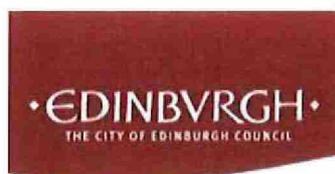


Edinburgh Trams

Report on Progress since Completion of Heads of Terms to 8th April 2011



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Document 1 of 2
Report

Issue Date: 7th April 2011

Hg Consulting



EDINBURGH TRAMS

REPORT ON PROGRESS SINCE COMPLETION OF HEADS OF TERMS TO 8TH APRIL 2011

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- 2.0 Governance and Management of the Project
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- 2 Draft Minute of Variation as at 5th April 2011
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1.0 HEADS OF TERMS / MINUTE OF VARIATION

1.1 Development of Heads of Terms to Form Minutes of Variation

In order to reduce time and increase efficiency of instruction, a briefing meeting with City of Edinburgh Council ("CEC") solicitors and McGrigors was held on 14th March 2011.

A joint briefing meeting with Kevin Russell, Axel Eickhorn and Colin Smith, together with McGrigors and Pinsent Masons was held on 20th March 2011.

The Minute of Variation draft attached is as at 5th April 2011 (see Appendix 2).

1.2 Minute of Variation Timetable

1.2.1 *Airport to Haymarket – 15th April 2011*

The tie / BBS Minute of Variation to the present contract requires to be agreed prior to and signed on the 15th April 2011.

In Hg Consulting's view, The signing of the Minute of Variation on the 15th of April 2011 should only be carried out with the benefit of confirmation from BBS and CAF that they will complete contractual arrangements to allow the novation of CAF's present contractual obligations from BBS to tie in the additional Minute of Variation to be signed on 1st July 2011.

The tie / BBS and tie / CAF Minutes of Variation should be signed simultaneously on 15th April 2011.

1.2.2 *Haymarket to York Place – 1st July 2011*

It has been agreed that the additional Minute of Variation Haymarket to York Place is to be ready for signature by 1st July 2011.

This additional Minute of Variation will be subject to full funding being confirmed to tie by CEC. The confirmation of funding is to be made by 1st September 2011.

The requirement of the project team is to have a design that is sufficiently advanced and consented to allow a detailed price to be agreed that will become an agreed Target Sum by 1st July 2011. Hg Consulting would recommend that the agreement of the Target Sum has a long stop date of 1st August 2011.

1.3 City of Edinburgh Council instructions to Contract Procedures

Since mediation the contract control from the client sponsor has been of greater influence.

The proposed methodology for CEC required changes is to notify CEC of requests or decisions by way of a letter to tie requesting that a change order be issued.

This instruction will be pre-agreed by CEC and BBS and the letter of instruction copied to the Contractor.

Matters presently being processed as noted above, as at 5th April 2011, include:

- letter to get Cathedral Lane Substation moved forward (excluding any further Global Henderson changes);



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**REPORT ON PROGRESS SINCE COMPLETION OF
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1.3 City of Edinburgh Council instructions to Contract Procedures cont'd

- letter to confirm that the terminal point is to be York Place;
- letter to confirm that there will be a full closure of Princes Street and that the Embargo has been lifted;
- letter to tie regarding their non involvement in BBS design (as per item 1.3 of HoT). Note civil and system and trackwork design will be issued to tie for information only to allow them to complete their obligations with third parties e.g. ICP;
- letter to tie covering audit (trackwork) and in general to allow BBS to complete the design and agree this with CEC;
- letter to tie regarding no further involvement in Roseburn Viaduct scope as the scope is agreed with CEC and included in the agreed Total Price as per Mar Hall - tie need to issue instruction to BBS for the agreed scope as outlined in the Project Phoenix document;
- letter to confirm that no signage is to be installed on top of tram stops;
- letter to confirm whether the depot access road, Hammer head Option 2 (as per tie letter INF CORR 7508/DB dated 11 March 2011) is to be implemented and the costs (Design & Construction) are additional to the agreed Total Price, per Mar Hall;
- letter to confirm whether the Gogar castle access road (as per tie letter INF CORR 7510/DB dated 11 March 2011) is to be implemented and the costs (Design & Construction) are additional to the agreed Total Price, per Mar Hall;
- Letter to tie regarding instruction to BBS for designing a temporary Overhead Catenary System to the east of Depot Access Bridge to facilitate the energisation of the mini test track and associated tracks within the Depot;
- Letter to tie regarding instruction to BBS for designing the new Termination Point at York Place (St Andrew Square); and
- Letter to tie regarding instruction to BBS for incorporation of an additional cycle path at Section 1A as requested by CEC.

1.4 CAF
1.4.1 Integration to BBS Systems

A series of meetings have been held between CAF and tie, culminating in a meeting between Richard Jeffrey, Vic Emery and Antonio Campos.

The latest tie / CAF Heads of Terms (Redacted) is attached (see Appendix 3).

The remaining issues that require to be managed and included in the tie / CAF Minute of Variation, to be compatible with BBS arrangements are:

- (i) Specification, location and scope of mini test track; and
- (ii) Programme, integration of systems and compatibility of entire plant, equipment, infrastructure, software, trams, etc.



EDINBURGH TRAMS

REPORT ON PROGRESS SINCE COMPLETION OF HEADS OF TERMS TO 8TH APRIL 2011

1.4.1 Integration to BBS Systems cont'd

On my researching historic files, I believe this information has been considered previously, but that no final decision was made (see Appendix 4).

The tie / CAF Minute of Variation

A joint meeting is proposed by Hg between BBS, CAF, CEC and tie to review previous discussions and re-establish a close definition regarding items (i) and (ii) above. Thereafter the resolution of this meeting should be inputted to the tie / BBS and tie / CAF Minutes of Variation respectively.

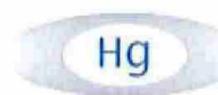
1.4.2 Partial/Possession and Handover/Commissioning Procedures

The programme and process will be built off the present BBS programme proposal of five trams from 15th October 2011 and the balance from mid December 2011.

An alternative proposal to take full possession of the Depot on 16th December 2011, with trams being delivered and commissioned from January 2012, is being discussed and a return call from CAF is awaited.

Requirements for commissioning, training of staff and resourcing, leading to a full handover compliant with ROGS to the end user, need to be embraced and understood by tie and the tram operator.

BBS are to comply with Employer's requirements.



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REPORT ON PROGRESS SINCE COMPLETION OF HEADS OF TERMS TO 8TH APRIL 2011

2.0 GOVERNANCE AND MANAGEMENT OF THE PROJECT

2.1 Client / Contractor

The project is funded by the Scottish Government (Transport Scotland) and City of Edinburgh Council. The project sponsor is City of Edinburgh Council.

The arms length project management company is tie Limited ("tie").

tie is CEC's agent to deliver the Edinburgh Trams project.

2.2 Project Delivery

The present proposal requires an adjusted scope per item five of the Head of Terms signed on 12 March 2011, which includes:

1. tie procuring and managing the utility diversion works required from on street works.
2. CAF providing the tram element of the contract.
3. BBS providing infrastructure and systems from the Airport to Haymarket and to York Place.

2.3 Project Control and Meeting Structure

A separate report on 15th April will be made on the governance from the project office upward (see diagram in Hg minutes, per Appendix 5).

From the project office downward it has been noted that meetings have been prolific.

A review of all meetings is presently underway to reduce the number of meetings and attendees in order to provide a structure of meetings that will have:

- (i) an agenda;
- (ii) minutes;
- (iii) actions and action by; and
- (iv) required minimum personnel.

This exercise is being led by Martin Foerder, Alfred Brandenburger and Colin Smith, with an aim for reporting and implementation by the end of April 2011.

Project strategic weekly meetings have been put in place, with input from a number of CEC technical staff and with attendance by tie staff. These cover:

- Risk
- Programme
- Commercial
- Design and Consents



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REPORT ON PROGRESS SINCE COMPLETION OF HEADS OF TERMS TO 8TH APRIL 2011

2.3 Project Control and Meeting Structure cont'd

It is proposed to add:

- Utilities; and
- Princes Street Remedial Works

Those meetings have been chaired by Hg on behalf of CEC (see Appendix 5).

The work activities of the client group and contractor were marshalled in line with the project delivery plan from 13th March 2011 to 8th April 2011 (see Appendix 6).

2.4 Key Outputs of Weekly Meetings

In future the foregoing could be reduced to fortnightly meetings.

2.4.1 Risk

An updated revised risk register for the whole project has been created. It has been agreed that this will be reviewed and managed by the Risk meeting forum on a weekly basis (see Appendix 7).

2.4.2 Programme

Software and programme are to be shared with agreed filters and a three-monthly look ahead programme is to be updated on a monthly basis. Again, the programme will be managed at weekly strategic meetings with a mitigating approach to early warnings (see Appendix 8).

2.4.3 Commercial

Monthly milestone valuations are to be carried out, based on work complete/delivered in line with the agreed milestones and broken down into BBS costs and Preliminaries.

Milestones are to be pre-agreed.

Hg Consulting has requested financial information from all contracted parties in order to prepare a project cash flow for the City of Edinburgh Council.

2.4.4 Design and Consents

There is weekly involvement with BBS and SDS in order to identify project threats to completing the design and to provide whole project team solutions to overcome issues, e.g. lettering above tram stops.

From 8th April it is proposed to deal with the following two project packages given their importance to an efficient interface with the public:

(a) Princes Street Remedial Works

To deal with the finalisation of the traffic management plan, stakeholder engagement, revision and implementation of previous good practice manuals, together with decision by the client to communications dealing with no embargo. Consideration is required regarding the 28-day notification period; with a decision to be taken by the client to either reduce the period to 14 days or to leave it at 28 days, but extend the duration on site closer to Christmas by 14 days.



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REPORT ON PROGRESS SINCE COMPLETION OF
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(b) Princes Street Remedial Works cont'd

The Traffic Management Plan including early enabling works (temporary lights, etc.) is presently being worked upon for consideration by CEC. The enabling works precedes the end of the 28-day notification period by 21 days therefore this is the critical item that needs to be dealt with first (see Appendix 9).

(c) Tie Utilities Package

This project meeting is to ensure compatibility between the tie utilities project package and BBS requirements, as well as to provide works attendance support if and when required to manage project programme impacts.



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REPORT ON PROGRESS SINCE COMPLETION OF HEADS OF TERMS TO 8TH APRIL 2011

3.0 PRIORITY WORKS

3.1 Definition and Scope

3.1.1 *Drawing of red / yellow line boundary of works*

To ensure clarity the scope of the Priority Works has been defined per a note in the Hg minutes and further designated by means of red / yellow line boundary scope drawings.

These drawings should be attached to the tie / BBS Minute of Variation (see Appendix 10).

3.2 Programme of Priority Works

3.2.1 *Commencement –3rd May / 4th April 2011*

Early commencement agreed on Priority Works on the depot and the mini test track was implemented in good faith on 4th April 2011 and costs are to be reimbursed. The balance of works is due to commence on 3rd May 2011.

3.2.2 *Integration of CAF delivery dates*

As noted earlier in this report, the integration of the CAF/BBS systems is required.

In Hg Consulting's view, a clear commitment is required from BBS and CAF to provide to existing Employer Requirements a project plan including, but not limited to, specification, testing, commissioning and programme of the integrated tram systems. This plan should be appended to the additional Minute of Variation to be signed on 1st July 2011.

3.3 Cost of Prioritised Works

3.3.1 *Method of agreeing value*

The Prioritised Works Price has been extracted from the agreed lump sum and is as attached (see Appendix 11).

The tie interpretation of value is lower.

Both parties however have agreed the method of value, based, where applicable, on quantities and rates.

Similarly, Preliminaries has been discussed with full transparency.

3.3.2 *Reduced and simplified milestones for payment, based on works not timeline*

It has been agreed to reduce the milestones to monthly, paid on works completed or delivered in the month.

Hg Consulting has requested financial information from all contracted parties in order to prepare a project cash flow for the City of Edinburgh Council.

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REPORT ON PROGRESS SINCE COMPLETION OF HEADS OF TERMS TO 8TH APRIL 2011

3.4 Ancillary and Other Works

3.4.1 Works contained within existing lump sum that can be brought forward

It has been agreed that works that are designed and consented for which a value has been agreed, can be brought forward and contained in the lump sum price and within the approved client budget should be considered and committed too in order that this work will not delay the overall completion should it only be commenced after 2 September 2011.

3.4.2 Advance works from Haymarket to York Place – project that advantageous to consider early commitment

Works within the Target Sum package should be considered and committed too in order that this work will not delay the overall completion should it only be commenced after 2 September 2011, e.g. advance site investigation works in connection with Haymarket to York Place.

3.5 Princes Street Remedial Work

3.5.1 Design Solution

Trackform has been agreed. CEC to confirm that non material variation to Planning only is required.

3.5.2 Traffic Management

The Traffic Management Plan has been agreed in principle on the basis of no embargo.

3.5.3 No embargo / programme

Matters of Pre-Start enabling works, notice procedures and previous positive lessons learnt should be dealt with and agreed prior to going live on this matter after 15th April.

Strategic details are to be dealt with at the weekly Princes Street Remedial Works project meeting.



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REPORT ON PROGRESS SINCE COMPLETION OF HEADS OF TERMS TO 8TH APRIL 2011

4.0 MANAGEMENT OF DESIGN AND CONSENTS PROCEDURE

4.1 Fast Track Approval Procedures

4.1.1 CEC Process (*Planning and Roads*)

CEC has implemented a consents task force and relocated resources to the Lochside Avenue offices.

This has resulted in a dramatic change in culture, creating a team spirit over seven-day working, the esprit de corps typified by delivery to site of a "35 person lunch" team curry.

A positive response to the accelerated consents process by SDS has brought about additional SDS resources to keep up with the CAD requirements of the fast track approvals (see Appendix 13).

Consultations over detailed discussions and programming of design resource and design prioritisation are now happening from desk to desk, rather than by appointments in different city offices.

The line management of this team through Andy Conway and Bob McCafferty goes straight to Dave Anderson, CEC Director, with a copy to Colin Smith.

A present proposal under discussion would be to have on site works inspected by Engineer Inspectors, as opposed to tie project managers.

Red Flag reports are being brought forward from the weekly design and consents meetings. These reports, e.g. Scottish Water, are brought to the attention of Dave Anderson, CEC Director. Thereafter an agreed action plan to mitigate is agreed with the project team (see Appendix 14).

This procedure will capture issues and will be followed in any dealings with the parties below:

- Third party landowners
- Network Rail
- Scottish Water
- Utility companies
- Forth Ports
- SEPA
- Historic Scotland
- Scottish Natural Heritage

4.1.2 Design Gatekeeper

At the Design and Consents weekly meeting Martin Foerder, Alfred Brandenburger and Colin Smith act as gatekeepers. The gatekeeper function is a mechanism whereby in the event that design is not up to a level ready for submission it is rejected. To date there have been no rejections.



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REPORT ON PROGRESS SINCE COMPLETION OF HEADS OF TERMS TO 8TH APRIL 2011

4.2 Design and Build

4.2.1 *Contractors Self Certification*

BBS carry design and build liability under this contract.

4.2.2 *Sign off Protocols Tracker on Certificate Stages*

tie is the duty holder under ROGS until this is transferred to the operator (to be named).

"Cases for safety" remain with the duty holder; this includes assurances on all systems.

The Independent Competent Person ("ICP") is presently employed by tie.

The ICP requires Design Assurance Certification.

To meet with the ICP requirements, BBS have prepared and issued a number of protocol statements and processes (see Appendix 15)

It has been agreed, without compromise to the process, that audits will be carried out at appropriate dates. This timetable is to be agreed, commencing in July 2011.



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REPORT ON PROGRESS SINCE COMPLETION OF HEADS OF TERMS TO 8TH APRIL 2011

5.0 RE-ENERGISATION OF PROJECT

5.1 Payments

5.1.1 Value and Trigger

In terms of Price clause (6) of the Heads of Terms, at the weekly commercial meeting it was recognised that the value of the following items required to be assessed:

- (i) Value of Prioritised Works;
- (ii) Value of Prioritised Works Preliminaries; and
- (iii) An agreed monthly milestone pattern, based on works completion

In addition, discussion had taken place at Mar Hall on the question of mobilisation and the cost of re-energisation of the project.

5.1.2 Payment Dates

Dates were discussed and in outline settled as follows:

Issue of Certificate Hg1	8 th April 2011
Trigger Point 1 – Signing of Minute of Variation	15 th April 2011
Ownership of materials transferred to CEC	15 th April 2011
Payment of Certificate Hg1	22 nd April 2011
Issue of Certificate Hg2	3 rd May 2011
Trigger Point 2 – Site Mobilisation, valuation of structures completed, design detail closed out - period 14 th March to 3 rd May 2011	3 rd May 2011
Payment of Certificate Hg2	17 th May 2011
Payment of Cumulative Certificate	13 th July, 10 th August and 31 st August 2011

5.2 Certificate Process

Certification on the specified dates would value the payment of the certified sum 14 days after the certificate date.



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REPORT ON PROGRESS SINCE COMPLETION OF HEADS OF TERMS TO 8TH APRIL 2011

5.2.1 *Hg1 and Hg2 (Hg Cumulative Certificate)*

Certification by Hg Consulting, Chartered Quantity Surveyors would be based on an impartial assessment of value delivered to the project. The duty of care provided by this certificate would be to City of Edinburgh Council.

The payment of the certified value would be conditional on:

- (i) the signing of the Minute of Variation by the Parties;
- (ii) vesting of title of materials with the Employer and implementation of a Bond or other financial instrument or measure to be agreed (see Appendix 18);
- (iii) transfer and ownership of the advanced design of the project to 15th April 2011;
- (iv) transfer of ownership of the project specific research and development intellect of the Siemens systems and controls; and
- (v) Transfer of ownership of works structures.

Further payments of Preliminaries, materials and equipment due for payment but not yet paid, in the sum of £13m, would be spread over the period from June to September 2011.

To ensure clarity of position, Hg facilitated a commercial workshop with BBS and tie where each party was able to present its assessment of mobilisation costs. After presentation, the other party was invited to comment. The differences in interpretation were noted.

Both parties, BBS and tie, agreed to exchange the details of their papers and the presentations on the day were recorded on white boards, photographed and thereafter typed up for record purposes (see Appendix 16).

The first part of the meeting closed; BBS and tie left the meeting.

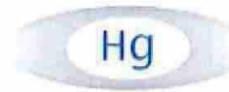
The second part of the meeting reconvened after a short recess with BBS and CEC (Alan Coyle and Colin Smith).

The difference of view had been clearly expressed in the earlier session, with the BBS requirement noted as £49m and tie's opinion at £19m.

BBS confirmed that they could not mobilise on the basis of a £19m payment.

After discussion it was agreed to take a proposal to the Principals on the basis of that noted below.

It was affirmed that the sums being discussed were already contained in the lump sum agreement of £362,500,000. The mobilisation certification process was to release cash flow against a measurement of value being transferred to the employer.



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**REPORT ON PROGRESS SINCE COMPLETION OF
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5.2.1 Hg1 and Hg2 (Hg Cumulative Certificate) cont'd

The proposal is further broken down between Bilfinger Berger and Siemens (see Appendix 17).

Certificate 1	£27,000,000	dated 8 th April 2011
Certificate 2	£9,000,000	dated 3 rd May 2011
	<hr/>	
	£36,000,000	
Cumulative Certificate June to 31 st August 2011	£13,000,000	Dated: 13 th July 2011 10 th August 2011 31 st August 2011
	<hr/>	
	£49,000,000	
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5.3 Target Sum – Haymarket to York Place

It has been discussed and agreed that based on the design target of 1st July 2011 a Target Sum will be determined, based on quantities and rates for materials, equipment and works, in line with market rates.

Preliminaries will be agreed in the form as utilised for the Priority Works.

Milestones will be pre-agreed and monthly.



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REPORT ON PROGRESS SINCE COMPLETION OF HEADS OF TERMS TO 8TH APRIL 2011

6.0 CONCLUSIONS

Working practices have changed; there is further improvement to be sought.

Project Governance structures are being streamlined and reformed.

Commitment and resource must be maintained to ensure the ability to agree the Minutes of Variation of 15th April 2011.

Commitment to the weekly site project management of strategic issues should be continued to project conclusion.

Regular reporting and communications between the Principals should be maintained.

The next key action is to bring to conclusion the Minutes of Variation of 15th April and 1st July 2011, recorded in an acceptable form to the parties, which must include the integration of systems and specification of the mini test track, together with a compliant project delivery plan.



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**REPORT ON PROGRESS SINCE COMPLETION OF
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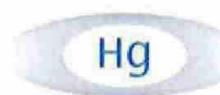
Appendix I – Heads of Terms (CEC, BBS, TIE)



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Appendix 2 - Draft Minute of Variation as at 5th April 2011



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**REPORT ON PROGRESS SINCE COMPLETION OF
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Appendix 3 - Heads of Terms (Redacted) (CEC, CAF, TIE)



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REPORT ON PROGRESS SINCE COMPLETION OF
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Appendix 4
Mini Test Track - Operational Readiness Workshop List



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**REPORT ON PROGRESS SINCE COMPLETION OF
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Appendix 5

Hg Minutes from Briefing Meetings on 14th and 18th March 2011



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**REPORT ON PROGRESS SINCE COMPLETION OF
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**Appendix 6
Project Delivery Plan from 13th March to 8th April 2011**



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**REPORT ON PROGRESS SINCE COMPLETION OF
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Appendix 7 - Risk Register



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**REPORT ON PROGRESS SINCE COMPLETION OF
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Appendix 8 - Prioritised Works Programme and Narrative



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**REPORT ON PROGRESS SINCE COMPLETION OF
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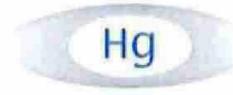
Appendix 9
Princes Street Remedial Works – Traffic Management



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**REPORT ON PROGRESS SINCE COMPLETION OF
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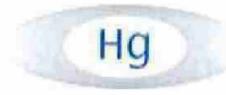
**Appendix 10
Prioritised Works – Scope / Red / Yellow line Boundary**



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Appendix II - Prioritised Works Price



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**REPORT ON PROGRESS SINCE COMPLETION OF
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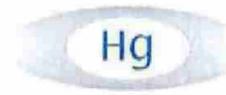
Appendix 12 - CEC Approvals – Technical Approval Comments



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**REPORT ON PROGRESS SINCE COMPLETION OF
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**Appendix 13
Design and Consent Issues (as at 30th March 2011)**



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**REPORT ON PROGRESS SINCE COMPLETION OF
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Appendix 14 - Red Flag Briefing Note – Scottish Water



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**REPORT ON PROGRESS SINCE COMPLETION OF
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Appendix 15 - Design & Build – Design Tracker



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**REPORT ON PROGRESS SINCE COMPLETION OF
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**Appendix 16
Notes from Commercial Workshop – 31st March**



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**Appendix 17
Re-Mobilisation Payments – Bilfinger Berger/Siemens Split**



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**REPORT ON PROGRESS SINCE COMPLETION OF
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Appendix 18 - Vesting of Materials stored at Broxburn

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 SET OF DATES
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(A)

15th OCTOBER
2010

24th Nov. 2010
+ 4 MONTHS

FOR DEPOT
AVAILABILITY
&

FOR DEPOT
AVAILABILITY
& (A)

MINI-TEST TRACK
AVAILABILITY.

9th JULY 2011
MINI-TEST TRACK
AVAILABILITY.

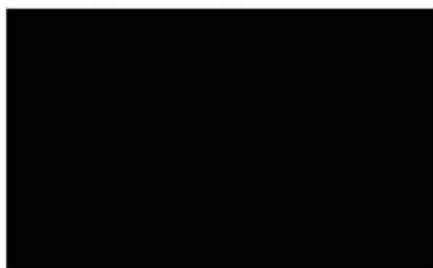
CAF: Richard Garner, Antonio Campos

Tie Ltd: Richard Jeffery, Vic Emery,

Note taker: Ritchie Somerville

1. **Contractual Relationships:** Both parties to instruct lawyers that they want to novate, or similar mechanism, and not renegotiate, the contract.
2. **Date of Novation:** All agreements have to happen simultaneously, on the 1 July or as agreed, in a tripartite agreement.
3. **Payment mechanics for lump sum payment:** Payment of €5.1M is at signature of novation, 1 July 2011 or date as arises. Additional payments after 15th October due to delay would be paid as per Marr Hall agreement on the basis of a straight line relationship, and would be paid at delivery date of the depot and mini test track and earlier if agreed.
4. **Reliability and performance bond:** Mechanism to be agreed to ensure that trams are always covered by bonds as per contract, and on number of trams to be agreed. Croydon arrangement needs to be subject to separate discussion.
5. **Tram Integration:** CAF obligation is to provide trams to meet the employer's requirements. Siemens have responsibility for integration for the total system. Consortium Exit Agreement to be clear that Siemens take the integration of tram into overall system risk: to be visible to all. CAF/Tie agreement notes that this is a Siemens risk, tie held harmless.
6. **Liquidated Damages:** Agreed. Post Novation, failure to meet the dates in the Novation agreement by CAF would be subject to liquidated damages.
7. **Payment during Commissioning:** Full Vehicle Commissioning Payments will be made upon satisfactory completion of commission to the extent possible on the mini test track.
8. **CEC to guarantee:** agreed
9. **Excess Trams:** Subject to agreement on terms, prior to signature of Minute of Agreement, reasonable costs for modification of Tram, external costs to CAF arising from lease/sale negotiations, are not due on CAF.
10. **EU procurement rules:** Both parties agree to remain silent on this. Item to be removed
11. **Funding:** Both parties agree to remain silent on this. Item to be removed.

Wednesday, 30 March 2011 2:57 PM



MINUTE OF VARIATION TO THE INFRACO CONTRACT

among

(1) tie LIMITED

and

(2) BILFINGER BERGER CIVIL UK LIMITED

and

(3) SIEMENS plc

and

(4) CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES S.A.

in respect of the PRIORITISED WORKS on the EDINBURGH TRAM NETWORK

MINUTE OF VARIATION

among

- (1) **tie LIMITED** (company number SC230949), whose registered office is at City Chambers, High Street, Edinburgh, Midlothian, EH1 1YJ ("**tie**") which expression shall include its personal representatives, successors, permitted assignees and transferees;
- (2) **BILFINGER BERGER CIVIL UK LIMITED**, a company incorporated in England and Wales under number 02418086 and having its registered office at 3rd Floor Braywick Gate, Braywick Road, Maidenhead, Berkshire SL6 1DA ("**BBUK**") which expression shall include its personal representatives, 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 ("**Siemens**") which expression shall include its personal representatives, successors, permitted assignees and transferees; and
- (4) **CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES S.A.**, a company registered in Spain and having its registered office at J. M. Iturrioz 26, 20200 Beasain, Spain ("**CAF**") which expression shall include its personal representatives, successors, permitted assignees and transferees,

(2), (3) and (4) together the "**Infraco**".

BACKGROUND

- A tie and Infraco entered into a contract on 14 May 2008 under which Infraco was appointed to carry out and/or manage the design, construction, installation, commissioning, tram procurement, system integration, infrastructure maintenance, tram maintenance and supply of related equipment and materials, trams and related infrastructure in respect of the Edinburgh Tram Network (such contract, amended as detailed below, is herein after referred to as the "**Infraco Contract**").
- B By an agreement in writing dated 13 May 2008 ("**Tram Supply Agreement**") tie appointed CAF to design, manufacture and supply 27 Trams and to supply documentation and associated equipment in connection with the Edinburgh Tram Network.
- C By a Minute of Variation in writing dated 14 May 2008, tie, BBUK, Siemens and CAF agreed that CAF would become a party to the Infraco Contract.
- D By an agreement in writing dated 14 May 2008 ("**Novation of Tram Supply Agreement**") tie and Infraco agreed, with the consent of the Tram Supplier, that Infraco would take over the rights and liabilities of the "Client" (as defined in the Tram Supply Agreement) under the Tram Supply Agreement.
- E The Infraco Contract was amended by the Princes Street Supplemental Agreement entered into between the Parties in March 2009 and re-executed on 29 May 2009, a Minute of Variation between the Parties dated 3 June 2009 and a Minute of Variation between the Parties dated 23 April 2010.
- F Following a mediation between the Parties which took place at Mar Hall between 8 and 12 March 2011, tie and Infraco have agreed to vary the Infraco Contract to the extent specifically set out in this Minute of Variation to give effect to the Prioritised Works.

1 DEFINITIONS AND INTERPRETATION

- 1.1 The definitions given in the recitals to this Minute of Variation apply to this Minute of Variation.
- 1.2 In the context of this Minute of Variation where the Infraco Contract has defined a meaning to any capitalised word or expression used in this Minute of Variation, the same meaning shall be given to it in this Minute of Variation, except as follows:

"**CEC**" means the City of Edinburgh Council;

"**Certificate 1 - First Materials and Equipment and First Mobilisation**" means the certificate to be issued by the Certifier in accordance with Clause 6 (*Certificate 1 - First Materials and Equipment and First Mobilisation*);

"**Certificate 2 - Second Mobilisation**" means the conditional certificate to be issued by the Certifier in accordance with Clause 7 (*Certificate 2 - Second Mobilisation*);

"**Certificate 3 (A, B & C) - Second Materials and Equipment**" means the conditional certificates to be issued by the Certifier in accordance with Clause 8 (*Certificate 3 (A, B & C) - Second Materials and Equipment*);

"**Certifier**" means the person appointed pursuant to the Certifier Agreement;

"**Certifier Agreement**" means the agreement between [], CEC, tie and Infraco for the certification of completion of the Prioritised Works and amounts payable under this Minute of Variation; [**Note: Certifier to be appointed and paid for by CEC. Certifier Agreement to provide that Certifier will be impartial, provide a duty of care to Infraco.**]

"**Communications Protocol**" means the communications protocol set out in Schedule Part 4 (*Communications Protocol*);

"**Heads of Terms**" means the heads of terms signed by tie, CEC, BBUK and Siemens in Glasgow on Saturday 12 March 2011;

"**Infraco Works Recommencement Date**" means 2 September 2011 subject to the Parties entering into an additional Minute of Variation as per the Heads of Terms on or before 1 July 2011.;

"**Materials and Equipment**" means the materials and equipment listed in Schedule Part 2 (*Materials and Equipment*);

"**Off-Street Works**" means that part of the Infraco Works from the Airport to Haymarket (chainage 712,579.5 to 200,000), including the enabling works to be performed at Lindsay Road Retaining Wall (at outbound chainages W1A 100,168 to 100,404; W1B 100,225 to 100,266, W1C 100,387 to 100,412 and W1D 100,467 to 100,478), Lindsay Road lowering (outbound chainage 100,230 to 100,560 and Lindsay Road LOD at east end) and the civil works at Tower Place Bridge (outbound chainage 101,430 to inbound chainage 101,517) including rail installation;

"**On-Street Works**" means that part of the Infraco Works from Haymarket to York Place (chainage 200,000 to 120,650), other than in respect of any Utilities diversion works;]

"**Fixed Sum Prioritised Works Price**" means the price for carrying out the Fixed Sum Prioritised Works set out in Schedule Part 1 (*Scope, Programme and Pricing of the Prioritised Works*);

"**Fixed Sum Prioritised Works Target Price**" means the price for carrying out the Prioritised Works other than the Fixed Sum Prioritised Works;

"Fixed Sum Prioritised Works" means the Prioritised Works to which a Fixed Sum Prioritised Works Milestone applies;

"Prioritised Works" means that part of the Infraco Works comprising the Depot (excluding any works to the east of the Depot Access Bridge), Depot Access Bridge and Depot Access Road, mini test track, Haymarket Yards, A8 Underpass, Princes Street Remedial Works and any other works agreed by the Parties to comprise the Prioritised Works as more particularly described in the Scope. The Prioritised Works shall comprise part of the Off-Street Works and part of the On-Street Works;

"Prioritised Works Commencement Date" means the later of:

(i) 3 May 2011; and

ii) the date on which all of the following events have occurred:

- (a) Infraco receives the amount payable pursuant to Clause [] (*Certificate 1 - First Materials and Equipment and First Mobilisation*);
- (b) A Mobilisation Certificate has been issued by tie pursuant to Clause [] (*Certificate 2 - Second Mobilisation*);
- (c) All Consents required to start the Prioritised Works have been issued by tie or provided by the relevant Approval Body;
- (d) tie have provided, or procured, possession and/or access to all work areas required to carry out the Prioritised Works [in accordance with the Prioritised Works Programme]

"Fixed Sum Prioritised Works Milestone" means each of the milestones for payment set out in Schedule Part 1 (Scope, Programme and Pricing of Prioritised Works) identified as a Fixed Sum Prioritised Works Milestone;

"Fixed Sum Prioritised Works Target Milestone" means each of the milestones for payment set out in Schedule Part 1 (Scope, Programme and Pricing of Prioritised Works) identified as a Fixed Sum Prioritised Works Target Milestones;

"Prioritised Works Programme" means that part of the New Programme which relates to the Prioritised Works;

"New Programme" means the programme for the Infraco Works set out in Schedule Part 1 (*Scope, Programme and Pricing of Prioritised Works*);

"Schedule" means the Schedule in [] Parts annexed to this Minute of Variation;

"Scope" means the scope of the Prioritised Works set out in Schedule Part 1 (*Scope, Programme and Pricing of Prioritised Works*) identified by means of specific drawing and chainage numbers;

"Total Price" has the meaning given in the Heads of Terms;

"Valuation Certificate" has the meaning given in Clause 9 (*Payment for the Prioritised Works*);

"Valuation Dates" means the dates set out in Schedule Part 3 (*Valuation Dates*), and Valuation Date shall be construed accordingly; and

"Vesting Certificate" means a vesting certificate in a form agreed between the Parties.

- 1.3 Clause headings in this Minute of Variation are for the convenience of the Parties only and do not affect its interpretation.
- 1.4 Unless the context otherwise requires:
 - 1.4.1 words importing gender include masculine, feminine and neuter;
 - 1.4.2 the singular includes the plural, and vice versa; and
 - 1.4.3 a reference to any Clause, Sub-Clause or Schedule is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause or schedule to this Minute of Variation and reference in any Schedule to any Part, Paragraph or Sub-Paragraph is, except where it is expressly stated to the contrary, a reference to such part, paragraph or sub-paragraph of that Schedule (as the case may be);

2 AMENDMENT OF THE INFRACO CONTRACT

- 2.1 The Parties hereby agree that the Infraco Contract is amended in accordance with the terms of and as required to implement this Minute of Variation.
- 2.2 The terms and conditions of this Minute of Variation, together with the Schedule, represent the entire agreement between the Parties relating to this variation of the Infraco Contract. Save as amended or dis-applied by this Minute of Variation, all the terms and conditions of the Infraco Contract remain in full force and effect.

3 APPLICATION OF THE INFRACO CONTRACT TO THE PRIORITISED WORKS

- 3.1 From the Prioritised Works Commencement Date the Prioritised Works will be carried out in accordance with the Infraco Contract as amended by the application of this Minute of Variation.
- 3.2 From the Prioritised Works Commencement Date until the Infraco Works Recommencement Date Infraco shall not carry out any Infraco Works other than the Prioritised Works. **[Note: Any ongoing obligations in relation to the supply of trams to be identified. Payments to CAF to be understood. Will there be any payments to CAF during the Priorities Works Period]**
- 3.3 Infraco shall from the date of this Minute of Variation self certify that the civils and systems and trackwork Design is in accordance with the Employer's Requirements. The self certification of the civils and systems and trackwork Design by Infraco:
 - 3.3.1 entitles Infraco to commence the construction of the Prioritised Works to which it relates; and
 - 3.3.2 replaces any requirement for tie's approval or review of the Design in the Infraco Contract.
- 3.4 For the avoidance of doubt, tie shall have no right or obligation to review and/or approve the civils and systems and trackwork Design and the Infraco shall be relieved of its obligations under Clause 10 and Schedule Part 14 of the Infraco Contract insofar as they relate to the civils and systems and trackwork Design by tie.
- 3.5 Infraco is not required to obtain any further Permits to Commence Works for any of the Prioritised Works subject to providing tie with such information as is reasonably required to allow tie to comply with the stakeholder notification requirements for which they are responsible.

4 SOLE ENTITLEMENT OF INFRACO TO PAYMENT, EXTENSIONS OF TIME OR OTHER RELIEF

Notwithstanding the terms of the Infraco Contract, the Parties have agreed that the Infraco's sole entitlement to payment, extension of time or other relief in respect of the Materials and Equipment, Mobilisation, Prioritised Works (including preliminaries in relation thereto) and the impact of the Materials and Equipment and Prioritised Works on the Infraco Works shall be as set out in this Minute of Variation.

5 AMENDMENT TO THE PROGRAMME

5.1 The Parties have agreed that from the Prioritised Works Commencement Date:

5.1.1 the New Programme shall be the Programme referred to in the Infraco Contract and the Planned Sectional Completion Dates and Planned Service Commencement Dates shall be amended to reflect the programme dates shown for sectional completion and service commencement in the New Programme; and

5.1.2 the Prioritised Works shall be carried out in accordance with the Prioritised Works Programme.

5.2 Any embargo on working as provided for in Schedule Part 3 (*Code of Construction Practice*) of the Infraco Contract shall not apply to the carrying out of the Prioritised Works to the extent it would be inconsistent with the Prioritised Works Programme.

6 CERTIFICATE 1 – FIRST MATERIALS AND EQUIPMENT AND FIRST MOBILISATION CERTIFICATE

6.1 On 8 April 2011 the Certifier issued a certificate to Infraco and tie, entirely conditional upon the entering into of this Minute of Variation by the Parties on [15 April 2011], certifying payment of the agreed sum of £[] (payable as to £[] in respect of an agreed first mobilisation payment to BBUK and £[] in respect of an agreed first mobilisation payment to Siemens in respect of the transfer to CEC of ownership in and unencumbered title to such Materials and Equipment as the certificate relates. Such payment and transfer shall be made by tie and Infraco respectively on the later of (i) 21 April 2011 and (ii) the date of execution of this Minute of Variation.

6.2 On the date that title to Materials and Equipment is transferred by Infraco to CEC pursuant to this Clause 6 or Clause 8 Infraco shall issue Vesting Certificates to CEC in respect of any Materials and Equipment which have not been delivered to the Depot or such other part of the Site where Infraco Works are being carried out.

6.3 The Parties acknowledge that the Materials and Equipment, or any part thereof, supplied pursuant to this Clause 6 or Clause 8 may not be incorporated as part of the Infraco Works pursuant to the Infraco Contract.

7 CERTIFICATE 2 - SECOND MOBILISATION CERTIFICATE

On 3 May 2011 tie shall procure that the Certifier shall issue a certificate to Infraco and tie, certifying payment of the agreed sum of £[] (payable as to £[] to BBUK and £[] to Siemens, and payment shall be made by tie on the later of (i) 17 May 2011.

8 **CERTIFICATES 3 (A, B & C) – SECOND MATERIALS AND EQUIPMENT**

- 8.1 On 15 June 2011 tie shall procure that the Certifier issues a certificate (Certificate 3A) to [Infraco] and tie, certifying payment of the agreed sum of £[] (payable as to £[] to Siemens) in respect of an agreed second payment to Siemens in respect of the transfer to tie of ownership in and unencumbered title to such Materials and Equipment as the certificate relates, such payment and transfer shall be made by tie and Infraco respectively on 29 June 2011.
- 8.2 On 13 July 2011 tie shall procure that the Certifier issues a certificate (Certificate 3B) to [Infraco] and tie, certifying payment of the agreed sum of £[] (payable as to £[] to Siemens) in respect of an agreed third payment to Siemens in respect of the transfer to tie of ownership in and unencumbered title to such Materials and Equipment as the certificate relates, such payment and transfer shall be made by tie and Infraco respectively on 27 July 2011.
- 8.3 On 10 August 2011 tie shall procure that the Certifier issues a certificate (Certificate 3C) to [Infraco] and tie certifying payment of the agreed sum of £[] (payable as to £[] to Siemens) in respect of an agreed fourth payment to Siemens in respect of the transfer to tie of ownership in and unencumbered title to such Materials and Equipment as the certificate relates, such payment and transfer, shall be made by tie and Infraco respectively on 24 August 2011.

9 **PAYMENT FOR THE PRIORITISED WORKS**

- 9.1 Subject to the terms of this Minute of Variation tie shall pay the Fixed Sum Prioritised Works Price and the Fixed Sum Prioritised Works Target Price for the carrying out and completion of the Prioritised Works.
- 9.2 On each Valuation Date tie shall procure that the Certifier shall certify:
- 9.2.1 the completion of each Fixed Sum Prioritised Works Milestone which has been completed since the last Valuation Date; and
- 9.2.2 the completion of each Fixed Sum Prioritised Works Target Milestone which has been completed since the last Valuation Date
- and the Certifier shall issue a certificate ("**Valuation Certificate**") to tie and Infraco certifying the same and the amount payable on completion of the Fixed Sum Prioritised Works Milestone and/or Fixed Sum Prioritised Works Target Milestone as set out in Schedule Part 1.
- 9.3 On receipt of a Valuation Certificate, Infraco shall submit a valid VAT invoice to tie and payment will become due to the Infraco on receipt by tie of such valid VAT invoice (the "**Prioritised Works Payment Due Date**"). The final date for payment by tie to the Infraco of a valid VAT invoice shall be the date occurring 14 calendar days after the Prioritised Works Payment Due Date.
- 9.4 A certificate issued by the Certifier under this Clause 9 shall be final and binding on the Parties except in the case of manifest error or fraud.
- 9.5 All sums expressed or referred to in this Minute of Variation and all sums due under certificates issued by the Certifier pursuant to this Minute of Variation are stated exclusive of Value Added Tax thereon. In addition to payments due under this Minute of Variation and such certificates tie shall in addition pay to the Infraco any Value Added Tax properly chargeable by Infraco thereon.
- 9.6 For the avoidance of doubt, where any Fixed Sum Prioritised Work Milestones are in respect of preliminaries such Fixed Sum Prioritised Work Milestones shall be deemed to

be a time based payment and shall be certified for payment once the relevant time period has elapsed without the need for further valuation or substantiation.

10 TOTAL PRICE

10.1 The Parties agree that the Fixed Sum Prioritised Work Price and all sums payable by tie pursuant to Clause 6, 7, and 8 of this Minute of Variation shall comprise part of the Total Price,

10.2 The Parties agree that the Fixed Sum Prioritised Work Target Milestones shall comprise part of the Target Sum.

10.3 tie acknowledges that to the extent that tie instigates any tie Change to the Prioritised Works or there is a Mandatory tie Change to the Prioritised Works any cost arising will be in addition to the Total Price or Target Sum included at paragraph 6.3 of the Heads of Terms [and that the valuation of any tie Change in these circumstances shall be in accordance with Clause 80.6 of the Infraco Contract.]

11 MAR HALL CONFIDENTIALITY AGREEMENT

The Parties acknowledge and agree to remain bound by the provisions of the Mar Hall Confidentiality Agreement entered into on behalf of each of them on 8 March 2011.

12 COMMUNICATIONS PROTOCOL

By their execution of this Minute of Variation the Parties agree to be bound by the Communications Protocol.

13 MORATORIUM

13.1 The Parties agree that provided amendments to the Infraco Contract to reflect the principles of the Heads of Terms are agreed by the Parties by or before 1 July 2011 that:

13.1.1 tie/CEC will not terminate the Infraco Contract on the basis of any Remediable Termination Notices and/or Underperformance Warning Notices served prior to 12 March 2011 or on any of the same grounds identified therein; and

13.1.2 all existing claims and further claims by Infraco under the Infraco Contract which relate to events which occurred prior to entering into of this Minute of Variation will not be prosecuted; and

13.1.3 tie/CEC shall not seek to recover liquidated and ascertained damages in respect of any delay in achieving the Planned Sectional Completion Dates in the Infraco Contract or the Agreed Tram Commissioning Dates in the Infraco Contract/Tram Supply Agreement.

13.2 tie hereby waives its rights in relation to any claim against Infraco or any of the Infraco Members under the Infraco Contract which would not have arisen but for the entering into and implementation of this Minute of Variation.

13.3 The Parties agree that all existing disputes notified by either Infraco or tie under the Dispute Resolution Procedure set out in Schedule Part 9 to the Infraco Contract shall be effectively stayed or "frozen" until the earlier of (a) 2 September 2011 and (b) 2 July 2011, where the Parties have failed to enter into a subsequent Minute of Variation by that date. At any time after the relevant date either Party shall be entitled to serve notice on the other of its intention to recommence any of the existing disputes, the dispute recommencing 7 calendar days following the service of such notice. Should this occur, the Parties agree that no issue

shall arise in relation to any failure by either Party to comply with the timescales set out in Schedule Part 9 of the Infraco Contract, during the period of suspension and/or as a consequence of this period of suspension provided always that the relevant period of suspension shall run up to the date the dispute recommences in accordance with this Clause 13.3.

14 KEY SUB-CONTRACTORS

14.1 Each Infraco Member may appoint Key Sub-Contractors to carry out part of the Infraco Works. The Parties acknowledge that there shall be no requirement for each Infraco Member to be a party to any sub-contract with any Key Sub-Contractor.

14.2 Each Infraco Member shall be free to choose the form of sub-contract to be entered into with each Key Sub-Contractor and tie/CEC shall have no entitlement to impose any restrictions on the management or replacement of the Key Sub-Contractors.

15 PRESERVATION OF RIGHTS

15.1 Subject to Clause 15.2 each Party preserves its rights and remedies in relation to any existing breach or other claim under the Infraco Contract as amended by this Minute of Variation as at the date of entering into this Minute of Variation (whether known or not at the date of execution of this Minute of Variation). The Parties further acknowledge that save to the extent varied by this Minute of Variation their respective rights and obligations in respect of the Infraco Works to the extent performed to date (other than works which will be remedied by the Princes Street Remedial Works forming part of the Prioritised Works) shall subsist.

15.2 The Parties agree and acknowledge that the New Programme includes all extensions of time to which Infraco is or may have become entitled to under the Infraco Contract in relation to Compensation Events and/or Notified Departures which occurred prior to the signing of the Heads of Terms.

16 DISPUTES

The Parties agree that any dispute, difference or unresolved claim between the Parties in connection with or arising from this Minute of Variation shall be dealt with in accordance with the provisions set out in Schedule Part 9 (*Dispute Resolution Procedure*) of the Infraco Contract.

17 VARIATION

This Minute of Variation is a variation to the Infraco Contract for the purposes of Clause 108 (Variations to be in Writing) of the Infraco Contract.

18 LAW AND JURISDICTION

Clause 117 (*Applicable Law*) of the Infraco Contract applies.

IN WITNESS WHEREOF these presents on this and the preceding [] pages together with the Schedule in [] Parts and Appendix which are annexed and subscribed as relative hereto are executed as follows:

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

at

on April 2011 by:

Authorised Signatory

Full Name

Witness Signature

Full Name

Address

EXECUTED for and on behalf of BILFINGER BERGER CIVIL UK LIMITED

at

on April 2011 by:

Authorised Signatory

Full Name

Witness Signature

Full Name

Address

EXECUTED for and on behalf of SIEMENS PLC

at

on April 2011 by:

Authorised Signatory

Full Name

Witness Signature

Full Name

Address

EXECUTED for and on behalf of CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES S.A.

at

on April 2011 by:

Authorised Signatory
Full Name
Witness Signature
Full Name
Address

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING MINUTE OF VARIATION

PART 1

SCOPE, PROGRAMME AND PRICING OF PRIORITISED WORKS

PART 2
MATERIALS AND EQUIPMENT

PART 3
VALUATION DATES

PART 4
COMMUNICATIONS PROTOCOL

tie Limited ("tie")

and

Construcciones y Auxiliar de Ferrocarriles S.A. ("CAF")

Draft

HEADS OF TERMS

[] March 2011

INTRODUCTION

- A. The Parties have agreed to procure the novation by BBCUK and Siemens to tie of the Tram Supply Agreement ("TSA") and Tram Maintenance Agreement ("TMA") as amended in terms of these Heads of Terms and to this end the Parties have agreed to enter into such agreements as are necessary to give effect to these heads of terms including the schedule hereto ("Heads of Terms").
- B. these Heads of Terms set out the key commercial principles agreed between the Parties in respect of the novation;
- C. these Heads of Terms are indicative and non-binding only;
- D. save where otherwise defined in these Heads of Terms, defined terms used in these Heads of Terms including the Recitals and Schedule to these Heads of Terms have the meaning set out in the contract entered into between tie, Bilfinger Berger Civil UK Limited and Siemens plc dated 14 May 2008 in relation to the Edinburgh Tram Network, as amended by Minute of Variation between tie, BBCUK, Siemens and CAF dated 14 May 2008, the Princes Street Supplemental Agreement entered into between tie, BBCUK, Siemens and CAF in March 2009 and re-executed on 29 May 2009, a Minute of Variation between tie, BBCUK, Siemens and CAF dated 3 June 2009 and a Minute of Variation between tie, BBCUK, Siemens and CAF dated 23 April 2010 (such contract as so amended being referred to herein as the "Infraco Contract"); and
- E. the following defined terms shall have the meaning given in the TSA: "Employer's Requirements", "Performance Bond", "Reliability Bond" and "Tram Manufacturing and Delivery Programme" *[Drafting Note: We are currently considering whether any other terms need to be defined by reference to the TSA/TMA rather than the Infraco Contract.]*

PROJECT CONTRACT HEADS OF TERMS	
SUBJECT MATTER	AGREED POSITION
Parties	the Parties to these Heads of Terms;
1. Novation	<p>The Parties agree to use reasonable endeavours to enter into novation agreements, or such other contractual arrangements as may be necessary to achieve effective contractual nexus between CAF and tie, novating and amending the TSA and TMA, amending the Infraco Contract, TSA and the TMA and entering into such other agreements to amend related documents to give effect to these Heads of Terms on or before 1 July 2011 or such other date as may be agreed between the Parties.</p> <p>Entry into the novation agreements and other agreements will be conditional upon (i) a variation to the Infraco Contract in terms acceptable to the Parties terminating the existing contractual relationship between tie and the Infraco insofar as it relates to the supply and maintenance of the Trams, and (ii) CAF being removed as a party to the Infraco Contract and related documents, ceasing to be a member of the Infraco consortium and the terms of related discharges, indemnities, performance bonds and other security documents being agreed; and (iii) satisfactory contractual arrangements being entered into amongst CEC, tie, BBCUK and Siemens to amend the Infraco Contract to reflect the Heads of Terms entered into between those parties on 12 March 2011, it being acknowledged that all those agreements and arrangements will be entered into on the same date, are interconditional and are subject to each such agreement and arrangement becoming unconditional.</p>
2 Fees, costs and expenses	The Parties shall each bear their own professional and other costs and expenses associated with these Heads of Terms.
3. Announcements	No announcement (whether internal or external) or press communication or release of information concerning these Heads of Terms shall be made by either Party other than as agreed between the Parties.
4. Binding effect of the Heads of Terms	The Parties acknowledge that these Heads of Terms reflect their present intentions in relation to the matters described at Clause 1 above, but except for Clauses 2 and 3 above, this Clause 4 and Clause 5 below, these Heads of Terms shall not be legally binding on the Parties.
5. Governing Law and Jurisdiction	<p>These Heads of Terms shall be governed and construed in accordance with Scots law.</p> <p>Each Party hereby irrevocably submits to the exclusive jurisdiction of the Court of Session as regards any claim, dispute or matter arising out of or in connection with these Heads of Terms and their implementation and effect.</p>

IN WITNESS WHEREOF these presents on this and the preceding 2 pages together with the Schedule in 1 Part which is annexed and subscribed as relative hereto are executed as follows:

EXECUTED for and on behalf of

tie LIMITED

at

on March 2011 by:

Authorised signatory

Full Name

Witness Signature

Full Name

Address

EXECUTED for and on behalf of

CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES S.A. (CAF)

at

on March 2011 by:

Authorised signatory

Full Name

Witness Signature

Full Name

Address

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(Spain-Traditional Sort)

SCHEDULE

AGREED KEY COMMERCIAL PRINCIPLES

Novation

1. The Parties will enter into novation agreements, or such other contractual arrangements as may be necessary to achieve contractual nexus between CAF and tie novating the TSA and the TMA from BBCUK and Siemens to tie and amending the Infraco Contract the TSA and the TMA on terms to be agreed on or before 1 July 2011 or such other date as may be agreed between the Parties.

Delay Costs

2. Payment mechanics for delay costs:

2.1. The TSA and TMA will be varied such that a lump sum for delay costs amounting to €5.1million will be payable by tie to CAF on the later of the anticipated date of signing of the contractual arrangements described at Clause 1 of these Heads of Terms being 1 July 2011 (or such other date as maybe agreed between the Parties) and the date that those contractual arrangements become unconditional.

2.2. To the extent that the Depot (including Depot access bridge) ~~availability date and/or the mini-test track are completed and become available for delivery and commissioning of the Trams~~ ~~availability date fall after 15 October 2011~~ then additional payments payable on a monthly basis on the respective delivery dates of the Depot (including Depot access bridge) and the mini-test track (or earlier if agreed) will become due from tie to CAF to be calculated by reference to separate monthly rates for each of the Depot (including Depot access bridge) and the mini-test track payable on a straight line basis, the precise mechanics of which are to be agreed with a ~~maximum sum of €0.466m~~ being payable should the Depot (including Depot access bridge) not be complete and available for available for delivery of the Trams until by 24 March 2012 ~~and the mini-test track not be complete and available for commissioning of the Trams until by 9 July 2012~~. Should delays extend beyond either of those dates then further delay payments will be calculated in accordance with clause 49 of the TSA ~~a similar manner using the same monthly rates~~.

3. **Payment of Lump Sum**

CAF and tie will agree the profile for the additional payments referred to at paragraph 2.2 above.

4. **Programme**

CAF and tie will work together to produce a specific version of the Tram Manufacturing and Delivery Programme and the other relevant programmes under the TSA to reflect each of the completion/availability dates set out above and other changes required to reflect the revised programme.

5. **Reliability Bond and Performance Bond**

A mechanism is to be agreed such that the Trams to be operated on the ETN are always covered either by the Performance Bond or the Reliability Bond in accordance with the terms of the TSA and TMA, with the switch to Reliability Bond from Performance Bond to occur upon delivery of a number of Trams (number to be agreed) to be operated on the ETN. The impact of the excess Tram arrangements referred to at paragraph 11 below on the timing of the Performance Bond and Reliability Bond will require to be agreed.

6. Integration

6.1. The Parties agree that the responsibility for the integration of the Trams with the Edinburgh Tram Network shall rest with BBCUK and Siemens as Infraco and that tie shall be held harmless. The contractual arrangements between the Parties, BBCUK and Siemens will make this clear;

6.2. CAF will interface and cooperate with BBCUK and Siemens as Infraco to the extent reasonably required by tie to facilitate the integration of the Trams with the Edinburgh Tram Network by BBCUK and Siemens as Infraco.

6.3. It is acknowledged that the CAF obligation is to provide Trams to meet the Employer's Requirements.

7. Liquidated Damages

CEC/Transport Scotland/TEL/tie shall have no claims against CAF for liquidated damages in respect of any delay under the Infraco Contract, the TSA or the TMA that has occurred or will occur due to progress of manufacture of the Trams or any other acts, omissions, matters or events occurring prior to the date of the novation of the TSA and TMA in respect of which it may be alleged that CAF is not entitled to an extension of time or other relief under the TSA or the TMA and the conclusion of all other agreements to be entered into under these Heads of Terms but after such date of novation CAF will be subject to liquidated damages for its failure to meet the relevant dates under the TSA and/or TMA in respect of any acts, omissions, matters or events occurring after such date of novation for which CAF is not entitled to extension of time or other relief under the TSA or TMA.

8. Number of Trams

~~Subject to the contractual arrangements described at paragraph 1 above becoming unconditional~~ CEC/Transport Scotland/TEL/tie will accept and pay for all 27 Trams under the TSA and will not be entitled to reject any of them, but without prejudice to CAF's obligations to provide Trams certified by the Tram Inspector in accordance with TSA and any right that may exist under the TSA to reject Trams that do not comply with the Employer's Requirements under the TSA.

9. Payment During Commissioning

Completion of and access to the Depot (including Depot access) and the mini-test track (to be defined by agreement) will allow some but not all commissioning to be carried out. The payment provisions of the TSA will provide for payment of the elements of the sums due under the TSA relating to commissioning following completion of the commissioning that can be carried out at the Depot (including Depot access) and the mini-test track (to be defined by agreement) and notwithstanding that full commissioning has not been completed ~~subject to tie being satisfied that it has sufficient security in place in respect of the remaining tests still required.~~

10. CEC Guarantee

CEC shall guarantee the obligations of tie under the TSA and the TMA.

11. Excess Trams

The Parties agree to make such changes to the Infraco Contract, the TSA and TMA as may be necessary and to provide such ~~consents and assistance~~ as may be reasonably required to enable tie/CEC, in conjunction with CAF, to sell, lease or otherwise deal with any Trams which are in excess of the current requirements of tie for that part of the Edinburgh Tram Network running from Airport to St Andrew Square subject to agreement between the Parties on terms including the reasonable cost payments (including a margin) to be paid to CAF for modification of the Trams and assistance provided as previously described, with it being acknowledged also that any