Draft to Richard Walker, Antonio Campos and Michael Flynn.

Dear Sirs,

I have been asked by Richard Jeffrey to respond to the contractual issues you raise in your joint letter dated 3 February 2010.

I have also been asked to make it clear that our Chairman and Chief Executive reserve the right to correspond with any party they feel has relevance to obtaining your performance of the Agreement. Your portrayal of Mr. Mackay and Mr. Jeffrey as **"tie**'s senior management" is ill considered.

I note that you only refute those issues referred to in four bullet points. I will reply to your four responses in a manner which gives symmetry to our explanation.

1	It seems contrived for you to elect to instigate the DRP procedure before you will commence what you purport to be **tie** changes and then behave in a manner which requires us to resort to adjudication. You ignore the fact that by referring your valuations to DRP they have, on average, been reduced by some 40% in value. Moreover, as you persist in offering no explanation by way of full Estimates we have been obliged in some cases to use the adjudication process to obtain as much explanation as we reasonably could. We are a public authority which has strict obligations to manage public money and whilst we accept the generality of an adjudicator's decision being binding until set aside by a higher authority the Agreement also places an obligation on you not to seek "double recovery" (Clause 121) and we have a duty to take reasonable steps to assure that you haven't. Moreover reference to legal principles, which have been confirmed by recent authority, persuade us that your position on entitlement pursuant to Pricing Assumption 3.4.1 is unsound. You render the meaning of 3.4.1 absurd and in the fullness of time we will take steps to have the matter corrected in the Courts if it proves necessary. Our view is that changes in design can arise by: i. Changes to Employer's Requirements instructed by **tie** – where this has happened we have admitted responsibility. ii. Changes in Employer's Requirements necessitated by either SDS or yourselves but not instructed by **tie**. iii. Normal design development. iv. Negligence by SDS or yourselves. We note that you now confirm your agreement that "all changes from BDDI to IFC" are not Notified Departures. Consequently we expect that you will agree

	that items ii, iii and iv are not Notified Departures. We do not agree with your interpretation of Clause 80, it ignores your duties and obligations in what is an entire agreement. Again your interpretation would fundamentally change the meaning of Clause 80.
2	We regret to note that despite the fact that you agree with Richard Jeffrey's recollection in his email to David Darcy on 19 November 2009 you have seen fit not to comply with the intentions agreed by them. (As you have referred to this email, we put it and the flow of emails which prompted it on the record.) Martin Foerder candidly confirmed at the meeting which took place in your offices on 1 February 2010 that the intention behind the manner in which you are revising the programme is to establish an extension of time. It is a well established principle that global assessment of extension of time (and loss and expense) is only permissible if and to the extent that it is not possible to make a detailed assessment or ascertainment. This is clearly not the case here. You have submitted numerous notices of intent to claim extension – none have complied with any of the requirements inter alia Clause 65.2. Some of your purported notices have asserted the delay to be caused by delays to IFC. You have given no explanation to show that such delays are not caused by you in providing SDS with information or by your own negligence. Whilst under Compensation Event (t), subject to Clause 19.19, delays caused by SDS can justify extension of time it would be absurd if you could gain by your own negligence. Any properly formulated submission under Clause 65.2 will need to demonstrate that the cause of delay isn't your own negligence or one of the reasons excluded under Clause 19.19.
3	Notwithstanding that you have failed to give adequate substantiation of extension we have offered an extension of 9 months to add to the previous extension of 7.6 weeks which was agreed to settle the entitlement arising from the difference between SDS Programme V26 and SDS Programme V31. It established the completion dates which reflected some misalignment (known at the time) in SDS Design. In the interests of mutual cooperation we offered the extension of time of 9 months to assist you. We are pleased to see that you confirm your agreement. In the absence of any detailed substantiation we are still of the opinion that even in light of current progress to utility diversions the works could be completed before June 2012. Your assertion that changes in design have rendered it impossible for you to ascertain the effect on your timing and sequence of work is another example of how your actions seek to change the meaning of the Agreement. Whilst you may not have the capability to properly revise your programme it does not mean it is

	impossible.
4	Despite all of this you are still incapable of programming your works to complete by the extended dates for completion. In fact your recent draft shows completion in October 2013 – that is in some 45 months time. The original period for completion was 38 months and you have completed not more than 15% of the work. Utility diversions are currently forecast to be completed by August 2010 – some 60% of On-street work areas are currently programmed to be available by June. In essence, in construction terms, this is not a complicated job and there have been no material changes to its alignment or structures. The bulk quantities of earthworks and materials are very modest and the New Depot is well underway. You currently can take possession of some 80% of the total site. Asserting that you require or are even entitled to a further 45 months to complete your Works, in spite of your obligation to mitigate delay, creates an impression that you are ignoring your obligations under the Agreement.
5	In our letter dated 19 January 2010 we confirmed that our Board fully recognises that Infraco are entitled to whatever the Agreement prescribes for them. Moreover, we have consistently and regularly requested and instructed that you accept the spirit of Clause 80.16 and proceed with the works with due expedition. Yet you persist with asserting that Clause 80 does not permit Infraco to commence work in respect of a **tie** Change (including Notified Departures) until instructed through receipt of a tie change order or after the Change has been referred to DRP. If indeed its terms are intended to place restrictions on you (as you assert and we deny) it can only be in order to protect **tie**. It would be plainly absurd if it should bar **tie** from instructing otherwise.

It is **tie**'s earnest desire that Infraco recognises it duties and obligations and brings about completion with due expedition.

Yours faithfully,

Steven Bell
Project Director