

Dear Sirs

**Edinburgh Tram Network Project**

**SDS Provider Agreement Dated 19 September 2005 (And Subsequent Novation 14 May 2008)**

Thank you for your letter reference, AF/CDV/310299/15UKM/31780629.1, dated 15 September 2010. We have reviewed the contents of this letter and earlier correspondence dated 05 & 18 August 2010 and 02 & 08 September 2010 and are able to respond as follows.

Parsons Brinckerhoff was appointed to provide services under the SDS Contract which was signed on 19 September 2005. This contract was novated to the Infraco comprising Bilfinger Berger (UK) Limited and Siemens PLC on 14 May 2008. Co-incident with the signing of the Novation Agreement all Parties signed the Collateral Warranty in favour of **tie** from the SDS Provider.

At Clause 2.2.2 the Collateral Warranty sets out the terms of the duty of care owed by the SDS Provider to **tie**.

At Clause 5.9.2 the Collateral Warranty states that **tie** has no authority to issue any direction or instruction to the SDS Provider in relation to the performance of the SDS Provider's obligations under the SDS Agreement or the Novation Agreement.

At Clause 3.4 the Collateral Warranty states that the SDS Provider shall provide to **tie** a copy of any of the Deliverables as soon as reasonably practical after receipt of a request from **tie** to do so in the context of the Copyright Licence terms set out at the wider Clause 3.

You make reference to Clause 11.5 of the Infraco Contract which stipulates that the Infraco shall not amend the SDS Agreement. You also refer to clause 3.28 of the novated SDS Provider Agreement under which the SDS Provider is deemed to be aware of the provisions of the Infraco Contract.

You refer to an audit by your clients relating to design status to date and your finding:

“... that material commercial arrangements outwith the SDS Agreement may have been agreed by and put in place between Bilfinger Berger Civil UK Limited, Siemens PLC and CAF (either individually or collectively) and Parsons Brinckerhoff”.

Whilst we are able to confirm that arrangements outwith the SDS Agreement have been agreed and put in place we reiterate, as previously set out in our letter to you dated 16 August 2010, that the terms and conditions of the SDS Agreement have not been amended in consequence. Your understanding is correct – these additional agreements are outwith the SDS Agreement. It is not, therefore, the case that:

“These arrangements would have a direct bearing on the performance of the project design commission which Parsons Brinckerhoff has been undertaking since October 2005”.

Nor do we understand the reasoning which would conclude that these agreements should be viewed as evidence of:

*"... a straightforward breach of [our] contractual commitments under the SDS Agreement (as novated to the BSC Consortium) and to tie under the SDS Novation Agreement and the SDS Collateral Warranty". (As a point of clarification it should be noted that the SDS Agreement was novated to the Infracore as constituted at the point of novation - not to the BSC Consortium.)*

Furthermore, given that the additional agreements are outwith the SDS Agreement they are covered by commercial confidentiality and we are not able to share them with you without the sanction of all parties to the agreements. This is the reason for our declining to provide you with copies of the additional agreements to date in response to your requests. The inferences set out in your letter dated 02 September 2010 arising from non-disclosure of the additional agreements are unwarranted and the arguments which you have sought to base on those inferences can readily be refuted.

We propose that a meeting be convened at an appropriate time and with all interested parties in attendance should you consider that further clarification is required.

Yours faithfully