PRIVILEGED IN CONFIDENCE FOI(S)A EXEMPT

among

(1) tie LIMITED

and

(2) THE CITY OF EDINBURGH COUNCIL

and

(3) BILFINGER BERGER CIVIL UK LIMITED

and

(4) SIEMENS plc

and

(5) CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES S.A.

Second Memorandum of Understanding

in respect of the

EDINBURGH TRAM NETWORK



MEMORANDUM OF UNDERSTANDING

among

- (1) tie LIMITED (company number SC230949), whose registered office is at City Chambers, High Street, Edinburgh, Midlothian, EH1 1Y3 ("tie") which expression shall include its personal representatives, successors, permitted assignees and transferees;
- (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 ("CEC");
- (3) **BILFINGER BERGER CIVIL UK LIMITED**, a company incorporated in England and Wales under number 02418086 and having its registered office at 3rd Floor Braywick Gate, Braywick Road, Maidenhead, Berkshire SL6 1DA ("**8BUK**") which expression shall include its personal representatives, successors, permitted assignees and transferees;
- (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; and
- (5) **CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES S.A.**, a company registered in Spain and having its registered office at 3. M. Iturrioz 26, 20200 Beasain, Spain ("CAF") which expression shall include its personal representatives, successors, permitted assignees and transferees,
 - (3), (4) and (5) together the "Infraco".

BACKGROUND

- A tie and Infraco (at that time comprising BBUK and Siemens) entered into a contract on 14 May 2008 under which Infraco was appointed to carry out and/or manage the design, construction, installation, commissioning, tram procurement, system integration, infrastructure maintenance, tram maintenance and supply of related equipment and materials, trams and related infrastructure in respect of the Edinburgh Tram Network (such contract, amended as detailed below, is herein after referred to as the "Infraco Contract");
- By an agreement in writing dated 13 May 2008 ("Tram Supply Agreement") tie appointed CAF to design, manufacture and supply 27 Trams and to supply documentation and associated equipment in connection with the Edinburgh Tram Network;
- C By an agreement in writing dated 13 May 2008 ("Tram Maintenance Agreement") tie appointed CAF to provide services for the ongoing maintenance of the Trams and for the supply of consumables and spares for the Trams in connection with the Edinburgh Tram Network;
- By a Minute of Variation in writing dated 14 May 2008 ("MoV1"), tie, BBUK, Siemens and CAF agreed that CAF would become a party to the Infraco Contract;
- By agreements in writing dated 14 May 2008 ("Novation of Tram Supply and Tram Maintenance Agreements") tie and Infraco agreed, with the consent of CAF as the Tram Supplier and Tram Maintainer, that Infraco would take over the rights and liabilities of tie as the "Client" (as defined in the Tram Supply Agreement and Tram Maintenance Agreement) under the Tram Supply and the Tram Maintenance Agreements;
- F The Infraco Contract was amended by the Princes Street Supplemental Agreement entered into between the Parties in March 2009 and re-executed on 29 May 2009, a

H & 70

- Minute of Variation between the Parties dated 3 June 2009 ("MoV2") and a Minute of Variation between the Parties dated 23 April 2010 ("MoV3");
- G Following a mediation between the Parties and CEC which took place at Mar Hall between 8 and 12 March 2011 ("Mediation"), tie and Infraco entered into a Minute of Variation dated 20 May and 10 June 2011 ("MoV4") in order to vary the Infraco Contract to give effect to the Prioritised Works (as therein defined);
- The Parties and CEC had also proposed to enter into a settlement agreement on or before 30 June 2011 to give effect to the negotiations resulting from Mediation but they have been unable to conclude those negotiations in the time available and the Parties and CEC entered into a Memorandum of Understanding ("First Mou") dated 24 August 2011 to extend the timescale for the conclusion of these negotiations until 31 August 2011;
- Following the decision of CEC's Full Council Meeting on 25 August 2011 ("Full Council Meeting decision") and the rejection of the St. Andrew Square/York Place option proposed by CEC, the Parties and CEC wish to continue its negotiations and to afford CEC the opportunity to secure and confirm funding; and
- The Parties and CEC now wish to enter into this Second Memorandum of Understanding in order to: record that Infraco has an entitlement to additional costs and time as a result of the Full Council Meeting decision; extend the funding satisfaction date to 2 September 2011; and extend the timescale for the conclusion of negotiations until 14 September 2011.

DEFINITIONS AND INTERPRETATION

- 1.1 The definitions given in the recitals to this Second Memorandum of Understanding and those set out below apply to this Second Memorandum of Understanding:
- 1.1.1 "Effective Date" means 30 June 2011; and
- 1.1.2 "Outstanding Matters" means those matters to be agreed between the Parties and CEC including those set out in Part 2 of the Schedule to the First MoU to MoV4 to the extent that the same remain to be agreed between the Parties and CEC.
- 1.1.3 "Agreed Commercial Matters" means those matters set out in Part 4 of the Schedule of the First MoU to MOV4.
- 1.2 Unless the context otherwise requires, where the Infraco Contract has defined a meaning to any capitalised word or expression used in this Second Memorandum of Understanding, the same meaning shall be given to it in this Second Memorandum of Understanding.
- 1.3 Clause headings in this Second Memorandum of Understanding are for the convenience of the parties to this Second Memorandum of Understanding only and do not affect its interpretation.
- 1.4 Unless the context otherwise requires:
- 1.4.1 words importing gender include masculine, feminine and neuter;
- 1.4.2 the singular includes the plural, and vice versa; and
- 1.4.3 a reference to any Clause, Sub-Clause or Schedule is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause or schedule to this Second Memorandum of Understanding and reference in any Schedule to any Part, Paragraph or Sub-Paragraph is, except where it is expressly stated to the contrary, a reference to such part, paragraph or sub-paragraph of that Schedule (as the case may be):

MOV/4 Further Extension from MOU dated 24 August 2011-

SETTLEMENT AGREEMENT

- 2.1 The Parties and CEC acknowledge and agree that:
- 2.1.1 Subject to Outstanding Matters (which remain to be agreed) the current draft settlement agreement is annexed as Part 1 of the Schedule; and
- 2.1.2 The Agreed Commercial Matters have now been agreed and are reflected in the settlement agreement.
- 2.2 The Parties shall use reasonable endeavours to agree the Outstanding Matters by 14 September 2011.
- 3. PROGRAMME AND COST ENTITLEMENT FOLLOWING FULL COUNCIL MEETING ON 25 AUGUST 2011
- 3.1 The Parties and CEC agree that that Infraco has an entitlement to additional costs and time as a result of the Full Council Meeting decision and such entitlement shall be agreed by the Parties and CEC acting reasonably and shall be recorded in the settlement agreement.
- 3.2 The "Fixed Sum Prioritised Works Milestone" schedule at Schedule Part 2 (Scope and Pricing of Prioritised Works) of MOV 4 shall be replaced by the updated milestones for payment for the Fixed Sum Prioritised Works as annexed at Part 3 of the Schedule to this Second Memorandum of Understanding.
- 3.3 The "Fixed Sum Prioritised Works Price" schedule at Schedule Part 2 (Scope and Pricing of Prioritised Works) of MOV 4 shall be replaced by the updated price for the Fixed Sum Prioritised Works as annexed at Part 3 of the Schedule to this Second Memorandum of Understanding.

4. FURTHER VARIATION OF MOV4

- 4.1 The Parties and CEC agree that MOV4 (as amended by the First MoU) shall with effect from the Effective Date be further varied in terms of Part 2 of the Schedule to this Second Memorandum of Understanding.
- 4.2 Save insofar as varied hereby, MOV4 shall remain in full force and effect.
- 4.3 For the avoidance of doubt, save insofar as varied or superseded hereby, the First MoU to MoV4 shall remain in full force and effect.

5. NON BINDING EFFECT

-clause 2.1 and Pairs I and 4

5.1 With the exception of part of the Schedule to this Second Memorandum of Understanding, this Second Memorandum of Understanding shall be legally binding on the Parties and CEC.



6. LAW AND JURISDICTION

- 6.1 This Second Memorandum of Understanding and any matters arising from this Second Memorandum of Understanding shall be governed by and construed in accordance with Scots law.
- 6.2 The Parties and CEC hereby irrevocably submit to the exclusive jurisdiction of the Court of Sessions in relation to this Second Memorandum of Understanding and any such matter.

IN WITNESS WHEREOF these presents on this and the preceding a pages together with the Schedules which are annexed and subscribed as relative hereto are executed as follows:

THE PROPERTY OF THE PROPERTY O	EXECUTED	FOF	and	on	behalf	of	tie	LIMI	TE
--	----------	-----	-----	----	--------	----	-----	------	----

at WANGLESS	FORTA CONSIDERA
on 240 Sate 2011	by:
Authorised Signatory	Maring and a second a second and a second and a second and a second and a second an
Full Name	DUB THE ANDERSON
Witness Signature	
Full Name	
Address	

EXECUTED for and on behalf of THE CITY OF EDINBURGH COUNCIL.

at Edul-Bu	475	
on 2 Sept	2011 by:	
Authorised Signatory	Liver and the second second	
Full Name		
Witness Signature	initiation.	411
Full Name		
Address		



EXECUTED for and on behalf of BILFINGER BERGER CIVIL UK LIMITED

* EDINBUNG	legi .
on @2/@3/ 2011	by:
Authorised Signatory	Acceptance of the second of th
Full Name	MANTIN PORCEA
Witness Signature	
Full Name	MARTIN GAZZAPIEN
Address	
EXECUTED for and on behalf	
at tall, high	
on 0 2 0 9 2011	by:
Authorised Signatory	
Full Name	An or a second s
Witness Signature	
Full Name	MANTIN GAZLANIEN
Address	grific grave
EXECUTED for and on behalf Y AUXILIAR DE FERROCAR	
at Oscole	
on = = \$\int_{\text{or}} \int_{\text{or}} \int_{\text{or}} \frac{1}{2011}	эу:
Authorised Signatory	All the state of t
Full Name	Assocs M. Copplas
Witness Signature	######################################
Full Name	395/63\$3.756.7/2.62
Address	

- Addyor's Paydhay Extension from this his different at the goal fine of

Part 1

Draft Settlement Agreement

7 L

Part 2

MOV4 variations

Clause 1.2	In the definition of "Minute of Variation 5" delete "31 August 2011" and insert "14 September 2011".
	In the definition of "Relevant Date" at (i) delete "1 September 2011" and insert "14 September 2011" and at (ii) delete "1 September 2011" and insert "14 September 2011".
	In the definition of "Fixed Sum Prioritised Works Price" delete "17 September 2011" and insert "15 October 2011".
Clause 3.3:	delete "31 August 2011" and insert "2 September 2011".
Clause 3.3.1:	delete "until 31 August 2011" and insert "until 14 September 2011".
Clause 3.3.3:	delete "1 September 2011" and insert "2 September 2011".
Clause 3.4:	delete "31 August 2011" and insert "14 September 2011".
Clause 3.4.1:	delete "31 August 2011" and insert "14 September 2011".
Clause 3.4.2:	delete "1 September 2011" and insert "12 October 2011".
Clause 14.3:	delete "2 September 2011" and insert "15 September 2011".

LE COMPANY OF THE PROPERTY OF

Part 3

UPDATED SCHEDULES TO MOV 4

[Fixed Sum Prioritised Works Price]

[Fixed Sum Prioritised Works Milestone]



Edinthetet Frant Nationals Prioritized Works Schadole Part I : Priving of Prioritised Works

Applications	52.	: 40	45	- 49	46	4/	48	30
Seriod kas	32-5/00	20-405	28-70%	75-895	29-24	30.448	\$2.50g.	15-90
				11.00		0000		

(XED)	SUM PRIORITISED	WORKS						2000				2020			
tere	Description		Section	Work Dissers/Son	Member	Due east	23,450	17-55ay	75-10a	27.101	24-200	21 čeg	19-Det	18-110v	Social
1	Produced Modes	Ī			22.0X		7,564	1.000							
		1	Nice Wido	program Kare 1.9 50	Serrons		2,800	2,000							
		2	sasaWase	Materials and Educationic (Corte 1 & 3A, 5/2 C)	Siscoss		12,000		3,333	0(30)	4,383				
					201716			1.000	1,366	:,2%	: 200	3,396	: 200	5,300	•••
			\$5 pt \$1,050	Operational per	Stenders			4754	894	294	550	403	890	-394	
1				8.6. 316.21100.300	1860000					, XG					
:		*	1000	Photoscoticoticoticoticotico	Sierrens			;				·*************************************			
1					.880,000			22. 2	125	5.8	1.33	175	1.4	1,25	
-		1	15	digression rates	Seedless							280	150	:02	
-				5. V. V. S. S. S. S. S.	18801/8			1	158	2250	140	193	-	500	
		6	×	All stadiospools - Priode Collins of Works	Seesen										
					(46.55)			803	225						
		1	84	Defex Access design	Spendens										
-					8670335		5353	500							
- 1		S	*	Drock Area : Solating	Stessens:				7030	22	3055	366	303	627	
-					3400K			29,0	750	-900	300	350	**********		
-		3	Χ.	Olevel Are at 150 months and	26665666			300	200	. 203	200	750	796	7,353	
-					98Ct/K				200	200	200				
		¥2.	7.	Booksi Areas a faltos féas: Froca	Sections						:00	4/30	600	318	
المدعاء	ar Ajawea Pristyty Wa	dha				14,910	22,500	52,537	7.518	2,552	1,761	3,915	3,319	3.501	(9.1
T	Assessary beaut				SHOOK		:5	98	10	35	:5	15	15	15	
		3	346	Digeog Mücreenseck Vocato	Signoppo										
- 1					99508							90			
		F. 3	180	Some and rate in the spill of wooder	Diestess										
					601134								70		
- 1		1.53	10	or of toxon Spoker should basely	Sonos				.,	*******					
			37/	WILLIAM STATE OF THE STATE OF T	85065							500			
- 1			39.	かかか A 外来 宋万郎	Sasarase										
- 1					5990.000		25	- 8	- 76	23	75	75	75	75	**********
- 1		1	-	" and " in Kildy" of 1990, and a King of the state of the state of	Secretor				1		***************************************				
- 1					SECON	5385		1913				15871			
- 1		1.	04.87	1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1	Sections	***************************************									
					00(3)fs		55	10.00			3	-			
			10	Star (dedicare in March 10 gaths 10% about 60 10 gi)	Steesees					-					
1					06C0K				1			89			
		2	bas were	Costing for Cropinopassion:	Sidmons	******	************								
				Subcrampolet Innoclation (a) (a) (a) (a)	890166	1,305							520	134	
		75	195	5000	Ооосеск										
iceri è	or Assessans, process					5;235	112	3,724	128	90	90	1,771	736	\$24	\$:
					44444444										
estat h	er tekka Sikat Potaratio	ed Wark	was known the	n Pelan Sised Yearke Price		81,219	25.410	23,333	7.528	2,550.	7,793	5,350	1,519	8 327	\$2

TARGET PRICE PRIORITISED WORKS

-	Beccure	100	Service	the frequency											
1	Sugar Policy Wickle	41	(6)30-	Administration of property of the feet	68008	965				35	5.	90	350	990	
- 1	3 1		1000	And our grading was w	88036										
			177	20,200 cm 20,2000 40,2 to	, 5000 H000										
	on or other states	٧.	hos	Reference on the Resident Control of Management of the Resident Control of the Residence of the Control of the Residence of the Control of the Residence of the Control of	-0955K								.330	105	
shat f	on Target Price Pinerils	ed We	iks - Tagget	Price Priorithised (Works Price)		660	ø	0	Q	22	14	382	330	299	6

SUMMARY : 3Y WORK DESCRIPTION

Spanocary	3.	Metalisation / Multipula Schippperson (Carlo 4,2,4,188,8,5)	500000	***		3,3436	4,444	4,333	4,533	-0	4	9	
		Program William	T		900	3,543	5,486	3,568	3,369	3,519	3.223	5,803	
}	3	Austrakij siljetić			225	1,284	198	99	90	1,773	230	524	
-	3	Torget State World	T			9		5.9	0.7	40	250	29.4	

SUMMARY : BY HIFRACO MEMBER

:00m	Descriptions			bifoss/Seniler									
	5490569	33	33%	Sibligue Berger Contactionpoo		5,110	9 53 7	3,200	2746	7,199	3,655	3,459	2,654
			374	Seventing.		15,536	2,590	2.228	17.777	5,673	3,798	1.700	1,728 47,000
Yosali					92 978	75 255		2,910		1,644	470	4.79	5,192 41,519

Print - 1 This hards only reconsists reproduce a facilitation of security and for distance of a paradox restriction of the produce of the Printing Word.

2. The security and reproduce a security of the Continue Accounts and Printing on the Continue Accounts an

Edinburgh Tran Network:

				na Schedula.			Sophistose	42	27	34	- 25	38	47	44	(80)				
							Period Sea	30-54ar	50.70	28 7/166	23/35/4	33.542	20.40g	17.565/	(60%K				
KED.	EURI PRIGRITISED	NORKS	¥	8		S		10000					00.000	× 0.4	:0 X-x				
5	1 Acceptance		Section	Wink Description	Mississe (spe	wooder	(0.04.00)	esteries	174559	24.500	22.53	240000	20.500	প্রব	:6702	let			
1	Provided Works				Steri Gridginghes	59000		7,900	0,1000							52			
		7	Site Wide	Miledustrian (Coms. v.S. 2)	Northeadach	Signatora		7,500	4,000										
-		7	565 Wido	Majorials and Equipment (Corp. 1 & Dayle & C)	Sket kan Shandder	Steinoco	·	(2:500)		4,234	33,323	1,233							
}					Stander genee	500000			1,2/91		4,200	t/zer	§	1,200	1,266				
-		.60	Rec Wide.	. And to Andrews	Paradisan Madigas Paradisanan	99150001			934		460				446	-			
-						88098			***		100	تتبسيا	50						
3			10,000	Otrocou Street 732 (Exatting Works	Niver contractors Visnationers		ļ		ļ		300		3.4						
3						Sychotos													
3		6	224	Marquefet Note	Nevertie Assistant	geries	<u> </u>			16.00	1373	135	129	1.75	(28)				
3					WikeNoveya:	Species							350	253	192				
-		5	×	NS Undergoss Proceeds & Williams	40000000000000000000000000000000000000	590005.			}	250	390	150	133	192	926				
-				na onection control of a way.	Note Vieto Sol	Starpens													
1					Succession Washington	-886VR -			163	235									
3		7	QC.	Count Sciens Gratia	Works Missioner	. Sieteces .							†						
3						Section	l	5151	506			********				.			
2 Secretary trans	٨	٤٠	Stepper Array Autibing	Award and Constituted Water Wikeyana	5000000				200	342	.40	450	402	699					
					588305			7%	80	.000			ļ						
	٠	16.	(Kyrid-Xiras) s éstantis Norme	Topo Schrift Conclusion		-									····				
	50				Scotene			200	800		250	·	- 390	3,201					
	55	8	Gopal Areas (Mail Fest Track)	10000000000000000000000000000000000000	260505	***			250	. 93 0	2-90								
	833333							200020000	Segress:						350	300	300	316	
	183					38,656	27:300	12.56	1,218	3,465	2,102	2,519	1,355	5,80					
×	Steelies trace				.60056m00000a	Selcon:		15		55	10	10	- 33	17	.15				
			!A	Strylling kitalnoonse Works	Werfit Ministers	Simes							1						
					-167.5385464ssst	89598	I			4.0		†	90						
			46	National Verting in Mannagher Conson.	Albert States and	Berness.								<u> </u>					
					************	000000						1	2						
		35	. 54	Alegoe of Science Selection of English Modern	Particle Actions (CA)	-			-		-		ļi	ļ					
		-		hiii		Swingle.													
= 1		-	144	00-100-05 VE2864592V209	Swatuk Morecu More Morecu	BRCGS:							500						
				P24	9000000000	3000000							li	ļ					
			*	okrawa - dripasy Magazopianie Vyaris	Sugar September	88006		75	:	1 ~	10	(25		23				
		-			386.200000	5500000													
				Land a waste of	Fred Survey State 2014	000,000			1,994			-	1,973						
			3483.6	Obbliscom Seminally Work in Programs	dunicolocust	domesti.			1										
					Signatur represent	200.00		36											
		3	-	Charles to the Valential Editional following (f	Store Wincom	Sentock			1	1		1	†	!	1				
						3600X			 				73	:	}	i			
		9	See Wide	Policy Challes Committee	Savabula friendas Works Miteriolog	Seeres													
												ļ	ļ			!			
- 1		-26	2 > †	Subministrative concessions /eer 5 0x0yes Note:	Paradolik Policina Work (Stations)	55'038.					ļ	ļ		38	333				
		L	L			500,000							1			ļ			
							1 156		24.	156				1 74	534				
	oc suprison works															100000000			

TARGET POICE PRIORITISED WORRS

Yagar eskarolasi	ķ	10208	Advanced Anning Institution will be an applied.	Prograffin Phytians World Stike (de n	86506	×		31	<u>0.3</u>	-36	160	(30)	
ži.				147,000,000,000,000,000	46C16C			 					
		egres	fictions street dutskepting Works	Youru Staniosi	5000554								
1	-3:	18/10	Subsectioning Coperinter Cashs 2 Septiminates	Togodista foortus : Shoostireada	\$802¢						136	. 161	

SUMMARY : BY WORK DESCRIPTION

6 Suboncer:	2. 1	Michigation / Materian & Equipment (Cens. 1.1 & 298 C.C.)		57,000	9.920	4.574	0,444	4.553	.09	- 4		
i		States views	1 2998	360	3,54	3 (54)	1282	3,763	3,659	3,000	> 603	
	1.31	Assisted Medic		146	4,70 0	:10	- 34	30	1,321	990	521	
	4	Yeapet Price Verying		2	.0	- 15	41	€0	30	,200	710	<i>.</i>

SUMMARY : BY IMPRACO MEMISER

2500 X400 X		26100	********							
d Spenier	e	iw.	Siftinger danger Si Si Victorias	2,355	9,697	200 1,246	2,189	3,636	: 485	/,55A
	2	SW	1820005.0K	25(1950)	4,004	Jan 1977	3,572	5,724	3, 590	2,738
1000				 22.515	31331	300	7,660	9,676	0.0%	

Ware 1. The county why shows the expenditure of the fractional distribution to contain 1911 and does not recovered the total where it his X-contained Marillo X-ray employees the restributional process of the X-contained X-



Part 4

Agreed Commercial Matters

- 1. The Contract Price for the Off Street Works is £362,500,000.
- 2. The termination amounts payable in the event that the Funding Satisfaction Date does not occur on or before the Termination Date shall be BBUK £27,761,517 and Siemens £38,488,963.

THE STATE OF THE PARTY OF THE P