



Mr Joachim Enenkel
Chairman of the Executive Management
Bilfinger Berger AG
Gustav-Nachtigal-Strasse 3
65189 Wiesbaden
Germany

Our Ref: INF CORR 5980

Date: 7 September 2010

Strictly Private and Confidential

Dear Mr Enenkel,

Edinburgh Tram Network – Without Prejudice

I am enclosing for information the various papers which Mr. Ed Kitzman has been working on with Mr Anthony Rush and Mr James Molyneux under the guise of Project Carlisle. Mr Rush and Mr Molyneux tell me that at a meeting last Sunday they and Mr. Kitzman agreed that these papers formed a framework on which the Infraco Consortium and ~~the~~ could reach a commercial compromise recognising that there will be no "winner". Moreover they consider they cannot materially take matters any further at this juncture. In short, they regard their work as being "Heads of Terms" which may be converted into a binding legal agreement including a revised, but certain, price.

I have no doubts whatsoever that certain individual parties within the Infraco Consortium may prefer a more open ended solution. However I have reviewed the papers in detail and discussed their genesis with Mr Rush and Mr Molyneux and I am happy to confirm that the terms they outline meet our stakeholder requirements for truncating the Infraco Contract.

Given 48 hours notice we would be happy to meet to try to finalise without delay the revised prices offered in the document as "fair value". I have to make it clear that any agreement reached on our part will be subject to Board Approval and Contract. Please be assured that I will take steps to arrange urgent approval if it proves necessary.

In presenting the product of their work with Mr. Kitzman my two "experienced" colleagues expressed certain overriding views/caveats:

- Apparently Bilfinger Berger and Siemens had not as yet reached a settled position with each other.
- Mr. Kitzman is not speaking for both Bilfinger Berger and Siemens.
- They are very concerned that this may delay and even prevent us reaching a resolution by this route.

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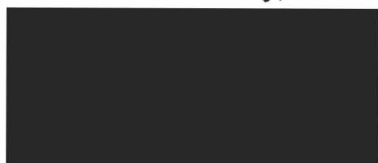
- They advise me that there is a desire on your part to terminate the Infraco Contract at St. Andrews Square (eliminate Part B) and I confirm that if this is the case you should propose that before we meet.
- They also report you may wish to re-novate CAF to **tie**, thus eliminating the joint and several responsibilities for integration. If that it so, please formally propose it.
- They are concerned (as we all are) that there are fundamental differences between Bilfinger Berger and Siemens which may even go as far as a desire by the two Consortium members to disengage with each other and/or change the structure of the Consortium relationships.

We have increasingly become concerned at what we have seen as a “fractured” relationship between the Consortium members at site level. This was part of my thinking when writing to you earlier. Your responses seemed to assuage any concern that there was disunity at the higher levels in your companies.

I would respectfully remind you that a strength your team offered us was the commitment to work together in partnership to deliver an integrated tram system which you were jointly and severally responsible for. You undertook a specific duty of care to manage the design of the Infraco Works, accepting novation of SDS as the designer of the civil engineering works. However, it is now clear to us that the Consortium members do not work together as an integrated team. We are progressively drawing your attention to the matters you need to remedy and look forward to receiving constructive plans from you on these subjects.

The expressed intention of a commercial compromise has to be, amongst other things such as price and time certainty, to rebuild and reinstate the strengths and duties you took on in May 2008. I would urge you therefore to bring out into the open for discussion and to settle any disagreement that may exist between Bilfinger Berger and Siemens as to the way forward. I assure you that **tie** will do all that is necessary to bring about a successful resolution provided it does not prejudice **tie**'s position. I hope that you will also take every possible step to make certain that this initiative is given the best chances of succeeding in building a new and better relationship, and settling all outstanding differences.

Yours sincerely,



David J Mackay
Chairman tie Ltd

cc: Mr David Darcy – Bilfinger Berger
Mr Antonio Campos - CAF

Bilfinger Berger Siemens CAF Consortium
9 Lochside Avenue
Edinburgh
EH12 9DJ

Our Ref: INF CORR 5859
(revised by agreement)

Date: [] September 2010

DELIVERED BY HAND TO MR KITZMAN

STRICTLY CONFIDENTIAL – LEGALLY PRIVILEGED AND FOISA EXEMPT

Dear Sirs,

Project Carlisle – Proposal for discussion and finalisation

We confirm that your letter dated 29 June 2010 (reference 25.1.201/RJW/6133) does not form a basis on which the process we jointly refer to as Project Carlisle can be concluded. After preliminary discussions held in May of this year we set out an outline of the scope and terms that would enable us to jointly implement the best options referred to by Mr. Kenneth Reid in his letter to our Chairman on 5 March 2010.

Despite the disappointment of receiving your letter in late June, we have been encouraged by the involvement of Mr. Ed Kitzman in agreeing and contributing to the content of our letter dated 22 June 2010 (reference INF. CORR. 5410) and his being actively and constructively involved in the work we have pressed forward with since receiving your letter. We are pleased to note that when he met Mr. Anthony Rush and Mr. James Molyneux on 17 August he was broadly in agreement with the outline explanation given to him which described the scope and reasoning of what we set out below and the programme for bringing this matter to a conclusion.

We have on a number of occasions expressed our appreciation of Mr. Kitzman – we would add that he has also given our stakeholders confidence that the Infraco Consortium can deliver an Edinburgh Tram Network whilst maintaining the integrity of the Infraco Contract.

Our proposal, referred to as **The Guaranteed Maximum Price tie Change (“GMP”)**, is explained by this letter and the draft documents attached hereto. They are without prejudice to our rights under the Infraco Contract and in Law and the proposal cannot be founded upon by the Infraco Parties or any other parties in any proceedings, or be construed to be an offer (either in part or in whole) capable of acceptance without our expressed agreement in writing. Any agreement which arises from this letter will be subject to a Deed of Variation approved by a Minute of **tie** Limited’s Board. Moreover, our proposal cannot be construed as implying **tie**’s admission of any liability to the Infraco Parties or **tie**’s waiver of any rights or claims against the Infraco Parties.

Governance and Guiding Principles

Acknowledging that after 28 months there have been circumstances which were excluded from the Contract Price - arising from Specified Exclusions, Provisional Sums, Pricing Assumptions and the requirements of third parties and **tie** - the objective of Project Carlisle is to put the parties into the position in which they would have been at May 2008, had such changes been known at the time. In doing so we are *inter alia* governed by the Ethical Standards in Public Life etc. (Scotland) Act 2000 - Model Code of Conduct and EU Procurement Law. What we agree with the Infraco has to be in the public interest. Moreover, it has to protect the integrity of the Infraco Contract arrived at after an advertised competition. Moreover, as far as we can, we have satisfied ourselves that had the original tender been based on what we propose it would not have altered the outcome of the pre-qualification and tender processes.

You will be well aware that from the outset there were expectations by some that the Infraco Contract gave certainty of out-turn cost. Whether such expectations were realistic or not is not material to us here other than to emphasise that after 28 months it is wholly reasonable to expect, and indeed require, the Infraco to agree to giving **tie** (and thereby the Public) price certainty. Consequently our proposal extinguishes the Infraco's ability to claim for additional payments arising pursuant to Schedule Part 4 of the Infraco Contract. Moreover, with the exception of certain enabling works to the Edinburgh Gateway Project (formerly known as Gogar Interchange), **tie**'s ability to vary the scope of the Infraco Works will be limited to it being necessary for the satisfactory and contractually compliant completion of the Infraco Works.

Arriving at a revised Contract Price

Factually, the Infraco has not substantiated sufficient of its purported claims for additional payment under the Infraco Contract for such substantiation to be used as a basis for coming to a revised Contract Price. We have therefore, in addition to attempting to put the Parties back to where they would have been in May 2008, broadly adopted the following principles:

1. Hadley & Baxendale - payments which may fairly and reasonably be considered as either arising naturally in the normal course of things, or may reasonably have been contemplated by both Parties when they entered into the Infraco Contract.
2. Without admitting that **tie** is in default, referring to the principles articulated under Clauses 88.8.1 to 88.8.4 of the Infraco Contract when determining fair value.

In considering all of the issues, we have decided that the following items are to be excluded and should be subject to separate investigation and negotiation:

- All works executed under or in connection with the Princes Street Supplemental Agreement.
- Any payment to the SDS Provider and/or liability of the SDS Provider.

Proposed revised Scope

The Infraco Works are to be separated into two parts:

Part A Airport to Waverley Bridge

Part B Waverley Bridge to Newhaven

Part A – Airport to Waverley Bridge.

With the exception of those works detailed in Appendix B, completion of the Infraco Works in Part A is to be executed by the Infraco in accordance with the revised Sectional Completion Dates explained below.

For Part A, the Infraco will be required to deliver no more than 20 Trams

Part B – Waverley Bridge to Newhaven

At its absolute discretion **tie** may instruct the Infraco to carry out the Infraco Works (excepting those omitted Civil Engineering Works) between Systems Points and to deliver the remaining 7 Trams.

Our proposal is based on the premise that the Infraco will not be required to carry out any further Civil Engineering work east of Haymarket, other than completing the Enabling Works in Section 1A and correcting defects between Lothian Road and Waverley Bridge. Our reasoning includes:

- The Infraco Members have expressed a strong desire not to carry out any Civil Engineering works east of Haymarket.
- At the present time, subject to programming for traffic management and embargo restrictions, the Infraco could be carrying out work to all but approximately 1 kilometre of On-street trackwork.
- To date the Infraco Parties have failed to issue an assured integrated design for the track and track foundation which has been approved by the Roads Authority and competent to achieve no objection from the Independent Competent Person.
- We have no confidence that the Infraco Parties, including SDS, have sufficient experience to produce such a design which represents best value, taking account of whole life costs.
- The work carried out in Princes Street is defective. The defects suggest that the Infraco Parties do not have adequate knowledge of the DMRB and local materials. The Infraco has failed to produce a remediation plan and **tie** has had to consequently issue a Remediable Termination Notice pursuant to Clause 90.1.2.
- Moreover, the defects suggest that the Infraco Parties do not possess the skilled resources and supervision required to satisfactorily complete 7.5 km of On-street work to sensitive city streets.
- The Infraco's behaviour when coming across adverse conditions is contrary to the spirit of co-operation and expediency required for such work.
- This arrangement will permit **tie** to carry out trials with the Roads Authority on alternative methodologies for future sections.

Revised dates for completion, liquidated damages, programme etc.

The Infraco has made no properly detailed submissions for extension of time other than in respect of Rev 1 and MUDFA Rev 8. The former has been granted and Robert Howie QC has determined by adjudication the Infraco's entitlement in respect of the latter. We also note that **tie** offered a global nine months' extension of time on 13 November 2009.

We have decided therefore that it would be fair and reasonable, taking account of the circumstances explained below, to set new Sectional Completion Dates where Robert Howie has determined them (albeit not finally binding on the Parties) with the exception of where he has decided that the Infraco has no further entitlement. For those sections we set them in accordance with **tie's** letter of 13 November 2009.

The revised Completion Dates for Part A become:

Section A	Set by Robert Howie QC	2 November 2010
Section B	Set by tie letter dated 13 November 2009	1 April 2011
Section C	Set by tie letter dated 13 November 2009	1 December 2011
Section D	Set by tie letter dated 13 November 2009	6 June 2012

Programming

In relation to the revised Infraco Works from the Airport to Waverley Bridge, other than requiring you to meet the above dates we see no reason why at this late stage we should not revise the requirements of Clause 60 in relation to Schedule Part 2 (Employer's Requirements) and we have put forward suitable changes to these provisions in the attached draft **tie** Change Order.

To assist you in meeting the revised Completion Date for Section D we are prepared to discuss with you measures which will allow us to reduce the period between the completion of Section C and Section D. Such measures may require giving us partial access to Section B works; storing and reducing the number of trams delivered as part of Part A Scope.

Access for the Infraco to carry out the Infraco Works from Waverley Bridge to Newhaven will be at the absolute discretion of **tie** and subject to individual programmes between "Systems Points" which are consistent with systems control, power supply, tramstops and parking for "dead" trams. It is our intention to establish a temporary System Point at St Andrews Square.

For the purposes of the GMP, Clause 61.8 will be deleted.

Liquidated Damages

As the calculation of losses reflected in Liquidated Damages will not be less for a truncated project, Liquidated Damages for Sectional Completion of Part A remain as stipulated by Clause 62 of the Infraco Contract. We will set Liquidated Damages for Part B at the anticipated cost of maintaining traffic management and direct supervision for the individual programmes of works to be carried out between Systems Points.

Excluded Items

Works executed to Princes Street (Lothian Road to Waverley Bridge)

Final agreement of the costs claimed by the Infraco arising from the Princes Street Supplemental Agreement will in any event not be possible until the Infraco and **tie** have agreed a Remediation Plan which is approved by the Roads Authority. In the meantime, **tie** will continue to pay, on-account, the amount currently certified as an interim payment, under reservation of being able to reduce such payment on a final conclusion as to liability.

SDS Provider

We are puzzled by your inclusion of the SDS Provider's claim for a payment of £16.275 million. It leads us to conclude that it deserves further investigation. We intend therefore to carry out a detailed investigation and audit of how the SDS Provider has performed and how the Infraco has managed them. Part of that investigation will take account of the agreement you admit has been entered into between Bilfinger Berger (and possibly others) with Parsons Brinkerhoff (and possibly others).

Until such time as we are able to come to a conclusive decision on the liabilities owed by us, or owed to us, we intend to agree to no further payment for the SDS Provider. Moreover, we reserve our rights to pursue any of the Infraco Parties (either individually or jointly) for recovery (under the Infraco Contract or in delict) of any losses and damages suffered by **tie** and arising from breach of contract, negligence, misrepresentation or any other wrongful act on the part of the SDS Provider or any other Infraco Party in relation to the services provided by the SDS Provider.

The SDS Provider and the Infraco are required to fulfil their obligations to deliver the design services relating to Phase 1b. In the event that they fail to do so, **tie** will recover the amounts previously paid to the SDS Provider for these services from payments due to the Infraco.

Conditions

Any Agreement arising from this proposal will *inter alia* be subject to the following conditions:

- The Infraco shall procure such design assurance as is necessary for the Independent Competent Person to admit a design for the On-Street trackwork which is approved by and meets the requirements of the Roads Authority and of **tie** acting with absolute discretion.
- 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 are not in contradiction to the Infraco's obligations pursuant to the Infraco Contract. For example, removing any exclusion of liability, including removing 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 will be completed rather than interim drawings (which exclude cross-sections) which are incomplete and not fully satisfactory in integration terms;
 - v. a complete SDS Drawing Register; and
 - vi. Inclusion of details to close out:
 - CEC Informatives;
 - Key ICP issues; and
 - Hazard Log item mitigation closure.
- The completed, approved, assured, integrated and compliant Design for the Edinburgh Tram Network Phases 1a and 1b, will include certification thereof by each Infraco Member, the SDS Provider and any Infraco Party or SDS Provider Party involved in the production or development of Design or the Infraco's Design.
 - The Infraco shall be responsible for all additional costs which may arise from any development or revision to the design of the Infraco Works other than as required by a **tie** Change.
 - The Infraco shall be entitled to the benefits of any value engineering savings achieved from the date of the Agreement.
 - The Infraco shall not be entitled to extension of time to the revised Sectional Completion Dates for Sections C and D unless:
 - a **tie** procures and completes the Civil Engineering Work from Haymarket to Lothian Road in such time as would prevent the Infraco, working reasonably in Designated Working Areas, from achieving those revised Sectional Completion Dates; and
 - b **tie** issues a Change Order pursuant to revised Clause 80.
 - The On-street Civil Engineering works shall be completed by others under the direct supervision of **tie**. Other than providing design assurances in respect of the design of such works as directed by **tie**, the Infraco shall have no liability for such works. However, the Infraco shall be responsible for integrating the design of the E&M Works with the On-street Civil Engineering works.
 - The Infraco shall be responsible for those Trams which have been constructed and commissioned pursuant to the Tram Supply Agreement but which are not required to run on the Edinburgh Tram Network which is constructed under the GMP Scope. The revised Contract Price shall include for any and all storage charges, in Spain or elsewhere, or any other costs and expenses related to the spare Trams which have arisen and may arise as a consequence of delay to the completion of the Infraco Works.

- The Infraco shall deliver to **tie** all information required by the Infraco Contract for all Key Sub-contractors the Infraco intends to employ on the Infraco Contract.
- The Infraco Parties shall disclose all agreements which they have entered into together since 14 May 2008, howsoever arising and which they would have not entered into but for their involvement in the Infraco Contract.
- Pursuant to Clause 26 the Infraco will submit for **tie's** approval full details of the experience and qualifications of the Infraco Representative and such approval shall be at the absolute discretion of **tie**.
- Only persons nominated as Key Personnel shall have day-to-day responsibility for and be involved in the performance of the Infraco Works.
- The Infraco shall design, carry out and complete enabling works for the Edinburgh Gateway Project at a reasonable price and use reasonable endeavours to complete such works without causing delay to the completion of the revised Infraco Works - Part A.
- The Infraco shall install On-street trackwork to Part A and Part B in accordance with the Infraco Contract and subject to **tie** issuing the Infraco with 14 days' notice in Part A and 28 days' notice in Part B to commence work and in accordance with the following provisions:
 1. Providing, taking from store, delivering to site, permanently installing in accordance with the assured integrated design approved pursuant to Clause 19 and by **tie**, in accordance with a reasonable programme agreed by **tie**, track rails and their supports and sleepers on a foundation prepared by others.
 2. The Infraco shall provide and permanently install in accordance with the said design composite packers to the rail flanges prior to handing over the installed track to **tie**.
 3. Other than for its design, the Infraco will bear no responsibility for the foundation to the track, or for any of the omitted civil engineering works subsequent to the installation of the track.
- **tie** shall be entitled to instruct the commencement of all or part of the Part B works at any point up to, but not later than, five years from the date that **tie** issues a Sectional Completion Certificate pursuant to Clause 44.3 of the Infraco Contract for Section D under Part A of the GMP Scope of Works.
- For the purposes of section 2.7.4 of the Employers Requirements, the required maximum journey time for St Andrews Square to the Airport will be 28 minutes, 53 seconds.

Revised Contract Price

The revised Contract Price, which comprises the total capital expenditure and revenue expenditure payable to the Infraco, including for all entitlements to additional payments (both agreed and not agreed) up to the date of the Deed of Variation, is as follows:

Part A	£
Construction Works Price Part A	216,492,216
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

Part B	£	£
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Construction Works Price Part B (subject to Prolongation Costs and interim payments for materials as below). The price for each of the following sections shall be subject to separate payment mechanisms for trackworks and other works:

Waverley Bridge to St. Andrew's Square

St. Andrew's Square to York Place

York Place to Foot of the Walk

Foot of the Walk to Ocean Terminal

Ocean Terminal to Newhaven

Part B Sub-Total	22,595,033
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SDS Price	To be determined
Tram Supply Price	9,887,637
Infraco Maintenance Mobilisation	Included in Part A
Tram Maintenance Mobilisation	148,770
Infraco Spare Parts	Included in Part A

Prolongation Costs – Part B only

Reimbursement will be predicated on the assumption that the above rates will be subject to payment from 30 June 2012 for increases in labour and plant costs, calculated annually in

line with the CPI published at each 30 June 2013, 2014 etc. (or some such other method to be agreed.)

Interim payment for materials - Part B only

The Infraco shall be entitled to on-account interim payment for materials (on-site or off-site) provided that:

- i. they are required for the purposes of the revised Infraco Works and have been subject to a binding contract for their purchase prior to the date of any Agreement arising from this proposal;
- ii. (a) the materials have been ordered and delivered prior to the date of any Agreement arising from this proposal, or (b) after the date of any Agreement arising from this proposal they are by written instruction from **tie** ordered and delivered to a location agreed with **tie**;
- iii. they are part of an integrated assured design which has been fully approved under the terms of the Infraco Contract. Such approval will include, but not be limited to, Roads Authority Approval;
- iv. **tie** agrees, acting reasonably, that title is unambiguously and irrevocably jointly in the names of **tie** and the City of Edinburgh Council and their assignees and successors;
- v. where it is necessary to vest the ownership it will be in the name of the City of Edinburgh Council and the materials will be stored separately and identified clearly as being the property of the City of Edinburgh Council;
- vi. the Infraco insures and keeps insured with a reputable insurer all materials against loss, damage (however so arising) and theft;
- vii. the on-account advance payment will not exceed 70% of its certified invoiced cost less a reasonable allowance for shipping and delivering the materials to Site;
- viii. an Infraco Party will provide an On-demand Guarantee or Insurance Bond in favour of **tie** and The City of Edinburgh Council to the full value of the vested materials plus an allowance for their shipping and delivery to site; and
- ix. any disputes or differences arising in connection with interim payments will be not be decided pursuant to Schedule Part 9. **tie** will have absolute discretion in deciding whether it agrees to and pays for materials on an interim basis.

Milestone Payments

Subsequent to agreement of the revised Contract Price, Construction Milestones revisions to Schedule Part 5 shall have to be agreed from which interim payments may be determined.

The opening values should be calculated:

- Construction - as previously certified less any payment for PSSA and the SDS Provider;
- Preliminaries recalculated as a proportion of Construction Milestone values.

Interim values will be calculated:

- Construction Milestones – as and when completed
- Preliminaries – pro-rata to the difference between the opening value calculated above and the total value of Construction Milestones shown above.
- Any overpayment or underpayment at opening shall be adjusted over a 12 month period at monthly tranches.

Bonds & Guarantees etc

There will be no revision to the Infraco's obligations pursuant to Clauses 74 to 78 inclusive.

The expiry and longstop dates of the Bonds and Guarantees shall be subject to further discussion.

Maintenance Agreements

We do not propose amending the terms of the Infraco Contract or Tram Maintenance Agreements other than to reduce the separate payment for each of Part A and Part B on a pro-rata basis to the number of Trams delivered or length of track commissioned.

Reaching an Agreement

Whilst the involvement with Mr. Kitzman will have ironed out many of the points of difference which may otherwise have existed in relation to the revised scope and terms, we recognise that there are still some issues we have not discussed with him. Mr. Kitzman has given us good access to the cost base for future Civil Engineering Works and we have based our pricing proposal on the information given to us. We have also had constructive discussions with him about design and future management of the project which has guided our proposal.

However, you have made it clear to us that Mr. Kitzman is only acting in the capacity of, as you put it, a "point of contact". In our eyes he does not have the authority to reach a final agreement on behalf of all Infraco Parties. Lessons were learned by tie and its stakeholders back in May 2008 at the time the Infraco Contract was entered into. Stakeholders in tie are clear that there can be no repeat of "last minute" changes in terms and price by the Infraco. It is essential therefore that we work together to the timetable outlined to Mr. Kitzman on 17 August and that the Principals involved are acting as members of and with the full authority of the relevant Parent Company Board responsible for the Infraco Contract.

Timetable

Activity	By whom	When (2010)
Explain Scope	Joint PC Teams	Done
Finalise and issue Counter Offer	tie PC Team to Infraco PC Team	24 August
Meet and discuss Counter Offer	Joint PC Teams	25 – 28 August
Revise Counter Offer (If required)	Joint PC Teams	29 August

Meet to finalise price and outstanding terms Principals and advisors By 3 September

Agree HOTs Companies and legal advisors 8 September

Finalisation Companies 15 September

Our proposal builds on Mr. Reid's expression of mutual interest in finding "*if at all possible, a common way forward under the terms of the contract*". Under the explanation we give above of the guiding principles which govern that common way forward, we believe that what we propose achieves Mr. Reid's ambitions and provides for the mandatory and irrevocable requirements which are needed to satisfy our duties as a publicly accountable body.

We look forward to reaching an agreement in the spirit of goodwill and cooperation established by our respective Project Carlisle teams.

Yours faithfully,

Richard Jeffrey
Chief Executive

For and on behalf of **tie** Limited

SUBJECT TO CONTRACT

**THIS DOCUMENT DOES NOT OFFER
TO CREATE ANY CONTRACTUAL
RELATIONS (WHETHER
EXPRESS OR IMPLIED)**

**GUARANTEED MAXIMUM PRICE
SCOPE OF WORKS**

1. The Guaranteed Maximum Price ("**GMP**") for the execution of the GMP Scope of Works is set out in Appendix II and is based on the following:
 - 1.1 The Infraco carrying out and completing the GMP Scope of Works (as defined below), to the approved, assured, integrated and compliant design, represented by the GMP IFC Drawings and in accordance with the Infraco Contract (as amended).
 - 1.2 "**GMP IFC Drawings**" shall mean the existing set of IFC drawings that represent the fully approved, assured, integrated and compliant design in accordance with the Infraco Contract and any other drawings which represent fully approved, assured, integrated and compliant design in accordance with the Infraco Contract and which the Infraco is obliged to deliver and use in order to carry out and complete the GMP Scope of Works.
 - 1.3 To the extent that the GMP IFC Drawings do not fully detail the scope of the Infraco Works (other than that which may be expressly instructed in writing by **tie** after *[insert date of agreement of the GMP]*) the GMP Scope of Works will be deemed to have included for all non-detailed or missing works or related services and deliverables.
 - 1.4 In the event that the GMP IFC Drawings contain any ambiguity or discrepancy, the GMP will be deemed to have included for correcting or removing any such ambiguity or discrepancy.
 - 1.5 The GMP Scope of Works shall include all Infraco Works required and arising from any actual or potential Permitted Variation, **tie** Change or Infraco Notice of **tie** Change issued by **tie** or the Infraco as at the date of this **tie** Change Order.
 - 1.6 Other than changes expressly instructed by **tie**, the costs of designing, carrying out, testing, commissioning and maintaining the GMP Scope of Works shall be at the sole risk of the Infraco.
 - 1.7 Unless the context requires otherwise, the definitions and rules in respect of interpretation contained in Schedule Part 1 (*Definitions and Interpretation*) of the Infraco Contract apply to this GMP Scope of Works.

GMP SCOPE OF WORKS

It is agreed, without qualification, that the GMP is to include for all Infraco Works and Deliverables in respect of the following scope of works ("**GMP Scope of Works**"):

The GMP Scope of Works shall comprise: all those Infraco Works necessary to deliver, as a fully functional commissioned tram system open for a public revenue generating public service and achieving the requisite run times in accordance with the Employer's Requirements and the Infraco Contract (both as amended), all those elements of the Edinburgh Tram Network set out below:

1. **PART A: WAVERLEY BRIDGE TO AIRPORT** (including Enabling Works)
 - 1.1 All Infraco Works for the following sections from Waverley Bridge (chainage 121380) to Edinburgh Airport (chainage 712580):
 - 1.1.1 Waverley Bridge (chainage 121380) to Lothian Road (chainage 130380 and in respect of overhead line, chainage 130663) (including those on-street Infraco Works carried out under the Supplemental Agreement in relation to Princes Street between tie and the Infraco, dated 29 May 2009);
 - 1.1.2 Lothian Road (chainage 130380 and in respect of overhead line, chainage 130663) to Haymarket (chainage 131247 and in respect of overhead line, chainage 131232) (excluding the Omitted Civil Engineering Works described in Appendix A);
 - 1.1.3 Haymarket Corridor (chainages 200000 to 200814 and in respect of overhead line, commences at chainage 131232);
 - 1.1.4 Roseburn Junction to Balgreen (chainages 510000 to 511477);
 - 1.1.5 Balgreen to Edinburgh Park Central (chainages 520000 to 524555);
 - 1.1.6 Edinburgh Park Central to Gogar (chainages 530000 to 531898);
 - 1.1.7 Gogar Depot;
 - 1.1.8 Gogar to Edinburgh Airport (chainages 710000 to 712580).
 - 1.2 All enabling works as follows and as shown in the sketches included in Appendix B:
 - 1.2.1 from Newhaven Tramstop (at chainage 100000) to Retaining Wall 1A (at chainage 100170) – fill to bottom of track level;
 - 1.2.2 Lindsay Road Retaining Walls 1A, 1B, 1C and 1D (at chainages 1A 100170 - 100400; 1B 100230 - 100270; 1C 100390 - 100415; and 1D 100470 - 100490) – approved, assured, integrated and compliant design and construction;
 - 1.2.3 Lindsay Road Link Road to Ocean Drive (chainage 100350 to chainage 100800) – removal of retaining wall and footpath, removal of trees and ground preparation, placing of earthworks fill and re-grading of profile;
 - 1.2.4 Lindsay Road (chainages 0 to 550) – lowering works; and
 - 1.2.5 Tower Place Bridge (at chainage 101430 - 101510) – works to be completed, including the track and the final roadway.
 - 1.3 The completed, approved, assured, integrated and compliant Design for the Edinburgh Tram Network Phases 1a and 1b, to include certification thereof by each Infraco Member, the SDS Provider and any Infraco Party or SDS Provider Party involved in the production or development of Design or the Infraco's Design.
2. **PART B: ON-STREET WORKS FROM WAVERLEY BRIDGE TO NEWHAVEN**
 - 2.1 All Infraco Works, excluding the Omitted Civil Engineering Works (described in Appendix A), for the following sections between Systems Points from Waverley Bridge (chainage 121380) to Newhaven (chainage 100,000):

- 2.1.1 Waverley Bridge (chainage 121380) to St Andrew's Square (chainage 121150 and in respect of overhead line, chainage 120804 (temporary works may be required));
 - 2.1.2 St Andrew's Square (chainage 121150 and in respect of overhead line, chainage 120804) to York Place (chainage 120850 (Elder Street) or 120600 (Picardy Place) and in respect of overhead line, chainage 120669);
 - 2.1.3 York Place (chainage 120850 (Elder Street) or 120600 (Picardy Place) and in respect of overhead line, chainage 120669) to Foot of Walk ((chainage 102720, and in respect of overhead line, chainage 102623);
 - 2.1.4 Foot of Walk (chainage 102720 and in respect of overhead line, chainage 102623) to Ocean Terminal (chainage 100800 and in respect of overhead line, chainage 100700); and
 - 2.1.5 Ocean Terminal (chainage 100800, and in respect of overhead line, 100700) to Newhaven (chainage 100,000).
- 2.2 The design, construction and installation of a temporary Systems Point at St Andrew's Square (which shall mean the permanent tramstop and a point facilitating systems control, including necessary crossover and associated control systems, power transformation and distribution facilities to energise the system and overhead line infrastructure, and parking for immobile Trams), excluding the Omitted Civil Engineering Works.
- 2.3 In the event that a temporary Systems Point is not established at St Andrew's Square, the sections referred to in paragraphs 2.1.1 and 2.1.2 will form one section from Waverley Bridge to York Place.

APPENDIX A

OMITTED CIVIL ENGINEERING WORKS

Omitted Civil Engineering Works shall comprise:

1. site clearance - removal and temporary storage off site of any street furniture such as bus shelters, bus trackers, CCTV installations, waste bins and decommissioning of telephone boxes and other permanent or temporary fixtures on the street;
2. temporary traffic management: installation, maintenance and demobilisation, including necessary lining and signage works;
3. planing road carriageways to appropriate depths and/or excavating down to design formation level of both carriageway and trackform (including associated spoil treatment, storage, reuse and disposal);
4. taking out kerbs and kerb logs;
5. dealing with any obstructions/soft spots/utilities/voids;
6. constructing track drainage, including connecting into and reinstating as required existing gullies and carriageway drainage;
7. installing cable duct banks;
8. excavating and constructing OLE pole foundations;
9. constructing up to formation of trackform slab in preparation for track installation by the Infracore;
10. civil engineering works to tramstops, up to and including platform level, including all necessary ducting and finishes, but not including tramstop furniture;
11. civil engineering works associated with tramstop equipment and the construction of the sub-station buildings and any associated civil engineering works;
12. re-laying kerbs to required design line and level;
13. reinstating/renewing paving;
14. installing all foundations and ducts for new traffic signalling at junctions/pedestrian crossings;
15. either overlaying wearing course to carriageway or alternatively building up full road construction and required surfacing layers to wearing course; constructing central reservations as required; constructing setted carriageway as required.
16. re-installing street furniture as required, including bus shelters, bus trackers, CCTV installations, waste bins, telephone boxes etc;
17. completing landscaping/street scaping works as required by the Employer's Requirements, Consents and relevant Third Party Agreements; and
18. all associated stakeholder and third party management and liaison functions in relation to these items.

**APPENDIX B
ENABLING WORKS SKETCHES**

APPENDIX V

[DRAFT] SCHEDULE OF AMENDMENTS

The Parties agree that, with immediate effect, the following amendments are made to the Infraco Contract for the purposes of the GMP Scope of Works and tie GMP Change Order:

1. Delete Clause 4.3.
2. Delete Clause 10.18.
3. In Clause 17.16, delete "*Mandatory*" (tie Change).
4. Delete Clause 18.17A.3.
5. Delete Clause 18.17C.
6. Clause 20.9 - delete reference to "*which shall be a Mandatory tie Change and the provisions of Clause 80 (tie Changes) shall apply*".
7. Clause 20.10 - delete final sentence and replace with "*For the purposes of this Clause 20.10, tie shall issue a tie Change in respect of such removal.*"
8. Clause 22 - delete references to unidentified utilities apparatus, adverse physical conditions, ground conditions, artificial obstructions and/or land which is contaminated.
9. Clause 28.7 - delete "*Subject to Clause 28.10*".
10. Clause 28.9 - delete "*Subject to Part 4 (Pricing)*".
11. Delete Clause 28.10.
12. **Programme**
- 12.1 Delete Clauses 60.3 to 60.6 (inclusive).
- 12.2 Insert new Clause 60.3:

"In addition to the requirements set by Schedule Part 13 Section A and the Third Party Obligations and the requirement to show the associated completion dates for the Infraco Works at or on third party property, the Infraco shall take full responsibility for showing on the Programme and updated Programmes the earliest and latest dates on which the Infraco requires access to third party property, equipment or third party approval, pursuant to the following conditions:

- (a) *such dates will not be before 28 days after the date of the Programme or updated Programme;*
- (b) *the Infraco will give notice to tie immediately it becomes apparent to the Infraco that a revision to such dates becomes necessary. Such notice will include:*
 - (i) *the reasons for the delay;*

- (ii) how the Infraco proposes mitigating the delay; and
- (iii) the impact on the critical path (s) of the Programme current at the time of making the submission and at the time of such delay becoming apparent."

12.3 Insert new Clause 60.4:

"The Infraco shall take full responsibility for obtaining Network Rail approvals within 10 weeks following making a formal submission to Network Rail and will give notice to tie immediately it becomes apparent that a revision to the Programme or updated Programme becomes necessary as a result of a delay by Network Rail to give approval to a formal submission. Such notice will include:

- (i) the reasons for the delay;
- (ii) how the Infraco proposes mitigating the delay; and
- (iii) the impact on the critical path (s) of the Programme current at the time of making the submission and at the time of such delay becoming apparent."

12.4 Renumber Clause 60.7 to be Clause 60.5 and delete the final sentence: "Thereafter the provisions of Clauses 60.3 and 60.5 shall apply."

12.5 Delete Clause 60.8 and insert the following:

tie shall have no obligation to approve or agree to any Programme. Acceptance or failure to reject by tie's Representative of any of the Programme shall not relieve the Infraco of any of its duties or responsibilities under this Agreement (as revised).

12.6 Renumber Clause 60.9 to be Clause 60.6.

12.7 In Schedule Part 1 (*Definitions and Interpretation*), delete the definition of "Programme" and insert:

"means the programme submitted to tie by the Infraco dated *** (insert date of tie Change Order) and with reference ***, as may be updated in accordance with requirements of Schedule Part 2 (*Employer's Requirements*)."

12.8 In Schedule Part 2 (*Employer's Requirements*), make the following changes to Section 12.2:

12.8.1 Delete paragraphs 2 and 3.

12.8.2 Revise paragraph 5 to the following:

The Programme shall be prepared by using an agreed version of a Primavera software (to be agreed between the Parties). The Infraco will show the critical path(s) on the Programme.

The Infraco Programme and the critical path(s) shall be updated monthly by the Infraco, and delivered to tie on the last Friday in each calendar month, so that the Infraco Works can be progressed and monitored by the Infraco and tie against the Planned Sectional Completion Dates.

- 12.8.3 Retain the sentence commencing "*The Programme shall clearly identify the following:*" and retain the bullet points which follow, subject to the following:
- 12.8.3.1 insert new bullet: "*the earliest and latest dates required for as to or on third party property and equipment;*"
 - 12.8.3.2 insert new bullet: "*the earliest and latest dates required for approval of informatives from CEC*";
 - 12.8.3.3 insert new bullet: "*the earliest and latest dates required for approval of submissions to Network Rail*"; and
 - 12.8.3.4 delete "*separated into sectors by WBS code*" in the first bullet point; and
 - 12.8.3.5 insert new bullet: "*latest programme dates provided by tie for On-street Civils Works omitted from the revised GMP Scope.*"
- 12.8.4 Revise the bullet point list commencing: "*The Programme shall meet the following minimum requirements...*" in order to reflect the version of Primavera which the Parties agree.
- 12.8.5 Delete the penultimate paragraph commencing: "*The Infraco shall update the Programme every four weeks...*".
13. Delete Clause 61.8.
14. Delete Clause 65.12.
15. Delete Clause 65.13.
16. Delete Clauses 79.1.2; 79.1.7 and 79.1.8.
17. **Clause 80 (tie Change)**
- 17.1 Delete Clause 80.2 and replace with the following:
- "A tie Notice of Change shall set out the proposed tie Change in sufficient detail to enable the Infraco to give tie an Estimate in accordance with Clause 80.3 below."*
- 17.2 Delete Clause 80.3.
- 17.3 Clause 80.4 will become Clause 80.3. Delete the opening paragraph of (new) Clause 80.3 and replace with the following:
- "Within 18 Business Days after having received a tie Notice of Change (or such longer period as may be agreed by tie (acting reasonably)), the Infraco shall deliver to tie an Estimate ("Estimate") which must include the opinion of the Infraco (acting reasonably) in all cases regarding:..."*

- 17.4 Clauses 80.4.1 to 80.4.10 (new Clauses 80.3.1 to 80.3.10) shall remain unamended, with the exception of the following:
- 17.4.1 in Clause 80.4.2 (new Clause 80.3.2), the words "(operation and maintenance)" shall be added between the words "performance" and "of the Edinburgh Tram Network"; and
- 17.4.2 in Clause 80.4.10 (new Clause 80.3.10), the reference to "this Clause 80" shall be deleted and replaced with "Clause 80.7".
- 17.5 Insert new Clause 80.4:
- "In the event that the Infraco is unable to give the Estimate in whole or part the Infraco shall tie within 18 Business Days after having received a tie Notice of Change (or such longer period as may be agreed by tie (acting reasonably)) giving clear written reasons why the Infraco is unable to do so and stating when the Estimate will be provided to tie."*
- 17.6 Delete Clause 80.6 and replace with the following:
- "[As soon as reasonably practicable] after tie receives the Estimate, the Parties shall discuss and agree the Estimate. From such discussions, tie may modify the tie Notice of Change and the Infraco shall update the Estimate accordingly. Upon agreement of the Estimate (if not already issued pursuant to Clause 80.11), tie shall issue a tie Change Order and the Infraco shall proceed diligently and expediently with the carrying out and completion of the Infraco Works and revised scope required by the tie Change Order."*
- 17.7 Delete Clause 80.7 and replace with the following:
- "The valuation of any tie Change made in compliance with this Clause 80 (tie Changes) shall be carried out by tie as follows:*
- 80.7.1 *by measurement and/or valuation [at fair rates and prices]; and*
- 80.7.2 *if the value of the tie Change cannot properly be ascertained by measurement and/or valuation, the reasonable additional costs of the resources and labour employed thereon including a reasonable allowance for overheads and profit."*
- 17.8 Delete Clauses 80.9 and Clause 80.10.
- 17.9 Clause 80.11 will become Clause 80.9. In (new) Clause 80.9 delete references to "SDS Contract" and replace with "SDS Agreement".
- 17.10 Clause 80.12 will become Clause 80.10. In (new) Clause 80.10.3.5, delete the words "to be performed after completion of Section D;"
- 17.11 Delete Clauses 80.13 to 80.18 (inclusive).
- 17.12 Insert new Clause 80.11:
- "tie may issue a tie Change Order at any time to the Infraco and such tie Change Order shall be issued pursuant to Clause 34.1. In the event that tie so instructs the Infraco prior to the issue of a tie Change Order (for the avoidance of doubt, including at the time of issuance of the tie Notice of Change), Infraco shall commence work in respect of the tie Change and the*

Infraco will be entitled to payment of the Infraco's demonstrable costs valued in accordance with Clause [80.7] on an interim basis for all work carried out by the Infraco in compliance with the tie Change Order."

17.13 Insert new Clause 80.12:

"Where a tie Change Order instructs an amendment to the terms and conditions of this Agreement, the Parties shall enter into any document to make such amendment within thirty Business Days following the issue of the tie Change Order."

17.14 Clause 80.19 shall become Clause 80.13.

17.15 Delete Clauses 80.20 and 80.21.

17.16 Clauses 80.22 and 80.23 shall become Clauses 80.14 and 80.15 respectively.

17.17 Delete Clause 80.24.

18. Delete Clause 81 (*Infraco Changes*).

19. In Clause 82.5, delete reference to "Clause 80.12" and insert "Clause 80.10".

20. In Clause 83.5, delete reference to "Clause 80.12" and insert "Clause 80.10".

21. Clause 84.4.4 - delete the word "Mandatory" (**tie Change**).

22. Clause 84.11 - delete the word "Mandatory" (**tie Change**).

23. Clause 87.1 - insert at the beginning of the first sentence the words: "Subject to Clause 86A".

24. Insert new Clause 86A:

"tie shall be entitled to instruct part or all of those GMP Scope of Works comprising Part B of the GMP Scope of Works at any time within five years following the date of issue of the Sectional Completion Certificate for Section D in respect of Part A of the GMP Scope of Works."

25. Clause 87.2 - delete the word "Mandatory" (**tie Change**).

26. Limb (g) in the definition of "Compensation Event" in Schedule Part 1 shall be amended.

27. Delete limbs (t), (u) and (x) in the definition of "Compensation Event" in Schedule Part 1 and mark "Not Used".

28. Insert new limbs to definition of Compensation Event to reflect **tie Change Order**.

29. Delete the definition of "Mandatory **tie Change**" and all references to Mandatory **tie Change** in the Infraco Contract.

30. Delete the definition of "Notified Departure" and all references to Notified Departure in the Infraco Contract.

31. In the definition of "Permitted Variation", delete the words "a Mandatory **tie Change**" and "a Notified Departure".

32. Delete Schedule Part 4 (*Pricing*).
33. Delete Schedule Part 5 (*Milestone Payments*) and replace with the Milestones contained in the GMP Pricing Schedule.
34. Delete Schedule Part 15 (*Programme*).

Draft

SUBJECT TO CONTRACT

***THIS DOCUMENT DOES NOT OFFER
TO CREATE ANY CONTRACTUAL
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); and
 - 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 100000 at Newhaven.
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.
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), save as expressly provided in this **tie** Change Order, as confirmed in the Deed of Variation.

5. **tie** reconfirms its instruction to proceed and the Infraco agrees to:

pursuant to the Infraco Contract (as varied pursuant to this **tie** GMP Change Order and the Deed of Variation), and in consideration of Part A of the GMP, the immediate commencement and carrying out and completion of Part A of the GMP Scope of Works to **tie's** satisfaction.

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

if instructed by **tie** (at **tie's** absolute discretion) at any point up to and including the date occurring 5 years from the date that **tie** issues a Sectional Completion Certificate pursuant to Clause 44.3 of the Infraco Contract for Section D under Part A of the GMP Scope of Works, the Infraco shall carry out all Infraco Works required to complete the on-street works described in Part B of the GMP Scope of Works, in consideration of payment by application of the prices contained in Part B of the GMP.

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 are not in contradiction to the Infraco's obligations pursuant to the Infraco Contract. For example, removing any exclusion of liability, including removing 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 will be completed rather than interim drawings (which exclude cross-sections) which are incomplete and 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, this will be the responsibility of the Infraco included within the GMP, 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 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.
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;
- 10.2 the dates for completion of each Section under Part A of the GMP Scope of Works being the Completion Dates as shown in Appendix III, the Completion Dates being updated to refer to completion at Waverley Bridge and not Newhaven; and
- 10.3 for the purposes of Part B of the GMP Scope of Works, liquidated and ascertained damages shall be calculated on the basis of anticipated costs of maintaining traffic

management and direct supervision of the individual programmes of works between Systems Points.

11. **tie** instructs and the Infraco agrees that Clauses 74 to 78 shall remain in full force and effect.

The expiry date of both the Performance Bond and the Retention Bond shall be extended to the date which is two years from the revised Completion Date for Section D.

The longstop date of 31 May 2027 in both Parent Company Guarantees shall be extended by two years.

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; and

- 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.
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; and
- (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.
21. **tie** instructs and the Infraco agrees that:
- in respect of Part A, 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; and
- in respect of Part B, interim payments shall be certified on the basis of fair value of work done to the date of the application by the Infraco.

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)

Definitions used in this Appendix II:

"**GMP**" means the Guaranteed Maximum Price [set out in the GMP Analysis].

"**GMP Analysis**" means the GMP Analysis set out below in this GMP Schedule.

"**Agreed GMP Scope**" has the meaning given to it in the Scope of Works.

"**Scope of Works**" means the GMP Scope of Works included at Appendix I.

"**Part A**" means the sections of Phase 1a of the Edinburgh Tram Network from Waverley Bridge to Edinburgh Airport (excluding the works carried out under the PSSA) plus the enabling works in Section 1A, all as described in the Scope of Works.

"**Part B**" means the sections of Phase 1a of the Edinburgh Tram Network from Waverley Bridge to Newhaven (excluding all civil engineering works), all as described in the Scope of Works.

"**PSSA**" means the Princes Street Supplemental Agreement between **tie** Limited and the Infraco Members dated 29 May 2009.

"**PSSA Works**" means the civil engineering works carried out by the Infraco pursuant to the PSSA.

GMP Analysis

Construction Works Price Part A	216,492,216
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

Part B

£

£

Construction Works Price Part B (subject to Prolongation Costs and interim payments for materials as below). The price for each of the following sections shall be subject to separate payment mechanisms for trackworks and other works:

Waverley Bridge to St. Andrew's Square

St. Andrew's Square to York Place

York Place to Foot of the Walk

Foot of the Walk to Ocean Terminal

Ocean Terminal to Newhaven

Part B Sub-Total 22,595,033

SDS Price	To be determined
Tram Supply Price	9,887,637
Infraco Maintenance Mobilisation	Included in Part A
Tram Maintenance Mobilisation	148,770
Infraco Spare Parts	Included in Part A

Part B Payment Schedule

Installing trackworks on prepared foundation

The Infraco shall install trackwork in accordance with the Infraco Contract and subject to **tie** issuing the Infraco with 14 days' notice to commence work and in accordance with the following provisions:

1. Providing, taking from store, delivering to site, permanently installing in accordance with the assured integrated design approved pursuant to Clause 19 and by **tie**, in accordance with a reasonable programme agreed by **tie**, track rails and their supports and sleepers on a foundation prepared by others.
2. The Infraco shall provide and permanently install in accordance with the said design chamfer filling materials to the rail flanges prior to handing over the installed track to **tie**.
3. The Infraco shall bear no responsibility for the foundation to the track, nor for any of the works subsequent to the installation of the track.
4. The Infraco shall be reimbursed in accordance with this schedule of rates:

Item	Approximate	Rate
	Quantity	£s
4.1 At one visit installing between 40 and 100 metres of track	tba	tba
4.2 At one visit installing between 100 and 200 metres of track	tba	tba
4.3 At one visit installing between 200 and 300 metres of track	tba	tba
4.4 At one visit installing greater than 300 metres of track.	tba	tba

Installing and commissioning overhead and E&M works

The Infraco shall install, test, commission and energise all other Infraco Works contained in this Scope of Works in accordance with the Infraco Contract revised by the **tie** Change Order and subject to **tie** issuing the Infraco with 28 days' notice to commence work and in accordance with the following provisions:

1. In sections between Systems Points
2. The Infraco shall be reimbursed in accordance with this schedule of rates:

Item	GMP Sum
2.1 Haymarket to Shandwick Place [this is in Part A]	tba
2.2 Shandwick Place to St Andrews Square [partly ditto]	tba
2.3 St Andrews Square to York Place	tba
2.4 York Place to Foot of Walk	tba
2.5 Foot of Walk to water of Leith	tba
2.6 Water of Leith to Ocean Terminal	tba
2.7 Ocean Terminal to Newhaven.	tba

APPENDIX III
COMPLETION DATES

Section	Agreed Completion Date
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 30m².
- 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 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. OLE Interface at Tower Place Bridge

- 7.1 The GMP is based on and includes for the Infraco being responsible for obtaining CEC approval for the OLE Interface at Tower Place Bridge.

8. OLE Interface at Russell Road Retaining Walls 3 & 4

- 8.1 The GMP is to be based on and includes for the Infraco being responsible for obtaining CEC approval for the OLE Interface at Russell Road Retaining Walls 3 & 4.

9. Interface with Scottish Power at Depot

- 9.1 The Infraco was notified of the local power supply provider at the Depot on 15 July 2010 and the Infraco is responsible for installing (or procuring the installation of) meter arrangements.

10. Washing Plant

- 10.1 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.

11. Design Assurance Statements

- 11.1 All necessary design assurance statements, approvals and Consents for the design; construction, testing and commissioning and opening for public services of the Edinburgh Tram Network included within and related to the GMP Scope of Works shall be provided to **tie** by the Infraco in accordance with the Infraco Contract, together with the Safety Assurance Plan to enable the Edinburgh Tram Network to comply with ROGS and the Law. Integrated Infraco Design Assurance Statements signed by all Infraco Members, Infraco Parties, and the SDS Provider (and any relevant SDS Provider Party) and inter-disciplinary checks in each case to **tie**'s reasonable satisfaction shall be required for all GMP IFC Drawings for the GMP Scope of Works.

12. New Ingliston Works

- 12.1 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.

13. Trackform Type Confirmation

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

14. Edinburgh Park and Edinburgh Airport

- 14.1 The GMP is based on access at Edinburgh Park and Edinburgh Airport being available to the Infraco, providing that the Infraco complies with its obligations under the Infraco Contract, Third Party Obligations and EAL Licence and EAL Lease.

15. OLE Vehicle Impact Report

- 15.1 The Infraco remains responsible for obtaining all necessary Consents in accordance with the Infraco Contract.

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]