

Base District Traffic Model (BDTM) Licence Agreement

This AGREEMENT is made the [] day of [] of 201[]

BETWEEN

(1) [] whose registered office is at [] (“the Developer”) and

(2) [] whose registered office is at [] (“the Traffic & Transport

Consultants, hereinafter called “the T&T Consultants”); and

(3) The Government of Hong Kong Special Administrative Region (“the Government”) acting through the Transport Department (“TD”)

1. The Licensed Materials comprises of (i) BDTM Data (consisting of network and matrix files) as specified in clause 5 of the BDTM Data Order Form and (ii) the Final Report (a technical document on the assumptions, development process and figures of the BDTM Data in (i)) whether in electronic read only device or otherwise which contains information of simulated traffic flow, physical details of roads and junctions, trip generation and attraction at each zone, assumed flow capacity for each of the simulated entities, etc at the base year and future years as appropriate.

2. In consideration of the charges paid by the T&T Consultants in the BDTM Data Order Form (attached herewith), the Transport Department shall provide the Licensed Materials as requested in the BDTM Data Order Form and the Government hereby grants a non-exclusive, non-assignable, non-sublicensable and non-transferable licence to use the Licensed Materials to the Developer and the T&T Consultants upon the following terms and conditions:

2.1 The Licensed Materials, supplied by the Transport Department, shall be used for the purpose as specified in clause 2 of the BDTM Data Order Form for carrying out traffic impact assessment (TIA) for the proposed development project and not for any other purpose for the period commencing from the date of this Licence Agreement until the completion date of the TIA for the proposed development project set out in clause 3 of the BDTM Data Order Form or two years from the date of this Licence Agreement whichever is the earlier.

2.2 Unless otherwise expressly stated or permitted under this Licence Agreement, the Licensed Materials or any part thereof shall not be used in any form or manner (including but not limited to copying, modification, enhancement, adaptation, translation or distribution to any third party in whatever form or media) by the Developer or the T&T Consultants.

2.3 If the supplied Licensed Materials is found to be corrupted or defective within one (1) calendar month from the date of collection by the users, Transport Department shall replace the supplied Licensed Materials. The Licensed Materials will not be regarded as corrupted or defective if it can be loaded into and displayed on the computer system of Transport Department.

2.4 The Transport Department shall not be responsible to install the Licensed Materials or provide any training in the use of the Licensed Materials and gives no warranty that the Licensed Materials can be processed on the computer system of the Developer or the T&T Consultants.

2.5 The Developer and the T&T Consultants acknowledge that the Licensed Materials has not been prepared specifically to meet their individual requirements and purpose and that they will not have any recourse against the Government for any damage or loss they may suffer in any use or attempted use of the Licensed Materials.

2.6 The Government gives no warranty that the Licensed Materials is error-free and the Government shall in no way be held responsible for any loss or damage which may be suffered by the users or any other person from the use of the Licensed Materials.

2.7 The Developer and the T&T Consultants shall display on and in the products containing the Licensed Materials an acknowledgement with the following wording “© Licensed Materials reproduced with permission of the Commissioner for Transport, the Government of the Hong Kong SAR”.

2.8 The Government remains the owners of the Licensed Materials and the intellectual property rights therein at all times.

2.9 The Developer [jointly and severally]**/** warrants and undertakes that it shall not infringe any intellectual property rights in the Licensed Materials and shall fully indemnify the Government against all loss, damage, claims, demands, proceedings, costs, charges, expenses and liabilities suffered or incurred by the Government arising by reason of any act, default, breach or omission on the part of the Developer.

2.10 The T&T Consultants [jointly and severally]**/** warrants and undertakes that it shall not infringe any intellectual property rights in the Licensed Materials and shall fully indemnify the Government against all loss, damage, claims, demands,

proceedings, costs, charges, expenses and liabilities suffered or incurred by the Government arising by reason of any act, default, breach or omission on the part of the T&T Consultants.

2.11 The Developer [jointly and severally]**/** warrants and undertakes that their staff shall abide by all the terms and conditions of the Licence Agreement in using the Licensed Materials and that their staff shall not infringe any intellectual property rights in the Licensed Materials and the Developer shall fully indemnify the Government against all loss, damage, claims, demands, proceedings, costs, charges, expenses and liabilities suffered or incurred by the Government arising by reason of any act, default, breach, omission or failure to comply with the terms and conditions of the Licence Agreement by or of the staff of the Developer in using the Licensed Materials.

2.12 The T&T Consultants [jointly and severally]**/** warrants and undertakes that their staff shall abide by all the terms and conditions of the Licence Agreement in using the Licensed Materials and that their staff shall not infringe any intellectual property rights in the Licensed Materials and the T&T Consultants shall fully indemnify the Government against all loss, damage, claims, demands, proceedings, costs, charges, expenses and liabilities suffered or incurred by the Government arising by reason of any act, default, breach, omission or failure to comply with the terms and conditions of the Licence Agreement by or of the staff of the T&T Consultants in using the Licensed Materials.

2.13 The Transport Department is not responsible for the accuracy of the Licensed Materials nor providing a copy of the revised Licensed Materials to the Developer and the T&T Consultants. The Developer and the T&T Consultants are responsible for making their own assessment of all information contained in the Licensed Materials and are advised to verify such information before acting upon it.

2.14 Technically, the Licensed Materials, among other things, are prepared, compiled and validated by the Transport Department based on, but not limited to, the following data sources (the original data sources) at the base years and future years (specified in clause 5 of the BDTM Data Order Form) as appropriate:

- i the cordoned strategic traffic flow (from the re-run of the Comprehensive Transport Study Model) for each of the BDTMs;
- ii. the Major Highway and Railway Network Assumptions; iii.
the Territorial Population and Employment Data Matrices;
- iv. future new developments;

- v. the latest resident and working populations classified on Small Street Block Group and Large Street Block Group respectively, Quarterly Survey of Employment and Vacancies and the like;
- vi. the Annual Traffic Census;
- vii. the cycle time, methods of control and signal plans for signal junctions;
- viii. the layout of roads, junctions and the traffic aids; and
- ix. the public bus routes and their timetables.

Notwithstanding the above, Licensed Materials have their limitations particularly in the following areas:

- i. they should not be used to forecast roads of strategic nature which have not been included in the Major Highway and Railway Network Assumptions.
- ii. they should not be used for projects straddling two different BDTMs.

2.15 The Developer and the T&T Consultants shall note that Licensed Materials has only been validated at major screenlines and junctions as detailed in the relevant Final Reports in the Licensed Materials. In the event that there is any discrepancy in the information contained in the Licensed Materials and that contained in the original data sources, the original data sources shall prevail.

2.16 Whilst endeavours have been made to ensure the accuracy of the Licensed Materials, no express or implied warranty or representation is given to the accuracy or completeness of the Licensed Materials or its appropriateness for use in any particular circumstances. The Government is not responsible for any loss, damage, claims, demands, proceedings, costs, charges, expenses and liabilities arising from any cause whatsoever in connection with the Licensed Materials or the use thereof.

2.17 Upon completion of the TIA for the proposed development project set out in clause 3 of the BDTM Data Order Form or upon two years from the date of this Licence Agreement whichever is the earlier, the Developer and the T&T Consultants shall immediately cease using the Licensed Materials. The Licensed Materials stored in the Developer and the T&T Consultants' computer systems and storage media shall all be destroyed upon completion of the TIA for the proposed development project set out in clause 3 of the BDTM Data Order Form or upon two years from the date of this Licence Agreement whichever is the earlier.

2.18.1 The Developer and the Consultants shall treat as confidential the Licensed Materials and all other data (including without limitation any personal

particulars records and Personal Data (as defined in the Personal Data (Privacy) Ordinance (Cap 486)) and materials of any nature (in or on whatever media)) accessible by the Developer and the T& T Consultants under this Licence Agreement or which the Government has for the purposes of or in the course of performing this Licence Agreement disclosed supplied made available or communicated to the Developer or the T&T Consultants and which the Government has designated as confidential **PROVIDED THAT** this clause 2.18.1 shall not extend to any information which was rightfully in the possession of the Developer or the T&T Consultants prior to the commencement of the negotiations leading to this Licence Agreement or which is already in the public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause).

2.18.2 The Developer and the T&T Consultants shall indemnify and keep the Government its employees and authorized persons fully and effectively indemnified against all loss, damage, claims, demands, proceedings, costs, charges, expenses and liabilities of whatsoever nature arising from or incurred by reason of any actions and/or claims made in respect of information subject to the Personal Data (Privacy) Ordinance (Cap 486) which action and/or claim would not have arisen but for the negligence or omission of the Developer or the T&T Consultants, any of their respective employees, sub-contractors or agents (or any one acting on their behalf) in connection with this Licence Agreement.

2.18.3 The Developer and the T&T Consultants hereby agree that it will use the confidential information described in clause 2.18.1 solely for the purposes of this Licence Agreement and that it will not, at any time whether during or after the completion, expiry or termination (howsoever occasioned) of this Licence Agreement use or allow to be used the same for any other purposes without the Government's prior written consent.

2.18.4 The Developer and the T&T Consultants undertakes to take all such security measures for the protection of the Licensed Materials which it is obliged by this clause 2.18.1 to keep secret and treat as confidential as it takes for the protection of its own confidential information, documentation and materials.

2.18.5 The Developer and the T&T Consultants shall ensure that each of their respective employees, agents, associates, sub-contractors, consultants and any other persons engaged in any work in connection with this Licence Agreement are aware of and comply with the provisions of this clause 2.18 and the Official Secrets Ordinance (Cap 521). The Developer and the T&T Consultants shall indemnify the Government and keep the Government fully and effectively indemnified against all actions, costs (including without limitation the fees and disbursements of lawyers, agents and experts witnesses), claims, demands, expenses, loss, damage and liabilities whatsoever which the Government may suffer incur or sustain as a result of any breach of confidence (whether under this Licence Agreement or general law) by the Developer and the T&T Consultants and/or by any of the said persons.

2.18.6 The Developer and the T&T Consultants undertakes, if so requested by the Government, to sign the Government's separate confidentiality agreement in a form prescribed by the Government and to procure each of their employees, agents, associates, sub-contractors and consultants to whom any confidential information is required to be disclosed to do so.

2.18.7 The Developer and the T&T Consultants shall promptly notify the Government of any breach of confidence, the Personal Data (Privacy) Ordinance or the Official Secrets Ordinance by any of the persons referred to in this clause 2.18 and give the Government all reasonable assistance in connection with any proceedings which the Government may institute against any such persons for any such breach.

2.18.8 The provisions of this clause 2.18 shall survive the termination of this Licence Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

2.19 The obligations and liabilities of the Developer and the T&T Consultants in this Licence Agreement are joint and several.

2.20 This Licence Agreement shall be governed by and construed in all respects according to the laws for the time being in force in Hong Kong Special Administrative Region.

Signed for and on behalf of the
Government

Signature _____

Name _____

Post _____

Witness _____

*[Signed for and on behalf of the
Developer

Signature _____

Name _____

Job title _____

Company chop _____

Witness _____]

*[Signed for and on behalf of the T&T
Consultants

Signature _____

Name _____

Job Title _____

Company chop _____

Witness _____]

**[Signed by _____
(Name)

And _____
(Name)

Being the partners of the Developer
(Company chop)

In the presence of
Witness _____]

**[Signed by _____
(Name)

And _____
(Name)

Being the partners of the T & T Consultants
(Company chop)

In the presence of
Witness _____]

***[Signed by _____
(Name)

for and on behalf of _____
(Name of unincorporated joint venture participant)
being a participant of the Developer
(Company chop)

In the presence of
Witness _____]

***[Signed by _____
(Name)

for and on behalf of _____
(Name of unincorporated joint venture participant)
being a participant of the T&T Consultants
(Company chop)

In the presence of
Witness _____]

* For use where the company is a limited liability company

** For use where the company is a partnership (please add space for more names where appropriate)

*** For use where the company is an unincorporated joint venture (Please add more execution clauses where appropriate)