



EDINBURGH TRAM NETWORK

ALLOCATION OF CONTRACTUAL RISKS IN THE DRAFT INFRACO CONTRACT

[◆] DECEMBER 2007

Risk : General Obligations Clauses	Allocation		
	Public Sector	Private Sector	Shared
[2.2] Failure to serve notice to propose extension no later than 180 days prior to expiry date.	✓		
[3.5] Termination by either party due to failure to satisfy a CP within 3 months of Effective Date which is not waived.	✓	✓	
[4.4/7.4] Discrepancies, errors or omissions in or between the Infraco Proposals and the Employers Requirements.		✓	
[4.5] Failure to bring discrepancies or requirements for further information in relation to documents to the attention of tie's Representative.		✓	

Risk : General Obligations Clauses	Allocation		
	Public Sector	Private Sector	Shared
<p>[5]<sup>1</sup> Failure to adequately inspect the Site and to satisfy and take account of the following:</p> <ul style="list-style-type: none"> <li>- the ground conditions on the Site;</li> <li>- all relevant safety requirements and environmental matters;</li> <li>- the form and nature of the Site;</li> <li>- the nature of the materials to be excavated;</li> <li>- the extent and nature and difficulty of the work and materials necessary for the completion of the Infraco Works;</li> <li>- the quality of any existing structures which will form part of, be adjacent to or be associated with the ETN;</li> <li>- risk of injury or damage to property adjacent to the Site and to occupiers of such property;</li> <li>- possibility of interference from parties other than <b>tie</b>;</li> <li>- the precautions, times and methods of working necessary to comply with the Code of Construction Practice and Code of Maintenance Practice and, in accordance with Good Industry Practice to minimise and nuisance or interference;</li> <li>- use by third parties of land being part of or adjacent to the ETN;</li> <li>- means of communication with and restrictions of access to the Site;</li> <li>- accommodation required by Infraco;</li> <li>- generally to obtain all necessary information as to risks, contingencies and other circumstances influencing or affecting the Infraco Works.</li> </ul>		✓	
[6.1/6.3] Failure to cooperate in order to facilitate carrying out the Infraco Works.			✓
[6.3.1] Failure to approach all Permitted Variations on a collaborative and Open Book Basis.			✓
[6.3.2] Failure to use reasonable endeavours to avoid unnecessary complaints, disputes and claims against the other Party.			✓
[6.3.3] Failure to comply with Dispute Resolution Procedure in relation to any such complaints, disputes and claims with or against the other Party.			✓
[6.3.4] Interference with the rights of the other Party in performing its obligations under the Infraco Contract, or in any other way hindering or preventing the other Party from performing those obligations or from enjoying the benefits of its rights.			✓

<sup>1</sup> Subject to ability of BBS to price for Existing Structures risk



Risk : General Obligations Clauses	Allocation		
	Public Sector	Private Sector	Shared
<ul style="list-style-type: none"> <li>• [7.3.17] in accordance with OGC's "Excellence in Construction" initiative;</li> <li>• [7.3.18] to ensure sustainability of the ETN in relation to energy consumption and the supply of materials from sustainable resources;</li> <li>• [7.3.19] in a manner not likely to be injurious to persons or property;</li> <li>• [7.3.20] using Key Personnel.</li> </ul>		✓	
[7.5.1] Failure to use reasonable endeavours to maximise construction productivity by reference to international best practice.		✓	
[7.5.2] Failure to use reasonable endeavours to minimise disruption to the city of Edinburgh.		✓	
[7.5.3] Failure to use reasonable endeavours to maintain safety and minimise the potential for accidents and safeguard the Infraco Works.		✓	
[7.5.4] Failure to use reasonable endeavours to safeguard the efficiency in the obtaining of Consents.		✓	
[7.5.5] Failure to use reasonable endeavours to minimise costs.		✓	
[7.6] Failure to keep itself fully informed about current professional and technical standards and about all matters relating to, or which might have a bearing on, the Infraco Works.		✓	
[7.8] Failure to fully understand the scope and extent of requirements and sufficiency of information to complete the Infraco Works.		✓	
[7.9-7.10] <sup>2</sup> Content, completeness, currency, accuracy or fitness for any purpose of Background Information supplied by <b>tie</b> or any of its stakeholders, subject to fraudulent statements or fraudulent provision of information by <b>tie</b> .		✓	
[7.11] Failure to liaise with any party, as required, to produce information required so that the Infraco Works can be progressed properly, according to Programme and in accordance with the Infraco Contract.		✓	
[7.12] Failure to liaise with regard to material types, methods and programmes, cost effectiveness and temporary works in respect of any Permitted Variation.		✓	
[7.13] Failure to provide all labour, goods, materials, Infraco's Equipment, Temporary Works, transport to and from the Site and everything else of a temporary or permanent nature required in respect of the Infraco Works which is either required in the Infraco Contract or which could have reasonably been foreseen by an experienced contractor.		✓	
[7.14] Failure to ensure the adequacy, stability and safety of all site operations and methods of construction.		✓	

<sup>2</sup> Subject to alignment of Background Information with Employer's Requirements.

Risk : General Obligations Clauses	Allocation		
	Public Sector	Private Sector	Shared
[7.15] Use or specification for use of any materials which are known to be deleterious or contravene any relevant standard or code of practice (including Ove Arup & Partners guidance or Good Industry Practice)		✓	
[7.16] Use of or installation on the Edinburgh Tram Network of materials which are not in accordance with the Employer's Requirements on the date of such use or installation.		✓	
[7.17] Failure to notify <b>tie</b> of any ground, geophysical or other surveys which the Infraco intends to carry out.		✓	
[7.18] Failure to notify <b>tie</b> of any Abortive Work.		✓	
[26.17] Failure of the Infraco, Key Personnel, staff and Infraco Parties to comply with all regulatory requirements and <b>tie's</b> Drug and Alcohol Policy.		✓	

Risk : System Integration <sup>3</sup>	Allocation		
	Public Sector	Private Sector	Shared
Failure to implement: <ul style="list-style-type: none"> <li>• [8.1.1] work to define sub-system performance and demonstrate that the System Availability Target can be met;</li> <li>• [8.1.2] management of technical interfaces including system wide issues such as electro-magnetic compatibility and stray current protection, noise, vibration and wheel/rail interface;</li> <li>• [8.1.3] test management, including the preparation of method statements, test scripts, the setting of pass/fail criteria, and analysis;</li> <li>• [8.1.4] alignment of operations and maintenance procedures;</li> <li>• [8.1.5] system activation;</li> <li>• [8.1.6] safety assurances and the Case for Safety;</li> <li>• [8.1.7] a requirements traceability matrix.</li> </ul>		✓	
[8.2] Failure to ensure that Trams and engineers works vehicles are fully integrated with the Infraco Works.		✓	
[8.3] Failure to carry out all of the system integration activities described in the Employer's Requirements and Infraco's Proposals.		✓	
[8.4] Failure to liaise with the Operator and <b>tie</b> in respect of system operation and related design, Systems Acceptance Tests and operational defects.		✓	
[8.5] Failure to ensure that design is compatible with system integration throughout the Term.		✓	
[8.6] Failure to manage configuration control of the ETN.		✓	

<sup>3</sup> System Integration risk is accepted by BBS, subject to technical discussions.

Risk : System Integration <sup>3</sup>	Allocation		
	Public Sector	Private Sector	Shared
[8.7] Failure to procure that the Tram Supplier complies with specific obligations (mock up, testing, safety etc).		✓	

Risk : Infrastructure and Equipment	Allocation		
	Public Sector	Private Sector	Shared
[9.1] Failure to pay the Infraco resulting in the title in all materials, goods and equipment not transferring to CEC.	✓		
[9.1] Failure to transfer title to CEC in all materials, goods, and equipment intended to form part of the ETN.		✓	
[9.1] Failure to deliver or install materials following advance payment including risk of insolvency of suppliers.		✓	
[9.2/9.3/9.4] Failure to clearly identify, separate and label project assets as the property of CEC, whether on sit or off site. Failure to include such provisions in sub-contracts.		✓	
[9.5] Failure to procure that CEC pursues claims against suppliers of defective or faulty materials which have vested in CEC and to reimburse Infraco of all costs recovered.	✓		
[9.6/9.7.1] Failure to procure that the Tram Supplier transfers title to CEC in the Trams (free from all Security Interests) or Tram Related Equipment.			✓
[9.8] Compatibility of all infrastructure, equipment and systems and fitness for purpose (as defined complaint with the Employer's Requirements), excluding items free issued to the Infraco by <b>tie</b> .		✓	
[9.9/9.10] Euro Compliance of equipment, excluding items free issued to the Infraco by <b>tie</b> .		✓	
[9.11] Malfunction, non-operability, late delivery, removal or replacement of free issue fare collection equipment.	✓		
[9.12] Failure to make the Trams and any materials (in which title has passed to <b>tie</b> or CEC) available to the Infraco for performance of its obligations.	✓		

Risk : Bonds, Guarantees and Collateral Warranties SUBJECT TO RESOLUTION OF COMMERCIAL DISCUSSIONS	Allocation		
	Public Sector	Private Sector	Shared

Risk : Deliverables	Allocation		
	Public Sector	Private Sector	Shared
[10.1] Failure to prepare Deliverables in accordance with the Infraco Contract and Programme.		✓	
[10.2] Failure to submit any Deliverables associated with any Permitted Variations to <b>tie's</b> Representative for review pursuant to the Review Procedure.		✓	
[10.3] Failure to allow <b>tie's</b> Representative reasonable opportunity to review any Deliverable at any stage of development.		✓	
[10.4] Failure to provide Deliverables in format required for <b>tie</b> extranet and failure to establish/maintain such an extranet.		✓	
[10.5/10.6] Failure to prepare a Submittal Programme which meets the Programme and submit same to <b>tie</b> and advise of revisions.		✓	
[10.6/10.7] Failure to comply with the Submittal Programme timescales			✓
[10.7] Introduction of alternative Submittal Programme where <b>tie</b> cannot comply with the original programme (not arising from Infraco default).	✓		
[10.8] Failure to give due consideration to <b>tie</b> or <b>tie's</b> Representative at a meeting called by <b>tie</b> or <b>tie's</b> Representative to discuss the development of a Deliverable and failure to submit a report detailing such discussions.		✓	
[10.9] Amendment to a Deliverable where such Deliverable does not meet the requirements of the Infraco Contract.		✓	
[10.9] Amendment to a Deliverable where such Deliverable does not meet the requirements of any "Approval Bodies".	✓	✓	
[10.10] Failure to provide Deliverables in accordance with the Infraco Contract.		✓	
[10.11] Provision of further Deliverables as requested by <b>tie</b> .	✓		
[10.12/10.13] Risks from conflicts, ambiguities, discrepancies, errors or omissions in or between Deliverables and proposing and carrying out resolution.		✓	
[10.14] Failure to ensure the Deliverables comply with document control requirements.		✓	
[10.15/10.16] Establishment, staffing and making available for <b>tie's</b> inspection of an office to store record of performance of the Infraco Works, drawings for construction, all specifications, all transactions entered into in relation to Permitted Variations and claims for additional costs or expenses.		✓	
[54.4/54.5] Failure to write up, maintain and store Technical Records in respect of Maintenance Services or in a format reasonably specified by <b>tie</b> .		✓	
[54.6] Maintenance, security, bugs etc in relation to the Infraco's computer systems and equipment		✓	

Risk : Novation and Other Key Interfaces <sup>4</sup>	Allocation		
	Public Sector	Private Sector	Shared
[11.1] Failure of the Infraco to execute the novation agreement.		✓	
[11.1] Failure of <b>tie</b> to create the novation agreement and procure the execution of the same by SDS Provider.	✓		
[11.2.1] Failure of the Infraco to procure and provide to <b>tie</b> a collateral warranty from the SDS Provider.		✓	
[11.3] Failure to procure that the SDS Provider carries out and completes the SDS Services.		✓	
[11.4] Management of the performance of the SDS Services and resultant liability.		✓	
[11.5] Amendment of the SDS Agreement.	✓	✓	
[11.6] Failure to procure the attendance of the SDS Provider at any meeting in relation to the Infraco Works.		✓	
[11.7] Failure to procure performance of additional services required from the SDS Provider following a request from <b>tie</b> .		✓	
[11.7] Requirement for additional services from SDS.	✓		
[11.8] Termination of the SDS Agreement without the consent of <b>tie</b> .		✓	
[11.9] Failure, if required by <b>tie</b> , on termination or expiry of the Infraco Contract to novate, assign or otherwise transfer the SDS Agreement to <b>tie</b> , the Scottish Ministers, TEL, CEC, Transport Scotland or their successors with no worse financial standing than <b>tie</b> or to any other person whose obligations are unconditionally guaranteed under the SDS Agreement by such a person.		✓	
[11.9] Failure to assist in obtaining a collateral warranty from SDS where novation, assignation or other transfer has taken place.	✓		
[12.1] Failure to enter into a novation agreement with <b>tie</b> and the Tram Supplier.		✓	
[12.2] Failure to procure that the Tram Supplier enters into a collateral warranty in favour of <b>tie</b> and to deliver same to <b>tie</b> .		✓	
[12.3] Failure to procure that the Tram Supplier carries out and completes the Tram Supply Obligations in accordance with the Tram Supply Agreement.		✓	
[12.4] Management of the performance of the Tram Supply Obligations and resultant liability.		✓	
[12.5] Amendment to the Tram Supply Agreement (including the Tram Supply Obligations).	✓	✓	
[12.6] Failure to procure the attendance of the Tram Supplier at any meeting in relation to the Infraco Works		✓	
[12.7] Failure to use reasonable endeavours to procure supply of additional Trams, spare parts and services following a request from <b>tie</b> .		✓	

<sup>4</sup> Subject to due diligence by BBS on the relevant agreements.



Risk : Novation and Other Key Interfaces <sup>4</sup>	Allocation		
	Public Sector	Private Sector	Shared
[12.7] The requirement for additional Tram Supply services.	✓		
[12.8-12.14] Termination of Tram Supplier or rectification of its defective performance.	✓	✓	
[12.15] Failure, if required by <b>tie</b> , on termination or expiry of the Infraco Contract to novate, assign or otherwise transfer the Tram Supply Agreement to <b>tie</b> , the Operator, the Scottish Ministers, TEL, CEC, Transport Scotland or their successors with no worse financial standing than <b>tie</b> or to any other person whose obligations are unconditionally guaranteed under the Tram Supply Agreement by such a person.		✓	
[12.15] Failure to assist in obtaining a collateral warranty from Tram Supplier where novation, assignation or other transfer has taken place.	✓		
[13.1] Failure to enter into a novation agreement with <b>tie</b> and the Tram Maintainer.		✓	
[13.2] Failure to procure that the Tram Maintainer enters into a collateral warranty in favour of <b>tie</b> .		✓	
[13.3] Failure to procure that the Tram Maintainer carries out and completes the Tram Maintenance Services in accordance with the Tram Maintenance Agreement.		✓	
[13.4] Management of the performance of the Tram Maintenance Services and resultant liability.		✓	
[13.5] Amendment of the Tram Maintenance Agreement.	✓	✓	
[13.6] Failure to procure the attendance of the Tram Maintainer at any meeting in relation to the Infraco Works.		✓	
[13.7] Failure to use reasonable endeavours to procure that the Tram Maintainer shall supply any additional spare parts and/or perform any additional services which are required by <b>tie</b> in respect of the ETN.		✓	
[13.8-13.16] Termination of Tram Maintainer or rectification of its defective performance.	✓	✓	
[13.17] Failure, if required by <b>tie</b> , on termination or expiry of the Infraco Contract to novate, assign or otherwise transfer the Tram Supply Agreement to <b>tie</b> , the Operator, the Scottish Ministers, TEL, CEC, Transport Scotland or their successors with no worse financial standing than <b>tie</b> or to any other person whose obligations are unconditionally guaranteed under the Tram Supply Agreement by such a person.		✓	
[13.17] Failure to assist in obtaining a collateral warranty from Tram Maintainer where novation, assignation or other transfer has taken place.	✓		
[14.1] Failure to carry out and complete the Infrastructure Maintenance Services.		✓	

Risk : Novation and Other Key Interfaces <sup>4</sup>	Allocation		
	Public Sector	Private Sector	Shared
[14.2] Failure to ensure sub-contract to a replacement maintainer is in the form of the IMA. <sup>5</sup>		✓	
[14.3] Failure, if required by <b>tie</b> , on termination or expiry of the Infraco Contract to novate, assign or otherwise transfer the Tram Supply Agreement to <b>tie</b> , the Scottish Ministers, CEC or their successors with no worse financial standing than <b>tie</b> or to any other person whose obligations are unconditionally guaranteed under the Tram Supply Agreement by such a person.		✓	
[16.2] <sup>6</sup> Risks arising through the Asset Protection Agreement. <b>NOTE: If this agreement is not settled prior to contract award, Infraco will seek a tie change.</b>	✓	✓	

Risk : Operator Interface	Allocation		
	Public Sector	Private Sector	Shared
[17.2] Occurrence and costs to the Infraco of an Operator Event to the extent the Infraco has not materially contributed to such event.	✓		
[17.3/17.4/17.7] Failure to mitigate (at reasonable inconvenience and cost), notify <b>tie</b> of or maintain reports of an Operator Event or matters which may precede an Operator Event.		✓	
[17.5] Arranging meeting and obtaining Operator's cooperation with agreed corrective measures following an Operator Event.	✓		
[17.8] Failure to, from the date of the Agreement, take into account comments of the Operator when refining Design and failure to deliver Infraco comments on functional and maintainability issues to <b>tie</b> and the Operator.		✓	
[17.9] Obstruction of the Operator in respect the Operator Maintenance Plan and Maintenance Services .		✓	
[17.9] <sup>7</sup> Obstruction by the Operator of the Infraco in respect of the Maintenance Services.	✓		
[17.10] Failure to observe the Operator's Representative's instructions.		✓	
[17.11-13] Failure to notify and co-operate with <b>tie</b> and the Operator and minimise the adverse consequences of Operator Maintenance, Maintenance Services and any planned or unplanned works or activities, including support in providing alternative transport and notifying passengers.		✓	
[17.14-17.17] Failure to comment, provide a report on and carry out modifications as a result of a DPOFA Change.		✓	
[17.18.1] Failure to provide a representative for the Project Safety Certification Committee.		✓	

<sup>5</sup> Handback bond arrangements to be confirmed

<sup>6</sup> BBS position reserved pending due diligence.

<sup>7</sup> BBS requires clarification on which parts of the ETN are to be maintained by the Operator.

Risk : Operator Interface	Allocation		
	Public Sector	Private Sector	Shared
[17.18.2.1/51.2] Failure to liaise with the Independent Competent Person, HMRI and the Emergency Services.		✓	
[17.18.2.2] Failure to develop and implement the Infraco Safety Management System.		✓	
[17.20/17.21] Failure to complete safety and service readiness verification each morning and to certify this to <b>tie</b> and the Operator.		✓	
[17.22] <sup>8</sup> Failure to liaise effectively with the Operator in the co-ordination of health and safety issues at the Depot.		✓	
[17.23] Failure to give the Operator and <b>tie</b> a minimum of one month's notice of any planned lifecycle maintenance forming part of the Maintenance Services to be carried out on any part of the ETN.		✓	
[17.24] Failure to provide <b>tie</b> and the Operator with a combined maintenance plan not less than 6 months prior to the Planned Service Commencement Date, subject to supply to the Infraco of the Operator Maintenance Plan 12 months prior to the Planned Service Commencement Date.			✓
[17.25-17.27] Failure to provide technical advice and information to the Operator during normal working hours; failure to provide reasonable works/site access to Operator and <b>tie</b> ; interference with Operator mobilisation.		✓	
[17.27/17.28] Interference with Infraco while on Site; failure to comply with safety procedures on site; damage to the Infraco Works caused by the Operator or <b>tie</b> (unless fair wear and tear or due to operations in accordance with the Operations and Maintenance Manual).	✓		
[17.29] Failure to work closely and effectively with the Operator to complete the System Acceptance Tests and related obligations on testing and commissioning.		✓	
[17.31] Failure of the Infraco to work collaboratively with the Operator and failure of the Operator to work collaboratively with the Infraco to: <ul style="list-style-type: none"> <li>• [17.31.1] maximise productivity during the Infraco Works and minimise disruption for the public and third parties;</li> <li>• [17.31.2] ensure the delivery of complete system integration;</li> <li>• [17.3.3] satisfy levels of technical systems availability;</li> <li>• [17.31.4] minimise and give the best advance notice of interruption to Transport Services;</li> <li>• [17.31.5] not hinder proper performance of the Project Development Services, Project Operations and obligations under the Infraco Contract;</li> <li>• [17.31.6] support adherence to timetables and the Programme;</li> <li>• [17.31.7] report promptly any proposed change permitted under the DPOFA or the Infraco Contract and related mitigation;</li> </ul>	✓ ✓ ✓ ✓ ✓ ✓	✓ ✓ ✓ ✓ ✓ ✓	

<sup>8</sup> BBS reserves position pending understanding of Depot.

Risk : Operator Interface	Allocation		
	Public Sector	Private Sector	Shared
<ul style="list-style-type: none"> <li>[17.31.8] use reasonable endeavours to minimise likelihood of interface disputes.</li> </ul>	✓	✓	
[17.32] Claims against <b>tie</b> by the Operator pursuant to DPOFA due to Infraco delay in performance of its obligations.		✓	

Risk : Land Issues and Consents	Allocation		
	Public Sector	Private Sector	Shared
[18.1/18.20] Failure to provide appropriate licence and the necessary Land Consents to enter and remain upon the Permanent Land.	✓		
[18.2] Encroachment, design or construction of ETN on any land outside of the Permanent Land and Temporary Sites without the consent of <b>tie</b> .		✓	
[18.3/18.6/18.17] Breach of a Land Consent due to breach of the agreement or wilful act or omission or the use of Temporary Sites outside that specified in the Acts.		✓	
[18.4] Failure to give <b>tie</b> not less than 40 days' notice where access is required to any Temporary Site for the purposes of carrying out the Infraco Works.		✓	
[18.5] Failure to provide access to the Temporary Sites following 40 days' notice having been given by the Infraco.	✓		
[18.7/18.8] <sup>9</sup> Failure to minimise period of possession of Temporary Site, or failure to quit occupation of such Temporary Site after 28 days (3 months where a Site Office has been established) following the completion of the Infraco Works to such Temporary Site.		✓	
[18.9] Failure to give notice of the vacation of a Temporary Site.		✓	
[18.10] Failure to remove all temporary works from a Temporary Site and restore the land to the reasonable satisfaction of the land owner.		✓	
[18.10.1] Demolition of a building or any part thereof without the consent of <b>tie</b> .		✓	
[18.10.2] Failure to provide <b>tie</b> with sufficient evidence (including a detailed record of the condition of the land both before and after the occupation of the Temporary Site) to show that restoration obligations have been complied with.		✓	
[18.11] Possession to be in accordance with the Third Party Agreements.		✓	
[18.12] Failure to provide notice of temporary possession for maintenance purposes, excluding where any Building Fixing Agreement contains a right for the Infraco to enter onto any land.		✓	
[18.13] Failure to give possession of land for maintenance purposes under section 27(1) of the Tram Acts.	✓		

<sup>9</sup> **tie** to revert after checking with Land Team.

Risk : Land Issues and Consents	Allocation		
	Public Sector	Private Sector	Shared
[18.14.1] Breach of requirement to be less than 20m away from Infraco Works;		✓	
[18.14.2] Breach of reasonable requirements in connection with maintenance.		✓	
[18.14.3] Breach of requirement to avoid possession of houses or gardens.		✓	
[18.14.3] Breach of requirement to avoid possession of occupied buildings.		✓	
[18.15/18.21] Provision of additional access, land, rights, facilities and/or Land Consents which are required by the Infraco outside the Permanent and Temporary Land.	✓	✓	
[18.16] Failure to use reasonable endeavours to provide assistance to <b>tie</b> in the provision and amendment of Land Consents.		✓	
[18.19] Breach of obligations under Schedule 13 (Third Party Agreements). <sup>10</sup> <b>NOTE: any Third Party Agreements disclosed post Award will be treated as a tie change.</b>		✓	
[18.22-18.24] Failure to obtain access to land required for Accommodation Works.	✓	✓	
[19.1] <sup>11</sup> <b>NOTE: CLAUSE TO BE REWORKED FOLLOWING AGREEMENT ON RISK ALLOCATION FOR CONSENTS</b> Failure to obtain, maintain and implement all Consents which may be required to carry out and complete the Infraco Works. <b>NOTE: drafting currently places consent risk with tie, not Infraco.</b>			✓
[19.2] Failure to provide copies of Consents to either Party's Representative			✓
[19.4] Cost of obtaining and maintaining in effect the Traffic Regulation Orders	✓		
[19.5] Failure to provide reasonable assistance to <b>tie</b> in obtaining and maintaining in effect the Traffic Regulation Orders		✓	
[19.6] Failure to update the Consents Programme by each Reporting Period End Date and to obtain any new Consents			✓
[19.9] Failure to give all notices and pay all fees required to be given or paid by Law in relation to the Infraco Works			✓
[19.10-19.12] <sup>12</sup> Failure to comply with Special Requirements of any Approval Bodies affected by the Infraco Works, provided <b>tie</b> has notified the Infraco of these <sup>13</sup>			✓
[19.14] Failure to use reasonable endeavours to obtain written consent of adjoining or neighbouring landowners with regard to interference with their rights.	✓		

<sup>10</sup> Not agreed, subject to commercial discussions as to what is included in this obligation.

<sup>11</sup> Consents responsibility under discussion.

<sup>12</sup> Special requirements schedule required.

<sup>13</sup> Costs of compliance with Special Requirements are borne by **tie** as a **tie** change.

Risk : Land Issues and Consents	Allocation		
	Public Sector	Private Sector	Shared
[20.1] <b>NOTE: SUBJECT TO AGREEMENT ON BFAs</b> Failure to submit the Proposals to <b>tie</b> at least 6 months prior to the date on which the Infraco proposes to install, maintain, modify or replace any relevant supporting infrastructure and to obtain <b>tie's</b> consent to the Proposals		✓	
[20.1.2] Failure to submit the necessary applications and obtain necessary Consents			✓
[20.2/20.4] Failure to submit revised proposals		✓	
[20.3] <b>tie</b> to obtain Consents and Building Fixing Agreements	✓		
[20.5] Where a building fixing agreement is to be used, securing the consent of the Heritable Proprietor and any other relevant party to allow the Infraco to carry out a survey and securing the agreement of the Heritable Proprietor to allow the setting of such building fixings (both at Infraco cost)		✓	
[20.6] Failure to inform the Infraco of failure to obtain the consent of the relevant Heritable Proprietor	✓		
[20.7] Where necessary due to the Heritable Proprietor withholding its consent to building fixings, the responsibility for and cost of the procedure of application to the sheriff pursuant to the Acts or submittal of alternative plans		✓	
[20.8] Failure by <b>tie</b> to respond within 10 days stating its preferred method for supporting the OLE	✓		
[20.9] Failure to procure that CEC uses all reasonable endeavours to assist the Infraco in the procedure for application to the sheriff pursuant to the Acts <sup>14</sup>	✓		
[20.9.1] Rejection of application by sheriff, revised proposals are an Infraco change		✓	
[20.9.2] If the Section 16(4) route not used, then <b>tie</b> change	✓		
[20.11] This provision conflicts with Clause 20.3		?	
[20.12] Cost of removal of a building fixing and installation of OLE pole	✓		
[20.13] Selection of method for supporting OEL where building cannot support the loadings of a building fixing		✓	
[21.4] Failure to obtain any street works licence, road opening permit and any other consent, licence or permission (other than any Land Consents) that may be required for the Infraco Works.		✓	

<sup>14</sup> Note that although **tie** shall procure that CEC offers such assistance, this will be at Infraco's cost

Risk : Land Issues and Consents	Allocation		
	Public Sector	Private Sector	Shared
[21.5] Failure to give notice to a relevant authority of its proposal to commence any work and failure to provide assistance to <b>tie</b> to recover contributions from the utilities.		✓	
[21.6] Third Party Works being carried out by a utility, roads authority or an authorised third party.	✓		
[22.1] Adverse physical conditions and artificial obstructions, subject to information being provided.		✓	
[22.2/22.5] Discovery of unexploded ordnance, unidentified utility apparatus or contaminated land.	✓	✓	
[23] Failure to provide <b>tie</b> and <b>tie's</b> Representative and any person authorised by <b>tie</b> or <b>tie's</b> Representative with access upon reasonable prior notice to any site, workshop or facility etc during normal working hours.		✓	
[23] Failure to comply with rules and regulations when on such sites.	✓		
[24.1/24.2] Failure to execute the Depot Licence and comply with the terms thereof.		✓	
[24.4] Condition or fitness for purpose of the Depot.		✓	
[24.5] Liability for death, injury, damage to property or any other liability resulting from use of the Depot.		✓	
[24.6] Disruption of the Infraco's performance by <b>tie</b> accessing the Depot.	✓		

Risk : Sub-Contracting and Personnel	Allocation		
	Public Sector	Private Sector	Shared
[28.2/28.3] Sub-contracting of part of the Infraco Works without <b>tie's</b> consent except in respect of the SDS Provider, Tram Supplier, Tram Maintainer and any approved sub-contractor and/or trades and failure to provide information to enable <b>tie</b> to make a decision.		✓	
[28.4] Failure to incorporate required contract terms into subcontracts to be entered into by agreed "Key Sub-Contractors" or where the terms of the subcontract would result in the Infraco not being able to perform its obligations.		✓	
[28.5] Failure to provide such skilled technical assistants and labour as required for execution of the Infraco Works.		✓	
[28.6] Misconduct, incompetence, negligence or non-compliance with safety precautions of any employee of the Infraco and/or a Sub-Contractor.		✓	
[28.7] Failure to use reasonable endeavours to provide Key Sub-Contractor collateral warranties to <b>tie</b> in favour of <b>tie</b> and/or in favour of CEC, BAA, TEL and Network Rail (any other party must be identified prior to Award).		✓	
[28.8] Failure to use reasonable endeavours to procure that any Sub-Contractor shall within 40 business days of any reasonable request by <b>tie</b> provide to <b>tie</b> a collateral warranty.		✓	

Risk : Sub-Contracting and Personnel	Allocation		
	Public Sector	Private Sector	Shared
[28.9] Failure in performance by Sub-Contractors.		✓	

Risk : Performance of the Works	Allocation		
	Public Sector	Private Sector	Shared
[25.1] Failure to observe the reasonable instructions of <b>tie's</b> Representative.		✓	
[25.1 and 25.7] Failure to monitor the Infraco Works and failure to inform Infraco of the identity of <b>tie's</b> Representative.	✓		
[26] Acts or omissions of the Infraco's Representative.		✓	
[26.1] Failure to provide sufficient superintendence to the Infraco Works.		✓	
[26.2/26.5/26.7] Failure to obtain/retain <b>tie's</b> approval of the Infraco's Representative or his deputy.		✓	
[26.3] Supervision, management and coordination of the Infraco Works to ensure completion of the Infraco Works.		✓	
[26.8] Replacement of the Infraco's Representative.		✓	
[26.9/26.10] Failure to provide sufficient staff and involve the Key Personnel in the Infraco Works.		✓	
[26.12] Failure to ensure that there are no changes to the Key Personnel without <b>tie's</b> prior written consent and that any replacement persons shall be of at least equivalent status an ability to the person whom they replace.		✓	
[26.13] Failure to use all reasonable endeavours to ensure the continuity of the personnel assigned to perform the Infraco Works and to carefully select Key Personnel having careful regard to their existing work load and other planned commitments.		✓	
[26.14] Failure to ensure that Key Personnel have the requisite level of skill, experience and authority and receive the necessary amount of training and supervision.		✓	
[26.16] Contracting of or retention of as an adviser or consultant any person currently or previously employed or engaged in the previous 3 months by <b>tie</b> without the prior written approval by <b>tie</b> .		✓	
[26.17] Failure of Key Personnel and other staff to comply with regulatory requirements and <b>tie's</b> drug and alcohol policy.		✓	
[26.18] Allowing the consumption of, or work of under, the influence of alcohol or drugs or the giving, selling or bartering of the same.		✓	
[27.1] Failure to employ careful, skilled and experienced staff or site supervisors with CSCS (or equivalent) certification.		✓	



Risk : Performance of the Works	Allocation		
	Public Sector	Private Sector	Shared
[27.2] Misconduct, incompetence, negligence or non-compliance with safety precautions of any person employed on the Infraco Works.		✓	

Risk : Construction	Allocation		
	Public Sector	Private Sector	Shared
[29.1 and 29.2] Errors in the position, levels, dimensions or alignment of any setting out of the Infraco Works during progress of Infraco Works.		✓	
[30.1] Failure to have full regard to safety of all persons entitled to be on Site and to keep the Site in an orderly state to avoid danger to such persons.		✓	
[30.2] Failure to provide required lights, guards, fencing etc.		✓	
[30.3] Failure to comply and use reasonable endeavours to ensure others comply with health and safety legislation and requirements.		✓	
[31.1 and 31.2] Failure to take full responsibility for the care of the Infraco Works from the Effective Date until, in relation to each Section, the date of issue of a Certificate of Sectional Completion in relation to that Section including rectification for loss or damage.		✓	
[32.1] Failure to comply with the Code of Construction Practice and Code of Maintenance Practice regarding maintenance of access to properties, bus stops and bus services and the closure of roads.		✓	
[32.2] Failure to minimise nuisance, inconvenience or interference to the business or operations of the owners, tenants of properties on or in the locality of the Site, bus operators and to the public generally and failure to comply with the Code of Construction Practice and Code of Maintenance Practice in this regard.		✓	
[33.1] Failure to use reasonable means to prevent roads or bridges being subjected to extraordinary traffic by the Infraco.		✓	
[33.1] Failure to select routes and use vehicles to as far as possible avoid unnecessary damage to roads and bridges.		✓	
[33.2] <sup>15</sup> Strengthening bridges or altering or improving any highway connecting with the Site to facilitate installation of the Trams, the Infraco's Equipment or Temporary Works.		✓	
[33.2 and 33.3] Claims for damage to highways or bridges caused by the installation of Trams, Infraco's Equipment or Temporary Works.		✓	
[34.1] Failure to construct and complete the Infraco Works in strict accordance with the Agreement and in strict compliance with tie's instructions.		✓	
[34.2] Failure of the materials, Infraco's Equipment, labour, mode and manner of construction being in accordance with the Infraco Contract.		✓	

<sup>15</sup> Subject to due diligence of Tramco

Risk : Construction	Allocation		
	Public Sector	Private Sector	Shared
[34.3] Time and cost (Compensation Event) if <b>tie's</b> instructions result in any delay or disruption or cost to the Infraco unless they result from the Infraco's default.	✓		
[39] Discovery of Fossils and Antiquities (including historical human remains) on Site.	✓		

Risk: Maintenance	Allocation		
	Public Sector	Private Sector	Shared
<p>Failure to carry out all maintenance, repair, renewals and remedial works to the ETN as is necessary to:</p> <ul style="list-style-type: none"> <li>• [52.1.1] maintain the ETN in accordance with the Maintenance Programme and the Maintenance Plan;</li> <li>• [52.1.2] ensure that the requirements of the Maintenance Specifications are met at all times;</li> <li>• [52.1.3]<sup>16</sup> comply with the Operator Procedures;</li> <li>• [52.1.4] ensure that <b>tie</b> is informed of any adverse impact of design, redesign or modification to the Infraco Works;</li> <li>• [52.1.5] ensure that no maintenance or repair work shall prejudice to the Care for Safety;</li> <li>• [52.1.6] not prejudice the health or safety of or unreasonably interfere with the duties of the Operator and third parties or expose <b>tie</b> liability under health and safety legislation;</li> <li>• [52.1.7] maximise the extent to which the ETN is available and to minimise interruption to availability;</li> <li>• [52.1.8] sustain the functionality of the component parts of the ETN for not less than the design life;</li> <li>• [52.1.9] hand back the ETN in a condition consistent with the Infraco having complied with Clause 52 (<i>Maintenance</i>) provided save for fair wear and tear or the expiry of working life.</li> </ul>		<ul style="list-style-type: none"> <li>✓</li> <li>✓</li> <li>✓</li> <li>✓</li> <li>✓</li> <li>✓</li> <li>✓</li> <li>✓</li> <li>✓</li> </ul>	
[52.2/52.3] Failure to work with Operator in respect of daily handover and handback.		✓	
[52.5] Failure to carry out Mobilisation Services on or before the appropriate Mobilisation Milestone Dates.		✓	
[52.6] Failure to carry out the Maintenance Services safely and efficiently and free of any reasonably avoidable risk of pollution, nuisance, interference or hazard.		✓	
[52.7] Failure to employ and train all staff necessary to perform the Maintenance Services in accordance with the Infraco Contract.		✓	

<sup>16</sup> BBS position reserved until Operator Procedures have been reviewed.

Risk: Maintenance	Allocation		
	Public Sector	Private Sector	Shared
[52.8] <sup>17</sup> Failure to provide and employ all staff necessary to perform the Mobilisation Services in accordance with the Infraco Contract.		✓	
[52.9] Failure to supply only new materials and goods (save where they have been repaired in accordance with Good Industry Practice) of a satisfactory quality.		✓	
[52.10-52.11] The provision of all Spare Parts and Special Tools required for the Maintenance Services (including the provision of valid calibration certificates) and which meet the technical and safety requirements of the Maintenance Specification.		✓	
[52.14] Failure to maintain adequate stocks for the Minimum Spare Parts Pool at the Depot, manage reorders and lead times and review of the level of Minimum Spare Parts Pool.		✓	
[52.14] Review and variation of the Minimum Spare Parts Pool	✓		
[52.15] Effecting repairs of all defects in, failures or damage to the ETN irrespective of cause, excluding the Free Issue Fare Collection Equipment, causing minimum disruption to the ETN.		✓	
[52.16] Cost of repairs referred to at 52.15 above to the extent that any damage to the ETN is caused by: 1) a breach of the Infraco Contract by Infraco or 2) any negligent act or omission by the Infraco or any Infraco Party.		✓	
[52.17] Cost of repairs referred to at 52.15 above to the extent that any damage to the ETN is not caused by: 1) a breach of the Infraco Contract by Infraco or 2) any negligent act or omission by the Infraco or any Infraco Party.	✓		
[52.18] Failure to repair or replace the ETN to a condition which meets the requirements of the Maintenance Specification.		✓	
[52.19] Temporary Repairs and obtaining prior approvals.		✓	
[52.20/52.21] Failure to provide assistance, information and advice to <b>tie</b> and the Operator which is reasonably required in the case of incidents or failures affecting the ETN and reporting thereon.		✓	
[52.22] Failure to have competent resources available to carry out the repairs at the site of the failure where this is the most efficient manner of dealing with the failure.		✓	
[52.23] Failure to report and propose a solution to defects where rectification falls within the scope of the Infrastructure Maintenance Services in the ETN which may prejudice safety or reliable operation of the ETN.		✓	
[52.24] Failure to provide additional systems availability requested by <b>tie</b> following Infraco's confirmation of its ability to so provide. <sup>18</sup>		✓	
[52.25] Failure to keep up to date and supply a maintenance manual, electronically and free of charge, to <b>tie's</b> representative.		✓	
[52.26] Failure to provide and maintain the Control Room. <sup>19</sup>		✓	

<sup>17</sup> Obligation to be clarified.

<sup>18</sup> Discussions as to payment of additional availability ongoing.

Risk: Maintenance	Allocation		
	Public Sector	Private Sector	Shared
[53] Use, handling, removal and disposal of Hazardous Materials and keeping an up to date register of same.		✓	
[54] <sup>20</sup> Maintenance of Technical Records and Computer Systems.		✓	

Risk : Quality, Testing and Examination	Allocation		
	Public Sector	Private Sector	Shared
[35.1] Failure of the materials and workmanship to be as described in the Infraco Contract. Testing and examination of the quality, weight or quantity of any materials used before use in the Infraco Works.		✓	
[35.2] Costs of and supply of samples.		✓	
[35.3/41.2/44.2/47.2] Costs of any specified tests.		✓	
[35.4] Costs of tests not identified in the Infraco Contract but requested by <b>tie</b> .		✓	
[36.1] Failure to give 48 hours notice to allow examination of work prior to covering up.		✓	
[36.2] Cost of uncovering where Infraco Works are found to be in accordance with Agreement.	✓		
[36.2] Cost of uncovering where Infraco Works are found not to be in accordance with Agreement.		✓	
[37.1] Removal and replacement of unsatisfactory workmanship or materials.		✓	
[37.5] Costs of opening up and testing for unsatisfactory work and materials following repeated non-compliance.		✓	
[38.3] Urgent repairs carried out by <b>tie</b> which the Infraco was liable to carry out at its own expense under the Agreement and which in the opinion of <b>tie's</b> Representative, acting reasonably, is necessary by reason of emergency or an immediate threat to health and safety.		✓	
[38.4] Urgent repairs carried out by the Infraco (except to the extent such work results from Infraco's default).	✓		
[40] Rectification of errors or omissions in the Infraco Works.		✓	
[41 and 42] Completion and Certification of Milestones.	✓	✓	
[43] <sup>21</sup> Appointment of Tram Inspector and compliance with obligations in the Tram Inspector Agreement and cooperation regarding related matters.	✓	✓	
[43.10] Costs of appointment and services of the Tram Inspector.	✓		

<sup>19</sup> Subject to BBS confirmation of its obligations

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<sup>20</sup> This is subject to a review of the Maintenance Services Connecting Agreement

<sup>21</sup> Pending outcome of discussions on the Tram Inspector Agreement