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6 May 2018

Secretary General
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn: Ms Sophie LAU)

Dear Ms Lau,

**Bills Committee on Guangzhou-Shenzhen-Hong Kong
Express Rail Link (Co-location) Bill**

Written enquiry from Hon CHU Hoi-dick

We refer to your letter dated 24 April 2018, enclosing a written enquiry from Hon CHU Hoi-dick dated 23 April 2018 in respect of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill (“Bill”). As stated in the letter issued by this Bureau dated 4 April 2018 in response to Hon CHU Hoi-dick’s earlier questions (LC Paper No. CB(4)865/17-18(01)), we observe that some of the current questions are not directly related to the Bill, and may not be relevant to the scope of

discussion of the Bills Committee. That being said, we will address all of the questions raised by Hon CHU Hoi-dick in this written reply to facilitate future discussions on appropriate platforms as necessary.

(1) Matters in relation to the right to use of the Mainland Port Area

(Part 1 of Hon CHU Hoi-dick's written enquiry)

Pursuant to Article 3 of the Co-operation Arrangement between the Mainland and the Hong Kong Special Administrative Region ("HKSAR") on the Establishment of the Port at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL") for Implementing Co-location Arrangement ("Co-operation Arrangement"), the establishment of the Mainland Port Area does not affect the rights and benefits regarding assets (including relevant lands as well as movable or immovable assets on these lands) and facilities pertaining to the Hong Kong Section of the XRL. With these matters being "reserved matters" under Article 3 of the Bill, the HKSAR will continue to handle these matters in accordance with the laws of the HKSAR and exercise jurisdiction over these matters in accordance with the Co-operation Arrangement.

The site earmarked for the West Kowloon Station is zoned "Comprehensive Development Area (1)" in the South West Kowloon Outline Zoning Plan No. S/K20/30. Moreover, the Town Planning Board approved with conditions the proposed comprehensive office/commercial/retail development above the West Kowloon Station on 7 May 2010 (planning application no. A/K20/113). The West Kowloon Station Mainland Port Area is merely part of the station, and the Bill does not affect any matter concerning places outside the Mainland Port Area.

As for matters such as the acquisition of the right to use,

duration and fees of the Mainland Port Area, as stated in the letter issued by this Bureau dated 4 April 2018 in response to Hon CHU Hoi-dick's earlier questions (LC Paper No. CB(4)865/17-18(01)), the delineation of applicable laws and jurisdiction (including jurisdiction of the courts) in respect of the Mainland Port Area to be implemented by the Bill originates from the NPCSC's Decision and the approved Co-operation Arrangement, and has no direct relationship to the acquisition of the right to use, duration and fees of the venues within the Mainland Port Area. The HKSAR Government is now conducting discussions with the Mainland on the issue and will report to the public at an appropriate juncture.

(2) Supplementary Service Concession Agreement (“SSCA”)

(Part 2 of Hon CHU Hoi-dick's written enquiry)

The Hong Kong Section of the XRL is connected to the Mainland Section. The operation of the Hong Kong Section of the XRL after its commissioning (including arrangements of drivers and train crew) therefore involves the co-operation of operators from both sides. The HKSAR Government is in discussion with the China Railway Corporation on the actual operating arrangements of the Hong Kong Section of the XRL, and will announce the outcome of the discussion and details of operating arrangements to the Panel on Transport of the Legislative Council (“LegCo”) and the public at an appropriate time.

As for the service concession of the Hong Kong Section of the XRL, at the meeting of the Executive Council on 12 September 2017, the Council advised and the Chief Executive ordered that the land or interests or other rights in respect of land for the operation of the Hong Kong Section of the XRL should be vested in and the movable assets of the XRL be assigned to the Kowloon-Canton Railway Corporation (“KCRC”)

at nominal value, and the KCRC would in turn incorporate the Hong Kong Section of the XRL into its Service Concession Agreement (“SCA”) signed with the MTR Corporation Limited (“MTRCL”) in 2007. The KCRC shall then discuss and draw up the SSCA with the MTRCL according to the SCA for granting a service concession to operate the Hong Kong Section of the XRL to the MTRCL. The HKSAR Government, the MTRCL and the KCRC have commenced discussion on the SSCA, and will announce the outcome of the discussion at an appropriate time. In any case, the discussion on the SSCA does not involve any Mainland parties.

As stated in the letter issued by this Bureau dated 4 April 2018 in response to Hon CHU Hoi-dick’s earlier questions (LC Paper No. CB(4)865/17-18(01)), as far as the SCA is concerned, the key terms in the SCA have been listed out in detail in the Circular issued to independent shareholders by the MTRCL during the Rail Merger in 2007. The relevant Circular is an open document, and the parts relevant to the SCA therein are enclosed at **Annex** for reference.

(3) Operating Agreement (“OA”)

(Part 4¹ of Hon CHU Hoi-dick’s written enquiry)

Pursuant to the Mass Transit Railway Ordinance (Cap. 556), the MTRCL has to enter into an OA with the Government in accordance with that Ordinance. The MTRCL shall maintain a proper and efficient service at all times during the franchise period in accordance with the Mass Transit Railway Ordinance and the OA. The OA itself and its Supplemental Operating Agreement (“SOA”) are not subsidiary legislation under the Mass Transit Railway Ordinance, and do not need to be submitted to the LegCo for scrutiny.

¹ There is no Part 3 in the original written enquiry.

As for the Hong Kong Section of the XRL project, the Government and the MTRCL are reviewing the applicability of the parts of the OA that are related to the Hong Kong Section of the XRL. The Government will also sign an SOA with the MTRCL to stipulate the service standards of the MTRCL's operation of the Hong Kong Section of the XRL. The Government will announce the outcome of the review at an appropriate time.

(4) Mainland Authorities Stationed at the Mainland Port Area

(Part 5 of Hon CHU Hoi-dick's written enquiry)

Pursuant to Article 6 of the Co-operation Arrangement, immigration inspection authority, customs authority, inspection and quarantine authority, integrated port administration authority and railway police authority stationed by the Mainland ("Mainland Authorities Stationed at the Mainland Port Area") will perform duties and functions in the Mainland Port Area in accordance with the laws of the Mainland. They shall not enter any area outside the Mainland Port Area to enforce the law, and have no law enforcement powers outside the Mainland Port Area.

As stipulated in Article 7(2) of the Co-operation Arrangement, facilities and equipments provided by the Mainland Authorities Stationed at the Mainland Port Area themselves or exclusively used by them in carrying out duties and functions pursuant to the Co-operation Arrangement are not matters over which the HKSAR exercises jurisdiction. To ensure effective port control and management in the West Kowloon Station Mainland Port Area, the Mainland Authorities Stationed at the Mainland Port Area will be equipped with appropriate manpower and facilities similar to the case for other existing ports.

The letter issued by the HKSAR Government to the LegCo Secretariat dated 26 February 2018 (LC Paper No. CB(4)659/17-18(01)) enclosed the floorplans of B2 level, B3 level and B4 level of the West Kowloon Station, in which the areas of “Mainland Clearance Area” and “Back Office of Mainland Authorities Stationed at the Mainland Port Area” had already been indicated. Having considered that the West Kowloon Station will be an important infrastructure and port area, the HKSAR Government cannot disclose the detailed layout of the above areas in view of security considerations.

(5) Real-name ticket purchase

(Part 6 of Hon CHU Hoi-dick’s written enquiry)

To provide ticketing service under the real-name system (including reserving seats from the Mainland railway operators, and services such as seeking refunds and altering tickets etc.), the MTRCL will need to transmit personal data to the Mainland railway operators in an encrypted manner. The MTRCL understands that the Mainland railway operators will delete passengers’ personal data within a reasonable period of time.

(6) Rescue, fire safety and police matters

(Part 7 of Hon CHU Hoi-dick’s written enquiry)

Pursuant to the Co-operation Arrangement and the Bill, immigration control is not a reserved matter, over which the Mainland will exercise jurisdiction in accordance with the Co-operation Arrangement and the laws of the Mainland. The Mainland Authorities Stationed at the Mainland Port Area will conduct immigration clearance in the Mainland Port Area for persons entering or leaving the Mainland

Port Area. As such, designated personnel of the HKSAR (including Hong Kong Police officers and Fire Services officers) have to undergo immigration clearances of both places when they enter the Mainland Port Area to perform duties and functions under the jurisdiction of the HKSAR as stipulated in Articles 3 and 7 of the Co-operation Arrangement, and leave the Mainland Port Area after performing the relevant duties and functions.

On the other hand, in cases of sudden and emergency incidents in the Mainland Port Area, the Mainland Authorities Stationed at the Mainland Port Area may request and authorize the rescue team of the HKSAR (including first aid personnel, Fire Services officers and Police officers) to enter the Mainland Port Area and provide assistance to the Mainland parties in handling the situation and preventing the scene from worsening for the purposes of avoiding or minimising casualty or property damage. Based on the principle of “prioritizing rescue”, the HKSAR Government and relevant Mainland authorities are now actively discussing the detailed arrangement so as to ensure that the rescue team of the HKSAR can swiftly and efficiently enter the Mainland Port Area to assist in handling rescue, emergency and sudden incidents etc.

Yours sincerely,



(Ronald CHENG)

for Secretary for Transport and Housing

c.c. Secretary for Justice
Secretary for Security

MTR Ordinance and Rail Merger Ordinance

Nothing in any Transaction Agreement shall oblige a party to that Transaction Agreement to conduct its business in any manner or to do anything which is incompatible with or in breach of any provision of the MTR Ordinance or the Rail Merger Ordinance.

Law

Each Transaction Agreement (and any dispute, controversy, proceedings or claims of whatever nature arising out of or in any way relating to that Transaction Agreement) shall be governed by and construed in all respects in accordance with Hong Kong law.

B) SERVICE CONCESSION AGREEMENT

The Service Concession Agreement was entered into on the Signing Date between the Company and KCRC.

The Service Concession Agreement contains the detailed provisions of the Service Concession granted by KCRC to the Company in relation to the KCRC Railway. The Service Concession Agreement covers the matters set out below.

Effective Date

The Service Concession Agreement is conditional upon each of the other Transaction Agreements (other than certain Transaction Agreements which will be entered into after the Merger Date) becoming effective on the Merger Date. The Service Concession Agreement is a “Service Concession Agreement” for the purposes of section 2(1) of the MTR Ordinance and section 2(1) of the KCRC Ordinance.

Grant of Service Concession and Grant of Licence***Service Concession and licence to use the KCRC Railway Land***

The Service Concession Agreement provides the grant by KCRC to the Company (on an exclusive basis) of a service concession to access, use and operate the Concession Property. For the avoidance of doubt, the only right conferred on the Company in respect of the KCRC Railway Land is a licence to use it for the purposes of carrying out the KCRC Services. The Company acknowledges that its rights to access and use the KCRC Railway Land (which at any time forms part of the Concession Property) during the Concession Period are:

- limited to those rights that are necessary for the Company to provide the KCRC Services to the Required Standards applicable to the KCRC Services;
- subject to all and any reservations, restrictions, exceptions, covenants, conditions, provisos, easements and other appurtenant rights applicable to or affecting the KCRC Railway Land (or any part thereof) and in existence immediately prior to the Merger Date or (in the case of any such KCRC Railway Land which forms part of any property designated in the relevant Supplemental Service Concession Agreement to be New Project Concession Property with respect to such New Project for the purposes of the Service Concession Agreement (“**New Project Concession Property**”) in existence immediately prior to the relevant effective date of that New Project (“**New Project Effective Date**”));
- subject to all and any reservations, restrictions, exceptions, covenants, conditions, provisos, easements and other appurtenant rights applicable to or affecting the KCRC Railway Land (or any part thereof) and arising on or after the Merger Date pursuant to the provisions of the Land Comfort Letter and/or pursuant to any change in law or regulation having the force of law; and

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- subject to the consent of the Director of Lands under the KCRC Ordinance and all relevant vesting deeds or land grants governing the KCRC Railway Land and the compliance by KCRC and the Company with the terms and conditions that the Director of Lands may impose in granting such consent.

New Projects

The Service Concession Agreement provides that any new railway project that is constructed by, leased to or vested in KCRC (other than any railway project that is already part of the Service Concession) and that is, pursuant to the terms of the Operating Agreement, to be the subject of a service concession on the terms contained in the Service Concession Agreement and the relevant Supplemental Service Concession Agreement, shall be subject to a service concession granted by KCRC in favour of the Company and the parties shall enter into a Supplemental Service Concession Agreement in respect of such new railway project.

KCRC covenants in respect of the Concession Property

During the Concession Period, KCRC shall not grant to any other party, nor shall KCRC itself exercise (i) in respect of any Concession Property, any rights which are the same as or similar to any of the rights granted to the Company pursuant to the Service Concession Agreement; and (ii) in respect of any New Project Concession Property, any rights which are the same as or similar to any of the rights granted to the Company pursuant to the Service Concession Agreement and the relevant Supplemental Service Concession Agreement.

Further, KCRC shall not carry out any act, or permit any act to be carried out, in relation to any Concession Property which in any way affects, prejudices or interferes with the rights of the Company under the Service Concession Agreement or the provision of the KCRC Services by the Company, except:

- pursuant to any exercise by KCRC of any of its rights set out in the Transaction Documents;
- if KCRC is required to do so in order to comply with any relevant law or regulation having the force of law which is binding on KCRC (including the KCRC Ordinance and the Rail Merger Ordinance); or
- pursuant to any reservation, restriction, exception, covenant, condition, proviso, easement or other appurtenant right applicable to or affecting the KCRC Railway Land.

Concession Period

The Concession Period shall commence in the case of any Concession Property other than any New Project Concession Property, on the Merger Date; in the case of any New Project Concession Property, on the relevant New Project Effective Date; and in the case of any Additional Concession Property, on the date on which such Additional Concession Property becomes Additional Concession Property.

The Concession Period shall terminate automatically on the earliest of (i) the revocation of the Franchise pursuant to the MTR Ordinance as it relates to the KCRC Railway; and (ii) the Natural Expiry Date or, where the term of the Service Concession has been extended, the new expiry date (as provided in the paragraph below).

If, at any time or times during the Concession Period, the term of the Franchise (as it relates to the KCRC Railway) is extended, the Concession Period shall be automatically extended, from the date on which the term of the Franchise (as it relates to the KCRC Railway) is so extended, for an identical period.

The KCRC Services

At all times during the Concession Period, the Company shall, provide the KCRC Services to the Required Standards applicable to the KCRC Services.

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Payments and Deposits

The Company shall pay to KCRC the following Concession Payments:

- **Upfront Payment** on the Merger Date of an amount totalling HK\$4.25 billion, being the agreed fee for the right to operate the Service Concession and the consideration for the Purchased Rail Assets.
- **Fixed Annual Payments** on the day immediately preceding each anniversary of the Merger Date which falls during the Concession Period, in arrears, a fixed amount of HK\$750 million for the right to use and operate the Concession Property for the operation of the Service Concession in respect of the 12 month period up to and including the date on which such payment falls due. There shall be no increase in the Fixed Annual Payments as a result of the commencement of operations of KSL or LMCSL.
- **Variable Annual Payments** in respect of each financial year of the Company which ends during the Concession Period for the right to use and operate the Concession Property for the operation of the Service Concession. The Variable Annual Payment payable by the Company for each financial year shall be calculated on a tiered basis by reference to the amount of the KCRC System Revenue for that financial year, in accordance with the following table:

KCRC System Revenue for a financial year of the Company (determined using the revenue allocation system set out in the SCA)	% of KCRC System Revenue as part of Variable Annual Payment for that financial year
First HK\$2.5 billion of KCRC System Revenue (i.e. HK\$0.0 - HK\$2.5 billion)	0.0%
Next HK\$2.5 billion of KCRC System Revenue (i.e. > HK\$2.5 billion and ≤ HK\$5.0 billion)	10.0%
Next HK\$2.5 billion of KCRC System Revenue (i.e. > HK\$5.0 billion and a ≤ HK\$7.5 billion)	15.0%
KCRC System Revenue beyond the first HK\$7.5 billion (i.e. > HK\$7.5 billion)	35.0%

The Service Concession Agreement provides the mechanism pursuant to which the Variable Annual Payments are to be made. The Variable Annual Payments will be payable annually in arrears within 60 days after the end of the relevant financial year of the Company (and will be adjusted if, following finalisation of the Company's audited accounts, the amount paid by the Company within the 60 day period referred to above is not correct). No Variable Annual Payment shall be payable in respect of any KCRC System Revenue generated during the period from (and including) the Merger Date to (but excluding) the day which falls on the third anniversary of the Merger Date.

If the Concession Period is extended, the Fixed Annual Payments and the Variable Annual Payments shall continue to be payable by the Company. The Service Concession Agreement provides the mechanism to calculate the Fixed Annual Payment if expiry or termination of the Service Concession does not fall on the day immediately preceding an anniversary of the Merger Date. The Service Concession Agreement also provides the mechanism to calculate the Variable Annual Payment if expiry or termination of the Service Concession does not fall on the last day of a financial year of the Company. The Company's obligations to make any payments under the Service Concession Agreement are absolute and unconditional and no amount payable under the Service Concession Agreement shall cease to be payable or shall be suspended or reduced by reason of any contingency. The Company and KCRC have agreed that the KCRC Railway Land has no meaningful value, given its legal characteristics, use and enjoyment, and accordingly that no part of the Concession Payments relates to the KCRC Railway Land.

In respect of any New Project Concession Property, the Company shall pay KCRC the Concession Payments as set out in, or otherwise determined in accordance with, and at the times provided in, the relevant Supplemental Service Concession Agreement.

On the Merger Date, KCRC shall transfer to the Company all amounts held by KCRC immediately prior to the Merger Date as deposits in respect of the use by third parties of Concession Property and amounts constituting retention monies or advances in relation to Concession Property less an appropriate amount to be retained by KCRC to reflect unpaid amounts due to KCRC prior to the Merger Date against which such deposits, retention monies or advances are held. During the Concession Period, the Company shall refund any deposits due to any third parties in accordance with the terms on which such deposits are held by KCRC immediately prior to the Merger Date.

Concession Property

General

During the Concession Period, subject to certain restrictions in respect of KCRC Railway Land, the Company shall, at all times, have the exclusive right to access, use and operate the Concession Property as at the Merger Date (the “**Initial Concession Property**”). KCRC shall grant to the Company the exclusive right to access, use and operate each item of New Project Concession Property on and from the relevant New Project Effective Date and as legal and beneficial owner of Additional Concession Property, the Company shall have the exclusive right to access, use and operate each item of such Additional Concession Property on and from the date on which such Additional Concession Property becomes Additional Concession Property.

In respect of KCRC Railway Land which comprises Initial Concession Property, New Project Concession Property or Additional Concession Property, the Company shall, at all times, have the non-exclusive licence to access and use such Initial Concession Property, KCRC shall grant to the Company the non-exclusive licence to access and use such New Project Concession Property on and from the relevant New Project Effective Date, and the Company shall have the non-exclusive licence to access and use any such Additional Concession Property on and from the date on which such Additional Concession Property becomes Additional Concession Property.

Initial Concession Property

KCRC shall remain the legal and beneficial owner of all and any Initial Concession Property and all and any New Project Concession Property throughout the Concession Period unless the Company purchases that Initial Concession Property or New Project Concession Property pursuant to any right to purchase Concession Property provided under the Service Concession Agreement.

Additional Concession Property

The Company will be the legal and beneficial owner of Additional Concession Property. The Service Concession Agreement sets out the regime for compensation payable by KCRC to the Company if Additional Concession Property is returned to KCRC at the end of the Concession Period.

Right to Purchase Concession Property

At any time or times during the Concession Period, the Company shall (subject to agreement on terms with KCRC) have the right or option: (a) to purchase any Concession Property (other than the Additional Concession Property) from KCRC; and (b) for an asset which constitutes Additional Concession Property, to require such asset to cease being subject to the obligations and restrictions applicable to Additional Concession Property under the SCA, and, in each case, the terms (including price) in relation to such right or option, and any consequential adjustments to the Concession Payments (if any), shall be such as are agreed between the Company and KCRC at the relevant time or times.

KCRC Railway Land No Longer Required in Connection with the KCRC Services

The Service Concession Agreement provides for a redelivery and surrender mechanism if, amongst other things, for a period of 6 months, the Company does not use a material portion of the KCRC Railway Land and/or a material part of any building forming part of the Concession Property in connection with the KCRC Services and, does not expect, for the immediately following period of 6 months, to use such material portion of the KCRC Railway Land and/or such material part of such building in connection with the KCRC Services.

Representations and Warranties given by the Company***Representations and Warranties***

The Company represents and warrants in favour of KCRC that, subject to certain provisions contained in the Merger Framework Agreement relating to third party claims and KCRC not breaching its obligations in respect of certain covenants in the SCA made relating to the Concession Property or operations:

- it has satisfied itself about all risks, liabilities, contingencies and circumstances concerning the Concession Property and the land on which the Concession Property is situated and the performance of the KCRC Services and it shall have no claim against KCRC (or any of its affiliates) or the Government for any such risk, liability, contingency or other circumstance;
- it accepts in all respects the existing state and condition of the Concession Property and the land on which any of the Concession Property is situated and shall take the same on an “as is” basis; and
- all authorisations required to be obtained to enable it to use and operate the Concession Property have been obtained or effected and are in full force and effect.

Indemnity

The Service Concession Agreement provides that, subject to certain conditions contained therein, the Company indemnifies KCRC (and its affiliates, employees, agents and contractors) against all losses incurred or suffered by such persons arising from a breach by the Company (or its affiliates) of the representations and warranties described above.

Risk Allocation

The Service Concession Agreement provides that, subject to certain provisions contained in the Merger Framework Agreement relating to third party claims and KCRC not breaching certain of its obligations in respect of its covenants made relating to the Concession Property or operations:

- the Company shall bear all risks, liabilities and/or costs whatsoever associated with or arising from the Concession Property and the land on which any of the Concession Property is located during the Concession Period;
- neither KCRC nor the Government shall in any circumstances be liable to provide the Company with any replacement goods or materials or land or parts at all; and
- neither KCRC nor the Government shall bear any responsibility or liability for any of the Concession Property during the Concession Period.

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In addition, the Company shall assume the risks, liabilities and costs arising from:

- the suitability of and title to the Concession Property and the land on which any of the Concession Property is situated;
- the physical state and condition of the Concession Property and the land on which any of the Concession Property is situated;
- any defects (inherent, patent, latent or otherwise) in any Concession Property;
- the quality of any facilities, installations, services or structures incorporated in or employed as or to be incorporated in or employed as part of the KCRC System or the Concession Property and the land on which any of the Concession Property is located;
- safety requirements and matters relating to air, water and land;
- the availability of facilities, installations, services and utilities required for the use and operation of the KCRC System and/or the Concession Property; and
- any requirements or approvals or the lack thereof under any applicable law or regulation,

and agrees that the existence of any condition, whether or not foreseeable by an experienced concessionaire, shall not:

- entitle the Company to refuse to accept the Concession Property or the land on which any of the Concession Property is located for all purposes of the Service Concession Agreement;
- give rise to any claim against KCRC or the Government under any of the Transaction Agreements; or
- give rise to any claim for any reduction in the amount of the Concession Payments.

The Company shall not be relieved in any way from any obligation under the Service Concession Agreement should any information whether obtained from KCRC or the Government or otherwise be incorrect or insufficient.

Subject to certain provisions contained in the Merger Framework Agreement relating to third party claims and subject to KCRC not breaching its obligations in respect of its covenants made relating to the Concession Property or operations, the Company waives, as between itself, KCRC and the Government all its rights in respect of any warranty or representation, express or implied, on the part of KCRC or the Government and all claims against KCRC or the Government in respect of or out of the operation or performance of the Concession Property.

The Company's Rights and Obligations

The Service Concession Agreement provides certain additional rights and obligations of the Company, including in relation to:

- the maintenance and retention of records;
- information and reporting covenants relating to the Capex Threshold, defaults, material adverse circumstances, litigation and other information required by KCRC to enable KCRC to comply with laws and regulations;
- auditing;

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- operation and maintenance of the Concession Property;
- disposal of Concession Property and the use of disposal proceeds;
- restrictions on the creation of security interests over the Concession Property;
- restrictions on parting with possession and sub-licensing certain Concession Property;
- rights of non-interference by KCRC (subject to certain conditions);
- rights to access and use KCRC Railway Land pursuant to a licence granted by KCRC; and
- apportionment of Government rates or rent relating to Concession Property pre and post Merger Date.

The Company is required at all times to maintain insurance in respect of Concession Property in accordance with the Service Concession Agreement.

KCRC's Rights and Obligations

The Service Concession Agreement provides certain additional rights and obligations of KCRC, including in relation to:

- limitation on disposals of any Concession Property;
- restrictions on the creation of security interests over the Concession Property;
- having no responsibility for the daily operations and maintenance of the Concession Property;
- rights of inspection in the event of breaches by the Company of the Service Concession Agreement or the Operating Agreement or if the Company is in default under the Franchise;
- the passing to the Company of notices, correspondence, orders or inquiries relating to the Concession Property which are received by KCRC on or after the Merger Date; and
- exercise of rights and performance of obligations under the KCRC Ordinance.

Intellectual Property Rights

The Service Concession Agreement contains provisions in relation to intellectual property rights. KCRC grants to the Company on a royalty-free basis, an exclusive licence to use certain intellectual property. Except in the case of intellectual property which is to be licensed for a transitional period, the licence will be coterminous with the Concession Period.

KCRC shall also provide the Company with copies of all documents and other media in KCRC's possession or control on which intellectual property that is Concession Property in the nature of know-how is recorded or incorporated.

Subject to certain conditions, the Company indemnifies KCRC (and its affiliates, employees, agents and contractors) on demand against all loss suffered or incurred by any of them as a result of any actual or alleged infringement of any Intellectual Property Right in connection with the provision by the Company of the KCRC Services or the Company's use of any Concession Property during the Concession Period. The Service Concession Agreement contains provisions, pursuant to which related claims are to be conducted.

Liability**Defects**

The Service Concession Agreement provides that subject to certain conditions, KCRC shall not be responsible for or liable to the Company for the condition of the Concession Property as at the date of its delivery to the Company; or any loss of any kind or nature caused directly or indirectly by the Concession Property or any part thereof or any inadequacy thereof for any purpose or any deficiency or defect therein (whether patent, latent, inherent or otherwise) or the use or performance thereof or any repairs, servicing or otherwise thereto or any delay in or interruption or loss of use thereof or any loss of business or other consequential damage or any damage whatsoever or howsoever caused.

Indemnity

Subject to certain conditions, the Company shall be responsible for and shall release and indemnify KCRC (and its affiliates, employees, agents and contractors) from and against losses incurred or suffered by any of them which arises directly or indirectly in respect of the Concession Property or out of its state, possession, use, performance, transportation or disposal or out of or in consequence of or in connection with any act, omission or negligence of the Company, its affiliates, employees, agents or contractors in:

- using, operating or maintaining the KCRC System and/or the Concession Property;
- designing, acquiring, constructing or otherwise creating any Additional Concession Property or any New Project Concession Property;
- providing the KCRC Services; or
- performing or failing to perform any of its obligations under the Service Concession Agreement.

The Company is not responsible for such matters if and to the extent such loss arises from the fraud or bad faith of KCRC or its affiliates, employees, agents or contractors (except where the agent in question is the Company and/or any of its affiliates acting as KCRC's agent pursuant to the Outsourcing Agreement, the KSL Project Management Agreement, the West Rail Agency Agreement and/or any other agreement or arrangement) or KCRC breaching its obligations in respect of certain covenants made relating to the Concession Property or operations.

Remedies

The Service Concession Agreement provides that there shall be no default or breach by the Company of its obligation to make payments on the due date under the Service Concession Agreement if the failure is caused by the error or fault of a person other than the Company (or its affiliates, agents or contractors) and if payment is made within 7 business days of the original due date.

The Service Concession Agreement provides that there is no contravention or breach by the Company of its obligations in respect of disposals of Concession Property if the Company remedies any failure to comply with such obligations within 30 days of the Company becoming aware of the disposal constituting the failure.

The Service Concession Agreement provides for general remedies for breaches of its terms by the Company and/or KCRC.

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Specific performance

The Company and KCRC acknowledge and agree that monetary damages alone shall be an insufficient remedy and, subject to an order of the court, specific performance shall be the appropriate remedy in the event that (i) the Company is in breach of its obligation to provide the KCRC Services to the Required Standards applicable to the KCRC System, or fails or refuses to return the Concession Property to KCRC upon the expiry or termination of the Concession Period, or is otherwise in breach of its return requirements, and/or provision of access obligations following termination or expiry of the Concession Period; or (ii) KCRC enters onto the KCRC Railway Land in breach of its obligations under the Transaction Agreements.

Consequences of Termination or expiry of Concession Period

The Service Concession Agreement provides the respective obligations of the Company and KCRC upon termination or expiry of the Concession Period regarding the return of Concession Property, respective access rights, arrangements in respect of intellectual property and in the case of any New Projects, additional obligations which will be set out in the relevant Supplemental Service Concession Agreement.

Compensation

Except as specifically provided in the Service Concession Agreement, no compensation will be payable by KCRC in respect of any Additional Concession Property upon the expiry or termination of the Concession Period. The Service Concession Agreement provides that, subject to certain conditions, upon the Company fulfilling the relevant return requirements as they apply to Concession Property, KCRC shall compensate the Company at the end of the Concession Period for expenditure on Additional Concession Property that is actually incurred by the Company in excess of the Capex Threshold.

Any agreement or determination as to the amount of the compensation payable by KCRC (if any) in respect of any Additional Concession Property upon the expiry or termination of the Concession Period shall represent the sole entitlement of the Company to compensation from KCRC and the Company shall have no other rights or remedies against KCRC and KCRC shall have no other liability to the Company, whether under the Service Concession Agreement, any other Transaction Document or at law, in respect of compensation payable in respect of Additional Concession Property upon the expiry or termination of the Concession Period.

Assignment and sub-contracting

KCRC may (without the Company's consent), assign or grant a security interest over its rights, including the receivables, under the Service Concession Agreement.

Except in the case of certain permitted sublicences, the Company shall not assign its rights or obligations under the Service Concession Agreement nor grant any interest in the Service Concession Agreement.

C) SALE AND PURCHASE AGREEMENT

The Sale and Purchase Agreement was entered into on the Signing Date between the Company and KCRC.

The Sale and Purchase Agreement contains the detailed provisions relating to the purchase of the Purchased Rail Assets by the Company from KCRC. The Sale and Purchase Agreement covers the matters set out below.

Effective Date

The Sale and Purchase Agreement is conditional upon each of the other Transaction Agreements (other than certain Transaction Agreements which will be entered into after the Merger Date) becoming effective on the Merger Date.