

**ASSIGNATION**

by

**tie LIMITED**

in favour of

**THE CITY OF EDINBURGH COUNCIL**

---

**Assignment of Infraco Contract and related agreements in relation to the  
Edinburgh Tram Network**

---



**McGrigors**

McGrigors LLP  
Princes Exchange  
1 Earl Grey Street  
EDINBURGH  
EH3 9AQ

Tel: +

Fax: +

E-Mail: [enquiries@mcgrigors.com](mailto:enquiries@mcgrigors.com)

Web Site: <http://www.mcgrigors.com>

9112531\_10.DOC

**BFB00005467\_0001**

## TABLE OF CONTENTS

Clause	Heading	Page No.
1	DEFINITIONS AND INTERPRETATION .....	1
2	ASSIGNATION .....	2
3	GOVERNING LAW AND JURISDICTION.....	3

## ASSIGNATION by

- (1) **tie LIMITED**, a company registered in Scotland with registered number SC230949 and having its registered office at City Chambers, High Street, Edinburgh EH1 1YJ (the "**Assignor**") in favour of
- (2) **THE CITY OF EDINBURGH COUNCIL** the local authority for the City of Edinburgh constituted in terms of the Local Government etc (Scotland) Act 1994 and having its principal offices at City Chambers, High Street, Edinburgh EH1 1YJ (the "**Assignee**")

With the consent of

- (3) **BILFINGER BERGER CIVIL UK LIMITED**, a company incorporated in England and Wales under number 02418086 and having its registered office at 3<sup>rd</sup> Floor Braywick Gate, Braywick Road, Maidenhead, Berkshire SL6 1DA ("**BBUK**") which expression shall include its personal representatives, successors, permitted assignees and transferees; AND
- (4) **SIEMENS PLC**, a company incorporated in England and Wales under number 00727817 and having its registered office at Faraday House, Sir William Siemens Square, Frimley, Camberley, Surrey, GU16 8QD ("**Siemens**") which expression shall include its personal representatives, successors, permitted assignees and transferees;

(3) and (4) together the "**Infraco**" and each separately an "**Infraco Member**".

## WHEREAS:-

- (A) The Assignor is a party to the Assigned Contracts;
- (B) The Assignor has agreed to assign its interest in the Assigned Contracts; and
- (C) The Assignee has agreed to accept an assignment of the Assigned Contracts.

IT IS AGREED as follows:-

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Assignment unless the context requires otherwise:

"**Assigned Contracts**" means the documents set out in Part 1 of the Schedule;

"**Contractors**" means the guarantors, sureties, contractors, sub-contractors and other professionals named in Part 1 of the Schedule who are a party to the Assigned Contracts;

"**Effective Date**" means the last date of execution of this Assignment; and

"**Settlement Agreement**" means the settlement agreement among the Assignor, the Assignee, BBUK, Siemens and Construcciones y Auxiliar de Ferrocarriles S.A. dated 15 September 2011.

### 1.2 Interpretation

Save to the extent that the context or the express provisions of this Assignment require otherwise, in this Assignment:-

- (a) words importing the singular shall include the plural and vice versa;
- (b) words importing any gender shall include all other genders;
- (c) a reference to a recital, Clause, Schedule or Part of the Schedule are to the relevant recital, clause, schedule or part of the schedule of or to this Assignment;
- (d) a reference to this Assignment or to any other document is a reference to this Assignment or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced at any time;
- (e) a reference to a provision of law is a reference to that provision as extended, applied, amended, consolidated or re-enacted;
- (f) any phrase introduced by the words "including", "include", "in particular" or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words;
- (g) a reference to the Assignor or Assignee includes its permitted successors, transferees, assignees;
- (h) any reference to a 'party' means a party to this Assignment.

### 1.3 Headings

The table of contents and the headings in this Assignment are included for convenience only and shall be ignored in construing this Assignment.

## 2 ASSIGNATION

- 2.1 With effect from the Effective Date, the Assignor assigns and transfers to the Assignee its whole right, title, interest, obligations and burdens in to and under the Assigned Contracts.
- 2.2 Subject always to the terms of the Assigned Contracts, the Assignee will pay to Infraco, the Infraco Members and any other parties listed in the Schedule to this Assignment as being parties to the Assigned Contracts any amounts to be paid by the Assignor under and in accordance with those contracts and will perform, implement and observe the whole other terms, conditions and obligations contained in the Assigned Contracts in so far as incumbent on the Assignor and whether arising prior to, on or after the Effective Date.
- 2.3 As from the Effective Date Infraco and the Infraco Members shall issue any invoices under the relevant Assigned Contracts to the Assignee at Waverley Court, 4 East Market Street, Edinburgh EH8 8BG marked for the attention of Alan Coyle, and any notices and notifications to which Clause 111 of the Infraco Contract applies, to 9 Lochside Avenue, Edinburgh EH12 9DJ, fax number 0131 347 3401 marked for the attention of Julian Weatherley, Director of Project Delivery – Edinburgh Tram or such other person or persons appointed from time to time and notified to Infraco, all in accordance with the Infraco Contract.
- 2.4 For the avoidance of doubt, the Assignee hereby acknowledges that it shall not be entitled to defend any actions, claims or proceedings under the Assigned Contracts at any time on the grounds that it was not originally party to the Assigned Contracts and that the releases, undertakings and waiver of rights given by the Assignor in favour of Infraco and the Infraco Members in the Settlement Agreement shall apply to the right, title, interest, obligations and burdens assigned and transferred to the Assignee under this Assignment.
- 2.5 Infraco and the Infraco Members acknowledge by their signature hereof, intimation of this Assignment.

2.6 Notwithstanding the assignation and transfer of the Settlement Agreement hereunder, the Assignor agrees to remain bound by the terms of the Settlement Agreement to the extent such terms relate to releases, undertakings and waiver of rights by the Assignor.

2.7 With effect from the Effective Date, tie's Representative for the purposes of the Infraco Contract shall be Julian Weatherley, or such other person or persons appointed from time to time and notified to Infraco, all in accordance with the Infraco Contract.

3 GOVERNING LAW AND JURISDICTION

3.1 Governing Law

This Agreement shall be governed by and construed in accordance with the law of Scotland.

3.2 Jurisdiction

The parties hereby irrevocably submit to the exclusive jurisdiction of the Court of Session as regards any claim, dispute or matter arising out of or in connection with this Assignation and its implementation and effect.

IN WITNESS WHEREOF these presents consisting of this and the preceding two (2) pages together with the Schedule annexed here to are executed by the parties as follows:

SUBSCRIBED for and on behalf of  
tie LIMITED  
at EDINBURGH  
on the 8 day of DECEMBER 2011

by [redacted] Authorised Signatory

David Alexander Anderson Full name

before this witness

[redacted] Witness

Alan Coyle Full name

[redacted] Address

SUBSCRIBED for and on behalf of  
THE CITY OF EDINBURGH COUNCIL  
at Edinburgh  
on the 8th day of December 2011

by [redacted] Authorised Signatory

CAROL ANNE STEWART Councillor Full Name

[redacted] Witness

Alan Coyle Full Name

[redacted] Address

SUBSCRIBED for and on behalf of  
BILFINGER BERGER CIVIL UK LIMITED  
at  
on the 12 day of DECEMBER 2011

by [REDACTED] Authorised Signatory

MARTIN FOERDER Full Name

[REDACTED] Witness

KEVIN RUSSELL Full Name

[REDACTED] Address

[REDACTED]

SUBSCRIBED for and on behalf of  
SIEMENS PLC  
at  
on the 12th day of December 2011

by [REDACTED] Authorised Signatory

Brandenburg Full Name

[REDACTED] Witness

FATIMAH GULLY Full Name

[REDACTED] Address

[REDACTED]

This is the Schedule referred to in the foregoing Assignment between tie Limited and The City of Edinburgh Council with the consent of Bilfinger Berger Civil UK Limited and Siemens plc.

### Schedule

#### Assigned Contracts

Document	Parties	Date
Infraco Contract	tie Limited, Bilfinger Berger Civil UK Limited and Siemens plc	14 May 2008, as amended by a Minute of Variation dated 14 May 2008, the Princes Street Supplemental Agreement dated March 2009 and re-executed on 29 May 2009, a Minute of Variation dated 3 June 2009, a Minute of Variation dated 23 April 2010, a Minute of Variation dated 20 May and 10 June 2011 and the Settlement Agreement dated 15 September 2011
Performance Guarantee	Australia and New Zealand Banking Group Limited	16 May 2008, as amended by the Confirmation Letter from Australia and New Zealand Banking Group Limited to tie Limited dated 15 September 2011
Retention Bond	Deutsche Bank AG	19 May 2008, as amended by the Confirmation Letter from Deutsche Bank AG to tie Limited dated 21 September 2011
Restated Bilfinger Berger Parent Company Guarantee	Bilfinger Berger SE and tie Limited	9 & 15 September 2011
Restated Siemens Parent Company Guarantee	Siemens Aktiengesellschaft and tie Limited	12 & 15 September 2011
Certifier Agreement for Infraco Works	tie Limited, The City of Edinburgh Council, Bilfinger Berger Civil UK Limited, Siemens plc and Hg Consulting (Scotland) Limited	15 September 2011
SDS Collateral Warranty to tie	Parsons Brinckerhoff Limited, tie Limited, Bilfinger Berger UK Limited and Siemens plc	14 May 2008
Halcrow Collateral Warranty to tie	Halcrow Group Limited and tie Limited	9 & 26 June 2008
Prioritised Works Certifier Agreement	tie Limited, The City of Edinburgh Council, Bilfinger Berger Civil UK Limited, Siemens plc, Construcciones y Auxiliar de Ferrocarriles S.A. and Hg Consulting (Scotland) Limited	15 July and 24 August 2011
Settlement Agreement	tie Limited, The City of Edinburgh Council, Bilfinger Berger Civil UK Limited, Siemens plc and Construcciones y Auxiliar de Ferrocarriles S.A.	15 September 2011