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**Your reference**

**Our reference**

AF/JLG/310299/15  
UKM/31529396.1

**Attention: S. Reynolds, Esq**

E-mail: ReynoldsS@pbworld.com

2 September 2010

**BY MAIL AND EMAIL**

Dear Sirs

**EDINBURGH TRAM NETWORK PROJECT  
SDS PROVIDER AGREEMENT DATED 19 SEPTEMBER 2005 (AND  
SUBSEQUENT NOVATION 14 MAY 2008)**

We have received your letter dated 27 August 2010, responding to our letter of 18 August 2010.

Our clients are disappointed with your response, as it fails to address the requests made in our letters of 5 and 18 August 2010, both of which clearly seek that you provide us with copies and details of any agreements you have entered into with the Bilfinger Berger - Siemens - CAF Consortium (or any Consortium member) and details of all Deliverables which have been influenced by any such arrangement (please refer to the letters for the full details of our request).

As advised, our clients were made aware that such an agreement was intended to be entered into. The conclusion of such an agreement has been verbally confirmed by Mr Darcy and Mr Kitzman, and informally confirmed in writing by Mr Russell, all at a senior level within Bilfinger Berger.

Entering into such an agreement is a straightforward breach of your contractual commitments under the SDS Agreement (as novated to the BSC Consortium) and to **tie** under the SDS Novation Agreement and the SDS Collateral Warranty.

Your non-disclosure of this agreement suggests to our clients that you also consider it to contain matters which are in breach of your contractual commitments and which are materially adverse to our clients. Your conduct puts our clients under a duty to investigate fully the effect of this agreement on best value design production and whether this agreement itself, or actions done or not done as a consequence of it, have adversely affected best value design and/or comprise a Prohibited Act. The absence of a completed design after 4 years and 10 months since your appointment compounds our clients' views.

Our clients draw adverse inference from your non-disclosure of the agreement, combined with the unsatisfactory and potentially disingenuous response to our letters of 5 and 18 August 2010. Those inferences include the fact that your conduct may

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amount to delictual interference with our clients' business and an intentional conspiracy which has caused them harm. Our clients' rights of action are expressly reserved.

Please provide us with the agreement and the information we seek on behalf of our clients.

Yours faithfully

*DLA Piper Scotland LLP*

**DLA PIPER SCOTLAND LLP**