

APPENDIX V

[TRAVELLING DRAFT] SCHEDULE OF AMENDMENTS

The Parties agree that, with immediate effect, the following amendments are made to the Infraco Contract for the purposes of the GMP Scope of Works and tie GMP Change Order:

1. Delete Clause 4.3.

2. Delete Clause 10.18.

3. Insert new Clause 16.36A:

"The Infraco shall be responsible for all costs in connection with PICOPS / COSS / Possession Protection Staff as Network Rail possession support when undertaking works adjacent or over the railway, where they relate to the Possessions required for the Infraco Works."

4. In Clause 16.73, delete the final sentence.

5. Insert new Clause 16.74:

"For the purposes of this Clause 16.74 the following definitions shall apply:

16.74.1 *"Infraco's Immunisation Strategy" shall mean the defined set of processes documented in the Infraco's NR EMC Strategy Plan approved by Network Rail on [insert date]; and*

16.74.2 *"NR Immunisation" shall mean, in so far as indicated in the Infraco's Immunisation Strategy as intended to be carried out on the Network, works to mitigate the potential effects to the Railway of electromagnetic interference due to effects of coupled energy or stray current from the operation of the Edinburgh Tram Network traction system.*

The Infraco shall procure the delivery of the NR Immunisation. The Infraco or the Infraco's sub-contractors shall carry out all the works and supply all equipment for the NR Immunisation in accordance with the Infraco's Immunisation Strategy."

6. In Clause 17.16, delete "Mandatory" (tie Change).

7. Delete Clause 18.17A.3.

8. Delete Clause 18.17C.

9. Clause 20.9 - delete reference to "which shall be a Mandatory tie Change and the provisions of Clause 80 (tie Changes) shall apply".

10. Clause 20.10 - delete final sentence and replace with "For the purposes of this Clause 20.10, tie shall issue a tie Change in respect of such removal."

11. Clause 22 - delete references to unidentified utilities apparatus, adverse physical conditions, ground conditions, artificial obstructions and/or land which is contaminated.

- 12. Clause 28.7 - delete "*Subject to Clause 28.10*".
- 13. Clause 28.9 - delete "*Subject to Part 4 (Pricing)*".
- 14. Delete Clause 28.10.

15. Programme

- 15.1 Delete Clauses 60.3 to 60.6 (inclusive).
- 15.2 Insert new Clause 60.3:

"In addition to the requirements set by Schedule Part 13 Section A and the Third Party Obligations and the requirement to show the associated completion dates for the Infraco Works at or on third party property, the Infraco shall take full responsibility for showing on the Programme and updated Programmes the earliest and latest dates on which the Infraco requires access to third party property, equipment or third party approval, pursuant to the following conditions:

- (a) such dates will not be before 28 days after the date of the Programme or updated Programme;*
- (b) the Infraco will give notice to **tie** immediately it becomes apparent to the Infraco that a revision to such dates becomes necessary. Such notice will include:*
 - (i) the reasons for the delay;*
 - (ii) how the Infraco proposes mitigating the delay; and*
 - (iii) the impact on the critical path (s) of the Programme current at the time of making the submission and at the time of such delay becoming apparent."*

- 15.3 Insert new Clause 60.4:

*"The Infraco shall take full responsibility for obtaining Network Rail approvals within 10 weeks following making a formal submission to Network Rail and will give notice to **tie** immediately it becomes apparent that a revision to the Programme or updated Programme becomes necessary as a result of a delay by Network Rail to give approval to a formal submission. Such notice will include:*

- (i) the reasons for the delay;*
- (ii) how the Infraco proposes mitigating the delay; and*
- (iii) the impact on the critical path (s) of the Programme current at the time of making the submission and at the time of such delay becoming apparent."*

- 15.4 Renumber Clause 60.7 to be Clause 60.5 and delete the final sentence: "*Thereafter the provisions of Clauses 60.3 and 60.5 shall apply.*"
- 15.5 Delete Clause 60.8 and insert the following:

"tie shall have no obligation to approve or agree to any Programme. Acceptance or failure to reject by tie's Representative of any of the Programme shall not relieve the Infraco of any of its duties or responsibilities under this Agreement (as revised)."

15.6 Renumber Clause 60.9 to be Clause 60.6.

15.7 In Schedule Part 1 (*Definitions and Interpretation*), delete the definition of "Programme" and insert:

*"means the programme submitted to tie by the Infraco dated *** (insert date of tie Change Order) and with reference ***, as may be updated in accordance with requirements of Schedule Part 2 (Employer's Requirements)."*

15.8 In Schedule Part 2 (*Employer's Requirements*), make the following changes to Section 12.2:

15.8.1 Delete paragraphs 2 and 3.

15.8.2 Revise paragraph 5 to the following:

"The Programme shall be prepared by using an agreed version of a Primavera software (to be agreed between the Parties). The Infraco will show the critical path(s) on the Programme.

The Infraco Programme and the critical path(s) shall be updated monthly by the Infraco, and delivered to tie on the last Friday in each calendar month, so that the Infraco Works can be progressed and monitored by the Infraco and tie against the Planned Sectional Completion Dates."

15.8.3 Retain the sentence commencing *"The Programme shall clearly identify the following:"* and retain the bullet points which follow, subject to the following:

15.8.3.1 insert new bullet: *"the earliest and latest dates required for as to or on third party property and equipment;"*

15.8.3.2 insert new bullet: *"the earliest and latest dates required for approval of informatives from CEC";*

15.8.3.3 insert new bullet: *"the earliest and latest dates required for approval of submissions to Network Rail";* and

15.8.3.4 delete *"separated into sectors by WBS code"* in the first bullet point; and

15.8.3.5 insert new bullet: *"latest programme dates provided by tie for On-street Civils Works omitted from the revised GMP Scope."*

15.8.4 Revise the bullet point list commencing: *"The Programme shall meet the following minimum requirements..."* in order to reflect the version of Primavera which the Parties agree.

15.8.5 Delete the penultimate paragraph commencing: *"The Infraco shall update the Programme every four weeks..."*

- 16. Delete Clause 61.8.
- 17. Delete Clause 65.12.
- 18. Delete Clause 65.13.
- 19. Delete Clauses 79.1.2; 79.17 and 79.1.8.

20. Clause 80 (tie Change)

- 20.1 Delete Clause 80.2 and replace with the following:

"A tie Notice of Change shall set out the proposed tie Change in sufficient detail to enable the Infraco to give tie an Estimate in accordance with Clause 80.3 below."

- 20.2 Delete Clause 80.3.

- 20.3 Clause 80.4 will become Clause 80.3. Delete the opening paragraph of (new) Clause 80.3 and replace with the following:

"Within 18 Business Days after having received a tie Notice of Change (or such longer period as may be agreed by tie (acting reasonably)), the Infraco shall deliver to tie an Estimate ("Estimate") which must include the opinion of the Infraco (acting reasonably) in all cases regarding:..."

- 20.4 Clauses 80.4.1 to 80.4.10 (new Clauses 80.3.1 to 80.3.10) shall remain unamended, with the exception of the following:

- 20.4.1 in Clause 80.4.2 (new Clause 80.3.2), the words "(operation and maintenance)" shall be added between the words "performance" and "of the Edinburgh Tram Network"; and

- 20.4.2 in Clause 80.4.10 (new Clause 80.3.10), the reference to "this Clause 80" shall be deleted and replaced with "Clause 80.7".

- 20.5 Insert new Clause 80.4:

"In the event that the Infraco is unable to give the Estimate in whole or part the Infraco shall tie within 18 Business Days after having received a tie Notice of Change (or such longer period as may be agreed by tie (acting reasonably)) giving clear written reasons why the Infraco is unable to do so and stating when the Estimate will be provided to tie."

- 20.6 Delete Clause 80.6 and replace with the following:

"[As soon as reasonably practicable] after tie receives the Estimate, the Parties shall discuss and agree the Estimate. From such discussions, tie may modify the tie Notice of Change and the Infraco shall update the Estimate accordingly. Upon agreement of the Estimate (if not already issued pursuant to Clause 80.11), tie shall issue a tie Change Order and the Infraco shall proceed diligently and expeditiously with the carrying out and completion of the Infraco Works and revised scope required by the tie Change Order."

20.7 Delete Clause 80.7 and replace with the following:

*"The valuation of any **tie** Change made in compliance with this Clause 80 (**tie** Changes) shall be carried out by **tie** as follows:*

80.7.1 by measurement and/or valuation [at fair rates and prices]; and

*80.7.2 if the value of the **tie** Change cannot properly be ascertained by measurement and/or valuation, the reasonable additional costs of the resources and labour employed thereon including a reasonable allowance for overheads and profit."*

20.8 Delete Clauses 80.9 and Clause 80.10.

20.9 Clause 80.11 will become Clause 80.9. In (new) Clause 80.9 delete references to "SDS Contract" and replace with "SDS Agreement".

20.10 Clause 80.12 will become Clause 80.10. In (new) Clause 80.10.3.5, delete the words "to be performed after completion of Section D;"

20.11 Delete Clauses 80.13 to 80.18 (inclusive).

20.12 Insert new Clause 80.11:

*"**tie** may issue a **tie** Change Order at any time to the Infraco and such **tie** Change Order shall be issued pursuant to Clause 34.1. In the event that **tie** so instructs the Infraco prior to the issue of a **tie** Change Order (for the avoidance of doubt, including at the time of issuance of the **tie** Notice of Change), Infraco shall commence work in respect of the **tie** Change and the Infraco will be entitled to payment of the Infraco's demonstrable costs valued in accordance with Clause [80.7] on an interim basis for all work carried out by the Infraco in compliance with the **tie** Change Order."*

20.13 Insert new Clause 80.12:

*"Where a **tie** Change Order instructs an amendment to the terms and conditions of this Agreement, the Parties shall enter into any document to make such amendment within thirty Business Days following the issue of the **tie** Change Order."*

20.14 Clause 80.19 shall become Clause 80.13.

20.15 Delete Clauses 80.20 and 80.21.

20.16 Clauses 80.22 and 80.23 shall become Clauses 80.14 and 80.15 respectively.

20.17 Delete Clause 80.24.

20.18 Insert new Clause that **tie** Changes can only be instructed by **tie** where it is necessary in **tie**'s opinion for the satisfactory completion of the Infraco Works.

20.19 Insert new Clause that amendments to the design before it is an Assured Design will not be a **tie** Change, including where the Infraco needs to amend the design to obtain any Consent.

21. Delete Clause 81 (*Infraco Changes*).

22. In Clause 82.5, delete reference to "*Clause 80.12*" and insert "*Clause 80.10*".
23. In Clause 83.5, delete reference to "*Clause 80.12*" and insert "*Clause 80.10*".
24. Clause 84.4.4 - delete the word "*Mandatory*" (**tie Change**).
25. Clause 84.11 - delete the word "*Mandatory*" (**tie Change**).
26. Clause 87.1 - insert at the beginning of the first sentence the words: "*Subject to Clause 86A*".
27. Insert new Clause 86A:

"tie shall be entitled to instruct part or all of those GMP Scope of Works comprising Part B of the GMP Scope of Works at any time within five years following the date of issue of the Sectional Completion Certificate for Section D in respect of Part A of the GMP Scope of Works."
28. Clause 87.2 - delete the word "*Mandatory*" (**tie Change**).
29. Limb (g) in the definition of "Compensation Event" in Schedule Part 1 shall be amended.
30. Delete limbs (t), (u) and (x) in the definition of "Compensation Event" in Schedule Part 1 and mark "Not Used".
31. Insert new limbs to definition of Compensation Event to reflect **tie Change Order**.
32. Delete the definition of "**Mandatory tie Change**" and all references to **Mandatory tie Change** in the Infraco Contract.
33. Delete the definition of "Notified Departure" and all references to Notified Departure in the Infraco Contract.
34. In the definition of "Permitted Variation", delete the words "*a Mandatory tie Change*" and "*a Notified Departure*".
35. In the definition of "**Planned Sectional Completion Date**", the dates will be deleted and amended as follows:
 - (a) Section A (Depot) - 2 November 2010
 - (b) Section B (Test Track) - 1 April 2011
 - (c) Section C (Testing and Commissioning) - 17 January 2011
 - (d) Section D - 6 June 2012.
36. Delete Schedule Part 4 (*Pricing*).
37. Delete Schedule Part 5 (*Milestone Payments*) and replace with [the Milestones contained in the GMP Pricing Schedule.]
38. Delete Schedule Part 15 (*Programme*).

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