



**INFRACO CONTRACT**

**EDINBURGH TRAM NETWORK ("ETN")**

**ALLOCATION OF CONTRACTUAL RISKS IN THE INFRACO CONTRACT**

**24 AUGUST 2007**

**(Based on 8 March 2007 Version of the Infraco Contract)**

Risk : General Obligations	Allocation		
	Public Sector	Private Sector	Shared
[3.5] Termination due to failure to satisfy a CP within 3 months of Effective Date which <b>tie</b> does not waive		✓	
[3.5] Termination due to failure to satisfy a CP within 6 months of the Effective Date which <b>tie</b> does not waive	✓		
[4.4] Discrepancies, errors or omissions in, or between the Infraco Proposals and, the Employers Requirements		✓	
[4.4] Failure to bring discrepancies or requirements for further information in relation to documents to the attention of <b>tie's</b> Representative		✓	
[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		✓	
[5.1.1] the ground conditions on the Site		✓	
[5.1.2] all relevant safety requirements and environmental matters		✓	
[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, nature and difficulty of the work and materials necessary for the completion of the Infraco Works.		✓	
[5.1.6] the quality of any existing structures which will form part of, be adjacent to or be associated with the ETN		✓	
[5.1.7] injury or damage to property adjacent to the Site and to occupiers of such property		✓	
[5.1.8] interference from parties other than <b>tie</b> .		✓	
[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 to minimise and nuisance or interference		✓	

Risk : General Obligations	Allocation		
	Public Sector	Private Sector	Shared
[5.1.10] use of land, which will form part of or be associated with or will be adjacent to the ETN, by third parties		✓	
[5.1.11] means of communication with and restrictions of access to the Site		✓	
[5.1.12] accommodation required by Infraco		✓	
[5.1.13] generally to obtain all necessary information as to risks, contingencies and other circumstances influencing or affecting the Infraco Works		✓	
[6.3] Failure to cooperate in order to facilitate carrying out the Infraco Works <sup>1</sup>			✓
[6.3.1] Failure to approach all Permitted Variations on a collaborative and Open Book Basis			✓
[6.3.2] Failure to use reasonable endeavours to avoid unnecessary complaints, disputes and claims against the other Party			✓
[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			✓
[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			✓
[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			✓
[6.3.6] Failure to take reasonable steps to manage, minimise and mitigate all costs			✓
[6.8] Failure to procure the attendance of any of the Infraco Parties as required by <b>tie</b> at quarterly meetings		✓	
[7.1] Failure to perform the Infraco Works fully and faithfully in accordance with the Infraco Contract		✓	
Failure to carry out the works in accordance with: <ul style="list-style-type: none"> <li>• [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</li> <li>• [7.3.1] the Infraco Contract</li> <li>• [7.3.2] enabling the ETN to be designed, constructed, installed, tested and commissioned, and thereafter operated and maintained</li> <li>• [7.3.3] the Infraco's quality management system and plans.</li> <li>• [7.3.4] the Employer's Requirements</li> </ul>		✓ ✓ ✓ ✓ ✓	

<sup>1</sup> Clause 6.3 contains partnering obligations

Risk : General Obligations	Allocation		
	Public Sector	Private Sector	Shared
<ul style="list-style-type: none"> <li>• [7.3.5] the Infraco's Proposals</li> <li>• [7.3.6] <b>tie</b> and CEC policies</li> <li>• [7.3.7] the Code of Construction Practice</li> <li>• [7.3.8] the Code of Maintenance Practice</li> <li>• [7.3.9] the Tram Legislation</li> <li>• [7.3.10] applicable Laws, Land Consents and Consents</li> <li>• [7.3.11] using reasonably practicable means to ensure impacts are no worse than residual impacts as identified in the Environmental Statements</li> <li>• [7.3.12] environmental regulations and requirements</li> <li>• [7.3.13] Good Industry Practice</li> <li>• [7.3.14] the requirement to ensure that the design of the ETN is buildable</li> <li>• [7.3.15] the requirement to provide assistance to <b>tie</b> in ensuring best value</li> <li>• [7.3.16] the requirement not to wilfully detract from image of <b>tie</b>, TEL, CEC, the Scottish Ministers, Transport Scotland or the ETN</li> <li>• [7.3.17] OGC's "Excellence in Construction" initiative</li> <li>• [7.3.18] the requirement to ensure sustainability of the ETN in relation to energy consumption and the supply of materials from sustainable resources</li> <li>• [7.3.19] requirement not to carry out works in a manner likely to be injurious to persons or property</li> <li>• [7.3.20] requirement to use Key Personnel</li> </ul>		✓	
[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		✓	
[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.		✓	
[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] Content of Background Information supplied by <b>tie</b> or any of its stakeholders		✓	

Risk : General Obligations	Allocation		
	Public Sector	Private Sector	Shared
[7.11] Failure to liaise with any party, as required, to produce information required so that the Infraco Works can be progressed properly, according to Programme and in accordance with the Infraco Contract		✓	
[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 infraco 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		✓	
[7.15] Use or specification of "prohibited" materials which are known to be deleterious or contravene any relevant standard or code of practice (including Over Arup guidance or Good Industry Practice)		✓	
[7.17] Failure to notify <b>tie</b> of any ground, geophysical or other surveys which the Infraco intends to carry out		✓	
[7.18] Failure to notify <b>tie</b> of any Abortive Work		✓	
[26.17] Failure to comply with all regulatory requirements, any rules, regulations and instructions from <b>tie's</b> representative and <b>tie's</b> Drug and Alcohol Policy		✓	

Risk : System Integration	Allocation		
	Public Sector	Private Sector	Shared
Failure to implement: <ul style="list-style-type: none"> <li>• [8.1.1] work to define sub-system performance and demonstrate that the System Availability Target can be met</li> <li>• [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</li> <li>• [8.1.3] test management, including the preparation of method statements, test scripts, the setting of pass/fail criteria, and analysis</li> <li>• [8.1.4] alignment of operations and maintenance procedures</li> <li>• [8.1.5] system activation</li> <li>• [8.1.6] safety assurances and the Case for Safety</li> <li>• [8.1.7] a requirements traceability matrix</li> </ul>		✓ ✓ ✓ ✓ ✓ ✓ ✓	
[8.2] Failure to ensure that Trams and engineers works vehicles are fully integrated with the Infraco Works		✓	

Risk : System Integration	Allocation		
	Public Sector	Private Sector	Shared
[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		✓	

Risk : Infrastructure and Equipment	Allocation		
	Public Sector	Private Sector	Shared
[9.1] Failure to pay the Infraco resulting in the title in all materials, goods and equipment not transferring to CEC	✓		
[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	✓	✓	
[9.7] Compatibility of all infrastructure, equipment and systems and fitness for purpose		✓	
[9.8/9.9] Euro Compliance of equipment		✓	

Risk : Bonds, Guarantees and Collateral Warranties	Allocation		
	Public Sector	Private Sector	Shared
[74.1] Failure to provide an adjudication performance bond for the required amount		✓	
[74.3] Failure to provide a retention bond for the required amount		✓	
[74.4] Failure to provide a handback bond for the required amount		✓	
[74.5] Downgrading of bond surety to A- rating or below by Standard & Poor's		✓	
[74.6] Failure to provide an Infraco parent company guarantee		✓	
[74.7] Failure to provide an Infraco collateral warranty in favour of CEC, Transport Scotland, Network Rail and any other party at tie's reasonable request		✓	

Risk : Deliverables	Allocation		
	Public Sector	Private Sector	Shared
[10.1] 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 <b>tie</b> 's Representative for review pursuant to the Review Procedure		✓	
[10.3] Failure to allow <b>tie</b> '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 <b>tie</b> extranet and in the numbers required by <b>tie</b>		✓	
[10.5] Failure to prepare a Submittal Programme which meets the Programme		✓	
[10.6/10.7] Failure to comply with the Submittal Programme timescales	✓	✓	
[10.7] Introduction of alternative Submittal Programme where <b>tie</b> cannot comply with the original programme (not arising from Infraco default)	✓		
[10.8] Failure to give due consideration to <b>tie</b> or <b>tie</b> 's Representative at a meeting called by <b>tie</b> or <b>tie</b> 's Representative to discuss the development of a Deliverable		✓	
[10.9] Amendment to a Deliverable where such Deliverable does not meet the requirements of the Infraco Contract or any Approval Bodies		✓	
[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 <b>tie</b>		✓	
[54.5] Maintenance, security, bugs etc in relation to the Infraco's computer systems and equipment		✓	

Risk : Novation and Other Key Interfaces	Allocation		
	Public Sector	Private Sector	Shared
[11.1] Failure to execute the novation agreement by the SDS Provider or the Infraco		✓	
[11.1] Failure of <b>tie</b> to create the novation agreement	✓		
[11.2] Failure of the Infraco to procure a collateral warranty from the SDS provider		✓	
[11.3] Failure to procure that the SDS Provider carries out and completes the SDS Services		✓	
[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 <b>tie</b>		✓	

Risk : Novation and Other Key Interfaces	Allocation		
	Public Sector	Private Sector	Shared
[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 <b>tie</b>		✓	
[11.8] Termination of the SDS Agreement without the consent of <b>tie</b>		✓	
[12.1] Failure to enter into a novation agreement with <b>tie</b> and the Tram Supplier		✓	
[12.2] Failure to procure that the Tram Supplier enters into a collateral warranty in favour of <b>tie</b>		✓	
[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 <b>tie</b>		✓	
[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 <b>tie</b>		✓	
[12.8] Determination of the appointment of the Tram Supplier without the prior written approval of <b>tie</b>		✓	
[12.9] Failure, if required by <b>tie</b> , on termination or expiry of the Infraco Contract or at any time during the term, to assign or otherwise transfer the Tram Supply Agreement to <b>tie</b> , the Operator, the Scottish Ministers, TEL, CEC, Transport Scotland or any local authority with no worse financial standing than <b>tie</b> 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 <b>tie</b> and the Tram Maintainer		✓	
[13.2] Failure to procure that the Tram Maintainer enters into a collateral warranty in favour of <b>tie</b>		✓	
[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 <b>tie</b>		✓	
[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 <b>tie</b> in respect of the ETN		✓	

Risk : Novation and Other Key Interfaces	Allocation		
	Public Sector	Private Sector	Shared
[13.8] Determination of the appointment of the Tram Maintainer without the prior written approval of <b>tie</b>		✓	
[13.9] Failure, if required by <b>tie</b> , on termination or expiry of the Infraco Contract or at any time during the term, to assign or otherwise transfer the Tram Maintenance Agreement to <b>tie</b> , the Operator, the Scottish Ministers, TEL, CEC, Transport Scotland or any local authority with no worse financial standing than <b>tie</b> or to any other person whose obligations are unconditionally guaranteed under the Tram Maintenance Agreement by such a person		✓	
[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 <b>tie</b>		✓	
[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 <b>tie</b>		✓	
[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 <b>tie</b> in respect of the ETN	✓	✓	
[14.8] Determination of the appointment of the Infrastructure Maintainer without the prior written approval of <b>tie</b>		✓	
[14.9] Failure, if required by <b>tie</b> , on termination or expiry of the Infraco Contract or at any time during the term, to assign or otherwise transfer the Infrastructure Maintenance Agreement to <b>tie</b> , the Operator, the Scottish Ministers, TEL, CEC, Transport Scotland or any local authority with no worse financial standing than <b>tie</b> or to any other person whose obligations are unconditionally guaranteed under the Infrastructure Maintenance Agreement by such a person		✓	
[15.1] Risks arising through the Roads Demarcation Agreement	✓	✓	
[16.2] Risks arising through the Asset Protection Agreement	✓	✓	



Risk : Operator Interface	Allocation		
	Public Sector	Private Sector	Shared
[17.2/17.6] 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	✓		
[17.3/17.4/17.7] Failure to mitigate or maintain reports of an Operator Event		✓	
[17.8] Failure to take into account comments of the Operator when refining Design and failure to deliver Infraco comments on functional and maintainability issues to <b>tie</b> and the operator		✓	
[17.9-17.13] Failure to co-operate with the Operator in respect the Operator Maintenance Plan and Maintenance Services to ensure that all parts of the ETN are constantly available and unrestricted for Transport Services		✓	
[17.16] DPOFA Changes	✓		
[17.17] Failure to provide DPOFA Change Response when required by <b>tie</b>		✓	
[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] Failure to liaise effectively with the Operator in the co-ordination of health and safety issues at the Depot		✓	
[17.23] Failure to give the Operator and <b>tie</b> 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 <b>tie</b> and the Operator with a combined maintenance plan not less than 6 months prior to the Planned Service Commencement Date		✓	
[17.25/17.26] Failure to provide technical advice, information and access to the Operator.		✓	
[17.28] Damage to the Infraco Works caused by the Operator or <b>tie</b>	✓		
[17.29] Failure to work closely and effectively with the Operator to complete the System Acceptance Tests and related obligations on testing and commissioning		✓	
Failure to work collaboratively with the Operator to: <ul style="list-style-type: none"> <li>• [17.31.1] maximise productivity during the Infraco Works and minimise disruption for the public and third parties</li> <li>• [17.31.2] ensure the delivery of complete system integration</li> <li>• [17.31.3] maintain the highest standards achievable with regard to the provision of Transport Services</li> <li>• [17.31.4] minimise and give the best advance notice of interruption to Transport Services</li> </ul>		✓ ✓ ✓ ✓	

Risk : Operator Interface	Allocation		
	Public Sector	Private Sector	Shared
<ul style="list-style-type: none"> <li>• [17.31.5] safeguard proper performance of the Project Development Services, Project Operations and obligations under the Infraco Contract</li> <li>• [17.31.6] support adherence to timetables and the Programme and share information and Deliverables</li> <li>• [17.31.7] report promptly any proposed change permitted under the Infraco Contract and related mitigation</li> <li>• [17.31.8] use best endeavours to minimise interface disputes</li> </ul>		✓  ✓  ✓  ✓	

Risk : Land Issues and Consents	Allocation		
	Public Sector	Private Sector	Shared
[18.1/18.20] Failure to provide licence to enter land and the necessary Land Consents <sup>2</sup>	✓		
[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 <b>tie</b> 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	✓		
[18.7/18.8] Failure to minimise period of possession of Temporary Site, or remain in possession of such Temporary Site after 28 days 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 <b>tie</b>		✓	
[18.10.2] Failure to provide <b>tie</b> 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		✓	
[18.13] Temporary possession for maintenance purposes in breach of: the Acts		✓	

<sup>2</sup> "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;

Risk : Land Issues and Consents	Allocation		
	Public Sector	Private Sector	Shared
[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		✓	
[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		✓	
[18.16] Failure to use reasonable endeavours to provide assistance to <b>tie</b> in the provision and amendment of Land Consents		✓	
[18.19] Breach of Schedule 13 (Third Party Agreements)		✓	
[19.1] Failure to obtain, maintain and implement all Consents which may be required to carry out and complete the Infraco Works <sup>3</sup>		✓	
[19.2] Failure to provide copies of Consents to <b>tie</b> 's Representative		✓	
[19.4] Cost of obtaining and maintaining in effect the Traffic Regulation Orders	✓		
[19.5] Failure to provide reasonable assistance to <b>tie</b> 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		✓	
[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		✓	
[19.10] Failure to comply with Special Requirements of any Approval Bodies affected by the Infraco Works <sup>4</sup>		✓	
[20.1] Failure to submit the Proposals <sup>5</sup> to <b>tie</b> 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 <b>tie</b> 's consent to the Proposals		✓	
[20.2] Failure to obtain all necessary Consents or approvals from the relevant planning authority and to obtain any Building Fixing Agreement		✓	
[20.3.1.1/20.3.2] Where a building fixing agreement is to be used, the cost of securing the consent of the Heritable Proprietor and any other relevant party to allow the Infraco to carry out a survey and the cost of securing the agreement of the Heritable Proprietor to allow the setting of such building fixings		✓	

<sup>3</sup> "Consents" means, without limitation, all permissions, consents, approvals, non objections, certificates, permits, licences, agreements, statutory agreements and authorisations, Planning Permissions, temporary traffic regulation orders, building fixing agreements, building control approvals, building warrants, Access Permits, Permits to Work and all other necessary consents and agreements from the Approval Bodies or any other relevant third parties whether required by Law or the Tram Legislation or under contract provided that, subject to Clause 18.17 [of the Infraco Contract], "Consents" shall not include any Land Consents and any Traffic Regulation Orders;

<sup>4</sup> Costs of compliance with Special Requirements are borne by **tie**.

<sup>5</sup> "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

Risk : Land Issues and Consents	Allocation		
	Public Sector	Private Sector	Shared
[20.3.1/20.11] Survey in respect of building fixings and costs of any proposed course of action arising therefrom		✓	
[20.4] Failure to inform <b>tie</b> of failure to obtain the consent of the relevant Heritable Proprietor		✓	
[20.5] 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		✓	
[20.6] Failure by <b>tie</b> to respond within 10 days stating its preferred method for supporting the OLE	✓		
[20.7] 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 <sup>6</sup>	✓		
[20.9] 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		✓	
[20.10] Cost of removal 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		✓	
[22.1] Adverse physical conditions and artificial obstructions <sup>7</sup>		✓	
[22.5] Reasonable extra costs, suspension and/or a variation in dealing with unexploded ordnance, unidentified utility apparatus or unidentified contaminated land	✓		
[23] Failure to provide <b>tie</b> and <b>tie's</b> Representative and any person authorised by <b>tie</b> or <b>tie's</b> Representative with access at all times to any site, workshop or facility etc.		✓	
[24] Failure to execute the Depot Licence and comply with the terms thereof		✓	

Risk : Sub-Contracting and Personnel	Allocation		
	Public Sector	Private Sector	Shared
[28.2] Sub-contracting of part of the Infraco Works without <b>tie's</b> consent except in respect of SDS Provider, Tram Supplier, Tram Maintainer, the Infrastructure Maintainer and any approved sub-contractor and/or trades		✓	
[28.4] 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		✓	

<sup>6</sup> Note that although **tie** shall procure that CEC offers such assistance, this will be at Infraco's cost

<sup>7</sup> Save in respect of unidentified utilities, contaminated land or unexploded ordnance

as required for execution of the Infraco Works			
[28.6] Removal of a sub-contractor or employee of a sub-contractor who misconducts himself or is incompetent		✓	
[28.7] Failure to provide Key Sub-Contractor collateral warranties to <b>tie</b> in favour of <b>tie</b> and/or in favour of CEC, Transport Scotland, TEL, Network Rail and any other party at <b>tie's</b> reasonable request		✓	
[28.8] Failure to use reasonable endeavours to procure that any Sub-Contractor shall within 40 business days of any reasonable request by <b>tie</b> provide to <b>tie</b> a collateral warranty		✓	
[28.9] Failure in performance by Sub-Contractors		✓	

Risk : Performance of the Works	Allocation		
	Public Sector	Private Sector	Shared
[25.1] Failure to observe the reasonable instructions of <b>tie's</b> Representative		✓	
[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 <b>tie's</b> 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 <b>tie's</b> 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 <b>tie</b> without the prior written approval by <b>tie</b>		✓	
[26.17] Failure of Key Personnel and other staff to comply with regulatory requirements, <b>tie's</b> drug and alcohol policy and any rules and regulations from <b>tie's</b> Representative		✓	
[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 <b>tie's</b> Representative, misconducts himself or is incompetent or negligent		✓	

Risk : Construction	Allocation		
	Public Sector	Private Sector	Shared
[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		✓	
[30.2] Failure to provide required lights, guards, fencing etc		✓	
[30.3] Failure to comply with health and safety legislation and requirements		✓	
[30.4] Failure to undertake instruction and training and provide and issue passes for admission to the Site		✓	
[30.6] 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		✓	
[30.10] Failure to keep the Site secure		✓	
[30.11] Failure to take reasonable steps to prevent unauthorised persons being admitted to the Site		✓	
[31.1] Failure to take full responsibility for the care of the Infraco Works and the ETN and any work, materials, plant and equipment for incorporation therein from the Effective Date until the Expiry Date.		✓	
[32.1] Failure to comply with requirements in Schedule 3 ( <i>Code of Construction Practice and Code of Maintenance Practice</i> ) 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 ( <i>Code of Construction Practice and Code of Maintenance Practice</i> ) and to minimise nuisance, inconvenience or interference to the business or operations of the owners, tenants or occupiers of the Site		✓	
[32.3] Failure to use reasonable endeavours to obtain written consent of adjoining or neighbouring landowners with regard to interference with their rights		✓	
[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] Strengthening bridges or altering or improving any highway connecting with the Site to facilitate movement of plant		✓	
[33.3] Claims for damage to highways or bridges		✓	
[34.1] Failure to construct and complete Infraco works in strict accordance with the Agreement, to the satisfaction of <b>tie</b> , and in strict accordance with <b>tie's</b> instructions		✓	

Risk : Construction	Allocation		
	Public Sector	Private Sector	Shared
[34.2] Failure to keep materials, Infraco's equipment, labour, mode and manner of construction in accordance with the Infraco Contract		✓	
[39. 6] Discovery of Fossils etc on Site <sup>8</sup>	✓		

Risk: Maintenance	Allocation		
	Public Sector	Private Sector	Shared
<p>Failure to carry out all maintenance, repair and works to the ETN as is necessary to:</p> <ul style="list-style-type: none"> <li>• [52.1.1] Maintain the ETN in accordance with the Maintenance Programme and the Maintenance Plan</li> <li>• [52.1.2] Ensure that the requirements of the Maintenance Specifications are met at all times</li> <li>• [52.1.3] Comply with the Operator Procedures</li> <li>• [52.1.4] Ensure that no design work, redesign work or modifications to the ETN shall prejudice the Case for Safety and/or impact negatively on the performance of the system</li> <li>• [52.1.5] Ensure that no maintenance or repair work shall prejudice to the Care for Safety</li> <li>• [52.1.6] Protect health and safety and not unreasonably interfere with the duties of other parties in relation to health and safety legislation</li> <li>• [52.1.7] Ensure that the ETN is Available on a continuing basis</li> <li>• [52.1.8] Maintain the design intention and design life periods in the Employer's Requirements</li> <li>• [52.1.9] Hand back of the ETN in a condition complying with Clause 52 (<i>Maintenance</i>) without requiring: 1) replacements as a result of fair wear and tear or expiry of working life or 2) repairs which could disrupt services for 24 hours or more</li> </ul>		<ul style="list-style-type: none"> <li>✓</li> <li>✓</li> <li>✓</li> <li>✓</li> <li>✓</li> <li>✓</li> <li>✓</li> <li>✓</li> <li>✓</li> </ul>	
[52.2/52.3] Failure to work with Operator in respect of daily handover, comments and checklist		✓	
[52.4] Failure to support, assist and co-operate with <b>tie</b> Parties as <b>tie</b> may reasonably require from time to time.		✓	
[52.5] 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		✓	

<sup>8</sup> Works required to be carried out in relation to the discovery of fossils and antiquities is deemed to be a **tie** Change (clause 39.6)

Risk: Maintenance	Allocation		
	Public Sector	Private Sector	Shared
[52.7] Failure to employ and train all staff necessary to perform the Maintenance Services in accordance with the Infraco Contract		✓	
[52.8] 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] 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			✓
[52.14] Variation of the Minimum Spare Parts Pool <sup>9</sup>	✓		
[52.15] Effecting repairs of all defects in, failures or damage to the ETN irrespective of cause.		✓	
[52.16] Cost of repairs referred to in 52.15 above where any damage to the ETN is caused by: 1) a breach of the Infraco Contract by Infraco; 2) any failure by the Infraco to perform the Maintenance Services; 3) the performance of the Maintenance Services by the Infraco or an Infraco Party or 4) any negligent act or omission by the Infraco or any Infraco Party		✓	
[52.17] The costs of any damage to the ETN which is NOT caused by 1) a breach of the Infraco Contract by Infraco; 2) any failure by the Infraco to perform the Maintenance Services; 3) the performance of the Maintenance Services by the Infraco or an Infraco Party or 4) any negligent act or omission by the Infraco or any Infraco Party <sup>10</sup>	✓		
[52.19] Temporary Repairs and obtaining approvals thereafter		✓	
[52.20/52.21] Failure to provide assistance, information and advice to <b>tie</b> and the Operator which is reasonably required in the case of incidents or failures and reporting thereon		✓	
[52.23] Failure to report and propose a solution to defects in the ETN which may prejudice safety or reliable operation of the ETN		✓	
[52.24] Failure to provide Additional systems availability requested by <b>tie</b>		✓	
[52.25] Failure to keep up to date and supply a maintenance manual, electronically and free of charge, to <b>tie's</b> representative		✓	
[52.26] Failure to provide efficient and immediate communication of information, CCTV images and data between the Control Room and CEC's traffic and information centre		✓	
53] Use of Hazardous Materials		✓	

<sup>9</sup> Variation to the Minimum Spare Parts Pool shall be treated as a **tie** Change.

<sup>10</sup> Such costs shall be treated as a **tie** Change.



Risk : Quality, Testing and Examination	Allocation		
	Public Sector	Private Sector	Shared
[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] Costs of any tests		✓	
[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 <u>are</u> found to be in accordance with Agreement	✓		
[36.2] Cost of uncovering where Infraco Works are found <u>not</u> to be in accordance with Agreement		✓	
[38.3] Urgent repairs carried out by <b>tie</b> which, in the opinion of <b>tie's</b> Representative acting reasonably, the Infraco was liable to carry out under the Agreement		✓	
[38.4] Urgent repairs carried out by the Infraco (except to the extent such work results from Infraco's default)			
[37.1] Unsatisfactory work or materials		✓	
[37.5] Costs of opening up and testing for unsatisfactory work and materials where order from <b>tie's</b> Representative is reasonable in the circumstances even though work is found not to be defective		✓	
[40] Errors or omissions in the Infraco Works		✓	
[43.5] Compliance with obligations in the Tram Inspector Agreement	✓	✓	
[43.10] Costs of appointment and services of the Tram Inspector		✓	
[44.3] Failure to satisfy <b>tie</b> that a Section should be granted a Certificate of Service Commencement		✓	
[46.2] Carrying out of Snagging		✓	
[47.2/47.4] Failure to satisfy <b>tie</b> that T4/T5 are complete and that a Network Certificate/Reliability Certificate should be issued		✓	
[48] Tests, surveys, trials or searches at <b>tie's</b> request where the defect, imperfection or fault is one for which the Infraco is NOT liable under the Agreement.	✓		
[48] Tests, surveys, trials or searches at <b>tie's</b> request where the defect, imperfection or fault is one for which the Infraco is liable under the Agreement.		✓	
[55.3] Costs associated with surveys and audits which do not show non-compliance by the Infraco	✓		
[55.4] Costs associated with surveys and audits which show a non-compliance by the Infraco		✓	
[56.1] Failure to comply with Schedule 6 Maintenance Payment Regime in respect of performance monitoring		✓	
[56.3-56.5] Failure to submit Service Quality Reports, Annual Service Reports and Self-Monitoring Plans at the required times		✓	

Risk : Quality, Testing and Examination	Allocation		
	Public Sector	Private Sector	Shared
[56.6] Failure to provide particulars of failed performance to <b>tie's</b> Representative as soon as reasonably practicable, and to assist <b>tie</b> in respect of monitoring procedures		✓	
56.8] Increased monitoring as a result of Underperformance Warning Notices being issued		✓	
[57] Resetting of performance criteria			✓
[105.1.2] Failure to operate a quality management system in accordance with BS EN 150 9001:2000		✓	

Risk : Programme	Allocation		
	Public Sector	Private Sector	Shared
[60.1./60.9/62.1] 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		✓	
[60.4] Deemed acceptance of a revised programme due to failure by <b>tie's</b> Representative to accept, reject or request further information within 10 Business Days in respect of revised programmes proposed by the Infraco	✓		
[60.2/60.5/60.7] Failure to update and to provide further information in respect of the revised programme proposed by Infraco		✓	
[62.6] Failure to deliver a Tram to the Depot by the Agreed Delivery Date		✓	
[62.11] Tram exceeding Maximum Tram Weight		✓	
[87.1] Suspension on instructions of <b>tie's</b> Representative in circumstances not provided below	✓		
[87.1.1] Suspension provided for in the Agreement		✓	
[87.1.2] Suspension necessary by reason of weather conditions or by some default of the Infraco		✓	
[87.1.3] Suspension necessary for the proper construction and completion or for the Safety of the Infraco Works		✓	
[87.2] Occurrence of abandonment or omission of Infraco Works if permission to resume not granted by <b>tie</b> within 6 months	✓		

Risk : Relief Events (time) and Compensation Events (time and/or costs)	Allocation		
	Public Sector	Private Sector	Shared
[Definition of Compensation Event] Occurrence of any delay caused by <b>tie</b> failing to give possession or access	✓		
[18.20/definition of Compensation Event] Occurrence of any delay caused by <b>CEC</b> stopping up streets	✓		

Risk : Relief Events (time) and Compensation Events (time and/or costs)	Allocation		
	Public Sector	Private Sector	Shared
[Definition of Compensation Event] Occurrence of any delay caused by Utilities Works or MUDFA works	✓		
[Definition of Compensation Event] Delay caused by breach by <b>tie</b> which materially and adversely affects the performance of the Infraco Works	✓		
[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	✓		
[34.3] Occurrence of any referable delay caused by instructions from <b>tie's</b> Representative under Clause 34.1	✓		
[37.5/definition] Occurrence of any referable delay caused by orders or directions from <b>tie's</b> Representative in respect of the removal of unsatisfactory work or materials <sup>11</sup>	✓		
[49.1/49.3] Failure to remove materials and equipment at the correct time		✓	
[63.2/63.7] 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.		✓	
[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	✓		
[Definition of Relief Event] Delay caused by terrorism	✓		
[Definition of Relief Event] Delay caused by strike or industrial dispute	✓		
[86.6/definition of Relief Event] Delay caused by a Force Majeure Event	✓		
[61.1] Increase to rate of progress where no entitlement to extension of time		✓	
[61.6] Acceleration measures required by <b>tie</b> to accelerate programme not arising out of any default by the Infraco	✓		
[63.1] Delay caused by Protestor Action	✓		
[63.3] Removal of protestors from the ETN <sup>12</sup>		✓	
[65.3] [Definition] Failure to notify <b>tie</b> within 10 Business Days of awareness of delay event/compensation event		✓	
[64/65.8.1] Failure to identify long lead time works		✓	
[64/65.8.2] Failure to identify enabling works required		✓	
[64/65.8.3] Failure to manage interface with CEC		✓	

<sup>11</sup> 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.

<sup>12</sup> 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).

Risk : Relief Events (time) and Compensation Events (time and/or costs)	Allocation		
	Public Sector	Private Sector	Shared
[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		✓	
[64.7/65.7] Concurrent delay		✓	
[80.14] Delay/costs due to a <b>tie</b> Change (save where the Infraco could have prevented the need for the <b>tie</b> change)	✓		
[87.1] Occurrence of any referable delay/costs caused by suspension by <b>tie's</b> Representative	✓		

Risk : Payment and Measurement	Allocation		
	Public Sector	Private Sector	Shared
[41.3] Failure to satisfy <b>tie</b> in relation to the achievement of a milestone (including a critical milestone)		✓	
[67.6/67.8] Failure to submit valid VAT invoice on time		✓	
[67.14/68.12] Failure to adhere to requirement to procure collateral warranties prior to payment		✓	
[69.1] Late Payment <sup>13</sup>	✓		
[69.2] Failure to issue a notice of withholding within the prescribed time period		✓	
[70.1] Payment of tax on any taxable supplies to <b>tie</b>		✓	

Risk : Warranties	Allocation		
	Public Sector	Private Sector	Shared
[75] Breach of corporate warranties		✓	

Risk : Required Insurances	Allocation		
	Public Sector	Private Sector	Shared
[76.1] Failure to procure and maintain Required Insurances		✓	
[76.11] Failure to comply with the terms of the Required Insurances or OCIP Insurances		✓	
[76.13] Commercially unreasonable rates and terms of insurance			✓

<sup>13</sup> Interest is payable by **tie** for late payment at 2% over the base rate of the Royal Bank of Scotland plc.

Risk : Required Insurances	Allocation		
	Public Sector	Private Sector	Shared
[76.14] Failure to obtain or maintain OCIP Insurances	✓		
[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		✓	

Risk : Indemnities, liability and sole remedy	Allocation		
	Public Sector	Private Sector	Shared
[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)		✓	
[77.1] 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		✓	
[77.2] Death of, or injury to, persons or loss of or damage to property resulting from any act, neglect, or breach of statutory duty by <b>tie</b> , its agents, servants or other contractors (not being employed by the Infraco or any Infraco Party) or for or in respect of any claims, demands, proceedings, damages, costs, charges and expenses	✓		
[77.9] Indirect Losses (except those sustained in breach of Third Party Agreements or Land Consents)	✓	✓	
[77.10] Indirect Losses sustained in respect of Third Party Agreements or Land Consents	✓	✓	

Risk : Changes	Allocation		
	Public Sector	Private Sector	Shared
79.2] Failure to maintain a change control register and provide a copy (and updates) to <b>tie</b>		✓	
[80] <b>tie</b> Change	✓		
[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 <b>tie</b> Change		✓	
[80.7] Failure to demonstrate that it is appropriate to subcontract for the <b>tie</b> Change and obtain best value for money		✓	
[80.8] Failure to agree the Estimate	✓	✓	
[80.13] Deemed withdrawal of a <b>tie</b> Change due to failure to issue <b>tie</b> Change Order within 30 days of agreement on Estimate	✓	✓	
[80.15-80.17] Failure by the Infraco to notify <b>tie</b> within 10 Business Days of matters which may constitute a <b>tie</b> Change		✓	

Risk : Changes	Allocation		
	Public Sector	Private Sector	Shared
[81] Infraco Change		✓	
[81.1] Failure to notify tie within 10 Business Days 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 duration 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	✓		
[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		✓	
[83.4] Payment of costs in Accommodation Works Cost Notice	✓		
[84] Qualifying Changes in Law <sup>14</sup> <ul style="list-style-type: none"> <li>• [884.2.1] failure to use all reasonable endeavours to minimise increase in costs</li> <li>• [84.2.2-3] failure to mitigate effects and implement changes in most cost effective manner</li> </ul>	✓	✓ ✓	
[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] Payment in respect of Qualifying Changes in Law which exceed a threshold of £150,000.	✓		
[84.4.2] Payment in respect of SDS Qualifying Changes in Law are above a threshold of £15,000 in respect of each and every event.	✓		
[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	✓		
[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	✓		

<sup>14</sup> "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)

Risk : Changes	Allocation		
	Public Sector	Private Sector	Shared
and every event.			
[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.	✓		
[84.5] General Change In Law		✓	
[85.1] Increase in the cost of any Phase 1b option		✓	
[86.2.2] The cost of any Network Expansions	✓		

Risk : Termination	Allocation		
	Public Sector	Private Sector	Shared
[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	✓	✓	
[89] Voluntary Termination by <b>tie</b> three years after the issue of the first certificate of Service Commencement		✓	
[93] Infraco's persistent breach of its obligations		✓	
Risk of termination due to: (see definition of Infraco Default) <ul style="list-style-type: none"> <li>• [Definition] Infraco insolvency event</li> <li>• [Definition] breach of provision of the Agreement which materially and adversely affects the Infraco Works</li> <li>• [Definition] conduct incompatible with the performance of the Infraco Works or wilful detraction to image and reputation of <b>tie</b>, CEC, the Scottish Ministers or any project related to the Infraco Works</li> <li>• [Definition] Infraco's failure to take out and maintain the Required Insurances</li> <li>• [Definition] failure to achieve the Service Commencement Date on or before the date falling [12 months] after the Planned Service Commencement Date</li> <li>• [Definition] Infraco's breach of confidentiality</li> <li>• [Definition] Infraco's failure to resolve a conflict of interest</li> <li>• [Definition] Change in legal status or control of the Infraco which is materially prejudicial to carrying out and completing the Infraco Works</li> <li>• [Definition] Abandonment without due cause of the whole of the Infraco Works or a material part of them</li> <li>• [Definition] Infraco's failure to commence Works within 90 days of Commencement Date</li> <li>• [Definition] Infraco's continued suspension of works for 15</li> </ul>		✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓	

days after a written notice to proceed			
• [Definition] The issue of 3 or more underperformance Warning Notices in any 12 month period		✓	
• [Definition of <b>tie</b> Default] <b>tie's</b> failure to make payment due under Interim Certificates exceeding 10% of the Tender Total	✓		
• [Definition or <b>tie</b> Default] <b>tie's</b> breach of material obligation under the Agreement which substantially frustrates or renders it impossible for the Infraco to perform its obligations for a continuous period of 90 days	✓		
• [91.6] Force Majeure			✓
• [92] Infraco or Sub-Contractor commits a Prohibited Act		✓	

Risk : Miscellaneous	Allocation		
	Public Sector	Private Sector	Shared
[50.3] 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		✓	
[58.9] Costs of compliance with TUPE provisions	✓		
[59.5] Costs arising and steps being required following a step in for Health and Safety and Environmental reason		✓	
[71.2] Tax fluctuations where <b>tie</b> is informed of such increase within 3 months	✓		
[71.2] Tax fluctuations where <b>tie</b> is NOT informed of such increase within 3 months		✓	
[73] Failure to provide reasonable assistance to <b>tie</b> 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	✓	✓	
[98.3 & 4] Failure to inform <b>tie</b> of any change in legal status/control	✓	✓	
[99] Occurrence of a Conflict of Interest		✓	
[101.2] Unauthorised disclosure of confidential information		✓	
[101.7] Breach of terms of FOISA <sup>15</sup>	✓		
[102] Unauthorised use of Project IPR		✓	
[102.2] Failure properly to assign IPR or grant appropriate licences to <b>tie</b>		✓	
[102.4] Failure to grant a licence in accordance with this clause	✓		
[102.9] Failure to use reasonable endeavours to procure licences of Third Party Software for <b>tie</b>		✓	

<sup>15</sup> 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.



Risk : Miscellaneous	Allocation		
	Public Sector	Private Sector	Shared
[102.10] Failure to ensure back up of Deliverables in accordance with Good Industry Practice		✓	
[102.12] Failure to provide source code, object code and documentation in relation to Third Party Software to tie		✓	
[102.9] Failure to procure the grant of a sub-licence for any relevant Third Party Software		✓	
[103] Breach of data controller obligations		✓	
[105.3] Failure to comply with the HSQE system		✓	
[115] Breach of discrimination legislation		✓	

Risk : Dispute Resolution	Allocation		
	Public Sector	Private Sector	Shared
[Schedule 9 paragraph 7] Loss of right to dispute due to failure to raise dispute within 3 months	✓	✓	
[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)	✓	✓	