

**tie LIMITED**

**- and -**

**THE CITY OF EDINBURGH COUNCIL**

**- and -**

**SP DISTRIBUTION LIMITED**

**AGREEMENT**

relating to  
works concerning Scottish Power equipment  
and apparatus in respect of the Edinburgh  
Tram Network

## CONTENTS

1.	DEFINITIONS AND INTERPRETATION.....	3
2.	GENERAL OBLIGATIONS.....	10
3.	CO-ORDINATED PROGRAMME OF WORKS.....	13
4.	DEVELOPMENT OF SCOPE OF ADVANCE DIVERSION WORKS .....	14
5.	MANAGEMENT OF THE ADVANCE DIVERSION WORKS.....	17
6.	COSTS, EXPENSES AND FINANCIAL CONTRIBUTIONS .....	25
7.	LIABILITY.....	27
8.	TRANSFER OF POWERS.....	28
9.	DISPUTE RESOLUTION PROCEDURE .....	29
10.	ASSIGNATION.....	33
11.	CONFIDENTIALITY.....	34
12.	NOTICES AND APPROVALS.....	36
13.	MISCELLANEOUS.....	36
14.	GOVERNING LAW AND JURISDICTION.....	37
	SCHEDULE.....	40
	PART 1.....	40
	ADJUDICATION.....	40
	PART 2.....	50
	PANELS FOR ADJUDICATION.....	50
	PART 3.....	52
	NOTICES.....	52
	PART 4.....	53
	PROPOSED TRAM NETWORK.....	53
	PART 5.....	54
	UTILITY LIAISON WORKING GROUP .....	54
	PART 6.....	55

**MAJOR TRANSPORT WORKS .....55**

**PART 7 .....57**

**MANAGEMENT OF WORKS AND HAND OVER PROTOCOL .....57**

**PART 8 .....58**

**DESIGN GUIDELINES.....58**

**PART 8 ANNEX.....63**

**DESIGN GUIDELINES DIAGRAMS .....63**

**PART 9 .....72**

**SERVITUDE AGREEMENT.....72**

**PART 10 .....78**

**UTILITIES FINANCIAL PROTOCOL DOCUMENT .....78**

## **AGREEMENT**

### **BETWEEN**

**tie LIMITED** (Company number SC230949), a wholly owned subsidiary of CEC, whose registered office is situated at City Chambers, High Street, Edinburgh EH1 1YJ acting as agent for CEC ("**tie**") and its permitted assignees;

and

**THE CITY OF EDINBURGH COUNCIL**, the Local Authority for the said City constituted in terms of the Local Government etc. (Scotland) Act 1994 and having its principal offices at Waverley Court, 4 East Market Street, Edinburgh EH8 8BG ("**CEC**") and its successors as Authorised Undertaker;

and

**SP DISTRIBUTION LIMITED**, (Company number SC189125) whose registered office is at 1 Atlantic Quay, Glasgow G2 8SP ("**SP**") and its successors or permitted assignees.

### **WHEREAS**

- (A) **CEC** promoted two private bills introduced to the Scottish Parliament on 29 January 2004, Edinburgh Tram (Line One) Bill ("**ETL1 Bill**") and Edinburgh Tram (Line Two) Bill ("**ETL2 Bill**") (collectively, the "**Bills**"). **ETL1 Bill** received royal assent on 8 May 2006 and **ETL2 Bill** received royal assent on 27 April 2006, each becoming Edinburgh Tram (Line One) Act 2006 ("**ETL1 Act**") and Edinburgh Tram (Line Two) Act 2006 ("**ETL2 Act**"), respectively (collectively, the "**Acts**"). The tram lines form the proposed Edinburgh Tram Network.

- (B) **tie** has been appointed by CEC to act as agent for CEC in respect of the application for legal powers and the procurement of the funding, construction, commissioning, operation and maintenance of the Edinburgh Tram Network.
- (C) As part of the Authorised Works permitted under the Acts, the Authorised Undertaker requires to carry out certain utility diversion works in respect of SP's equipment and apparatus.
- (D) SP is part of the Scottish Power plc group of companies and is a licensed distributor of electricity pursuant to the provisions of the Electricity Act 1989 (as amended). SP Power Systems Limited operates and manages the electricity distribution network for SP.
- (E) SP has duties pursuant to section 9 of the Electricity Act to develop and maintain efficient, co-ordinated and economical systems of electricity distribution.
- (F) SP also has a duty to provide connections between its distribution system and any premises in the South of Scotland when required to do so by the owner or occupier of any premises for the purpose of enabling electricity to be conveyed to or from the premises, (subject to the provisions of the Electricity Act 1989).
- (G) In addition SP has a duty to transport electricity over its distribution system for the suppliers of electricity and has entered into numerous agreements to allow this to be done.
- (H) The parties recognise that their respective objectives are served efficiently by a co-ordinated approach to programming and implementation of the Advance Diversion Works.
- (I) The parties acknowledge and accept as binding on each other and their successors or assignees (statutory or otherwise) the following terms and conditions:

**IT IS HEREBY AGREED** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following terms shall have the following meanings, unless the context requires otherwise:

1.1.1 "**Adjudication Procedure**" means that part of the Dispute Resolution Procedure set out in part 1 of the Schedule;

- 1.1.2 **“Adopted Apparatus”** means the FC AD Works in so far as adopted into the SP Network;
- 1.1.3 **"Advance Diversion Works"** means all Authorised Works (comprising the FC AD Works, and the SP AD Works) relating to the Apparatus and in particular the 'diversionary work' as defined in, and for the purposes of the 2003 Regulations, the scope of which shall be determined in accordance with the provisions of this Agreement;
- 1.1.4 **“ADW Dispute”** means a dispute or difference arising between the parties under this Agreement during the design, construction or engineering of the Advance Diversion Works and which will affect, interrupt or delay in any way, the execution of the Advance Diversion Works but excluding any dispute relating to the financial remedies of the parties, including but not limited to, the financial consequences of any delay in carrying out the Advance Diversion Works, payment in respect of the Advance Diversion Works or damages for breach of this Agreement or otherwise.
- 1.1.5 **“ADW Specification”** shall have the meaning given in Clause 4.2;
- 1.1.6 **“ADW Section Specification”** means the ADW Specification in respect of any Section of the Advance Diversion Works;
- 1.1.7 **“Affiliate”** means any holding company of SP, any subsidiary of SP or any subsidiary of a holding company of SP, in each case within the meaning of Sections 736, 736A and 736B of the Companies Act 1985;
- 1.1.8 **"Agreement"** means this agreement and its Schedule;
- 1.1.9 **"Apparatus"** means any equipment, apparatus or other devices belonging to, used by or maintained by SP, above or below ground, and includes any structure for the lodging within that structure of equipment or apparatus or any structure required to maintain or afford access;
- 1.1.10 **"Approvals Body"** means any authority or body concerned with the provision of consents, approvals, permits, licences or other enabling action in connection with the Edinburgh Tram Network;

- 1.1.11 "**Authorised Undertaker**" shall mean CEC, ~~tie~~ acting on behalf of CEC, or any party to whom the powers of the authorised undertaker under the Acts is duly transferred in accordance with the Acts;
- 1.1.12 "**Authorised Works**" means the works to be authorised by the Acts;
- 1.1.13 "**C3 proposals**" means any proposed scheme submitted under section C3 of Appendix C to the Code;
- 1.1.14 "**C4 budget estimates**" means detailed estimates provided under section C4 (iii) of Appendix C of the Code;
- 1.1.15 "**C4 scheme**" means a final detailed scheme (without C4 budget estimates) submitted under section C4 (i) and (ii) of Appendix C of the Code;
- 1.1.16 "**Code**" means the Code of Practice entitled "Measures Necessary where Apparatus is affected by Major Works (Diversionary works)" dated June 1992, as revised and re-issued from time to time;
- 1.1.17 "**Confidential Information**" means all documents, materials and other information or data (whether technical or commercial) of a confidential nature relating to the subject matter of this Agreement;
- 1.1.18 "**Defects Correction Period**" means in relation to (a) any excavations, or works within excavations, being in either case excavations which are of a depth of one and a half metres or greater and which form part of the Adopted Apparatus – a period of three years and (b) all other work which forms part of the Adopted Apparatus – a period of two years;
- 1.1.19 "**Designer**" means the consultant(s) appointed by the Authorised Undertaker to have design responsibility in whole or in part for the Edinburgh Tram Network;
- 1.1.20 "**Design Guidelines**" means the protocol set out in Part 8 of the Schedule (*Design Guidelines*);
- 1.1.21 "**DKE**" means the developed kinematic envelope which is the maximum width under any circumstances of a tram in motion at a particular point on the Edinburgh Tram Network as shown in a plan developed by the Designer

and as initialled by or on behalf of the parties for the purpose of identification on or about the date of this Agreement;

- 1.1.22 **"Disclosed Data"** means the information relating to this Agreement disclosed to SP for the purposes of or pursuant to this Agreement;
- 1.1.23 **"Dispute"** means a dispute or difference arising between the parties under this Agreement;
- 1.1.24 **"Dispute Resolution Procedure"** means the procedure set out in Clause 9 of this Agreement;
- 1.1.25 **"Distribution Code"** means the distribution code established pursuant to Condition 9 of SP's distribution license granted , or treated as granted, pursuant to Section 6 (1) (c) of the Electricity Act 1989;
- 1.1.26 **"Edinburgh Tram Line 1"** means a loop tramline and associated works through north Edinburgh city centre with Leith, Newhaven, Granton, Roseburn and Haymarket and passing through the Waterfront Development Area, as such route is authorised under the ETL1 Act but only in so far as is illustrated on the plan forming Part 4 of the Schedule;
- 1.1.27 **"Edinburgh Tram Line 2"** means a western tramline and associated work from Edinburgh city centre to Edinburgh Park, the Gyle, Gogarburn and Edinburgh Airport/Newbridge as such route is authorised under the ETL2 Act but only in so far as is illustrated on the plan forming Part 4 of the Schedule;
- 1.1.28 **"Edinburgh Tram Network"** means Edinburgh Tram Line 1 and Edinburgh Tram Line 2 or either of them;
- 1.1.29 **"Electricity Acts"** means the Electricity Act 1989 as amended by *inter alios* the Utilities Act 2000;
- 1.1.30 **"Electricity Industry Standards"** means any applicable electricity industry standards, guidance, code of practice, health and safety requirements or directions applicable to (as the context requires) electricity distribution from time to time;



- 1.1.31 **"FC AD Works"** means the FC Jointing Works and the other elements of the Advance Diversion Works that are to be carried out by the Framework Contractor and shall not include the SP AD Works;
- 1.1.32 **"FC Jointing Works"** means all low voltage jointing works to be carried out on networks of 415V or below which are to be undertaken by the Jointing Contractor, and which are required as part of the Advance Diversion Works;
- 1.1.33 **"FC Termination Notice"** shall have the meaning given in Clause 5.8.4;
- 1.1.34 **"Final Notice"** shall have the meaning given in Clause 5.8.3;
- 1.1.35 **"FOIA"** shall have the meaning given in Clause 11.2.9;
- 1.1.36 **"Framework Agreement"** means the agreement referred to in Clause 5.1 of this Agreement;
- 1.1.37 **"Framework Contractor"** means Alfred McAlpine Infrastructure Services Limited a company incorporated under the Companies Act with registration number 00728599 and having its registered office at Kinnaird House, 1 Pall Mall East, London SW1Y 5AZ;
- 1.1.38 **"Initial Condition Survey"** means a survey carried out in pursuance of Clause 4.10 of this Agreement;
- 1.1.39 **"Jointing Contractor"** means the contractor appointed by the Framework Contractor to carry out the FC Jointing Works;
- 1.1.40 **"Limits of Deviation"** means the limits described in the plans lodged with the Bills when submitted to the Scottish Parliament;
- 1.1.41 **"MUDFA Programme"** means the programme developed by the Framework Contractor in accordance with the Utilities Diversion Strategy;
- 1.1.42 **"New Condition Survey"** means a survey carried out under Clause 5.13 of this Agreement;
- 1.1.43 **"Rectification Plan"** means the rectification plan prepared by the Authorised Undertaker and agreed pursuant to Clause 5.8.2 (Rectification Plan);

- 1.1.44 "**Related Contracts**" means in respect of Edinburgh Tram Network or any part of the same, the agreements entered into or to be entered into by the Authorised Undertaker in respect of *inter alia* the funding, financing, design, construction, operation and maintenance thereof;
- 1.1.45 "**Relevant Authority**" means any public body or organisation with regulatory responsibilities or involvement with regard to the Edinburgh Tram Network;
- 1.1.46 "**Requested Information**" shall have the meaning given in Clause 11.3.1;
- 1.1.47 "**Schedule**" means the relevant schedule in ten parts subscribed and attached as relative to this Agreement;
- 1.1.48 "**Section**" means a section of the Advance Diversion Works as identified in Part 4 of the Schedule;
- 1.1.49 "**Servitude Agreement**" means the relevant servitude agreement substantially in the form set out in Part 9 of the Schedule (*Servitude Agreements*);
- 1.1.50 "**SP AD Works**" means the SP Jointing Works and any other element of the Advance Diversion Works which may only be carried out by SP by virtue of an operational, statutory or other regulatory obligation including those works as set out in the Works and Handover Protocol;
- 1.1.51 "**SP Jointing Works**" means all high voltage jointing works to be carried out on networks greater than 415V which are to be undertaken by SP pursuant to Clause 5.3, and which are required as part of the Advance Diversion Works;
- 1.1.52 "**SP Network**" means the electricity distribution network operated and managed by or for SP including the Apparatus and all rights and obligations constituting or associated with the same;
- 1.1.53 "**SP Requirements**" means (i) CAB-03-020, Issue 6: Technical specification for Power Cables up to and including 33kv and associated Auxiliary cables; (ii) CAB-06-001, Issue 2: Approved Equipment Register, Cables & Cable

Accessories; (iii) CAB-15-003, Issue 5: Handling and Installation of Cables up to and including 33kV; and (iv) the Design Guidelines;

- 1.1.54 **"SP Future Works"** means replacement, refurbishment, upgrading, repair or monitoring works relevant to the Advance Diversion Works which have been determined by SP pursuant to a pre-existing programme matched to statutory requirements (or as otherwise needed for legal compliance) and scheduled to take place in relation to Apparatus located on, under, across or over land within the Limits of Deviation within a period of no less than five years from the date of this Agreement;
- 1.1.55 **"Tram Project Affected Area"** means the anticipated limits of the Edinburgh Tram Network as set out in the drawings in Part 4 of the Schedule;
- 1.1.56 **"Tram Supplier"** means the tram supplier to be procured by the Authorised Undertaker in relation to the supply of trams for the Edinburgh Tram Network;
- 1.1.57 **"Utility Liaison Working Group"** shall have the meaning given in Clause 4.1;
- 1.1.58 **"Utilities Diversion Strategy"** means the methodology, resources, procurement and contracts applied by the Authorised Undertaker and agreed with the Utility Liaison Working Group in accordance with Clause 4.1;
- 1.1.59 **"the 1991 Act"** means the New Roads and Street Works Act 1991 or any statutory revision or re-enactment thereof and any regulations made thereunder;
- 1.1.60 **"the 2003 Regulations"** means the Road Works (Sharing of Costs of Works) (Scotland) Regulations 2003;
- 1.1.61 **"Warning Notice"** shall have the meaning given in Clause 5.8.1; and
- 1.1.62 **"Works and Handover Protocol"** means the protocol set out in Part 7 of the Schedule (*Management of Works and Handover Protocol*).

- 1.2 The provisions of the 1991 Act shall apply to the parties and to the subject matter of this Agreement (unless the context implies otherwise), including as to the conferred powers of the 1991 Act for Tramways in the Authorised Undertaker.
- 1.3 In the event of any ambiguity between and with regard to the terms of the Acts and the terms of this Agreement, the terms of this Agreement shall apply.
- 1.4 The singular includes the plural and vice versa and any one gender includes the others.
- 1.5 Headings are for reference only and shall not affect or be used in the interpretation of this Agreement.
- 1.6 Reference to a statute, bye-law, regulation, standard or order (including without prejudice to the generality SP Requirements) is to that statute, bye-law, regulation, standard or order as amended, modified or replaced from time to time and to any bye-law, regulation, rule, standard, delegated legislation or order made thereunder.
- 1.7 References to the word "person" or "persons" or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies, incorporated or unincorporated, whether having separate legal personality or not.
- 1.8 References to "statutory compensation" include references to payments or penalties payable to or at the direction of economic regulators.
- 1.9 References to the date of this Agreement shall mean the last date of execution of this Agreement.

#### **1A Commencement and Deadline Date**

This Agreement shall take effect on the last date of execution of this Agreement.

#### **2. GENERAL OBLIGATIONS**

- 2.1 The Authorised Undertaker shall use such skill and care as is expected of a competent developer to co-ordinate the overall planning and supervision and execution of the Authorised Works in accordance with the terms of this Agreement and throughout the progress of the Authorised Works shall ensure that SP is fully informed of all material matters concerning the Advance Diversion Works.

- 2.2 Without prejudice to the provisions of Clause 9, the Authorised Undertaker shall use all reasonable endeavours to co-operate with SP to resolve all issues arising between them resulting from the design, programming, construction and maintenance of the Advance Diversion Works.
- 2.3 In all cases relating to this Agreement, the Authorised Undertaker and SP agree to act reasonably and (without prejudice to that generality) where reference is made in this Agreement to the satisfaction of any party, such satisfaction shall be reasonable satisfaction and where any party is required under this Agreement to give its consent or approval to any matter or thing, such consent or approval shall be given as a notice in writing not to be unreasonably withheld or delayed.
- 2.4 The Authorised Undertaker shall obtain the prior consent of SP before deviating to a vertical depth beyond what is agreed between the parties in the detailed design for the FC AD Works, such consent not to be unreasonably withheld or delayed where such deviation does not adversely affect the Apparatus. The Authorised Undertaker shall indemnify SP in accordance with Clause 7 (*Liability*) for any loss or damage SP suffers caused as a result of any deviation to a vertical depth beyond what is agreed between the parties in the detailed design for the FC AD Works.
- 2.5 Save in the case of an emergency where consent may be obtained retrospectively, SP shall obtain the prior consent of the Authorised Undertaker before carrying out any physical changes to any land within the Limits of Deviation which may have a material effect on the ability of the Authorised Undertaker to carry out or procure the carrying out of the Authorised Works.
- 2.6 Subject to SP's obligations under the Electricity Acts or SP's licence conditions the parties undertake to each other that they will not use any means or take any action, or procure any other person to do so, that would have the effect of nullifying, undermining or rendering less effective or ineffective any provision of, or the underlying purpose of, this Agreement. The Authorised Undertaker acknowledges that SP as a statutory utility cannot fetter its discretion in the proper exercise of its statutory duties and functions and nothing in this Agreement shall be construed as fettering SP in the exercise of its discretion.
- 2.7 In respect of their ability to enter into this Agreement, both tie and SP warrant that they have full authority under its memorandum and articles of association, CEC

warrants that it has full authority under its powers and standing orders and each party warrants that it has obtained or does not require the consent, authority or licence of any third party and that by entering into this Agreement it will not be or become in breach of any other agreement, arrangement or legal obligation of any nature.

- 2.8 The Authorised Undertaker shall ensure that the Designer and any party carrying out the Authorised Works will ensure that the design, installation and operation of the Authorised Works (excluding the SP AD Works) complies with the Distribution Code with regards to the issue of power quality and where stray current may be or become an issue, complies with the provisions of European Industry Standard EN50122 in respect of electromagnetic compatibility.
- 2.9 SP warrants that in so far as it is aware at the date of this Agreement that: (a) the SP Network is compliant with the Distribution Code (Distribution Licence Condition 9) in respect of acceptable levels of deviation in voltage and frequency; and (b) the SP Network is not currently affected by stray current. The Authorised Undertaker accepts that, save to the extent that the Authorised Undertaker proves to the contrary, the SP Network is not currently affected by stray current.
- 2.10 The Authorised Undertaker shall consult, or procure that the Designer consult with SP regarding compliance with the Distribution Code in respect of power quality and the level of adequate stray current protection required for the SP Network;
- 2.11 The Authorised Undertaker shall procure the provision of adequate protective measures to ensure that the SP Network remains compliant with the Distribution Code and is not affected by stray current emanating from the Edinburgh Tram Network;
- 2.12 In the event that SP considers on reasonable and demonstrable grounds presented to the Authorised Undertaker that the SP Network is at any time non-compliant with the Distribution Code or affected by stray current, as a result of the Authorised Works (excluding the SP AD Works) the Authorised Undertaker shall:
- 2.12.1 rectify the situation by providing such protection as is required to comply with Clause 2.11;

- 2.12.2 indemnify SP for any expenditure incurred in making good any damage caused to the Apparatus or the SP Network by any non-compliance with the Distribution Code or such stray current;
- 2.12.3 reimburse SP for any reasonable cost or expenditure incurred in demonstrating to the Authorised Undertaker's satisfaction that the SP Network is non compliant with the Distribution Code or affected by stray current and/or that the Authorised Undertaker has installed inadequate protective measures; and
- 2.12.4 indemnify SP for any other costs, expenses, losses or penalties incurred or suffered as a result of any such non-compliance with the Distribution Code (Distribution Licence Condition 9) caused by the Edinburgh Tram Network.
- 2.13 In relation to the proposals submitted to SP pursuant to Clause 5.11, the parties shall consult with a view to the inclusion of agreed matters within the scope of the Advance Diversion Works.
- 2.14 The parties shall act in good faith in the exercise of their obligations under this Agreement.
- 2.15 The Authorised Undertaker and SP shall designate a suitably qualified representative who shall meet on a monthly basis with his counterpart (or at such other interval as agreed) to review the performance of this Agreement.
- 2.16 SP warrants that it is the only Scottish Power plc company that owns any Apparatus affected by the FC AD Works.

### **3. CO-ORDINATED PROGRAMME OF WORKS**

- 3.1 The parties acknowledge and agree that the minimum disruption to the public, minimum diversionary works with minimum out-turn costs are important mutual objectives in relation to the execution of the Advance Diversion Works and the SP Future Works. To that end:
- 3.1.1 SP shall provide the Authorised Undertaker within 90 days of the last date of execution of this Agreement, or another date as may be mutually agreed between the parties, with a current valid programme for and details of SP Future Works; and

3.1.2 The parties acknowledge that it is the Authorised Undertaker's intention to ensure execution and completion of the Advance Diversion Works by 1 June 2008, or another date as may be subsequently notified by the Authorised Undertaker. If any SP Future Works require to be undertaken prior to 1 June 2008, SP undertakes to use its reasonable endeavours to facilitate the implementation of the applicable SP Future Works, including early or adjusted commencement and implementation within the timeframe referred to in the MUDFA Programme so as to complement the Utilities Diversion Strategy.

For the avoidance of doubt, unless expressly agreed by the parties, the SP Future Works shall not form part of the Advance Diversion Works.

#### **4. DEVELOPMENT OF SCOPE OF ADVANCE DIVERSION WORKS**

- 4.1 In pursuance of section 143(1) of the 1991 Act, the Authorised Undertaker shall establish a stakeholder working group made up of SP and other statutory undertakers and utilities named in Part 5 of the Schedule for the purpose of consulting on and agreeing to a strategy to optimise the construction productivity during the execution of the Authorised Works and to minimise disruption while safeguarding the interests of SP and other statutory undertakers and utilities named in Part 5 of the Schedule which does not compromise design, procurement and delivery of the Edinburgh Tram Network to budget and programme (the "**Utility Liaison Working Group**"). The Utility Liaison Working Group shall agree and implement a schedule of meetings for the development of the Utilities Diversion Strategy.
- 4.2 The Authorised Undertaker shall engage the Designer to develop the scope, design technical specification, and method statement for the FC AD Works in accordance with the Design Guidelines and the overall programme for the Advance Diversion Works (the "**ADW Specification**").
- 4.3 In pursuance of section 143(1) of the 1991 Act, SP shall co-operate with the Designer so as to facilitate the timely production by the Authorised Undertaker of the ADW Specification.
- 4.4 The Authorised Undertaker shall submit each ADW Section Specification to SP for approval before carrying out the works set out in such ADW Section Specification. Unless otherwise agreed between the Authorised Undertaker and SP in writing, the



Authorised Undertaker shall not submit more than two ADW Section Specifications to SP for SP's consideration at any one time, such ADW Section Specification to be considered by SP within a reasonable period of time.

- 4.5 After each ADW Section Specification has been agreed between the Authorised Undertaker and SP in accordance with the Design Guidelines, the Authorised Undertaker shall procure that for each relevant Section it or its Designer provides SP with estimates similar to C4 budget estimates for the FC AD Works to be carried out in accordance with the Design Guidelines.
- 4.6 SP shall, within 42 days of the last date of receiving each request from the Authorised Undertaker together with the relevant ADW Section Specification and the relevant C4 budget estimates in terms of Clause 4.5, provide the information, set out in Clause 4.7 as it relates to the relevant Section.
- 4.7 SP shall provide the following information pursuant to Clause 4.6 relating to the SP AD Works to be carried out by or on behalf of SP based on existing C3 proposals upgraded to a level C4 scheme:
  - 4.7.1 C4 budget estimates in respect of the SP AD Works but only insofar as such C4 budget estimates can be provided without any reference being made to, or engaging with, any third parties, SP being required to identify to the Authorised Undertaker any caveats in respect of the C4 budget estimates of which the Authorised Undertaker should be made aware as a result of the fact that SP did not go to the open market to assist in the production of such C4 budget estimates;
  - 4.7.2 where available all relevant contemporary data including contemporary condition surveys relating to the presence and location of all buried and above ground Apparatus within the Limits of Deviation and particularly focusing upon the DKE plus two metres on either side thereof;
  - 4.7.3 plans showing indicative locations and depths of all buried and above ground Apparatus within the Tram Project Affected Area;
  - 4.7.4 any other cost or technical information which may be reasonably required in respect of the SP AD Works or the FC Jointing Works; and

4.7.5 subject to the Authorised Undertaker complying with its obligations under Clause 4, confirmation that based on the Disclosed Data, and save for any breaches by the Authorised Undertaker, the Authorised Undertaker or the Framework Contractor or their respective obligations under this Agreement, the Advance Diversion Works do not adversely affect SP's assets or operations having satisfied itself in relation to the following:

4.7.5.1 the extent, design, scope and programme of the Authorised Works;

4.7.5.2 the proposed position of any alternative Apparatus to be provided or constructed with a view to ensuring that SP will be afforded the necessary facilities for the maintenance and renewal of that alternative Apparatus; and

4.7.5.3 SP's requirement to be able to maintain, repair or replace as necessary the Apparatus post construction of the Edinburgh Tram Network without adversely affecting or interrupting the operation and maintenance of the Edinburgh Tram Network.

4.8 The Authorised Undertaker shall procure the design of the FC AD Works are carried out using such skill and care as is expected of a properly qualified and competent designer with experience designing works of a similar size and type to the FC AD Works in accordance with the SP Requirements and Electricity Industry Standards (or such derogations therefrom as SP may approve or consent to in writing and by expressly referring to it being aware that its approval or consent to the matter in question constitutes a derogation from the relevant standard) and such other conditions as SP may in its reasonable opinion consider necessary to ensure the effective operation of the SP Network;

4.9 The Authorised Undertaker shall procure the FC AD Works are carried out in a good and workmanlike manner using such skill and care as is expected of a properly qualified and competent contractor with experience of carrying out works of a similar size and type to the FC AD Works and the standards of material and workmanship are in accordance with the SP Requirements and Electricity Industry Standards.

4.10 At the date of this Agreement SP warrants that the Apparatus is in a condition which is fit for purpose and compliant with SP's obligations under the Electricity Acts. If the Authorised Undertaker wants to establish for its own purposes the condition of

the Apparatus, SP shall facilitate the carrying out by the Authorised Undertaker of a survey of the condition of all Apparatus in, upon, under, below or across the DKE plus two metres on either side, thereof, such survey to be carried out at the Authorised Undertaker's cost ("**Initial Condition Survey**"). On completion of the Initial Condition Survey the parties shall meet with a view to agreeing what changes, if any, are required to the Initial Condition Survey to reflect the condition of the Apparatus. If the parties agree the contents of the Initial Condition Survey, the Initial Condition Survey (as amended) will be deemed to reflect the condition of such Apparatus. If the parties cannot agree to the contents of the Initial Condition Survey, or any amendment to it, either party may refer the matter to the Dispute Resolution Procedure.

- 4.11 Subject to compliance with any statutory requirements and timescales SP shall work closely with the Authorised Undertaker in relation to implementation of the Utilities Diversion Strategy in accordance with the MUDFA Programme in order to minimise diversion requirements and out-turn costs and in particular to identify and recommend appropriate adjustment to any programme of works by SP likely to compromise or adversely affect the programme for the stopping up or diversion of any streets or roads for the purposes of the Authorised Works.
- 4.12 SP shall attend and participate in meetings as may be reasonably required by the Authorised Undertaker, including but not limited to meetings (i) concerning any working party established by the parties named in part 5 of the Schedule for the purpose of input to the Utilities Diversion Strategy; and (ii) during execution of the Authorised Works. The Authorised Undertaker shall reimburse SP's proper and reasonable costs for attending such meetings. The Authorised Undertaker shall provide SP with an agenda in advance of all meetings and a copy of the minutes for all relevant meetings (whether or not a SP representative has attended). The Authorised Undertaker shall attend meetings as may be reasonably required by SP.

## **5. MANAGEMENT OF THE ADVANCE DIVERSION WORKS**

- 5.1 The Authorised Undertaker has through ~~the~~ appointed the Framework Contractor to carry out the FC AD Works under a multi-utility Framework Agreement, to develop the MUDFA Programme and to carry out such other responsibilities relating to project management of the MUDFA Programme and the FC AD Works and the programming for the SP AD Works, the provision of road opening notices, trench

digging, road openings, preparation of joint holes, cable procurement and the laying of cables.

5.2 Clause not used

5.3 The parties agree that SP shall carry out the SP Jointing Works. The parties further agree that such SP Jointing Works and any other SP AD Works shall be carried out in accordance with the reasonable requests of the Framework Contractor acting in accordance with the provisions of the Works and Handover Protocol, and provided that such reasonable requests are notified in writing to SP no less than 4 weeks prior to the commencement of such SP Jointing Works or such other SP AD Works. SP shall comply (or shall procure compliance) with such reasonable requests. The Authorised Undertaker shall procure that the Framework Contractor shall manage the interface between the carrying out of the SP AD Works with the remainder of the Advance Diversion Works, and issue such reasonable requests to SP as are necessary to ensure that the SP AD Works are carried out in accordance with the MUDFA Programme, the Framework Agreement and this Agreement. SP hereby agrees:

5.3.1 in respect of the SP AD Works (excluding the SP Jointing Works), to execute or to procure the execution of such works or to instruct the Authorised Undertaker to procure the appointment of a suitable party to execute such works on behalf of SP, in either case subject to such reasonable and usual industry specific terms and conditions and any statutory or other regulatory requirements, or any reasonable operational requirements within such reasonable timescales as may be agreed by the Authorised Undertaker, the Framework Contractor and SP; and

5.3.2 in respect of the SP AD Works, that the cost of carrying out the SP AD Works, including an estimate of any statutory compensation SP may require to pay as described in Clause 5.4 shall be stipulated in the C4 budget estimates to be provided by SP under Clause 4.

5.4 The Authorised Undertaker shall indemnify SP in respect of any statutory compensation SP requires to pay as a result of any timescale or unreasonable delays caused by either the Authorised Undertaker or the Framework Contractor which affects the SP AD Works under Clause 5.3.1. This Clause 5.4 is subject to SP's

reasonable endeavours to reduce the amount of any applicable statutory compensation owed by SP.

5.5 The Authorised Undertaker shall or shall procure that the Framework Contractor shall:

5.5.1 carry out the FC AD Works in accordance with the SP Requirements and the Electricity Industry Standards (or such derogations therefrom as SP may approve or consent to in writing and by expressly referring to it being aware that its approval or consent to the matter in question constitutes a derogation from the relevant Standard) and such other conditions as SP may in its reasonable opinion consider necessary to ensure the effective operation of the SP Network;

5.5.2 carry out the FC AD Works in accordance with the provisions of the Works and Handover Protocol;

5.5.3 take all reasonable steps to ensure that the FC AD Works are carried out to minimise disruption to the SP Network and any third party using or with an interest in or a right over any part of the SP Network;

5.5.4 immediately take all action as reasonably required by SP or, if SP reasonably considers it necessary, suspend work if SP notifies the Authorised Undertaker that it considers that any act or omission of the Authorised Undertaker or its contractors has or could cause, exacerbate or be inconsistent (as applicable) with the effective operation of the SP Network; and

5.5.5 procure that all materials and goods used in the FC AD Works shall be new, of good quality, suitable for their purpose, in compliance with the SP Requirements and the Electricity Industry Standards, consistent with all existing operational apparatus on the SP Network and not generally known in the electricity industry to be deleterious at the time of incorporation.

5.6 Clause not used

**5.7 Inspection and Removal**

- 5.7.1 SP shall be entitled to inspect at any time prior to the energisation and adoption of the FC AD Works into the SP Network to ascertain whether they are being carried out in accordance with this Agreement, the SP Requirements and the Electricity Industry Standards with the prior consent of the Authorised Undertaker (which shall not be unreasonably withheld or delayed) and upon reasonable notice (at least one business day) to the Framework Contractor, such inspection to be co-ordinated with the Authorised Undertaker.
- 5.7.2 If SP has reasonable cause to believe that the Framework Contractor or Jointing Contractor (as the case may be), is or has been in breach of its obligations relating to the FC AD Works and subject to SP using reasonable endeavours to act on such breach in a timely manner to avoid any unnecessary cost or delay in the Advance Diversion Works, SP may require the Authorised Undertaker to procure the Framework Contractor or Jointing Contractor (as the case may be) to open up for inspection, any of the FC AD Works covered up or to arrange for or to carry out any testing of any materials or goods (whether or not already incorporated in the Advance Diversion Works) or of any of the FC AD Works.
- 5.7.3 If any of the FC AD Works, materials or goods are found, pursuant to Clause 5.7.1 or 5.7.2, not to be in accordance with this Agreement, the SP Requirements and the Electricity Industry Standards, then SP without prejudice to its rights otherwise, may issue requests to the Authorised Undertaker or Jointing Contractor (as the case may be) that the Authorised Undertaker or Jointing Contractor (as the case may be) procures the removal, re-execution and replacement of any applicable FC AD Works, materials or goods.
- 5.7.4 When Clause 5.7.3 applies, SP shall be entitled to withhold payment of any sums then due to the Authorised Undertaker under this Agreement, pending the Authorised Undertaker satisfying the requirements of Clause 5.7.3.
- 5.7.5 If any FC AD Works, materials or goods are subsequently found, pursuant to Clause 5.7.2, to be in accordance with this Agreement, the SP Requirements and the Electricity Industry Standards then SP shall pay the costs associated

with the opening up of the FC AD Works any testing of the FC AD Works materials or goods and any delay caused to the Advance Diversion Works.

## **5.8 Repeated Failures in the FC AD Works**

### **5.8.1 Persistent Breach Warning Notice**

If, during the carrying out of the FC AD Works relative to any Section, repeated failures in the execution of the FC AD Works occur such that Clause 5.7.3 has applied more than once in respect of a failure in power quality and/or customer supply SP may, using its reasonable discretion, serve a notice (a "**Warning Notice**") on the Authorised Undertaker:

5.8.1.1 specifying that the notice is a Warning Notice;

5.8.1.2 giving reasonable details of the breaches and / or failures; and

5.8.1.3 stating that the breach is a breach which may result in a termination of this Agreement.

### **5.8.2 Rectification Plan**

Following the service of a Warning Notice under Clause 5.8.1 the Authorised Undertaker shall within seven days of receipt of the Warning Notice put forward a Rectification Plan to SP in terms reasonably acceptable to SP. The Authorised Undertaker shall detail within the Rectification Plan the steps that it has already taken in order to remedy the breaches or failures specified in the Warning Notice in question and the further steps and procedures that the Authorised Undertaker intends to take or implement in order to prevent such breaches or failures from recurring. The Authorised Undertaker shall implement the Rectification Plan in accordance with its terms to prevent such breaches or failures from recurring.

### **5.8.3 Persistent Breach Final Notice**

If, following service of a Warning Notice under Clause 5.8.1, a further failure in the execution of FC AD Works occurs such that Clause 5.7.3 is applied in

respect of a failure in power quality and/or customer supply SP may, serve a notice (a "**Final Notice**") on the Authorised Undertaker:

5.8.3.1 specifying that it is a Final Notice;

5.8.3.2 stating that the Authoriser Undertaker has been the subject of a Warning Notice; and

5.8.3.3 stating that: (i) the Authorised Undertaker shall immediately procure that the Framework Contractor or Jointing Contractor (where the failure is in relation to the FC Jointing Works) shall cease to carry out the FC AD Works or FC Jointing Works (as appropriate); (ii) the Authorised Undertaker shall procure that the Framework Agreement or the contract with the Jointing Contractor is amended to delete reference to any FC AD Works or FC Jointing Works that remain to be completed by the Framework Contractor or the Jointing Contractor (as appropriate); and (iii) the Authorised Undertaker shall, subject to the prior consultation of SP, procure a replacement framework contractor or jointing contractor (as appropriate) to carry out the FC AD Works or FC Jointing Works, such procurement to be subject to the SP Requirements and the Electricity Industry Standards.

#### 5.8.4 FC Termination Notice

If, following service of a Final Notice under Clause 5.8.3, any failure in the execution of FC AD Works occurs such that Clause 5.7.3 is applied in respect of power quality and/or customer supply SP may, using its reasonable discretion, serve a notice (an "**FC Termination Notice**") on the Authorised Undertaker:

5.8.4.1 specifying that it is an FC Termination Notice;

5.8.4.2 stating that the Authoriser Undertaker has been the subject of a Final Notice; and



- 5.8.4.3 stating that any right of the Authorised Undertaker and/or the new framework contractor to carry out the FC AD Works under this Agreement shall cease and that SP shall procure the carrying out of the remaining FC AD Works
- 5.8.5 Following receipt of an FC Termination Notice the Authorised Undertaker shall procure that the new framework contractor ceases to carry out the FC AD Works under this Agreement and SP shall procure the carrying out of the FC AD Works remaining to be carried out, in accordance with the 1991 Act, the 2003 Regulations and the Code and within such reasonable timescales as may be agreed by the Authorised Undertaker and SP.
- 5.9 The Authorised Undertaker shall provide SP with not less than 28 days' notice in writing of its intention to stop up any street under section 7 of each of the Acts respectively in any case where any Apparatus is under, in, upon, over, along or across that street.
- 5.10 The Authorised Undertaker shall include in the FC AD Works detailed specifications for under track crossings, with separate duct access for the exclusive use of SP to facilitate:
- 5.10.1 the SP AD Works; and
- 5.10.2 SP Future Works as referred to in Clause 3 above,
- at positions agreed between the parties as required by the Design Guidelines, so as to safeguard the Edinburgh Tram Network against the need for SP within a period of five years from the date of this Agreement to initiate SP Future Works or SP AD Works likely to naturally disrupt the Authorised Works of the Edinburgh Tram Network.
- 5.11 Any variation to the scope of the Advance Diversion Works proposed by SP or occasioned by the SP Future Works and which are not identified specifically by SP prior to the appointment of the Framework Contractor shall be dealt with in accordance with the change control mechanism in the Framework Agreement.
- 5.12 SP shall give the Authorised Undertaker notice where it considers on reasonable grounds presented to the Authorised Undertaker that the Framework Contractor has

compromised or damaged any Apparatus and subject to Clause 5.13 the Authorised Undertaker shall indemnify SP in accordance with Clause 7 (*Liability*).

- 5.13 If the Authorised Undertaker reasonably believes that the Framework Contractor has not compromised or damaged the Apparatus, the Authorised Undertaker shall be entitled to instruct an independent third party selected by agreement with SP to carry out a condition survey ("**New Condition Survey**") to establish whether or not the Framework Contractor did in fact cause such compromise or damage to the Apparatus. If such New Condition Survey shows that no damage has been caused to the Apparatus since the Initial Condition Survey or that there is damage but that such damage is proven not to have been caused by the Framework Contractor, the reasonable cost of the survey and all reinstatement works and any properly vouched additional cost to the Authorised Works directly caused by any resultant delay shall be to the account of SP. If the New Condition Survey shows damage has been caused by the Framework Contractor, the cost of the survey shall be borne by the Authorised Undertaker.
- 5.14 The parties agree that in the event that during the FC AD Works the Framework Contractor uncovers electricity equipment belonging to a statutory undertaker or other person which has not been previously referenced pursuant to Clause 4, the Authorised Undertaker shall use reasonable endeavours to identify the owner of such equipment and procure that such equipment is made safe. If the Authorised Undertaker is unable having used all reasonable endeavours to identify the owner of such equipment and make such equipment safe, SP shall:
- 5.14.1 assist the Framework Contractor in identifying the owner of such equipment;
  - 5.14.2 attend the relevant site as required by the Framework Contractor;
  - 5.14.3 perform the works necessary to test whether such equipment is 'live' and make such equipment safe; and
  - 5.14.4 facilitate
    - 5.14.4.1 obtaining any relevant approvals as may be necessarily required by the Framework Contractor; and
    - 5.14.4.2 the production of any information reasonably required for a variation of the FC AD Works,

and that with a view to enabling the Framework Contractor to perform the Framework Contract to programme. Provided the electricity equipment uncovered does not belong to SP, tie shall ensure that the Authorised Undertaker shall pay to SP the costs reasonably incurred by SP in connection with the provision of its services under this Clause 5.14.

- 5.15 Upon the completion, energisation and adoption of the Advance Diversion Works (or such part thereof) and all works relating to them including any equipment or apparatus relative to such works shall belong to and remain the property of SP. The Authorised Undertaker shall indemnify SP against reasonable costs incurred or suffered by SP in remedying any fault or carrying out any repair or rectification on or in connection with any of the Adopted Apparatus during the Defects Correction Period for such of the Adopted Apparatus and that whether arising from the design, materials used or workmanship of such Adopted Apparatus unless such fault, repair or need for rectification is directly caused by SP acting in breach of this Agreement.
- 5.16 Where the Advance Diversion Works are to be located out-with a road, tie shall, prior to the Framework Contractor carrying out such elements of the Advance Diversion Works, procure at no cost to SP that any third party, upon whose land Advance Diversion Works are to be carried out, enters into a binding agreement with SP, substantially in the form of the Servitude Agreement, any revisions being made to the Servitude Agreement to receive approval from SP acting reasonably (having regard to its obligations as a licensed electricity distributor), or in a form of agreement similar to that previously agreed between SP and such third party. For further clarification in regards to any segment of Apparatus that is diverted, SP's new right of access for such Apparatus will be at a cost no greater than that which is currently contracted for between SP and such third party. The Authorised Undertaker shall reimburse SP's reasonable legal costs of entering into such Servitude Agreement.

## **6. COSTS, EXPENSES AND FINANCIAL CONTRIBUTIONS**

- 6.1 The parties agree that the categories of Authorised Works listed in Part 6 of the Schedule, including the Advance Diversion Works shall be 'major transport works' for the purposes of the 1991 Act and the 2003 Regulations and in these regards, the parties agree to the cost sharing allocations provided under the 2003 Regulations, allocating a 7.5% contribution from SP to the Authorised Undertaker for any FC AD Works carried out by the Authorised Undertaker, and a 92.5% contribution from the

Authorised Undertaker to SP for any SP AD Works carried out by SP.. The Authorised Undertaker shall not receive any cost sharing contributions from any other statutory undertaker or utility with regard to any of the Advance Diversion Works except where there is an equitable share allocation for costs of common works among the statutory undertakers, including such works as traffic management or shared excavation, to be based on such agreed principles as set out in Part 10 of the Schedule.

6.2 The Authorised Undertaker shall, in accordance with Clause 6.4, pay to SP and keep SP indemnified against:

6.2.1 the costs, charges and expenses reasonably incurred by SP in connection with the provision of its services under Clause 4 in developing the technical specification and scope of the Advance Diversion Works based upon the C4 scheme in respect of the Advance Diversion Works; and

6.2.2 with regard to the SP Future Works, either

6.2.2.1 such fixed cost as provided by SP (wherever possible) and agreed with the Authorised Undertaker, which represents any additional costs incurred by SP as a result of the performance of its obligations under Clause 3 of this Agreement; or

6.2.2.2 where the fixed costs referred to in Clause 6.2.2.1 cannot be provided and the cost of the SP Future Works as a result of such works being carried out in pursuance of Clause 3 ("the actual cost"), exceeds the cost of the SP Future Works had it not been for SP's obligations under Clause 3 ("the budgeted cost"), the difference between the actual cost and the budgeted cost.

6.3 Payments due to either party for the Advance Diversion Works, shall be made in accordance with the section C9 of Appendix C to the Code and the 2003 Regulations. For purposes of Clause 3(1)(a) of the 2003 Regulations, payments shall be made in accordance with Clause 8(1)(b) of the 2003 Regulations and invoices presented shall reflect the costs of such Advance Diversion Works in respect of the relevant Section.

6.4 For any other payments due to SP by the Authorised Undertaker under Clause 6.2, the following provisions shall apply:

6.4.1 SP shall deliver to the Authorised Undertaker an invoice illustrating a breakdown of costs incurred by SP together with any substantiating documentation, and a calculation of the contribution required from the Authorised Undertaker (the “Invoice”). All Invoices delivered by SP under this Section shall include any VAT or other taxes payable under this Agreement.

6.4.2 The Authorised Undertaker shall remit payment to SP no later than thirty-five (35) days of the date of the Invoice. Overdue payments shall bear interest until paid at the rate of 1% above the base rate for the time being at the Royal Bank of Scotland. All payments under this Clause 6.4 will be made in accordance with the method of payment details set out in Part 3 of the Schedule.

6.5 If the Authorised Undertaker disputes any portion of an Invoice, the Authorised Undertaker shall pay the undisputed amount shown on the Invoice and such Dispute shall be referred to the Dispute Resolution Procedure.

## 7. LIABILITY

7.1 If, by reason or in consequence of the construction or failure of any of the FC AD Works, resulting from any wrongful act or breach of this Agreement, any damage is caused to any Apparatus or other property of SP, or there is any interruption in the supply of the service by SP, tie or CEC shall: -

7.1.1 bear and pay the cost reasonably incurred by SP in making good such damage or restoring such supply; and

7.1.2 compensate SP in respect of any statutory compensation SP requires to pay under Clause 5.4; and

7.1.3 indemnify SP against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it,

by reason or in consequence of any such damage, or interruption.

7.2 Nothing in Clause 7.1 shall impose any liability on tie or CEC with respect to any damage or interruption to the extent that it is attributable to the act, negligence or default of SP, their officers, servants, contractors or agents.

- 7.3 SP shall give **tie** and CEC reasonable notice of any such claim or demand.
- 7.4 No party shall be liable for any breach of this Clause 7 caused by matters beyond its reasonable control.
- 7.5 In any event, and notwithstanding anything contained in this Clause 7, in no circumstances shall SP, **tie** or CEC be liable in contract, delict (including negligence or breach of statutory duty) or otherwise, and whatever the cause thereof-
- 7.5.1 for any loss of profits, business, contracts, revenues, or anticipated savings;  
or
- 7.5.2 for any special indirect or consequential loss or damage of any nature whatsoever;
- that may arise, be suffered or incurred by another party to this Agreement.
- 7.6 In any event, and notwithstanding anything contained in this Clause, SP's liability in contract, delict (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, arising by reason of or in connection with this Clause 7 (except in relation to death or personal injury caused by the wilful act or negligence of SP or its employees while acting in the course of their employment) shall be limited to £1,000,000 of physical damage and £50,000 in any other type of claim.
- 7.7 CEC and **tie** shall be jointly and severally liable for their respective obligations to SP under and pursuant to this Agreement.

## 8. TRANSFER OF POWERS

- 8.1 If any of the powers of the Authorised Undertaker are transferred to another person or body (whether corporate or unincorporated) ("**the Transferee**") under Section 69 of the ETL1 Act or under Section 68 of the ETL2 Act, **tie** and CEC shall procure a direct covenant from the Transferee in favour of SP that the Transferee shall observe and perform such of the obligations of and restrictions on the Authorised Undertaker under this Agreement as relate to the exercise of the powers which have been transferred.

8.2 Upon **tie** and CEC procuring the direct covenant referred to in Clause 8.1 above save where CEC assigns the direct covenant to **tie** as the Transferee and in respect of any subsisting breach of CEC's or **tie**'s obligations, **tie** and CEC shall be released from any obligation under this Agreement to observe and perform the obligations and restrictions which relate to the exercise of the powers which have been transferred.

## **9. DISPUTE RESOLUTION PROCEDURE**

9.1 The parties agree that this Clause 9 shall have effect for the resolution of any Dispute or ADW Dispute as the case may be.

9.2 Any Dispute or ADW Dispute shall, in the first instance, be referred to the Internal Resolution Procedure in accordance with Clause 9.10. For the purposes of the said Internal Resolution Procedure, references to "the Chief Executive (or equivalent)" shall in relation to SP be construed as references to the director of SP who is most appropriate to deal with the subject matter of the dispute.

9.3 Provided **tie** or CEC are the Authorised Undertakers, the parties shall not commence any court proceedings for any Dispute or ADW Dispute until the Dispute Resolution Procedure has been completed, under exception that the Dispute Resolution Procedure shall not apply so as to prevent any of the parties seeking an interim order, or interim relief, in the Scottish courts.

9.4 In the event that any court proceedings whatsoever are initiated by any party against the other party or parties (as the case may be) to the Dispute or ADW Dispute, the parties agree that the Court of Session, Scotland, shall have exclusive jurisdiction.

9.5 The parties shall not be entitled to suspend the performance of any undisputed obligations under this Agreement merely by reason of the reference of any Dispute or ADW Dispute to the Dispute Resolution Procedure.

9.6 Subject to the Authorised Undertaker's discretionary rights set out in paragraph 41 to paragraph 43.3 of Part 1 of the Schedule to require that a Dispute or ADW Dispute and a Related Dispute (as defined in paragraph 41 of Part 1 of the Schedule) be dealt with together at an appropriate stage of the Dispute Resolution Procedure, the provisions of this Clause 9 are mandatory and binding upon the parties.

9.7 Not used.

- 9.8 Provided **tie** or CEC are the Authorised Undertaker, except in relation to the matters provided for in paragraphs 1 to 40 of part 1 of the Schedule and subject to the provisions of Clause 9.9, in the event that any party pursues any ADW Dispute under the Dispute Resolution Procedure, and in the event that such party fails to observe any time limit or timescale provided for in the Dispute Resolution Procedure in relation to the pursuit or progression of such ADW Dispute, and provided that the other party has acted reasonably to accommodate any reasonable need for an extension of time, such party shall, subject to the operation of Clause 9.9, immediately upon such failure occurring, be deemed to have irrevocably waived any right to pursue or progress such ADW Dispute any further. In that event, such party shall be deemed to have elected not to have referred such ADW Dispute or to have withdrawn such ADW Dispute from the ADW Dispute Resolution Procedure and shall be deemed to have irrevocably waived any right to refer any Dispute arising from the same or substantially the same ADW Dispute or similar circumstances to the Dispute Resolution Procedure and shall be liable for payment of the whole fees incurred by any adjudicator who has acted in respect of such ADW Dispute. This Clause 9.8 is without prejudice to the rights of any party to this Agreement to raise in defence to any ADW Dispute any defence (including, without prejudice to the preceding generality, any defence of retention, compensation or set-off) which would otherwise be available to it.
- 9.9 Notwithstanding the provisions of Clause 9.8 above, in the event that a party who pursues any ADW Dispute under the Dispute Resolution Procedure fails to observe any time limit or timescale provided for in the Dispute Resolution Procedure in relation to the pursuit or progression of the ADW Dispute, the other party may elect to waive such failure, in which event the time limit or timescale to which such failure relates shall be extended at the discretion of such other party or parties to the ADW Dispute and the ADW Dispute shall progress in accordance with the Dispute Resolution Procedure, subject that all other time limits and timescales provided for in the Dispute Resolution Procedure which are affected by such extension shall be deemed to have been extended to give effect to such extension of the time limit or timescale to which such failure relates.

#### **Internal Resolution Procedure**

- 9.10 The following procedure is the Internal Resolution Procedure referred to in Clause 9.2:



- 9.10.1 in the event of any Dispute arising, the representatives to the parties shall seek to resolve the Dispute at a meeting to be convened within three business days of written notification by any party to the Dispute to the other parties to the Dispute that it wishes to initiate the Internal Resolution Procedure in respect of that Dispute ("**Notification**"). Such Notification shall be given in accordance with the provisions of Clause 12 of this Agreement;
- 9.10.2 further meetings may follow the meeting referred to in Clause 9.10.1, but in any event, if the Dispute is not resolved within seven business days of Notification, each party shall, before the expiry of the period of ten business days from Notification, serve, in accordance with the provisions of Clause 12 of this Agreement, a written position paper ("**Position Paper**") upon the other party. Each party's Position Paper shall state in reasonable detail that party's position and required objectives in relation to the Dispute, any required redress, and, where possible, any comment on the position of the other party;
- 9.10.3 upon such service of the Position Paper by the party initiating or pursuing the Dispute, the chief executive (or equivalent) of the parties (or their respective deputies in the event of their unavailability) shall seek to resolve the Dispute by meeting in good faith to discuss and negotiate upon the Dispute without recourse to legal or other proceedings;
- 9.10.4 in the event that resolution of the Dispute is achieved by the chief executive (or equivalent) of the parties, the resolution shall be reduced to writing and, once it is signed by the duly authorised representatives of the parties, shall be binding on the parties;
- 9.10.5 unless concluded by a written legally binding agreement, all discussions and negotiations connected with the Dispute shall be conducted in confidence and without prejudice to the rights of the parties to the Dispute in any future legal or other proceedings, nor may such matters be produced or relied upon in evidence in any such proceedings;
- 9.11 In the event that any Dispute is not resolved by the Internal Resolution Procedure within a period of 30 business days from Notification (or longer if so agreed by the parties) then the following provisions of this Clause 9.11 shall apply:

9.11.1 the chief executive (or equivalent) of the parties (or their respective deputies in the event of their unavailability) shall, within a further period of five business days, seek to agree that the Dispute shall be resolved by any one of the following procedures:

9.11.1.1 mediation in accordance with Clauses 9.12 to 9.14; or

9.11.1.2 adjudication in accordance with the provisions of part 1 of the Schedule in which event the Referring Party must give its Notice of Adjudication to the other party or parties (as the case may be) to the Dispute within five business days of the date of expiry of the period of 35 business days from Notification (or longer if so agreed by the parties to the Dispute); or

9.11.1.3 litigation before the Court of Session, Scotland, in which event the Summons or Petition in any such litigation shall be signetted and served within ten business days of the date of expiry of the period of 35 business days from Notification (or longer if so agreed by the parties to the Dispute).

9.11.2 In the event that the chief executive (or equivalent) of the parties (or their respective deputies in the event of their unavailability) are unable to agree that the Dispute be resolved by the procedures described in Clauses 9.11.1.1 to 9.11.1.3, the party initiating or pursuing the Dispute shall refer the Dispute to mediation (and thereafter adjudication if necessary) in accordance with Clause 9.12 to 9.14.

### **Mediation**

9.12 The parties shall attempt in good faith to resolve the Dispute by a procedure of mediation in accordance with the Centre for Effective Dispute Resolution mediation rules or Model Mediation Procedure in force at the commencement of the mediation, (or in the event that the Centre for Effective Dispute Resolution has ceased to exist as at the time of the commencement of the mediation, mediation rules or a model mediation procedure offered by any other body offering commercial mediation services which shall be selected by tie, which procedures shall be commenced within five business days of the date of expiry of the period of 35 business days from

Notification (or longer if so agreed by the parties). In the event that any such mediation rules or model mediation procedure conflicts with any provision of this Clause 9, the provisions of this Clause 9 shall take precedence. In the event that any timescales contained in such mediation rules or model mediation procedure conflicts with the timescales referred to in this Clause 9, the timescales contained in such mediation rules or model mediation procedure shall be amended accordingly such that the timescales referred to in this Clause 9 shall be adhered to.

9.13 In the event that resolution of the Dispute is achieved in consequence of such mediation procedure, such resolution shall be reduced in writing and, once it is signed by the duly authorised representatives of the parties, shall be binding on the parties. Unless concluded by a written legally binding agreement, all discussions and negotiations connected with the mediation procedure referred to in Clause 9.12 shall be concluded in confidence and without prejudice to the rights of the parties and any future legal or other proceedings. Nor may such matters be produced or relied upon in evidence in any such proceedings.

9.14 If any Dispute to which this Clause 9 relates is not resolved by the mediation procedure referred to in Clause 9.12 and 9.13 within a period of 55 business days from Notification (or longer if so agreed by the parties), the mediation procedure shall be terminated and, unless the party initiating or pursuing the Dispute withdraws the Dispute, the Dispute shall within a further five business days, be referred to adjudication in accordance with part 1 of the Schedule.

## **10. ASSIGNATION**

10.1 Subject to Clause 10.2 SP shall not assign, novate or otherwise transfer the whole or any part of the Agreement without the prior written agreement of the Authorised Undertaker, such agreement not to be unreasonably withheld or delayed.

10.2 SP shall be entitled (without the consent of the Authorised Undertaker) to assign and/or transfer its rights and/or obligations under this Agreement to any of its Affiliates or to such other person as may acquire the business and assets of SP or such Affiliate where the business and assets acquired comprise or will be used in connection with the provision of (or procuring the provision of) services similar to the electricity distribution, and the Affiliate or such other person will be entitled to perform SP rights and/or obligations under this Agreement thereby assigned and/or

transferred, provided such Affiliate or other such person is of no worse financial standing than SP, is demonstrably capable of performing the obligations of SP under this Agreement and is a licensed distributor of electricity pursuant to the provisions of the Electricity Act 1989 (as amended).

10.3 CEC and **tie** shall only be entitled to assign, novate or transfer the whole or any part of this Agreement to a Transferee as defined in Clause 8.1 above or otherwise:

10.3.1 to any body with no worse financial standing than that of **tie** who takes over all or substantially all of the functions of **tie**; and

10.3.2 whose obligations under this Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to SP) by **tie** or by a person falling within Clause 10.3;

10.3.3 or with the prior written consent of SP (such consent not to be unreasonably withheld or delayed).

## **11. CONFIDENTIALITY**

11.1 Each party agrees that, except as permitted by Clause 11.2:

11.1.1 all Confidential Information shall be treated as strictly confidential and shall not be divulged in any way to any third party without the prior approval of the other parties; and

11.1.2 it shall procure that its respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

11.2 The parties shall be entitled to divulge any Confidential Information without the approval of the other parties in the following circumstances:

11.2.1 to any officer or servant of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary to enable the party in question to perform an obligation under this Agreement or to enforce its rights under this Agreement, upon obtaining an undertaking of strict confidentiality from such officer, servant or person;

- 11.2.2 to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity upon obtaining an undertaking of strict confidentiality from such advisers or consultants;
- 11.2.3 to any lender, security trustee, bank or other financial institution from whom such party is seeking or obtaining finance, or any advisers to any such entity, upon obtaining an undertaking of strict confidentiality from the entity or advisers in question;
- 11.2.4 to the extent that it has become available to the public other than as a result of any breach of an obligation of confidence;
- 11.2.5 pursuant to the order of any court or tribunal of competent jurisdiction;
- 11.2.6 to any Affiliate, the Office of Gas and Electricity Markets (OFGEM) or any other Regulator of the electricity industry, or energywatch or its successor;
- 11.2.7 to the Scottish Executive;
- 11.2.8 to the Scottish Ministers;
- 11.2.9 subject to Clause 11.3 to the extent required by any legislation including the provisions of the Freedom Of Information (Scotland) Act 2002 (“FOIA”)

### 11.3 Freedom of Information

- 11.3.1 Where **tie** receives a request for information which is covered by the FOIA and which relates to any Confidential Information of SP (the “**Requested Information**”) the parties shall comply with the procedure set out in this Clause 11.3.
- 11.3.2 Subject to Clause 11.3.4 the Authorised Undertaker shall, before making any disclosure of the Requested Information and as soon as reasonably practicable after receiving the FOIA request, notify SP of the receipt of such request and of the nature and extent of the Requested Information.
- 11.3.3 Following notification under Clause 11.3.2, SP may make representations in writing to the Authorised Undertaker as to the basis the Requested Information is covered by an exemption in the FOIA and should not therefore be disclosed, including where relevant, any representations as to the

balance of the public interests in disclosure and non-disclosure. Such representations must be provided to the Authorised Undertaker no later than five (5) business days following the notification under Clause 11.3.2.

11.3.4 The Authorised Undertaker shall reasonably consider any representations and recommendations made by SP under Clause 11.3.3 before reaching a decision on whether it must and will disclose the Requested Information. However, the parties acknowledge that in all cases it is for the Authorised Undertaker (having full regard to any guidance or briefings issued by the Scottish Information Commissioner or the Scottish Ministers) to determine whether it is obliged to disclose the Requested Information under the FOIA, including where the public interest lies in relation to disclosure.

11.3.5 If the Authorised Undertaker makes a decision to disclose the Requested Information, it shall notify SP of this decision not less than 3 business days in advance of the disclosure being made.

11.3.6 SP shall to the extent that it is reasonably practicable for it to do so, co-operate, facilitate, support and assist the Authorised Undertaker to comply with the FOIA and any codes of practice applicable from time to time relating to access to public authorities information.

## **12. NOTICES AND APPROVALS**

12.1 Any notice or approval to be given under this Agreement shall be in writing.

12.2 Any notice or approval shall be delivered by hand or by post to the relevant address set out in Part 3 of the Schedule and shall be deemed to have been received:

12.2.1 if sent by hand, at the time of receipted delivery;

12.2.2 if sent by post, five working days after posting.

## **13. MISCELLANEOUS**

13.1 If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Agreement in that jurisdiction shall not be

affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected in any other jurisdiction.

- 13.2 Nothing in this Agreement shall create a partnership, association or joint venture or establish a relationship of principal and agent.
- 13.3 No waiver by any party of any default or defaults by the other parties to this Agreement in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character.
- 13.4 No failure or delay by any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by that party of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.
- 13.5 No amendment to this Agreement shall be effective unless in writing and signed on behalf of the parties.
- 13.6 Nothing in this Agreement shall confer on any third party a right to enforce any term of this Agreement by virtue of the doctrine of *jus quaesitum tertio*.
- 13.7 This Agreement contains all of the expressed terms of and constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes and extinguishes any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter. Each party to this Agreement acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it.
- 13.8 The parties shall each be responsible for their own costs and expenses (including legal expenses) in connection with the negotiation and execution of this Agreement.

#### **14. GOVERNING LAW AND JURISDICTION**

- 14.1 This Agreement shall be governed by and construed in accordance with the laws of Scotland.

14.2 Save as expressly provided otherwise, the parties irrevocably agree that the courts of Scotland are to have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Agreement.

IN WITNESS WHEREOF this and the preceding 37 pages and the Schedule attached as relative hereto are executed as follows:

For and on behalf of **tie LIMITED** at  
Edinburgh on 24 / 4 / 2008 by:

  
.....  
Authorised Signatory

WILLIAM CALLAGHER  
.....  
Full Name (Please print in full)

  
.....  
Witness

SUSAN CLARK  
.....  
Full Name (Please print in full)

Citypoint, 65 Haymarket Ter  
.....  
EDINBURGH  
.....  
Address

For and on behalf of **THE CITY OF  
EDINBURGH COUNCIL** at Edinburgh on  
20 JUNE 2008 by:

  
.....  
Authorised Signatory

Simon Harrison  
.....  
Full Name (Please print in full)

  
.....  
Witness

YSELLA JAGO  
.....  
Full Name (Please print in full)

CITY CHAMBERS  
.....  
EDINBURGH  
.....  
Address



For and on behalf of **SP DISTRIBUTION LIMITED** at *Kilmarnock*  
on *22 April* 2008  
by:

[Redacted Signature]

Director/Authorised Signatory

*ALAN ALEXANDER BRYLE*  
Full Name (Please print in full)

[Redacted Signature]

Director/Witness

*SUZANNE ELIZABETH WILSON*  
Full Name (Please print in full)

*NEW MLDERSTON HOUSE*  
*BELLSHILL, ML4 3FF*  
Address

This is the Schedule referred to in the preceding Agreement between **the Limited**, The City of Edinburgh Council and SP Distribution Limited.

## SCHEDULE

### PART 1

#### ADJUDICATION

1. In the event that a party refers a Dispute to adjudication in terms of Clause 9.11.1 or 9.14 of this Agreement or exercises a statutory right available to it (if any) under the Housing Grants, Construction & Regeneration Act 1996, to raise adjudication proceedings, such adjudication shall be conducted in accordance with paragraphs 2 to 40 of this Part 1 of the Schedule wherein the reference to "days" is a reference to calendar days.

#### **Notice of intention to seek adjudication**

2. Any party to this Agreement may give written notice ("**Notice of Adjudication**") of its intention to refer a Dispute to adjudication and the party giving such notice shall be the "**Referring Party**" for the purposes of this Agreement.
3. The Notice of Adjudication shall be given to the other party and the party receiving the Notice of Adjudication shall be the "**Responding Party**".
4. The Notice of Adjudication shall set out briefly:
  - 4.1 the nature and a brief description of the Dispute and the parties involved;
  - 4.2 details of where and when the Dispute has arisen;
  - 4.3 the nature of the redress which is sought; and
  - 4.4 the names and addresses of the parties (including the addresses which the parties have specified for the giving of notices).
5. The adjudicator selected to consider the Dispute shall be selected from one of the panels ("**Panels**") appointed by the parties to the Dispute in accordance with the following:

- 5.1 there shall be four Panels, one in respect of legal matters, ("Legal Panel"), one in respect of construction matters and construction/operation interface matters ("Construction Panel"), one in respect of operational and maintenance matters ("Operations Panel") and one in respect of financial matters ("Financial Panel").
- 5.2 each Panel shall be comprised of four members, who are listed in Part 2 of the Schedule to this Agreement.
- 5.3 if any member of a Panel resigns or dies or becomes incapax or ill to the extent of being unable to reasonably discharge his duties as a member of the Panel, a replacement shall be appointed by the parties to the Dispute as soon as practicable. Any such replacement shall be wholly independent of the Authorised Undertaker, tie, CEC, SP or any Relevant Authority, any Approvals Body, the Tram Supplier or any party associated with the Edinburgh Tram Network, and any successor to or subsidiary or parent of any of the aforementioned parties. If the parties to the Dispute are unable to agree on the identity of such replacement(s), the President or Vice President for the time being of The Chartered Institute of Arbitrators (Scottish Branch) or the Institution of Civil Engineers shall appoint such replacement(s) within 30 days of any application for such appointment by any party to the Dispute.
6. The Referring Party shall at the same time as giving the Notice of Adjudication to the Responding Party will send to each of the members of the relevant Panel a copy of the Adjudication Notice and a request that each member of the relevant Panel advises the parties to the Dispute within three days as to whether or not he is able and willing to act. The parties shall attempt to agree within two further days as to which one of the members of the relevant Panel who responded indicating that they are able and willing to act shall be requested to act as adjudicators. In the event that such agreement is reached, the Referring Party shall, within a further period of one day, request the member of the relevant Panel upon whom agreement has been reached to act as adjudicator. In the event that such agreement is not reached, the Responding Party shall, within a further period of two days, select one of the members of the relevant Panel who responded indicating that they are able and willing to act and the Referring Party shall request that member to act as adjudicator.
7. If no member of the relevant Panel indicates that he is able and willing to act within three days of receiving a request to act as adjudicator, the Referring Party shall request the Chairman or the Vice-Chairman for the time being of The Chartered Institute of Arbitrators (Scottish Branch) or the Institution of Civil Engineers to select a person to act as adjudicator.

8. Any person appointed, requested or selected to act as adjudicator in accordance with paragraphs 6, 7 and 11 shall be a natural person acting in his personal capacity. A person appointed, requested or selected to act as an adjudicator shall be wholly independent of the Authorised Undertaker, **tie**, CEC, SP, any Relevant Authority, any Approvals Body, the Tram Supplier, any party in contract or providing goods or services in relation to the Edinburgh Tram Network, and any successor or subsidiary or parent of the aforementioned parties.
9. The request referred to in paragraph 7 shall be accompanied by a copy of the Notice of Adjudication.
10. The Chartered Institute of Arbitrators (Scottish Branch) or the Institution of Civil Engineers must communicate the selection of an adjudicator to the Referring Party within three days of receiving a request to do so.
11. Where the Chartered Institute of Arbitrators (Scottish Branch) or the Institute of Civil Engineers fails to comply with paragraph 10 above, the Referring Party may:
  - 11.1 agree with the other party to request a specified person to act as adjudicator; or
  - 11.2 request any other adjudicator nominating body to select a person to act as adjudicator. An "adjudicator nominating body" shall mean a body (not being a natural person and not being a party to the Dispute) which holds itself out publicly as a body which will select an adjudicator when requested to do so by a Referring Party.
12. The person requested to act as adjudicator in accordance with the provisions of paragraph 6, paragraph 7 or paragraph 11 shall indicate whether or not he is willing to act within two days of receiving the request.
13. Where an adjudicator has been selected in accordance with paragraph 6, 7 or 11, the Referring Party shall, not later than seven days from the date of the Notice of Adjudication, refer the Dispute in writing (the "**Referral Notice**") to the adjudicator.
14. A Referral Notice shall be accompanied by copies of, or relevant extracts from the Agreement and such other documents as the Referring Party intends to rely upon.
15. The Referring Party shall, at the same time as he sends to the adjudicator the documents referred to in paragraph 13 and paragraph 14, send copies of those documents to the Responding Party.

16. The adjudicator may, with the consent of the parties to those disputes, adjudicate at the same time on more than one Dispute under the Agreement.
17. The parties may agree to extend the period within which the adjudicator may reach a decision in relation to all or any of these Disputes.
18. An adjudicator may resign at any time on giving notice in writing to the parties to the Dispute.
19. An adjudicator must resign where the Dispute is the same or substantially the same as one which has previously been referred to adjudication, and a decision has been taken in that adjudication.
20. Where an adjudicator ceases to act under paragraph 18 or 19, or dies or becomes incapax or ill to the extent of being unable to reasonably discharge his duties;
  - 20.1 the Referring Party may serve a fresh notice in accordance with paragraphs 2 to 4 and shall in accordance with paragraphs 5 to 12 request an adjudicator to act; and
  - 20.2 if requested by the new adjudicator, the parties shall supply him with copies of all documents which they had made available to the previous adjudicator.
21. The parties may at any time agree to revoke the appointment of the adjudicator and in such circumstances the fees and expenses of that adjudicator shall, subject to paragraph 22, be determined and payable in accordance with paragraphs 38 and 39.
22. Where the revocation of the appointment of the adjudicator is due to the default or misconduct of the adjudicator, the parties shall not be liable to pay the adjudicator's fees and expenses.

**Powers of the adjudicator**

23. The adjudicator shall:
  - 23.1 act impartially in carrying out his duties and shall do so in accordance with any relevant terms of the Agreement and shall reach his decision in accordance with Scots law; and
  - 23.2 avoid incurring unnecessary expense.

24. The adjudicator may take the initiative in ascertaining the facts and the law necessary to determine the Dispute, and shall decide on the procedure to be followed in the adjudication. In particular, he may:
- 24.1 request the other parties to supply him with such documents as he may reasonably require including, if he so directs, any written statement from the other parties supporting or supplementing the Referral Notice and any other documents given under paragraphs 13 to 15;
  - 24.2 conduct the adjudication in the English language and decide whether a translation of any document is to be provided and, if so, by whom, by when, and at whose cost;
  - 24.3 meet and question the other parties to the Dispute and their representatives;
  - 24.4 subject to obtaining any necessary consent from a third party or the parties, make such site visits and inspections as he considers appropriate, whether accompanied by the parties or not;
  - 24.5 subject to obtaining any necessary consent from a third party or the parties to the Dispute, procure the carrying out of any tests or experiments, and make directions as to the conditions for and responsibility for the cost of the same;
  - 24.6 obtain and consider such representations and submissions as he requires, and, provided he has notified the parties to the Dispute of his intention, appoint experts, assessors or legal advisers;
  - 24.7 give directions as to the timetable for the adjudication, any deadlines, or limits as to the length of written documents or oral representations to be complied with; and
  - 24.8 issue other directions relating to the conduct of the adjudication.
25. The parties shall comply with any request or direction of the adjudicator in relation to the adjudication.
26. If, without showing sufficient cause, a party fails to comply with any request, direction or timetable of the adjudicator made in accordance with his powers, fails to produce any document or written statement requested by the adjudicator, or in any other way fails to comply with a requirement under these provisions relating to the adjudication, the adjudicator may:

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

**Adjudicator's decision**

30. Unless otherwise agreed in accordance with paragraphs 42.1 and 43.1, the adjudicator shall reach his decision not later than:
  - 30.1 twenty eight days after the date of the Referral Notice mentioned in paragraph 13;
  - 30.2 forty two days after the date of the Referral Notice if the Referring Party so consents;or

- 30.3 such period exceeding twenty eight days after the Referral Notice as the parties to the Dispute may, after the giving of that notice, agree.
31. Where the adjudicator fails, for any reason, to reach his decision in accordance with paragraph 30:
- 31.1 the other party may serve a fresh notice in accordance with paragraphs 2 to 4 and shall request an adjudicator to act in accordance with paragraphs 5 to 13; and
- 31.2 if requested by the new adjudicator the parties shall supply him with copies of all documents which they had made available to the previous adjudicator.
32. As soon as possible after he has reached a decision, the adjudicator shall deliver a copy of that decision to each of the parties to the Dispute.
33. The adjudicator shall decide the matters in the Dispute and may make a decision on different aspects of the Dispute at different times.
34. The adjudicator may take into account any other matters which the parties agree should be within the scope of the adjudication or which are matters under the Agreement which he considers are necessarily connected with the Dispute and, in particular, he may:
- 34.1 open up, review and revise any decision taken or any notice certifying payment given by any person referred to in the Agreement, unless the Agreement states that the decision or notice certifying payment is final and conclusive;
- 34.2 decide that any of the parties to the Dispute is liable to make a payment under the Agreement (whether in sterling or some other currency) and, subject to the terms of the Agreement, when that payment is due and the final date for payment.
35. The adjudicator shall provide written reasons for his decision.

**Effect of the decision**

36. In his decision, the adjudicator may, if he thinks fit, order one or both of the parties to comply peremptorily with his decision or any part of it. In the absence of any directions by the adjudicator relating to the time for performance of his decision, the parties shall be required to comply with any decision of the adjudicator immediately on delivery of the decision to the parties in accordance with paragraph 32.



37. The decision of the adjudicator shall be binding on the parties, and they shall comply with it, until the Dispute is finally determined by legal proceedings or by agreement between the parties.
38. The adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses incurred by him and the parties shall be jointly and severally liable to pay that amount to the adjudicator.
39. Without prejudice to the right of the adjudicator to effect recovery from the parties in accordance with paragraph 38, the parties to the Dispute shall each be liable to pay an equal share of the adjudicator's fees and expenses.
40. The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and any employee or agent of the adjudicator shall be similarly protected from liability.

#### **Related Disputes**

41. Notwithstanding the terms of Clauses 9.2, 9.3, 9.6, 9.8 and 9.9, of this Agreement, in the event that a dispute or potential dispute under, or in connection with any of the Related Contracts, has arisen or arises out of substantially the same issues of fact and/or law (as the case may be) as a Dispute under the Agreement (a "**Related Dispute**"), then providing that the Related Contract contains dispute resolution provisions in terms substantially the same as set out in the Dispute Resolution Procedure (save for necessary changes), **tie** may require and direct that the Dispute and the Related Dispute be dealt with together at an appropriate stage of the Dispute Resolution Procedure.
42. In the event that a Related Dispute has already been referred to the decision of an adjudicator in accordance with the provisions of the Related Contract, and the Authorised Undertaker is of the opinion that a Dispute is to be (but has not yet been) referred to adjudication under part 1 of the Schedule, the Authorised Undertaker may refer the Dispute, or may by notice in writing to SP require that the Dispute be referred (as the case may be) to the adjudicator appointed under the Related Contract to decide upon the Related Dispute, and:
  - 42.1 the adjudicator shall, if practicable, hear the Dispute at the same time as the Related Dispute and shall request such extension of time for producing his decision or award as he may require in order to reach a decision in respect of each of the Dispute and the Related Dispute at the same time. The parties shall agree to such request for an

extension of time except in the event that the Dispute or the Related Dispute relates to "construction operations" within the meaning ascribed to that term by the Housing Grants, Construction and Regeneration Act 1996 (if applicable) (unless otherwise agreed by the parties, all parties to the Related Dispute and the adjudicator);

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

42.3 **tie** shall procure that, as soon as practicable, the other party or parties to the Related Dispute shall give SP copies of the Related Contract, the Referral Notice in the Related Dispute and any other documentation provided to the adjudicator by any party to the Related Dispute.

43. In the event that a Dispute has already been referred to the decision of an adjudicator, and the Authorised Undertaker is of the opinion that a Related Dispute is to be (but has not yet been) referred to adjudication, the Authorised Undertaker may refer the Related Dispute to the adjudicator appointed under the Adjudication Procedure to decide upon the Dispute, and:

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

43.2 except in the event that the Dispute or the Related Dispute relates to "construction operations" within the meaning ascribed to that term by the Housing Grants, Construction and Regeneration Act 1996 (if applicable) (unless otherwise agreed by

the parties, all parties to the Related Dispute and the adjudicator), the adjudicator shall have power (if so requested by the Authorised Undertaker) to make his decisions or awards in the Dispute and the Related Dispute in such a manner as if the rules applicable in the Court of Session, Scotland as to the joining of one or more defenders or third parties or conjoining actions were applicable to the parties to the Dispute and the Related Dispute, and to the adjudicator;

- 43.3 as soon as practicable, **tie** shall give to SP copies of the Related Contract, the Referral Notice in the Related Dispute and any other documentation provided to the adjudicator by any party to the Related Dispute.

**PART 2**

**PANELS FOR ADJUDICATION**

**FINANCIAL**

**Alan Wilson**

[REDACTED]  
Chesterfield  
DERBYSHIRE  
[REDACTED]

**Peter Chapman**

[REDACTED]  
Stokesheath Road  
OXSHOTT  
SURREY  
[REDACTED]

**Tony Canham**

[REDACTED]  
Thorpe St Andrew  
NORWICH  
[REDACTED]

**Guy Cottam**

[REDACTED]  
Upper Limpley Stoke  
BATH  
[REDACTED]

**CONSTRUCTION / OPERATIONAL**

**Nigel Lowe**

Nigel Lowe Consulting Limited  
[REDACTED]

LONDON  
[REDACTED]

**John Hunter**

Hunter Consulting  
Commercial Centre  
Stirling Enterprise Park  
STIRLING  
FK7 7BF

**Bryan Porter**

[REDACTED]  
Newton Meams  
GLASGOW  
[REDACTED]

**Eric Mouzer**

[REDACTED]  
Edgebaston  
BIRMINGHAM  
[REDACTED]

**LEGAL**

**Gordon Reid, QC**

[REDACTED]  
By St Andrews  
FIFE  
[REDACTED]

**Robert Howie, QC**

[REDACTED]  
EDINBURGH  
[REDACTED]

**Lord Dervaird (Prof. John Murray, QC)**

[REDACTED]  
EDINBURGH  
[REDACTED]

**Gordon Coutts, QC**

[REDACTED]  
EDINBURGH  
[REDACTED]

**PART 3**

**NOTICES**

**1. SP's address for the service of notices is:**

SP Distribution Limited  
1 Atlantic Quay  
Glasgow  
G2 8SP

and

SP Distribution Limited  
New Alderston House  
Dove Wynd  
Strathclyde Business Park  
Belshill  
ML4 3AD

All written notices to be marked: "URGENT: ATTENTION LEGAL DIRECTOR, ENERGY NETWORKS"

**2. tie's address for the service of notices is:**

tie Limited  
Citypoint 65 Haymarket Terrace  
EDINBURGH  
EH12 5HB

All written notices to be marked: "URGENT: ATTENTION THE CHAIRMAN"

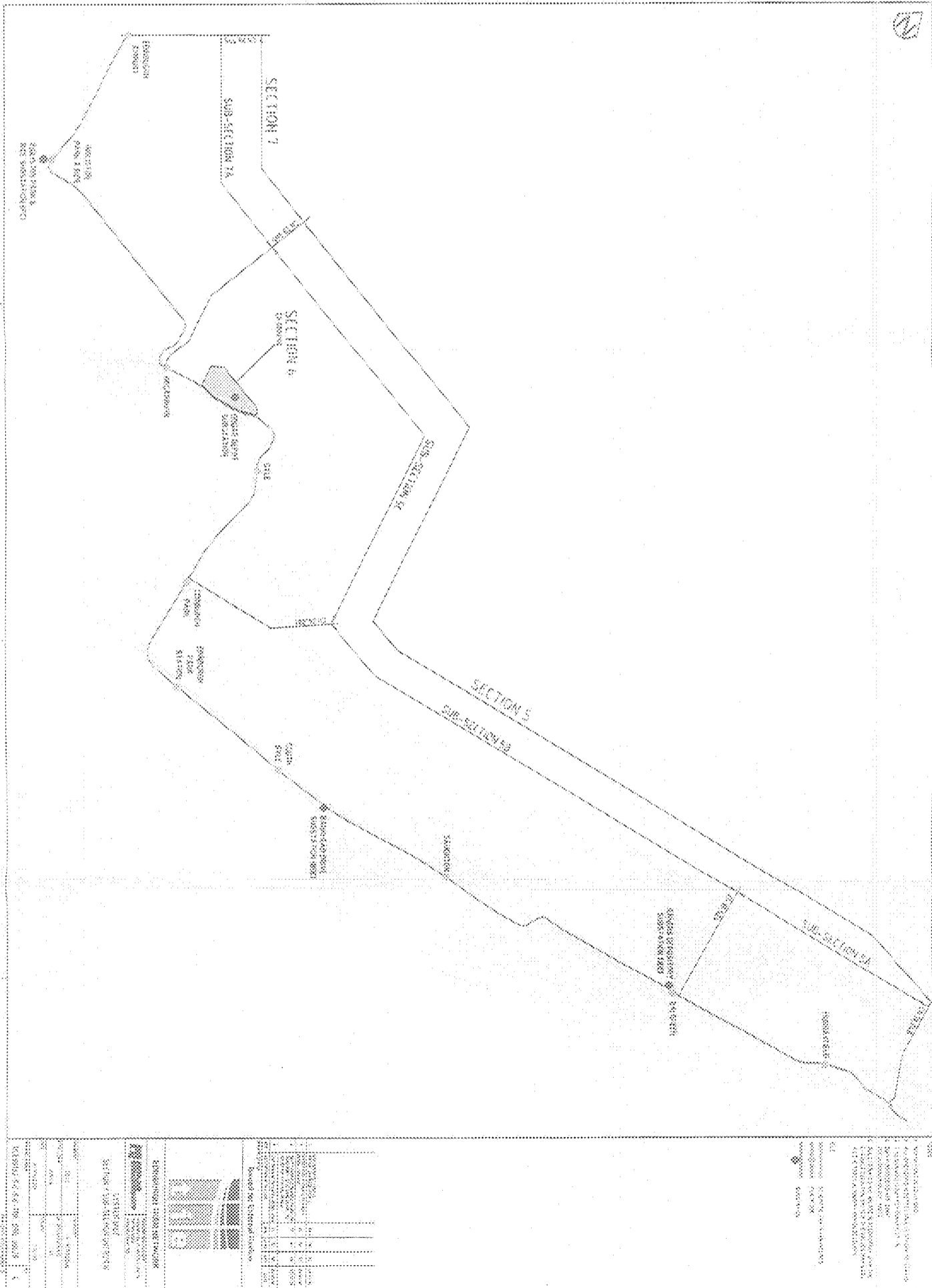
**PART 4**  
**PROPOSED TRAM NETWORK**







SP SECTION 11 [REDACTED]  
 DATE OF [REDACTED]  
 [REDACTED]



## **PART 5**

### **UTILITY LIAISON WORKING GROUP**

Utility Liaison Working Group members to include any or all of the parties listed in this Part 5 (or additional parties as agreed from time to time) as are relevant to the matters to be discussed at the particular working party meeting:

British Telecommunications PLC

SP Distribution Limited

Thus PLC

Scottish Water

Cable and Wireless UK

Scotland Gas Networks Limited

NTL Group Limited

NTL National Networks Limited

Telewest Limited

Telewest Communications Group Limited

Easynet Telecommunications Limited

Edinburgh Airport Limited

BAA PLC

Forth Ports PLC

Ocean Terminal Limited

## PART 6

### MAJOR TRANSPORT WORKS

Any works relating to, or involving the construction, repair, removal, isolation, protection, reinforcement or enhancement of the following shall be major transport works for the purposes of the 1991 Act and the 2003 Regulations:

- track slab formation and trackbed where not trackslab
- overhead line and foundations
- tram stops
- substations
- electrical equipment
- drainage
- ducting
- facilitating earthworks, retaining walls, culverts, structures and foundations
- bus stops
- grading crossfalls and kerbs
- traffic intersection
- traffic intersection realignment
- street furniture and the relocation thereof
- street lighting
- noise barriers
- street and road signage
- cathodic protection equipment

- equipotential bonding
- depot including siteworks, trackworks and building works
- seawall reconstruction/protection
- overtrack structures
- highway, street and footpath repaving as a result of any of the above
- any other works necessary or ancillary to the above or such other accommodation works as may be necessary for the purposes of the Authorised Works.

## **PART 7**

### **MANAGEMENT OF WORKS AND HAND OVER PROTOCOL**

Subject to further detailed discussions between SP and the Framework Contractor:

- The Authorised Undertaker shall procure that the Framework Contractor shall be responsible for the procurement and handling of materials associated with SP cable diversions, in accordance with SP Requirements, including CAB-03-020, Issue 6: Technical specification for Power Cables up to and including 33kv and associated Auxiliary cables; and CAB-06-001, Issue 2: Approved Equipment Register, Cables & Cable Accessories
- The Authorised Undertaker shall procure that the Framework Contractor shall be responsible for the preparation and management of road opening notices
- The Authorised Undertaker shall be responsible for procurement and execution of the FC Jointing Works in accordance with the requirements of SP.
- SP shall retain control of and discretion in management of access to SP's Networks
- The Authorised Undertaker shall procure that the Framework Contractor shall be responsible for the management of excavation works and road safety associated with SP cable diversion
- The Authorised Undertaker shall procure that the Framework Contractor shall be responsible for the management of cable installations associated with SP cable diversions, in accordance with SP Requirements including in accordance with CAB-15-003, Issue 5: Handling and Installation of Cables up to and including 33kV
- The Authorised Undertaker shall procure that the Framework Contractor shall warrant as laid details to SP
- SP shall retain control of and discretion in SP network switching and issue of safety permits for work
- SP shall retain control of and discretion in cancellation of safety permits for work and return of SP Network to service
- SP shall retain control of and discretion in recording of as-built records associated with SP cable diversions into SP's GIS

## PART 8

### DESIGN GUIDELINES

#### **Guidelines for the Design of Deviations and Protection of SP Energy Networks' Power and Telemetry Cables in the Vicinity of the Proposed Edinburgh Tramway.**

In order to avoid unnecessary work the following design principles shall be adopted:

#### **1 Crossings Greater Than 200mm Below the Tramway Sub-Base.**

- 1.1 Existing cables crossing the proposed tramway need not be replaced providing that they meet the following requirements:
  - a) they have no service or tee-joints within 1800mm of the DKE; and
  - b) they are sufficiently deep i.e. are at least 200mm below the lower limit of the sub-base of the track excavations.
  
- 1.2 Where the above conditions can be met, the existing cables shall be adequately protected and banks of ducts installed under the tramway and extending to at least 1800mm beyond the DKE as follows:
  - a) 1 x 150mm duct per cable plus one spare duct for each group of LV, 11kV and pilot cables at a crossing location; and
  - b) 6 x 100mm ducts per circuit for each 33kV and associated pilot cable.
  
- 1.3 Where the above conditions are met but it is not possible to install ducts adjacent to the existing cable, seek advice from an SP Energy Networks design engineer.

## **2 Crossings Up To 200mm Below the Tramway Sub-Base.**

- 2.1 Where existing cables crossing the proposed tramlines have insufficient depth, they shall be replaced by new cables laid through ducts installed under the tramway and extended to at least 1800mm beyond the DKE as follows:
- a) 1 x 150mm duct containing a cable plus one spare duct for each LV, 11kV and pilot cable;  
and
  - b) 6 x 100mm ducts comprising one duct for each of the three single core cables and the pilot cable plus two spare ducts for each 33kV circuit.

## **3 Additional Requirements for Cables Crossing the Tramway at an Angle.**

- 3.1 LV cables may be retained and/or ducted under the track on the same line as the existing cable provided the length of continuous ducting under the track, which must extend 1800mm beyond the DKE, does not exceed 30m. Where this length is exceeded, a combination of an angled crossing of up to 30m in length plus cable laid alongside the track at more than 1800mm beyond the DKE shall be used.
- 3.2 11kV, 33kV and associated pilot cables may be retained and/or ducted under the track on the same line as the existing cable provided that the length of continuous ducting under the track, which must extend 1800mm beyond the DKE, does not exceed 100m. Where this length is exceeded, a combination of an angled crossing of up to 100m length plus cable laid alongside the track at more than 1800mm beyond the DKE shall be used.
- 3.3 Sections of LV, 11kV and associated pilot cables which are laid alongside the tramway in roadway more than 1800mm beyond the DKE should be ducted where practicable.

## **4 Cables Running Under the Tramway.**

- 4.1 LV cables which meet the following requirements may be retained, however, this must be referred to an SP Energy Networks design engineer for approval:

- a) run under the zone extending to 1800mm beyond the DKE for no more than 30m;
  - b) are at a depth greater than 200mm below the tramway sub-base; and
  - c) do not have any tee or breech joints or services connected.
- 4.2 11kV, 33kV and associated pilot cables which meet the following requirements may be retained, however, this must be referred to an SP Energy Networks design engineer for approval:
- a) run under the zone extending to 1800mm beyond the DKE for no more than 100m.
  - b) are at a depth greater than 200mm below the tramway sub-base; and
  - c) do not have any tee or breech joints connected.
- 4.3 All cables less than 200mm below the tramway sub-base shall be replaced at least 1800mm beyond the DKE.
- 4.4 Sections of LV, 11kV and associated pilot cables laid alongside the tramway in roadway more than 1800mm beyond the DKE should where practicable be ducted.

## **5 LV Service Cables.**

- 5.3 LV Service cables crossing the tramway shall be subject to the same conditions and requirements as LV mains cables.
- 5.4 LV service cables jointed to mains cables within 1800mm of the DKE shall be disconnected and replaced at least 1800mm beyond the DKE. Where the replacement service has to pass under the tramway, ducting requirements shall be the same as those for LV cables.
- 5.5 LV services supplying existing street furniture less than 1800mm beyond the DKE will be disconnected. If any service of this type is to be retained it should be referred to an SP Energy Networks design engineer.



## **6 Future Requirements.**

- 6.3 In addition to protecting and diverting cables, provision shall be made for future cables by installing additional ducts at regular intervals. Unless over-ridden by requirements at key locations, general requirements are:
- a) a bank of 2 x 150mm spare ducts across the tramway every 50m unless spare ducts have already been installed adjacent to existing cables or diversions within 50m either side; and
  - b) a bank of 4 x 100mm and 2 x 150mm spare ducts across the tramway at 250m intervals to allow for future 33kV cables.
- 6.4 The above ducting requirements are additional to any ducts for proposed services for tramway stops and street furniture. E.g. tramway substations will require 3 x 150mm ducts and tram stops 2 x 150mm ducts where their services or loop-ins cross the tramway.

## **7 Installation Requirements.**

- 7.3 When designing for the routing of cables (for example determining joint bay and cable bending radii requirements), this shall be done in accordance with SP Energy Network's specification document CAB-15-003: Handling and Installation of cables up to and including 33kV.
- 7.4 Where existing cables are being retained below the tramway they shall:
- a) be at least 200mm below the lower limit of the sub-base of the track excavations; and
  - b) be protected by marker tape and a 50mm screed of concrete laid immediately below the sub-base of the track excavations.
- 7.5 All ducts shall be laid as close as practicable to standard depths shown in table 7f. In addition they shall:
- a) for HV and LV cables, be 150mm Rigiduct or approved equivalent laid at least standard depth below the sub-base of the track excavations;

- b) For 33kV cables, be 100mm Rigiduct or approved equivalent laid at least standard depth below the sub-base of the track excavations;
- c) Have marker tape installed immediately below the sub-base of the track excavations, 75mm above the duct;
- d) be sealed, have a draw-rope inserted and identified for SP Energy Networks' only use by marker tape within the duct;
- e) Extend 1800mm beyond the tramway DKE; and
- f) Where spare ducts are to be laid alongside a retained cable, they should be laid between 500mm and 1000mm from the cable.

7.6 Where numbers of cables and other utilities result in congested track crossings, the above specifications may be relaxed or modified with the consent of the SP Energy Networks design engineer.

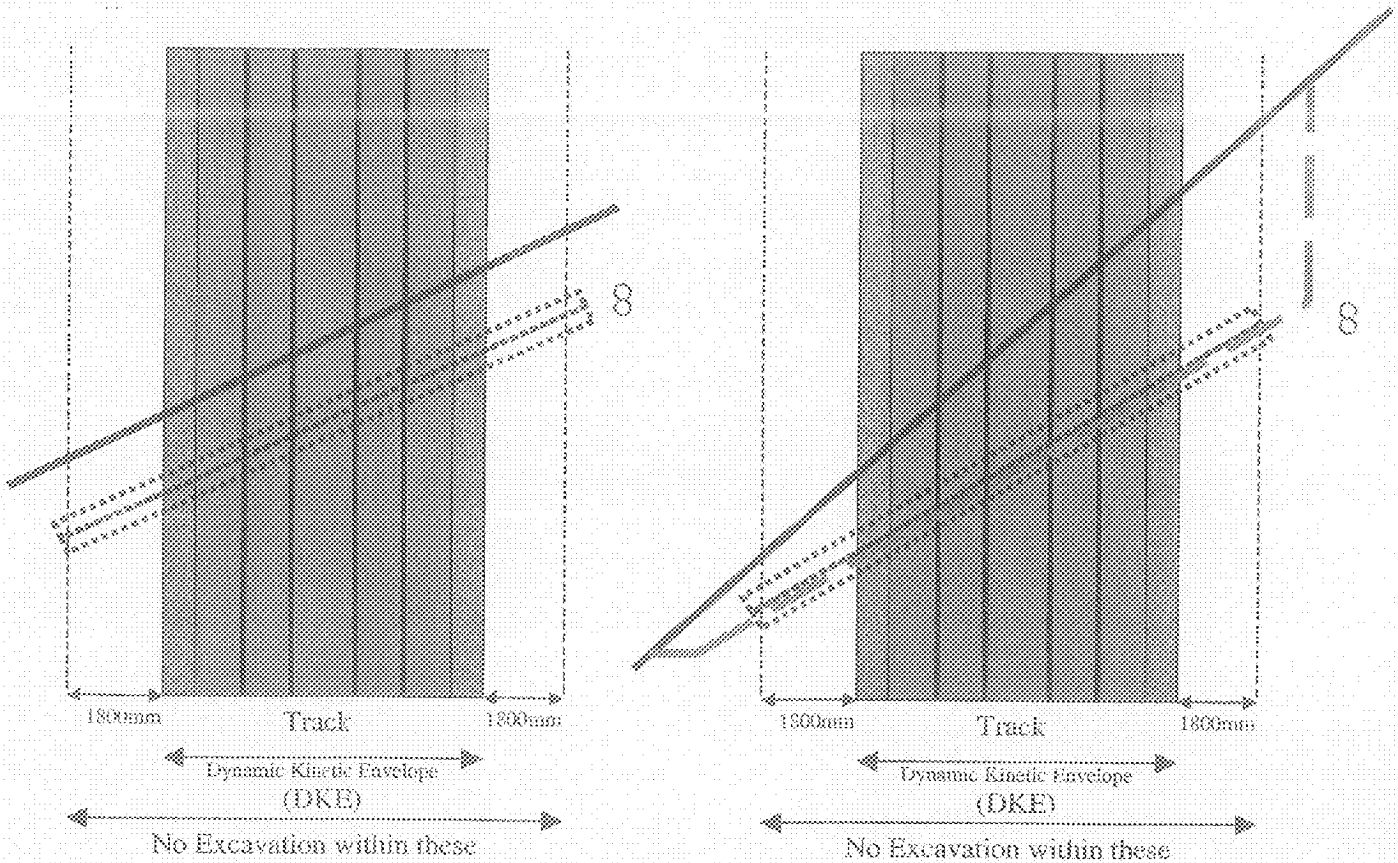
7.7 Where the DKE is within 2800mm of the footpath, any design for ducting or cable diversions shall be referred to an SP Energy Networks design engineer.

7.8 Cables and ducts laid at over 1800mm beyond the DKE shall be installed so as to provide the minimum depth of cover detailed below:

<b>Voltage</b>	<b>Roadway</b>	<b>Footpath</b>	<b>Verge/Garden</b>	<b>Agricultural</b>
<b>33kV</b>	775mm	775mm	775mm	910mm
<b>11kV</b>	700mm	600mm	700mm	910mm
<b>LV</b>	600mm	450mm	600mm	910mm

7.9 All jointing of diverted sections of cable shall be at least 1800mm beyond the DKE.

DESIGN GUIDELINES DIAGRAMS

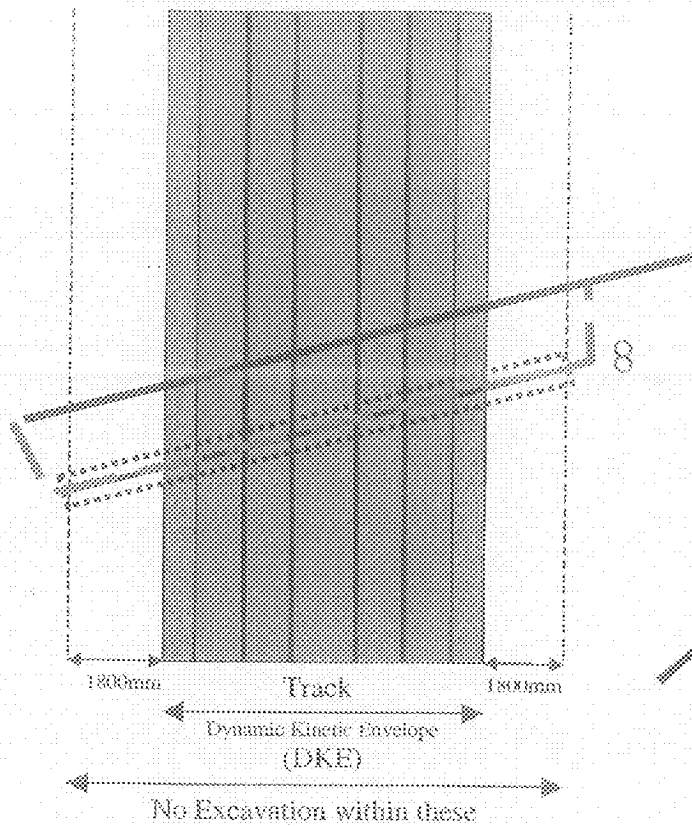


a) LV Cable > 200mm below sub-base crossing tramway with less than 30m total length below zone extending 1800mm beyond DKE.

Install 2 x 150mm Rigiduct extending at least 1800mm beyond the DKE, installed at standard depth below the sub-base and between 500mm and 1000mm from the cable.

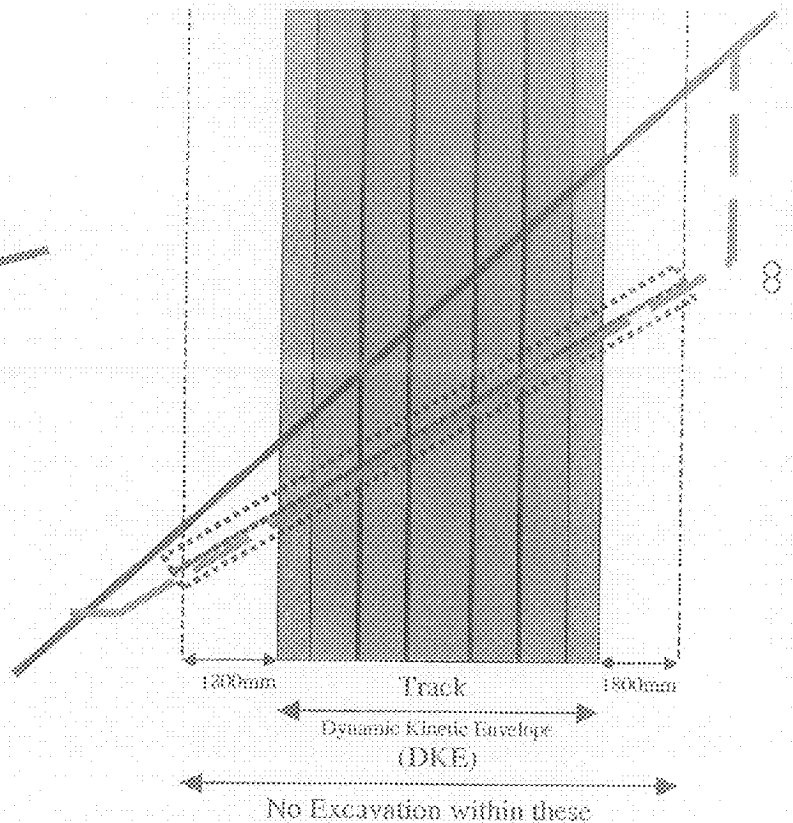
b) LV Cable > 200mm below sub-base crossing tramway with over 30m total length below zone extending 1800mm beyond DKE.

Install 2 x 150mm Rigiducts extending at least 1800mm beyond the DKE, installed at standard depth below the sub-base and no more than 30m in length. Replace existing cable by laying new cable through one of the ducts. Joint at least 1800mm beyond the DKE.



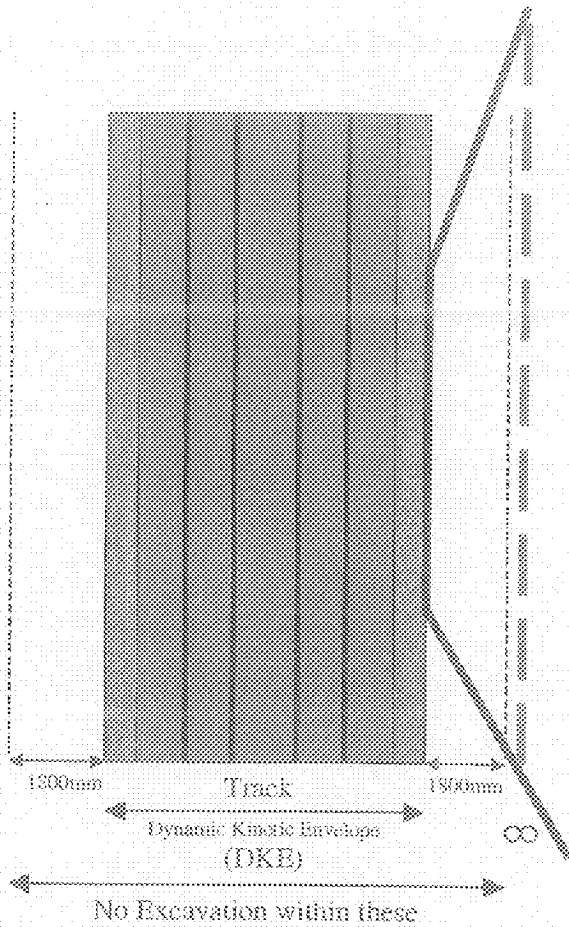
e) LV Cable < 200mm below sub-base crossing tramway with less than 30m total length below zone extending 1800mm beyond DKE.

Install 2 x 150mm Rigiducts extending at least 1800mm beyond the DKE and installed at standard depth below the sub-base. Replace existing cable by laying new cable through one of the ducts. Joint at least 1800mm beyond the DKE.



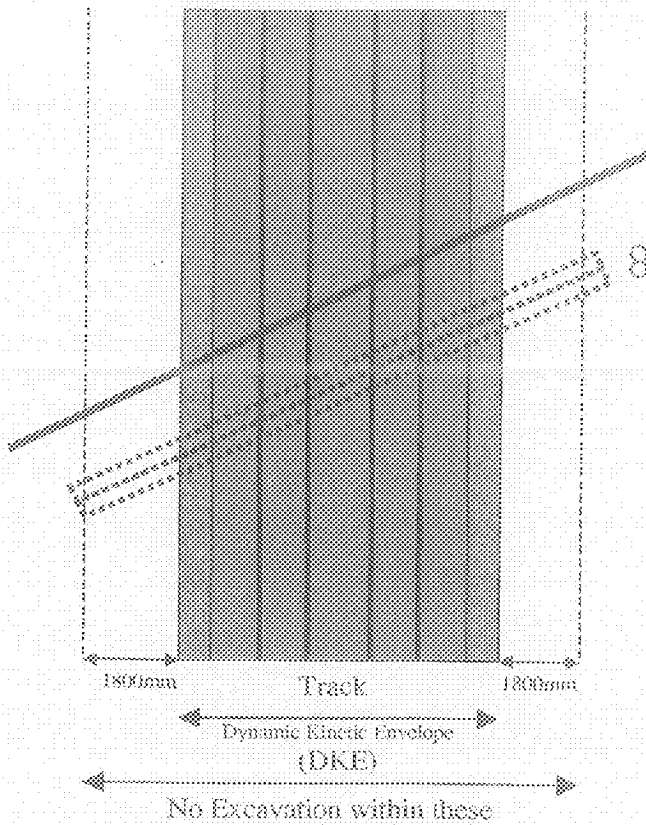
d) LV Cable < 200mm below sub-base crossing tramway with over 30m total length below zone extending 1800mm beyond DKE.

Install 2 x 150mm Rigiducts extending at least 1800mm beyond the DKE, installed at standard depth below the sub-base and no more than 30m in length. Replace existing cable by laying new cable through one of the ducts. Joint at least 1800mm beyond the DKE.



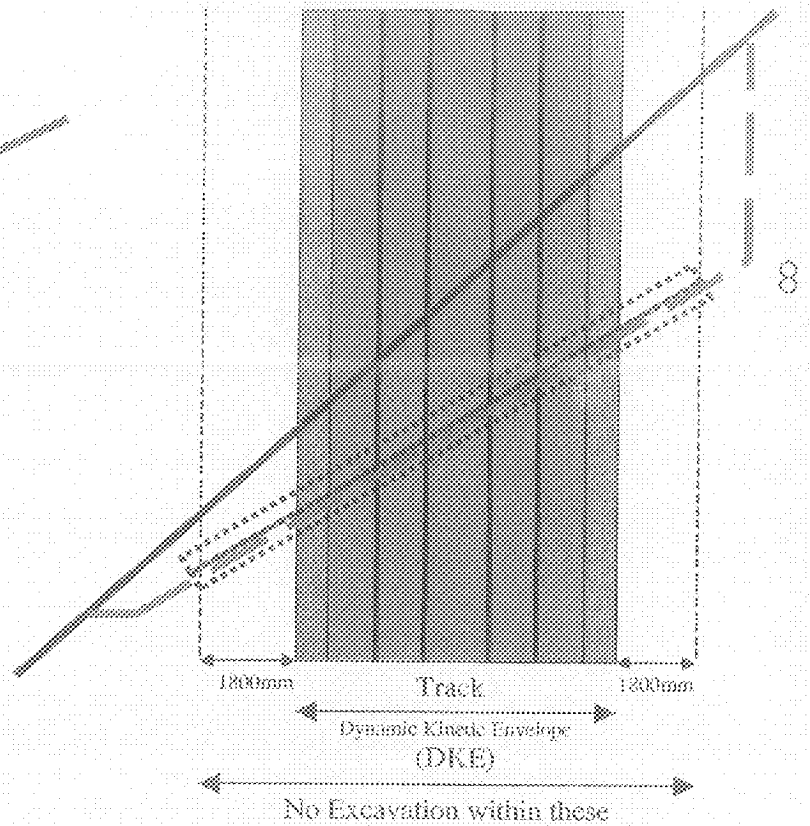
e) LV Cable within zone extending 1800mm beyond DKE

Replace cable within 500mm of the zone extending 1800mm beyond DKE with new cable laid through 150mm Rigiducts installed at standard depth and at least 1800mm beyond DKE.



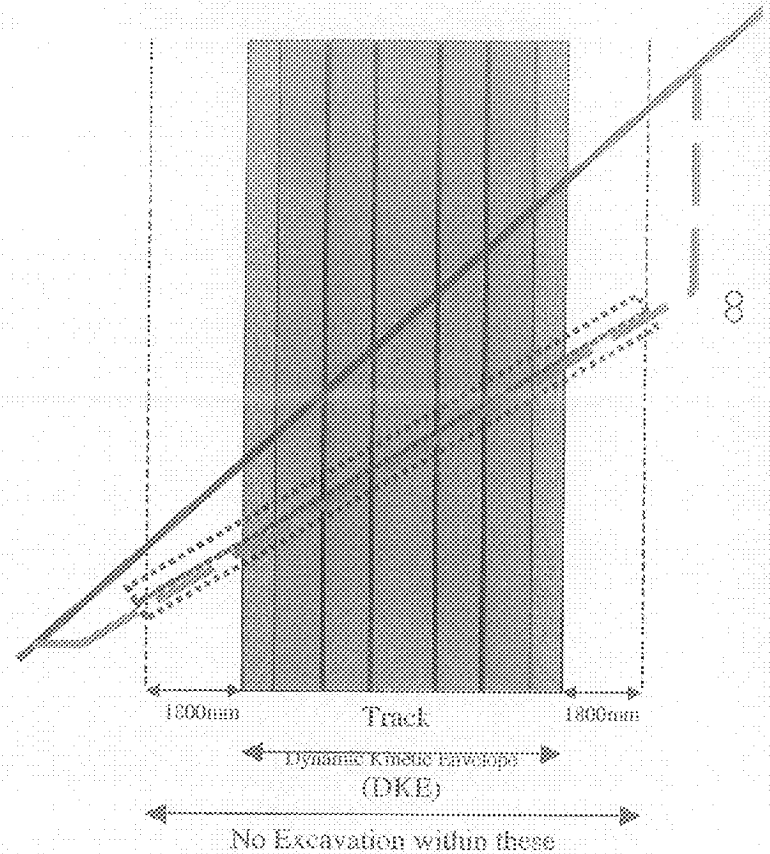
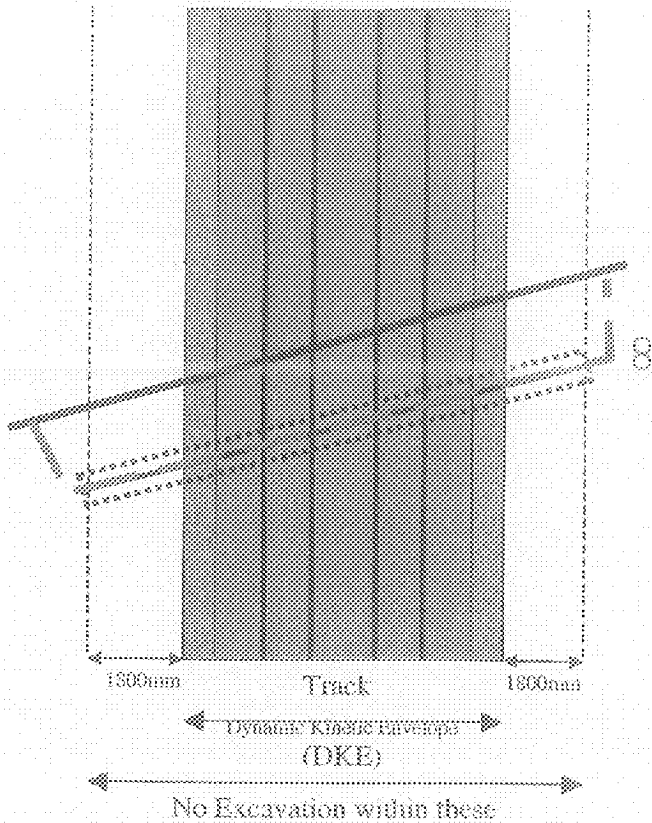
f) 11kV Cable > 200mm below sub-base crossing tramway with less than 100m total length below zone extending 1800mm beyond DKE.

Protect cables with 50mm concrete screed immediately below sub-base extending to the edge of the DKE. Install 2 x 150mm Rigiducts extending at least 1800mm beyond the DKE, installed at standard depth below the sub-base and between 500mm and 1000mm from the cable.



g) 11kV Cable > 200mm below sub-base crossing tramway with over 100m total length below zone extending 1800mm beyond DKE.

Install 2 x 150mm Rigiducts extending at least 1800mm beyond the DKE, installed at standard depth below the sub-base and no more than 100m in length. Replace existing cable by laying new cable through one of the ducts. Joint at least 1800mm beyond the DKE.



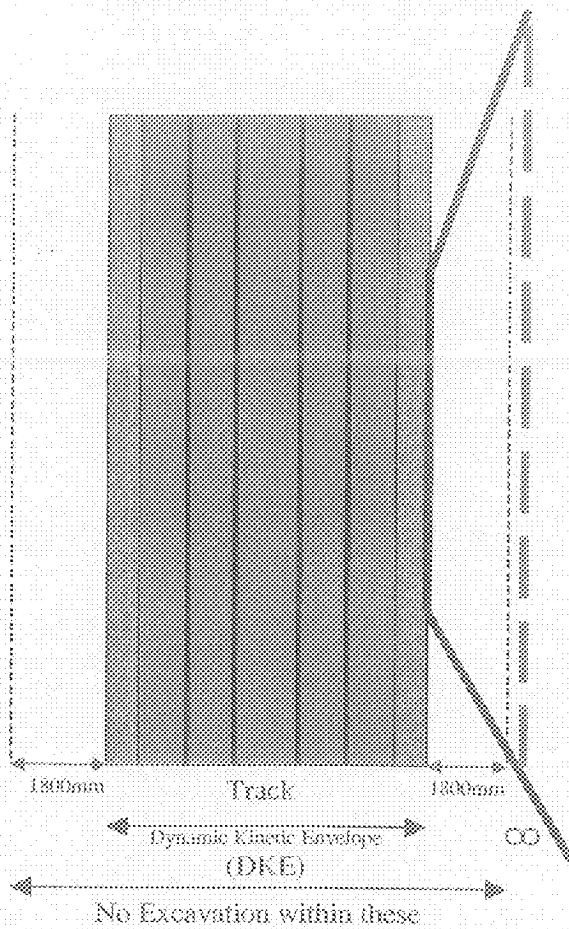
- b) 11kV Cable < 200mm below sub-base crossing tramway with less than 100m total length below zone extending 1800mm beyond DKE.

Install 2 x 150mm Rigiducts extending at least 1800mm beyond the DKE and installed at standard depth below the sub-base. Replace existing cable by laying new cable through one of the ducts. Joint at least 1800mm beyond the DKE.

- i) 11kV Cable < 200mm below sub-base crossing tramway with over 100m total length below zone extending 1800mm beyond DKE.

Install 2 x 150mm Rigiducts extending at least 1800mm beyond the DKE, installed at standard depth below the sub-base and no more than 100m in length. Replace existing cable by laying new cable through one of the ducts. Joint at least 1800mm beyond the DKE.

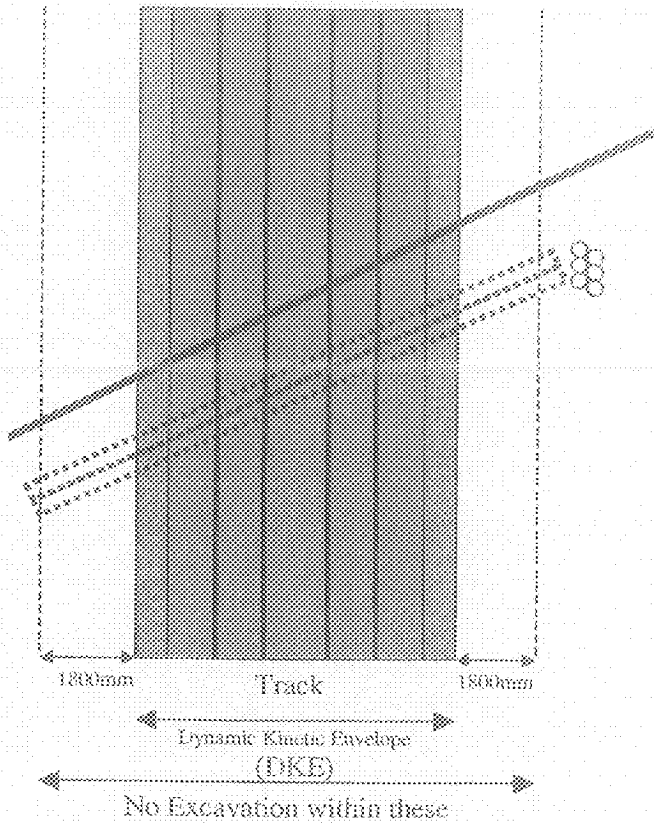




**j) 11kV Cable within zone extending 1800mm beyond DKE**

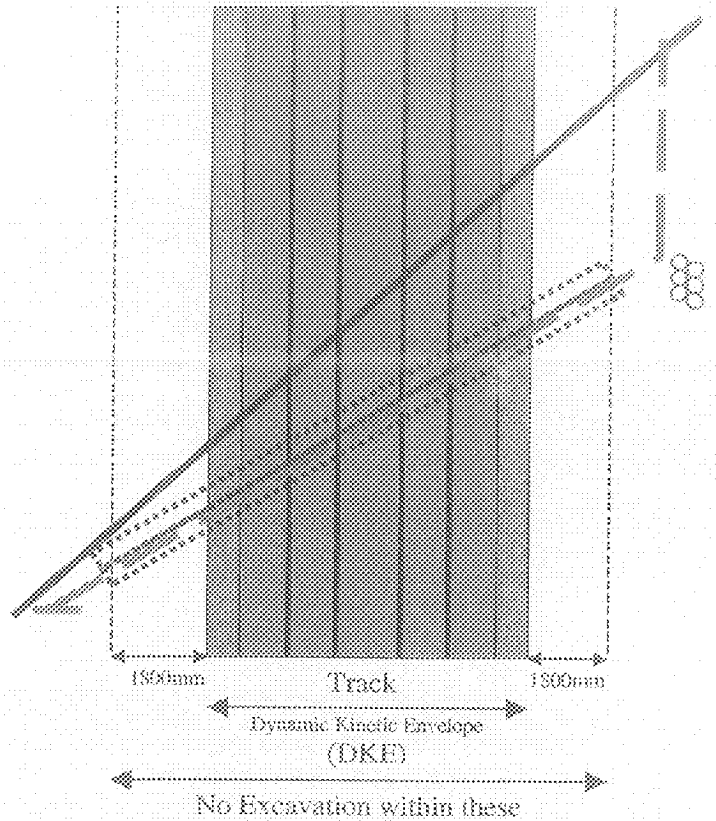
Replace cable within 500mm of the zone extending 1800mm beyond DKE with new cable laid through 150mm Rigiducts installed at standard depth and at least 1800mm beyond DKE.





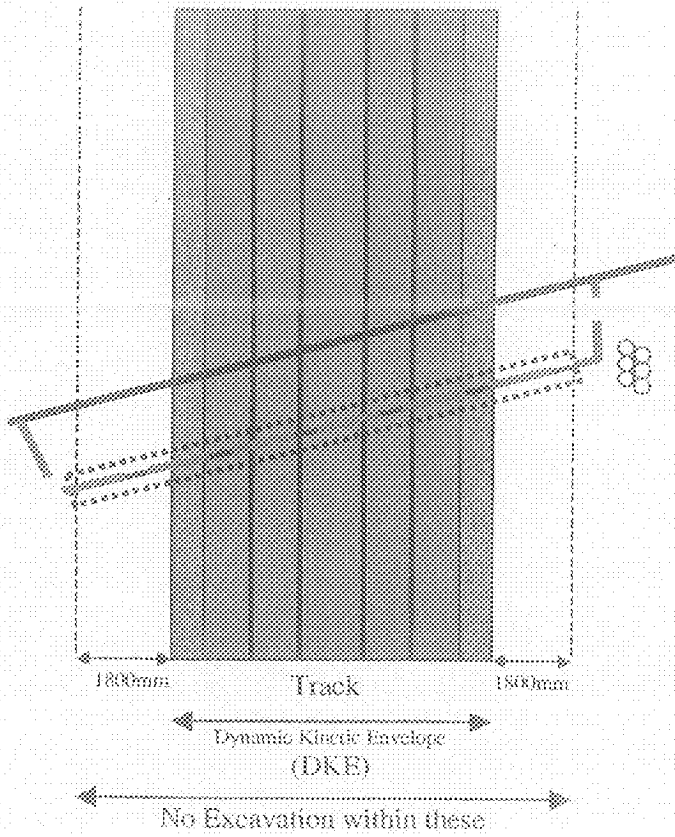
- k) 33kV Cable > 200mm below sub-base crossing tramway with less than 100m total length below zone extending 1800mm beyond DKE.

Install 6 x 100mm Rigiducts extending at least 1800mm beyond the DKE, installed at standard depth below the sub-base and between 500mm and 1000mm from the cable.



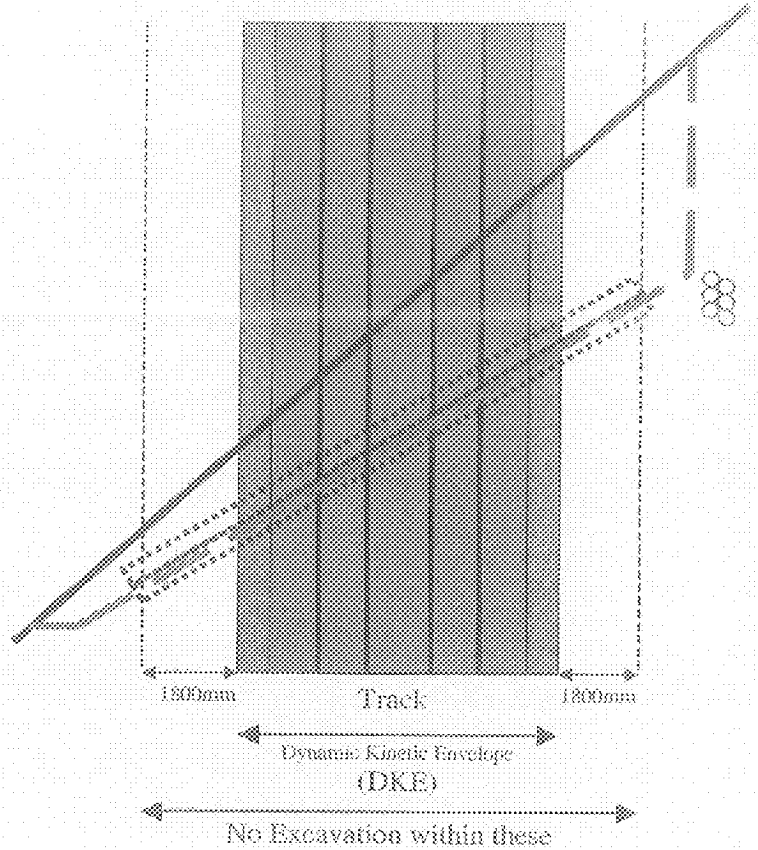
- D) 33kV Cable > 200mm below sub-base crossing tramway with over 100m total length below zone extending 1800mm beyond DKE.

Install 6 x 100mm Rigiducts extending at least 1800mm beyond the DKE, installed at standard depth below the sub-base and no more than 100m in length. Replace existing cable by laying new cable through one of the ducts. Joint at least 1800mm beyond the DKE.



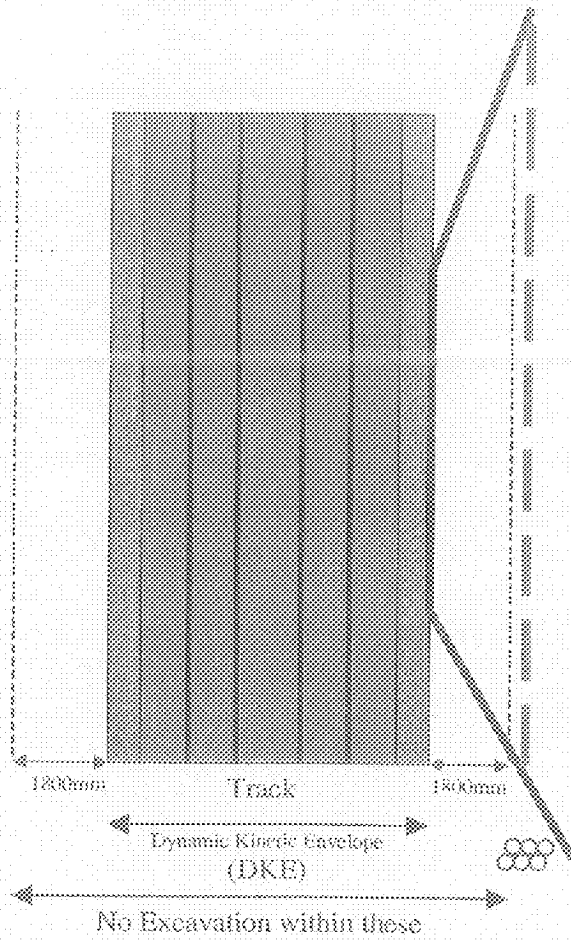
m) 33kV Cable < 200mm below sub-base crossing tramway with less than 100m total length below zone extending 1800mm beyond DKE.

Install 6 x 100mm Rigiducts extending at least 1800mm beyond the DKE and installed at standard depth below the sub-base. Replace existing cable by laying new cable through one of the ducts. Joint at least 1800mm beyond the DKE.



n) 33kV Cable < 200mm below sub-base crossing tramway with over 100m total length below zone extending 1800mm beyond DKE.

Install 6 x 100mm Rigiducts extending at least 1800mm beyond the DKE, installed at standard depth below the sub-base and no more than 100m in length. Replace existing cable by laying new cable through one of the ducts. Joint at least 1800mm beyond the DKE.



**e) 33kV Cable within zone extending 1800mm beyond DKE**

Replace cable within 500mm of the zone extending 1800mm beyond DKE with new cable laid through 100mm Rigiducts installed at standard depth and at least 1800mm beyond DKE.

**PART 9**

**SERVITUDE AGREEMENT**

**1. Deed of Servitude in respect of Overhead and Underground Lines:**

DEED OF SERVITUDE

by

[ ]

in favour of

SP DISTRIBUTION LIMITED

Overhead and Underground Lines

WE, [ ] heritable proprietor of ALL and WHOLE [*insert conveyancing description*] [*show on plan if possible*](hereinafter referred to as "the Subjects") IN CONSIDERATION of the sum of [ ] paid to us by SP DISTRIBUTION LIMITED, incorporated under the Companies Acts (Company Number SC189125) and having their Registered Office at One Atlantic Quay, Glasgow G2 8SP, of which sum we hereby acknowledge the receipt, [with the consent and concurrence of [*insert any relevant consenter*]] GIVE, GRANT and DISPONE to and in favour of the said [ ] and their successors and assignees in the exercise of their function as statutory electricity undertakers (the said [ ] and their successors and assignees as aforesaid being hereinafter referred to as "SP") (one) a heritable and irredeemable servitude right to carry overhead, with the unrestricted right to use, inspect, maintain, repair, replace, remove and renew (including the right to extend and enlarge), all overhead electric lines, within the Subjects, (which expression "overhead electric lines" means any overhead lines which are used for carrying electricity or electronic communications for any purpose and including any support for any such lines, any apparatus connected to any such lines and any wire,

cables, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with any such lines) (two) a heritable and irredeemable servitude right to lay, with the unrestricted right to use, inspect, maintain, repair, replace, remove and renew (including the right to extend and enlarge), all underground electric lines, within the Subjects, (which expression "underground electric lines" means any underground lines which are used for carrying electricity or electronic communications for any purpose and including any support for any such lines, any apparatus connected to any such lines and any wire, cables, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with any such lines and also including connections, cable markers, cable terminals, drains, culverts, inspection hatches, jointing bays and other underground works together with (1) a right to lay (in so far as not already laid) (a) the overhead electric lines in through and across the Subjects along the route coloured green on the plan annexed and signed as relative hereto declaring that in the event of SP requiring to replace and/or renew the overhead electric lines or the supporting structures along the route coloured green on the plan annexed and signed as relative hereto they will be entitled to situate the replacement or new overhead electric lines and supporting structures at a lateral distance up to ten metres from the existing locations of the overhead electric lines and supporting structures or along such other route as near as reasonably practicable to the original route such deviation from the original route to be agreed between the parties in writing and (b) the underground electric lines in through and across the Subjects along the route indicated by the broken blue line on the plan annexed and signed as relative hereto or along such route as near as reasonably practicable to the original route such deviation from the original route to be agreed between the parties in writing; (2) the right to erect (in so far as not already erected), maintain and replace steel lattice towers/pylons/poles with guards, foundations, supports, stays, wires, cables and other structures ("the supporting structures") on the Subjects for the purpose of supporting the overhead electric lines; (3) a right of access over the Subjects for all necessary pedestrian and vehicular purposes related to erecting, inspecting, maintaining, repairing, replacing, renewing and removing the overhead electric lines and the underground electric lines, and/or the supporting structures (4) the right to enter the Subjects and remove any buildings, other erections, workings or land formations which reduce the ground clearance of the overhead electric

lines or might otherwise in the sole opinion of SP injuriously affect the overhead electric lines, the underground electric lines and/or the supporting structures or the use and operation thereof or hinder or restrict access thereto for any of the foregoing purposes which shall be constructed, placed or permitted [on the Subjects] [ within a distance laterally of [ ] metres from the middle of the overhead electric lines or the underground electric lines][*may require separate distances or areas shown on plans for underground/overhead lines*]; and (5) the right to enter the Subjects and lop, cut or remove any trees, shrubs or bushes as shall be grown, cultivated or permitted to grow on the Subjects within a lateral distance of [ ] metres from the middle of the overhead electric lines or the underground electric lines [*may require separate distances or areas shown on plans for underground/overhead lines*] or on the line of the access thereto which might in the sole opinion of SP interfere with the enjoyment by the SP of the rights hereby granted and generally restrict any of the operations of SP in relation to the use and operation of the overhead electric lines, the underground electric lines and/or the supporting structures, or the future use, operation, inspection, maintenance, repair, replacement, enlargement or removal thereof; and which rights shall be exercised subject to the following conditions:- (a) SP shall exercise the foregoing rights so as to cause the least inconvenience to us or our successors as proprietors of the Subjects and shall make good or pay reasonable compensation for any damage caused to the Subjects arising from the exercise of the foregoing rights and (b) SP shall indemnify us and our foresaids against all physical loss and damage occasioned by defects in or operations in connection with the overhead electric lines, the underground electric lines and the supporting structures except in so far as such loss or damage arises directly or indirectly through the act or omission of us or our foresaids or our or their representatives, employees or tenants whomsoever or of any occupiers of the Subjects or those for whom we or they are responsible in law; and we and our successors as proprietors of the Subjects as part of the grant of the aforesaid servitude hereby undertake not to do or cause or permit to be done on or along the electric lines anything likely to cause damage or injury to the electric lines and to take all reasonable precautions to prevent such damage or injury; FURTHER DECLARING that any dispute or difference as to the meaning and effect of these presents shall, failing agreement, be referred for the decision of a single Arbiter mutually appointed or failing agreement to be appointed by the President for the time being of the Law Society of Scotland and neither the parties to any such arbitration proceedings nor the Arbiter appointed as aforesaid shall have right to state a case for the decision of any Court; WITH

ENTRY as at the [ ] day of [ ] notwithstanding the date or dates hereof; And we grant  
warrandice; IN WITNESS WHEREOF

**2. Deed of Servitude in respect of Underground Lines:**

DEED OF SERVITUDE

by

[ ]

in favour of

SP DISTRIBUTION LIMITED

Underground Lines

WE, [ ] heritable proprietor of ALL and WHOLE [*insert conveyancing description*] [*show on plan if possible*](hereinafter referred to as "the Subjects") IN CONSIDERATION of the sum of [ ] paid to us by SP DISTRIBUTION LIMITED, incorporated under the Companies Acts (Company Number SC189125) and having their Registered Office at One Atlantic Quay, Glasgow G2 8SP, of which sum we hereby acknowledge the receipt, [with the consent and concurrence of [*insert any relevant consenter*]] GIVE, GRANT and DISPONE to and in favour of the said [ ] and their successors and assignees in the exercise of their function as statutory electricity undertakers (the said [ ] and their successors and assignees as aforesaid being hereinafter referred to as "SP") a heritable and irredeemable servitude right to lay, with the unrestricted right to use, inspect, maintain, repair, replace, remove and renew (including the right to extend and enlarge), all electric lines, within the Subjects, (which expression "electric lines" means any lines which are used for carrying electricity or electronic communications for any purpose and including any support for any such lines, any apparatus



connected to any such lines and any wire, cables, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with any such lines and also including connections, cable markers, cable terminals, drains, culverts, inspection hatches, jointing bays and other underground works) together with (1) a right to lay (in so far as not already laid) the same in through and across the Subjects along the route indicated by the broken blue line on the plan annexed and signed as relative hereto or along such route as near as reasonably practicable to the original route such deviation from the original route to be agreed between the parties in writing; (2) a right of access over the Subjects for all necessary pedestrian and vehicular purposes related to erecting, inspecting, maintaining, repairing, replacing, renewing and removing the electric lines, (3) the right to enter the Subjects and remove any buildings, other erections, workings or land formations which might in the sole opinion of SP injuriously affect the electric lines or the use and operation thereof or hinder or restrict access thereto for any of the foregoing purposes which shall be constructed, placed or permitted [on the Subjects] [ within a distance laterally of [ ] metres from the middle of the electric lines]; and (4) the right to enter the Subjects and lop, cut or remove any trees, shrubs or bushes as shall be grown, cultivated or permitted to grow on the Subjects within a lateral distance of [ ] metres from the middle of the electric lines or on the line of the access thereto which might in the sole opinion of SP interfere with the enjoyment by the SP of the rights hereby granted and generally restrict any of the operations of SP in relation to the use and operation of the electric lines, or the future use, operation, inspection, maintenance, repair, replacement, enlargement or removal thereof; and which rights shall be exercised subject to the following conditions:- (a) SP shall exercise the foregoing rights so as to cause the least inconvenience to us or our successors as proprietors of the Subjects and shall make good or pay reasonable compensation for any damage caused to the Subjects arising from the exercise of the foregoing rights and on each occasion when SP's operations result in the disturbance of the surface of the Subjects SP shall reinstate or make good or pay reasonable compensations for any damage caused to the Subjects arising from the such disturbance and (b) SP shall indemnify us and our foresaids against all physical loss and damage occasioned by defects in or operations in connection with the electric lines and the supporting structures except in so far as such loss or damage arises directly or indirectly through the act or omission of us or our foresaids or our or their representatives, employees or tenants



whomsoever or of any occupiers of the Subjects or those for whom we or they are responsible in law; and we and our successors as proprietors of the Subjects as part of the grant of the aforesaid servitude hereby undertake not to do or cause or permit to be done on or along the electric lines anything likely to cause damage or injury to the electric lines and to take all reasonable precautions to prevent such damage or injury; FURTHER DECLARING that any dispute or difference as to the meaning and effect of these presents shall, failing agreement, be referred for the decision of a single Arbiter mutually appointed or failing agreement to be appointed by the President for the time being of the Law Society of Scotland and neither the parties to any such arbitration proceedings nor the Arbiter appointed as aforesaid shall have right to state a case for the decision of any Court; WITH ENTRY as at the [ ] day of [ ] notwithstanding the date or dates hereof; And we grant warrandice; IN WITNESS WHEREOF

## PART 10

### UTILITIES FINANCIAL PROTOCOL DOCUMENT

This document is intended as a starting discussion point for review with the Statutory Utility Companies (SUC).

#### Financial Matters

C3's have been received from the majority of the SUC's, for Line 1 therefore current involvement and scheme development on this line is at tie's cost.

#### Allowance for Betterment

Regarding Betterment (including increasing capacity or enhancing the duty of the apparatus) SUC's are to keep full accounts of the betterment & deferment renewal, including deductions for the full value of any recovered materials (including scrap), which tie propose to claim during the diversionary works.

Apparatus upgraded to a greater capacity or to make provision for future demand;

- a) can be carried out under the MUDFA Contract, but paid for by the SUC;
- b) it may also be economically cost effective to undertake some works before the tram is installed.
- c) if this is the case, costs over and above a like for like movement will not be tie's liability.

#### Allowance for Deferment of Time for Renewal of Apparatus [DofR]

Regarding DofR (the actuarial allowance to recognise the replacement of time-served apparatus) tie will expect claims to be calculated in accordance with the Bacon and Woodrow formula in Appendix E to the CoP.

#### Cost Share

Tie intend to invoke the cost sharing provisions of the Act and NRSWA, this cost sharing applying to the "allowable cost" of the agreed and necessary measures and applies irrespective of whether you have reserved your rights to work on your own apparatus or have allowed others (MUDFA) to undertake the work on your behalf.

To invoke the cost share on works undertaken, tie will make staged payments to you, in accordance with the regulations, based on the detailed estimate (C4). Advance payments may be made in specific instances, where, for example, long lead times are involved and early placement of orders is necessary.

The sums and timing of payments will be agreed as part of the development and agreement process.

For works to be undertaken on your behalf by the MUDFA Contractor, we will, if required, provide the equivalence of a C4 estimate.

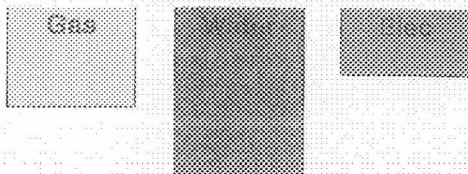
All SUC's will be treated equally and in accordance with tie's obligations under the Act, NRSWA & any specific agreement. As monies are likely to flow in both directions, tie will operate an open book approach to ensure complete transparency.

Distribution of cost liability for Multi Trenching

Tie are aware that this could potentially be an extremely complex issue; therefore a simple solution is suggested (see below).

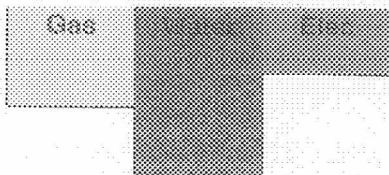
Cost to be ascertained for works to be carried out on an individual utility trench basis, these costs will include for the individual trenching, traffic management, prelims, etc for each utility. Costs will be based on MUDFA Contractors Prices.

Example



Gas	=	£350	Therefore	350/1000 = 35%
Water	=	£550		550/1000 = 55%
Elec	=	£100		100/1000 = 10%
Total	=	£1000	Total	= 100%

Actual cost for multi trenching will then be provided by the MUDFA Contractor.



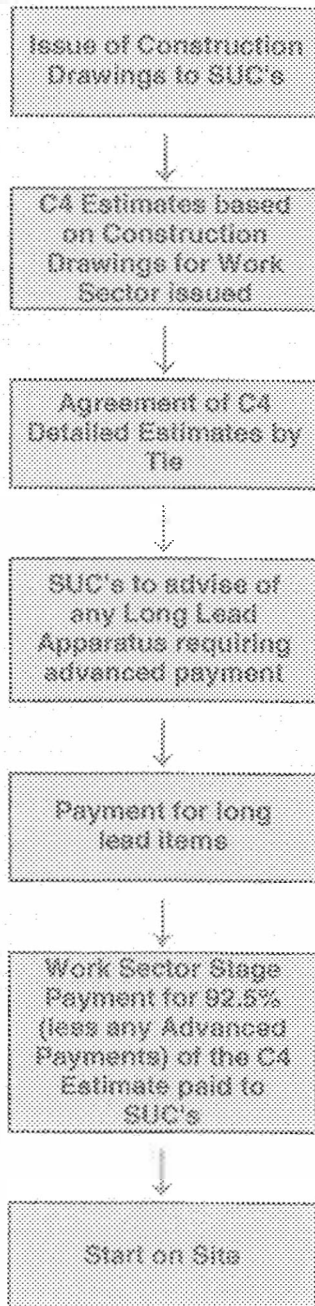
Therefore if the actual cost for the multi trenching on the above example was say £800, then;

Gas	=	35% of actual cost £800 = £280
Water	=	55% of actual cost £800 = £440
Elec	=	10% of actual cost £800 = £80

The above example is a simplistic one, however in reality; there will be other factors at work. Trench widths may vary due to a variety of circumstances. Apparatus may not be present or may vary in density (for e.g.) along the length of a 'shared trench'. Other apparatus (private or public) may be able to take advantage of a combined trench for

part of its length, as well as problems in costing apparatus crossing the line of the trench. In actuality it may not be possible to develop this formula for cost sharing and therefore we may have to assess and agree the cost apportionment with you, post-completion of site work. However where practically possible we propose to use the above formula.

**C4 Detailed Estimates from SUC's  
Flow Chart**





C4 Detailed Estimates from MUDFA  
Flow Chart

Issue of Construction  
Drawings to MUDFA



C4 Detailed  
Estimates provided  
by MUDFA for Works



Start on Site



Completion of  
Section



Apportionment of  
costs undertaken by  
MUDFA on behalf of  
SUC's, issued to  
SUC's



SUC's agree  
apportionment



Payment from SUC's  
to Tie within 4 weeks  
of agreement of costs

[Redacted] Tie Limited

[Redacted] City of Edinburgh Council

[Redacted] SP Distribution Limited