

Appendix A Roley Contractual Risk Matrix

ROLEY
 INFRACO CONTRACT
 EDINBURGH TRAM NETWORK
 ALLOCATION OF CONTRACTUAL RISKS IN THE INFRACO CONTRACT
 [05] October 2007
 (Based on 8 March 2007 Version of the Infraco Contract as negotiated by tie)

Scoop have this as a Public Sector Risk
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 This does not appear on Scoop's Matrix
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NOTE: Impacts Are Post Mitigation

Risk :	Allocation			Impact	Mitigations			Risk Allocation - £	Tie comments
	Public Sector	Private Sector	Shared		OCIP	Other Insurances	Other Mitigations		
General Obligations Clauses									
[2.2] Extension of Term - Failure to serve notice to propose extension no later than 180 days prior to expiry date	✓			Not a risk, tie can extend term of maintenance.					This is as drafted, although bidder has increase time period from 90 to 180 days.
[3.5] Termination due to failure to satisfy a CP within 3 months of Effective Date which tie does not waive NOTE: Roley has now accepted the indemnity provision remains live on termination under this Clause [e-mail dated 25/09/2007 from Ian Laing refers]			✓	Prob: Remote - 10% Impact - Potentially Black Flag			Costs recovered from Infraco up to the cap under Clause 77. tie contract management will obtain CP document at contract award.	N/A	Costs recovered from Infraco up to the cap. Possible need to re-procure. In practice we would revert to reserve bidder. There would be a residual risk of delay to programme and damage to reputation. This is of a very low probability given the financial penalty to Infraco. Risk Id 1001
[4.4][1] <u>Discrepancies, errors or omissions in, or between the Infraco Proposals and, the Employers Requirements</u>		✓							
[4.5][2] <u>Failure to bring discrepancies or requirements for further information in relation to documents to the attention of tie's Representative NOTE: Time limit to raise issue remains - to be agreed</u>		✓							
[5] Failure to adequately inspect the Site and to take due and proper account of the risks listed below in carrying out the Infraco Works NOTE: This is qualified by reference to inspection being only superficial and not involving any intrusive surveys.		✓							See clause 22
[5.1.1][3] <u>the ground conditions on the Site NOTE: tie accepts risk of unforeseeable ground conditions not apparent from ITN.</u>		✓	✓	Prob: Possible - 50% Impact: Catastrophic - £2m	✓				See comments on clause 22. Note:- Where ground conditions causes physical damage to the works this would be covered by OCIP and any damage to contractors plant and equipment covers damage to their plant and resulting idol time rates is covered by contractor's insurances
[5.1.2] all relevant safety requirements and environmental matters		✓			✓	✓			OCIP overs legal liability to third parties for physical injury or damage. Covers accidental pollution. Excludes clean-up costs and gradual pollution. Contractors' Employers Liability covers injury to employees.
[5.1.3] the form and nature of the Site		✓							
[5.1.4] the nature of the materials to be excavated		✓							
[5.1.5] the extent and nature and difficulty of the work and materials necessary for the completion of the Infraco Works.		✓							
[5.1.6] ^[4] the quality of any existing structures which will form part of, be adjacent to or be associated with the ETN ^[5]		✓			✓				OCIP covers physical damage to existing structures except if caused by faults or defects known by an insured or ought to have been known, that existed at the time of policy commencement
[5.1.7] injury or damage to property adjacent to the Site and to occupiers of such property		✓			✓				OCIP covers legal liability for physical damage or injury to third parties, subject to no breaches of policy terms and conditions
[5.1.8] interference from parties other than tie.		✓							
[5.1.9] the precautions, times and methods of working necessary to comply with the Code of Construction Practice and Code of Maintenance Practice and, in accordance with Good Industry Practice to minimise and nuisance or interference		✓			✓				OCIP covers legal liability for physical damage or injury to third parties and liability for accidental nuisance, subject to no breaches of policy terms and conditions
[5.1.10] use by third parties of land being part of or next to ETN. NOTE: not accepted at present by Roley.		✓			✓				OCIP covers legal liability for physical damage or injury to third parties, subject to no breaches of policy terms and conditions, for incidents occurring on the contract site.
[5.1.11] means of communication with and restrictions of access to the Site		✓							
[5.1.12] accommodation required by Infraco		✓				✓			Site accommodation is insured for physical damage by the main contractors
[5.1.13] generally to obtain all necessary information as to risks, contingencies and other circumstances influencing or affecting the Infraco Works		✓							
[6.3] <u>Failure to cooperate in order to facilitate carrying out the Infraco Works[6]</u>			✓	See tie comments			See tie comments		Relates to project partnering and mutual co-operation. No material risk provided tie acts reasonably
[6.3.1] Failure to approach all Permitted Variations on a collaborative and Open Book Basis			✓	See tie comments			See tie comments		Relates to project partnering and mutual co-operation. No material risk provided tie acts reasonably
[6.3.2] Failure to use reasonable endeavours to avoid unnecessary complaints, disputes and claims against the other Party			✓	See tie comments			See tie comments		Relates to project partnering and mutual co-operation. No material risk provided tie acts reasonably
[6.3.3] Failure to comply with Dispute Resolution Procedure in relation to any such complaints, disputes and claims with or against the other Party			✓	See tie comments			See tie comments		Relates to project partnering and mutual co-operation. No material risk provided tie acts reasonably
[6.3.4] Interference with the rights of the other Party in performing its obligations under the Infraco Contract, or in any other way hindering or preventing the other Party from performing those obligations or from enjoying the benefits of its rights			✓	See tie comments			See tie comments		Relates to project partnering and mutual co-operation. No material risk provided tie acts reasonably
[6.3.5] Failure to take reasonable steps to mitigate any costs, unnecessary acts, foreseeable losses and liabilities of the other Party which are likely to arise out of any failure by the non complying party to take the steps listed in Cl. 6.3.1 to 6.3.4 above			✓	See tie comments			See tie comments		Relates to project partnering and mutual co-operation. No material risk provided tie acts reasonably
[6.3.6] Failure to take reasonable steps to manage, minimise and mitigate all costs			✓	See tie comments			See tie comments		Relates to project partnering and mutual co-operation. No material risk provided tie acts reasonably
[6.8] Failure to procure the attendance of any of the Infraco Parties as required by tie at quarterly meetings		✓							
[7.1] Failure to perform the Infraco Works fully and faithfully in accordance with the Infraco Contract		✓							

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Risk :	Allocation			Impact	Mitigations			Risk Allocation - £	Tie comments
	Public Sector	Private Sector	Shared		OCIP	Other Insurances	Other Mitigations		
Failure to carry out the works in accordance with:									
• [7.2] a reasonable level of professional skill, care and diligence to be expected of a properly qualified and competent professional contractor experienced in carrying out works and services of a similar nature to the Infraco Works		✓							
• [7.3.1] the Infraco Contract		✓							
• [7.3.2] enabling the ETN to be designed, constructed, installed, tested and commissioned, and thereafter operated and maintained		✓							
• [7.3.3] the Infraco's quality management system and plans.		✓							
• [7.3.4] the Employer's Requirements		✓							
• [7.3.5] the Infraco's Proposals		✓							
• [7.3.6] tie and CEC policies		✓							
• [7.3.7] the Code of Construction Practice		✓							
• [7.3.8] the Code of Maintenance Practice		✓							
• [7.3.9] the Tram Legislation		✓							
• [7.3.10] applicable Laws, Land Consents and Consents		✓							
• [7.3.11] using reasonably practicable means to ensure impacts are no worse than residual impacts as identified in the Environmental Statements		✓							
• [7.3.12] environmental regulations and requirements		✓							
• [7.3.13] Good Industry Practice		✓							
• [7.3.14] the requirement to ensure that the design of the ETN is buildable		✓							
• [7.3.15] the requirement to provide assistance to tie in ensuring best value		✓							
• [7.3.16] the requirement not to wilfully detract from image of tie, TEL, CEC, the Scottish Ministers, Transport Scotland or the ETN		✓							
• [7.3.17] OGC's "Excellence in Construction" initiative		✓							
• [7.3.18] the requirement to ensure sustainability of the ETN in relation to energy consumption and the supply of materials from sustainable resources		✓							
• [7.3.19] requirement not to carry out works in a manner likely to be injurious to persons or property and where liability results from Infraco negligence or breach of the Infraco Works NOTE: This does not encompass injurious affection caused by non-compliance with Law.		✓							
• [7.3.20] requirement to use Key Personnel		✓							
[7.5.1] Failure to use reasonable endeavours to maximise construction productivity by reference to international best practice		✓							
[7.5.2] Failure to use reasonable endeavours to minimise disruption to the city of Edinburgh		✓							
[7.5.3] Failure to use reasonable endeavours to maintain safety and minimise the potential for accidents and safeguards the Infraco Works		✓			✓	✓			OCIP covers damage to the works and liability to third parties for physical damage or injury, subject to no braeches of the policy terms and conditions. Employer's Liability purchased by contractors will cover injury to employees. Insurances does not cover fines due to breaches of legislation.
[7.5.4] Failure to use reasonable endeavours to safeguard the efficiency in the obtaining of Consents		✓							
[7.5.5] Failure to use reasonable endeavours to minimise costs		✓							
[7.6] Failure to keep itself fully informed about current professional and technical standards and about all matters relating to, or which might have a bearing on, the Infraco Works.		✓				✓			Contractor's Professional Indemnity covers compensation for their legal liability due to acts errors or omissions following breaches of professional activities or duties.
[7.8] Failure to fully understand the scope and extent of requirements and sufficiency of information to complete the Infraco Works		✓							
[7.9-7.10][7] Content of Background Information supplied by tie or any of its stakeholders			✓	Prob: Remote - 10% Impact: Moderate - £500k			Provision of design becomes an Infraco risk post contract under the design and build arrangement. Onus will be on Infraco to liaise with third parties. Contractor to provide an interface management tracker to minimise risk of lack of third party consultation impinging on works. tie project management to monitor Infraco's management of interface with other parties.		NOTE: Background information to be reviewed by Infraco during preferred bidder stage - not included in QRA at this stage





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	Public Sector	Private Sector	Shared		OCIP	Other Insurances	Other Mitigations		
[7.11] Failure to liaise with any party, as reasonably required, to produce information required so that the Infraco Works can be progressed properly, according to Programme and in accordance with the Infraco Contract			✓	Prob: Remote - 10% Impact: Moderate - £500k			Provision of design becomes an Infraco risk post contract under the design and build arrangement. Onus will be on Infraco to liaise with third parties. Contractor to provide an interface management tracker to minimise risk of lack of third party consultation impinging on works. tie project management to monitor Infraco's management of interface with other parties.	65.36	Risk Id 1003
[7.12] Failure to liaise with regard to material types, methods and programmes, cost effectiveness and temporary works in respect of any Permitted Variation		✓							
[7.13] Failure to provide all labour, goods, materials, Infraco's Equipment, Temporary Works, transport to and from the Site and everything else of a temporary or permanent nature required in respect of the Infraco Works which is either required in the infract Contract or could have been reasonably foreseen by an experienced contractor		✓							
[7.14] Failure to ensure the adequacy, stability and safety of all site operations and methods of construction		✓			✓	✓			OCIP covers damage to the works and liability to third parties for physical damage or injury, subject to no breaches of policy terms and conditions. Employer's Liability purchased by contractors will cover injury to employees.
[7.15] Use or specification of any materials which are known to be deleterious or contravene any relevant standard or code of practice (including Over Arup guidance or Good Industry Practice)		✓							
[7.16] Use of or installation on the Edinburgh Tram Network of materials which are not in accordance with the Employer's Requirements on the date of such use or installation		✓							
[7.17] Failure to notify tie of any ground, geophysical or other surveys which the Infraco intends to carry out		✓							
[7.18] Failure to notify tie of any Abortive Work		✓							
[26.17] Failure to comply with all regulatory requirements and tie's Drug and Alcohol Policy		✓			✓	✓			In the event that an individual causes damage to the works and liability to third parties for physical damage or injury as a result of their use of drugs and alcohol OCIP covers such damage and liabilities, subject to no breaches of the policy terms and conditions. Employer's Liability purchased by contractors will cover injury to employees. Insurances does not cover fines due to breaches of legislation.
System Integration[8]									
Failure to implement:									
• [8.1.1] work to define sub-system performance and demonstrate that the System Availability Target can be met		✓							
• [8.1.2] management of technical interfaces including system wide issues such as electro-magnetic compatibility and stray current protection, noise, vibration and wheel/rail interface		✓							
• [8.1.3] test management, including the preparation of method statements, test scripts, the setting of pass/fail criteria, and analysis		✓							
• [8.1.4] alignment of operations and maintenance procedures		✓							
• [8.1.5] system activation		✓							
• [8.1.6] safety assurances and the Case for Safety		✓							
• [8.1.7] a requirements traceability matrix		✓							
[8.2] Failure to ensure that Trams and engineers works vehicles are fully integrated with the Infraco Works		✓							
[8.3] Failure to carry out all of the system integration activities described in the Employer's Requirements and Infraco's Proposals		✓							
[8.4] Failure to liaise with the Operator and tie in respect of system operation and related design, Systems Acceptance Tests and operational defects		✓							
[8.5] Failure to ensure that design is compatible with system integration throughout the Term		✓							
[8.6] Failure to manage configuration control of the ETN		✓							

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Infrastructure and Equipment									
[9.1] Failure to pay the Infraco resulting in the title in all materials, goods and equipment not transferring to CEC	✓			Prob: Improbable - 5% Impact: Potential Black Flag			Project financial reporting will provide CEC with advance notice of payment drawdown requirement. CEC to effect treasury management to support the payment requirements.	N/A	Risk Id 1004
[9.2/9.3/9.4] Failure to clearly identify project assets as the property of CEC, whether on sit or off site		✓							
[9.6.1] Failure of tie to issue the Certificate of Tram Commissioning (due to tie default or due to tests not having been passed) resulting in title in the Trams not transferring to CEC			✓	Prob: Improbable - 5% Impact: Potential Black Flag			See tie comments. Tie project management will ensure that tie's actions are discharged timeously so as not to disrupt tram testing and commissioning.	N/A	Risk is that title does not pass after the project has paid for all or part of the tram vehicle because Infraco becomes insolvent and the tram supplier is prevented from fulfilling delivery obligations by liquidation/administration. This may not be an issue as may be resolved in TSA. Risk Id 1005
[9.7] Compatibility of all infrastructure, equipment and systems and fitness for purpose (i.e. compliance with the Employer's Requirements), excluding items free issued to the Infraco by tie		✓							
[9.8/9.9] Euro Compliance of equipment, excluding items free issued to the Infraco by tie		✓							
[9.10] Failure to pay the Infraco resulting in the title in all materials, goods and equipment not transferring to CEC	✓			N/A			N/A		A technical risk only as Infraco control availability of trams to deliver works
Bonds, Guarantees and Collateral Warranties									
[74.1] Failure to provide an adjudication performance bond for the required amount		✓							
[74.3] Failure to provide a retention and handback bond for the required amount		✓							
[74.5][9] Downgrading of bond surety to A- rating or below by Standard & Poor's, subject to availability of sureties with such ratings.		✓							
[74.6][10] Failure to provide an Infraco parent company guarantee		✓							
[74.7][11] Failure to provide an Infraco collateral warranty in favour of CEC and Network Rail.		✓							
Deliverables									
[10.1][12] Failure to prepare Deliverables in accordance with the Infraco Contract and Programme		✓							
[10.2] Failure to submit any Deliverables associated with any Permitted Variations to tie Representative for review pursuant to the Review Procedure		✓							
[10.3] Failure to allow tie's Representative reasonable opportunity to review any Deliverable at any stage of development		✓							
[10.4/10.6] Failure to provide Deliverables in format required for tie extranet and in the numbers required by tie		✓							
[10.5] Failure to prepare a Submittal Programme which meets the Programme		✓							
[10.6/10.7] Failure to comply with the Submittal Programme timescales			✓	Prob: Possible - 50% Impact: Minor - £50k			Mitigation is to agree a response plan between Infraco, tie and external parties that can be used to manage away this risk. Clause 10 requires Infraco to issue a reminder to tie. Furthermore failure to respond is deemed to be a "no objection" thereby not impacting upon the programme.	32.68	Risk is that tie do not review submissions within prescribed timescales and lose the ability to mitigate failures and any deficiencies in the contractor's submissions. Another risk is that tie could lose the ability to manage the interfaces with third parties under tie responsibility. Risk Id 1006
[10.7] Introduction of alternative Submittal Programme where tie cannot comply with the original programme (not arising from Infraco default)	✓			Prob: Remote - 10% Impact: Moderate - £500k			tie would have early warning of inability to comply and could resource accordingly. Alternative Submittal Programme is not compulsory therefore tie do not have to respond.	65.36	Risk 1007
[10.8] Failure to give due consideration to tie or tie's Representative at a meeting called by tie or tie's Representative to discuss the development of a Deliverable		✓							
[10.9][13] Amendment to a Deliverable where such Deliverable does not meet the requirements of the Infraco Contract		✓							
[10.9][14] Amendment to a Deliverable where such Deliverable does not meet the requirements of any "Approval Bodies"	✓			Prob: Remote 10% Impact: Moderate £500k			tie/CEC to ensure that approval bodies do not gain 'betterment' without appropriate funding contributions		Note: this only extends to additional costs resulting from betterment
[10.12/10.13] Risks from conflicts, ambiguities, discrepancies, errors or omissions in or between Deliverables		✓							
[54.4] Failure to provide Technical Records in a format reasonably specified by tie		✓							
[54.5] Maintenance, security, bugs etc in relation to the Infraco's computer systems and equipment		✓							

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Novation and Other Key Interfaces[15]									
[11.1] Failure to execute the novation agreement by the SDS Provider or the Infraco		✓							
[11.1] Failure of tie to create the novation agreement – risk is pre-award in that Infraco refuses to accept the novation of SDS.	✓			Prob: Improbable - 5% Impact - Black Flag			tie have developed the Facilitated Negotiations activity prior to contract award to deal with impediments to resolution. Under the Preferred Bidder Agreement award is conditional on Infraco accepting both SDS and Tramco novation.	N/A	Risk Id 1008
[11.2.1] Failure of the Infraco to procure a collateral warranty from the SDS provider		✓							
[11.4] Management of the performance of the SDS Services and liability for them		✓							
[11.5] Amendment of the SDS Agreement without the consent of tie		✓							
[11.6] Failure to procure the attendance of the SDS Provider at any meeting in relation to the Infraco Works		✓							
[11.7] Failure to procure services required from the SDS Provider following a request from tie		✓							
[11.8][17] Termination of the SDS Agreement without the consent of tie.		✓							
[11.9] ^[18] Failure, if required by tie, on termination or expiry of the Infraco Contract to novate, assign or otherwise transfer the Tram Supply Agreement to tie, the Operator, the Scottish Ministers, TEL, CEC, Transport Scotland or their successors with no worse financial standing than tie or to any other person whose obligations are unconditionally guaranteed under the Tram Supply Agreement by such a person ^[19]		✓							
[12.1] Failure to enter into a novation agreement with tie and the Tram Supplier. NOTE: Subject to due diligence by Roley on final TSA.		✓							
[12.2] Failure to procure that the Tram Supplier enters into a collateral warranty in favour of tie		✓							
[12.3] Failure to procure that the Tram Supplier carries out and completes the Tram Supply Obligations in accordance with the Tram Supply Agreement		✓							
[12.4] Management of the performance of the Tram Supply Obligations and liability for them		✓							
[12.5] Making amendment to the Tram Supply Agreement (including the Tram Supply Obligations) without the prior approval of tie		✓							
[12.6] Failure to procure the attendance of the Tram Supplier at any meeting in relation to the Infraco Works		✓							
[12.7] Failure to procure supply of additional Trams, spare parts and services following a request from tie		✓							
[12.8] ^[20] Determination of the appointment of the Tram Supplier without the prior written approval of tie ^[21]		✓							
[12.9][22] Failure, if required by tie, on termination or expiry of the Infraco Contract to novate, assign or otherwise transfer the Tram Supply Agreement to tie, the Operator, the Scottish Ministers, TEL, CEC, Transport Scotland or their successors with no worse financial standing than tie or to any other person whose obligations are unconditionally guaranteed under the Tram Supply Agreement by such a person		✓							
[13.1] Failure to enter into a novation agreement with tie and the Tram Maintainer		✓							
[13.2] Failure to procure that the Tram Maintainer enters into a collateral warranty in favour of tie		✓							
[13.3] Failure to procure that the Tram Maintainer carries out and completes the Tram Maintenance Services in accordance with the Tram Maintenance Agreement		✓							
[13.4] Management of the performance of the Tram Maintenance Services and liability for them		✓							
[13.5] Amendment of the Tram Maintenance Agreement without the prior written approval of tie		✓							
[13.6] Failure to procure the attendance of the Tram Maintainer at any meeting in relation to the Infraco Works		✓							
[13.7] Failure to procure that the Tram Maintainer shall supply any additional spare parts and/or perform any additional services which are required by tie in respect of the ETN		✓							
[13.8][23] Determination of the appointment of the Tram Maintainer without the prior written approval of tie		✓							
[13.9][24] Failure, if required by tie, on termination or expiry of the Infraco Contract to novate, assign or otherwise transfer the Tram Supply Agreement to tie, the Operator, the Scottish Ministers, TEL, CEC, Transport Scotland or their successors with no worse financial standing than tie or to any other person whose obligations are unconditionally guaranteed under the Tram Supply Agreement by such a person		✓							

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[14.1] Failure to enter into a sub-contract with the Infrastructure Maintainer		✓							
[14.2] Failure to procure that the Infrastructure Maintainer enters into a collateral warranty in favour of tie		✓							
[14.3] Failure to procure that the Infrastructure Maintainer carries out and completes the Infrastructure Maintenance Services		✓							
[14.4] Management of the performance of the Infrastructure Maintenance Services and liability for them		✓							
[14.5] Amendment of the Infrastructure Maintenance Agreement (including the Infrastructure Maintenance Services) without the prior written approval of tie		✓							
[14.6] Failure to procure the attendance of the Infrastructure Maintainer at any meeting in relation to the Infraco Works		✓							
[14.7] Failure to procure that the Infrastructure Maintainer shall perform any additional services which are required by tie in respect of the ETN		✓							
[14.8][25] Determination of the appointment of the Infrastructure Maintainer without the prior written approval of tie		✓							
[14.9][26] Failure, if required by tie, on termination or expiry of the Infraco Contract to novate, assign or otherwise transfer the Tram Supply Agreement to tie, the Operator, the Scottish Ministers, TEL, CEC, Transport Scotland or their successors with no worse financial standing than tie or to any other person whose obligations are unconditionally guaranteed under the Tram Supply Agreement by such a person		✓							
[15.1] Risks arising through the Roads Demarcation Agreement - The RDA is an agreement which covers all roads access and maintenance requirements during the Infraco Works			✓	N/A			Mitigated by inclusion of RDA responsibilities matrix in Employer's Requirements so that Infraco are clear on and accept their responsibilities. RDA to be finalised and included in contract (significant CEC input required). Agree on street work methodology and ensure handback responsibilities are clear.		To be finally assessed on completion of RDA. This is a maintenance issue therefore risk not included in Project Risk Register. Note: RDA to be finalised in Preferred Bidder period
[16.2] Risks arising through the Asset Protection Agreement - The APA is a Network Rail required agreement to ensure that any network rail assets are properly protected from damage during the Infraco Works			✓	N/A			Finalise APA and include in contract prior to award. Apply effective project management to ensure Network Rail/Infraco comply.		To be finally assessed on conclusion of APA negotiations with Network Rail. NOTE: APA to be finalised in Preferred Bidder period
Operator Interface									
[17.2/17.6][29] Occurrence and costs to the Infraco of an Operator Event which the Infraco has not materially contributed to, and has suffered a material adverse impact	✓			Prob: Possible - 50% Impact - Maintenance and Operations	✓		In the circumstances where the operator causes a delay costs recovered from operator under the DPOFA up to £10m. Mitigation: Manage the operator's interface with Infraco to avoid culpable delay.		OCIP DSU covers an accumulation of loss of revenue to tie and TEL up to £24m over 2 years following "insured" events only, subject to a 60 day excess.
[17.3/17.4/17.7] Failure to mitigate (at reasonable inconvenience and cost), notify tie of or maintain reports of an Operator Event or matters which may precede an Operator Event		✓							
[17.8][30] Failure to, from the date of the Agreement, take into account comments of the Operator when refining Design and failure to deliver Infraco comments on functional and maintainability issues to tie and the operator		✓							
[17.9][31] Obstruction of the Operator in respect the Operator Maintenance Plan and Maintenance Services		✓							
[17.9][32] Obstruction by the Operator of the Infraco in respect of the Maintenance Services	✓			Prob: Remote - 10% Impact - Maintenance and Operations					Not in QRA - maintenance phase risk
[17.10] Failure to act upon Operator instructions		✓							
[17.11-13] Failure to notify tie and the operator of requirements for Operator Maintenance and failure to co-operate in the planning and execution of any Operator Maintenance, Maintenance Services and any planned or unplanned works or activities		✓							
[17.16] DPOFA Changes	✓			No risk			tie to effectively project manage interface between DPOFA and Infraco		
[17.17] Failure to provide DPOFA Change Response when required by tie		✓							
[17.18.1.1/51.2] Failure to liaise with HMRI and the emergency services		✓							
[17.18.1.2] Failure to develop and implement the Infraco Safety Management System		✓							
[17.20/17.21] Failure to complete safety and service readiness verification each morning to the satisfaction of the Operator		✓							
[17.22][33] Failure to liaise effectively with the Operator in the co-ordination of health and safety issues at the Depot		✓							

ROLEY
INFRACO CONTRACT
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[05] October 2007
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Risk :	Allocation			Impact	Mitigations			Risk Allocation - £	Tie comments
	Public Sector	Private Sector	Shared		OCIP	Other Insurances	Other Mitigations		
[17.23] Failure to give the Operator and tie a minimum of one month's notice of any planned lifecycle maintenance forming part of the Maintenance Services to be carried out on any part of the ETN		✓							
[17.24] Failure to provide tie and the Operator with a combined maintenance plan not less than 6 months prior to the Planned Service Commencement Date, subject to supply to the Infraco of the Operator Maintenance Plan [9] months prior to the Planned Service Commencement Date			✓	Prob: Remote - 20% Impact - Operations and Maintenance			Length of delay would depend on circumstances. Furthermore, there is some float in the 6 month period.		
[17.25/17.26][34] Failure to provide technical advice, information and access to the Operator.		✓							
[17.28] Damage to the Infraco Works caused by the Operator or tie	✓			Prob: Remote - 20% Impact - Operations and Maintenance	✓				Loss and damage to the works covered by OCIP CAR policy, subject to no breaches of the policy. Where operator culpable for damage, OCIP excess recovered from operator.
[17.29] Failure to work closely and effectively with the Operator to complete the System Acceptance Tests and related obligations on testing and commissioning		✓			✓	✓			This could give rise to a claim for failure to ensure a safe place and system of work. Claims for bodily injury may be covered under OCIP or Employee's Liability Insurance
[17.31] Failure of the Infraco to work collaboratively with the Operator and failure of the Operator to work collaboratively with the Infraco to:			✓				Operators required to collaborate. Costs recovered from Operator under Operator Agreement..		NOTE: mutual obligation for tie to ensure Operator co-operation. Not in QRA as is maintenance phase risk
• [17.31.1] maximise productivity during the Infraco Works and minimise disruption for the public and third parties			✓						
• [17.31.2] ensure the delivery of complete system integration			✓						
• [17.31.4] minimise and give the best advance notice of interruption to Transport Services			✓						
• [17.31.5] not hinder proper performance of the Project Development Services, Project Operations and obligations under the Infraco Contract			✓						
• [17.31.6] support adherence to timetables and the Programme			✓						
• [17.31.7] report promptly any proposed change permitted under the DPOFA or the Infraco Contract and related mitigation			✓						
• [17.31.8] use reasonable endeavours to minimise interface disputes			✓						
Land Issues and Consents[35]									
[18.1/18.20] ^[36] Failure to provide licence to enter land and the necessary Land Consents ^[37]	✓			Prob: Improbable - 5% Impact: Moderate - £500k			Obtain confirmation from Infracos that land secured is adequate to deliver the works. Release land to Infracos in accordance with agreed schedule. Ensure lease for NR land is in place prior to commencement of Infraco works	Risk Id 279 - Risk Allocation £1345k. Allocated to clauses 18, 19 and 20	Consequences: Delay to progress of works with consequential additional project and Infraco costs.
[18.2] Encroachment on land outside of the Permanent Land and Temporary Sites		✓							
[18.3/18.6/18.17] Breach of a Land Consent or use of Temporary Sites outside that specified in the Acts		✓							
[18.4] Failure to give tie not less than 40 days' notice where access is required to any Temporary Site for the purposes of carrying out the Infraco Works		✓							
[18.5/18.13] Failure to provide access to the Temporary Sites following 40 days' notice having been given by the Infraco	✓			Prob: Improbable - 1% Impact: Minor - £100k			Infraco to confirm requirement for temporary sites.	As above	Consequences: Delay to progress of works with consequential additional project and Infraco costs. Insignificant risk therefore not included in QRA.
[18.7/18.8][38] Failure to minimise period of possession of Temporary Site, or remain in possession of such Temporary Site after 28 days (3 months where a Site Office has been established) following the completion of the Infraco Works to such Temporary Site		✓							
[18.9] Failure to give notice of the vacation of a Temporary Site		✓							
[18.10] Failure to remove all temporary works from a Temporary Site and restore the land to the reasonable satisfaction of the land owner		✓							
[18.10.1] Demolition of a building or any part thereof without the consent of tie		✓							
[18.10.2] Failure to provide tie with sufficient evidence (including a detailed record of the condition of the land both before and after the occupation of the Temporary Site) to show that restoration obligations have been complied with		✓							
[18.12] Failure to provide notice of temporary possession for maintenance purposes, excluding where any Building Fixing Agreement contains a right for the Infraco to enter onto any land		✓							
[18.13] Temporary possession for maintenance purposes in breach of the Acts	✓			Prob: Improbable - 5% Impact - Moderate £100k (Maintenance Stage)				As above	Not in QRA as is maintenance risk
[18.14.1] requirement to be less than 20m away from Infraco Works		✓							
[18.14.2] reasonable requirements in connection with maintenance		✓							
[18.14.3] requirement to avoid possession of houses or gardens		✓							
[18.14.3] requirement to avoid possession of occupied buildings		✓							





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Risk :	Allocation			Impact	Mitigations			Risk Allocation - £	Tie comments
	Public Sector	Private Sector	Shared		OCIP	Other Insurances	Other Mitigations		
[18.15/18.21] Provision of land and/or Land Consents which are required by the Infraco and are outside the Permanent and Temporary Land		✓							Not a material difference between bidders
[18.16] Failure to use reasonable endeavours to provide assistance to tie in the provision and amendment of Land Consents		✓							
[18.19] Breach of Schedule 13 (Third Party Agreements)		✓							
[19.1][39] Failure to obtain, maintain and implement all Consents which may be required to carry out and complete the Infraco Works			✓	Prob: Remote - 10% Impact: Moderate - £200k				As above	
[19.2] Failure to provide copies of Consents to either Party's Representative			✓	See 19.1 Above				As above	
[19.4] Cost of obtaining and maintaining in effect the Traffic Regulation Orders	✓			Prob: Improbable - 5% Impact: Black Flag			This is a tie budget cost. There is 789k in the budget allocated for legal support (D&W) for the TRO process. The strategy for this process is outlined in K Rimmer's TPB papers which outline the plan for delivering TROs.		Consequences: Inability to deliver Tram network in to operation.
[19.5] Failure to provide reasonable assistance to tie in obtaining and maintaining in effect the Traffic Regulation Orders		✓							
[19.6] Failure to update the Consents Programme by each Reporting Period End Date and to obtain any new Consents			✓	See 19.1 Above				As above	
[19.9] Failure to give all notices and pay all fees required to be given or paid by Law in relation to the Infraco Works			✓	See 19.1 Above				As above	
[19.10-19.12] ^[40] Failure to comply with Special Requirements of any Approval Bodies affected by the Infraco Works, provided tie has notified the Infraco of these ^[41]			✓	See 19.1 Above				As above	
[20.1] ^[42] Failure to submit the Proposals ^[43] to tie at least 6 months prior to the date on which the Infraco proposes to install, maintain, modify or replace any relevant supporting infrastructure and to obtain tie's consent to the Proposals		✓							
[20.1.2] Failure to submit the necessary applications and obtain necessary Consents		✓							
[20.2/20.4] Failure to submit revised proposals		✓							
[20.3] tie to obtain Consents and Building Fixing Agreements	✓							See tie comments	No material risk as alternative to building fixings by substitution of poles is in place. Decision will be made well before work required on site.
[20.5] Where a building fixing agreement is to be used, securing the consent of the Heritable Proprietor and any other relevant party to allow the Infraco to carry out a survey and securing the agreement of the Heritable Proprietor to allow the setting of such building fixings (both at Infraco cost)		✓							This is currently the responsibility of SDS and will become Infraco's responsibility through novation
[20.6] Failure to inform the Infraco of failure to obtain the consent of the relevant Heritable Proprietor	✓			Prob: Improbable - 3% Impact: Moderate - 4 week delay			Most of these will be confirmed prior to award, remainder will be prior to the physical works to the OLE	As above	
[20.7] Where necessary due to the Heritable Proprietor withholding its consent to building fixings, the cost of the procedure of application to the sheriff pursuant to the Acts or submittal of alternative plans		✓							
[20.8] Failure by tie to respond within 10 days stating its preferred method for supporting the OLE	✓			Prob: Improbable - 3% Impact: Moderate - 4 week delay			Most of these will be confirmed prior to award, remainder will be prior to the physical works to the OLE	As above	
[20.9] Failure to procure that CEC uses all reasonable endeavours to assist the Infraco in the procedure for application to the sheriff pursuant to the Acts ^[46]	✓			See Other Mitigation			Although CEC to action, this will be done at Infraco's cost.	As above	
[20.9.1] Rejection of application by sheriff, revised proposals are an Infraco change		✓							
[20.9.2] If the Section 16(4) route not used, then tie change	✓			See 20.8 Above				As above	Consequences: Delay to completion of works Mitigation: Obtain agreement to the alternative of poles to building fixes. SDS obligated to obtain all consents required for building fixings.
[20.11] Failure to obtain any necessary Consent required in relation to the sitting of a building fixing and to enter into a Building Fixing Agreement with the relevant heritable proprietor		✓							
[20.12] Cost of removal of a building fixing	✓			Prob: Improbable - 1% Impact: Insignificant - £10k			Use pole in place of building fixing.	As above	Insignificant Risk therefore not included in QRA
[20.13] Selection of method for supporting OLE where building cannot support the loadings of a building fixing		✓							
[21.4] Failure to obtain any street works licence, road opening permit and any other consent, licence or permission (other than any Land Consents) that may be required for the Infraco Works		✓							
[21.5] Failure to give notice to a relevant authority of its proposal to commence any work		✓							





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Risk :	Allocation			Impact	Mitigations			Risk Allocation - £	Tie comments
	Public Sector	Private Sector	Shared		OCIP	Other Insurances	Other Mitigations		
[22.1] Adverse physical conditions and artificial obstructions[10]		✓					Provide GI, soil survey and interpretive reports to Infraco and undertake additional ground investigation if necessary.		Note: Infraco takes risk of general conditions reasonably foreseeable by a competent and experienced Civil Engineering contractor based on ground investigation data required.
[22.5][49] Reasonable extra costs, suspension and/or a variation in dealing with unforeseeable unexploded ordnance, unidentified utility apparatus, unidentified contaminated land or unforeseeable ground conditions	✓			Prob: Improbable - 5% Impact: Insignificant - 1 day			Unexploded Ordnance - Emergency services to remove. Programme Manager to arrange alternative work area. Infraco will be provided with all records of potential ordnance.		
				Prob: Possible - 50% Impact: Catastrophic - £2m			Unidentified Utility - surveys undertaken and utility data from Mudfa works to be provided to Infraco	There is £6.4m in the Project Risk Allocation for unknown or abandoned assets	
				Contaminated land – SDS has undertaken surveys. Surveys to be provided to Infraco					
[23] Failure to provide tie and tie's Representative and any person authorised by tie or tie's Representative with access upon reasonable prior notice to any site, workshop or facility etc during normal working hours		✓							
[24][50] Failure to execute the Depot Licence and comply with the terms thereof		✓							
Sub-Contracting and Personnel									
[28.2] Sub-contracting of part of the Infraco Works without tie's consent except in respect of SDS Provider, Tram Supplier, Tram Maintainer, the Infrastructure Maintainer and any approved sub-contractor and/or trades		✓							
[28.4][51] Failure to incorporate required contract terms into subcontracts to be entered into by agreed "Key Sub-Contractors"		✓							
[28.5] Failure to provide such skilled technical assistants and labour as required for execution of the Infraco Works		✓							
[28.6] Removal of any employee of the Infraco and/or a Sub-Contractor who misconducts himself or is incompetent		✓							
[28.7][52] Failure to provide Key Sub-Contractor collateral warranties to tie in favour of tie and/or in favour of CEC and Network Rail		✓							
[28.8] Failure to use reasonable endeavours to procure that any Sub-Contractor shall within 40 business days of any reasonable request by tie provide to tie a collateral warranty		✓							
[28.9] Failure in performance by Sub-Contractors		✓							
Performance of the Works									
[25.1] Failure to observe the reasonable instructions of tie's Representative		✓							
[25.7] Failure to inform Infraco of the identity of tie's Representative	✓			Procedural issue only					
[26] Acts or omissions of the Infraco's Representative		✓							
[26.1] Failure to provide sufficient superintendence to the Infraco Works		✓							
[26.2/26.5/26.7] Failure to obtain/retain tie's approval of the Infraco's Representative or his deputy		✓							
[26.10] Failure to provide sufficient staff and involve the Key Personnel		✓							
[26.12] Failure to ensure that there are no changes to the Key Personnel without tie's prior written consent and that any replacement persons shall be of at least equivalent status an ability to the person whom they replace		✓							
[26.13] Failure to use all reasonable endeavours to ensure the continuity of the personnel assigned to perform the Infraco Works and to carefully select Key Personnel having careful regard to their existing work load and other planned commitments		✓							
[26.14] Failure to ensure that Key Personnel have the requisite level of skill, experience and authority		✓							
[26.16] Contracting of or retention of as an adviser or consultant any person currently or previously employed or engaged in the previous 3 months by tie without the prior written approval by tie		✓							
[26.17] Failure of Key Personnel and other staff to comply with regulatory requirements, tie's drug and alcohol policy		✓							
[26.18] Allowing the consumption of, or work of under, the influence of alcohol or drugs or the giving, selling or bartering of the same		✓							
[27.1] Failure to employ careful, skilled and experienced staff or site supervisors with CSCS (or equivalent) certification		✓							
[27.2] The removal of any person employed on the Infraco Works who, in the opinion of tie's Representative, misconducts himself or is incompetent or negligent		✓							

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Risk :	Allocation			Impact	Mitigations			Risk Allocation - £	Tie comments
	Public Sector	Private Sector	Shared		OCIP	Other Insurances	Other Mitigations		
Construction[53]									
[29.1] Errors in the position, levels, dimensions or alignment of any setting out of the Infraco Works during progress of Infraco Works		✓							
[30.1] Failure to have full regard to safety of all persons entitled to be on Site and to keep the Site in an orderly state to avoid danger to such persons		✓			✓	✓			OCIP covers damage to the works and liability to third parties for physical damage or injury, subject to no breaches of policy terms and conditions. Employer's Liability purchased by contractors will cover injury to employees. Insurance does not cover fines due to breach of legislation.
[30.2] Failure to provide required lights, guards, fencing etc		✓			✓	✓			A claim for bodily injury may be made on the grounds of failure to protect employees, visitors or trespassers (particular child trespassers) OCIP covers physical injury to third parties, Employers Liability to employees, both subject to no policy breaches
[30.3] Failure to comply with health and safety legislation and requirements		✓			✓	✓			OCIP covers damage to the works and liability to third parties for physical damage or injury, subject to no breaches of policy terms and conditions. Employer's Liability purchased by contractors will cover injury to employees. Insurance does not cover fines due to breach of legislation.
[30.4][54] Failure to undertake instruction and training and provide and issue passes for admission to the Site		✓			✓	✓			OCIP covers damage to the works and liability to third parties for physical damage or injury, subject to no breaches of policy terms and conditions. Employer's Liability purchased by contractors will cover injury to employees. Insurance does not cover fines due to breach of legislation.
[30.6] [55] Failure to provide a list of the names of all workers requiring passes together with two photographs		✓							
[30.9] Failure to ensure that the Infraco Parties are confined only to that portion of the Site necessary to enable them to carry out the Infraco Works		✓			✓	✓			A claim for bodily injury may be made on the grounds of failure to protect employees, visitors or trespassers (particular child trespassers) OCIP covers physical injury to third parties, Employers Liability to employees, both subject to no policy breaches
[30.10] Failure to keep the Site secure		✓							
[30.11] Failure to take reasonable steps to prevent unauthorised persons being admitted to the Site		✓			✓				OCIP covers damage to the works, for example, due to vandalism and liability to third parties for physical damage or injury, subject to no breaches of policy terms and conditions.
[31.1][56] Failure to take full responsibility for the care of the Infraco Works from the Effective Date until, in relation to each Section, the date of issue of a Certificate of Sectional Completion in relation to that Section		✓			✓	✓			OCIP covers damage to the works and contractors have insurance for loss or damage to contractor's plant and equipment. Both subject to no breaches of policy terms.
[32.1] Failure to comply with requirements in Schedule 3 (Code of Construction Practice and Code of Maintenance Practice) as to maintenance of access to properties, bus stops and bus services and the closure of roads		✓							
[32.2] Failure to comply with requirements in Schedule 3 (Code of Construction Practice and Code of Maintenance Practice) and to minimise nuisance, inconvenience or interference to the business or operations of the owners, tenants or occupiers of the Site		✓			✓				OCIP covers legal liability for physical damage or injury to third parties and liability for nuisance, subject to no breaches of policy terms and conditions
[32.3][57] Failure to use reasonable endeavours to obtain written consent of adjoining or neighbouring landowners with regard to interference with their rights	✓			Prob: Remote - 20% Impact: Minor - £100k					Not agreed position and insignificant risk therefore not included on QRA
[33.1] Failure to use reasonable means to prevent "extraordinary traffic" caused by vehicles related to the ETN.		✓							
[33.1] Failure to select routes and use vehicles to as far as possible avoid unnecessary damage to roads and bridges.		✓							
[33.2][58] Strengthening bridges or altering or improving any highway connecting with the Site to facilitate installation of the Trams, the Infraco's Equipment or Temporary Works		✓							
[33.3] Claims for damage to highways or bridges		✓			✓	✓			OCIP covers legal liability to third parties for physical damage to property which would include highways or bridges if caused by the work, subject to no breaches of policy terms and conditions. OCIP also covers loss or damage to existing structures in the care, custody and control of the project. Where vehicles or plant cause damage to the highways or bridges the liability will be insured under the contractor's Motor third party liability policy.
[34.1] Failure to construct and complete Infraco works in strict accordance with the Agreement and in strict accordance with tie's instructions		✓							
[34.2] Failure to keep materials, Infraco's equipment, labour, mode and manner of construction in accordance with the Infraco Contract		✓							
[34.3] Claims for Compensation Event if tie's instructions result in delay or disruption or cost to the Infraco	✓			N/A					Such instructions (where not to correct an Infraco default) are likely to be tie changes in any event. This does not relate to a risk but a decision.
[39] Discovery of Fossils etc on Site	✓			Prob: Probable - 85% Impact: Moderate - £250k			1. Identify hotspots 2. Agree Protocol	Risk Id - 105, Risk Allocation £194k	





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	Public Sector	Private Sector	Shared		OCIP	Other Insurances	Other Mitigations		
							3. Review Infraco programme regarding archaeological hotspots and ensure adequate programme float 4. Undertake archaeological work in advance on off-street sections		
Maintenance									
Failure to carry out all maintenance, repair and works to the ETN as is necessary to:									
• [52.1.1] Maintain the ETN in accordance with the Maintenance Programme and the Maintenance Plan		✓							
• [52.1.2] Ensure that the requirements of the Maintenance Specifications are met at all times		✓							
• [52.1.3][59] Comply with the Operator Procedures		✓							
• [52.1.5] Ensure that no maintenance or repair work shall prejudice to the Care for Safety		✓							
• [52.1.9] Hand back of the ETN in a condition consistent with the Infraco having complied with Clause 52 (Maintenance) provided that: 1) the Infraco will not be in breach because of fair wear and tear or expiry of working life, and 2) this clause imposes no obligations on the Infraco to carry out any Operator Maintenance		✓							
[52.2/52.3] Failure to work with Operator in respect of daily handover, comments and checklist		✓							
[52.4][60] Failure to support, assist and co-operate with tie Parties as tie may reasonably require from time to time		✓							
[52.5][61] Failure to carry out Mobilisation Services on or before the appropriate Mobilisation Milestone Dates		✓							
[52.6] Safety and efficiency of the Maintenance Services, so that the ETN is capable of being operated in a safe and efficient manner and free of any reasonably avoidable risk of pollution, nuisance, interference or hazard		✓			✓	✓			OCIP covers damage to the works and liability to third parties for physical damage or injury, subject to no breaches of policy terms and conditions. This includes nuisance and accidental pollution. Pollution clean-up costs and Gradual Pollution not insured. Employer's Liability purchased by contractors will cover injury to employees. Insurance does not cover fines due to breach of legislation.
[52.7] Failure to employ and train all staff necessary to perform the Maintenance Services in accordance with the Infraco Contract		✓			✓	✓			OCIP covers damage to the works and liability to third parties for physical damage or injury, subject to no breaches of policy terms and conditions. Employer's Liability purchased by contractors will cover injury to employees. Insurance does not cover fines due to breach of legislation.
[52.8][62] Failure to provide and employ all staff necessary to perform the Mobilisation Services in accordance with the Infraco Contract		✓							
[52.9] Failure to supply only new materials and goods		✓							
[52.10-52.13][63] The provision of all Spare Parts and Special Tools required for the Maintenance Services (including the provision of valid calibration certificates)		✓							
[52.14] Review of the level of Minimum Spare Parts Pool			✓	Prob: Remote - 10% Impact: Minor - £25k			Mitigation: Agree spare parts pool with operator prior to contract award		Insignificant risk therefore not included in QRA
[52.14] Variation of the Minimum Spare Parts Pool [64]	✓			See 52.14 Above			As above		Insignificant risk therefore not included in QRA
[52.15] Effecting repairs of all defects in, failures or damage to the ETN irrespective of cause.		✓			✓	✓			OCIP CAR covers damage caused by defective design or workmanship but excludes costs of improving design materials and workmanship, which arises during construction or occurring within 12 months of commencement of Maintenance Period. It does not cover repairs solely due to the existence of a defect. There must be damage under OCIP. Contractors are required to purchase Professional Indemnity insurance which covers their legal liability for acts of omissions following breaches of their professional activities or duties.
[52.16] Cost of repairs referred to in 52.15 above to the extent that any damage to the ETN is caused by: 1) a breach of the Infraco Contract by Infraco or 2) any negligent act or omission by the Infraco or any Infraco Party		✓			✓	✓			OCIP CAR covers damage caused by defective design or workmanship but excludes costs of improving design materials and workmanship, which arises during construction or occurring within 12 months of commencement of Maintenance Period. It does not cover repairs solely due to the existence of a defect. There must be damage under OCIP. Contractors are required to purchase Professional Indemnity insurance which covers their legal liability for acts of omissions following breaches of their professional activities or duties.

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[52.17][65] Cost of repair to the extent that any damage to the ETN is NOT caused by 1) a breach of the Infraco Contract by Infraco or 2) any negligent act or omission by the Infraco or any Infraco Party	✓			Prob: Possible - 50% Impact: Moderate - £500k	✓		As per clause 17.34		OCIP CAR covers damage caused by defective design or workmanship but excludes costs of improving design materials and workmanship, which arises during construction or occurring within 12 months of commencement of Maintenance Period. It does not cover repairs solely due to the existence of a defect. There must be damage under OCIP.
[52.19] Temporary Repairs and obtaining approvals thereafter		✓			✓				Temporary repairs to the works from an insured event covered under OCIP, subject to no policy breaches.
[52.20/52.21] Failure to provide assistance, information and advice to tie and the Operator which is reasonably required in the case of incidents or failures affecting the ETN and reporting thereon[66]		✓							
[52.23] Failure to report and propose a solution to defects where rectification falls within the scope of the Infrastructure Maintenance Services in the ETN which may prejudice safety or reliable operation of the ETN[67]		✓							
[52.24] Failure to provide additional systems availability requested by tie following Infraco's confirmation of its ability to so provide		✓							
[52.25] Failure to keep up to date and supply a maintenance manual, electronically and free of charge, to tie's representative		✓							
[53][68] Use, handling and disposal of Hazardous Materials		✓							
[54][69] Maintenance of Technical Records and Computer Systems		✓							
Quality, Testing and Examination									
[35.1] Testing and examination of the quality, weight or quantity of any materials used before use in the Infraco Works		✓							
[35.2] Costs of samples		✓							
[35.3/41.2/44.2/47.2][70] Costs of any tests specified tests (additional tests will be a tie change)		✓		Prob: Improbable - 5% Impact: Insignificant - £25k			ERs include tests required and these have been priced accordingly. Additional tests will be in response to particular circumstances and may be at Infraco's cost or a tie change. Construction supervision and application by contractor of quality management procedures will reduce the likelihood of additional tests.		Insignificant risk therefore not included in QRA
[36.1] Failure to give 48 hours notice to allow examination of work prior to covering up		✓							
[36.2] Cost of uncovering where Infraco Works are found to be in accordance with Agreement	✓			Prob: Improbable - 1% Impact: Insignificant - £25k			ERs include tests required and these have been priced accordingly. Additional tests will be in response to particular circumstances and may be at Infraco's cost or a tie change. Construction supervision and application by contractor of quality management procedures will reduce the likelihood of additional tests.		Construction supervision will reduce the likelihood of additional tests. Insignificant risk therefore not included in QRA.
[36.2] Cost of uncovering where Infraco Works are found not to be in accordance with Agreement		✓							
[37.1] Unsatisfactory work or materials		✓							
[37.5] Costs of opening up/testing for unsatisfactory work/materials after repeat offences.		✓					As 35.3		
[38.3] Urgent repairs carried out by tie which the Infraco was liable to carry out under the Agreement and which in the opinion of tie's Representative, acting reasonably, gives rise to an immediate threat to health and safety		✓			✓				Temporary repairs to the works from an insured event covered under OCIP, subject to no policy breaches.
[38.4] Urgent repairs carried out by the Infraco (except to the extent such work results from Infraco's default)	✓			See 52.17[65] Above	✓		ERs include tests required and these have been priced accordingly. Additional tests will be in response to particular circumstances and may be at Infraco's cost or a tie change. Construction supervision will reduce the likelihood of additional tests.		Mitigation: Covered by OCIP, subject to no policy breaches, therefore not included in QRA- Infraco liable for deductible if they are at fault. Budget allowance for tie deductibles.
[37.1] Unsatisfactory work or materials		✓			✓				OCIP CAR covers damage caused by defective design, materials or workmanship but excludes costs of improving design materials and workmanship, which arises during construction or occurring within 12 months of commencement of Maintenance Period. It does not cover repairs solely due to the existence of a defect. There must be damage under OCIP.
[37.5][71] Costs of opening up and testing for unsatisfactory work and materials following repeat offences.		✓							Position as 35.3

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Scoop have this as a Public Sector Risk
 Scoop have this as a Private Sector Risk
 This does not appear on Scoop's Matrix
 Scoop have this as a Shared Risk

NOTE: Impacts Are Post Mitigation

Risk :	Allocation			Impact	Mitigations			Risk Allocation - £	Tie comments
	Public Sector	Private Sector	Shared		OCIP	Other Insurances	Other Mitigations		
[40] Errors or omissions in the Infraco Works		✓				✓			Contractors are required to purchase Professional Indemnity insurance which covers their legal liability to pay compensation for acts of omissions following breaches of their professional activities or duties.
[43.5][72] Compliance with obligations in the Tram Inspector Agreement (Non-compliance with)	✓	✓		Prob: Improbable - 3% Impact: Minor - £25k			Apply effective project management and respond promptly to any approval process.		Majority of risk lies with Infraco. Minor risk to tie therefore not included in QRA.
[43.10] Costs of appointment and services of the Tram Inspector	✓			Not a risk - included in budget					Tram Inspector costs included in budget.
[44.1/45.1/47.1] Failure to inspect the Infraco works on the dates specified				Prob: Improbable - 3% Impact: Minor - £25k					Subject to negotiation
[46.2][73] Carrying out of Snagging		✓							
[47.2/47.4] Failure to complete T5 and to satisfy tie that T5 is complete and that a Network Certificate/Reliability Certificate should be issued		✓							
[48] Tests, surveys, trials or searches at tie's request where the defect or fault is one for which the Infraco is NOT liable under the Agreement	✓			Prob: Improbable - 5% Impact: Insignificant - £25k			ERs include tests required and these have been priced accordingly. Additional tests will be in response to particular circumstances and may be at Infraco's cost or a tie change. Construction supervision and application by contractor of quality management procedures will reduce the likelihood of additional tests.		Insignificant risk therefore not included in QRA
[48] Tests, surveys, trials or searches at tie's request where the defect or fault is one for which the Infraco is liable under the Agreement		✓							
[55.3][74] Costs associated with surveys and audits which do not show non-compliance by the Infraco	✓			Prob: Improbable - 5% Impact: Insignificant - £25k			Construction supervision and application by contractor of quality management procedures will reduce the likelihood of additional tests.		Insignificant risk therefore not included in QRA
[55.4] Costs associated with surveys and audits which show a material non-compliance by the Infraco		✓							
[55.5/55.6] Failure to rectify in agreed period		✓							
[56.1][75] Failure to comply with Schedule 6 Maintenance Payment Regime in respect of performance monitoring		✓					Mitigation: To apply performance management during maintenance phase		Performance and payment regime mirrored in DPOFA contract.
[56.3-56.5] Failure to submit Service Quality Reports, Annual Service Reports and Self-Monitoring Plans at the required times		✓							
[56.6] Failure to assist tie in respect of monitoring procedures		✓							
[56.8] Increased monitoring as a result of Underperformance Warning Notices being issued		✓							
[105.1.2] Failure to operate a quality management system in accordance with BS EN 1509001:2000		✓							
Programme									
[60.1/60.9/62.1][76] Failure to progress Infraco Works with due expedition and in a timely and efficient manner in accordance with the Programme and to mitigate any delays		✓					Liquidated damages provide recovery of project costs.		LDs capped at 10% of contract value.
[60.4] Deemed acceptance of a revised programme due to failure by tie's Representative to accept, reject or request further information within 10 Business Days in respect of revised programmes proposed by the Infraco	✓			Prob: Improbable - 5% Impact: Minor - 2 weeks			Apply effective project management to respond within time limit. Also, a second chance reminder which Infraco is required to issue		Programme is produced for the purposes of project management of Infraco. Does not entitle extensions of time however material inaccuracies in programme could affect defence of claims for extension of time.
[60.2/60.5/60.7] Failure to update and to provide further information in respect of the revised programme proposed by Infraco		✓							
[62.1] Late completion of any Section resulting in LDs NOTE: LDs/drafting O/S		✓							
[62.6] ^[77] Failure to deliver a Tram to the Depot by the Agreed Delivery Date ^[78]		✓							
[62.11] Tram exceeding Maximum Tram Weight		✓							
[87.1] Suspension on instructions of tie's Representative in circumstances not provided below	✓			Prob: Insignificant - 5% Impact: Catastrophic - £1m			Good planning by tie and CEC should avoid need to apply this suspension.	50.98	Clause is to protect tie for necessary suspension due to unforeseeable events. Risk Id 1009
[87.1.3] Suspension necessary for the proper construction and completion or for the Safety of the Infraco Works		✓							
[87.2] Occurrence of termination or omission of Infraco Works if permission to resume not granted by tie within 6 months	✓			Prob: Improbable - 1% Impact: Catastrophic - £10m			Suspensions are generally due to Infraco default. If tie responsibility - unlikely to apply to whole of works and partial suspension could be deployed for affected area.	130.73	Risk Id 1010





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Risk :	Allocation			Impact	Mitigations			Risk Allocation - £	Tie comments
	Public Sector	Private Sector	Shared		OCIP	Other Insurances	Other Mitigations		
Relief Events (time) and Compensation Events (time and/or costs)									
[Definition of Compensation Event] Occurrence of any delay caused by tie failing to give possession or access including refusal of third party to permit Infraco to exercise occupation rights.	✓			Prob: Improbable - 3% Impact: Moderate - £200k			Mitigation: Agree Land Release schedule with Infraco prior to contract award.		Note all GVDs issued. Insignificant risk therefore not included in QRA.
[18.20/definition of Compensation Event] Occurrence of any delay caused by CEC stopping up streets	✓			Prob: Remote - 30% Impact: Catastrophic - £1m			Mitigation: To agree full on-street construction works methodology prior to contract award. This gives CEC clear understanding of sequence and timing of Infraco works. CEC where possible to schedule other work around Tram. To be monitored on a monthly basis.		Not an issue for the Project Risk Register as this is a residual CEC issue
[Definition of Compensation Event] Occurrence of any delay caused by Utilities Works, MUDFA Works, breach of Third Party Agreements, Unplanned City Events, New Utilities and/or any other event referred to as a Compensation Event	✓			Prob: Possible - 40% Impact: Catastrophic - £1m			Construction programme has been sequenced and interleaved with that of Infraco's. Infraco programme to be shared with CEC and significant third parties and monitored on a period by period basis to avoid programme clashes.	522.9	Risk Id 1011
[Definition of Compensation Event] Delay caused by breach by tie a tie Party or act of Network Rail which adversely affects the performance of the Infraco Works	✓			Prob: Improbable - 3% Impact: Moderate - £200k			Apply effective project management and control		Insignificant risk therefore not included in QRA.
[Definition of Compensation Event] Delay caused by discovery of unexploded ordnance, utility apparatus or contaminated land which did not at the time of such discovery form part of the Infraco Works	✓			Prob: Improbable - 3% Impact: Moderate - £100k			See Clause 22		Insignificant risk therefore not included in QRA.
[Definition of Compensation Event] Any inaccuracy, incompleteness or unfitness for purpose of any of the Background Information. NOTE: This is not consistent with clauses 7.9 and 7.10 and results in significant risk retention. To be reviewed	✓			To be reviewed					Subject to negotiation - should end after due diligence
[Definition of Compensation Event] Failure by tie to obtain Land Consent, land agreement or TRO.	✓								
[Definition of Compensation Event] Power Failure or bursting of pipes, apparatus save when caused by Infraco.	✓				✓				
[Definition of Compensation Event] Vandalism impacting ETN.			✓		✓				
[Definition of Compensation Event] Operator interference with Infraco.	✓			Prob: Improbable - 3% Impact: Moderate - £500k			Back off to Operator through DPOFA		Insignificant risk therefore not included in QRA.
[34.3] Occurrence of any referable delay caused by instructions from tie's Representative under Clause 34.3	✓			Prob: Remote - 10% Impact: Minor - £100k			Apply effective project management		Insignificant risk therefore not included in QRA.
[37.5/definition] Occurrence of any referable delay caused by orders or directions from tie's Representative in respect of the removal of unsatisfactory work or materials[79]	✓			See 34.3 Above			Apply effective project management		See also mitigations referred to under clauses 35 and 36. Insignificant risk therefore not included in QRA.
[49.1/49.3] Failure to remove materials and equipment at the correct time		✓							
[63.2/63.7][80] Cost of repairing or making good any damage to property or personal injury or death suffered on the Site caused by Protestor Action except where such Protestor Action is directed at the Infraco "personally" and not at the project.	✓			Prob: Remote - 10% Impact: Moderate - £250k	✓		Apply stakeholder management and monitor stakeholder groups for potential areas of strong dissent and direct action.		OCIP covers loss or damage to the works by protestor action and any legal liability to the project which results, subject to no policy breaches
[Definition of Relief Event] Delay caused by terrorism	✓			Impossible to quantify	✓				Covered under OCIP for accumulated costs resulting from insured events for £24m for 2 years, subject to 60 day deductible..
[Definition of Relief Event] Delay caused by UK strike or industrial dispute affecting Infraco workforce.	✓			Impossible to quantify			Principally Infraco risk unless national strike		Principally Infraco risk unless national strike, refer to general delay risk item
[86.6/definition of Relief Event] Delay caused by a Force Majeure Event	✓			Impossible to quantify					Parties responsible for own costs, refer to general delay risk item
[61.1] Increase to rate of progress where no entitlement to extension of time		✓							
[61.6] Acceleration measures required by tie to accelerate programme not arising out of any default by the Infraco	✓			Prob: Remote - 10% Impact: Moderate - £500k			Apply timely decision making and anticipate potential problems to minimize need for any acceleration. Assess the requirement for any acceleration on a business case basis		This is not really a risk but a decision to be made in the circumstance.
[63.1] Delay caused by Protestor Action	✓			Prob: Remote - 10% Impact: Moderate - £250k	✓		Apply stakeholder management and monitor stakeholder groups for potential areas of strong dissent and direct action.		Only a public sector risk to the extent that it is not caused by Infraco If damage or loss occurs, delay costs would contribute to overall DSU cover under OCIP, subject to 60 day deductible
[Definition of Relief Event] Delay caused by fire, flood (other than flood caused by bursting or overflowing of apparatus and pipes), explosion, lightning, tempest or earthquakes, power failure or failure of operators or pipes	✓			Prob: Improbable - 5% Impact: Impossible to quantify					Covered under OCIP in respect of works. Allowance for deductibles in estimate. Contractor bears own costs for Relief Event
[63.3] Removal of protestors from the ETN[81]	✓								

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Risk :	Allocation			Impact	Mitigations			Risk Allocation - £	Tie comments
	Public Sector	Private Sector	Shared		OCIP	Other Insurances	Other Mitigations		
[65.3][82] [Definition] Failure to notify tie within 20 Business Days of awareness of delay event/compensation event		✓							
[64/65.8.1][83] Failure to identify long lead time works. NOTE: drafting remains to be settled. Roley seeks agreement POA Preferred Bidder.		✓							
[64/65.8.2] Failure to identify enabling works required		✓							
[64/65.8.3] Failure to manage interface with CEC		✓							
[64/65.8.4] Failure to manage interface with third party consent provider		✓							
[64/65.8.5] Failure to identify required instructions		✓							
[64/65.9] Any other cause of delay not being a Relief Event or Compensation Event or caused by Infraco breach		✓							
[80.14] Delay/costs due to a tie Change (save where the Infraco could have prevented the need for the tie change)[22]	✓			Prob: Remote - 10% Impact: Minor - £100k			Apply effective project management and project stakeholders to minimize need for changes		All significant changes to be dealt with by applying 'business case' justification and by application of the Change Control Process. Insignificant risk therefore not included in QRA.
[87.1] Occurrence of any referable delay/costs caused by suspension by tie's Representative	✓			Prob: Improbable - 1% Impact: Catastrophic - £1m			Apply effective project management and minimize need for changes	9.67	Risk Id 1012
Payment and Measurement									
[41.1] Failure to attend testing relevant to Milestone achievement	✓								Under negotiation
[41.3] Failure to satisfy tie in relation to the achievement of a milestone (including a critical milestone)		✓							
Payment provisions are not complete and cannot be commented on here									
[67.6/67.8][84] Failure to submit valid VAT invoice on time		✓							
[67.14/68.12][85] Failure to adhere to requirement to procure collateral warranties prior to payment		✓							Deleted by Scoop
68.4 Failure by tie to issue Maintenance Service Interim Certificate deemed to be an issue of MSIC for full amount claimed	✓			Prob: Improbable - 5% Impact: Minor - £100k					Under negotiation. Same clause on Scoop not amended. Insignificant risk therefore not included in QRA
[69.1] Interest on Late Payment at Base Rate + 2% (against Infraco Invoice or tie set off)	✓								
[69.3] Failure to issue a notice of withholding within the prescribed time period	✓			Prob: Improbable - 5% Impact: Minor - £100k			Apply effective contract management		Insignificant risk therefore not included in QRA
[70.1] Payment of tax on any taxable supplies to tie		✓							
[70.5] Reimbursement of third party VAT intended in Party Costs	✓	✓					CEC reclaim VAT		Inserted clause by Roley therefore not on Scoop
Warranties									
[75] Breach of corporate warranties		✓							
Required Insurance									
[76.1] Failure to procure and maintain Required Insurances		✓							
[76.11] Failure to comply with the terms of the Required Insurances or OCIP Insurances		✓			✓	✓			All interested parties insured under OCIP. OCIP includes a non-vitiating clause which protects the rights of other insured parties
[76.13] Commercially unreasonable rates and terms of insurance			✓	See tie comments			Monitor market but dealing with major firms that should be able to get reasonable terms		Not a risk - premiums agreed for duration
[76.14] Failure to obtain or maintain OCIP Insurances	✓			Not a risk - OCIP in place	✓	✓	Monitor market but dealing with major firms that should be able to get reasonable terms		OCIP in place for duration of construction phase. Operational phase has still to be placed. All contracts contain clauses that if tie do not effect an OCIP then the contractor must effect Additional Joint named insurances covering the same risks and this will be treated as a tie change..
[76.16] Excesses/deductibles under OCIP Insurances or Additional Insurances to the extent that the claim is due to acts or omissions of the Infraco		✓							tie has a budget for deductibles which it is responsible for under OCIP. Contractor bears own costs.
[49.2] Loss or damage to Infraco's Equipment, Temporary Works, goods or materials, Trams, engineers works vehicles, Spare Parts, Special Tools (except as stated in Clause 77.1)		✓			✓				OCIP covers loss or damage to the works. Contractors insure loss or damage to own equipment and plant, both subject to no policy breaches
[77.1][89] The Infraco to indemnify the Indemnified Parties from and against any and all claims, suits, losses, liabilities damages, penalties, fines, forfeitures, and the costs and expenses incident thereto (including without limitation any legal costs of defence) as a result of the Infraco's negligence or breach of the Agreement		✓			✓				OCIP covers loss or damage to the works and liability to third parties which contains a waiver of subrogation against all insured parties. Contractor responsible for deductibles unless not negligent. Contractors insure Employer's Liability risks and both INFRACO and TRAMCO have agreed waiver of subrogations for tie. Fines, penalties not insured.

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Risk :	Allocation			Impact	Mitigations			Risk Allocation - £	Tie comments
	Public Sector	Private Sector	Shared		OCIP	Other Insurances	Other Mitigations		
[77.2] Death of, or injury to, persons, loss of or damage to property, loss or damage to the Infraco Works; causing itself or CEC to be in breach of any law, the Asset Protection Act, The DPOFA, the Roads Demarcation Agreement, Tram Inspector Agreement, the Third Party Agreements, other undertakings, Land Consent, Permanent Land or Temporary Land; IPR infringement, making alternative arrangements resulting from any act, omission, neglect, or breach of statutory duty by tie, CEC, any tie Party or any of their respective agents, servants or other contractors (not being employed by the Infraco or any Infraco Party) or for or in respect of any claims, suits, losses, liabilities, damages, penalties, fines, forfeitures, demands, proceedings, damages, costs, charges and expenses	✓			Prob: Improbable - 3% Impact: Dependent upon circumstances however provided for in OCIP	✓				Legal liability to third parties for physical damage or injury for costs damages and expenses covered under OCIP. Fines and penalties not insured.
[77.10][90] Indirect Losses NOTE: under negotiation	✓	✓		Prob: Improbable - 1% Impact Catastrophic - £2m				26.15	Infraco bears losses in relation to Third Parties indirect losses up to the level of the liability cap where caused by their failure. tie bears losses where due to tie failure. Risk Id 1013. The Utility Companies customer charger payments are excluded but are the responsibility of the INFRACO contractor (included within cap). OCIP covers £1m for pure financial loss cover, i.e. economic losses under delict. The financial loss cover excludes liabilities assumed under contract. No cover for tie breach of procurement rules.
[77.9] Cap on liability - negotiation to be finalised and confirmed CHECK right clause reference									Losses capped at 20% of the construction element of contract excluding receipts from Bonds and losses arising from insurable events (but insurable losses capped at OCIP indemnity level). LDs capped at 10% of construction element of contract sum.
Changes									
[79.2] Failure to maintain a change control register and provide a copy (and updates) to tie		✓							
[80] tie Change	✓			As 80.14 Above			Apply effective project management and minimize need for changes		
[80.4/80.8] Failure to comply with Estimate time limits		✓							
[80.6/80.14] Failure to include attempt to minimise costs, need for, and impact of the tie Change		✓							
[80.7] Failure to demonstrate that it is appropriate to subcontract for the tie Change and obtain best value for money		✓							
[80.8] Failure to agree the Estimate			✓	Prob: Remote - 20% Impact: Minor - £100k (these refer to DRP costs)			Apply effective project management. Contract procedure deals with mitigation.		Insignificant risk therefore not included in QRA
[80.11] Withdrawal of tie Notice of Change				Prob: Remote - 10% Impact: Insignificant - £10k					Clause inserted by Roley. Insignificant risk therefore not included in QRA
[80.12][91] Deemed withdrawal of a tie Change due to failure to issue tie Change Order within 30 days of agreement on Estimate			✓	Prob: Remote - 10% Impact: Insignificant - £10k			Apply effective project management.		Insignificant risk therefore not included in QRA
[80.13] No EoT or Costs if Infraco could have foreseen the need for or materially reduced the scope of the tie charge. NOTE: under review by Roley									Under negotiation
[80.15-80.17] Failure by the Infraco to notify tie within set periods of matters which may constitute a tie Change		✓							
[81] Infraco Change		✓							
[81.1] Failure to notify tie of matters which may constitute and Infraco Change		✓							
[81.2.1] Reduction in Contract Price if Infraco Change results in lower costs		✓							
[81.2.2] Increase in costs to Infraco if such increased costs result from an Infraco Change		✓							
[81.3] Failure to propose a change which might result in a saving of more than £20,000		✓							
[82.2] Failure to take reasonable steps to minimise the inconvenience to the Infraco and disruption to the Programme of any Small Works.		✓							
[82.3] Failure to carry out and complete any Small Works in accordance with Small Works Cost Notice		✓							
[82.4] Payment of costs in Small Works Cost Notice	✓			Not a risk			Apply effective project management to minimize changes as 80.14		Not a risk but a decision - included in general contingency.
[83.2] Failure to take reasonable steps to minimise the duration of any Accommodation Works		✓							
[83.3] Failure to carry out and complete any Accommodation Works in accordance with Accommodation Works Cost Notice	✓			This is not a risk as tie will be paying these costs. There is provisional sum of £1m in the contract.					Mitigation: apply effective project management to monitor provisional sum

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Risk :	Allocation			Impact	Mitigations			Risk Allocation - £	Tie comments
	Public Sector	Private Sector	Shared		OCIP	Other Insurances	Other Mitigations		
[84] ^[92] Qualifying Changes in Law ^[93] (time and cost implications)	✓			Prob: Improbable - 5% (During Construction) Impact: Minor - £100k			Qualifying Change of Law covers either a Discriminatory Change of Law (applying to the Edinburgh Tram Network or Infraco only) or a Specific Change of Law (applying to works the same as or similar to Infraco Works). Infraco are responsible for additional costs up to thresholds noted in Clause 84 but tie is responsible for any Qualifying Change of Law in the event that these thresholds are exceeded. Given the timescales to implement changes, this is more likely to be applicable to the maintenance phase.		Mitigation for Qualifying Change in Law is to deliver within current requirements but threshold as noted below. Not a significant risk therefore not included in QRA.
• [84.2.1] failure to use all reasonable endeavours to minimise increase in costs		✓							
• [84.2.2-3] failure to mitigate effects and implement changes in most cost effective manner		✓							
[84.3] Failure to implement the change in all circumstances (except to the extent that such change is not necessary to implement the Qualifying Change in Law)		✓							
[84.4.1][94] Payment in respect of Qualifying Changes in Law which exceed a threshold of £150,000.	✓			See 84 Above			See 84 Above		See above
[84.4.2] Where the limit of £150,000 in aggregate has been exceeded, payment in respect of SDS Qualifying Changes in Law are above a threshold of £15,000 in respect of each and every event.	✓			See 84 Above			See 84 Above		See above
[84.4.3] Where the limit of £150,000 in aggregate has been exceeded, payment in respect of Tram Supply Qualifying Changes in Law which are above a threshold in respect of £30,000 in respect of each and every event	✓			See 84 Above			See 84 Above		See above
[84.4.4] Where the limit of £150,000 in aggregate has been exceeded, payment in respect of Tram Maintenance Qualifying Changes which are above a threshold of £15,000 in respect of each and every event.	✓			See 84 Above			See 84 Above		See above
[84.4.5] Where the limit of £150,000 in aggregate has been exceeded, payment in respect of Infrastructure Maintenance Qualifying Changes in Law which are above a threshold of £75,000 in respect of each and every event. NOTE: Roley is seeking a cap on aggregate exposure under all of these provisions of £150,000. tie to consider and revert	✓			See 84 Above			See 84 Above		
[84.5] General Change In Law[95]			✓	Not a risk to tie					CEC to back off changes in law to TS in funding agreement
[85.1] The cost of any Phase 1b option	✓			N/A			N/A		Not a risk but a decision to be made against an option
[86.2.2] The cost of any Network Expansions	✓			N/A			N/A		Not a risk but a decision to be made against an option
Termination									
[87] Suspension of Work (unless provided for in the Agreement, or is necessary by reason of the weather or some default on the part of Infraco or is necessary for proper construction and safety reasons) for 6 months NOTE: tie considering grounds for suspension.	✓			As 87.2			As 87.2		
[88.8] tie Default termination liability: all works carried out as valued; prelims; supplies/materials committed under contract; demobilisation costs; subcontractor breakage costs; loss of profit (under negotiation by Roley)	✓						Provide forecasts, updated on a four weekly period basis. CEC to manage treasury function to ensure funds are available.		Under negotiation
[88.9] Suspension for non-payment by tie	✓						Provide forecasts, updated on a four weekly period basis. CEC to manage treasury function to ensure funds are available.		Scoop have removed this clause
[89] Voluntary Termination by tie three years after the issue of the first certificate of Service Commencement	✓ (financial)	✓		This is a tie's discretion and shouldn't be undertaken if results in significant impact at the time.					A decision - not risk
Risk of termination due to: (see definition of Infraco Default)									
• [Definition] Infraco insolvency event		✓							
• [Definition] breach of provision of the Agreement which materially and adversely affects the Infraco Works not remedied within 30 days		✓							
• LDs cap at Clause 62.3 is exceeded.		✓							
• [Definition] Infraco's unremedied failure to take out and maintain the Required Insurances		✓							

**ROLEY
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EDINBURGH TRAM NETWORK
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[05] October 2007
(Based on 8 March 2007 Version of the Infraco Contract as negotiated by tie)**

	Scoop have this as a Public Sector Risk
	Scoop have this as a Private Sector Risk
	This does not appear on Scoop's Matrix
	Scoop have this as a Shared Risk

NOTE: Impacts Are Post Mitigation

Risk :	Allocation			Impact	Mitigations			Risk Allocation - £	Tie comments
	Public Sector	Private Sector	Shared		OCIP	Other Insurances	Other Mitigations		
• [Definition] failure to achieve Sectional Completion Date or the Service Commencement Date on or before the date falling [12 months] after the Planned Service Commencement Date or Planned Sectional Completion Date		✓							
• [Definition] Infraco's breach of confidentiality obligations		✓							
• [Definition] Infraco's failure to resolve a conflict of interest - subject to due diligence		✓							
• [Definition] Change in legal status or control of the Infraco which is materially prejudicial to carrying out and completing the Infraco Works - subject to review		✓							
• [Definition] Permanent Abandonment without due cause of the whole of the Infraco Works or a material part of them		✓							
• [Definition] Infraco's failure to commence Works within 90 days of Commencement Date		✓							
• [Definition] Infraco's continued suspension of works for 15 days after a written notice to proceed - subject to review		✓							
• [Definition] The issue of 3 or more underperformance Warning Notices in any 12 month period - Roley requires due diligence		✓							
• [Definition of tie Default] tie's failure to make payment due under Interim Certificates exceeding, in aggregate, 5% of the Contract Price	✓			Prob: Improbable - 1% Impact: Black Flag			Provide forecasts, updated on a four weekly period basis. CEC to manage treasury function to ensure funds are available.	N/A	Risk Id 1015
• [Definition or tie Default] tie's breach of obligation under the Agreement which materially and adversely affects the carrying out/completion of the Infraco Works[31]	✓			Prob: Improbable - 1% Impact: Black Flag			Apply effective project management. CEC to support tie with quick and effective decision making.	N/A	Risk Id 1016
tie Insolvency Event	✓								
• tie breach of assignment provision (assignment permitted to CEC, Minister and TEL otherwise requires Infraco prior consent which can be withheld without reason)		✓							
• [91.6] Force Majeure Event(ultimate termination as per tie Default)	✓	✓		Prob: Improbable - 1% Impact: Black Flag			Each party carries own costs	N/A	
• [92] Infraco or Sub-Contractor commits a Prohibited Act		✓							
Miscellaneous									
[50.3][96] Failure in role as Principal Contractor under CDM where such action results from any action, lack of action or default on the part of the Infraco.		✓							
[51.1] Failure to report accidents to HSE		✓							
[58][97] TUPE responsibilities - Roley has required extensive amendment			✓	This is only an issue once the maintenance phase ends					
[58.9][98] Costs of compliance with TUPE provisions	✓			This is only an issue once the maintenance phase ends			Contractual protections for frustrations of transfer to new maintainer		Would be dealt with in any business case for taking maintenance in-house.
[59.5] Reasonable and demonstrable costs arising and steps being required following a step-in for Health and Safety and Environmental reason		✓							
[71.2] Tax fluctuations where tie is informed of such increase within 3 months	✓			Prob: Remote - 10% Impact: Major - £500k			Residual Risk - CEC to back this off to TS under funding agreement	see tie comments	Applies to employee national insurance and VAT only. Risk Id 1017 but not included in QRA as CEC to manage
[71.2] Tax fluctuations where tie is NOT informed of such increase within 3 months		✓							
[73] Failure to provide reasonable assistance to tie in respect of best value performance and improvement		✓							
[95.3/95.4/95.5] Failure to provide continuity services following termination		✓							
[98.1-98.2] Unauthorised Assignment	✓	✓		Theoretical risk only					Mitigation: follow contract
[98.3 & 4] Failure to inform tie of any change in legal status/control	✓	✓		Theoretical risk only					
[99] Occurrence of a Conflict of Interest		✓							
[101.2] Unauthorised disclosure of confidential information		✓							
[101.7] Breach of terms of FOISA[99]	✓			Prob: Remote - 20% Impact: Moderate - £100k					Not on QRA - not a material risk
[102] Unauthorised use of Project IPR - provisions remain under negotiation									Subject to negotiation
[102.2] Failure properly to assign IPR or grant appropriate licences to tie									Subject to negotiation
[102.4] Failure to grant a licence in accordance with this clause									Subject to negotiation
[102.9] Failure to use reasonable endeavours to procure licences of Third Party Software for tie		✓							Subject to negotiation
[102.10] Failure to ensure back up of Deliverables in accordance with Good Industry Practice		✓							Subject to negotiation
[102.12] Failure to provide source code, object code and documentation in relation to Third Party Software to tie		✓							Subject to negotiation
[102.9] Failure to procure the grant of a sub-licence for any relevant Third Party Software		✓							Subject to negotiation

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NOTE: Impacts Are Post Mitigation

Risk :	Allocation			Impact	Mitigations			Risk Allocation - £	Tie comments
	Public Sector	Private Sector	Shared		OCIP	Other Insurances	Other Mitigations		
[103] Breach of data controller obligations		✓							
[105.3] Failure to comply with the HSQE system		✓							
[115] Breach of discrimination legislation		✓							
[118] Failure to act reasonably when exercising discretion.			✓						
[121] Failure to arrange interface with operator	✓								
Dispute Resolution									
[Schedule 9 paragraph 7] Loss of right to dispute due to failure to raise dispute within 3 months	✓	✓		Prob: Improbable - 5% Impact: Minor - £100k			Mitigation: apply effective and project contract management		Insignificant risk therefore not included in QRA
[Schedule 9 paragraph 9] Loss of right to dispute due to failure to meet any timescales prescribed in DRP (Other than in respect of the adjudication provisions)	✓	✓		Prob: Improbable - 5% Impact: Minor - £100k			Mitigation: apply effective and project contract management		Insignificant risk therefore not included in QRA

- [1] [Foley to review wording.](#)
- [2] [Business days and mar-up review subject to agreement on how ERs are amended.](#)
- [3] [Roley accepts subject to review of SI reports.](#)
- [4] [Agreed subject to DD.](#)
- [5] [Agreed subject to review of bridge assessments in due diligence and reassessment prior to award](#)
- [6] [Clause 6.3 contains partnering obligations](#)
- [7] [Background Information - Subject to DD, review of land risk provisions and ER amendments. Further drafting required to reflect risk position.](#)
- [8] [Roley has accepted risk for System Integration but further review of details under novated contracts and Employer's Requirements is required](#)
- [9] [Subject to availability of sureties to provide such Bond.](#)
- [10] [Needs to reflect that 2 PCGs will be provided.](#)

- [11] [Subject to review of Asset Protection Agreement and inclusion of any other parties.](#)
- [12] [Further review of details under novated contracts/ERs required.](#)
- [13] [Accepted subject to review of drafting.](#)
- [14] [Accepted subject to review of drafting.](#)
- [15] [Subject to due diligence on the relevant agreements](#)
- [16] ["SDS Agreement Letter" to be defined.](#)
- [17] [Reinstatement subject to review of Roley wording.](#)
- [18] [Redraft to allow for Infraco rights on precedent breach to be retained. Removal of mark-up subject to DD.](#)
- [19] [Roley to provide wording preserving its rights for a precedent breach](#)
- [20] [Reinstatement subject to review of Roley wording.](#)
- [21] [Subject to Roley review and subsequent provision of wording to protect it when Tramco in material breach.](#)
- [22] [Redraft to allow for Infraco rights on precedent breach to be retained. Removal of mark-up subject to DD.](#)
- [23] [Reinstatement subject to review of Roley wording.](#)
- [24] [Redraft to allow for Infraco rights on precedent breach to be retained. Removal of mark-up subject to DD.](#)
- [25] [Reinstatement subject to review of Roley wording.](#)
- [26] [Redraft to allow for Infraco rights on precedent breach to be retained. Removal of mark-up subject to DD.](#)
- [27] [Roley position reserved pending due diligence.](#)
- [28] [Roley position reserved pending due diligence.](#)
- [29] [Roley position reserved pending due diligence.](#)
- [30] [To be clarified during due diligence.](#)
- [31] [tie to talk with AR on this clause to clarify his position.](#)
- [32] [Roley requires clarification on which parts of the ETN are to be maintained by the Operator.](#)
- [33] [Roley requires understanding of Depot.](#)
- [34] [Charging mechanism for additional hours to be discussed.](#)
- [35] [Consent definition to be split into tie Consents and Infraco Consents and risk allocation of this Clause 19 to be appropriately agreed.](#)
- [36] [To be expanded to allow for exclusivity.](#)
- [37] ["Land Consents" means all licences to occupy land, wayleaves, and any other licences, permissions, rights of access and related consents in respect of the land required for the Infraco Works;](#)
- [38] [tie to revert after checking with Land Team.](#)

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[39] Consents definition to be split and risk to be agreed and sub-clauses to be reinserted.
 [40] Special requirements schedule required.
 [41] Costs of compliance with Special Requirements are borne by tie
 [42] Subject to due diligence.

[43] "Proposals" means, in relation to each section of OLE forming part of the Edinburgh Tram Network, 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
 [44] Conflict in risk position.
 [45] 20.3 conflicts with 20.5 on risk position. Clarification required.
 [46] Note that although tie shall procure that CEC offers such assistance, this will be at Infraco's cost
 [47] Subject to the provision of information.

[48] Save in respect of unidentified utilities, contaminated land or unexploded ordnance

[49] Subject to extension for unforeseeable ground conditions. tie to provide info to Roley.
 [50] Subject to due diligence on the Depot Licence
 [51] To define Key Sub-Contractors. Roley do not agree to the approval of any Sub-Contracts.
 [52] To be finalised following definition of Key Sub-Contractors.

[53] Roley wishes to discuss the practical aspects of compliance with clauses 30.5-30.9.
 [54] Acceptable subject to definition of "Designated Work Area".

[55] Roley wishes to discuss the practical aspects of compliance with clauses 30.5 - 30.9
 [56] Risk transfer and handover details required.
 [57] Subject to clarification of clause 19 and land risk issues
 [58] Subject to due diligence of Tramco
 [59] Position reserved until Operator Procedures have been reviewed.
 [60] Obligation to be clarified
 [61] Mobilisation Services to be defined.
 [62] Obligation to be clarified.
 [63] Intention to be clarified.

[64] Variation to the Minimum Spare Parts Pool shall be treated as a tie Change.
 [65] Roley proposes to have a pre-approved lot of prices for standard repairs.
 [66] Infraco can recover its costs where the incident or failure was not due to its negligence or omission.

[67] Costs allocated in accordance with clauses 52.16/52.17.
 [68] Maintenance of Hazardous Materials Register to be clarified.
 [69] This is subject to a review of the Maintenance Services Connecting Agreement
 [70] Principle agreed, drafting to be finalised.

[71] concept of repeat offences agreed, drafted required.
 [72] Pending due diligence on Tram Inspector Agreement
 [73] Snagging protocol, time limit and long head time to be agreed.
 [74] Subject to review of maintenance services meeting agreement
 [75] Subject to review of maintenance services meeting agreement

[76] Subject to review of MUDFA dates
 [77] Intention to be clarified before clause 62 can be agreed.
 [78] Subject to due diligence.

[79] The cost of the test or opening up is to be borne by the Infraco. However, unless it can be shown that the workmanship or materials were not in accordance with the Agreement, the orders will constitute a Relief Event.
 [80] tie to provide reworked clause with new risk position.

[81] Note that Infraco may request the assistance of tie to remove protestors where Infraco can show, to tie's satisfaction, that the legal remedies available to Infraco have been exhausted or are unsuitable (clause 63.4). However, Infraco will indemnify tie in respect of any costs incurred in providing such assistance (clause 63.7).
 [82] Subject to review of revised drafting.

[83] List of Relief/Compensation Events needs to flow through from TSA/TMA and apply to Maintenance Period.

[84] Subject agreement on practicalities.
 [85] % deletions subject to future agreement.

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	Public Sector	Private Sector	Shared		OCIP	Other Insurances	Other Mitigations		

[\[86\] Interest is payable by tie for late payment at 2% over the base rate of the Royal Bank of Scotland plc.](#)

[\[87\] OCIP renewal issues to be clarified.](#)

[\[88\] OCIP renewal issues to be clarified.](#)

[\[89\] Subject to due diligence and further review.](#)

[\[90\] Subject to reinstatement of original Indirect Loss definition.](#)

[\[91\] Remove foresight element.](#)

[\[92\] End and definitions still to be negotiated and redrafted to reflect outcome.](#)

[\[93\] "Qualifying Change in Law" means:](#)

(a) a Discriminatory Change in Law ("**Discriminatory Change in Law**" means a Change in Law, the terms of which apply expressly to: (a) the ETN; and/or (b) the Infraco and not to other persons); and/or

(b) a Specific Change in Law ("**Specific Change in Law**" means any Change in Law which specifically applies to the same as or similar to the Infraco Works but excluding the making, amendment or revocation of any traffic regulation order)

[\[94\] tie to revert on Aggregate Cap.](#)

[\[95\] Redrafting required](#)

[\[96\] To be reviewed by Roley.](#)

[\[97\] Subject to Agreement between parties at PB.](#)

[\[98\] Subject to Agreement between parties at PB.](#)

[\[99\] Infraco acknowledges that tie is subject to the requirements of the FOISA and the Infraco undertakes to assist and cooperate with tie \(at Infraco's expense\) with such compliance. However, it is still tie that has the obligation to comply](#)