

## **Bills Committee on Rail Merger Bill**

### **Integrated Operating Agreement**

#### **PURPOSE**

Upon implementation of the proposed merger between the Mass Transit Railway (“MTR”) and Kowloon-Canton Railway (“KCR”) systems, the existing Operating Agreement (“OA”) between MTR Corporation Limited (“MTRCL”) and the Government would be expanded into an integrated OA to cover the regulation of the operation of both the MTR and the KCR railways. This paper explains the major changes to be made to the existing OA as a result of the proposed merger. A summary of the relevant provisions in the draft integrated OA is provided at **Annex A** for Members’ information.

#### **BACKGROUND**

2. MTRCL’s railway operation is regulated by the existing OA. After the rail merger, the post-merger corporation (“MergeCo”) would be subject to an integrated OA which would be a legally binding document entered into between MergeCo and the Government. The integrated OA would be modelled on the existing OA with suitable amendments and additions to reflect the proposed merger.

3. At the Bills Committee meeting held on 2 November 2006, Members were briefed on the changes to be made to the existing OA as a result of the proposed introduction of a fare adjustment mechanism as part of the merger package. Paragraphs 5 - 14 below and **Annex A** highlight the other major changes to be made to the existing OA as a result of the merger.

4. Apart from these major changes, the other provisions in the existing OA would be retained with suitable modifications where appropriate to cover the regulation of the KCR railways. These are

explained further in paragraphs 15 - 16 below. Details of the relevant provisions in the draft integrated OA are at **Annex B**.

## **MAJOR CHANGES TO THE EXISTING OPERATING AGREEMENT**

5. New provisions would be added to reflect relevant arrangements for future new projects after the merger. The integrated OA would stipulate the performance levels required of MergeCo covering the operation of both the MTR and KCR railways.

6. Upon progressive integration of the MTR and KCR systems after the merger, it is possible that certain MTR or KCR assets would be used for the operation of both systems (“Common Assets”). The integrated OA would contain new provisions on arrangements for access to the Common Assets if the franchise is terminated or suspended.

### New projects

7. The integrated OA would stipulate that Government has the right to determine whether the “ownership approach” (under which MergeCo would fund, construct and operate the new railway) or the “concession approach” (under which Government would fund the construction of the new railway and MergeCo would be granted a service concession to operate the new railway) should be adopted for individual new railway projects which are not natural MTR-extension projects. For any such railway project that Government invites MergeCo to operate under a concession approach, MergeCo shall operate the new railway based on financial terms to be determined on the understanding that MergeCo would require an appropriate commercial rate of return to be determined on a case-by-case basis.

8. For future railway projects which are natural MTR-extension projects, the status quo would apply i.e. Government would discuss the financial arrangement for the new project with MergeCo on the basis of the ownership approach.

## Performance requirements

9. The existing performance criteria of the two railway corporations can be divided broadly into:

- (a) train service performance (train service delivery, passenger journeys on time, train punctuality); and
- (b) reliability of passenger service related equipment at stations (add value machines, ticket issuing machines, ticket gates, escalators, passenger lifts).

All these existing performance criteria would be maintained after the merger.

10. As a follow-up to the meeting of the Panel on Transport held on 26 May 2006 to discuss the proposed steps for the legislative exercise for the rail merger, we have provided the current performance requirements of the two railway corporations to Panel members for information and they are summarised at **Annex C**. As not all railway lines have reached the same stage of maturity and in some cases different railway lines operate in different operating environment, the existing performance requirements vary slightly between different lines.

11. In our discussion with the Panel on Transport earlier this year, we have assured the Panel that the performance requirements for MergeCo for MTR and KCR railway lines would be at least comparable to the existing requirements for the individual lines concerned. In this connection, it is relevant to note that in one of the subsequent written submissions from the staff side of the railway corporations for the public session of this Bills Committee held on 28 October 2006 (vide LC Paper No. CB(1)68/06-07(03)), there were some comments from the staff perspective in relation to performance requirements and these are quoted below: “Staff generally accept the reliability targets, which cover train service, automatic fare collection systems, escalators and lifts, as stipulated in the Mass Transit Railway Corporation Limited Operating Agreement of 2000. In a stable working environment, staff will have more confidence to perform their duties ..... However, MTRCL and

KCRC differ in terms of working culture, environment, equipment, nature and standards, and hence time would be needed for integration. We understand that there are high expectations from society on the rail services in Hong Kong, but invisible pressure should not be asserted on staff. We hope society would understand our difficulties and be accommodating in the early stage of the merger. We will, however, pledge to do our best to meet or exceed the reliability targets in railway operation.”

12. After detailed discussion with MTRCL, it was agreed that the following performance requirements would be uplifted after the merger:

For MTR railways:

- Passenger Journeys on Time for the Airport Express Line (AEL) – increase from 98% to 98.5%
- Add-value Machine Reliability for all MTR Lines and the AEL – increase from 95.5% to 98%
- Ticket Machine Reliability for all MTR Lines and the AEL – increase from 93% to 97%

For KCR railways:

- Passenger Journeys on Time for KCR railways viz. East Rail (ER) and West Rail (WR) – increase from 98% to 98.5%
- Passenger Lift Reliability for KCR railways viz. ER and WR – increase from 98% to 98.5%

The performance requirements for MergeCo are set out in **Appendix to Annex A**. As a result of the above proposed changes, the rail merger would bring about higher performance requirements for railway lines which would benefit the travelling public. MergeCo would have to sustain good performance throughout the franchise period in order to meet or exceed these performance requirements.

#### Access to Common Assets

13. The Rail Merger Bill provides that Government has the right to use Common Assets which Government has not taken possession of upon revocation, suspension or expiry of MergeCo’s franchise, and on the other

hand MergeCo has the right to use Common Assets which Government has taken possession of upon revocation or suspension of the franchise as it relates to the KCR railways. The integrated OA would contain provisions to provide for the access arrangements to Common Assets in these circumstances.

14. A summary of the provisions in the draft integrated OA on new projects, performance requirements and access to Common Assets are at **Annex A**.

### **OTHER PROVISIONS IN EXISTING OPERATING AGREEMENT TO BE RETAINED**

15. At present, the safe and efficient operation of the MTR railways is regulated under the Mass Transit Railway Ordinance, Cap. 556 and the OA. Hong Kong Railway Inspectorate (HKRI) is responsible for monitoring railway safety, while the Transport Department is responsible for monitoring the performance of railway services. After the merger, all the relevant provisions in the existing OA would be retained in the integrated OA with suitable modifications to cover the regulation of both the MTR and the KCR railways.

16. The principal headings of the relevant provisions in the draft integrated OA are at **Annex B** for Members' information. In respect of the safe operation and service delivery of the railways, the integrated OA would require MergeCo to, inter alia:

- (a) design, construct, operate and maintain (as the case may be) the railways having due regard to the safety of the railways;
- (b) establish a safety management system to review, control and minimise safety risks;
- (c) employ an independent expert to review the safety management system regularly; and
- (d) satisfy the HKRI that any new lines or extensions of the

railways are in all aspects safe and in sound condition to be used for carrying passengers before commissioning.

- (e) report to the Commissioner for Transport (Commissioner) on disruptions of train services in accordance with the agreed procedures<sup>1</sup>;
- (f) ensure the Commissioner has no objection to any material modification of the train service arrangement in respect of the hours of operation of train services and the service capacity for the core service hours before implementing such modification;
- (g) develop and maintain arrangements for measuring customer satisfaction with its railway services (including passenger satisfaction surveys and the method and extent of publication of the survey results); and
- (h) develop and maintain a system for handling passenger complaints and suggestions.

17. It is widely acknowledged that the two railway corporations have performed very well and Hong Kong has a well-established regime for regulating railway operation that works well. We will build on this solid foundation in moving towards and beyond the rail merger.

Environment, Transport and Works Bureau  
15 December 2006

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<sup>1</sup> MergeCo would be required to notify the Commissioner of service disruption incidents which may cause disruption to railway service for 8 minutes or more.

**Summary of relevant provisions in the draft integrated Operating Agreement regarding New Projects, Performance Requirements and Access Regime**

**New Projects**

**1 Natural extension of MTRC Railway (“New MTR Project”)**

- 1.1 The existing arrangements contained in the Operating Agreement would be preserved. Government and MergeCo would discuss the financial arrangement for the New MTR Project on the basis of the ownership approach (under which the operator would fund, construct and operate the New MTR Project).
- 1.2 If an agreement on the terms could not be reached within a reasonable time period, Government may cease negotiations with MergeCo and invite other persons to undertake the New MTR Project.

**2 Natural extension of KCRC Railway (“New KCR Project”)**

- 2.1 For any New KCR Project, Government may decide to adopt the ownership approach or the concession approach (under which Government would fund the construction of the new railway and the operator would be granted a service concession to operate the new railway).
- 2.2 For any New KCR Project in respect of which Government decides to adopt the ownership approach, Government and MergeCo would discuss the financial arrangement. If an agreement on the terms could not be reached within a reasonable time period, Government may cease negotiations with MergeCo and invite other persons to undertake the New KCR Project on the basis of the ownership approach, or invite MergeCo to operate the New KCR Project through the concession approach in which case MergeCo shall

operate that New KCR Project.

- 2.3 For any New KCR Project in respect of which Government decides to adopt the concession approach, Government shall invite MergeCo to operate the New KCR Project in which case MergeCo shall operate that New KCR Project.
- 2.4 Government acknowledges that MergeCo will require an appropriate commercial rate of return to be determined on a case-by-case basis for undertaking New KCR Projects under the concession approach.
- 2.5 The provisions under this paragraph 2 will cease to have effect if MergeCo's franchise as it relates to the KCRC Railway only is revoked or expires.

### **3 New project that is not natural extension of MTRC or KCRC Railway ("New Separate Project")**

- 3.1 For any New Separate Project, Government may decide to adopt the ownership approach or the concession approach.
- 3.2 For any New Separate Project in respect of which Government decides to adopt the ownership approach, Government may:
  - (i) discuss with MergeCo the financial arrangement for MergeCo to undertake the New Separate Project; or
  - (ii) award the New Separate Project through an open tender process.
- 3.3 For any New Separate Project in respect of which Government decides to adopt the concession approach, Government may, in its absolute discretion, invite MergeCo and/or third party to operate the New Separate Project.
- 3.4 For each New Separate Project that Government invites MergeCo to operate under a service concession approach, MergeCo shall operate that New Separate Project. Government acknowledges that



MergeCo will require an appropriate commercial rate of return to be determined on a case-by-case basis for undertaking New Separate Projects under the concession approach.

#### **4 Entrustment Arrangement**

MergeCo shall be entrusted with the design and construction of New Projects which are to be undertaken by MergeCo through the concession approach, subject to:

- (i) Government's formal approval process; and
- (ii) MergeCo and Government agreeing on the price for such entrustment for each such New Project.

#### **Performance Requirements**

- 5. MergeCo shall meet the performance requirements as set out in the **Appendix**.

#### **Access Regime**

#### **6 General**

6.1 Upon progressive integration of the MTR and KCR systems in future, there would be assets used for the operation of both the MTR system and the KCR system ("Common Property"). Paragraphs 7 – 9 below set out the arrangements for determining the detailed terms for :-

- (a) Government to use the Common Property which is not taken possession of by Government upon franchise revocation, suspension or expiry; and
- (b) MergeCo to use those Common Property which is taken possession of by Government upon revocation of the franchise

as it relates to the KCRC Railway only or suspension of part of MergeCo's franchise.

## **7 Access upon Franchise Termination**

7.1 Franchise termination refers to the following three scenarios:

- (a) MergeCo's franchise expires and is not renewed; or
- (b) MergeCo's franchise is revoked; or
- (c) the part of MergeCo's franchise as it relates to the KCRC Railway only, is revoked (i.e. MergeCo retains the franchise as it relates to the MTRC Railway)

7.2 Upon franchise termination set out in paragraph 7.1, MergeCo shall grant to Government access to MergeCo's Common Property which is not taken possession of by Government under section 19(1) of the MTR Ordinance, if so required by Government, in a manner that enables Government to provide the KCRC Services and/or the MTRC Services (as the case may be) to the safety, performance and other operational standards prescribed by applicable law<sup>1</sup> ("Required Standards") as they apply to the MTRC Services or KCRC Services (as the case may be) at the time of franchise termination.

7.3 Under paragraph 7.1(c), Government shall grant to MergeCo access to any KCRC Common Property which is taken possession of by Government under section 19A(2) of the MTR Ordinance, if so required by MergeCo, in a manner that enables MTRC to provide the MTRC Services to the Required Standards as they apply to the MTRC Services at the time of termination of the part of franchise as it relates to the KCRC Railway.

## **8 Access upon Franchise Suspension**

Upon any franchise suspension (i.e. any part of MergeCo's franchise is suspended in accordance with the MTR Ordinance):

- (i) MergeCo shall grant to Government access to any Common Property which is not taken possession of by Government under

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<sup>1</sup> And any other agreement, instrument or document as agreed by Government and KCRC or MTRCL.

section 15(5) of the MTR Ordinance, if so required by Government, in a manner that enables Government to provide the KCRC Services and the MTRC Services (to the extent that they are covered by the franchise suspension) to the Required Standards as they apply to such services at the time of such suspension; and

- (ii) Government shall grant to MergeCo access to any Common Property which is taken possession of by Government under section 15(5) of the MTR Ordinance, if so required by MergeCo, in a manner that enables MergeCo to provide the KCRC Services and the MTRC Services (to the extent that they are not covered by the franchise suspension) to the Required Standards as they apply to such services at the time of such suspension.

## **9 Access Agreements**

This provision sets out the procedures for MergeCo and Government to follow in determining an access agreement which shall include, without limitation, provisions dealing with the access fees, term of the access agreement, and the respective rights of the parties concerned.

ENDS

Performance Requirements for MergeCo

<b>Performance Criteria</b>	<b>Performance Requirements</b>
Train Service Delivery	98.5%
Passenger Journeys on Time	98.5%
Train Punctuality	98%
Add Value Machine Reliability	98%
Ticket Machine Reliability	97%
Ticket Gate Reliability	97%
Escalator Reliability	98%
Passenger Lift Reliability	98.5%

**DETAILS OF THE RELEVANT PROVISIONS**

**of the**

**OPERATING AGREEMENT**

**between**

**GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION**

**and**

**THE POST-MERGER CORPORATION**

Preamble

This integrated Operating Agreement is made pursuant to the Mass Transit Railway Ordinance (the MTR Ordinance) and will replace the existing Operating Agreement between the Government of HKSAR (Government) and MTR Corporation Limited (MTRCL) (the MTR Operating Agreement).

## **1. INTERPRETATION**

The new integrated Operating Agreement will contain appropriate interpretation provisions.

## **2. EXTENSION OF FRANCHISE**

Whilst the MTR Ordinance would enable the post-merger corporation (the “Corporation”) to apply for, and Government to grant, extensions of the franchise, the procedures are set out in the integrated Operating Agreement. The franchise of the Corporation will be extendable by application or by reason of the amount of capital expenditure invested<sup>1</sup> by the Corporation on the railway network, subject to approval by the Chief Executive in Council.

## **3. DESIGN, CONSTRUCTION AND MAINTENANCE OF THE RAILWAY**

### **3.1 Electric Power Supply**

The Corporation shall make provision for and, as far as is reasonably practicable, maintain more than one source of electric power supply to all parts of the railway so that, in the event of a failure of one source, another source shall be capable of maintaining a safe and tolerable environment for all persons using the railway.

### **3.2 Use of Electrical Energy**

3.2.1 The Corporation shall take all proper precautions in the use of electrical energy.

3.2.2 The Corporation shall take all reasonable precautions in constructing, placing and maintaining its electric lines and circuits and other works of all descriptions, and also in the operation of the railway, so as to prevent the discharge of electrical current into the ground in such a manner as will injuriously affect by fusion or electrolytic action any gas, water or hydraulic power pipes, electric lines or other metallic pipes, structures or substances or as will interfere with, or with the working of, any wire, line or apparatus from time to time used for the purpose of transmitting electrical energy or of telegraphic, telephonic or electrical signalling communication or the currents in such wire, line or apparatus.

### **3.3 Control Centres**

3.3.1 The Corporation shall provide and maintain adequate facilities in the control centres for the safe regulation, control and direction of trains and persons using or employed in the operation of the railway.

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<sup>1</sup> The threshold of capital expenditure invested would be increased from \$10 billion in the existing Operating Agreement to \$15 billion and the incurred capital expenditure made by MTRCL up to the merger date would be reset to zero upon merger.

- 3.3.2 The Corporation shall ensure that such control centres are manned at all times by persons trained in the use of the equipment installed therein and in such duties assigned to them and shall take such steps as may be necessary to ensure that such persons remain at all times competent to carry out such duties.

#### **3.4 Prevention of Flooding**

The Corporation shall provide and maintain adequate means to prevent flooding of the railway premises insofar as it is reasonably practicable and within the reasonable control of the Corporation.

#### **3.5 Provision of Depots and Equipment**

- 3.5.1 The Corporation shall provide and maintain adequate depot facilities for the stabling, cleaning, inspection, maintenance and repair of rolling stock. These depots shall be of an adequate capacity to maintain full services and shall contain all the necessary equipment for the work to be undertaken safely.

- 3.5.2 The Corporation shall develop and maintain suitable arrangements for the maintenance and repair of all rails, overhead line equipment, tunnels, viaducts, stations and other structures, infrastructure, plant and equipment used in connection with the operation of the railway, subject to such particular arrangements as are made within the terms of the Eastern Harbour Crossing Agreement and the Airport Railway Operating and Maintenance Terms.

#### **3.6 Monitoring of Environmental Conditions**

The Corporation shall monitor and record the environmental conditions throughout the enclosed areas of the railway and shall provide and maintain such measuring and recording instruments as may be necessary for the continuous monitoring and recording of such environmental conditions which, in the case of temperature in enclosed areas at stations, shall be on a continuous basis.

#### **3.7 Lighting and Ventilation**

- 3.7.1 The Corporation shall provide and maintain adequate lighting in areas of the railway premises accessible to the public and where persons are at any time required to work.

- 3.7.2 The Corporation shall provide and maintain adequate ventilation in enclosed areas of the railway premises and in areas of the railway premises over which the Corporation can reasonably exercise climatic control and which are not naturally ventilated, in each case to which the public has access.

#### **3.8 Police Accommodation**

- 3.8.1 The Corporation shall provide, to the satisfaction of the Commissioner of Police, adequate accommodation and facilities for members of the Hong Kong Police Force on duty on the railway and the railway premises and maintain

such accommodation and facilities properly, with certain railway premises exempted from this requirement due to physical constraints.

- 3.8.2 To the extent permitted by law, the Corporation shall allow members of the Hong Kong Police Force on duty on the railway and the railway premises access to its closed circuit television monitors in its control centres and stations for the purposes of crowd management and crime prevention and detection. In addition, the Corporation shall allow members of the Hong Kong Police Force access to its closed circuit television systems at Kowloon Tong station, Tsim Sha Tsui station, Causeway Bay station, Nam Cheong station, Mei Foo station, Tsuen Wan West station, Kam Sheung Road station, Yuen Long station, Long Ping station, Tin Shui Wai station, Siu Hong station, Tuen Mun station, the operations control centre at Tsing Yi and Kam Tin and at such other locations as may be agreed between the Corporation and the Commissioner of Police from time to time.
- 3.8.3 The Government shall continue to procure that the Hong Kong Police Force will continue to provide a police service for the railway and the railway premises in the same manner as that provided as at the date of the integrated Operating Agreement.

#### **4. RAILWAY PASSENGER SERVICES**

##### **4.1 Disruptions to Train Services**

- 4.1.1 The Corporation shall report to the Commissioner for Transport (“Commissioner”) and the Commissioner of Police, in accordance with the notification and alert procedures agreed between the Corporation and Government from time to time, with the least practicable delay:
- (a) the emergency closure of any station or any part of the railway during hours of operation;
  - (b) any anticipated emergency closure of any station or any part of the railway that may affect the normal operation of the railway; and
  - (c) any interruption or delay in train service which might affect the safe and efficient conveyance of passengers travelling or wishing to travel on the railway.
- 4.1.2 The Corporation shall consult the Commissioner on any new arrangements by the Corporation which may reasonably be considered as adversely affecting the normal operation of the railway prior to its implementation of such arrangements.

##### **4.2 Train Service Arrangements**



4.2.1 On the Merger Date<sup>2</sup> and from time to time, the Corporation shall provide to the Commissioner detailed information relating to the train service arrangements provided by the Corporation on each Operating Day as at the Merger Date or such other day (as the case may be) covering each line of the railway in respect of:

- (a) the hours of operation of train services;
- (b) the Service Capacity (as defined in clause 4.2.4),

4.2.2 As at the Merger Date, the minimum level of Train Service Arrangements to be provided by the Corporation covering each line of the railway shall be set out in a schedule to the integrated Operating Agreement (the Train Service Arrangement Schedule).

4.2.3

(a) Before implementing any Material Modification (as defined in clause 4.2.5) to any of the Train Service Arrangements, the Corporation shall give the Commissioner written notice (the Material Modification Notice) containing details of the Material Modification together with explanations of, and for, the Material Modification and the Corporation's assessment of the likely impact on passenger services and, in the event that a Material Modification relates to engineering works which the Corporation plans to implement as part of its capital or engineering works programmes (Planned Works), that Material Modification Notice shall be given by the Corporation to the Commissioner as soon as reasonably practicable in the circumstances following the Corporation's decision to implement that Material Modification and, in any event, within a specified period prior to the implementation of that Material Modification.

(b) (i) The Corporation shall be entitled to implement any Material Modification described in a Material Modification Notice which it proposes to implement: (1) for reasons associated with safety or its implementation of Planned Works; or (2) in order to prevent, mitigate the effects of, or remedy, an Exemption Event (as defined in clause 4.11.2).

(ii) In the case of any other Material Modification described in a Material Modification Notice, the Corporation shall be entitled to implement that Material Modification at any time after a specified period from the date of the relevant Material Modification Notice and the Train Service Arrangement Schedule shall be amended accordingly in accordance with clause 4.2.7. Provided the Commissioner has not given the Corporation written notice within the specified period from the date of the Material Modification Notice that he objects to that Material

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<sup>2</sup> Merger Date refers to the day on which the Rail Merger Ordinance comes into operation.

Modification together with explanations of, and for, any such objection and any such objection, if given, shall be given by the Commissioner acting reasonably.

- (c) In relation to any modification to any train service arrangement that does not constitute a Material Modification to that Train Service Arrangement, the Corporation shall, insofar as reasonable practicable in the circumstances, inform the Commissioner in writing of that modification at least 14 days prior to the implementation of that modification.

4.2.4 For the purposes of this clause 4.2, Service Capacity of a line of the railway shall be calculated by applying the following formula:

$$\text{Car Capacity} \times \text{Cars per Train} \times \text{Train Frequency}$$

Where:

Car Capacity shall have the meaning ascribed to that term in the Train Service Arrangement Schedule;

Cars per Train means the number of train cars comprised in a train that is operating on that line of the railway; and

Train Frequency means the number of trains operating each direction on that line of the railway per hour.

4.2.5 For the purposes of clause 4.2.3, Material Modification means a modification to the Train Service Arrangements which the Corporation proposes will last for at least 21 days and which, in respect of:

- (a) the hours of operation of train services, is a modification which, on each operating day, would result in:
  - (i) the first train operating in each direction on each line of the railway being scheduled to depart more than 15 minutes after the First Train Time (being the time shown in the Train Service Arrangement Schedule as the First Train Time for that train) from the first station at which it is intended to stop for passengers to board; or
  - (ii) the last train operating on each line of the railway being scheduled to depart more than 15 minutes before the Last Train Time (being the time shown in the Train Service Arrangement Schedule as the Last Train Time for that train) from the first station at which it is intended to stop for passengers to board; and
- (b) the Service Capacity for the Core Service Hours (being the periods shown in the Train Service Arrangement Schedule as the Core Service Hours), is a modification which would result in a decrease in the Service Capacity for the relevant Core Service Hours of at least 15% from the Service Capacity shown

in the Train Service Arrangement Schedule as the Service Capacity for the relevant Core Service Hours.

#### **4.2.6 New Projects and New Technology**

- (a) Clause 4.2.3 shall not apply in relation to a modification to any Train Service Arrangement which would result from the introduction of a new project or the introduction of New Technology (as defined in clause 4.10.3(b)).
- (b) Before the commencement of train service operations on any new project or the introduction of any New Technology (as defined in clause 4.10.3(b)), the Corporation shall establish to the reasonable satisfaction of the Commissioner specific Train Service Arrangements for that New Project or in respect of that New Technology (as the case may be).
- (c) After any Train Service Arrangement has been established pursuant to clause 4.2.6(b), clause 4.2.3 (a) and (b) shall apply to any subsequent Material Modification to that Train Service Arrangement and clause 4.2.3(c) shall apply to any subsequent modification to that Train Service Arrangement which does not constitute a Material Modification to that Train Service Arrangement.

#### **4.2.7 Amendments to the Train Service Arrangement Schedule**

The Train Service Arrangement Schedule shall be amended from time to time to reflect any Material Modifications implemented by the Corporation in accordance with clause 4.2.3(b)(ii). Any amendment to the Train Service Arrangement Schedule pursuant to clause 4.2.7 of the integrated Operating Agreement shall be in the form of a supplemental agreement to the integrated Operating Agreement signed by the Corporation and the Commissioner (on behalf of the Government).

### **4.3 Railway Cleanliness**

The Corporation shall, as far as is reasonably practicable, at all times keep the railway premises in a clean and sanitary state.

### **4.4 Passenger Environment**

4.4.1 The Corporation shall provide a comfortable passenger environment by maintaining adequate standards for temperature and ventilation in enclosed areas of the railway premises and in areas of the railway premises over which the Corporation can reasonably exercise climatic control and which are not naturally ventilated, in each case to which the public has access.

4.4.2 In ensuring that a comfortable passenger environment is provided, the Corporation shall take into account such guidance notes, practice notes and other advice relevant to clause 4.4.1 as may be issued by Government from time to time.

4.4.3 The Corporation shall take into account all the guidance notes, practice notes and advice as may be issued by the Government from time to time relating to any aspects of the transmission of audio or audio-visual programmes in train compartments.

#### 4.5 **Communications**

4.5.1 The Corporation shall provide and maintain adequate and efficient means of communication between its control centres and:

(a) all:

(i) trains in operation (whether or not carrying passengers);

(ii) stations;

(iii) depots; and

(iv) such other places as are essential to the proper, efficient and safe operation of the railway;

(b) and such:

(i) police facilities as may be designated by the Commissioner of Police;

(ii) transport coordination centres and such other places as may be designated by the Commissioner;

(iii) communications centres as may be designated by the Director of Fire Services and such other places as may be agreed between the Corporation and the Director of Fire Services; and

(iv) control rooms of those companies that supply electric power to the Corporation.

4.5.2 For the purpose of monitoring transport services, the Corporation shall allow any Government employees nominated by the Commissioner access to its control centres and railway premises during emergencies and at such other times as may be agreed between Government and the Corporation.

#### 4.6 **Noise and Vibration**

The Corporation shall ensure that the noise and vibration emitted due to the operation of the railway is at all times kept to a minimum consistent with proper maintenance and safe operational practices.

#### 4.7 **Collection of Fares**

The Corporation shall provide and maintain adequate staff and a reliable ticketing system for the efficient and effective collection of fares.

#### **4.8 Ticket and Cash Handling**

The Corporation shall, as far as is reasonably practicable, ensure that all ticket, smart card and cash handling facilities are at all times safe and secure.

#### **4.9 Escalators and Lifts**

The Corporation shall provide and maintain adequate and reliable escalators and lifts for the efficient and effective transportation of passengers within stations.

#### **4.10 Performance Requirements, New Projects and New Technology**

##### **4.10.1 Performance Requirements**

- (a) The integrated Operating Agreement will set out the standards of performance (the Performance Requirements) which the Corporation shall be required to meet during each Operating Period (calculated on a yearly basis).
- (b) The Commissioner shall assess the Corporation's compliance with the Performance Requirements in respect of each Operating Period on a date as he and the Corporation shall agree, such date being within two months following the end of the relevant Operating Period.
- (c) During an assessment carried out pursuant to clause 4.10.1(b), the Commissioner may require the Corporation to explain any failure by the Corporation to meet any Performance Requirement applicable for the relevant Operating Period and to provide information on the actions it has taken, or proposes to take, to improve its performance.
- (d) Should for any reason the Corporation become aware during any Operating Period that it is unable to meet, or is unlikely to meet, any Performance Requirement, it shall furnish the Commissioner with explanations in writing for its inability, or the unlikelihood of its ability, to meet such Performance Requirement, together with information on any action it is taking to improve the situation.

##### **4.10.2 Review of Performance Requirements**

The Performance Requirements shall be jointly reviewed by the Corporation and the Commissioner:

- (a) not later than 28th February (or such other date as the Corporation and the Commissioner may agree) in each Operating Period, taking into account the results of any customer surveys covered by reports furnished pursuant to clause 4.13.3, the opening of any New Projects, the introduction of any New Technology and any other relevant circumstances; and
- (b) at any other time or times during an Operating Period, within 28 days after receipt by the Commissioner of a request in writing from the Corporation for a joint review to be carried out in the particular circumstances (save that no such

request may be made if the particular circumstances existed, or the Corporation was aware that the particular circumstances would arise, at the time of the most recent annual review carried out pursuant to clause 4.10.2.(a)).

At any such review, the Corporation and the Commissioner may agree what, if any, temporary changes should be made to any of the Performance Requirements or the application thereof, in each case, for such period as may be agreed between the Commissioner and the Corporation. Any such request referred to in clause 4.10.2(b) shall be accompanied with details of the Corporation's proposals and reasons supporting them. Without prejudice to clause 4.10.3, the particular circumstances in which a request may be made may include, but shall not be limited to:

- (i) the period during which new or substantially modified designs for passenger trains are implemented and for the initial period thereafter agreed between the Corporation and the Commissioner;
- (ii) the period during which any new or substantially revised methods of automatic train control are implemented and for the initial period thereafter agreed between the Corporation and the Commissioner;
- (iii) the period during which any substantial alteration, extension, addition or modification to any material infrastructure, plant or equipment used in connection with the operation of the railway is implemented and for the initial period thereafter agreed between the Corporation and the Commissioner; and
- (iv) any infrastructure, plant or equipment necessary for the operation of the railway or a substantial percentage of rolling stock being damaged beyond economic repair unless such damage is the fault of the Corporation because it has not used its reasonable endeavours (i) to take such steps to prevent such damage and (ii) to take such steps to remedy such damage, in each case as is practicable in the circumstances.

#### 4.10.3 New Projects and New Technology

- (a) Without prejudice to clause 4.10.3(c), where the Corporation introduces a New Project and the introduction of that New Project is likely to materially affect the Corporation's ability to meet any Performance Requirement, then in determining whether the Corporation has met any Performance Requirement, no account shall be taken of any New Project during the period of introduction of that New Project and for two years from the commencement of operations on that New Project.
- (b) Without prejudice to clause 4.10.3(c), where new or substantially changed technology (the purpose of which is to assist in improving or maintaining the railway) is introduced by the Corporation in connection with the operation of the railway (New Technology) and the introduction of such New Technology is likely to materially affect the Corporation's ability to meet any Performance Requirement in respect of the operation of that or any other part of the railway

(the Relevant Part of the Railway) during the period when that New Technology is being introduced, then, in determining whether the Corporation has met any Performance Requirement, no account shall be taken of the operation of the Relevant Part of the Railway for two years from the date of the introduction of that New Technology.

- (c) Before the commencement of operations on any New Project referred to in clause 4.10.3(a) or the introduction of any New Technology, the Corporation shall establish to the reasonable satisfaction of the Commissioner specific performance criteria, performance definitions and performance levels for:
- (i) that New Project (New Project Requirements, which expression includes such requirements as amended from time to time in accordance with the integrated Operating Agreement); and
  - (ii) the operation of the Relevant Part of the Railway (New Technology Requirements, which expression includes such requirements as amended from time to time in accordance with the integrated Operating Agreement),

and such New Project Requirements or New Technology Requirements, as the case may be, shall be applicable in respect of that New Project or the operation of the Relevant Part of the Railway, as the case may be, for two years from the commencement of operations on that New Project or the date of the introduction of that New Technology, as the case may be. The Corporation shall base such New Project Requirements or New Technology Requirements, as the case may be, on the best information available to the Corporation, including the outcome of any performance trials and relevant contract specifications.

- (d) The Standard Performance Requirements<sup>3</sup> shall continue to be applicable in respect of the operation of the railway other than such part where New Project Requirements or New Technology Requirements, as the case may be, are for the time being applicable pursuant to this clause 4.10.3.
- (e) The New Project Requirements in respect of the New Projects on which operations commence at any time during the period beginning two years immediately before the Merger Date shall be set out in the integrated Operating Agreement.

#### 4.10.4 Amendments to Performance Requirements (Schedule 2)

Part I of Schedule 2 to this integrated Operating Agreement shall be amended from time to time to reflect any changes to any Standard Performance Requirements agreed between the Corporation and the Commissioner pursuant to clause 4.10.2. Part II or Part III, as the case may be, of Schedule 2 shall be amended from time to time to reflect the establishment of any New Project Requirements or New Technology

<sup>3</sup> Standard Performance Requirements refer to the performance requirements excluding any New Project Requirements and any New Technology Requirements.

Requirements agreed between the Corporation and the Commissioner pursuant to clause 4.10.3, and any changes thereto agreed between the Corporation and the Commissioner pursuant to clause 4.10.2. Any amendment to Schedule 2 pursuant to this clause 4.10.4 shall be in the form of a supplemental agreement to this integrated Operating Agreement signed by the Corporation and by the Commissioner (on behalf of Government).

#### **4.11 Exemption Events**

4.11.1 The Corporation shall not be regarded as having failed to meet a Performance Requirement if the failure has resulted (whether directly or indirectly and whether in whole or in part) from the occurrence of an Exemption Event, provided that the Corporation shall not be entitled to rely upon an Exemption Event if such event occurred as a result of a breach of contract or negligence, or was caused or materially contributed to, by or on the part of the Corporation or persons directly under its control.

4.11.2 For the purposes of clause 4.2.3(b)(i), 4.11.1 and 9.4 only, an Exemption Event means:

- (a) the outbreak of war affecting Hong Kong, hostilities (whether or not war is declared), invasion, acts of foreign enemies, rebellion, revolution, military or usurped power, the overthrow of Government (whether by external or internal means), natural disasters, civil war, riot, commotion, disorder, civil disturbance, terrorism, strike, industrial action, act of god, loss or diminution of power supply, disruption caused by any member of the public or any other cause or event which is beyond the control of the Corporation; and
- (b) one or more mandatory modifications affecting any infrastructure, plant or equipment necessary for the operation of the railway or a substantial percentage of rolling stock which materially affects the Corporation's ability to meet any Performance Requirement.

4.11.3 The Corporation shall use its reasonable endeavours:

- (a) to take such steps to prevent the occurrence of an Exemption Event;
- (b) to mitigate the effects of the occurrence of an Exemption Event; and
- (c) to take such steps to remedy any Exemption Event,

in each case as are practicable in the circumstances.

#### **4.12 Customer Service Pledges**

4.12.1 Prior to, and for, each Operating Period, the Corporation shall establish and publish on an annual basis, Customer Service Pledges.

4.12.2 The Corporation shall publish:



- (a) on a quarterly basis, such data as shall measure its actual performance against the Customer Services Pledges, together with explanations, as appropriate;
- (b) on a quarterly basis, data in relation to passenger complaints;
- (c) on an annual basis, data in relation to accidents, serious injuries and fatalities on the railway; and
- (d) on an annual basis, data in relation to the hours of daily operation of train services and the frequency of train services for peak and off-peak services.

4.12.3 The Customer Service Pledges shall relate to:

- (a) train service delivery;
- (b) passenger journeys on time;
- (c) train punctuality;
- (d) train reliability;
- (e) ticket reliability;
- (f) add-value machine reliability;
- (g) ticket machine reliability;
- (h) ticket-gate reliability;
- (i) escalator reliability;
- (j) passenger lift reliability;
- (k) temperature and ventilation levels;
- (l) railway cleanliness; and
- (m) passenger enquiry response time,

or as otherwise agreed between the Commissioner and the Corporation from time to time.

4.12.4 In each Operating Period, the Corporation shall strive to meet the Customer Service Pledges but the parties acknowledge and agree that the Customer Service Pledges are voluntary targets and are not themselves Performance Requirements or obligations relating to performance.

#### 4.13 **Measuring Customer Satisfaction**

4.13.1 The Corporation shall develop and maintain arrangements for measuring customer satisfaction with its railway services (including passenger

satisfaction surveys and the method and extent of publication of the survey results).

4.13.2 Such measures of customer satisfaction shall, as far as reasonably practicable, reflect the matters listed in clause 4.12.3.

4.13.3 Within a period that is reasonable in the circumstances following a request by the Commissioner, the Corporation shall furnish the Commissioner with a report on the outcome of any arrangements made under clause 4.13.1.

#### 4.14 **Handling of Passenger Complaints and Suggestions**

4.14.1 The Corporation shall develop and maintain a system for handling passenger complaints and suggestions.

4.14.2 Within six weeks after the end of each Operating Period, the Corporation shall furnish the Commissioner with a report summarising the complaints and suggestions received by the Corporation in relation to its railway services, and any action taken by the Corporation thereon, for that Operating Period.

#### 4.15 **Signs and Passenger Information**

4.15.1 The Corporation shall provide and maintain adequate illuminated signs, in Chinese and English, in every station for the information and direction of the public and to enable passengers to proceed safely and correctly with the minimum of delay.

4.15.2 The Corporation shall display on railway premises and the approaches thereto appropriate signs and information in Chinese and English, including, but not limited to, MTR By-laws, directional signs and fares.

4.15.3 The Corporation shall make available at each station the information published pursuant to clause 4.12.2(d).

4.15.4 Subject to clause 4.16, the Commissioner may request the Corporation to review the provision, content or any other matter relating to signs and passenger information in relation to any station, line or train.

#### 4.16 **Request for Review**

4.16.1 The Commissioner may request the Corporation to review its arrangements in respect of the operation of its railway services. The Corporation shall comply with such a request for review and shall inform the Commissioner of the outcome within a period that is reasonable in the circumstances.

4.16.2 The Commissioner may request the Corporation to consider specific suggestions for changes in the operation of its railway services. The Corporation shall give due consideration to any such suggestions for changes (but shall not be obliged to make any such changes) and shall notify the

Commissioner of its intended course of action, giving reasons for any inability to adopt any such suggestions for changes.

## **5. SAFETY MANAGEMENT**

### **5.1 General**

5.1.1 Without prejudice to the powers of the Inspector contained in section [27] of the MTR Ordinance, the Corporation shall design, construct, operate and maintain the railway having, at all times, due regard to the safety of the railway and of persons using or employed on the railway to the reasonable satisfaction of the Inspector.

5.1.2 The Corporation shall establish, operate and maintain a safety management system and continue to review, control and minimise safety risks as far as reasonably practicable.

### **5.2 Instruction Manuals**

5.2.1 Without prejudice to the powers of the Inspector contained in section [27] of the MTR Ordinance, the Corporation shall provide to the Inspector copies of such manuals of instruction and documentation as relate to procedures in respect of safety, emergency and security matters in connection with the railway premises.

5.2.2 In the preparation and major revision of any manual of instruction required under Regulation [9(a)] of the Mass Transit Railway Regulations (Cap 556A of the laws of Hong Kong) (the MTR Regulations), the Corporation shall consult:

- (a) the Inspector if such instructions have safety implications; and
- (b) the Commissioner of Police, the Director of Fire Services and the Inspector if such instructions have safety implications and relate to fire fighting and rescue and other emergencies.

### **5.3 Independent Safety Expert**

The Corporation shall employ the services of an independent expert to review its safety management system at a regular interval of not more than three years, or such other period as the Corporation and the Inspector may agree from time to time.

### **5.4 Rescue and Breakdown Equipment**

5.4.1 The Corporation shall, as far as reasonably practicable, provide adequate vehicles and equipment for the safe and speedy recovery of defective trains and equipment and for the rescue of passengers and persons employed on the railway.

5.4.2 The Corporation shall, as far as reasonably practicable, ensure that such vehicles and equipment are at all times effective and maintained in an efficient

working condition and, if necessary, are attended and operated by persons trained to carry out the duties assigned to them and that such persons remain competent at all times.

## **5.5 Maintenance Procedures**

5.5.1 The Corporation shall establish, operate and maintain a maintenance management system for the maintenance of facilities, systems and trains to minimise safety risks as far as reasonably practicable and insofar as the circumstances reasonably require.

5.5.2 The Corporation shall ensure that maintenance work will be carried out by competent personnel.

5.5.3 The Corporation shall establish effective maintenance schedules and procedures with reference to manufacturers' recommendations in line with operational experience and insofar as the circumstances reasonably require.

## **5.6 Provision of Railway Staff**

5.6.1 The Corporation shall at all times have on duty railway staff in such numbers and with such training and experience as will ensure the proper control and operation of the railway and the safety of persons using or employed on it.

5.6.2 The Corporation shall not knowingly permit any employee to be on duty whilst under the influence of alcohol or any drug or substance which would or may tend to impair the adequate performance of his duties, or who is otherwise unfit to perform his duties for any reason.

5.6.3 Every employee of the Corporation and person authorised by the Corporation on duty at places to which the public has access shall carry a means of identification and evidence of his appointment or, as the case may be, his authorisation issued by the Corporation which he shall produce for inspection to any person who on reasonable grounds requests him to do so.

## **5.7 Opening of the Railway, New Projects and Additional or Modified Major Facilities, etc.**

5.7.1 The Corporation shall not:

(a) open any new part of the railway for the conveyance of passengers, their luggage and goods; or

(b) commence operations on any New Project or open any station or junction which forms part of the railway or is directly connected with such part of the railway; or

(c) bring into use any additional or modified major facilities, equipment, systems or trains or introduce New Technology which have or are likely to have an

impact on the safety of the railway or on the safety of persons using or employed on the railway,

until the Inspector has expressed in writing to the Secretary that, in his opinion, the same is in all respects safe and in sound condition to be used for the conveyance of passengers and their luggage and goods.

5.7.2 The Corporation shall:

- (a) establish, operate and maintain a safety management system to review, control and minimise safety risks in any works carried out under clause 5.7.1;
- (b) demonstrate to the Inspector that, insofar as the circumstances reasonably require, safety risks have been appropriately addressed in the design, construction and commissioning stages;
- (c) demonstrate to the Inspector that appropriate facilities, procedures and competent staff are in place for the safe operation and maintenance of the railway;
- (d) provide submissions on design, construction methods, commissioning tests, training, maintenance and all other information as may reasonably be required by the Inspector during the design, construction and commissioning stages;
- (e) perform any and all such tests as may reasonably be requested by the Inspector and to forward all results of such tests to the Inspector; and
- (f) at such reasonable times as the Inspector may request permit the Inspector to carry out any inspection, examination or test he considers expedient and provide such resources and assistance as may be reasonable in the circumstances to enable him to carry out such inspections, examinations and tests,

so as to enable him to give his opinion for the purpose of clause 5.7.1.

5.7.3 Notwithstanding anything herein contained and so far as permitted by law, the Inspector shall not be liable to the Corporation, by reason of him having given an opinion for the purpose of clause 5.7.1, or by reason of anything done under clause 5.7.2, for any loss or damage the Corporation may suffer arising out of the design, construction, operation or maintenance of the railway and shall not relieve the Corporation from responsibility and liability under the MTR Ordinance, the MTR Regulations and the terms of the integrated Operating Agreement.

## 5.8 Contingency Plans

The Corporation shall develop and maintain contingency plans to be implemented in the event of a breakdown, accident, emergency, any other incident or any other substantial or important matter on or affecting any part of the railway or railway premises, such plans shall include arrangements for matters such as notifying and

updating the Commissioner and the public, the making of announcements, the broadcasting of messages through the media, the evacuation of passengers, the supply of alternative transport services and any particular arrangement for fare collection.

## **6. LAND**

### **6.1 Land for New Projects**

This section stipulates that the Government and the Corporation shall agree the detailed terms upon which the land required for a new railway project will be provided to the Corporation and that the land premium shall be assessed in accordance with Government's land policy at the relevant time.

## **7. NEW PROJECTS**

This section will contain provisions giving a framework for the construction and operation of new projects by the Corporation relating to:

- (a) the KCRC Railway;
- (b) the MTRC Railway; and
- (c) railways that are neither part of the KCRC Railway nor the MTRC Railway.

The framework is described in Annex A.

## **8. FARE REGULATION**

This section will contain provisions providing for a fare adjustment mechanism and regulation the fares of the Corporation in general. The provisions are described in the paper on "Fare Adjustment Mechanism and Fare Reduction Proposal" which the Bills Committee considered on 2 November 2006.

## **9. COMPENSATION**

9.1 Compensation payable under section [20] of the MTR Ordinance for the loss of any relevant property will be equal to the higher of the fair value of the relevant property and the depreciated book value of the relevant property as determined by the independent valuers (or the arbitrator, as the case may be) appointed under clause 10.

9.2 Where possession of the relevant property has been taken by Government following a revocation of the Franchise under section [18] of the MTR Ordinance there shall be deducted from the amount of compensation determined under clauses 9.1, 9.3 and 9.4 such amount as may be agreed or determined by the independent valuers (or the arbitrator, as the case may be) appointed under clause 10 as costs reasonably incurred by Government in obtaining that revocation.

9.3 Compensation payable under section [20] of the MTR Ordinance for the use of any relevant property shall be determined by the independent valuers (or the arbitrator, as the case may be) appointed under clause 10.

9.4 Compensation payable under section [20] of the MTR Ordinance for the damage to any relevant property that is returned to the Corporation pursuant to section [19(3)] of the MTR Ordinance shall be equal to the reasonable cost to the Corporation of remedying such damage.

9.5 Compensation payable under section [15A] of the MTR Ordinance will be determined by the independent valuers (or the arbitrator, as the case may be) appointed under Clause 10.

## **10. APPOINTMENT OF VALUERS**

10.1 The integrated Operating Agreement will contain provisions setting out the procedure for (i) the appointment, jointly by Government and the Corporation, of independent valuers to determine and (ii) the determination by such valuers of compensation payable by Government to the Corporation under certain provisions of the MTR Ordinance.

## **11. DISPUTE SETTLEMENT**

11.1 In the event of any dispute between Government and the Corporation arising out of or in connection with the integrated Operating Agreement, both parties shall first attempt to resolve that dispute by means of informal negotiation.

11.2 If informal negotiation does not resolve that dispute, both parties may agree to submit that dispute to arbitration in accordance with the Arbitration Ordinance (Cap. 341 of the laws of Hong Kong). Any arbitration award shall be binding on both parties.

11.3 Nothing in this clause 11 shall:

- (i) impose any legal obligation on either party to agree to submit a dispute to arbitration;
- (ii) prevent either party from seeking injunctive or other judicial relief at any time; or
- (iii) affect the rights and liabilities of either party under the MTR Ordinance.

## **12. ASSISTANCE IN SECURING CONTINUITY**

12.1 In order to facilitate the continuity of the railway services which are subject to the Franchise on expiry or revocation of the Franchise, during the period commencing five years prior to expiry of the Franchise and during the implementation of any revocation procedure under the MTR Ordinance (as the case may be), the Corporation shall not take any action which may result in frustrating the transition to any successor franchisee of the right to provide the railway services which are subject to the Franchise or the part of Franchise relating to the KCRC Railways.

12.2 Nothing contained in clause 12.1 shall preclude the Corporation from taking any action or omitting to take any action in good faith and in the ordinary and usual course of business of the Corporation.

### **13. REVIEW OF TERMS OF OPERATING AGREEMENT**

#### **13.1 Periodic Review**

On the fifth anniversary of the date of the integrated Operating Agreement (or such other date as the parties may agree) and on each successive fifth anniversary thereafter (or such other date as the parties may agree), the parties shall jointly carry out and complete a review of each of the terms of the integrated Operating Agreement within six months of the fifth anniversary of the date of this Agreement and of each successive fifth anniversary thereafter and, where both parties think fit and subject to clause 13.3, they shall amend the integrated Operating Agreement. At any review carried out pursuant to this clause 13.1, the parties shall consider all relevant factors, including, without limitation, the manner in which the Corporation may reasonably maintain a rate of technological and technical progress for the management and operation of the railway commensurate with good international practice and passengers' needs having regard to the costs that would be incurred therefor, the financial resources of the Corporation and prudent commercial principles.

#### **13.2 Other Reviews**

At any time during the Franchise period, either party (the Requesting Party) may request the other party to carry out a joint review with the Requesting Party of any term or terms of the integrated Operating Agreement. Following such a request being made, the other party shall be obliged to carry out a joint review within a reasonable period with the Requesting Party and, where both parties think fit and subject to clause 13.3, they shall amend the integrated Operating Agreement.

#### **13.3 Amendment**

Without prejudice to clause 4.10.4, no amendment to the integrated Operating Agreement shall have any effect whatsoever unless made in writing and signed by both parties.

### **14. FURNISHING OF RECORDS**

14.1 The Corporation shall maintain records of:

- (i) train service delivery;
- (ii) passenger journeys on time;
- (iii) train punctuality;
- (iv) train reliability;
- (v) ticket reliability;



- (vi) add-value machine reliability;
- (vii) ticket machine reliability;
- (viii) ticket-gate reliability;
- (ix) escalator reliability;
- (x) passenger lift reliability;
- (xi) temperature and ventilation;
- (xii) railway cleanliness;
- (xiii) accidents, serious injuries and fatalities;
- (xiv) emergency closures of the railway or any part thereof;
- (xv) performance in relation to Customer Service Pledges;
- (xvi) passenger complaints and suggestions;
- (xvii) the number of passengers carried;
- (xviii) the number of incoming/outgoing passengers at each station;
- (xix) the fare revenue;
- (xx) the maintenance of trains; and
- (xxi) the number of trains in use.

14.2 Subject to the Commissioner and the Corporation reaching agreement, the Corporation shall maintain records in addition to those required under section [11] of the MTR Ordinance and clause 14.1.

14.3 The Corporation may be required to furnish copies of any records maintained pursuant to clause 14.1 or 14.2 to the Secretary or the Commissioner and to permit the Secretary or the Commissioner to inspect them in the manner prescribed in, and subject to the terms of, sections [11] and [12] of the MTR Ordinance.

## **15. EXTERNAL AUDIT**

The Corporation shall submit to the Commissioner a report prepared by its external auditors, on an annual basis, as to whether or not, during the immediately preceding Operating Period, in the opinion of the external auditors, the Corporation had in place internal control systems and procedures which were adequate to enable, as far as practicable, the Corporation to measure and record, in all material respects, its compliance with the Performance Requirements and its calculation of the Customer Service Pledges and, if the opinion of the external auditors is that those control

systems and procedures were not adequate, the nature and extent of any inadequacies. Any such report shall be binding on the Corporation and Government.

## **16. REGULATIONS**

Government undertakes that, prior to the Secretary making any regulations under section [33] of the MTR Ordinance (Proposed Regulations), it will:

- (i) provide the Corporation with details of the Proposed Regulations;
- (ii) consult with the Corporation in relation to the Proposed Regulations for a reasonable period taking account of the nature and scope of the Proposed Regulations and their likely impact on the Corporation; and
- (iii) take account of all reasonable representations made by the Corporation in relation to the Proposed Regulations.

## **17. INTERCITY PASSENGER SERVICE<sup>4</sup> AND FREIGHT SERVICE<sup>5</sup>**

### **17.1 Arrangements for intercity passenger trains and freight trains owned and operated by the Corporation**

The Corporation shall ensure that as close as reasonably practicable:

17.1.1 any train that it owns and operates on the Intercity Passenger Service meets the levels of safety and general cleanliness required of it in respect of the Domestic Service<sup>6</sup> and has adequate standards of temperature and ventilation; and

17.1.2 any train that it owns and operates on the Freight Service meets the levels of safety and general cleanliness required of it in respect of the Domestic Service,

in each case, taking account of the different nature of the Intercity Passenger Service and the Freight Service (as the case may be) from the Domestic Service.

### **17.2 Arrangements for Third Party Trains**

#### **17.2.1 Safety**

17.2.1.1 The Corporation shall establish a system with the third party operators for approving the third party trains to run on the railway safely.

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<sup>4</sup> Intercity Passenger Service refers to the service for the carriage of passengers between Hong Kong and the Mainland that is provided by the Corporation in conjunction with third party operators or other third party facilitators.

<sup>5</sup> Freight Service refers to the service for the carriage of freight between Hong Kong and the Mainland that is provided by the Corporation in conjunction with third party operators.

<sup>6</sup> Domestic Service refers to the service for the carriage of passengers on the railway within Hong Kong that is provided by the Corporation.

- 17.2.1.2 The Corporation shall carry out design checks and tests in accordance with the system established pursuant to clause 17.2.1 to verify that the types of third party trains that are operated on the railway are compatible with the infrastructure of the Corporation and are safe to run on the railway.
- 17.2.1.3 The Corporation shall, in consultation with the Inspector, establish procedures with each third party operator for handling emergencies involving third party trains on the railway.
- 17.2.1.4 The Corporation shall not allow any type of third party trains to run in Hong Kong on the railway until the Corporation has certified in writing to the Secretary that in the opinion of the Corporation and in the opinion of the Inspector, the Corporation has completed the work in clauses 17.2.1.2 and 17.2.1.3.
- 17.2.1.5 This provision stipulates out that the Corporation shall provide relevant information, perform relevant tests and permit the Inspector to carry out inspections, examinations and/or tests so as to enable the Inspector to give his opinion for the purpose of clause 17.2.1.4.
- 17.2.1.6 The Corporation shall establish arrangements with each third party operator for it to seek the Corporation's approval to any modification of its third party train(s) that has, or is likely to have, an impact on the Corporation's infrastructure. If the Corporation agrees to the modification, the Corporation shall justify its decision to the satisfaction of the Inspector before approving any modified third party train to run on the railway.
- 17.2.1.7 The Corporation shall in accordance with the system established pursuant to clause 17.2.1.1, establish and maintain a register to record the types of third party trains certified in accordance with clause 17.2.4. The Corporation shall keep the register up-to-date and shall ensure that no third party trains other than the types certified run in Hong Kong on the railway.
- 17.2.1.8 The Corporation shall seek confirmation from the third party operators that the types of third party trains which are certified are maintained regularly to ensure their safe running in Hong Kong on the railway.
- 17.2.1.9 Notwithstanding anything herein contained, and so far as permitted by law, the Inspector shall not be liable to the Corporation or any third party operator, by reason of him having given any opinion or by reason of anything done under this clause 17.2 for any loss or damage the Corporation or any third party operator may suffer arising out of the design, construction, operation or maintenance of the railway and shall not relieve the Corporation and the third party operators from responsibility and liability under the laws of Hong Kong, the terms of the integrated Operating Agreement and/or any other agreement, contract, or arrangement between the Corporation and the third party operators.

## 17.2.2 General cleanliness, temperature and ventilation

The Corporation shall use all reasonable endeavours to seek confirmation from the relevant third party operators that arrangements are in place regarding (i) the general cleanliness of the third party trains operated on the Intercity Passenger Service and Freight Service that run in Hong Kong on the railway; and (ii) the temperature and ventilation of the third party trains operated on the Intercity Passenger Service that run in Hong Kong on the railway.

### **17.3 Definitions**

The integrated Operating Agreement shall include appropriate definitions of the terms relating to clause 17.

### **17.4 Applicability of certain clause to Intercity Passenger Service and Freight Service**

The provisions of clauses 3 to 12, clauses 14 to 16 and Schedules 1 and 2 shall only apply to the Domestic Service. None of those provisions shall apply to the Intercity Passenger Service or the Freight Service.

## **18. MISCELLANEOUS**

### **18.1 MTR Operating Agreement**

The parties agree that, on the Merger Date, the MTR Operating Agreements terminated and is replaced by the integrated Operating Agreement.

### **18.2 Waiver**

The failure by Government to enforce at any time or for any period any one or more of the terms of the integrated Operating Agreement shall not constitute a waiver of them or of the right at any time subsequently to enforce all terms of the integrated Operating Agreement.

### **18.3 Disclosure of Information**

18.3.1 Government shall not disclose any Restricted Information unless it has first consulted the Corporation regarding its intention to do so.

18.3.2 Government shall procure that none of the Secretary, the Commissioner, the Inspector or any other person acting for or on behalf of Government discloses any Restricted Information unless he has first consulted the Corporation regarding his intention to do so.

18.3.3 For the avoidance of doubt, any party referred to in clause 18.3.2 may disclose particular Restricted Information after consultation with the Corporation regarding his intention to disclose that information.

18.3.4 Clauses 18.3.1 and 18.3.2 shall not apply in relation to Restricted Information that has entered the public domain otherwise than as a consequence of any act of Government or any person acting for or on behalf of Government.

18.3.5 For the purposes of section [12(2)] of the MTR Ordinance, the Corporation agrees that, prior to the date of the integrated Operating Agreement, it has been consulted regarding the intended disclosure by the Secretary or any other person authorised by the Secretary in writing as referred to in section [11(2)(b)] of the MTR Ordinance of any information, other than Restricted Information, which might be furnished by the Corporation pursuant to section [10] or [11] of the MTR Ordinance and that the Secretary or such other person may, but shall be under no obligation to, disclose any such information without further consultation.

18.3.6 For the purposes of this clause, Restricted Information means information (in any form whatsoever) furnished to Government, the Secretary, the Commissioner, the Inspector or any other person acting for or on behalf of Government by the Corporation:

- (i) pursuant to section [10], [11] or [27] of the MTR Ordinance; or
- (ii) under the integrated Operating Agreement or by virtue of the exercise of any powers conferred by the integrated Operating Agreement,

which, at the time that information was furnished to Government or the Secretary, the Commissioner, the Inspector or such other person, as the case may be, was specified by the Corporation to be unpublished commercially sensitive information.

18.3.7 This clause 18.3 shall continue to apply after the termination of the integrated Operating Agreement without limitation in time.

#### 18.4 Notices

18.4.1 Any notices, certificates or other communications to Government in connection with the integrated Operating Agreement shall be sent, as the circumstances require:

- (i) marked for the attention of the 'Secretary for the Environment, Transport and Works' at 16th Floor, Murray Building, Garden Road, Central, Hong Kong ; or
- (ii) marked for the attention of the 'Commissioner for Transport' at Transport Department, 41st Floor, Immigration Tower, 7 Gloucester Road, Wan Chai, Hong Kong,

or to such other person or to such other address as may be notified by Government to the Corporation.

18.4.2 Any notices, certificates or other communications to the Corporation in connection with the integrated Operating Agreement shall be sent marked for the attention of the Legal Director and Secretary at MTR Tower, Telford Plaza, 33 Wai Yip Street, Kowloon Bay, Kowloon, or to such other person, or to such other address, as may be notified by the Corporation to Government.

18.4.3 All notices shall be in writing. Any notice delivered personally shall be deemed to have been given at the time of such delivery. Any notice sent by facsimile transmission shall be effective only on receipt. Any notice sent by post shall be deemed to have been given on the third Business Day after posting if correctly addressed and sent by prepaid mail within Hong Kong.

#### **18.5 No obligation for Government to obtain Corporation's agreement**

This provision sets out that the requirement for consultation with the Corporation or any other person in relation to any matter does not oblige the Government, the Secretary, the Commissioner, the Inspector or any other person acting for and on behalf of Government (as the case may be), to obtain the agreement of the Corporation or that other person in relation to that matter.

#### **18.6 Counterparts**

18.6.1 The integrated Operating Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.

18.6.2 Each counterpart shall constitute an original of the integrated Operating Agreement, but all the counterparts shall together constitute but one and the same instrument.

#### **18.7 Compatibility with MTR Ordinance**

Nothing in the integrated Operating Agreement shall oblige the Corporation to conduct its business in any manner or to do anything which is incompatible with any provision of the MTR Ordinance.

#### **18.8 No Partnership**

Nothing in the integrated Operating Agreement and no action taken by the parties pursuant to the integrated Operating Agreement shall constitute, or be deemed to constitute, the parties a partnership, association, joint venture or other co-operative entity.

#### **18.9 Governing Law and Jurisdiction**

18.9.1 The integrated Operating Agreement shall be governed by, and construed in accordance with, the laws of Hong Kong.

18.9.2 The courts of Hong Kong shall have jurisdiction to settle any proceeding, suit or action arising out of, or in connection with the integrated Operating

Agreement and each party submits to the jurisdiction of the courts of Hong Kong.

**Existing Performance Requirements of MTR and KCR Railways**

Performance Criteria *	Performance Requirements	
	MTR (MTR urban lines and Airport Express Line)	KCR (East Rail and West Rail)
(a) Train Service Delivery	98.5%	98.5%
(b) Passenger Journeys on Time	98.5% (98% for Airport Express Line)	98%
(c) Train Punctuality	98%	98%
(d) Add Value Machine Reliability	95.5%	98%
(e) Ticket Issuing Machine Reliability	93%	97%
(f) Ticket Gate Reliability	97%	97%
(g) Escalator Reliability	98%	98%
(h) Passenger Lift Reliability	98.5%	98%

\* The performance levels are calculated by applying the following formulae for each month in a calendar year and then calculating the mean thereof:

$$\text{For item (a): } \frac{\text{Actual Train Trips in a Month}}{\text{Scheduled Train Trips in a Month}} \times 100\%$$

$$\text{For item (b): } \frac{\text{Incoming Patronage in a Month} - \text{Passengers in a Month delayed by at least 5 minutes}}{\text{Incoming Patronage in a Month}} \times 100\%$$

$$\text{For item (c): } \frac{\text{Actual AEL Train Trips in a Month} - \text{AEL Train Trips in a Month Delayed by at least } y \text{ minutes}}{\text{Actual AEL Train Trips in a Month}} \times 100\%$$

where y = 5 for AEL; 2 for MTR; 3 for KCR

For items (d) to (h):

$$\frac{\text{Total Operating Hours in a Month for the relevant equipment} - \text{Total Non - Operating Hours in a Month for the relevant equipment}}{\text{Total Operating Hours in a Month for the relevant equipment}} \times 100\%$$