

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); and
 - 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 100000 at Newhaven.
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.
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 eventuate) arising from or in connection with the GMP, GMP Scope of Works (and Omitted Civil Engineering Works), save as expressly provided in this **tie** Change Order, as confirmed in the Deed of Variation.

5. **tie** reconfirms its instruction to proceed and the Infraco agrees to:

pursuant to the Infraco Contract (as varied pursuant to this **tie** GMP Change Order and the Deed of Variation), and in consideration of Part A of the GMP, the immediate commencement and carrying out and completion of Part A of the GMP Scope of Works to **tie**'s satisfaction.

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

if instructed by **tie** (at **tie**'s absolute discretion) at any point during the Term, the Infraco shall carry out all Infraco Works required to complete the on-street works described in Part B of the GMP Scope of Works, in consideration of payment by application of the prices contained in Part B of the GMP.

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 approved, assured, integrated and compliant IFC Drawings 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 IFC Drawings used for the construction and completion of the GMP Scope of Works.

7.5 In the event of any ambiguity or discrepancy in the IFC Drawings relating to the GMP Scope of Works, this will be the responsibility of the Infraco included within the GMP, and the Infraco will have no entitlement to any additional payment or time to make any necessary correction to the IFC Drawings and to complete the Infraco Works required for the GMP Scope of Works.

7.6 The Infraco shall obtain all 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.

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

no later than [*date*] 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.

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

the Infraco shall design, carry out and complete certain enabling works to be determined 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;

- 10.2 the dates for completion of each Section under Part A of the GMP Scope of Works being the Completion Dates as shown in Appendix III, the Completion Dates being updated to refer to completion at Waverley Bridge and not Newhaven; and

- 10.3 for the purposes of Part B of the GMP Scope of Works, liquidated and ascertained damages shall be calculated on the basis of anticipated costs of maintaining traffic management and direct supervision of the individual programmes of works between Systems Points.

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

The expiry date of both the Performance Bond and the Retention Bond shall be extended to the date which is two years from the revised Completion Date for Section D.

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** instructs and the Infraco agrees that:

pursuant to Clause 26.2 of the Infraco Contract, the Infraco will submit for **tie's** approval full details of the experience and qualifications of the Infraco's Representative for the GMP Scope of Works. **tie's** approval (or otherwise) shall be at the absolute discretion of **tie**.

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

by the date of this **tie** Change Order, the Infraco will submit for **tie's** approval (at **tie's** absolute discretion) the nominated Key Personnel 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 80.18) for the purposes of the GMP Scope of Works, as shown in the Schedule of Amendments included in Appendix V, such modification including:

16.2 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);

16.3 clarification that any adjustments to the GMP shall be evaluated in accordance with revised Clause 80; and

16.4 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.

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 and submitted to **tie** on the last Friday of each calendar month showing any change to the Programme and, subject to stakeholder notification, any revised order, sequencing methodology or manner in which the Infraco proposes to carry out the Infraco Works.

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 planting works which shall be carried out by the Infraco at the beginning of the next planting season.

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 prior to the date of this **tie** Change Order; and

(ii) the arrangements concluded under the Deed of Variation 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.

21. tie instructs and the Infraco agrees that:

in respect of Part A, 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; and

in respect of Part B, interim payments shall be certified on the basis of fair value of work done to the date of the application by the Infraco.

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:

in the event that Network Rail unreasonably delay in giving approvals, provided that such delay could not have been reasonably foreseen, avoided or mitigated by the Infraco, 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 the Infraco agrees that:
- [Permits to Work - to discuss]*
29. **tie** instructs and Infraco agrees that the definition of Construction Works Price shall be amended to reflect GMP.

**APPENDIX I
GMP SCOPE OF WORKS**

[Insert GMP Scope of Works]

APPENDIX II

AGREED ESTIMATE (GMP PRICING SCHEDULE)

Definitions used in this Appendix II

“**GMP**” has the meaning given to it in the Scope of Works.

“**GMP Analysis**” means the GMP Analysis set out below in this GMP Schedule.

“**Agreed GMP Scope**” has the meaning given to it in the Scope of Works.

“**Scope of Works**” means the GMP Scope of Works included at Appendix I.

“**Part A**” means the sections of Phase 1a of the Edinburgh Tram Network from Waverley Bridge to Edinburgh Airport (excluding the works carried out under the PSSA) plus the enabling works in Section 1A, all as described in the Scope of Works.

“**Part B**” means the sections of Phase 1a of the Edinburgh Tram Network from Waverley Bridge to Newhaven (excluding all civil engineering works), all as described in the Scope of Works.

“**PSSA**” means the Princes Street Supplemental Agreement between **tie** Limited and the Infraco Members dated 29 May 2009.

“**PSSA Works**” means the civil engineering works carried out by the Infraco pursuant to the PSSA.

GMP Analysis

Construction Works Price Part A	216,492,216
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

Part B £ £

Construction Works Price Part B (subject to Prolongation Costs and interim payments for materials as below). The price for each of the following sections shall be subject to separate payment mechanisms for trackworks and other works:

Waverley Bridge to St. Andrew's Square

St. Andrew's Square to York Place

York Place to Foot of the Walk

Foot of the Walk to Ocean Terminal

Ocean Terminal to Newhaven

Part B Sub-Total	22,595,033
SDS Price	To be determined
Tram Supply Price	9,887,637
Infraco Maintenance Mobilisation	Included in Part A

Tram Maintenance Mobilisation

148,770

Infraco Spare Parts

Included in Part A

Part B Payment Schedule

Installing trackworks on prepared foundation

The Infraco shall install trackwork 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. Providing, taking from store, delivering to site, permanently installing in accordance with the assured integrated design approved pursuant to Clause 19 and by tie, in accordance with a reasonable programme agreed by tie, track rails and their supports and sleepers on a foundation prepared by others.
2. The Infraco shall provide and permanently install in accordance with the said design composite packers to the rail flanges prior to handing over the installed track to tie.
3. The Infraco shall bear no responsibility for the foundation to the track, nor for any of the works subsequent to the installation of the track.
4. The Infraco shall be reimbursed in accordance with this schedule of rates:

Item	Approximate	Rate
	Quantity	£s
4.1 At one visit installing between 40 and 100 metres of track	tba	tba
4.2 At one visit installing between 100 and 200 metres of track	tba	tba

- | | | | |
|-----|---|-----|-----|
| 4.3 | At one visit installing between 200 and 300 metres of track | tba | tba |
| 4.4 | At one visit installing greater than 300 metres of track. | tba | tba |

Installing and commissioning overhead and E&M works

The Infraco shall install, test, commission and energise all other Infraco Works contained in this Scope of Works in accordance with the Infraco Contract revised by the **tie** Change Order and subject to **tie** issuing the Infraco with 14 days' notice to commence work and in accordance with the following provisions:

1. In sections between Systems Points
2. The Infraco shall be reimbursed in accordance with this schedule of rates:

Item	GMP Sum
2.1 Haymarket to Shandwick Place [this is in Part A]	tba
2.2 Shandwick Place to St Andrews Square [partly ditto]	tba
2.3 St Andrews Square to York Place	tba
2.4 York Place to Foot of Walk	tba
2.5 Foot of Walk to water of Leith	tba
2.6 Water of Leith to Ocean Terminal	tba
2.7 Ocean Terminal to Newhaven.	tba

**APPENDIX III
COMPLETION DATES**

Section	Agreed Completion Date
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 approved, assured, integrated and compliant 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 approved, assured, integrated and compliant 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 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 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. OLE Interface at Tower Place Bridge

- 7.1 The GMP is based on and includes for the Infraco being responsible for obtaining CEC approval for the OLE Interface at Tower Place Bridge.

8. OLE Interface at Russell Road Retaining Walls 3 & 4

- 8.1 The GMP is to be based on and includes for the Infraco being responsible for obtaining CEC approval for the OLE Interface at Russell Road Retaining Walls 3 & 4.

9. Interface with Scottish Power at Depot

- 9.1 The Infraco was notified of the local power supply provider at the Depot on 15 July 2010 and the Infraco is responsible for installing (or procuring the installation of) meter arrangements.

10. Washing Plant

- 10.1 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.

11. Design Assurance Statements

- 11.1 All necessary design assurance statements, approvals and Consents for the design, construction, testing and commissioning and opening for public services of the Edinburgh Tram Network included within and related to the GMP Scope of Works shall be provided to **tie** by the Infraco in accordance with the Infraco Contract, together with the Safety Assurance Plan to enable the Edinburgh Tram Network to comply with ROGS and the Law. Integrated Infraco Design Assurance Statements signed by all Infraco Members, Infraco Parties, and the SDS Provider (and any relevant SDS Provider Party) and interdisciplinary checks in each case to **tie**'s reasonable satisfaction shall be required for all IFC Drawings for the GMP Scope of Works.

12. New Ingliston Works

- 12.1 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.

13. Trackform Type Confirmation

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

14. Edinburgh Park and Edinburgh Airport

- 14.1 The GMP is based on access at Edinburgh Park and Edinburgh Airport being available to the Infraco, providing that the Infraco complies with its obligations under the Infraco Contract, Third Party Obligations and EAL Licence and EAL Lease.

15. OLE Vehicle Impact Report

- 15.1 The Infraco remains responsible for obtaining all necessary Consents in accordance with the Infraco Contract.

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]