

# Supplemental Agreement

Crossrail Limited

(the *Employer*)

and

Bechtel Limited

(the *Project Delivery Partner*)

Project Delivery Partner Services

Contract No C2166

Contract Amendment No. 4

This Deed is made on the 1<sup>st</sup> day of July 2016

Between:

- (1) **CROSSRAIL LIMITED** (company number 4212657) of 25 Canada Square, London E14 5LQ (the *Employer*); and
- (2) **BECHTEL LIMITED** (company number 0506133) of 11 Pilgrim Street, London EC4V 6RN (the *Project Delivery Partner*).

## BACKGROUND

- (A) The *Employer*, the *Project Delivery Partner* and Bechtel Corporation entered into a contract (contract number 2166) for project delivery partner services dated 17 April 2009 as amended by the *Employer's* letter of 20 October 2009 (Project Delivery Partner Appointment: Amendment No. 1) countersigned by the *Project Delivery Partner* on 30 October 2009, the *Employer's* letter of 8 February 2010 (Project Delivery Partner Appointment: Amendment No. 2) countersigned by the *Project Delivery Partner* on 10 February 2010 and a Supplemental Agreement dated 28 April 2011 (Contract Amendment No. 3) (the "**Appointment**").
- (B) This Deed is supplemental to and amends the Appointment. This Deed and the Appointment shall be read and construed together as one contract.
- (C) The *Employer* and the *Project Delivery Partner* have agreed to amend the Appointment as set out below.

## AGREED TERMS

1. With effect from 1 April 2016, Appendix 4 (Incentive Schedule) to the Contract Data Part One is deleted in its entirety and replaced with the Appendix to this Deed.
2. All other terms and conditions of the Appointment remain in full force and effect and are not affected by the agreement set out in this Deed.

Executed as a deed and delivered on the date above by:

[Redacted] (signed)

01/07/2014 ..... (name of Director)

[Redacted] (signed)

..... M.C. Fee ..... (name of ~~Director~~ or Company Secretary)

On behalf of **Crossrail Limited**

[Redacted] (signed)

Arlia Madam ..... (name of Director)

[Redacted] (signed)

John Steward ..... (name of Director or Company Secretary)

On behalf of **Bechtel Limited**

**APPENDIX**

**REVISED APPENDIX 4  
INCENTIVE SCHEDULE**

## Appendix 4

### Incentive Schedule

#### 1. Definitions

In this schedule, the following defined terms have the following meanings:

Actual Final CRL Direct Costs

Are defined in the PDA as follows:

**"Actual Final CRL Direct Costs"** means the aggregate of all Costs incurred by CRL or accrued for payment by CRL in respect of the Project Period (net of any recovered VAT) plus, to the extent not already included:

- (a) the cost of purchase (net of any recovered VAT) of the CWG Works for the then current forecast Asset Price (as defined in the CWG Agreement), as shown in the Financial Models;
- (b) the amounts (net of any recovered VAT) payable to Berkeley Homes for the BH Works, as shown in the Financial Models; and
- (c) any amount paid out (net of any recovered VAT) by *TfL* or SoS in respect of a liability of CRL pursuant to any guarantee or other credit support provided in respect of CRL's obligations to deliver the Crossrail Project,

less the aggregate of any such Costs which have been recovered by CRL (other than pursuant to Clause 17.3) and any claims which have been recovered by CRL;"

(all such capitalised terms having the meaning defined in the PDA.)

Central Operating Section

Is defined in the PDA as follows:

**"Central Operating Section"** means the part of the Crossrail Network (i) between Royal Oak (in the City of Westminster) and Pudding Mill Lane (in the London Borough of Newham) and (ii) between Royal Oak (in the City of Westminster) and Abbey Wood (in the London Borough of Greenwich) the exact parameters of which shall be determined pursuant to the Sponsors Requirements;"

(all such capitalised terms having the meaning defined in the PDA.)

Contract Year

A twelve month period, commencing 1 April, save that the first Contract Year shall be the period from the Contract Date to and including 31 March 2010.

Costs

Are defined in the PDA as follows:

**"Costs"** means, in relation to any costs referred to in this Agreement:

- (a) the nominal amount of such costs incurred up to the relevant calculation date; and
- (b) the nominal amount of such costs forecast to be incurred after the relevant calculation date (including risk contingency) determined on a P50 (unless stated otherwise) basis pursuant to Part 1 of Schedule 7 and assuming an inflation rate equal to the then current Mid Case Indices;”

(all such capitalised terms having the meaning defined in the PDA.)

Final Completion

Is defined in the PDA as follows:

“**Final Completion** means the satisfaction of the Final Completion Criteria;”

“**Final Completion Criteria** has the meaning given to such term in Clause 16.5(a);”

Clause 16.5(a) of the PDA states:

“**16.5 Final Completion**

- (a) Final Completion in respect of the Railway, shall occur once the following criteria (the “**Final Completion Criteria**”) have been met:
  - (i) all then current manufacturer or design/construction warranties in respect of the Railway have been novated or assigned to the relevant Operator; and
  - (ii) all obligations of CRL pursuant to this Agreement have been fully and finally discharged.”

(all such capitalised terms having the meaning defined in the PDA.)

Final Earned Amount

Has the meaning set out in section 3.3 below.

Final Incentive Schedule

The final incentive schedule attached.

Final Maximum Amount

Is the greater of the sum of the Reserved Amounts or [REDACTED] but subject to a maximum of [REDACTED]

Financial Models

are defined in the PDA as follows:

“**Financial Models** means the Crossrail Investment Model, Project Financial Model and the QRA;”

(all such capitalised terms having the meaning defined in the PDA.)

Handover

has the meaning given to it in clause 16.2 of the PDA.

Interim Actual Amount

Such amount of the Interim Maximum Amount as is allocated

within the Interim Incentive Schedule to the achievement of a particular Performance Band for an Interim KPI.

Interim Earned Amount	Has the meaning set out in section 2.2 below.
Interim Incentive Schedule	The interim incentive schedule attached and subsequent interim incentive schedules agreed in accordance with this Appendix.
Interim KPI	A key performance indicator set out in the Interim Incentive Schedule.
Interim Maximum Amount	An amount expressed in pounds sterling being the product of the anticipated Price for Services Provided to Date for the next Contract Year multiplied by the Interim Performance Incentive Percentage.
Interim Performance Incentive Percentage	15%
Interpolated	<p>Means calculation of the Final Earned Amount where the Project Cost is not:</p> <ul style="list-style-type: none"><li>(a) equal to or less than IPO minus [REDACTED]</li><li>(b) equal to IPO minus [REDACTED]; or</li><li>(c) equal to [REDACTED] or [REDACTED]</li><li>(d) equal to or more than [REDACTED]</li></ul> <p>by linear interpolation between the Final Earned Amounts for IPO minus [REDACTED] and IPO minus [REDACTED] or between IPO minus [REDACTED] and [REDACTED] or between [REDACTED] and [REDACTED] as the case may be, as stated in the Final Incentive Schedule</p>
Intervention Point 0 or IPO	<p>Is defined in the PDA as follows:</p> <p><b>"Intervention Point 0 or IPO</b> means an amount equal to the sum of:</p> <ul style="list-style-type: none"><li>(a) the Total Sponsor Committed Funding from time to time less [REDACTED]</li><li>(b) all forecast and actual Cash Management Funding Amounts up to an aggregate cap of [REDACTED]</li><li>(c) any City of London Corporation Additional Contribution; and</li><li>(d) any actual and forecast Interim Property Income;"</li></ul> <p>(all such capitalised terms having the meaning defined in the PDA.)</p>
Material Event	<p>Is defined in the PDA as follows:</p> <p><b>"Material Event"</b> means:</p> <ul style="list-style-type: none"><li>(a) any Change of Law; or</li><li>(b) if, at the time of any Financial Models update, the</li></ul>

Anticipated Final CRL Direct Cost resulting from the application of the latest available Mid Case Indices to the real Costs included in the Baseline Crossrail Investment Model and the Baseline Project Financial Model is greater than the Anticipated Final CRL Direct Cost that would have resulted from the application of the Baseline Indices to such real Costs.

(all such capitalised terms having the meaning defined in the PDA.)

Omission Value	An amount equal to the Interim Performance Incentive Percentage applied to the anticipated Price for Services Provided to Date for omitted <i>services</i> as at the date of such omission.
Performance Band	A performance band set out in the Interim or Final Incentive Schedule.
Programme Completion	Means the later of twelve months after the date that the railway transport system that is the subject of the Programme commences full operations and twelve months from Final Completion under the PDA.
Programme KPI	A key performance indicator set out in the Final Incentive Schedule.
Project Cost or PC	means Actual Final CRL Direct Costs without taking any account of any part of the Final Earned Amount in respect of Programme KPI 2
Reserved Amount	75% of the Interim Earned Amount in any Contract Year.
Sponsors	<i>TfL</i> and <i>DfT</i>
Stage 3 Opening	Is the commencement of passenger services between Paddington and Custom House / Abbey Wood.

## **2. Interim Incentive Scheme**

CRL has chosen, in the first Contract Year, not to set an Interim KPI associated with expenditure against the Resource Schedule. In future years, CRL will set an Interim KPI which measures efficiency, measuring forecast spend (Resource Schedule) against actual.

### **2.1 Fixing Interim KPIs**

The Interim KPIs and associated Performance Bands and Interim Actual Amounts are to be aligned throughout the project organisation and with the overall objectives of Project.

No later than 3 assessment intervals prior to the commencement of each subsequent Contract Year, the *Project Delivery Partner* submits a draft Interim Incentive Schedule to the *Employer* for review as part of its proposed Service Delivery Plan. The *Employer* reviews this and the Parties use all reasonable endeavours to agree the same before the final assessment date prior to commencement of such Contract Year. In the event of any failure to agree the Interim Incentive Schedule by such date, the *Employer* shall be entitled at its absolute discretion to determine the Interim Incentive Schedule for the Contract Year in question.

Subject to the remainder of this paragraph, once the Interim Incentive Schedule for a Contract Year (including without limitation the Interim Maximum Amount) has been agreed by the Parties or

determined by the *Employer* as relevant, the Interim Maximum Amount will not be changed whether in consequence of a compensation event or otherwise. The Interim Incentive Schedule may be changed at the discretion of CRL during the year.

## 2.2 Ascertaining the applicable Interim Earned Amount

At the end of a Contract Year, the *Project Delivery Partner* reports his performance as part of the integrated team and against the Interim KPIs to the *Employer*, stating which Performance Band he believes he has achieved in respect of each Interim KPI. The *Employer* reviews the *Project Delivery Partner's* report and either accepts or rejects the *Project Delivery Partner's* statements in respect of each Interim KPI. If the *Employer* rejects the *Project Delivery Partner's* statements in whole or in part then the *Employer* shall make his own assessment of the *Project Delivery Partner's* performance against those Interim KPI's where the *Employer* has rejected the *Project Delivery Partner's* statement and such assessment shall, subject to the *Project Delivery Partner's* rights under clause W.2, be used in the assessment of the Interim Earned Amount.

The "Interim Earned Amount" is the sum of the Interim Actual Amounts associated with the Performance Band achieved against each Interim KPI and:

If the Interim Earned Amount is a positive number:

- 25% of the Interim Earned Amount is an amount due to the *Project Delivery Partner* pursuant to clause 50.3. Invoices submitted by the *Project Delivery Partner* shall clearly identify the Interim Earned Amount and the calculation thereof; and
- The Reserved Amount is not an amount due but is included within the Final Maximum Amount.

Or, if the Interim Earned Amount is a negative number:

- the Interim Earned Amount is an amount due to the *Employer* as a debt and may be deducted from sums otherwise payable to the *Project Delivery Partner*; provided that the aggregate of such deductions in any Contract Year shall not exceed 10% of the anticipated Price for Services Provided to Date for that Contract Year; and
- no amount is added to or deducted from the Final Maximum Amount.

## **3. Final Incentive Scheme**

3.1 Not used.

### 3.2 Fixed Programme KPIs

The Final Incentive Schedule is included within this Appendix. The *Employer* will only consider making changes to the Final Incentive Schedule where there is a major change to the Sponsor's Requirements or a Material Event that can be shown to materially affect the Programme KPIs and/or Performance Bands. In such circumstances the *Employer* shall propose changes to the Final Incentive Schedule in writing for agreement by the *Project Delivery Partner*. The *Project Delivery Partner* shall respond to any such proposal within a reasonable period and if the proposal is agreed such agreement shall be recorded in writing and the Final Incentive Schedule shall be amended accordingly.

### 3.3 Ascertaining the applicable Final Earned Amount

Upon Programme Completion the *Project Delivery Partner* reports his performance against the Programme KPIs to the *Employer*, stating which Performance Band he believes he has achieved in respect of each Programme KPI. The *Employer* reviews the *Project Delivery Partner's* report and either accepts or rejects the *Project Delivery Partner's* statements in respect of each Programme KPI. If the *Employer* rejects the *Project Delivery Partner's* statements in whole or in part then he shall make his own assessment of the *Project Delivery Partner's* performance against those Programme KPI's where the *Employer* has rejected the *Project Delivery Partner's* statement and such assessment shall, subject to the *Project Delivery Partner's* rights under clause W.2, be used in the assessment of the Final Earned Amount.

The "Final Earned Amount" is the sum of:

- the percentage achieved against Programme KPI 2 applied to the Final Maximum Amount; and
- the percentages achieved in respect of each of Programme KPIs 3.1 to 3.6 inclusive applied to the Final Maximum Amount;

provided that:

- in the event that the *Project Delivery Partner* achieves Programme KPI 3.1 by the earliest milestone date specified in the Final Incentive Schedule for that KPI, the *Project Delivery Partner* shall also be deemed to have achieved the milestone dates specified for Programme KPIs 3.3 to 3.6 inclusive (regardless of whether they were in fact achieved) for the purposes of the calculation of the Final Earned Amount; and
- in the event of a breach of IP1 each of the percentages in relation to Programme KPIs 2 and 3.1 will be no greater than zero (but may be a negative figure where applicable in accordance with the Final Incentive Schedule). A breach of IP1 is deemed to have occurred upon notification to the *Project Delivery Partner* of receipt by the *Employer* of notice from the Sponsors that a TfL Significant Remedy Trigger Event (defined in the PDA) has occurred pursuant to clause 23.1 of the PDA.

The Final Earned Amount is an amount due to the *Project Delivery Partner* pursuant to clause 50.3. Invoices submitted by the *Project Delivery Partner* shall clearly identify the Final Earned Amount and the calculation thereof. If the Final Earned Amount is a negative amount, such amount is payable by the *Project Delivery Partner* to the *Employer* as a debt due and the *Employer* may deduct such amount from sums otherwise due to the *Project Delivery Partner*.

If the *Project Delivery Partner's* performance against a Programme KPI is capable of being determined prior to Programme Completion, the *Project Delivery Partner* may report his performance against such Programme KPI to the *Employer*, stating which Performance Band he believes he has achieved and requesting that the *Employer* makes a provisional determination of the Final Earned Amount in respect of that KPI. If the *Employer* in its absolute discretion agrees to make such a provisional determination and accepts the *Project Delivery Partner's* statements in respect of such KPI, the amount of such provisional determination is an amount due and payable to the *Project Delivery Partner* in accordance with the preceding paragraph. The *Project Delivery Partner* acknowledges that any payment of such provisional determination is without prejudice to the *Employer's* right to open up and re-determine such provisional determination following Programme Completion. In the event any such re-determination reduces the Final Earned Amount for such KPI, the amount of such reduction is payable to the *Employer* as a debt due and may be deducted from sums otherwise payable to the *Project Delivery Partner*.

The *Project Delivery Partner* is only entitled to be paid any Reserved Amount or part thereof in accordance with this section 3 and without limiting the foregoing is not entitled to any such payment following termination of its employment or this contract prior to Programme Completion. In the event the *Project Delivery Partner* has been paid a provisional sum in respect of the Final Incentive Schedule and its employment or this contract is terminated, such amount is payable to the *Employer* as a debt due and may be deducted from sums otherwise payable to the *Project Delivery Partner*.

██████████ will be paid to the *Project Delivery Partner* upon demonstration that the completed Project is 100% compliant with the performance requirements set out in the Crossrail Programme Functional Requirements current at Final Completion (which are currently set out in Section 2.3 of Version 4.0 of the Crossrail Project Functional Requirements) which shall be demonstrated through measuring the performance of the operational railway one year after Final Completion. This bonus will not be subject to price escalation. No payment shall be made in the event that the completed Project is not demonstrated to be 100% compliant.

#### 3.4 Safety Performance

The *Employer* may in its absolute discretion decide not to pay up to 50% of the Final Earned Amount in the event of an incident arising out of or in connection with the Project involving death or serious personal injury or substantial property damage or loss.



## Final Incentive Schedule

Final Incentive Schedule		A = Performance Band B = Final Earned Amount (% of Final Maximum Amount)
No.	KPI Description and Definition	
<b>1</b>	<b>Safe delivery</b>	
<b>1.1</b>	<p>Performance in managing contractors' safety performance measured using HSPI</p> <p>Note: No financial incentive is attached to safety performance in order to encourage open and transparent reporting of performance.</p>	<p><b>A</b></p> <p>Achievement of following target: 85% or more of Crossrail contracts managed by the <i>Project Delivery Partner</i> have an HSPI score above 2, calculated as an average over the last three years prior to Substantial Completion</p> <p>N/A</p>
		<b>B</b> N/A
<b>1.2</b>	<p>Performance in managing continuous improvement in contractors' safety performance measured using the <i>Employer's Performance Assurance Framework (PAF)</i></p> <p>Note: No financial incentive is attached to safety performance in order to encourage open and</p>	<p><b>A</b></p> <p>Achievement of following target: Improvement of more than 75% in Health &amp; Safety performance of Crossrail contracts managed by the <i>Project Delivery Partner</i> measured using the <i>Employer's Performance Assurance Framework (PAF)</i> from the introduction of PAF to Programme Completion.</p>

Final Incentive Schedule											
No.	KPI Description and Definition										
	<p><b>A = Performance Band</b> <b>B = Final Earned Amount (% of Final Maximum Amount)</b></p>										
	transparent reporting of performance.										
	<b>B</b> N/A										
<b>1.3</b>	<p>Performance in managing contractors' safety performance measured using RIDDOR and LTC AFR</p> <p>Note: No financial incentive is attached to safety performance in order to encourage open and transparent reporting of performance.</p>										
	<b>A</b> Achievement of following targets across all Crossrail contracts managed by the <i>Project Delivery Partner</i> :										
	<ol style="list-style-type: none"> <li>Continuous improvement in RIDDOR and Lost Time Injury (LTC) accident frequency rate (AFR)</li> <li>Three-year rolling average RIDDOR AFR (including any LTC of more than 3 days) less than 0.15</li> <li>Three-year rolling average LTC AFR less than 0.20</li> </ol>										
	<b>B</b> N/A										
<b>2</b>	<b>Cost Performance</b>										
	Overall performance in managing the nominal cost of the Project measured by Project Cost (PC) at Final Completion										
	<b>A</b> PC <= IPO - [redacted]										
	<b>B</b> [redacted]										
	<table border="1"> <tr> <td>IP0- [redacted] PC &lt; IPO- [redacted]</td> <td>IP0- [redacted] PC &lt; [redacted]</td> <td>PC = [redacted]</td> <td>[redacted] &lt; PC &lt; [redacted]</td> <td>PC &gt; = [redacted]</td> </tr> <tr> <td>Interpolated</td> <td>Interpolated</td> <td>[redacted]</td> <td>Interpolated</td> <td>[redacted]</td> </tr> </table>	IP0- [redacted] PC < IPO- [redacted]	IP0- [redacted] PC < [redacted]	PC = [redacted]	[redacted] < PC < [redacted]	PC > = [redacted]	Interpolated	Interpolated	[redacted]	Interpolated	[redacted]
IP0- [redacted] PC < IPO- [redacted]	IP0- [redacted] PC < [redacted]	PC = [redacted]	[redacted] < PC < [redacted]	PC > = [redacted]							
Interpolated	Interpolated	[redacted]	Interpolated	[redacted]							

### Final Incentive Schedule

**No.** **KPI Description and Definition**

**A = Performance Band**

**B = Final Earned Amount (% of Final Maximum Amount)**

#### 3 Delivery on Time to Quality

No.	KPI Description and Definition	A	B	Stage 3 Opening on or in advance of 9 December 2018.	Stage 3 Opening after 9 December 2018 but on or before 13 September 2020	Stage 3 Opening after 13 September 2020
3.1	Performance in achieving Stage 3 Opening.	A	B	Stage 3 Opening on or in advance of 9 December 2018.	Stage 3 Opening after 9 December 2018 but on or before 13 September 2020	Stage 3 Opening after 13 September 2020
3.2	Progressive handover of sufficient siding capacity at Ilford between 7 February and 7 April 2017 to support the arrival and stabling of the Class 345 trains. Full handover by 21 April 2017.	A	B	Progressive Handover of sufficient siding capacity at Ilford between 7 February and 7 April 2017 to support the arrival and stabling of the Class 345 trains and full Handover of Ilford Stabling Facility by 21 April 2017.	Failure to achieve progressive siding capacity at Ilford between 7 February and 7 April 2017 to support the arrival and stabling of the Class 345 trains and full Handover of Ilford Stabling Facility by 21 April 2017.	Failure to achieve progressive Handover of sufficient siding capacity at Ilford between 7 February and 7 April 2017 to support the arrival and stabling of the Class 345 trains and full Handover of Ilford Stabling Facility by 21 April 2017.
3.3	Performance in achieving First Phase early energisation of non-traction permanent power.	A	B	First Phase early energisation of non-traction permanent power on or in advance of 30 September 2017	First Phase early energisation of non-traction permanent power after 30 September 2017	First Phase early energisation of non-traction permanent power after 30 September 2017
3.4	Performance in achieving start of dynamic testing for Zones 1 and 2	A	B	Start of dynamic testing for Zones 1 and 2 on or in advance of 1 November 2017	Start of dynamic testing for Zones 1 and 2 on or in advance of 1 November 2017	Start of dynamic testing for Zones 1 and 2 after 1 November 2017
3.5	Performance in achieving start of dynamic testing for Zones 3 and 4	A	B	Start of dynamic testing for Zones 3 and 4 on or in advance of 1 January 2018	Start of dynamic testing for Zones 3 and 4 on or in advance of 1 January 2018	Start of dynamic testing for Zones 3 and 4 after 1 January 2018

**Final Incentive Schedule**

No.	KPI Description and Definition	A = Performance Band B = Final Earned Amount (% of Final Maximum Amount)	
3.6	Performance in achieving Handover of Central Operating Section to relevant operators/ infrastructure managers	A Handover of Central Operating Section to relevant operators/ infrastructure managers on or in advance of 5 July 2018	Handover of Central Operating Section to relevant operators/ infrastructure managers after 5 July 2018
		B [Redacted]	[Redacted]