CONDITIONS UNDER WHICH THE BBS CONSORTIUM RETAINS ITS POSITION AS PREFERRED BIDDER IN THE INFRACO PROCUREMENT TO ENABLE tie AND THE BBS CONSORTIUM TO PROCEED TO CONTRACT CLOSE

Condition One

tie shall pay the BBS Consortium an incentivisation bonus of £4,800,000, such sum to be paid as follows:

- £1,200,000 within 7 days of issue of Sectional Completion A
- £1,200,000 within 7 days of issue of Sectional Completion B
- £1,200,000 within 7 days of issue of Sectional Completion C
- £1,200,000 within 7 days of issue of Sectional Completion D

as detailed on the Contract Programme in Schedule Part 15.

Condition Two

If tie does not proceed with Phase 1b of the ETN Project or tie does proceed but BBS has proposed an estimate which tie has rejected unreasonably then:

- BBS Consortium shall be compensated for its work in the procurement period on Phase 1b by a payment of £3.2m (currently contained in the BBS Consortium price for Phase 1b)
- tie shall make a payment within 30 days of the Schedule Part 37 date (6 July 2009, unless the parties otherwise agree) against a valid VAT invoice.
- In the event that tie and BBS subsequently agree to recommence negotiations on a proposal (price, programme, scope and terms) for Phase 1b the £3.2m paid by tie to BBS will be discounted from the final price for Phase 1b.

Condition Three

The ETN Contract Suite and all associated documentation is closed out on the positions as detailed in column 3 on the attached summary table on all remaining matters and there is no further discussion on any matter except for housekeeping and sense checking. This includes:

- BBS Consortium withdrawing all outstanding points on the SDS Novation Agreement which were raised in week commencing 28th April 2008 other than as agreed above as detailed in the summary table.
- 2. BBS Consortium accepts the position as amended in the summary table on Schedule Part 14 Review Procedure and the Design Management Plan and the Definition of Issued For Construction Drawings and the phased release of IFCs as allowed for in the Design Delivery Programme.

3. BBS Consortium delivering its collateral warranties at Contract Close and those of its subcontractors for tie and third parties on the terms required by tie in the InfraCo Contract.

Condition Four

When CAF joins the BBS Consortium and becomes party to the InfraCo Contract, this happens on the following terms:

- An indemnity as attached.
- Express agreed amendments to the two bonds provided by the BBS sureties to tie
- Amendments to the Siemens AG and Bilfinger Berger AG parent company guarantees to confirm no effect on scope, validity or duration of PCGs. Legal opinion to confirm this, all as agreed with Herbert Fettig on 9 May 2008.

Conditions Five and Condition Six

BBS agree to close down the Mobilisation and Advance Works Contract and waive the right to any entitlement to claim time relief or payment arising from events during the four months preceding award of the Infraco contract which would have been compensation events had the contract been in place at that time.

For the avoidance of doubt the requirement for IFC drawings and access to undertake the works post contract award as detailed on the contract programme shall not be affected by the above.

Condition Seven – Road Reconstruction

Costs arising in connection with BBS Pricing Assumption 12 in Schedule Part 4 are capped at £1.5m save for any prolongation costs arising from

- (i) SDS redesign of the roads or
- (ii) Reverting to the SDS roads design

with respect to BBS's Pricing Assumption 12 to the extent that such redesign causes delay to the Programme critical path.

Any prolongation entitlement to the BBS Consortium as a result of this Pricing Assumption 12 and related Programme Assumption 5 in Schedule Part 4 is limited to a maximum of eight weeks.

tie and CEC will support the re-design proposals that SDS develop to align their designs with the BBS Pricing Assumption 12.

Condition Eight - Early release of IFC information

BBS Consortium agree to accept the risk and any costs arising from changes relating to early release of IFC information, subject to a cap of £1.5m.

Condition Nine – Uninsured Third Party Economic and Consequential Loss

It is agreed that any amount due to **tie** within 7 days of the issue of the Reliability Certificate in accordance with Clause 77.8 and Schedule Part 43 of the InfraCo Contract is waived.

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We agree to make the appropriate amendments to the Conditions of Contract to incorporate these agreements.

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We hereby confirm on behalf of the BBS Consortium that there are no further outstanding financial, technical, commercial or legal issues connected to our offer and we are ready, willing and able to sign the ETN Contract Suite with proper corporate authority, as notified to all parties, on Tuesday 13 May 2008.



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BB CONTRACT REVIEW

UPDATED WITH DLAP/TIE COMMENT RE POINTS WHICH HAVE ALREADY BEEN DEALT WITH

Schedule Part	Agreed/Outstanding Issues	DLAP/tie comment
Clause 4	Priority of documents clause required for inconsistencies and ambiguities in Base Date Design Information.	Not Accepted
	Insert - "Where there is any discrepancy or ambiguity between any of the Base Date Design Information the most economical design will take priority"	
Clause 38.15	38.15 of the TSA needs to be flowed up.	Is agreed where tie is late in paying InfraCo milestones: DLAP drafting.
Clause 84	Clause 48.5 of TMA to be reflected in Infraco Contract.	Agreed.
		65
Schedule Part 1: Definitions and nterpretation		Amendments acceptable to tie have been made.
Systems Acceptance Test"	to read:- means the tests described in the Employers Requirements	
	including tests T1, T2, T3, T4 and/or T5, and the other testing and commissioning activities described in Section 23, Schedule Part 2 (Employers Requirements);	
chedule Part 2: mployer's equirements	Robert Kraemer's comments on Section 8.2 to be addressed by tie.	Erratum schedule to deal with points agreed with tie.
	Bernhard Brauns' comments on Section 40 to be addressed by tie. Bernhard reviewing tie reply and will advise on any material issues by 9 May.	Check on cleaning reerratum schedule
	Tie to clarify that they accept responsibility for traffic	Steven Bell to provide more details on traffic modelling. Does not remove existing SDS obligations

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	modelling.	regarding Junction Modelling and WAN modelling
	tie will not accept any changes to the ER's at this stage.	
Schedule Part 3: Code of Construction Practice and Code of Maintenance Practice	Bernhard Brauns' comments on Part B (Maintenance) to be addressed by tie, Bernhard reviewing tie reply and will advise of any material issues by 9 May.	Closed
Schedule Part 4: Pricing	Contract Price to be agreed. Mobilization and Advance Works tie changes. SDS Novation sum to be agreed.	Correct. Mobilisation and Advance Works changes to be identified by tie letter and formal change issued after Contract Award.
2	At the end of 2.6 add "(but not Preliminaries)".	Agreed
	Pricing Assumption 4 should read "the Design Delivery Programme as defined in the SDS Agreement is"	Agreed
	Amend Pricing Assumption 5 to read as follows: "That in the event that tie, the SDS Provider and the Infraco have agreed mitigation measures"	Agreed
	Pricing Assumption 14 - the change from "thin" to "thick" is not correct. It should revert to "thin".	Agreed.
	Assumption 41 is fine save that in at the end "this Agreement" should read "the Asset Protection Agreement".	Not accepted. "this Agreement" is correct.
	Pricing Assumption 42 "SDS designer" should read "SDS Provider"	Agreed
	Para 3.5, line 7, should read "have issued a tie Notice of Change"	Agreed
	Appendix C – delete identified value engineering item 22 (rationalisation of spares).	Steven to check with Alastair.
	Appendix G – 1.4 – amend to read "In all cases where a tie Change is being valued in accordance with Clause 80.6. Site related overhead (Preliminaries) shall be valued and added as follows:"	Cross-ref should be 1.3. aîter (b)

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Schedule Part 5: Milestone Payments	Not reflect cash profile accepted by Siemens.	Siemens and BB to agree proposed schedule for tie acceptance.
	Needs to be agreed by parties where to include payment for initial spares package and for maintenance mobilisation. Proposed wording sent to DLA by Marco Wagner on 28 March to be addressed by tie.	BBS propose that initial parts and spares are paid for then they are delivered to tie. BBS propose mobilisation payment as follows: 15% down payment at contract signature. 20% at completion of depot, 25% Completion of test track, 35% when phase 1a finished, 5% Service commencement date. tie to consider BBS proposal
Schedule Part 6:	Marco Wagner's mark-up and	Comments received and tie has
Maintenance Payment Regime	comments sent to DLA on 28 April to be addressed by tie.	accepted those which it can. Issues which represent a change in position have not been incorporated. (See delta view)
		Martin and Alastair discussed further 09/05. Agreed further amendments. 1 outstanding issue re indexation.
		Otherwise closed.
Schedule Part 7: Maintenance Pricing	Marco Wagner provided comments to DLA on 30 April. To be addressed by tie.	tie still reviewing comments.
Schedule Part 8: Bonds, Parent Company Guarantee and Collateral Warranty		
Part A – Performance bond	Agreed	
	Agreed	2.5
Part B Retention Bond	Agreed	
Part C – Defects Rectification bond	Agreed	Agreed.
Part D → Parent Company Guarantees		
art E Infraco ollateral Warranty to	Liability Cap and Maintenance Cap definitions in Appendix to match final definition under	Change has already been incorporated.

tie	Infraco Contract.	Confirm change has already been incorporated.
	Attestation clause to refer to appendix	
	BB execute by 2 directors.	
	1. 	
Part F – Sub-contractor Collateral Warranty	Agreed that this will be dealt with after contract award.	(see final version of Sch 8 issued today)
Schedule Part 9: Dispute Resolution Procedure	Agreed	
Schedule Part 10: Dispute Resolution Procedure Panel	Agreed	
Schedule Part 11: Required Insurances	BBS to respond.	
Schedul e Part 12: Key Personnel	Agreed	
Schedule Part 13: Third Party Agreements	Agreed	
Schedule Part 14: Review Procedure	Para 3.1 – Any amendment to the DMP shall be a tie Change.	Not Agreed.
	Para 10.2 and 10.3 – tie already have this protection in Clause 80.20 so this clause is not required.	Agree 10 Business Days or as otherwise agreed.
	Para 10.4 – this para undermine clauses elsewhere in the contract in relation design development in particular Clause 4.	Tie are looking at this and will provide close drafting to deal with this.
	Final comments on DMP to follow by lunchtime 9 May.	Steven to consider PM comments and will include at discretion.
Schedule Part 15: Programme	BBS submitted Infraco Programme to tie – confirmation required from tie. Programme issues to be resolved.	Closed other than agreement on Programme assumptions.
Schedule Part 16: Tram Supply Agreement	Confirmation required that clause 38.15 has been flowed up into the Infraco Contract.	Will be flowed up.
	Outstanding commercial	

	issue	
Clause 44	BBS require 5% top up bond from CAF if the first bond is capped out.	Agreed no action as top up can be dropped as long as CAF come inte consortium.
Schedule Part 17: Tram Supply – Novation Agreeme	Agreed – final version to be issued	Thanks - engrossment version will be forwarded separately.
Schedule Part 18: Tram Supply – Collateral Warranty favour of tie	Agreed – final version to be issued	Thanks - engrossment version will be forwarded separately.
Schedule Part 19: Tram Maintenance Agreement	TMA Clause 48.5 - Risk position on General Changes in Law requires to be flowed up into the Infraco Contract.	
Clause 42.2.4	allocation set out in the TMA is not acceptable to BBS as currently drafted. In order to address this issue, Clause 48.5 of the TMA needs to be flowed up into the info[] contract. This is a fundamental issue for its obligations under this Agreement."	
Schedule 23 Performance Bond	TMA – Schedule 23 (Performance Bond) - Deletion of "persistently and / or maliciously" and "persistently" where it appears within clause 1 of the Performance Bond to be confirmed.	Not confirmed.
Schedule Part 20: Tram Maintenance Novation Agreement		Thanks - engrossment version will be forwarded separately.
Schedule Part 21: Tram Maintenance – Collateral Warranty in avour of tie		Thanks - engrossment version will be forwarded separately.

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Schedule Part 22: SDS Agreement	Agreed	
Schedule Part 23: SDS Novation Agreement	Design scope split to be confirmed.	Approach agreed on co-ordination and integration strategy to be
Appendix Part 1: Schedule of	DDC to review and rearrand to	raised via Infraco alignment workshop.
Amendments	BBS to review and respond to DLA mark-up issued 8 May.	Check on alignment drafting to be made including Review Procedure and Clause 5 and payment
Appendix Part 2: Consents Programme and Design Delivery Programme		mechanisms for such items to be addressed. Defined terms to be made consistent where relevant and
Appendix Part 3: Halcrow Collateral		definition of IFC to be amplified with SDS and in Infraco contract.
Warranty in favour of tie	(1) (1)	Other gaps in schedules to be completed.
Appendix Part 4	81	
- Part A: Design and Deliverable Status		
- Part B: Amendments to Schedule 1 of the SDS Agreement		
Appendix Part 5 Disclosure Statement		
- Part A: SDS Disclosures		
- Part B: tie Disclosures		12
Appendix Part 6 – Third Party Agreements		
Appendix Part 7		
- Part A: Letters of Instruction		
- Part B: PB Report on nfraco Proposais		
Schedule Part 24: SDS Collateral warranty in avour of tie	Agreed	
	Agreed	
Schedule Part 25: Spare Parts	Agreed	JB.

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Schedule Part 26: tie Obligations	Date for item 1 should be 29 August 2008. Programme has event of 0 days for Activity 10751 "Remove Scotrail Oil Tanks" date matching up with the programme – 29 August 2008.	Date will not be changed.
	Insert obligation on tie to procure Forth Ports Land – the site of the Leith Depot.	Agreed but accept that tie will put obligation on Infraco to act appropriately whilst on site and when leaving site.
Schedule Part 27: Asset Protection Agreement and Bridge Agreement	Agreed	
Schedule Part 28: Certificates	Agreed.	
Schedule Part 29: tie and CEC Policies	Agreed.	
Schedule Part 30; Infraco's Proposals	Appendix of drawings to be completed. Final confirmation of Infraco Proposals required.	
	Robert Kraemer's comments on Chapter 3.8 (RAMS) to be incorporated.	As agreed with tie.
Schedule Part 31: Drawings		Agreed and closed.
Schedule Part 32: Depot Licence	Depot responsibility allocation matrix to be finalised.	This is dealt with in the Erratum to the ERs. No changes required to Schedule Part 32.
Schedule Part 33: Building Fixing Agreement	Agreed	
Schedule Part 34: Tram Inspector Agreement	Agreed.	
Schedule Part 35: Reporting Period End Dates	Should be an extra 4 reporting period end dates, last one being in July 2012.	Tie to check
Schedule Part 36: UPE Information		
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Schedule Part 37: Phase 1B	Tie remarks email 8/05/08. BB replied 8 May re specific correspondence. Siemens to comment.	Closed
Schedule Part 38: Approved Suppliers	PM issued mark-up 29 April.	
Section 1A	Insert "Major" before Civils Works Contractors	Confirm change has been incorporated.
22	Insertion of "Where Major Works Civil Contractors means civil works contractors to whom Infraco subcontract responsibility for the majority of civil engineering elements of any section of Phase 1a (other than the obligations of the SDS Provider)."	Confirm change has been incorporated.
Schedule Part 39: Tram Supply Agreement Obligations	Agreed	
Schedule Part 40: Environmental or Health and Safety Key Performance Indicators	Agreed.	
Schedule Part 41: Ground Conditions and Utility Information	BBS to check that information matches previous information.	Confirm this Schedule has not changed since the version issued on 23.04.
		Agreement today that letters (dated 20 and 27 Nov and 6 Dec 07) should be included or will be included in this Schedule.
Schedule Part 42: Development Partnering and Operating Franchise	Agreed	
Schedule Part 43: Reserve Account	Purpose of reserve account to be agreed. Reference to liabilities incurred not agreed.	No changes
Schedule Part 44: EAL Vorks		
.2	Delete "will not be valid"	Confirm change has been incorporated.
.2.1	To read:	Confirm change has been
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To read: "include Agreed EAL Works Data;" To read: "include land which is:" To read: refer to plans forming part of the Drawdown Information are <u>extracts from the Plans</u> Contents - Schedule 1 should be Schedule Part 1 Contents - should add in	Confirm change has been incorporated. Confirm change has been incorporated. Confirm change has been incorporated. Confirm change has been
Data;" To read: "include land which is:" To read: refer to plans forming part of the Drawdown Information are <u>extracts from the Plans</u> Contents - Schedule 1 should be Schedule Part 1	incorporated. Confirm change has been incorporated. Confirm change has been incorporated. Confirm change has been
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refer to plans forming part of the Drawdown Information are <u>extracts from the Plans</u> Contents - Schedule 1 should be Schedule Part 1	incorporated. Confirm change has been
Drawdown Information are extracts from the Plans Contents - Schedule 1 should be Schedule Part 1	incorporated. Confirm change has been
should be Schedule Part 1	
Contents - should add in	incorporated.
Schedule Part 2 - BBS' Representatives	Confirm change has been incorporated.
Recital C - please confirm date of Grant Funding Letter from Transport Scotland	17 January 2008 - Confirm change has been incorporated.
Clause 3.3 – "or tie has suffered an Insolvency Event" to be deleted.	
Attestation - change to reflect one schedule in 2 parts	Confirm change has been incorporated.
Schedule Part 1 - Alternative B - replace "both of us" with "the Infraco"	Confirm change has been incorporated.
Schedule Part 2 - BBS representatives will be Michael Flynn, Christian Roth, Richard Walker and Gary Dalton	To be Agreed
tie will need to obtain CEC approval to enter into the Minute of Variation and confirm that the CEC	Not Agreed. Tie's authority to vary the contract is contained in its Operating Agreement.
Guarantee will still be valid following CAF becoming party to the Infraco	Letter of no objection from CEC to CAF joining Infraco.
	date of Grant Funding Letter from Transport Scotland Clause 3.3 – "or tie has suffered an Insolvency Event" to be deleted. Attestation - change to reflect one schedule in 2 parts Schedule Part 1 - Alternative B - replace "both of us" with "the Infraco" Schedule Part 2 - BBS representatives will be Michael Flynn, Christian Roth, Richard Walker and Gary Dalton tie will need to obtain CEC approval to enter into the Minute of Variation and confirm that the CEC Guarantee will still be valid following CAF becoming

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EDINBURGH TRAM NETWORK CAF becomes a party to the Infraco Contract

PCGs at new clause 1.4

AND

Siemens AG

TIB AGABPS

- 1.4 The Guarantor hereby acknowledges that Siemens Subsidiary (i) has entered into an agreement with the Bilfinger Subsidiary and Construcciones Y Auxiliar de Ferrocarriles S.A. ("CAF") hereby CAF has joined the Infraco and (ii) will enter into an agreement (the "Minute of Variation") with Bilfinger Berger UK Limited, the and CAF whereby CAF will become party to the Infraco Contract with joint and several responsibility towards the The Guarantor Turkestakes to and agrees without reservation with, the that neither the entry of CAF into the Infraco (and any future variation to the terms of such entry) her any act of Stet
- Set omission by CAF nor the Minute of Variation shall have any effect upon the bligations and liabilities of the Guarantor and the rights and entitlements of the Limited pursuant to this Guarantee.

Bilfinger Berger AG

The Guarantor hereby acknowledges that Bilfinger Subsidiary (i) has entered into an there is a the second s 1.4 the Infraco Contract with joint and several responsibility towards the. The Guarantor ACE N undertakes to, and agrees without reservation, with the that neither the entry of CAF into the Artherite Infraco (and any future variation to the terms of such entry) nor any act or omission by CAF HG NATE nor the Minute of Variation shall have any effect upon the obligations and liabilities of the Guarantor and the rights and entitlements of the Limited pursuant to this Guarantee.

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Supplemental German Legal Opinion on PCG

"We have been asked to give our opinion on an amendment to the Parent Company Guarantees (which we are instructed is identical in each case for Siemens AG and for Bilfinger Berger AG).

We are of the view that this amendment is effective, as a matter of German law, to confirm the Guarantor's acknowledgement and acceptance that a third party (Construcciones Y Auxiliar de Ferrocarriles S.A.) is now to be a party to the Infraco Contract, the performance of which is underwritten by its Guarantee. This confirmation by the Guarantor would act as a complete bar against any argument in legal proceedings being raised by the Guarantor that its liability had been altered without its consent thereby releasing it from all or any of its obligations."

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intervity will be capped at £8 million. I cap is outside and dris not count touroras the bility cap in the Sylrace Contract. '08 gread - The This cap is Liblity cap accepts that, from the MoV Date CAF will become a member of the Infraco and that the CAF will become a party to the Infraco Contract. 22 Upon and with effect from the MoV Date, the Infraco Contract is hereby amended as set out in Schedule 1 to this MoV. Save as amended by this MoV, the provisions of the Infraco Contract shall remain in 2.3 full force and effect. 885 2.4 Subject to Clauses 77.1, 77.2, 77.3, 17777.8 dille of the Infraco Contract. Sie shall indemnify tie in respect of losses (excluding any uninsured economic and conseguential loss or Indirect Losses (as such term is defined in the Infraco Contract)) incurred by tie in relation to set any changes which are regulated to the Contract Price, Programme, Employer's Reguirements or Infraco Proposals (as such terms are defined in the Infraco Contract). provided that: such loss is directly attributable to the consequences of CAF becoming a 241 party to the Infraco Contract ;and to Infraco that such loss would not have been incurred by 210 demonstrates. mie a party to the Infrace Centract: and tio had (BBS veasa as soon asitie becomes aware 2.4.3 any matter or thing which might lead to tie aco making a claim against Statistic under this Clause 2.4 tie will so notify **B**35 eenen Siemens and provide Siemens at that time with all the information which tie Ca has about such matter or thing and why it might lead to such a claim and from any Ass for Mhich incentury de s Clause 2.4 a reasonable stimate of an henefite enjoyed by tie 1Inda becoming a part to the innace Contract which have 83-7 not Tanta a loss the the put З. APPLICABLE LAW 3.1 -This MoV and any document completed or to be a completed in accordance with its provisions and any matter arising from this MoV or any such document shall be governed by and construed in accordance with Scots Law. Subject to Clause 97 (Dispute Resolution Procedure) of the Infraco Contract, the 3.2 parties to this MoV hereby irrevocably submit to the exclusive jurisdiction of the Court of Session in relation to this MoV, any such document and any such matter. IN WITNESS WHEREOF these presents on this and the precedin (2) pages together with Schedule annexed and signed as relative hereto are executed as follows: check: EXECUTED for and on behalf of TIE LIMITED at on 2008 by: Authorised Signatory Full Name Mullipart X/8/f 2 ETN Minute Of Hilos//Webmail. Tie. Ltd. Uk/Exchange/Alastair. Variation Not Yetaporovedovob Tie 08.05 08.05.2008.00007Attach=1C/Decumente And