

**MOBILISATION AND ADVANCE
WORKS CONTRACT
EDINBURGH TRAM NETWORK**

1 Workshare Professional comparison of
interwovenSite://EDIDMS/UKMATTERS/16563327/9 and
interwovenSite://EDIDMS/UKMATTERS/16563327/10. Performed on 06/12/2007.

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AGREEMENT

BETWEEN

- (1) **tie LIMITED**, a company incorporated under the Companies Act with registration number SC230949 and having its registered office at City Chambers, High Street, Edinburgh, Midlothian, EH1 1YJ ("**tie**"); and
- (2) **BILFINGER BERGER (UK) Limited** (a company incorporated in England and Wales under number 02418086 and having its registered office at 150 Aldersgate Street, London EC1A 4EJ) **and 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) (together, "**Infraco PB**").

WHEREAS

- (A) **tie** has conducted a competitive tendering process pursuant to a notice published in the Official Journal of the European Union on 31 January 2006 and has selected Infraco PB to conclude (subject to the Preferred Bidder Agreement, being a document of that name entered into between **tie** and Infraco PB on 22 October 2007 (the "**PB Agreement**") and to enter into a contract ("**the Infraco Contract**") for the design, construction, testing, commissioning and maintenance of the Edinburgh Tram Network;
- (B) Certain works and services are necessary to support **tie's** project programme and to prepare for commencement of the main implementation works of the Infraco Contract to be concluded between **tie** and Infraco PB;
- (C) In its capacity as appointed Preferred Bidder, Infraco PB shall have begun to and shall continue to undertake the activities, works, services and supplies (set out in Part I of the Schedule) ("**the Mobilisation and Advance Works**") in accordance with this Agreement; and
- (D) the Mobilisation and Advance Works constitute part of those activities, works, services and suppliers that, but for this Agreement, would have been provided by Infraco PB pursuant to the Infraco Contract.

NOW IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 From the date of execution of the Infraco Contract, the terms and conditions of the Infraco Contract will apply to the Mobilisation and Advance Works and this

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Agreement shall (without prejudice to clause 6.3.1) cease to have effect in relation thereto.

1.2 Until the date of execution of the Infraco Contract, if there are any inconsistencies or conflicts between the terms and conditions of this Agreement and the terms and conditions of the Infraco Contract, the terms and conditions of this Agreement shall prevail with respect to the performance of the Mobilisation and Advance Works.

1.3 In this Agreement, the following terms shall bear the following meaning:

1.3.1 "Agreed Element Estimate" has the meaning ascribed to it in clause 5.3, or such other price as is determined by ~~tie~~ pursuant to clause 10;

1.3.2 "Days" means Business Days;

1.3.3 "Employer's Requirements" has the meaning given in the PB Agreement;

1.3.4 "Infraco Contract Terms" means the terms and conditions of the draft Infraco Contract dated 3 December 2007, ~~in so far as such terms had been agreed between the Parties as at that date~~;

1.3.5 "Infraco Contract Works" means the works described in the Infraco Proposal included within the PB Agreement;

1.3.6 "Infraco Members" means each of Bilfinger Berger (UK) Limited and Siemens Plc, in circumstances where an obligation placed on them under this Agreement is several and not joint;

1.3.7 "Infraco Proposals" has the meaning given in the PB Agreement;

1.3.8 "Mobilisation and Advance Works Price" means the estimated price for the Mobilisation and Advance Works, as shown in Part 2 of the Schedule, or such other maximum estimated price calculated in accordance with this Agreement;

1.3.9 "Reporting Period" means (except in the case of Period 7, which will be the period from the date of execution of this Agreement until 8 December 2007) each of the four-week periods ending on: [parties to confirm](#)

- 5 January 2008;

- 2 February 2008;

- 1 March 2008;

- and 4 weekly thereafter

1.4 All other capitalised terms shall, where the context permits, have the meaning ascribed to them in the Infraco Contract Terms.

1.5 References to "the Schedule" shall, where the context permits, refer to the Schedule to this Agreement.

1.6 Obligations under this Agreement expressed as:

1.6.1 those of "Infraco PB", shall be joint and several obligations of Billfinger (UK) Limited and Siemens plc; and

1.6.2 those of "each of the Infraco Members" shall be several obligations, which shall apply to each of Billfinger (UK) Limited and Siemens Plc in the manner and to the extent that such obligations would have applied to such entity had it alone entered into this Agreement with **tie**.

2. MOBILISATION AND ADVANCE WORKS

2.1 Infraco PB shall perform the Mobilisation and Advance Works:

2.1.1 in accordance with the terms and conditions set out in this Agreement;

2.1.2 in accordance with any written instructions issued by **tie** to Infraco PB in accordance with clause 10;

2.1.3 in accordance with the terms and conditions of the Employer's Requirements and the Infraco Proposals;

2.1.4 with a reasonable level of professional skill, care and diligence to be expected of a properly qualified and competent professional organisation experienced in providing and carrying out works and services for projects of a similar size, scope and complexity to the Mobilisation and Advance Works;

2.1.5 so as to ensure compliance with the Edinburgh Tram Acts and, in particular, Infraco PB shall comply with Schedules 6 and 7 of the Edinburgh Tram

(Line One) Act 2006 and the Edinburgh (Line Two) Act 2006 in relation to its use and occupation of sites referred to; and

2.1.6 in accordance with the Code of Construction Practice and the Noise and Vibration Policy.

2.2 Infraco PB shall use reasonable endeavours to undertake and complete the Mobilisation and Advance Works in accordance with the Mobilisation and Advance Works Programme submitted by Infraco PB and set out at Part 3 of the Schedule ("the Programme").

2.3 Without prejudice to Infraco PB's obligation, pursuant to clause 2.2, to perform the Mobilisation and Advance Works in accordance with the Programme, Infraco PB shall:

2.3.1 continue expeditiously to carry out those Mobilisation and Advance Works which Infraco PB has, at the date of this Agreement, begun to perform; and

2.3.2 use reasonable endeavours to complete the Mobilisation and Advance Works by 28 January 2008, or by such other date or dates as the Parties may agree in writing at their absolute discretion.

3. KEY STAFF AND SUBCONTRACTING

3.1 **tie** has nominated Susan Clark ("the **tie** Project Manager") to act on its behalf in relation to the performance of the Mobilisation and Advance Works. **tie** shall be entitled to appoint a replacement Project Manager at any time by communicating this in writing to Infraco PB.

3.2 Infraco PB has nominated Scott McFadzen to be the Infraco PB Co-ordinator and to act on its behalf in relation to the performance of the Mobilisation and Advance Works.

3.3 The Infraco PB Co-ordinator (or any replacement made pursuant to this clause 3.3) shall not be removed or replaced, without either the prior written consent of **tie** or pursuant to a request made by **tie** (acting reasonably) under clause 10.3. Such consent shall not be unreasonably withheld or delayed. The **tie** Project Manager and the Infraco PB Co-ordinator shall (subject to any express provisions of this Agreement to the contrary) have the full authority of the respective Party in relation to this Agreement.

- 3.4 Infraco PB is not permitted to sub-contract the whole of the Mobilisation and Advance Works. Subject to clause 3.5, if Infraco PB wishes to sub-contract any part of the Mobilisation and Advance Works it can only do so with the prior written approval of **tie** (such approval not to be unreasonably withheld or delayed). To obtain **tie's** approval, Infraco PB must send a written request for approval at least five (5) days before it wishes to enter the sub-contract, together with a copy of the proposed form of sub-contract. **tie** will then either give its prior written approval, or set out its reasons for refusal.
- 3.5 **tie's** consent is deemed to have been given, pursuant to clause 3.4, to the appointment of the sub-contractors listed in Part [] of the Schedule. For the avoidance of doubt, this clause 3.5 is without prejudice to the obligations of Infraco PB under the Infraco Contract in relation to sub-contracting, or to the responsibility of Infraco PB for the actions, works and activities of its sub-contractors in relation to the Infraco Contract.
- 3.6 Infraco PB shall remain responsible for the work and activities of any sub-contractor under this Agreement as if such works and activities had not been sub-contracted.

4. SITE ESTABLISHMENT

- 4.1 Infraco PB will give **tie** no less than five Business Days written notice of the dates on which it will require access to any part of a Site for carrying out any part of the Mobilisation and Advance Works, specifying the land it will need in order to establish site offices and initial working areas. Infraco PB acknowledges that such access may not be exclusive. Within two Business Days of its receipt of any such notice, **tie** will confirm in writing to Infraco PB, at its absolute discretion, the extent to which such access is permissible, any restrictions or conditions with which Infraco PB must comply in relation to such access and/or the reasons why the access requested has not been granted.
- 4.2 Infraco PB shall not permit any of its staff (or any of its sub-contractor's staff) to enter any land owned or occupied by **tie** or the City of Edinburgh Council for any purpose connected with this Agreement, unless and until they have received appropriate permission from **tie** pursuant to clause 4.1. Any such access will be strictly in accordance with any restrictions or conditions set out by **tie** pursuant to clause 4.1.

5. PLANNING, PAYMENT AND REPORTING

- 5.1 Prior to giving **tie** the notice referred to in clause 4.1, Infraco PB shall advise **tie** of its proposed methods for carrying out any of the Mobilisation and Advance Works on site and shall not proceed with any activity unless and until **tie** has, in its absolute discretion, notified Infraco PB in writing of his acceptance of the proposed method for carrying out a particular activity. In exercising its discretion under this clause 5.1, **tie** will consider whether or not the proposed activity is within the scope of the relevant works as set out in this Agreement, and whether sufficient and appropriate information has been provided to **tie**. If **tie** does not accept the proposed method for carrying out a particular activity Infraco PB will, if required to do so by **tie** but subject always to agreement of the relevant estimate pursuant to clause 5.3, nevertheless carry out that activity in accordance with the original proposal of Infraco PB, pending resolution of the matter pursuant to clause 12. **tie's** acceptance shall not imply approval of the methods proposed by Infraco PB nor shall it in any way limit Infraco PB's responsibilities, or any of **tie's** rights, under this Agreement.
- 5.2 Subject to Infraco PB carrying out its obligations under this Agreement (including without limitation, completion of the Mobilisation and Advance Works in accordance with the Programme and to the satisfaction of **tie**), **tie** will pay an amount to Infraco PB calculated in accordance with clause 5.3. The only amounts payable by **tie** to Infraco PB pursuant to this Agreement shall be the aggregate of:
- 5.2.1 all of the Agreed Element Estimates;
 - 5.2.2 any amounts payable by **tie** to ~~the~~-Infraco PB under clause 8.2; and
 - 5.2.3 any amounts payable by **tie** to Infraco PB under clause 5.6.
- 5.3 Infraco PB shall provide to **tie** a detailed estimate of the cost of each element of cost of the Mobilisation and Advance Works as described in Part 2 of the Schedule. Infraco PB will begin or continue work on each element only following agreement of the detailed estimate by the Parties (such agreed estimate being the "Agreed Element Estimate") unless the Parties, acting reasonably, agree in writing to the contrary. The estimate shall be prepared by measurement and valuation, applying the rates and prices set out in the PB Agreement to the extent that such rates and prices are applicable, and otherwise at pro-rata rates or, where pro-rate rates are not applicable, at fair rates for

the work to be done. The Parties shall use all reasonable endeavours to agree the estimate within a reasonable period of time.

5.4 At the end of each Reporting Period, Infraco PB may submit an application for payment in relation to each element of the Mobilisation and Advance Works which it has begun to work on or completed, in accordance with this Agreement. Any such application shall be submitted to **tie**, supported by comprehensive detail of the value of work completed or the proportional value of the work in progress, by reference to the Agreed Element Estimate of the relevant element, and such other supporting documentation as is reasonably required by **tie**.

5.5 **tie** shall issue a payment certificate to Infraco PB within 5 (five) days from the date on which **tie** receives the application for payment and supporting information referred to in clause 5.4. Following its receipt of a payment certificate issued by **tie** pursuant to this clause 5.5, Infraco PB shall issue a VAT invoice (which must include a copy payment certificate) to **tie**. **tie** will pay any undisputed amount set out in such an invoice within 35 days of receipt. Interest due on any undisputed amount set out in such invoice which remains unpaid after this date at 2% above the prevailing Royal Bank of Scotland plc published base rate.

5.6 If this Agreement is terminated pursuant to clause 6.1 by **tie** Infraco PB shall be entitled to payment by **tie** only in respect of:

5.6.1 works performed prior to the date of such termination (determined by reference to the Agreed Element Estimates) which have been, or are subsequently, assessed by **tie** to be satisfactory; and

5.6.2 to the extent demonstrated to the satisfaction of **tie**, cancellation costs in respect of sub-contractors for supplies and works entered into in respect of the Infraco Works. This is provided that the entry into such contracts was previously agreed in writing between Infraco PB and **tie**.

Without limitation to the generality of clause 13, other than as specifically provided for in this Agreement, **tie** will not be liable to Infraco PB, other than as specifically provided for under this Agreement, for any costs, losses, commitments, loss of profit, loss of overhead contribution, consequential or indirect loss or any other costs whatsoever arising from the termination or expiry of this Agreement.

- 5.7 **tie** shall be entitled to set-off (by issuing a valid invoice) any sums due and payable by Infraco PB to **tie** against any amounts payable pursuant to this paragraph 5.
- 5.8 Not later than 7 (seven) days before the end of each Reporting Period, Infraco PB shall provide **tie** with a report ("Period Report"). The Period Report will include:
- 5.8.1 a commentary on the activities undertaken during the relevant Reporting Period;
 - 5.8.2 the progressed programme together with an explanation of the progress of each activity against the baseline; and
 - 5.8.3 a cost report setting out:
 - 5.8.3.1 the current expected total price of the Mobilisation and Advance Works which will be payable by **tie** pursuant to this Agreement;
 - 5.8.3.2 a cash flow forecast in relation to the carrying out of works under this Agreement;
 - 5.8.3.3 details of procurement commitments made by Infraco PB; and
 - 5.8.3.4 details of procurement commitments to be made in the next Reporting Period by Infraco PB;
 - 5.8.3.5 a commentary on the commercial aspects of this Agreement.
 - 5.8.4 details of any information and actions which Infraco PB wishes **tie** (in its absolute discretion) to provide or carry out; and
 - 5.8.5 a safety report detailing any relevant incidents, and the corrective action taken by Infraco PB.
- 5.9 **tie's** obligation to make any payment pursuant to this Agreement to Infraco PB will be suspended, and the date on which any such payment is due extended accordingly, to the extent that any Period Report due under clause 5.8 has not been provided to **tie** to the satisfaction of **tie**.

6. TERMINATION

- 6.1 **tie** may terminate this Agreement upon giving Infraco PB 7 Business Days notice in writing at any time.
- 6.2 Infraco PB may not terminate this Agreement, unless **tie** fails to pay any undisputed amount within 20 Business Days of the date on which payment of such undisputed amount fell due under this Agreement.
- 6.3 This Agreement shall terminate immediately:
- 6.3.1 on the Infraco Contract being entered into by **tie** and PB; or
 - 6.3.2 if the Infraco Contract has not been entered into by **tie** and Infraco PB by 28 January 2008, or by such later date which the Parties, prior to 28 January 2008, agree.

7. INTELLECTUAL PROPERTY RIGHTS

The terms of clause 102 of the Infraco Contract Terms shall apply, mutatis mutandis, to Project IPR arising out of, used in or created to implement the Mobilisation and Advance Works.

8. INDEMNITY AND SOLE REMEDY

- 8.1 Subject to clauses 8.3.1, 8.4, 8.6 and 8.7 Infraco PB shall be responsible for and shall indemnify **tie**, and their employees and agents from and against any and all expenses, costs (including legal costs), liability, loss, damages and claims of whatever nature and howsoever arising in respect of:
- 8.1.1 death or bodily injury to any person;
 - 8.1.2 loss or damage to property (including property belonging to **tie** or for which it is responsible);
 - 8.1.3 any breach of statutory duty; and
 - 8.1.4 any claim made by any third party,

which may arise in consequence of any breach by Infraco PB (or any of its contractors, sub-contractors, employees or agents) of any term of this Agreement, or any negligence, default, wilful act or wilful omission of any such party.

8.2 Subject to clauses 8.3.2, 8.4 and 8.6, **tie** shall indemnify Infraco PB and its employees and agents from and against all expenses, costs (including legal costs), liability, loss, damages and claims arising in respect of:

8.2.1 death or bodily injury to any person;

8.2.2 loss or damage to property (including the property of Infraco PB, or for which Infraco PB is responsible);

8.2.3 any breach of statutory duty; and

8.2.4 any claim made by any third party,

which results directly from breach of this Agreement by **tie** (or any of its contractors, sub-contractor, employees or agents).

8.3 The maximum cumulative liability of:

8.3.1 Infraco PB to **tie** pursuant to this Agreement shall be limited to £7,000,000 (seven million pounds); ; and

8.3.2 of **tie** to Infraco PB pursuant to clause 8.2 shall be limited to £1,000,000 (one million pounds), and **tie** shall not have any greater liability to Infraco PB in relation to the indemnity under that clause.

8.4 Each Party's liability to indemnify the other under this Agreement shall be reduced in proportion to the extent that the relevant breach, act, omission, neglect, breach of statutory duty or default of the indemnifying party (or of its contractor, sub-contractor, employees or agents) contributed to the said death, injury, loss or damage.

8.5 Nothing in this clause 8 shall in any way restrict or exclude the liability of any Party in relation to death or personal injury arising from that Party's negligence, or in relation to fraudulent misrepresentation.

8.6 Subject to clause 8.5, and save for payments expressly agreed as payable pursuant to clause 8.8, neither Party shall be entitled to claim damages or loss (i) for breach of this

Agreement (ii) in delict (including negligence) (iii)for breach of statutory duty (iv)on any other basis whatsoever (including, for the avoidance of doubt, pursuant to any indemnity) to the extent that such damages or loss claimed by that Party are for Indirect Losses suffered by that Party. Nothing in this clause 8.6 shall affect either Party's liability to the other in respect of any claim, action, proceedings or demand against such other Party by a third party in connection with any Indirect Loss suffered.

8.7 Infraco PB shall have no liability to **tie**, its employees and agents in respect of any claims or losses arising from or in connection with a third party agreement or undertaking the terms of which had not been disclosed to Infraco PB prior to the date of this Agreement.

8.8 **Sole Remedy**

8.8.1 subject to clauses 8.8.2 and 8.8.3, and apart from the remedies expressly provided for in this Agreement, neither **tie** nor Infraco PB shall have any other remedy, right or cause of action against the other (including without limitation, any right to terminate this Agreement or to suspend performance of a Party's obligations under it) arising out of or in consequence of the defective performance or non-performance by **tie** or Infraco PB (as the case may be) of their respective obligations under this Agreement.

8.8.2 Nothing in this clause shall prevent or restrict the right of either **tie** or Infraco PB to seek injunctive relief or a decree of specific performance.

8.8.3 the provisions of clause 8.8.1 are without prejudice to either Party's rights to terminate this Agreement pursuant to clause 6.1.

9. **INSURANCE [to be reviewed by BBS insurance and tie insurance advisers. Some provisions differ from those under Infraco Contract]**

9.1 Without prejudice to its liability to indemnify **tie** under clause 8.1 above, or to any other provision of this Agreement, each of the Infraco PBMembers shall take out and maintain the following Required Insurances at its own cost:

9.1.1 **Professional Indemnity**

Each of the Infraco Members' normal and customary level of professional indemnity cover which, in any event, shall not be less than £10 million (ten

million pounds), or such other sum as may be agreed in writing by ~~tie~~, in respect of each and every occurrence, and in the aggregate during each twelve month period of insurance, subject to one reinstatement of the limit of indemnity for each twelve month period of insurance, with an insurer authorised to carry out insurance business in Europe. Such insurance shall be maintained by each of the Infraco ~~PB~~Members from the date of this Agreement for twelve months and, thereafter, for each further twelve month period or part thereof until the earlier of (i) twelve years from the completion of the activities forming the subject of this Agreement or (ii) twelve years from the date of termination or expiry of this Agreement.

9.1.2 Employer's Liability

Each of the Infraco Members' normal and customary level of employer's liability cover, which in any event shall be not less than £10 million (ten million pounds) in respect of any one occurrence or series of occurrence arising from one original cause or event, and with an insurer authorised to carry out insurance business in the United Kingdom. Such insurance shall be maintained by each of the Infraco Members from the date of this Agreement for twelve months and, thereafter, for each further twelve month period until the expiry or earlier date of termination of this Agreement.

9.1.3 Contractor's Plant All Risks

Each of the Infraco Members' normal and customary level of contractor's plant and accommodation all risks insurance for loss destruction or damage to contractor's plant, tools, and equipment of any kind including site huts, temporary buildings and their contents for the value of the plant, tools and equipment and with an insurer authorised to carry out insurance business in the European Union. Such insurance shall be maintained by each of the Infraco Members from the date of this Agreement until the expiry or earlier date of termination of this Agreement.

9.1.4 Comprehensive Motor Insurance

Each of the Infraco Members' normal and customary level of Comprehensive Motor Insurance in respect of loss or damage to Own Vehicles and Legal Liability for death, injury, illness or disease or loss of or damage to Third

Party Property and shall not be less than the market value for Own Vehicles, £20 million (twenty million pounds) for Property Damage caused by cars, £5 million (five million pounds) for Property Damage caused by Commercial Vehicles, and unlimited for bodily injury, and with an insurer authorised to carry out insurance business in the United Kingdom. Such insurance shall be in place from the date of this Agreement for a period of twelve months and, thereafter, for each further twelve month period until the expiry or earlier date of termination of this Agreement. Each of the Infraco Members shall procure that tie shall be noted as an insured party on the policy.

- 9.2 Each of the Infraco Members shall with all due diligence conform to the terms and conditions of the said Required Insurances.
- 9.3 Each of the Infraco Members shall provide satisfactory evidence to tie that the Required Insurances that each of the Infraco Members is required to arrange under this Agreement have been effected.
- 9.4 Each of the Infraco Members shall use reasonable endeavours to procure that the Employers Liability Insurances contain a waiver of subrogation against tie and any tie party save in respect of fraud or deliberate non-disclosure.
- 9.5 Without prejudice to its liability to indemnify Infraco PB under clause 8.2, or to any other provision of this Agreement tie shall, at its own cost, take out and maintain the following OCIP Insurances, insuring the interests of tie and Infraco PB from the date of this Agreement until the earlier of the completion of the activities forming the subject of this Agreement or expiry or earlier termination of this Agreement.

9.5.1 **Third Party Liability**

Legal Liability against all sums (including claimants' costs and expenses) arising from death or bodily injury to or illness or disease suffered by any person and loss of or damage to any physical property or destruction, loss of amenities nuisance or trespass happening in or consequent of carrying out the Mobilisation and Advance Works or of the presence of Infraco PB, its employees or agents on site in the sum not less than £100 million (one hundred million pounds) in respect of any one occurrence and £100 million (one hundred million pounds) in the aggregate in respect of products liability

or pollution or contamination with an insurer and on terms approved by Infraco PB, acting reasonably.

9.5.2 Construction All Risks

All risks of loss damage destruction of the contract works whether permanent or temporary, property or goods the property of tie or Infraco PB of for which they may be responsible for in connection with the works with an insurer and on terms approved by Infraco PB, acting reasonably.

9.6 Each of the Infraco Members acknowledges that tie has taken out the OCIP Insurances and agrees to comply with the requirements of the insurers with whom the OCIP Insurances are placed, provided that such requirements have been notified to Infraco PB. Each of the Infraco Members agrees that it will intimate to tie any act, occurrence or failure which may:

9.6.1 lead to any claim being made under the OCIP Insurances; or

9.6.2 render any of the OCIP Insurances void, voidable, unenforceable, suspended or impaired in whole or in part or which may otherwise render any sum paid out under any relevant policy repayable in whole or in part.

9.7 Neither of the Infraco Members shall take any action or fail to take any reasonable action or (insofar as it is reasonably within its power) permit or allow others to take or fail to take any action (in either case including failure to disclose any fact) as a result of which any of the OCIP Insurances may be rendered void, voidable, unenforceable, suspended or impaired in whole or in part or which may otherwise render any sum paid out under any relevant policy repayable in whole or in part.

10. VARIATIONS

tie may instruct Infraco PB in writing:

10.1 to make an addition to, or omission from, or other change to the Mobilisation and Advance Works;

10.2 to make any change to the physical and environmental conditions in which the Mobilisation and Advance Works are carried out; or

10.3 to provide additional Infraco PB Co-ordinator(s) pursuant to clause 3.2.

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Infraco PB shall be entitled to refuse to implement such a Variation on the grounds set out in clause 80 of the Infraco Contract Terms.

Any such instruction shall be valued by **tie** in a manner consistent with the principles set out in clause 5.3, and any applicable Agreed Element Estimate adjusted accordingly. The Parties shall use all reasonable endeavours to agree any such valuation by **tie** made in accordance with this clause 10.

11. CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 1994 ("CDM REGULATIONS")

[DLAP DN: Pinsent Masons to revert with appropriate drafting]

12. DISPUTES

12.1 Any dispute or difference of opinion relating to this Agreement (a "Dispute") shall, in the first instance, be considered by the **tie** Project Manager and Infraco PB Representative.

12.2 If the Dispute has not been resolved within seven (7) days of its occurrence then the Dispute shall be considered by the respective principals of **tie** and Infraco PB.

12.3 If the Dispute has not been resolved within seven (7) days of the end of the seven day period referred to in clause 12.2, the **tie** Project Manager may propose an interim solution to the Dispute which shall bind the Parties until the matter in Dispute is finally resolved by the courts or otherwise.

12.4 If, within fourteen (14) days of the end of the seven (7) day period referred to in clause 12.2, either the **tie** Project Manager has not proposed an interim solution to the Dispute, either Party objects to the interim solution then any Party may refer the matter to the Court of Session.

12.5 The Parties shall procure that the procedure set out in this clause 12 is adhered to in relation to any Dispute.

13. CONSEQUENTIAL AND INDIRECT LOSS

Without prejudice to any other limitation on liability set out expressly in this Agreement, or any express remedy, neither Party shall be liable to any other (including, without limitation,

on any termination of this Agreement) by reason of any breach of this Agreement for Indirect Loss.

14. NOVATION OF SUB-CONTRACTORS

In the event that the Infraco Contract is not awarded to Infraco PB, Infraco PB will within 7 days of any written request by **tie**, novate to **tie** all its rights and obligations in any contract between Infraco PB and suppliers and sub-contractors specified in such request and shall procure that such suppliers and sub-contractors consent to such novation. Infraco PB shall, and shall procure that such suppliers and sub-contractors shall, enter into such novation document as is reasonably required by **tie**.

15. AMENDMENTS IN WRITING

Any amendment to this Agreement must be in writing, signed by each Party.

16. ASSIGNMENT

Neither Party may assign the benefit of this Agreement, or transfer any of its rights or obligations hereunder in any way whatsoever save with the written consent of the other Party (such consent not to be unreasonably withheld).

17. RELATIONSHIP WITH THE INFRACO CONTRACT

The Parties expressly acknowledge that the obligations comprising the Mobilisation and Advance Works are in no way additional to, those obligations which it is intended by the Parties that Infraco PB will assume under the Infraco Contract.

18. GOVERNING LAW AND LANGUAGE

This Agreement is governed by, and shall be construed in accordance with the Laws of Scotland, and the Parties irrevocably agree that the Courts of Scotland shall have exclusive jurisdiction to settle any matter or dispute which may arise in connection with the terms of this Agreement or the construction and interpretation thereof. All correspondence made under or pursuant to this Agreement and all notices served under this Agreement shall be in the English language.

19. SEVERABILITY

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The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision thereof. Any invalidity or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if the Agreement did not contain the invalid or unenforceable portion or provision.

20. WAIVER

No failure by any Party to insist upon the strict performance of any term, covenant or condition of this Agreement or to exercise any right or remedy upon breach or any provision or acceptance or payment for performance or non-performance during the continuation of any such breach shall constitute a waiver of such term, covenant or condition herein or a waiver of any subsequent breach or default in the performance of any term, covenant or condition herein

21. CONFIDENTIALITY AND PROPRIETARY INFORMATION

21.1 The Parties acknowledge and agree that all of the information contained herein and supplied by one Party to the other under the provisions of this Agreement shall be treated as confidential and shall only be disclosed by either Party (the "Disclosing Party"):

21.1.1 to officers, agents, consultants, contractors and employees to the extent that such disclosure is required for the proper performance of their work and the Parties shall take all reasonable care to ensure that such information is not otherwise disclosed by them or their officers, employees, agents, consultants or contractors;

21.1.2 to third parties other than those specified above:

21.1.2.1 where such information comes into the public domain other than a result of a breach of this Agreement; or

21.1.2.2 where such information is required to be disclosed by Applicable Law or by any duly authorised regulatory body;

21.1.3 with consent of each Party; or

21.1.4 by tie pursuant to the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004 provided that tie

will, if reasonably practicable, provide written confirmation to ~~the~~Infraco PB of any request to disclose information which ~~he~~ reasonably believes may be commercially sensitive information, and shall take account of ~~the~~ Infraco PB's reasonable written representations prior to making any decision to make any such disclosure.

21.2 In all cases of disclosure (other than disclosure by ~~tie~~ pursuant to clause 21.1.4), the Disclosing Party shall so far as possible secure in advance of disclosure of the information a written undertaking from any third party to prevent further disclosure of the information without the written consent of both Parties and the Disclosing Party shall give as much notice as possible to the other Party.

22. NO PARTNERSHIP

22.1 It is expressly declared that no rights shall be conferred under and arising out of this Agreement upon any person other than ~~the~~Infraco PB and ~~tie~~. There shall not be created by this Agreement a jus quaesitum tertio in favour of any other party whatsoever..

22.2 Nothing contained in this Agreement shall constitute a partnership or agency relationship between the Parties. No Party is authorised to bind another Party or incur liabilities or grant waivers or consents on another Party's behalf.

IN WITNESS WHEREOF these presents on this and the preceding 18 pages together with Parts One to [Four] (inclusive) of the Schedule annexed and signed as relative hereto are executed as follows:

EXECUTED for and on behalf of **tie Limited**

at

on 200 by:

Director/Authorised Signatory

Full Name



WILLIAM GALLAGHER

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Witness Signature

[Redacted Signature]

Full Name

MATTHEW CROSSE

Address

Tie Ltd, Cityprint
Haymarket Terrace
Edinburgh.

EXECUTED for and on behalf of Bilfinger Berger AG at

on 20 December 2007 by:

~~Director~~/Authorised Signatory

[Redacted Signature]

Full Name

GEORGE SCOTT MCFADZEN

Witness Signature

[Redacted Signature]

Full Name

THOMAS LOVE MURRAY

Address

c/o BILFINGER BERGER CIVIL
LOCHSIDE HOUSE
LOCHSIDE WAY,
EDINBURGH BUSINESS PARK

EXECUTED for and on behalf of Siemens AG at

on 21st Decem 2007 by:

~~Director~~/Authorised Signatory

[Redacted Signature]

Full Name

STEPHEN A WELLS

Witness Signature

[Redacted Signature]

Full Name

GEOFFREY GILBERT

Address

c/o Tie, Cityprint, Edinburgh.



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**THIS IS PART ONE OF THE SCHEDULE TO THE ADVANCE WORKS AND
MOBILISATION AGREEMENT REFERRED TO AS SUCH IN THAT AGREEMENT**

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**THIS IS PART TWO OF THE SCHEDULE TO THE ADVANCE WORKS AND
MOBILISATION AGREEMENT REFERRED TO AS SUCH IN THAT AGREEMENT**

PAYMENT SCHEDULE

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**THIS IS PART THREE OF THE SCHEDULE TO THE ADVANCE WORKS AND
MOBILISATION AGREEMENT REFERRED TO AS SUCH IN THAT AGREEMENT**

PROGRAMME FOR MOBILISATION AND ADVANCE WORKS

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