

PRIVILEGED IN CONFIDENCE  
FOI(S)A EXEMPT

MINUTE OF VARIATION TO THE INFRACO CONTRACT

among

(1) tie LIMITED

and

(2) BILFINGER BERGER CIVIL UK LIMITED

and

(3) SIEMENS plc

and

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

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in respect of the PRIORITISED WORKS on the EDINBURGH TRAM NETWORK

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*04.7*  
*AS*

## MINUTE OF VARIATION

among

- (1) **tie LIMITED** (company number SC230949), whose registered office is at City Chambers, High Street, Edinburgh, Midlothian, EH1 1YJ ("**tie**") which expression shall include its personal representatives, successors, permitted assignees and transferees;
- (2) **BILFINGER BERGER CIVIL UK LIMITED**, a company incorporated in England and Wales under number 02418086 and having its registered office at 3<sup>rd</sup> Floor Braywick Gate, Braywick Road, Maidenhead, Berkshire SL6 1DA ("**BBUK**") which expression shall include its personal representatives, successors, permitted assignees and transferees;
- (3) **SIEMENS PLC**, a company incorporated in England and Wales under number 00727817 and having its registered office at Faraday House, Sir William Siemens Square, Frimley, Camberley, Surrey, GU16 8QD ("**Siemens**") which expression shall include its personal representatives, successors, permitted assignees and transferees; and
- (4) **CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES S.A.**, a company registered in Spain and having its registered office at J. M. Iturrioz 26, 20200 Beasain, Spain ("**CAF**") which expression shall include its personal representatives, successors, permitted assignees and transferees,

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

## BACKGROUND

- A tie and Infraco (at that time comprising BBUK and Siemens) entered into a contract on 14 May 2008 under which Infraco was appointed to carry out and manage the design, construction, installation, commissioning, tram procurement, system integration, infrastructure maintenance, tram maintenance and supply of related equipment and materials, trams and related infrastructure in respect of the Edinburgh Tram Network (such contract, amended as detailed below, is herein after referred to as the "**Infraco Contract**");
- B By an agreement in writing dated 13 May 2008 ("**Tram Supply Agreement**") tie appointed CAF to design, manufacture and supply 27 Trams and to supply documentation and associated equipment in connection with the Edinburgh Tram Network;
- C By a Minute of Variation in writing dated 14 May 2008 ("**MoV1**"), tie, BBUK, Siemens and CAF agreed that CAF would become a party to the Infraco Contract;
- D By an agreement in writing dated 14 May 2008 ("**Novation of Tram Supply Agreement**") tie and Infraco agreed, with the consent of CAF as the Tram Supplier, that Infraco would take over the rights and liabilities of tie as the "Client" (as defined in the Tram Supply Agreement) under the Tram Supply Agreement;
- E The Infraco Contract was amended by the Princes Street Supplemental Agreement entered into between the Parties in March 2009 and re-executed on 29 May 2009, a Minute of Variation between the Parties dated 3 June 2009 ("**MoV2**") and a Minute of Variation between the Parties dated 23 April 2010 ("**MoV3**"); and
- F Following a mediation between the Parties which took place at Mar Hall between 8 and 12 March 2011, tie and Infraco have agreed to vary the Infraco Contract to the extent specifically set out in this Minute of Variation ("**MoV4**") to give effect to the Prioritised Works.

## 1 DEFINITIONS AND INTERPRETATION

1.1 The definitions given in the recitals to this Minute of Variation apply to this Minute of Variation.

1.2 In the context of this Minute of Variation where the Infraco Contract has defined a meaning to any capitalised word or expression used in this Minute of Variation, the same meaning shall be given to it in this Minute of Variation, except as follows:

"**Auxiliary Works**" means those of the Prioritised Works identified as such in Schedule Part 2 (*Scope and Pricing of Prioritised Works*);

"**Certificate 1 - First Materials and Equipment and First Payment**" means the certificate issued by the Certifier in accordance with Clause 6 (*Certificate 1 - First Materials and Equipment and First Payment*);

"**Certificate 2 - Second Payment**" means the certificate to be issued by the Certifier in accordance with Clause 7 (*Certificate 2 - Second Payment*);

"**Certificate 3 (A, B and C) - Second Materials and Equipment**" means the certificates to be issued by the Certifier in accordance with Clause 8 (*Certificate 3 (A, B & C) - Second Materials and Equipment*);

"**Certifier**" means Hg Consulting, Chartered Surveyors, 20 Lymedoch Crescent, Glasgow, G3 6EQ;

"**Certifier Agreement**" means the agreement between the Certifier, CEC, tie and Infraco for the certification of completion of the Prioritised Works and amounts payable under this Minute of Variation to be entered into on or about the date of execution of this Minute of Variation;

"**Change**" means, in relation to the Prioritised Works, a tie Change or a Mandatory tie Change as the case may be;

"**Change Procedure**" means the change procedure set out in Schedule Part 7 (*Change Procedure*);

"**Fixed Sum Prioritised Works**" means those of the Prioritised Works identified as such in Schedule Part 2 (*Scope and Pricing of Prioritised Works*);

"**Fixed Sum Prioritised Works Milestone**" means each of the milestones for payment for the Fixed Sum Prioritised Works as set out in Schedule Part 2 (*Scope and Pricing of Prioritised Works*);

"**Fixed Sum Prioritised Works Price**" means the price for carrying out the Fixed Sum Prioritised Works as set out in Schedule Part 2 (*Scope and Pricing of Prioritised Works*) up to the 17 September 2011 and does not represent the total value / price of the Prioritised Works beyond this date;

"**Governance Structure**" means the structure set out in Schedule Part 8 (*Governance Structure*);

"**Heads of Terms**" means the heads of terms signed by tie, CEC, BBUK and Siemens in Glasgow on Saturday 12 March 2011;

"**Interdisciplinary Design Check Procedure**" means the procedure set out at Schedule Part 9 (*Interdisciplinary Design Check Procedure*);

**"Materials and Equipment"** means the materials and equipment to be provided by Siemens including but not limited to the materials and equipment listed in Schedule Part 3 but excluding Trams and Tram Related Equipment (*Materials and Equipment*);

**"Minute of Variation 5" or "MoV5"** means the Minute of Variation to be entered into between tie, BBUK, Siemens and CAF varying the Infraco Contract in respect of the Off-Street Works and On-Street Works as per the Heads of Terms on or before 1 July 2011;

**"Off-Street Works"** means that part of the Infraco Works from the Airport to Haymarket (chainage 712,579.5 to 200,000), including the enabling works to be performed at Lindsay Road Retaining Wall (at outbound chainages W1A 100,168 to 100,404; W1B 100,225 to 100,266, W1C 100,387 to 100,412 and W1D 100,467 to 100,478), Lindsay Road lowering (outbound chainage 100,230 to 100,560 and Lindsay Road LOD at east end) and the civil works at Tower Place Bridge (outbound chainage 101,430 to inbound chainage 101,517) including rail installation;

**"On-Street Works"** means that part of the Infraco Works from Haymarket to York Place (chainage 200,000 to 120,650), other than in respect of any Utilities diversion works;

**"Outstanding Consents"** means any of the Consents referred to Schedule Part 5 in relation to Prioritised Works, which are still to be obtained as at the date of execution of this Minute of Variation;

**"Preliminaries"** means the preliminary milestones forming part of the Fixed Sum Prioritised Works Milestones as set out in Schedule Part 2 (*Scope and Pricing of Prioritised Works*);

**"Prioritised Works"** means that part of the Infraco Works comprising the Depot (excluding any works to the east of the Depot Access Bridge as shown on drawing ULE90130-06-DEP-00016 Rev6), Depot Access Bridge and Depot Access Road, mini test track, Haymarket Yards, A8 Underpass, Princes Street Remedial Works, the Auxiliary Works and any other works agreed by the Parties to comprise the Prioritised Works as more particularly described in the Scope. The Prioritised Works shall comprise part of the Off-Street Works and part of the On-Street Works;

**"Prioritised Works Commencement Date"** means the later of:

- (i) 3 May 2011; and
- (ii) the date on which all of the following events have occurred:
  - (a) Infraco receives the amount payable pursuant to Clause 6 (Certificate 1 First Materials and Equipment and First Mobilisation);
  - (b) the Certifier has issued the certificate (Second Mobilisation Payment) to tie and Infraco pursuant to Clause 7; and
  - (c) the Outstanding Consents required to start the Prioritised Works have been issued by tie or provided by the relevant Approval Body;

**"Prioritised Works Estimate"** means the estimate to be provided by Infraco in response to a tie Notice of Change detailing the time and cost implications of compliance with the proposed Change;

**"Prioritised Works Programme"** means the programme for the Prioritised Works set out in Schedule Part 1 (*Programme of Prioritised Works*) as updated by agreement between the Parties from time to time;

**"Relevant Date"** means either (i) 2 July 2011 in the event that MoV5 has not been entered into for reasons other than insufficient tie and/or CEC funding; or (ii) 1 September 2011 if



MoV5 has been entered into or MoV5 has not been entered into because of insufficient tie and/or CEC funding, as the case may be;

"**Schedule**" means the Schedule in 10 Parts annexed to this Minute of Variation;

"**Scope**" means the scope of the Prioritised Works set out in Schedule Part 2 (*Scope and Pricing of Prioritised Works*) identified by means of narrative, specific drawing and chainage numbers;

"**Target Price**" means the sum to be agreed amongst tie, BBUK and Siemens for the On-Street Works;

"**Target Price Prioritised Works Milestone**" means each of the milestones for payment for the Target Price Prioritised Works as set out in Schedule Part 2 (*Scope and Pricing of Prioritised Works*);

"**Target Price Prioritised Works Price**" means the price for carrying out the Target Price Prioritised Works as set out in Schedule Part 2 (*Scope and Pricing of Prioritised Works*);

"**Target Price Prioritised Works**" means those of the Prioritised Works identified as such in Schedule Part 2 (*Scope and Pricing of Prioritised Works*);

"**Total Price**" has the meaning given in the Heads of Terms;

"**Valuation Certificate**" has the meaning given in Clause 9 (*Payment for the Prioritised Works*);


"**Valuation Dates**" means the dates identified for "Due Certified" set out in Schedule Part 2 (*Scope and Pricing of Prioritised Works*), and Valuation Date shall be construed accordingly; and

"**Vesting Certificate**" means a vesting certificate in the form set out at Schedule Part 6 (*Vesting Certificate*).

- 1.3 Clause headings in this Minute of Variation are for the convenience of the Parties only and do not affect its interpretation.
- 1.4 Unless the context otherwise requires:
  - 1.4.1 words importing gender include masculine, feminine and neuter;
  - 1.4.2 the singular includes the plural, and vice versa; and
  - 1.4.3 a reference to any Clause, Sub-Clause or Schedule is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause or schedule to this Minute of Variation and reference in any Schedule to any Part, Paragraph or Sub-Paragraph is, except where it is expressly stated to the contrary, a reference to such part, paragraph or sub-paragraph of that Schedule (as the case may be);

## 2 AMENDMENT OF THE INFRACO CONTRACT

- 2.1 The Parties hereby agree that the Infraco Contract is amended in accordance with the terms of and as required to implement this Minute of Variation.
- 2.2 The terms and conditions of this Minute of Variation, together with the Schedule, represent the entire agreement between the Parties relating to this variation of the Infraco Contract. Save as amended or dis-applied by this Minute of Variation, all the terms and conditions of the Infraco Contract remain in full force and effect.



3 APPLICATION OF THE INFRACO CONTRACT TO THE PRIORITISED WORKS

3.1 From the Prioritised Works Commencement Date the Prioritised Works will be carried out in accordance with the Infraco Contract as amended by the application of this Minute of Variation.

3.2 From the Prioritised Works Commencement Date until the Relevant Date unless the Parties agree otherwise Infraco shall not carry out any Infraco Works other than the Prioritised Works, the Tram Supply Obligations and, to the extent applicable, the Tram Maintenance Services. tie's obligations to make payment to Infraco and Infraco's rights and obligations in respect of the Tram Supply Obligations and, to the extent applicable, the Tram Maintenance Services shall remain unchanged by this Minute of Variation.

3.3 If on or before 1 July 2011 the Parties have not entered into an MoV5 on an unconditional basis or on a conditional basis in either case because tie and / or CEC do not have sufficient funding to meet tie's obligations under the Infraco Contract:-

3.3.1 Infraco shall, subject to Clause 3.3.2, continue to carry out the Prioritised Works between 2 July 2011 and 1 September 2011, and inter alia the provisions of Clause 9 of this Minute of Variation shall continue to apply and Infraco shall not be required to carry out the Infraco Works (other than the Prioritised Works);

3.3.2 Infraco shall not carry out the Princes Street Remedial Works forming part of the Prioritised Works unless on or before 2 July 2011 tie has confirmed in writing to Infraco that it should do so. In the event that such written confirmation is not given by tie, the Parties shall as soon as reasonably practicable following 2 July 2011 agree (each Party being obliged to act reasonably) a revised approach to the carrying out of the Princes Street Remedial Works by Infraco, it being acknowledged by the Parties that such revised approach is to have the effect of reducing the disruption to the use of Princes Street by third parties;

3.3.3 the Infraco Contract shall automatically terminate at 5pm on 1 September 2011 and the Parties shall have no rights or obligations in respect of the future performance of the Infraco Works save as provided in Clause 94.6 of the Infraco Contract;

3.3.4 the Parties shall enter into discussions with a view to arriving at mutually acceptable terms to deal with the consequences of termination pursuant to Clause 3.3.3; and

3.3.5 notwithstanding the terms of any agreement or otherwise pursuant to Clause 3.3.4 tie shall make the payments to Infraco in accordance with Clauses 8.2 and 8.3, and Clause 3.3.6  
*3.3.6 TAKE IN PAPER APART*  
save as agreed between the Parties pursuant to Clause 3.3.4 or as set out in Clause 3.3.5, in the event of termination pursuant to this Clause 3.3 the Parties confirm that such termination shall occur on a no fault basis and, no compensation shall be payable by either Party whether under contract, delict (including negligence), breach of (or compliance with) statutory duty, restitution or otherwise as a result of such termination of the Infraco Contract.

3.4 If the Parties have not entered into MoV5 on or before 1 July 2011 for any reasons other than those set out in Clause 3.3:

3.4.1 Infraco shall not be obliged to perform the Prioritised Works in accordance with Clause 3.1 beyond 1 July 2011;

3.4.2 the Infraco Works (as varied by this Minute of Variation) shall recommence on 2 July 2011; and

3.4.3 tie shall make the payments to Infraco in accordance with Clauses 8.2 and 8.3.

3.5 Infraco shall from the date of this Minute of Variation self certify that the civils and systems and trackwork Design is in accordance with the Employer's Requirements.

~~B.3.5 at the end add "and Clause 3.3.6~~

Insert a new Clause 3.3.6 as follows:-

"without prejudice to Clause 3.3.4 and unless otherwise agreed, on the date of termination:-

(i) tie, whom failing CEC, shall acquire the Trams, the Tram Related Equipment and the Depot Equipment (as defined in the TSA) specified or comprising part of the Tram Supply Obligations;

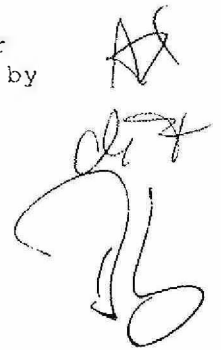
(ii) CAF shall deliver the Trams, the Trams Related Equipment and the Depot Equipment (as defined in the TSA) specified or comprising part of the Tram Supply Obligations to tie or CEC as directed; and

(iii) tie, whom failing CEC, shall pay to CAF (i) all milestone payments set out in Schedule 5 to the TSA that remain unpaid ("the Unpaid Sums") notwithstanding that the milestones to allow application for payment of such milestone payments have not occurred less (ii) the Certified Deduction. In the event that the Unpaid Sums less the Certified Deduction results in a negative figure then such sum shall be payable by CAF to tie, whom failing CEC."

"Certified Deduction" means such sum as the Certifier certifies under the Certifier Agreement should be deducted from the Unpaid Sums to reflect the difference in value attributable to what CAF have delivered under Clause 3.3.6 and what CAF would have been obliged to deliver had the Infraco Contract not been terminated."

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"provided that nothing in this Clause 3.3.6 shall operate to vary or amend the terms of the Tram Supply Agreement or act as an admission by BCUK or Siemens of any liability to CAF under the Tram Supply Agreement, Infraco Contract or consortium agreement."

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- 3.6 Infraco shall comply with the Interdisciplinary Design Check Procedure. Nothing in this procedure shall affect the legal and statutory obligations of each of CEC and tie.
- 3.7 tie shall have no right or obligation to review and/or approve the civils and systems and trackwork Design and the Infraco shall be relieved of its obligations under Clause 10 and Schedule Part 14 of the Infraco Contract in so far as they relate to the civils and systems and trackwork Design, provided that nothing in this clause 3.7 shall operate to prevent tie from being able properly to discharge its obligations under ROGS.
- 3.8 Infraco shall not be required to obtain any further Permits to Work for any of the Prioritised Works subject to providing tie with such information as is reasonably required to allow tie to comply with the notification and third party requirements (as necessary) for which it is responsible.

**4 SOLE ENTITLEMENT OF INFRACO TO PAYMENT, EXTENSIONS OF TIME OR OTHER RELIEF**

- 4.1 Notwithstanding the terms of the Infraco Contract, the Parties have agreed that the Infraco's sole entitlement to payment and extension of time in relation to Planned Sectional Completion Date A or other relief in respect of
- (i) the Materials and Equipment, Prioritised Works (including the Preliminaries) and matters covered by Certificates 1, 2 and 3 (A, B and C), and
  - (ii) the impact of the Materials and Equipment and Prioritised Works on the Infraco Works

shall be as set out in this Minute of Variation.

- 4.2 Notwithstanding the terms of clause 4.1:-
- 4.2.1 all entitlements of the Parties arising prior to and after the conclusion of this Minute of Variation (including, without prejudice to the foregoing generality, entitlements to payment, extension of time and relief) in respect of the Tram Supply Obligations and the Tram Maintenance Services shall be determined as though this Minute of Variation had not been concluded; and
- 4.2.2 nothing in this Minute of Variation shall operate to exclude, restrict or prejudice all and any claims of the Parties arising prior to and after this Minute of Variation under the terms of the Infraco Contract in respect of the Tram Supply Obligations and the Tram Maintenance Services, determined as though this Minute of Variation had not been concluded.

**5 AMENDMENT TO THE PROGRAMME**

- 5.1 The Parties have agreed that from the Prioritised Works Commencement Date:
- 5.1.1 the Prioritised Works shall be carried out in accordance with the Prioritised Works Programme;
- 5.1.2 the Planned Sectional Completion Date Section A shall be amended to 16 December 2011; and
- 5.1.3 the definition of Section A in Schedule Part 1 of the Infraco Contract shall be deleted and replaced with:

"means the completion of the Depot (including energisation) excluding the area east of the Depot Access Bridge as shown on drawing ULE90130-06-DEP-00016 Rev6 overmarked and included in Schedule Part 2"

- 5.2 Any embargo on working as provided for in Schedule Part 3 (*Code of Construction Practice*) of the Infraco Contract shall not apply to the carrying out of the Prioritised Works to the extent it would be inconsistent with the Prioritised Works Programme.
- 5.3 Notwithstanding the terms of this Clause 5, Infraco shall not be required to commence any part and/or parts of the Prioritised Works in accordance with the Prioritised Works Programme until tie has provided or procured any Outstanding Consents required and/or possession and/or access to all work areas reasonably required to allow Infraco to commence and/or proceed with any such part and/or parts of the Prioritised Works in accordance with the Prioritised Works Programme.
- 5.4 The Prioritised Works Programme and the activity durations therein shall be updated and extended by a day in respect of each day in which tie fails to procure any Outstanding Consents required and/or possession and/or access to work areas by the date on which such Prioritised Works are scheduled to commence and/or proceed in accordance with the Prioritised Works Programme.
- 5.5 The Prioritised Works Programme will be updated to reflect any Change in accordance with Clause 10 and Schedule Part 7 (Change Procedure).

## 6 CERTIFICATE 1 - FIRST MATERIALS AND EQUIPMENT AND FIRST PAYMENT

- 6.1 On 15 April 2011 the Certifier issued a certificate (Certificate 1 – First Materials and Equipment and First Payment Certificate) to Infraco and tie, certifying payment of the agreed sum of £27,000,000 (payable as £7,500,000 to BBUK and £19,500,000 to Siemens. Such payments shall be made by tie on 22 April 2011 and transfer of ownership in and unencumbered title to such Materials and Equipment by Siemens to CEC shall be made on the date of receipt of payment by Siemens.
- 6.2 The Parties acknowledge that not all of the Materials and Equipment may be required as part of the Infraco Works. tie/CEC shall make the Materials and Equipment, or any part thereof, transferred or vested in CEC pursuant to this Clause 6 or Clause 8 available to Infraco to incorporate as part of the Prioritised Works as required pursuant to the Infraco Contract. Siemens warrants that the Materials and Equipment meet the Employer's Requirements on the date such Materials and Equipment are vested in CEC.
- 6.3 The Parties acknowledge that tie/CEC has the right to carry out an inspection at reasonable times on Site in respect of all the Materials and Equipment to be transferred to or vested in CEC pursuant to this Clause 6 or Clause 8.

## 7 CERTIFICATE 2 - SECOND PAYMENT

By 3 May 2011 tie, BBUK and Siemens shall request that the Certifier shall issue a certificate in accordance with the Certifier Agreement (Certificate 2 – Second Payment Certificate) to Infraco and tie, certifying payment of the agreed sum of £9,000,000 (payable as £5,000,000 to BBUK and £4,000,000 to Siemens) and payment shall be made by tie to Infraco of the amount certified on 17 May 2011.

## 8 CERTIFICATE 3 (A, B and C) - SECOND MATERIALS AND EQUIPMENT

- 8.1 On 15 June 2011 tie, BBUK and Siemens shall request that the Certifier issues a certificate in accordance with the Certifier Agreement (Certificate 3A – Second Materials and Equipment) to Infraco and tie, certifying payment of the agreed sum of £4,334,000 (payable as £4,334,000 to Siemens) in respect of an agreed second payment to Siemens in respect of the transfer to CEC of ownership in and unencumbered title to such Materials and Equipment identified in the relevant Vesting Certificate. Such payment and transfer shall be made by tie and Infraco respectively on the later of (i) 29 June 2011, and (ii) the date of receipt by CEC of the relevant Vesting Certificate duly executed by Siemens.

8.2 On 13 July 2011 tie, BBUK and Siemens shall request that the Certifier issues a certificate in accordance with the Certifier Agreement (Certificate 3B – Second Materials and Equipment) to Infraco and tie, certifying payment of the agreed sum of £4,333,000 (payable as £4,333,000 to Siemens) in respect of an agreed third payment to Siemens in respect of the transfer to CEC of ownership in and unencumbered title to such Materials and Equipment identified in the relevant Vesting Certificate. Such payment and transfer shall be made by tie and Infraco respectively on the later of (i) 27 July 2011 and (ii) the date of receipt by CEC of the relevant Vesting Certificate duly executed by Siemens.

8.3 On 10 August 2011 tie, BBUK and Siemens shall request that the Certifier issues a certificate in accordance with the Certifier Agreement (Certificate 3C – Second Materials and Equipment) to Infraco and tie, certifying payment of the agreed sum of £4,333,000 (payable as £4,333,000 to Siemens) in respect of an agreed fourth payment to Siemens in respect of the transfer to CEC of ownership in and unencumbered title to such Materials and Equipment identified in the relevant Vesting Certificate. Such payment and transfer shall be made by tie and Infraco respectively on the later of (i) 24 August 2011 and (ii) the date of receipt by CEC of the relevant Vesting Certificate duly executed by Siemens.

#### 8A INTELLECTUAL PROPERTY RIGHTS

8A.1 The Parties acknowledge and agree that in relation to the Infraco IPR in the Materials and Equipment only reference to the Infraco Works in Clause 102.2.2 of the Infraco Contract shall be replaced by reference to the construction and completion of Phase 1a (excluding the spur at Roseburn Junction).

8A.2 The Parties acknowledge and agree that provided that tie has made payment in full pursuant to Clauses 8.1, 8.2 and 8.3 of this Minute of Variation nothing in Clause 102.4 of the Infraco Contract shall prevent the use of Materials and Equipment by tie in relation to the construction and commissioning of Phase 1a (excluding the spur at Roseburn Junction) following termination of the Infraco Contract provided that tie may not use such rights to design, construct, manufacture, commission or procure any materials and equipment.

#### 9 PAYMENT FOR THE PRIORITISED WORKS

9.1 Subject to the terms of this Minute of Variation tie shall pay to Infraco the Fixed Sum Prioritised Works Price and the Target Price Prioritised Works Price for the carrying out and completion of the Prioritised Works.

9.2 On each Valuation Date the Parties shall request that the Certifier shall certify in accordance with the Certifier Agreement:

9.2.1 the completion of each Fixed Sum Prioritised Works Milestone which has been completed since the last Valuation Date; and

9.2.2 the completion of each Target Price Prioritised Works Milestone which has been completed since the last Valuation Date,

and the Parties acknowledge that the Certifier shall, on the same date issue a certificate ("**Valuation Certificate**") to tie and Infraco pursuant to the Certifier Agreement.

9.3 On receipt of a Valuation Certificate Infraco shall submit a valid VAT invoice to tie and payment will become due to the Infraco on receipt by tie of such valid VAT invoice. The final date for payment by tie to the Infraco shall be the date occurring 14 calendar days after receipt by Infraco and tie of the Valuation Certificate (provided a valid VAT invoice has been received by tie from Infraco).

9.4 Any certificate issued by the Certifier pursuant to this Minute of Variation and /or the Certifier Agreement and any assessment pursuant to Clause 9.6 below, shall be final and binding on the Parties except in the case of manifest error or fraud.

- 9.5 All sums expressed or referred to in this Minute of Variation and all sums due under certificates issued by the Certifier pursuant to this Minute of Variation and /or the Certifier Agreement are stated exclusive of Value Added Tax thereon. In addition to payments due under this Minute of Variation and such certificates tie shall in addition pay to the Infraco any Value Added Tax properly chargeable by Infraco thereon.
- 9.6 Preliminaries shall be deemed to be a time based payment and shall be certified for payment once the relevant time period has elapsed without the need for further valuation or substantiation.
- 9.7 For the avoidance of doubt, where pursuant to the terms of the Certifier's Agreement the Certifier makes an assessment that the Prioritised Works are in delay as a result of circumstances in respect of which tie is responsible for delay, Preliminaries shall be certified for payment as set out in Clause 9.6.
- 9.8 Notwithstanding the foregoing, to the extent that Infraco does not progress the Prioritised Works in accordance with the Prioritised Works Programme and to the extent that tie is not responsible for such lack of progress, the Certifier shall make a reasonable assessment of the Preliminaries properly due to Infraco and the same shall be certified for payment.

**10 TOTAL PRICE**

- 10.1 The Parties agree that the Fixed Sum Prioritised Work Price and all sums payable by tie pursuant to Clauses 6, 7 and 8 of this Minute of Variation shall comprise part of the Total Price.
- 10.2 The Parties agree that the Target Price Prioritised Works Price shall comprise part of the Target Price.
- 10.3 Save as hereinafter provided for, the Parties agree that the Change Procedure will, in the period from the date of this Minute of Variation to the Relevant Date apply to all Changes and that Clause 80 of the Infraco Contract shall be dis-applied for the period from the date of this Minute of Variation to the Relevant Date. Nothing in the Change Procedure shall operate to establish the entitlements of Infraco in relation to the Tram Supply Obligations and the Tram Maintenance Services.
- 10.4 The Parties acknowledge that where there is a Change, the Total Price and/or the Target Price shall be adjusted to reflect the value of the tie Change Order.

**11 EXCESS TRAMS**

Infraco agrees to provide such assistance as may be reasonably required to enable tie/CEC to sell, lease or otherwise deal with any Trams which are in excess of the current requirements of tie for that part of the Edinburgh Tram Network running from the Airport to St Andrews Square, subject to agreement between the Parties on terms including reasonable payments on commercial terms to be paid to Infraco for modification of the Trams and assistance as previously described, with it being acknowledged also that any external costs to Infraco arising from these matters are not for the account of Infraco.

**12 MAR HALL CONFIDENTIALITY AGREEMENT**

The Parties acknowledge and agree to remain bound by the provisions of the Mar Hall Confidentiality Agreement entered into on behalf of each of them on 8 March 2011.

**13 COMMUNICATIONS PROTOCOL**

By their execution of this Minute of Variation the Parties agree that the preparation of any required statement shall be prepared by CEC and provided to Infraco for approval, such approval not to be unreasonably withheld or delayed. tie acknowledges that Infraco are

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required to seek relevant company head quarters final approval for release of any such statement, such approval not to be unreasonably withheld or delayed.

**14 MORATORIUM**

14.1 The Parties agree that provided that MoV5 is entered into:

14.1.1 tie/CEC will not terminate the Infraco Contract on the basis of any Remediable Termination Notices and/or Underperformance Warning Notices served prior to 12 March 2011 or on any of the same facts and circumstances identified therein to the extent that such facts and circumstances existed on the date of execution of this Minute of Variation; and

14.1.2 all existing claims and further claims by Infraco under the Infraco Contract which relate to events which occurred prior to entering into of this Minute of Variation will not be prosecuted; and

14.1.3 tie/CEC shall not seek to recover liquidated and ascertained damages in respect of any delay in achieving the Planned Sectional Completion Dates in the Infraco Contract or the Agreed Tram Commissioning Dates in the Infraco Contract/Tram Supply Agreement.

14.2 Neither Party shall:

14.2.1 Without prejudice to Clause 4.2, bring a claim against the other Party under the Infraco Contract to the extent that such claim arises out of any act or omission of the other Party where such Party is acting in compliance with its obligations under the Infraco Contract as amended by this Minute of Variation; and/or

14.2.2 seek to deny (i) a claim; or (ii) prevent the exercise of rights or compliance with obligations, under the Infraco Contract to the extent that any relevant provisions in the Infraco Contract have not been complied with in relation to any timing or submission requirements during the period between 24 February 2011 and the Relevant Date. Any period stated in the Infraco Contract in relation to such claim or exercise of rights or compliance with obligations shall be deemed to commence or recommence, as the case may be, on the Relevant Date.

14.3 The Parties agree that all existing Disputes notified by either Infraco or tie under the Dispute Resolution Procedure set out in Schedule Part 9 (*Dispute Resolution Procedure*) to the Infraco Contract shall be effectively stayed or "frozen" until 2 July 2011. Unless the Parties agree otherwise at any time after 2 July 2011 either Infraco or tie shall be entitled to serve notice on the other of its intention to recommence any of the existing Disputes, the Dispute recommencing 7 calendar days following the service of such notice. Should this occur, the Parties agree that no issue shall arise in relation to any failure by either Infraco or tie to comply with the timescales set out in Schedule Part 9 (*Dispute Resolution Procedure*) of the Infraco Contract, during the period of suspension and/or as a consequence of this period of suspension.

**15 KEY SUB-CONTRACTORS**

15.1 Each Infraco Member may appoint Key Sub-Contractors to carry out any part of the Prioritised Works and/or Infraco Works. The Parties acknowledge that there shall be no requirement for each Infraco Member to be a party to any sub-contract with any Key Sub-Contractor.

15.2 Each Infraco Member shall be free to choose the form of sub-contract for the Prioritised Works and/or Infraco Works to be entered into with each Key Sub-Contractor and tie/CEC shall have no entitlement to impose any restrictions on the management or replacement of the Key Sub-Contractors. Such sub-contracts shall contain reasonable obligations on the relevant Key Sub-Contractor in relation to health and safety.

**16 PRESERVATION OF RIGHTS**

- 16.1 Subject to Clause 16.2 each Party preserves its rights and remedies in relation to any existing breach or other claim under the Infraco Contract as amended by this Minute of Variation as at the date of entering into this Minute of Variation (whether known or not at the date of execution of this Minute of Variation). The Parties further acknowledge that save to the extent varied by this Minute of Variation their respective rights and obligations in respect of the Infraco Works to the extent performed to date (other than works which will be remedied by the Princes Street Remedial Works forming part of the Prioritised Works) shall subsist.
- 16.2 The Parties agree and acknowledge that:
  - 16.2.1 the Fixed Sum Prioritised Works Price, includes a time related payment for the period during which the Prioritised Works are being undertaken which will be taken into account in any future determination of Infraco's entitlement to prolongation costs (if any) in the event of termination of the Infraco Contract pursuant to Clause 3.3 or otherwise;
  - 16.2.2 the Planned Sectional Completion Date Section A shall be as amended pursuant to Clause 5.1.2.

**17 DISPUTES**

The Parties agree that any dispute, difference or unresolved claim between the Parties in connection with or arising from this Minute of Variation shall be dealt with in accordance with the provisions set out in Schedule Part 9 (*Dispute Resolution Procedure*) of the Infraco Contract save that the Internal Resolution Procedure and paragraph 10 of that Schedule Part 9 shall be amended such that the Joint Project Forum described in the Governance Structure shall take the place of the respective Chief Executives (or equivalent) of tie and Infraco respectively.

**18 VARIATION**

This Minute of Variation is a variation to the Infraco Contract for the purposes of Clause 108 (*Variations to be in Writing*) of the Infraco Contract.

**19 LAW AND JURISDICTION**

Clause 117 (*Applicable Law*) of the Infraco Contract applies.

**IN WITNESS WHEREOF** these presents on this and the preceding 10 pages together with the Schedule in 10 Parts which is annexed and subscribed as relative hereto are executed as follows:

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

at

on 2011 by:

Authorised Signatory

Full Name

Witness Signature

Full Name

Address

[Redacted Signature Area]

Victor Reginald Emery

[Redacted Signature Area]

Elizabeth McKabe

[Redacted Address Area]

**EXECUTED for and on behalf of BILFINGER  
BERGER CIVIL UK LIMITED**

at *EDINBURGH*

on *20 MAY* 2011 by:

Authorised Signatory

Full Name

Witness Signature

Full Name

Address

[Redacted]

*MARTIN FUEROER*

[Redacted]

*CHRISTOPHER OWENS*

[Redacted]

**EXECUTED for and on behalf of SIEMENS PLC**

at *Edinburgh*

on *20 May* 2011 by:

Authorised Signatory

Full Name

Witness Signature

Full Name

Address

[Redacted]

*Alfred Brandelburger*

[Redacted]

*PATRICK SCULLY*

[Redacted]

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

at *Edinburgh*

on *20<sup>th</sup> May* 2011 by:

Authorised Signatory

Full Name

Witness Signature

Full Name

Address

[Redacted]

*ANTONIO M. CAMPOS*

[Redacted]

*SAVIN HSE PATON*

[Redacted]

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING MINUTE OF VARIATION

PART 1

PROGRAMME OF PRIORITISED WORKS

Handwritten signature and initials in the bottom right corner. The signature appears to be 'A. J.' with a flourish, and below it are the initials 'A. J.' and '11/10'.

**NARRATIVE TO ACCOMPANY THE PROGRAMME PREPARED FOLLOWING THE MEDIATION ON 8 to 12 MARCH 2011 Revision 3, revised 6 May 2011.**

Note: The Programme has been revised to accommodate the agreements reached between the parties on the scope and schedule of works to be undertaken on Princes Street.

**Prioritised Works**

Works commenced on 3 May 2011 following the agreement of the form of MoV 4, with the exception of the mini test track and the Depot external works which recommenced on 4 April 2011 and the works on Princes Street which are programmed to commence on 2 July 2011.

Princes Street

The Programme is based on the programme assumption that the whole of Princes Street shall be available and that there will be no interruption of a summer Embargo, i.e. Full Closure of Princes Street from 2 July 2011 until 26 November 2011. Further, there is no allowance in the programme for dealing with utility works or delay resulting therefrom. Completion is subject to the assumption that there is no slippage due to adverse or severe weather.

Scope

1. Princes Street Road/Rail Joint – Enhanced Design

The works involve the removal and replacement of bituminous surfacing adjacent to the rails on Princes Street with coloured concrete to try and match the adjacent asphalt road surface. All road markings, road studs and areas of Antiskid/Coloured Surfacing within the areas that are affected by the works will be replaced / reinstated.

The length of the works is as detailed below.

Inbound Track (East Bound Carriageway)

- Section 1C Chainage 121,370 - Chainage 121,976
- Section 1D Chainage 130,000 - Chainage 130,380

Outbound Track (West Bound Carriageway)

- Section 1C Chainage 121,374 - Chainage 121,980
- Section 1D Chainage 130,000 - Chainage 130,380

July 2011: Works will commence on the tram tracks on the south side of Princes Street, involving planing to a depth of 250mm along the entirety of the street with planing machines working from both ends. Work will subsequently be carried out to infill the area around the tram rails with reinforced concrete. The north side road lanes, during this time will remain open to pedestrians and delivery vehicles, up until the end of the festival period. The south side footpath will remain open throughout the remedial works.

September 2011: Following the Summer Festival fireworks, work will also commence to plane to a depth of 250mm along the north side lanes of Princes Street, and infill the area around the tram rails with concrete.

End November 2011: All work on Princes Street will cease for the duration of the Christmas/New Year shopping season and the areas where construction has not been completed will be temporarily surfaced and the site compound will be removed. Princes Street will remain pedestrianised.

January 2012: Work will recommence on Princes Street to complete the reinforcement of the outstanding section of tram track and carry out ancillary work, erecting overhead line poles, associated equipment and to install the street furniture at the tram stop.

Early May 2012: Target completion date.

## 2. OLE Works & Street Lighting

OLE Foundations within the section from Hanover Street to Waverley Junction (7 nr) and South Charlotte Street to Lothian Road (4 nr) will be completed. Note there are utility/basement/design conflicts associated with these foundations that require resolution. All OLE poles will be erected and street lighting installed.

## 3. Tram Stop

The tramstop finishes will be completed but no furniture including the shelter, PID, bins etc will be installed.

## 4. Scottish Water

Completion of works from the original phase of construction works and includes provision of additional crossing due to OLE conflict. The pipework is in place and only the connection has to be completed. Notifications and SW requirements may affect the actual start date.

## 5. BT

BT remedial works in the area of South St David Street will be completed.

## 6. Chambers

The remedial works will commence after 2 July 2011 and be completed.

## 7. Finishes

All outstanding works to footways, pedestrian barrier, signs and track drainage will be completed.

## Haymarket Viaduct

The Track is to be constructed from the tangent point at the end of the straight section of track at the eastern end of Haymarket Viaduct to the tangent point at inbound track Chainage 200,260 and the tangent point at outbound track Chainage 200,207 and the road fully reinstated. Prioritised Works to Haymarket Viaduct is restricted to that necessary to lay the tracks including the concrete infill of the Rheda City track construction. (N.B. construction work on track curves must start and finish at tangent points).

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Although the track bed is constructed in the second phase of traffic management, a third phase of traffic management is required (that can only take place after phases 1 & 2) to complete the outbound track (Chainage 200,207 to 200,260) that runs in Haymarket Yards. This third phase is not part of the Prioritised Works.

Depot Access Bridge

Construction continues and is anticipated to be complete in May 2011.

The Depot

Internal work on the Depot Building continues. External works recommenced on 4 April 2011. The Depot Building will be available to take delivery of up to the first five trams from 15 October 2011 following the issue by tie of a partial completion certificate in respect of the Depot Building. The trams will be unloaded on track 15 and stabled inside the Depot Building. The unloading and shunting activities of each tram into the Depot Building shall be within reasonable times agreed between BB, Siemens and CAF to minimise the disruption of the Prioritised Works.

The works in the Depot area to the east of the Depot Access Bridge that become redundant once the Edinburgh Gateway is instructed have been deleted from the Programme and hence "Section A" needs to be redefined. The Depot (excluding area east of Depot Access Bridge) will be available to take delivery of any further trams from 16 December 2011 following the issue by tie of a completion certificate in respect of Section A. Note warrantee period commences with the issue of the completion certificate. This will involve handover of Depot and commencement of handover procedures with the Operator.

To create a Programme that represents a complete scope of works, provisional activities have been added to represent what may require construction under the Edinburgh Gateway. The duration and logic applied to these activities is provisional only. The actual impact of the Edinburgh Gateway on the Programme can only be determined once the works are instructed and the appropriate IFC drawings are available.

Mini Test Track

To achieve the shortest programme period the mini test track constitutes a single track on the inbound track from chainage 531,230 to 531,800. These locations are determined by the OHLE design. This track will be connected to the depot via the depot west entrance switch. A temporary Overhead Catenary System will be installed using the final back stay at chainage 531,749 at the west end and a new back stay to be installed around chainage 531,260 in the east end of the mini test track. This will result in an energised and usable track of about 400m. The period reflected in the programme includes a 2 week period for energisation tests. A temporary Overhead Catenary System will be designed and implemented on the east side of the Depot Access Bridge to enable all tracks within the Depot to be energised. The additional costs associated with implementing this temporary Overhead Catenary System to accommodate energisation of the mini test track will need to be agreed. This temporary Overhead Catenary System will be replaced at a later time with the permanent Overhead Catenary System when the Edinburgh Gateway has been designed and constructed.

The Edinburgh Gateway works also prevent the installation of the final radio mast in time to be available for the operation of the mini test track.

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The programme considers that for all works adjacent to the mini test track and the final works on the mini test track area will be executed under normal construction conditions, without any restrictions. Therefore this track cannot be permanently used for testing purposes until the final installation is completed.

#### A8 Underpass

Phases 1, 2 and 4 are programmed to recommence on 3 May 2011.

#### Auxiliary Items

The Programme includes for the following auxiliary items:

- Additional Testing in Murrayfield Corridor
- Water of Leith Sewer Lining Works
- Demolition of Plots 97/102
- Testing of Contamination
- Advanced Site investigation Works in Section 1C/1D

#### **Remaining Off Street Works**

The remaining off street works are programmed to commence on or about 2 September 2011 following the signing of a further MoV by 01 July 2011.

The CAF works no longer form part of the programme however periods have been allowed for their works as previously advised by CAF to allow calculation of the dates for Planned Sectional Completion Section A and Planned Sectional Completion Section B.

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## General

The data date of the programme is 31 March 2011. For work activities currently under construction their anticipated actual progress at 31 March 2011 has been taken as the start point of the programme.

The programme for the works recognises the allowed working hours stated in the Code of Construction Practice of 0700 to 1900 Monday to Friday and 0800 to 1300 on a Saturday. However a 40 hour effective working week has been used to calculate the duration of activities to take account of rest breaks, un-exceptional weather delays and travel between work sites. Construction work will be required outside the hours stated in the Code of Construction Practice for Rail Possessions, work on busy road junctions, stringing catenary cables etc. The necessary approvals will be sought in advance for such works in accordance with the tender documents and the programme assumes that such approval will be granted as necessary to maintain the programme.

Assumptions and factual statements upon which the programme has been prepared are as set out in this document. General assumptions are as follows.

The programme assumes that all outstanding drawings have been issued at IFC status by the 31 March 2011 (excluding "Roseburn Viaduct" [the structures at Roseburn Street] (20 June 2011) and the redesign of S21B, C and D (16 May 2011))

The programme assumes that all Third Party approvals / licenses will be in place for these works to commence and proceed as shown.

Detailed programmes are available for all structures. The programme shows summaries of these programmes.

The construction works in general are subject to Network Rail approval. An eleven week period has been assumed for all Network Rail WPP and form C approvals, which includes a three week "cooling off period" for the WPP. The Programme generally shows the latest dates for these approvals.

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Programme following Mediation

on 8 - 12 March 2011 (110506)

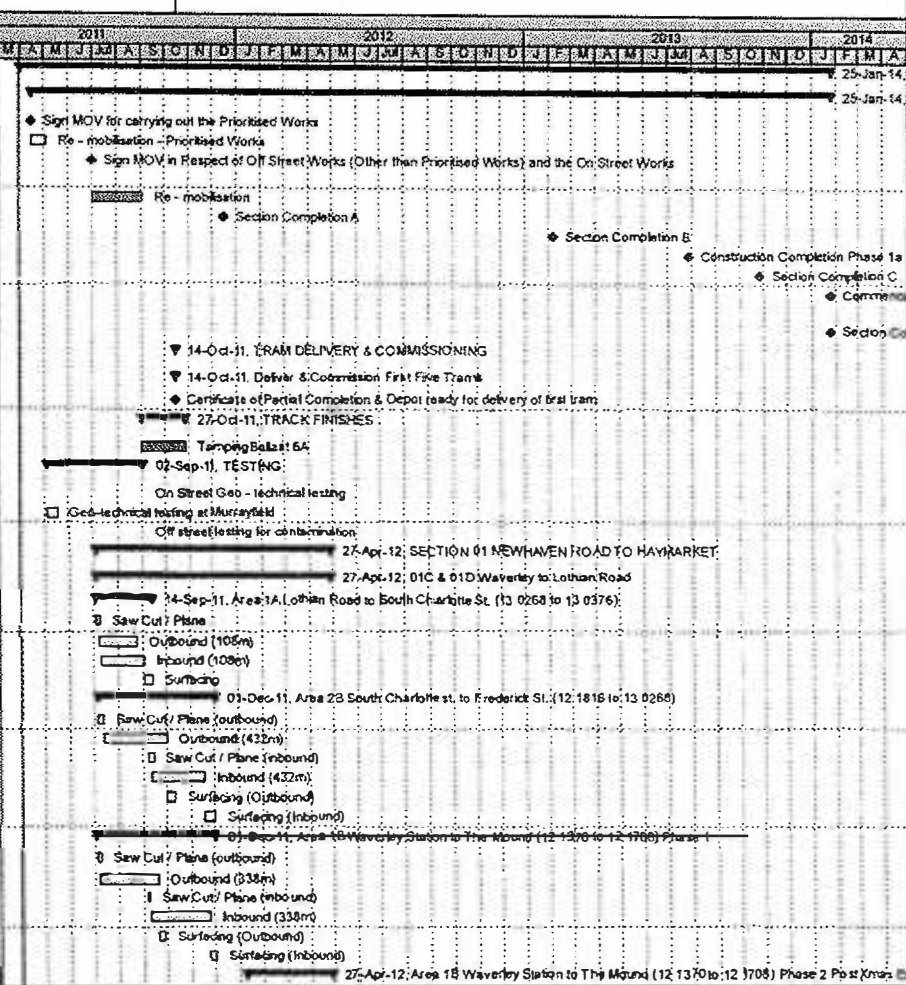
Prioritised Works

EDINBURGH TRAM NETWORK

BILFINGER BERGER SIEMENS CAF  
Civil

06-May-11 14:03

Activity ID	Activity Name	Original Duration	Start	Finish	Total Float
<b>Programme following Mediation 8-12 March 2011 rev 3 (Prioritised Works)</b>					
692		692	31-Mar-11	25-Jan-14	65
<b>KEY DATES</b>					
1060	Sign MOV for carrying out the Prioritised Works	0	15-Apr-11*	15-Apr-11*	0
1070	Re - mobilisation - Prioritised Works	10	15-Apr-11	03-May-11	120
1000	Sign MOV in Respect of Off Street Works (Other than Prioritised Works) and the On Street Works	0	01-Jul-11*	01-Jul-11*	0
1050	Re - mobilisation	44	01-Jul-11	02-Sep-11	0
313	Section Completion A	0	16-Dec-11*	16-Dec-11*	0
314	Section Completion B	0	07-Feb-13*	07-Feb-13*	0
281	Construction Completion Phase 1a Edinburgh Airport to Haymarket	0	28-Jul-13	28-Jul-13	75
315	Section Completion C	0	27-Oct-13	27-Oct-13	106
310	Commencement of Revenue Service Phase 1a Edinburgh Airport to Haymarket	0	25-Jan-14	25-Jan-14	106
325	Section Completion D	0	25-Jan-14	25-Jan-14	106
<b>TRAM DELIVERY &amp; COMMISSIONING</b>					
0	14-Oct-11	14-Oct-11	254		
Deliver & Commission First Five Trams					
0	14-Oct-11	14-Oct-11	254		
CAF-01 Certificate of Partial Completion & Depot ready for delivery of first trams					
0	14-Oct-11	14-Oct-11	254		
<b>TRACK FINISHES</b>					
A20000	Tamping Ballast 6A	40	01-Sep-11	27-Oct-11	0
0	01-Sep-11	27-Oct-11	0		
<b>TESTING</b>					
1C-15/16-1210	On Street Geo - technical testing	36	03-May-11	02-Sep-11	0
5A-11-S218;21D-19	Geo-technical testing at Murrayfield	30	03-May-11	17-May-11	120
2/5/7-15/16-1220	Off street testing for contamination	43	04-Jul-11	02-Sep-11	0
<b>SECTION 01 NEWHAVEN ROAD TO HAYMARKET</b>					
202	04-Jul-11	27-Apr-12	354		
<b>01C &amp; 01D Waverley to Lothian Road</b>					
202	04-Jul-11	27-Apr-12	354		
<b>Area 1A (Edinburgh Road to South Charlotte St (13 0268 to 13 0376))</b>					
51	04-Jul-11	14-Sep-11	504		
1C-15/16-1060	Saw Cut / Plane	4	04-Jul-11*	08-Jul-11	484
1C-15/16-1090	Outbound (108m)	33	07-Jul-11	24-Aug-11	504
1C-15/16-1100	Inbound (108m)	38	11-Jul-11	02-Sep-11	504
1C-15/16-1150	Surfacing	8	02-Sep-11	14-Sep-11	504
<b>Area 2B South Charlotte St to Frederick St (12 1816 to 13 0268)</b>					
04	08-Jul-11	01-Dec-11	449		
1C-15/16-1110	Saw Cut / Plane (outbound)	6	06-Jul-11	14-Jul-11	484
1C-15/16-1120	Outbound (432m)	56	13-Jul-11	30-Sep-11	484
1C-15/16-1290	Saw Cut / Plane (inbound)	6	05-Sep-11*	13-Sep-11	449
1C-15/16-1130	Inbound (432m)	49	12-Sep-11	18-Nov-11	449
1C-15/16-1125	Surfacing (Outbound)	8	30-Sep-11	12-Oct-11	484
1C-15/16-1160	Surfacing (Inbound)	8	18-Nov-11	01-Dec-11	449
<b>Area 1B Waverley Station to The Mound (12 1370 to 12 1708) Phase 1</b>					
04	04-Jul-11	08-Jul-11	495		
1C-15/16-1140	Saw Cut / Plane (outbound)	4	04-Jul-11*	08-Jul-11	495
1C-15/16-1170	Outbound (338m)	52	07-Jul-11	20-Sep-11	495
1C-15/16-1300	Saw Cut / Plane (inbound)	4	05-Sep-11*	09-Sep-11	0
1C-15/16-1180	Inbound (338m)	54	08-Sep-11	23-Nov-11	0
1C-15/16-1135	Surfacing (Outbound)	5	20-Sep-11	27-Sep-11	495
1C-15/16-1190	Surfacing (Inbound)	5	23-Nov-11	01-Dec-11	6
<b>Area 1B Waverley Station to The Mound (12 1370 to 12 1708) Phase 2 Post Xmas</b>					
04	04-Jul-11	08-Jul-11	495		



Date	Revision	Checked	Approved
02-Feb-11	Revision 0	SCS/MHE	BSC
16-Feb-11	Revision 1	SCS/MHE	BSC
18-Feb-11	Revision 2	SCS/MHE	BSC
06-May-11	Revision 3	SCS/MHE	BSC

Actual Work  
 Remaining Work  
 Critical Remaining Work  
 Milestone  
 Summary

BFB00096810\_0022

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