

**The Minister of Finance and The Minister for State-Owned Enterprises**

**New Zealand Railways Corporation**

**Toll NZ Consolidated Limited**

**Partial Surrender and Variation of Lease**

**Kensington Swan  
Solicitors  
Wellington and Auckland**

**MEMORANDUM OF PARTIAL SURRENDER AND VARIATION OF LEASE** dated

**PARTIES**

- 1 **THE MINISTER OF FINANCE** and **THE MINISTER FOR STATE-OWNED ENTERPRISES**, acting on behalf of the Crown (“the Ministers”)
- 2 **NEW ZEALAND RAILWAYS CORPORATION** (“the Corporation”)
- 3 **TOLL NZ CONSOLIDATED LIMITED** (“Toll Rail”)

**BACKGROUND**

- A The Ministers, the Corporation and Toll Rail (under its former name, New Zealand Rail Limited) are parties to a lease dated 20 December 1991, as varied by a memorandum of variation of lease dated 28 April 1993 (“the Original Lease”). The Original Lease related to certain land (and interests in land) owned by the Crown, or owned, held, used, or occupied by the Corporation, that was leased to Toll Rail to enable it to perform the functions of a railway operator.
- B There have from time to time been additions to and deletions from the land subject to the Lease. For example, by Agreement to Partially Surrender and Vary the Core Rail Lease dated 24 December 2001 the Parties agreed that certain land comprising the Auckland rail corridors would be deleted from the Original Lease.
- C The Parties have since agreed that the land used as rail corridors will also be deleted from the Original Lease, and that the Crown will purchase from Toll Rail the rail infrastructure on that land.
- D The Parties have therefore agreed to the surrender of the Surrender Land and to vary the terms of the Original Lease as set out in this Memorandum.

**THE PARTIES AGREE AS FOLLOWS:**

1 **Surrender of Surrender Land and Variation of Original Lease**

With effect on and from the date of this Memorandum:

- 1.1 The Surrender Land is surrendered and deleted from the Original Lease; and
- 1.2 The Original Lease is varied by deleting Schedules A to F and substituting the Schedules A to H set out in the Annexure to this Memorandum.

2 **Execution**

This Memorandum shall not be binding on any of the Parties until it has been executed and delivered by all of the Parties.

**Signed by The Hon Dr Michael Cullen,**  
Minister of Finance,  
in the presence of:

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Witness: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**Signed by The Hon Mark Burton,**  
Minister for State-Owned Enterprises,  
in the presence of:

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Witness: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**The Common Seal of  
New Zealand Railways Corporation**  
was hereto affixed in the presence of:

\_\_\_\_\_  
  
\_\_\_\_\_

**Signed for Toll NZ  
Consolidated Limited**  
by its authorised  
signatories in the presence of:

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Authorised Signatory

Witness: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

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LESSOR'S ADDRESS:	New Zealand Railways Corporation 5th Floor Prime Finance House 142 Lambton Quay WELLINGTON PO Box 593 Fax: 04 499 5792  ATTENTION: Chief Executive Officer
LESSEE AND LESSEE'S ADDRESS:	Toll NZ Consolidated Limited Ground Floor Tranz Rail Building Smales Farm Cnr Northcote and Taharoto Roads Takapuna AUCKLAND Private Bag 92138 Auckland Mail Centre Fax: 09 270 5039  ATTENTION: General Counsel
LAND:	Land is defined in Clause 1.1.6 of Schedule B
COMMENCEMENT DATE:	29 July 1991
TERM OF LEASE:	Expiring on 31 December 2030 subject to the provisions for termination or partial termination in this Lease and the right of renewal.
TERM OF RENEWAL: (Clause 8.1)	40 years
FINAL TERMINATION DATE:	31 December 2070
ANNUAL RENT: (Clause 2.1.1)	One dollar (\$1.00)
FREQUENCY OF RENT: (Clause 2.1.1)	When demanded

## SCHEDULE B

### CLAUSE 1: DEFINITIONS, INTERPRETATIONS AND EXCLUSIONS

In this Lease, unless a contrary intention appears:

#### 1.1 Definitions

- 1.1.0 “**Auckland Access Agreement**” means the Amended and Restated Tranz Rail Access Agreement between the Lessor and the Lessee (under its former name, Tranz Rail Limited) and dated 13 May 2002, as amended by the Deed Relating to the Auckland Arrangements or as otherwise amended from time to time.
- 1.1.0A “**Auckland Partial Surrender**” means the Agreement to Partially Surrender and Vary the Core Rail Lease between the Lessor and the Lessee (under its former name, Tranz Rail Limited) and dated 24 December 2001.
- 1.1.0B “**Access Agreement**” means the National Rail Access Agreement between Her Majesty the Queen in Right of New Zealand acting by and through her Minister of Finance and Toll NZ Consolidated Limited and dated on or about the date of the Memorandum, as amended from time to time.
- 1.1.0C “**Access Provider**” has the meaning set out in Clause 1.1 of the Access Agreement (or Clause 1.1 of the Auckland Access Agreement, as the case may require).
- 1.1.0D “**Agreement for Sale and Purchase**” means the Agreement for Sale and Purchase of Rail Network and Associated Assets between Her Majesty the Queen in Right of New Zealand acting by and through her Minister of Finance, Toll NZ Limited and Toll NZ Consolidated Limited and dated on or about the date of the Memorandum.
- 1.1.1 “**Agreement to Partially Surrender**” Deleted
- 1.1.1A “**Anniversary Date**” has the meaning set out in Clause 4.12.1.
- 1.1.2 “**Authority**” means each and every local body, territorial, government or other authority having jurisdiction or authority over or in respect of the Land or the use thereof.
- 1.1.2A “**Base Rate**” means a rate 3 percentage points above the average rate as displaying on the Reuters Monitor Screen page BKBB (or any successor page displaying the same information) under the heading “FRA” for bank accepted bills having a term of 3 months, at or about 10.45 a.m. on the relevant day.
- 1.1.2B “**Capitalisation Threshold**” means the sum of \$300,000, adjusted in accordance with Clause 4.12.
- 1.1.2C “**Capitalised Value**” means, in relation to any annual cost or annual income stream, the present value of that cost or income stream (after tax) as calculated by applying a capitalisation rate equal to the Base Rate.
- 1.1.3 “**Commencement Date**” means 29 July 1991.
- 1.1.4 “**Corporation**” means New Zealand Railways Corporation and its successors and assigns and, where not repugnant to the context, includes the employees and agents of New Zealand Railways Corporation.

- 1.1.4A “**CPI**” means the Consumer Price Index (All Groups) published by Statistics New Zealand or any other government agency, or the most nearly-comparable index if that index ceases to be published.
- 1.1.4B “**CPI Formula**” means the formula set out in Clause 4.12.1.
- 1.1.4C “**Customer**” means a Person who, in the ordinary course of business (and whether as a sender, receiver, payer or agent), uses rail freight services on a more than occasional basis and for whom the Lessee or one of its sublessees is providing such services.
- 1.1.4CA “**Deed Relating to the Auckland Arrangements**” means the Deed Relating to Auckland Arrangements between Her Majesty the Queen in Right of New Zealand acting by and through her Minister of Finance, the Lessee and Tranz Metro Auckland Limited and dated on or about the date of the Memorandum.
- 1.1.4D “**Deletion Notice**” means the notice referred to in Clause 3.3.1.2.
- 1.1.4DA “**Designations Deed**” means the Deed in Relation to Network Designations between Her Majesty the Queen in Right of New Zealand acting by and through her Minister of Finance and Toll NZ Consolidated Limited and dated on or about the date of the Memorandum.
- 1.1.4DB “**Disposal Notice**” Deleted
- 1.1.5 “**Dispute**” has the meaning set out in Clause 4.5A.1.
- 1.1.5A “**Expert**” means the expert or experts appointed to make an Expert Determination pursuant to Clause 4.5A.
- 1.1.5B “**Expert Determination**” means the expert determination process referred to in Clause 4.5A.
- 1.1.5C “**Fibre Optic Cable Easement**” means the easement granted pursuant to the Fibre Optic System Sale and Purchase Agreement and Easement Agreement dated 28 September 1990 made between the Alternate Telecommunications Company Limited and the Corporation.
- 1.1.5D “**Freight Village**” means an area of Land which is recorded as a Freight Village in the Register and which is Land that, either at the date it is recorded in the Register or within 10 years after that date, is Land used for Freight Village Purposes and which is Land:
- 1.1.5D.1 within which a rail loading/unloading point (servicing, within that 10 year period, more than one Customer) is operated; or
- 1.1.5D.2 which is primarily used as an aggregation area for a rail loading/unloading point (servicing, within that 10 year period, more than one Customer).
- 1.1.5E “**Freight Village Purposes**” means:
- 1.1.5E.1 the provision and operation of freight facilities (including the loading, storage, warehousing or refrigeration of goods, freight and containers), the provision of interchange facilities with other transport modes, and related services such as container cleaning and repair; or
- 1.1.5E.2 the provision of all other services reasonably required for, or common to, the efficient, effective, or competitive operation of a facility enabling the

interchange of goods, freight and containers between rail and land or sea transport.

- 1.1.5F **“Future Rail Purposes”**: Any Land shall be considered to be held or required for Future Rail Purposes when, taking into account alternative methods of rail operation which may exist in the future, it is likely that such Land will be required for Rail Purposes.
- 1.1.5G **“Future Rail Purposes Review”** means a review carried out pursuant to Part B of Schedule E.
- 1.1.5H **“GST”** means goods and services tax or any similar tax.
- 1.1.5I **“Impact Criteria”** has the meaning set out in paragraphs 6(b) and 6(c) of Schedule D.
- 1.1.5IA **“Including”** and similar words do not imply any limitation.
- 1.1.5J **“Infrastructure”** means all improvements, fixtures and fittings (including without limitation, rail lines, sleepers, ballast, fastenings, poles, pylons, signalling equipment, communications equipment, network control equipment, bridges, waterways, tunnels, formations, overhead lines, cables, pipes, platforms, railway stations, freight sheds and associated buildings, electrical substations and other electricity reticulation equipment, buildings, structures and other fixed equipment) on, under or above the surface of the Land which are necessary for the safe and proper carrying out of railway operations and all services reasonably related thereto.
- 1.1.5K **“Investigation Site”** Deleted
- 1.1.6 **“Land”** means the land subject to the Original Lease as varied from time to time (or, where the context requires, any part of the Land) but excluding:
- 1.1.6.1 all the Lessee’s improvements; and
  - 1.1.6.2 Deleted
  - 1.1.6.3 all land surrendered or deleted from this Lease during the Term, whether pursuant to Clause 1.1 of the Memorandum or otherwise by agreement between the Parties.
- Subject always to the definition of “Land” in this Clause 1.1.6, the Land is described in Schedule C.
- 1.1.6A **“Land for Deletion”** has the meaning set out in Clause 3.3.1.2.
- 1.1.6B **“Land Transactions”** has the meaning set out in Clause 9.2.
- 1.1.6BA **“Landplan”** means the land plan referred to in paragraph 7 of Schedule H.
- 1.1.6C **“Lease”** means the Original Lease, as varied by the Memorandum and these Schedules.
- 1.1.7 **“Lessee”** means Toll NZ Consolidated Limited, its permitted successors and assigns and where not repugnant to the context, the employees and agents of the Lessee.
- 1.1.8 **“Lessor”** means the Ministers and the Corporation (or either of them as the context permits) and their respective successors and assigns and, where not repugnant to the context, the employees and agents of the Lessor.

- 1.1.9 “**Licence**” means the licence dated 27 October 1990 between the Corporation, the Lessee, and the Ministers pursuant to which the Corporation and the Ministers granted a licence to the Lessee to occupy and use the Land and certain other land.
- 1.1.9A “**Line Segment**” has the meaning set out in Clause 1.1 of the Access Agreement.
- 1.1.9B “**Local Authority**” has the meaning ascribed to it in Section 2(1) of the Local Government Act 1974.
- 1.1.9C “**Lower Estimate**” has the meaning set out in paragraph 29 of Schedule H.
- 1.1.9D “**Memorandum**” means the memorandum which precedes this Schedule.
- 1.1.10 “**Ministers**” means the Minister of Finance and the Minister for State-Owned Enterprises, acting on behalf of the Crown.
- 1.10A “**Non-Contiguous Cities**” means cities which do not have common boundaries, however:
- 1.1.10A.1 Within the greater Wellington region, Wellington, the Hutt Valley and the Porirua Basin shall be deemed contiguous; and
- 1.1.10A.2 Within the greater Auckland region, the Auckland Isthmus, including Waitakere, North Shore/Albany, Auckland City and Manukau City shall be deemed contiguous.
- 1.1.11 “**Notice of Cessation**” Deleted
- 1.1.11A “**Original Lease**” means the Lease described in Recital A of the Memorandum.
- 1.1.11B “**Parties**” means the Lessor and the Lessee.
- 1.1.11C “**Person**” includes any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organization, trust, State or agency of a State in each case whether or not having separate legal personality.
- 1.1.11D “**Potentially Surplus Land**” is Land under review in accordance with Clause 3.2A.3 and Schedule H.
- 1.1.11DA “**Proposed Transaction**” has the meaning set out in Clause 3.3.2.3(i)(c).
- 1.1.11E “**Public Work**” has the meaning ascribed to it in Section 2 of the Public Works Act 1981.
- 1.1.12 “**Rail Corridor**” Deleted
- 1.1.12A “**Rail Network**” means the Rail Network as defined in the Access Agreement and the Auckland Network as defined in the Auckland Access Agreement.
- 1.1.13 “**Rail Purposes**” has the meaning set out in Clause 1.1A.1.
- 1.1.13A “**Rail Purposes Review**” has the meaning set out in paragraph 6 of Part A of Schedule E.
- 1.1.13B “**Rail Services**” has the meaning set out in Clause 1.1A.2.
- 1.1.13C “**Rail Services Operator**” has the meaning ascribed to it in Section 2(1) of the Transport Services Licensing Act 1989.

- 1.1.13D “**Register**” means the Register referred to in Clause 4.8A.
- 1.1.13DA “**Released Land**” has the meaning ascribed to it in the Agreement for Sale and Purchase.
- 1.1.13DB “**Rent**” means the rent referred to in Schedule A.
- 1.1.13DC “**Request**” has the meaning set out in paragraph 1 of Schedule D.
- 1.1.13E “**Required Process**” has the meaning set out in paragraph 5 of Schedule H.
- 1.1.13F “**Requiring Authority**” means:
- 1.1.13F.1 a Minister of the Crown; or
  - 1.1.13F.2 a Local Authority; or
  - 1.1.13F.3 a network utility operator approved as a Requiring Authority under Section 167 of the Resource Management Act 1991.
- 1.1.13FA “**Retained Land**” has the meaning set out in Paragraph 12 of Part A of Schedule 1 of the Agreement for Sale and Purchase.
- 1.1.13G “**Review Commencement Date**” has the meaning set out in paragraph 2 of Schedule H.
- 1.1.13H “**Review Land**” means any part of the Land which is from time to time being subjected to the review process referred to in Clause 3.3.3 and set out in Schedule E.
- 1.1.13I “**Review Termination Date**” has the meaning set out in paragraph 4 of Schedule H.
- 1.1.13J “**Subdivision Period**” means the maximum period from time to time (including any renewal periods) for which a lease or a sublease may be granted without a statutory requirement for a consent (such period being, as at the Variation Date, 35 years, pursuant to section 218 of the Resource Management Act 1991).
- 1.1.13K “**Sublease Income**” has the meaning set out in paragraph 2 of Schedule F.
- 1.1.13L “**Sublease or Grant**” has the meaning set out in Clause 3.3.2.2B.
- 1.1.13LA “**Surrender**” means the surrender effected pursuant to Clause 1.1 of the Memorandum.
- 1.1.13LB “**Surrender Land**” means the Surrender Land as defined in Clause 1.1 of the Agreement for Sale and Purchase but excluding that part of the Released Land as does not comprise the First Tranche (the terms “Released Land” and “First Tranche” being defined in Paragraph 2 of Schedule 11 of the Agreement for Sale and Purchase).
- 1.1.13M “**Term**” means the term of this Lease, including any renewal of such term.
- 1.1.13N “**Territorial Authority**” has the meaning ascribed to it in Section 2(1) of the Local Government Act 1974.
- 1.1.14 “**Track**” Deleted
- 1.1.14A “**Transaction**” has the meaning set out in Clause 3.6A.1.
- 1.1.14B “**Transport Activities**” has the meaning set out in Clause 1.1A.3.1.

1.1.14C “**Upper Estimate**” has the meaning set out in paragraph 29 of Schedule H.

1.1.14D “**Variation Date**” means the date of the Memorandum.

1.1.15 “**Vesting Date**” means 28 October 1990.

1.1.15A “**Wellington Station Buildings**” Deleted

## 1.1A **Definitions of Rail Purposes, Rail Services and Transport Activities**

1.1A.1 “**Rail Purposes**”, in relation to Land, means activities that are:

1.1A.1.1 Rail Services described in Clause 1.1A.2; or

1.1A.1.2 Transport Activities described in Clause 1.1A.3; or

1.1A.1.3 Operations within a Freight Village described in Clause 1.1.5D.

1.1A.2 “**Rail Services**” means:

1.1A.2.1 the provision, storage and maintenance of Infrastructure; or

1.1A.2.2 the provision, storage, maintenance and operation of rail vehicles (including locomotives, rolling stock, service wagons and equipment related to the provision, maintenance and servicing of Infrastructure and rail vehicles); or

1.1A.2.3 the provision of manufacturing, maintenance, assembly, refurbishment, renewal and professional engineering services to the rail industry; or

1.1A.2.4 the provision and operation of rail passenger facilities and interchange facilities; or

1.1A.2.5 the provision and operation of inter-island passenger and freight services including interchange facilities related to these services; or

1.1A.2.6 the provision and operation of freight facilities (including the loading, storage, warehousing or refrigeration of goods, freight and containers, the provision of interchange facilities with other transport modes, and related services such as container cleaning and repair) where rail is a significant transport mode relative to other land transport modes using these facilities; or

1.1A.2.7 the provision and operation of management, logistics and other services (including order processing and inventory management) reasonably related to the provision or facilitation of the above activities.

1.1A.3.1 “**Transport Activities**” means the provision and operation of non-rail freight services (including road transport and related loading, storage, warehousing or refrigeration of goods) where the primary purpose of those services is:

1.1A.3.1.1 the transport of goods to or from a site used for Rail Services, but excluding transport between Non-Contiguous Cities that are connected by rail; or

1.1A.3.1.2 freight services to a Customer, where those services require specialist equipment or rolling stock, or a speed of delivery, or involve a volume, that cannot economically be serviced using only rail, or are to or from locations not connected by rail; or

1.1A.3.1.3 the provision and operation of management, logistics and other services (including order processing and inventory management) reasonably related to the provision or facilitation of the above activities.

1.1A.3.2 For the purposes of determining whether Land used for the provision and operation of non-rail freight services is Land upon which Transport Activities are carried out, the areas of Land so used in each of the cities of Auckland, Hamilton, Palmerston North, Wellington, Christchurch and Dunedin must separately pass the test of the primary purpose outlined in Clauses 1.1A.3.1.1 and 1.1A.3.1.2. All Land so used elsewhere must, when taken together, collectively pass the test of the primary purpose outlined in Clauses 1.1A.3.1.1 and 1.1A.3.1.2.

## 1.2 **Interpretation**

1.2.1 Words importing the singular number shall include the plural, the masculine gender shall include the feminine, persons shall include companies, and vice versa.

1.2.2 Any provision of this Lease to be performed by 2 or more persons shall bind those persons jointly and severally.

1.2.3 The Index to this Lease and any headings and marginal notations in this Lease have been inserted for convenience only and shall not in any way limit or govern the construction of the terms of this Lease.

1.2.4 Any reference in this Lease to any statute or regulation is deemed to include all amendments and revisions made from time to time to that statute or regulation.

1.2.5 Any reference in this Lease to a “month” or “monthly” shall mean respectively calendar month and calendar monthly.

1.2.6 A “working day” means any day of the week other than:

1.2.6.1 Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, New Zealand’s anniversary day, Auckland’s anniversary day and Wellington’s anniversary day; and

1.2.6.2 a day in the period commencing on 24 December in any year and ending on 5 January in the following year, both days included.

1.2.7 Unless repugnant to the context, any reference in any Schedule to a paragraph shall be a reference to the particular paragraph of that Schedule (or that part of the Schedule, as the case may be).

## 1.3 **Exclusion of Statutory Provisions**

1.3.1 The covenants, conditions, agreements and restrictions which would be implied in this Lease by the Property Law Act 1952 are hereby negated except to the extent that they are expressly contained in this Lease.

1.3.2 To the extent permitted by law the application to this Lease of any moratorium or other law act or regulation having the effect of extending the term, reducing or postponing the payment of rent or other moneys payable under this Lease or otherwise affecting the operation of the terms of this Lease is expressly excluded and negated.

#### 1.4 **Limitation on Waiver**

No waiver by the Lessor of any one breach of any covenant obligation or provision contained or implied in this Lease shall operate as a waiver of another breach of the same or any other covenant obligation or provision contained or implied in this Lease.

#### 1.5 **Relationship of Parties**

Nothing contained herein shall be deemed or construed by the Parties or by any third party as creating the relationship of partnership or of principal or agent or of joint venture between the Parties it being understood and agreed that neither the method of computation of rent nor any other provisions contained herein nor any acts of the Parties shall be deemed to create any relationship between the Parties other than the relationship of Lessor and Lessee upon the terms provided in this Lease.

#### 1.6 **Severability**

If any term covenant or condition of this Lease or the application thereof to any person or circumstance shall be or become invalid or unenforceable the remaining terms conditions and covenants shall not be affected thereby.

#### 1.7 **Non-Merger**

The covenants conditions agreements and obligations of the parties in this Lease and this Lease document shall not merge with or be extinguished by the grant of any further or other lease but shall remain in full force and effect and operative according to their tenor. Further, the provisions of the Licence shall not merge with this Lease but, except to the extent that they are inconsistent herewith, shall continue in full force and effect and operative according to their tenor.

#### 1.8 **Service of Notices**

1.8.1 Any notice or other document required to be given delivered or served under this Lease shall be in writing and delivered or transmitted by fax transmission (where receipt of such transmission is acknowledged by the recipient) or delivery or posting by registered post addressed to the address for service specified in Schedule A (as the same may be varied from time to time by notice in writing to the other parties) or, if none is specified, to the registered office or principal place of business of the party intended to be served.

1.8.2 Any notice or other document shall be deemed to have been given or served and received by the other party:

1.8.2.1 when delivered by hand; or

1.8.2.2 3 working days after being posted by registered mail with postage prepaid; or

1.8.2.3 on completion of the transmission when sent by fax and subsequently acknowledged as provided in Clause 1.8.1.

1.8.3 In the case of any notice or document required to be served or given by any party to any other it may be signed on behalf of the party giving it by any attorney, officer, employee, agent or solicitor of or for that party or any other person authorised by that party from time to time.

1.8.4 Unless and until a party gives notice of any change, the address for service and fax number specified in Schedule A shall apply for the purposes of this Clause 1.8.

1.8.5 Unless otherwise inconsistent with the context, service of any notice or document upon the Corporation for the purposes of this Lease in the manner prescribed by this Lease shall be deemed to be service upon the Ministers and the Corporation but only in their capacities as Lessor hereunder and in no other capacity.

#### 1.9 **Acts of Lessor**

Unless otherwise inconsistent with the context, any action of the Lessor under this Lease required of the Lessor in that capacity (and not an action specifically required of the Ministers under the terms of this Lease) may be carried out by the Corporation on behalf of the Lessor.

#### 1.10 **GST**

1.10.1 **Lessee Payment:** The Lessee shall pay to the Lessor or as the Lessor shall direct all GST payable on Rent and other money payable by the Lessee under this Lease. GST in respect of Rent shall be payable on each occasion when any Rent falls due for payment and in respect of any other money payable by the Lessee, shall be payable on demand subject to the Lessor issuing to the Lessee an appropriate invoice.

1.10.2 **Lessor Payment:** The Lessor shall pay to the Lessee or as the Lessee shall direct all GST payable on any payments due by the Lessor to the Lessee under this Lease on demand, subject to the Lessee issuing to the Lessor an appropriate invoice.

### **CLAUSE 2: RENT AND OUTGOINGS**

#### 2.1 **Rent**

2.1.1 The Lessee will pay the Rent upon demand, subject to Clause 2.1.4. All other rents and payments shall be paid at the times prescribed by this Lease and if not prescribed, then promptly upon such payment becoming due.

2.1.2 The expression "upon demand" shall mean upon demand being made by notice in writing from the Lessor, served upon the Lessee in accordance with the provisions of Clause 1.8.

2.1.3 Deleted

2.1.4 If the Lessee continues to use or occupy any part of the Land following termination of this Lease insofar as it relates to that part of the Land, the Lessee shall from the date or dates of termination in each case pay to the Lessor by monthly instalments the full current market rent for that part of the Land, such rent to be agreed between the Lessee and the Lessor within 10 working days of the termination or failing agreement, determined in accordance with Clause 4.5A. Such use or occupation or acceptance by the Lessor of such rent shall not prejudice any other rights and remedies the Lessor may have in respect of such continued occupation or any other rights or remedies under this Lease or otherwise.

#### 2.2 **Outgoings**

2.2.1 The Lessee will pay all costs, charges and outgoings however incurred in respect of the Land during the term hereof and all rates, charges, assessments, duties, impositions and fees at any time or from time to time payable to any Authority in respect of the Land or the occupation thereof irrespective of the ownership thereof or paid or payable by the Lessor in

consequence of the receipt of rent or other moneys pursuant to this Lease, or in consequence of the Lessor having any estate or interest in the Land, but excluding:

- 2.2.1.1 Income tax or any tax on rental income or other tax assessed in respect of the Lessor's income or profits;
  - 2.2.1.2 Any costs incurred in respect of the Land, or liens or interests on the Land, arising from activities of the Lessor on the Land or on any adjacent land, after the Commencement Date, to the extent that those activities are not merely the holding of an estate or interest in the Land or the protection of the rights of the Lessor in relation to that estate or interest; and
  - 2.2.1.3 Any outgoings and liabilities in respect of any air rights over the Land held by the Lessor or granted by the Lessor to a third party, but without releasing the Lessee from liability to pay a reasonable proportion of the outgoings and liabilities in respect of the Land over which such rights are granted, unless otherwise agreed.
- 2.2.2 If the Lessor is liable to pay land tax, capital tax or capital gains tax or any other tax or charge levied or charged by any Authority based upon the value of the Land at any time during the Term, then the Lessee will pay to the Lessor on demand or direct to the relevant Authority a reasonable portion of such land or other tax or charge. Such portion shall be agreed upon or, failing agreement, determined pursuant to Clause 4.5A. For the purposes of this Clause 2.2:
- 2.2.2.1 Land tax (or such other tax or charge) shall be deemed to be due in the same manner as Territorial Authority general rates and to be a liability throughout the financial year during which it is due and shall be apportioned between the Lessor and the Lessee in respect of periods current at the commencement and expiry or sooner termination of the Term; and
  - 2.2.2.2 In respect of any Land over which air rights are held by the Lessor or granted to a third party by the Lessor, the Lessee will be liable only in respect of a reasonable portion of the tax or charge in respect of that Land.
- 2.2.3 The Lessee shall pay to the appropriate suppliers all charges for water, gas, electricity, telephone and all utility and other services connected to the Land.
- 2.2.4 Should the Lessee make default in payment of such outgoings, taxes or charges required under this Clause 2.2 the Lessor may, to the extent that it has or may have a liability for them, pay them and forthwith recover the amount paid as if it were rent in arrears payable by the Lessee.
- 2.2.5 Where the Lessee wishes to challenge:
- 2.2.5.1 the values or apportionments adopted in any rating assessment relating to the Land, or any improvements on the Land; or
  - 2.2.5.2 the jurisdiction of any Authority to levy or charge rates in relation to the Land or any improvements on the Land;

but does not have the legal standing to pursue that challenge with the relevant Authority, the Lessor will co-operate with the Lessee as reasonably necessary and practicable, provided that the challenge, if successful (in whole or in part) will have no adverse consequences for the Lessor. The Lessee will pay the Lessor's actual and reasonable costs in relation to the

challenge, including a reasonable allowance for the actual and reasonable time spent by the Lessor's personnel.

### **CLAUSE 3: LAND AREA SUBJECT TO VARIATION**

#### **3.1 Variations**

The Land leased by the Lessor to the Lessee under this Lease may be increased or reduced from time to time in accordance with the provisions of this Clause 3. The Lessor agrees to grant and the Lessee agrees to accept a lease of any additional Land on the terms of this Lease, when that Land is identified and recorded in accordance with this Clause 3. The Lessee agrees to surrender and the Lessor agrees to accept a surrender of this Lease in respect of any Land removed from the scope of this Lease when that Land is identified and recorded in accordance with this Clause 3.

3.1A The Parties acknowledge that pursuant to Clause 8(a) of the Auckland Partial Surrender the Lessee has covenanted with the Lessor that the Lessee will not deal with land included in this Lease which adjoins the Surrender Land (as defined in the Auckland Partial Surrender) in a way which materially detrimentally affects the Surrender Land (as defined in the Auckland Partial Surrender). The Lessee confirms that this Lease includes that covenant.

#### **3.1B Surrender**

3.1B.1 The Parties' rights and obligations under this Lease and the Licence, as they relate to the Surrender Land, shall cease as at the Variation Date, without prejudice however to the Lessor's rights in relation to any breaches by the Lessee (including the Lessor's rights under Clause 5.4), whether or not the Lessor has given notice of such breaches or taken any enforcement action in relation to them.

3.1B.2 The Surrender is not a termination for the purposes of this Lease or the Licence and none of the provisions in this Lease or the Licence intended to apply on a termination shall apply in respect of the Surrender. Specifically, the Surrender shall not amount to a termination or partial termination of this Lease for the purposes of Clauses 2.1.4 or 4.10. Nor shall the Surrender amount to a parting of possession or occupation of the Surrender Land for the purposes of Clause 3.3.2.

#### **3.2 Reversion of Unused Corridor and Lessor's Rights of First Refusal**

Deleted

#### **3.2A Potentially Surplus Land**

3.2A.1 The Lessee may elect at any time by notice to the Lessor to have Land not required for Rail Purposes or Future Rail Purposes considered for the purposes of determining whether it should be classified as Potentially Surplus Land.

3.2A.2 At any time the Lessor may suggest to the Lessee in writing that the Lessee should elect to have certain Land considered under Clause 3.2A.1.

3.2A.3 Where the Lessee has elected to have certain Land considered under Clause 3.2A.1 and (in the case of a review to which paragraph 1(a) of Schedule H applies), the Lessor has agreed to the review under paragraph 4 of Schedule H, the review processes in Schedule H shall apply and the Lessor's rights of review under Clause 3.3.3 shall be suspended during the period from the Review Commencement Date to the earlier of the actual termination of the review and the Review Termination Date for the Land.

### 3.3 Deletion of Land from this Lease and Subleasing

#### 3.3.1 Deletion of Land from this Lease

3.3.1.1 The Lessee may in its absolute discretion elect at any time during the Term to call upon the Lessor to delete any Land from the operation of this Lease PROVIDED THAT the Lessee may not so elect with respect to any Land where traffic on all Line Segments connecting with that Land is at or below the sum of the relevant levels for both freight and passenger seats set out in the Access Agreement.

3.3.1.2 Whenever the Lessee so elects, it shall give notice in writing to the Lessor (“the Deletion Notice”) containing sufficient details of that part of the Land to enable it to be identified (“the Land for Deletion”) together with a summary of the items which the Lessee proposes to leave on the Land for Deletion and a date or dates by which the Lessee intends to clear its remaining operations and assets from and vacate the Land for Deletion and an undertaking to clear and vacate by such date or dates together with any conditions or reservations relating to the deletion. The obligation of the Lessee to clear the Land for Deletion shall only extend to the clearance of such of the Lessee’s assets which it wishes to retain and any rubbish or abandoned equipment from the Land for Deletion so that it is left in a tidy condition.

3.3.1.3 The Lessor may at its absolute discretion decline to delete any Land for Deletion from the operation of this Lease if it considers that it would be unreasonable or impracticable for the Lessor to take over the management or maintenance of that Land for Deletion or be unreasonable or impracticable to sell it or that there is not likely to be sufficient profit from any sale, taking into account the likely costs of further clearing the Land for Deletion, preparing it for sale and arranging and proceeding with the sale. If the Lessor decides not to accept any Land for Deletion it shall give written notice to the Lessee of such decision as soon as reasonably practicable (but in any event not later than 3 months) after receipt of the Deletion Notice and:

- (i) the Land shall become Land required for Future Rail Purposes; and
- (ii) the Lessor’s rights of review in Clause 3.3.3 will be postponed for a period of 10 years from the date such written notice is given to the Lessee.

3.3.1.4 Deleted

3.3.1.5 Deleted

3.3.1.6 The Lessor may at its absolute discretion enter into negotiations with the Lessee for payment of compensation to the Lessee for the deletion of Land for Deletion from the operation of this Lease including compensation for improvements on that Land.

3.3.1.7 Deleted

3.3.1.8 Deleted

3.3.1.9 Deleted

3.3.1.10 Deleted

### 3.3.1A Deletions for Public Works

3.3.1A.1 The Parties have agreed upon a process for dealing with any request from a Requiring Authority for Land to be deleted from this Lease and transferred to that Requiring Authority for a Public Work. That process is set out in Schedule D.

### 3.3.2 Control of Subleasing and Assignment

#### 3.3.2.1 Grants subject to Consent

Except as expressly provided in this Lease, or with the written consent of the Lessor (which the Lessor may withhold at its absolute discretion) the Lessee shall not be entitled to sublease, assign, transfer, grant rights of occupation, grant easements, or in any way part with the possession or occupation of the Land or any part thereof or any estate or interest therein other than a transfer or assignment of the whole of this Lease to a Rail Services Operator. In the case of any transfer or assignment of the Land the Lessee shall procure the execution by the transferee or assignee of a covenant with the Lessor that the transferee or assignee will at all times during the continuance of the Term duly observe and perform all the covenants conditions and agreements herein contained or implied on the part of the Lessee to be observed and performed but without thereby releasing the Lessee from its obligations to observe and perform the covenants and conditions on the part of the Lessee herein contained or implied, such covenant to contain a like covenant in the event of any subsequent transfer or assignment.

#### 3.3.2.2 Restrictions on Grants

Notwithstanding anything to the contrary, the Lessee shall not grant or allow to be granted any sublease, charge, mortgage or other arrangement except in circumstances where the rights of any other party who will or may acquire an interest in the Land (including any sublessee, chargeholder, mortgagee or mortgagee in possession):

- (i) are no greater, in relation to the Land, than the rights which the Lessee has;
- (ii) are subject to all the rights which the Lessor has, including the right to enforce compliance with all obligations on the part of the Lessee under this Lease, and to exercise its rights in relation to any non-compliance; and
- (iii) are subject to all the rights under Clauses 7.1, 10, 11 and 19.7 of the Access Agreement and Clauses 2.2 and 6.4(b) of the Auckland Access Agreement.

### 3.3.2.2A **Lessor Assistance to Dealing with Lease**

The Lessor acknowledges that the Lessee may from time to time wish to exercise its rights under this Lease by using various financing, operating or ownership structures so as to develop and fully enhance the Land for Rail Purposes, including structures involving subleasing (in accordance with this Lease), mortgaging or other such arrangements. The Lessor agrees to provide reasonable assistance to the Lessee to implement such structures (for example, by consenting to the creation of a separate leasehold title for part of the Land), but only on the following conditions:

- (i) the Lessee is not in default under this Lease;
- (ii) the Lessee is at all times to remain fully liable to the Lessor for the performance by the Lessee of its obligations under this Lease;
- (iii) the Lessee satisfies the Lessor as to the matters set out in Clause 3.3.2.2;
- (iv) the structures will meet the objectives of developing and fully enhancing the Land for Rail Purposes; and
- (v) the assistance provided by the Lessor will be provided at the Lessee's cost and expense in all things and strictly without prejudice to the terms of this Lease and the Lessor's rights under this Lease.

### 3.3.2.2B **Rights to Sublease or Grant**

The Lessee may in its absolute discretion grant a sublease, licence, easement or other right of occupation or use over any part of the Land (a "Sublease or Grant") but only in compliance with Clause 3.3.2.2 and the following provisions of this Clause 3.3.2.

### 3.3.2.2C **Wellington Station Buildings**

Deleted

### 3.3.2.3 **Sublease or Grant for Less than 7 Years**

- (i) Subject to the Lessee's obligations under this Lease (including those in Clause 3.3.2.2), and to the Lessor's rights and obligations under any statute or regulation, the Lessee may in its absolute discretion grant a Sublease or Grant consistent with its rights as Lessee under this Lease, provided:
  - (a) the Land subject to the Sublease or Grant is used for Rail Purposes or is required for Future Rail Purposes; and
  - (b) the term of the Sublease or Grant, including any rights of renewal, does not exceed 7 years.
- (ii) Where in accordance with this Lease it has been agreed or determined that Land is to be deleted from this Lease, the Lessee may enter into Subleases or Grants in respect of such Land only if they are terminable by the Lessee giving not less than 12 months' notice.

### 3.3.2.3A **Sublease or Grant for More than 7 Years**

- (i) Subject to:
  - (a) Clause 3.3.2.2A (if applicable);
  - (b) the Lessee's obligations under this Lease (including those in Clause 3.3.2.2); and
  - (c) the Lessor's rights and obligations under any statute or regulation;

the Lessee may grant a Sublease or Grant consistent with its rights as Lessee under this Lease where the term of the Sublease or Grant, including any rights of renewal, exceeds 7 years but does not exceed the Subdivision Period applicable at the commencement of such term, provided the Lessee has first obtained the Lessor's written consent. The Lessor shall consent if the following conditions have been fulfilled:

- (d) the Lessee is not in default under this Lease;
  - (e) the Lessee is at all times to remain fully liable to the Lessor for the performance by the Lessee of its obligations under this Lease;
  - (f) the Lessee satisfies the Lessor as to the matters set out in Clause 3.3.2.2;
  - (g) the Land subject to the Sublease or Grant is to be used only for Rail Purposes; and
  - (h) the Lessor is satisfied that the proposed sublessee or grantee is respectable, responsible and has the financial resources to meet its commitments under the Sublease or Grant.
- (ii) Subject to satisfaction of the conditions in Clause 3.3.2.3A(i), the Lessor's consent shall be provided within 20 Working Days after receipt of a written application for its consent, provided such application:
    - (a) makes it clear that it is an application for the purposes of this Clause 3.3.2.3A; and
    - (b) contains such information as will enable the Lessor to be satisfied that the conditions in Clause 3.3.2.3A(i) have been fulfilled.

### 3.3.2.4 **Sublease to Rail Services Operator**

Deleted

**3.3.2.5 Lessor to Receive Copies**

The Lessee shall provide to the Lessor, as and when requested, a copy of any Sublease or Grant and confirm to the Lessor in writing that in each case the Land is to be used for Rail Purposes or is required for Future Rail Purposes.

**3.3.2.5A Subleased Land Ceasing to be Used for Rail Purposes**

The Lessee shall give notice in writing to the Lessor any time that any Land which has been the subject of a Sublease or Grant for Rail Purposes has ceased to be used for Rail Purposes and specify the new use or purpose for that Land, to enable the Lessor to consider whether to exercise its review rights under Clause 3.3.3.

**3.3.2.6 Subleasing by Agreement**

Subject to Clause 4.1.3 and to the obligations of the Lessor pursuant to the Public Works Act 1981, the New Zealand Railways Corporation Restructuring Act 1990 or any other statute or regulation or agreement, nothing in this Clause 3.3.2 shall prevent the parties at their absolute discretion from agreeing in any case and on any terms to the Lessee granting a sublease, licence, easement or other right of occupation or use of any part of the Land for a period greater than the Subdivision Period.

**3.3.2.6A Easements Pursuant to Prior Agreements or Legislation**

The provisions of this Clause 3.3.2 shall not affect the Lessee's ability to grant easements or other rights of use or occupation pursuant to any agreement entered into prior to the Commencement Date or pursuant to any statute or regulation.

**3.3.2.7 Existing Leases**

The provisions of this Clause 3.3.2 shall not affect any grants, leases, licences easements or other rights of occupation or use of any part of the Land existing at the Commencement Date and which are to remain in existence notwithstanding that they may be for periods in excess of the Subdivision Period.

**3.3.2.7A Designations**

The parties acknowledge and agree that designations relating to the Land are subject to the Designations Deed.

**3.3.2.8 Lessor's Costs**

All costs reasonably incurred by the Lessor in respect of any proposed Sublease or Grant (whether or not it proceeds to completion) shall be paid by the Lessee.

**3.3.2.9 Leases of Buildings**

Notwithstanding that Land (as defined) does not include buildings, and that buildings on the Land are capable of separate ownership pursuant to section 6(8) of the New Zealand Railways Corporation Restructuring Act 1990, and subject to any right the Lessee may have under this Lease to remove buildings

on the Land, the Lessee will not enter into any agreement to lease or to grant rights of occupation or use of any building or part of any building owned by the Lessee on the Land which:

- (i) may involve a breach of Clause 3.3.2.2; or
- (ii) is for a term (including all rights of renewal) which exceeds 7 years, except pursuant to a Sublease granted in accordance with Clause 3.3.2.3A.

**3.3.2.10 Section 109(2) Property Law Act 1952**

Any assignment or underletting of the interest of the Lessee within the meaning of Section 109(2) of the Property Law Act 1952 shall be deemed to be a breach of this Lease.

**3.3.2.11 Delegated Powers of Lessee**

Nothing in this Lease shall prevent the Lessee from exercising any powers delegated to it by the Lessor from time to time in respect of the Land.

**3.3.2.12 Lessor Granting Rights to Other Parties**

Without prejudice to the rights of the Access Provider under Clauses 10 and 11 of the Access Agreement, if the Lessor in its absolute discretion wishes to grant an easement or other right of use or occupation of or over the Land which would interfere with the quiet enjoyment by the Lessee of its rights under this Lease, then:

- (i) The Lessor shall give notice to the Lessee giving full details of the proposed grant and the part or parts of the Land to which it applies; and
- (ii) The Lessee shall as soon as practicable, but in any event not later than one month from the receipt of the notice, notify the Lessor in writing whether it approves the proposed grant. The decision whether to approve shall be at the absolute discretion of the Lessee.

**3.3.2A Transfer of Sublease on Termination or Deletion of Land**

If this Lease is terminated in respect of any Land, or any Land is deleted from this Lease under any provision of this Lease:

- (a) any Sublease or Grant granted in accordance with this Lease (in the case of a termination), or granted in accordance with this Lease and relating to that Land or any building or other improvement on that Land (in the case of a deletion), shall, subject to Clause 3.3.2A(c), remain in effect following the termination or deletion as if it had been granted by the Lessor; and
- (b) subject to Clause 3.3.2A(c), the Lessee will do everything necessary on its part to transfer its interest in the Sublease or Grant to the Lessor or its nominee as soon as practicable; but

- (c) notwithstanding Clauses 3.3.2A(a) or (b) or any other provision of this Lease, unless otherwise agreed by the Lessor in writing (and at its absolute discretion) in any particular case, no obligations under a Sublease or Grant shall be transferred to the Lessor or its nominee if they would be more onerous on the Lessor than the obligations of the Lessor under this Lease. Each document recording a Sublease or Grant shall contain an acknowledgement to this effect by the sublessee or grantee, as the case may be.

### 3.3.3 **Lessor's Right to Review Use or Future Use of Land**

3.3.3.1 Except where the Lessor's rights of review have been suspended pursuant to any other provision of this Lease, the Lessor is entitled at its absolute discretion, in accordance with Schedule E, to carry out a review of whether:

- (i) any Land is being used for Rail Purposes; and
- (ii) at any time after 30 June 2006 (subject to Clause 3.3.3.6), any Land classified as being held for Future Rail Purposes is required for those purposes;

whether the Land in either case (or any building on the Land) is used or occupied by the Lessee or by a sublessee or other person deriving its right of occupation or use from the Lessee.

3.3.3.2 The entitlement to review in this Clause 3.3.3 shall not apply to the Released Land for the period starting on the Variation Date and ending on 30 June 2006 (subject to Clause 3.3.3.6).

3.3.3.3 The process for review under Clause 3.3.3.1(i) shall be as set out in Part A of Schedule E. The process for review under Clause 3.3.3.1(ii) shall be as set out in Part B of Schedule E.

3.3.3.4 If the Lessee enters into a Sublease or Grant over any building or part of any building on any Land, then the Lessor will in respect of such Sublease or Grant, have the same rights to review that Sublease or Grant under this Clause 3.3.3 as for Land as a means of investigating whether the Land occupied by that building should be deleted from the operation of this Lease.

3.3.3.5 Any Land deleted from this Lease as a result of a review under Schedule E shall be yielded up by the Lessee in accordance with Clause 4.4.8.

3.3.3.6 Nothing in Clauses 3.3.3.1(ii) or 3.3.3.2 shall prevent the carrying out of any Impact Review pursuant to Schedule D.

### 3.3.4 **Pre-Approval Rights**

3.3.4.1 The Lessee may by notice seek the written approval of the Lessor that a proposed activity or activities on the Land is for Rail Purposes or that Land be classified as required for Future Rail Purposes.

3.3.4.2 The process for dealing with any such request shall be as set out in Schedule G and any decision made pursuant to it shall be binding as set out in that Schedule.

3.3.5 **Sharing of Sublease Income**

All Sublease Income shall be treated in the manner set out in Schedule F.

3.4 **Air Rights**

Deleted

3.5 **Additions to Land**

3.5.1 There may be additions to the Land by the classification or reclassification of other land of the Lessor as Land to be leased. Those additions shall take effect:

3.5.1.1 Deleted

3.5.1.2 Deleted

3.5.1.3 Deleted

3.5.1.4 Deleted

3.5.1.5 following agreement to include land inadvertently excluded or wrongly classified; or

3.5.1.6 Deleted

3.5.1.7 following agreement to include any other land in the Lease, whether pursuant to Clause 3.5.2A or otherwise.

3.5.2 That additional land shall form part of the Land as defined herein when it is identified and recorded pursuant to Clause 3.7.1.

3.5.2A The parties acknowledge that the Agreement for Sale and Purchase contains certain provisions allowing for the addition of land to the Land, and agree to be bound by those provisions.

3.6 **Land inadvertently included in this Lease**

3.6.1 The parties may identify any land that has been inadvertently included in the Land. That land shall no longer form part of the Land when it is identified and recorded pursuant to Clause 3.7.1.

3.6A **Lessor to Advise Lessee Before Sale or Lease**

3.6A.1 If at any time during the Term the Lessor wishes to:

3.6A.1.1 sell any land previously included in this Lease; or

3.6A.1.2 grant a lease of any land previously included in this Lease for a term (including any renewal terms) of 7 years or more and at an initial annual rent of \$25,000 plus GST or more (such figure to be adjusted annually in the manner set out in Clause 4.12);

then the Lessor shall, before entering into such a transaction (“the Transaction”):

- 3.6A.1.3 advise the Lessee in writing of the Lessor’s intention to enter into the Transaction; and
  - 3.6A.1.4 consider in good faith any proposal by the Lessee for the Lessee itself to use the land in question for Rail Purposes, provided such proposal is notified to the Lessor within 20 working days after receipt by the Lessee of the advice referred to in Clause 3.6A.1.3.
- 3.6A.2 For the avoidance of doubt, the Lessee acknowledges that the Lessor may enter into the Transaction, subject only to complying with Clause 3.6A.1.

**3.7 Record of Variations to Land Area**

- 3.7.1 The parties shall take all reasonable steps to ensure that any variation to the Land and the effective date thereof are clearly recorded by correspondence and in the Register, or other mutually acceptable means.
- 3.7.2 The grant in respect of additional land, and the surrender in respect of land removed from the scope of this Lease, in each case as provided for in Clause 3.1, shall apply to all variations to the Land recorded pursuant to this Clause 3.7.
- 3.7.3 Either party may call upon the other to execute a formal variation of this Lease, to record additions to and deletions from the Land since the previous variation. The reasonable costs of the other party shall be met by the party seeking the formal variation.

**3.8 Other Rail Operators**

Deleted

3.9 Deleted

**3.10 Adjustments to Rail Corridors**

Deleted

**3.11 Investigation Sites**

Deleted

**CLAUSE 4: RIGHTS AND OBLIGATIONS OF PARTIES**

**4.1 Use**

The Lessee shall have the exclusive right to use, occupy and enjoy the Land during the Term but subject to the terms of this Lease and to the following:

- 4.1.1 The Lessee shall, unless otherwise provided for in this Lease, use the Land and all parts thereof throughout the Term only for Rail Purposes, except where:
  - 4.1.1.1 the Land is required for Future Rail Purposes or is subject to a Future Rail Purposes Review; or
  - 4.1.1.2 the Lessor, at its absolute discretion, has consented in writing to another use of the Land.

- 4.1.2 Deleted
- 4.1.3 The Lessee shall not during the Term take any action or knowingly suffer or allow any action to be taken (including the removal of Infrastructure) which will or may, directly or indirectly:
  - 4.1.3.1 interrupt or cause to be interrupted the linear continuity of the whole or any part of the Rail Network; or
  - 4.1.3.2 prevent or impede or cause to be prevented or impeded the carrying on of railway operations over the whole or any part of the Rail Network.
- 4.1.4 This Lease is granted subject to the rights of the grantees or holders of all leases, licences, easements, grants of use or occupation or other rights granted to or held by the Corporation or any other parties with respect to the Land at the Commencement Date.
- 4.1.5 Subject to the provisions of Clause 3.3.5, the Lessee shall be entitled to all revenues from the Land and shall pay and discharge all outgoings and liabilities of or in respect of the Land in accordance with Clause 2.2.
- 4.1.6 The Lessee shall, to the extent that it is legally capable of doing so, observe and perform all agreements, duties, liabilities and obligations of the Lessor in respect of the Land at the Commencement Date and in respect of the use or occupation thereof including, without limitation, the performance of all obligations to other parties in respect of the matters referred to in Clause 4.1.4.
- 4.1.7 The Lessee shall allow any other party holding from the Lessor at the Commencement Date or holding as permitted by this Lease in respect of the Land, rights of occupation, access, passage, easement, charge, use or any rights or benefits whatever, the full and unimpeded use of such rights or benefits according to the terms upon which such rights or benefits were conferred, and shall:
  - 4.1.7.1 Not do, knowingly suffer or allow to be done anything on or in respect of the Land or any adjoining land which the Lessee owns or occupies or otherwise has control over, which would interfere with such rights or benefits; and
  - 4.1.7.2 Carry out the obligations of and protect the Lessor in respect of such rights or benefits to the extent that the Lessee may legally do so as Lessee hereunder.
- 4.1.8 The use or occupation of minor and insignificant areas of the Land for purposes other than those required by Clause 4.1.1, such as cell phone towers or advertising hoardings, shall not in itself mean that the Land is not being used for the purposes specified in Clause 4.1.1.

#### 4.1A **Freight Villages**

- 4.1A.1 The Lessee may from time to time propose new areas of Land as Freight Villages, or propose that the boundaries of existing Freight Villages be altered, subject in all cases to the Lessor's approval. Such approval shall not be unreasonably withheld. The Lessor, in considering whether or not to give its approval, shall give prime consideration to:

- 4.1A.1.1 whether the Lessee's proposal is likely to be beneficial to maintaining or improving the volume of freight carried by rail, and/or is likely to facilitate the effective provision of Rail Services; and
- 4.1A.1.2 whether the area of Land subject to the Lessee's proposal is of an appropriate size for the proposed operations.
- 4.1A.2 If any Land has been recorded as a Freight Village for a period of 10 years or more, but the Lessor believes that that Land no longer satisfies the definition of a Freight Village, the Lessor may initiate a Rail Purposes Review or a Future Rail Purposes Review in respect of that Land.
- 4.1A.3 The Register shall be updated as necessary to record any changes to the Freight Village details pursuant to this Clause 4.1A.

#### 4.2 **Lessee not to charge assets subject to reversion**

Deleted

#### 4.3 **Land Sales**

- 4.3.1 The Lessee shall during the term of this Lease co-operate with and take reasonable steps to assist the Lessor in the Lessor's land sales with the objective of achieving an optimum return from such sales, consistent with the rights of the Lessee under this Lease or the Licence. In addition but subject to the Lessee's consent, which shall not be unreasonably withheld or delayed, and to the requirements of the Lessee pursuant to Clause 4.3.2, the Lessee shall:
  - 4.3.1.1 At the Lessor's cost, permit the Lessor to continue to use all existing drains, waterways, easements and services pertaining to the land of the Lessor adjoining or neighbouring the Land and, where any of such land is sold or subdivided, to allow the benefit thereof to run with such land;
  - 4.3.1.2 At the request and expense of the Lessor, and without consideration, grant to any purchaser or lessee from the Lessor, rights in relation to any of the matters referred to in Clause 4.3.1.1 on terms and conditions which the Lessor has customarily set when granting such rights;
  - 4.3.1.3 At the request of the Lessor, negotiate in good faith with the Lessor with respect to any future easements, rights of way and other services reasonably required by the Lessor in connection with its land sales;
  - 4.3.1.4 Permit the Lessor, its employees and agents access to the Land from time to time in accordance with procedures to be agreed between the Lessor and the Lessee, for the purposes of carrying out any surveys, installing pipes and other services and attending to the maintenance thereof and any other work or activity reasonably necessary to enable the Lessor to carry out its land sales.
- 4.3.2 In granting its consent pursuant to Clause 4.3.1 the Lessee may in its absolute discretion require that its reasonable costs of attending to the matters referred to in that Clause be reimbursed by the Lessor and may also in its absolute discretion impose on the Lessor or any purchaser or lessee from the Lessor reasonable conditions to ensure that the continuation of the Lessee's use of the Land for Rail Purposes or retention of it for Future Rail Purposes is not interfered with unreasonably.

#### 4.4 **Lessee's other covenants**

During the Term the Lessee shall:

##### 4.4.1 **Comply with Statutes**

Comply with the provisions of all statutes, regulations, by-laws and other enactments or legally binding local body requirements affecting the Land or relating to any works or operations carried out on the Land by the Lessee and observe all legally binding environmental, health and safety requirements relating to the Land.

##### 4.4.2 **Railway Operations**

Deleted

##### 4.4.3 **Maintain public risk insurance**

Obtain and keep in full force and effect with a reputable insurance office during the Term a public risk policy of insurance for a reasonable sum and on reasonable terms and conditions and advise the Lessor from time to time of the nature and extent of such cover.

##### 4.4.4 **Cause employees and others to comply**

At all times during the Term and in every reasonable manner require and cause its contractors, subcontractors, employees, agents, invitees and licensees to observe and perform the provisions, terms and conditions of this Lease and the duties and obligations on the Lessee's part to be observed and performed hereunder.

##### 4.4.5 **Access to Records**

4.4.5.1 Permit the Lessor and its employees, agents and nominees access at all reasonable times to any information relating to the Land, relevant to compliance with the Lessee's obligations under this Lease and held by the Lessee in any form. The Lessee shall make no charge for access to records and plans but shall be entitled to charge a reasonable fee to cover costs involved in supplying any other information; and

4.4.5.2 Store and maintain such information, records and plans to a reasonable standard.

##### 4.4.6 **Indemnity**

Save harmless and fully indemnified the Corporation, the Minister of Railways, the Minister of Finance, the Minister for State-Owned Enterprises and the Government of New Zealand, their employees, agents and contractors from and against all actions, claims, demands, losses, damages, costs and expenses for which the Lessor shall or may be or become liable in respect of and arising from:

4.4.6.1 Any cost, loss, damage or injury to property or Person caused or contributed to by the Lessee or its contractors, employees, agents or invitees or by the occupation or use of the Land by the Lessee or its contractors, employees, agents or invitees;

- 4.4.6.2 Any cost, loss, damage or injury to property or persons on or off the Land caused or contributed to by any act, omission, neglect, breach or default on the part of the Lessee or its contractors, employees, agents or invitees;
- 4.4.6.3 The failure by the Lessee to comply with any of its obligations under this Lease;
- 4.4.6.4 The failure of the Lessee to comply with any of its obligations under any grant, easement or other right of use or occupation of the Land made pursuant to any agreement entered into prior to the Commencement Date, made as permitted under the terms of this Lease or entered into pursuant to any statute or regulation.

For the avoidance of doubt, the parties acknowledge and agree that the expression “the Lessee or its contractors, employees, agents or invitees” does not include any person who has been granted rights to be on the Land pursuant to either the Access Agreement or the Auckland Access Agreement and is on the Land in that capacity (and not as a contractor, employee, agent or invitee of the Lessee).

#### 4.4.7 **Lessee’s Risk**

Occupy and use the Land at the Lessee’s risk in all things and indemnify and release the Lessor from and against all claims and demands of any kind and from all cost or liability which may arise in respect of any accident, damage or injury occurring to the Lessee or any other person or any property in or about the Land as a result of any act or omission of the Lessee.

#### 4.4.8 **Condition on Yielding up**

Forthwith upon the expiration of the Term or sooner determination of this Lease, or upon the deletion of any Land from this Lease (otherwise than in accordance with Clause 3.3.1.2), peaceably surrender and yield up to the Lessor the Land (or the Land deleted from this Lease, as the case may be) in a condition free of significant hazards to members of the public and clean and free from rubbish.

#### 4.4.9 **Use of Easements and Services**

The Lessee shall during the Term:

- 4.4.9.1 Permit the Lessor to continue to use all existing drains, waterways, easements, rights of way and services pertaining to any of the Land which adjoins or neighbours any other land of the Lessor.
- 4.4.9.2 At the request of the Lessor, negotiate in good faith with respect to any future easements, rights of way and other services over the Land as reasonably required by the Lessor.
- 4.4.9.3 Permit the Lessor and its employees and agents reasonable access to any Land from time to time in accordance with procedures to be agreed between the Lessor and the Lessee, for the purposes of carrying out any surveys, installing pipes and other services and attending to the maintenance thereof and any other work or activity reasonably required by the Lessor in relation to any of the matters referred to in Clause 4.4.9.1.

#### 4.5 Lessor's covenants

The Lessor shall during the Term:

- 4.5.1 Permit the Lessee to continue to use all existing drains, waterways, easements and services pertaining to any of the Land which adjoins or neighbours any other land of the Lessor and where any of such land is sold or subdivided, ensure that the Lessee continues to have those rights or provide alternative facilities for the Lessee.
- 4.5.2 If requested by the Lessee, grant to the Lessee at the Lessee's expense, easements and rights of way in relation to any of the matters referred to in Clause 4.5.1. The Lessor shall meet and reimburse all costs of providing rights to the Lessee under this Clause 4.5.2 if the requirement arises as a consequence of the sale or disposition of land by the Lessor.
- 4.5.3 At the request of the Lessee, negotiate in good faith with respect to any future easements, rights of way and other services reasonably required from the Lessor by the Lessee for Rail Purposes or Future Rail Purposes. The Lessor shall meet and reimburse all costs of providing rights to the Lessee under this Clause 4.5.3 if the requirement arises as a consequence of the sale or disposition of land by the Lessor.
- 4.5.4 Permit the Lessee, its employees and agents, reasonable access to any other land of the Lessor from time to time in accordance with procedures to be agreed between the Lessor and the Lessee, for the purposes of carrying out any surveys, installing pipes and other services and attending to the maintenance thereof and any other work or activity reasonably necessary to enable the Lessee to use the Land for Rail Purposes.
- 4.5.5 Give reasonable notice to the Lessee of all proposed sales of any of the Lessor's land contiguous to the Land.
- 4.5.6 Deleted
- 4.5.7 Not grant rights over the Land which would in any way derogate from the rights of the Lessee, without the written consent of the Lessee.
- 4.5.8 Permit the Lessee, upon paying the rent hereby reserved and performing and observing the covenants, provisos, conditions and agreements herein contained and on the part of the Lessee to be paid, observed and performed, peaceably to hold and enjoy the Land (subject to the provisions of this Lease) without hindrance or interruption by the Lessor or by any person or persons claiming under the Lessor until the expiration or sooner determination of this Lease.
- 4.5.9 Deleted
- 4.5.10 Permit the Lessee and its employees, agents and nominees access at all reasonable times to any information relating to the Land, relevant to compliance with the Lessor's obligations under this Lease and held by the Lessor in any form. The Lessor shall make no charge for access to records and plans but shall be entitled to charge a reasonable fee to cover costs involved in supplying any other information.

4.5.11 Pay interest (at the Base Rate plus 2 percentage points per annum) on any moneys owing by the Lessor to the Lessee on any account whatsoever pursuant to this Lease if those moneys shall be in arrear and unpaid for 10 working days after formal or legal demand for payment has been made. This Clause 4.5.11 is without prejudice to the other rights, powers and remedies of the Lessee under this Lease.

#### 4.5A **Dispute Resolution**

- 4.5A.1 If a dispute between the Parties in respect of this Lease remains unresolved for a period of 10 working days (“the Dispute”), each of the Parties will designate a senior manager or officer to review the Dispute and use every reasonable effort to develop a workable resolution to the Dispute. If the Dispute remains unresolved for a further period of 10 working days, it will be referred to the Chief Executive Officer of the Corporation and the Lessee’s designated Senior Manager, and they shall each use every reasonable effort to develop a workable resolution to the Dispute.
- 4.5A.2 If the Dispute remains unresolved for a further period of 10 working days, it will be referred for Expert Determination in accordance with the following provisions of this Clause 4.5A.
- 4.5A.3 Where a Dispute is to be referred for Expert Determination, the Parties shall endeavour to agree on the type or types (e.g. legal, valuation or engineering), number and identity of Experts required to determine the Dispute. In the absence of such agreement, the Parties shall request the President for the time being of the New Zealand Law Society to appoint the Expert(s).
- 4.5A.4 With any Expert Determination:
- 4.5A.4.1 The timing and content of the process for the determination will be set by the Expert; and
- 4.5A.4.2 Subject to any conflicting cost-allocation provisions in Schedules D, E and G, the Expert will decide on an appropriate allocation, as between the Parties, of the Expert’s costs.
- 4.5A.5 Where the Dispute:
- 4.5A.5.1 has no obvious financial implications; or
- 4.5A.5.2 has or may have financial implications which are not able to be readily-quantified; or
- 4.5A.5.3 has financial implications, and the difference between the Parties can be quantified as:
- 4.5A.5.3.1 a “one off” monetary figure which is less than the Capitalisation Threshold; or
- 4.5A.5.3.2 an annual cost or annual income stream with a Capitalised Value which is less than the Capitalisation Threshold;
- the decision of the Expert will be final and binding on the Parties, subject to Clause 4.5A.6.
- 4.5A.6 Where the Dispute is of such a nature that the outcome of the Dispute will, in the reasonable opinion of either Party, establish a precedent under this Lease that will have financial

implications on either Party equal to or greater than the Capitalisation Threshold, then either Party may, after the Expert Determination has been concluded, have the matter finally resolved through Court proceedings.

4.5A.7 Where the Dispute has financial implications, and the difference between the Parties can be quantified as:

4.5A.7.1 a “one off” monetary figure which is equal to or greater than the Capitalisation Threshold; or

4.5A.7.2 an annual cost or annual income stream with a Capitalised Value which is equal to or greater than the Capitalisation Threshold;

then either Party may, after the Expert Determination has been concluded, have the matter finally resolved through Court proceedings.

#### 4.6 **Lessor’s right on default**

Whenever the Lessee fails without reasonable cause to comply with the provisions of this Lease, the Lessor (without prejudice to any of the remedies of the Lessor) shall be entitled after giving reasonable notice to the Lessee to enter on the Land for the purposes of ensuring due compliance. The reasonable costs of and incidental to any actions of the Lessor or its agents in relation thereto shall be recoverable from the Lessee upon demand.

#### 4.7 **Rights not severable**

The Lessor shall take reasonable steps during the term to comply with any reasonable request from the Lessee relating to the enforcement or exercise of any rights of the Lessor that are not severable from the Lessor’s estate in the Land.

#### 4.8 **Property Records**

For the purposes of clarification it is recorded that ownership of the Register and all other property information, plans and records relating to the Land shall always remain with the Lessor. Any such items in the possession of the Lessee at the expiry or sooner determination of this Lease will be given by the Lessee to the Lessor.

#### 4.8A **Register**

4.8A.1 The Parties have agreed to create and update a Register. The purpose of the Register is to keep up-to-date records of:

4.8A.1.1 the Land from time to time subject to this Lease (making allowances for additions and deletions);

4.8A.1.2 the status of the Land subject to this Lease, e.g. which Land is designated as a Freight Village, or Released Land or is potentially surplus;

4.8A.1.3 the Land Transactions and progress with them; and

4.8A.1.4 such other matters as the Parties may agree on from time to time.

4.8A.2 The Register will be created and updated by the Lessor, as required by this Lease and as otherwise as agreed with the Lessee. There shall be 2 copies of the Register, with one copy to be held by each Party (subject to Clause 4.8).

4.8A.3 Once the Register has been created, and each time it is updated, the Lessor shall seek written acknowledgement from the Lessee that the Register in its then current form is accurate to the best of the Lessee's knowledge and belief (after the Lessee has made any inquiries that may be reasonably required). The Lessor shall provide the Lessee with all information held by the Lessor and reasonably necessary to enable the Lessee to give such acknowledgement on an informed basis. Such acknowledgement shall be given only by a duly authorised officer of the Lessee (as notified to the Lessor from time to time) and will not be unreasonably withheld or delayed.

4.8A.4 The contents of the Register, once acknowledged pursuant to Clause 4.8A.3, will be deemed to be part of this Lease.

#### 4.9 **No Fencing Liability on Lessor**

The Lessor shall not be liable nor be called upon to erect or repair or contribute towards the cost of erection or repair of any boundary fence.

#### 4.10 **No Compensation for Buildings or Improvements**

4.10.1 Subject to Clauses 3.3.1.6 and 4.10.2, and Schedules E and H, upon the expiration or earlier termination of the Term in respect of the Land or any part of the Land, or upon the deletion of any Land from this Lease, all buildings and other improvements on such Land shall be deemed to have become the sole and exclusive property of the Lessor. The Lessor will not be required to pay any compensation whatsoever to the Lessee.

4.10.2 In the case of early termination, or the deletion of any Land from this Lease, the Lessee shall have a reasonable time to remove such buildings and other improvements (but not any Infrastructure), such reasonable time to be no longer than 6 months. In attending to any such removal, the Lessee shall not cause or allow any breach of Clauses 10 or 11 of the Access Agreement.

4.10.3 Nothing in this Clause 4.10 applies to:

4.10.3.1 Deleted

4.10.3.2 any deletion of Land from this Lease pursuant to Schedules E or H.

#### 4.11 **Official Information Act 1982**

If a request is made to the Lessor under the Official Information Act 1982 for the release of information in relation to the Land as held at any time, whether before or after the Vesting Date, then the Lessor shall, except to the extent that the Lessee agrees otherwise:

4.11.1 Forthwith inform the Lessee of the request and its terms;

4.11.2 Consult with the Lessee prior to the release of any information (and take due account of any reasonable views of the Lessee in regard to the confidentiality of that information); and

4.11.3 Before, or (as near as practicable) contemporaneously with, the release of any information provide to the Lessee details of the information which is to be released.

#### 4.12 Adjustment to Capitalisation Threshold

4.12.1 On each anniversary of the Variation Date (an “Anniversary Date”) the Capitalisation Threshold shall be adjusted in accordance with any adjustment in the CPI. Such adjustment shall be calculated as follows:

$$NCT = CT \times \frac{B}{A}$$

where:

*NCT* = The new Capitalisation Threshold to apply from the Anniversary Date;

*CT* = The Capitalisation Threshold for the 12 month period immediately preceding the Anniversary Date;

*B* = The most recently-published quarterly CPI figure preceding the Anniversary Date; and

*A* = The CPI figure for the equivalent quarter date 12 months earlier.

4.12.2 An example of the application of the CPI Formula is as follows:

- Assumptions:
- (a) Variation Date is 30 June 2004;
  - (b) Anniversary Date is 30 June 2005;
  - (c) *CT* is \$300,000;
  - (d) *B* is 1,050 (being the quarterly CPI Figure as at 31 March 2005); and
  - (e) *A* is 1,000 (being the quarterly CPI figure as at 31 March 2004).

Capitalisation Rate with effect from 30 June 2005 (*NCT*) is:

$$\$300,000 \times \frac{1,050}{1,000} = \$315,000$$

(representing a 5% increase in the CPI over the period starting on 1 April 2004 and ending on 31 March 2005).

### CLAUSE 5: DEFAULT BY LESSEE

#### 5.1 Default by Lessee

The Lessee will be in default if at any time during the Term:

- 5.1.1 Any rent or other moneys payable by the Lessee are in arrears for one month after it has become due and formal demand therefor in writing has been made; or
- 5.1.2 The Lessee commits, permits or suffers to occur any breach or default in the due and punctual observance and performance of any of the terms of this Lease and

such default is continued for one month after notice requiring the default to be remedied; or

5.1.3 Deleted

5.1.4 The Lessee is not a company and:

5.1.4.1 A creditor's petition in bankruptcy is presented against the Lessee; or

5.1.4.2 The Lessee commits an act of bankruptcy within the meaning of Section 19 of the Insolvency Act 1967; or

5.1.5 The Lessee is a company and:

5.1.5.1 An order is made or a resolution is effectively passed for the winding up of the Lessee; or

5.1.5.2 The Lessee goes into liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation approved in writing by the Lessor).

5.1.6 Deleted

5.1.7 Deleted

## 5.2 **Effect of Default**

If the Lessee is in default under Clause 5.1, then notwithstanding any prior waiver or failure to take action by the Lessor or any indulgence granted by the Lessor to the Lessee in respect of any such matter or default whether past or continuing, the Lessor or any person duly authorised by the Lessor may at its absolute discretion re-enter upon the Land or any part in the name of the whole and thereby determine the estate of the Lessee. That re-entry will not release the Lessee from any liability in respect of the breach or non-observance of any covenants conditions agreements and restrictions of this Lease and will be without prejudice to any action or other remedy which the Lessor has or might or otherwise could have for arrears of rent or breach of covenant or for damage as a result of any such event.

## 5.3 **Interest on Unpaid Moneys**

Without prejudice to the other rights, powers and remedies of the Lessor under this Lease, if any rent or other moneys owing by the Lessee to the Lessor on any account whatsoever pursuant to this Lease shall be in arrear and unpaid for 10 working days after formal or legal demand for payment has been made, such moneys shall bear interest calculated at the Base Rate plus 2 percentage points per annum.

## 5.4 **Lessor may remedy Lessee's Default**

Without prejudice to the other rights powers and remedies of the Lessor the Lessor may at its absolute discretion elect to remedy at any time upon reasonable notice any default by the Lessee under this Lease. Whenever the Lessor so elects, all costs and expenses incurred by the Lessor (including legal costs and expenses) in remedying such default shall be paid by the Lessee to the Lessor forthwith on demand.

## 5.5 **Distraint**

The Lessor may at its absolute discretion distraint for rent or any other moneys payable by the Lessee to the Lessor under this Lease which is in arrears or unpaid for one month after it has become due and payable and been legally demanded. This right shall not extend to permit any action by the Lessor which would jeopardise safety or the operation of rail or maritime transport or telecommunications systems.

## **CLAUSE 6: COSTS**

6.1 In addition to the rent and other moneys reserved by this Lease the Lessee shall pay all costs, charges and expenses for which the Lessor shall become liable in consequence of or in connection with any breach or default by the Lessee in the performance or observance of any of the terms, covenants and conditions of this Lease.

## **CLAUSE 7: TERMINATION**

### **7.1 Reversion of Certain Leasehold Lands**

7.1.1 The parties recognise that, by virtue of Clause 3 of the New Zealand Rail Limited Vesting Order 1990 and Clause 14 of the First Schedule to that Order, certain rights, interests and obligations were vested in the Lessee in respect of leases, easements, grants and other interests in land given by third parties (originally in favour of the Corporation or the Lessor). Upon the expiry or termination of this Lease those rights, interests and obligations, so far as they still exist vested in the Lessee, shall:

7.1.1.1 To the extent that they are rights or interests in land which would be part of the Rail Network if they were on Land subject to the Lease, be assigned to and vested in the Lessor; and

7.1.1.2 Deleted

7.1.1.3 To the extent that Clause 7.1.1.1 does not apply, remain vested in the Lessee and will not be affected by the expiry or termination of this Lease.

7.1.2 If this Lease terminates in respect of part of the Land, the provisions of Clause 7.1.1 shall apply in respect of that part.

7.1.3 The Lessee shall during the term take reasonable steps to ensure that all rights, interests and obligations referred to in Clause 7.1.1 are maintained in full force and effect to the extent necessary to preserve the linear continuity of the Rail Network.

### **7.2 Events Causing Termination or Partial Termination**

This Lease shall terminate in respect of any particular part or parts of the Land:

7.2.1 Upon deletion of such part or parts from this Lease under any provision of this Lease;

7.2.2 Deleted

7.2.3 Deleted

7.2.4 Deleted

- 7.2.5 Deleted
- 7.2.6 Deleted
- 7.2.7 If such part or parts are expropriated or acquired (by agreement or compulsorily) under the provisions of the Public Works Act 1981 or any legislation or power to similar effect;
- 7.2.8 Upon the vesting of that part or parts in, or purchase of them by, the Lessee; or
- 7.2.9 Deleted
- 7.2.10 Where the parties agree that such part or parts shall be deleted from the operation of this Lease.

**7.3 Termination of Continuing Rights**

Deleted

**CLAUSE 8: RIGHT OF RENEWAL**

- 8.1 If the Lessee shall during the Term duly and punctually pay the rental payable hereunder and duly observe and perform the terms of this Lease on the Lessee's part to be complied with and shall give notice in writing to the Lessor at least 6 months prior to the expiration of the term of the Lessee's desire to take a new Lease of the Land, then the Lessor will at the cost of the Lessee grant the Lessee a renewal of the Lease for the period of renewal specified in Schedule A, such further term to run from the expiry of the preceding term and to be at the same rental as that agreed upon for the initial term. Such renewed lease shall otherwise be upon and subject to the same covenants, conditions and restrictions as are herein contained and implied except for this right of renewal so that the period of this Lease plus the renewal shall not extend beyond 31 December 2070.

**CLAUSE 9: TITLE TO LAND**

- 9.1 The parties believe that the Lessor has the necessary rights of ownership, occupation or usage over the Land to grant this Lease, but the Lessor shall have no liability for any defect in title or right of occupation or usage that may exist, now or in the future.
- 9.2 The parties acknowledge that before the Commencement Date the Lessor had, and on and from the Commencement Date the Lessee has, been administering acquisitions and dispositions of land pursuant to powers under the New Zealand Railways Corporation Act 1981, the Public Works Act 1981 and elsewhere, so that all of the Land will be held by the Crown for railways purposes or by the Corporation ("the Land Transactions"), and agree that:
  - 9.2.1 From the Commencement Date, to the extent that any Land Transactions have not been initiated and/or completed (whether those Land Transactions commenced before, on, or after the Commencement Date), the Lessee will use its reasonable endeavours to complete those Land Transactions as soon as practicable;
  - 9.2.2 Deleted
  - 9.2.3 The Lessee will pay all the costs of completing the Land Transactions;

- 9.2.4 The Lessee shall, on each anniversary of the Variation Date, report in writing to the Lessor on the Land Transactions completed during the previous 12 months and the Land Transactions still to be completed; and
- 9.2.5 Deleted
- 9.2.6 Deleted
- 9.3 To the extent that the Lessee requires any act to be taken in the name of the Lessor in relation to Clause 9.2, or in order to remedy any defects referred to in Clause 9.1, or requires administrative assistance and access to records which are only available from the Lessor, the Lessor, will, at the Lessee's expense, provide all reasonable assistance.
- 9.4 The Lessee may in its absolute discretion and at its cost acquire any land or interest in land, or dispose of any land or interest in land other than Land under this Lease.
- 9.5 The Lessor shall assist the Lessee and will take reasonable steps to do any act or thing to enable this Lease to be registered in respect of all or any part of the Land pursuant to the Land Transfer Act 1952, subject where applicable to Clauses 3.3.2.2 and 3.3.2.2A. The Lessee may register a caveat to protect its interest hereunder. The Lessee will meet any reasonable costs of the Lessor in arranging for registration.

**CLAUSE 10: AMENDMENTS TO SCHEDULES**

- 10.1 Deleted

**CLAUSE 11: FURTHER ACTS**

- 11.1 Each of the parties to this Lease shall, at the request of the other party, take all reasonable steps to execute and deliver any further documents or assurances and do all acts and things that the other party may reasonably require to carry out the true intent and meaning of this Lease.

**CLAUSE 12: ACCESS AGREEMENT**

- 12.1 This Lease, the Lessee's rights under this Lease and the rights of any other party who may have or acquire an interest in the Land are subject to Clauses 7.1, 10, 11 and 19.7 of the Access Agreement and Clauses 2.2 and 6.4(b) of the Auckland Access Agreement.

## **SCHEDULE C**

### **Land**

Subject always to the definition of “Land” in Clause 1.1.6, and subject to any necessary adjustment in accordance with Clause 2.4 of the Agreement for Sale and Purchase, the Land is approximately described as follows:

- Those areas shown outlined in blue on the attached plans and maps (and described as “Retained Land”);
- The areas shown outlined in green on the attached plans and maps (and described as “Released Land” and “Reconfiguration Land”) but excluding that part of the Released Land as comprises the First Tranche (the terms “Released Land” and “First Tranche” being defined in Paragraph 2 of Schedule 11 of the Agreement for Sale and Purchase); and
- On the plans and maps described as “Wellington Metro” plans and maps, those parts of the areas shown hatched in yellow that are marked as “Station Buildings to remain Toll’s under the Core Lease”.

## SCHEDULE D

### Deletions for Public Works (Clause 3.3.1A)

1 **General:** The Parties have agreed upon the following process for dealing with any request from a Requiring Authority for Land to be deleted from this Lease and transferred to that Requiring Authority for a Public Work (“a Request”).

2 **Costs:** The Lessee is entitled to demand and receive from the Requiring Authority recovery of all actual and reasonable costs incurred by the Lessee in responding to the Request, including the actual and reasonable cost of the Lessee’s personnel. If the Requiring Authority fails to agree to and honour this entitlement:

- (a) the Lessee may, at its absolute discretion, refuse to deal with the Request (or to continue to deal with the Request, if applicable); and
- (b) the Lessor shall, if notified by the Lessee, refuse to deal with the Request.

The Lessor shall use all reasonable endeavours to ensure that any of its costs in responding to the Request are paid direct by the Requiring Authority, so that they are not deducted from the sale proceeds in terms of paragraph 11(a).

3 **Price and Terms:** If the Lessee is unable, despite having acted in good faith, to agree with the Requiring Authority on:

- (a) the sale price for the Land which is subject to the Request (“the Relevant Land”); or
- (b) the other terms of the sale of the Relevant Land;

the Lessee will have no obligation to further deal with the Request, unless otherwise required to do so under this Schedule D. The Lessee will not expect the Requiring Authority to pay an amount greater than the highest amount which the Relevant Land might be expected to realise if sold in the open market by a willing seller to a willing buyer (not being the Requiring Authority), without any reference to the value of the Relevant Land to the Requiring Authority.

4 **Lessor’s Agreement Required:** Notwithstanding anything to the contrary, no Land will be deleted from this Lease pursuant to this Schedule D without the Lessor’s written consent, which the Lessor may give or withhold at its absolute discretion.

5 **Potentially Surplus Land:** If the Relevant Land is Potentially Surplus Land, then for a period of 12 months after the Lessor agreed to the Relevant Land being reviewed as Potentially Surplus Land (in terms of paragraph 4 of Schedule H), neither party shall be required to deal with the Request or agree to the deletion of the Relevant Land from this Lease.

6 **Definitions:** For the purposes of the following paragraphs of this Schedule D:

- (a) Land being used for a Rail Purposes activity includes a width of Land on a Line Segment equal to the greater of:

- (i) the existing rail facilities relating to that Line Segment; and
  - (ii) the width required to encompass a double track and an access road, which in open flat terrain is about 20 metres;
- (b) Impact Criteria shall be deemed to apply to a Request, in relation to Land being used for Rail Purposes, if the granting of the Request and/or the work proposed to be undertaken on the Relevant Land by or on behalf of the Requiring Authority would have an adverse impact on a Rail Purposes activity being conducted on the Land, including adverse impacts relating to:
- (i) noise;
  - (ii) sight lines;
  - (iii) safety;
  - (iv) access; and
  - (v) the Rail Purposes activity being carried out on the Land (or any Rail Purposes activity carried out on the Land during the 5 year period immediately preceding the making of the Request if that Rail Purposes activity were to be again carried out on the Land in the future).
- (c) Impact Criteria shall be deemed to apply to a Request, in relation to Land held or required for Future Rail Purposes, if the granting of the Request and/or the work proposed to be undertaken on the Relevant Land by or on behalf of the Requiring Authority would be likely to have an adverse impact on a Rail Purposes activity on the Land, taking into account alternative methods of rail operation which may exist in the future, including adverse impacts relating to:
- (i) noise;
  - (ii) sight lines;
  - (iii) safety; and
  - (iv) access.

7 **Lessee May Refuse to Deal with Request:** The Lessee may refuse to deal with the Request if, in the Lessee's opinion, Impact Criteria apply to the Request.

8 **Procedure**

- (a) If the Lessee receives a Request, it shall, as soon as practicable and in any case within 45 working days, give written notice of the Request to the Lessor.
- (b) If the Lessee receives a Request it shall, as soon as practicable and (in situations where the Request is received more than 6 months after the Variation Date) within 45 working days of receiving confirmation that its costs will be paid by the Requiring Authority in terms of paragraph 2, advise the Lessor in writing that the Lessee has resolved that:
  - (i) Impact Criteria apply to the Request; and/or

- (ii) the Lessee is prepared to engage in without prejudice negotiations with the Requiring Authority.

9 **Disputes as to Impact Criteria**

- (a) If the Lessor disputes a resolution by the Lessee that Impact Criteria apply to the Request, the Lessor may initiate a review of whether or not Impact Criteria do, in fact, apply to the Request (“the Impact Review”).
- (b) Any Impact Review must be initiated by the Lessor within 45 working days after the Lessor receives the Lessee’s advice under paragraph 8(b).
- (c) The Impact Review may involve:
  - (i) the Lessor and/or its agents visiting the Relevant Land and interviewing the Lessee’s relevant personnel;
  - (ii) the Lessor requesting (and the Lessee providing) information regarding the current and historical use of the Relevant Land;
  - (iii) an inquiry by the Lessor into the Lessee’s reasons for resolving that Impact Criteria apply to the Request; and
  - (iv) such other matters as are relevant.
- (d) The Parties shall co-operate to ensure that the Impact Review is completed as soon as is reasonably possible, and preferably within 45 working days of the Impact Review starting (or such longer period as is reasonable). They shall also take all reasonable steps to minimise, as far as practicable, the effect of the Impact Review on the Lessee’s operations.
- (e) As soon as practicable, but not later than 45 working days after the Impact Review has been completed, the Lessor shall notify the Lessee of its conclusions in relation to the Impact Review and the reasons for them. Such conclusions shall be at the absolute discretion of the Lessor.
- (f) If, after completion of the Impact Review, the Lessor concludes that Impact Criteria do apply to the Request, it shall pay the Lessee’s actual and reasonable costs of the Impact Review, including a reasonable allowance for the actual and reasonable time spent by the Lessee’s personnel on the Impact Review.
- (g) If, after completion of the Impact Review, the Lessor concludes that Impact Criteria do not apply to the Request; and:
  - (i) the Lessee in its absolute discretion accepts this conclusion; or
  - (ii) the Lessee disagrees but the dispute is resolved in the Lessor’s favour under Clause 4.5A;then:
  - (iii) the Lessee shall pay the Lessor’s actual and reasonable costs of the Impact Review, including a reasonable allowance for the actual and reasonable time spent by the Lessor’s personnel on the Impact Review; and

(iv) the Lessee shall agree to the Request, subject to paragraph 3.

(h) Where there is any dispute about whether Impact Criteria apply to the Request, the party against whom the dispute is resolved will pay the other party's actual and reasonable costs of the dispute, including a reasonable allowance for the actual and reasonable time spent by that other party's personnel on the dispute.

10 **Lessee may Dispute:** Nothing in this Schedule D will prevent the Lessee from disputing with the Requiring Authority whether the Relevant Land is in fact required by the Requiring Authority for the Public Work.

11 **Division of Sale Proceeds:** If the Parties agree to the Relevant Land being deleted from this Lease and transferred to the Requiring Authority, the Lessee shall be entitled to the higher of:

(a) 45% of the net sale proceeds (i.e. net of any costs not payable by the Requiring Authority); and

(b) the Capitalised Value of the Lessee's share of any sublease income being generated by the Relevant Land at the time of the transfer;

subject however to paragraph 12.

12 **Higher Share of Sale Proceeds:** If:

(a) Impact Criteria apply to the Request; and

(b) the Lessee considers that the Relevant Land has value to the Lessee in an alternative use permitted under this Lease; and

(c) the possibility of the Relevant Land being used by the Lessee or another person for that alternative use is not reflected in the Lessee's share of net sale proceeds specified in paragraph 11(a), i.e. 45%;

the Lessee may negotiate in good faith with the Lessor for the Lessee to receive more than 45% of the net sale proceeds. If such negotiation fails to produce an agreement, the Lessee will have no obligation to further deal with the Request, unless otherwise required to do so under this Schedule D.

13 **Third Parties:** Nothing in this Schedule D shall obviate any liability of the Requiring Authority to compensate third parties for the loss of any interest for which they may be entitled to compensation.

## **SCHEDULE E**

### **Lessor's Right to Review Use of Land (Clause 3.3.3)**

#### **Part A: Review of Land used for Rail Purposes**

- 1 The Lessor may at any time, with reasonable cause, initiate a review of the use of Land claimed by the Lessee to be used for Rail Purposes, whether or not that Land is being used by the Lessee or by another person. The process for the review shall be as set out in the succeeding paragraphs of this Part A.

#### **Announce Intentions**

- 2 Prior to initiating the review, the Lessor shall give notice to the Lessee informing the Lessee of its intention to perform the review and providing its reasons why it questions whether the Land concerned ("the Review Land") is being used for Rail Purposes.

#### **Lessee's First Election**

- 3 Within 45 working days of receipt of the notice referred to in paragraph 2 the Lessee shall elect one of the following:
- (a) to commence altering the use of the Review Land in a material and enduring manner to Rail Purposes and complete such alteration as soon as practicable; or
  - (b) to alter the classification of the Review Land to Land required for Future Rail Purposes; or
  - (c) to have the Review Land considered as Potentially Surplus Land (except that this paragraph (c) does not apply if the Lessee has, within the period of 5 years preceding the Lessor's notice under paragraph 2, elected to have the Review Land considered as Potentially Surplus Land under this paragraph (c), paragraphs 15 or 16(c) of this Part A or paragraphs 5(b) or 14 of Part B); or
  - (d) to provide initial justification as to why in the Lessee's opinion the Review Land is used for Rail Purposes and, in the event it is found not to be, whether it is required for Future Rail Purposes.
- 4 As soon as it has made its election pursuant to paragraph 3 (and no later than the expiry of the 45 working day period referred to in paragraph 3) the Lessee shall give notice of it to the Lessor (and, if paragraph 3(d) is elected, the notice must include the initial justification).
- 5 The Lessor and the Lessee shall each bear their own costs up to this stage of the process.

#### **Consequences of Lessee's First Election**

- 6 If the Lessee elects to proceed under paragraph 3(a) and the Lessor at any subsequent time does not accept that:
- (a) the alteration being made to the use of the Review Land will result in an alteration of the use of the Review Land in a material and enduring manner to Rail Purposes; or

(b) the alteration is being completed as soon as practicable;

then in either case the Lessor shall give notice to the Lessee to that effect, and the review process set out in paragraphs 11 to 13 (“the Rail Purposes Review”) shall apply. Where this paragraph applies, the Lessor’s notice shall be given within 45 working days of receipt by the Lessor of the Lessee’s notice under paragraph 4.

- 7 If the Lessee elects to proceed under paragraph 3(b) and the Lessor does not accept that the Review Land can appropriately be classified for Future Rail Purposes then the Lessor shall give notice to the Lessee to that effect within 45 working days of receiving the Lessee’s notice under paragraph 4 and the review process set out in Part B shall apply.
- 8 If the Lessee elects to proceed under paragraph 3(c), Schedule H shall apply. If the process under Schedule H is terminated by the Lessee before the Land is deleted from this Lease, the Lessor may, at its absolute discretion, recommence the process under this Part A after the expiration of 12 months from such termination, starting with a new notice under paragraph 2.
- 9 If the Lessee has given the Lessor notice that it believes that the Review Land is used for Rail Purposes under paragraph 3(d) and the Lessor rejects this by notice to the Lessee within 45 working days of receiving the Lessee’s notice under paragraph 4, then the Rail Purposes Review shall apply.
- 10 If the Lessee has made an election under paragraph 3(d) and at the time it made the election it also notified the Lessor that it believes the Review Land has elements of both Rail Purposes and Future Rail Purposes, the Review Land shall be reviewed concurrently under both the Rail Purposes Review and the review processes outlined in Part B.

### **Rail Purposes Review**

- 11 The Rail Purposes Review may involve, without limitation:
  - (a) the Lessor and/or its agents visiting the Review Land and interviewing relevant personnel of the Lessee;
  - (b) the Lessor obtaining information from the Lessee regarding the current and historical usage of the Review Land; and
  - (c) an inquiry into the Lessee’s justification as to why the Review Land remains used for Rail Purposes and any other relevant arguments.
- 12 The Lessor and the Lessee shall co-operate to ensure that the Rail Purposes Review is conducted over as short a time as possible with the objective of completing it within 45 working days (or such longer period as is reasonable in relation to the Review Land concerned), and shall take all reasonable steps to minimise as far as practicable the impact of the review on the operations of the Lessee.
- 13 As soon as practicable, but not later than 45 working days after the Rail Purposes Review has been completed, the Lessor shall notify the Lessee of its conclusions in relation to the review and its reasons for those conclusions.

### **Consequences of Rail Purposes Review**

- 14 If, after the completion of the Rail Purposes Review, the Lessor has concluded that the Review Land is used for Rail Purposes or its use is being altered in accordance with

paragraph 3(a), it shall notify the Lessee and pay the Lessee's actual and reasonable costs of the Rail Purposes Review, including a reasonable allowance for the actual and reasonable time spent by the Lessee's personnel on it.

- 15 If, after the completion of the Rail Purposes Review, the Lessor has concluded that the Review Land is not used for Rail Purposes or its use is not being altered in accordance with paragraph 3(a), it shall notify the Lessee. If the Lessee notifies the Lessor that it accepts this conclusion, Schedule H shall apply in respect of the Review Land and the Lessee shall pay the Lessor's actual and reasonable costs of the Rail Purposes Review, including a reasonable allowance for the actual and reasonable time spent by the Lessor's personnel on it. If the process under Schedule H is terminated by the Lessee before the Review Land is deleted from this Lease, the process under this Part A may at the Lessor's absolute discretion recommence after the expiration of 12 months from such termination, starting with a new notice under paragraph 2.
- 16 If the Lessee does not accept the Lessor's conclusion under paragraph 15, the Lessee shall, within 45 working days of receiving the Lessor's notice under paragraph 15, elect one of the following options for the Review Land and give notice to the Lessor accordingly:
- (a) to alter (or continue to alter, as the case may be) the use of the Review Land in a material and enduring manner to Rail Purposes, such alteration to be completed as soon as practicable; or
  - (b) if it has given notice to the Lessor of its election under paragraph 3(d) that the Land is required for Future Rail Purposes, to proceed to alter the classification of the Review Land to Land required for Future Rail Purposes; or
  - (c) to have the Review Land considered as Potentially Surplus Land, in which case Schedule H will apply. If the process under Schedule H is terminated by the Lessee before the Land is deleted from this Lease, the process under this Part A may at the Lessor's absolute discretion recommence after the expiration of 12 months from such termination, starting with a new election under subparagraph (a), (b) or (d) of this paragraph 16; or
  - (d) to determine that the matter is a dispute to be dealt with in accordance with Clause 4.5A and paragraphs 19 to 22, in which case those provisions will apply.

#### **Alteration of Use Review**

- 17 If the Lessee has elected to alter (or continue to alter, as the case may be) the use of the Review Land to Rail Purposes pursuant to paragraph 16(a) and the Lessor at any subsequent time does not accept that:
- (a) the alteration being made to the use of the Review Land will result in an alteration of the use of the Review Land in a material and enduring manner to Rail Purposes; or
  - (b) that the alteration is being completed as soon as practicable;
- the Lessor may elect to treat the matter as a dispute to be dealt with in accordance with Clause 4.5A and paragraphs 19 to 22.
- 18 If the Lessee has elected to alter the classification of the Review Land to Land required for Future Rail Purposes under paragraph 16(b) then the Lessor may, within 45 working days of

receiving the Lessee's notice under that paragraph, treat the matter as a dispute to be dealt with under Clause 4.5A, paragraphs 19 to 22 of this Part A and paragraph 17 of Part B.

### **Dispute Resolution**

- 19 If, as a result of the dispute resolution procedure in Clause 4.5A, a dispute under this Part is resolved in favour of the Lessor, the Lessee shall within 45 working days of completion of the dispute resolution procedure:
- (a) complete arrangements to delete the Review Land from the Lease and assign to the Lessor any sublease, licence, easement or other right of occupation relating to the Review Land; and
  - (b) pay the Lessor's reasonable costs of and incidental to the review and the dispute resolution procedure.
- 20 If the Review Land is deleted in accordance with paragraph 19(a) and is subsequently sold or otherwise disposed of by the Lessor, the Lessee shall not be entitled to any share of the proceeds of such sale or disposition, other than the value of any improvements on the Review Land after deducting any expenditure incurred by the Lessor to remedy any failure to meet the requirements of this Lease in relation to the Lessee yielding up the Review Land in accordance with Clause 4.4.8. The value of the improvements shall be determined by agreement between the Parties or, failing agreement, under Clause 4.5A.
- 21 If, as a result of the dispute resolution procedure in Clause 4.5A, a dispute under this Part is resolved in favour of the Lessee, the Lessor shall pay to the Lessee the Lessee's reasonable costs of and incidental to the review and the dispute resolution process together with one half of the current market value of the Review Land (excluding any improvements on it) as determined by the Expert appointed under Clause 4.5A.
- 22 If, as a result of the dispute resolution procedure in Clause 4.5A, a dispute under this Part is resolved partly in favour of the Lessor and partly in favour of the Lessee, then paragraphs 19 and 21 shall not apply and the obligations of the parties to each other shall be as agreed between them or as determined under Clause 4.5A.

### **Part B: Review of Land Held for Future Rail Purposes**

- 1 Subject to paragraphs 2 and 3, the Lessor may at any time after 30 June 2006, with reasonable cause, initiate a review as to whether Land that is classified for Future Rail Purposes is required for those purposes, whether or not that Land is being used by the Lessee or another person. The process for the review shall be as set out in the succeeding paragraphs of this Part B.
- 2 The right of review is limited to Land which has not been used for Rail Purposes for a period of 5 years or more.
- 3 Where Land has been the subject of a review under this Part B it shall not be subjected to another review until 10 years has expired from the completion of the earlier review.

### **Announce Intentions**

- 4 Prior to initiating the review the Lessor shall give notice to the Lessee informing the Lessee of its intention to perform the review and providing its reasons why it questions whether the Land concerned ("the Review Land") is required for Future Rail Purposes.

### **Lessee's First Election**

- 5 Within 45 working days from receipt of the notice referred to in paragraph 4 the Lessee shall give notice to the Lessor either:
- (a) providing its initial justification for the continuation of the classification of the Review Land as required for Future Rail Purposes; or
  - (b) electing to have the Review Land considered as Potentially Surplus Land, in which case Schedule H will apply (except that this paragraph (b) does not apply if the Lessee has, within the period of 5 years preceding the Lessor's notice under paragraph 4, elected to have the Review Land considered as Potentially Surplus Land under this paragraph (b) or paragraphs 3(c) or 16(c) of Part A). If the process under Schedule H is terminated by the Lessee before the Land is deleted from this Lease, the process under this Part B may at the Lessor's absolute discretion recommence after the expiration of 12 months from such termination, starting from paragraph 7 as if the Lessee had made an election under paragraph 5(a).
- 6 The Lessee and the Lessor shall each bear their own costs up to this stage of the process.

### **Consequences of Lessee's Election**

- 7 The Lessor shall give notice to the Lessee, within 45 working days of receipt of the notice referred to in paragraph 5, whether it accepts the Lessee's initial justification under paragraph 5(a).
- 8 The Lessor may commence a review under paragraphs 10 to 12 ("the Future Rail Purposes Review"):
- (a) if the Lessor does not accept the Lessee's initial justification under paragraph 5(a); or
  - (b) if the Lessee has altered the classification of the Review Land to land required for Future Rail Purposes under paragraphs 3(b) or 16(b) of Part A; or
  - (c) concurrently with a Review for Rail Purposes under Part A if the Lessee contends the Review Land meets elements of both Rail Purposes and Future Rail Purposes.
- 9 The Lessor shall advise the Lessee of its intention to proceed with the Future Rail Purposes Review within 45 working days of the occurrence of one of the events referred to in paragraph 8(a), (b) or (c).

### **Future Rail Purposes Review**

- 10 The Future Rail Purposes Review may involve, without limitation:
- (a) the Lessor visiting the Review Land and interviewing relevant personnel of the Lessee;
  - (b) the Lessor obtaining information from the Lessee regarding the Lessee's views on the potential future uses of the Review Land;
  - (c) the Lessee supplying the Lessor details supporting the Lessee's assertion that the Review Land is required for Future Rail Purposes.

- 11 The Lessor and the Lessee shall co-operate to ensure the review is conducted over as short a period of time as possible with the objective of completing it within 45 working days (or such longer period as is reasonable in relation to the Review Land concerned), and shall take all reasonable steps to minimise as far as practicable the impact of the review on the operations of the Lessee.
- 12 As soon as practicable, but not later than 45 working days after the Future Rail Purposes Review has been completed, the Lessor shall notify the Lessee of its conclusions in relation to the review and its reasons for those conclusions.

### **Consequences of Future Rail Purposes Review**

- 13 If, after the completion of a Future Rail Purposes Review, the Lessor has concluded that the Review Land is required for Future Rail Purposes it shall notify the Lessee and pay the Lessee's actual and reasonable costs of the review, including a reasonable allowance for the actual and reasonable time spent by the Lessee's personnel on it.
- 14 If, after the completion of a Future Rail Purposes Review, the Lessor has concluded that the Review Land is not required for Future Rail Purposes, it shall notify the Lessee. If the Lessee notifies the Lessor that it accepts this conclusion, Schedule H shall apply in respect of the Review Land and the Lessee shall pay the Lessor's actual and reasonable costs of the Future Rail Purposes Review, including a reasonable allowance for the actual and reasonable time spent by the Lessor's personnel on it. If the process under Schedule H is terminated by the Lessee before the Review Land is deleted from this Lease, the process under Part A may at the Lessor's absolute discretion recommence after the expiration of 12 months from such termination, starting with a new notice under paragraph 2 of Part A.
- 15 If the Lessee rejects the Lessor's conclusion under paragraph 14 it shall, within 45 working days of receiving the Lessor's notice under paragraph 14, notify the Lessor and give reasons for that rejection.
- 16 Within 45 working days of receipt of the notice referred to in paragraph 15 the Lessor may treat the issue as a dispute for resolution under Clause 4.5A and paragraphs 17 to 21 of this Part B.

### **Dispute Resolution**

- 17 In determining whether Review Land is required for Future Rail Purposes the guiding principle will be whether, taking into account alternative methods of rail operation that may exist in the future, it is likely to be reasonably necessary within the remaining term of this Lease to use the Review Land for Rail Purposes.
- 18 If, as a result of the dispute resolution procedure in Clause 4.5A, a dispute under this Part is resolved in favour of the Lessor, the Lessee shall within 45 working days of completion of the dispute resolution procedure:
- (a) complete arrangements to delete the Review Land from the Lease and assign to the Lessor any sublease, licence, easement or other right of occupation relating to the Review Land; and
  - (b) pay the Lessor's reasonable costs of and incidental to the review and the dispute resolution procedure.
- 19 If the Review Land is deleted in accordance with paragraph 18(a) and is subsequently sold or otherwise disposed of by the Lessor, the Lessee shall not be entitled to any share of the

proceeds of such sale or disposition, other than the value of any improvements on the Review Land, after deducting any expenditure incurred by the Lessor to remedy any failure to meet the requirements of this Lease in relation to the Lessee yielding up the Review Land in accordance with Clause 4.4.8. The value of the improvements shall be determined by agreement between the Parties or, failing agreement, under Clause 4.5A.

- 20 If, as a result of the dispute resolution procedure in Clause 4.5A, a dispute under this Part is resolved in favour of the Lessee, the Lessor shall pay to the Lessee the Lessee's reasonable costs of and incidental to the review and the dispute resolution process together with one half of the current market value of the Review Land (excluding any improvements on it as at the date of the Lessor's notice to the Lessee under paragraph 7) as determined by the Expert appointed under Clause 4.5A.
- 21 If, as a result of the dispute resolution procedure in Clause 4.5A, a dispute under this Part is resolved partly in favour of the Lessor and partly in favour of the Lessee, paragraphs 18 and 20 shall not apply and the obligations of the parties to each other shall be as agreed between them or as determined under Clause 4.5A.

### **Part C: General**

- 22 During the period from any deletion of Review Land from this Lease under this Schedule E to the date of settlement of the sale of the Review Land, the following provisions shall apply:
- (a) the Lessor will use all reasonable endeavours to manage the Review Land pending sale in a prudent manner and in particular will use all reasonable endeavours to derive Sublease Income in respect of the Review Land and any improvements on it (but the Lessor will not be required to pay the Lessee for those improvements);
  - (b) any Sublease Income derived by the Lessor from subleases or grants of the Review Land shall be apportioned between any improvements on the Review Land and the Review Land itself; and
  - (c) the Lessor shall pay the proportion of that Sublease Income that relates to improvements to the Lessee; except that, where Sublease Income is derived from subleases or grants relating wholly or partly to improvements (such as buildings, fencing and paving) that have been made since the Variation Date and paid for wholly by the Lessor, the Lessor is entitled to retain the whole of the share of the Sublease Income that can reasonably be attributed to such of those improvements that have been paid for by the Lessor; and
  - (d) the Lessor is entitled to retain all of the Sublease Income that relates to the Review Land itself; and
  - (e) the terms "Sublease Income" and "subleases or grants" in this Part C have the same meanings as in Schedule F as if references in that Schedule to the Lessee were references to the Lessor (and vice versa) and with all other necessary modifications; and
  - (f) paragraphs 1 to 4A of Schedule F shall apply with all necessary modifications to the sharing of Sublease Income under this paragraph as if references in those paragraphs to the Lessee were references to the Lessor (and vice versa).
- 23 No review under this Schedule E shall suspend or alter the rights or obligations of either Party under this Lease, except as expressly provided for.

24 The provisions of Clauses 3.3.2A and 4.4.8 shall apply to all Land deleted from this Lease pursuant to this Schedule E.

## SCHEDULE F

### Sharing of Sublease Income (Clause 3.3.5)

- 1 This Schedule F sets out the arrangements for the sharing by the Lessor and the Lessee of income derived by the Lessee or any related company of the Lessee (as that term is defined in the Companies Act 1993) from subleases, licences, easements and other rights of occupation or use granted by the Lessee in respect of any Land or in respect of any buildings or other improvements on any Land (in this Schedule F called “subleases or grants”).
- 2 The income referred to in paragraph 1 (in this Schedule F called the “Sublease Income”) means the net income as defined in paragraph 3 derived by the Lessee (as lessor or grantor) under subleases or grants in respect of any period after the Variation Date and shall be shared between the Lessee and the Lessor in different proportions, according to the particular use to which the Land is being put, as set out in the following paragraphs of this Schedule F.
- 3 Sublease Income means GST-exclusive net income received or receivable by or credited to the Lessee pursuant to subleases or grants, whether on a periodic or lump sum basis and includes pre-payment of rent, premiums or key money paid by sublessees or grantees solely in consideration of the sublease or grant less the following GST-exclusive costs (where not recoverable by the Lessee):
  - (a) Rates or other charges or taxes for which the Lessee is required to account to any Authority;
  - (b) Insurance premiums and related valuation fees and any insurance excesses in respect of any claims;
  - (c) Payments and reimbursement of the cost of supply of utilities by the Lessee to sublessees or licensees such as electricity, gas, water, wastewater, cleaning, reception or other office services costs;
  - (d) Rubbish collection charges;
  - (e) New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment;
  - (f) Service contract charges for such services as air conditioning, lifts, other building services and security services;
  - (g) Charges for the provisioning of toilets and other shared facilities;
  - (h) Compliance costs, including the costs of providing a building warrant of fitness under the Building Act or otherwise complying with the requirements of a compliance schedule, a code compliance certificate, health and safety or other statutory or regulatory requirements in respect of the Land or the Lessee's buildings on the Land;
  - (i) Inducement payments or expenditure of a capital nature which the Lessee undertakes in order to induce the sublessee or grantee to take a sublease or grant,

commissions paid to agents and advertising costs or costs of external consultants related to the leasing; and

- (j) Maintenance, cleaning or other outgoings incurred in:
  - (i) making the Land, buildings or other improvements suitable or more suitable for prospective sublessees or grantees; or
  - (ii) discharging the Lessee's obligations under the sublease or grant.
  
- 3A The Lessee agrees that costs or outgoings of the nature described in paragraph 3 may only be deducted from the income from the particular sublease or grant in respect of which they were incurred and not income from other subleases or grants and that where the Lessor does not share in any part of Sublease Income (for example under paragraph 5(f)) a fair and reasonable proportion of the costs or outgoings shall be apportioned to that part of Sublease Income in which the Lessor is not sharing.
  
- 4 The Lessee shall not be required to charge rental, premiums or key money for subleases or the grant of subleases or grants, and the value of any direct or collateral benefit received by the Lessee through the entering into of subleases or grants such as goodwill derived as part of the sale of a business, payment for improvements or other assets, benefits under freight or other services contracts or the like shall not form part of Sublease Income.
  
- 4A The Lessee will account to the Lessor in respect of Sublease Income on a fully transparent open book basis. In calculating Sublease Income, all income, cash, rental, fees, credits, costs and outgoings will be treated in accordance with generally accepted accounting practices in New Zealand. Any dispute as to whether or not any item has been properly-treated in the calculation of Sublease Income shall be referred for resolution in accordance with Clause 4.5A.
  
- 5 Subject to the above paragraphs of this Schedule F, the Sublease Income from the Variation Date shall be shared by the Lessee and the Lessor as follows:
  - (a) Where, pursuant to the sublease or grant, the Land is used for an activity that is a Rail Service there shall be no sharing of the Sublease Income.
  - (b) Where, pursuant to the sublease or grant, the Land is used for an activity that is not a Rail Service but is a Rail Purposes activity, the Lessor shall receive 7.5% of the Sublease Income.
  - (c) Deleted
  - (d) Where the Land is used by third parties for advertising, or for utilities infrastructure, the Lessor shall receive 12% of any Sublease Income from subleases or grants existing at the Variation Date, and 15% of Sublease Income from subleases or grants entered into or renewed after that date.
  - (e) For all other subleases and grants, the Lessor shall receive 12% of any Sublease Income from subleases or grants existing on the Variation Date and 15% of any Sublease Income from subleases or grants entered into or renewed after that date.
  - (f) Where Sublease Income is derived from subleases or grants relating wholly or partly to improvements (such as buildings, fencing and paving) that have been made by the Lessee after the Variation Date and paid for wholly by the Lessee,

that part of the Sublease Income which can reasonably be attributed to such of those improvements that have been paid for by the Lessee shall not be shared.

- (g) Where the Land is used by the Lessee for Rail Purposes but the particular use under the sublease or grant is not for Rail Purposes (such as a utilities crossing or other non-railway use of Land), the sharing arrangements in subparagraphs (d) and (e) of this paragraph shall apply.
- (h) The Lessee shall make payments pursuant to this Schedule F to the Lessor for the quarters ending on the last day of March, June, September and December in each year by the last day of the month following the end of each such quarter.
- (i) For the purposes of subparagraphs (d), (e) and (g) of this paragraph, subleases or grants existing at the Variation Date for which the Sublease Income in each case is less than \$1,000 p.a. and which run on from year to year terminable by notice shall progressively be treated as having been entered into after that date, at the rate of 1/7th thereof each year ending on an anniversary of the Variation Date. After 7 years from the Variation Date they shall all be treated as having been entered into after that date and accordingly the Lessor will receive 15% of all Sublease Income to which that subparagraph (d), (e) or (g) applies.

## **SCHEDULE G**

### **Pre-Approval Rights (Clause 3.3.4.2)**

- 1 The following provisions of this Schedule G govern the process by which the Lessee may request the Lessor's prior written approval to activities the Lessee is planning to undertake on particular Land being consistent with the classification of that Land as being used for Rail Purposes or required for Future Rail Purposes.
- 2 In seeking such approval, the Lessee acknowledges the Lessor's need for relevant and timely information and the Lessee shall provide such information as is reasonably required by the Lessor to enable it to reach a considered decision.
- 3 The Lessor may only seek from the Lessee information relevant to the determination of the correct classification for the particular Land given the intended activities.
- 4 The Lessor will seek such information as soon as practicable after receiving the Lessee's request under paragraph 1.
- 5 The Lessor will exercise reasonable endeavours to notify the Lessee of its decision within 20 working days of receipt of the request from the Lessee and, in respect of requests made by the Lessee more than 6 months after the Variation Date, no later than 45 working days after the Lessee has provided the required information to the Lessor.
- 6 The Lessor may attach conditions to its decision.
- 7 Where the Lessor's decision is to accept the Lessee's proposal or to accept it subject to conditions, and these conditions are subsequently satisfied, the decision will be binding on the Lessor.
- 8 If the Lessee disagrees with the Lessor's decision or it contains conditions which the Lessee disagrees with, the Lessee may, within 45 working days of the Lessor notifying the Lessee of its decision, elect to treat the issue as a dispute to which Clause 4.5A shall apply.
- 9 Where as a result of the dispute resolution procedure in Clause 4.5A one party is unsuccessful, that party shall pay the actual and reasonable costs of the other party in connection with the application and the dispute resolution process.
- 10 If as a result of the dispute resolution procedure in Clause 4.5A the dispute is resolved partly in favour of the Lessor and partly in favour of the Lessee, the costs shall be met as agreed between them or as determined in the dispute resolution process.

## **SCHEDULE H**

### **Process for Sale of Potentially Surplus Land (Clause 3.2A.3)**

#### **Step 1 – Initial Advice and Investigation**

- 1 The review process in this Schedule H shall apply where:
  - (a) the Lessee has elected by notice to the Lessor to have Land considered as Potentially Surplus Land pursuant to Clause 3.2A.1; or
  - (b) the Lessee elects or is required to have Review Land considered as Potentially Surplus Land under Schedule E.
- 2 Upon the happening of either of the events in paragraph 1 (the “Review Commencement Date”), the Lessor and the Lessee will, if the Lessor so agrees under paragraph 4, proceed with a review process involving the following procedures and any other procedures agreed by them in writing from time to time.
- 3 The Lessee will as soon as practicable after the Review Commencement Date, supply the Lessor with relevant details in writing of the Land concerned, the nature of any improvements on that Land, details of any sublease or other arrangement in place in regard to the Land, and a summary of the actions required by the Lessee to make the Land surplus.
- 4 With effect from the Review Commencement Date, the Lessor shall commence an initial evaluation of the issues relating to the future disposal of the Land concerned, and its Required Process, and advise the Lessee in writing whether (in its absolute discretion) it agrees to the Land being reviewed under this Schedule H as Potentially Surplus Land. If the Lessor does so agree, the Lessor must advise the Lessee in writing of any matters it is aware of and which may have an effect on the sale process, and the Parties must agree the latest date by which the review process in paragraphs 7 to 23 of this Schedule H must end in respect of the Land concerned (“the Review Termination Date”).
- 5 The “Required Process” of the Lessor shall be the process which the Lessor is required from time to time to undertake pursuant to any statutory or other legal obligation or government policy before being in a position to sell the Potentially Surplus Land. The Lessor has provided the Lessee with a summary of the Required Process as at the Variation Date, and shall inform the Lessee of any potential changes to the Required Process as soon as practicable after the Lessor becomes aware of them. The Lessor will provide the Lessee with a further summary of the Required Process whenever changes are made to it.
- 6 Notwithstanding any other paragraph of this Schedule H, if a review process under this Schedule H has been commenced under paragraph 1(b), the Lessor may not refuse to agree under paragraphs 4 or 17.

#### **Step 2 – Establishment of a Landplan**

- 7 If the Lessor has agreed to a review under paragraph 4, the Lessee will, as soon as reasonably practicable, prepare and deliver to the Lessor a Landplan for the Potentially Surplus Land.

- 8 The Landplan will establish the process to secure the highest practicable net proceeds from the sale of the Potentially Surplus Land taking into account the Required Process. The assessment will take account of the value of any improvements proposed to be left in place or to be added on the Potentially Surplus Land to the highest value user of the Land. The assessment shall also allow for the following deductions (which shall be disclosed in the Landplan):
- (a) The value of any Lessee's improvements on the Potentially Surplus Land that are of such a value that their retention is economically sensible, such value to be set out in the valuation report of the Landplan.
  - (b) Any reasonable costs of reinstating the Potentially Surplus Land to a saleable condition, including (without limitation) costs of removing pollutants and improvements where it is economically sensible to do so.
  - (c) The reasonable costs expected to be incurred by the Lessee in altering its business activities to make the Potentially Surplus Land surplus or accessible, less any value directly or indirectly received or receivable by the Lessee from such alteration.
  - (d) The reasonable costs of any work or activities (including providing access, fencing, buildings, buying out or putting in place subleases and subdividing) that are economically sensible to add value for sale purposes.
  - (e) The expected reasonable administrative sale costs incurred or to be incurred by the Lessor and the Lessee to give effect to a sale including the costs associated with developing and implementing the Landplan and the exercise of the Required Process.
  - (f) The expected time value of delays in effecting a sale following completion of the Required Process less any expected income from subleases or other arrangements in relation to the Potentially Surplus Land over the period.
- 9 The Lessee shall engage specialist consultants to advise on the valuation aspects of the Landplan and to provide upper and lower estimates of market value against which the Lessor's obligations under Step 6 shall be measured.
- 10 The Landplan shall set out the most cost-effective ordering of any expenditure and may suggest alternative arrangements for different sales processes that may arise under the Required Process.

### **Step 3 – Lessor's Landplan review rights**

- 11 Upon receipt of the Landplan from the Lessee, the Lessor shall review it, obtain such advice on it as it considers appropriate, and notify the Lessee whether it accepts it. The Lessee shall provide the Lessor with reasonable access to the Potentially Surplus Land for this purpose.
- 12 Subject to paragraph 13, the Lessor shall be entitled, after reviewing the Landplan, to notify the Lessee that it disputes elements of the Landplan, including (without limitation) whether it is likely to secure the highest practicable net proceeds of sale, the reliability of the Lessee's valuer's upper and lower estimates of market value, and the costs set out in the Landplan.

- 13 The Lessor shall not be entitled to object to the Lessee's definition of the Potentially Surplus Land area or to the Lessee's proposed alterations to its business activities. Both of these items will remain at the absolute discretion of the Lessee, although the Lessee shall consult with the Lessor on such matters before finalising the Landplan.
- 14 If the Lessor disputes any aspects of the Landplan pursuant to paragraphs 12 and 13, the parties shall take reasonable steps to negotiate a mutually acceptable solution. Failing that, the issue shall become a dispute to be dealt with under Clause 4.5A.

#### **Step 4 – Determining the Status of the Potentially Surplus Land**

- 15 As soon as practicable after the later of:
- (a) acceptance of the Landplan by the Lessor; or
  - (b) resolution of any disputes in relation to it;
- the Lessee shall notify the Lessor in writing whether that Potentially Surplus Land remains potentially surplus or whether it is no longer potentially surplus. If the Lessee decides, in its absolute discretion, that the Land remains potentially surplus, the Lessee may at its absolute discretion attach conditions in such declaration, provided they are reasonable and were identified in the Landplan. Such conditions may include the achievement of required levels of certainty of sale, the timing of sale, minimum net sale proceeds, or no material changes to the Required Process contemplated by the Landplan, before the Lessee is required to delete the Potentially Surplus Land from this Lease or to perform the tasks in the Landplan, but these conditions cease to apply once the Potentially Surplus Land has been deleted from this Lease.
- 16 If in the notification under paragraph 15 the Potentially Surplus Land is declared by the Lessee to be no longer potentially surplus, the Lessor's rights of review under Clause 3.3.3 in relation to that Land shall be reinstated:
- (a) if paragraph 1(a) applied to the Land, 12 months after the date of that notification; or
  - (b) if paragraph 1(b) applied to the Land, 12 months after the date of that notification, and paragraph 16(c) of Part A of Schedule E, or paragraph 5(b) of Part B of Schedule E, as the case may be, shall apply accordingly.
- 17 If the Potentially Surplus Land is declared by the Lessee to remain potentially surplus pursuant to paragraph 15, the Lessor shall give notice to the Lessee that it either (at the Lessor's absolute discretion):
- (a) agrees that the Potentially Surplus Land remains potentially surplus, in which case the provisions of paragraphs 18 to 26 shall apply; or
  - (b) does not agree that the Potentially Surplus Land remains potentially surplus, in which case the Potentially Surplus Land will be reclassified as Land Required for Future Rail Purposes and the Lessor's rights of review under Clause 3.3.3 will be reinstated in relation to that Land only after the expiration of 10 years from the date the Lessor notifies the Lessee that it declines to agree that the Potentially Surplus Land remains potentially surplus.

**Step 5 - Process if the Lessor agrees the Potentially Surplus Land as surplus**

- 18 If the Lessor agrees that the Potentially Surplus Land remains potentially surplus pursuant to paragraph 17(a) then paragraphs 19 to 26 shall apply.
- 19 From receipt of the notice under paragraph 17(a) and until the Potentially Surplus Land is deleted from this Lease, the Lessee will manage the Potentially Surplus Land and share any revenue arising from it in accordance with Schedule F.
- 20 The Lessor will carry out the Required Process as far as it is able without having the Potentially Surplus Land deleted from this Lease.
- 21 When the Required Process has been completed to the extent set out in paragraph 20 the Lessee shall perform the tasks of the Landplan contemplated in paragraphs 8(b), (c) and (d) in the order determined by the Landplan, subject to any conditions of the Landplan having been met.
- 22 If any conditions of the Landplan are not fulfilled within a reasonable time other than due to actions or inactions of the Party giving notice, either Party may at their absolute discretion notify the other in writing that the Potentially Surplus Land is no longer potentially surplus. In that case the process in this Step 5 shall be discontinued from the date of the notification and paragraphs 16 or 17, as the case may be, shall apply as if the notification under this paragraph were a notification under paragraphs 15 or 17(b), as the case may be.
- 23 Upon completion of the tasks required by the Landplan, the Lessee and the Lessor will take all necessary steps to delete the Potentially Surplus Land (in the remaining paragraphs of this Schedule H called “the Land”) from this Lease and the Lessee will transfer any sublease or other rights or obligations in accordance with Clause 3.3.2A to the Lessor or its nominee.

**Step 6 – Process following deletion of Land from Lease**

- 24 As soon as practicable after the Land is deleted from this Lease:
- (a) the Lessor and the Lessee shall complete all other steps reasonably required to facilitate the sale of the Land (including consulting each other over ways to effect the sale at the earliest practicable date, and on whether any aspects of the Landplan require modification); and
  - (b) the Lessor shall sell the Land, and complete the settlement of the sale, at the earliest practicable date.
- 25 As soon as practicable after the Land is deleted from this Lease:
- (a) each Party shall advise the other of the actual and reasonable costs incurred by it in carrying out its obligations under paragraphs 7 to 23 of this Schedule H in relation to the Land; and
  - (b) one Party shall make a payment to the other so that the net effect is that the Lessor bears 55%, and the Lessee bears 45%, of the total costs of both Parties referred to in subparagraph (a) of this paragraph.
- 26 As soon as practicable after each quarterly date (being, in this Schedule H, the last days of March, June, September, and December) following the date on which the Land is deleted from this Lease and until (and including) the quarterly date following the date of settlement of the sale of the Land:

- (a) each Party shall advise the other of the actual and reasonable costs incurred by it during the quarter ending on that quarterly date (but, in the case of the first quarter, excluding any period before the date on which the Land is deleted from this Lease) in carrying out its obligations under paragraphs 24 to 31 in relation to the Land, including the actual and reasonable administrative and selling costs incurred by the Lessor in undertaking the Required Process and giving effect to the sale and the actual and reasonable costs of the Parties in implementing the Landplan; and
- (b) one Party shall make a payment to the other so that the net effect is that the Lessor bears 55%, and the Lessee bears 45%, of the total costs of both Parties referred to in subparagraph (a) of this paragraph.

27 During the period from the deletion of the Land from the Lease to the date of settlement of the sale of the Land, the Sublease Income derived by the Lessor from subleases or grants of the Land shall be shared between the Lessor and the Lessee in the proportions of 55% and 45% respectively and:

- (a) the terms “Sublease Income” and “subleases or grants” in this paragraph have the same meanings as in Schedule F as if references in that Schedule to the Lessee were references to the Lessor (and vice versa) and with all other necessary modifications; and
- (b) paragraphs 1 to 4 of Schedule F shall apply with all necessary modifications to the sharing of Sublease Income under this paragraph as if references in those paragraphs to the Lessee were references to the Lessor (and vice versa);

except that, where Sublease Income is derived from subleases or grants relating wholly or partly to improvements (such as buildings, fencing and paving) that have been made after the Variation Date and paid for wholly by the Lessee or the Lessor, the Lessee or the Lessor, as the case may be, is entitled to the share of the Sublease Income that can reasonably be attributed to those improvements and the remaining Sublease Income shall be shared between the Parties in accordance with this paragraph 27.

28 As soon as practicable after settlement of the sale of the Land the Lessor shall pay to the Lessee the following:

- (a) The agreed value of any Lessee’s buildings on the Land as set out in the Landplan; and
- (b) 45% (or, in the circumstances referred to in paragraph 30, 50%) of the net proceeds of sale of the Land after deducting the amount referred to in subparagraph (a) of this paragraph.

29 If the Lessor, for reasons other than those anticipated in the Required Process (including if applicable, the requirement to offer-back), sells the Land at a price below the lower estimate of market value as contained in the Landplan (“the Lower Estimate”), then the Lessee’s share of the net proceeds of sale of the Land determined under paragraph 28(b) shall be calculated as if a current market value had been obtained for the Land, namely a price midway between the Lower Estimate and the upper estimate of value as contained in the Landplan (“the Upper Estimate”).

30 If the Lessor fails to enter into an unconditional contract for the sale of the Land within the period of 6 months from the date on which the Land is deleted from this Lease and has failed to use reasonable endeavours to achieve a sale during that period, the figure of 45% in

paragraphs 27 and 28(b) shall be deemed to be amended to a figure of 50%, but this paragraph shall not apply if paragraph 31 applies.

- 31 If the Lessor fails to enter into an unconditional contract for the sale of the Land prior to the date (“the Exit Date”) that is 12 months after the date on which the Land was deleted from this Lease, the Lessor shall immediately pay to the Lessee the amounts which would be due to the Lessee under paragraph 28 if the Land was sold on the Exit Date for a price mid-way between the Upper Estimate and the Lower Estimate. This paragraph shall not apply where the failure to enter into the contract is due to:
- (a) a lack of a prospective buyer at a price above the Lower Estimate; and/or
  - (b) a lack of a prospective buyer on terms contemplated in the Landplan.
- 32 In all other cases, the Parties shall consult in good faith over the best means to dispose of the Land, including where applicable, amending the content of the Landplan in relation to the Land.
- 33 Except as expressly provided for in this Lease, no review or other action under this Schedule shall suspend or alter the rights or obligations of either Party under this Lease.
- 34 The provisions of Clauses 3.3.2A and 4.4.8 shall apply to all Land deleted from this Lease pursuant to this Schedule H.