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tie Remediable Termination Notice in respect of alleged
Failure to Provide Extranet and Responses thereto.

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For The Attention of Martin Foerder
Project Director
Bilfinger Berger Siemens CAF Consortium
9 Lochside Avenue
Edinburgh Park
Edinburgh EH12 9DJ

Our Ref: INF CORR 5770

Date: 9th August 2010

By fax and personal delivery

Dear Sirs,

**INFRACO CONTRACT
REMEDIABLE TERMINATION NOTICE
INFRACO DEFAULT (a): CLAUSES 10.4 AND 10.16 – FAILURE TO PROVIDE EXTRANET
AND INFORMATION IN RESPECT OF INFRACO CLAIMS**

Enclosed is a Remediable Termination Notice in respect of Infraco Default under the Infraco Contract.

We look forward to receiving your rectification plan within 30 Business Days of the date of this Remediable Termination Notice.

Yours faithfully,



Steven Bell
Project Director – Edinburgh Trams

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REMEDIABLE TERMINATION NOTICE

INFRACO DEFAULT (a); CLAUSES 10.4 AND 10.16 - FAILURE TO PROVIDE EXTRANET AND INFORMATION IN RESPECT OF INFRACO CLAIMS

1. Infraco Default (a)

- 1.1 The Infraco has breached its obligation to permit tie, tie's Representative or their duly authorised representatives (to the extent necessary to verify any claim made by the Infraco under the Infraco Contract) to inspect, and take copies of, the documents which must be kept at a (staffed) office; comprising a complete, up-to-date and orderly documentary record of the performance of the Infraco Works, all transactions entered into by the Infraco in relation to any potential or actual Permitted Variations and information (including transactional information) in relation to any claims for additional costs or expenses from the Infraco to tie arising in accordance with the terms of the Infraco Contract (including Compensation Events), such staffed office to be established pursuant to Clause 10.16 of the Infraco Contract.
- 1.2 The Infraco has breached its obligation to establish and maintain an extranet which tie, any tie Parties and any other party reasonably required by tie may access remotely by computer to view, and electronically store and/or print copies of, any Deliverables, as required pursuant to Clause 10.4 of the Infraco Contract.
- 1.3 In both cases the Infraco has failed to comply with tie's instructions under letter of 13 July 2010 (reference: INF CORR 5526) to remedy these breaches.
- 1.4 Individually and cumulatively, these breaches materially and adversely affect the carrying out and completion of the Infraco Works by preventing tie from enjoying its contractual rights and interfering with tie's performance of its duties and preventing tie from managing (and delivering in accordance with) the contractual mechanisms in the Infraco Contract to deal with Permitted Variations and claims for additional time, costs or expenses (for example, Compensation Events and Relief Events) and by frustrating the claims process and exhausting tie project management and staff time. The breaches mean that tie is unable to verify or understand the Deliverables which the Infraco is or is not producing or the Infraco's claims resulting (together with other acts and omissions on the part of the Infraco) in the absence of any contractually competent programme which materially and adversely impacts the carrying on and completion of the Infraco Works.
- 1.5 This is an Infraco Default (a) under the Infraco Contract.

2. Nature of Infraco Default which requires to be rectified

- 2.1 For the duration of the Infraco Contract (since 14 May 2008), the Infraco has not allowed tie, tie's Representative or their duly authorised representatives access to a staffed office compliant with Clause 10.16 to inspect a documentary record in relation to all claims. tie has not had information or confirmation from the Infraco whether or not such an office which is compliant with Clause 10.16 is in existence.
- 2.2 The Infraco has also failed to establish an extranet under Clause 10.4 which prevents tie from monitoring relevant contract information, including design-related Deliverables, on a regular and convenient basis.

2.3 For the duration of the Infraco Contract, the Infraco has repeatedly refused to provide tie with information in relation to claims. This includes claims in relation to payment of the Contract Price, Permitted Variations, Compensation Events, Relief Events and Notified Departures. tie has sought to access this information through various routes available to tie, including via: the contractual mechanism and the Infraco's duties to provide information in respect of Relief Events (Clause 64); the contractual mechanism and the Infraco's duties to provide information in respect of Compensation Events (Clause 65); the provisions in relation to payment of the Contract Price (Clause 66); the contractual mechanism and the Infraco's duties to provide information in respect of tie Changes (Clause 80); the contractual audit process (Clause 104); and through contractual correspondence and the overarching partnering obligations on which the Infraco Contract is founded (Clause 6). In relation to all of these contractual mechanisms, the Infraco has repeatedly refused to provide tie with information requested by tie to enable tie to verify the Infraco's claim in question.

2.4 tie expressly requested in writing to exercise its rights under Clause 10.16 by letter dated 13 July 2010 (reference: INF CORR 5526). tie expressly instructed the Infraco (pursuant to Clause 34.1 of the Infraco Contract) to:

2.4.1 *"provide us [tie] with unlimited access to your [the Infraco's] Document Control Room (for the purposes set out in Clause 10.16) during normal business hours";*

2.4.2 *"Provide an orderly documentary record as required by Clause 10.16 for any additional costs or expenses you have claimed or intend to claim...";*

2.4.3 *"Provide immediate access as required pursuant to Clause 10.16";* and

2.4.4 *"confirm that in future Infraco will not seek to recover additional expenses and costs without having conformed with the requirements of Clause 10.16".*

As at the date of this Remediable Termination Notice, the Infraco has not replied to this letter. As at the date of this Remediable Termination Notice, the Infraco has not complied with tie's instructions and has not provided tie with the access and records sought. Subsequent to this letter, tie has sought again to access this information by following up verbally and meetings with the Infraco.

2.5 tie expressly requested to exercise its rights under Clause 10.4 by letter dated 30 June 2010 (reference: INF CORR 5464/RB). In the context of an audit on management of the design, tie expressly requested that the facilities in accordance with Clause 10.4 of the Infraco Contract were made available to tie from 12 noon on Friday 2 July 2010. tie had previously expressly requested such facilities in the context of the audit on three occasions ((i) verbal request at the audit meeting of 14 June 2010; (ii) email request from Bob Bell (tie) to Stefan Rothaus (BSC) on 17 June 2010 at 14:31; and (iii) email request from Bob Bell (tie) to Stefan Rothaus on 24 June 2010 at 14:41). This matter has also been subject to previous requests from tie to BSC through the duration of the Infraco Contract.

2.6 The Infraco responded by letter dated 5 July 2010 (reference: ETN (BSC) TIE\$Q&ABC#051041) stating that the required extranet *"will not, however, be available on the date requested in your letter."*

2.7 By letter dated 13 July 2010 (reference: INF CORR 5526), tie once again expressly instructed in writing the Infraco (pursuant to Clause 34.1 of the Infraco Contract) to:

2.7.1 *"provide with immediate effect an extranet to comply with Clause 10.4";* and

2.7.2 "Provide written evidence of the steps you have taken to comply with Clause 10.4".

As at the date of this Remediable Termination Notice, the Infraco has not replied to this letter. As at the date of this Remediable Termination Notice, the Infraco has not complied with tie's instructions and has not provided tie with access to an extranet (or an explanation of what the steps the Infraco has taken to comply with this obligation). Subsequent to this letter, tie has followed up verbally and at meetings with the Infraco.

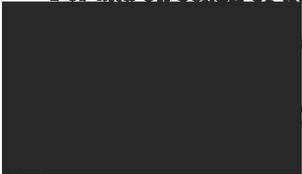
2.8 The Infraco is committing an Infraco Default (a) by not permitting tie (and tie's Representative and their duly authorised representatives) to inspect and take copies of, at an office established pursuant to Clause 10.16 of the Infraco Contract, the complete, up-to-date and orderly documentary record of the performance of the Infraco Works, all transactions entered into by the Infraco in relation to any actual or potential Permitted Variations and information (including transactional information) in relation to any claims for additional costs or expenses from the Infraco to tie, to permit tie to verify any claim made by the Infraco under the Infraco Contract.

2.9 The Infraco is committing an Infraco Default (a) by not allowing tie (and tie Parties and any other party reasonably required by tie) to access an extranet and view (and electronically store and print) any Deliverables in relation to the Infraco Works.

3. Rectification Plan

3.1 tie looks forward to receipt of a comprehensive rectification plan from the Infraco addressing this Infraco Default (a) within 30 Business Days of the date of this Remediable Termination Notice.

For and on behalf of tie



Gram Project Director

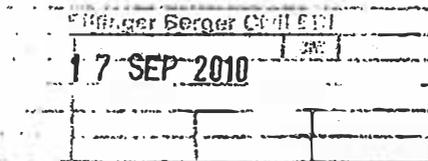
... 9 / 8 / 10 Date

Our ref: 25.1.201/KDR/6731
Your ref: INF CORR 5770

Bilfinger Berger-Siemens- CAF
Consortium

17 September 2010

tie limited
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EH12 5HD



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For the attention of Steven Bell – Project Tram Director

Dear Sirs,

Edinburgh Tram Network Infraco

Infraco Contract: Alleged Remediable Termination Notice (Clauses 10.4 and 10.16 – Failure to provide Extranet and Information in respect of Infraco Claims)

We refer to your letter dated 9 August 2010 (INF CORR 5770) which purports to enclose a Remediable Termination Notice in relation to matters associated with Infraco's obligations under Clauses 10.4 and 10.16 of the Infraco Contract.

As at the date of writing you have served Remediable Termination Notices in respect of another 4 matters. None of these matters have been the subject of referrals to dispute resolution. It appears to us that tie has abandoned the contractual mechanism for resolution of disputes. This may be because every major issue of principle has been decided against tie in adjudication. However that is no justification for now abusing the termination provisions of the contract. It is clear that tie is now pursuing a policy of serving a Remediable Termination Notice in respect of each and every grievance it may have, regardless of the significance of each grievance and its implications for the Infraco Works. Whilst we will respond to each Remediable Termination Notice in turn, we object to tie's adoption of this policy.

We summarise our response to the Notice as follows:

1. The Notice does not identify a breach of Clause 10.16.
2. The breach of Clause 10.4 was acknowledged by Infraco in its letter of 11 August 2010 (ETN(BSC)TIE\$Q&ABC#051085).
3. The alleged breach or breaches of Clause 10.16 and 10.4 do not materially and adversely affect the carrying out and/or completion of the Infraco Works.
4. The Notice does not therefore identify an Infraco Default (a).
5. Your letter does not therefore constitute a valid Remediable Termination Notice.
6. Any attempt to terminate the Infraco Contract on the basis of this alleged Notice will be entirely without contractual basis.

This is further explained as follows:

1. No Breach of Clause 10.16

The Notice alleges that Infraco has breached its obligation in Clause 10.16 to allow tie personnel access to Infraco's offices to inspect documentary records in relation to all claims. However, it fails to narrate any specific instances when Infraco has failed to provide tie personnel with such access, other than Infraco's failure to comply with the instruction contained in tie's letter of 13 July 2010 (INF CORR 5526).

tie have only requested access under Clause 10.16 once. Such access was specifically requested by tie for the first time on 26 March 2010 at the audit concerning INTCs 204, 205 and 212. In response to that request and in compliance with Infraco's obligations under Clause 10.16, tie personnel (your Robert Bell and David Carnegie) was provided with such access (at Lochside Avenue and in particular to the offices of our Martin Hutchinson and David Gough) that same day. No subsequent requests have been made under Clause 10.16.

Clause 10.16 does not permit tie to issue the instruction contained in your letter of 13 July 2010 (INF CORR 5526). As set out in the Notice the instruction in that letter inter alia required unlimited access to a Document Control Room and an orderly documentary record for any additional costs or expenses with no reference to a particular claim. These instructions went well beyond that which Infraco is required to provide by way of access to records in order to comply with its obligations under Clause 10.16. Accordingly, Infraco's failure to comply with such instruction is not a breach of Clause 10.16.

There having been no other requests from tie under Clause 10.16, there has been no breach of Clause 10.16.

2. Clause 10.4 – Failure to provide an Extranet

As stated in our letter of 11 August 2010 (ETN(BSC)TIE\$Q&ABC#051085), we acknowledge that Infraco is obliged to provide an Extranet under Clause 10.4.

As you are well aware discussions between tie and Infraco personnel have been taking place to progress the setting up of an appropriate Extranet site to include the "body of evidence" that has to be handed over on completion to tie. We will under separate cover request information from tie in order to set up and provide tie access to an Extranet.

3. Carrying out and/or Completion of the Infraco Works not materially and adversely affected

Neither of the alleged breaches identified by you in the Notices has materially or adversely affected the carrying out and/or completion of the Infraco Works.

No requests have been made under Clause 10.16 which Infraco has failed to comply with. In any event all information relating to Permitted Variations and other claims which Infraco is required to provide to you under the contract has been provided in accordance with the relevant provisions of the contract. The information which would have been made available through an Extranet has been provided to tie by alternative means.

There is not one specific instance where a failure to comply with either of these clauses has had any impact on the carrying out and/or completion of the Infraco Works, never mind a material and adverse affect.

You state in your letter that tie has failed to perform its duties in relation to the management of (and to deliver in accordance with) the contractual mechanisms under the Infraco Contract intended to deal with Permitted Variations and claims for additional time, costs and expenses. We would entirely agree with this statement. However, this failure has not been caused by Infraco's failure to provide access in accordance with Clause 10.16 or the lack of an Extranet site. On the contrary, it has been caused by tie's refusal to acknowledge Infraco's contractual rights and entitlements under the Infraco Contract, and award claims for time, costs and expenses accordingly.

This position has been unanimously supported by the third party Adjudicators who have all rejected your argument that tie are entitled to refuse to perform their duties under Clause 80 on the basis that the provision of certain information is a condition precedent to the performance of those duties. Lord Dervaird's recent decision on the operation of Clause 80.13 has confirmed tie's culpability in respect of any delay in the completion of the Infraco Works caused by the failure which you appear to accept in this Notice.

4. No Infraco Default (a)

It follows from the preceding paragraphs that the circumstances you narrate in your Notice do not meet the definition of "Infraco Default (a)" in the Infraco Contract Schedule Part 1, contrary to your assertion.

5. Letter INF CORR 5770 is not a valid Remediable Termination Notice

As no Infraco Default has occurred, you have no right to serve any Remediable Termination Notice as you have purported to do.

6. No right to Terminate

No grounds for termination can arise from this alleged Notice.

For the avoidance of doubt this letter does not nor is it intended to constitute a rectification plan. If and to the extent the Infraco considers it necessary or appropriate notwithstanding the views expressed in this letter such a plan will be sent under separate cover.

We invite you to withdraw your purported Notice served with letter INF CORR 5770.



SIEMENS

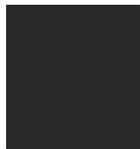


Yours faithfully,



M Foerder
Project Director
Bilfinger Berger Siemens CAF Consortium

cc: R. Walker
M. Flynn
A. Campos
M. Berrozpe
A. Urriza



Our ref: 25.1.201/KDR/6732

Bilfinger Berger-Siemens- CAF
Consortium

17 September 2010

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United Kingdom

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EH12 5HD

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For the attention of Steven Bell – Project Tram Director

Dear Sirs,

**Edinburgh Tram Network Infraco
Alleged Remediable Termination Notice (Clauses 10.4 and 10.16 – Failure to provide
Extranet and Information in respect of Infraco Claims)
Rectification Plan**

We refer to your letter dated 9 August 2010 (INF CORR 5770) which purports to enclose a Remediable Termination Notice in relation to matters associated with Infraco's obligations under Clauses 10.4 and 10.16 of the Infraco Contract.

As stated in our letter of today's date (25.1.201/KDR/6731), we do not consider that you had or have any grounds for the service of this Remediable Termination Notice which is accordingly invalid and which we have invited you to withdraw.

Notwithstanding this, and without prejudice to our position as set out in our letter (25.1.201/KDR/6731), we provide below our Rectification Plan prepared in accordance with the Infraco Contract in respect of the matters contained in your letter of 9 August 2010 (INF CORR 5770).

Clause 10.4 states:

"The Infraco shall establish and maintain an extranet which tie, any tie Parties and any other party reasonably required by tie may access remotely by computer (through an appropriate login/security regime) to view any Deliverables including any drawings comprised within the Deliverables and electronically store and/or print copies of such Deliverables."

We have established an extranet and request that tie provide the following information in order that Infraco can comply with Clause 10.4 of the Infraco Contract.

A list of named individuals whom tie wish to have access to the extranet, viz.

- Firstname
- Lastname
- e-mail Address

On receipt of this information, Infraco will require 5 business days to set up the individuals within the Extranet to enable these individuals to have access remotely by computer.

Clause 10.16 states:

"The Infraco shall establish at the Site and/or elsewhere an office or offices which shall be staffed during all normal business hours and at which shall be kept a complete, up-to-date and orderly documentary record of the performance of the Infraco Works, all transactions entered into by the Infraco in relation to any potential or actual Permitted Variations and information (including any transactional information) in relation to any claims for additional costs or expenses from the Infraco to tie arising in accordance with the terms of this Agreement (including Compensation Events). To the extent necessary to verify any claim made by the Infraco under this Agreement, tie, tie's Representative or their duly authorised representatives shall during all normal business hours be permitted to inspect the same and to take copies and to use such copying facilities as are maintained at the place where the records are kept."

Infraco has a Document Control Room which has been maintained since contract commencement. Infraco confirms that access to this room will be provided to tie's Representative or duly authorised representatives for the purposes set out in Clause 10.16 on receipt of a request for such access.

Yours faithfully,

M Foerder
Project Director
Bilfinger Berger Siemens CAF Consortium

cc: R. Walker
M. Flynn
A. Campos
M. Berrozpe
A. Urriza



For The Attention of Martin Foerder
Project Director
Billfinger Berger Siemens CAF Consortium
9 Lochside Avenue
Edinburgh
EH12 9DJ

Our Ref: INF CORR 6353

Date: 1st October 2010

Dear Sirs,

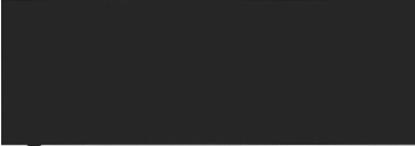
**EDINBURGH TRAM NETWORK – INFRACO
CLAUSES 10.4 AND 10.16 - FAILURE TO PROVIDE EXTRANET AND INFORMATION IN
RESPECT OF INFRACO CLAIMS**

We acknowledge receipt of your letter dated 17 September 2010 (reference 25.1.2011/KDR/6731).

We do not agree with or accept the allegations contained therein and we do not withdraw the Remediabale Termination Notice in relation to Infraco Default in respect of the Infraco's failure to provide an extranet and access to information.

Thank you for your proposed rectification plan submitted on 17 September 2010 in response to the Remediabale Termination Notice, to which we will respond under separate cover.

Yours faithfully



Steven Bell
Project Director – Edinburgh Tram



For The Attention of Martin Foerder
Project Director
Bilfinger Berger Siemens CAF Consortium
9 Lochside Avenue
Edinburgh
EH12 9DJ

Our Ref: INF CORR 6352

Date: 1 October 2010

Dear Sirs,

**EDINBURGH TRAM NETWORK - INFRACO
CLAUSES 10.4 AND 10.16 - FAILURE TO PROVIDE EXTRANET AND INFORMATION IN
RESPECT OF INFRACO CLAIMS
RECTIFICATION PLAN**

We write with regard to your rectification plan submitted on 17 September 2010 (Ref 25.1.201/KDR/6732).

Your proposed rectification plan is not acceptable, as it does not comprise a comprehensive rectification plan which sets out how you intend to remedy the Infraco Default subject of the Remediable Termination Notice.

Without prejudice to our rights pursuant to clauses 90.2 and 118 of the Infraco Contract, a comprehensive rectification plan would set out *inter alia* the following:

Extranet

- A comprehensive description of the extranet (including the technology on which the extranet is based) which you say you have established.
- Details of the contents of the extranet, including the Deliverables uploaded (or not uploaded), file types and date from which the extranet runs from.
- A comprehensive description of how users access the extranet (including the use of the login/security regime and the process for adding new users) and view, electronically store and print Deliverables.
- Information about the Infraco's process and programme to add new Deliverables to the extranet and the mechanism and process for publishing Deliverables from the extranet to tie's Document Management System.

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Registered in Scotland No. 230949 at City Chambers, High Street, Edinburgh, EH1 1YJ. Edinburgh Trams is an operating name of tie Ltd.

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web: www.tie.ltd.uk

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Staffed Office / clause 10.16

- Confirmation that the Document Control Room is the staffed office for the purposes of clause 10.16 and that the Document Control Room contains a "*complete, up-to-date and orderly documentary record of the performance of the Infraco Works, all transactions entered into by the Infraco in relation to any potential or actual Permitted Variations and information (including any transactional information) in relation to claims for additional costs or expenses from the Infraco to tie arising from the terms of this Agreement [the Infraco Contract] (including Compensation Events)*" and that no part of the complete, up-to-date documentary record described by clause 10.16 is held elsewhere.
- Information about the documents which are contained in the Document Control Room and how they are ordered.
- A comprehensive description of the staffing arrangements and arrangements in respect of accessing the Document Control Room.
- Details of the copying facilities which are available, including location and any arrangements for their use.

Yours faithfully



Steven Bell
Project Director – Edinburgh Tram

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