

Dated the day of December 2013

Ktt Wi-Fi Provider License Agreement

by and between

MTR Corporation Limited

and

[OPERATOR] Limited

Template

KTT WI-FI PROVIDER LICENSE AGREEMENT

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THIS PROVIDER LICENSE AGREEMENT is made on the _____ day of December 2013

BETWEEN:-

- (1) **[OPERATOR] Limited**, a company incorporated in Hong Kong and having its registered office at **[INSERT REGISTERED OFFICE ADDRESS IN HONG KONG]** (“**Operator**”); and
- (2) **MTR Corporation Limited**, a company incorporated in Hong Kong and having its registered office at MTR Headquarters Building, Telford Plaza, 33 Wai Yip Street, Kowloon Bay, Kowloon, Hong Kong (“**MTRCL**”).

(MTRCL and the Operator are collectively referred to as the “**Parties**” or individually referred to as the “**Party**”)

WHEREAS:-

- (A) The Premises are owned by Kowloon-Canton Railway Corporation (“**KCRC**”), and MTRCL has under a number of agreements with the KCRC acquired the power and the right to license out the Premises.
- (B) MTRCL is formed to construct, operate and maintain a mass transit railway system in Hong Kong and as such owns/manages, leases/or occupies premises, plant, machineries, installations, facilities and related railway transport systems in Hong Kong and the PRC.
- (C) MTRCL has assigned TraxComm Limited (“**TraxComm**”) to manage a number of telecommunication activities (including tendering of certain services) within mass transit railway system in Hong Kong on behalf of MTRCL under an agreement between MTRCL and TraxComm.
- (D) KTT is a Hong Kong / China cross-boundary railway service which currently operates three (3) round trips daily plying between MTR Hung Hom Station of Hong Kong and Guangzhou East Station of China. One (1) fleet of KTT consists of two (2) locomotives and twelve (12) passenger cars of which nine (9) cars are currently in daily operation. The train compartments and locomotives of the KTT are important assets to KTT services and to MTRCL. All on-board services of the KTT are of prime concerns to the image of MTRCL.
- (E) The Operator is willing to provide Wi-Fi-based wireless high speed connections for passengers of KTT to access the internet throughout a train journey between MTR Hung Hom Station of Hong Kong and Guangzhou East Station of the PRC.
- (F) In addition to this Agreement, the Operator has agreed to enter into a service agreement with TraxComm for the provision of technical and maintenance services by TraxComm.
- (G) This KTT Wi-Fi Provider Licence Agreement (“**Provider Licence Agreement**”) is intended to specify the detailed contractual terms and conditions for the provision of Wi-Fi connections for passengers of KTT and internet connections for passengers on KTT, at the through train platform areas and at the Departure Hall of MTR Hung Hom Station.

NOW IT IS HEREBY AGREED AS FOLLOWS:-

1. INTERPRETATION

1.1 Words and phrases appearing in this Provider Licence Agreement and the recitals shall be construed in accordance with the definitions and provisions as follows:

“**Affected Party**” means a party the performance of whose obligations under this Agreement is affected by a Force Majeure Event.

“**Agreement**” means this Provider Licence Agreement and the Schedules, all agreed specifications, plans, drawings and other documents which are prepared pursuant to this Agreement and/or any amendments to this Agreement which are in writing and executed by both Parties.

“**Certificate of Completion**” means each certificate of completion issued by MTRCL pursuant to Clause 5.6.

“**Commercial Launch**” means the date on which the Wi-Fi service is put into service on KTT and at Departure Hall for public use. As at the date of this Agreement, the Commercial Launch is scheduled to be 1st day of March 2014.

“**Competent Person**” means a person who is authorized and approved in writing by the MTRCL to carry out such duties in the Premises as may be authorized by the MTRCL.

“**Computer Kiosks**” means furniture with a total of five (5) desktop computer units with individual liquid crystal display monitor, keyboard and mouse which are placed and/or installed on the furniture for passengers to access the internet without paying a fee at the designated location(s) of Departure Hall at MTR Hung Hom Station.

“**Confidential Information**” means all information whether commercial, financial, technical or otherwise (whether oral, in writing, machine readable or in any other form) and material (whether electronically recorded, in writing or otherwise) which by its nature should be treated as secret and confidential, whether or not labeled as ‘Confidential’, and which the Parties desire to protect against unrestricted disclosure or competitive use or which is designated as such, including without limitation:-

- (a) information relating directly or indirectly to the disclosing Party’s business, undertakings or that of any member of its group, including but not limited to details of trade secrets, know-how, strategies, ideas, operations, processes, methodologies and practices;
- (b) information relating directly or indirectly to the disclosing Party’s plans, intentions, know-how, market opportunities and business affairs, undertakings or those of any member of its group or its customers (including potential customers) and clients; and
- (c) all information disclosed and materials supplied by the Operator pursuant to the Wi-Fi services in this Agreement.

“Departure Hall” means the designated areas for passengers awaiting trains leaving Hong Kong within MTR Hung Hom Station as further set out in Schedule 6 and excludes (unless otherwise agreed by the Parties) all areas which are licensed or occupied by commercial or non-commercial occupants through contractual arrangements or otherwise with MTRCL and/or any of its affiliates.

“Force Majeure Event” means an event beyond the reasonable control of the Affected Party including, without limitation, strikes, lock-outs and labour disputes, acts of God, war, riot, civil commotion, epidemic, malicious damage (but excluding malicious damage involving the employees of the Affected Party or its subcontractors), earthquake, storm, flood, fire, accident, explosion or meteor, government restraint, expropriation or prohibition, any action or event that infringes property rights, inability or delay in granting or obtaining government’s or authorities’ approvals, consents, permits or licenses, or termination or withdrawal of such approvals, consents, permits or licenses.

“Government” means the government of Hong Kong.

“Government Authorities” means any statutory, government licensing or competent authorities in Hong Kong and the PRC.

“Hong Kong” means Hong Kong Special Administrative Region, which shall bear the meaning given in the Interpretation and General Clauses Ordinance (Cap. 1, Laws of Hong Kong).

“Hong Kong Dollar” (or **“HK\$”**) means the official currency in Hong Kong.

“Intellectual Property Rights” means any of the following in any part of the world:-

- (a) a patent, trade mark, trade name, service mark, (in each case whether registered or unregistered and including applications therefor), registered design, copyright or design right or any right which is similar or analogous to any of the foregoing; or
- (b) any right to bring an action for passing off or any similar or analogous proceedings.

“KTT” means Ktt Through Train, a double-decker cross-boundary passenger train which currently operates three (3) round trips daily plying between MTR Hung Hom Station of Hong Kong and Guangzhou of the PRC. This passenger train is currently operated by MTRCL.

“KTT Wi-Fi Service” means an internet connection access over Wi-Fi on KTT, at the through train platform areas and at the Departure Hall that the Operator manages and operates.

“Licence” means the licence granted by MTRCL to the Operator in accordance with Clause 2.

“Licence Fee” means a certain amount to be paid as agreed in Schedule 2 herewith throughout the Term by the Operator to MTRCL and in accordance with Clause 3.1 of this Agreement.

“MTR” means the mass transit railway system in Hong Kong in accordance with the Mass Transit Railway Ordinance (Cap. 556, Laws of Hong Kong).

“MTR Hung Hom Station” means the railway terminal at Hung Hom designated by the MTRCL for the handling and/or transportation of passengers.

“Non-Traffic Hours” means generally 1:00 a.m. to 5:00 a.m. and the exact hours are subject to change and depend on the station operation.

“Premises” means the trains, spaces and premises managed by the MTRCL including without limitation the MTR Hung Hom Station and the Departure Hall.

“PRC” means the People’s Republic of China.

“Public Holiday” means public holidays in Hong Kong from time to time.

“Public Wireless Local Area Network” (or **“PWLAN”**) means the Wi-Fi-based wireless technology within the technical criteria of the class licence as defined by the Telecommunications Authority for the provision of the Services.

“PWLAN Equipment” means all or any of the cables, plant, machinery, facilities and equipment and property owned, leased or controlled by the Operator and to be from time to time installed, affixed or mounted on KTT and/or the designated area within MTR Hung Hom Station up to and including the point of interconnection with telecommunication facilities of fixed carrier licensees, mobile carrier licensees and/or radiocommunications carrier licensees for the purpose of establishing and operating the Services under this Agreement.

“Security Deposit” means a sum equivalent to twenty-five per cent (25%) of the sum of Licence Fee, payable by the Operator to MTRCL as security for the due and punctual performance of its obligations under this Agreement. This deposit shall be kept by MTRCL throughout the Term and it shall be used to offset against any loss or damage as a result of a default of the Operator of any term of this Agreement, before releasing it to the Operator without interest.

“Services” means KTT Wi-Fi Service provided by the Operator using the PWLAN Equipment in compliance with and in accordance with the Performance Standard set out in Schedule 8, and broadband internet access services at Computer Kiosks in Departure Hall of MTR Hung Hom Station provided by the Operator.

“Telecommunications Authority” means a public officer as referred in the Telecommunications Ordinance (Cap. 106, Laws of Hong Kong).

“Term” means the period from 31st day of December 2013 to 30th day of June 2016, both dates inclusive.

“Usage Fee” means a certain fee to be paid by a User to the Operator in any way and in any time with or without an agent throughout the Term to connect to the internet through the KTT Wi-Fi Service.

“User” (or **“Users”**) means a person to whom the Operator has agreed to provide the Services.

“Wi-Fi” means wireless fidelity which is a wireless networking protocol conforming to the IEEE 802.11 a/b/g/n standards and any new standards as

acceptable worldwide.

“**Working Day**” means any day other than a Saturday or Sunday and which is not a Public Holiday in Hong Kong.

1.2 In this Agreement, unless the context otherwise requires:-

- (a) References to (or to any specific provision of) this Agreement or any other document shall be construed as references to this Agreement, that provision or that document as modified, amended or supplemented from time to time with the agreement of the relevant parties and in force at any relevant time;
- (b) The words “herein”, “hereto”, “hereof”, “hereunder” and words of similar import shall be construed as references to this Agreement as a whole and not to the particular provision in which the relevant reference appears;
- (c) Any references to a Clause, or a Schedule is to a clause in or schedule to this Agreement;
- (d) Clause headings have been inserted for ease of reference only and shall not affect interpretation;
- (e) Words importing the singular meaning include the plural meaning, and vice versa;
- (f) Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include corporation, organization, joint venture, association and firm and all such words shall be construed interchangeably in that manner;
- (g) Words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to permit, cause or allow breach or contravention of the restriction;
- (h) References to any ordinance, enactment, rule, law or regulation are to such ordinance, enactment, rule, law or regulation as amended, modified, consolidated, extended or re-enacted and include any subsidiary legislation made thereunder;
- (i) References to any party to this Agreement shall be to it and its permitted successors, assigns and any person who for the time being is entitled (by assignment, novation or otherwise) to that party’s rights under this Agreement (or any interest in those rights) or who, as administrator, liquidator or otherwise, is entitled to exercise those rights; in particular those references included a person to whom those rights (or any interest in those rights) are transferred or passed as a result of merger, division, reconstruction or other form of reorganization of that party;
- (j) Any right or power conferred by this Agreement may be exercised, and any duty or obligation imposed by this Agreement is to be performed, from time to time as occasion requires;
- (k) The word “law” also includes common and customary law and any

constitution, letters patent, royal instructions, decree, judgment, legislation, order, statute, treaty and other legislative measure, in each case of any jurisdiction whatsoever;

- (l) The word “consent” also includes an approval, authorization, exemption, filing, licence, permission and registration;
- (m) The word “costs” also includes costs, fees, charges and expenses of every description; and
- (n) The word “month” means a Gregorian calendar month.

1.3 If there is any inconsistency between Clauses 1 to 29 of this Agreement and a Schedule or between any Schedules, the inconsistency will be resolved in the following order of preference, unless the context otherwise requires:-

- (a) Clauses 1 to 29 of this Agreement; and
- (b) the Schedules 1 to 8.

2. RIGHT AND TERM

2.1 In consideration of the Operator agreeing to pay the Licence Fee in accordance with Clauses 3.1 and to observe and comply with the covenants and conditions hereinafter mentioned including those set out in Schedule 1, MTRCL hereby grants to the Operator, with effect from the commencement date of the Term (a) a non-transferable, non-sublicensable limited exclusive right to the Operator to provide the Services and (b) (for the purpose of provision of the Services by the Operator) a non-exclusive, non-transferable and non-sublicensable right of access to the Operator to the designated areas at the Premises as may be necessary to install, operate, repair, test, maintain, renovate, remove and replace any PWLAN Equipment as may from time to time be approved in writing by MTRCL.

2.2 The Licence granted to the Operator under Clause 2.1 shall commence with effect from 31st day of December 2013 (that is, the commencement date of the Term) which shall cover the period for the preparation of operations and provision of design, production, supply, installation, testing, commissioning, operation and maintenance of the Services and any equipment in relation to the Services and this Agreement shall expire on 30th day of June 2016 or earlier termination in accordance with the provisions as contained in this Agreement.

2.3 The rights of the Licence granted to the Operator under this Agreement are contractual rights only and nothing herein shall in any circumstance amount to or be deemed to confer any lease, tenancy or other interest of and in any part of the Premises or any airspace connected therewith to the Operator.

2.4 MTRCL is entitled to extend this Agreement on terms to be mutually agreed for a further term of two (2) years from the date of expiration of this Agreement. In the event where MTRCL decides to extend this Agreement, the Operator shall be informed in writing six (6) months prior to the expiry of this Agreement. In the event where MTRCL decides not to extend this Agreement, the Operator shall not be entitled to claim for any compensation of

any nature from MTRCL.

3. PAYMENTS AND CHARGES

- 3.1 The Operator agrees with MTRCL as follows:-
- 3.1.1 to promptly and punctually pay to MTRCL the Licence Fee in advance in accordance with Schedule 2 without any set-off, deduction or abatement, exclusive of all other charges (if any) and clear of all deductions;
 - 3.1.2 to pay all charges, impositions and other outgoings whether directly or indirectly in respect of the Services;
 - 3.1.3 to pay and discharge all deposits and charges in respect of all telecommunications and/or radiocommunications supplied in respect of or related to the Services or otherwise in connection with the Services by the Operator within Hong Kong and/or the PRC; and
 - 3.1.4 to pay all licences, rates, taxes, assessments, duties and charges which are or may at any time be imposed or charged by the Government Authorities in respect of or related to the Services or otherwise in connection with the exercise by the Operator of its rights granted hereunder.
- 3.2 No invoice will be issued by MTRCL in respect of such payment by the Operator to MTRCL in Clause 3.1.1.
- 3.3 All payments by the Operator to MTRCL in this Clause 3 shall be made by electronic transfer through the Operator's bankers to such accounts or in any other manner as may be directed by MTRCL. Any failure to pay as aforesaid shall be deemed to be the Operator's default in making due payment.
- 3.4 If any payment under this Agreement shall be due and payable on a public holiday such payment and charges shall be due and payable on the preceding Working Day.
- 3.5 Without prejudice to any other rights or remedies to which either of the Parties may be entitled if the Operator fails to make in full when due any payment to be made by it under this Agreement, the amount for the time being outstanding shall (before as well as after judgment) bear interest (immediately due and payable by the Operator in the same manner as the overdue payment) as from the due date for payment until actual payment, such interest being compounded by adding accrued interest to capital every month at the annual rate of two per cent (2%) above and varying with the prime rate for the time being of The Hongkong and Shanghai Banking Corporation Limited in Hong Kong calculated on a pro rata basis for the month in question.
- 3.6 Should MTRCL (or TraxComm if MTRCL so designates) be required to take legal action for the recovery of any payments due, MTRCL (or TraxComm if MTRCL so designates) shall be entitled to be indemnified by and recover from the Operator as a debt all legal fees and expenses and court fees incurred by MTRCL (or TraxComm if MTRCL so designates).

- 3.7 For the avoidance of doubt, nothing herein shall oblige or commit MTRCL to provide any loan, grant, subsidy, investment, funding or financial assistance of whatever nature to the Operator for or in connection with the design, supply, production, installation, operation, testing, commissioning, maintenance of the PWLAN Equipment, Computer Kiosks and/or any equipment in relation to the Services, and/or in connection with the sales, marketing, customer services of the Services.
- 3.8 The legal costs and disbursements incidental to the preparation and completion of this Agreement shall be borne by the Operator solely. The stamp duty and registration fee(s) (if any) payable on this Agreement shall be borne by MTRCL and the Operator equally.

4. SECURITY DEPOSIT

- 4.1 The Operator shall, within twenty-one (21) calendar days from the date of signing of this Agreement, deliver to MTRCL the Security Deposit, as per interpretation in Clause 1, given in favour of MTRCL to secure the due observance and performance by the Operator of all the agreements, stipulations and conditions to be observed and performed by the Operator under this Agreement.
- 4.2 The Security Deposit shall be retained by MTRCL throughout the Term and in the event of any breach or non observance or non performance by the Operator of any of the agreements, stipulations or conditions in this Agreement, MTRCL shall without prejudice to any other rights under this Agreement or at law be entitled to use, retain, deduct or set off from the Security Deposit any amount suffered by MTRCL as a consequence of the breach, non observance or non performance by the Operator without prejudice to any other rights under this Agreement or at law.
- 4.3 Where at any time throughout the Term, the Security Deposit shall be reduced or falls below the existing amount at the date hereof, the Operator shall within fourteen (14) calendar days of a written notice from MTRCL (or TraxComm if MTRCL so designates) pay to MTRCL such sum(s) as will be necessary to maintain the Security Deposit at the existing amount. MTRCL reserves the right to impose interest as stated in Clause 3.5 to any late payment of Security Deposit relating to Clause 4.1 and Clause 4.3.
- 4.4 In no event shall the Operator be entitled to treat the amount of deduction from the Security Deposit as payment of the Licence Fee or any part thereof or any sum payable by it under this Agreement.

5. INSTALLATION, OPERATION AND MAINTENANCE

- 5.1 The Operator shall have the sole responsibility and at its own costs in respect of:-
- 5.1.1 the design, delivery, installation, test and commissioning, operation and maintenance of the PWLAN equipment in relation to the Services including without limitation to Computer Kiosks, PWLAN Equipment and the enclosure thereof installed within the

Premises and the Operator's areas;

- 5.1.2 the design, delivery, installation, testing and commission, operation and maintenance of the access network using PWLAN Equipment and to acquire necessary telecommunication services and facilities and internet bandwidth to enable the provision of the Services; and
- 5.1.3 the design, construct, delivery, testing, commission, operation and recovery of the Computer Kiosks at Departure Hall using internet broadband connection and to acquire necessary telecommunication services and facilities and internet bandwidth to enable the provision of the Services.
- 5.2 The Operator agrees to pay the costs of provision of power points incurred by MTRCL from the extension of existing power facilities for any equipment as mentioned in Clause 5.1.
- 5.3 The Operator shall at its sole costs complete all works under this Agreement and the design, fitting, installation, operation, connection and mounting of any equipment in relation to the Services for Computer Kiosks on KTT and within the Departure Hall or any part of the Premises in compliance with Schedule 7 (Computer Kiosks) and the standards of quality and instructions laid down by the manufacturers of the any equipment in relation to Computer Kiosks, PWLAN Equipment and cables to be installed in relation thereto. The Operator shall comply with any additional reasonable terms and conditions imposed by MTRCL in this regard to MTRCL's reasonable satisfaction. MTRCL shall use reasonable endeavours to ensure that necessary approvals and permissions are granted to the Operator in respect of the installation of the PWLAN Equipment and the Computer Kiosks on KTT and within the Departure Hall or part of the Premises.
- 5.4 As soon as any part of the works referred to in Clause 5.4 is completed and ready for operation, the Operator may apply to MTRCL for the grant of a Certificate of Completion to allow it to utilise the whole or any part of the works when each phase of the works or any part thereof is completed to its reasonable satisfaction. Each Certificate of Completion shall identify the part of the works to which it refers and any minor outstanding works to be completed and the agreed times in which the same shall be completed. The Operator shall not use any part of the works until a Certificate of Completion, whether for the whole or such part, has been issued by MTRCL which issuance shall not be unreasonably withheld or delayed.
- 5.5 The Operator is required subject to the approval by MTRCL in accordance with Clause 5.4 to fit, install, connect and mount the PWLAN Equipment and Computer Kiosks in accordance with Schedule 7 (Computer Kiosks) and using due care and diligence and in a reasonable manner so as not to interfere or cause damage to the property or interest of MTRCL or that of any other party or to the operation of the MTR and/or the Premises.
- 5.6 The Operator shall have the sole responsibility and at its sole costs in respect of:-
 - 5.6.1 operating and maintaining the Services and any equipment in relation to Services throughout the Term using due care and diligence and in such a manner so as not to interfere or cause

- damage to the property or interest of MTRCL, or other parties or to the operation of the MTR including KTT and/or any part of the Premises, or other parties' system or any part thereof;
- 5.6.2 daily operation of the Services including without limitation to ongoing maintenance, authentication and billing, customer service, and technical support to the Users;
 - 5.6.3 operating one toll-free telephone support hotline in Hong Kong and one toll-free telephone support hotline in the PRC, solely for the Services, from 7:30am till 11:00pm every calendar day to enable Users to contact the hotline service staff members of the Operator;
 - 5.6.4 keeping any equipment in relation to the Services at its own costs in good, clean and proper repair and condition and to make good any damage and defect as may from time to time be necessary for the operation of the Services;
 - 5.6.5 obtaining and keeping in force throughout the Term all necessary consents, permits or certificates of whatsoever nature from all relevant Government Authorities necessary for the work and the maintenance work, and MTRCL shall provide reasonable assistance to the Operator in obtaining such licences if and when requested by the Operator;
 - 5.6.6 obtaining and keeping in force throughout the Term all necessary consents, permits or certificates of whatsoever nature from all relevant Government Authorities necessary for the installation, operation and maintenance of any equipment including the PWLAN Equipment, and the supply of the Services;
 - 5.6.7 conducting regular on-site inspections and maintenance, at least one time per three months, on all the hardwares and softwares in relation to the Services, regardless of whether any comment has been received by the telephone support hotlines as mentioned in Clause 5.8.3, to ensure its integrity and no hazards to the train services and/or passengers, and submit the inspection and maintenance reports to MTRCL within three (3) calendar days after such on-site inspection; and
 - 5.6.8 preparing a monthly report on the maintenance records and conditions of all equipment in relation to the Services for the submission to MTRCL.
- 5.7 The Operator shall be held fully responsible for the management, control and the safety of all its employees, representatives and contractors, and material gaining access to the railway and shall exercise all reasonable care to prevent any loss, damage or injury from being caused to any persons, materials or property inside the MTR, the railway system and the Premises.
- 5.8 The Operator shall be required to nominate its staff, representatives or contractors to attend relevant safety training courses conducted either by MTRCL, in particular the Competent Person training courses, and the Operator shall pay a training fee of Two Thousand Dollars (HK\$2,000) (2013 prices, which may be adjusted from time to time without prior notice by

MTRCL) for each participant of the courses; or by government recognised bodies at its own costs, to enable them to acquire the necessary skills and knowledge to perform the obligations contained in this Agreement.

- 5.9 The Operator shall comply with any reasonable and lawful instructions and requirements which MTRCL may issue in connection with such work as mentioned in this Clause 5.
- 5.10 The Operator agrees that MTRCL may at its entire discretion, and provided that the railway traffic and customer services of the MTR will not be affected, grant access to the Operator during Non-Traffic Hours to the trackside, tunnels, restricted areas of railway stations and depots subject to this Agreement. Any access granted by MTRCL to the Operator shall be subject to the provisions of Clause 21.
- 5.11 The Operator shall at its sole costs promptly and professionally handle all enquires raised by MTRCL and/or Government Authorities relating to any equipment in relation to the Services and provide briefings to MTRCL to introduce and update their knowledge of the Services and any equipment in relation to the Services when the Operator makes any change to the Services and/or any equipment in relation to the Services.
- 5.12 Upon the expiry or early termination of the Term and if MTRCL so instructs, the Operator shall not remove all equipment in relation to the Services excluding the Computer Kiosks, and return to MTRCL the sites in like condition, as at the commencement of the Term (fair wear and tear, inherent and structural defects excepted). In particular, the Operator shall repair or replace, as required, all related electrical installations and equipment in accordance with all legal requirements and to the reasonable satisfaction of MTRCL.
- 5.13 The Operator shall comply with all relevant laws, ordinances, rules, regulations, standards, codes of practice and instructions, including those issued or imposed by MTRCL and/or Government Authorities from time to time (including without limitation to rules, procedures, code of practice, and quality, performance and safety standards of the MTRCL) and all reasonable requirements and directions of MTRCL in respect of the performance of the works and services and the conduct of its workmen and agents at the MTR and/or the Premises.
- 5.14 The Operator shall not engage any contractor or subcontractor without the prior written approval of MTRCL, and such approval shall be at the sole discretion of MTRCL and MTRCL may impose such condition as it desires.
- 5.15 The Operator agrees throughout the Term to provide thirty (30) free-of-charge accounts without usage limitations for staff of MTRCL, and five (5) free-of-charge accounts without usage limitations for TraxComm to use the Services.

6. MARKETING AND SALES

- 6.1 Subject to the installation and availability of all equipments in relation to the Services, the date of the Commercial Launch in relation to the KTT Wi-Fi Service shall be mutually agreed by both the Operator and MTRCL. In the

event the date of the Commercial Launch is deferred, the Operator shall not promote, market and sell the Wi-Fi Service on KTT and the Wi-Fi Service at the Departure Hall prior to the actual service availability.

- 6.2 The Operator shall actively and lawfully at its sole costs promote, market and sell the KTT Wi-Fi Service, and has the right to formulate and implement sales and marketing strategies excluding pricing (or fee or Usage Fee) that requires Users to pay for the Services.
- 6.3 The Operator agrees to provide KTT Wi-Fi Service to Users at the Usage Fee as shown in Schedule 3 throughout the Term pursuant to Clause 6.2. Subject to the written approval by MTRCL, the Operator may alter the Usage Fee and/or propose any new fee or new access plan for Users.
- 6.4 The Operator shall design and operate a KTT-specific login page as MTRCL may direct from time to time. Reasonable space shall be provided in such login page for browsing information of the MTR without charging any fee to the Users. Any promotion message other than any service of MTRCL on such login page shall be subject to the mutual agreement between MTRCL and the Operator.
- 6.5 The Operator agrees to grant Users to use Computer Kiosks and associated internet connections free of charge at any time throughout the Term.
- 6.6 All contents for public communication, within or outside the Premises, including without limitation to sales, marketing and promotion activities in particular relating to the corporate identity of MTRCL shall be subject to the prior written approval by MTRCL.
- 6.7 Any use of any company's trademarks, logos or information for promoting the Services, within or outside the Premises, shall be submitted to MTRCL for its prior approval.
- 6.8 The Operator shall at its sole costs provide sufficient signs on KTT, at the through train platform areas and at the Departure Hall for identifying the availability of Wi-Fi coverage, at the locations mutually agreed by MTRCL and the Operator. The size and contents of such signs shall be mutually agreed by MTRCL and the Operator.
- 6.9 Subject to the mutual agreement between the Operator and MTRCL, the Operator shall participate and support any co-effort and activity in promoting the KTT Wi-Fi Service. For the avoidance of doubt, MTRCL has no commitment to provide spaces at costs or at no costs for the Operator to display promotion materials regarding the Services.
- 6.10 Subject to the request of MTRCL, the Operator shall at its sole costs collect all relevant statistics and data for MTRCL throughout the Term and furnish the same along with updates to MTRCL upon such intervals and in such formats and detail as MTRCL may reasonably direct from time to time.

7. PERFORMANCE STANDARDS

7.1 The Operator shall at its sole costs be responsible for:-

7.1.1 the quality of the Services and for the reliability and performance

of the equipment in relation to the Services; and

7.1.2 testing and recording the performance of the Services and demonstrate to MTRCL that the Services meets the Performance Standard defined in Schedule 8.

7.2 The Operator agrees that MTRCL shall have the right to participate in such tests pursuant to Clause 7.1.2 and to propose other suitable tests (which proposals will not be unreasonably denied) and to review the results of such tests.

8. OPERATOR'S LICENCES

8.1 The Operator shall not operate its PWLAN Equipment on KTT and at the Departure Hall and other parts of the Premises unless the Operator has valid licences issued by the Telecommunications Authority and/or other Government Authorities to operate the Services via the PWLAN Equipment.

8.2 The Operator will promptly advise MTRCL in writing from time to time of any renewal, revocation or cancellation of the licences mentioned in Clause 8.1 above, and of any change in its conditions in relation to the Operator's obligations under this Agreement.

9. INSURANCE

9.1 The Operator shall effect and/or maintain and/or shall ensure that any contractor or subcontractor employed by it shall effect and/or maintain third party liability insurance covering legal liability for the accidental death or injury of a person or the accidental loss or damage to property in an amount not less than HK\$25 million per claim which may be adjusted from time to time as specified by MTRCL on reasonable notice to the Operator.

9.2 The Operator shall, whenever required, produce to MTRCL and/or shall arrange for the production to MTRCL copies of any such policies of insurance and receipts for payment of the current premium.

9.3 The Operator shall take out and maintain third party insurance to cover the operation of the Services in and concerning the mass transit railway system (including any activity by TraxComm in connection with the installation, use and maintenance of any equipment in relation to the Services) on terms and in amounts considered appropriate by MTRCL in the context of the scale and nature of the MTR.

10. INDEMNITIES AND SPECIAL REQUIREMENTS

10.1 MTRCL shall not be liable, unless proven negligent, for or in respect of any damages or compensation under the Fatal Accidents Ordinance (Chapter 22), the Employees' Compensation Ordinance (Chapter 282), the Occupiers Liability Ordinance (Chapter 314) or at common law, by or in consequence of any accident or injury to any workman or any other person whether or not in the employ of the Operator arising out of the use of the Services (including the

KTT Wi-Fi Service) or the Premises or in any way whatsoever relating to the Services and the Operator shall indemnify and keep MTRCL indemnified against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof and in relation thereto.

- 10.2 Contractors, workmen, employees, agents or invitees posted by the Operator at the Premises shall at all times observe and comply with the procedures and instructions as may from time to time be stipulated or given by MTRCL.
- 10.3 The Operator agrees to indemnify MTRCL with regards any loss, cost, claim or expense in connection with the Services. MTRCL shall not in any way be responsible to the Operator or to another party in connection with any internet access through the Services. The Operator agrees this indemnity shall survive the termination of this Agreement.
- 10.4 The Operator agrees to indemnify and keep MTRCL, its officers and servants fully indemnified from and against all loss, damage, injury, costs, expenses, demands, claims, proceedings and liabilities suffered or incurred by MTRCL, its officers and servants arising either directly or indirectly out of:-
- (a) any breach, non-observance or non-performance by the Operator of the provisions of this Agreement;
 - (b) any act, omission, default or negligence of the Operator or any servants, agents, employees, workmen, contractors or invitees of the Operator;
 - (c) any person claiming through or under the Operator in relation to the Services and/or the Premises; and
 - (d) any of the obligations on the part of the Operator under this Agreement.

The Operator agrees this indemnity shall survive the termination of this Agreement.

- 10.5 The Operator agrees to obey and comply with, and to indemnify MTRCL against any breach or non-compliance with the terms and conditions of the grant of the Licence, any laws, ordinances, regulations, by-laws, rules, directions, notices and requirements of any Government Authorities relating to the Premises or the use thereof or controlling affecting or applicable to the conduct and carrying out of the Services throughout the Term.
- 10.6 Where such claim, demand, damage, proceeding, cost or expense is attributable to a third-party claim against MTRCL, then MTRCL shall not settle or compromise any such claim without the prior written consent of the Operator whose consent shall not be unreasonably withheld or delayed and the Operator shall be entitled at its own costs appoint legal counsel to work with the legal counsel appointed by MTRCL in defending or settling such claim.
- 10.7 The Operator will not do nor permit to be done anything whereby any licences, permits, approvals or consents (collectively the “**relevant licences**” for the purpose of Clauses 10.7 and 10.8,) in relation to the Services may be revoked, cancelled or withdrawn and ensure the Services are conducted in a lawful proper and orderly manner with such adequately trained and competent staff as shall be necessary to supervise the conduct of all persons at or within the

Premises from time to time and further do all things necessary to maintain and from time to time renew the relevant licences and not to do or permit or suffer to be done anything which might prejudice the future grant or renewal of the relevant licences and to comply with all requirements and recommendations from time to time of the Government Authorities.

- 10.8 The Operator shall make no claim whatsoever against MTRCL in the event of the Operator's failure or inability for obtaining and/or renewing the relevant licences.

11. INTERFERENCE BY THE PWLAN EQUIPMENT

- 11.1 The Operator shall comply with such reasonable and lawful directions given by MTRCL to ensure that the installation, operation and provision of Wi-Fi service, repair and/or maintenance and/or removal of the PWLAN Equipment shall not interrupt, interfere with, disturb or disrupt at any time any other systems and services on KTT and/or within the Premises.

- 11.2 If the operation and provision of Wi-Fi service PWLAN Equipment is shown to interrupt, interfere with or disturb or disrupt or in any other way affect the communications or telecommunications systems and services on KTT and/or within Premises operated by any party or any other person, MTRCL may, upon prior written notice to the Operator, and after a reasonable period, request the Operator to rectify disconnect or otherwise disable the PWLAN Equipment until such interference or disruption can be resolved by the Operator to MTRCL's reasonable satisfaction without payment of any compensation to the Operator provided that MTRCL shall ensure that any such disconnection is carried out in a reasonable manner.. In the event of emergency, MTRCL may repair, replace or make good such damage by giving notice to the Operator as soon as practicable after the action is taken and in which case MTRCL shall have the right to recover all costs and expenses reasonably incurred by it as a result thereof from the Operator. MTRCL shall use its best endeavours to immediately inform the Operator upon any disconnection of the PWLAN Equipment.

12. REMOVAL OF THE PWLAN EQUIPMENT

- 12.1 The Operator shall be required to remove part of or all the PWLAN Equipment installed or erected on KTT, the Departure Hall and/or any part of the Premises upon receipt of adequate and reasonable prior written notice issued by MTRCL. The time period for such removal will be mutually agreed and MTRCL will use reasonable efforts to grant the necessary access to permit compliance with this Clause.

- 12.2 In the event where the Operator fails to complete such removal (without any fault on the part of MTRCL) in accordance with the written notice as mentioned in Clause 12.1 within such time periods, MTRCL may take reasonable action to remove and make good the same without liability for any damage to the PWLAN Equipment thereby caused and the Operator shall forthwith pay to MTRCL on demand all reasonable costs and expenses incurred by MTRCL in relation to such removal.

- 12.3 The Operator shall ensure that any action, work or operation carried out by it or its servants, agents or contractors under Clause 12 shall not interfere with any other person or property or the conduct of any operation in the Premises and the MTR.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 Each Party acknowledges and agrees that the other Party does not and have not under this Agreement granted it any right or license in or to the other Party's Intellectual Property Rights, and no license or other rights shall be created by implication or estoppel. In particular, but without limiting the generality of the foregoing, no right or license in or to source code for any software of the other Party is granted hereunder (if any).
- 13.2 Each Party agrees not to use the other Party's trade marks, logos or trade names without the prior written consent of the other Party.

14. NON-ASSIGNMENT

- 14.1 Neither Party hereto may assign or otherwise transfer its rights or obligations hereunder or any part thereof without the prior written consent of the other Party, except MTRCL may transfer its rights or obligations to any of its affiliates upon serving prior written notice to the Operator.
- 14.2 The Operator shall not assign sub-license or permit to assign or sub-license or alienate or otherwise dispose this Agreement or the rights, wholly or partially, hereby granted or allow to be used for provision of the Services except with the prior written approval of MTRCL.
- 14.3 The sub-contracting or sub-letting of any part of the obligations of the Operator shall not relieve it from any liability, duty or obligation under this Agreement and it shall be and remain fully responsible for the acts, omission, defaults and negligence of its subcontractors, agents or employees as fully as if they were the acts, neglects or defaults of the Operator.

15. NO TENANCY AND JOINT VENTURE

- 15.1 This Agreement does not create or constitute a lease or a tenancy of any location of the Premises or grant to or create in favour of the Operator any interest, right or exclusive possession in any land and/or any air space.
- 15.2 The Operator agrees that the right to provide the Services including the provision of internet connections in defined technologies and the use of the Premises constitutes a licence only and nothing in this Agreement nor in any of the acts of the Parties hereto shall be deemed to have created a partnership, agency, tenancy, joint venture or any relationship between the Parties other than as herein set out. The Operator shall have no authority or power to bind MTRCL or pledge its credit.

16. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

16.1 The Operator represents and warrants to MTRCL that:-

- 16.1.1 it is a company duly incorporated with limited liability and validly existing under the laws of Hong Kong;
- 16.1.2 it has the corporate power and authority to own its assets and patents and to install any equipment in relation to the Services and conduct the Services, business and operations which it now proposes to conduct relative to it or its business;
- 16.1.3 it has the necessary corporate power and legal capacity to enter into, exercise its rights and perform and comply with its obligations under this Agreement;
- 16.1.4 its entry into, exercise of its rights and/or performance of and compliance with its obligations under this Agreement do not violate:-
 - (a) any law to which it is subject;
 - (b) its memorandum and articles of association; or
 - (c) any agreement to which it is a party or which is binding on its assets;
- 16.1.5 all actions, consents and conditions (including, without limitation, all government and other official consents) required to enable it lawfully to enter into, exercise its rights, perform and comply with its obligations under this Agreement have been taken, fulfilled, obtained and are in full force and effect;
- 16.1.6 it agrees to comply with the Code of Practice in accordance to the guidelines as stated in Schedule 5 herewith, and
- 16.1.7 no litigation, arbitration or other proceeding is current, or so far as it is aware, pending or threatened:-
 - (a) to restrain it from entering into, exercising its rights and/or performing or complying with its obligations under this Agreement; or
 - (b) which has or could have an adverse effect on or on its ability to perform any of its obligations under this Agreement.

16.2 The Operator undertakes to and in favour of MTRCL that:-

- 16.2.1 it shall keep and prepare its books of account and all financial statements in accordance with generally accepted accounting principles and practices consistently applied in Hong Kong;
- 16.2.2 it shall deliver and provide to MTRCL at its own costs:-
 - (a) promptly upon becoming aware of the same, details of any matters or thing which may or is likely to inhibit, impair, delay, or adversely affect the Operator in the performance of its obligations under this Agreement; and

- (b) within such period as MTRCL may specify, all such other information relating to the financial conditions and/or the Services of the Operator as MTRCL may require from time to time.

16.2.3 it shall obtain adequate and appropriate insurance coverage throughout the Term of this Agreement for any works within the Premises.

17. TERMINATION

17.1 The rights and liberties hereby granted shall absolutely cease and determine upon the determination of this Agreement in accordance with the terms hereof but without prejudice to any right of either Party in respect of any antecedent breach of the conditions, obligations and provisions herein contained.

17.2 Without prejudice to any other rights of MTRCL to terminate this Agreement or any other rights claims or remedies that MTRCL may have against the Operator pursuant to the provisions hereof or arising from operation of law, MTRCL may terminate this Agreement in the event that:-

17.2.1 the Operator fails to pay in full any sum due under this Agreement;
or

17.2.2 the Operator or any successor to the Licence to provide the Services granted to the Operator ceases to carry on its Wi-Fi service for whatever reason; or

17.2.3 the licence, authorization or exemption (as the case may be) issued by the Telecommunications Authority and/or other Government Authorities to the Operator necessary for the operation of the Services, is cancelled or withdrawn for any reason or the terms thereof varied such that any part of the Services cannot reasonably be provided or operation of any part of the Services by the Operator cannot be continued; or

17.2.4 the use of the Premises or operation of the Services in the Premises shall be illegal or become prohibited by any Government Authorities or by any order of the court or if the Government shall threaten to suspend upon train service of which the Premises forms part or any part thereof whether by reason of such use and/or operation or otherwise; or

17.2.5 the Operator assigns or purports to assign the benefit and/or burden of this Agreement without MTRCL's prior written consent other than in accordance with Clause 14 of this Agreement; or

17.2.6 the Operator fails to pay duly and fully in accordance with the Agreement referred to in Clause 3.

17.3 Either Party may forthwith terminate this Agreement by written notice to the other party upon occurrence of any of the following events of default which the party in default fails to remedy (if capable to do so) within thirty (30) days upon receipt of a written notice from the non-defaulting party specifying such

default and requiring the same to be remedied:-

- 17.3.1 any warranty or representation under Clause 16 of this Agreement becomes untrue or incorrect; or
 - 17.3.2 either party fails to comply with any term or condition of this Agreement after reasonable written notice is served by the non-defaulting party upon the defaulting party; or
 - 17.3.3 the other party becomes insolvent or is unable to pay its debts when they fall due (within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong)); or
 - 17.3.4 the other party makes a general assignment or an arrangement or composition with or for the benefit of its creditors, or has a receiver or similar officer appointed over all or a substantial part of its undertaking or assets; or
 - 17.3.5 any action is taken by the other party for dissolution or winding-up (except for the purpose of a reconstruction, amalgamation or reorganisation in such manner that the entity resulting therefrom effectively agrees to be bound by and assumes the obligations and liabilities imposed on the other party under this Agreement) or anything analogous to any of the foregoing occurs in respect of the other party; or
 - 17.3.6 the other party commits any material breach of any of the provisions of this Agreement.
- 17.4 For the purpose of Clauses 17.2 and 17.3 (but not otherwise), a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of remedy.
- 17.5 In the event of termination of this Agreement under Clauses 17.2 and 17.3, the Operator is not entitled to any refund of any payments made whatsoever under this Agreement.
- 17.6 Any termination pursuant to sub-clauses 17.2 or 17.3 hereof shall be without prejudice to the rights claims or remedies of either Party in respect of any antecedent breach of this Agreement. MTRCL shall not in any circumstances be liable to the Operator or any other person whomsoever in respect of any loss of profits or of business or other pecuniary loss or for any disruption or inconvenience caused to or suffered or sustained by the Operator or any other person as a result of or arising from any such termination.
- 17.7 Termination of this Agreement shall not prejudice any rights which either Party may have accrued as at the date of termination.
- 17.8 The following clauses will survive the termination or expiration of this Agreement and shall continue to have full binding force and effect between the Parties notwithstanding the termination or expiration: Clause 10 (relating to indemnities), Clause 12 (relating to removal of equipment), Clause 17 (relating to the termination), Clause 18 (relating to final statement), Clause 22 (relating to confidentiality) and Clause 29 (relating to applicable law).

18. [NOT IN USE]

18.1 [NOT IN USE]

19. HANDOVER

19.1 The Operator agrees to transfer the ownership including physical properties and Intellectual Property Rights (where applicable) of the Computer Kiosks and the associated computer units, equipment and furniture to MTRCL upon the expiration of the Agreement unless MTRCL exercises its rights to extend this Agreement with respect to Clause 2.4.

19.2 Two (2) months before the transfer of Computer Kiosks and the associated computer units, equipment and furniture to MTRCL pursuant to Clause 19.1, the Operator shall conduct operation and maintenance training for MTRCL's staff with the manuals, such that MTRCL's staff can continue the operation and maintenance of the Computer Kiosks.

20. NON-WAIVER

20.1 Any failure or delay by either Party to exercise all or any right, power or remedy under this Agreement shall not operate as a waiver thereof. The rights, powers and remedies provided herein are cumulative and are not exclusive of any rights, power or remedies otherwise available in law or in equity.

20.2 The acceptance of payment by MTRCL (or TraxComm if MTRCL so designates) shall not be deemed to operate as a waiver by MTRCL of any right to proceed against the Operator in respect of a breach by the Operator of any of its obligations hereunder.

20.3 No condoning, excusing or overlooking by either Party of any default, breach, non-observance or non-performance by the defaulting Party at any time or times of any of the defaulting Party's obligations herein contained shall operate as a waiver of the non-defaulting Party's rights hereunder in respect of any antecedent continuing or subsequent default, breach, non-observance or non-performance or so as to affect in any way the rights and remedies of the non-defaulting Party hereunder in respect of any such antecedent continuing or subsequent default breach nonobservance or non-performance. No waiver by the non-defaulting Party shall be inferred from or implied by anything done or omitted by the non-defaulting Party, unless expressed in writing and signed by the non-defaulting party. Any consent given by the non-defaulting Party shall only apply to the particular matter to which it relates and not a waiver or release of any of the provisions hereof nor shall it be construed as dispensing with the necessity of obtaining the specific written consent of the non-defaulting Party in the future, unless expressly so provided.

21. RAILWAY PARAMOUNT

21.1 The Operator acknowledges and agrees that the efficient and expeditious operation of the KTT and MTR service are paramount considerations in the

performance of, and in giving effect to, any provision of this Agreement notwithstanding any clause or provision of this Agreement to the contrary.

- 21.2 MTRCL shall have the absolute right to do all such acts and things as it may in its absolute discretion consider necessary and expedient for the purpose of inspecting, maintaining and repairing any part of KTT or to ensure smooth operation of KTT including, without limitation, the suspension of operation of KTT and the closure of any KTT station. MTRCL shall not be liable (whether in contract, tort or under any statute or otherwise) to the Operator under any circumstances for any direct, indirect or consequential loss, damage or liability incurred or sustained by the Operator in relation to or arising out of any such acts including without limitation any loss of revenue or profits.
- 21.3 The Operator agrees that MTRCL shall have the right to make additions, improvements, installations or repairs to any part or portion of the Premises as the same may be desired by the MTRCL from time to time at its own costs and expenses, and such activities may cause obstructions of and interference with the use of the Premises and the Services and the MTRCL may interrupt or suspend the supply of electricity or other services when necessary for additions, improvements, installations or repair purpose. TraxComm and the Operator shall not make any claims to either Party and/or the MTRCL for compensation or otherwise in relation to or as a result of the exercise of this right by the MTRCL.
- 21.4 The Operator acknowledges that the MTR Hung Hom Station may be closed for such period as MTRCL may in its absolute discretion determine and the Operator or its contractors, workmen, employees, agents or invitees shall carry out no works nor any other activities whatsoever in or upon the Premises during such period of closure except with the prior written consent of MTRCL.
- 21.5 The Operator accepts the train services of KTT and the Premises without limitation to MTR Hung Hom Station on an “as is” basis and shall not be entitled to any claim for compensation or deduction whatsoever or discrepancies hereto in respect of the train services of KTT and/or the Premises that may be altered, ceased or closed from time to time without prior notice to the Operator.
- 21.6 Without prejudice to Clause 17, MTRCL expressly reserves the right to terminate this Agreement if required for MTRCL’s train operation needs or service improvement schemes, by giving at least six (6) months advance notice in writing to the Operator without any compensation thereof and the Operator shall have no claim whatsoever against MTRCL.

22. CONFIDENTIALITY

- 22.1 Each Party agrees to keep and procure to be kept secret all the Confidential Information obtained from the other Party pursuant to this Agreement or prior to it.
- 22.2 Subject to other provisions of Clause 22 of this Agreement, neither Party shall at any time divulge, disclose nor otherwise furnish to any third party any information relating to the affairs or business of the other Party.

- 22.3 Each Party shall only reveal the Confidential Information to its officers, employees, legal advisors, agents or contractors to whom disclosure is necessary for each of them to perform his duties for the purpose of this Agreement. Each Party shall impose the above obligation of confidentiality on their respective officers, employees, legal advisors, agents and contractors.
- 22.4 The foregoing obligations shall not apply, however, to any part of the Confidential Information which:
- 22.4.1 was already known to the recipient Party prior to receipt thereof; or
 - 22.4.2 was already in the public domain or becomes so through no fault of the recipient Party; or
 - 22.4.3 was acquired by the recipient Party from a third party having the right to convey the Confidential Information to the recipient Party without any obligation of confidentiality not to disclose the same; or
 - 22.4.4 is independently developed by the recipient Party without access to the information of the other; or
 - 22.4.5 is approved for release by prior written authorization by the owner of the Confidential Information; or
 - 22.4.6 is required by law, any regulatory requirements, or the business rules of any stock exchange to be disclosed, provided that the Party required to disclose that Confidential Information shall:-
 - (a) immediately notify the disclosing Party, where time permits and without contravention of any law, in writing of the particulars of the required disclosure; and
 - (b) provide the disclosing Party with all necessary assistance reasonably required by the disclosing Party (at the disclosing Party's own costs and expenses) to enable the disclosing Party to take any reasonably steps available to it to prevent that disclosure or to ensure that it occurs subject to a reasonable obligation of confidence.
- 22.5 Subject to the provisions in Clause 22.4, these obligations of confidentiality shall survive for a period of five (5) years after the expiration or termination of this Agreement.
- 22.6 Each Party further agrees, upon expiration or termination for whatever cause of this Agreement, forthwith to return to the other Party all documents and any materials (in whatever form) containing any of the Confidential Information and/or the business of the other Party.

23. COMMUNICATION

- 23.1 Any notice, consent, approval or other communication (collectively "communication") under this Agreement shall be made in writing but, unless otherwise stated, may be made by email, facsimile or letter but, if made by email or facsimile by the Operator shall promptly be confirmed by letter.

- 23.2 Any communication or document to be made or delivered by either party to the other party shall be made or delivered to the email address, facsimile number and/or correspondence address from time to time designated by the other party for the purpose of this Agreement.

If to the Operator:

Address: [INSERT ADDRESS]
For the attention of: [INSERT NAME AND TITLE]
Fax Number: [INSERT FAX NUMBER]
Email Address: [INSERT ADDRESS]

If to MTRCL:

Address: 2nd Floor, Fo Tan Railway House,
9 Lok King Street,
Fo Tan, Sha Tin, New Territories, Hong Kong.
For the attention of: Mr Kelvin Liang,
Acting Manager – Intercity Business & Services
Fax Number: 2688 1492
Email Address: KLCLIANG@mtr.com.hk

With a copy to TraxComm Limited:

Address: 12th Floor, MTR Headquarters Building,
Telford Plaza, 33 Wai Yip Street,
Kowloon Bay, Kowloon, Hong Kong.
For the attention of: Mr Brian Ho,
Business Development Manager
Fax Number: 2993 3538
Email Address: brianhcc@mtr.com.hk

24. PARTIAL INVALIDITY

- 24.1 If any one or more of the provisions of this Agreement shall be declared or adjudged to be illegal, invalid or unenforceable under any applicable law, such illegality, invalidity or unenforceability shall not vitiate any other provisions of this Agreement which shall be read and construed as if such declared or adjudged illegal, invalid or unenforceable provision were not contained in this Agreement.

25. CORPORATION LIABILITY FOR APPROVAL

- 25.1 No right of action or claim in contract, tort or any other legal basis shall accrue to the Operator under the provisions of this Agreement when MTRCL decides to reject or not accept any terms, specifications, proposals or details of any

kind put forward by the Operator in connection with any proposal in respect of Clause 5 and Clause 6.

- 25.2 The Operator shall at all times be responsible for the display of any material communicating to the public, within or outside the Premises, including those materials used to promote, market and sell the KTT Wi-Fi Service and the Operator shall also be responsible in the case of any complaint, claim, legal or statutory action from any person, entity or Government Authorities regarding such text, image, graphic, message, sound, video or whatsoever format which was shown to the public by any means or through any channel regardless of whether it is within the legal jurisdiction of Hong Kong or in the PRC, despite the fact that such material may have been approved by MTRCL.

26. ENTIRE AGREEMENT

- 26.1 This Agreement embodies the entire understanding between the parties relating to its subject matter and all previous agreements, representations, warranties or statements whether orally or in writing hereto before made relating to any of the matters referred to herein are hereby negated and excluded. TraxComm is not a party to this Agreement and TraxComm shall not be held liable for any liabilities, damages, actions, claims, fees or expenses whatsoever arising out of or under this Agreement.
- 26.2 No amendment or variation of this Agreement shall be effective unless it is in writing and signed by the authorized representatives of both MTRCL and the Operator.

27. FORCE MAJEURE

- 27.1 Neither Party shall be liable for any failure to perform this Agreement or any part thereof by reason of a Force Majeure Event. Neither Party shall have any claim against the other party for credits, refund of charges, damages, direct, indirect consequential or otherwise, in respect of any such failure by the other Party. Without limiting the forgoing and to the best of its ability both Parties will endeavour to provide alternatives, if available.
- 27.2 The Party affected by the Force Majeure Event will be granted a reasonable extension of time to perform its duties and obligations under this Agreement, if:-
- 27.2.1 it notifies the other Party as soon as reasonably practicable of the event or circumstance and of the period for which it expects performance of its duties and obligations to be delayed or prevented; and
- 27.2.2 it takes all reasonable steps to limit the effects of the Force Majeure Event.

28. RESOLUTION OF DISPUTES

- 28.1 Each Party agrees that if any dispute shall arise between them which cannot be

resolved at the working level in relation to the installation, commissioning and operation of the Services, any equipment in relation to the Services or the validity and effect of any works contemplated under this Agreement, and such dispute may relate to, or have an impact upon the conditions of any telecommunications licence granted to a Party, or the technical implications of the telecommunications services and networks provided thereunder and any consequential effects on the KTT and/or the Premises then (subject to any other clause in this Agreement which overrides this Clause 28):-

- 28.1.1 MTRCL and the Operator shall meet and endeavour to agree in good faith a suitable resolution of the dispute.
 - 28.1.2 in the event that MTRCL and the Operator are unable to resolve the dispute after the meeting mentioned in Clause 28.1.1, either Party may require the dispute to be referred to senior management of each of MTRCL and the Operator for resolution;
 - 28.1.3 in the event that such senior management are unable to resolve the same, without prejudicing either Party's rights under Clause 29.1 below, then either Party may refer the matter in dispute to the Telecommunications Authority who (if they determine that such dispute is within the ambit of their authority) may give guidance and directions which, in the absence of manifest error, will be followed by the Parties as a basis to resolve such dispute.
- 28.2 If the Parties are unable to amicably resolve any disagreement or dispute within thirty (30) days from the date when such disagreement or dispute arose hereafter the actions in respect of sub-clauses 28.1 without prejudicing either Party's rights under Clause 29.1 below, either Party may give to the other written notice requiring such dispute or difference to be referred to arbitration, such arbitration to be conducted as a domestic arbitration under the Arbitration Ordinance (Cap 341, Laws of Hong Kong), in accordance with the Domestic Arbitration Rules of the Hong Kong International Arbitration Centre ("HKIAC") and by a person to be agreed upon between the Parties or if the Parties fail to agree upon an arbitrator within thirty (30) calendar days of either Party serving on the other party a written notice to concur in the appointment of an arbitrator by a person to be appointed by the Secretary-General of the Hong Kong International Arbitration Centre. If the Secretary-General is absent from Hong Kong or is otherwise unable or unwilling to appoint an arbitrator, then his function under Clause 28.2 may be fulfilled by any Acting Secretary-General or other officer of the Hong Kong International Arbitration Centre.
- 28.2.1 Arbitration shall be conducted by a single arbitrator to be appointed by the HKIAC.
 - 28.2.2 The language of the arbitration shall be English and all written communications and statements, and all hearings shall be conducted in the English language.
 - 28.2.3 Any award issued by an arbitrator appointed pursuant to Clause 28.2 shall be final and binding upon the Parties, and his fees for so acting shall be borne by the Parties in equal shares.

- 28.3 Subject to the other provisions of this Agreement, the Parties must continue to comply with their respective obligations under this Agreement during the continuance of a disagreement or dispute, or during any alternative dispute resolution process undertaken in accordance with Clause 28 or any permitted court proceedings.
- 28.4 Notwithstanding the provisions of Clause 28 without prejudicing either Party's rights under Clause 29.1 below, either Party shall have the right to seek preliminary and permanent injunctive relief in any court of competent jurisdiction, in order to prevent or enjoin any misappropriation, misuse, unauthorized disclosure or infringement of any of either Party's Intellectual Property Rights and/or Confidential Information.

29. GOVERNING LAW

- 29.1 This Agreement shall be governed by and construed in accordance with the laws for the time being in force in Hong Kong, and the Parties agree to submit to the exclusive jurisdiction of the courts of Hong Kong.
- 29.2 The Operator is fully aware of the laws for the time being in force in the PRC and within the Guangdong Province of the PRC, including without limitation to the applicable laws on the provision of any telecommunication activity, business or operations with or without the provision of Wi-Fi service on KTT.

IN WITNESS HEREOF the authorized representatives of each of the Parties have executed and entered into this Agreement on the day and year first above written.

SIGNED by)
for and on behalf of)
[NAME OF THE OPERATOR] Limited) **[NAME, JOB TITLE]**
)
in the presence of) **[NAME, JOB TITLE]**

SIGNED by)
TraxComm Limited)
as the telecommunication agency) **[NAME, JOB TITLE]**
for and on behalf of)
MTR Corporation Limited)
)
in the presence of) **[NAME, JOB TITLE]**

Template

SCHEDULES

SCHEDULE 2 – LICENCE FEE

*[the same Schedule 2 in accordance to **Pricing Documents**]*

SCHEDULE 3 – USAGE FEE

*[the same Schedule 3 in accordance to **Pricing Documents**]*

SCHEDULE 4 – FULFILMENT FEE

*[the same Schedule 4 in accordance to **Pricing Documents**]*

SCHEDULE 8 – PERFORMANCE STANDARD

*[the same Schedule 8 in accordance to **Performance Commitment**]*

Template

KTT Wi-Fi Provider Licence Agreement

Schedule 1 – General Requirements of the Service

This Schedule 1 states the general requirements of the Service that the Operator shall agree at its sole costs to fulfil in respect of the provision of internet connection service on KTT (via Wi-Fi technologies at a fee chargeable to Users), at the through train platform areas and at the Departure Hall of MTR Hung Hom Station (via Wi-Fi technologies at a fee chargeable to Users for usage on KTT) (collectively called as “Wi-Fi service”), and at Computer Kiosks (via broadband free-of-charge to Users).

Part A

The Operator shall agree to provide internet connection service via Wi-Fi technologies to the public at the Premises designated by MTRCL during the Term hereof meeting the following requirements:-

1. each subscription of Wi-Fi service shall allow that paid User to access to the internet including email servers and VPN servers throughout subscriber’s single journey on KTT train plus within the through train platform areas and Departure Hall of MTR Hung Hom Station.
(Note: Train journey between Hung Hom Station and Guangzhou East Station is about 140 minutes excluding unplanned train delays, and passengers may stay at Departure Hall for 40 minutes excluding unplanned train delays.)
2. each subscription of Wi-Fi service per User per train journey (“One-Time Usage Fee”) shall be reasonable to the Users when comparing to a train ticket fare (currently at HK\$190), that is, recommended at a ceiling of 15% of a train ticket fare.
3. each subscription of Wi-Fi service per User per train journey for the existing customers of the Operator (“Top-up Usage Fee”) shall be reasonable to the Users when comparing to a train ticket fare (currently at HK\$190), that is, recommended at a ceiling of 15% of a train ticket fare.
4. provision of Wi-Fi access plan(s) other than “One-Time Usage Fee” and “Top-up Usage Fee” shall be subject to prior written approval by the train operator of KTT (MTR Corporation Limited – Intercity Department).
5. alternation of any usage fee(s) in relation to the Service without limitation to “One-Time Usage Fee” and “Top-up Usage Fee” shall be agreed in advance by the train operator of KTT (MTR Corporation Limited – Intercity Department).
6. provision of bandwidth of not less than 21M bps (download) and 21M bps (upload) between each modem / antenna on KTT and any radiocommunication devices along the train route for one fleet of KTT on-board Wi-Fi service during a journey on KTT train.
7. provision of two (2) toll-free telephone hotline numbers for subscribers to make inquiries (services and technical issues) via their mobile phones in both Hong Kong and mainland China.

8. be responsible for all issues in relation to or arising from the use of the Service including without limitation to licenses of operations, comments and complaints in respect of service quality, connectivity, payment, etc.
9. provision of thirty-five (35) unique user ids and passwords at no cost to TraxComm and the MTRCL for unlimited access by TraxComm and the MTRCL within KTT on-board, at through train platform areas and Departure Hall of MTR Hung Hom Station.

Part B

The Operator shall agree to provide internet connection service at the Computer Kiosks (via broadband internet access) to the public at the Premises designated by MTRCL during the Term hereof meeting the following requirements:-

1. provision of five (5) Computer Kiosks for passengers to access the internet without paying a fee at Departure Hall of MTR Hung Hom Station.
2. design, construction, supply and installation of five (5) Computer Kiosks with furniture, desktop computer units including individual liquid crystal display monitor, keyboard and mouse at Departure Hall of MTR Hung Hom Station.
3. be responsible for all issues in relation to or arising from the use of the Computer Kiosks including without limitation to computers and relevant licenses, software updates, hardware maintenance, power supply, internet connection and network connectivity for the purpose of operating the Computer Kiosks.

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Schedule 5 – Code of Practice

This Schedule 5 states the Code of Practice (“the Code”) that provides an ethical and behavioural framework for MTRCL’s suppliers/ contractors/ consultants (herein collectively noted as “Vendor”) in Hong Kong and overseas. All Vendors are required to comply with these guidelines when doing business with MTRCL. Vendors should ensure communication with their employees for compliance with the Code.

MTRCL reserves the right, upon reasonable notice, to conduct compliance audit with Vendors on the Code. Any violation of the Code shall be considered a material breach of the relevant contract/ order/ agreement by the Vendor.

Part A

Ethical Standards

The Vendor shall uphold ethical principles for its operation, including:-

- (a) Compliance with all applicable laws and regulations
- (b) Confidentiality
- (c) Open and fair competition
- (d) Anti-bribery and corruption

Part B

Human and Labour Rights

The Vendor shall support the principles of, the United Nations Universal Declaration of Human Rights, the International Labour Organization Declaration of Fundamental Principles and Rights at Work, the OECD Principles of Corporate Governance and the United Nations Global Compact, in the following areas:-

- (a) Child Labour
- (b) Forced Labour
- (c) Health and Safety
- (d) Wages and Working Hours
- (e) Discrimination
- (f) Discipline
- (g) Freedom of Association

Part C

Supplier Chain Management

The Vendor shall ensure full compliance with the Code by its own suppliers, subcontractors and other business partners.

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Schedule 6 – Departure Hall

This Schedule 6 provides information about the Departure Hall of MTR Hung Hom Station, in order to facilitate the planning of provision of internet connection service on KTT (via Wi-Fi technologies at a fee chargeable to Users), at the through train platform areas and at the Departure Hall of MTR Hung Hom Station (via Wi-Fi technologies at a fee chargeable to Users for usage on KTT) (collectively called as “Wi-Fi service”), and via Computer Kiosks free-of-charge to Users.

Part A

Gross area of the Departure Hall of MTR Hung Hom Station refers to:-

- (a) Platform & Departure Hall – about 1458 m²; and
- (b) VIP room (not directly connecting to Departure Hall) – about 42 m²,

but excludes (unless otherwise agreed by the Parties) all areas which are licensed or occupied by commercial or non-commercial occupants through contractual arrangements or otherwise with MTRCL and/or any of its affiliates.

Electricity power socket, telephone line socket are network cable socket are not available, and the Operator of the Services is required to arrange such sockets at its own costs.

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Schedule 7 – Computer Kiosks

This Schedule 7 defines the general requirements that the Operator agrees to comply with in respect of provision of internet connection service free-of-charge to Users at Departure Hall of MTR Hung Hom Station, under a provider licence to be granted by MTRCL to the Operator.

Part A

The Operator shall at its sole costs:-

- (a) submit design proposal, construction method statement, safety management plan, project management plan and other documents when deemed required to MTRCL, and shall start on-site production and construction of Computer Kiosks after obtaining appropriate licenses from relevant Government Authorities if any and obtaining approval in writing from MTRCL.
- (b) be responsible for all issues in relation to the Computer Kiosks including without limitation to design, construction, supply, installation, computers and relevant licenses, software updates, hardware maintenance, power supply, internet connection and network connectivity for the purpose of operating the Computer Kiosks, and agrees to upgrade the five desktop computer units in every twenty-four (24) months by providing brand-new computer units at the latest model as mutually agreed between MTRCL and the Operator.

Part B

Basic requirements of each desktop computer unit:-

- liquid crystal display monitor (19-inch non-reflective screen)
- mouse with scrollable control
- keyboard with Chinese input characters
- desktop computer core unit (minimum requirements):
 - Intel® Core™ i7 860 Processor (2.8GHz , 1333MHz FSB, 6MB L2 Cache), or equivalent
 - 4GB DDR3 SDRAM 1066MHz Memory
 - 250GB SATA 7200rpm Hard Drive
 - 1024MB NVIDIA® GeForce® GT220, or equivalent
 - USB slot
- software:
 - operating system
 - anti-virus software and definition update
- house-rule and security features:
 - auto restore to new operating system after every log-out by User
 - domain and contents filters