

from the office of the Chief Executive

Rob Holden

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20 October 2009

Bechtel Limited
11 Pilgrim Street
London EC4V 6RN

For the attention of Mr Cliff Mumm

Dear Cliff

Project Delivery Partner Appointment: Amendment No. 1

We refer to the proposal submitted by the *Project Delivery Partner* pursuant to paragraph 4.4.4 of Appendix 1 (Scope) of the Project Delivery Partner Appointment dated 17 April 2009 (Contract No. 2166).

The *Project Delivery Partner's* proposal was conditional on the *Employer* providing an indemnity in relation to the any potential transfer under the TUPE Regulations and a revision to the amount referred to in clause 92.4.

The *Employer* has accepted the *Project Delivery Partner's* proposal on the basis set out below:

A new clause 27.6 is inserted into the Project Delivery Partner Appointment as follows:

**Indemnity 27.6
from CRL**

- 27.6.1** In the event that there is or is alleged to be a transfer of an undertaking or a service provision change as defined in and to which the TUPE Regulations apply ("**Relevant Transfer**") in relation to the *Project Delivery Partner's* assumption or performance of duties and responsibilities of any of the NEC3 Engineering and Construction Contract Project Manager or Supervisor (or equivalent under other forms of contract) for any or all Project enabling works (the "**Relevant Services**") the parties agree to deal with the risks and/or consequences thereof as set out in the following clauses.
- 27.6.2** The parties agree that notwithstanding the operation of any provision of the TUPE Regulations it is not their intention that the contracts of employment or any liabilities associated with such contracts of employment of any person employed or engaged by

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the *Employer* or any of its past or present contractors or sub-contractors assigned to the Relevant Services (each a "**Relevant Employee**") should transfer to the *Project Delivery Partner* or any Subconsultant at any time or under any circumstances relating to the assumption, cessation, or performance by the *Project Delivery Partner* of any Relevant Services, or the omission of the Relevant Services from services being performed by any contractors or sub-contractors, or the termination of any contract for or relating to the Relevant Services.

- 27.6.3** The *Project Delivery Partner* agrees to enter into a seconding agreement with the *Employer's* present contractor assigned to the Relevant Services, in accordance with which certain of the Relevant Employees will be seconded to work under the direction and control of the *Project Delivery Partner*.
- 27.6.4** In the event that any third party (including any Relevant Employee and any of the *Employer's* past or present contractors or sub-contractors) asserts or claims that there has been a Relevant Transfer, the *Project Delivery Partner* agrees to notify the *Employer* as soon as it becomes aware of any such assertion or claim and agrees not to make any admission, offer, settlement, payment or promise in respect of such assertion or claim without the prior written consent of the *Employer*, such consent not to be unreasonably withheld or delayed.
- 27.6.5** 27.6.5.1 If at any time there is a Relevant Transfer to the *Project Delivery Partner* and any Relevant Employee is found or alleged to be employed by the *Project Delivery Partner* or a Subconsultant, the parties agree that, as between themselves and notwithstanding clause 27.1 up to and including clause 27.5 of the contract:
- (a) if the Relevant Employee is or had been employed by a present contractor of the *Employer*, in consultation with the *Project Delivery Partner*, the *Employer* will use reasonable endeavours to procure that its contractor or subcontractor will,
- or
- (b) if the Relevant Employee is not employed by a present contractor of the *Employer*, in consultation with the *Employer*, the *Project Delivery Partner* will use reasonable endeavours to procure that the contractor or subcontractor by whom the Relevant Employee is or had been employed will,
- within 7 days of being informed of such finding or allegation make to that Relevant Employee an offer in

writing to employ him under a new contract of employment to take effect on the termination of employment referred to in clause 27.6.5.2 below and on terms and conditions which do not differ in any material way from the terms and conditions of employment of that person immediately before the Relevant Transfer.

27.6.5.2 Upon the offer referred to in clause 27.6.5.1 above being made (or at any time after the offer should have been made if no offer is made), the *Project Delivery Partner* will if such employment is continuing

or alleged to continue with the *Project Delivery Partner* terminate the employment or alleged employment of the Relevant Employee concerned in accordance with the notice provisions in the Relevant Employee's contract of employment or engagement.

27.6.6 The *Employer* indemnifies the *Project Delivery Partner* and keeps the *Project Delivery Partner* indemnified from and against all and any costs claims expenses damages demands actions losses and liabilities ("Costs") arising out of or in connection with:

- (a) any one or more Relevant Employees whose employment in respect of the Relevant Services and any liabilities associated with such employment has transferred or is alleged to have transferred to the *Project Delivery Partner* or Subconsultant pursuant to or as a result of a Relevant Transfer in relation to the Relevant Services;
- (b) the termination by the *Project Delivery Partner* or Subconsultant of the employment of any Relevant Employee pursuant to clause 27.6.5.2;
- (c) any claim in respect of any person which arises or is alleged to arise by reason of the operation of and/or for failure to inform and consult under or otherwise comply with the TUPE Regulations in respect of a Relevant Transfer in relation to the Relevant Services;

save that:

- (i) the *Project Delivery Partner* agrees that it shall be responsible for paying the legal costs (but for the avoidance of doubt not any damages or other compensation) paid to a Relevant Employee in connection with a successful claim by that Relevant Employee that the *Project Delivery*

Partner did not terminate his or her employment in accordance with the notice provisions in the Relevant Employee's contract of employment or engagement;

- (ii) the *Project Delivery Partner* agrees that this indemnity shall not extend to any Costs arising out of any act of discrimination by the *Project Delivery Partner* in either the selection for or manner of dismissal of any such Relevant Employee; and
- (iii) no indemnity is given by the *Employer* to the *Project Delivery Partner* in respect of:

- (A) any secondment fees and associated VAT payable by the *Project Delivery Partner* to any past or present contractor of the *Employer* pursuant to any secondment agreement between that contractor and the *Project Delivery Partner* in respect of the secondment of any Relevant Employees by the contractor to the *Project Delivery Partner*; and

- (B) any Costs incurred by the *Project Delivery Partner* which would not have been incurred had the *Project Delivery Partner* given notice of termination as described in clause 27.6.5.2 within a reasonable period of time following the Relevant Transfer so long as in assessing what is reasonable in these circumstances due account is taken of the date of which the *Project Delivery Partner* (using reasonable endeavours to do so) first obtained a copy of the terms and conditions relating to that employee's employment, enabling it to terminate the employment appropriately in accordance therewith.

The Contract Data is revised as follows:

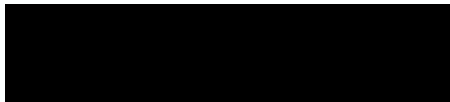
9. Termination

Delete [REDACTED] and replace with [REDACTED]
[REDACTED]

For the avoidance of doubt, all other terms and conditions of the Project Delivery Partner Appointment remain in full force and effect and are not affected by the agreement set out in this letter.

Please confirm your agreement to the amendments to the Project Delivery Partner Appointment set out above by signing and returning the enclosed copy of this letter.

Yours sincerely



Rob Holden
Chief Executive
For and on behalf of Crossrail Limited

Bechtel Limited agrees to the amendments to the Project Delivery Partner Appointment as set out above.

Signed on behalf of Bechtel Limited:

Signature



Name Clifford G Mumm (pursuant to a Power of Attorney dated 18 September 2009)

Position Project Director

Date 30/10/09