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Your Ref: COM-Corresp-30

11 December 2007

tie Ltd
CityPoint, 1st Floor
65 Haymarket Terrace
Edinburgh
EH12 5HD

Attention: Damian Sharp

Dear Damian

**Edinburgh Tram Network
System Design Services (SDS): Halcrow Collateral Warranties**

In response to your letter referenced above received on 6 December 2007 I am pleased to enclose a copy of the sub-consultancy agreement between PB and Halcrow.

Yours sincerely



Jason Chandler
Parsons Brinckerhoff

*Over a Century of
Engineering Excellence*

**In association with Halcrow
Corderoy, Ian White Associates
Quill Power Communications, SDQ**

Parsons Brinckerhoff Ltd
Registered in England and Wales
No. 2554514. Registered Office:
Amber Court, William Armstrong Drive
Newcastle upon Tyne NE4 7YQ

CEC01547205_0001

PARSONS BRINCKERHOFF LTD

- and -

HALCROW GROUP LTD

**PROVISION OF DESIGN SUB
CONSULTANCY SERVICES**

relating to

THE EDINBURGH TRAM NETWORK

SUB CONSULTANCY AGREEMENT

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AGREEMENT

BETWEEN

- (1) **Parsons Brinckerhoff Ltd** a company incorporated under the Companies Act with registration number 2554514 and having its registered office at Amber Court, William Armstrong Drive, Newcastle Business Park, Newcastle upon Tyne, NE4 7YQ ("The Consultant") which expression shall include its successors in title and permitted assignees; and
- (2) **Halcrow Group Ltd** a company incorporated under the Companies Act with registration number 3415971 and having its registered office at 44 Brook Green, Hammersmith, London W6 7BY (the "The Sub Consultant") which expression shall include its permitted assignees.

WHEREAS

- A. The Consultant has entered into an agreement (the Main Agreement) with **tie** (the Client) for the provision of System Design Services in connection with the Edinburgh Tram Project.
- B. The Consultant has selected The Sub Consultant to provide part of the System Design Services (the Sub Consultancy Sub Consultancy Services) as hereinafter defined, under the terms and conditions set out in this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement (including the recitals and the Schedules), save as otherwise expressly stated or as the context otherwise requires, the following words and expressions shall have the meanings hereby ascribed to them:

"Abortive Work" means any work which cannot be used in relation to the Edinburgh Tram Network (but not including work occurring as part of the iterative process of design);

"AFC" means automatic fare collection;

"Affected Party" means a Party that is unable to comply with all or a material part of its obligations under this Agreement as a direct result of a Force Majeure Event;

"Agreement" means the main body of this document (as may be amended from time to time in accordance with this Agreement) together with the Schedules, and the Formal Offer, and the Letter of Appointment;

"ALARP" means as low as reasonably practicable;

"Approval Bodies" means any Relevant Authorities, planning authorities, roads authorities, HMRI, Network Rail and any other parties who are to issue Consents which may be required for the construction, installation, commissioning, completion and opening of the Edinburgh Tram Network;

"BAA" means BAA plc, a company incorporated under the companies Act with registration number 1970855 and having its registered office at 130 Wilton Road,

London, SW1V 1LQ which expression shall include its successors in title and assignees;

"Background Information" means all and any materials, documents, drawings, plans or other information in paper, electronic or any other form, relating in any way to this Agreement and the Tram Legislation (and the parliamentary process) and made available to The Sub Consultant by **tie**, either directly or via The Consultant CEC and/or any of their respective members, officers, agents and/or advisers during the procurement competition relative to this Agreement or thereafter;

"Business Day" means any day other than a Saturday, Sunday or a public holiday recognised by CEC;

"CCTV" means closed circuit television;

"CDM Regulations" means the Construction (Design and Management) Regulations 1994 (S.I. 1994/3140) or any Regulations superseding these;

"CEC" means the City of Edinburgh Council and its successors and assignees whomsoever;

"Cess" means safe area at the side of the tram track;

"Change in Control" means any sale or disposal of any legal, beneficial or equitable interest in any or all of the share capital of a corporation or the control over the exercise of voting rights in a corporation or the control over the right to appoint or remove directors of a corporation;

"Change in Law" means the coming into effect after the last date of execution of this Agreement of:

- (a) Legislation, other than any Legislation which on the date of this Agreement has been published:
 - (i) in a draft Bill as part of a Scottish Executive/Scottish Parliament or United Kingdom Government consultation paper;
 - (ii) in a Bill (including the Tram Bills);
 - (iii) in draft subordinate Legislation within the meaning of section 21(1) of the Interpretation Act 1978; or
 - (iv) as a proposal in the Official Journal of the European Communities;
- (b) any Guidance (other than Guidance which on the date of this Agreement has been published (in draft or otherwise) in any Scottish Executive, Scottish Parliament or United Kingdom Government consultation paper (and/or on any Scottish Executive, Scottish Parliament or United Kingdom Government internet site)); or
- (c) any applicable judgement of a relevant court of law which changes a binding precedent;

"CIS" means customer information system;

"Civils" means civil engineering;

"Client" means **tie**.

"The Consultant Change" means any addition, modification, reduction or omission in respect of the Sub Consultancy Services or any other term of this Agreement instructed in accordance with Clause 7.2, or Clause 15 (*Changes*) **"The Consultant Change Order"** means the written confirmation issued by The Consultant to proceed with a The Consultant Change on the basis of an Estimate (as modified, if required);

"The Consultant Default" means one of the following events:

- (a) a failure by The Consultant to make payment of any amount of money that is certified in an Interim Certificate as due and payable by The Consultant to The Sub Consultant under this Agreement exceeding 5% of the value of the Sub Consultancy Services to be performed under this Agreement (as such value is determined in accordance with this Agreement); or
- (b) a breach by The Consultant of any of its material obligations under this Agreement which substantially frustrates or renders it impossible for The Sub Consultant to perform its obligations under this Agreement for a continuous period of 30 days;

"The Consultant Notice of Change" means a notice served by The Consultant pursuant to Clause 15.1, setting out the matters specified in Clause 15.2;

"The Consultant Party" means any advisers appointed by The Consultant or any of The Consultant's employees, agents, contractors and sub-contractors of any Consultant party and its or their directors, officers and employees (excluding The Sub Consultant or any The Sub Consultant Party);

"The Consultant's Representative" means the person or persons appointed by The Consultant from time to time and notified to The Sub Consultant;

"Code" means the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 as the same may be amended, varied or replaced from time to time;

"Code of Construction Practice" means the code which has been developed in conjunction with all relevant parties with regard to construction practices, environmental issues, safety issues and other aspects relative to the construction, installation and commissioning of the Edinburgh Tram Network ;

"Commercially Sensitive Information" means the subset of Confidential Information listed in Schedule 5 (*Commercially Sensitive Information*) comprised of information:

- (a) which is provided by The Sub Consultant to The Consultant in confidence for the period set out in that schedule; and/or
- (b) that constitutes a trade secret;

"Confidential Information" means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, goods, Sub Consultancy Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998, and the Commercially Sensitive Information;

"Consents" means, without limitation all permissions, consents, approvals, non-objections, certificates, permits, licences, agreements, statutory agreements and authorisations, Planning Permissions, traffic regulation orders, building fixing agreements, building control approvals, building warrants, and all other necessary consents and agreements from the Approval Bodies, or any Relevant Authority, any other relevant third parties whether required by Law or the Tram Legislation or under contract;

"Construction Panel" has the meaning given to it in Clause 28.19.1;

"Construction Proposals" means the proposals for the construction, installation and commissioning of the Edinburgh Tram Network to be developed by the Infraco;

"Control Room" means a centralised control room within the Depot which will facilitate tram servicing and maintenance;

"CPO" means Compulsory Purchase Order;

"Data Radio" means a system that allows two way data communication for monitoring, control and recording between the Control Room and remote equipment eg trams, TPDS, PCC, PHC, sub-station equipment, TVM, PID, UTX and signals;

"DCCB" means direct current circuit breaker;

"DDA" means the Disability Discrimination Act 1995;

"The Sub Consultant Deliverables" means the deliverables as defined in Clause 4 of this Agreement. **"Depot"** has the meaning given in paragraph 1.1.4 of Schedule 11 (*Requirements Specification for Overall System Operational and Performance Requirements*);

"Design Manual" means the design manual issued by CEC as may be amended from time to time;

"Design and Technical Gateway Process" means the process set out in Clause 7.3 of this Agreement;

"Detailed Design Phase" means the phase described in paragraph 2.6 of Schedule 1 (*Scope of Sub Consultancy Services*);

"Detailed Design Phase Milestone Payment" means the sum of money identified in respect of the milestone payment for Detailed Design Phase in Schedule 3 (*Pricing Schedule*) as may be adjusted from time to time in accordance with this Agreement;

"Detailed Design Phase Sub-Milestones" means the sub-milestones identified as occurring during the Detailed Design Phase in Schedule 3 (*Pricing Schedule*) as may be adjusted from time to time in accordance with this Agreement;

"Detailed Design Phase Sub-Milestone Payments" means the sum of money identified in respect of each Detailed Design Phase Sub-Milestone in Schedule 3 (*Pricing Schedule*) as may be adjusted from time to time in accordance with this Agreement;

"DfT" means the Department for Transport;

"Discriminatory Change in Law" means a Change in Law, the terms of which apply expressly to:

- (a) the Edinburgh Tram Network; and/or
- (b) The Consultant and not to other persons;

"Dispute" means any dispute, difference or unresolved claim between the Parties in connection with or arising from this Agreement;

"Dispute Resolution Procedure" means the procedure set out in Clause 28 (*Dispute Resolution Procedure*);

"DKE" means developed kinematic envelope;

"DNO" means district network operator;

"DPOFA" means the development partnering and operating franchise agreement between tie and the Operator dated 14 May 2004;

"Edinburgh Tram Network" means Line One and Line Two or either of them, as may be amended from time to time, together with any modification, line extension, spur, interconnection and any additional line which may be instructed by tie;

"Effective Date" shall have the meaning given in Clause 2.1;

"E&M" means electrical and mechanical;

"EMC" means electro magnetic current;

"Environmental Statement" means the environmental statements supporting each of the Tram Bills;

"Environmental Information Regulations" means the Environmental Information (Scotland) Regulations 2004 Scottish SI 2004/520;

"E & P" means electrification and power;

"Final Persistent Breach Notice" has the meaning given in Clause 24.2;

"Financial Panel" has the meaning given to it in Clause 28.19.1;

"FOISA" means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner in relation to such legislation;

"Force Majeure Event" means the occurrence after the Effective Date of:

- (a) war, civil war, armed conflict or terrorism; or
- (b) nuclear, chemical or biological contamination unless the source of the contamination is the result of actions by The Sub Consultant or any The Sub Consultant Party; or
- (c) pressure waves caused by devices travelling at supersonic speeds; or

(d) a natural disaster.

Sub Consultancy Services "**4ft**" means the distance between inner sides of the two running rails of the track;

"Functional Requirements Specifications" means the Requirements Specification for Civil Engineering Works, the Requirements Specification for Overall System and Performance Requirements, the Requirements Specification for Supervision, Command and Control Suite of Systems, the Requirements Specification for Electrification and Power, the Requirements Specification for Tram Vehicle, and the System-Wide Non-Functional Requirements as may be amended and developed from time to time;

"General Change in Law" means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;

"Good Industry Practice" means using standards, practices, methods and procedures conforming to Law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably be expected from a large, reputable, professionally qualified, competent and skilled organisation experienced in carrying out activities of a similar nature, scope and complexity to those comprised in the Sub Consultancy Services, and seeking in good faith to comply with its contractual obligations and all duties owed by it;

"GSN" means global structured notation for safety cases;

"Guidance" means the any applicable guidance, direction or determination issued by any regulatory body with which The Consultant and/or The Sub Consultant is bound to comply;

"HCI" means human computer interface;

"HF" means human factors;

"HMRI" means Her Majesty's Railway Inspectorate;

"HSAW" means the Health & Safety at Work Act;

"HSE" means Health & Safety Executive;

"HVAC" means heating, ventilation and air conditioning;

"IEC" means International Electrotechnical Commission;

"Indemnified Liabilities" means actions, claims (including third party claims), demands, proceedings, losses, damages, liabilities, costs and expenses (including reasonable legal fees and expert witness fees);

"Indemnified Parties" has the meaning given in Clause 27.1;

"Indirect Loss" means any business interruption, loss of profits, loss of business, loss of business opportunity, loss of or damage to or corruption of data or loss of management time or time of other employees;

"Information" has the meaning given under section 73 of FOISA;

"Infraco" means the infrastructure provider to be appointed or appointed by **tie** in relation to the Edinburgh Tram Network;

"Infraco Contract" means the contract to be entered into or entered into by **tie** with the Infraco in relation to the completion of the design, and carrying out the construction, commissioning and maintenance planning of the Edinburgh Tram Network;

"Insolvency Event" means any of the following events:

- (a) The Sub Consultant is unable to pay its debts as they fall due or is insolvent or admits in writing inability to pay its debts as they fall due;
- (b) The Sub Consultant suspends for a period of two months making payments on all or any class of its debts or a moratorium is declared by The Sub Consultant in respect of its indebtedness;
- (c) The Sub Consultant ceases business or announces an intention to do so;
- (e) the following are entered into:
 - (i) a voluntary arrangement (other than a solvent one) for a composition of debts of The Sub Consultant;
 - (ii) a scheme of arrangement in respect of The Sub Consultant pursuant to the Insolvency Act 1986 or the Companies Act 1985; or
 - (iii) a material composition or arrangement other than a solvent one with The Sub Consultant's creditors;
- (f) either of the following:
 - (i) the winding-up of The Sub Consultant (including passing a shareholders' resolution or the presentation of a petition by The Sub Consultant for the purpose of winding up The Sub Consultant); or
 - (ii) its administration (including where an application is made by The Sub Consultant, or petition is presented by The Sub Consultant for or any meeting of its directors or members resolves to make an application for an administration order);
- (g) an order for the winding-up or administration of The Sub Consultant is made;
- (h) any liquidator, judicial custodian, receiver, administrative receiver, administrator or the like is appointed in respect of The Sub Consultant or any material part of The Sub Consultant's assets;
- (i) possession is taken of, or any execution or other process (other than on the dependence or inhibition) is levied or enforced upon, any material part of the property (whether real or personal) of The Sub Consultant by or on behalf of any creditor or encumbrance of The Sub Consultant; or

- (j) anything analogous to any of the events mentioned in paragraphs (a) to (h) above occurs in relation to The Sub Consultant under the law of any relevant jurisdiction;

"Intellectual Property Rights" means any rights in or to any patent, design right, utility model, trade mark, brand name, service mark, trade name, business name, logo, invention (whether registered or unregistered), domain name, semi-conductor right, topography right, software designs and/or other materials, source code, copyright, moral right, or rights in databases and any other rights in respect of any industrial or intellectual property, whether capable of being registered or not, including all rights to apply for any of the foregoing rights or for an extension, revival or renewal of any of the foregoing rights and any similar or analogous rights to any of the above, whether arising or granted under the law of Scotland or of any other jurisdiction;

"Interim Certificate" means any notice to be issued by The Consultant in accordance with Clause 12.3;

"Internal Resolution Procedure" means the procedure described in Clause 28.10;

"Joint Revenue Committee" means the consultant or consultants appointed by tie to perform transport modelling functions in relation to the Edinburgh Tram Network;

"Key Personnel" means those staff specified as such in Schedule 2 (*Key Personnel*);

"Law" means:

- (a) any applicable Legislation;
- (b) any applicable Guidance; and
- (c) any applicable judgment of a relevant court of law which is a binding precedent,

in each case in force in Scotland;

"Legal Panel" has the meaning given to it in Clause 28.19.1;

"Legislation" means any Act or instruments of the Scottish Parliament or the United Kingdom Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972;

"Line One" means Sectors DHY6 (excluding the tramstop at Murrayfield and the alignment between that tramstop and the junction at Roseburn), HOT1, HOT2, HOT3, HOT4, HOT5, HOT6, HCT1, CTO1 and CTO2 as may be amended from time to time;

"Line Two" means Sectors ARP1, DHY1, DHY2, DHY3, DHY4, DHY5, DHY6 (excluding the tramstop at Haymarket and the alignment between that tramstop and the junction at Roseburn), and GNB1 as may be amended from time to time;

"Line One and Line Two" means Sectors ARP1, DHY1, DHY2, DHY3, DHY4, DHY5, DHY6, HOT1, HOT2, HOT3, HOT4, HOT5, HOT6, HCT1, CTO1, CTO2 and GNB1 as may be amended from time to time;

"Main Agreement" means the agreement between The Consultant and TIE Limited.

"Management Fees" means the sum of money identified in respect of management fees in Schedule 3 (*Pricing Schedule*) as may be adjusted from time to time in accordance with this Agreement;

"Master Project Programme" means the project programme to be prepared, maintained, updated and amended from time to time by **The Consultant** and notified to The Sub Consultant and as may be extended in accordance with Clause 7.5 of this Agreement;

"M & E" means mechanical and electrical;

"Milestone Completion Certificate" means the certificate to be issued by The Consultant in accordance with Clause 7.3 in relation to the completion of the Requirements Definition Phase, the System-Wide Preliminary Design Requirements, the Preliminary Design Phase and the Detailed Design Phase;

"Network Diagram" means the diagram identified in the Requirements Specification for Overall System Operational and Performance Requirements;

"Network Rail" means Network Rail Infrastructure Limited, a company incorporated under the Companies Act with registered number 2904587 and having its registered office at 40 Melton Street, London, NW1 2EE which shall include its successors in title and assignees;

"Notice of Adjudication" has the meaning given in Clause 28.16;

"Notification" has the meaning given in Clause 28.10.1;

"Novation Agreement" means the novation agreement to be entered into among **tie**, **The Consultant**, and the Infracore.

"OLE" means overhead line equipment;

"Open Book Basis" means the availability and disclosure (consistent with operation of Clause 14 (*Audit*)) of all underlying data and calculations used by The Sub Consultant to create and justify costings and financial analysis presented to The Consultant;

"Operations Panel" has the meaning given to it in Clause 28.19.1;

"Operator" means Transdev Edinburgh Tram Limited, a company incorporated in Scotland under registered number SC267598 and having its registered office at Level 2, Saltire Court, 20 Castle Terrace, Edinburgh EH1 2ET, appointed by **tie** as operator under the DPOFA;

"ORS" means operational radio system;

"OS" means Ordnance Survey;

"Overview Display" means a plasma or equivalent display to be provided in the Control Room such that it can be seen by all Control Room staff to manage the Edinburgh Tram Network effectively;

"PA" means public address;

"Panels" has the meaning given to it in Clause 28.19;

"Parliamentary Undertakings" means any undertaking given to a Parliamentary

Committee during the passage of the Tram Bills through the Scottish Parliament, and any undertaking or agreement given to any person in consideration of his refraining from opposition to the Tram Bills through the Scottish Parliament;

"Party" means each and any of the parties to this Agreement and "Parties" shall be construed accordingly;

"P3e" means Primavera 3e;

"PCC" means point control cabinet;

"Permitted Variation" means a The Consultant Change, a change proposed by The Sub Consultant or a Qualifying Change in Law, as agreed or determined to proceed in accordance with this Agreement;

"Persistent Breach Notice" has the meaning given in Clause 24.1;

"PHC" means point heating cabinet;

"PHP" means passenger help point;

"PID" means passenger information display;

"Planned Service Commencement Date" means the programmed date of service commencement of 31 December 2009 as may be amended from time to time by tie and notified by The Consultant to The Sub Consultant;

"Planning Permission" means any planning permission, planning approval, approval of reserved matters, listed building consent, conservation areas consent and/or other consent or approval;

"Position Paper" has the meaning given in Clause 28.10.2;

"Preliminary Design Phase" means the phase described in paragraph 2.4 of Schedule 1 (*Scope of Sub Consultancy Services*);

"Preliminary Design Phase Milestone Payment" means the sum of money identified in respect of the milestone payment for Preliminary Design Phase in Schedule 3 (*Pricing Schedule*) as may be adjusted from time to time in accordance with this Agreement;

"Preliminary Design Phase Sub-Milestones" means the sub-milestones identified as occurring during the Preliminary Design Phase in Schedule 3 (*Pricing Schedule*) as may be adjusted from time to time in accordance with this Agreement;

"Preliminary Design Phase Sub-Milestone Payments" means the sum of money identified in respect of each Preliminary Design Phase Sub-Milestone in Schedule 3 (*Pricing Schedule*) as may be adjusted from time to time in accordance with this Agreement;

"Programme" means the programme set out in Schedule 4 (*Programme*) (as maintained, updated and amended from time to time by The Consultant in accordance with this Agreement) as may be extended in accordance with Clause 7.5 of this Agreement which shall include the Programme Phasing Structure;

"Programme Phasing Structure" means the programme set out in Appendix 2 of Schedule 1 (*Scope of Sub Consultancy Services*) as may be amended by **tie** from time to time and notified by The Consultant to The Sub Consultant;

"Prohibited Act" means:

- (a) offering, giving or agreeing to give to **tie**, the Scottish Executive, CEC, or any **tie** Party or any other public body or any person owned or employed by any of them any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement;
- (b) paying commission or agreeing to pay commission to any person in connection with the award of this Agreement;
- (c) committing any offence:
 - (i) under the Prevention of Corruption Acts 1889-1916 or section 68(2) of the Local Government (Scotland) Act 1973;
 - (ii) under any Law creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other relevant agreement with **tie**, the Scottish Executive, CEC or any other public body; or
- (d) defrauding or attempting to defraud or conspiring to defraud **tie**, CEC, the Scottish Executive or any other public body;

Any references within this Agreement to any "Prohibited Act" shall include acts outwith the United Kingdom and the references within the definition "Prohibited Act" to UK legislation shall be deemed to be amended to refer to legislation in other jurisdictions outside of the United Kingdom.

"Project IPR" means all Intellectual Property Rights in the Deliverables and the Specially Written Software and any other Intellectual Property Rights created in the performance of the Sub Consultancy Services which are specific in nature to the performance of the Sub Consultancy Services;

"P & R" means park and ride;

"Qualifying Change in Law" means:

- (a) a Discriminatory Change in Law; and/or
- (b) a Specific Change in Law;

"Referral Notice" has the meaning given in Clause 28.27;

"Referring Party" has the meaning given in Clause 28.16;

"Related Contract" has the meaning given in Clause 28.55;

"Related Dispute" has the meaning given in Clause 28.55;

"Relevant Authority" means any court with the relevant jurisdiction and any local authority, national authority or supra national agency, inspectorate, minister, Scottish Executive, body, official or public or statutory person of the government of the United Kingdom or of the European Union and "Relevant Authorities" shall be construed accordingly;

"Requests for Information" shall have the meaning set out in FOISA or any apparent request for information under FOISA, the Environmental Information Regulations or the Code;

"Required Insurances" means the insurances set out in Part 1 of Schedule 6 (*Required Insurances*) as may be amended from time to time in accordance with this Agreement;

"Requirements Definition Phase" means the phase described in paragraph 2.3 of Schedule 1 (*Scope of Sub Consultancy Services*);

"Requirements Definition Phase Milestone Payment" means the sum of money identified in respect of the milestone payment for the Requirements Definition Phase in Schedule 3 (*Pricing Schedule*) as may be adjusted from time to time in accordance with this Agreement;

"Requirements Definition Phase Sub-Milestones" means the sub-milestones identified as occurring during the Requirements Definition Phase in Schedule 3 (*Pricing Schedule*) as may be adjusted from time to time in accordance with this Agreement;

"Requirements Definition Phase Sub-Milestone Payments" means the sum of money identified in respect of each Requirements Definition Phase Sub-Milestone in Schedule 3 (*Pricing Schedule*) as may be adjusted from time to time in accordance with this Agreement;

"Requirements Specification for Civil Engineering Works" means the specification set out in Schedule 12 to the Agreement as may be amended and developed from time to time in accordance with this Agreement;

"Requirements Specification for Electrification and Power" means the specification set out in Schedule 14 to the Agreement as may be amended from time to time in accordance with this Agreement;

"Requirements Specification for Overall System Operational and Performance Requirements" means the specification set out in Schedule 11 to the Agreement as may be amended and developed from time to time in accordance with this Agreement;

"Requirements Specification for Supervision, Command and Control Suite of Systems" means the specification set out in Schedule 13 to the Agreement as may be amended and developed from time to time in accordance with this Agreement;

"Requirements Specification for Tram Vehicle" means the specification set out in Schedule 15 to the Agreement as may be amended and developed from time to time in accordance with this Agreement;

"Responding Party" has the meaning given in Clause 28.17;

"Retention" has the meaning given in Clause 12.7.1;

"Review Procedure" means the review procedure set out in Schedule 9 (*Review Procedure*);

"RSPG" means Railway Safety Principles and Guidance, issued by HMRI under HSE;

"RVAR" means Rail Vehicle Accessibility Regulations;

"SCADA" means supervisory control and data acquisition system;

"SCC" means supervisory, control and communications system;

"Schedules" means Schedule 1 (*Scope of Sub Consultancy Services*), Schedule 2 (*Key Personnel*), Schedule 3 (*Pricing Schedule*), Schedule 4 (*Programme*), Schedule 5 (*Commercially Sensitive Information*), Schedule 6 (*Required Insurances*), Schedule 7 (*Draft Collateral Warranties*), Schedule 8 (*Not Used*), Schedule 9 (*Review Procedure*), Schedule 10 (*Panels for the Dispute Resolution Procedure*), Schedule 11 (*Requirements Specification for Overall System Operational and Performance Requirements*), Schedule 12 (*Requirements Specifications for Civil Engineering Works*), Schedule 13 (*Requirements Specification for Supervision, Command and Control Suite of Systems*), Schedule 14 (*Requirements Specification for Electrification and Power*), Schedule 15 (*Requirements Specification for Tram Vehicle*), Schedule 16 (*System-Wide Non-Functional Requirements*), and Schedule 17 (*Not Used*), as the same may be amended from time to time in accordance with the terms of this Agreement;

"The Sub Consultant Default" means the events set out in Clause 19.1;

"The Sub Consultant IPR" means:

- (a) all Intellectual Property Rights (including Intellectual Property Rights in relation to The Sub Consultant Software) which The Sub Consultant can demonstrate by documentary evidence were already existing and owned by or licensed to The Sub Consultant prior to the Effective Date; and
- (b) any modifications or developments of any of the rights listed in paragraph (a) above which are generic in nature and not specific to the performance of the Sub Consultancy Services;

"The Sub Consultant Software" means programs, the Intellectual Property Rights in which are (a) owned by The Sub Consultant; and (b) used by The Sub Consultant to carry out its obligations under this Agreement;

"The Sub Consultant's Representative" shall have the meaning given to it in Clause 10.8;

"SDS Provider" means The Consultant.

"SDS-JRC Modelling Suite" has the meaning given in paragraph 3.5.1 of Schedule 1 (*Scope of Sub Consultancy Services*);

"Sector" means each sector identified in the Programme Phasing Structure;

"Sub Consultancy Services" shall mean those Sub Consultancy Services to be performed by The Sub Consultant which are set out in Schedule 1 (*Scope of Sub*

Consultancy Services) and for the avoidance of any doubt, shall include any variations pursuant to the provisions of this Agreement, and shall also include the other obligations which The Sub Consultant is required to carry out as expressed under this Agreement;

"Service Commencement Date" means the date the Edinburgh Tram Network goes into passenger carrying service;

"Specially Written Software" means programs which are written by or on behalf of The Sub Consultant specifically to enable The Sub Consultant to carry out its obligations under this Agreement;

"Specific Change in Law" means any Change in Law which specifically applies to the provision of a service the same as or similar to the Sub Consultancy Services (but not to the provision of other Sub Consultancy Services) but excluding the making, amendment or revocation of any traffic regulation order;

"Stage Build" means part of the Edinburgh Tram Network that once commissioned can be opened for Trial Operation;

"Sub-Milestones" means those sub-milestones identified in Schedule 3 (*Pricing Schedule*) as may be adjusted from time to time in accordance with this Agreement;

"Submitted Item" has the meaning given in paragraph 1.2 of Schedule 9 (*Review Procedure*);

"Sub-Sector" means each sub-sector identified in the Programme Phasing Structure;

"System-Wide Preliminary Design Requirements" means those high level requirements for the whole of the Edinburgh Tram Network described in paragraph 2.4 of Schedule 1 (*Scope of Sub Consultancy Services*);

"System-Wide Non-Functional Requirements" means the requirements set out in Schedule 16 to the Agreement as may be amended and developed from time to time in accordance with this Agreement;

"TBC" means traction/brake controller;

"Technical Specifications" are the specifications to be prepared by The Sub Consultant to describe the relevant technical aspects of each part of the Edinburgh Tram Network which shall meet the Functional Requirements Specifications and shall allow relevant aspects of the Edinburgh Tram Network to be procured, constructed, installed, commissioned and maintained;

"Termination Date" means the date of termination expressed in a notice served in accordance with Clauses 19 (*Termination for The Sub Consultant Default*), 20 (*Termination, Abandonment or Suspension of the Sub Consultancy Services by The Consultant*), 21 (*Termination for The Consultant Default*), 22 (*Termination for Corrupt Gifts and Payments*), 23 (*Termination by Reason of Force Majeure*) or 24 (*Persistent Breach*) (as appropriate);

"Third Party Software" means programs, the Intellectual Property Rights in which are (a) owned by a third party and (b) used by The Sub Consultant to carry out its obligations under this Agreement;

"tie" means a company incorporated under the Companies Act with registered number SC230949 and having its registered office at City Chambers, High Street, Edinburgh, Midlothian, EH1 1YJ which shall include its successors in title and permitted assignees;

" The Consultant Party" means any advisers appointed by **The Consultant** or any of **The Consultant's** agents, employees, contractors and sub-contractors of any The Consultant party and its or their directors, officers and employees (but excluding The Sub Consultant, any The Sub Consultant Party) and statutory undertakers and utilities;

"TLA" means three letter acronym;

"Topics Register" means the central project register of all known issues relating to the design, construction, testing, commissioning, operation and maintenance of the Edinburgh Tram Network;

"TPDS" means tram position and detection system;

"Tram Bills" means the Edinburgh Tram (Line One) Bill and the Edinburgh Tram (Line Two) Bill,

"Tram Legislation" means the Edinburgh Tram (Line One) Bill and the Edinburgh Tram (Line Two) Bill, and after such Bills are enacted means the Edinburgh Tram (Line One) Act, the Edinburgh Tram (Line Two) Act and such other legislation relative to the Edinburgh Tram Network as may be enacted from time to time;

"Tram Supplier" means the tram supplier to be procured by **tie** in relation to the supply of trams for the Edinburgh Tram Network;

"Tram Supply Contract" means the contract to be entered into by **tie** or other party with the Tram Supplier in relation to the supply of trams for the Edinburgh Tram Network;

"Transport Edinburgh Limited" means Transport Edinburgh Limited, (registered number SC269639) and having its registered office at City Chambers, High Street, Edinburgh, Midlothian, EH1 1YJ which shall include its successors in title and permitted assignees;

"Trial Operation" means the timetabled operation by the Operator of the Edinburgh Tram Network prior to the Service Commencement Date;

"TRO" means Traffic Regulation Orders;

"TRTS" means tram ready to start;

"TSS Provider" means the technical support Sub Consultancy Services provider to be appointed by **tie**;

"TVM" means automatic ticket vending machine;

"UPS" means uninterruptible power supply;

"UTC" means urban traffic control;

"**UTX**" means urban traffic controller device;

"**VDV**" means vibration dose value;

"**Voice Radio**" means a system that allows two way voice communication between two points (eg Control Room, trams, mobile radio handsets, public address system and passenger help points);

"**WBS**" means work breakdown structure;

"**WHT**" means World Heritage Trust;

"**Wireless Telecomms**" means a system that allows two way data and/or video communication for monitoring, control and recording between the Control Room and remote equipment eg CCTV.

1.2 Unless the context requires otherwise:

1.2.1 words importing gender include masculine, feminine and neuter;

1.2.2 the singular includes the plural and vice versa;

1.2.3 a reference to any part, Clause, sub-clause or Schedule is, except where it is expressly stated to the contrary, a reference to such part, Clause or sub-clause of or Schedule to this Agreement;

1.2.4 a reference in any Schedule to any part, paragraph or sub-paragraph is, except where it is expressly stated to the contrary, a reference to such part, paragraph or sub-paragraph of that Schedule (as the case may be);

1.2.5 any reference to this Agreement or to any other document shall include any variation, amendment, or supplement to this Agreement or such document as expressly permitted under the terms of this Agreement;

1.2.6 any reference to any enactment, order, regulation or other similar instrument (including any EU instrument) (whether specifically named or not) shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted and shall include any orders, consents, regulations, legally binding codes of practice or subordinate legislation (within the meaning of section 21(1) of the Interpretation Act 1978) made thereunder;

1.2.7 a reference to a person includes individuals, firms, partnerships, bodies corporate, joint ventures, government departments and any organisation capable of suing or being sued and references to any of the same include the others and their successors and assignees and transferees to the extent that such assignation and transfer are expressly permitted under the terms of this Agreement;

1.2.8 headings and the contents list are for convenience of reference only and do not affect the interpretation of this Agreement;

1.2.9 the ejusdem generis rule does not apply and the meaning of general words is not to be restricted by any particular examples preceding or following those general words;

- 1.2.10 a reference to a time of day is a reference to the time in Scotland;
 - 1.2.11 subject to the restrictions imposed by this Agreement on subcontracting, an obligation to do something includes an obligation to procure it to be done;
 - 1.2.12 an obligation not to do something includes an obligation not to wilfully allow it to be done;
 - 1.2.13 the word "including" means "including without limitation";
 - 1.2.14 a reference to "consent" shall mean consent in writing;
 - 1.2.15 any reference to any Deliverable or course of action being reviewed, approved, agreed, consented to or otherwise processed in accordance with this Agreement means that the provisions of Schedule 9 (*Review Procedure*) shall apply except where otherwise agreed in writing by The Consultant.
- 1.3 This Agreement shall be interpreted and construed as a whole provided that in the event of any inconsistency or conflict between:
- 1.3.1 the main body of this Agreement and the Schedules, the main body of this Agreement shall prevail to the extent of any such inconsistency or conflict over the Schedules
 - 1.3.2 the main body of this Agreement and the Schedules and the Formal Offer and/or the Letter of Appointment, the main body of the Agreement and the Schedules shall prevail to the extent of any such inconsistency or conflict over the Formal Offer and/or the Letter of Appointment
- unless expressly stated otherwise by The Consultant.
- 1.4 In the case of any inconsistency or conflict between or in any of the documents forming the Agreement, or any inconsistency or conflict between the Agreement and any instructions from The Consultant or The Consultant's Representative, The Sub Consultant shall notify The Consultant within 3 Business Days and The Consultant, subject to Clause 1.3, shall issue in writing such further instructions as The Consultant considers appropriate in its absolute discretion to resolve the inconsistency or conflict.
- 1.5 Where a Party comprises two or more persons:
- 1.5.1 any obligations on the part of that Party contained or implied in this Agreement are deemed to be joint and several obligations on the part of those persons; and
 - 1.5.2 references to that party include references to each and any of those persons.

2. TERM OF THIS AGREEMENT

- 2.1 This Agreement shall come into effect on the 20th September 2005 shall continue in effect until the date on which The Sub Consultant is notified by The Consultant that a one year defects liability period for the Infraco Contract has ended in accordance with the terms of the Infraco Contract provided always that the Parties may agreed to extend the term of this Agreement.

3. DUTY OF CARE, STANDARDS AND THE SUB CONSULTANCY SERVICES TO BE PROVIDED

General

- 3.1 The Consultant hereby appoints The Sub Consultant in accordance with the terms of this Agreement and The Sub Consultant hereby accepts full responsibility and agrees to perform the Sub Consultancy Services and its other obligations under this Agreement fully and faithfully in the best interests of The Consultant.
- 3.2 The Sub Consultant warrants to The Consultant that, in the performance of the Sub Consultancy Services and its other obligations under this Agreement it shall exercise a reasonable level of professional skill, care and diligence to be expected of a properly qualified and competent system design Sub Consultancy Services provider experienced in performing Sub Consultancy Services similar to the Sub Consultancy Services in connection with projects of a similar size, scope and complexity.
- 3.3 The Sub Consultant shall (each as distinct and separate obligations) perform the Sub Consultancy Services and its other obligations under this Agreement (exercising the level of skill, care and diligence set out in Clause 3.2):
- 3.3.1 so as to comply in all respects with this Agreement;
 - 3.3.2 so as to enable the Edinburgh Tram Network to be procured, constructed, installed, tested and commissioned, and thereafter operated and maintained;
 - 3.3.3 in accordance with The Sub Consultant's quality management system and plans;
 - 3.3.4 so as to ensure compliance with the Functional Requirements Specifications and the Technical Specifications (as applicable);
 - 3.3.5 in accordance with the Design Manual;
 - 3.3.6 so as to ensure compliance with the Tram Legislation;
 - 3.3.7 so as to ensure compliance with all applicable Law and Consents;
 - 3.3.8 in accordance with the Parliamentary Undertakings;
 - 3.3.9 in compliance with the Environmental Statements, and all other applicable environmental regulations and requirements;
 - 3.3.10 so as to permit compliance with the Code of Construction Practice and with the Construction Proposals;
 - 3.3.11 in accordance with Good Industry Practice;
 - 3.3.12 to ensure that the design of the Edinburgh Tram Network is buildable;
 - 3.3.13 to assist **tie** in ensuring that Best Value (pursuant to the Local Government (Scotland) Act 1973 as amended by the Local Government in Scotland Act 2003) has been secured in the performance of the Sub Consultancy Services;
 - 3.3.14 in such manner so as not wilfully to detract from the image and reputation of **tie**, The Consultant, Transport Edinburgh Limited, CEC, the Scottish

- Executive or any project related to the performance of the Sub Consultancy Services;
- 3.3.15 in a manner that is not likely to be injurious to persons or property; and
- 3.3.16 using the Key Personnel and such other staff as may be approved by The Consultant for that type of work.
- 3.4 The Sub Consultant shall to the extent necessary for the performance of its Sub Consultancy Services and its other obligations under this Agreement take due and proper account of the risks associated with the Edinburgh Tram Network arising from:
- 3.4.1 ground conditions (including climatic, geotechnical, ecological, environmental, hydrological and sub-surface conditions, any contamination and any archaeological finds);
- 3.4.2 use by third parties of any of the land which will form part of or be associated with or will be adjacent to the Edinburgh Tram Network;
- 3.4.3 the quality of any existing structures;
- 3.4.4 the obligations assumed or the undertakings given in any Parliamentary Undertakings relative to this Agreement; and
- 3.4.5 safety requirements and environmental matters.
- 3.5 The Sub Consultant shall use best endeavours to ensure that the design of the relevant parts of the Edinburgh Tram Network performed by The Sub Consultant as part of the Sub Consultancy Services:
- 3.5.1 maximises construction productivity by reference to international best practice;
- 3.5.2 minimises disruption to the city of Edinburgh;
- 3.5.3 safeguards efficiency in the obtaining of Consents; and
- 3.5.4 optimises the Infraco's compliance with the Construction Code of Practice
- 3.6 The Sub Consultant shall at all times keep itself fully informed about current professional standards and about all matters relating to, or which might have a bearing on, the performance of the Sub Consultancy Services and its other obligations under this Agreement.
- 3.7 The Sub Consultant's duties and obligations under or pursuant to this Agreement will not be released diminished or in any other way affected by any independent inquiry into any matter which may be made or carried out by the Client or by any firm, company or party on the Client's behalf nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Client.
- 3.8 The Sub Consultant is deemed to have satisfied itself that it fully understands the scope and extent of the Sub Consultancy Services and its other obligations under this Agreement, and that it has sufficient information or will at the relevant time have sufficient information, to enable it to perform the Sub Consultancy Services and its other obligations under this Agreement.

- 3.9 The Sub Consultant acknowledges that The Consultant will rely upon the skill and judgement of The Sub Consultant in connection with all matters for which The Sub Consultant is responsible under this Agreement.
- 3.9A Notwithstanding anything to the contrary contained in or implied by this Agreement the liability of The Sub Consultant in respect of its obligations under this Agreement shall be limited to using the level of skill, care and diligence set out in Clause 3.2 in performing such obligations.

Background Information

- 3.10 The Sub Consultant acknowledges that certain Background Information has been made available to it in relation to this Agreement either directly by tie or The Consultant. The Sub Consultant further acknowledges that **The Consultant** does not give any warranty or undertaking as to the completeness, currency, accuracy or fitness for any purpose of any of the Background Information and, subject to the express provisions of this Agreement, neither **The Consultant**, any The Consultant Parties, nor any of its or their employees shall be liable to The Sub Consultant in contract, delict (including breach of statutory duty), or otherwise as a result of:

3.10.1 any inaccuracy, error, defect, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Background Information; nor

provided that nothing in this Clause 3.10 shall exclude any liability in respect of any statements made or information provided fraudulently.

- 3.11 The Sub Consultant acknowledges and confirms that as part of the Sub Consultancy Services it has conducted its own analysis and review of the Background Information and has before the execution of this Agreement, or upon receipt if received thereafter, satisfied itself as to the veracity, accuracy, reasonableness, scope, materiality, currency (where applicable) and completeness of all such Background Information upon which it places reliance.

Liasion and Compliance with Master Project Programme and Budget

- 3.12 The Sub Consultant shall liaise with The Consultant, any The Consultant Party, **tie**, any The Consultant Party, the Tram Supplier, and any other parties as may be required by The Consultant to facilitate the production, by such persons, of any information required from them, in order that the Sub Consultancy Services and its other obligations under this Agreement can be progressed according to the Master Project Programme and the Programme. The Sub Consultant shall liaise with The Consultant, any The Consultant Party, **tie**, any **tie** Party, the Tram Supplier, and any other parties as may be required by The Consultant as often, as is necessary, in order to ensure that the Sub Consultancy Services and its other obligations under this Agreement are performed properly and in accordance with the terms of this Agreement.
- 3.13 The Sub Consultant shall collaborate and liaise with The Consultant throughout the performance of the Sub Consultancy Services, inter alia, to ensure due consideration is given to the type of materials and optimum and cost effective construction methods, construction programme and temporary works, as appropriate.
- 3.14 Where The Consultant, or other bodies or persons involved in related works or Sub Consultancy Services appoint other consultants or use their own staff for purposes related to the Sub Consultancy Services or The Sub Consultant's other obligations under this Agreement, The Sub Consultant shall use all reasonable endeavours (including the use of liaison with such other bodies or persons) to ensure that the Sub Consultancy Services, The Sub Consultant's other obligations under this Agreement

and these related works are carried out together with the greatest economy and in accordance with the Master Project Programme and the Programme.

- 3.15 In performing the Sub Consultancy Services and its other obligations under this Agreement, The Sub Consultant will have regard to the constraints imposed by the Master Project Programme and the Programme and to the objective of keeping the overall costs of the Sub Consultancy Services and its other obligations under this Agreement within any budgetary constraints agreed with The Consultant. If The Sub Consultant considers that there may be a conflict between its obligations under this Clause 3.15 and the performance of the Sub Consultancy Services and/or the performance of any of The Sub Consultant's obligations under this Agreement, it will within 3 Business Days give written notice of the same to The Consultant.

Provision of all labour, goods, materials and Sub Consultancy Services

- 3.16 The Sub Consultant shall provide all labour, goods, materials and Sub Consultancy Services whether of a temporary or permanent nature required in and for the execution of the Sub Consultancy Services and its other obligations under this Agreement so far as the necessity for providing the same is specified in this Agreement or could reasonably be foreseen therefrom by a system design Sub Consultancy Services provider experienced in work of similar nature and scope as the Sub Consultancy Services.

Prohibited Materials

- 3.17 The Sub Consultant warrants to The Consultant that it has not specified for use and shall use the standard of skill and care provided for in Clause 3.2 not to specify for use and shall use such skill and care consistent with any supervisory and inspection responsibilities to be undertaken as part of the Sub Consultancy Services to see that there shall not be used, any materials which at the time of specification or use (as the case may be):
- 3.17.1 are known to be deleterious in the particular circumstances in which they are specified to be used (either to health and safety or to the durability of any works on which The Sub Consultant is employed by The Consultant); or
 - 3.17.2 contravene any relevant standard or code of practice issued from time to time by The BSI Group or under a European directive relating to standards; or
 - 3.17.3 do not accord with the guidelines contained in the edition of the publication "Good Practice in Selection of Construction Materials" (Ove Arup & Partners) current at the date of specification of use; or
 - 3.17.4 contravene Good Industry Practice.

CDM Regulations

- 3.18 The Sub Consultant warrants to The Consultant that it shall carry out and fulfil the responsibilities of a "Designer" imposed by the CDM Regulations and shall co-operate with and supply any required information to any planning supervisor appointed by **tie** or the Infracore (as appropriate) in the performance by the planning supervisor of its obligations under the CDM Regulations. The Sub Consultant shall notify The Consultant as soon as it becomes aware, or reasonably anticipates that it shall have insufficient resources or the necessary competence to comply with its obligations under the CDM Regulations.

Mitigation and Open Book Accounting

- 3.19 The Sub Consultant undertakes to co-operate with The Consultant in order to facilitate the performance of this Agreement and in particular will:
- 3.19.1 approach all pricing, estimating and budgeting functions on a collaborative and Open Book Basis;
 - 3.19.2 use reasonable endeavours to avoid unnecessary complaints, disputes and claims against or with The Consultant;
 - 3.19.3 not interfere with the rights of The Consultant in performing its obligations under this Agreement, nor in any other way hinder or prevent The Consultant from performing those obligations or from enjoying the benefits of its rights;
 - 3.19.4 take reasonable steps to mitigate any costs, unnecessary acts, foreseeable losses and liabilities of The Consultant; and
 - 3.19.5 take all reasonable steps to manage, minimise and mitigate all costs.

Investigations and Surveys

- 3.20 The Sub Consultant shall notify The Consultant of any ground, physical, geophysical investigations or archaeological or ecological surveys or any other investigations or surveys which it considers necessary to carry out.

Procurement Support

- 3.21 The Sub Consultant shall relative to the scope of design Sub Consultancy Services provided, cooperate with The Consultant to make suitable facilities and resources available upon reasonable notice from the bidders for the Infraco Contract and the Tram Supply Contract to permit and facilitate the ability of these bidders to thoroughly examine, check and satisfy themselves as to the adequacy, correctness and suitability of the Deliverables which have been created by the SDS Provider and which the Infraco and the Tram Supplier will be adopting and making use of respectively in the Infraco Contract and the Tram Supply Contract. No additional costs shall be paid to the SDS Provider in respect of the provision of such suitable facilities and resources or the supply to bidders of any Deliverables as part of the procurement process.
- 3.22 The Sub Consultant agrees to adhere to the bidding protocols be developed and issued by tie relative to the procurement of the Infraco Contract and the Tram Supply Contract which shall cover issues including interaction with the bidders, limits of assistance to be given to the bidders, confidentiality, collusion, development of the design and continuing performance of the Sub Consultancy Services.

Defects Rectification

- 3.23 The Consultant shall request The Sub Consultant to assist the Infraco, as appropriate, in the design and execution of any defects rectification relative to the Edinburgh Tram Network, and in assisting The Consultant in obtaining a defects rectification certificate from tie, for the scope of works described in The Sub Consultancy Services.

System Integration

- 3.24 The Consultant shall request The Sub Consultant to liaise with the Operator as instructed by The Consultant in relation to the scope of works described in The Sub Consultancy Services with regard to,

- 3.24.1 system operation and related design issues;
 - 3.24.2 commissioning and Trial Operation; and
 - 3.24.3 operational defects.
- 3.25 The Sub Consultant shall be responsible for ensuring that elements of the design Sub Consultancy Services as described in the Sub Consultancy Services provided, are compatible with system integration.

Traffic Management Protocol

- 3.26 The Sub Consultant shall support The Consultant in its obligation to undertake the development of a traffic management protocol (with a view to this document becoming part of the Infraco Contract), and shall attend all meetings to which it is invited with The Consultant, **tie**, CEC, any other Relevant Authorities and the Operator to discuss traffic management issues.

4. DEVELOPMENT, REVIEW, FINALISATION AND DELIVERY OF THE HALCROW DELIVERABLES

- 4.1 The Consultant shall agree the deliverables to be provided by The Sub Consultant in accordance with the Scope of Sub Consultancy Services as defined in Schedule 1 of this Agreement, and The Consultant shall be entitled to review the Deliverables in accordance with Schedule 9 (*Review Procedure*).
- 4.2 The Sub Consultant shall submit the design of any changes and any other The Sub Consultant Deliverables associated with any changes developed pursuant to Clause 15 (*Changes*) to The Consultant's Representative for review pursuant to Schedule 9 (*Review Procedure*).
- 4.3 The Sub Consultant shall allow The Consultant's Representative, at any time, a reasonable opportunity to view any The Sub Consultant Deliverable at any stage of development, and this opportunity shall be made available to The Consultant's Representative as soon as reasonably practicable following receipt of any written request from The Consultant's Representative.
- 4.4 The Sub Consultant shall assist in maintenance of a computerised database/repository which The Consultant, The Consultant's Representative, The Clinet, any of The Client's Parties and any other party reasonably required by The Client may access remotely by computer (through an appropriate login/security regime) to view drawings comprised within The Sub Consultant Deliverables and electronically store and/or print copies of such The Sub Consultant Deliverables.
- 4.5 The Sub Consultant shall, as soon as reasonably practicable after the Effective Date, submit to The Consultant's Representative a submittal programme setting out the order in which each The Sub Consultant Deliverable is to be submitted. The Sub Consultant may, as necessary, update such programme and shall submit the same from time to time to The Consultant's Representative so that The Consultant has at least 14 days' notice of any revision to the periods shown in the previous submittal programme and The Sub Consultant shall submit to The Consultant's Representative five copies of each The Sub Consultant Deliverable no later than the end of the period shown in the submittal programme for that The Sub Consultant Deliverable.
- 4.6 Where The Consultant's Representative does not consider that The Consultant will be able to comply with the periods specified in Schedule 9 (*Review Procedure*) for indicating 'no objection' status or the making of objections in relation to any Halcrow Deliverable because of the volume of documents to be received in accordance with

the submittal programme, The Consultant's Representative may introduce an alternative timetable and The Sub Consultant shall comply with such alternative timetable. Provided that, where The Consultant is unable to comply with the time periods set out in Schedule 9 (*Review Procedure*) and such inability is not due to any breach of this Agreement, omission or fault on the part of The Sub Consultant, the introduction of an alternative timetable shall be treated as a The Consultant Change and the terms of Clause 15 shall apply.

- 4.7 During the preparation of The Sub Consultant Deliverables, The Consultant and/or The Consultant's Representative shall at its discretion be entitled to call for a meeting to discuss the development of any The Sub Consultant Deliverable, and The Sub Consultant shall give due consideration to any comments made by The Consultant or The Consultant's Representative at any such meetings. As soon as reasonably practicable following any such meeting, The Sub Consultant will prepare and circulate to those attending the meeting a report listing The Sub Consultant Deliverables discussed and any comments made at such meeting.
- 4.8 If it should be found that The Sub Consultant Deliverables do not fulfil the requirements of this Agreement or the needs of any Approval Bodies, The Sub Consultant shall at its own expense amend the Sub Consultant Deliverable. Such amendment shall be made in accordance with Schedule 9 (*Review Procedure*) and such amendment and rectification shall ensure that The Sub Consultant Deliverable shall satisfy the requirements of this Agreement and any Approval Bodies.
- 4.9 The Sub Consultant shall provide The Consultant with all The Sub Consultant Deliverables in accordance with the terms of this Agreement and where no timescale for provision of such The Sub Consultant Deliverables is specified, such Halcrow Deliverables shall be provided to The Consultant as soon as reasonably practicable. The Sub Consultant shall provide to The Consultant, at no cost to The Consultant, five copies of The Sub Consultant Deliverables in hard copy form and one copy in an agreed soft copy form (as appropriate to the format of The Sub Consultant Deliverables). In respect of any further copies of a particular The Sub Consultant Deliverable, The Consultant may require or which tie may require, The Sub Consultant agrees to absorb the reasonable copying charges or other reasonable charges for provision of the same to The Consultant as The Consultant requires and for the purposes of achieving all Consents.
- 4.10 In addition to the requirements of Clause 4.9, The Sub Consultant shall provide to The Consultant, at no cost to The Consultant, five copies in hard copy form and one copy in an agreed soft copy form of the as-built drawings and any manuals prepared Sub Consultancy Services as described in the Sub Consultancy Services.
- 4.11 The Sub Consultant accepts all risks arising from any conflicts, ambiguities, discrepancies, errors or omissions that subsequently appear within or between any of the Functional Requirements Specifications, the Technical Specifications and any of the other Sub Consultant Deliverables as described in the Sub Consultancy Services, and The Sub Consultant shall not be entitled to make any claim against The Consultant for an extension of time, payment or otherwise in respect of any such conflicts, ambiguities, discrepancies, errors or omissions.
- 4.12 The Sub Consultant shall coordinate its activities with that of The Consultant to ensure that within 3 Business Days it is able to notify the tie upon becoming aware of any conflicts, ambiguities, discrepancies, errors or omissions within or between any of the Functional Requirements Specifications, the Technical Specifications, and any of the other Deliverables. Where there are any conflicts, ambiguities, discrepancies, errors or omissions, The Sub Consultant shall provide with any notification its proposals for resolving such conflicts, ambiguities, discrepancies, errors or omissions in compliance with this Agreement. Such proposals could include the suggestion that

no action is required. The Sub Consultant shall proceed with its proposals to resolve any such conflicts, ambiguities, discrepancies, errors or omissions as soon as reasonably practicable. If the proposal from The Sub Consultant is that no action is required or The Consultant does not agree with the action proposed by The Sub Consultant, The Consultant may notify The Sub Consultant, within 10 Business Days of The Sub Consultant's notice, to resolve any conflicts, ambiguities, discrepancies, errors or omissions in a different manner (which notification shall be binding on The Sub Consultant).

- 4.13 The Sub Consultant shall develop the Functional Requirements Specifications and the Technical Specifications as described in the Sub Consultancy Services provided using solutions which are in accordance with Good Industry Practice.

5. CONSENTS

- 5.1.1 The Sub Consultant shall use its best endeavours and at its own cost and expense to obtain and maintain in effect all 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 Sub Consultancy Services; and
- 5.1.2 implement each Consent within the period of its validity and in accordance with its terms.
- 5.2 The Sub Consultant shall provide copies of such Consents to The Consultant Representative. At the request of The Sub Consultant, The Consultant may at their discretion render appropriate assistance, without any obligation, in relation to obtaining any Consent.
- 5.3 Acknowledgement by the Client of the copies of Consents provided to them pursuant to Clause 5.2 shall not in any way affect The Sub Consultant's obligations or relieve The Sub Consultant from its obligations pursuant to this Clause 5 (*Consents*) or otherwise.
- 5.4 The Sub Consultant shall provide The Consultant with a programme of Consents to be obtained within 30 days of the Effective Date and shall update the programme on a monthly basis showing progress and any new Consents to be obtained. The Consultant shall be entitled to request information in relation to the progress of the application for any such Consent and the Consent itself and The Sub Consultant shall provide the same at no cost to The Consultant.

6. QUALITY ASSURANCE

- 6.1 The Sub Consultant shall operate a quality management system, and comply with such system. Such quality management system shall meet the quality management system in the Main Agreement. the standard of which shall comply with BS EN 150 9001:2000. Such plans shall be developed in accordance with the Review Procedure.
- 6.2 If in the opinion of The Consultant, any Sub Consultant Deliverable is not prepared in accordance with The Sub Consultant's quality management system or with any other provision of the Agreement, The Consultant shall so inform The Sub Consultant in writing giving reasons. Such non-compliance shall be treated as an error or omission in the performance of the Sub Consultancy Services and the provisions of Clause 18 (*Errors and/or Omissions in the Sub Consultancy Services*) shall apply.

- 6.3 Compliance with any such approved quality management system shall not relieve The Sub Consultant from any of its other duties, obligations or liabilities under this Agreement.

7. PROGRESS

7.1 Master Project Programme, Programme Phasing Structure and Programme

7.1.1 The Sub Consultant shall progress the Sub Consultancy Services with due expedition and in a timely and efficient manner without delay, to achieve timeous completion of the Sub Consultancy Services (or any part thereof) and its other obligations under this Agreement in accordance with the Master Project Programme and unless otherwise agreed with The Consultant, The Sub Consultant shall adhere to that Master Project Programme with due diligence.

7.1.2 The Sub Consultant shall support The Consultant in its obligation to update the Programme with detailed programme information and shall thereafter maintain update and amend the Programme in accordance with the requirements set out in paragraph 4 of Schedule 1 (*Scope of the Sub Consultancy Services*) and/or at additional or other intervals as may be reasonably required by The Consultant. Any updates or amendments to the Programme shall be approved by The Consultant in accordance with the Review Procedure or as may be otherwise agreed in writing by The Consultant.

7.2 The Sub Consultant shall carry out the Sub Consultancy Services, as described in the Sub Consultancy Services required in respect of the Requirements Definition Phase, the System-Wide Preliminary Design Requirements, the Preliminary Design Phase, and the Detailed Design Phase in the order of "criticality" (with "A" being the most critical), sequence and dates shown in the Programme Phasing Structure PROVIDED ALWAYS that The Consultant may at any time require The Sub Consultant to stop, amend and/or accelerate such order of performance in respect of the whole or any part of the Requirements Definition Phase, the System-Wide Preliminary Design Requirements, the Preliminary Design Phase and/or the Detailed Design Phase. Any such stop, amendment or acceleration shall be complied with as soon as reasonably practicably by The Sub Consultant subject to the following procedure (unless otherwise agreed by the Parties):

7.2.1 The Sub Consultant shall coordinate its activities with that of The Consultant to provide an Estimate to the Client for any required stop, amendment or acceleration within 5 Business Days of any request from the Client;

7.2.2 any Estimate provided by The Sub Consultant shall include the opinion of The Sub Consultant (acting reasonably) on the following matters:

7.2.2.1 whether relief from compliance with any of its obligations under this Agreement is required as a result of the required stop, amendment or acceleration;

7.2.2.2 any impact on the performance of the Sub Consultancy Services;

7.2.2.3 any impact on the Master Project Programme and the Programme, and any requirement for an extension of time;

7.2.2.4 any amendment required to the Agreement as a result of the required stop, amendment or acceleration,

- 7.2.2.5 the proposed method of delivery of the required stop, amendment or acceleration;
 - 7.2.2.6 proposals to mitigate the impact of the required stop, amendment or acceleration; and
 - 7.2.2.7 any increase or decrease in any sums due to be paid to The Sub Consultant (including any milestone payments and lump sum payments) as a result of the required stop, amendment or acceleration.
- 7.2.3 the valuation of any required stop, amendment or acceleration shall be added to or deducted from the sums due to be paid to The Sub Consultant as the case may be and shall be ascertained, by The Consultant as follows:
- 7.2.3.1 by measurement and valuation at the rates and prices for similar work in Schedule 3 (*Pricing Schedule*) insofar as such rates and prices apply;
 - 7.2.3.2 if such rates and prices do not apply by measurement and valuation at rates and prices deduced therefrom insofar as it is practical to do so;
 - 7.2.3.3 if such rates and prices do not apply and it is not practicable to deduce rates and prices therefrom by measurement and/or valuation at fair rates and prices; or
 - 7.2.3.4 if the value of the required stop, amendment or acceleration cannot properly be ascertained by measurement and/or valuation, the value of the resources and labour employed thereon, as appropriate, in accordance with the basis of rates for provisional work set out in Schedule 3 (*Pricing Schedule*);

provided that where any required stop, amendment or acceleration would otherwise fall to be valued under Clauses 7.2.3.1 and 7.2.3.2 above, but The Consultant's Representative is of the opinion that the instruction therefor was issued at such a time or was of such content as to make it unreasonable for the alteration or addition to be so valued, the value of the required stop, amendment or acceleration shall be ascertained by measurement and/or valuation at fair rates and prices.

- 7.2.4 The Sub Consultant shall include in the Estimate evidence demonstrating that:
- 7.2.4.1 The Sub Consultant has used all reasonable endeavours to minimise (including by the use of competitive quotes) any increase in costs and to maximise any reduction of costs;
 - 7.2.4.2 The Sub Consultant has, where required by The Consultant, sought competitive quotes from persons other than The Sub Consultant Parties in pursuance of its obligation under Clause 7.2.4.1 above;
 - 7.2.4.3 The Sub Consultant has investigated how to mitigate the impact of the required stop, amendment or acceleration; and
 - 7.2.4.4 the required stop, amendment or acceleration will, where relevant, be implemented in the most cost-effective manner..

- 7.2.5 As soon as reasonably practicable after The Consultant receives the Estimate, the Parties shall discuss and agree the issues set out in the Estimate. From such discussions The Consultant may modify its original instruction in relation to the required stop, amendment or acceleration, and The Consultant may require The Sub Consultant to seek and evaluate competitive tenders. In each case, The Sub Consultant shall, as soon as practicable, and in any event not more than 14 days after receipt of such instruction, notify The Consultant of any consequential changes to the Estimate.
- 7.2.6 If the Parties cannot agree on the contents of the Estimate, then either Party may refer the Estimate for determination in accordance with the Dispute Resolution Procedure
- 7.2.7 As soon as reasonably practicable after the contents of the Estimate have been agreed or determined pursuant to the Dispute Resolution Procedure The Consultant shall:
 - 7.2.7.1 confirm its instruction in relation to the required stop, amendment or acceleration; or
 - 7.2.7.2 withdraw its instruction in relation to the required stop, amendment or acceleration.
- 7.2.8 If The Consultant does not confirm its instruction in relation to the required stop, amendment or acceleration within 30 days of the contents of the Estimate having been agreed or determined pursuant to Clause 7.2.7, then the instruction in relation to the required stop, amendment or acceleration shall be deemed to have been withdrawn.

7.3 Design and Technical Gateway Process

Gateway from the Requirements Definition Phase to the preparation of the System-Wide Preliminary Design Requirements

- 7.3.1 The Sub Consultant shall coordinate its Services with that of The Consultant to ensure that, within 3 Business Days, it is able to notify the Client when The Consultant considers that it has completed each of the Sub Consultancy Services to be carried out pursuant to the Requirements Definition Phase and that all matters to be agreed during the Requirements Definition Phase have been agreed between the SDS Provider and the Client. Without limitation, The Consultant shall not serve such notice until the Sub Consultancy Services described in paragraph 2.3 of Schedule 1 (*Scope of Sub Consultancy Services*) have been completed.
- 7.3.2 If the Client agrees that all of such Sub Consultancy Services have been completed and/or the relevant matters agreed, and the Client issues a Milestone Completion Certificate, The Consultant shall notify The Sub Consultant in writing within 10 Business Days that the preparation of the System-Wide Preliminary Design Requirements Sub Consultancy Services as described in the Sub Consultancy Services provided by The Sub Consultant can commence. Subject to Clause 7.2 and notwithstanding that a Milestone Completion Certificate may have been issued by the Client, The Sub Consultant shall not commence the Detailed Design Phase in respect of such Sub-Sector or Sector (as appropriate) until The Consultant shall have confirmed such commencement by notice in writing to The Sub Consultant.
- 7.3.3 To the extent that the Client considers that any Sub Consultancy Services have not been completed by the SDS Provider and/or the relevant matters

agreed in respect of the Sub Consultancy Services , The Consultant shall within 7 Business Days notify The Sub Consultant in writing accordingly, including details of the further activities to be carried out by The Sub Consultant in order to complete such Sub Consultancy Services.

- 7.3.4 After receiving any notification from The Consultant under Clause 7.3.3, The Sub Consultant shall within 3 Business Days re-notify The Consultant when The Sub Consultant considers that it has completed each of the Sub Consultancy Services to be carried out pursuant to the Requirements Definition Phase and that all matters to be agreed during the Requirements Definition Phase have been agreed between The Sub Consultant and The Consultant, and the provisions of Clauses 7.3.1 to 7.3.3 shall apply mutatis mutandis to such re-notification.
- 7.3.5 To the extent that some but not all of the Sub Consultancy Services in respect of the Requirements Definition Phase have been completed and/or relevant matters agreed, the Client may, in its sole discretion, notify the SDS Provider in writing that the preparation of the System-Wide Preliminary Design Requirements shall commence and in such circumstances:

7.3.5.1 The Consultant may direct that some or all of the preparation of the System-Wide Preliminary Design Requirements Sub Consultancy Services as described in the Sub Consultancy Services provided shall be commenced; and

7.3.5.2 The Sub Consultant shall continue to provide the Sub Consultancy Services in respect of the Requirements Definition Phase until (i) the relevant Sub Consultancy Services have been completed, and (ii) all matters to be agreed during Requirements Definition Phase have been agreed between the SDS Provider and the Client, or until The Consultant otherwise directs;

PROVIDED ALWAYS that the Client shall not issue a Milestone Completion Certificate in respect of the Requirements Definition Phase until all of the Sub Consultancy Services have been completed and/or the relevant matters agreed.

Gateway from the preparation of the System-Wide Preliminary Design Requirements to the Preliminary Design Phase in respect of each Sub-Sector

- 7.3.6 The Sub Consultant shall coordinate its Sub Consultancy Services with The Consultant to ensure that within 3 Business Days it is able to notify the Client when the SDS Provider considers that it has completed each of the Sub Consultancy Services to be carried out pursuant to the preparation of the System-Wide Preliminary Design Requirements and that all matters to be agreed in respect of the preparation of the System-Wide Preliminary Design Requirements have been agreed between The Sub Consultant and The Consultant. Without limitation, The Sub Consultant shall not serve such notice until the relevant Sub Consultancy Services described in paragraph 2.4 of Schedule 1 (*Scope of Sub Consultancy Services*) have been completed to a high level for the whole System.
- 7.3.7 If the Client agrees that all of such Sub Consultancy Services have been completed and/or the relevant matters agreed, and the Client issues a Milestone Completion Certificate , The Consultant shall notify The Sub Consultant in writing within 10 Business Days that the Preliminary Design Phase in respect of each Sub-Sector can commence. Subject to Clause 7.2 and notwithstanding that a Milestone Completion Certificate may have been

issued by the Client, The Sub Consultant shall not commence the Detailed Design Phase in respect of such Sub-Sector or Sector (as appropriate) until The Consultant shall have confirmed such commencement by notice in writing to The Sub Consultant.

- 7.3.8 To the extent that the Client considers that any Sub Consultancy Services have not been completed by the SDS Provider and/or the relevant matters agreed in respect of the scope of design Sub Consultancy Services provided by the Sub Consultant, The Consultant shall within 7 Business Days notify The Sub Consultant in writing accordingly, including details of the further activities to be carried out by The Sub Consultant in order to complete such Sub Consultancy Services.
- 7.3.9 After receiving any notification from The Consultant under Clause 7.3.8, The Sub Consultant shall within 3 Business Days re-notify The Consultant when The Sub Consultant considers that it has completed each of the Sub Consultancy Services to be carried out pursuant to the System-Wide Preliminary Design Requirements and that all matters to be agreed during the System-Wide Preliminary Design Requirements have been agreed between The Sub Consultant and The Consultant, and the provisions of Clauses 7.3.6 to 7.3.9 shall apply mutatis mutandis to such re-notification.
- 7.3.10 To the extent that some but not all of the Sub Consultancy Services in respect of the preparation of the System-Wide Preliminary Design Requirements have been completed and/or the relevant matters agreed, the Client may, in its sole discretion, notify the SDS Provider in writing that the Preliminary Design Phase in respect of each Sub-Sector or Sector (as appropriate) shall commence and in such circumstances:
- 7.3.10.1 The Consultant may direct that some or all of the Sub Consultancy Services in respect of the Preliminary Design Phase shall be commenced; and
- 7.3.10.2 The Sub Consultant shall continue to provide the Sub Consultancy Services in respect of the preparation of the System-Wide Preliminary Design Requirements until (i) the relevant Sub Consultancy Services have been completed, and (ii) all matters to be agreed in respect of the preparation of the System-Wide Preliminary Design Requirements have been agreed between the SDS Provider and the Client, or until The Consultant otherwise directs.

PROVIDED ALWAYS that the Client shall not issue a Milestone Completion Certificate in respect of the preparation of the System-Wide Preliminary Design Requirements until all of the Sub Consultancy Services have been completed and/or the relevant matters agreed.

Gateway from the Preliminary Design Phase in respect of each Sub-Sector or Sector (as appropriate) to the Detailed Design Phase in respect of each Sub-Sector or Sector (as appropriate)

- 7.3.11 In respect of each Sub-Sector or Sector (as appropriate), The Sub Consultant shall coordinate its Sub Consultancy Services with that of The Consultant to ensure that within 3 Business Days it is able to notify the Client when the SDS Provider considers that it has completed each of the Sub Consultancy Services to be carried out pursuant to the Preliminary Design Phase in respect of each Sub-Sector or Sector (as appropriate) and that all matters to be agreed in respect of the Preliminary Design Phase in respect of each

Sub-Sector or Sector (as appropriate) have been agreed between The Sub Consultant and The Consultant. Without limitation, The Sub Consultant shall not serve such notice until the Sub Consultancy Services described in paragraph 2.4 of Schedule 1 (*Scope of Sub Consultancy Services*) have been completed.

- 7.3.12 If the Client agrees that all of such Sub Consultancy Services have been completed and/or the relevant matters agreed in respect of a Sub-Sector or Sector (as appropriate), and the Client issues a Milestone Completion Certificate, The Consultant shall notify The Sub Consultant within 10 Business Days. Subject to Clause 7.2 and notwithstanding that a Milestone Completion Certificate may have been issued by the Client, The Sub Consultant shall not commence the Detailed Design Phase in respect of such Sub-Sector or Sector (as appropriate) until The Consultant shall have confirmed such commencement by notice in writing to The Sub Consultant.
- 7.3.13 To the extent that the Client considers that any Sub Consultancy Services have not been completed by the SDS Provider and/or the relevant matters agreed in respect of the Sub Consultancy Services provided by the Sub Consultant, The Consultant shall within 7 Business Days notify The Sub Consultant in writing accordingly, including details of the further activities to be carried out by The Sub Consultant in order to complete such Sub Consultancy Services.
- 7.3.14 After receiving any notification from The Consultant under Clause 7.3.13, The Sub Consultant shall within 3 Business Days re-notify The Consultant when The Sub Consultant considers that it has completed each of the Sub Consultancy Services to be carried out pursuant to the Preliminary Design Phase in respect of such Sub-Sector or Sector (as appropriate) and that all matters to be agreed during the Preliminary Design Phase in respect of such Sub-Sector or Sector (as appropriate) have been agreed between The Sub Consultant and The Consultant, and the provisions of Clauses 7.3.11 to 7.3.13 shall apply mutatis mutandis to such re-notification.
- 7.3.15 To the extent that some but not all of the Sub Consultancy Services to be carried out pursuant to the Preliminary Design Phase in respect of a Sub-Sector or Sector (as appropriate) have been completed and/or the relevant matters agreed, the Client may, in its sole discretion, notify the SDS Provider in writing that the Detailed Design Phase in respect of such Sub-Sector or Sector (as appropriate) shall commence and in such circumstances:
- 7.3.15.1 The Consultant may direct that some or all of the Sub Consultancy Services to be performed pursuant to the Detailed Design Phase in respect of such Sub-Sector or Sector (as appropriate) shall be commenced; and
- 7.3.15.2 The Sub Consultant shall continue to provide the Sub Consultancy Services to be carried out pursuant to Preliminary Design Phase in respect of such Sub-Sector or Sector (as appropriate) until (i) the relevant Sub Consultancy Services have been completed, and (ii) all matters to be agreed in respect of the Preliminary Design Phase in respect of such Sub-Sector or Sector (as appropriate) have been agreed between the SDS Provider and the Client, or until The Consultant otherwise directs.

PROVIDED ALWAYS that the Client shall not issue a Milestone Completion Certificate in respect of the Detailed Design Phase for such Sub-Sector or

Sector (as appropriate) until all of the Sub Consultancy Services have been completed and/or the relevant matters agreed.

Completion of the Detailed Design Phase in respect of each Sub-Sector or Sector (as appropriate)

- 7.3.16 In respect of each Sub-Sector or Sector (as appropriate), The Sub Consultant shall coordinate its Sub Consultancy Services with that of The Consultant to ensure that within 3 Business Days it is able to notify the Client when the SDS Provider considers that it has completed each of the Sub Consultancy Services to be carried out pursuant to the Detailed Design Phase in respect of each Sub-Sector or Sector (as appropriate) and that all matters to be agreed in respect of the Detailed Design Phase in respect of each Sub-Sector or Sector (as appropriate) have been agreed between The Sub Consultant and The Consultant. Without limitation, The Sub Consultant shall not serve such notice until the Sub Consultancy Services described in paragraph 2.6 of Schedule 1 (*Scope of Sub Consultancy Services*) have been completed.
- 7.3.17 If the Client agrees that all of such Sub Consultancy Services have been completed and/or the relevant matters agreed in respect of a Sub-Sector or Sector (as appropriate), and the Client issues a Milestone Completion Certificate, The Consultant shall notify The Sub Consultant within 10 Business Days.
- 7.3.18 To the extent that the Client considers that any Sub Consultancy Services have not been completed by the SDS Provider and/or the relevant matters agreed in respect of the Sub Consultancy Services provided by The Sub Consultant,, The Consultant shall within 7 Business Days notify The Sub Consultant in writing accordingly, including details of the further activities to be carried out by The Sub Consultant in order to complete such Sub Consultancy Services.
- 7.3.19 After receiving any notification from The Consultant under Clause 7.3.18, The Sub Consultant shall within 3 Business Days re-notify The Consultant when The Sub Consultant considers that it has completed each of the Sub Consultancy Services to be carried out pursuant to the Detailed Design Phase in respect of such Sub-Sector or Sector (as appropriate) and that all matters to be agreed during the Detailed Design Phase in respect of such Sub-Sector or Sector (as appropriate) have been agreed between The Sub Consultant and The Consultant, and the provisions of Clauses 7.3.16 to 7.3.18 shall apply mutatis mutandis to such re-notification.

7.4 Delays

- 7.4.1 Within 3 Business Days, of The Sub Consultant becoming aware of the likelihood of delay to the performance of any element of the Sub Consultancy Services Sub Consultancy Services as described in the Sub Consultancy Services provided such that the Master Project Programme and the Programme are unlikely to be met, the Sub Consultant shall notify The Consultant, informing The Consultant of the reasons, the likely delay and any measures, with estimated costs, which may mitigate the delay.
- 7.4.2 Following such notification, The Sub Consultant shall promptly provide The Consultant with all necessary information to enable The Consultant to approve any amendments to the Master Project Programme and the Programme which The Sub Consultant wishes to make in accordance with Clause 7.4.1.

- 7.4.3 If tThe Consultant instructs The Sub Consultant to mitigate the delay, any such mitigation shall be at The Sub Consultant's expense if the delay was the fault of The Sub Consultant, otherwise any costs associated with such instruction will be dealt with as a variation in accordance with Clause 15 (*Changes*).

7.5 Extensions of Time

- 7.5.1 If for any other reason outwith the control of The Sub Consultant and not arising out of The Sub Consultant's breach of this Agreement or The Sub Consultant's negligent or wilful act or omission, The Sub Consultant considers that The Sub Consultant is entitled to an extension of time for completion of the Sub Consultancy Services, The Sub Consultant shall within 7 Business Days of becoming aware of such possible entitlement to an extension of time, request an extension of time from The Consultant stating the reason for the request and clearly indicating the length and basis of calculation of the extension of time requested.
- 7.5.2 Subject to Clause 7.5.3, within 7 Business Days of receipt of such notice The Consultant shall respond, either:
- (i) agreeing to the extension of time and consequent amendment of the Programme or the Master Project Programme; or
 - (ii) granting an amended extension of time and consequent amendment of the Programme or the Master Project Programme; or
 - (iii) clearly stating the further information required before reaching a decision; or
 - (iv) rejecting the request, clearly stating The Consultant's reason for doing so.
- 7.5.3 The Sub Consultant shall not be entitled to any extension of time if and to the extent that The Sub Consultant could (where such action is within the power of The Sub Consultant and The Sub Consultant could be reasonably expected to take such action, having regard to the scope and nature of the Sub Consultancy Services provided by the Sub Consultant), by the exercise of the standard of skill, care and diligence provided for in Clause 3.2, have prevented or reduced the requirement for such extension of time.

7.6 The Consultant Decisions & Information

- 7.6.1 Within 3 Business Days, the Sub Consultant finds that a The Consultant decision or information essential to the continuity of the Sub Consultancy Services or to achieving the Master Project Programme and the Programme is likely to be required, The Sub Consultant shall give notice of that requirement to The Consultant with full supporting information including the date by which such decision or information is required to ensure that there is no delay to the continuity of the Sub Consultancy Services.
- 7.6.2 The Consultant shall within 7 days, in liaison with The Sub Consultant, determine and notify The Sub Consultant in writing of the date by which the decision is to be made or the information is to be provided.
- 7.6.3 In the event that The Consultant's notified date or The Consultant's actual decision or provision of information results in delay to the continuity of Sub

Consultancy Services the matter shall be treated as an extension of time in accordance with Clause 7.5.

- 7.6.4 Where The Sub Consultant makes any recommendation to The Consultant requiring the decision and agreement of The Consultant to proceed, any reasonably foreseeable effect of the application of that recommendation not fully described and evaluated by The Sub Consultant using the standard of skill, care and diligence provided for in Clause 3.2 to The Consultant at the time of the recommendation or earlier shall be the full responsibility of The Sub Consultant.

7.7 Abortive Work

- 7.7.1 Immediately that The Sub Consultant becomes aware that any element of Sub Consultancy Services is likely to be Abortive Work for any reason, The Sub Consultant shall notify The Consultant of:

- (i) the probable nature of the Abortive Work;
- (ii) the cause of the Abortive Work being abortive;
- (iii) the estimated effect of the Abortive Work in terms of cost, of time in completion of the Sub Consultancy Services and of any other matters in relation to the Agreement; and
- (iv) any measures to be taken which may mitigate that effect.

- 7.7.2 The Sub Consultant and The Consultant shall jointly investigate, and The Consultant shall determine the actual extent of any Abortive Work.

- 7.7.3 Payment by The Consultant to The Sub Consultant in respect of any Abortive Work which has been carried out by The Sub Consultant shall be determined as a variation in accordance with Clause 15 (*Changes*) of this Agreement provided always that no payment shall be due for Abortive Work which has resulted from any fault of The Sub Consultant and/or any breach by The Sub Consultant of its obligations under this Agreement.

8. KEY PERSONNEL,

- 8.1 The Sub Consultant shall ensure that:

- 8.1.1 the Key Personnel shall have day-to-day responsibility for and be involved in the performance of the Sub Consultancy Services; and

- 8.1.2 in addition to the Key Personnel, there shall at all times be a sufficient number of staff (including all relevant grades of supervisory staff) available for the provision of the Sub Consultancy Services in accordance with this Agreement. This obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness and other absences and anticipated and actual peaks in servicing The Consultant's requirements for the Sub Consultancy Services.

- 8.2 The Sub Consultant shall locate staff at such locations as The Sub Consultant considers convenient for the Project, provided that:

- 8.2.1 The Sub Consultant acknowledges that it will not be entitled to any reimbursement from The Consultant in relation to the travel of any person to

- or from Edinburgh, or for the accommodation or subsistence of any person visiting Edinburgh; and
- 8.2.2 The Consultant will require The Sub Consultant to make the Key Personnel available for meetings in Edinburgh at such times as The Consultant may, in its sole discretion, direct; and
- 8.2.3 The Sub Consultant's Representative and other members of The Sub Consultant's staff (as The Consultant may reasonably require) shall be required to be located in Edinburgh or such other location as may be reasonably required by the Client.
- 8.3 The Sub Consultant shall ensure that there are no changes to the Key Personnel without The Consultant's prior written consent (such consent not to be unreasonably withheld or delayed in the case of a change necessitated by sickness or reasonable annual, maternity, paternity or compassionate leave or where one of the Key Personnel's employment ceases) and that any replacement persons shall be of at least equivalent status and ability to the person whom they replace.
- 8.4 The Sub Consultant shall use all reasonable endeavours to ensure the continuity of the personnel assigned to perform the Sub Consultancy Services and shall select Key Personnel having careful regard to those persons' existing work load and other planned commitments.
- 8.5 The Sub Consultant shall ensure that its Key Personnel and staff shall:
- 8.5.1 have the level of skill, experience and authority appropriate (i) to the Sub Consultancy Services to which such staff are allocated and (ii) the standards to be achieved pursuant to this Agreement; and
- 8.5.2 receive such training and supervision as is necessary to ensure the proper performance of this Agreement and compliance with all regulatory requirements appropriate to and required for the performance of the Sub Consultancy Services in accordance with this Agreement.
- 8.6 All Key Personnel should have a nominated deputy who shall be capable of fulfilling the duties of the person to whom they are deputising in the event of their absence and who shall be kept fully informed of project status in the relevant area.
- 8.7 The Consultant shall be at liberty to object to and require The Sub Consultant to remove from the performance of the Sub Consultancy Services any person employed by The Sub Consultant (including any person from any permitted The Sub Consultant Party) who in the reasonable opinion of The Consultant misconducts itself or is incompetent or negligent in the performance of its duties or persists in any conduct which is prejudicial to safety or health, and such persons shall not be again employed upon the Sub Consultancy Services without the permission of The Consultant. No compensation shall be payable by The Consultant in respect of such objection and removal.
- 8.8 If The Consultant gives The Sub Consultant notice that any member of staff should be removed from involvement in the Sub Consultancy Services, The Sub Consultant shall immediately comply with such notice.
- 8.9 The Sub Consultant shall (and shall procure that the Key Personnel, its staff employed in the performance of the Sub Consultancy Services and The Sub Consultant Parties) comply with all regulatory requirements appropriate to and required for the performance of the Sub Consultancy Services and any rules, regulations and instructions from The Consultant's Representative.

9. SUB-LETTING AND THE APPOINTMENT OF THE SUB CONSULTANT PARTIES

9.1 The Sub Consultant shall not sub-let any of the Sub Consultancy Services.

10. MANAGEMENT OF THE SUB CONSULTANCY SERVICES

10.1 The Consultant's Representative shall:

10.1.1 be responsible for the day to day supervision of the Sub Consultancy Services to be performed by The Sub Consultant;

10.1.2 exercise the functions and powers of The Consultant in relation to the Project which are identified in this Agreement;

10.1.3 exercise such other functions and powers of The Consultant under this Agreement as The Consultant may notify to The Sub Consultant from time to time; and

10.1.4 be the primary point of contact for The Sub Consultant with The Consultant;

and The Sub Consultant shall observe, The Sub Consultant, all reasonable instructions of The Consultant and The Consultant's Representative in relation to this Agreement. The Sub Consultant shall not The Sub Consultant act upon any instruction from any other party unless confirmed by The Consultant or The Consultant's Representative in writing. If The Sub Consultant The Sub Consultant shall receive any such instructions, The Sub Consultant shall notify The Consultant or e The Consultant's Representative immediately.

10.2 The Consultant's Representative shall be entitled at any time, by notice in writing to The Sub Consultant, to authorise any other persons to exercise the functions and powers of The Consultant delegated to him, either generally or specifically. Until further notice from The Consultant, any act of any such person shall, for the purposes of this Agreement, constitute an act of The Consultant's Representative and all references to " The Consultant's Representative" in this Agreement (apart from this Clause 10 (*Management of the Sub Consultancy Services*)) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.

10.3 The Consultant may by notice in writing to The Sub Consultant change the identity of The Consultant's Representative. The Consultant shall consult with The Sub Consultant prior to the appointment of any replacement for The Consultant's Representative, taking account of the need for liaison and continuity in respect of this Agreement. Such change shall have effect on the date specified in the written notice.

10.4 During any period when a The Consultant's Representative has not been appointed (or when The Consultant's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his functions under this Agreement), The Consultant shall carry out the functions which would otherwise be performed by The Consultant's Representative.

10.5 No decision, act or omission of The Consultant, or The Consultant's Representative shall, except as otherwise expressly provided in this Agreement:

10.5.1 in any way relieve or absolve The Sub Consultant from, modify, or act as a waiver or personal bar of, any liability, responsibility, obligation or duty under this Agreement;

- 10.5.2 in the absence of an express written instruction or authorisation issued by The Consultant under Clause 15 (*Changes*), constitute or authorise a variation; or
- 10.5.3 be construed as restricting or binding The Consultant in any way save with regard to the specific project matters to which it relates.
- 10.6 The Sub Consultant shall be entitled to treat all instructions and directions of The Consultant's Representative as those of The Consultant provided always that such instructions or directions of The Consultant's Representative are in writing, are not in conflict with or are inconsistent with this Agreement or any other express instructions or directions of The Consultant, and The Sub Consultant shall not be required to determine whether an express authority has in fact been given. The Sub Consultant shall, as soon as reasonably practicable, bring to the attention of The Consultant any instructions or directions that are given to The Sub Consultant that are ambiguous or in conflict or are inconsistent, and The Consultant will verify such instructions in writing.
- 10.7 If for any reason The Consultant's Representative considers it necessary to give any instructions or directions orally, then, provided that The Consultant confirms such instruction or direction within five Business Days, such oral instruction or direction shall be deemed to be an express instruction or direction of The Consultant.
- 10.8 The Sub Consultant shall appoint a representative ("The Sub Consultant's Representative") who shall:
- 10.8.1 act as the principal point of contact for The Consultant, and The Consultant's Representative in relation to all matters related to this Agreement;
- 10.8.2 have full authority to act on behalf of The Sub Consultant for all purposes of this Agreement, and The Consultant and The Consultant's Representative shall be entitled to treat all instructions and directions of The Sub Consultant's Representative as those of The Sub Consultant.;
- 10.8.3 manage and co-ordinate the provision of the Sub Consultancy Services by The Sub Consultant (and any The Sub Consultant Party) and the integration of provision of the Sub Consultancy Services with the tasks being performed by The Consultant's internal team and the other advisers appointed by The Consultant; and
- 10.8.4 liaise with The Consultant's Representative in relation to various matters including, the scope of the Sub Consultancy Services to be carried out from time to time.
- 10.9 The Sub Consultant may by written notice to The Consultant change the identity of The Sub Consultant's Representative. Where The Sub Consultant wishes to do so, it shall by written notice to The Consultant propose a substitute for approval, taking account of the need for liaison and continuity in respect of the provision of the Sub Consultancy Services and the Master Project Programme and the Programme when the change is proposed. Such appointment shall be subject to the prior written approval of The Consultant (not to be unreasonably withheld or delayed).
- 10.10 The Sub Consultant shall also nominate a deputy to The Sub Consultant's Representative. During any period when The Sub Consultant's Representative is unable through illness, incapacity, annual leave or any other reason whatsoever to carry out or exercise his functions under this Agreement, such deputy shall carry out the functions which would otherwise be performed by The Sub Consultant's Representative.

11. METHODS OF PAYMENT

- 11.1 The fees for the performance of the Sub Consultancy Services shall be a combination of:
- 11.1.1 milestone payments incorporating sub-milestone payments, as set out in Schedule 3 (*Pricing Schedule*), or as may be otherwise agreed by The Consultant in accordance with this Agreement;
 - 11.1.2 a fixed lump sum or sums as set out in Schedule 3 (*Pricing Schedule*), or as may be otherwise agreed by The Consultant in accordance with this Agreement; and/or
 - 11.1.3 a time based fee as may be agreed by The Consultant in accordance with this Agreement and in accordance with the relevant rates set out in Schedule 3 (*Pricing Schedule*) to this Agreement.
 - 11.1.4 Subject to Clause 12.8 the fees shall not exceed the Sub Consultant Contract Value stated in Schedule 3.
- 11.2 Any applications for payments for sums due under this Agreement shall be made in accordance with the procedure set out in Clause 12 (*Arrangements for Invoicing and Payment*) and any payment which is due to The Sub Consultant shall be paid by The Consultant in accordance with the procedure set out in Clause 12 (*Arrangements for Invoicing and Payment*)
- 11.3 During the Requirements Definition Phase, The Sub Consultant shall make applications for Requirements Definition Phase Sub-Milestone Payments in accordance with Clause 12 (*Arrangements for Invoicing and Payment*) for completed Requirements Definition Phase Sub-Milestones up to a cumulative value of fifty per cent (50%) of the total value of the Requirements Definition Phase Milestone Payment. The Sub Consultant shall not make application for payment for any incomplete Requirements Definition Phase Sub-Milestones and The Consultant's decision as to whether any Requirements Definition Phase Sub-Milestone is complete shall be final. The Sub Consultant shall make an application for payment of the remaining fifty per cent (50%) of the total value of the Requirements Definition Phase Milestone Payment following the issue of the Milestone Completion Certificate by The Client in respect of the Requirements Definition Phase.
- 11.4 The Sub Consultant shall make an application for payment in respect of the System-Wide Preliminary Design in accordance with Clause 12 (*Arrangements for Invoicing and Payment*) following the issue of the Milestone Completion Certificate by the Client for the System-Wide Preliminary Design.
- 11.5 During the Preliminary Design Phase, The Sub Consultant shall make applications for Preliminary Design Phase Sub-Milestone Payments in accordance with Clause 12 (*Arrangements for Invoicing and Payment*) for completed Preliminary Design Phase Sub-Milestones in respect of each Sub-Sector or Sector (as appropriate) up to a cumulative value of eighty per cent (80%) of the total value of the Preliminary Design Phase Milestone Payment for the relevant Sub-Sector or Sector (as appropriate). The Sub Consultant shall not make application for payment for any incomplete Preliminary Design Phase Sub-Milestones and The Consultant's decision as to whether any Preliminary Design Phase Sub-Milestone is complete shall be final. The Sub Consultant shall make an application for payment in respect of the remaining twenty per cent (20%) of the total value of the Preliminary Design Phase Milestone Payment for the relevant Sub-Sector or Sector (as appropriate) following the issue of the Milestone Completion Certificate by The Consultant in respect of the Preliminary Design Phase for the relevant Sub-Sector or Sector (as appropriate).

- 11.6 During the Detailed Design Phase, The Sub Consultant shall make applications for Detailed Design Phase Sub-Milestone Payments in accordance with Clause 12 (*Arrangements for Invoicing and Payment*) for completed Detailed Design Phase Sub-Milestones in respect of each Sub-Sector or Sector (as appropriate) up to a cumulative value of eighty per cent (80%) of the total value of the Detailed Design Phase Milestone Payment for the relevant Sub-Sector or Sector (as appropriate). The Sub Consultant shall not make application for payment for any incomplete Detailed Design Phase Sub-Milestones and The Consultant's decision as to whether any Detailed Design Phase Sub-Milestone is complete shall be final. The Sub Consultant shall make an application for payment in respect of the remaining twenty per cent (20%) of the total value of the Detailed Design Phase Milestone Payment for the relevant Sub-Sector or Sector (as appropriate) following the issue of the Milestone Completion Certificate by The Consultant in respect of the Detailed Design Phase for the relevant Sub-Sector or Sector (as appropriate).
- 11.7 The Sub Consultant shall make applications for payment in respect of any fixed lump sum or sums in accordance with Clause 12 (*Arrangements for Invoicing and Payment*) up to the agreed value of the fixed lump sum or sums and The Consultant shall not be liable to pay The Sub Consultant any additional sum of money in relation to the Sub Consultancy Services to which the fixed lump sum or sums relates, unless agreed expressly in writing by The Consultant in accordance with this Agreement.

12. ARRANGEMENTS FOR INVOICING AND PAYMENT

- 12.1 Subject to Clause 11 (Methods of Payment), The Sub Consultant shall submit each application for payment in respect of any sub-milestones, milestones, fixed lump sum or sums and any other fees, costs and/or expenses agreed in accordance with this Agreement, which are being claimed by The Sub Consultant for the previous calendar month, to The Consultant's Representative by the last day of the calendar month .
- 12.2 Each application for payment shall:
- 12.2.1 set out the sub-milestone payments claimed;
 - 12.2.2 set out the milestone payments claimed;
 - 12.2.3 include any Milestone Completion Certificates;
 - 12.2.4 set out the proportion of any fixed lump sum or sums claimed in an updated cost loaded programme in electronic form (P3e) with two hard copies of all supporting documentation
 - 12.2.5 set out the proportion of Management Fees claimed in an updated cost loaded programme in electronic form (P3e) with two hard copies of all supporting documentation;
 - 12.2.6 set out any other fees claimed in an updated cost loaded programme in electronic form (P3e) with two hard copies of all supporting documentation;
 - 12.2.7 set out any other costs and/or expenses where it has been agreed in writing that such costs and/or expenses shall be charged to The Consultant;
 - 12.2.8 a forecast of the fees and any associated costs and/or expenses which The Sub Consultant estimates could be claimed for the next two months following the month which is the subject of the application for payment, together with a breakdown of the tasks and workstreams which relate to such forecast.

- 12.3 The Consultant shall procure that the The Consultant Representative shall, subject to any clarifications as are in The Consultant opinion (acting properly and reasonably) necessary, certify by notice in writing (an "Interim Certificate") to the Sub Consultant that part of the sum claimed in the application for payment which is approved by The Consultant and give reasons why any part of the sum claimed has not been certified and the value of the sums involved no later than 16 Business Days after the date on which application for payment was received by The Consultant.
- 12.4 Subject to Clause **Error! Reference source not found.**, the Sub Consultant shall submit a VAT invoice to The Consultant within seven days of the date of the Interim Certificate and to the value of the said Interim Certificate. Payment will become due to the SDS Provider on the date of issue of said Interim Certificate by The Consultant and subject to Clause 12.5 the final date for payment by The Consultant of such valid VAT invoice shall be 30 days from the date of issue of the Interim Certificate by The Consultant.
- 12.5 If the Halcrow Group Ltd is late in submitting its application for payment to The Consultant by more than three Business Days after the required timescales in Clause 12.1, payment in respect of any amount certified in an Interim Certificate, shall become due to The Sub Consultant on the date of receipt of the relevant valid VAT invoice by The Consultant in respect of the late application for payment, and the final date for payment of such valid VAT invoice shall be made by The Consultant to the Sub Consultant within 30 days of the first date of the calendar month following receipt of the valid VAT invoice.
- 12.6 If the Sub Consultant is late in submitting a valid VAT invoice to The Consultant by more than three Business Days after the required timescales in Clause 12.4, payment in respect of any amount certified in an Interim Certificate, shall become due to the Sub Consultant on the date of late receipt of the relevant valid VAT invoice by The Consultant and the final date for payment of such late valid VAT invoice shall be made by The Consultant to the Sub Consultant within 30 days of the first date of the calendar month following receipt of the late valid VAT invoice.
- 12.7 **Adjustments to the Milestone Payments, Lump Sums and Rates**
- 12.7.1 Without prejudice to Clause 12.3, any milestone payments, and/or lump sum or sums payments, or other sums set out in Schedule 3 (*Pricing Schedule*) to this Agreement or agreed in accordance with this Agreement will not be adjusted except by the express written agreement of The Consultant where there has been a variation of the Sub Consultancy Services in accordance with Clause 15 (*Changes*);
- 12.7.2 The rates set out in Schedule 3 (*Pricing Schedule*) to this Agreement shall not be adjusted;
- 12.8 **Interest on Late Payments**
- 12.8.1 In the event of failure of The Consultant to make payment in accordance with this Clause 12 (*Arrangements for Invoicing and Payment*), The Consultant shall pay to The Sub Consultant interest upon any payment not paid by the final date for payment at a rate per annum equivalent to 2 per cent above the Base Rate of the Royal Bank of Scotland current on the date upon which such payment first becomes overdue adjusted to reflect any changes to the rate during the period over which the payment remains overdue.
- 12.9 **The Sub Consultant to remain responsible:**

12.9.1 The final payment for any Sub Consultancy Services shall not be interpreted as being the satisfaction of The Consultant that the Sub Consultancy Services have been performed in accordance with the Agreement.

12.9.2 The responsibility of The Sub Consultant for the Sub Consultancy Services shall not come to an end solely by reason of the making of any payment therefor.

13. SET-OFF

13.1 Subject to Clause 13.2 and Clause 27.4, The Consultant may deduct any amount payable by The Sub Consultant to The Consultant whether by way of damages or in respect of any loss or expense sustained by The Consultant by reason of The Sub Consultant's breach of this Agreement from any other payment or payments due to be made to The Sub Consultant by The Consultant under this Agreement.

13.2 Any notice of intention to withhold payment shall be served by The Consultant at least three days prior to the final date for payment calculated in accordance with Clause 12 (*Arrangements for Invoicing and Payment*) and such notice shall state the sums being withheld and the detailed reason or detailed reasons for such withholding. Where an effective notice of intention to withhold payment is given, but on the matter being referred to the Dispute Resolution Procedure, it is decided that the whole or part of the amount should be paid, the decision shall be construed as requiring payment not later than:

13.2.1 7 days from the date of the decision, or

13.2.2 the date which, apart from the notice, would have been the final date for payment,

whichever is the later.

13.3 The Sub Consultant shall be entitled to payment of interest as provided in Clause 12.10.1 in respect of the relevant part of any payments which have been withheld in accordance with Clause 13.2 but are subsequently determined as being payable by The Consultant to The Sub Consultant either by agreement between the Parties or a decision following a referral to the Dispute Resolution Procedure. The interest shall be calculated for the period between the date when the relevant part of the payment should have been paid but for the notice of intention to withhold payment and the date on which payment is made by The Consultant in accordance with Clause 13.2.

14. AUDIT

14.1 The Sub Consultant shall produce to The Consultant any documents or provide any information relevant to the performance of the Sub Consultancy Services or any part thereof as The Consultant's auditors may require and shall provide any documents or information reasonably required by The Consultant in respect of any The Sub Consultant Parties.

14.2 Proper books, vouchers, accounts and records relating to the Sub Consultancy Services and any Sub Consultancy Services being performed by The Sub Consultant Parties shall be maintained by The Sub Consultant at its place of business and shall be available for inspection by The Consultant or any officer authorised by The Consultant at all reasonable times during the duration of the Agreement and for six years after the termination or expiry of this Agreement.

15. CHANGES

The Consultant Changes

- 15.1 Unless expressly stated in this Agreement or as may otherwise be agreed by the Parties, The Consultant Changes shall be dealt with in accordance with this Clause 15 (*Changes*). If The Consultant requires a The Consultant Change, it must serve a The Consultant Notice of Change on The Sub Consultant.
- 15.2 A The Consultant Notice of Change shall:
- 15.2.1 set out the proposed The Consultant Change in sufficient detail to enable The Sub Consultant to calculate and provide the Estimate in accordance with Clause 15.3 below;
 - 15.2.2 require The Sub Consultant to provide The Consultant within 18 days of receipt of The Consultant Notice of Change with an Estimate, and specify whether any competitive quotes are required; and
 - 15.2.3 set out how The Consultant wishes to pay (where relevant) for any proposed The Consultant Change.
- 15.3 As soon as is reasonably practicable, and in any event within 18 days after having received a The Consultant Notice of Change, The Sub Consultant shall deliver to The Consultant the Estimate. The Estimate shall include the opinion of The Sub Consultant (acting reasonably) on:
- 15.3.1 whether relief from compliance with any of its obligations under this Agreement is required during or as a result of the implementation of the proposed The Consultant Change;
 - 15.3.2 any impact on the performance of the Sub Consultancy Services;
 - 15.3.3 any impact on the Master Project Programme and the Programme, and any requirement for an extension of time;
 - 15.3.4 any amendment required to the Agreement as a result of the implementation of the proposed The Consultant Change,
 - 15.3.5 the proposed method of delivery of the proposed The Consultant Change;
 - 15.3.6 proposals to mitigate the impact of the proposed The Consultant Change; and
 - 15.3.7 any increase or decrease in any sums due to be paid to The Sub Consultant (including any milestone payments and lump sum payments) as a result of the implementation of the proposed The Consultant Change.
- 15.4 The valuation of any The Consultant Changes made in compliance with this Clause 15 (*Changes*) shall be added to or deducted from the sums due to be paid to The Sub Consultant as the case may be, and shall be ascertained by The Consultant as follows:
- 15.4.1 by measurement and valuation at the rates and prices for similar work in Schedule 3 (*Pricing Schedule*) insofar as such rates and prices apply;

- 15.4.2 if such rates and prices do not apply by measurement and valuation at rates and prices deduced there from insofar as it is practical to do so;
- 15.4.3 if such rates and prices do not apply and it is not practicable to deduce rates and prices there from by measurement and/or valuation at fair rates and prices; or
- 15.4.4 if the value of The Consultant Change cannot properly be ascertained by measurement and/or valuation, the value of the resources and labour employed thereon, as appropriate, in accordance with the basis of rates for provisional work set out in Schedule 3 (*Pricing Schedule*);

provided that where any The Consultant Change would otherwise fall to be valued under Clauses 15.4.1 and 15.4.2 above, but The Consultant's representative is of the opinion that the instruction therefore was issued at such a time or was of such content as to make it unreasonable for the alteration or addition to be so valued, the value of The Consultant Change shall be ascertained by measurement and/or valuation at fair rates and prices.

- 15.5 The Sub Consultant shall include in the Estimate evidence demonstrating that:
 - 15.5.1 The Sub Consultant has used all reasonable endeavours to minimise (including by the use of competitive quotes) any increase in costs and to maximise any reduction of costs;
 - 15.5.2 The Sub Consultant has, where required by The Consultant, sought competitive quotes from persons other than The Sub Consultant Parties in pursuance of its obligation under Clause 15.5.1 above;
 - 15.5.3 The Sub Consultant has investigated how to mitigate the impact of The Consultant Change; and
 - 15.5.4 the proposed The Consultant Change will, where relevant, be implemented in the most cost-effective manner, including showing that when such expenditure is incurred Changes in Law that are foreseeable at that time have been taken into account by The Sub Consultant.
- 15.6 If The Sub Consultant does not intend to use its own resources to implement any proposed The Consultant Change, it shall:
 - 15.6.1 demonstrate that it is appropriate to subcontract the implementation of such The Consultant Change; and
 - 15.6.2 comply with Good Industry Practice with the objective of ensuring that it obtains best value for money when procuring any The Sub Consultant Party or Deliverable required in relation to the proposed The Consultant Change.
- 15.7 As soon as reasonably practicable after The Consultant receives the Estimate, the Parties shall discuss and agree the issues set out in the Estimate. From such discussions The Consultant may modify The Consultant Notice of Change, and The Consultant may require The Sub Consultant to seek and evaluate competitive tenders. In each case The Sub Consultant shall, as soon as practicable, and in any event not more than 14 days after receipt of such modification, notify The Consultant of any consequential changes to the Estimate.
- 15.8 If the Parties cannot agree on the contents of the Estimate, then either Party may refer the Estimate for determination in accordance with the Dispute Resolution

Procedure provided that The Sub Consultant shall not be obliged to implement any proposed The Consultant Change where:

15.8.1 The Consultant does not have the legal power or capacity to require the implementation of such proposed The Consultant Change; or

15.8.2 implementation of such proposed The Consultant Change would

15.8.2.1 be contrary to Law;

15.8.2.2 not be technically feasible;

15.8.2.3 substantially and materially increases the probability of a substantial non-compliance with this Agreement by The Sub Consultant; or

15.8.2.4 be outwith the specific competence of The Sub Consultant either in performing the activity required by The Consultant Change or in supervising a The Sub Consultant Party to carry out the activity required by The Consultant Change.

15.9 As soon as reasonably practicable after the contents of the Estimate have been agreed or determined pursuant to the Dispute Resolution Procedure The Consultant shall:

15.9.1 issue a The Consultant Change Order ; or

15.9.2 withdraw The Consultant Notice of Change.

For the avoidance of doubt, The Sub Consultant shall not commence work until instructed through receipt of a The Consultant Change Order.

15.10 If The Consultant does not issue a The Consultant Change Order within 30 days of the contents of the Estimate having been agreed or determined pursuant to Clause 15.9, then The Consultant Notice of Change shall be deemed to have been withdrawn.

Restrictions on Entitlements to Relief for a Consultant Change

15.11 The Sub Consultant shall not be entitled to any extension of time, payment or relief in respect of any The Consultant Change if and to the extent that The Sub Consultant could (where such action is within the power of The Sub Consultant and The Sub Consultant could be reasonably expected to take such action, having regard to the scope and nature of the Sub Consultancy Services), by the exercise of reasonable foresight and diligence, have prevented or materially reduced the requirement for such The Consultant Change.

15.12 If, having received instructions from The Consultant or The Consultant's Representative, The Sub Consultant considers that compliance with those instructions would amount to a The Consultant Change, The Sub Consultant shall within 10 Business Days of any instructions being received, notify The Consultant of the same and, if it is agreed by the par The Consultants or determined pursuant to the Dispute Resolution Procedure that a The Consultant Change would arise if the instructions were complied with, The Consultant may proceed with the instruction in accordance with this Clause 15 (*Changes*).

15.13 Any failure by The Sub Consultant to notify The Consultant within 10 Business Days of instructions being received that it considers compliance with such instructions from

The Consultant or The Consultant's Representative would amount to a The Consultant Change shall constitute an irrevocable acceptance by The Sub Consultant that any compliance with The Consultant's or The Consultant Representative's comments shall be without cost to The Consultant and without any entitlement to any extension of time or other relief.

- 15.14 Any failure by The Sub Consultant to notify The Consultant within 10 Business Days of becoming aware of any other matter or occurrence which could amount to a The Consultant Change shall constitute an irrevocable acceptance by The Sub Consultant that in being instructed to deal with such matter or occurrence as a The Consultant Change, The Sub Consultant shall not be entitled to any costs, extension of time or other relief in respect of such The Consultant Change.

Changes proposed by The Sub Consultant

- 15.15 Within 10 Business Days of The Sub Consultant becoming aware of the need or desirability for a variation to the Sub Consultancy Services, The Sub Consultant shall notify The Consultant of the reasons, consequential effects including any increase or reduction in costs, and options available to mitigate these effects with a recommendation for action by The Consultant.
- 15.16 If The Consultant wishes to proceed with a variation proposed by The Sub Consultant, The Consultant shall serve a The Consultant Notice of Change on The Sub Consultant and Clauses 15.2 to 15.11 shall be adhered to by The Consultant and The Sub Consultant.

Change Control Register

- 15.17 The Sub Consultant shall maintain a change control register which shall detail the status and gives summary information on all withdrawn, potential and confirmed variations under this Agreement.

16. QUALIFYING CHANGE IN LAW

- 16.1 If a Qualifying Change in Law occurs or is to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

16.1.1 any necessary change in the Sub Consultancy Services;

16.1.2 whether any changes are required to the terms of this Agreement to deal with the Qualifying Change in Law; or

16.1.3 whether relief from compliance with any obligations under this Agreement is required as a result of the Qualifying Change in Law;

in each case giving in full detail the procedure for implementing the Qualifying Change in Law. Responsibility for any costs of such implementation (and any resulting variation to payments due under this Agreement or other payment method at The Consultant's discretion) shall be dealt with in accordance with Clauses 16.2 and 16.3 below.

- 16.2 As soon as reasonably practicable after receipt of any notice from either Party under Clause 16.1 above, the Parties shall discuss and agree the issues referred to in Clause 16.1 above and any ways in which The Sub Consultant can mitigate the effect of the Qualifying Change in Law and The Sub Consultant shall:

16.2.1 provide evidence to The Consultant that The Sub Consultant has used and will continue to use all reasonable endeavours (including where appropriate

and practicable the use of competitive quotes) to minimise any increase in costs and maximise any reduction in costs;

- 16.2.2 demonstrate how the effects of the Qualifying Change in Law will be mitigated;
 - 16.2.3 demonstrate that the relevant changes will be implemented in the most cost-effective manner, including showing that when expenditure is incurred or has been incurred, foreseeable Changes in Law at that time have been taken into account by The Sub Consultant; and
 - 16.2.4 give evidence as to how the Qualifying Change in Law has affected the fees and/or costs of similar consultants.
- 16.3 As soon as reasonably practicable after the issues referred to in Clause 16.2 have been agreed between the Parties or determined pursuant to the Dispute Resolution Procedure, The Consultant shall give a The Consultant Notice of Change and the provisions of Clause 15 (*Changes*) shall apply except that The Sub Consultant shall be obliged to implement the change in all circumstances (except to the extent that such change is not necessary to implement the Qualifying Change in Law). The Consultant shall issue The Consultant Change Order once it has been agreed or determined pursuant to the Dispute Resolution Procedure. In assessing the value of the change, The Consultant shall pay the agreed amount less the agreed threshold of £15,000 for each and every event. The Consultant will, at its sole discretion, determine the scope of each and every event.
- 16.4 Except as otherwise expressly provided in this Agreement, The Sub Consultant shall be responsible for any increase in its costs and shall not be entitled to any relief from its obligations under this Agreement to the extent that the same is caused as a result of a General Change in Law.

17. REQUIRED INSURANCES

- 17.1 The Sub Consultant shall, at its own cost, procure that each of the Required Insurances is taken out, comes into effect and is maintained with reputable insurers authorised to carry out insurance business in the United Kingdom and otherwise in accordance with the requirements of Schedule 6 (*Required Insurances*).
- 17.2 The Sub Consultant shall provide satisfactory evidence to The Consultant that the Required Insurances have been effected and are being maintained. The Sub Consultant shall upon request produce to The Consultant confirmation of the payment of current insurance premiums.
- 17.3 The Sub Consultant shall, when required by The Consultant, make available for inspection by The Consultant, documentary evidence that such Required Insurances are being properly maintained. For the avoidance of doubt, The Consultant acknowledges that there may be a delay between the renewal date and issue of such evidence and such delay will not be deemed to be a failure of The Sub Consultant to provide evidence of cover.
- 17.4 If The Sub Consultant shall fail upon request to produce to The Consultant satisfactory evidence that there is in force the Required Insurances referred to in this Clause 17 (*Required Insurances*) or is otherwise in breach of this Clause 17 (*Required Insurances*), The Consultant may, on behalf of The Sub Consultant, effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by The Consultant as aforesaid from any monies due or which may become due to The Sub Consultant.

- 17.5 The Sub Consultant shall increase the limit of indemnity and amend the terms of the third party liability insurance set out in Schedule 6 (*Required Insurances*) if required by The Consultant in order to meet the requirements of any third party including Network Rail and BAA with regard to any of the Sub Consultancy Services to be performed by The Sub Consultant in accordance with this Agreement. Any costs associated with such increase and/or amendment shall be paid by The Consultant
- 17.6 The Sub Consultant shall not take any action or fail to take any reasonable action or (insofar as it is reasonably within its power) permit or allow others to take or fail to take any action (including failure to disclose any fact) as a result of which any of the Required Insurances may be rendered void, voidable, unenforceable or suspended or impaired in whole or in part or which may otherwise render any sum paid out under any relevant policy repayable in whole or in part.
- 17.7 The supply to The Consultant of any insurance policy or insurance certificate or renewal certificate or other evidence of compliance with this Clause 17 (*Required Insurances*) shall not imply, or be taken as, acceptance by The Consultant that:
- 17.7.1 the extent of insurance cover is sufficient and its terms are satisfactory; or
- 17.7.2 in respect of any risks not insured against, insurable interests or parties not insured, an acceptance by The Consultant that the same were uninsurable.

18. ERRORS AND/OR OMISSIONS IN THE SUB CONSULTANCY SERVICES

- 18.1 If during the performance of the Sub Consultancy Services and/or where The Sub Consultant has completed the Sub Consultancy Services, The Consultant becomes aware of any error or omission in the performance of the Sub Consultancy Services or of any other breach of this Agreement, The Consultant shall notify The Sub Consultant, who shall, at its own expense and in liaison with The Consultant and/or any other party or parties nominated by The Consultant, rectify any error or omission or breach, or where this is agreed by The Consultant to be impracticable or undesirable, take such other agreed steps to address the error or omission.
- 18.2 Any direct costs to The Consultant of remedying any such errors or omissions or breaches shall be paid by The Sub Consultant to The Consultant.
- 18.3 These arrangements shall in no respect diminish The Consultant's ability to recover damages from The Sub Consultant for losses incurred by The Consultant consequent upon the error or omission or breach in question.

19. TERMINATION FOR THE SUB CONSULTANT DEFAULT

- 19.1 The Consultant may terminate this Agreement upon giving written notice to The Sub Consultant, and this Agreement shall terminate on the date falling 30 days after the service of such notice if:
- 19.1.1 The Sub Consultant breaches any material provision or requirement of the Agreement; or
- 19.1.2 the circumstances envisaged by Clause 32.7 apply;
- 19.1.3 following a written warning and the removal of any member of the Key Personnel, any replacement member of the Key Personnel is, in the reasonable opinion of The Consultant, incompetent to perform any of his duties;

- 19.1.4 The Sub Consultant conducts itself in a manner which The Consultant reasonably considers to be incompatible with the performance of the Sub Consultancy Services, and/or in such manner so as to wilfully detract from the image and reputation of The Consultant, **tie**, CEC, Transport Edinburgh Limited, the Scottish Executive or any project related to the performance of the Sub Consultancy Services, or
- 19.1.5 any partner or director of The Sub Consultant directly involved with this Agreement is expelled from or sanctioned by his relevant professional Institute or Institution, which circumstance would materially compromise the performance of the Sub Consultancy Services; or
- 19.1.6 an Insolvency Event occurs; or
- 19.1.7 The Sub Consultant fails to resolve a conflict of interest in accordance with Clause 30 (*Conflict of Interest*) to the reasonable satisfaction of The Consultant; or
- 19.1.8 there is a change in legal status of The Sub Consultant or a Change in Control of The Sub Consultant which is materially prejudicial to the performance of the Sub Consultancy Services.

20. TERMINATION, ABANDONMENT OR SUSPENSION OF THE SUB CONSULTANCY SERVICES BY THE CLIENT

- 20.1 The Client may terminate the SDS Provider Agreement at any time and for whatever reason. Upon receipt of such notice of termination The Consultant shall give written notice to The Sub Consultant, and this Agreement shall terminate on the date falling 60 days after the date of service of such written notice.
- 20.2 At any time the Client may decide to postpone or abandon any part of the Sub Consultancy Services and, if as a consequence The Consultant decides to postpone or abandon any part of the Sub Consultancy Services provided by The sub Consultant in relation to this Agreement, The Consultant may by notice in writing to The Sub Consultant seek to vary the Sub Consultancy Services either by excluding the Sub Consultancy Services (or any part thereof) to be performed by The Sub Consultant, or by suspending performance of the same, and in such notice The Consultant shall specify the Sub Consultancy Services affected.
- 20.3 Unless otherwise notified in writing by The Consultant, if The Consultant shall not have required The Sub Consultant to resume the performance of Sub Consultancy Services in respect of the whole or any part of the Sub Consultancy Services suspended under Clause 20.2 within a period of 12 months from the date of the notice, the Agreement shall forthwith automatically terminate in whole if the whole of the Sub Consultancy Services has been terminated or in part, if part of the Sub Consultancy Services has been terminated.
- 20.4 The Sub Consultant shall, upon receipt of any notice in accordance with this Clause 20 (*Termination, Abandonment or Suspension of the Sub Consultancy Services by The Consultant*) terminating, suspending or abandoning the whole or any part of the Sub Consultancy Services, proceed in an orderly manner but with all reasonable speed and economy to take such steps as are necessary to bring to an end or suspend (as appropriate) the Sub Consultancy Services and its other obligations under this Agreement. The Consultant and The Sub Consultant shall meet within 7 days of the said receipt of such notice to assess the costs arising.

21. TERMINATION OR SUSPENSION FOR THE CONSULTANT DEFAULT

- 21.1 If a The Consultant Default has occurred and The Sub Consultant wishes to terminate this Agreement, The Sub Consultant must serve a termination notice on The Consultant within 30 days of becoming aware of The Consultant Default. Failure to do so shall be a waiver of the right to terminate.
- 21.2 The Sub Consultant shall specify in the termination notice the type of The Consultant Default which has occurred entitling The Sub Consultant to terminate.
- 21.3 Provided The Sub Consultant has complied with Clauses 21.1 and 21.2, this Agreement shall terminate on the day falling 60 days after the date on which The Consultant receives the termination notice, unless The Consultant rectifies The Consultant Default within 60 days of receipt of the termination notice.
- 21.4 The Sub Consultant shall not be entitled to, and shall not purport to, terminate this Agreement or accept any repudiation of this Agreement, except as expressly provided in this Clause 21 (*Termination for The Consultant Default*) or Clause 23 (*Termination by Reason of Force Majeure*).
- 21.5 If The Consultant shall fail to pay The Sub Consultant in full any amount properly due and payable under this Agreement by the final date for payment in accordance with the requirements of Clause 12 (*Arrangements for Invoicing and Payment*) and no effective notice to withhold payment has been given by The Consultant to The Sub Consultant, The Sub Consultant may, after giving The Consultant 60 days' notice in writing of the same, stating the ground or grounds on which it is intended to suspend performance, suspend the performance of the Sub Consultancy Services until payment in full is made by The Consultant.

22. TERMINATION FOR CORRUPT GIFTS AND PAYMENTS

- 22.1 The Sub Consultant or anyone employed by it or acting on its behalf (including any The Sub Consultant Party) shall not commit any Prohibited Act.
- 22.2 If The Sub Consultant, or anyone employed by it or acting on its behalf (including any The Sub Consultant Party), commits any Prohibited Act, then The Consultant shall be entitled to act in accordance with Clauses 22.3 to 22.7.
- 22.3 If a Prohibited Act is committed by The Sub Consultant or by an employee of The Sub Consultant not acting independently of The Sub Consultant, then The Consultant may terminate this Agreement by giving notice to The Sub Consultant.
- 22.4 If a Prohibited Act is committed by an employee of The Sub Consultant acting independently of The Sub Consultant, then The Consultant may give notice to The Sub Consultant of termination and this Agreement will terminate, unless within 30 days of receipt of such notice The Sub Consultant terminates the employee's employment and (if necessary) procures the performance of the relevant part of the Sub Consultancy Services by another person.
- 22.5 If a Prohibited Act is committed by anyone acting on behalf of The Sub Consultant (excluding employees of The Sub Consultant but including any The Sub Consultant Party, and their employees) and not acting independently of The Sub Consultant, then The Consultant may give notice to The Sub Consultant of termination and this Agreement will terminate.
- 22.6 If a Prohibited Act is committed by anyone acting on behalf of The Sub Consultant (excluding employees of The Sub Consultant but including any The Sub Consultant Party, and their employees) and acting independently of The Sub Consultant, then The Consultant may give notice to The Sub Consultant of termination and this Agreement will terminate, unless within 30 days of receipt of such notice The Sub

Consultant terminates that party's employment and procures the performance of the relevant part of the Sub Consultancy Services by another person.

- 22.7 Any notice of termination under this Clause 22 (*Termination for Corrupt Gifts and Payments*) shall specify:
- 22.7.1 the nature of the Prohibited Act;
 - 22.7.2 the identity of the person whom The Consultant believes has committed the Prohibited Act; and
 - 22.7.3 the date on which this Agreement will terminate, in accordance with the applicable provision of this Clause 22 (*Termination for Corrupt Gifts and Payments*).

23. TERMINATION BY REASON OF FORCE MAJEURE

- 23.1 Neither Party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and such party is directly prevented from carrying out such obligations by that Force Majeure Event provided that such prohibition on bringing a claim and exclusion of liability shall not operate if and to the extent that:
- 23.1.1 the Affected Party could, by the exercise of reasonable foresight and diligence, have prevented or reduced the effect of the Force Majeure Event; and
 - 23.1.2 the Affected Party could, whether before or after the occurrence of the Force Majeure Event, have reduced or eliminated the resulting breach of its obligations under this Agreement by taking reasonable steps.
- 23.2 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as reasonably practicable, specifying details of the Force Majeure Event and providing evidence of its effect on the obligations of the Affected Party and any action proposed to remove or mitigate its effect.
- 23.3 The Parties shall enter into bona fide discussions with a view to alleviating the effects of such Force Majeure Event, and if the terms or measures to remove the effect of the Force Majeure Event cannot be agreed on or before the date falling 12 months after the date of the commencement of the Force Majeure Event or by the end of such longer period as the Parties may have agreed, or such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with all or a material part of its obligations under this Agreement for a period of more than 12 months after the date of the commencement of the Force Majeure Event or by the end of such longer period as the Parties may have agreed, either Party shall have the option to terminate this Agreement by written notice to the other.
- 23.4 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay to the performance of the Sub Consultancy Services and The Sub Consultant shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 23.5 The Affected Party shall notify the other party as soon as reasonably practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this

Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

24. PERSISTENT BREACH

24.1 If a breach by The Sub Consultant of any of its obligations under this Agreement has occurred more than once then The Consultant may serve a notice ("Persistent Breach Notice") on The Sub Consultant:

24.1.1 specifying that it is a Persistent Breach Notice;

24.1.2 giving reasonable details of the breach; and

24.1.3 stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Agreement.

24.2 If, following service of such a Persistent Breach Notice, the breach specified has continued or occurred once again after the date falling 30 days after the date of service of the Persistent Breach Notice and before the date falling 365 days after the date of service of such notice, then The Consultant may serve another notice ("Final Persistent Breach Notice") on The Sub Consultant:

24.2.1 specifying that it is a Final Persistent Breach Notice;

24.2.2 stating that the breach specified has been the subject of a prior Persistent Breach Notice within the period of 365 days prior to the date of service of the Final Persistent Breach Notice; and

24.2.3 stating that if such failure is not remedied within 7 days or is remedied and occurs once or more within the 180 day period after the date of service of the Final Persistent Breach Notice, this Agreement may be terminated with immediate effect.

25. PAYMENT FOLLOWING TERMINATION OR SUSPENSION

25.1 No compensation shall be payable by The Consultant to The Sub Consultant for termination of this Agreement whether under contract, delict (including negligence), breach of (or compliance with) statutory duty, restitution or otherwise but without prejudice to payments due under Clause 25.3.

25.2 Within 30 days of termination of this Agreement and following receipt of a valid VAT invoice, The Consultant shall pay to The Sub Consultant:

25.2.1 any undisputed sums due from The Consultant to The Sub Consultant pursuant to Clauses 11 (*Methods of Payment*) and 12 (*Arrangements for Invoicing and Payment*);

25.2.2 any entitlement to demobilisation costs pursuant to Clause 25.3; and

25.2.3 any sums due to The Sub Consultant in respect of any work in progress which have not been certified in accordance with Clause 12 (*Arrangements for Invoicing and Payment*) provided that the calculation of such sums have been certified as follows:

25.2.3.1 The Sub Consultant shall have provided The Consultant with a valuation of all work in progress in relation to the Sub Consultancy Services in accordance with the provisions of Clause 15.4 and subject to Clause 11 (*Methods of Payment*)

and, for the avoidance of doubt, subject to any agreed milestone or lump sum payments set out in Schedule 3 (*Pricing Schedule*) or as agreed otherwise in accordance with this Agreement;

- 25.2.3.2 The Consultant shall, subject to any clarifications as are in The Consultant's opinion (acting properly and reasonably necessary) certify by notice in writing to The Sub Consultant that part of the work in progress which is approved by The Consultant and give reasons why any part of the work in progress has not been certified and the value of the sums involved no later than 10 Business Days after the date on which such valuation was received. The Consultant's valuation of such work in progress shall be final and binding.
- 25.3 The Consultant shall make payment to The Sub Consultant of any demobilisation costs which have been demonstrably and reasonably incurred by The Sub Consultant in respect of:
- 25.3.1 termination for The Consultant Default pursuant to Clause 21 (*Termination or Suspension for The Consultant Default*); or
- 25.3.2 termination or abandonment pursuant to Clause 20 (*Termination, Abandonment or Suspension of the Sub Consultancy Services by The Consultant*); or
- 25.3.3 suspension pursuant to Clause 20 (*Termination, Abandonment or Suspension of the Sub Consultancy Services by The Consultant*).
- 25.4 The Sub Consultant shall use all reasonable endeavours to minimise and mitigate any such demobilisation costs and The Consultant shall not be liable to pay The Sub Consultant for such demobilisation costs to the extent that The Sub Consultant has failed to minimise or mitigate such demobilisation costs or to the extent that such demobilisation costs have arisen out of The Sub Consultant's breach of this Agreement or any negligent or wilful act or omission by The Sub Consultant.
- 25.5 Within 30 days of termination of this Agreement, The Sub Consultant shall pay to The Consultant any sums due from The Sub Consultant to The Consultant pursuant to this Agreement.
- 25.6 This Agreement shall terminate automatically on the expiry of this Agreement unless it shall have been terminated earlier in accordance with the provisions of this Agreement. The Sub Consultant shall not be entitled to any compensation on expiry of the Agreement.
- 25.7 Within 30 days of expiry of this Agreement, The Consultant shall pay to The Sub Consultant any undisputed sums due from The Consultant to The Sub Consultant in accordance with Clauses 11 (*Methods of Payment*) and 12 (*Arrangements for Invoicing and Payment*).
- 25.8 Within 30 days of expiry of this Agreement, The Sub Consultant shall pay to The Consultant any sums due from The Sub Consultant to The Consultant pursuant to this Agreement.
- 25.9 Either Party may refer any Dispute about disputed sums to the Dispute Resolution Procedure. If it is determined pursuant to the Dispute Resolution Procedure that the whole or part of any disputed amount is due to either The Consultant or The Sub Consultant, The Consultant or The Sub Consultant (as appropriate) shall raise an

invoice within 30 days in respect of such determined amount and payment shall be made by the relevant Party within 60 days of the receipt of such invoice.

- 25.10 In the event of the Agreement being terminated under Clause 19 (*Termination for The Sub Consultant Default*) or Clause 22 (*Termination for Corrupt Gifts and Payments*) or Clause 24 (*Persistent Breach*), The Consultant shall be entitled to recover from The Sub Consultant all losses, liabilities damages, penalties, fines, forfeitures, and the costs and expenses incident thereto (including without limitation legal costs of defence) sustained by The Consultant by such termination, and, without prejudice to the generality of this provision, The Consultant may forthwith employ and pay persons to carry out, manage and complete the Sub Consultancy Services and recover the additional costs of so doing from The Sub Consultant.
- 25.11 In any case in which The Consultant has required The Sub Consultant to suspend the carrying out of the Sub Consultancy Services, The Consultant may at any time within the period of 12 months from the date of The Consultant's notice served in accordance with Clause 20.2 (or such longer period as may be notified in writing by The Consultant) require The Sub Consultant in writing to resume the performance of such Sub Consultancy Services. In such event, if The Sub Consultant needs to perform any additional Sub Consultancy Services in connection with the resumption of the Sub Consultancy Services, The Consultant shall pay The Sub Consultant fair and reasonable costs in respect of the performance of such additional Sub Consultancy Services which shall be treated as a The Consultant Change and agreed in accordance with Clause 15 (*Changes*).

26. EFFECTS OF TERMINATION OR EXPIRY

- 26.1 Subject to Clause 25.2, The Sub Consultant shall not have any other right or remedy against The Consultant on termination of this Agreement.
- 26.2 Subject to any exercise by The Consultant of its rights to perform, or to procure a third party to perform, the obligations of The Sub Consultant, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any notice of default or breach or termination notice, until the termination of this Agreement becomes effective.
- 26.3 Any termination or expiry of this Agreement shall not prejudice or affect the accrued rights or claims of either Party.
- 26.4 On expiry of this Agreement or any earlier termination of this Agreement for whatever reason, all Deliverables shall be handed to The Consultant, provided that The Sub Consultant may retain one copy of any Deliverable where such copy is required for the purposes of Law or any recognised regulatory requirement or for record purposes (where The Consultant acting reasonably agrees). The provisions of Clause 32 (*Confidential Information*) will continue to apply to these Deliverables beyond expiry of this Agreement or any earlier termination for whatever reason.
- 26.5 In order to aid the progress of the performance of the Sub Consultancy Services, The Consultant may make available to The Sub Consultant various information, materials and documents. On expiry of this Agreement or any earlier termination of this Agreement for whatever reason, all such information, materials and documents shall be returned to The Consultant provided that The Sub Consultant may retain one copy of any information, materials and documents where such copy is required for the purposes of Law or any recognised regulatory requirement. The provisions of Clause 32 (*Confidential Information*) will continue to apply to such information, materials and documents beyond expiry of this Agreement or any earlier termination for whatever reason.

- 26.6 Completion or termination of the Sub Consultancy Services shall not affect The Sub Consultant's obligations under Clauses 3 (*Duty of Care, Standards and the Sub Consultancy Services to be provided*), 11 (*Methods of Payment*), 12 (*Arrangements for Invoicing and Payment*), 13 (*Set-Off*), 14 (*Audit*), 17 (*Required Insurances*), 18 (*Errors and/or Omissions in the Sub Consultancy Services*), 25 (*Payment Following Termination or Suspension*), 26 (*Effects of Termination or Expiry*), 27 (*Indemnity by The Sub Consultant*), 28 (*Dispute Resolution Procedure*), 31 (*Copyright and Intellectual Property*) and 32 (*Confidential Information*). Those obligations shall continue in full force and effect.

27. INDEMNITY BY THE SUB CONSULTANT, LIABILITY AND SOLE REMEDY

- 27.1 The Sub Consultant shall indemnify The Consultant and its officers, agents and employees ("Indemnified Parties") from and against any and all reasonably foreseeable, properly mitigated claims, suits, losses, liabilities damages, penalties, fines, forfeitures, and the costs and expenses incident thereto (including without limitation any legal costs of defence) which any of the Indemnified Parties may hereafter incur, become responsible for, or pay out as a result of or in connection with:
- 27.1.1 any of The Sub Consultant's, or its employees' or any The Sub Consultant Party's negligent or wilful acts or wilful omissions in the performance of the Sub Consultancy Services; or
 - 27.1.2 breach of any term or provision of this Agreement ; or
 - 27.1.3 breach of any Law; or
 - 27.1.4 any non-performance or delay in performance of The Sub Consultant's obligations under this Agreement.
- 27.2 The Parties acknowledge and agree that the only rights available to them to terminate this Agreement are those expressly set out in this Agreement and that neither Party shall be entitled to exercise a right to terminate or rescind or accept the repudiation of this Agreement under any other right whether arising in common law or statute or otherwise howsoever (other than for fraud or a fraudulent misrepresentation).
- 27.3 Nothing in this Agreement shall exclude or limit the liability of either Party for:
- 27.3.1 death or personal injury caused by that Party's negligence or the negligence of anyone for whom that Party is vicariously liable;
 - 27.3.2 fraud or fraudulent misrepresentation; or
 - 27.3.3 any breach of warranty given as to valid and marketable title, freedom from unduly onerous burdens and conditions or entitlement to possession by action of prescription; or
 - 27.3.4 of The Sub Consultant, for any breach of this Agreement or any delict (including negligence) or other liability arising prior to termination of this Agreement;
- provided that nothing in this Clause 27.3 shall confer on either Party rights or remedies that they would not otherwise have.
- 27.4 Subject to Clause 27.3, neither party shall be entitled to claim damages for breach of this Agreement, in delict (including negligence), breach of statutory duty or on any other basis whatsoever to the extent that such damages claimed by that Party are for

Indirect Losses suffered by that Party provided that for the avoidance of doubt, nothing in this 27.4 shall affect either Party's liability to the other Party, in respect of any claim, action, proceedings or demand against such other Party by a third party in connection with Indirect Loss suffered.

- 27.5 The Sub Consultant shall not be relieved or excused of any responsibility, liability or obligation under this Agreement by the appointment of any The Sub Consultant Party. The Sub Consultant shall, as between itself and The Consultant, be responsible for the selection, pricing, performance, acts, defaults, omissions, breaches, delict and offences of any The Sub Consultant Party. All references in this Agreement to any act, default, omission, breach, delict or offence of The Sub Consultant shall be construed to include any such act, default, omission, breach or delict of any The Sub Consultant Party.
- 27.6 Notwithstanding any other term of this Agreement, except as detailed in Clauses 27.3.1, 27.3.2 and 27.3.3, The Sub Consultant's total liability hereunder whether in contract, delict or howsoever arising shall not exceed the sum of £10,000,000 in respect of each and every claim other than in respect of claims arising from pollution or contamination where the limit of indemnity of £10,000,000 applies to any one claim and in aggregate during the policy period.

28. DISPUTE RESOLUTION PROCEDURE

- 28.1 The Parties agree that this Clause 28 (*Dispute Resolution Procedure*) shall have effect for the resolution of any Dispute.
- 28.2 Any Dispute shall, in the first instance, be referred to the Internal Resolution Procedure in accordance with Clause 28.10.
- 28.3 Neither Party shall commence any court proceedings until the procedures in Clauses 28.10 to 28.57.3 have been completed, under exception that Clause 28 (*Dispute Resolution Procedure*) shall not apply so as to prevent either Party seeking an interim order, or interim relief, in the Scottish courts.
- 28.4 In the event that any court proceedings whatsoever are initiated by either Party against the other, the Parties agree that the Court of Session, Scotland, shall have exclusive jurisdiction.
- 28.5 Neither Party shall be entitled to suspend the performance of its undisputed obligations under this Agreement merely by reason of the reference of any Dispute to the Dispute Resolution Procedure contained in this Clause 28 (*Dispute Resolution Procedure*).
- 28.6 Subject to The Consultant's discretionary rights set out in Clause 28.55 to Clause 28.57.3 to require that a Dispute and a Related Dispute (as defined in Clause 28.55) be dealt with together at an appropriate stage of the Dispute Resolution Procedure, the provisions of this Clause 28 (*Dispute Resolution Procedure*) are mandatory and binding upon the Parties.
- 28.7 Unless a Party refers a Dispute to the Dispute Resolution Procedure contained in this Clause 28 (*Dispute Resolution Procedure*) within three months of the date on which the event, matter or situation giving rise to the Dispute first occurred, such Party shall be deemed to have irrevocably waived any right to refer such Dispute to the Dispute Resolution Procedure, under exception that if such Party was not aware, and could not with reasonable diligence have been aware, that such event, matter or situation had occurred, this Clause 28.7 shall have effect as if for the reference herein to the date on which such event, matter or situation occurred, there was substituted a reference to the date when such Party first became, or could with reasonable

diligence have become, aware that such event, matter or situation had occurred. This Clause 28.7 is without prejudice to the right of either Party to raise in defence to any Dispute any defence (including, without prejudice to the foregoing generality, any defence of retention, compensation or set-off) which would otherwise be available to it.

- 28.8 Except in relation to the matters provided for in Clauses 28.15 to Clause 28.54 and subject to the provisions of Clause 28.9, in the event that either Party pursues any Dispute under the Dispute Resolution Procedure, and in the event that such Party fails to observe any time limit or timescale provided for in this Clause 28 (*Dispute Resolution Procedure*) in relation to the pursuit or progression of such Dispute, such Party shall, immediately upon such failure occurring, be deemed to have irrevocably waived any right to pursue or progress such Dispute any further. In that event, such Party shall be deemed to have elected not to have referred such Dispute or to have withdrawn such Dispute from the Dispute Resolution Procedure and shall be deemed to have irrevocably waived any right to refer any Dispute arising from the same or substantially the same Dispute or similar circumstances to the Dispute Resolution Procedure and shall be liable for payment of the whole fees incurred by any mediator or adjudicator who has acted in respect of such Dispute. This Clause 28.8 is without prejudice to the rights of either Party to raise in defence to any Dispute any defence (including, without prejudice to the foregoing generality, any defence of retention, compensation or set-off) which would otherwise be available to it.
- 28.9 Notwithstanding the provisions of Clause 28.8, in the event that a Party who pursues any Dispute under the Dispute Resolution Procedure fails to observe any time limit or timescale provided for in this Clause 28 (*Dispute Resolution Procedure*) in relation to the pursuit or progression of the Dispute, the other Party may elect to waive such failure, in which event the time limit or timescale to which such failure relates shall be extended at the discretion of such other Party and the Dispute shall progress in accordance with the Dispute Resolution Procedure, subject that all other time limits and timescales provided for in this Clause 28 (*Dispute Resolution Procedure*) which are affected by such extension shall be deemed to have been extended to give effect to such extension of the time limit or timescale to which such failure relates.

Internal Resolution Procedure

- 28.10 The following procedure is the Internal Resolution Procedure referred to in Clause 28.2:
- 28.10.1 In the event of any Dispute arising, The Sub Consultant's Representative and The Consultant's Representative shall seek to resolve the Dispute at a meeting to be convened within three Business Days of written notification by either Party to the other that it wishes to initiate the Internal Resolution Procedure in respect of that Dispute ("Notification"). Such Notification shall be given in accordance with the provisions of Clause 35 (*Notices*) of this Agreement.
- 28.10.2 Further meetings may follow the meeting referred to in Clause 28.10.1, but in any event, if the Dispute is not resolved within seven Business Days of Notification, each Party shall, before the expiry of the period of ten Business Days from Notification, serve, in accordance with the provisions of Clause 35 (*Notices*) of this Agreement, a written position paper ("Position Paper") upon the other Party. Each Party's Position Paper shall state in reasonable detail that Party's position and required objectives in relation to the Dispute, any required redress, and, where possible, any comments on the other Party's position.

- 28.10.3 Upon such service of a Position Paper by the Party initiating or pursuing the Dispute, the Chief Executive (or equivalent) of The Sub Consultant and the Chief Executive (or equivalent) of The Consultant (or their respective deputies in the event of their unavailability) shall seek to resolve the Dispute by meeting in good faith to discuss and negotiate upon the Dispute without recourse to legal or other proceedings.
- 28.10.4 In the event that the resolution of the Dispute is achieved by the Chief Executive (or equivalent) of The Sub Consultant and the Chief Executive (or equivalent) of The Consultant, the resolution shall be reduced to writing and, once it is signed by the duly authorised representatives of both Parties, shall be binding on the Parties.
- 28.10.5 Unless concluded by a written legally binding agreement, all discussions and negotiations connected with the Dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any future legal or other proceedings. Nor may such matters be produced or relied upon in evidence in any such proceedings.
- 28.11 In the event that any Dispute is not resolved by the Internal Resolution Procedure within a period of thirty Business Days from Notification (or longer if so agreed by the Parties) then the following provisions of this Clause 28.11 shall apply;
- 28.11.1 The Chief Executive (or equivalent) of The Sub Consultant and the Chief Executive (or equivalent) of The Consultant or their respective deputies in the event of their unavailability) shall, within a further period of five Business Days, seek to agree that the Dispute shall be resolved by any one of the following procedures:
- 28.11.1.1 mediation in accordance with Clauses 28.12 to 28.14; or
- 28.11.1.2 adjudication in accordance with Clause 28.15 to 28.54 in which event the Referring Party must give its Notice of Adjudication to the other Party within five Business Days of the date of expiry of the period of thirty five Business Days from Notification (or longer if so agreed by the Parties); or
- 28.11.1.3 litigation before the Court of Session, Scotland, in which event the Summons or Petition in any such litigation shall be signetted and served within ten Business Days of the date of expiry of the period of thirty-five Business Days from Notification (or longer if so agreed by the Parties).
- 28.11.2 In the event that the Chief Executive (or equivalent) of The Sub Consultant and the Chief Executive (or equivalent) of The Consultant (or their respective deputies in the event of their unavailability) are unable to agree that the Dispute be resolved by the procedures described in Clauses 28.11.1.1 to 28.11.1.3, the Party initiating or pursuing the Dispute shall refer the Dispute to mediation (and thereafter adjudication if necessary) in accordance with Clauses 28.12 to 28.14.

Mediation

- 28.12 The Parties shall attempt in good faith to resolve the Dispute by a procedure of mediation in accordance with the Centre for Effective Dispute Resolution mediation rules or Model Mediation Procedure in force at the commencement of the mediation, (or in the event that the Centre for Effective Dispute Resolution has ceased to exist as at the time of the commencement of the mediation, mediation rules or a model

mediation procedure offered by any other body offering commercial mediation Sub Consultancy Services which shall be selected by The Consultant), which procedure shall be commenced within five Business Days of the date of expiry of the period of thirty-five Business Days from Notification (or longer if so agreed by the Parties). In the event that any provision of such mediation rules or model mediation procedure conflicts with any provision of this Clause 28 (*Dispute Resolution Procedure*), the provisions of this Clause 28 (*Dispute Resolution Procedure*) shall take precedence. In the event that any timescales contained in such mediation rules or model mediation procedure conflicts with the timescales referred to in this Clause 28 (*Dispute Resolution Procedure*), the timescales contained in such mediation rules or model mediation procedure shall be amended accordingly such that the timescales referred to in this Clause 28 (*Dispute Resolution Procedure*) shall be adhered to.

- 28.13 In the event that resolution of the Dispute is achieved in consequence of such mediation procedure, such resolution shall be reduced to writing and, once it is signed by the duly authorised representatives of both Parties, shall be binding on the Parties. Unless concluded by a written legally binding agreement, all discussions and negotiations connected with the mediation procedure referred to in Clause 28.12 shall be conducted in confidence and without prejudice to the rights of the Parties in any future legal or other proceedings. Nor may such matters be produced or relied upon in evidence in any such proceedings.
- 28.14 If any Dispute to which this Clause 28 (*Dispute Resolution Procedure*) relates is not resolved by the mediation procedure referred to in Clauses 28.12 and 28.13 within a period of 55 Business Days from Notification (or longer if so agreed by the Parties), the mediation procedure shall be terminated and, unless the Party initiating or pursuing the Dispute withdraws the Dispute, the Dispute shall within a further 5 Business Days, be referred to adjudication in accordance with Clauses 28.15 to 28.54.

Adjudication

- 28.15 In the event that either Party refers a Dispute to adjudication in terms of Clause 28.11.1 or 28.14, or exercises a statutory right available to it (if any) under the Housing Grants Construction and Regeneration Act 1996 to raise adjudication proceedings, such adjudication shall be conducted in accordance with Clauses 28.15 to 28.54 wherein any reference to "days" is a reference to calendar days.

Notice of intention to seek adjudication

- 28.16 Either Party may give written notice (the "Notice of Adjudication") of its intention to refer the Dispute to adjudication and the Party giving such notice shall be the "Referring Party".
- 28.17 The Notice of Adjudication shall be given to the other Party and the Party receiving the Notice of Adjudication shall be the "Responding Party".
- 28.18 The notice of adjudication shall set out briefly:
- 28.18.1 the nature and a brief description of the Dispute and of the parties involved;
 - 28.18.2 details of where and when the Dispute has arisen;
 - 28.18.3 the nature of the redress which is sought; and
 - 28.18.4 the names and addresses of the Parties (including the addresses which the Parties have specified for the giving of notices).

- 28.19 The adjudicator selected to consider the Dispute shall be selected from one of the panels ("Panels") appointed by the Parties in accordance with the following:
- 28.19.1 There shall be four Panels, one in respect of legal matters, ("Legal Panel") one in respect of construction matters and construction/operation interface matters ("Construction Panel"), one in respect of operational and maintenance matters ("Operations Panel") and one in respect of financial matters ("Financial Panel").
- 28.19.2 Each Panel shall be comprised of four members, who are listed in Schedule 10 (*Panels for the Dispute Resolution Procedure*) to this Agreement.
- 28.19.3 If any member of a Panel resigns or dies or becomes incapax or ill to the extent of being unable to reasonably discharge his duties as a member of the Panel, a replacement shall be appointed by the Parties as soon as practicable. Any such replacement shall be wholly independent of the Client, any Client Party, the SDS Provider, any SDS Provider Party, **tie**, any **tie** Party, City of Edinburgh Council or any Relevant Authority, any Approvals Body, the Tram Supplier or any equipment supplier or any party associated with the Edinburgh Tram Network, and any successor to or subsidiary or parent of any of the aforementioned parties. If the Parties are unable to agree on the identity of such replacement(s), the President or Vice President for the time being of The Chartered Institute of Arbitrators (Scottish Branch) or the Institution of Civil Engineers shall appoint such replacement(s) within thirty days of any application for such appointment by either Party.
- 28.20 The Referring Party shall at the same time as giving the Notice of Adjudication to the Responding Party, send to each of the members of the relevant Panel a copy of the Adjudication Notice and a request that each member of the relevant Panel advises both Parties within three days as to whether or not he is able and willing to act. The Parties shall attempt to agree within two further days as to which one of the members of the relevant Panel who responded indicating that they are able and willing to act shall be requested to act as adjudicator. In the event that such agreement is reached, the Referring Party shall, within a further period of one day, request the member of the relevant Panel upon whom agreement has been reached to act as adjudicator. In the event that such agreement is not reached, the Responding Party shall, within a further period of two days, select one of the members of the relevant Panel who responded indicating that they are able and willing to act and the Referring Party shall request that member to act as adjudicator;
- 28.21 If no member of the relevant Panel indicates that he is able and willing to act within three days of receiving a request to act as adjudicator, the Referring Party shall request the Chairman or the Vice-Chairman for the time being of The Chartered Institute of Arbitrators (Scottish Branch) or the Institution of Civil Engineers to select a person to act as adjudicator.
- 28.22 Any person appointed, requested or selected to act as adjudicator in accordance with Clause 28.20, 28.21 and 28.24 shall be a natural person acting in his personal capacity. A person appointed, requested or selected to act as an adjudicator shall be wholly independent of The Consultant, any The Consultant Party, The Sub Consultant, any The Sub Consultant Party, **tie**, any **tie** Party, City of Edinburgh Council or any Relevant Authority, any Approvals Body, the Tram Supplier or any equipment supplier or any party associated with the Edinburgh Tram Network, and any successor to or subsidiary or parent of any of the aforementioned parties.
- 28.23 The request referred to in Clause 28.20 shall be accompanied by a copy of the Notice of Adjudication.

- 28.24 The Chartered Institute of Arbitrators (Scottish Branch) or the Institution of Civil Engineers must communicate the selection of an adjudicator to the Referring Party within three days of receiving a request to do so.
- 28.25 Where The Chartered Institute of Arbitrators (Scottish Branch) or the Institution of Civil Engineers fails to comply with Clause 28.24, the Referring Party may:
- 28.25.1 agree with the other Party to the Dispute to request a specified person to act as adjudicator; or
- 28.25.2 request any other adjudicator nominating body to select a person to act as adjudicator. An "adjudicator nominating body" shall mean a body (not being a natural person and not being a Party to the Dispute) which holds itself out publicly as a body which will select an adjudicator when requested to do by a Referring Party.
- 28.26 The person requested to act as adjudicator in accordance with the provisions of Clause 28.20 or 28.21 shall indicate whether or not he is willing to act within two days of receiving the request.
- 28.27 Where an adjudicator has been selected in accordance with Clause 28.20, 28.21 or 28.24, the Referring Party shall, not later than seven days from the date of the Notice of Adjudication, refer the Dispute in writing (the "Referral Notice") to the adjudicator.
- 28.28 A Referral Notice shall be accompanied by copies of, or relevant extracts from the Agreement and such other documents as the Referring Party intends to rely upon.
- 28.29 The Referring Party shall, at the same time as he sends to the adjudicator the documents referred to in Clauses 28.27 and 28.28, send copies of those documents to the Responding Party.
- 28.30 The adjudicator may, with the consent of the Parties to those disputes, adjudicate at the same time on more than one Dispute under the Agreement.
- 28.31 The Parties may agree to extend the period within which the adjudicator may reach a decision in relation to all or any of these Disputes.
- 28.32 An adjudicator may resign at any time on giving notice in writing to the Parties.
- 28.33 An adjudicator must resign where the Dispute is the same or substantially the same as one which has previously been referred to adjudication, and a decision has been taken in that adjudication.
- 28.34 Where an adjudicator ceases to act under Clauses 28.32 or 28.33, or dies or becomes incapax or ill to the extent of being unable to reasonably discharge his duties;
- 28.34.1 the Referring Party may serve a fresh notice in accordance with Clauses 28.16 to 28.19 and shall in accordance with Clauses 28.20 to 28.29 request an adjudicator to act; and
- 28.34.2 if requested by the new adjudicator, the Parties shall supply him with copies of all documents which they had made available to the previous adjudicator.
- 28.35 The Parties to a Dispute may at any time agree to revoke the appointment of the adjudicator and in such circumstances the fees and expenses of that adjudicator shall, subject to Clause 28.36, be determined and payable in accordance with Clauses 28.52 to 28.53.

- 28.36 Where the revocation of the appointment of the adjudicator is due to the default or misconduct of the adjudicator, the Parties shall not be liable to pay the adjudicator's fees and expenses.

Powers of the Adjudicator

- 28.37 The adjudicator shall:

28.37.1 act impartially in carrying out his duties and shall do so in accordance with any relevant terms of the Agreement and shall reach his decision in accordance with Scots law; and

28.37.2 avoid incurring unnecessary expense.

- 28.38 The adjudicator may take the initiative in ascertaining the facts and the law necessary to determine the Dispute, and shall decide on the procedure to be followed in the adjudication. In particular, he may:

28.38.1 request either Party to supply him with such documents as he may reasonably require including, if he so directs, any written statement from either Party supporting or supplementing the Referral Notice and any other documents given under Clauses 28.27 to 28.28;

28.38.2 conduct the adjudication in the English language and decide whether a translation of any document is to be provided and, if so, by whom, by when, and at whose cost;

28.38.3 meet and question either Party and their representatives;

28.38.4 subject to obtaining any necessary consent from a third party or the Parties, make such site visits and inspections as he considers appropriate, whether accompanied by the Parties or not;

28.38.5 subject to obtaining any necessary consent from a third party or the Parties, procure the carrying out of any tests or experiments, and make directions as to the conditions for and responsibility for the cost of the same;

28.38.6 obtain and consider such representations and submissions as he requires, and, provided he has notified the Parties of his intention, appoint experts, assessors or legal advisers;

28.38.7 give directions as to the timetable for the adjudication, any deadlines, or limits as to the length of written documents or oral representations to be complied with; and

28.38.8 issue other directions relating to the conduct of the adjudication.

- 28.39 The Parties shall comply with any request or direction of the adjudicator in relation to the adjudication.

- 28.40 If, without showing sufficient cause, a Party fails to comply with any request, direction or timetable of the adjudicator made in accordance with his powers, fails to produce any document or written statement requested by the adjudicator, or in any other way fails to comply with a requirement under these provisions relating to the adjudication, the adjudicator may:

28.40.1 continue the adjudication in the absence of that Party or of the document or written statement requested;

- 28.40.2 draw such inferences from that failure to comply as may, in the adjudicator's opinion, be justified in the circumstances;
- 28.40.3 make a decision on the basis of the information before him, attaching such weight as he thinks fit to any evidence submitted to him outside any period he may have requested or directed;
- 28.40.4 disqualify any part or parts of that Party's submissions affected by the failure to comply; and
- 28.40.5 grant the other Party proper opportunity to consider and respond to any evidence or representation made late.
- 28.41 Subject to any agreement between the Parties to the contrary, either Party may be assisted by, or represented by, such advisers or representatives (whether legally qualified or not) as he considers appropriate.
- 28.42 The adjudicator shall consider any relevant information submitted to him by either Party and shall make available to them any information to be taken into account in reaching his decision.
- 28.43 The adjudicator and the Parties shall not disclose to any other person any information or document provided in connection with the adjudication which the Party supplying it has indicated is to be treated as confidential, except to the extent that disclosure is required by law or is necessary for the purposes of, or in connection with, the adjudication, or the information is already in the public domain.

Adjudicator's Decision

- 28.44 Unless otherwise agreed in accordance with Clause 28.56.1 or 28.57.1, the adjudicator shall reach his decision not later than:
- 28.44.1 twenty eight days after the date of the Referral Notice mentioned in Clause 28.25;
- 28.44.2 forty two days after the date of the Referral Notice if the Referring Party so consents; or
- 28.44.3 such period exceeding twenty eight days after the Referral Notice as the Parties may, after the giving of that notice, agree.
- 28.45 Where the adjudicator fails, for any reason, to reach his decision in accordance with Clause 28.44:
- 28.45.1 either of the Parties to the Dispute may serve a fresh notice in accordance with Clause 28.16 to 28.19 and shall request an adjudicator to act in accordance with Clauses 28.20 to 28.29; and
- 28.45.2 if requested by the new adjudicator the Parties shall supply him with copies of all documents which they had made available to the previous adjudicator.
- 28.46 As soon as possible after he has reached a decision, the adjudicator shall deliver a copy of that decision to each of the Parties.
- 28.47 The adjudicator shall decide the matters in Dispute and may make a decision on different aspects of the Dispute at different times.

28.48 The adjudicator may take into account any other matters which the Parties agree should be within the scope of the adjudication or which are matters under the Agreement which he considers are necessarily connected with the Dispute and, in particular, he may:

28.48.1 open up, review and revise any decision taken or any notice certifying payment given by any person referred to in the Agreement, unless the Agreement states that the decision or notice certifying payment is final and conclusive;

28.48.2 decide that any of the Parties to the Dispute is liable to make a payment under the Agreement (whether in sterling or some other currency) and, subject to the terms of the Agreement, when that payment is due and the final date for payment.

28.49 The adjudicator shall provide written reasons for his decision.

Effect of the Decision

28.50 In his decision, the adjudicator may, if he thinks fit, order either or both of the Parties to comply peremptorily with his decision or any part of it. In the absence of any directions by the adjudicator relating to the time for performance of his decision, the Parties shall be required to comply with any decision of the adjudicator immediately on delivery of the decision to the Parties in accordance with Clause 28.46.

28.51 The decision of the adjudicator shall be binding on the Parties, and they shall comply with it, until the Dispute is finally determined by legal proceedings or by agreement between the Parties.

28.52 The adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses incurred by him and the Parties shall be jointly and severally liable to pay that amount to the adjudicator.

28.53 Without prejudice to the right of the adjudicator to effect recovery from either Party in accordance with Clause 28.52, the Parties shall each be liable to pay one-half share of the adjudicator's fees and expenses.

28.54 The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and any employee or agent of the adjudicator shall be similarly protected from liability.

Related Disputes

28.55 Notwithstanding the terms of Clauses 28.2, 28.3, 28.6, 28.7, 28.8 and 28.9, in the event that a dispute or potential dispute under, or in connection with any contract associated with the Edinburgh Tram Network (referred to in this Clause 28 (*Dispute Resolution Procedure*) as "Related Contracts"), has arisen or arises out of substantially the same issues of fact and/or law (as the case may be) as a Dispute under this Agreement (a "Related Dispute"), then providing that the Related Contract contains dispute resolution provisions in terms substantially the same as set out in this Clause 28 (*Dispute Resolution Procedure*) (save for necessary changes), The Consultant may require and direct that the Dispute and the Related Dispute be dealt with together at an appropriate stage of the Dispute Resolution Procedure.

28.56 In the event that a Related Dispute has already been referred to the decision of an adjudicator in accordance with the provisions of the Related Contract, and The Consultant is of the opinion that a Dispute is to be (but has not yet been) referred to adjudication under this Clause 28 (*Dispute Resolution Procedure*), The Consultant may refer the Dispute, or may by notice in writing to The Sub Consultant require that the Dispute be referred (as the case may be) to the adjudicator appointed under the Related Contract to decide upon the Related Dispute, and:

28.56.1 the adjudicator shall, if practicable, hear the Dispute at the same time as the Related Dispute and shall request such extension of time for producing his decision or award as he may require in order to reach a decision in respect of each of the Dispute and the Related Dispute at the same time. The Parties shall agree to such request for an extension of time, except in the event that the Dispute or the Related Dispute relates to "construction operations" within the meaning ascribed to that term by the Housing Grants, Construction and Regeneration Act 1996 (if applicable) (unless otherwise agreed by the Parties, all parties to the Related Dispute and the Adjudicator);

28.56.2 except in the event that the Dispute or the Related Dispute relates to "construction operations" within the meaning ascribed to that term by the Housing Grants, Construction and Regeneration Act 1996 (if applicable) (unless otherwise agreed by the Parties, all parties to the Related Dispute and the Adjudicator), the adjudicator shall have power (if so requested by The Consultant) to make his decisions or awards in the Dispute and the Related Dispute in such a manner as if the rules applicable in the Court of Session, Scotland as to the joining of one or more defenders or third parties or conjoining actions were applicable to the Parties to the Dispute and the Related Dispute, and to the adjudicator; and

28.56.3 The Consultant shall procure that, as soon as practicable, the other party or parties to the Related Dispute shall give The Sub Consultant copies of the Related Contract, the referral notice in the Related Dispute and any other documentation provided to the adjudicator by any party to the Related Dispute.

28.57 In the event that a Dispute has already been referred to the decision of an adjudicator, and The Consultant is of the opinion that a Related Dispute is to be (but has not yet been) referred to adjudication, The Consultant may refer the Related Dispute to the adjudicator appointed under this Clause 28 (*Dispute Resolution Procedure*) to decide upon the Dispute, and:

28.57.1 the Adjudicator shall, if practicable, hear the Related Dispute at the same time as the Dispute and shall request such extension of time for producing his decision or award as he may require in order to reach a decision in respect of each of the Dispute and the Related Dispute at the same time. The Parties shall agree to such request for an extension of time, except in the event that the Dispute or the Related Dispute relates to "construction operations" within the meaning ascribed to that term by the Housing Grants, Construction and Regeneration Act 1996 (if applicable) (unless otherwise agreed by the Parties, all parties to the Related Dispute and the Adjudicator);

28.57.2 except in the event that the Dispute or the Related Dispute relates to "construction operations" within the meaning ascribed to that term by the Housing Grants, Construction and Regeneration Act 1996 (if applicable) (unless otherwise agreed by the Parties, all parties to the Related Dispute and the Adjudicator), the adjudicator shall have power (if so requested by The Consultant) to make his decisions or awards in the Dispute and the Related Dispute in such a manner as if the rules applicable in the Court of

Session, Scotland as to the joining of one or more defenders or third parties or conjoining actions were applicable to the Parties to the Dispute and the Related Dispute, and to the adjudicator;

28.57.3 as soon as practicable, The Consultant shall give to The Sub Consultant copies of the Related Contract, the referral notice in the Related Dispute and any other documentation provided to the adjudicator by any party to the Related Dispute.

29. ASSIGNATION, CHANGES IN LEGAL STATUS AND CHANGES IN CONTROL

29.1 Without prejudice to Clause 9 (*Sub-Letting and the Appointment of The Sub Consultant Parties*), The Sub Consultant shall not assign, novate or otherwise transfer the whole or any part of the Agreement without the prior written agreement of The Consultant.

29.2 If the legal status of The Sub Consultant shall change in any way, The Consultant shall be informed by The Sub Consultant in writing, immediately.

29.3 If there is a Change of Control in The Sub Consultant, The Consultant shall be informed immediately by The Sub Consultant in writing.

30. CONFLICT OF INTEREST

30.1 The Sub Consultant shall:

30.1.1 be responsible for ensuring that no conflict of interest arises in respect of its duties under the Agreement;

30.1.2 make all possible enquiries to ensure that there is no conflict of interest prior to its assuming the duties required of it under the terms of the Agreement; and

30.1.3 consult and advise The Consultant if The Sub Consultant considers that a conflict of interest arises or if he considers that a conflict of interest may exist or may arise or may be foreseeable and shall furnish The Consultant with such information as shall enable The Consultant to determine whether or not a conflict of interest has arisen.

31. COPYRIGHT AND INTELLECTUAL PROPERTY

31.1 All The Sub Consultant IPR shall continue to be owned by The Sub Consultant.

31.2 The Sub Consultant hereby:

31.2.1 assigns by way of future assignation to The Consultant with full title guarantee the Project IPR which is created by it and shall procure that Project IPR created by any The Sub Consultant Party is also so assigned, for all of the residue of the term of such rights and all renewals or extensions thereof and together with all accrued causes of action in respect thereof;

31.2.2 grants to The Consultant a non-exclusive perpetual irrevocable royalty free licence to use such The Sub Consultant IPR as may be necessary for The Consultant to use in relation to any projects associated with the Sub Consultancy Services;

31.2.3 grants to The Consultant the right to grant non-exclusive non-assignable sub-licences to third parties for such lengths of time as The Consultant may

reasonably require and otherwise on the same terms as the licence granted to The Consultant pursuant to Clause 31.2.2 above, to use The Sub Consultant IPR referred to in that Clause (other than in relation to Third Party Software which is subject to the provision of Clause 31.9) in so far as is necessary or desirable for such third party to use such The Sub Consultant IPR in relation to any projects associated with the Sub Consultancy Services;

- 31.3 For the avoidance of doubt, the persons to whom The Consultant may grant sub-licences pursuant to Clause 31.2.3 above shall include:
- 31.3.1 any The Consultant Party;
 - 31.3.2 the Operator and any party other than the Operator providing support to **tie** in relation to the Edinburgh Tram Network;
 - 31.3.3 **tie** and any **tie** Party;
 - 31.3.4 bidders for the Infraco Contract and the Tram Supply Contract;
 - 31.3.5 the Tram Supplier;
 - 31.3.6 any party providing maintenance in relation to the Edinburgh Tram Network;
 - 31.3.7 the Joint Revenue Committee;
 - 31.3.8 any party appointed by **tie** to carry out utilities diversions; and
 - 31.3.9 any assignee or transferee under this Agreement.
- 31.4 The Consultant hereby grants to The Sub Consultant a non-exclusive revocable royalty free licence for the duration of this Agreement to use such Project IPR as is owned by it as may be necessary for The Sub Consultant to use solely and exclusively for the purpose of performing the Sub Consultancy Services.
- 31.5 The copyright of this Agreement and any data or software supplied to The Sub Consultant by The Consultant, shall remain solely with The Consultant.
- 31.6 The Sub Consultant shall at any time and from time to time hereafter at the request of The Consultant execute all such documents and do all such further acts as may be required in order to vest the rights referred to in Clause 31.2.1 in The Consultant.
- 31.7 The Sub Consultant waives any and all moral rights held or to be held by The Sub Consultant in the Halcrow Deliverables and the Project IPR and shall procure that all of The Sub Consultant Parties who are authors of the whole or any part of the Sub Consultant Deliverables or the Project IPR waive and abandon in writing all moral rights.
- 31.8 The Sub Consultant agrees that all rights in the Project IPR shall remain the property of The Consultant and The Sub Consultant shall retain no rights in the Project IPR beyond the licence granted in Clause 31.4 above. The Sub Consultant shall be entitled to use such Project IPR only on the terms set out herein and solely for the purpose of the performance of the Sub Consultancy Services. In particular, otherwise as permitted in this Agreement herein, The Sub Consultant shall not disclose, assign, sub-licence, lease, rent or otherwise dispose of the Project IPR.
- 31.9 To the extent that any of the Sub Consultant Deliverables are generated by or maintained on a computer or similar system, The Sub Consultant shall use all

reasonable endeavours to procure for the benefit of The Consultant, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant Third Party Software on the same terms as The Sub Consultant Software is licensed to The Consultant, to enable The Consultant or its nominee to access and otherwise use (subject to the payment by The Consultant of the relevant fee, if any) such Sub Consultant Deliverables in connection with this Agreement. As an alternative, The Sub Consultant may provide such Sub Consultant Deliverables in a format which may be read by software generally available at reasonable prices in the market at the relevant time or in hard copy format.

- 31.10 The Sub Consultant shall ensure the back-up and storage in safe custody of the Sub Consultant Deliverables in accordance with Good Industry Practice. Without prejudice to this obligation, The Sub Consultant shall submit to The Consultant's Representative for approval its proposals for the back-up and storage in safe custody of the Sub Consultant Deliverables and The Consultant shall be entitled to object if the same is not in accordance with Good Industry Practice. The Sub Consultant shall comply, and shall cause all The Sub Consultant Parties to comply, with all such proposals to which The Consultant Representative has given his or her approval. The Sub Consultant may vary its procedures for such back-up and storage subject to submitting its proposals for change to The Consultant Representative, who shall be entitled to object on the basis set out above.
- 31.11 Where a claim or proceeding is made or brought against The Consultant or its permitted licensees which arises out of the infringement of any Intellectual Property Rights in any Sub Consultant Deliverables or other materials provided by The Sub Consultant or any The Sub Consultant Party to The Consultant then The Sub Consultant shall indemnify and keep The Consultant indemnified on demand at all times from and against all Indemnified Liabilities arising in connection with such claim or proceedings except where such claim has arisen from The Consultant's use of the Sub Consultant Deliverables for anything other than the benefit of the Edinburgh Tram Project.
- 31.12 For the purposes of this Clause 31 (*Copyright and Intellectual Property*), "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.
- 31.13 The provisions of this Clause 31 (*Copyright and Intellectual Property*) shall apply during the continuance of this Agreement and after its termination howsoever arising, and immediately following termination howsoever arising, The Sub Consultant shall provide The Consultant with:
- 31.13.1 a copy of the object code for the Third Party Software and The Sub Consultant Software on media that is reasonably acceptable to The Consultant;
 - 31.13.2 a copy of the source code for the Specially Written Software on media that is reasonably acceptable to The Consultant; and
 - 31.13.3 a copy of all documentation, manuals and other technical information relating to the Third Party Software, the Specially Written Software and The Sub Consultant Software that is reasonably required by The Consultant to operate, manage and support the Third Party Software, the Specially Written Software and The Sub Consultant Software.
- 31.14 The Sub Consultant shall not reproduce or publish any document or matter relating to the Sub Consultancy Services or this Agreement, either alone or in association with any other body or person, without the prior written consent of The Consultant.

32. CONFIDENTIAL INFORMATION

- 32.1 Each Party:
- 32.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
 - 32.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.
- 32.2 The Sub Consultant shall take all necessary precautions to ensure that all Confidential Information obtained from The Consultant under or in connection with the Agreement:
- 32.2.1 is given only to such of the staff and professional advisors or The Sub Consultant Parties engaged to advise it in connection with the Agreement as is strictly necessary for the performance by The Sub Consultant of the Sub Consultancy Services and its other obligations under this Agreement and only to the extent necessary for the performance by The Sub Consultant of the Sub Consultancy Services and its other obligations under this Agreement;
 - 32.2.2 is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisors or The Sub Consultant Parties otherwise than for the purposes of the Agreement.
- 32.3 Where it is considered necessary in the opinion of The Consultant, The Sub Consultant shall ensure that staff or such professional advisors or The Sub Consultant Parties sign a confidentiality undertaking before commencing work in connection with the Agreement.
- 32.4 The Sub Consultant shall not use any Confidential Information it receives from The Consultant otherwise than for the purposes of the Agreement.
- 32.5 The provisions of Clauses 32.1 to 32.4 shall not apply to:
- 32.5.1 any information which is or becomes public knowledge (otherwise than by breach of this Clause 33);
 - 32.5.2 any information which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - 32.5.3 any information which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 32.5.4 any information which is independently developed without access to the Confidential Information;
 - 32.5.5 any disclosure pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under FOISA, the Code, or the Environmental Information Regulations pursuant to Clauses 32.7 to 32.11(inclusive);
 - 32.5.6 any disclosure by The Consultant of this Agreement including The Sub Consultant's fees and commercial terms, any information relating to the design of any aspect of the Edinburgh Tram Network and such other

information as may be reasonably required for the purpose of conducting a due diligence exercise with any bidders for the Infraco Contract and the Tram Supply Contract and their advisers;

32.5.7 any disclosure by **tie** or the Client of this Agreement and any related information to the TSS Provider;

32.5.8 any information which is required to be disclosed to that Party's insurers and/or legal advisers subject to Clauses 33.2 and 33.3;

32.5.9 any registration of information in respect of the Consents and any property registration required;

32.5.10 any disclosure of information by The Consultant or **tie** to Transport Edinburgh Limited, CEC, Partnerships UK Limited, any department, office or agency of the Scottish Executive or the UK government;

32.5.11 any disclosure for the purpose of:

32.5.11.1 the examination and certification of **tie**'s, The Consultant's or The Sub Consultant's accounts; or

32.5.11.2 any examination (pursuant to applicable Law) of the economy, efficiency and effectiveness with which **tie** has used their resources or funding made available to them including any examination pursuant to the Local Government (Scotland) Act 1973 as amended by the Local Government in Scotland Act 2003 of whether the **tie** has secured Best Value in the performance of its functions

32.5.12 any disclosure of Confidential Information obtained from The Sub Consultant:

32.5.12.1 to any government department or any other local government authority or public authority equivalent in status to **tie**. All government departments or any other local government authority or public authority equivalent in status to **tie** receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or any other local government authority or public authority equivalent in status to **tie** on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any other local government authority or public authority equivalent in status to **tie**; or

32.5.12.2 to any person engaged in providing any Sub Consultancy Services to The Consultant for any purpose relating to or ancillary to the Agreement;

provided that in disclosing information under this Clause 32 (*Confidential Information*) The Consultant discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

32.6 Nothing in this Clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

- 32.7 In the event that The Sub Consultant fails to comply with this Clause 32 (*Confidential Information*), The Consultant reserves the right to terminate the Agreement by notice in writing in accordance with Clause 19.1.
- 32.8 The Sub Consultant acknowledges that **tie** is subject to the requirements of FOISA and the Environmental Information Regulations and shall assist and cooperate with **tie** (at The Sub Consultant's expense) to enable **tie** to comply with these Information disclosure requirements. **tie** agrees that it shall comply with the terms of the Code in respect of the discharge of its obligations under FOISA.
- 32.9 The Sub Consultant shall and shall procure that The Sub Consultant Parties shall:
- 32.9.1 transfer the Request for Information to **tie** as soon as practicable after receipt and in any event within two Business Days of receiving a Request for Information from The Consultant;
- 32.9.2 provide **tie** with a copy of all Information in its possession or power in the form that **tie** requires within five Business Days (or such other period as **tie** may specify) of **tie** requesting that Information; and
- 32.9.3 provide all necessary assistance as reasonably requested by **tie** to enable **tie** to respond to a Request for Information within the time for compliance set out in section 10 of FOISA or regulation 5 of the Environmental Information Regulations.
- 32.10 **tie** shall be responsible for determining at its absolute discretion whether the Confidential Information and/or any other Information:
- 32.10.1 is exempt from disclosure in accordance with the provisions of the Code, FOISA or the Environmental Information Regulations;
- 32.10.2 is to be disclosed in response to a Request for Information, and
- 32.11 in no event shall The Sub Consultant respond directly to a Request for Information unless expressly authorised to do so by **tie**.
- 32.12 The Sub Consultant acknowledges that **tie** may be obliged, pursuant to the Code, FOISA, or the Environmental Information Regulations to disclose Information:
- 32.12.1 without consulting with The Sub Consultant, or
- 32.12.2 following consultation with The Sub Consultant and having taken its views into account.
- 32.13 The Sub Consultant shall ensure that all information and Deliverables produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit The Consultant and **tie** to inspect such records as requested from time to time.
- 32.14 The Sub Consultant acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that **tie** may nevertheless be obliged to disclose Confidential Information in accordance with Clause 32.9.
- 32.15 Any public relations material, press releases, public presentations or conference engagements in relation to this Agreement planned by The Sub Consultant requires The Consultant's and **tie**'s prior written approval.

33. WAIVER

- 33.1 Save where expressly stated, no failure or delay by The Consultant to exercise any right or remedy in connection with this Agreement will operate as a waiver of it or of any other right or remedy nor will any single or partial exercise preclude any further exercise of the same, or of some other right or remedy. A waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach.
- 33.2 The Sub Consultant agrees that no waiver shall occur or be deemed to have occurred unless or until a clear and unequivocal express waiver of a clearly identified default is contained in a written notice by The Consultant to The Sub Consultant expressly for the purpose of effecting such waiver.
- 33.3 The Parties' rights and remedies under this Agreement are, except where provided otherwise in this Agreement, independent, cumulative and do not operate to exclude one another or any rights or remedies provided by law.

34. ENTIRE AGREEMENT

- 34.1 Except where expressly provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.
- 34.2 Each of the Parties confirms to the other that it has neither been induced to enter into this Agreement in reliance on, nor has it made, any representation or warranty except those contained or referred to in this Agreement.
- 34.3 Any representations or warranties other than those contained or referred to in this Agreement are superseded and extinguished by this Agreement.
- 34.4 Each Party irrevocably and unconditionally waives all rights and remedies which it might otherwise have had in relation to any representations or warranties other than those contained or referred to in this Agreement.

35. NOTICES

- 35.1 Any notice or notification required or authorised to be given under this Agreement by one Party to the other shall be:
- 35.1.1 in writing;
- 35.1.2 sent by one of the following methods:
- (i) pre-paid registered or recorded delivery post or facsimile transmission addressed to the Party to which it is given at:
 - (a) in the case of notices given to The Consultant: For the attention of the Company Secretary, Parsons Brinckerhoff Ltd; Amber Court, William Armstrong Drive, Newcastle upon Tyne, NE4 7YQ, fax number + 44 (0)191 226 2104
 - (b) in the case of notices given to The Sub Consultant: For the attention of the Company Secretary, Halcrow Group Ltd, 44 Brook Green, Hammersmith, London, W6 7BY, fax number +44 (0)207 603 0095 (ii) facsimile transmission addressed to The Consultant's Representative or The Sub Consultant's Representative (as appropriate) at a facsimile

number notified to the giving Party by the receiving Party for the service of notices under this Agreement from time to time; or

- (iii) personal delivery into the hands of:
 - (a) in the case of notices given to The Consultant, The Consultant's Representative; or
 - (b) in the case of notices given to The Sub Consultant, The Sub Consultant's Representative.
- (iv) e-mail to:
 - (a) in the case of notices given to The Consultant, The Consultant's Representative; or
 - (b) in the case of notices given to The Sub Consultant, The Sub Consultant's Representative.

35.1.3 be deemed duly served:

- (i) if sent by pre-paid registered or recorded delivery post, 2 clear Business Days after posting; or
- (ii) if sent via facsimile transmission or personal delivery, on the day of issue of the relevant fax confirmation receipt or such personal delivery (as appropriate), unless that day is not a Business Day in which case it shall be deemed duly served on the next Business Day thereafter; or
- (iii) if sent via e-mail, the date of written acknowledgement by the Party to whom the notice was served.

36. CONSENT AND APPROVAL

36.1 The giving of any consent or approval by or on behalf of The Consultant shall not in any way relieve The Sub Consultant of any of its obligations under the Agreement or of its duty to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the consent or approval.

36.2 Failure by The Consultant to disapprove or object to any matter or thing shall not prejudice its power subsequently to take action under the Agreement in connection therewith.

37. DISCRIMINATION

38.1 The Sub Consultant shall not (and The Sub Consultant shall insert a clause to this effect in each contract with any The Sub Consultant Party) unlawfully discriminate within the meaning and scope of the provisions of the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003.

38. FURTHER ASSURANCE

39.1 Each Party shall at the reasonable request and cost of the other (save where it is expressly provided that the cost of such act or execution shall be for that party's

account) do any act or execute any document that may be necessary to give full effect to this Agreement.

39. APPLICABLE LAW

39.1 This Agreement, any document completed or to be completed in accordance with its provisions and any matter arising from it or any such document shall be governed by and construed in accordance with Scots law.

39.2 Subject to Clause 28 (*Dispute Resolution Procedure*), the Parties hereby irrevocably submit to the exclusive jurisdiction of the Court of Session in relation to this Agreement, any such document and any such matter.

40. VARIATIONS TO BE IN WRITING

No variation, or alteration of any of the provisions of this Agreement shall be effective unless it is in writing and signed by both Parties.

41. NO PARTNERSHIP OR AGENCY

41.1 Nothing in this Agreement shall be construed as creating a partnership between The Consultant and The Sub Consultant.

41.2 The Sub Consultant shall not (and shall procure that The Sub Consultant Parties shall not) act or purport to act as agent for The Consultant in relation to any matter unless specifically authorised in writing under this Agreement by The Consultant. The Sub Consultant shall not be entitled to bind The Consultant in any way or to create any liability or cause of action against The Consultant and shall not hold itself out (and shall procure that no The Sub Consultant Party shall hold itself out) as having any such authority or power

42. INVALID TERMS

If any term of this Agreement shall be held to any extent to be invalid, unlawful or unenforceable:

42.1 that term shall to that extent be deemed not to form part of this Agreement; and

42.2 the validity and enforceability of the remainder of this Agreement shall not be affected.

43. THIRD PARTY RIGHTS

Subject to any other express provision of this Agreement, a person who is not party to this Agreement shall have no right to enforce any term of this Agreement.

IN WITNESS WHEREOF these presents on this and the preceding [♦] pages together with Schedules One to Seventeen (inclusive) which are annexed hereto are executed as follows:

EXECUTED for and on behalf of
PARSONS BRINCKERHOFF LTD at

on by:

Authorised Signatory

Full Name

Witness Signature

.....

Full Name

.....

Address

.....

.....

EXECUTED for and on behalf of
HALCROW GROUP LTD at

on 2006 by:

Director/Authorised Signatory

Full Name

Witness Signature

Full Name

Address

.....

This is Schedule One referred to in the foregoing Agreement between The Consultant and The Sub Consultant

SCHEDULE ONE

SCOPE OF SUB CONSULTANCY SERVICES

[Insert]

Sub Consultancy Services

This is Schedule Two referred to in the foregoing Agreement between The Consultant and The Sub Consultant

SCHEDULE TWO

KEY PERSONNEL

Deputy Project Manager – David Simmons BSc CEng MICE

Approvals Manager – Rick Finc

**This is Schedule Three referred to in the foregoing Agreement between The Consultant and
The Sub Consultant**

SCHEDULE THREE

PRICING SCHEDULES

[TO BE INSERTED]

**This is Schedule Four referred to in the foregoing Agreement between The Consultant and the
Halcrow Group Ltd**

SCHEDULE FOUR

PROGRAMME

The Consultant and the Halcrow Group Ltd shall agree the Schedule of Works to be aligned to the Programme indicated in Schedule 4 of the Main Agreement.

**This is Schedule Five referred to in the foregoing Agreement between the Client and the SDS
Provider**

SCHEDULE FIVE

COMMERCIALY SENSITIVE INFORMATION

This is Schedule Six referred to in the foregoing Agreement between The Consultant and The Sub Consultant

SCHEDULE SIX

REQUIRED INSURANCES

Part 1

Required insurances

1. PROFESSIONAL INDEMNITY INSURANCE

- Insured Party:** The Sub Consultant
- Coverage:** The legal liability of The Sub Consultant as a result of any negligent act, error, or omission in the performance of its professional activities and duties in connection with the Sub Consultancy Services.
- Limit of Indemnity:** Minimum £10,000,000 on an each and every claim basis and [£◆] on an aggregate basis in respect of pollution and contamination claims and date recognition claims. There is no requirement to maintain cover in respect of asbestos or terrorism related claims.
- Period of Insurance:** From the Effective Date for 12 months¹ and thereafter each further 12 month period until the earlier of 12 years from the completion by The Sub Consultant of the Sub Consultancy Services and its obligations under this Agreement or 12 years from the Termination Date, provided always that such insurance is available at commercially reasonable rates.

2. THIRD PARTY LIABILITY INSURANCE

- Insured Party:** The Sub Consultant
- Coverage:** The legal liability of The Sub Consultant for death, injury, illness, disease contracted by third party persons or loss of or damage to property arising out of or in connection with the Sub Consultancy Services.
- Limit of Indemnity:** Unlimited as to the number of occurrences in each 12 month period in respect of death or injury to persons. For all other occurrences, a minimum of £5,000,000 any one occurrence (unlimited as to number of occurrences in the Period of Insurance stated below) in respect of third party liability and £5,000,000 any one occurrence and in the

¹ Will be amended to reflect the successful Tenderer's policy term.

aggregate in any one 12 month period of insurance in respect of products liability and in annual aggregate in respect of pollution and contamination claims.

Period of Insurance: From the Effective Date for 12 months² and thereafter each further 12 month period until the earlier of Termination Date or the completion by The Sub Consultant of the Sub Consultancy Services and its obligations under this Agreement.

3. EMPLOYERS LIABILITY INSURANCE

Insured Party: The Sub Consultant

Coverage: The legal liability of The Sub Consultant for death, injury, illness, disease contracted by employees of The Sub Consultant caused by or arising out of or in connection with the Sub Consultancy Services.

Limit of Liability Minimum limit of indemnity of £10,000,000 any one occurrence or series of occurrences arising from one original cause or event.

Period of Insurance: From the Effective Date for 12 months³ and thereafter each further twelve month period until the earlier of the completion by The Sub Consultant of the Sub Consultancy Services and its obligations under this Agreement or the Termination Date.

² Will be amended to reflect the successful Tenderer's policy term.

³ Will be amended to reflect the successful Tenderer's policy term.

**This is Schedule Seven referred to in the foregoing Agreement
between the Client and the SDS Provider**

SCHEDULE SEVEN

**COLLATERAL WARRANTIES IN FAVOUR OF TIE, CITY OF EDINBURGH COUNCIL, INFRACO
AND FUNDER**

The Consultant and the Halcrow Group Ltd shall agree a suitable form of Collateral Warranty.

SCHEDULE EIGHT

NOT USED

**This is Schedule Nine referred to in the foregoing Agreement
between The Consultant and The Sub Consultant**

SCHEDULE NINE

REVIEW PROCEDURE

1. Introduction

- 1.1 Except where otherwise agreed in writing, the provisions of this Schedule 9 (*Review Procedure*) shall apply whenever any Halcrow Deliverable or course of action is required to be reviewed, approved, agreed, consented to or otherwise processed in accordance with the Agreement.
- 1.2 Each submission by the SDS Provider to the Client's Representative under the Review Procedure shall be accompanied by five copies of the proposed Deliverable (in appropriate agreed format) to be reviewed or a statement of the proposed course of action (the entire contents of a submission being referred to as a "Submitted Item"). In relation to each Submitted Item, the provisions of this Schedule 9 (*Review Procedure*) shall apply.
- 1.3 Within 20 Business Days of the date of receipt of a submission (or re-submission, as the case may be) of the Submitted Item to the Client's Representative (or such other period as the Parties may agree), the Client's Representative shall return one copy of the relevant Submitted Item to the SDS Provider endorsed (subject to and in accordance with paragraph 3 (*Grounds of Objection*)) "Level A - no objection", "Level B - proceed subject to comments" or "Level C - resubmit".
- 1.4 If the Client's Representative fails to return a copy of any Submitted Item within 20 Business Days (or within such other period as the Parties may agree in writing) of the date of its submission to the Client's Representative, then the SDS Provider shall re-submit the submitted item. If the Client's Representative fails to return a copy of any Submitted Item within seven days of any re-submission, then the Client's Representative shall be deemed to have returned the Submitted Item to the SDS Provider endorsed "Level A - no objection".
- 1.5 If the Client's Representative makes an objection to any Submitted Item in accordance with paragraph 3 (*Grounds of Objection*), the Client's Representative shall state the ground upon which such objection is based and the evidence or other information necessary to substantiate that ground.
- 1.6 For the avoidance of doubt, the Client's Representative shall be entitled to make such comments on any Submitted Item on any grounds as he sees fit but, to the extent that the Client's Representative comments on a Submitted Item other than on the grounds specified in paragraph 3 (*Grounds of Objection*), or fails to comply with the provisions of this paragraph 1, the SDS Provider may, at its discretion request written clarification of the basis for such comments and, if clarification is not received within 10 Business Days of such request by the SDS Provider refer the matter for determination in accordance with the Dispute Resolution Procedure.
- 1.7 Where any information that has been provided is updated, the new issues shall be provided promptly to the Client as soon as reasonably possible.
- 1.8 The Client's Representative shall be entitled to instruct the SDS Provider that a defined class of Deliverable or course of action may be submitted "for information" and not for review in accordance with this Schedule 9 (*Review Procedure*).

- 1.9 The SDS Provider shall ensure that each Submitted Item shall contain sufficient detail and shall be accompanied by sufficient information to enable the Client's Representative to assess the Submitted Item in accordance with Schedule 9 (*Review Procedure*).
- 1.10 Where a revised Submitted Item is submitted, the SDS Provider shall also ensure that such revision clearly identifies what revision to the Deliverable was made.

2. Further Information

- 2.1 The SDS Provider shall submit any further or other information, data and documents that the Client's Representative reasonably requires to act in accordance with this Schedule 9 (*Review Procedure*). If the SDS Provider does not submit any such information, data and documents, the Client's Representative shall be entitled to object to the Submitted Item:
- 2.1.1 on the basis of the information, data and documents which have been provided; or
- 2.1.2 on the grounds that insufficient information, data and documents have been provided to enable the Client's Representative to act in accordance with this Schedule 9 (*Review Procedure*).

3. Grounds of Objection

- 3.1 The Client's Representative may object to any Submitted Item on the grounds set out in paragraph 2 (*Further Information*) above but otherwise may make objections in relation to a Submitted Item if, on the balance of probabilities, implementation of that Submitted Item:
- 3.1.1 would not be in accordance with this Agreement; and/or
- 3.1.2 would result in an increase to the Client's liabilities or potential or contingent liabilities under this Agreement; and/or
- 3.1.3 would be inefficient as to expenditure of resource/costs; and/or
- 3.1.4 would lead to a health and safety risk to any person or property; and/or
- 3.1.5 would lead to a breach of any Law or the terms of any Consent; and/or
- 3.1.6 would necessitate the obtaining of a new Law or the obtaining of a variation to an existing Law; and/or
- 3.1.7 would not be in accordance with any relevant environmental requirements; and/or
- 3.1.8 would not be in accordance with the Functional Requirements Specifications or the Technical Specifications; and/or
- 3.1.9 would adversely impact on the flexibility or ease of operation, run time, reliability, operating maintenance costs or revenues of the Edinburgh Tram Network; and/or
- 3.1.10 would materially adversely affect The Sub Consultant's ability to perform its obligations under this Agreement; and/or

- 3.1.11 would materially adversely affect The Consultant's ability to perform its obligations or enforce its rights under this Agreement; and/or
- 3.1.12 is not in accordance with The Sub Consultant's quality plans; and/or
- 3.1.13 would not be in accordance with Good Industry Practice; and/or
- 3.1.14 would prevent efficient procurement, construction, completion and/or commissioning of or under the Infraco Contract; and/or
- 3.1.15 prevent Service Commencement being achieved by the Planned Service Commencement Date.

4. Effect of Review

- 4.1 Any Submitted Item which is returned or deemed pursuant to paragraph 1.4 to have been returned by the Client's Representative endorsed "Level A - no objection" shall be complied with and implemented by the SDS Provider subject to Clauses 7.2 and 7.3 of the Agreement.
- 4.2 If the Client's Representative returns the Submitted Item endorsed other than "Level A - no objection", the SDS Provider shall:
 - 4.2.1 where the Client's Representative has endorsed the Submitted Item "Level B - proceed subject to comments", proceed with the performance of the Sub Consultancy Services (subject to Clauses 7.2 and 7.3 of the Agreement) but acknowledge and take into account the Client's Representative's comments;
 - 4.2.2 where the Client's Representative has endorsed the Submitted Item "Level C - resubmit", not act upon the Submitted Item, amend the Submitted Item to respond to the Client's Representative's objections and requirements, and re-submit the same to the Client's Representative in accordance with paragraph 4.3 unless The Sub Consultant disputes that any such objection or proposed requirement is on grounds permitted by this Agreement, in which case The Sub Consultant or The Consultant's Representative may refer the matter for determination in accordance with the Dispute Resolution Procedure and The Sub Consultant shall not act on the Submitted Item until such matter is so determined or otherwise agreed provided that any referral to the Dispute Resolution Procedure is at the risk of The Sub Consultant.
- 4.3 Where the Submitted Item has been endorsed *Level C*, The Sub Consultant shall within 10 Business Days of receiving the returned Submitted Item, resubmit the Submitted Item as amended to The Consultant's Representative and the provisions of paragraphs 1.2 to 4 of this Schedule 9 (*Review Procedure*) shall apply (*mutatis mutandis*) to such re-submission.
- 4.4 The return or deemed return of any Submitted Item endorsed "Level A - no objection" or otherwise endorsed in accordance with paragraph 4.2.1 (*Level B - proceed subject to comments*) shall mean that the relevant Submitted Item may be used or implemented (subject to any comments made in accordance with paragraph 4.2.1) for the purposes for which it is intended. However, the return or deemed return of any Submitted Item howsoever endorsed shall not:
 - 4.4.1 relieve The Sub Consultant of its obligations under this Agreement; nor
 - 4.4.2 constitute an acknowledgement, admission or acceptance by The Consultant that The Sub Consultant has complied with such obligations.

5. Disclaimer

- 5.1 No review, objection, comment or silence by The Consultant shall operate to (i) exclude or limit The Sub Consultant's obligations or liabilities under this Agreement (or The Consultant's rights under this Agreement) or (ii) fix The Consultant with any express or implied obligations, duties or liabilities with respect to the Submitted Item.
- 5.2 For the avoidance of doubt, this information is supplementary to information required to be produced by The Sub Consultant in order to satisfy the approval requirements of and Consents from other third parties and Approval Bodies. These include those required for:
- 5.2.1 local planning authorities;
 - 5.2.2 local roads authorities;
 - 5.2.3 HMRI;
 - 5.2.4 Network Rail;
 - 5.2.5 statutory undertakers; and
 - 5.2.6 the Scottish Executive.
- 5.3 The Sub Consultant shall promptly provide copies of all such submissions to The Consultant together with the responses to them as a matter of routine.

6. Documentation Format and Management

- 6.1 The Sub Consultant shall issue five copies (in appropriate agreed format) of all Submitted Items to The Consultant and compile and maintain a register of the date and contents of the submission for each Submitted Items.
- 6.2 The Sub Consultant shall compile and maintain a register of the date of receipt and content of all Submitted Items that are returned or deemed to be returned by The Consultant's Representative.
- 6.3 All drawings shall be presented as A3 sized paper copies and drawings shall be prepared at their original size in a manner that allows them to be readily legible when reduced to A3 size. Original drawings shall not be greater than A0 in size.

7. Variations

- 7.1 No review, objection or comment or any failure to make objection or comment under this Schedule 9 (*Review Procedure*) by the Client shall constitute a Client Change
- 7.2 If, having received comments from The Consultant's Representative, The Sub Consultant considers that compliance with those comments would amount to a The Consultant Change, The Sub Consultant shall within seven days of any comments being received, before complying with the comments, notify The Consultant of the same and, if it is agreed by the parties or determined pursuant to the Dispute Resolution Procedure that a The Consultant Change would arise if the comments were complied with, The Consultant may proceed with the matter in accordance with Clause 15 (*Changes*).
- 7.3 Any failure by The Sub Consultant to notify The Consultant within seven days of comments being received that it considers compliance with such comments of The Consultant's Representative would amount to a The Consultant Change shall

constitute an irrevocable acceptance by The Sub Consultant that any compliance with The Consultant's comments shall be without cost to The Consultant and without any entitlement to any extension of time or other relief.

- 7.4 No alteration or modification to the scope, quality, quantity or nature of the Sub Consultancy Services arising from the development of the detailed Design or from the co-ordination or integration of the Design shall be construed or regarded as a The Consultant Change.

This is Schedule Ten referred to in the foregoing Agreement between The Consultant
and The Sub ConsultantThe Sub Consultant

SCHEDULE TEN

PANELS FOR THE DISPUTE RESOLUTION PROCEDURE

CONSTRUCTION / OPERATIONAL

Alan Wilson
8 Somersby Avenue
Chesterfield
DERBYSHIRE
S42 7LY

Peter Chapman
Somersby House
Stokesheath Road
OXSHOTT
SURREY KT22 0PS

Tony Canham
The Old School
School Lane
Thorpe St Andrew
NORWICH
NR7 0PE

Guy Cottam
2 Old Track
Upper Limpley Stoke
BATH
BA3 WY

FINANCIAL

Nigel Lowe
Nigel Lowe Consulting Limited
27 Old Gloucester Street
LONDON
WC1N 3XX

John Hunter
Hunter Consulting
Commercial Centre
Stirling Enterprise Park
STIRLING
FK7 7BF

Bryan Porter
1 Waterfoot Road
Newton Mearns
GLASGOW

G77 5RU

Eric Mouzer
111 Hagley Road
Edgebaston
BIRMINGHAM
B11 8LB

LEGAL

Gordon Reid, QC
Blebo House
By St Andrews
FIFE
KY15 5TZ

Robert Howie, QC
41A Fountainhall Road
EDINBURGH
EH9 2LN

Lord Dervaird (Prof. John Murray QC)
4 Moray Place
EDINBURGH
EH3 6TS

Gordon Coutts, QC
6 Heriot Row
EDINBURGH
EH3 6HU

Angus Glennie, QC
Threeburnford
Oxton
Lauder
BERWICKSHIRE
TD2 6PU

**This is the Schedule Eleven referred to in the foregoing Agreement between The Consultant
and the Sub Consultant**

SCHEDULE ELEVEN

**REQUIREMENTS SPECIFICATION FOR OVERALL SYSTEM AND OPERATIONAL
PERFORMANCE REQUIREMENTS**

**The Requirements Specification for Overall System and Operational Performance
Requirements as included in Schedule 11 of the Main Agreement forms part of this Agreement.
The Consultant and the Sub Consultant shall agree the detailed input from the Sub Consultant.**

This is the Schedule Twelve referred to in the foregoing Agreement between The Consultant and The Sub Consultant

SCHEDULE TWELVE

REQUIREMENTS SPECIFICATIONS FOR CIVIL ENGINEERING WORKS

The Requirements Specification for Civil Engineering Works as included in Schedule 12 of the Main Agreement forms part of this Agreement. The Consultant and the Sub Consultant shall agree the detailed input from the Sub Consultant.

This is the Schedule Thirteen referred to in the foregoing Agreement between The Consultant and the Sub Consultant

SCHEDULE THIRTEEN

REQUIREMENTS SPECIFICATION FOR SUPERVISION, COMMAND AND CONTROL SUITE OF SYSTEMS

The Requirements Specification for Supervision, Command and Control Suite of Systems as included in Schedule 13 of the Main Agreement forms part of this Agreement. The Consultant and the Sub Consultant shall agree the detailed input from the Sub Consultant .

This is the Schedule Fourteen referred to in the foregoing Agreement between The Consultant and the Sub Consultant

SCHEDULE FOURTEEN

REQUIREMENTS SPECIFICATION FOR ELECTRIFICATION AND POWER

The Requirements Specification for Electrifications and Power as included in Schedule 14 of the Main Agreement forms part of this Agreement. The Consultant and the Sub Consultant shall agree the detailed input from the Sub Consultant .

This is the Schedule Fifteen referred to in the foregoing Agreement between The Consultant and the Sub Consultant

SCHEDULE FIFTEEN

REQUIREMENTS SPECIFICATION FOR TRAM VEHICLE

The Requirements Specification for Tram Vehicle as included in Schedule 15 of the Main Agreement forms part of this Agreement. The Consultant and the Sub Consultant shall agree the detailed input from the Sub Consultant.

This is the Schedule Sixteen referred to in the foregoing Agreement between The Consultant and the Sub Consultant

SCHEDULE SIXTEEN

SYSTEM-WIDE NON-FUNCTIONAL REQUIREMENTS

The Requirements Specification for System-Wide Non-Functional Requirements as included in Schedule 16 of the Main Agreement forms part of this Agreement. The Consultant and the Sub Consultant shall agree the detailed input from the Sub Consultant.

**This is the Schedule Seventeen referred to in the foregoing Agreement between the Consultant
and the Sub Consultant**

SCHEDULE SEVENTEEN

NOT USED