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運輸及房屋局  
運輸科

香港添馬添美道 2 號  
政府總部東翼



Transport and  
Housing Bureau  
Government Secretariat  
Transport Branch

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立法會綜合大樓  
立法會秘書處秘書長  
(經辦人：周嘉榮先生)

周先生：

### 廣深港高速鐵路(高鐵)香港段

立法會秘書處在 2016 年 1 月 22 日轉交何俊仁議員及胡志偉議員於 2016 年 1 月 21 日致立法會工務小組委員會主席的信函收悉。本局現按照信函段落回覆如下：

#### (1) 各高鐵合約工程進度

截至 2015 年 8 月 31 日，42 個高鐵香港段工程主要合約的進度見附件一。

## **(2) 高鐵工程申索情況**

截至 2015 年 8 月 31 日，香港鐵路有限公司(下稱「港鐵公司」)共接獲 845 宗已具有理據的申索，申索金額約為 233.5 億元，佔已批出合約總額的 51.6%。詳細申索資料如下：

	已獲解決的申索			尚未解決的申索		
	宗數	申索金額*(百萬元)	發放金額(百萬元)	宗數	申索金額*(百萬元)	發放金額(百萬元)
鐵路隧道	82	2,258.4	1,207.3	359	9,198.7	1,774.4
西九龍總站	46	246.5	186.9	291	8,998.6	1,892.3
機電工程	2	0.0	0.0	65	2,643.2	128.6
合計	130	2,504.9	1,394.2	715	20,840.5	3,795.3

\* 承建商於申索書上清楚列明之金額。

港鐵公司作為高鐵香港段工程的「項目管理人」，目前正與有關承建商商討申索內容及細節，就承建商提出的申索金額進行詳細評估。港鐵公司會謹慎處理每一宗申索，而承建商亦必須提供充足理據及資料。在任何情況之下，港鐵公司在工程方面的支出(包括發給予承建商的申索金額)不得超過高鐵項目的委託費用(目前為 650 億元)。由於牽涉商業敏感資料，政府不便進一步透露個別合約的詳細申索數字及細節，以免影響港鐵公司與承建商的商議。

## **(3)、(4)、(5)及(6) 政府與港鐵公司於 2015 年 11 月 30 日簽訂的協議**

為了妥善解決高鐵超支的問題，政府與港鐵公司經商討後於 2015 年 11 月 30 日達成協議。有關協議並不涉及或影響港鐵公司與各承建商簽訂的合約及處理承建商提出的申索。根據港鐵公司提供的資料，到目前為止，港鐵公司並未有因為工程延誤而與現有承建商重新簽訂新的合約。

同時，新簽訂的協議亦不會影響政府和港鐵公司在 2010 年 1 月就推展高鐵項目簽訂的委託協議下的監察機制。路政署及其監察及核證顧問會繼續按現有機制加大力度監察港鐵公司推展高鐵項目。

有關協議的副本(只有英文版)載於附件二，供委員參閱。

運輸及房屋局局長

(吳鴻輝



代行)

2016 年 1 月 26 日

連附件

副本致：

財經事務及庫務局(經辦人：陳敏兒女士)

傳真號碼：2147 5240

路政署(經辦人：梁家聰先生)

傳真號碼：2714 5297

截至 2015 年 8 月 31 日，42 個高鐵工程主要合約<sup>1</sup>  
的進度如下：

序號	合約編號	合約名稱 <sup>2</sup>	工程進度
1	802	南昌物業地基移除及重置	99.1%
2	803A	西九龍總站垂直隔牆(地盤甲)	100%
3	803B	西九龍總站樁柱(地盤甲-北)	100%
4	803C	西九龍總站樁柱(地盤甲-南)	100%
5	803D	西九龍總站垂直隔牆及樁柱 (西九文化區)	100%
6	805	深旺道障礙物移除	100%
7	810A	西九龍總站(北)	43.3% <sup>3</sup>
8	810B	西九龍總站(南)	86.5%
9	811A	西九龍總站連接隧道(北)	98.3%
10	811B	西九龍總站連接隧道(南)	67.5%
11	815A	鐵門、門框及五金供應	63.0%
12	815F	公眾洗手間裝修工程	28.0%
13	816A	西九龍站之環境控制系統	39.5%
14	816B	西九龍站之樓宇設備控制系統	38.8%
15	816C	西九龍站之低壓供電系統	35.4%

<sup>1</sup> 主要合約指批出合約時價值超過 5,000 萬元。

<sup>2</sup> 中文合約名稱僅供參考，若有差異以英文為準。

<sup>3</sup> 截至2015年8月31日，根據港鐵公司的進度報告，西九龍總站(北)(合約編號810A)的車站挖掘工程及混凝土結構工程的累計進度分別約為90%及50%。

16	816D	西九龍站之消防、供水及排水系統	38.7%
17	820	美荔道至海庭道隧道	99.6%
18	821	石蔭至美荔道隧道	100%
19	822	謝屋村至石蔭隧道	99.5%
20	823A	大江埔至謝屋村隧道	87.4%
21	823B	石崗列車停放處及緊急救援處	97.8%
22	824	牛潭尾至大江埔隧道	84.5%
23	825	米埔至牛潭尾隧道	97.9%
24	826	皇崗至米埔隧道	86.7%
25	830	軌道及接觸網系統	67.1%
26	840	動車組	52.4%
27	841A	訊號系統 - 軌旁設備	54.7%
28	841B	訊號系統 - 車載設備	62.8%
29	842A	內地段機電設備接口修改工程	30.0%
30	843	隧道環境控制系統	49.1%
31	844	11千伏特供電系統	18.9%
32	846	軌旁設備	44.3%
33	847	升降機	31.3%
34	848	自動扶梯與自動人行道	32.1%
35	849	無線通信系統	42.7%
36	850	乘客移動通信系統	49.0%

37	851	固定通信系統	43.2%
38	852	票務系統	70.0%
39	853	主控系統	76.3%
40	855	隧道通風設施及緊急救援處樓宇設備	69.1%
41	856	石崗列車停放處樓宇設備	96.6%
42	861A	軌道機車及軌道平板車	92.3%

30 November 2015

DEED

relating to the

EXPRESS RAIL LINK

between

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

MTR CORPORATION LIMITED

Slaughter and May  
47<sup>th</sup> Floor, Jardine House  
Central  
Hong Kong

103112593



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**THIS DEED OF AGREEMENT** is made on the 30 November 2015

**BETWEEN:**

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

**WHEREAS:**

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

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

**NOW THIS DEED WITNESSES AS FOLLOWS:**

## **PART I**

### **INTERPRETATION**

#### **1. Interpretation**

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

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

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

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

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

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

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

**"Corporation"** means MTR Corporation Limited.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Law"** means any ordinance or subsidiary legislation.

**"LegCo"** means the Legislative Council of Hong Kong.

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

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

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

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

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

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

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

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

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

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

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

**"Shareholder"** means the holder of a Share.

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

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

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

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

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

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

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

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

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

## **PART II**

### **SPECIAL DIVIDEND**

#### **2. Payment of Special Dividend**

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

## **PART III**

### **FINANCING OF CURRENT COST OVERRUN AND FURTHER COST OVERRUN**

#### **3. Current Cost Overrun**

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

#### **4. Further Cost Overrun**

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



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

#### PART IV

#### EGM

#### 5. Corporation to convene EGM

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

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

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

**7. Liability Cap**

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

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

- 8.1 The Arrangements are conditional on:

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

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

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

8.3 In the event that:

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

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

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

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

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

## PART VII

### MISCELLANEOUS

#### 9. Amendments to EA2

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

**10. Integrated Package**

- 10.1 The Arrangements constitute an integrated package of terms.

**11. No Precedent**

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

**12. Preservation of Rights and Liabilities**

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

**13. Invalidity**

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

**14. No Partnership**

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

**15. Further Assurance**

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

**16. Amendments**

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

**17. Waiver**

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

**18. Conflict**

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

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

**19. Payments**

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

**20. Notices**

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

**21. Dispute Resolution**

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

**22. Governing Law and Jurisdiction**

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

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

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

SIGNED AS A DEED AND DELIVERED

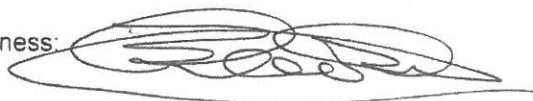
By: G. E. Meller      GILL MELLER      LEGAL DIRECTOR &  
 Signature                      Name of Director                      Title of Director      SECRETARY

for and on behalf of  
 MTR CORPORATION LIMITED

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

in the presence of:

Name, address and signature of witness:



Name: BRIAN DOWNIE

Address: MTR HEADQUARTERS BUILDING  
TELFORD PLAZA  
KOWLOON BAY HONG KONG

SIGNED, SEALED AND DELIVERED

By

THE GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION

By:



Signature

Rebecca Pun Deputy Secretary  
Name Position (Transport) I

in the presence of:

Name, address and signature of witness:

Name: Klaus CHAN



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



## SCHEDULE

### Amendments to EA2

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

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

- (B) Clause 2.3 (Financial Undertakings and Payment Mechanics) shall be deleted and replaced with:

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

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

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

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

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

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

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

(C) Clause 2.6 shall be deleted;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **APPENDIX**

### **Revised XRL Programme**

