DRAFT OF DLA REPORT ON INFRACO CONTRACT SUITE

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Infraco contract suite

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Process of drafting, negotiation, review and quality control

The structure, membership and competence of the tie / TEL commercial and technical negotiating team have been assessed previously and have remained largely consistent since the bid evaluation process commenced. Council officers have operated in an integrated manner with the main negotiating team, which has also had extensive support from our external legal advisors (in DLA Piper's case from late September 2007 onwards following instruction to disengage from the process in May 2007), Transdev and other advisors.

Appropriate quality control procedures have been applied to finalisation of the Infraco contract suite. In a number of critical areas, senior tie and TEL people have performed a review of terms independent of the main negotiating team, the important elements of which are set out in this report. The TPB, TEL and tie Boards have been regularly kept abreast of progress in all important areas and have confirmed or redirected effort as appropriate. Communications on these key matters with senior Council officers has been conducted both through the TPB and its sub-committees and also through frequent informal contact. Finally, the OGC Gateway 3 Review Team examined key areas of the contract suite before approval in advance of the October 2007 Council meeting.

In broad terms, the principal pillars of the contract suite in terms of programme, cost, scope and risk transfer have not changed materially since the approval of the Final Business Case in October 2007. It is felt that the process of negotiation and quality control has operated effectively to ensure the final contract terms are robust and that where risk allocation has altered this has been adequately reflected in suitable commercial compromises.

General description of scope, parties and contract structure

The Infraco contract suite comprises the following principal contracts :

- **Infraco system design, construction and maintenance contract between tie and BBS;**
- **Employer's Requirements and Infraco Proposals;**
- **Tramco vehicle supply and maintenance contracts between tie and CAF;**
- **Tramco Novation Agreement establishing Infraco – Tramco arrangements;**
- **SDS Novation Agreement establishing Infraco – SDS Provider arrangements;**
- **Security documentation; and**
- **Ancillary agreements and Collateral Warranties**

Overview of Infraco contract terms

This section is not a substitute for reading the Contract itself. It summarises those provisions in which CEC has expressed particular interest. It should be understood that the ETN Contract Suite has undergone a lengthy and difficult negotiation and close out phase.

The Infraco Works are to be carried out pursuant to an Infraco Contract between tie Ltd and Bilfinger Berger (UK) Limited and Siemens plc. Bilfinger Berger (UK) Limited and Siemens plc have formed an unincorporated consortium to carry out the Infraco Works and are together called the 'Infraco', each company separately being an Infraco Member. Bilfinger Berger (UK) Limited and Siemens plc have joint and several liability for the performance and discharge of all obligations under the Infraco Contract and the novated agreements that will be housed within it.

<u>Authority to Transact</u>

The legal authority of the various counterparties to tie and to CEC (under its Guarantee) will be dealt with in the conventional manner:

- **each party will produce certified board minutes or other legally competent evidence of the corporate decision to enter into the ETN Contract Suite;**

- **all signatories will have legally effective power of attorney from their respective organisations; and**

- **in relation to foreign companies, an external counsel's opinion covering the legally binding nature of the corporate acts (re Contract execution) carried out in accordance with the Board resolutions, the signatories' delegated authority and the enforceability of the Contracts against the parties through the courts in their respective home jurisdictions.**

CEC and tie will be required to produce their own legal authority to transact as has been explained and agreed previously with CEC Legal.

The Infraco Contract executed by tie Limited, Bilfinger Berger (UK) Limited and Siemens plc comprises Core Terms and Conditions and a series of detailed Schedules which contain the price for and the scope of the Infraco Works and amplify the responsibilities and commitments accepted by the Infraco.

Conditions Precedent

At present, the draft Infraco Contract provides that the delivery of various ancillary agreements (notably the novations and the performance security package) are conditions precedent to its effectiveness. Since the intention is for all documentation to be closed provided and executed simultaneously, this technical provision may be removed prior to contract award date.

Warranties

The Infraco members provide key individual warranties regarding the Infraco Proposals meeting the Employer's Requirements and regarding their capacity to enter into the Infraco Agreement.

Duty of Care and General Obligations

Under the Infraco Contract the 'Infraco' has a duty of care and general obligation to carry out and complete the Infraco Works fully in accordance with the Agreement. Infraco is further obligated to procure that the Infraco Parties (the Infraco members and their agents, advisors, consultants and sub contractors) carry out the Infraco Works in accordance with inter alia, the Contract, the general Law and stipulated tie and CEC policies to enable the Edinburgh Tram Network to be designed, constructed, installed, integrated, tested, commissioned and thereafter operated and maintained. The scope for which the Infraco has contracted is contained in the Employer's Requirements and the Infraco Proposals.

Indemnity Provisions

Generally the Infraco must indemnify tie and CEC from all losses incurred as a result of a breach of the Infraco Contract by the Infraco or negligent or wilful acts of the Infraco. This includes where the breach or negligence causes:

- **death or injury;**

- **damage to property or to the Infraco Works;**

• infringement of third party IPR;

• causing tie or CEC to breach any law, consents, third party agreements or undertakings entered into prior to the date of the Infraco Contract;

• causing tie or CEC to breach the Network Rail Asset Protection Agreement, the DPOFA or the Tram Inspector Agreement.

The Infraco also has a specific obligation to indemnify tie in respect of any losses suffered resulting from the adverse impact of the Infraco Works in respect of the property interests, liabilities or statutory obligations of Forth Ports and Stakis. The Infraco is wholly responsible to tie for any actions or omissions of its employees, agents, advisers and sub-contractors.

Principal Exclusions:

any act or omission of tie or CEC is the cause of such death, injury or damage to property;
proportion of loss caused by tie/CEC;
indirect losses of tie/CEC by reason of Infraco breach or negligence, but indirect losses claimed by a third party are carved out of this prohibition.

Infraco would therefore be liable to indemnify tie/CEC against a claim for lost revenue asserted by a business adversely affected by Infraco's breach.

<u>ETN Assets</u>

The Agreement provides for the direct transfer of title to CEC in all materials, goods, and equipment which is intended to be part of the completed Edinburgh Tram Network. 'Infraco' shall procure that all ETN assets are supplied free from security interests and that any material stored off site is identified as belonging to CEC, wherever practicable.

<u>Price</u>

A contract price has been agreed. The contract price and pricing schedules for carrying out the Infraco Works is contained in schedules to the Infraco Contract. A substantial portion of the Contract Price is agreed on a lump sum fixed price basis. There are certain work elements that cannot be definitively concluded in price and as such Provisional Sums are included (see Section 10 below).

<u>Programme</u>

The Agreement provides that 'Infraco' shall progress the Infraco Works to achieve timeous delivery and completion of the Infraco Works (or parts thereof) and in their obligations under the Agreement all in accordance with an agreed Programme which is bound into the Schedules. This Programme is the product of tie, Infraco and SDS Provider negotiations and is cardinal to the control of Infraco and SDS Provider's performance and their potential entitlement.

Novations

The Agreement provides that, as a condition precedent, Infraco shall enter into and execute Novation Agreements to incorporate and bind previous agreements between tie and the design provider (SDS), the Tram supplier (Tramco) and the Tram Maintenance provider (Tramco), into the Infraco Contract. These agreements therefore become the full responsibility of 'Infraco' as an essential component of the completion of the Infraco Works. In addition to the Novation Agreements, collateral warranties are to be provided to tie by the design provider (SDS), the Tram supplier (Tramco) and the Tram Maintenance provider.

Network Rail Interface

Under the Agreement Infraco acknowledges that it will require to comply with the Asset Protection Agreement (APA) with Network Rail in relation to the Edinburgh Tram Network. Infraco are to comply with the APA and undertake that if shall not put tie/CEC in breach of the APA. The APA has been stepped down into the Infraco Contract so that the Infraco is fully on notice of those obligations which it will perform on behalf of tie/CEC.

Operator Interface

The Infraco's interface with Transdev is dealt with through Clause 17 of the Agreement. A duty of liaison and cooperation is imposed. Interference with maintenance works by the Operator may entitle an Infraco to claim for a Compensation Event and likewise any adverse affect of unplanned maintenance/defective maintenance would give rise to a right of indemnity for tie against any Transdev claim for relief/cost under the DPOFA. Any change to tram operations which adversely impacts the Infraco maintenance could give rise to a tie Change.

Safety

'Infraco' shall provide a permanent representation for the Project Safety Committee and shall develop and implement a safety management system to address all aspects of safety in working practices during construction , operation and maintenance.

Site Access

tie has granted a non exclusive licence to Infraco to enter and remain upon the permanent land of the term of the contract and exclusive licence to enter and remain upon designated working area for the duration of the Infraco scheme and shall provide Infraco with all necessary land consents.

Works on permanent land or temporary sites by Infraco are subject to compliance with the requirements of Third party by tie and/or CEC.

Infraco Maintenance

Infraco shall comply with the requirements of the Code of Construction Practice and Code of Maintenance Practice with regard to the maintenance of access properties, bus stops, bus services and closure of roads.

The Infraco is obliged to undertake maintenance of the ETN from the time when any section is completed and then under the full Maintenance Services regime once Service Commencement occurs. The Maintenance Services contract is for ten years post Service Commencement, with a unilateral option for tie to extend for five years, subject to any required changes. tie may terminate the Infraco Contract on six months' notice at any time after three years of ETN operation. Compensation is payable as if termination had occurred for tie default.

Milestones and Payment schedule

The construction sequence is broken down into construction milestones and critical milestones and procedures have been agreed for the monitoring of progress toward each milestone based upon milestone schedules. Interim Payments will be made to 'Infraco' monthly subject to and in accordance with the completion of stated Milestones. The Agreement obliges 'Infraco' to complete the Infraco Work in sections and 'Infraco's failure to complete sections by the sectional completion date will result in Infraco becoming liable to pay liquidated and ascertained damages to tie at amounts stated in the Agreement. If 'Infraco' are delayed by reason of certain prescribed events they may be able to apply for a Extension of Time and/or claim costs in connection with certain prescribed events listed in the Agreement.

Variation

The Agreement contains a relatively conventional contractual change mechanism in relation to the management and evaluation of variations. Variation rules depend upon the type of change instructed whether it is a tie Change, tie Mandatory Change or an 'Infraco' Change.

Phase 1b and Network Expansions

'Infraco' acknowledges that tie may, subject to notice instruct the Phase 1b works to be carried out provided that the election is made no later than 31st March 2009. The Agreement contains specific provisions (Schedule 42) under which 'Infraco' would carry out Phase 1b works if so instructed. Network Expansion (i.e. a spur, interconnect or modification) would fall to be dealt with as a tie Change under the Variation mechanism.

Termination

If tie defaults (on payment above a certain threshold or becomes insolvent) Infraco may serve a termination notice in accordance with the Agreement. The Agreement sets out the treatment of such termination. If Infraco defaults in certain prescribed matters, tie may, after giving required notice, terminate the

Agreement. The Agreement again sets out the rules relating to such proposed termination as final account, compensation (if any) and tie's rights to compensation.

Under these provisions, the compensation entitlements are sole remedies.

Dispute Resolution

The Agreement contains provision for the settlement of any disputes under a Dispute Resolution Procedure contained in the Schedules to the Infraco Contract.

Disputes are to be dealt with through a rapid escalation process to Chief Executive level in order to achieve amicable resolution of any unsolved dispute within 15 days. If no settlement is possible, the Chief Executives may elect mediation, adjudication, or court proceedings as the resolution process. The Dispute Resolution Procedure mechanic allows for joinder of related disputes at the instigation of either party. The provisions are exempt form the application of mandatory adjudication time limits (under the Housing Grants Construction Regeneration Act 1996) by virtue of the Tram Acts.

SDS Novation Agreement and design delivery and approval process

Principles of Novation

The novation of SDS Provider to 'Infraco' involves 'Infraco' taking responsibility for managing SDS to produce the remaining design and approvals for the Edinburgh Tram Network.

The principal of novation was to ensure that the integration of design and construction is the responsibility of BBS and gives BBS recourse to the same contractual remedies against SDS as tie would have had in that situation, including critically the ability to claim against SDS's Professional Indemnity Insurance cover in relation to defective design carried out by SDS.

SDS Provider Novation outcome

The novation of SDS Provider to the Infraco has been the subject of intense negotiation since preferred bidder announcement. tie's ability to close this element of the procurement has been compromised by:

- **SDS Provider indifferent performance to design production programme**
- **BBS increasing visibility of SDS underperformance**
- **a reluctance by SDS Provider to engage on the terms of the novation**
- **the evolving status of the Employer's Requirements and the Infraco Proposals**
- **the negotiating stance of BBS to avoid importing any risk from SDS failure to manage design approval.**

- **SDS claims relating to earlier periods of design development and previous tie project management's lack of experience in using the SDS Contract to control SDS performance.**

The terms of the novation of SDS have therefore been settled on the basis that BBS risk adversity required accommodation, otherwise no transfer of responsibility for design production and consent management could have been achieved. Two prime concessions have therefore been made by tie:

(1) to the extent the CEC consenting process is delayed through no fault of SDS Provider, that delay will entitle BBS to claim a Compensation Event under the Infraco Contract (time relief and additional cost). Such a claim would also encompass SDS Provider delay costs. Although the SDS Contract provided that SDS would take all consent risk, without exception, BBS were not prepared to absorb this risk (through recourse to SDS Provider) having carried out post preferred bidders due diligence on SDS design and the consent process with CEC.

(2) If through its own fault or dilatoriness SDS is late in delivering a design into the CEC Consent process and this in turn delays the issue of construction drawings to BBS (Issued for Construction), BBS will be entitled to apply liquidated damages up to an agreed level (currently proposed by tie at £1,000,000 and with approximate minimum rate of £20,000 per week).

BBS would have recovery risk on such liquidated and ascertained damages[1] but beyond the cap, tie would be required to recompense BBS.

(3) BBS are reluctant to take any risk as regards to quality of BBS designs. The current position is that any damages or loss suffered by BBS beyond the £10,000,000 cap under SDS novated contract (in relation to deficiency in SDS design) would be a tie risk.

Following the novation of SDS, tie will hold a collateral warranty from SDS regarding SDS services and work product prior to novation. The terms of the Collateral Warranty will be standard for a design and engineering services consultancy and were substantially contained in one annex to the SDS Contract when it was executed in September 2005. tie will also hold the SDS Parent Company Guarantee which supported the original SDS Contract.

<u>Design expectations of the Infraco</u>

The Infraco offer is based on design completed to date and a programme for future delivery of design. The offer is also based on those approvals achieved to date and a programme for achieving the remaining prior and technical approvals.

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[1] Note that the enforceability of such LADs is open to question unless they represent a genuine pre-estimate of BBS loss from the delay.

At the time of the original Infraco bid price in [insert date], X of the Y deliverables had been delivered to tie ltd; P prior approvals and Q technical approvals had been granted. Design has been released to BBS as it has been completed since then. The final 'Infraco' proposal is based on the updated design at [2 February 2008] when A deliverables had been delivered to tie ltd; B prior approvals and C technical approvals had been granted.

The original 'Infraco' construction programme was based on version 22 of the SDS design programme (dated X); the construction programme included in the final 'Infraco' proposal has been updated to match up with version 26 of the SDS design programme (dated 4 February 2008)

The substantial progress with completion of the SDS design has reduced the risk of late production impacting on the construction programme and has given 'Infraco' greater certainty of the construction needed.

Managing Approvals Risk

The risk of securing approvals has been shared between SDS and tie ltd. The 'Infraco' then takes programme and construction risk based on approvals being granted in line with the agreed master programme for the project.

SDS takes the risk of achieving delivery of batches for approval on the agreed date to the agreed quality. That risk is capped at [insert details]. Provided the application for approval is made on time and the quality of application is in line with agreed expectations then tie ltd takes the risk that the Council does not process the application within the 8 week period included in the programme.

The management of this risk has begun long before the application for approval is made. Designs have been reviewed progressively throughout their development involving the relevant Council officials and representatives of other approval bodies. Before applications are made for prior approval there is an 8-week period of informal consultation on top of the earlier involvement in design development. Addressing the comments received from informal consultation significantly improves the design and the chances of the Council being able to process an application within the 8 week formal period.

Design Guidance

In developing the current design, SDS has been under an obligation to take account of:

- **the provisions of the Tram Acts**
- **the Environmental Statement**
- **statutory and supplemental planning guidance from the Scottish Government and City of Edinburgh Council**
- **the Tram Design Manual**
- **all third party agreements in relation to the project**
- **UK guidance on the safe design and operation of tram systems**

There is no SDS Provider performance guarantee. There is a £500,000 bond which is callable if SDS Provider fails to novate.

Confirmation of BBS acceptance of modelling

This matter is now enshrined in the Employer’s Requirements.

Employer’s Requirements

The Infraco Proposals and the Employer's Requirements

No legal review has been instructed by tie in relation to the Infraco Proposals, on the basis that these are technical responses to the outline Employer's Requirements issued initially by tie in October 2006 at ITN stage and then progressively until final bid submissions as at [7] August 2007.

In early January 2008, tie instructed an urgent review of the Employer's Requirements Version [3.0] by DLA Piper. In the time available (less than a week) all sections (barring [□] and [□]) were commented by DLA Piper at a level aimed to (1) improve terminology consistency, (2) wherever possible, to convert non-contractual language into statements of obligation and (3) remove ambiguity or repetition. The majority of these adjustments were made by tie but DLA Piper has not been involved since.

Since that exercise there have been [three] further iterations of the Employer's Requirements but no further legal review. Consequently, no legal assurance can be given regarding the current content of the Employer's Requirements and their consistency with the Infraco core terms and conditions. BBS' position as of 4 March 2008 was that they could not sign the Infraco Contract without a thorough review of the Employer's Requirements by their legal team. tie has instructed SDS to carry out an exercise to bring the Employer's Requirements and the Infraco Proposals into alignment so that SDS Provider are able to warrant that their design will be in compliance the Employer's Requirements. This may result in further changes to the Employer's Regulations and/or the Infraco Proposals, limiting the value of any interim legal review.

The risk created by discrepancies between the version of the Employer's Requirements eventually settled on and the Infraco core terms and conditions lies in the Infraco attempting to exploit ambiguity to engineer the need for tie Change or Relief when none is in fair justified. tie project management will need to be vigilant in identifying and closing off such opportunities using the contract provisions which impose duties on Infraco to respect ambiguities and discrepancies.

[Further comment on outcome of SDS / BBS / tie negotiations on SDS Novation and alignment to mitigate risk.]

Advance purchase materials

The risk relating to advance purchase materials is with BBS if material is purchased to support unapproved design or design that has not been consented.

[Further comment on likely actual advance purchase activity]

Infraco Payment mechanism

<u>Construction</u>

Payment under the contract is entirely against a 4 weekly application from Infraco in respect of milestones which have previously been certified by tie as having been achieved. The milestone schedule reflects the Infraco price allocated in amounts to series of construction milestones and critical milestones and to the future period in which each milestone is expected to be achieved in accordance with the agreed programme.

The milestone schedule and certification mechanism has been prepared and agreed in accordance with the following key principles:

- **Save in respect of agreed advance payments, Infraco will not be paid in advance of its own outgoing cash flows through its own supply chain**

- **The individual milestones are defined such that the process of determining whether or not they have been achieved will be subject to the minimum of uncertainty or dispute**

- **The certification of a milestone will require evidence that all required relevant consents and approvals have been delivered in respect of the related works**

The contract provides an effective mechanism for the addition and variation to milestones (valuation or date) initiated by either tie or Infraco.

Infraco will submit a detailed claim for payment within 3 business days of the end of each 4 week reporting period in respect of milestones certified as achieved following which tie will have 5 business days to certify the total payment and a further 15 business days to make payment. There are no express retentions of payment but a retention bond is provided as explained below and tie has a contractual right of set off.

<u>Commissioning and Maintenance</u>

Infraco will commission Phase 1a in 4 key sections, transfer title accordingly and hand over control of each section to the operator and maintainers:

- **Section A – The depot, certified after system acceptance test T1 has been passed for that section;**

- **Section B – Depot to the Airport, certified after system acceptance test T1 has been passed for that section;**
- **Section C – The rest of Phase 1a, certified after system acceptance test T1 has been passed for that section and system acceptance test T2 has been passed for Phase 1a, and**
- **Section D – Driver training and commissioning, certified after system performance test T3 has been passed for Phase 1a.**

Certification of Section D requires that in addition to passing the system performance demonstration all relevant consents and approvals have been obtained and documentation and initial spares have been delivered.

After the period of trial running without passengers has been completed, passenger service will commence.

During the commissioning period, Infraco will be paid Mobilisation Milestone Payments according to the programme for establishing the maintenance organisation and systems. The Operator, Transdev, will be paid on a 4 week reporting period basis up to a maximum of a capped sum for the commissioning activities as a whole.

After the commencement of passenger operation, the Operator and the Infraco will be paid their respective operating and maintenance fees on a 4 week reporting period basis The performance of the delivered systems in passenger service will be monitored against two final system acceptance test criteria, Network Performance test T4 and Reliability test T5. After the Reliability Certificate has been certified then the 4 weekly fees paid will be subject to the performance regime.

Infraco performance security arrangements

<u>Bonds during construction period</u>

Two bonds are being provided by Infraco from Standard & Poors A- rated financial institutions (expected to be ANZ Bank and Deutsche Bank), a Performance Bond and a Retention Bond. Both bonds are in substance 'on-demand', meaning there is no requirement that proof of failure (beyond formal notification) by Infraco must be produced by tie before a claim can be made under the bond.

The Performance Bond is in the amount of £20m throughout the construction period reducing to £10m when a certificate of Revenue Service Commitment is issued and further reducing to £8m when a certificate of Network Certificate relating to the achievement of performance criteria is issued. The issue of the aforementioned certificates is subject to a rigorous testing regime as defined in the Employers Requirements, including evidence that all relevant consents and approvals have been delivered, and provides both security for tie/CEC and incentive to Infraco to perform.
The Retention Bond is in the amount of £2m initially adjusting to the following amounts at sectional completion:

- **£4m section A – The depot**
- **£6m section B – Depot to the Airport**
- **£8m section C – The rest of Phase 1a**
- **£10m section D – Driver training and commissioning**
- **£6m at issue of Network Certificate (pertaining to reliability as defined in the Employers Requirements)**

The Retention Bond is released when a Reliability Certificate is issued.

The Operator provides a Performance Bond in amount of £10,000,000 from a financial institution of good credit. The Bond is 'on-demand', meaning there is no requirement for proof of failure by the Operator to be produced by tie before a claim can be made under the bond.

During the maintenance phase post Service Commencement, Infraco is required to provide a performance security (or submit to a cash deposit/retention regime) at any time that there is determined by survey to be remedial work of a value greater than the minimum to reinstate the Edinburgh Tram Network assets to the Handback Condition. The amount may be up to £1,000,000.

<u>Parent Company Guarantees (PCGs</u>)

PCGs are provided by the ultimate holding companies of both Infraco consortium members in respect of all performance, financial and other obligations of their subsidiaries which are contracting with tie. The substance of these entities, which are the group holding companies in each case, has been subject to financial verification.

The PCGs respect the joint and several liability provisions in the Infraco contract; each claim by tie under the PCG's must be served on each of the parent companies in the proportion of their share of the Infraco consortium but in the event of either parent company failing to honour payment of such a claim, the other parent company is liable up to the limit of overall liability specified in the Infraco contract (20% of the Infraco contract price).

The PCGs provide that in the event of a change in control or ownership of the subsidiary companies which are entering into the Infraco contract, the PCG's remain in force until a replacement PCG has been provided on terms which are acceptable to tie.

In all other respects the PCGs are constructed such that the obligations and liabilities of the parent companies mirror that of the two subsidiaries in the Infraco consortium including the dates on which obligations are set expire.

All obtainable necessary collateral warranties have been agreed sought and provided for as requirements of Infraco.

Overview of Tramco contract terms

[Update of this section outstanding]

[This section to cover :

- **General description of scope, parties and contract structure**
- **Duty of care and general obligations**
- **Systems integration**
- **Title to assets created**
- **Tramco maintenance**
- **[Interfaces – Operator]**
- **Consents**
- **Safety & Security**
- **Milestones**
- **Management of variations**
- **Phase 1b and network expansion**
- **Termination**
- **Dispute resolution**
- **Joint & Several liability**
- **Conditions precedent**
- **Approval process and signatories**
- **Warranties & indemnities**

Trams will be supplied pursuant to a Tram Supply Agreement between tie Limited and Contrucciones y Auxilliar de Ferrocarilles S.A (CAF) "Tramco". Tramco are to carry out the Tram works and design, manufacture, engineer, supply, test, commission deliver and provide 27 trams and if required any additional trams in accordance with the Employer's Requirements, the tram Suppliers Proposal and agreed programme. Tramco shall ensure that all data, component, systems, devices, equipment, software and mechanism incorporated in the trams are fit for purpose and compatible with each other. Tramco shall operate under good industry practice, comply with all applicable laws and consents and ensure that each tram meets the required standards. The parties have agreed to work in mutual cooperation to fulfil the agreed roles and responsibilities to carry out and complete the tram works in accordance with the Agreement.

Tramco shall provide support in respect of the key elements of system integration of the tram works with the Edinburgh Tram Network.

Tramco acknowledges that the operator shall be responsible for the Operator Maintenance of the Edinburgh Tram Network and that Tramco would at all times liaise with the Operator.

Tramco shall deliver and finalise the designs, design data and all other deliverables as prescribed in the Employer's Requirements.

The Agreement allows for the introduction of changes either by tie or Tramco always subject to notices and prescribed rules. tie may, subject to notice and terms, order additional trams with related spare parts and special tools.

Tramco shall at all times utilise a Project Quality Assurance Programme compliant to standards.
A tram manufacturing and delivery programme is agreed and regular monitoring of progress will take place.
There is provision is the Agreement for tie to be involved in inspecting the trams at various stages of the manufacturing process. Tramco shall deliver the trams to the designated point of delivery at the depot and delivery tests shall be conducted.

Tramco, tie and the operator shall agree a training programme and the detailed implementation.

Tramco shall provide Trams free form all security interests transforming title to CEC.

Termination of the Agreement may be made by either party subject to certain prescribed defaults and terms.

2.11 Tramco payment mechanism

Supply agreement

The payment mechanism under the supply contract conforms substantially to that under the Infraco contract as described above with the milestone payments heavily weighted towards:

- Initial mobilisation and establishment of supply chain
- Delivery of tram vehicles
- Attainment of performance and reliability standards as specified

Maintenance agreement
Infraco is required to provide a security at any time that there is determined by survey to be remedial work of a value greater than £50,000 to reinstate the Edinburgh Tram Network assets to the Handback Condition. This may either be in the form of a cash deposit or an on-demand Handback Bond covering the full value.

2.12 Tramco performance security arrangements

Bonds during supply period

Tramco will provide a Reliability bond in the defined amount of 5% of the Tramco price such bond to be provided on or before the due date of delivery of the first Tram vehicle.

Parent Company Guarantee (PCG)

The supply and maintenance contracts with Tramco are with the ultimate holding company so the issue of a PCG does not arise. The liability cap of Tramco under the tram supply agreement is 20% of the Tramco supply price.

Performance securities under maintenance agreement

Tramco is required to provide a security at any time that there is determined by survey to be remedial work of a value greater than £50,000 required to reinstate the Tram assets to the Handback Condition,. This may either be in the form of a cash deposit or an on-demand Handback Bond covering the full value of the remedial work outstanding. The liability cap of the Tramco under the tram maintenance agreement is 18.5% of the aggregate 30 year Tram maintenance price.

CEC Financial Guarantee

CEC are required to provide a guarantee to the Infraco of the financial obligations (including future variations) of tie under the Infraco contract in recognition of the fact that tie on its own has no capacity to bear any financial commitment insofar as it is not 'back to back' with the funding of the project which is channelled through CEC. In this sense it is materially consistent with the provisions of the PCGs (including periods allowed for payment of amounts due) provided by the Infraco, except that it is a guarantee of financial obligations only and not of performance. The CEC Guarantee will be released upon issue of the ETN Reliability Certificate, that is to say approximately nine to twelve months after Service Commencement. Any pre-existing claims will survive release until settled.

The terms and conditions of the CEC Guarantee and in particular its call mechanics, liability cap and protections are in line with market practice for this type of instrument. It should be noted that the Guarantee may be called upon by the Infraco on multiple occasions if tie is in payment default more than once. The instrument has been drafted, negotiated and settled with direct involvement and support of CEC Legal and Finance.

The guarantee is provided to Infraco meaning either or both of Bilfinger & Berger UK Limited or Siemens PLC or their assignees as permitted and approved under the Infraco contract.

CEC will benefit from the same contractual defences and entitlements to set off as tie and will have no liability greater than tie's. No claim can be made for an amount which is in dispute if tie has been referred the matter under the dispute resolution provisions of the contract.

The practical day to day implication of the Guarantee is that its provisions will not be invoked so long as the process for drawdown of cash from CEC to tie to meet payment obligations as they fall due is uninterrupted. Any dispute under the Guarantee would be subject to court proceedings.