



Billfinger Berger Siemens CAF Consortium
9 Lochside Avenue
Edinburgh
EH12 9DJ

Our Ref: INF CORR 6275

Date: 24 September 2010

DELIVERED BY EMAIL TO MR KITZMAN

STRICTLY CONFIDENTIAL – LEGALLY PRIVILEGED AND FOISA EXEMPT

Dear Sirs,

Project Carlisle – Revised Proposal for discussion and finalisation

We are in receipt of a letter dated 11 September 2010 (reference 25.1.201/EK/6682) from Infraco's Representative to tie's Project Director which purports to be Infraco's Full and Final Proposal for Project Carlisle. We understand that it seeks to dismiss the detailed proposal we made on 7 September 2010 (reference INF.COR. 5990).

The Infraco Representative's letter is contrary to the working practice agreed between Infraco Members and tie and it departs from the essential requirements that we refer to below. We are pleased to confirm that Mr. Kitzman has continued to work with our representatives to clarify certain issues which may have prevented us reaching an agreement based on the mutual understanding which has evolved from the consultations which Mr. Kitzman has conducted with Mr. Rush and Mr. Molyneux. We will therefore not respond to the 11 September 2010 letter other than to say we reject any differences it may raise with our proposal (our letter 5990 and this letter). We also deny any explicit or implicit allegations of tie's behaviour.

Our proposal is without prejudice to our rights under the Infraco Contract and in Law and cannot be founded upon by the Infraco Parties or any other parties in any proceedings, or be construed to be an offer (either in part or in whole) capable of acceptance without our express agreement in writing. Any agreement which arises from this letter will be subject to a Deed of Variation approved by a Minute of tie Limited's Board. Moreover, our proposal cannot be construed as implying tie's admission of any liability to the Infraco Parties or tie's waiver of any rights or claims against the Infraco Parties.

Governance and Guiding Principles

We do not withdraw what was set out in our letter reference INF. CORR. 5859 dated 24 August 2010 and subsequent amendments thereto agreed with Mr. Kitzman, however we make clear that the following principles are of the essence for any agreement which results from Project Carlisle:

- Price certainty for tie and its stakeholders.

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Registered in Scotland No. 230948 at City Chambers, High Street, Edinburgh, EH1 1YJ. Edinburgh Trams is an operating name of tie Ltd.

- A fully working and commissioned Edinburgh Tram Network from the Airport to St. Andrew's Square by the earliest and most cost efficient date.

Arriving at a revised Contract Price

We make no changes to our previous proposal, other than to confirm that for the purposes on any agreement:

The application of the revised **tie** Change mechanism (revised Clause 80) in respect of changes to the Design will be subject to the following principles which will be included in the documents:

- I. The definition of "**tie** Change" will remain unamended.
- II. The Infraco Works will, *inter alia*, be described by the Design for those works which will form part of a Design Assurance Statement(s) which has been, or is to be, issued by the Infraco and which de facto certifies that any IFC Drawing which is incorporated in the said Design Assurance Statement is for a base design which is supported by a written statement of the design philosophy, explaining why it is a good, best-value, design which satisfies the Employer's Requirements and certifying that all:
 - i. Consents, including but not limited to Design Stage Consents, have been obtained from Approval Bodies and third parties;
 - ii. appropriate CEC informatives have been concluded;
 - iii. interdisciplinary checks have been carried out; and
 - iv. elements of design are integrated, which means certifying the existence of adequate, concrete and sufficient evidence of unconditional, readily accessible, sound and comprehensive integration.

A Design which fully complies with this (II) will be the "Approved Design"

- III. Any revision required to the Infraco's submissions to obtain all Consents prior to the issue by the Infraco of any part of the Approved Design will not constitute a **tie** Change.
- IV. Unless any addition, modification, reduction or omission arises from an error, discrepancy, ambiguity or default by or of the Infraco or any Infraco Parties, any instruction to add to, modify, reduce or omit in respect of any part of the Approved Design will constitute a **tie** Change.
- V. Other than to rectify and error, discrepancy, ambiguity or default by or of the Infraco or any Infraco Parties, the Infraco will not add to, modify, reduce or omit in respect of any part of the Approved Design unless instructed by **tie**.

Proposed revised Scope

Taking cognisance of the Infraco's further representations since 11 September 2010, the Infraco Works will be confined to one Part:

Part A – Airport to St Andrew's Square.

With the exception of the Omitted Civil Engineering Works (detailed in Appendix A of the draft GMP Scope of Works), completion of the Infraco Works in Part A is to be executed by the Infraco in accordance with the revised Sectional Completion Dates explained below.

Our proposal is based on the premise that the Infraco will not be required to carry out any further Civil Engineering Works east of Haymarket, other than completing the Enabling Works in Section 1A (as detailed in the GMP Scope of Works) and correcting defects between Lothian Road and Waverley Bridge.

For Part A, subject to further discussion between **tie** and CAF, the Infraco will be required to deliver no more than 20 Trams.

We are prepared to enter into discussions which may lead to the novation back to **tie** of:

1. The Tram Agreement and the Tram Maintenance Agreement.
2. The SDS Agreement for the completed, approved, assured, integrated and compliant Design of the Edinburgh Tram Network for Phases 1a and 1b, to include certification thereof by each Infraco Member, the SDS Provider and any Infraco Party or SDS Provider Party involved in the production or development of Design.

Revised dates for completion, liquidated damages, programme etc.

Hitherto, the Infraco has made no properly detailed submissions for extension of time other than in respect of Rev 1 and MUDFA Rev 8. The former has been granted and Robert Howie QC has determined by adjudication the Infraco's entitlement in respect of the latter. We also note that **tie** offered a global nine months' extension of time on 13 November 2009.

INF. CORR 5990 *inter alia* considered it to be fair and reasonable, taking account of the circumstances explained below, to set new Planned Sectional Completion Dates where Robert Howie determined them (albeit not finally binding on the Parties) with the exception of where he decided that the Infraco has no further entitlement. For those sections, we set them in accordance with **tie's** letter of 13 November 2009.

The revised Planned Sectional Completion Dates for Part A become:

Section A	Set by Robert Howie QC	2 November 2010
Section B	Set by tie letter dated 13 November 2009	1 April 2011
Section C	Set by tie letter dated 13 November 2009	1 December 2011
Section D	Set by tie letter dated 13 November 2009	6 June 2012

Sections C and D will refer to completion at St Andrew's Square and not Newhaven.

We confirm that **tie** is prepared for its Project Carlisle representatives to enter into more detailed discussion with the Infraco on Planned Sectional Completion Dates provided that the Infraco undertakes to approach such discussions in the spirit of finding the earliest and most cost-effective completion date(s) for **tie** and its stakeholders.

Such willingness includes giving **tie** access (including partial access) to the Depot (Section B) at the earliest time.

We repeat that to assist you in meeting the revised Planned Sectional Completion Date for Section D we are prepared to discuss with you measures which will allow us to reduce the period between the completion of Section C and Section D. Such measures may require giving us partial access to Section B works and/or storing and reducing the number of trams delivered as part of the Part A Scope.

Programming

In relation to the revised Infraco Works from the Airport to St Andrew's Square, other than requiring you to meet the above dates we see no reason why we should not revise the requirements of Clause 60 in relation to Schedule Part 2 (*Employer's Requirements*) and we have agreed suitable changes to these provisions which are referred to in the attached draft **tie** Change Order.

As part of our proposal, Clause 61.8 will be deleted.

Liquidated and Ascertained Damages

As the calculation of losses reflected in Liquidated and Ascertained Damages will not be less for a truncated project, Liquidated and Ascertained Damages for the Sectional Completion of Part A will remain as stipulated by Clause 62 of the Infraco Contract.

Excluded Items

Works executed to Princes Street (Lothian Road to Waverley Bridge)

Final agreement of the costs claimed by the Infraco arising from the Princes Street Supplemental Agreement ("**PSSA**") will not be possible until the Infraco and **tie** have agreed a Rectification Plan which is approved by the Roads Authority. In the meantime, **tie** will continue to pay, on-account, the amount currently certified as an interim payment, under reservation of being able to reduce such payment on a final conclusion as to liability.

SDS Provider

Events since 24 August 2010 have added to our concern about the inclusion by you of the SDS Provider's claim for a payment of £16.275 million. It leads us to conclude that it deserves further investigation. We are therefore to carry out a detailed investigation and audit of how the SDS Provider has performed and how the Infraco has managed them. Part of that investigation will take account of the agreement you admit has been entered into between Bilfinger Berger (and possibly others) with Parsons Brinkerhoff (and possibly others).

Until such time as we are able to come to a conclusive decision on the liabilities owed by us, or owed to us, we intend to agree to no further payment for the SDS Provider. Moreover, we reserve our rights to pursue any of the Infraco Parties (either individually or jointly) for recovery (under the Infraco Contract or in delict) of any losses and damages suffered by **tie** and arising from breach of contract, negligence, misrepresentation or any other wrongful act on the part of the SDS Provider or any other Infraco Party in relation to the services provided by the SDS Provider.

The SDS Provider and the Infraco are required to fulfil their obligations to deliver the design services relating to Phase 1b. In the event that they fail to do so, **tie** will recover the amounts previously paid to the SDS Provider for these services from payments due to the Infraco.

Conditions

Any Agreement arising from this proposal will *inter alia* be subject to the following conditions:

- The Infraco shall procure such design assurance as is necessary for the Independent Competent Person to admit a design for the On-Street trackwork which is approved by and meets the requirements of the Roads Authority and of **tie** acting with absolute discretion.
- Such design assurance shall *inter alia* provide:
 - i. adequate, complete and sufficient evidence of unconditional, readily accessible, sound and comprehensive integration;
 - ii. Design Assurance Statements which are not in contradiction to the Infraco's obligations pursuant to the Infraco Contract and which do not exclude liability. This will include the removal of statements such as the following:

*"This Drawing incorporates the 'RailOne RHEDA City -C' proprietary rail fastening system developed for Edinburgh Tram Network by the BSC consortium. **The SDS trackform design incorporates RHEDA City C in its entirety without modification and accepts no liability for the suitability of the system.** For details of BSC refer to RHEDA City C typical sections ETN(TRW=TD&ATB#055716. SDS have prepared a comprehensive review of the RHEDA City System, refer to doc No. TBC for details";*
 - iii. IDC/IDR output evidence in tabular form which is essential for **tie** to carry out a review of the submissions made by the Infraco;
 - iv. integrated design assurance statements which are complete rather than interim drawings which are incomplete and which exclude cross-sections and which are not fully satisfactory in integration terms;
 - v. a complete SDS Drawing Register; and
 - vi. Inclusion of details to close out:
 - (a) CEC Informatives;
 - (b) Key ICP issues; and
 - (c) Hazard Log item mitigation closure.
- The completed, approved, assured, integrated and compliant Design for the Edinburgh Tram Network Phases 1a and 1b will include certification thereof by each Infraco Member, the SDS Provider and any Infraco Party or SDS Provider Party involved in the production or development of Design or the Infraco's Design.
- The Infraco shall be responsible for all additional costs which may arise from any development or revision to the design of the Infraco Works other than as required by a **tie** Change.

- The Infraco shall be entitled to the benefits of any value engineering savings achieved from the date of any agreement arising out of our proposal.
- The Infraco shall not be entitled to extension of time to the revised Planned Sectional Completion Dates for Sections C and D unless:
 - a **tie** procures and completes the Omitted Civil Engineering Works from Haymarket to Lothian Road and Waverley Bridge to St Andrew's Square in such time as would prevent the Infraco, working reasonably in Designated Working Areas, from achieving those revised Planned Sectional Completion Dates; and
 - b **tie** issues a Change Order pursuant to revised Clause 80.
- The On-street Civil Engineering Works shall be completed by others under the direct supervision of **tie**. Other than providing design assurances in respect of the design of such works as directed by **tie** and being responsible for integrating the design of the E&M Works with the On-street Civil Engineering Works, the Infraco shall have no liability for such works.
- The Infraco shall be responsible for those Trams which have been constructed and commissioned pursuant to the Tram Supply Agreement but which are not required to run on the Edinburgh Tram Network which is constructed under the GMP Scope pursuant to our proposal. The revised Contract Price shall include for any and all storage charges, in Spain or elsewhere, or any other costs and expenses related to the spare Trams which have arisen and may arise as a consequence of delay to the completion of the Infraco Works.
- The Infraco shall deliver to **tie** all information required by the Infraco Contract for all Key Sub-Contractors which the Infraco intends to employ on the Infraco Contract.
- The Infraco Parties shall disclose all agreements which they have entered into together since 14 May 2008, howsoever arising and which they would have not entered into but for their involvement in the Infraco Contract.
- Pursuant to Clause 26, the Infraco will submit for **tie's** approval full details of the experience and qualifications of the Infraco Representative and such approval shall be at the absolute discretion of **tie**.
- Only persons nominated as Key Personnel shall have day-to-day responsibility for and be involved in the performance of the Infraco Works.
- The Infraco shall design, carry out and complete enabling works for the Edinburgh Gateway Project at a reasonable price and use reasonable endeavours to complete such works without causing delay to the completion of the revised Infraco Works - Part A.
- The Infraco shall install On-street trackwork to Part A (from Haymarket to Lothian Road and Waverley Bridge to St Andrew's Square) in accordance with the Infraco Contract and subject to **tie** issuing the Infraco with 14 days' notice to commence work and in accordance with the following provisions:

1. The Infraco shall provide, take from store, deliver to site, and permanently install the track rails and their supports and sleepers on a foundation prepared by others, in accordance with the assured integrated design approved pursuant to Clause 19 and by **tie**, in accordance with a reasonable programme agreed by **tie**.
 2. The Infraco shall provide and permanently install in accordance with the said design chamber filling materials to the rail flanges prior to handing over the installed track to **tie** to complete the Omitted Civil Engineering Works.
 3. Other than for its design, the Infraco will bear no responsibility for the foundation to the track, or for any of the Omitted Civil Engineering Works subsequent to the installation of the track.
- The Infraco shall issue **tie** with 14 days' written notice of the date by which the On-street trackwork shall be complete to enable **tie** to access, carry out and complete any remaining Omitted Civil Engineering Works. **tie** shall notify the Infraco upon conclusion of the Omitted Civil Engineering Works and the Infraco shall carry out all remaining Infraco Works, including the E & M Works and the testing, commissioning and energisation of the Edinburgh Tram Network.
 - For the purposes of section 2.7.4 of the Employers Requirements, the required maximum journey time for St Andrew's Square to the Airport will be 28 minutes, 53 seconds.

Revised Contract Price

The revised Contract Price, which comprises the total capital expenditure and revenue expenditure payable to the Infraco, including for all entitlements to additional payments (both agreed and not agreed) up to the date of the Deed of Variation, is as follows:

Part A	£
Construction Works Price Part A	See below
SDS Price	To be determined
PSSA Payment	To be determined
Tram Supply Price	45,893,997
Infraco Maintenance Mobilisation	1,633,522
Tram Maintenance Mobilisation	2,275,806
Infraco Spare Parts	1,013,090

Construction Works Price Part A

We place a fair value on this GMP Scope of Works, as a base line, at: £223,467,580 subject to increase or decrease for the following items:

- i. Re-novation of the Tram Supply Agreement and Tram Maintenance Agreement back to **tie**.
- ii. Re-novation of the SDS Agreement back to **tie**.
- iii. An arrangement for dealing with contaminated land whereby the Infraco are reimbursed on cost plus basis with a cap placed on the Infraco's entitlement for reimbursement of £8 million.
- iv. A commercial compromise adjustment agreed between the Infraco and **tie**.

Please note there will be no other form of adjustment to the Construction Works Price.

Milestone Payments

Subsequent to agreement of the revised Contract Price, revisions to the Construction Milestones in Schedule Part 5 shall have to be agreed from which interim payments may be determined.

The opening values should be calculated:

- Construction - as previously certified less any payment for PSSA and the SDS Provider; and
- Preliminaries recalculated as a proportion of Construction Milestone values.

Interim values will be calculated:

- Construction Milestones – as and when completed;
- Preliminaries – pro-rata to the difference between the opening value calculated above and the total value of Construction Milestones shown above; and
- Any overpayment or underpayment at opening shall be adjusted over a 12 month period at monthly tranches.

Bonds & Guarantees etc

There will be no revision to the Infraco's obligations pursuant to Clauses 74 to 78 inclusive.

Maintenance Agreements

We do not propose amending the terms of the Infraco Contract in relation to maintenance or the Tram Maintenance Agreements other than to reduce the payment for Part A on a pro-rata basis to the length of track commissioned or the number of Trams delivered respectively.

Project Carlisle

Our determination to see Project Carlisle through is neither deflected nor diminished by receiving your letter dated 22 September 2010 (ref 25.1.1201/KDR/6790), apparently written "without prejudice" and, in our view, without contractual merit. Nor does it contribute to a rational approach to sensible negotiations to solve what are obviously different perceptions of the cause of your extremely poor performance on this Project.

Both parties have invested time and energy in Project Carlisle and we have expressed appreciation of this often. This is not the place to deal with the assertions you now want to make, save to say that we reject them in their entirety and will reply separately in due course. If your expectation has been that tie would not use its rights under the Infraco Contract to correct your repeated delinquency you ignore our duty to act in the public interest. You should recognise that accepting terms you dictate cannot be in the public interest.

We make it clear that tie's focus on fair value is not driven by affordability constraint; it is driven by your behaviour for 30 months on this Contract for which you still haven't completed the design. Nothing you assert can detract from this fact. We have admitted that utility diversions have been delayed, but your failure to complete the design dominates that delay.

You wrongly deem what on your part are assumptions to be corroboration of our motives, for example the Preliminaries dispute. You ignore that the Infraco Contract proscribes waiver of our rights in the event that we have taken a certain course of action which may have been favourable to you. Whatever you may care to misrepresent, misinterpret or threaten, be assured it will not deflect us from taking and in some cases accelerating the rights we have to obtain resolution of your misconduct.

Your letter exaggerates and misrepresents the status and import of DRPs decided by Adjudicators. There have been 9, not 15 as you claim. Not all have been on points of principle and by no measure have all been decided in Infraco's favour. In fact where valuation has been at issue it may be said that the results have favoured the tax-payer. Two, by Lord Dervaird and Mr. Howie Q.C., have addressed important contractual principles. Mr Howie found against the manner in which you have sought to claim extension of time and to programme your works. Lord Dervaird decided on one narrow part of the implementation of Clause 80. As you are aware, we are in the process of reviewing all INTCs submitted by you and are applying Lord Dervaird's narrowly focused decision as part of that wider exercise. It is wholly misleading to assert that Lord Dervaird's decision affects all or even more than a small minority of the INTCs you have notified.

For our part we do not demur from you doing no more than you are obligated to. Our concern is that your conduct is such that it amounts to requiring a process of attrition to get you to accept your obligations. The RTNs you refer to are an unfortunate but necessary manifestation of our frustration with your conduct.

You are right that there have been two proposals from the Infraco Representative. Reminding of this only serves to confuse because when we met after the last proposal on 11 September 2010 it was made clear to both Mr. Darcy and Mr. Wakeford how those proposals failed in meeting the essential conditions we refer to under "Governance and Guiding Principles" above. Mr. Darcy and Mr. Wakeford clearly understood that and since then we have been discussing the revisions to our proposal, which are set out herein, with Mr. Kitzman. He was confirmed to be the sole representative for the Infraco Members on Project Carlisle by Mr. Darcy and Mr. Wakeford and these conditions have been made clear to him from the outset of his involvement.

This revision to our proposal arises from discussions which took place with Mr. Kitzman before he left for his leave in the USA. Indeed we understood from him that we are to keep in contact with him whilst he is on leave and on the 18 September 2010 he expressed his own satisfaction by email with the revised definition of tie Change set out on page 2 herein.

However, we are encouraged that despite the confused message in your letter that you accept that it is time to reach a conclusion on Project Carlisle. We share those sentiments and are of course prepared to make representatives of our choice available to discuss such a conclusion.

Yours faithfully



Richard Jeffrey
Chief Executive

For and on behalf of tie Limited

SUBJECT TO CONTRACT

***THIS DOCUMENT DOES NOT OFFER
TO CREATE ANY CONTRACTUAL
RELATIONS (WHETHER
EXPRESS OR IMPLIED)***

PROJECT CARLISLE - PRELIMINARY DRAFT

tie GMP CHANGE ORDER to the Infraco in respect of the GMP, GMP Scope of Works and Omitted Civil Engineering Works

The following constitutes the formal tie Change Order for the purposes of Clause 80 of the Infraco Contract and is based upon tie's acceptance of Infraco Estimate No ♦ dated ♦ 2010 pursuant to tie Notice of Change No ♦ dated ♦ 2010 .

Capitalised terms (where not otherwise defined) and clause number references are as used in the Infraco Contract.

1. tie instructs and the Infraco agrees to:
 - 1.1 the introduction and application of a Guaranteed Maximum Price ("GMP") on the basis of the Estimate (contained in Appendix II) for the carrying out and completion by the Infraco of all Infraco Works and related services necessary to carry out and complete the GMP Scope of Works (contained in Appendix I) pursuant to the Infraco Contract (as varied pursuant to this Change Order);
 - 1.2 the omission from the Infraco Works of all Omitted Civil Engineering Works (as described in Appendix A to the GMP Scope of Works) from chainage 131247 at Haymarket to chainage 130380 at Lothian Road and from chainage 121380 at Waverley Bridge to chainage 121150 (and, in respect of overhead line, chainage 120804) at St Andrew's Square; and
 - 1.3 the omission from the Infraco Works of all Infraco Works (with the exception of the provision of the Design pursuant to the GMP Scope of Works and paragraph 8 of this tie Change Order) from chainage 121150 (and, in respect of overhead line, chainage 120804) at St Andrew's Square to chainage 100000 at Newhaven ("Omitted Scope").
2. tie instructs and the Infraco agrees that:

the GMP shall not under any circumstances be exceeded, save by strict application of Clause 80 (as varied).
3. tie accepts and the Infraco acknowledges:

an agreed and validated credit from the Infraco in the amount of £ [♦] for the Infraco Works included in the Construction Works Price but now not applicable due to the Omitted Civil Engineering Works pursuant to Appendix A of the GMP Scope of Works and the Omitted Scope.

4. **tie** instructs and the Infraco agrees to:
 - 4.1 on the basis of the Infraco's Estimate No ◆ and this **tie** Change Order, the conclusion of a Deed of Variation pursuant to Clause 80 and Clause 108 of the Infraco Contract to effect the necessary modifications to the terms and conditions of the Infraco Contract to reflect the GMP and the GMP Scope of Works; and
 - 4.2 the Infraco shall waive irrevocably all further claims, entitlements or rights of any kind (whether now existing or which might otherwise arise) arising from or in connection with the GMP, GMP Scope of Works (and Omitted Civil Engineering Works and the Omitted Scope), save as expressly provided in this **tie** Change Order, as confirmed in the Deed of Variation.
5. **tie** reconfirms its instruction to proceed with and the Infraco agrees to:

the immediate commencement and carrying out and completion of the GMP Scope of Works to **tie's** satisfaction, in consideration of the GMP and pursuant to the Infraco Contract (as varied pursuant to this **tie** GMP Change Order and the Deed of Variation).
6. **tie** instructs and the Infraco agrees that:
 - 6.1 the Infraco shall install On-street trackwork to Part A (from Haymarket to Lothian Road and Waverley Bridge to St Andrew's Square) in accordance with the Infraco Contract and subject to **tie** issuing the Infraco with 14 days' written notice to commence work on any Designated Working Area and in accordance with the following provisions:
 - 6.1.1 the Infraco shall provide, take from store, deliver to site, and permanently install the track rails and their supports and sleepers on a foundation prepared by others, in accordance with the assured integrated design approved pursuant to Clause 19 and by **tie**, in accordance with a reasonable programme agreed by **tie**;
 - 6.1.2 the Infraco shall provide and permanently install in accordance with the said design chamber filling materials to the rail flanges prior to handing over the installed track to **tie** to complete the Omitted Civil Engineering Works; and
 - 6.1.3 other than for the Design, the Infraco will bear no responsibility for any of the Omitted Civil Engineering Works subsequent to the installation of the track.
 - 6.2 The Infraco shall issue **tie** with 14 days' written notice of the date by which the On-street trackwork on any Designated Working Area (from Haymarket to Lothian Road and Waverley Bridge to St Andrew's Square) shall be complete to enable **tie** (or any **tie** Party) to access, carry out and complete any remaining Omitted Civil Engineering Works. **tie** shall notify the Infraco upon conclusion of the Omitted Civil Engineering Works on a Designated Working Area (from Haymarket to Lothian Road and Waverley Bridge to St Andrew's Square) and the Infraco shall carry out all remaining Infraco Works, including the E & M Works and the testing, commissioning and energisation of the Edinburgh Tram Network.

7. **tie** instructs and the Infraco agrees that:
- 7.1 The GMP Scope of Works and the GMP includes all Infraco Works arising from or required by all actual or potential Permitted Variations, **tie** Changes and Infraco Notices of **tie** Changes existing at the date of this **tie** Change Order.
- 7.2 The GMP Scope of Works and the GMP includes the carrying out and completion of all detailed items stated in the Specific Requirements contained at Appendix IV.
- 7.3 The Infraco shall use all existing GMP IFC Drawings (as defined in the GMP Scope of Works) in the carrying out and completion of the GMP Scope of Works unless otherwise instructed by **tie**.
- 7.4 The Infraco shall or shall procure the approval, assurance, integration and compliance of all design used for the construction and completion of the GMP Scope of Works. For the purposes of the GMP Scope of Works, such design assurance shall *inter alia* provide:
- i. adequate, complete and sufficient evidence of unconditional, readily accessible, sound and comprehensive integration;
 - ii. Design Assurance Statements which comply with, and are not in contradiction to, the Infraco's obligations pursuant to the Infraco Contract and which do not exclude liability. This will include the removal of statements such as the following:

"This Drawing incorporates the 'RailOne RHEDA City -C' proprietary rail fastening system developed for Edinburgh Tram Network by the BSC consortium. The SDS trackform design incorporates RHEDA City C in its entirety without modification and accepts no liability for the suitability of the system. For details of BSC refer to RHEDA City C typical sections ETN(TRW=TD&ATB#055716. SDS have prepared a comprehensive review of the RHEDA City System, refer to doc No. TBC for details";
 - iii. IDC/IDR output evidence in tabular form which is essential for **tie** to carry out a review of the submissions made by the Infraco;
 - iv. integrated design assurance statements which are complete rather than interim drawings which are incomplete and which exclude cross-sections and which are not fully satisfactory in integration terms;
 - v. a complete SDS Drawing Register; and
 - vi. Inclusion of details to close out:
 - (a) CEC Informatives;
 - (b) Key ICP issues; and
 - (c) Hazard Log item mitigation closure.
- 7.5 In the event of any ambiguity or discrepancy in the GMP IFC Drawings relating to the GMP Scope of Works, it will be the responsibility of the Infraco to correct or remove any such ambiguity or discrepancy and the Infraco will have no entitlement to any additional

payment or time to make any necessary correction to the GMP IFC Drawings and to complete the Infraco Works required for the GMP Scope of Works.

7.6 The Infraco shall obtain all Consents and necessary approvals from the relevant Approval Body or third party required to carry out and complete the GMP Scope of Works, specifically all outstanding items regarding technical approvals from the Roads Authority.

7.7 An "Approved Design" is:

a Design which will form part of a Design Assurance Statement(s) which has been, or is to be, issued by the Infraco and which de facto certifies that any IFC Drawing which is incorporated in the said Design Assurance Statement is for a base design which is supported by a written statement of the design philosophy, explaining why it is a good, best-value, design which satisfies the Employer's Requirements and certifying that all:

- (i) Consents, including but not limited to Design Stage Consents, have been obtained from Approval Bodies and third parties;
- (ii) appropriate CEC informatives have been concluded;
- (iii) interdisciplinary checks have been carried out; and
- (iv) elements of design are integrated, which means certifying the existence of adequate, concrete and sufficient evidence of unconditional, readily accessible, sound and comprehensive integration.

7.8 Any revision required to the Infraco's submissions to obtain any and all Consents prior to the issue by the Infraco of any part of the Approved Design will not constitute a tie Change.

7.9 Unless any addition, modification, reduction or omission arises from an error, discrepancy, ambiguity or default by or of the Infraco or any Infraco Parties, any instruction to add to, modify, reduce or omit in respect of any part of the Approved Design by tie will constitute a tie Change.

7.10 Other than to rectify and error, discrepancy, ambiguity or default by or of the Infraco or any Infraco Parties, the Infraco will not add to, modify, reduce or omit in respect of any part of the Approved Design unless instructed by tie.

8. tie instructs and the Infraco agrees that:

no later than 31 December 2011 the Infraco shall deliver a completed, approved, assured, integrated and compliant design for Phase 1b (Roseburn Junction to Granton Square) signed off and certified by the SDS Provider and each of the Infraco Members (and any relevant Infraco Party and SDS Provider Party), together with provision of all associated Project IPR, Infraco IPR and SDS Provider Party IPR and all related Deliverables. Full compliance with this instruction shall be a condition precedent of tie's payment of any sum due to the SDS Provider under the GMP (if applicable).

9. tie instructs and the Infraco agrees to:

the Infraco shall design, carry out and complete certain enabling works to be determined and instructed pursuant to a tie Change Order for the Edinburgh Gateway Project (formerly

Gogar Interchange) at a reasonable price and using reasonable endeavours to complete such works without causing delay to the completion of the GMP Scope of Works.

10. **tie** instructs and the Infraco agrees to:

10.1 the continuation of the application of Clause 62 of the Infraco Contract in respect of liquidated and ascertained damages; and

10.2 the dates for completion of each Section under the GMP Scope of Works being the Planned Sectional Completion Dates as shown in Appendix III, the Planned Sectional Completion Dates being updated to refer to completion at St Andrew's Square and not Newhaven.

11. **tie** instructs and the Infraco agrees that Clauses 74 to 78 shall remain in full force and effect.

12. **tie** confirms and the Infraco acknowledges:

tie's notification to City of Edinburgh Council of the adjustment to the Construction Works Price by operation of this **tie** Change Order and the Deed of Variation.

13. **tie** instructs and the Infraco agrees to:

the notification by each Infraco Member to their Parent Company Guarantors concerning GMP, the GMP Scope of Works, Omitted Civil Engineering Works and related modifications to the Infraco Contract under the Deed of Variation.

Each Party shall provide the other with a certified copy of such notification within 7 days of the date of the **tie** Change Order.

14. **tie** hereby notifies that:

pursuant to Clause 26.2 of the Infraco Contract, [*insert name of the Infraco Representative*] is approved to be the Infraco Representative for the GMP Scope of Works.

15. **tie** hereby notifies that:

the list of Key Personnel contained in Appendix VII to this **tie** Change Order is approved for the GMP Scope of Works. No other persons, other than those approved as Key Personnel, shall have day-to-day responsibility for and be involved in the performance of the GMP Scope of Works.

16. **tie** instructs and the Infraco agrees to:

16.1 the modification of Clause 80 (and related definitions) of the Infraco Contract (such modification to be introduced pursuant to Clause 80.12 of the Infraco Contract (as revised pursuant to this **tie** Change Order)) for the purposes of the GMP Scope of Works, as shown in the Schedule of Amendments included in Appendix V, such modification including:

16.1.1 clarification that the only circumstances in which a **tie** Change can occur is where **tie** expressly instructs a **tie** Change which is necessary in **tie's** opinion for the satisfactory completion of the GMP Scope of Works (unless necessary

as a result of the Infraco's (or an Infraco Party's) failings, default, action, omission or error);

- 16.1.2 clarification that any adjustments to the GMP shall be evaluated in accordance with revised Clause 80;
- 16.1.3 clarification that the Infraco will only be entitled to additional time for the **tie** Change where the delayed activity is demonstrated to be on the critical path at the time the delay occurs; and
- 16.1.4 clarification that the Infraco will not be entitled to a **tie** Change where a revision is required to the Infraco's submissions to obtain all Consents prior to the issue by the Infraco of any part of the Approved Design.

17. **tie** instructs and the Infraco agrees to:

the specific amendments to the Infraco Contract contained in Appendix V (*Schedule of Amendments*) to be effected by the Deed of Variation, (including the deletion of Schedule Part 4 of the Infraco Contract) required to effect this **tie** Change Order and the irrevocable waiver and withdrawal by the Infraco of all entitlements, claims, demands and submissions of any kind arising from or connected with Schedule Part 4 (whether relating to on-street or off-street works), including in relation to the Pricing Assumptions and Notified Departures and all Infraco Notices of **tie** Change.

18. **tie** instructs and the Infraco agrees to:

The Infraco shall submit to **tie** a Programme showing the critical path(s) on the date of this **tie** Change Order, such Programme and the critical path(s) to be updated in accordance with Clause 60 and the Employer's Requirements (both as revised).

19. **tie** instructs and the Infraco agrees that:

for programming purposes, any landscaping on a Section will be considered complete provided that the only unfinished works are seeding, turfing or planting works which shall be carried out by the Infraco at the beginning of the next seeding, turfing or planting season(s).

20. **tie** instructs and the Infraco agrees that:

- (i) there shall be no further entitlements in respect of the Infraco's claims for delay, disruption or other relief to the Infraco Works necessary to execute the GMP Scope of Works existing (whether or not notified to **tie**) prior to the date of this **tie** Change Order;
- (ii) the arrangements concluded under the Deed of Variation to be entered into following this **tie** Change Order will represent full and final settlement of all and any past, current and potential submissions, claims, entitlements and representations by the Infraco relating to extensions of time, related compensation or additional payment for prolongation, mitigation, acceleration measures, re-sequencing, **tie** Change, Mandatory **tie** Change, Compensation Events, Pricing Assumptions and Notified Departures arising from or in connection with the GMP Scope of Works or the Omitted Civil Engineering Works or the Omitted Scope; and

(iii) the Infraco shall have no entitlement of any nature in respect of the Omitted Civil Engineering Works or the Omitted Scope, whether arising prior to or after the date of this **tie** Change, including any indemnity for loss of profits or loss of contribution to overheads.

21. **tie** instructs and the Infraco agrees that:

in respect of the GMP, Schedule Part 5 of the Infraco Contract (*Milestones*) shall be revised to suit the Programme (once submitted). Preliminaries will be re-calculated as a proportion of Construction Milestone values.

22. **tie** instructs and the Infraco agrees that:

The Infraco shall be responsible within the GMP for all costs associated with the treatment and remediation of contaminated land within the GMP Scope of Works, including contaminated materials and plants outside the Earthworks Outline, and the Infraco Contract will be varied accordingly under the Deed of Variation.

23. **tie** instructs and the Infraco agrees that:

the Infraco shall take full risk for utilities which could not reasonably have been foreseen on the basis of available information and knowledge of Site up to £50,000 per event (to cover the costs of any additional works in relation to the unforeseen utilities). Where the cost of dealing with an unforeseen utilities event is greater than £50,000, this shall be deemed to be a Compensation Event (to be calculated and assessed in accordance with Clause 65 of the Infraco Contract), for which the Infraco will be responsible for the first £50,000 of costs; and

the Infraco Contract will be varied accordingly.

24. **tie** instructs and the Infraco agrees that:

in the event that the completion of the sewer diversion at Structure 26 - South Gyle Access Bridge (being carried out by a third party) is delayed beyond 31 October 2010, if the delayed activity is demonstrated to be on the critical path at the time the delay occurs and the Infraco can demonstrate that it has incurred additional loss or expense, this shall be deemed to be a Compensation Event (to be calculated and assessed in accordance with Clause 65 of the Infraco Contract).

25. **tie** instructs and the Infraco agrees that:

Subject to the Infraco having obtained **tie**'s approval to any submission to Network Rail and any amendment thereto if Network Rail delay in giving approval of such submission beyond 10 weeks, provided that such delay could not have been reasonably foreseen, avoided or mitigated by the Infraco with the reasonable assistance of **tie**, and if the delayed activity is demonstrated to be on the critical path at the time the delay occurs and the Infraco can demonstrate that it has incurred additional loss and expense, this shall be deemed to be a Compensation Event (to be calculated and assessed in accordance with Clause 65 of the Infraco Contract).

26. **tie** instructs and the Infraco agrees that:

if Scottish Water fails to provide the water supply connection to the Depot by 30 September 2010, provided that the Infraco has provided a design which is acceptable to Scottish Water and which permits Scottish Water to provide the connection by this date, if the Infraco can demonstrate that it has incurred delay or additional loss and expense, this shall be deemed to be a Compensation Event (to be calculated and assessed in accordance with Clause 65 of the Infraco Contract).

27. **tie** instructs and the Infraco agrees to, on the date of issue of this **tie** Change Order,

the provision to **tie** of copies of the executed sub-contracts (approved by **tie** in advance, at **tie**'s absolute discretion) with the Key Sub-Contractors approved by **tie** for the GMP Scope of Works, listed in Appendix VI; and

the provision to **tie** of executed collateral warranties in accordance with Clause 28.7 and 74.10 of the Infraco Contract in favour of **tie**, CEC and TEL and EAL and NR, if requested by **tie**.

28. **tie** instructs and Infraco agrees that the definition of Construction Works Price shall be amended to reflect the GMP as set out in Appendix II to this **tie** Change Order.

**APPENDIX I
GMP SCOPE OF WORKS**

[Insert GMP Scope of Works]

APPENDIX II
AGREED ESTIMATE (GMP PRICING SCHEDULE)

In this Appendix II the following definition shall apply:

"PSSA" means the Princes Street Supplemental Agreement between ~~the~~ Limited and the Infraco Members dated 29 May 2009 in respect of the civil engineering works carried out by the Infraco on Princes Street.

The GMP Analysis for the GMP Scope of Works is as follows:

GMP Analysis

Construction Works Price Part A	£223,467,580
SDS Price	To be determined
PSSA Payment	To be determined
Tram Supply Price	45,893,997
Infraco Maintenance Mobilisation	1,633,522
Tram Maintenance Mobilisation	2,275,806
Infraco Spare Parts	1,013,090

APPENDIX III

PLANNED SECTIONAL COMPLETION DATES

Section	Agreed Date for Completion
Section A	2 November 2010
Section B	1 April 2011
Section C	10 December 2011
Section D	6 June 2012

APPENDIX IV
SPECIFIC REQUIREMENTS

The following are Specific Requirements with which the Infraco must comply as part of the GMP Scope of Works:

1. Roseburn Viaduct

- 1.1 On the basis of an inclusion within GMP, the installation of a suitable and secure gate at the entrance to the portal to prevent graffiti in the portal structure entry to Haymarket Depot, where **tie** instructs at its discretion.
- 1.2 On the basis of an inclusion within GMP, the installation of an approved ceramic finish to prevent graffiti on the face of the wall under the main Roseburn Viaduct and to improve the amenity of the area, where **tie** instructs at its discretion.
- 1.3 The alignment of the existing wall at Murrayfield which is to remain and a small area of additional soft landscaping up to a maximum area of 30m².
- 1.4 On the basis of an inclusion within GMP, the installation of false walls in accordance with [Drawing Number ULE90130-05-PLG-00265 rev 2 and [*sketches and photos to be inserted*]] in order to prevent the use of the spaces for anti-social behaviour and the accumulation of rubbish, where **tie** instructs at its discretion.

2. Landfill Site

- 2.1 The solution priced within the GMP is based on the Infraco's current proposal as shown on the GMP IFC Drawings which amends trackform to ballast, details a retaining structure for track, incorporates a surcharge and an element of earth retention which is shown on the GMP IFC drawings.
- 2.2 The GMP includes landfill taxes and all other taxes payable on the surcharge to the landfill Site. The Infraco is responsible for obtaining any HMRC exemptions, concessions or allowances and the GMP is deemed to take account of any such HMRC exemptions, concessions or allowances. Any additional costs or expenses which arise shall be to the account of Infraco.

3. Tramstop Design

- 3.1 The construction of all tramstops from Airport to St Andrew's Square (inclusive) on the basis of the specification provided by Alastair Richards on 17 May 2010 (to be listed).

4. Network Rail: Form C Submissions

- 4.1 The GMP is based on Network Rail standard requirements for Form C submissions. Upon request from Infraco, **tie** shall use reasonable endeavours to assist the Infraco with obtaining necessary approvals, but such assistance will be dependent upon timely, compliant and complete Form C submissions by the Infraco to Network Rail.

5. Lochside Avenue Junction

- 5.1 The GMP includes all Infraco Works based on the drawings referenced in letter from CEC dated 20 May 2010 (reference: SS1 40/RG) and included in the GMP IFC Drawings, which were approved with conditions by CEC on 20 May 2010. The Infraco is responsible for complying with any further requirements from CEC without additional payment or time relief.

6. Changes to Traffic Regulation Orders (TROs)

- 6.1 The Infraco shall be responsible within the GMP for additional costs arising from any change to Traffic Regulation Orders.

7. Washing Plant

- 7.1 The GMP is based on and includes for all Infraco Works and additional works or services to deliver the engineering solution currently proposed by the Infraco (Siemens) (*date to be inserted*) with additional arrangements for effectively washing the ends of trams on a more regular basis as required by the Employer's Requirements.

8. New Ingliston Works

- 8.1 The GMP includes for the future-proofing works for New Ingliston Limited as scoped in tie Notice of Change No. 27 and Infraco Notice of tie Change No. 258.

9. Trackform Type Confirmation

- 9.1 The trackform type is confirmed in the Agreed Trackform Summary (reference: SPM-TRW-GEN-0118).

10. Scottish Power connections

- 10.1 The GMP includes for Scottish Power connections to new street lights and new traffic signals from Haymarket to Lothian Road (inclusive) and Waverley Bridge to St Andrew's Square (inclusive).

11. Network Rail Possession Support

- 11.1 The GMP includes 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.

**APPENDIX V
SCHEDULE OF AMENDMENTS**

[To insert agreed Schedule of Amendments - for the purposes of the Preliminary Carlisle draft, see Paper Apart]

APPENDIX VI

KEY SUB-CONTRACTORS

The following Key Sub-Contractors have been approved by **tie** for the purposes of the GMP Scope:

[insert list of all the Civils Sub-Contractors from Airport to Lothian Road and all the systems Sub-Contractors for Lothian Road to Newhaven]

**APPENDIX VII
KEY PERSONNEL**

[insert list of approved Key Personnel for the GMP Scope of Works]

SUBJECT TO CONTRACT

**THIS DOCUMENT DOES NOT OFFER
TO CREATE ANY CONTRACTUAL
RELATIONS (WHETHER
EXPRESS OR IMPLIED)**

**GUARANTEED MAXIMUM PRICE
SCOPE OF WORKS**

1. The Guaranteed Maximum Price ("GMP") for the execution of the GMP Scope of Works is set out in Appendix II and is based on the following:
 - 1.1 The Infraco carrying out and completing the GMP Scope of Works (as defined below), to the approved, assured, integrated and compliant design, represented by the GMP IFC Drawings and in accordance with the Infraco Contract (as amended).
 - 1.2 "GMP IFC Drawings" shall mean the existing set of IFC drawings that represent the fully approved, assured, integrated and compliant design in accordance with the Infraco Contract and any other drawings which represent fully approved, assured, integrated and compliant design in accordance with the Infraco Contract and which the Infraco is obliged to deliver and use in order to carry out and complete the GMP Scope of Works.
 - 1.3 To the extent that the GMP IFC Drawings do not fully detail the scope of the Infraco Works (other than that which may be expressly instructed in writing by **tie** after *[insert date of agreement of the GMP]*) the GMP Scope of Works will be deemed to have included for all non-detailed or missing works or related services and deliverables.
 - 1.4 In the event that the GMP IFC Drawings contain any ambiguity or discrepancy, the GMP will be deemed to have included for correcting or removing any such ambiguity or discrepancy.
 - 1.5 The GMP Scope of Works shall include all Infraco Works required and arising from any actual or potential Permitted Variation, **tie** Change or Infraco Notice of **tie** Change issued by **tie** or the Infraco as at the date of this **tie** Change Order.
 - 1.6 Other than changes expressly instructed by **tie**, the costs of designing, carrying out, testing, commissioning and maintaining the GMP Scope of Works shall be at the sole risk of the Infraco.
 - 1.7 Unless the context requires otherwise, the definitions and rules in respect of interpretation contained in Schedule Part 1 (*Definitions and Interpretation*) of the Infraco Contract apply to this GMP Scope of Works.
2. It is agreed, without qualification, that the GMP is to include for all Infraco Works and Deliverables in respect of the following scope of works ("**GMP Scope of Works**"):
 - 2.1 The GMP Scope of Works shall comprise: all those Infraco Works necessary to deliver, as a fully functional commissioned tram system open for a public revenue generating public service and achieving the requisite run times in accordance with the Employer's Requirements and the Infraco Contract (both as amended), all those elements of the Edinburgh Tram Network set out below:

3. **ST ANDREW'S SQUARE TO AIRPORT** (including Enabling Works)
- 3.1 All Infraco Works for the following sections from St Andrew's Square (chainage 121150 and in respect of overhead line, chainage 120804) to Edinburgh Airport (chainage 712580):
- 3.1.1 St Andrew's Square (chainage 121150 and in respect of overhead line, chainage 120804 (temporary works may be required)) to Waverley Bridge (chainage 121380) (excluding the Omitted Civil Engineering Works described in Appendix A);
 - 3.1.2 Waverley Bridge (chainage 121380) to Lothian Road (chainage 130380 and in respect of overhead line, chainage 130663) (including those on-street Infraco Works carried out under the Supplemental Agreement in relation to Princes Street between ~~tie~~ and the Infraco, dated 29 May 2009);
 - 3.1.3 Lothian Road (chainage 130380 and in respect of overhead line, chainage 130663) to Haymarket (chainage 131247 and in respect of overhead line, chainage 131232) (excluding the Omitted Civil Engineering Works described in Appendix A);
 - 3.1.4 Haymarket Corridor (chainages 200000 to 200814 and in respect of overhead line, commences at chainage 131232);
 - 3.1.5 Roseburn Junction to Balgreen (chainages 510000 to 511477);
 - 3.1.6 Balgreen to Edinburgh Park Central (chainages 520000 to 524555);
 - 3.1.7 Edinburgh Park Central to Gogar (chainages 530000 to 531898);
 - 3.1.8 Gogar Depot;
 - 3.1.9 Gogar to Edinburgh Airport (chainages 710000 to 712580).
- 3.2 The design, construction and installation of a temporary Systems Point at St Andrew's Square (which shall mean the permanent tramstop and a point facilitating systems control, including necessary crossover, associated control systems, power transformation and distribution facilities to energise and de-energise the system and all associated overhead line infrastructure and parking for immobile Trams), excluding the Omitted Civil Engineering Works described in Appendix A.
- 3.3 In the event that ~~tie~~ is satisfied that it is not possible to establish a temporary Systems Point at St Andrew's Square pursuant to paragraph 3.2 above, the Infraco shall be required to design, construct and install an alternative Systems Point at a suitable location which enables the operation of the Edinburgh Tram Network to St Andrew's Square with identical run-time capability, and any works which are additional to the works described in paragraph 3.2 above will be instructed by ~~tie~~ as a ~~tie~~ Change necessary for the satisfactory completion of the Infraco Works which will be valued in accordance with Clause 80 (as revised).
- 3.4 All enabling works as follows and as shown in the sketches included in Appendix B:
- 3.4.1 from Newhaven Tramstop (at chainage 100000) to Retaining Wall 1A (at chainage 100170) – fill to bottom of track level;
 - 3.4.2 Lindsay Road Retaining Walls 1A, 1B, 1C and 1D (at chainages 1A 100170 - 100400; 1B 100230 - 100270; 1C 100390 - 100415; and 1D 100470 - 100490) – approved, assured, integrated and compliant design and construction;

- 3.4.3 Lindsay Road Link Road to Ocean Drive (chainage 100350 to chainage 100800) – removal of retaining wall and footpath, removal of trees and ground preparation, placing of earthworks fill and re-grading of profile;
 - 3.4.4 Lindsay Road (chainages 0 to 550) – lowering works; and
 - 3.4.5 Tower Place Bridge (at chainage 101430 - 101510) – works to be completed, including the track and the final roadway.
- 3.5 The completed, approved, assured, integrated and compliant Design for the Edinburgh Tram Network Phases 1a and 1b, to include certification thereof by each Infraco Member, the SDS Provider and any Infraco Party or SDS Provider Party involved in the production or development of Design or the Infraco's Design.

APPENDIX A

OMITTED CIVIL ENGINEERING WORKS

Omitted Civil Engineering Works shall comprise:

1. site clearance - removal and temporary storage off site of any street furniture such as bus shelters, bus trackers, CCTV installations, waste bins and decommissioning of telephone boxes and other permanent or temporary fixtures on the street;
2. temporary traffic management: installation, maintenance and demobilisation, including necessary lining and signage works;
3. planing road carriageways to appropriate depths and/or excavating down to design formation level of both carriageway and trackform (including associated spoil treatment, storage, reuse and disposal);
4. taking out kerbs and kerb logs;
5. dealing with any obstructions/soft spots/utilities/voids;
6. constructing track drainage, including connecting into and reinstating as required existing gullies and carriageway drainage;
7. installing cable duct banks;
8. excavating and constructing OLE pole foundations;
9. constructing up to formation of trackform slab in preparation for track installation by the Infracore;
10. civil engineering works to tramstops, up to and including platform level, including all necessary ducting and finishes, but not including tramstop furniture;
11. civil engineering works associated with tramstop equipment and the construction of the sub-station buildings and any associated civil engineering works;
12. re-laying kerbs to required design line and level;
13. reinstating/renewing paving;
14. installing all foundations and ducts for new traffic signalling at junctions/pedestrian crossings;
15. either overlaying wearing course to carriageway or alternatively building up full road construction and required surfacing layers to wearing course; constructing central reservations as required; constructing setted carriageway as required.
16. re-installing street furniture as required, including bus shelters, bus trackers, CCTV installations, waste bins, telephone boxes etc;
17. completing landscaping/street scaping works as required by the Employer's Requirements, Consents and relevant Third Party Agreements; and
18. all associated stakeholder and third party management and liaison functions in relation to these items.

**APPENDIX B
ENABLING WORKS SKETCHES**

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 the 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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