

***SUBJECT TO CONTRACT***

***THIS DOCUMENT DOES NOT OFFER  
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RELATIONS (WHETHER  
EXPRESS OR IMPLIED)***

**PROJECT CARLISLE - PRELIMINARY DRAFT**

**tie GMP CHANGE ORDER to the Infraco in respect of the GMP, GMP Scope of Works and Omitted Civil Engineering Works**

**The following constitutes the formal tie Change Order for the purposes of Clause 80 of the Infraco Contract and is based upon tie's acceptance of Infraco Estimate No ◆ dated ◆ 2010 pursuant to tie Notice of Change No ◆ dated ◆ 2010 .**

**Capitalised terms (where not otherwise defined) and clause number references are as used in the Infraco Contract.**

1. tie instructs and the Infraco agrees to:
  - 1.1 the introduction and application of a Guaranteed Maximum Price ("GMP") on the basis of the Estimate (contained in Appendix II) for the carrying out and completion by the Infraco of all Infraco Works and related services necessary to carry out and complete the GMP Scope of Works (contained in Appendix I) pursuant to the Infraco Contract (as varied pursuant to this Change Order);
  - 1.2 the omission from the Infraco Works of all Omitted Civil Engineering Works (as described in Appendix A to the GMP Scope of Works) from chainage 131247 at Haymarket to chainage 130380 at Lothian Road and from chainage 121380 at Waverley Bridge to chainage 121150 (and, in respect of overhead line, chainage 120804) at St Andrew's Square; and
  - 1.3 the omission from the Infraco Works of all Infraco Works (with the exception of the provision of the Design pursuant to the GMP Scope of Works and paragraph 8 of this tie Change Order) from chainage 121150 (and, in respect of overhead line, chainage 120804) at St Andrew's Square to chainage 100000 at Newhaven ("**Omitted Scope**").
2. tie instructs and the Infraco agrees that:

the GMP shall not under any circumstances be exceeded, save by strict application of Clause 80 (as varied).
3. tie accepts and the Infraco acknowledges:

an agreed and validated credit from the Infraco in the amount of £ [◆] for the Infraco Works included in the Construction Works Price but now not applicable due to the Omitted Civil Engineering Works pursuant to Appendix A of the GMP Scope of Works and the Omitted Scope.

4. **tie** instructs and the Infraco agrees to:
  - 4.1 on the basis of the Infraco's Estimate No **◆** and this **tie** Change Order, the conclusion of a Deed of Variation pursuant to Clause 80 and Clause 108 of the Infraco Contract to effect the necessary modifications to the terms and conditions of the Infraco Contract to reflect the GMP and the GMP Scope of Works; and
  - 4.2 the Infraco shall waive irrevocably all further claims, entitlements or rights of any kind (whether now existing or which might otherwise arise) arising from or in connection with the GMP, GMP Scope of Works (and Omitted Civil Engineering Works and the Omitted Scope), save as expressly provided in this **tie** Change Order, as confirmed in the Deed of Variation.
5. **tie** reconfirms its instruction to proceed with and the Infraco agrees to:

the immediate commencement and carrying out and completion of the GMP Scope of Works to **tie**'s satisfaction, in consideration of the GMP and pursuant to the Infraco Contract (as varied pursuant to this **tie** GMP Change Order and the Deed of Variation).
6. **tie** instructs and the Infraco agrees that:
  - 6.1 the Infraco shall install On-street trackwork to Part A (from Haymarket to Lothian Road and Waverley Bridge to St Andrew's Square) in accordance with the Infraco Contract and subject to **tie** issuing the Infraco with 14 days' written notice to commence work on any Designated Working Area and in accordance with the following provisions:
    - 6.1.1 the Infraco shall provide, take from store, deliver to site, and permanently install the track rails and their supports and sleepers on a foundation prepared by others, in accordance with the assured integrated design approved pursuant to Clause 19 and by **tie**, in accordance with a reasonable programme agreed by **tie**;
    - 6.1.2 the Infraco shall provide and permanently install in accordance with the said design chamber filling materials to the rail flanges prior to handing over the installed track to **tie** to complete the Omitted Civil Engineering Works; and
    - 6.1.3 other than for the Design, the Infraco will bear no responsibility for any of the Omitted Civil Engineering Works subsequent to the installation of the track.
  - 6.2 The Infraco shall issue **tie** with 14 days' written notice of the date by which the On-street trackwork on any Designated Working Area (from Haymarket to Lothian Road and Waverley Bridge to St Andrew's Square) shall be complete to enable **tie** (or any **tie** Party) to access, carry out and complete any remaining Omitted Civil Engineering Works. **tie** shall notify the Infraco upon conclusion of the Omitted Civil Engineering Works on a Designated Working Area (from Haymarket to Lothian Road and Waverley Bridge to St Andrew's Square) and the Infraco shall carry out all remaining Infraco Works, including the E & M Works and the testing, commissioning and energisation of the Edinburgh Tram Network.

7. **tie** instructs and the Infraco agrees that:
- 7.1 The GMP Scope of Works and the GMP includes all Infraco Works arising from or required by all actual or potential Permitted Variations, **tie** Changes and Infraco Notices of **tie** Changes existing at the date of this **tie** Change Order.
- 7.2 The GMP Scope of Works and the GMP includes the carrying out and completion of all detailed items stated in the Specific Requirements contained at Appendix IV.
- 7.3 The Infraco shall use all existing GMP IFC Drawings (as defined in the GMP Scope of Works) in the carrying out and completion of the GMP Scope of Works unless otherwise instructed by **tie**.
- 7.4 The Infraco shall or shall procure the approval, assurance, integration and compliance of all design used for the construction and completion of the GMP Scope of Works. For the purposes of the GMP Scope of Works, such design assurance shall *inter alia* provide:
- i. adequate, complete and sufficient evidence of unconditional, readily accessible, sound and comprehensive integration;
  - ii. Design Assurance Statements which comply with, and are not in contradiction to, the Infraco's obligations pursuant to the Infraco Contract and which do not exclude liability. This will include the removal of statements such as the following:

*"This Drawing incorporates the 'RailOne RHEDA City -C' proprietary rail fastening system developed for Edinburgh Tram Network by the BSC consortium. The SDS trackform design incorporates RHEDA City C in its entirety without modification and accepts no liability for the suitability of the system. For details of BSC refer to RHEDA City C typical sections ETN(TRW=TD&ATB#055716. SDS have prepared a comprehensive review of the RHEDA City System, refer to doc No. TBC for details";*
  - iii. IDC/IDR output evidence in tabular form which is essential for **tie** to carry out a review of the submissions made by the Infraco;
  - iv. integrated design assurance statements which are complete rather than interim drawings which are incomplete and which exclude cross-sections and which are not fully satisfactory in integration terms;
  - v. a complete SDS Drawing Register; and
  - vi. Inclusion of details to close out:
    - (a) CEC Informatives;
    - (b) Key ICP issues; and
    - (c) Hazard Log item mitigation closure.
- 7.5 In the event of any ambiguity or discrepancy in the GMP IFC Drawings relating to the GMP Scope of Works, it will be the responsibility of the Infraco to correct or remove any such ambiguity or discrepancy and the Infraco will have no entitlement to any additional

payment or time to make any necessary correction to the GMP IFC Drawings and to complete the Infraco Works required for the GMP Scope of Works.

7.6 The Infraco shall obtain all Consents and necessary approvals from the relevant Approval Body or third party required to carry out and complete the GMP Scope of Works, specifically all outstanding items regarding technical approvals from the Roads Authority.

7.7 An "Approved Design" is:

a Design which will form part of a Design Assurance Statement(s) which has been, or is to be, issued by the Infraco and which de facto certifies that any IFC Drawing which is incorporated in the said Design Assurance Statement is for a base design which is supported by a written statement of the design philosophy, explaining why it is a good, best-value, design which satisfies the Employer's Requirements and certifying that all:

- (i) Consents, including but not limited to Design Stage Consents, have been obtained from Approval Bodies and third parties;
- (ii) appropriate CEC informatives have been concluded;
- (iii) interdisciplinary checks have been carried out; and
- (iv) elements of design are integrated, which means certifying the existence of adequate, concrete and sufficient evidence of unconditional, readily accessible, sound and comprehensive integration.

7.8 Any revision required to the Infraco's submissions to obtain any and all Consents prior to the issue by the Infraco of any part of the Approved Design will not constitute a **tie** Change.

7.9 Unless any addition, modification, reduction or omission arises from an error, discrepancy, ambiguity or default by or of the Infraco or any Infraco Parties, any instruction to add to, modify, reduce or omit in respect of any part of the Approved Design by **tie** will constitute a **tie** Change.

7.10 Other than to rectify and error, discrepancy, ambiguity or default by or of the Infraco or any Infraco Parties, the Infraco will not add to, modify, reduce or omit in respect of any part of the Approved Design unless instructed by **tie**.

8. **tie** instructs and the Infraco agrees that:

no later than 31 December 2011 the Infraco shall deliver a completed, approved, assured, integrated and compliant design for Phase 1b (Roseburn Junction to Granton Square) signed off and certified by the SDS Provider and each of the Infraco Members (and any relevant Infraco Party and SDS Provider Party), together with provision of all associated Project IPR, Infraco IPR and SDS Provider Party IPR and all related Deliverables. Full compliance with this instruction shall be a condition precedent of **tie**'s payment of any sum due to the SDS Provider under the GMP (if applicable).

9. **tie** instructs and the Infraco agrees to:

the Infraco shall design, carry out and complete certain enabling works to be determined and instructed pursuant to a **tie** Change Order for the Edinburgh Gateway Project (formerly

Gogar Interchange) at a reasonable price and using reasonable endeavours to complete such works without causing delay to the completion of the GMP Scope of Works.

10. **tie** instructs and the Infraco agrees to:
  - 10.1 the continuation of the application of Clause 62 of the Infraco Contract in respect of liquidated and ascertained damages; and
  - 10.2 the dates for completion of each Section under the GMP Scope of Works being the Planned Sectional Completion Dates as shown in Appendix III, the Planned Sectional Completion Dates being updated to refer to completion at St Andrew's Square and not Newhaven.
11. **tie** instructs and the Infraco agrees that Clauses 74 to 78 shall remain in full force and effect.
12. **tie** confirms and the Infraco acknowledges:

**tie's** notification to City of Edinburgh Council of the adjustment to the Construction Works Price by operation of this **tie** Change Order and the Deed of Variation.
13. **tie** instructs and the Infraco agrees to:

the notification by each Infraco Member to their Parent Company Guarantors concerning GMP, the GMP Scope of Works, Omitted Civil Engineering Works and related modifications to the Infraco Contract under the Deed of Variation.

Each Party shall provide the other with a certified copy of such notification within 7 days of the date of the **tie** Change Order.
14. **tie** hereby notifies that:

pursuant to Clause 26.2 of the Infraco Contract, [*insert name of the Infraco Representative*] is approved to be the Infraco Representative for the GMP Scope of Works.
15. **tie** hereby notifies that:

the list of Key Personnel contained in Appendix VII to this **tie** Change Order is approved for the GMP Scope of Works. No other persons, other than those approved as Key Personnel, shall have day-to-day responsibility for and be involved in the performance of the GMP Scope of Works.
16. **tie** instructs and the Infraco agrees to:
  - 16.1 the modification of Clause 80 (and related definitions) of the Infraco Contract (such modification to be introduced pursuant to Clause 80.12 of the Infraco Contract (as revised pursuant to this **tie** Change Order)) for the purposes of the GMP Scope of Works, as shown in the Schedule of Amendments included in Appendix V, such modification including:
    - 16.1.1 clarification that the only circumstances in which a **tie** Change can occur is where **tie** expressly instructs a **tie** Change which is necessary in **tie's** opinion for the satisfactory completion of the GMP Scope of Works (unless necessary

as a result of the Infraco's (or an Infraco Party's) failings, default, action, omission or error);

- 16.1.2 clarification that any adjustments to the GMP shall be evaluated in accordance with revised Clause 80;
- 16.1.3 clarification that the Infraco will only be entitled to additional time for the **tie** Change where the delayed activity is demonstrated to be on the critical path at the time the delay occurs; and
- 16.1.4 clarification that the Infraco will not be entitled to a **tie** Change where a revision is required to the Infraco's submissions to obtain all Consents prior to the issue by the Infraco of any part of the Approved Design.

17. **tie** instructs and the Infraco agrees to:

the specific amendments to the Infraco Contract contained in Appendix V (*Schedule of Amendments*) to be effected by the Deed of Variation, (including the deletion of Schedule Part 4 of the Infraco Contract) required to effect this **tie** Change Order and the irrevocable waiver and withdrawal by the Infraco of all entitlements, claims, demands and submissions of any kind arising from or connected with Schedule Part 4 (whether relating to on-street or off-street works), including in relation to the Pricing Assumptions and Notified Departures and all Infraco Notices of **tie** Change.

18. **tie** instructs and the Infraco agrees to:

The Infraco shall submit to **tie** a Programme showing the critical path(s) on the date of this **tie** Change Order, such Programme and the critical path(s) to be updated in accordance with Clause 60 and the Employer's Requirements (both as revised).

19. **tie** instructs and the Infraco agrees that:

for programming purposes, any landscaping on a Section will be considered complete provided that the only unfinished works are seeding, turfing or planting works which shall be carried out by the Infraco at the beginning of the next seeding, turfing or planting season(s).

20. **tie** instructs and the Infraco agrees that:

- (i) there shall be no further entitlements in respect of the Infraco's claims for delay, disruption or other relief to the Infraco Works necessary to execute the GMP Scope of Works existing (whether or not notified to **tie**) prior to the date of this **tie** Change Order;
- (ii) the arrangements concluded under the Deed of Variation to be entered into following this **tie** Change Order will represent full and final settlement of all and any past, current and potential submissions, claims, entitlements and representations by the Infraco relating to extensions of time, related compensation or additional payment for prolongation, mitigation, acceleration measures, re-sequencing, **tie** Change, Mandatory **tie** Change, Compensation Events, Pricing Assumptions and Notified Departures arising from or in connection with the GMP Scope of Works or the Omitted Civil Engineering Works or the Omitted Scope; and

(iii) the Infraco shall have no entitlement of any nature in respect of the Omitted Civil Engineering Works or the Omitted Scope, whether arising prior to or after the date of this **tie** Change, including any indemnity for loss of profits or loss of contribution to overheads.

21. **tie** instructs and the Infraco agrees that:

in respect of the GMP, Schedule Part 5 of the Infraco Contract (*Milestones*) shall be revised to suit the Programme (once submitted). Preliminaries will be re-calculated as a proportion of Construction Milestone values.

22. **tie** instructs and the Infraco agrees that:

The Infraco shall be responsible within the GMP for all costs associated with the treatment and remediation of contaminated land within the GMP Scope of Works, including contaminated materials and plants outside the Earthworks Outline, and the Infraco Contract will be varied accordingly under the Deed of Variation.

23. **tie** instructs and the Infraco agrees that:

the Infraco shall take full risk for utilities which could not reasonably have been foreseen on the basis of available information and knowledge of Site up to £50,000 per event (to cover the costs of any additional works in relation to the unforeseen utilities). Where the cost of dealing with an unforeseen utilities event is greater than £50,000, this shall be deemed to be a Compensation Event (to be calculated and assessed in accordance with Clause 65 of the Infraco Contract), for which the Infraco will be responsible for the first £50,000 of costs; and

the Infraco Contract will be varied accordingly.

24. **tie** instructs and the Infraco agrees that:

in the event that the completion of the sewer diversion at Structure 26 - South Gyle Access Bridge (being carried out by a third party) is delayed beyond 31 October 2010, if the delayed activity is demonstrated to be on the critical path at the time the delay occurs and the Infraco can demonstrate that it has incurred additional loss or expense, this shall be deemed to be a Compensation Event (to be calculated and assessed in accordance with Clause 65 of the Infraco Contract).

25. **tie** instructs and the Infraco agrees that:

Subject to the Infraco having obtained **tie**'s approval to any submission to Network Rail and any amendment thereto if Network Rail delay in giving approval of such submission beyond 10 weeks, provided that such delay could not have been reasonably foreseen, avoided or mitigated by the Infraco with the reasonable assistance of **tie**, and if the delayed activity is demonstrated to be on the critical path at the time the delay occurs and the Infraco can demonstrate that it has incurred additional loss and expense, this shall be deemed to be a Compensation Event (to be calculated and assessed in accordance with Clause 65 of the Infraco Contract).

26. **tie** instructs and the Infraco agrees that:
- if Scottish Water fails to provide the water supply connection to the Depot by 30 September 2010, provided that the Infraco has provided a design which is acceptable to Scottish Water and which permits Scottish Water to provide the connection by this date, if the Infraco can demonstrate that it has incurred delay or additional loss and expense, this shall be deemed to be a Compensation Event (to be calculated and assessed in accordance with Clause 65 of the Infraco Contract).
27. **tie** instructs and the Infraco agrees to, on the date of issue of this **tie** Change Order,
- the provision to **tie** of copies of the executed sub-contracts (approved by **tie** in advance, at **tie**'s absolute discretion) with the Key Sub-Contractors approved by **tie** for the GMP Scope of Works, listed in Appendix VI; and
- the provision to **tie** of executed collateral warranties in accordance with Clause 28.7 and 74.10 of the Infraco Contract in favour of **tie**, CEC and TEL and EAL and NR, if requested by **tie**.
28. **tie** instructs and Infraco agrees that the definition of Construction Works Price shall be amended to reflect the GMP as set out in Appendix II to this **tie** Change Order.



**APPENDIX I  
GMP SCOPE OF WORKS**

*[Insert GMP Scope of Works]*

APPENDIX II

AGREED ESTIMATE (GMP PRICING SCHEDULE)

In this Appendix II the following definition shall apply:

"PSSA" means the Princes Street Supplemental Agreement between **tie** Limited and the Infraco Members dated 29 May 2009 in respect of the civil engineering works carried out by the Infraco on Princes Street.

The GMP Analysis for the GMP Scope of Works is as follows:

**GMP Analysis**

Construction Works Price Part A	£223,467,580
SDS Price	To be determined
PSSA Payment	To be determined
Tram Supply Price	45,893,997
Infraco Maintenance Mobilisation	1,633,522
Tram Maintenance Mobilisation	2,275,806
Infraco Spare Parts	1,013,090

APPENDIX III

PLANNED SECTIONAL COMPLETION DATES

Section	Agreed Date for Completion
Section A	2 November 2010
Section B	1 April 2011
Section C	10 December 2011
Section D	6 June 2012

## APPENDIX IV

### SPECIFIC REQUIREMENTS

The following are Specific Requirements with which the Infraco must comply as part of the GMP Scope of Works:

#### 1. Roseburn Viaduct

- 1.1 On the basis of an inclusion within GMP, the installation of a suitable and secure gate at the entrance to the portal to prevent graffiti in the portal structure entry to Haymarket Depot, where **tie** instructs at its discretion.
- 1.2 On the basis of an inclusion within GMP, the installation of an approved ceramic finish to prevent graffiti on the face of the wall under the main Roseburn Viaduct and to improve the amenity of the area, where **tie** instructs at its discretion.
- 1.3 The alignment of the existing wall at Murrayfield which is to remain and a small area of additional soft landscaping up to a maximum area of 30m<sup>2</sup>.
- 1.4 On the basis of an inclusion within GMP, the installation of false walls in accordance with [Drawing Number ULE90130-05-PLG-00265 rev 2 and [*sketches and photos to be inserted*]] in order to prevent the use of the spaces for anti-social behaviour and the accumulation of rubbish, where **tie** instructs at its discretion.

#### 2. Landfill Site

- 2.1 The solution priced within the GMP is based on the Infraco's current proposal as shown on the GMP IFC Drawings which amends trackform to ballast, details a retaining structure for track, incorporates a surcharge and an element of earth retention which is shown on the GMP IFC drawings.
- 2.2 The GMP includes landfill taxes and all other taxes payable on the surcharge to the landfill Site. The Infraco is responsible for obtaining any HMRC exemptions, concessions or allowances and the GMP is deemed to take account of any such HMRC exemptions, concessions or allowances. Any additional costs or expenses which arise shall be to the account of Infraco.

#### 3. Tramstop Design

- 3.1 The construction of all tramstops from Airport to St Andrew's Square (inclusive) on the basis of the specification provided by Alastair Richards on 17 May 2010 (to be listed).

#### 4. Network Rail: Form C Submissions

- 4.1 The GMP is based on Network Rail standard requirements for Form C submissions. Upon request from Infraco, **tie** shall use reasonable endeavours to assist the Infraco with obtaining necessary approvals, but such assistance will be dependent upon timely, compliant and complete Form C submissions by the Infraco to Network Rail.

**5. Lochside Avenue Junction**

- 5.1 The GMP includes all Infraco Works based on the drawings referenced in letter from CEC dated 20 May 2010 (reference: SS1 40/RG) and included in the GMP IFC Drawings, which were approved with conditions by CEC on 20 May 2010. The Infraco is responsible for complying with any further requirements from CEC without additional payment or time relief.

**6. Changes to Traffic Regulation Orders (TROs)**

- 6.1 The Infraco shall be responsible within the GMP for additional costs arising from any change to Traffic Regulation Orders.

**7. Washing Plant**

- 7.1 The GMP is based on and includes for all Infraco Works and additional works or services to deliver the engineering solution currently proposed by the Infraco (Siemens) (*date to be inserted*) with additional arrangements for effectively washing the ends of trams on a more regular basis as required by the Employer's Requirements.

**8. New Ingliston Works**

- 8.1 The GMP includes for the future-proofing works for New Ingliston Limited as scoped in **tie** Notice of Change No. 27 and Infraco Notice of **tie** Change No. 258.

**9. Trackform Type Confirmation**

- 9.1 The trackform type is confirmed in the Agreed Trackform Summary (reference: SPM-TRW-GEN-0118).

**10. Scottish Power connections**

- 10.1 The GMP includes for Scottish Power connections to new street lights and new traffic signals from Haymarket to Lothian Road (inclusive) and Waverley Bridge to St Andrew's Square (inclusive).

**11. Network Rail Possession Support**

- 11.1 The GMP includes for all costs in connection with PICOPS / COSS / Possession Protection Staff as Network Rail possession support when undertaking works adjacent or over the railway, where they relate to the Possessions required for the Infraco Works.

**APPENDIX V  
SCHEDULE OF AMENDMENTS**

*[To insert agreed Schedule of Amendments - for the purposes of the Preliminary Carlisle draft, see Paper Apart]*

**APPENDIX VI  
KEY SUB-CONTRACTORS**

The following Key Sub-Contractors have been approved by **tie** for the purposes of the GMP Scope:

*[insert list of all the Civils Sub-Contractors from Airport to Lothian Road and all the systems Sub-Contractors for Lothian Road to Newhaven]*

**APPENDIX VII  
KEY PERSONNEL**

*[insert list of approved Key Personnel for the GMP Scope of Works]*