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立法會秘書處秘書長
（經辦人：劉素儀女士）

劉女士：

調查廣深港高速鐵路香港段（「高鐵香港段」）建造工程延誤的背景及原委專責委員會（「專責委員會」）

委託協議

貴處曾於2015年1月23日及3月3日致函運輸及房屋局局長，要求我們提供以下文件：

(i) 政府與香港鐵路有限公司（「港鐵公司」）於2008年11月24日及2010年1月26日簽訂的兩份委託協議；

(ii) 港鐵公司向項目監管委員會提交的進度報告；以及

(iii) 路政署於部門首長會議上向運輸及房屋局提供的簡介資料。

鑑於政府和港鐵公司於2015年11月30日向公眾交代高鐵香港段的最新造價和工程進展時，已披露了相當部分的委託協議內容，我們經詳細考慮並與港鐵公司商討後，決定向專責委員會提供兩份委託協議的副本（請見附件），以供參閱。

至於港鐵公司向項目監管委員會（「監委會」）提交的進度報告，由於份屬機密並涉及敏感商業資料，我們認為把有關報告作遮蓋處理後，以機密形式提供專責委員會於閉門研訊中省覽是恰當

的做法。另外，由於部門首長會議的簡介資料屬政府機密內部記錄，我們亦建議以機密形式提供相關資料的要點予專責委員會於閉門研訊中省覽。

如專責委員會同意我們建議的安排，我們會另行向專責委員會以上述方式提供有關資料。

運輸及房屋局局長

（陳可舒 陳可舒 代行）

二零一六年一月四日

附件

副本抄送： 路政署署長
港鐵公司主席
港鐵公司行政總裁

Dated the 24th day of November 2008

DEED

ENTRUSTMENT AGREEMENT FOR

DESIGN AND SITE INVESTIGATION IN RELATION TO THE

EXPRESS RAIL LINK

between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

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

TABLE OF CONTENTS

		Page
1.	PART I – INTERPRETATION	2
2.	PART II - FINANCING OF THE DESIGN AND SITE INVESTIGATION ACTIVITIES	8
3.	PART III – OBLIGATIONS AND WARRANTIES	9
4.	PART IV – CONSULTATION, PROJECT MONITORING AND VERIFICATION	14
5.	PART V –ENVIRONMENTAL PROTECTION	18
6.	PART VI – FURTHER AGREEMENT	19
7.	PART VII – TERMINATION AND SUSPENSION	20
8.	PART VIII - INTELLECTUAL PROPERTY RIGHTS	24
9.	PART IX – MISCELLANEOUS	26
10.	APPENDIX A – SCOPE OF RAILWAY WORKS, RRIW AND EPIW, PROPERTY DEVELOPMENT ENABLING WORKS AND WKCD INTERFACE ENABLING WORKS	36
11.	APPENDIX B – DESIGN AND SITE INVESTIGATION ACTIVITIES	39
12.	APPENDIX C – DESIGN AND SITE INVESTIGATION PROGRAMME	42
13.	APPENDIX D – EXPRESS RAIL LINK	44
14.	APPENDIX E – PAYMENT OF THIRD PARTY COSTS; IN-HOUSE DESIGN COSTS, DESIGN AND SITE INVESTIGATION ON- COST, PRELIMINARY COSTS AND RECRUITED STAFF COSTS	46
15.	APPENDIX F – AMOUNTS PAYABLE TO THE CORPORATION	51
16.	APPENDIX G – CONTENT REQUIREMENTS OF REPORTS TO GOVERNMENT	55

THIS DEED OF AGREEMENT is made on the 24th day of November 2008

BETWEEN:

(1) SECRETARY FOR TRANSPORT AND HOUSING for and on behalf of the GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION (**"Government"**); and

(2) MTR CORPORATION LIMITED whose registered office is MTR Headquarters Building, Telford Plaza, Kowloon Bay, Kowloon (the **"Corporation"**).

WHEREAS:

(A) The Regional Express Link (**"REL"**) is one of the railway projects recommended for implementation in the Railway Development Strategy 2000. Later, the REL became the Hong Kong section of the Guangzhou – Shenzhen – Hong Kong Express Rail Link (**"ERL"**) being pursued jointly by Hong Kong and the Mainland. In middle of 2005, the Kowloon-Canton Railway Corporation (**"KCRC"**) submitted a study report on the Hong Kong section of the ERL by sharing tracks with the existing West Rail (the Shared Corridor Option) together with a proposal for the Northern Link (**"NOL"**). The report also included a Dedicated Corridor Option in which the ERL services would be operating along a completely new rail corridor within Hong Kong.

(B) In February 2006, the then Environmental, Transport, and Works Bureau asked the KCRC to proceed with further planning of the NOL and Hong Kong section of the ERL as a combined project under the Shared Corridor Option. In the light of the rail merger discussion held at that time, a joint study team was formed by the Corporation and KCRC to progress the study.

(C) Subsequently, there were changes in the Mainland's planning parameters significantly affecting the planning of the Hong Kong section of the ERL, in particular on the choice of corridor options. KCRC submitted to Government in the middle of 2007 a project proposal on the Hong Kong section of the ERL on the basis of the Dedicated Corridor Option. The proposed NOL was de-linked from the Hong Kong section of the ERL.

(D) Following the rail merger on 2 December 2007, the Corporation took over the planning of the ERL and changed the acronym for the Express Rail Link to XRL instead of ERL, to avoid duplication with the use of the acronym "ERL" in the existing East Rail Line.

(E) On 22 April 2008, the Executive Council decided that the Corporation should be asked to proceed with the further planning and design of the Hong Kong section of the XRL on the basis that the Corporation would be invited to undertake the Hong Kong section of the XRL under the concession approach.

(F) Pursuant to the decision of the Executive Council referred to in Recital (E) above, Government and the Corporation have agreed to enter into this Agreement to provide for the design of and site investigation and procurement activities in relation to the Express Rail Link.

NOW IT IS HEREBY AGREED AS FOLLOWS:

PART I

INTERPRETATION

1. Interpretation

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

"Additional Amount" has the meaning ascribed to that term in **Clause 2.5**.

"Additional Funding Suspension Costs" has the meaning ascribed to that term in **Clause 14.9(c)**.

"Additional Suspension Costs" has the meaning ascribed to that term in **Clause 14.6(c)(iii)**.

"Authorised Signatories" has the meaning ascribed to that term in **Appendix E**.

"Business Day" means a day (excluding Saturdays) on which licensed banks are open for business generally in Hong Kong.

"Cashflow Forecast" has the meaning ascribed to that term in **Clause 11.8**.

"Certificate" has the meaning ascribed to that term in **paragraph 1.2** of **Appendix E**.

"Certified Amount" has the meaning ascribed to that term in **Appendix E**.

"Deed Poll Dispute" has the meaning ascribed to that term in **Clause 25.4**.

"Deliverable Documents" shall mean the final versions of any compilation of information, drawing, plan, report or design and any other materials or documents, which have been created, developed or made by the Corporation, its employees or Third Parties in connection with the Express Rail Link project, including without limitation, the materials or documents referred to in **Clause 10.3**.

"Design and Site Investigation Activities" means all activities as detailed in **Appendix B** which are related to, as the case may be, the Railway Works, the EPIW, the RRIW, Property Development Enabling Works or WKCD Interface Enabling Works, and which are required for the design and/or site investigation and/or procurement activities and/or, as the case may be, the procurement thereof, in relation to the Express Rail Link project.

"Design and Site Investigation Cost" means the total cost of the Design and Site Investigation Activities including, but not limited to:

(a) the Third Party Costs;

(b) the In-house Design Costs;

(c) the Design and Site Investigation On-cost;

(d) the Preliminary Costs; and

(e) the Recruited Staff Costs.

"**Design and Site Investigation On-cost**" has the meaning ascribed to that term in **paragraph 1.1** of **Appendix F.**

"**Design and Site Investigation Programme**" means the programme for the execution of the Design and Site Investigation Activities as set out in **Appendix C.**

"**Direct Costs**" means any and all charges, costs and amounts payable to any Government department, bureau, agency or body in relation to the Design and Site Investigation Activities, including without limitation, any internal charges, costs and amounts of Government, any Government department, bureau, agency or body.

"**Dispute**" shall have the meaning ascribed to that term in **Clause 25.1**.

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

"**Due Date**" has the meaning ascribed to that term in **Appendix E**.

"**ERL**" has the meaning ascribed to that term in Recital (A).

"**Essential Public Infrastructure Works**" or "**EPIW**" means any item of work which is described as such in **Appendix A** as the same may be updated from time to time and, for the avoidance of doubt, is not described as forming part of the Railway Works but is associated with the Express Rail Link.

"**Express Rail Link**" means the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link, comprising approximately 26 kilometres of rail tunnels from the boundary with Shenzhen to, and including, the terminus located in West Kowloon in the vicinity of Jordan and Austin Roads, together with all related rolling stock, electrical and mechanical equipment and other facilities required to permit operation of such rail link as an extension of the Mainland high speed rail network, as shown on the plan in Appendix D.

"**Force Majeure**" means any cause preventing or delaying either party from performing any of its obligations under this Agreement which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented or delayed.

"**Funding Resumption Date**" shall have the meaning ascribed to that term in **Clause 14.9(a)**.

"**Funding Resumption Notice**" shall have the meaning ascribed to that term in **Clause 14.9**.

"**Funding Suspension Date**" shall have the meaning ascribed to that term in **Clause 14.7(b)**.

"Funding Suspension Period" means the period commencing on the Funding Suspension Date and ending on the date on which the suspension ceases (if any).

"Funding Suspension Obligations" shall have the meaning ascribed to that term in **Clause 14.7(a)**.

"Further Agreement" means an agreement which may be entered into by Government and the Corporation and which may contain each of their rights, obligations, duties and powers with respect to the financing, construction, completion, testing, commissioning and putting into service of each of the Railway Works, the EPIW, the RRIW, the Property Development Enabling Works and the WKCD Interface Enabling Works.

"Government Information" has the meaning ascribed to that term in **Clause 27.2**.

"HKIAC" shall have the meaning ascribed to that term in **Clause 25.3**.

"In-house Design Costs" shall have the meaning ascribed to that term in **paragraph 1.1** of **Appendix F**.

"In-house Design Rates" shall have the meaning ascribed to that term in **paragraph 1.5** of **Appendix F**.

"intellectual property rights" means patents, copyright, design rights, artistic works, trademarks, service marks, trade names, domain names, topography rights, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights of whatever nature and wherever arising, whether now known or hereafter created and in each case whether registered or unregistered and including applications for the grant of any such rights.

"KCRC" has the meaning ascribed to that term in Recital (A).

"Mainland" means any part of the People's Republic of China other than Hong Kong, Macau and Taiwan.

"NOL" has the meaning ascribed to that term in Recital (A).

"Operating Agreement" means the operating agreement dated 9 August 2007 made between Secretary for Transport and Housing for and on behalf of Government and the Corporation, as contemplated in Section 4(2) of the Ordinance.

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

"Payment Obligations" shall have the meaning ascribed to that term in **Clause 14.8(b)**.

"Preliminary Costs" means a sum or sums payable to the Corporation in respect of certain preliminary work carried out, or procured, by the Corporation in relation to the Design and Site Investigation Activities from and including 2 December 2007 to but excluding the date of this Agreement.

"Project Control Total" means the amount agreed between Government and the Corporation (which may be adjusted by agreement between Government and the

Corporation in the event that the Design and Site Investigation Cost exceeds the original or previous Project Control Total) within one hundred (100) days of the date of this Agreement as an estimate of the Design and Site Investigation Cost, inclusive, without limitation, of (i) any amounts payable to the Corporation; and (ii) any contingencies for variations in scope and escalation of costs but prior to such amount being agreed between Government and the Corporation as contemplated above, shall on a provisional basis be taken to mean HK$1,000,000,000.

"Property Development Enabling Works" means any item of work which is described as such in **paragraph 4** of **Appendix A** as the same may be updated from time to time.

"Railway Works" means any item of work which is described as such in **Appendix A** and which is necessary for the construction and/or operation of the Express Rail Link.

"Recruited Staff Costs" shall have the meaning ascribed to that term in **paragraph 1.1.** of **Appendix F.**

"Recruited Staff Rates" has the meaning ascribed to that term in **paragraph 1.7** of **Appendix F.**

"Rectification Date" has the meaning ascribed to that term in **Clause 2.6**.

"REL" has the meaning ascribed to that term in Recital (A).

"Relevant Obligations" has the meaning ascribed to that term in **Clause 14.2(b)(i).**

"Relevant Fixed Percentage" has the meaning ascribed to that term in **paragraph 1.1** of **Appendix F.**

"Reprovisioning, Remedial and Improvement Works" or **"RRIW"** means any item of work which is described as such in **Appendix A**, as the same may be updated from time to time, and, for the avoidance of doubt, is not described as forming part of the Railway Works but is associated with the Express Rail Link.

"Resumption Date" has the meaning ascribed to that term in **Clause 14.2(b)(iii).**

"Senior Executives Committee" has the meaning ascribed to that term in **Clause 25.1.**

"Service Concession Agreement" has the meaning ascribed to that term in **Clause 16.2.**

"Suspension Date" has the meaning ascribed to that term in **Clause 14.2(b)(ii).**

"Suspension Period" means the period commencing on the Suspension Date and ending on the date on which the suspension ceases (if any).

"Termination Costs" has the meaning ascribed to that term in **Clause 14.4(b).**

"Third Party" means any contractor, consultant or other third party employed or otherwise engaged by the Corporation in connection with the Design and Site Investigation Activities.

"Third Party Costs" means any and all payments to Third Parties including, for the avoidance of doubt, any additional costs in relation thereto as a result of a modification agreed in accordance with **Clause 8** and any Additional Suspension Costs.

"WKCD Interface Enabling Works" means any item of work which is described as such in **paragraph 5** of **Appendix A** as the same may be updated from time to time.

"WKCD" means the West Kowloon Cultural District.

1.2 Any reference in this Agreement to:

a **"day"** means a calendar day unless the context otherwise requires;

a **"month"** means a calendar month unless the context otherwise requires;

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; and

"Express Rail Link project" shall be construed to include the works comprising EPIW, RRIW and Property Development Enabling Works and WKCD Interface Enabling Works.

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 Appendices hereto) or any other agreement or document shall each be construed as a reference to this Agreement, any of the Appendices 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;

(b) a reference to any statute or statutory provision or subsidiary legislation or either or both of the Arbitration or Mediation Rules of the Hong Kong International Arbitration Centre 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"**, **"Appendix"** or a **"paragraph"** is a reference to a Recital hereto, a Clause hereof, a Part hereof, an Appendix hereto or a paragraph in the Clause or Appendix 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 Appendix headings are for ease of reference only and do not affect the interpretation of this Agreement.

1.6 Terms defined in any Appendix to this Agreement and not otherwise defined herein shall bear the meaning ascribed to them in such Appendix.

1.7 The Government's obligations under this Agreement as a commercial contracting 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

FINANCING OF THE DESIGN AND SITE INVESTIGATION ACTIVITIES

2. Financial Undertakings and Payment Mechanics

2.1 In consideration of the Corporation executing or procuring the execution of the Design and Site Investigation Activities and carrying out its other obligations under this Agreement, Government shall pay to the Corporation the In-house Design Costs, the Design and Site Investigation On-Cost, the Preliminary Costs and the Recruited Staff Costs.

2.2 The maximum aggregate amount payable by Government to the Corporation under **Clause 2.1** shall be limited to HK$1,500,000,000.

2.3 Government shall bear and finance the full amount of the Design and Site Investigation Cost and the Direct Costs and shall:

(a) in relation to the Preliminary Costs, the Third Party Costs, the In-house Design Costs, the Design and Site Investigation On-Cost and the Recruited Staff Costs, make payments in accordance with **Appendix E**; and

(b) in relation to the Direct Costs, make the payments directly to the relevant persons.

2.4 Subject to **Clause 1.7**, Government shall use its reasonable endeavours to obtain all necessary authorities, permissions, approvals and consents for the funding of the Design and Site Investigation Cost and the Direct Costs and otherwise for Government's entry into and compliance with this Agreement.

2.5 If the Corporation becomes aware that the Design and Site Investigation Cost will exceed the Project Control Total, the Corporation shall notify Government as soon as reasonably practicable (such excess being referred to as the "**Additional Amount**").

2.6 In the event that the Corporation has, in accordance with **Clause 2.5**, notified Government that the Design and Site Investigation Cost will exceed the Project Control Total then, subject to **Clause 1.7**, Government shall, within twenty eight (28) days of receipt of notification under **Clause 2.5** (the "**Rectification Date**"), take all reasonable steps to obtain all necessary authorities, permissions, approvals and consents for the funding of the Additional Amount or shall propose an alternative solution to the provision of such Additional Amount.

2.7 In the event that Government fails to comply with its obligation contained in **Clause 2.3(b)**, the Corporation's only remedy against Government in respect of such failure shall be as contained in **Clause 14.2(b)**.

PART III

OBLIGATIONS AND WARRANTIES

3. General

The Design and Site Investigation Activities shall be carried out in a manner which reflects the Corporation's responsibilities and duties under the Ordinance, the Operating Agreement (in both cases, to the extent applicable) and this Agreement.

4. Corporation's Obligations

4.1 The Corporation shall carry out or procure the carrying out of the Design and Site Investigation Activities in accordance with all applicable laws, regulations, by-laws, the Ordinance, the Operating Agreement (in each case, to the extent applicable) and this Agreement.

4.2 Without prejudice to the generality of **Clause 4.1**, the Corporation shall, to the satisfaction of Government, carry out or procure the carrying out of the Design and Site Investigation Activities for the RRIW and the EPIW (as described in **paragraph 2** of **Appendix B**) and Property Development Enabling Works and WKCD Interface Enabling Works, in accordance with specifications and/or standards to be agreed or, in the absence of such agreement, reasonably stipulated by Government or other relevant public bodies.

4.3 In the performance of its obligations under this Agreement, the Corporation shall comply with and satisfy all relevant statutory or other legal requirements applicable to the Design and Site Investigation Activities including without limitation the obtaining of all requisite licences, authorisations, permits, approvals or exemptions.

4.4 The Corporation shall not be in breach of any of its obligations under **Clauses 4.1** to **4.3** nor **Clause 29** to the extent that any failure of the Corporation to perform such obligation is attributable to a failure by Government to comply with its obligations under **Clause 7**.

4.5 In performing its obligations under this Agreement the Corporation shall:

(a) let all contracts with Third Parties under the Corporation's conditions of contract;

(b) in reaching any commercial settlements with Third Parties which are not strictly in accordance with the terms of the relevant contract or which amend the terms of the relevant contract, the Corporation shall seek to ensure that such settlements are in the best interests of the Express Rail Link project including the associated EPIW and RRIW and Property Development Enabling Works and WKCD Interface Enabling Works and shall act in accordance with the relevant commercial settlement procedures referred to in **Clause 4.5(c)(iv)**;

(c) act in accordance with the Corporation's management systems and procedures, as such may be amended from time to time, in each of the following areas:

(i) organisation and management responsibilities;

(ii) project management and control;

(iii) relevant project management and procurement procedures; and

(iv) commercial settlement procedures,

a copy of each of which shall be provided by the Corporation to Government on request;

(d) in the event that the Corporation intends to amend any of the Corporation's procedures referred to in **Clause 4.5(c)** in such a way that would materially prejudice Government's position in relation to the Express Rail Link project, the Corporation shall provide Government with copies of the proposed amendments. In the event that Government proposes to provide comments on the Corporation's proposed amendments to the Corporation's procedures referred to in **Clause 4.5(c)**, it shall provide any such comments in writing to the Corporation within a reasonable time following its receipt of the relevant document, taking into account the Corporation's obligations under **Clause 10.2**. The Corporation shall give full and proper consideration to such comments (if any) put forward by Government and shall, subject to its obligations under **Clause 10.2** and taking account of the practical requirements for implementing the Express Rail Link project:

(i) if the written comments provided by Government in accordance with the above contain an objection by Government to the Corporation's implementation of its proposed amendments then the Corporation shall not implement such proposed amendments until and unless Government agrees to the proposed amendments; and

(ii) in any other case, whenever requested and within a reasonable time, provide written replies thereto, such replies shall include, where applicable, the Corporation's reasons for not accepting any comments from Government made pursuant to this **Clause 4.5(d)**; and

(e) comply with those obligations which apply to it as an entity named under the World Trade Organisation Agreement on Government Procurement.

4.6 The Corporation's liability to Government in respect of death or personal injury caused by the negligence of the Corporation shall be unlimited, but the Corporation's total aggregate liability to Government (whether in contract, tort (including negligence) or otherwise) in respect of any other action, cost, claim, demand, expense (including, without limitation, the fees and disbursements of arbitrators, mediators, arbitration centre administration venue and facility hire, lawyers, agents and expert witnesses) and all awards, and costs which may be agreed to be paid in settlement of any proceedings and liabilities of whatsoever nature arising out of or in connection with this Agreement shall be limited to HK$700 million.

4.7 In the event that, upon settlement of the final accounts in relation to the Third Party contracts, the Corporation is in receipt of any funds which it has been paid pursuant to such contracts which is properly attributable to Government, the Corporation agrees that such funds shall be dealt with as directed by Government.

4.8 The Corporation shall manage and enforce, in accordance with the Corporation's procedures referred to in **Clause 4.5(c)**, any and all claims arising under or in connection with the Third Party contracts. The provisions of this **Clause 4.8** shall survive the termination of this Agreement and shall continue in full force and effect notwithstanding such termination.

5. Corporation's Skill and Care Warranty

5.1 The Corporation warrants that:

(a) the Design and Site Investigation Activities shall be carried out with the skill and care reasonably to be expected of a professional and competent design engineer and project manager;

(b) other than as permitted in accordance with the Corporation's procedures referred to in **Clause 4.5(c)**, the Express Rail Link shall be designed:

(i) to standards and in accordance with a specification which is consistent with and not materially in excess of those applicable to relevant elements of comparable completed railway projects in Hong Kong and the Mainland (as adjusted to take account of the legal and regulatory requirements which are applicable in Hong Kong); and

(ii) to reflect the long distance, intercity and high-speed nature of the Express Rail Link; and

(iii) which will allow the Corporation to satisfy those responsibilities and duties to which it will be subject if operations commence on the Express Rail Link, under the Ordinance, the Operating Agreement and the relevant service concession agreements (if any); and

(c) in the event the Corporation proposes that any significant aspect of the design of the Express Rail Link be materially in excess of the standards and specification referred to in **Clause 5.1(b)**, the Corporation shall first obtain the consent of Government before implementing such design.

5.2 Without prejudice to the rights and remedies of Government in respect of any breach of this Agreement by the Corporation, the Corporation shall indemnify and keep indemnified Government against all actions, proceedings, costs, claims, demands, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses), losses or damages suffered by Government and all awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of whatsoever nature which Government may pay or incur as a result of the negligence of the Corporation in performing its obligations under this Agreement or any breach of this Agreement by the Corporation.

5.3 In the event of any errors or omissions by the Corporation which constitute breaches of this Agreement by the Corporation and as a result of which the re-execution of the Design and Site Investigation Activities is required, the Corporation shall, if required by Government, at its own cost re-execute (or procure the re-execution of) such Design and Site Investigation Activities to the reasonable satisfaction of Government. In the event that the Corporation complies with this provision, Government shall have no further rights

or remedies against the Corporation in respect of any breach by the Corporation of this Agreement which led to the re-execution of the Design and Site Investigation Activities pursuant to this **Clause 5.3** except to the extent of any losses or damages suffered by Government as a result of any such breach which are not remedied, rectified or otherwise made good by such re-execution of the Design and Site Investigation Activities. For the avoidance of doubt, any liability of the Corporation under this **Clause 5.3** to re-execute (or procure the re-execution of) Design and Site Investigation Activities shall be subject to **Clause 4.6**.

6. Professional Indemnity Insurance

6.1 The Corporation shall, in connection with its obligations under this Agreement, effect and maintain with reputable insurers, professional indemnity insurance in respect of its obligations in relation to the Design and Site Investigation Activities for an amount of not less than HK$70,000,000 provided always that such professional indemnity insurance is available and continues to be available at reasonable commercial rates. Such professional indemnity insurance shall be for a period of not less than six years from the date or dates (as the case may be) of completion of the Design and Site Investigation Activities. The Corporation shall immediately notify Government in the event that professional indemnity insurance ceases to be available at reasonable commercial rates or is otherwise not maintained in accordance with this **Clause 6.1** or for any reason becomes void or unenforceable and shall agree with Government alternative requirements in place of the foregoing requirements of this **Clause 6.1**.

6.2 Unless Government otherwise agrees in writing, the Corporation shall procure that all design consultants employed or engaged in connection with the Design and Site Investigation Activities and who have design responsibility effect and maintain with reputable insurers professional indemnity insurance in respect of their obligations in relation thereto in each case for an amount of not less than HK$70,000,000 for a period of not less than six years from the dates or dates (as the case may be) of completion of the relevant items of work described in **Appendix A** provided always that such professional indemnity insurance:

(a) is available and continues to be available at reasonable commercial rates; and

(b) in the case of any design consultant who is based in a place outside Hong Kong, is generally available and continues to be generally available in the place in which the relevant design consultant is based.

The Corporation shall immediately notify Government in the event that professional indemnity insurance ceases to be available at reasonable commercial rates or, in the case of professional indemnity insurance for a design consultant who is based in a place outside Hong Kong, ceases to be generally available in the place in which the design consultant is based or is otherwise not maintained in accordance with this Clause or for any reason becomes void or unenforceable and shall agree with Government alternative requirements in place of the foregoing requirements of this **Clause 6.2**.

6.3 The Corporation shall use all reasonable endeavours to ensure that no actions shall be taken or omitted or suffer anything to be done or omitted by it or its agents as a result of which any insurance policy or part thereof effected in accordance with this **Clause 6** may be avoided, forfeited, revoked or withdrawn.

7. Government to Co-operate

7.1 Government shall use reasonable endeavours to provide the Corporation with any information or assistance of a non-financial nature reasonably required by the Corporation, so as to enable the Corporation to meet its obligations under this Agreement.

7.2 Subject to **Clause 1.7** and without prejudice to **Clause 4.3**, Government shall, to the extent that it is empowered or otherwise able to do so having taken all reasonable steps, procure that all necessary licences, consents and other permissions and approvals required for, or in connection with, the design, construction and operation of the Express Rail Link project are given or granted as expeditiously as possible when required and in a manner consistent with facilitating Government's expectations with regard to the timetable for delivery of the Express Rail Link project, and shall when given or granted be of the duration and on terms required.

8. Modifications

Either party to this Agreement may propose, by notice in writing to the other party, material modifications to the contents of **Appendix A**, **Appendix B**, and/or **Appendix C**. If the relevant party wishes to proceed with the material modification proposed by it in such notice, the parties shall endeavour to agree on the scope and extent of the material modification so proposed and the likely effect of such material modification on the Design and Site Investigation Cost and the Design and Site Investigation Programme. Any increase in the Design and Site Investigation Cost shall be borne by Government.

9. Mutual Co-operation

Each of Government and the Corporation shall use reasonable endeavours to co-operate with the other in relation to the preparation of any submission or other document to various authorities including, without limitation, the Legislative Council and relevant District Councils. In the event that Government requests the Corporation to provide any information, input or comment in relation to any such submission or other document, Government shall give the Corporation a reasonable amount of time within which to provide such information, input or comment. Government shall take account of any information, input or comment provided to it by the Corporation.

PART IV

CONSULTATION, PROJECT MONITORING AND VERIFICATION

10. Consultation

10.1 The parties shall hold quarterly review sessions to review progress under this Agreement with respect to, without limitation, the matters contained in **Appendix B** and **Appendix C**. Prior to the holding of any such quarterly review, Government may, in its sole discretion, prepare a quarterly report summarising the major issues arising from the monthly reports prepared by the Corporation under **Clause 11.4** in respect of the quarter immediately preceding the relevant quarterly review session.

10.2 Notwithstanding anything herein contained, the Corporation shall use its reasonable endeavours to:

(a) complete, or procure the completion of, the Design and Site Investigation Activities in accordance with the Design and Site Investigation Programme; and

(b) minimise any delay or other effect which any modifications made under **Clause 8** may have on the Design and Site Investigation Programme.

10.3 Without prejudice to the generality of the obligations of the Corporation under this **Clause 10**, the Corporation shall, at the relevant time, submit to Government, for comment, the following documents which are relevant to the general scope of the Express Rail Link project and its service performance when operations commence on the Express Rail Link:

(a) Project Objectives and Service Requirements;

(b) Preliminary Design Final Report;

(c) Draft and Final Gazette Plans (including those relating to scheme amendment(s));

(d) Scheme Design Plans; and

(e) contract and procurement strategy,

together with any other supporting reports and papers and shall allow Government a reasonable time for review of the documents. In the event that Government proposes to provide comments on any of the documents referred to in this **Clause 10.3**, it shall provide any such comments in writing to the Corporation within a reasonable time following its receipt of the relevant document, taking into account the Corporation's obligations under **Clause 10.2**. The Corporation shall give full and proper consideration to such comments (if any) put forward by Government and shall, subject to its obligations under **Clause 10.2**, whenever requested and within a reasonable time, provide written replies thereto, such replies shall include, where applicable, the Corporation's reasons for not accepting any comments from Government made pursuant to this **Clause 10.3**.

11. Project Monitoring and Verification

11.1 In addition to the provisions of **Clause 10.1**:

(a) the Corporation shall keep Government informed of all matters which in the opinion of the Corporation are likely to have a material impact on; and

(b) the Corporation shall provide such financial or other information as Government shall reasonably require concerning,

all matters specified in **Appendix A**, **Appendix B**, **Appendix C** and on all matters concerning the Express Rail Link project in general; and

(c) Government shall report to the Corporation in a timely manner on issues arising from Government departments, bureaux, agencies or bodies and any other third parties in relation to the Express Rail Link project.

11.2 The Corporation shall give such assistance as may reasonably be required by Government regarding the financial or other information supplied by it under **Clause 11.1(b)**, including explanation of the methodology or assumptions in such information. The Corporation shall give full and proper consideration to all queries, comments and suggestions put forward by Government and shall, whenever requested and within a reasonable time, provide written replies thereto, such replies shall include, where applicable, the Corporation's reasons for not accepting any queries, comments and suggestions from Government made pursuant to this **Clause 11.2**.

11.3 Upon written request and reasonable notice by Government, the Corporation shall attend briefings or consultation sessions to explain any information supplied by it under **Clause 11.1(b)** to Government or Government's nominees. Such meetings shall be held at such place and time as Government may specify following consultation with the Corporation.

11.4 The Corporation agrees to provide to Government, by the end of each calendar month, a progress report on the Design and Site Investigation Activities which were carried out in the immediately preceding calendar month. The first of such progress reports shall be provided by the Corporation to Government by 30 November 2008 on the Design and Site Investigation Activities which were carried out in October 2008.

11.5 The report referred to in **Clause 11.4** shall be in a format agreed between Government and the Corporation and shall include, without limitation, the items listed in **Part I** of **Appendix G**.

11.6 Within three (3) months following completion of the Design and Site Investigation Activities or the date of termination of this Agreement (whichever is the earlier), the Corporation shall provide to Government a final report on the Design and Site Investigation Activities.

11.7 The report referred to in **Clause 11.6** shall be in a format agreed between Government and the Corporation and shall include, without limitation, the items listed in **Part II** of **Appendix G**.

11.8 The Corporation shall provide cashflow forecasts to Government on a monthly basis, setting out the expenditure profile of the Design and Site Investigation Cost which was anticipated as at the end of the immediately preceding calendar month for the life of the Express Rail Link project (each, a "**Cashflow Forecast**"). The first of such Cashflow Forecasts shall be provided to Government within one calendar month of the date of this Agreement and, thereafter, subsequent Cashflow Forecasts shall be provided to Government within one calendar month of the end of each calendar month.

11.9 Government shall be entitled to send a representative to attend the following meetings held in relation to the Express Rail Link project, such meetings shall be held by the Corporation in compliance with the procedures referred to in **Clause 4.5(c)**:

(a) design presentations;

(b) tender readiness presentations;

(c) tender assessments (Tender Assessment Team/Executive Tender Panel);

(d) the Corporation's monthly cost meetings;

(e) the Corporation's monthly progress meetings; and

(f) Project Control Group,

and such representatives shall be entitled to receive any papers which are prepared for consideration at such meetings.

11.10 At intervals which are reasonable, having due regard to the Design and Site Investigation Programme and with a view to minimising any delays thereto, following the date of this Agreement, Government shall, in addition to its monitoring rights set out in the preceding provisions of this **Clause 11**, be entitled to appoint an appropriate consultant to verify the Corporation's compliance with the Corporation's obligations under this Agreement and may, on reasonable notice, notify the Corporation in writing of:

(a) those of the Corporation's obligations compliance with which Government proposes to verify; and

(b) details of the employees and representatives of the appropriate consultant who require access rights to the Corporation's offices and any other places in which the Corporation is performing the Design and Site Investigation Activities in order to carry out the verification.

11.11 At any time the Corporation is in material or persistent breach (or Government, acting reasonably, suspects that the Corporation is in material or persistent breach) of any of the Corporation's material obligations under this Agreement, Government shall be entitled to verify the Corporation's compliance with the Corporation's obligations under this agreement and may, on reasonable notice, notify the Corporation in writing of:

(a) the breach or suspected breach (as the case may be) and where applicable the grounds on which Government suspects there is a material or suspected breach;

(b) those of the Corporation's obligations compliance with which Government proposes to verify; and

(c) details of Government's employees and other representatives who require access rights to the Corporation's offices and any other places in which the Corporation is performing the Design and Site Investigation Activities in order to carry out the verification.

11.12 For the purposes of any verification pursuant to **Clause 11.10** or **Clause 11.11** the Corporation shall allow, and shall procure that its contractors and consultants allow, the appropriate consultant and/or Government's employees and other representatives (as the case may be), on reasonable notice and where possible during normal working hours, access to the sites referred to in **Clause 11.10(b)** and **Clause 11.11(c)**, the Corporation's books and records and relevant personnel and information systems provided that, and only insofar as:

(a) such verification is carried out with due regard for minimising disruption to the Design and Site Investigation Activities;

(b) such verification relates to a particular matter or issue which was stated in the notice provided by Government to the Corporation; and

(c) such books, records, personnel and information systems relate to, or hold information about the relevant obligations of the Corporation or the material or persistent breach or suspected breach.

11.13 Notwithstanding the provisions of **Clause 27**, the parties shall keep confidential the findings of any verification carried out pursuant to **Clause 11.10** or **Clause 11.11** provided that Government may, if required by the Public Accounts Committee of the Legislative Council, disclose such findings to the Public Accounts Committee of the Legislative Council if Government has given the Corporation prior written notice of its intention to do so, such notice being of a reasonable period taking account of the Corporation's status as a company whose shares are listed on The Stock Exchange of Hong Kong Limited. This **Clause 11.13** shall continue to apply after the termination of this Agreement without limitation in time.

11.14 Government and the Corporation agree that any monitoring and verification undertaken in relation to the Design and Site Investigation Activities shall be undertaken in parallel with the Design and Site Investigation Programme and Government and the Corporation shall use their best endeavours to undertake all aspects of such monitoring or verification in a manner which will minimise any delay or interruption to the Design and Site Investigation Activities.

PART V

ENVIRONMENTAL PROTECTION

12. Environmental Protection

Without prejudice to the generality of **Clause 4.1**, to the extent applicable, the Corporation shall carry out environmental impact assessment studies relating to the railway scheme for the Express Rail Link in accordance with the Environmental Impact Assessment Ordinance (Cap. 499 of the Laws of Hong Kong). Government and the Corporation shall consult and liaise with each other regarding the nature, scope and content of such assessment. In undertaking the Design and Site Investigation Activities the Corporation shall comply with, and shall take reasonable steps to procure that any of its consultants, contractors and agents comply with all relevant statutory requirements in force from time to time including, without limitation, the Noise Control Ordinance (Cap. 400 of the Laws of Hong Kong), the Water Pollution Control Ordinance (Cap. 358 of the Laws of Hong Kong) and the Air Pollution Control Ordinance (Cap. 311 of the Laws of Hong Kong) and any technical memoranda referenced in any such ordinance (in each case, to the extent applicable). Such reasonable steps shall include requiring such consultants, contractors and agents to undertake, in any relevant contract or contracts between them and the Corporation, to comply with all relevant statutory requirements in force from time to time.

PART VI

FURTHER AGREEMENT

13. Further Agreement

13.1 If the railway scheme for the Express Rail Link is authorised under the Railways Ordinance (Cap. 519 of the Laws of Hong Kong), Government and the Corporation shall, as soon as reasonably practicable thereafter, commence negotiations for the entry into the Further Agreement.

13.2 Until the Further Agreement (if any) is entered into pursuant to **Clause 13.1**, neither Government nor the Corporation shall have any obligation in respect of the Express Rail Link project except as provided in this Agreement.

PART VII

TERMINATION AND SUSPENSION

14 Termination and Suspension

14.1 This Agreement shall commence on the date hereof and shall remain in force and effect until the completion of the Design and Site Investigation Activities unless terminated earlier pursuant to **Clauses 14.2** or **14.3**.

14.2 The Corporation may:

(a) serve on Government a notice in writing of not less than six (6) months to terminate this Agreement:

(i) at any time after two (2) months have elapsed from the Suspension Date specified in any notice served by the Corporation under **Clause 14.2(b)**, provided that, as at the date of the notice to terminate this Agreement, no Resumption Date had been specified by the Corporation in relation to such notice; or

(ii) at any time after two (2) months have elapsed from the Funding Suspension Date specified in any notice served by the Corporation under **Clause 14.7**, provided that, as at the date of the notice to terminate this Agreement, no Funding Resumption Notice had been issued by Government,

in which event this Agreement shall terminate absolutely on the date specified in such notice to be the date on which this Agreement shall terminate; and

(b) serve on Government a notice in writing to suspend the performance of certain of the Corporation's obligations under this Agreement in the event that Government fails to comply in any respect with any of its obligations under **Clause 2.3**. Such a notice shall specify:

(i) which of the Corporation's obligations under this Agreement (other than its obligations under **Clause 11.1**), having been, or are reasonably likely to be, materially affected by Government's failure to comply with its obligations under **Clause 2.3**, shall be suspended (the "**Relevant Obligations**");

(ii) the date from which such Relevant Obligations shall be suspended (the "**Suspension Date**") being a date not less than seven (7) days from the date of the notice;

(iii) the date (if any) on which the Corporation expects such suspension to cease (the "**Resumption Date**"); and

(iv) the reason or reasons for the proposed suspension.

14.3 Government may terminate this Agreement by serving a notice in writing on the Corporation:

(a) if a decision is made by Government not to proceed further with the railway scheme for the Express Rail Link and that decision is announced publicly; or

(b) if the Corporation commits a material or persistent breach of any of its material obligations under this Agreement and (in the case of a breach capable of being remedied) does not remedy such breach within thirty (30) days of receiving from Government written notice of the breach and a request to remedy the same,

in the event of either happening this Agreement shall be terminated on the date the notice is served.

14.4 Upon the termination of this Agreement under **Clause 14.2(a) or Clause 14.3**:

(a) the Corporation shall promptly deliver to Government a set of the Deliverable Documents prepared up to the date of such termination; and

(b) where such termination is pursuant to **Clause 14.2(a)** or **14.3**, Government shall, in accordance with **Appendix E** and, without prejudice to any other rights and remedies to which Government may be entitled where the termination is pursuant to **Clause 14.3(b)** or to which the Corporation may be entitled where the termination is pursuant to **Clause 14.2(a)**, pay to the Corporation and/or the Third Parties, as the case may be, any and all unpaid Third Party Costs, In-house Design Costs, Recruited Staff Costs and Design and Site Investigation On-costs incurred up to the relevant Suspension Date or Funding Suspension Date (as the case may be) where the termination is pursuant to **Clause 14.2(a)** or incurred up to the date of the relevant notice of termination where the termination is pursuant to **Clause 14.3** and any Third Party Costs, Recruited Staff Costs and In-house Design Costs that arise as a result of the termination (being "**Termination Costs**") provided that the Corporation shall exercise the skill and care reasonably expected of a professional and competent project manager in seeking to ensure such Termination Costs are kept to a reasonable level.

14.5 In the event of termination of this Agreement, all the rights and obligations of the parties shall forthwith cease, except for those provisions expressly stated to continue without limit in time. Termination of this Agreement shall not affect any rights, liabilities or remedies arising under this Agreement prior to such termination and **Clauses 25** (Dispute Resolution) and **26** (Governing Law and Jurisdiction) shall continue to apply to such rights, liabilities and remedies and to those provisions which are expressly stated to continue without limit in time.

14.6 (a) In the event that the Corporation serves a notice on Government pursuant to **Clause 14.2(b)**, the requirement on the Corporation to perform the Relevant Obligations shall cease with effect from the Suspension Date and, accordingly, the Corporation shall not be obliged to perform the Relevant Obligations with effect from the Suspension Date.

(b) In the event that Government rectifies, to the reasonable satisfaction of the Corporation, any failure or failures (as the case may be) by Government to comply with any of its obligations under **Clause 2.3**, as specified in a notice served by the Corporation pursuant to **Clause 14.2(b)** prior to the Suspension Date specified therein, the Relevant Obligations shall not be suspended on the

relevant Suspension Date and the Corporation shall perform the Relevant Obligations in accordance with this Agreement.

(c) In the event that, following a Suspension Date, Government rectifies, to the reasonable satisfaction of the Corporation, the failure or failures (as the case may be) by Government to comply with its obligations under **Clause 2.3** as specified in a notice served by the Corporation pursuant to **Clause 14.2(b)** the Corporation shall use its reasonable endeavors to resume the performance of the Relevant Obligations as soon as reasonably practicable and as soon as reasonably practicable:

(i) the Corporation shall serve a notice in writing on Government informing Government of the date on which the suspension will cease;

(ii) the parties shall adjust **Appendix C** to reflect the occurrence and duration of the Suspension Period; and

(iii) if the Corporation calculates that the Design and Site Investigation Cost will, as a result of the occurrence of the Suspension Period, or a subsequent resumption of the Design and Site Investigation Activities, increase (such increase being referred to as the "**Additional Suspension Costs**"), the Corporation shall, as soon as reasonably practicable prior to the Resumption Date, serve a notice in writing on Government informing Government thereof and specifying the amount of the Additional Suspension Costs. The Additional Suspension Costs shall be borne by Government.

(d) As soon as reasonably practicable following the end of the Suspension Period (if any), the Corporation shall perform the Relevant Obligations in accordance with this Agreement.

14.7 In the event that within sixty (60) days of the Rectification Date, after having taken the steps specified in **Clause 2.6** to ensure that the Additional Amount is available, Government has not secured the availability of the Additional Amount pursuant to **Clause 2.6**, then Government shall promptly serve on the Corporation a notice in writing containing details in relation thereto. As soon as practicable following receipt by the Corporation of such notice, the Corporation shall serve on Government a notice in writing to suspend the performance of the Corporation's obligations under this Agreement. Such notice shall specify:

(a) which of the Corporation's obligations under this Agreement (other than its obligations under **Clause 11.1**) shall be suspended (the "**Funding Suspension Obligations**"); and

(b) the date from which the Funding Suspension Obligations shall be suspended (the "**Funding Suspension Date**") being not less than seven (7) days from the date of the notice.

14.8 In the event that the Corporation serves a notice on Government pursuant to **Clause 14.7**:

(a) the requirement on the Corporation to perform the Funding Suspension Obligations shall cease with effect from the Funding Suspension Date and,

accordingly, the Corporation shall not be obliged to perform the Funding Suspension Obligations with effect from the Funding Suspension Date; and

(b) save as specified in **Clause 14.4(b)**, the Government's obligations to bear and finance the full amount of the Design and Site Investigation Cost pursuant to **Clause 2.3** (the "**Payment Obligations**") shall cease with effect from the Funding Suspension Date in respect of Design and Site Investigation Cost incurred after the Funding Suspension Date and, accordingly, Government shall not be obliged to comply with **Clause 2.3** with effect from the Funding Suspension Date insofar as they relate to Design and Site Investigation Cost incurred after the Funding Suspension Date.

14.9 In the event that, following the Funding Suspension Date but prior to the issue of any termination notice by the Corporation pursuant to **Clause 14.2(a)(ii)**, Government secures the availability of the Additional Amount pursuant to **Clause 2.6**, Government shall promptly serve on the Corporation a notice in writing containing details in relation thereto (a "**Funding Resumption Notice**"). As soon as practicable following receipt by the Corporation of a Funding Resumption Notice:

(a) the Corporation shall serve a notice in writing on Government informing Government of the expected date of resumption of the Funding Suspension Obligations and the Payment Obligations (the "**Funding Resumption Date**");

(b) the parties shall adjust **Appendix C** to reflect the occurrence and duration of the Funding Suspension Period; and

(c) if the Corporation calculates that the Design and Site Investigation Cost will, as a result of the occurrence of the Funding Suspension Period, or a subsequent resumption of the Funding Suspension Obligations, increase (such increase being referred to as the "**Additional Funding Suspension Costs**"), the Corporation shall, as soon as reasonably practicable prior to the Funding Resumption Date, serve a notice on government informing Government thereof and specifying the amount of the Additional Funding Suspension Costs. The Additional Funding Suspension Costs shall be borne by Government.

14.10 With effect from the Funding Resumption Date:

(a) the Corporation shall become obliged to perform the Funding Suspension Obligations; and

(b) Government shall become obliged to comply with **Clause 2.3**.

PART VIII

INTELLECTUAL PROPERTY RIGHTS

15 Intellectual Property Rights

15.1 The Corporation warrants, and shall at its own expense ensure, that:

(a) the Corporation has the full capacity, right, title, power and authority to grant the licence referred to in **Clause 15.2**:

(b) the use, operation or possession by Government and Government's assigns, successors and authorised users of the Deliverable Documents or any part thereof for any purposes contemplated by this Agreement or expressed in **Clause 15.2** does not and will not infringe the intellectual property rights of any party; and

(c) in respect of any part or parts of the Deliverable Documents of which any intellectual property right is vested in a third party, the Corporation shall obtain a valid and continuing licence, right or power which shall entitle both the Corporation and Government (including Government's assigns, successors and authorised users) to use such part or parts of the Deliverable Documents for any of the purposes contemplated by this Agreement and to grant the licence referred to in **Clause 15.2**.

15.2 Without prejudice to any other rights of Government to use the Deliverable Documents under this Agreement or otherwise at law, the Corporation hereby grants and agrees to grant to Government a perpetual, royalty free, worldwide, freely assignable, non-exclusive and irrevocable licence (carrying the right to grant sub-licenses) to use (including publish, display, exhibit and do any other acts set out in sections 22(1)(a) to 22(1)(g) and sections 23 to 29 of the Copyright Ordinance Cap. 528 of the Laws of Hong Kong), reproduce, modify, adapt and translate any of the works, designs or inventions incorporated or referred to in anything used in or required for the Design and Site Investigation Activities and contained in the Deliverable Documents for all purposes relating to the Express Rail Link project and/or the subsequent alteration, extension, operation and maintenance thereof. The licence shall take effect from the date of submission or supply of the Deliverable Documents to Government in accordance with the provisions of this Agreement.

15.3 Where, under the licence granted pursuant to **Clause 15.2**, the Government intends to reproduce, or to permit others to reproduce, any or any part of a Deliverable Document for publication, the form of presentation of the publication shall be advised to the Corporation.

15.4 The Corporation further agrees that the intellectual property rights in any materials developed by Government on the basis of the Deliverable Documents (including any alteration, modification, adaptation or translation of the Deliverable Documents) shall vest in and belong to Government absolutely upon creation.

15.5 The Corporation agrees that any assignment made by the owners of the intellectual property rights subsisting in the Deliverable Documents shall be subject to the licence of Government referred to in **Clause 15.2**. The Corporation shall procure that the owners

also impose obligations on the assignees regarding their subsequent assignments of such intellectual property rights to be made subject to the said licence of Government with the intent that the obligations shall bind all subsequent assignees.

15.6 The Corporation hereby irrevocably and unconditionally waives and shall procure all authors concerned to waive in favour of Government and its assigns, successors and authorised users all moral rights in respect of the Deliverable Documents to which they may now or at any time in future be entitled under the Copyright Ordinance (Cap. 528 of the Laws of Hong Kong) or under any similar law in force from time to time anywhere in the world.

15.7 Without prejudice to the rights and remedies of Government in respect of any breach by the Corporation of this **Clause 15**, the Corporation shall indemnify and keep indemnified Government against all actions, costs, claims, demands, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and all awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of whatsoever nature which Government may pay or incur in respect of infringement of any intellectual property rights and/or a breach of any of the warranties and undertakings given by the Corporation under this **Clause 15** arising from the design, development, use, possession or operation of the Deliverable Documents by Government for the purposes referred to in **Clause 15.2.**

15.8 The provisions of this **Clause 15** shall survive the termination of this Agreement and shall continue in full force and effect notwithstanding such termination.

15.9 The Corporation shall, if and when required by Government, at the Corporation's own expense and within the time stipulated by Government do all things (including without limitation the registration of the licence under the relevant ordinances) and execute all further instruments and documents as Government may require whether for the purpose of perfecting or effecting (as the case may be) the licence referred to in **Clause 15.2** or conferring the rights hereinbefore mentioned on Government.

PART IX

MISCELLANEOUS

16 The Ordinance

16.1 The Ordinance shall not be, or be deemed to be, amended or revoked, nor any of the obligations thereunder modified, in any respect by the provisions of this Agreement.

16.2 Nothing in this Agreement shall oblige the Corporation to conduct its business in any manner or to do anything which is incompatible with the provisions of the Ordinance, the Operating Agreement or the service concession agreement entered into between the Corporation and KCRC on 9 August 2007 (the "**Service Concession Agreement**").

17. 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.

18. 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.

19. 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 19** shall survive the termination of this Agreement and shall continue in full force and effect notwithstanding such termination.

20. 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 hereto.

21. 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.

22. Conflict

22.1 In the event of any conflict between the provisions of this Agreement and the Appendices, the provisions of this Agreement shall prevail.

22.2 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.

23. Payments

23.1 Subject to the foregoing provisions of this Agreement, if any sum would otherwise become due for payment on a day which is not a Business Day, such sum shall become due on the immediately preceding Business Day.

23.2 In the event of failure by either Government or the Corporation to pay any sum on the date on which such sum is expressed to be due hereunder (whether legally or formally demanded or not), the defaulting party shall, without prejudice to any remedies available to the other party hereunder or at law, or in equity, pay to the other party interest on such sum from but excluding the date of such failure to and including the date of actual payment (as well after as before judgement) calculated on a daily basis at the rate per annum which, at the date of the failure, is equal to the lower of:

(a) one (1) per cent. over the best lending rate for Dollars quoted from time to time by The Hongkong and Shanghai Banking Corporation Limited or such other bank as may be agreed from time to time between Government and the Corporation; and

(b) the rate of interest ordered or determined from time to time under section 49 of the High Court Ordinance (Cap. 4 of the Laws of Hong Kong) minus one (1) per cent.

23.3 Each of the Corporation and Government shall be entitled to set-off any fixed sums which have been awarded to it by a court in Hong Kong (or adjudicated by arbitration in accordance with **Clause 25** or agreed to between Government and the Corporation) and are payable by the other party against any payment due to such party under this Agreement.

23.4 Except as may be otherwise expressly provided herein, every sum payable under this Agreement shall be paid in full without set-off, counterclaim, condition or qualification of any nature and without any deduction or withholding for or on account of any taxes, levies, imposts, duties, charges or fees of any nature including, without limitation, by any provision of any ordinance.

24 Notices

24.1 The Railway Development Office of Highways Department is the representative of the Transport and Housing Bureau in executing this Agreement. Any notices, certificates or

other communications to Government in connection with this Agreement shall be sent to the Principal Government Engineer/Railway Development at Ho Man Tin Government Offices, Kowloon (facsimile number: 2714 8176) and shall also be copied to the Secretary for Transport and Housing at Murray Building, Garden Road, Central, Hong Kong (facsimile number: 2868 5261), or such other address or fax number, or to such other person, as may be notified by Government to the Corporation in accordance with the provisions of this **Clause 24.**

24.2 Any notices, certificates or other communications to the Corporation in connection with this Agreement shall be sent to it at MTR Headquarters Building, Telford Plaza, 33 Wai Yip Street, Kowloon Bay, Kowloon and marked for the attention of the Legal Director and Secretary (facsimile number: 2993 3379), or such other address or fax number, or to such other person, as may be notified by the Corporation to Government in accordance with the provisions of this **Clause 24**.

24.3 All notices shall be in writing. Any notice delivered by hand 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 surface mail within Hong Kong. No notice may be given by e-mail.

25. Dispute Resolution

25.1 In the event of any dispute arising from or connected with this Agreement (including a dispute regarding the existence or validity of this Agreement) (each a "**Dispute**"), a committee shall be formed consisting of the Corporation's chief executive officer and **Permanent Secretary for Transport and Housing (Transport)** at that time (or such delegates as each may validly appoint for the purposes of carrying out the actions set out in **Clause 25.2**, provided that prior notice of such appointment is given to the other party)(the "**Senior Executives Committee**").

25.2 All Disputes shall be referred to and settled by the mutual agreement of the members of the Senior Executives Committee, who shall state their mutual decision in writing and give notice of the same to the Corporation and Government.

25.3 If the Senior Executives Committee shall fail to give the mutual decision referred to in **Clause 25.2** above for a period of twenty eight (28) days after being requested to do so such Dispute or Disputes (as the case may be) shall be referred to mediation at Hong Kong International Arbitration Centre ("**HKIAC**") and in accordance with the HKIAC's Mediation Rules. If the mediation is abandoned by the mediator or is otherwise concluded or terminated without the Dispute or Disputes (as the case may be) being resolved, then such Dispute or Disputes (as the case may be) shall be referred to and determined by arbitration at the HKIAC and in accordance with its Domestic Arbitration Rules or in the event that any change in Hong Kong's Arbitration Ordinance (Cap. 341 of the Laws of Hong Kong) removes the distinction between International and Domestic arbitrations, in accordance with such Arbitration Rules promulgated by the HKIAC in substitution or replacement of its Domestic Arbitration Rules.

25.4 The Corporation shall include in its contracts with Third Party contractors and consultants appropriate provisions pursuant to which such Third Party contractors and consultants agree:

(a) that any dispute between Government and any Third Party contractor or consultant arising from or connected with any deed poll made by Government in favour of such Third Party contractors and consultants (including a dispute regarding the existence or validity of such deed poll) (each, a "**Deed Poll Dispute**") shall be referred to mediation at the HKIAC and in accordance with the HKIAC's Mediation Rules. If the mediation is abandoned by the mediator or is otherwise concluded or terminated without the Deed Poll Dispute being resolved then such Deed Poll Dispute shall be referred to and determined by arbitration at the HKIAC and in accordance with its Domestic Arbitration Rules or, in the event that any change in Hong Kong's Arbitration Ordinance (Cap. 341 of the Laws of Hong Kong) removes the distinction between International and Domestic arbitrations, in accordance with such Arbitration Rules promulgated by the HKIAC in substitution or replacement of its Domestic Arbitration Rules; and

(b) to confirm in writing to Government within thirty (30) days of entering into the relevant contract with the Corporation that it agrees:

(i) to deal with any Deed Poll Dispute in the manner described in **Clause 25.4(a)**;

(ii) that Government may disclose the outline of any Deed Poll Dispute and the terms of settlement for which a settlement agreement has been reached or the outcome of the arbitration or any other means of resolution of any Deed Poll Dispute to the Public Accounts Committee of the Legislative Council upon its request subject to the terms of **Clause 27.6** (except that, for this purpose:

(1) the first and last sentences shall not apply; and

(2) the references in the remainder of **Clause 27.6** to "the Corporation" shall be read as "the relevant Third Party contractor or, as the case may be, consultant")

and **Clause 27.7**; and

(iii) that in the event that Government informs it in writing in accordance with **Clause 27.6** (as applied by **Clause 25.4(b)(ii)**) before any disclosure is made to the Public Accounts Committee, Government may, at the same time, inform in writing the Corporation of the same (including the matters to be disclosed to the Public Accounts Committee).

In the event that Government, in accordance with **Clause 27.6** (as applied by **Clause 25.4(b)(ii)**), informs in writing the relevant Third Party contractor or, as the case may be, consultant before any disclose is made to the Public Accounts Committee, Government shall, at the same time, inform in writing the Corporation of the same.

25.5 For the avoidance of doubt, none of the provisions of this **Clause 25** shall affect the right of the Corporation to suspend or terminate its obligations under this Agreement pursuant to **Clause 14**.

26. Governing Law and Jurisdiction

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

26.2 The parties hereto agree that any separate agreement or document entered into between them referred to in or contemplated by this Agreement (including, without limitation, any Certificate) shall be governed by and construed in accordance with the laws of Hong Kong.

26.3 Subject to **Clause 25**, each party agrees that the courts of Hong Kong are to have jurisdiction to settle any proceeding, suit or action arising out of or in connection with the Agreement and/or separate document referred to in **Clause 26.2** and each party submits to the jurisdiction of such courts.

27. Disclosure of Information

27.1 If the Corporation has provided the Government with documents and/or information excluding the documents comprising, and/or information contained in, the Deliverable Documents which it has declared in writing to be confidential and stamped accordingly, whether in relation to its practice or special circumstances or for other good cause, unless Government has reasonable grounds to disagree and within two (2) months of receipt of such documents and/or information (as the case may be) by notice in writing informs the Corporation of such disagreement, then such documents and/or information (as the case may be) will be treated as confidential and shall not be disclosed.

27.2 Except as necessary for the carrying out of the Design and Site Investigation Activities, the Corporation shall not (except with the prior written consent of, or as instructed by, Government) use or disclose Government Information to any person other than a person, agent or consultant employed or engaged by the Corporation in carrying out the Design and Site Investigation Activities or the Corporation's accountants, insurers, financial advisers, legal advisers, or other professional advisers employed or engaged in connection with the Design and Site Investigation Activities. For the purposes of this **Clause 27.2**, "**Government Information**" means:

Clause 33.2 to 33.5

(a) any information furnished by Government or the Mainland parties and authorities to the Corporation in relation to:

(i) boundary control arrangements with the Mainland and/or Hong Kong;

(ii) Hong Kong and/or Mainland security arrangements; and/or

(iii) information relating to Mainland land (including, without limitation, land surveying co-ordinates, lot details and borehole log information),

and which, at the time that information was furnished to the Corporation, was specified by Government or the Mainland parties and authorities (as the case may be) to be "**Government Information**"; or

(b) any information furnished by Government or the Mainland parties and authorities to the Corporation which is apparently of a confidential nature; and

(c) any part of any Deliverable Document which includes information described in **Clauses 27.2(a)** and/or **(b)**.

27.3 The obligations on the Corporation set out in **Clause 27.2** shall not apply to any information which:

(a) is publicly available or becomes publicly available through no act or omission of the Corporation; or

(b) the Corporation is required by law to disclose pursuant to an order of a court of competent jurisdiction, or a requirement of any Government department or entity, or any regulator which has jurisdiction over the Corporation.

27.4 Any disclosure to any person, agent, consultant, accountant, insurer, financial adviser, legal adviser or other professional adviser permitted under **Clause 27.2** shall be in strict confidence and shall be on a "need to know" basis.

27.5 The Corporation shall ensure that its employees, agents, consultants, accountants, insurers, financial advisers, legal advisers or other professional advisers as mentioned in **Clause 27.2** are aware of, and shall be required to comply with, the provisions contained in **Clauses 27.2** to **27.4** (inclusive). If required by Government, the Corporation undertakes to take reasonable steps to procure, for and on behalf of Government, a confidentiality undertaking in a form satisfactory to Government from any employee, agent, consultant, accountant, insurer, financial adviser, legal adviser or other professional adviser as mentioned in **Clause 27.2** to whom any Government Information is to be disclosed. Such reasonable steps shall include requiring such employees, agents, consultants, accountants, insurers, financial advisers, legal advisers and other professional advisers as mentioned in **Clause 27.2** to undertake, in any relevant contract or contracts between them and the Corporation, to provide to Government a confidentiality undertaking in a form satisfactory to Government.

27.6 In relation to disputes in relation to this Agreement between:

(a) Government and the Corporation; or

(b) the Corporation and Third Party contractors and consultants,

the Government may, notwithstanding any provision of the Mediation Rules or, as the case may be, Arbitration Rules referred to in **Clause 25** and subject to the following provisions, disclose the outline of any such dispute and the terms of settlement for which a settlement agreement has been reached or the outcome of the arbitration or any other means of resolution of dispute to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the Public Accounts Committee, Government shall inform the Corporation in writing. Disclosures shall not be made to the Public Accounts Committee before expiry of the first six (6) months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute without the written consent of the Corporation (such consent not to be unreasonably withheld). The Corporation shall be deemed to have given its consent to disclosures on the expiry of the first six (6) months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute. The Corporation may, if it considers it necessary to protect the sensitive nature of certain information relating to it, request Government to disclose such specified information to the Public Accounts Committee strictly on a confidential basis. If Government considers that there are legitimate grounds to accede to the Corporation's request or requests (as the case may be), Government shall convey the said request or requests (as the case may be) to the Public Accounts Committee for its consideration. The Corporation shall include in its contracts with Third Party contractors and consultants

appropriate provisions on disclosure of information to the Public Accounts Committee of the Legislative Council upon its request on terms similar to the terms of this **Clause 27.6**.

27.7 This **Clause 27** shall continue to apply after the termination of this Agreement without limitation in time.

28. Force Majeure

28.1 If either party is prevented or delayed in the performance of any of its obligations under this Agreement as a result of Force Majeure, that party shall forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to Force Majeure, and will, subject to service of such notice and having taken all reasonable steps to avoid such prevention or delay, have no liability for any losses suffered by other parties or otherwise in respect of the performance of such of its obligations as are prevented by the Force Majeure during the continuation of such Force Majeure, and for such time after they cease as is necessary for the party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations. The corresponding obligations of the other party will be suspended to the same extent.

28.2 If the Force Majeure has the effect of preventing or delaying the performance of the Design and Site Investigation Activities in accordance with the Design and Site Investigation Programme set out in **Appendix C**, then the Corporation shall, in consultation with Government, revise the Design and Site Investigation Programme to take account of such prevention or delay and shall agree with Government of any material changes made pursuant to this **Clause 28.2**.

28.3 The party claiming to be prevented or delayed in the performance of any of its obligations under this Agreement by reason of Force Majeure shall use all reasonable endeavours to bring the Force Majeure event to a close or to find a solution by which the Agreement may be performed despite the continuance of the Force Majeure.

29. Design Submissions

29.1 Notwithstanding the difference in respect of applicability of the Buildings Ordinance (Cap. 123 of the Laws of Hong Kong) to the works in relation to a railway project carried out by the Corporation under the ownership approach (subject, in any event, to section 54(2) of the Ordinance) and the works in relation to a railway project carried out by the Corporation under the concession approach (as in the case of the Express Rail Link, to which the Buildings Ordinance (Cap. 123 of the Laws of Hong Kong) is not applicable), the Corporation agrees that it shall carry out Consultation in relation to the Railway Works in substantially the same manner and substantially to the same extent (adjusted as is necessary to reflect the specific requirements of the Railway Works, and by agreement between Government and the Corporation) as if the Express Rail Link were being carried out by the Corporation under the ownership approach.

29.2 For the purposes of this **Clause 29**:

(a) "Consultation" means such consultation as may be stipulated by the Building Authority for a railway project carried out by the Corporation under the ownership approach including, but not limited to, submissions of design submissions in respect of structural engineering, geotechnical engineering, safety, security and transport integration to the relevant Government departments and consultation

with the Station and Transportation Integration Committee, Safety and Security Coordination Committee and Trackside Safety Security Committee; and

(b) "Building Authority" has the meaning ascribed to that term in the Buildings Ordinance (Cap. 123 of the Laws of Hong Kong).

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

SIGNED, SEALED AND DELIVERED

By: R.J. BLACK
Projects Director

[insert name and appointment of MTR officer]

for and on behalf of

MTR CORPORATION LIMITED

Pursuant to a Power of Attorney granted by the Corporation on 2 January 2008

in the presence of:

Name, address and signature of witness:

Name: DAVID FLEMING

Address: MTR HEADQUARTERS BLDG, TELFORD PLAZA
33 WAI YIP STREET, KOWLOON BAY, H.K.

SIGNED, SEALED AND DELIVERED

By

GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

By PHILIP YUNG
DEPUTY SECRETARY (TRANSPORT) 1
[insert name and appointment of officer]

in the presence of:

Name, address and signature of witness:

Name: TONY LAM

Address: 16/F. MURRAY BUILDING GARDEN ROAD, CENTRAL

Dated the 24th day of November 2008

ENTRUSTMENT AGREEMENT FOR

DESIGN AND SITE INVESTIGATION IN RELATION TO THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

APPENDIX A

Scope of Railway Works, RRIW and EPIW, Property Development Enabling Works and WKCD Interface Enabling Works

APPENDIX A

SCOPE OF RAILWAY WORKS, RRIW AND EPIW, PROPERTY DEVELOPMENT ENABLING WORKS AND WKCD INTERFACE ENABLING WORKS

1. As at the date of this Agreement, the **Railway Works** include:

1.1 approximately twenty-six (26) kilometres long underground tunnels and associated facilities, emergency rescue station, tunnel ventilation shafts and adits;

1.2 a new underground terminus in West Kowloon with provision of boundary control facilities, vehicle loading/unloading areas, car parks and other associated facilities to support the operation of the terminus;

1.3 rail track formation works, earthworks, civil and structural works, electrical and mechanical works and rolling stock;

1.4 construction of other associated railway facilities including ventilation shafts, ventilation buildings and associated emergency access roads, plant buildings, train stabling yard and associated inspection and maintenance facilities, train control and communication facilities and electrical and mechanical plant;

1.5 reconstruction and realignment of existing roads including carriageways and footpaths;

1.6 diversion of existing utilities;

1.7 preventive and remedial works including underpinning the foundations of existing buildings or structures; and

1.8 ancillary works including associated building services works, architectural works, drainage works, slope works, landscaping works and other road works.

2. As at the date of this Agreement, the **RRIW** include the removal and replacement, modification or improvement of existing privately owned facilities or facilities owned by Government or public bodies required as a consequence of the construction of the Express Rail Link. The design, construction and finishes of the RRIW are to be executed by the Corporation to the satisfaction of respective private owners, Government or public bodies (as the case may be). Following the completion of the RRIW, the RRIW shall be owned, managed, maintained and controlled by such private owner, Government or, public bodies, as the case may be. As at the date of this Agreement, the RRIW include:

2.1 reprovisioning of footbridges or any structures along the tunnel alignment;

2.2 reprovisioning of playgrounds/sitting out areas/amenity areas permanently closed for making way for station entrances or other railway facilities.

3. As at the date of this Agreement, the **EPIW** include any item of work which is associated with or ancillary to the Express Rail Link for enabling the Express Rail Link to be commissioned for commercial operations or which has a significant interface with any item of the Railway Works. The design, construction and finishes of the EPIW are to be executed by the Corporation to the satisfaction of Government. Following the completion of the EPIW, the EPIW will be handed over to and will be owned, managed, maintained

and controlled by Government. As at the date of this Agreement, the EPIW include pedestrian links including subways and footbridges between West Kowloon Terminus and nearby areas, including those connecting existing MTR stations.

4. As at the date of this Agreement the Property Development Enabling Works include foundation, substructure and the necessary facilities for future property development above the Express Rail Link terminus in West Kowloon. For the avoidance of doubt, the property development stated in this paragraph excludes those inside the WKCD. The planning of the property development and design of the associated enabling works are to be executed by the Corporation to the satisfaction of Government.

5. As at the date of this Agreement, the WKCD Interface Enabling Works include foundations, substructure, and transfer plate or the like and the necessary facilities to allow construction of WKCD buildings to be constructed above the Express Rail Link terminus where the terminus has extended into the WKCD area. The Corporation shall liaise with the relevant parties and authorities relating to the West Kowloon Cultural District and design the foundations, substructure, and transfer plate or the like to allow construction of WKCD structures above the Express Rail Link terminus within the WKCD area.

Dated the 27th day of November 2008

ENTRUSTMENT AGREEMENT FOR

DESIGN AND SITE INVESTIGATION IN RELATION TO THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

APPENDIX B

Design and Site Investigation Activities

APPENDIX B

DESIGN AND SITE INVESTIGATION ACTIVITIES

1 Design and Site Investigation Activities for the Railway Works

As at the date of this Agreement, the Design and Site Investigation Activities for the Railway Works include:

1.1 preliminary and detailed design of the Railway Works. The Corporation shall carry out the reference design of the railway alignment, trackwork, systemwide architectural finishes (signage, for example) and systemwide E & M works for the Railway Works using its in-house expertise or with assistance by external consultants. External consultants or contractors will be engaged by the Corporation to carry out all other design;

1.2 invitation and assessment of tenders for the Railway Works construction contracts and contracts for the procurement of goods, including any commercial negotiation and all necessary procedures within the Corporation to the point where the relevant contracts, as required by the programme, can be awarded;

1.3 all necessary ground investigations and works supervision;

1.4 provision by the Corporation of administrative, legal, public relations and other support to Government with a view to achieving gazetting and authorization of the Expess Rail Link railway scheme under the Railways Ordinance (Cap. 519 of the Laws of Hong Kong);

1.5 provision of support by the Corporation to Government for liaison with Mainland parties and authorities on matters relating to the Express Rail Link; and

1.6 provision of support by the Corporation to Lands Department for administrative work associated with securing the necessary entitlements in respect of land required for the construction and operation of the Railway Works and for land resumption and clearance matters relating to the Express Rail Link.

2. Design and Site Investigation Activities for the RRIW and EPIW

As at the date of this Agreement, the Design and Site Investigation Activities for the RRIW and EPIW include:

2.1 preliminary and detailed design of the RRIW and EPIW. External consultants will be engaged by the Corporation to carry out all detailed design for the RRIW and EPIW;

2.2 invitation and assessment of tenders for the RRIW and EPIW construction contracts and contracts for the procurement of goods, including any commercial negotiation and all necessary procedures within the Corporation to the point where the relevant contracts, as required by the programme, can be awarded;

2.3 all necessary ground investigations and works supervision;

2.4 provision by the Corporation of administrative, legal, public relations and other support to Government with a view to achieving authorization of the Express Rail Link railway scheme under the Railways Ordinance (Cap. 519 of the Laws of Hong Kong);

2.5 if required by Government, assistance to Government and any Government nominee with the quality assurance of the design of the RRIW and EPIW; and

2.6 provision of support by the Corporation to Lands Department for administrative work associated with securing the necessary entitlements in respect of land required for the construction and operation of the RRIW and EPIW.

3. **Design and Site Investigation Activities for the Property Development Enabling Works and WKCD Interface Enabling Works**

As at the date of this Agreement, the Design and Site Investigation Activities for the Property Development Enabling Works and WKCD Interface Enabling Works include:

3.1 preliminary design and detailed design of the Property Development Enabling Works and WKCD Interface Enabling Works including all necessary submissions to satisfy the provisions of the Buildings Ordinance (Cap. 123 of the Laws of Hong Kong). External consultants will be engaged by the Corporation to carry out all detailed design for the Property Development Enabling Works and WKCD Interface Enabling Works;

3.2 invitation and assessment of tenders for the Property Development Enabling Works and WKCD Interface Enabling Works construction contracts and contracts for the procurement of goods, including any commercial negotiation and all necessary procedures within the Corporation to the point where the relevant contracts, as required by the programme, can be awarded; and

3.3 all necessary ground investigations and works supervision.

Dated the 24th day of November 2008

ENTRUSTMENT AGREEMENT FOR

DESIGN AND SITE INVESTIGATION IN RELATION TO THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

APPENDIX C

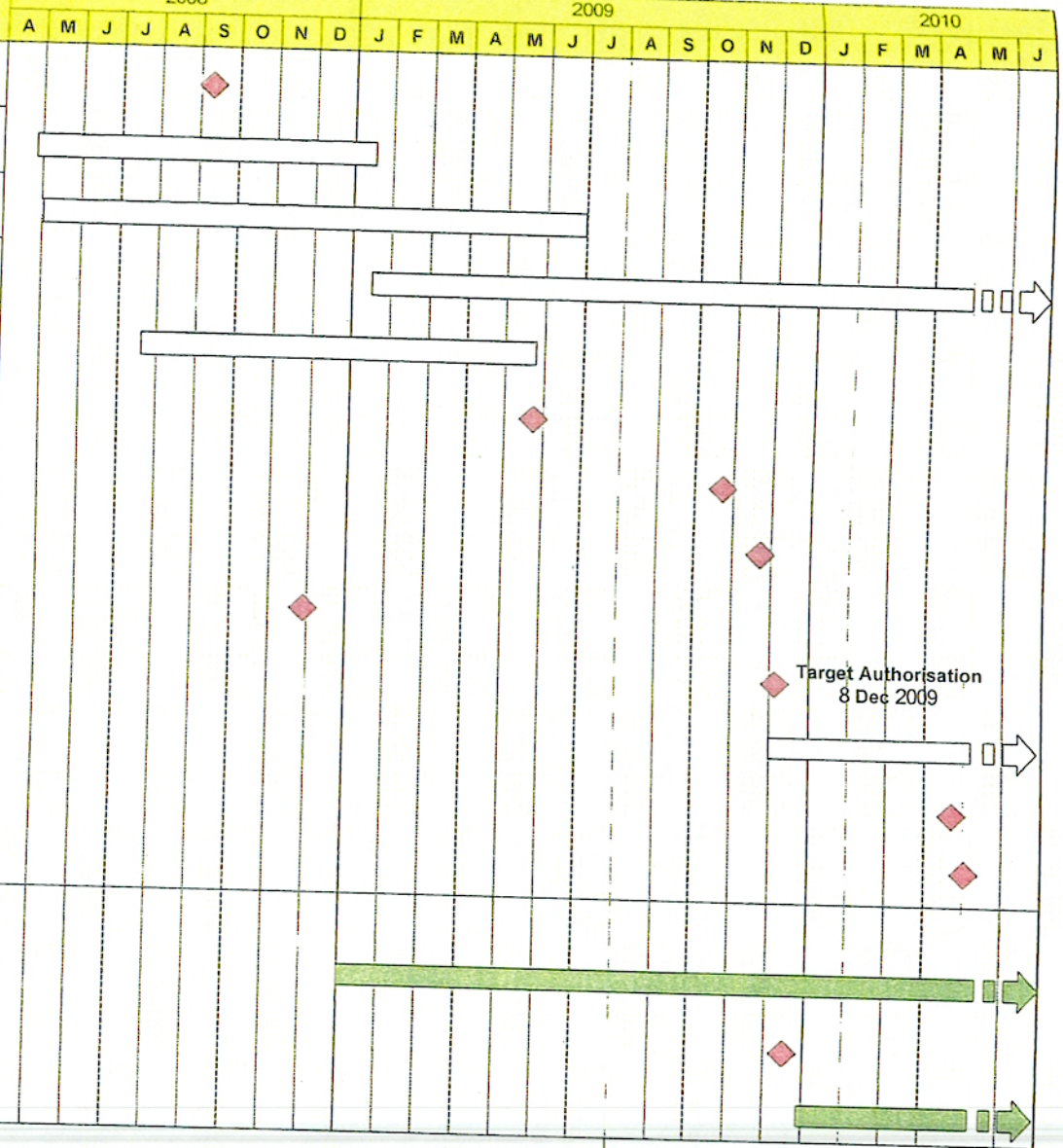
Design and Site Investigation Programme

APPENDIX C

Design and Site Investigation Programme

APPENDIX C

Act ID	Activity Description
010	Entrustment Agreement for Design & Site Investigation
020	Preliminary Design
030	Site Investigation
040	Detailed Design
050	EIA Study
060	Submit EIA Report
070	Approval of EIA Report
080	Obtain Environmental Permit
090	Scheme Gazettal
100	Scheme Authorisation
110	Acquisition of Land
120	Funding for Main Works
130	Commencement of Main Works
ADVANCE & REPROVISIONING WORKS	
140	Utility Diversions
150	Funding for Advance Works
160	Construction of Advance Works



MTR

Express Rail Link (XRL)
Design & Site Investigation Programme

Prog No.: XRL / Prg / 1449

Date	Revision	Checked	Approved
21-Aug-08	General Update	TL	BC
08-Sep-08	General Update	TL	BC

09/09/08

Dated the 24th day of November 2008

ENTRUSTMENT AGREEMENT FOR

DESIGN AND SITE INVESTIGATION IN RELATION TO THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

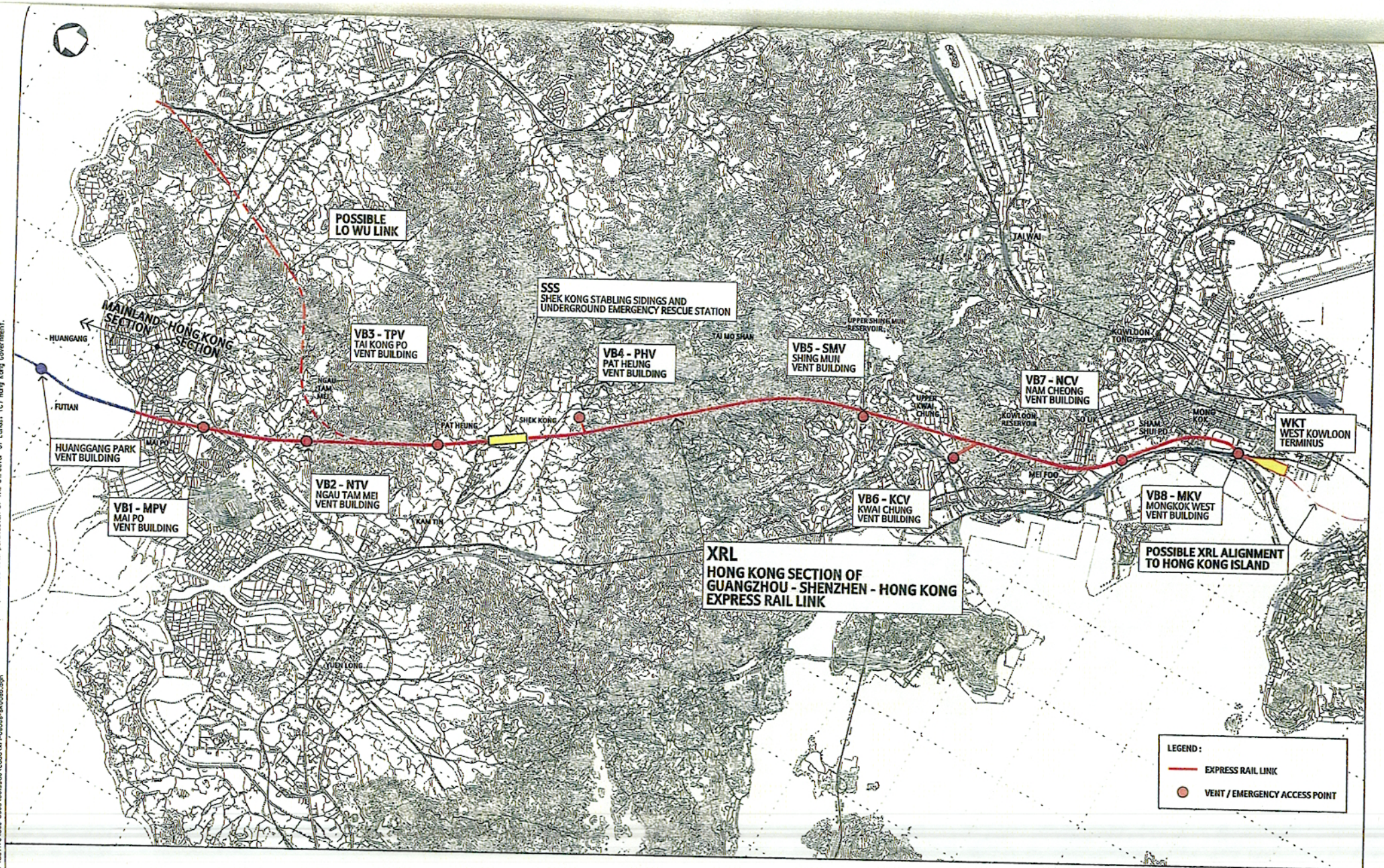
APPENDIX D

Express Rail Link

APPENDIX D

Express Rail Link

Dated the 24th day of November 2008



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EXPRESS RAIL LINK ALIGNMENT PLAN

XRL ENTRUSTMENT AGREEMENT
APPENDIX D (SHEET 1 OF 3)
DWG NO. : XRL/08008/SK008

DATE : 02SEP2008 REV : B

FULL SIZE A3

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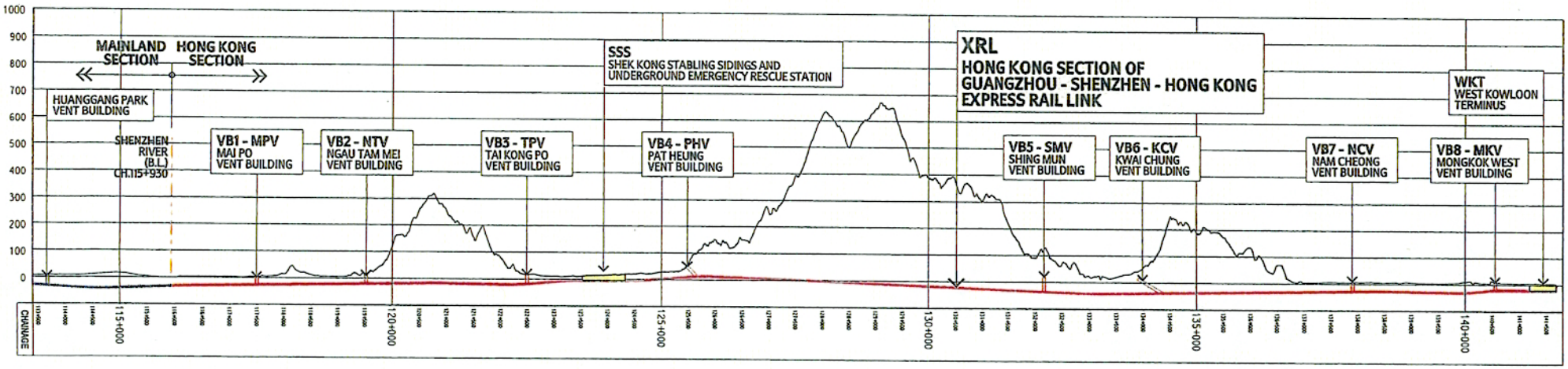

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EXPRESS RAIL LINK LONGITUDINAL SECTION

XRL ENTRUSTMENT AGREEMENT
APPENDIX D (SHEET 2 OF 3)
DWG NO.: XRL/08008/SK009

DATE: 02SEP2008 REV: B

FULL SIZE A3

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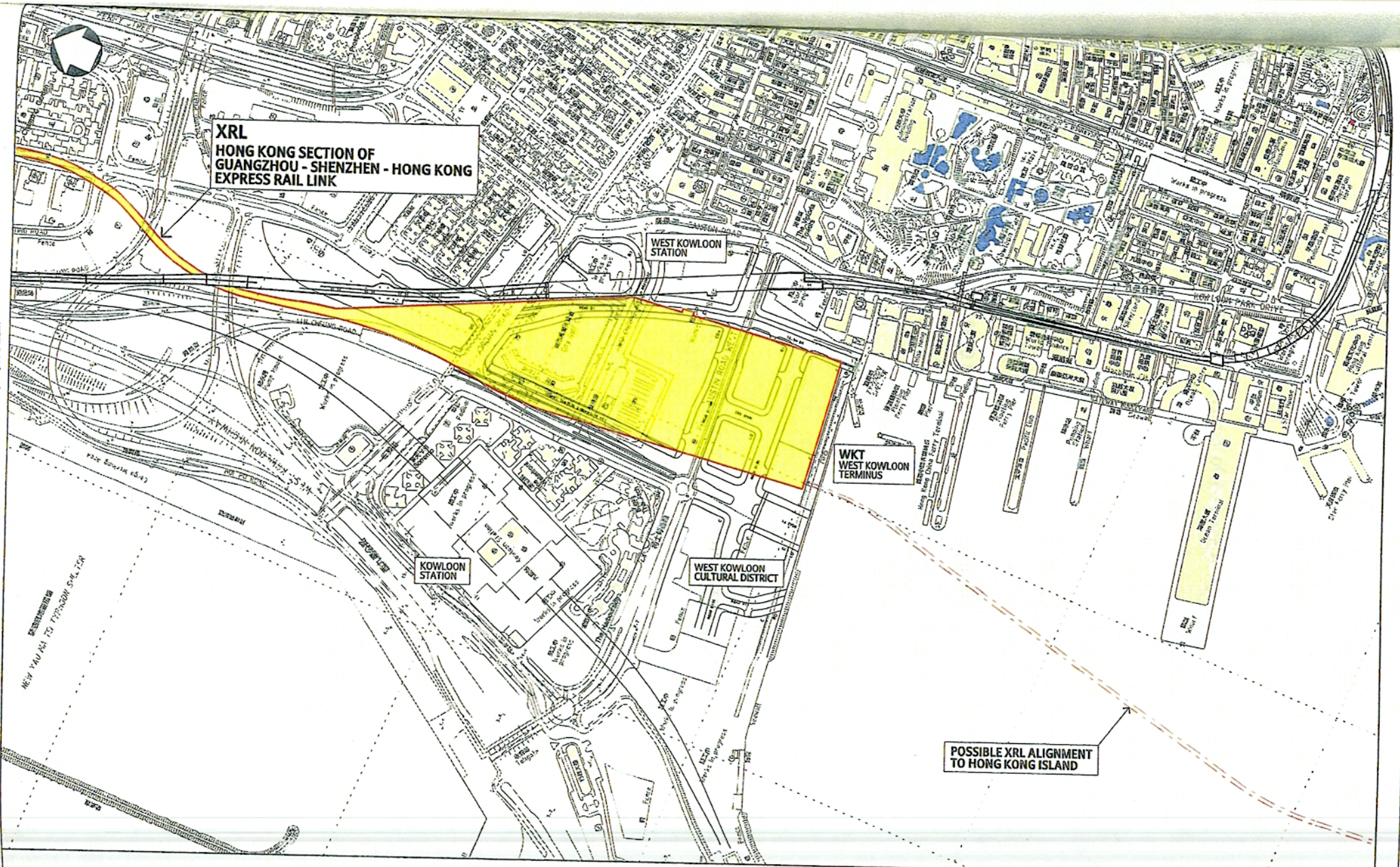

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EXPRESS RAIL LINK
WEST KOWLOON TERMINUS

XRL ENTRUSTMENT AGREEMENT
APPENDIX D (SHEET 3 OF 3)
DWG NO.: XRL/08010/SK011

DATE: 21JUL2008 REV: A

FULL SIZE A3

Dated the 24th day of November 2008

ENTRUSTMENT AGREEMENT FOR

DESIGN AND SITE INVESTIGATION IN RELATION TO THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

APPENDIX E

Payment of Third Party Costs, In-house Design Costs, Design and Site Investigation On-cost, Preliminary Costs and Recruited Staff Costs

APPENDIX E

PAYMENT OF THIRD PARTY COSTS, IN-HOUSE DESIGN COSTS, DESIGN AND SITE INVESTIGATION ON-COST, PRELIMINARY COSTS AND RECRUITED STAFF COSTS

In this **Appendix E**, except where the context otherwise requires, the following terms and expressions shall have the following meanings:

"**Authorised Signatories**" means:

(i) in the case of a Certificate submitted in relation to In-house Design Costs and Recruited Staff Costs, at least one senior manager from the Corporation's finance department who has no material day-to-day involvement in the Express Rail Link project and one other person whose identity has been notified to Government by the Corporation in writing from time to time as being duly authorised by the Corporation to sign Certificates; and

(ii) in any other case, those persons whose identities have been notified to Government by the Corporation in writing from time to time as being duly authorised by the Corporation to sign Certificates.

"**Business Day**" means a day (excluding Saturdays) on which licensed banks are open for business generally in Hong Kong.

"**Certified Amount**" means the total amount specified in a Certificate to be payable by Government.

"**Default Interest**" means, in relation to a Certified Amount that is not paid on the relevant Due Date, interest calculated at the rate per annum which at the date of the failure to pay the Certified Amount is equal to the lower of:

(i) one (1) per cent. over the applicable best lending rate for the relevant currency quoted from time to time by The Hongkong and Shanghai Banking Corporation Limited or such other bank as may be agreed from time to time between Government and the Corporation; and

(ii) the rate of interest ordered or determined from time to time under section 49 of the High Court Ordinance (Cap.4 of the Laws of Hong Kong) minus one (1) per cent.

"**Due Date**" means the date specified in a Certificate as the date on which payment of the Certified Amount is due being the day which falls on the 30th day after the date of the relevant Certificate.

1. **Certification by Corporation**

1.1 Subject to the provisions of this **Appendix E**, Government shall pay the Third Party Costs, the In-house Design Costs, the Design and Site Investigation On-cost, the Preliminary Costs and the Recruited Staff Costs in accordance with each Certificate (as defined in **Paragraph 1.2** below) submitted by the Corporation pursuant to **Paragraph 1.2** below.

1.2 For the purposes of **Paragraph 1.1** above, the Corporation shall from time to time submit to Government a certificate in substantially the form set out in the Annex to this **Appendix E** (each, a "**Certificate**") signed by the Authorised Signatories referred to in part (i) of the definition of "Authorised Signatories" (in the case of a Certificate submitted in relation to In-house Design Costs or Recruited Staff Costs) or any two of the Authorised Signatories referred to in part (ii) of the definition of "Authorised Signatories" (in any other case) provided that:

(i) in the case of a Certificate submitted in relation to Third Party Costs, In-house Design Costs, Design and Site Investigation On-cost and/or Recruited Staff Costs, the Corporation shall not include in such Certificate any amount or amounts included in a Certificate previously submitted in relation to Preliminary Costs; and

(ii) in the case of a Certificate submitted in relation to Preliminary Costs, the Corporation shall not include in such Certificate any amount or amounts included in a Certificate previously submitted in relation to Third Party Costs, In-house Design Costs, Design and Site Investigation On-cost and/or Recruited Staff Costs.

The Corporation shall procure that such Certificate shall be received by Government within five days of the date of such Certificate.

1.3 Government shall be entitled to act and rely on each Certificate without liability or further investigation and shall not be required to make any payments in respect of the Third Party Costs, the In-house Design Costs, the Design and Site Investigation On-cost, Preliminary Costs and Recruited Staff Costs other than as set out in the Certificates. In producing each Certificate, the Corporation shall exercise the skill and care reasonably to be expected of a professional and competent project manager and, where relevant, shall ensure it is in compliance with the relevant Third Party Contract and shall act fairly and impartially between Government and each relevant Third Party contractor or consultant.

1.4 Government shall ensure that each Certified Amount shall be paid in accordance with the details specified in each Certificate no later than the relevant Due Date.

1.5 For the avoidance of doubt, Government shall not be entitled to delay or refuse to make any payment specified in any Certificate.

1.6 If Government fails to pay any Certified Amount in accordance with a Certificate on the relevant Due Date for that Certificate, Government shall pay Default Interest to the relevant payee specified in the Certificate as being entitled to the Certified Amount, calculated on a daily basis, on that Certified Amount from but excluding the Due Date to and including the date on which payment of the Certified Amount is actually made (as well after as before judgement).

1.7 In the event that the Corporation's annual audited accounts show that the Corporation has been paid a sum or sums in excess of its entitlement under this Agreement, the Corporation shall promptly notify Government of the same and following such notification, Government shall be entitled to set-off an amount equal to such sum or sums (as the case may be) against any Certificate or Certificates (as the case may be) submitted by the Corporation in respect of the Preliminary Costs, the Design and Site Investigation On-cost, the In-house Design Costs and/or the Recruited Staff Costs.

Annex

[Form of Certificate]

To: Principal Government Engineer/Railway Development
Ho Man Tin Government Offices
Kowloon

Attention: Principal Government Engineer/Railway Development

(Fax Number: [2714 8176]) [Date]

Certificate pursuant to Entrustment Agreement for Design and Site Investigation in relation to the Express Rail Link dated October 2008 (the "Agreement")

This Certificate is submitted by the Corporation pursuant to Clause 2 and paragraph 1.2 of Appendix E to the Agreement.

In accordance with Clause 2 of and paragraph 1.1 of Appendix E to, the Agreement, Government shall pay the amount[s] set out below to the payee[s] on the Due Date[s] set out below:

Category of Amounts	**Certified Amount**	**Payee**	**Payee's Payment details**	**Due Date**
[Preliminary Costs]	*To be completed*	*Corporation*	*To be completed*	*To be completed*
[Third Party Costs]	*To be completed*	*To be completed*	*To be completed*	*To be completed*
[In-house Design Costs]	*To be completed*	*Corporation*	*To be completed*	*To be completed*
[Design and Site Investigation On-Cost]	*To be completed*	*Corporation*	*To be completed*	*To be completed*
[Recruited Staff	*To be completed*	*Corporation*	*To be completed*	*To be*

Costs] *completed*

The above amount[s] [has/have] been determined in accordance with the Corporation's management systems and procedures referred to in Clause 4.5(c) of the Agreement.

[In relation to each of the above Third Party Costs, we attach a copy of the certificate signed by the [Engineer's Representative/Employer's Delegate/Employer's Representative/Engineer's Delegate] (as the case may be) and the Contracts Administration Manager and dated [•]]

Words and expressions defined in the Agreement shall have the same meaning when used in this letter.

For and on behalf of
MTR Corporation Limited

Signed: _____	Signed : _____

Dated the 24th day of November 2008

ENTRUSTMENT AGREEMENT FOR

DESIGN AND SITE INVESTIGATION IN RELATION TO THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

APPENDIX F

Amounts Payable to the Corporation

APPENDIX F

AMOUNTS PAYABLE TO THE CORPORATION

1. **Amounts Payable to the Corporation**

1.1 In accordance with **Clause 2.3(a)**, the Corporation shall be entitled to be paid the following amounts, which shall be paid to the Corporation in accordance with **Appendix E**:

	Activity	Basis of Calculation	Payment Method
1.	In-house design activities including, without limitation, track alignment and components, rolling stock, signaling and train control system, tunnel environmental control system, platform screen doors/ automatic platform gates, power supply system, trackside auxiliaries, radio system, communications systems, automatic fare collection system, electronic access control system, main control system, depot equipment, lifts, escalators, signage and other linewide architectural items, modifications to trains, track and railway systems in the operating railway, provision of specialist services (including without limitation, fire engineering, operations planning, maintenance planning, works programming and risk assessment)	Time charge based on records maintained by the Corporation and the In-House Design Rates (the **"In-house Design Costs"**)	By Government on a monthly basis
2.	Project management and corporate support in respect of the Design and Site Investigation Activites	Subject to **paragraph 1.2** below, an agreed percentage (the **"Relevant Fixed Percentage"**) of the Third Party Costs, Recruited Staff Costs and In-house Design Costs (the **"Design and Site Investigation On-cost"**)	By Government on a monthly basis
3.	Provision of support by the Corporation to Lands	Time charge based on records maintained by	By Government on a monthly

	Department for administrative work associated with securing the necessary entitlements in respect of land required for the construction and operation of the Railway Works and for land resumption and clearance matters relating to the Express Rail Link	the Corporation and the Recruited Staff Rates (the "**Recruited Staff Costs**")	basis.

1.2 The parties agree that, until such time as the Relevant Fixed Percentage is agreed, the Corporation shall be paid the Design and Site Investigation On-cost on a provisional basis as set out in **paragraph 1.6** of this **Appendix F**, based on records maintained by the Corporation.

1.3 The parties agree that if, for whatever reason (whether as a result of the interim payment mechanism set out in **paragraph 1.2** above or otherwise but not as a result of the cap referred to in **Clause 2.2**) the amount paid to the Corporation hereunder in respect of the Design and Site Investigation On-cost does not equal the Relevant Fixed Percentage of the Third Party Costs, Recruited Staff Costs and In-house Design Costs then the shortfall or overpayment (as the case may be) shall, subject to **Clause 14.4(b)**, be paid by Government or repaid by the Corporation respectively to the other party on termination of this Agreement or shall be addressed by the parties under the Further Agreement, in the event that a Further Agreement is entered into.

1.4 The Relevant Fixed Percentage shall be agreed between the parties as soon as reasonably practicable after the date hereof and, in any event, prior to their entry into any Further Agreement or prior to any termination of this Agreement.

1.5 "**In-house Design Rates**" means, calculated by the Corporation on an hourly basis, the salaries and benefits payable or due (as the case may be) to staff involved in in-house design work.

1.6 Until such time that the Relevant Fixed Percentage is agreed between the Corporation and Government, the Design and Site Investigation On-cost shall consist of the following:

(i) the salaries and benefits payable or due (as the case may be) to staff involved in project management work;

(ii) an appropriate allocation of the Corporation's general costs and expenses incurred in supporting (i) the in-house design work; (ii) the project management work; and (iii) the land administration work, including without limitation, the salaries and benefits payable or due (as the case may be) to staff who the Corporation determines are involved in corporate overhead and support work (including, without limitation, in-house human resources, legal and secretarial, accounting, finance, treasury, corporate relations, marketing and information technology staff), and costs and expenses (whether notional or actual) relating to premises, energy and utilities, insurance, rates and taxes, and administration; and

(iii) the cost of the professional indemnity insurance to be procured by the Corporation in accordance with **Clause 6.1**.

All determinations to be made by the Corporation under this paragraph 1.6 shall:

(i) be made by the Corporation acting fairly; and

(ii) to the extent applicable, be consistent with the Corporation's internal accounting policies and procedures.

1.7 "**Recruited Staff Rates**" means, calculated on an hourly basis, the salaries and benefits payable or due (as the case may be) to staff involved in working on land administration issues associated with the Express Rail Link project.

Dated the 24th day of November 2008

ENTRUSTMENT AGREEMENT FOR

DESIGN AND SITE INVESTIGATION IN RELATION TO THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

APPENDIX G

Content requirements of reports to Government

PART I

CONTENT REQUIREMENTS FOR MONTHLY REPORTS TO GOVERNMENT ON DESIGN AND SITE INVESTIGATION ACTIVITIES

Each report provided by the Corporation to Government pursuant to **Clause 11.4** shall include:

1. the Cashflow Forecast prepared by the Corporation in accordance with **Clause 11.8**;

2. the Corporation's estimate of the total amount of the Design and Site Investigation Cost (inclusive of the cost of all known and anticipated variations, contingencies, escalations and anticipated claim settlements);

3. a summary of the payments made in accordance with **Appendix E** during the calendar month immediately preceding the date of the report, together with a brief narrative in respect of such movements;

4. a summary of progress against the Design and Site Investigation Programme;

5. a list of any contracts awarded during the calendar month immediately preceding the date of the report;

6. details of any other major issues arising in relation to the Express Rail Link project which the Corporation determines is relevant for the purposes of the report;

7. the Project Control Total; and

8. such other information as may be reasonably required by Government.

PART II

CONTENT REQUIREMENTS FOR FINAL REPORT

ON DESIGN AND SITE INVESTIGATION ACTIVITIES

The report provided by the Corporation to Government pursuant to **Clause 11.6** shall include (or in the case of **item 7** below, have attached to it):

1. the final amount of the Design and Site Investigation Cost (inclusive of the cost of all variations, contingencies, escalations and claim settlements known as at the date of the report);

2. a summary of the payments made in accordance with **Appendix E** during the period commencing on the day following the period covered in the immediately preceding report provided under **Clause 11.4**, together with a brief narrative in respect of such movements;

3. a summary showing completion of the Design and Site Investigation Activities against the Design and Site Investigation Programme;

4. a list of any contracts awarded during the period commencing on the day following the period covered in the immediately preceding report provided under **Clause 11.4**;

5. a list of any outstanding material commercial issues as at the date of the report;

6. details of any other major issues arising in relation to the Express Rail Link project which the Corporation determines is relevant for the purposes of the report;

7. the Deliverable Documents; and

8. such other information as may be reasonably required by Government.

7

Dated the 26 day of January 2010

DEED

ENTRUSTMENT AGREEMENT FOR

CONSTRUCTION AND COMMISSIONING OF THE

EXPRESS RAIL LINK

between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

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

HK093100112

CONTENTS

		Page
1	Interpretation	3
2	Financial Undertakings and Payment Mechanics	10
3	General	12
4	Corporation's Obligations	12
5	Corporation's Skill and Care Warranty	15
6	Insurance	17
7	Government to Co-operate	18
8	Modifications	19
9	Mutual co-operation	20
10	Handing Over	20
11	Land Acquisition	21
12	Land for Railway Consultation	22
13	Compliance with KSL Vesting Deed	22
14	Co-ordination and Use of Express Rail Link	23
15	Operation and Maintenance of the Express Rail Link	23
16	Consultation	24
17	Project Monitoring and Verification	25
18	Environmental Protection	29
19	Other Agreements	30
20	Termination and Suspension	31
21	Intellectual Property Rights	35
22	The Ordinance	37

23 Invalidity..... 37

24 No Partnership..... 37

25 Further Assistance..... 37

26 Amendments..... 37

27 Waiver..... 37

28 Conflict..... 38

29 Payments..... 38

30 Notices..... 38

31 Dispute Resolution..... 39

32 Governing Law and Jurisdiction..... 41

33 Disclosure of Information..... 41

34 Force Majeure..... 43

35 Design Submissions and Construction..... 44

36 Temporary Discontinuance of Works..... 44

37 Collateral Deed from Third Party contractors..... 45

Appendix A: Scope of Railway Works, RRIW and EPIW, Property Development Enabling Works and WKCD Interface Enabling Works..... 48

Appendix B: Entrustment Activities..... 51

Appendix C: Entrustment Programme..... 55

Appendix D: Express Rail Link..... 57

Appendix E: Payment of Third Party Costs and Miscellaneous Works Fee..... 59

Appendix F: Project Management Cost and Miscellaneous Works Fee..... 64

Appendix G: Content requirements of reports to Government..... 69

Appendix H: Handover Procedure..... 72

Appendix I: Deliverable Documents in relation to the Property Development Enabling 79

Works and the WKCD Interface Enabling Works.....

Appendix J: As-Constructed Documents..... 83

Appendix K: WKCD Works Areas..... 85

Appendix L: Collateral Deed..... 86

THIS DEED OF AGREEMENT is made on the 26 day of January 2010

BETWEEN:

(1) SECRETARY FOR TRANSPORT AND HOUSING for and on behalf of the GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION (**"Government"**); and

(2) MTR CORPORATION LIMITED whose registered office is MTR Headquarters Building, Telford Plaza, Kowloon Bay, Kowloon (the **"Corporation"**).

WHEREAS:

(A) The Regional Express Link ("**REL**") is one of the railway projects recommended for implementation in the Railway Development Strategy 2000. Later, the REL became the Hong Kong section of the Guangzhou – Shenzhen – Hong Kong Express Rail Link ("**ERL**") being pursued jointly by Hong Kong and the Mainland. In the middle of 2005, the Kowloon-Canton Railway Corporation ("**KCRC**") submitted a study report on the Hong Kong section of the ERL by sharing tracks with the existing West Rail (the "**Shared Corridor Option**") together with a proposal for the Northern Link ("**NOL**"). The report also included a Dedicated Corridor Option in which the ERL services would be operating along a completely new rail corridor within Hong Kong.

(B) In February 2006, the then Environmental, Transport, and Works Bureau asked KCRC to proceed with further planning of the NOL and Hong Kong section of the ERL as a combined project under the Shared Corridor Option. In the light of the rail merger discussion held at that time, a joint study team was formed by the Corporation and KCRC to progress the study.

(C) Subsequently, there were changes in the Mainland's planning parameters significantly affecting the planning of the Hong Kong section of the ERL, in particular on the choice of corridor options. KCRC submitted to Government in the middle of 2007 a project proposal on the Hong Kong section of the ERL on the basis of the Dedicated Corridor Option. The proposed NOL was de-linked from the Hong Kong section of the ERL.

(D) Following the rail merger on 2 December 2007, the Corporation took over the planning of the ERL and changed the acronym for the Express Rail Link to XRL instead of ERL, to avoid duplication with the use of the acronym "ERL" in the existing East Rail Line.

(E) On 22 April 2008, the Chief Executive in Council decided that the Corporation should be asked to proceed with the further planning and design of the Hong Kong section of the XRL on the basis that the Corporation would be invited to undertake the operation of the Hong Kong section of the XRL under the concession approach.

(F) Pursuant to the decision of the Chief Executive in Council referred to in Recital (E) above, Government and the Corporation entered into a preliminary entrustment agreement on 24 November 2008 to provide for the design of, and site investigation and procurement activities in relation to, the Express Rail Link (the "**Preliminary Entrustment Agreement**").

(G) The scheme in respect of the Express Rail Link was first gazetted under the Railways Ordinance (Cap. 519 of the Laws of Hong Kong) on 28 November 2008, with amendments and corrections gazetted on 30 April 2009. The scheme, as amended with such minor

modifications as deemed necessary, was authorized by the Chief Executive in Council on 20 October 2009.

(H) On 20 October 2009, the Chief Executive in Council decided that the Corporation should be asked to proceed with the construction, testing and commissioning of the Hong Kong section of the Express Rail Link on the understanding that the Corporation would be invited to undertake the operation of the Hong Kong section of the Express Rail Link under the concession approach.

(I) Pursuant to the authorization of the Chief Executive in Council referred to in Recital (G) above and the decision of the Chief Executive in Council referred to in Recital (H) above, Government and the Corporation have agreed to enter into this Agreement to provide for the further design, construction, procurement of services and equipment, testing, commissioning and all other matters associated with the bringing into service of the Express Rail Link.

NOW IT IS HEREBY AGREED AS FOLLOWS:

PART I

INTERPRETATION

1. Interpretation

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

"Additional Amount" has the meaning ascribed to that term in **Clause 2.5**.

"Additional Funding Suspension Costs" has the meaning ascribed to that term in **Clause 20.9(C)**.

"Additional Suspension Costs" has the meaning ascribed to that term in **Clause 20.6(C)(iii)**.

"Authorised Signatories" has the meaning ascribed to that term in **Appendix E**.

"Business Day" means a day (excluding Saturdays) on which licensed banks are open for business generally in Hong Kong.

"Building Authority" has the meaning ascribed to that term in **Clause 35.2(B)**.

"Buildings Ordinance" means the Buildings Ordinance (Cap. 123 of the Laws of Hong Kong).

"Cashflow Forecast" has the meaning ascribed to that term in **Clause 17.8**.

"Certificate" has the meaning ascribed to that term in **paragraph 1.2** of **Appendix E**.

"Certificate of Completion" means a certificate issued under a Third Party Contract in relation to the Entrustment Activities, certifying the date of completion of the portion of the Works to which such Third Party Contract relates.

"Certified Amount" has the meaning ascribed to that term in **Appendix E**.

"Chief Executive in Council" means the Chief Executive acting after consultation with the Executive Council.

"Collateral Deed" has the meaning ascribed to that term in **Clause 37.1**.

"Commercial Operations" means the operation of railway services on the Express Rail Link on a revenue earning basis, providing scheduled transport for the public.

"concession approach" has the meaning ascribed to that term in the Operating Agreement.

"Consultation" has the meaning ascribed to that term in **Clause 35.2(A)**.

"Copyright Ordinance" means the Copyright Ordinance (Cap. 528 of the Laws of Hong Kong).

"Court Order" has the meaning ascribed to that term in **Clause 36.4**.

"Date of Handover" has the meaning ascribed to that term in **Appendix H**.

"Deed Poll Dispute" has the meaning ascribed to that term in **Clause 31.4**.

"Defects Liability Period" means the period for which the relevant Third Party remains liable to repair defects identified following the issue of the relevant Certificate of Completion in relation to Entrustment Activities they have carried out under the relevant Third Party Contract.

"Deliverable Documents" shall mean the final versions of any compilation of information, drawing, plan, report or design and any other materials or documents, which have been created, developed or made by the Corporation, its employees or Third Parties in connection with the Express Rail Link project, including without limitation, the materials or documents referred to in **Clause 16.5**.

"Direct Costs" means:

(a) any and all charges, costs and amounts payable to any Government department, bureau, agency or body in relation to the Entrustment Activities, including without limitation, any internal charges, costs and amounts of Government, any Government department, bureau, agency or body; and

(b) any and all amounts payable to KCRC pursuant to **Clause 13**.

"Dispute" shall have the meaning ascribed to that term in **Clause 31.1**.

"Division of Responsibilities" means the paper entitled "Division of Responsibilities between MTRCL and RDS of Lands Department with regard to the Milestones for Express Rail Link (XRL) Project" dated 14 April 2008.

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

"Due Date" has the meaning ascribed to that term in **Appendix E.**

"Early Handover Agreement" has the meaning ascribed to that term in **paragraph 1.8** of **Appendix H**.

"Entrustment Activities" means all activities, including the procurement thereof, as detailed in **Appendix B** which are related to, as the case may be, the Railway Works, the EPIW, the RRIW, the Property Development Enabling Works and/or the WKCD Interface Enabling Works and all activities, including the procurement thereof, as agreed between Government and the Corporation which are related to the Miscellaneous Works (if any), and which, in each case, are required for the planning, design, construction, testing and commissioning thereof in relation to the Express Rail Link project.

"Entrustment Cost" means the total cost of the Entrustment Activities including, but not limited to:

(a) the Third Party Costs;

(b) the Project Management Cost; and

(c) the Miscellaneous Works Fee.

"Entrustment Programme" means the programme for the execution of the Entrustment Activities as set out in **Appendix C**, as such programme may be adjusted in accordance with the provisions of **Clause 8.2**.

"ERL" has the meaning ascribed to that term in **Recital (A)**.

"Essential Public Infrastructure Works" or **"EPIW"** means any item of work which is described as such in **Appendix A** as the same may be updated from time to time and, for the avoidance of doubt, is not described as forming part of the Railway Works but is associated with the Express Rail Link.

"Estimated Handover Date" means the date set out in Entrustment Programme (as the same may be adjusted in accordance with the provisions of this Agreement) as being the date on which the Corporation estimates that it will issue the Handover Certificate or, where there is early handover of a part or parts of the Works, the date on which the Corporation estimates that it will issue the last Handover Certificate.

"Express Rail Link" means the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link, comprising approximately twenty-six (26) kilometres of rail tunnels from the boundary with Shenzhen to, and including, the terminus located in West Kowloon in the vicinity of Jordan and Austin Roads, stabling sidings and emergency rescue station in Shek Kong, together with all related rolling stock, electrical and mechanical equipment and other facilities required to permit operation of such rail link as an extension of the Mainland high speed rail network, as shown on the plan in **Appendix D**.

"Express Rail Link project" shall be construed to include the works comprising EPIW, RRIW, Property Development Enabling Works, WKCD Interface Enabling Works and Miscellaneous Works (if any).

"Force Majeure" means any cause preventing or delaying either party from performing any of its obligations under this Agreement which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented or delayed.

"Funding Resumption Date" shall have the meaning ascribed to that term in **Clause 20.9(A)**.

"Funding Resumption Notice" shall have the meaning ascribed to that term in **Clause 20.9**.

"Funding Suspension Date" shall have the meaning ascribed to that term in **Clause 20.7(B)**.

"Funding Suspension Period" means the period commencing on the Funding Suspension Date and ending on the date on which the suspension ceases (if any).

"Funding Suspension Obligations" shall have the meaning ascribed to that term in **Clause 20.7(A)**.

"Government Information" has the meaning ascribed to that term in **Clause 33.2**.

"Handover Certificate" has the meaning ascribed to that term in **paragraph 1.7** of **Appendix H**.

"Handover Notice" has the meaning ascribed to that term in **paragraph 1.1** of **Appendix H**.

"Handover Procedure" means the procedure for the handover of the Works set out in **Appendix H**.

"HKIAC" shall have the meaning ascribed to that term in **Clause 31.3**.

"Instrument of Compliance" means the instrument of compliance entered into between Government and the Corporation on or around the date of this Agreement, pursuant to which, in relation to certain land (or access to certain land) to be provided by Government to the Corporation in connection with the Express Rail Link project, the Corporation undertakes to consult with Government on the impact of the Works on public health and safety, adjacent buildings and other infrastructure.

"intellectual property rights" means patents, copyright, design rights, artistic works, trademarks, service marks, trade names, domain names, topography rights, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights of whatever nature and wherever arising, whether now known or hereafter created and in each case whether registered or unregistered and including applications for the grant of any such rights.

"KCRC" has the meaning ascribed to that term in **Recital (A)**.

"KSL Vesting Deed" means the deed dated 14 August 2009 between the Director of Lands of the Government of Hong Kong Special Administrative Region and KCRC, pursuant to which certain land and rights in respect of the land required for the operational purposes of the Kowloon Southern Link railway was vested in KCRC.

"Land Availability Programme" has the meaning ascribed to that term in **Clause 11.2**.

"Mainland" means any part of the People's Republic of China other than Hong Kong, Macau and Taiwan.

"Miscellaneous Works" has the meaning ascribed to that term in **Clause 4.2**.

"Miscellaneous Works Fee" has the meaning ascribed to that term in **paragraph 2.1** of **Appendix F**.

"NOL" has the meaning ascribed to that term in **Recital (A)**.

"Operating Agreement" means the operating agreement dated 9 August 2007 made between Secretary for Transport and Housing for and on behalf of Government and the Corporation, as contemplated in Section 4(2) of the Ordinance.

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

"Outstanding Items List" has the meaning ascribed to that term in **paragraph 3.2** of **Appendix H**.

"Ownership Approach" has the meaning ascribed to that term in the Operating Agreement.

"Payment Obligations" shall have the meaning ascribed to that term in **Clause 20.8(B)**.

"Preliminary Entrustment Agreement" has the meaning ascribed to that term in **Recital (F)**.

"Project Control Total" means HK$65,000 million, being the amount agreed between Government and the Corporation (which may be adjusted by agreement between Government and the Corporation in the event that the Entrustment Cost exceeds the original or previous Project Control Total) as an estimate of the Entrustment Cost, inclusive, without limitation, of (i) any amounts payable to the Corporation and Third Parties; (ii) any contingencies for variations in scope and escalation of costs; and (iii) any amounts payable in connection with the Miscellaneous Works.

"Project Management Cost" means HK$4,590 million to be paid to the Corporation by Government in accordance with **Appendix F**, as such sum may be varied in accordance with the terms of **Appendix F**.

"Project Supervision Committee" means the committee established by Government for the purposes of carrying out the activities specified in **Clause 16.1**.

"Property Development Enabling Works" means any item of work which is described as such in **paragraph 4** of **Appendix A** as the same may be updated from time to time.

"Proposed Date of Handover" has the meaning ascribed to that term in **paragraph 1.2** of **Appendix H**.

"Railways Ordinance" means the Railways Ordinance (Cap. 519 of the Laws of Hong Kong).

"Railway Works" means any item of work which is described as such in **Appendix A** and which is necessary for the construction and/or operation of the Express Rail Link.

"Rectification Date" has the meaning ascribed to that term in **Clause 2.5(B)**.

"REL" has the meaning ascribed to that term in Recital (A).

"Relevant Fixed Percentage" means, in respect of each item of work forming part of the Miscellaneous Works, a fixed percentage agreed between the Corporation and Government being a percentage that is the same percentage as that used to calculate the Project Management Cost in relation to the Entrustment Activities.

"Relevant Obligations" has the meaning ascribed to that term in **Clause 20.2(B)(i)**.

"Reprovisioning, Remedial and Improvement Works" or **"RRIW"** means any item of work which is described as such in **Appendix A**, as the same may be updated from time to time, and, for the avoidance of doubt, is not described as forming part of the Railway Works but is associated with the Express Rail Link.

"Resumption Date" has the meaning ascribed to that term in **Clause 20.2(B)(iii)**.

"Senior Executives Committee" has the meaning ascribed to that term in **Clause 31.1**.

"Service Concession Agreement" has the meaning ascribed to that term in **Clause 22.2**.

"Site A" means the site zoned "Comprehensive Development Area (1)" on the draft "South West Kowloon Outline Zoning Plan No. S/K20/23".

"Stock Exchange" means The Stock Exchange of Hong Kong Limited.

"Suspension Date" has the meaning ascribed to that term in **Clause 20.2(B)(ii)**.

"Suspension Period" means the period commencing on the Suspension Date and ending on the date on which the suspension ceases (if any).

"Termination Costs" has the meaning ascribed to that term in **Clause 20.4(B)**.

"Third Party" means any contractor, consultant, adviser or other third party employed or otherwise engaged by the Corporation in connection with the Entrustment Activities including, for the avoidance of doubt, all activities relating to the Miscellaneous Works.

"Third Party Contract" has the meaning ascribed to that term in **Clause 4.6(A)**.

"Third Party Costs" means any and all payments to Third Parties including, for the avoidance of doubt, any additional costs in relation thereto as a result of a modification agreed in accordance with **Clause 8** and any Additional Suspension Costs.

"WKCD Interface Enabling Works" means any item of work which is described as such in **paragraph 5** of **Appendix A** as the same may be updated from time to time.

"WKCD" means the West Kowloon Cultural District.

"Works" has the meaning ascribed to that term in **Clause 4.7**.

"Works Areas" means any and all land temporarily required by the Corporation and/or Third Parties, in each case, to facilitate the carrying out of the Entrustment Activities

1.2 Any reference in this Agreement to:

a **"day"** means a calendar day unless the context otherwise requires;

a **"month"** means a calendar month unless the context otherwise requires; and

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 Appendices hereto) or any other agreement or document shall each be construed as a reference to this Agreement, any of the Appendices 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;

(B) a reference to any statute or statutory provision or subsidiary legislation or either or both of the Arbitration or Mediation Rules of the Hong Kong International Arbitration Centre 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"**, **"Appendix"** or a **"paragraph"** is a reference to a Recital hereto, a Clause hereof, a Part hereof, an Appendix hereto or a paragraph in the Clause or Appendix 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 Appendix headings are for ease of reference only and do not affect the interpretation of this Agreement.

1.6 Terms defined in any Appendix to this Agreement and not otherwise defined herein shall bear the meaning ascribed to them in such Appendix.

1.7 Government's obligations under this Agreement as a commercial contracting 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

FINANCING OF THE ENTRUSTMENT ACTIVITIES

2. Financial Undertakings and Payment Mechanics

2.1 In consideration of the Corporation executing or procuring the execution of the Entrustment Activities (other than the Miscellaneous Works (if any)) and carrying out its other obligations under this Agreement and the Preliminary Entrustment Agreement, Government shall pay to the Corporation the Project Management Cost, in accordance with **Appendix F**, and, in consideration of the Corporation executing or procuring the execution of the Miscellaneous Works (if any) and carrying out its other obligations under this Agreement in relation to the Miscellaneous Works (if any), Government shall pay to the Corporation the Miscellaneous Works Fee in accordance with **Appendix E**.

2.2 The maximum aggregate amount payable by Government to the Corporation under **Clause 2.1** shall be limited to HK$2,000,000,000 per annum and a total in aggregate of HK$10,000,000,000.

2.3 Government shall bear and finance the full amount of the Entrustment Cost and the Direct Costs and shall:

(A) in relation to the Third Party Costs, make payments in accordance with **Appendix E**;

(B) 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

(C) in relation to the Direct Costs, make the payments directly to the relevant persons.

2.4 Subject to **Clause 1.7**, Government shall use its reasonable endeavours to obtain all necessary authorities, permissions, approvals and consents for the funding of the Entrustment Cost and the Direct Costs and otherwise for Government's entry into and compliance with this Agreement.

2.5 If the Corporation becomes aware that the Entrustment Cost will exceed the Project Control Total, the Corporation shall, as soon as reasonably practicable, notify Government of:

(A) the amount by which the Entrustment Cost will exceed the Project Control Total (such excess being referred to as the "**Additional Amount**"); and

(B) the date upon which the Corporation estimates that the aggregate of Entrustment Costs paid or payable by Government will exceed the Project Control Total (such date being the "**Rectification Date**"),

which information shall be updated on a regular basis by way of the cashflow forecasts provided to Government in accordance with **Clause 17.8**.

2.6 In the event that the Corporation has, in accordance with **Clause 2.5**, notified Government then, subject to **Clause 1.7**, Government shall take all reasonable steps to obtain all necessary authorities, permissions, approvals and consents for the funding of the Additional Amount or shall propose an alternative solution to the provision of such Additional Amount, no less than one hundred (100) days prior to the Rectification Date or such later date as is notified to Government by way of the cashflow forecasts provided to Government in accordance with **Clause 17.8**.

2.7 In the event that Government fails to comply with its obligation contained in **Clause 2.3(C)**, the Corporation's only remedy against Government in respect of such failure shall be as contained in **Clause 20.2(B)**.

2.8 Without prejudice to Government's obligations under this Agreement, following the Corporation becoming aware of any amount becoming payable by Government as Direct Costs, the Corporation shall, as soon as reasonably practicable, notify Government of the relevant amount to be paid as Direct Costs and the identity of the relevant payee.

PART III

OBLIGATIONS AND WARRANTIES

3. General

The Entrustment Activities shall be carried out in a manner which reflects the Corporation's responsibilities and duties under the Ordinance, the Operating Agreement (in both cases, to the extent applicable) and this Agreement.

4. Corporation's Obligations

4.1 The Corporation shall carry out or procure the carrying out of the Entrustment Activities in accordance with all applicable laws, regulations, by-laws, the Ordinance, the Operating Agreement (in each case, to the extent applicable) and this Agreement.

4.2 From time to time, the Corporation may agree in writing with Government to carry out or procure the carrying out of on behalf of Government, in conjunction with the activities detailed in **Appendix B**, any item of work not forming part of the activities detailed in **Appendix B** (or a variation thereof) and any associated services. The parties agree any such items of work and all activities agreed between the Corporation and Government that relate to such items of work will constitute "**Miscellaneous Works**" for the purposes of this Agreement. Following each such agreement, the Corporation shall carry out all works so agreed to be Miscellaneous Works as part of the Entrustment Activities in accordance with this Agreement and all activities as agreed between Government and the Corporation which are related to the Miscellaneous Works, in each case, as if they had at all times formed part of the Entrustment Activities.

4.3 Without prejudice to the generality of **Clause 4.1**, the Corporation shall, to the satisfaction of Government, carry out or procure the carrying out of the Entrustment Activities for the RRIW and the EPIW (as described in **paragraph 2 of Appendix B**), the Property Development Enabling Works, the WKCD Interface Enabling Works and the Miscellaneous Works (if any), in accordance with specifications and/or standards to be agreed or, in the absence of such agreement, reasonably stipulated by Government or other relevant public bodies.

4.4 In the performance of its obligations under this Agreement, the Corporation shall comply with and satisfy all relevant statutory or other legal requirements applicable to the Entrustment Activities including without limitation the obtaining of all requisite licences, authorisations, permits, approvals or exemptions.

4.5 The Corporation shall not be in breach of any of its obligations under **Clauses 4.1** to **4.4** nor **Clause 35** to the extent that any failure of the Corporation to perform such obligation is attributable to a failure by Government to comply with its obligations under **Clause 7**.

4.6 In performing its obligations under this Agreement the Corporation shall:

(A) let all contracts with Third Parties under the Corporation's conditions of contract (each a "**Third Party Contract**");

(B) in reaching any commercial settlements with Third Parties which are not strictly in accordance with the terms of the relevant contract or which amend the terms of the

relevant contract, the Corporation shall seek to ensure that such settlements are in the best interests of the Express Rail Link project including the associated EPIW, RRIW, Property Development Enabling Works, WKCD Interface Enabling Works and Miscellaneous Works (if any), shall act in accordance with the relevant commercial settlement procedures referred to in **Clause 4.6(C)(iv)** and shall in a timely manner consult the Project Supervision Committee in respect of any proposed commercial settlement before such settlement is considered by the Project Control Group (or such other relevant approval authority) and give full and proper consideration to such comments (if any) put forward by the Project Supervision Committee in order to enable it to monitor any proposed commercial settlements to be reached in connection with the Entrustment Activities;

(C) act in accordance with the Corporation's management systems and procedures, as such may be amended from time to time, in each of the following areas:

(i) organisation and management responsibilities;

(ii) project management and control;

(iii) relevant project management and procurement procedures;

(iv) commercial settlement procedures (subject to the Corporation's compliance with its obligations in relation to the Project Supervision Committee under **Clause 4.6(B)**, **Clause 16.1** and **Clause 16.2**); and

(v) the appointment of external legal advisers (which appointments shall be notified in writing to Government in advance),

a copy of each of which shall be provided by the Corporation to Government on request;

(D) in the event that the Corporation intends to amend any of the Corporation's procedures referred to in **Clause 4.6(C)** in such a way that would materially prejudice Government's position in relation to the Express Rail Link project, the Corporation shall provide Government with copies of the proposed amendments. In the event that Government proposes to provide comments on the Corporation's proposed amendments to the Corporation's procedures referred to in **Clause 4.6(C)**, it shall provide any such comments in writing to the Corporation within a reasonable time following its receipt of the relevant document, taking into account the Corporation's obligations under **Clause 22.2**. The Corporation shall give full and proper consideration to such comments (if any) put forward by Government and shall, subject to its obligations under **Clause 22.2** and taking account of the practical requirements for implementing the Express Rail Link project:

(i) if the written comments provided by Government in accordance with the above contain an objection by Government to the Corporation's implementation of its proposed amendments then the Corporation shall not implement such proposed amendments until and unless Government agrees to the proposed amendments; and

(ii) in any other case, whenever requested and within a reasonable time, provide written replies thereto, such replies shall include, where applicable, the Corporation's reasons for not accepting any comments from Government made pursuant to this **Clause 4.6(D)**;

(E) comply with those obligations which apply to it as an entity named under the World Trade Organisation Agreement on Government Procurement; and

(F) notwithstanding paragraphs (A) and (C) of this **Clause 4.6**, the Corporation will require that no Third Party Contract contains:

(i) material risks to Government that are materially in excess of; or

(ii) material terms that are materially more onerous on, or materially less favourable to, the Corporation than;

those that the Corporation would accept for the Corporation had such Third Party Contract been entered into by the Corporation in connection with a project which is undertaken under the Ownership Approach, other than where required to reflect the provisions of this Agreement.

4.7 The Corporation shall be responsible for the care of the Railway Works, RRIW, EPIW, Property Development Enabling Works, WKCD Interface Enabling Works and the Miscellaneous Works (if any) (together, the "**Works**") from the commencement of construction until the date of handover of those Works in accordance with the Handover Procedure and for completing or procuring the completion of any outstanding Works and/or defective Works contained in any Outstanding Items List.

4.8 Following the handover of the Railway Works to Government in accordance with the Handover Procedure, Government shall carry out any fair wear and tear repairs required for such part of the Railway Works which are not the responsibility of the Corporation or its contractors under **Clause 4.10** of this Agreement until the Corporation takes over the operation of the Express Rail Link pursuant to the concession approach.

4.9 For the avoidance of doubt, but without prejudice to the provision of **Clause 4.10**, following handover of each of the EPIW, RRIW, Property Development Enabling Works, WKCD Interface Enabling Works and the Miscellaneous Works (if any) to Government in accordance with the Handover Procedure, the Corporation shall cease to have any obligation to carry out any fair wear and tear repairs required for, as the case may be, the EPIW, RRIW, Property Development Enabling Works, WKCD Interface Enabling Works and/or the Miscellaneous Works (if any).

4.10 During the period of twelve (12) years from the date of the Certificate of Completion, the Corporation shall be responsible for the repair of any defects in the Works that are identified following the end of the Defects Liability Period under the relevant Third Party Contract to which such defect in the Works relates. Where any defect in the Works relates to more than one Third Party Contract, the Corporation shall be responsible for only the repair of the elements of such defect that relate to a Third Party Contract in respect of which the relevant Defects Liability Period had expired prior to the time such defect was identified, provided that the remaining elements of such defect, which relate to any Third Party Contract in respect of

which the Defects Liability Period had not then expired, had been included in the relevant Outstanding Items List applicable to the relevant Third Party Contract.

4.11 The Corporation's liability to Government in respect of death or personal injury caused by the negligence of the Corporation shall be unlimited, but the Corporation's total aggregate liability to Government (whether in contract, tort (including negligence) or otherwise) in respect of any other action, cost, claim, demand, expense (including, without limitation, the fees and disbursements of arbitrators, mediators, arbitration centre administration venue and facility hire, lawyers, agents and expert witnesses) and all awards, and costs which may be agreed to be paid in settlement of any proceedings and liabilities of whatsoever nature arising out of or in connection with the Preliminary Entrustment Agreement and this Agreement shall be limited to the total aggregate value of:

(A) the Preliminary Costs, the In-House Design Costs, the Design and Site Investigation On-Cost and the Recruited Staff Cost (as such terms are defined in the Preliminary Entrustment Agreement), in each case, that have been and will be received by the Corporation from Government under the Preliminary Entrustment Agreement; and

(B) the fees that have been and will be received by the Corporation from Government under this Agreement.

4.12 The Corporation shall manage and enforce, in accordance with the Corporation's procedures referred to in **Clause 4.6(C)**, any and all claims arising under or in connection with the Third Party Contracts (including, for the avoidance of doubt, claims under performance bonds, parent company guarantees and/or other performance security in relation to Third Party Contracts). The provisions of this **Clause 4.12** shall survive the termination of this Agreement and shall continue in full force and effect notwithstanding such termination.

4.13 In the event that, upon or after settlement of the final accounts in relation to the Third Party Contracts, the Corporation is in receipt of any liquidated damages and/or any other funds which it has been paid pursuant to such contracts (including, for the avoidance of doubt, funds received in relation to costs of arbitration or litigation proceedings awarded against a Third Party, damages received in relation to a Third Party Contract, funds attributable to payments under performance bonds, parent company guarantees and/or other performance security in relation to the Third Party Contracts) which are properly attributable to Government, the Corporation agrees that such liquidated damages and/or other funds shall be promptly dealt with as directed by Government.

5. Corporation's Skill and Care Warranty

5.1 The Corporation warrants that:

(A) in the case of those Entrustment Activities that relate to the provision of project management services, such Entrustment Activities shall be carried out with the skill and care reasonably to be expected of a professional and competent project manager whose role includes the procurement, co-ordination, administration, management and supervision (including testing and examining the plant, goods, materials and workmanship) of the design and construction of works and the procurement of goods that are analogous to those being procured under the Third

Party Contracts and associated contract management and management and enforcement of claims;

(B) in the case of those Entrustment Activities that relate to the provision of design services, such Entrustment Activities shall be carried out with the skill and care reasonably to be expected of a professional and competent design engineer;

(C) in the case of those Entrustment Activities that relate to the carrying out of construction works, such Entrustment Activities shall be carried out with the skill and care reasonably to be expected of, and by utilising such plant, goods and materials reasonably to be expected from, a competent and workmanlike construction contractor;

(D) other than as permitted in accordance with the Corporation's procedures referred to in **Clause 4.6(C)**, the Express Rail Link shall be designed and constructed:

(i) to standards and in accordance with a specification which is consistent with and not materially in excess of those applicable to relevant elements of comparable completed railway projects in Hong Kong and the Mainland (as adjusted to take account of the legal and regulatory requirements which are applicable in Hong Kong);

(ii) using consultants, sub-consultants, contractors, sub-contractors and employees of the Corporation who are of a number and level of qualification which is consistent with and not materially less than, or in excess of, those employed in relation to relevant elements of comparable completed railway projects in Hong Kong;

(iii) to reflect the long distance, intercity and high-speed nature of the Express Rail Link; and

(iv) which will allow the Corporation to satisfy those responsibilities and duties to which it will be subject if operations commence on the Express Rail Link, under the Ordinance, the Operating Agreement and the relevant service concession agreements (if any); and

(E) in the event the Corporation proposes that any significant aspect of the design of the Express Rail Link be materially in excess of the standards and specification referred to in **Clause 5.1(D)**, the Corporation shall first obtain the consent of Government before implementing such design.

5.2 Without prejudice to the rights and remedies of Government in respect of any breach of this Agreement by the Corporation, the Corporation shall indemnify and keep indemnified Government against all actions, proceedings, costs, claims, demands, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses), losses or damages suffered by Government and all awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of whatsoever nature which Government may pay or incur as a result of the negligence of the Corporation in performing its obligations under this Agreement or any breach of this Agreement by the Corporation.

5.3 In the event of any errors or omissions by the Corporation which constitute breaches of this Agreement by the Corporation and as a result of which the re-execution of the Entrustment Activities is required, the Corporation shall, if required by Government, at its own cost re-execute (or procure the re-execution of) such Entrustment Activities to the reasonable satisfaction of Government. In the event that the Corporation complies with this provision, Government shall have no further rights or remedies against the Corporation in respect of any breach by the Corporation of this Agreement which led to the re-execution of the Entrustment Activities pursuant to this **Clause 5.3** except to the extent of any losses or damages suffered by Government as a result of any such breach which are not remedied, rectified or otherwise made good by such re-execution of the Entrustment Activities. For the avoidance of doubt, any liability of the Corporation under this **Clause 5.3** to re-execute (or procure the re-execution of) Entrustment Activities shall be subject to **Clause 4.11**.

6. Insurance

6.1 The Corporation shall, in connection with its obligations under this Agreement, effect and maintain at Government's cost and expense 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:

(A) contractors' all risks insurance (which shall provide cover up to the value of the Works) with respect to all permanent and temporary works and plant erected, or in the course of erection, in relation to the carrying out of the Entrustment Activities and all material or other property belonging to or supplied to the relevant Third Parties or sub-contractors of such Third Parties or for which they are or hold themselves responsible which are for use or intended for use in connection with the Entrustment Activities, including temporary buildings belonging to the Corporation or the relevant Third Parties or sub-contractors of such Third Parties but excluding tools, equipment and other items not for incorporation in or use in relation to the Entrustment Activities, during the period in which such Entrustment Activities are carried out, including the duration of the relevant Defects Liability Periods;

(B) third party liability insurance (which shall provide cover up to a maximum of HK$1,500,000,000 for any one claim) with respect to legal liability in case of death or personal injury or damage to or loss of any property of whatsoever nature and description arising in connection with the Entrustment Activities, during the period in which the Entrustment Activities are carried out, including the duration of the relevant Defects Liability Periods; and

(C) such other insurances as may be required by law from time to time.

Contractors' all risks insurance, third party liability insurance and such other insurances effected and maintained by the Corporation in accordance with this **Clause 6.1** shall in each case be for the benefit and in the joint names of the Corporation, Government and all relevant Third Parties and sub-contractors of such Third Parties. Without prejudice to the other provisions of this **Clause 6.1**, the Corporation shall immediately notify Government in the event that insurance is not maintained in accordance with this **Clause 6.1** or for any reason becomes void or unenforceable and shall agree with Government alternative requirements in place of the foregoing requirements of this **Clause 6.1**. The Corporation shall, upon request in writing from Government, supply Government with evidence in the form of a broker's certificate or certificates confirming that insurance is being effected and maintained in accordance with this **Clause 6**.

6.2 Unless Government otherwise agrees in writing, the Corporation shall procure that all design consultants employed or engaged in connection with the Entrustment Activities and who have design responsibility effect and maintain with reputable insurers professional indemnity insurance in respect of their obligations in relation thereto in each case for an amount of not less than HK$70,000,000 for a period of not less than six years from the dates or dates (as the case may be) of completion of the relevant items of work described in **Appendix A** provided always that such professional indemnity insurance:

(A) is available and continues to be available at reasonable commercial rates; and

(B) in the case of any design consultant who is based in a place outside Hong Kong, is generally available and continues to be generally available in the place in which the relevant design consultant is based.

The Corporation shall immediately notify Government in the event that professional indemnity insurance ceases to be available at reasonable commercial rates or, in the case of professional indemnity insurance for a design consultant who is based in a place outside Hong Kong, ceases to be generally available in the place in which the design consultant is based or is otherwise not maintained in accordance with this Clause or for any reason becomes void or unenforceable and shall agree with Government alternative requirements in place of the foregoing requirements of this **Clause 6.2**.

6.3 The Corporation shall use all reasonable endeavours to ensure that no actions shall be taken or omitted or suffer anything to be done or omitted by it or its agents as a result of which any insurance policy or part thereof effected in accordance with this **Clause 6** may be avoided, forfeited, revoked or withdrawn.

7. Government to Co-operate

7.1 Government shall use reasonable endeavours to provide the Corporation with any information or assistance of a non-financial nature reasonably required by the Corporation, so as to enable the Corporation to meet its obligations under this Agreement, including (but not limited to) liaising with relevant authorities and regulators in the Mainland (including their respective contractors and sub-contractors) in order to facilitate the Corporation's interface with such authorities and regulators in relation to the Entrustment Activities.

7.2 Subject to **Clause 1.7** and without prejudice to **Clause 4.4**, Government shall, to the extent that it is empowered or otherwise able to do so having taken all reasonable steps, procure that

all necessary licences, consents and other permissions and approvals required for, or in connection with, the design, construction and operation of the Express Rail Link project are given or granted as expeditiously as possible when required and in a manner consistent with facilitating Government's expectations with regard to the timetable for delivery of the Express Rail Link project, and shall when given or granted be of the duration and on terms required.

8. Modifications

8.1 Subject to **Clause 8.2**, either party to this Agreement may propose, by notice in writing to the other party, material modifications to the contents of **Appendix A**, **Appendix B**, and/or **Appendix C**. If the relevant party wishes to proceed with the material modification proposed by it in such notice, the parties shall endeavour to agree on the scope and extent of the material modification so proposed and the likely effect of such material modification on the Entrustment Cost and the Entrustment Programme. Any increase in the Entrustment Cost shall be borne by Government.

8.2 Subject to the Corporation complying with **Clause 8.3**, the Corporation shall be entitled to adjust **Appendix C** in the event that any one or more of the following events causes delay to the progress of the Entrustment Activities:

(A) any extension of time is granted under any Third Party Contract, except where such extension of time is attributable to the negligence and/or default of, or an omission by, the Corporation or its agents or employees;

(B) a failure by Government to use reasonable endeavours to provide alternative land pursuant to **Clause 12.2**;

(C) a Suspension Period pursuant to **Clause 20.6(C)(ii)**;

(D) a temporary discontinuance of all or part of the Works ordered by Government pursuant to **Clause 36**;

(E) the acts or omissions of persons to whom access to the Works is granted pursuant to **paragraph 4** of **Appendix H**;

(F) a failure by Government to comply with its obligations under this Agreement including, but not limited to, a failure by Government to provide land in accordance with the Land Availability Programme; or

(G) a delay by relevant Mainland authorities in granting any approvals required in relation to the testing and commissioning of the Railway Works, except where such delay is attributable to the negligence and/or default of, or an omission by, the Corporation or its agents or employees,

provided that, any adjustment to **Appendix C** by the Corporation pursuant to this **Clause 8.2** is fair and reasonable having regard to all the relevant circumstances including, but not limited to, the delay in question and the consequences of such delay and provided further that, the Corporation shall exercise the skill and care reasonably to be expected of a professional and competent project manager in seeking to avoid or mitigate the effects of such event or events on timely completion of the Entrustment Activities.

8.3 The Corporation shall consult and liaise with Government in a timely manner if any adjustment pursuant to **Clause 8.2** would have the effect of amending the Estimated Handover Date.

9. Mutual Co-operation

Each of Government and the Corporation shall use reasonable endeavours to co-operate with the other in relation to the preparation of any submission or other document to various authorities including, without limitation, the Legislative Council and relevant District Councils. In the event that Government requests the Corporation to provide any information, input or comment in relation to any such submission or other document, Government shall give the Corporation a reasonable amount of time within which to provide such information, input or comment. Government shall take account of any information, input or comment provided to it by the Corporation.

10. Handing Over

10.1 The Corporation and Government shall comply with their respective obligations under **Appendix H**.

10.2 Following handover of the Works in accordance with the provisions of **Appendix H**, the Corporation shall, as soon as practicable (and in any event no later than thirty (30) days from the later of the date of handover of such Works and the end of the Defects Liability Period applicable to the relevant Third Party Contracts) provide to Government (or such other party as Government may direct) warranties and undertakings that are on the same terms as all unexpired warranties and undertakings that have been provided by Third Parties to the Corporation and relate to the design and construction of the Works.

PART IV

LAND

11. Land Acquisition

11.1 Without prejudice to the rights and remedies of Government under this Agreement and the Preliminary Entrustment Agreement, Government shall bear all land acquisition, clearance and related costs, of whatsoever nature and howsoever caused, arising from the implementation of the Express Rail Link project including, but not limited to, the costs and amounts referred to in **Clauses 11.1**, **11.2** and **11.3.**

11.2 Government shall use reasonable endeavours to obtain, and pass to the Corporation in accordance with the terms of this Agreement, all land (including land not held by Government at the date of this Agreement) required by the Corporation for the construction of the Works. As soon as practicable after the date of this Agreement, the Corporation shall provide Government with a schedule (the "**Land Availability Programme**") which sets out the land the Corporation requires to be made available to it for the implementation of the Express Rail Link project and, where required, specifying dates by which such land is to be made available to the Corporation in order to enable the Corporation to complete the Express Rail Link project in accordance with the Entrustment Programme. Government shall notify the Corporation of any change to the timing of the availability of such land as soon as practicable. Without prejudice to the Corporation's rights under **Clause 8.2**, following receipt of any such notification, the Corporation shall revise the Land Availability Programme to take account of the change to the timing of the availability of such land, using reasonable endeavours to minimise any delay to the Land Availability Programme, and submit the revised Land Availability Programme to Government.

11.3 Government shall bear, as Direct Costs, all costs, expenses and other amounts that have been, are now, or may from time to time be incurred or paid by the Lands Department pursuant to the involvement of the Lands Department in connection with the implementation of the Express Rail Link project. These costs include, but are not limited to, staff costs, accommodation, equipment, office rent, departmental expenses and administrative overheads as determined in accordance with the guidelines set out in the costing manual issued by the Treasury.

11.4 Government may notify the Corporation in writing as soon as practicable after the Secretary for Transport and Housing has received a written claim from any person claiming an entitlement to compensation under the Railways Ordinance and may consult with the Corporation on how best such claim should be considered. The responsibility for considering any such claim and for determining the amount of any payment to a claimant under the Railways Ordinance and any other ex-gratia allowances payable shall lie with Government. Without prejudice to the rights and remedies of Government under this Agreement and the Preliminary Entrustment Agreement, Government shall be liable to pay all amounts to third parties arising as a result of any claim for compensation by any third party in connection with the Express Rail Link project, including for the avoidance of doubt, for the loss of redevelopment potential which arises as a result of the Express Rail Link project.

11.5 For the avoidance of doubt, Government shall also be liable to pay, as Direct Costs, all amounts to the Lands Department (including, but not limited to, any staff costs,

accommodation, equipment, office rent, departmental expenses and administrative overheads) arising as a result of any claim for compensation by any third party, including for the avoidance of doubt, for the loss of redevelopment potential which arises as a result of the Express Rail Link project.

11.6 For the avoidance of doubt, the Corporation shall continue to provide administrative support to the Lands Department in connection with Government's obligations under this **Clause 11** in accordance with the Division of Responsibilities.

12. Land for Railway Construction

12.1 Subject to such terms and conditions, and in such form, as may be prescribed by Government, the Corporation and Third Parties shall be permitted to occupy land required as Works Areas. No (or nominal) rental shall be payable by the Corporation for the land required by the Corporation as Works Areas or the land required by the Corporation for the purpose of railway construction (other than as Works Areas) and which will be occupied by facilities and structures relating to the operation of the Express Rail Link.

12.2 In the event that any portion or portions of the land (as shown stippled black in **Appendix K**) required by the Corporation as Works Areas is or are required to be handed back to Government for the purposes of the West Kowloon Cultural District project or other uses, Government shall give the Corporation reasonable notice (which, in each case, shall be not less than three (3) months) of such requirement. In the event that any portion or portions of such land is or are required to be handed back to Government for the purposes of the West Kowloon Cultural District project or other uses earlier than 31 March 2012, Government shall use reasonable endeavours to provide the Corporation with alternative land reasonably acceptable to the Corporation.

13. Compliance with KSL Vesting Deed

In the exercise of the rights conferred upon the Authorized Persons of Government or the Railway Operator (for the purposes of this **Clause 13** only, as such terms are defined in the KSL Vesting Deed) under clauses 6 to 11 of the KSL Vesting Deed, the Corporation shall, and shall procure that all Third Parties, comply with the provisions of clauses 14 (a) to (d) (inclusive) of the KSL Vesting Deed, provided that, without prejudice to the rights and remedies of Government under this Agreement and the Preliminary Entrustment Agreement, any compensation or reimbursement payable to KCRC in accordance with the provisions of clause 14 of the KSL Vesting Deed shall be borne by Government as Direct Costs.

PART V

TRANSPORT

14. Co-ordination and Use of Express Rail Link

14.1 The Corporation shall consult and liaise with Government to establish the function, capacity, layout and details of passenger interchange facilities including, without limitation, public transport interchanges to be designed and constructed as EPIW by the Corporation at the proposed West Kowloon Terminus and Jordan Road.

15. Operation and Maintenance of the Express Rail Link

15.1 Government agrees that the Corporation has been asked to proceed with the construction, testing and commissioning of the Express Rail Link (pursuant to and on the terms of this Agreement) on the understanding that the Corporation will be invited to undertake the operation of the Express Rail Link under the concession approach.

PART VI

CONSULTATION, PROJECT MONITORING AND VERIFICATION

16. Consultation

16.1 The Project Supervision Committee shall hold monthly meetings to review progress under this Agreement with respect to, without limitation, the Miscellaneous Works, the matters contained in **Appendix B** and **Appendix C,** any issues arising as a result of the site inspections referred to in **Clause 17.15** and to monitor procurement activities, post-tender award cost control and resolution of contractual claims, in each case, associated with the Express Rail Link project, in accordance with its terms of reference.

16.2 Unless otherwise agreed between Government and the Corporation, the Corporation shall send a representative or representatives to attend all meetings of the Project Supervision Committee and such representatives shall provide such information (including, in relation to any proposed commercial settlement, supporting legal advice), co-operation and assistance as, in each case, Government may reasonably require and be entitled to receive any papers which are prepared for consideration at the meetings of the Project Supervision Committee.

16.3 The parties shall keep confidential all information disclosed at, or in connection with, meetings of the Project Supervision Committee provided that Government may, if required by the Public Accounts Committee of the Legislative Council, disclose such information to the Public Accounts Committee of the Legislative Council if Government has given the Corporation prior written notice of its intention to do so, such notice being of a reasonable period taking account of the Corporation's status as a company whose shares are listed on the Stock Exchange. This **Clause 16.3** shall continue to apply after the termination of this Agreement without limitation in time.

16.4 Notwithstanding anything herein contained, the Corporation shall use its best endeavours to:

(A) complete, or procure the completion of, the Entrustment Activities (excluding the works comprised in and all activities relating to the Miscellaneous Works (if any)) in accordance with the Entrustment Programme;

(B) complete, or procure the completion of, the works comprised in and activities relating to the Miscellaneous Works (if any) in accordance with the relevant timetable agreed with Government at the time the relevant Miscellaneous Works are entrusted to the Corporation; and

(C) minimise any delay or other effect which any modifications made under **Clause 8** may have on the Entrustment Programme.

16.5 Without prejudice to the generality of the obligations of the Corporation under this **Clause 16**, the Corporation shall, at the relevant time, submit to Government, for comment, the following documents which are relevant to the general scope of the Express Rail Link project and its service performance when operations commence on the Express Rail Link:

(A) preliminary and final versions of the documents specified in **Appendix J**;

(B) preliminary and final operation and maintenance manuals;

(C) preliminary and final property interface schedules in respect of third party structures;

(D) preliminary and final versions of the documents listed in **Appendix I** in relation to the Property Development Enabling Works and WKCD Interface Enabling Works;

(E) preliminary and final plans showing the alignment of, and areas occupied by, the Express Rail Link, required to enable Government to confer on KCRC legal title to such land as is necessary in relation to the Express Rail Link; and

(F) the manual to be used in connection with the testing and commissioning of the Express Rail Link,

together with any other supporting reports and papers and shall allow Government a reasonable time for review of the documents. In the event that Government proposes to provide comments on any of the documents referred to in this **Clause 16.5**, it shall provide any such comments in writing to the Corporation within a reasonable time following its receipt of the relevant document, taking into account the Corporation's obligations under **Clause 16.3**. The Corporation shall give full and proper consideration to such comments (if any) put forward by Government and shall, subject to its obligations under **Clause 16.3**, whenever requested and within a reasonable time, provide written replies thereto, such replies shall include, where applicable, the Corporation's reasons for not accepting any comments from Government made pursuant to this **Clause 16.5**.

17. Project Monitoring and Verification

17.1 In addition to the provisions of **Clause 16**:

(A) the Corporation shall:

(i) keep Government informed of all matters which in the opinion of the Corporation are likely to have a material impact on; and

(ii) provide such financial or other information as Government shall reasonably require concerning,

all matters specified in **Appendix A**, **Appendix B**, **Appendix C** and on all matters concerning the Express Rail Link project in general; and

(B) Government shall report to the Corporation in a timely manner on issues arising from Government departments, bureaux, agencies or bodies and any other third parties in relation to the Express Rail Link project.

17.2 The Corporation shall give such assistance as may reasonably be required by Government regarding the financial or other information supplied by it under **Clause 17.1(A)(ii)**, including explanation of the methodology or assumptions in such information. The Corporation shall give full and proper consideration to all queries, comments and suggestions put forward by Government and shall, whenever requested and within a reasonable time, provide written replies thereto, such replies shall include, where applicable, the Corporation's reasons for not accepting any queries, comments and suggestions from Government made pursuant to this **Clause 17.2**.

17.3 Upon written request and reasonable notice by Government, the Corporation shall attend briefings or consultation sessions to explain any information supplied by it under **Clause 17.1(A)(ii)** to Government or Government's nominees. Such meetings shall be held at such place and time as Government may specify following consultation with the Corporation.

17.4 The Corporation agrees to provide to Government, by the end of each calendar month, a progress report on the Entrustment Activities which were carried out in the immediately preceding calendar month. The first of such progress reports shall be provided by the Corporation to Government by 31 March 2010 on the Entrustment Activities that were carried out in January 2010 and February 2010.

17.5 The report referred to in **Clause 17.4** shall be in a format agreed between Government and the Corporation and shall include, without limitation, the items listed in **Part I** of **Appendix G**.

17.6 Within three (3) months following the issue of the Handover Certificate (or the last of such certificates where there is early handover of a part or parts of the Works pursuant to **Appendix H**) or the date of termination of this Agreement (whichever is the earlier), the Corporation shall provide to Government a final report on the Entrustment Activities.

17.7 The report referred to in **Clause 17.6** shall be in a format agreed between Government and the Corporation and shall include, without limitation, the items listed in **Part II** of **Appendix G**.

17.8 The Corporation shall provide cashflow forecasts to Government on a monthly basis, setting out the expenditure profile of the Entrustment Cost which was anticipated as at the end of the immediately preceding calendar month for the life of the Express Rail Link project (each, a "**Cashflow Forecast**"). The first of such Cashflow Forecasts shall be provided to Government within one (1) calendar month of the date of this Agreement and, thereafter, subsequent Cashflow Forecasts shall be provided to Government within one (1) calendar month of the end of each calendar month.

17.9 Government shall be entitled to send a representative to attend the following meetings held in relation to the Express Rail Link project, such meetings shall be held by the Corporation in compliance with the procedures referred to in **Clause 4.6(C)**:

(A) tender readiness presentations;

(B) tender assessments (Tender Assessment Team/Executive Tender Panel);

(C) the Corporation's monthly cost meetings;

(D) the Corporation's monthly progress meetings;

(E) meetings of the committee known as the "Project Control Group"; and

(F) meetings of the committee known as the "Commissioning Committee",

and such representatives shall be entitled to receive any papers which are prepared for consideration at such meetings.

17.10 At intervals which are reasonable, having due regard to the Entrustment Programme and with a view to minimising any delays thereto, following the date of this Agreement, Government shall, in addition to its monitoring rights set out in the preceding provisions of this **Clause 17**, be entitled to appoint an appropriate consultant to verify the Corporation's compliance with the Corporation's obligations under this Agreement and may, on reasonable notice, notify the Corporation in writing of:

(A) those of the Corporation's obligations compliance with which Government proposes to verify; and

(B) details of the employees and representatives of the appropriate consultant who require access rights to the Corporation's offices and any other places in which the Corporation is performing the Entrustment Activities in order to carry out the verification.

17.11 At any time the Corporation is in material or persistent breach (or Government, acting reasonably, suspects that the Corporation is in material or persistent breach) of any of the Corporation's material obligations under this Agreement, Government shall be entitled to verify the Corporation's compliance with the Corporation's obligations under this Agreement and may, on reasonable notice, notify the Corporation in writing of:

(A) the breach or suspected breach (as the case may be) and where applicable the grounds on which Government suspects there is a material or suspected breach;

(B) those of the Corporation's obligations compliance with which Government proposes to verify; and

(C) details of Government's employees and other representatives who require access rights to the Corporation's offices and any other places in which the Corporation is performing the Entrustment Activities in order to carry out the verification.

17.12 For the purposes of any verification pursuant to **Clause 17.10** or **Clause 17.11** the Corporation shall allow, and shall procure that its contractors and consultants allow, the appropriate consultant and/or Government's employees and other representatives (as the case may be), on reasonable notice and where possible during normal working hours, access to the sites referred to in **Clause 17.10(B)** and **Clause 17.11(C)**, the Corporation's books and records and relevant personnel and information systems provided that, and only insofar as:

(A) such verification is carried out with due regard for minimising disruption to the Entrustment Activities;

(B) such verification relates to a particular matter or issue which was stated in the notice provided by Government to the Corporation; and

(C) such books, records, personnel and information systems relate to, or hold information about, the relevant obligations of the Corporation or the material or persistent breach or suspected breach.

17.13 Notwithstanding the provisions of **Clause 33**, the parties shall keep confidential the findings of any verification carried out pursuant to **Clause 17.10** or **Clause 17.11** provided that Government may, if required by the Public Accounts Committee of the Legislative Council, disclose such findings to the Public Accounts Committee of the Legislative Council if Government has given the Corporation prior written notice of its intention to do so, such notice being of a reasonable period taking account of the Corporation's status as a company whose shares are listed on the Stock Exchange. This **Clause 17.13** shall continue to apply after the termination of this Agreement without limitation in time.

17.14 Government and the Corporation agree that any monitoring (including any inspections undertaken in accordance with **Clause 17.15**) and verification undertaken in relation to the Entrustment Activities shall be undertaken in parallel with the Entrustment Programme and Government and the Corporation shall use their best endeavours to undertake all aspects of such monitoring or verification in a manner which will minimise any delay or interruption to the Entrustment Activities.

17.15 The Corporation shall arrange formal joint site inspections of all worksites on a quarterly basis (or at such other intervals as may be agreed between Corporation and Government from time to time) to allow Government and any persons duly authorised by Government to review the Corporation's compliance with its obligations under this Agreement.

PART VII

ENVIRONMENTAL PROTECTION

18. Environmental Protection

18.1 Without prejudice to the generality of **Clause 4.1**, to the extent applicable, the Corporation shall carry out the Entrustment Activities in accordance with the requirements of the Environment Impact Assessment carried out by the Corporation in accordance with the Environmental Impact Assessment Ordinance (Cap. 499 of the Laws of Hong Kong). In undertaking the Entrustment Activities, the Corporation shall comply with, and shall take reasonable steps to procure that any of its consultants, contractors and agents comply with all relevant statutory requirements in force from time to time including, without limitation, the Noise Control Ordinance (Cap. 400 of the Laws of Hong Kong), the Water Pollution Control Ordinance (Cap. 358 of the Laws of Hong Kong) and the Air Pollution Control Ordinance (Cap. 311 of the Laws of Hong Kong) and any technical memoranda referenced in any such ordinance (in each case, to the extent applicable). Such reasonable steps shall include requiring such consultants, contractors and agents to undertake, in any relevant contract or contracts between them and the Corporation, to comply with all relevant statutory requirements in force from time to time.

18.2 In carrying out the Entrustment Activities, the Corporation shall comply with those obligations which apply to it as a certified company under the International Organisation for Standardization in relation to environmental management.

18.3 Upon completion of the Works, the Corporation shall provide Government with all environmental permits relating to the Express Rail Link project.

PART VIII

OTHER AGREEMENTS

19. Other Agreements

19.1 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.

19.2 For the avoidance of doubt, save as set out in **Clause 19.1** and **Clause 4.11**, nothing in this Agreement shall in any way affect the rights and obligations of the parties under the Preliminary Entrustment Agreement, which shall continue in force until its expiry or termination in accordance with the terms thereof.

19.3 In carrying out their respective obligations under this Agreement, the Corporation and Government shall each act in accordance with the terms of the Instrument of Compliance as if their respective rights and obligations thereunder formed part of this Agreement.

PART IX

TERMINATION AND SUSPENSION

20. Termination and Suspension

20.1 This Agreement shall commence on the date hereof and shall remain in force and effect until the completion of the Entrustment Activities unless terminated earlier pursuant to **Clauses 20.2** or **20.3**.

20.2 The Corporation may:

(A) serve on Government a notice in writing of not less than six (6) months to terminate this Agreement:

(i) at any time after two (2) months have elapsed from the Suspension Date specified in any notice served by the Corporation under **Clause (B)**, provided that, as at the date of the notice to terminate this Agreement, no Resumption Date had been specified by the Corporation in relation to such notice; or

(ii) at any time after two (2) months have elapsed from the Funding Suspension Date specified in any notice served by the Corporation under **Clause 20.7**, provided that, as at the date of the notice to terminate this Agreement, no Funding Resumption Notice had been issued by Government,

in which event **paragraph 1.10** of **Appendix H** shall apply and this Agreement shall terminate absolutely on the date specified in such notice to be the date on which this Agreement shall terminate or, if later, the date of completion of the Handover Procedure; and

(B) serve on Government a notice in writing to suspend the performance of certain of the Corporation's obligations under this Agreement in the event that Government fails to comply in any respect with any of its obligations under **Clause 2.3**. Such a notice shall specify:

(i) which of the Corporation's obligations under this Agreement (other than its obligations under **Clause 17.1**), having been, or are reasonably likely to be, materially affected by Government's failure to comply with its obligations under **Clause 2.3**, shall be suspended (the "**Relevant Obligations**");

(ii) the date from which such Relevant Obligations shall be suspended (the "**Suspension Date**") being a date not less than seven (7) days from the date of the notice;

(iii) the date (if any) on which the Corporation expects such suspension to cease (the "**Resumption Date**"); and

(iv) the reason or reasons for the proposed suspension.

20.3 Government may terminate this Agreement by serving a notice in writing on the Corporation:

(A) if a decision is made by Government to cancel the Express Rail Link project and that decision is announced publicly; or

(B) if the Corporation commits a material or persistent breach of any of its material obligations under this Agreement and (in the case of a breach capable of being remedied) does not remedy such breach within thirty (30) days of receiving from Government written notice of the breach and a request to remedy the same,

in the event of either happening **paragraph 1.10** of **Appendix H** shall apply and this Agreement shall be terminated on the date this notice is served or, if later, upon completion of the Handover Procedure.

20.4 Upon the termination of this Agreement under **Clause 20.2(A) or Clause 20.3**:

(A) the Corporation shall promptly deliver to Government a set of the Deliverable Documents prepared up to the date of such termination; and

(B) where such termination is pursuant to **Clause 20.2(A) or Clause 20.3**, Government shall, in accordance with **Appendix E** and, without prejudice to any other rights and remedies to which Government may be entitled where the termination is pursuant to **Clause 20.3(B)** or to which the Corporation may be entitled where the termination is pursuant to **Clause 20.2(A)**, pay to the Corporation and/or the Third Parties, as the case may be, any and all unpaid Third Party Costs, Project Management Costs and Miscellaneous Works Fees incurred up to the relevant Suspension Date or Funding Suspension Date (as the case may be) where the termination is pursuant to **Clause 20.2(A)** or incurred up to the date of the relevant notice of termination where the termination is pursuant to **Clause 20.3** and any Third Party Costs and Miscellaneous Works Fees that arise as a result of the termination (being "**Termination Costs**") provided that the Corporation shall exercise the skill and care reasonably expected of a professional and competent project manager in seeking to ensure such Termination Costs are kept to a reasonable level.

20.5 In the event of termination of this Agreement, all the rights and obligations of the parties shall forthwith cease, except for those provisions expressly stated to continue without limit in time. Termination of this Agreement shall not affect any rights, liabilities or remedies arising under this Agreement prior to such termination and **Clause 31** and **Clause 33** shall continue to apply to such rights, liabilities and remedies and to those provisions which are expressly stated to continue without limit in time.

20.6

(A) In the event that the Corporation serves a notice on Government pursuant to **Clause 20.2(B)**, the requirement on the Corporation to perform the Relevant Obligations shall cease with effect from the Suspension Date and, accordingly, the Corporation shall not be obliged to perform the Relevant Obligations with effect from the Suspension Date.

(B) In the event that Government rectifies, to the reasonable satisfaction of the Corporation, any failure or failures (as the case may be) by Government to comply with any of its obligations under **Clause 2.3**, as specified in a notice served by the Corporation pursuant to **Clause 20.2(B)** prior to the Suspension Date specified therein, the Relevant Obligations shall not be suspended on the relevant Suspension Date and the Corporation shall perform the Relevant Obligations in accordance with this Agreement.

(C) In the event that, following a Suspension Date, Government rectifies, to the reasonable satisfaction of the Corporation, the failure or failures (as the case may be) by Government to comply with its obligations under **Clause 2.3** as specified in a notice served by the Corporation pursuant to **Clause 20.2(B)** the Corporation shall use its reasonable endeavors to resume the performance of the Relevant Obligations as soon as reasonably practicable and as soon as reasonably practicable:

(i) the Corporation shall serve a notice in writing on Government informing Government of the date on which the suspension will cease;

(ii) the parties shall adjust the Entrustment Programme to reflect the occurrence and duration of the Suspension Period; and

(iii) if the Corporation calculates that the Entrustment Cost will, as a result of the occurrence of the Suspension Period, or a subsequent resumption of the Entrustment Activities, increase (such increase being referred to as the "**Additional Suspension Costs**"), the Corporation shall, as soon as reasonably practicable prior to the Resumption Date, serve a notice in writing on Government informing Government thereof and specifying the amount of the Additional Suspension Costs. The Additional Suspension Costs shall be borne by Government.

(D) As soon as reasonably practicable following the end of the Suspension Period (if any), the Corporation shall perform the Relevant Obligations in accordance with this Agreement.

20.7 In the event that within sixty (60) days prior to the Rectification Date or such later date as referred to in **Clause 2.6**, after having taken the steps specified in **Clause 2.6** to ensure that the Additional Amount is available, Government has not secured the availability of the Additional Amount pursuant to **Clause 2.6**, then Government shall promptly serve on the Corporation a notice in writing containing details in relation thereto. As soon as practicable following receipt by the Corporation of such notice, the Corporation shall serve on Government a notice in writing to suspend the performance of the Corporation's obligations under this Agreement. Such notice shall specify:

(A) which of the Corporation's obligations under this Agreement (other than its obligations under **Clause 17.1**) shall be suspended (the "**Funding Suspension Obligations**"); and

(B) the date from which the Funding Suspension Obligations shall be suspended (the "**Funding Suspension Date**") being not less than seven (7) days from the date of the notice.

20.8 In the event that the Corporation serves a notice on Government pursuant to **Clause 20.7**:

(A) the requirement on the Corporation to perform the Funding Suspension Obligations shall cease with effect from the Funding Suspension Date and, accordingly, the Corporation shall not be obliged to perform the Funding Suspension Obligations with effect from the Funding Suspension Date; and

(B) save as specified in **Clause 20.4(B)**, Government's obligations to bear and finance the full amount of the Entrustment Cost pursuant to **Clause 2.3** (the "**Payment Obligations**") shall cease with effect from the Funding Suspension Date in respect of Entrustment Cost incurred after the Funding Suspension Date and, accordingly, Government shall not be obliged to comply with **Clause 2.3** with effect from the Funding Suspension Date insofar as they relate to Entrustment Cost incurred after the Funding Suspension Date.

20.9 In the event that, following the Funding Suspension Date but prior to the issue of any termination notice by the Corporation pursuant to **Clause 20.2(A)(ii)**, Government secures the availability of the Additional Amount pursuant to **Clause 2.5(A)**, Government shall promptly serve on the Corporation a notice in writing containing details in relation thereto (a "**Funding Resumption Notice**"). As soon as practicable following receipt by the Corporation of a Funding Resumption Notice:

(A) the Corporation shall serve a notice in writing on Government informing Government of the expected date of resumption of the Funding Suspension Obligations and the Payment Obligations (the "**Funding Resumption Date**");

(B) the parties shall adjust **Appendix C** to reflect the occurrence and duration of the Funding Suspension Period; and

(C) if the Corporation calculates that the Entrustment Cost will, as a result of the occurrence of the Funding Suspension Period, or a subsequent resumption of the Funding Suspension Obligations, increase (such increase being referred to as the "**Additional Funding Suspension Costs**"), the Corporation shall, as soon as reasonably practicable prior to the Funding Resumption Date, serve a notice on Government informing Government thereof and specifying the amount of the Additional Funding Suspension Costs. The Additional Funding Suspension Costs shall be borne by Government.

20.10 With effect from the Funding Resumption Date:

(A) the Corporation shall become obliged to perform the Funding Suspension Obligations; and

(B) Government shall become obliged to comply with **Clause 2.3**.

PART X

INTELLECTUAL PROPERTY RIGHTS

21. Intellectual Property Rights

21.1 The Corporation warrants, and shall at its own expense ensure, that:

(A) the Corporation has the full capacity, right, title, power and authority to grant the licence referred to in **Clause 21.2**:

(B) the use, operation or possession by Government and Government's assigns, successors and authorised users of the Deliverable Documents or any part thereof for any purposes contemplated by this Agreement or expressed in **Clause 21.2** does not and will not infringe the intellectual property rights of any party; and

(C) in respect of any part or parts of the Deliverable Documents of which any intellectual property right is vested in a third party, the Corporation shall obtain a valid and continuing licence, right or power which shall entitle both the Corporation and Government (including Government's assigns, successors and authorised users) to use such part or parts of the Deliverable Documents for any of the purposes contemplated by this Agreement and to grant the licence referred to in **Clause 21.2**.

21.2 Without prejudice to any other rights of Government to use the Deliverable Documents under this Agreement or otherwise at law, the Corporation hereby grants and agrees to grant to Government a perpetual, royalty free, worldwide, freely assignable, non-exclusive and irrevocable licence (carrying the right to grant sub-licenses) to use (including publish, display, exhibit and do any other acts set out in sections 22(1)(a) to 22(1)(g) and sections 23 to 29 of the Copyright Ordinance), reproduce, modify, adapt and translate any of the works, designs or inventions incorporated or referred to in anything used in or required for the Entrustment Activities and contained in the Deliverable Documents for all purposes relating to the Express Rail Link project and/or the subsequent alteration, extension, operation and maintenance thereof, including for the avoidance of doubt:

(A) in the case of the Deliverable Documents in relation to the Property Development Enabling Works as listed in **Part I** of **Appendix I**, for all purposes relating to the sale and development of Site A or any part or parts thereof and/or the subsequent use, management, alteration, extension, operation, maintenance and redevelopment thereof; and

(B) in the case of the Deliverable Documents in relation to the WKCD Interface Enabling Works as listed in **Part II** of **Appendix I**, for all purposes relating to the sale and development of any land forming part of the WKCD and/or the subsequent use, management, alteration, extension, operation, maintenance and redevelopment thereof.

The licence shall take effect from the date of submission or supply of the Deliverable Documents to Government in accordance with the provisions of this Agreement.

21.3 Where, under the licence granted pursuant to **Clause 21.2**, Government intends to reproduce, or to permit others to reproduce, any or any part of a Deliverable Document for publication, the form of presentation of the publication shall be advised to the Corporation.

21.4 The Corporation further agrees that the intellectual property rights in any materials developed by Government on the basis of the Deliverable Documents (including any alteration, modification, adaptation or translation of the Deliverable Documents) shall vest in and belong to Government absolutely upon creation.

21.5 The Corporation agrees that any assignment made by the owners of the intellectual property rights subsisting in the Deliverable Documents shall be subject to the licence of Government referred to in **Clause 21.2**. The Corporation shall procure that the owners also impose obligations on the assignees regarding their subsequent assignments of such intellectual property rights to be made subject to the said licence of Government with the intent that the obligations shall bind all subsequent assignees.

21.6 The Corporation hereby irrevocably and unconditionally waives and shall procure all authors concerned to waive in favour of Government and its assigns, successors and authorised users all moral rights in respect of the Deliverable Documents to which they may now or at any time in future be entitled under the Copyright Ordinance or under any similar law in force from time to time anywhere in the world.

21.7 Without prejudice to the rights and remedies of Government in respect of any breach by the Corporation of this **Clause 21**, the Corporation shall indemnify and keep indemnified Government against all actions, costs, claims, demands, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and all awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of whatsoever nature which Government may pay or incur in respect of infringement of any intellectual property rights and/or a breach of any of the warranties and undertakings given by the Corporation under this **Clause 21** arising from the design, development, use, possession or operation of the Deliverable Documents by Government for the purposes referred to in **Clause 21.2.**

21.8 The provisions of this **Clause 21** shall survive the termination of this Agreement and shall continue in full force and effect notwithstanding such termination.

21.9 The Corporation shall, if and when required by Government, at the Corporation's own expense and within the time stipulated by Government do all things (including without limitation the registration of the licence under the relevant ordinances) and execute all further instruments and documents as Government may require whether for the purpose of perfecting or effecting (as the case may be) the licence referred to in **Clause 21.2** or conferring the rights hereinbefore mentioned on Government.

PART XI

MISCELLANEOUS

22. The Ordinance

22.1 The Ordinance shall not be, or be deemed to be, amended or revoked, nor any of the obligations thereunder modified, in any respect by the provisions of this Agreement.

22.2 Nothing in this Agreement shall oblige the Corporation to conduct its business in any manner or to do anything which is incompatible with the provisions of the Ordinance, the Operating Agreement or the service concession agreement entered into between the Corporation and KCRC on 9 August 2007 (the "**Service Concession Agreement**").

23. 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.

24. 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.

25. 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 25** shall survive the termination of this Agreement and shall continue in full force and effect notwithstanding such termination.

26. 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 hereto.

27. 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.

28. Conflict

28.1 In the event of any conflict between the provisions of this Agreement and the Appendices, the provisions of this Agreement shall prevail.

28.2 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.

29. Payments

29.1 Subject to the foregoing provisions of this Agreement, if any sum would otherwise become due for payment on a day which is not a Business Day, such sum shall become due on the immediately preceding Business Day.

29.2 In the event of failure by either Government or the Corporation to pay any sum on the date on which such sum is expressed to be due hereunder (whether legally or formally demanded or not), the defaulting party shall, without prejudice to any remedies available to the other party hereunder or at law, or in equity, pay to the other party interest on such sum from but excluding the date of such failure to and including the date of actual payment (as well after as before judgement) calculated on a daily basis at the rate per annum which, at the date of the failure, is equal to the lower of:

(A) one (1) per cent. over the best lending rate for Dollars quoted from time to time by The Hongkong and Shanghai Banking Corporation Limited or such other bank as may be agreed from time to time between Government and the Corporation; and

(B) the rate of interest ordered or determined from time to time under section 49 of the High Court Ordinance (Cap. 4 of the Laws of Hong Kong) minus one (1) per cent.

29.3 Each of the Corporation and Government shall be entitled to set-off any fixed sums which have been awarded to it by a court in Hong Kong (or adjudicated by arbitration in accordance with **Clause 31** or agreed to between Government and the Corporation) and are payable by the other party against any payment due to such party under this Agreement.

29.4 Except as may be otherwise expressly provided herein, every sum payable by Government or the Corporation to the other party under this Agreement or payable under any Certificate shall be paid in full without set-off, counterclaim, condition or qualification of any nature and without any deduction or withholding for or on account of any taxes, levies, imposts, duties, charges or fees of any nature including, without limitation, by any provision of any ordinance.

30. Notices

30.1 The Railway Development Office of Highways Department is the representative of the Transport and Housing Bureau in executing this Agreement. Any notices, certificates or other communications to Government in connection with this Agreement shall be sent to the

Principal Government Engineer/Railway Development at Ho Man Tin Government Offices, Kowloon (facsimile number: 2714 8176) and shall also be copied to the Secretary for Transport and Housing at Murray Building, Garden Road, Central, Hong Kong (facsimile number: 2868 5261), or such other address or fax number, or to such other person, as may be notified by Government to the Corporation in accordance with the provisions of this **Clause 30**.

30.2 Any notices, certificates or other communications to the Corporation in connection with this Agreement shall be sent to it at MTR Headquarters Building, Telford Plaza, 33 Wai Yip Street, Kowloon Bay, Kowloon and marked for the attention of the Legal Director and Secretary (facsimile number: 2993 3379), or such other address or fax number, or to such other person, as may be notified by the Corporation to Government in accordance with the provisions of this **Clause 30**.

30.3 All notices shall be in writing. Any notice delivered by hand 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 surface mail within Hong Kong. No notice may be given by e-mail.

31. Dispute Resolution

31.1 In the event of any dispute arising from or connected with this Agreement (including a dispute regarding the existence or validity of this Agreement) (each a "**Dispute**"), a committee shall be formed consisting of the Corporation's chief executive officer and Permanent Secretary for Transport and Housing (Transport) at that time (or such delegates as each may validly appoint for the purposes of carrying out the actions set out in **Clause 31.2**, provided that prior notice of such appointment is given to the other party)(the "**Senior Executives Committee**").

31.2 All Disputes shall be referred to and settled by the mutual agreement of the members of the Senior Executives Committee, who shall state their mutual decision in writing and give notice of the same to the Corporation and Government.

31.3 If the Senior Executives Committee shall fail to give the mutual decision referred to in **Clause 31.2** above for a period of twenty eight (28) days after being requested to do so such Dispute or Disputes (as the case may be) shall be referred to mediation at Hong Kong International Arbitration Centre ("**HKIAC**") and in accordance with the HKIAC's Mediation Rules. If the mediation is abandoned by the mediator or is otherwise concluded or terminated without the Dispute or Disputes (as the case may be) being resolved, then such Dispute or Disputes (as the case may be) shall be referred to and determined by arbitration as a domestic arbitration (as such term is used in the Arbitration Ordinance (Cap. 341 of the Laws of Hong Kong)) at the HKIAC and in accordance with its Domestic Arbitration Rules or in the event that any change in Hong Kong's Arbitration Ordinance (Cap. 341 of the Laws of Hong Kong) removes the distinction between International and Domestic arbitrations, in accordance with such Arbitration Rules promulgated by the HKIAC in substitution or replacement of its Domestic Arbitration Rules.

31.4 The Corporation shall include in its contracts with each Third Party, appropriate provisions pursuant to which such Third Party agrees:

(A) that any dispute between Government and that Third Party arising from or connected with any deed poll made by Government in favour of such Third Party (including a dispute regarding the existence or validity of such deed poll) (each, a "**Deed Poll Dispute**") shall be referred to mediation at the HKIAC and in accordance with the HKIAC's Mediation Rules. If the mediation is abandoned by the mediator or is otherwise concluded or terminated without the Deed Poll Dispute being resolved then such Deed Poll Dispute shall be referred to and determined by arbitration as a domestic arbitration (as such term is used in the Arbitration Ordinance (Cap. 341 of the Laws of Hong Kong)) at the HKIAC and in accordance with its Domestic Arbitration Rules or, in the event that any change in Hong Kong's Arbitration Ordinance (Cap. 341 of the Laws of Hong Kong) removes the distinction between International and Domestic arbitrations, in accordance with such Arbitration Rules promulgated by the HKIAC in substitution or replacement of its Domestic Arbitration Rules; and

(B) to confirm in writing to Government within thirty (30) days of entering into the relevant contract with the Corporation that it agrees:

(i) to deal with any Deed Poll Dispute in the manner described in **Clause 31.4(A)**;

(ii) that Government may disclose the outline of any Deed Poll Dispute and the terms of settlement for which a settlement agreement has been reached or the outcome of the arbitration or any other means of resolution of any Deed Poll Dispute to the Public Accounts Committee of the Legislative Council upon its request subject to the terms of **Clause 33.6** (except that, for this purpose:

(1) the first and last sentences shall not apply; and

(2) the references in the remainder of **Clause 33.6** to "the Corporation" shall be read as "the relevant Third Party")

and **Clause 33.7**;

(iii) that in the event that Government informs it in writing in accordance with **Clause 33.6** (as applied by **Clause 31.4(B)(ii)**) before any disclosure is made to the Public Accounts Committee, Government may, at the same time, inform in writing the Corporation of the same (including the matters to be disclosed to the Public Accounts Committee).

31.5 In the event that Government, in accordance with **Clause 33.6** (as applied by **Clause 31.4(B)(ii)**), informs in writing the relevant Third Party before any disclosure is made to the Public Accounts Committee, Government shall, at the same time, inform in writing the Corporation of the same.

31.6 For the avoidance of doubt, none of the provisions of this **Clause 31** shall affect the right of the Corporation to suspend or terminate its obligations under this Agreement pursuant to **Clause 20**.

32. Governing Law and Jurisdiction

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

32.2 The parties hereto agree that any separate agreement or document entered into between them referred to in or contemplated by this Agreement (including, without limitation, the Instrument of Compliance and any Certificate) shall be governed by and construed in accordance with the laws of Hong Kong.

32.3 Subject to **Clause 31**, each party agrees that the courts of Hong Kong are to have jurisdiction to settle any proceeding, suit or action arising out of or in connection with the Agreement and/or separate document referred to in **Clause 32.2** and each party submits to the jurisdiction of such courts.

33. Disclosure of Information

33.1 If the Corporation has provided Government with documents and/or information excluding the documents comprising, and/or information contained in, the Deliverable Documents which it has declared in writing to be confidential and stamped accordingly, whether in relation to its practice or special circumstances or for other good cause, unless Government has reasonable grounds to disagree and within two (2) months of receipt of such documents and/or information (as the case may be) by notice in writing informs the Corporation of such disagreement, then such documents and/or information (as the case may be) will be treated as confidential and shall not be disclosed.

33.2 Except as necessary for the carrying out of the Entrustment Activities, the Corporation shall not (except with the prior written consent of, or as instructed by, Government) use or disclose Government Information to any person other than a person, agent or consultant employed or engaged by the Corporation in carrying out the Entrustment Activities or the Corporation's accountants, insurers, financial advisers, legal advisers, or other professional advisers employed or engaged in connection with the Entrustment Activities. For the purposes of this **Clause 33.2**, "**Government Information**" means:

(A) any information furnished by Government or the Mainland parties and authorities to the Corporation in relation to:

(i) boundary control arrangements with the Mainland and/or Hong Kong;

(ii) Hong Kong and/or Mainland security arrangements; and/or

(iii) information relating to Mainland land (including, without limitation, land surveying co-ordinates, lot details and borehole log information),

and which, at the time that information was furnished to the Corporation, was specified by Government or the Mainland parties and authorities (as the case may be) to be "**Government Information**";

(B) any information furnished by Government or the Mainland parties and authorities to the Corporation which is apparently of a confidential nature; and

(C) any part of any Deliverable Document which includes information described in **Clauses 33.2(A)** and/or **(B)**.

33.3 The obligations on the Corporation set out in **Clause 33.2** shall not apply to any information which:

(A) is publicly available or becomes publicly available through no act or omission of the Corporation; or

(B) the Corporation is required by law to disclose pursuant to an order of a court of competent jurisdiction, or a requirement of any Government department or entity, or any regulator which has jurisdiction over the Corporation.

33.4 Any disclosure to any person, agent, consultant, accountant, insurer, financial adviser, legal adviser or other professional adviser permitted under **Clause 33.2** shall be in strict confidence and shall be on a "need to know" basis.

33.5 The Corporation shall ensure that its employees, agents, consultants, accountants, insurers, financial advisers, legal advisers or other professional advisers as mentioned in **Clause 33.2** are aware of, and shall be required to comply with, the provisions contained in **Clauses 33.2** to **33.4** (inclusive). If required by Government, the Corporation undertakes to take reasonable steps to procure, for and on behalf of Government, a confidentiality undertaking in a form satisfactory to Government from any employee, agent, consultant, accountant, insurer, financial adviser, legal adviser or other professional adviser as mentioned in **Clause 33.2** to whom any Government Information is to be disclosed. Such reasonable steps shall include requiring such employees, agents, consultants, accountants, insurers, financial advisers, legal advisers and other professional advisers as mentioned in **Clause 33.2** to undertake, in any relevant contract or contracts between them and the Corporation, to provide to Government a confidentiality undertaking in a form satisfactory to Government.

33.6 In relation to disputes in relation to this Agreement between:

(A) Government and the Corporation; or

(B) the Corporation and any Third Party,

Government may, notwithstanding any provision of the Mediation Rules or, as the case may be, Arbitration Rules referred to in **Clause 31** and subject to the following provisions, disclose the outline of any such dispute and the terms of settlement for which a settlement agreement has been reached or the outcome of the arbitration or any other means of resolution of dispute to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the Public Accounts Committee, Government shall inform the Corporation in writing. Disclosures shall not be made to the Public Accounts Committee before

expiry of the first six (6) months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute without the written consent of the Corporation (such consent not to be unreasonably withheld). The Corporation shall be deemed to have given its consent to disclosures on the expiry of the first six (6) months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute. The Corporation may, if it considers it necessary to protect the sensitive nature of certain information relating to it, request Government to disclose such specified information to the Public Accounts Committee strictly on a confidential basis. If Government considers that there are legitimate grounds to accede to the Corporation's request or requests (as the case may be), Government shall convey the said request or requests (as the case may be) to the Public Accounts Committee for its consideration. The Corporation shall include in its contracts with Third Parties appropriate provisions on disclosure of information to the Public Accounts Committee of the Legislative Council upon its request on terms similar to the terms of this **Clause 33.6**.

33.7 This **Clause 33** shall continue to apply after the termination of this Agreement without limitation in time.

34. Force Majeure

34.1 If either party is prevented or delayed in the performance of any of its obligations under this Agreement as a result of Force Majeure, that party shall forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to Force Majeure, and will, subject to service of such notice and having taken all reasonable steps to avoid such prevention or delay, have no liability for any losses suffered by other parties or otherwise in respect of the performance of such of its obligations as are prevented by the Force Majeure during the continuation of such Force Majeure, and for such time after they cease as is necessary for the party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations. The corresponding obligations of the other party will be suspended to the same extent.

34.2 If the Force Majeure has the effect of preventing or delaying the performance of the Entrustment Activities (excluding the works comprised in and all activities relating to the Miscellaneous Works, if any) in accordance with the Entrustment Programme set out in **Appendix C**, then the Corporation shall, in consultation with Government, revise the Entrustment Programme to take account of such prevention or delay and shall agree with Government any material changes made pursuant to this **Clause 34.2**.

34.3 If the Force Majeure has the effect of preventing or delaying the performance of any of the works comprised in or the activities relating to the Miscellaneous Works (if any) in accordance with the timetable agreed between the Corporation and Government in respect of such Miscellaneous Works, then the Corporation shall, in consultation with Government, revise such timetable to take account of such prevention or delay and shall agree with Government any material changes made to the agreed date(s) of completion of the Miscellaneous Works pursuant to this **Clause 34.3**.

34.4 The party claiming to be prevented or delayed in the performance of any of its obligations under this Agreement by reason of Force Majeure shall use all reasonable endeavours to bring the Force Majeure event to a close or to find a solution by which the Agreement may be performed despite the continuance of the Force Majeure.

35. Design Submissions and Construction

35.1 Without prejudice to the rights and obligations of the parties under the Instrument of Compliance and notwithstanding the difference in respect of applicability of the Buildings Ordinance to the works in relation to a railway project carried out by the Corporation under the Ownership Approach (subject, in any event, to section 54(2) of the Ordinance) and the works in relation to a railway project carried out by the Corporation under the concession approach (as in the case of the Express Rail Link, to which the Buildings Ordinance is not applicable), the Corporation agrees that it shall carry out Consultation in relation to the Railway Works in substantially the same manner and substantially to the same extent (adjusted as is necessary to reflect the specific requirements of the Railway Works, and by agreement between Government and the Corporation) as if the Express Rail Link were being carried out by the Corporation under the Ownership Approach.

35.2 For the purposes of this **Clause 35**:

(A) "**Consultation**" means such consultation as may be stipulated by the Building Authority for a railway project carried out by the Corporation under the ownership approach including, but not limited to, submissions of design submissions in respect of structural engineering, geotechnical engineering, safety, security and transport integration to the relevant Government departments and consultation with the Station and Transportation Integration Committee, Safety and Security Coordination Committee and Trackside Safety Security Committee; and

(B) "**Building Authority**" has the meaning ascribed to that term in the Buildings Ordinance.

36. Temporary Discontinuance of the Works

36.1 Government shall, where it is necessary in order to comply with the terms of any Court Order, have power to order, in writing, the Corporation to discontinue temporarily the procurement of the carrying out of, or the carrying out of, the Works or any part thereof for such time and times and in such manner as Government reasonably considers to be necessary. The Corporation shall during such period of temporary discontinuance properly protect and secure the Works or, as the case may be, the relevant part thereof, so far as is necessary in the reasonable opinion of Government. The Corporation shall continue to proceed with due diligence other parts of the Works not affected by any order issued by Government pursuant to this **Clause 36.1**.

36.2 Where the Corporation has incurred additional expenditure by reason of a temporary discontinuance order given by Government under **Clause 36.1**, then Government shall, upon receipt of reasonable satisfactory evidence from the Corporation, increase the Project Management Cost by an amount equal to such additional expenditure (to be payable on such date or dates as may be agreed between the Corporation and Government but, in any event, no later than the last scheduled date for payment of the Project Management Cost set out in **Appendix F**) and the Entrustment Cost shall be adjusted accordingly, provided that the Corporation shall exercise the skill and care reasonably to be expected of a professional and competent project manager in seeking to ensure that such additional expenditure is kept to a reasonable level.

36.3 The provisions of **Clauses 36.1** and **36.2** are without prejudice to the rights and remedies of either party under any other provisions of this Agreement, under statute, at common law or in equity.

36.4 For the purposes of **Clause 36**:

"**Court Order**" means any order or direction made by a court in Hong Kong in respect of any legal proceedings (including but not limited to judicial review proceedings) taken out to challenge any matter affecting the execution of the Works or any part thereof.

37. Collateral Deed from Third Party contractors

37.1 The Corporation shall ensure that any contract with a Third Party contractor shall, inter alia, provide that the Third Party contractor under the contract shall execute as a deed and provide to Government a collateral deed in the form appended in **Appendix L** to this Agreement together with such amendments as Government may approve, such approval not to be unreasonably withheld or delayed (in each case, a "**Collateral Deed**").

37.2 The Corporation shall procure that, within a reasonable period after the time of execution of any contract with a Third Party contractor, the Third Party contractor under the contract shall have provided a duly executed Collateral Deed to Government in accordance with **Clause 37.1**. The provision of a duly executed Collateral Deed by any Third Party contractor to Government shall be without prejudice to and shall not deemed or construed as to limit or exclude any rights or remedies which Government may have against the Corporation under this Agreement.

37.3 The Corporation shall provide Government with all information, co-operation and assistance which Government may reasonably require in order to enforce its rights under any Collateral Deed, provided that, prior to the handing over of all the Works or, where **paragraph 1.10 of Appendix H** applies, the relevant parts of the Works being the subject of the handover pursuant to **paragraph 1.10** of **Appendix H** in accordance with the Handover Procedure, Government shall not seek to enforce its rights under any Collateral Deed except with the consent of the Corporation (such consent not to be unreasonably withheld or delayed). The provisions of this **Clause 37.3** shall survive the termination of this Agreement and shall continue in full force and effect notwithstanding such termination.

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

SIGNED, SEALED AND DELIVERED

By: _____ LEONARD B. TURK _____ LEGAL DIRECTOR & SECRETARY.

Signature | Name of Director | Title of Director

for and on behalf of

MTR CORPORATION LIMITED

Pursuant to a Power of Attorney granted by the Corporation on 2 July 2009

in the presence of:

Name, address and signature of witness:

Name: JOHN CARTWRIGHT, SLAUGHTER AND MAY

Address: 47/F, JARDINE HOUSE
ONE CONNAUGHT PLACE
CENTRAL, HONG KONG SAR

SIGNED, SEALED AND DELIVERED

By

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

By

_____	Philip Yung	Deputy Secretary (Transport) 1
Signature	Name	Title

in the presence of:

Name, address and signature of witness:

Name: Fiona Au

Address: 16/F, Murray Building, Garden Road, Hong Kong

Dated the 26 day of January 2010

ENTRUSTMENT AGREEMENT FOR

CONSTRUCTION AND COMMISSIONING OF THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

APPENDIX A

Scope of Railway Works, RRIW and EPIW, Property Development Enabling Works and WKCD Interface Enabling Works

APPENDIX A

SCOPE OF RAILWAY WORKS, RRIW AND EPIW, PROPERTY DEVELOPMENT ENABLING WORKS AND WKCD INTERFACE ENABLING WORKS

1. As at the date of this Agreement, the Railway Works comprise:

1.1 approximately twenty-six (26) kilometres long underground tunnels and associated facilities, emergency rescue station, tunnel ventilation shafts and adits;

1.2 a new underground terminus in West Kowloon with provision of boundary control facilities, vehicle loading/unloading areas, car parks and other associated facilities to support the operation of the terminus;

1.3 rail track formation works, earthworks, civil and structural works, electrical and mechanical works and rolling stock;

1.4 construction of other associated railway facilities including ventilation shafts, ventilation buildings and associated emergency access roads, plant buildings, train stabling yard/rescue station and associated inspection and maintenance facilities, train control and communication facilities and electrical and mechanical plant;

1.5 reconstruction and realignment of existing roads including carriageways and footpaths;

1.6 diversion of existing utilities;

1.7 preventive and remedial works including underpinning the foundations of existing buildings or structures; and

1.8 ancillary works including associated building services works, architectural works, drainage works, slope works, landscaping works and other road works.

2. As at the date of this Agreement, the RRIW comprise the removal and replacement, modification or improvement of existing privately owned facilities, facilities owned or operated by the Corporation or facilities owned by Government or public bodies required as a consequence of the construction of the Express Rail Link. In relation to facilities not owned or operated by the Corporation, the design, construction and finishes of the RRIW are to be executed by the Corporation to the satisfaction of respective private owners, Government or public bodies (as the case may be). Following the completion of the RRIW, the RRIW shall be owned, managed, maintained and controlled by such private owner, the Corporation, Government or public bodies, as the case may be. As at the date of this Agreement, the RRIW comprise:

2.1 modifications to existing MTR stations, lines and facilities;

2.2 reprovisioning of footbridges or any structures along the tunnel alignment;

2.3 reprovisioning of playgrounds/sitting out areas/amenity areas permanently closed for making way for the Express Rail Link; and

2.4 reprovisioning of the Wui Cheung Road public transport interchange.

3. As at the date of this Agreement, the EPIW comprise any item of work which is associated with or ancillary to the Express Rail Link for the purposes of enabling the Express Rail Link to be commissioned for Commercial Operations or which has a significant interface with any item of the Railway Works but excluding, for the avoidance of doubt, any item of work falling within the scope of any other entrustment agreements and/or project agreements entered into by Government and the Corporation or any third party prior to the date of this Agreement. The design, construction and finishes of the EPIW are to be executed by the Corporation to the satisfaction of Government. Following the completion of the EPIW, the EPIW will be handed over to and will be owned, managed, maintained and controlled by Government. As at the date of this Agreement, the EPIW comprise:

3.1 enabling works for CEDD footbridges at Sham Mong Road;

3.2 pedestrian links including subways and footbridges between West Kowloon Terminus and nearby areas, including those connecting existing MTR stations; and

3.3 roadwork (including associated noise mitigation measures) associated with the West Kowloon Terminus and surrounding areas.

4. As at the date of this Agreement the Property Development Enabling Works comprise foundation, substructure, and transfer plate (if any) or the like and the necessary facilities to allow future property development above the Express Rail Link terminus in West Kowloon. For the avoidance of doubt, the property development stated in this paragraph excludes those inside the WKCD. The planning of the property development and design of the associated enabling works are to be executed by the Corporation to the satisfaction of Government.

5. As at the date of this Agreement, the WKCD Interface Enabling Works comprise foundation, substructure, and transfer plate (if any) or the like and the necessary facilities to allow construction of WKCD buildings above the Express Rail Link terminus where the terminus has extended into the WKCD area. The Corporation shall liaise with the relevant parties and authorities relating to the West Kowloon Cultural District and design the foundations, substructure, and transfer plate or the like to allow construction of WKCD structures above the Express Rail Link terminus within the WKCD area.

Dated the 16 day of January 2010

ENTRUSTMENT AGREEMENT FOR

CONSTRUCTION AND COMMISSIONING OF THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

APPENDIX B

Entrustment Activities

APPENDIX B

ENTRUSTMENT ACTIVITIES

1. Entrustment Activities for the Railway Works

As at the date of this Agreement, the Entrustment Activities for the Railway Works comprise:

1.1 completion of all necessary aspects of the detailed design of the Railway Works that are not already included in the scope of the Preliminary Entrustment Agreement;

1.2 invitation and assessment of tenders in respect of, and award of, Third Party Contracts for the Railway Works, including any commercial negotiations and satisfaction of all necessary procedures within the Corporation and all requirements of this Agreement;

1.3 all necessary additional ground investigations not included in the scope of the Preliminary Entrustment Agreement;

1.4 completion or procurement of completion of the construction of the Railway Works;

1.5 project management and site supervision of the Third Party Contracts associated with the Railway Works, including, but not limited to, management and enforcement of claims and conduct of related dispute resolution proceedings;

1.6 testing, commissioning and handing over of the completed Railway Works in accordance with the provisions of **Appendix H**;

1.7 provision of support by the Corporation to Government for liaison with Mainland parties and authorities on matters relating to the Express Rail Link;

1.8 provision of support by the Corporation to Lands Department for administrative work associated with securing the necessary entitlements in respect of land required for the construction and operation of the Express Rail Link and for land resumption and clearance matters relating to the Express Rail Link project, in each case, in accordance with the Division of Responsibilities;

1.9 provision of support by the Corporation to Lands Department in respect of the administrative work associated with the preparation of vesting deeds and/or other land-related documentation required for the operation of the Express Rail Link;

1.10 if required by Government, provision of support and advice by the Corporation to Government and Government's nominees in considering and assessing any claims for compensation under any of the Railways Ordinance, the KSL Vesting Deed and any other relevant document; and

1.11 following completion of the Railway Works, removal from the land occupied by the Railway Works and all related Works Areas of all plant and equipment used by the Corporation and/or Third Parties in connection with the design and construction of the Railway Works and all surplus materials (except those required for completing the outstanding Works and/or

defective Works contained in the Outstanding Items List or to discharge the Corporation's other obligations under this Agreement) and rubbish of any kind whatsoever.

2. Entrustment Activities for the RRIW and EPIW

As at the date of this Agreement, the Entrustment Activities for the RRIW and EPIW comprise:

2.1 completion of all necessary aspects of the detailed design of the RRIW and EPIW that are not already included in the scope of the Preliminary Entrustment Agreement;

2.2 invitation and assessment of tenders in respect of, and award of, Third Party Contracts for the RRIW and EPIW, including any commercial negotiations and satisfaction of all necessary procedures within the Corporation and all requirements of this Agreement;

2.3 all necessary additional ground investigations not included in the scope of the Preliminary Entrustment Agreement;

2.4 completion or procurement of completion of the construction of the RRIW and EPIW;

2.5 project management and site supervision of the Third Party Contracts associated with the RRIW and EPIW, including, but not limited to, management and enforcement of claims and conduct of related dispute resolution proceedings;

2.6 testing, commissioning and handing over of the completed RRIW and EPIW works in accordance with the provisions of **Appendix H**;

2.7 if required by Government, assisting Government and any Government nominee in carrying out quality assurance in relation to the construction of the RRIW and EPIW;

2.8 provision of support by the Corporation to Lands Department for administrative work associated with securing the necessary entitlements in respect of land required for the construction and operation of the RRIW and EPIW;

2.9 if required by Government, provision of support and advice by the Corporation to Government and Government's nominees in considering and assessing any claims for compensation under any of the Railways Ordinance, the KSL Vesting Deed and any other relevant document; and

2.10 following completion of each item of the RRIW and the EPIW, removal from the land occupied by the relevant item of RRIW or EPIW (and all Works Areas related to the completion of such item) of all plant and equipment used by the Corporation and/or Third Parties in connection with the design and construction of the relevant item of RRIW or EPIW and all surplus materials (except those required for completing the outstanding Works and/or defective Works contained in the Outstanding Items List or to discharge the Corporation's other obligations under this Agreement) and rubbish of any kind whatsoever.

3. Entrustment Activities for the Property Development Enabling Works and WKCD Interface Enabling Works

As at the date of this Agreement, the Entrustment Activities for the Property Development Enabling Works and WKCD Interface Enabling Works comprise:

3.1 invitation and assessment of tenders in respect of, and award of, Third Party Contracts for the Property Development Enabling Works and WKCD Interface Enabling Works, including any commercial negotiations and satisfaction of all necessary procedures within the Corporation and all requirements of this Agreement;

3.2 all necessary additional ground investigations not included in the scope of the Preliminary Entrustment Agreement;

3.3 completion or procurement of completion of the construction of the Property Development Enabling Works and WKCD Interface Enabling Works;

3.4 project management and site supervision of the Third Party Contracts associated with the Property Development Enabling Works and WKCD Interface Enabling Works including, but not limited to, management and enforcement of claims and conduct of related dispute resolution proceedings;

3.5 testing, commissioning and handing over of the completed Property Development Enabling Works and WKCD Interface Enabling Works in accordance with the provisions of **Appendix H**;

3.6 following completion of each item of the Property Development Enabling Works and WKCD Interface Enabling Works, removal from the land occupied by the relevant item of Property Development Enabling Works or WKCD Interface Enabling Works (and all Works Areas related to the completion of such item) of all plant and equipment used by the Corporation and/or Third Parties in connection with the design and construction of the relevant item of Property Development Enabling Works or WKCD Interface Enabling Works and all surplus materials (except those required for completing the outstanding Works and/or defective Works contained in the Outstanding Items List or to discharge the Corporation's other obligations under this Agreement) and rubbish of any kind whatsoever.

3.7 all necessary detailed design aspects including statutory approvals permits for the design and construction of Property Development Enabling Works and WKCD Interface Enabling Works; and

3.8 provision of support to Lands Department for administrative work associated with the demarcation of the interface between railway and property development in respect of the ownership, management, maintenance and other related aspects.

4. Other Entrustment Activities

Performing all other services as are required under this Agreement in relation to the Express Rail Link project.

Dated the 26 day of January 2010

ENTRUSTMENT AGREEMENT FOR

CONSTRUCTION AND COMMISSIONING OF THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

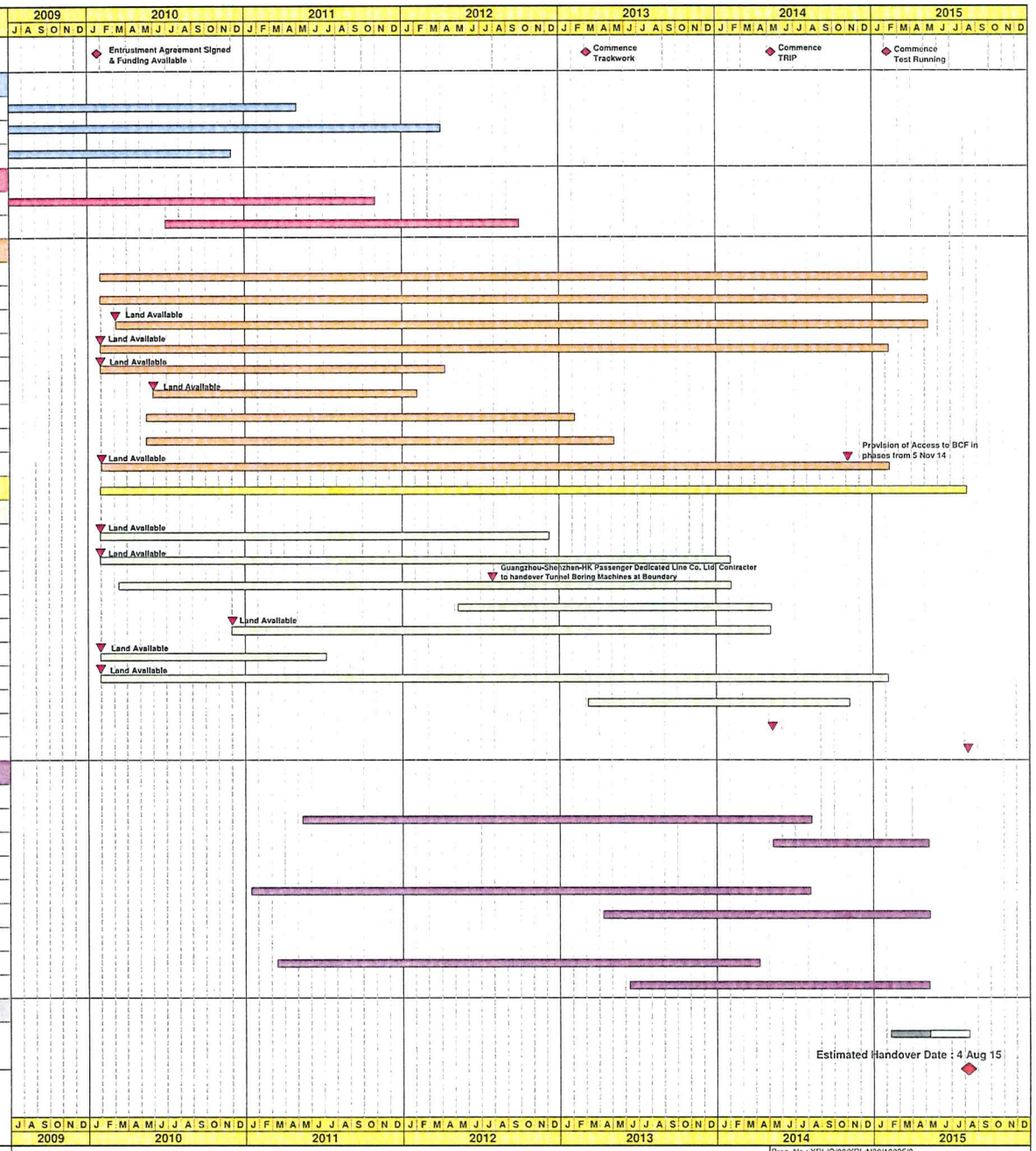
APPENDIX C

Entrustment Programme

APPENDIX C

ENTRUSTMENT PROGRAMME

ACTIVITY DESCRIPTION	COMPLETION DATE
1. DESIGN	
Civil Works Design & Tender Documents	30-Apr-11
Systemwide E&M Design & Tender Documents	31-Mar-12
Trackwork Design & Tender Documents	30-Nov-10
2. CONTRACT PROCUREMENT	
Civil Construction Contracts	31-Oct-11
E&M Works Contracts	30-Sep-12
3. RRIW & EPIW / ENABLING WORKS	
RRIW	5-May-15
EPIW	5-May-15
Property Development Enabling Works	5-May-15
WKCD Interface Enabling Works	4-Feb-15
Removal & Reprovisioning of Nam Cheong Property Foundation	4-Apr-12
Removal of CLP Substation at Shum Mong Road	4-Feb-12
Modification Works for MTR Tsuen Wan Line Pump Sump	4-Feb-13
Obstruction Removal of 4 Existing Box Culverts Along Sham Mong Road (Note 1)	5-May-13
Completion of Boundary Control Facilities at West Kowloon Terminus (WKT)	4-Feb-15
4. RAILWAY WORKS	4-Aug-15
(A) CIVIL CONSTRUCTION	
Tunnel Obstruction Removal	5-Dec-12
Tunnels (Mai Po to Hoi Ting Road)	4-Feb-14
Tunnels (Huanggang to Mai Po - HK Section)	4-Feb-14
Tunnel Ventilation Buildings	5-May-14
Shek Kong Stabling Sidings (SSS) and Emergency Rescue Siding (ERS)	5-May-14
Piling Works of West Kowloon Terminus (Site A & WKCD)	5-Jul-11
WKT and Approach Tunnels	4-Feb-14
Trackwork & Overhead Line	4-Nov-14
Commencement of Testing and Commissioning	6-May-14
Completion of Testing and Commissioning	4-Aug-15
(B) E&M CONSTRUCTION WORKS	
(a) Rolling Stock	
Design, Manufacturing & Delivery	4-Aug-14
Testing & Commissioning	5-May-15
(b) WKT / Vent Buildings / SSS	
Design, Manufacturing & Delivery	4-Aug-14
Installation & Testing	5-May-15
(c) Track Related Works	
Design, Manufacturing & Delivery	4-Apr-14
Installation & Testing	5-May-15
(C) TEST & TRIAL RUNNING	
Test & Trial Running	4-Aug-15



Notes:

1. Excluding reinstatement works.

MTR

EXPRESS RAIL LINK PROJECT
ENTRUSTMENT PROGRAMME

Prog. No.: XRL/O/00/XRL/N30/100025/0

Date	Revision	Checked	Approved
25-Jan-10	0	ML/DM	BC

Appendix C

Dated the 26 day of January 2010

ENTRUSTMENT AGREEMENT FOR

CONSTRUCTION AND COMMISSIONING OF THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

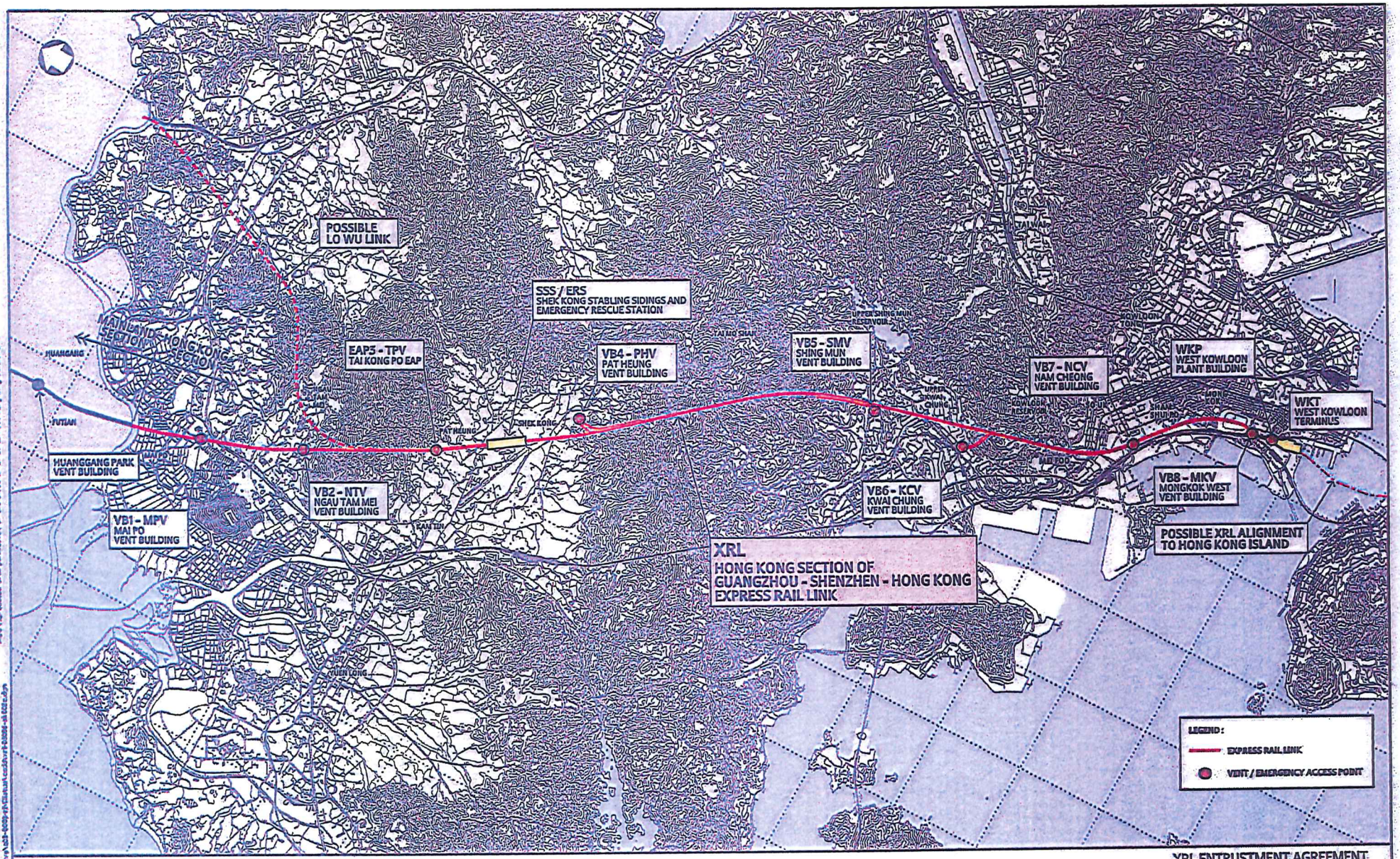
MTR CORPORATION LIMITED

APPENDIX D

Express Rail Link

APPENDIX D

EXPRESS RAIL LINK



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EXPRESS RAIL LINK ALIGNMENT PLAN

XRL ENTRUSTMENT AGREEMENT
APPENDIX D (SHEET 1 OF 3)
DWG NO.: XRL/08008/SK008

DATE: 16DEC2009 REV: C

FULL SIZE A3

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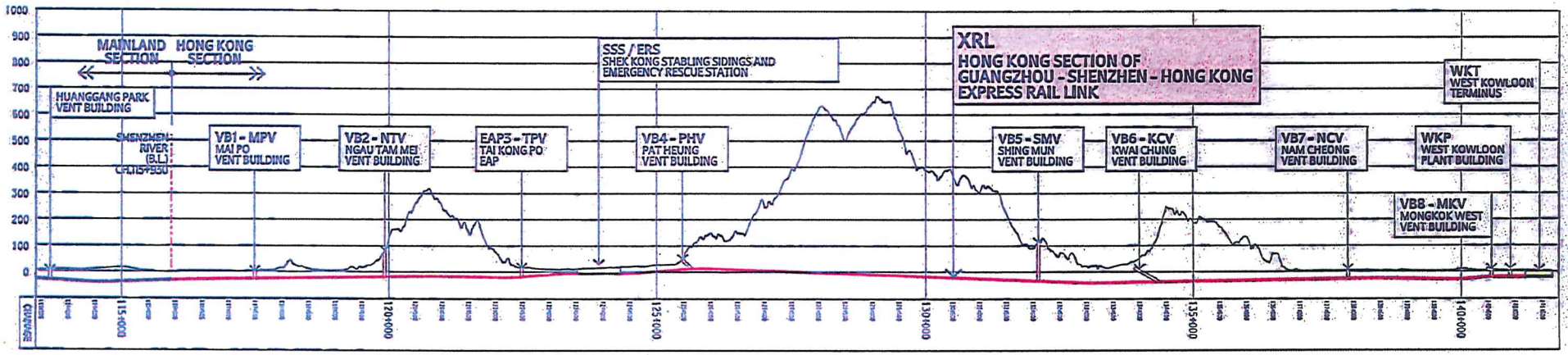

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EXPRESS RAIL LINK LONGITUDINAL SECTION

XRL ENTRUSTMENT AGREEMENT
APPENDIX D (SHEET 2 OF 3)
DWG NO.: XRL/08008/SK009

DATE: 16DEC2009 REV: C

FULL SIZE A3

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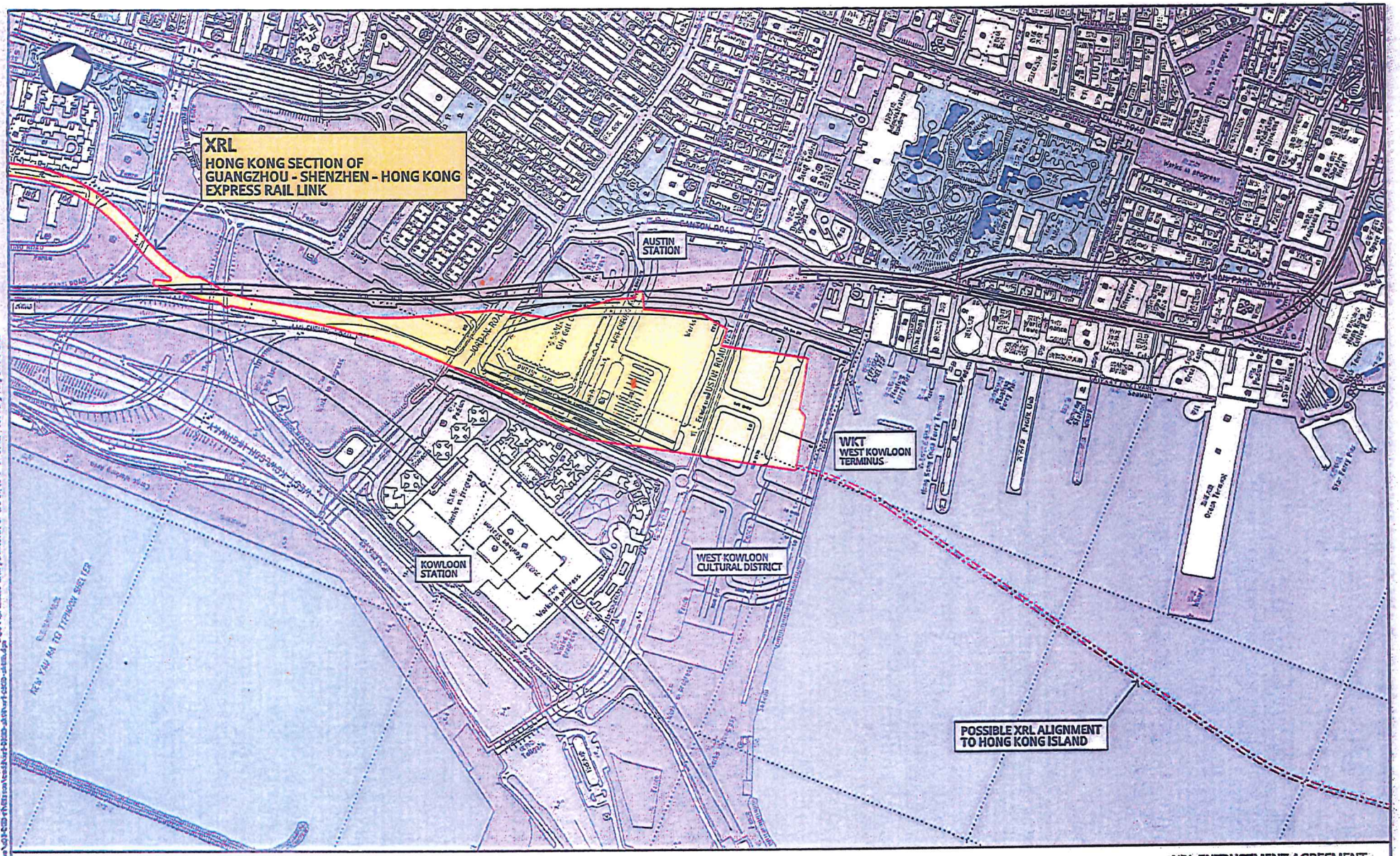

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EXPRESS RAIL LINK
WEST KOWLOON TERMINUS

XRL ENTRUSTMENT AGREEMENT
APPENDIX D (SHEET 3 OF 3)
DWG NO.: XRL/08010/SK011

DATE: 16DEC2009 REV: B

FULL SIZE A3

Dated the 26 day of January 2010

ENTRUSTMENT AGREEMENT FOR

CONSTRUCTION AND COMMISSIONING OF THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

APPENDIX E

Payment of Third Party Costs and Miscellaneous Works Fee

APPENDIX E

PAYMENT OF THIRD PARTY COSTS AND MISCELLANEOUS WORKS FEE

In this **Appendix E**, except where the context otherwise requires, the following terms and expressions shall have the following meanings:

"**Authorised Signatories**" means:

(i) in the case of a Certificate submitted in relation to the Third Party Costs, those persons whose identities have been notified to Government by the Corporation in writing from time to time as being duly authorised by the Corporation to sign Certificates; and

(ii) in the case of a Certificate submitted in relation to the Miscellaneous Works Fee, at least one senior manager from the Corporation's finance department who has no material day-to-day involvement in the Express Rail Link project and one other person whose identity has been notified to Government by the Corporation in writing from time to time as being duly authorised by the Corporation to sign Certificates.

"**Business Day**" means a day (excluding Saturdays) on which licensed banks are open for business generally in Hong Kong.

"**Certified Amount**" means the total amount specified in a Certificate to be payable by Government.

"**Default Interest**" means, in relation to a Certified Amount that is not paid on the relevant Due Date, interest calculated at the rate per annum which at the date of the failure to pay the Certified Amount is equal to the lower of:

(i) one (1) per cent. over the applicable best lending rate for the relevant currency quoted from time to time by The Hongkong and Shanghai Banking Corporation Limited or such other bank as may be agreed from time to time between Government and the Corporation; and

(ii) the rate of interest ordered or determined from time to time under section 49 of the High Court Ordinance (Cap. 4 of the Laws of Hong Kong) minus one (1) per cent.

"**Due Date**" means the date specified in a Certificate as the date on which payment of the Certified Amount is due being the day which falls on the 30th day after the date of the relevant Certificate or, notwithstanding **Clause 29**, if such day is not a Business Day, then the next Business Day immediately following such 30th day.

1. Certification by Corporation

1.1 Subject to the provisions of this **Appendix E**, Government shall pay the Third Party Costs and the Miscellaneous Works Fee in accordance with each Certificate (as defined in **Paragraph 1.2** below) submitted by the Corporation pursuant to **Paragraph 1.2** below.

1.2 For the purposes of **Paragraph 1.1** above, the Corporation shall from time to time submit to Government a certificate in substantially the form set out in the Annex to this **Appendix E** (each, a "**Certificate**") signed by any two of the Authorised Signatories referred to in part (i) of the definition of "Authorised Signatories" (in the case of a Certificate submitted in relation to the Third Party Costs) or the Authorised Signatories referred to in part (ii) of the definition of "Authorised Signatories" (in the case of a Certificate submitted in relation to the Miscellaneous Works Fee). The Corporation shall procure that such Certificate shall be received by Government within five days of the date of such Certificate

1.3 Government shall be entitled to act and rely on each Certificate without liability or further investigation and shall not be required to make any payments in respect of the Third Party Costs and the Miscellaneous Works Fee other than as set out in the Certificates. In producing each Certificate, the Corporation shall exercise the skill and care reasonably to be expected of a professional and competent project manager and, where relevant, shall ensure it is in compliance with the relevant Third Party Contract and shall act fairly and impartially between Government and each relevant Third Party.

1.4 Government shall ensure that each Certified Amount shall be paid in accordance with the details specified in each Certificate no later than the relevant Due Date.

1.5 For the avoidance of doubt, Government shall not be entitled to delay or refuse to make any payment specified in any Certificate.

1.6 If Government fails to pay any Certified Amount in accordance with a Certificate on the relevant Due Date for that Certificate, Government shall pay Default Interest to the relevant payee specified in the Certificate as being entitled to the Certified Amount, calculated on a daily basis, on that Certified Amount from but excluding the Due Date to and including the date on which payment of the Certified Amount is actually made (as well after as before judgement).

Annex

[Form of Certificate]

To: Principal Government Engineer/Railway Development
Ho Man Tin Government Offices
Kowloon

Attention: Principal Government Engineer/Railway Development

(Fax Number: [2714 8176])
[Date]

Certificate pursuant to Entrustment Agreement for Construction and Commissioning in relation to the Express Rail Link
dated January 2010 (the "Agreement")

This Certificate is submitted by the Corporation pursuant to **Clause 2 of and paragraph 1.2 of Appendix E to the Agreement**.

In accordance with **Clause 2 of and paragraph 1.1 of Appendix E to the Agreement**, Government shall pay the amount[s] set out below to the payee[s] on the Due Date[s] set out below:

Category of Amounts	**Certified Amount**	**Payee**	**Payee's Payment details**	**Due Date**
[Third Party Costs]	*To be completed*	*To be completed*	*To be completed*	*To be completed*
[Miscellaneous Works Fee]	*To be completed*	*Corporation*	*To be completed*	*To be completed*

The above amount[s] [has/have] been determined in accordance with the Corporation's management systems and procedures referred to in **Clause 4.6(C)** of the Agreement.

[In relation to each of the above Third Party Costs, we attach a copy of the certificate signed by the [Engineer's Representative/Employer's Delegate/Employer's Representative/Engineer's Delegate] (as the case may be) and the Contracts Administration Manager and dated [•]]

Words and expressions defined in the Agreement shall have the same meaning when used in this letter.

For and on behalf of
MTR Corporation Limited

Signed: _____	Signed : _____

Dated the 26 day of January 2010

ENTRUSTMENT AGREEMENT FOR

CONSTRUCTION AND COMMISSIONING OF THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

APPENDIX F

Project Management Cost and Miscellaneous Works Fee

APPENDIX F

PROJECT MANAGEMENT COST AND MISCELLANEOUS WORKS FEE

1. Project Management Cost

1.1 Pursuant to **Clause 2.1**, Government shall pay the Corporation the Project Management Cost in accordance with the table set out below:

Payment Schedule (Amount in HK$M)

Valuation Period		Payment Date	Total (HK$M)	Year Total (HK$M)
2009	Up to end Dec.	end Jan 10	343.0	343.0 (N1)
2010	Q1	end Jan 10	121.9	593.6
	Q2	end Mar 10	131.9	
	Q3	end Jun 10	175.9	
	Q4	end Sep 10	163.9	
2011	Q1	end Dec 10	170.2	730.6
	Q2	end Mar 11	169.2	
	Q3	end Jun 11	210.0	
	Q4	end Sep 11	181.2	
2012	Q1	end Dec 11	190.4	784.1
	Q2	end Mar 12	180.4	
	Q3	end Jun 12	221.9	
	Q4	end Sep 12	191.4	
2013	Q1	end Dec 12	202.4	815.0
	Q2	end Mar 13	193.4	
	Q3	end Jun 13	229.1	
	Q4	end Sep 13	190.1	
2014	Q1	end Dec 13	195.1	

	Q2	end Mar 14	178.9	744.6
	Q3	end Jun 14	199.8	
	Q4	end Sep 14	170.8	
2015	Q1	end Dec 14	185.7	530.6
	Q2	end Mar 15	137.7	
	Q3	end Jun 15	119.5	
	Q4	end Sep 15	87.7	
2016	Q1	end Dec 15	28.7	46.5
	Q2	end Mar 16	8.8	
	Q3	end Jun 16	6.0	
	Q4	end Sep 16	3.0	
2017	Q1	end Dec 16	2.0	2.0

Notes:

(N1)
$343M is the agreed amount of project management fee to be settled for the valuation period up to the end of December 2009. It includes the cumulative amount recovered by the Corporation under the Preliminary Entrustment Agreement.

1.2 Unless otherwise agreed between the parties, Government shall ensure that each portion of the Project Management Cost shall be paid into a Hong Kong bank account notified by the Corporation to Government from time to time, no later than the relevant payment date specified in the table above (in each case a "**Project Management Cost Payment Date**").

1.3 If Government fails to pay any portion of the Project Management Cost (the "**Unpaid Amount**") on the relevant Project Management Cost Payment Date, Government shall pay interest on such Unpaid Amount to the Corporation in accordance with **Clause 29.2**.

1.4 In the event that a material modification to any or all of **Appendices A**, **B** and/or **C** is likely, in the reasonable opinion of the Corporation, to result in a material increase or decrease in the project management responsibilities or costs of the Corporation and in the circumstances set out in **Clause 36.2**, the Corporation and Government shall negotiate in good faith to agree an increase or, as the case may be, decrease in the Project Management Cost and any necessary amendments to the contents of this **Appendix F**.

1.5 Without prejudice to the Corporation's rights under **paragraph 1.4**, in the event that a material modification to **Appendix C** (including a modification pursuant to **Clause 8.1**, an adjustment pursuant to **Clauses 8.2, 20.6(C)(ii)** or **20.9(B)** and a revision pursuant to **Clause34.2**) has resulted in a material prolongation of the Entrustment Programme or any part thereof, Government and the Corporation shall, in each case, negotiate in good faith to agree any necessary amendments to the payment schedule set out in **paragraph 1.1** as are fair and reasonable having regard to all the relevant circumstances including, but not limited to, the duration of the material prolongation and the nature of the relevant Entrustment Activities that have been so prolonged.

1.6 For the avoidance of doubt:

(A) the Corporation shall continue to comply with its obligations under this Agreement (including, but not limited to, provision of administrative support pursuant to **Clauses 11.4** and **11.6**, claims management and enforcement, conduct of related dispute resolution proceedings and completion of any outstanding Entrustment Activities) notwithstanding its receipt from Government of the full amount of the Project Management Cost; and

(B) except where provided in this Agreement or otherwise agreed between the parties, Government shall not be required to compensate the Corporation for any costs it incurs in complying with its obligations under **paragraph 1.6(A)**.

2. Miscellaneous Works Fee

2.1 Pursuant to **Clause 2.1**, where the Corporation carries out or procures the carrying out of any Miscellaneous Works, unless otherwise agreed in writing between Government and the Corporation, the Corporation shall be entitled to be paid an amount equal to the Relevant Fixed Percentage of the Third Party Costs attributable to the Miscellaneous Works from time to time (the "**Miscellaneous Works Fee**").

2.2 Unless otherwise agreed in writing between Government and the Corporation, the Corporation shall be paid the Miscellaneous Works Fee by Government in accordance with **Appendix E**.

Dated the 26 day of January 2010

ENTRUSTMENT AGREEMENT FOR

CONSTRUCTION AND COMMISSIONING OF THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

APPENDIX G

Content requirements of reports to Government

PART I

CONTENT REQUIREMENTS FOR MONTHLY REPORTS TO GOVERNMENT ON ENTRUSTMENT ACTIVITIES

Each report provided by the Corporation to Government pursuant to **Clause 17.4** shall include:

1. the Cashflow Forecast prepared by the Corporation in accordance with **Clause 17.8**;

2. the Corporation's estimate of the total amount of the Entrustment Cost (inclusive of the cost of all known and anticipated variations, contingencies, escalations and anticipated claim settlements);

3. a summary of the payments made in accordance with **Appendix E** during the calendar month immediately preceding the date of the report, together with a brief narrative in respect of such movements;

4. a summary of progress against the Entrustment Programme;

5. a list of any contracts awarded during the calendar month immediately preceding the date of the report;

6. details of any other major issues arising in relation to the Express Rail Link project which the Corporation determines is relevant for the purposes of the report;

7. the Project Control Total; and

8. such other information as may be reasonably required by Government.

PART II

CONTENT REQUIREMENTS FOR FINAL REPORT TO GOVERNMENT ON ENTRUSTMENT ACTIVITIES

The report provided by the Corporation to Government pursuant to **Clause 17.6** shall include (or in the case of **item 7** below, have attached to it):

1. the final amount of the Entrustment Cost (inclusive of the cost of all variations, contingencies, escalations and claim settlements known as at the date of the report);

2. a summary of the payments made in accordance with **Appendix E** during the period commencing on the day following the period covered in the immediately preceding report provided under **Clause 17.4**, together with a brief narrative in respect of such movements;

3. a summary showing completion of the Entrustment Activities against the Entrustment Programme;

4. a list of any contracts awarded during the period commencing on the day following the period covered in the immediately preceding report provided under **Clause 17.4**;

5. a list of any outstanding material commercial issues as at the date of the report;

6. details of any other major issues arising in relation to the Express Rail Link project which the Corporation determines is relevant for the purposes of the report;

7. subject to the requirements of **Appendix J**, the Deliverable Documents; and

8. such other information as may be reasonably required by Government.

Dated the 26 day of January 2010

ENTRUSTMENT AGREEMENT FOR

CONSTRUCTION AND COMMISSIONING OF THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

APPENDIX H

Handover Procedure

APPENDIX H

HANDOVER PROCEDURE

1. Date of Handover

1.1 Unless otherwise agreed in writing between the parties, where the Corporation reasonably considers that the Entrustment Activities are sufficiently advanced to enable the setting of a formal date for handover to Government of the Works, the Corporation shall issue a notice to Government (the "**Handover Notice**").

1.2 The Handover Notice shall specify the Corporation's proposed date for handover of the Works (which date shall be no less than twenty 20 months from the date of issue of the Handover Notice)(the "**Proposed Date of Handover**").

1.3 Upon receipt of the Handover Notice, Government shall have thirty 30 days within which it may notify the Corporation of any reasonable objection to the Proposed Date of Handover.

1.4 If no reasonable objection is received by the Corporation within the thirty 30 day period specified in **paragraph 1.3**, Government shall be deemed to have accepted the Proposed Date of Handover.

1.5 If Government does reasonably object to the Proposed Date of Handover within the thirty 30 day period specified in **paragraph 1.3**, the Corporation and Government shall each use their best endeavours to agree, as soon as practicable, an alternative date for the handover of the Works.

1.6 The date accepted by Government pursuant to **paragraph 1.4** or, as the case may be, agreed between the parties pursuant to **paragraph 1.5** shall be the "**Date of Handover**".

1.7 Unless otherwise agreed in writing between the parties, on the Date of Handover the Corporation shall deliver to Government a certificate in a form to be agreed between the parties, certifying the handover by the Corporation of the Works (the "**Handover Certificate**"). Upon delivery of the Handover Certificate:

(A) the Corporation shall be deemed to have completed such of the Entrustment Activities which are agreed between the parties to be the subject of the Handover Certificate and to have handed over to Government, or to such third party as Government may direct, the entirety of the Works; and

(B) all obligations of the Corporation under this Agreement shall cease, save for those which:

(i) are expressly stated in this Agreement (or are otherwise agreed between the parties) to or impliedly survive the completion of the Entrustment Activities (including, without limitation, **Clauses 4.10**, **4.12**, **11.6**, **16.3**, **17.13**, **21**, **25**, **31**, **33** and **37.3**); or

(ii) remain unfulfilled at the time.

1.8 Notwithstanding anything to the contrary contained in this **Appendix H**, Government may request in writing at any time that, subject to the Corporation's written consent (which shall not be unreasonably withheld), parts of Works will be handed over to Government prior to the Date of Handover (in each case, an "**Early Handover Agreement**") and all costs arising from the implementation of the Early Handover Agreement which would have not arisen if the relevant part of the Works had been handed over to Government on the Date of Handover shall be borne by Government, provided that the Corporation shall exercise the skill and care reasonably to be expected of a professional and competent project manager in seeking to ensure that the costs so arising are kept to a level that is reasonable in the circumstances.

1.9 The provisions of this **paragraph 1** of **Appendix H** shall apply mutatis mutandis to all Early Handover Agreements (if any), save that in each case:

(A) unless otherwise agreed, **paragraphs 1.1** to **1.5** (inclusive) and **paragraph 1.7(B)** of this **Appendix H** shall not apply;

(B) the "Works" for the purposes of each Early Handover Agreement shall be construed as a reference to the part of the Works proposed to be handed over to Government under the relevant Early Handover Agreement;

(C) the "Date of Handover" shall be construed as the date or dates prior to the Date of Handover that are contained in each Early Handover Agreement and upon which it is agreed that the relevant part of the Works shall be handed over to Government;

(D) "Handover Certificate" shall be construed to mean a certificate in form agreed between the parties, certifying handover by the Corporation of such part of the Works as are the subject of each relevant certificate; and

(E) **paragraph 1.7(A)** shall be construed to refer those Entrustment Activities that relate to the part of the Works that are the subject to the relevant Early Handover Agreement.

1.10 In the event that notice to terminate this Agreement has been given by either party pursuant to **Clause 20**, the Corporation and Government shall use their best endeavours to ensure prompt handover to Government (or such parties as Government may direct) of such parts of the Works as have been completed or are otherwise in a sufficiently advanced stage so as to enable handover. Any handover pursuant to this **paragraph 1.10** shall be carried out in accordance with the terms of this **Appendix H**, subject to such amendments as are reasonably necessary with regard to the stage that the Entrustment Activities had reached immediately prior to the issue of the relevant notice to terminate pursuant to **Clause 20.3** or, in the case of termination pursuant to **Clause 20.2(A)**, the date specified in the notice to be the date on which this Agreement shall terminate, and as otherwise agreed in writing between the parties.

1.11 The provisions of this **Appendix H** shall be construed, where appropriate, to take account of any and all Early Handover Agreements. Unless otherwise agreed, the procedures set out in **paragraphs 2** to **6** of this **Appendix H** shall apply to the parts of the Works that are the subject of any Early Handover Agreements.

2. Formation of Handover Committee

2.1 Promptly and, in any event, within thirty (30) days following the determination of the Date of Handover pursuant to **paragraph 1** (or in the case of an Early Handover Agreement, within thirty (30) days following the date of the Early Handover Agreement), the parties shall form a committee (the "**Handover Committee**") consisting of an equal number of representatives of Government and the Corporation. Each such representative must be of a sufficient level of seniority to enable the Handover Committee to carry out effectively the responsibilities delegated to it pursuant to **paragraph 2.2**.

2.2 Unless otherwise agreed in writing between the parties the Handover Committee shall be responsible for:

(A) agreeing, insofar as practicable, the timetable for and manner of:

(i) the carrying out of the joint inspections of the Works specified in **paragraph 3**;

(ii) the rectification or completion, as the case may be, of items listed in an Outstanding Items List pursuant to **paragraph 3**;

(iii) the granting of access to certain areas of the Works to members of relevant Government departments, the West Kowloon Cultural District Authority and any other persons authorised by Government and/or the West Kowloon Cultural District Authority, in each case, required under **paragraph 4**;

(iv) monitoring the testing and commissioning referred to in **paragraph 5**;

(v) delivery of the documents referred to in **Part II** of **Appendix G**; and

(vi) any other actions reasonably required in order to ensure that the Works are transferred to Government on the Date of Handover; and

(B) agreeing any amendment to the Date of Handover.

2.3 The Handover Committee shall meet at such intervals as are reasonably necessary to ensure the handover of the Works on the Date of Handover and in any event at least once a quarter. In addition to such quarterly meetings, either party shall be entitled to request a meeting of the Handover Committee, such meeting to take place as soon as reasonably practicable following such request and, in any event, no later than 10 days following the date such request is made.

3. Joint Inspections of the Works

3.1 Prior to the issue of any Certificate of Completion, Government shall be notified in writing at least fifteen (15) working days in advance of, and shall be entitled to attend as an observer (or send a representative to attend as an observer), pre-completion inspections carried out by the Corporation under Third Party Contracts.

3.2 Government shall be entitled to receive copies of any lists of outstanding Works and/or defective Works prepared by the Corporation in respect of any Third Party Contract (in each case an "**Outstanding Items List**").

3.3 Prior to the expiry of any Defects Liability Period in relation to a Third Party Contract in respect of which an Outstanding Items List was issued by the Corporation, Government shall be notified in writing at least fifteen (15) working days in advance, and shall be entitled to attend as an observer (or send a representative to attend as an observer), any inspection of the relevant Works carried out for the purposes of ensuring that all the actions specified in the relevant Outstanding Items List have been carried out by the relevant Third Party. For the avoidance of doubt, failure by the Corporation to complete or procure the completion of all actions on any Outstanding Items List shall not delay the handover of the Works (including any part of the Works pursuant to any Early Handover Agreement) pursuant to the terms of this **Appendix H**.

4. Access to relevant areas of the Works for Government Departments

4.1 Eighteen (18) months prior to the Date of Handover, the Corporation shall procure that, subject to **paragraph 4.2** below, members and/or representatives of relevant Government departments shall be granted access to those areas of the Works which are to be used or occupied exclusively by Government or the West Kowloon Cultural District Authority following the Date of Handover including, without limitation, customs, immigration and quarantine areas, solely for the purpose of determining that such areas are being constructed and fitted-out and/or fitting out such areas, in each case, in a manner which is suitable for their ultimate use by Government or the West Kowloon Cultural District Authority.

4.2 If members and/or representatives of Government, the West Kowloon Cultural District Authority or any other persons authorised by Government and/or the West Kowloon Cultural District Authority intend to have access to the Works pursuant to **paragraph 4.1** above, Government shall provide the Corporation with prior notice of such intention (being not less than seven (7) working days' notice). Such notice shall:

(A) specify the areas of the Works to which such members and/or representatives of Government, the West Kowloon Cultural District Authority or any other persons authorised by Government and/or the West Kowloon Cultural District Authority intend to have access;

(B) contain details of the members and/or representatives of Government, the West Kowloon Cultural District Authority or any other persons authorised by Government and/or the West Kowloon Cultural District Authority who intend to have access; and

(C) provide details of the date or date(s) and time or time(s) (in each case which must be during normal working hours) on and at which such members and/or representatives of Government, the West Kowloon Cultural District Authority or any other persons authorised by Government and/or the West Kowloon Cultural District Authority require access to the Works.

4.3 If, as a result of the acts or omissions of members and/or representatives of Government and/or the West Kowloon Cultural District Authority, in each case, who have access to the Works pursuant to this **paragraph 4**, any of the following events occur:

(A) any delay to the completion of the Entrustment Activities; or

(B) any increase in costs (including, for the avoidance of doubt any increase in amounts payable by the Corporation and/or Third Parties in respect of insurance),

Government shall bear the full costs of all such events as Third Party Costs, provided that the Corporation shall exercise the skill and care reasonably to be expected of a professional and competent project manager in seeking to ensure that the increased costs so arising are kept to a level that is reasonable in the circumstances.

4.4 For the avoidance of doubt, the Corporation shall be entitled, acting reasonably, to refuse access to all or any part of the Works and/or to impose such conditions on entry as it considers reasonable, in each case where the Corporation considers that such refusal and/or such conditions are required in the interests of safety or operational necessity or to enable the Corporation to comply with its obligations under this Agreement.

5. Testing and Commissioning of the Railway Works

5.1 Approximately fifteen (15) months prior to the Date of Handover, the Corporation shall commence the testing and commissioning of the Railway Works in accordance with the relevant commissioning manual for testing and commissioning of the Express Rail Link.

5.2 No less than twelve (12) months prior to the Date of Handover the Corporation shall, in accordance with its established procedures, commence those activities in relation to the Express Rail Link that are reasonably required in order to enable the individual appointed as inspector under section 26 of the Ordinance to provide, prior to the date agreed by the Corporation and Government for commencement of Commercial Operations, the Secretary for Transport and Housing with the opinion required under clause 5.7.1 of the Operating Agreement.

6. Testing and Commissioning of the RRIW and EPIW

6.1 Approximately six (6) months prior to the Date of Handover, the Corporation shall carry out the testing and commissioning of the completed RRIW and EPIW in accordance with the relevant requirements as shall be agreed between the Corporation and Government, or, in the absence

of such agreement, as reasonably stipulated by Government or other relevant public bodies pursuant to **Clause 4.3**.

7. Testing and Commissioning of the Property Development Enabling Works and WKCD Interface Enabling Works

7.1 Approximately six (6) months prior to the Date of Handover, the Corporation shall carry out the testing and commissioning of the completed Property Development Enabling Works and WKCD Interface Enabling Works in accordance with the relevant requirements as shall be agreed between the Corporation and Government, or, in the absence of such agreement, reasonably stipulated by Government or other relevant public bodies pursuant to **Clause 4.3**.

Dated the 26 day of January 2010

ENTRUSTMENT AGREEMENT FOR

CONSTRUCTION AND COMMISSIONING OF THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

APPENDIX I

Deliverable Documents in relation to the Property Development Enabling Works

and the WKCD Interface Enabling Works

APPENDIX I

DELIVERABLE DOCUMENTS IN RELATION TO THE PROPERTY DEVELOPMENT ENABLING WORKS AND THE WKCD INTERFACE ENABLING WORKS

Part I – Property Development Enabling Works

The documents as listed below are the as-built records and documents to be delivered at the completion of the station.

(A) Statutory Documents

1. Master Layout Plan, planning approval and conditions (if any) and associated supporting documents;

2. General Building Plans and associated supporting documents;

3. Record Plans of Temporary Deck over future property car park and loading/unloading area and associated supporting documents; and

4. Record Plan of Property Enabling Works (foundation and superstructure) with BD acknowledgement letter on BA14 (inclusive of submitted forms and supporting documents under the application).

(B) As-Built Records / Drawings

The as-built records/drawings (plans, sections and details) of all interface works with property development will include but not be limited to the following:

1. Enabling Works for Property Development

   (A) Station structures and related provisions;

   (B) Loading schedule of supports to property works; and

   (C) Miscellaneous interface details including temporary protection for property works, utility lead-in point provisions, provisions for seawater cooling system for future installation, waterproofing provisions, and the associated temporary building services provisions, etc.

2. <u>Temporary Deck covering future property car park and loading / unloading area</u>

   (A) Temporary structure; and

   (B) Miscellaneous interface details including temporary drainage system and the associated building services provisions, etc.

3. Other Interface Works

(A) Interfacing details, including that with the footbridges, railway works and the associated provisions;

(B) Railway works that shall be protected, maintained or modified by the developer such as vent shafts, fireman / escape stairs, station roof, maintenance accesses, etc; and

(C) Miscellaneous interface details including the temporary landscape works, the associated building services, etc.

(C) Operating and Maintenance Manuals

1. Operating and maintenance manuals covering the interfaces between the railway and property areas before or after completion of construction, comprising:

(A) Provisions and restrictions during the construction period for the property development to ensure safety, security and avoidance of nuisance or disturbance to the operation of the XRL;

(B) Operating and maintenance responsibilities for shared elements of the structure, access, drainage, landscaping, common areas, etc; and

(C) Rights of access for inspection, rights to repair defects, giving of notice, etc.

Part II – WKCD Interface Enabling Works

(A) Statutory Documents

1. Record Plans of the WKCD Enabling Works including foundation, structure and associated supporting documents.

(B) As-Built Records / Drawings

The general requirements of as-constructed documents in **Appendix J** shall be applicable to the WKCD Interface Enabling Work. The as-built records/drawings of all interface works with the WKCD will comprise:

1. Enabling Works for WKCD

(A) Station structures and the related provisions;

(B) Loading schedule of supports to the WKCD works;

(C) Foundation works including piling and diaphragm walls if any; noise and vibration mitigation measures; and

(D) Miscellaneous interface details including the structural transfer plate if any, the temporary protections for the WKCD works, utility lead-in point provisions, and any associated temporary building services provisions.

2. Other Interface Works

Railway works that shall be protected, maintained or modified by the WKCDA such as vent shafts, fireman / escape stairs, station entrance / adit(s), potential underground connection provisions, Emergency Vehicular Access route for railway, maintenance accesses etc. Including details of:

(A) all utility installations and building services such as cooling mains, power supply and lighting facilities, etc;

(B) all interface works, openings and connections (pedestrian subways/vehicular access/egress points with other structures;

(C) all land re-instatement works and associated landscaping works; and

(D) all traffic control and surveillance works.

(C) Operating and Maintenance Manuals

1. Operating and maintenance manuals covering the interfaces between the railway and WKCD areas before or after completion of construction, comprising:

(A) Provisions and restrictions during the construction period for the WKCD to ensure safety, security and avoidance of nuisance or disturbance to the operation of the XRL;

(B) Operating and maintenance responsibilities for shared elements of the structure, access, drainage, landscaping, common areas, etc; and

(C) Rights of access for inspection, rights to repair defects, giving of notice, etc.

Dated the 26 day of January 2010

ENTRUSTMENT AGREEMENT FOR

CONSTRUCTION AND COMMISSIONING OF THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

APPENDIX J

As-Constructed Documents

APPENDIX J

AS-CONSTRUCTED DOCUMENTS

The Corporation shall submit to Government the following documents by way of as-constructed records:

1. one A1 size hard copy and one A3 size reduced hard copy comprising:

(A) general arrangements showing alignment, setting out data and levels;

(B) structural details of the works;

(C) foundation records;

(D) details of all drainage, utilities with levels and alignment;

(E) details of carriageway, pavement and road markings and road lighting, in each case, if any, and street furniture;

(F) schematic diagrams, control/logic diagrams, wiring diagrams, routing drawings, interface drawings, software documentations, assembly drawings and layout drawings for E&M systems and equipment;

(G) T&C procedures and records for E&M systems and equipment;

(H) details of all temporary work left in place; and

(I) any other details as reasonably required by Government;

2. one electronic copy on CD-ROM in Microstation dgn format for all CADD Drawings Files;

3. one electronic copy on CD-ROM in scanned pdf format of A3 size reduced print of item (2) above;

4. detailed calculations and analysis/simulation reports (if any) of the as-constructed works;

5. design certificates, submissions to and certificates issued by any relevant authorities (e.g. FSD, WSD, EMSD), inspection and testing certificates, factory test records, software license agreements;

6. all relevant operating and maintenance manuals; and

7. all relevant material specification records.

The Corporation shall use its reasonable endeavours to ensure that the above records are available at the time of the final report to be provided to Government pursuant to **Clause 17.6** and shall ensure that, in any event, the above records are provided to Government within six months of the issue of the Handover Certificate.

Dated the 26 day of January 2010

ENTRUSTMENT AGREEMENT FOR

CONSTRUCTION AND COMMISSIONING OF THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

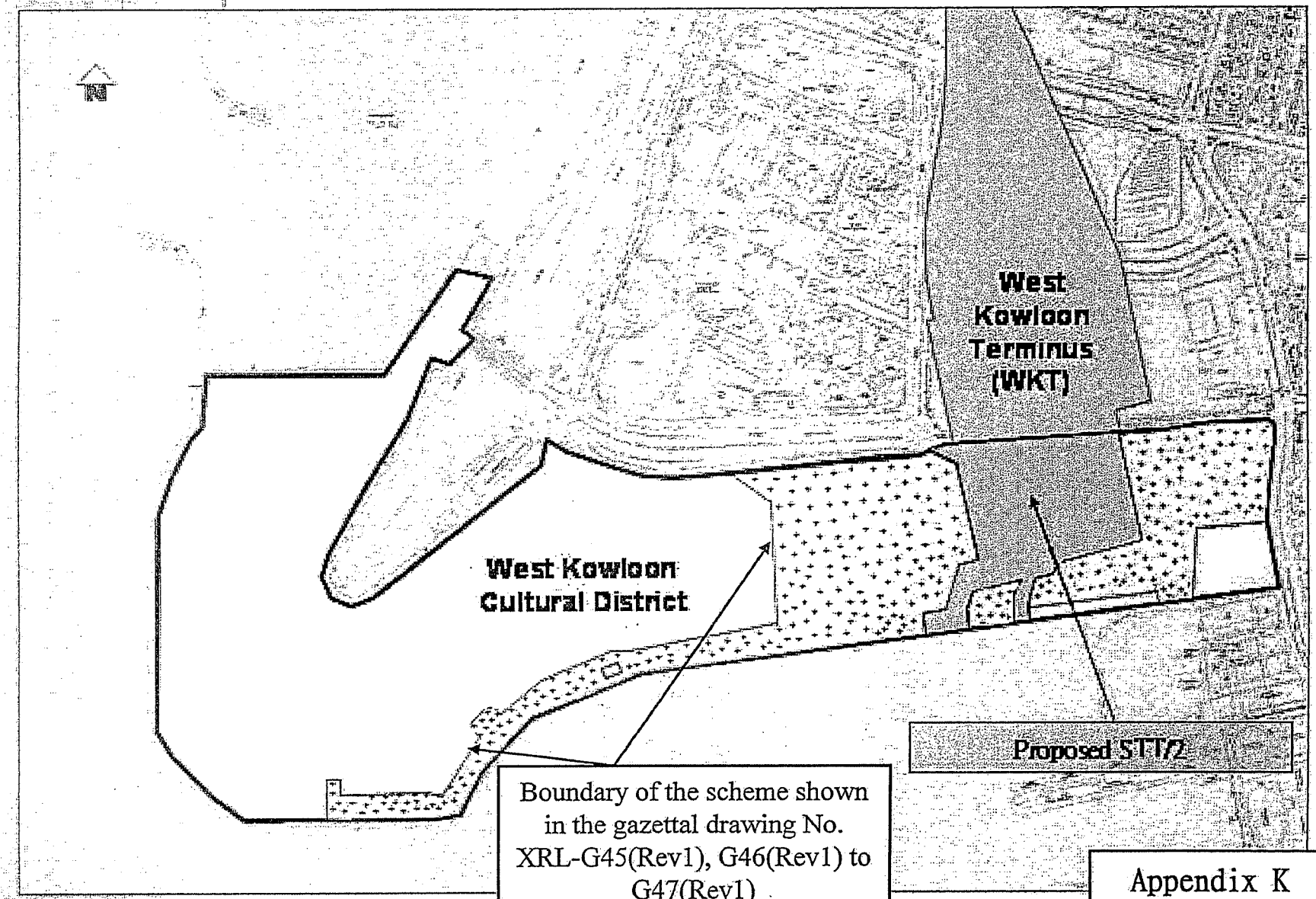
and

MTR CORPORATION LIMITED

APPENDIX K

WKCD Works Areas

Proposed XRL Works Areas in WKCD



Appendix K

Dated the 26 day of January 2010

ENTRUSTMENT AGREEMENT FOR

CONSTRUCTION AND COMMISSIONING OF THE

EXPRESS RAIL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

APPENDIX L

Collateral Deed

Dated the _____ day of _____

[INSERT NAME OF CONTRACTOR]

to

THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

COLLATERAL DEED

SLAUGHTER AND MAY
SOLICITORS
HONG KONG SAR

[Construction Contracts]

THIS DEED is made the day of

BY

(1) [Contractor name][Company Number][Registered Address] (the "Contractor"),

IN FAVOUR OF

(2) The Government of the Hong Kong Special Administrative Region (the "Government").

WHEREAS:

1. On [•] the Government and MTR Corporation Limited (the "Employer") entered into an entrustment agreement for the construction and commissioning of the Express Rail Link project (the "Entrustment Agreement") pursuant to which, *inter alia*, the Employer will act as project manager and procure the design and construction of the Express Rail Link project by certain third party contractors and consultants.

2. Pursuant to the terms of the Entrustment Agreement, the Government has sole responsibility for the payment of third party contractors and consultants appointed by the Employer in connection with the Entrustment Agreement.

3. The Contractor has been appointed by the Employer in respect of the Entrustment Agreement by a contract dated [•] (the "Contract").

NOW THIS DEED WITNESSES AS FOLLOWS:-

4. The Contractor HEREBY COVENANTS that the Contractor shall be liable to the Government for any act or omission which constitutes a breach by the Contractor of any express or implied term of the Contract as if the Government and the Employer jointly had been named as the employer under the Contract.

5. The Contractor acknowledges and accepts that the Employer and the Government are and will be entirely reliant upon the Contractor's skill, care and judgement in carrying out all duties, obligations and responsibilities imposed upon the Contractor by the Contract.

6. The Contractor shall have no liability to the Government by virtue of this Deed for any act or omission of the Contractor not being an act or omission which constitutes a breach by the Contractor of any express or implied term of the Contract and the Contractor shall have no greater duties to the Government by virtue of this Deed than it would have owed to the Government had the Government and the Employer jointly been named as the employer under the Contract.

7. The Government shall not be entitled to set-off any sums claimed under this Deed against any sums stated to be payable to the Contractor by Government in any certificate issued by the Employer under the Contract.

8. In any action brought by the Government regarding an alleged breach of the Contract, the Contractor shall have available to it all defences as may have been available to it under the Contract as if the Government and the Employer jointly were the employer under the Contract, other than in respect of any set-off and counterclaim against the Employer.

9. No allowance of time by the Government hereunder or by the Employer under the Contract nor any forbearance or forgiveness in or in respect of any matter or thing concerning this Deed or the Contract on the part of the Government or the Employer, nor anything that the Government or the Employer may do or omit or neglect to do, shall in any way release the Contractor from any liability under this Deed or constitute a waiver of rights.

10. In this Deed:-

(i) Where the context so admits or requires, words importing the masculine gender shall be deemed to include females and corporations, and words in the singular shall include the plural.

(ii) If any party at any time comprises two or more persons, the obligations of that party are to be joint and several obligations of those persons.

11. LAW, DISPUTE RESOLUTION AND JURISDICTION

(i) Governing law

This Deed and all matters arising from or connected with it are governed by, and shall be construed in accordance with, Hong Kong law.

(ii) Dispute resolution

In the event of a dispute arising from or connected with this Deed (including a dispute regarding the existence or validity of this Deed) (each, a "Dispute"), such Dispute shall be referred to mediation at Hong Kong International Arbitration Centre ("HKIAC") and in accordance with the HKIAC's Mediation Rules. If the mediation is abandoned by the mediator or is otherwise concluded or terminated without the Dispute being resolved, then such Dispute shall be referred to and determined by arbitration as a domestic arbitration (as such term is used in the Arbitration Ordinance (Cap. 341 of the Laws of Hong Kong)) at the HKIAC and in accordance with its Domestic Arbitration Rules or in the event that any change in Hong Kong's Arbitration Ordinance (Cap. 341 of the Laws of Hong Kong) removes the distinction between International and Domestic Arbitrations, in accordance with such Arbitration Rules promulgated by the HKIAC in substitution or replacement of its Domestic Arbitration Rules.

(iii) Hong Kong courts

Subject to clause 11(ii), the courts of Hong Kong will have jurisdiction to settle any Dispute arising from or connected with this Deed.

(iv) Appropriate forum

Subject to clause 11(ii), the Contractor confirms that the courts of Hong Kong are the most appropriate and convenient courts to settle any Dispute and, accordingly, that it will not argue to the contrary.

12. DISCLOSURE OF INFORMATION TO THE PUBLIC ACCOUNTS COMMITTEE

(i) The Contractor agrees that:

(A) notwithstanding any provision of the HKIAC's Mediation Rules or, as the case may be, Arbitration Rules referred to in clause 11(ii) but subject to clause 12(ii), Government may disclose the outline of any Dispute and the terms of settlement for which a settlement agreement has been reached or the outcome of the arbitration or any other means of resolution of any Dispute to the Public Accounts Committee of the Legislative Council upon its request; and

(B) that in the event that Government, in accordance with clause 12(ii), informs it in writing before any disclosure is made to the Public Accounts Committee, Government may, at the same time, inform the Employer of the same in writing (including the matters to be disclosed to the Public Accounts Committee),

(ii) Clause 12(i) is subject to the requirement that, before disclosures are made to the Public Accounts Committee, Government shall inform the Contractor in writing. Disclosures shall not be made to the Public Accounts Committee before expiry of the first six (6) months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of the Dispute without the written consent of the Contractor (such consent not to be unreasonably withheld). The Contractor shall be deemed to have given its consent to disclosures on the expiry of the first six (6) months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of the Dispute. The Contractor may, if it considers it necessary to protect the sensitive nature of certain information relating to it, request Government to disclose such specified information to the Public Accounts Committee strictly on a confidential basis. If Government considers that there are legitimate grounds to accede to the Contractor's request or requests (as the case may be), Government shall convey the said request or requests (as the case may be) to the Public Accounts Committee for its consideration.

IN WITNESS the Contractor has executed this Deed the day and year first above written.

SEALED with the Common Seal of [•] and)
SIGNED by)
)
Director(s) and/or person(s) duly authorised by)
the Board of Directors in the presence of / :-)

Witnessed by:-