

AGREEMENT

BETWEEN

TIE LIMITED

- and -

SIEMENS PLC

- and -

BILFINGER BERGER (UK) LIMITED

AGREEMENT

BETWEEN

- (1) **tie LIMITED ("tie");** and
- (2) **BILFINGER BERGER UK LIMITED ("BB");** and
- (3) **SIEMENS PLC ("Siemens")**

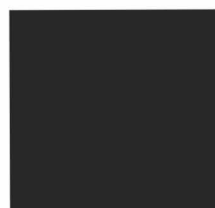
(together the "**BBS Consortium**")

WHEREAS

1. **tie** and the BBS Consortium agree the following:
 - 1.1 a construction contract price for Phase 1a of £222,062,426 (the "**Construction Contract Price**");
 - 1.2 the programme for the Project is moved out by 3 months;
 - 1.3 that **tie** has no objection to CAF joining the BBS Consortium earlier than or following award of the Infraco Contract and concurrent novation of the Tram Supply Agreement and the Tram Maintenance Agreement;
 - 1.4 that **tie** shall work with the BBS Consortium to support the BBS Consortium in the formalisation of CAF joining the BBS Consortium;
 - 1.5 that CAF joining the BBS Consortium will not impact on Construction Contract Price, programme, the Employer's Requirements or the Infraco Proposals;
 - 1.6 that two months are added to the completion date for Section A;
 - 1.7 the Milestone Payment Schedule will contain discrete milestones in respect of work by Siemens;
 - 1.8 unforeseen risks arising out of Infraco Contract, Tram Maintenance Agreement and Tram Supply Agreement misalignment, if any, will be shared on a 50/50 basis.

2. **tie** and the BBS Consortium agree that under no circumstances shall the Construction Contract Price of £222,062,426 be increased prior to formal signature of the Infraco Contract and Schedules (including the Employer's Requirements and the Infraco Proposals), the Tram Supply Agreement and Schedules, the Tram Maintenance Novation Agreement and Schedules, the SDS Novation Agreement and Schedules, the Tram Supply Novation Agreement and Schedules and the Tram Maintenance Agreement and Schedules (the "**Infraco Contract Suite**") except in respect of:
 - 2.1 the formalisation of the price for changes to the Employer's Requirements Version 3.1; and
 - 2.2 the resolution of the SDS Residual Risk Issue.
3. The BBS Consortium have advised a sum of £3,200,000 in respect of changes from Employer's Requirements Version 3.1 and **tie's** budget for such changes is £1,600,000. **tie** and the BBS Consortium shall work together to deliver alignment to **tie's** budget. To support this objective, the BBS Consortium will provide an itemised list of the changes from the Employer's Requirements Version 3.1 and for each item detailed build up of cost on a revenue cost basis.
4. The SDS Residual Risk Issue relates to the provision of adequate design information, and particularly earthworks design by SDS and the recovery by the BBS Consortium of costs and expenses from SDS in the event that their designs are inadequate.
5. **tie** and the BBS Consortium expressly acknowledge that this Agreement is concluded on the basis of acting in good faith and strictly in accordance with the procurement model in the Final Business Case.
6. **tie** and the BBS Consortium agree that it is a condition of **tie's** acceptance of the Construction Contract Price that the BBS Consortium agree to close and finalise the Infraco Contract Suite:
 - 6.1 by 1 March 2008 and such that **tie** is in a position to award an Infraco Contract no later than on or after 12 March 2008, subject to the provision of a satisfactory performance security package by SDS; and
 - 6.2 on the basis as set out in the Schedule (*Infraco Contract Suite Close Out*) to this Agreement.

7. **tie** and the BBS Consortium agree that adherence to the terms and conditions of this Agreement is a condition to the BBS Consortium retaining its status as Preferred Bidder in relation to the provision of the Infraco Works as defined in the Infraco Contract.
8. **tie** and the BBS Consortium agree that **tie** shall present to the BBS Consortium a detailed programme (the "**Close Out Programme**") to close the Infraco Contract Suite and that the BBS Consortium shall agree such Close Out Programme by close of business on Monday 11 February. Failure to so agree shall be deemed to be a breach of Clause 5 above.
9. **tie** and the BBS Consortium shall use their best endeavours to adhere to the Close Out Programme.
10. The BBS Consortium enters into this Agreement on the basis of joint and several liability for the performance and discharge of all obligations arising from or in connection with this Agreement.
11. This Agreement shall be governed by and construed in accordance with Scots Law.
12. In the event of any ambiguity or discrepancy between any provisions in the main body of this Agreement and those in the Preferred Bidder Agreement, the terms of this Agreement will prevail.



13. tie and the BBS Consortium agree to extend the Advance Works and Mobilisation Agreement to 31 March 2008.

IN WITNESS WHEREOF these presents on this and the preceding 3 pages together with the Schedule (*Infraco Contract Suite Close Out*) which is annexed and signed as relative hereto are executed as follows:

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

at

on 7 FEBRUARY 2008 by:



Signatory

Full Name

Witness Signature

Full Name

Address


MATTHEW CROSSIE

PHILIP HEWITT
COLLINS HOUSE, RUTLAND SQUARE
EDINBURGH EH1 2AN

EXECUTED for and on behalf of **BILFINGER BERGER (UK) LIMITED**

at

on 7TH FEBRUARY 2008 by:



Signatory

Full Name

Witness Signature

Full Name

Address


R T WACKEN

PHILIP HEWITT
COLLINS HOUSE, RUTLAND SQUARE
EDINBURGH EH1 2AN

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

at

on 7th February 2008 by:

Signatory



Full Name

MICHAEL FLYNN

Witness Signature



Full Name

PHILIP HEWITT

Address

COLLINS HOUSE, RUTLAND SQUARE
EDINBURGH EH1 2AA

**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN
TIE LIMITED, SIEMENS PLC AND BILFINGER BERGER (UK) LIMITED**

SCHEDULE

INFRACO CONTRACT SUITE CLOSE OUT

Terms used in this Schedule are as defined in the draft Contract documentation.

1. FINALISATION OF CONTRACTS

- 1.1 The Infraco Contract drafting is to be finalised by DLA Piper, commercial representatives will meet to agree remaining commercial principles and provide instructions to their respective lawyers.
- 1.2 The position on latent defects shall be in accordance with Scots Law save that latent defects liability runs for 12 years after the date of the Reliability Certificate. Latent defects is not to be a defined term in the Infraco Contract.
- 1.3 The Tram Supply Agreement is to be finalised on agreed positions as at 7 February 2008. All outstanding issues are to be based on the agreed position as at 7 February 2008, including the position in respect of the EPR concept and drafting (this is to exclude the Infraco Contract claims concept), except for the following:
 - 1.3.1 Indirect Losses - ~~tie~~ shall work with the BBS Consortium to resolve this item;
 - 1.3.2 Step-in for Health and Safety breach to be addressed in the Tram Maintenance Agreement;
 - 1.3.3 DPOFA Claims - agree to carve-out of Infraco Contract;
 - 1.3.4 Protestor Action does not yet align - to be resolved;
 - 1.3.5 System Integration - exists in the drafting already;
 - 1.3.6 Warranty on materials - exists in the drafting already;
 - 1.3.7 IPR - flow up to Infraco Contract in respect of CAF;
 - 1.3.8 Insurance - exists in the drafting already.
- 1.4 The Tram Maintenance Agreement is to be finalised on agreed positions as at 7 February 2008. All outstanding issues are to be finalised based on the agreed position as at 7 February 2008.

2. INFRACO CONTRACT SPECIFIC POINTS

- 2.1 The only issues that are to be treated further are those that are agreed as open on the Issues List (as at 28 January 2008) and those in Section 2.4

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- 2.2 The Design Management Plan is agreed by the BBS Consortium.
- 2.3 Clause 19 (*Consents*) and the provisions at Clause 18 which relate to Third Party Agreements are to be closed on the basis as agreed on 5 February 2008.
- 2.4 **tie** and the BBS Consortium will resolve the issues on "splitting" Construction and Maintenance in the Infraco Contract on 8 February 2008 based on the list of issues sent under email dated 14 January 2008.
- 2.5 Schedule 4 (*Contract Price Analysis*) is to:
- 2.5.1 contain detailed bottom up price build up and description of scope for each element which is to be provided by noon on 13 February 2008 in the case of Siemens and noon on 14 February 2008 in the case of BB;
 - 2.5.2 concept of draft limbs (n) and (o) (in the BBS Consortium draft presented on 6 February 2008) are not acceptable and are not to be included in Schedule 4 (*Contract Price Analysis*) or in the Infraco Contract or either of the novation agreements.
 - 2.5.3 limb (c) is deleted;
 - 2.5.4 notified departures are dealt with under Clause 80 (*tie Changes*) of the Infraco Contract;
 - 2.5.5 value engineering will be dealt with in accordance with the Wiesbaden Agreement dated 20 December 2007;
 - 2.5.6 include the BBS Consortium's letter provided prior to the appointment of Preferred Bidder in respect of Network Rail Immunisation.
- 2.6 Schedule 9 (*Dispute Resolution Procedure*)
- 2.6.1 BBS Consortium will work with tie to deliver a DRP that is as close as possible to **tie's** drafting position (on disapplication of the Housing Grants, Construction and Regeneration Act 1996) save for it being agreed; reciprocal right of joinder of Related Disputes will be included.
- 2.7 There will be no further "sole remedy" discussions on either the Infraco Contract or the related Collateral Warranties. **tie's** position .

3. NOVATION

- 3.1 Subject to 1.3, the BBS Consortium's agreement to novate CAF is confirmed and the novation agreement is to be finalised based on **tie's** position.
- 3.2 The BBS Consortium's agreement to novate SDS is confirmed and the novation agreement is to be finalised based on **tie's** position as agreed on 5 February 2008.



4. NETWORK RAIL

4.1 The BBS Consortium will work with tie to achieve an acceptable position in relation to the flowdown of obligations contained in the Network Rail Asset Protection Agreement based on tie's drafting position.

5. EAL FLOWDOWN

5.1 The BBS Consortium will work with tie to achieve an acceptable position in relation to the flowdown of obligations contained in the EAL Agreement Licence.

6. PERFORMANCE SECURITY PACKAGE

6.1 The Performance Security Package is to be closed out based on the exchange of emails between the BBS Consortium and DLA Piper on 6 and 7 February 2008 regarding Parent Company Guarantee's and the CEC Guarantee.

6.2 The cash retention, cash deposit or Maintenance Bond is to be excluded from the BBS liability cap.

6.3 Following issue of the Reliability Certificate, the Siemens liability under its Parent Company Guarantee shall be reduced to £3,500,000 for the maintenance period.

6.4 The CEC Guarantee shall be cancelled at issue of the Reliability Certificate.

6.5 ^{UK Ltd} Bilfinger Berger will provide a PCG in respect of the full liability under the Infraco Contract in respect of latent defects.



Signatory
TIE LIMITED



Signatory
SIEMENS PLC



Signatory
BILFINGER BERGER (UK) LIMITED