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本局檔號 Our Ref. THB(T)CR 10/1016/99

來函檔號 Your Ref.

香港
中區立法會道一號
立法會綜合大樓
立法會秘書處議會事務部
(經辦人：劉素儀女士)
(傳真：3151 7052)

劉女士：

立法會交通事務委員會
沙田至中環線項目的委託協議

因應委員要求政府提供政府與香港鐵路有限公司
(港鐵公司)就建造沙田至中環線項目簽訂的委託協議
文本，本局經詳細考慮並徵得港鐵公司同意後，現向委
員會提供相關委託協議的副本(請見附件)，以供參閱。

運輸及房屋局局長

(柯雋銘  代行)

2018年11月20日

附件

副本抄送：路政署署長

港鐵公司行政總裁

Dated the 29th day of May 2012

DEED

ENTRUSTMENT AGREEMENT FOR
CONSTRUCTION AND COMMISSIONING OF THE
SHATIN TO CENTRAL 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
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Hong Kong

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CONTENTS

| | Page |
|---|------|
| 1 Interpretation..... | 3 |
| 2 Financial Undertakings and Payment Mechanics..... | 12 |
| 3 General..... | 14 |
| 4 Corporation's Obligations..... | 14 |
| 5 Corporation's Skill and Care Warranty..... | 17 |
| 6 Insurance..... | 19 |
| 7 Government to Co-operate..... | 20 |
| 8 Modifications..... | 21 |
| 9 Mutual Co-operation..... | 21 |
| 10 Handing Over..... | 21 |
| 11 Land Acquisition..... | 23 |
| 12 Land for Railway Consultation..... | 24 |
| 13 SCL Protection Works..... | 25 |
| 14 Co-ordination and Use of the Shatin to Central Link..... | 26 |
| 15 Deleted..... | 26 |
| 16 Consultation..... | 27 |
| 17 Project Monitoring and Verification..... | 28 |
| 18 Environmental Protection..... | 32 |
| 19 Other Agreements..... | 33 |
| 20 Termination and Suspension..... | 34 |
| 21 Intellectual Property Rights..... | 38 |
| 22 The Ordinance..... | 40 |
| 23 Invalidity..... | 40 |

| | | |
|----|---|----|
| 24 | No Partnership..... | 40 |
| 25 | Further Assurance..... | 40 |
| 26 | Amendments..... | 40 |
| 27 | Waiver..... | 40 |
| 28 | Conflict..... | 41 |
| 29 | Payments..... | 41 |
| 30 | Notices..... | 41 |
| 31 | Dispute Resolution..... | 42 |
| 32 | Governing Law and Jurisdiction..... | 44 |
| 33 | Disclosure of Information..... | 44 |
| 34 | Force Majeure..... | 45 |
| 35 | Design Submissions and Construction..... | 45 |
| 36 | Temporary Discontinuance of the Works..... | 46 |
| 37 | Collateral Deed from Third Party contractors..... | 47 |
| | Appendix A: Scope of Railway Works, RRIW, EPIW, Property Development Enabling Works, Interface Works and CEDD Works | 50 |
| | Appendix B: Entrustment Activities..... | 62 |
| | Appendix C: Entrustment Programme..... | 66 |
| | Appendix D: Shatin to Central Link..... | 68 |
| | Appendix E: Payment of Third Party Costs and Interface Works Cost..... | 70 |
| | Appendix F: Funding Percentage Amount and Interface Works Cost..... | 75 |
| | Appendix G: Project Management Cost and Miscellaneous Works Fee..... | 79 |
| | Appendix H: Content requirements of reports to Government | 84 |
| | Appendix I: Handover Procedure..... | 87 |
| | Appendix J: Deliverable Documents in relation to the Property Development Enabling Works..... | 93 |

| | |
|---|-----|
| Appendix K: As-Constructed Documents | 96 |
| Appendix L: Collateral Deed..... | 99 |
| Appendix M: Handover Assets and MTR Assets..... | 105 |
| Appendix N: CEDD Works..... | 109 |

THIS DEED OF AGREEMENT is made on the 29th day of May 2012

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 Shatin to Central Link is one of the railway projects recommended for implementation in the Railway Development Strategy 2000. The Kowloon-Canton Railway Corporation ("**KCRC**") and the Corporation were invited to submit proposals in 2001. In June 2002, the Chief Executive in Council ordered that KCRC should be awarded the SCL project based on its conforming proposal.
- (B) In September 2003, KCRC submitted a preferred Shatin to Central Link scheme to Government. The preferred Shatin to Central Link scheme would make use of the East Rail Line crossing the harbour to form the Fourth Rail Harbour Crossing. Moreover, it would comprise an Automated People Mover system at Tsz Wan Shan to replace the previously proposed Tsz Wan Shan Station, a new Causeway Bay North Station, and Ma Tau Kok Station to replace the To Kwa Wan Station and Ma Tau Wai Station in the conforming proposal.
- (C) On 24 February 2004, the Executive Council gave approval for inviting KCRC and the Corporation to commence negotiation on a possible rail merger on the basis of a set of parameters. These parameters included the early resolution of interchange arrangements for new rail projects under planning, notably the Shatin to Central Link. The Corporation and KCRC completed their discussions and reported the outcome of their discussions to Government in September 2004. The report included a Shatin to Central Link scheme to be implemented under the rail merger scenario.
- (D) Based on the KCRC Shatin to Central Link preferred scheme and with some further refinements, KCRC, on 21 September 2004, submitted to Government a draft Final Proposal on the KCRC Shatin to Central Link scheme.
- (E) The Corporation and KCRC also submitted to Government in July 2005 a Technical and Financial Report on the Shatin to Central Link scheme under the rail merger scenario.
- (F) On 11 April 2006, the Chief Executive in Council agreed that the proposed Memorandum of Understanding for the proposed rail merger could be executed and consultation with the Legislative Council should proceed. The relevant legislative process for the rail merger was completed on 11 July 2007. The implementation of the rail merger commenced on 2 December 2007.
- (G) On 11 March 2008, the Executive Council decided that the Corporation should be asked to proceed with the further planning and design of the Shatin to Central Link based on the scheme jointly developed by the Corporation and KCRC previously and submitted to Government in July 2005.

- (H) Pursuant to the decision of the Executive Council referred to in Recital (G) above, Government and the Corporation entered into an entrustment agreement on 24 November 2008 to provide for the design of, and site investigation and procurement activities in relation to, the Shatin to Central Link ("**EA1**").
- (I) On 17 May 2011, Government and the Corporation entered into an entrustment agreement to provide for the financing, construction, procurement of services and equipment and other matters associated with the EA2 Works ("**EA2**").
- (J) The scheme in relation to the Shatin to Central Link was first gazetted under the Railways Ordinance (Cap. 519 of the Laws of Hong Kong) on 26 November 2010, with amendments and corrections gazetted on 15 July 2011 and 11 November 2011. The scheme, as amended with such minor modifications as deemed necessary, was authorised by the Chief Executive in Council on 27 March 2012.
- (K) Pursuant to the authorisation of the Chief Executive in Council referred to in Recital (J) above, Government and the Corporation have agreed to enter into this Agreement ("**EA3**" or this "**Agreement**") to provide for the further financing, design, construction, procurement of services and equipment, testing, commissioning and all other matters associated with the bringing into service of the Shatin to Central 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)**.

"Arbitration Ordinance" means the Arbitration Ordinance (Cap 609. of the Laws of Hong Kong).

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

"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).

"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 17.8**.

"CEDD Kai Tak Works" means the CEDD Works under item (G)1 of **Appendix A**.

"CEDD Wan Chai Works" means the CEDD Works under item (G)2 of **Appendix A**.

"CEDD Works" means any item of work which is described as such in **Appendix A** and, for the avoidance of doubt, is not described as forming part of the Railway Works.

"CEDD Works Notice" has the meaning ascribed to that term in **Clause 2.10**.

"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 or, in relation to any Interface Works set out in item (F)(b) of **Appendix A**, a certificate issued by the Corporation certifying the date of completion of such Interface Works.

"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 Shatin to Central 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 I**.

“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 Shatin to Central Link Project, including without limitation, the materials or documents referred to in **Clause 16.5**.

“Direct Costs” means 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.

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

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

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

“EA1” has the meaning ascribed to that term in **Recital (H)**.

“EA1 Design and Site Investigation On-Cost” has the meaning ascribed to the term “Design and Site Investigation On-Cost” in EA1.

“EA1 In-house Design Costs” has the meaning ascribed to the term “In-house Design Costs” in EA1.

“EA1 Preliminary Costs” has the meaning ascribed to the term “Preliminary Costs” in EA1.

“EA2” has the meaning ascribed to that term in **Recital (I)**.

“EA2 Project Management Cost” has the meaning ascribed to the term “Project Management Cost” in EA2.

“EA2 Works” has the meaning ascribed to the term “Works” in EA2.

“Early Handover Agreement” has the meaning ascribed to that term in **paragraph 1.8 of Appendix I**.

“Enabling Works” has the meaning ascribed to that term in EA2.

“Enabling Works Entrustment Activities” means the “Entrustment Activities” (as defined in EA2) related to the Enabling Works.

“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 the Interface 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 Shatin to Central Link Project.

“Entrustment Cost” means the total cost to Government of the Entrustment Activities including:

- (a) the Third Party Costs less the aggregate of Funding Percentage Amount;
- (b) the portion of the Project Management Cost in relation to the Entrustment Activities, being HK\$6,735.5 million;
- (c) the Interface Works Cost (subject to **Part II of Appendix F**); and
- (d) the Miscellaneous Works Fee (if any).

“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**.

“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 Shatin to Central 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 Handover Assets, the date on which the Corporation estimates that it will issue the last Handover Certificate.

"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 Percentage" means, in respect of each item of the Railway Works, the percentage (if any) attributable to the Corporation, as set out in the fourth column of the table in **Appendix A**.

"Funding Percentage Amount" means, in respect of each relevant item of the Railway Works, the amount calculated in accordance with **Part I of Appendix F**.

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

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

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

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

"Handover Procedure" means the procedure for the handover of the Handover Assets set out in **Appendix I**.

"Handover Assets" has the meaning ascribed to that term in **Appendix M**.

"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 Shatin to Central 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, trademarks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights, whether now known or created in the future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights.

"Interface Works" means any item of work which is described as such in **Appendix A**.

"Interface Works Cost" has the meaning ascribed to that term in **Part II of Appendix F**.

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

"KTE Project Agreement" means the Project Agreement for the financing, design, construction and operation of the Kwun Tong Ling Extension between Government and the Corporation dated 17 May 2011.

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

"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 G**.

"MTR Assets" has the meaning ascribed to that term in **Appendix M**.

"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 I**.

"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)**.

"Project Control Total" means HK\$70,827 million (excluding the costs relating to the CEDD Kai Tak Works), 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. On the date of this Agreement, the Corporation shall provide Government with a breakdown of the Project Control Total setting out an estimate of each of the following parts (each, a **"Relevant Part"**):

- (a) the portion of the Entrustment Cost estimated to be incurred in relation to the Railway Works and Interface Works;
- (b) the portion of the Entrustment Cost estimated to be incurred in relation to those items of EPIW, RRIW and Property Development Enabling Works;
- (c) the portion of the Entrustment Cost estimated to be incurred in relation to the CEDD Wan Chai Works;

- (d) the portion of the Entrustment Cost estimated to be incurred in relation to the CEDD Kai Tak Works; and
- (e) the portion of the Estimated Cost estimated to be incurred in relation to the Miscellaneous Works.

“Project Management Cost” means HK\$7,893 million to be paid to the Corporation by Government in accordance with **Appendix G**, as such sum may be varied in accordance with the terms of **Appendix G**.

“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 **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 I**.

“Railway Works” means any item of work which is described as such in **Appendix A**.

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

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

“Relevant Fixed Percentage” means, in respect of each item of work forming part of the Miscellaneous Works, a fixed percentage to be agreed between the Corporation and Government.

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

“Relevant Part” has the meaning ascribed to that term in the definition of **“Project Control Total”**.

“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 Shatin to Central Link.

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

“SCL Protection Works” means:

- (A) certain protection works which comprise an approximately 160 metre length tunnel at the southwest part of the Causeway Bay Typhoon Shelter; and
- (B) certain protection works which comprise approximately 69 metres of diaphragm walls and top slabs immediately east of Expo Drive.

"SCL Works" means the Works and the Enabling Works.

"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**.

"Shatin to Central Link" or the **"SCL"** means:

- (a) the extension of the Ma On Shan Line from Tai Wai to Diamond Hill connecting the station at Tai Wai with the station at Diamond Hill;
- (b) the further extension of the Ma On Shan Line from Diamond Hill to Hung Hom to join the West Rail Line; and
- (c) the rail line connecting the East Rail Line in the vicinity of Hung Hom to the station at Admiralty, with possible future extension to Central,

as shown on the plan in **Appendix D**.

"Shatin to Central Link Project" shall be construed to include the works comprising the Railway Works, the RRIW, the EPIW, the Property Development Enabling Works, the Interface Works and the Miscellaneous Works (if any).

"SIL(E) Project Agreement" means the Project Agreement for the financing, design, construction and operation of the South Island Line (East) between Government and the Corporation dated 17 May 2011.

"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, subject to **Clause 31.4** and **Clause 37.4**, 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, subject to **Appendix F**, any and all costs payable to Third Parties pursuant to the Third Party Contracts entered into in relation to the Railway Works, the RRIW, the EPIW, the Property Development Enabling Works and the Miscellaneous Works (if any) 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 but excluding any fee paid to the unsuccessful tenderer for any Third Party Contract which is a target cost contract.

"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.
- 1.8 For the avoidance of doubt, any reference in EA2 to "EA3" is a reference to this Agreement.

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, EA1 and EA2, Government shall pay to the Corporation the Project Management Cost, in accordance with **Appendix G**, 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 G**.
- 2.2 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 Interface Works Cost, subject to **Part II of Appendix F**, make payments to the Corporation in accordance with **Appendix E**;
 - (C) in relation to the Project Management Cost and the Miscellaneous Works Fee (if any), make payments to the Corporation in accordance with **Appendix G**; and
 - (D) in relation to the Direct Costs, make the payments directly to the relevant persons.
- 2.3 The maximum aggregate amount payable by Government to the Corporation under **Clause 2.2** shall be limited to HK\$3,000 million per annum and a total in aggregate of HK\$15,000 million.
- 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 or any part of the Entrustment Cost will exceed the Relevant Part of 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 or the relevant part of the Entrustment Cost will exceed the Relevant Part of 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 the Entrustment Cost, or the relevant parts of the Entrustment Cost, paid or payable by Government will exceed the Project Control Total or the Relevant Part of the Project Control Total, as the case may be (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 2.2(D)**, 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.
- 2.9 The Corporation shall, in respect of the Railway Works set out in **items (A)21 to (A)32, (A)34 to (A)37 and (A)39 of Appendix A**, bear and finance the full amount of the Funding Percentage Amount attributable to such Railway Works and shall, where applicable, make payments to Government in accordance with **paragraph 2 of Appendix E**. The maximum aggregate amount payable by the Corporation to Government under this **Clause 2.9** shall be limited to HK\$4,000 million per annum and a total in aggregate of HK\$15,000 million.
- 2.10 Notwithstanding the CEDD Works set out in **item (G) of Appendix A**, neither party to this Agreement shall have any right or obligation under this Agreement in respect of the CEDD Works until and unless the Corporation has received written notice from Government that Government has received sufficient funding for the construction of the relevant CEDD Works and the relevant CEDD Works are to proceed in accordance with this Agreement (each, a "**CEDD Works Notice**"). Upon receipt by the Corporation of the CEDD Works Notice, the Corporation shall carry out or procure the carrying out of the Entrustment Activities in relation to the relevant CEDD Works in accordance with this Agreement and this Agreement shall thereafter be construed in every way as if the relevant CEDD Works had all times formed part of the Works. For the purposes of this Agreement and in relation to the relevant CEDD Works specified in that CEDD Works Notice, any reference to EPIW (other than the definition of EPIW in **Clause 1.1**) shall be deemed to include a reference to the relevant CEDD Works specified in that CEDD Works Notice. Without limitation to the foregoing, the provisions in **Clauses 1 to 12 and 16 to 37 and the Appendices** to this Agreement which apply to EPIW shall be deemed to apply to the relevant CEDD Works specified in that CEDD Works Notice.
- 2.11 The Project Management Cost set out in **Clause 1.1** and the payment schedule set out in **paragraph 1.1 of Appendix G** is inclusive of all CEDD Works and there shall be no adjustments to the amount of the Project Management Cost upon the receipt of a CEDD Works Notice.
- 2.12 Upon receipt by the Corporation of a CEDD Works Notice in respect of the CEDD Kai Tak Works, the Project Control Total shall be increased by an amount equal to HK\$553.8 million.

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, the EPIW, the Property Development 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**"), provided that the maximum pain share for the Employer under any Third Party Contract which is a target cost contract shall be 10% of the initial target cost;

- (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, seek to ensure that such settlements are in the best interests of the Shatin to Central Link Project, act in accordance with the relevant commercial settlement procedures referred to in **Clause 4.6(C)(iv)** and 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 Shatin to Central 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 Shatin to Central 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, the Interface Works, the RRIW, the EPIW, the Property Development Enabling Works and the Miscellaneous Works (if any) (together, the "**Works**") from the commencement of construction until the date of handover of those Works (if any) 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 Handover Assets which are required to be handed over to Government in accordance with the Handover Procedure, Government shall carry out any fair wear and tear repairs required for such part of the Handover Assets 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 Shatin to Central 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 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 and/or the Miscellaneous Works (if any).
- 4.10 (A) 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 and some elements of such defect have already been included in the Outstanding Items List applicable to the relevant Third Party Contract before the expiry of the relevant Defects Liability Period,

the Corporation shall be responsible for only the repair of the remaining elements of such defect not so included.

- (B) In relation to any Interface Works set out in item **(F)(b)** of **Appendix A**, 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 such Interface Works.

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 EA1, EA2 and this Agreement shall be limited to the total aggregate value of:

- (A) the fees that have been and will be received by the Corporation from Government under EA1 and EA2; 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 Shatin to Central 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;
 - (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; and
 - (iii) in a manner which will allow the Corporation to satisfy those responsibilities and duties to which it will be subject if operations commence on the Shatin to Central 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 Shatin to Central 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.

For the avoidance of doubt, the warranties set out in this **Clause 5.1** shall not apply to the SCL Protection Works. In the event that the SCL Protection Works or any aspect thereof causes the Corporation to be in breach of this **Clause 5.1** (whether directly or indirectly), Government shall have no right against the Corporation under this Agreement or otherwise in respect of any such breach by the Corporation.

For the purposes of **Clauses 5.1(D)** and **5.1(E)** only, any reference to "Shatin to Central Link" shall be construed to exclude the EA2 Works.

- 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, the Corporation or sub-contractors of such Third Parties or the Corporation 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 or the Corporation 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 (where applicable) the duration of the relevant Defects Liability Periods;
 - (B) third party liability insurance (which shall provide cover for a minimum 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 (where applicable) 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 or the Corporation. 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.
- 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 Shatin to Central 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 Shatin to Central 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 Suspension Period pursuant to **Clause 20.6(C)(ii)**; or
- (C) a failure by Government to comply with its obligations under this Agreement including, but not limited to, a failure by Government to provide land, the tree removal applications and/or the SCL Protection Works in accordance with the Land Availability Programme,

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 I**.

- 10.2 Following handover of the Handover Assets in accordance with the provisions of **Appendix I**, 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 Handover Assets and the end of the Defects Liability Period applicable to the relevant Third Party Contracts) provide to Government (or, if Government directs, to such other entity that is owned by Government) 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 Handover Assets.

PART IV

LAND

11. Land Acquisition

11.1 Without prejudice to the rights and remedies of Government under this Agreement, EA1 and EA2, Government shall bear all land acquisition, clearance and related costs, of whatsoever nature and howsoever caused, arising from the implementation of the Shatin to Central Link Project including, but not limited to, the costs and amounts referred to in this **Clauses 11**.

11.2 (A) 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), tree removal applications and the SCL Protection Works required by the Corporation for the construction of the Works. Subject to **Clause 11.2(B)**, the Corporation shall provide Government with a schedule (the "**Land Availability Programme**") which sets out the land, tree removal applications and the SCL Protection Works the Corporation requires to be made available to it for the implementation of the Shatin to Central Link Project and, where required, specifying dates by which such land, tree removal applications and SCL Protection Works are to be made available to the Corporation in order to enable the Corporation to complete the Shatin to Central 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, tree removal applications and/or SCL Protection Works 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, tree removal applications and/or SCL Protection Works, using reasonable endeavours to minimise any delay to the Land Availability Programme, and submit the revised Land Availability Programme to Government.

(B) The Corporation shall provide Government with the Land Availability Programme in accordance with the table below.

| Timing | Scope |
|---|--|
| As soon as practicable after the date of this Agreement | The scope of the Land Availability Programme to be provided to Government shall be in respect of the matters set out in paragraphs (a) and (b) of the definition of "Shatin to Central Link" under Clause 1.1 |
| On or before 31 December 2012 | The scope of the Land Availability Programme to be provided to Government shall be in respect of the matters set out in paragraph (c) of the definition of "Shatin to Central Link" under Clause 1.1 |

- 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 Shatin to Central 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, EA1 and EA2, 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 Shatin to Central Link Project, including for the avoidance of doubt, for the loss of redevelopment potential which arises as a result of the Shatin to Central 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 Shatin to Central Link Project.
- 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 (including the sea floor and shoreline) 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 Shatin to Central Link.

PART V

SCL PROTECTION WORKS

13. **SCL Protection Works**

- 13.1 Government shall handover the SCL Protection Works to the Corporation in accordance with the Land Availability Programme.
- 13.2 Any defect in the SCL Protection Works that are identified following their handover to the Corporation shall be repaired by the Corporation. The cost of such repair (excluding any repairs in respect of any defect in the design of the SCL Protection Works) shall be borne by Government.

PART VI

TRANSPORT

14. **Co-ordination and Use of the Shatin to Central Link**

- 14.1 The Corporation shall consult and liaise with Government to establish the function, capacity, layout and details of passenger interchange facilities .

15. **Deleted**

PART VII

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 Shatin to Central 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 Shatin to Central Link Project and its service performance when operations commence on the Shatin to Central Link:
- (A) preliminary and final versions of the documents specified in **Appendix K**;

- (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 J** in relation to the Property Development Enabling Works;
- (E) preliminary and final plans showing the alignment of, and areas occupied by, the Shatin to Central Link, required to enable Government to confer, if required, on KCRC legal title to such land as is necessary in relation to the Shatin to Central Link; and
- (F) the manual to be used in connection with the testing and commissioning of the Shatin to Central 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 Shatin to Central 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 Shatin to Central 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.
- 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 H**.
- 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 Handover Assets pursuant to **Appendix I**) 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 H**.
- 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 Shatin to Central 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 Shatin to Central 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, information systems and reasonable office facilities 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 VIII

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 Shatin to Central Link Project.

PART IX

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 in respect of the EA1 Preliminary Costs, EA1 Design and Site Investigation On-Cost, EA1 In-house Design Costs and the EA2 Project Management Cost.
- 19.2 For the avoidance of doubt, save as set out in **Clause 19.1** and **Clause 4.12**, nothing in this Agreement shall in any way affect the rights and obligations of the parties under EA1 and EA2, which shall continue in force until their 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 X

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 I** 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 2.2**. 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 2.2**, 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 Shatin to Central 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 I** 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 Entrustment Cost 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, Interface Works Costs, Project Management Cost (pro rata by reference to the valuation period in **Appendix G** up to the date of termination) 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 2.2**, 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 2.2** as specified in a notice served by the Corporation pursuant to **Clause 20.2(B)** the Corporation shall use its reasonable endeavours 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 2.2** (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 2.2** 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 referred to in **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 2.2**.

PART XI

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 (including 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 enable the Corporation 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 Shatin to Central Link Project and/or the subsequent alteration, extension, operation and maintenance thereof, including for the avoidance of doubt, in the case of the Deliverable Documents in relation to the Property Development Enabling Works as listed in **Appendix J**, for all purposes relating to the sale and development of the relevant property developments or any part or parts thereof 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. Such waiver shall take effect upon the grant of licence to Government under **Clause 21.2**.
- 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 (including Government's assigns, successors and authorised users) 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 (including Government's assigns, successors and authorised users) 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 (including Government's assigns, successors and authorised users) 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 XII

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 22/F, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong (facsimile number: 2523 9187), 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 provided that such receipt shall be deemed to have occurred (A) at 9:00 a.m. if the transmission is made on a Business Day earlier than 9:00 a.m. (Hong Kong time), (B) at the same time as transmission if the transmission is made on a Business Day during the period from 9:00 a.m. to 5:00 p.m. (Hong Kong time) and (C) at 9:00 a.m. on the next Business Day after such transmission is made for all other cases. 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 at HKIAC and in accordance with and subject to the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance. All the provisions in Schedule 2 to the Arbitration Ordinance shall apply to any arbitration instituted in accordance with this **Clause 31**. The Domestic Arbitration Rules of HKIAC shall apply to any arbitration instituted in accordance with this **Clause 31**.

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 at HKIAC and in accordance with and subject to the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance. All the provisions in Schedule 2 to the Arbitration Ordinance shall apply to any arbitration instituted in accordance with this **Clause 31**. The Domestic Arbitration Rules of HKIAC shall apply to any arbitration instituted in accordance with this **Clause 31**; 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 33.2** (except that, for this purpose:
 - (1) the first and last sentences shall not apply; and
 - (2) the references in the remainder of **Clause 33.2** to “the Corporation” shall be read as “the relevant Third Party”)
 and **Clause 33.3**;
 - (iii) that in the event that Government informs it in writing in accordance with **Clause 33.2** (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).

In this **Clause 31.4**, any reference to a “**Third Party**” shall exclude any counterparty under any Third Party Contract relating to any Interface Works.

31.5 In the event that Government, in accordance with **Clause 33.2** (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.

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 In relation to disputes in relation to this Agreement between:

- (A) Government and the Corporation; or
- (B) the Corporation and any Third Party,

notwithstanding any provision of the Mediation Rules, the Arbitration Ordinance or, as the case may be, the Domestic Arbitration Rules referred to in **Clause 31** and subject to the following provisions: (i) Government may 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 33.2**; and (ii) the Corporation may disclose any relevant information if required under The Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited or any other rules of the relevant exchange on which any security of the Corporation is listed provided that, to the extent that it is reasonably practicable to do so, prior notice of such disclosure is given by the Corporation to Government.

- 33.3 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 Shatin to Central Link, to which the Buildings Ordinance is not applicable), the Corporation agrees that it shall carry out Consultation in relation to the Railway Works and the Interface 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 the Interface Works, and by agreement between Government and the Corporation) as if the Shatin to Central 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 G**) 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 this **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 be 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 I** applies, the relevant parts of the Works being the subject of the handover pursuant to **paragraph 1.10 of Appendix I** 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.
- 37.4 In this **Clause 37**, any reference to a **"Third Party"** shall exclude any counterparty under any Third Party Contract relating to any Interface Works.

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:   Gillian Elizabeth Miller 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 3 January 2012

in the presence of: 

Name, address and signature of witness:

Name: **Roger C H Cheng**
Solicitor, Hong Kong SAR
 Address: **Slaughter and May**

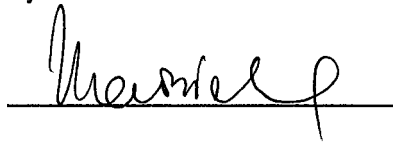
SIGNED, SEALED AND DELIVERED

By

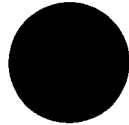
for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION

By



Signature



CHENG MEISZE, MAISIE

Name

DEPUTY SECRETARY FOR
TRANSPORT AND HOUSING
(TRANSPORT) I

Title

in the presence of:



Name, address and signature of witness:

Name: LAM SAI HUNG

Address: 22/F EAST WING, CENTRAL GOVERNMENT OFFICES
2 TIM MEI AVENUE, TAMAR, HONG KONG

Dated the 29th day of May 2012

ENTRUSTMENT AGREEMENT FOR
CONSTRUCTION AND COMMISSIONING OF THE
SHATIN TO CENTRAL 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, EPIW, Property Development Enabling Works, Interface Works and
CEDD Works

APPENDIX A

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

As at the date of this Agreement, the Works comprise the Railway Works, the RRIW, the EPIW, the Property Development Enabling Works and the Interface Works, in each case, as set out in the table below. In respect of each item of Railway Works, the fourth column of the table below sets out the relevant Funding Percentage.

| | Description of Works | % attributable to Government | % attributable to the Corporation |
|--------------------------|--|------------------------------|-----------------------------------|
| (A) Railway Works | | | |
| 1. | Approximately a total length of seventeen (17) kilometres, consisting of two sections: (i) Tai Wai to Hung Hom section: approximately a total length of eleven (11) kilometres extension of the Ma On Shan Line from Tai Wai via Southeast Kowloon to Hung Hom where it will join the West Rail Line; and (ii) Hung Hom to Admiralty section: approximately a total length of six (6) kilometres extension of the East Rail Line from Hung Hom across the Victoria Harbour to northern Wan Chai and Admiralty. | 100 | 0 |
| 2. | Underground and cross harbour tunnels, viaducts, approach structures and associated facilities. | 100 | 0 |
| 3. | Seven new stations comprising Hin Keng, Diamond Hill, Kai Tak, To Kwa Wan, Ma Tau Wai, Hung Hom, Exhibition and associated facilities. | 100 | 0 |
| 4. | Bifurcation from existing East Rail Line from Ho Man Tin to Hung Hom to gradually slope down and deepen to form an underground section, to match with the vertical alignment of the cross harbour tunnel section. | 100 | 0 |
| 5. | Stabling sidings at the disused Freight Yard Extension at Hung Hom and associated approach tracks with associated inspection and maintenance facilities. | 100 | 0 |
| 6. | Construction of other associated railway facilities including ventilation shafts, ventilation buildings and associated emergency access roads and plant buildings. | 100 | 0 |

| | Description of Works | % attributable to Government | % attributable to the Corporation |
|-----|---|------------------------------|-----------------------------------|
| 7. | Associated earthworks, civil and structural works, building services works, architectural works, drainage works, landscaping, diversion of existing utilities, temporary traffic management, reconstruction and realignment of existing roads including carriageways and footpaths. | 100 | 0 |
| 8. | Preventive and remedial works including underpinning the foundations of existing buildings or structures. | 100 | 0 |
| 9. | System-wide electrical and mechanical systems comprising: <ul style="list-style-type: none"> (i) Trackworks and Overhead Line; (ii) Signalling System for East West Line; (iii) Tunnel Environmental Control System; (iv) Platform Screen Doors; (v) Power Supply System and Trackside Auxiliaries; (vi) Lifts and Escalators; (vii) Radio and Communication Systems; (viii) Automatic Fare Collection System and Security Access Management System; (ix) Main Control Systems; and (x) Train Wash Plant. | 100 | 0 |
| 10. | Tai Wai Depot Tail Tracks and Wu Kai Sha Overrun Tracks Signalling modification. | 100 | 0 |
| 11. | Civil modification of existing stations along the East Rail Line to cater for the future operation of nine-car trains. | 100 | 0 |
| 12. | Modification of Signalling System in Lo Wu Freight Yard, Mong Kok Freight Yard and Hung Hom for Hung Hom area reprovisioning. | 100 | 0 |
| 13. | Modification of Controlling and Communication Systems in Lo Wu Freight Yard, Mong Kok Freight Yard and Hung Hom for Hung Hom area reprovisioning. | 100 | 0 |

| | Description of Works | % attributable to Government | % attributable to the Corporation |
|-----|--|------------------------------|-----------------------------------|
| 14. | Modification of existing West Rail Line and Ma On Shan Line Signalling System and integration with the new East West Line section Signalling system for EWL operation. | 100 | 0 |
| 15. | Civil modification of depot and stabling facilities in Pat Heung Depot, Ho Tung Lau Depot and Lo Wu. | 100 | 0 |
| 16. | Civil modification of existing Diamond Hill station of Kwun Tong Line to accommodate the interchange arrangement with the East West Line. | 100 | 0 |
| 17. | Modification of existing Hung Hom station of East Rail Line and West Rail Line to accommodate the interchange arrangement with the SCL. | 100 | 0 |
| 18. | Ancillary construction works and equipment necessary for the operation of the Shatin Central Link. | 100 | 0 |
| 19. | Platform modification works at East Rail Line. | 100 | 0 |
| 20. | Modification of West Rail Line Main Control System to integrate with East West line Main Control System. | 100 | 0 |
| 21. | Signalling System for North South Line | 12.7 | 87.3 |
| 22. | New TETRA Radio System for existing Ma On Shan Line. | 0 | 100 |
| 23. | New TETRA Radio System for existing East Rail Line. | 0 | 100 |
| 24. | Replacement of Integrated Control and Communication System to Main Control System for existing Ma On Shan Line. | 0 | 100 |
| 25. | Replacement of Integrated Control and Communication System to Main Control System for existing East Rail Line. | 0 | 100 |
| 26. | Rolling Stock conversion for 348 existing cars for East West Line. | 0 | 100 |
| | Procurement of: 16 new cars for East West Line; 10 x 7 cars new trains for East West Line; and 37 x 9 cars new trains for North South Line. | 45.8 | 54.2 |

| | Description of Works | % attributable to Government | % attributable to the Corporation |
|-----|---|-------------------------------------|--|
| 27. | Expansion of Station Control Rooms at existing East Rail Line. | 0 | 100 |
| 28. | Provision of Telecommunication Equipment Room and Pre-action Sprinkler System at existing Ma On Shan Line. | 0 | 100 |
| 29. | Provision of Telecommunication Equipment Room, Signal Equipment Room and FM200 Rooms at existing East Rail Line. | 0 | 100 |
| 30. | Remaining works at Ho Man Tin Station for the full operation of SCL. | 73.5 | 26.5 |
| 31. | Remaining works at Admiralty Station and Hong Kong Park Ventilation Building for the full operation of SCL. | 70 | 30 |
| 32. | Automatic platform gates along the Ma On Shan Line. | 50 | 50 |
| 33. | Extension of existing stations platforms along the Ma On Shan Line and associated works to cater for the future operation of eight-car trains. | 100 | 0 |
| 34. | Civil modification of existing Ma On Shan Line station platform for APG installation. | 0 | 100 |
| 35. | Automatic platform gates along the East Rail Line. | 0 | 100 |
| 36. | The Pat Heung Depot infrastructure maintenance building. | 93.4 | 6.6 |
| 37. | The Pat Heung Depot permanent way workshop. | 38.5 | 61.5 |
| 38. | Station artworks at new stations under the SCL excluding Hung Hom Station. | 100 | 0 |
| 39. | Station artworks at Hung Hom stations. | 50 | 50 |
| 40. | The relocation and maintenance of trees in connection with the Shatin to Central Link Project including the relocation and maintenance of such trees after the Handover Date. | 100 | 0 |

| | Description of Works |
|-----------------|--|
| (B) RRIW | |
| 1. | Reprovisioning of Public Transport Interchange at Wan Chai North |
| 2. | Proposed Public Transport Interchange at Fung Tak |
| 3. | Reprovisioning of portion of Cheong Wan Road Flyover |
| 4. | Reprovisioning of road facilities at Chatham Road North |
| 5. | Reprovisioning of road facilities around Kowloon City and Ma Tau Wai |
| 6. | Reprovisioning of road facilities at Lung Cheung Road near Diamond Hill Station |
| 7. | Reprovisioning of portion of Wan Shing Street Footbridge |
| 8. | Reprovisioning of portion of Percival Street Footbridge |
| 9. | Improvement to subways at Olympic Garden |
| 10. | Reprovisioning of Wan Chai Ferry Pier Footbridge |
| 11. | Reprovisioning of Hong Wan Path |
| 12. | Reprovisioning of fender piles of Hung Hom Bypass |
| 13. | Underpinning of the Kowloon North East Corridor Piers |
| 14. | Underpinning of the East Kowloon Corridor Piers |
| 15. | Underpinning of the Hung Hom Bypass Pier |
| 16. | Underpinning of the Canal Road Flyover |
| 17. | Underpinning of the Hung Hing Road Flyover |
| 18. | Reprovisioning of culvert at Hung Hom Station and Proposed Hung Hom Stabling Sidings |
| 19. | Reprovisioning of culvert at North Fan Area of Hung Hom Station |
| 20. | Reprovisioning of culvert at Canal Road |
| 21. | Reprovisioning of culvert at Lung King Street |

| | Description of Works |
|-----|--|
| 22. | Reprovisioning of culvert at Fleming Road |
| 23. | Reprovisioning of sewers and cooling mains near Hung Hom Railway Station |
| 24. | Slope improvement works near Oi Sen Path |
| 25. | Reprovisioning of portion of Wan Chai Sports Ground |
| 26. | Reprovisioning of Wan Chai Swimming Pool and Harbour Road Sports Centre |
| 27. | Strengthening of Hong Kong Coliseum Podium |
| 28. | Reprovisioning of portion of Ma Chai Hang Recreation Ground and Proposed Indoor Games Hall |
| 29. | Reprovisioning and improvement of Sung Wong Toi Playground |
| 30. | Reprovisioning and improvement of Olympic Garden |
| 31. | Improvement to Hin Tin Playground and proposed Hin Kwai Lane Sitting Out Area and Proposed Shek Mun Garden |
| 32. | Reprovisioning and improvement of Ma Tau Wai Road/To Kwa Wan Road Garden |
| 33. | Reprovisioning and improvement of Ma Tau Wai Road/Chi Kiang Street Amenity Area |
| 34. | Reprovisioning and improvement of Ma Tau Wai Road/Chatham Road North Amenity Area |
| 35. | Reprovisioning and improvement of Ma Tau Chung Road/Tam Kung Road Amenity Area |
| 36. | Reprovisioning and improvement of Ma Tau Wai Road/Ma Hang Chung Road Rest Garden |
| 37. | Reprovisioning and improvement of Lok Shan Road Playground and To Kwa Wan Complex Playground |
| 38. | Reprovisioning and improvement of Tsz Wan Shan Estate Central Playground and Tsz Wan Shan Road Rest Garden |
| 39. | Reprovisioning and improvement of Winslow Street Playground and Amenity Area |
| 40. | Reprovisioning and improvement of Chatham Road Interchange Rest Garden |
| 41. | Reprovisioning and improvement of playground at junction of Fenwick Pier Street and Convention Avenue |
| 42. | Reprovisioning and improvement of tunnel approach Rest Garden |

| | Description of Works |
|---|---|
| 43. | Preservation of old pillbox and former Royal Airforce Hangar at ex-Tai Hom Village |
| 44. | Reprovisioning of New Territories South Animal Management Centre and Sha Tin Plant Quarantine Station |
| 45. | Reprovisioning of police facilities near Causeway Bay Typhoon Shelter and improvement to Police Sports and Recreation Club at Boundary Street |
| 46. | Reprovisioning of Wan Chai Ferry Concourse Public Toilet |
| 47. | Reprovisioning of Hin Keng Estate Refuse Collection Point |
| 48. | Reprovisioning works at Fleet Arcade at Fenwick Pier Street |
| 49. | Reprovisioning of staircases and grease trap in Hong Kong Convention and Exhibition Centre |
| <u>(C) EPIW</u> | |
| 1. | Fung Tak pedestrian walkway system |
| 2. | Pedestrian walkway system at Yuk Wah Street |
| 3. | Pedestrian walkway system near Tsz Wan Shan Estate Central Playground |
| 4. | Proposed covered walkway between To Kwa Wan Station and Kai Tak Development Area |
| <u>(D) Property Development Enabling Works</u> | |
| 1. | Enabling works at To Kwa Wan Station and Wan Chai North works sites comprising enhancement of the foundation and structure of the station, installation of necessary piles along the tunnels and stations to preserve the topside development potential of the sites concerned. Excluding, for the avoidance of doubt, property development enabling works at Ho Man Tin. |
| <u>(E) Miscellaneous Works</u> | |
| 1. | Any Miscellaneous Works that may be agreed between Government and the Corporation. |

| | |
|--|--|
| (F) <u>Interface Works</u> | |
| (a) <u>Interface Works by Third Party</u> | |
| 1. | Modification of system-wide systems for North South Line. |
| 2. | Modification of system-wide systems for East West Line. |
| 3. | Modification of system-wide systems for 9-cars operation at East Rail Line Stations. |
| 4. | Modification of system-wide systems for 8-cars operation at Ma On Shan Line Stations. |
| 5. | Modification of existing radio system at interchange stations and Tsing Yi Operation Control Centre with East West Line and North South Line. |
| 6. | Modification of existing Diamond Hill Station (Kwun Tong Line) system-wide E&M for interfacing with new system-wide systems at Diamond Hill Station (East West Line) and for relocated Station Control Room. |
| 7. | Hung Hom Area Reprovisioning E&M Relocation Works. |
| 8. | Modification of Public Address System at Hung Hom due to latest FSD requirements. |
| 9. | Provision of mobile high level working platform at Hung Hom Stabling Siding (HHS). |
| 10. | Modification of existing Ho Tung Lau Depot Wash Plant to accommodate new profile EMU. |
| 11. | Cable Surveys (with local cable diversion at Pat Heung Depot) for East West Line. |
| 12. | Cable Surveys for East Rail Line. |
| 13. | Provision of operator console, mimic panel and associated equipment/accessories for East West Line and North South Line at Tsing Yi Operation Control Centre. (17.7% of the costs apportioned to SCL) |
| 14. | Modification of system Signage at Stations & Trains. |
| 15. | Admiralty station infeed upgrade. (33% of the costs apportioned to SCL) |
| 16. | Locomotives, Wagons and Back-up Vehicles for SCL. |
| 17. | Upgrade of East Rail Line Public Address System to support the announcement of East Rail Line mixed fleet operations, and to form an integrated North South Line Public Address System. |
| 18. | Upgrade of East Rail Line Digital Transmission System to support North South Line Communications Systems. |

| | |
|---|--|
| 19. | Upgrade East Rail Line CCTV System to monitor East Rail Line mixed fleet operation and to form an integrated North South Line CCTV System. |
| 20. | Upgrade of East Rail Line Passenger Information Display System to support the announcement of East Rail Line mixed fleet operations, and to form an integrated North South Line Passenger Information Display System. |
| 21. | Upgrade of the Tunnel Ventilation and Traction Power Control System for East Rail Line and Ma On Shan Line operations prior to the migration of Integrated Control and Communication System to North South Line Main Control System. |
| 22. | Upgrade the Fire Alarm Panel in East Rail Line to interface with North South Line. |
| 23. | Track and overhead line geometry recording vehicles to cater for the Project Works including Hung Hom station to Admiralty station section. |
| 24. | Engineering wagons to cater for Hung Hom station to Admiralty station section. |
| 25. | Engineering loco to cater for the Project Works and Hung Hom station to Admiralty station section. |
| 26. | Underfloor wheel lathe for North South Line rolling stock. |
| 27. | The Universal Integrated Training System. (46.6% of the costs apportioned to SCL) |
| (b) Interface Works by the Corporation | |
| 1. | Modification of trackworks and overhead line at Hung Hom north for connection of North South Line to existing East Rail Line. |
| 2. | Modification of trackworks and overhead line for track diversion of existing West Rail Line from East Tsim Sha Tsui Hung to Hung Hom. |
| 3. | Modification of trackworks and overhead line at existing Diamond Hill Station and interfacing with new system-wide systems for relocated Station Control Room. |
| 4. | Modification of trackworks and overhead line at Pak Heung Depot. |
| 5. | Modification of trackworks and overhead line at Tai Wai Depot Tail Track. |
| 6. | Modification of trackworks and overhead line for re-provisioning of P-Way Sidings, HV Sidings & Workshop at Mongkok Freight Yard, Loco Shed at Lo Wu Marshalling Yard and Shatin Freight Yard. |
| 7. | Modification of trackworks at Ma On Shan Line for 8-car operation. |
| 8. | Modification of trackworks at East Rail Line. |
| 9. | Modification of trackworks, overhead line and integration of new system-wide systems into |

| | |
|--|--|
| | existing systems including associated works for the construction of the new Admiralty Station. |
| 10. | Modification of works trains to support trackworks and overhead line modifications. |
| 11. | Miscellaneous items to cover system-wide modifications which are incidental and in close connection with high inter-dependency with the trackworks and overhead line modifications. |
| 12. | Integration works of new system-wide systems into existing systems including associated cabling works |
| 13. | Decommissioning of redundant systems at Hung Hom after opening of East West Line and North South Line. |
| 14. | Establishment of works train operation for Train Related Installation Programme. |
| 15. | Establishment of Reliability Proofing support to participate in the reliability proofing activities. |
| 16. | Mobilisation pre-operation activities to cope with opening of the railway including early engagement of operation control centre, station, train, maintenance department to support reliability proofing, operations readiness, test running and trial running prior to opening of the railway. |
| 17. | Train and station power supply prior to opening of the railway. |
| (G) CEDD Works (subject to Clause 2.10) | |
| 1. | <p><u>CEDD Kai Tak Works</u></p> <p>(Package A) Construction of Roads L9 and L16 and the associated pedestrian streets, drainage, sewerage, watermain and landscape works in the Roads.</p> <p>(Package B) Construction of Road L16 (part) and the associated pedestrian streets, drainage, sewerage, watermain and landscape works.</p> <p>(Package C) Construction of a section of Kai Tak River and multi-cell drainage culverts.</p> <p>(Package D) Construction of a section of twin-cell drainage box culvert.</p> <p>Further details of the CEDD Kai Tak Works are set out in Part I of Appendix N.</p> |
| 2. | <p><u>CEDD Wan Chai Works</u></p> <p>(a) Construction of a section of dual two-lane primary distributor, Road P2, and re-alignment of the existing Convention Avenue and Hung Hing Road;</p> <p>(b) Construction of ground level roads, modification of existing roads for connection with Slip Road 3 of the proposed Trunk road and some road junction improvement works; and</p> <p>(c) Construction of associated footpaths, roadside amenities, stormwater drainage works,</p> |

sewerage works and landscaping works.

Further details of the CEDD Wan Chai Works are set out in **Part II of Appendix N.**

Dated the 29th day of May 2012

ENTRUSTMENT AGREEMENT FOR
CONSTRUCTION AND COMMISSIONING OF THE
SHATIN TO CENTRAL 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 and Interface Works

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

- 1.1 completion of all necessary aspects of the detailed design of the Railway Works and the Interface Works;
- 1.2 invitation and assessment of tenders in respect of, and award of, Third Party Contracts for the Railway Works and the Interface 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 EA1 or EA2;
- 1.4 completion or procurement of completion of the construction of the Railway Works and the Interface Works;
- 1.5 project management and site supervision of the Third Party Contracts associated with the Railway Works and the Interface 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 Handover Assets in accordance with the provisions of **Appendix I**;
- 1.7 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 Shatin to Central Link;
- 1.8 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 and any other relevant document;
- 1.9 following completion of the Railway Works and the Interface Works, removal from the land occupied by the Railway Works and the Interface 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 the Interface 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; and
- 1.10 reliability proofing of the Railway Works.

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 EA1 or EA2;
- 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 EA1 or EA2;
- 2.4 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 I**;
- 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 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**

As at the date of this Agreement, the Entrustment Activities for the Property Development 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, 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 EA1 or EA2;
- 3.3 procurement of completion of the construction of the Property Development Enabling Works;

- 3.4 project management and site supervision of the Third Party Contracts associated with the Property Development 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 in accordance with the provisions of **Appendix I**;
- 3.6 following completion of each item of the Property Development Enabling Works, removal from the land occupied by the relevant item of Property Development 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 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
- 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 Shatin to Central Link Project.

Dated the 29th day of May 2012

ENTRUSTMENT AGREEMENT FOR
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SHATIN TO CENTRAL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

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and

MTR CORPORATION LIMITED

APPENDIX C

Entrustment Programme

APPENDIX C

ENTRUSTMENT PROGRAMME

| ACTIVITY DESCRIPTION | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|------|------|------|------|------|------|------|------|------|------|------|
| DESIGN | | | | | | | | | | | |
| Detailed Design | | | | | | | | | | | |
| WORKS CONTRACT PROCUREMENT (SCL EWL) | | | | | | | | | | | |
| Civil Construction Contracts | | | | | | | | | | | |
| E&M Works Contracts | | | | | | | | | | | |
| SHATIN TO CENTRAL LINK (SCL EWL) | | | | | | | | | | | |
| Tze Wan Shan Pedlink | | | | | | | | | | | |
| TKW to HOM Section (include TKW & MTW) | | | | | | | | | | | |
| Modification of MOL Infrastructure | | | | | | | | | | | |
| HIK To DIH Section (include HIK & DIH) | | | | | | | | | | | |
| HOM to HUH Section (include HUH & HHS) | | | | | | | | | | | |
| DIH to TKW Section (include KAT) | | | | | | | | | | | |
| Design, Manufacturing, Delivery, Modification & Commissioning of 7-car Trains for EWL | | | | | | | | | | | |
| Trackwork & E&M Installation, T&C & Dynamic Test, Test & Trial Running | | | | | | | | | | | |
| EWL Opening | | | | | | | | | | | |
| REPROVISIONING WORKS & ENTRUSTED WORKS TO OTHERS | | | | | | | | | | | |
| Entrusted Works to WDII & CWB | | | | | | | | | | | |
| Reprovisioning of NTAMC & STPOCS | | | | | | | | | | | |
| Reprovisioning of Fung Tak PTT | | | | | | | | | | | |
| Reprovisioning of Indoor Games Hall & Wan Chai Swimming Pool & PSRC Enhancement | | | | | | | | | | | |
| Reprovisioning of POC | | | | | | | | | | | |
| WORKS CONTRACT PROCUREMENT (SCL NSL) | | | | | | | | | | | |
| E&M Works Contracts | | | | | | | | | | | |
| Civil Construction Contracts | | | | | | | | | | | |
| SHATIN TO CENTRAL LINK (SCL NSL) | | | | | | | | | | | |
| Design, Manufacturing, Delivery & Commissioning of New 9-car Trains for NSL | | | | | | | | | | | |
| EAL Modification Works for NSL | | | | | | | | | | | |
| Immersed Tube and Bored Tunnels | | | | | | | | | | | |
| EXH Station | | | | | | | | | | | |
| ADM Related Works | | | | | | | | | | | |
| Trackwork & E&M Installation, T&C & Dynamic Test, Test & Trial Running | | | | | | | | | | | |
| NSL Opening | | | | | | | | | | | |

SHATIN TO CENTRAL LINK (SCL)

ENTRUSTMENT PROGRAMME

| | | | | | |
|------|-----------|-------------|----|----------|----|
| Date | 11-May-12 | First Issue | JC | Approved | JC |
| | | | | | |
| | | | | | |
| | | | | | |

Program No.: SCL/0000/PPD/0000264

Dated the 29th day of May 2012

ENTRUSTMENT AGREEMENT FOR
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SHATIN TO CENTRAL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

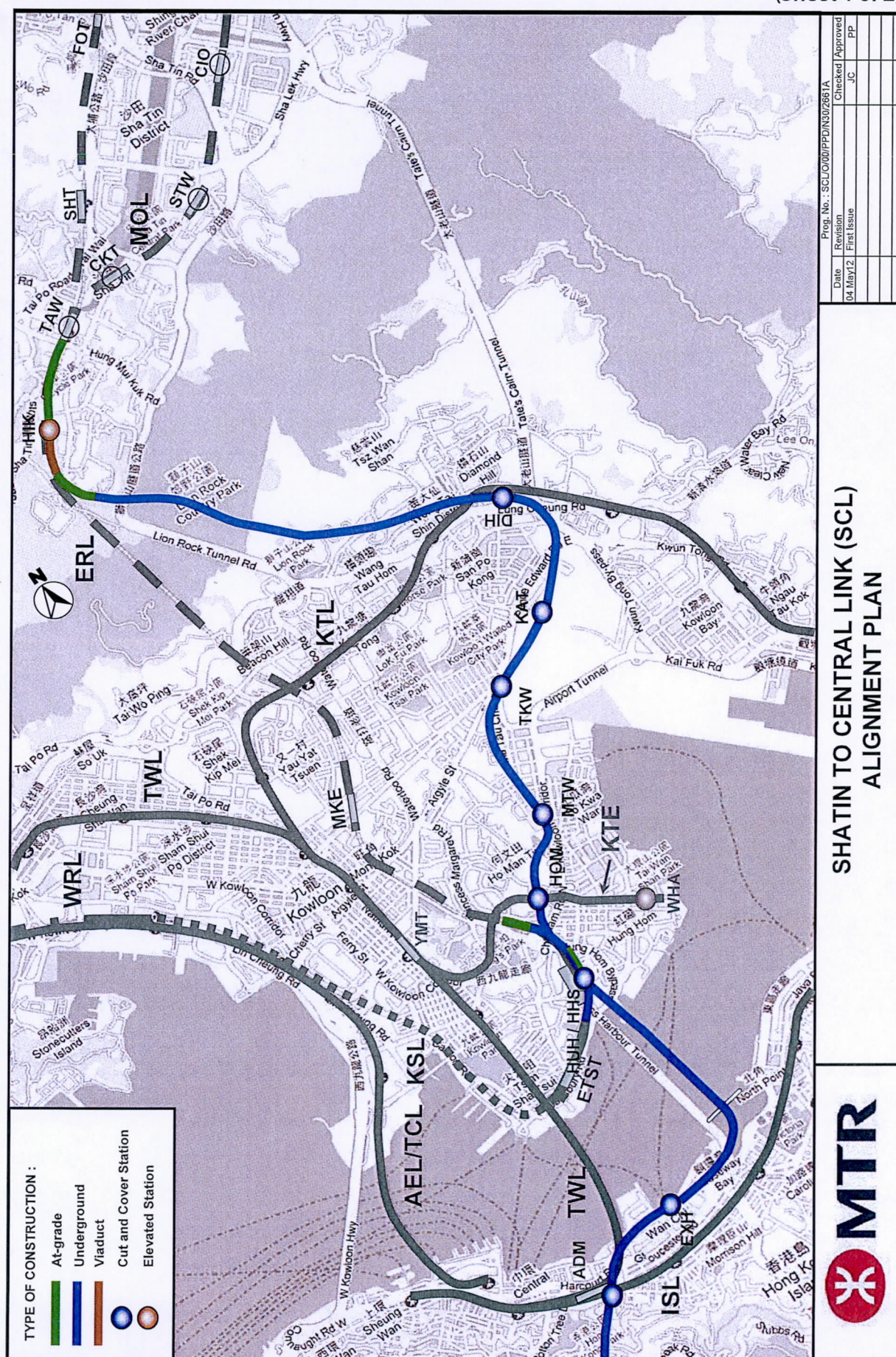
MTR CORPORATION LIMITED

APPENDIX D

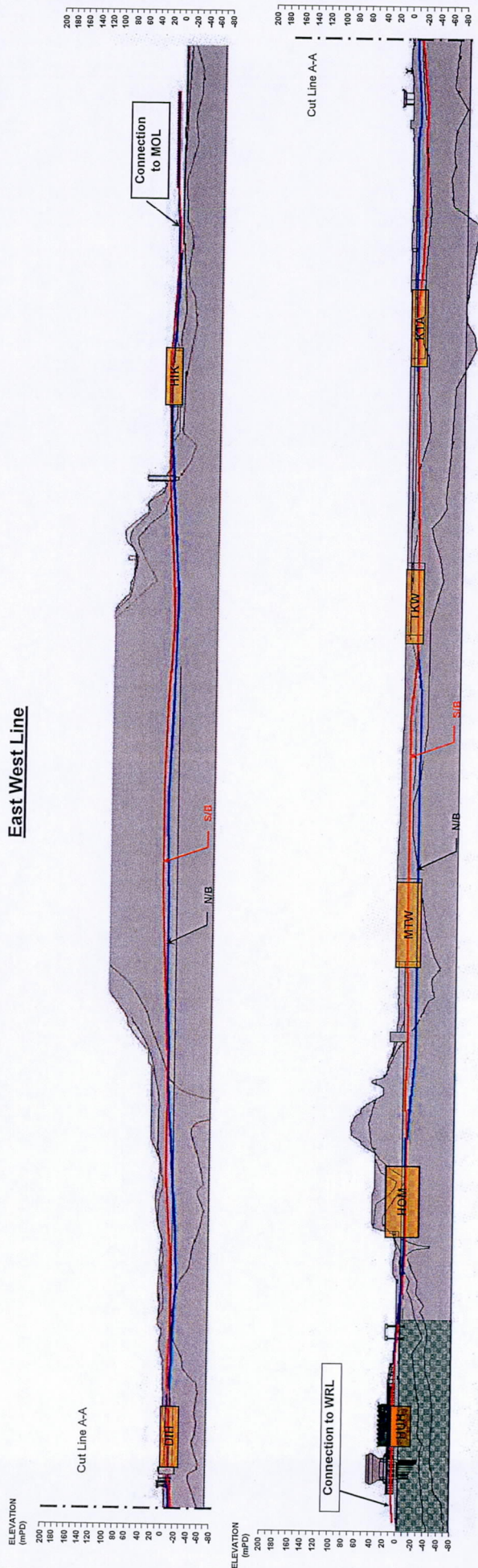
Shatin to Central Link

APPENDIX D

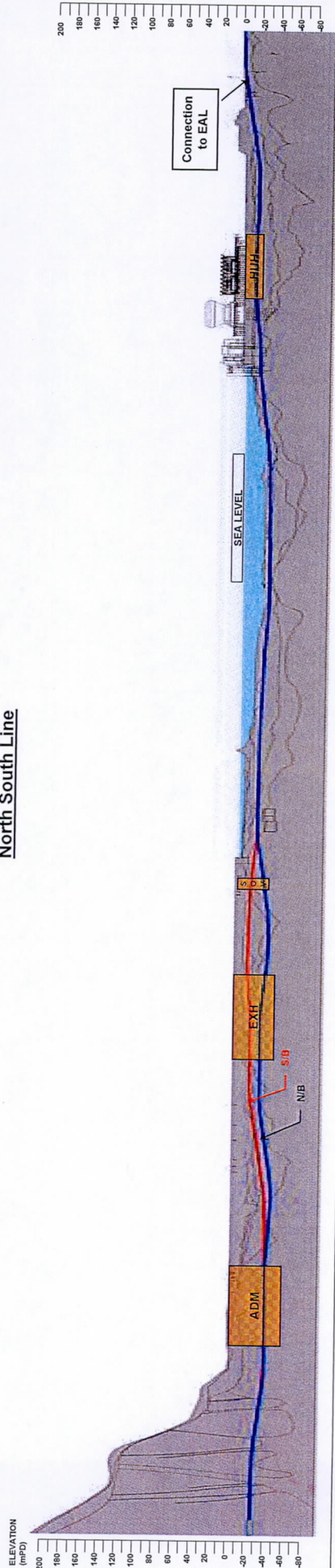
SHATIN TO CENTRAL LINK



East West Line



North South Line



SHATIN TO CENTRAL LINK (SCL)
LONGITUDINAL PROFILE

| Date | Revision | Checked | Approved |
|----------|----------|---------|----------|
| 7 May 12 | 1 | JP | JP |

Proj. No.: SCL009P0202044

Dated the 29th day of May 2012

ENTRUSTMENT AGREEMENT FOR
CONSTRUCTION AND COMMISSIONING OF THE
SHATIN TO CENTRAL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

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MTR CORPORATION LIMITED

APPENDIX E

Payment of Third Party Costs and Interface Works Cost

APPENDIX E

PAYMENT OF THIRD PARTY COSTS AND INTERFACE WORKS COST

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 Interface Works Cost, at least one senior manager from the Corporation’s finance department who has no material day-to-day involvement in the Shatin to Central 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 (in respect of any Third Party Costs) or the 21st day (in respect of any Interface Works Cost) 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 (in respect of any Third Party Costs) or the 21st day (in respect of any Interface Works Cost).

1. Certification by Corporation

- 1.1 Subject to the provisions of this **Appendix E**, Government shall pay the Third Party Costs and the Interface Works Cost 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 Interface Works Cost). 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/or the Interface Works Cost 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).

2. **Payment by Corporation**

- 2.1 On or before the date falling two Business Days prior to the Due Date in respect of each of the Third Party Costs, the Corporation shall, where applicable, pay to Government an amount equal to the Funding Percentage Amount (if any) in respect of the Railway Works to which such Third Party Costs relate.

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 Shatin to Central Link
dated [•] 2012 (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] by the Due Date[s] set out below:

| Category of Amounts | Certified Amount | Payee | Payee's Payment details | Due Date |
|---|-------------------------|------------------------|--------------------------------|------------------------|
| [Third Party Costs] | <i>To be completed</i> | <i>To be completed</i> | <i>To be completed</i> | <i>To be completed</i> |
| <i>[Third Party Costs associated with the Railway Works]</i> | <i>To be completed</i> | <i>N/A</i> | <i>N/A</i> | <i>N/A</i> |
| <i>[Third Party Costs associated with EPIW / RRIW / Property Development]</i> | <i>To be completed</i> | <i>N/A</i> | <i>N/A</i> | <i>N/A</i> |

Enabling Works]]

| | | | | |
|---|------------------------|------------|------------|------------|
| <i>[Third Party Costs associated with [the CEDD Kai Tak Works]]</i> | <i>To be completed</i> | <i>N/A</i> | <i>N/A</i> | <i>N/A</i> |
|---|------------------------|------------|------------|------------|

| | | | | |
|--|------------------------|------------|------------|------------|
| <i>[Third Party Costs associated with [the CEDD Wan Chai Works]]</i> | <i>To be completed</i> | <i>N/A</i> | <i>N/A</i> | <i>N/A</i> |
|--|------------------------|------------|------------|------------|

| | | | | |
|--|------------------------|------------|------------|------------|
| <i>[Third Party Costs associated with [the Miscellaneous Works]]</i> | <i>To be completed</i> | <i>N/A</i> | <i>N/A</i> | <i>N/A</i> |
|--|------------------------|------------|------------|------------|

| | | | | |
|-------------------------------|------------------------|--------------------|------------------------|------------------------|
| <i>[Interface Works Cost]</i> | <i>To be completed</i> | <i>Corporation</i> | <i>To be completed</i> | <i>To be completed</i> |
|-------------------------------|------------------------|--------------------|------------------------|------------------------|

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 and any Interface Works Costs relating to Interface Works carried out by Third Parties, 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 [•]].

[On or before the date falling two Business Days prior to the Due Date in respect of the above Third Party Costs, the Corporation will pay to Government HK\$[•], being an amount equal to the Funding Percentage Amount in respect of the Railway Works to which such Third Party Costs relate.]

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 29th day of May 2012

ENTRUSTMENT AGREEMENT FOR
CONSTRUCTION AND COMMISSIONING OF THE
SHATIN TO CENTRAL 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

Funding Percentage Amount and Interface Works Cost

APPENDIX F

PART I

FUNDING PERCENTAGE AMOUNT

1. Calculation of Funding Percentage Amount

The Funding Percentage Amount in respect of each of the items of the Railway Works set out in items **(A)21 to (A)32, (A)34 to (A)37 and (A)39** of **Appendix A** shall be calculated as the aggregate of the relevant Funding Percentage (as set out opposite the description of such Railway Works in the fourth column of the table in **Appendix A**) of:

- (A) the final outturn construction cost for the relevant item of the Railway Works; and
- (B)
 - (i) all other associated costs and expenses in connection with the relevant Railway Works including, but not limited to land costs (including, for the avoidance of doubt, any claims for compensation under the Railways Ordinance), employee compensation insurance, contractors' all risks insurance and third party liability insurance; and
 - (ii) any additional costs in relation to the relevant Railway Works as a result of a modification agreed in accordance with **Clause 8**.

For the avoidance of doubt, the Funding Percentage Amount shall not include any Additional Suspension Costs incurred in relation to such Railway Works.

2. Interim Payment

In respect of each of the items of Railway Works referred to in **paragraph 1** of this **Appendix F**, the parties agree that, until such time as the Funding Percentage Amount for the relevant Railway Works is determined, the Corporation shall determine the amount of its payment to Government under **paragraph 2** of **Appendix E** hereof on a reasonable basis taking into account any amounts payable to Third Parties in relation to such Railway Works or otherwise incurred in relation to such Railway Works, and exercising such skill and care as may reasonably be expected of a professional and competent project manager.

3. Shortfall/Overpayment

The parties further agree that if, for whatever reason, the amount paid to Government by the Corporation under **paragraph 2** of **Appendix E** in respect of each of the items of Railway Works referred to in **paragraph 1** of this **Appendix F** does not equal the Funding Percentage Amount attributable to such Railway Works, then the shortfall or overpayment (as the case may be) shall be paid by the Corporation (in the case of a shortfall) or repaid by Government (in the case of an overpayment) to the other party as soon as reasonably practicable following the determination of such Funding Percentage Amount.

4. Target Cost Contracts

In the event that any Third Party Contract in respect of any part of the Railway Works is a target cost contract, the final outturn construction cost of that part of the Railway Works undertaken pursuant to such Third Party Contract shall mean the "Total Cost" of such works under that contract, as adjusted to take account of the "Contractor's Share", as stated in the Final Certificate for that contract (in each case as such terms are defined in the relevant Third Party Contract).

PART II

INTERFACE WORKS COST

1. Interface Works Cost means the costs incurred by the Corporation in completing the Interface Works, which shall consist of the following:
 - (i) any costs payable to Third Parties engaged in connection with the Interface Works 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;
 - (ii) the wages and benefits payable or due (as the case may be) to workmen involved in undertaking the Interface Works;
 - (iii) the support and related overheads involved in managing the Interface Works;
 - (iv) any costs and expenses including works trains, energy costs, pre-operational overheads and expenditures in connection with managing the reliability proofing of the Railway Works and the Interface Works; and
 - (v) all other associated costs and expenses incurred by the Corporation in connection with the Interface Works 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.
2. All determinations to be made by the Corporation under this **Part II** of **Appendix F** 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.
3. In respect of any Interface Works Costs incurred pursuant to **paragraphs (i), (ii) or (v)** above, to the extent that such Interface Works Costs relate to items **(F)(a)13, (F)(a)15 or (F)(a)27** of **Appendix A**, Government's obligation to make payments to the Corporation pursuant to **Clause 2.2(B)** shall be limited to 17.7 per cent., 33 per cent. and 46.6 per cent. of such Interface Works Costs respectively.

Dated the *29th* day of May 2012

ENTRUSTMENT AGREEMENT FOR
CONSTRUCTION AND COMMISSIONING OF THE
SHATIN TO CENTRAL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

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MTR CORPORATION LIMITED

APPENDIX G

Project Management Cost and Miscellaneous Works Fee

APPENDIX G

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) |
|------------------|---------------|--------------|---------------|------------------------|
| | | | | |
| 2012 | Up to end May | 21 Jun 2012 | 1,157.5 | 1,157.5 (Note 1) |
| | Q3 | end Jun 2012 | 61.5 | 106.5 (Q3 and Q4 only) |
| | Q4 | end Sep 2012 | 45.0 | |
| 2013 | Q1 | end Dec 2012 | 225 | 900 |
| | Q2 | end Mar 2013 | 225 | |
| | Q3 | end Jun 2013 | 225 | |
| | Q4 | end Sep 2013 | 225 | |
| 2014 | Q1 | end Dec 2013 | 245 | 980 |
| | Q2 | end Mar 2014 | 245 | |
| | Q3 | end Jun 2014 | 245 | |
| | Q4 | end Sep 2014 | 245 | |
| 2015 | Q1 | end Dec 2014 | 257.5 | 1,030 |
| | Q2 | end Mar 2015 | 257.5 | |
| | Q3 | end Jun 2015 | 257.5 | |
| | Q4 | end Sep 2015 | 257.5 | |
| 2016 | Q1 | end Dec 2015 | 265 | 1,060 |
| | Q2 | end Mar 2016 | 265 | |

| | | | | |
|------|----|--------------|--------|------|
| | Q3 | end Jun 2016 | 265 | |
| | Q4 | end Sep 2016 | 265 | |
| 2017 | Q1 | end Dec 2016 | 248.75 | 995 |
| | Q2 | end Mar 2017 | 248.75 | |
| | Q3 | end Jun 2017 | 248.75 | |
| | Q4 | end Sep 2017 | 248.75 | |
| 2018 | Q1 | end Dec 2017 | 190 | 760 |
| | Q2 | end Mar 2018 | 190 | |
| | Q3 | end Jun 2018 | 190 | |
| | Q4 | end Sep 2018 | 190 | |
| 2019 | Q1 | end Dec 2018 | 135 | 540 |
| | Q2 | end Mar 2019 | 135 | |
| | Q3 | end Jun 2019 | 135 | |
| | Q4 | end Sep 2019 | 135 | |
| 2020 | Q1 | end Dec 2019 | 82.5 | 330 |
| | Q2 | end Mar 2020 | 82.5 | |
| | Q3 | end Jun 2020 | 82.5 | |
| | Q4 | end Sep 2020 | 82.5 | |
| 2021 | Q1 | end Dec 2020 | 7.0 | 28.0 |
| | Q2 | end Mar 2021 | 7.0 | |
| | Q3 | end Jun 2021 | 7.0 | |
| | Q4 | end Sep 2021 | 7.0 | |
| 2022 | Q1 | end Dec 2021 | 6.0 | 6.0 |

(Note 1) HK\$1,157.5M is the agreed amount of project management fee to be settled for the valuation period up to the end of May 2012. It includes the cumulative amount recovered by the Corporation under EA1 and EA2.

- 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 or there is any change in laws, regulations or directions in respect of the Works or the method of construction of the Works that is likely, in the reasonable opinion of the Corporation or Government, to result in a material increase or decrease in the project management responsibilities or costs of the Corporation, 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 G**.
- 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 **Clause 34.2**) 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, 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, Government shall pay the Miscellaneous Works Fee to the Corporation at the same time as the relevant

Third Party Costs attributable to the Miscellaneous Works are due for payment as certified in accordance with **Appendix E**.

Dated the 29th day of May 2012

ENTRUSTMENT AGREEMENT FOR
CONSTRUCTION AND COMMISSIONING OF THE
SHATIN TO CENTRAL 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

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), which shall include the Corporation's estimate of the final outturn construction cost of (i) the Railway Works and the Interface Works (ii) the EPIW, RRIW and Property Development Enabling Works (iii) the CEDD Kai Tak Works and (iv) the CEDD Wan Chai Works;
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 list of any contracts awarded during the calendar month immediately preceding the date of the report;
5. a summary of progress against the Entrustment Programme;
6. details of any other major issues arising in relation to the Shatin to Central 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) , which shall include the final outturn construction cost of (i) the Railway Works and the Interface Works (ii) the EPIW, RRIW and Property Development Enabling Works (iii) the CEDD Kai Tak Works and (iv) the CEDD Wan Chai Works;
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 Shatin to Central Link Project which the Corporation determines is relevant for the purposes of the report;
7. subject to the requirements of **Appendix K**, the Deliverable Documents; and
8. such other information as may be reasonably required by Government.

Dated the 29th day of May 2012

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MTR CORPORATION LIMITED

APPENDIX I

Handover Procedure

APPENDIX I

HANDOVER PROCEDURE

1. **Date of Handover**

- 1.1 Unless otherwise agreed in writing between the parties, where the Corporation reasonably considers that both (a) the Enabling Works Entrustment Activities and (b) the Entrustment Activities are sufficiently advanced to enable the setting of a formal date for handover to Government of the Handover Assets, 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 Handover Assets (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 Handover Assets.
- 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 Handover Assets (the "**Handover Certificate**"). Upon delivery of the Handover Certificate:
 - (A) the Corporation shall be deemed to have completed such of the Entrustment Activities and the Enabling Works 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 Handover Assets;
 - (B) the MTR Assets shall be deemed to have been vested in the Corporation and shall be owned solely and exclusively by the Corporation; and
 - (C) 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, 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 I**, Government may request in writing at any time that, subject to the Corporation's written consent (which shall not be unreasonably withheld), parts of the Handover Assets 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 Handover Assets 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 I** 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 I** shall not apply;
 - (B) the "Handover Assets" for the purposes of each Early Handover Agreement shall be construed as a reference to the part of the Handover Assets 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 Handover Assets 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 Handover Assets as are the subject of each relevant certificate; and
 - (E) **paragraph 1.7(A)** shall be construed to refer those Entrustment Activities and Enabling Works Entrustment Activities that relate to the part of the Handover Assets 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 Handover Assets 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 I**, 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 I** 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 I** shall apply to the parts of the Handover Assets that are the subject of any Early Handover Agreements.
- 1.12 Government shall allow, or procure KCRC to allow, the Corporation to access and use the Railway Works and the Interface Works together with any associated land for the purposes of operating, maintaining or constructing any part of the Shatin to Central Link and the railways operated by the Corporation and maintaining such Works from the date of completion of construction of such Works until the operation of the Shatin to Central Link pursuant to the concession approach.

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 SCL 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 SCL Works to members of relevant Government departments and any other persons authorised by Government, 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 H**; and
 - (vi) any other actions reasonably required in order to ensure that the Handover Assets 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 Handover Assets 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 SCL 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 or in respect of any Interface Works set out in item (F)(b) of **Appendix A**.
- 3.2 Government shall be entitled to receive copies of any lists of outstanding SCL Works and/or defective SCL 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 SCL 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 Handover Assets (including any part of the Handover Assets pursuant to any Early Handover Agreement) pursuant to the terms of this **Appendix I**.

4. **Testing and Commissioning of the Railway Works and the Interface Works**

- 4.1 Approximately fifteen (15) months prior to the Date of Handover, the Corporation shall commence the testing and commissioning of the Railway Works and the Interface Works in accordance with the relevant commissioning manual for testing and commissioning of the Shatin to Central Link.
- 4.2 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 Shatin to Central 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.

5. **Testing and Commissioning of the RRIW and EPIW**

- 5.1 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**.

6. **Testing and Commissioning of the Property Development 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 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 29th day of May 2012

ENTRUSTMENT AGREEMENT FOR
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Between

SECRETARY FOR TRANSPORT AND HOUSING

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MTR CORPORATION LIMITED

APPENDIX J

Deliverable Documents in relation to the Property Development Enabling Works

APPENDIX J

DELIVERABLE DOCUMENTS IN RELATION TO THE PROPERTY DEVELOPMENT
ENABLING WORKS**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. Temporary Deck covering future property car park and loading / unloading area
 - (A) Temporary structure; and
 - (B) Miscellaneous interface details including temporary drainage system and the associated building services provisions, etc.
3. Other associated 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 Shatin to Central Link;
 - (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 29th day of May 2012

ENTRUSTMENT AGREEMENT FOR
CONSTRUCTION AND COMMISSIONING OF THE
SHATIN TO CENTRAL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

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MTR CORPORATION LIMITED

APPENDIX K

As-Constructed Documents

APPENDIX K

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 29th day of May 2012

ENTRUSTMENT AGREEMENT FOR
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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 Shatin to Central 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 Shatin to Central 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:-
 - 10.1 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.
 - 10.2 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
 - 11.1 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.
 - 11.2 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 at HKIAC and in accordance with and subject to the provisions of the Arbitration Ordinance (Cap. 609 of the Laws of Hong Kong) (the "Arbitration Ordinance") and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance. All the provisions in Schedule 2 to the Arbitration Ordinance shall apply to any arbitration instituted in accordance with this Clause 11. The Domestic Arbitration Rules of HKIAC shall apply to any arbitration instituted in accordance with this Clause 11.
12. DISCLOSURE OF INFORMATION TO THE PUBLIC ACCOUNTS COMMITTEE
 - 12.1 The Contractor agrees that:
 - (A) notwithstanding any provision of the HKIAC's Mediation Rules, the Arbitration Ordinance or, as the case may be, the Domestic Arbitration Rules referred to in

clause 11.2 but subject to clause 12.2, 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 12.2, 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),

- 12.2 Clause 12.1 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:-

Dated the 29th day of May 2012

ENTRUSTMENT AGREEMENT FOR
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SHATIN TO CENTRAL LINK

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SECRETARY FOR TRANSPORT AND HOUSING

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MTR CORPORATION LIMITED

APPENDIX M

Handover Assets and MTR Assets

APPENDIX M

HANDOVER ASSETS AND MTR ASSETS

In this Agreement:

"Handover Assets" means (i) the Enabling Works and (ii) those parts of the Works identified as such in the second column of the table set out below; and

"MTR Assets" means those parts of the Works identified as such in the second column of the table set out below.

| Works | MTR Assets/Handover Assets |
|---|---|
| The Railway Works set out in: | |
| Items (A)1 to (A)7 of Appendix A | Handover Assets |
| Item (A)8 of Appendix A | N/A |
| Items (A)9 to (A)15 of Appendix A | Handover Assets |
| Item (A)16 of Appendix A | MTR Assets |
| Items (A)17 to (A)20 of Appendix A | Handover Assets |
| Item (A)21 of Appendix A (i) New section between bifurcation point at Ho Man Tin to end of overrun tunnel at Admiralty (ii) Existing section between Lo Wu and Lok Ma Chau to Hung Hom (iii) Central equipment in Tsing Yi Operation Control Centre and Ho Tung Lau Depot | Handover Assets MTR Assets MTR Assets |
| Items (A)22 to (A)25 of Appendix A | MTR Assets |
| Item (A)26 of Appendix A | |
| EWL rolling stock conversion (348 cars) | MTR Assets |
| EWL new cars (16 cars) | MTR Assets |
| EWL new trains (10x7 cars) | |

| Works | MTR Assets/Handover Assets |
|---|-----------------------------------|
| 3 new trains (3x7 cars) | Handover Assets |
| 7 new trains (7x7 cars) | MTR Assets |
| NSL new trains (37x9 cars) | |
| 19 new trains (19x9 cars) | Handover Assets |
| 18 new trains (18x9 cars) | MTR Assets |
| Items (A)27 to (A)29 of Appendix A | MTR Assets |
| Items (A)30 and (A)31 of Appendix A | |
| New Admiralty Station, Ho Man Tin Station and Hong Kong Park Ventilation Building | |
| (i) Areas owned by Government as specified in SIL(E) and KTE Project Agreements | Handover Assets |
| (ii) Areas owned by MTR as specified in SIL(E) and KTE Project Agreements | MTR Assets |
| Item (A)32 of Appendix A | |
| (i) Automatic platform gates for four-car train platform areas | Handover Assets |
| (ii) Automatic platform gates for remaining four-car train platform areas | MTR Assets |
| Item (A)33 of Appendix A | Handover Assets |
| Items (A)34 and (A)35 of Appendix A | MTR Assets |
| Item (A)36 of Appendix A | Handover Assets |
| Item (A)37 of Appendix A | MTR Assets |
| Item (A)38 of Appendix A | Handover Assets |
| Item (A)39 of Appendix A | |
| (i) Floor standing art pieces in concourse | Handover Assets |
| (ii) Ceiling hung artwork in existing concourse | MTR Assets |

| Works | MTR Assets/Handover Assets |
|---|---|
| Item (A)40 of Appendix A | Handover Assets |
| The RRIW, EPIW and Property Development Enabling Works set out in Appendix A | Handover Assets |
| The Interface Works set out in Appendix A excluding items (F)(a)6, (F)(a)15, (F)(a)27, (F)(b)3, and (F)(b)9 | Handover Assets |
| Items (F)(a)6, (F)(b)3 and (F)(b)9 of Appendix A | MTR Assets |
| Item (F)(a)15 of Appendix A | N/A |
| Item (F)(a)27 of Appendix A (i) 1 cab replica for East West Line; and 1 cab replica for North South Line (ii) 1 cab replica for South Island Line (East); 2 modified cab replica for East West Line; and 1 cab replica for North South Line | Handover Assets MTR Assets |
| The CEDD Works set out in Appendix A | Handover Assets |

Dated the 29th day of May 2012

ENTRUSTMENT AGREEMENT FOR
CONSTRUCTION AND COMMISSIONING OF THE
SHATIN TO CENTRAL LINK

Between

SECRETARY FOR TRANSPORT AND HOUSING

for and on behalf of

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

and

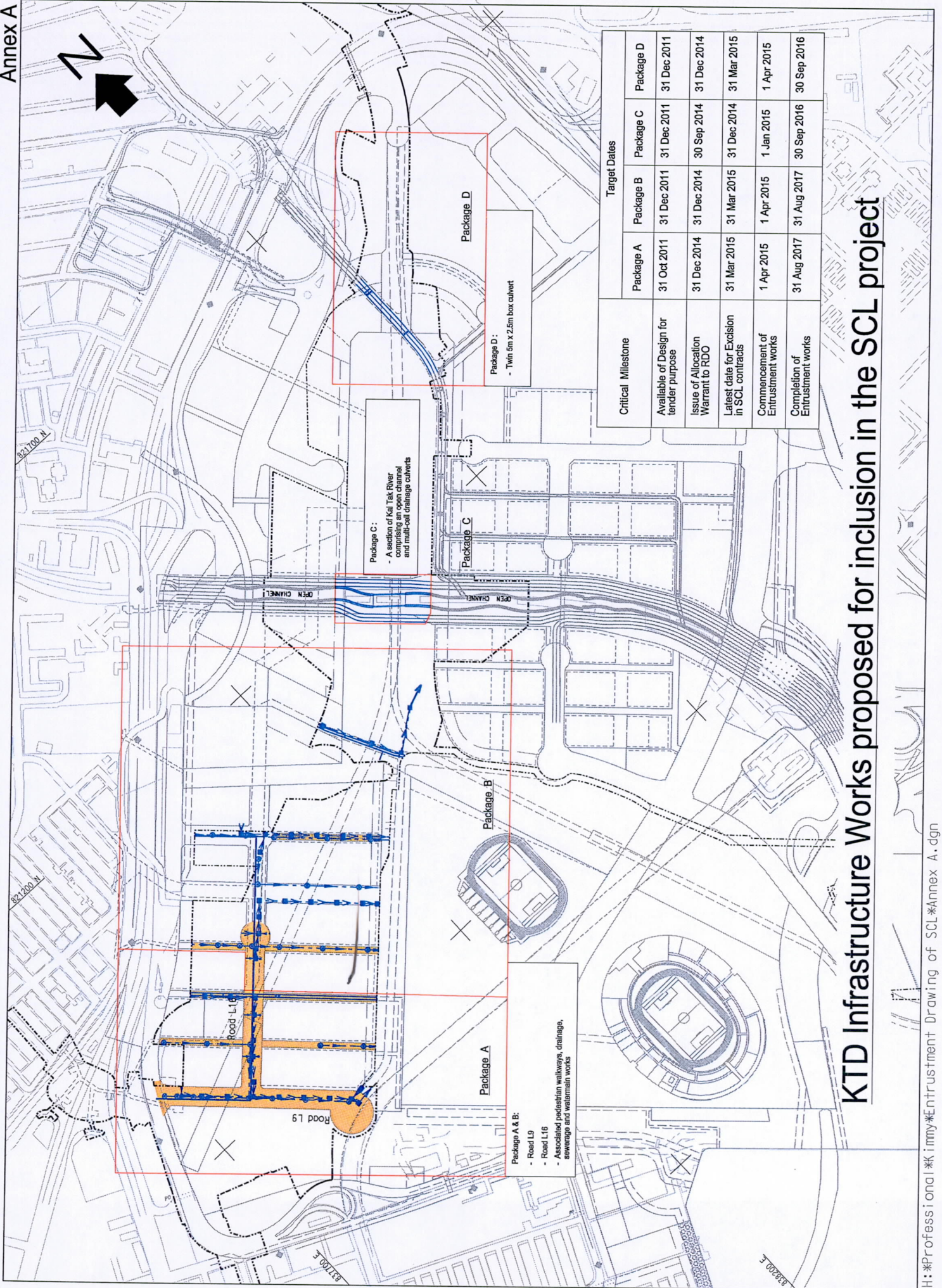
MTR CORPORATION LIMITED

APPENDIX N

CEDD Works

PART I

CEDD KAI TAK WORKS



KTD Infrastructure Works proposed for inclusion in the SCL project

PART II

CEDD WAN CHAI WORKS

