

SCHEDULE 2

Dated

2003

HEADS OF AGREEMENT

**TRANZ RAIL HOLDINGS LIMITED and
TRANZ RAIL LIMITED**

AND

**HER MAJESTY THE QUEEN IN RIGHT OF
NEW ZEALAND**

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DATED the

day of

June 2003

PARTIES

1. **TRANZ RAIL HOLDINGS LIMITED (“TRH”) and TRANZ RAIL LIMITED** (jointly and severally referred to as “**Tranz Rail**”)
2. **HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND** acting by and through her Minister of Finance (“**Crown**”)

BACKGROUND

- A. Tranz Rail and the Crown have agreed to enter into the following transactions:
 - (a) Tranz Rail will sell, and the Crown will purchase, Tranz Rail's Rail Network and associated assets;
 - (b) Tranz Rail will partially surrender the Core Lease (as defined below); and
 - (c) The Crown will grant Tranz Rail rights of access to the Rail Network subject to various terms and conditions (including access fees payable by Tranz Rail, and service levels to be met by both parties including maintenance obligations to be met by the Crown).
- B. This Agreement sets out the terms of those transactions and related commercial matters and is intended to be binding on the parties.

1. INTERPRETATION

1.1 Definitions:

“**Access Agreement**” has the meaning given in clause 5.1(e);

“**Agreement**” means this agreement together with its Schedules.

“**Auckland Rail Arrangements**” means the following documents:

- (a) Amended and Restated Tranz Rail Access Agreement between the Crown and Tranz Rail Limited, dated 13 May 2002;
- (b) Maintenance and Network Control Agreement between the Crown and Tranz Rail Limited, dated 13 May 2002;
- (c) Option to Purchase the Swanson–Helensville Assets between the Crown and Tranz Rail Limited, dated 13 May 2002;
- (d) Designation Deed between the Crown, Tranz Rail Limited and NZRC, dated 13 May 2002;

“Best Endeavours” means, in relation to either party agreeing to achieve an outcome, the prompt and diligent use of all reasonable resources available to that party to effect that outcome as soon as possible, except that the best endeavours of the Crown shall not include the exercise by it or the use of any regulatory or legislative powers in order to influence or effect an outcome;

“Bill Rate” means in respect of any date the mid or “FRA” rate for 90 day bank accepted bills (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page) at or about 10:45am on that day;

“Business Day” means Monday to Friday, excluding public holidays in Auckland and Wellington;

“Completion” means completion of the Rail Network Transfer in accordance with this Agreement;

“Completion Date” means the date 40 Business Days after the date on which Toll Group (NZ) Limited declares its takeover offer for all of the shares in Tranz Rail unconditional (or that takeover offer otherwise becomes unconditional), or any other date agreed by the parties in writing;

“Conditions” means the conditions specified in clause 4.1;

“Core Lease” means the memorandum of lease dated 20 December 1991 between the Crown, NZRC and Tranz Rail Limited, as varied by deed of variation dated 28 April 1993, by agreement to surrender dated 24 December 2001 and as further varied in accordance with section 3(c) of Schedule 2;

“Default Rate” means the interest rate specified in clause 3.1(a) plus a further margin of 5% per annum in respect of any payment default, or 2% per annum in respect of any other default;

“Deposit” means the amount of \$44,000,000 that the Crown was obliged, subject to certain conditions, to pay to Tranz Rail as a deposit and in part payment of the purchase price of the Rail Network and the Network Assets under clause 3.1 of the Initial Heads of Agreement;

“Encumber” means to grant or to allow any encumbrance over, or interest in respect of, property, including an option, restriction, right of first refusal, right of pre-emption, a security agreement or any "security interest" as that term is defined in the Personal Property Securities Act 1999, or any other third party interest of any kind, and **“Encumbrance”** has a corresponding meaning;

“Ferry Service Operations” means Tranz Rail's existing and proposed inter-island ferry operations, including the ferries, terminal and other buildings, stations, rail lines and sidings in the immediate vicinity of the existing or proposed inter-island ferry terminals, inter-island terminals, mechanical depots, workshops and storage facilities relating to locomotives, wagons and passenger operations, inventory and plant, loading shelters, terminal improvements at major and certain regional sites such as asphalt and light towers, terminal services such as container and forklift repair and management, amenities and administration facilities, and any or any part of any resource consents, environmental approvals and/or designations (including requiring authority status) granted in respect of the existing or proposed Ferry Service Operations (including the proposed Clifford Bay ferry terminal);

“Ferry Service Operations Land” means any land used or intended to be used for any Ferry Service Operations in the immediate vicinity of the current or proposed inter-island ferry terminals and includes the proposed branch line from the South Island Main Trunk to the proposed Clifford Bay terminal;

“General Security Deed” means the General Security Deed entered into between the Crown, Tranz Rail and certain of Tranz Rail’s subsidiaries on or about 18 June 2003;

“Initial Heads of Agreement” means the Heads of Agreement between the Crown and Tranz Rail dated 6 June 2003, which has been terminated;

“Management Agreement” has the meaning given in clause 5.1(b);

“Material Contracts” has the meaning given in Schedule 1;

“Network Assets” has the meaning given in Schedule 1;

“Network Encumbrances” has the meaning given in Schedule 1;

“NZRC” means New Zealand Railways Corporation;

“Opco” has the meaning given in section 1(c) of Schedule 4;

“Rail Network” has the meaning given in Schedule 1;

“Rail Network Transfer” has the meaning given in clause 2.1;

“Rail Network Transfer Agreements” means the agreements to be entered into by the parties under clause 5;

“Released Land” means the land to be released from the Core Lease for which the Crown will pay Tranz Rail as part of the purchase price for the Rail Network and Network Assets in accordance with Schedule 3, as defined in section 2(c) of that Schedule;

“Retained Assets” has the meaning given in Schedule 1;

“Retained Land” has the meaning given in Schedule 1;

“Sale and Purchase Agreement” has the meaning given in clause 5.1(a);

“Steering Group” means a joint steering group comprised of two representatives of each party established by the parties for the purposes of the Sale and Purchase Agreement and the Management Agreement (provided that the parties may have different representatives on the steering group for the purposes of each Agreement);

“Surrender Land” has the meaning given in Schedule 1;

“Toll” means Toll Holdings Limited and Toll Group (NZ) Limited;

“TrackCo” has the meaning given in clause 2.2;

“Transitional Period” means the period from the Completion Date until 30 June 2004 (or such other date agreed by the parties); and

“Tranz Rail Group” means TRH, Tranz Rail Limited and all of the subsidiaries of those companies (“subsidiary” having the meaning given in the Companies Act 1993).

1.2 **Interpretation:** In this Agreement:

- (a) a reference to a:
 - (i) **“party”** includes a reference to that party's successors and permitted assigns;
 - (ii) **“person”** includes an individual, firm, company, corporation or unincorporated body of persons, or any authority, in each case whether or not having a separate legal personality, and a reference to **“company”** includes a person;
 - (iii) clause or Schedule is a reference to a clause or Schedule of this Agreement unless specifically stated otherwise;
 - (iv) statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
 - (v) **“dollars”** or **“\$”** is a reference to New Zealand currency;
- (b) an agreement, representation or warranty:
 - (i) given or entered into by two or more persons is given or entered into and binds them **jointly and severally**; and
 - (ii) in favour of two or more persons is for the benefit of them **jointly and severally**;
- (c) headings are for convenience and do not affect interpretation;
- (d) **“including”** and similar words do not imply any limitation;
- (e) wherever there is a reference in this Agreement to a party paying costs, that reference shall be deemed to refer only to direct and reasonable costs (provided that this provision shall not apply to sections 8 to 10 of Schedule 4);
- (f) where a party, or the parties, are required by this Agreement to consult on a matter, the party or parties will carry out that consultation in good faith acting reasonably; and
- (g) where a party puts a proposal under this Agreement to the other party in good faith acting reasonably, the other party will consider that proposal in good faith.

2. **SALE AND PURCHASE**

2.1 **Rail Network Transfer:** Subject to clause 4, Tranz Rail and the Crown agree to give effect to the transfer of the Rail Network to the Crown (**“Rail Network Transfer”**) as follows:

- (a) **Network Assets:** Tranz Rail shall sell and the Crown shall purchase the Rail Network and the Network Assets;

- (b) **Tranz Rail lease:** Tranz Rail, the Crown and NZRC shall partially surrender and vary the Core Lease, so that:
- (i) the Surrender Land ceases to be subject to the Core Lease and reverts to the Crown; and
 - (ii) the Retained Land continues to be leased by Tranz Rail under the Core Lease;
- (c) **Tranz Rail access:** the Crown will grant Tranz Rail rights of access to the Rail Network transferred to the Crown under (a) and (b) above subject to the terms and conditions (including access fees payable by Tranz Rail and service levels to be met by both parties including maintenance obligations to be met by the Crown) as set out in Schedule 4; and
- (d) **Rail Network Transfer Agreements:** Tranz Rail and the Crown shall enter into the Rail Network Transfer Agreements in order to give effect to the above,

all in accordance with the terms of this Agreement.

- 2.2 **TrackCo:** The Crown will establish an appropriate entity to administer the Rail Network, the Network Assets and the Surrender Land, to hold the benefit of (and to perform the Crown's obligations under) the Rail Network Transfer ("**TrackCo**").
- 2.3 **Timetable:** The parties will agree upon a timetable in order to enable the Rail Network Transfer to occur by the Completion Date. Each party must use its Best Endeavours to ensure that the timetable is met in all respects.
- 2.4 **Co-operation:** The parties acknowledge that a substantial degree of co-operation is required in order to enable them to give effect to the transactions contemplated by this Agreement. The parties agree to perform their obligations and exercise their rights under this Agreement in good faith, and to co-operate with, and use their Best Endeavours to assist, the other party to comply with its obligations under this Agreement.
- 2.5 **Investment in Rail Network:**
- (a) In the period from Completion to 30 June 2008, the Crown shall expeditiously invest at least \$100,000,000 plus GST on upgrading the Rail Network, in order to improve its performance, efficiency, safety and reliability.
 - (b) The sum in clause 2.5(a) is in addition to the replacement capital expenditure of \$100,000,000 plus GST referred to in section 8(b)(ii)(1) of Schedule 4, which the Crown shall be obliged to expend by 30 June 2007.
- 2.6 **Tranz Rail investment:** Tranz Rail shall invest at least \$100,000,000 plus GST in the period from Completion to 30 June 2008 in the upgrading of its rolling stock and locomotives.
- 2.7 **Consultation:** The parties shall establish a working party in order to consult on the expenditure of the sums set out in clauses 2.5 and 2.6 with the objective of maximising the economic benefits of the investments to be made by the parties. The working party will meet annually and will make recommendations to the parties, including appropriate investments (and the timing thereof) that the parties may make under those clauses. The parties will have regard to the recommendations of

the working party (acting reasonably and in good faith) in making their decisions about the expenditure of the sums set out in clauses 2.5 and 2.6, and will only materially depart from those recommendations after notifying the working party of that departure and the reasons for doing so. Notwithstanding the foregoing, each party retains the final right of decision over such investments.

- 2.8 **Reporting on investment:** The Crown and Tranz Rail will each provide a report to the other party within 30 days of the end of their respective financial years setting out the investments they have made in that financial year in accordance with clauses 2.5 and 2.6.

3. DEPOSIT ON PURCHASE PRICE OF RAIL NETWORK AND NETWORK ASSETS

- 3.1 **Deposit:** The Crown paid the Deposit, less an amount of \$168,932.82 for certain of its legal costs, to Tranz Rail on 18 June 2003. For the purposes of this Agreement, the Deposit is not a deposit, or part payment, of the purchase price for the Rail Network or the Network Assets. In accordance with clause 3 of the Initial Heads of Agreement (which survives termination of the Initial Heads of Agreement):

- (a) Tranz Rail shall continue to pay to the Crown interest on the amount of the Deposit from time to time at the Bill Rate plus a margin of 4% per annum, such interest to be calculated daily, and such rate to be determined as at the date of payment of the Deposit and at intervals of 90 days thereafter. That interest shall be paid by instalments at intervals of 90 days from the date on which the Deposit was paid and on 30 June 2004.
- (b) if the Deposit (or any part thereof) is not repaid or any interest on the Deposit is not paid when due, Tranz Rail shall pay to the Crown interest at the Default Rate on any such unpaid amount from its due date to the date of actual receipt by the Crown, calculated daily with 90 day rests.
- (c) Tranz Rail shall repay the Deposit to the Crown (without set-off or deduction, together with all accrued unpaid interest, and default interest and costs) by 30 June 2004 (or such later date as the Crown may nominate in writing) or on any earlier date on which such amounts may become payable pursuant to the General Security Deed.

- 3.2 **Security:** The obligations of Tranz Rail in respect of the Deposit set out in clause 3 of the Initial Heads of Agreement shall continue to be secured by the General Security Deed.

- 3.3 **Survival:** The provisions of this clause 3 shall survive termination of this Agreement.

4. CONDITIONS

- 4.1 **Conditions:** The parties' obligation to give effect to the Rail Network Transfer is conditional upon:

- (a) Tranz Rail obtaining (if required) all necessary shareholders' consents to the Rail Network Transfer on or before the Completion Date;
- (b) none of the following occurring;

- (i) any company in the Tranz Rail Group being placed in receivership or having a receiver, trustee, manager (including a statutory manager) appointed in respect of any such company or all or any part of its business or assets; or
- (ii) an order being made for the winding up or liquidation of any company in the Tranz Rail Group, or any company in the Tranz Rail Group making any application for such an order, but excluding the voluntary liquidation of Tranz Rail Financial Receivables Limited provided this company does not hold any interest in any Network Assets or Surrender Land;
- (c) Tranz Rail procuring from its New Zealand banking syndicate, in favour of and on terms satisfactory to the Crown, within 20 Business Days of the execution of this Agreement, all necessary consents and approvals to the Rail Network Transfer; and
- (d) TRH obtaining (if required) the consent of the trustee for the holders of subordinated bonds issued by TRH to the Rail Network Transfer, on or before the Completion Date.

4.2 **Benefit of Conditions:** The parties acknowledge that:

- (a) the Condition in clause 4.1(a) has been inserted for the benefit of both the Crown and of Tranz Rail; and
- (b) the Conditions in clauses 4.1(b) to (d) have been inserted for the benefit of the Crown.

4.3 **Waiver:** A Condition may only be waived or its date for satisfaction extended by the party entitled to the benefit of the Condition (or both parties where both are entitled to the benefit of the Condition) and will only be effective to the extent specifically set out in that waiver or extension, provided that the date for satisfaction of a Condition may not be extended beyond 30 November 2003 (if the extended date for satisfaction of the applicable Condition is later than the Completion Date, the Completion Date shall also be deemed to be extended to that date). Notwithstanding the foregoing, or clause 4.2(a), the Crown may unilaterally waive the Condition in clause 4.1(a) if Toll holds or controls 90% or more of the voting rights in TRH.

4.4 **Fulfilment of Conditions:** The Crown agrees to act reasonably in determining whether or not it is satisfied with the matters referred to in clauses 4.1(b) to (d). In all other respects, the parties must use their Best Endeavours and provide all reasonable assistance and information to each other to procure the fulfilment of the Conditions (provided that this obligation shall not apply to either the Crown or Tranz Rail in respect of the Conditions in clause 4.1(b)).

4.5 **Conditions not satisfied:** If any Condition is not satisfied or waived by the applicable due date, or in the case of the Conditions in clause 4.1(b) if at any time prior to Completion of the Rail Network Transfer either of those Conditions is no longer satisfied, (and the breach of the Condition has not been waived), then either the Crown or Tranz Rail (in respect of the Condition in clause 4.1(a)) or the Crown (in respect of the Conditions in clauses 4.1(b), (c) or (d)) may (if it has complied with its obligations under clause 4.4) terminate this Agreement by 24 hours notice in writing to the other party. Notwithstanding the foregoing, Toll shall not be entitled to terminate this Agreement in respect of the Condition in clause 4.1(a) if Toll holds or controls 90% or more of the voting rights in TRH.

5. RAIL NETWORK TRANSFER AGREEMENTS

- 5.1 **Completion of agreements:** Subject to clause 5.3, in order to give effect to the Rail Network Transfer, Tranz Rail and the Crown must complete:
- (a) a sale and purchase agreement setting out the terms of the Rail Network Transfer, on the terms summarised in Schedule 2 (the “**Sale and Purchase Agreement**”), by the Completion Date;
 - (b) a management agreement on the terms summarised in Schedule 6, to provide for the management by Tranz Rail as the Crown’s agent of the Rail Network and, the Network Assets during the Transitional Period (the “**Management Agreement**”), by the Completion Date;
 - (c) an interim access arrangement on the terms summarised in Schedule 4 setting out Tranz Rail’s access rights in respect of the Rail Network for the period from Completion Date to the end of the Transitional Period, by the Completion Date;
 - (d) an agreement to partially surrender and vary the Core Lease, on the terms summarised in Schedule 5 (the Crown must also procure the execution of this agreement by NZRC), by the end of the Transitional Period; and
 - (e) an access agreement between Tranz Rail and the Crown on the terms summarised in Schedule 4, setting out Tranz Rail’s access rights in respect of the Rail Network, service levels to be met by the Crown and Tranz Rail, access fees payable by Tranz Rail, and the Crown’s maintenance obligations (the “**Access Agreement**”), by the end of the Transitional Period.
- 5.2 **Best Endeavours:** The parties shall act in good faith and use their Best Endeavours to complete the Rail Network Transfer Agreements referred to in clauses 5.1(a) to (c) by the dates specified in those clauses, but if those agreements are not completed by those dates the parties shall complete them as soon as possible thereafter.
- 5.3 **Supporting Documentation:** The parties will use their Best Endeavours to complete the detailed supporting documentation and other actions necessary to give effect to the Rail Network Transfer by Completion or as soon as possible thereafter, such as completion of an agreed listing of the Network Assets transferred; identifying and documenting the Surrender Land and the Retained Land; and obtaining any outstanding counter-party consents to the assignment of the Material Contracts (including, if requested by the Crown, Tranz Rail requesting Tranz Scenic 2001 Limited to enter into a new contract with the Crown on substantially the same timeframes specified in, and on the same terms as, the current contract), in order to give effect to the Rail Network Transfer in accordance with clause 5.1.
- 5.4 **Auckland Rail Arrangements:** Tranz Rail and the Crown agree to review the Auckland Rail Arrangements to determine whether any of the terms of those arrangements should be varied to be consistent with the transactions contemplated by this Agreement. Notwithstanding the foregoing, the parties agree to terminate the Maintenance and Network Control Agreement forming part of the Auckland Rail Arrangements on Completion of the Rail Network Transfer.

5.5 **Transactions to proceed:** The parties acknowledge that the transactions contemplated by this Agreement shall proceed in accordance with the terms and conditions of this Agreement irrespective of whether or not any or all of the Rail Network Transfer Agreements are finalised or executed. If a Rail Network Transfer Agreement is not executed by Completion, the matters to be governed by such agreement shall be governed by this Agreement together with the relevant Schedule to this Agreement.

6. PRICE, COMPLETION AND PAYMENT

6.1 **Network Asset price:** The parties estimate the purchase price for the Rail Network and Network Assets will be \$50,000,000.00, plus GST if any (this estimate is not binding on, or actionable by, either party). The final purchase price for the Rail Network and the Network Assets shall be determined in accordance with Schedule 3.

6.2 **Completion Date:** On the Completion Date:

- (a) the parties shall complete the Rail Network Transfer in accordance with this Agreement or (in the case of the Rail Network Transfer), if executed, the Sale and Purchase Agreement referred to in clause 5.1(a); and
- (b) subject to Tranz Rail complying with its settlement obligations and to clause 6.3, the Crown shall pay the purchase price of the Rail Network and the Network Assets to Tranz Rail.

6.3 **Released Land:** If the value of any of the Released Land identified under Schedule 3 by Completion has not been established by that date under that Schedule, the amount of the purchase price relating to the Released Land shall be paid by the Crown within 14 days of that value being established in accordance with Schedule 3.

6.4 **Default:** If a party fails to make any payment when due under this Agreement, interest will be payable on the amount outstanding at the Default Rate.

7. WARRANTIES

7.1 **Warranties:** In addition to (and without limiting) the warranties to be given by Tranz Rail under the Rail Network Transfer Agreements, Tranz Rail warrants and represents to the Crown as follows as at the date of this Agreement and on Completion:

- (a) it is validly existing;
- (b) it has full authority and all necessary consents to enter into and perform this Agreement (other than any consents required under clauses 4.1(a) and 4.1(c));
- (c) this Agreement and all other agreements contemplated by this Agreement will, when signed by Tranz Rail, constitute valid and binding obligations of, and will be enforceable against, Tranz Rail in accordance with their respective terms;
- (d) no material event of default (however described) by Tranz Rail under any contract material to Tranz Rail has occurred and is continuing that has not been waived by the relevant parties to the contract, and there is no breach by Tranz Rail of any provision of any contract that is

material to Tranz Rail that has not been remedied, or is not capable of remedy in accordance with applicable grace provisions under the relevant contract; and

- (e) that the entry into this Agreement and the performance of its obligations under this Agreement does not and will not place Tranz Rail in breach of any other material agreement which would have a material adverse effect on the Network Assets or on Tranz Rail's ability to perform its obligations under this Agreement.

7.2 **Agreement for Sale and Purchase:** If the parties have not entered into the Sale and Purchase Agreement by Completion, Tranz Rail shall (without limitation) also be deemed to give warranties of the nature referred to in section 8 of Schedule 2, on equivalent terms (where applicable) to those given in the Agreement for Sale and Purchase of the Auckland Network forming part of the Auckland Rail Arrangements.

8. PENDING COMPLETION

8.1 **Risk:** The Rail Network and the Network Assets shall be at the sole risk of Tranz Rail from the date of this Agreement until Completion.

8.2 **Positive obligations:** From the date of this Agreement to the Completion Date, Tranz Rail must ensure that:

- (a) the Rail Network and the Network Assets are operated and maintained, and its business is carried on, in the normal course with the same level of care and in accordance with existing practice and in material compliance with all applicable laws;
- (b) it immediately notifies the Crown in writing of any information or event of which Tranz Rail becomes aware that has or may have a material adverse effect on the Rail Network or the Network Assets or on Tranz Rail; and
- (c) all policies of insurance covering the Network Assets or Tranz Rail as at the date of this Agreement are kept in force on their current terms, all premiums are duly paid, and it takes or permits no action that may materially prejudice Tranz Rail's cover under those policies. All proceeds received from any claims for less than \$10,000,000 under such insurance policies shall be paid to the Crown on Completion of the Rail Network Transfer without right of deduction or set-off. If the Rail Network Transfer does not occur Tranz Rail shall have no obligation to make such a payment to the Crown.

8.3 **Restrictions:** From the date of this Agreement to the Completion Date, Tranz Rail must not, and must procure that no member of the Tranz Rail Group will (except as expressly provided for in this Agreement or with the prior written consent of the Crown):

- (a) acquire or dispose of (or enter into any commitment to acquire or dispose of) any Network Assets except in the ordinary course of business;
- (b) enter into, terminate or vary any contract material to the Rail Network or Network Assets (what is material in this clause 8.3 is not to be construed by reference to the definition of Material Contract);

- (c) further Encumber any of the Network Assets, other than any security granted in favour of the Crown in connection with this Agreement or retention of title arrangements entered into in the ordinary course of business;
- (d) do anything which could result in the termination of any contract material to the Rail Network or the Network Assets or which could defeat or otherwise materially prejudice any such contract;
- (e) materially change or agree to materially change the remuneration or any other material term of employment of any director, employee or contractor that TrackCo may be required to offer employment to under this Agreement, except for ordinary wage or salary increases in accordance with its established review policies, or commence the employment of any person at a rate of remuneration in excess of \$100,000 per annum that TrackCo may be required to offer employment to under this Agreement; or
- (f) other than in the ordinary course of business, enter into any arrangement or agreement or incur any commitment or liability in connection with the Network Assets having a value, or involving an amount, or providing for payments over its term, which are in excess of \$500,000.00.

8.4 **Further disclosure:** From the date of this Agreement to Completion, Tranz Rail must disclose immediately to the Crown any matter or circumstance which arises or becomes known to it which constitutes a breach of clause 8.2 or 8.3.

9. CONFIDENTIALITY AND ANNOUNCEMENTS

- 9.1 **Confidentiality:** This Agreement shall not constitute "Information" of either party under the Confidentiality Deed entered into by them dated 8 May 2003. Either party may disclose all or any part of this Agreement, and shall where practicable consult with the other party before doing so.
- 9.2 **Announcements:** No party shall make or authorise any media release or other public announcement relating to or referring to the matters dealt with in this Agreement, without the prior written consent of the other parties. The parties acknowledge that Tranz Rail shall be required to make an announcement to the market as soon as this Agreement is finalised and that the Minister of Finance will also make a public announcement as soon as possible following such market announcement. The parties shall co-operate with each other in co-ordinating the making of any announcements.

10. DUE DILIGENCE

- 10.1 Prior to Completion of the Rail Network Transfer the Crown shall be permitted to carry out due diligence investigations in respect of the following matters:
- (a) the Material Contracts;
 - (b) the condition of the Rail Network;
 - (c) the Network Encumbrances together with related income streams;

- (d) the Surrender Land and the Released Land; and
- (e) Tranz Rail's 2003/2004 budget and business plan,

and Tranz Rail shall use its Best Endeavours to comply with all reasonable information requests made by the Crown in respect of such due diligence investigations. The purpose of such investigations shall be to enable the Crown:

- (i) to form a better view of the overall condition of the Rail Network;
- (ii) to identify, in relation to any income stream from the Network Encumbrances, any adjustment of the purchase price as provided for in Schedule 3;
- (iii) to determine whether it shall acquire from Tranz Rail any Material Contract not specifically identified in this Agreement; and
- (iv) to form a better view of the details of the Surrender Land and the Released Land.

11. MISCELLANEOUS

11.1 **Variation:** Any variation to this Agreement must be recorded in writing and signed by the authorised representatives of each party.

11.2 **Notices:** Notices under this Agreement must be in writing and must be sent to the following contact addresses (or any alternative address notified in writing by a party):

The Crown: The Treasury
 1 The Terrace
 P O Box 3724
 Wellington
Attention: Treasury Solicitor
Fax: 04 472 6281

Tranz Rail: Tranz Rail
 Smales Farm
 Takapuna
 Auckland
Attention: General Counsel
Fax: 09 270 5039

Any notice sent by post to that contact address is assumed to have been delivered 2 Business Days after it is posted. A notice may be sent by fax to the person listed above. Any notice sent by fax to that contact number is assumed to have been delivered once a correct transmission

confirmation slip is received, but any fax sent after 5pm on a Business Day is deemed to have been delivered at 9am on the next Business Day.

- 11.3 **No waiver or consent:** No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by any party in any way affects, limits or waives the right of such party to later enforce and compel strict compliance with the provisions of this Agreement. No consent under this Agreement shall be valid unless it is in writing, nor will it eliminate or modify the need for a specific consent in any other instance.
- 11.4 **No implied waivers:** A failure to exercise or delay in exercising any right under this Agreement will not operate as a waiver of that right, nor will any single or partial exercise of any right preclude any other or further exercise of that right or the exercise of any other right.
- 11.5 **Relationship of parties:** Nothing in this Agreement is deemed or construed to constitute any party a partner or agent of the other or to create any trust.
- 11.6 **Governing law:** This Agreement is governed by, and construed in accordance with, the law of New Zealand, and the parties submit to the exclusive jurisdiction of the Courts of New Zealand.
- 11.7 **Counterparts:** This Agreement may be executed in two or more counterparts, each of which is deemed an original and all of which constitute one and the same agreement. This Agreement will be effective upon the exchange by facsimile of executed signature pages.
- 11.8 **Further assurances:** Each party must promptly do everything reasonably required to give effect to the terms of this Agreement according to its spirit and intent.
- 11.9 **Partial Invalidity:** The illegality, invalidity or unenforceability at any time of any provision of this Agreement under any law, will not affect the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of those provisions under any other law.
- 11.10 **Assignment:** No party may assign any of its rights or obligations under this Agreement without the consent in writing of the other party.
- 11.11 **Entire agreement:** This Agreement records the entire agreement between the parties, in respect of its subject matter, and prevails over any earlier agreement.
- 11.12 **Crown action:** Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement requires the Crown to exercise, or use, any regulatory or legislative powers in order to influence or affect an outcome.

EXECUTION

SIGNED for and on behalf
of **HER MAJESTY THE QUEEN IN
RIGHT OF NEW ZEALAND** by her
MINISTER OF FINANCE:

in the presence of:

Signature of witness

Full name of witness

Address

Occupation

SIGNED for and on behalf
of **TRANZ RAIL HOLDINGS LIMITED** by:

Signature of director

Signature of director

Full name of director

Full name of director

SIGNED for and on behalf
of **TRANZ RAIL LIMITED** by:

Signature of director

Signature of director

Full name of director

Full name of director

SCHEDULE 1

Rail Network and Network Assets

1. Definitions

Terms used in this Schedule have the meaning given in this Schedule or clause 1.1 of this Agreement (as applicable).

2. “Rail Network”

All of the rail network currently owned or (to the extent capable of being transferred or otherwise being made available for the benefit of the Crown) held or otherwise used by the Tranz Rail Group (including the Swanson to Helensville section of the North Auckland line which is the subject of an agreement between the Crown and Tranz Rail), and includes:

- (a) all improvements on, under or above the Surrender Land;
- (b) to the extent necessary or desirable to operate or maintain that rail network, all infrastructure on the Retained Land, “infrastructure” including all of the assets listed in (a) to (h) of section 4 of this Schedule; and
- (c) all rights, interests and assets necessary or desirable for the Crown to:
 - (i) become the owner, operator and maintainer of Tranz Rail’s rail network; and
 - (ii) meet its obligations under the Access Agreement.

3. “Network Assets”

All assets owned or (to the extent capable of being transferred or otherwise being made available for the benefit of the Crown) held or otherwise used by any member of the Tranz Rail Group for or in connection with the operation or maintenance of the Rail Network, including the:

- (a) Infrastructure;
- (b) Tranz Rail’s interest in the Surrender Land;
- (c) Network Entitlements;
- (d) Network Encumbrances (including all rights to receive revenues from those encumbrances);
- (e) Network Designations;
- (f) Material Contracts provided that where a Material Contract is not specifically identified in section 8 of this Schedule such Material Contract shall only form part of the Network Assets if confirmed as such in writing by the Crown within 5 Business Days of being fully disclosed to the Crown provided that the Crown shall not unreasonably withhold its agreement to assume any such Material Contract;

- (g) Tranz Rail's interest in the fibre optic telecommunications cable (including Tranz Rail's fibres in the cable) and all associated plant and equipment that is the subject of the agreement referred to in section 8(a) of this Schedule, wherever that cable is situated (including to avoid doubt all such cable located within the Auckland Network as defined in the Auckland Rail Arrangements); and
- (h) Network Records and Intellectual Property,

together with any other contracts to which any member of the Tranz Rail Group is a party which are necessary for the operation or maintenance of the Rail Network.

4. "Infrastructure"

All of the following infrastructure assets owned or (to the extent capable of being transferred or otherwise made available for the benefit of the Crown) held or otherwise used by the Tranz Rail Group:

- (a) track infrastructure (including rails, sleepers and associated formation and ballast);
- (b) structures infrastructure (including bridges, formation, culverts and tunnels);
- (c) signals infrastructure (including all signalling, level crossing alarms, signalling power supplies and related systems and equipment);
- (d) the electric overhead power system (including wooden overhead poles and substations) in the Wellington region;
- (e) electrification assets of the North Island main trunk line;
- (f) network train control centre and radio systems and related assets;
- (g) associated inventory;
- (h) major track plant (including the infrastructure wagon fleet),

together with (without limitation) all other infrastructure assets owned or (to the extent capable of being transferred or otherwise made available for the benefit of the Crown) held or otherwise used by the Tranz Rail Group in connection with the operation or maintenance of the Rail Network, **BUT** excluding the Retained Assets (if there is any conflict between this definition of "Infrastructure" and the definition of "Retained Assets", the parties will work together to effect a transfer which reflects the intention of this Agreement that the Crown will become the owner and operator of the Rail Network and that Tranz Rail will continue to operate rail services on the Rail Network).

5. "Network Encumbrances"

All leases, licences and rights in relation to the Surrender Land granted to third parties, provided that only those income streams associated with such Network Encumbrances listed in the Annex to Schedule 3 shall be taken into account in calculating the purchase price for the Rail Network and the Network Assets.

6. “Network Entitlement”

All resource consents, leases, licences, easements, permits and consents:

- (a) granted by a third party to any company in the Tranz Rail Group; or
- (b) otherwise held or controlled by a company in the Tranz Rail Group; or
- (c) that relate in any way to the Rail Network, the Network Assets or the ownership, use, operation, or maintenance thereof,

provided that the Network Entitlement does not include any resource consent or environmental approval held by Tranz Rail in respect of the Ferry Service Operations or Ferry Service Operations Land.

7. “Network Designations”

All designations held by Tranz Rail for "railway purposes" over which Tranz Rail has requiring authority status by virtue of the Resource Management Act 1991, the Resource Management (Approval of New Zealand Rail Limited as Requiring Authority) Order 1992 or the Resource Management (Approval of Tranz Rail Limited as Requiring Authority) Notice 1996, excluding Designation R2 of the Wellington District Plan, any designation or part thereof, or notice of requirement or existing requiring authority status relating to, or affecting any, Ferry Service Operation or Ferry Service Operations Land.

8. “Material Contracts”

Material Contracts means the:

- (a) Fibre Optic System Sale and Purchase Agreement and Easement Agreement dated 28 September 1990 between CLEAR Communications Limited and New Zealand Railways Corporation as assigned to Tranz Rail Limited pursuant to the Deed of Assignment dated 27 October 1990;
- (b) Services Agreement Relating to Infrastructure Engineering Services in connection with Tranz Rail Outsourcing Programme dated 22 March 2002 between Transfield Services Infrastructure (New Zealand) Limited and Tranz Rail Limited;
- (c) Service Delivery Agreement Voice Services dated 5 July 2002 between Telecom New Zealand Limited and Tranz Rail Limited;
- (d) Service Delivery Agreement Lanlink Interoffice Sites dated 5 July 2002 between Telecom New Zealand Limited and Tranz Rail Limited;
- (e) Mobile Services Agreement dated 5 July 2002 between Telecom New Zealand Limited and Tranz Rail Limited;
- (f) Connections Contract dated 3 May 2001 between Transpower New Zealand Limited and Tranz Rail Limited;

- (g) draft electricity supply contract (undated) to be entered into between Meridian Energy Limited and Tranz Rail; and
- (h) Track Access Agreement dated 19 December 2001 between Tranz Scenic 2001 Limited and Tranz Rail Limited,

together with any other contracts to which a member of Tranz Rail Group is a party with a gross annual cost or income to such member of at least \$5 million and a term of at least 5 years and which relate to the operation or maintenance of the Rail Network or the Network Assets.

9. “Network Records and Intellectual Property”

Tranz Rail’s operating codes and rules, systems, designs, drawings and asset databases relating to the Rail Network and the Network Assets together with all underlying intellectual property but excluding those records and intellectual property which exclusively relate to Tranz Rail as an operator of rail services on the Rail Network. The parties will work together to effect a separation of the foregoing that reflects the intention of this Agreement that the Crown will become the owner and operator of the Rail Network and that Tranz Rail will continue to operate rail services on the Rail Network.

10. “Retained Assets”

Non-track assets used exclusively for Tranz Rail’s rail freight, rail passenger, distribution services and inter-island operations (including ferries, terminal and other buildings, stations, inter-island terminals, mechanical depots, workshops and storage facilities relating to locomotives, wagons and passenger operations, inventory and plant, loading shelters, terminal improvements at major and certain regional sites such as asphalt and light towers, terminal services such as container and forklift repair and management, amenities and administration facilities, and any resource consents, environmental approvals and designations (including requiring authority status) granted in respect of the Ferry Service Operations). To avoid doubt, no assets falling within any of the categories (a) to (h) in the definition of Infrastructure shall form part of the Retained Assets.

11. “Surrender Land”

All of the land the subject of the Core Lease other than the Retained Land.

12. “Retained Land”

Land which:

- (a) is exclusively occupied by Tranz Rail facilities (such as offices, workshops and terminals) and which is necessary for the continued operation of Opco; or
- (b) is leased to third parties where:
 - (i) that third party’s continued occupation of that land is necessary for Opco’s operations; and
 - (ii) that lease does not form part of the Network Encumbrances for which Tranz Rail is to be paid under Schedule 3,

PROVIDED THAT:

- (c) the Retained Land excludes all land (and the surrounding rail corridor) which the Network Assets are located on, under or over, and any other land necessary or desirable for the Crown to operate and maintain the Network Assets and the Rail Network; and
- (d) the Retained Land is to be minimised to the greatest extent possible.

SCHEDULE 2

Sale and Purchase Agreement Terms

1. General principles

The Sale and Purchase Agreement shall contain:

- (a) such of the terms of the main body of this Agreement that are relevant;
- (b) the terms summarised in this Schedule; and
- (c) such other terms as are reasonable having regard to terms customarily found in an agreement for the sale and purchase of business assets and having regard to the nature of the transactions contemplated in this Agreement.

2. Process

The parties will establish a Steering Group to:

- (a) manage the identification of:
 - (i) the Network Assets to be transferred to the Crown;
 - (ii) any restrictions on or material adverse outcome for the Crown arising from the transfer of those assets to the Crown (e.g. encumbrances over those assets);
 - (iii) the employees engaged in the operation and maintenance of the Rail Network and the Network Assets (to whom the Crown will be required to make offers of employment at the end of the Transitional Period);
 - (iv) the Surrender Land and the Retained Land;
 - (v) the Released Land;
 - (vi) the Network Encumbrances to be transferred to the Crown, and the associated revenue streams for the purposes of the purchase price adjustment on settlement, to the extent that Tranz Rail is entitled to be compensated for the surrender of those revenues; and
 - (vii) the Network Entitlements to be transferred to the Crown;
- (b) manage the separation of the Network Assets from Tranz Rail's existing assets and business for transfer to the Crown on Completion of the Rail Network Transfer. The Crown's approval will be required for any structure other than a direct transfer to the Crown on Completion except that the Crown acknowledges that some Network Assets may not be able to be transferred to the Crown without third party consent or without triggering a material adverse outcome for the Crown in respect of such Network Assets. Such Network Assets shall be held on trust for the Crown pending receipt of such consent or resolution of those matters that would otherwise result in a material adverse outcome for the Crown. Tranz Rail acknowledges that the Crown may require the Network Assets, the benefit of this Agreement

and/or the benefit of the Rail Network Agreements to be vested in a Crown owned corporation or some other Crown entity, and Tranz Rail must comply with any direction from the Crown to that effect;

- (c) be the first point for the resolution of disputes between the parties; and
- (d) monitor and report on the parties' performance of their respective obligations up to Completion and during the subsequent Transitional Period.

Unless the parties agree otherwise, the Steering Group will make recommendations for acceptance by the parties, it will not have the power to bind the parties to any decision of the Steering Group.

3. Provisions concerning specific Network Assets:

- (a) **CLEAR Cable:** Tranz Rail's rights and obligations in the fibre optic system sale and purchase agreement and easement agreement dated 28 September 1990 between The Alternative Telecommunications Company Limited (now TelstraClear Limited) and NZRC (as assigned to Tranz Rail Limited pursuant to the deed of assignment dated 27 October 1990), in relation to the fibre optic telecommunications cable the subject of that agreement will be transferred to the Crown, together with all of Tranz Rail's rights and interests in and respect of the cable and other equipment the subject of that agreement.
- (b) **Employees:** Tranz Rail and the Crown will work together to identify those Tranz Rail employees employed by Tranz Rail in connection with the assets and operations to be transferred to the Crown, in accordance with the following:
 - (i) those employees will be transferred upon conclusion of the Transitional Period. Tranz Rail will continue to employ those staff during the Transitional Period in order to perform its obligations under the Management Agreement to be entered into by the parties as part of the Rail Network Transfer Agreements;
 - (ii) at the end of the Transitional Period, the Crown or the Crown's nominee will (subject to (iii) below) offer each such employee employment on terms which are the same as, or more favourable than, the terms applicable to that employee immediately before transfer;
 - (iii) any redundancy payments and costs associated with the transfer of such employees arising out of a failure by the Crown to comply with (ii) above will be payable by the Crown;
 - (iv) there will need to be detailed process provisions surrounding employees. For example, Tranz Rail will not be able to freely increase salaries or change terms and conditions etc, hire or fire, from the date of execution of this Agreement to the end of the Transitional Period other than as a result of its normal processes and acting reasonably;
 - (v) the Crown agrees to resolve prior to Completion the issues relating to the Government Superannuation Fund to enable Tranz Rail to transfer the employees referred to in this

clause at the end of the Transitional Period without affecting those employees' status or rights in respect of the Government Superannuation Fund.

- (c) **Core Lease:** Tranz Rail and the Crown will agree to partially surrender and vary the Core Lease in respect of the Surrender Land, on the terms referred to in Schedule 5, together with any of the Released Land identified under Schedule 3 that is Retained Land. Each party will bear its own costs in respect of that surrender and variation. The Crown will procure NZRC's agreement to that surrender and variation of the Core Lease. It is acknowledged that the Crown may amend the New Zealand Railways Corporation Restructuring Act 1990 to prevent any material adverse outcome for the Crown arising from the surrender of land from the Core Lease and the parties expressly agree that, at the option of the Crown, the surrender of land from the Core Lease may be delayed until any time up to the end of the Transitional Period.
- (d) **Designation arrangements:** Tranz Rail will transfer to a Minister nominated by the Crown all Network Designations. In respect of those designations in the name of Tranz Rail which are not Network Designations, Tranz Rail will act in accordance with the Designation Agreement, which is attached as Schedule 1 to the Designation Deed forming part of the Auckland Rail Arrangements, as if:
- (i) the Retained Land were the Ferry Service Operations Land;
 - (ii) the Surrender Land were as defined in this Agreement; and
 - (iii) the "[Holder]" referred to the Minister nominated by the Crown.
- (e) **Intellectual property licence:** The Crown will provide a licence to Tranz Rail to use the intellectual property transferred to the Crown as part of the Network Assets in so far as such intellectual property rights are required by Tranz Rail to continue to operate rail services on the Rail Network. Such licence shall be exclusive in respect to mechanical engineering intellectual property that does not relate to or is not otherwise required in connection with interoperability and otherwise shall be non-exclusive.
- (f) **Additional services and access:** If either party requires services not otherwise provided for in the Rail Network Transfer Agreements (including hook and pull services to be provided to the Crown) from the other following separation of assets and activities, then it is agreed that such services shall be provided on fair and reasonable terms. Tranz Rail shall provide the Crown and its assignees and contractors (and similar) with reasonable access, free of charge, to the Retained Land and Tranz Rail's facilities and other property to enable the Crown, its assignees and contractors (and similar) to operate, maintain and develop the Rail Network and the Network Assets.

4. Costs

Each party shall bear its own costs in connection with the transfer of the Rail Network and the Network Assets to the Crown (in particular the costs of obtaining all necessary third party consents).

5. Apportionment

Any prepayment made by or received by Tranz Rail in respect of the Network Assets shall be apportioned between the parties as at the Completion Date.

6. Risk and passing of title

Risk and title will pass to the Crown on Completion.

7. Post Completion Obligations

Standard provisions will be included to deal with transitional matters such as:

- (a) any of the Material Contracts that cannot be transferred to the Crown on Completion will be held on trust by Tranz Rail for the benefit of the Crown; and
- (b) Tranz Rail will hold all revenues received in respect of any of the Rail Network or any of the Network Assets on trust for the Crown, to be paid to the Crown on a monthly basis without deduction or set-off.

8. Warranties

By Tranz Rail (stated as at execution and on Completion):

- (a) power and capacity;
- (b) no further Encumbrances;
- (c) solvency;
- (d) all information provided by or on behalf of Tranz Rail to the Crown is complete and accurate in all material respects (provided that this warranty shall not apply to information relating to the condition of the Rail Network nor to prospective financial information);
- (e) environmental for the period of Tranz Rail's ownership;
- (f) compliance with laws in all material respects;
- (g) litigation that is material to Network Assets or Tranz Rail's ability to perform its obligations under the Sale and Purchase Agreement; and
- (h) the Material Contracts are valid and binding, none of the parties to those contracts are in material breach of any of their material obligations under them and Tranz Rail has no knowledge of the existence of any grounds for any party to terminate those contracts,

together with the warranties in clause 7.1(c) to (e) of this Agreement.

These warranties are to be transferable by the Crown with the Network Assets. Any warranty claim must be made within 3 years of Completion and must be for a minimum amount of \$500,000 for any single claim or series of related claims, and no claim will be made unless the aggregate of all claims is \$2,000,000 or more.

9. Indemnities

Tranz Rail to indemnify the Crown for breach of any warranty (subject to specified limitations) and for any breach of the Tranz Scenic Access Agreement referred to in section 8(h) of Schedule 1 (to the extent the Crown is required to accept liability for such breaches).

10. Confidentiality

Parties to maintain confidentiality of the agreement and not disclose without other party's prior written consent subject to usual exceptions.

11. Boilerplate

Include equivalent provisions to clauses 11.1 to 11.12 of this Agreement.

SCHEDULE 3

Rail Network Transfer Purchase Price

1. Purchase Price:

- (a) The purchase price for the Rail Network, the Network Assets and the Rail Network Transfer shall be the total of the following:
 - (i) the amount payable for the release of certain land from the Core Lease, as calculated under section 2;
 - (ii) the amount payable by the Crown for certain of the Network Encumbrances as calculated under section 3 and adjusted under section 4 below;
 - (iii) the sum of \$1.00 for all other Network Assets and any other interest, right or entitlement that Tranz Rail may have in the Rail Network.
- (b) The purchase price specified in section 1(a) shall be the total amount payable by the Crown for the transfer of the Rail Network and the Network Assets and for the Rail Network Transfer as a whole (including the surrender of the Surrender Land from the Core Lease).

2. Released Land:

- (a) The parties have identified certain land subject to the Core Lease at the locations listed in section 2(h) below, that can be made surplus and released from the Core Lease. Tranz Rail has agreed to facilitate the release and sale of this land. The parties have agreed that Tranz Rail will be paid the Relevant Proportion (as defined in section 2(f) below) of the net value of the property after deducting any costs incurred in making the property available for sale.
- (b) The parties shall identify the specific land to be released at each such location in accordance with the Steering Group processes identified in this Agreement including Schedule 2. If the parties are unable to reach agreement in respect of any location by Completion then:
 - (i) any such land that forms part of the Retained Land shall be retained by Tranz Rail subject to the Core Lease; and
 - (ii) any such land that forms part of the Surrender Land will be surrendered to the Crown in accordance with this Agreement,and no payment shall be due to Tranz Rail in respect thereof.
- (c) For the specific land identified and agreed by the parties under (b) above (“**Released Land**”), the Crown and Tranz Rail will within 14 days from the execution of this Agreement appoint its own valuer to value the property and contemporaneously notify the other party of such appointment. If a party fails to appoint a valuer within such period then the valuation for the relevant property produced by the other party’s valuer shall be binding on the parties for purposes of the operation of this Schedule. If those two valuers cannot agree a valuation within 10 days of the last of them being appointed in respect of any property, then those two

valuers shall within 5 days appoint a third suitably qualified independent party to act as an umpire. If such appointment is not made within 5 days of the failure to reach agreement on valuation of the relevant property, then the umpire shall be appointed by the President of the New Zealand Law Society. That umpire shall carry out a valuation of the relevant property with all due expediency and such umpire's valuation will be final and binding on the parties for purposes of the operation of this section 2. The appointed valuers and the umpire, if appointed, shall be acting as experts and not arbitrators and the provisions of the Arbitration Act 1996 shall not apply.

- (d) The value to be determined by the valuers shall be fair market value. In the case of the properties at Te Rapa, Wellington yard, and the "ARC site" at Westfield (and if applicable the Wellington Station Building), Tranz Rail has identified either special features of the property, or likely purchasers of the property with highly specific requirements. In those cases both valuers are to take into account the special features of the property or the likelihood of the identified purchasers buying the property in question, and the costs to that purchaser of acquiring another suitable site, as part of the valuation process.
- (e) Subject to the Released Land being surrendered from the Core Lease together with the Surrender Land on Completion, the amount payable to Tranz Rail in respect of such land shall be determined on the basis that Tranz Rail shall be allocated the Relevant Proportion of the sum of:
 - (i) the value determined under section 2(c) above; MINUS
 - (ii) all costs incurred or to be incurred (based on reasonable estimates) in valuing and preparing the relevant land for sale (including survey, remedial, development, and re-titling costs).

The parties acknowledge that the Crown may determine a date later than Completion for such surrender so as to avoid a material adverse outcome for the Crown, in which case the requirement for the land to be surrendered by Completion under this section 2(e) shall not apply.

- (f) For the purposes of this Schedule, the "Relevant Proportion" is:
 - (i) in respect of the Westfield land and the Wellington rail yards, 100%;
 - (ii) in respect of the Te Rapa land, 85%; and
 - (iii) in respect of all other land, 55%.
- (g) Tranz Rail had advanced a sale process for its interests in the Wellington railway station building. If Tranz Rail completes this transaction by 31 December 2003, Tranz Rail shall be entitled to retain the net sale proceeds of that transaction, provided Tranz Rail pays all costs, associated with that sale and meets all liabilities and other obligations arising in connection therewith. If the transaction is not completed by that date, the Wellington Station Building will be released from the Core Lease, and the Crown shall pay Tranz Rail the fair market value of that building determined in accordance with sections 2(c) to (e) above. Tranz Rail shall not be permitted to complete the sale until the purchaser has entered into a lease with

the Crown for the land on which the Wellington Station Building is situated (and any other relevant land), on terms satisfactory to the Crown (acting reasonably). On completion of the transaction that land (and any other relevant land) shall be surrendered from the Core Lease as Released Land.

- (h) If prior to the completion of the surrender of the Released Land, Tranz Rail establishes that there are reasonable alternative structures which improve the financial outcomes arising out of the surrender of that land for Tranz Rail, Tranz Rail may propose these to the Crown for consideration, and the Crown will consider those in good faith.
- (i) If at any time up to the date 12 months after the completion of the surrender of any of the Released Land, Tranz Rail notifies the Crown that it considers that parts of that Released Land are immediately (or will in the near future be) necessary for the development of Tranz Rail's rail or logistics operations, the Crown will consider in good faith either removing that land from the Released Land to be surrendered to it, or (if the land has already been surrendered) bringing that land back into the Core Lease subject to Tranz Rail repaying to the Crown the amount received by it from the Crown in respect of that land under this Schedule. The Crown will not unreasonably withhold its consent to any such request (to avoid doubt the Crown will be entitled to require Tranz Rail to provide reasonable evidence that the land requested is necessary for such purposes). This section shall not apply to the Wellington Station Building.
- (j) The land to be released is at the following locations:

Locations
Whangarei
Southdown
Westfield (ARC Site)
Te Rapa
Tauranga
Gisborne
Napier
Hastings
New Plymouth
Wanganui
Palmerston North
Wellington (Yard)
WSB (Adjacent Areas)
Gracefield
Woburn
Picton
Greymouth
Hokitika
Linwood
Waltham
Lyttleton
Ashburton
Timaru
Oamaru
Dunedin
Invercargill
Wellington Station Building

3. Network Encumbrances:

- (a) The purchase price of the Network Encumbrances shall be calculated as the present value of the net cash flows after tax arising or projected to arise from those Network Encumbrances listed in the Annex to this Schedule over a period of 15 years from the date of Completion (or in the case of bridges and sidings, a period of 20 years from the date of Completion), using a 10% discount rate.
- (b) The net cash flows relating to each Encumbrance are subject to verification prior to Completion under section 4 below.
- (c) Tranz Rail may enter into new Network Encumbrances pending Completion subject to the Crown's prior written consent, such consent not to be unreasonably withheld. The Rail Network and Network Assets purchase price shall be adjusted to reflect any new net cash flows arising from such new Network Encumbrances by applying a valuation calculated on the equivalent basis to (a) above, subject to verification by the Crown.
- (d) The Network Encumbrances which will form part of the Rail Network and Network Assets purchase price are those listed in the Annex to this Schedule 3 (and no others). To avoid doubt no amount is payable by the Crown in respect of cash flows arising from the Tranz Scenic track access agreement forming part of the Material Contracts or in respect of any other track access agreement.

4. Rail Network and Network Assets purchase price adjustment:

The Rail Network and Network Assets purchase price will be adjusted if the Crown identifies that any income stream from the Network Encumbrances listed in the Annex or that have been incorporated into the formulation of the purchase price under section 3(c):

- (a) was factually incorrect as regards the existence or level or apportionment of such income stream; or
- (b) has been prepaid,

such adjustment shall be made using the valuation methodology specified in section 3.

ANNEX TO SCHEDULE 3

NETWORK ENCUMBRANCES

Existing Subleases

Lessee	Location
FULTON HOGAN CANTERBURY	AROWHENUA
TELECOM MOBILE	ARTHURS PASS
TRANSPower NZ LIMITED	ARTHUR'S PASS
CARR GRAEME & OTHERS	ASHBURTON
PYNE GOULD GUINNESS LTD	ASHBURTON
MAINLINE STEAM HERITAGE TRUST	AUCKLAND
VIVIAN CONTAINER SERVICES LIMITED	AUCKLAND FRT CN
BP OIL NEW ZEALAND LIMITED	AUCKLAND FRT CN
WELLINGTON ALARM SERVICE	AVA
H V MARTIAL ARTS INSTRUCTORS ASSOC.	AVA
NEW ZEALAND PERMANENT TRUSTEES LTD	AVA
TELECOM MOBILE LIMITED	AYLESBURY
STIRLING ORCHARD	BAYVIEW
COLYER WATSON FELLMONGERY LIMITED	BELFAST
ENZA	BLENHEIM FRT CN
VODAFONE	BLUFF
TELECOM NEW ZEALAND LIMITED	BRYDWR
VODAFONE	CAMBRIDGE
SHEEHAN J	CHRISTCHURCH
TIMBER SUPPLIES LIMITED	CHRISTCHURCH
COBRA CONTRACTING LIMITED	CHRISTCHURCH
FLETCHER CHALLENGE STEEL PRODUCTS	CHRISTCHURCH
SPECIALISED CONTAINER SERVICES CHCH	CHRISTCHURCH
WESTLAND COOP DAIRY LTD	CHRISTCHURCH
BEAUREIGN FAMILY TRUST	CLIVE
WILLIAMS GARDEN PLACE LIMITED	CROFTON DOWNS
CHURCHILL SHOPPING CENTRE LIMITED	CROFTON DOWNS
CHURCHILL SHOPPING CENTRE LIMITED	CROFTON DOWNS
HARRISON B	DANNEVIRKE
TRANSIT NZ	
SPECTRUM DISPLAYS LTD	
GOODING S	
FLETCHER MERCHANTS LIMITED	
MILBURN NZ	
ACTION ADVENTURES RENTALS	
SOUTHERN CONT. SERVICES	DUNEDIN
SCOTT OF ST CLAIR LIMITED	DUNEDIN
BP OIL PIPES	DUNEDIN
BRAMBLES NEW ZEALAND LIMITED	DUNEDIN
ASPLUNDH TREE EXPERT (NZ) LIMITED	DUNEDIN
MAINFREIGHT TRANSPORT LIMITED	DUNEDIN
SOLID ENERGY NEW ZEALAND LIMITED	DUNOLLIE
CARTER NIGEL	FITZROY
CARTER HOLT HARVEY	FRANKTON
HUGHES WILLIAM	FRANKTON
KS & GM MUIR	GORE
BURMAH CASTROL NZ LIMITED	GRACEFIELD
SCOTT PRESTON SHED 1 GRACEFIELD	GRACEFIELD
SPECIALISED CONTAINER SERVICES	GRACEFIELD
CAPITAL INDUSTRIAL COATINGS LIMITED	GRACEFIELD
HEARD ANDREW & OTHERS	GRASSMERE
GREYMOUTH CAR CENTRE	GREYMOUTH
RSPCA	GREYMOUTH
WEST COAST MOTORS (S.I.) LIMITED	GREYMOUTH
MICO WAKEFIELD	HAMILTON

Lessee	Location
WAIKATO POLYTECHNIC	HAMILTON
CHUBB H	HAMILTON
BROADCAST COMMUNICATIONS LIMITED	HAMILTON
DEPT OF CORRECTIONS	HASTINGS
HASTINGS TOURISM FACILITIES TRUST	HASTINGS
HEINZ WATTIES	HASTINGS
TIP TOP ICE CREAM	HASTINGS
KIWI CO-OPERATIVE DAIRIES LIMITED	HAWERA
HEATHCOTE PROPERTY HOLDINGS	HEATHCOTE
TELECOM NEW ZEALAND LIMITED	HORNBY
BELLSOUTH NEW ZEALAND	HORNBY
BRIDEN	HOUHOU
SOUTH PORT NZ LTD	INVERCARGILL
RAYMOND & DIXON LIMITED	INVERCARGILL
VODAFONE	INVERCARGILL
KAI TECH LIMITED	INVERCARGILL
MAINFREIGHT TRANSPORT LIMITED	INVERCARGILL
STUART B	KAIKOURA
SIGGLEKOW PATRICK JOHN	KAIKOURA
TELECOM MOBILE	KAIRUA
AVIS RENTAL CAR	KAIWHARAWHARA
BUDGET RENTAL CAR	KAIWHARAWHARA
CAPITAL GIRLS GYMNASTICS CLUB	KAIWHARAWHARA
ACE TOURIST RENTALS (NZ) LIMITED	KAIWHARAWHARA
FAULTLINE LIMITED	KAIWHARAWHARA
TAUMARERE NORTHLAND RAIL TRUST	KAWAKAWA
FCL FORESTS	KAWERAU
PETER TROTTER	KOPUTAROA
PETER TROTTER	KOPUTAROA
WILLIAMS & WILSHIER LIMITED	KOUTU
THE WAREHOUSE	KOUTU
FOXTON HARDWARE SUPPLIE	LEVIN
ALPHA CUSTOM BUILDERS	LEVIN
TELECOM NEW ZEALAND LTD	LINWOOD
MAIN LYNDY & OTHERS	LINWOOD
DAILY FREIGHTWAYS LIMITED	LINWOOD
MAINFREIGHT TRANSPORT LIMITED	LINWOOD
MILBURN NEW ZEALAND LIMITED	LYTTLETON
RAVENSDOWN FERTILISER CO-OP LIMITED	MANAKAU
MCKELLAR PROPERTY SERVICES	MASTERTON
TAIRAWHITI POLYTECHNIC	MASTERTON
VODAFONE	MASTERTON
BROWN LAND LIMITED	MATAMATA
FLETCHER CHALLENGE ENERGY TARANAKI	MIDHURST
STRUM JOHN PETER	MORRINSVILLE
K & B REED CONTRACTORS	MOSGIEL
WINSTONE AGGREGATES LIMITED	MT MAUNGANUI
THOMPSON TIMBER SUPPLIES	MT MAUNGANUI
SUPPLY SERVICES HOLDINGS	MT MAUNGANUI
GLOVER FAMILY TRUST	MT MAUNGANUI
CLARKSON ROBERT	MT MAUNGANUI
HARKIN ROOFING LIMITED	MT MAUNGANUI
DELTA CORPORATION LIMITED	MT MAUNGANUI
BHP TRANSPORT & LOGISTICS (NZ) LTD	MT MAUNGANUI
SHELL NEW ZEALAND LIMITED	MURUPARA
FLETCHER CHALLENGE FORESTS LIMITED	MURUPARA
CUMMING BUSINESS TRUST	NAPIER
GILRAY PROPERTIES	NAPIER
WOODHEAD	NEW PLYMOUTH
ABACUS DEVELOPMENT	NEW PLYMOUTH
MCCUTCHEON CONSOLIDATED LIMITED	NEW PLYMOUTH
MCCARTHY JOHN M & JUNE M	OAMARU

Lessee	Location
JOKNAL PRODUCTS LTD	ORARI
NZL GROUP LIMITED	OTAHUHU
BELLSOUTH NEW ZEALAND	OTAHUHU
TOTAL WASTE SERVICES LIMITED	OTAHUHU
PRECISION PRECASTING	OTAKI
JW PATTERSON	OTAMAKAU
CALTEX OIL (NZ) LIMITED	OTIRIA
BP OIL NEW ZEALAND LIMITED	OTUMOETAI
TELECOM NEW ZEALAND LIMITED	OTUMOETAI
GLENEARY FARMS	PAERATA
SHELL TODD OIL SERVICES LIMITED	PALMER ROAD
KAPUNI ENERGY LIMITED	PALMER ROAD
SHELL NEW ZEALAND LIMITED	PALMERSTON NTH
MURPHY DOWNING LIMITED	PALMERSTON NTH
FLETCHER MERCHANTS LIMITED	PALMERSTON NTH
ASH CAIRNS PROPERTIES LIMITED	PALMERSTON NTH
R G CRUDEN LIMITED	PALMERSTON NTH
BELLSOUTH NEW ZEALAND	PALMERSTON NTH
CHALLENGE PETROLEUM LIMITED	PALMERSTON NTH
TELECOM NEW ZEALAND LIMITED	PAPANUI
PARAPARAUMU TAXIS (1991) LIMITED	PARAPARAUMU
SUNSHINE TAXIS LIMITED	PARAPARAUMU
MAINFREIGHT TRANSPORT LIMITED	PENROSE
MASON LEONARD	PICTON
PIGGY PACKER RENTALS	PORIRUA
MARUSUMI WHANGAREI COMPANY LIMITED	PORTLAND
FRANKLIN D. C.	PUKEKOHE
COCA-COLA AMATIL (N.Z.) LIMITED	PUTARURU
ECOPINE	PUTARURU
SOLID ENERGY NEW ZEALAND LIMITED	RAPAHOE
NZ INDUSTRIAL HOLDINGS	SEAVIEW
J G MCDRURY	SELWYN
BONNER E A, ESTATE OF	SKINNER ROAD
STARTFORD POWER LD	SKINNER TD
NEW PLYMOUTH DISTRICT COUNCIL	SMART ROAD
PROSPEX NZ LIMITED	SOCKBURN
STRATFORD DISTRICT COUNCIL	STRATFORD
VODAFONE	STRATFORD
BARKER FRANCIS	TAIHAPE
E LICHTENSTEIN & CO. LTD	TAIHAPE
VODAFONE	TAUMARUNUI
T BRAITHWAITE TIMBER LIMITED	TAUMARUNUI
WILSON JAMES	TAURANGA
COASTAL IMPORTS LIMITED	TAURANGA
VODAFONE	TAURANGA
TRANSPower NEW ZEALAND LIMITED	TE MAUNGA
TE RUNANGA O TAPUIKA ME WAITAHA	TE PUKE
PUKEPINE SAWMILLS (1998) LIMITED	TE PUKE
KELLY KELVIN JOHN & DESMOND PATRICK	TE ROTI
AITKEN FAMILY TRUST	TEMIKA
VODAFONE	TIMARU
DUNEDIN CITY COUNCIL	UPP.PORT CHLMRS
EUROCELL SAWMILLING LIMITED	UPPER HUTT
ALSTOM	VARIOUS
TRANSFIELD	VARIOUS
GOUGH GOUGH HAMMER	VARIOUS
TRANZ SCENIC 2001	VARIOUS
LOOK OUTDOORS CONTRACT	VARIOUS
PYPER BRIAN & OTHERS	WAHAROA
HOROWHENUA ELECTRICITY LIMITED	WAIKANAE
HAWKES BAY DISTRICT COUNCIL	WAIPAWA
WAITAKI DISTRICT COUNCIL	WAITAKI

Lessee	Location
MINISTRY OF EDUCATION	WELLINGTON
TRANZIT GROUP LIMITED	WELLINGTON
WESTPAC BANKING CORPORATION	WELLINGTON
CONDRENS PARKING LIMITED	WELLINGTON
TRUST BANK WELLINGTON LIMITED	WELLINGTON
FULTON HOGAN	WELLINGTON
NEWSPAPER DISTRIBUTION	WELLINGTON
CROSADO KEVIN	WELLINGTON
NEW ZEALAND DOCUMENT EXCHANGE LTD	WELLINGTON
HERTZ RENTAL CAR	WELLINGTON
JONES CHRIS - LEGAL SERVICES	WELLINGTON
ZIA SHAGUFTA	WELLINGTON
TELSTRA SATURN LIMITED	WELLINGTON
GREAT AMERICAN HOTDOG COMPANY	WELLINGTON
NRG TRUST	WELLINGTON
LESVOS SHOE & BAG REPAIRS	WELLINGTON
INST OF PROF & LEGAL STUDIES	WELLINGTON
JOHN BILTON MARINE LIMITED	WELLINGTON
G & S MURDOCH LIMITED	WELLINGTON
TRANZ SCENIC 2000	WELLINGTON
FIRST COMMUNICATIONS LIMITED	WELLINGTON
OWENS CONTAINER SERVICES	WESTFIELD
JOHNSON BROS TRANSPORT	WESTPORT
MILBURN NEW ZEALAND LIMITED	WESTPORT
TNL GROUP LIMITED	WESTPORT
MARTIN & CO. (WESTPORT) LIMITED	WESTPORT
HEWETSON ROLAND	WESTPORT
WHAKATU COOLSTORES	WHAKATU
TELECOM NEW ZEALAND LIMITED	WHANGAREI
WHANGAREI DISTRICT COUNCIL	WHANGAREI
BELLSOUTH NEW ZEALAND	WOBBURN
EWING CONSTRUCTION LIMITED	WOOLSTON
FINNIGAN & SORRELL HOLDINGS LIMITED	WOOLSTON

SCHEDULE 4

Access Agreement Terms

1. Overview

- (a) To the extent applicable, the basic terms of the Access Agreement will be based on the current Tranz Rail Access Agreement for the Auckland Network dated 13 May 2002, and the Common Access Terms annexed to that Agreement (together the “**Auckland Access Agreement**”) amended to:
- (i) reflect the national nature of the access rights to be granted to Tranz Rail; and
 - (ii) incorporate the terms summarised in this Schedule and the remainder of this Agreement.
- (b) The parties will consider collapsing the Auckland Access Agreement into this Access Agreement at some future point. Until any such agreement is reached, the Auckland Access Agreement will continue and this Access Agreement will not apply to the Auckland Network (as defined in the Auckland Access Agreement).
- (c) In this Schedule “**Opco**” means Tranz Rail Limited.
- (d) The Crown acknowledges that it is necessary for Opco to have appropriate avenues of input into the manner in which TrackCo will perform its operational functions both as maintainer of the Rail Network and Network Assets and as network controller for the Rail Network (the role of network controller being substantially as set out in the Common Access Terms referred to in section 1(a) above). The parties accordingly agree that:
- (i) Opco may nominate an appropriately skilled employee or director to be appointed by the Crown to TrackCo’s board (the nominated individual to be subject to the Crown’s consent, such consent not to be unreasonably withheld);
 - (ii) they will include appropriate arrangements in the Access Agreement to provide:
 - (1) regular opportunities for Opco to review and provide feedback on TrackCo’s operational performance, including feedback on opportunities for TrackCo to improve the efficiency and utilisation of the Rail Network for the benefit of rail operators. TrackCo is required to take reasonable account of such reviews and feedback;
 - (2) appropriate arrangements for the secondment of an Opco train controller and/or scheduling expert to TrackCo, to assist TrackCo with the scheduling and control of freight operations on the Rail Network (provided that operational control of the Rail Network shall remain with TrackCo).
- (e) TrackCo will not subcontract the performance of its functions as network controller under the Access Agreement to a rail operator with access rights to the Rail Network.

2. Access Rights

- (a) Subject to section 2(b), Opco will have exclusive access rights to the Rail Network for the operation of rail services.
- (b) Opco's access rights will terminate on 31 December 2070, unless terminated earlier in accordance with the terms of the Access Agreement. Opco's right of exclusivity is subject to:
 - (i) all existing access agreements or arrangements, and any renewals or replacements thereof (including any new access agreements for the same or reasonably equivalent access rights or capacity under those existing access agreements or arrangements); and
 - (ii) sections 2(d), 3 and 5(d).
- (c) TrackCo is not required to grant to Opco any better rights to use the Rail Network than the rights transferred to the Crown under the Rail Network Transfer (i.e. defects in Tranz Rail's title, rights of use etc continue to be Opco's risk under the Access Agreement other than where such defects have been cured).
- (d) If, notwithstanding Opco's exclusive access rights, TrackCo would be in breach of any law if it refuses to grant access to another rail service operator, TrackCo may grant that operator access on terms which are no more favourable to those on which access is provided to Opco in respect of the relevant parts of the Rail Network, having regard to the relative volume and scope of services respectively provided by Opco and the new operator.
- (e) Subject to section 2(f), Opco will not be permitted to transfer, assign or sub-license any of its access rights or the Access Agreement as a whole while the TAC pricing principles set out in this Schedule apply.
- (f) The parties will agree a procedure to enable Opco to sub-licence private sidings, and other access rights below an agreed materiality threshold.

3. Use it or lose it

- (a) Opco's access rights to individual line segments will be on a "use it or lose it" basis. Opco will lose its exclusivity in respect of a line segment if its average annual freight levels over any rolling 3 year period fall below the threshold for that line segment set out in the Annex to this Schedule. Opco shall lose its exclusivity in respect of the Wellington metro line segments if its passenger levels fall below those in the Core Lease. Annual periods are to be measured from 1 July to 30 June in each year.
- (b) If in any annual period there is:
 - (i) a material negative economic event affecting the New Zealand economy as a whole, or affecting a particular sector or region of New Zealand (e.g. a major economic downturn), that materially reduces Opco's freight levels; or

- (ii) a material force majeure event (e.g. an earthquake causing major track damage on a line segment), or material non-performance by TrackCo of its obligations under the Access Agreement, that has a material adverse effect on Opco's ability to meet the thresholds on a particular line segment(s);

then for the purposes of the use it or lose it calculation, a reasonable adjustment will be made to Opco's freight levels for that year for the affected line segments to take account of that event(s).

- (c) For the purposes of the use it or lose it calculation, a reasonable adjustment will also be made to Opco's freight levels in a year if Opco establishes, on the balance of probabilities, that a major customer of Opco has withdrawn freight from Opco on a line segment in that year with the intention of triggering the loss of Opco's access rights on that line segment.
- (d) TrackCo will consult with Opco in good faith before giving any notice that Opco has lost exclusivity in respect of a line segment and shall consider, acting reasonably, any reasonable plans or proposals put forward by Opco in respect of that line segment.
- (e) If Opco loses its access rights to a line segment, Opco will provide access (interconnection) to its facilities in any of its adjacent terminals, services (other than IT services) and interchange (including running rights to and use of the nearest interchange, marshalling yards and other facilities) on fair and reasonable terms to enable a new operator to effectively and efficiently exercise its rights. Any access rights granted to a new operator will be on a non-exclusive basis. TrackCo's access agreement with any such new operator will be required to include reciprocal provisions for Opco's benefit.
- (f) Once Opco has lost rights of exclusivity, it shall not regain those rights regardless of whether or not its traffic levels subsequently increase above the thresholds in section 3(a).

4. TrackCo SLA:

- (a) TrackCo will be responsible for:
 - (i) the maintenance of the Rail Network, using its Best Endeavours to achieve standards and conditions better than or equal to those at the date of this Agreement;
 - (ii) incident management and investigation functions required in relation to the occurrence of incidents on the Rail Network;
 - (iii) network control functions required to operate the Rail Network, including signalling and train control;
 - (iv) implementing, co-ordinating and maintaining an approved safety system in respect of the Rail Network, when that is required by the applicable rail safety regime. TrackCo and Tranz Rail will work together expeditiously and in good faith to meet the requirements of the LTSA relating to TrackCo's or Opco's approved safety system after Completion takes place;

- (v) implementing, co-ordinating and maintaining the operating codes and rules in respect of the Rail Network (subject to LTSA and any other regulatory approval where required); and
 - (vi) implementing, co-ordinating and maintaining any certification system required in respect of the Rail Network, including in respect of TrackCo's vehicles and personnel (subject to LTSA and any other regulatory approval where required).
- (b) TrackCo will agree to service levels (and will implement sustainable improvement programmes) in the following areas, in order to meet the Crown's national rail objectives:
- (i) provision of a viable, nationwide rail service;
 - (ii) safety (including third party safety);
 - (iii) operating standards and efficiency;
 - (iv) rail customer satisfaction; and
 - (v) facilitation of other (permitted) operators' operations on the Rail Network.
- (c) TrackCo will at the end of the Transitional Period implement an approved safety system relating to TrackCo's operations (subject to applicable laws).

5. Opco SLA obligations:

- (a) Opco will agree to service levels (and will implement sustainable improvement programmes) in the following areas in order to meet the Crown's national rail objectives:
- (i) provision of a viable, nationwide rail service;
 - (ii) safety (including third party safety);
 - (iii) operating standards and efficiency;
 - (iv) rail customer satisfaction; and
 - (v) facilitation of other (permitted) operators' operations on the Rail Network.
- (b) TrackCo will also have a right to procure additional service level commitments from Opco, for example in relation to the number or configuration of freight services on particular line segments. Opco will offer fair and reasonable terms for such additional service levels on a full cost recovery basis.
- (c) Opco will have a first right of refusal to access and the ability to offer services in respect of:
- (i) any new line constructed by TrackCo; and
 - (ii) any subsidy offered by TrackCo in relation to any line segment, unless Opco has lost its rights of exclusivity in respect of that line segment.

- (d) If Opco does not exercise its first right of refusal under section 5(c), TrackCo may offer such access or ability to offer services to third parties (including any other existing operator), provided that Opco will have a further right of refusal if TrackCo wishes to contract with a third party on terms which are more favourable than those offered to Opco. Opco shall comply with section 3(e) in respect of such new operators.
- (e) Opco will be required to provide a transparent pricing regime to all freight forwarders (including Tranz Rail's Distribution Services Group, any successor business unit, and any freight forwarding business of any related company of Tranz Rail, as "related company" is defined in section 2(3) of the Companies Act 1993), such pricing regime to provide equal pricing and services to all such freight forwarders relative to volumes.

6. Annual information exchange:

- (a) To support TrackCo's and Opco's respective obligations in sections 4 and 5 above, TrackCo and Opco will be subject to reciprocal annual information exchange obligations. The information to be exchanged will be based on the following:
 - (i) reporting of performance against their respective service levels including additional service levels purchased by TrackCo; and
 - (ii) details of any future plans and programmes,

and will include a process for verification where reasonably required by a party. Such information will be provided subject to appropriate confidentiality undertakings.

7. KPIs:

- (a) The parties will agree a KPI regime (including a bonus and penalty regime) that will apply to both parties.
- (b) The purpose of the KPI regime will be to incentivise the parties to meet their service level commitments.
- (c) The KPIs, and each party's performance against them, will be made public by TrackCo and Opco on an annual basis.

8. Pricing Principles:

(a) **Over-riding principle:**

- (i) the track access charges ("**TAC**") payable by Opco will be set at levels which are expected to ensure that TrackCo recovers:
 - (1) a return on capital and depreciation in respect of capital expenditure, to the extent provided in section 8(b) below; and
 - (2) its cash expenses, as defined in section 8(c),

after deduction of net access fees received from other rail operators for the use of the Rail Network.

- (ii) GST (as defined in the Goods and Services Tax Act 1985) will be payable by Opco in addition to the TAC.

(b) **Capital expenditure:**

- (i) **Return on TrackCo's capex:** Subject to section 8(b)(ii), TAC will include recovery of a return on capital and depreciation on capital expenditure to the extent that expenditure is undertaken:

- (1) as part of the replacement of any of the Rail Network or Network Assets;
- (2) to enable TrackCo to comply with legal or regulatory requirements; or
- (3) at Opco's request.

TrackCo will use its Best Endeavours to implement capital expenditure in the most economic basis practicable.

- (ii) **Excluded Capex:** TrackCo shall not be entitled to recover a return on capital or depreciation on the following capital expenditure:

- (1) The first \$100,000,000 plus GST of capital expenditure by TrackCo in the period to 30 June 2007 on replacement of the Rail Network and Network Assets (such as expenditure on life expired infrastructure);
- (2) The \$100,000,000 plus GST to be expended by TrackCo under clause 2.5 of this Agreement in upgrading the Rail Network (whether expended by the Crown or TrackCo);
- (3) Capital expenditure by TrackCo that does not provide any commercial benefit for Opco (such as to extend the geographic scope of the Rail Network if such expansion does not confer commercial benefits on Opco), provided (to avoid doubt) that expenditure within sections (1) to (3) of section 8(b)(i) is not excluded capital expenditure under this section.

- (c) **Cash expenses:** Means all cash expenditure or cash outlay by TrackCo (excluding capital expenditure),

but does not include any cash expenses directly relating to capital expenditure by TrackCo that falls within section (3) of section 8(b)(ii) above.

- (d) **Return on capital:** In any financial year, Trackco's return on capital on capital expenditure in respect of which TrackCo is entitled to recover a return on capital shall be calculated as the average of the opening and closing depreciated book value for that year of the asset created by the expenditure multiplied by TrackCo's weighted average cost of capital ("**WACC**").

(e) **Book value of Rail Network and Network Assets:** For the purposes of this Agreement, the book value of the Rail Network or a Network Asset shall be calculated as the sum of its cost plus interest accrued at TrackCo's WACC on capital spent on the asset up to the time of its completion, less accumulated depreciation.

(f) **TrackCo's WACC:** TrackCo's WACC shall be calculated as:

$$\text{WACC} = D/(D + E) \times K_d \times (1 - T) + E/(D + E) \times K_e$$

where:

D = book value of TrackCo's debt;

E = book value of TrackCo's equity;

K_d = TrackCo's cost of debt;

T = tax rate on company income in New Zealand;

K_e = TrackCo's cost of equity.

(g) **TrackCo's cost of equity:** TrackCo's cost of equity shall be calculated as:

$$K_e = R_f \times (1 - t) + B_e \times \text{MRP}$$

where:

R_f = yield on 10-year New Zealand government stock;

t = weighted average tax rate on interest across all investors;

B_e = TrackCo's equity beta;

$$= B_a \times (1 + D/E);$$

B_a = TrackCo's asset beta;

MRP = post-tax market risk premium for the New Zealand market.

(h) **TrackCo's WACC parameters for the period to 30 June 2013:** for the period to 30 June 2013, the following parameters used in calculating TrackCo's WACC are to be fixed at the values shown:

$$t = 0.20;$$

$$B_a = 0.45;$$

$$\text{MRP} = 7\%;$$

T = zero in periods when TrackCo is expected to have either current or past year tax losses available such that it is not expected to pay income tax in the period under consideration;

- (i) **TrackCo's WACC parameters for periods after 30 June 2013:** Subject to section 11, TrackCo and Opco shall agree with WACC parameters to be used to calculate TrackCo's WACC for each 3 year period following 30 June 2013. If the parties are unable to agree the parameters, an independent, suitably qualified expert shall be appointed by the parties to determine the parameters, such determination to be binding on the parties.
- (j) **Depreciation:** Straight-line depreciation is to be recovered by TrackCo on capital expenditure in respect of which TrackCo is entitled to recover depreciation as referred to in section 8(b), the depreciation term to be determined in accordance with generally accepted accounting practice (as defined in the Financial Reporting Act 1993).
- (k) **Income tax:** TrackCo will take advantage of available tax deductions, including continuing to deduct replacement capital expenditure to the extent permitted by law.
- (l) **Capacity and variable charges:** The TAC will be split between a capacity charge and a variable ("GTK") component. The TAC will be further split by line segment, with a capacity charge per train path and a GTK component for each line segment, in accordance with the following principles:
 - (i) the GTK component will be consistent across the Rail Network but TrackCo may lower the GTK component on any line segment to incentivise Opco at TrackCo's sole discretion. If, in any TAC charging year from 1 July 2004 to 30 June 2009, Opco increases its GTK volume on the Main North Line, Main South Line or NIMT (and other line segments agreed by the parties) by more than 10% over the Base Volume, the additional GTK volume on the applicable line will not incur a GTK component charge. The "Base Volume" for each line will be the annual average of the GTK volume for that line over the period from 1 July 2002 to 30 June 2004. The parties will negotiate in good faith to agree on an appropriate volume growth incentive regime for those lines for subsequent periods after 30 June 2009, having regard to the terms of the incentive regime to 30 June 2009;
 - (ii) the capacity charge/GTK proportions will be structured to incentivise the movement of additional freight on rail up to the point that additional investment is required by TrackCo;
 - (iii) the capacity charge is intended to represent a "lease" of a train path on a line segment for the time period of the charge, being three years. The capacity charge is payable irrespective of whether or not the train path is used;
 - (iv) the capacity charge will only change as a result of:
 - (1) annual indexing of the TAC, and triennial resetting, under section 9;
 - (2) investments requested or agreed by Opco in respect of that line segment (to enable TrackCo to recover the full capital and operating cost of the investment) as referred to in section 8(b)(i)(3);
 - (v) the TAC for passenger services will be modified as appropriate, to reflect the different nature of passenger services.

9. Setting the Track Access Charge and Payment:

(a) Transitional Period:

- (i) Subject to section 9(a)(ii) and (iii) below, up to the end of the Transitional Period Opco shall pay all of the cash expenses of operating the Rail Network and Network Assets under the Management Agreement to be entered into by the parties on the terms set out in Schedule 6. In return, no track access charges shall be payable by Opco for that period.
- (ii) The Crown will meet the abnormal or one-off costs arising from the restructuring of TrackCo during the Transitional Period subject to Opco's compliance with the following procedure:
 - (1) Opco will consult with the Crown on its restructuring plans in good faith and will take reasonable account of the Crown's comments and suggestions;
 - (2) Opco will obtain the Crown's consent (not to be unreasonably withheld) before incurring any material restructuring cost that Opco proposes will be for the Crown's account.
- (iii) At the end of the Transitional Period Opco shall be entitled to a rebate from TrackCo to the extent that the total cash expenses incurred by Opco under (i) above exceed 9/12ths (or such other appropriate proportion if the Transitional Period is longer or shorter than 9 months) of the agreed or determined forecast level of cash expenses for TrackCo for the 12 months immediately following the end of the Transitional Period (as such forecast is agreed or determined under section 9(b) below). Opco will use its Best Endeavours to expeditiously restructure TrackCo during the Transitional Period to achieve an efficient level of cash expenses for TrackCo.

(b) End of Transitional Period to 30 June 2007:

- (i) Before the expiry of the Transitional Period, Opco will prepare forecasts for the expected cash expenses of TrackCo for the following 3 year period ("**Forecasts**"). The purpose of the Forecasts is to set the TAC (before taking into account TrackCo's capital expenditure in respect of which it is entitled to recover a return on capital and depreciation) for the period from the end of the Transitional Period to 30 June 2007. TrackCo may either agree to or dispute the Forecasts.
- (ii) If TrackCo disputes the Forecasts within 60 days of receipt of the Forecasts from Opco and the parties are unable to resolve that dispute within a reasonable period of good faith negotiations, either party may refer the Forecasts to an independent third party ("Independent Auditor") to review and audit the reasonableness of the Forecasts, having regard to best practice. The Independent Auditor may make such changes to the Forecasts as he or she considers reasonable having regard to best practice, and the amended Forecasts will be the final Forecasts.

- (iii) The final Forecasts (either as agreed or determined by the Independent Auditor) will be used to calculate the TAC payable by Opco (before taking into account TrackCo's capital expenditure in respect of which it is entitled to recover a return on capital and depreciation) over the period to 30 June 2007.

(c) **Subsequent Triennial Charging Periods:**

- (i) At least 6 months prior to the end of the triennial TAC charging period to 30 June 2007 (and at least 6 months prior to the commencement of each subsequent triennial TAC charging period), TrackCo will prepare Forecasts as a basis to enable TrackCo to set the TAC (before taking into account TrackCo's capital expenditure in respect of which it is entitled to recover a return on capital and depreciation) for the subsequent triennial charging period. Opco may either agree to or dispute the Forecasts.
- (ii) If Opco disputes the costs set out in the Forecasts within 60 days of receipt of the Forecasts from TrackCo and the parties are unable to resolve that dispute within a reasonable period of good faith negotiations, either party may refer the Forecasts to an independent third party ("Independent Auditor") to review and audit the reasonableness of the cash expenses set out in the Forecasts having regard to best practice.

The Independent Auditor may make such changes to the Forecasts as he or she considers reasonable having regard to best practice (to the extent consistent with those pricing principles in section 8) and the amended Forecasts will be the final Forecasts.

- (iii) The final Forecasts (either as agreed or determined by the Independent Auditor) will be used to calculate the TAC (before taking into account TrackCo's capital expenditure in respect of which it is entitled to recover a return on capital and depreciation) payable by Opco over the subsequent triennial charging period.
- (d) **Payment:** From the end of the Transitional Period, the TAC will be payable monthly in arrears, the GTK component of those monthly charges being calculated on estimated volumes with quarterly wash-ups once actual volume figures are available. Default interest will be payable on late payments, at the Default Rate.
- (e) **Opco information:** Opco must provide TrackCo with any information and explanations reasonably requested by TrackCo regarding Opco's anticipated business plan, operations (including changes to its operations) for the following three year TAC charging period, to enable TrackCo to prepare its Business Plans under this section 9.

10. Adjustment of TAC:

- (a) The TAC (including both the capacity charge and GTK components) will be adjusted at the end of each annual charging period to 30 June by the movement in an appropriate index in that period, that index to be agreed by the parties.

- (b) If the TAC may also be adjusted in accordance with the pricing principles in section 8 to take account of any unbudgeted capital expenditure by TrackCo in that period in respect of which TrackCo is entitled to a return on capital expenditure under section 8(b).
- (c) In any triennial TAC charging period TrackCo shall be entitled to recover from Opco unplanned, uninsured costs outside of TrackCo's control, including derailments, slips and force majeure events.

11. Review of Pricing Principles:

The parties will review in good faith the operation of the pricing principles and TAC regime in this Schedule in the six months prior to 30 June 2013 (or over such other period that the parties agree). Changes may only be made by agreement.

12. Changes to safety system and operating codes and rules: Opco and TrackCo will agree a process to:

- (a) separate policy from operating process and infrastructure from operations in Opco's existing safety system and operating codes and rules; and
- (b) maintain and change the separated codes, rules and safety system,

including obtaining all necessary LTSA and other regulatory approvals.

13. Boilerplate: Including:

- (a) equivalent terms to clauses 11.1 to 11.12 of this Agreement;
- (b) both parties will be excused any non-performance of their obligations due to force majeure;
- (c) TrackCo may assign all its rights and obligations under the Access Agreement to a Crown entity that is to be responsible for the long term operation and maintenance of the Rail Network; and
- (d) dispute resolution.

ANNEX TO SCHEDULE 4

MINIMUM FREIGHT LEVELS - USE IT OR LOSE IT THRESHOLDS

Line Type	Line Section	Track Km**	Threshold (minimum freight level) in tonnes
I	Cambridge Branch	19	*
I	ECMT Te Maunga – Kawerau	77	*
I	Hokitika Branch	38	*
I	Kinleith Branch	65	*
I	Midland Line Rolleston – Stillwater	197	*
I	Midland Line Rolleston – Greymouth	14	*
I	Mission Bush Branch	17	*
I	MNPL Kiwi – New Plymouth	83	*
I	MNPL Marton – Kiwi	130	*
I	Murupara Branch	57	*
I	Ohai Industrial Line (Wairio Branch)	77	*
I	Stillwater Westport Ngakawau	166	*
Industrial Line Total		941	
IC	Kapuni Branch	8	*
IC	Mt Maunganui Branch	7	*
IC	Port Chalmers Branch	2	*
IC	Wanganui/Castlecliff Branch	11	*
Interconnection Total		28	
M	Johnsonville	10	*
M	Melling	3	*
M	NAL Westfield – Waitakere	50	*
M	NIMT Hamilton – Pukekohe	84	*
M	NIMT Wellington – Waikanae	100	*
M	Wairarapa Wellington – Masterton	123	*
Metro Total		370	
R	Bluff Branch	26	*
R	Dargaville Branch	50	*
R	NAL Waitakere – Whangarei	176	*
R	NAL Waitakere – Otiria	68	*
R	PNGL Napier – Gisborne	211	*
R	Rotorua	49	*
R	Stratford – Okahukura Line	143	*
R	Wairarapa Masterton – Woodville	81	*
Regional Lines Total		803	
T	ECMT Hamilton – Te Maunga	105	*
T	Main North Line	348	*
T	MSL Dunedin – Invercargill	224	*
T	MSL Lyttleton – Rolleston	32	*
T	MSL Rolleston – Dunedin	346	*
T	NIMT Hamilton – Pukekoe	96	*
T	NIMT Marton – Hamilton	362	*
T	NIMT Palmerston North – Marton	42	*
T	NIMT Waikanae – Palmerston North	88	*
T	PNGL Oringi – Napier	143	*
T	PNGL Palmerston North – Oringi	45	*

* 70% of annual average tonnage for freight over the 2002, 2003 and 2004 calendar years. The parties will complete the above table with details of the actual tonnage figure, for each line within a reasonable period after 31 December 2004.

SCHEDULE 5

Terms of Agreement to Partially Surrender and Vary the Core Lease

This Agreement shall be on substantially the same terms (except as to the land surrendered from the Core Lease) as the Agreement to Partially Surrender and Vary the Core Rail Lease between the Crown, NZRC and Tranz Rail, dated 24 December 2001.

This Agreement will require the parties, following Completion, to negotiate in good faith to agree a further variation of the Core Lease in order to ensure that the lease reflects, and contains terms reasonably appropriate to, the remaining land leased to Tranz Rail under it after completion of the surrender of the Surrender Land.

The parties agree that the position reached to date in respect of the revised Core Lease document under negotiation between NZRC and Tranz Rail shall as soon as practicable be submitted to the relevant Ministers for their consideration and response.

SCHEDULE 6

Management Agreement

1. **Parties:** Tranz Rail and the Crown.
2. **Guiding Principles:**
 - (a) Tranz Rail will carry out its management functions pursuant to the Management Agreement so as to operate and maintain the Rail Network, Network Assets and Surrender Land in the same manner and to at least the same standard as was the case prior to Completion provided that Tranz Rail will comply with any specific directions of the Crown in respect to discharge of such functions so long as the associated costs are allowed for in the budget or are otherwise met by the Crown.
 - (b) Tranz Rail will maintain a high level of transparency in performing its management functions so as to enable identification of any potential conflict of interests and ensure that in discharge of such management functions Tranz Rail acts to the extent permitted by law in the interests of the Crown.
 - (c) Tranz Rail will carry out its management functions in a manner that facilitates, so far as is reasonably possible, an effective and efficient hand over to the Crown (or its nominee) of the management functions carried out by Tranz Rail upon the conclusion of this agreement.
3. **Term:** The agreement will commence on Completion and conclude at the end of the Transitional Period or such later period as agreed.
4. **Appointment:** The Crown will appoint Tranz Rail to operate and maintain the Rail Network, Network Assets and Surrender Land on the Crown's behalf.
5. **Steering Group and Planning:** Tranz Rail and the Crown will jointly form a steering group comprised of two representatives each of the Crown and Tranz Rail that, acting co-operatively and transparently, will be responsible for agreeing a monthly performance plan for Tranz Rail's performance under the management agreement and monitoring performance against that plan.
6. **Management Functions:** The management functions to be undertaken by Tranz Rail on behalf of the Crown will include:
 - (a) Infrastructure and maintenance management;
 - (b) contract and project management;
 - (c) train control at centralised and local levels;
 - (d) Rail Network and incident management control;
 - (e) rail safety system management including rules, codes, instructions and training materials, identification of risk issues, prioritising actions in respect of such risks in consultation with the Crown, and maintaining of risk issues register;

- (f) developing a transparent charging regime in respect of Tranz Rail accessing the professional services group to be transferred to TrackCo;
- (g) rail operational training, development and delivery;
- (h) track and structures engineering;
- (i) incident investigations;
- (j) community relationships including Crown land management obligations;
- (k) establishing the structure of, and administering, the new organisation required to carry out the management functions;
- (l) carrying out all necessary succession planning to effect a handover to the Crown or its nominee upon conclusion of the management agreement;
- (m) developing and implementing all necessary arrangements to effect, so far as is reasonably possible, a separation of the operations of Tranz Rail post-Completion from the ongoing operation and maintenance of the Rail Network, Network Assets and Surrender Land; and
- (n) community liaison.

7. Performance: Tranz Rail will be required to perform the management services in a manner:

- (a) that complies with the applicable agreed performance plan and within the agreed budget except where agreed by the Crown;
- (b) that complies with any applicable approved safety system;
- (c) consistent with ensuring the safety and integrity of the Rail Network, and its efficient operation (provided that Tranz Rail shall not be responsible for liability (except to the extent budgeted)) arising from risks where it could not reasonably be expected to be aware of such risks or liability. Tranz Rail will be responsible for liabilities arising from identified risks for which it has agreed a priority with the Crown if such liability arises prior to actions to address such risks being taken in accordance with any agreed timetable;
- (d) that ensures the Crown's material compliance with any agreement relating to the Rail Network, Network Assets or the Surrender Land known at the time the budget is agreed;
- (e) that ensures material compliance with all provisions in agreements relating to the Rail Network, Network Assets or the Surrender Land to which the Crown is a party and known at the time the budget is agreed;
- (f) that is fair, reasonable, impartial and non-discriminatory; and
- (g) that materially complies with, and procures the Crown's material compliance with, all applicable laws.

8. Reporting and record keeping: Tranz Rail will keep detailed records of its performance of the above functions and allow the Crown access to those records.

- 9. Insurance:** Tranz Rail is to maintain public liability insurance in accordance with its current practices. Tranz Rail is to continue its current insurance cover for the Network Assets in the Crown's name and for the Crown's benefit, at Tranz Rail's cost.
- 10. Payment:**
- (a) No fee will be payable to Tranz Rail for the performance of its services under this Agreement and Tranz Rail shall meet all costs associated with the operation and maintenance of the Rail Network and Network Assets in accordance with the provisions of Schedule 4.
 - (b) Any revenue received by Tranz Rail relating to, or in connection with, the Rail Network, Network Assets or the Surrender Land is Crown revenue and is to be held on trust for the Crown.
- 11. Intellectual property:** The Crown will own all intellectual property rights arising from the performance of the management services.
- 12. Liability and indemnity:**
- (a) The Crown will indemnify Tranz Rail from and against any claims made by any third party against Tranz Rail arising out of Tranz Rail's performance of the management functions excluding those arising as a result of Tranz Rail's negligence, wilful default or breach of its obligations under the Management Agreement.
 - (b) The Crown's obligations to indemnify Tranz Rail shall be reduced by the amount recoverable by Tranz Rail under any policy of insurance, and Tranz Rail must make a claim against any relevant policy of insurance.
 - (c) Tranz Rail is to indemnify the Crown from any claims (including legal costs) which the Crown incurs as a result of Tranz Rail's negligence, wilful default or breach.
- 13. Termination:** The Crown (but not Tranz Rail) may terminate the Management Agreement on 1 month's notice, if Tranz Rail commits a material breach or is placed in receivership or liquidation. Prior to 30 June 2004 the Management Agreement can be terminated by agreement.
- 14. Boilerplate:** Including equivalent terms to clauses 11.1 to 11.12 of this Agreement.