

# Evaluation Of Change

**TIE LIMITED**

## **POSITION PAPER**

relating to

the agreement between **tie** Limited

and

Bilfinger Berger (UK) Limited / Siemens plc / Construcciones y Auxiliar de Ferrocarriles consortium

in connection with the works authorised by the

*Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006*

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**CEC00951736\_0001**

## 1. INTRODUCTION

This paper sets out the Contract provisions (including as amended by the Minute of Variation) and implementation of Clause 80 and Schedule Part 4 in relation to the processes in the valuation of tie Change and the obligations of both parties in relation to the agreement of Estimates and the issue of tie Changes.

## 2. TIE'S POSITION

### Valuation of Changes

- 2.1 Change is valued in accordance with Clause 80 and Schedule Part 4 of the Infraco Contract.
- 2.2 Clause 80 deals with the evaluation of Change. 80.6 sets out the valuation rules upon which to value tie Changes (in order):
  - 2.3 Measured works using rates from Schedule Part 4
  - 2.4 If no directly applicable rate Measured works using rates analogous thereto
  - 2.5 or fair rates and prices
  - 2.6 or the value of resources and labour
- 2.7 Schedule Part 4 (Appendix G) sets out the process for agreement of the value of changes and this is as follows:
  - 2.8 Valuation in accordance with Clause 80.6.1 and 2 for measured works.
  - 2.9 Valuation in accordance with Clause 80.6.3. or 80.6.4 to be on Actual Cost or estimated Actual Cost.
  - 2.10 In respect of a valuation on Actual Cost then head office overheads and profit shall be applied at 10% for Civils and 17% for Systems and track
  - 2.11 Preliminaries shall be added to Actual Cost as follows:
    - 2.12 7.4% for Consortium Preliminaries for elements set out in Appendix F
    - 2.13 17.5% for any other Preliminaries elements in addition to the Consortium Preliminaries (see Minute of Variation).

### Minute of Variation

- 2.14 A Minute of Variation was signed on 3 June 2009. This was agreed to incorporate a fixed percentage allowance applicable to all Changes to cover any other Preliminaries elements which in the Infraco Contract were to be valued in accordance with Schedule Part 4 Appendix F.

### Provision of Estimates/Agreement of tie Changes

- 2.15 Clause 80 requires Estimates to be provided by Infraco within 18 business days of the issue of a tie notice of Change (or deemed notice of Change in respect of Notified Departures) or deliver a request for a reasonable extension of time.

### **3. TIE'S COMMENTS AND UNDERSTANDING OF INFRACO'S POSITION ON THE EVALUATION OF CHANGE**

#### **Valuation**

In general terms Infraco are now following the rules set out in Clause 80.6 although it is Infracos position that where the provisions of Clause 80.6.1 and 2 apply the Schedule of Rates items are only applicable to the particular section of work that the Change occurs and not to other sections of work. Tie disagrees with this and considers that the Schedule of Rates should be applied as stated in the contract i.e that rates for similar work (not necessarily in the section that the potential Change occurs) or rates deduced from the Schedule of Rates for similar work should be used.

Tie has allowed the application of 10% as stated in Appendix G to any evaluation based on actual cost (the Schedule of Rates allows for the addition of 10% for overheads and profit) and to all Change values a further application of 7.4% to cover Consortium Prelims also as stated in Appendix G. This would not appear to be disagreed.

#### **Minute of Variation**

Following a mediation process a Minute of Variation was agreed. Tie applies 17.5% to the value of all Changes to cover for any other Preliminaries in lieu of the provisions of the Contract which was to value each Change in accordance with Appendix F. This is to be applied to work based on Actual Cost to cover Prelims. It implies therefore that Prelim items should not be included as actual cost either by BSC or by one of BSC's sub contractors since it is covered by a fixed percentage in this way. BSC are claiming as part of their actual cost build up for Prelim items claimed by their sub contractors stating that this is part of actual cost. It is a cost to BSC but an allowance has been made by way of a fixed percentage to cover such cost. This is one of the main reasons for the Minute of Variation in that individual prelim type costs do not require to be reviewed or scrutinised by tie for each Change. It is important to state what has been bought out by this fixed percentage. It is in lieu of the provisions of the Contract which was to value any other prelim items in accordance with Appendix F. Appendix F (with the exception of the Consortium Preliminaries valued separately) allows for Preliminaries under a) High Level Section Preliminaries and b) Sub Contractor Preliminaries.

BSC are claiming for sub contractor preliminaries as actual cost and again as part of a fixed percentage following the MOV thus defeating the objective of the MOV.

#### **Estimates**

BSC has consistently not provided Estimates in time as required by Clause 80.3 nor has a proper request with reasons been given to tie to extend the period. BSC has stated that the Changes are too complex. The delay to the provision of Estimates is beyond the bounds of reasonableness and delays are occurring as a result.

**4. LIST OF SUPPORTING DOCUMENTATION**

Clause 80

Schedule Part 4 – Appendix F

Schedule Part 4 – Appendix G

Minute Of Variation

## **80. TIE CHANGES**

- 80.1 Unless expressly stated in this Agreement or as may otherwise be agreed by the Parties, **tie** Changes shall be dealt with in accordance with this Clause 80 (*tie Changes*). If **tie** requires a **tie** Change, it must serve a **tie** Notice of Change on the Infraco.
- 80.2 A **tie** Notice of Change shall:
- 80.2.1 set out the proposed **tie** Change in sufficient detail to enable the Infraco to calculate and provide the Estimate in accordance with Clause 80.4 below;
  - 80.2.2 subject to Clause 80.3, require the Infraco to provide **tie** within 18 Business Days of receipt of the **tie** Notice of Change with an Estimate, and specify whether any competitive quotes are required and;
  - 80.2.3 set out how **tie** wishes to pay (where relevant) for the proposed **tie** Change.
  - 80.2.4 set out any changes which **tie** believe are required to the terms of this Agreement and/or the SDS Contract to give effect to the proposed **tie** Change
- 80.3 If, on receipt of the **tie** Notice of Change, the Infraco considers (acting reasonably) that the Estimate required is too complex to be completed and returned to **tie** within 18 Business Days, then the Infraco shall, within 5 Business Days (during the period prior to issue of the Reliability Certificate) and within 10 Business Days (at any time after issue of the Reliability Certificate) of receipt of such **tie** Notice of Change, deliver to **tie** a request for a reasonable extended period of time for return of the Estimate, such extended period to be agreed by the Parties, both acting reasonably.
- 80.4 As soon as reasonably practicable, and in any event within 18 Business Days after having received a **tie** Notice of Change (or such longer period as may have been agreed by the Parties, pursuant to Clause 80.3 or as required by Clause 80.11), the Infraco shall deliver to **tie** the Estimate. The Estimate shall include the opinion of the Infraco (acting reasonably) in all cases on:
- 80.4.1 whether relief from compliance with any of its obligations under this Agreement is required during or as a result of the implementation of the proposed **tie** Change;
  - 80.4.2 any impact on the performance of the Infraco Works and the performance of the Edinburgh Tram Network;
  - 80.4.3 any impact on the Programme and any requirement for an extension of time;

- 80.4.4 any Consents, Land Consents and/or Traffic Regulation Orders (and/ or any amendment or revision required to existing Consents, Land Consents and/ or Traffic Regulation Orders) which are required in order to implement or as a result of the implementation of the proposed **tie** Change and any update of the Consents Programme which will be required as a result;
  - 80.4.5 any new agreements with third parties which may be required to implement the **tie** Change;
  - 80.4.6 any amendment required to the Agreement or the Key Subcontracts as a result of the implementation of the proposed **tie** Change;
  - 80.4.7 the proposed method of delivery of the proposed **tie** Change;
  - 80.4.8 proposals to mitigate the impact of the proposed **tie** Change;
  - 80.4.9 confirmation of the changes to the terms of this Agreement and/or the SDS Contract proposed by **tie** and any further changes the terms of this Agreement and/or the SDS Contract necessary to give effect to the proposed **tie** Change; and
  - 80.4.10 any increase or decrease in any sums due to be paid to the Infraco under this Agreement (including the value of any Milestone Payments and the scheduling of such Milestone Payments) in order to implement, and as a direct consequence of implementation of, the **tie** Change, such increase or, decrease to be calculated in accordance with this Clause 80.
- 80.5 Where the **tie** Change, in the opinion of the Infraco acting reasonably, impacts the ability to deliver the Maintenance Services in accordance with Clause 52 (Maintenance) the Estimate delivered pursuant to Clause 80.4 shall include any net increase or decrease in:
- 80.5.1 in the case of demonstrable impact (taking into account any impact of previously implemented **tie** or Infraco Changes) on routine maintenance activity:
    - 80.5.1.1 the consequential change in labour resources and management time required for each affected maintenance element of the Infraco Works; and
    - 80.5.1.2 the consequential change in materials, plant and equipment required; or
  - 80.5.2 in the case of demonstrable impact (taking into account any impact of previously implemented **tie** or Infraco Changes) on renewals maintenance activity:

80.5.2.1 the scope of required renewals work or services and frequency of renewals;

80.5.2.2 the resulting change in labour resources and management time required for the renewal work; and

80.5.2.3 the resulting change in materials and plant and equipment (if any) used to effect the renewals.

80.6 The valuation of any **tie** Changes made in compliance with this Clause 80 (*tie Changes*) shall be carried out as follows:

80.6.1 by measurement and valuation at the rates and prices for similar work in Appendix F to Schedule Part 4 (*Pricing*) or Schedule Part 7 (*Maintenance Contract Price Analysis*) as the case may be in so far as such rates and prices apply;

80.6.2 if such rates and prices do not apply, by measurement and valuation at rates and prices deduced therefrom insofar as it is practical to do so;

80.6.3 if such rates and prices do not apply and it is not practicable to deduce rates and prices therefrom, by measurement and/or valuation at fair rates and prices in accordance with Appendix G Schedule Part 4 (*Pricing*) and Appendix F Schedule Part 7 (*Maintenance Contract Price Analysis*);

80.6.4 if the value of the **tie** Change cannot properly be ascertained by measurement and/or valuation, the value of the resources and labour employed thereon, as appropriate and in accordance with Appendix G to Schedule Part 4 (*Pricing*) and Appendix F to Schedule Part 7 (*Maintenance Contract Price Analysis*);

provided that where any **tie** Change would otherwise fall to be valued under Clauses 80.6.1 and 80.6.2 above, but the instruction therefor was issued at such a time or was of such content as to make it unreasonable for the alteration or addition to be so valued, the value of the **tie** Change shall be ascertained by measurement and/or valuation at fair rates and prices.

80.7 The Infraco shall include in the Estimate evidence demonstrating that:

80.7.1 the Infraco has used all reasonable endeavours to minimise (including by the use of competitive quotes where appropriate in the case of construction works and where reasonable in the circumstances that new or additional sub contractors are required to deliver the change in the case of Maintenance Services or where construction works

are undertaken during the maintenance phase) any increase in costs and to maximise any reduction of costs ;

80.7.2 the Infraco has, where required by **tie** and where appropriate and practicable, sought competitive quotes from persons other than the Infraco Parties in pursuance of its obligation under Clause 80.7.1 above;

80.7.3 the Infraco has investigated how to mitigate the impact of the **tie** Change; and

80.7.4 the proposed **tie** Change will, where relevant, be implemented in the most cost effective manner (taking into account the reasonable requirements of Infraco in relation to quality) including showing where reasonably practicable that when any expenditure is incurred, relevant Changes in Law that are reasonably foreseeable at the time of consideration of the specific **tie** Change and which relate to that **tie** Change have been taken into account by the Infraco.

80.8 If the Infraco does not intend to use its own resources to implement any proposed **tie** Change, it shall:

80.8.1 demonstrate that it is appropriate to subcontract the implementation of such **tie** Change; and

80.8.2 comply with Good Industry Practice with the objective of ensuring that it obtains best value for money when procuring any sub-contractor or Deliverable required in relation to the proposed **tie** Change.

80.9 As soon as reasonably practicable after **tie** receives the Estimate, the Parties shall discuss and agree the issues set out in the Estimate. From such discussions **tie** may modify the **tie** Notice of Change, In each case the Infraco shall subject to Clause 80.11, as soon as practicable, and in any event not more than 15 Business Days after receipt of such modification, notify **tie** of any consequential changes to the Estimate.

80.10 Subject to Clause 80.15, if the Parties cannot agree on the contents of the Estimate, then either Party may refer the Estimate for determination in accordance with the Dispute Resolution Procedure.

80.11 If a **tie** Change requires a change in respect of design work to be carried out by the SDS Provider under the SDS Contract or any other change to the SDS Contract, the cost of such change will be valued in accordance with the terms of the SDS Contract and Infraco shall be allowed such time to perform its obligations under this Clause 80 as may reasonably be



required to allow it to obtain information from the SDS Provider under the SDS Contract which Infraco may require in order to prepare an Estimate for such Change and any modifications thereto.

80.12 The Infraco shall not be obliged to implement any proposed **tie** Change where:

80.12.1 **tie** does not have the legal power or capacity to require the implementation of such proposed **tie** Change; or

80.12.2 NOT USED

80.12.3 implementation of such proposed **tie** Change would:

80.12.3.1 be contrary to Law;

80.12.3.2 not be technically feasible;

80.12.3.3 increase the risk of a non-compliance with this Agreement by the Infraco to the extent such risk is not capable of being addressed by relief from obligations given to the Infraco or by amendment to the terms of this Agreement;

80.12.3.4 be outwith the specific competence of the Infraco either in performing the activity required by the **tie** Change or in supervising an the Infraco Party to carry out the activity required by the **tie** Change;

80.12.3.5 where the **tie** Change is instructed after the completion of Section D, require Infraco to carry out work and/or services that are not transport infrastructure and maintenance related to be performed after completion of Section D; or

80.12.3.6 make the provision of the Maintenance Services by the Infraco financially unfeasible.

80.13 Subject to Clause 80.15, as soon as reasonably practicable after the contents of the Estimate have been agreed **tie** may:

80.13.1 issue a **tie** Change Order to Infraco,; or

80.13.2 except where the Estimate relates to a Mandatory **tie** Change, withdraw the **tie** Notice of Change, in which case Infraco shall be entitled to claim the reasonable additional

costs incurred by the Infraco in complying with this Clause 80 in relation to that **tie** Notice of Change including the cost of any abortive works where **tie** has instructed Infraco to commence works prior to the agreement of the Estimate.

Subject to Clause 80.15, for the avoidance of doubt, the Infraco shall not commence work in respect of a **tie** Change until instructed through receipt of a **tie** Change Order unless otherwise directed by **tie**.

80.14 Subject to Clause 80.15, if **tie** does not issue a **tie** Change Order in accordance with Clause 80.13.1, within 28 Business Days of the contents of the Estimate having been agreed or determined then the **tie** Notice of Change shall be deemed to have been withdrawn except where the Estimate relates to a Mandatory **tie** Change in which case **tie** will be deemed to have issued a **tie** Change Order.

80.15 Where an Estimate has been referred to the Dispute Resolution Procedure for determination, but it is deemed by **tie** (acting reasonably) that the proposed **tie** Change is urgent and/or has a potential significant impact on the Programme, subject to Infraco's right to refuse to carry out a **tie** Change under Clause 80.12 and save where such proposed **tie** Change includes work by the SDS Provider and where the valuation of such work is not agreed, **tie** may instruct Infraco to carry out the proposed **tie** Change prior to the determination or agreement of the Estimate by issuing a **tie** Change Order to that effect.

80.16 Where **tie** issues a **tie** Change Order under Clause 80.15, Infraco shall implement the **tie** Change, and prior to determination of the Estimate shall be entitled to claim Infraco's demonstrable costs in implementing the **tie** Change calculated in accordance with Clause 80.6.

80.17 As soon as reasonably practicable and in any event within 20 Business Days of issue of a **tie** Change Order, or such other period as the Parties may agree acting reasonably, Infraco shall update:-

80.17.1 the Programme in accordance with Clause 60;

80.17.2 Schedule Part 5 (*Milestone Payments*) in relation to Milestone Payments and/or Critical Milestone Payments in accordance with Clause 67.10;

80.17.3 the Maintenance Services Payments in accordance with Clause 68.8;

80.17.4 the Maintenance Services Performance Plan; and

80.17.5 any other previously accepted Deliverable

as may be required in accordance with the agreed Estimate or as may be required to implement the **tie** Change in accordance with this Agreement.

- 80.18 As soon as reasonably practicable and in any event within 20 Business Days of issue of a **tie** Change Order, or such other period as the Parties may agree acting reasonably, the Parties shall enter into any document to amend the terms and conditions of this Agreement as referred to in the agreed Estimate to which the **tie** Change Order relates.

#### **Restrictions on Entitlements to Relief for tie Change**

- 80.19 The Infraco shall not be entitled to any extension of time, payment or relief in respect of any **tie** Notice of Change affecting the construction of the Infraco Works or the delivery of the Maintenance Services if and to the extent that:

80.19.1 with regard to construction, it would be reasonable to expect Infraco to have prevented or materially reduced the requirement for such **tie** Change, given the information known to Infraco at the time; and

80.19.2 with regard to Infrastructure Maintenance Services, it would have been reasonable to expect the Infraco to have foreseen that a physical deficiency or defect in the Infraco Works would, despite continual planned maintenance, lead to the requirement for a **tie** Change which could have been prevented or materially reduced by earlier intervention by **tie** and Infraco has failed to report such deficiency or defect in the Infraco Works in a timely fashion to **tie**.

- 80.20 If, having received instructions from **tie** or **tie's** Representative, the Infraco consider that compliance with those instructions would amount to a **tie** Change, then the Infraco shall comply with the instruction and shall within 20 Business Days of any instructions being received, notify **tie** of the same, such notification to include an Estimate pursuant to Clauses 80.4 and 80.5. From the date of receipt by **tie** of such an Estimate, Clause 80.15 and 80.16 shall be deemed to apply *mutatis mutandis* to the work carried out by Infraco in complying with such instruction. If it is agreed by the Parties or determined pursuant to the Dispute Resolution Procedure that the instructions amount to a **tie** Change (either Party being entitled to refer the matter to the Dispute Resolution Procedure if the matter has not been agreed within 10 Business Days of the Estimate being received by **tie**) then the provisions of this Clause 80 (*tie Changes*) shall apply to such instructions.

- 80.21 Any failure by the Infraco to notify **tie** within 20 Business Days of instructions being received that it considers compliance with such instructions from **tie** or **tie's** Representative would

amount to a **tie** Change shall constitute an irrevocable acceptance by the Infraco that any compliance with **tie**'s or **tie**'s Representative's instructions shall not constitute a **tie** Change under this Agreement.

### **Third Party Agreements**

80.22 If **tie** wishes Infraco to perform any of the obligations contained in any third party agreement which are not set out in part A of Schedule Part 13 (*Third Party Agreements*) or to be responsible for ensuring that neither **tie** or CEC will be put in breach of their obligations to third parties other than to the extent that it is responsible by virtue of the operation of Clause 18.17A **tie** shall serve a notice on the Infraco (a "**TPA Change Notice**") which notice shall comply with the requirements of Clause 80.2. Subject to Clause 80.25, the provisions of this Clause 80 shall apply *mutatis mutandis* to any TPA Change Notice served by **tie**.

80.23 Following service by **tie** of a TPA Change Notice, the Parties shall negotiate in good faith and acting reasonably to agree the adjustment to the Contract Price, if any, appropriate to compensate Infraco for the Infraco accepting any additional responsibility or risk arising from the TPA Change Notice to the extent not reflected adequately through application of Clause 80.5.

### **Notified Departures**

80.24 Where pursuant to paragraph 3.5 of Schedule Part 4 (*Pricing*) or pursuant to Clause 14 (*tie Obligations*), **tie** is deemed to have issued a **tie** Notice of Change as a result of the occurrence of a Notified Departure, the provisions of this Clause 80 (*tie Changes*) other than Clause 80.19 shall apply.

## **81. INFRACO CHANGES**

81.1 If the Infraco becomes aware of the need or desirability for a variation to the Infraco Works, (which does not fall within any of the other categories listed in Clause 79.1, save for Clause 79.1.2) the Infraco shall notify **tie** of the reasons for such variation and make proposals for the proposed variation in writing. **tie** shall be free to accept or reject any proposed variation as **tie** thinks fit, (other than where the Infraco Change is necessary for Infraco to comply with a Change in Law which is not a Qualifying Change in Law, in which case **tie** shall accept such proposal or such other proposal as **tie** may reasonable require which does not increase the costs to the Infraco of complying with the relevant Change in Law) and **tie** shall determine whether such proposal is dealt with in accordance with Clause 81.2 or Clause 81.3.

Worksheet: 26 - 1 - Appendix 7 - Schedule Part 4

DESCRIPTION	Section A E	Section B E	TOTAL B/E	Period			2005-2006		
				Section A E	Section B E	Total B/E	Section A E	Section B E	Total B/E
<b>PRELIMINARIES AND GENERAL ITEMS</b>									
<b>Subcontract Requirements - Section A</b>									
Construction - Item 1	1,317,000		1,317,000						
All other materials, supplies, etc. - Item 2	1,845,846		1,845,846				1,845,846		1,845,846
Accommodation for the Engineer's and Client's Staff, establish and remove office	22,310		22,310						22,310
Accommodation for the Engineer's and Client's Staff, maintain and operate office	221,027		221,027						221,027
Services for Engineer's and Client's Staff, maintain and operate transport vehicles	296,170		296,170						296,170
Equipment for use by the Engineer's and Client's Staff, maintain and operate photographic equipment	18,523		18,523						18,523
Construction - Item 3	2,689,374		2,689,374				2,689,374		2,689,374
Construction - Item 4	265,048		265,048				265,048		265,048
Construction - Item 5	691,200		691,200				691,200		691,200
Construction - Item 6	12,578		12,578				12,578		12,578
Construction - Item 7	284,265		284,265				284,265		284,265
Construction - Item 8	509,976		509,976				509,976		509,976
Construction - Item 9	231,758		231,758						231,758
Construction - Item 10	18,200		18,200						18,200
Construction - Item 11	2,198,312		2,198,312				2,198,312		2,198,312
<b>Subcontract Requirements - Section B</b>									
Construction - Item 12		675,743	675,743						675,743
Construction - Item 13		861,247	861,247					861,247	861,247
Construction - Item 14		44,259	44,259						44,259
Construction - Item 15		172,947	172,947						172,947
Construction - Item 16		111,618	111,618						111,618
Construction - Item 17		80,228	80,228						80,228
Construction - Item 18		1,248,888	1,248,888				1,248,888		1,248,888
Construction - Item 19		102,700	102,700						102,700
Construction - Item 20		319,200	319,200						319,200
Construction - Item 21		13,958	13,958						13,958
Construction - Item 22		164,223	164,223						164,223
Construction - Item 23		528,446	528,446						528,446
Construction - Item 24		157,638	157,638						157,638
Construction - Item 25		9,252	9,252						9,252
<b>Subtotal</b>	<b>18,268,947</b>	<b>2,462,367</b>	<b>20,731,314</b>				<b>18,268,947</b>	<b>2,462,367</b>	<b>20,731,314</b>
<b>METRIC RELATED CHANGES</b>									
High Level Section A Establish Section A Sites (Item 1)	1,466,821		1,466,821						1,466,821
High Level Section A Supervision (Time Related)	2,721,528		2,721,528						2,721,528
High Level Section A Maintain Section A Offices (Time Related)	994,385		994,385						994,385
Direct Subcontractor Section A Supervision	1,147,710		1,147,710						1,147,710
Direct Subcontractor Section A Establish Site Services Water etc.	372,365		372,365						372,365
Direct Subcontractor Section A Staff, Man & Misc Plant	717,091		717,091						717,091
Direct Subcontractor Section A Establish & Bond	243,989		243,989						243,989
Direct Subcontractor Section A Establish and Maintain Compound	54,734		54,734						54,734
Direct Subcontractor Section A Non-petroleum Labour	383,855		383,855						383,855
DD1 Section A Preliminary	6,731,481		6,731,481						6,731,481
DD2 Section A Supervision (Time Related)	2,508,222		2,508,222						2,508,222
DD3 Section A Preliminary (Fixed)	1,531,755		1,531,755						1,531,755
DD4 Section A Preliminary (Time Related)	2,050,152		2,050,152						2,050,152
DD5 Section A Supervision & Bond	187,862		187,862						187,862
DD6 Section A Preliminary (Fixed)	318,868		318,868						318,868
DD7 Section A Preliminary (Time Related)	1,422,000		1,422,000						1,422,000
DD8 Section A Preliminary (Time Related)	146,982		146,982						146,982
DD9 Section A Preliminary (Fixed)		636,770	636,770						636,770
DD10 Section A Preliminary (Time Related)		1,824,818	1,824,818						1,824,818
DD11 Section A Preliminary		2,508,222	2,508,222						2,508,222
DD12 Section A Preliminary (Time Related)		2,530,628	2,530,628						2,530,628
DD13 Section B Preliminary (Time Related)		2,279,208	2,279,208						2,279,208
DD14 Section B Supervision (Time Related)		2,182,872	2,182,872						2,182,872
High Level Section B Establish Section B Sites (Item 1)		601,472	601,472						601,472
High Level Section B Supervision (Time Related)		1,485,222	1,485,222						1,485,222
High Level Section B Maintain Section B Offices (Time Related)		594,164	594,164						594,164
<b>Subtotal</b>	<b>20,421,388</b>	<b>78,378,127</b>	<b>98,799,515</b>				<b>20,421,388</b>	<b>78,378,127</b>	<b>98,799,515</b>
<b>Grand Total (Gross Prelims)</b>	<b>38,690,335</b>	<b>18,668,540</b>	<b>57,358,875</b>				<b>38,690,335</b>	<b>18,668,540</b>	<b>57,358,875</b>
Estimation (preliminary)							-2,645,000	-1,402,550	-4,047,550
<b>Grand Total (Net Prelims)</b>	<b>38,690,335</b>	<b>18,668,540</b>	<b>57,358,875</b>				<b>36,045,335</b>	<b>17,265,990</b>	<b>53,311,325</b>
Construction Cost (Total Gross Value less Prelims)									53,311,325

Note:  
The Prelims percentage shown above is to be used by other systems in addition to Actual Cost

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## APPENDIX G

### PROCESS FOR AGREEMENT OF VALUE OF TIE CHANGES

#### 1.0 Generally

- 1.1 The valuation of any **tie** Changes shall be made in accordance with Clause 80.6
- 1.2 Where Clause 80.6.3 or 80.6.4 applies and to the extent that they apply to a **tie** Change then the valuation shall be on the basis of Actual Cost or estimated Actual Cost.
- 1.3 In respect of a valuation of any work under 1.2 the **tie** Representative shall apply head office overheads and profit percentages to the appropriate elements of Actual Cost as follows:

(a)	Civil Engineering works	10%
(b)	Systems and Track works	17%

In all cases where a **tie** Change is being valued in accordance with Clause 80.6, Site related overhead (Preliminaries) shall be valued and added as follows:

7.4% to be added to Actual Cost to cover the Consortium Preliminaries and associated elements as set out in Spreadsheet 1 in Appendix F.

If appropriate to the particular **tie** Change, any other Preliminaries elements, valued in accordance with the Spreadsheet 2 set out in Appendix F.

- 1.4 The amount of the overheads and profit percentage calculated as part of the valuation of Variations shall be added in the case where the valuation results in an addition and shall be deducted where the valuation results in an omission.
- 1.5 Where 1.2 above is the basis of the valuation of **tie** Changes then the following items shall not be included as Actual Costs under the Infraco Contract.
1. Costs not justified by the Infraco's accounts and records.
  2. Costs not payable under the Infraco Contract.
  3. Costs arising from the Infraco's Design errors.
  4. Costs arising in respect of loss or damage except as provided for under the Agreement.
  5. Costs which should have not been paid to a sub-contractor in accordance with the relevant sub-contract.
  6. Costs arising from people who are part of the Head Office Overhead.





MINUTE OF VARIATION

among

- 1) **TIE LIMITED**, a company incorporated in Scotland under number SC230949 and having its registered office at City Chambers, High Street, Edinburgh, EH1 1YJ ("TIE"), which expression shall include its successors, permitted assignees and transferees;
- 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, which expression shall include its successors, permitted assignees and transferees;
- 3) **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, which expression shall include its successors, permitted assignees and transferees; and
- 4) **CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES S.A.**, a company registered in Spain in the Corporate Register of Guipuzcoa: volume 983, sheet 144, page number SS-329, entry 239 and having its registered office at J.M. Iturrioz 26, 20200 Beasain (Guipuzcoa), Spain ("CAF") which expression shall include its personal representatives, successors, permitted assignees and transferees;

(2), (3) and (4) together acting jointly and severally as "the Infraco"

WHEREAS

(A) tie, Bilfinger Berger (UK) Limited and Siemens plc entered into an agreement on 14 May 2008 amended by the Minute of Variation between tie, Bilfinger Berger (UK) Limited, Siemens plc and Construcciones Y Auxiliar de Ferrocarriles S.A dated 14 May 2008 (the "Infraco Contract");

(B) The Parties have agreed to amend the Infraco Contract as set out in this Minute of Variation;

TIE and the Infraco hereby agree as follows:

1. This document constitutes a variation in writing pursuant to Clause 108 of the Infraco Contract.
2. All other provisions of the Infraco Contract remain in full force and effect as set out therein.
3. The Infraco Contract is hereby amended as follows:

In Schedule Part 4 Appendix G to the Infraco Contract at paragraph 1.3:

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After the sentence ending "...Spreadsheet 1 in Appendix F.", the following sentence shall be inserted:

"Further, 17.5% to be added to the Actual Cost to cover any other Preliminaries (in addition to the Consortium Preliminaries) with regard to any tie Change associated with Civil Engineering Works, provided that this calculation shall in no case apply to Systems and Trackworks or claims for other Preliminaries in relation to prolongation costs arising from extensions of time or delay."

The sentence starting "If appropriate to the particular tie Change..." shall be amended to read:

"If appropriate to any particular tie Change which relates to Systems and Trackworks, any other Preliminaries valued in accordance with the Spreadsheet 2 set out in Appendix F."

and there shall be inserted the following sentence:

"If appropriate to any particular tie Change, claims for other Preliminaries elements in relation to prolongation costs arising from extensions of time or delay, valued in accordance with the Spreadsheet 2 set out in Appendix F."

- 4. The Parties undertake and warrant to one another that each signatory to this Minute of Variation has full delegated authority to execute this document.

IN WITNESS WHEREOF these presents consisting of this and the preceding page are executed as follows:

EXECUTED for and on behalf of TIE Limited at Edinburgh on 3 June 2009

[Redacted] ..... Director/Authorised Signatory
[Signature] ..... Full Name
[Redacted] ..... Witness
DENNIS MURRAY ..... Full Name and Address

EXECUTED for and on behalf of Bilfinger Berger (UK) Limited at Edinburgh on 3 June 2009

[Redacted] ..... Director/Authorised Signatory
[Signature] ..... Full Name
[Redacted] ..... Director/ Authorised Signatory
MARTIN FOLEY ..... Full Name and Address

EXECUTED for and on behalf of Siemens plc  
at Edinburgh on 3 June 2009

[Redacted] ..... Director/Authorised Signatory

Alfred Brandenburger ..... Full Name

[Redacted] ..... Director/ Authorised Signatory

Michael [Redacted] ..... Full Name and Address..

EXECUTED for and on behalf of Construcciones Y Auxiliar de Ferrocarriles S.A.  
at Edinburgh on 3 June 2009

[Redacted] ..... Director/Authorised Signatory

Antonio M. Lopez ..... Full Name

[Redacted] ..... Witness

[Redacted] ..... Full Name and Address

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