

EDINBURGH TRAM NETWORK

LIABILITY CAPS

1. The Liability Cap under the Infraco Contract is currently split into liability:

- in relation to performance of the construction and installation activities; and
- liability relating to carrying out of the 10 year Infrastructure Maintenance activities.

Liability of the Infraco to **tie** for the failures of the Tram Supplier and the Tram Maintainer operate as separate sub-caps and liabilities incurred under such sub-caps count towards the overall Infraco Liability Cap.

2. Liability in relation to Construction and Installation Activities

The Infraco's financial liability (that is to say its overall indemnity against claims) to **tie**/CEC in relation to construction activities under the Infraco Contract is capped at 20% of the Construction Contract Price (currently equating to approximately £45 million). This cap would adjust to reflect any agreed variations and also the value of the Phase 1b option.

3. Liability in relation to Infrastructure Maintenance Activities

The Infraco's financial liability to **tie** in respect of carrying out Infrastructure Maintenance, following issue of the Reliability Certificate (9 to 12 months after Service Commencement), is capped at £3.5 million. Prior to issue of the Reliability Certificate, the Infraco's liability in respect of Infrastructure Maintenance is capped at 20% of the Construction Contract Price.

Post Reliability Certificate, the Infrastructure Maintenance Liability Cap will be reduced by any performance payment deductions made against the Infraco by **tie**.

4. Inclusions within overall Liability Cap

The Liability Cap includes any payments made to **tie** under the Parent Company Guarantees (see the Parent Company Guarantee commentary for further details). Also included within the overall Liability Cap are any payments made to CEC, Network Rail, BAA, TEL and any other third parties under collateral warranties provided by Infraco.

Exclusions from the overall contractual Liability Cap are:

- any proceeds from the Retention Bond and the Performance Bond (see Bond paper);
- any recovery under the OCIP Insurance;
- any recovery under the Insurances carried by the Infraco; and
- liabilities which would have been covered by insurance proceeds, but for the application of deductibles.

5. Operation of sub-caps

(a) Tram Supply

The cap on the Infraco's financial liability arising solely from a failure of the Tram Supplier to perform is 20% of the Tram Price (approximately £10,000,000). This cap excludes the amounts recovered from bonds or insurance proceeds.

(b) Tram Maintenance

The cap on Infraco's liability in relation to a Tram Maintainer default under the Tram Maintenance Agreement is 18.5% of the total performance payment (approximately £11,100,000) in respect of the Tram Maintenance Services or 22.5% of the Tram Maintenance contract price (equalling approximately £2,000,000) in any one year. This also excludes the proceeds of any performance security held by **tie** in respect of the non-compliance of the Trams, the Spare Parts Pool or Technical Records return condition.

Recourse by **tie** within these sub-caps counts towards the overall Liability Cap in the Infraco Contract.

6. SDS Provider Cap on liability for delay

It is currently proposed that the SDS Provider's overall liability in respect of causing delay by late delivery of consented design to Infraco would be dealt with as a liquidated amount under the novated SDS Contract. BBS would suffer application of LADs for delay under the Infraco Contract but would be held harmless for its own justifiable prolongation Costs.

The SDS Provider's indemnity is unlimited in amount but capped at £10,000,000 for each and every claim.