

**PROTOCOL IN RESPECT OF CLAUSE 80.20 OF THE INFRACO CONTRACT ("Protocol")
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. **tie** and the Infraco (together the "**Parties**") require to agree a protocol whereby **tie** can issue instructions for works which need to be commenced as soon as possible ("**tie Priority Works**") without the time constraints associated with a full **tie** Change process and at the same time protecting the contractual rights of both **tie** and the Infraco.
- D. The Parties have agreed that this Protocol 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 and is intended to supplement and clarify the application of the terms of Clause 80.20 in such circumstances.

PROTOCOL

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.

2. At the time when **tie** contacts the Infraco as set out in paragraph 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:
 - 2.1 employment of any specialist services or sub-contractors;
 - 2.2 increased labour costs due to nature, timing or conditions of the work;
 - 2.3 increased plant costs due to nature, timing or conditions of the work;
 - 2.4 increased material costs; and
 - 2.5 any special attendance or other preliminaries necessitated.

Notwithstanding the other provisions of this Protocol 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.

3. 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 with the Infraco in accordance with paragraphs 1 and 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**").
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, which shall in any event be no more than twenty (20) Business Days following the date of the **tie** Priority Works Instruction, 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.
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.
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.
7. Prior to the determination of the Infraco Priority Works Estimate 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 paragraph 4.

8. Any premium costs to which the Infraco may be entitled pursuant to this Protocol 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 paragraph 4.
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.

INTERPRETATION

10. All capitalised terms used in this Protocol (unless otherwise defined) shall have the meanings given to them in the Infraco Contract.
11. All reference to "Clauses" in this Protocol shall mean clauses of the Infraco Contract.
12. Wherever **tie** wishes to proceed with the **tie** Priority Works Instruction, the Parties agree that the terms of this Protocol shall take precedence over the terms of Clause 80.20.

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

Authorised Signatory
Full Name
Witness Signature
Full Name
Address
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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