

20.8

tie Remediable Termination Notice in respect of alleged Breaches evincing course of conduct and Responses thereto.

Advanced Copy

Bilfinger Berger UK Limited EDI	
Date	30 SEP 2010
Time	
From	
To	
Destination	



For The Attention of Martin Foerder:
 Project Director
 Bilfinger Berger Siemens CAF Consortium
 9 Lochside Avenue
 Edinburgh Park
 Edinburgh EH12 9DJ

Our Ref: INF CORR 6318

Date: 30 September 2010

By fax and personal delivery

Dear Sirs

**INFRACO CONTRACT
 REMEDIABLE TERMINATION NOTICE
 INFRACO DEFAULT (a) BREACHES EVINCING COURSE OF CONDUCT**

Enclosed is a Remediable Termination Notice in respect of Infraco Default (a) under the Infraco Contract.

We look forward to receiving your rectification plan within 30 Business Days of the date of this Remediable Termination Notice.

Yours faithfully



Steven Bell
 Project Director – Edinburgh Tram

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REMEDIAL TERMINATION NOTICE

INFRACO DEFAULT (A): BREACHES EVINCING COURSE OF CONDUCT

1. Infraco Default (a)

- 1.1 The Infraco has breached its obligation under Clause 7.1 of the Infraco Contract to accept full responsibility for and to carry out and complete the Infraco Works fully and faithfully in accordance with the Infraco Contract.
- 1.2 The Infraco has breached its obligation under Clause 7.2 of the Infraco Contract to ensure that, in carrying out and completing the Infraco Works, the Infraco exercises a reasonable level of professional skill, care and diligence to be expected of a properly qualified and competent professional contractor experienced in carrying out works and services of a similar nature to the Infraco Works in connection with projects of a similar scope and complexity.
- 1.3 Individually and cumulatively, these breaches materially and adversely affect the carrying out and completion of the Infraco Works.
- 1.4 This is an Infraco Default (a) under the Infraco Contract.

2. Nature of the Infraco Default which has occurred

- 2.1 The Infraco has demonstrated, and continues to demonstrate, an ongoing course of conduct which constitutes multiple repeated and unremedied breaches of the Infraco's obligations under the Infraco Contract, to the level that this course of conduct is materially and adversely affecting the carrying out and completion of the Infraco Works.
- 2.2 The course of conduct adopted by the Infraco is in breach of the duty of care owed by the Infraco to tie under the Infraco Contract and is a course of conduct which a properly qualified and competent professional contractor, experienced in carrying out works and services of a similar nature to the Infraco Works in connection with projects of a similar scope and complexity, and acting fairly and reasonably, would not have adopted.
- 2.3 This course of conduct manifests itself in the Infraco's approach to its performance of the Infraco Works and the discharge of the Infraco's obligations under the Infraco Contract and in the Infraco's specific failures to perform and to comply with these obligations.
- 2.4 **Approach to the Infraco Works and the Infraco Contract**
 - 2.4.1 The Infraco has demonstrated, and continues to demonstrate, a course of conduct which comprises ongoing delinquent and obstructive behaviour and an obdurate refusal to work in mutual co-operation with tie to carry out and complete the Infraco Works and to achieve delivery of the Edinburgh Tram Project in accordance with the terms of the Infraco Contract.
 - 2.4.2 The Infraco has demonstrated, and continues to demonstrate an ongoing course of conduct which is adversarial, aggressive and misrepresents facts and where the Infraco's positions have changed throughout the course of the Infraco Contract.
 - 2.4.3 The Infraco operates as a dysfunctional consortium, contrary to its commitment under the Infraco Contract as a joint and severally liable entity, to the detriment

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of the carrying out and completion of the Infraco Works, the Infraco's relations with tie, as client under the Infraco Contract, and the reputation of the Edinburgh Tram Project.

2.4.4 This course of conduct has been evident since the execution of the Infraco Contract on 14 May 2008 and is ongoing.

2.5 Non delivery of the Infraco Works

2.5.1 The Infraco's conduct obstructs the successful delivery of the Infraco Works in accordance with the Infraco Contract.

2.5.2 The Infraco's rate of progress is too slow and cannot meet the standards of "due expedition" and "timely and efficient manner" under the Infraco Contract. After over 30 months of a 38 month Programme, only 24.3% of the Infraco Works have been completed. The Infraco has no contractually compliant Programme. The Infraco persistently refuses to comply with tie's instructions and directions in relation to the inadequate speed of execution of the Infraco Works. Where the Infraco has notified an alleged Compensation Event, the Infraco does not continue with the completion of the Infraco Works as it is required to under the Infraco Contract. The Infraco will not continue with any works which are the subject of a tie Change or Notified Departure prior to the issue of a tie Change Order or the referral of the relevant Estimate (if there is one) to the Dispute Resolution Procedure.

2.5.3 The Infraco has not yet delivered a contractually compliant Design under the Infraco Contract. The delivery of Issued for Construction ("IFC") Drawings (including IFC Drawings for key structures) is repeatedly late. There is no assured, integrated design solution for on-street trackworks. This is a fundamental failure which goes to the root of compliance with the Infraco Contract (including the Employer's Requirements), and prevents contractually compliant delivery and completion of the Infraco Works.

2.6 Poor design and defective installation

2.6.1 The Infraco's misconduct includes disregard for the quality of the Infraco's delivery of the Infraco Works, in that the Infraco has installed defective works on Princes Street which the Infraco has failed to remedy.

2.6.2 The Design is often of poor quality, does not comply with the Employer's Requirements and is not fit for purpose, but the Infraco takes no measures to manage or sanction or correct the failings that cause this situation. The Design has not been prepared with the requisite level of skill and application of expertise required for a project such as the Edinburgh Tram Project and commensurate with the contractual duty of care. The Infraco has not managed the SDS Provider to provide the SDS Services in accordance with its obligations and commensurate with the contractual duty of care.

2.6.3 The Infraco's conduct demonstrates a disregard for the Deliverables which the Infraco is required to submit and maintain pursuant to the Infraco Contract. The Infraco has submitted and continues to submit to tie Deliverables which are unsatisfactory, fail to achieve the contract requirements and are contrary to Good Industry Practice and the OGC's "Excellence in Construction" initiative and which fall below that which a properly qualified and competent professional

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contractor experienced in carrying out works and services of a similar nature to the Infraco Works in connection with projects of a similar scope and complexity, acting fairly and reasonably, would have delivered.

2.7 Lack of supervision

- 2.7.1 The ongoing course of conduct of the Infraco demonstrates abrogation of its duties in relation to supervising the carrying out and completion of the Infraco Works.
- 2.7.2 The Infraco failed to provide adequately qualified superintendence of the carrying out of the Infraco Works on Princes Street. The lack of adequate superintendence contributed to the installation of defective works on Princes Street.
- 2.7.3 The Infraco has breached its obligations to manage the SDS Provider and to ensure that the SDS Provider carries out the SDS Services in accordance with the SDS Agreement. The SDS Provider has failed to provide the SDS Services in accordance with the SDS Agreement. The Infraco has not enforced the contractual mechanisms available to it under the SDS Agreement to impose sanctions on poor performance or to ensure the correction of errors. The Infraco has not demonstrated that it has taken any meaningful steps to manage the SDS Provider or the progress of the SDS Services. The delivery of IFC Drawings is repeatedly late, often materially. There are instances where an entirely inadequate design has been proposed and the design has had to undergo redesign.
- 2.7.4 The Infraco's conduct demonstrates a lack of supervision and management over its supply chain, which is necessary to deliver the Infraco Works. After over 28 months since contract signature, the Infraco does not yet have in place a set of approved Key Sub-Contractors. The Infraco has not procured Collateral Warranties for the benefit of tie, CEC and TEL from any of its Key Sub-Contractors in respect of Major Civils Works Contractors.

2.8 Disregard for contractual mechanisms

- 2.8.1 The Infraco's conduct demonstrates a disregard for the application of and adherence to the mechanisms included in the Infraco Contract to manage the Infraco Contract and the Infraco Works.
- 2.8.2 The Infraco has persisted in refusing to comply with the contractual mechanism included in the Infraco Contract to regulate tie Changes (including Mandatory tie Changes). The Infraco has demonstrated a course of conduct amounting to an abuse of the application of Clause 80, by: automatically notifying matters under the tie Change mechanism without demonstrating the appropriateness or why a matter is an alleged tie Change; persistently and systematically failing to meet the contractual obligations to deliver contractually compliant and timeous Estimates in relation to tie Changes; not complying with its mitigation obligations; and persistently submitting grossly overvalued and inflated Estimates. The Infraco evinces a non-collaborative and exploitative approach to the tie Change mechanism and the submission of Estimates. The Infraco refuses to recognise that its behaviour potentially puts tie in conflict with its duties of public accountability. The Infraco does not act fairly or reasonably.
- 2.8.3 The Infraco has persisted in refusing to comply with the contractual mechanism included in the Infraco Contract in relation to Compensation Events. The Infraco

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has demonstrated a course of conduct amounting to an abuse of the application of Clause 65, by submitting claims for Compensation Events without any evidence that an event satisfies the contractual tests for entitlement, often in the form of a standard letter; by refusing to substantiate claims; failing to produce any timely assessment relating to individual facts and circumstances; and consistently being late with submissions. The Infraco has refused on a blanket basis to provide tie with meaningful estimates of the effect of the alleged Compensation Event and any acceleration or mitigation measures adopted. This erodes tie's ability to have trust in the Infraco's motive in applying for time and money and undermines tie's position. The Infraco does not inform tie of other instances of delay to the Infraco Works which are not caused by alleged Compensation Events.

- 2.8.4 The Infraco has persisted in being obstructive and uncooperative in relation to the application of the audit mechanism in Clause 104 of the Infraco Contract, by conduct including: refusing to respond to questions asked, failing to provide information requested or taking an unreasonably long time to provide information requested; refusing to provide access as requested; and acting contrary to the commitments to work in mutual co-operation with tie in the carrying out of the Infraco Works, act fairly and reasonably and approach all actual or potential Permitted Variations on an Open Book Basis.
- 2.8.5 The Infraco has failed to establish at a staffed office and comply with the contractual mechanism to enable the verification of claims made by the Infraco under the Infraco Contract (including in respect of actual or potential Permitted Variations, Compensation Events, and any other claims for additional costs or expenses which the Infraco is claiming) by tie, tie's Representative or their duly authorised representatives.
- 2.8.6 The Infraco has persisted in not complying with the contractual mechanism in Clause 28 for the approval of the form of sub-contract for Key Sub-Contractors.
- 2.8.7 The Infraco has failed to comply with the mechanism for design review and the review of Deliverables provided for in the Infraco Contract (the Design Review Procedure and Design Management Plan contained at Schedule Part 14). In respect of the civil engineering works forming part of the Infraco Works, the Design Review Procedure has been used inconsistently.

2.9 Performance of Contract

- 2.9.1 The Infraco's conduct comprises a disregard for the Infraco's obligations under the Infraco Contract and a serial and continuing delinquency regarding performance of the Infraco's obligations under the Infraco Contract.
- 2.9.2 There have been many, and continue to be many, breaches of the terms of the Infraco Contract by the Infraco. The Infraco's breaches of contract have been in respect of almost every aspect of project delivery: some are minor, some are material. The Infraco's breaches include breaches of the clauses of the Infraco Contract included in Appendix A of this Remediable Termination Notice.

2.10 Unwillingness to resolve difficulties or the Infraco's breaches

- 2.10.1 The Infraco's conduct has not demonstrated, and continues not to demonstrate, willingness or engagement to resolve the difficulties and breaches of contract by the Infraco which arise.

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- 2.10.2 tie has engaged in much discussion and correspondence with the Infraco in relation to the Infraco's individual and cumulative breaches and behaviour which evince this course of conduct. As at the date of this Remediable Termination Notice, discussion and correspondence has not been able to rectify the Infraco's course of conduct or improve the Infraco's approach to the Infraco Contract and the delivery of the Edinburgh Tram Project.
- 2.10.3 The lack of engagement and failure to act in partnership with tie is a tone which was set by the Infraco from the outset of the contractual relationship, for example, by the Infraco's unwillingness to attend and engage in the initial partnering workshops arranged by tie following contract signature to facilitate a collaborative partnering environment, and which spans many aspects of project delivery.
- 2.10.4 tie has sought to apply the audit process under Clause 104 of the Infraco Contract in order to request information and understand certain matters. Where tie has sought to undertake audits, the Infraco has consistently taken issue with the ability of tie to undertake the relevant audits and has been obstructive and uncooperative during the audit process and has failed on a number of occasions to provide the information requested. The Infraco's non-compliance with tie's instructions and repeated requests and tie's directions as part of the audit process in relation to the management of the design and design changes is the conduct which partly necessitated the need for the Remediable Termination Notice in respect of the Infraco's failure to provide tie with access to an extranet and failure to provide tie with information (issued on 9 August 2010) and the Remediable Termination Notice in respect of the Infraco entering into an agreement with the SDS Provider, without tie's prior approval, which contractualises an approach to tie Changes (issued on 1 September 2010).
- 2.10.5 The Infraco demonstrates an approach to differences and disputes which is not constructive and which is contrary to the Infraco's obligations to work in mutual co-operation with tie and to use reasonable endeavours to avoid unnecessary complaints, disputes and claims and which is contrary to that which a properly qualified and competent professional contractor, acting fairly and reasonably, would take. The Infraco routinely grossly overvalues Estimates, refuses to provide information and explanation, refuses to provide reasons for why a matter is an alleged Notified Departure or alleged Compensation Event under the Infraco Contract and refuses to provide vouching for actual or potential Permitted Variations. On occasion, tie has turned to the contractual Dispute Resolution Procedure in order to seek to understand the Infraco's position.

2.11 Underperformance Warning Notices

- 2.11.1 Due to the Infraco's material breaches of contract, and the Infraco's persistent failure to rectify the breaches, the situation has become intolerable and tie has been obliged to issue Underperformance Warning Notices in accordance with the terms of the Infraco Contract. As at the date of this Remediable Termination Notice, tie has issued an Underperformance Warning Notice in respect of the Infraco carrying out seriously defective works on Princes Street (issued on 9 August 2010) and an Underperformance Warning Notice in respect of the Infraco's failure to deliver to tie a contractually compliant Programme (issued on 8 September 2010).

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2.12 Remediable Termination Notices

- 2.12.1 tie has been obliged to issue Remediable Termination Notices in accordance with the terms of the Infraco Contract in respect of the breaches by the Infraco listed at paragraphs 2.12.1.1 to 2.12.1.8 below. The Infraco had otherwise failed to rectify the breaches, despite repeated requests from tie on each over a period of time, to the extent that the Infraco's breaches were (individually and cumulatively) materially and adversely affecting the carrying out and completion of the Infraco Works. It is a measure of the seriousness as to how tie views these breaches and the Infraco's persistent failure to respond to and engage on, in any meaningful way, the concerns and requests of tie, as client and counterpart in a partnering contract, that these Remediable Termination Notices have had to be issued.
- 2.12.1.1 Remediable Termination Notice in respect of the installation of seriously defective works on Princes Street (issued on 9 August 2010);
- 2.12.1.2 Remediable Termination Notice in respect of inadequate and incompetent superintendence for the carrying out of works of Princes Street (issued on 9 August 2010);
- 2.12.1.3 Remediable Termination Notice in respect of the Infraco's failure to provide tie with access to an extranet and failure to provide tie with information (issued on 9 August 2010);
- 2.12.1.4 Remediable Termination Notice in respect of the Infraco's failure to deliver a contractually compliant Programme (issued on 16 August 2010);
- 2.12.1.5 Remediable Termination Notice in respect of the Infraco entering into an agreement with the SDS Provider, without tie's prior approval, which contractualises an approach to tie Changes (issued on 1 September 2010);
- 2.12.1.6 Remediable Termination Notice in respect of the Infraco's ongoing failure to deliver a fully integrated, assured design for the on-street trackworks (issued on 8 September 2010);
- 2.12.1.7 Remediable Termination Notice in respect of the Infraco's failure to progress demolition works at Russell Road (issued on 21 September 2010); and
- 2.12.1.8 Remediable Termination Notice in respect of the Infraco's persistent breach of the tie Change mechanism (issued on 30 September 2010).
- 2.12.2 It is acknowledged that, in response to the Remediable Termination Notices listed at paragraphs 2.12.1.1, 2.12.1.2 and 2.12.1.3, the Infraco's position is that the Remediable Termination Notices are not justified. Notwithstanding, the Infraco submitted rectification plans in order to address the defaults included in 2.12.1.1 and 2.12.1.3 (by letters dated 17 September 2010, references: 25.1.201/KDR/6730 and 25.1.201/KDR/6732). The rectification plan provided by the Infraco in respect of the Remediable Termination Notice at 2.12.1.1 has been rejected by tie. It does not contain the necessary approvals from the relevant Approval Bodies (or address how to achieve these); does not address all

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the defects present in materials and workmanship; is not technically sound; and is put forward without an integrated, assured and complete design relevant for the rectification works. For these reasons, the rectification plan is in itself a breach of contract. The rectification plan provided by the Infraco in respect of the Remediable Termination Notice at 2.12.1.3 is currently under review.

- 2.12.3 As at the date of this Remediable Termination Notice, the Infraco has not yet submitted rectification plans in respect of the Remediable Termination Notices listed at paragraphs 2.12.1.2 and 2.12.1.4 to 2.12.1.8.
- 2.12.4 The rectification plans for the Remediable Termination Notices at 2.12.1.2 (inadequate and incompetent superintendence on Princes Street) and 2.12.1.4 (failure to deliver a contractually compliant Programme) are both overdue.
- 2.12.5 The Infraco's conduct is contrary to that of a properly qualified and competent professional contractor. A properly qualified and competent professional contractor respecting partnering obligations and acting reasonably would have taken steps to resolve the defaults without the need for the client to issue notices of potential termination.
- 2.13 Disregard for the client's public accountability and best value**
- 2.13.1 The Infraco has demonstrated and continues to demonstrate a total disregard for its commitments under the Infraco Contract to assist tie to secure best value in respect of the carrying out of the Infraco Works and make arrangements to secure continuous improvement in the way in which the Infraco Works are conducted having regard to the Project Vision and a combination of economy, efficiency and effectiveness. The Infraco has demonstrated and continues to demonstrate disregard for its obligations, specified throughout the Infraco Contract in respect of mitigating and minimising costs in the delivery of the Infraco Works, including in respect of actual or potential Permitted Variations and Compensation Events.
- 2.13.2 The Infraco has approached the tie Change mechanism and the Compensation Events mechanism with a course of conduct which demonstrates an exploitation of the Infraco's rights to potential entitlement and which demonstrates an approach to inflating claims made.
- 2.13.3 The Infraco has repeatedly refused to operate on an Open Book Basis in respect of actual or potential Permitted Variations and has demonstrated little attempt to seek to mitigate or minimise costs. The Infraco has demonstrated a course of conduct which seeks to maximise gain for the Infraco, without any fair and reasonable consideration for its contractual commitments to tie, as a publicly accountable body.
- 2.13.4 tie is aware that the Infraco has entered into an agreement with the SDS Provider, without tie's approval, in breach of contract. The Infraco has refused to disclose this to tie. tie believes that the agreement contractualises the Infraco's and the SDS Provider's approach to design development and completion, delay in design production and actual and potential Permitted Variations, in a manner which is contrary to that anticipated and permitted under the Infraco Contract and which varies the SDS Provider's entitlement to payment under the Infraco Contract and the Infraco's entitlement under the Notified Departure mechanism in the Infraco Contract. Such approach disguises the true status and circumstances of the design programme and design product and conceals the true picture from tie. The

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existence of this agreement is evidence of a conjoined approach by the Infraco and the SDS Provider to abuse contractual entitlements which may be available to the Infraco and to hide this from tie.

- 2.13.5 The Infraco's conduct in respect of the public image and reputation of the Edinburgh Tram Network, tie and CEC is contrary to that required by the Infraco Contract and the Infraco's contractual commitment to work in mutual co-operation with tie and not wilfully detract from the image of tie, CEC and the Edinburgh Tram Project. The Infraco persistently engages with the media, without the approval of tie, disclosing Confidential Information. The Infraco has engaged with the media on occasions, without the approval of tie, misrepresenting information, which, as a result, discredits tie and the Edinburgh Tram Project. This conduct seriously undermines tie's relationship with the Infraco and is contrary to the conduct which should be expected from a properly qualified and competent professional contractor experienced in carrying out works and services of a similar nature to the Infraco Works in connection with projects of a similar scope and complexity and acting fairly and reasonably.

3. Material and Adverse Effect

- 3.1 The Infraco's breaches, individually and cumulatively, as an ongoing course of conduct have a material and adverse effect on the carrying out and completion of the Infraco Works.
- 3.2 The material and adverse effect on the carrying out and completion of the Infraco Works, caused by the Infraco's course of conduct includes:
- 3.2.1 the Infraco Works not being carried out and completed in certain locations;
 - 3.2.2 the Infraco Works being delayed and the absence of a meaningful and contractually compliant Programme;
 - 3.2.3 the existence of defective works and works which are, or are capable of, creating hazards;
 - 3.2.4 works carried having shorter asset life than they ought to have had they been properly carried out in accordance with the Infraco Contract;
 - 3.2.5 works which have been carried out do not satisfy the necessary statutory requirements;
 - 3.2.6 works which have been carried out fall short of the contractual standards;
 - 3.2.7 after over 28 months since contract signature, no completed, assured and integrated design exists for the Edinburgh Tram Network, thereby making completion of the Infraco Works impossible;
 - 3.2.8 the production of an inefficient and/or incompetent design which delays works commencement and completion and which impacts upon tie's rights to meet the requisite statutory requirements;
 - 3.2.9 interference with tie's rights as client in respect of the Infraco Works under the Infraco Contract and the systematic substantial inflation of claims for additional costs;



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- 3.2.10 denying tie the ability to understand and have visibility in relation to the Deliverables necessary for the carrying out and completion of the Infraco Works;
- 3.2.11 failure to mitigate the impact of Permitted Variations; and
- 3.2.12 the creation of considerable uncertainty regarding completion dates and out-turn cost.

4. Rectification Plan

- 4.1 tie looks forward to receipt of a comprehensive rectification plan from the Infraco addressing this Infraco Default (a) within 30 Business Days of the date of this Remediable Termination Notice.
- 4.2 In order to address the Infraco Default which has been identified in this Remediable Termination Notice, tie would expect any such rectification plan to put forward *inter alia* comprehensive proposals for how the Infraco will remedy the Infraco Default subject of this Remediable Termination Notice, by rectifying its course of conduct, demonstrating commitment to the Infraco Works and the operation of the Infraco Contract, working in mutual co-operation with tie, confirming a willingness to resolve difficulties without the need for the issue of Remediable Termination Notices, responding reasonably and proactively to the outstanding Remediable Termination Notices, setting a contractually compliant programme for the carrying out and completion of the Infraco Works, including the delivery of an approved compliant, integrated, assured complete Design, releasing the agreement which the Infraco has entered into with the SDS Provider and demonstrating the commitment to comply with all contractual obligations under the Infraco Contract to carry out and complete the Infraco Works.

5. Definitions

- 5.1 Unless the context otherwise requires, all defined terms used in this Remediable Termination Notice have the same meaning as given in the Infraco Contract.

for and on behalf of tie Limited



... Project Director

30 September 2010 Date

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APPENDIX A : INFRACO BREACHES

The Infraco's breaches of the Infraco Contract include:

1. Clause 6.1 - failure to work in mutual co-operation with tie to fulfil the agreed roles and responsibilities;
2. Clause 6.1 - failure to apply expertise to carry out and complete the Infraco Works in accordance with the Infraco Contract;
3. Clause 6.2 - failure to procure that each Infraco Party works in accordance with the principles set out in Clause 6.1 of the Infraco Contract and the inducement of the SDS Provider not to comply with its duty of care;
4. Clause 6.3.1 - failure to approach all Permitted Variations on a collaborative and Open Book Basis;
5. Clause 6.3.2 - failure to use reasonable endeavours to avoid unnecessary complaints, disputes and claims;
6. Clause 6.3.4 - failure to not interfere with the rights of tie in performing its obligations under the Infraco Contract;
7. Clause 6.3.6 - failure to take all reasonable steps to manage, minimise and mitigate all costs;
8. Clause 7.1 - failure to accept full responsibility for and to carry out and complete the Infraco Works fully and faithfully in accordance with the Infraco Contract;
9. Clause 7.2 - failure to ensure that, in carrying out and completing the Infraco Works, the Infraco exercises a reasonable level of professional skill, care and diligence to be expected of a properly qualified and competent professional contractor experienced in carrying out works and services of a similar nature to the Infraco Works in connection with projects of a similar scope and complexity;
10. Clause 7.3.1 - failure to carry out and complete the Infraco Works in accordance with and so as to comply in all respects with the Infraco Contract;
11. Clause 7.3.2 - failure to carry out and complete the Infraco Works so as to enable the Edinburgh Tram Network to be designed, constructed, installed, tested and commissioned, and thereafter operated and maintained;
12. Clause 7.3.3 - failure to carry out and complete the Infraco Works in accordance with the Infraco's quality management system and plans as developed in accordance with Clause 105 of the Infraco Contract;
13. Clause 7.3.4 - failure to carry out and complete the Infraco Works so as to ensure compliance with the Employer's Requirements;
14. Clause 7.3.10 - failure to carry out and complete the Infraco Works so as to ensure compliance with all applicable Law, Land Consents and Consents;
15. Clause 7.3.12 - failure to carry out and complete the Infraco Works in accordance with all applicable environmental regulations and requirements;

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16. Clause 7.3.13 - failure to carry out and complete the Infraco Works in accordance with Good Industry Practice;
17. Clause 7.3.14 - failure to carry out the Infraco Works so as to ensure that the design of the Edinburgh Tram Network is buildable and maintainable;
18. Clause 7.3.15 - failure to carry out and complete the Infraco Works so as to assist tie in relation to providing information that best value has been secured in respect of the carrying out of the Infraco Works;
19. Clause 7.3.16 - failure to carry out and complete the Infraco Works so as not to wilfully detract from the image and reputation of tie, CEC and the Edinburgh Tram Network;
20. Clause 7.5.1 - failure to use reasonable endeavours to ensure that, in carrying out the Infraco Works, the Infraco maximises productivity by reference to Good Industry Practice;
21. Clause 7.5.2 - failure to use reasonable endeavours to ensure that, in carrying out the Infraco Works, the Infraco minimises disruption to the city of Edinburgh;
22. Clause 7.5.3 - failure to use reasonable endeavours to ensure that, in carrying out the Infraco Works, the Infraco maintains safety;
23. Clause 7.5.4 - failure to use reasonable endeavours to ensure that, in carrying out the Infraco Works, the Infraco safeguards efficiency in the obtaining of Consents;
24. Clause 7.5.5 - failure to use reasonable endeavours to ensure that, in carrying out the Infraco Works, the Infraco minimises costs;
25. Clause 7.6 - failure to keep itself fully informed about all matters relating to, or which might have a bearing on, the carrying out of the Infraco Works;
26. Clause 7.18 - failure to notify tie of Abortive Works as soon as reasonably practicable after the Infraco becomes aware that any element of the Infraco Works is likely to be Abortive Works;
27. Clause 8.1.6 - failure to ensure that safety assurances and the Case for Safety will be achieved at the issue of a Certificate of Sectional Completion;
28. Clause 8.3 - failure to carry out all of the system integration activities described in Schedule Part 2 (*Employer's Requirements*);
29. Clause 8.5 - failure to ensure that all elements of design (which form part of the Infraco Works) relative to the Edinburgh Tram Network are compatible with system integration and to make qualified personnel available to ensure system integration throughout the Term;
30. Clause 9.4 - failure to incorporate provisions equivalent to those provided in Clauses 9.1 to 9.2 in every sub-contract in order to protect tie's and CEC's interests in all supplies, materials, goods or equipment intended for the Infraco Works;
31. Clause 10.1 - failure to develop and finalise the Deliverables in accordance with the Programme and the Infraco Contract;

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32. Clause 10.2 - failure to submit Deliverables associated with any Permitted Variation to tie's Representative for review pursuant to Schedule Part 14 (Review Procedure and Design Management Plan);
33. Clause 10.4 - failure to establish and maintain an extranet which tie, any tie Parties and any other party reasonably required by tie may access remotely by computer (through an appropriate login/security regime) to view all Deliverables including any drawings comprised within the Deliverables and electronically store and/or print copies of such Deliverables;
34. Clause 10.5 - failure to ensure that the Programme sets out the manner and timing and each phase of the development and production of the Deliverables and the order in which each Deliverable is to be submitted for review in accordance with the Review Procedure and the programme for uploading the Deliverables onto the extranet in accordance with Clause 10.3;
35. Clause 10.9 - failure to ensure that the Deliverables fulfil the requirements of the Infraco Contract and meet the needs of Approval Bodies;
36. Clause 10.10 - failure to provide tie with all Deliverables in accordance with the terms of the Infraco Contract and, where no timescale for provision of such Deliverables is specified in the Programme, to provide such Deliverables to tie as soon as reasonably practicable;
37. Clause 10.16 - failure to establish at the Site and/or elsewhere an office staffed during all normal business hours at which shall be kept a complete, up-to-date and orderly documentary record of the performance of the Infraco Works, all transactions entered into by the Infraco in relation to any potential or actual Permitted Variations and information (including transactional information) in relation to any claims for additional costs or expenses by the Infraco to tie arising in accordance with the terms of the Infraco Contract (including Compensation Events) and to permit tie, tie's Representative or their duly authorised representatives (to the extent necessary to verify any claim made by the Infraco under the Infraco Contract) to inspect, and take copies of, the documents kept at such office;
38. Clause 11.3 - failure to procure that the SDS Provider shall carry out and complete the SDS Services in accordance with the SDS Agreement;
39. Clause 11.4 - failure to carry out all management activities in order to manage the performance of the SDS Services;
40. Clause 11.5 - breach of obligation not to amend the SDS Agreement without the prior written approval of tie;
41. Clause 19.3 - failure to obtain all Design Stage Consents required for the performance and completion of the Infraco Works;
42. Clause 22.3 - failure to give details of the associated estimated costs, and the extent of the anticipated delay in or interference with the carrying out of the Infraco Works, in respect of adverse physical conditions, ground conditions, artificial obstructions and/or land which is contaminated, when giving notice to tie;
43. Clause 26.1 - failure to provide all necessary superintendence during the construction and completion of the Infraco Works, given by sufficient persons having adequate knowledge of the operations to be carried out (including the methods and techniques required and the hazards likely to be encountered) for the satisfactory and safe construction of the Infraco Works;

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44. Clause 26.4 - failure of the Infraco's Representative to manage and co-ordinate the provision of the Infraco Works by the Infraco (and any Sub-Contractor) and the integration of provision of the Infraco Works with the tasks being performed by tie's internal team and liaise with tie's Representative in relation to matters arising in relation to the Infraco Works;
45. Clause 26.12 - failure to ensure that there are no changes to the Key Personnel without tie's prior consent and that any replacement persons are of at least equivalent status and ability to the person whom they replace;
46. Clause 27.1 - failure to employ in and about the construction and completion of the Infraco Works and in their superintendence only persons who are careful, skilled and experienced in their several trades and callings;
47. Clause 27.2 - failure to remove from the Infraco Works a person employed thereon of whom tie has requested the removal due to their incompetence or negligence in the performance of their duties;
48. Clause 28.2 - failure to obtain tie's prior written approval for a sub-contractor for performance of a specific part of the Infraco Works;
49. Clause 28.4 - failure to obtain tie's approval to the form of sub-contract for any work which is sub-contracted to each Sub-Contractor in advance of the sub-contract's execution;
50. Clause 28.7 - failure to procure that every Key Sub-Contractor provides to tie a collateral warranty prior to the date of execution of the sub-contract in favour of each of tie, CEC, EAL, TEL and Network Rail;
51. Clause 30.3 - failure to comply with all duties and obligations under Law and requirements having the force of law relating to the health, safety and conduct of construction or maintenance operations;
52. Clause 32.2 - failure to seek at all times to minimise any nuisance or inconvenience to or interference with the business or operations of the owners, tenants or occupiers of the Site or other premises upon or in the locality of the Site, to bus operations and to the public generally;
53. Clause 34.1 - failure to construct and complete the Infraco Works in strict accordance with tie and tie's Representative's instructions on any matter connected with the Infraco Works;
54. Clause 34.2 - failure to carry out the Infraco Works in the mode, manner and speed of construction in accordance with the Infraco Contract;
55. Clause 41.1 - failure to comply with the Construction Milestone regime in respect of the Preliminaries claimed pursuant to Schedule Part 5 (*Milestone Payments*);
56. Clause 60.1 - failure to progress the Infraco Works with due expedition and in a timely and efficient manner without delay, to achieve timeous completion of the Infraco Works and the Infraco's other obligations under the Infraco Contract in accordance with the Programme;
57. Clause 60.2 - failure to update the Programme in accordance with the requirements of Schedule Part 2 (*Employer's Requirements*);
58. Clause 60.9 - failure to take reasonable steps to mitigate the effects of any delay to the progress of the Infraco Works;