

## KEY OUTSTANDING ISSUES

### SETTLEMENT AGREEMENT

Clause Ref	Issue	Action	Date to be agreed by	Comment
1.	CAF refuse to agree they will not plead personal bar, waiver etc. to a CEC claim on grounds of BBS actions prior to Novation Date. BBS will only agree to warrant they have not waived rights etc. if CAF give such an undertaking.	BBS/CAF (CEC to assist)	2/8/11	CAF/BBS need to agree.  CEC only able to take on a clean contract.
2.	OH&P Fee to be applied to Prelims Fee? BBS say yes; CEC say no.	None	N/A	There is to be a prelims fee, a works cost and then an OH&P fee.
3.	BBS wish to exclude certain matters from the settlement - such matters to be set out in Schedule Part G. BBS to explain what these are.	None	N/A	These relate to changes to the onstreet design and offstreet design (which will cause an increase in design and construction costs). They cannot be valued now These changes were after Mar Hall and were not part of the agreed costs. It needs to be made clear that the settlement will not operate to exclude the work done or being done in this regard.  Colin will forward to CEC a list of the design works to which they relate. That list (which is updated every fortnight) is in Clause 4.1.1.4 of a draft document he has.
4.	CEC require a clear statement that claims re tram integration failure against BBS are outside the settlement. BBS to reconsider (accepted in principle).	None	N/A	Principle agreed

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5.	BBS to provide Siemens pricing mechanism to be included in clause 6 for approval of CEC.	Colin/Alfred	2/8/11	To be produced
6.	Target On Street Works Price to be agreed.	Colin/Martin/Alfred	END AUGUST?	There is no need to agree the Target On Street Works Price. What is needed is the On Street Contract Sum. A process for discussing and agreeing that is in place.
7.	Procurement	Colin/Martin	2/8/11	Issue to be discussed between Colin/Martin.
8.	Termination sum	Colin	2/8/11	Colin to confirm by email to Martin/Alfred and Alastair M. that the figure in the agreed MOV4 extension letter is agreed. That figure represents a mutual walk away figure and includes settlement of all claims.

**INFRACO CONTRACT (NON TRAMS)**

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4.	Risk of ambiguity/discrepancy in the contract documents – CEC believe it should be BBS risk.	Colin	5/8/11	Outstanding
10.	CEC to review BBS mark up of Schedule 14 (Design Review) and clause 10. Do CEC want greater oversight? BBS to be liable fully for meeting Approval Body requirements?	BBS/Colin	???	BBS to discuss with lawyers and forward Part 14 to CEC.  Colin to set out review procedure that presently exists in one paragraph.
18.18	CE if failure to give exclusive possession of Off Street Works areas? CEC had qualified.	Colin	5/8/11	Colin to review Designated Working Areas definition
19.	BBS assistance re TTRO's to be a Change? CEC say not if "reasonable".	-BBS	5/8/11	BBS to check with lawyers
19.5	BBS not to obtain Scottish Water approvals or covenants between York Place – Newhaven and all Forth Port Consents?	-None	N/A	All parties agree that these consents cannot be obtained.  The work is to be excluded by way of a change order
30.2/ CE.(I)/ RE(d)	BBS to keep the site secure? Protect from vandalism/protestor action?	-BBS	5/8/11	BBS to check with lawyers
41.	Milestone payment mechanism to be agreed by CEC. Valuation Certificates to be final and binding? This <b>not</b> agreed. Milestones to be agreed.	CEC/BBS	???	The milestones are well advanced. They have been reduced from circa 2300 to 500 ie 50 per month.

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				<p>The values are being worked on. Fixed milestones for items less than 100k. In excess of that they will be assessed on progress.</p> <p>Colin is happy for the valuation certificates to be final and binding. CEC requires advice from Ashurst.</p>
44.	New Certifier Agreement to be entered into? Sectional completion to be certified by Certifier?	None	N/A	<p>A new certifier's agreement will be needed. That will be similar to the one for MOV4.</p> <p>Sectional completion will be certified by the Certifier. Colin will be the Certifier.</p>
44.9A	Partial completion arrangements for depot to be agreed.	BBS/CEC	5/8/11	<p>Colin is to set out on one page the partial completion arrangements and definition.</p> <p>15 October 2011 is correct</p>
52.	To be reviewed by Siemens Maintenance.	BBS	???	<p>BBS to review clause 52.</p> <p>Section 40 of the ER's is being reviewed by BBS as part of the ER's response.</p> <p>There is apparently another more detailed clause or</p>

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				schedule relating to maintenance costs that needs to be looked at by CEC/BBS to reflect the shorter route.
62.2/3	Sectional LADs and LAD cap to be agreed by CEC.	Colin	5/8/11	Colin to look at
77.16	BBS to have no liability for design of Secondary Phase 1(a) to extent it was prepared by SDS?.	BBS	5/8/11	BBS to check
80.12.3.3	BBS can refuse to implement a Change if it would "increase risk" of non-compliance with Agreement?.	BBS	5/8/11	BBS to check
"Designated Working Areas"	CEC to check definition	Colin	5/8/11	Colin to review
"Edinburgh Tram Network"	CEC to check definition	BBS lawyers and CEC lawyers	10/8/11	BBS and CEC lawyers to discuss
"Liability Cap"	BBS wish to reconsider.	BBS	5/8/11	BBS to comment
"Operator Events"	CEC require a materiality test to be included before it was considered a CE.	BBS	5/8/11	BBS to check. May need to introduce a de minimis
"Planned Sectional Completion Date"	CEC to consider proposal.	Colin	5/8/11	Colin to check
"Secondary Phase 1a Design"	CEC to check definition	Ashurst	5/8/11	The principle of excluding design changes required during any future construction

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Exclusion"				phase as a result of new factors in the ground is agreed. Wording to be looked at.
"Section" definitions	CEC to check definition	Colin/Alastair Richards	5/8/11	Colin and Alastair Richards to check

**INFRACO CONTRACT (TRAMS)**

<b>Clause Ref</b>	<b>Issue</b>	<b>Action</b>	<b>Date to be agreed by</b>	<b>Comment</b>
4.1	As amended BBS are only responsible for complying with ERs "to the extent relevant" to the carrying out of Infraco Works.	BBS	w/c 8/8/11	BBS to respond when able to comment on ER's generally
4.8/ 7.3.2/ Definition of Edinburgh Tram Network/ Infraco Works	BBS revised position is that Trams should be removed from the Infraco Contract. This increases the possibility of a "gap".	Ashurst	10/8/11	Ashurst to consider further
8.7	Following Systems Acceptance Date BBS compliance with system integration is conditional upon CAF compliance with TSA/TMA.	BBS	5/8/11	BBS to check
8.8	tie is under an obligation to procure that CEC manages the TSA/TMA and issues such instructions and requests to CAF "to enable Infraco to perform its obligations under this Agreement".	BBS lawyers and CEC lawyers	5/8/11	Thought to be out of date - lawyers meeting on 28/7/11 discussed.
9.12	tie has been put under an obligation to ensure that Trams, Tram Related Equipment, drivers and other technical personnel are made available at tie's cost "to the extent Infraco needs the Trams to complete the Infraco Works". Failure to do so shall be a Compensation Event.	BBS lawyers and CEC lawyers	5/8/11	Thought to be out of date - lawyers meeting on 28/7/11 discussed.
12.1	BBS have given themselves a right to ask CEC to terminate the TSA/TMA. If CEC do terminate or agree to rectification plan BBS's integrations responsibilities are suspended until CAF are replaced or the Tram	BBS	5/8/11	BBS to check

	rectification plan has been implemented.			
14	This clause provides an alternative approach to the CEC Tram integration proposal discussed (Ashurst/Pinsents/Biggarts). This is noted in the mark up. This drafting has been ignored pending further discussions on the CEC drafting.	BBS lawyers and CEC lawyers	5/8/11	Thought to be out of date – lawyers meeting on 28/7/11 discussed.
77.21	tie is required to indemnify Infraco for all claims, losses etc. incurred by Infraco which arise from a breach by CAF of Tram Supplier Integration.	BBS	5/8/11	BBS to check
Definition of "DPOFA Infraco Event"	This concept which allowed tie to claim against Infraco if breaches caused the Operator to claim against tie, has been deleted.	BBS	10/8/11	BBS to check



**ON STREET WORKS SCHEDULE**

<b>Clause Ref</b>	<b>Issue</b>	<b>Action</b>	<b>Date to be agreed by</b>	<b>Comment</b>
1.	CEC to review and confirm drafting.	CEC	10/8/11	Ashurst to review
2.	"Aggregate Claims Amount" to be agreed.	Colin	5/8/11	Colin to advise
3.	"Aggregate Extension of Time" to be agreed.	Colin	5/8/11	Colin to advise
4.	Pricing Assumptions agreed in principle – detailed drafting to be agreed.	Colin	5/8/11	Colin to advise
5.	OH&P Fee to be agreed.	Colin	5/8/11	Colin to advise
6.	Prelims to be agreed.	BBS/Colin	End August	BBS/Colin to resolve following subcontractor process
7.	Mark up rates to be agreed.	BBS/Colin	End August	BBS/Colin to resolve following subcontractor process
	Liquidated sums for prolongation costs	Colin	5/8/11	Colin to advise
	Other sums – schedule of rates	BBS/Colin	End August	BBS/Colin to resolve following subcontractor process

**OTHERS**

<b>Clause Ref</b>	<b>Issue</b>	<b>Action</b>	<b>Date to be agreed by</b>	<b>Comment</b>
	Programme to be agreed.	Colin	???	Colin looking at
	On Street Contract Sum to be agreed.	BBS.CEC	End August	Being discussed and will follow subcontractor process
	On Street design package to be agreed.	Colin	End August	Colin to review as part of subcontractor process
	Employers requirements	BBS	w/c 8/8/11	BBS to provide response w/c 8/8/11
	CAF exit from consortia	BBS/CAF	w/c/8/8/11	Progress needs to be made
	Principals meeting	Principals	24/8/11	To take place on 24/8/11, the day before the Council meeting.