

**FOISA EXEMPT AND COMMERCIAL IN  
CONFIDENCE**

**(1) tie LIMITED**

**- and -**

**(2) CARILLION UTILITY SERVICES LIMITED**

**MINUTE OF AGREEMENT**

relating to

Edinburgh Tram Network

## MINUTE OF AGREEMENT

### BETWEEN

- (1) **tie LIMITED**, a company incorporated under the Companies Act with registration number SC230949 and having its registered office at City Chambers, High Street, Edinburgh, Midlothian, EH1 1YJ and having its principal place of business at City Point, 65 Haymarket Terrace, Edinburgh EH12 5HD ("**tie**"), which expression shall include its successors and permitted assignees; and
- (2) **CARILLION UTILITY SERVICES LIMITED** (formerly called Alfred McAlpine Infrastructure Services Limited) a company incorporated under the Companies Act with registration number 00728599 and having its registered office at 24 Birch Street, Wolverhampton ("**MUDFA Contractor**") which expression shall include its successors and permitted assignees.

### WHEREAS

- A **tie**, and the MUDFA Contractor (collectively referred to as the "**Parties**") entered into a Multi-Utilities Diversion Framework Agreement ("**MUDFA Agreement**") dated 4 October 2006 (reference number 11162343-2.Doc) to carry out and complete the MUDFA Works relating to Edinburgh Tram Network; and
- B the Parties have now agreed to amend the MUDFA Agreement to allow (i) the MUDFA Contractor to be relieved of its obligations to complete the Remaining MUDFA Works, as hereinafter defined, on terms and to the extent specified in this Minute of Agreement and (ii) a new contractor ("**New Contractor**") to carry out and complete the Remaining MUDFA Works.

### IT IS HEREBY AGREED AS FOLLOWS:

1. The defined terms in this Minute of Agreement shall have the same meaning as the defined terms in the MUDFA Agreement unless otherwise specified and the Appendices hereto shall form part of this Minute of Agreement.
2. Unless specifically amended by this Minute of Agreement, the terms and conditions of the MUDFA Agreement shall remain in full force and effect.

3. As at the 4 December 2009 ("**the December Completion Date**") the MUDFA Contractor will be deemed to have carried out and completed all of the MUDFA Works required to be provided by it under the MUDFA Agreement under exception of the work not completed or not executed (including any outstanding testing) detailed in Appendix 1 hereto ("**Remaining MUDFA Works**"). The Parties agree that the Remaining MUDFA Works as specified in Appendix 1 are an exhaustive list of the MUDFA Works not completed or executed as at the December Completion Date.
4. The MUDFA Contractor is relieved of all of its obligations under the MUDFA Agreement in relation to the carrying out and completion of the Remaining MUDFA Works and shall have no responsibility whatsoever in relation thereto.
5. Following execution of this Minute of Agreement **tie**:
  - 5.1 will be responsible for procuring the carrying out and completion of the Remaining MUDFA Works;
  - 5.2 will give the MUDFA Contractor the opportunity to be present to witness the testing of any MUDFA Works executed by the MUDFA Contractor. Testing will be carried out in accordance with the flowchart specified in Appendix 2; and
  - 5.3 agree that, notwithstanding that the MUDFA Contractor has no obligation to carry out and complete the Remaining MUDFA Works after the December Completion Date, **tie** will pay the MUDFA Contractor the sum of £363,000 sterling as preliminaries costs in respect of the period from the December Completion Date to 31 January 2010.
6. The MUDFA Contractor shall:
  - 6.1 remove all materials from Site except as may be directed in writing by **tie**;
  - 6.2 provide **tie** with all Deliverables that require to be provided under the terms of the MUDFA Agreement including those specified in Appendix 3 hereof (in accordance with the agreed programme as specified in Appendix 4 for the provision of such Deliverables) under exception of any Deliverables in relation to the Remaining MUDFA Works;
  - 6.3 pay all fees and give all notices, in respect of any legislation, including all licences and permits required under legislation that the MUDFA Contractor is obliged to pay

or give under the MUDFA Agreement other than in relation to the Remaining MUDFA Works; and

- 6.4 pass to **tie**, promptly on request, all licences, permits, guarantees, consents and any other document, which it is obliged to provide under the MUDFA Agreement in relation to the carrying out and maintenance of the MUDFA Works, under exclusion of the Remaining MUDFA Works.
7. Any reference in the MUDFA Agreement to the MUDFA Works shall be deemed to be a reference to the MUDFA Works under exclusion of the Remaining MUDFA Works.
8. The whole of the MUDFA Works under exclusion of the Remaining MUDFA Works shall be deemed substantially complete as at the December Completion Date. It is further agreed that certain Work Sectors were substantially complete by the dates specified in Appendix 5 hereof ("**Work Sector Completion Dates**") and Certificates of Substantial Completion for every Work Sector are deemed to have been issued by the relevant Work Sector Completion Date contained in Appendix 5.
9. **tie** confirms and hereby grants the MUDFA Contractor an extension of the time for substantial completion of the whole of the MUDFA Works under exclusion of the Remaining MUDFA Works and each of the Work Sectors and Work Sections until the December Completion Date and extends the Longstop Date mentioned in clauses 1.1 and 45.1 of the MUDFA Agreement until 31 January 2010.
10. **tie** hereby waives any entitlement whatsoever to claim damages (including without prejudice to the foregoing generality damages in terms of clause 45 of the MUDFA Agreement) arising out of or in connection with any alleged delay which has occurred prior to the December Completion Date by the MUDFA Contractor in carrying out and completing the MUDFA Works, any Work Sectors or any Work Sections.
11. The Parties agree that certain MUDFA Contractor employees will be seconded to **tie** in accordance with the Secondment Agreement attached as Appendix 6.
12. The MUDFA Contractor shall provide **tie** with collateral warranties as provided for in the MUDFA Agreement, subject to the following:
- 12.1 The form of collateral warranty set out in schedule 15 of the MUDFA Agreement shall be deleted and replaced with the form of collateral warranty set out in Appendix 7 hereto;

- 12.2 Scottish Power shall be added to the list of parties set out in clause 4.7 of the MUDFA Agreement; and
- 12.3 The MUDFA Contractor shall have no obligation to procure collateral warranties in terms of clause 12.8 of the MUDFA Agreement.
13. The Defects Correction Period under the MUDFA Agreement shall commence on the December Completion Date and shall end on the 3 December 2011.
14. The MUDFA Contractor shall remain fully responsible for any defects in the MUDFA Works (under exclusion of the Remaining MUDFA Works) in accordance with the provisions of the MUDFA Agreement subject to the following:
- 14.1 the MUDFA Contractor shall have no responsibility or obligation whatsoever for any defects in reinstatement or surfacing works executed by it at any location as part of the MUDFA Works where those reinstatement or surfacing works are (or will require to be) reconfigured, replaced or materially disturbed or damaged by Infracore or by the New Contractor in order to execute any works to be carried out by them (for the avoidance of doubt this clause 14.1 will not relieve the MUDFA Contractor from any responsibility or obligation under the MUDFA Agreement in respect of any other defect whatsoever);
- 14.2 the Required Response Times specified as Levels of Urgency 2 and 3 in paragraph 6.2 of Schedule 2 of the MUDFA Agreement shall be amended as follows:
- (i) for Levels of Urgency 2 and 3 the MUDFA Contractor shall advise tie within 4 hours of notification whether it intends to carry out the relevant work; and
- (ii) where the MUDFA Contractor advises tie that it intends to carry out the relevant work in terms of clause 14.4 (i), above, it shall commence the relevant work within the timescales as specified for each Level of Urgency 2 and 3 as set out in Appendix 8,
- for the avoidance of doubt the Required Response Time specified as Level of Urgency 1 in paragraph 6.2 of Schedule 2 of the MUDFA Agreement is not amended in any way by the terms of this Minute of Agreement.

- 14.3 the Parties have agreed as specified in Appendix 8 a working protocol to assist the process of intimation and rectification of any defects for which the MUDFA Contractor remains responsible.
15. Within 27 days of the date of execution hereof the MUDFA Contractor shall provide to **tie** a Retention Bond in accordance with clauses 4.2 and 4.5 of the MUDFA Agreement subject to:
- 15.1 the form of Retention Bond set out in Schedule 7, Part B of the MUDFA Agreement shall be deleted and replaced with the form of Retention Bond set out in Appendix 9 hereto; and
- 15.2 any revisions to the form of Retention Bond, as set out in Appendix 9 hereto, as may be proposed by the surety providing the Retention Bond and approved by **tie** (acting reasonably in respect of such proposals).
16. For the avoidance of doubt any liability of the MUDFA Contractor shall remain subject to the limitation on liability as set out in clause 84 of the MUDFA Agreement. In the event of non provision by the MUDFA Contractor of a Retention Bond in terms of clause 15 hereof, it is agreed between the Parties that the limit of the MUDFA Contractor's liability under clause 84 of the MUDFA Agreement shall be increased by the sum of £1.5 million sterling (in relation to any claim arising from breach of contract by the MUDFA Contractor, for damages sustained by **tie** as established and ascertained pursuant to and in accordance with the provisions of the MUDFA Agreement) until such time as a Retention Bond has been provided in terms of clause 15 hereof. On provision of a Retention Bond, as agreed herein, the limitation on liability shall revert to the amount set out in clause 84 of the MUDFA Agreement.
17. For the purpose of clause 84.2 of the MUDFA Agreement the period of 12 years stipulated therein shall commence on the December Completion Date.
18. The MUDFA Contractor shall notify **tie** of any third party claims which have been made against the MUDFA Contractor as a result of the MUDFA Works. Any such claims will be dealt with in accordance with clause 55 of the MUDFA Agreement.
19. As of midnight on the December Completion Date the MUDFA Contractor will cease to be the Principal Contractor under the Construction (Design and Management) Regulations 1994 and 2007 (as amended) and clause 66 of the MUDFA Agreement. As from that date **tie** will be responsible for ensuring that the requirements of the Construction (Design and

Management) Regulations 1994 and 2007 have been met in relation to the MUDFA Works including any requirement to have a Principal Contractor appointed.

- 20. The MUDFA Contractor shall retain all documents specified in clause 68.2 of the MUDFA Agreement for a period of twelve years from the December Completion Date.
- 21. This Minute of Agreement shall be governed by and construed in accordance with the laws of Scotland.

**IN WITNESS WHEREOF** these presents consisting of this and the preceding 5 pages, are executed as follows:

For and on behalf of **tie Limited** at Edinburgh  
on 2009 by:

..... Authorised Signatory	..... Witness
..... Full Name (Please print in full)	..... Full Name (Please print in full)
	..... Address.

For and on behalf of **Carillion Utility Services Limited** at  
on 2009 by:

..... Authorised Signatory	..... Witness
..... Full Name (Please print in full)	..... Full Name (Please print in full)
	..... Address

Appendix 1- Remaining MUDFA Works (page 1 of 3)

Annandale Street to Broughton Street

Handover Pack Number	Description	Diversion Ref.	Approximate Remaining Metres	Diversion Status	Testing Status at December Completion Date				Details of Testing	Remaining MUDFA Works
					Fully Tested	Part Tested	Not Tested	Testing Not Required		
A7	New 180mm main to be tied into existing 180mm main.	1C/SW/D/04	0	Pipework completed. Connection cannot be completed due to SW sequence						Connection to be completed. One connection on Annandale St & one connection on Montgomery St. Pipe line will require re-chlorination prior to connecting to SW system
A8	New 400mm Water to be tied into Existing 9" Cast Iron. Connection	1C/SW/D/12	0	Pipework completed. Connection cannot be completed due to SW sequence						Connection can only be completed after Baxters Place - Union Street due to SW sequence issues.
A9	New 180mm to be tied into existing 5" and 2 x 4" (Annandale Junction).	1C/SW/D/13	0	Pipework completed except connections.						Connection can only be completed after Baxters Place - Union Street due to SW sequence issues
	New 180mm connection at Union Street.		0	Pipework completed except connection.						Connection to be completed. One 6" connection to be completed at Union Street and one 5" connection to be completed at Antiqua Street.
A17	Connects diversion 1C/SP/D/03	1C/SP/JB/13	0	Ducting completed.						Ducting to be extended as required by SP
A22	125mm tie-in at Haddington Place	Additional	0	Incomplete.						Service transfers required prior to abandoning. Final connection
A25	90mm connection Gayfield Square.	Additional	0	Not done						To be completed
A27	5 way BT London Road	1C/BT/D/29	15	50% complete						To be completed
A28	6 way SP ducting - Brunswick - McDonald Road	1B/SP/D/19	25	Three ducts installed.						Three remaining ducts to be installed. SP cabling and connections to be completed.
	500mm MP gas crossing at Jane Street	1B/MP/01	35	Not started due to culvert						Diversion still to be commenced

Appendix 1- Remaining MUDFA Works (page 2 of 3)

Haymarket

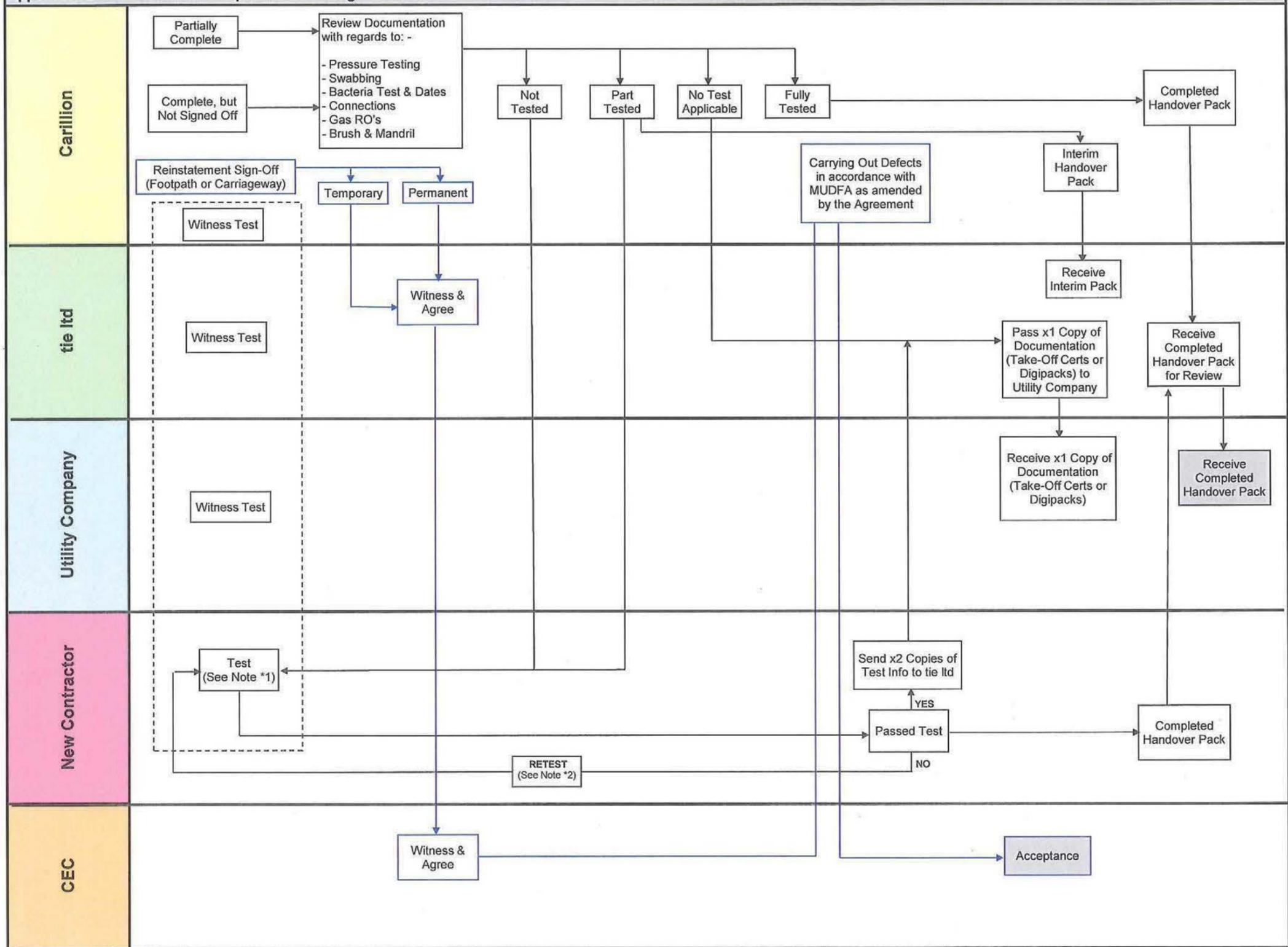
Handover Pack Number	Description	Diversion Ref.	Approximate Remaining Metres	Diversion Status	Testing Status at December Completion Date				Details of Testing	Remaining MUDFA Works
					Fully Tested	Part Tested	Not Tested	Testing Not Required		
H1	500mm gas main	1D/LP/D/109	62	Pipe installed between Grosvenor Junction & up to the corner of west Maitland / Torphichen Junction. Not progressed over the twin water mains on Torphichen and into TM section 4a. Gas main cap ended or terminated with blank plates on flanges.					Ends capped and tested - CUS test only. Test failed on Mechanical Joints. Three number joint positions to be excavated and inspected.	Complete remaining section in TM Phase 4B & 4A. Test & commission. No gas commissioning, service transfers or de-commissioning works have been completed on Haymarket.
H2	90mm gas main	1D/LP/D/101E	22	Part sections of the main installed along the south side of West Maitland St. Section from Morrison St and section in centre of West Maitland St installed. Three service crossings installed across West Maitland St. Not commissioned. Connects onto the 500 mm Pipe (LP/D/109) and runs down West Maitland St to a dead end.					Ends capped and tested - CUS test only.	Complete pipework
H3	550mm water main -(West leg)	1D/SW/D/19	0	West leg installed of 550mm twin crossing installed & tested. Now in Commission						
H4	550mm water main -(East Leg)	1D/SW/D/19	53	East leg not started. Dependant on completing the west leg.						Complete lift & lay section of the twin water main (East side of Twin Crossing) after the west side of the twin is commissioned. Swab, pressure test & commission
H5	125mm water main	1D/SW/D/20	10	Pipe installed between Morrison St & Torphichen St.					Main swabbed and pressure tested.	Commission and connect outstanding service connections to the new main.
H6	180mm water main	1D/SW/D/18	15	Pipe installed in Coates Place						Complete diversion and test
H7	180mm tie in	1D/SW/D/10a	15	Connection of the water main system. Require phase 4A to complete						Commissioned up to last service (see As-laid), full testing required once pipework has been laid.
H8	2 way, - 2 x Hv, Scottish Power	1D/SP/D/21	5	Ducts 80% completed.						Complete duct installation and install cables
H9	2 way, 2 x LV, Scottish Power	1D/SP/D/20	0	Part completed - in Section 4B.						Complete jointing.
H10	2 way, 2 x LV, Scottish Power	1D/SP/D/18	5	Ducting installed. Final 5m of cabling at proposed joint bays.						Complete jointing.
H11	8 way, 2 x 33 Kv, 2 x HV, Scottish Power	1D/SP/D/16,17	14	Ducting complete across West Maitland Street to Palmerston Junction. Duct extension not completed.						Complete ducting. Install cable and joint
H13	8 way, 2 x 33Kv, Scottish Power	1D/SP/D/14	54	Most of the ducting has been installed. Outstanding sections of ducting to be completed in TM Phase 3.5 & 4. North side of West Maitland St.						Remaining section of ducting to be installed in TM phase 3.5 & 4a. Cabling & jointing required in Torphichen St & Manor Place.
H14	4 way 2 x HV	1D/SP/D/13	10	Excavation of trial holes on footway to determine amended route required						To be installed during TM phase 3.5
	2 Way LV	1D/SP/D/12	0	Ducting completed.						Cables to be installed and connection to be completed. Connection location in Shandwick Place.
H15	2 way, Virgin Media	1D/VM/D/09	5	Ducting across Manor Place completed. Ducting to be installed into boxes within footpath. TM phase 3.5 work						Ducting required to be between existing box & new box in Manor Place. All work within the footpath.
H16	2 way, Virgin Media	1D/VM/D/10	24	Ducting as above. VM/D/09. Ducting cannot be completed until TM phase 3.5 is installed.						Ducting in footpath required on East Side of Manor Place footpath. Also require new box in footpath.
H18	4 way, Virgin Media	1D/VM/D/22	5	Ducting installed across West Maitland Street. Ducting to be extended across large excavation in Torphichen junction and new box to build.						Ducting required for final section and new box to be built
H19	1 way, Virgin Media	1D/VM/D/23	18	Incomplete						Section 4 - Not Started
H20	2 way, Virgin Media	1D/VM/D/24	1	Completed ducting across West Maitland St. Cannot connect to box until VM/D 23 box position is determined.						Connection into box
H21	1 way, Virgin Media	1D/VM/D/26	20	Installed in West Maitland St pavement(South Side) in 'hit & miss' pattern due to shop doorways.						Complete missing parts of the ducting. Complete boxes and test.
H22	4 way, BT	1D/BT/D/41	25	Part completed						To be completed
H23	10 way, BT	1D/BT/D/37	65	Ducting part completed in Torphichen junction only. Requires TM Phase 3.5 to complete.						Requires TM switch to complete the work in West Maitland Street.
H24	1 way, BT	1D/BT/D/37a	20	Ducting only part completed including stub duct from side of manhole.						Ducting to be installed under TM Phase 3.5.
H25	4 way, C&W	1D/CW/D/10	70	Small section of ducting completed in TM Phase 4b						The main section of ducting is to be installed in TM Phase 3.5.
H26	4 way, C&W	1D/CW/D/07	5	Installed most of the ducting. Not completed into box.						Remainder of ducting and connection to box
H27	4 way, Thus	1D/TH/D/11	30	Completed ducting in TM Phase 4b.						Require TM Phase 4A to complete ducting into Torphichen Street.
H28	2 way, Verizon & 4 Way (ENERGIS)	TQ 1328	0	Ducting completed.					Verizon tested & signed off. ENERGIS to witness tests	Energis to witness test
H29	Additional power	1D/SP/D/16,17	22	Additional works on Diversions D16 & D17.						Additional works on diversions D16 & D17
H31	1 way, 2 x LV, Scottish Power. Joints	1D/SP/D/24	2	Cabling still to be completed						2 Joints required when SP/D/25 is decided
H32	1 way, 2 x LV, Scottish Power.	1D/SP/D/25	12	Awaiting final design						Connection to Haymarket Station
H33	400 mm Diameter Water main to connect into existing system adjacent to Caly Ale House location	1D/SW/D/25	5	Pipework completed between Dalry Road & Clifton Terrace. Part of the system is tested & in commission. (80% complete)					Test last section of the system	Remove end plates. Test last section of water main & commission. Complete connection.
H34	Remove T piece on existing main opposite Rosebury Crescent	2A/D/PW/02	0	Remove T-Piece on existing main						Remove T piece on existing main opposite Rosebury Crescent.
H35	C & W ducting has been damaged by SGN. This needs to be repaired and diverted into new box	1D/CW/D/12, 1D/CW/D/14	0	C & W ducting requires diverting into existing box once SGN have finished their works						Ducts to be repaired by SGN
H36	BT Diversion at Clifton Terrace	4	0	Ducting has been damaged by SGN during the lift & lay work. Now require repairing before it is tested and signed off by BT.					Ducting tested passed the brush test except bore no 8. Only 2 ducts passed the mandrel tests. Silt / dirt ingress into ducts after SGN damage	SGN will have to finish repairing the damaged ducts
H37	Fire Hydrant to be installed at junction after water main is completed	1D/SW/D/21	0	Not started.						Still to be installed
H38	Fire Hydrant to be installed at junction after water main is completed. TM Phase 4A	1D/SW/D/22	0	Not started.						Still to be installed
H39	63 mm Service Connection to Ryries Bar	1D/SW/D/24	5	Not started.						Still to be installed
H40	2 way, Virgin Media	1D/VM/D/25	0	Build Footway Box						Box to be built
H41	1 way, Virgin Media	1D/VM/D/30	5	Not installed						Still to be installed
H42	4 way, C&W	1D/CW/D/05	4	4 Way ducting incomplete at Manor Place						Ducting to be completed
H43	4 way, C&W	1D/CW/D/12	0	Ducting still to be diverted into new box on Clifton Terrace after SGN remedial works						Ducting to be diverted into existing box
H44	4 way, C&W	1D/CW/D/14	0	Ducting still to be diverted into new box on Clifton Terrace after SGN remedial works						Ducting to be diverted into existing box
H45	4 way, BT	1D/BT/D/38	8	Ducting part completed.						Ducting to be completed across Coates Place
H47	4 way, BT	1D/BT/D/36	0	Box not built						Box to be built in footpath on Coates Place

Appendix 1- Remaining MUDFA Works (page 3 of 3)

York Place to Broughton Street

Handover Pack Number	Description	Diversion Ref.	Approximate Remaining Metres	Diversion Status	Testing Status at December Completion Date				Details of Testing	Remaining MUDFA Works
					Fully Tested	Part Tested	Not Tested	Testing Not Required		
Y1	Lay 16 x 100mm ducts, 5 x 150mm ducts	1C2/SP/D/01	27	Length of ducting not installed at Elder Street						Complete installation of ducting to the north side of York Place plus the central and northern phases across York Place. Jointing bays to be excavated, cables installed and jointed. Complete reinstatement.
Y3	Lay 5 x 150mm ducts	1C2/SP/D/03	22	No ducting installed at Elder St.						Complete installation of ducting to the north side of York Place plus the central and northern phases across York Place. Jointing bays to be excavated, cables installed and jointed. Complete reinstatement.
Y4	Lay 2 x 150mm ducts	1C2/SP/D/04	22	No ducting installed at Elder St.						Complete installation of ducting to the north side of York Place plus the central and northern phases across York Place. Jointing bays to be excavated, cables installed and jointed. Complete reinstatement.
Y7	Connects diversion 1C2/SP/D/01	1C2/SP/JB/4	0	No cable installed						Excavate joint bay & reinstate after jointing
Y8	Connects diversion 1C2/SP/D/01	1C2/SP/JB/5	0	No cable installed						Excavate joint bay & reinstate after jointing
Y11	Connects diversion 1C2/SP/D/03 and 1C2/SP/D/04	1C2/SP/JB/6	0	No cable installed						Excavate joint bay & reinstate after jointing
Y12	Connects diversion 1C2/SP/D/03 and 1C2/SP/D/04	1C2/SP/JB/7	0	No cable installed						Excavate joint bay & reinstate after jointing
Y17	400mm Crossings at Dublin Street	1C/SW/D/13	0	Completed twin crossing pipework.					400 mm main on south side of York Place has been tested and witnessed by CUS. No pressure test to the twin legs. Foam swab left in pipework.	Swab & pressure test pipework.
Y18	400mm pipe to tie-in at Dublin Street	1C/SW/D/14	45	Twin crossings complete, still to install pipework and tie into existing 12" main					Twin legs capped off	Extend pipeline from twin crossings westwards along York Place to connection position. Swab & pressure test pipework. Chlorinate and complete connection.
Y19	400mm crossing Elder Street	1C/SW/D/09	21	Completed 400 mm pipe line from St Andrew Square to a position half way across Elder Street junction within the limits of Phase 3 TM. Pipework west of the junction has been pressure tested.					Main tested but only witnessed by CUS.	Section to complete across the east side of Elder St
Y20	180mm crossing Elder Street	1C/SW/D/12	21	Completed 180mm pipeline from St Andrews Sq to a position half way across Elder St. Also connected into the existing main at Elder St junction. Service connections completed onto the new main.					Main swabbed, tested and commissioned up to Elder St junction.	Section to complete across the east side of Elder St
Y21	400mm York Place to Conan Doyle and Tie-In	1C/SW/D/09	12	Pipework to be completed from a position to the east of Elder St junction up to the east side of the pedestrian crossing.					Completed pipework has been tested in sections & witnessed by CUS only.	Complete pipework up to connection position. Swab main, pressure test and chlorinate. Complete outstanding connection on the east side of the pedestrian crossing.
Y22	180mm York Place to Conan Doyle and Tie-In	1C/SW/D/12	12	Pipework to be completed from a position to the east of Elder St junction up to the east side of the pedestrian crossing. Service connections completed onto the new main.					Small section of main to be tested.	Complete pipework up to connection position. Swab main, pressure test and chlorinate. Complete outstanding connection on the east side of the pedestrian crossing.
Y23	400mm Crossings at Broughton Street	1C/SW/D/11	14	Completed twin crossings 2/3rds of the way across York Place.					Twin crossing requires swabbing, testing and commissioning.	Last third of the pipework diversion to be installed; pipework to be extended east towards Broughton St junction and the pipework installed at the end of Picardy Place.
Y24	400mm pipe to tie-in at Picardy Place	1C/SW/D/09	68	No pipework installed across Broughton Street junction.						Complete pipework across Broughton St Junction. Pipework in position to the east side of Broughton Street at Picardy Place. Swab main, pressure test, chlorinate and complete connection. To be removed when 180mm is joined through at Elder Street
	5" cross connection onto new 180mm main	Additional		Needs to be removed when new 180mm main is joined through at Elder Street						Tie in onto 5" still to complete
	400mm pipe to tie onto 5" at Broughton Street	1C/SW/D/11		Pipework not tied in						Tie in onto 12" still to complete
	400mm pipe to tie onto 12" at Broughton Street	1C/SW/D/11		Pipework not tied in						Completion of ducts and box
Y25	Lay 4 way to 1C/CW/D/11 -(Box Location)	1C/CW/D/12	17	Work not completed						Ducting to be completed.
Y26	Lay 4 way to 1C/CW/D/11 -(Box Location)	1C/CW/D/13	20	Ducts laid 2/3rds across York Place.						Outstanding ducts across Elder St junction
Y27	Lay 4 way Across Elder Street	1C/CW/D/08	21	Ducts completed across Elder St junction.						Ducting to be completed.
Y28	Lay 4 way Across Elder Street to York Lane	Additional	27	No ducting installed						
Y29	Lay 2 way From o/s 27 York Place to o/s 30 York Place	Additional	27	No						Ducting to be completed.
Y30	Build 1 JUF4 box o/s 30 York Place	Additional	0	No						Complete in TM Phase 10
Y31	Lay 4 way From York Lane to Broughton Street	1C/CW/D/04	102	No						Complete in TM Phase 10
Y32	Lay 4 way from 1C/CW/D/05 to 1C/CW/D/06	1C/CW/D/03	73	50% complete						Complete in TM Phase 10
Y33	Build new JUF6 box opposite 51 York place to accommodate Diversion 1C/CW/D/03	Additional	0	Ducting part completed across York Place. 2/3rds					Cannot test & sign off until complete up to the box. No access to end of the ducts.	Box on North side of York Place to be built. Box on south side of York Place to be built in footpath.
Y34	Lay 24 way into 1C/BT/D/71 (Dublin Street)	1C/BT/D/66	17	Completed ductwork from Elder St - MRX 613 to 2/3 way across York Place up to Dublin St.					Cannot test & sign off until completed up to the box. No access to end of the ducts.	Complete last section of the ducts and connect into the new chamber. Complete installation of draw cord, brush & mandrel and sign off.
Y37	Lay 16 way from 405 to 613	1C/BT/D/65	0	Completed ductwork between boxes.					Tested by CUS, but requires testing / mandrel & sign off.	Ducts need to be tested and signed off
Y38	Build 412 o/s 44 York Place	1C/BT/D/60	0	Not started						Box to be constructed
Y39	Lay 32 way across York Place to 412	1C/BT/D/59	35	Not started. Need to pick up on previously completed ducting installed along the south side of York Place and now abandoned.						Completed over three TM phases once MRX 412 on north side of York Place is positioned.
Y40	Build new manhole at Broughton Street	Additional	0	Not started						Box to be constructed
Y41	Lay 32 ducts from 412 to existing 510 -North side of York Place	1C/BT/D/57	10	Part installed on south side of York Place only						Ducting to be completed.
Y42	Lay 2 way across York Place o/s 44 York Place	1C/BT/D/59	10	Part completed 2/3rds across York Place.						Ducting to be completed.
Y43	Complete 613 at Elder Street	Additional	0	Completed chamber. Ducts installed on the east side of the chamber						Complete ducting on south side of York Place to connect into ducting previously installed and re-route into the new BT manhole on the north side of York Place.
Y44	Lay 28 ducts down York Place to new manhole at Broughton Street, 18 into manhole and ten into existing box at Picardy Place. (18 Way -90)	Additional	115	Not started						Complete 28 way ducts from new 412 in north side of York Place.
Y45	Lay 6 way from North St Andrews to Dublin Street	1C/BT/D/67	15	Completed 2/3rds across road.						To be completed
Y46	Lay 10 Way ducting - Splits from 28 way ducts at Broughton St junction and goes to box at Picardy Place.	1C/BT/D/48 - (?)	123	Not started						To be completed
Y47	Lay 3 way from 613 to No.13 York Place	Additional	0	Completed.					Tested but not witnessed by BT	Testing to be undertaken
Y51	Additional 2 way crossing o/s 44 York Place	Additional	12	Completed 2/3rds across road.						To be completed
Y52	Lay 4way ducts across York Place at Elder Street	1C/TH/D/14	22	Completed in TM Phase 3 only.						To be completed
Y53	Lay 4 way ducts across York Place at York Lane	1C/TH/D/15	10	Completed 2/3rds across road.						To be completed
Y54	315mm Tie-in to Existing 250mm Cast Iron main at York Place	1C2/LP/D/102	10	T branch installed on new 315 dia. pipework diversion but it is not connected to the existing 250 mm Pipeline.						To be completed
Y55	315mm tie-in to 125mm at Conan Doyle	1C2/LP/D/101	15	Pipe work installed up to the east side of the ped crossing at the Conan Doyle.						Connection required on the east side of the pedestrian crossing. De-commission existing gas main
Y56	315mm Crossing at St Pails Church and tying into 9" Cast	1C2/LP/D/103	35	Pipework installed 2/3rds across York Place.						Complete last 1/3 rd of the pipeline and the commissioning.
Y58	Gas Connections & De-commissioning	1C2/LP/D/102, 1C2/LP/D/101, 1C2/LP/D/103	10	tie into existing 125mm main Cut and Cap new 250mm Main Tie in to existing 9" main						To complete the connections require access to three locations. Any Service transfers require completing & old main needs to be de-commissioned.
Y59	Gas Connections & De-commissioning	1C2/LP/D/108a	3	180mm pipe to be tied into existing 125mm main						To complete the connections require access to two locations. Any Service transfers require completing & old main needs to be de-commissioned.

Appendix - 2 - Flowchart for Completion of Testing



Notes: \*1 - Carillion to be given 24 hours notice of any test being carried out  
 \*2 - After work done in accordance with Clause 14.3 protocol

Appendix 3 - Deliverables (page 1 of 3)

**SU Completion Certificate as follows:-**

<b>Statutory Undertaker</b>	<b>Completion Pack Deliverables</b>
<b>SGN</b>	Completion Certificate
	As Built Drawings
	List of CUS & tie TQs
	Butt Fusion Records
	Jointers Information, evidence of Operative Competence.
	Materials Certification
	Digipack References
	CUS Cover Letter
<b>Scottish Power</b>	Completion Certificate
	As Built Drawings
	List of CUS & tie TQs
	Cable Test Certificates
	Duct Information
	CUS Cover Letter
<b>Scottish Water</b>	Completion Certificate
	As Built Drawings
	List of CUS & tie TQs
	List of Take Over Certificates
	List of Test Certificates
	CUS Cover Letter
<b>Telecom Companies</b>	Completion Certificate
	As Built Drawings
	List of CUS & tie TQs
	Test Certificates
	Schedule of Supplier of Materials
	CUS Cover Letter

**Appendix 3 - Deliverables (page 2 of 3)**

**Interim Site Completion Certificates as follows:-**

Site Hand Over to CEC	Completion Pack Contents	Comments
Applies to all sites.	Copy of Signed "Interim" Site Certificate	This certificate is used to certify that the site has been re-instated and is fit for use by the public. It is not to be confused with the Work Site Completion Certificate.
	Plan showing boundary of area covered by site.	

**Work Site Completion Certificates as follows:-**

Work Site Completion Certificates/ Work Order	Location	Completion Pack Deliverables
1A Plates 11 to 12	Rennies Isle Bridge to Tower Bridge	Worksite Completion Certificate Signed by CUS. Completed SU Completion Certificate Register for each SU. Copies of as Built Drawings
1A Plates 13 to 15	Tower Bridge to Tower Street	
1A Plates 16 to 21	Tower Street to Duke St	
1B Plates 22 to 16	Duke Street to Balfour Street	
1B Plates 27 to 31	Balfour Street to MacDonald Road	
1C Plates 32 to 35	MacDonald Road to Picardy Place	
1C Plates 36 to 38	Picardy Place to York Place	
1C Plates 39 to 41	North St Andrew St to South St Andrew St.	
1C Plates 42 to 44	South St Andrew St to the Mound	
1C Plates 45 to 48	The Mound to Lothian Road	
1D Plates 49 to 51	Shandwick Place	
1D Plates 52 to 56	Atholl and Grosvenor Crescent to Clifton Terrace	
2A	Haymarket Yards	
5A Plates 1 to 3	Russel Road to Murrayfield	
5B Plates 6 to 13	Balgreen Road to Broomhouse Road	
5B Plates 14 to 20	Broomhouse Road to Edinburgh Park	
5C Plates 21 to 26	Edinburgh Park to Gogar Burn	
6	Gogar Depot	
6A	Gogar Roundabout, A8 Underpass	
7A	Gogarburn to Airport Boundary	

**Appendix 3 - Deliverables (page 3 of 3)**

**Deliverables for Inclusion in Health and Safety File as follows:-**

<b>Deliverables Required</b>	<b>Comments</b>
SU Completion Certificate Registers	Separate register for each SU with information on each diversion completed, including the tie MUDFA reference of where the completion pack is stored electronically.
Register of Interim Site Completion Certificates.	tie MUDFA reference to be included to show where stored electronically.
Register of Work Site Completion Certificates.	tie MUDFA reference to be included to show where stored electronically.
Contractor's Residual risk Register	
CCTV Surveys of Sewers where affected by the works.	



**Appendix 5 - Work Section Completion Dates**

Work Sector		Work Section		Work Site	Completion Dates	
<b>Section 1</b>	Victoria Bridge to Haymarket	Section 1A	Victoria Bridge to Duke Street	01/01	Duke Street to Tower Street	14-Aug-2009
				02/01	Victoria Bridge to Rennies Isle Bridge	14-Aug-2009
				03/01	Rennies Isle Bridge to Tower Street	18-Jan-2008
		Section 1B	Duke Street to McDonald Road	1B RAT (BT)	Jane Street (BT)	23-Jun-2009
				01/01	McDonald Road to Balfour Street	16-Jan-2008
				01/02	Balfour Street to Duke Street	23-Jun-2009
		Section 1C	McDonald Road to Castle Street East	1C 001/001	The Mound	28-Nov-2009
				1C 001/002	The Mound to Castle Street East	28-Nov-2009
				1C 002/001	The Mound to South St Andrews Street	15-Feb-2008
				1C 003/001	St Andrews Square	28-Nov-2009
				1C 004/001	McDonald Road to Broughton Street	28-Nov-2009
				1C 005/001	Broughton Street	28-Nov-2009
				1C 005/001	Broughton Street to Dublin Street	28-Nov-2009
		Section 1D	Castle Street East to Haymarket	1D 001/001	Haymarket to Manor Place	28-Nov-2009
				1D 004/001	Manor Place to Shandwick Place	09-Jul-2008
1D 004/001	Lothian Road Junction			28-Nov-2009		
1D 005/002	Castle Street East to Castle Street West			09-Jul-2008		
<b>Section 2</b>	Haymarket Yards				<b>22-May-2009</b>	
<b>Section 5</b>	Edinburgh Park Tram Stop to Russell Road				<b>23-Feb-2009</b>	
<b>Section 6</b>	Gogar				<b>14-Apr-2009</b>	
<b>Section 7</b>	Gogarburn to Ingliston Park & Ride				<b>18-Dec-2007</b>	

## Appendix 6

### Secondment Agreement between **tie** Limited ("**tie**") and Carillion Utility Services Limited ("**MUDFA Contractor**")

1. The Parties are agreed that:  
  
Gil Clelland and Stuart Robinson  
  
hereinafter ("**Secondees**") shall be seconded by the MUDFA Contractor to **tie**.
2. The Secondees shall remain seconded to **tie** during the period from 30 November 2009 until 28 February 2010 ("**Secondment Period**"), unless (i) the Parties agree otherwise in writing or (ii) either party terminates the Secondment Agreement having given the other party one month's prior written notice. The secondment shall be 5 days each week, Monday to Friday inclusive. The Secondees will work primarily from **tie's** office at City Point or on the site of the Edinburgh tram network.
3. During the Secondment Period the Secondees shall work under the sole direction of **tie**. **tie** agree that the Secondees shall only be utilised to assist **tie** achieve completion of the Remaining MUDFA Works and shall not be used in any capacity to comment, assist or give input in any way whatsoever in relation to any claims by the MUDFA Contractor against **tie** or by **tie** against the MUDFA Contractor under or in connection with the MUDFA Agreement.
4. Neither party will use or disclose any confidential information obtained about the other as a result of the secondment.
5. During the Secondment Period, the Secondees shall remain employees of the MUDFA Contractor and the MUDFA Contractor shall be responsible, in respect of the Secondment Period, for payment to the Secondees of their salary, benefits and all associated emoluments.
6. Throughout the Secondment Period, the Secondees shall be:-
  - 5.2.1 included on the MUDFA Contractor's payroll, along with their other employees;
  - 5.2.2 subject to the MUDFA Contractor's disciplinary procedures;
  - 5.2.3 entitled to raise any grievance in accordance with the terms and conditions of their employment with the MUDFA Contractor; and
  - 5.2.4 subject to their terms and condition of employment in relation to all matters not

specifically dealt with under this Secondment Agreement.

7. Nothing in this Secondment Agreement constitutes or shall be construed as constituting a relationship of employment between **tie** and the Secondees. Furthermore nothing in this Secondment Agreement constitutes the Secondees as agents of **tie** and the Secondees shall have no right or authority to bind **tie** or hold themselves out as agents of **tie** unless expressly authorised to do so by **tie**.
8. **tie** shall make payment to the MUDFA Contractor of a secondment charge for the services of each Secondee during the Secondment Period ("**the Secondment Charge**") at the rate of £478 plus VAT per day in respect of Gil Clelland and £380.00 plus VAT per day in respect of Stuart Robinson. Should any Secondee be unavailable to carry out duties as directed by **tie** at any time, other than the period 24<sup>th</sup> December 2009 until 3<sup>rd</sup> January 2010, and for whatever reason the MUDFA Contractor shall not be entitled to payment for that Secondee for each day that the Secondee is not available.
9. The MUDFA Contractor shall be entitled to render invoices to **tie** for the Secondment Charge at the end of each calendar month during the Secondment Period. Subject to receipt of an invoice in respect of the Secondment Charge, **tie** shall make payment of the Secondment Charge no later than 14 days after the date of receipt of the invoice.
10. **tie** shall indemnify the MUDFA Contractor against any claim made by the Secondees against the MUDFA Contractor arising out of any act or omission during the Secondment Period of any person employed by, or contracted to or providing services to **tie** insofar as such claim arises out of or in connection with any act or omission of any such person in the ordinary course of their employment, contract or provision of services.
11. **tie** agrees that it shall not during the Secondment Period and for six months immediately thereafter offer employment to the Secondees without the MUDFA Contractors consent.
12. It is expressly agreed that the MUDFA Contractor shall have no liability whatsoever for any loss or damage sustained by **tie** and which **tie** claims arises out of any act or omission on the part of the Secondees while acting on **tie**'s behalf during the Secondment Period.
13. Save as expressly provided for in this letter, after the Secondment Period, none of the Secondees, the MUDFA Contractor or **tie** shall have any further obligation to any of the others in respect of the subject matter of this Secondment Agreement.
14. During the Secondment Period both Secondees shall observe all **tie** rules, policies and

procedures applicable to **tie** employees. Failure by either Seconded to do so will entitle **tie** to immediately terminate the Secondment of the Seconded and **tie** will have no liability to pay the Secondment Charge in respect of the Seconded for any remaining days of the Secondment Period after the date of termination.

**APPENDIX 7**

**MUDFA CONTRACTOR COLLATERAL WARRANTY**

**(1) CARILLION UTILITY SERVICES LIMITED**

**- and -**

**(2) [THIRD PARTY BENEFICIARY]**

**COLLATERAL WARRANTY  
in favour of [THIRD PARTY  
BENEFICIARY] from [THE  
MUDFA CONTRACTOR]**

**relating to**

**THE VARIED MUDFA WORKS**

## AGREEMENT

### BETWEEN

- (1) **CARILLION UTILITY SERVICES LIMITED**, (formerly called Alfred McAlpine Infrastructure Services Limited) a company incorporated under the Companies Act with registration number 00728599 and having its registered office at 24 Birch Street, Wolverhampton WV1 4HY ("**MUDFA Contractor**"); and
- (2) [**THIRD PARTY BENEFICIARY**] (company number [ ]) whose registered office is at [ ] ("**Beneficiary**") which expression shall include its successors and permitted assignees.

### BACKGROUND:

- A By an agreement in writing dated 4 October 2006 as subsequently amended by a Minute of Agreement dated [ ] (together the "**Varied MUDFA Agreement**"), **tie** (as hereinafter defined) appointed the MUDFA Contractor to carry out the Varied MUDFA Works (as hereinafter defined) in connection with the Edinburgh Tram Network;
- B It is a term of the Varied MUDFA Agreement that the MUDFA Contractor shall enter into this Agreement with the Beneficiary.

### IT IS AGREED as follows:

#### 1. DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1 the following words and expressions have the following meanings, unless the context requires otherwise:

"**Agreement**" means this document (as amended from time to time pursuant to clause 10);

"**Deliverables**" means all documents, information, reports, diagrams, records, method statements, risk assessments, manuals, schedules, databases, photographs, formulae, plans, designs, specifications, drawings, details, calculations, models and simulations, the outputs and reports based on any models, programmes and all other material created and/or provided by the MUDFA Contractor (or any other third party) in the performance of the Varied MUDFA Works and the MUDFA Contractor's other obligations under the Varied MUDFA Agreement;

**"Edinburgh Tram Network"** means Line One and Line Two of the Edinburgh Tram Network as described in the Tram Legislation, and as may be amended from time to time together with any modification, line extension, spur, interconnection, and additional line;

**"Good Industry Practice"** means using standards, practices, methods and procedures conforming to law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably be expected from a large, reputable, professionally qualified, competent and skilled organisation experienced in carrying out activities of a similar nature, scope and complexity to those comprised in the Varied MUDFA Works;

**"Intellectual Property Rights"** means any rights in or to any patent, design right, utility model, trade mark, brand name, service mark, trade name, business name, logo, invention (whether registered or unregistered), domain name, semi-conductor right, topography right, software designs and/or other materials, source code, copyright, moral right, know-how, or rights in databases and any other rights in respect of any industrial or intellectual property, whether capable of being registered or not, including all rights to apply for any of the foregoing rights or for an extension, revival or renewal of any of the foregoing rights and any similar or analogous rights to any of the above, whether arising or granted under the law of Scotland or of any other jurisdiction;

**"Party"** means each and any of the parties to this Agreement and **"Parties"** shall be construed accordingly;

**"tie"** means tie Limited, a company incorporated under the Companies Act with registration number SC230949 and having its registered office at City Chambers, High Street, Edinburgh, Midlothian, EH1 1YJ;

**"Tram Legislation"** means the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006, and such other legislation relative to the Edinburgh Tram Network as may be enacted from time to time.

**"Varied MUDFA Works"** means the works carried out and completed by the MUDFA Contractor under the Varied MUDFA Agreement;

- 1.2 unless the context requires otherwise:
- 1.2.1 words importing:
- 1.2.1.1 the singular include the plural and vice versa; and
- 1.2.1.2 one gender includes all other genders.
- 1.2.2 a reference to:
- 1.2.2.1 persons includes firms, companies, corporations, partnerships, trusts, authorities and other incorporated and/or unincorporated bodies; and
- 1.2.2.2 a clause is a reference to a clause in this Agreement.
- 1.3 The list of contents and clause headings in this Agreement are included for convenience only and do not affect its interpretation.
- 1.4 Where a party comprises two or more persons:
- 1.4.1 any obligations on the part of that party contained or implied in this agreement are deemed to be joint and several obligations on the part of those persons; and
- 1.4.2 references to that party shall include references to each and any of those persons.

## **2. STANDARD OF CARE**

- 2.1 The MUDFA Contractor warrants and undertakes to the Beneficiary that it has carried out the Varied MUDFA Works and its other duties and obligations under the Varied MUDFA Agreement subject to and in accordance with the terms thereof.
- 2.2 In addition to and without derogation from clause 2.1, the MUDFA Contractor warrants to the Beneficiary that in the performance of the Varied MUDFA Works and its other obligations under the Varied MUDFA Agreement it has exercised a reasonable level of professional skill, care and diligence to be expected of a properly qualified and competent contractor experienced in carrying out works and services similar to the Varied MUDFA Works in connection with projects of a similar size, scope and complexity.

- 2.3 The MUDFA Contractor shall owe a duty of care to the Beneficiary in carrying out its duties and obligations under the Varied MUDFA Agreement.

### **3. MATERIALS**

- 3.1 The MUDFA Contractor warrants to the Beneficiary that it has not used any materials which at the time of use:
- 3.1.1 were known to be deleterious in the particular circumstances in which they were used (either to health and safety or to the durability of the Varied MUDFA Works); or
  - 3.1.2 contravened any relevant standard or code of practice issued from time to time by the BSI Group or under a European directive relating to standards; or
  - 3.1.3 did not accord with the guidelines contained in the edition of the publication "Good Practice in Selection of Construction Materials" (Ove Arup & Partners) current at the date of specification of use; or
  - 3.1.4 contravened Good Industry Practice.

### **4. COPYRIGHT LICENCE**

- 4.1 The MUDFA Contractor hereby grants to the Beneficiary a non-exclusive, perpetual, irrevocable, and royalty-free licence to use such Intellectual Property Rights in the Deliverables as may be necessary for the Beneficiary to use in connection with the Beneficiary's rights and obligations under this Agreement or otherwise for any purpose in connection with the Edinburgh Tram Network. This licence shall carry the right to grant sub-licences, and be freely transferable to third parties. For the avoidance of doubt, the granting of such licences to third parties or sub-licences shall not increase the MUDFA Contractor's liability under the Varied MUDFA Agreement and the Beneficiary shall include a statement to this effect in each such licence/sub-licence.
- 4.2 In so far as ownership of the copyright and any other Intellectual Property Rights in any Deliverable prepared or provided by the MUDFA Contractor in connection with the Edinburgh Tram Network is vested in any person other than the MUDFA Contractor, the MUDFA Contractor shall use reasonable endeavours to procure for the Beneficiary the benefit of such a licence as is referred to in clause 4.1 for the purposes referred to therein.

- 4.3 The MUDFA Contractor shall, if so requested at any time, execute such documents and perform such acts as may be required fully and effectively to assure to the Beneficiary or any third party the rights referred to in this clause 4.
- 4.4 The MUDFA Contractor shall provide to the Beneficiary a copy of any of the Deliverables as soon as reasonably practicable after receipt by the MUDFA Contractor of a written request from the Beneficiary to do so.
- 4.5 The MUDFA Contractor undertakes to the Beneficiary that the use by the Beneficiary of any of the Deliverables for any purpose provided for in this clause 4 shall not infringe the rights of any third party in relation to the Deliverables.

## **5. ASSIGNATION**

- 5.1 The MUDFA Contractor shall not assign, novate or otherwise transfer the whole or any part of this Agreement without the prior written agreement of the Beneficiary.
- 5.2 Subject to Clause 5.3, the Beneficiary shall not assign, novate or otherwise transfer the whole or any part of this Agreement without the prior written agreement of the MUDFA Contractor, such written agreement not to be unreasonably withheld or delayed.
- 5.3 The number of assignments permitted pursuant to Clause 5.2 shall be limited to two.
- 5.4 The MUDFA Contractor undertakes to the Beneficiary not to contend in any court proceedings under this Agreement that any person to whom the Beneficiary assigns or has assigned its rights under this Agreement or any of them in accordance with the foregoing provisions of this clause is to be precluded from recovering any loss resulting from any breach of this Agreement (whenever happening) by reason that such person is an assignee and not the original contracting party under this Agreement or by reason that the Beneficiary is named under this Agreement or any intermediate assignee of the Beneficiary escaped loss resulting from such breach by reason of the disposal of its interest in the same.

## **6. LIABILITY OF THE MUDFA CONTRACTOR**

- 6.1 The responsibility of the MUDFA Contractor under this Agreement is not to be reduced or in any way released or limited by any enquiry or inspection by or on behalf of any person notwithstanding that such enquiry or inspection may give rise to a claim by the Beneficiary against a third party.

- 6.2 The rights and benefits conferred upon the Beneficiary by this Agreement are in addition to any other rights and remedies that the Beneficiary may have against the MUDFA Contractor including (without prejudice to the generality of the foregoing) any remedies in delict.
- 6.3 Notwithstanding any other provision of this Agreement, the MUDFA Contractor shall have no greater liability to the Beneficiary under this Agreement either in terms of nature, extent or duration than the MUDFA Contractor to tie under the Varied MUDFA Agreement and the liability of the MUDFA Contractor under this Agreement shall be no greater than it could have been if the Beneficiary had been named as a party to the Varied MUDFA Agreement jointly with tie.
- 6.4 Subject to the other provisions of this Agreement, the liability of the MUDFA Contractor to the Beneficiary is to be determined in all respects in accordance with the terms of the Varied MUDFA Agreement and, in the event of any claim by the Beneficiary under this Agreement, the MUDFA Contractor shall be entitled to rely upon any defence, set-off, counterclaim, right, limitation or exclusion under the Varied MUDFA Agreement as though the Beneficiary were named as tie under it.
- 6.5 Notwithstanding any other provision of this Agreement, the MUDFA Contractor shall not be liable to the Beneficiary under this Agreement for any delay in carrying out or completing of the Varied MUDFA Works or any part or parts thereof howsoever caused.
- 6.6 Notwithstanding any other provision of this Agreement, where tie, or any other beneficiary, has recovered from the MUDFA Contractor,
- (a) any sum in connection with the Varied MUDFA Works, or
  - (b) any expense to make good a breach of the Varied MUDFA Agreement or any other collateral warranty in connection with the Varied MUDFA Works
- then, in respect of any claim brought by the Beneficiary under this Agreement in connection with the same circumstances, the amount which may be payable hereunder shall be reduced to the extent of the sum(s) previously recovered by tie or any other beneficiary.
- 6.7 The Beneficiary may not commence any legal action against the MUDFA Contractor under this Agreement after expiry of a period of 12 years from [ ].

## **7. NOTICES**

7.1 Any notice required to be given under this Agreement is to be hand delivered or sent by special delivery, prepaid registered or recorded delivery post to the party concerned at its registered office set out in this Agreement or to such other addresses as may be notified by such party for the purposes of this clause.

7.2 Any notice given pursuant to clause 7.1 shall be deemed to have been received upon proof of delivery.

## **8. RIGHTS OF THIRD PARTIES**

8.1 A person who is not a party to this Agreement shall have no right to enforce any term of this Agreement.

## **9. INVALID TERMS**

9.1 If any term of this Agreement shall be held to any extent to be invalid, unlawful or unenforceable:

9.1.1 that term shall to that extent be deemed not to form part of this Agreement;  
and

9.1.2 the validity and enforceability of the remainder of this Agreement shall not be affected.

## **10. VARIATIONS AND WAIVERS TO BE IN WRITING**

10.1 No variation, alteration or waiver of any of the provisions of this Agreement shall be effective unless it is in writing and signed by or on behalf of the Party against which the enforcement of such variation, alteration or waiver is sought.

## **11. WAIVER**

11.1 Save where expressly stated, no failure or delay by either Party to exercise any right or remedy in connection with this Agreement shall operate as a waiver of it or of any other right or remedy nor shall any single or partial exercise preclude any further exercise of the same, or of some other right or remedy. A waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach.

11.2 The Parties' rights and remedies under this Agreement are, except where provided otherwise in this Agreement, independent, cumulative and do not operate to exclude one another or any rights or remedies provided by law.

**12. JURISDICTION AND LAW**

12.1 This Agreement is governed by and is to be construed according to Scots law and the Scottish courts shall have jurisdiction in relation to all matters arising under it.

**IN WITNESS WHEREOF** these presents on this and the preceding 8 pages are executed as follows:

**SUBSCRIBED** for and on behalf of )  
**CARILLION UTILITY SERVICES** )  
**LIMITED** )  
at )  
on the day )  
of 2009 )  
by )

Director .....

Name (block capitals) .....

Director/Secretary .....

Name (block capitals) .....

**SUBSCRIBED** for and on behalf of )  
 )  
at )  
on the day )  
of 2009 )  
by )

Authorised signatory/  
Secretary/Director .....

Name  
(block capitals) .....

in the presence of

Witness signature .....

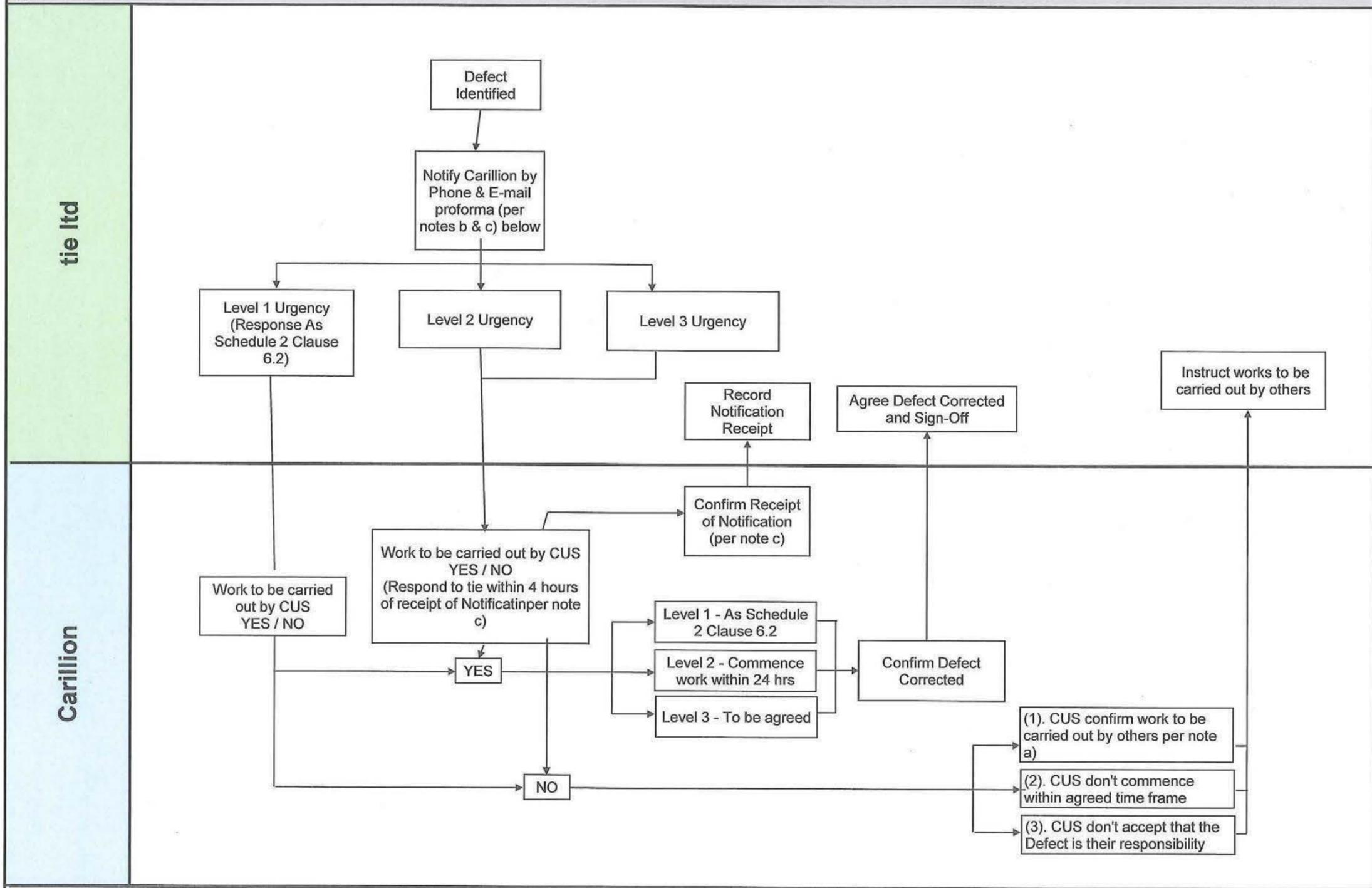
Witness name  
(block capitals) .....

Witness address .....

.....

.....

Appendix 8- Defects Protocol



NOTES: \*(a) At agreed Schedule of Rates if (1).  
 (b) Proforma for Defect Notification Process to be created  
 (c) Key Contacts to be agreed for Carillion and tie ltd

## **APPENDIX 9**

**THIS GUARANTEE BOND** is made **BETWEEN** the following parties whose names and registered office addresses are set out in the Schedule to this Bond ("the Schedule") :-

- (1) The "Contractor" as principal
- (2) The "Guarantor" as guarantor, and
- (3) The "Employer"

**WHEREAS:**

- (1) By a contract (the "Contract") entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the "Works") upon and subject to the terms and conditions therein set out
- (2) The Employer has agreed to accept a retention bond in lieu of deducting retention money (the "Retention").
- (3) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the sum set out in the Schedule upon the terms and conditions of this Guarantee Bond subject to the limitation set out in clause 2

**NOW IT IS HEREBY AGREED AS FOLLOWS:-**

1. The Guarantor subject to the provisions of this Guarantee Bond guarantees to the Employer that if in breach of the contract by the contractor the Guarantor shall satisfy and discharge the damages sustained by the Employer as established and ascertained pursuant to and in accordance with the provisions of and by reference to the Contract and taking into account all sums due or to become due to the Contractor
2. The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the "Bond Amount") but subject to such limitation and to clause 4 the liability of the Guarantor shall be co-extensive with the liability of the Contractor under the Contract
3. The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Guarantee Bond

4. Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon the Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach has been made upon the Guarantor before Expiry.
5. The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract
6. For the avoidance of doubt in the event the rating of the Guarantor is downgraded then this shall not be viewed as a default of the MUDFA Contractor or the Guarantor. In the event of a down grading and no other guarantor has an A- or better rating then this shall not be viewed as a default of the MUDFA Contractor or the Guarantor. Furthermore such events shall not be deemed as grounds for a demand in terms of this Guarantee Bond.
7. This Guarantee Bond shall not be assigned without the prior written consent of the Guarantor and the Contractor
8. The parties to this Guarantee Bond do not intend that any of its terms will be enforceable, by any person not a party to it.
9. This Guarantee Bond shall be governed by and construed in accordance with the laws of Scotland and only the Court of Session shall have jurisdiction hereunder

**IN WITNESS WHEREOF** these presents on this and the preceding [◆] pages together with the Schedule which is annexed and signed as relative hereto are executed as follows:

**EXECUTED** for and on behalf of **[THE CONTRACTOR]** at

on \_\_\_\_\_ [◆] by:

Director/Authorised Signatory \_\_\_\_\_

Full Name \_\_\_\_\_

Witness Signature \_\_\_\_\_

Full Name \_\_\_\_\_

Address \_\_\_\_\_

**EXECUTED** for and on behalf of **[THE  
GUARANTOR]** at

on **[◆]** by:

Director/Authorised Signatory

Full Name

Witness Signature

Full Name

Address

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**EXECUTED** for and on behalf of **[THE  
EMPLOYER]** at

on **[◆]** by:

Director/Authorised Signatory

Full Name

Witness Signature

Full Name

Address

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**This is the Schedule referred to in the foregoing Retention Bond between the Contractor, the Guarantor and the Employer**

**THE SCHEDULE**

The Contractor: **Carillion Utility Services Limited** (formerly called **Alfred McAlpine Infrastructure Services Limited**) a company incorporated under the Companies Act with registration number 00728599 and having its registered office 24 Birch Street, Wolverhampton, WV1 4HY ("**MUDFA Contractor**") which expression shall include its personal representatives, successors and permitted assignees.

The Guarantor: **[◆]**

The Employer: **tie LIMITED** a company incorporated under the Companies Act with registration number 00728599 and having its registered office at City Chambers, High Street, Edinburgh, Midlothian, EH1 1YJ which expression shall include its successors and permitted assignees.

The Contract: A contract dated the 4 October 2006 between the Employer and Contractor in the form known as the Multi Utilities Diversion Framework Agreement as amended by a Minute of Agreement between the Employer and Contractor dated [ ] December 2009 for the construction of works in connection with the Edinburgh Tram Network

The Bond Amount: The sum of **£1,500,000 (ONE MILLION FIVE HUNDRED THOUSAND POUNDS) STERLING**

Expiry: This Guarantee Bond shall become null and void upon the issue of the Defects Correction Certificate for the MUDFA Works (such appropriate certificate to be conclusive evidence for the purposes of this Guarantee Bond)