

shall act under the Asset Protection Agreement in seeking to procure that Network Rail will adhere to the obligations.

16.12 The Infraco shall promptly notify **tie** of any information in relation to the APA Works which is reasonably required to be obtained from Network Rail in order to carry out the APA Works. The Infraco shall be responsible for any delay arising as a result of its failure to identify and notify **tie** of the need for such information.

16.13 The Infraco and **tie** acknowledge that Network Rail shall carry out or procure the carrying out of its obligations under the Asset Protection Agreement:

16.13.1 in accordance with Legal Requirements (as defined in the Asset Protection Agreement) and such other statutory requirements and mandatory standards as may be applicable to the rail industry from time to time (including the Safety Case (as defined in the Asset Protection Agreement));

16.13.2 in accordance with the terms of any APA Consents;

16.13.3 in a timely, economic and efficient manner, having regard at any particular time to Network Rail's obligations, purposes and duties as operator, renewer, maintainer and developer of the Network;

16.13.4 with that degree of skill, diligence and prudence which should be exercised by a skilled and experienced network operator and owner; and

16.13.5 in accordance with and subject to the terms of the Asset Protection Agreement.

The Infraco and **tie** further acknowledge that the standards set out in Clauses 16.13.1 to 16.13.4 are in descending order of priority so that in the event of any conflict between two or more of such standards Network Rail's obligation will be to act in accordance with the standard listed higher above.

16.14 The Infraco shall immediately notify **tie** in the event that Network Rail acts in a way which is not in accordance with Network Rail's obligations as described in Clause 16.13, or is otherwise acting in a manner which is of concern to the Infraco and, upon such notification, **tie** shall act under the Asset Protection Agreement in seeking to procure that Network Rail will adhere to its obligations; **tie** shall immediately notify and provide details to the Infraco in the event of Network Rail notifying **tie** of it becoming aware of any matter which will prevent or impede the carrying out of the APA Works.

- 16.15 The Infraco shall respond as soon as reasonably practicable to any request by **tie** for documentation or assistance to assist Network Rail in obtaining any consent necessary for the APA Works.
- 16.16 The Infraco shall prepare any APA Deliverable submission in line with its APA Works Programme and shall notify **tie** not less than 25 Business Days prior to any such submission.
- 16.17 Upon submittal of any APA Deliverable in relation to the APA Works, the Infraco shall provide a list of the Standards, legal requirements and other guidance and codes of practice which it has complied with in preparing such APA Deliverable, and shall ensure that any further information, data and documents that are reasonably required by **tie** are provided as soon as reasonably practicable. The Infraco shall comply with any procedures and requirements notified by **tie** to the Infraco from time to time in relation to the submittal of APA Deliverables, whether or not consistent with Clause 10 (*Development, Review, and Finalisation of the Deliverables*).
- 16.18 Where an APA Deliverable is returned by **tie** and receives full approval, the Infraco shall be entitled to proceed with APA Works as specified in the APA Deliverable. Where any APA Deliverable is approved with comments, the relevant APA Works may proceed after the Works Commencement Date subject to the inclusion of the comments, and the Infraco shall record the means of achieving compliance with such comments in writing and promptly submit this to **tie**. In the event that approval is not received in respect of the APA Deliverable, the Infraco shall not act upon the APA Deliverable, but shall amend the APA Deliverable in accordance with comments received and shall resubmit the same.
- 16.19 The Infraco shall not commence detailed design of any part of the APA Works until **tie** has confirmed to the Infraco that Network Rail has approved all relevant APA Deliverables.
- 16.20 The Infraco shall, and shall procure that each of its subcontractors shall, meet the requirements of Network Rail's Link Up Accreditation for all relevant classes of APA Works to be carried out by the Infraco or the particular subcontractor. The Infraco shall, when required by the Infraco, demonstrate that both it and its subcontractors hold the relevant certificate from Network Rail confirming that it and its subcontractor has a Contractor's Assurance Case.
- 16.21 The Infraco shall design, procure and carry out each element of the APA Works in accordance with all Standards as at the date that such element of the APA Works passes Stage Gate Four and any change of Standards for safety reasons thereafter or such derogations from the Standards as Network Rail and/or the relevant Approval Bodies may approve or consent to in writing. The Infraco shall design, procure and carry out the APA Works in accordance with the requirements which Network Rail are entitled to stipulate to **tie** under the Asset Protection Agreement.

- 16.22 The Infraco shall ensure that design of the APA Works is such as to enable construction of the APA Works in a manner which minimises disruption to the Railway and enables future construction or maintenance to be carried out on the rail Network and which, as far as is reasonably possible, minimises costs and disruption to the rail Network during construction or maintenance.
- 16.23 The Infraco shall meet with Network Rail and/or **tie** as may reasonably be required on reasonable notice during the Term in respect of matters to which clauses 7.2.5, 7.4.3 and 8.13 of the Asset Protection Agreement refer but only in the event and to the extent that the Infraco otherwise has ongoing obligations under the Infraco Contract in respect of such matters or as may be agreed between the Parties acting reasonably.
- 16.24 Prior to commencing the construction of the APA Works, the Infraco and each subcontractor shall produce a quality plan, environmental plan, and a safety plan specific to the APA Works in order to satisfy the requirements of achieving a Network Rail Contractor Assurance Case.
- 16.25 The Infraco shall prepare, in accordance with any reasonable requirements which **tie** may have, any documentation required by Network Rail to enable Network Rail to obtain Consents necessary for the APA Works. Any modification of the design and construction process necessary to secure such consents can be obtained shall be a **tie** Change save to the extent that the need for such modification arises due to a failure by the Infraco to anticipate the requirements in question in breach of Clause 7.1.
- 16.26 Where Network Rail obtain a consent necessary for the APA Works, **tie** shall supply the Infraco with copies of the approved drawings together with supporting design and check certificates and contract documents for the Infraco's use during the carrying out of the APA Works.
- 16.27 Where **tie** are obliged to obtain a consent necessary for the APA Works, the Infraco shall provide all reasonable assistance (which for the avoidance of doubt, shall not include the provision of any undertakings, guarantees, collateral warranties (save as otherwise required under this Agreement) or indemnities) to **tie** in obtaining consents for which **tie** are responsible (and in maintaining those consents during the Term but in that case only in so far as referable to the proper requirements of the Independent Competent Person or otherwise arising from a Bridge Agreement (following notification of execution by **tie** under Clause 16.55.4) to the extent that the Infraco is not relieved from such obligations under Clause 16.45, in circumstances where the need for and nature of such assistance ought reasonably to be anticipated in the exercise of the level of skill, care and diligence referred to in Clause 7.1.
- 16.28 Following completion of any Sector in relation to the APA Works, the Infraco shall remove from and leave such completed Sector clear of plant equipment and materials not

reasonably required in respect of the ongoing obligations of the Infraco in respect of the APA Works and site thereof.

16.29 The Infraco shall ensure that, during the Term, neither it nor any of its subcontractors shall interfere with the availability of suitable access and egress rights into and from Haymarket Depot for all necessary purposes at all times to the reasonable satisfaction of Network Rail.

16.30 The Infraco shall not and shall not allow or permit or submit anything to be done by it or any of its subcontractors, which would adversely affect the continuous operation of train refuelling equipment and fuel tanks at Haymarket Depot. The Infraco shall ensure that, during the Term, neither it nor any of its subcontractors shall interfere with the safe and suitable access to such equipment and fuel tanks for all necessary purposes at all times to the reasonable satisfaction of Network Rail.

16.31 The Infraco shall ensure that all elements of the APA Works which relate to new or existing over-bridges, under-bridges and foot-bridges will comply with the Standards (subject to Clause 16.20) and the requirements of HMRI.

16.32 The Infraco shall, prior to the commencement of the APA Works, carry out a condition and defects survey in respect of the land coloured pink in the plans set out in Schedule Part 8 of the Asset Protection Agreement.

16.33 The Infraco shall submit an APA Works Programme for approval in principle by **tie** and Network Rail prior to the APA Works Commencement Date and shall do so sufficiently in advance of such date so as to allow **tie** and Network Rail a reasonable period in which to provide their approval. Such APA Works Programme shall include:

16.33.1 all submission dates for approval of APA Deliverables;

16.33.2 submission data work package plans;

16.33.3 the proposed detailed possession plan;

16.33.4 details of all survey works;

16.33.5 works inspection and testing plans;

16.33.6 take-over and commissioning plans;

16.33.7 details of interaction with any Interfacing Projects and how these will affect the programme; and

16.33.8 verification of the critical path activities.

tie acknowledges that Network Rail is obliged in terms of the Asset Protection Agreement to both act reasonably and to co-operate in the planning and development of an APA Works Programme.

16.34 If this APA Works Programme is not sufficiently developed prior to the APA Works Commencement Date for approval, the Infraco shall, as soon as reasonably practicable, submit a full APA Works Programme in compliance with Clause 16.32 above, and shall liaise with **tie** in respect of revising such APA Works Programme until it is approved. The Infraco shall use reasonable endeavours to ensure that it has minimised the disruptive possession requirements in consultation with **tie** and Network Rail. The Infraco shall undertake the arrangements reasonably required by **tie** in respect of the interface of the APA Works with the Interfacing Projects through the agreed point(s) of contact notified by **tie**. The Infraco shall comply with the reasonable requirements of **tie** in respect of the procurement of necessary resources to facilitate the use of possessions on the dates identified in the APA Works Programme (as updated from time to time in accordance with this Clause 16 (*Interface with Network Rail*)).

16.35 The Infraco shall, where required by **tie**, produce a revised programme and possession dates where it becomes clear, in consultation with **tie**, that in the reasonable opinion of **tie** the progress of the APA Works is not sufficient to meet the previously agreed programme and possessions timetable.

16.36 The Infraco shall act with all due expedition in relation to consultation and development of plans which will affect the time table for Possessions. In the event that the Infraco is responsible for any delay which renders any Possession obsolete or insufficient for the purposes of the APA Works, the Infraco shall reimburse **tie** for all costs associated with the Possession(s) which are cancelled or not used as a result and the Infraco shall not be entitled to an extension of time, additional payment or relief in such circumstances.

16.37 The Infraco shall not commence any part of the APA Works prior to the APA Works Commencement Date.

16.38 Prior to undertaking each particular part of the APA Works, the Infraco shall:

16.38.1 obtain **tie's** prior written approval (not to be unreasonably withheld) to the APA Works Programme and method statement for the carrying out and completion of that particular part of the APA Works and any associated movement of materials, plant and equipment on or near the railway;

16.38.2 in relation to any APA Works to be undertaken in an area which is the subject of a Regulated Change process, await a notice to proceed from **tie** in respect of this part of the APA Works prior to commencing works in the areas which are subject to the Regulated Change. A **tie**

Change shall occur if such a notice to proceed is not issued in accordance with the agreed APA Works Programme.

16.39 During the construction of the APA Works the Infraco shall:

- 16.39.1 take all steps required to ensure that the APA Works are carried out in a way that minimises disruption to the railway and any third party using it or having an interest in the land affected by the APA Works;
- 16.39.2 establish and maintain a robust procedure to ensure the safe access for all authorised personnel to the railway in connection with the Works;
- 16.39.3 not interfere, and ensure that no subcontractor interferes, with existing points of emergency access to the network without **tie** having obtained the prior agreement of Network Rail in writing;
- 16.39.4 submit in writing for the approval of **tie** (such approval not to be unreasonably withheld) any proposals for the provision of personnel to supervise Possessions or the APA Works;
- 16.39.5 carry out the APA Works efficiently at such times and in such a way as to minimise, in so far as is reasonably practicable, any interference with traffic operating on the rail network;
- 16.39.6 carry out the APA Works to the satisfaction of **tie** and Network Rail in respect of the protection, safety and efficient operation of the railway and the safety of persons and property on or near the railway;
- 16.39.7 procure that all materials and goods used in the APA Works shall be new, of good quality, suitable for their purpose, in compliance with all applicable Standards (subject to Clause 16.20) and not generally known in the railway industry to be deleterious at the time of incorporation;
- 16.39.8 maintain the APA Works until Completion of "the Works" as defined in the Asset Protection Agreement.
- 16.39.9 cause the APA Works to be completed with all reasonable dispatch and in any event by 30 June 2011, as such date may be extended with consent of **tie**;
- 16.39.10 arrange for the relocation to a suitable environment of any flora and fauna which is subject to conservation and which may be affected by the APA Works;
- 16.39.11 temporarily erect fencing to protect the network from trespass and vandalism to the reasonable satisfaction of **tie** and Network Rail;

- 16.39.12 provide for such barriers, supervision, and lighting of the APA Works as may be reasonably specified by **tie** as being necessary during the carrying out of the APA Works;
- 16.39.13 comply with the requirements of Network Rail with regard to Network Rail's signalling arrangements and the prevention of any adverse effects which may be caused by the lighting of the APA Works;
- 16.39.14 provide **tie** with reasonable notice in writing of any inspections or testing of the APA Works by the Infraco or its subcontractors and allow **tie** the opportunity to procure Network Rail attendance at such inspection, demonstration or testing;
- 16.39.15 notify **tie** in writing once it considers (a) a Sector has been completed is capable of being certified as completed and (b) the APA Works have been completed and are capable of being certified as being completed;
- 16.39.16 provide **tie** with such information at such times and in such form as **tie** may reasonably require about the APA Works to enable Network Rail to populate its asset register.
- 16.40 The Infraco shall consult with **tie** and Network Rail and prepare a Construction Phase Plan (as defined in the CDM Regulations) for the APA Works alone, and submit it to **tie**. The Infraco shall amend such plan to take account of any reasonable comments made by **tie** or passed on from Network Rail.
- 16.41 The Infraco shall prepare a relevant data manual for the APA Works alone to form part of the health and safety file for CDM purposes. The manual shall be finalised and passed to **tie** for onward delivery to Network Rail with such number of copies as Network Rail may reasonably require prior to completion of the APA Works.
- 16.42 The Infraco shall use reasonable endeavours to identify any relationship between the APA Works and Interfacing Projects which have been notified to it by **tie** or Network Rail. The Infraco shall mitigate and control the APA Works elements of such interface as far as is reasonably practicable.
- 16.43 The Infraco shall at its own cost make good any property of Network Rail which has been damaged or interfered with in during the course of the APA Works, and shall carry out any remedial work as may be required to ensure that the APA Works comply with the Asset Protection Agreement. The Infraco shall carry out any demonstrations or tests for any part of the APA Works which are reasonably required by **tie** as a result of such damage, interference or remedial work under this Clause 16.42 at its own cost.

16.44 The Infraco acknowledges that Network Rail may require **tie** to suspend the carrying out of the APA Works when Network Rail has notified **tie** that such suspension is necessary in order to prevent, address, alleviate or comply with a Network Operation Issue (and that **tie** may in such an event instruct Infraco to suspend the APA Works to the extent necessary to comply with Network Rail's requirement; provided that Network Rail has complied with the restrictions upon it in this regard set out in clauses 10.2 and 10.3 of the Asset Protection Agreement. Any such suspension shall be a Compensation Event to the extent that such suspension has not been caused by any act or omission of the Infraco.

16.45 The Infraco shall from notification of execution of each Bridge Agreement by **tie** under Clause 16.55.4 until the expiry of the Term comply with the terms of each of the Bridge Agreements, save where the terms of such Bridge Agreement are inconsistent with the draft Bridge Agreement in the Schedule Part 27 Section B (*Asset Protection Agreement and Bridge Agreement*), and provided that:

~~16.45.1~~ reference in the Bridge Agreement to "in accordance with the Asset Protection Agreement" shall be construed for the purposes of this Clause 16.45 as being in accordance with Clause 16.1 of this Agreement;

16.45.1 ~~16.45.2~~ the Infraco shall not be responsible for any costs of Network Rail arising under the Bridge Agreement;

16.45.2 ~~16.45.3~~ Clause 16.20 shall apply to the Standards relevant to the Bridge Agreement;

16.45.3 ~~16.45.4~~ if Network Rail exercise a right to fix apparatus under the Bridge Agreement, any impact on the Infraco shall be treated as a **tie** Change;

16.45.4 ~~16.45.5~~ the Infraco shall incur no liability under the Bridge Agreement in respect of future railway alterations; and

16.45.5 ~~16.45.6~~ for the avoidance of doubt, the liability of the Infraco in respect of the compliance with the Bridge Agreements remains subject to Clauses 77.2, 77.3, 77.7, 77.8, 16.72 and 16.73;

16.46 Prior to Network Rail taking any action or ordering any suspension envisaged to which Clause 16.44 would apply, **tie** shall involve the Infraco in consultation with itself and Network Rail in order to identify the best course of action in relation to the Network Operation Issue. **tie** shall provide the Infraco with all information which it receives from Network Rail in relation to the Network Operation Issue, including updates in relation to the estimates of any duration of suspension, and shall notify the Infraco as soon as practicable once the APA Works can be resumed.

- 16.47 Where **tie** requires the Infraco to take any action as the result of an instruction from Network Rail in respect of a Network Operation Issue, the Infraco and **tie** acknowledge that Network Rail is entitled to issue instructions directly to the Infraco where **tie** is not available. The Infraco and **tie** acknowledge that, for these purposes, such direct instructions from Network Rail shall be treated as an instruction from **tie's** Representative under Clause 25 (***tie's** Representative*).
- 16.48 The Infraco and **tie** shall exchange information and otherwise cooperate with each other in accordance with the reasonable requirements of Network Rail, so far as is necessary to enable Network Rail to review and revise its safety regime relating to maintenance, repair, improvement, alteration and operation of the Railway during the construction of the APA Works and for a period of 12 months following completion of the APA Works.
- 16.49 The Infraco acknowledges that Network Rail may inspect the APA Works (including ultrasonic examination of the operational track) at any time prior to the date of Taking Into Use and **tie** shall inform the Infraco of any areas requiring such attention and the level of priority for such work. The Infraco shall carry out such work within the time-scale specified within the Standards (subject to Clause 16.20). If the Infraco unreasonably fails to do so, it acknowledges that Network Rail is entitled to undertake such corrective or remedial work itself and recover the costs thereof from **tie** (subject to **tie** being entitled to recover such costs where the measures and/or timescales are determined to have been disproportionate or unnecessary under the Dispute Resolution Procedure as defined in the Asset Protection Agreement), and **tie** shall be entitled to recover such costs from the Infraco, subject to Clauses 77.2, 77.3, 77.7, 77.8, 16.72 and 16.73.
- 16.50 The Infraco shall comply with the reasonable requirements of Network Rail in respect of Taking Into Use of the APA Works to the extent that such are to be Taken Into Use, and to provide Network Rail with reasonable assistance in respect of these procedures and the procedures for certifying completion of a Sector of the APA Works and those applicable to completion of the APA Works as a whole.
- 16.51 Following completion of the APA Works, the Infraco will:
- 16.51.1 within two years (but not less than 18 months) of the completion of the APA Works, repeat the condition and defects survey required under Clause 16.32 in adherence with the access requirement and procedures agreed with Network Rail in relation to the APA Works;
 - 16.51.2 make good any damage caused to Network Rail property by the carrying out and completion of the APA Works and, subject to intended alterations arising as a consequence of the APA Works, reinstate all Network Rail property so damaged to a condition substantially the same as existed at

the APA Works Commencement Date as evidenced by the condition and defects survey; and

16.51.3 carry out and complete rectification and remedial works which may be necessary as a consequence of the Infraco or any subcontractor failing to carry out and complete the APA Works in accordance with the Asset Protection Agreement. In the event that the Infraco does not carry out such works within three months of completion of the APA works, it acknowledges that Network Rail may carry out such works and recover the costs thereof from tie, and tie shall be entitled to recover such costs from the Infraco.

16.52 The Infraco shall not use or operate or permit any third party to use or operate any operational Railway track (other than for testing as agreed with Network Rail and tie). The Infraco shall not, and shall procure that no other party shall, use or operate any of the APA Works or areas in which the Infraco has been working for commercial purposes.

16.53 The Infraco acknowledges that if, in consequence of the construction of the APA Works or existence of the APA Works, Network Rail incurs additional costs and expense in connection with the repair, maintenance, improvement, operation or alteration of the Railway which would not have been incurred but for the construction of the APA Works or existence of the APA Works, and in so far as such additional cost or expense arises as a result of Infraco's breach of the Infraco Contract, such additional cost or expense shall be paid by tie to Network Rail, and tie shall be entitled to recover such additional expense from the Infraco, provided that such additional expense is incurred prior to 1 April 2014 and subject to Clauses 77.2, 77.3, 77.7, 77.8, 16.72 and 16.73.

16.54 The Infraco acknowledges that in the event of acts of trespass or vandalism occurring on or from the Site (or on or from a bridge or its approaches under a Bridge Agreements(following notification of execution by tie under Clause 16.55.4)) which endangers the safety of the railway or the safety of Network Rail property or persons on or near the Railway, Network Rail may (subject to the terms of Clause 12.8 of the Asset Protection Agreement or Clause 2.11 of the Bridge Agreement, as the case may be) take immediate action at the cost of tie to safeguard the Railway or such person or property. Where such actions are properly taken prior to the Completion of the Works (as defined in the Asset Protection Agreement) or, at any time in the case of a Bridge Agreement issue, and are necessary as a result of the Infraco's failure to implement security obligations in accordance with the Infraco Contract, the Infraco shall reimburse tie for any such costs, subject to Clauses 77.2, 77.3, 77.7, 77.8, 16.72, and 16.73.

16.55 From the date set for completion of the relevant Sector of the APA Works until (a) in the case of those parts of the APA Works that are to be Taken Into Use, the date that the relevant Sector or part thereof is Taken Into Use; (b) in the case of those parts of the APA

Works which shall be the subject of any Bridge Agreement, the date of execution of the relevant Bridge Agreement; and (c) in the case of those parts of the APA Works which are not to be Taken Into Use or are not to be the subject of any Bridge Agreement, the date of completion of the APA Works as a whole (such parts of the APA Works being in each case hereinafter referred to as the "**Completed Areas**"):

16.55.1 To the extent that the APA Works were undertaken by the Infraco, the Infraco shall be responsible for maintaining such Completed Areas in good and substantial order and repair to the reasonable satisfaction of **tie** and shall secure these Completed Areas against acts of trespass or vandalism;

16.55.2 subject to the terms of the Agreement, the Infraco shall assume all risk and responsibility for loss, damage or destruction of the Completed Areas and for the costs of rectifying or reinstating such loss, damage or destruction (provided that the Infraco shall not be responsible for any loss, damage or destruction caused or arising as a result of the acts or omissions of Network Rail or any person for whom Network Rail is responsible);

16.55.3 the Infraco shall immediately notify **tie** if it considers that Network Rail is not providing access which is reasonably sufficient in order to undertake its obligations under this Clause 16.55.

16.55.4 **tie** will immediately notify the Infraco when any Bridge Agreement is executed and provide the Infraco with a certified true copy of the same.

16.56 Following the date of completion of any Sector, the Infraco shall be entitled to occupy and use such areas and maintain them subject always to the reasonable conditions of Network Rail. The right to occupy and use such areas shall subsist from:

16.56.1 the date of Sector completion for each Sector in respect of allowing the Infraco to secure the area, undertake reasonable inspection and rectify defects arising in respect of the completed Sector;

16.56.2 the date which is the later of (a) the date of completion of the APA Works as a whole and (b) the date upon which **tie** confirms to the Infraco that procedures are agreed between all relevant parties in respect of testing, commissioning and trial running of the passenger tramway (including driver training);

16.56.3 and until the Service Commencement Date;

The right to occupy and use is not granted for any other purpose unless expressly permitted under the Asset Protection Agreement.

16.57 Subject to clauses 77.2, 77.3, 77.7, 77.8, 16.72 and 16.73, the Infraco shall indemnify and keep indemnified **tie** from liability to Network Rail arising in any way directly out of the occupancy or use by the Infraco, or any act, failure or negligence or omission of the Infraco or any subcontractor in respect of any Completed Area.

16.58 Subject to Clauses 16.59 to 16.63 below, variations to the APA Works howsoever arising (each an "**APA Variation**") shall be dealt with in accordance with the provisions of Clause 80 (**tie Changes**) and Clause 81 (*Infraco Changes*).

16.59 Where the Infraco reasonably believes that a variation is required to the APA Works (an "**Infraco APA Variation**"), it shall promptly notify **tie** of that fact and shall, as soon as is practicable thereafter, provide **tie** with full details of the reason why it considers that an Infraco APA Variation is required. The Infraco acknowledges that **tie** is required to notify Network Rail of any such variations and will use its reasonable endeavours to respond promptly to **tie** in respect of any queries which arise in relation to the variation proposal. Where it is agreed between **tie** and Network Rail that such Infraco APA Variation is required, then this shall be an Infraco Change.

16.60 The Infraco acknowledges that, in relation to any proposed variation of the APA Works, information is required by **tie** to provide Network Rail with details of the steps that the Infraco proposes to take in order to implement the variation, and that details of the Infraco's view of any APA Consents which must be obtained or amended for the purposes of the APA Variation must also be supplied. The Infraco shall promptly prepare and supply **tie** with any such information as soon as reasonably practicable, and in any event to allow **tie** to comply with its obligations to Network Rail within the timescales set out in the Asset Protection Agreement.

16.61 As reasonably required by **tie**, the Infraco shall meet with **tie** and Network Rail to agree matters such as alterations to the APA Works Programme, the requirement for additional Possessions, the impact on Direct Costs and any amendments needed to the APA Works requirements in relation to an APA Variation following approval in principle by Network Rail of the same.

16.62 The Infraco shall as between Infraco and **tie** be responsible for any Direct Costs which Network Rail incurs in connection with any Infraco APA Variation. The Infraco shall within 15 Business Days pay to **tie** on behalf of Network Rail any such Direct Costs which are properly due and notified to the Infraco by **tie** with supporting vouching.

16.63 Where in terms of the provisions of Clause 80 (**tie Changes**) and Clause 81 (*Infraco Changes*), as applicable, an APA Variation is to proceed and requires that additional APA Works are to be executed in respect of a Sector for which Sector completion has been

certified, the Infraco shall undertake reasonable endeavours to ensure that a re-certification of that Sector can be undertaken by Network Rail once the APA Variation in question has been implemented.

- 16.64 The Infraco acknowledges the circumstances in clauses 3.6, 11.1 and 14 of the Asset Protection Agreement which entitle **tie** or CEC to recover from Network Rail Direct Costs and/or relief. The Infraco agrees to supply all information practicably obtainable in so far as reasonably required by **tie** within the timescale specified in the Asset Protection Agreement so as to enable **tie** to make a claim against Network Rail where such circumstances arise. In the event the **tie** should have been able to claim against Network Rail, but were unable to do so due to a failure of the Infraco to identify and/or provide information due as aforesaid in relation to the event to which the claim relates, the Infraco will not be able to make a claim against **tie** for costs, or make any claim under Clause 64 (*Relief Events*) or 65 (*Compensation Events*).
- 16.65 Where Infraco reasonably believes that a claim or action is required to be taken against Network Rail in association with the requirements of the APA Works, it shall immediately notify **tie** and provide all reasonable assistance in order to formulate and conduct such claim or action.
- 16.66 Subject to the terms of the Infraco Contract (including, without prejudice to the foregoing generality, Clauses 77.2, 77.3, 77.7, 77.8, 16.72, and 16.73) the Infraco shall indemnify and keep indemnified **tie** for all reasonable Direct Costs incurred during the Term in relation to any negligence, breach of the Infraco Contract, act or omission of the Infraco in relation to electromagnetic interference originating from the APA Works and the effect thereof on Network Rail and the rail Network during and after construction of the APA Works which arises during the Term;
- 16.67 The Infraco shall give **tie** all reasonably required information in connection with any claim arising under the Asset Protection Agreement during the Term.
- 16.68 The Infraco acknowledges the events of termination arising under clause 21 of the Asset Protection Agreement, and shall immediately notify **tie** in the event that the Infraco considers that any event, act or omission has occurred which may entitle termination by either Network Rail or **tie** under that clause.
- 16.69 Subject to Clauses 16.72 and 16.73, the Infraco agrees to take such reasonable steps as are notified to it by **tie** or Network Rail to rectify any breaches, acts or omissions by the Infraco of its obligations under the Agreement which may entitle Network Rail to terminate the Asset Protection Agreement.
- 16.70 Subject to Clause 16.72 and 16.73, the Infraco acknowledges the circumstances in clauses 12.11 and 20 of the Asset Protection Agreement under which Network Rail may recover monies from CEC or **tie** , and undertakes when reasonably requested by **tie** to use

reasonable endeavours to mitigate the circumstances under which Network Rail may make such a claim against **tie** or CEC.

16.71 **tie** and the Infraco each acknowledge that any notice, objection or communication to be given by the Infraco in relation to the APA Works, which may be required to be communicated to Network Rail, will necessarily involve a review by Network Rail in order to respond to such notice, objection or communication. **tie** and the Infraco shall act reasonably in giving such notice, objection or communication in order to allow Network Rail an adequate period for review and providing Network Rail with sufficient information to undertake such review.

16.72 Notwithstanding any other provision of the Infraco Contract, the Infraco's liability and extent of any obligations of any nature in respect of : (1) any failure to handback any part of the Network after the planned expiry of a Possession; or (2) any claim of any nature arising from the terms of any Track Access Agreement, Freight Access Agreement or any contract in any way incorporating the Depot Access Conditions or the Station Access Conditions (such terms having the meaning ascribed to them in the Asset Protection Agreement) shall be limited to £40,000 for each and every incident subject to an aggregate limit of £500,000 for all such liabilities, obligations or claims – and that subject to Clauses 77.2, 77.3, 77.7, 77.8, and 16.73.

16.73 Notwithstanding any other provision of the Infraco Contract, the Infraco's liability and extent of any obligations of any nature in respect of NR Immunisation shall be subject to an aggregate limit of £750,000 for all such liabilities, obligations or claims – and that subject to Clauses 77.2, 77.3, 77.7, 77.8 and 16.72. This Clause 16.73 shall not apply to the elements of NR Immunisation costs referred to in the Schedule Part 4 Appendix **JC** Paragraph 3 (*Pricing*).

16.74 The Parties agree that Appendix C of the Schedule Part 4 shall apply in relation to Infraco's obligations in respect of NR Immunisation.

17. **INTERFACE WITH THE OPERATOR**

17A. The Parties acknowledge and agree that:

(a) the DPOFA may be terminated;

(b) in the event the DPOFA is terminated, tie will procure that a subsidiary of CEC other than tie (the "Nominated Subsidiary") will immediately carry out the obligations of the Operator pursuant to the DPOFA as if it was the Operator, notwithstanding that the Nominated Subsidiary will not be the counterparty to a legally enforceable DPOFA;

(c) tie shall provide the Infraco with written notice as to the identity of the Nominated Subsidiary;

(d) Infraco acknowledges and agrees that the Nominated Subsidiary shall on receipt of the notification under clause 17A(c) be deemed to be the Operator under the Infraco Contract

(e) when identifying whether there are changes to the DPOFA as envisaged by clause 17.14 it shall be assumed that the Nominated Subsidiary and tie are party to the DPOFA, that the DPOFA is legally enforceable and that the Nominated Subsidiary (as Operator) and tie are exercising their contractual rights and performing their contractual obligations under the DPOFA;

(f) an Operator Event shall have occurred pursuant to limb (a) of that definition if the Nominated Subsidiary delays the performance of the obligations or the exercise of the rights it would have assuming the Nominated Subsidiary was a counterparty to a legally enforceable DPOFA;

(g) in establishing whether a tie DPOFA Change has occurred, it shall be assumed that any change which would qualify as a tie change (as defined under the DPOFA) is instructed as such a tie Change and the Nominated Subsidiary shall identify the effects of such tie Change in accordance with clause 24 of the DPOFA.

Operator Events

17.1 Nothing in this Clause 17 (*Interface with the Operator*) shall modify or dilute the general or specific obligations of the Infraco which concern interface or co-operation with the Operator.

17.2 Subject to Clauses 17.3 and 17.4 in the event that any of the events or circumstances defined as Operator Events occur and to the extent that the Infraco can demonstrate to **tie's** satisfaction, **tie** acting reasonably, that there has been a resultant material adverse effect on the Infraco's ability to perform any of its obligations or exercise any of its rights pursuant to this Agreement the Operator Event shall be a Compensation Event and the Infraco shall be entitled to relief and/or compensation on the basis set out in Clause 65 (*Compensation Events*) in respect of such Operator Event provided that where Infraco has predominantly caused or materially contributed to the occurrence effect or duration of the Operator Event the compensation available to Infraco pursuant to Clause 65 (*Compensation Events*) shall be reduced to the extent of such causation or contribution.

17.3 If any Operator Event occurs, the Infraco shall:

17.3.1 notify **tie** and the Operator as soon as practicable after being on notice of the Operator Event (and in any case no later than 1 day after being on initial notice of the Operator Event) of the occurrence of the Operator Event and, as soon as reasonably practicable after such notification from the Infraco (and in any case no later than 2 Business Days after such notification or such longer period as agreed between the Parties), the Infraco shall notify **tie** and the Operator of the likely occurrence, severity (including additional costs) and duration of the Operator Event and any likely impact on the ability of the Infraco and/or any Infraco Party to perform its obligations in relation to the Infraco Works; and

17.3.2 NOT USED

17.3.3 be responsible for recording the effects of the Operator Event on the ability of the Infraco and/or any Infraco Party to perform its obligations in relation to the Infraco Works and for providing **tie** with an accurate and comprehensive report on such effects of the Operator Event within 5 Business Days of being on notice of such Operator Event, such report to detail emerging additional costs and expected (or actual) duration of this Operator Event.

17.4 The Infraco shall take all reasonable measures to prevent and to mitigate any Operator Event from materially adversely affecting the proper performance of the Infraco Works (including the Maintenance Services) provided that the Infraco can do so without unreasonable inconvenience or cost.

17.5 **tie** shall arrange a meeting with the Operator, the Infraco, **tie** and **tie's** Representative to discuss and agree a plan for corrective measures necessary to address any Operator Event and to permit the Infraco to resume unrestricted (or the best, even if restricted, level of) performance of the Infraco Works within the shortest practicable time period. It shall be the **tie's** responsibility to obtain the Operator's cooperation with any corrective measures agreed by the Parties to be taken by the Infraco, whether temporary or permanent.

17.6 NOT USED

17.7 The Infraco shall be under a continuing obligation to report promptly, and in any event within 2 Business Days, upon becoming aware of same, to the Operator and to **tie** any incident, matter or operational irregularity which may precede the occurrence or indicate the existence of an Operator Event.

Design Input and Technical Requirements

17.8 In accordance with Schedule Part 14 (*Review Procedure*), the Infraco shall, from the Effective Date of this Agreement, take account of any comments from **tie** in relation to operational issues when refining its Design, Maintenance Plans, standards, procedures and safety documentation in accordance with Schedule Part 2 (*Employer's Requirements*) and when ensuring system integration in accordance with Clause 8 (*System Integration*). The Infraco shall as part of the Mobilisation Services comment on maintainability issues and provide review and support during the design and construction process, seeking to optimise the whole life asset cost. These comments shall be deliverable to the Operator in addition to **tie**.

Operation and Maintenance Procedures

17.9 The Infraco acknowledges that the Operator shall be responsible for Operator Maintenance of ~~the Edinburgh Tram Network~~ Initial Phase 1a. The Infraco shall not obstruct the performance by the Operator of the Operator Maintenance. **tie** shall procure that the Operator does not obstruct the performance by the Infraco or any Infraco Party of the Maintenance Services. The Infraco shall liaise with the Operator in relation to the Maintenance Services and Operator Maintenance.

17.10 Subject to Clause 17.10.3 Infraco acknowledges that **tie** and the Operator may agree from time to time to delegate to the Operator the exercise of **tie's** contractual rights under this Agreement. Where **tie** delegates the exercise of any of its contractual rights under this Agreement the provisions of this Clause 17.10 shall apply.

17.10.1 Subject to Clause 17.10.4, **tie** may from time to time by notice in writing to the Infraco, delegate the exercise of specific contractual rights to a suitable specified employee of the Operator (the "**Operator's Representative**").

17.10.2 The Infraco shall observe, and shall procure that any Infraco Parties observe, all reasonable instructions of Operator's Representative given in accordance with this Agreement.

17.10.3 The Operator's Representative shall have no authority to terminate this Agreement, make any claim for payment (under indemnity or otherwise), raise any claim, suit or action against the Infraco, instruct a **tie** Change, amend this Agreement nor to relieve the Infraco of any of its obligations under this Agreement.

17.10.4 **tie** may by notice in writing to the Infraco change the identity of the Operator's Representative. **tie** shall consult with the Infraco prior to the appointment of or replacement for Operator's Representative, taking account of the need for liaison and continuity in respect of this

Agreement. Such appointment or change shall have effect on the date specified in the written notice.

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

17.10.6 Instructions given by the Operator's Representative under Clause 17.10 and 17.11 shall be in writing. Provided that if for any reason it is considered necessary to give any such instruction orally the Infraco shall comply therewith.

17.10.7 Any such oral instruction shall be confirmed in writing as soon as is possible under the circumstances. Provided that if the Infraco confirms in writing any such oral instruction which confirmation is not contradicted in writing by the Operator's Representative or **tie's** Representative forthwith it shall be deemed to be an instruction in writing by the Operator's Representative.

17.10.8 Upon the written request of the Infraco, **tie's** Representative shall specify in writing under which of his duties and authorities the instruction is given.

17.10.9 **tie** shall procure that any Operator's Representative shall not exercise their delegated contractual rights in a way which is likely to interfere with the discharge of Infraco's obligations under this Agreement.

17.11 The Infraco shall:

17.11.1 promptly notify the Operator and **tie** of any requirement for Operator Maintenance of which the Infraco becomes aware; and

17.11.2 co-operate with the Operator in relation to the planning and execution of Operator Maintenance and Maintenance Services.

17.12 If, at any time after the Service Commencement Date, it appears likely to the Infraco that any planned works or activities (including Maintenance Services) to be carried out by the Infraco will necessitate interruption to or restriction of the Transport Services on ~~the~~ Edinburgh Tram Network Initial Phase 1a, the Infraco (as appropriate) shall:

17.12.1 notify **tie** and the Operator not less than 42 days prior to such planned works or activities, and take all reasonable steps to support **tie** in notifying passengers as soon as reasonably practicable in advance of the carrying out of such planned works or activities, of the nature of such work and the likely disruption or restriction of the Transport Services; and

17.12.2 take all steps which are reasonably practicable to minimise the adverse consequences of such works or activities to passengers.

17.13 In the event of any unplanned works or activities (including Maintenance Services) to be carried out by the Infraco as a result of a system failure, breakdown or an emergency caused by a failure of the Infraco to comply with its obligations under this ~~Agreements~~ Agreement, the Infraco shall:

17.13.1 notify **tie** and the Operator as soon as possible of the nature of such works or activities and the likely disruption or restriction of the Transport Services;

17.13.2 take all reasonable steps to support **tie** in notifying passengers as soon as reasonably practicable of the nature of such works and activities and the likely disruption or restriction of the Transport Services; and

17.13.3 take all steps which are reasonably practicable to minimise the adverse consequences of such works and activities to passengers. Where **tie** considers that such works and activities will result in the Transport Services not being provided for any period, the Infraco shall take such steps that shall include support and, save in relation to any failure to provide the Tram Supply Obligations and/or the Tram Maintenance Services, compensation to the Operator in providing an alternative means of transportation being in service as soon as reasonably practicable. For the purposes of this Clause 17.13.3, the Parties acknowledge that it will generally be reasonably practicable for the Operator to arrange for an alternative means of transportation to be in service within 90 minutes of becoming aware of the requirement for it.

DPOFA Changes

17.14 **tie** shall notify the Infraco of any proposed variation under the DPOFA which in **tie's** opinion (acting reasonably) may affect the Infraco's performance of its obligations or the exercise of its rights under this Agreement or increase the likelihood of a claim arising under Clause 17.33 and the Infraco shall respond with comments ("**DPOFA Change**

Response") within 15 Business Days of being notified by **tie** of any proposed variation under DPOFA (a "**DPOFA Change**").

17.15 If in the DPOFA Change Response, Infraco have provided information in relation to or agreed with **tie's** assessment in relation to:

17.15.1 any adverse impact which the DPOFA Change will have on the Infraco Works or the ability of, or cost to the Infraco of performing its obligations under this Agreement, or the rights of Infraco under this Agreement or increase the likelihood of a claim arising under Clause 17.33; or

17.15.2 any valid reason why the Infraco would be entitled to refuse to implement any **tie** Change required as a result of the DPOFA Change in accordance with Clause 80.12

(being the "**DPOFA Adverse Impact**")

the Infraco shall provide **tie** and the Operator with a written report within 15 Business Days (or such longer period as the Parties acting reasonably agree) providing details of the DPOFA Adverse Impact and Infraco's proposals for avoiding or mitigating the DPOFA Adverse Impact and any **tie** Changes which, in the opinion of the Infraco, acting reasonably, will be required as a result of the DPOFA Change ("**DPOFA Change Report**").

17.16 **tie** shall review the DPOFA Change Report promptly and if **tie**, acting reasonably, is satisfied that a modification to the proposed DPOFA Change is required to address any issue arising from the DPOFA Change Report, **tie** shall instruct such modification under the change provisions of the DPOFA and any change required to the Infraco Works shall be a Mandatory **tie** Change pursuant to Clause 80 (**tie** Changes).

17.17 Failure by the Infraco to respond as stipulated in Clauses 80 and 17.15 shall be a bar to any claim for relief or compensation under Clause 80 (**tie** Changes) or otherwise. Infraco shall not be entitled to refuse to perform its obligations which are affected by the DPOFA Change unless so entitled pursuant to Clause 80.12.

Safety

17.18

17.18.1 The Infraco shall provide a permanent representative for the Project Safety Certification Committee who shall be responsible for the Infraco's mandatory participation in and technical contribution to the Project Safety Certification Committee's output and the discharge of its responsibilities.

17.18.2 The Infraco's obligations with regard to safety shall encompass at a minimum:

- 17.18.2.1 participation on a compulsory basis in all liaison meetings with the Independent Competent Person, HMRI and Emergency Services;
- 17.18.2.2 the development and implementation of a safety management system (the "**Infraco Safety Management System**") which shall address without limitation:
 - (i) Infraco staff competency and its continual assessment;
 - (ii) training on all safety related issues;
 - (iii) safety procedures;
 - (iv) record keeping and audit;
 - (v) certification of materials and equipment;
 - (vi) frequency and mode of audit by tie of the Infraco Safety Management System;
 - (vii) incident response and management; and
 - (viii) continual improvement and best practice.

17.19 tie and the Operator shall be entitled to review the Infraco Safety Management System (and its implementation) at any time upon notice which is appropriate in the circumstances and in any case within no more than 3 days. For the avoidance of doubt, tie and the Operator shall be entitled to immediate access upon the occurrence of an incident.

17.20 It shall be the responsibility of the Infraco to undertake and complete verification, through agreed procedure, of the safety and service readiness of ~~the Edinburgh Tram Network~~ **Initial Phase 1a** prior to service start-up every morning no later than one hour (or such other time as agreed between the Parties) prior to Transport Services commencing each day and to certify this status to tie and to the Operator in an agreed form.

17.21 In the event that the Operator can demonstrate to the Infraco that ~~the Edinburgh Tram Network~~ **Initial Phase 1a** is not ready for service start up in accordance with Clause 17.19 or such other process as is agreed between the Parties, the Infraco shall notify tie and the Infraco shall rectify any deficiency in accordance with this Agreement which is preventing the commencement of Transport Services in accordance with this Agreement.

17.22 The Infraco shall liaise effectively with the Operator in co-ordination of health and safety issues at the Depot in accordance with the Depot Licence.

Maintenance

17.23 The Infraco shall give the Operator and **tie** a minimum of one month's prior notice in outline of any planned maintenance forming part of the Maintenance Services to be carried out on any part of ~~the Edinburgh Tram Network~~Initial Phase 1a, such initial notice to be followed by at least 14 days notice in detail and, in relation to Infrastructure Maintenance Services, 7 days notice of individual method statements relating to such works or activities anywhere on ~~the Edinburgh Tram Network~~Initial Phase 1a.

17.24 Not less than 6 months prior to the Planned Service Commencement Date, the Infraco shall provide **tie** and the Operator with a combined maintenance plan demonstrating how the effects of planned maintenance on the provision of Transport Services in accordance with Timetable shall be minimised, based upon the Maintenance Plan and, subject to a copy of the Operator Maintenance Plan being supplied to the Infraco not less than 12 months prior to the Planned Service Commencement Date, the Operator Maintenance Plan. **tie** shall review such combined maintenance plan ~~in accordance with Schedule Part 14 (Review Procedure and Design Management Plan)~~.

Operational Interface and Operator Mobilisation

17.25 Following the Service Commencement Date subject to Clause 17.20, the day-to-day operation of ~~the Edinburgh Tram Network~~Initial Phase 1a shall be the responsibility of the Operator. To enable the efficient operation of ~~the Edinburgh Tram Network~~Initial Phase 1a, the Infraco shall provide technical advice where practicable to **tie** and to the Operator during normal working hours regarding the operational deployment and integration of the various components of ~~the Edinburgh Tram Network~~Initial Phase 1a which relate to the scope of work under this Agreement and any other non-confidential and non-financial information regarding their design, construction, standards, integration, operation and maintenance which the Operator and **tie** may reasonably request provided such request does not adversely impact on the delivery of the Infraco Works.

Facilities and Access

17.26 The Infraco shall in so far as reasonably practicable at all times provide to the Operator and **tie** such access to the places where the Infraco Works are being performed and the Tram testing facilities during the construction of the Infraco Works as the Operator may reasonably require and in accordance with Clause 17.27.

17.27 The Infraco acknowledges that the Operator and **tie** will require access to the Site, the places where the Infraco Works are being performed and the Tram testing facilities in

order to prepare for the operation of ~~the Edinburgh Tram Network~~ Initial Phase 1a. The Infraco agrees:

17.27.1 that it will co-operate with the Operator and **tie** and plan to avoid any interference with mobilisation by the Operator; and

17.27.2 that the presence of the Operator and **tie** on at such locations will not in any circumstances be treated as partial completion of the Infraco Works;

provided that such access shall not disrupt or interfere with the performance by Infraco or any Infraco Party of the Infraco Works and **tie** shall, and shall procure that the Operator shall, during any period when it or they have access to such locations, the Infraco Works and the Tram testing facilities, comply with all rules and regulations applicable to working at those premises for the safety of persons and convenience of the public.

17.28 Pursuant to Clause 17.23 **tie** agrees that where any damage is caused to the Infraco Works by the Operator or by **tie**, the repair of such damage shall not be part of the Infraco's obligations under this Agreement unless such damage results from fair wear and tear or from operations by the Operator or **tie** in accordance with the Operations and Maintenance Manual but where **tie** requires the Infraco to repair such damage, it will issue a **tie** Notice of Change in respect of such repair works.

System Acceptance

17.29 The Infraco shall ensure that at all times it works closely and effectively with the Operator in the performance by the Operator of the Operator's obligations and the performance by the Infraco of the Infraco's obligations pursuant to the Systems Acceptance Tests and the associated obligations on testing and commissioning set out in Schedule Part 2 (*Employer's Requirements*).

17.30 In the event that as a direct consequence of an Operator Event, the Infraco is unable to progress or is hindered in the performance of its obligations pursuant to the Systems Acceptance Tests and the associated obligations on testing and commissioning set out in Schedule Part 2 (*Employer's Requirements*), it shall notify **tie** and the Operator in writing as soon as practicable stating the reasons and the action required in order to remedy the situation.

Partnering

17.31 The Infraco shall use reasonable endeavours to work collaboratively with the Operator and **tie** shall procure that the Operator shall use reasonable endeavours to work collaboratively with the Infraco at all times in order to:

- 17.31.1 maximise productivity during the Infraco Works and minimise disruption for the public and third parties;
- 17.31.2 ensure the effective discharge of the Infraco's obligation to deliver complete system integration throughout the Infraco Works in accordance with Clause 8 (*System Integration*);
- 17.31.3 satisfy the levels of technical systems availability required following the Service Commencement Date to support the provision of the Transport Services
- 17.31.4 minimise and give best advance notice to one another and to **tie** of any interruption to Transport Services caused by any Operator Event, DPOFA Infraco Event or Infraco Default, maintenance (planned or unplanned) or third party incident;
- 17.31.5 not hinder proper performance of the Project Development Services, the Project Operations and all obligations under this Agreement;
- 17.31.6 mutually support adherence to the Programme and all related timelines and programmes;
- 17.31.7 report promptly to one another and to **tie** any proposed change permitted under the DPOFA (in the case of the Operator) or this Agreement (in the case of the Infraco), which is likely to or will have a material impact on the performance of any obligations owed to **tie** or the exercise of rights under this Agreement and/or the DPOFA (as appropriate) by the Infraco and/or the Operator during design, construction, operation or maintenance of ~~the Edinburgh Tram Network~~**Initial Phase 1a**, and to jointly inform **tie** regarding measures proposed to avoid or mitigate such impact; and
- 17.31.8 to use reasonable endeavours to agree and implement whenever appropriate measures to minimise the likelihood of disputes or claims arising from or in connection with the interface between the Operator's rights and obligations and the Infraco's rights and obligations pursuant to DPOFA and this Agreement respectively.

17.32 Subject to the provisions of Clauses 17.30, 77.3, 77.7 and 77.8, in the event that a DPOFA Infraco Event occurs, Infraco shall indemnify **tie** against any costs, claims, losses, liabilities or other expenditure (~~save to the extent incurred as a result of any act or omission of the Tram Supplier or Tram Maintainer in which case tie's rights under Clause 77 shall apply~~)

("DPOFA Claims") which **tie** is required to pay to the Operator pursuant to DPOFA, save that any element of DPOFA Claim arising by reason of any delay in the performance of the Infraco's obligations under this Agreement prior to Service Commencement Date shall be recovered by **tie** solely through the operation of Clause 62 (*Liquidated and Ascertained Damages*). Infraco shall not be liable indemnify **tie** against any DPOFA Claims to the extent the DPOFA Infraco Event giving rise to the DPOFA Claims has arisen as a result of an amendment to DPOFA not notified to Infraco in accordance with Clause 17.14.

17.33 Where, in this Agreement, the Infraco is required to liaise, co-operate, work with, meet or otherwise interface with the Operator, **tie** shall procure that the Operator shall liaise, co-operate, work with, meet or otherwise interface with the Infraco to enable the Infraco to comply with such obligations in relation to the Operator under this Agreement.

17.34 Where the Operator or **tie** have predominantly caused or materially contributed to the occurrence, effect or duration of a DPOFA Infraco Event the amount payable by Infraco as a result of a DPOFA Claim shall be reduced to the extent of such causation or contribution.

~~17.35 Where, in relation to the Tram Supply Agreement and as directed by the Infraco, the Tram Supplier is obliged to accept and act upon reasonable instructions from the Operator in respect of specific contractual rights including safety management, possession co-ordination and maintenance interaction, such instructions are likely to impede or delay the execution of works by the Tram Supplier then, on the Infraco's request, the Operator shall be required by **tie** under DPOFA to confirm them in writing to the Tram Supplier. In so far as the written instructions do not arise from an act or omission under this Agreement or under the Tram Supply Agreement or procedures by the Tram Supplier, the Infraco or the Tram Supplier (as relevant) shall not be liable for such non-execution or delay and liquidated damages shall not be applied. If the instructions or actions require the addition of works or duties or deliveries not included in the scope of the Tram Supply Agreement and where the Tram Supplier claims reasonable, substantiated economic compensation for such works from the Infraco in accordance with Clause 49 (*Compensation Event*) of the Tram Supply Agreement, this shall be a Compensation Event under this Agreement. **NOT USED.**~~

PART 5 - LAND ISSUES, CONSENTS AND SITE

18. LAND CONSENTS, PERMANENT LAND AND TEMPORARY SITES

18.1 **tie**:

18.1.1 warrants to the Infraco that it will grant access to the Permanent Land and Temporary Sites and provide Infraco with all necessary Land Consents in each case accordance with this Clause 18.

18.1.2 hereby grants a non-exclusive licence to the Infraco to enter and remain upon the Permanent Land for the duration of the Term and an exclusive licence to the Infraco to enter and remain upon the Designated Working Area for the duration of the time required (pursuant to Schedule Part 15 (*Programme*)) for completion of the Infraco Works to be executed on such Designated Working Area; and

18.1.3 shall provide the Infraco with all necessary Land Consents in relation to the Permanent Land for the duration of time required (pursuant to Schedule Part 15 (*Programme*)),

in either case only in so far as the same is required for the purposes of carrying out the Infraco Works. For the avoidance of doubt, the rights provided to the Infraco pursuant to this Clause 18.1 shall not confer nor be deemed to confer upon the Infraco a right of ownership, a lease or any other interest in the Permanent Land other than a right of access, egress or occupancy as is required for the purposes of carrying out the Infraco Works.

18.2 Subject to any rights to enter upon any Temporary Sites pursuant to Clauses 18.4 to 18.10 (inclusive) and any requirement to carry out Accommodation Works ~~outwith~~ with the Permanent Land, the Infraco shall not design Phase 1a or construct any part of ~~the Edinburgh Tram Network~~ Initial Phase 1a upon or otherwise encroach upon any land outwith the Permanent Land for the purposes of carrying out the Infraco Works without the prior written consent of **tie**.

18.3 In relation to the parts of the Permanent Land referred to in schedule 6 to each of the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006, the Infraco shall use such sites for the purposes set out in relation thereto in the said schedule 6.

18.4 Where the Infraco requires access to any Temporary Site for the purposes of carrying out the Infraco Works, it shall give **tie** not less than 40 days notice and at the same time as providing such notice, shall be required to provide to **tie**:

18.4.1 an estimate as to the amount of time that the Infraco will occupy such site; and

18.4.2 a breakdown of the use of such site in the form of a detailed programme of works.

18.5 **tie** shall, within 40 days of the notice issued by the Infraco pursuant to Clause 18.4 (or such longer period as may be referred to in such notice) provide access to the Infraco to

the relevant Temporary Site for the purpose referred to in Clause 18.6, including the provision of any necessary Land Consents in relation thereto.

- 18.6 Without prejudice to any other term of this Agreement, the Infraco shall comply with the terms of schedule 7 of each of the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006 in relation to the purpose for which possession of any Temporary Site can be taken in accordance with Clauses 18.4 to 18.10 (inclusive).
- 18.7 The Infraco's possession of any Temporary Site pursuant to Clauses 18.4 to 18.10 (inclusive) shall be subject to an overriding obligation to minimise the period of any such possession.
- 18.8 Without prejudice to Clause 18.7, the Infraco shall not, without the prior written agreement of **tie**, remain in possession of any Temporary Site after the end of the period of 28 days following completion of the Infraco Works to that Temporary Site save where the Infraco has established a site office on such Temporary Site, when the period shall be 3 months.
- 18.9 The Infraco shall provide **tie** with as much notice as is reasonably practicable of its vacation of any Temporary Site in relation to which it has taken possession.
- 18.10 Before giving up possession of any Temporary Site, the Infraco shall remove all temporary works and restore the land to the reasonable satisfaction of the land owner (as notified to the Infraco by **tie**), provided that the Infraco shall not be required to replace a building removed on any Temporary Site in accordance with the Tram Legislation. For the avoidance of doubt, the Infraco shall:
- 18.10.1 not demolish a building or any part thereof without the consent of **tie**; and
 - 18.10.2 provide **tie** 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 it has complied with its restoration obligations under this Clause 18.10.
- 18.11 Without prejudice to the rights of access to be granted to Infraco by **tie** pursuant to Clause 18.1 and 18.5, Infraco shall comply with the requirements of Clause 18.17A and Schedule Part 13 (*Third Party Agreements*) when it is in occupation of the Permanent Land or any Temporary Site pursuant to this Clause 18 (*Land Consents, Permanent Land and Temporary Sites*).
- 18.12 For the purposes of performing the Maintenance Services, the Infraco shall provide **tie** and any relevant land owner with not less than 40 days notice of its intention to enter upon and take temporary possession of any land outwith the Permanent Land, provided that, the

Infraco may not be entitled to request any land which is referred to in Clause 18.14 below. The requirement to give prior written notice set out in this Clause 18.12 shall not apply where any building fixing agreement entered into pursuant to this Agreement contains a right for Infraco or any Infraco Party to enter onto any land for the purposes of performing the Maintenance Services.

18.13 On the expiry of the 40 days notice referred to in Clause 18.12 above (or such longer notice period as is provided by the Infraco in the said notice), **tie** shall procure that the Infraco shall be entitled to take possession of such land in accordance with section 27(1) of either the Edinburgh Tram (Line One) Act 2006 or the Edinburgh Tram (Line Two) Act 2006 (as appropriate).

18.14 For the avoidance of doubt, the Infraco shall not be entitled to take possession of any land pursuant to Clause 18.12 where such land:

18.14.1 is more than 20 metres from any Infraco Works;

18.14.2 is not reasonably required for the purposes of, or in connection with the Maintenance Services;

18.14.3 involves taking possession of any house or garden belonging to a house; or

18.14.4 involves taking possession of any building (other than a house) if it is for the time being occupied.

18.15 Without prejudice to the obligations of **tie** to provide access to the Permanent Land or any Temporary Site to the extent set out in this Clause 18 (*Land Consents, Permanent Land and Temporary Sites*), the Infraco shall notify **tie** as soon as reasonably practicable on becoming aware of any Land Consents which may be required in order to carry out and complete the Infraco Works. For the avoidance of doubt, the Infraco shall be responsible for obtaining, at its own cost, any Land Consents required outwith the Permanent Land or Temporary Sites as aforesaid and, **tie** shall use reasonable endeavours to assist the Infraco to obtain such Land Consents provided that the costs of such assistance shall be paid by the Infraco to **tie**.

18.16 As required by **tie**, the Infraco shall use reasonable endeavours to assist **tie** to obtain any Land Consents, any amendments to existing Land Consents and any new Land Consents in respect of the Permanent Land and the Temporary Sites, including providing works programmes, providing any relevant information, and notifying land owners. Any reasonable costs associated with assisting **tie** shall be paid by **tie** to the Infraco.

18.17 The Infraco warrants that it shall not breach the terms of any Land Consent in respect of the Permanent Land or any Temporary Site with which it is issued by **tie** in accordance

with this Agreement. If the Infraco breaches any term of any Land Consent, the Infraco shall be required to seek any amendment to the existing Land Consent or new Land Consent which may be required in order to carry out and complete the relevant Infraco Works. In the circumstances where a breach of the Land Consent has arisen because of the breach of this Agreement by the Infraco or a wilful act or wilful omission by the Infraco, the Infraco shall not be entitled to apply for an extension of time or any payment to the extent that such extension of time or payment is required as a direct result of the breach of the Land Consent caused by the Infraco or any Infraco Party. If the Infraco does not obtain the required amendment or new Land Consent, **tie** shall be entitled to recover the costs from the Infraco which are associated with **tie** obtaining such amendment or new Land Consent.

18.17A Without prejudice to the rights of access to be granted to Infraco by **tie** pursuant to Clause 18.1 and 18.5, the Infraco shall take all necessary steps in delivering the Infraco Works to ensure that neither **tie** nor CEC will be put in breach of their obligations to third parties pursuant to the third party undertakings and commitments contained in Schedule Part 13 Section B. If, in complying with this obligation while carrying out any part of the Infraco Works other than the On Street Works:

18.17A.1 the Infraco incurs costs or suffers delay as a result of adverse impact on the Programme or unreasonable constraints on its construction methodology due to constraints or requirements in such third party undertakings and commitments which are materially different to the obligations under this Agreement and which could not reasonably have been foreseen by an experienced transport infrastructure contractor executing works in the operating environment of a major UK city;

18.17A.2 the Infraco is required to undertake minor works;

18.17A.3 works are required which are ~~outwith the Base Date Design Information contained in Schedule Part 4 (Pricing);~~ not included within the Off Street Works Design provided the same are not required due to any negligence, breach or omission of the Infraco.

then the circumstances under 18.17A.1 shall be a Compensation Event, any minor works required under 18.17A.2 shall be deemed to have been instructed by **tie** pursuant to Clause 83 (*Accommodation Works*) and 18.17A.3 shall be dealt with as a **tie** Change.

18.17B The Infraco undertakes to comply with its obligations in relation to Schedule Part 13 Section A (*Third Party Agreements*) and shall not cause **tie** or CEC to be in breach of such agreements (or to be unable to exercise their rights pursuant thereto) by reason of its failure to perform such obligations.

18.17C Before commencing any works pursuant to Clause 18.17A.3, the Infraco shall notify **tie** of its intention to execute such works. **tie** shall respond to such notification within 10 Business Days. If **tie** instructs such works in its response, such instruction shall constitute a Mandatory **tie** Change for the carrying out of such works. If **tie** does not instruct such **tie** Change in its response, the Infraco shall not carry out such works and shall not be in breach of any of its obligations under this Agreement as a result of not carrying out the works.

18.17D In the event that the Infraco considers and demonstrates to **tie**, acting reasonably, that it is impossible and not just more expensive to carry out any part of the Infraco Works without breaching its obligations to comply with the requirements of Third Party Obligations or its other obligations under Clause 18.17A, **tie** shall endeavour to obtain an appropriate amendment or deletion of the relevant third party requirements or constraint to remove such impossibility provided that Infraco has submitted supporting information on what measures it will use to minimise the effect of the Infraco Works on the third party in question and Infraco will not be required to continue to comply with such third party requirements. If **tie** cannot obtain the relevant amendment or deletion, **tie** shall instruct the Infraco pursuant to a **tie** Change [under Clause 80 \(where it is a change to the Off Street Works\)](#).

18.18 If the Infraco suffers delay from failure on the part of **tie** to give possession or access in accordance with the terms of this Clause 18 (*Land Consents, Permanent Land and Temporary Sites*), [for the purposes of completing the Off Street Works](#) such failure shall be a Compensation Event and the terms of Clause 65 (*Compensation Events*) shall apply.

18.19 Subject to Clause 18.23 and Clause 83 the Infraco shall provide or acquire at its own cost any additional access, land, rights or facilities outside the Permanent Land and the Temporary Sites being provided by **tie** in accordance with this Clause 18 (*Land Consents, Permanent Land and Temporary Sites*) for the purposes of the Infraco Works.

18.20 If having used reasonable endeavours to obtain access to land, rights or facilities outside the Permanent Land and the Temporary Sites required to allow it to carry out any part of the Accommodation Works, Infraco is refused or is unreasonably delayed access (or such access having been granted is subsequently withdrawn) to such land, rights or facilities sufficient to allow completion of the Accommodation Works Infraco shall serve a notice on **tie** (an "Accommodation Works Notice") which shall contain the following information:

18.20.1 the land, rights or facilities to which Infraco has been unable to gain access;

18.20.2 the steps taken to gain such access to land, rights or facilities;

18.20.3 the circumstances in which access has been withdrawn or denied;
and

18.20.4 details of any other parts of the Infraco Works which can not be carried out in accordance with the Programme if the Accommodation Works are not completed.

18.21 Within 15 Business Days of receipt of an Accommodation Works Notice, **tie** may notify Infraco that it disputes the circumstances to which Clause 18.20 applied have occurred. If such a notice is served by **tie**, the Parties shall use reasonable endeavours to resolve such dispute within 10 Business Days of the service of such a notice, failing which either Party will be entitled to refer the matter for determination to the Dispute Resolution Procedure.

18.22 If **tie** does not dispute the Accommodation Works Notice pursuant to Clause 18.21, any delay or failure to obtain access to land, rights or facilities to which Clause 18.20 applies shall be (i) a Compensation Event and the terms of Clause 65 (Compensation Events) shall apply to the extent such delay applies to the Off Street Works, or (ii) a Pricing Assumption Variation to the extent such delay applies to the On Street Works, and **tie's** Representative shall issue further instructions regarding the Accommodation Works Notice given pursuant to Clause 83 (*Accommodation Works Changes*).

19. **CONSENTS AND TRAFFIC REGULATION ORDERS**

19.1 Subject to Clause 19.2, **tie** shall:

19.1.1 obtain and maintain in effect all Temporary Traffic Regulation Orders ("**TTROs**") required for the execution of the Infraco Works prior to Service Commencement Date and all Traffic Regulation Orders with permanent effect required for the operation and maintenance of ~~the Edinburgh Tram Network~~ Initial Phase 1a and shall call-off under existing TTROs, all at such times and for such periods as may be required to allow Infraco to carry out and complete the Infraco Works in accordance with the Programme ~~and On Street Construction Works Methodology~~; and

19.1.2 obtain and maintain in effect all other Consents which are **tie** Consents.

19.2 The Infraco shall provide all supporting information necessary to enable **tie** to obtain a TTRO or call-off under an existing TTRO and all other reasonably necessary assistance and support to **tie** for the purposes of **tie's** activities pursuant Clause 19.1 in accordance with the Employer's Requirements. Where tie or CEC requires Infraco to procure any

design to review, obtain or modify a TTRO then tie shall instruct Infraco and such instruction shall be a tie Change.

In the event that the failure of the Infraco to provide assistance timeously and in accordance with the Employer's Requirements causes a delay in tie obtaining the relevant Temporary Traffic Regulation Order or Traffic Regulation Order, Infraco shall not be entitled to any relief or additional payment in respect of resultant delay or cost that Infraco or any Infraco Party may suffer as a result of the delay in obtaining the TRO or TTRO except where such failure arose as a result of a ~~Notified Departure~~, tie Change or Compensation Event.

19.3 The Infraco shall obtain and maintain all Design Stage Consents, Construction and Maintenance Stage Consents and Temporary Traffic Regulation Orders (required after the Service Commencement Date) required for the performance and completion of the Infraco Works.

19.4 tie shall provide all reasonable assistance to the Infraco and Infraco Parties in obtaining and maintaining Consents for which the Infraco and/or the Infraco Parties are responsible. Where Infraco notifies tie in writing that it or the Infraco Parties are encountering difficulty in obtaining or maintaining a Consent, tie shall, where appropriate, provide support to the Infraco and/or the Infraco Parties by making representations to the relevant Approval Body, provided always that the Infraco (or the relevant Infraco Party) has submitted all required information relevant to the process of seeking the Consent in compliance with the Approval Body's timescales and requirements.

19.5 Infraco shall obtain and maintain in full force and effect the Design Stage Consents (excluding between York Place and Newhaven, Scottish Water Approvals and Consents and all Forth Ports Approvals and Consents) and the Construction and Maintenance Stage Consents.

~~19.5.1 The obtaining and maintaining of Design Stage Consents form part of the scope of services provided by the SDS Provider to the Infraco, save that where Infraco has elected to undertake designs itself or is procuring others to undertake such designs (that is to say Infraco Design), in which case Infraco is responsible for supporting the SDS Provider with relevant technical expertise in accordance with the SDS Agreement in order for SDS Provider to obtain the Design Stage Consents that relate to these elements of the design for the Infraco Works. NOT USED.~~

~~19.5.2 Subject to Clause 19.6 below, failure to obtain a Design Stage Consent (including Additional Consents) from the relevant Approval Body in respect of a design which the SDS Provider is responsible for preparing~~

~~by the date on which it is shown as required in the Consents Programme included in the SDS Novation Agreement and/or Schedule Part 15 (Programme), shall be a Compensation Event. **NOT USED.**~~

~~19.5.3 The Infraco shall itself be responsible for obtaining the Construction and Maintenance Stage Consents.~~

19.5.3 NOT USED.

19.6 ~~Clause 19.5.2 shall apply following the inability of the SDS Provider to obtain (or maintain) a Design Stage Consent for which it is responsible and in accordance with the Consents Programme contained in the SDS Novation Agreement, provided that: **NOT USED.**~~

~~19.6.1 the Infraco:~~

- ~~(i) has informed **tie** of the reasons (if any) given by the relevant Approval Body for declining to issue or renew the Design Stage Consent by the programmed date and has provided appropriate supporting documentation to **tie**;~~
- ~~(ii) has informed **tie** as soon as practicable after it became aware that the Design Stage Consent may not be obtained or renewed by the programmed date;~~
- ~~(iii) has used reasonable endeavours to afford **tie** the opportunity to meet with the relevant Approval Body within 3 Business Days of notification pursuant to Clause 19.6.1(i) and (ii) with a view to resolving the situation and supported **tie** by its attendance at such meeting, accompanied by the SDS Provider;~~
- ~~(iv) has acted in order to mitigate the impact of the failure to obtain or renew the Consent;~~

~~19.6.2 the Infraco has taken all reasonable steps to manage the SDS Provider to ensure the SDS Provider obtains or renews the Design Stage Consents and ensures timely provision of adequate required information to the relevant Approval Body in accordance with the Consents Programme, the Design Delivery Programme, the agreed requirements of the Approval Body and the Design Management Plan as set out in Schedule Part 14 (Review Procedure and Design Management Plan);~~

~~19.6.3 where the Approval Body is CEC, the inability to obtain or renew the Consent is not the result of the Infraco reprogramming the Infraco Works or instructing the SDS Provider to reprioritise the Design Delivery Programme (save where such~~

~~reprogramming or reprioritisation is the direct result of a tie Change, a Relief Event, a default by tie or a Compensation Event or has been agreed pursuant to Clause 19.16), such that CEC has insufficient time or information in which to respond to an altered timescale;~~

~~19.6.4 where the Approval Body is CEC and where CEC has failed to respond and comply with the timescale requirements set out in the Consents Programme, such failure has not been caused by incomplete or late submissions by the SDS Provider or the Infraco as required by the Consents Programme, Schedule Part 14 (Review Procedure and Design Management Plan), SDS Agreement (other than as a result of a Compensation Event, Relief Event, default by tie or tie Change);~~

~~19.6.5 the failure to obtain or renew the Consent is not a consequence of a failure of the SDS Provider to perform its obligations under the SDS Agreement in terms of the quality or content of the relevant design submissions and as required pursuant to the Consents Programme contained in Schedule Part 15 (Programme), Schedule Part 14 (Review Procedure and Design Management Plan) and, where relevant, Clause 10 (Design Development and Finalisation); and~~

~~19.6.6 the failure to obtain or renew a Design Stage Consent for Infraco's Design is not a consequence of a failure of the Infraco to provide all the necessary information timeously in accordance with Schedule Part 14 (Review Procedure and Design Management Plan) and with the Programme or a failure of the Infraco to provide adequate technical support to the SDS Provider pursuant to Clause 19.5.1 or a consequence of the content or quality of the Infraco Design but not, for avoidance of doubt, on the grounds of design principle, scope, form or specification where such design meets the Employer's Requirements and the Infraco Proposals.~~

19.7 Subject to Clause 19.6, Clause 19.5.2 shall apply where, and to the extent that, a Consent is sought and the relevant Approvals Body **NOT USED.**

~~19.7.1 requires changes to design which could not reasonably have been anticipated from the previous formal or informal consultations or communications with the Approvals Body; or~~

~~19.7.2 does not deliver the Consent within the period stated in the Consents Programme or such Consents Programme updated in accordance with these terms.~~

19.8 ~~Clauses 19.6.3 and 19.6.4 shall not apply to a Consent where CEC is the Approval Body and where CEC, acting reasonably, has agreed in writing to a proposal from Infraco to changes in the sequencing, packaging, timescales, reprogramming or reprioritisation implemented by Infraco from the Consents Programme, the Design Delivery Programme and the Design Management Plan as set out in and the Schedule Part 14 (Review Procedure and Design Management Plan), provided that Infraco has provided reasonable advance notice to tie and to the Approvals Body including full details of the proposed changes.~~ **NOT USED.**

19.9 Responsibility for obtaining, maintaining or renewing any Consent which is not specified in the Consents Programme ("**Additional Consent**") shall be allocated as follows:

19.9.1 ~~where the Additional Consent is a Design Stage Consent, it shall be the responsibility of the Infraco to manage the SDS Provider in obtaining the Consent (to the extent that such Consent is the responsibility of the SDS Provider to obtain under the SDS Agreement), save for Consents which relate to design prepared by the Infraco itself in which case the Infraco shall be responsible for the Consent which, if appropriate, shall be dealt with as an Infraco Change.~~ **NOT USED.**

19.9.2 where the Additional Consent is a Design Stage Consent or a Construction and Maintenance Stage Consent, it shall be the Infraco's responsibility and, if relevant, shall be dealt with as an Infraco Change;

19.9.3 where the Additional Consent is a **tie** Consent, **tie** shall be responsible for obtaining, maintaining or renewing it.

19.9.4 Where the Additional Consent is not a Design Stage Consent or a Construction and Maintenance Stage Consent and **tie** requires Infraco to obtain it, then **tie** shall instruct Infraco and such instruction shall be a **tie** Change.

The Parties shall provide all reasonable support to one another in relation to obtaining and maintaining such Additional Consents and each shall bear its own costs in obtaining any Additional Consent, save where the Additional Consent is required as a result of a **tie** Change, in which case the costs related to obtaining the Additional Consent shall be included in the valuation pursuant to Clause 80 (**tie** Change) or Schedule Part X, Appendix B Pricing Assumption Variation Mechanism.

19.10 **tie** shall obtain the Network Rail Possessions required by Infraco to carry out and complete the Infraco Works in accordance with the Programme. The Infraco shall prepare and provide to **tie** in accordance with the Programme all required technical and design documentation necessary to enable **tie** to apply to Network Rail to obtain Consents for the

booking or rebooking of possessions (which have been obtained by **tie** based on the Infraco Proposals) in accordance with the Programme. **tie** shall be responsible for the charge payable to Network Rail for possessions, save where new possessions are needed due to the Infraco's default or delay (save where such default or delay has been caused by a default by **tie**, a Compensation Event, Relief Event or a **tie** Change) in which event any associated charges shall be paid by the Infraco. Cancellation or alteration by Network Rail of possession dates, timings or duration with insufficient notice or replacement possessions shall be a Compensation Event to the extent such possession is required for carrying out/completion of the Off Street Works.

- 19.11 The Infraco shall update the Consents Programme by each Reporting Period End Date showing progress and any Additional Consents to be obtained. **tie** shall be entitled to request information in relation to the progress of the application for any Design Stage and Construction and Maintenance Stage Consent and the Consent itself and the Infraco shall provide the same at no cost to **tie**.
- 19.12 The Infraco shall notify any relevant Approval Bodies, with a copy to **tie**, of the dates and times when the Infraco will require their services on the Site and shall be responsible for the co-ordination of their works if necessary with the remainder of the Infraco Works.
- 19.13 Where **tie's** authorisation or completion of documentation in respect of compliance with any Law is required, the Infraco shall furnish the relevant documentation to **tie** and, where possible, permit **tie** a period of 10 Business Days to authorise or complete it.
- 19.14 Except where otherwise provided in this Agreement and except in respect of **tie** Consents, the Infraco shall, or procure that the relevant Infraco Party shall, give all notices and pay all fees required to be given or paid in connection with the procurement of any Consent.
- 19.15 Without prejudice to the Infraco's obligations and rights under Clauses 18, 20, 32.1 and 32.2 and subject to **tie's** obligations to provide Land Consents in relation to the Permanent Land and the Temporary Sites pursuant to Clauses 18.1 and 18.5 and **tie's** obligations pursuant to this Clause 19, if the carrying out of the Infraco Works or the remedying of any defects therein is likely to necessitate any interference with the rights of adjoining or neighbouring landowners, tenants or occupiers, then the Infraco shall use reasonable endeavours to obtain the prior written agreement of such landowners, tenants and/or occupiers on terms and conditions acceptable to the Infraco, acting reasonably. **tie** shall provide such reasonable assistance as requested by the Infraco in obtaining any such agreement. The Infraco shall comply with any conditions contained in any such agreement.
- 19.16 The Infraco may, ~~upon reasonable notice to **tie**, request a change to~~ the order in which the Consents ~~Programme,~~ they are obliged to obtain are obtained in order to re-sequence or re-prioritise submissions in order to preserve the Programme (or to mitigate adverse

impact upon it). ~~In the event that the Infraco can demonstrate to **tie**, acting reasonably, that the change requested is necessary to prevent or mitigate the effect of a **tie** Change, a Relief Event, a Compensation Event or a Notified Departure or that such re-sequencing or re-prioritising does~~ **Such sequencing or re-sequencing shall** not create an increase or change in CEC's resourcing requirement or its work load per unit time in processing the relevant submissions, ~~then **tie** shall approve such change within a timescale that is reasonable in the circumstances.~~

19.17 If having used reasonable endeavours, having acted in accordance with Good Industry Practice in relation to any construction methodology relevant to the granting of a Construction and Maintenance Stage Consent and having provided all necessary information required to obtain such Construction and Maintenance Stage Consent, Infraco is refused such Construction and Maintenance Stage Consent or the granting of such Construction and Maintenance Stage Consent is unreasonably delayed, then such refusal or delay shall be a Compensation Event **to the extent such delay applies to Off Street Works** to which Clause 65 (Compensation Event) shall apply.

19.18 Where the Infraco obtain an APA Consent, the Infraco shall forward two copies of such APA Consent to **tie**.

~~19.19 The Infraco shall not be entitled to any relief or compensation and the provisions of Clause 65 (Compensation Events) shall not apply in the event that Infraco Design is (i) not submitted to the SDS Provider in accordance with the Consents Programme and Schedule Part 14 (Review Procedure and Design Management Plan); or (ii) is rejected by the Approvals Body on grounds of content or quality but not, for avoidance of doubt, on the grounds of design principle, scope, form or specification where such design meets the Employer's Requirements and the Infraco Proposals.~~

20. BUILDING FIXING AGREEMENTS

20.1 The Infraco shall submit Proposals to **tie** at least 6 months (other than any revised Proposal referred to in Clause 20.3 in which case such Proposals shall be submitted to allow sufficient time for **tie** acting expeditiously to review and agree in order to comply with the Programme) prior to the date on which the Infraco proposes to install, maintain, modify or replace any relevant supporting infrastructure in order to comply with the Programme. The Infraco shall, prior to taking any action under Clause 20.4 or otherwise in relation to the installation, maintenance, modification or replacement of any relevant infrastructure, obtain **tie's** consent to the Proposals referred to in this Clause 20.1, which consent shall not be unreasonably withheld or delayed provided that if **tie** unreasonably withholds or delays such consent the Infraco shall be entitled to refer the matter to the Dispute Resolution Procedure.

20.2 Concurrently with the action under Clause 20.1 and subject to Clause 19 (*Consents and Traffic Regulation Orders*) the Infraco shall obtain all necessary Consents or approvals from the relevant planning authority for the installation of temporary poles as an alternative for every proposed building fixing, in order that Clause 20.9.1.2 can be implemented forthwith on said clause being utilised.

20.3 In the event that **tie** do not consent to the Proposals referred to in Clause 20.1, the Infraco shall submit revised Proposals to **tie** to install, maintain, modify or replace any relevant supporting infrastructure, in order to obtain **tie's** consent in accordance with Clause 20.1, in order to comply with the Programme.

20.4 In the event that **tie** gives its consent to the Proposals referred to in Clause 20.1, the Infraco shall obtain all necessary Consents or approvals from the relevant planning authority in accordance with Clause 19 (*Consents and Traffic Regulation Orders*).

20.5 Where it is agreed, pursuant to Clause 20.3, that a building fixing is to be used, modified or replaced, the Infraco shall:

20.5.1 at its own cost:

20.5.1.1 provide **tie** with all information **tie** reasonably requires in order to secure the consent of the Heritable Proprietor and any other relevant party to allow the Infraco to carry out a survey in order to ascertain whether the relevant building may safely support the loadings which will be imposed upon it by the building fixings (or modification or replacement thereof) to be attached thereto for as long as may be required in connection with ~~the~~ Edinburgh Tram Network Initial Phase 1a; and

20.5.1.2 carry out the relevant survey

to allow **tie** and Infraco to enter into or vary a Building Fixing Agreement with the Heritable Proprietor under Clause 20.6; and

20.5.2 at its own cost, by the date falling 90 Business Days before the date on which the building fixing (or modification or replacement thereof) is scheduled to be affixed in accordance with the Programme, provide **tie** with all information **tie** reasonably requires in order to secure the agreement of the Heritable Proprietor to allow the siting, modification or replacement (as the case may be) of building fixings in such locations as the Infraco has set out in the Proposals issued pursuant to Clause 20.1, which agreement shall be documented and set out in the form of a Building Fixing Agreement or a variation to the existing Building Fixing Agreement or in the form of a new Building Fixing Agreement, subject to any amendments that **tie** may agree.

- 20.6 Subject to Clause 20.11, the Parties shall enter into any Building Fixing Agreement required pursuant to Clause 20.5.2 and **tie** shall procure that CEC and the Heritable Proprietor enter into such Building Fixing Agreement.
- 20.7 If any Heritable Proprietor withholds consent as envisaged by Clause 20.5, **tie** may, at its own cost, utilise the procedure for application to the Sheriff Court pursuant to section 16(4) of either the Edinburgh Tram (Line One) Act 2006 or the Edinburgh Tram (Line Two) Act 2006 (as appropriate).
- 20.8 Where **tie** decides to use the procedure referred to in Clause 20.7, the Infraco will use all reasonable endeavours to assist **tie** in such proceedings and **tie** shall reimburse Infraco for its reasonably and directly incurred costs in complying with this obligation.
- 20.9 Where **tie** uses the procedure referred to in Clause 20.7, and the application is rejected by the Sheriff Court, in whole or in part, or where **tie** determines that the rejection is likely to be upheld by the Sheriff Court, the Infraco, as directed by **tie** (acting reasonably) shall:
- 20.9.1.1 where in Infraco's opinion (acting reasonably) there is sufficient time within the construction programme, submit alternative plans for affixation of building fixings to alternative buildings at or around the same location; or
- 20.9.1.2 where in Infraco's opinion (acting reasonably) there is not sufficient time within the construction programme to propose such alternative plans, install a temporary pole in accordance with Clause 20.3 provided Infraco has obtained the application or applications required in order to obtain all necessary Consents or approvals from the relevant planning authority in accordance with Clause 20.4; or
- 20.9.1.3 submit alternative plans for affixation of building fixings to alternative buildings at or around the same location and install foundations for a temporary pole in accordance with Clause 20.3.
- For the purposes of this Clause 20.9, **tie** will review such alternative plans and then issue a **tie** Change which shall be a Mandatory **tie** Change and the provisions of Clause 80 (**tie** Changes) shall apply.
- 20.10 If a relevant Heritable Proprietor or other appropriate party serves notice on the Infraco prior to the Expiry Date pursuant to Law or pursuant to a Repairs Notice or Redevelopment Notice under a Building Fixing Agreement (each as defined therein), requiring the temporary removal of a building fixing, the Infraco shall, subject to obtaining any necessary Consents for such removal and the erection and use of a temporary pole to support OLE at that location, remove the relevant building fixing or any part thereof as required by the terms of the relevant notice and shall be entitled to support the OLE at that location by erecting a temporary pole provided that as soon as reasonably practicable

upon completion of the third party's works in respect of which the notice was served the Infraco shall:

20.10.1 remove any temporary pole; and

20.10.2 thereafter support the OLE forming part of ~~the Edinburgh Tram Network~~Initial Phase 1a at that location by way of a building fixing and not by any other method.

For the purposes of this Clause 20.10 such removal shall be a Mandatory **tie** Change and the provisions of Clause 80 (*tie Changes*) shall apply.

20.11 If having undertaken a survey pursuant to Clause 20.5.1.2, the Infraco is reasonably of the opinion that the building to which a building fixing is to be attached, modified or replaced cannot safely support the loadings which will be imposed upon it by such building fixing (or modification or replacement thereof) for as long as may be required in connection with ~~the Edinburgh Tram Network~~Initial Phase 1a and there is no alternative building at or around the same location to which the building fixing could reasonably be attached, and the Infraco submits to **tie** the survey and report upon which such opinion is based and either:

20.11.1 **tie** confirms in writing to the Infraco that it does not dispute such opinion; or

20.11.2 it is determined by the Dispute Resolution Procedure that such opinion is correct,

then the Infraco shall be entitled to select the method for supporting the OLE at that location subject to obtaining all necessary Consents or approval from the relevant planning authority.

20.12 If, following compliance with Clauses 20.2, 20.4 and 20.9, having used reasonable endeavours (including application of Good Industry Practice) and provided all necessary information in a timely fashion required to obtain a Consent for any building fixings, the granting of such Consent to the Infraco is either refused or is delayed, such refusal or delay shall be a Compensation Event pursuant to Clause 65 (*Compensation Events*).

20.13 Clauses 20.7, 20.8, and 20.9 shall apply equally to circumstances where a Building Fixing Agreement is entered into but the successor to the whole or any part of the interest of the Heritable Proprietor in question refuses to honour the terms of the same or to enter into a fresh Building Fixing Agreement as to when a Heritable Proprietor withholds consent envisaged by Clause 20.5.

20.14 Subject to Clauses 77.2, 77.3, 77.7 and 77.8 (and where applicable Clauses 16.72 and 16.73), Infraco shall indemnify CEC during the Term in respect of any payments properly

made pursuant to Clause 4 of any Building Fixing Agreement to the extent that liability to make such payment has arisen as a result of the Infraco's breach of its obligations under this Agreement.

21. **NEW ROADS AND STREET WORKS ACT 1991 AND UTILITIES DIVERSION**

21.1 In this Clause 21 (*New Roads and Street Works Act 1991 and Utilities Diversion*) "**NRSWA**" shall mean the New Roads and Street Works Act 1991.

21.2 NOT USED

21.3 All other expressions common to the Act and to this Clause 21 (*New Roads and Street Works Act 1991 and Utilities Diversion*) shall have the same meaning assigned to them by NRSWA.

21.4 The Infraco shall obtain any street works licence, road opening permits and any other consent, licence or permission (other than any Land Consents) under NRSWA that may be required for the carrying out of the Infraco Works on public roads and shall supply **tie** with copies thereof including details of any conditions or limitations imposed.

21.5 The Infraco shall be responsible for giving to any relevant utility any required notice (or advance notice where prescribed) of its proposal to commence any work. A copy of each such notice shall be given to **tie**. The Infraco shall use reasonable endeavours to assist **tie** and CEC in relation to the operation of NRSWA to recover contribution from, where appropriate, any relevant statutory undertaker.

21.6 If at any time during the Term works are carried out on the Permanent Land:

21.6.1 by or on behalf of a utility;

21.6.2 by the roads authority or any other third party authorised to carry out such works by the roads authority;

except in any case where the works are executed by Infraco or an Infraco Party pursuant to Infraco's obligations under this Agreement ("**Third Party Works**");

21.6.3 Infraco shall not be in breach of and shall be relieved of its obligations under this Agreement to the extent such breach is caused by such Third Party Works; and

21.6.4 where such Third Party Works do not meet the standards set in the Employer's Requirements to which Infraco is obliged to maintain the Infraco Works in accordance with Clause 52, Infraco shall be relieved of its obligations to meet the standards set in Schedule Part 2 (*Employer's Requirements*) in relation to such Third Party Works and shall not be

obliged to repair, reinstate or otherwise maintain such works except if otherwise instructed by **tie**, in which case such instruction will be a **tie** Change provided that the Infraco notifies **tie** promptly upon becoming aware of the occurrence of such Third Party Works.

~~22. ADVERSE PHYSICAL CONDITIONS AND ARTIFICIAL OBSTRUCTIONS~~

~~22. 22.1 NOT USED.~~

~~22.1 NOT USED.~~

~~22.2 If at any time prior to 3 weeks before the commencement of engineering and construction activities (as shown in the Programme) on the affected area of the Site, the Infraco identifies or has reason to believe that there is unexploded ordnance, unidentified utility apparatus not listed in the Utilities Information or adverse physical conditions, ground conditions, artificial obstructions and/or land which is contaminated (other than land which is contaminated by the Infraco) and is not listed in the Ground Condition Information, the Infraco shall as early as practicable give written notice thereof to **tie**. NOT USED.~~

~~22.3 When giving written notice in accordance with Clause 22.2, the Infraco shall give details of (i) any anticipated effects of such unexploded ordnance, unidentified utility apparatus not listed in the Utilities Information, adverse physical conditions, ground condition, artificial obstructions or land which is contaminated, (ii) the measures it has taken, is taking or is proposing to take, (iii) the associated estimated costs, and (iv) the extent of the anticipated delay in or interference with the carrying out of the Infraco Works.~~

~~22.4 Following receipt of the notice by **tie** pursuant to Clause 22.2, **tie**'s Representative shall:~~

~~22.4.1 require the Infraco to investigate and report upon the practicality, cost and timing of alternative measures which may be available; and/or~~

~~22.4.2 give written consent to the measures notified by the Infraco under Clause 22.3 with or without modification; and/or~~

~~22.4.3 give written instructions as to how the unexploded ordnance, utility apparatus which is not identified in Schedule Part 41 (Ground Conditions and Utilities Information), adverse physical conditions, ground condition, artificial obstructions or land which is contaminated are to be dealt with~~

~~and tie's Representative shall either order a suspension under Clause 87 (Suspension of Work) or instruct a tie Change in respect of the work to be carried out under this Clause 22.4 as a Mandatory tie Change under Clause 80 (tie Changes).~~

~~22.5 Notwithstanding the provisions of Clause 5 (Provision and Interpretation of Information), the discovery by Infraco at any time following the date 3 weeks before the commencement of engineering and construction activities (as stated in the Programme) on the affected area of the Site:~~

- ~~(a) unexploded ordnance;~~
- ~~(b) utility apparatus which is not identified in Schedule Part 41 (Ground Conditions and Utilities Information) and which could not have, or the nature of which could not have, reasonably been foreseen from the use of and interpolation from the Utilities Information; or~~
- ~~(c) adverse physical conditions, ground conditions, artificial obstructions and/or land which is contaminated, where such contamination has not been included in the Contract Price Analysis which could not have or the nature of which could not have reasonably been foreseen from the use of and interpolation from the Ground Condition Information;~~

~~shall be a Compensation Event in accordance with Clause 65 (Compensation Events) provided that:-~~

~~22.5.1 the Infraco demonstrates to the reasonable satisfaction of tie's Representative that the Infraco has used its reasonable endeavours to adjust the order and sequence in which the Infraco proposes to execute the Infraco Works in order to minimise the effects of the delay in, or if possible to avoid altogether any delay in, the progress by the Infraco of the Infraco Works; and~~

~~22.5.2 the Infraco demonstrates to the reasonable satisfaction of tie's Representative that the Infraco has used its reasonable endeavours to minimise and mitigate any extra costs incurred in relation to such adverse physical conditions, ground conditions, artificial obstructions, unexploded ordnance, unidentified utility apparatus or land which is contaminated; and~~

~~22.5.3 the Infraco demonstrates to the reasonable satisfaction of tie's Representative that any claim for additional time relates to timing implications which exceed those that are contained within the Programme in relation to the discovery of unexploded~~

~~ordnance, unidentified utility apparatus, adverse physical conditions, ground conditions, artificial obstructions or land which is contaminated.~~

23. **ACCESS TO THE INFRACO WORKS, THE SITE AND WORKSHOPS ETC.**

23.1 **tie**, **tie's** Representative and any person authorised by **tie** or **tie's** Representative shall upon reasonable prior notice being given have access during normal working hours to the areas where the Infraco Works are being carried out and to the Site (so far as the same is under the Infraco's control) and to all workshops and places where work is being prepared or whence materials, manufactured articles, machinery and equipment ~~(including the Trams)~~ are being obtained for the Infraco Works (including the premises of any Infraco Party) and the Infraco shall afford every facility for and every assistance in obtaining such access or the right to such access provided that such access shall not disrupt or interfere with the performance by Infraco or any Infraco Party of the Infraco Works and **tie** shall, and shall procure that **tie's** Representative and any person authorised by **tie** or **tie's** Representative shall, during any period when it or they have access to the Site, the Infraco Works and the Tram testing facilities, comply with all rules and regulations applicable to working at those premises for the safety of persons and convenience of the public.

24. **USE OF THE DEPOT**

24.1 On completion of the construction of ~~the Depot~~ Section A, the Infraco shall enter into and execute the Depot Licence in the form set out in Schedule Part 32 (*Depot Licence*).

24.2 Subject to the Infraco executing the Depot Licence and complying with and procuring the Infraco Parties' compliance with the obligations in this Clause 24 (*Use of the Depot*) and the Depot Licence, the Infraco and the Infraco Parties shall have the right to access and use those parts of the Depot which the Infraco and the Infraco Parties properly require to so use for the purpose of carrying out the Infraco Works (including the Maintenance Services) in accordance with this Agreement.

24.3 The Infraco agrees that:

24.3.1 the right to access and use the Depot granted pursuant to this Clause 24 (*Use of the Depot*) and the Depot Licence shall terminate on the earlier of the Termination Date or the Expiry Date; and

24.3.2 the Infraco's and the Infraco Parties' right to use such parts of the Depot shall not create any relationship of landlord and tenant.

24.4 Neither CEC nor **tie** give any warranty as to the condition or fitness for purpose of the Depot.

24.5 Subject to the exception set out in Clause 77.2, **tie** and CEC shall not be liable for the death of or injury to persons or damage to any property or for any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by the Infraco and/or the Infraco Parties or any person in the use of the Depot.

24.6 Nothing in this Clause 24 (*Use of the Depot*) or the Depot Licence shall restrict **tie's** and **tie** Parties' absolute right of access to any part of the Depot at any time provided that :

24.6.1 if such access disrupts or interferes with the performance by Infraco or any Infraco Party of the Infraco Works, such disruption or interference shall be a Compensation Event; and

24.6.2 Infraco shall not be liable for the death of or injury to persons or damage to any property or for any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by tie and/or tie Parties and/or any third party as a result of tie's, tie Parties' or any third party's (i) negligence; or (ii) failure to comply with health and safety, in accessing the Depot.

24A.1 Infraco shall, prior to the execution of the Depot Licence, use reasonable endeavours to grant tie by the 15th October 2011 a non-exclusive licence to the Depot Building and all necessary access to the Depot Building, and shall use reasonable endeavours to extend such licence to include the Mini Test Track from the 2nd December 2011. tie shall and shall procure that the Tram Supplier and Tram Maintainer comply with Infraco's Permit to Work Procedures. tie shall be entitled to grant the Tram Supplier and Tram Maintainer and (only in connection with the delivery of the Trams) the Operator and CEC a sub-licence to the Depot Building. tie's licence pursuant to clause 24A and its right to sub-licence shall be suspended if tie or tie's sub-licencees fail to comply with the Permit to Work Procedures and shall resume when tie provides reasonable assurance to Infraco that the Permit to Work Procedures shall from then on be complied with.

24A.2 For the purposes of this clause 24A "Permit to Work Procedures" means the permit to work procedures to be agreed between the Infraco, tie, the Tram Supplier, the Tram Maintainer and the Operator before 15 October 2011.

24A.3 In the period between the granting of the licence under clause 24A and the Sectional Completion Date for Section A tie shall liaise with Infraco and take any reasonable comments of Infraco into account before designating a delivery point for the Trams pursuant to clause 28.2.2 and 29.1.1 of the Tram Supply Agreement.

PART 6 - PERSONNEL

25. **TIE'S REPRESENTATIVE**

25.1 Subject to Clause 25.2, **tie's** Representative may exercise the authority of **tie** specified in the Agreement. **tie's** Representative shall:

25.1.1 be responsible for the day to day monitoring of the Infraco Works to be performed by the Infraco;

25.1.2 exercise such functions and powers of **tie** under this Agreement as **tie** may notify in writing to the Infraco from time to time; and

25.1.3 be the primary point of contact for the Infraco with **tie**;

and the Infraco shall observe, and shall procure that any Infraco Party observes, all reasonable instructions of **tie** and **tie's** Representative given in accordance with this Agreement. The Infraco shall not and shall procure that any Infraco Party shall not act upon any instruction from any other party unless confirmed by **tie** or **tie's** Representative in writing. If the Infraco or any Infraco Party shall receive any such instructions, the Infraco shall notify **tie** or **tie's** Representative immediately.

25.2 **tie** may by notice in writing to the Infraco from time to time, restrict the authority of **tie's** Representative and/or require **tie's** Representative to obtain the specific approval of **tie** before exercising any such authority. In the event of such restriction or requirement, the Infraco shall look to **tie** to exercise the relevant authority or to confirm that **tie** has given the relevant approval.

25.3 Except as expressly stated in the Agreement, **tie's** Representative shall have no authority to amend the Agreement nor to relieve the Infraco of any of its obligations under the Agreement.

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

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

25.6 No decision, act or omission of **tie** or **tie's** Representative shall, except as otherwise expressly provided in this Agreement:

25.6.1 in any way relieve or absolve the Infraco from, modify, or act as a waiver or personal bar of, any liability, responsibility, obligation or duty under this Agreement;

25.6.2 in the absence of an express written instruction or authorisation issued by **tie** under Clause 80 (**tie Changes**) constitute or authorise a variation; or

25.6.3 be construed as restricting or binding **tie** in any way save with regard to the specific project matters to which it relates.

25.7 Where **tie's** Representative is not a single named individual, **tie's** Representative shall within 7 days of the Effective Date notify to the Infraco in writing the name of the individual who will act on its behalf and assume the full responsibilities of **tie's** Representative under the Agreement. **tie's** Representative shall thereafter in like manner notify the Infraco of any replacement of the named individual.

25.8 **tie's** Representative may from time to time delegate any of the duties and authorities vested in **tie's** Representative, and **tie's** Representative may at any time revoke such delegation. Any such delegation:

25.8.1 shall be in writing and shall not take effect until such time as a copy thereof has been delivered to the Infraco or the Infraco's Representative; and

25.8.2 shall continue in force until such time as **tie's** Representative shall notify the Infraco in writing that the same has been revoked.

25.9 Instructions given by **tie's** Representative or by any person exercising delegated duties and authorities under Clause 25.8 shall be in writing. Provided that if for any reason it is considered necessary to give any such instruction orally the Infraco shall comply therewith.

25.10 Any such oral instruction shall be confirmed in writing as soon as is possible under the circumstances. Provided that if the Infraco confirms in writing any such oral instruction which confirmation is not contradicted in writing by **tie's** Representative forthwith it shall be deemed to be an instruction in writing by **tie's** Representative.

25.11 Upon the written request of the Infraco, **tie's** Representative or the person exercising delegated duties or authorities under Clause 25.8 shall specify in writing under which of his duties and authorities the instruction is given.

26. **INFRAACO'S SUPERINTENDENCE AND KEY PERSONNEL**

26.1 The Infraco shall provide all necessary superintendence during the construction and completion of the Infraco Works. Such superintendence shall be given by sufficient

persons having adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) for the satisfactory and safe construction of the Infraco Works.

26.2 The Infraco's senior representative on the Site ("**Infraco's Representative**") must be approved by **tie**, for which purpose the Infraco shall first provide **tie** with full details of the experience and qualifications of the Infraco's Representative.

26.3 The Infraco shall ensure that, so long as the Infraco's Representative remains an employee or servant of the Infraco and is not incapacitated by illness or otherwise nor absent in consequence of his reasonable holiday entitlement, the Infraco's Representative shall undertake overall supervision of the Infraco Works for whatever time may be required to ensure the completion of the Infraco Works in accordance with the Agreement. The Infraco's Representative shall be responsible for the safety of all Infraco Works.

26.4 The Infraco's Representative shall:

26.4.1 act as the principal point of contact for **tie**, and **tie's** Representative in relation to all matters related to this Agreement;

26.4.2 have full authority to act on behalf of the Infraco for all purposes of this Agreement, and **tie** and **tie's** Representative shall be entitled to treat all instructions and directions of the Infraco's Representative as those of the Infraco; and

26.4.3 manage and co-ordinate the provision of the Infraco Works by the Infraco (and any Sub-Contractor) and the integration of provision of the Infraco Works with the tasks being performed by **tie's** internal team and the other advisers and contractors appointed by **tie** (where such tasks have been notified to the Infraco), and liaise with **tie's** Representative in relation to matters arising in relation to the Infraco Works.

26.5 The Infraco's Representative shall not be changed by the Infraco without the consent of **tie** to such change (which consent shall not be unreasonably withheld or delayed) and the Infraco shall provide **tie's** Representative with full details of the experience and qualifications of the proposed substitute Infraco's Representative. The Infraco shall take account of the need for liaison and continuity in respect of the provision of the Infraco Works in accordance with the Programme when any change is proposed.

26.6 The Infraco shall also nominate a deputy to the Infraco's Representative. During any period when the Infraco's Representative is unable through illness, incapacity, annual leave or any other reason whatsoever to carry out or exercise his functions under this

Agreement, such deputy shall carry out the functions which would otherwise be performed by the Infraco's Representative.

26.7 **tie** may at any time request the removal from the Infraco Works of the Infraco's Representative or his deputy for reasons of incompetence or gross misconduct and request the prompt appointment of a satisfactory substitute, approved by **tie** and the Infraco shall provide **tie's** Representative with full details of the experience and qualifications of the proposed substitute.

26.8 Any costs incurred by the Infraco in replacing the Infraco's Representative (in any circumstances) shall be borne by the Infraco.

26.9 The Infraco shall ensure that the Key Personnel shall have day-to-day responsibility for and be involved in the performance of the Infraco Works.

26.10 In addition to the Key Personnel, there shall at all times be a sufficient number of staff (including all relevant grades of supervisory staff) available for the provision of the Infraco Works in accordance with this Agreement. This obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness and other absences, and anticipated and actual peaks in servicing the requirements for the Infraco Works.

26.11 The Infraco shall locate staff at such locations as the Infraco considers convenient for the Infraco Works, provided that:

26.11.1 the Infraco acknowledges that it will not be entitled to any reimbursement from **tie** in relation to the travel of any person to or from Edinburgh, or for the accommodation or subsistence of any person visiting Edinburgh; and

26.11.2 **tie** will require the Infraco to make the Key Personnel available for meetings in Edinburgh at such times as **tie** may, in its absolute discretion direct subject to reasonable advance notice of such meetings being given by **tie** to the Infraco.

26.12 ~~The Infraco shall, and shall use reasonable endeavours to procure that the Tram Supplier and Tram Maintainer, ensures that there are no changes to the Key Personnel without **tie's** prior written consent (such consent not to be unreasonably withheld or delayed) and that any replacement persons shall be of at least equivalent status and ability to the person whom they replace.~~ **NOT USED**

26.13 The Infraco shall use all reasonable endeavours to ensure the continuity of the personnel assigned to perform the Infraco Works and shall select Key Personnel having careful regard to those persons' existing work load and other planned commitments.

26.14 The Infraco shall ensure that its Key Personnel shall:

26.14.1 have the level of skill, experience and authority appropriate to (i) the Infraco Works to which such staff are allocated, and (ii) the standards to be achieved pursuant to this Agreement; and

26.14.2 receive such training and supervision as is necessary to ensure the proper performance of this Agreement and compliance with all regulatory requirements appropriate to and required for the performance of the Infraco Works in accordance with this Agreement.

26.15 All Key Personnel should have a nominated deputy who shall be capable of fulfilling the duties of the person to whom they are deputising in the event of their absence and who shall be kept fully informed of project status in the relevant area.

26.16 The Infraco shall not, during the period of this Agreement, contract or retain as an adviser or consultant, any person currently or previously employed or engaged as appropriate in the previous 3 months by **tie** unless the prior written approval of **tie** has been obtained. For the avoidance of doubt, this Clause 26.16 shall not apply to the SDS Provider, the Tram Supplier and the Tram Maintainer.

26.17 The Infraco shall (and shall procure that the Key Personnel, its staff employed in the performance of the Infraco Works and the Infraco Parties) comply with all regulatory requirements appropriate to and required for the performance of the Infraco Works, **tie's** Drug and Alcohol Policy.

26.18 The Infraco shall not at the Depot or at any premises from where any Infraco Parties carry out the Infraco Works and/or any obligations under this Agreement at any time allow the consumption of, or work under, the influence of alcoholic liquors or drugs or give, sell or barter any alcoholic liquors or drugs or permit or suffer any such gift, sale or barter to be made by any Infraco Party.

27. **REMOVAL OF INFRACO'S EMPLOYEES**

27.1 The Infraco shall employ or cause to be employed in and about the construction and completion of the Infraco Works and in the superintendence thereof only persons who are careful, skilled and experienced in their several trades and callings. The Infraco shall ensure that its site supervisors and operatives who are involved in carrying out the Infraco Works shall have CSCS (or equivalent) certification, if relevant to the works they are performing.

27.2 Notwithstanding the provisions of paragraph 6 of parts A and B of Schedule Part 3 (*Code of Construction Practice and Code of Maintenance Practice*), **tie's** Representative shall be at liberty to object to and require the Infraco to remove or cause to be removed from the

Infraco Works any person employed thereon who in the opinion of **tie's** Representative mis-conducts himself or is incompetent or negligent in the performance of his duties or fails to conform with any particular provisions with regard to safety which may be set out in this Agreement or persists in any conduct which is prejudicial to safety or health, and such persons shall not be again employed upon the Infraco Works without the permission of **tie's** Representative.

27.3 Any costs incurred by the Infraco in removing, or causing to be removed, a person in accordance with this Clause 27 (*Removal of Infraco's Employees*) shall be borne by the Infraco.

28. **SUB-LETTING AND THE APPOINTMENT OF SUB-CONTRACTORS**

28.1 The Infraco shall not sub-contract the whole of the Infraco Works.

28.2 ~~Subject to Clauses 28.3 and 28.4, the Infraco may sub-contract part of the Infraco Works with the prior written approval of tie, to a sub-contractor, supplier, sub-consultant, specialist and/or other party for performance of that specific part of the Infraco Works. The consent of tie shall be deemed to have been given to the appointment of the Tram Supplier, the SDS Provider and the Tram Maintainer. The consent of tie shall also be deemed to have been given to the appointment of the sub-contractors listed in Schedule Part 38 (*Approved Suppliers and Sub-Contractors and Trades*) and to the listed aspects of the Infraco Works and/or trades required for the Infraco Works in respect of which the Infraco may appoint a sub-contractor, sub-consultant, specialist and/or other party.~~ The Infraco may sub-contract parts of the Infraco Works without the consent of tie being required.

28.3 ~~In respect of the Key Sub-Contractors not already approved and listed in Schedule Part 38 (*Approved Suppliers and Sub-Contractors and Trades*), the Infraco shall supply a reasonable level of relevant information (including curriculum vitae, information on relevant experience and technical capacity, insurance details and the methodology for provision of the sub-let works) required by tie to enable a decision to be made by tie on the suitability of the proposed Key Sub-Contractors to perform the relevant part of the Infraco Works. tie's decision on the use of and identity of any sub-contractor, supplier, sub-consultant, specialist and/or other party shall not be unreasonably withheld or delayed provided that tie is entitled to so withhold its decision if: NOT USED.~~

~~28.3.1 tie considers that the proposed Key Sub-Contractor has an unacceptable safety record;~~

~~28.3.2 such Key Sub Contractor will not provide a collateral warranty in accordance with Clause 28.7 unless Infraco provides a collateral warranty in accordance with Clause 28.10;~~

28.4 The Infraco shall ~~obtain tie's approval to the form of sub contract for any work which is to be sub contracted to each Key Sub Contractor in advance of such sub contract's execution. tie shall notify the Infraco of its approval within 10 Business Days of a request for such approval by the Infraco which approval may only be withheld by tie acting reasonably if:~~ procure that each sub contract it enters into with a key Sub-Contractor contains reasonable obligations on the relevant key Sub-Contractor in relation to health and safety.

~~28.4.1 the sub contract does not in substance reflect the Infraco and the relevant Key Sub Contractor as parties to such sub contract, the provisions listed in Schedule Part 38 (Approved Suppliers and Sub Contractors and Trades) Part II in so far as they relate to the work that is to be sub contracted; or~~

~~28.4.2 the terms of the sub contract will result in Infraco being unable to perform its obligations under this Agreement.~~

28.5 ~~The Infraco shall, and shall procure that every Sub Contractor shall, provide and employ in connection with the execution of the Infraco Works:~~ NOT USED.

~~28.5.1 only such technical assistants as are skilled, experienced and assessed as competent for undertaking a specified range of activities in their respective occupations and, as appropriate, such sub agents, foremen and leading hands as are competent to give proper supervision to the work they are required to supervise; and~~

~~28.5.2 such skilled, semi skilled and unskilled labour as is necessary for the proper and timely execution of the Infraco Works.~~

28.6 Notwithstanding the provisions of paragraph 6 of parts A and B of Schedule Part 3 (*Code of Construction Practice and Code of Maintenance Practice*), **tie's** Representative shall be at liberty after due warning in writing to require the Infraco to remove from the Infraco Works any employee of the Infraco and/or an employee of a Sub-Contractor who misconducts itself or is incompetent or negligent in the performance of its duties or fails to conform with any particular provisions with regard to safety which may be set out in the Agreement or persists in any conduct which is prejudicial to safety or health and such employee shall not be again employed upon the Infraco Works without the permission of **tie's** Representative.

28.7 Subject to Clause 28.10, the Infraco shall procure that every Key Sub-Contractor (excluding the Tram Supplier, the Tram Maintainer and the SDS Provider) provide to **tie** a collateral warranty prior to the date of execution of the relevant sub-contract:

28.7.1 in favour of **tie** in the form set out in part F of Schedule Part 8, (*Bonds, Parent Company Guarantees and Collateral Warranties*) with only such amendments as **tie** may approve such approval to be provided by **tie** within 10 Business Days of receipt of the proposed collateral warranty; and/or

28.7.2 in favour of CEC, EAL, TEL and Network Rail (in this case, where relevant to Network Rail infrastructure, the operational railway and railway assets or its safety case and emergency procedures) in respect of carrying out the Infraco Works in the form set out in part F of Schedule Part 8 (*Bonds, Parent Company Guarantees and Collateral Warranties*) or in the case of EAL in the form set out in Appendix 8 to Schedule Part 44 (*EAL Works*); or

28.7.3 where the form referred to in Clause 28.7.1 or 28.7.2 cannot be obtained, in a different form acceptable to both Parties acting reasonably and taking account of industry practice and in the case of a collateral warranty to be granted in favour of any person other than **tie**, the beneficiary's requirements.

28.8 NOT USED.

28.9 ~~Subject to Schedule Part 4 (Pricing) the~~**The** Infraco shall be and shall remain wholly liable to **tie** under this Agreement for carrying out and completing the Infraco Works including any part of the Infraco Works carried out by any Sub-Contractor.

28.10 In any case where the Infraco is unable to obtain a collateral warranty from a Key Sub-Contractor in accordance with Clause 28.7 and can demonstrate to **tie's** satisfaction that it has used reasonable endeavours to do so prior to entering into contract with such Key Sub-Contractor the Infraco shall, if so required by **tie**, expressly warrant the Key Sub-Contractor's works in the form as would have been granted by the Key Sub-Contractor with the exception of the cap on liability under such collateral warranty which shall be expressed in the same terms as the Infraco Collateral Warranty. The inability to provide the collateral warranty from the Key Sub-Contractor in the circumstances described in this sub-clause shall not constitute a breach of this Clause 28.

PART 7 - GENERAL CONSTRUCTION AND MAINTENANCE OBLIGATIONS

29. SETTING-OUT

- 29.1 Save in relation to the Tram Maintenance Services and the Tram Supply Obligations, until the issue of the Patent Defects Rectification Certificate in terms of Clause 46, the Infraco shall be responsible for the accurate setting-out of the Infraco Works and for the correctness of the position, levels, dimensions and alignment of all parts of the Infraco Works and for the provision of all necessary instruments, appliances and labour in connection therewith.
- 29.2 Save in relation to the Tram Maintenance Services and the Tram Supply Obligations, until the issue of the Patent Defects Rectification Certificate in terms of Clause 46, if at any time during the progress of the Infraco Works, any error shall appear or arise in the position, levels, dimensions or alignment of any part of the Infraco Works, the Infraco, on being required so to do by **tie's** Representative, shall at its own cost rectify such error to the satisfaction of **tie's** Representative (acting reasonably).
- 29.3 The checking of any setting-out or of any line or level by **tie's** Representative shall not in any way relieve the Infraco of its responsibility for the correctness thereof and the Infraco shall carefully protect and preserve all bench-marks, sight rails, pegs and other things used in setting out the Infraco Works.

30. SAFETY AND SECURITY

- 30.1 The Infraco shall throughout the execution and completion of the Infraco Works have full regard for the safety of all persons entitled to be upon the Site and shall keep the Site (so far as the same is under its control) and the Infraco Works, in an orderly state appropriate to the avoidance of danger to such persons.
- 30.2 The Infraco shall provide and maintain at its own cost all lights, guards, fencing, warning signs and watching when and where necessary, or required by **tie's** Representative (acting reasonably), or required in accordance with Schedule Part 3 (*Code of Construction Practice and Code of Maintenance Practice*), and/or in accordance with Good Industry Practice or by any statutory or other competent authority for the protection of the Infraco Works or for the safety of the public or others whilst minimising inconvenience.
- 30.3 The Infraco shall comply with, shall procure that the Infraco Parties shall comply with all their respective duties and obligations under all Law and requirements having the force of law relating to the health, safety and conduct of construction or maintenance operations.
- 30.4 The Infraco shall use reasonable endeavours to procure that other persons authorised to be on the Designated Working Area (so far as the same is under its control) comply with all