



**THIS IS SCHEDULE PART 4 REFERRED TO IN THE
FOREGOING AGREEMENT BETWEEN TIE AND THE
INFRACO**

SCHEDULE PART 4

PRICING

CONTENTS

- 1.0 Generally
- 2.0 Definitions used in this Schedule
- 3.0 Schedules of Rates

Appendices

- A Schedules of Rates
- B Process for the agreement of Value of tie Changes (other than On Street Works tie Changes)
- C Network Rail Immunisation

1.0 GENERALLY

- 1.1 The Construction Works Price is the aggregate of the Off Street Works Price and the On Street Works Contract Price as set out in the table in paragraph 2.1 of this Schedule Part 4 (Pricing).
- 1.2 Subject to Schedule Part 45 (On Street Works), the Construction Works Price is on a lump sum basis that is fixed until completion of the Infraco Works and not subject to variation except in accordance with the provisions of this Agreement.
- 1.3 References to clause numbers in Part 4 of this Schedule are to clauses in the Infraco Contract unless otherwise stated.
- 1.4 All rates, lump sums and the like contained in this Schedule Part 4 are exclusive of Value Added Tax and are in Pounds Sterling.

2.0 DEFINITIONS USED IN THIS SCHEDULE

- 2.1 The "Contract Price" comprises capital expenditure as follows:

Contract Price Analysis	£
Off Street Works Price	£362,500,000
On Street Works Contract Price	£47,384,510
Construction Works Price	£409,884,510
Infraco maintenance mobilisation	£2,205,311
Infraco initial spare parts	£1,013,090
Total of capital expenditure	£413,102,911

3.0 SCHEDULES OF RATES

- 8.1 Rates for certain items have been established for determining the value of **tie** Changes (other than On Street Works tie Changes) as noted in Appendix A.
- 8.2 Rates for SDS are as noted in the SDS Agreement / SDS Novation Agreement which also set out the mechanism that shall apply in respect of any design associated with **tie** Changes (other than On Street Works tie Changes).

APPENDIX A
SCHEDULE OF RATES

APPENDIX B

PROCESS FOR AGREEMENT OF VALUE OF TIE CHANGES (other than On Street Works tie Changes)

tie Changes

1. The valuation of any tie Change to which Clause 80 applies shall be made in accordance with Clause 80.6.
2. Where Clause 80.6.4 applies and to the extent that they apply to a **tie** Change then the valuation shall be on the basis of actual cost or estimated actual cost of resources and labour employed thereon.
3. Infraco shall apply the following head office overheads and profit percentages to any amount calculated in accordance with:
 - 3.1 Clauses 80.6.1, 80.6.2, 80.6.3 and 80.6.4 where such amounts apply to Systems and Trackworks; and
 - 3.2 Clause 80.6.4 where such amounts apply to Civil Engineering Works,
as follows:

3.3	Civil Engineering Works including any SDS Design Fees	10%
3.4	Systems and Track Works	17%
4. Infraco shall apply the following Site related overheads percentages to any amount calculated in accordance with Clauses 80.6.1, 80.6.2, 80.6.3 and 80.6.4 as follows:
 - 4.1 7.4% to cover the consortium preliminaries.
 - 4.2 17.5% of any Civil Engineering Works to cover any other Civil Engineering works preliminaries with regard to any tie Change to which this Appendix B applies, provided that this calculation shall in no case apply to claims for preliminaries arising from extensions of time or delay.
5. **Prolongation**
 - 5.1 Preliminaries for Civil Engineering Works arising from extensions of time or delay shall be calculated by applying the rates and prices set out in Appendix A.
 - 5.2 The head office overheads and profit percentage for Civil Engineering Works set out in paragraph 3.2 above shall be applied to the preliminaries calculated in accordance with paragraph 5.1.
 - 5.3 Prolongation costs (including site related overheads and any other preliminaries) for Systems and Trackwork shall be calculated by applying the rates and prices set out at Appendix A.
 - 5.4 In respect of the valuation of prolongation costs relating to Systems and Trackwork, 17% shall be added to the sums calculated in accordance with paragraph 5.3 in respect of head office overheads and profit.

6. The amount of the overheads and profit percentage calculated as part of the valuation of tie Changes shall be added in the case where the valuation results in an addition and shall be deducted where the valuation results in an omission.
7. Where paragraph 2 above is the basis of the valuation of tie Changes then the following items shall not be included as actual costs under the Infraco Contract.
 1. Costs not justified by the Infraco's accounts and records.
 2. Costs not payable under the Infraco Contract.
 3. Costs arising from the Infraco's Design errors.
 4. Costs arising in respect of loss or damage except as provided for under the Agreement.
 5. Costs which should have not been paid to a sub-contractor in accordance with the relevant sub-contract.
 6. Costs arising from people who are part of the Head Office Overhead.

APPENDIX C

NETWORK RAIL IMMUNISATION

1. Words defined in Clause 16 or Part 1 of the Schedule shall have the same meaning in this Appendix C to Part 4 of the Schedule. Additionally, for the purposes of this Appendix C;
 - 1.1 "**Immunisation Programme**" shall mean the series of linked tasks, defined in the form of a Gantt chart in the Infraco's schedule of works, to be completed within a predetermined time that when executed to completion will result in NR Immunisation;
 - 1.2 "**Infraco's Immunisation Strategy**" shall mean the defined set of processes documented in the Infraco's NR EMC Strategy Plan; and
 - 1.3 "**NR Immunisation**" shall mean, in so far as indicated in Infraco's Immunisation Strategy as intended to be carried out on the Network, works to mitigate the potential effects to the Railway of electromagnetic interference due to effects of coupled energy or stray current from the operation of the Edinburgh Tram Network traction system.
2. The Infraco has agreed to undertake the NR Immunisation, including management of associated works, programme and approvals together with obligations in relation to the same set out in Clause 16 (*Interface with Network Rail*), subject to Network Rail approving the Infraco Immunisation Strategy in writing before 31 July 2008. In the event that Network Rail have been unable to determine whether or not to approve the Infraco Immunisation Strategy by 31 July 2008 due to material delay on the part of the Infraco in the provision of relevant information reasonably required by Network Rail through **tie**, the deadline for approval specified in this paragraph shall be extended to such later date as the Parties, acting reasonably shall agree.
3. In the event that Network Rail approve the NR Immunisation prior to the deadline referred to in paragraph 2 above:
 - 3.1 Infraco shall procure the delivery of the NR Immunisation;
 - 3.2 subject to any liability in relation to NR Immunisation and associated Possessions being addressed under Clauses 16.72 or 16.73, **tie** shall pay to Infraco 100% of the cost of NR Immunisation subject to a cap for the total cost of such works of £3 million;
 - 3.3. Infraco and **tie** shall jointly to carry out value engineering investigations in respect of NR Immunisation;
 - 3.4 in the event that the actual cost of procuring the NR Immunisation is less than £3 million then **tie** shall (in the case of Infraco, in addition to sums paid or due to be paid under paragraph 3.2) pay one third of the difference between the actual cost and £3 million to both Network Rail and Infraco and be entitled to retain the remaining third of that difference;
 - 3.5 in so far as the cost of NR Immunisation exceeds £3 million, Infraco shall be responsible for 100% of the proportion of that cost in excess of £3 million but not exceeding £3.375 million;
 - 3.6 subject to any liability in relation to NR Immunisation and associated Possessions being addressed under Clauses 16.72 or 16.73, in so far as the cost of NR Immunisation exceeds

£3.375 million but does not exceed £4.125 million, **tie** shall pay Infraco 50% of the proportion of that cost in excess of £3.375 million in addition to all sums due to Infraco pursuant to paragraph 3.2;

- 3.7 subject to any liability in relation to NR Immunisation and associated Possessions (as defined in Clause 16) being addressed under Clauses 16.72 or 16.73, **tie** shall pay Infraco 100% of the cost of NR Immunisation in so far as the cost of such works exceeds £4.125 million.
4. The Infraco Immunisation Strategy is based on the Infraco or its sub-contractors carrying out all the works and supplying all equipment for the NR Immunisation.
5. Network Rail Costs as defined for the purposes of the Asset Protection Agreement shall be excluded in the calculation of the cost of the NR Immunisation for paragraph 3. All such Network Rail Costs shall be borne by **tie**.
6. Delays to NR Immunisation attributable to Network Rail shall be Compensation Events to the extent that such delays are not directly due to Infraco failure to comply with its obligations under this Agreement.
7. The Infraco's liability to **tie** in respect of or arising out of NR Immunisation shall be subject to the limitations as provided for in Clauses 16.72 and 16.73.
8. In the event that Network Rail do not accept the Infraco Immunisation Strategy by the deadline specified in paragraph 2 above, **tie** shall instruct the Infraco on how to proceed in respect of NR Immunisation and such instructions shall be Compensation Events and a **tie** Change (for any resulting additional or changed work required by **tie**) under the Infraco Contract.
9. In the event of paragraph 8 applying, the **tie** Change shall (subject to evaluation) omit an allowance of £2.2 million for NR Immunisation and add back any additional work to be undertaken to by the Infraco to support **tie** in delivering an alternative immunisation solution to mitigate the potential effects to the Railway of electromagnetic interference due to effects of coupled energy or stray current from the operation of the Edinburgh Tram Network traction system ("Alternative Solution").
10. In the event that the Infraco does not undertake the NR Immunisation or Alternative Solution works in full, all electromagnetic interference or corrosion due to effects of coupled energy or stray current from the operation of the Edinburgh Tram Network related obligations, in the Infraco Contract (including without prejudice to the foregoing Clause 16 and any relevant Third Party Agreements in Part 13 Section A of the Schedule) shall be the subject of a **tie** Change.
11. For the avoidance of doubt, **tie** shall pay to the Infraco, to the extent not taken into account in the **tie** Change arising pursuant to paragraph 8, any costs and expenses incurred as a consequence of the delay between the deadline specified in paragraph 2 and the actual date (and not the deemed date) that **tie** issue a **tie** Change Order. Such costs and expenses shall be evaluated pursuant to Clause 65 (*Compensation Events*) on the basis that such delay is itself a Compensation Event.
12. **tie** accepts that the Infraco may commence the work to deliver the NR Immunisation under the Mobilisation and Advance Works Agreement.
13. All sums due to Infraco pursuant to this Appendix C shall be paid in accordance with Clause 66 (*Payment of the Contract Price*) and not Clause 67 (*Payment in respect of Applications for Payments*).