

86.4.1 the Infraco shall provide access to such information, documents and records as may be reasonably requested by **tie** or the **tie** Parties in relation to the development of the proposed Network Expansion; and

86.4.2 **tie** and the Infraco will negotiate in good faith in relation to agreeing any amendments to this Agreement that are necessary in respect of the Network Expansion.

PART 16 - SUSPENSION, TERMINATION, EXPIRY AND HANDBACK

87. SUSPENSION OF WORK

87.1 The Infraco shall on the written order of **tie's** Representative suspend the progress of the Infraco Works or any part thereof for such time or times and in such manner as **tie's** Representative may consider necessary and shall during such suspension properly protect and secure the Infraco Works so far as is necessary in the opinion of **tie's** Representative. Except to the extent that such suspension is necessary by reason of breach of this Agreement by the Infraco and such breach is of such nature that would not permit continued performance of the Infraco Works without risk to the health and safety of any person or risk of substantial damage to property then if compliance with **tie's** Representative's instructions under this Clause 87 (*Suspension of Work*) involves the Infraco in delay or extra cost (including costs incurred in properly protecting and securing the work), such instructions shall be a Compensation Event and Clause 65 (*Compensation Events*) shall apply to the extent they apply to the Off Street Works or Schedule Part X (On Street Works) to the extent they apply to the On Street Works.

87.2 If the progress of the Infraco Works or any part thereof is suspended on the written order of **tie's** Representative and if permission to resume work is not given by **tie's** Representative within a period of six months from the date of suspension then the Infraco may unless such suspension is otherwise provided for in the Agreement or continues to be necessary by reason of some default on the part of the Infraco serve a written notice on **tie's** Representative requiring permission within 20 Business Days from the receipt of such notice to proceed with the Infraco Works or that part thereof in regard to which progress is suspended. If within the said 20 Business Days **tie's** Representative does not grant such permission, the Infraco by a further written notice so served may (but is not bound to) elect to treat the suspension where it affects part only of the works as a Mandatory **tie** Change deleting such works from the Infraco Works or where it affects the whole Infraco Works, as a result of which the Infraco cannot perform any material part of its obligations under this Agreement for a continuous period of 45 Business Days, as a **tie** Default.

87.3 Upon termination of this Agreement on the grounds of **tie** Default pursuant to Clause 87.1:

87.3.1 **tie** shall be under the same obligations with regard to payment as if termination on the grounds of **tie** Default had occurred in accordance with the provisions of Clause 88 (*Termination or Suspension for tie Default*); and

87.3.2 the Infraco shall comply with Clause 94 (*Effects of Termination or Expiry*) and Clause 95 (*Transition on Termination or Expiry*).

88. TERMINATION OR SUSPENSION FOR TIE DEFAULT

88.1 If a **tie** Default has occurred and the Infraco wishes to terminate this Agreement the Infraco may serve a termination notice on **tie** and such termination notice shall be in accordance with this Clause 88.

88.2 The Infraco shall specify in the termination notice the type of the **tie** Default which has occurred entitling the Infraco to terminate.

88.3 Provided the Infraco has complied with Clauses 88.1 and 88.2, this Agreement shall terminate on the day falling thirty Business Days after the date on which **tie** receives the termination notice, unless, in the case of a **tie** Default capable of rectification, **tie** rectifies the **tie** Default within thirty Business Days of receipt of the termination notice.

88.4 Subject to Clause 87.3, the Infraco shall not be entitled to, and shall not purport to, terminate this Agreement or accept any repudiation of this Agreement, except as expressly provided in this Clause 88 (*Termination or Suspension for tie Default*) or Clause 91 (*Termination by Reason of Force Majeure*).

88.5 Upon expiry of the thirty Business Days notice referred to in Clause 88.3 and notwithstanding the provisions of Clause 49 (*Non-Removal of Materials and Contractor's Equipment*) the Infraco shall with all reasonable despatch remove from the Site all Infraco's Equipment. In the event of any failure so to do **tie** shall have like powers to those contained in Clause 49.3 to dispose of any Infraco's Equipment.

88.6 No compensation shall be payable by **tie** to the Infraco for termination of this Agreement in terms of this Clause 88 (*Termination or Suspension for tie Default*) whether under contract, delict (including negligence), breach of (or compliance with) statutory duty, restitution or otherwise but without prejudice to payments due under Clause 88.8.

88.7 On termination of this Agreement in terms of this Clause 88 (*Termination or Suspension for tie Default*), the Infraco shall comply with Clause 94 (*Effects of Termination or Expiry*) and Clause 95 (*Transition on Termination or Expiry*).

88.8 Upon termination of this Agreement pursuant to Clause 88.3 and following receipt of a valid VAT invoice, **tie** shall pay the Infraco within 30 Business Days of receipt of such VAT invoice (in so far as such amounts or items have not already been covered by payments on

account made to the Infraco) the value of all work carried out prior to the date of termination and in addition:

88.8.1 the amounts payable in respect of any preliminary items so far as the work or service comprised therein has been carried out or performed and a proper proportion of any such items which have been partially carried out or performed;

88.8.2 the cost of materials or goods reasonably ordered for the Infraco Works which have been delivered to the Infraco or of which the Infraco is legally liable to accept delivery (such materials or goods becoming the property of ~~the~~ upon such payment being made to the Infraco);

88.8.3 the reasonable cost of removal under Clause 88.5;

88.8.4 all other expenses properly, demonstrably and reasonably incurred by the Infraco arising from the termination of this Agreement including, without limitation, any amounts which the Infraco is required to pay to its subcontractors ~~(including the Tram Supplier and the Tram Maintainer)~~ in order to terminate any subcontracts relating to this Agreement ~~(including the Tram Supply Agreement and the Tram Maintenance Agreement)~~; provided such contracts have been entered into on reasonable commercial terms; and

88.8.5

88.8.5.1 in respect of any termination which occurs prior to the Service Commencement Date the loss of profit fixed at ten percent (10%) for civils and seventeen percent (17%) for track and systems calculated with reference to demobilisation costs; and

88.8.5.2 in respect of any termination which occurs after the Service Commencement Date a payment representing the amount to be paid to the Infraco for one Reporting Period in respect of full performance of the Infrastructure Maintenance Services as calculated in accordance with part A of Schedule Part 6 (*Maintenance Payment Regime*)

provided that:

(i) the Infraco shall use all reasonable endeavours to minimise and mitigate any costs referred to in this Clause 88.8 and **tie** shall not be liable to pay the Infraco for such costs to the extent that the Infraco has failed to use all reasonable endeavours to minimise or mitigate such costs or to the extent that such costs have arisen out of the Infraco's breach of this Agreement or any negligent act or omission by the Infraco or any act or omission by the Infraco which is intended to disrupt, frustrate or delay due performance under Clauses 95 and 96. Any payment to be made under this Clause 88.8 shall be treated as a final account and payment shall be made by **tie** in accordance with Clause 67 (*Payment in respect of Applications for Milestone Payments*) or Clause 68 (*Payment in respect of Maintenance Services*) (as appropriate); and

~~(ii) the Tram Supply Agreement and the Tram Maintenance Agreement shall be deemed to have been entered into on reasonable commercial terms.~~

~~(ii) NOT USED.~~

88.9

88.9.1 If **tie** shall fail to pay the Infraco in full any amount properly due and payable under this Agreement by the final date for payment in accordance with the requirements of Clause 67 (*Payment in respect of Applications for Milestone Payments*) or Clause 68 (*Payment in respect of Maintenance Services*) (as appropriate) and no effective notice to withhold payment has been given by **tie** to the Infraco, the Infraco may, after giving **tie** ninety days' notice in writing of the same, stating the ground or grounds on which it is intended to suspend performance, suspend the performance of the Infraco Works until payment in full is made by **tie**.

88.9.2 Infraco shall be entitled to suspend performance of the Infraco Works in accordance with Clause 88.9.1 on 60 days notice where **tie** has failed to pay and CEC has failed to make payment of the relevant amount in accordance with the CEC Guarantee (for the avoidance of doubt such period of 60 days shall operate instead of the 90 day period in Clause 88.9.1).

89. VOLUNTARY TERMINATION BY TIE

89.1 Three years after the issue of the first Certificate of Service Commencement, **tie** may terminate this Agreement at any time and for whatever reason upon giving written notice

to the Infraco that this Agreement shall terminate on the date falling six months after the date of service of such written notice.

89.2 Upon termination of the Infraco's employment pursuant to Clause 89.1,

89.2.1 **tie** shall be under the same obligations with regard to payment as if termination on the grounds of **tie** Default had occurred in accordance with the provisions of Clause 88 (*Termination or Suspension for tie Default*); and

89.2.2 the Infraco shall comply with Clause 94 (*Effects of Termination or Expiry*) and Clause 95 (*Transition on Termination or Expiry*).

90. **TERMINATION ON INFRACO DEFAULT**

90.1 In the event that an Infraco Default:

90.1.1 as stipulated pursuant to Infraco Default (c), (d), (e), (g) and (i) in Schedule Part 1 occurs then **tie** may after giving 7 Business Days notice in writing to the Infraco specifying the nature of the Infraco Default which has occurred, terminate this Agreement.

90.1.2 as stipulated pursuant to Infraco Default (a), (f), (g) (to the extent that the Underperformance Warning Notices have been issued pursuant to Clause 56.7.2) and (j) in Schedule Part 1 occurs **tie** may give notice in writing to the Infraco specifying the nature of the Infraco Default which has occurred (a "**Remediable Termination Notice**").

90.1.3 as stipulated pursuant to Infraco Default (b) in Schedule Part 1 occurs **tie** may give notice in writing to the Infraco specifying the nature of the Infraco Default which has occurred (an "**Insolvency Termination Notice**").

90.2 Following service of a Remediable Termination Notice by **tie** in accordance with Clause 90.1.2 the Infraco may submit a comprehensive rectification plan setting out how it intends to remedy the Infraco Default in respect of which the Remediable Termination Notice has been served to **tie** within 30 Business Days of the date of such notice (or such longer period as **tie** may agree to in its absolute discretion). **tie** shall consider such rectification plan and determine, at **tie's** absolute discretion, within 10 Business Days of receipt whether the rectification plan is acceptable. If **tie** accepts the rectification plan, the Remediable Termination Notice shall no longer be effective and no further Remediable Termination Notice will be served by **tie** in respect of the relevant Infraco Default, provided that the Infraco complies in full with the terms of the rectification plan as accepted by **tie**. Any failure by Infraco to comply with the terms of such rectification plan shall entitle **tie**

to terminate the Agreement on 5 Business Days written notice to the Infraco and there shall be no obligation on **tie** to consider any further rectification plan.

90.3 Following service of an Insolvency Termination Notice by **tie** in accordance with Clause 90.1.3 the Infraco Member not effected by the Insolvency Event may submit a comprehensive rectification plan setting out how it intends to continue to provide the Infraco Works without the other Infraco Member within 30 Business Days of the date of such notice (or such longer period as **tie** may agree to in its absolute discretion) **tie** shall consider such rectification plan and determine, acting reasonably, within 10 Business Days of receipt whether the rectification plan is acceptable.

90.4 If **tie** does not accept the rectification plan submitted by Infraco or Infraco does not (for any reason) submit a rectification plan within the 30 Business Day period (or such longer period as has been agreed by **tie**), **tie** may after giving 5 Business Days notice in writing to the Infraco terminate this Agreement.

90.5 For the avoidance of doubt, neither the submission of any rectification plan nor **tie's** consideration of it shall relieve the Infraco in any way from the due and proper performance of all of its obligations under this Agreement. Any expenditure or liability incurred by Infraco in preparing and submitting any rectification plan shall be to the account of the Infraco.

90.6 Following termination under this Clause 90, **tie** may enter upon the Infraco Works and any other parts of the Site and expel the Infraco therefrom without thereby avoiding the Agreement or releasing the Infraco from any of its obligations or liabilities under the Agreement.

90.7 Following termination in accordance with this Clause 90, where **tie** has entered upon the Infraco Works and any other parts of the Site as set out in Clause 90.1, **tie** may:

90.7.1 complete or carry out the Infraco Works itself; or

90.7.2 employ any other contractor to complete the Infraco Works.

and in the event of termination of this Agreement on the grounds of Infraco Default (b) may use for such completion any of the Infraco's Equipment, Temporary Works, goods and materials on any part of the Site and shall continue to enjoy (i) its right to copy and use all drawings specifications and other documents made by or on behalf of the Infraco and (ii) all rights granted to **tie** pursuant to Clause 102 (*Copyright and Intellectual Property*)

90.8 In the event of termination of this Agreement on the grounds of Infraco Default (b):

90.8.1 **tie** may at any time sell any of the said Infraco Member's Equipment or Temporary Works and apply the proceeds of sale in or towards the satisfaction of

any sums due or which may become due to it from the Infraco under the Agreement;

90.8.2 the Infraco agrees that an automatic assignation of all Key Subcontractor sub-contracts shall be effected by **tie** giving written notice of assignation to every Key Subcontractor as provided for in the relevant Key Subcontractor collateral warranty.

90.9 Where **tie** has entered upon the Infraco Works and any other parts of the Site, the Infraco shall, if so instructed by **tie's** Representative in writing within 7 days of such entry, use reasonable endeavours to assign to **tie** any agreement as soon as practicable which the Infraco may have entered into and which are, in **tie's** reasonable opinion, material to the completion of the Infraco Works for the supply of any goods or materials and/or for the carrying out of any work for the purposes of the Agreement.

90.10 The Infraco shall comply with Clause 94 (*Effects of Termination or Expiry*) and Clause 95 (*Transition on Termination or Expiry*).

90.11 No compensation shall be payable by **tie** to the Infraco for termination under this Clause 90 (*Termination on Infraco Default*) whether under contract, delict (including negligence), breach of (or compliance with) statutory duty, restitution or otherwise but without prejudice to payments due under Clause 90.15.

90.12 As soon as may be practicable after termination of this Agreement pursuant to Clause 90.1 the Parties shall agree as at the time of such termination:

90.12.1 the amount (if any) which has been reasonably earned and not yet paid pursuant to this Agreement by the Infraco in respect of work actually done by it under the Agreement; and

90.12.2 the value of any unused or partially used goods and materials which are under the control of **tie** or CEC by reason of such termination and for which the Infraco has not yet been paid.

90.13 If **tie** enters upon the Infraco Works and any other parts of the Site and expels the Infraco in accordance with this Clause 90 (*Termination on Infraco Default*), **tie** shall not be liable to pay the Infraco any money under the Agreement (whether in respect of amounts certified by **tie's** Representative or otherwise) including any sums determined under Clause 90.11 unless or until **tie's** Representative certifies that an amount is due to the Infraco under Clause 90.15.

90.14 **tie's** Representative shall, within 6 months of completion of the works and services to be performed by the Infraco as part of the Infraco Works (excluding Maintenance Services) up

to and including the Service Commencement Date and remaining to be completed at termination, certify:

90.14.1 the costs of completing the Infraco Works, not including any amount calculated as due to the Infraco pursuant to Clause 90.12, up to and including the Service Commencement Date in accordance with the terms of this Agreement (whether or not the Infraco Works are completed under a separate contract) and all other costs and expenses properly incurred by **tie**, less such sum as would have been due to the Infraco if the Infraco had completed the Infraco Works up to and including the Service Commencement Date together with any proceeds of sale under Clause 90.8; and

90.14.2 the amount **tie** will spend on the Maintenance Services (whether or not such services are provided under a separate contract) less the amount **tie** would have paid to the Infraco for the Maintenance Services over the Term.

90.15 Should the aggregate of the amount as certified by **tie's** Representative pursuant to Clauses 90.14.1 and 90.14.2 be:

90.15.1 a positive amount, and such amount is still a positive amount after subtraction of any amount calculated pursuant to Clause 90.12 then such amount shall be a debt due to **tie** from the Infraco payable within 30 Business Days.

90.15.2 a negative amount, and is still a negative amount after the addition of any amount calculated pursuant to Clause 90.12 then such amount shall be a debt due to the Infraco from **tie** payable within 30 Business Days.

90.16 If at any time prior to the completion of the Infraco Works any sum as calculated under Clauses 90.14.1 and 90.14.2 is a positive amount, **tie's** Representative may issue an interim certificate to that effect notwithstanding that the Infraco Works have not been completed.

90.17 Every certificate issued by **tie's** Representative pursuant to this Clause 90 (*Termination on Infraco Default*) shall be sent to the Infraco with such detailed explanation as may be necessary.

90.18 Subject to Clause 77.10 and Clause 77.11 the provisions of this Clause 90 (*Termination on Infraco Default*) are without prejudice to any other rights and remedies of **tie** including where **tie** is obliged to curtail the Infraco Works or suspend their performance for a period.

90.19 The Infraco shall notify **tie** as soon as practicable and in any event within 2 Business Days of any presentation of any petition for the purpose of winding up either Infraco Member or its parent company guarantor or for an administration order or the opening of an equivalent process under the Insolvency Act 1986, the EC Insolvency Regulation 1346/2000 or the Bundesinsolvenzgesetz of 5 October 1994 (as amended) in circumstances where Clause 75.1.6 would apply.

91. **TERMINATION BY REASON OF FORCE MAJEURE**

91.1 Neither Party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and such Party is directly prevented from carrying out such obligations by that Force Majeure Event provided that such prohibition on bringing a claim and exclusion of liability shall not operate if and to the extent that:

91.1.1 the Affected Party could, by the exercise of reasonable foresight and diligence, have prevented or reduced the effect of the Force Majeure Event; and

91.1.2 the Affected Party could, whether before or after the occurrence of the Force Majeure Event, have reduced or eliminated the resulting breach of its obligations under this Agreement by taking reasonable steps.

91.2 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as reasonably practicable, specifying details of the Force Majeure Event and providing evidence of its effect on the obligations of the Affected Party and any action proposed to remove or mitigate its effect.

91.3 The Parties shall enter into *bona fide* discussions with a view to alleviating the effects of such Force Majeure Event as soon as reasonably practicable, and if the terms or measures to remove the effect of the Force Majeure Event cannot be agreed on or before the date falling 12 months after the date of the commencement of the Force Majeure Event or by the end of such longer period as the Parties may have agreed, or such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with all or a material part of its obligations under this Agreement for a period of more than 12 months after the date of the commencement of the Force Majeure Event or by the end of such longer period as the Parties may have agreed, either Party shall have the option to terminate this Agreement by written notice to the other.

91.4 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay to the performance of the Infraco Works and the Infraco shall at all times during which a Force Majeure Event

is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

91.5 The Affected Party shall notify the other party as soon as reasonably practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

91.6 The effects of a Force Majeure Event shall be dealt with under Clause 64 (*Relief Events*).

91.7 No compensation shall be payable by **tie** to the Infraco for termination of this Agreement in terms of this Clause 91 (*Termination by Reason of Force Majeure*) whether under contract, delict (including negligence), breach of (or compliance with) statutory duty, restitution or otherwise but without prejudice to payments due under Clause 91.7.

91.8 Upon termination of the Infraco's employment pursuant to Clause 91.3,

91.8.1 **tie** shall be under the same obligations with regard to payment as if termination on the grounds of **tie** default had occurred in accordance with the provisions of Clause 88 (*Termination or Suspension for tie Default*); and

91.8.2 the Infraco shall comply with Clause 94 (*Effects of Termination or Expiry*) and Clause 95 (*Transition on Termination or Expiry*).

92. **TERMINATION FOR CORRUPT GIFTS AND FRAUD**

92.1 The Infraco or anyone employed by it or acting on its behalf (including any Infraco Party) shall not commit any Prohibited Act.

92.2 If the Infraco, or anyone employed by it or acting on its behalf (including any Infraco Parties), commits any Prohibited Act, then **tie** shall be entitled to act in accordance with this Clause 92 (*Termination for Corrupt Gifts and Fraud*).

92.3 If a Prohibited Act is committed by the Infraco or by an employee of the Infraco not acting independently of the Infraco, then **tie** may terminate this Agreement by giving notice to the Infraco.

92.4 If a Prohibited Act is committed by an employee of the Infraco acting independently of the Infraco, then **tie** may give notice to the Infraco of termination and this Agreement will terminate, unless within thirty days of receipt of such notice the Infraco terminates that employee's employment and (if necessary) procures the performance of the relevant part of the Infraco Works by another person.

92.5 If a Prohibited Act is committed by anyone acting on behalf of the Infraco (excluding employees of the Infraco but including any Infraco Party, and their employees) and not acting independently of the Infraco, then **tie** may give notice to the Infraco of termination and this Agreement shall terminate.

92.6 If a Prohibited Act is committed by anyone acting on behalf of the Infraco (excluding employees of the Infraco but including any Infraco Party and their employees) and acting independently of the Infraco, then **tie** may give notice to the Infraco of termination and this Agreement will terminate, unless within thirty days of receipt of such notice the Infraco terminates that party's employment and procures the performance of the relevant part of the Infraco Works by another person.

92.7 Any notice of termination under this Clause 92 (*Termination for Corrupt Gifts and Fraud*) shall specify:

92.7.1 the nature of the Prohibited Act;

92.7.2 the identity of the person whom **tie** believes has committed the Prohibited Act; and

92.7.3 the date on which this Agreement will terminate, in accordance with the applicable provision of this Clause 92 (*Termination for Corrupt Gifts and Fraud*) .

92.8 No compensation shall be payable by **tie** to the Infraco for termination of this Agreement in terms of this Clause 92 (*Termination for Corrupt Gifts and Fraud*) whether under contract, delict (including negligence), breach of (or compliance with) statutory duty, restitution or otherwise but without prejudice to payments due under Clause 92.9.

92.9 Upon termination of the Infraco's employment pursuant to this Clause 92 (*Termination for Corrupt Gifts and Fraud*),;

92.9.1 **tie** shall be under the same obligations with regard to payment as if termination on the grounds of Infraco Default had occurred in accordance with the provisions of Clause 90 (*Termination on Infraco Default*); and

92.9.2 the Infraco shall comply with Clause 94 (*Effects of Termination or Expiry*) and Clause 95 (*Transition on Termination or Expiry*).

93. **PERSISTENT BREACH**

93.1 If at any time after the first Sectional Completion Date when the Infraco is performing Maintenance Services, whether or not in pursuance of Clause 52 (Maintenance), the same breach by the Infraco of any of its obligations under this Agreement (other than a breach for which **tie** has an express remedy under this Agreement) has occurred three or more

times in any twelve month rolling period **tie** may serve a notice, which notice shall not be served vexatiously or in respect of a trivial breach ("**Persistent Breach Notice**") on the Infraco:

- 93.1.1 specifying that it is a Persistent Breach Notice;
- 93.1.2 giving reasonable details of the breach; and
- 93.1.3 stating that such breach is a breach which could reasonably be expected to cause detriment of **tie**, if it recurs frequently or continues, and may result in a termination of this Agreement.

93.2 If, following service of such a Persistent Breach Notice, the breach specified has continued or occurred a further twice after the date falling 30 days after the date of service of the Persistent Breach Notice and before the date falling 365 days after the date of service of such notice, then **tie** may serve another notice ("**Final Persistent Breach Notice**") on the Infraco:

- 93.2.1 specifying that it is a Final Persistent Breach Notice;
- 93.2.2 stating that the breach specified has been the subject of a prior Persistent Breach Notice within the period of 365 days prior to the date of service of the Final Persistent Breach Notice; and
- 93.2.3 stating that if such failure is not remedied within fifteen days or is remedied and occurs twice or more within the 180 day period after the date of service of the Final Persistent Breach Notice, this Agreement may be terminated with immediate effect.

93.3 Provided that for the purpose of this Clauses 93.1 and 93.2.3 respectively, a breach shall only be deemed to have:

- 93.3.1 occurred three or more times where it has occurred three or more times as a result of the same breach having been committed by (i) the same Infraco Party or (ii) ~~any of either~~ Infraco, or SDS Provider, ~~Tram Supplier or Tram Maintainer~~.
- 93.3.2 occurred more than twice where it has occurred more than twice as a result of the same breach having been committed more than twice by (i) the same Infraco Party or (ii) ~~any of either~~ Infraco, or SDS Provider, ~~Tram Supplier or Tram Maintainer~~.

93.4 Where following the service of a Persistent Breach Notice or Final Persistent Breach Notice as the case may be, the Infraco has terminated or procured the termination of the

agreement regarding the party whose acts or omissions gave rise to the service of the Persistent Breach Notice or Final Persistent Breach Notice as the case may be, all Persistent Breach Notices or Final Persistent Breach Notices served under this Clause 93 shall be deemed to be cancelled for the purpose of this Clause 93 and Clause 90 but only in respect of the first three occasions on which the Infraco replaces a subcontractor following service of a Persistent Breach Notice or Final Persistent Breach Notice.

94. **EFFECT OF TERMINATION OR EXPIRY**

- 94.1 Subject to the provisions of Clauses 88 (*Termination or Suspension for **tie** Default*), 91 (*Termination by Reason of Force Majeure*) and Clause 94.3, the Infraco shall not have any other right or remedy against **tie** on termination of this Agreement.
- 94.2 Subject to any exercise by **tie** of its rights to perform, or to procure a third party to perform, the obligations of the Infraco and subject to the right of the Infraco to suspend pursuant to Clause 88.9, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any notice of default or breach or termination notice, until the termination of this Agreement becomes effective.
- 94.3 Any termination or expiry of this Agreement shall not prejudice or affect the accrued rights or claims of either Party.
- 94.4 On expiry of this Agreement or any earlier termination of this Agreement for whatever reason, all Deliverables and any information provided by **tie** to the Infraco shall be returned to **tie**, save for any documents which are required to be retained by the Infraco as a matter of Law, in such event certified true copies of the relevant documents shall be provided.
- 94.5 This Agreement shall terminate automatically on the expiry of this Agreement unless it shall have been terminated earlier in accordance with the provisions of this Agreement. The Infraco shall not be entitled to any compensation on expiry of the Agreement.
- 94.6 Expiry or termination of the Agreement shall not affect each Party's respective obligations under, Clause 67 (*Payment in respect of Applications for ~~Milestone~~ Payments*), Clause 68 (*Payment in respect of Maintenance Services*), Clause 69 (*Interest on Late Payments and Set-Off*), Clause 76 (*Required Insurances*), Clause 77 (*Indemnity by Infraco, Liability and Sole Remedy*) Clause 88 (*Termination or Suspension for **tie** Default*), Clause 89 (*Voluntary Termination by **tie***), Clause 90 (*Termination on Infraco Default*), Clause 91 (*Termination by Reason of Force Majeure*), Clause 92 (*Termination for Corrupt Gifts and Fraud*), Clause 94 (*Effects of Termination or Expiry*), Clause 95 (*Transition on Termination or Expiry*), Clause 96 (*Surveys prior to Expiry Date*), Clause 97 (*Dispute Resolution Procedure*), Clause 101 (*Confidential Information*), Clause 102 (*Copyright and Intellectual Property*)

and Clause 104 (*Information and Audit Access*) and those obligations shall continue in full force and effect.

94.7 ~~Should the expiry of this Agreement result in an early termination of the Tram Maintenance Agreement or Tram Supply Agreement, tie shall make payment to the Infraco in respect of any payment the Infraco is obliged to make to the Tram Maintainer or Tram Supplier in accordance with the Tram Maintenance Agreement or Tram Supply Agreement (as appropriate).~~ **NOT USED.**

95. **TRANSITION ON TERMINATION OR EXPIRY**

95.1 12 months before the Expiry Date and again, as updated, on the Expiry Date or upon termination, the Infraco shall provide to tie the following information ("**Handback Package**"):

95.1.1 (so far as Infraco is permitted) a list of all contracts, permits, licences, Consents or other documents which are material to the operation of ~~the Edinburgh Tram Network~~ **Initial Phase 1a** or which have a value in excess of £50,000 ~~or in the case of expiry or termination of the Tram Maintenance Agreement, £5,000,~~ (as Indexed) showing (as appropriate) the contract account number, name, address and telephone number of the parties, contract price, value, term and notice period for termination or expiry date;

95.1.2 a list of all computer systems used for the maintenance of ~~the Edinburgh Tram Network~~ **Initial Phase 1a** together with a description of the systems and all passwords where applicable;

95.1.3 the Technical Records and spare parts usage;

95.1.4 a list of Assets forming part of ~~the Edinburgh Tram Network~~ **Initial Phase 1a** with a value of more than £25,000 ~~or in the case of expiry or termination of the Tram Maintenance Agreement, £2,500,~~ (as Indexed) or which are otherwise key to the operation of ~~the Edinburgh Tram Network~~ **Initial Phase 1a**;

95.1.5 the names and addresses of all insurers providing the Required Insurances along with the applicable policy members and other references;

95.1.6 a letter, in a form reasonably satisfactory to tie, authorising tie and its agents to request and to receive from the relevant insurers

details of all claims paid or outstanding under the Required Insurances;
and

95.1.7 the TUPE Information.

95.2 **tie** shall not disclose the terms of the Handback Package to any third party, other than:

95.2.1 to the extent in the public domain, or as required by the Law or in the course of conducting, prosecuting or defending any Dispute, or following a Termination Notice in accordance with clauses 95.2.2 and 95.2.3; or

95.2.2 for the purpose of seeking offers from third parties for the provision of any of the ~~Tram Maintenance Services (subject to the provisions of Clause 102 (Copyright and Intellectual Property)) and/or the~~ Infrastructure Maintenance Services or like services following the termination or expiry of this Agreement; or

95.2.3 to a Successor Infraco or its sub-contractors for the purpose of ensuring or assisting with continuity of the ~~Tram Maintenance Services and/or the~~ Infrastructure Maintenance Services following termination or expiry of this Agreement provided that the Successor Infraco is required to comply with confidentiality obligations equivalent to those set out in Clause 101 (*Confidential Information*).

95.3 The Infraco shall maintain and manage the business of providing ~~the Tram Maintenance Services (as far as is commercially reasonable) and~~ the Infrastructure Maintenance Services with the intent that **tie** or any Successor Infraco would be able to take over that business and secure continuity of the Infrastructure Maintenance Services on a going concern basis at any time following a Termination Notice until the Termination Date becomes effective ~~and/or the Tram Maintenance Services on a going concern basis at any time following a Termination Notice until the Termination Date (as defined in the Tram Maintenance Agreement) becomes effective.~~

95.4 Accordingly, following the service of a Termination Notice or in the six month period preceding the expiry of this Agreement, the Infraco shall (and shall procure that the Infraco Parties shall):

95.4.1 take all reasonable steps and co-operate fully with **tie** and any Successor Infraco so that continuation of ~~the Tram Maintenance Services and/or~~ the Infrastructure Maintenance Services after such termination or expiry is achieved with the minimum disruption and so as to prevent or

mitigate any inconvenience or risk to health or safety of any **tie** Parties and members of the public;

95.4.2 liaise with **tie** and any Successor Infraco and provide reasonable assistance and advice concerning the ~~Tram Maintenance Services and/or~~ Infrastructure Maintenance Services and their transfer to **tie** or to such Successor Infraco;

95.4.3 allow **tie** and any Successors Infraco access (at reasonable times and on reasonable notice) to each part of ~~the Edinburgh Tram Network~~ Initial Phase 1a provided that such access shall not disrupt or interfere with the performance by Infraco or any Infraco Party of the Infraco Works and **tie** shall, and shall procure that any Successor Infraco shall, during any period when it or they have access to ~~the Edinburgh Tram Network~~ Initial Phase 1a, comply with all Law applicable to working at those premises for the safety of persons and convenience of the public;

95.4.4 provide to **tie** and to any Successor Infraco such non-commercially sensitive information concerning ~~the Edinburgh Tram Network and the Tram Maintenance Services and/or~~ Initial Phase 1a and the Infrastructure Maintenance Services which is reasonably required for the efficient transfer of responsibility for performance of the ~~Tram Maintenance Services and/or~~ Infrastructure Maintenance Services;

95.4.5 at the request of **tie** and/or the Successor Infraco, save where otherwise expressly provided for under this Agreement, provide the originals of such documentation within 14 Business Days of such termination or the Expiry Date and, so far as the Infraco is permitted use reasonable endeavours to, assign any sub-contracts, guarantees and/or warranties, on either the termination or expiry date save for in the case of termination for Infraco Default (b), in which event the Infraco agrees that an automatic assignation of all Key Subcontractor sub-contracts shall be effected by **tie** giving written notice of assignation to every Key Subcontractor as provided for in the relevant Key Subcontractor collateral warranty;

95.4.6 allow, or procure that the Infraco Parties shall allow, **tie** and any Successor Infraco such access to any employees engaged by the Infraco or such Infraco Party in the provision of the ~~Tram Maintenance Services and/or~~ Infrastructure Maintenance Services as **tie** or such Successor Infraco shall reasonably require for the purpose of informing and

consulting with such employees over the terms and conditions on which their employment will be transferred (to the extent this is the case) to **tie** or any Successor Infraco or sub-contractor engaged by the Successor Infraco; and

95.4.7 on request, make the Handback Package available to **tie** or any Successor Infraco.

95.5 The Infraco shall use reasonable endeavours to facilitate the transfer of responsibility for the ~~Tram Maintenance Services and/or~~ Infrastructure Maintenance Services to a Successor Infraco or to **tie**, as the case may be, and the Infraco shall take no action at any time which is calculated or intended to prejudice or frustrate or make more difficult such transfer. In particular, but without limitation to the generality of the foregoing, the Infraco shall, during the final twelve months of the Term (where this expires by effluxion of time) or during the period following service of a Termination Notice, and whilst the same remains outstanding:

95.5.1 without prejudice to Clause 52.12, not allow levels of stocks and Spare Parts, Special Tools and other spares to fall to the level which might reasonably be expected to prejudice the continuing efficient operation and maintenance of ~~the Edinburgh Tram Network~~ Initial Phase 1a in accordance with Good Industry Practice; and

95.5.2 observe and perform the provisions of Clause 58 (*TUPE and Handover*).

95.6 As soon as reasonably practicable after service of a Termination Notice or at least 90 days prior to the Expiry Date, the Infraco shall, by notice in writing to **tie**, provide (or procure that the relevant Infraco Parties provide) to **tie** and any nominated Successor Infraco an inventory of all Spare Parts, Special Tools, other spares, consumables and other items used in the Maintenance Services which do not form part of ~~the Edinburgh Tram Network~~ Initial Phase 1a and permit **tie** or any Successor Infraco to inspect and examine the same. The Infraco and **tie** shall seek to agree the price for the spares, consumables and other items transferred under this Clause 95.6 but in the event of failure to agree such a price the same shall be determined by reference to the Dispute Resolution Procedure. Following agreement or determination of a price the Infraco shall (or shall procure that the relevant Infraco Party which owns the same shall) with effect from the date of payment of such price transfer to **tie**, or as it may nominate in writing to the Infraco, all such Spare Parts, Special Tools, and other spares, consumables and other items as may be specified by a notice in writing from **tie** to the Infraco (other than those consumed or used in the normal course of the ~~Tram Maintenance Services and/or~~ Infrastructure Maintenance Services prior to such transfer).

95.7 NOT USED

95.8 The Infraco shall, to the extent required by this Agreement, handover the Assets to CEC, **tie** or a Successor Infraco, such handover to be in a timely and orderly fashion so as to preserve the technical and commercial integrity and goodwill and value of ~~the Edinburgh Tram Network~~ **Initial Phase 1a** and to enable an efficient handover of the Infraco Works and subject to Clause 95.6 and 95.9, shall not be entitled to any payment in respect of the handover or any relinquishment of licence to use the Assets or perform the Infraco Works.

95.9 **tie** may request to purchase any assets owned by the Infraco which have been used in the performance of the Infraco Works or used in relation to ~~the Edinburgh Tram Network~~ **Initial Phase 1a**. If the Parties agree a fair market value for any such assets, **tie** shall pay the agreed sum to the Infraco and the Infraco shall deliver such assets to **tie** as soon as reasonably practicable.

96. SURVEYS PRIOR TO EXPIRY DATE

96.1 Without prejudice to Clause 55 (*Surveys of ~~the Edinburgh Tram Network~~ Initial Phase 1a and Audits of Maintenance Procedures*) and Clause 95 (*Transition on Termination or Expiry*), at any time after the issue of the Reliability Certificate if **tie** reasonably believes that the Infraco is in breach of its obligations under Clause 52, **tie** shall be entitled to carry out or procure a survey from a professionally qualified, competent and skilled person experienced in carrying out surveys of a similar nature, scope and complexity to those being procured ("**Condition Survey**") of ~~the Edinburgh Tram Network~~ **Initial Phase 1a** to assess to what extent it has been and is being maintained by the Infraco in accordance with this Agreement, and in particular under Clause 52 (*Maintenance*), **and** Schedule Part 2 (*Employer's Requirements*), ~~Schedule Part 21 (Tram Maintenance Agreement)~~. Where such Condition Surveys will impact upon the Infrastructure Maintenance Services or require the assistance of the Infraco, such Condition Surveys shall be carried out no more frequently than once every quarter.

96.2 **tie** shall notify the Infraco in writing a minimum of 10 Business Days in advance of the date they wish to commence a Condition Survey (or elements of such survey). **tie** shall consider in good faith any reasonable written request by the Infraco for the relevant Condition Survey to be carried out on a different date or dates if such request is made at least 5 Business Days prior to the notified date and the Infraco (acting reasonably) is able to demonstrate that carrying out the relevant Condition Survey on the notified date would materially prejudice the Infraco's ability to provide the Maintenance Services.

96.3 When carrying out a relevant Condition Survey, **tie** shall (or shall procure that the surveyor shall) use reasonable endeavours to minimise any disruption caused to the provision of the Maintenance Services by the Infraco. The Infraco shall afford **tie** and the surveyor (free of charge) any reasonable assistance required by **tie** and/or the surveyor

during the carrying out of the relevant Condition Survey. Subject to Clause 96.4.2, the cost of a Condition Survey and of restoring any damage resulting from the carrying out of the Condition Survey shall be borne by **tie**.

96.4 If, in the reasonable opinion of **tie**, a Condition Survey shows that the Infraco has not complied with or is not complying with its obligations under Clause 52 (*Maintenance*) other than in respect of maintenance work scheduled in the Maintenance Plan:

96.4.1 the Parties shall meet to discuss the Condition Survey and agree the:

96.4.1.1 rectification and/or maintenance work required to bring the condition of ~~the Edinburgh Tram Network~~ Initial Phase 1a to the standard it would have been in if the Infraco had complied or was complying with its obligations under this Agreement, in particular under Clause 52 (*Maintenance*) (the "**Required Condition**");

96.4.1.2 period within which the Infraco must carry out such rectification and/or maintenance work taking into account maintenance work scheduled in the Maintenance Plan other than where such work has been unreasonably deferred; and

96.4.1.3 the likely cost of carrying out such rectification and/or maintenance work, provided that if the Parties cannot agree the Required Condition, the period within which such work should be carried out or the likely cost of carrying out such rectification and/or maintenance work either Party will be entitled to refer the matter for determination to the Dispute Resolution Procedure.

96.4.2 **tie** shall be entitled to recover the cost of the relevant Condition Survey from the Infraco as a debt where the Conditions Survey shows a material non-compliance with the Infraco's obligations under Clause 52 (*Maintenance*).

96.4.3 Where the cost of remedying any non-compliance as established pursuant to 96.4.1.3 is likely to exceed £50,000, **tie** shall be entitled to require that the Infraco shall provide within 20 Business Days of a written request from **tie** either (at Infraco's option) a cash deposit or a bond (substantially in the form of part C of Schedule Part 8 equal the lesser of (i) the value of the rectification and/or maintenance works necessary to meet the Required Condition; and (ii) £1,000,000. In the event that, where required by **tie**, Infraco do not provide such bond or cash retention within 20 Business Days **tie** shall be entitled to exercise automatic withholding from payments to Infraco until such time as the

monies withheld pursuant to this provision equal the lesser of (i) the value of the rectification and/or maintenance works necessary to meet the Required Condition; and (ii) £1,000,000. The proceeds of any bond, retention or cash deposit made pursuant to this Clause 96.4.3 shall not count towards the Liability Cap pursuant to Clause 77.7.

96.4.4 In the event that the value of the rectification and/or maintenance works as established pursuant to Clause 96.4.1.3 necessary to meet the Required Condition is likely to exceed £1,000,000 **tie** may request Infraco to extend the value of the bond or cash deposit put in place pursuant to Clause 96.4.3 beyond £1,000,000. Should Infraco refuse to increase the value of the bond or cash deposit pursuant to Clause 96.4.3 beyond £1,000,000, **tie** shall be entitled to treat such refusal as an Infraco Default.

96.5 The Infraco shall carry out such rectification and/or maintenance work as is necessary to meet the Required Condition within the period agreed pursuant to Clause 96.4.1.2 and any costs it incurs in carrying out such rectification and/or maintenance work shall be to its own expense.

96.6 Where it has been agreed between the Parties acting reasonably that the rectification and/or maintenance work necessary to meet the Required Condition has been carried out by the Infraco or **tie** then, as soon as practicable (and any event within 10 Business Days of the date on which all such work has been carried out) **tie** shall pay to the Infraco any credit balance remaining on the cash deposit or serve a notice on the Infraco confirming completion of the rectification or maintenance works and that any bond put in place pursuant to Clause 96.4.3 may be released.

96.7 If and to the extent that the Infraco fails to carry out the necessary rectification and/or maintenance work as is necessary to meet the Required Condition within the period agreed pursuant to Clause 96.4.1.2, **tie** shall be entitled to carry out or procure the carrying out of such rectification and/or maintenance work necessary to meet the Required Condition and may make withdrawals from the retention or deposit provided pursuant to Clause 96.4.3 or may call against the bond provided pursuant to Clause 96.4.3 to recover its reasonable and demonstrable costs in carrying out or procuring the carrying out of such works.

96.8 In the event that the value of the retention, deposit or bond is insufficient to cover **tie** carrying out or procuring the carrying out of such rectification and/or maintenance work necessary to meet the Return Condition, **tie** shall be entitled to recover such shortfall from the Infraco as a debt.

PART 17 - MISCELLANEOUS

97. **DISPUTE RESOLUTION PROCEDURE**

97.1 The Parties agree that any Dispute shall be dealt with in accordance with the provisions set out in Schedule Part 9 (*Dispute Resolution Procedure*).

98. **ASSIGNATION, CHANGE IN LEGAL STATUS AND CHANGES IN CONTROL**

98.1 Without prejudice to Clause 28 (*Sub-Letting and the Appointment of Sub-Contractors*), the Infraco shall not assign, novate or otherwise transfer the whole or any part of the Agreement without the prior written agreement of **tie** and CEC.

98.2 In addition to and without prejudice to Clause 11 (*Novation of the SDS Agreement to the Infraco*), ~~Clause 12 (*Novation of the Tram Supply Agreement to the Infraco*) and Clause 13 (*Novation of the Tram Maintenance Agreement to the Infraco*)~~ **tie** shall be entitled to assign, novate or otherwise transfer the whole or any part of this Agreement:

98.2.1 to the Scottish Ministers, CEC, or their statutory successors (enjoying full executive authority in their own right under public administrative law) in accordance with the Tram Legislation; or

98.2.2 NOT USED

98.2.3

- (a) to TEL;
- (b) or to any other person

in accordance with the Tram Legislation, and whose obligations under this Agreement are in both cases irrevocably guaranteed (in a form reasonably acceptable to the Infraco acting reasonably) by CEC or the Scottish Ministers; or

98.2.4 with the prior written consent of each Infraco Member, such consent shall be deemed not to be unreasonably withheld if the reason for withholding is an objection to the assignee from any of the Infraco's sureties pursuant to Clause 74.

99. **NOT USED**

100. **SECURITY INTERESTS**

100.1 The Infraco shall not create or agree to create any Security Interest over ~~the Edinburgh Tram Network~~ Initial Phase 1a or the Secondary Phase 1a Design or part thereof or

the Secondary Phase 1a Equipment or any Assets ~~owned by tie or CEC~~ or over this Agreement.

100.2 The Infraco shall not dispose of any right in respect of or interest in any Asset used in the Infraco Works or relating to ~~the Edinburgh Tram Network~~ Initial Phase 1a or the Secondary Phase 1a Design if to do so would have a material adverse effect upon either ~~the Edinburgh Tram Network~~ Initial Phase 1a, the Secondary Phase 1a Design, the rights in the Assets held by CEC, or the position of tie under this Agreement, whether or not this Agreement has terminated or expired provided always that restrictions in this Clause 100 (*Security Interests*) shall not apply in the case of:

100.2.1 disposals of redundant or obsolete Assets not required for ~~the Edinburgh Tram Network~~ Initial Phase 1a and not forming part of the Secondary Phase 1a Equipment provided that tie has procured CEC consent to such disposal, and CEC receives any proceeds associated with such disposal; or

100.2.2 disposals of property or assets where such property or assets are replaced by other property or assets comparable or superior as to type and function.

101. **CONFIDENTIAL INFORMATION**

101.1 Each Party:

101.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

101.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such person and to such extent as may be necessary for the performance of this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

101.2 Each Party shall take all necessary precautions to ensure that all Confidential Information obtained from the other Party under or in connection with the Agreement:

101.2.1 is given only to such of the staff, contractors, agents, subcontractors, consultants and professional advisors engaged by it in connection with this Agreement as is strictly necessary for the carrying out by that Party of its obligations under this Agreement; and

101.2.2 is treated as confidential and not disclosed (without prior approval) or used by any such staff, contractors, agents, subcontractors, consultants and professional advisors otherwise than for the purposes of this Agreement.

101.3 Where it is considered necessary in the opinion of the owner of the Confidential Information, the other Party shall ensure that its staff, contractors, agents, subcontractors, consultants and professional advisors sign a confidentiality undertaking before commencing work in connection with this Agreement.

101.4 Neither Party shall use any Confidential Information it receives from the other Party otherwise than for the purposes of this Agreement.

101.5 The provisions of Clauses 101.1 to 101.4 shall not apply to:

- 101.5.1 any information which is or becomes public knowledge (otherwise than by breach of this Clause 101 (*Confidential Information*));
- 101.5.2 any information which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- 101.5.3 any information which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 101.5.4 any information which is independently developed without access to the Confidential Information;
- 101.5.5 any disclosure pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under FOISA, the Code, or the Environmental Information Regulations pursuant to Clauses 101.7 to 101.11 (inclusive);
- 101.5.6 NOT USED
- 101.5.7 any information which is required to be disclosed to that Party's insurers, financial advisers and/or legal advisers subject to Clauses 101.2 and 101.3;
- 101.5.8 any registration of information in respect of the Consents and any property registration required;
- 101.5.9 any disclosure of information by **tie** to TEL, CEC, any department, office or agency of the Scottish Executive, the Scottish Ministers, Transport Scotland, Partnerships UK Limited or the UK government where such Confidential Information is required to be disclosed by Law or where the disclosing Party,

acting reasonably, needs to disclose such information in order to comply with the provisions of this Agreement;

101.5.10 NOT USED

101.5.11 any disclosure of Confidential Information obtained from the Infraco to any government department or any other local government authority or public authority equivalent in status to **tie** where such Confidential Information is required to be disclosed by Law or where the disclosing Party, acting reasonably, needs to disclose such information in order to comply with the provisions of this Agreement. All government departments or any other local government authority or public authority equivalent in status to **tie** receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or any other local government authority or public authority equivalent in status to **tie** on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any other local government authority or public authority equivalent in status to **tie** provided that in disclosing information under this Clause 101 (*Confidential Information*) **tie** discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate,

provided that in disclosing information under this Clause 101 (*Confidential Information*) **tie** discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate. **tie** shall be responsible to the Infraco for any abuse by the recipient in breach of such confidentiality obligation.

101.6 Nothing in this Clause 101 (*Confidential Information*) shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights including those rights expressed in Clause 102 (*Copyright and Intellectual Property*).

101.7 The Infraco acknowledges that **tie** is subject to the requirements of FOISA and the Environmental Information Regulations and shall assist and cooperate with **tie** (at **tie's** expense) to enable **tie** to comply with any Information disclosure requirements in relation to this Agreement. **tie** agrees that it shall comply with the terms of the Code in respect of the discharge of its obligations under FOISA.

101.8 The Infraco shall, and shall procure that the Infraco Parties shall:

101.8.1 transfer any Request for Information to **tie** as soon as practicable after receipt and in any event within 5 Business Days of receiving any Request for Information;

101.8.2 provide all reasonable assistance requested by **tie**, at **tie's** cost, in order to support **tie** and CEC with regard to any requirement from Scottish Ministers regarding their obligations pursuant to the Code;

101.8.3 provide all necessary assistance as reasonably requested by **tie** to enable **tie** to respond to a Request for Information relating to this Agreement within the time for compliance set out in section 10 of FOISA or regulation 5 of the Environmental Information Regulations.

101.9 **tie** shall be responsible for determining at its absolute discretion whether the Confidential Information and/or any other Information:

101.9.1 is exempt from disclosure in accordance with the provisions of the Code, FOISA or the Environmental Information Regulations; and

101.9.2 is to be disclosed in response to a Request for Information,

save that, where any Request for Information relates to Confidential Information disclosed by the Infraco under this Agreement, **tie** shall, where practicable, in advance of making any disclosure under FOISA or the Environmental Information Regulations notify the Infraco of such request and consult with the Infraco regarding all reasonable representations by the Infraco that such Confidential Information is exempt information.

101.10 In no event shall the Infraco respond directly to a Request for Information unless expressly authorised to do so by **tie**.

101.11 The Infraco acknowledges that **tie** may be obliged, pursuant to the Code, FOISA, or the Environmental Information Regulations to disclose Information:

101.11.1 without consulting with the Infraco; or

101.11.2 following consultation with the Infraco and having taken its views into account.

101.12 NOT USED

101.13 The Infraco acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that **tie** may nevertheless be obliged to disclose Confidential Information in accordance with Clause 101.7.

101.14 Any public relations material, press releases, public presentations or conference engagements in relation to this Agreement planned by the Infraco requires **tie's** prior written approval.

101.15 If a Party becomes required in circumstances contemplated by clauses 101.5.5, 101.5.9, 101.5.10 or 101.5.11 to disclose any Confidential Information, such Party shall give to the Party which owns such Confidential Information as much notice as is practical in the circumstances of such disclosure and shall co-operate with that other Party, having due regard to the other Party's views, and take such steps as the other Party may reasonably require in order to enable it to mitigate the effect of, or avoid the requirements for, any such disclosure.

102. **COPYRIGHT AND INTELLECTUAL PROPERTY**

102.1 All the Infraco IPR shall be owned by the Infraco and/or the Infraco Parties at all times.

102.2 The Infraco hereby:

102.2.1 assigns by way of future assignation to **tie** with full title guarantee the Project IPR which is created by it and used by the Infraco to carry out its obligations under this Agreement for all purposes for all of the residue of the term of such Intellectual Property Rights and all renewals or extensions thereof and together with all accrued causes of action in respect thereof, provided that **tie** shall grant a non-exclusive, perpetual, transferable and royalty-free licence in such Project IPR to the Infraco to use, have used and sublicense such Project IPR without any restriction.

102.2.2 grants to **tie** a non-exclusive perpetual irrevocable royalty free licence to use such Infraco IPR which is contained in the Deliverables as may be necessary for **tie** to use in relation to the Infraco Works and the Maintenance Services and any extension of the Edinburgh Tram Network [beyond Initial Phase 1a](#) and undertakes to procure for **tie** a licence on the same terms as above in respect of any Project IPR created by the Infraco Parties.

102.2.3 grants to **tie**, with the prior written consent of the Infraco such consent not to be unreasonably withheld, the right to grant non-exclusive non-assignable sub-licences to third parties for such periods of time as **tie** may reasonably require and otherwise on the same terms as the licence granted to **tie** pursuant to Clause 102.2.2 above, to use the Infraco IPR referred to in that clause (other than in relation to Third Party Software and commercially available software which is subject to the provisions of Clause 102.9) in so far as is necessary or desirable for

such third party to use such Infraco IPR in relation to the Infraco Works ~~for the Edinburgh Tram Network~~, the Maintenance Services and any extension of the Edinburgh Tram Network beyond Initial Phase 1a.

102.2.4 **tie** acknowledges that the rights in and title to Project IPR created by the Infraco Parties shall remain vested in those parties.

102.3 For the avoidance of doubt, the persons to whom **tie** may grant sub-licences pursuant to Clause 102.2.3 above without consent shall include:

102.3.1 any **tie** Party;

102.3.2 CEC and TEL;

102.3.3 the Operator and any party other than the Operator providing support to **tie** in relation to the Infraco Works, the Maintenance Services ~~and~~ or the Edinburgh Tram Network;

102.3.4 any Successor Infraco and any party providing maintenance in relation to the Infraco Works ~~and~~ or the Edinburgh Tram Network; and

102.3.5 any permitted assignee or transferee under this Agreement.

102.3A tie shall, if requested, grant to Infraco a non-exclusive, non-assignable sublicense of such elements of the Tram Supplier IPR as may be required for the Infraco to carry out its obligations under this Agreement.

102.4 ~~tie shall not exercise any of the rights licensed to it pursuant to this Clause 102 to design, construct, manufacture or commission or procure the same:~~ NOT USED

~~102.4.1 unless and until tie and the Infraco cannot agree a price and/or delivery time in relation to a Spare Part or Special Tool; or~~

~~102.4.2 unless a notice pursuant to Clause 12.8 has been served by the Infraco; or~~

~~102.4.3 unless tie has served a Final Persistent Breach Notice caused by the Tram Supplier.~~

102.5 The copyright of this Agreement and any data or software supplied to the Infraco by **tie**, shall remain solely with **tie**.

102.6 The Infraco shall at any time and from time to time hereafter at the request of **tie**, execute all such documents and do all such further acts as may be required in order to vest the rights referred to in Clause 102.2.1 in **tie**.

102.7 The Infraco waives any and all moral rights held or to be held by the Infraco in the Deliverables (save in relation to Infraco IPR contained in them) and the Project IPR assigned to **tie**.

102.8 ~~**tie** shall not be entitled to adapt, reverse engineer, decompile, disassemble and/or modify the Tram Software in whole or in part except:~~ **NOT USED.**

~~102.8.1 as permitted by Law; or~~

~~102.8.2 to the extent that such action is legitimately required for the purposes of integrating the operation of the Tram Software with the operation of other software or systems used by **tie** or **tie** Parties in connection with the Edinburgh Tram Network.~~

102.9 To the extent that any of the Deliverables are generated by or maintained on a computer or similar system, the Infraco shall use reasonable endeavours to procure for the benefit of **tie**, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant Third Party Software (other than any commercially available standard software) on the same terms as the Infraco Software is licensed to **tie**, to enable **tie** or its nominee to access and otherwise use (subject to the payment by **tie** of the relevant fee, if any) such Deliverables in connection with this Agreement. As an alternative, the Infraco may provide such Deliverables in a format which may be read by software generally available at reasonable prices in the market at the relevant time or in hard copy format. The Infraco shall obtain for **tie** the right to use commercially generally available (standard) software incorporated into or used in the Infraco Works and provided as Deliverables on the standard licence terms granted with such software.

102.10 The Infraco shall ensure the back-up and storage in safe custody of the Deliverables in accordance with Good Industry Practice, as agreed with **tie** in advance, such agreement not to be unreasonably withheld or delayed.

102.11 For the purposes of this Clause 102 (*Copyright and Intellectual Property*), "use" shall include the acts of copying, modifying, adapting or translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly. The Infraco shall not be liable or responsible for any modifications or adaptations made by **tie** or its licencees.

102.12 The provisions of this Clause 102 (*Copyright and Intellectual Property*) shall apply during the continuance of this Agreement and after its termination howsoever arising, and immediately following termination howsoever arising, the Infraco shall provide **tie** with:

102.12.1 a copy of the object code for the Third Party Software and the Infraco Software on media that is acceptable to **tie** (acting reasonably);

102.12.2 a copy of the source code for the Specially Written Software on media that is acceptable to **tie** (acting reasonably); and

102.12.3 a copy of all documentation, manuals and other technical information relating to the Third Party Software, the Specially Written Software and the Infraco Software that is reasonably required by **tie** to operate, manage and support the Third Party Software, the Specially Written Software and the Infraco Software.

102.13 The Infraco shall not publish any document or matter relating to the Infraco Works or this Agreement, either alone or in association with any other body or person, without the prior written consent of **tie**, which consent shall not be withheld unreasonably.

Software

102.14 In designing and creating Infraco Software forming part of the Deliverables, the Infraco shall ensure:

- (a) that orderly auditable records of the progress of the development of the Infraco Software from the functional requirements to the final code are maintained, and that regular verification and testing occurs at each stage of the design process;
- (b) that it shall produce, during the development of the Infraco Software comprehensive and accurate documentation including specifications, cause and effect charts and flowcharts are produced;
- (c) that the documentation, access rights, details of configuration software and the like produced in accordance with (a) above, is such as to enable an appropriately qualified independent auditor (who is not involved in the original design) to:
 - (i) relate the Infraco Software to the performance of the relevant equipment under normal and fault conditions;
 - (ii) to verify its compliance with the functional requirements of that equipment;
 - (iii) to operate and reconfigure the Software without the assistance of the Infraco; and
- (d) that the Infraco Software is designed, developed and documented following an industry-recognised standard, using recognised quality control methods.

102.15 Subject to the terms of any Third Party Software Licences, the Infraco shall to a reasonable extent, create or provide:

- (a) coding and documentation, in machine readable form, of the final structure of the Infraco Software, and of the intermediate stages leading to it (i.e. source and object codes); and
- (b) where **tie** so instructs, usable copies of any ancillary computer programs used to generate the code (such as compilers) provided that **tie** meet the costs of any additional Third Party Software Licences.

102.16 Where the Infraco is required to provide Infraco Software as part of a Deliverable under this Agreement it shall, within thirty (30) days of acceptance of the Infraco Software by **tie** place, or shall procure the placement of, a copy of the source code of the Infraco Software in escrow with the NCC Group of Manchester Technology Centre, Oxford Road, Manchester ("**NCC**") or such other escrow agent as the Parties may agree. The Parties shall enter into NCC's standard escrow agreement (provided that, in the case of Third Party Software, the Infraco shall procure that the owner of such software enters into such escrow agreement) for a single licensee (or if no such agreement exists, the appropriate standard agreement as stipulated by NCC). The cost of such source code deposit (including all renewal costs) shall be payable by Infraco.

Technical Library

102.17 The Infraco shall;

- (a) as soon as reasonably practicable establish a secure, virtual electronic site for the storage of Deliverables other than the source code (the "**Technical Library**"). Such electronic site shall be capable of being accessed through a standard web browser. At **tie's** request, the Infraco will in addition also establish a physical site with paper copies of the Technical Library;
- (b) as and when Deliverables (other than the source code) are produced or updated from time to time:
 - (i) where such Deliverables are produced or updated by the Infraco, promptly ensure that a copy of those Deliverables or its updated version is placed in the Technical Library; and
 - (ii) where such Deliverables are produced or updated by any Subcontractor, as soon as reasonably practical ensure that a copy of those Deliverables or their updated version(s) are placed in the Technical Library;

- (c) establish an index, in a format approved by **tie**, of all Deliverables deposited in the Technical Library from time to time and update that index whenever any such Deliverables are deposited in the Technical Library;
- (d) deliver one copy of the index and each update established under clause 102.17(c) to **tie**; and
- (e) permit **tie** (or its nominee) to have access to the Technical Library from time to time during normal business hours, and following reasonable notice from **tie** (or its nominee) to the Infraco, for the purpose only of auditing its contents against the current index.

102.18 Within three Business Days of the earlier of the issue of the Reliability Certificate pursuant to Clause 47.4 or the termination of this Agreement, the Infraco shall hand over the Technical Library, and the secure access to it, to **tie** and the Infraco's obligations in relation to the further maintenance of the Technical Library shall cease. Should an audit of the contents of the Technical Library against the current index reveal that the index does not contain details of categories or types of Deliverables which should be contained within the Technical Library, **tie** may request and the Infraco grants access to **tie** to the Technical Library from time to time during business hours in order to audit the contents of the Technical Library to determine whether such categories and types of Deliverables are in fact contained within the Technical Library. Any such request shall be made with reasonable notice and shall indicate with reasonable clarity the Technical Information or the type of Deliverable which is required for review.

102.19 ~~In relation to Trameco IPR and Trameco Project IPR, the provisions of Schedule Part 39 shall apply.~~ **NOT USED.**

103. DATA PROTECTION

103.1 For the purpose of the following clauses, the term "**personal data**" shall have the meaning given to it in the Data Protection Act 1998.

103.2 The Infraco shall, in relation to any personal data relating to the performance of the Infraco Works in respect of which it is either the "data controller" or the "data processor" for the purposes of the Data Protection Act 1998, comply with the obligations of a "data controller" under the provisions of the seventh data protection principle as set out in Schedule 1 of that Act. In addition, the Infraco:

103.2.1 shall have at all material times (and shall use its reasonable endeavours to procure that all the Infraco Parties have or will have at all material times) the appropriate technical and organisational measures in place against unauthorised or unlawful processing of personal data

and against accidental loss or destruction of, or damage to, personal data held or processed by it;

103.2.2 shall (and shall use its reasonable endeavours to procure that the Infraco Parties shall) take at all material times, all reasonable steps to ensure the integrity of any of its staff with access to personal data processed in connection with the Infraco Works;

103.2.3 shall act only on the instructions of **tie** in relation to the processing of any personal data in respect of which **tie** is the "data controller" for the purposes of that Act;

103.2.4 shall only obtain, hold, process, use, store and disclose such personal data as is necessary to perform its obligations under this Agreement; and

103.2.5 shall allow **tie** access to any relevant premises on reasonable notice to inspect its procedures referred to in Clause 103.2.1.

104. INFORMATION AND AUDIT ACCESS

104.1 The Infraco shall, in accordance with Good Industry Practice, keep and maintain:

104.1.1 all Deliverables;

104.1.2 all invoices, timesheets and expense claims for which the Infraco has sought or is seeking reimbursement under the provisions of this Agreement;

and shall keep the above items for at least six years following expiry or termination of this Agreement.

104.2 The items referred to in Clause 104.1 shall be kept in good order and in such form so as to be capable of audit (including by electronic means) by **tie's** Representative, **tie**, CEC, **tie's** auditors or CEC's auditors or any other third party. The Infraco shall make such records available for inspection by or on behalf of **tie's** Representative, **tie**, CEC, **tie's** auditors or CEC's auditors or any other third party at all reasonable times during normal working hours on not less than one Business Day's notice. Save where an Infraco Default has occurred and is continuing, the frequency of any audit or inspection pursuant to this Clause 104 shall be reasonable and **tie** shall, and shall procure that **tie's** Representative and any other agents or representatives shall, during any period when it or they have access to any premises of the Infraco or any Infraco Party, comply with all rules and regulations notified to **tie** applicable to working at those premises for the safety of persons and convenience of the public.

104.3 In addition to the requirements of Clause 104.1 and 104.2, the Infraco shall provide to **tie's** Representative, **tie**, CEC, **tie's** auditors, CEC's auditors or their successors, any other information, documents, records and the like in the possession of, or available to the Infraco (and to this end, the Infraco shall use all reasonable endeavours to procure that all such items in the possession of the Infraco Parties shall be available to it) as may be reasonably requested by **tie's** Representative, **tie**, CEC, **tie's** auditors or CEC's auditors for any purpose in connection with this Agreement and/or the Infraco Works.

104.4 The Infraco shall provide and shall procure that the Infraco Parties shall provide such assistance as **tie** may reasonably require from time to time, to enable **tie** and CEC to meet their obligations to provide reports and returns pursuant to Law, directions and guidance applicable to the passenger transport sector, and to carry out audits.

104.5 The Infraco shall comply, at its own cost, with any reasonable request by **tie** in respect of the recording, storage, keeping, disclosure, organisation, use, processing, dissemination, deletion or destruction of any records, data or information obtained by the Infraco as a result of carrying out the Infraco Works in so far as is in accordance with the HSQE System.

104.6 **tie** shall provide to the Infraco (subject to reasonable notice and relevant undertaking as to costs) such information within its possession or control with respect to the Edinburgh Tram Network as the Infraco may reasonably request to enable it to perform its obligations under this Agreement, provided that **tie** shall have no obligation to provide information with respect to which it is subject to an obligation of confidentiality (whether under any Law, at contract or otherwise).

104.7 The provisions of this Clause 104 (*Information and Audit Access*) shall apply during the continuance of this Agreement and after its expiry or termination howsoever arising.

105. **HEALTH AND SAFETY, QUALITY ASSURANCE AND ENVIRONMENTAL MANAGEMENT SYSTEM**

105.1 The Infraco shall operate:

105.1.1 a health and safety management system, the standard of which shall comply with OHSAS 18001 or HSG65;

105.1.2 a quality management system, the standard of which shall comply with BS EN ISO 9001:2000; and

105.1.3 an environmental management system, the standard of which shall comply with BS EN ISO 14001:2004;

which shall be known together as the "**HSQE System**".

105.2 The Infraco shall (and shall procure that the Infraco Parties) comply with the HSQE System and the Infraco shall develop appropriate management plans so as to ensure such compliance with the HSQE System.

105.3 If any Deliverable has not been prepared in accordance with the HSQE System, **tie's** Representative shall so inform the Infraco in writing giving reasons. If such non-compliance gives rise to a defect in the Infraco Works then the Infraco shall not be entitled to make any claim against **tie** for an extension of time or payment in respect of such defect.

105.4 Compliance with the **HSQE****HSE** System shall not relieve the Infraco from any of its other duties, obligations or liabilities under this Agreement.

105.5 The Infraco shall appoint (or shall procure the appointment of) an **HSQE****HSE** Manager as soon as reasonably practicable following the Effective Date. The identity of the **HSQE****HSE** Manager (and any replacement) shall be subject to the approval of **tie's** Representative (such approval not to be unreasonably withheld or delayed).

105.6 The **HSQE****HSE** Manager shall:

105.6.1 ensure the effective operation of the HSQE System described in this Clause 105 (*Health and Safety, Quality Assurance and Environmental System*);

105.6.2 audit the HSQE System at regular intervals and report the findings of such audit to **tie's** Representative;

105.6.3 review the HSQE System at intervals agreed with **tie's** Representative to ensure its continued suitability and effectiveness; and

105.6.4 liaise with **tie's** Representative on all matters relating to the HSQE System.

106. ENTIRE AGREEMENT

106.1 Except where expressly provided otherwise in this Agreement, ~~this Agreement constitutes~~ the Defined Agreements constitute the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings including the PB Agreement, Weisbaden Agreement and Rutland Square Agreement and the 9th May 2008 Agreement, concerning the subject matter of this Agreement.

106.2 Each of the Parties confirms to the other that it has neither been induced to enter into this Agreement in reliance on, nor has it made, any representation or warranty except those contained or referred to in ~~this Agreement~~ the Defined Agreements.

106.3 Any representations or warranties other than those contained or referred to in ~~this Agreement~~ the Defined Agreements are superseded and extinguished by this Agreement.

106.4 The Parties agree that the PB Agreement, Weisbaden Agreement and Rutland Square Agreement and the 9th May 2008 Agreement shall terminate forthwith on the Commencement Date and neither Party shall have any liability in respect thereof from the date of such termination.

106.5 Each Party irrevocably and unconditionally waives all rights and remedies which it might otherwise have had in relation to any representations or warranties other than those contained or referred to in this Agreement save in respect of any fraudulent misrepresentation.

107. **FURTHER ASSURANCE**

107.1 Each Party shall at the reasonable request and cost of the other (save where it is expressly provided that the cost of such act or execution shall be for that Party's account) do any act or execute any document that may be necessary to give full effect to this Agreement.

108. **VARIATIONS TO BE IN WRITING**

108.1 No variation or alteration of any of the provisions of this Agreement shall be effective unless it is in writing and signed by both Parties.

109. **WAIVERS**

109.1 Save where expressly stated, no failure or delay by either Party to exercise any right or remedy in connection with this Agreement will operate as a waiver of it or of any other right or remedy nor will any single or partial exercise preclude any further exercise of the same, or of some other right or remedy. A waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach.

109.2 The Parties agree that no waiver shall occur or be deemed to have occurred unless or until clear and unequivocal express waiver of a clearly identified default is contained in a written notice by the waiving Party to the other Party expressly for the purpose of effecting such waiver.

109.3 The Parties' rights and remedies under this Agreement are, except where provided otherwise in this Agreement, independent, cumulative and do not operate to exclude one another or any rights or remedies provided by Law.

110. **NO PARTNERSHIP OR AGENCY**

110.1 Nothing in this Agreement shall be construed as creating a partnership between **tie** and the Infraco.

110.2 The Infraco shall not (and shall procure that the Infraco Parties shall not) act or purport to act as agent for **tie** in relation to any matter unless specifically authorised in writing under this Agreement by **tie**. The Infraco shall not be entitled to bind **tie** in any way or to create any liability or cause of action against **tie** and shall not hold itself out (and shall procure that no Infraco Party shall hold itself out) as having any such authority or power.

111. **NOTICES**

111.1 Any notice or notification required or authorised to be given under this Agreement by one Party to the other shall be:

111.1.1 in writing;

111.1.2 sent by one of the following methods:

111.1.2.1 pre-paid special or recorded delivery post or facsimile transmission addressed to the Party to which it is given at:

- (i) in the case of notices given to **tie**: **tie** Limited, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD, fax number 0131 622 8301 for the attention of: Tram Project Director, or such other address or fax number in the United Kingdom as **tie** may notify the Infraco from time to time for that purpose; or
- (ii) in the case of notices given to the Infraco: Bilfinger Berger - Siemens Consortium, 9 Lochside House, ~~3 Lochside Way~~Avenue, Edinburgh Park, Edinburgh EH12 9DFD~~J~~, fax number 0131 452 ~~2518~~2990, for the attention of ~~Scott McFadzen~~Martin Foerder, or such other address or fax number in the United Kingdom as the Infraco may notify **tie** from time to time for that purpose; or

111.1.2.2 facsimile transmission addressed to the **tie's** Representative or the Infraco's Representative (as appropriate) at a facsimile number notified to the giving Party by the receiving Party for the service of notices under this Agreement from time to time; or

111.1.2.3 personal delivery into the hands of:

- (i) in the case of notices given to **tie**, **tie's** Representative; or
- (ii) in the case of notices given to the Infraco, the Infraco Representative;

111.1.3 be deemed duly served:

111.1.3.1 if sent by pre-paid special or recorded delivery post on proof of delivery; or

111.1.3.2 if sent via facsimile transmission or personal delivery, on the day of issue of the relevant fax confirmation receipt or such personal delivery (as appropriate), unless that day is not a Business Day or such delivery or transmission is made after 5:00pm on a Business Day in which case it shall be deemed duly served on the next Business Day thereafter.

112. **INVALID TERMS**

112.1 If any term of this Agreement shall be held to any extent to be invalid, unlawful or unenforceable:

112.1.1 that term shall, to that extent, be deemed not to form part of this Agreement; and

112.1.2 the validity and enforceability of the remainder of this Agreement shall not be affected.

112.2 Without prejudice to any other terms of this Agreement, the Parties shall promptly consult in good faith with a view to agreeing as soon as reasonably practicable one or more provisions in lieu of the invalid provision such as will, so far as is possible under any applicable Law, have the same commercial effect as the invalid provision would have had if it had not been unlawful, unenforceable or invalid.

113. **THIRD PARTIES RIGHTS**

113.1 It is expressly declared that no rights shall be conferred under this Agreement upon any person other than the Infraco, **tie** and, pursuant to Clause 9 (*Title*), Clause 77 (*Indemnity By Infraco, Liability and Sole Remedy*) and Clause 98(*Assignment, Change in Legal Status and Changes in Control*), CEC and, in the case of Clause 77, the Indemnified Parties (other than CEC and **tie**). There shall not be created by this Agreement a jus quaesitum tertio in favour of any party whatsoever save for CEC by virtue of Clause 9 (*Title*) and Clause 20.14. For the avoidance of doubt, any Indemnified Party who is an officer, agent or employee of **tie** or CEC shall only be entitled to assert this entitlement through **tie** or CEC.

114. **CONSENT AND APPROVAL**

114.1 The giving of any consent or approval by or on behalf of **tie** shall not in any way relieve the Infraco of any of its obligations under this Agreement or of its duty to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the consent or approval.

114.2 Failure by **tie** to disapprove or object to any matter or thing shall not prejudice its power subsequently to take action under this Agreement in connection therewith, save where such disapproval or objection is to be made pursuant to Clause 12.8, Clause 13.8, ~~Clause 41 (Completion of Construction Milestones and Critical Milestones)~~, Clause 64 (Relief Events), Clause 65 (Compensation Events), Clause 80 (**tie** Changes) or Clause 90 (Termination for Infraco Default).

115. **DISCRIMINATION**

115.1 The Infraco shall not (and the Infraco shall insert a clause to this effect in each contract with any Infraco Party) unlawfully discriminate within the meaning and scope of the provisions of the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003.

116. **DEROGATIONS**

116.1 The Infraco shall not, without the prior written consent of **tie** (acting reasonably), apply for any exemption or derogation from or dispensation under any applicable Law which would otherwise apply to the Infraco Works and including, without limitation, any exemption order under Section 47(3) of the Disability Discrimination Act 1995 or dispensations under the provisions of Section 10 of the Railways and Other Passenger Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994 or any provisions which may replace, modify or supersede such provisions.

117. **APPLICABLE LAW**

117.1 This Agreement, any document completed or to be a completed in accordance with its provisions and any matter arising from this Agreement or any such document shall be governed by and construed in accordance with Scots law.

117.2 Subject to Clause 97 (*Dispute Resolution Procedure*), the Parties hereby irrevocably submit to the exclusive jurisdiction of the Court of Session in relation to this Agreement, any such document and any such matter.

118. **DUTY TO ACT REASONABLY**

118.1 Wherever in this Agreement a Party is required to make any determination or to give any decisions, instructions, opinions or consents or to express satisfaction or approval or otherwise take any action, that Party shall act fairly and reasonably within the terms of this Agreement (save where this Agreement expressly states that **tie** is to have absolute discretion), and having regard to all the circumstances.

119. **MITIGATION**

119.1 In all cases where a Party seeks to establish or alleges a breach of this Agreement or a right to be indemnified or compensated or to be awarded costs in accordance with this Agreement, that Party shall be under a duty to take all reasonable measures to mitigate the loss which has occurred.

120. **JOINT AND SEVERAL LIABILITY**

120.1 Each Infraco Member enters into this Agreement on the basis of joint and several liability for the performance and discharge of all obligations, save for Clause 75 (*Warranties*) (but not including Clause 75.1.7), arising from or in connection with the Agreement.

121. **NO DOUBLE RECOVERY**

121.1 Neither Party to this Agreement shall:

121.1.1 be entitled to recover any amount from the other under this Agreement to the extent that it has previously recovered for the same loss or damage under the terms of this Agreement or otherwise; or

121.1.2 claim or purport to claim for the same loss or damage under more than one provision of this Agreement.

IN WITNESS WHEREOF these presents on this and the preceding ~~236~~**215** pages together with Schedule in ~~Fourty Four~~**Forty Five** parts (inclusive) which is annexed and signed as relative hereto are executed as follows:

EXECUTED for and on behalf of **TIE LIMITED**
at Edinburgh on ~~13 May 2008~~ by:

Authorised Signatory

Full Name

Witness Signature

Full Name

Address

EXECUTED for and on behalf of **BILFINGER
BERGER CIVIL UK LIMITED** at Edinburgh on
~~13 May 2008~~ by:

~~Director~~ Authorised Signatory

Full Name

Director

Full Name

EXECUTED for and on behalf of **SIEMENS**
PLC at Edinburgh on ~~13 May 2008~~
by:

Authorised Signatory

Full Name

Authorised Signatory

Full Name

THIS IS THE SCHEDULE ~~PART 1~~ REFERRED TO IN THE FOREGOING AGREEMENT
BETWEEN TIE AND THE INFRACO

SCHEDULE PART 1
DEFINITIONS AND INTERPRETATION

1. Unless otherwise defined in this Agreement (including the recitals and the Schedules), save as the context otherwise requires, the following words and expressions shall have the meanings hereby ascribed to them:

"**Abortive Work**" means any work which cannot be used in relation to ~~the Edinburgh Tram Network~~ Initial Phase 1a or the Secondary Phase 1a Design (but not including work occurring as part of the iterative process of design);

"**Access Permit**" has the meaning given in paragraph 3.4.1 of part A of Schedule Part 3 (*Code of Construction Practice and Code of Maintenance Practice*);

"**Access Permit Form**" has the meaning given in paragraph 3.4.2 of part A of Schedule Part 3 (*Code of Construction Practice and Code of Maintenance Practice*);

"**Accommodation Works**" means any works arising out of the compulsory purchase process (including the reinstatement of boundary walls, fences) or any other works **tie** are obliged to procure are carried out for third parties associated with ~~the Edinburgh Tram Network~~ Initial Phase 1a

"**Accommodation Works Change**" means any Accommodation Works instructed by **tie** in accordance with Clause 83 (*Accommodation Works*) or which Infraco is required to carry out in accordance with Clause 18.17A.2;

"**Accommodation Works Notice**" has the meaning given in Clause 83 (*Accommodation Work Changes*);

~~"Actual Milestone Date" means the date on which a certificate in respect of a Milestone is issued in accordance with this Agreement;~~

"**Additional Available Infrastructure**" ~~and "Additional Available Tram"~~ means such level of additional availability which **tie** notifies to the Infraco pursuant to Clause 52.24 which is outwith the required Available Infrastructure and ~~Available Tram and~~ which is confirmed by the Infraco pursuant to Clause 52.24.

"**Additional Insurance**" has the meaning given in Clause 76.20;

"**Affected Party**" means a Party that is unable to comply with all or a material part of its obligations under this Agreement as a direct result of a Force Majeure Event;

"**Affiliates**" means, in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company and "holding company" and "subsidiary" shall have the meaning given to them in section 736 of the Companies Act 1985 and its equivalent under the laws of the Federal Republic of Germany and the laws of Spain;

"Agreed Tram Commissioning Date" shall mean the Agreed Commissioning Date as defined in the Tram Supply Agreement;

"**Agreement**" means Clauses 1 to 121 (inclusive) together with the Schedule in 44 Parts annexed thereto as may be amended from time to time in accordance with its terms;

"**Annual Service Report**" has the meaning given to it in Clause 73.4;

"Anti No Loss Agreement" means the agreement on or about the date of this Agreement relating to recovery of losses between tie and CEC in relation to claims incurred by CEC under the Tram Supply Agreement or the Tram Maintenance Agreement and by tie under this Agreement;

"**Application for Milestone Payment**" means the applications for payment from the Infraco to tie in respect of specific identified Milestones ~~and specific identified Critical Milestones~~. Such applications for payment together with specific identified Milestones ~~and Critical Milestones~~ are set out for each Reporting Period in Schedule Part 5 (*Milestone Payments*);

"Application for Payment" means the application for payment from the Infraco to tie in respect of Infraco Works completed free from defects for each Reporting Period;

"**Approval Bodies**" means any government agency or department, official or public statutory person, utilities, planning authorities, roads authorities, HMRI, HSE, Independent Competent Persons, BAA/EAL, Network Rail, SEPA, SNH, ORR, Historic Scotland, CAA and any other third parties who are to issue or provide Consents which may be required for ~~the design, construction, installation, testing, commissioning, completion, opening, operation, maintenance, use or modification of the Edinburgh Tram Network;~~

(a) the design, construction, installation, testing, commissioning, completion, opening, operation, maintenance, use or modification of Initial Phase 1a;
or

(b) the Secondary Phase 1a Design; or

(c) the Secondary Phase 1a Equipment;

"**Assets**" means all assets and rights to enable **tie**, CEC, TEL or their assignees or agents to own, operate, maintain and extend ~~the Edinburgh Tram Network~~Initial Phase 1a, including:

- (a) any materials and equipment forming part of ~~the Edinburgh Tram Network~~Initial Phase 1a;
- (b) any books and records (including the Operating and Maintenance Manual, health and safety manuals and other know how contained within the Project IPR and the Infraco IPR);and
- (c) ~~any Trams,~~ Spare Parts, Special Tools and other assets (together with any warranties in respect of assets being transferred);

but excluding any assets and rights in respect of which **tie** or CEC is full, legal and beneficial owner by virtue of Clause 9 (*Title*);

"**Asset Management System**" means the asset maintenance management and recording system described in Schedule Part 2 (*Employer's Requirements*);

"**Asset Protection Agreement**" means the agreement set out in Schedule Part 27 (*Asset Protection Agreement and Bridge Agreement*);

"**Available Infrastructure**" means that ~~the Edinburgh Tram Network~~Initial Phase 1a is fully functional each Operating Day from half an hour before the First Tram is scheduled to leave the Depot until half an hour after the Last Tram is scheduled to return to the Depot, compliant in all material respects with the Employer's Requirements save for any defects to the infrastructure of ~~the Edinburgh Tram Network~~Initial Phase 1a that will not affect the safety or quality of operation of ~~the Edinburgh Tram Network~~Initial Phase 1a or its compliance with the Disability ~~Discrimination~~Discrimination Act 1995 that has been advised to the Infraco and which does not constitute a restriction in the manner in which ~~the Edinburgh Tram Network~~Initial Phase 1a is to be operated;

"**Available Tram**" means a Tram that (i) fully complies with the Tram Maintenance Specification, save for Minor Defects (as defined in the Tram Maintenance Agreement), and (ii) is free from Material Defects (as defined in the Tram Maintenance Agreement);

"**BAA**" means BAA plc, a company incorporated under the Companies Act with registration number 1970855 and having its registered office at 130 Wilton Road, London, SW1V 1LQ which expression shall include its successors in title and assignees and any of its associated or subsidiary companies with interests at Edinburgh International Airport;

"Background Information" means all and any materials, documents, drawings, plans or other information in paper, electronic or any other form, relating in any way to this Agreement or the Tram Legislation (and the parliamentary process) and made available to the Infraco by **tie**, CEC and/or any of their respective members, officers, agents and/or advisers during the procurement competition relative to this Agreement or thereafter including the Ground Condition Information;

"Base Case RPIX" means RPIX as at 1 September 2007;

"BT" means British Telecommunications PLC, a company incorporated under the Companies Act with registered number 01800000 and having its registered office at 81 Newgate Street, London, EC1A 7AJ;

"Business Day" means any day other than a Saturday or Sunday, or a public holiday recognised by CEC;

"Building Fixing Agreement" means the agreement in the form set out in Schedule Part 33 (*Building Fixing Agreement*);

"CAA" means the Civil Aviation Authority;

"Cable and Wireless" means Cable and Wireless UK, a company incorporated under the Companies Act with registered number 01541957 and having its registered office at Lakeside House, Cain Road, Bracknell, Berkshire, RG12 1XL;

"CAF Bond" means the performance bond or the reliability bond provided by the Tram Supplier under the Tram Supply Agreement as the case may be;

"Case for Safety" means all necessary documentation, information and other requirements for the issue of a safety certificate or a safety authorisation (as appropriate) by the Office of the Rail Regulation pursuant to the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

"CDM Co-ordinator" has the meaning given in Clause 50.1;

"CDM Regulations" means the Construction (Design and Management) Regulations 2007 (SI 2007/320);

"CEC" means the City of Edinburgh Council;

"CEC Guarantee" means the guarantee granted by CEC in favour of Infraco of even date as the ~~date of this~~ **Settlement** Agreement;

"**Certificate of Sectional Completion**" means any certificate issued by ~~tie~~the Certifier in accordance with Clause 44.3;

"**Certificate of Service Commencement**" means the certificate issued by **tie** in accordance with Clause 45.3;

~~"Certificate of Tram Commissioning" means the certificate to be issued by the Tram Inspector in accordance with Clause 2.4.8 of Schedule Part 34 (Tram Inspector Agreement);~~

"Certifier" means Hg Consulting, Chartered Surveyors, 20 Lynedoch Crescent, Glasgow, G3 6EQ or any replacement Certifier agreed by tie and the Infraco;

"**Change in Control**" means any sale or disposal of any legal, beneficial or equitable interest in share capital comprising at least 30% of either Infraco Member, the sale of its business and assets or the transfer or acquisition of the ability to direct its management and control;

"**Change in Law**" means the coming into effect after the 7 August 2007 ~~or, in relation to the Tram Supply Obligations and Tram Maintenance Obligations only, the 14 September 2007~~ of:

- (a) Legislation, other than any Legislation which on the 7 August 2007 ~~or, in relation to Legislation which affects the Tram Supply Obligations and Tram Maintenance Obligations only, the 14 September 2007~~ has been published:
 - (i) in a draft Bill as part of a Scottish Executive/Scottish Parliament or United Kingdom Government consultation paper;
 - (ii) in a Bill;
 - (iii) in draft subordinate Legislation within the meaning of section 21(1) of the Interpretation Act 1978; or
 - (iv) as a proposal in the Official Journal of the European Union.
- (b) any Guidance or any changes to Guidance; or
- (c) any applicable judgement of a relevant court of law which changes a binding precedent;
- (d) any new requirement for any statutory Consent other than statutory Consents the need for which had been published on 7 August 2007;

"Civil Engineering Works" is that part of the Infraco Works to be carried out by Bilfinger Berger Civil UK Limited as more particularly set out in the Infraco's Proposals;

"Client Change" shall have the meaning given in the Tram Supply Agreement;

"Code of Construction Practice" or "CoCP" means the code of construction practice set out at part A of Schedule 3 (*Code of Maintenance Practice and Code of Construction Practice*);

"Code of Maintenance Practice" means the code of maintenance practice set out at part B of Schedule 3 (*Code of Maintenance Practice and Code of Construction Practice*);

"Code" means the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 as the same may be amended, varied or replaced from time to time;

"Commencement Date" means the date the CP Certificate has been issued or, if there are no Conditions Precedent, the Effective Date;

"Compensation Event" means:

- (a) any breach by **tie**, the **tie** Representative or any **tie** Party of any of **tie's** obligations under this Agreement which adversely affects the performance of the Infraco Works;
- (b) subject to clause 18.18, the failure of **tie** to give possession or access as referred to in Clause 18 (*Land Consents, Permanent Land and Temporary Sites*) or the refusal of any landowner or occupier to allow the Infraco to exercise the rights of possession or access granted in accordance with this Agreement;
- (c) the exercise by CEC of its discretion to temporarily stop up streets where the exercise of such discretion adversely affects the Infraco's performance of its obligations under this Agreement;
- (d) ~~execution of any Utilities Works or MUDFA Works;~~subject to clauses 80.19, 80.20 and 80.21, a tie Change;
- (e) instructions by **tie's** Representative to which Clause 34.3 applies;
- (f) failure by **tie** to obtain any Land Consent pursuant to Clause 18 (*Land Consents, Permanent Land and Temporary Sites*) (to the extent this is **tie's** responsibility) or any **tie** Consent;

- (g) ~~the discovery by the Infraco of unexploded ordnance, unidentified utility apparatus, adverse physical conditions, ground conditions, artificial obstructions and/or land which is contaminated in the circumstances described in Clause 22.5;~~ termination by CEC of the Tram Supply Agreement at any time prior to the System Acceptance Date otherwise than pursuant to a notification from the Infraco in accordance with Clause 12.15;
- (h) a breach by the Tram Supplier or the Tram Maintainer of its obligations in respect of Tram Supplier Integration which takes place prior to the System Acceptance Date, to the extent that such breach, results in the Infraco incurring any loss or liability after the System Acceptance Date;
- (i) ~~(h)~~ protestor action directed against **tie** or a **tie** Party or the Edinburgh Tram Network which, save in respect of Tram Supply Protestor Action, lasts (or the impact of which lasts) for more than 14 days provided such protestor action has not arisen as a result of or been caused by an Infraco breach of its obligations under this Agreement or otherwise by any actions or omissions of the Infraco or Infraco Parties unrelated to the Edinburgh Tram Network provided that for the avoidance of doubt such protestor action shall be a Compensation Event as from the fifteenth day of its duration;
- ~~(i) Tram Supply Protestor Action which exceeds one day in duration;~~
- (j) any breach by Network Rail of the Asset Protection Agreement or the Network Rail Agreement;
- (k) the occurrence of any Operator Event;
- (l) any damage to the ~~Edinburgh Tram Network~~ Off Street Works caused by vandalism;
- (m) the malfunction or non-interoperability of free issue material pursuant to Clause 9.10;
- (n) a breach by **tie** or any **tie** Party of any of its obligations under the Depot Licence which adversely affects the performance of the Infraco Works or any exercise of **tie's** rights of access which disrupts or interferes with the Infraco Works in terms of Clause 24.6;
- (o) **tie's** Representative's failure (following notice in accordance with this Agreement having been given) to attend the tests or to carry out the inspections (or rearranged inspections or tests) and the carrying out of such tests

or inspections on the new dates notified by **tie's** Representative pursuant to ~~Clause 41.1~~ this Agreement;

- (p) compliance with **tie's** Representative's instructions under Clause 87 (*Suspension of Work*) which involves the Infraco in delay or extra cost (including costs incurred in properly protecting and securing the Infraco Works);
- (q) any breach by the Tram Inspector of the Tram Inspector Agreement or non-delivery of the Tram Inspection Services (as defined in the Tram Inspector Agreement) or other obligation set out in the Tram Inspector Agreement which would have been a breach had the Tram Inspector Agreement been entered into;
- (r) any other event which is expressly stated as a Compensation Event in terms of this Agreement;
- (s) ~~the occurrence of a Relief Event which is the direct cause of the Infraco suffering delay of more than 3 months in delivering the Depot where such delay leads to a Compensation Event under the Tram Supply Agreement;~~ NOT USED;
- (t) ~~save as excluded by Clause 19.19, failure of the SDS Provider to achieve the release of Issued for Construction Drawings by the date identified in the Programme for the release of such Issued for Construction Drawings;~~ NOT USED;
- (u) ~~any material breach (as distinct from (t) above) by the SDS Provider of its obligations under the SDS Agreement or in delict in relation to the quality of the Deliverables under the SDS Agreement;~~ NOT USED;
- (v) ~~Operator instructions or actions as stated in Clause 17.35 requiring the addition of works or services not included in the scope of the Tram Supply Agreement and where the Tram Supplier claims reasonable, substantiated economic compensation for such works or services from the Infraco in accordance with Clause 49 (Compensation Event) of the Tram Supply Agreement;~~ NOT USED;
- (w) in relation to the granting of Consents for building fixings, where the granting of such Consents is either refused or is delayed in accordance with Clause 20.12;
- (x) ~~delay arising between the date tie is notified of a Notified Departure and the actual date on which tie issue a tie Change Order in respect of such Notified Departure;~~ NOT USED;

"Conditions Precedent" means the execution by the Infraco of the Tram Supply Novation Agreement, the Tram Maintenance Novation Agreement and the SDS Novation Agreement and the provision of those instruments required to be provided on the Effective Date by Clause 74 (*Bond, Parent Company, Company Guarantees and Collateral Warranties*) and the agreed form of German legal opinions in respect of each Parent Company Guarantee;

"Confidential Information" means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, goods, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;

"Consents" means, without limitation, all permissions, consents, approvals, non objections, certificates, permits, licences, agreements, statutory agreements and authorisations, Planning Permissions, temporary traffic regulation orders, building control approvals, building warrants, Access Permits, Permits to Work and all other necessary consents and agreements whether required by Law or the Tram Legislation or under contract provided that, subject to Clause 18.17, **"Consents"** shall not include any Land Consents or Building Fixing Agreements;

"Consents Programme" means the programme for submitting elements of the Design for approval by the relevant Approval Bodies set out in Schedule Part 15 (*Programme*), showing the time assumed for the issue of the relevant Consent by the Approval Body, ~~period allowed in Schedule Part 14 (*Design Review and Design Management Plan*) for tie~~ ~~review~~ and the date of issue of the Issued for Construction Drawings for each element of the Design as such programme may be amended from time to time in accordance with this Agreement;

"Construction and Maintenance Stage Consent" means the Consents listed in Table B below and any further Consents required to enable the construction of a design which has been fully consented, but excluding tie Consents.

Table B

Construction and Maintenance Stage Consents (indicative only)		
	Temporary Discharge Consents	
	Hoarding Licences	
	Obtaining and maintaining Building Warrants and subsequent certification	
	Testing, commissioning and service commencement permissions and certificates; Temporary Works Consents; Consents pursuant to Clause 21.4	

~~"Construction Interim Certificate" means any certificate to be issued by tie in accordance with Clause 67.5;~~

~~"Construction Milestone" means any milestone (other than any Critical Milestone) which has been identified and defined as a construction milestone in of Schedule Part 5 (Milestone Payments);~~

~~"Construction Milestone Completion Certificate" means any certificate in respect of achievement of a Construction Milestone issued by tie's Representative in accordance with Clause 41.3;~~

"Construction Payment Due Date" has the meaning given to it in Clause ~~67.6~~67.4;

"Construction Phase Health and Safety Plan" means the plan proposed by the Infraco in accordance with the requirements of the CDM Regulations;

"Construction Works Price" means the construction works price included in Schedule Part 4 (*Pricing*) as may be varied from time to time in accordance with this Agreement;

"Construction/Operational Panel" has the meaning given to it in paragraph 19.1 of Schedule Part 9 (*Dispute Resolution Procedure*);

"Contract Price" means the Contract Price made up of the elements shown in Schedule Part 4 (~~Price~~Pricing) as may be varied from time to time in accordance with this Agreement;

"**Contract Price Analysis**" means the analysis set out in section ~~2.5~~2.1 of Schedule Part 4 (~~Price~~Pricing);

"**Control Centre**" means the control centre for the Edinburgh Tram Network to be provided by the Infraco pursuant to this Agreement and operated by the Operator pursuant to the DPOFA;

"**CP Certificate**" means the certificate to be issued by ~~tie~~ in accordance with Clause 3.3, confirming that each of the Conditions Precedent, if any, have been waived or satisfied;

~~"Critical Milestone" means any milestone which has been identified and defined as "critical" in respect of an Application for Milestone Payment in Schedule Part 5 (Milestone Payments);~~

~~"Critical Milestone Completion Certificate" means any certificate in respect of achievement of a Critical Milestone issued by tie's Representative in accordance with Clause 41.3;~~

~~"Critical Milestone Payment" means the payment to be made against the achievement of a Critical Milestone for an amount set out in Schedule Part 5 (Milestone Payments);~~

"**CSCS**" means Construction Skills Certification Scheme;

"Defined Agreements" means this Agreement, the Settlement Agreement, the Tram Interface Agreement, MOV1, MOV2 and (for the purposes of enforcing preserved claims in relation to Priority Works (as defined therein) only) MOV4;

"**Deliverables**" all documents, information, reports, diagrams, pricing schedules, records, method statements, risk assessments, manuals, schedules, databases, reinforcement details, photographs, formulae, plans, designs, specifications, drawings (including as-built drawings), details, calculations, analysis, operation and maintenance manuals, software, data, data configuration designs, tools and details, software protocols, source and object codes, transport and other models and simulations, the outputs and reports based on any models, programmes and all other material created and/or provided by Infraco (and/or any Infraco Party or any other third party) in relation to the Infraco Works required to deliver the Infraco Works;

"**Depot**" means the depot at Gogar comprising maintenance facilities, stabling facilities, sidings, operations, cleaning, the Control Centre, storage facilities and accommodation for operational and maintenance staff;

"**Depot Building**" means the building within the Depot;

"Depot Licence" means the licence in the form set out in Schedule Part 32 (*Depot Licence*) as executed by the Infraco, ~~the Operator~~ and ~~Tram Maintainer~~; tie;

"Design" means the design ~~of the Edinburgh Tram Network~~ for Phase 1a to be developed and finalised by the Infraco in accordance with this Agreement;

"Design Manual" means the design manual issued by CEC from time to time;

"Design Stage Consents" means the Consents (in respect of Design produced by SDS Provider or Infraco Design) listed in Table A below and any further consents that the SDS Provider is responsible for obtaining under the SDS Agreement, save for Construction and Maintenance Stage Consents.

Table A

Category	Type	Approval Body
Railways and Aviation	HMRI	HMRI
	Network Rail	Network Rail
	EAL/BAA/Aviation Consents (including EAL Permissions) and EAL Works Data to the extent that the same are deliverables under the SDS Agreement	EAL/BAA/CAA/NATS
Planning	Listed Building Consent	CEC Planning Authority
	Prior Approval	CEC Planning Authority
	Planning Permission	CEC Planning Authority
	Conservation Area Consent	CEC Planning Authority
	Scheduled Monument Consent	Scottish Executive & Historic Scotland
	Advertisement Consent	CEC Planning Authority
Traffic Management	Road Technical Approvals relating to structures, lighting, traffic signals, road markings, safety and geometry and drainage	CEC Roads Authority
Environment Ecological	Badger Licence	Scottish Natural Heritage
	Otter holt/disturbance licence	Scottish Natural Heritage
	Bat Licence	Scottish Natural Heritage
	Appropriate Assessment	Competent Authority
Drainage CAR	CAR General Binding Rules	SEPA
	CAR Registration	SEPA
	CAR Licence	SEPA
	Water/Wastewater Connection	Scottish Water
Construction	Discharge Consents to the extent related to design of the permanent works	SEPA
	Technical Approval	CEC Bridges/CEC Roads
	Building Warrant	CEC Building Standards
Radio	OFCOM licence	OFCOM
Design Consultation	Third party Design Consultation	Third parties

Undertakings	Undertakings to Parliament	Parliament and third parties
Agreements	Third parties approvals/consents	Third parties

"Designated Working Area" means ~~any land, worksite or~~ the smallest area ~~of the public road which the Infraco occupies for the purposes of executing the Infraco Works;~~ to which it is apparent from the Programme that Infraco requires exclusive access in order to carry out the following elements of works as shown in the Programme:

Off-Street Works (and "Prioritised Works")

Intermediate Section 1A

Lindsay Road Retaining Wall W1A

Lindsay Road Retaining Wall W1B

Lindsay Road Retaining Wall W1C

Lindsay Road Retaining Wall W1D

Lindsay Road works

Tower Place Bridge

Intermediate Section 1C/1D

Princes Street Remedial Works

Intermediate Section 2A

E & M Installation 2A

Haymarket Viaduct (S19)

Haymarket Tram Stop

Haymarket Substation

Track work Haymarket to Roseburn (CH 0 to 260)

Track work Haymarket to Roseburn (CH 260 to 799)