

Summary of Remediable Termination Notices and direct correspondence

RTN	Description	Infraco Default	Rectification Plan?	Response by tie	Further correspondence
1	Princes Street (Defects) (dated 9/8/10)	(a) a breach by the Infraco which has a material and adverse affect on the carrying out and/or completion of the Works.	Yes (without prejudice to rejection of RTN on other grounds) (dated 17/9/10)	Rejected – with reasons (dated 29/9/10)	Letter from Infraco responding to tie dated 14/1/11 – summarising position following presentation to tie/CEC
2	Clause 10.4 and 10.16 – Failure to Provide Extranet (dated 9/8/10)	(a) – as above	Yes (without prejudice to rejection of RTN) (dated 17/9/10)	Further information sought (dated 11/10/10)	
3	Princes Street (Lack of Superintendence) (dated 9/8/10)	(a) – as above	Yes – as in RTN 1 (dated 24/9/10)	Yes – as in RTN 1 (dated 29/9/10)	
4	Clause 60 (not updating Programme and not mitigating delay) (dated 16/8/10)	(a) – as above	Yes – without prejudice to rejection of RTN and only in respect of the failure to record progress properly (dated 24/9/10)	Rejected – with reasons (dated 7/10/10)	Letter from tie dated 18/10/10 responding to other allegations.
5	Bilfinger Berger/SDS Provider Minute of Agreement (dated 1/9/10)	(a) – as above	No – there is no agreement in place to rectify (dated 12/10/10)	Notifying that further response will follow in due course (dated 26/10/10)	
6	Design (Trackworks) (dated 8/9/10)	(a) – as above	Yes – without prejudice (dated 26/10/10)	Rejected – with reasons (dated 9/11/10)	Response by Infraco dated 14/1/11
7	Failure to progress demolition works at Plots 97 and 102 Russell Road (dated 21/9/10)	(a) – as above	No – response requests further information from tie (dated 1/11/10)	Response pending	

8	Clause 80 – tie Change (dated 29/9/10)	(a) – as above	No – no default is identified (dated 9/11/10)	Response pending (correspondence has been exchanged on the underlying issue)	
9	Breaches evincing a Course of Conduct (dated 30/9/10)	(a) – as above	No – no default identified (dated 10/11/10)	Response pending (correspondence has been exchange on the underlying issue)	
10	Failure to manage design at Gogarburn Retaining Wall W14C and W14D (dated 12/10/10)	(a) – as above	No – delay is not attributable to Infraco (dated 22/11/10)	Response – rejecting Infraco's argument (dated 24/2/11)	



For The Attention of Martin Foerder
Project Director
Bilfinger Berger Siemens CAF Consortium
9 Lochside Avenue
Edinburgh Park
Edinburgh EH12 9DJ

Our Ref: INF CORR 7011/AS

Date: 24th February 2011

Dear Sirs,

**Edinburgh Tram Network- Infraco
Infraco Contract – Remedial Termination Notice
Infraco Default (a): Failure to Manage Design at Gogarburn Retaining Wall W14C
and W14D**

We refer to your response of 22nd November 2010 (25.1.201/KDR/7500) to our letter dated 12th October 2010 (INF CORR 6422) which served a Remediable Termination Notice in relation to an Infraco Default (a): Failure to Manage Design at Gogarburn Retaining Wall W14C and W14D and we note that your letter confirms that you do not offer a rectification plan.

Your letter makes allegations against **tie** which appear to be your opinion and not consistent with assessment of the facts. Your response demonstrates your understanding of the content of our Notice.

tie is entitled to use Clause 90.1.2 and has clearly given notice in writing to Infraco specifying the nature of the Infraco Default.

The Notice does identify clear breaches of contract by Infraco, and you accept that the delay that is caused by this, is, material and adverse to the completion of the Infraco Works.

Citypoint Offices, 65 Haymarket Terrace, Edinburgh, EH1 2 SHD

Tel: +44 (0) [REDACTED] Email: info@edinburghtrams.com Fax: +44 (0) 131 623 8601 Web: www.edinburghtrams.com

Registered in Scotland No: 230949 at City Chambers, High Street, Edinburgh, EH1 1YJ. Edinburgh Trams is an operating name of tie Ltd.

Direct dial: [REDACTED]
e-mail: steven.bell@tie.ltd.uk
web: www.tie.ltd.uk

Your response appears to rely on your assertion that the matters identified are not breaches of contract by Infraco and that the delay, whilst material and adverse to the completion of the Infraco Works, is not the responsibility of Infraco.

You refer to History and Background

1.2

The issues you identify do not relieve Infraco of their obligation to provide IFC drawings for the Gogarburn Retaining Wall in accordance with the Infraco Contract. The issues associated with EARL, the agreement and signing of side agreements with third parties and final determination of LOD were all known to Infraco before the Infraco Contract was executed.

1.3

We note your confirmation that the Infraco has an obligation under the Infraco Contract to achieve EAL approval.

1.4

As you have yet to achieve final approval from EAL and CEC for the alignment of the Gogarburn Retaining Walls we do not accept your comments.

1.5

We confirm the change to accommodate the kiosk and canopy facilities at Edinburgh airport tram stop were issued under cover of letter reference PD.CORR.057SB/JS of 23rd April 2008 which is included under the Infraco Contract Schedule Part 23. As a result you have always been aware of the facilities required at the Edinburgh Airport tramstop (including those outwith the LOD) and the review meetings with EAL post contract award were to clarify the requirements.

This is acknowledged in both our letter reference PD.CORR.057SB/JS of 23rd April 2008 and your letter reference 25.1.201/Jhi/261 of 14th July 2008.

We note that the introduction of the protrusion into the Gogar burn was proposed by Infraco.

We record the output of the EAL meetings were advised to Infraco on 19th June 2008 following receipt of SDS letter ULE90130-07-LET-00344 which is enclosed with your letter reference 25.1.201/Jhi/261 noted above. At this stage Infraco were aware of all relevant issues associated with the design of the Gogarburn Retaining Wall and the responsibility for the hydraulic modelling. The requirement to reassess following the review meetings with EAL remains with Infraco as is consultation with other statutory bodies. The Infraco was instructed to carry out its obligations including necessary hydraulic modelling.

We note the wall alignment now proposed by Infraco in your most recent Approval in Principle submission to CEC detailed in drawing number ULE90130-07-RTW-00034 rev 9 identifies a straight wall past the kiosk area and a further 0.5m translation to the west to improve the channel conveyance.

1.6

1.6.1

We confirm that the initial increase in length required to the retaining walls is to accommodate the facilities at Edinburgh airport tram stop as issued under cover of letter reference PD.CORR.057SB/JS of 23rd April 2008 which is included under the Infraco Contract Schedule Part 23. As a result Infraco have always been aware of the facilities required at the Edinburgh Airport tramstop (including those outwith the LOD) and the review meetings with EAL post contract award were to clarify the requirements. We record the output of the EAL meetings were advised to Infraco on 19th June 2008 following receipt of SDS letter ULE90130-07-LET-00344 which is enclosed with your letter reference 25.1.201/Jhi/261 of 14th July 2008.

We record the instruction issued under cover of our letter reference INF CORR 122 relates to scope discussed in the EAL interface meeting of 16th July 2008 and detailed in your letter reference 25.1.201/SR/321 of 1st August 2008 and does not affect the design of Gogarburn Retaining Walls W14C and W14D. Our letter INF CORR 656 of 29th January 2009 is not an instruction but an acknowledgement of the amended design scope discussed and agreed in the EAL meetings in June and July 2008. We record the requirements relating to the finish on the retaining walls were confirmed by CEC within the response times accepted for the informal planning consultation period. We confirm this minor change did not impact on the ability of Infraco to provide an IFC drawing to the timescales required under the contract.

1.6.2

The planning approval for the retaining wall is not delayed due to changes in the area but to the requirement to achieve EAL approval for the design of the retaining wall which requires approval of the Flood Study. As we will discuss in 1.6.3 below the changes you refer to have no impact on the design of retaining wall W14C and W14D. We are concerned you believe it is necessary to resolve all issues at EAL prior to submitting planning approval for retaining walls W14C&D which are critical to the construction programme. Furthermore we record our Mr Damian Sharp discussed the possibility of a separate application for the retaining wall should this be of benefit to Infraco.

We note prior approval for the portion of the retaining walls within the LOD was achieved on 19th February 2009 and this approval was unaffected by the changes you refer to in 1.6.3 and includes retaining wall W14C and W14D (part). We remind you that you have known about the requirement for retaining walls outwith the LOD since before contract award as detailed in our letter reference PD.CORR.057SB/JS of 23rd April 2008 which is included under Infraco Contract Schedule Part 23.

1.6.3

We note your comments however none of the referred changes materially impacted the completion of the design of retaining walls W14C & W14D. For clarity we refer to the following which details the scope of each change.

- (a) This issue relates to the airport canopy structure only.
- (b) This issue relates to the interface with the EAL walkway on the west side of the canopy only.
- (c) This issue relates to the interface with the EAL walkway on the west side of the canopy only.
- (d) This issue relates to the provision of a canopy over the kiosk. The footprint of the canopy has been known since the 19th June 2008.
- (e) This issue relates to changes at the kiosk only.

1.6.4

We reiterate our concerns that Infraco are attempting to resolve all issues at EAL prior to submitting planning approval for elements critical to the construction programme.

- (a) INTC 277 (DCR 0226) – OLE base special at Airport Terminus – This issue does not relate to the design of retaining walls W14C and W14D and was suitably instructed in our letter reference INF CORR 619 of 20th January 2009.
- (b) INTC 277 (DCR 0288) – Visualisations and options for the Airport Kiosk and Canopy. This issue does not impact on the design of retaining walls W14C and W14D and is dealt with in our letter reference INF CORR 7072 of 7th January 2011.

1.6.5

As discussed above, instruction in the matters referred to in 1.6.4 above are not required to complete the design of retaining wall W14 C and D. We confirm resolution of the flooding issues and in particular achieving EAL approval is an Infraco responsibility as acknowledged in your response under item 1.3. We record our letter references INF CORR 5869 and INF CORR 6324 of 25th August and 6th October 2010 respectively have reiterated this and requested Infraco resolve the issue urgently.

We note that at a meeting with Infraco, SDS and tie on 15th November 2010 and recorded under cover of our letter reference INF CORR 6854 of 13th December 2010, Infraco confirmed they could provide a solution which would ensure no material adverse impact to EAL. We record this is some 29 months since Infraco became aware of the issue and 18 months since EAL raised their objection (refer to technical note of 18th June 2008 identifying adverse impact of retaining walls). We record the date 2nd July 2009 of the EAL objection was only achievable following the Infraco issue of the design deliverables to tie for onward transfer to EAL on 29th May 2009 at least 11 months after the flooding issue was known to Infraco.

We further record the technical note of 18th June 2008 models the retaining wall alignment which achieved IFC status on 27th February 2009 and includes the latest footprint for the kiosk and canopy. We note the current flood model issued under cover of Infraco letter reference 25.1.201/SN/7674 of 15th December 2010 has been issued to EAL and the current alignment of retaining wall W14C (straight wall past kiosk/canopy together with 0.5m translation west) has now been approved by EAL and CEC. As discussed in our letter reference INF CORR 7179 of 21st January 2011 EAL should confirm shortly if there any residual concerns to be addressed prior to removing their flooding objection.

1.6.6

We note your comments regarding the Notice of Change 035 for minor amendments to the wall to accommodate utility penetrations which was subsequently withdrawn. We confirm this issue was instructed after the programmed date for completion of 8th October 2008.

1.7

The critical issues associated with provision of IFC drawings relate to finalisation of approval of the flooding issues and the form of the wall. As noted in 1.6.5 it would appear Infraco are approaching finalisation of a solution to meet overall approval however we note the wall has changed on numerous occasions. We record the wall achieved IFC status on 27th February 2009 as a reinforced concrete gravity wall (however it did not have EAL approval). This design was withdrawn by Infraco in favour of an anchored sheet piled cantilever wall and resubmitted to CEC. We note the latest proposal from Infraco for a secant piled wall has recently been submitted to CEC for AIP approval as illustrated by drawing ULE90130-07-RTW-00034 rev 9 (issue date 15th October 2010). We are particularly concerned why the wall has changed three times since contract award while the design has been managed by Infraco and you have still to submit a compliant design through the Schedule 14 procedure or confirm it is an Infraco change.

As discussed under item 1.6.2, 1.6.3 and 1.6.4 we have confirmed the retaining wall design is not affected by the Changes you refer to and we are concerned you would delay issue of the retaining wall planning drawings while other less critical issues are resolved. We can also confirm Infraco do not require an instruction to complete the flood model and demonstrate the extent of works required to resolve the EAL flooding objection.

Notwithstanding and in accordance with Infraco Contract Clause 18.2 **tie** provided written consent to Infraco in our letter reference INF CORR 6854 of 13th December 2010 which acknowledged *"Infraco and **tie** agreed that Infraco's final report should include close out of the following issues: 2) Confirmation of the extent of embankment improvement works required to ensure no material adverse impact to EAL at any location on their existing flood defences as a result of the ETN infrastructure up to a 1 in 200 year storm return period"* We confirm this letter was issued shortly after our meeting of 15th November 2010 when Infraco informed **tie** that their design solution would involve works outside the LOD. We also confirm due to the recent modelling works completed by Infraco and detailed in your letter reference 25.1.201/SN/7674 of 15th December 2010, EAL have been able to confirm they have no objection to the design alignment of the retaining wall and CEC have subsequently been able to approve your AIP submission. We question why it has taken Infraco 31 months to resolve the issue of the alignment of the retaining wall and in particular why the concerns raised in the technical note of 18th June 2008 were not acted on earlier in order to meet the programmed IFC date of 8th October 2008.

We are also concerned you refer to additional Third Party approvals as you acknowledge in under item 1.3 that EAL approval is included in the Infraco contract.

1.8

We confirm that any directions required to allow finalisation of the retaining wall were issued prior to contract award (PD.CORR.057SB/JS of 23rd April 2008) and further clarified at EAL meetings following contract award. This is recorded in your letter reference 25.1.201/JHi/261 which confirms the requirements were known to Infraco and SDS on 19th June 2008. We confirm no other instructions from **tie** were required to allow Infraco to achieve IFC status for retaining wall W14C and D. Please refer also to our response under 1.6.1.

1.9

No comment

1.10

See our response to item 1.7 above.

1.11

See our response to item 1.7 above.

1.12

Infraco have the responsibility to obtain EAL approval as identified in Infraco Contract Schedule Part 44. The realignment of W14D was not requested by tie or EAL at the meeting on 16th September 2010. The suggestion was tabled by Infraco and is your proposal to allow you to meet your obligations under the contract.

We note the form of the wall detailed in the latest proposal from Infraco to CEC is for a secant piled wall. We note as discussed in item 1.7 above this is the 3rd version of the wall design since contract award.

1.13

We reiterate our concerns that INTC 155c has not been withdrawn, as to date Infraco have not provided an IFC drawing for Gogarburn Retaining Walls W14C and W 14D.

1.14

We refer to our response to item 1.8. which confirms Infraco were aware of the final design requirements on 19th June 2008.

1.15

We refer to our response to item 1.8 above.

1.16

As discussed all necessary instruction and final clarification was given to Infraco by 19th June 2008. We note the form of the wall has changed initially to a cantilever sheet piled solution and now to a secant piled solution since the issue of IFC drawings on 27th February 2009. These changes have been instigated entirely by Infraco. Infraco have never explained the delay in issue of drawings from 6 October 2008 and failed to submit via Schedule Part 14/Clause 81 for Design Review, or via Clause 81 as an Infraco Change.

1.17

We record EAL have provided confirmation that they have no objection to the latest retaining wall alignment proposed by Infraco following review of your latest hydraulic report issued to ~~tie~~ under cover of letter reference 25.1.201/SN/7674 of 15th December 2010. This was confirmed to Infraco in our letter reference INF CORR 7179 on 21st January 2011. We again note that there has been no satisfactory explanation as to why it has taken BSC 31 months to resolve the issue of the alignment of the retaining wall and in particular why the concerns raised in the technical note of 18th June 2008 were not acted on earlier in order to meet the programmed IFC date of 8th October 2008 and your obligations under Schedule Part 44.

We record that Infraco were aware of their obligations at contract award and this is explicitly detailed in Infraco Contract Schedule Part 23 CI 6.1. In view of Infraco's obligations under Schedule Part 23 CI 6.1 and considering Infraco have provided an alignment that ensures no material adverse impact at EAL we cannot see the relevance of the issues you raise associated with the EARL cancellation, compensatory flood storage and EAL's perceived unfamiliarity with the design. We record the flooding technical note was prepared post contract award and Infraco had been managing SDS for 8 months at the EAL interface meeting you have identified on 28th January 2009.

We refute your allegations that the kiosk and canopy dictated the alignment of the retaining wall. This is confirmed by the current alignment detailed on drawing number ULE90130-07-RTW-00034 rev 9 which (shows a straight wall past the kiosk and canopy area set back a further 0.5m from the previous issued alignment) has been approved by EAL and CEC. This has been revised from Infraco's proposal of the 90 degree step in the wall identified in your IFC submission on 27th February 2009.

We confirm planning approval for the retaining wall outwith the LOD is not dependent on resolution of the issues associated with the Airport Terminus. We have confirmed this in our response to items 1.6.2, 1.6.3 and 1.6.4. and are concerned by Infraco attempting to link unrelated issues to delay critical works streams.

1.18

Our response to item 1.8 reiterates that all the necessary instruction and final clarification were given to Infraco by 19th June 2008 to allow BSC to achieve IFC status for retaining walls W14C and W14D.

1.19

We refer to our response to item 1.8 above.

1.20

We refer to our responses given in items 1.7 and 1.8 above.

1.21

We refer to our responses given in items 1.7 and 1.8 above.

1.22

We record Infraco issued the design to tie for onward issue to EAL for approval as required through Schedule Part 44 on 29th May 2009 some 12 months after contract award. We reiterate our concerns that Infraco has not offered an explanation as to why the retaining wall design could not have been issued to EAL prior to 8th October 2008. We confirm our response to item 1.8 clarifies that all necessary instruction was provided by tie by 19th June 2010.

1.23

We refer to our responses under items 1.7 and 1.8 above.

1.24

We refer to our responses under items 1.7 and 1.8 above.

1.25

We refer to our responses under items 1.7 and 1.8 above.

1.26

We refer to our responses under items 1.6, 1.7 and 1.8 above.

1.27

- a) We confirm the **tie** instruction that was required to allow finalisation of the retaining wall were issued prior to contract award (PD.CORR.057SB/JS of 23rd April 2008) and further clarified at EAL meetings following contract award. This is recorded in your letter reference 25.1.201/Jhi/261 which confirms the requirements were known to Infraco and SDS on 19th June 2008. We confirm no other instructions from **tie** were required to allow Infraco to achieve IFC status for retaining wall W14C and D. We refer additionally to our responses under 1.6 above.
- b) We record EAL have provided confirmation that they have no objection to the latest retaining wall alignment proposed by Infraco following review of your latest hydraulic report issued to **tie** under cover of letter reference 25.1.201/SN/7674 of 15th December 2010. This was confirmed to Infraco in our letter reference INF CORR 7179 on 21st January 2011. We confirm this process follows BSC obligations under Infraco contract schedule Part 44 and question why this has taken 31 months to achieve since contract award. We also reaffirm our position that BSC have offered no reasonable explanation why this issue could not have been resolved to allow the programmed date for completion of IFC drawings of 8th October 2008 to be met.

2.1

We record your acceptance that the delay in finalising the design of the Gogarburn Retaining Walls W14C and W14D may have a material and adverse impact upon the completion of Section **B**. We reiterate for all the reasons detailed above that this delay is the responsibility of Infraco.

3.14

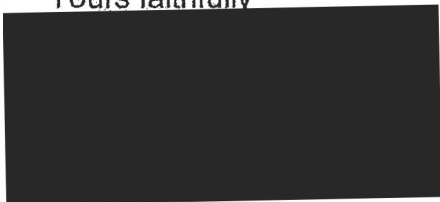
We confirm for all the reasons detailed above that our Notice issued under cover of letter reference INF CORR 6422 meets the requirements and definition of "Infraco Default (a)"

5./6/7/8

Our Remedial Termination Notice stands. It was issued in accordance with the Contract and set out as an Infraco Defalut as stated in our letter of 12th October 2010 (INF CORR 6422).

It is Infraco's obligation to propose a design capable of acceptance by EAL, something you have yet to fully achieve. Any change issues associated with the design of the Gogarburn Retaining Walls were clearly instructed sufficiently in advance of the programmed date for completion on 8th October 2008. The dominant cause of any delay is the responsibility of Infraco.

Yours faithfully



Steven Bell
Project Director