

TRAM SUPPLY AGREEMENT
RISK ALLOCATION OF SELECTED RISKS IDENTIFIED BY TIE IN THE TRAM SUPPLY AGREEMENT ("TSA")
26-Sep-07

Important Note: This risk allocation matrix is based on the TSA issued at BAFO by tie and the preferred Candidate's submission as negotiated by tie. This is not a summary of all risks and a further risk allocation matrix showing the final position reached between the preferred Candidate and tie will be prepared in due course. Also, please note that there are various caps on liability expressed in the Contract and so all risk transfer to the public sector is subject to those caps.

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
Fitness for purpose of parts, components etc [Clause 7.1.1.4]		✓		Accepted	
Compliance with tie and CEC policies [Clause 7.1.1.13]		✓		Accepted	
Failure to use the Key Personnel [Clause 7.1.2.5]		✓		Accepted	
Warranty that the Tram Supplier's Proposals meet the Employer's Requirements [Clause 7.2]		✓		Accepted	
Use or specification of "prohibited materials" which were known to be deleterious, contravene health and safety standards etc at the time of specification or use. [Clause 7.11]		✓		Accepted	
Discrepancies or errors within the Employer's Requirements and between the Employer's Requirements and the Tram Supplier's Proposals, Trams and/or Tram Documentation. [Clause 7.12]		✓		Accepted - but clarified so that the review of the Employer's Requirements is limited to the Tram Supplier's scope	Mitigation: further technical review during Due Diligence and Facilitated Negotiations should highlight any issues. After award this will be either Infracore or Tramco responsibility.
Failure to notify the Client of any discrepancies or errors as soon as reasonably practicable and in any event within 5 Business Days [Clause 7.12]		✓		Accepted - but timescale adjusted	
Failure to approach Permitted Variations on an Open Book Basis [Clause 8.3]		✓		Accepted	

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
Failure to provide support for System Integration [Clause 9.1]		✓		Accepted - with minor drafting adjustment to limit demonstration of sub-system performance to the main systems of the Tram, particularly the traction equipment	
Failure to provide qualified personnel to support effective system integration [Clause 9.5]		✓		Accepted - with minor drafting adjustment to refer to scope of works	
Failure to take account of Client or tie comments as part of the Review Procedure [Clause 10.1]		✓		Accepted	
Failure to liaise with the Operator at all times in relation to the Operator Maintenance Plan [Clause 10.2]		✓		Accepted	
Failure to act upon instructions from the Operator in relation to safety management, possession co-ordination and maintenance interaction [Clause 10.3]		✓		Accepted - but any costs/delay associated with compliance with such instructions should be treated as a Compensation Event where not Tramco Default.	

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
Failure to deliver the Tram Works in accordance with the Employer's Requirements and without interruption [Clause 10.4]		✓		Compliance with the Employer's Requirements is accepted but "without interruption" has been deleted.	Clause 10 is Interface with the Operator. The deletion of "without interruption" is a clarification that reflects that some aspects will in practice be interrupted. Any potential change that could arise out from the Operator would be administered through tie if required or 'backed off' to the Operator through DPOFA.
Failure to notify the Client, tie, and the Operator of planned works and services to be carried out by the Tram Supplier which will necessitate interruption to or restriction of the Transport Services [Clause 10.5]		✓		Accepted - but timescale adjusted	
Failure to attend at the Project Safety and Certification Committee and comply with associated obligations [Clause 10.6]		✓		Accepted	
Failure to provide technical advice free of charge to the Client, the Operator and tie regarding the Trams following the Service Commencement Date [Clause 10.11]		✓		Accepted with minor drafting clarification	
Failure to provide access to the Site and other places where the Tram Works are being performed [Clause 10.12]		✓		Accepted	
Failure to work collaboratively with the Operator to maintain the highest standards achievable with regard to the provision of the Tram Works [Clause 10.16.3]		✓		Accepted	

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	Comments
	Client - pre-novation / Client - post novation	Tram Supplier	Shared		
Failure to repeat corporate and other warranties on each date on which a Milestone Payment is made [Clause 11.4]		✓		Accepted	
Fitness for purpose of Background Information [Clause 11.5]		✓		Accepted	
Failure to obtain Consents [Clause 12]		✓		Accepted	
Failure to attend at meetings called by the Client to discuss the development of any Deliverable [Clause 15.5]		✓		Accepted with the addition that the Client must act reasonably in relation to calling such meetings.	
Failure to provide the required number of Deliverables and to absorb the cost of copies of additional Deliverables [Clause 15.7]		✓		Accepted but clarified that they will provide 3 copies.	
Occurrence of conflicts, ambiguities, discrepancies, errors or omissions etc in the Tram Requirements Specification or any of the Deliverables [Clause 15.8]		✓		Accepted	
Failure to notify the Client of conflicts, ambiguities etc in the Tram Requirements Specification or any of the Deliverables [Clause 15.9]		✓		Accepted - but timescale adjusted to 10 Business Days	
Failure of Tram Supplier's Representative and Client's Representative to attend monthly progress meetings and other meetings at other times [Clauses 16.1/16.2]	✓	✓		Accepted - at Client's discretion, meetings could take place in Tram Supplier's premises. Also increased the notice period for the additional meetings.	Client would be Infraco Post Novation.
Failure of Tram Supplier not to make the Tram Supplier's Representative, Key Personnel and Tram Supplier Parties available for meetings [Clause 16.3]		✓		Accepted	

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
Failure of the Tram Supplier to obtain the Client's approval prior to changing any Key Personnel [Clause 18.1]		✓		Accepted	
Failure of the Tram Supplier obtain replacement Key Personnel within 10 Business Days [Clause 18.2]		✓		Accepted	
Failure of the Tram Supplier to make personnel available [Clause 18.4]		✓		Accepted with minor drafting adjustment	
Provision of technical assistance and advice until the expiry of the Extended Warranty Period at no cost [Clause 18.5]				Accepted	
Employment of tie personnel (without tie's consent) by the Tram Supplier within 3 months of personnel leaving tie [Clause 18.7]		✓		Accepted - and has been made reciprocal on tie .	Onus now also on tie not to 'poach' Tramco staff. tie HR would act as safety net.
Failure to comply with tie's drug and alcohol policy and other regulations [Clause 18.8]		✓		Accepted	
Failure to comply with Client requirements in relation to progressing Client Change Orders [Clause 20]		✓		Accepted with minor drafting adjustments in respect of timescales	
Failure to comply Client's requirements in respect of Provisional Estimates [Clause 20.12]		✓		Not accepted - adjusted to refer to a fast track dispute resolution procedure	Facilitated Negotiations between Infraco/Tramco will need to address this issue.
Failure to prevent/mitigate any circumstances which cause a Client Change (with the result that no Client Change is instructed following such inaction) [Clause 20.13]		✓		Not accepted - adjusted to refer to a fast track dispute resolution procedure	Facilitated Negotiations between Infraco/Tramco will need to address this issue.

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
Failure by the Infraco to notify the Client within 10 Business Days of any compliance with Client instructions or the occurrence of any matter which may constitute a Client Change [Clauses 20.15/20.16]		✓		Accepted	
Tram Supplier Changes which result in higher costs [Clause 21.2]		✓		Accepted with minor drafting adjustment	
Sharing of savings as a result of Tram Supplier Changes which arise out of value engineering proposals [Clause 21.3]			✓	Accepted with minor drafting adjustment	This would be an 'opportunity' rather than a risk but it is shared
Failure to provide a mock-up of the Tram [Clause 23.1.1.]		✓		Accepted - but mock-up to be provided within 30 weeks rather than 20 weeks. Other minor drafting adjustments	
Failure to allow audit and inspection [Clause 24]		✓		Accepted but 'carve out' dealing with commercially sensitive information	
Failure to comply with quality assurance requirements [Clause 25]		✓		Accepted - but subject to technical standards being agreed	Facilitated Negotiations between Infraco/Tramco will need to address this issue.
Failure to reissue the Tram Manufacturing and Delivery Programme at the end of each Reporting Period or as otherwise reasonably required by tie [Clause 26.2]		✓		Accepted with a minor drafting adjustment	

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
Failure to have the Depot ready in accordance with the Tram Manufacturing and Delivery Programme.	✓			Failure to give access to the Depot in accordance with the Depot Sub-Licence is a Compensation Event. Proposed new Clause 26.4 has been rejected	If the delay to the Depot is Infraco's responsibility then this would be their risk. If however it is tie's responsibility then additional costs could occur and tie's mitigation would be effective project management.
Failure to progress the Tram Works to allow substantial completion in accordance with the Tram Manufacturing and Delivery Programme. [Clause 27.1]		✓		Accepted - but addition that its agreement that the progress of the Tram Works is too slow must be obtained.	Mitigation: on-going review of progress by tie / Tram Inspector.
Compliance with pre-delivery inspections and factory acceptance tests [Clause 28]		✓		Accepted	
Costs of strengthening bridges or altering roads on route to the Depot to allow for delivery of Trams to the Depot. [Clause 29.1.3]		✓		Accepted	
Responsibility for unloading the Trams [Clause 29.1.4]		✓		Accepted	
Time being of the essence in relation to meeting the Tram delivery dates set out in the Tram Manufacturing and Delivery Programme [Clause 29.2]		✓		Accepted	
Compliance with requirements for tram delivery tests and certification [Clause 30]		✓		Accepted	
Compliance with requirements for training, commissioning, testing and certification [Clause 31]		✓		Accepted	

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
Issue of a Repeated Failure Notice. [Clause 32.1]		✓		Accepted - but adjustments to the restriction on payments made.	
Failure to maintain and update the Tram Documentation in accordance with the Client's requirements [Clause 33.2/33.3]		✓		Accepted	
Failure to deposit Tram Documentation as escrow material within the specified time period. [Clause 33.5]		✓		Accepted - but amended the specified time period from 28 days to 25 business days.	
Increase in the cost of and compliance with delivery requirements in relation to Spare Parts and Tools over the 30 year supply period [Clause 34.3]		✓		Accepted	
Failure to transfer title in Trams and items of Tram Related Equipment to CEC. [Clause 35]		✓		Accepted but drafting to be further adjusted.	Facilitated Negotiations between Infraco/Tramco will need to address this issue.

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	Comments
	Client - pre-novation / Client - post novation	Tram Supplier	Shared		
Occurrence of a Fleet Tram Defect [Clause 36]		✓		Accepted for 4 years only from commencement of Passenger Services - warranty period reduced from 6 years from commencement of Passenger Services. Also, definition of Fleet Tram Defect has been adjusted to split components, assemblies or sub-assemblies	Mitigation: Tram Supplier will also be Tram Maintainer and have on-going responsibility. Reflects industry practice.
Occurrence of an Extended Tram Warranty Defect [Clause 36]		✓		Accepted	
Occurrence of a Paint and Finish Defect [Clause 36]		✓		Accepted	
Occurrence of Tram Defect during the Primary Tram Warranty Period [Clause 36]		✓		Accepted for 2 years only from the Tram Maintenance Date - warranty period reduced from 6 years from the Tram Maintenance Date	Mitigation: Tram Supplier will also be Tram Maintainer and have on-going responsibility.
Full warranty period to be applied to any repaired, rebuilt or replaced component [Clause 36.6]		✓		Accepted	
No warranty given in respect of the Depot		✓		Accepted	
Set-off of amounts owed to the Client by the Tram Supplier [Clause 38.9.3]		✓		Accepted but with amended drafting.	
Failure to provide the Required Insurances [Clause 40]		✓		Accepted	

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
Indemnification of tie by the Tram Supplier from and against any and all actions, claims, demands, proceedings, liabilities, damages, penalties, fines, forfeitures and incidental costs and expenses which any Indemnified Party may incur. [Clause 41.1]		✓		Accepted	
Cap on Tram Supplier's liability to exclude proceeds from the Reliability Bond, and to not relate to liabilities which are covered or should have been covered under the insurances or which would have been covered but for the application of deductibles. [Clause 41.5]	✓	✓		Not accepted - wants such amounts to be included within the cap.	Would potentially reduce access to funds in event of significant Tramco Default that also related to the bond or insurance. Mitigation would initially be that Infracore have vested interest to monitor closely, additionally tie exercising effective project management.
Cap on Client's liability [Clause 41.6]		✓		Accepted	
Sole remedies for Tram Supplier are those which are expressed [Clause 41.9]		✓		Accepted	
Responsibility for making the Client commit offences [Clause 41.10]		✓		Accepted	
Payment of Delivery Retention for late delivery of Trams [Clause 41.20/41.21]		✓		Accepted	
Payment of Liquidated Damages for overweight Trams [Clause 41.25]		✓		Accepted	
Responsibility for maintenance handover for a period of 2 years following the termination or completion of the Tram Works [Clause 42.2]		✓		Accepted	

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
The credit rating of the surety issuing the Reliability Bond being downgraded to A- or lower by Standard & Poors. [Clause 44.2]		✓		Not accepted - the Client's ability to request the Tram Supplier to procure a substitute bond has been deleted.	Potential increase in risk exposure if downgrading leads to surety insolvency and then followed by Tramco insolvency prior to new bond being procured. Mitigation would initially be that Infracore have vested interest to monitor closely, additionally tie exercising effective project management.
Failure to meet defined Reliability standards [Clause 44.3]		✓		Accepted	
Tram Supplier delays [Clause 45]		✓		Accepted	
Occurrence of a Relief Event [Clause 47]	✓	✓		Accepted	Relief Event is an extension of time but without costs.
Failure to submit a notice of a claim for an extension of time within 10 Business Days after awareness of the occurrence of a Relief Event. [Clause 47.4]		✓		Accepted - but the number of days to respond increased.	
Compliance with Tram Supplier's obligations during any time when an extension of time is granted [Clause 47.6]		✓		Accepted	
Concurrent delay [Clause 47.8.1.2]		✓		Accepted	
Failure to carry out the Tram Works notwithstanding the occurrence of a Relief Event. [Clause 47.11]		✓		Accepted - but amendment upon the occurrence of a Force Majeure event.	Force Majeure events are not common and generally impossible to predict.

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
Failure to mitigate delay by adjusting the order and sequence of execution of the Tram Works [Clause 47.8.2]		✓		Accepted	
Failure to identify long lead time works, order long lead time materials, manage any required interface with any Approval Body or identify required instructions in order to progress the Tram Works. [Clause 47.9]		✓		Accepted	
Occurrence of a Change in Law [Clause 48]	✓	✓		Accepted	Qualifying Change of Law covers either a Discriminatory Change of Law (applying to the Edinburgh Tram Network or Tram only) or a Specific Change of Law (applying to works the same as or similar to Tram Works). Tramco is responsible for additional costs up to thresholds noted in Clause 48.3 but tie is responsible for any Qualifying Change of Law in the event that this threshold is exceeded. Given the timescales to implement changes, this is more likely to be applicable to the maintenance phase.

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
Occurrence of a Compensation Event [Clause 49]	✓			Accepted	
Failure to carry out the Tram Works using best endeavours notwithstanding the occurrence of a Compensation Event. [Clause 49.2.3.3]		✓		Accepted - but amendment upon the occurrence of a Force Majeure event.	Force Majeure events are not common and generally impossible to predict.
Failure to comply with the requirements to deal with a Compensation Event and submit a notice of a claim for an extension of time within 10 Business Days after awareness of the occurrence of a Compensation Event. [Clause 49.3]		✓		Accepted - but the number of days to respond is increased.	
Compliance with Tram Supplier's obligations during any time when an extension of time is granted [Clause 47.6]		✓		Accepted	
Concurrent delay [Clause 49.6.1.2]		✓		Accepted	
Failure to mitigate delay and costs by adjusting the order and sequence of execution of the Tram Works [Clause 49.6.2]		✓		Accepted	
Failure to identify long lead time works, order long lead time materials, manage any required interface with any Approval Body or identify required instructions in order to progress the Tram Works. [Clause 49.7]		✓		Accepted - but amendment inserted for an exception whereby the Client agrees in writing to an exception to the stated requirements.	
Failure to comply with requests for the attendance of certain officers or employees of the Tram Supplier at Client meetings. [Clause 50.2.3]		✓		Accepted - but insertion that the Client must act reasonably.	
Failure to provide Annual Service Reports and Best Value Improvement Plans [Clause 50.4 -50.9]		✓		Accepted	

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	Comments
	Client - pre-novation / Client - post novation	Tram Supplier	Shared		
Failure to assign Project IPR. [Clause 51.1]		✓		Accepted - but the definition of Project IPR is to be adjusted.	Facilitated Negotiations between Infraco/Tramco will need to address this issue.
Failure to grant a licence in respect of Tram Supplier IPR [Clause 51.2]		✓		Accepted - but with minor drafting adjustment	
Delivery of Tram Supplier IPR [Clause 51.3]		✓		Accepted	
Costs in taking measures as a result of Protestor Action. [Clause 53.2]		✓		Not accepted - Douglas has inserted that it should be indemnified by the Client for the assumption of such costs.	Facilitated Negotiations between Infraco/Tramco will need to address this issue.
Suspension of the Tram Works. [Clause 54.1]		✓		Accepted in principle - list of reasons for such suspension requires to be agreed.	Facilitated Negotiations between Infraco/Tramco will need to address this issue.

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
Termination of the TSA on Tram Supplier Default. [Clause 55.1]		✓		Accepted - but amended this so that, instead of immediate termination, termination occurs 60 days from its receipt of the termination notice and within this 60 days it has the opportunity to rectify its default.	In practice the amendment reflects a more pragmatic approach as immediate termination would have extremely significant ramifications.
Failure to notify of the decision of the Tram Supplier to seek financial or legal advice relating to the solvency of the Tram Supplier and / or the presentation or petition for the winding up of the Tram Supplier or any petition for an administration order. [Clause 55.4]		✓		Not accepted - Douglas has deleted its notification obligations.	Theoretical reduction in the period for early warning, however there would be other indications that would indicate problems and allow tie to consider appropriate mitigation measures.
Termination for persistent breach [Clause 56]		✓		Accepted	
Termination of the TSA on Client Default [Clause 57]	✓			Accepted	This is a not an amendment by the Preferred Bidder.
Occurrence of a Force Majeure Event [Clause 59]		✓		Accepted - but "war" has been adjusted to refer to "war in Spain".	Force Majeure events are not common and generally impossible to predict.
No compensation for loss of profits on termination [Clause 62.3]		✓		Accepted	
Right to reject Trams on termination of the TSA [Clause 63.1.5]		✓		Accepted	

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
The withholding of the Client's consent to sub-contract or assign the TSA. [Clause 69.7]		✓		Accepted - but the wording which allows the Client to withhold its consent "without limitation" has been deleted.	
The restriction on the ability of the Tram Supplier to create a Security Interest over any Assets. [Clause 71.1]		✓		Not accepted - Douglas has deleted this restriction.	Facilitated Negotiations between Infraco/Tramco will need to address this issue.
Failure by the Tram Supplier to disclose personal data only as is necessary to perform its obligations under the TSA. [Clause 72.2.4]		✓		Not accepted.	Facilitated Negotiations between Infraco/Tramco will need to address this issue.
Failure to allow the Client or tie access to any relevant premises. [Clause 77.2.5]		✓		Accepted - but insertion made that such access must be justified by the Client.	
Provision of Parent Company Guarantee to tie. [Schedule 1 Part 3, Parent Company Guarantee]		✓		Parent will be the contracting party to the TSA - so no Parent Company Guarantee is required.	

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
Liability under the Novation Agreement. [Schedule 1, Part 3, Tram Supply Novation Agreement Clause 4.4]		✓		New Clause 4.4 stating that it shall not be responsible for indirect or consequential damages has been inserted.	
Failure to acknowledge payments due to the Tram Supplier under the TSA have been paid. [Schedule 1, Part 3, Tram Supply Novation Agreement Clause 8]		✓		Accepted - but insertion that this is subject to confirmation of pending payments and that it will suffer no payment delays as a result of the novation process.	Facilitated Negotiations between Infracore/Tramco will need to address this issue. Mitigation is the concept of the Tram Inspector and the co-ordination of payment applications.
Extension of time or additional payments to the Tram Supplier will not exceed that which the Infracore is entitled to for the same Client Change. [Schedule 1, Part 3, Tram Supply Novation Agreement Appendix 1]		✓		Accepted - but inserted an exception where such payments have been previously agreed with tie or Force Majeure.	Force Majeure events are not common and generally impossible to predict.
Assignment of the TSA by Client. [Schedule 1, Part 3, Tram Supply Novation Agreement Appendix 1]		✓		Accepted - original drafting reinstated	
Failure to grant a licence to use Project and Tram Supplier IPR as necessary. [Schedule 1, Part 3, Tram Supply Collateral Warranty Clause 3.1]		✓		Accepted	
Failure to grant tie a licence to use any Software. [Schedule 1, Part 3, Tram Supply Collateral Warranty Clause 3.2/3.3]		✓		Accepted	

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
Failure to provide a copy of the Deliverables to tie which are to be provided to the Newco under the TSA. [Schedule 1, Part 3, Tram Supply Collateral Warranty Clause 3.4]		✓		Accepted - but an exception where the Deliverables have already been delivered to tie has been inserted.	
Liability of tie to the Tram Supplier pre step-in [Schedule 1, Part 3, Tram Supply Collateral Warranty Clause 5.9]		✓		Accepted - but indirect and consequential loss excluded at Clause 7.6	
Contending in court proceedings that an assignee under the Collateral Warranty is to be precluded from recovering loss by reason that such party is not the original contracting party under the Collateral Warranty. [Schedule 1, Part 3, Tram Supply Collateral Warranty Clause 6.3]		✓		Not accepted	Facilitated Negotiations between Infraco/Tramco will need to address this issue.
Surety claiming or ranking in competition with tie in the liquidation of the Tram Supplier. [Schedule 10, Part A, Reliability Bond Clause 3]		✓		To be confirmed - requires confirmation from Surety that this is acceptable.	Facilitated Negotiations between Infraco/Tramco will need to address this issue.
Failure to grant a licence to use the IPR in the Deliverables as may be necessary. [Schedule 10, Part B, Collateral Warranty Clause 4.1]		✓		Accepted subject to amendment	Facilitated Negotiations between Infraco/Tramco will need to address this issue.

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
Assignment of the collateral warranty by the Beneficiary. [Schedule 10, Part B, Collateral Warranty Clause 6.2.5]		✓		Accepted - but has limited the assignment rights by deleting the ability of the beneficiary to assign without its consent on no more than two occasions. Also limited the Beneficiary's rights of assignment with the consent of the Tram Supplier, to persons whose financial standing is no worse than tie .	Limitation on the number of assignments is typical of the market and not thought likely to be an issue here.
Contending in court proceedings that an assignee under the Collateral Warranty is to be precluded from recovering loss by reason that such party is not the original contracting party under the Collateral Warranty. [Schedule 10, Part B, Collateral Warranty Clause 6.3]		✓		Not accepted - Douglas has deleted this provision. Drafting to be further adjusted.	Facilitated Negotiations between Infraco/Tramco will need to address this issue.
Liability of the Tram Supplier [Schedule 10, Part B, Collateral Warranty Clause 7]		✓		Accepted	
Failure to obtain Required Insurances. [Schedule 11, Part 1]		✓		Accepted - has adjusted the extensions and levels of insurances required.	Insurance team to review.
Failure to grant a licence to use the IPR in the Sub-Contractor Deliverables as may be necessary. [Schedule 18, Sub-Contractor Direct Agreement, Clause 4.1]		✓		Accepted	

Risk	Original Risk Allocation			Preferred Candidate's position on proposed risk allocation	tie Comments
	tie - pre-novation /Client - post novation	Tram Supplier	Shared		
Failure to provide a copy of the Sub-Contractor Deliverables to the Beneficiary following receipt of a written request to do so. [Schedule 18, Sub Contractor Direct Agreement, Clause 4.4]		✓		Accepted - but an exception where the Sub-Contractor Deliverables have already been delivered to tie has been inserted.	
Assignment of the Sub-Contractor Direct Agreement by the Beneficiary. [Schedule 18, Sub-Contractor Direct Agreement, Clause 7.2]		✓		Accepted	
Liability of the Sub-Contractor [Schedule 18, Sub-Contractor Direct Agreement Clause 8]		✓		Accepted - but indirect and consequential loss has been excluded	
Contending in court proceedings that an assignee under the Sub-Contractor Direct Agreement is to be precluded from recovering loss by reason that such party is not the original contracting party under the Direct Agreement. [Schedule 18, Sub-Contractor Direct Agreement, Clause 7.3]		✓		Not accepted - has deleted this provision. Drafting to be adjusted.	Facilitated Negotiations between Infracore/Tramco will need to address this issue.