

Intermediate Section 5A

E & M Installation 5A

Russell Road Bridge (S20)

Russell Road Retaining Walls (W3 and W4)

Murrayfield Tram Stop Retaining Walls (W18)

Murrayfield Tram Stop

Track work Roseburn to Murrayfield (CH 0 to 470)

Roseburn Street Viaduct (S21A 501)

Roseburn Street Viaduct (S21A 502)

Roseburn Street Viaduct (S21A 503)

Roseburn Street Viaduct (S21A 504)

Roseburn Street Viaduct (S21A 505)

Murrayfield Stadium Retaining Walls (S21B)

Murrayfield Underpass (S21C)

Murrayfield Training Pitches Retaining Wall (S21D)

Water of Leith Bridge (S21E) (centre pier)

Water of Leith Bridge (S21E) (end supports)

Water of Leith Bridge (S21E) (Deck)

Baird Drive Retaining Wall (W8)

Balgreen Road Bridge (S22A)

Balgreen Road Bridge (S22B)

Balgreen Road Retaining Walls (W9)

Track work Murrayfield to Balgreen (CH 470 to 1476)

Jenners Substation

Intermediate Section 5B

E & M Installation 5B

Carrick Knowe Bridge (S23)

Track work Balgreen to Saughton (CH 0 to 1160)

Track work Balgreen to Saughton (CH 1160 to 1690)

Retaining Wall W500

Balgreen Tram Stop

Saughton Tram Stop

South Gyle Access Bridge (S26)

Bankhead Drive Retaining Wall (W11)

Bankhead Tram Stop

Track work Saughton to Bankhead (CH 1690 to 2950)

Track work Bankhead to Edinburgh Park Station (CH 2950 to 3740)

Edinburgh Park Station Tram Stop

Track work Edinburgh Park Station to Central (CH 3740 to 4594)

Edinburgh Park Central Tram Stop

Bankhead Sub Station

Intermediate Section 5C

E & M Installation 5C

Gyle Retaining Wall (W19)

Track work Edinburgh Park to Gyle (CH 0 to 760)

A8 Underpass (W28) Phase 1

[A8 Underpass \(W28\) Phase 2](#)

[A8 Underpass \(W28\) Phase 3](#)

[A8 Underpass \(W28\) Phase 4](#)

[Edinburgh Gateway](#)

[Mini Test Track](#)

[Track work Gyle to Depot \(CH 760 to 1322\)](#)

[Depot Access Bridge \(S32\)](#)

[Track work Depot to Gogarburn \(CH 1322 to 1884\)](#)

[Gogarburn Tram Stop](#)

[Intermediate Section 6A](#)

[E & M Installation 6A](#)

[Depot Building](#)

[Track work](#)

[Intermediate Section 7A](#)

[E & M Installation 7A](#)

[Track work Gogar Landfill Site \(Ch 0 to 400\)](#)

[Track work Gogarburn To Ingliston \(CH 400 to 800\)](#)

[Track work Gogarburn To Ingliston \(CH 800 to 1750\)](#)

[Ingliston Tram Stop](#)

[Track works Ingliston to Airport \(CH 1750 to 2583\)](#)

[Airport Tram Stop](#)

[Ingliston Sub Station](#)

On-Street Works

Intermediate Section 1C

E & M Installation 1C

York Place Ch 680 to 1070

St Andrew Square Ch 1027 to 1171

St Andrew Square (south) Princes St East (Ch 1150 to 1370)

St Andrew Square North

St Andrew Square South

St Andrew Square West

Picardy Place Temporary Tram Stop

Cathedral Sub Station

St Andrew Square Tram Stop

Princes Street Tram Stop

Intermediate Section 1D

E & M Installation 1D

Shandwick Place Phase 1

Shandwick Place Phase 2

Shandwick Place Phase 3

Shandwick Place Phase 4

Shandwick Place Phase 5

Shandwick Place Phase 6

Haymarket Phase 1

[Haymarket Phase 2](#)

[Haymarket Phase 3](#)

[Haymarket Phase 4](#)

[Haymarket Phase 5](#)

[Haymarket Phase 6/1](#)

[Haymarket Phase 6/2](#)

[Haymarket Phase 6/3](#)

[Haymarket Phase 6/4](#)

[Haymarket Phase 6/5](#)

[Shandwick Place Tram Stop](#)

"**Discriminatory Change in Law**" means a Change in Law, the terms of which apply expressly to:

- (a) the ~~Edinburgh Tram Network~~[Infraco Works](#); and/or
- (b) the Infraco, ~~the Tram Supplier and/or the Tram Maintainer~~ and not to other persons;

"**Dispute**" means any dispute, difference or unresolved claim between the Parties in connection with or arising from this Agreement;

"**Dispute Resolution Procedure**" means the procedure set out in Schedule Part 9 (*Dispute Resolution Procedure*);

"**DPOFA**" means the development, partnering and operating franchise agreement between **tie** and the Operator dated 14 May 2004 as amended by Minute of Variation dated 19 and 20 December 2007;

"**DPOFA Change**" has the meaning given in Clause 17 (*Interface with the Operator*);

"**DPOFA Change Response**" has the meaning given in Clause 17 (*Interface with the Operator*);

"**DPOFA Infraco Event**" means any breach (including any breach which results in an alteration to the Programme) by the Infraco of its obligations set out in this Agreement which (i) results in the Operator asserting any claim against **tie** for relief from the

performance of its obligations, compensation or indemnification pursuant to the DPOFA; or
(ii) results directly in a **tie** DPOFA Change;

"Drawdown Notice" has the meaning given in Schedule Part 44 (*EAL Works*);

"Drawings" means those plans and drawings ~~containted~~contained in Schedule Part 31 (*Drawings*);

"EAL" means Edinburgh Airport Limited, a company incorporated under the Companies Acts with registered number SCO96623 and having its registered office at St Andrew's Drive, Glasgow Airport, Paisley, PA3 2SW;

"EAL Artefacts" has the meaning given to it in paragraph 21 of Appendix 5 Schedule Part 44 (*EAL Works*);

"EAL Lease" means the lease from EAL (as landlord) to CEC (as tenant) dated 20 and 25 February 2008 (as may be amended from time to time);

"EAL Licence" means the licence agreement between EAL and CEC dated 28 January 2008 and 25 February 2008, together with its schedule (as may be amended from time to time);

"EAL Permissions" means all:

- (a) permits, licences, consents, approvals, permissions, warrants, relaxations which are required by any applicable Law; and
- (b) any third party consents which require to be obtained,

for the carrying out of the EAL Works;

"EAL Works" has the meaning given in Schedule Part 44 (*EAL Works*);

"EAL Works Data" has the meaning given in Schedule Part 44 (*EAL Works*);

"Earthworks Outline" has the meaning ascribed to it in Schedule Part 4 (*Pricing*);

"Easynet" means Easynet Telecommunications Limited, a company incorporated under the Companies Act with registered number 02883980 and having its registered office at 44-46 Whitfield Street, London, W1T 2RJ;

~~**"Edinburgh Tram Network"** means the tramway which is to be designed, constructed and maintained in Edinburgh pursuant to this Agreement in Phase 1a (forming part of Line One and Line Two as described in the Tram Legislation) and, if the Phase 1b option set out in Clause 85 is exercised, Phase 1b, together with all associated works and facilities required pursuant to this Agreement including all civil engineering and track works, Trams,~~

~~infrastructure, plant, machinery and equipment installed or used for the operation of such tramway;~~

"Edinburgh Tram Network" has the meaning ascribed to it in Schedule Part 2 (Employer's Requirements);

"**Effective Date**" means the last date of execution of this Agreement;

"**EHS KPI Deduction**" has the meaning given in Clause 67.5;

"**EIA**" means environmental impact assessment;

"**EMC**" means electro magnetic current;

"**Emergency Services**" means Lothian and Borders Police, Lothian and Borders Fire Brigade, British Transport Police, Scottish Ambulance Services and HM Coastguard;

"**Employer's Requirements**" means the specification or specifications set out in Schedule Part 2 (*Employer's Requirements*) and any modification thereof or addition thereto as may be made from time to time in writing by **tie** or **tie's** Representative in accordance with this Agreement;

"Enabling works in Section 1A" means, Lindsay Road Retaining Wall, Lindsay Road Lowering and the civil works at Tower Place Bridge. The works on Tower Place Bridge include for rail installation on the bridge itself but exclude the transitions and rail expansion joints that are outwith the limits of the bridge;

"Enhanced Timetable" means the timetable defined in Schedule Part 2 (Employer's Requirements);

"**Environmental Information Regulations**" means the Environmental Information (Scotland) Regulations 2004, Scottish SI 2004/520;

"**Environmental Statements**" means the environmental statements supporting the Tram Legislation;

"**Estimate**" means the estimate to be provided by the Infraco pursuant to Clause 80 (**tie Change**);

"ETN" means the Edinburgh Tram Network;

"**Euro Compliant**" has the meaning given in Clause 9.10;

"**Expiry Date**" means (subject to **tie's** right to extend in accordance with Clause 23) the date falling 10 years from the issue of the Certificate of Service Commencement;

"**Expiry Survey**" has the meaning given in Clause 96.1;

"**Extended Expiry Date**" means the date falling 15 years from the issue of the Certificate of Service Commencement or such later date as may be agreed between the Parties in accordance with Clause 2.4;

"**Final Persistent Breach Notice**" means a notice served by tie pursuant to Clause 93.2;

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

"**First Party**" has the meaning given in Clause 6.3;

"**FOISA**" means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner in relation to such legislation;

"**Force Majeure Event**" means the occurrence after the Effective Date of:

- (a) war, civil war or armed conflict in the United Kingdom or the United Kingdom and Spain;
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions by the Infraco or any Infraco Party; or
- (c) pressure waves caused by devices travelling at supersonic speeds;
- ~~(d) exceptionally adverse weather conditions affecting shipment or transportation of Trams.~~
- (d) NOT USED.

"**Forth Ports**" means Forth Ports PLC a company incorporated under the Companies Acts with registered number SC134741 and having its registered office at 1 Prince of Wales Dock, Leith, Edinburgh, EH6 7DX;

"**Free Issue Fare Collection Equipment**" means all fare collection equipment issued to Infraco or an Infraco Party by tie or a tie Party;

"**General Change in Law**" means a Change in Law which is not a Qualifying Change in Law;

"**Good Industry Practice**" means using standards, practices, methods and procedures conforming to Law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably be expected from a large, reputable, professionally qualified, competent and skilled organisation experienced in carrying out activities of a

similar nature, scope and complexity to those comprised in the Infraco Works and seeking in good faith to comply with its contractual duties and all duties owed by it;

"Green Zone Working" means the term applied to those works carried out on Network Rail infrastructure while traffic is still operating and staff are protected by means other than look-out;

"Ground Condition Information" means the materials, documents, surveys, analysis, drawings, plans or other information in paper or electronic, relating in any way to the ground and physical conditions at the Site as set out in Part A Schedule Part 41 (*Ground Conditions and Utilities Information*);

"Guidance" means any applicable guidance, policy, direction or determination issued by any Approval Body with which **tie**, CEC, the Infraco and/or the Infraco Parties are bound to comply, and shall include the **tie** and CEC Policies (set out in Schedule Part 32 (*tie and CEC Policies*));

"Handback Package" means the information referred to in Clause 95 (*Transition on Termination or Expiry*), as updated by the Infraco from time to time in accordance with the provisions of Clause 95 (*Transition on Termination or Expiry*);

"Hazardous Materials" means any materials, Parts or systems generally known and accepted at the time of their use by the Infraco or any Infraco Party in performing the Maintenance Services to comprise or contain a toxic substance or other hazard to the safety or health of persons or safety of property;

"Health and Safety File" has the meaning given in Clause 50.1;

"Heritable Proprietor" means the heritable proprietor of a building, or where such building consists of a tenement or other flatted dwelling houses, the heritable proprietor of each flat or sub-unit;

"Historic Scotland" means an agency within the Scottish Executive Education Department which was established in April 1991 and having its principal office at Longmere House, Salisbury Place, Edinburgh, EH9 1SH;

"HMRI" means Her Majesty's Railway Inspectorate or its successor or equivalent regulatory body or person;

"HSE" means Health and Safety Executive;

"HSQHSE Manager" means the manager appointed in accordance with Clause 105.5;

"HSQE" has the meaning given in Clause 105.1;

"Indemnified Parties" has the meaning given to it in Clause 77.1;

"Independent Competent Person" means Mr. John Dolan or such other person appointed by **tie** to agree and oversee the implementation of all procedures and processes to comply with the provisions of the Railway and Other Guided Transport Systems (Safety) Regulations 2006 and to enable the testing, commissioning and operation of the ETN;

"Indexed" means in relation to an amount, the amount to be indexed multiplied by the value of RPIX at the Point of Indexation, divided by the Base Case RPIX;

"Indirect Losses" means any damage, cost, third party claim, expense or loss incurred by a Party to this Agreement or by any Infraco Parties or any of the Indemnified Parties as a consequence of a breach of this Agreement or a negligent act or omission which relates to consequential or indirect loss or loss of profits or revenue, loss of use, loss of production or output, interruption or loss of business or business opportunity, loss of contract, loss of goodwill and whether or not the Party committing the breach knew, or ought to have known, that such indirect or consequential loss would be likely to be suffered as a consequence of such breach.

"Information" shall have the meaning given to it in Section 73 of FOISA;

"Infraco Change" means a change proposed by the Infraco in accordance with Clause 81.1 and approved by **tie** in accordance with Clause 80 (**tie Changes**) or Clause 81 (*Infraco Changes*);

"Infraco Default" means one of the following events:

- (a) a breach by the Infraco of any of its obligations under this Agreement which materially and adversely affects the carrying out and/or completion of the Infraco Works;
- (b) the occurrence of an Insolvency Event in relation to the Infraco or either of the Infraco Members;
- (c) the Infraco fails to commence the Infraco Works within 90 days of the Commencement Date or permanently abandons the Infraco Works (or a material part of them) at any time;
- (d) the Service Commencement Date or Sectional Completion Date (as appropriate) in respect of a Section is not achieved or is programmed to not be achieved (as set out in the Programme) on or before the date falling 12 months after the Planned Service Commencement Date or Planned Sectional Completion Date (as appropriate) except as a result of a Compensation Event, Relief Event, Force Majeure Event, **tie** Change, Accommodation Works Change, a Change in Law (where compliance with such Change in Law is the sole reason for the Infraco

failure to achieve the relevant date) and any legitimate suspension of the Infraco Works by the Infraco pursuant to Clause 87 (*Suspension of Work*);

- (e) the Infraco does not confirm its agreement in writing to a Liquidated Damages Cap Increment in accordance with Clause 62.10;
- (f) a breach by the Infraco of its obligations to take out and maintain the Required Insurances which is not remedied by the Infraco within 10 days of written notice from **tie** to the Infraco specifying the relevant breach and requiring it to be remedied;
- (g) the issue of four or more Underperformance Warning Notices in any 12 month period;
- (h) NOT USED
- (i) the Infraco has reported a change in the legal status of the Infraco or a Change in Control of the Infraco which is materially prejudicial to carrying out and completing the Infraco Works; or
- (j) the Infraco has suspended the progress of the Infraco Works without due cause for 15 Business Days after receiving from **tie's** Representative a written notice to proceed.

"Infraco's Design" means any Design used by Infraco which SDS Provider is not responsible for producing pursuant to the SDS Agreement;

"Infraco's Equipment" means all plant, appliances or things of whatsoever nature required in or about the construction and completion of the Infraco Works but does not include materials or other things intended to form or forming part of the Infraco Works and does not include Assets;

"Infraco IPR" means:

- (a) all Intellectual Property Rights in the Deliverables (including Intellectual Property Rights in relation to the Infraco Software) which were already existing and owned by, or licensed to, the Infraco and/or the Infraco Parties prior to the Effective Date;
- (b) any modifications or developments of any of the Intellectual Property Rights referred to in paragraph (a) above which are generic in nature and not specific to the carrying out of the Infraco Works; and

- (c) all Intellectual Property Rights in tram signalling systems, communication systems, SCADA systems and system integration programmes, methodologies or software

in all cases excluding Tramco IPR.

"Infraco Party" means each and any of the Infraco Member's employees, directors, officers, agents, professional advisors, consultants and contractors and its or their sub-contractors (of any tier) including the Sub-Contractors and shall include its or their directors, officers and employees as they are involved in relation to the Infraco Works but shall not include the Tram Maintainer or Tram Supplier and **"Infraco Parties"** shall be construed accordingly;

"Infraco's Proposals" means the Infraco's proposals for implementation of the Infraco Works included in Schedule Part 30 (*Infraco Proposals*) as amended from time to time in accordance with this Agreement;

"Infraco's Representative" shall have the meaning given to it in Clause 26.2;

"Infraco Safety Management System" has the meaning given in Clause 17.18.2.2;

"Infraco's Site Rules" means the site rules prepared by the Infraco which are relevant to the Infraco Works;

"Infraco Software" means programs, the Intellectual Property Rights in which are:

- (a) owned by the Infraco; and
- (b) used by the Infraco to carry out its obligations under this Agreement.

"Infraco Works" means, as the context requires, the EAL Works and all or any of the works to be constructed and completed and/or services to be provided and/or ~~the~~ plant, machinery and equipment to be supplied and installed by the Infraco (including Tram Supplier Integration) and which are necessary to ~~deliver the Edinburgh Tram Network and to subsequently maintain it;~~

(a) deliver the design for Phase 1a (other than the Secondary Phase 1a Design Exclusions);

(b) deliver Initial Phase 1a;

(c) deliver the Secondary Phase 1a Equipment; and

(d) provide the Infrastructure Maintenance Services

all in accordance with this Agreement and the ~~Employer's~~ Employers Requirements;

"Infrastructure Maintenance Services" means the ongoing maintenance of ~~the Edinburgh Tram Network~~ Initial Phase 1a (excluding the Trams and all traffic lights, traffic light controls and traffic light systems), supply of spares, Special Tools and the provision of any associated services and other obligations incumbent on the Infraco as described in this Agreement;

"Infrastructure Maintenance Services Payment" means the payment to be made to the Infraco in respect of the performance of the Infrastructure Maintenance Services in accordance with this Agreement. This payment shall be based on the sums set out in Schedule Part 4 (*Pricing*) and the final amount to be paid in each Reporting Period to the Infraco shall be calculated in accordance with Clause 68 (*Payment in Respect of Maintenance Services*) and part A of Schedule Part 6 (*Maintenance Payment Regime*).

"Infrastructure Maintenance Plan" means the maintenance plan to be prepared by the Infraco in relation to the Infrastructure Maintenance Services;

"Initial Buildability Report" means the report to be prepared by the Infraco in accordance with Schedule Part 2 (*Employer's Requirements*);

"Initial Phase 1a" means that part of Phase 1a described as such in section 2.2 of Schedule Part 2 (Employer's Requirements) including all requisite structures track works, supporting infrastructure, plant, machinery and equipment;

"Insolvency Event" means any of the following events in relation to a Party:

- (a) the Party is unable to pay its debts as they fall due or is insolvent or admits (in writing) its inability to pay its debts as they fall due;
- (b) the Party suspends for a period of two months making payments on all or any class of its debts or a moratorium is declared by the Party in respect of its indebtedness;
- (c) the Party ceases business or announces an intention to do so;
- (d) the following are entered into:
 - (i) a voluntary arrangement (other than a solvent one) for a composition of debts of the Party;
 - (ii) a scheme of arrangement in respect of the Party pursuant to the Insolvency Act 1986 or the Companies Act 1985; or
 - (iii) a material composition or arrangement (other than a solvent one) with the Party's creditors;

- (e) either of the following:
 - (i) the winding-up of the Party (including passing a shareholders' resolution or the presentation of a petition by the Party for the purpose of winding up the Party); or
 - (ii) its administration (including where an application is made by the Party or petition is presented by the Infraco for, or any meeting of its directors or members resolves to make an application for, an administration order);
- (f) an order for the winding-up or administration of the Party is made;
- (g) any liquidator, judicial custodian, receiver, administrative receiver, administrator or the like is appointed in respect of any Party or any material part of the Party's assets;
- (h) possession is taken of, or any distress, execution or other process (other than on the dependence of inhibition) is levied or enforced upon, any material part of the property (whether real or personal) of the Party by or on behalf of any creditor or encumbrancer of the Party; or
- (i) anything analogous to any of the events mentioned in paragraphs (a) to (h) above occurs in relation to the Party under the law of any relevant jurisdiction specifically the opening of insolvency proceedings pursuant to the EC Insolvency Regulation 1346/2000, the Insolvency Act 1986 or the Bundesinsolvenzgesetz of 5 October 1994 (as amended) or the equivalent under the laws of Spain;

"Insolvency Termination Notice" has the meaning given to it in Clause 90.1.3;

"Intellectual Property Rights" means any rights in or to any patent, design right, utility model, trade mark, brand name, service mark, trade name, business name, logo, invention (whether registered or unregistered), domain name, semi-conductor right, topography right, software designs and/or other materials, source code, copyright, moral right, know-how or rights in databases and any other rights in respect of any industrial or intellectual property, whether capable of being registered or not, including all rights to apply for any of the foregoing rights or for an extension, revival or renewal of any of the foregoing rights and any similar or analogous rights to any of the above, whether arising or granted under the law of Scotland or of any other jurisdictions;

"Internal Resolution Procedure" means the procedure described in paragraphs 9 and 10 of Schedule Part 9 (*Dispute Resolution Procedure*);

"IPR" means intellectual property rights;

"Issued for Construction Drawings" means those Deliverables necessary for the Infraco to commence construction of the relevant part of the Infraco Works ~~and as shown on the Design Delivery Programme~~ which have been ~~fully~~ approved by all relevant Approval Bodies ~~and in accordance with the Review Procedure~~;

"Key Personnel" means those staff identified as key personnel of the Infraco and/or any Infraco Parties in Schedule Part 12 (*Key Personnel*);

"Key Sub-Contractor" means any supplier or sub-contractor carrying out works falling within the categories set out in Schedule Part 38 (*Approved Suppliers and Sub-contractors (and Trades)*) as may be amended from time to time;

"Land Consents" means all licences to occupy land, wayleaves and any other licences, permissions, rights of access and related consents in respect of land required for the Infraco Works including rights of access and related consents in respect of land to which the EAL Lease and EAL Licence apply and all related Drawdown Notices;

"Last Tram" means each of the timetabled Trams which are the last to operate in passenger service on each route in each direction prior to ~~the Edinburgh Tram Network~~ Initial Phase 1a shutting down for the night;

"Late Tram" means either:

- (a) a Tram:
 - (i) that is in passenger carrying service; and
 - (ii) is arriving at Edinburgh Airport or departing from any other Monitoring Point; and
 - (iii) in the case of Edinburgh Airport its arrival, when compared to the Timetable, is more than 2 minutes (i.e. 120 seconds) late; or
 - (iv) its departure from any other Monitoring Point when compared to the Timetable is timed either more than 2 minutes (i.e. 120 seconds) late or more than 1 minute (i.e. 60 seconds) early; or
- (b) where there is no Tram running in service at a Monitoring Point, contrary to the Timetable;

"Law" means:

- (a) any applicable Legislation;
- (b) any applicable Guidance; and
- (c) any applicable judgment of a relevant court of law which is a binding precedent;

in each case in force in Scotland;

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

"Legislation" means any Act or instruments of the Scottish Parliament or the United Kingdom Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972, and any bye-laws of any local or other statutory authority;

"Liability Cap" means:

- (i) Subject always to subparagraphs (ii) to (iv) below, in relation to:
 - (a) any claim brought or liability incurred by **tie** or the Indemnified Parties prior to the issue of the Reliability Certificate or within 6 months of the issue of the Reliability Certificate arising from or in connection with Infraco Works (other than Infrastructure Maintenance Services after the Service Commencement Date) carried out prior to the issue of the Reliability Certificate;
 - (b) latent defects and uncorrected Patent Defects;
 - (c) any third party claim made against **tie** or the Indemnified Parties for direct loss or damage made after the issue of the ~~Reliability~~**Reliability** Certificate and arising from or in connection with latent defects;
 - (d) liabilities owed by the Infraco connected with liquidated damages outstanding from settlement of final account after Service Commencement;

twenty percent (20%) of the Construction Works Price (including, the value of any **tie** Changes arising from Clause 80 (*tie Changes*), ~~Notified Departures~~, extensions to ~~the Edinburgh Tram Network~~**Initial Phase 1a** instructed through Clause 81 (*Infraco Changes*), Clause 85 (*Phase 1b*) or Clause 86 (*Network Expansions*) (the **"Construction Cap"**), subject to (A) in the case of any liability arising solely from the breach of contract or negligent acts or omissions of the SDS Provider, the SDS

Liability Cap; and (B) in the case of any liability arising under (c) above, nine million pounds (£9,000,000);

- (ii) subject to sub-paragraphs (iii) and (iv), in respect of claims brought against or liabilities incurred by ~~the~~ or the Indemnified Parties to which paragraph (i) above does not apply, an amount of three million, five hundred thousand pounds (£3,500,000) (in relation to Phase 1a), or the Maintenance Cap, whichever is lower;
- ~~(iii) In relation to liability arising solely from any act or omission of the Tram Supplier, an amount when aggregated with all previous claims equal to twenty percent (20%) of the Aggregate Tram Price and (excluding the proceeds of all insurance, bonds and cash securities) as defined in the Tram Supply Agreement, such liability to be treated as outside the Construction Cap;~~
- ~~(iv) In relation to liability arising from any act or omission of the Tram Maintainer, an aggregate amount of eighteen and one half percent (18.5%) of the aggregate Maximum Performance Payment over the Term of and as defined in the Tram Maintenance Agreement and annually twenty two and one half percent (22.5%) of the aggregate Maximum Performance Payment as defined in the Tram Maintenance Agreement of the Tram Maintenance Services, (in the case of the aggregate cap only, excluding the proceeds of any insurance, bonds and cash securities) such liability to be treated as outside the Maintenance Cap;~~

"Maintenance Cap": means in relation to each year, the amount attributable to that year as calculated below:

- (a) the cap for the mobilisation period and the first three years following the Service Commencement Date shall be calculated as follows:

$$MC = \left(27 \left(\frac{IMSP}{100} \right) \right)$$

where:

~~MP = the aggregate of payments made in respect of Mobilisation Milestones; and~~

IMSP = the Infrastructure Maintenance Service Payment to be made in respect of the first three full years following the final Service Commencement Date.

- (b) for the fourth year the cap shall be calculated as follows:

$$\mathbf{AMC}_4 = \mathbf{MC} + \left(27 \left(\frac{\mathbf{IMSP}}{100} \right) \right)$$

where:

MC = the maintenance cap calculated pursuant to sub-paragraph (a) above; and

IMSP = the Infrastructure Maintenance Service Payment to be made in respect of the fourth year.

provided that \mathbf{AMC}_4 shall not exceed THREE MILLION FIVE HUNDRED THOUSAND POUNDS (£3,500,000).

- (c) the cap for each subsequent year shall be calculated as follows:

$$\mathbf{AMC}_n = \mathbf{AMC}_{(n-1)} + \left(27 \left(\frac{\mathbf{IMSP}}{100} \right) \right)$$

where:

n is the number of years following the Service Commencement Date

$\mathbf{AMC}_{(n-1)}$ = the annual maintenance cap calculated for the immediately preceding year; and

IMSP = the Infrastructure Maintenance Service Payment to be made in respect of the year n.

provided that \mathbf{AMC}_n shall not exceed THREE MILLION FIVE HUNDRED THOUSAND POUNDS (£3,500,000).

"MOV 1" means the minute of variation between the Parties dated 14 May 2008;

"MOV 2" means the minute of variation between the Parties dated 3 June 2009;

"MOV 4" means the minute of variation between the Parties dated 20 May and 10 June 2011;

"Line One" means the tramway works as authorised by the Edinburgh Tram (Line One) Act 2006;

"Line Two" means the tramway works as authorised by the Edinburgh Train (Line Two) Act 2006;

"**LLAU**" means the limits of land to be temporarily acquired and used for ~~the Edinburgh Tram Network~~ Initial Phase 1a;

"**Local Code of Construction Practice**" means a code of construction practice that is to be established by **tie** in respect of a party whose private or commercial interests are affected by the execution of the construction, installation, re-installation or renewal of the Edinburgh Tram Network;

"**LOD**" means the limits of deviation for ~~the Edinburgh Tram Network~~ Phase 1a;

"**Maintenance Contract Price**" means the maintenance contract price in respect of the Infrastructure Maintenance Services ~~and the Tram Maintenance Services~~ included in Schedule Part 4 (Price Pricing) as may be varied from time to time in accordance with this Agreement;

"**Maintenance Mobilisation Period**" means the period ending on the Service Commencement Date;

"**Maintenance Payment Due Date**" has the meaning given to it in Clause 68.5;

"**Maintenance Plan**" means the Infrastructure Maintenance Plan ~~and the Tram Maintenance Plan and/or the Tram Maintainer's proposals~~ for implementation of the Infrastructure Maintenance Services ~~or Tram Maintenance Services respectively~~;

"**Maintenance Programme**" means the programme for carrying out the Maintenance Services as developed by the Infraco and amended from time to time in accordance with this Agreement;

"**Maintenance Services**" means the Infrastructure Maintenance Services ~~and the Tram Maintenance Services~~;

"**Maintenance Services Interim Certificate**" means any certificate to be issued by **tie** in accordance with Clause 68.4;

"**Maintenance Services Payment**" means the Infrastructure ~~Maintenance Services Payment and/or the Tram~~ Maintenance Services Payment;

"**Maintenance Specification**" means the specification or specifications in respect of ~~Trams~~, infrastructure and equipment set out in Section 40 of Schedule Part 2 (*Employer's Requirements*) and any modification thereof or addition thereto as may from time to time be approved in writing in accordance with this Agreement;

"Mandatory tie Change" means any addition, modification, reduction or omission in respect of the Infraco Works instructed in accordance with Clause 80 (*tie Changes*) which this Agreement specifically states will be a Mandatory **tie** Change;

~~"Maximum Tram Weight" means the maximum weight of a tare Tram of 55.85 tonnes;~~

~~"Milestone" means a Construction Milestone, a Critical Milestone, a Mobilisation Milestone, a Tram Milestone and/or a Tram Maintenance Mobilisation Milestone;~~

~~"Milestone Completion Certificate" means a Construction Milestone Completion Certificate, a Critical Milestone Completion Certificate, Mobilisation Milestone Completion Certificate and/or Tram Milestone Completion Certificate;~~

"Milestone" means any milestone in respect of the Infraco Works which has been identified and defined in Schedule Part 5 (*Milestone Payments*);

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

"Mini Test Track" shall mean a single 400 metre energised inbound track from chainage 531,230 to 531,800 connected to the Depot by the west entrance switch and using a temporary overhead catenary system using a final back stay at chainage 531,749 at the west end and a new back stay around chainage 531,260, including all such facilities as are necessary to allow the Tram Commissioning Tests of Trams (except the facilities to allow the specific Trams Commissioning Tests to be undertaken on the obstacle deflector, noise and vibration, ride quality, EMC, operational radio and the tram position and detection equipment);

"Minimum Spare Parts Pool" means the minimum level of each Spare Part or Special Tool to be held in the Spare Parts Pool as specified in the Infraco's Proposals;

"Mobilisation and Advanced Works Agreement" means the agreement entered into between **tie** and Infraco on 21 December 2007;

"Mobilisation Milestone" means any milestone relative to the Infrastructure Maintenance Services which has been identified and defined as a mobilisation milestone in Schedule Part 5 (*Milestone Payments*);

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

"Mobilisation Period" means the period commencing on the Effective Date and ending on the Service Commencement Date;

"Monitoring Point" means the locations where the arrival or departure of Trams is recorded for the purpose of calculating Tram punctuality for the purpose of part A of Schedule Part 6 (*Maintenance Payment Regime*), being:

- (a) **Phase 1a:** for the purposes of monitoring arrival and departure: Edinburgh Airport;
- (b) **Phase 1a:** for the purposes of measuring departure only:
 - (i) Edinburgh Park Station;
 - (ii) Haymarket;
 - (iii) Foot of the Walk;
 - (iv) Leith (Newhaven or Ocean Terminal according to service); and
 - (v) Picardy Place;
- (c) **Phase 1b:** for the purposes of measuring departure only:
 - (a) Crewe Toll (northbound only); and
 - (b) Granton Square;

"Mobilisation Services" means the mobilisation services to be provided by the Infraco during the Mobilisation Period in accordance with this Agreement;

~~"MUDFA Contract" means the agreement dated 4 October 2006 and entered into between tie Limited and the MUDFA Contractor;~~

~~"MUDFA Contractor" means Alfred McAlpine Infrastructure Services Limited, a company incorporated under the Companies Act with registration number 00728599 and having its registered office at Kinnaird House, 1 Pall Mall East, London, SW1Y 5AZ, which expression shall include its permitted assignees or such other multi-utilities diversion framework agreement sub-contractor appointed by tie from time to time in relation to the Edinburgh Tram Network;~~

~~"MUDFA Works" means the works carried out by the MUDFA Contractor under its contract with tie;~~

"Network Certificate" means a certificate issued in accordance with Clause 47.3;

"Network Expansion" means any expansion of the Edinburgh tram Network beyond Phase 1a and Phase 1b;

"Network Rail" means Network Rail Infrastructure Limited, a Company incorporated under the Companies Act with registered number 2904587 and having its registered office at 40 Melton Street, London, NW1 2EE;

"Network Rail Agreement" means the protective provisions agreement entered into among **tie**, CEC and Network Rail and dated 17 and 21 June 2005;

"Notice of Adjudication" has the meaning given in paragraph 16 of Schedule Part 9 (*Dispute Resolution Procedure*);

"Notification" has the meaning given in paragraph 10.1 of Schedule Part 9 (*Dispute Resolution Procedure*);

~~**"Notified Departure"** has the meaning given in Schedule Part 4 (*Pricing*);~~

"NOx" means nitrogen oxides;

"NPV" means net present value;

"NR" means Network Rail;

"NRSWA" shall have the ~~meaning~~**meaning** given in Clause 21 (*New Roads and Street Works Act 1991 and Utilities Division*);

"NTL" means NTL Limited, a company incorporated under the Companies Act with registered number 02586701 and having its registered office at 160 Grant Portland Street, London, W1W 5QA;

"Ocean Terminal" means Ocean Terminal Limited, a company incorporated under the Companies Act with registered number SC178696 and having its registered office at 1 Prince of Wales Dock, Leith, Edinburgh, EH6 7DX;

"OCIP Insurances" means the insurances taken out and maintained by **tie** referred to in Clause 76 (*Required Insurances*) and set out in Schedule Part 11 (*Required Insurances*) which may be amended and notified (as required) to the Infraco from time to time;

"Off Street Works" means the section of the Infraco Works from Edinburgh Airport to Haymarket (ch.20 0000) and the Enabling Works in Section 1A;

"Off Street Works Design" means the Design for the Off Street Works;

"Off Street / On Street Boundary" means the boundary between Section 1D and Section 2A (Haymarket Station (ch 13 1250) or Haymarket Viaduct (ch 20 000));

"OGC" means the Office of Government Commerce, an independent office of the Treasury which was established in April 2001 and having its principal office at Rosebury Court, St. Andrew's Business Park, Norwich, Norfolk, NR7 0HS;

"OLE" means overhead line equipment;

"On Street ~~Construction Works Methodology~~" means the document of that name contained in Schedule Part 15 (*Programme*); **" means the section of the Infraco Works from Haymarket (ch 200,000) to York Place (assumed to be ch 120,680) West of Broughton Street;**

"Open Book Basis" means the availability and disclosure (consistent with operation of Clause 104 (*Information and Audit Access*)) of a reasonable level of data and calculations used by the Infraco to create and justify costings and financial analysis presented to **tie** which shall include any management costs and overheads of Infraco to the extent relevant, and capable of being identified as being attributable to such costings or financial analysis;

"Operating Day" means a 24 hour period starting from 3a.m. on each day when the Trams are ~~timetabled~~**timetabled** to run;

"Operations and Maintenance Manual" means the manual to be prepared by the Infraco in accordance with Clause 52.25;

"Operations Performance Specification" means the specification included within Schedule Part 2 (*Employer's Requirements*);

"Operator" means Transdev Edinburgh Tram Limited, a company incorporated in Scotland under registered number SC267598 and having its registered office at Level 2, Saltire Court, 20 Castle Terrace, Edinburgh EH1 2ET, appointed by **tie** as operator under the DPOFA or its successor;

"Operator Event" means:

- (a) any **material** delay by the Operator in the performance of its obligations or exercise of its rights pursuant to DPOFA or in responding to any request from the Infraco to assist in relation to unforeseen damage to or interference with the Transport Services or minor obstruction on ~~the Edinburgh Tram Network~~**Initial Phase 1a** caused by any third party in so far as forming part of the Operator's responsibilities under DPOFA;

- (b) any material failure or omission in the provision of the Project Development Services or the performance of the Project Operations by the Operator;
- (c) any damage to or deficiencies in the Infraco Works caused directly and predominantly by the Operator; or
- (d) any act or omission by the Operator which:
 - (i) materially prevents or interfere with the design, installation, integration, system acceptance, testing, commissioning, operation or maintenance of ~~the Edinburgh Tram Network~~Initial Phase 1a;
 - (ii) increases the Contract Price;
 - (iii) requires the Infraco to apply for a variation to the Infraco Works in accordance with Clause 81 (*Infraco Changes*); or
 - (iv) adversely impacts in a material way on the Infraco Works, the Maintenance Services, ~~the Edinburgh Tram Network~~Initial Phase 1a and/or whole life costs or handback obligations in terms of Clause 95 (*Transition on Termination or Expiry*).

(e) failure by tie to comply with its obligations under Clause 17A(b):

"Operator Maintenance" means the maintenance of ~~the Edinburgh Tram Network~~Initial Phase 1a to be carried out by the Operator in accordance with the DPOFA;

"Operator Maintenance Plan" means the plan to be prepared by the Operator in relation to the performance of the Operator Maintenance and notified to the Parties from time to time;

"Operator Procedures" means those procedures in place to ensure the safe and efficient maintenance operation of ~~the Edinburgh Tram Network~~Initial Phase 1a, as agreed between the Parties from time to time and as contained in the Review Procedure;

"Operator's Case for Safety" means the case for safety that the Operator is required to maintain in respect of the operation of ~~the Edinburgh Tram Network~~Initial Phase 1a;

"Operator's Services" means the services to be provided by the Operator in accordance with the DPOFA;

"Operational Timetable" means the timetable defined in section 2 of Schedule Part 2 (Employer's Requirements);

"**ORR**" means the Office of Rail Regulation, an independent statutory body established on 5 July 2004 under the Railways and Transport Safety Act 2003;

"**Panels**" has the meaning given to it in paragraph 19 of Schedule Part 9 (*Dispute Resolution Procedure*);

"**Part**" means any component or furnishing or equipment intended to form part of the completed ~~Edinburgh Tram Network~~Initial Phase 1a furnished within or relating to ~~the Edinburgh Tram Network~~Initial Phase 1a whether or not the same is installed on ~~the Edinburgh Tram Network (including any Tram)~~Initial Phase 1a;

"**Party**" means each and any of the parties to this Agreement and "**Parties**" shall be construed accordingly;

"Passenger Service" or "Passenger Services" means the provisions of public passenger transport services on Initial Phase 1a;

"**Patent Defect**" means any defect, deficiency, shrinkage or other fault due to design, goods, materials, workmanship or services not being in accordance with this Agreement and which are (i) apparent from or would be revealed by a non-intrusive inspection of the Infraco Works or (ii) obvious during their ordinary intended use as stipulated in the Employer's Requirements or Infraco Proposals;

"**Patent Defect Notification Period**" means 24 months from the Service Commencement Date, save in relation to all traffic lights, traffic light controls and traffic light systems;

"**Patent Defects Rectification Certificate**" means the certificate issued by **tie** upon the Infraco completing its obligations to rectify Patent Defects in accordance with the terms of the Agreement;

"Payment" means that part of the Contract Price that the Infraco believes is due to him in a Reporting Period in respect of Infraco Works completed free from defects calculated in accordance with Schedule Part 4 (Pricing);

"**Performance Bond**" means the performance bond to be provided by the Infraco pursuant to Clause 74.1 which shall be substantially in the form set out in Schedule Part 8 (*Bonds, Parent Company Guarantees and Collateral Warranties*) issued by a surety approved by **tie** in advance in writing, such approval not to be unreasonably withheld or delayed;

"**Performance Review Date**" means the date 3, 8, and (if applicable) 13 years after the Service Commencement Date;

"Performance Review Period" means the period between each Performance Review Date (and the period between the Service Commencement Date and the first Performance Review Date);

"Permanent Land" means the land shown highlighted in blue on the plans and drawings set out in Schedule Part 31 (*Drawings*);

"Permit to Work Procedures" shall have the meaning set out in clause 24A.2;

"Permits to Work" means the permits to work issued by **tie** in accordance with paragraph 3.5 of part A, and paragraph 3.4 of part B, of Schedule Part 3 (*Code of Construction Practice and Code of Maintenance Practice*);

"Permitted Variation" means a **tie** Change, a Small Works Change, an Accommodation Works Change, an Infraco Change, a Mandatory **tie** Change and/or ~~a Notified~~ **Departure Pricing Assumption Variation** which has been authorised to proceed in accordance with the provisions of this Agreement;

"Persistent Breach Notice" means a notice served by **tie** pursuant to Clause 93 (*Persistent Breach*);

~~**"Phase 1a"** means Edinburgh Airport to Newhaven (inclusive), together with the Depot at Gogar and the spur at Roseburn Junction;~~

"Phase 1a" means Phase 1a of the ETN (forming part of Line One and Line Two as described in the Tram Legislation), as further described in section 2.2 of Schedule Part 2;

"Phase 1b" means Roseburn Junction to Granton Square (inclusive);

"Phase 1b Works" means as the context requires, all or any of the works to be designed, constructed and completed and/or services to be provided and/or the plant, machinery and equipment to be supplied and installed by the Infraco in accordance with this Agreement and which are necessary to deliver Phase 1b, and to subsequently maintain Phase 1b all in accordance with the Employer's Requirements and this Agreement.

"Planned Sectional Completion Date" means each of the following programmed dates of sectional completion for the relevant Section in accordance with this Agreement of ~~the Edinburgh Tram Network~~ **Initial Phase 1a** as may be amended from time to time in accordance with this Agreement:

(a) Section A (Depot) ~~–25 March 2010–~~ **16 December 2011;**

(b) Section B (Test Track) ~~23 April 2010;~~ 8 March 2013;

(c) Section C (Testing and Commissioning) ~~17 January 2011;~~ 9 April 2014;

~~(d) Section D – the date which falls 26 weeks after the issue of the Certificate of Section Completion in respect of Section C;~~

(d) Section D – 8 July 2014;

"Planned Service Commencement Date" means the date shown in the Programme as the Service Commencement Date as may be amended from time to time and in accordance with this Agreement;

"Planning Permission" means any planning permission, planning approval, approval of reserved matters, listed building consent, conservation areas consent and/or other consent or approval;

"Point of Indexation" shall be January each year to be applied annually as of 1st April each year;

"Position Paper" has the meaning given in paragraph 10.2 of Schedule Part 9 (*Dispute Resolution Procedure*);

"Principal Contractor" has the meaning given to it in the CDM Regulations;

"Prior Approvals" means approvals from CEC planning officers to the appearance of any structures and apparatus (whether temporary or permanent) forming part of the Infracore Works;

"Programme" means the programme set out in Schedule Part 15 (*Programme*) as developed and extended from time to time in accordance with this Agreement which shall include, the Maintenance Programme, the Consents Programme and Design Delivery Programme but shall exclude any programme developed in respect of the completion of any Accommodation Works Changes;

"Prohibited Act" means:

- (a) offering, giving or agreeing to **tie**, the Scottish Executive, Transport Scotland, the Scottish Ministers, CEC or any **tie** Party or any other public body or any person owned or employed by any of them any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement; or

- (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement;
- (b) paying commission or agreeing to pay commission to any person in connection with the award of this Agreement;
- (c) committing any offence:
 - (i) under the Prevention of Corruption Acts 1889-1916 or section 68(2) of the Local Government (Scotland) Act 1973;
 - (ii) under any Law creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other relevant agreement with **tie**, the Scottish Executive, Transport Scotland, the Scottish Ministers, CEC or any other public body; or
- (d) defrauding or attempting to defraud or conspiring to defraud **tie**, CEC, the Scottish Executive, Transport Scotland, the Scottish Ministers or any other public body;

Any references within this Agreement to any "**Prohibited Act**" shall include acts outwith the United Kingdom and the references within the definition "**Prohibited Act**" to UK legislation shall be deemed to be amended to refer to legislation in other jurisdictions outside of the United Kingdom;

"**Project Development Services**" means the services to be provided by the Operator to **tie** pursuant to and described in the DPOFA as may be amended from time to time;

"**Project IPR**" means any Intellectual Property Rights arising out of, used in or created to implement the Infraco Works and produce Deliverables (including the "Specially Written Software" any asset management system and/or Works programming system) and for the extension of ~~any~~the Edinburgh Tram Network beyond Initial Phase 1a in accordance with this Agreement, but excluding any Infraco IPR contained in the Deliverables and excluding any Tramco Project IPR;

"**Project Operations**" means the performance of:

- (a) the Transport Services on ~~the Edinburgh Tram Network~~Initial Phase 1a (including the operation of the Control Centre);
- (b) the Operator Maintenance of ~~the Edinburgh Tram Network~~Initial Phase 1a; and
- (c) all other obligations of the Operator under the DPOFA from time to time;

as may be varied from time to time;

"Project Safety Certification Committee" shall include representatives from **tie**, Transport Edinburgh Limited, CEC in its capacity as roads authority, the Infraco, the Operator, Lothian Buses, the SDS Provider, the Tram Supplier and the Tram Maintainer;

"Project Vision" has the meaning given in Recital F of this Agreement;

"Proposals" means, in relation to each section of OLE forming part of ~~the Edinburgh Tram Network~~ **Phase 1a**, the Infraco's proposals for the type of supporting infrastructure to be installed in relation thereto, together with any information or documentation which would be reasonably required by **tie** in order to properly evaluate such proposals;

"Qualifying Change in Law" means:

- (a) a Discriminatory Change in Law; and/or
- (b) a Specific Change in Law; and/or
- (c) a Change in Law that requires any modification, adjustment or addition to the Infraco Works (as installed) after the Planned Service Commencement Date;
- (d) any alteration or amendment to **tie** and CEC policies set out in Schedule Part 29 (*tie and CEC Policies*);

"Redevelopment Notice" has the meaning given in the Building Fixing Agreement;

"Red Zone Working" means the term applied to those works carried out on Network Rail infrastructure while traffic is still operating and staff are protected by look-out;

"Referral" has the meaning given in paragraph 27 of Schedule Part 9 (*Dispute Resolution Procedure*);

"Referring Party" has the meaning given in paragraph 16 of Schedule Part 9 (*Dispute Resolution Procedure*);

"Regulations" has the meaning given in Clause 50.1;

"Related Contract" has the meaning given in paragraph 55 of Schedule Part 9 (*Dispute Resolution Procedure*);

"Related Dispute" has the meaning given in paragraph 55 of Schedule Part 9 (*Dispute Resolution Procedure*);

"Relevant Tram Equipment and Documentation" means the Trams, Tram Related Equipment and Tram Documentation required by Infraco to discharge its obligations under this Agreement;

"Reliability Certificate" means a certificate issued by **tie** in accordance with Clause 47.4;

"Relief Event" means unless any of the following events arise (directly or indirectly) as a result of any act or omission of the Infraco and/or an Infraco Party:

- (a) fire, explosion, lightning, tempest, flood (other than flood caused by bursting or overflowing of apparatus or pipes), earthquakes, or storm, ionising ~~variation~~**radiation**, riot and civil commotion ~~(which results in a Relief Event under the Tram Supply Agreement)~~. For avoidance of doubt "flood" shall exclude flooding affecting any part of ~~the Edinburgh Tram Network~~**Initial Phase 1a** caused by weather or local conditions against which the Infraco, acting prudently and reasonably and in accordance with Good Industry Practice, should have protected ~~the Edinburgh Tram Network~~**Initial Phase 1a**;
- (b) ~~save in relation to Utility diversions~~, failure by any Utility to carry out works or provide services which are required by Infraco to carry out the Infraco Works which they would ordinarily provide, save to the extent such failure arises from an exercise of rights by such party pursuant to an agreement with the Infraco;
- (c) any accidental loss of or damage to a material part of the Infraco Works;
- (d) protestor action ~~directed~~**direct** against:
 - (i) **tie** or a **tie** Party or the Edinburgh Tram Network which lasts (or the impact of which lasts) for less 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; or
 - (ii) a third party unconnected with the Edinburgh Tram Network;
- (e) any official or unofficial strike, lockout, go-slow or other industrial dispute generally:
 - (i) affecting the construction, civil engineering, in the United Kingdom in which a substantial number of the Infraco's employees participate; or

(ii) ~~affecting the tram and/or tram manufacturing industry or a significant sector of it save where such events relate to the Tram Supplier's workforce or the workforce of any sub-contractor to the Tram Supplier, in which case they shall not qualify as a Relief Event;~~ NOT USED

- (f) orders or directions from **tie's** Representative in respect of the removal of unsatisfactory work or materials referred to in Clause 37.5, which are referable to Clause 64 (*Relief Events*);
- (g) the occurrence of a Force Majeure Event;
- (h) an act of terrorism; or
- (i) power failure or bursting or overflowing of apparatus or pipes except in each case where such failure, bursting or overflowing arises from the operations of the Infraco or from a failure of the Infraco's and/or an Infraco Party's plant or equipment and/or any part of ~~the Edinburgh Tram Network~~ Initial Phase 1a itself.

"Remediable Termination Notice" has the meaning given in Clause 90.1.2;

"Repairs Notice" has the meaning given in the Building Fixing Agreement;

"Reporting Period" means a period of 28 days;

"Reporting Period End Date" means any of the dates set out in Schedule Part 35 (*Reporting Period End Dates*);

"Request for Information" shall have the meaning set out in FOISA and shall include any apparent request for information under FOISA, the Environmental Information Regulations or the Code;

"Required Insurances" means the insurances taken out and maintained by the Infraco Members set out in Schedule Part 11 (*Required Insurances*) as may be amended from time to time in accordance with this Agreement;

"Responding Party" has the meaning given to it in paragraph 17 of Schedule Part 9 (*Dispute Resolution Procedure*);

"Retention Bond" means a retention bond provided from time to time by the Infraco to **tie** pursuant to Clause 74 (*Bonds Parent Company Guarantees and Collateral Warranties*), and which shall be substantially in the form set out in Part B of Schedule Part 8 (*Bonds, Parent Company Guarantees and Collateral Warranties*) issued by a surety approved by **tie** in advance in writing, such approval not to be unreasonably withheld or delayed;

"**Review Procedure**" means the review procedure set out in Schedule Part 14 (*Design Review and Design Management Plan*);

"**RPIX**" means the general index of retail prices for all items excluding mortgage interest payments (Office of National Statistics: Series Identifier: CHMK) as published or any replacement thereof or, in the event such index ceases to exist, such other similar index as the Parties shall agree from time to time (or, if the Parties cannot so agree, as determined under the Dispute Resolution Procedure on the referral of either Party) provided that, if the basis of computation of such index shall have changed between the two relevant months, any official reconciliation between the two bases of computation published by a United Kingdom government department shall be binding on the Parties and, in the absence of such official reconciliation, such adjustment shall be made to the figure of such index for the second of those months to make it correspond as nearly as possible to the method of computation for the first of those months and such adjusted figure shall be considered for the purpose of this Agreement to the exclusion of the actual published figure;

"**Schedule of Rates**" means the rates specified in Schedule Part 4 (*Pricing*);

"**Schedules**" means the Schedule in ~~44~~45 Parts annexed to the Agreement;

"**Scotland Gas Networks**" means Scotland Gas Networks PLC, a company incorporated under the Companies Act with registered number SC264065 and having its registered office at Inveralmond House, 200 Dunkeld Road, Perth, Perthshire, PH1 3AQ;

"**Scottish Environment Protection Agency**" or "**SEPA**" means a body established under the Environment Act 1995 and having its principal office at Erskine Court, Castle Business Park, Stirling, FK9 4TR;

"**Scottish Natural Heritage**" means a statutory agency whose remit is set out in sections 1, 2 and 3 of the Natural Heritage (Scotland) Act 1991 and having its principal office at 12 Hope Terrace, Edinburgh, EH9 5NP;

"**Scottish Power**" means SP Distribution Limited, a company incorporated under the Companies Act with registered number SC189125 and having its registered office at 1 Atlantic Quay, Glasgow, G2 8SP;

"**Scottish Water**" means Scottish Water Limited, a body established under the Water Industry (Scotland) Act 2002 and having its principal office at Castle House, 6 Castle Drive, Carnegie Campus, Dunfermline, Fife, KY11 8GG;

"**SDS Agreement**" means the agreement between the SDS Provider and **tie** dated 19 September 2005 set out in Schedule Part 22 (*SDS Agreement*) as may be amended by the SDS Novation Agreement entered into in accordance with Clause 11.1 or from time to time with the approval of **tie** in accordance with this Agreement;

~~"**SDS Compensation Event**" means Compensation Events (t) and (u);-~~

"**SDS Liability Cap**" means an aggregate amount of ten million pounds (£10,000,000) for each and every event, save in relation to liability for pollution or contamination which is restricted to an aggregate cap of ten million pounds (£10,000,000);

"**SDS Novation Agreement**" means the agreement entered into by the Infracore and the SDS Provider on the same date as the Agreement and included as Schedule Part 23.

"**SDS Provider**" means Parsons Brinckerhoff Limited, a company incorporated under the Companies Act with registration number 02554514 and having its registered office at Amber Court, William Armstrong Drive, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YQ which expression shall include its permitted assignees;

"**SDS Provider Party**" means any sub-consultant, supplier, sub-contractor, specialist and/or any other party appointed by the SDS Provider in accordance with the SDS Agreement to perform any part of the SDS Services;

"**SDS Qualifying Change in Law**" means a Qualifying Change in Law under the SDS Agreement;

"**SDS Services**" means those services to be provided by the SDS Provider in terms of the SDS Agreement ~~and shall exclude any design provided to the MUDFA Contractor in respect of utilities diversions;~~

"**Secondary Phase 1a**" means that part of Phase 1a described as such in section 2.2 of Schedule Part 2 (Employer's Requirements);

"**Second Party**" has the meaning given in Clause 6.3;

"**Secondary Phase 1a Design**" means that part of the Design relating to Secondary Phase 1a;

"**Secondary Phase 1a Design Exclusions**" means in respect of the Deliverables relating to Secondary Phase 1a Design;

- (i) any amendments to the Deliverables required due to any conflicts with utilities or underground obstructions;
- (ii) any amendments to the Deliverables during construction of Secondary Phase 1a;
- (iii) any amendments to the Deliverables required as a result of Change in Law subsequent to delivering to tie;

- (iv) any Deliverables relating to the works required to deconstruct any element of Initial Phase 1a in preparation of the construction of Secondary Phase 1a;
- (v) any amendments to the Deliverables resulting from the requirement for new or amended Consents for Secondary Phase 1a arising after the date of delivery to tie;
- (vi) any amendments to the Deliverables, applications for re-approval or applications for fresh Consents required as a result of the expiry of any Consents that are time-limited following delivery to tie;
- (vii) any amendments to the Deliverables required as a result of any change to Traffic Regulation Orders or Traffic Modelling assumptions after the date of delivery to tie;
- (viii) any amendments to the Deliverables required as a result of agreements between CEC or tie and any third parties or developers which Infraco was not required to comply with under this Agreement at the date of delivery to tie;
- (ix) any run time simulation required in relation to the Secondary Phase 1a Design after the date of delivery to tie; and
- (x) any design validation test procedures required as a result of any changes to the Deliverables required by tie after the date of delivery to tie;

"Secondary Phase 1a Equipment" means the equipment for Secondary Phase 1a as further detailed in Section 1.2 of Schedule Part 2 (Employer's Requirements) excluding traffic light and traffic light control equipment;

"Section" means any of Section A, Section B, Section C or Section D, all as may be amended from time to time in accordance with this Agreement;

"Section A" means ~~the~~ completion of the Depot (including energisation) ~~and the first Tram delivered to the Site and assembled and the completion of all tests required by the Employer's Requirements in relation to that Section~~ excluding the area east of the Depot Access Bridge as shown on drawing ULE 90130-06-DEP-00016 Rev 6 overmarked and included in Schedule Part 2 of Minute of Variation 4 and excludes any Landscaping;

"Section B" means completion of the test track (including energisation), ~~assumed-~~ as functional from the Depot west entry/exit to the airport (excluding the completion of the Kiosk & Canopy at the Airport and any Landscaping, and five

Trams delivered to the Site and assembled with the first Tram to have completed the Tram Type Test and the remaining Trams to have completed the Tram Commissioning Routine Tests, such tests as described in the Employer's Requirements and the completion of all tests required ~~by the Employer's Requirements in relation to that Section, including those System Acceptance Tests required~~ to enable the commencement of Driver Training;

"**Section C**" means the carrying out and completion of ~~Phase 1a to Newhaven~~the section from Airport to York Place (including energisation) and the ~~spur or delta at Roseburn Junction and the~~ completion of all tests required by the Employer's Requirements in relation to that ~~Section~~the section from Airport to York Place, including those System Acceptance Tests that must be successfully completed prior to shadow running as provided for in the Employer's Requirements;

"**Section D**" means the completion of shadow running and commencement of revenue service approval obtained and the completion of all tests required by the Employer's Requirements in relation to ~~that Section~~the section from Airport to York Place, including those System Acceptance Tests that must be successfully completed to enable Service Commencement;

"**Section E**" completion of Phase 1b;

"**Section F**" means the carrying out and completion of T1, T2 and T3 in respect of Phase 1b;

"**Sectional Completion Date**" means the date of issue of a Certificate of Sectional Completion for the relevant Section in accordance with this Agreement;

"**Security Interest**" means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect and includes any Security as defined in section 248(b) of the Insolvency Act 1986;

"**Self-Monitoring Plan**" means a detailed plan produced by the Infraco pursuant to Clause 56 setting out how it proposes to monitor its compliance with the Employer's Requirements and its obligations under this Agreement in a way which will enable: (i) the Infraco to produce the Service Quality Reports; (ii) ~~tie~~ to satisfy itself as to the level of the Infraco's compliance with the Employer's Requirements and its obligations under this Agreement in all respects; and (iii) the Parties to perform their respective responsibilities pursuant to and as described in Clause 103 (*Best Value*);

"**Service Commencement Date**" means the date of issue of the Certificate of Service Commencement in accordance with this Agreement;

"**Service Quality Report**" means the report to be submitted by the Infraco pursuant to Clause 56 (*Service Performance and Quality Monitoring*) in a form developed and containing the information agreed by the Parties;

"Settlement Agreement" means the agreement between the Parties and CEC relating to this Agreement dated 15th September 2011;

"**Site**" means the lands or places on, under, in, or through which the Infraco Works are to be constructed including the Permanent Land and the Temporary Sites, any other lands or places covered by the Land Consents and/or land provided by **tie** for the purposes of the Agreement or any additional land or facilities provided by the Infraco pursuant to Clause 18.19, together with such other places as may be designated in the Agreement or subsequently agreed by the Parties as forming part of the Site;

"**Small Works**" means any change to the Infraco Works or additional works of a similar nature to, or related to, the Infraco Works having an individual cost not exceeding £10,000 (as Indexed) or as otherwise agreed between the Parties from time to time save where such works require the involvement of either the SDS Provider, the Tram Supplier or the Tram Maintainer;

"**Small Works Change**" means any Small Works instructed in accordance with Clause 82 (*Small Works Changes*);

"**Small Works Cost Notice**" has the meaning given in Clause 82 (*Small Works Changes*);

"**Snagging**" has the meaning given in Clause 44.6;

"**Snagging List**" means the list issued by **tie** in accordance with Clause 44.6;

"**Snagging Rectification Certificate**" means a certificate issued under Clause 46 (*Snagging*);

"**Spare Parts**" means such components, parts, consumables, equipment and furnishings as may reasonably be required from time to time to comply with the Infraco's obligations in terms of Clause 52 (*Maintenance*);

"**Spare Parts Pool**" means the pool of Spare Parts and Special Tools owned by **tie** and to be maintained by the Infraco in accordance with Clause 52 (*Maintenance*);

"**Special Tools**" means the special tools, hand tools and test equipment required to carry out maintenance of ~~the Edinburgh Tram Network~~ Initial Phase 1a, listed in the Infraco's Proposals as the same may be varied from time to time by written agreement of the parties (such agreement not to be unreasonably withheld or delayed) but excluding any

special tools, hand tools and test equipment which are being supplied by the Tram Supplier pursuant to the Tram Supply Agreement;

"**Specially Written Software**" means programs which are written by or on behalf of the Infraco specifically to enable the Infraco to carry out its obligations under this Agreement;

"**Specific Change in Law**" means any Change in Law which specifically applies to the provision of works the same as or similar to the Infraco Works or applies to Trams and affects the carrying out of the Infraco Works but excluding the making, amendment or revocation of any Traffic Regulation Order;

"**Sub-Contractor**" any sub-contractor, sub-consultant, supplier, specialist and/or other party appointed in accordance with Clause 28 (*Subletting and the Appointment of Sub-Contractors*), or otherwise approved by **tie**, and "Sub-Contract" is to be interpreted accordingly;

"**Submitted Item**" has the meaning given in paragraph 1.2 of Schedule Part 14 (*Review Procedure and Design Management Plan*);

"**Successor Infraco**" means any person or persons notified by **tie** to the Infraco as having been, or intended to be, appointed to complete any part of the Infraco Works and/or maintain any part of ~~the Edinburgh Tram Network~~ Initial Phase 1a following termination or expiry of this Agreement;

~~"Systems Acceptance Tests" means the tests described in the Employer's Requirements including tests T1, T2, T3, T4 and/or T5, and the other testing and~~ **System" means all infrastructure, plant, machinery, equipment (including Trams) and systems comprised in and required to deliver a fully operational and maintainable Initial Phase 1a;**

~~"System Acceptance" means the testing, commissioning activities described in Schedule Part 2 (Employer's Requirements);~~ **and acceptance of Initial Phase 1a in accordance with section 23 of Schedule Part 2 and the other requirements of this Agreement;**

"System Acceptance Date" means the first date on which Tests T4 and T5 have both been satisfied in accordance with the requirements of this Agreement;

"System Acceptance Tests" means Tests T1, T2, T3, T4 and T5;

"System and Trackwork" is that part of the Infraco Works to be carried out by Siemens plc as more particularly set out in the Infraco's Proposals;

"System Integration" means the successful integration of all elements of the System (including the Trams) so as to enable Initial Phase 1a to meet the pass criteria for each of the Tests;

"Systems Availability Target" has the meaning given in Schedule Part 2 (*Employer's Requirements*);

"Technical Library" has the meaning given to it in Clause 102.17(a);

"Technical Records" means the technical records in respect of ~~the Edinburgh Tram Network~~Initial Phase 1a to be retained and updated in accordance with the Maintenance Specification and the Employer's Requirements;

"Telewest" means either or both of Telewest Limited and Telewest Communications;

"Telewest Communications" means Telewest Communications Group Limited, a company incorporated under the Companies Act with registered number 02514287 and having its registered office at 160 Great Portland Street, London, W1W 5QA;

"Telewest Limited" means Telewest Limited, a company incorporated under the Companies Act with registered number 03291383 and having its registered office at 160 Great Portland Street, London, W1W 5QA;

"Temporary Works" means all temporary works of every kind required in or about the construction and completion of the Infraco Works;

"Temporary Sites" means any of the sites shown highlighted in red on the plans set out in Schedule Part 31 (*Drawings*);

"Term" means the period from (and including) the Effective Date until (and including) the earlier of the Termination Date and the Expiry Date;

"Termination Date" means the date of early termination of this Agreement in accordance with Clauses 3 (*Conditions Precedent*), 88 (*Termination or Suspension for tie Default*), 89 (*Voluntary Termination by tie*), 90 (*Termination on Infraco Default*), 91 (*Termination by Reason of Force Majeure*), 92 (*Termination for Corrupt Gifts and Fraud*) or 93 (*Persistent Breach*);

"Test Plan" means the test plan pursuant to Section 3 of Schedule Part 2 (Employer's Requirements);

"**Termination Notice**" means a notice to terminate this Agreement served by either Party in accordance with the terms of this Agreement;

"**Tests**" means the Factory Acceptance Tests (excluding Factory Acceptance Tests in relation to Trams), Site Tests, Sub-system Integration Tests, System Commissioning and Integration Tests and System Acceptance Tests all as described in section 23 of Schedule Part 2 (Employer's Requirements);

"**Test T1**" means the post commissioning test described in section 23 of Schedule Part 2 (Employer's Requirements);

"**Test T2**" means performance test 1 described in section 23 of Schedule Part 2 (Employer's Requirements);

"**Test T3**" means the pre-operations test described in section 23 of Schedule Part 2 (Employer's Requirements);

"**Test T4**" means the network performance test described in section 23 of Schedule Part 2 (Employer's Requirements);

"**Test T5**" means the network reliability test described in section 23 of Schedule Part 2 (Employer's Requirements);

"**Test Track**" means that portion of the Infraco Works that will be utilised by the Infraco Tram Supplier to test run Trams and systems and to train drivers and other staff;

"**Third Party Obligations**" means the obligations which Infraco is obliged to comply with under Clauses 18.17A and B and set out in Schedule Part 13 (*Third Party Agreements*) as that Schedule Part 13 may be amended from time to time as a result of a **tie** Change;

"**Third Party Software**" means programs, the Intellectual Property Rights in which are:

- (a) owned by a third party; and
- (b) used by the Infraco to carry out its obligations under this Agreement;

"**Thus**" ~~means~~ means Thus PLC, a company incorporated under the Companies Act with registered number SC 192666 and having its registered office at 1-2 Berkeley Square, 99 Berkeley Street, Glasgow, G3 7HR;

"**tie and CEC Policies**" means the policies included in Schedule Part 29 (*tie and CEC Policies*);

"**tie Change**" means any addition, modification, reduction or omission in respect of the Infraco Works instructed in accordance with Clause 80 (*tie Changes*) or any other event

which this agreement specifically states will be a **tie** Change but which shall not include any Small Works Change or any Accommodation Works Change;

"tie Change Order" means the written confirmation issued by **tie** to proceed with a **tie** Change on the basis of an Estimate (as modified, if required);

"tie Consents" means securing the Traffic Regulation Orders and Temporary Traffic Regulation Orders in accordance with Clause 19.1 together with such other Consents that relate to the statutory authority to implement ~~the Edinburgh Tram Network~~ Initial Phase 1a, but excluding all Design Stage Consents.

"tie Customer Satisfaction Survey" means the customer satisfaction survey produced annually (or with such other frequency as may be agreed between the Infraco and **tie**) in accordance with Clause 73.3;

"tie Default" means one of the following events:

- (a) the failure of **tie** for more than 30 days following the final date for payment to pay to the Infraco an amount in excess of £250,000 which has been certified for payment pursuant to Clause 67.5 or Clause 68.4 except where **tie** has exercised contractual rights of set-off or retention as provided for in this Agreement, including pursuant to Clauses 37.2, 38.2, 38.3, 44.5, 45.5, 67.14, 67.15, 68.12, 68.13, 69.4, 96.4.3 or Schedule Part 43;
- (b) a breach by **tie** of any of its material obligations under this Agreement which substantially frustrates or renders it impossible for the Infraco to perform any material part of its obligations under this Agreement for a continuous period of 45 Business Days;
- (c) an Insolvency Event in relation to **tie**;
- (d) breach by **tie** of Clause 98; ~~or~~
- (e) Change in Law which makes completion of or carrying out of a material part of the Infraco Works either impossible or illegal; or
- (f) where the Tram Supply Agreement is terminated by tie prior to the System Acceptance Date, the failure of tie to procure a replacement Tram Supplier within 12 months of terminating the Tram Supply Agreement;**

"tie DPOFA Change" means a change proposed by **tie** in accordance with the DPOFA;

"tie's Drug and Alcohol Policy" means the policy included in Schedule Part 29 (*tie and CEC Policies*);

"**tie Notice of Change**" means a notice service by **tie** pursuant to Clause 80 (**tie Changes**), setting out the matters referred to in Clause 80;

"**tie Obligations**" means the obligations which **tie** is required to perform under this Agreement which are set out in Schedule Part 26;

"**tie Party**" means any advisers appointed by **tie** and/or any of **tie's** employees, agents, contractors and sub-contractors and its or their directors, officers and employees (but excluding the Infraco and/or any Infraco Party);

"**tie's Representative**" means the person or persons appointed by **tie** from time to time and notified to the Infraco;

~~"**Timetable**" means the timetable which is developed in accordance with Schedule Part 2 (Employer's Requirements) as may be amended from time to time;~~

"Timetables" means the Operational Timetable and the Enhanced Timetable;

"**TOC**" means (passenger) train operating company;

"Traffic Controls Defect Notification Period" means:

(a) in relation to all traffic lights, traffic light controls and traffic light systems on the On Street Works, 24 months from 15 November 2009;

(b) in relation to all traffic lights, traffic light controls and traffic light systems on the Off Street Works, 24 months from the date on which the lights are commissioned;

"**Traffic Regulation Orders**" means the traffic regulation orders required for the operation and maintenance of ~~the Edinburgh Tram Network~~ **Initial Phase 1a;**

"Tram Agreements" means the Tram Supply Agreement and the Tram Maintenance Agreement;

"Tram Delivery and Maintenance Obligations" means:

(a)

(i) in respect of each Tram:

(A) the issue by the Tram Inspector of a Factory Acceptance Type Test Certificate;

(B) the issue by the Tram Inspector of Factory Acceptance Routine Test Certificate;

(C) the issue by the Tram Inspector of Certificates of Tram Delivery; and

(D) the Tram Inspector confirming in writing that he is in a position to issue Site Commissioning Certificates (except in relation to EMC, noise, vibration and ride quality elements of the Site Commissioning Tests); and

(ii) the delivery to the Site of the Trams and the Relevant Tram Equipment and Documentation,

in accordance with the Tram Manufacturing and Delivery Programme; and

(b) ~~"Tram Commissioning Routine Tests"~~ means together the site commissioning tests and the system integration tests to be carried out on the System and on each Tram as set out the making available of the Trams (maintained in accordance with the Tram Maintenance Agreement) and the Relevant Tram Equipment and Documentation to Infraco in accordance with the Test Plan and subject to the notice periods in section 23 of Schedule Part 2 (Employer's Requirements);

"Tram Employer's Requirements" means the subset of the Employer's Requirements listed in Part 1 of Schedule 2 (Employer's Requirements) of the Tram Supply Agreement as relating to the Tram Supplier and the Tram Maintainer;

"Tram Interface Agreement" means the agreement of even date hereof between Infraco, the Tram Supplier and Tram Maintainer and CEC;

"Tram Manufacturing and Delivery Programme" means the Tram Supplier programme in Schedule Part 4 of the Tram Supply Agreement;

"Tram Test Plan" means the plan for the conduct of the Tram Tests to be developed by the Tram Supplier in accordance with Section 23.18.3 of Schedule Part 2 (Employer's Requirements);

"Tram Tests" means the Tram Tests as specified in section 23.18.4 of Schedule Part 2 (Employer's Requirements);

"Tramco IPR" means the Tram Supplier IPR as such term is defined in the Tram Supply Agreement and the Tram Maintainer IPR as such term is defined in the Tram Maintenance Agreement;

"Tramco Project IPR" means all Intellectual Property Rights created in the performance of the Tram Supplier's obligations pursuant to the Tram Supply Agreement and the Tram Maintainer's obligations pursuant to the Tram Maintenance Agreement relating to aesthetic and ergonomic detailed design and which are specific in nature to the performance of the

Tram Supplier's obligations pursuant to the Tram Supply Agreement and the Tram Maintainer's obligations pursuant to the Tram Maintenance Agreement;

"**Trams**" means all or any of the tram vehicles ~~for the Edinburgh Tram Network~~ to be provided under the Tram Supply Agreement and maintained under the Tram Maintenance Agreement used or to be used on the Edinburgh Tram Network;

"**Tramstop**" means the places (including termini) at which fare paying passengers are permitted to board and/or leave Trams;

"**Tram Inspector**" means the person specified as such in the Tram Inspector Agreement;

"**Tram Inspector Agreement**" means the agreement between the Tram Inspector, ~~tie~~ and ~~the~~ Infraco for the inspection and certification of Trams which shall be ~~substantially~~ in the form set out in Schedule Part 34 (*Tram Inspector Agreement*);

"**Tram Legislation**" means the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006, which received Royal Assent on 8 May 2006 and 27 April 2006 respectively and which confer on CEC all requisite authorities and statutory powers to procure the construction, operation and maintenance of the Edinburgh Tram Network;

~~"Tram Maintenance Commencement Date" shall have the meaning given to it pursuant to the Tram Maintenance Agreement;~~

"**Tram Maintainer**" means the party appointed to carry out the Tram Maintenance Services in accordance with the Tram Maintenance Agreement;

"**Tram Maintenance Agreement**" means the agreement awarded to the Tram Maintainer in respect of the Tram Maintenance Services set out in Schedule Part 19 (*Tram Maintenance Agreement*) as may be amended from time to time ~~with the approval of tie~~ in accordance with this Agreement;

~~"Tram Maintenance Plan" means the maintenance plan to be prepared by the Tram Maintainer in accordance with the Tram Maintenance Agreement;~~

"**Tram Maintenance Qualifying Change in Law**" means a Qualifying Change in Law pursuant to the Tram Maintenance Agreement;

"**Tram Maintenance Services**" means the ongoing maintenance of the Trams, supply of consumable spares for the Trams, the provision of any associated services and other obligations incumbent on the Tram Maintainer (excluding the Tram Supply Obligations) as described in the Tram Maintenance Agreement;

~~"Tram Maintenance Services Payment" means the payment to be made to the Infraco in respect of the performance of the Tram Maintenance Services in accordance with this Agreement. This payment shall be based on the sums set out in Schedule Part 4 (Price) and the final amount to be paid in each Reporting Period to the Infraco shall be calculated in accordance with Clause 68 (Payment in Respect of Maintenance Services) and part B of Schedule Part 6 (Maintenance Payment Regime).~~

~~"Tram Milestone" means any milestone which has been identified and defined as a "tram milestone" in Schedule Part 5 (Milestone Payments);~~

~~"Tram Milestone Completion Certificate" means a certificate to be issued in respect of a milestone completed by the Tram Supplier;~~

~~"Tram Related Equipment" means the Spare Parts and Special Tools (which are required specifically in relation to the Trams) and the documentation, specifications, instructions, catalogues, spare parts list, training and maintenance manuals and log books and Tram Software listed in Part 2 of Schedule Part 2 (Employer's Requirements);~~

"Tram Related Equipment" has the meaning given in the Tram Supply Agreement;

"Tram Requirements Specification" means Section 24 of Schedule Part 2 (Employer's Requirements);

~~"Tram Software" means the executable object code version of software relating to equipment installed on the Trams, which is supplied in machine readable form and already loaded upon the relevant piece of equipment or computer system to which it relates, including for the avoidance of doubt all software embedded in a hardware device which is installed on the Trams;~~

"Tram Supplier" means the party appointed by tie to carry out the Tram Supply Obligations in accordance with the Tram Supply Agreement;

"Tram Supplier Integration" means the Tram Works (as defined in the Tram Supply Agreement) and the Services (as defined in the Tram Maintenance Agreement) that relate to or are required for the purpose of;

(a) System Integration; and

(b) enabling the System to meet the pass criteria for all the Tests,

but excluding the Tram Delivery and Maintenance Obligation;

"Tram Supply Advance Works Agreement" means the agreement entered into between **tie** and the Tram Supplier on 18 December 2007;

"Tram Supply Agreement" means the agreement awarded by to the Tram Supplier in respect of the Tram Supply Obligations set out in Schedule Part 16 (*Tram Supply Agreement*) as may be amended from time to time ~~with the approval of tie in accordance with this Agreement;~~

~~**"Tram Supply Protestor Action"** means any action occurring in Edinburgh or whilst undertaking the delivery of trams within Scotland, directed against tie or a tie Party or the Edinburgh Tram Network which affects the performance of the Tram Supplier's obligations under the Tram Supply Agreement and has not arisen as a result of or been caused by the Tram Supplier's breach of its obligations under the Tram Supply Agreement or otherwise by any action or omission of the Tram Supplier unrelated to the Edinburgh Tram Network;~~

~~**"Tram Supply Qualifying Change in Law"** means a Qualifying Change in Law pursuant to the Tram Supply Agreement;~~

"Tram Supply Obligations" means the design, manufacture and supply of the Trams, and supply of documentation, capital spares, special tools and any associated equipment, the provision of services and other obligations incumbent on the Tram Supplier (excluding the Tram Maintenance Services) as described in the Tram Supply Agreement;

~~**"Tram Type Test"**~~**Supply Qualifying Change in Law** means ~~any of the Type Tests as defined in Schedule Part 16~~ **(a Qualifying Change in Law pursuant to the** Tram Supply Agreement);

"Transport Edinburgh Limited" or **"TEL"** means Transport Edinburgh Limited a company incorporated under the Companies Act with registered number SC269639 and having its registered office at 55 Annandale Street, Edinburgh, EH7 4AZ;

"Transport Scotland" means an agency within the Scottish Executive Enterprise, Transport and Lifelong Learning Department which was established in January 2006 and having its principal office at Buchanan House, 58 Port Dundas Road, Glasgow, H4 0HF;

"Transport Services" means the public passenger transport services to be provided by the Operator on ~~the Edinburgh Tram Network~~**Initial Phase 1a** (or any part thereof) in accordance with the DPOFA;

"TTROs" means temporary traffic regulation orders;

"TUPE Information" has the meaning given in Clause 58.1

"**TVM**" means ticket vending machine (automatic or manual);

"**Underperformance Warning Notice**" means a notice issued to the Infraco by **tie** pursuant to Clause 56.7.2;

"**UTC**" means urban traffic control;

"**Utilities**" means BT, Easynet, NTL, Scottish Water, Scotland Gas Networks, Cable and Wireless, Forth Ports, Ocean Terminal, Scottish Power, Telewest and Thus and their successors, permitted assignees and transferees and "**Utility**" shall be construed accordingly;

"**Utilities Information**" means the data, information, plans, drawings, surveys, reports, renewals programmes, estimates, technical schedules contained in part B of Schedule Part 41 (*Ground Conditions and Utilities Information*) which relate to the existence, location, type, extent, use and serviceability of any utility apparatus or equipment;

~~"Utilities Works" means any works carried out, or to be carried out, by the Utilities or any other public utility company under contract with tie relative to the MUDEFA Works;~~

"**Works Breakdown Structure**" or "**WBS**" means the works breakdown structure set out in Schedule Part 2 (*Employer's Requirements*);

"**Work Site**" means any work site within any part of the Infraco Works; and

"**Work Site Completion Certificate**" has the meaning given in paragraph 3.7.1 of part A of Schedule Part 3 (*Code of Construction Practice and Code of Maintenance Practice*).

"**9th May 2008 Agreement**" means the agreement of that date signed by **tie** Limited and both Infraco Members;

2. Unless the context requires otherwise:

2.1 words importing gender include masculine, feminine and neuter;

2.2 the singular includes the plural, and vice versa;

2.3 a reference to any Clause, Sub-Clause or Schedule is, except where it is expressly stated to the contrary, a reference to such Clause, Sub-Clause or Schedule to this Agreement;

2.4 a reference in any Schedule to any part, paragraph or sub-paragraph is, except where it is expressly stated to the contrary, a reference to such part, paragraph or sub-paragraph of that Schedule (as the case may be);

- 2.5 any reference to this Agreement or to any other document shall include any variation, amendment, or supplement to this Agreement or such other document as expressly permitted under the terms of this Agreement;
- 2.6 any reference to any enactment, draft enactment, order, regulation or other similar instrument (including any EU instrument) (whether specifically named or not) shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted and shall include any orders, consents, regulations, legally binding codes of practice or subordinate legislation (within the meaning of section 21(1) of the Interpretation Act 1978) made thereunder;
- 2.7 a reference to a person includes individuals, firms, partnerships, bodies corporate, joint ventures, government departments and any organisation capable of suing or being sued and references to any of the same include the others and their successors and assignees and transferees;
- 2.8 the *ejusdem generis* rule does not apply and the meaning of general words is not to be restricted by any particular examples preceding or following those general words;
- 2.9 a reference to a time of day is a reference to the time in Scotland;
- 2.10 subject to the restrictions imposed by this Agreement on subcontracting, an obligation to do something includes an obligation to procure it to be done;
- 2.11 an obligation not to do something includes an obligation not to wilfully allow it to be done;
- 2.12 the word "**including**" means "**including without limitation**";
- 2.13 a reference to "**consent**" shall mean consent in writing;
- 2.14 the headings, contents lists and marginal notes in the Agreement shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof or of the Agreement;
- 2.15 The word "**cost**" and words "**direct cost**" or any phrase analogous thereto when used in the Agreement shall include all expenditure properly incurred or to be incurred whether on or off the Site including overheads, finance and other charges properly allocatable thereto;

- 2.16 communications which under the Agreement are required to be "in writing" may be handwritten, typewritten or printed and sent by hand, post, email, facsimile or other means resulting in a permanent record; and
- 2.17 ~~any reference to any Deliverable or course of action being reviewed, approved, agreed, consented to or otherwise processed in accordance with this Agreement, means that the provisions of Schedule Part 14 (Review Procedure and Design Management Plan) shall apply except where otherwise agreed in writing by tie;~~ and NOT USED
- 2.18 references to "traffic management" and "Temporary Traffic Regulation Orders" (TTROs) shall be deemed to include the requirements of EAL, Forth Ports and any other third party relating to road closures and procedures.
3. Where a Party comprises two or more persons:
- 3.1 any obligations on the part of that party contained or implied in this Agreement are deemed to be joint and several obligations on the part of those persons; and
- 3.2 references to that party include references to each and any of those persons.
4. The language of this Agreement is English. All 'as built' drawings, system integration documentation and technical data, operating and maintenance instructions and manuals, warranty documentation, Spare Parts information, identification labels, programmes and other written and printed matter required in respect of the Infraco Works and the subsequent operation and maintenance of ~~the Edinburgh Tram Network~~ Initial Phase 1a which are to be provided by the Infraco in accordance with this Agreement, shall be in English.

Document comparison by Workshare Professional on 15 September 2011 07:21:47

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Moved cell	
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