



**THIS IS SCHEDULE PART 45 REFERRED TO IN THE  
FOREGOING AGREEMENT BETWEEN TIE AND THE  
INFRACO**

## **SCHEDULE PART 45**

### **PRICING**

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## 1.0 GENERALLY

- 1.1 The On Street Works Contract Price is the amount set out in Appendix A to this Schedule Part 45 as may be varied in accordance with the terms of this Schedule Part 45.
- 1.2 Subject to the provisions of this Schedule Part 45 the On Street Works Contract Price is payable by **tie** for all elements of work required as specified in the Employer's Requirements in Schedule Part 2 and reflected in the On Street Design Information to carry out and complete the On Street Works. The Parties have agreed a non-legally binding On Street Works Protocol annexed at Appendix E.
- 1.3 This Schedule Part 45 sets out:
- 1.3.1 the mechanism for determining the amount Infraco is entitled to include in each Application for Payment in respect of the On Street Works;
  - 1.3.2 the On Street Works Trigger Date, which will apply the provisions of Appendix A Part 2;
  - 1.3.3 the Pricing Assumptions upon which the On Street Works Contract Price has been calculated and the mechanism for determining the variation to the On Street Works Contract Price and the On Street Works Programme in the event of a departure from any of the Pricing Assumptions;
  - 1.3.4 Detailed rates and prices to be used in calculating any variation to the On Street Works Contract Price (including prelims and prolongation costs); and
  - 1.3.5 Detailed rates and prices to be used in calculating the On Street Works Sum (including prelims and prolongation costs/prices)
- 1.4 All rates, prices, lump sums and the like contained in this Schedule Part 45 are exclusive of Value Added Tax and are in Pounds Sterling.

## 2.0 DEFINITIONS USED IN THIS SCHEDULE

- 2.1 "**Certifier Agreement**" means the agreement between the Certifier, CEC , **tie** and Infraco for certification of sums due until the completion of the Infraco Works entered into on or about the date of this Agreement;
- 2.2 "**Issued for Construction Drawings**" shall have the meaning as used in Schedule Part 1 (*Definitions and Interpretations*);
- 2.3 "**On Street Works**" has the meaning set out in Schedule Part 1 (*Definitions and Interpretation*);
- 2.4 "**On Street Works Aggregate Price**" means the aggregate amount of the On Street Works Contract Price Payment and the On Street Works Sum;
- 2.5 "**On Street Works Estimate**" means the On Street Works Estimate to be provided by Infraco to **tie** in accordance with Appendix B to this Schedule Part 45;
- 2.6 "**On Street Works Contract Price**" means the amount set out in Appendix A to this Schedule Part 45;
- 2.7 "**On Street Works Contract Price Payment**" means that part of the On Street Works Contract Price payable by **tie** to Infraco from time to time in respect of the carrying out of

the On Street Works prior to the On Street Works Trigger Date calculated in accordance with this Schedule Part 45 and in particular Appendix A, Part 1;

- 2.8 **"On Street Works Sum"** means the amount payable by **tie** to Infraco in respect of the carrying out and completion of the On Street Works after the On Street Works Trigger Date calculated in accordance with this Schedule Part 45 and in particular Appendix A Part 2;
- 2.9 **"On Street Works tie Change"** means a **tie** Change which relates to the On Street Works;
- 2.10 **"Archaeological Officer"** means the archaeological officer appointed by CEC from time to time;
- 2.11 **"On Street Design Information"** means all the documents for the On Street Works listed and attached in Appendix D to this Schedule Part 45;
- 2.12 **"On Street Works Milestone Schedule"** means the milestone schedule for the On Street Works set out in Schedule Part 5;
- 2.13 **"On Street Works Trigger Date"** has the meaning given in paragraph 5 of this Schedule Part 45;
- 2.14 **"On Street Works Programme"** means the elements of the Programme following Mediation on 8 – 12 March 2011 (110908) Revision 4 which relate to the On Street Works;
- 2.15 **"On Street Works tie Change Notice"** means a tie Notice of Change in respect of the On Street Works;
- 2.16 **"Pricing Assumptions"** means the assumptions in respect of the On Street Works Contract Price as noted in paragraph 6.4 of this Schedule Part 45;
- 2.17 **"Pricing Assumption Variation"** is where now or at any time the facts or circumstances relating to the On Street Works differ in any way from the Pricing Assumptions save to the extent caused by a breach of contract by the Infraco, an Infraco Change or a Change in Law;
- 2.18 **"On Street Works Variation Mechanism"** means the mechanism set out in Appendix B of this Schedule Part 45;
- 2.19 **"On Street Construction Elements"** means each of the three construction elements for the On Street Works namely, Haymarket, Shandwick Place and York Place / St Andrew Square.
- 2.19.1 **"Haymarket"** means all works between Palmerston Place (Ch 13 0960) and Haymarket Station (Ch 13 1250).
- 2.19.2 **"Shandwick Place"** means all works between the western end of the works already constructed in Princes Street (Ch 13 0376) and Palmerston Place (Ch 13 0960).
- 2.19.3 **"York Place / St Andrew Square"** means all works between the terminal point in York Place (assumed to be Ch 12 0680 west of Broughton Street and the eastern end of the works already constructed in Princes Street (Ch 12 1370).
- 2.20 **"Tram Event"** means any facts or circumstances which comprise a Compensation Event pursuant to Clause 12 and Compensation Event (g) and (h) which have an adverse effect on the carrying out and/ or completion of the On Street Works;

2.21 **"Valuation Certificate"** means any certificate issued by the Certifier in accordance with the Certifier Agreement.

2.22 **"Valuation Date"** means any of the dates on which the Certifier will issue a Valuation Certificate set out in Schedule Part 35.

### **3.0 PAYMENT OF THE ON STREET WORKS AGGREGATE PRICE**

3.1 Infraco shall be entitled to include in any Application for Payment the amount calculated in accordance with Appendix A in respect of any On Street Works carried out prior to the Reporting Period End Date of the Reporting Period which ended prior to the date of submission of the Application for Payment. Any Application for Payment may include all amounts claimed in any On Street Works Estimate submitted by Infraco in relation to such works in accordance with Appendix B of this Schedule Part 45.

3.2 At any time prior to the On Street Works Trigger Date the On Street Works Contract Price Payment in respect of the On Street Works carried out during the relevant Reporting Period will be calculated in accordance with Appendix A Part 1 of this Schedule Part 45.

3.3 At any time after the On Street Works Trigger Date the On Street Works Sum in respect of the On Street Works carried out during the relevant Reporting Period will be calculated in accordance with Appendix A Part 2 of this Schedule Part 45.

3.4 Amounts calculated in accordance with this Schedule Part 45 (On Street Works) shall be paid in accordance with Clause 67 of the Infraco Contract.

### **4.0 VARIATION TO THE ON STREET WORKS AGGREGATE PRICE, AND ON STREET WORKS PROGRAMME**

4.1 The On Street Works Aggregate Price and On Street Works Programme will only be amended and varied in accordance with the provisions of this Schedule Part 45.

4.2 The provisions of Appendix B of this Schedule Part 45 (On Street Works) shall apply to On Street Works **tie** Changes.

### **5.0 ON STREET WORKS TRIGGER DATE**

5.1 Subject to clause 5.3, the On Street Works Trigger Date shall occur on the first Valuation Date (if any) on which:

5.1.1 The Aggregate Claims Amount exceeds the Aggregate Certified Amount by £750,000 or more; and/or

5.1.2 The Aggregate Extension of Time Claim exceeds 21 calendar days.

5.2 Where:

5.2.1 The "Aggregate Claims Amount" on any Valuation Date is the aggregate of all amounts in respect of the On Street Works included in any and all Applications for Payment submitted by Infraco not later than 5 weeks prior to the relevant Valuation Date;

5.2.2 The "Aggregate Certified Amount" on any Valuation Date is the aggregate of all amounts in respect of the On Street Works included in any Valuation Certificate issued on or prior to the Valuation Date. For the avoidance of doubt any amounts paid to Infraco by **tie** which do not relate to amounts

certified in the Valuation Certificate will not be included in the calculation of the Aggregate Certified Amount"; and

5.2.3 The "Aggregate Extension of Time Claim" on any Valuation Date is the aggregate of all extensions of time in respect of the On Street Works claimed by Infraco in any On Street Works Estimate provided to tie prior to the Application for Payment submitted by Infraco not later than 5 weeks prior to the relevant Valuation Date which have not been included in an agreed On Street Works Estimate in respect of which a tie Change Order has been issued on or prior to the Valuation Date.

5.3.1 Not later than 4 weeks after the On Street Works Trigger Date the Joint Project Forum shall meet to discuss the outstanding claims which have caused the On Street Works Trigger Date, with a view to resolving such claims.

5.3.2 If the Joint Project Forum unanimously agrees claims (in respect of which Infraco is paid the agreed amount and/or receives an agreed extension of time by way of the issue of a tie Change Order (whichever is relevant) within 5 Business Days of the Joint Project Forum agreement) which would have reduced:

(a) the Aggregate Extension of Time Claim; and/or

(b) the difference between the Aggregate Claims Amount and the Aggregate Certified Amount,

to below the levels set out in Clause 5.1 had they been agreed prior to the relevant Valuation Date, the On Street Works Trigger Date shall be deemed not to have occurred and the provisions of Part 1 of Appendix A shall continue to apply.

## **6.0 PRICING ASSUMPTIONS**

6.1.1 The On Street Works Contract Price and On Street Works Programme has been fixed on the basis of inter alia the Pricing Assumptions set out in paragraph 6.4 below. If now or at any time the facts or circumstances vary in any way from the Pricing Assumptions (or any part of them) such variation will, subject to paragraph 6.1.2 below, be a Pricing Assumption Variation requiring a change to the Employer's Requirements and/or the Infraco Proposals or otherwise requiring the Infraco to take account of the Pricing Assumption Variation in the On Street Works Contract Price and/or On Street Works Programme. Infraco shall only be entitled to an extension of time and/or relief from performance of its obligations, and not any additional cost, where protestor action comprising a Pricing Assumption Variation lasts for less than 14 days.

6.1.2 If the varied facts or circumstances, referred to in paragraph 6.1.1 result from any negligence omission or breach of the Agreement by the Infraco such variation shall not be a Pricing Assumption Variation.

6.1.3 Infraco warrants that the On Street Design Information complies with the Employer's Requirements as of 13<sup>th</sup> September 2011.

6.2 It is accepted by the Parties that the Pricing Assumptions in respect of the On Street Works have been necessary. The Parties acknowledge that certain of these Pricing Assumptions may result in a Pricing Assumption Variation. The On Street Works Variation Mechanism will apply for the purposes of determining the impact of the Pricing Assumption Variation on the On Street Works Contract Price and/or On Street Works Programme, and any other consequential amendments to the Infraco Contract.

- 6.3 The On Street Works Variation Mechanism and Pricing Assumptions will not apply to the calculation of the On Street Works Sum after the On Street Works Trigger Date except for the purposes of determining Infraco's entitlement to any extension of time and time related preliminaries in respect of such extension of time. Infraco shall not be entitled to an extension of time to the extent that failure to progress the On Street Works is as a result of Infraco's negligence omission or breach of the Infraco Contract. For the avoidance of doubt preliminaries in respect of the On Street Works shall be calculated by reference to the liquidated preliminaries rates at Appendix C.
- 6.4 The Pricing Assumptions are as follows:
- 6.4.1 The design will not be amended from the drawings forming part of the On Street Design Information as a consequence of the requirements of tie, CEC, any Third Party or any Approval Body save to the extent that the amendment has been required in order to comply with the Employer's Requirements as of 13<sup>th</sup> September 2011.
  - 6.4.2 Design approvals will be obtained for each of the items identified below by the dates identified below:
    - 6.4.2.1 Floating Track Slab (on-street only) (9 November 2011)
    - 6.4.2.2 Tram Turnback Strategy (22 September 2011)
    - 6.4.2.3 York Place Terminal Point Design (14 December 2011)
    - 6.4.2.4 Cathedral Lane Substation Design (7 November 2011)
    - 6.4.2.5 Elder Street (28 November 2011)
    - 6.4.2.6 Dublin Street -- Listed Building Consent (LBC) (16 December 2011)
    - 6.4.2.7 Cycleway at Mound, Princes St (29 September 2011)
    - 6.4.2.8 St Andrew Square (15 December 2011)
  - 6.4.3 Not Used.
  - 6.4.4 That in carrying out the On Street Works, Infraco will not be required to undertake any works outwith the "Excavation limits" as defined on Drawing ULE90130-SCH-45-6.4.4 Rev O included in the On Street Design Information at Appendix D.
  - 6.4.5 That in carrying out the On Street Works, Infraco will not discover any Utilities which require to be diverted or in respect of which protective works are required to allow the completion of the On Street Works in accordance with this Agreement and / or be required to carry out subsequent execution of diversion or protective works associated with any Utilities apparatus.
  - 6.4.6 That in carrying out the On Street Works, Infraco will not discover any unexploded ordnance or any contaminated material.
  - 6.4.7 The roads as reconstructed in accordance with the design will be adopted by CEC and 'handed back' on or prior to Service Commencement and thereafter CEC shall undertake routine maintenance (sweeping, litter, gritting, salting, normal wear and tear and the like) at no cost to Infraco. However, for the avoidance of doubt, Infraco remains responsible for any defects in design or construction.
  - 6.4.8 That no protective measures are required in relation to protected trees.
  - 6.4.9 That the Archaeological Officer shall not delay or disrupt the On Street Works.

- 6.4.10 That any third parties shall not carry out works which delay or disrupt the On Street Works.
- 6.4.11 That compliance with the Infraco's obligation pursuant to Clause 18.17B and under Schedule Part 13 Section A (Third Party Agreements) to give "due and proper cognisance to third party requirements" (and similar obligations such as to have "due and proper regard to such third party requirements") under the Third Party Agreements shall not cause any delay or disruption to the carrying out of the On Street Works, on the basis that the Infraco shall have used reasonable endeavours to mitigate the impact of such compliance and that any such third party requirements could not reasonably have been foreseen by an experienced contractor executing works in the operating environment of a UK city.
- 6.4.12 That any conditions attaching to any licence or similar arrangement entered into between **tie** and a third party entered into pursuant to any agreement included in Schedule Part 13 Section A (Third Party Agreements) shall not cause any delay or disruption to the carrying out of the On Street Works, on the basis that the Infraco shall provide all reasonable assistance to **tie** to ensure compliance at all times with any such conditions and shall use all reasonable endeavours to mitigate the impact of such conditions in the carrying out of the On Street Works.
- 6.4.13 That there is no breach by **tie** of any of **tie's** obligations under this Agreement which adversely affects the performance of the On Street Works.
- 6.4.14 That there is no failure of **tie** to give possession or access as referred to in Clause 18 (Land Consents, Permanent Land and Temporary Sites) or any refusal of any landowner or occupier to allow the Infraco to exercise the rights of possession or access granted in accordance with this Agreement.
- 6.4.15 That there is no exercise by CEC of its discretion to temporarily stop up streets where the exercise of such discretion adversely affects the Infraco's performance of its obligations under this Agreement in so far as they relate to the On Street Works.
- 6.4.16 That there is no instruction by **tie's** Representative to which Clause 34.3 applies.
- 6.4.17 Subject to paragraph 6.1.1, that there is no protestor action directed against **tie** or a **tie** Party or the Edinburgh Tram Network except where such protestor action is as a result of or has been caused by an Infraco breach of its obligations under this Agreement or otherwise by any actions or omissions of the Infraco or Infraco Parties unrelated to the Edinburgh Tram Network.
- 6.4.18 That an Operator Event or Tram Event does not occur.
- 6.4.19 That there is no damage to the On Street Works caused by vandalism.
- 6.4.20 That there is no malfunction or non-interoperability of the Free Issue Fare Collection Equipment.
- 6.4.21 That there will be no failure (following notice in accordance with this Agreement having been given) of **tie's** Representative to attend the tests or to carry out inspections (or rearranged inspections or tests) and the carrying out of such tests of inspections on the new dates notified by **tie's** Representative pursuant to this Agreement.
- 6.4.22 That compliance with **tie's** Representative's instructions under Clause 87 (*Suspension of Work*) will not involve the Infraco in delay or extra cost



(including costs incurred in properly protecting and securing the On Street Works).

- 6.4.23 There will be no requirement to employ or engage additional quantity surveyors to assist with the cost management of the carrying out and completion of the On Street Works Systems and Trackwork provided that if such requirement should arise and this Pricing Assumption Variation shall apply Infraco shall not be entitled to any extension of time but Infraco may at its absolute discretion employ or engage up to two additional contract quantity surveyors to assist with the cost management of the carrying out and completion of the On Street Works Systems and Trackwork and **tie** shall be liable for such additional cost provided such cost shall not exceed £764,000 for two surveyors over 30 months.
- 6.4.24 Approval for working outside the hours stated in the Code of Construction Practice (for example those activities listed in Appendix F) will be granted as necessary to maintain the Programme.
- 6.4.25 All consents, licences and approvals from any Third Parties and Approval Bodies required for the construction of the On Street Works that have been the subject of a competent application from the Infraco are obtained as required to allow the On Street Works to proceed in accordance with the Programme.
- 6.4.26 Infraco will be allowed to recommence the traffic management enabling works on 12 September 2011 in preparation for commencing the works on Princes Street from 19 September 2011.
- 6.4.27 The On Street Works will commence on 3 October 2011.
- 6.4.28 Scottish Water requirements and notifications will not delay commencement and the carrying out of the On Street Works on Princes Street in accordance with the Programme.
- 6.4.29 The works on York Place/ St Andrew Square and Shandwick Place elements can commence whilst the work in Princes Street between South Charlotte Street and South St David Street continues.
- 6.4.30 Any amendment to the Programme will not require the deployment at any one time of more than 3 track gangs and 2 OLE gangs.

## **7.0 SET OFF**

- 7.1 For the purposes of sums due in respect of the On Street Works, save in cases of fraud or error in calculating sums due, **tie** shall not be entitled to withhold/set off or deduct any monies in respect of any claim under the Infraco Contract which has not been agreed between the Parties or determined by reference to the Dispute Resolution Procedure to be payable by Infraco to **tie**.
- 7.2 Amounts certified in a Valuation Certificate and/or paid by **tie** in respect of any element of the On Street Works can not, save in cases of fraud or in error in calculation of sums due or unless subsequently agreed between the Parties or determined by reference to the Dispute Resolution Procedure, later be disputed by any Party and/or set off and/or deducted against any amounts certified in any subsequent Valuation Certificate or payment provided always that no Valuation Certificate shall be conclusive evidence that any work to which it relates is in accordance with the Agreement.

## 8.0 SUSPENSION OF THE ON STREET WORKS

- 8.1 If, at any time after the On Street Works Trigger Date, on any Valuation Date the Aggregate Claims Amount, exceeds the Aggregate Certified Amount by £ 1,500,000, Infraco shall be entitled to suspend the performance of the On Street Works and shall not be required to recommence the On Street Works until such difference is reduced to less than £750,000.

## 9.0 TERMINATION OF THE ON STREET WORKS

- 9.1 **tie** shall be entitled to serve a **tie** Change Notice removing all of the On Street Works which have not been carried out and/or completed at the date of service of the notice from the Infraco Works (Removal Notice). The impact of the removal of the On Street Works on the Off Street Works will be evaluated by the Parties in accordance with Clause 80. For the avoidance of doubt Infraco agree that **tie** or CEC may employ a replacement contractor to complete any On Street Works removed by a Removal Notice.
- 9.2 The Parties agree that following receipt by Infraco of a Removal Notice **tie** shall pay the Infraco within 30 Business Days of receipt of a valid VAT invoice:
- 9.2.1 the value of all work carried out on the On Street Works prior to the issue of the Removal Notice not already covered by payments made by **tie** prior to the issue of the Removal Notice, which value shall be calculated in accordance with Appendix A of this Schedule Part 45:
- 9.2.2 the amounts payable in respect of any preliminary items so far as the work or service comprised therein has been carried out or performed and a proper proportion of any such items which have been partially carried out or performed.
- 9.2.3 the cost of materials or goods reasonably ordered for the On Street Works being removed which have been delivered to the Infraco or of which the Infraco is legally liable to accept delivery (such materials or goods becoming the property of **tie** upon such payment being made to the Infraco).
- 9.2.4 Infraco's properly, mitigated, demonstrably and reasonably incurred demobilisation expenses arising from the issue of the Removal Notice including any amounts which the Infraco is required to pay to its subcontractors in order to terminate or vary any subcontracts relating to the On Street Works.
- 9.2.5 In no circumstances shall **tie** be liable to pay Infraco any sums in respect of its own or (save in respect of the trackwork subcontract between BAM Rail B.V. and Siemens plc dated 21 May 2008) its subcontractors loss of profit or opportunity resulting from the issue of the Removal Notice.
- 9.3 Within 14 Business Days of the issue of a Removal Notice, Infraco shall hand back to **tie** possession of those parts of the Site the subject of the Removal Notice, leaving such parts of the Site in a safe and clean state, free from any temporary buildings, plant, tools, equipment, goods or materials belonging to the Infraco.
- 9.4 Infraco shall use reasonable endeavours to procure that the SDS Provider provides a collateral warranty to any contractor appointed by **tie** or CEC to complete any On Street Works removed by a Removal Notice on terms similar (mutatis mutandis) to the warranty provided by the SDS Provider to **tie** pursuant to clause 11.2.

## APPENDIX A

Subject to the provisions of this Schedule Part 45 (and in particular the occurrence of the On Street Works Trigger Date), the On Street Works Contract Price is the amount of £47,384,510.

### ON STREET WORKS AGGREGATE PRICE

#### **Part 1 – Calculation of the On Street Works Contract Price Payment payable prior to the On Street Works Trigger Date**

Infraco shall be entitled to include in accordance with Clause 67 in any Application for Payment submitted prior to the On Street Works Trigger Date, the amounts as stated within the On Street Works Milestone Schedule, together with the value of all amounts claimed in any On Street Works Estimate submitted by Infraco in relation to the works carried out up to the applicable Reporting Period End Date

#### **Part 2 – Calculation of the On Street Works Sum payable after the On Street Works Trigger Date**

Following the On Street Works Trigger Date (but subject to Clause 5.3) Infraco shall in good faith complete the On Street Works. Infraco shall be entitled to include in any Application for Payment submitted after the On Street Works Trigger Date, the aggregate of the amounts set out in 1.0 and 2.0 below less any Disallowable Costs:

- 1.0 Subject to the above, in respect of the On Street Works other than the On Street Works System and Trackwork:
  - 1.1 The amount calculated by applying the actual quantities of subcontractor resources expended in carrying out the On Street Works during the relevant Reporting Period to the applicable subcontractor rates set out in Appendix C;
  - 1.2 The amount calculated by applying the duration in weeks (pro rata) since the last Reporting Period End date up to the applicable Reporting Period End Date to the applicable subcontractor preliminaries rates set out in Appendix C;
  - 1.3 The amount calculated by applying the applicable Subcontractors Overhead and Profit Percentage set out in Appendix C to items 1.1 and 1.2 above;
  - 1.4 The amount calculated by applying the duration in weeks (pro rata) since the last Reporting Period End date up to the applicable Reporting Period End Date, to the applicable preliminaries rates set out in Part 6.1 of Appendix C for the “Torphichen St Office”;
  - 1.5 The amount calculated by applying the duration in weeks (pro rata) since the last Reporting Period End date up to the applicable Reporting Period End Date, to the applicable preliminaries rates set out in Part 6.1 of Appendix C for the “Edinburgh Park Office”;
  - 1.6 The amount calculated by applying the duration in weeks (pro rata) since the last Reporting Period End Date up to the applicable Reporting Period End Date, to the applicable preliminaries rates set out in Part 6.1 of Appendix C for 1C and 1D; and
  - 1.7 Where an extension of time is awarded in respect of the On Street Works, prolongation costs for the Edinburgh Park Office calculated in accordance with Part 6.1 of Appendix C;

1.8 The amount calculated by applying the head office overhead and profit percentage (as detailed in paragraph 6.4(a) of Appendix B) to the aggregate of the amounts calculated as payable in respect of the On Street Works in items 1.1 to 1.7.

2.0 In respect of the On Street Works System and Trackwork:

2.1 The amounts as stated within the On Street Works Milestone Schedule (excluding Milestones for preliminaries) which relate to On Street Works System and Trackwork (or the appropriate percentages thereof where a Milestone(s) is/are not fully complete);

2.2 Where an extension of time is awarded in respect of the On Street Works, prolongation costs for the On Street Works System and Trackworks calculated in accordance with Part 6.1 of Appendix C;

2.3 The amount as stated in Schedule Part 5 in respect of the Milestones for preliminaries applying to the relevant Reporting Period;

2.4 The amount calculated by applying the rates and prices in respect of disruption to the On Street Works System and Trackwork to any period of disruption and/or standing time during the relevant Reporting Period;

2.5 The amount calculated by applying the duration in weeks (pro rata) since the last Reporting Period End date up to the applicable Reporting Period End Date to the applicable subcontractor preliminaries rates in respect of Systems and Trackwork;

2.6 The amount calculated by applying the duration in weeks (pro rata) since the last Reporting Period End Date up to the applicable Reporting Period End Date to the rate for up to two additional quantity surveyors not included in the preliminaries to supervise the carrying out and completion of the On Street Works Systems and Trackwork provided such amount shall not exceed £764,000 for two additional quantity surveyors over 30 months;

2.7 The amount for additional and/or modified work, including any On Street Works **tie** Change, calculated by applying the rates and prices, overhead and profit percentages; and

2.8 The amount calculated by applying the head office overhead and profit percentage (as detailed in paragraph 6.4(b) of Appendix B) to the aggregate of the amounts calculated as payable in respect of the On Street Works items above (save for those amounts referred to in paragraph 2.7) in respect of On Street Works System and Trackwork,

all as set out in Appendix C provided always that Infraco shall not be reimbursed any preliminaries costs under this Appendix A where such preliminaries costs relate to any period of delay to completion of the On Street Works not caused by a tie Notice of Change or a Pricing Assumption Variation.

3.1 Subject to Clause 3.2, the calculation of the On Street Works Sum in accordance with this Part 2 shall include all works carried out by Infraco in order to carry out and/or complete the On Street Works which were not included in a Valuation Certificate prior to the On Street Works Trigger Date.

3.2 The calculation of the On Street Works Sum in accordance with this Part 2 shall not include sums included in the last Application for Payment to be submitted immediately prior to the On Street Works Trigger Date (which shall continue to be dealt with as if the On Street Works Trigger Date had not occurred) unless and until such sums are in dispute and have not been paid to Infraco by the date of issue of the Valuation Certificate issued 5 weeks after the On Street Works Trigger Date.

Disallowable Costs are as follows:

- i) Plant Breakdown costs including consequential costs and fitter time rectifying.
- ii) Cost of materials which do not comply with the Agreement
- iii) Plant hire company Theft/Damage charges.
- iv) Cost resulting from events covered by Insurances (Infraco, subcontractor and OCIP)
- v) Insurance excesses.
- vi) Cost relating to reworking due to poor workmanship and/or failure of materials (excluding snagging items)
- vii) Small plant changeover charges
- viii) Vehicle damage costs
- ix) preliminaries payable after a Planned Sectional Completion Date as a result of a delay in achieving the relevant Sectional Completion Date, where such preliminaries would not have been payable but for Infraco's breach of its obligations under this Agreement
- x) Costs incurred as a result of any negligence omission or breach by Infraco
- xi) Costs not substantiated by Infraco's records as required to be kept pursuant to Appendix C
- xii) Improperly or erroneously calculated cost

## APPENDIX B

### ON STREET WORKS VARIATION MECHANISM

#### 1. Interpretation

1.1 In this Appendix B, reference to "time and cost implications" shall mean:

1.1.1 In the case of "time", any impact on the On Street Works elements of the Programme and requirement for an extension of time to take into account any delay in the carrying out and/or completion of the On Street Works (including for the avoidance of doubt any overall delay to completion or delay in the completion of any On Street Construction Element) arising as a result of any Pricing Assumption Variation or On Street Works **tie** Change, or where the delay has occurred after the On Street Works Trigger Date, in accordance with paragraph 6.3. Time shall also include the preliminaries payable as a result of any such extension of time, calculated using the preliminaries rates set out in Appendix C.

1.1.2 In the case of "costs" any increase or decrease in the On Street Works Contract Price (including the value of any Milestone Payments and the scheduling of such Milestone Payments) required in order to implement and as a direct consequence of the occurrence or implementation of a Pricing Assumption Variation or On Street Works **tie** Change, such amount to be calculated by applying the rates and prices, overhead costs and profit percentages set out in Appendix C and/or

1.1.2.1 in respect of the delivery of the Maintenance Services in accordance with Clause 52 (*Maintenance*), any net increase or decrease in:

(a) in the case of demonstrable impact (taking into account any impact of previously implemented On Street Works **tie** Changes) on routine maintenance activity:

(i) the consequential change in labour resources and management time required for each affected maintenance element of the Infracore Works; and

(ii) the consequential change in materials, plant and equipment required; or

(iii) the consequential changes in payments due to sub-contractors;

(b) in the case of demonstrable impact (taking into account any impact of previously implemented On Street Works **tie** Changes) on renewals maintenance activity:

(i) the scope of required renewals work or services and frequency of renewals;

(ii) the resulting change in labour resources and management time required for the renewal work; and

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

- (iv) the consequential changes in payments due to sub-contractors.

required in order to implement and as a direct consequence of the occurrence or implementation of a Pricing Assumption Variation or On Street Works **tie** Change.

## **2. Application of this Mechanism**

2.1 This Appendix B will apply for the purposes of determining

2.1.1 the time and cost implications of all On Street Works **tie** Changes and Pricing Assumption Variations which occur prior to the On Street Works Trigger Date;

2.1.2 the time implications of all On Street Works **tie** Changes and Pricing Assumption Variations which occur after the On Street Works Trigger Date.

2.1.3

(a) Subject to paragraph 2.1.3(b), Clause 80 will not apply to any On Street Works **tie** Changes or Pricing Assumption Variations.

(b) Clause 80.19 will apply to On Street Works **tie** Notices of Change.

## **3. Notification of Pricing Assumption Variation**

Infraco shall notify **tie** and the Certifier of the occurrence of any Pricing Assumption Variation as soon as practicable after it occurs ("Pricing Assumption Variation Notification"), providing such details of the Pricing Assumption Variation as are reasonably necessary to describe the Pricing Assumption Variation.

## **4. Issue of an On Street Works **tie** Notice of Change**

4.1 The issue by **tie** of a **tie** Notice of Change upon Infraco must include sufficient detail to enable the Infraco to provide its On Street Works Estimate.

## **5. Infraco's right to refuse to implement an On Street Works **tie** Change**

5.1 Infraco shall be entitled to refuse to implement an On Street Works **tie** Change where:

5.1.1 **tie** does not have legal power or capacity to require the implementation of such proposed On Street Works **tie** Change;

5.1.2 Implementation of such proposed On Street Works **tie** Change would:

(a) Be contrary to Law

(b) Not be technically feasible

(c) Increase the risk of non compliance with this Agreement 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;

- (d) Be outwith the specific competence of the Infraco either in performing the activity required by the On Street Works **tie** Change or in the supervising an Infraco Party to carry out the activity required by the On Street Works **tie** Change;
- (e) Where the On Street Works **tie** Change is instructed after the completion of Section D, require Infraco to carry out works and/or services that are not transport infrastructure and maintenance related, to be performed after completion of Section D.
- (f) Make the provision of the Maintenance Services by the Infraco financially unfeasible.

**6. Preparation and Submission of On Street Works Estimates**

6.1 After each Reporting Period End Date but prior to the Application for Payment, Infraco shall provide to **tie** an On Street Works Estimate.

6.2 Prior to the On Street Works Trigger Date, each On Street Works Estimate will include:

- 6.2.1 the cost and time implications of all Pricing Assumption Variations which had an impact on the cost of carrying out the On Street Works during the Reporting Period just completed (in so far as relevant),
- 6.2.2 the cost and time implications of all On Street Works **tie** Changes in so far as Infraco has been able to determine such implications as at the date of submission of the Estimate.

Infraco shall act in good faith in calculating the cost and time implications referred to in this paragraph 6.2.

6.3 Prior to the On Street Works Trigger Date the valuation of any On Street Works Estimate shall be carried out as follows:

- a) by measurement and valuation at the rates and prices for similar work in Part 1 and Part 2 of Appendix C to this Schedule Part 45 in so far as such rates and prices apply;
- b) where such rates and prices do not apply, by measurement and valuation at rates and prices deduced therefrom in so far as it is practical to do so;
- c) where such rates and prices do not apply and it is not practicable to deduce rates and prices therefrom, the cost of the resources employed having regard to the civil engineering resource rates set out in Part 3 of Appendix C;
- (d) applying the subcontractor overhead and profit percentage as set out in Appendix C to the subcontractor costs calculated in accordance with this paragraph 6.3;
- (e) prolongation costs (including site related overheads and any other preliminaries) shall be calculated by applying the rates and prices set out in Appendix C. The sums



calculated in accordance with paragraphs 6.3(a) to (d) shall not include any costs arising from extensions of time or delay.

6.4 Infraco shall apply the following head office overheads and profit percentages to any amount calculated in accordance with paragraph 6.3 as follows:

- a) Civil Engineering works including any SDS Design Fees 10%
- b) Systems and Track works 17%

Infraco shall apply the following Site related overheads percentages to any amount calculated in accordance with paragraph 6.3 as follows:

- a) 7.4% to cover the consortium preliminaries (except in respect of amounts calculated pursuant to paragraph 6.3(e)).
- b) 17.5% to cover any other preliminaries with regard to any Change associated with Civil Engineering works, provided that this percentage shall in no case apply to Systems and Trackworks or in respect of amounts calculated pursuant to paragraph 6.3(e).

6.5 After the On Street Works Trigger Date, each On Street Works Estimate will include the time implications of:

- a) all Pricing Assumption Variations which had an impact on the carrying out of the On Street Works during the Reporting Period just completed; and
- b) all On Street Works tie Changes in so far as Infraco has been able to demonstrate such implications as at the date of submission of the Estimate.

After the On Street Works Trigger Date Infraco shall be entitled to preliminaries and prolongation costs as set out in Part 2 of Appendix A in respect of any extension of time to which it is entitled as a result of a Pricing Assumption Variation or On Street Works tie Change.

6.6 For the avoidance of doubt, after the On Street Works Trigger Date, Infraco shall be entitled to include in Applications for Payment costs incurred in carrying out the On Street Works as amended by an On Street Works tie Change.

## 7.0 Following Submission of an On Street Works Estimates

7.1 The Parties and the Certifier shall seek to agree any On Street Works Estimate as soon as reasonably practicable and in any event within 5 weeks of submission of the Estimate. In the event of any failure to agree, the Certifier shall make a determination and this shall be included in a Valuation Certificate (in respect of additional cost) and a tie Change Order (in respect of additional time). The Certifier's determination of any extension of time included in a tie Change Order shall, saving in cases of fraud and error in calculation, and subject to the Dispute Resolution Procedure, be binding on the Parties.

7.2 As soon as any On Street Works Estimate has been agreed or determined, the Certifier shall issue a tie Change Order to Infraco reflecting the same.

7.3 Notwithstanding that an On Street Works Estimate has not been submitted by Infracore or agreed or determined by the Certifier, Infracore shall proceed with:

7.3.1 The On Street Works as varied by a Pricing Assumption Variation; and/or

7.3.2 Implementing any On Street Works **tie** Change (except where Infracore is entitled to refuse to implement such a change in accordance with paragraph 5 above).

**APPENDIX C**

**ON STREET WORKS RATES, PRICES, PRELIMINARIES AND PROLONGATION COSTS**

**APPENDIX D**  
**ON STREET DESIGN INFORMATION**

## APPENDIX E

### ON STREET WORKS PROTOCOL

This On Street Works protocol sets out an arrangement to declare the available working between Bilfinger Berger, Siemens, tie, City of Edinburgh Council, the utility companies and the approved utility contractors (hereinafter referred to as “the Parties”).

This protocol is defined as being as a minimum the reasonable steps to be taken by the Parties to mitigate delays and the effect on the project programme, where a clash exists between the required infrastructure for Initial Phase 1a and the existence of utilities installations as apparatus.

It is recognised that the Programme Rev 4 requires that Bilfinger Berger and Siemens shall have first call on any particular location and shall be given free access to proceed with their works. However, in the event that it becomes apparent by survey or by uncovering the presence of utilities that clash with the tram infrastructure, the Parties shall give notice, communicate and work together to achieve a solution that provides the minimum impact to the Programme Rev 4, with the least cost.

Elements of the agreed working include, but are not limited to:

1. Pre-Start surveys;
2. Charting known clashes;
3. Providing reasonable access to working areas for all parties on a location by location agreed basis;
4. Contributing and collaborating in joint site coordination; and
5. Open and transparent joint communication with utility companies.

This protocol does not affect the contractual rights of the contracted parties.

## On Street Works Protocol Flow Diagram

The parties agree to utilise the below noted protocol for the on street works:



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## APPENDIX F

### CODE OF CONSTRUCTION PRACTICE APPROVAL

- Enabling works for and establishment/removal of traffic management phases;
  - York Place phases 1 to 3 and sub phases.
  - St Andrews Square phases 1 and 2 and sub phases.
  - St Andrews Square North.
  - St Andrews Square South.
  - St Andrews Square West.
  - South St Andrews/Waverley Junction phases 1 to 4 and sub phases.
  - Princes Street and sub phases.
  - Shandwick Place phases 1 to 7 and sub phases.
  - Haymarket phases 1 to 6 and sub phases.
- Road surfacing tie-ins and white lining at the above locations.
- The delivery and offloading of materials to on-street locations including, but not limited to, track, sleepers, OLE poles & cables, canopies.
- The erection of On Street OLE poles, building fixings and cables.
- The pouring, finishing and curing of concrete that cannot be completed within normal working hours.
- The fuelling and maintenance of pumps.
- The maintenance of safety equipment, including traffic management, fencing etc.
- Enabling works for and establishment/removal of traffic management phases;
  - Haymarket Yards.
  - Russell Road.
  - Roseburn Street.
  - Balgreen Road.
  - South Gyle Access.
  - Hermiston Gate.
  - Gyle Broadway.
  - A8.
  - Eastfield Avenue.
- Road surfacing tie-ins and white lining at the above locations.
- In compliance with the wishes of third parties and subsequent instruction from CEC/tie.
- Stringing catenary cables.
- Commissioning activities.