

政府總部
運輸及房屋局
運輸科

香港添馬添美道 2 號
政府總部東翼

本局檔號 Our Ref.
來函檔號 Your Ref.



Transport and
Housing Bureau
Government Secretariat
Transport Branch

East Wing, Central Government Offices,
2 Tim Mei Avenue,
Tamar, Hong Kong

電話 Tel. No.: 3509 8173
傳真 Fax No.: 2136 8016

Email and Fax
rkwchow@legco.gov.hk
Fax No. : 2978 7569

26 January 2016

Mr. Raymond CHOW
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr. CHOW,

Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL)

I refer to the letter from Hon Albert HO and Hon WU Chi-wai to the Chairman of PWSC dated 21 January 2016, which was forwarded to us on 22 January 2016. Our replies to the enquiries are as below -

(1) Progress of major contracts

The progress of the 42 major contracts up to 31 August 2015 is attached at **Annex 1**.

(2) Claims Situation of the XRL

As at 31 August 2015, the MTR Corporation Limited (MTRCL) received 845 substantiated claims and the amount claimed in total was approximately \$23.35 billion, representing 51.6% of the awarded contract sum for the contracts. Details are as follows:

	Claims resolved			Claims unresolved		
	Number	Amount claimed* (\$million)	Amount awarded (\$million)	Number	Amount claimed* (\$million)	Interim award (\$million)
Railway Tunnels	82	2,258.4	1,207.3	359	9,198.7	1,774.4
West Kowloon Terminus	46	246.5	186.9	291	8,998.6	1,892.3
E&M Works	2	0.0	0.0	65	2,643.2	128.6
Total	130	2,504.9	1,394.2	715	20,840.5	3,795.3

* Amount stated in the contractor's detailed claim report.

As the project manager of the XRL, MTRCL has been discussing the details of the claims with the contractors concerned, and will thoroughly assess the amount claimed. The Corporation would process each claim in a prudent manner, and the contractors would have to provide sufficient justifications and information. In any circumstances, the payment (including amount awarded to contractors' claims) made by MTRCL under the XRL project must not exceed the Entrustment Cost (currently at \$65 billion) of the XRL project. Due to commercial sensitivity, it is not appropriate for us to disclose the details of claims under individual contracts in order not to affect the on-going discussion between MTRCL and the contractors.

(3), (4), (5) and (6) The agreement signed between the Government and MTRCL on 30 November 2015

In order to address the issue of project cost overrun, the

Government and MTRCL reached an agreement on 30 November 2015. The agreement does not relate to nor affect the contracts signed between MTRCL and the contractors and the associated claims assessment. Based on information provided by MTRCL, no new contract was signed with the existing contractors as a result of the project delay.

Furthermore, the newly signed agreement will not affect the monitoring and verification arranged established under the Entrustment Agreement reached by Government and MTRCL in January 2010. Highways Department and its Monitoring and Verification Consultant will continue to enhance monitoring MTRCL's works in implementing the XRL project according to the established arrangement.

A copy of the agreement is attached at **Annex 2** for reference.

Yours sincerely,



(Chris NG)

for Secretary for Transport and Housing

Encls.

c.c.

Financial Services and the Treasury Bureau
(Attn: Ms. Priscilla Chan)

(Fax: 2147 5240)

Highways Department
(Attn: Mr. Tony Leung)

(Fax: 2714 5297)

The progress of the 42 major contracts¹ up to end August 2015 is as follows:

No.	Contract No.	Contract title²	% Progress
1	802	Nam Cheong Property Foundation Removal and Reprovisioning	99.1%
2	803A	West Kowloon Terminus Diaphragm Walls (Site A)	100%
3	803B	West Kowloon Terminus Piles (Site A - North)	100%
4	803C	West Kowloon Terminus Piles (Site A - South)	100%
5	803D	West Kowloon Terminus Diaphragm Walls and Piles (WKCD)	100%
6	805	Sham Mong Road Obstruction Removal	100%
7	810A	West Kowloon Terminus Station North	43.3% ³
8	810B	West Kowloon Terminus Station South	86.5%
9	811A	West Kowloon Terminus Approach Tunnel (North)	98.3%
10	811B	West Kowloon Terminus Approach Tunnel (South)	67.5%
11	815A	Supply of Metal Doors and Frames including Ironmongery	63.0%
12	815F	West Kowloon Terminus – Public Toilet Fit-out works	28.0%
13	816A	West Kowloon Terminus – Environmental Control System	39.5%

¹ Major contract refers to the awarded contract with the contract sum value more than \$50 million.

² The contractor titles in Chinese are for reference only. The English version shall prevail whenever there is a discrepancy.

³ As at 31 August 2015, according to MTRCL's progress report, about 90% of excavation works and 50% of concrete structural works for West Kowloon Terminus Station North (Contract no. 810A) were completed.

14	816B	West Kowloon Terminus – Building Services Control System	38.8%
15	816C	West Kowloon Terminus – Electrical Installation	35.4%
16	816D	West Kowloon Terminus – Fire Services, Plumbing & Drainage	38.7%
17	820	Mei Lai Road to Hoi Ting Road Tunnels	99.6%
18	821	Shek Yam to Mei Lai Road Tunnels	100%
19	822	Tse Uk Tsuen to Shek Yam Tunnels	99.5%
20	823A	Tai Kong Po to Tse Uk Tsuen Tunnels	87.4%
21	823B	Shek Kong Stabling Sidings & Emergency Rescue Sidings	97.8%
22	824	Ngau Tam Mei to Tai Kong Po Tunnels	84.5%
23	825	Mai Po to Ngau Tam Mei Tunnels	97.9%
24	826	Huanggang to Mai Po Tunnels	86.7%
25	830	Trackwork and Overhead Line System	67.1%
26	840	Express Rail Link: Rolling Stock	52.4%
27	841A	Signalling System - Trackside Equipment	54.7%
28	841B	Signalling System - Trainborne Equipment	62.8%
29	842A	Mainland E&M Interface Modification Works	30.0%
30	843	Tunnel Environmental Control System	49.1%
31	844	11kV Power Distribution	18.9%
32	846	Trackside Auxiliaries	44.3%
33	847	Lifts	31.3%
34	848	Escalators and Moving Walkways	32.1%

35	849	Radio Communications System	42.7%
36	850	Passenger Mobile Communications System	49.0%
37	851	Fixed Communications System	43.2%
38	852	Ticketing System	70.0%
39	853	Main Control System	76.3%
40	855	Building Services for Tunnel Ventilation Facilities and Emergency Rescue Siding	69.1%
41	856	Building Services for Shek Kong Stabling Sidings	96.6%
42	861A	Locomotives and Flat Wagons	92.3%

30 November 2015

DEED

relating to the

EXPRESS RAIL LINK

between

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

Slaughter and May
47th Floor, Jardine House
Central
Hong Kong

103112593

CONTENTS

	Page
1 Interpretation.....	2
2 Payment of Special Dividend.....	6
3 Current Cost Overrun.....	6
4 Further Cost Overrun.....	6
5 Corporation to Convene EGM.....	7
6 Cost Overrun Arbitration.....	8
7 Liability Cap.....	8
8 Conditions.....	8
9 Amendment to EA2.....	9
10 Integrated Package.....	10
11 No Precedent.....	10
12 Preservation of Rights and Liabilities.....	10
13 Invalidity.....	10
14 No Partnership.....	10
15 Further Assurance.....	10
16 Amendments.....	11
17 Waiver.....	11
18 Conflict.....	11
19 Payments.....	11
20 Notices.....	11
21 Dispute Resolution.....	11

	Page
22 Governing Law and Jurisdiction.....	11
23 SCHEDULE.....	14
24 APPENDIX.....	18

THIS DEED OF AGREEMENT is made on the 30 November 2015

BETWEEN:

- (1) **THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION;**
and
- (2) **MTR CORPORATION LIMITED** whose registered office is MTR Headquarters Building,
Telford Plaza, Kowloon Bay, Kowloon.

WHEREAS:

- (A) On 24 November 2008, Government and the Corporation entered into a preliminary entrustment agreement to provide for the design of, and site investigation and procurement activities in relation to, the XRL.
- (B) On 26 January 2010, Government and the Corporation entered into an entrustment agreement for the construction and commissioning of the XRL.
- (C) On 15 April 2014, the Corporation announced that it needed to set out a new timeline for the completion of the project, with major construction works to be finished within 2016 and the opening of the line for passenger service in 2017.
- (D) In July 2014, the Corporation provided to Government a revised project cost estimate for the XRL Project of HK\$71.52 billion, inclusive of future insurance and project management costs.
- (E) In June 2015, the Corporation completed its review of the XRL Project cost estimate and the revised timetable for the construction of the XRL.
- (F) On 30 June 2015, the Corporation:
 - (i) reported to Government that the Corporation estimates:
 - (a) the XRL being completed in the third quarter of 2018 (including programme contingency of six months); and
 - (b) the total project cost to be HK\$85.3 billion (including contingency);
 - (ii) advised Government that these revised estimates are based on a number of assumptions including timely funding arrangements and require the co-operation of various parties and certain approvals from Government; and
 - (iii) announced that it had reported the above to Government and that the Board had authorised the Chairman and the Chief Executive Officer of the Corporation to engage with Government with a view to enabling the XRL to commence operations in accordance with the revised timetable referred to in Recital (F)(i)(a) above.

- (G) Government and the Corporation have reached an understanding as to the structure and terms of the proposed arrangements for funding the completion of the XRL Project and amending EA2 which is recorded in this Agreement.

NOW THIS DEED WITNESSES AS FOLLOWS:

PART I

INTERPRETATION

1. Interpretation

- 1.1 In this Agreement (including the Recitals and the Schedule), except where the context otherwise requires, the following terms and expressions shall have the following meanings:

"Arbitrator" means the arbitral tribunal appointed, in accordance with EA2, for the purposes of the Cost Overrun Arbitration (if any).

"Arrangements" means all the arrangements in aggregate contained in this Agreement which, together, form an integrated package of terms.

"Associate" has the meaning given to that term in the Listing Rules.

"Back Stop Date" means the earlier of (i) the date of a notice to terminate EA2 that may be served by the Corporation on Government under **Clause 20.2** of EA2; and (ii) 30 September 2016.

"Board" means the board of directors of the Corporation.

"Companies Ordinance" means the Companies Ordinance (Cap. 622 of the Laws of Hong Kong).

"Corporation" means MTR Corporation Limited.

"Cost Overrun Arbitration" means an arbitration (if any) commenced in accordance with EA2 to determine the Corporation's liability (if any) for the Current Cost Overrun under EA1 and EA2 (as more particularly described in **Clause 6.1** below).

"Current Cost Overrun" means that portion of the Entrustment Cost (including Project Management Cost) (up to a maximum of HK\$84.42 billion) that exceeds HK\$65 billion.

"Deed Poll" means the deed poll executed by Government on 26 January 2010.

"Dollars" and the term **"HK\$"** denote the lawful currency of Hong Kong.

"EA1" means the agreement referred to in **Recital (A)**.

"EA2" means the agreement referred to in **Recital (B)** (being, for the avoidance of doubt, the form of that agreement immediately before the Effective Date, unless otherwise expressly stated in this Agreement).

"Effective Date" means the date on which the Arrangements become fully unconditional and effective in accordance with **Clause 8.1** below.

"EGM" means a general meeting of the Shareholders convened in accordance with the Listing Rules and the Companies Ordinance.

"Entrustment Activities" has the meaning given to that term in EA2.

"Entrustment Cost" means the total cost of the Entrustment Activities, as more particularly defined in EA2.

"Entrustment Programme" has the meaning given to that term in EA2.

"Estimated Handover Date" has the meaning given to that term in EA2.

"Excess Liability" means the amount of the Corporation's liability (if any) for the Current Cost Overrun, determined by the Arbitrator under the Cost Overrun Arbitration that exceeds the Liability Cap.

"Force Majeure" has the meaning given to that term in EA2.

"FSI" means the Financial Secretary Incorporated (incorporated under the Financial Secretary Incorporation Ordinance (Cap.1015 of the Laws of Hong Kong)).

"Further Cost Overrun" means the amount of the Entrustment Cost (including Project Management Cost), if any, that exceeds HK\$84.42 billion.

"Government" means the Government of the Hong Kong Special Administrative Region.

"Hong Kong" means the Hong Kong Special Administrative Region.

"Independent Shareholders" means Shareholders of the Corporation excluding the FSI and any Associates of the FSI and/or Government.

"Independent Shareholder Approval" means the approval of this Agreement and the Arrangements given by the Independent Shareholders at an EGM.

"Law" means any ordinance or subsidiary legislation.

"LegCo" means the Legislative Council of Hong Kong.

"LegCo Approval" means the approval by LegCo (or the relevant committee(s) thereof) of the additional funding required for the Current Cost Overrun in order for Government to be able to perform its obligations under this Agreement and the Arrangements.

"Liability Cap" means the limit on the Corporation's liability contained in **Clause 4.11** of EA2.

"Listing Rules" means the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited.

"Operating Agreement" means the Operating Agreement entered into between Government and the Corporation on 9 August 2007.

"Ordinance" means the Mass Transit Railway Ordinance (Cap. 556 of the Laws of Hong Kong).

"Party" means Government or the Corporation (and **"Parties"** means both of them).

"Project Management Cost" means the amount payable by Government to the Corporation pursuant to EA2 (as amended by this Agreement) and referred to therein as the "Project Management Cost" (as the same is increased in accordance with Paragraph 1.4 of Appendix F of EA2, as contemplated in **Paragraph K** of the **Schedule**).

"Register" means the register of Shareholders kept by the Corporation in accordance with the Companies Ordinance.

"Revised XRL Programme" means the programme which is contained in the **Appendix** to the **Schedule** showing the commencement of commercial operations on the XRL in the third quarter of 2018 (which, for the avoidance of doubt, on the Effective Date will become the Entrustment Programme for the purposes of EA2).

"Service Concession Agreement" means the Service Concession Agreement entered into by Kowloon-Canton Railway Corporation and the Corporation on 9 August 2007.

"Share" means an issued share in the share capital of the Corporation.

"Shareholder" means the holder of a Share.

"Special Dividend" means a special dividend in the aggregate amount of HK\$4.40 per Share.

"Suspension Costs" means all costs and expenses described in **Clause 8.4** below.

"Suspension Process" has the meaning given to that term in **Clause 8.3** below.

"Third Party" has the meaning given to that term in EA2.

"Third Party Contract" has the meaning given to that term in EA2.

"XRL" means the Hong Kong section of the Guangzhou-Shenzhen – Hong Kong Express Rail Link.

"XRL Project" means the project of constructing and commissioning the XRL.

- 1.2 Any reference in this Agreement to:
- (A) a **"day"** means a calendar day unless the context otherwise requires;
 - (B) a **"month"** means a calendar month unless the context otherwise requires; and
 - (C) a **"person"** shall be construed as a reference to any person, firm, company, corporation or any association or partnership or joint venture (whether or not having separate legal personality) of two or more of the foregoing.
- 1.3 Where words and expressions appearing in this Agreement are defined in the Ordinance, they shall have the meanings assigned to them in the Ordinance unless otherwise stated.
- 1.4 In this Agreement, except where the context otherwise requires:
- (A) any reference to this Agreement (together with any Schedules hereto) or any other agreement or document shall each be construed as a reference to this Agreement, any of the Schedules hereto or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated or supplemented and shall include any document which is supplemental to, is expressed to be collateral with or is entered into pursuant to or in accordance with the terms of this Agreement, or as the case may be, such other agreement or document (subject to the words in brackets contained in the definition "EA2" in **Clause 1.1** above);
 - (B) a reference to any statute or statutory provision or subsidiary legislation shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, replaced or re-enacted;
 - (C) a statute shall include any and all subsidiary legislation made under such statute;
 - (D) a **"Recital"**, **"Clause"**, **"Part"**, **"Schedule"**, **"Appendix"** or a **"Paragraph"** is a reference to a Recital hereto, a Clause hereof, a Part hereof, a Schedule hereto, an Appendix hereto or a Paragraph in the Clause or Schedule in which it appears;
 - (E) the singular shall include the plural and vice versa;
 - (F) any gender shall include all genders; and
 - (G) **"information"** shall include data, drawings, plans, writing and documents of any description and stored on, in or upon any media.
- 1.5 Clause, Part and Schedule headings are for ease of reference only and do not affect the interpretation of this Agreement.
- 1.6 Government's obligations under this Agreement as a commercial party shall not fetter the powers, discretions and duties of any Government departments or officers under the

law to the extent that such departments or officers are to act in governmental capacity or as a competent authority.

PART II

SPECIAL DIVIDEND

2. Payment of Special Dividend

- 2.1 The Corporation shall pay the Special Dividend as an interim dividend.
- 2.2 The Special Dividend shall be paid in two equal tranches:
 - (A) the first tranche will be paid on a date which will be determined by the Board and will be announced by the Corporation in accordance with the Listing Rules (being a date which is within a reasonable period following the Effective Date) to Shareholders whose names appear on the Register on a date which will be determined by the Board and will be announced by the Corporation in accordance with the Listing Rules; and
 - (B) the second tranche will be paid on a date which will be determined by the Board and will be announced by the Corporation in accordance with the Listing Rules (being approximately 12 months after payment of the first tranche of the Special Dividend referred to in **Clause 2.2(A)**) to Shareholders whose names appear on the Register on a date which will be determined by the Board and will be announced by the Corporation in accordance with the Listing Rules.

PART III

FINANCING OF CURRENT COST OVERRUN AND FURTHER COST OVERRUN

3. Current Cost Overrun

- 3.1 Government shall bear and finance the Current Cost Overrun.

4. Further Cost Overrun

- 4.1 The Corporation shall bear and finance the Further Cost Overrun (if any).
- 4.2 The Corporation shall have no obligation to bear and finance such portion of the Further Cost Overrun that:

- (A) results from any change in Law enacted or made after the execution of this Agreement which affects directly the XRL Project and/or the Entrustment Activities; or
 - (B)
 - (i) comprises Suspension Costs; or
 - (ii) results from the occurrence of a Force Majeure; or
 - (iii) results from the suspension or termination of EA2 otherwise than as permitted under **Clause 4.3** below.
- 4.3 During the period when the Corporation is bearing and financing the Further Cost Overrun, Government shall not suspend or terminate the XRL Project and/or EA2 except as a result of the Corporation breaching EA2 and provided Government does so in accordance with EA2.
- 4.4 If the Corporation becomes aware that the Entrustment Cost will exceed HK\$84.42 billion, it shall use its best endeavours to procure the agreement of relevant Third Parties that:
- (A) such Third Parties will not seek to enforce their rights under the Deed Poll to receive payment from Government of amounts of the Entrustment Cost (if any) that form part of the Further Cost Overrun; and
 - (B) such Third Parties will seek payment from the Corporation of any amount of the Entrustment Cost that forms part the Further Cost Overrun.
- 4.5 In the event that, notwithstanding **Clause 4.4** above, Government is required to, and does, pay a Third Party for an amount of the Entrustment Cost that forms part of the Further Cost Overrun, the Corporation shall, as soon as reasonably practicable, indemnify Government for such amount paid by Government (excluding any amount referred to in **Clause 4.2** above) provided Government has paid such amount in accordance with the Deed Poll and EA2.

PART IV

EGM

5. Corporation to convene EGM

- 5.1 The Corporation shall convene an EGM with a view to obtaining Independent Shareholder Approval, notwithstanding **Clause 8.1** below.

PART V**COST OVERRUN ARBITRATION****6. Cost Overrun Arbitration**

- 6.1 Government reserves the right to refer the question of the Corporation's liability (if any) under EA1 and EA2 for the Current Cost Overrun (including any question Government may have regarding the validity of the Liability Cap) to arbitration in accordance with the arbitration provisions in **Clause 31** of EA2, save that any such referral will take place after the commencement of commercial operations on the XRL and will not require a prior referral to the Senior Executives Committee or to mediation (as contemplated in **Clauses 31.1, 31.2 and 31.3** of EA2). Schedule 2 of the Arbitration Ordinance (Cap. 609 of the Laws of Hong Kong) shall apply to any Cost Overrun Arbitration.

7. Liability Cap

- 7.1 If the Arbitrator does not determine that the Liability Cap is invalid and determines that, but for the Liability Cap, the Corporation's liability under EA1 and EA2 for the Current Cost Overrun would exceed the Liability Cap, then the Corporation shall:
- (A) bear such amount as is awarded to Government up to the Liability Cap;
 - (B) seek the approval of its Independent Shareholders for the Corporation to bear the Excess Liability; and
 - (C) if the approval of the Independent Shareholders referred to in **Clause 7.1(B)** above is obtained, pay the Excess Liability to Government.

PART VI**EFFECTIVENESS OF THE ARRANGEMENTS****8. Conditions**

- 8.1 The Arrangements are conditional on:

- (A) Independent Shareholder Approval being granted; and
- (B) LegCo Approval being granted,

prior to the Back Stop Date and will become effective when such conditions are satisfied.

8.2 The Corporation shall, in a timely manner, provide Government with such information as may reasonably be required to enable Government to decide whether and, if so, when to give notice under **Clause 8.3** below.

8.3 In the event that:

- (A) an alternative solution (as referred to in **Clause 2.6** of EA2) which is satisfactory to Government and the Corporation is not implemented; and
- (B) Government determines that the suspension of one or more Third Party Contracts in accordance with their terms will have to commence in order that the Entrustment Cost does not exceed HK\$65 billion (the "**Suspension Process**"),

Government may instruct the Corporation by written notice to commence the Suspension Process and the Corporation will, as soon as reasonably practicable, comply with such instruction.

8.4 Without prejudice to **Clause 5.1(A)** of EA2, in the event that, as a direct or indirect result of the Corporation complying with a written notice from Government pursuant to **Clause 8.3** above, any additional costs or expenses arise (including costs and/or expenses arising directly or indirectly from the suspension and/or any subsequent re-commencement of the relevant Third Party Contracts including, without limitation, any additional costs and expenses in respect of sub-contractors of any tier, suppliers and workers), Government shall bear and finance such costs and expenses (and the Corporation shall have no responsibility whatsoever to bear and finance any such costs and expenses).

8.5 Unless the Corporation receives a written notice from Government pursuant to **Clause 8.3** above or **Clause 20.7** of EA2, the Corporation shall not commence suspending any Third Party Contract, for the purpose of ensuring that the Entrustment Cost does not exceed HK\$65 billion (and shall continue to administer the Third Party Contracts in such circumstances).

8.6 The Corporation's liability to Government arising out of, or in connection with, **Clauses 8.2, 8.3 and 8.5** shall be subject to **Clause 4.11** of EA2 as if they were contained in EA2.

PART VII

MISCELLANEOUS

9. Amendments to EA2

9.1 EA2 shall be amended in accordance with the **Schedule**.

10. Integrated Package

- 10.1 The Arrangements constitute an integrated package of terms.

11. No Precedent

- 11.1 This Agreement and the Arrangements are specifically tailored to address the particular circumstances of the XRL Project and shall not serve as a precedent or create any expectations for the manner in which any other project will be addressed.

12. Preservation of Rights and Liabilities

- 12.1 The execution of this Agreement shall not in any way affect the rights and obligations of either Party under EA1 and EA2 which accrued up to and including the Effective Date (including, without limitation, rights and obligations relating to the Entrustment Programme and the Estimated Handover Date), except as expressly stated in this Agreement. The agreement between the Parties under **Clause 9.1** above to replace the Entrustment Programme contained in EA2 with the Revised XRL Programme shall not prejudice any rights Government may have in respect of the circumstances which gave rise to such replacement.

13. Invalidity

If at any time any provision or part of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, such illegality, invalidity or unenforceability shall not affect or impair the legality, validity or enforceability in that jurisdiction of any other part of that provision or any other provision of this Agreement or, in any other jurisdiction, of that provision or part thereof or any other provision of this Agreement.

14. No Partnership

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

15. Further Assurance

Each of the Parties agrees that it shall, from time to time on being required to do so by the other Party, now or at any time during the subsistence of this Agreement, either or both do or procure the doing of all such acts or execute or procure the execution of all such documents in a form satisfactory to the other Party as reasonably considered necessary by it for giving full effect to and the full benefit of the rights, powers and remedies conferred by this Agreement. The provisions of this **Clause 15** shall survive the termination of this Agreement and shall continue in full force and effect notwithstanding such termination.

16. Amendments

Save as otherwise expressly provided in this Agreement, no provision of this Agreement may be amended, waived, discharged or terminated other than (in each case) by an instrument in writing signed by or on behalf of each of the Parties.

17. Waiver

No failure to exercise, nor any delay in exercising, on the part of any Party hereto, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any rights and remedies provided by law.

18. Conflict

18.1 In the event of any conflict between the provisions of this Agreement and the **Schedule**, the provisions of this Agreement shall prevail.

18.2 In the event of any conflict between the provisions of this Agreement and the Ordinance, the Operating Agreement, or the Service Concession Agreement, the provisions of the Ordinance, the Operating Agreement or the Service Concession Agreement (as the case may be) shall prevail.

19. Payments

19.1 **Clause 29** of EA2 shall apply mutatis mutandis in respect of any payments under this Agreement.

20. Notices

20.1 **Clause 30** of EA2 shall apply mutatis mutandis to any notices, certificates or other communications in connection with this Agreement.

21. Dispute Resolution

21.1 Except in the case of the Cost Overrun Arbitration (which shall be subject to, and governed by, Part V of this Agreement), any dispute arising from or connected with this Agreement (including a dispute regarding the existence or validity of this Agreement), shall be subject to, and governed by, **Clause 31** of EA2.

22. Governing Law and Jurisdiction

22.1 This Agreement shall be governed by, and construed in accordance with, the laws of Hong Kong.

22.2 The Parties agree that any separate agreement or document entered into between them referred to in or contemplated by this Agreement shall be governed by, and construed in accordance with, the laws of Hong Kong.

IN WITNESS WHEREOF the Parties have caused this Agreement to be duly executed as a deed the day and year first above written.

SIGNED AS A DEED AND DELIVERED

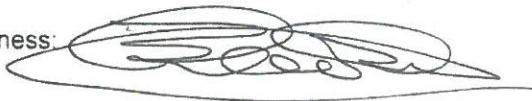
By: G. E. Meller GILL MELLER LEGAL DIRECTOR &
 Signature Name of Director Title of Director SECRETARY

for and on behalf of
 MTR CORPORATION LIMITED

Pursuant to a Power of Attorney granted by the
 Corporation on 24 JUNE 2015

in the presence of:

Name, address and signature of witness:



Name: BRIAN DOWNIE

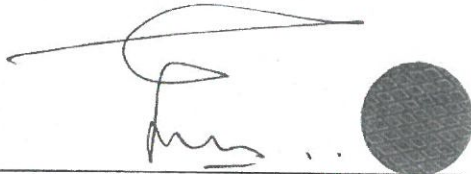
Address: MTR HEADQUARTERS BUILDING
TELFORD PLAZA
KOWLOON BAY HONG KONG

SIGNED, SEALED AND DELIVERED

By

THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

By:



Signature

Rebecca Pun Deputy Secretary
Name Position (Transport) I

in the presence of:

Name, address and signature of witness:

Name: Klaus CHAN 

Address: 22/F, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar.

SCHEDULE

Amendments to EA2

The following clauses of EA2 shall be amended on the Effective Date:

- (A) in Clause 1.1:
 - (i) in the definition "Project Control Total", the figure "HK\$65,000 million" shall be deleted and replaced with "HK\$84,420 million"; and
 - (ii) in the definition "Project Management Cost", the figure "HK\$4,590 million" shall be deleted and replaced with "HK\$6,344 million";
- (B) Clause 2.3 (Financial Undertakings and Payment Mechanics) shall be deleted and replaced with:

"Government shall bear and finance the full amount of such portion of the Entrustment Cost and the Direct Costs up to a maximum aggregate amount that is equal to the Project Control Total and shall:

 - (i) in relation to the Third Party Costs, make payments in accordance with Appendix E;
 - (ii) in relation to the Project Management Cost and the Miscellaneous Works Fee (if any), make payments in accordance with Appendix F and Appendix E, respectively; and
 - (iii) in relation to the Direct Costs, make the payments directly to the relevant persons.

The Corporation shall bear and finance the full amount of such portion of the Entrustment Cost and Direct Costs that exceeds the Project Control Total and shall:

- (i) in relation to the Third Party Costs which exceed the Project Control Total, pay the Third Parties direct; and
- (ii) in relation to the Direct Costs which exceed the Project Control Total, make the payments directly to the relevant persons,

Provided that the Corporation shall have no obligation to bear and finance any such amount that:

- (a) results from any change in any ordinance or subsidiary legislation enacted or made after 30 November 2015 which affects directly the Express Rail Link project and/or the Entrustment Activities; or
- (b) (1) comprises any additional costs or expenses (including costs and/or expenses arising directly or indirectly from the suspension and/or any subsequent re-commencement of the relevant Third Party Contracts including, without limitation, any additional costs and expenses in respect of sub-contractors of any tier, suppliers and workers) arising as a direct or indirect result of the Corporation complying with a

written notice from Government instructing the Corporation to commence suspending Third Party Contracts; or (2) results from the occurrence of a Force Majeure; or (3) results from the suspension or termination of this Agreement otherwise than where, during the period when the Corporation is bearing and financing the portion of the Entrustment Cost that it is required to bear and finance under this Agreement, the Corporation is in breach of this Agreement and as a result Government suspends or terminates this Agreement in accordance with this Agreement.”;

(C) Clause 2.6 shall be deleted;

(D) in Clause 6.1 (Insurance), the preamble shall be deleted and replaced with:

“The Corporation shall, in connection with its obligations under this Agreement, effect and maintain (the cost of which shall form part of the Entrustment Cost) with reputable insurers, or will procure from all contractors and sub-contractors employed or engaged in connection with the Entrustment Activities to effect and maintain with reputable insurers.”;

(E) in Clause 8.1 (Modifications), the final sentence shall be deleted and replaced with:

“Any increase in the Entrustment Cost shall be borne in accordance with Clause 2.3 or as otherwise agreed between the parties.”;

(F) Clause 19.1 (Other Agreements) shall be deleted and replaced with:

“Following the date of this Agreement, Government shall not be required to make any further payments to the Corporation under the Preliminary Entrustment Agreement in respect of the Design and Site Investigation On-Cost (as such term is defined in the Preliminary Entrustment Agreement), but shall be required to continue to pay Third Party Costs, Preliminary Costs (if any), In-House Design Costs and Recruited Staff Costs (as such terms are defined in the Preliminary Entrustment Agreement) in accordance with Appendix E thereof up to an amount which, when aggregated with the amounts which Government is required to pay under Clause 2.3 of this Agreement, does not exceed the Project Control Total.”;

(G) Clause 20 (Termination and Suspension) shall be amended by adding a new Clause 20.11:

“20.11 Unless the Corporation receives a written notice from Government instructing the Corporation to commence suspending one or more Third Party Contracts or a written notice from Government under Clause 20.7, the Corporation shall not commence suspending any Third Party Contract, for the purpose of ensuring that the Entrustment Cost does not exceed HK\$65 billion (and shall continue to administer the Third Party Contracts in such circumstances).”;

(H) in Appendix A (Scope of Railway Works, RRIW AND EPIW, PROPERTY DEVELOPMENT ENABLING WORKS AND WKCD INTERFACE ENABLING WORKS), Paragraph 1.2 shall be deleted and replaced with:

“1.2 a new underground terminus in West Kowloon with provision of ten (10) platforms only, boundary control facilities, vehicle loading/unloading areas, car parks and other associated facilities to support the operation of the terminus.”;

- (I) in Appendix C (Entrustment Programme), the programme shall be deleted and replaced with the Revised XRL Programme (which, for the avoidance of doubt, on the Effective Date will become the Entrustment Programme for the purposes of EA2);
- (J) in Appendix E (Payment of Third Party Costs and Miscellaneous Works Fee), Paragraph 1.1 shall be deleted and replaced with:
- “1.1 Subject to the provisions in this Appendix E, Government shall pay the Third Party Costs (subject to Clause 2.3) and the Miscellaneous Works Fee in accordance with each Certificate (as defined in Paragraph 1.2 below) submitted by the Corporation pursuant to Clause 1.2 below.”; and
- (K) in Appendix F (Project Management Cost and Miscellaneous Works Fee), Paragraph 1.1 shall be amended by deleting the table, which shall be replaced with:

Valuation Period		Payment Date	Per EA2 Payment Schedule (HK\$M)	Additional Project Management Cost (HK\$M)	Total (HK\$M)	Year Total (HK\$M)
2015	Up to end Dec	end Sep 15	4,541.5 (Note 1)	-	4,541.5	4,541.5
2016	Q1	end Dec 15	28.7		28.7	775.8
	Q2	end Mar 16	8.8		8.8	
	Q3	end Jun 16	6.0		6.0	
	Q4	end Sep 16	3.0		3.0	
		(Note 2)		729.3 (Note 2)	729.3	
2017	Q1	end Dec 16	2.0	205.8	207.8	727.7
	Q2	end Mar 17	-	199.4	199.4	
	Q3	end Jun 17	-	162.7	162.7	
	Q4	end Sep 17	-	157.8	157.8	
2018	Q1	end Dec 17	-	125.7	125.7	286.3
	Q2	end Mar 18	-	78.4	78.4	
	Q3	end Jun 18	-	53.6	53.6	
	Q4	end Sep 18	-	28.6	28.6	

2019	Q1	end Dec 18	-	6.3	6.3	12.7
	Q2	end Mar 19	-	2.6	2.6	
	Q3	end Jun 19	-	2.1	2.1	
	Q4	end Sep 19	-	1.7	1.7	
TOTAL			4,590.0	1,754.0	6,344.0	6,344.0

Note 1: Includes \$343 million which is the agreed amount of Project Management Cost to be settled for the valuation period up to the end of December 2009 and the cumulative amount recovered by the Corporation under the EA1.

Note 2: Payment dates for the additional Project Management Cost payable in 2016 shall be agreed between the parties, failing which such amount (being HK\$729.3 million) shall be paid in two equal tranches on 30 September 2016 and 31 December 2016, respectively.

APPENDIX

Revised XRL Programme

