

among

(1) tie LIMITED

and

(2) THE CITY OF EDINBURGH COUNCIL

and

(3) BILFINGER BERGER CIVIL UK LIMITED

and

(4) SIEMENS pic

and

(5) CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES S.A.

Second Memorandum of Understanding

in respect of the

EDINBURGH TRAM NETWORK



MEMORANDUM OF UNDERSTANDING

among

- (1) **tie LIMITED** (company number SC230949), whose registered office is at City Chambers, High Street, Edinburgh, Midlothian, EH1 1YJ ("**tie**") which expression shall include its personal representatives, successors, permitted assignees and transferees;
- (2) **THE CITY OF EDINBURGH COUNCIL** the local authority for the City of Edinburgh constituted in terms of the Local Government etc (Scotland) Act 1994 and having its principal offices at City Chambers, High Street, Edinburgh EH1 1YJ ("**CEC**");
- (3) **BILFINGER BERGER CIVIL UK LIMITED**, a company incorporated in England and Wales under number 02418086 and having its registered office at 3rd Floor Braywick Gate, Braywick Road, Maidenhead, Berkshire SL6 1DA ("**BBUK**") which expression shall include its personal representatives, successors, permitted assignees and transferees;
- (4) **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 ("**Siemens**") which expression shall include its personal representatives, successors, permitted assignees and transferees; and
- (5) **CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES S.A.**, a company registered in Spain and having its registered office at J. M. Iturrioz 26, 20200 Beasain, Spain ("**CAF**") which expression shall include its personal representatives, successors, permitted assignees and transferees,

(3), (4) and (5) together the "**Infraco**".

BACKGROUND

- A **tie** and Infraco (at that time comprising BBUK and Siemens) entered into a contract on 14 May 2008 under which Infraco was appointed to carry out and/or manage the design, construction, installation, commissioning, tram procurement, system integration, infrastructure maintenance, tram maintenance and supply of related equipment and materials, trams and related infrastructure in respect of the Edinburgh Tram Network (such contract, amended as detailed below, is herein after referred to as the "**Infraco Contract**");
- B By an agreement in writing dated 13 May 2008 ("**Tram Supply Agreement**") **tie** appointed CAF to design, manufacture and supply 27 Trams and to supply documentation and associated equipment in connection with the Edinburgh Tram Network;
- C By an agreement in writing dated 13 May 2008 ("**Tram Maintenance Agreement**") **tie** appointed CAF to provide services for the ongoing maintenance of the Trams and for the supply of consumables and spares for the Trams in connection with the Edinburgh Tram Network;
- D By a Minute of Variation in writing dated 14 May 2008 ("**MoV1**"), **tie**, BBUK, Siemens and CAF agreed that CAF would become a party to the Infraco Contract;
- E By agreements in writing dated 14 May 2008 ("**Novation of Tram Supply and Tram Maintenance Agreements**") **tie** and Infraco agreed, with the consent of CAF as the Tram Supplier and Tram Maintainer, that Infraco would take over the rights and liabilities of **tie** as the "Client" (as defined in the Tram Supply Agreement and Tram Maintenance Agreement) under the Tram Supply and the Tram Maintenance Agreements;
- F The Infraco Contract was amended by the Princes Street Supplemental Agreement entered into between the Parties in March 2009 and re-executed on 29 May 2009, a

Minute of Variation between the Parties dated 3 June 2009 ("**MoV2**") and a Minute of Variation between the Parties dated 23 April 2010 ("**MoV3**");

G Following a mediation between the Parties and CEC which took place at Mar Hall between 8 and 12 March 2011 ("**Mediation**"), **tie** and Infraco entered into a Minute of Variation dated 20 May and 10 June 2011 ("**MoV4**") in order to vary the Infraco Contract to give effect to the Prioritised Works (as therein defined);

H The Parties and CEC had also proposed to enter into a settlement agreement on or before 30 June 2011 to give effect to the negotiations resulting from Mediation but they have been unable to conclude those negotiations in the time available and the Parties and CEC entered into a Memorandum of Understanding ("**First MoU**") dated 24 August 2011 to extend the timescale for the conclusion of these negotiations until 31 August 2011;

I Following the decision of CEC's Full Council Meeting on 25 August 2011 ("**Full Council Meeting decision**") and the rejection of the St. Andrew Square/York Place option proposed by CEC, the Parties and CEC wish to continue its negotiations and to afford CEC the opportunity to secure and confirm funding; and

J The Parties and CEC now wish to enter into this Second Memorandum of Understanding in order to: record that Infraco has an entitlement to additional costs and time as a result of the Full Council Meeting decision; extend the funding satisfaction date to 2 September 2011; and extend the timescale for the conclusion of negotiations until 14 September 2011.

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions given in the recitals to this Second Memorandum of Understanding and those set out below apply to this Second Memorandum of Understanding:

1.1.1 "**Effective Date**" means 30 June 2011; and

1.1.2 "**Outstanding Matters**" means those matters to be agreed between the Parties and CEC including those set out in Part 2 of the Schedule to the **First MoU** to MoV4 to the extent that the same remain to be agreed between the Parties and CEC.

1.1.3 "**Agreed Commercial Matters**" means those matters set out in Part 4 of the Schedule of the **First MoU** to MoV4.

1.2 Unless the context otherwise requires, where the Infraco Contract has defined a meaning to any capitalised word or expression used in this Second Memorandum of Understanding, the same meaning shall be given to it in this Second Memorandum of Understanding.

1.3 Clause headings in this Second Memorandum of Understanding are for the convenience of the parties to this Second Memorandum of Understanding only and do not affect its interpretation.

1.4 Unless the context otherwise requires:

1.4.1 words importing gender include masculine, feminine and neuter;

1.4.2 the singular includes the plural, and vice versa; and

1.4.3 a reference to any Clause, Sub-Clause or Schedule is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause or schedule to this Second Memorandum of Understanding and reference in any Schedule to any Part, Paragraph or Sub-Paragraph is, except where it is expressly stated to the contrary, a reference to such part, paragraph or sub-paragraph of that Schedule (as the case may be):

2. **SETTLEMENT AGREEMENT**

2.1 The Parties and CEC acknowledge and agree that:

2.1.1 Subject to Outstanding Matters (which remain to be agreed) the current draft settlement agreement is annexed as Part 1 of the Schedule; and

2.1.2 The Agreed Commercial Matters have now been agreed and are reflected in the settlement agreement.

2.2 The Parties shall use reasonable endeavours to agree the Outstanding Matters by 14 September 2011.

3. **PROGRAMME AND COST ENTITLEMENT FOLLOWING FULL COUNCIL MEETING ON 25 AUGUST 2011**

3.1 The Parties and CEC agree that that Infracore has an entitlement to additional costs and time as a result of the Full Council Meeting decision and such entitlement shall be agreed by the Parties and CEC acting reasonably and shall be recorded in the settlement agreement.

3.2 The "Fixed Sum Prioritised Works Milestone" schedule at Schedule Part 2 (Scope and Pricing of Prioritised Works) of MOV 4 shall be replaced by the updated milestones for payment for the Fixed Sum Prioritised Works as annexed at Part 3 of the Schedule to this Second Memorandum of Understanding.

3.3 The "Fixed Sum Prioritised Works Price" schedule at Schedule Part 2 (Scope and Pricing of Prioritised Works) of MOV 4 shall be replaced by the updated price for the Fixed Sum Prioritised Works as annexed at Part 3 of the Schedule to this Second Memorandum of Understanding.

4. **FURTHER VARIATION OF MOV4**

4.1 The Parties and CEC agree that MOV4 (as amended by the First MoU) shall with effect from the Effective Date be further varied in terms of Part 2 of the Schedule to this Second Memorandum of Understanding.

4.2 Save insofar as varied hereby, MOV4 shall remain in full force and effect.

4.3 For the avoidance of doubt, save insofar as varied or superseded hereby, the **First MoU** to MoV4 shall remain in full force and effect.

5. **NON BINDING EFFECT**

5.1 With the exception of ~~Part 1~~ of the Schedule to this Second Memorandum of Understanding, this Second Memorandum of Understanding shall be legally binding on the Parties and CEC.

clause 2.1 and parts 1 and 4



6. **LAW AND JURISDICTION**

6.1 This Second Memorandum of Understanding and any matters arising from this Second Memorandum of Understanding shall be governed by and construed in accordance with Scots law.

6.2 The Parties and CEC hereby irrevocably submit to the exclusive jurisdiction of the Court of Sessions in relation to this Second Memorandum of Understanding and any such matter.

IN WITNESS WHEREOF these presents on this and the preceding ^{2, 4, 8, 8B} pages together with the Schedules which are annexed and subscribed as relative hereto are executed as follows:

EXECUTED for and on behalf of **tie LIMITED**

at Waverley Court, Edinburgh

on 2nd Sept. 2011 by: 

Authorised Signatory

Full Name David Alexander Anderson


Witness Signature

Full Name

Address


EXECUTED for and on behalf of **THE CITY OF EDINBURGH COUNCIL**

at Edinburgh

on 2 Sept 2011 by: 

Authorised Signatory

Full Name

Witness Signature 

Full Name

Address



EXECUTED for and on behalf of BILFINGER
BERGER CIVIL UK LIMITED

at EDINBURGH

on 02/09/ 2011 by: 

Authorised Signatory

Full Name

MARTIN FORDER

Witness Signature


Full Name

MARTIN GALLAGHER

Address

EXECUTED for and on behalf of SIEMENS PLC

at Edinburgh

on 02/09/ 2011 by: 

Authorised Signatory

Full Name

Witness Signature

Full Name

MARTIN GALLAGHER

Address

EXECUTED for and on behalf of CONSTRUCCIONES
Y AUXILIAR DE FERROCARRILES S.A.

at Balears

on 22 Sept 2011 by: 

Authorised Signatory

Full Name

Antonio M. Campos

Witness Signature

Full Name

Maria Teresa Novas

Address

SCHEDULE

Part 1

Draft Settlement Agreement

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SCHEDULE

Part 2

MOV4 variations

- Clause 1.2: In the definition of "Minute of Variation 5" delete "31 August 2011" and insert "14 September 2011".
- In the definition of "Relevant Date" at (i) delete "1 September 2011" and insert "14 September 2011" and at (ii) delete "1 September 2011" and insert "14 September 2011".
- In the definition of "Fixed Sum Prioritised Works Price" delete "17 September 2011" and insert "15 October 2011".
- Clause 3.3: delete "31 August 2011" and insert "2 September 2011".
- Clause 3.3.1: delete "until 31 August 2011" and insert "until 14 September 2011".
- Clause 3.3.3: delete "1 September 2011" and insert "2 September 2011".
- Clause 3.4: delete "31 August 2011" and insert "14 September 2011".
- Clause 3.4.1: delete "31 August 2011" and insert "14 September 2011".
- Clause 3.4.2: delete "1 September 2011" and insert "~~12~~³ October 2011".
- Clause 14.3: delete "2 September 2011" and insert "15 September 2011".



SCHEDULE

Part 3

UPDATED SCHEDULES TO MOV 4

[Fixed Sum Prioritised Works Price]

[Fixed Sum Prioritised Works Milestone]



		Application														
		01	02	03	04	05	06	07	08	09	10					
		Period End	21-Mar	20-Apr	18-May	17-Jun	15-Jul	14-Aug	11-Sep	09-Oct	07-Nov	Total				
Item	Description	Section	Work Description	Member	21-Mar	22-Apr	17-May	18-Jun	17-Jul	16-Aug	11-Sep	10-Oct	08-Nov	Total		
1	Prioritised Works	1	Site Work	Multi-Station (Class 1 & 2)	BRUK	11,700	7,200	5,000						23,900		
					Siemens	11,700	7,200	5,000								23,900
		2	Site Work	Material and Equipment (Class 1 & 2, 3, 4)	Siemens	20,000	12,000		4,334	6,000	4,833				47,167	
					BRUK	20,000	12,000		4,334	6,000	4,833				47,167	
		3	Site Work	Cablework	Siemens	2,500		2,000	2,000	2,000	1,000	1,000	1,000	1,000	1,000	13,500
					BRUK	2,500		2,000	2,000	2,000	1,000	1,000	1,000	1,000	1,000	13,500
		4	10110	Phase Street for Enabling Works	BRUK	100				100						200
					Siemens	100				100						200
		5	15	"Aggregates Road"	BRUK	100			100	100	100	100	100	100	100	1,000
					Siemens	100			100	100	100	100	100	100	100	1,000
		6	12	All underground - Phase 1 & 2 Works	BRUK	100		100	100	100	100	100	100	100	100	1,000
Siemens	100					100	100	100	100	100	100	100	100	1,000		
7	10	Depth Access - Bridge	BRUK	100		100	100							400		
			Siemens	100		100	100							400		
8	8	Ground Area - Building	BRUK	1,000	500	500								2,000		
			Siemens	1,000	500	500								2,000		
9	6	Depth Access - National World	BRUK	1,000		500	500	500	500	500	500	500	500	4,000		
			Siemens	1,000		500	500	500	500	500	500	500	500	4,000		
10	7	Depth Access - Street Road Work	BRUK	100		200	200	200	200	200	200	200	200	1,600		
			Siemens	100		200	200	200	200	200	200	200	200	1,600		
Total for Fixed Price Prioritised Works					44,300	22,900	22,500	2,534	2,600	2,733	3,000	3,000	3,000	108,100		
2	Availability Works	1	14	Deepcut Maintenance - Works	BRUK	100	10	10	10	10	10	10	10	10	1,100	
					Siemens	100	10	10	10	10	10	10	10	10	1,100	
		2	16	Availability - Working - Underlay/Bit/Gravel	BRUK	100		100								200
					Siemens	100		100								200
		3	18	Width of Lines - Street Road Work	BRUK	100										100
					Siemens	100										100
		4	16	Availability - Works - 10110	BRUK	100							100			200
					Siemens	100							100			200
		5	10	All On - Access - Day to Day Maintenance - Access	BRUK	100	10	10	10	10	10	10	10	10	10	1,100
					Siemens	100	10	10	10	10	10	10	10	10	10	1,100
		6	14, 15	Work Area - Availability - Work - 10110	BRUK	1,000		1,000					1,000			3,000
Siemens	1,000					1,000					1,000			3,000		
7	18	Availability - Works - 10110 - 10110	BRUK	100		100								200		
			Siemens	100		100								200		
8	10	Testing for Foundations	BRUK	100							100			200		
			Siemens	100							100			200		
9	10	Subcontract - Cables - Street Road & Bridge Work	BRUK	1,000								100	100	1,200		
			Siemens	1,000								100	100	1,200		
Total for Availability Works					3,200	110	3,734	130	100	1,711	130	300	5,705			
Total for Fixed Price Prioritised Works - Fixed Price Prioritised Works Price					47,500	23,010	26,234	2,664	2,700	2,733	3,130	3,100	3,300	113,805		

TARGET PRICE PRIORITISED WORKS

Item	Description	Section	Work Description	Member	21-Mar	22-Apr	17-May	18-Jun	17-Jul	16-Aug	11-Sep	10-Oct	08-Nov	Total
1	Target Price Works	1	10110	Depth Maintenance - Works	BRUK	100			100	100	100	100	100	1,100
					Siemens	100			100	100	100	100	100	100
		2	10110	Subcontract - Cables - Street Road & Bridge Work	BRUK	100							100	100
Total for Target Price Prioritised Works - Target Price Prioritised Works Price					200	0	0	0	100	100	100	200	1,400	

SUMMARY - BY WORK DESCRIPTION

Item	Description	Section	Work Description	Member	21-Mar	22-Apr	17-May	18-Jun	17-Jul	16-Aug	11-Sep	10-Oct	08-Nov	Total	
1	Summary	1	Material and Equipment (Class 1 & 2, 3, 4)	BRUK	20,000	12,000		4,334	6,000	4,833				47,167	
				Siemens	20,000	12,000		4,334	6,000	4,833					47,167
		2	Priority Works	BRUK	100		100								200
				Siemens	100		100								200
Total					20,100	12,100	100	4,434	6,000	4,833			47,567		

SUMMARY - BY IFRACO MEMBER

Item	Description	Section	Work Description	Member	21-Mar	22-Apr	17-May	18-Jun	17-Jul	16-Aug	11-Sep	10-Oct	08-Nov	Total
1	Summary	1	10110 - Bridge - 10110	BRUK	100									100
				Siemens	100									
Total					200	0	0	0	0	0	0	0	200	

Note: 1. This table only shows the expenditure of the Prioritised Works up to the 31 October 2013 and does not include the expenditure of the Prioritised Works.
 2. The availability works shown above are shown as to be on the same accounts and price periods.

FIXED SUM PRIORITISED WORKS

Item	Description	Section	Work Description	Milestone Type	Milestone	Application										Total								
						12	13	14	15	16	17	18	19	20	21									
						22-Mar	29-Mar	05-Apr	12-Apr	19-Apr	26-Apr	03-May	10-May	17-May	24-May	31-May	07-Jun	14-Jun						
I	Prioritised Works	1	Site Work	Installation (Items 1 & 2)	Fixed Sum Prioritised Works Milestone	000104	0	7,000	0	0	0	0	0	0	0	0	0	0	0	7,000				
						000105	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
						000106	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
						000107	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
						000108	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
						000109	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
						000110	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
						000111	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
						000112	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
						000113	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total for Fixed Sum Prioritised Works						0	7,000	0	0	0	0	0	0	0	0	0	0	0	7,000					
X	Priority Items	1	1A	Signage Maintenance - Signs	Fixed Sum Prioritised Works Milestone	000104	0	0	0	0	0	0	0	0	0	0	0	0	0	0				
						000105	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
						000106	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
						000107	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
						000108	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
						000109	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
						000110	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
						000111	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
						000112	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
						000113	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total for Priority Items						0	0	0	0	0	0	0	0	0	0	0	0	0	0					
Total for Fixed Sum Prioritised Works - Fixed Sum Prioritised Works Item						0	7,000	0	0	0	0	0	0	0	0	0	0	0	0	7,000				

TARGET PRICE PRIORITISED WORKS

Item	Description	Section	Work Description	Milestone Type	Milestone	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total			
1	Target Price Items	1	10210	Advanced Risk Investigation (Items 1 & 2) LUTD	Target Price Prioritised Works Milestone	000104	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
						000105	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
						000106	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total for Target Price - Prioritised Works - Target Price - Prioritised Works Item						0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			

SUMMARY - BY WORK DESCRIPTION

Item	Description	Section	Work Description	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total			
1	Summary	1	Maintenance / Materials & Equipment (Items 1, 2 & 3) LUTD	000104	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
				000105	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
				000106	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
				000107	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total				0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		

SUMMARY - BY INFRAID MEMBER

Item	Description	Section	Work Description	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total	
1	Summary	1	Site Work	000104	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
				000105	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total				0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Note: 1. This schedule shows the completion of the prioritised works up to 31 October 2014 and does not represent the total extent of the prioritised works.
 2. The amounts shown in the application to 31 October 2014 are for the period of the application and do not include any other work.

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SCHEDULE

Part 4

Agreed Commercial Matters

1. The Contract Price for the Off Street Works is £362,500,000.
2. The termination amounts payable in the event that the Funding Satisfaction Date does not occur on or before the Termination Date shall be BBUK £27,761,517 and Siemens £38,488,963.

