

## AGREEMENT

### BETWEEN

- (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; 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 which expression shall include its successors, permitted assignees and transferees; and
- (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**")

### Whereas:

- A On 14 May 2008, **tie** entered into a contract (the "Infraco Contract") with Bilfinger Berger UK Limited and Siemens plc (together an non-incorporated joint venture "the Infraco") for the carrying out of the Infraco Works; and
- B CAF entered in to both a Tram Supply Agreement and Tram Maintenance Agreement with **tie** which agreements were novated to the Infraco;
- C Pursuant to a Minute of Variation dated 14 May 2008 CAF became a member of the Infraco;
- D The parties wish to record their agreement to amend certain provisions of the Infraco Contract,

### Now it is hereby agreed as follows:

- 1 Add new definition as follows:  

"**Critical tie Change**" means a **tie** Notice of Change issued (or deemed or required to be issued) in circumstances where the Infraco has encountered circumstances during the carrying out of the Infraco Works which require the issue of a **tie** Change and where immediate compliance with the **tie** Change is required in order to avoid or mitigate a material impact on the progress of the Infraco Works.
- 2 Delete the first sentence of Clause 80.9 and substitute therefore the following:  

"**tie** shall, as soon as reasonably practicable (and in any event within 10 Business days) after it receives the Estimate, either agree the content of the Estimate or refuse to agree the Estimate (stating the grounds of refusal). In the event that the Estimate is not agreed, the Parties shall as soon as reasonably practicable thereafter (and in any event within 7 Business Days) discuss and agree the content of the Estimate."
- 3 At the end of Clause 80.11 add the following:

"Where this Clause 80.11 applies, the Infraco shall as soon as reasonably practicable following consultation with the SDS Provider notify **tie** of the time estimated to be required to prepare the Estimate."

4 Delete Clause 80.20 and substitute therefore:

"**tie** or **tie's** Representative may issue instructions and/or clarifications from time to time as may be necessary to resolve minor issues (unlikely to have any material impact on the Programme or the sums due to the Infraco under this Agreement) arising on Site during the carrying out of the Infraco Works. Where such instructions and/or clarifications are issued verbally, the Infraco shall issue a "Confirmation of Verbal Instruction" notice confirming the instruction and/or clarification given. If the Infraco considers that compliance with those instructions would amount to a **tie** Change, then the Infraco shall comply with those instructions and shall notify **tie** that it considers such compliance to amount to a **tie** Change. If it is agreed by the Parties or determined pursuant to the Dispute Resolution Procedure that the instructions amounted 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) then the work carried out in compliance with such instruction shall be valued in accordance with Clause 80.6 and **tie** shall procure that such value is included in the next Construction Interim Certificate issued by the **tie** Representative.

5 Add new Clause 80.25 as follows:

"80.25.1 **tie** or the Infraco may notify the other of circumstances where it is considered that a **tie** Notice of Change issued, deemed issued or required to be issued is a Critical **tie** Change.

80.25.2 Where the **tie** Change is a Critical **tie** Change, **tie** shall (subject to Clauses 80.12 and 80.25.5) be deemed to have issued an instruction (and subsequent instructions) to the Infraco requiring the Infraco to proceed with the **tie** Change prior to the issue of a **tie** Change Order. In such circumstances **tie** shall not be entitled to withdraw the **tie** Notice of Change

80.25.3 As soon as reasonably practicable (and in any event within 2 Business Days following the deemed issue of an instruction pursuant to Clause 80.25.2) **tie** shall issue a further instruction setting out:

80.25.3.1 the nature and extent of the work and/or design to be undertaken by the Infraco prior to the issue of a **tie** Change Order; and

80.25.3.2 whether **tie** anticipates any further instructions being issued pursuant to this Clause 80.25.3 in respect of the relevant Critical **tie** Change,

and the Infraco shall, upon receipt of such instruction, proceed to implement the work and/or design set out therein. An instruction issued by **tie** pursuant to this Clause 80.25.3 shall supersede the relevant instruction deemed to be issued pursuant to Clause 20.25.2 (without prejudice to the Infraco's right to payment in respect of works carried out pursuant to Clause 80.25.3).

80.25.4 The Infraco shall, until such time as the relevant **tie** Change Order is issued, be paid the cost of complying with instructions issued pursuant to Clauses 80.25.2 and 80.25.3 together with preliminaries, overhead and profit as set out in Appendix G of Schedule Part 4 and the Infraco shall

include such sums (together with reasonable supporting documentation establishing the basis of the sums being claimed) in any application for payment issued pursuant to Clause 67.4. tie shall procure that each Construction Interim Certificate issued by the tie Representative shall include any sums due to the Infracore pursuant to this Clause 80.25. Once the relevant tie Change Order has been issued, the valuation of work carried out pursuant to this Clause 80.25 shall be carried out in accordance with Clause 80.6.

80.25.5 tie shall not be entitled to issue any instructions pursuant to this Clause 80.25 in circumstances where the consequence of the instruction would be that the aggregate value of work and/or design undertaken pursuant to this Clause 80.25 and not included in a Construction Interim Certificate would exceed £500,000.

**EXECUTED** for and on behalf of **TIE LIMITED** at Edinburgh on [●] 2008 by:

Authorised Signatory .....  
Full Name .....  
Witness Signature .....  
Full Name .....  
Address .....  
.....

**EXECUTED** for and on behalf of **BILFINGER BERGER UK LIMITED** at Edinburgh on [●]2008 by:

Director .....  
Full Name .....  
Director .....  
Full Name .....

**EXECUTED** for and on behalf of **SIEMENS PLC** at Edinburgh on [●] 2008 by:

Authorised Signatory .....  
Full Name .....  
Authorised Signatory .....  
Full Name .....

**EXECUTED** for and on behalf of **CAF** at Edinburgh on [●] 2008 by:

Authorised Signatory

.....

Full Name

.....

Authorised Signatory

.....

Full Name

.....