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## **Edinburgh Trams**

### **Report on Progress since Completion of Heads of Terms to 8<sup>th</sup> April 2011**



**BILFINGER BERGER**  
civil

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**Document 1 of 2**  
**Report**

Issue Date: 7<sup>th</sup> April 2011

**Hg Consulting**

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**REPORT ON PROGRESS SINCE COMPLETION OF  
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**REPORT ON PROGRESS SINCE COMPLETION OF HEADS OF TERMS TO 8<sup>TH</sup> APRIL 2011****1.0 HEADS OF TERMS / MINUTE OF VARIATION****1.1 Development of Heads of Terms to Form Minutes of Variation**

In order to reduce time and increase efficiency of instruction, a briefing meeting with City of Edinburgh Council ("CEC") solicitors and McGrigors was held on 14<sup>th</sup> March 2011.

A joint briefing meeting with Kevin Russell, Axel Eickhorn and Colin Smith, together with McGrigors and Pinsent Masons was held on 20<sup>th</sup> March 2011.

The Minute of Variation draft attached is as at 5<sup>th</sup> April 2011 (see Appendix 2).

**1.2 Minute of Variation Timetable****1.2.1 Airport to Haymarket – 15<sup>th</sup> April 2011**

The tie / BBS Minute of Variation to the present contract requires to be agreed prior to and signed on the 15<sup>th</sup> April 2011.

In Hg Consulting's view, The signing of the Minute of Variation on the 15<sup>th</sup> of April 2011 should only be carried out with the benefit of confirmation from BBS and CAF that they will complete contractual arrangements to allow the novation of CAF's present contractual obligations from BBS to tie in the additional Minute of Variation to be signed on 1<sup>st</sup> July 2011.

The tie / BBS and tie / CAF Minutes of Variation should be signed simultaneously on 15<sup>th</sup> April 2011.

**1.2.2 Haymarket to York Place – 1<sup>st</sup> July 2011**

It has been agreed that the additional Minute of Variation Haymarket to York Place is to be ready for signature by 1<sup>st</sup> July 2011.

This additional Minute of Variation will be subject to full funding being confirmed to tie by CEC. The confirmation of funding is to be made by 1<sup>st</sup> September 2011.

The requirement of the project team is to have a design that is sufficiently advanced and consented to allow a detailed price to be agreed that will become an agreed Target Sum by 1<sup>st</sup> July 2011. Hg Consulting would recommend that the agreement of the Target Sum has a long stop date of 1<sup>st</sup> August 2011.

**1.3 City of Edinburgh Council instructions to Contract Procedures**

Since mediation the contract control from the client sponsor has been of greater influence.

The proposed methodology for CEC required changes is to notify CEC of requests or decisions by way of a letter to tie requesting that a change order be issued.

This instruction will be pre-agreed by CEC and BBS and the letter of instruction copied to the Contractor.

Matters presently being processed as noted above, as at 5<sup>th</sup> April 2011, include:

- letter to get Cathedral Lane Substation moved forward (excluding any further Global Henderson changes);

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**REPORT ON PROGRESS SINCE COMPLETION OF HEADS OF TERMS TO 8<sup>TH</sup> APRIL 2011****1.3 City of Edinburgh Council instructions to Contract Procedures cont'd**

- letter to confirm that the terminal point is to be York Place;
- letter to confirm that there will be a full closure of Princes Street and that the Embargo has been lifted;
- letter to tie regarding their non involvement in BBS design (as per item 1.3 of HoT). Note civil and system and trackwork design will be issued to tie for information only to allow them to complete their obligations with third parties e.g. ICP;
- letter to tie covering audit (trackwork) and in general to allow BBS to complete the design and agree this with CEC;
- letter to tie regarding no further involvement in Roseburn Viaduct scope as the scope is agreed with CEC and included in the agreed Total Price as per Mar Hall - tie need to issue instruction to BBS for the agreed scope as outlined in the Project Phoenix document;
- letter to confirm that no signage is to be installed on top of tram stops;
- letter to confirm whether the depot access road, Hammer head Option 2 (as per tie letter INF CORR 7508/DB dated 11 March 2011) is to be implemented and the costs (Design & Construction) are additional to the agreed Total Price, per Mar Hall;
- letter to confirm whether the Gogar castle access road (as per tie letter INF CORR 7510/DB dated 11 March 2011) is to be implemented and the costs (Design & Construction) are additional to the agreed Total Price, per Mar Hall;
- Letter to tie regarding instruction to BBS for designing a temporary Overhead Catenary System to the east of Depot Access Bridge to facilitate the energisation of the mini test track and associated tracks within the Depot;
- Letter to tie regarding instruction to BBS for designing the new Termination Point at York Place (St Andrew Square); and
- Letter to tie regarding instruction to BBS for incorporation of an additional cycle path at Section 1A as requested by CEC.

**1.4 CAF****1.4.1 Integration to BBS Systems**

A series of meetings have been held between CAF and tie, culminating in a meeting between Richard Jeffrey, Vic Emery and Antonio Campos.

The latest tie / CAF Heads of Terms (Redacted) is attached (see Appendix 3).

The remaining issues that require to be managed and included in the tie / CAF Minute of Variation, to be compatible with BBS arrangements are:

- (i) Specification, location and scope of mini test track; and
- (ii) Programme, integration of systems and compatibility of entire plant, equipment, infrastructure, software, trams, etc.

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**1.4.1 Integration to BBS Systems cont'd**

On my researching historic files, I believe this information has been considered previously, but that no final decision was made (see Appendix 4).

**The tie / CAF Minute of Variation**

A joint meeting is proposed by Hg between BBS, CAF, CEC and tie to review previous discussions and re-establish a close definition regarding items (i) and (ii) above. Thereafter the resolution of this meeting should be inputted to the tie / BBS and tie / CAF Minutes of Variation respectively.

**1.4.2 Partial/Possession and Handover/Commissioning Procedures**

The programme and process will be built off the present BBS programme proposal of five trams from 15<sup>th</sup> October 2011 and the balance from mid December 2011.

An alternative proposal to take full possession of the Depot on 16<sup>th</sup> December 2011, with trams being delivered and commissioned from January 2012, is being discussed and a return call from CAF is awaited.

Requirements for commissioning, training of staff and resourcing, leading to a full handover compliant with ROGS to the end user, need to be embraced and understood by tie and the tram operator.

BBS are to comply with Employer's requirements.

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**REPORT ON PROGRESS SINCE COMPLETION OF HEADS OF TERMS TO 8<sup>TH</sup> APRIL 2011****2.0 GOVERNANCE AND MANAGEMENT OF THE PROJECT****2.1 Client / Contractor**

The project is funded by the Scottish Government (Transport Scotland) and City of Edinburgh Council. The project sponsor is City of Edinburgh Council.

The arms length project management company is tie Limited ("tie").

tie is CEC's agent to deliver the Edinburgh Trams project.

**2.2 Project Delivery**

The present proposal requires an adjusted scope per item five of the Head of Terms signed on 12 March 2011, which includes:

1. tie procuring and managing the utility diversion works required from on street works.
2. CAF providing the tram element of the contract.
3. BBS providing infrastructure and systems from the Airport to Haymarket and to York Place.

**2.3 Project Control and Meeting Structure**

A separate report on 15<sup>th</sup> April will be made on the governance from the project office upward (see diagram in Hg minutes, per Appendix 5).

From the project office downward it has been noted that meetings have been prolific.

A review of all meetings is presently underway to reduce the number of meetings and attendees in order to provide a structure of meetings that will have:

- (i) an agenda;
- (ii) minutes;
- (iii) actions and action by; and
- (iv) required minimum personnel.

This exercise is being led by Martin Foerder, Alfred Brandenburger and Colin Smith, with an aim for reporting and implementation by the end of April 2011.

Project strategic weekly meetings have been put in place, with input from a number of CEC technical staff and with attendance by tie staff. These cover:

- Risk
- Programme
- Commercial
- Design and Consents

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It is proposed to add:

- Utilities; and
- Princes Street Remedial Works

Those meetings have been chaired by Hg on behalf of CEC (see Appendix 5).

The work activities of the client group and contractor were marshalled in line with the project delivery plan from 13<sup>th</sup> March 2011 to 8<sup>th</sup> April 2011 (see Appendix 6).

**2.4 Key Outputs of Weekly Meetings**

In future the foregoing could be reduced to fortnightly meetings.

**2.4.1 Risk**

An updated revised risk register for the whole project has been created. It has been agreed that this will be reviewed and managed by the Risk meeting forum on a weekly basis (see Appendix 7).

**2.4.2 Programme**

Software and programme are to be shared with agreed filters and a three-monthly look ahead programme is to be updated on a monthly basis. Again, the programme will be managed at weekly strategic meetings with a mitigating approach to early warnings (see Appendix 8).

**2.4.3 Commercial**

Monthly milestone valuations are to be carried out, based on work complete/delivered in line with the agreed milestones and broken down into BBS costs and Preliminaries.

Milestones are to be pre-agreed.

Hg Consulting has requested financial information from all contracted parties in order to prepare a project cash flow for the City of Edinburgh Council.

**2.4.4 Design and Consents**

There is weekly involvement with BBS and SDS in order to identify project threats to completing the design and to provide whole project team solutions to overcome issues, e.g. lettering above tram stops.

From 8<sup>th</sup> April it is proposed to deal with the following two project packages given their importance to an efficient interface with the public:

**(a) Princes Street Remedial Works**

To deal with the finalisation of the traffic management plan, stakeholder engagement, revision and implementation of previous good practice manuals, together with decision by the client to communications dealing with no embargo. Consideration is required regarding the 28-day notification period; with a decision to be taken by the client to either reduce the period to 14 days or to leave it at 28 days, but extend the duration on site closer to Christmas by 14 days.

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***(b) Princes Street Remedial Works cont'd***

The Traffic Management Plan including early enabling works (temporary lights, etc.) is presently being worked upon for consideration by CEC. The enabling works precedes the end of the 28-day notification period by 21 days therefore this is the critical item that needs to be dealt with first (see Appendix 9).

***(c) Tie Utilities Package***

This project meeting is to ensure compatibility between the tie utilities project package and BBS requirements, as well as to provide works attendance support if and when required to manage project programme impacts.



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### 3.0 PRIORITY WORKS

#### 3.1 Definition and Scope

##### 3.1.1 *Drawing of red / yellow line boundary of works*

To ensure clarity the scope of the Priority Works has been defined per a note in the Hg minutes and further designated by means of red / yellow line boundary scope drawings.

These drawings should be attached to the tie / BBS Minute of Variation (see Appendix 10).

#### 3.2 Programme of Priority Works

##### 3.2.1 *Commencement –3<sup>rd</sup> May / 4<sup>th</sup> April 2011*

Early commencement agreed on Priority Works on the depot and the mini test track was implemented in good faith on 4<sup>th</sup> April 2011 and costs are to be reimbursed. The balance of works is due to commence on 3<sup>rd</sup> May 2011.

##### 3.2.2 *Integration of CAF delivery dates*

As noted earlier in this report, the integration of the CAF/BBS systems is required.

In Hg Consulting's view, a clear commitment is required from BBS and CAF to provide to existing Employer Requirements a project plan including, but not limited to, specification, testing, commissioning and programme of the integrated tram systems. This plan should be appended to the additional Minute of Variation to be signed on 1<sup>st</sup> July 2011.

#### 3.3 Cost of Prioritised Works

##### 3.3.1 *Method of agreeing value*

The Prioritised Works Price has been extracted from the agreed lump sum and is as attached (see Appendix 11).

The tie interpretation of value is lower.

Both parties however have agreed the method of value, based, where applicable, on quantities and rates.

Similarly, Preliminaries has been discussed with full transparency.

##### 3.3.2 *Reduced and simplified milestones for payment, based on works not timeline*

It has been agreed to reduce the milestones to monthly, paid on works completed or delivered in the month.

Hg Consulting has requested financial information from all contracted parties in order to prepare a project cash flow for the City of Edinburgh Council.

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**3.4 Ancillary and Other Works****3.4.1 Works contained within existing lump sum that can be brought forward**

It has been agreed that works that are designed and consented for which a value has been agreed, can be brought forward and contained in the lump sum price and within the approved client budget should be considered and committed too in order that this work will not delay the overall completion should it only be commenced after 2 September 2011.

**3.4.2 Advance works from Haymarket to York Place –  
project that advantageous to consider early commitment**

Works within the Target Sum package should be considered and committed too in order that this work will not delay the overall completion should it only be commenced after 2 September 2011, e.g. advance site investigation works in connection with Haymarket to York Place.

**3.5 Princes Street Remedial Work****3.5.1 Design Solution**

Trackform has been agreed. CEC to confirm that non material variation to Planning only is required.

**3.5.2 Traffic Management**

The Traffic Management Plan has been agreed in principle on the basis of no embargo.

**3.5.3 No embargo / programme**

Matters of Pre-Start enabling works, notice procedures and previous positive lessons learnt should be dealt with and agreed prior to going live on this matter after 15<sup>th</sup> April.

Strategic details are to be dealt with at the weekly Princes Street Remedial Works project meeting.

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**REPORT ON PROGRESS SINCE COMPLETION OF HEADS OF TERMS TO 8<sup>TH</sup> APRIL 2011****4.0 MANAGEMENT OF DESIGN AND CONSENTS PROCEDURE****4.1 Fast Track Approval Procedures****4.1.1 CEC Process (Planning and Roads)**

CEC has implemented a consents task force and relocated resources to the Lochside Avenue offices.

This has resulted in a dramatic change in culture, creating a team spirit over seven-day working, the esprit de corps typified by delivery to site of a "35 person lunch" team curry.

A positive response to the accelerated consents process by SDS has brought about additional SDS resources to keep up with the CAD requirements of the fast track approvals (see Appendix 13).

Consultations over detailed discussions and programming of design resource and design prioritisation are now happening from desk to desk, rather than by appointments in different city offices.

The line management of this team through Andy Conway and Bob McCafferty goes straight to Dave Anderson, CEC Director, with a copy to Colin Smith.

A present proposal under discussion would be to have on site works inspected by Engineer Inspectors, as opposed to tie project managers.

Red Flag reports are being brought forward from the weekly design and consents meetings. These reports, e.g. Scottish Water, are brought to the attention of Dave Anderson, CEC Director. Thereafter an agreed action plan to mitigate is agreed with the project team (see Appendix 14).

This procedure will capture issues and will be followed in any dealings with the parties below:

- Third party landowners
- Network Rail
- Scottish Water
- Utility companies
- Forth Ports
- SEPA
- Historic Scotland
- Scottish Natural Heritage

**4.1.2 Design Gatekeeper**

At the Design and Consents weekly meeting Martin Foerder, Alfred Brandenburger and Colin Smith act as gatekeepers. The gatekeeper function is a mechanism whereby in the event that design is not up to a level ready for submission it is rejected. To date there have been no rejections.

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**4.2 Design and Build**

**4.2.1 Contractors Self Certification**

BBS carry design and build liability under this contract.

**4.2.2 Sign off Protocols Tracker on Certificate Stages**

tie is the duty holder under ROGS until this is transferred to the operator (to be named).

“Cases for safety” remain with the duty holder; this includes assurances on all systems.

The Independent Competent Person (“ICP”) is presently employed by tie.

The ICP requires Design Assurance Certification.

To meet with the ICP requirements, BBS have prepared and issued a number of protocol statements and processes (see Appendix 15)

It has been agreed, without compromise to the process, that audits will be carried out at appropriate dates. This timetable is to be agreed, commencing in July 2011.

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### 5.0 RE-ENERGISATION OF PROJECT

#### 5.1 Payments

##### 5.1.1 Value and Trigger

In terms of Price clause (6) of the Heads of Terms, at the weekly commercial meeting it was recognised that the value of the following items required to be assessed:

- (i) Value of Prioritised Works;
- (ii) Value of Prioritised Works Preliminaries; and
- (iii) An agreed monthly milestone pattern, based on works completion

In addition, discussion had taken place at Mar Hall on the question of mobilisation and the cost of re-energisation of the project.

##### 5.1.2 Payment Dates

Dates were discussed and in outline settled as follows:

Issue of Certificate Hg1	8 <sup>th</sup> April 2011
Trigger Point 1 – Signing of Minute of Variation	15 <sup>th</sup> April 2011
Ownership of materials transferred to CEC	15 <sup>th</sup> April 2011
Payment of Certificate Hg1	22 <sup>nd</sup> April 2011
Issue of Certificate Hg2	3 <sup>rd</sup> May 2011
Trigger Point 2 – Site Mobilisation, valuation of structures completed, design detail closed out - period 14 <sup>th</sup> March to 3 <sup>rd</sup> May 2011	3 <sup>rd</sup> May 2011
Payment of Certificate Hg2	17 <sup>th</sup> May 2011
Payment of Cumulative Certificate	13 <sup>th</sup> July, 10 <sup>th</sup> August and 31 <sup>st</sup> August 2011

#### 5.2 Certificate Process

Certification on the specified dates would value the payment of the certified sum 14 days after the certificate date.

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**5.2.1 Hg1 and Hg2 (Hg Cumulative Certificate)**

Certification by Hg Consulting, Chartered Quantity Surveyors would be based on an impartial assessment of value delivered to the project. The duty of care provided by this certificate would be to City of Edinburgh Council.

The payment of the certified value would be conditional on:

- (i) the signing of the Minute of Variation by the Parties;
- (ii) vesting of title of materials with the Employer and implementation of a Bond or other financial instrument or measure to be agreed (see Appendix 18);
- (iii) transfer and ownership of the advanced design of the project to 15<sup>th</sup> April 2011;
- (iv) transfer of ownership of the project specific research and development intellect of the Siemens systems and controls; and
- (v) Transfer of ownership of works structures.

Further payments of Preliminaries, materials and equipment due for payment but not yet paid, in the sum of £13m, would be spread over the period from June to September 2011.

To ensure clarity of position, Hg facilitated a commercial workshop with BBS and tie where each party was able to present its assessment of mobilisation costs. After presentation, the other party was invited to comment. The differences in interpretation were noted.

Both parties, BBS and tie, agreed to exchange the details of their papers and the presentations on the day were recorded on white boards, photographed and thereafter typed up for record purposes (see Appendix 16).

The first part of the meeting closed; BBS and tie left the meeting.

The second part of the meeting reconvened after a short recess with BBS and CEC (Alan Coyle and Colin Smith).

The difference of view had been clearly expressed in the earlier session, with the BBS requirement noted as £49m and tie's opinion at £19m.

BBS confirmed that they could not mobilise on the basis of a £19m payment.

After discussion it was agreed to take a proposal to the Principals on the basis of that noted below.

It was affirmed that the sums being discussed were already contained in the lump sum agreement of £362,500,000. The mobilisation certification process was to release cash flow against a measurement of value being transferred to the employer.

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**REPORT ON PROGRESS SINCE COMPLETION OF HEADS OF TERMS TO 8<sup>TH</sup> APRIL 2011****5.2.1 Hg1 and Hg2 (Hg Cumulative Certificate) cont'd**

The proposal is further broken down between Bilfinger Berger and Siemens (see Appendix 17).

Certificate 1	£27,000,000	dated 8 <sup>th</sup> April 2011
Certificate 2	£9,000,000	dated 3 <sup>rd</sup> May 2011
	<hr/>	
	£36,000,000	
Cumulative Certificate June to 31 <sup>st</sup> August 2011	£13,000,000	Dated: 13 <sup>th</sup> July 2011 10 <sup>th</sup> August 2011 31 <sup>st</sup> August 2011
	<hr/>	
	£49,000,000	
	<hr/>	

**5.3 Target Sum – Haymarket to York Place**

It has been discussed and agreed that based on the design target of 1<sup>st</sup> July 2011 a Target Sum will be determined, based on quantities and rates for materials, equipment and works, in line with market rates.

Preliminaries will be agreed in the form as utilised for the Priority Works.

Milestones will be pre-agreed and monthly.

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**6.0 CONCLUSIONS**

Working practices have changed; there is further improvement to be sought.

Project Governance structures are being streamlined and reformed.

Commitment and resource must be maintained to ensure the ability to agree the Minutes of Variation of 15th April 2011.

Commitment to the weekly site project management of strategic issues should be continued to project conclusion.

Regular reporting and communications between the Principals should be maintained.

The next key action is to bring to conclusion the Minutes of Variation of 15<sup>th</sup> April and 1<sup>st</sup> July 2011, recorded in an acceptable form to the parties, which must include the integration of systems and specification of the mini test track, together with a compliant project delivery plan.



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**Appendix I – Heads of Terms (CEC, BBS, TIE)**

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**Appendix 2 - Draft Minute of Variation as at 5<sup>th</sup> April 2011**

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**Appendix 3 - Heads of Terms (Redacted) (CEC, CAF, TIE)**

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**Appendix 4  
Mini Test Track - Operational Readiness Workshop List**

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Appendix 5

Hg Minutes from Briefing Meetings on 14<sup>th</sup> and 18<sup>th</sup> March 2011

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Appendix 6  
Project Delivery Plan from 13<sup>th</sup> March to 8<sup>th</sup> April 2011

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Appendix 7 - Risk Register

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**Appendix 8 - Prioritised Works Programme and Narrative**



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Appendix 9  
Princes Street Remedial Works – Traffic Management

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Appendix 10  
Prioritised Works – Scope / Red / Yellow line Boundary

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**Appendix II - Prioritised Works Price**

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**Appendix 12 - CEC Approvals – Technical Approval Comments**

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Appendix 13  
Design and Consent Issues (as at 30<sup>th</sup> March 2011)

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**Appendix 14 - Red Flag Briefing Note – Scottish Water**

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**Appendix 15 - Design & Build – Design Tracker**

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Appendix 16  
Notes from Commercial Workshop – 31<sup>st</sup> March



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**Appendix 17  
Re-Mobilisation Payments – Bilfinger Berger/Siemens Split**

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**Appendix 18 - Vesting of Materials stored at Broxburn**