

Supplemental Agreement

Crossrail Limited

(the *Employer*)

and

Bechtel Limited

(the *Project Delivery Partner*)

Project Delivery Partner Services

Contract No C2166

Contract Amendment No. 3



This Deed is made on the 28th day of April 2011

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 and 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 (the "**Appointment**"). This Deed is supplemental to the Appointment.
- (B) The *Employer* and the *Project Delivery Partner* have agreed to amend the Appointment as set out below.

AGREED TERMS

1. The *Employer* and the *Project Delivery Partner* agree to amend the Appointment as follows:
 - 1.1 Clauses 11.2(9) and (31) are deleted in their entirety and replaced as follows:
 - (9) "Completion is when the *Project Delivery Partner* has completed the *services* or when the contract is terminated, whichever is the earlier."
 - (31) "The Price for Services Provided to Date is the Time Charge for the work which has been carried out."
 - 1.2 Clause 12.6.2 is deleted in its entirety and replaced as follows:

"The *Project Delivery Partner* acknowledges that *TfL* is a best value authority for the purposes of the Local Government Act 1999 and as such the *Employer* is required to make arrangements to secure continuous improvement in the way it exercises its functions having regard to a combination of economy, efficiency and effectiveness. The *Project Delivery Partner* assists the *Employer* to discharge the *Employer's* duty

where possible, and in doing so, inter alia supports the *Employer* in relation to the carrying out of any reviews of the Project or the Programme reasonably requested by the *Employer* from time to time."

1.3 Clause 13.6 is deleted in its entirety and replaced with the words "Not used".

1.4 Clause 15.1 is amended by the insertion of the following wording before the first sentence of clause 15.1:

"The provisions of Clause 15 apply to the extent stated in the Service Delivery Plan."

1.5 Clause 16.1 is deleted in its entirety and replaced as follows:

"The *Employer* or the *Project Delivery Partner* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. If the ambiguity or inconsistency is between the Scope and the Service Delivery Plan, the provisions of the Service Delivery Plan shall take precedence. In the case of other ambiguities or discrepancies the *Employer* gives an instruction resolving the ambiguity or inconsistency, as agreed with the *Project Delivery Partner*."

1.6 Clause 17.1 is deleted in its entirety and replaced as follows:

"The *Project Delivery Partner* notifies the *Employer* as soon as he considers that the Scope requires him to do anything which is illegal or impossible. If the *Employer* agrees, he gives an instruction, as agreed with the *Project Delivery Partner*, to change the Scope appropriately."

1.7 Clause 20.2 is deleted in its entirety and replaced as follows:

"The *Employer* may not give an instruction to the *Project Delivery Partner* which changes the Scope without the *Project Delivery Partner's* agreement."

1.8 Clause 21.2 is deleted in its entirety and replaced as follows:

"The *Project Delivery Partner's* obligation in respect of the performance of the *services* is to use the standard of skill, care and diligence to carry out and complete the *services* to be reasonably expected from a properly qualified professional consultant experienced in providing services similar in size, scope and complexity to the *services* and for projects similar in size, scope and complexity to the Programme, all as amplified in the Service Delivery Plan."

1.9 Clause 21.3 is deleted in its entirety and replaced as follows:

"The *Employer* shall undertake the statutory role of CDM Coordinator under the Construction (Design and Management) Regulations and the *Project Delivery Partner* shall cooperate with and coordinate his Provision of the Services with the services to be provided by the designers, the principal contractor, the client and the CDM Coordinator under the Construction (Design and Management) Regulations 2007."

1.10 Clause 23.1 is deleted in its entirety and replaced as follows:

"The *Project Delivery Partner* co-operates with Others as required to Provide the Services in obtaining and providing information which they need in connection with the *services*."

1.11 Clause 23.3 is deleted in its entirety and replaced with the words "Not Used".

1.12 Clause 25 is deleted in its entirety and replaced as follows:

25.1 "The *Project Delivery Partner* supports the *Employer* in relation to obtaining approval from Others where necessary or desirable for the Project.

25.2 The *Employer* provides access to a person, place or thing to the *Project Delivery Partner* as stated in the Contract Data or Service Delivery Plan on or before the later of its *access date* and the access date for it shown on the Accepted Programme.

25.3 Except in relation to any matter which under this contract requires the agreement of the Project Delivery Partner, the *Project Delivery Partner* obeys an instruction which is in accordance with this contract and is given to him by the *Employer*.

25.4 The *Project Delivery Partner* acts in accordance with the health and safety requirements stated in the Scope.

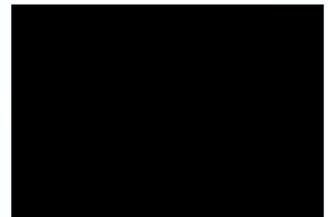
25.5 The *Project Delivery Partner* co-operates with Others To Provide the Services and in complying with its other obligations under this contract."

1.13 Clause 30.1 is deleted in its entirety and replaced as follows:

"The *Project Delivery Partner* starts work on the *starting date* (not before) and proceeds with the work diligently."

1.14 Clause 40 is deleted in its entirety and replaced with the words "Not Used".

1.15 Clause 41.1 is deleted in its entirety and replaced as follows:



"The *Employer* notifies the *Project Delivery Partner* of each Defect as soon as he finds it and the *Project Delivery Partner* notifies the *Employer* of each Defect as soon as he finds it. After Completion the *Project Delivery Partner* notifies the *Employer* of each Defect as soon as he finds it. The *Employer's* rights in respect of a Defect which the *Employer* has not found or notified are not affected."

1.16 Clause 41.2 is deleted in its entirety and replaced with the words "Not Used"

1.17 Clause 41.3 is deleted in its entirety and replaced with the words "Not Used".

1.18 Clause 50.1 is deleted in its entirety and replaced as follows:

50.1 "The *Project Delivery Partner* assesses the amount due and submits an invoice at each assessment date. The first assessment date is decided by the *Project Delivery Partner* to suit the procedures of the Parties and is not later than the assessment interval after the starting date. Later assessment dates occur

- at the end of each assessment interval and
- at Completion of the whole of the services."

1.19 Clause 66 is deleted in its entirety and replaced as follows:

"Where the *Employer* or the *Project Delivery Partner* considers that staff resource levels set out in the Service Delivery Plan are not sufficient to Provide the Services, the *Employer* and the *Project Delivery Partner* shall discuss whether or not to agree a change to the Service Delivery Plan."

1.20 Clause 85 is deleted in its entirety and replaced as follows:

"The maximum aggregate liability of the *Project Delivery Partner* and its affiliates (including without limitation the Guarantor) and its Subconsultants to the *Employer*, *DfT* and *TfL* arising out of or relating to any service provided after the Contract Date which suffers from a Defect, other than the excluded matters listed in this clause 85, shall nonetheless not exceed [REDACTED]

The excluded matters under this clause 85 are amounts payable by the *Project Delivery Partner* under the indemnity in clause 80.1 in connection with third party claims for death of or bodily injury to a person or loss of or damage to property.

Any amounts paid in relation to any service which suffers from a Defect are also taken into account in calculating whether the Total Liability Cap is exhausted."

1.21 Clause X20.2 is deleted in its entirety and replaced as follows:

X20.2 The *Project Delivery Partner* reports to the *Employer* his performance against each of the Interim KPIs and Programme KPIs. Reports are provided at the intervals stated in the Contract Data or Service Delivery Plan and include the forecast final measurement against each indicator.

1.22 The fourth bullet point is deleted in its entirety from the "Contract Data Part One, 1 General" and replaced as follows:

- "The Scope is at Appendix 1 as amended by the Service Delivery Plan."

1.23 The following bullet point is deleted in its entirety from the "Contract Data Part One, 4 Quality" :

- "The *defects date* is 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."

1.24 The bullet point relating to the Total Liability Cap is deleted in its entirety from the "Contract Data Part One, 8 Indemnity, Insurance and liability" and replaced as follows:

[REDACTED]

1.25 The bullet point entitled "Contract Data Part One, Optional Statements, If Option X1 is used" is deleted in its entirety from the Contract Data and replaced as follows:

"The *index* is the seasonally Adjusted Average Weekly Earnings - Whole Economy, including bonuses, excluding arrears series K54L."

1.26 The Contract Data Part Two – "Data provided by the *Project Delivery Partner*" shall be amended by deleting the words "and any further key persons" after the list of *key persons* at the second bullet point and replacing with the following words "or such".

2. Appendix 4 (Incentive Schedule) is deleted in its entirety and replaced with the Appendix to this Deed.

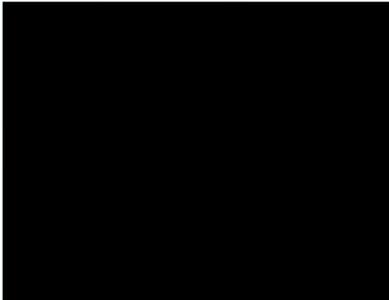
3. The effective date of the amendments to the Appointment set out above is 4 April 2011 with the exception that the effective date of the amendments to clause 85, to the Contract Data Part One item 8 the Total Liability Cap (as referred to in clause 82) and to Appendix 4 (Incentive Schedule) set out above, is 17 April 2009. For the avoidance of doubt, the Parties agree that the limitations upon the *Project Delivery Partner's* liabilities set out in clause 85 and the Contract Data Part One item 8 the



Total Liability Cap (as referred to in Clause 82), as amended and set out above, apply as if they had been included in the Appointment when it was entered into in place of the provisions which were in fact included at such time.

4. 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:



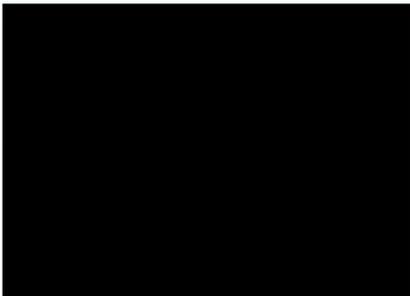
(signed)

(name of Director)

(signed)

(name of ~~Director~~ or Company Secretary)

On behalf of **Crossrail Limited**



(signed)

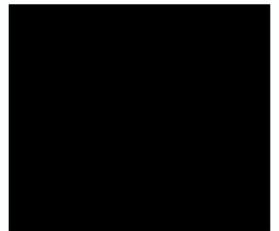
(name of Director)

(signed)

(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:

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.
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]
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%
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.
Reserved Amount	75% of the Interim Earned Amount in any Contract Year.
Sponsors	TfL and DfT.

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.

The Interim KPIs for the first Contract Year are attached.

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 Definitions

PROGRAMME KPI 2.1

Project Cost (PC) means Actual Final CRL Direct Costs less:

- (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;
- (c) Land and Property Costs;
- (d) Programme level indirect costs;
- (e) NR Financing Costs;
- (f) 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 relating to a liability for Costs falling within paragraphs (a) to (e) above; and
- (g) Tax Costs.

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 Clauses 17.3 or 17.5) and any claims which have been recovered by CRL;"

Crossrail NEC Contract is the NEC form of contract as amended for use on the Project.

Financial Models are defined in the PDA as follows:

"Financial Models means the Crossrail Investment Model, Project Financial Model and the QRA;"

Land and Property Costs are the costs of the acquisition of any Land.

Land is defined in the PDA as follows:

"**Land** means land of any tenure and mines and minerals and buildings or parts of buildings and includes any easement, right, privilege or benefit in, over or derived from land;"

Programme level indirect costs are the total indirect costs less the costs paid to the PDP.

NR Financing Costs are defined in the PDA as follows:

"**NR Financing Costs** means the Costs paid and forecast to be paid (net of any recovered or recoverable VAT) by CRL in relation to Network Rail's financing Costs in respect of the On-Network Works;"

Tax Costs are defined in the PDA as follows:

"**Tax Costs** means any Costs by way of corporation tax or irrecoverable VAT paid or forecast to be paid by CRL in respect of the Project Period;"

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;"

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);"

1.1 "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."

Target Project Cost (TPC) is defined as follows:

the sum of the Prices (as defined in the Crossrail NEC Contract) determined under the contracts relating to the works (including design contracts) falling within the definition of Project Cost, as the same will be adjusted from time to time to take account of Compensation Events (as defined in the Crossrail NEC3 Contract). In the event that any alternative form of contract is used for any element of the Project then the equivalent terms used in those contracts in place of "Prices" and "Compensation Events" will be used to calculate Target Project Cost.

Sponsor Change means a Change (as defined in the PDA) initiated by the Sponsors which is the subject of a Change Confirmation Notice (issued under Schedule 4 of the PDA).

Adverse Event and **Adverse Event Notice** are defined in the PDA as follows:

"Adverse Event has the meaning given to such term in Clause 22.1;"

1.2 "22.1 If any:

- (a) risk;
- (b) event or series of events; or
- (c) behaviour by an Industry Partner,

(each an **"Adverse Event"**) has, or is likely to have, a material adverse impact on the Crossrail Project (and/or its implementation), then without prejudice to:

- (a) CRL's obligation to implement the Crossrail Project in accordance with Clause 3.2; and
- (b) CRL's reporting obligations in any other provision of this Agreement,
- (c) CRL shall promptly notify the Sponsors of the Adverse Event (an **"Adverse Event Notice"**) giving full details of the nature of the event and its potential consequences and impact on the Crossrail Project."

Material Event is defined in the PDA as follows:

"Material Event has the meaning given to such term in Clause 24.2;"

1.3 **"24.2 Material Events – Identification**

Each of the following shall be a **"Material Event"**:

- (a) any Change in Law; or
- (b) if, at the time of any Financial Models update, the 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."

Material Event Notice is defined in clause 24.3(b) of the PDA as follows:

- (a) "CRL shall provide notice to each of the other Parties and to the Project Representative as soon as practicable after it considers that a Material Event has occurred (a **"Material Event Notice"**). The notice shall include a short description of the Material Event."

Investment Authority (IA) is the sum of the Authorised Budgets, as defined in the CRL Investment Authority Process, for the contracts relating to the works (including design contracts) falling within the definition of Project Cost as the same may be varied in accordance with the CRL Investment Authority Process.

Pain Limit (PL) is for the purpose of KPI 2.1 the sum of [REDACTED]. Should the Project Cost equal or exceed [REDACTED] the maximum negative Final Earned Amount is limited to [REDACTED] of the Reserved Amount. The Pain Limit will only be adjusted by the Employer in the event of Sponsor Change or Material Event under the PDA if and to the extent that it gives rise to an adjustment to the Sponsors' committed funding.

Any adjustment to the PL will be determined by the *Employer* as the effect of the Sponsor Change or Material Event measured as an increase or decrease to PC as estimated at the time of receipt of the Change Confirmation Notice or Material Event Response Notice as defined in the PDA.

Interpolated means calculation of the Final Earned Amount where the Project Cost is not:

- (a) equal or less than TPC;
- (b) equal to IA; or
- (c) equal or more than PL,

by linear interpolation between the Final Earned Amounts for TPC and IA or between IA and PL, as the case may be, as stated in the Final Incentive Schedule

PROGRAMME KPI 2.2

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. Should this occur the PC will be deemed to exceed PL for the purposes of evaluating KPI 2.1.

PROGRAMME KPI 3.1

Substantial Completion is defined in the PDA as follows:

"Substantial Completion means, in respect of an Element, or group of Elements, the satisfaction of the Substantial Completion Criteria;"

"Substantial Completion Criteria has the meaning given to such term in Clause 16.3(a);"

1.4

"16.3 Substantial Completion

- (a) (a) Substantial Completion in respect of an Element, or group of Elements of the Crossrail Project, shall occur once the Sponsors have endorsed CRL's certification that the following criteria (the "**Substantial Completion Criteria**") have been met:
 - (i) CRL has provided to the Sponsors the relevant certificates of Handover (and associated snagging lists) jointly signed by CRL and the relevant Operators evidencing that CRL has handed over each such Element in full to the relevant Operators (in accordance with Clause 16.2) for use in Trial Operations;
 - (ii) CRL has complied in full with the Assurance Process, including satisfactory completion of Trial Running, and has provided to the Sponsors all relevant certificates of assurance and the associated snagging lists in relation to each such Element;
 - (iii) CRL has provided the Sponsors with sufficient evidence of confirmation from each relevant Operator that:
 - (A) CRL has provided such Operator with sufficient documentation to enable it to develop its Safety Management System to enable the operation and maintenance of the Element or group of Elements;
 - (B) CRL has complied, to the extent relevant to such Operator, with Clause 19 in respect of that Element or group of Elements;
 - (C) CRL has procured adequate specialist equipment, tools and plant (including specialist on-track plant), to the extent that it is particular

to the Crossrail Project and not otherwise available to such Operator, as specified in the operations and maintenance manuals in respect of the Crossrail Project and has transferred to such Operator the benefit of any ongoing supply, support or maintenance arrangements provided by the supplier of the specialist equipment, tools or plant (including specialist on-track plant);

- (D) such Operator has developed maintenance strategies and plans as required for the relevant Element, consistent with the overall programme for the development and opening of the Railway;
 - (E) provided that such Operator has advised CRL of its requirements for Maintenance & Support Services and Spares in relation to the Element in sufficient time for CRL to include those requirements in its planned procurement activities, then CRL has procured such Maintenance & Support Services and Spares necessary to support the Operators' operational activities; and
 - (F) provided that such Operator has advised CRL of its requirements for future provision of Maintenance & Support Services and Spares in relation to the Element in sufficient time for CRL to include those requirements in its planned procurement activities, then CRL has procured those commercial arrangements with CRL's Delivery Contractors and subcontractors (provided that it is acknowledged that the Operators are ultimately responsible for determining the appropriate type, quantity and availability of Maintenance & Support Services and Spares for their respective operations);
- (iv) CRL has complied, to the extent relevant to each Sponsor, with Clause 19 in respect of that Element or group of Elements."

Element is defined in the PDA as follows:

"**Element** has the meaning given to such term in Clause 16.2(a);"

1.5 "16.2 Handover"

- (a) Subject to Clause 16.2(c)(i), CRL shall procure the handover of groups of assets and/or systems (each such group constituting an "**Element**" of the Railway) to the relevant Operator after satisfactory completion of Dynamic Testing in respect of each such Element in accordance with the Assurance Process (a "**Handover**")."

Longstop Date is defined in the PDA as follows:

"**Longstop Date** means the date falling 36 months after the Final Delivery Date"

Target Final Delivery Date is defined in the PDA as follows:

"**Target Final Delivery Date** means 10 September 2017, as may be amended in accordance with this Agreement;"

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 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 percentages achieved in respect of each Programme KPI applied to the Final Maximum Amount.

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*.

A [REDACTED] 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)				
Aim	KPI Description and Definition	Excellent	Good	Acceptable	Unacceptable	Poor
1	Safe delivery					
1.1	CLRL will be taking all necessary measures to achieve its zero accident aspiration. Delivery of the Project relative to health and safety targets will be measured through a portfolio of measures such as percentage of people trained, incident reporting rate, compliance with Health and Safety Standards, and evidence of safe behaviours. (A set of agreed quantitative measures and percentage weightings to be developed with CRL). Note: No financial incentive is attached to safety performance in order to encourage open and transparent reporting of performance.	Weighted average of annual scorecards from years 1 to programme close. (Target TBA)	Weighted average of annual scorecards from years 1 to programme close. (Target TBA)	Weighted average of annual scorecards from years 1 to programme close. (Target TBA)	Weighted average of annual scorecards from years 1 to programme close. (Target TBA)	Weighted average of annual scorecards from years 1 to programme close. (Target TBA)
		A				
		B				
2	Cost Performance					
2.1	Overall performance in managing the nominal cost of the Project measured by Project Cost (PC) at Final Completion relative to the Target Project Cost (TPC), Investment Authority (IA) and Pain Limit (PL).	A PC <= TPC-100m	TPC-£100m < PC < IA	PC = IA	IA < PC < PL	PC >= PL
		B 85%	Interpolated	0%	Interpolated	
2.2	Performance in managing cost certainty during the delivery of the Project measured by the extent of any breach of Intervention Point 1 (PDA Clause 23) A breach of Intervention Point 1 will be deemed to have occurred if notification to that effect is received from the Sponsors under clause 23 of the PDA. Should this occur the PC will be deemed to exceed PL for the purposes of evaluating KPI 2.1.					
3	Delivery on Time to Quality					

Final Incentive Schedule

Aim		KPI Description and Definition	A = Performance Band B = Final Earned Amount (% of Final Maximum Amount)				
			Excellent	Good	Acceptable	Unacceptable	Poor
3.1		Performance in achieving Substantial Completion (PDA Clause 16.3) of all Elements comprising the Project by the Target Final Delivery Date (Defined in PDA).	Substantial Completion on or in advance of the Target Final Delivery Date.				
			15%			0%	
			100%	Interpolated	15%	Interpolated	
		Total					

