

EDINBURGH TRAM NETWORK

INFRACO CONTRACT

BBS POSITION AS AT THURSDAY 13 MARCH 2008 BASED ON INFRACO CONTRACT

This is based on an understanding of OCIP Policy through emails, conversations and draft documents.

Third Party Liability	Contractual Indemnity in Infraco Contract Duration: up to Reliability Certificate (or Service Commencement)	Insurance under OCIP Duration: to July 2011 plus 2 years defects liability period	Additional Insurance	Gap	Comments
Claims arising from BBS negligence in respect of third party property damage	Infraco indemnifies tie/CEC against all claims, liabilities, damages, penalties, fines and costs incurred by reason of Infraco negligent or wilful acts or omissions performing the Works subject to 20% contractual cap (£46m)	OCIP covers this for Insured Parties up to limit of insurance indemnity.	The draft Infraco Contract provides for Infraco to take out additional insurance on tie's request and as a tie Change. This applies in this column.	-	The contractual indemnity is subject to a 20% cap during construction and a £3.5 million cap post Reliability Certificate (?) save for third party liabilities arising from latent defects, [◆]. Claims under collateral warranties count against the cap. Proceeds of bonds, cash retentions, insurance proceeds, insurance deductibles and proceeds of

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Third Party Liability	Contractual Indemnity in Infraco Contract Duration: up to Reliability Certificate (or Service Commencement)	Insurance under OCIP Duration: to July 2011 plus 2 years defects liability period	Additional Insurance	Gap	Comments
					insurance which ought to have been available but for Infraco breach does not count towards cap.
Claims arising from BBS negligence in respect of pure financial/economic loss	Infraco indemnifies tie/CEC against third parties' Indirect Losses (i.e. loss of revenue, financial loss) up to contractual cap of £46m.	<p>OCIP covers this for Insured Parties up to limit of insurance indemnity, provided that the financial loss is directly connected to an interest in damaged property.</p> <p>OCIP provides £1 million cover for pure economic loss where there is no proprietary connection between the damage and the loss (for example: BBS severs mains cabling, utilities are cut off and shop loses custom).</p>	Possibility of increased cover under OCIP.	-	-
Claims arising from BBS breach of contract in respect of damage to third party	Infraco indemnifies tie/CEC against all claims, liabilities, damages, penalties, fines and costs incurred	OCIP covers this for Insured Parties up to limit of insurance indemnity.	-	-	-

Third Party Liability	Contractual Indemnity in Infraco Contract Duration: up to Reliability Certificate (or Service Commencement)	Insurance under OCIP Duration: to July 2011 plus 2 years defects liability period	Additional Insurance	Gap	Comments
property	by reason of Infraco breach of contract.				
Claims arising from BBS breach of contract in respect of pure financial/economic loss	Infraco indemnifies tie/CEC against third parties' Indirect Losses (i.e. loss of revenue, financial loss) up to contractual cap of £46m.	OCIP covers this for Insured Parties up to limit of insurance indemnity, provided that the financial loss is directly connected to an interest in damaged property. OCIP provides £1 million cover for pure economic loss where there is no proprietary connection between the damage and the loss (for example, utilities are cut off).	Possibility of increased cover under OCIP.	-	-
Third Party claims arising from nuisance	Infraco under a duty to minimise and reduce any nuisance caused by the carrying out of the Works.	OCIP covers this subject to exclusions.	-	-	-
Third Party claims arising from unavoidable consequence of carrying out the Authorised Works	As above	OCIP covers this liability to third parties as far as it relates to nuisance and a proprietary interest.	-	-	Business compensation fund for pure economic loss claims.

Third Party Liability	Contractual Indemnity in Infraco Contract Duration: up to Reliability Certificate (or Service Commencement)	Insurance under OCIP Duration: to July 2011 plus 2 years defects liability period	Additional Insurance	Gap	Comments
(likely to be nuisance based)		It does not cover a third party claim in so far as it relates to pure financial/economic loss.			
Claims arising from tie/CEC being put in breach of Third Party Agreements	Infraco indemnifies tie/CEC for breach of contract and negligence in respect of Third Party Agreement claims arising from breach of Third Party Agreements caused by BBS. With regard to parliamentary undertakings, test of reasonable foreseeability applies to type of constraint that BBS could cause tie/CEC to breach.	Not insured (?)	-	-	-
Claims arising from tie being put in breach of DPOFA	Infraco indemnifies tie/CEC against claims arising out of (i) breach of DPOFA by tie caused by Infraco or (ii) interference with Transdev by Infraco.	Not insured (?)	-	-	-

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BBS POSITION AS AT 3pm FRIDAY 14 MARCH 2008

This is based on an understanding of OCIP Policy through emails, conversations and draft documents.

Third Party Liability	Contractual Indemnity in Infraco Contract	Insurance under OCIP (duration to July 2011 plus 2 years defects liability period)	Additional Insurance	Gap	Comments
Claims arising from BBS negligence in respect of third party property damage	As for 13.3.08	OCIP covers this for Insured Parties up to limit of insurance indemnity.	The draft Infraco Contract provides for Infraco to take out additional insurance on tie's request and as a tie Change. This applies in this column.	-	-
Claims arising from BBS negligence in respect of pure financial/economic loss	As for 13.3.08	OCIP covers this for Insured Parties up to limit of insurance indemnity provided that the financial loss is directly connected to an interest in damaged property. OCIP provides £1 million cover for pure economic loss	Possibility of increased cover under OCIP.	-	-

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Third Party Liability	Contractual Indemnity in Infraco Contract	Insurance under OCIP (duration to July 2011 plus 2 years defects liability period)	Additional Insurance	Gap	Comments
		where there is no proprietary connection between the damage and the loss (for example, utilities are cut off).			
Claims arising from BBS breach of contract in respect of damage to third party property	<p>NEW: The indemnity in the draft Infraco Contract has been subjected to a test of loss, being the reasonably foreseeable consequence of breach of contract.</p> <p>Breach would not necessarily trigger access to the indemnity.</p>	OCIP covers this for Insured Parties up to limit of insurance indemnity.	-	-	Certain liabilities CEC could incur as a statutory body or under the Tram Acts could be triggered by breach of contract by BBS which is not necessarily negligent. For example, a fine/penalty under the Tram Acts or a breach of public duty is not insured under OCIP. If this were not foreseeable, CEC would have an exposure.
Claims arising from BBS breach of contract in respect of pure financial/economic loss	As for 13.3.08	OCIP covers this for Insured Parties up to limit of insurance indemnity provided that the financial loss is directly connected to an interest in damaged property.	Possibility of increased cover under OCIP.	-	-

Third Party Liability	Contractual Indemnity in Infraco Contract	Insurance under OCIP (duration to July 2011 plus 2 years defects liability period)	Additional Insurance	Gap	Comments
		OCIP provides £1 million cover for pure economic loss where there is no proprietary connection between the damage and the loss (for example, utilities are cut off).			
Third Party claims arising from nuisance	As for 13.3.08	OCIP covers this subject to exclusions.	-	-	-
Third Party claims arising from unavoidable consequence of carrying out the Authorised Works (likely to be nuisance based)	NEW: BBS wish tie to indemnify them against third party claims against BBS in the case of BBS executing the Works.	OCIP covers this liability to third parties as far as it relates to nuisance and a proprietary interest. It does not cover it in so far as it relates to pure financial/economic loss.	-	-	-
Claims arising from tie/CEC being put in breach of Third Party Agreements	PROPOSED BY TIE: Foreseeability test is not applied to these tie/CEC commitments if a breach by BBS puts tie/CEC in breach.	Not insured	-	-	-

Third Party Liability	Contractual Indemnity in Infraco Contract	Insurance under OCIP (duration to July 2011 plus 2 years defects liability period)	Additional Insurance	Gap	Comments
Claims arising from tie being put in breach of DPOFA	As for 13.3.08	Not insured	-	-	-

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INFRACO CONTRACT

BBS POSITION AS AT SATURDAY 15 MARCH 2008

This is based on an understanding of OCIP Policy through emails, conversations and draft documents.

Third Party Liability	Contractual Indemnity in Infraco Contract	Insurance under OCIP (duration to July 2011 plus 2 years defects liability period)	Additional Insurance	Gap	Comments
Claims arising from BBS negligence in respect of third party property damage	None	OCIP covers this for Insured Parties up to limit of insurance indemnity.	<p>The draft Infraco Contract provides for Infraco to take out additional insurance on tie's request and as a tie Change.</p> <p>This applies in this column.</p>	-	<p>Exclusions:</p> <ul style="list-style-type: none"> • Deductibles • Insureds Property • Fines/penalties • Buildings/structures temporarily occupied by the Insured • Liquidated Damages • Damage to the Works • Loss caused by design or professional advice • Existing pollution /contamination

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Third Party Liability	Contractual Indemnity in Infraco Contract	Insurance under OCIP (duration to July 2011 plus 2 years defects liability period)	Additional Insurance	Gap	Comments
Claims arising from BBS negligence in respect of pure financial/economic loss	None	<p>OCIP covers this for Insured Parties up to limit of insurance indemnity provided that the financial loss is directly connected to an interest in damaged property.</p> <p>OCIP provides £1 million cover for pure economic loss where there is no proprietary connection between the damage and the loss (for example, utilities are cut off).</p>	Possibility of increased cover under OCIP.	As above and any pure economic or financial loss unconnected to property damage as utilities diversion.	-
Claims arising from BBS breach of contract in respect of damage to third party property	None	OCIP covers this for Insured Parties up to limit of insurance indemnity.	-	As above in respect of exclusions and any liability above OCIP policy limit.	-
Claims arising from BBS breach of contract in respect of pure financial/economic loss	None	<p>OCIP covers this for Insured Parties up to limit of insurance indemnity provided that the financial loss is directly connected to an interest in damaged property.</p> <p>OCIP provides £1 million cover for pure economic loss where there is no proprietary connection between the damage and the loss (for example, utilities are cut off).</p>	Possibility of increased cover under OCIP.	As above and any pure economic loss unconnected to proprietary interest.	-

Third Party Liability	Contractual Indemnity in Infraco Contract	Insurance under OCIP (duration to July 2011 plus 2 years defects liability period)	Additional Insurance	Gap	Comments
Third Party claims arising from nuisance	None	OCIP covers this subject to [◆]	-	Exclusions as above and any foreseeable consequences of the Works.	-
Third Party claims arising from unavoidable consequence of carrying out the Authorised Works (likely to be nuisance based)	None	OCIP covers this liability to third parties as far as it relates to nuisance and a proprietary interest. It does not cover it in so far as it relates to pure financial/economic loss.	-	Exclusions as above and any foreseeable consequences of the Works.	Business compensation fund for pure economic loss claims.
Claims arising from tie/CEC being put in breach of Third Party Agreements	None	Not insured	-	-	-
Claims arising from tie being put in breach of DPOFA	None	Not insured	-	-	-