

PARSONS BRINCKERHOFF LIMITED

SDS CONTRACT

NOVATION PLANNING

Date 05 January 2008

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Executive Summary

The purpose of this document is to review the provisions for novation of the SDS Contract in the light of the current status of that Contract. The document considers each of the clauses pertaining to novation and considers how the clauses may be applied in the current circumstances

PB notes that the intent of the business case was that the detailed design delivered from the SDS contract would be complete prior to award of the Infracore Contract.

PB notes that the detailed design is not yet complete.

PB notes that the MUDFA scope is not complete.

PB notes that the Draft Novation Agreement included as Schedule 8 to the SDS contract provides for the release by **tie** of SDS, and for release by SDS of **tie** from the performance....

PB notes the provisions of the Draft Novation Agreement for costs.....

PB notes that **tie** has yet to advise on the status of the Employer's Requirements; any reductions in scope to be made prior to novation; and any changes to scope to be made prior to novation

Payments

Conclusions – risks to **tie** and PB

Recommendations – delay novation or modify Draft Agreement

Impact of claim status to be added throughout

What happens if we refuse to sign?

1 Principles of Novation of the SDS Contract

1.1 Requirements of the SDS Contract

With reference to Clause 29 of the SDS Contract:-

- The SDS Contract is to be novated to the Infraco at the option of **tie**
- The scope of the SDS Contract may be reduced by **tie** prior to novation
- Changes to scope may be instructed by **tie** prior to novation as a result of changes proposed by the Bidders.

With reference to the Draft Novation Agreement included as Schedule 8 to the Contract, this Agreement sets out:-

- The release by **tie** of SDS from the further performance of the SDS Provider's duties and obligations under the SDS Agreement
- The release by SDS of **tie** from any and all duties, obligations and liabilities owed to the SDS Provider under the SDS Agreement.
- Acceptance of liability by the SDS Provider to the Infraco
- Provision for the amendment of the SDS Agreement as defined by Appendix 1 to the Draft Novation Agreement. Clause 3 of Appendix 1 sets out provision for amendments to Clause 28 of the Agreement concerned with Duty of Care, Standards and the Services to be Provided
- Acknowledgement by the SDS Provider that all fees and expenses properly due to the SDS Provider under the SDS Agreement up to the date of the Agreement have been paid by **tie**

With reference to Clause 29.6 of the SDS Contract:-

- On the date of execution of the Novation Agreement, the SDS Provider shall execute a collateral warranty agreement in favour of **tie** in the form contained in Schedule 7 (Collateral Warranty Agreement) and provide the same as executed to **tie** on that date.

1.2 SDS Contract Status at Novation – Planned vs Actual

The current status of the SDS Contract is different now from that which was envisaged at novation both when the business case was drawn up and when the SDS Contract was awarded.

For the ETN Scope key variances can be summarised as follows:-

- With reference to the master programme dated xx/xx/xxxx, the scope of work to deliver detailed design packages should have been complete prior to award of the Infraco Contract. This scope of work is not complete.
- Completion of the detailed design has been delayed in the past due to delays in the resolution of “Critical Issues”. One Issue remains outstanding:- the delay to resolution of the third party agreement between CEC and the SRU. The absence of this agreement will impact the programme to completion of the SDS ETN Scope.

For the MUDFA Scope key variances can be summarised as follows:-

- With reference to the master programme dated xx/xx/xxxx the scope of work to deliver MUDFA Issue-for-construction, (IFC), drawings should have been complete prior award of the Infraco Contract. This scope of work is not complete.

1.3 **tie** Actions Prior to Novation

Partly as a result of the detailed negotiations with the Bidders **tie** has introduced changes to the Employer’s Requirements. These changes are in addition to earlier changes which modified the Requirements from the version produced by SDS and which has formed the reference for the completion of the preliminary and detailed designs.

Figure 1 shows how the Detailed Design and the Employer’s Requirements have evolved. Figure 1 also shows the relationship between the Employer’s Requirements and the BBS Offer. Currently the Employer’s Requirements, the Detailed Design, and the BBS Offer are not aligned. It is assumed that **tie** will have completed the review of the Employer’s Requirements prior to novation and will be in a position to advise SDS of any changes which may be required to the detailed design at that point.

It is a pre-requisite for novation that the Design (including any change instructions) conforms with the Requirements. Reference Clause 4.8 of the SDS Contract:-

- 4.8 If it should be found that the Deliverables do not fulfil the requirements of this Agreement or the needs of any Approval Bodies, the SDS Provider shall at its own expense amend the Deliverable. Such amendment shall be made in accordance with Schedule 9 (Review Procedure) and such amendment and rectification shall ensure that the Deliverable shall satisfy the requirements of this Agreement and any Approval Bodies.

In the context of this Clause it is clear that in addition to ensuring that Changes are instructed in order to achieve alignment between the Requirements and the Design **tie** must also ensure that the needs of the Approval Bodies will not be adversely affected by any changes instructed.

Currently the SDS Detailed Design conforms to Version 1.x of the Employer's Requirements.

1.4 Outstanding Payments Against SDS Claims

This position not envisaged at Contract Award.

1.5 *tie* Novation Plan dated 06 December 2007

PB notes the content of the "Novation Plan" provided in draft format by *tie*. Appendix 1 contains a set of comments on the content of the document.

2 Provision for Novation

2.1 Contract Reference

At Clause 29.1 the SDS Contract defines the requirement for novation:-

29.1 **tie** intends to enter into an infrastructure supply contract with the Infraco. It is a material condition of this Agreement that the SDS Provider shall, if and at the time requested by **tie**, enter into and execute a Novation Agreement with **tie** and the Infraco in the form set out in Schedule 8 (Novation Agreement).

2.2 Impact of Differences between Planned and Actual Contract Status

2.2.1 Incomplete ETN Detailed Design Scope

Clause 29 can be applied irrespective of the incomplete status of the detailed design scope. However, Clause 29 leaves open the question of when the contract should be novated. If the option is taken up by **tie** novation could occur at any time, with the two obvious options from the ETN perspective to novate (i) at the same time as the Infraco contract is awarded and (ii) at the point where the design is complete.

In PB's opinion both options should be considered since there may be risk to **tie** from invoking novation before all approvals and consents have been achieved by SDS. In PB's experience securing approvals and consents has been facilitated by the relationships which have been developed to date and it is possible that these will change at novation. The potential risk of disruption to programme is considered significant.

2.2.2 Incomplete MUDFA IFC Scope

Clause 29 can be applied irrespective of the incomplete status of the MUDFA IFC scope. However, Clause 29 leaves open the question of when the contract should be novated. If the option is taken up by **tie** novation could occur at any time, with the two obvious options from the MUDFA perspective to novate (i) at the same time as the Infraco contract is awarded and (ii) at the point where the IFC design is complete.

Since the MUDFA scope is not novated and in light of the provisions contained in the Draft Novation Agreement for release by **tie** of SDS from the further performance of the SDS Provider's duties and obligations under the SDS Agreement, (ref section 5), **tie** would have to contract the completion of the MUDFA IFC scope separately if novation were to be exercised at Infraco Contract Award. Given the detailed knowledge of the SDS team of the MUDFA requirements the option of delaying novation to allow SDS to complete this scope should be considered.

2.3 Action

Tie to confirm if the option to novate the SDS Contract is to be taken up and, if so, the intended timing.

3 Provision for Reduction in Scope

3.1 Contract Reference

At Clause 29.2 the SDS Contract provides for the scope to be reduced by **tie** prior to novation:-

29.2 Notwithstanding the provisions of Clause 15 (Changes), **tie** may in its absolute discretion require the reduction of the scope of the Services prior to the execution of the Novation Agreement by the SDS Provider.

Clause 29.2 continues to define the process for valuation of WIP associated with any reduction in scope.

Clause 29.3 defines the process for invoicing payment for the WIP associated with any reduction in scope:-

29.3 If the scope of the Services is reduced by **tie**, then within 30 Business Days of the date of execution of the Novation Agreement by the SDS Provider, the SDS Provider shall submit a valid VAT invoice to **tie** for the work in progress certified by **tie** in respect of the services which have been removed from the Services to be performed by the SDS Provider.¹

Clause 29.4 defines the process for payment against any invoice raised under the provisions of Clause 29.3:-

29.4 Payment will become due to the SDS Provider on the date of receipt of the valid VAT invoice by **tie** and the final date for payment by **tie** of such valid VAT invoice shall be 30 days from the date of receipt of such valid VAT invoice.

3.2 Impact of Differences between Planned and Actual Contract Status

3.2.1 Incomplete ETN Detailed Design Scope

There is no impact on the provision for reduction in scope.

3.2.2 Incomplete MUDFA IFC Scope

Since the MUDFA scope is not to be novated, if **tie** chooses to exercise the option for novation before the MUDFA scope is complete the SDS Contract scope will have to be reduced by the outstanding MUDFA scope.

¹ Note that this is the only instance requiring a valuation of WIP prior to novation. The intent of the contract is that all other applications for payment continue as previously with the change of client being the sole difference post-novation

3.3 Action

Tie to confirm if any reductions in scope are to be instructed.

4 Provision for Changes to Scope

4.1 Contract Reference

At Clause 29.5 the SDS Contract provides for the scope to be changed as a result of notification by **tie** of any changes which arise due to BBS:-

29.5 Within 10 days of any request from **tie**, the SDS Provider shall provide an Estimate of any changes proposed by the bidders for the Infraco Contract to the scope of the Services or the Deliverables, which have been notified by **tie** to the SDS Provider.

4.2 Impact of Differences between Planned and Actual Contract Status

4.2.1 Incomplete ETN Detailed Design Scope

There is no impact on the provision for changes to scope.

4.2.2 Incomplete MUDFA IFC Scope

Since the MUDFA scope is not to be novated there is no impact on the provision for changes to scope.

4.3 Action

Tie to instruct any changes to scope.

Note that, with reference to the Draft Final Business Case, PB understands that any changes introduced as a result of changes proposed by the Bidders are to be instructed at the Bidder's risk. The relevant clause is clause 7.51 of the Draft Final Business case dated November 2006:-

7.51 "...Infraco bidders will prepare their bids on the basis of the emerging SDS designs and the successful bidder will be required to adopt the SDS Provider's design as at the date of Infraco contract signature. Variations to this design could be introduced with the agreement of **tie** but at the risk of the Infraco."

5 Release, (a), by *tie* of SDS, and, (b), by SDS of *tie*

5.1 Contract Reference

At Clause 3.1 the Draft Novation Agreement provides for the release by *tie* of SDS:-

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

At Clause 2.1 the Draft Novation Agreement provides for the release by SDS of *tie*:-

- 2.1 The SDS Provider releases and discharges *tie* from any and all duties, obligations and liabilities owed to the SDS Provider under the SDS Agreement and accepts the liability of the Infracore under the SDS Agreement in lieu of *tie*.

5.2 Impact of Differences between Planned and Actual Contract Status

5.2.1 Incomplete ETN Detailed Design Scope

The only change due to these release clauses from the SDS perspective is a change of client. Hence, there is no impact from the incomplete ETN detailed design scope.

5.2.2 Incomplete MUDFA IFC Scope

Since the MUDFA scope is not novated the impact of the release by *tie* of SDS is that alternative arrangements have to be put in place by *tie* for the completion of the remaining MUDFA scope. This introduces risk to *tie*.

5.3 Action

6 Amendment of the SDS Agreement

6.1 Contract Reference

At Clause 3 Appendix 1 to the Draft Novation Agreement provides for amendments to Clause 28 of the SDS Agreement by the insertion of three additional Clauses:-

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

6.2 Impact of Differences between Planned and Actual Contract Status

6.2.1 Incomplete ETN Detailed Design Scope

Given the incomplete nature of the ETN detailed design scope the proposed clause 3.28 becomes much more onerous than it would have been under the circumstances envisaged at contract award when the design would have been complete at novation. Experience to date of dealing with the Stakeholders suggest that further delays to programme can be expected and in these circumstances clause 3.28 introduces unacceptable risk for PB.

6.2.2 Incomplete MUDFA IFC Scope

Since the MUDFA scope is not to be novated there is no impact on the provision for the SDS Contract to be amended.

6.3 Action

7 Acknowledgement of Payment

7.1 Contract Reference

At Clause 8 the Draft Novation Agreement provides for acknowledgement of payment by **tie**:-

The SDS Provider acknowledges that all fees and expenses properly due to the SDS Provider under the SDS Agreement up to the date of this Agreement have been paid by **tie** except sums which have been agreed to be due to the SDS Provider in accordance with Clause 12.7.3 and/or Clause 29.4 of the SDS Agreement and which have not been paid by **tie**.

Sums due in accordance with Clause 12.7.3 are those due for payment of retentions. Clause 12.7.3 should be read in conjunction with Clause 12.7.1 and Clause 12.7.2:-

12.7.1 Prior to the date of execution of the Novation Agreement by the SDS Provider and the date of execution of the Funder's Direct Agreement by the SDS Provider, the SDS Provider shall submit a VAT invoice to **tie** for ninety seven per cent (97%) of the sum certified in each relevant Interim Certificate. **tie** shall retain three per cent (3%) of such sums certified in each relevant Interim Certificate (the "Retention"). Payment will become due to the SDS Provider on the date of issue of such Interim Certificate by **tie** and subject to Clauses 12.5 and 12.6, the final date for payment of such valid VAT invoice shall be 30 days from the date of issue of the Interim Certificate.

12.7.2 Within 30 Business Days of the date of execution of the Novation Agreement by the SDS Provider and the date of execution of the Funder's Direct Agreement by the SDS Provider or the SDS Provider being notified in writing by **tie** that the Novation Agreement is not to be executed by the SDS Provider and/or that that the Funder's Direct Agreement is not to be executed by the SDS Provider, the SDS Provider shall issue a valid VAT invoice to **tie** for one hundred per cent (100%) of the total of all Retentions retained in accordance with Clause 12.7.1.

12.7.3 Payment will become due to the SDS Provider on the date of receipt of the valid VAT invoice by **tie** and the final date for payment of such valid VAT invoice by **tie** shall be 30 days from the date of receipt of such valid VAT invoice.

Sums due in accordance with Clause 29.4 are those due for WIP associated with any reduction in scope as described in section 1.2 above.

7.2 Impact of Differences between Planned and Actual Contract Status

7.2.1 Incomplete ETN Detailed Design Scope

No problem if payment mechanism is followed

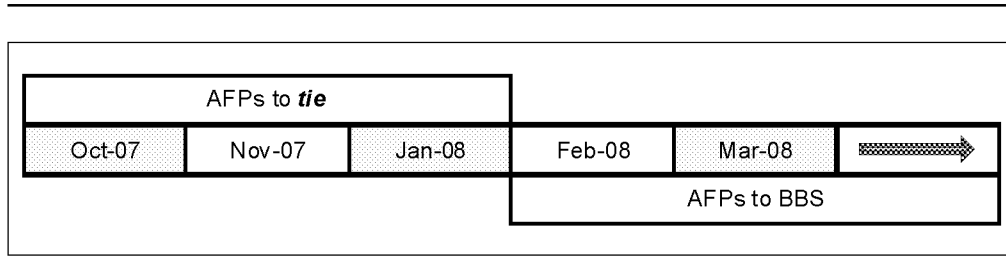


Chart 1 **Application for Payment Process**

7.2.2 Incomplete MUDFA IFC Scope

Reduction in wip

FIGURES

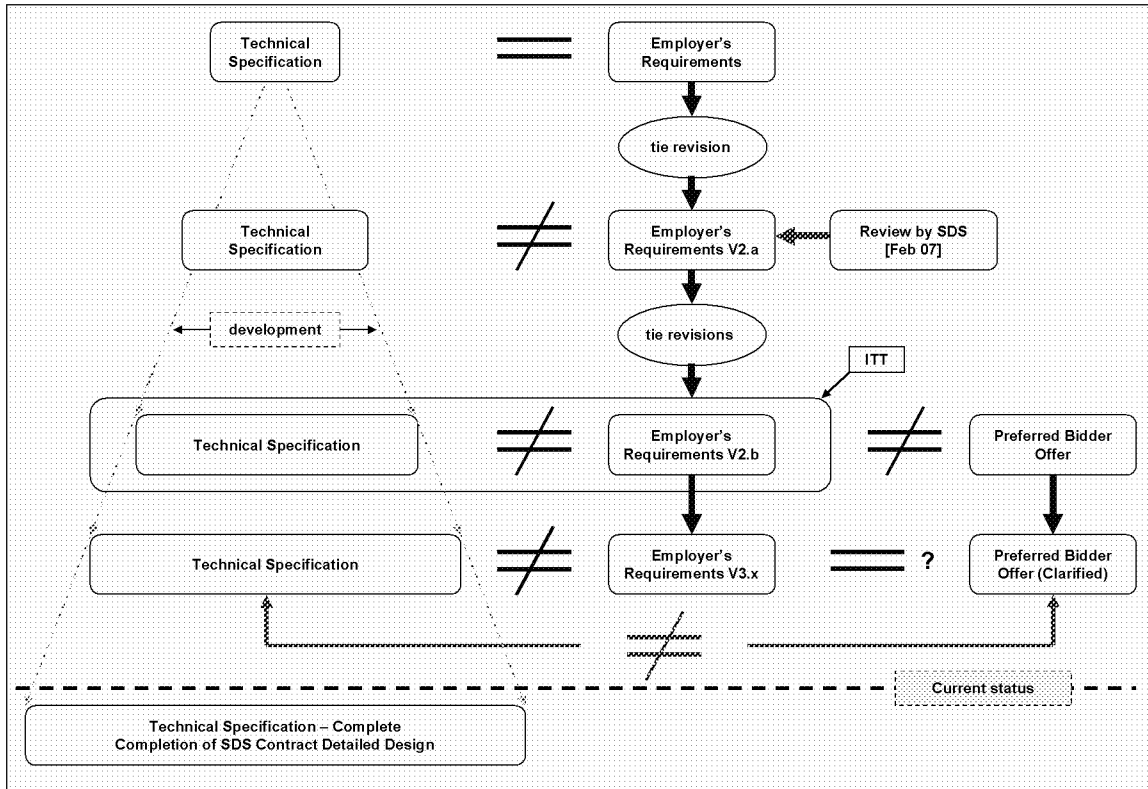


Figure 1 Evolution of the Misalignment of the SDS Detailed Design; the *tie* Employer's Requirements; and the BBS Offer

APPENDIX 1

Commentary on the “Novation Plan” Proposed by *tie*

Tie Proposed Novation Plan	PB Comments
1.0 Purpose	
1.1 The purpose of this plan is to set out the principles, steps and programme necessary to effect the novation of SDS to Infraco as agreed between SDS, BBS and tie.	
1.2 The Project Procurement Strategy requires the novation of SDS to Infraco to maintain the single point responsibility for design, construction, commissioning, maintenance, affordability and risk allocation objectives of the strategy.	
1.3 The plan addresses the following aspects:-	
<ul style="list-style-type: none"> • Contractual requirements 	
<ul style="list-style-type: none"> • Scope of novation 	
<ul style="list-style-type: none"> • Technical – the issues that need to be addressed to enable novation to proceed without creating disconnects in designs and specifications of the respective parties 	
<ul style="list-style-type: none"> • Programme for novation – the steps to conclude a novation at Financial Close 	
2.0 Contractual	
2.1 The novation will be effected via the draft novation agreement contained in schedule eight of the SDS contract. The novation agreement will contain the following:-	
<ul style="list-style-type: none"> • Changes to the SDS contract terms via Appendix 1 	
<ul style="list-style-type: none"> • Scope to be provided direct to tie 	This is not contemplated by the SDS Contract
<ul style="list-style-type: none"> • SDS Disclosure Statement 	This is not provided for in the SDS Contract
<ul style="list-style-type: none"> • Status Of Design 	

<ul style="list-style-type: none"> • Status Of Consents 	
<ul style="list-style-type: none"> • Statement of Commercial Position 	
<ul style="list-style-type: none"> • Collateral Warranty from Halcrow 	
<ul style="list-style-type: none"> • Agreed Detailed Design Standard (See para 7 below) 	
The content of these sections is defined below.	
<p>2.2 A collateral warranty is required from Halcrow in the form attached. This is to be provided at the same time as the signature of the novation agreement and novation is conditional upon its provision. No collateral warranties are required from Courderoys or Ian White Associates (<i>BBS to confirm</i>). The Form of Warranty is enclosed as Appendix A.</p>	<p>The requirement for a collateral warranty from Halcrow is stated at Clause 9.5 in connection with the appointment of SDS Provider Parties and not in the clauses specifically related to novation. Nevertheless, Halcrow has committed to provide a collateral warranty assuming a suitable form of words can be agreed</p>
<p>2.3 Changes to the SDS contract terms are as follows (drafting to be agreed where appropriate:-</p>	
<ul style="list-style-type: none"> • In Schedule 1 reference to “tie” to be substituted with “Client” 	Accepted
<ul style="list-style-type: none"> • In Schedule 1 the services referred to in Section 3 below will be deleted. 	Under the provisions of Clause 29.2?
<ul style="list-style-type: none"> • Schedule 11 clause 1.4 shall be amended as follows:- 	
Delete current clause 1.4 and substitute:-	
“1.4 Edinburgh Tram Network operations shall support the following journey times:	Review
1. Phase 1a – Airport to Ocean Terminal (Newhaven ?) shall have an end to end journey time including layover of ???? all runtime assumptions shall be agreed by tie.	Review
2. Phase 1b – Ocean Terminal to Granton Square shall have an end to end journey time including layover of ???? All runtime assumptions shall be agreed by tie.	Review
3. Common corridor – The section between Haymarket and Ocean Terminal shall have an end to end journey time including layover of ???? All runtime	Review

assumptions shall be agreed by tie .”	
<ul style="list-style-type: none"> The above changes will be added to those currently in the Draft Novation Agreement included in the SDS contract. 	Why should these specific items be included within the Draft Novation Agreement when they form part of the contract to which the Draft Novation Agreement refers?
3.0 Scope to Be Provided Direct To tie	
3.1 A direct contract will be established between tie and SDS at the same time as the novation agreement is signed. The scope of this contract (“the Services”) will be for:-	This is not contemplated by the SDS Contract. The Draft Novation Agreement specifically provides for release by tie of SDS from the further performance of the SDS Provider's duties and obligations under the SDS Agreement.
<ul style="list-style-type: none"> Provide technical support and advice, including but not limited to feasibility, preliminary, detailed design and obtaining all ancilliary consents, necessary to enable tie and CEC to <ul style="list-style-type: none"> obtain core traffic regulation orders (TROs) obtain TROs for wider area traffic measures 	
<ul style="list-style-type: none"> Provide technical support and advice, including but not limited to feasibility, preliminary, detailed design for wider area traffic measures including those outside the LOD and LLAU which are necessary to enable the traffic system in Edinburgh to operate at optimal level following completion of the Edinburgh Tram Network. 	
<ul style="list-style-type: none"> Provision of utilities designs in accordance with Schedule 1 including general technical support and on-site support for these works and in accordance with any Changes in respect of utilities designs 	
<ul style="list-style-type: none"> Provision of design and technical support in respect of future extensions to the scheme as tie may from time to time instruct. The extent of such services remains at tie's discretion and tie reserves the right to tender such services. The option included in 	

the direct contract does not represent prequalification of SDS for any such tender shortlist for such services.	
<ul style="list-style-type: none"> • Provision of such other design and technical support in respect of the Edinburgh Tram Network as tie may from time to time instruct 	
3.2 The terms of the contract between tie and SDS will be as those contained in the SDS Contract dated 19 th September 2005 with the following changes:-	If any separate contract were to be established the terms and conditions of the existing SDS Contract would not be appropriate for the scope of work contemplated. If a separate contract were agreed it should be awarded on a time and expenses basis
<ul style="list-style-type: none"> • Schedule 1 – shall be as Appendix B to this Plan 	
<ul style="list-style-type: none"> • Schedule 2 – Key Personnel shall be Alan Dolan, David Pluse, Brian McCreer, Chris Reed, Warren Murphy + Tom Kelly's replacement. These personnel shall not provide services to BBS until such time as their work supporting tie under this direct contract are completed, unless otherwise agreed in writing by tie. Confidentiality Agreements will be required from these individuals to ensure that no breaches of confidentiality in respect of the services provided direct, particularly in respect of BBS, and that conflicts of interest with BBS are avoided. 	
<ul style="list-style-type: none"> • Schedule 3 - Pricing Schedule shall be as Appendix C to this Plan 	
<ul style="list-style-type: none"> • Schedule 4 – Programme shall be as Appendix D to this Plan 	
<ul style="list-style-type: none"> • Schedule 5 – Deleted 	
<ul style="list-style-type: none"> • Schedule 6 – Insurances shall be as included in the current contract 	
<ul style="list-style-type: none"> • Schedule 7 – Deleted (the collateral warranty will be incorporated into this contract) 	
<ul style="list-style-type: none"> • Schedule 8 – Novation Agreement – Deleted 	
<ul style="list-style-type: none"> • Schedule 9 – Review Procedure shall be as included in the current contract 	

<ul style="list-style-type: none"> • Schedule 10 – Panels For The Dispute Resolution Procedure shall be as included in the current contract 	
<ul style="list-style-type: none"> • Schedule 11 – Requirements Specification for Overall System Operational and Performance Requirements shall be as included in the current contract in so far as it relates to the scope of this contract 	
<ul style="list-style-type: none"> • Schedule 12 - Requirements Specification for Civil Engineering shall be as included in the current contract in so far as it relates to the scope of this contract 	
<ul style="list-style-type: none"> • Schedule 13 - Requirements Specification for Supervision, Command And Control Suite Of Systems shall be as included in the current contract in so far as it relates to the scope of this contract 	
<ul style="list-style-type: none"> • Schedule 14 – Requirements Specification for Electrification & Power shall be as included in the current contract in so far as it relates to the scope of this contract 	
<ul style="list-style-type: none"> • Schedule 15 – Requirements Specification for Tram Vehicle shall be as included in the current contract in so far as it relates to the scope of this contract 	
<ul style="list-style-type: none"> • Schedule 16 – System – Wide Non – functional Requirements 	
<ul style="list-style-type: none"> • Schedule 17 – Agreement Between the SDS Provider and the Joint Revenue Committee 	
<ul style="list-style-type: none"> • Retention Bond to be provided for the retained scope. 	
<ul style="list-style-type: none"> • Provide a parent company guarantee for the retained scope, in the form contained in the SDS Contract. 	
<p>3.3 Requirements Definitions, Preliminary Designs and Detailed Designs as approved by tie and as may be delivered and approved by tie under the novated contract to Infracore shall be incorporated into this contract to the extent that they are required in order to deliver the Services.</p>	<p>Note that tie has yet to confirm the definition of the Employer’s Requirements for the scheme</p>

<p>4.0 SDS Disclosure Statement</p>	
<p>4.1 In order that the status of the SDS contract pre and post novation is clear details of the status of progress and commercial position must be clearly stated within the novation agreement. To this end SDS warrant the following to Infracore as at the point of Novation (practically the position at 5th January 2008):-</p>	<p>PB will provide a status report on the SDS Contract. The provision of any warrants should be of the form set out in the SDS Contract and the Schedules attached thereto. No other warrants should be required. The comments here are made as clarifications to the items raised.</p>
<ul style="list-style-type: none"> • that tie's liabilities are discharged in terms of payments, save as expressly carved out. 	<p>This is a pre-requisite for Novation</p>
<ul style="list-style-type: none"> • that the design fits within the LoDs advising where this is not the case and the implications for the design delivery. 	<p>The status of the design should be clear from tie's management perspective. No further warrant is required</p>
<ul style="list-style-type: none"> • SDS have complied with their obligations under Clause 3 of the SDS Contract specifically and that no extensions of time or other claims are sought or anticipated to be sought from tie in respect of events, actions or inactions prior to the date of novation or events, actions or inactions foreseeable at the date of novation. 	
<ul style="list-style-type: none"> • the full scope of design deliverables produced for tie and the status of each along with relevant consents. See appendix E. 	<p>Status report to be provided</p>
<ul style="list-style-type: none"> • the status of the identified design deliverables as being capable of deployment by the Infracore without further design refinement. See Appendix E. 	<p>Status report to be provided</p>
<ul style="list-style-type: none"> • that there are no claims or disputes regarding its design deliverables. 	
<ul style="list-style-type: none"> • that the design meets the Employer's Requirements as at the date of Novation, including compliance with the Noise and Vibration Policy, code of Construction Practice and Environmental Statement and the like. 	<p>PB awaits tie's advice on the status of the Employer's Requirements</p>
<ul style="list-style-type: none"> • that the design complies with Consents (including Land Consents) 	<p>The status of the design should be clear from tie's management perspective. No further</p>

and Special Requirements.	warranty is required
<ul style="list-style-type: none"> That the designs take account of and incorporate the requirements of Third Party Agreements and Parliamentary Undertakings. 	The status of the design should be clear from <i>tie</i> 's management perspective. No further warranty is required. However, in this particular case it should be noted that the Third Party Agreement with SRU is still not in force.
<ul style="list-style-type: none"> That there are no Changes in Law which affect the designs as currently completed or to be completed (Preliminary Design or Detailed Design) 	
4.2 In addition SDS are to	
<ul style="list-style-type: none"> identify any outstanding design deliverables, the programme. See Appendix E. 	Status report to be provided
<ul style="list-style-type: none"> costs for the production and finalisation of outstanding design deliverable post novation in accordance with the SDS Contract and Changes instructed as at the date of Novation. See Appendix F 	The costs for any changes instructed by <i>tie</i> will be provided by SDS
<ul style="list-style-type: none"> confirm in the novation agreement that they are responsible for obtaining the listed Consents and will be obliged to obtain those Consents (including Building Fixing consents/agreements) in accordance with the BBS programme. The listed consents are as set out in Appendix E. 	SDS's responsibility for obtaining consents is defined by the SDS Contract. SDS cannot agree that it is obliged to obtain any such consents in accordance with the BBS programme. Under the original provisions of the Contract all such consents would have been secured prior to novation – and this could still apply dependent upon the timing of novation.
<ul style="list-style-type: none"> confirm the status of all consents which it has sought in connection with its design and project support services. The status of consents currently is as set out in Appendix E. 	Status report to be provided
<ul style="list-style-type: none"> confirm provision of collateral warranty for <i>tie</i> and CEC as provided for in the SDS Contract. 	The SDS Contract provides for a collateral warranty to <i>tie</i> , but not to CEC
<ul style="list-style-type: none"> provide collateral warranties in favour of Network Rail and BAA (EAL) 	The SDS Contract does not provide for collateral warranties in favour of Network Rail or BAA.

<ul style="list-style-type: none"> confirm any retained scope and Infraco acknowledges this arrangement as set out in Section 3 above. 	Not contemplated by the SDS Contract
4.3 tie warrant to Infraco that tie's payments to SDS are fully up to date and identifies any outstanding payments as carved out of Infraco's obligations as novated client.	
4.4 tie is to identify and confirm any retained scope and Infraco acknowledges this arrangement as set out in Section 3 above.	
4.5 tie /SDS/Infraco acknowledge full scope of novated SDS services.	
4.6 For the purposes of this Disclosure Statement the status will be as of 5 th January 2008.	
5.0 Status Of Design and Consents	
5.1 The status of the design and consents is to be as exists at 5 th January 2008. The status summary is to set out in detail:-	
<ul style="list-style-type: none"> The design deliverables provided to tie (title, description and document reference), their status ie Design Completion notified to tie, submitted awaiting comment/approval or acceptance for Prior Approval, submitted with Design Assurance Statement awaiting comment/approval or acceptance for Technical Acceptance, Prior Approval Granted, Technical Approval Granted. 	Status report to be provided
<ul style="list-style-type: none"> The extent to which each Change has been incorporated into the design deliverables. 	Status report to be provided
<ul style="list-style-type: none"> For each deliverable the status of any applicable consents i.e. details of the consents required and for each consent for each deliverable consent obtained, consent application submitted and date on which consent expected, date consent application to be 	Status report to be provided

submitted and date consent expected.	
<ul style="list-style-type: none"> For each deliverable submitted under a Design Assurance Statements whether the design deliverable is capable of deployment by the Infracore without further refinement. 	This can only be assessed by BBS
<ul style="list-style-type: none"> A copy of the SDS programme progressed for work completed up to 5th January 2008. 	Status report to be provided
5.2 The pro formas/current position in respect of the above are to be included in Appendix D so that all parties are clear and agreed on the format and content.	
6.0 Statement Of Commercial Position	
6.1 The commercial position is to be as at 5 th January 2008. The format and status is to be as set out in Appendix E. This will set out:-	
<ul style="list-style-type: none"> A summary of the financial position for the novated contract <ul style="list-style-type: none"> current contract costs, including accepted changes and changes submitted but not yet agreed, payments certified to that date, 	Assistance to be provided to tie for the production of a status report
	Assistance to be provided to tie for the production of a status report
	Assistance to be provided to tie for the production of a status report
<ul style="list-style-type: none"> A list of the Changes accepted by tie 	Assistance to be provided to tie for the production of a status report
6.2 tie will pay direct to SDS all payments certified up to 5 th January 2008.	tie will pay direct to SDS all payments certified up prior to novation.
7.0 Detailed Design Deliverables	
7.1 SDS confirm that their Services include for:-	The services provided are as set out in the SDS Contract. Any attempt to summarise the

		complexities of the SDS Contract as proposed here is certain to result in an incomplete and inconsistent assessment which would potentially introduce unnecessary risks to the novation process
	<ul style="list-style-type: none"> • construction drawings and as built drawings will be provided 	
	<ul style="list-style-type: none"> • that in the "System Design Spec" a RAMS analysis/concept is provided with a break down to each function, including vehicles 	
	<ul style="list-style-type: none"> • in "Planning Approvals" all approvals to tie, CEC, Network Rail and any other authority is included 	
	<ul style="list-style-type: none"> • test & commissioning procedures are included in the "Requirements Test Spec" or the "System Design Test Spec" 	
	<ul style="list-style-type: none"> • all changes resulting from BBS amendments in the Employer Requirements and the Tram design as a result of the bidding phase will be covered in this agreement 	
8.0	Scope Not Required by BBS	
8.1	BBS do not require the following services and scope to be provided by BBS:-	
	<ul style="list-style-type: none"> • <i>BBS to advise</i> 	Advice still awaited
8.2	A change order will be issued to reflect this and the SDS Contract Sum adjusted accordingly, to the extent that such services and scope have not already been delivered.	
9.0	Technical	

<p>9.1 The Infraco Employer's Requirements, Infraco Proposals, Tram Vehicle Employer's Requirements, Tramco Proposals and SDS Design (SDS Design is all of the deliverables under the SDS Contract) must align each with the other at novation. This does not mean that each must contain the same statements but that the documents must not conflict with each other.</p>	<p>This whole section should be simplified. tie is to determine the up-to-date content of the Employer's Requirements, incorporating any changes agreed from the negotiations with BBS. (It is for tie to ensure that the Stakeholders are in agreement with any revisions which may be deemed necessary). tie is then to determine whether any changes should be instructed to the SDS design in accordance with Clause 29 of the SDS Contract</p>
<p>9.2 Alignment of the SDS design and Employer's Requirements means:-</p>	
<ul style="list-style-type: none"> • The SDS design should not conflict with the Employer's Requirements 	
<ul style="list-style-type: none"> • That the SDS designs completed to date will deliver the requirements of the Employer's Requirements 	
<ul style="list-style-type: none"> • That the SDS designs to be completed will deliver the requirements of the Employer's Requirements 	
<ul style="list-style-type: none"> • Where conflicts are identified SDS advise tie and tie decide the action required to bring about alignment (either a change to the Employer's Requirements or a change to the SDS design) 	
<p>The SDS design and Infraco Proposals also need to align. This means that:-</p>	
<ul style="list-style-type: none"> • There should be no conflicts between the Infraco Proposals and SDS Design. 	
<ul style="list-style-type: none"> • Where conflicts are identified SDS and BBS advise tie and tie decide the action required to bring about alignment (either a change to the Infraco Proposals or a change to the SDS design) 	
<p>9.3 The steps to achieve this are:-</p>	

<ul style="list-style-type: none"> • BBS to advise the elements of system for which SDS design is not required. We believe that this applies principally to the systems. BBS have put forward technical proposals for various systems. SDS have produced specifications of varying levels of detail and system architecture drawings which are different and conflict with the BBS proposals. There seems little mileage in SDS revisiting their designs in these areas. BBS need to consider the extent and scope of ongoing SDS support they require to integrate their designs into the design for the whole Network, designs required to obtain planning (prior) approvals to the extent they relate to systems, ongoing performance modelling support required and the like. 	
<ul style="list-style-type: none"> • The revised scope of designs to be agreed with SDS (This then to be added into the novation plan) 	
<ul style="list-style-type: none"> • BBS to concurrently agree the alignment of their proposals with the Employer's Requirements (we await your fully marked up ERs and compliance matrix) 	
<ul style="list-style-type: none"> • Once item 2 is settled SDS are to review and confirm alignment of their remaining design with the Employer's Requirements 	
<ul style="list-style-type: none"> • BBS to identify any aspects of the remaining SDS design which do not align with their technical proposals. tie to then decide on the course of action and instruct accordingly. 	
<p>9.4 The possible outcomes of the alignment exercise are:-</p>	
<ul style="list-style-type: none"> • Changes to the ERs are instructed by tie to ensure alignment with certain elements of the SDS design 	
<ul style="list-style-type: none"> • Changes to the ERs are instructed by tie to ensure alignment with certain elements of the Infraco Proposals 	
<ul style="list-style-type: none"> • Changes are instructed to the SDS Design to align with Employer's Requirements 	
<ul style="list-style-type: none"> • Changes are required to the Infraco Proposals to align with the 	

SDS design		
<ul style="list-style-type: none"> • Certain elements of the SDS design completed to date are agreed as redundant (they having been superseded by the Infracore Proposals as accepted by tie 		
<ul style="list-style-type: none"> • Changes are required to the Tramco Proposals to align with the Employer's Requirements 		
<ul style="list-style-type: none"> • Changes are required to the Employer's Requirements to align with the Tramco Proposals 		
<ul style="list-style-type: none"> • Changes are required to the SDS Designs to align with the Tramco Proposals 		
9.4 It is not necessary for the SDS Design to be amended to align by novation but that:-		
<ul style="list-style-type: none"> • there is clear agreement on how the SDS Design needs to change (as listed in a schedule) 		
<ul style="list-style-type: none"> • there is clear agreement on where the SDS Design completed to date is redundant (as listed in a schedule) 		
<ul style="list-style-type: none"> • the programme for changing the design is agreed 		
<ul style="list-style-type: none"> • any necessary Changes under the SDS contract are agreed to effect amendments to the design to deliver alignment. 		
9.5 It is not expected that these changes will be extensive.		
10.0 Programme for Novation		
10.1 The programme for concluding the novation on the 28 th January 2008 is:-		
<ul style="list-style-type: none"> • Halcrow confirm agreement to provide collateral warranty by novation – 10th December 2007 		
<ul style="list-style-type: none"> • Agreement of terms of direct contract between tie and SDS by – 17th December 2007 		
<ul style="list-style-type: none"> • SDS provide draft documents to support the Disclosure Statement 		

by – 20 th December 2007		
<ul style="list-style-type: none"> • SDS provide final documents to support Disclosure Statement by – 5th January 2008. 		
<ul style="list-style-type: none"> • SDS/tie/BBS sign novation agreement – 28th January 2008 		
<ul style="list-style-type: none"> • SDS/tie sign direct contract – 28th January 2008 		
11.0 Agreement		
11.1 tie, SDS and BBS confirm their agreement to this Plan.		