



(1) tie

- and -

(2) INFRACO

- and -

(3) PARSONS BRINCKERHOFF LIMITED

SUBJECT TO CONTRACT

PB now have 11.04.08 Infraco Contract version. PB also have Schedules [4,9,10,12,13,14,28,30,31,32,34,35,36,38,39,42,43,44,45,46] to the Infraco Contract

VERSION FOLLOWING MEETING OF 16/17.04.08 BETWEEN SDS, BBS AND TIE

**NOVATION OF SYSTEM DESIGN
SERVICES AGREEMENT**

in respect of

EDINBURGH TRAM NETWORK

AGREEMENT

AMONG

- (1) **TIE LIMITED** (Company number SC230949) whose registered office is at City Chambers, High Street, Edinburgh, Midlothian, EH1 1YJ ("**tie**");
- (2) **BILFINGER BERGER UK LIMITED**, a company incorporated in England and Wales under number 02418086 and having its registered office at 150 Aldersgate Street, London, EC1A 4EJ, which expression shall include its successors, permitted assignees and transferees and **SIEMENS PLC**, a company incorporated in England and Wales under number 00727817 and having its registered office at Faraday House, Sir William Siemens House, Frimley, Camberley, Surrey, GU16 8QD, which expression shall include its successors, permitted assignees and transferees, acting jointly and severally (together the "**Infraco**");
- (3) **PARSONS BRINCKERHOFF LIMITED** (company number 2554514) whose registered office is at Amber Court, William Armstrong Drive, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YQ ("**SDS Provider**").

BACKGROUND

- A By an agreement in writing dated 19 September 2005 ("**SDS Agreement**") **tie** appointed the SDS Provider to provide system design services in connection with the Edinburgh Tram Network.
- B **tie** and Infraco have entered into a contract of even date ("**Infraco Contract**") under which Infraco has been appointed to complete the design and carry out the construction, installation, commissioning and maintenance planning in respect of the Edinburgh Tram Network.
- C **tie** and Infraco have agreed, with the consent of the SDS Provider, that the Infraco shall take over the rights and liabilities of the "Client" under the SDS Agreement by novating the SDS Agreement from **tie** to Infraco upon and subject to the terms of this Agreement.

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions given in the recitals to this Agreement apply to this Agreement.
- 1.2 Clause headings in this Agreement are for the convenience of the parties only and do not affect its interpretation.
- 1.3 Unless otherwise defined hereunder, where the SDS Agreement defines a meaning to any capitalised word or expression used in this Agreement, the same meaning shall be given to it in this Agreement.
- 1.4 In this Agreement the following words and expressions shall have the meanings hereby ascribed to them

"**Alignment Process**" means the process described in Appendix, Part 9;

"**Design Delivery Programme**" has the meaning given in Appendix 1 to this Agreement;

"**Disclosure Statement**" means Appendix, Part 5 (together with all the documents attached to or referred to in it) in the agreed form from the SDS Provider to Infraco executed and delivered to Infraco immediately prior to the execution of this Agreement;

"**EAL**" means Edinburgh Airport Limited a subsidiary of BAA plc and the operator of Edinburgh Airport;

"**Employer's Requirements**" has the meaning given in the Infraco Contract, "**Infraco Proposals**" has the meaning given in the Infraco Contract;

"**Incentivisation Payment**" means the sum of £1,000,000;

"**Infraco Contract**" has the meaning given in Appendix 1 to this Agreement;

"**Issued for Construction Drawings**" has the meaning given in Appendix 1 to this Agreement;

"SRU" means the Scottish Rugby Union;

"Third Party Agreements" means the Parliamentary Undertakings, Third Party Agreements referred to in Section A and Section B of Part 13 of the Schedule to the Infraco Contract , together with any other undertakings or commitments entered into at the date of this Agreement by CEC or tie in relation to the Edinburgh Tram Network and listed in Appendix Part 6 (in so far as the same have been supplied to the SDS Provider);

"Tram Legislation" means the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006, which received Royal Assent on 8 May 2006 and 27 April 2006 respectively and which confer on CEC all requisite authorities and statutory powers to procure the construction, operation and maintenance of the Edinburgh Tram Network;

2. RELEASE BY THE SDS PROVIDER OF TIE

- 2.1 The SDS Provider releases and discharges tie from any and all duties, obligations and liabilities owed to the SDS Provider under the SDS Agreement and accepts the liability of the Infraco under the SDS Agreement in lieu of tie.
- 2.2 The Parties acknowledge that the SDS Provider and tie shall enter into a separate agreement in respect of certain design and engineering services connected to the implementation of utilities diversionary works for the Edinburgh Tram Network and that scope of work is not novated under this Agreement.

3. RELEASE BY TIE OF THE SDS PROVIDER

- 3.1 tie releases and discharges the SDS Provider from the further performance of the SDS Provider's duties and obligations under the SDS Agreement.

4. ACCEPTANCE OF LIABILITY BY THE SDS PROVIDER TO THE INFRACO

- 4.1 The SDS Provider undertakes to continue to perform all the duties and to discharge all the obligations of the SDS Provider under the SDS Agreement and to be bound by its terms and conditions in every way as if the Infraco was and always had been a party to the SDS Agreement in place of tie.
- 4.2 The SDS Provider warrants and undertakes to the Infraco that:
 - 4.2.1 in respect of the duties and obligations which it has already performed under the SDS Agreement, it has performed those duties and obligations in accordance with the standards of skill and care set out in the SDS Agreement; and
 - 4.2.2 subject to Clause 12.1:
 - (a) the SDS Provider is not aware having made due and diligent enquiry, of any breaches by tie of the SDS Agreement and there is no dispute or claim subsisting nor are there any circumstances existing which might give rise to any dispute or claim relative to the SDS Agreement;
 - (b) the information set out at Appendix Part 4 (*Design and Deliverable Status*) is true, complete and accurate in all respects and is not misleading;
 - (c) the Deliverables completed by the SDS Provider to the date of this Agreement and listed in Appendix Part 4:
 - (A) are in all respects in compliance with the SDS Agreement and, without prejudice to the foregoing generality:
 - (i) the Tram Legislation;
 - (ii) all applicable Law and Consents;
 - (iii) the Parliamentary Undertakings;

- (iv) the Environmental Statements, and all other applicable environmental regulations and requirements;
 - (v) will permit compliance with the Code of Construction Practice; and
 - (vi) the Third Party Agreements (and in the case of SRU the draft Third Party Agreement);
- (B) is so as to enable the Edinburgh Tram Network on completion of construction, testing and commissioning to be sited (and thereafter be operated and maintained) within the limits of deviation under the Tram Legislation save as expressly indicated in Appendix Part 7 the Disclosure Statement,
- (d) the design as fully developed pursuant to the SDS Agreement following the date of this Agreement shall continue to meet the requirements of Clause 4.2.2(c)(A) and (B) and on the basis of the standard of reasonable skill and care exercised pursuant to clause 3.2 of the SDS Agreement that
- (i) the designs and Deliverables completed prior to the date of this Agreement comply with the Employer's Requirements
 - (ii) the designs and Deliverables as will be completed after the date of this Agreement will comply with the Employer's Requirements,
- provided that in circumstances where compliance with the Employer's Requirements is dependant upon further design development to be undertaken by the Client (and which is out with the Services provided by SDS), the SDS Provider's obligation pursuant to this Clauses 4.2.2(d) shall be limited to having produced or producing designs and Deliverables that are capable of allowing Infraco to develop a design which is compliant with the Employer's Requirements.
- (e) save in respect of any Consents which are the responsibility of **tie** in terms of Clause 19 of the Infraco Contract, the Consents listed at Appendix Part 2 (*Consents Programme*) are all the Design Stage Consents which are required to enable the Edinburgh Tram Network to be procured, constructed, installed, tested and commissioned, and thereafter operated and maintained in accordance with the Infraco Contract;
- (f) it has received no Client Notice of Change or any other instruction from **tie** to vary any term of the SDS Agreement (whether pursuant to Clause 15 and 29.2 of the SDS Agreement or otherwise) and, subject to Clause 9.1 below, it has agreed no variation, alteration of the SDS Agreement; and
- (g) no Change in Law has come into effect or is anticipated to come into effect which would have a material adverse impact on the Deliverables completed or to be completed pursuant to the SDS Agreement

The SDS Provider warrants and undertakes to the Infraco that it shall be liable for any loss or damage suffered or incurred by the Infraco arising out of any negligent act, default or breach by the SDS Provider in the performance of its obligations under the SDS Agreement prior to the date of this Agreement. The SDS Provider shall be liable for such loss or damage notwithstanding that such loss or damage would not have been suffered or incurred by **tie** (or suffered or incurred to the same extent by **tie**) or is different to or arises on a different basis to any loss or damage which would have been suffered or incurred by **tie**.

- 4.3 The SDS Provider undertakes and warrants to the Infraco that its design is consistent with and delivers the Edinburgh Tram Network runtime set out in the Employers' Requirements , which runtime supersedes that set out in the SDS Agreement.
- 4.4 The liability of the SDS Provider to the Infraco pursuant to the SDS Agreement shall not be affected by the Infraco's assumption of liability for design to ~~tie~~ pursuant to the Infraco Contract.
- 4.5 The SDS Provider acknowledges that the Infraco has and shall continue to rely upon all Services carried out by the SDS Provider.
- 4.6 ~~tie~~ warrants that it has issued initial instructions (in the form of the letters annexed at Appendix pPart 87) to the SDS Provider in relation to produce a report which will set out the impact on the Design-Delivery-Programme and the valuation of the cost of redesign work required to addressing any misalignment between the Deliverables completed prior to the date of this Agreement, and the Employer's Requirements and the Infraco Proposals, and ensure that such Deliverables comply with the Employer's Requirements and the Infraco Proposals. Upon completion of the Alignment Processwork entailed to carry out the instructed alignment, the SDS Provider confirms to ~~tie~~ and the Infraco that such Deliverables shall be consistent with the Employer's Requirements and the Infraco Proposals. ~~tie~~ shall pay the SDS Provider for completion of this exercise in accordance with Clause 4.9.
- 4.7 As soon as reasonably practicable, the Parties shall commence and expeditiously conduct a series of meetings to determine the development of the Infraco Proposals and any consequential amendment to the Deliverables (the "**Development Workshops**"). The matters to be determined at the Development Workshops shall be those set out in the report annexed at Part B of Appendix Part 7, to be dealt with in the following order of priority and objective:
- ~~SDS to provide suggested order of priority~~
1. Roads and associated drainage and vertical alignment with the objective of minimising the extent of full depth reconstruction for roads thus minimising cost and construction programme duration
 2. Structures value engineering, including track fixings to structures with the objective of enabling BBS to realise the Value Engineering savings for the structures identified in Schedules 4 and 30 of the Infraco contract (Pricing and Infraco Proposals respectively).
 3. OLE Design with the objective of identifying and agreeing the actions, responsibilities and programme to enable Infraco to implement their proposals for OLE as identified in the Infraco Proposals
 4. Trackform with the objective of completing an integrated design to enable BBS to implement their proposals for trackform
 5. Sub-station buildings with the objective of resolving the misalignmentmatch between Infraco Proposals and SDS Design with the minimum of changes to accommodate the Infraco Proposals for substations.
- The following to be reviewed at the end of the Development Workshop to identify any issues arising from the above items:
1. Earthworks
 2. Landscaping
 3. OLE Foundations
 4. horizontal alignment
 5. Site Clearance
 6. Tramstops
- 4.8 The product of the Development Workshops shall be a report signed by each of the Parties to detail the conclusions in respect of each matter. Any consequential ~~tie~~ Change Orders or instructions shall be appended to such report as and when the same are issued. ~~tie~~ shall pay

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the SDS Provider for the work required for the Development Workshop in accordance with Clause 4.9.

4.9. ~~[tie to advise]SDS will be paid for their work in connection with 4.6 and 4.8 in accordance with the terms of the SDS Agreement.~~

5. VESTING OF REMEDIES AGAINST SDS PROVIDER

5.1 All rights of action and remedies against the SDS Provider under and pursuant to the SDS Agreement vested in **tie** shall from the date of this Agreement vest in the Infraco.

5.2 Subject to Clause 12.1, **tie** warrants to the Infraco that there is no dispute or claim subsisting (save to the extent that the same are fairly disclosed in the Disclosure Statement), nor are there any circumstances existing which might give rise to any dispute or claim by the SDS Provider against **tie** relative to the SDS Agreement.

5.3 **tie** shall indemnify the Infraco against all loss, injury and damage that the Infraco may incur as a consequence of any dispute or claim by the SDS Provider or circumstance referred to in Clause 5.2 above identified in the Disclosure Statement which relates to the SDS Provider and **tie's** dealings under the SDS Agreement prior to the date of this Agreement.

6. ACCEPTANCE OF LIABILITY BY THE INFRACO

The Infraco undertakes to perform all the duties and to discharge all the obligations of **tie** under the SDS Agreement and to be bound by its terms and conditions in every way as if the Infraco was and always had been a party to the SDS Agreement in place of **tie** and as if all acts and omissions of **tie** under or pursuant to the SDS Agreement prior to the date of this Agreement were the acts and omissions of the Infraco.

7. VESTING OF REMEDIES AGAINST TIE

7.1 All rights of action and remedies under or pursuant to the SDS Agreement vested in the SDS Provider shall, save in respect of those sums identified in Clauses 8.1 and 8.8 from the date of this Agreement lie against the Infraco and not **tie**.

7.2 Without prejudice to Clause 4.2.2(a), the SDS Provider waives all right to claim against Infraco in respect of any breach of the SDS Agreement by **tie** prior to the date of this Agreement.

8. ACKNOWLEDGEMENT OF PAYMENT AND INCENTIVE

8.1 The SDS Provider acknowledges that all fees and expenses properly due to the SDS Provider under the SDS Agreement up to the date of this Agreement have been paid by **tie** other than any payments which become due under Clause 29.3 of the SDS Agreement or due as a consequence of the further instruction to be issued by **tie** pursuant to Clause 4.6 to be paid by **tie**.

8.2 **tie** and SDS acknowledge that **tie** has paid SDS in respect of its existing claims for prolongation and SDS confirms to **tie** and the Infraco that it has accepted such payments in full and final settlement of any and all claims of whatever nature existing and/or available to it prior to the date of execution of this Agreement.

8.3 **tie** warrants to Infraco that all fees and expenses properly due to the SDS Provider under the SDS Agreement up to the date of this Agreement have been paid by **tie**.

8.4 The parties agree that Infraco will have no liability in relation to the payments referred to in Clause 8.1 or 8.8.

8.5 **tie** has released the retention bond (in accordance with clause 12.7.4 of the SDS Agreement)

- 8.6 Subject to Clause 4.2.1, the SDS Provider warrants to the Infraco that Appendix Part 4 contains an accurate status and identification confirmation of all Deliverables produced by the SDS Provider up to the date of this Agreement.
- 8.7 The parties agree that Appendix Part 4 contains (i) an accurate description of the balance of the Deliverables to be completed; and (ii) the agreed price for completion of the Deliverables.
- 8.8 **Tie** shall pay to the SDS Provider the Incentivisation Payment 14 days after the provision of the last required Issued for Construction Drawing save that the Incentivisation Payment shall be reduced by the sum of £[1,000,000/112] in respect of each occasion that the SDS Provider does not achieve the provision of Issued for Construction Drawings by the dates identified in the Design Delivery Programme save where **tie** and the SDS Provider otherwise agree. No further or other reduction can be made to the Incentivisation Payment whether by abatement set off or counterclaim.
- 8.9 For the purposes of Clause 8.8 any extension of time granted to the SDS Provider pursuant to Clause 7.5.2 of the SDS Agreement in respect of any Issued for Construction Drawings shall be ignored save where the cause of the entitlement to an extension of time is a circumstance or occurrence entitling the Infraco to an extension of time and that such circumstance or occurrence is a **tie** Change (as defined in the Infraco Contract).

9. AMENDMENT OF SDS AGREEMENT

- 9.1 **tie**, the SDS Provider and the Infraco agree that the terms of the SDS Agreement shall be and are varied in the manner set out in Appendix Part 1 to this Agreement.
- 9.2 Subject to Clause 9.1, **tie** warrants to Infraco that it has not issued any Client Notice of Change or any other instruction to the SDS Provider to vary any term of the SDS Agreement (whether pursuant to clause 15 of the SDS Agreement, clause 29.2 of the SDS Agreement or otherwise) and it has agreed no variation, alteration of the SDS Agreement.

10. AFFIRMATION OF SDS AGREEMENT

The terms and conditions of this Agreement represent the entire agreement between the parties relating to the novation of the SDS Agreement and, except as specifically amended by Appendix Part 1 of this Agreement, all the terms and conditions of the SDS Agreement remain in full force and effect.

11. RIGHTS OF THIRD PARTIES

A person who is not party to this Agreement shall have no right to enforce any term of this Agreement. This Clause does not affect any right or remedy of any person which exists or is otherwise available.

12. WARRANTIES

- 12.1 The warranties set out in Clause 4.2.2(a) to-(g) and Clause 5.2, are subject only to any matter which is fully and fairly disclosed to the Infraco in the Disclosure Statement (with sufficient details to enable the Infraco to identify the nature and scope of the matter disclosed and to make an informed assessment of the matter concerned and its significance to the Infraco and/or the design, construction, installation, testing, commissioning, operation and or maintenance of the Edinburgh Tram Network).
- 12.2 Save as provided in Clause 12.1 no information of which Infraco has knowledge (actual, constructive or imputed) shall prejudice any claim being made by Infraco under any of the warranties set out in Clauses 4.2, 4.3, 5.2, 8.2, 8.6 and 9.2 (the "**Warranties**") nor shall it affect the amount recoverable under any such claim and neither the rights and remedies of Infraco nor the SDS Provider's or **tie**'s (as the case may be) liability in respect of the Warranties shall be affected by any investigation made by or on behalf of Infraco.

- 12.3 Each of the Warranties shall be interpreted as a separate and independent Warranty so that Infraco shall have a separate claim and right of action in respect of every breach of each Warranty.
- 12.4 Each of **tie** and the SDS Provider severally undertakes to Infraco both before and after the date of this Agreement to notify the Infraco as soon as reasonably practicable in writing of any event, matter or circumstance which comes to its knowledge which is, or may constitute, a breach of, or which is, or may be, inconsistent with, any of the Warranties given by that Party in this Agreement or the disclosures given by that Party in the Disclosure Statement.

13. LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with Scots law and the Scottish Courts shall have jurisdiction with regard to all matters arising under it. This Agreement shall be a "Related Contract" for the purpose of clause 28 of the SDS Agreement and Clause 97 (Dispute Resolution Procedure) of the Infraco Contract.

IN WITNESS WHEREOF these presents on this and the preceding [◆] pages together with the Appendix in [◆] Parts which is annexed hereto are executed as follows:

EXECUTED for and on behalf of **TIE LIMITED** at

on _____ 2008 by:
 Authorised Signatory
 Full Name
 Witness Signature
 Full Name
 Address

EXECUTED for and on behalf of **SIEMENS PLC** at

on _____ 2008 by:
 Director/Authorised Signatory
 Full Name
 Witness Signature
 Full Name
 Address

EXECUTED for and on behalf of **BILFINGER**

BERGER UK LIMITED

at

on 2008 by:

Director/Authorised Signatory

Full Name

Witness Signature

Full Name

Address

.....

EXECUTED for and on behalf of
PARSONS BRINCKERHOFF LIMITED at

on 2008 by:

Director/Authorised Signatory

Full Name

Witness Signature

Full Name

Address

.....

This is the Appendix referred to in the foregoing novation agreement among tie, [Infraco] and Parsons Brinkerhoff Limited

APPENDIX PART 1
SCHEDULE OF AMENDMENTS TO THE SDS AGREEMENT

Clause 1 – Definitions and Interpretation

1.1 Amend existing definitions:

Background Information

Insert ", the Client" after "CEC"

Change in Law

Add "(d) any new requirement for any statutory Consent other than a statutory Consent the need for which had been published on 7 August 2007."

Client Change

Add 'and any amendment to the Consents Programme and/or the Design Delivery Programme (other than one necessitated by a breach of this Agreement by the SDS Provider) and any change made to the Employer's Requirements or Infraco Proposals made after [date of deed of novation]'

Edinburgh Tram Network

Delete "tie" and replace with "the Client"

Insolvency Event

(k) delete references to "tie" and replace with "the Client" in each place

Delete **Master Project Programme** and replace with Programme

Planned Service Commencement Date means [date to be lifted from the Programme]

Programme

Delete the entire definition and replace with "means the Consents Programme and/or the Design Delivery Programme, as the context may require"

Programme Phasing Structure

Delete "tie" and replace with "the Client"

1.1 Insert the following new definitions:

Client Designs means designs and information which are being provided by the Client;

Compensation Event has the meaning given in the Infraco Contract;

Consents Programme means the document in Appendix Part 2 to the Novation Agreement as amended or updated from time to time in accordance with this Agreement

Construction Programme means the programme included in Schedule 15 of the Infraco Contract and as may be updated in accordance with the terms of the Infraco Contract such programme to contain the Consents Programme, Design Delivery Programme and the construction activities programme.

Design Delivery Programme means the document Appendix Part 2 to the Novation Agreement as amended or updated from time to time in accordance with this Agreement

Design Management Plan means the document which forms part of Part 14 of the Schedule to the Infraco Contract and has that name;

Design Stage Consents means the Consents (including Consents in respect of Client Designs) listed in Table A below and any further Consents which may be required for the

construction, installation, commissioning, completion and opening of the Edinburgh Tram Network as is consistent with, required by or contained within the Services.

Table A

	Consent	Approval Body
Railways and Aviation	HMRI	HMRI
	Network Rail	Network Rail
	Airport/Aviation Consents, including EAL Permissions and EAL Works Data, to the extent that the same are Deliverables under the SDS Agreement.	Edinburgh Airport Limited/CAA/NATS
Planning	Listed Building Consent	CEC Planning Authority
	Prior Approval	CEC Planning Authority
	Planning Permission	CEC Planning Authority
	Conservation Area Consent	CEC Planning Authority
	Scheduled Monument Consent	Scottish Executive & Historic Scotland
	Advertisement Consent	CEC Planning Authority
Traffic Management	Road Technical Approvals	CEC Roads Authority
Environment Ecological	Badger Licence	Scottish Natural Heritage
	Otter holt/disturbance licence	Scottish Natural Heritage
	Bat Licence	Scottish Natural Heritage
	Appropriate Assessment	Competent Authority
Drainage CAR	CAR General Binding Rules	SEPA
	CAR Registration	SEPA
	CAR Licence	SEPA
	Water/Wastewater Connection	Scottish Water
Construction	Technical Approval	CEC Bridges/CEC Roads
	Building Warrant	CEC Building Standards
Radio	OFCOM licence	OFCOM
Design Consultation	Third Party Design Consultation	
Undertakings	Parliamentary Undertakings	
Agreements	Agreements with Third Parties	

Infraco Works has the meaning given in the Infraco Contract

Issued for Construction Drawings means those Deliverables which comprise the complete package necessary for Infraco to commence construction of the relevant part of the Infraco Works and as shown on the Design Delivery Programme;

Quality Management System means the quality management system entitled [] utilised by the Infraco and dated [];

Relief Event has the meaning given in the Infraco Contract

Clause 2 – Term of this Agreement

Delete Clause 2 and substitute therefore:

This Agreement shall come into effect on the last date of execution of this Agreement. The rights and obligations imposed on the SDS Provider to perform the services set out in Schedule 1 (Scope of Service) shall continue (unless expressly provided otherwise in Schedule 1 to this Agreement) until the date on which the SDS Provider is notified by the Client that the Patent Defects Rectification Period (as defined in the Infraco Contract) has expired. For the avoidance of doubt, the liability of the SDS Provider in respect of any breach of this Agreement or negligence in the performance of the Services shall continue in full force and effect notwithstanding any notification by the Client pursuant to this Clause 2.1.

Clause 3 - Duty of Care, Standards and the Services to be Provided

- 3.3.4 Insert "Employer's Requirements" after "Technical Specifications".
- 3.3.14 Insert ", the Client, Bilfinger Berger, Siemens" after "the Scottish Executive"
- 3.10 Delete references to "**tie**" and "**tie Parties**" and replace with references to "the Client" and "Client Parties" respectively.
- 3.18 Replace "planning supervisor" with "CDM coordinator".

Insert the following new Clauses:

- 3.28 The SDS Provider is aware and has knowledge of all the terms and conditions of the Infraco Contract and the SDS Provider shall not cause the Infraco to be in breach of the provisions of the Infraco Contract to be observed and performed and complied with by the Infraco in so far as they relate and apply to the Services, and is further aware and has taken and shall continue to take full account of the obligations to be undertaken and the liabilities which may be incurred by the Infraco therein in relation to the Services.
- 3.29 The SDS Provider acknowledges that any breach by it of this Agreement may result in the Infraco committing breaches of and becoming liable for damages under the Infraco Contract and other contracts made by it in connection with the Infraco Contract and may occasion further loss or expense to the Infraco in connection with the Infraco Contract and such other contracts and all such damage, loss and expense is hereby agreed to be within the contemplation of the Parties as being the probable results of any such breach by the SDS Provider. Subject to Clause 27.6 and 27.7, the SDS Provider shall indemnify the Infraco against all such damage, loss and expense.
- 3.30 The SDS Provider shall observe, perform and comply with all the provisions of the Infraco Contract (in so far as the same has been supplied to the SDS Provider) on the Infraco's part to be observed, performed and complied with insofar as they relate and apply to the performance of the Services and the SDS Provider shall be liable to the Infraco for:
 - 3.30.1 any breach, non-observance or non-performance for which the SDS Provider is responsible of any of the provisions of the Infraco Contract in so far as they relate and apply to the performance of Services; and
 - 3.30.2 any act or omission for which the SDS Provider is responsible which involves the Infraco in any liability to **tie** and/or the Tram Supplier under the provisions of the Infraco Contract in so far as they relate and apply to the performance of Services; and

3.30.3 any claim, damage, loss or expense due to or resulting from any negligence or breach of duty for which the SDS Provider is responsible.

3.31 Provided that the Client has received the necessary design and other information from the SDS Provider in accordance with the Design Delivery Programme to allow it to develop the Client Designs, the Client shall, as soon as reasonably practicable, provide to the SDS Provider such Client Designs and, save where the SDS Provider has an obligation pursuant to this Agreement to obtain such information or instructions from another party, such other information and instructions as are necessary to enable the SDS Provider to comply with the Consents Programme and/or the Design Delivery Programme.

Clause 4 - Development, Review, Finalisation and Delivery of the Deliverables

4.4 Delete reference to tie in third line and replace with "the Client".

Delete Clause 4.5 and insert the following new Clause 4.5

4.5 The SDS Provider shall submit to the Client's Representative five copies of each Deliverable no later than the date shown in the Design Delivery Programme.

4.8 Delete all after 'Approval Bodies' and add: "the SDS Provider shall amend the Deliverable. Such amendment shall be at the SDS Provider's cost except where such amendment is required in order for the Deliverable to meet the requirements of any Approval Bodies, save where such requirements are:

- 4.8.1 inconsistent with or in addition to the Infraco Proposals or the Employer's Requirements;
- 4.8.2 not reasonable given the nature of the Approval Body; or
- 4.8.3 not reasonably foreseeable within the context of the Infraco's Proposals or the Employer's Requirements,

in which case such amendment shall be a Client Change. All such amendments shall be made in accordance with Schedule 9 (*Review Procedure*) and shall ensure that the Deliverable shall satisfy the requirements of this Agreement.

4.11/4.12 Insert "Employer's Requirements" in line 3 after "Technical Specifications"

Insert the following new Clause 4.14:

4.14 In addition to the other requirements of this Clause 4, the SDS Provider shall support the Client as required in relation to the maintenance and provision of any records, drawings, registers, manuals and/or reports as may be required under the Infraco Contract.

Clause 5 – Consents

Delete Clause 5.1 and substitute therefor:

5.1 The SDS Provider shall (at its own cost and expense):

- 5.1.1 submit applications which are valid and complete for (and/or for renewal or extension as appropriate of) all Design Stage Consents in accordance with the timetable set out in the Consents Programme and thereafter (subject to Clause 7.5) obtain and maintain in effect all Design Stage Consents;
- 5.1.2 implement each Design Stage Consent within the period of its validity and in accordance with its terms; and
- 5.1.3 observe and comply with the terms of each Consent (not being a Design Stage Consent) obtained from time to time in connection with the construction, installation, commissioning, completion and opening of the Edinburgh Tram Network.

Clause 5.2 - Delete "Consents" and replace with "Design Stage Consents".

Delete 5.4 and substitute therefor:

- 5.4 The SDS Provider shall update the Consents Programme not less than 3 Business Days prior to each Reporting Period End Date, showing progress and identifying any new Consents (whether or not Design Stage Consents) to be obtained. Subject to Clauses 7.5 and 15 no other changes to the Consents Programme shall be permitted without the consent in writing of the Client. The Client shall be entitled to request information in relation to the progress of the application for any such Consent and the Consent itself and the SDS Provider shall provide the same at no cost to the Client.

Insert new Clauses:

- 5.5 Without prejudice to Clause 5.1.1, the SDS Provider shall inform the Client as soon as practicable after becoming aware that a Design Stage Consent (or its extension and/or renewal) will not be obtained by the programmed date set out in the Consents Programme.
- 5.6 Where an application for a Design Stage Consent (or its extension and/or renewal) is denied, the SDS Provider shall notify the Client of the reasons given by the Approval Body for declining to issue or renew the Design Stage Consent and shall provide all appropriate supporting documentation to the Client.
- 5.7 Subject to Clause 5.8 below, failure to obtain a Design Stage Consent from the relevant Approval Body in respect of a design which the SDS Provider is responsible for preparing by the date on which it is shown as required in the Design Delivery or Consents Programme shall not be a breach of this Agreement and shall be a Compensation Event.
- 5.8 Clause 5.7 shall apply following the inability of the SDS Provider to obtain (or maintain) a Design Stage Consent for which it is responsible and in accordance with the Consents Programme contained in the SDS Novation Agreement, provided that:
- 5.8.1 the SDS Provider
- (i) has complied with clauses 5.5 and 5.6;
 - (ii) has used reasonable endeavours to afford the Infracore a period of 3 Business Days from notification under Clauses 5.5 or 5.6 to meet with the relevant Approval Body with a view to resolving the situation and supports them by its attendance at such meeting; The SDS Provider acknowledges that **it** is entitled to attend the meeting
 - (iii) has acted timeously in order to mitigate the impact of the failure to obtain or renew the Consent;
- 5.8.2 the SDS Provider has ensured timely provision of adequate required information to the relevant Approval Body in accordance with the Design Management Plan, agreed requirements of the Approval Body and the sequencing, packaging and timescales set out in the Design Management Plan, the Design Delivery Programme and the Consents Programme.
- 5.8.3 the inability to obtain or renew the Consent is not the result of the SDS Provider reprioritising the Consents Programme and/or the Design Delivery Programme (save where such reprogramming or prioritisation is the direct result of a Client Change, an extension of time pursuant to Clause 7.5, a Relief Event or a Compensation Event) such that the relevant Approval Body has insufficient time or information in which to respond to an altered timescale;
- 5.8.4 there has been a failure of the relevant Approval Body to respond in accordance with the agreed requirements of the Approval Body and timescales set out in the Design Management Plan or, if none has been stipulated, any reasonable timescale, provided that this failure has not been caused by inadequate or late submissions by the SDS Provider with regard to other Consents;
- 5.8.5 the failure to obtain or renew the Consent is not a consequence of a failure of the SDS Provider to perform its obligations under the SDS Agreement in terms of the quality or content of the relevant Deliverables and as required pursuant to the Design Management Plan, the Design Delivery Programme or the Consents Programme and, where relevant, Clause 10 (*Design Development and Finalisation*); or

- 5.8.6 the failure to obtain or renew a Consent is as a consequence of the quality or content of Client Design.
- 5.9 For the avoidance of doubt, clause 5.7 shall apply where, and to the extent, that a Consent in respect of a submission for Prior Approval is sought and the relevant Approvals Body
- 5.9.1 requires changes to design which could not reasonably have been anticipated from the previous formal or informal consultations or communications with the Approvals Body; or
- 5.9.2 does not deliver the Consent within the period stated in the Consents Programme or such Consents Programme updated in accordance with these terms.
- 5.10 Clause 5.8.3 shall not apply to a Prior Approval Consent where the Approval Body, acting reasonably, has agreed in writing to a proposal from the SDS Provider to changes in the sequencing, packaging and timescales set out in the Design Management Plan or the Consents Programme, provided that the SDS Provider has provided reasonable advance notice to **tie** and to the Approvals Body including full details of the proposed changes.

Clause 6 – Quality Assurance

- 6.1 Delete "a quality management system, and comply with such system" and replace with "and comply with the Quality Management System".
- 6.2 Delete "SDS Provider's quality management system" and replace with "Quality Management System".

Clause 7.1 – Master Project Programme, Programme Phasing Structure and Programme

- 7.1 Amend to delete reference to "Master Project Programme" and substitute "Programme".

Clause 7.5 - Extensions of Time:

Delete Clause 7.5 and substitute therefor:

- 7.5.1 If the SDS Provider shall be delayed in the execution of the Services:
- 7.5.1.1 by any circumstances or occurrence (other than a breach of this Agreement by the SDS Provider) entitling the Infraco to an extension of time for completion or stage completion of the Infraco Contract including, without limitation, any Relief Event or Compensation Event; or
- 7.5.1.2 by the issuing of a Client Change Order in respect of the Services to which Clause 7.5.1.1 does not apply; or
- 7.5.1.3 by reason of any other breach by the Client of this Agreement (save to the extent caused or contributed to by breach of this Agreement by the SDS Provider) to the extent not caused or contributed to by breach of the Infraco Contract by **tie** or any Relief Event or Compensation Event; or
- 7.5.1.4 by reason of any circumstances to which Clause 5.8.6 applies, irrespective of whether it entitles the Infraco to an extension of time or Compensation Event under the Infraco Contract,

then in any such event the SDS Provider shall forthwith notify the Client of:-

- (a) the cause of the delay;
- (b) the SDS Provider's estimate of the likely effect of such delay upon the Consents Programme and/or the Design Delivery Programme;
- (c) the estimated additional cost that shall be incurred; and
- (d) any acceleration measures which the SDS Provider could take to mitigate the effects of such delay and an estimate of the costs thereof

and, in the case of any event listed in Clauses 7.5.1.1 and/or 7.5.1.2, shall include such information as Infraco would be required to provide pursuant to Clause 65.2 of the Infraco Contract in respect of such event and/or circumstance.

- 7.5.2 Subject to compliance with Clause 7.5.1, the SDS Provider shall, subject to any instruction to accelerate the Services pursuant to Clause 7.5.3, be entitled to such adjustment to the Consents Programme and/or the Design Delivery Programme as may in all circumstances be fair and reasonable in respect of any event or circumstance under Clause 7.5.1, provided always that the SDS Provider's entitlement to an extension of time for any event listed in Clauses 7.5.1.1 and 7.5.1.2 above shall in no circumstances exceed (in respect of such event) the extension of time (if any) to which the Client is entitled for the identical event under the Infraco Contract. An extension of time shall not be granted where the cause of the Services having been delayed, affected or suspended is due to any act, omission, default or breach of the Agreement by the SDS Provider or its employees, agents or servants or any SDS Provider Party.
- 7.5.3 The Client shall issue a Client Change Order to authorise any agreed acceleration of the Consents Programme and/or the Design Delivery Programme and/or increased costs as a result of delays notified under Clause 7.5.1.
- 7.5.4 If the Services are delayed in circumstances other than those entitling the SDS Provider to an extension of time as set out in Clause 7.5.1 or as a result of a Force Majeure Event, the SDS Provider shall inform the Client at the earliest opportunity and shall give an estimate of the likely effect upon the Consents Programme and/or the Design Delivery Programme. The SDS Provider at his own expense shall take such acceleration measures as are necessary to achieve the requirements of the Consents Programme and/or the Design Delivery Programme.
- 7.5.5 The SDS Provider shall not be entitled to and shall be deemed to have irrevocably waived any entitlement to any extension of time unless the SDS Provider has:
- 7.5.5.1 within 10 Business Days of becoming aware of the circumstances or occurrences which have caused or are likely to cause delay to the SDS Provider in the performance of the Services notified the Client in writing; and
 - 7.5.5.2 within 10 Business Days after such notification submitted by further written notice to the Client detailed particulars of any extension of time to which it may consider itself entitled in order that such submission may be investigated at the time; and
 - 7.5.5.3 wherever applicable, complied with the requirements of any Clause under this Agreement requiring timely notice to be given.
- 7.5.6 Any notice under 7.5.5.1 or 7.5.5.2 above shall give full particulars to the extent then possible of the cause of the delay and of its probable duration and where appropriate (and that without prejudice to Clause 7.5A) reasonable estimate of any direct and indirect costs likely to result therefrom together with any other relevant details.

7.5A Additional Costs

- 7.5A.1 In the event that a Compensation Event causes the SDS Provider to incur costs beyond such costs which were reasonably anticipated to be incurred by the SDS Provider but for the occurrence of the Compensation Event (which for these purposes shall include any breach of this Agreement by the Client to the extent caused or contributed to by breach of the Infraco Contract by **tie**) then without prejudice to Clause 7.5 the SDS Provider shall be entitled to claim costs under this Agreement.
- 7.5A.2 To claim costs, the SDS Provider must, as soon as practicable, and in any event within 10 Business Days after it first became aware that the Compensation Event had caused or is likely to cause the SDS Provider to incur additional costs:
- (a) give to the Client a notice of its claim for costs and full details of the nature of the Compensation Event, the date of occurrence and its likely duration;
 - (b) include in any notice given under Clause 7.5A.2(a) full details of any costs claimed including:
 - (i) details of the costs or losses which are not Indirect Losses;

- (ii) mitigation measures adopted and why unsuccessful; and
- (iii) any acceleration or other measures which the Infraco could take to mitigate the effects of any delay or non-performance and, where applicable, an estimate of the costs thereof;

provided that where a Compensation Event has a continuing effect, such that it is not practicable for SDS Provider to submit full details in accordance with this Clause 7.5A.2 then the SDS Provider shall instead submit to the Client:

- (A) a statement to that effect with reasons, together with interim written particulars (including details of the likely consequences of the Compensation Event on the SDS Provider's ability to comply with its obligations under this Agreement and an estimate of the likelihood and likely extent of the delay or non-performance and the costs incurred); and
 - (B) thereafter, further interim written particulars until the actual costs incurred (if any) are ascertainable, whereupon the SDS Provider shall as soon as reasonably practicable, submit to the Client the items referred to in Clause 7.5A.2(b);
- (c) demonstrate to the reasonable satisfaction of the Client that:
- (i) the SDS Provider and the SDS Provider Parties could not reasonably have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken;
 - (ii) the Compensation Event is the direct cause of the additional costs; and
 - (iii) the SDS Provider is using reasonable endeavours to perform its obligations under this Agreement.

7.5A.3 In the event that the SDS Provider has complied with its obligations under Clause 7.5A.2, then the SDS Provider shall be paid the amount of any direct and demonstrable additional cost as may be reasonable in the circumstances of the Compensation Event, provided always that the SDS Provider's entitlement to such costs shall in no circumstances exceed (in respect of such event) a fair and reasonable proportion of the costs (if any) to which the Client is entitled for the identical event under the Infraco Contract. An entitlement to additional costs shall not be granted where the cause of the Compensation Event is due to any act, omission, default or breach of the Agreement by the SDS Provider or its employees, agents or servants or any SDS Provider Party.

7.5A.4 The SDS Provider shall notify the Client if at any time it receives or becomes aware of any further information relating to the Compensation Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

7.5A.5 If the Parties cannot agree the extent of the extension of time or relief required or the additional costs claimed or the Client disagrees that a Compensation Event has occurred (or as to its consequences) or that the SDS Provider is entitled to any additional costs, either Party may refer the matter for determination in accordance with the Dispute Resolution Procedure.

7.5A.6 The Client shall, in assessing any delay or extension of time or costs for the purpose of Clause 7.5 and/or this Clause 7.5A:

- (a) not take into account any event or cause of delay or costs which is caused by any negligence, omission, default, breach of contract or breach of statutory duty of the SDS Provider or any SDS Provider Parties;
- (b) take into account an event or cause of delay or costs only if and to the extent that the SDS Provider establishes to the satisfaction of the Client that the SDS Provider has used its reasonable endeavours to adjust the order and sequence in which the SDS Provider proposes to carry out the Services in such a manner as to minimise the effects of the delay in, or if possible to avoid altogether any delay in, the progress of the Services and mitigate the costs.

7.5A.7 The SDS Provider shall not be entitled to and shall be deemed to have irrevocably waived any entitlement to any extension of time and/or additional costs in respect of any failure by the SDS Provider to:

- (a) manage the required interface with CEC in so far as this forms part of the Services; or
- (b) manage any required interface with any Approval Body and/or third party where consent or approval is required at any stage of the Services; or
- (c) identify any instructions which are required from the Client and/or **tie** in order to progress the Services in accordance with the Consents Programme and/or the Design Delivery Programme,

provided that following the occurrence of a Compensation Event nothing in this Clause 7.5A.7 shall prevent any required interfaces with CEC, any Approval Body and/or third party, or instructions which are required from the Client and/or **tie** from being taken into account when considering extensions of time in accordance with Clause 7.5 and/or additional costs in accordance with Clause 7.5A.

7.5A.8 Notwithstanding the occurrence of a Compensation Event, the SDS Provider shall continue to carry out the Services unless otherwise agreed in connection with Clause 7.5 and/or this Clause 7.5A.

Clause 9 – Sub-letting and the Appointment of SDS Provider Parties

Delete Clause 9.5.[Obligation as between SDS and **tie** moves into SDS Collateral Warranty to **tie**]

Clause 11 – Methods of Payment

In Clause 11.6

In line five, replace "eighty per cent (80%)" with "ninety per cent (90%)"

In line nine, after the word "final.", delete the remaining wording and replace with:

"The SDS Provider may make application for payment in respect of the remaining ten per cent (10%) of the total value of the Detailed Design Phase Milestone payment:

11.6.1 in the case of Detailed Design Phase Deliverables which are required to be submitted to CEC for Technical Approval or Prior Approval pursuant to the Design Management Plan, on the date of their submission provided that such submission is made on or before the date of submission required by the Design Delivery Programme.

11.6.2 in the case of all other Deliverables, following the issue of the Milestone Completion Certificate by the Client in respect of the relevant Detailed Design Phase for the relevant sub-sector or sector (as appropriate)."

[Now not required]

Clause 15 - Changes

Insert the following new Clauses 15.18 and 15.19

15.18 Except in relation to a breach of this Agreement by the Client or unless otherwise agreed by the Client in writing, the SDS Provider's entitlement to additional payment or an extension of time for a Permitted Variation shall in no circumstances exceed (in respect of such Permitted Variation) the extension of time (if any) and/or additional payment (if any) to which the Infraco is entitled under the Infraco Contract for the identical Permitted Variation. The SDS Provider's entitlement to such extension of time or additional payment under this Agreement shall in no circumstances exceed that proportion of the Infraco's entitlement to an extension of time or additional payment under the Infraco Contract to which the Infraco becomes entitled in respect of the entitlement claimed by the SDS Provider. An extension of time and/or additional

payment shall not be granted where the cause of the Permitted Variation is due to any act, omission, default or breach of the Agreement by the SDS Provider, its employees, agents or servants or any SDS Provider Party.

- 15.19 Clause 15.18 shall not apply in connection with additional payment due to the SDS Provider for Services relating to Deliverables required to allow **tie** to determine whether it wishes to proceed with the implementation of a value engineering opportunity that is "design to cost" as provided for in paragraph 5.7 of Schedule Part 4 of the Infraco Contract.

Clause 19 - Termination for SDS Provider Default

Delete Clause 19.1.3 and substitute therefore "Clause not used".

Clause 20 - Termination, Abandonment or Suspension of the Services by the Client

Delete Clause 20.1 and substitute therefor:

- 20.1 In the event that the Infraco Contract is terminated, this Agreement shall terminate. Such termination shall be deemed to have occurred under Clause 20 unless the Infraco Contract is terminated as a result of any circumstances specified in Clause 19 whereupon the provisions of Clause 25.3 shall not apply in such event.

Clause 22 - Termination for Corrupt Gifts and Payments

Delete Clause 22 (Termination for Corrupt Gifts and Payments in its entirety) substitute therefor:

- 22.1 The SDS Provider or anyone employed by it or acting on its behalf (including any SDS Provider Party) shall not commit any Prohibited Act.
- 22.2 If the SDS Provider or anyone employed by it or acting on its behalf (including any SDS Provider Party) commits any Prohibited Act, then the Client may terminate this Agreement with immediate effect by giving notice to the SDS Provider.

Clause 27 – Indemnity by SDS Provider, Liability and Sole Remedy

Insert new Clauses:

- 27.7 If the SDS Provider fails to achieve the provision of Issued for Construction Drawings identified in the Design Delivery Programme by the date set out in the Design Delivery Programme for the release of the Issued for Construction Drawings (or within such longer period as is agreed by the Client), the SDS Provider will pay the Client liquidated damages at the rate of £[1,000,000/112] in respect of each failure.
- 27.8 The SDS Provider will not be liable to pay liquidated damages:
- 27.8.1 to the extent that the failure to achieve the release date for Issued for Construction Drawings is the failure of **tie** or the CEC to approve the SDS submission of the design Deliverables within the requisite period set by the Design Management Plan; or
- 27.8.2 if and to the extent that the total aggregate liquidated damages under Clause 27.7 in respect of submissions under this Agreement exceeds £1,000,000.
- 27.9 In the event that it is agreed by the Parties or determined pursuant to Clause 28 (*Dispute Resolution Procedure*) that the Deliverable (including the relevant Issued for Construction Drawings) was not submitted in accordance with the Agreement in terms of packaging, sequence, process, or the content or quality was inadequate or insufficient, the limits set out in Clause 27.7 and 27.8 shall not apply and the SDS Provider shall be liable to the full extent under this Agreement.

- 27.10 The liquidated damages set out in Clause 27.7 are a genuine pre-estimate of losses incurred by the Client resulting from failure by the SDS Provider to achieve the relevant release date and the Parties shall not seek to challenge the application or recovery of such amounts on the basis of this underlying calculation.
- 27.11 Notwithstanding the generality of Clause 27.1, the SDS Provider shall indemnify the Client from all loss, costs, claims, damages, expenses and liabilities incurred by the Client pursuant to Clause 77.5 of the Infraco Contract caused by a breach of this Agreement by the SDS Provider in relation to the exercise of powers under the Tram Legislation (in so far as the same are to be carried out by Infraco pursuant to the Infraco Contract) excluding the construction and maintenance activities associated with the Infraco Works.
- 27.12 Each of the obligations of the SDS Provider under this Agreement shall be interpreted as a separate and independent obligation so that Infraco shall have a separate claim and right of action in respect of every breach of each obligation (including without limitation each failure to comply with Clauses 4.5 and/or 5.1.1).
- 27.13 The SDS Provider shall not be entitled to any common law rights including (but not limited to) rights to damages or any other rights under contract, delict or otherwise (other than specific implement, interim specific implement, interdict, interim interdict or any action for payment) in relation to any breach of this Agreement by the Client to the extent caused or contributed to by breach by **tie** of the Infraco Contract or any other Compensation Event. The SDS Provider's sole right to an extension of time and/or relief from the performance of its obligations and/or to claim costs in connection with a Compensation Event shall be as set out in Clause 7.5 and 7.5A, respectively.
- 27.14 The SDS Provider shall not be responsible for the quality or content of Client Design. The SDS Provider shall undertake a general review of Client Design on receipt of the same from the Client, and shall report to the Client with details of any element which is patently inconsistent with the requirements of an Approval Body as applied to design submitted previously.

Clause 29 – Novation, Collateral Warranty in favour of tie, Funder's Direct Agreement and Agreement between the Joint Revenue Committee and the SDS Provider

Insert new Clause:

- 29.10 Contemporaneously with its execution of the Novation Agreement, the SDS Provider shall deliver to the Client a collateral warranty agreements duly executed by Halcrow and the SDS Provider in favour of each of the Client and **tie** in the relevant form set out in Appendix Part 3 to the Novation Agreement.

Clause 30 - Assignment, Changes In Legal Status And Changes In Control

Delete Clause 30.2 and substitute therefor:

- 30.2 The Client shall be entitled to assign, novate or otherwise transfer the whole or any part of this Agreement:
- 30.2.1 to an assignee permitted in accordance with the terms of the Infraco Contract;
or
- 30.2.2 with the prior written consent of the SDS Provider (such consent not to be unreasonably withheld or delayed).

Clause 32.2.1 – Delete "with full title guarantee"

Schedule 1 – Scope of Services

[Amend to include amendments set out in Part B of Appendix Part 4.]

Delete paragraph [utilities diversion paragraph number]3.2.1.

Amend paragraph 2.1.1 to include after 'all design' in the first line, the words 'other than Client Design',

Schedule 3 – Pricing Schedule – Provisional Additional Work

Delete references to **tie** and **tie Representative** and replace with "Client" and "Client's Representative", respectively.

Schedule 9 – Review Procedure

In paragraph 1.3 replace "20 days" with "10 days".

APPENDIX PART 2
CONSENTS PROGRAMME AND DESIGN DELIVERY PROGRAMME

APPENDIX PART 3

HALCROW COLLATERAL WARRANTIES/WARRANTY

[To be obtained by SDS Provider in accordance with Clause 9 of the SDS Agreement within 14 days of tie's request]

Section A – tie

27/03: Halcrow has put forward unacceptable form of Collateral Warranty

02/04: SDS to report following further discussions with Halcrow

17/04 SDS to pursue Halcrow Collateral Warranty for tie. BBS have dropped the requirement for a CW from Halcrow

Section B – Client

Note: Halcrow currently refuses to provide collateral warranty (27/08)

02/04: SDS to report following further discussions with Halcrow

APPENDIX PART 4

Part A - Design and Deliverable Status

[set out here:

- *the full scope of the design deliverables produced for **tie** to date and the status of each i.e whether or not capable of deployment by Infracore without further development,*
- *what is outstanding and the programme for delivery of those- including the extent to which those need to be "consented"*
- *the costs/fees attached to the production/finalisation of outstanding deliverables]*

Part B - Amendments to Schedule 1 of the SDS Agreement

APPENDIX PART 5
Disclosure Statement
(with attachments)
Part A - SDS Disclosures

Part B - tie Disclosures
[tie to provide]

APPENDIX PART 6
Third Party Agreements
LISTED AS ENVISAGED UNDER TPA DEFINITION

Note : To include Network Rail Asset Protection Agreement

Sent APA to SDS on 02/04

APPENDIX PART 7
Exceptions under clause 4.2.2(B)

APPENDIX PART 7

Part A - Letters of Instruction

Part B - PB Report on Infraco Proposals dated [↓]

APPENDIX PART 9

Alignment Process