



**THIS IS SCHEDULE PART 9 REFERRED TO IN THE
FOREGOING AGREEMENT BETWEEN TIE AND THE
INFRACO**

SCHEDULE PART 9

DISPUTE RESOLUTION PROCEDURE

1. The Parties agree that this Schedule Part 9 (*Dispute Resolution Procedure*) shall have effect for the resolution of any Dispute.
2. Subject to paragraph 15 hereof, any Dispute shall, in the first instance, be referred to the Internal Resolution Procedure in accordance with paragraph 9.
3. Neither Party shall commence any court proceedings until the procedures in paragraphs 9 to 54 have been completed, under exception that the provisions of this Schedule Part 9 (*Dispute Resolution Procedure*) shall not apply so as to prevent either Party seeking an interim order, or interim relief, in the Scottish courts.
4. In the event that any court proceedings whatsoever are initiated by either Party against the other, the Parties agree that the Court of Session, Scotland, shall have exclusive jurisdiction.
5. Neither Party shall be entitled to suspend the performance of its undisputed obligations under this Agreement merely by reason of the reference of any Dispute to the Dispute Resolution Procedure contained in this Schedule Part 9 (*Dispute Resolution Procedure*).
6. Subject to tie's and the Infraco's discretionary rights set out in paragraphs 55 to paragraph 71 to require that a Dispute and a Related Dispute (as defined in paragraph 55) be dealt with together at an appropriate stage of the Dispute Resolution Procedure, the provisions of this Schedule Part 9 (*Dispute Resolution Procedure*) are mandatory and binding upon the Parties. For the avoidance of doubt nothing in this Schedule Part 9 shall be intended to disapply section 80(2) and 79(2) of the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006 (together the "**Tram Acts**") respectively.
7. Except in relation to the matters provided for in paragraphs 14 to 54 and subject to the provisions of paragraph 8, in the event that either Party following the referral of any Dispute pursues such Dispute under the Dispute Resolution Procedure, and in the event that such Party fails to observe any time limit or timescale provided for in this Schedule Part 9 (*Dispute Resolution Procedure*) in relation to the pursuit or progression of such Dispute, such Party shall, upon such failure occurring and upon the expiry of 90 days following written notification from the other Party requiring the first Party to pursue the Dispute Resolution Procedure, be deemed to have irrevocably waived any right to pursue or progress such Dispute any further. In that event, such Party shall be deemed to have elected not to have referred such Dispute or to have withdrawn such Dispute from the Dispute Resolution Procedure and

shall be deemed to have irrevocably waived any right to refer any Dispute arising from the same or substantially the same Dispute or similar circumstances to the Dispute Resolution Procedure and shall be liable for payment of the whole fees incurred by any mediator or adjudicator who has acted in respect of such Dispute. This paragraph 7 is without prejudice to the rights of either Party to raise in defence to any Dispute any defence (including, without prejudice to the foregoing generality, any defence of retention, compensation or set-off) which would otherwise be available to it.

8. Notwithstanding the provisions of paragraph 7, in the event that a Party who pursues any Dispute under the Dispute Resolution Procedure fails to observe any time limit or timescale provided for in this Schedule Part 9 (*Dispute Resolution Procedure*) in relation to the pursuit or progression of the Dispute or fails to take action following a notification from the other Party pursuant to paragraph 7 above, the other Party may elect to waive such failure, in which event the time limit or timescale to which such failure relates shall be extended at the discretion of such other Party and the Dispute shall progress in accordance with the Dispute Resolution Procedure, subject that all other time limits and timescales provided for in this Schedule Part 9 (*Dispute Resolution Procedure*) which are affected by such extension shall be deemed to have been extended to give effect to such extension of the time limit or timescale to which such failure relates.

Internal Resolution Procedure

9. The following procedure is the Internal Resolution Procedure referred to in paragraph 2:

- 9.1 In the event of any Dispute arising, the Infraco's Representative and tie's Representative shall seek to resolve the Dispute at a meeting to be convened within three Business Days of written notification by either Party to the other that it wishes to initiate the Internal Resolution Procedure in respect of that Dispute ("**Notification**"). Such Notification shall be given in accordance with the provisions of Clause 111 (*Notices*) of this Agreement.

- 9.2 If following the meeting referred to in paragraph 9.1, the Dispute is not resolved or in the event that a meeting has not been convened within 3 Business Days pursuant to paragraph 9.1, each Party shall, before the expiry of the period of seven Business Days from Notification, serve, in accordance with the provisions of Clause 111 (*Notices*) of this Agreement, a written position paper ("**Position Paper**") upon the other Party. Each Party's Position Paper shall state in reasonable detail that Party's position and required objectives in relation to the Dispute; any required redress, and, where possible, any comments on the other Party's position.

- 9.3 Upon such service of a Position Paper by the Party initiating or pursuing the Dispute, the Chief Executive (or equivalent) of the Infraco and the Chief Executive (or equivalent) of **tie** (or their respective deputies in the event of their unavailability) shall seek to resolve the Dispute by meeting in good faith to discuss and negotiate upon the Dispute without recourse to legal or other proceedings.
- 9.4 In the event that resolution of the Dispute is achieved by the Chief Executive (or equivalent) of the Infraco and the Chief Executive (or equivalent) of **tie**, the resolution shall be reduced to writing and, once it is signed by the duly authorised representatives of both Parties, shall be binding on the Parties.
- 9.5 Unless concluded by a written legally binding agreement, all discussions and negotiations connected with the Dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any future legal or other proceedings. Nor may such matters be produced or relied upon in evidence in any such proceedings.
10. In the event that any Dispute is not resolved by the Internal Resolution Procedure within a period of twenty Business Days from Notification (or longer if so agreed by the Parties) then the following provisions of this paragraph 10 shall apply;
- 10.1 The Chief Executive (or equivalent) of the Infraco and the Chief Executive (or equivalent) of **tie** (or their respective deputies in the event of their unavailability) shall, within a further period of five Business Days, seek to agree that the Dispute shall be resolved by any one of the following procedures:
- 10.1.1 mediation in accordance with paragraphs 11 to 13; or
- 10.1.2 adjudication in accordance with paragraphs 14 to 54; or
- 10.1.3 litigation before the Court of Session, Scotland, in which event the Summons in any such litigation shall be signeted and served within ten Business Days of the date of expiry of the period of 60 Business Days following the conclusion of the internal resolution procedure under paragraphs 9 and 10.

In the event that the Chief Executive (or equivalent) of the Infraco and the Chief Executive (or equivalent) of **tie** (or their respective deputies in the event of their unavailability) are unable to agree that the Dispute be resolved by one of the procedures described in paragraphs 10.1.1, 10.1.2 or 10.1.3, the Party initiating or pursuing the Dispute may refer the Dispute to mediation (and thereafter adjudication, if necessary) in accordance with paragraphs 11 to 13 or in the case of a Related

Dispute conjoined by either Party pursuant to paragraph 55 or where a Related Dispute has already been referred to the decision of an adjudicator to adjudication in accordance with paragraphs 14 to 54 (without the need first to refer the Dispute to mediation).

Mediation

11. The Parties shall attempt in good faith to resolve the Dispute by a procedure of mediation in accordance with the Centre for Effective Dispute Resolution mediation rules or Model Mediation Procedure in force at the commencement of the mediation, (or in the event that the Centre for Effective Dispute Resolution has ceased to exist as at the time of the commencement of the mediation, mediation rules or a model mediation procedure offered by any other body offering commercial mediation services which shall be selected by agreement between the Parties failing such agreement by the Party referring the Dispute to mediation. In the event that any provision of such mediation rules or model mediation procedure conflicts with any provision of this Schedule Part 9 (*Dispute Resolution Procedure*), the provisions of this Schedule Part 9 (*Dispute Resolution Procedure*) shall take precedence. In the event that any timescales contained in such mediation rules or model mediation procedure conflicts with the timescales referred to in this Schedule Part 9 (*Dispute Resolution Procedure*), the timescales contained in such mediation rules or model mediation procedure shall be amended accordingly, such that the timescales referred to in this Schedule Part 9 (*Dispute Resolution Procedure*) shall be adhered to.
12. In the event that resolution of the Dispute is achieved in consequence of such mediation procedure, such agreed resolution shall be recorded in writing and, once it is signed by the duly authorised representatives of both Parties, shall be binding on the Parties. Unless concluded by a written legally binding agreement, all discussions and negotiations (including written submissions made and documents produced in relation thereto) connected with the mediation procedure referred to in paragraph 11 shall be conducted in confidence and without prejudice to the rights of the Parties in any future legal or other proceedings. Nor may such matters be produced or relied upon in evidence in any such proceedings.
13. If any Dispute to which this Schedule Part 9 (*Dispute Resolution Procedure*) relates is not resolved by the mediation procedure referred to in paragraphs 11 and 12 within a period of 30 Business Days from the referral of the Dispute to mediation (or longer if so agreed by the Parties), the mediation procedure shall be terminated and unless the Party initiating or pursuing the Dispute withdraws the Dispute the Dispute shall, within 60 days of the

termination of the mediation procedure be referred to adjudication in accordance with paragraphs 14 to 54.

Adjudication

14. In the event that either Party refers a Dispute to adjudication in terms of paragraph 10.1.2 or 13, or exercises a statutory right available to it under the Housing Grants, Construction and Regeneration Act 1996 to raise adjudication proceedings in relation to "construction operations" (within the meaning ascribed to that term by the Housing Grants, Construction and Regeneration Act 1996) which are not Authorised Works as defined in the Tram Acts, such adjudication shall be conducted in accordance with paragraphs 14 to 54, wherein any reference to "days" is a reference to calendar days.
15. Where a Related Dispute (as defined in paragraph 55) relates or is claimed by the other party to a Related Contract to relate to "construction operations" within the meaning ascribed to that term by the Housing Grants, Construction and Regeneration Act 1996 and where such other party to a Related Contract claims to exercise a statutory right available to it under the Housing Grants, Construction and Regeneration Act 1996, then reference of the Dispute arising under this Agreement to the Internal Resolution Procedure (save as provided regarding the meeting to take place under paragraph 9.1) or to mediation shall not be a precondition to the commencement of adjudication proceedings. In the foregoing circumstances, **tie** or the Infraco shall be entitled to refer a Dispute at any time to adjudication in terms of paragraphs 14 to 54 hereof.

Notice of intention to seek adjudication

16. Either Party may give written notice (the "**Notice of Adjudication**") of its intention to refer the Dispute to adjudication and the Party giving such notice shall be the "**Referring Party**".
17. The Notice of Adjudication shall be given to the other Party and the Party receiving the Notice of Adjudication shall be the "**Responding Party**".
18. The Notice of Adjudication shall set out briefly:
 - 18.1 the nature and a brief description of the Dispute and of the parties involved;
 - 18.2 details of where and when the Dispute has arisen;
 - 18.3 the nature of the redress which is sought; and

- 18.4 the names and addresses of the Parties (including the addresses which the Parties have specified for the giving of notices).
19. The adjudicator selected to consider the Dispute shall be selected from one of the panels ("**Panels**") appointed by the Parties in accordance with the following:
- 19.1 there shall be three Panels, one in respect of legal matters, ("**Legal Panel**") one in respect of construction and operational matters ("**Construction/Operational Panel**"), and one in respect of financial matters ("**Financial Panel**").
- 19.2 each Panel shall be comprised of at least four members, who are listed in Schedule Part 10 (*Panels for the Dispute Resolution Procedure*) to the Agreement.
- 19.3 if any member of a Panel resigns or dies or becomes incapax or ill to the extent of being unable to reasonably discharge his duties as a member of the Panel, a replacement shall be appointed by the Parties as soon as practicable. Any such replacement shall be wholly independent of **tie**, any **tie** Party, TEL, Transport Scotland, the Infraco, any Infraco Party, CEC or any Relevant Authority, any Approval Body, the Tram Supplier, the Tram Maintainer, the MUDFA Contractor or any equipment supplier or any party associated with the Edinburgh Tram Network, and any successor to or subsidiary or parent of any of the aforementioned parties. If the Parties are unable to agree on the identity of such replacement(s), the President or Vice President for the time being of The Chartered Institute of Arbitrators (Scottish Branch) or the Institution of Civil Engineers or the Law Society of Scotland shall appoint such replacement(s) within thirty days of any application for such appointment by either Party.
20. The Referring Party shall at the same time as giving the Notice of Adjudication to the Responding Party, send to each of the members of the relevant Panel a copy of the Notice of Adjudication and a request that each member of the relevant Panel advises both Parties within three days of the date of the Notice of Adjudication as to whether or not he is able and willing to act. The Referring Party shall (acting reasonably) be entitled to select which of the Panels is the relevant Panel in light of the subject matter of the Dispute. The Parties shall attempt to agree within two further days as to which one of the members of the relevant Panel who responded indicating that they are able and willing to act shall be requested to act as adjudicator. In the event that such agreement is reached, the Referring Party shall, within a further period of one day, request the member of the relevant Panel upon whom agreement has been reached to act as adjudicator. In the event that such agreement is not reached, the Responding Party shall, within a further period of two days, select one of the members of the

relevant Panel who responded indicating that they are able and willing to act and the Referring Party shall request that member to act as adjudicator.

21. If no member of the relevant Panel indicates that he is able and willing to act within three days of receiving a request to act as adjudicator, the Referring Party shall request the President or the Vice President for the time being of the Chartered Institute of Arbitrators (Scottish Branch) or the Institution of Civil Engineers or the Law Society of Scotland to select a person to act as adjudicator.
22. Any person appointed, requested or selected to act as adjudicator in accordance with paragraphs 19, 20, 21, 24 and 25 shall be a natural person acting in his personal capacity. A person appointed, requested or selected to act as an adjudicator shall be wholly independent of tie, any tie Party, TEL, Transport Scotland, the Infraco, any Infraco Party, CEC or any Relevant Authority, any Approvals Body, the SDS Provider, the Tram Supplier, the Tram Maintainer, the MUDFA Contractor, or any equipment supplier or any party associated with the Edinburgh Tram Network, and Infraco Parties and any successor to or subsidiary or parent of any of the aforementioned parties.
23. The requests referred to in paragraphs 20 and 21 shall be accompanied by a copy of the Notice of Adjudication.
24. The Chartered Institute of Arbitrators (Scottish Branch) or the Institution of Civil Engineers or the Law Society of Scotland must communicate the selection of an adjudicator to the Referring Party within three days of receiving a request to do so.
25. If the Chartered Institute of Arbitrators (Scottish Branch) or the Institution of Civil Engineers or the Law Society of Scotland fails to comply with paragraph 24, the Referring Party may:
 - 25.1 agree with the other Party to the Dispute to request a specified person to act as adjudicator; or
 - 25.2 request any other adjudicator nominating body to select a person to act as adjudicator. An "adjudicator nominating body" shall mean a body (not being a natural person and not being a Party to the Dispute) which holds itself out publicly as a body which will select an adjudicator when requested to do so by a Referring Party.
26. The person requested to act as adjudicator in accordance with the provisions of paragraph 20 or 21 shall indicate whether or not he is willing to act within two days of receiving the request.

27. Where an adjudicator has been selected and appointed in accordance with paragraphs 19, 20 or 21 within seven days of the date of the Notice of Adjudication, then the Referring Party shall refer the Dispute in writing (the "Referral") to the adjudicator within that seven day period. Where an adjudicator has not been selected within and appointed within seven days of the Notice of Adjudication, then the Referral shall be made immediately upon such selection and appointment. Any failure on the part of the Referring Party to make the Referral within seven days of the date of the Notice of Adjudication shall not invalidate the decision of the adjudicator.
28. The Referral shall be accompanied by copies of, or relevant extracts from the Agreement and such other documents as the Referring Party intends to rely upon.
29. The Referring Party shall, at the same time as he sends to the adjudicator the documents referred to in paragraphs 27 and 28, send copies of those documents to the Responding Party.
30. The adjudicator may, with the consent of the parties to those Disputes, adjudicate at the same time on more than one Dispute under the Agreement.
31. The Parties may agree to extend the period within which the adjudicator may reach a decision in relation to all or any of these Disputes.
32. An adjudicator may resign at any time on giving notice in writing to the Parties.
33. An adjudicator must resign where the Dispute is the same or substantially the same as one which has previously been referred to adjudication, and a decision has been taken in that adjudication.
34. Where an adjudicator ceases to act under paragraph 32 or 33, or dies or becomes incapax or ill to the extent of being unable to reasonably discharge his duties:
 - 34.1 the Referring Party may serve a fresh notice in accordance with paragraphs 16 to 18 and shall in accordance with paragraphs 19 to 29 request an adjudicator to act; and
 - 34.2 if requested by the new adjudicator, the Parties shall supply him with copies of all documents which they had made available to the previous adjudicator.
35. The Parties to a Dispute may at any time agree to revoke the appointment of the adjudicator and in such circumstances the fees and expenses of that adjudicator shall, subject to paragraph 36, be determined and payable in accordance with paragraphs 52 and 53.

36. Where the revocation of the appointment of the adjudicator is due to the default or misconduct of the adjudicator, the Parties shall not be liable to pay the adjudicator's fees and expenses.

Powers of the Adjudicator

37. The adjudicator shall:

37.1 act impartially in carrying out his duties and shall do so in accordance with any relevant terms of the Agreement and shall reach his decision in accordance with Scots law; and

37.2 avoid incurring unnecessary expense.

38. The adjudicator may take the initiative in ascertaining the facts and the law necessary to determine the Dispute, and shall decide on the procedure to be followed in the adjudication. In particular, he may:

38.1 request either Party to supply him with such documents as he may reasonably require including, if he so directs, any written statement from either Party supporting or supplementing the Referral and any other documents given under paragraphs 28 and 29;

38.2 conduct the adjudication in the English language and decide whether a translation of any document is to be provided and, if so, by whom, by when, and at whose cost;

38.3 meet and question either Party and their representatives;

38.4 subject to obtaining any necessary consent from a third party or the Parties, make such site visits and inspections as he considers appropriate, whether accompanied by the Parties or not;

38.5 subject to obtaining any necessary consent from a third party or the Parties, procure the carrying out of any tests or experiments, and make directions as to the conditions for and responsibility for the cost of the same;

38.6 obtain and consider such representations and submissions as he requires, and, provided he has notified the Parties of his intention, appoint experts, assessors or legal advisers;

38.7 give directions as to the timetable for the adjudication, any deadlines, or limits as to the length of written documents or oral representations to be complied with; and

- 38.8 issue other directions relating to the conduct of the adjudication.
39. The Parties shall comply with any request or direction of the adjudicator in relation to the adjudication.
40. If, without showing sufficient cause, a Party fails to comply with any request, direction or timetable of the adjudicator made in accordance with his powers, fails to produce any document or written statement requested by the adjudicator, or in any other way fails to comply with a requirement under these provisions relating to the adjudication, the adjudicator may:
- 40.1 continue the adjudication in the absence of that Party or of the document or written statement requested;
 - 40.2 draw such inferences from that failure to comply as may, in the adjudicator's opinion, be justified in the circumstances;
 - 40.3 make a decision on the basis of the information before him, attaching such weight as he thinks fit to any evidence submitted to him outside any period he may have requested or directed;
 - 40.4 disqualify any part or parts of that Party's submissions affected by the failure to comply; and
 - 40.5 grant the other Party proper opportunity to consider and respond to any evidence or representation made late.
41. Subject to any agreement between the Parties to the contrary, either Party may be assisted by, or represented by, such advisers or representatives (whether legally qualified or not) as he considers appropriate.
42. The adjudicator shall consider any relevant information submitted to him by either Party and shall make available to them any information to be taken into account in reaching his decision.
43. The adjudicator and the Parties shall not disclose to any other person any information or document provided in connection with the adjudication which the Party supplying it has indicated is to be treated as confidential, except to the extent that disclosure is required by law or is necessary for the purposes of, or in connection with, the adjudication, or the information is already in the public domain.

Adjudicator's Decision

44. Unless otherwise agreed in accordance with paragraph 56.1 or 65.1 the adjudicator shall reach his decision not later than:
 - 44.1 twenty eight days after the date of the Referral as defined in paragraph 27;
 - 44.2 forty two days after the date of the Referral if the Referring Party so consents; or
 - 44.3 such period exceeding twenty eight days after the Referral as the Parties may, after the giving of that notice, agree.
45. Where the adjudicator fails, for any reason, to reach his decision in accordance with paragraph 44:
 - 45.1 either of the Parties to the Dispute may serve a fresh notice in accordance with paragraphs 16 to 18 and shall request an adjudicator to act in accordance with paragraphs 19 to 29; and
 - 45.2 if requested by the new adjudicator the Parties shall supply him with copies of all documents which they had made available to the previous adjudicator.
46. As soon as possible after he has reached a decision, the adjudicator shall deliver a copy of that decision to each of the Parties.
47. The adjudicator shall decide the matters in Dispute and may make a decision on different aspects of the Dispute at different times.
48. The adjudicator may take into account any other matters which the Parties agree should be within the scope of the adjudication or which are matters under the Agreement which he considers are necessarily connected with the Dispute and, in particular, he may:
 - 48.1 open up, review and revise any decision taken or any notice certifying payment given by any person referred to in the Agreement, unless the Agreement states that the decision or notice certifying payment is final and conclusive;
 - 48.2 decide that any of the Parties to the Dispute is liable to make a payment under the Agreement (whether in sterling or some other currency) and, subject to the terms of the Agreement, when that payment is due and the final date for payment.
49. The adjudicator shall provide written reasons for his decision.

Effect of the Decision

50. In his decision, the adjudicator may, if he thinks fit, order either or both of the Parties to comply forthwith with his decision or any part of it. In the absence of any directions by the adjudicator relating to the time for performance of his decision, the Parties shall be required to comply with any decision of the adjudicator immediately on delivery of the decision to the Parties in accordance with paragraph 46.
51. The decision of the adjudicator shall be binding on the Parties, and they shall comply with it, until the Dispute is finally determined by legal proceedings or by agreement between the Parties.
52. The adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses incurred by him and the Parties shall be jointly and severally liable to pay that amount to the adjudicator.
53. Without prejudice to the right of the adjudicator to effect recovery from either Party in accordance with paragraph 52, the adjudicator may by direction determine the apportionment between the parties of liability for his fees and expenses.
54. The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and any employee or agent of the adjudicator shall be similarly protected from liability.

Related Disputes

55. In the event that a Dispute arising under, out of or in connection with this Agreement which in the opinion of **tie** or the Infraco relates to a dispute or difference arising out of or in connection with any agreement associated with the Edinburgh Tram Network between **tie** and a third party or the Infraco and a third party (a "Related Contract") all such disputes or differences being referred to as a "**Related Dispute**", then providing that the Related Contract contains dispute resolution provisions in terms substantially the same as set out in this Schedule Part 9 (*Dispute Resolution Procedure*) (save for necessary changes), **tie** or the Infraco (as the case may be) may by written notice to the other request that the Dispute and the Related Dispute be dealt with together at an appropriate stage of the Dispute Resolution Procedure.

Referral of a Dispute under this Agreement to a Related Adjudicator

56. In the event that a Related Dispute has already been referred to the decision of an adjudicator ("**Related Adjudicator**") in accordance with the provisions of the Related Contract, and **tie** or the Infraco (as the case may be) is of the opinion, acting reasonably, that a Dispute is to be (but has not yet been) referred to adjudication under this Schedule Part 9 (*Dispute Resolution Procedure*), **tie** or the Infraco (as the case may be) may refer the Dispute to the Related Adjudicator. **tie** and the Infraco agree that, without fettering or restricting the adjudicator's power and authority in any way, it is their intention that such adjudicator shall, insofar as is relevant, practicable and appropriate, come to the same conclusion as to the facts and apply the same reasoning and analysis in reaching a decision on the Dispute as the adjudicator's conclusions, reasoning and analysis applied by him as the Related Adjudicator in the Related Dispute. The adjudicator shall:
- 56.1 if practicable, hear the Dispute at the same time as the Related Dispute and shall request such extension of time for producing his decision or award as he may require in order to reach a decision in respect of each of the Dispute and the Related Dispute at the same time. The Parties shall agree to such request for an extension of time, except in the event that the Dispute or the Related Dispute relates to "construction operations", which are not Authorised Works, within the meaning ascribed to that term by the Housing Grants, Construction and Regeneration Act 1996 (if applicable) (unless otherwise agreed by the Parties, all parties to the Related Dispute and the adjudicator);
- 56.2 except in the event that the Dispute or the Related Dispute relates to "construction operations", which are not Authorised Works, within the meaning ascribed to that term by the Housing Grants, Construction and Regeneration Act 1996 (if applicable) (unless otherwise agreed by the Parties, all parties to the Related Dispute and the adjudicator), have power (if so requested by **tie** and the Infraco) to make his decisions or awards in the Dispute and the Related Dispute in such a manner as if the rules applicable in the Court of Session, Scotland as to the joining of one or more defenders or third parties or conjoining actions were applicable to the Parties to the Dispute and the Related Dispute, and to the adjudicator; and
- 56.3 **tie** or the Infraco (as the case may be) shall procure that, as soon as practicable, the other party or parties to the Related Dispute shall give the Infraco or **tie** (as the case may be) copies of the Related Contract, the Referral Notice in the Related Dispute and

any other documentation provided to the adjudicator by any party to the Related Dispute.

tie's or Infraco's request to consolidate a Related Dispute with a Dispute

57. Where a Related Dispute has been referred to adjudication, tie or the Infraco (as the case may be) may by written notice request the adjudicator (copied to the Infraco or tie as the case may be and to the other party to the Related Dispute) to consolidate the Related Dispute with the Dispute with a view to allowing all questions arising out of the Dispute and the Related Dispute to be disposed of in the adjudication. Where tie or the Infraco (as the case may be) request the adjudicator to consolidate the Dispute and Related Dispute then tie or the Infraco (as the case may be) shall (or may procure that the other party to the Related Dispute shall) as soon as practicable, and in any case within fourteen (14) days of the referral of the Dispute to the adjudicator, give to the adjudicator conducting the adjudication under this Agreement and also to the other parties to the Dispute and the Related Dispute the following particulars:

57.1 a copy of the relevant Related Contract;

57.2 a preliminary statement from tie, the Infraco and/or, as the case may be, the other party to the Related Dispute setting out:

57.2.1 the basis and the grounds for consolidation of the Related Dispute and the Dispute;

57.2.2 the cases of the parties to the Related Dispute;

57.2.3 any relief sought by the parties to the Related Dispute; and

57.2.4 a list of any documents served in relation to the Related Dispute.

Any such particulars sent by tie, the Infraco or the other party to the Related Dispute (as the case may be) to the adjudicator shall be sent at the same time to tie, the Infraco and the other party to the Related Dispute (as the case may be.)

58. On receiving the particulars set out in paragraph 57 above, provided that such particulars have been received within fourteen (14) days of the referral of the Dispute to the adjudicator, the adjudicator shall if he considers that the Dispute and the Related Dispute are substantially the same or connected one to the other, immediately request that the parties to the Dispute and the other party to the Related Dispute attend a meeting with the adjudicator with a view to determining whether or not the Dispute and the Related Dispute should be consolidated. If the

Adjudicator and all the relevant parties agree, they may hold a telephone conference call instead of a meeting, and in such event references in paragraphs 58 to 62 to a meeting or to attending a meeting, shall mean a telephone conference call and taking part in such a telephone conference call.

59. **tie** or the Infraco (as the case may be) shall use its reasonable endeavours to procure that an authorised representative or nominee of the other party to the Related Dispute shall attend the meeting with the adjudicator referred to in paragraph 58 above. **tie** and the Infraco each agree to send an authorised representative or nominee to any meeting of this kind under this Agreement or under a Related Contract, which they may be requested to attend.
60. At the meeting referred to in paragraph 58 above, the Party which has not requested the adjudicator to consolidate the Dispute with the Related Dispute shall, as a preliminary matter, either:
- 60.1 confirm to the adjudicator that it accepts the proposed consolidation of the Related Dispute with the Dispute; or
- 60.2 inform the adjudicator that it does not accept the proposed consolidation of the Related Dispute with the Dispute.

Decision to Consolidate

61. Where paragraph 60.1 applies, or if **tie's** authorised representative or nominee or if the Infraco's authorised representative or nominee (as the case may be) does not attend the meeting referred to in paragraph 58 above (having received due notice thereof) the adjudicator shall if he considers that the Dispute and the Related Dispute are substantially the same or connected one to the other immediately issue a decision consolidating the Dispute and the Related Dispute and shall have the authority and the power referred to in paragraph 63 below.
62. Where paragraph 60.2 above applies, or if **tie's** authorised representative or nominee or if the Infraco's authorised representative or nominee (as the case may be) attends the meeting referred to in paragraph 58 above but does not confirm to the adjudicator whether or not **tie** or the Infraco (as the case may be) accepts or does not accept the proposed consolidation of the Related Dispute with the Dispute, the adjudicator shall issue within one (1) Business Day of the meeting referred to in paragraph 58 above his written decision, as to whether or not the Dispute and the Related Dispute are substantially the same or connected. If the adjudicator considers that the Dispute and the Related Dispute are not substantially the same or not connected one to the other, or has failed or is unable to reach a decision within one (1)

Business Day of the meeting referred to in paragraph 58, the Dispute and the Related Dispute shall not be consolidated. If the adjudicator considers that the Dispute and the Related Dispute are substantially the same or connected one to the other the adjudicator shall immediately issue a decision consolidating the Dispute and the Related Dispute and the adjudicator shall have the authority and the power referred to in paragraph 63 below.

63. The adjudicator shall have the authority and power to consolidate the Dispute and the Related Dispute and to direct that all procedural and/or evidential matters arising in both the Dispute and the Related Dispute are dealt with in whatever manner the adjudicator considers shall lead to the fair and expeditious resolution of both the Dispute and the Related Dispute and the parties (including the other party to the Related Dispute) shall thereafter abide by and implement such consolidation and any such direction and any decision of the adjudicator. For the foregoing purposes:

63.1 unless the context otherwise requires, the provisions of the adjudication rules in this Schedule Part 9 shall apply as between **tie** and the Infraco (as the case may be) and the other party to the Related Dispute, as they apply between the Infraco and **tie** in relation to the Dispute; and

63.2 the adjudicator shall have the same authority and powers as if the Related Dispute constituted a dispute or difference between **tie** and the Infraco.

64. In the event that the Related Dispute is consolidated with the Dispute, the adjudicator shall reach a decision on the Dispute and the Related Dispute at the same time and in any event within twenty eight (28) days of the earlier of the referral of the Dispute or the referral of the Related Dispute, or such longer period as is agreed by the parties to the Dispute and the Related Dispute after the date that the Related Dispute has been consolidated with the Dispute. The adjudicator shall be entitled to extend the said period of twenty eight (28) days by up to fourteen (14) days with the consent of the party by whom the Dispute and (where applicable) the Related Dispute were referred.

Referral of a Related Dispute to the Adjudicator

65. In the event that a Dispute has already been referred to the decision of an adjudicator, and **tie** or the Infraco (as the case may be) is of the opinion (acting reasonably) that a Related Dispute is to be (but has not yet been) referred to adjudication, **tie** or the Infraco (as the case may be) may refer the Related Dispute to the adjudicator appointed in relation to the Dispute under this Schedule Part 9 (*Dispute Resolution Procedure*). **tie** and the Infraco agree that, without fettering or restricting the adjudicator's power and authority in any way, it is their intention

that the adjudicator shall, insofar as is relevant, practicable and appropriate, come to the same conclusion as to the facts and apply the same reasoning and analysis in reaching a decision on the Related Dispute as the adjudicator's conclusions, reasoning and analysis applied by him as adjudicator in relation to the Dispute under this Agreement. The adjudicator shall:

- 65.1 if practicable, hear the Related Dispute at the same time as the Dispute and shall request such extension of time for producing his decision or award as he may require in order to reach a decision in respect of each of the Dispute and the Related Dispute at the same time. The Parties shall agree to such request for an extension of time, except in the event that the Dispute or the Related Dispute relates to "construction operations" which are not Authorised Works within the meaning ascribed to that term by the Housing Grants, Construction and Regeneration Act 1996 (if applicable) (unless otherwise agreed by the Parties, all parties to the Related Dispute and the Adjudicator);
- 65.2 except in the event that the Dispute or the Related Dispute relates to "construction operations" which are not Authorised Works within the meaning ascribed to that term by the Housing Grants, Construction and Regeneration Act 1996 (if applicable) (unless otherwise agreed by the Parties, all parties to the Related Dispute and the Adjudicator), have power (if so requested by **tie** and the Infraco) to make his decisions or awards in the Dispute and the Related Dispute in such a manner as if the rules applicable in the Court of Session, Scotland as to the joining of one or more defenders or third parties or conjoining actions were applicable to the Parties to the Dispute and the Related Dispute, and to the adjudicator; and
- 65.3 as soon as practicable, **tie** or the Infraco (as the case may be) shall give to the Infraco or **tie** (as the case may be) copies of the Related Contract, the Referral Notice in the Related Dispute and any other documentation provided to the adjudicator by any party to the Related Dispute.

Consolidation of a Dispute under this Agreement with a Related Dispute

66. In the event that, subject to paragraph 67, an adjudicator under a Related Contract (“**Related Adjudicator**”), who is permitted pursuant to the Related Contract to do so, decides that a Dispute under this Agreement be consolidated with a Related Dispute with which the Related Adjudicator is dealing under the Related Contract, then:

- 66.1 notwithstanding anything in the adjudication rules in this Schedule Part 9, with effect from the time of such decision, the adjudicator shall cease to have authority or

- jurisdiction to determine the Dispute which shall instead be determined by the Related Adjudicator and the appointment of the adjudicator under this Agreement shall cease;
- 66.2 such decision shall be binding on **tie** and the Infraco and both of them shall acknowledge the appointment of the Related Adjudicator as the adjudicator of the Dispute;
- 66.3 **tie** and the Infraco shall be jointly liable with the other party to the relevant Related Contract for the Related Adjudicator's reasonable fees and expenses including those reasonable fees and expenses of any specialist consultant or adviser (excluding legal) appointed by the Related Adjudicator in accordance with the adjudication procedure in the Related Agreement, in respect of the period after the date on which the Dispute is consolidated with the Related Dispute pursuant to a decision of the Related Adjudicator;
- 66.4 without prejudice to the right of the Related Adjudicator to effect recovery from either party in accordance with paragraph 66.3, **tie** and the Infraco agree that the Related Adjudicator may by direction determine the apportionment between the parties of liability for his fees and expenses referred to in paragraph 66.3; and
- 66.5 notwithstanding anything to the contrary a Dispute under this Agreement shall only be consolidated with a Related Dispute, if the Related Adjudicator receives particulars of the Dispute within fourteen (14) days of the referral of the Related Dispute to the Related Adjudicator under the Related Contract.
67. Where the Related Adjudicator receives a request under the Related Contract, that a Dispute under this Agreement be consolidated with a Related Dispute with which he is dealing under the Related Contract, **tie** and the Infraco acknowledge that the Related Adjudicator may immediately request that they, together with the other party to the Related Dispute, attend a meeting with the Related Adjudicator with a view to determining whether or not the Dispute and the Related Dispute should be consolidated. If the Related Adjudicator and all the relevant parties agree, they may hold a telephone conference call instead of a meeting, and in such an event references in paragraphs 67 to 71 to a meeting or to attending a meeting shall mean a telephone conference call and taking part in such a telephone conference call.
68. **tie** and the Infraco each agree to send an authorised representative or nominee to any meeting of this kind under this Agreement or under a Related Agreement, which they may be requested to attend.

69. At the meeting referred to in paragraph 67 above, the Party which has not requested the Related Adjudicator to consolidate the Related Dispute with the Dispute shall, as a preliminary matter, either:
- 69.1 confirm to the Related Adjudicator that it accepts the proposed consolidation of the Dispute with the Related Dispute; or
 - 69.2 inform the Related Adjudicator that it does not accept the proposed consolidation of the Dispute with the Related Dispute.
70. Where paragraph 69.1 applies, or if **tie's** authorised representative or nominee or if the Infraco's authorised representative or nominee (as the case may be) fails to attend the meeting referred to in paragraph 67 above (having received due notice thereof), the Related Adjudicator shall if he considers that the Dispute and the Related Dispute are substantially the same or connected one to the other, immediately issue a decision consolidating the Dispute and the Related Dispute and shall have the authority and the power to consolidate the Dispute and the Related Dispute and to direct that all procedural and/or evidential matters arising in both the Dispute and the Related Dispute are consolidated in whatever manner the Related Adjudicator considers shall lead to the fair and expeditious resolution of both the Dispute and the Related Dispute and the parties (including the party to the Related Dispute) shall thereafter abide by and implement such consolidation and any such direction.
71. Where paragraph 69.2 applies or if **tie's** authorised representative or nominee or if the Infraco's authorised representative or nominee (as the case may be) attends the meeting referred to in paragraph 67 but does not confirm to the Related Adjudicator whether or not that **tie** or the Infraco (as the case may be) accepts or does not accept the proposed consolidation of the Dispute with the Related Dispute, the Related Adjudicator shall within one (1) Business Day of the meeting referred to in paragraph 67 issue his written decision, as to whether or not the Dispute and the Related Dispute are substantially the same or connected. If the Related Adjudicator considers that the Dispute and the Related Dispute are not substantially the same or not connected one to the other, or has failed or is unable to reach a decision within 1 Business Day of the meeting referred in paragraph 67, the Dispute and the Related Dispute shall not be consolidated. If the Related Adjudicator considers that the Related Dispute and the Dispute are substantially the same or connected one to the other, the Related Adjudicator shall immediately issue a decision consolidating the Dispute and the Related Dispute and shall have the authority and the power to consolidate the Dispute and the Related Dispute and to direct that all procedural and/or evidential matters arising in both the Dispute and the Related Dispute are consolidated in whatever manner the Related Adjudicator considers shall lead to

the fair and expeditious resolution of both the Dispute and the Related Dispute and the parties (including the party to the Related Dispute) shall thereafter abide by and implement such consolidation and any such direction.