

MINUTE OF AGREEMENT

BETWEEN

BILFINGER BERGER CIVIL UK LIMITED a company incorporated in England and Wales under number 02418086 and having its registered office at 7400 Daresbury Park, Warrington, Cheshire, WA4 4BS ("BBUK") which expression shall include its successors, permitted assignees and transferees; and

PARSONS BRINCKERHOFF LIMITED a company registered in England (registered number 2554514) whose registered office is Amber Court, William Armstrong Drive, Newcastle Business Park, Newcastle upon Tyne, NE4 7YQ. (hereinafter referred to as "PB" or "SDS Provider") which expression shall include its successors, permitted assignees and transferees

WHEREAS

- A. BBUK requires the SDS Provider to provide some additional design services and resource in connection with the completion of the design for the Edinburgh Tram Network in order to comply with Infracore's duty to mitigate under the Infracore Contract and SDS have agreed to provide those services.
- B. PB entered into an agreement with tie on 19 September 2005 (the SDS Agreement), where PB was appointed as the SDS Provider to provide the system design services in connection with the Edinburgh Tram Network.
- C. tie and Infracore agreed, with the consent of PB, that the Infracore take over the rights and liabilities of tie under the SDS Agreement by novating the SDS Agreement from tie to Infracore on 14 May 2008 (the SDS Novation Agreement).

NOW, it is hereby agreed as follows:

1. This agreement comprises:

- 1.1 Clauses 1 - 19
- 1.2 **Appendix 1** - Information Requirements;
- 1.3 **Appendix 2** - Design Basis Assumptions;
- 1.4 **Appendix 3** - Schedule of Identified Design Changes not yet instructed by tie;
- 1.5 **Appendix 4** - Design Completion Schedule;
- 1.6 **Appendix 5** - Remuneration Matrix;
- 1.7 **Appendix 6** - Progress Monitoring and Payment Mechanism;



The following words and phrases shall have the following meanings for the purposes of this Agreement:

"Design Deliverable Package" means each group of design deliverables making up each of the design deliverable packages set out in the Design Completion Schedule.

"Design Milestone Targets" means the targets set out in the Design Completion Schedule.

2. PB shall provide such additional resource as may be required to complete and shall (i) complete each of the Design Deliverable Packages and (ii) achieve each of the Design Milestone Targets, by the date set out in the **Appendix 4** (Design Completion Schedule), all in accordance with the process set out in **Appendix 6** (Progress Monitoring and Payment Mechanism) on the terms and conditions set out in the SDS Agreement as and the SDS Novation Agreement.
3. This Agreement does not alter, amend or otherwise operate as a waiver by either Party of the rights and/or obligations of either Party under the SDS Agreement and/or the SDS Novation Agreement which shall continue in full force and effect notwithstanding the terms of this Agreement.
4. The Parties acknowledge that at the date of execution of this Agreement, there is information and/or design input required by each Party [and Siemens] to facilitate the performance of the respective obligations by the remaining Parties. This information and/or design input, along with the responsible Party and the due date is provided at **Appendix 1**.
5. The Parties acknowledge that failure to comply with the provisions of **Appendix 1** may prevent the successful achievement of the Design Milestone Targets for the Design Deliverable Packages as per **Appendix 4**.
6. It is accepted by the Parties that to fix the terms of this Agreement against a developing factual background, Design Basis Assumptions have been agreed as provided at **Appendix 2**.
7. The Parties acknowledge that in order to complete the Design Deliverable Packages and achieve the Design Milestone Targets by the dates set out in **Appendix 4**, it is necessary to consider certain items that have been identified by the SDS Provider as being a variation to the Services. These items together with their assessed value are listed in **Appendix 3**.
8. In order to allow the Design Deliverable Packages to be completed in the absence of agreement between the Parties as to whether or not the items set out in **Appendix 3** are variations to the Services to be provided by the SDS Provider under the SDS Agreement, each item identified by the SDS Provider is categorised in **Appendix 3** as follows:

Type A: Changes accepted in principle for which the BBUK shall pay the SDS Provider 100% of the amount contained in **Appendix 3** plus the balance of any greater amount which SDS may eventually be entitled to recover from Infracore under the SDS Agreement.

Type B: Changes requiring further clarification for which BBUK shall pay 75% of the amount contained in **Appendix 3** plus the balance of any greater amount which SDS may eventually be entitled to recover from Infracore under the SDS Agreement.

9. The SDS Provider acknowledges that in order for Infracore to be able to pursue its entitlements under the Infracore Contract in respect of the items identified in **Appendix 3** they rely on the SDS Provider's ability to substantiate the variations it is claiming for and the SDS Provider agrees to take all measures and provide all information which Infracore may require to obtain the acceptance that the items in **Appendix 3** are tie Changes under the Infracore Contract.
10. The SDS Provider shall provide all Design Deliverables in accordance with **Appendix 4** and **Appendix 6**.
11. The SDS Provider shall receive remuneration in those amounts detailed in **Appendix 5**, as follows:
 - Item 5.1: subject to achievement of the milestones defined in **Appendix 4** and fulfilment of the requirements included in **Appendix 6**; and
 - Item 5.2: in accordance with the SDS Agreement and SDS Novation Agreement.
12. The remuneration detailed in **Appendix 5** represents the SDS Provider's sole entitlement under this Agreement and the SDS Provider acknowledges and agrees that no additional claims for payment will be made in connection with the provision of its services under this Agreement.
13. Monitoring of the process, agreement of milestone achievement, payment of remuneration and the resolution of any disagreements shall be undertaken by the Supervising Committee in accordance with **Appendix 6**.
14. The Parties shall undertake milestone achievement reviews at the end of each milestone period as defined in **Appendix 4**.
15. The Parties shall review satisfactory achievement of the Design Milestone Targets at the end of every second milestone period and shall agree to continue or terminate the SDS Provider's services under this Agreement. Termination shall be confirmed by written notice.
16. In the event of such termination in accordance with paragraph 15, the termination shall be with immediate effect and the SDS Provider shall be entitled to receive only that remuneration for previous Design Milestone Groups and only when deliverables are complete as per the requirements of **Appendix 6**.
17. The SDS Provider acknowledges and agrees that it shall not be entitled to any additional entitlements resulting from termination of this Agreement in accordance with paragraph 15.
18. For the avoidance of doubt, the purpose of this Agreement is solely to allow BBUK to mitigate its loss in respect of the late delivery of the design, by means of an extra incentivisation payment to the SDS Provider as per **Appendix 5**, to compensate SDS for an additional amount of design coordination resources. This is without prejudice to either Parties rights or obligations under the SDS Agreement or SDS Novation



Agreement and does not constitute any acceptance by either of the Parties, as to why the SDS design delivery programme is delayed thus far, nor does it constitute any extension of time to the SDS Provider under the SDS Agreement as novated to Infracore. Nothing in this Agreement relieves the SDS Provider from any of its obligations under the SDS Agreement and SDS Novation Agreement or effects the rights or remedies of Infracore against the SDS Provider under such Agreements.

19. This Agreement shall be governed and construed in accordance with Scots Law and the Parties hereby irrevocably submit to the exclusive jurisdiction of the Court of Session in relation to this Agreement.

IN WITNESS WHEREOF the Parties have entered into this Agreement.

Executed for and on behalf of
Bilfinger Berger UK Limited
at Edinburgh on 25 February 2010

Authorised Signatory

Full Name

MARTIN FORDEA

Witness Signature

Full Name

Yousuf Voj

Executed for and on behalf of
Parsons Brinckerhoff Limited
at Edinburgh on 25 February 2010

Authorised Signatory

Full Name

STEPHEN C REYNOLD

Witness Signature

Full Name

KATE SHODALL

Appendix 1 :

Information Requirements

| No | Description | Action By | Date Due |
|----|---|---|------------------------------------|
| 1 | Transition (run on- run off) slabs Details provided | Closed | |
| 2 | Direct fix track on existing structures Existing SDS design to be issued | SDS | 4/12/09 |
| 3 | Depot Column Track Rail fixing dimensions | Siemens | 15/12/09 |
| 4 | Wheel Lathe Track Positions of load application adjacent to wheel lathe pit | Siemens | 27/11/09 |
| 5 | Depot Track layout <ul style="list-style-type: none"> Revise and Issue layout drawings to show correct surfacing Show preferred drainage positions Show tramwash location details Show bogie turntable location Details provided | Closed | |
| 6 | Sanding Plant Confirm status and utility/builders-work details Details provided | Closed | |
| 7 | S&C Layout Drawings Provide general dimensions, construction depth etc | Siemens | 27/11/09 |
| 8 | Point machines Confirm all civil construction requirements Details provided | Closed | |
| 9 | Vibration Floating Track <ul style="list-style-type: none"> Confirm locations – plain line details provided S&C and special track locations Issue cross section details of generic floating slab track Issue cross section details of S&C and special track | Closed Siemens Siemens Siemens | 30/11/09 tba 30/11/09 tba |
| 10 | Trackform/Track Finish Location Schedule Reconcile and reissue chainage schedule. | SDS | 27/11/09 |
| 11 | Depot Passenger Lift Confirm motor heat load/ventilation requirements Details provided | Closed | |

Appendix 2

Design Basis Assumptions

1 Tie/CEC Issues

| No | Details |
|----|--|
| 1 | <p>Section 3 (Phase 1B)</p> <p>Ongoing design work for Section 3 is excluded from the CDC scope. Works will only be progressed if resources are otherwise unoccupied and complete information is received from CEC.</p> |
| 2 | <p>Roads Design, Section 1C2 (Picardy Place)</p> <ul style="list-style-type: none">• Consortium IDC and production of AFC drawings will be progressed on basis of current IFA design (road layout, Picardy Place Tramstop etc). Drawings to be produced without receipt of CEC Roads Approval if not forthcoming,• Design study instructed by Tie Notice of Change 075 (BSC letter 3895, 27/10/09) and expected further instructions will be progressed if resources are available, but are excluded from CDC scope |
| 3 | <p>South Gyle Access Bridge</p> <p>SDS has completed options report and may be requested to do further work but this is excluded from the CDC scope. Existing design, based on utility diversions, will be progressed through Consortium.</p> |
| 4 | <p>CEC or other Approver comments resulting in Change Instructions</p> <p>Changes will be processed commercially by SDS and BSC as normal (estimates, submission of INTC to Tie etc). Instructions to SDS implement changes will specify the timescale – if implementation is instructed within CDC scope, SDS will have opportunity to amend overall programme, otherwise will not be implemented until CDC scope is complete.</p> |
| 5 | <p>Changes to IFC Design to implement TRO Design.</p> <p>Amendment/up-revision of IFC drawings to be consistent with TRO designs (at TRO 1 stage) and ongoing changes being identified by CEC, is excluded from CDC scope. Consortium IDC will be completed on current IFC design excluding TRO amendments. It is accepted that there are impacts to the consortium design (i.e. Grosvenor Street kerb line requiring OLE pole relocation) which may be impacted after CDC.</p> <p>TRO driven changes will implemented by post-CDC revision of the relevant drawings when commercial issues with Tie/CEC are resolved.</p> |
| 6 | <p>Forth ports/Scottish Government Access Gate</p> <p>Potential future change, excluded from CDC scope – treat as specific example of item 4 above.</p> |
| 7 | <p>Gogarburn/RBS Tramstop</p> <p>Complete CDC scope and consortium IDC on basis of tramstop design incorporating "future proofing" as detailed in BSC letter 25.1.201/JHI/3856 dated</p> |



| No | Details |
|----|---|
| | 29/10/09. |
| 8 | <p>Gogar Interchange Complete CDC scope and consortium IDC on basis of current design without any provision for Gogar Interchange.</p> <p>Design of Interchange, which is being undertaken by additional resources not participating in CDC, will continue in parallel.</p> |
| 9 | Section 2A, Haymarket Carpark Access Road – CEC legal issues (adoption) Excluded from CDC scope (treat as specific example of item 4 above) |
| 10 | Depot Access Bridge – possible CEC requirement for further widening for Gogar Interchange pedestrian access. Excluded from CDC scope. |
| 11 | <p>MUDFA Changes Any future changes instructed by tie due to MUDFA impacts are excluded from CDC scope (treat as specific example of item 4 above).</p> |
| 12 | <p>SRU Accommodation Works Requirements Freeze</p> <p>Design to be completed in line with existing DCR0114, DCR0194, and ATR0112.</p> <p>Any instruction incorporate new changes or the signed SRU Agreement would be dealt with on an individual basis in line with Item 4 above.</p> |
| 13 | <p>Forth Ports Requirements Design Freeze</p> <p>Design has been completed in Line with Forth Ports Agreement (signed February 2006) and any subsequent instructions issued by tie which supersede various clauses and requirements of the agreement. These changes include:</p> <p>Pre-Novation: CR39, CR40, CR48, CR53, CR54, CR182, CR194, CR252, CR253, CR254, CR274, CR278, CR312, CR326, CR342, CR344, CR352</p> <p>Post Novation: DCR0006, DCR0076, DCR0077, DCR0096, DCR0097, DCR0100, DCR0103, DCR0131, DCR0147, DCR0166, DCR0175</p> <p>The following changes have not been instructed and would be dealt with on an individual basis in line with Item 4 above: DCR0080, DCR0141, DCR0202, DCR0203</p> |
| 14 | <p>Operational Design Reviews</p> <p>ODR requirements requiring Change Instructions are excluded from CDC scope (treat as specific example of item 4 above).</p> |
| 15 | Possible New Ramp at Lindsay Road |

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| No | Details |
|----|---|
| | Potential future change, excluded from CDC scope – treat as specific example of item 4 above. |
| 16 | Traffic Modelling CDC scope to be based on current models taken forward to completion. Changes introduced by tie for the civil design will be dealt with after CDC scope completion. Any changes by tie to be dealt with individually in line with Item 4 above. |
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2 BSC/SDS Issues

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| 1 | <p>Informatives</p> <p>Informatives notified up to Informatives Meeting on 27/10/09 are included in CDC scope. Implementation/discharge of later informatives will be completed after CDC. BSC elements / inputs to the notified Informatives which SDS require for coordination will be provided.</p> |
| 2 | <p>Depot Access Road – BAA Future Requirements</p> <p>No further design work to address BAA wish for detailed design to be produced (to confirm passive provision is adequate) in CDC scope.</p> <p>Consortium IDC on basis of current information. BAA approval to be resolved after CDC.</p> |
| 3 | <p>BAA Flood Mitigation</p> <p>Works included in CDC scope. Any works required which are agreed to be outwith SDS contract scope will be instructed on basis of agreed SDS estimate.</p> |
| 4 | <p>Audit Participation</p> <p>Audit participation required by Tie will be instructed to SDS, such that CDC programme impact can be agreed.</p> |
| 5 | <p>BDDI-IFC Substantiation</p> <p>BDDI-IFC Substantiation required by BSC will be instructed to SDS, such that CDC programme impact can be agreed.</p> |
| 6 | <p>OLE Misalignment Design - Technical and Planning Approvals</p> <p>BSC (Siemens) to undertake coordination of Planning and Technical design approvals for BSC (Siemens) OLE misalignment design.</p> <p>This work has not been instructed to SDS and requires a coordinated design to</p> |



| | |
|---|---|
| | take forward to CEC. |
| 7 | <p>Input Information</p> <p>All information identified as necessary from BSC required to incorporate into the civil design is provided in accordance with Appendix 1. Any information provided thereafter is subject to evaluation and adjustment of the programme.</p> |
| 8 | <p>Operational Design Review</p> <p>ODR identified concerns which are errors/omissions from existing design are included in CDC scope.</p> <p>Existing ODR comments to be categorised as either changes or errors/omissions by C Brady and S Ney</p> |

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Appendix 3

Schedule of Identified Design Changes not yet instructed by tie

| Index | Short Title | Value | Comment |
|---|---|-----------|-------------------|
| Type A Changes accepted in principle | | | |
| DCR0036 | Reconstituted Planing VE | £ 5,000 | |
| DCR0127 | Building Fixing Owner Agreements | £ 14,265 | |
| DCR0141 | Hawthorne Vale cycleway connection | £ 35,398 | |
| DCR0151 | West Depot Turnout Revision | £ 3,205 | |
| DCR0167 | Cathedral Lane substation alternative design - Henderson Global Concept | £ 119,171 | |
| DCR0170 | RBS Tramstop Existing Utility Services | £ 1,665 | |
| DCR0180 | OLE development workshop | £ 20,028 | |
| DCR0191 | Gogar Landfill Scottish Water Utility Diversion | £ 16,284 | |
| DCR0198 | BAA Dualling Future proofing - Eastfield Avenue | £ 12,838 | |
| DCR0200 | BAA New Burnside Road Alignment | £ 6,819 | |
| DCR0202 | Forth Ports Drainage Approvals | £ 5,000 | |
| DCR0203 | Forth Ports substation re-design | £ 10,000 | |
| DCR0205 | CCRC Interface slope and drainage | £ 2,000 | |
| DCR0132 | RBS Tramstop Future Proofing | £ 10,000 | |
| TOTAL | | £ 261,672 | |
| Type B Changes requiring further clarification | | | |
| DCR0098 | Removal of trees to create continuous layby - Constitution St | £ 11,151 | |
| DCR0101 | Wider Area Modelling | £ 6,500 | |
| DCR0103 | Relocation of 5 OLE Poles to North at Tower Place Junction | £ 6,496 | |
| DCR0145 | Section 6 turning Head | £ 4,951 | |
| DCR0163 | Operational Design review of Depot - Section 6 | £ 26,415 | |
| DCR0169 | Bicycle Provision at Haymarket Steps | £ 6,471 | |
| DCR0172 | Leith Walk Underground Structure | £ 10,000 | |
| DCR0181 | Depot Additional Design | £ 46,851 | |
| DCR0209 | Crawley Tunnel Underground Chamber and Services | £ 25,000 | |
| DCR0211 | Underground Chamber - West Maitland Street & Clifton Terrace | £ 9,101 | |
| DCR0214 | Provision of 110V supply | £ 11,357 | |
| DCR0220 | Compressed Air Supply | £ 5,000 | |
| DCR0193 | Street Lighting Haymarket Terrace | £ 10,000 | |
| DCR0201 | Network Rail Turning Head Lighting | £ 5,000 | |
| DCR0204 | Drainage at Depot - BAA run off | £ 5,000 | |
| DCR0212 | Tram Stops Development Workshop | £ 35,000 | |
| DCR0213 | Substation Development Workshop | £ 90,000 | |
| DCR0216 | Drainage Development Workshop | £ 25,000 | |
| DCR0219 | Frederick Street new crossing | £ 15,000 | |
| DCR0176C | OLE technical and planning alignment | £ 81,101 | PROVISIONAL VALUE |
| TOTAL | | £ 435,392 | |
| GRAND TOTAL | | £ 697,064 | |

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Appendix 5

Remuneration Matrix

| Item | | | Amount |
|------|--------------------------------|----------|----------|
| 5.1 | Design Completion Services | | £495,000 |
| 5.2 | Changes included in Appendix 3 | | |
| | 5.2.1 Type A | £261,672 | |
| | 5.2.2 Type B | £326,544 | |
| | Total Item 5.2 | | £588,216 |
| | | | |

Grand Total

£1,083,216



Appendix 6

Progress Monitoring and Payment Mechanism

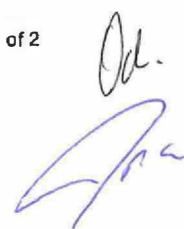
General concept is that the agreed design completion scope is subdivided into agreed deliverable group milestones, to be achieved in accordance with a detailed programme. Each deliverable group milestone will consist of all the deliverables due in each 2 week time block, such that there will be 6 or 7 milestones for the 3 month design completion process.

The agreed cost of the design completion will be spread equally over the deliverable groups. Payments are due on achievement of the entire group milestone only (ie not proportionally on individual deliverables) but each milestone group is split into 2 stages as outlined below. Payment is not linked to time/resource costs.

The generic process for deliverable completion will be as follows :-

- BSC confirm input data (meetings process, recorded in notes),
- BSC confirm Design Freeze/Design Basis Assumptions, in respect of Tie/CEC/Third Party requirements and approvals,
- If the information included in Appendix 1, which should be supplied by BSC to SDS in order to complete the design completion scope covered by this Agreement is not provided in the timescales identified in Appendix 1, SDS are to advise of any programme implications to BSC within 3 days of BSC providing this information. Under these conditions, remuneration for the milestone group will be made at the original timescales subject to the successful delivery of all other deliverables in the group and the affected deliverable will be included in a subsequent milestone group to be agreed between BSC and SDS.
- SDS complete design,
- SDS issue design for approval (if required),
- When SDS are confident approval (if required) will be achieved, SDS issue design for Consortium Interdisciplinary Review (CIDR). This issue (of all the deliverables in the deliverable group) triggers 25% of group milestone achievement,
- BSC carry out CIDR (with SDS present) and identify amendments required, in accordance with agreed programme and timescale,
- SDS procure external approval (if required) and identify any amendments required, in accordance with agreed programme and timescale,
- SDS amend design as necessary and issue for Consortium Interdisciplinary Check (CIDC), in accordance with agreed programme and timescale,
- BSC carry out CIDC and issue IDC Certificate. CIDC (for all the deliverables in the deliverable group) triggers balance of group milestone achievement,
- BSC instruct SDS to issue drawing as Agreed for Construction (AFC),
- If BSC fails to complete CIDR or CIDC to agreed timescale, but SDS have procured external approval (where required), balance of milestone achievement is automatically triggered 15 working days after issue for CIDR (of all the deliverables in the deliverable group).

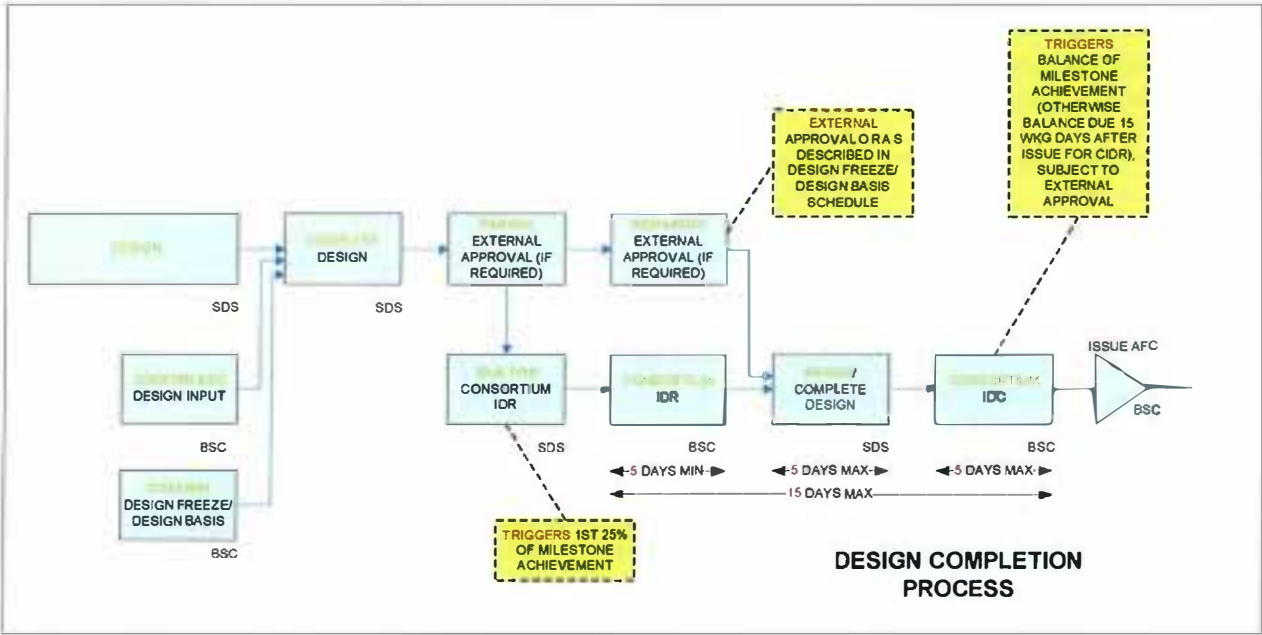
Thus 25% of each milestone payment would be triggered when all deliverables in a milestone group were issued for CIDR (entirely within SDS control). The balance would be triggered when the CIDC was completed.



SDS are protected from over-run due to BSC failure to resource IDR/IDC process by automatic trigger of balance of milestone 15 days after issue of all deliverables for CIDR.

However, for external approvals not excluded by the Design Freeze/Design Basis schedule, SDS could not issue for CIDC and would be at risk of over-run.

The process is illustrated below :-



Management of the process, agreement of milestone achievement, and resolution of any disagreements will be undertaken by a 3 man supervising committee comprising Colin Brady, Michael Wilken and Jason Chandler.

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