

AGREEMENT

BETWEEN

- (1) **TIE LIMITED**, a company incorporated in Scotland under number SC230949 and having its registered office at City Chambers, High Street, Edinburgh EH1 1YJ ("**tie**"), which expression shall include its successors, permitted assignees and transferees; and
- (2) **BILFINGER BERGER UK LIMITED**, a company incorporated in England and Wales under number 02418086 and having its registered office at 150 Aldersgate Street, London EC1A 4EJ, which expression shall include its successors, permitted assignees and transferees; and
- (3) **SIEMENS PLC**, a company incorporated in England and Wales under number 00727817 and having its registered office at Faraday House, Sir William Siemens Square, Frimley, Camberley, Surrey GU16 8QD, which expression shall include its successors, permitted assignees and transferees, and
- (4) **CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES S.A.**, a company registered in Spain in the Corporate Register of Guipuzcoa: volume 983, sheet 144, page number SS-329, entry 239 and having its registered office at J.M. Iturrioz 26, 20200 Beasain (Guipuzcoa), Spain ("**CAF**").

BACKGROUND

- A. **tie** and Bilfinger Berger UK Limited and Siemens Plc (Bilfinger Berger UK Limited and Siemens Plc together the "**Infraco**") entered into an agreement, dated 14 May 2008, for the design, construction, testing, commissioning and maintenance of the Edinburgh Tram Network (the "**Infraco Contract**").
- B. Pursuant to a Minute of Variation dated 14 May 2008, CAF became a member of the Infraco.
- C. The Parties have agreed that this Agreement shall apply in respect of instructions issued by **tie** which **tie** considers require immediate attention and which instructions may ~~or may not~~ amount to a **tie** Change.
- D. Definition of 'tie Priority Works Instruction' and 'Infraco Priority Works Estimate' to be inserted – draft to be agreed

Delete Clause 80.20 and replace with the following

80.20.1

Prior to the issue of a written instruction from **tie** which instructs immediate action from the Infraco to prepare and commence the relevant **tie** Priority Works ("**tie Priority Works Instruction**"), **tie** shall contact the Infraco to discuss the requirements, including (as appropriate): any design work required; any impact on third parties; the programme of **tie** Priority Works; and any potential cost and time impact, including the premium costs which may be incurred as a result of the instruction.

80.20.2

At the time when **tie** contacts the Infraco as set out in ~~paragraph 1~~ Clause 80.20.1, the Infraco shall advise **tie** of any premium costs (premium costs being extra over costs resulting from the nature, timing and conditions of the **tie** Priority Works) that are likely to be incurred as a result of the instruction. Premium costs may include inter alia:

- 1.1 employment of any specialist services or sub-contractors;
- 1.2 increased labour costs due to nature, timing or conditions of the work;
- 1.3 increased plant costs due to nature, timing or conditions of the work;
- 1.4 increased material costs; and
- 1.5 any special attendance or other preliminaries necessitated.

Notwithstanding the other provisions of this Clause or the provisions of the Infraco Contract, the Infraco shall, as soon as reasonably possible after the Infraco becomes aware that a likely premium cost will in fact be incurred as a result of the instruction, advise **tie** in writing of such premium cost. Infraco shall require to demonstrate why any premium costs are additional to the contract rates set out in Schedule part 4.

80.20.3

In respect of Clause 80.20.1 above, if **tie** wishes to proceed with the **tie** Priority Works, **tie** shall issue to the Infraco the **tie** Priority Works Instruction, outlining the requirements, including (as appropriate) the design work to be undertaken, the proposed construction methodology and a programme of works as ~~discussed~~ agreed with the Infraco in accordance with ~~paragraphs 1 and 2~~ Clauses 80.20.1 and 80.20.2. **tie** shall also propose a programme for the Parties to agree, acting reasonably, the Estimate for the **tie** Priority Works ("**Infraco Priority Works Estimate**").

80.20.4

No later than two (2) Business Days following the date of issue of such **tie** Priority Works Instruction, the Parties shall agree, acting reasonably, the programme for the Infraco to produce the Infraco Priority Works Estimate and the Parties shall also agree, acting reasonably, a process for demonstrating and auditing any costs incurred in carrying out the **tie** Priority Works. ~~. which shall in any event be no more than twenty (20) Business Days following the date of the tie Priority Works Instruction~~ The Infraco Priority Works Estimate shall be prepared in the detail set out in this Clause 80 except in respect of full programme impact which impact shall be assessed together with the combined effect of any other relevant and appropriate instructions and demonstrated by Infraco on the Contract Programme within 40 business days of the of the completion of the Priority Works. Upon receipt of this programme demonstration by Infraco, **tie** shall respond within 20 business days. ~~and the Parties shall agree, acting reasonably, a process for demonstrating and auditing any costs incurred in carrying out the tie Priority Works. Such Infraco Priority Works Estimate shall be prepared in sufficient detail and with requisite diligence and in accordance with Clauses 80.4, 80.5, 80.7 and 80.8 of the Infraco Contract.~~

80.20.5

Upon receipt of the **tie** Priority Works Instruction, the Infraco shall implement the **tie** Priority Works with due diligence and in accordance with its duties under the Infraco Contract. **tie** shall not withdraw the **tie** Priority Works Instruction once the Infraco has commenced the **tie** Priority Works.

80.20.6

As soon as reasonably practicable after the Infraco Priority Works Estimate has been agreed, **tie** may issue a **tie** Change Order to the Infraco in accordance with Clause 80.13. For the avoidance of doubt, the **tie** Priority Works Instruction shall be deemed to be a direction given by **tie** pursuant to Clause 80.13. If the Parties cannot agree on the contents of the Infraco Priority Works Estimate, then either Party may refer the Infraco Priority Works Estimate for determination in accordance with the Dispute Resolution Procedure.

80.20.7

Prior to the agreement or determination of the Infraco Priority Works Estimate and the issue of a **tie** Change Order the Infraco shall be entitled to claim the Infraco's demonstrable costs in implementing the **tie** Priority Works Instruction calculated in accordance with Clause 80.6 and demonstrated in accordance with the process agreed pursuant to Clause 80.20.4. **tie** shall include such demonstrable costs claimed by Infraco in the next Construction Interim Certificate. For the avoidance of doubt any demonstrable costs certified by **tie** in Construction Milestone Certificates will be deleted and replaced by the amounts subsequently agreed or determined in the Infraco Priority Works Estimate.

80.20.8

Any premium costs to which the Infraco may be entitled pursuant to this Agreement shall be paid by **tie** as extra over the rates and costs which are used to calculate Estimates in Schedule Part 4 of the Infraco Contract and which will be used to calculate the Infraco Priority Works Estimate, ~~provided that the premium costs are extra to the deemed allowances inherent in those Schedule Part 4 rates and prices and~~ providing that the Infraco demonstrates such costs in accordance with the process agreed by the Parties pursuant to Clause 80.20.4.

~~80.20.9~~

~~The Parties acknowledge and agree that works instructed by **tie** under the **tie** Priority Works Instruction may require to be instructed in stages (for example, if there is a design to be agreed by **tie** and/or third parties prior to construction) and the Infraco shall commence such works in accordance with the **tie** Priority Works Instruction.~~

80.20.10

Where Infraco are required to execute Utilities Diversions that fall within the Specified Exclusions set out in Schedule Part 4 item 3.3a) or carry out work to resolve minor issues (unlikely to have a material impact on the Programme or the sums due to the Infraco under this agreement) Infraco shall without delay inform **tie** of the nature and location of such occurrences and request a **tie** instruction which shall be a **tie** Priority Works Instruction. In the request for a **tie** instruction Infraco shall set out the reasons for such request with reference to the Infraco Contract ~~and whether Infraco considers it to be a **tie** Change.~~

80.20.11

In respect of Clause 80.20.10 upon receipt of a request for a **tie** instruction, **tie** shall review and may issue a **tie** Priority Works Instruction. Infraco shall upon receipt of such Priority Works Instruction proceed to implement the work and/or design set out therein. Infraco shall, until such time as the relevant Change Order is issued, be paid the demonstrable cost of complying with instructions issued pursuant to Clause 80.20.10. Infraco shall submit necessary records to evidence the extent and cost of the work being undertaken for **tie** to review and agree. Upon receipt of the evidenced demonstrable cost incurred in carrying out the instructed works **tie** shall upon application by Infraco certify for payment such demonstrable cost in the next Construction Milestone Certificate. This shall be on an Actual Cost basis as set out in Schedule Part

4 Appendix G. Infraco shall prepare and submit a tie Priority Works Estimate as soon as is reasonably practicable following receipt of the tie Priority Works Instruction. The tie Priority Works Estimate shall be valued in accordance with Schedule Part 4 Appendix G. As soon as reasonably practicable after the Infraco Priority Works Estimate has been agreed tie may issue a tie Change Order to Infraco. Once the relevant Change Order has been issued, the valuation of the work carried out pursuant to Clause 80.20.10 shall be calculated in accordance with ~~Clause 80.6~~ Clause 80.6.3 and 80.6.4 unless otherwise agreed.

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

Authorised Signatory
Full Name
Witness Signature
Full Name
Address

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

Director
Full Name
Director
Full Name

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

Authorised Signatory
Full Name
Authorised Signatory
Full Name

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

Authorised Signatory

Full Name
Authorised Signatory
Full Name