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Committee Council
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Wellington Network Agreement

1. Purpose

To seek Council approval for Greater Wellington Regional Council (GWRC) to enter an agreement with KiwiRail Holdings Limited (KiwiRail) by which GWRC will secure long term rights to operate Wellington's passenger rail service on the KiwiRail-owned Wellington metro rail network (the Agreement).

2. The decision-making process and significance

The matter requiring decision in this report has been considered by officers against the requirements of Part 6 of the Local Government Act 2002.

2.1 Significance of the decision

Officers have considered the significance of the matter, taking into account the Council's significance policy and decision-making guidelines. Due to the procedural nature of this decision officers recommend that the matter be considered to have low significance.

Officers do not consider that a formal record outlining consideration of the decision-making process is required in this instance.

3. Background

The provision of the Wellington's passenger rail service relies on GWRC holding a right of access to the rail network.

GWRC's access to the KiwiRail network is currently secured by an interim agreement that is due to expire on 30 June 2013. Interim access agreements have been in place for several years while GWRC and Auckland Transport have been negotiating the terms and conditions of a new, long term agreement with KiwiRail.

The terms and conditions of GWRC's access are now essentially agreed. A copy of the Agreement is included as **Attachment 1**. A copy of the Deed of

Accession to be signed by KiwiRail Limited as GWRC's nominated metro service operator is included as **Attachment 2**. Both the Agreement and the Deed of Accession need to be approved and signed on behalf of GWRC.

4. GWRC objectives

In negotiating the Agreement GWRC's objectives were that it should:

1. Provide long term access rights, given the high cost and long term nature of GWRL's investment in rollingstock, stations and other rail assets
2. Allow GWRC to pass the access right to whomever GWRC may wish to appoint to operate the Wellington's passenger rail service and to maintain GWRL's rolling stock fleets (the Metro Service Operator or MSO)
3. Be performance based, in order to secure best value for money for ratepayers, farepayers and taxpayers
4. Provide an effective tool by which GWRC and the MSO may manage their relationships with KiwiRail with respect to the Wellington network over the long term
5. Provide a mechanism for GWRC involvement and influence in the long term planning, development and management of KiwiRail's Wellington metro network assets.

Officers believe that the Agreement now negotiated with KiwiRail has achieved these objectives.

4.1 Long term access

The Agreement has a term of 85 years commencing 1 July 2013. This term provides GWRC with the security that is necessary to continue making substantial capital investments in rolling stock and land based rail assets. GWRC's 85 year term is the same as agreed between Auckland Transport and KiwiRail.

The Agreement defines access rights by reference to the geographic area covered by the Wellington metro rail services, the number of train services that GWRC may operate on the Wellington Network, and the priority given to passenger rail services in relation to other services that also use the Wellington Network. Other users include KiwiRail's freight service, and scheduled long distance passenger services, and charter and heritage operators.

The Agreement provides GWRC with access rights that are sufficient to meet the foreseeable increase in demand for Wellington metro rail services.

4.2 GWRC's nomination of a MSO

The Agreement provides for GWRC to nominate a Metro Services Operator and for KiwiRail to agree to the nomination provided that the new MSO has

signed a Deed of Accession¹, and that KiwiRail is reasonably satisfied that the MSO:

- Holds a licence under the Railways Act 2005 and all other licences, permits and approvals required under law, and
- Satisfies the insurance requirements of the Common Access Terms (that are binding on all rail operators).

4.3 Performance based agreement

The Agreement includes comprehensive provisions by which KiwiRail's performance will be measured, reported, rewarded and managed by GWRC and the MSO.

4.3.1 Performance measurement

In addition to granting access, the Agreement requires KiwiRail to provide a range of operational services and to renew network assets. The operational services are:

Network management	comprising the development and implementation of a triennial Network Management Plan, the coordination of network service delivery, and reporting to GWRC and the MSO
Network Control	comprising train control, traction control, access control and supporting the delivery of GWRC's RTI system for rail
Maintenance	comprising planned and unplanned maintenance of track, platforms, signals, telecommunication, electrical systems, bridges tunnels, protective walls and the overhead traction electricity system
Incident Response	for example returning the Wellington metro network to service after the recent derailment

For each of these operational services (and for network asset renewals) the Agreement includes a set of Performance Indicators (PIs) and performance targets, along with an obligation on KiwiRail to measure its actual performance at regular intervals. Across the operational services there are a total of 16 PIs.

The Agreement also includes a set of 7 outcome- focussed Key Performance Indicators (KPIs):

KPI	Measuring...
1: Punctuality	the extent to which network performance enables train services to run on time

¹ The purpose of the Deed of Accession is to join GWRC's nominated MSO as a party to the Wellington Network Agreement

2: Reliability	the extent to which network performance avoids train services being cancelled
3: Completed Trips	the combined effect on trains services of punctuality and reliability
4: Lost time minutes	the extent to which temporary speed restrictions imposed because of the condition of the network give rise to longer journey times
5: Heat 40s	the extent to which speed restrictions imposed because of possible buckling of track when track temperature exceeds 40 degrees Celsius give rise to longer journey times
6: Track Possession Time overruns	the number of occasions when the track is not returned to the MSO by the scheduled time when KiwiRail has closed the track to undertake maintenance or renewal work
7: Efficiency and use of Track possessions	the extent to which KiwiRail successfully completes all of the maintenance and renewal work that is programmed to occur during a scheduled track closure

The Agreement also includes a set of nine Asset Quality Measures that measure long term trends in the quality of the various network assets on which the Wellington’s passenger rail service depends.

4.3.2 Performance reporting

The Agreement requires KiwiRail to report its performance against all PIs, KPIs and Asset Quality Measures within a regime of monthly and annual reports. This reporting regime will provide GWRC and the MSO with a very comprehensive insight into KiwiRail’s management of the Wellington metro network as it affects the performance of the Wellington’s passenger rail service.

4.3.3 Performance Incentive Regime

The Agreement includes a performance incentive regime under which actual performance against KPIs is associated with a scale of performance payments or rebates.

Prior to the commencement of each Triennium the KPIs and performance targets and payments that make up the incentive regime are re-set by negotiation with KiwiRail.

For the remaining two years of the first Triennium²:

- the Performance Incentive Regime is based on just one KPI, i.e. Completed Trips.

² The Agreement aligns triennial with GWRC’s planning cycle. Consequently the Agreement commences one year into the first triennium.

- performance payments to KiwiRail will range from a monthly rebate of \$10,000 (if the measure of completed trips is less than 90.5%) to a monthly payment of approximately \$146,000 (> 99.75% Completed Trips).

4.3.4 Performance Notices

In the event that KiwiRail’s performance falls outside a Fail Limit set for each KPI, GWRC or the MSO may issue a performance notice to KiwiRail and require a remedial report from KiwiRail setting out the actions KiwiRail intends to take to raise performance.

4.3.5 GWRC’ s right of assignment

Clause 4.10.1 (page 16) allows GWRC to assigns its rights and obligations under the Agreement to a public statutory body constituted under the Local Government Act 2002 or a Council-Controlled Organisation. This right or assignment may be used in the event of a change to regional governance arrangements.

4.3.6 Financial management

GWRC is the biggest user of the Wellington metro rail network and consequently GWRC carries the largest share of the cost of that network.

For FY14 GWRC share of those costs (excluding the Incident Fee) will total almost \$17m, comprising:

Operational expenses	\$11m
Asset renewals	\$6m
Performance payments (expected cost)	\$1m

Under the Agreement GWRC’s exposure to KiwiRail’s financial performance is managed through:

- The setting of a budget for GWRC’s proportion of operational services and asset renewals at triennial intervals by reference to a set of proportion tables that reflect GWRC’s share of network usage
- GWRC’s payment obligation (including the maximum Performance Fee) for each year of the triennium being limited to the amount of the agreed GWRC budget.

The Agreement provides for GWRC to undertake an audit of KiwiRail’s network financial information, with the cost of the audit met by KiwiRail if material or wilful inaccuracy is found.

Collectively the mechanisms included in the Agreement that are described above will place GWRC and the MSO in a strong position to secure high levels of network performance from KiwiRail.

4.4 Relationship management

KiwiRail's performance will in part depend on the manner in which GWRC and the MSO manage the contractual relationship.

The Agreement provides for both parties to nominate a Contract Manager whose responsibilities include managing the relationship, improving service delivery and ensuring each party meets all of its contractual obligations.

The Agreement also provides for regular and purposeful meetings that are informed by comprehensive reports.

5. GWRC's influence on KiwiRail's long term management of the Wellington metro network

The Agreement provides GWRC and the MSO with the capacity to strongly influence the long term management of the Wellington metro network through the requirement for KiwiRail to obtain GWRC's consent to a comprehensive Network Management Plan.

The Network Management Plan will be produced on a triennial basis, and cover a 10 year time horizon with detailed information for the triennium and an outline for the following seven years.

Key components of the Network Management Plan are:

- A current assessment of the condition of the various assets making up the Wellington metro network
- An assessment of current and expected utilisation of the Wellington metro network by the MSO, KiwiRail's freight service and any other operators
- KiwiRail's philosophy and strategic plan for the management of the Wellington metro network
- KiwiRail's planned programme of maintenance and renewals work over the triennium and the associated GWRC budget, and
- The expected implications of the funding available from GWRC and all other sources on the condition of the Wellington metro network over the triennium (with the expectation that the available funding should be sufficient to enable the network condition to be maintained or improved).

6. Residual issue – Commerce Act

GWRC has sought to include provisions in the Agreement to ensure that all operators using the Wellington Network contribute to access costs in proportion to their use of the Network. Acting on legal advice KiwiRail had resisted GWRC's provisions on the basis that they may prevent KiwiRail offering more favourable access terms to another Operator and may therefore be deemed anti-competitive under the Commerce Act.

At the time of completion of this report GWRC and KiwiRail officers had reached a compromise on these provisions but their acceptability to KiwiRail's senior management and Board had not been confirmed.

Officers will update Councillors on this matter at the Council meeting on 26 June.

7. **Signing of Agreement and Deed of Accession**

Subject to the satisfactory resolution of the two outstanding issues, officers consider that the Agreement is in a form that can now be signed on behalf of GWRC.

Clause 4.3 of the Agreement allows GWRC to nominate an MSO and requires KiwiRail Holdings Limited to grant access rights to the nominated MSO subject to certain conditions.

The nomination by GWRC and granting of access rights is formalised by GWRC, the MSO (currently KiwiRail Ltd) and KiwiRail Holdings Limited entering into a Deed of Accession.

The accompanying Deed of Accession (refer **Attachment 2**) requires signing by GWRC by David Benham in his capacity as attorney for GWRC.

8. **Communication**

It is not intended to undertake any communication activity regarding the signing of this agreement

9. **Recommendations**

That the Council:

1. *Receives the report.*
2. *Notes the content of the report.*
3. *Note the content of the accompanying near – final Wellington Network Agreement.*
4. *Note the content of the accompanying Deed of Accession.*
5. *Notes that at the time of preparing this Report there remained two matters in the Agreement which had not been resolved with KiwiRail.*
6. *Approves the signing of the Wellington Network Agreement by the Chief Executive, David Benham.*
7. *Approves the signing of the accompanying Deed of Accession for GWRC by David Benham in his capacity as attorney.*

Report prepared by:

Report approved by:

Angus Gabara
Manager, Rail Operations

Wayne Hastie
General Manager, Public
Transport

Attachment 1: Wellington Network Agreement

Attachment 2: Deed of Accession

Wellington Network Agreement

KiwiRail Holdings Limited trading as KiwiRail

Greater Wellington Regional Council

Contents

Parties	7
Introduction and background	7
Operative provisions	7
1. Objectives and general principles	7
Objectives	7
General principles	8
2. Term	8
3. Rights and obligations of Access Provider	8
Grant of Access Rights to Metro Service Operator	8
Network Services	12
Default or negligence	13
Other Operators bound by Common Access Terms	13
Proportion Tables	13
Licence	13
Standards required	14
Exclusion of warranty	14
Performance Indicators (PIs), Key Performance Indicators (KPIs) and Asset Quality Measures	14
Consultation on key decisions on service delivery	15
Open book environment	15
Expense recording	16
Efficiency gains	16
Assignment or transfer by Access Provider	16
Subcontracting by Access Provider	17
Sale of part of the Wellington Network	17
4. Rights and obligations of GWRC	19
Fees paid by GWRC	19
GWRC's role in relation to the Metro Service Operator	19
GWRC and Metro Service Operator's role in the relation to a Maintainer	20
GWRC nomination	20
Assignment or transfer by GWRC	21
5. Rights and obligations of Metro Service Operator	22
Access Rights	22
Non-exclusivity of Access Rights	22
Right to sub-licence Access Rights	22
Network Management Plan	23
Monitoring by Metro Service Operator	23
6. Joint obligations	23
Access Rights	23
Common Access Terms	23
Scheduling and Timetabling initiatives	23

Wellington Network Agreement

Track Possessions	24
GWRL Infrastructure	24
Catch-up Renewals	25
Determining the GWRC Budget and calculating Fees for each Triennium or on nomination of a new Operator	25
Review of terms of this Agreement	26
Frequency of review	26
Review of traction electricity supply	27
7. Performance management of this Agreement	27
Performance based agreement	27
Representatives	28
Daily Report by Metro Service Operator	28
Monthly Report by Access Provider	28
Full Year Report by Access Provider	28
Financial Audit	29
Efficiency Audit Report	29
Right to issue Performance Notice and approve Remedial Report	30
Performance Improvement Reports	30
Metro Service Operator Suspension Notices	30
Appointment of new Operator following issue of Suspension Notice	31
Representatives Meetings	31
Review of meeting arrangements	32
Attendance by GWRC	32
Dispute resolution procedure	32
8. Other provisions	32
Variation	32
Notices	32
No waiver	33
No implied waivers	33
No partnership	33
Governing law	33
Counterparts	33
Entire agreement	33
Further assurance	33
Partial invalidity	34
Crown action	34
GWRC action	34
Execution	35
Schedule 1 – Definitions and interpretation	36
Schedule 2 – GWRL Infrastructure	46
Schedule 3 – Determination of GWRC Budget and calculation of Fees	52
Annexure 1: Template for GWRC Budget	67
Annexure 2: Template for Monthly Invoice Report	71
Annexure 3: Template for monthly financial report	73
Annexure 4: Template for full year financial report	76

Wellington Network Agreement

Annexure 5: GWRC Budget 2013/14 – 2014/15	78
Schedule 4 – Network Management Services	80
Annexure 1: Content of Network Management Plan	91
Annexure 2: Track Possessions	96
Annexure 3: Asset Quality Measures	103
Schedule 5 – Network Control Services	109
Schedule 6 – Maintenance Services	116
Schedule 7 – Renewal Services	121
Schedule 8 – Incident Services	124
Schedule 9 – Performance Incentive Regime and Key Performance Indicators	126
Schedule 10 – Form of Deed of Accession	135
Schedule 11 – Form of Variation Agreement	141
Schedule 12 – Common Access Terms	147

Wellington Network Agreement

Agreement dated

2013

Parties

Between

KiwiRail Holdings Limited trading as KiwiRail (**Access Provider**)

And

Greater Wellington Regional Council (**GWRC**), a public statutory body constituted under the Local Government Act 2002.

Introduction and background

- A. The Access Provider owns and operates the Wellington Network.
- B. GWRC is responsible for all of the Wellington Region's public transport services (excluding state highways), including rail services on the Wellington Network. GWRC (with support from GWRL) is responsible for prudent stewardship and the efficient and effective use of its resources to deliver public transport services to meet the current and future needs of the Wellington region for good quality infrastructure, and local public services. GWRC (via GWRL) owns metro rolling stock, various railway premises and other assets required for the provision of Metro Services.
- C. The Access Provider and GWRC have entered into this Agreement to secure for the Wellington region long term access to the Wellington Network for Metro Services and provision of Network Services. Such access and Network Services are provided for in this Agreement by the grant of Access Rights and related rights to the Metro Service Operator and other rights to GWRC and the provision of Network Services by the Access Provider, in each case on the terms of this Agreement.

Operative provisions

1. Objectives and general principles

Objectives

- 1.1 The parties record their mutual objectives of ensuring that:
 - 1.1.1 the Access Provider provides and manages the Access Rights and Network Services, and participates in decisions regarding the Timetable and Codes, in a non-discriminatory basis as between the Metro Service Operator and other Operators; and
 - 1.1.2 Network Services are provided:
 - (a) in an efficient and effective manner;

Wellington Network Agreement

- (b) at a reasonable cost, paid at levels that enable the Access Provider to recover the agreed share of the Access Provider's reasonable actual costs in accordance with this Agreement;
- (c) to allow the Metro Service Operator to deliver Metro Services that are safe, punctual and reliable; and
- (d) in a manner that (if required by GWRC) enables GWRC to participate in decisions relating to the Wellington Network and Network Services in accordance with this Agreement.

General principles

1.2 The parties acknowledge that this Agreement governs complex operational and commercial inter-relationships and inter-dependencies, and agree that, if they are to achieve their mutual objectives throughout the Term they need to work together at all times in a co-operative and collaborative manner. In view of this, the parties agree, at all times in connection with this Agreement, to:

1.2.1 act:

- (a) reasonably and in good faith; and
- (b) openly and constructively;

1.2.2 use reasonable endeavours to assist the other parties to:

- (a) perform that other party's obligations and exercise its rights under this Agreement; and
- (b) achieve the objectives set out in clause 1.1.

2. Term

2.1 This Agreement commences on the Commencement Date and continues for 85 years from the Commencement Date ("**Term**").

3. Rights and obligations of Access Provider

Grant of Access Rights to Metro Service Operator

3.1 With effect from the Commencement Date, in accordance with, and to the extent permitted by, the terms of this Agreement, the Access Provider grants to the Metro Service Operator a licence to use the Wellington Network for the purposes of carrying on the Metro Services:

3.1.1 in accordance with the Timetable;

3.1.2 at the following frequencies and journey times:

- (a) on the Wellington to Masterton and Masterton to Wellington, Wellington Network Routes 2 trains per hour in the peak maximum journey time of 103 minutes based on all stops between Upper Hutt and Masterton and non-stop between Upper Hutt and Wellington;

Wellington Network Agreement

- (b) on the Wellington to Upper Hutt and Upper Hutt to Wellington, Wellington Network Routes:
 - (i) 15 minute frequency during the Peak;
 - (ii) 30 minute frequency during the Interpeak and Off-peak;
 - (iii) 38 minutes maximum journey time during the Peak south bound all stops between Upper Hutt and Taita and non-stop between Taita and Wellington; and
 - (iv) 45 minutes all stops maximum journey time during the Interpeak and Off-peak;

- (c) on the Wellington to Taita and Taita to Wellington, Wellington Network Routes:
 - (i) 12 minute frequency during the Peak;
 - (ii) 30 minute frequency during the Interpeak and Off-peak formed of the Train Services on the Wellington to Upper Hutt and Upper Hutt to Wellington, Wellington Network Routes;
 - (iii) 27 minutes maximum journey time during the Peak all stops between Taita and Petone and non-stop between Petone and Wellington; and
 - (iv) 29 minutes all stops maximum journey time during the Interpeak and Off-peak;

- (d) on the Wellington to Melling and Melling to Wellington, Wellington Network Routes:
 - (i) 20 minute frequency during the Peak;
 - (ii) 60 minute frequency during the Interpeak and Off-peak; and
 - (iii) 18 minutes all stops maximum journey time during the Peak, Interpeak and Off-peak;

- (e) on the Wellington to Waikanae and Waikanae to Wellington, Wellington Network Routes:
 - (i) 20 minute frequency during the Peak;
 - (ii) 30 minute frequency during the Interpeak and Off-peak;

Wellington Network Agreement

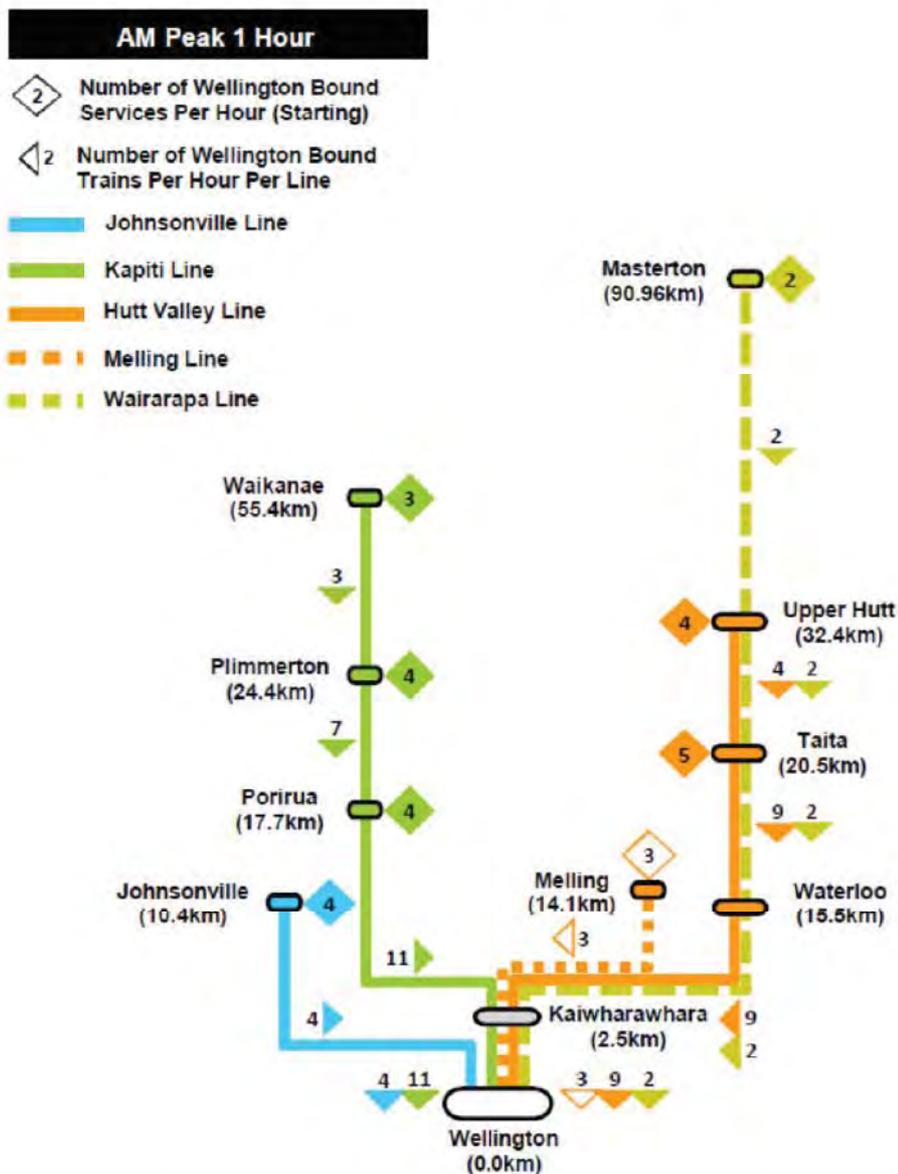
- (iii) 53 minutes maximum journey time during the Peak all stops between Waikanae and Plimmerton and non-stop between Plimmerton and Wellington; and
 - (iv) 60 minutes all stops maximum journey time during the Interpeak and Off-peak;
- (f) on the Wellington to Plimmerton and Plimmerton to Wellington, Wellington Network Routes:
 - (i) 15 minute frequency during the Peak;
 - (ii) 30 minute frequency during the Interpeak and Off-peak formed of the Train Services on the Wellington to Waikanae and Waikanae to Wellington, Wellington Network Routes;
 - (iii) 25 minutes maximum journey time during the Peak all stops between Plimmerton and Porirua and non-stop between Porirua and Wellington; and
 - (iv) 29 minutes all stops maximum journey time during the Interpeak and Off-peak;
- (g) on the Wellington to Porirua and Porirua to Wellington, Wellington Network Routes:
 - (i) 15 minute frequency during the Peak;
 - (ii) 30 minute frequency during the Interpeak and Off-peak formed of the Train Services on the Wellington to Waikanae and Waikanae to Wellington, Wellington Network Routes;
 - (iii) 21 minutes all stops maximum journey time during the Peak; and
 - (iv) 21 minutes all stops maximum journey time during the Interpeak and Off-peak;
- (h) on the Wellington to Johnsonville and Johnsonville to Wellington, Wellington Network Routes:
 - (i) 15 minute frequency during the Peak;
 - (ii) 30 minute frequency during the Interpeak and Off-peak;
 - (iii) 24 minutes all stops maximum journey time during the Peak; and

Wellington Network Agreement

- (iv) 21 minutes all stops maximum journey time during the Interpeak and Off-peak; and

3.1.3 for reasonable access to all stations, yards, stabling and marshalling areas, the Thorndon Carriage Wash Building and Thorndon Carriage Depot, including all GWRL Infrastructure and other Infrastructure to enable Personnel of the Metro Service Operator to provide Train Services and to enable Personnel of the Metro Service Operator, GWRC and GWRL to operate and maintain (including to renew or develop) GWRL Infrastructure.

3.2 The following diagram illustrates the number of Train Services required during the ‘AM-Peak hour’ to provide the frequencies described at clause 3.1.2. In the event of any inconsistency or ambiguity between the diagram and clause 3.1.2, the requirements at clause 3.1.2 take precedence.



3.3 The parties shall work together in good faith to achieve the Metro Services described at clause 3.1, recognising the joint objective of delivering Metro

Wellington Network Agreement

Services at frequencies during the Peak as set out at clause 3.1.2 and as illustrated in the diagram set out at clause 3.2. The parties acknowledge and accept that they will comply with their respective obligations under clause 4.8 of the Common Access Terms and work together with other Operators in relation to changes to the Timetable after the Commencement Date to reflect this joint objective (to the extent there is available capacity) and the parties will undertake operational modelling using an industry standard train timetabling simulation model to test potential operating and Infrastructure assumptions for the purpose of identifying any such available capacity.

- 3.4 The parties shall on a regular basis:
- 3.4.1 examine their respective methods of operation in the performance of their respective obligations under this Agreement, and use reasonable endeavours to ensure that those methods of operation facilitate creation or management of the capacity required for the Metro Service Operator's Train Services;
 - 3.4.2 identify opportunities to efficiently create additional capacity for the Wellington Network; and
 - 3.4.3 through the Timetable Committee processes under the Common Access Terms, identify opportunities to optimise the use of the Wellington Network for Metro Services, including working with other Operators to minimise their operations during Peak hours.

Network Services

- 3.5 On and from the Commencement Date, the Access Provider will in return for payment of the Fees, provide the following Network Services:
- 3.5.1 Network Management Services, as set out in Schedule 4 (Network Management Services);
 - 3.5.2 Network Control Services, as set out in Schedule 5 (Network Control Services);
 - 3.5.3 Maintenance Services, as set out in Schedule 6 (Maintenance Services);
 - 3.5.4 Renewal Services, as set out in Schedule 7 (Renewal Services);
 - 3.5.5 Incident Services, as set out in Schedule 8 (Incident Services); and
 - 3.5.6 Upgrade Services.
- together the '**Network Services**'.
- 3.6 In calculating the Fees for Network Services, the Access Provider shall apply the principle that the amount of Recoverable Expenses payable by GWRC under this Agreement shall be proportionate to the Metro Service Operator's use of the Wellington Network relative to other Operators.

Wellington Network Agreement

Default or negligence

- 3.7 In calculating the Fees, the Access Provider shall not recover any Recoverable Expenses incurred to the extent resulting from:
- 3.7.1 any negligence or other default of this Agreement by the Access Provider (or, for the avoidance of doubt, any subcontractor of the Access Provider); or
 - 3.7.2 the default or negligence of any other Operator.

Other Operators bound by Common Access Terms

- 3.8 The Access Provider agrees that it shall not grant any other Operator any Access Rights to the Wellington Network (or grant any lease, proprietary or other interest under which a third party could exercise rights of access, as an operator of rail service vehicles, to the Wellington Network) without that Operator also being bound by the Common Access Terms.
- 3.9 The Access Provider shall not waive or vary any provision of the Common Access Terms in respect of another person in any Wellington Network Access Agreement with that person without the Metro Service Operator's and GWRC's prior written consent (such consent not to be unreasonably withheld).

Proportion Tables

- 3.10 The Access Provider agrees that it will not grant any other Operator Access Rights to the Wellington Network (or grant any lease, proprietary, or other interest under which a third party could exercise rights of access as an operator of rail service vehicles to the Wellington Network), without either :
- 3.10.1 obtaining GWRC's prior written approval that the introduction of the new Operator will not adversely affect the principle that the amount of Recoverable Expenses payable by GWRC under this Agreement shall be proportionate to the Metro Service Operator's use of the Wellington Network; or
 - 3.10.2 confirming that the new Operator has agreed to be subject to and included in the Proportion Tables setting out the basis upon which all Operators utilising the Wellington Network will pay for expenses incurred by the Access Provider;
 - 3.10.3 proposing a review and variation to the Proportion Tables included at Schedule 3 (Determination of GWRC Budget and calculation of Fees) to include the new Operator; and
 - 3.10.4 the parties to this Agreement agreeing to change the Proportion Tables to include the new Operator and recording that change by execution of a variation agreement in the form set out at Schedule 11 (Form of Variation).

Licence

- 3.11 The Access Provider shall, at all times, ensure that it holds and maintains all railway access provider licences and other licences, permits or approvals

Wellington Network Agreement

required under any applicable law to operate (including as Network Controller, as defined in the Common Access Terms) and maintain the Wellington Network.

Standards required

- 3.12 The Access Provider shall use its best endeavours to maintain and operate the Wellington Network to standards and conditions so that at all times:
- 3.12.1 Vehicles operated by the Metro Service Operator at the Commencement Date may continue to operate on the Wellington Network (for the avoidance of doubt, subject however to compliance with the requirements of applicable law);
 - 3.12.2 the KPI Results satisfy or exceed the KPI Achieve Benchmarks;
 - 3.12.3 the PI Results satisfy or exceed the PI Achieve Benchmarks;
 - 3.12.4 the Asset Quality Measures demonstrate a trend toward the goals specified at Annexure 3, Schedule 4 (Network Management Services); and
 - 3.12.5 the Access Provider meets the minimum standards required to maintain any railway access provider licence or other accreditation required under clause 3.11.

Exclusion of warranty

- 3.13 Without limiting the Access Provider's obligations under this Agreement, the Access Provider gives no warranty that the Wellington Network is free of faults or defects or that the Metro Service Operator's use of the Wellington Network shall be continuous or uninterrupted.
- 3.14 All implied warranties and warranties by operation of law or otherwise are excluded to the maximum extent permitted by law.
- 3.15 To avoid doubt, the Metro Service Operator agrees and represents that it is acquiring the Access Rights, and entering into this Agreement, for the purposes of a business and that the Consumer Guarantees Act 1993 does not apply to this Agreement, including the provision of the Access Rights or the Network Services by the Access Provider to the Metro Service Operator or GWRC (as applicable).

Performance Indicators (PIs), Key Performance Indicators (KPIs) and Asset Quality Measures

- 3.16 Performance Indicators (PIs), Key Performance Indicators (KPIs), and Asset Quality Measures for the purpose of reporting on, monitoring and analysing the Access Provider's performance of Network Services are set out as follows:
- 3.16.1 Performance Indicators are set out at Schedule 4 (Network Management Services) Schedule 5 (Network Control Services) Schedule 6 (Maintenance Services) Schedule 7 (Renewal Services) and Schedule 8 (Incident Services);

Wellington Network Agreement

- 3.16.2 Key Performance Indicators (KPIs) are set out at Schedule 9 (Performance Incentive Regime and Key Performance Indicators); and
- 3.16.3 Asset Quality Measures are set out at Annexure 3, Schedule 4 (Network Management Services).
- 3.17 The Access Provider shall seek continuous improvements to the performance of the Wellington Network so that, where possible, the KPI Achieve Benchmarks are exceeded.
- 3.18 If the Access Provider becomes aware of potential for KPI performance measures to trend towards the KPI Fail Limit, the Access Provider must provide early advice to the Metro Service Operator on reasons and potential remedies.
- 3.19 The Access Provider will establish and maintain PI, KPI and Asset Quality Measures monitoring, recording, reporting and verification systems:
 - 3.19.1 to enable the Metro Service Operator to accurately and reliably implement, monitor, record and report on the PI and KPI regimes, (including an annual third party audit, if required and funded by either the Metro Service Operator or GWRC);
 - 3.19.2 to enable GWRC to understand the quality of the Wellington Network Infrastructure; and
 - 3.19.3 to the satisfaction of GWRC and the Metro Service Operator, acting reasonably.
- 3.20 The Access Provider shall not be required to establish and maintain monitoring, recording, reporting and verification systems in regard to PIs that are the responsibility of the Metro Service Operator.

Consultation on key decisions on service delivery

- 3.21 When a proposal of the Access Provider in relation to all or part of the Rail Network or the Network Services:
 - 3.21.1 has long-term or material cost or service level implications; or
 - 3.21.2 has the potential to create industrial or other indirect disruptions (such as in-house, as opposed to contracting out services); or
 - 3.21.3 relates to alternative procurement methods;that will affect the Metro Service Operator, the Access Provider will, with an open mind, consult GWRC and allow GWRC a reasonable time to respond to any such proposal prior to carrying out the proposal.

Open book environment

- 3.22 The Access Provider will operate in an “open book environment” as regards the Metro Service Operator and GWRC by providing them with:

Wellington Network Agreement

- 3.22.1 full disclosure of actual income and costs incurred relating to the Wellington Network and the provision of Network Services including allocation methodology for all source transactions;
- 3.22.2 full disclosure of all performance data and the source of such data; and
- 3.22.3 full disclosure of actual income and costs incurred relating to other Access Rights, the determination of the Wellington Network Budget, the GWRC Budget and the Fees.

Expense recording

- 3.23 The Access Provider shall use reasonable endeavours to establish (within a reasonable period from the Commencement Date) systems, records, work practices and contracting methodologies so that, as far as reasonably practicable, its expenses in respect of the Wellington Network and the national Rail Network are directly attributable solely to either the Wellington Network or the national Rail Network.

Efficiency gains

- 3.24 The Access Provider shall use its best endeavours to reduce costs through efficiency and other productivity gains, including through the appropriate outsourcing (in accordance with all applicable State sector procurement and contracting guidelines and requirements) of Renewal Services and Upgrade Services projects and management expertise, labour, material, plant and equipment used in Maintenance Services and Network Control Services for the Wellington Network.

Assignment or transfer by Access Provider

- 3.25 The Access Provider is entitled to assign or transfer its rights and obligations under this Agreement with the prior written approval of GWRC. The Access Provider, GWRC, the Metro Service Operator and the assignee shall enter into a deed of assignment or novation (as the case maybe) approved by GWRC (such approval not to be unreasonably withheld, provided that the deed preserves the Access Provider's obligation under clause 3.26) to give effect to the assignment or transfer of the Access Provider's rights and obligations under this clause 3.25.
- 3.26 Notwithstanding any vesting or assignment or transfer of the rights and obligations of the Access Provider under this Agreement, any person that has been the Access Provider shall, during the Term, continue to comply with clause 3.30 as if it was still the Access Provider in respect of any Relevant Land for which it holds the fee simple or other alienable interest.
- 3.27 A change in control of the Access Provider, or the Access Provider ceasing to be either ultimately wholly owned by the Crown or a statutory corporation solely accountable to the Crown, will be deemed to be an assignment for the purposes of this clause. "Control" means the power to hold more than 50% of the voting securities, or to exercise or control the exercise of more than 50% of the maximum number of votes than can be voted at a meeting of shareholders; or control directly or indirectly, the composition of the board of directors or

Wellington Network Agreement

board of management of, the Access Provider, whether through the ownership of voting securities, by contract or otherwise.

Subcontracting by Access Provider

3.28 The Access Provider may subcontract to any person the performance of all or any part of its rights and/or obligations under this Agreement, provided that, in respect of any contract that has the effect of the Access Provider subcontracting or transferring to a third party responsibility for all or a significant part of the management or provision of the Network Services or for the maintenance of the Wellington Network, the Access Provider.

3.28.1 gives the Metro Service Operator and GWRC at least three months' prior written notice of such contract; and

3.28.2 before entering into such contract, must have obtained the approval (not to be unreasonably withheld) of the Metro Service Operator and GWRC to the proposed subcontracting or transfer.

3.29 For the avoidance of doubt:

3.29.1 the provisions of clause 3.28 do not apply to any contracts existing as at the Commencement Date; and

3.29.2 subcontract includes any contract with any lessor or licensor of the Wellington Network (or related company of such lessor or licensor) to the Access Provider.

Sale of part of the Wellington Network

3.30 If at any time during the Term, the Access Provider wishes to sell, or grant any interest, lease or licence or other use or occupancy rights for a term (including any renewal terms) of ten years or more in, any of the land comprising the Wellington Network or which adjoins, or is closely connected to, the Wellington Network ("**Relevant Land**"), then the Access Provider shall, subject to clauses 3.30.1 and 3.30.2 below, before entering into such a transaction ("**Transaction**"):

3.30.1 advise GWRC in writing of the Access Provider's intention to enter into the Transaction ; and

3.30.2 subject to:

- (a) any legislative requirements;
- (b) any Crown policy requirements relating to the transfer and disposal of Crown assets; and
- (c) any contractual or other arrangement applying as at the Commencement Date;

that restrict the Access Provider's ability to comply with this subclause 3.30.2, negotiate with GWRC (each party to negotiate in

Wellington Network Agreement

good faith) for GWRC to use the land in question for Wellington metro rail purposes only, provided that:

- (d) the GWRC interest in the Relevant Land is notified to the Access Provider within 45 Business Days after receipt by GWRC of the advice referred to in subclause 3.30.1 above with an outline of the proposed sale, grant of any interest, lease, licence or other use or occupancy right (**GWRC Interest**); and
- (e) if the Access Provider and GWRC have not, within six calendar months following notification to the Access Provider of the GWRC Interest, received and agreed (acting reasonably) a GWRC proposal that contains the essential terms of the sale, grant of any interest, lease, licence or other use or occupancy right (which may be subject to conventional funding and Council approval processes) then the Access Provider may immediately enter into the relevant Transaction.

3.31 To avoid doubt, GWRC acknowledge that:

3.31.1 the Access Provider may enter into the Transaction, subject only to complying with clause 3.30; and

3.31.2 the provisions of clause 3.30 shall not apply to entry into any:

- (a) Transaction between the Access Provider and any party that is and remains wholly, directly or indirectly, owned and controlled by the Crown, or a statutory corporation solely accountable to the Crown, which requires that other party to comply with clause 3.30 in respect of any interest in or right relating to Relevant Land of that other party, as if that other party is the Access Provider and references to Relevant Land were to such interest or right; or
- (b) easements, leases, licences, deeds of grant of similar arrangements in relation to the erection, installation or placement of cabling, wiring, pipes and other utilities over, across or through railway land entered into or granted by the Access Provider in the ordinary course of owning and managing the Wellington Network; or
- (c) Transaction (other than any sale of Relevant Land) entered into or granted by the Access Provider for rail purposes; and

3.31.3 nothing in clause 3.30 requires the Access Provider to act in breach of any of its legislative obligations or any contractual or other obligation of the kind described in subclause 3.30.2 in respect of the Relevant Land, including any such obligations under the Public Works Act

Wellington Network Agreement

1981 and/or the New Zealand Railways Corporation Restructuring Act 1990.

4. Rights and obligations of GWRC

Fees paid by GWRC

4.1 In consideration of the Access Provider granting Access Rights to the Metro Service Operator and for providing the Network Services, GWRC shall:

4.1.1 pay fees to the Access Provider for the Network Services as follows:

- (a) Operations Fee (for Network Management Services, Network Control Services and Maintenance Services);
- (b) Renewal Fee (for Renewal Services);
- (c) Performance Fee;
- (d) Incident Fee (for Incident Services); and
- (e) Upgrade Fee (for Upgrade Services);

together the 'Fees'; and

4.1.2 determine a GWRC Budget with the Access Provider to set the maximum amounts payable for the Operations Fee, the Renewal Fee and the Performance Fee for each Financial Year of a Triennium, in accordance with Schedule 3 (Determination of GWRC Budget and calculation of Fees).

GWRC's role in relation to the Metro Service Operator

4.2 GWRC is a party to this Agreement and agrees to pay the Fees (unless payment is delegated to the Metro Service Operator in accordance with clause 4.5 or 6.11.5) in order to secure for the Wellington region long term access to the Wellington Network for Metro Services.

4.3 In order to give effect to clause 4.2, and subject to any restrictions set out in this Agreement, GWRC has the right under clauses 4.8 and 7.21 to require the Access Provider, to grant Access Rights to the Metro Service Operator for the time being and during the relevant period, as nominated by GWRC, on the terms of this Agreement.

4.4 At the Commencement Date, GWRC has nominated KiwiRail Limited as the Metro Service Operator. KiwiRail Limited shall become a party to this Agreement, and shall assume the rights and obligations of the Metro Service Operator under this Agreement as specified in the deed of accession in the form set out at Schedule 10 (Form of Deed of Accession) or such other form as agreed between GWRC and the Access Provider (acting reasonably) (**KiwiRail Limited Deed of Accession**) or as determined by GWRC under clause 4.5, upon delivering to the Access Provider and GWRC a validly executed KiwiRail Deed of Accession and establishing in writing to the Access Provider's satisfaction (acting reasonably) that KiwiRail Limited satisfied the

Wellington Network Agreement

requirements of clause 4.8.4 as if it had been nominated by GWRC under clause 4.8.

- 4.5 GWRC may, by notice to the Access Provider and the Metro Service Operator, from time to time delegate any of its rights or obligations under this Agreement to the Metro Service Operator or take upon itself any of the rights and obligations of the Metro Service Operator under this Agreement.

GWRC and Metro Service Operator's role in the relation to a Maintainer

- 4.6 GWRC has the right to require the Access Provider to grant a licence, on the same or substantially the same terms as this Agreement, to a person nominated by GWRC which has also been contracted by GWRL or the Metro Service Operator to provide maintenance services in respect of Vehicles used for Metro Services ("Maintainer"), for access to, and use of, such depots, yards or storage areas (and the Wellington Network) to the extent required to enable it to carry out its contract with GWRL or the Operator for the provision of Vehicle maintenance services.

- 4.7 At the Commencement Date, GWRL has engaged KiwiRail Limited as a Maintainer.

GWRC nomination

- 4.8 GWRC may nominate a person from time to time to be the Metro Service Operator, in accordance with the following:

4.8.1 GWRC must give the Access Provider at least 3 months' prior written notice of its intention to appoint a new Metro Service Operator, such notice to include notice of the proposed duration of the Metro Service Operator's appointment;

4.8.2 GWRC shall ensure payment (either by GWRC or the incumbent Metro Service Operator) to the Access Provider of all undisputed amounts due and payable by the incumbent Metro Service Operator to the Access Provider under this Agreement immediately prior to the appointment of a new Metro Service Operator;

4.8.3 subject to GWRC complying with clause 4.8.2 and the nominated Metro Service Operator complying with clause 4.8.4, the new nominated Metro Service Operator may as of right become a party of this Agreement in which case the new Metro Service Operator shall assume the rights and obligations of the Metro Service Operator under this Agreement; and

4.8.4 A new Metro Service Operator shall only become a party to this Agreement, and assume the rights and obligations of the Metro Service Operator under this Agreement, upon:

- (a) delivery by the new Metro Service Operator to the Access Provider and GWRC of a validly executed deed of accession in the form set out at Schedule 10 (Form of Deed Accession) (customised to the extent necessary); and

Wellington Network Agreement

- (b) the new Metro Service Operator establishing in writing, to the Access Provider's reasonable satisfaction, that the new Metro Service Operator:
 - (i) holds a licence issued under the Railways Act 2005 to operate rail services on the Wellington Network (or relevant parts thereof) and all other licences, permits and approvals required under all applicable law; and
 - (ii) satisfies the insurance requirements set out in the Common Access Terms to be fulfilled by the Metro Service Operator (including the requirement to obtain any public liability and other insurance cover);

unless as otherwise agreed in the writing by the Access Provider at its sole discretion. With effect on and from satisfaction of the requirements of this clause 4.8.4, the previous Metro Service Operator shall cease to be a party to this Agreement.

4.9 For the avoidance of doubt:

- 4.9.1 no person or party may exercise any Access Rights under this Agreement without first having satisfied the requirements in subclauses 4.8.4(a) and 4.8.4(b); and
- 4.9.2 appointment of a new Metro Service Operator by GWRC in accordance with this clause 4.8, and accession by that new Metro Service Operator to this Agreement in accordance with clause 4.8.4, shall be without prejudice to and shall not affect, the rights and remedies of the Access Provider and the previous Metro Service Operator, which have accrued prior to such appointment and accession.

Assignment or transfer by GWRC

- 4.10 GWRC or any permitted assignee is entitled to assign or transfer all (but not part of) its rights and obligations under this Agreement, provided that:
 - 4.10.1 GWRC (or any subsequent assignor) gives the Access Provider at least one month's written notice of the assignment or transfer;
 - 4.10.2 the assignee is a public statutory body constituted under the Local Government Act 2002 or a Council-Controlled Organisation;
 - 4.10.3 a deed of assignment or novation in a form approved by the Access Provider (acting reasonably) or prepared by the Access Provider and approved by GWRC (or any permitted assignor), acting reasonably, is properly executed as by the assignor and assignee and delivered to the Access Provider prior to the assignment date; and

Wellington Network Agreement

4.10.4 GWRC (or any subsequent assignor) pays the Access Provider's reasonable out of pocket expenses in respect of the approval and/or preparation of the deed of assignment or novation.

4.11 For the avoidance of doubt, the parties acknowledge that clause 4.10 shall apply whether the assignment or transfer in question is an assignment or transfer by GWRC or any permitted assignee or transferee from GWRC.

5. Rights and obligations of Metro Service Operator

Access Rights

5.1 The Metro Service Operator will use the Wellington Network for the purposes of carrying on the Metro Services in accordance with the licence granted by the Access Provider at clause 3.1, and the requirements of this Agreement.

5.2 Notwithstanding any other provision in this Agreement or elsewhere, the Access Rights granted to the Metro Service Operator and the Metro Service Operators obligations to comply with this Agreement shall not come into force until the Commencement Date (unless otherwise agreed between the Access Provider and the Metro Service Operator).

Non-exclusivity of Access Rights

5.3 Notwithstanding any other provision in this Agreement, the Metro Service Operator's licence to use, and the Metro Service Operator's Access Rights in respect of, the Wellington Network under this Agreement are non-exclusive.

5.4 The Access Rights granted to the Metro Service Operator under this Agreement shall co-exist with any rights granted in respect of the Wellington Network by the Access Provider to any other Operators under any and all separate Wellington Network Access Agreements. Subject to other Operators being under a similar obligation, the Metro Service Operator must act reasonably so that the other Operators can make reasonable use of their respective Access Rights.

5.5 The Access Rights granted to the Metro Service Operator under this Agreement do not include the right to operate any freight services on the Wellington Network.

Right to sub-licence Access Rights

5.6 The Metro Service Operator may sub-licence all or part of its rights under this Agreement to any other person for the purpose of that person carrying out the Metro Services, with the prior written consent of the Access Provider (such consent not to be unreasonably withheld).

5.7 The Metro Service Operator has the right under this Agreement to sub licence its Access Rights to a Maintainer to the extent that the Maintainer requires access to, and use of, any part of the Wellington Network to allow it to provide maintenance services in respect of the Vehicles used for Metro Services.

5.8 If the Metro Service Operator grants a sub-licence under clause 5.6 or 5.7, it shall be responsible for, and shall indemnify the Access Provider pursuant to

Wellington Network Agreement

any indemnity contained in the Common Access Terms from and against all costs, losses, expenses and liabilities arising from or in connection with the acts and omissions of any such sub-licensee within the Wellington Network, as if the Metro Service Operator was such sub-licensee.

- 5.9 Without limiting the foregoing, the Metro Service Operator shall be responsible for ensuring such sub-licensee complies with all the terms of this Agreement as if it were a party to this Agreement in the capacity of the Metro Service Operator, and any breach of the obligations of the Metro Service Operator under this Agreement by such sub-licensee shall be deemed to be a breach by the Metro Service Operator.

Network Management Plan

- 5.10 The Metro Service Operator must (on request by either the Access Provider or GWRC) provide information to the Access Provider and GWRC relevant to the preparation and review of the Network Management Plan in accordance with requirements set out at Schedule 4 (Network Management Services).

Monitoring by Metro Service Operator

- 5.11 The Metro Service Operator will establish and maintain relevant data and monitoring and reporting systems to accurately and reliably monitor, record and report on delays or cancellations of Train Services or irregularities in the Network Services resulting from any act or omission of the Access Provider for the purpose of producing the 'Daily Report' as required by clause 7.3.

6. Joint obligations

Access Rights

- 6.1 The parties acknowledge that the Access Rights and related rights under this Agreement are granted to the Metro Service Operator for the time being and accordingly, for the purposes of this Agreement, the Metro Service Operator (and not GWRC) is the Operator in respect of those Access Rights and related rights.

Common Access Terms

- 6.2 The parties, agree:
- 6.2.1 to be bound by and comply with the Common Access Terms; and
 - 6.2.2 for the avoidance of doubt, where there is any inconsistency between this Agreement and the Common Access Terms, the provisions of the Common Access Terms shall prevail unless the Common Access Terms expressly states otherwise.

Scheduling and Timetabling initiatives

- 6.3 The parties will, through the Timetable Committee processes under the Common Access Terms, work together to optimise the use of the Wellington Network including working with other Operators to minimise their operations during the Peak.

Wellington Network Agreement

Track Possessions

- 6.4 The parties must work with each other to propose a Track Possession Plan for the approval of the Wellington Network Timetable Committee (including for the approval of any subcommittee appointed to develop and recommend a Track Possessions Plan to the Wellington Network Timetable Committee) (the **Track Possessions Subcommittee**). The Track Possession Plan will be based on the Track Possessions Allowance and the general principles and timeframes set out at Annexure 2, Schedule 4 (Network Management Services).
- 6.5 Unless the parties agree otherwise, the parties shall ensure that they are each represented on any Track Possessions Subcommittee appointed to develop and recommend a Track Possession Plan to the Wellington Network Timetable Committee.
- 6.6 The Access Provider shall ensure that:
- 6.6.1 Track Possessions are conducted in accordance with the Track Possession Plan;
 - 6.6.2 to the extent that a Track Possession is required for emergency purposes and not included in the Track Possession Plan, the Metro Service Operator is given as much notice as possible; and
 - 6.6.3 at all times it endeavours to avoid any inconvenience caused to the operation of Metro Services by Track Possessions.
- 6.7 The parties shall ensure that the Track Possessions that are available within the agreed Track Possession Plan are utilised in accordance with the provisions set out at paragraph 4.2, Annexure 2, Schedule 4 (Network Management Services).

GWRL Infrastructure

- 6.8 The parties acknowledge that:
- 6.8.1 GWRL is the owner of the assets and other infrastructure described at Schedule 2 (GWRL Infrastructure);
 - 6.8.2 the Access Provider and GWRL have various rights and obligations under the GWRL leases, licences and access arrangements described at paragraph 1.10 of Schedule 2 (GWRL Infrastructure) some of which will be relevant to the delivery of Metro Services and the parties rights and obligations under this Agreement; and
 - 6.8.3 the Access Provider shall not be entitled to recover costs under this Agreement associated with the maintenance, inspection or renewal of the GWRL Infrastructure:
 - (a) except in accordance with the terms of the lease, licence or other access arrangements described at paragraph 1.10 Schedule 2 (GWRL Infrastructure); or

Wellington Network Agreement

- (b) as separately agreed in writing between GWRC and the Access Provider.

Catch-up Renewals

- 6.9 The Access Provider and GWRC acknowledge that at the Commencement Date the Crown has committed to fund Catch-up Renewal Services over a period no greater than 8 years commencing from 1 July 2011 at a total cost of \$88.4 million.
- 6.10 The parties acknowledge that:
- 6.10.1 the programme and scope of the Catch-up Renewal Services will be described in the Network Management Plan in accordance with the requirements set out at Annexure 1, Schedule 4 (Network Management Services);
 - 6.10.2 the Catch-up Renewal Fee for Catch-up Renewal Services will be paid for by the Crown; and
 - 6.10.3 to avoid doubt, the Access Provider is not required to undertake any Catch-up Renewal Services that are not fully funded by the Crown.

Determining the GWRC Budget and calculating Fees for each Triennium or on nomination of a new Operator

- 6.11 The parties acknowledge that:
- 6.11.1 the GWRC Budget for each Triennium and each Financial Year within a Triennium will be calculated and determined in accordance with the principles set out at Schedule 3 (Determination of GWRC Budget and calculation of Fees);
 - 6.11.2 the GWRC Budget for each of the final two Financial Years of the First Triennium are set out at Schedule 3 (Determination of GWRC Budget and calculation of Fees);
 - 6.11.3 prior to the commencement of each subsequent Triennium (or as soon as possible following any revision in accordance with paragraphs 5.2 and 5.3 of Schedule 4 (Network Management Services)) the parties shall execute a variation agreement in the form set out at Schedule 11 (Form of Variation Agreement), customised to the extent necessary, to record the GWRC Budget for that Triennium;
 - 6.11.4 if a variation agreement to record the GWRC Budget is not executed prior to the commencement of each Triennium the provisions at paragraph 5.3 of Schedule 4 (Network Management Services) shall apply;
 - 6.11.5 the parties may review the arrangements set out at Schedule 3 (Determination of GWRC Budget and calculation of Fees) on the nomination of a new Metro Service Operator under clause 4.8 of this

Wellington Network Agreement

Agreement. This review may consider alternative payment methodologies including amendments to:

- (a) make the Metro Service Operator responsible for payment of the Fees; and
- (b) enable the Metro Service Operator to manage its cost and performance risk in relation to Network Services.

6.11.6 any changes arising from a review under clause 6.11.5 above must be recorded as a variation agreement in the form set out at Schedule 11 (Form of Variation Agreement), customised to the extent necessary, to record the agreed change.

Review of terms of this Agreement

6.12 Prior to the commencement of each Triennium the parties shall:

6.12.1 identify the changes required to Schedule 3 (Determination of GWRC Budget and calculation of Fees) to record the GWRC Budget for that Triennium together with any other changes required as a result of a revision to the Proportion Tables;

6.12.2 identify any changes required to Schedule 9 (Performance Incentive Regime and Key Performance Indicators) arising from any agreed variation to the Performance Incentive Regime;

6.12.3 identify any other changes arising from any other agreed variation to this Agreement; and

6.12.4 prepare and execute a variation agreement in the form set out at Schedule 11 (Form of Variation Agreement), customised to the extent necessary, to record the agreed changes.

6.13 Subject to clause 6.14, in addition to the review required prior to the commencement of each Triennium as contemplated at clause 6.12, any party may, at any other time and from time to time, provide to the other parties (“receiving parties”) a notice requesting a review of the terms of this Agreement (including, to avoid doubt, the Asset Quality Measures, PI and KPI regimes) other than the Term. The receiving parties shall, promptly after receiving such notice, consider any amendment to the terms of this Agreement proposed by the initiating party, and the parties shall negotiate and agree the relevant proposed variations to this Agreement. To avoid doubt, the receiving parties shall also be entitled to submit to the first party, proposed amendments to this Agreement.

Frequency of review

6.14 No party shall be required to participate in a review of the terms of this Agreement as contemplated in clause 6.13 any more frequently than once in each Financial Year.

Wellington Network Agreement

Review of traction electricity supply

- 6.15 The parties acknowledge that at the Commencement Date the Access Provider:
- 6.15.1 purchases traction electricity used by GWRL's Vehicles and other Vehicles used for Metro Services, and recovers this cost from the Metro Service Operator; and
 - 6.15.2 the Metro Service Operator recovers that cost from GWRC under the Wellington Metro Services operating agreement between GWRC and KiwiRail Limited applying at the Commencement Date.
- 6.16 GWRC may from 30 June 2016, at any review initiated under clauses 6.11 or 6.12 require the Access Provider to cease supplying traction electricity to the Metro Service Operator under the current arrangement and instead:
- 6.16.1 require the Access Provider to supply and charge the cost of traction electricity to GWRC as part of the Fees paid under this Agreement; or
 - 6.16.2 cease to supply traction electricity and permit GWRC to purchase traction electricity directly; or
 - 6.16.3 cease to supply traction electricity and permit the Metro Service Operator to purchase traction electricity directly.

7. Performance management of this Agreement

Performance based agreement

- 7.1 The parties acknowledge that throughout the Term the objectives of this Agreement set out at clause 1.1 will be achieved by:
- 7.1.1 management of this Agreement in accordance with the general principles described at clause 1.2;
 - 7.1.2 applying the performance management and incentive regime set out at Schedule 9 (Performance Incentive Regime and Key Performance Indicators);
 - 7.1.3 provision of the following:
 - (a) a Daily Report provided by the Metro Service Operator;
 - (b) a Monthly Report provided by the Access Provider;
 - (c) a Full Year Report provided by the Access Provider; and
 - (d) the other notices, reports, audits and reviews required by this Agreement.
 - 7.1.4 attendance at the meetings described at clause 7.22; and
 - 7.1.5 prompt and efficient attention to any actions assigned to the parties or their representatives.

Wellington Network Agreement

Representatives

7.2 The parties will each, appoint a Contract Manager whose primary responsibilities include:

7.2.1 managing the relationship between the Access Provider and the Metro Service Operator with the overall objective of improving service delivery; and

7.2.2 ensuring each party's contractual and reporting objectives under this Agreement are met.

Daily Report by Metro Service Operator

7.3 The Metro Service Operator will, within one Business Day of the end of each day, provide to the Access Provider a report (the "**Daily Report**") on any delays or cancellations of Train Services or irregularities in the Network Services resulting from any act or omission of the Access Provider. This will be the initial allocation of delays (i.e. Metro Services that are not "on-time") as defined in Schedule 9 (Performance Incentive Regime and Key Performance Indicators) and cancellations of Train Services for the purposes of this Agreement.

Monthly Report by Access Provider

7.4 The Access Provider will provide to GWRC and the Metro Service Operator a report for each month (the "**Monthly Report**"), within 11 Business Days of the end of that month (excluding the report for December which will be provided within 15 Business Days of the end of that month).

7.5 The Monthly Report will be provided:

7.5.1 in a format reasonably approved by GWRC;

7.5.2 contain the information described at paragraph 9.3, Schedule 4 (Network Management Services), in sufficient detail to inform discussion in the monthly meetings held in accordance with clause 7.22.3; and

7.5.3 unless agreed otherwise the financial information shall be provided in accordance with the template for the monthly financial report set out at Annexure 3, Schedule 3 (Determination of GWRC Budget and calculation of Fees).

Full Year Report by Access Provider

7.6 The Access Provider will provide to GWRC and the Metro Service Operator a report for each Financial Year (in addition to the relevant Monthly Report) (the "**Full Year Report**"), no later than six weeks after the start of the following Financial Year.

7.7 The Full Year Report will be provided:

7.7.1 in a format reasonably approved by GWRC;

Wellington Network Agreement

- 7.7.2 contain the information described at paragraph 9.4, Schedule 4 (Network Management Services); and
- 7.7.3 unless agreed otherwise the financial information shall be provided in accordance with the template for the full year financial report set out at Annexure 4, Schedule 3 (Determination of GWRC Budget and calculation of Fees).

Financial Audit

- 7.8 GWRC shall be entitled (but not obliged) at any time to complete an annual audit of the financial information provided under this Agreement. GWRC shall appoint the auditor(s).
- 7.9 The Access Provider must co-operate to facilitate and disclose all information reasonably requested to the auditor appointed by GWRC and co-operate to facilitate any such audit(s) occurring on a transparent and efficient basis.
- 7.10 GWRC shall meet the cost of any financial audit, unless the audit results show any material and wilful inaccuracy in the financial information. In such circumstances the cost of the audit shall be borne by the Access Provider.

Efficiency Audit Report

- 7.11 The Metro Service Operator or GWRC may (at their cost) obtain a report prepared by an independent expert (the “**Efficiency Audit Report**”) in relation to any Financial Year at any time for the purpose of:
 - 7.11.1 testing the effectiveness and efficiency of the Access Provider in relation to the performance of the Network Services during the relevant Financial Year against the relevant Network Management Plan, and
 - 7.11.2 the requirements of this Agreement, which may include:
 - (a) determining meaningful input and output benchmarks;
 - (b) comparisons with similar organisations or activities or rail network services; and
 - (c) providing information regarding the reallocation of resources to enable the provision of the Network Services in accordance with this Agreement in a more economic and efficient manner.
- 7.12 The Access Provider must co-operate and disclose all information reasonably requested to the independent expert for the purpose of preparing the Efficiency Audit Report.
- 7.13 The Access Provider shall take account of and provide a report to the Metro Service Operator and GWRC of its actions and responses to any Efficiency Audit Report.

Wellington Network Agreement

Right to issue Performance Notice and approve Remedial Report

- 7.14 The Metro Service Operator may issue a written request (“**Performance Notice**”) to the Access Provider if the Access Provider’s KPI results fall outside the KPI Fail Limit.
- 7.15 The Performance Notice issued by the Metro Service Operator shall require the Access Provider to provide a Remedial Report setting out:
- 7.15.1 the reasons for the relevant performance levels, and
 - 7.15.2 the action that the Access Provider will take to avoid such levels of performance.
- 7.16 The Metro Service Operator will, upon receipt of the Remedial Report from the Access provider:
- 7.16.1 approve the Remedial Report; or
 - 7.16.2 reject (acting reasonably) the Remedial Report and provide reasons for that rejection. In that case, the Access Provider will provide to the Metro Service Operator for approval in accordance with this clause 7.16 an amended Remedial Report within 10 Business Days of receipt of such notice of rejection.
- 7.17 The objective of the Remedial Report regime is for problem recognition to occur, and the Remedial Report to be prepared and accepted, within a one monthly cycle.
- 7.18 The Access Provider must:
- 7.18.1 respond to any Performance Notice issued by the Metro Service Operator and provide a Remedial Report in accordance with the provisions at clause 7.15 to 7.17; and
 - 7.18.2 comply with each Remedial Report or amended Remedial Report approved by the Metro Service Operator.

Performance Improvement Reports

- 7.19 In addition to providing and acting on a Remedial Report, the Access Provider will prepare and provide reports, when requested by the Metro Service Operator within a separate timeframe, on the status of corrective actions where these have been identified as relating to the Wellington Network as a result of any investigation, audit or review of the Network Services. Such reports will continue to be provided on a monthly basis until the Metro Service Operator agrees otherwise.

Metro Service Operator Suspension Notices

- 7.20 The Access Provider may, acting reasonably, from time to time serve a suspension notice (“**Suspension Notice**”) on the Metro Service Operator (with a copy to GWRC) where:

Wellington Network Agreement

- 7.20.1 for any reason and at any time during the term of this Agreement, the licence issued under the Railways Act 2005 (“**Rail Licence**”) or any other applicable law, held or required to be held by the Metro Service Operator is or are revoked or suspended, or amended so as not to lawfully permit the Metro Service Operator to operate Train Services on the Wellington Network (“**Licence Events**”); or
- 7.20.2 there is a material non-compliance with the Rail Licence (“**Event of Default**”),

and immediately impose on the Metro Service Operator by such notice reasonable restrictions on the use of the Wellington Network (so far as is reasonably applicable), provided that such restrictions relate only to the Vehicles, Metro Services or other rail operations to which the relevant Licence Event or Event of Default relates. The Metro Service Operator shall immediately comply with the restrictions in the Suspension Notice.

Appointment of new Operator following issue of Suspension Notice

- 7.21 If the Access Provider suspends all of the Metro Service Operator’s Access Rights in the manner contemplated in clause 7.20, on or after the effective date of suspension, GWRC may appoint a new Metro Service Operator to become a party to this Agreement and assume the rights and obligations of the Metro Service Operator under this Agreement.

Representatives Meetings

- 7.22 The Access Provider and the Metro Service Operator will:
- 7.22.1 each weekday, review by teleconference or meeting, punctuality and reliability of Train Services;
- 7.22.2 on a weekly basis, attend an operations meeting chaired by the Metro Service Operator to address the past week’s performance issues and identify network and operational service improvements. This meeting shall use common databases for all reporting and record the allocation of responsibility as contemplated in clause 7.3 for cancellations and delays of Metro Services for the week ending Sunday of the previous week. If a party wishes to dispute the allocation, then such dispute must be notified at the next weekly operations meeting. Any allocation not disputed by this process will be deemed to be undisputed and the parties may only dispute allocations for the week being reviewed at the meeting. Unresolved disputed allocations will be escalated to the monthly meeting (and if unresolved, determined by expert determination);
- 7.22.3 on a monthly basis, attend a meeting chaired by the Metro Service Operator to discuss:
- (a) the contents of the Monthly Report;
 - (b) any outstanding issues arising from the prior monthly meeting;

Wellington Network Agreement

- (c) progress on closing out any issues of non-performance;
- (d) any other relevant issues that may be raised by the Access Provider, the Metro Service Operator or GWRC.

7.23 The actions arising from the meetings described at clause 7.22 between the Metro Service Operator and Access Provider are to be minuted, and a copy of all material provided to the meeting shall be retained by each party and copied to GWRC.

Review of meeting arrangements

7.24 The parties may review the Representatives Meeting arrangements in order to improve their effectiveness.

Attendance by GWRC

7.25 A representative of GWRC may attend and participate in any meeting between the Metro Service Operator and the Access Provider.

Dispute resolution procedure

7.26 Except as expressly provided in this Agreement, any disputes between the parties of this Agreement shall be resolved in the manner set out in clause 17 of the Common Access Terms.

8. Other provisions

Variation

8.1 Any variation to this Agreement including its Schedules or Annexures must be recorded in writing in the form set out at Schedule 11 (Form of Variation Agreement), customised to the extent necessary, to record the agreed changes and signed by the authorised representatives of each party.

Notices

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

The Access Provider:	KiwiRail Level 4 Wellington Railway Station Bunny Street PO Box 593 Wellington
Attention:	General Counsel

Wellington Network Agreement

The Metro Service Operator:	As advised by the relevant Metro Service Operator according to this Agreement as contemplated in clause 4.8.4
GWRC	Greater Wellington Regional Council PO Box 11646 Wellington 6142
Attention:	The Chief Executive

8.3 Any notice sent by post to that contract address shall be assumed to have been delivered 2 Business Days after it is posted.

No waiver

8.4 No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by any party in any way affects, limits or waives the right of such party to later enforce and compel strict compliance with the provisions of this Agreement. No consent under this Agreement shall be valid unless it is in writing, nor will it eliminate or modify the need for a specific consent in any other instance.

No implied waivers

8.5 A failure to exercise, or delay in exercising any right under this Agreement shall not operate as a waiver of that right, nor shall any single or partial exercise of any right preclude any other or further exercise of that right or the exercise of any other right.

No partnership

8.6 This Agreement creates no partnership, relationship of fiduciary, agent, or joint venture between the parties.

Governing law

8.7 This Agreement is governed by, and construed in accordance with, the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

Counterparts

8.8 This Agreement may be executed in two or more counterparts, each of which is deemed an original and all of which constitute one and the same agreement. This Agreement shall be effective upon the exchange of executed signature pages.

Entire agreement

8.9 This Agreement and the documents referred to in this Agreement record the entire agreement between the parties, in respect of its subject matter and prevails over any earlier agreement.

Further assurance

8.10 Each party shall promptly do everything reasonably required to give effect to the terms of this Agreement according to their spirit and intent.

Wellington Network Agreement

Partial invalidity

- 8.11 The illegality, invalidity or unenforceability at any time of any provision of this Agreement under any law, will not affect the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of those provisions under any other law.

Crown action

- 8.12 Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement requires the Crown (or the Access Provider if different from the Crown) to exercise, or use any regulatory or legislative powers in order to influence or affect an outcome.

GWRC action

- 8.13 Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement requires GWRC to exercise, or use, any regulatory or legislative powers in order to influence or affect an outcome.

Wellington Network Agreement

Execution

SIGNED for and on behalf of **GREATER WELLINGTON REGIONAL COUNCIL** in the presence of:

and witnessed by:

Signature

Signature of witness

Occupation

City/town of residence

SIGNED for and on behalf of **KIWIRAIL HOLDINGS LIMITED** trading as **KIWIRAIL** in the presence of:

and witnessed by:

Signature

Signature of witness

Occupation

City/town of residence

Wellington Network Agreement
Schedule 1

Schedule 1 – Definitions and interpretation

1. Definitions

1.1 In this Agreement, unless the context otherwise requires:

“**Access Provider**” means KiwiRail Holdings Limited.

“**Access Rights**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Agreement**” means this agreement and each of the schedules and annexures attached to it and the Common Access Terms.

“**Ancillary Movements**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Asset Quality Measures**” means the asset quality and performance measures monitored and reported on by the Access Provider in accordance with Annexure 3, Schedule 4 (Network Management Services).

“**Authority**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Base Transit Time**” has the meaning given in the performance calculation formula section of the Lost Time Minutes KPI at Section 4 of Schedule 9 (Performance Incentive Regime and Key Performance Indicators).

“**Business Day**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Catch-up Renewal Fee**” means the amount payable by the Crown to the Access Provider in relation to Catch-up Renewal Services.

“**Catch-up Renewal Services**” means any renewal projects which the Crown has agreed to fund as described at clauses 6.9 and 6.10.

“**Codes**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Commencement Date**” means 1st July 2013.

“**Common Access Terms**” means the common access terms dated 20 June 2012, a copy of which is attached as Schedule 12 (Common Access Terms).

“**Contract Manager**” means the individual appointed by each of the parties under clause 7.2.

“**Council-Controlled Organisation**” has the meaning given to it in section 6 of the Local Government Act 2002.

“**Crown**” has the meaning given to it in clause 1.1 of the Common Access Terms.

Wellington Network Agreement
Schedule 1

“**CSB**” means compulsory stop board.

“**Daily Report**” has the meaning given to it in clause 7.3.

“**Default Interest Rate**” means the average rate as displayed on the Reuters Monitor Screen page BKBM (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 am on the day on which interest starts to accrue, plus 2%.

“**Fees**” has the meaning given to it in clause 4.1.1.

“**Efficiency Audit Report**” means the report described at clause 7.11

“**Event of Default**” has the meaning given to it in clause 7.20.2.

“**Expert Determination**” means the resolution of a dispute by determination by a third party expert under clause 17.3(b) of the Common Access Terms. The guidelines for such hearing(s) shall be set by the expert.

“**Financial Year**” means a period from 1 July and ending on 30 June the following year.

“**First Triennium**” means the Financial Years ending 30 June 2013, 30 June 2014 and 30 June 2015.

“**Freight Services**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Full Year Report**” has the meaning given to it in clause 7.6. “**GAAP**” means generally accepted accounting practice.

“**GST**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**GWRC Budget**” means the budget that sets out the maximum amounts payable for the Operations Fee, the Renewal Fee and the Performance Fee for each Financial Year of the relevant Triennium and recorded at Schedule 3 (Determination of GWRC Budget and calculation of Fees).

“**GWRL**” means Greater Wellington Rail Limited being a council controlled organisation established by GWRC to own metropolitan rail assets.

“**GWRL Infrastructure**” means the assets and improvements described at Schedule 2 (GWRL Infrastructure).

“**Heat 40**” or “**H40**” means a TSR and associated Track inspection procedure to mitigate the risk from Track buckles occurring in high temperatures.

“**Hutt Valley Line**” means track sections 770 to 772 being part of the “Wairarapa –Metro” sub segment as identified in Schedule 1 to the Common Access Terms.

Wellington Network Agreement
Schedule 1

“**Incident**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Incident Cost**” means all cash expenditure incurred by the Access Provider (including by or through any KiwiRail Group Member) to undertake Incident Services.

“**Incident Fee**” means the amount payable by GWRC to the Access Provider for the Incident Services (as determined in accordance with Schedule 3 (Determination of GWRC Budget and calculation of Fees)).

“**Incident Services**” means services described at paragraph 2.1 of Schedule 8 (Incident Services).

“**Infrastructure**” has the meaning given to it in clause 1.1 of the Common Access Terms, but to the extent comprised in the Wellington Network only.

“**Interpeak**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Johnsonville Line**” means the “Johnsonville” sub segment (also referred to as the JVL line) as identified in Schedule 1 to the Common Access Terms.

“**KiwiRail Group**” means the Access Provider and any related company (as defined in section 2(3) of the Companies Act 1993) of the Access Provider and “KiwiRail Group Member” means any one of them.

“**KPI**” means the key performance indicators as agreed by the Access Provider and the Metro Service Operator in accordance with Schedule 9 (Performance Incentive Regime and Key Performance Indicators).

“**KPI Achieve Benchmark**” means each of the benchmarks specified in the “KPI Achieve Benchmark” row of each of the tables set out in section 4 of Schedule 9 (Performance Incentive Regime and Key Performance Indicators).

“**KPI Fail Limit**” means each of the benchmarks specified in the “KPI Fail Limit” row in each of the tables set out at section 4 of Schedule 9 (Performance Incentive Regime and Key Performance Indicators).

“**KPI Party**” means the Access Provider or the Metro Service Operator, as the case may be.

“**KPI Result**” means, in relation to each KPI, the actual performance result achieved for the relevant KPI for the relevant reporting period.

“**Licence Event**” has the meaning given to it in clause 7.20.1.

“**Long Distance Passenger Services**” has the meaning given to it in clause 1.1 of the Common Access Terms.

Wellington Network Agreement
Schedule 1

“**Lost Time Minutes KPI**” or “**LTM KPI**” has the meaning given to it in section 4 of Schedule 9 (Performance Incentive Regime and Key Performance Indicators).

“**Maintainer**” has the meaning given to it in clause 4.6.

“**Maintenance Services**” means Scheduled Maintenance and Unscheduled Maintenance as described at Schedule 6 (Maintenance Services).

“**Melling Line**” means the “Melling” sub segment (also referred to as the “MEL” line) as identified in Schedule 1 to the Common Access Terms.

“**Metro Services**” means the Wellington metro Train Services including Ancillary Movements for such services, in each case operated by the Metro Service Operator or its permitted sub-licenceses in accordance with this Agreement.

“**Metro Service Operator**” means the person who, at the relevant time, is nominated by GWRC in accordance with clause 4.8 or clause 7.21 to operate the Metro Services. At the Commencement Date the Metro Service Operator is KiwiRail Limited.

“**Monthly Invoice Report**” means the report provided by the Access Provider in accordance with paragraph 7.2 of Schedule 3 (Determination of GWRC Budget and calculation of Fees).

“**Monthly Report**” has the meaning given to it in clause 7.4.

“**Network Control Services**” means the control services, described at section 2 of Schedule 5 (Network Control Services).

“**Network Management Plan**” means the network management plan prepared in accordance with Schedule 4 (Network Management Services).

“**Network Management Services**” means the services described at Schedule 4 (Network Management Services).

“**Network Services**” has the meaning given to it in clause 3.5

“**NZRC**” means New Zealand Railways Corporation a statutory corporation established under the New Zealand Railways Corporation Act 1981.

“**North Island Main Trunk**” or “**NIMT**” or “**Kapiti Line**” means the “NIMT-Wellington” sub segments as identified in Schedule 1 to the Common Access Terms.

“**Off-Peak**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Operations Fee**” means the amount payable by GWRC to the Access Provider for Network Management Services, Network Control Services and

Wellington Network Agreement
Schedule 1

Maintenance Services, calculated in accordance with Schedule 3 (Determination of GWRC Budget and calculation of Fees).

“**Operator**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Operations Management System**” or “**OMS**” means the information technology system used by the Access Provider to capture data from the Rail Network control systems.

“**Overheads**” means expenses described at paragraph 2.2 and 2.4 of Schedule 3 (Determination of GWRC Budget and calculation of Fees).

“**party**” means the Access Provider and/or the Metro Service Operator, and/or GWRC where the context requires it.

“**parties**” means the Access Provider, the Metro Service Operator and GWRC unless expressed otherwise.

“**Peak**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Performance Fee**” means the amounts payable by the GWRC to the Access Provider in respect of the Access Provider's performance, as determined in accordance with the scale set out in the table at paragraph 1.5.4 of Schedule 9 (Performance Incentive Regime and Key Performance Indicators).

“**Performance Incentive Regime**” means a system that associates KPIs with achievement targets and financial rewards or deductions.

“**Performance Notice**” means a notice issued by the Metro Service Operator and has the meaning given to it at clause 7.14.

“**Performance Rebate**” means the amount payable by the Access Provider to GWRC in respect of the Access Provider's performance, as determined in accordance with the table at paragraph 1.5.4 of Schedule 9 (Performance Incentive Regime and Key Performance Indicators).

“**Permanent Speed Restriction**” or “**PSR**” means, in respect of any Wellington Network Route, any:

- (a) permanent speed restriction in place on that Wellington Network Route as at the Commencement Date (as shown in the speed boards listed in the standard working timetable); or
- (b) Permitted PSR.

“**Permitted PSR**” means, in respect of any Wellington Network Route, any permanent speed restriction put in place on that Wellington Network Route after the Commencement Date which:

Wellington Network Agreement
Schedule 1

- (a) has the effect of reducing the Base Transit Time for that Wellington Network Route;
- (b) is required by any relevant Code; or
- (c) is necessary as a result of a material change to the Wellington Network which has been approved under clause 10.2 of the Common Access Terms.

“Permitted TSR” means, in respect of any Wellington Network Route, any temporary speed restriction put in place on that Wellington Network Route after the Commencement Date which:

- (a) has the effect of reducing the Base Transit Time for that Wellington Network Route;
- (b) is required by any relevant Code; or
- (c) is necessary as a result of a material change to the Wellington Network which has been approved under clause 10.2 of the Common Access Terms.

“Personnel” has the meaning given to it in clause 1.1 of the Common Access Terms.

“PI” means the performance indicators set out at section 10 Schedule 4 (Network Management Services), section 3 Schedule 5 (Network Control Services), section 3 Schedule 6 (Maintenance Services), section 3 Schedule 7 (Renewal Services) and section 3 Schedule 8 (Incident Services).

“PI Achieve Benchmark” means each of the benchmarks specified in the “PI Achieve Benchmark” rows of each of the tables set out at Schedule 4 (Network Management Services), Schedule 5 (Network Control Services), Schedule 6 (Maintenance Services), Schedule 7 (Renewal Services) and Schedule 8 (Incident Services).

“PI Result” means, in relation to each PI, the actual performance results for the relevant PI for the relevant reporting period.

“Priority Rules” means the priority rules in Schedule 5 of the Common Access Terms.

“Proportion Tables” means the tables setting out the basis on which **all** Operators utilising the Wellington Network will share the expenses incurred by the Access Provider in providing Network Management Services, Network Control Services, Maintenance Services, Renewal Services and Incident Services, as recorded at section 5 of Schedule 3 (Determination of GWRC Budget and calculation of Fees).

“Recoverable Expenses” has the meaning set out at section 2, Schedule 3 (Determination of GWRC Budget and calculation of Fees).

Wellington Network Agreement
Schedule 1

“**Rail Network**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**RTI**” means Real Time Information system installed on the Wellington Network by GWRC or the Operator, as updated from time to time.

“**Relevant Land**” has the meaning given to it in clause 3.29.

“**Remedial Report**” means a report from the Access Provider in accordance with clause 7.15 required in response to a Performance Notice.

“**Renewal Fee**” means the amount payable by GWRC to the Access Provider for the Renewal Services, determined in accordance with Schedule 3 (Determination of GWRC Budget and calculation of Fees).

“**Renewal Services**” means the services described at section 2 Schedule 7 (Renewal Services) and in the Network Management Plan.

“**Reporting Services**” means the provision of reports by the Access Provider in accordance with section 7 of this Agreement, paragraph 7.2 of Schedule 3 (Determination of GWRC Budget and calculation of Fees) and paragraph 9.1 Schedule 4 (Network Management Services).

“**Representatives Meeting**” means any meeting held as contemplated in clause 7.22.

“**Scheduled Maintenance**” means planned inspection and maintenance of the Infrastructure comprising the Wellington Network.

“**Shunts**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**STE**” means signals, telecommunications and electrical.

“**Suspension Notice**” has the meaning given to it in clause 7.20.

“**Term**” has the meaning given to it in clause 2.1.

“**Tax Invoice**” has the meaning given to it in the Goods and Services Tax Act 1985.

“**Timetable**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Thorndon Carriage Wash Building and Thorndon Carriage Depot**” have the meaning set out in the Licence to Occupy between KiwiRail Limited and GWRL dated 3 April 2012.

“**Track Database**” means the systems used by the Access Provider to record the condition of the track assets.

Wellington Network Agreement
Schedule 1

“**Track Possession**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Track Possessions Allowance**” means the Track Possessions which the Access Provider is entitled to in a Financial Year described in the table at paragraph 2.3 of Annexure 2, Schedule 4 (Network Management Services).

“**Track Possession Plan**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Track Possessions Subcommittee**” means the subcommittee of the Wellington Network Timetable Committee described at paragraph 3.1.3 Annexure 2 (Track Possessions) Schedule 4 (Network Management Services) and clause 6.4 of this Agreement.

“**Train Service**” means a single train service operated by the Metro Service Operator on the Wellington Network for the carriage of passengers having:

- (a) an origin;
- (b) a destination;
- (c) stopping pattern;
- (d) arrival time at destination and departure time at origin and intermediary stations; and
- (e) unique service identification number.

“**Triennium**” means the period from the Commencement Date to 30 June 2015 and each subsequent three year period thereafter.

“**TSR**” means a temporary speed restriction introduced in accordance with the Codes.

“**Unscheduled Maintenance**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Update Network Management Plan**” has the meaning given to it in paragraphs 6.1 and 6.2 of Schedule 4 (Network Management Services).

“**Upgrade**” means new Infrastructure acquired, or any new part of the Wellington Network or new Infrastructure constructed, for the purpose of increasing the capacity of the Wellington Network.

“**Upgrade Fee**” means the amount payable by GWRC to the Access Provider for the Upgrade Services, as agreed between those parties.

“**Upgrade Services**” means services performed by the Access Provider in relation to the provision of Upgrades.

Wellington Network Agreement
Schedule 1

“**Vehicles**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Wairarapa Line**” or “**WL**” means the “Wairarapa-Metro” sub-segments as identified in Schedule 1 to the Common Access Terms.

“**Wellington Network**” has the meaning given to it in clause 1.1 of the Common Access Terms.

“**Wellington Network Access Agreement**” means an access agreement between the Access Provider and any Operator pursuant to which the Access Provider grants that Operator certain access rights to the Wellington Network (or parts thereof).

“**Wellington Network Budget**” means the Access Provider’s complete budget for the Wellington Network, as described at section 3 Schedule 3 (Determination of GWRC Budget and calculation of Fees) and as set out in the Network Management Plan

“**Wellington Network Route**” means that part of the Wellington Network from:

- (a) Wellington to Masterton;
- (b) Masterton to Wellington;
- (c) Wellington to Upper Hutt;
- (d) Upper Hutt to Wellington;
- (e) Wellington to Taita;
- (f) Taita to Wellington
- (g) Wellington to Melling;
- (h) Melling to Wellington;
- (i) Wellington to Waikanae;
- (j) Waikanae to Wellington;
- (k) Wellington to Plimmerton;
- (l) Plimmerton to Wellington;
- (m) Wellington to Porirua
- (n) Porirua to Wellington
- (o) Wellington to Johnsonville; and
- (p) Johnsonville to Wellington.

Wellington Network Agreement
Schedule 1

“**Wellington Network Timetable Committee**” has the meaning given to it in clause 1.1 of the Common Access Terms.

2. Interpretation

2.1 In this Agreement, unless the context otherwise requires:

- 2.1.1 the singular includes the plural and vice versa;
- 2.1.2 references to a month or a year are references to a calendar month or year as the case may be;
- 2.1.3 a day is 24 consecutive hours from (but excluding) 24:00 on the previous calendar day, and any reference to any named day of the week shall be to such period commencing on that named day;
- 2.1.4 XX:20 means, as an example of this notation, 20 minutes past the hour; and
- 2.1.5 references to dates and times are to dates and times in New Zealand.

3. Further interpretation

3.1 In this Agreement:

- 3.1.1 a reference to a party is a reference also to that party's successors and permitted assigns;
- 3.1.2 a reference to a "person" includes an individual, firm, company, body corporate, corporation or unincorporated body of persons, or any Authority, in each case whether or not having separate legal personality, and a reference to a "company" includes a person;
- 3.1.3 headings are for convenience only and do not affect interpretation;
- 3.1.4 references to clauses, schedules and paragraphs are references to clauses, schedules and paragraphs of this Agreement unless specifically stated otherwise;
- 3.1.5 references to a document or agreement includes it as varied, novated or replaced, unless otherwise expressly specified;
- 3.1.6 a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- 3.1.7 “including” or similar words do not imply any limitation.

Wellington Network Agreement
Schedule 2

Schedule 2 – GWRL Infrastructure

Background

1.1 The following infrastructure owned by GWRL together with all subsequent improvements or additions to those assets, will be operated, maintained, renewed and upgraded by Greater Wellington Rail Limited (**GWRL**) as the owner of the infrastructure. The GWRL infrastructure described in this Schedule reflects the assets described as the Land Based Assets and the Bridge and Subway Improvements transferred to GWRL by the Transfer Agreement executed by GWRC, GWRL and KiwiRail dated 5 July 2011(**Transfer Agreement**).

Stations

1.2 All station buildings (excluding Wellington Station) as set out at Appendix C – Attachment 4 to the Transfer Agreement between GWRC, GWRL and KiwiRail dated 5 July 2011.

Structures: Pedestrian Bridges

1.3 The following Pedestrian Bridges:

Line	Bridge	Name
JVL	5A	Raroa Station
NIMT	12	Tawa Station
NIMT		Takapu Road – steps
NIMT	14	Linden Station
NIMT	15	Kenepuru Station
NIMT	5	Kaiwharawhara Station
WRL	17	Ava Station South End
WRL	18	Ava Station North End
WRL	22	Woburn Station South
WRL	23	Woburn Station North
WRL	27	Wingate Station
WRL	33	Heretaunga Station
WRL	34	Trentham Station

Wellington Network Agreement
Schedule 2

Structures: Pedestrian Underpasses

1.4 The following Pedestrian Underpasses:

Line	Bridge	Name
NIMT	17A	Porirua Station
NIMT	19C	Paremata Station
NIMT	20A	Mana Station
NIMT	21AA	Plimmerton Station
NIMT		Paraparaumu Station
WRL	6B	Ngauranga Station
WRL	11A	Ava Station South End
WRL	24A	Epuni Station
WRL		Waterloo Station
WRL	25A	Naenae Station
WRL	27AA	Taita Station
WRL	28AB	Pomare Station

Pedestrian Access Ways

1.5 The general principle is that the Access Provider has accountability for all access paths where they either cross at grade or run between Tracks. All access ways not identified in the Access Provider’s accountability list described at Schedule 11 are the responsibility of GWRL.

Platform and Carpark Structures

1.6 With the exception of the Wellington Station, and Muri GWRL is responsible for routine maintenance and renewal of all lighting, signage, shelters including shelter flooring (where this is not part of the platform), fencing (including in relation to stabling), and other improvements such as lighting and associated cabling, bike racks, stations and directional signage, seats and rubbish bins in the Wellington Network as shown in Appendix C Attachments 4 and 5 to the Transfer Agreement.

Maintenance Buildings and Equipment

1.7 All maintenance buildings (including EMU Depot and extension, depot carpark, Wheel Lathe Building) and associated plant and equipment (including train wash and wheel lathe equipment as shown in Appendix C Attachment 3 to the Transfer Agreement.

1.8 All fencing, lighting and other security equipment for all depots and storage areas.

Wellington Network Agreement
Schedule 2

- 1.9 For the avoidance of doubt the following assets in the EMU Depot and train storage areas are the property of the Access Provider:
- 1.9.1 the depot protection system; and
 - 1.9.2 the track, signals and traction assets.

Lease and access arrangements

- 1.10 The following leases, licences and access arrangements apply to the land on which the GWRL Infrastructure is located:
- (a) a ground lease from NZRC in favour of the GWRL dated 3 April 2012 for the land on which 48 Wellington region station buildings sit (other than Wellington Railway Station), noting that GWRL owns the station building itself together with use of the common areas, primarily platforms;
 - (b) a ground lease from KiwiRail Limited in favour of GWRL dated 3 April 2012 for the land on which the EMU Depot and Wheel Lathe Building sit (noting that the GWRL owns these buildings) and associated carparking areas;
 - (c) a deed of grant from NZRC in favour of GWRL dated 3 April 2012 to use and occupy the ground and airspace for bridge, subway and Waterloo canopy improvements;
 - (d) a licence from KiwiRail Limited in favour of GWRL dated 3 April 2012 to use the Thorndon Carriage Wash Building and Thorndon Carriage Depot, noting that KiwiRail owns the Thorndon Carriage Wash Building and the Thorndon Carriage Depot;
 - (e) a lease from NZRC in favour of GWRL dated 3 April 2012 for car park land at the following stations:
 - (i) the land containing approximately 606 square metres as is shaded orange on the plan “Ava Station” dated 28 November 2011;
 - (ii) those two parcels of Land containing approximately 1900 and 1564 square metres as are shaded orange together with the right of use in common with all other users of the Common Areas shaded green all as shown on the plan “Carterton Station” dated 28 November 2011;
 - (iii) the land containing approximately 1760 square metres as is shaded orange together with the right of use in common with all other users of the Common Areas shaded pink all as shown on the plan “Crofton Downs Station” dated 28 November 2011;

Wellington Network Agreement
Schedule 2

- (iv) the Land containing approximately 4646 square metres as is shaded orange on the plan “Featherston Station” dated 28 November 2011;
- (v) those two parcels of Land containing approximately 1152 and 263 square metres as are shaded orange together with the right of use in common with all other users of the Common Areas shaded pink all as shown on the plan “Johnsonville Station” dated 28 November 2011;
- (vi) the Land containing approximately 590 square metres as is shaded orange on the plan “Khandallah Station” dated 28 November 2011;
- (vii) the Land containing approximately 669 square metres as is shaded orange on the plan “Lower Hutt Station” dated 28 November 2011;
- (viii) those two parcels of Land containing approximately 2844 and 995 square metres as are shaded orange together with the right of use in common with all other users of the Common Areas shaded green all as shown on the plan “Mana Station” dated 28 November 2011;
- (ix) the Land containing approximately 3005 square metres as is shaded orange on the plan “Manor Park Station” dated 28 November 2011;
- (x) the Land containing approximately 8045 square metres as is shaded orange together with the right of use in common with all other users of the Common Areas shaded green all as shown on the plan “Masterton Station” dated 28 November 2011;
- (xi) the Land containing approximately 2818 square metres as is shaded orange together with the right of use in common with all other users of the Common Areas shaded pink all as shown on the plan “Maymorn Station” dated 28 November 2011;
- (xii) the Land containing approximately 494 square metres as is shaded orange on the plan “Melling Station” dated 28 November 2011;
- (xiii) the Land containing approximately 494 square metres as is shaded orange on the plan “Ngaio Station” dated 28 November 2011;
- (xiv) the Land containing approximately 1933 square metres as is shaded orange together with the right of use in common with all other users of the Common Areas shaded pink as shown on the plan “Paekakariki Station” dated 28 November 2011;

Wellington Network Agreement
Schedule 2

- (xv) the Land containing approximately 2370 square metres as is shaded orange on the plan “Paraparaumu Station” dated 28 November 2011;
- (xvi) the Land containing approximately 8341 square metres as is shaded orange on the plan “Paremata Station” dated 28 November 2011;
- (xvii) those two parcels of Land containing approximately 6961 and 495 square metres as are shaded orange on the plan “Petone Station” dated 28 November 2011;
- (xviii) the Land containing approximately 454 square metres as is shaded orange on the plan “Pomare Station” date 28 November 2011;
- (xix) those two parcels of Land containing approximately 1316 and 402 square metres as are shaded orange together with the right of use in common with all other users of the Common Areas shaded green all as shown on the plan “Pukerua Bay Station” dated 21 March 2012;
- (xx) the Land containing approximately 511 square metres as is shaded orange on the plan “Raroa Station” dated 28 November 2011;
- (xxi) those two parcels of Land containing approximately 502 and 240 square metres as are shaded orange together with the right of use in common with all other users of the Common Areas shaded pink all as shown on the plan “Redwood Bay Station” dated 28 November 2011;
- (xxii) the Land containing approximately 195 square metres as is shaded orange on the plan “Silverstream Station” dated 21 March 2012;
- (xxiii) those two parcels of Land containing approximately 765 and 251 square metres as are shaded orange on the plan “Simla Crescent Station” dated 21 March 2012;
- (xxiv) the Land containing approximately 3287 square metres as is shaded orange together with the right of use in common with all other users of the Common Areas shaded pink all as shown on the plan “Solway Station” dated 28 November 2011;
- (xxv) the Land containing approximately 3490 square metres as is shaded orange on the plan “Taita Station” dated 28 November 2011;

Wellington Network Agreement
Schedule 2

- (xxvi) The Land containing approximately 870 square metres as is shaded orange on the plan “Tawa Station” dated 28 November 2011;
- (xxvii) the Land containing approximately 5063 square metres as is shaded orange together with the right of use in common with all other users of the Common Areas shaded pink all as shown on the plan “Trentham Station” dated 28 November 2011;
- (xxviii) the Land containing approximately 3451 square metres as is shaded orange on the plan “Upper Hutt Station” dated 28 November 2011;
- (xxix) the Land containing approximately 2896 square metres as is shaded orange together with the right of use in common with all other users of the Common Areas shaded pink all as shown on the plan “Waikanae Station” dated 28 November 2011;
- (xxx) those two parcels of Land containing approximately 3495 and 2291 square metres as are shaded orange on the plan “Wallaceville Station” dated 28 November 2011;
- (xxxi) those two parcels of Land containing approximately 10257 and 3111 square metres as are shaded orange on the plan “Waterloo Station” dated 28 November 2011;
- (xxxii) the Land containing approximately 1539 square metres as is shaded orange on the plan “Woburn Station” dated 28 November 2011; and
- (xxxiii) those two parcels of Land containing approximately 4423 and 1481 square metres as are shaded orange on the plan “Woodside Station” dated 20 March 2012.

Schedule 3 – Determination of GWRC Budget and calculation of Fees

1. Introduction

- 1.1 Determination of the GWRC Budget and the calculation of the Fees shall occur:
- 1.1.1 by GWRC advising the Access Provider of its available funding envelope in accordance with clause 4.8 of this Schedule;
 - 1.1.2 by the Access Provider applying the principles set out at clause 3.6 of this Agreement;
 - 1.1.3 by the Access Provider completing a Wellington Network Budget in accordance with section 3 of this Schedule;
 - 1.1.4 by GWRC and the Access Provider agreeing the GWRC Budget in accordance with section 4 of this Schedule setting the maximum amounts payable in each Financial Year of a Triennium for:
 - (a) the Operations Fee (for Network Management Services, Network Control Services and Maintenance Services);
 - (b) the Renewal Fee (for Renewal Services); and
 - (c) the Performance Fee.
 - 1.1.5 using the Proportion Tables described in section 5 of this Schedule; and
 - 1.1.6 on the basis that the Access Provider is entitled to be reimbursed for Recoverable Expenses determined in accordance with section 2 of this Schedule.
- 1.2 For the avoidance of doubt it is acknowledged that the following Fees will not be included in the determination of the GWRC Budget:
- 1.1.7 the Incident Fee (for Incident Services); and
 - 1.1.8 the Upgrade Fee (for Upgrade Services).

2. Recoverable Expenses

- 2.1 The parties acknowledge that for the purpose of determining the GWRC Budget and calculating the Fees to be paid under this Agreement, “**Recoverable Expenses**” means all expenditure incurred by the Access Provider on an accrual basis to deliver Network Services and perform its obligations under this Agreement. All expenditure should be recognised in accordance with GAAP, subject to the provisions at clauses 2.2 to 2.3 of this Schedule.

Wellington Network Agreement
Schedule 3

2.2 Recoverable Expenses includes:

2.2.1 expenditure (of both an operational and capital nature) on labour and materials incurred directly on provision of the Network Services; and

2.2.2

2.2.3 a reasonable allocation of the overheads attributable to the provision of Network Services, attributed (to the extent possible) on the basis of the underlying cost drivers of the overheads. Overheads means the administrative or operational expenses attributable to the provision of Network Services for the Wellington Network (but not solely attributable to any other part of the Rail Network).

2.3 Recoverable Expenses excludes any:

2.3.1 expenditure on maintaining or operating assets that are not required for the provision of Network Services;

2.3.2 expenditure on Network Services to the extent recovered from a third party;

2.3.3 depreciation, amortisation, revaluation, or loss on disposal of any assets required for the provision of Network Services;

2.3.4 capital charges incurred by the Access Provider (other than principal and interest repayments associated with incidental arrangements such as the lease of office equipment);

2.3.5 costs of junction control services where these are provided by the Metro Service Operator;

2.3.6 costs associated with maintenance of, and access to, assets owned or controlled either by GWRC or by GWRL for the purposes of the Metro Services (unless such maintenance is required by GWRC);

2.3.7 costs recovered by any member of the KiwiRail Group under any other agreement with GWRC, GWRL, or the Metro Service Operator;

2.3.8 expenditure incurred or to the extent resulting from default or negligence of the Access Provider or any other Operator, as described at clause 3.7 of this Agreement; and

2.3.9 amounts deducted for non performance under the provisions of this Agreement, including, but not limited to the Performance Rebate or any Default Interest incurred by the Access Provider.

2.4 For the avoidance of doubt the parties acknowledge that:

2.4.1 The Access Provider is responsible for the operation and maintenance of the national Rail Network, which includes the Wellington Network. For that reason the Access Provider may incur certain overhead

Wellington Network Agreement
Schedule 3

expenses that benefit both the Wellington Network and the national Rail Network. Both the Wellington Network Budget and the GWRC Budget may include a reasonable proportion of such overhead expenses incurred on this basis; and

2.4.2 overheads exclude any rent or other amount payable by the Access Provider to any person in relation to any lease, licence, use or occupancy rights in relation to any land forming any part of the Rail Network or any Infrastructure or other railway asset, unless:

- (a) the Access Provider has determined that any lease, licence, use or occupancy rights in relation to any land forming part of the Railway Network or any Infrastructure or other railway asset is directly relevant to the provision of Network Services;
- (b) the details of such lease, licence, use or occupancy right have been provided to and considered by GWRC; and
- (c) GWRC has agreed in writing that a reasonable allocation of such rent or other amount shall be recovered by the Access Provider as a Recoverable Expense.

3. Wellington Network Budget

3.1 The Access Provider will complete a Wellington Network Budget that will:

3.1.1 form part of the Network Management Plan; and

3.1.2 contain sufficient detail to inform the parties about the cost of implementing the Network Management Plan and providing the Network Services.

3.2 To assist GWRC's consideration of the GWRC Budget, the Access Provider shall provide a draft Wellington Network Budget for a Triennium prepared on an accrual basis in accordance with GAAP showing all income and expenditure associated with the Wellington Network.

3.3 The draft Wellington Network Budget provided by the Access Provider shall include:

3.3.1 A detailed summary of all budgeted income for each three Financial Years of the relevant Triennium in detail, and a forecast in outline, for the remaining seven years, which shall include:

- (a) all income derived from or attributable to the Wellington Network relating to the provision of Access Rights;
- (b) all other income derived from or attributable to Infrastructure or other railway assets making up the Wellington Network and utilised by the Metro Service Operator if such Infrastructure or railway assets have a direct or indirect cost

Wellington Network Agreement
Schedule 3

that has been or will be attributed to GWRC, including but not limited to:

- (i) any amount received from any other Operator, the Regulator or any other person;
 - (ii) any amount received under any claim (under any insurance or otherwise); and
 - (iii) any amount received under any disaster relief programme (or equivalent);
- (c) any other income derived from or attributable to the Wellington Network that GWRC reasonably requests to be included;
 - (d) the proportion of the income derived from or attributable to the Wellington Network that will be included as an offset in the GWRC Budget and the basis for that apportionment (including any contingency applied to that the income); and
 - (e) any income derived from or attributable to the Wellington Network that will not be included as an offset in the GWRC Budget including the rationale for that decision.

3.3.2 A detailed summary of all expenditure for each three Financial Years of the relevant Triennium, and in outline for the following seven years, which shall include:

- (a) the expenditure (or the proportion of the expenditure) that will be included in the GWRC Budget in the following expense categories;
 - (i) Network Management Services; Network Control Services; and Maintenance Services (together comprising the budget for the Operations Fee);
 - (ii) Renewal Services (comprising the budget for the Renewals Fee);
 - (iii) Upgrade Services (comprising the proposed Upgrade Fee) (if any);
- (b) the expenditure (or the proportion of any expenditure) that will not be included in the GWRC Budget, including any Catch-up Renewals; and
- (c) any expenditure that will be included in the GWRC Budget that has not been apportioned in accordance with the Proportion Tables including the rationale for that decision.

Wellington Network Agreement
Schedule 3

- 3.3.3 A detailed summary of all overheads by major cost category attributable to the Wellington Network, including:
- (a) the overheads (or the proportion of the overheads) that will be included in the GWRC Budget, including (to the extent reasonably possible) the basis for and the underlying cost drivers of such overheads; and
 - (b) the overheads (or the proportion of any overheads) that will not be included in the GWRC Budget.
- 3.3.4 The assumptions underlying the Wellington Network Budget and any other information related to the determination of the GWRC Budget; and
- 3.3.5 The risks to the Wellington Network Budget including any risks related to the determination of the GWRC Budget.

4. GWRC Budget

- 4.1 The GWRC Budget will be derived from the Wellington Network Budget and shall be set out in accordance with the template attached at Annexure 1 of this Schedule, in detail for each Financial Year of the relevant Triennium and in outline for the following seven years. Unless otherwise agreed the GWRC Budget must be presented in accordance with the template.
- 4.2 The GWRC Budget for the Operations Fee and the Renewals Fee will be set at levels which are expected to ensure that the Access Provider is reimbursed for such proportion of the reasonable Recoverable Expenses that an efficient and effective Access Provider would incur in providing:
- 4.2.1 Network Management Services; Network Control Services and Maintenance Services (together comprising the budget for the Operations Fee); and
 - 4.2.2 Renewal Services (comprising the budget for the Renewals Fee),
- as corresponds to the Metro Service Operator's proportion of use of the Wellington Network relative to other Operators as set out in the applicable Proportion Tables at paragraph 5.5 of this Schedule.
- 4.3 The GWRC Budget for the Operations Fee and the Renewal Fee shall set the maximum that the Access Provider shall receive in any Financial Year for Network Management Services, Network Control Services, Maintenance Services and Renewal Services.
- 4.4 Unless agreed otherwise by GWRC in accordance with paragraph 6.3 of this Schedule, the GWRC Budget for the Performance Fee shall set the maximum that the Access Provider may receive in any Financial Year under the Performance Incentive Regime set out at Schedule 9 (Performance Incentive Regime and Key Performance Indicators).

Wellington Network Agreement
Schedule 3

- 4.5 The GWRC Budget for the Performance Fee shall:
- 4.5.1 not exceed 7.012% of the GWRC Budget for the Operations Fee and the Renewal Fee in any Financial Year of the First Triennium; and.
 - 4.5.2 be sufficient to provide for payments within a range negotiated for each subsequent Trienniums in accordance with the elements of the Performance Incentive Regime set out at paragraph 1.2 of Schedule 9 (Performance Incentive Regime and Key Performance Indicators) subsenniums.,;
- 4.6 For the avoidance of doubt:
- 4.6.1 the GWRC Budget will not be adjusted during a Triennium for any increase in Recoverable Expenses or reduction in income;
 - 4.6.2 the GWRC Budget for the Performance Fee will not be adjusted during a Financial Year or at any other time to reflect any difference between:
 - (a) the GWRC Budget for the Operations Fee and the Renewal Fee; and
 - (b) the actual amounts invoiced to GWRC for those Fees.
 - 4.6.3 the Access Provider is not entitled to recover in any subsequent Triennium any Recoverable Expense for Network Management Services, Network Control Services, Maintenance Services or Renewal Services that is incurred in or that relates to a prior Triennium.

GWRC Budget for the second and third Financial Years of the First Triennium

- 4.7 The GWRC Budget for the second and third Financial Years of the First Triennium is summarised in the table below and set out in detail in Annexure 4 to this Schedule:

Wellington Network Agreement
Schedule 3

GWRC Budget	Financial Year 2013/2014	Financial Year 2014/2015
Operations Fee	\$9,739,173	\$10,238,866
Renewal Fee	\$ 5,847,000	\$ 5,761,134
Sub total	\$15,586,173	\$16,000,000
Performance Fee (7.0124%)	\$ 1,092, 965	\$ 1,121,984
Total GWRC Budget	\$16,679,138	\$17,121,984
Incident Fee	(no budget)	(no budget)
Upgrade Fee	(no budget)	(no budget)

GWRC Budget for subsequent Trienniums

- 4.8 GWRC will provide the Access Provider with a funding envelope for the proposed GWRC Budget for each Financial Year of a Triennium no later than 1 August of the Financial Year preceding the first year of each Triennium.
- 4.9 No later than 30 September of the Financial Year preceding the first year of each Triennium the Access Provider will provide GWRC with:
- 4.9.1 a draft Wellington Network Budget prepared in accordance with section 3 of this Schedule; and
- 4.9.2 a draft GWRC Budget prepared in accordance with section 4 of this Schedule.
- 4.10 GWRC will upon receipt of the draft GWRC Budget as contemplated by paragraph 4.9 above, review the draft GWRC Budget and notify the Access Provider whether it:
- 4.10.1 accepts the draft GWRC Budget;
- 4.10.2 accepts the draft GWRC Budget subject to certain proposed amendments in which case details of such amendments shall be included in the notice provided by GWRC to the Access Provider;
- 4.10.3 requires further information to reach a conclusion; or
- 4.10.4 rejects the draft GWRC Budget including providing the reasons for doing so.
- 4.11 The Access Provider and GWRC shall endeavour to agree the GWRC Budget by 31 March of the Financial Year preceding the first year of each Triennium.

Wellington Network Agreement
Schedule 3

- 4.12 If on or before 30 April of the Financial Year preceding the first year of the Triennium, GWRC and the Access Provider have failed to reach agreement on the GWRC Budget then the provisions at paragraph 5.2 and 5.3 of Schedule 4 (Network Management Services) shall apply.
- 4.13 Prior to the commencement of each Triennium (or as soon as possible following any revision in accordance with paragraphs 5.2 and 5.3 of Schedule 4), the agreed GWRC Budget for the Triennium shall be recorded as a variation in accordance with clause 6.12 of this Agreement.

5. Proportion Tables

- 5.1 The purpose of the Proportion Tables is to establish for the duration of each Triennium the basis on which operators utilising the Wellington Network will pay the reasonable expenses that an efficient and effective Access Provider would incur in providing Network Management Services, Network Control Services, Maintenance Services, Renewal Services and Incident Services for the Wellington Network.
- 5.2 Prior to the commencement of each Triennium a revision to the Proportion Tables will be:
- 5.2.1 proposed by the Access Provider
 - 5.2.2 agreed by GWRC; and
 - 5.2.3 recorded as a variation in accordance with clause 6.12 of this Agreement.
- 5.3 Any revision of the Proportion Tables shall be based on:
- 5.3.1 the principles set out at clause 3.6 of this Agreement;
 - 5.3.2 a forecast of the Timetable and train loads for the Triennium and informed by actual Timetables and train loads operated in the preceding Triennium up to the date of preparation of the GWRC Budget;
 - 5.3.3 if applicable, include any new Operator that will be granted Access Rights during the Triennium; and
 - 5.3.4 where achievable, include objective engineering evidence of cost drivers.
- 5.4 In the event that the Access Provider and GWRC are unable to agree a revision of the Proportion Tables, the Proportion Tables applicable in the previous Triennium shall continue until new Proportion Tables are agreed.
- 5.5 The Proportion Tables for the First Triennium are set out below.

Wellington Network Agreement
Schedule 3

Network Control Services	Allocation type	2012/2013		2013/2014		2014/2015	
		Metro Allocation	Freight/Long Distance Passenger Allocation	Metro Allocation	Freight/Long Distance Passenger Allocation	Metro Allocation	Freight/Long Distance Passenger Allocation
Train Control	Custom (generally based on Trains)	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Signal Boxes	Custom (generally based on Trains)	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Traction Control	Custom	100.00%	0%	100.00%	0%	100.00%	0%
RTI	Custom	100.00%	0%	100.00%	0%	100.00%	0%

Maintenance Costs	Allocation type	2012/2013		2013/2014		2014/2015	
		Metro Allocation	Freight/Long Dist. Passenger Allocation	Metro Allocation	Freight/Long Dist. Passenger Allocation	Metro Allocation	Freight/Long Dist. Passenger Allocation
Track Inspection	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Track Maintenance	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Structural Inspection	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Structural Maintenance	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Traction Inspection	Custom	100.0%	0%	100.0%	0%	100.0%	0%
Traction Maintenance	Custom	100%	0%	100%	0%	100%	0%
EM80 Inspections	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
NDT Inspections	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Communications	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Signals Inspection	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Signals Maintenance	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Vegetation Control	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Graffiti	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Night Maintenance - Track	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Night Maintenance - Signals	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Dynamic Track Stabiliser	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Ballast Cleaner	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Protection	Trains (from FY14)	56.36%	43.64%	87.80%	12.20%	89.60%	10.40%
Tamping/Track Stab.	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%

Renewals	Allocation Type	2012/2013		2013/2014		2014/2015	
		Metro Allocation	Freight/Long Dist. Passenger Allocation	Metro Allocation	Freight/Long Dist. Passenger Allocation	Metro Allocation	Freight/Long Dist. Passenger Allocation
Track							
Relay	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Rerail	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%

Wellington Network Agreement
Schedule 3

Joint Elimination	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Face Re-sleeping	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Spot Re-sleeping	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Turnouts (install or replace)	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Placement of Ballast or fines	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Formation Upgrade	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Level Crossing renewals	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Installation of Track fastenings	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Track Destressing	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Insulated Joints at Level Crossings	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Signals and Interlocking							
Unallocated amount for signals telecoms, traction & electrical	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Renew points - Signals and interlocking	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Renew signals only - Signalling and Interlocking	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Renew Signalling cables	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Renew Signalling Locations	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Level Crossing renew HAB's, FLs, Bells	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Renewals Electrical	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Renew power and lighting facilities	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Renewals Infrastructure network	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Renewals Standby battery replacements	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Like-for-like Renewals	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%
Structures							
Bridges	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Tunnels	Carriages	56.36%	43.64%	56.36%	43.64%	61.93%	38.07%
Electrical (non-traction)							
Like-for-like renewals (electrical)	Trains	87.80%	12.20%	87.80%	12.20%	89.60%	10.40%

Direct Incident Costs	Allocation type	2012/2013		2013/2014		2014/2015	
		Metro Allocation	Freight/Long Dist. Passenger Allocation	Metro Allocation	Freight/Long Dist. Passenger Allocation	Metro Allocation	Freight/Long Dist. Passenger Allocation
Incident Response	Refer CAT	CAT-	CAT-	CAT-	CAT-	CAT-	CAT-

Overheads	Allocation type	2012/2013		2013/2014		2014/2015	
		Metro Allocation	Freight/Long Dist. Passenger Allocation	Metro Allocation	Freight/Long Dist. Passenger Allocation	Metro Allocation	Freight/Long Dist. Passenger Allocation
KiwiRail Network overheads	Custom based on the proportion	74%	26%	74%	26%	74%	26%

Wellington Network Agreement
Schedule 3

	of the Wellington Network Budget allocated to GWRC in the GWRC Budget						
KiwiRail Group overheads	As above	74%	26%	74%	26%	74%	26%

6. Calculation of the Fees

Calculation of Operations Fee and Renewal Fee

6.1 The amount of each monthly payment shall be A minus B where:

A: is the sum of the Metro Services Operator’s actual Financial Year to date Recoverable Expenses making up the Operations Fee and Renewal Fee; and

B: is the Financial Year to date amount of payments already invoiced to GWRC for the Operations Fee and Renewal Fee,

provided that GWRC shall not be obliged to pay the Access Provider any amount that exceeds the GWRC Budget for the combined value of the Operations Fee and the Renewal Fee for the Financial Year.

Calculation of Performance Fee

6.2 The amount of the monthly Performance Fee (or any Performance Rebate) shall be determined in accordance with the Performance Incentive Regime set out at paragraph 1.5 of Schedule 9 (Performance Incentive Regime and Key Performance Indicators), provided that GWRC shall not be obliged to pay the Access Provider any amount that exceeds the GWRC Budget for the Performance Fee for the Financial Year.

6.3 The Access Provider may present a case to exceed the GWRC Budget for the Performance Fee in a Financial Year, subject to the prior approval of GWRC (such approval not to be unreasonably withheld), provided:

6.3.1 the forecast Recoverable Expenses for Network Management Services, Network Control Services and Maintenance Services (including Overheads) for the Financial Year are less than the GWRC Budget for the Operations Fee;

6.3.2 the forecast Performance Fee for the Financial Year is greater than the GWRC Budget for the Performance Fee;

6.3.3 the actual Operations Fee and the proposed Performance Fee for the Financial Year will not exceed the total GWRC Budget for the Operations Fee and the Performance Fee for the Financial Year; and

6.3.4 the case presented by the Access Provider for payment of the increased amount, is made in writing to GWRC at least 10 Business Days prior to the end of the Financial Year.

Wellington Network Agreement
Schedule 3

Calculation of Incident Fee

- 6.4 The Incident Fee shall be paid for Incident Services provided in response to, and remedy of, an Incident, if the Incident:
- 6.4.1 results in serious harm, injury or fatality; or
 - 6.4.2 causes significant damage to property; or
 - 6.4.3 involves a level crossing collision; or
 - 6.4.4 is weather related or other event not causing serious injury or harm (e.g. slip or washout or terrorism threat) that causes major delays or cancellations of greater than four hours; or
 - 6.4.5 is a derailment or collision.
- 6.5 The Incident Fee is to reimburse the Access Provider for such proportion of the reasonable Recoverable Expenses incurred by the Access Provider in providing the Incident Services as corresponds to the Metro Service Operator's proportion of use of the Wellington Network relative to other Operators as set out in the relevant Proportion Table.
- 6.6 The Incident Fee includes the aggregate of the:
- 6.6.1 amount payable by GWRC to the Access Provider determined in accordance with paragraphs 6.4 and 6.5 above; and
 - 6.6.2 except to the extent excluded from any Recoverable Expenses under clause 3.7 of this Agreement, such proportion of any amounts apportioned to the Access Provider as contemplated in clause 14.8 of the Common Access Terms, as corresponds to the Metro Service Operator's Proportion of use of the Wellington Network, as set out in the relevant Proportion Tables, and not otherwise charged to GWRC under this Agreement or any other agreement between GWRC (or the Metro Service Operator) and any KiwiRail Group Member.
- 6.7 The Access Provider may add a margin of 7% to the Incident Fee determined in accordance with paragraphs to 6.4 to 6.6 above.

7. Invoicing

Estimate of monthly invoice

- 7.1 The Access Provider shall, by no later than the second Business Day of each month, provide GWRC with an estimate of the monthly Fees payable by GWRC for the preceding month.

Submission of Monthly Invoice Report

- 7.2 The Access Provider shall, on a monthly basis and by no later than the 8th Business Day of each month, provide to GWRC a Monthly Invoice Report for the preceding month setting out sufficient information to confirm the invoiced

Wellington Network Agreement
Schedule 3

amounts to GWRC's reasonable satisfaction. The Monthly Invoice Report shall in a manner that corresponds with the amount invoiced for that month:

- 7.2.1 clearly detail the amounts making up the Operations Fee;
 - 7.2.2 clearly detail the amounts making up the Renewal Fee;
 - 7.2.3 clearly detail the amounts making up the Incident Fee (if any);
 - 7.2.4 clearly detail the amounts making up the Performance Fee; and
 - 7.2.5 clearly detail the amount making up the Upgrade Fee (if any).
- 7.3 The required template for the Monthly Invoice Report is set out in Annexure 2 to this Schedule. Unless otherwise agreed, the Monthly Invoice Report must be completed in accordance with the template.
- 7.4 To avoid doubt, the form and requirements of the Monthly Invoice Report must not be changed without the prior agreement of GWRC.

Form of invoices

- 7.5 The Access Provider shall issue a separate Tax Invoice for each of the following Fees incurred in the preceding month:
- 7.5.1 the Operations Fee;
 - 7.5.2 the Renewals Fee;
 - 7.5.3 the Performance Fee;
 - 7.5.4 the Incident Fee; and
 - 7.5.5 the Upgrade Fee (if any).

Payment of invoices

- 7.6 The Fees will be paid monthly in arrears in accordance with paragraph 7.7 of this Schedule.
- 7.7 Subject to paragraph 7.13 of this Schedule, GWRC shall pay the Access Provider the amount of the Fees incurred in the preceding month, if:
1. the Monthly Invoice Report for the preceding month has been received in accordance with paragraph 7.2 above;
 2. the estimate of the monthly invoice has been received in accordance with paragraph 7.1 above, and a separate Tax Invoice for the relevant Fee is received by GWRC on or before the 10th day of the month, by the 20th of the month of receipt of that Tax Invoice; or
 3. if a Tax Invoice is received by GWRC after the 10th day of the month, by the 20th day of the month following the month of receipt of that Tax Invoice.

Wellington Network Agreement
Schedule 3

- 7.8 If any payment falls due under this Agreement on a day which is not a Business Day, payment shall be made on the immediately following Business Day but the amount of such payment shall not be adjusted.

No deduction

- 7.9 Subject to paragraphs 7.13 and 8.1 of this Schedule, each payment to be made by GWRC to the Access Provider under this Agreement shall be made on the relevant due date by payment in immediately available funds, without any set-off or deduction, to such bank account as the Access Provider may from time to time notify to GWRC.

GST

- 7.10 All amounts in this Agreement are stated exclusive of any GST.
- 7.11 A party must pay GST on a taxable supply made to it under this Agreement, in addition to any consideration (excluding GST) that is payable for that taxable supply. The party making the taxable supply must provide a valid tax invoice to the other party at or before the time that the other party is required to pay the GST. Terms used in this clause have the meaning given to them in the Goods and Services Tax Act 1985.

Default interest

- 7.12 Subject to paragraph 7.13, if any amount due and payable by any party under this Agreement is not paid within 30 Business Days of the due date for payment in the manner herein stipulated, the liable party shall on demand pay interest, at the Default Interest Rate, on the moneys unpaid, from the due date for payment to the date payment is made in full.

Invoice disputes

- 7.13 If any party (acting reasonably) disputes its liability under this Agreement for any amount claimed in any invoice or any amount alleged to be due (**Disputed Sum**), then without prejudice to that party's rights under this Agreement, that party must, within 5 Business Days of receipt of the relevant invoice or payment demand in relation to the Disputed Sum, notify the party requiring such payment of the dispute (together with provision of details on the nature of the dispute). The party disputing payment may withhold payment of a Disputed Sum if it has so given notice, but must not delay payment of any undisputed portion of any invoice or amount alleged to be due.
- 7.14 The party requiring payment of the Disputed Sum shall promptly acknowledge receipt of the dispute notice from the other party and the parties shall use all reasonable endeavours to promptly resolve the invoice dispute.
- 7.15 On resolution of the dispute, the party liable to pay a sum to the other party shall pay it within 5 Business Days of the later of:
- 7.15.1 the date of resolution of the dispute; and
 - 7.15.2 the original due date for payment of the Disputed Sum,

Wellington Network Agreement
Schedule 3

together with interest at the Default Interest Rate (if requested) for the period from the original due date for payment of the Disputed Sum and the actual date of payment in full of the relevant amount. The recipient shall issue a new Tax Invoice or credit note (as the case may be) to reflect the amount payable upon resolution of the dispute.

7.16 The existence of a dispute as to payment does not relieve the parties from their obligations under this Agreement while that dispute remains unresolved.

8. With-holding payments for inadequate Reporting Services and Network Management Plan

8.1 GWRC shall withhold from the payment of the most recent Tax Invoice for the Fees received from the Access Provider:

8.1.1 a total amount of \$15,000 for each Monthly Report or Full Year Report, if the Access Provider does not meet the PI achieve benchmark set out at section 10, Schedule 4 (Network Management Services); and

8.1.2 a total amount of \$75,000 for each draft Network Management Plan or draft Update Network Management Plan, if the Access Provider does not meet the PI achieve benchmark set out at section 10, Schedule 4 (Network Management Services),

until such time as the report, completed report, plan, or completed plan, is provided to GWRC, at which point the amount withheld may at the discretion of GWRC be paid by GWRC to the Access Provider.

9. Catch-up Renewals

9.1 For the avoidance of doubt, no amount (including Recoverable Expenses), in relation to the Catch-up Renewal Services shall be payable by GWRC to the Access Provider.

Wellington Network Agreement
Schedule 3

Annexure 1: Template for GWRC Budget

Wellington Network Agreement
Schedule 3

KiwiRail Wellington Network
Budget 2013/14

Example Only

	Wellington Network Budget			Allocation		GWRC Budget			
	2012-13	2013-14	Incr / - Decr	2012-13	2013-14	2012-13	2013-14	Incr / - Decr	%
Operations Budget									
Revenue									
Income not attributable to GWRC	0	0	0	0.00%		0	0	0	0
Income attributable to GWRC	0	0	0	100.00%		0	0	0	0
One off project revenue	0	0	0	100.00%		0	0	0	0
Total Revenue	0	0	0			0	0	0	0
Network Management services									
OIL Staff Charge						981,096	906,332	-74,764	-7.6%
Insurance						425,000	435,625	10,625	2.5%
Electricity (non traction)						208,722	208,722	0	0.0%
Total Network Management Services						1,614,818	1,550,679	-64,139	-4.0%
Network Control Services									
Operations Manager						102,036	102,144	108	0.1%
Train Control						666,197	709,470	43,273	6.5%
Network Authorities						27,284	33,899	6,615	24.2%
Traction and Operations Support						238,071	104,716	-133,356	-56.0%
National Signal Boxes						634,174	472,757	-161,417	-25.5%
Total Network Control Services						1,667,763	1,422,985	-244,778	-14.7%
Maintenance Cost by Activity									
Track Inspection	248,600	369,000	120,400	48.4%	GTk	140,111	207,968	67,857	48.4%
Track Maintenance	2,248,000	2,695,750	447,750	19.9%	GTk	1,266,973	1,519,325	252,352	19.9%
EM80 Inspections	60,300	43,167	-17,133	-28.4%	GTk	33,985	24,329	-9,656	-28.4%
NMT Inspections	105,000	146,766	41,766	39.8%	GTk	59,178	82,717	23,539	39.8%
Tamping / Track Stab.	204,833	102,500	-102,333	-50.0%	GTk	115,444	57,769	-57,675	-50.0%
Protection	60,000	61,500	1,500	2.5%	GTk	33,816	34,661	845	2.5%
Structural Inspection	70,000	92,250	22,250	31.8%	GTk	39,452	51,992	12,540	31.8%
Structural Maintenance	444,600	363,875	-80,725	-18.2%	GTk	250,577	205,080	-45,497	-18.2%
Platform Maintenance					Custom	0	200,000	200,000	
Traction Inspection	298,800	820,000	521,200	174.4%	Custom	298,800	820,000	521,200	174.4%
Traction Maintenance	1,326,800	912,370	-414,430	-31.2%	Custom	1,326,800	912,370	-414,430	-31.2%
Communications	316,000	266,500	-49,500	-15.7%	Trains	277,463	234,000	-43,463	-15.7%
Signals Inspection	648,200	738,000	89,800	13.9%	Trains	569,151	648,000	78,849	13.9%
Signals Maintenance	504,000	512,500	8,500	1.7%	Trains	442,537	450,000	7,463	1.7%
Vegetation Control	450,000	461,250	11,250	2.5%	Trains	395,122	405,000	9,878	2.5%
Graffiti	100,000	102,500	2,500	2.5%	Trains	87,805	90,000	2,195	2.5%
Night Maintenance - Track	260,000	0	-260,000	-100.0%	Custom	260,000	0	-260,000	-100.0%
Night Maintenance - Signals	180,000	0	-180,000	-100.0%	Custom	180,000	0	-180,000	-100.0%
RTI	0	0	0		Custom	0	0	0	
One off project costs	0	0	0		Custom	0	0	0	
Staff time not allocated to activities	0	0	0		Custom	0	0	0	
Total Maintenance Cost	7,525,133	7,887,928	362,795	4.8%		5,777,214	5,943,212	165,998	2.9%
Overhead Costs									
KiwiRail Network Overheads						747,430	766,116	18,686	2.5%
KiwiRail Group Overheads						54,811	56,182	1,370	2.5%
Total Overheads						802,241	822,297	20,056	2.5%
Recoverable Expenses	7,525,133	7,887,928	362,795	4.8%		9,862,036	9,739,173	-122,862	-1.2%
Total Operations Fee	7,525,133	7,887,928	362,795	4.8%		9,862,036	9,739,173	-122,862	-1.2%

Wellington Network Agreement
Schedule 3

	Wellington Network Budget			Allocation		GWRC Budget			
	2012-13	2013-14	Incr / - Decr	2012-13	2013-14	2012-13	2013-14	Incr / - Decr	%
Signals & Interlocking	430,964	450,793	19,828	87.80%	Trains	378,407	395,818	17,410	4.6%
Traction	920,409	977,860	57,451	100.00%	Custom	920,409	977,860	57,451	6.2%
Platforms	0	0	0	100.00%	Custom	0	0	0	
Track	5,286,345	5,911,871	625,526	56.36%	GTK	2,979,385	3,392,733	413,348	13.9%
Tunnel 2/Rimutaka Tunnel	0	0	0	56.36%	GTK	0	0	0	
Structures	551,385	1,111,643	560,258	70.41%	Both	388,236	736,146	347,910	89.6%
Route Access	396,647	344,443	-52,204	100.00%	Custom	396,647	344,443	-52,204	-13.2%
Project Management	572,788	0	-572,788	37.21%	Custom	213,160	0	-213,160	-100.0%
GWRC Funded Renewals	8,158,538	8,796,609	638,071			5,276,245	5,847,000	570,755	10.8%
Catch-up Renewals 1 (Not funded)	0	0	0	0.00%		0	0	0	
Catch-up Renewals 2 (Not funded)	0	0	0	0.00%		0	0	0	
Other Renewals	0	0	0			0	0	0	
Total Renewals Fee	8,158,538	8,796,609	638,071			5,276,245	5,847,000	570,755	10.8%

	Wellington Network Budget			Allocation		GWRC Budget			
	2012-13	2013-14	Incr / - Decr	2012-13	2013-14	2012-13	2013-14	Incr / - Decr	%
Calculated performance fee						1,061,460	1,092,965	31,505	3.0%
Total Performance Fee						1,061,460	1,092,965	31,505	3.0%

Wellington Network Agreement
Schedule 3

Annexure 2: Template for Monthly Invoice Report

**Kiwirail Wellington Network
Monthly Invoice Report
30 July 2013**

Example Only

Operations fee	GWRC Share					
	Year-to-Date				Calculation	
	Actual	Budget	Variance	%	YTD Actual to Prev' Month	Current Month - To Pay
Revenue						
Income not attributable to GWRC	0	0	0		0	0
Income attributable to GWRC	0	0	0		0	0
One off project revenue	0	0	0		0	0
Total Revenue	0	0	0		0	0
Network Management services						
OIL Staff Charge	85,000	83,802	-1,198	-1.4%	0	85,000
Insurance	36,302	36,302	0	0.0%	0	36,302
Electricity (non traction)	17,394	17,394	0	0.0%	0	17,394
Total Network Management Services	138,696	137,498	-1,198	-0.9%	0	138,696
Network Control Services						
Operations Manager	8,512	8,512	0	0.0%	0	8,512
Train Control	55,000	59,123	4,123	7.0%	0	55,000
Network Authorities	2,825	2,825	0	0.0%	0	2,825
Traction and Operations Support	8,726	8,726	0	0.0%	0	8,726
National Signal Boxes	39,396	39,396	0	0.0%	0	39,396
Total Network Control Services	114,460	118,582	4,123	3.5%	0	114,460
Maintenance Cost by Activity						0
Track Inspection	10,398	10,398	0	0.0%	0	10,398
Track Maintenance	121,174	133,758	12,584	9.4%	0	121,174
EM80 Inspections	3,866	3,866	0	0.0%	0	3,866
NDT Inspections	5,055	5,055	0	0.0%	0	5,055
Tamping / Track Stab. Protection	9,861	9,861	0	0.0%	0	9,861
Structural Inspection	2,888	2,888	0	0.0%	0	2,888
Structural Maintenance	4,212	4,212	0	0.0%	0	4,212
Platform Maintenance	33,799	33,799	0	0.0%	0	33,799
Platform Maintenance	-16,667	-16,667	0	0.0%	0	-16,667
Traction Inspection	35,021	35,021	0	0.0%	0	35,021
Traction Maintenance	100,000	117,292	17,292	14.7%	0	100,000
Communications	18,959	18,959	0	0.0%	0	18,959
Signals Inspection	49,500	49,500	0	0.0%	0	49,500
Signals Maintenance	37,800	37,800	0	0.0%	0	37,800
Vegetation Control	33,750	33,750	0	0.0%	0	33,750
Graffiti	7,500	7,500	0	0.0%	0	7,500
Night Maintenance - Track	0	0	0		0	0
Night Maintenance - Signals	0	0	0		0	0
RTI	0	0	0		0	0
One off project costs	0	0	0		0	0
Staff time not allocated to activities	0	0	0		0	0
Total Maintenance Cost	457,117	486,993	29,876	6.1%	0	457,117
Overhead Costs						
KiwiRail Network Overheads	63,843	63,843	0	0.0%	0	63,843
KiwiRail Group Overheads	4,682	4,682	0	0.0%	0	4,682
Total Overheads	68,525	68,525	0	0.0%	0	68,525
Recoverable Expenses	778,797	811,598	32,801	4.0%	0	778,797
Total Operations Fee	778,797	811,598	32,801	4.0%	0	778,797

Wellington Network Agreement
Schedule 3

Renewals Fee	GWRC Share					
	Year-to-Date				Amount to pay	
	Actual	Budget	Variance	%	to Prev' Month	Current Month
Signals & Interlocking	26,341	29,894	3,552	11.9%	0	26,341
Traction	85,000	83,333	-1,667	-2.0%	0	85,000
Platforms	0	0	0		0	0
Track	42,270	56,360	14,090	25.0%	0	42,270
Tunnel 2/Rimutaka Tunnel	0	0	0		0	0
Structures	51,723	51,723	0	0.0%	0	51,723
Route Access	36,577	36,577	0	0.0%	0	36,577
Project Management	20,417	20,417	0	0.0%	0	20,417
Total Renewals Fee	262,328	278,304	15,976	5.7%	0	262,328

Performance Fee	GWRC Share					
	Year-to-Date				Amount to pay	
	Actual	Budget	Variance	%	YTD Actual to Prev' Month	Current Month
Calculated performance fee	70,000	76,293	6,293	8.2%	0	70,000
Total Performance Fee	70,000	76,293	6,293	8.2%	0	70,000

Incident Fee	GWRC Share					
	Year-to-Date				Amount to pay	
	Actual	Budget	Variance	%	YTD Actual to Prev' Month	Current Month
Incident 1	5,000				0	5,000
Incident 2	23,000				0	23,000
Incident 3	0				0	0
Total Incident Fee	28,000	0	0		0	28,000

Wellington Network Agreement
Schedule 3

Annexure 3: Template for monthly financial report

Wellington Network Agreement
Schedule 3

KiwiRail Wellington Network
Monthly Report - Financials
30 July 2013

Example Only

	Wellington Network				GWRC Share			
	Year-to-Date		Full Year		Year-to-Date		Full Year	
	Actual	Budget	Variance	%	Forecast	Budget	Variance	%
Operations fee				Allocation				
Revenue	0	0	0	0.0%	0	0	0	0
Income not attributable to GWRC	0	0	0	100.0%	0	0	0	0
Income attributable to GWRC	0	0	0	100.0%	0	0	0	0
One off project revenue	0	0	0		0	0	0	0
Total Revenue	0	0	0		0	0	0	0
Network Management services								
OIL Staff Charge	85,000	75,528	-9,472	-11.1%	1,010,000	906,332	-103,668	-10.3%
Insurance	36,302	36,302	0	0.0%	435,625	435,625	0	0.0%
Electricity (non traction)	17,394	17,394	0	0.0%	208,722	208,722	0	0.0%
Total Network Management Services	138,696	129,223	-9,472	-6.8%	1,654,347	1,550,679	-103,668	-6.3%
Network Control Services								
Operations Manager	8,512	8,512	0	0.0%	102,144	102,144	0	0.0%
Train Control	55,000	59,123	4,123	7.5%	700,000	709,470	9,470	1.4%
Network Authorities	2,825	2,825	0	0.0%	33,899	33,899	0	0.0%
Traction and Operations Support	8,726	8,726	0	0.0%	104,716	104,716	0	0.0%
National Signal Boxes	39,396	39,396	0	0.0%	472,757	472,757	0	0.0%
Total Network Control Services	114,460	118,582	4,123	3.6%	1,413,515	1,422,985	9,470	0.7%
Maintenance Cost by Activity								
Track Inspection	18,450	30,750	12,300	66.7%	221,400	369,000	147,600	66.7%
Track Maintenance	215,000	224,846	9,846	4.5%	2,600,000	2,695,750	-94,250	-3.7%
EMBO Inspections	6,859	3,597	-3,262	-47.6%	82,308	43,167	-39,141	-47.6%
NDT Inspections	8,969	12,231	3,262	36.4%	107,625	146,766	39,141	36.4%
Tamping / Track Stab.	17,486	8,542	-8,944	-51.2%	209,954	102,500	-107,454	-51.2%
Protection	5,125	0	-5,125	0.0%	61,500	61,500	0	0.0%
Structural Inspection	7,474	7,688	214	2.9%	89,688	92,250	2,562	2.9%
Structural Maintenance	59,970	30,323	-29,647	-49.4%	719,643	363,875	-355,768	-49.4%
Platform Maintenance	16,667	16,667	0	0.0%	200,000	200,000	0	0.0%
Traction Inspection	35,021	58,333	23,313	66.7%	420,250	820,000	399,750	95.1%
Traction Maintenance	125,000	76,031	-48,969	-39.2%	1,450,000	912,370	-537,630	-37.1%
Communications	21,592	22,208	616	2.9%	259,108	266,500	7,392	2.9%
Signals Inspection	56,375	51,500	-4,875	-8.6%	676,500	738,000	61,500	9.1%
Signals Maintenance	43,050	42,708	-342	-0.8%	516,600	512,500	-4,100	-0.8%
Vegetation Control	38,438	38,438	0	0.0%	461,250	461,250	0	0.0%
Graffiti	8,542	8,542	0	0.0%	102,500	102,500	0	0.0%
Night Maintenance - Track	0	0	0	0.0%	0	0	0	0.0%
Night Maintenance - Signals	0	0	0	0.0%	0	0	0	0.0%
RTI	0	0	0	0.0%	0	0	0	0.0%
One off project costs	0	0	0	0.0%	0	0	0	0.0%
Staff time not allocated to activities	0	0	0	0.0%	0	0	0	0.0%
Total Maintenance Cost	684,027	657,327	-26,700	-3.9%	8,378,325	7,887,928	-490,397	-5.9%
Overhead Costs								
KiwiRail Network Overheads	60,000	63,843	3,843	6.4%	750,000	766,116	16,116	2.1%
KiwiRail Group Overheads	4,682	4,682	0	0.0%	56,182	56,182	0	0.0%
Total Overheads	64,682	68,525	3,843	5.9%	806,182	822,297	16,116	2.0%
Recoverable Expenses	684,027	657,327	-26,700	-3.9%	8,378,325	7,887,928	-490,397	-5.9%
Total Operations Fee	684,027	657,327	-26,700	-3.9%	8,378,325	7,887,928	-490,397	-5.9%

Wellington Network Agreement
Schedule 3

	Wellington Network						GWRC Share									
	Year-to-Date			Full Year			Year-to-Date			Full Year						
	Actual	Budget	Variance %	Forecast	Budget	Variance %	Allocation	Actual	Budget	Variance %	Forecast	Budget	Variance %			
Renewals Fee																
Signals & Interlocking	30,000	37,566	7,566	25.2%	408,549	450,793	42,243	10.3%	26,341	32,985	6,643	25.2%	358,726	395,818	37,092	10.3%
Traction	80,000	81,488	1,488	1.9%	1,000,000	977,860	-22,140	-2.2%	80,000	81,488	1,488	1.9%	1,000,000	977,860	-22,140	-2.2%
Platforms	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Track	75,000	100,000	25,000	33.3%	5,000,000	5,911,871	911,871	18.2%	43,043	57,390	14,348	33.3%	2,869,500	3,392,823	523,323	18.2%
Tunnel 2/Rimutaka Tunnel	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Structures	81,258	92,637	11,379	14.0%	975,100	1,111,643	136,543	14.0%	53,810	61,345	7,535	14.0%	645,725	736,146	90,421	14.0%
Route Access	41,707	28,704	-13,003	-31.2%	500,479	344,443	-156,037	-31.2%	41,707	28,704	-13,003	-31.2%	500,479	344,443	-156,037	-31.2%
Project Management	31,197	0	-31,197		374,358	0	-374,358		31,197	0	-31,197		374,358	0	-374,358	
GWRC Funded Renewals	339,161	340,395	1,233	0.4%	8,258,487	8,796,609	538,123	6.5%	276,098	261,912	-14,185	-5.1%	5,748,789	5,847,090	98,301	1.7%
Catch-up Renewals 1 (Mot funded)	0	0	0	0	0	0	0	0.0%	0	0	0	0	0	0	0	0
Catch-up Renewals 2 (Mot funded)	0	0	0	0	0	0	0	0.0%	0	0	0	0	0	0	0	0
Other Renewals	0	0	0	0	0	0	0		0	0	0	0	0	0	0	
Total Renewals Fee	339,161	340,395	1,233	0.4%	8,258,487	8,796,609	538,123	6.5%	276,098	261,912	-14,185	-5.1%	5,748,789	5,847,090	98,301	1.7%

88.74

	Wellington Network						GWRC Share									
	Year-to-Date			Full Year			Year-to-Date			Full Year						
	Actual	Budget	Variance %	Forecast	Budget	Variance %	Allocation	Actual	Budget	Variance %	Forecast	Budget	Variance %			
Performance Fee																
Calculated performance fee	70,000	75,279	5,279	7.5%	1,091,079	1,092,971	1,892	0.2%	70,000	75,279	5,279	7.5%	1,091,079	1,092,971	1,892	0.2%
Total Performance Fee	70,000	75,279	5,279	7.5%	1,091,079	1,092,971	1,892	0.2%	70,000	75,279	5,279	7.5%	1,091,079	1,092,971	1,892	0.2%

	Wellington Network						GWRC Share									
	Year-to-Date			Full Year			Year-to-Date			Full Year						
	Actual	Budget	Variance %	Forecast	Budget	Variance %	Allocation	Actual	Budget	Variance %	Forecast	Budget	Variance %			
Incident Fee																
Incident 1	5,000	20,000	15,000	75.0%	20,000	20,000	0	0	5,000	20,000	15,000	75.0%	20,000	20,000	0	0
Incident 2	23,000	25,000	2,000	8.0%	25,000	25,000	0	0	23,000	25,000	2,000	8.0%	25,000	25,000	0	0
Incident 3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Incident Fee	28,000	45,000	17,000	37.8%	45,000	45,000	0	0	28,000	45,000	17,000	37.8%	45,000	45,000	0	0

Wellington Network Agreement
Schedule 3

Annexure 4: Template for full year financial report

Kiwirail Wellington Network **Example Only**
Full Year Report - Financials
For the Year ended 30 June 2014

Operations fee	Wellington Network				Allocation	GWRC Share			
	Actual	Budget	Variance	%		Actual	Budget	Variance	%
Revenue									
Income not attributable to GWRC	0	0	0		0.0%	0	0	0	
Income attributable to GWRC	0	0	0		100.0%	0	0	0	
One off project revenue	0	0	0		100.0%	0	0	0	
Total Revenue	0	0	0			0	0	0	
Network Management services									
OIL Staff Charge						1,010,000	906,332	-103,668	-10.3%
Insurance						435,625	435,625	0	0.0%
Electricity (non traction)						208,722	208,722	0	0.0%
Total Network Management Services						1,654,347	1,550,679	-103,668	-6.3%
Network Control Services									
Operations Manager						102,144	102,144	0	0.0%
Train Control						700,000	709,470	9,470	1.4%
Network Authorities						33,899	33,899	0	0.0%
Traction and Operations Support						104,716	104,716	0	0.0%
National Signal Boxes						472,757	472,757	0	0.0%
Total Network Control Services						1,413,515	1,422,985	9,470	0.7%
Maintenance Cost by Activity									
Track Inspection	221,400	369,000	147,600	66.7%	56.4%	124,781	207,968	83,187	66.7%
Track Maintenance	2,800,000	2,695,750	-104,250	-3.7%	56.4%	1,578,081	1,519,325	-58,755	-3.7%
EM80 Inspections	82,308	43,167	-39,141	-47.6%	56.4%	46,389	24,329	-22,060	-47.6%
NDT Inspections	107,625	146,766	39,141	36.4%	56.4%	60,657	82,717	22,060	36.4%
Tamping / Track Stab.	209,954	102,500	-107,454	-51.2%	56.4%	118,330	57,769	-60,561	-51.2%
Protection	61,500	61,500	0	0.0%	56.4%	34,661	34,661	0	0.0%
Structural Inspection	89,688	92,250	2,563	2.9%	56.4%	50,548	51,992	1,444	2.9%
Structural Maintenance	719,643	363,875	-355,768	-49.4%	56.4%	405,591	205,080	-200,511	-49.4%
Platform Maintenance	200,000	200,000	0	0.0%	100.0%	200,000	200,000	0	0.0%
Traction Inspection	420,250	820,000	399,750	95.1%	100.0%	420,250	820,000	399,750	95.1%
Traction Maintenance	1,450,000	912,370	-537,630	-37.1%	100.0%	1,450,000	912,370	-537,630	-37.1%
Communications	259,108	266,500	7,392	2.9%	87.8%	227,509	234,000	6,491	2.9%
Signals Inspection	676,500	738,000	61,500	9.1%	87.8%	594,000	648,000	54,000	9.1%
Signals Maintenance	516,600	512,500	-4,100	-0.8%	87.8%	453,600	450,000	-3,600	-0.8%
Vegetation Control	461,250	461,250	0	0.0%	87.8%	405,000	405,000	0	0.0%
Graffiti	102,500	102,500	0	0.0%	87.8%	90,000	90,000	0	0.0%
Night Maintenance - Track	0	0	0		100.0%	0	0	0	
Night Maintenance - Signals	0	0	0		100.0%	0	0	0	
RTI	0	0	0		100.0%	0	0	0	
One off project costs	0	0	0		100.0%	0	0	0	
Staff time not allocated to activities	0	0	0		100.0%	0	0	0	
Total Maintenance Cost	8,378,325	7,887,928	-490,397	-5.9%		6,259,397	5,943,212	-316,185	-5.1%
Overhead Costs									
KiwiRail Network Overheads						750,000	766,116	16,116	2.1%
KiwiRail Group Overheads						56,182	56,182	0	0.0%
Total Overheads						806,182	822,297	16,116	2.0%
Recoverable Expenses	8,378,325	7,887,928	-490,397	-5.9%		10,133,440	9,739,173	-394,267	-3.9%
Total Operations Fee	8,378,325	7,887,928	-490,397	-5.9%		10,133,440	9,739,173	-394,267	-3.9%

Wellington Network Agreement
Schedule 3

Renewals Fee	Wellington Network				Allocation	GWRC Share			
	Actual	Budget	Variance	%		Actual	Budget	Variance	%
Signals & Interlocking	408,549	450,793	42,243	10.3%	87.80%	358,726	395,818	37,092	10.3%
Traction	1,000,000	977,860	-22,140	-2.2%	100.00%	1,000,000	977,860	-22,140	-2.2%
Platforms	0	0	0		100.00%	0	0	0	
Track	5,000,000	5,911,871	911,871	18.2%	57.39%	2,869,424	3,392,733	523,309	18.2%
Tunnel 2/Rimutaka Tunnel	0	0	0		56.36%	0	0	0	
Structures	975,100	1,111,643	136,543	14.0%	66.22%	645,725	736,146	90,421	14.0%
Route Access	500,479	344,443	-156,037	-31.2%	100.00%	500,479	344,443	-156,037	-31.2%
Project Management	374,358	0	-374,358		100.00%	374,358	0	-374,358	
GWRC Funded Renewals	8,258,487	8,796,609	538,123	6.5%		5,748,713	5,847,000	98,287	1.7%
Catch-up Renewals 1 (Mot funded)	3,200,000	0	-3,200,000		0.0%	0	0	0	
Catch-up Renewals 2 (Mot funded)	0	0	0		0.0%	0	0	0	
Other Renewals	3,200,000	0	-3,200,000			0	0	0	
Total Renewals Fee	11,458,487	8,796,609	-2,661,877	-23.2%		5,748,713	5,847,000	98,287	1.7%

Performance Fee	Wellington Network				Allocation	GWRC Share			
	Actual	Budget	Variance	%		Actual	Budget	Variance	%
Calculated performance fee						1,091,079	1,092,965	1,886	0.2%
Total Performance Fee						1,091,079	1,092,965	1,886	0.2%

Incident Fee	Wellington Network				Allocation	GWRC Share			
	Actual	Budget	Variance	%		Actual	Budget	Variance	%
Incident 1						20,000			
Incident 2						25,000			
Incident 3						0			
Total Incident Fee						45,000	0	0	

Wellington Network Agreement
Schedule 4

Schedule 4 – Network Management Services

1. Service Objective

- 1.1 The objective of Network Management Services is to plan, coordinate, monitor and report on the delivery of Network Control Services, Maintenance Services, Incident Services, Renewal Services, Catch-up Renewal Services and Upgrade Services in accordance with the objectives and general principles described at clause 1 of this Agreement.

2. Description of Network Management Services

- 2.1 The Network Management Services will include:
- 2.1.1 development of the Network Management Plan;
 - 2.1.2 full revision of the Network Management Plan at triennial intervals;
 - 2.1.3 updating of the Network Management Plan between each triennial revision;
 - 2.1.4 coordinating and monitoring the delivery of the Network Services that are necessary to meet the requirements of this Agreement and the prevailing Network Management Plan; and
 - 2.1.5 reporting to the Metro Service Operator and/or GWRC on:
 - (a) the performance of the Access Provider in delivering the Network Services in accordance with this Agreement and the prevailing Network Management Plan; and
 - (b) the performance and quality of the Wellington Network,each of which is described below.

3. Development of the Network Management Plan

- 3.1 The Access Provider will develop a Network Management Plan that will address all of the matters set out in Annexure 1 to this Schedule in an appropriate level of detail to enable the Metro Service Operator and GWRC to make an informed assessment of the information, recognising that the Network Management Plan provides:
- 3.1.1 an important mechanism by which the parties will discuss and reach agreement on the Access Provider's proposals for the management of the Wellington Network;
 - 3.1.2 a framework within which the programme of Network Services and related funding requirements will be developed; and
 - 3.1.3 the basis upon which the GWRC Budget will be determined.

Wellington Network Agreement
Schedule 4

- 3.2 In developing the Network Management Plan and prior to approval by the parties, consideration will be given to the implications for the:
- 3.2.1 quality and condition of Wellington Network assets;
 - 3.2.2 operational performance of the Wellington Network; and
 - 3.2.3 delivery of safe, reliable and punctual Metro Services by the Metro Service Operator.
- 3.3 Each Network Management Plan will adopt a ten year planning horizon in detail for the first three years and in outline for the following seven years.
- 3.4 If any Network Management Plan requires any activity which is a material change under clause 10.2 of the Common Access Terms, then implementation of that activity will be subject to clause 10.2 of the Common Access Terms.
- 3.5 The first Network Management Plan will cover the two year period 1 July 2013 to 30 June 2015.

4. Process to develop draft Network Management Plan

- 4.1 To inform its development of each draft Network Management Plan:
- 4.1.1 the Access Provider shall undertake a review of its actual performance, both physical and financial, over the preceding Triennium (which shall subsequently be set out in the Full Year Report);
 - 4.1.2 GWRC shall by 1 August of the Financial Year preceding the first year of each Triennium, provide the Access Provider with:
 - (a) a funding envelope for the proposed GWRC Budget for each year of a Triennium in accordance with paragraph 4.7 of Schedule 3 (Determination of GWRC Budget and Fees);
 - (b) a current version of its Regional Rail Plan;
 - 4.1.3 the Metro Service Operator shall provide the Access Provider with all material information regarding its Metro Services and anticipated changes to its Metro Services for the following three years and in outline for the following seven years by 1 August of the Financial Year preceding the first year of each Triennium;
 - 4.1.4 the Access Provider shall obtain such material information from other Operators in relation to their anticipated changes; and
 - 4.1.5 the Access Provider shall undertake reasonable consultation with, and take into account, the views and comments of the Metro Service Operator; GWRC, any other Operator and any relevant Authority.

Wellington Network Agreement
Schedule 4

- 4.2 The Access Provider will provide GWRC and the Metro Service Operator with a draft Network Management Plan no later than 30 September of the Financial Year preceding the first year of each Triennium.

5. Process for finalisation of the Network Management Plan

- 5.1 GWRC in consultation with the Metro Service Operator will upon receipt of the draft Network Management Plan as contemplated in paragraph 4.2 above, review the draft Network Management Plan and notify the Access Provider whether GWRC:

5.1.1 accepts the draft Network Management Plan, (including the draft GWRC Budget);

5.1.2 accepts the draft Network Management Plan (including the proposed GWRC Budget), subject to certain proposed amendments in which case details of such amendments shall be included in the notice provided by GWRC to the Access Provider;

5.1.3 requires further information to reach a conclusion; or

5.1.4 rejects the draft Network Management Plan (including if applicable, the draft GWRC Budget) and the reasons for doing so.

- 5.2 If on or before 30 April of the Financial Year preceding the first year of the Triennium, GWRC and the Access Provider have failed to agree the contents of the Network Management Plan (including the GWRC Budget) or as a result of changes to the funding envelope provided by GWRC under paragraph 4.1.2(a) then:

5.2.1 GWRC may request the Access Provider to provide information regarding the effect on the GWRC Budget of a higher or lower level of Network Services (or such other matter relating to the Network Management Plan as it considers appropriate) and the Access Provider will provide such information (in reasonable detail to allow GWRC to make an informed decision) as soon as possible; and

5.2.2 GWRC may, in its discretion require the Access Provider to amend the Network Management Plan to reflect any higher or lower level of Network Services considered appropriate and funded by GWRC subject to the requirements of the Access Provider's Rail Licence. For the avoidance of doubt, the parties acknowledge that such amendment to the Network Management Plan is not subject to any Dispute Resolution Procedure or other proceedings other than in relation to consequential adjustments to the KPI Achieve Benchmarks. If GWRC requires an amendment to the Network Management Plan to require a higher level of Network Services without fully funding such higher level of Network Services, it is deemed that:

- (a) the higher level of Network Services required by GWRC (when compared against the level of Network Services

Wellington Network Agreement
Schedule 4

agreed to by the Access Provider) shall constitute a material change to the Wellington Network for the purposes of clause 10.2 of the Common Access Terms; and

- (b) the Metro Service Operator shall be the Proposer (as defined in clause 10.2(b)(i) of the Common Access Terms) of such material change.

5.3 Until the Access Provider and GWRC have agreed the draft Network Management Plan, (including the GWRC Budget) or GWRC has required an amendment to the draft Network Management Plan in accordance with clause 5.2, for the relevant Triennium, the parties agree that:

5.3.1 GWRC shall continue to pay the monthly Operations Fee at the same level and subject to the same limits that applied for the final Financial Year of the previous Triennium;

5.3.2 GWRC shall continue to pay the Performance Fee and apply the Performance Incentive Regime on the same basis that applied in the final Financial Year of the previous Triennium;

5.3.3 the Access Provider will use all reasonable endeavours to continue to provide the same level of Network Management Services, Network Control Services and Maintenance Services provided in the final Financial Year of the previous Triennium;

5.3.4 GWRC's obligation to pay the Renewals Fee and the Access Provider's obligation to provide Renewal Services shall be suspended except to the extent of any Renewal Services approved in writing by GWRC prior to such services being undertaken;

5.3.5 GWRC shall pay the Incident Fee and Incident Services shall be provided by the Access Provider on the same basis that applied during the final Financial Year of the previous Triennium; and

5.3.6 all other terms of this Agreement shall continue to apply.

6. Annual update of the Network Management Plan

6.1 Between each triennial revision the Access Provider will prepare and submit an annual update to the Network Management Plan no later than 30 September of the preceding Financial Year.

6.2 The annual update will have a ten year planning period in detail for the first three years and in outline for the following seven years, adding another year's plan to that provided in the previous Network Management Plan or Update Network Management Plan.

6.3 To inform the preparation of the annual update, the Metro Service Operator will, by 1 August of the preceding Financial Year, provide the Access Provider with all material information regarding its Metro Services and anticipated

Wellington Network Agreement
Schedule 4

changes if any to its Metro Services for each remaining Financial Year(s) of the Triennium.

7. Full revision of the Network Management Plan at triennial intervals

7.1 The Network Management Plan will be subject to full revision by the Access Provider for the Triennium 1 July 2015 to 30 June 2018, and again prior to the commencement of each successive Triennium.

8. Coordination and monitoring of the services to meet the requirements of this Agreement and the prevailing Network Management Plan

8.1 The Access Provider shall use best endeavours to fully implement the prevailing Network Management Plan in accordance with the provisions of this Agreement. This will include:

8.1.1 planning, coordinating and monitoring the delivery of Network Management Services, Network Control Services, Maintenance Services, Incident Services, Renewal Services, Catch-up Renewal Services and Upgrade Services;

8.1.2 planning and managing Track Possessions as set out in Annexure 2 to this Schedule (Track Possessions Plan and development);

8.1.3 monitoring and reporting on the quality and performance of the Access Provider's assets by reference to appropriate Asset Quality Measures;

8.1.4 monitoring and assessing the provision of Network Services against the work programme set out in the Network Management Plan and the GWRC Budget;

8.1.5 operational liaison and coordination with the Metro Service Operator and GWRC;

8.1.6 fulfilling the functions of the Network Controller; and

8.1.7 managing Permanent Speed Restrictions and TSRs by:

(a) not imposing any Permanent Speed Restriction (other than a Permitted PSR) on any Wellington Network Route without the prior approval of the Metro Service Operator;

(b) promptly notifying and consulting with the Metro Service Operator concerning any:

(i) proposed Permitted PSR; or

(ii) Permitted TSR;

Wellington Network Agreement
Schedule 4

- (c) using best endeavours to predict TSRs arising from planned works and consulting with the Metro Service Operator before imposing any planned TSR with a view to minimising, to the extent practical, disruption or delay to Metro Services as a result of any such proposed TSR; and
- (d) promptly notifying the Metro Service Operator of any unplanned TSR and consulting with the Metro Service Operator to the extent practicable, prior to imposing such TSR or as soon as possible thereafter.

9. Reporting to GWRC and the Metro Service Operator

9.1 The Access Provider shall provide the following Reporting Services in accordance with the requirements at section 7 of this Agreement or as otherwise required by this Schedule:

- 9.1.1 the Monthly Report to be submitted to GWRC and the Metro Service Operator;
- 9.1.2 the Full Year Report to be submitted to GWRC and the Metro Service Operator;
- 9.1.3 Remedial Reports in response to a Performance Notice (as required);
- 9.1.4 responses to any Efficiency Audit Reports (as required);
- 9.1.5 Performance Improvement Reports requested under clause 7.19 of this Agreement (if requested by the Metro Service Operator); and
- 9.1.6 any other reports reasonably requested by either GWRC or the Metro Service Operator to assist the management of this Agreement and the implementation of the Network Management Plan.

9.2 The content of each report shall be determined by the parties having regard to its intended purposes or use by GWRC or the Metro Service Operator.

9.3 As a minimum the Monthly Report shall include:

- 9.3.1 for KPIs:
 - (a) the Access Provider's performance in the month against each KPI including explanatory comments;
 - (b) a time series (including a trend graph) of the results for each KPI for the preceding 12 months (or where agreed by GWRC such shorter period since the Commencement Date);
 - (c) a delays attribution report identifying the delays for which the Access Provider is responsible and which underlie reported performance against the Punctuality, Reliability and Completed Trips KPIs; and

Wellington Network Agreement
Schedule 4

- (d) the Performance Fee for the preceding month, including its calculation in accordance with Performance Incentive Regime and any Performance Rebate.

9.3.2 for Network Management Services:

- (a) the Access Provider's performance in the month against each PI including explanatory comments;
- (b) a time series (including a trend graph) of the PI Results for each PI for the preceding 12 months (or where agreed by GWRC such shorter period since the Commencement Date);
- (c) an update of each Asset Quality Measure, including a trend graph for the relevant month and the preceding 12 months (or where agreed by GWRC such shorter period since the Commencement Date); and
- (d) an analysis of any relevant problems and issues with the Wellington Network and its operation or condition.

9.3.3 for Network Control Services;

- (a) the Access Provider's performance in the month against each PI including explanatory comments; and
- (b) a time series (including a trend graph) of the PI Results for each KPI and PI for preceding 12 months (or where agreed by GWRC such shorter period since the Commencement Date).

9.3.4 for Maintenance Services, Renewal Services and Catch-up Renewal Services;

- (a) the Access Provider's performance against the work programme set out in the relevant Network Management Plan including explanatory comments;
- (b) the Access Provider's performance in the month against each PI including explanatory comments;
- (c) a time series (including a trend graph) of the PI Results for each PI for preceding 12 months (or where agreed by GWRC such shorter period since the Commencement Date); and
- (d) any incidents including lost time injuries to staff,

9.3.5 for Incident Services, detail of any Incident that occurred during the month or in any earlier month for which investigation, reporting and remedial action is yet to be completed;

Wellington Network Agreement
Schedule 4

9.3.6 the monthly financial report for the Operations Fee, the Renewals Fee, any Catch-up Renewals, the Performance Fee and the Incident Fee, presented in a similar format to the template at Annexure 3, Schedule 3 (Determination of GWRC Budget and calculation of Fees) for both the Wellington Network and the GWRC share, which will include:

- (a) a comparison of actual expenditure for the Financial Year to date against budgeted expenditure for the Financial Year to date, with the variance;
- (b) a comparison of actual revenue for the Financial Year to date against budgeted revenue for the Financial Year to date, with the variance;
- (c) a current forecast of actual expenditure for the full Financial Year against budgeted expenditure for the full Financial Year to date with the variance;
- (d) a current forecast of actual revenue for the full Financial Year against the budgeted expenditure for the full Financial Year, with the variance;
- (e) explanations of any material variances;
- (f) comment on any risks and challenges in meeting the forecasts for the current Financial Year;
- (g) a description of options for containing any variances identified with the intention that the GWRC Budget for the current Financial Year will not be exceeded;
- (h) any future issues relevant to the setting of the GWRC Budget or the calculation of Fees;
- (i) any other future financial issues or risks identified by the Access Provider as relevant to the performance of Network Services and the requirements of this Agreement; and
- (j) a copy of the Monthly Invoice Report.

9.3.7 any other relevant matters including but not limited to:

- (a) any operational or performance issues that have arisen in the previous month and not dealt with during the weekly operations meeting;
- (b) any changes proposed to rail licences, approved safety cases, safety systems, Codes, standards, rules and/or check sheets; where relevant to the Access Provider or the Network Services being provided;

Wellington Network Agreement
Schedule 4

- (c) any other matters, issues, reports or notices on which GWRC or the Metro Service Operator have requested additional information or reporting; and
- (d) any emerging risks, issues or matters that the Access Provider should bring to the attention of the Metro Service Operator and GWRC.

9.4 As a minimum the Full Year Report shall:

- 9.4.1 compare actual performance for the Financial Year against the performance for the preceding five Financial Years (to the extent possible) in regard to all KPIs and PIs;
- 9.4.2 review each component of the Network Management Plan (as specified in Annexure 1 to this Schedule) and identify and set out:
 - (a) any departures from the Network Management Plan and the reasons for those departures; and
 - (b) any proposed variation to the Network Management Plan and the reasons for those variations;
- 9.4.3 compare actual performance against the GWRC Budget for the preceding Financial Year; and
- 9.4.4 update the final monthly financial report and set out a full year financial report in a similar format to the template at Annexure 4, Schedule 3 (Determination of GWRC Budget and calculation of Fees) to compare the actual income and expenditure for the Financial Year with the final version of the agreed GWRC Budget, including a comparison of the actual income and expenditure with the income and expenditure in the Wellington Network Budget attached to the agreed Network Management Plan.

10. Performance indicators for Network Management Services

- 10.1 In measuring the Access Provider's provision of Network Management Services the parties will utilise the following performance indicators:

Wellington Network Agreement
Schedule 4

Management 1: Timing of submission and completeness of content of draft Network Management Plan and draft annual updates	
Performance measurement methodology	No formula
Data sources	The date that the draft Network Management Plan and draft annual Update Network Management Plan is submitted. Content of the drafts submitted Annexure 1 to this Schedule
Measurement and Reporting frequency	Annual
PI Fail Limit	Draft Network Management Plan is submitted after 30 September, or There are material omissions in respect of the matters set out on Annexure 1 to this Schedule
PI Achieve Benchmark	Draft is submitted no later than 30 September and there are no material omissions with respect to the matters set out in Annexure 1 of this Schedule
Comment: The Access Provider's performance against this PI is subject to the regime for with-holding payments set out in paragraph 8.1.2 of Schedule 3 (Determination of GWRC Budget and calculation of Fees)	

Management 2: Timing of submission and completeness of Full Year Report	
Performance measurement methodology	No formula
Data sources	The date on which the Access Provider submits the Full Year Report The content of the Full Year Report
Measurement and Reporting frequency	Annual
PI Fail Limit	The Full Year Report is submitted later than six weeks after the start of the following Financial Year, or The content of the Full Year Report is not in a form approved by GWRC.
PI Achieve Benchmark	The Full Year Report is submitted on or before six weeks after the start of the following Financial Year, and The content of the Full Year Report is in accordance with the form approved by GWRC.
Comment: The Access provider's performance against this PI is subject to the regime for with-holding payments set out in paragraph 8.1.1 of Schedule 3 (Determination of GWRC Budget and calculation of Fees)	

Wellington Network Agreement
Schedule 4

Management 3: Timing of submission and completeness of content of the Monthly Report	
Performance measurement methodology	No formula
Data sources	The date on which the Access Provider submits the Monthly Report The content of the Monthly Report.
Measurement and Reporting frequency	Monthly
PI Fail Limit	The Monthly Report is submitted <u>after</u> the 11th Business Day or in the case of the December Report the 15 th Business Day of the month following the month to which it relates, or The content of the Monthly Report does not cover the information set out at paragraph 9.3 of this Schedule or is in a form that has not been approved by GWRC.
PI Achieve Benchmark	The Monthly Report is submitted on or before the 11th Business Day or in the case of the December Report the 15 th Business Day of the month following the month to which it relates , and The content of the Monthly Report covers the information set out at paragraph 9.3 of this Schedule and is in a form that has been approved by GWRC
Comment: The Access Provider's performance against this PI is subject to the regime for with-holding payments set out in paragraph 8.1.1 of Schedule 3 (Determination of GWRC Budget and calculation of Fees)	

Annexure 1: Content of Network Management Plan

1. Content

- 1.1 The content of the Network Management Plan will be largely drawn from the Access Provider's internal business plans and asset management plans.
- 1.2 The Network Management Plan will include all of the following:
 - 1.2.1 a current description of the Wellington Network;
 - 1.2.2 an assessment of the current condition of the assets comprising the Wellington Network;
 - 1.2.3 an outline of the current levels of utilisation of the Wellington Network and the expected changes in utilisation over the forthcoming 10 year period;
 - 1.2.4 the Access Provider's philosophy for the management of the Wellington Network;
 - 1.2.5 the Access Provider's strategic plan for the management of the Wellington Network including its plans for the mitigation and management of risks;
 - 1.2.6 the Access Provider's programme for the provision of Network Services over the Triennium;
 - 1.2.7 the Wellington Network Budget (which includes the GWRC Budget); and
 - 1.2.8 analysis of the implication of the Wellington Network Budget on the provision of Network Services and the condition of network assets over the relevant triennium,

each of which is described below.

2. Description of the Wellington Network

- 2.1 The description of the Wellington Network will include:
 - 2.1.1 line maps showing Track and permanent way assets;
 - 2.1.2 the train control system including communications and radio systems;
 - 2.1.3 signals and telecommunications assets including the relevant S & I diagrams;
 - 2.1.4 traction assets including the relevant traction electrical schematics;
 - 2.1.5 structures assets including:

Wellington Network Agreement
Schedule 4

- (a) bridges;
 - (b) tunnels;
 - (c) slopes; and
 - (d) weather and coastal/river protection;
- 2.1.6 specific vehicle storage areas and yards that the Metro Service Operator uses; and
- 2.1.7 any other assets maintained or operated by the Access Provider comprising part of the Wellington Network.
- 2.2 The description will acknowledge that:
- 2.2.1 GWRC via its subsidiary GWRL, is the owner of and has responsibility for the maintenance of the GWRL Infrastructure described at Schedule 2 (GWRL Infrastructure); and
 - 2.2.2 arrangements regarding access to and the parties other rights and obligations in regard to the GWRL Infrastructure are set out in the lease, licences and access arrangements described at 1.10 of Schedule 2 (GWRL Infrastructure).

3. Current condition of the Wellington Network

- 3.1 The description of the current condition of the Wellington Network will include:
- 3.1.1 a high level overview that identifies any major deficiencies in asset condition;
 - 3.1.2 overall trends in asset performance including time series data for each of the Asset Quality Measures for each of the previous five years to the extent available;
 - 3.1.3 any other relevant information that describes age/condition profiles; and
 - 3.1.4 the identification and assessment of specific safety and operational risks arising from asset condition.

4. Wellington Network capacity and utilisation

- 4.1 The description of Wellington Network capacity and utilisation will include:
- 4.1.1 the current capacity of each Wellington Network Line Section and in total for all lines at the time of preparation of the Network Management Plan, calculated as the theoretical number of train paths per hour based on the most common train path type; for example, an all stops Train Service ("Predominant Use Train Path");

Wellington Network Agreement
Schedule 4

- 4.1.2 current utilisation of each Wellington Network Line Section being the equivalent number of Predominant Use Train Paths utilised on each Wellington Network Line Section;
- 4.1.3 total number per annum of Metro Services, Long Distance Passenger Services and Freight Services (including Timetabled Services, Shunts and Ancillary Movements) using each Wellington Network Line Section presented as a time series for the previous five Financial Years (or such shorter period from the Commencement Date);
- 4.1.4 total gross tonne kilometres (GTK) and train kilometres (TKM) for each service type presented as a time series for the previous five Financial Years; and
- 4.1.5 a strategic assessment of the requirements of the Operators over the 10 year planning period including:
 - (a) the anticipated utilisation of the current Wellington Network capacity by each such Operator; and
 - (b) any additional requirements as advised by such Operators, including, but not limited to, changes in:
 - (i) axle loads;
 - (ii) Track speeds;
 - (iii) path types;
 - (iv) train lengths; and
 - (v) train configurations.

5. Access Provider's philosophy for the management of the Wellington Network

- 5.1 The Access Provider goals and priorities for the Wellington Network, and its approach to prioritisation and trade-offs.

6. Strategic management

- 6.1 The strategic management section of the Network Management Plan will set out the Access Provider's strategic plan for the provision of Network Management Service, Network Control Services, Maintenance Services, Renewal Services, Catch-up Renewal Services and Upgrade Services (if any) over the 10 year planning horizon including:
 - 6.1.1 recommended asset condition and Asset Quality Measure targets, having regard to the strategic assessment and overview undertaken by the Access Provider;
 - 6.1.2 expected benefits in terms of:

Wellington Network Agreement
Schedule 4

- (a) improved Wellington Network reliability and availability as indicated by PI and KPI results;
 - (b) increased capacity/functionality to meet any increased demand and needs of the Metro Services Operator;
 - (c) improved maintainability;
 - (d) ongoing cost reductions; and
 - (e) any additional income or funding (including the source) available to offset costs.
- 6.1.3 the methodology and criteria used by the Access Provider to rank the priority of any planned Maintenance Services, Renewal Services, Catch-up Renewal Services or Upgraded Services projects;
- 6.1.4 the identification, mitigation and management of risks; and
- 6.1.5 safety improvements plans, both in general and specifically in relation to the Wellington Network.

7. Programme for the provision of Network Services

- 7.1 The Network Management Plan will set out the Access Provider's intended works programme in a reasonable level of detail for the first Financial Year in the planning period and in a reasonable level of indicative detail for the remainder of the planning period.
- 7.2 The work programme will separately describe:
- 7.2.1 proposed Maintenance Services activities;
 - 7.2.2 proposed Renewal Services projects;
 - 7.2.3 proposed Catch-up Renewal Services projects; and
 - 7.2.4 proposed Upgrade Services (if any).
- 7.3 For each of the Network Services above, the works programme will set out:
- 7.3.1 scope of works to be undertaken;
 - 7.3.2 the estimated cost of the works;
 - 7.3.3 the expected asset condition at the end of each Financial Year;
 - 7.3.4 anticipated benefits to be derived from the works;
 - 7.3.5 proposed construction timeline and major construction milestones;

Wellington Network Agreement
Schedule 4

- 7.3.6 likely requirements for Track Possessions for the Triennium and in outline for the following seven years including expected impact on the Timetable and Operators' Access Rights to the Wellington Network.

8. Budgets

- 8.1 The Network Management Plan will attach the detailed budgets including:
- 8.1.1 the Wellington Network Budget;
 - 8.1.2 the GWRC Budget (derived from the Wellington Region Budget); and
 - 8.1.3 the budgeted cost ratios, derived from the Wellington Region Budget and the GWRC Budget including:
 - (a) cost per track and route kilometre;
 - (b) cost per train kilometre;
 - (c) cost per carriage kilometre; and
 - (d) cost per passenger journey using forecasts provided by the Metro Service Operator for passenger journeys.
- 8.2 Each of the budgeted cost ratios described in subparagraph 8.1.3 will be set out:
- 8.2.1 in total, and separately for each of the Operating Fee and Renewal Fee;
 - 8.2.2 by each year of the Triennium to which it relates;
 - 8.2.3 for the previous five years as that becomes available; and
 - 8.2.4 include forecasted cost ratios for years 4 to 10 of the Network Management Plan.

Annexure 2: Track Possessions

1. Introduction

- 1.1 It is acknowledged by the parties that scheduled Track Possessions are required to address network safety, service, asset deterioration and capacity issues via a planned programme of work (**Works Programme**).
- 1.2 The Works Programme will involve the delivery of Maintenance Services and Renewals Services, and may also include Catch-Up Renewals and Upgrade Services.
- 1.3 Scheduled Track Possessions will be:
 - 1.3.1 agreed at regular intervals by the Wellington Network Timetable Committee;
 - 1.3.2 based on the Track Possessions Allowance; and
 - 1.3.3 recorded in the Track Possession Plan.
- 1.4 Unscheduled Track Possessions may also be required from time to time for the purpose of delivering urgent unplanned maintenance or in the event of an Incident.
- 1.5 The Access Provider will at all times endeavour to minimise the inconvenience of Scheduled and Unscheduled Track Possessions to the Metro Service Operator.

2. Track Possessions Allowance

- 2.1 The purpose of the Track Possessions Allowance is to specify for each line and sub segment described in the table at paragraph 2.3 of this Annexure:
 - 2.1.1 the time periods within which scheduled Track Possessions may occur; and
 - 2.1.2 for each time period, the maximum number of scheduled Track Possessions that may be included in the Track Possession Plan.
- 2.2 The distinct time periods within which scheduled Track Possessions may occur are:
 - 2.2.1 Christmas, being a continuous period in each Financial Year, the duration of which will be subject to agreement by the Metro Service Operator in relation to the day of the week on which Christmas Day falls and recognising that the Christmas period is generally between 8 and 10 days in duration;
 - 2.2.2 Easter, being a continuous period between the end of timetabled Metro Services on the Thursday before Good Friday and the

Wellington Network Agreement
Schedule 4

commencement of timetabled Metro Services on the Tuesday after Easter Monday;

2.2.3 Long Weekends, being a continuous period between the end of timetabled Metro Services on the day before the first day of any Long Weekend and the commencement of timetabled Metro Services on the day after the last day of the Long Weekend. Long Weekends may include Waitangi Day, Anzac Day, Queens Birthday and Labour Day, where those days fall on a Friday or a Monday. Wellington Anniversary Day may be included and treated as a Long Weekend with the prior agreement of the Track Possessions Subcommittee;

2.2.4 Weekends, for which a continuous time period may be either:

(a) a single continuous period of 12 hours between the end of timetabled Metro Services on a Friday and the commencement of timetabled Metro Services on a Monday (a **Part Weekend**); or

(b) a continuous time period from the end of timetabled Metro Services on a Friday to the commencement of timetabled Metro Services on a Monday (a **Full Weekend**).

2.2.5 Weekday, being from the Sunday night until Thursday night, for which a time period may be:

(a) any time after 20:00 until the commencement of timetabled Metro Services the following day (an **Early Evening**);

or

(b) any time after 22:00 until the commencement of timetabled Metro Services the following day (a **Late Evening**);

or

(c) any time when timetable Metro Services would not be affected by the Track Possession (a **Night**).

2.3 For all time periods with the exception of Christmas and Easter, the maximum number of scheduled Track Possessions that may be included in the Track Possession Plan in each Financial Year is set out in the table below:

Wellington Network Agreement
Schedule 4

TRACK POSSESSION ALLOWANCES PER FINANCIAL YEAR BY LOCATION AND TIME PERIOD

Line Name	LOCATION (refer CAT schedule 1)			TIME PERIOD					
	Line Sub Segment (CAT)	Track Section Name and Number (CAT)	To / From Station	Long Weekend	Part Weekend	Full Weekend	Early Evening	Late Evening	Night
Kapiti Line	NIMT-Wellington	Wellington-Kaiwharawhara 786		5	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
		Kaiwharawhara-Waikanae 787-790	, Tawa, Porirua, Plimmerton, Paekakariki, Paraparaumu, or Waikanae	5	10	15	150	50	Unlimited
Hutt Valley Line	Wairarapa-Metro	Kaiwharawhara - Upper Hutt 770-772	, Petone, Waterloo, Taita, Trentham or Upper Hutt	5					Unlimited
Wairarapa Line		Upper Hutt-Masterton 773	Upper Hutt, Featherston, or Masterton	5	2	5	Unlimited	Unlimited	Unlimited
Melling Line	Melling	Melling Branch 783		5	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Johnsonville Line	Johnsonville	Johnsonville 785		5	2	10	10	20	Unlimited

2.4 In applying the Track Possessions Allowance set out at paragraph 2.3 above the following principles apply:

2.4.1 in the Wellington - Kaiwharawhara Track Section the “Unlimited” Track Possessions are subject to:

- (a) the track and electrified areas being split to allow timetabled Metro Services to continue;
- (b) normal access of Vehicles continuing for all lines; and
- (c) normal access of Vehicles continuing to the EMU Maintenance Depot;

2.4.2 for the Wairarapa Line and Melling Line “Unlimited” Track Possessions are subject to there being no timetabled Metro Services. The Track Possessions Allowance recorded in the table at paragraph 2.3 will be reviewed if the Timetable for Metro Services on either the Wairarapa Line or the Melling Line is amended. The revised Track

Wellington Network Agreement
Schedule 4

- Possessions Allowance (if amended) shall be recorded as a variation in accordance with clause 6.14 of this Agreement;
- 2.4.3 during week day “Nights” time periods, stabling requirements (including traction, lighting and security) in the yards at Wellington, Upper Hutt, Paekakariki and Waikanae shall continue;
- 2.4.4 during week day “Late Evening” and week day “Early Evening” time periods, the number of Track Possessions shown in the table must be shared between the Kapiti Line and the Hutt Valley Line, with only one line available for a Track Possession at a time unless the prior approval of the Track Possessions Subcommittee has been obtained. If such prior approval has been obtained then such a Track Possession of the Kapiti Line and Hutt Valley Line will count as two possessions for purposes of the Track Possessions Allowance;
- 2.4.5 during “Part Weekend” and “Full Weekend” time periods, the number of Track Possessions shown in the table must be shared between the Kapiti Line and Hutt Valley Line. A Track Possession of both the Kapiti Line and Hutt Valley Line will count as two possessions for purposes of the Track Possessions Allowance;
- 2.4.6 during “Christmas”, “Easter”, “Long Weekend” and “Night” time periods all lines shall be available for Track Possessions with no restriction on the number of lines affected at one time;
- 2.4.7 during all other time periods, the prior approval of the Track Possessions Subcommittee must be obtained.
- 2.4.8 in relation to the location of a Track Possession:
- (d) each Track Possession counts once against the total allowance shown in the table for the affected line, line sub-segment or track section; and
 - (e) when a single Track Possession overlaps a line, line sub-segment or track section boundary it counts against the total allowance shown in the table for each line, line sub-segment or track section boundary affected; and
- 2.4.9 in relation to the time of a Track Possession, where it is possible to accommodate the Track Possession in more than one time period, the Access Provider must nominate the time period against which the Track Possession is to be counted, as illustrated in the following example:
- Example:*
- A Track Possession taken at 21:00 on a Saturday until start of Metro Services on a Sunday could be nominated by the Access Provider as a:*
- (a) *Part Weekend Track Possession, or*

Wellington Network Agreement
Schedule 4

(b) *Full Weekend Track Possession.*

2.5 It is acknowledged by the parties that the Track Possessions Allowance recorded in the table at paragraph 2.3 above, will be reviewed following completion of Catch-Up Renewals. The revised Track Possessions Allowance (if amended) shall be recorded as a variation in accordance with clause 6.14 of this Agreement.

3. Track Possession Plan

3.1 The Track Possession Plan will:

3.1.1 record the provisional Track Possessions for a period of eighteen months from its commencement;

3.1.2 be agreed by the Wellington Network Timetable Committee;

3.1.3 be developed and then updated monthly by a subcommittee (the **Track Possessions Subcommittee**) appointed by the Wellington Network Timetable Committee;

3.1.4 have regard to the:

(a) Track Possessions Allowance;

(b) proposed Works Programme; and

(c) current Timetable.

3.2 The following principles shall guide the development of the Track Possession Plan:

3.2.1 that scheduled Track Possessions should:

(a) have as little impact as possible on the on-time performance of Train Services;

(b) minimise passenger disruption;

(c) minimise bus usage and maximise Metro Services;

(d) avoid the need for passengers to change transport mode more than once on their journey;

(e) establish a predictable pattern during weekends to enable the Metro Service Operator to efficiently communicate the required Track Possessions and alternative arrangements to passengers; and

(f) allow the Access Provider to meet the objectives described at clause 1.1 of this Annexure, safely and efficiently;

Wellington Network Agreement
Schedule 4

- 3.2.2 that Peak and Interpeak Metro Services should not normally be affected by scheduled Track Possessions;
- 3.2.3 that where reasonably practical Track Possessions should be scheduled so as not to affect Metro Services for special events, where the special event has been approved by the Metro Service Operator and GWRC;
- 3.2.4 that preference will be given to fewer but longer Track Possessions involving multiple work groups that are planned with long periods of notice to the Metro Service Operator;
- 3.2.5 that to the extent possible, the Access Provider will, at the end of a scheduled Track Possession, return the relevant Wellington Network lines, line sub segment or track section to operation on time and with normal line speed capability;
- 3.2.6 that Catch-up Renewal Services and Upgrade Services should, to the maximum extent practical be undertaken within the Track Possessions Allowance;
- 3.2.7 that the Track Possession Plan may include fewer scheduled Track Possessions than provided for in Track Possession Allowance; and
- 3.2.8 that scheduled Track Possessions in excess of the Track Possession Allowance may be agreed by the Wellington Network Timetable Committee in exceptional circumstances.

4. Utilisation of Track Possessions within the agreed Track Possession Plan

- 4.1 The Access Provider, Metro Service Operator and GWRC acknowledge that the value to the Access Provider of any Track Possession is strongly influenced by:
 - 4.1.1 the duration of the Track Possession; and
 - 4.1.2 the number of non-conflicting work-groups undertaking works during the Track Possession.
- 4.2 In utilising the scheduled Track Possessions that are available within the agreed Track Possessions Plan:
 - 4.2.1 the Access Provider and the Metro Service Operator will closely co-operate and jointly plan in order to get the optimal benefit out of every Track Possession;
 - 4.2.2 the Access Provider and the Metro Service Operator will use all reasonable efforts to ensure the alternative transport arrangements and their funding requirements are negotiated and agreed by GWRC prior to commencement of a Financial Year;

Wellington Network Agreement
Schedule 4

- 4.2.3 the Access Provider will confirm each scheduled Track Possession with as much advance notice as is practicable in the circumstances (normally a minimum of three months) recognising that Train Services are based on reliable and predictable train movements and any changes require planning of alternatives and publicity to passengers;
- 4.2.4 the Metro Service Operator will participate with the Access Provider in a process of progressively refining the details of each scheduled Track Possession as the due date approaches. Neither the boundaries nor the times of a planned Track Possession as set out in the Track Possession Plan may be extended without the agreement of the Metro Service Operator;
- 4.2.5 the Access Provider, the Metro Service Operator and GWRC acknowledge that changes to scheduled Track Possessions may occur and in that event they will cooperate to mitigate the adverse affect of such changes; and
- 4.2.6 the Metro Service Operator will ensure that a Track Possession is clearly communicated to commuters and people of Wellington in a positive manner, highlighting future benefits that will be delivered to passengers.

Annexure 3: Asset Quality Measures

1. Monitoring and Reporting on Network Asset Quality

- 1.1 The Access Provider will monitor and report the quality of its track, signals telecommunications and electrical, structures and traction assets.
- 1.2 At the Commencement Date monitoring and reporting shall be undertaken by reference to measures that include those set out in this Annexure 3.
- 1.3 As more sophisticated measures of asset quality are developed these measures may be added to or substituted.
- 1.4 It is acknowledged that a more effective capture of fault duration and reporting will be progressively implemented.

Asset Quality Measure 1: Fitted Track TQI	
Definition	TQI means Track Quality Index The TQI value represents three (3) times the standard deviation of the parameter over a selected distance. Figures are obtained of each of line, top, gauge, cant, twist, ROCOD (rate of change of cant deficiency) and cyclic variation. These are called parameters. The standard deviations of these are summed to give a TQ/km total. The lower the number, the better the track. Sharply curved track generally scores lower than straight track so differing lines cannot be directly compared.
Measurement methodology	EM80 car
Data sources	The TQI data presented as a series from 1992
Measurement and Reporting frequency	Each EM80 run – normally a minimum of 2 times per annum
Benchmark	NIMT = 35 Hutt Valley Line = 33 Wairarapa Line (from 34-90km) = 29 Melling Line = 43 Johnsonville Line = 64
Goal	The quality of the Wellington Network track asset is such that a rolling 3 year time series of data shows a general trend toward reaching or maintaining the benchmark for Fitted TQI on all lines
Comment: TQI is a slow moving metric – the important issue is the trend rather than absolute measures.	

Wellington Network Agreement
Schedule 4

Asset Quality Measure 2: Classified Track Faults	
Definition	Classified track faults are a measure of the extent to which the track fault diverges from code and the urgency by which they are fixed. The Access Provider's system records 3 levels: 1 Star Faults 2 Track Class 1 Faults 3 Track Class 2 Faults
Measurement methodology	EM80 car
Data sources	EM80 software (stored in and obtained from the Track Asset Database)
Measurement and Reporting frequency	Each EM80 run – the data is updated - normally a minimum of 2 times per annum.
Benchmark	NIMT (from 0 to 55.5km): reducing 5% per cycle from opening values of Star: 68; Class 1: 82. Class 2: 167 (reported but not benchmarked) Hutt Valley Line: (from 1.82 to 34km) reducing 5% per cycle from opening value of Star: 19; Class 1: 38; Class 2: 107 (reported but not benchmarked). Wairarapa Line: (from 34-90km) reducing 5% per cycle from opening value of Start: 12; Class 1: 25; Class 2: 27 (reported but not benchmarked). Melling Line: reducing 5% per cycle from opening value of Star: 0; Class 1: 6; Class 2: 17 (reported but not benchmarked).] Johnsonville Line: reducing 5% per cycle from opening values of: Star: 45; Class 1; 44; Class 2: 72 (reported but not benchmarked).
Goal	The quality of the Wellington Network track asset is such that the most recent measurement of Track Class 1 and Star Faults shows a reduction of 5% or more from the last recorded measurement at the same time of year for the line.
<p>Comments: This measure will require an annual re-set of the opening value based on results from the previous year Data from each recording will be reported, but rather than being compared to the last recording, it will be compared to the last recording for the same time of year (i.e. Winter recording 2014 compared to Winter recording 2013). Therefore a 'cycle' is approximately 1 year.</p> <p>Class 2 Faults are not expected to necessarily reduce between cycles since they do not relate to priority work. However, they will be reported and may eventually be included in the Performance Indicator benchmarking with the other types.</p>	

Wellington Network Agreement
Schedule 4

Asset Quality Measure 3: Rail Failures	
Definition	Rail failures mean rail breaks, heat buckles and other track failures which require immediate intervention of staff, and normally involving some disruption to Train Services.
Measurement methodology	IRIS
Data sources	Monthly fault reports routinely collected in the Access Provider's IRIS system
Measurement and Reporting frequency	Monthly
Benchmark	Rail Failures excluding heat buckles: 4 per quarter in total for all lines Heat buckles: nil in total for all lines 1. Heat buckles within H40 areas = maximum of 2 per season 2. Heat buckles outside H40 areas = nil
Goal	The quality of the Wellington Network track asset is such that actual rail failures per quarter are at or below the Benchmark
Comment: This will be measured and reported monthly but the benchmark will be quarterly	

Asset Quality Measure 4: U1 Signals, Telecommunications and Electrical Faults (STE)	
Definition	STE faults means any failure on the STE asset irrespective of impact on the Wellington Network
Measurement methodology	The number of U1 faults and U2 faults and the monthly Signalling System Outages PI described below will serve as the proxy for the Signals Quality Measure in the short term
Data sources	SAP/Maximo as each will generate a work order number
Measurement and Reporting frequency	Monthly
Benchmark	U1 faults per month: 50 U2 faults per month: 25
Goal	The quality of the Wellington Network STE asset is such that the number of U1 faults and U2 faults during the reporting month is at or below the Benchmark and a 12 month graph shows a declining trend
Comment:	

Wellington Network Agreement
Schedule 4

Asset Quality Measure 5: Signalling System Outages causing 5 minute delay	
Definition	A Signalling System Outage causing 5 minute delay is any failure of the signalling system identified in the delay statistics as having been caused by signals outage or reversion.
Measurement methodology	The 155 log of signals failures
Data sources	The 155 log of signals failures
Measurement and Reporting frequency	Monthly
Benchmark	Zero 5 minute delays caused by Signalling System Outages in the reporting month
Goal	The quality of the Wellington Network Signal System is such that a rolling 3 year time series of data shows a trend toward declining numbers of Signalling System Outages causing 5 minute delays.
Comment:	

Asset Quality Measure 6: Radio system Outages	
Definition	Radio System Outages includes any failure in the hardware and software in train control, the fixed communications mediums in the field (transmitter towers etc.), and service provider connections but excludes radios within the cab.
Measurement methodology	155 and SAP/Sirius
Data sources	155 and SAP/Sirius
Measurement and Reporting frequency	Monthly
Benchmark	Zero five minute delays caused by Radio System Outages in the reporting month.
Goal	The quality of the Wellington Network Rail System is such that a rolling 3 year time series of data shows a trend toward declining numbers of Radio System Outages causing 5 minute delays.
Comment:	

Wellington Network Agreement
Schedule 4

Asset Quality Measure 7: Network Control Outages due to Asset Failure	
Definition	A Network Control Outage due to Asset Failure is an unplanned outage (of any nature) to the network control system that could affect the running of Train Services on the Wellington Network
Measurement methodology	See below
Data sources	A log of each Network Control Outage, its location (noting that it will affect train control centre but the cause may be in the field), its time of occurrence, its duration and the total number and the total and mean duration of all Network Control Outages for the relevant month.
Measurement and Reporting frequency	Monthly
Benchmark	Zero in Network Control Outages due to Asset Failure in the reporting month
Goal	The quality of the Wellington Network, Network Control System is such that a rolling 3 year time series of data shows a trend towards declining numbers of Network Control Outages due to Asset Failure.
Comment: For most months the assumption is there will be nil to report	

Asset Quality Measure 8: Structures Quality – excluding traction poles	
Definition	Measure of condition on the basis that the number of outstanding work-orders and work-order hours is a measure of the extent of deterioration
Measurement methodology	Analysis of outstanding service work order hours using revised P1 to be introduced in code review during FY14
Data sources	Service work order hours
Measurement and Reporting frequency	Quarterly to align with the M121 a-d reports
Benchmark	Benchmark will be set in FY14
Goal	Goal will be set in FY14
Comment: The Access Provider is changing its structures code during FY14 to reflect different levels of priority to that currently prescribed. The Access Provider has a base measure for the new system prepared in May 2012. The new code will not be in place until the end of FY14 – formal measurement will start in FY14	

Wellington Network Agreement
Schedule 4

Asset Quality Measure 9: Traction System Outage – Substations, OHLS and control systems	
Definition	A Traction System Outage is an unplanned outage (of any nature) to the traction system that could affect the running of Train Services on the Wellington Network.
Measurement methodology	Event log
Data sources	A log of each traction system outage, its time of occurrence, its duration, its location and the total number and the total and mean duration of all traction system outages for the relevant month.
Measurement and Reporting frequency	Monthly
Benchmark	Zero five minute delays caused by Traction System Outages in the reporting month
Goal	The quality of the Wellington Network Traction System is such that a rolling 3 year time series of data shows a trend towards declining numbers of signalling system outages causing 5 minute delays.
Comment: The report will include all outages regardless of cause but the Traction System outages Asset Quality Measure will exclude outages where the cause is attributable to a third party.	

Schedule 5 – Network Control Services

1. Network Control Service objective

- 1.1 The objective of Network Control Services is to operate trains paths and control access of people to the Wellington Network safely and efficiently consistent with the rights and obligations of the Common Access Terms, the applicable Access Rights and the objectives set out at clause 1.1 of this Agreement.

2. Description of Network Control Services

- 2.1 Network Control Services include:

- 2.1.1 train control;
- 2.1.2 traction control and Wellington Network support;
- 2.1.3 access authorities; and
- 2.1.4 RTI system input,

each of which is described below.

Train control

- 2.2 Train control includes:

- 2.2.1 timetable and planning, being medium and long-term forward-looking allocation of slots on the Wellington Network for Train Service movements and maintenance in association with the Wellington Network Timetable Committee;
- 2.2.2 access authorisations, being the creation of “local” rules for a specific period/location. Access authorisations may be created as early as 42 days and as late as 1 day prior to taking effect; and
- 2.2.3 control and safe working, being on the day application of rules and the exercise of judgment to facilitate the train timetable and Wellington Network maintenance timetable through the use of control systems including systems under the direction of the National Train Control Centre (NTCC) located in Wellington. At the Commencement Date train control may also be delivered locally from signal boxes located at Plimmerton, Petone, Taita, Tawa, Porirua and Wellington.

Traction control and Wellington Network support

- 2.3 Traction control and Wellington Network support includes:

- 2.3.1 24/7 control and supervision of the 1500V DC overhead network;
- 2.3.2 monitoring of Track, signal, structures and traction alarms and various system activations;

Wellington Network Agreement
Schedule 5

- 2.3.3 despatch of work crews to deal with alarms and events; and
- 2.3.4 assessment and issue of permits for third party entry to the Wellington Network.

Access authorities

- 2.4 Access authorities includes:
 - 2.4.1 access planning;
 - 2.4.2 work notification (Bulletins); and
 - 2.4.3 rule modification and safe working instructions.
- 2.5 Access authorities services are provided by the ‘Access Provider’s National Authorities Group’ which:
 - 2.5.1 supports timetabling activities provided by Timetable Committees established under the Common Access Terms; and
 - 2.5.2 is fully engaged in planning for Track Possessions and in facilitating unplanned Track Possessions.

RTI system input

- 2.6 RTI system input includes the provision and maintenance of the functionality that is necessary to continuously:
 - 2.6.1 receive data into the OMS from the Metro Service Operator which links Vehicles with the unique service identification number of each Train Service (service linking data);
 - 2.6.2 associate service linking data with the actual position of each Train Service; and
 - 2.6.3 publish the actual position of each Train Service together with the associated service linking data via a web service that is accessible to GWRC’s RTI system.
- 2.7 To enable GWRC’s RTI system to reliably generate real time arrival predictions at chosen stations or other Wellington Network locations, the Access Provider will:
 - 2.7.1 maintain necessary geographical station reference data (waypoints and geofences) in the OMS;
 - 2.7.2 maintain a test environment for testing changes to the web service;
 - 2.7.3 schedule planned disruptions to the RTI web service to occur at times when no Train Services are operating; and
 - 2.7.4 provide advance notification to the Metro Service Operator and GWRC of all planned disruptions to the RTI web service.

Wellington Network Agreement
Schedule 5

2.8 The parties acknowledge that:

- 2.8.1 the RTI system deployed on Vehicles may limit the ability of the Access Provider to meet the service obligations described at clause 2.7.
- 2.8.2 GWRC will work with the Access Provider to minimise disruption and ensure the RTI services can be provided within the GWRC Budget allowance for these services; and
- 2.8.3 for the First Triennium the budget allowance for the RTI services is not included in the GWRC Budget and will be separately agreed in writing by GWRC and the Access Provider.

3. Performance Indicators (PIs) for Network Control Services

3.1 For the purpose of reporting its performance in the delivery of Network Control Services the Access Provider will capture data and calculate the PIs below. For any of the PIs for which it is impractical for the Access Provider to report Wellington Network specific performance the Access Provider will report on national performance and highlight Wellington Network specific events.

Network Control Services 1: Mean Network Control response time - radios	
Performance Measurement Methodology	<p>The Network Control Response Time PI measures the mean elapsed time between:</p> <ul style="list-style-type: none"> • a call made to the Access Provider's network control centre by the Metro Service Operator, an Operator or the Access Provider's Personnel; and • a response to that call by the Access Provider's network control centre ("Network Controller Response Time") <p>for all calls in the relevant month.</p>
Data sources	<p>A log maintained by the Access Provider that records:</p> <ul style="list-style-type: none"> • each call made to the Access Provider's network control centre; • its time of occurrence; • the total number of calls; and • the mean and median Network Control Response Time <p>for the relevant month.</p>
Measurement and Reporting frequency	Monthly
PI Fail Limit	less than 92.5% of radio calls are answered within 4 minutes
PI Achieve Benchmark	greater than 92.5% but less than 97.5% of radio calls are answered within 4 minutes

Wellington Network Agreement
Schedule 5

PI Exceed	greater than 97.5% of radio calls answered within 4 minutes
Comment:	

Network Control Services 2: Mean Network Control response time – phones	
Performance Measurement Methodology	<p>The Network Control Response Time PI measures the mean elapsed time between:</p> <ul style="list-style-type: none"> • a call made to the Access Provider's network control centre by the Metro Service Operator, an Operator or the Access Provider's Personnel; and • a response to that call by the Access Provider's network control centre ("Network Controller Response Time") <p>for all calls in the relevant month.</p>
Data sources	<p>A log maintained by the Access Provider that records:</p> <ul style="list-style-type: none"> • each call made to the Access Provider's network control centre; • its time of occurrence; • the total number of calls; and • the mean and median Network Control Response Time for the relevant month.
Measurement and Reporting frequency	Monthly
PI Fail Limit	less than 90% of phone calls are answered within 4 minutes
PI Achieve Benchmark	greater than 90% but less than 95% of phone calls are answered within 4 minutes
PI Exceed	greater than 95% of phone calls are answered within 4 minutes
Comment:	

Wellington Network Agreement
Schedule 5

Network Control Services 3: Decision making consistent with Common Access Terms and Agreement	
Performance Measurement Methodology	Count of inconsistent decisions in the relevant month
Data sources	Month-end review of train graphs, customer feed-back and NCM logs
Measurement and Reporting frequency	Monthly exception report
PI Fail Limit	1 or more decisions inconsistent with Common Access Terms causing delays greater than 5 minutes during the relevant period
PI Achieve Benchmark	No decisions inconsistent with Common Access Terms during the relevant month
PI Exceed	n/a
Comment:	

Network Control Services 4: Unanticipated service failures due to preventable errors by people in the Network Control Services	
Performance Measurement Methodology	Count of service failures due to preventable network control errors in the relevant month
Data sources	Post event audit of occurrence
Measurement and Reporting frequency	Monthly
PI Fail Limit	Any occurrence
PI Achieve Benchmark	Nil occurrences
PI Exceed	n/a
Comment:	

Network Control Services 5: Traction control switching error leading to operator or rail safety incident or prospective incident	
Performance Measurement Methodology	Count of switching errors
Data sources	Post event audit of occurrences
Measurement and Reporting	Monthly

Wellington Network Agreement
Schedule 5

frequency	
PI Fail Limit	Any occurrence
PI Achieve Benchmark	Nil occurrence
PI Exceed	n/a
Comment:	

Network Control Services 6: No evidence of controller failing to disclose error	
Performance Measurement Methodology	Counts of controller failures found not to have been disclosed
Data sources	After- the-event analysis of graphs, radio logs or reports from third parties
Measurement and Reporting frequency	Monthly
PI Fail Limit	Any occurrence
PI Achieve Benchmark	Nil occurrences
PI Exceed	n/a
Comment:	

Network Control Services 7: Currency of KRG audits of controller competency	
Performance Measurement Methodology	No formula
Data sources	Training database and in-house audit monthly report
Measurement and Reporting frequency	Monthly
PI Fail Limit	Greater than 5%
PI Achieve Benchmark	No more than 5% overdue in any month
PI Exceed	Less than 5%
Comment:	

Network Control Services 8: Availability of RTI web services	
Performance Measurement Methodology	No formula
Data sources	Server records

Wellington Network Agreement
Schedule 5

Measurement and Reporting frequency	Monthly
PI Fail Limit	To be agreed within 3 months of robust RTI data becoming available;
PI Achieve Benchmark	To be agreed within 3 months of robust RTI data becoming available
PI Exceed	To be agreed within 3 months of robust RTI data becoming available
<p>Comment: The KPI will be negotiated within 3 months of robust RTI data becoming available and is intended to be a measure of RTI system availability (ie up / down time) when Train Services are running</p>	

Wellington Network Agreement
Schedule 6

Schedule 6 – Maintenance Services

1. Objective

- 1.1 The objective of Maintenance Services is, in combination with Renewal Services, to hold Wellington Network conditions within Code tolerances to ensure that Operators can sustainably operate Train Services in accordance with the Timetable and the objectives set out at clause 1.1 of this Agreement.

2. Description of Maintenance Services

- 2.1 Maintenance Services include:

- 2.1.1 inspections;
- 2.1.2 Scheduled Maintenance; and
- 2.1.3 Unscheduled Maintenance;
- 2.1.4 of track, structures, signals communication and electrical systems, and the traction system, each of which is described below.

Inspections

- 2.2 Inspections include;

- 2.2.1 codified safety and reliability checks of track, structures, signals communication and electrical systems, and the traction system at frequencies determined by the relevant Codes and Code supplements;
- 2.2.2 measuring and noting key equipment parameters (e.g. fibre optic light levels, battery voltage) with the intention of ensuring that equipment is operating within specified parameters and identifying any trends which might indicate impending failure;
- 2.2.3 reporting of faults found; and
- 2.2.4 reporting of inspection checks completed.

Scheduled Maintenance

- 2.3 Scheduled Maintenance includes:

- 2.3.1 swapping out of equipment that has reached the end of its service life;
- 2.3.2 replacement of worn components (e.g. points motor brushes);
- 2.3.3 resetting and recalibration of equipment (e.g. track circuit setup);
- 2.3.4 equipment cleaning;
- 2.3.5 taking action as required to rectify any deficiencies (e.g. tightness of bolts, security of rail bonds);
- 2.3.6 testing of circuits and equipment after change-out; and

Wellington Network Agreement
Schedule 6

2.3.7 corridor maintenance including fences, signs, graffiti removal and vegetation control.

Unscheduled Maintenance

2.4 Unscheduled Maintenance includes:

2.4.1 24/7, response, investigation and repair in response to failures of track, structures, signals telecommunication and electrical systems, and the traction system;

2.4.2 call outs for occurrences not falling into the definition of Incidents such as:

- (a) third party incidents;
- (b) off track issues & failures;
- (c) public complaints; and
- (d) track failures and faults.

3. Performance Indicators (PIs) for Maintenance Services

3.1 For the purpose of reporting its performance in the delivery of Maintenance Services the Access Provider will capture data and calculate the PIs below:

Maintenance Services 1: Compliance with requirements for track	
Performance Measurement Methodology	Trend evident in most recent report
Data source	M120 report
Measurement and Reporting Frequency	Quarterly
PI Fail Limit	M120 report shows declining trend in the Access Provider's compliance with inspections and maintenance requirements
PI Achieve Benchmark	M120 report shows no material adverse change in the Access Provider's compliance with inspections and maintenance requirements
PI Exceed	M120 report shows trend toward improvement in the Access Provider's compliance with inspections and maintenance requirements
Comment:	

Maintenance Services 2: Compliance with requirements for structures	
Performance Measurement Methodology	Trend evident in most recent M121a-d report

Wellington Network Agreement
Schedule 6

Data sources	M121a-d report
Measurement and Reporting Frequency	Quarterly
PI Fail Limit	M121a-d reports show declining trend in the Access Providers compliance with requirements for structures inspections and maintenance
PI Achieve Benchmark	M121a-d reports show no material adverse change in the Access Provider's compliance with requirements for structures inspections and maintenance
PI Exceed	M121a-d reports show trend toward improvement in the Access Provider's compliance with requirements for structures inspections and maintenance
Comment:	

Maintenance Services 3: Compliance with requirements for STE	
Performance Measurement Methodology	Trend evident in most recent SL265 report
Data sources	SL265 report
Measurement and Reporting Frequency	Quarterly
PI Fail Limit	SL265 report shows declining trend in the Access Provider's compliance with requirement for STE inspections and maintenance.
PI Achieve Benchmark	SL265 report shows no material adverse change in the Access Provider's non-compliance with requirements for STE inspections and maintenance.
PI Exceed	SL265 report shows trend toward improvement in the Access Provider's compliance with requirements for STE inspections and maintenance.
Comment:	

Wellington Network Agreement
Schedule 6

Maintenance Services 4: Compliance with requirements for traction	
Performance Measurement Methodology	Trend evident in most recent PK664 report
Data sources	PK664A report
Measurement and Reporting Frequency	Quarterly
PI Fail Limit	PK664A report shows declining trend in the Access Provider's compliance with requirement for Traction system inspections and maintenance
PI Achieve Benchmark	PK664A report shows no material adverse change in the Access Provider's compliance with requirements for Traction system inspections and maintenance
PI Exceed	PK664 report shows trend toward improvement in the Access Provider's compliance with requirements for Traction system inspections
Comment:	

Maintenance Services 5: STE system failure response time	
Performance Measurement Methodology	<p>The mean elapsed time between:</p> <ul style="list-style-type: none"> the time at which the Access Provider becoming aware of an unplanned outage (of any nature) to the signalling and telecommunication system that could affect the running of Train Services on the Wellington Network; and the time of commencement of repairs or other activities required to return the signalling system to normal operation <p>for all unplanned outages of the signalling system in the relevant month</p>
Data sources	Sirius and 155 reports of U1 issues commencing 1 October 2013
Measurement and Reporting Frequency	Monthly
PI Fail Limit	to be set by 31 January 2014.
PI Achieve Benchmark	to be set by 31 January 2014.
PI Exceed	to be set by 31 January 2014.
Comment:	

Wellington Network Agreement
Schedule 6

Maintenance Service 6: Traction System Response Time	
Performance Measurement Methodology	<p>The mean elapsed time between:</p> <ul style="list-style-type: none"> • the Access Provider becoming aware of an unplanned U1 to the traction system that could affect the running of Train Services; and • the time of commencement of repairs or other activities required to return the traction system to normal operation <p>for all unplanned outages of the traction system in the relevant month</p>
Data sources	Sirius and 155 reports commencing 1 October 2013
Measurement and Reporting Frequency	monthly
PI Fail Limit	to be set by 31 January 2014
PI Achieve Benchmark	to be set by 31 January 2014
PI Exceed	to be set by 31 January 2014
Comment:	

Wellington Network Agreement
Schedule 7

Schedule 7 – Renewal Services

1. Objective

- 1.1 The objective of Renewal Services is to replace life - expired Wellington Network assets at the optimum time with a modern equivalent asset so that the safe and efficient operation of the Wellington Network is sustained in accordance with the objectives set out at clause 1.1 of this Agreement.

2. Description of Renewal Services

- 2.1 Renewal Services comprise the replacement of track, structures, signals telecommunications and electrical systems, and the traction system, each of which is described below:

2.1.1 track – planning and delivery of:

- (a) replacement/renewal of rail relays;
- (b) re-railing;
- (c) face re-sleepering;
- (d) spot re-sleepering;
- (e) turnout replacements;
- (f) replacement/renewal of level crossings;
- (g) ballast installation and cleaning;
- (h) de stress of track;
- (i) formation rehabilitation;
- (j) renewal of track fastenings;
- (k) elimination of jointed rail through welding; and
- (l) rail grinding;

2.1.2 traction – replacement/renewal of:

- (a) substation elements;
- (b) spot poles and jewellery;
- (c) contact, catenary, feeder and dropper wiring lengths;
- (d) face poles and jewellery;
- (e) control systems; and

Wellington Network Agreement
Schedule 7

- (f) earthing and bonding;
- 2.1.3 signals, telecommunications and electrical – replacement/renewal of elements of:
- (a) train radio system;
 - (b) fibre optic network;
 - (c) trackside signal cables poles, lights;
 - (d) track circuits and relays;
 - (e) signalling power supply distribution and back-up systems;
 - (f) points machines;
 - (g) location cases;
 - (h) interlockings;
 - (i) level crossing alarms;
 - (j) train stops; and
 - (k) miscellaneous Track-side monitors;
- 2.1.4 structures including platforms:
- (a) replacement/renewal of structural elements of bridges;
 - (b) replacement of design life expired bridges;
 - (c) replacement/renewal of structural elements of tunnel floors, linings (but not track within tunnels);
 - (d) stabilisation of slopes through inspection, active monitoring and appropriate mitigation activities (including construction of retaining walls, catch fences, rock netting);
 - (e) replacement/renewal of culverts and drainage systems;
 - (f) replenishment of sea and river protection structures;
 - (g) replacement of structural elements of lighting towers/renewal of lighting towers (including new foundation);
 - (h) reinstatement (installation) of (new) impact beams to protect railway bridges from strikes;
 - (i) replacement/renewal of platform surfaces and edges; and
 - (j) replacement/renewal of bridge traction screens.

Wellington Network Agreement
Schedule 7

3. Performance Indicators (PIs) for Renewal Services

3.1 For the purpose of reporting its performance in the delivery of Renewal Services the Access Provider will capture data and calculate the PIs below:

Renewals Services 1: Renewal activity - actual against planned	
Performance Calculation Formula	Comparison of : <ul style="list-style-type: none"> the Renewal Services activity set out in the prevailing Wellington Network Management Plan; with records of actual Renewal Services activity undertaken for the relevant period.
Data sources	The prevailing Wellington Network Management Plan Records of completed Renewal Services activity
Measurement and Reporting Frequency	Quarterly
PI Fail Limit	Not all items of Renewal Services work contemplated for the relevant period in the prevailing Wellington Network Management Plan are fully completed within the reporting period
PI Achieve Benchmark	All items of Renewal Services work contemplated for the relevant period in the prevailing Wellington Network Management Plan are fully completed within the relevant period
Comment: For first triennium (FY13-FY15) a tolerance band of 10% (on \$ value) is applied to the "Fail" and "Achieve" benchmarks, to allow due time for the accuracy of the NMP process to develop.	

Wellington Network Agreement
Schedule 8

Schedule 8 – Incident Services

1. Objective

1.1 The objective of Incident Services is to promptly return the Wellington Network to safe operations following an Incident in a manner that is consistent with directions from outside parties, the need to retain evidence for subsequent review and inquiry, and the objectives set out at clause 1.1 of this Agreement.

2. Description of Incident Services

2.1 Incident Services include:

2.1.1 assigning an appropriate person as incident controller immediately after receiving advice that an Incident has occurred;

2.1.2 an on site assessment of the severity of the Incident and the development of a course of action to restore the Wellington Network to operation;

2.1.3 liaising with all affected parties including the Metro Service Operator and GWRC regarding the service implications of the Incident and the likely time to restore the Wellington Network to operation;

2.1.4 commissioning the necessary resources and supervising all work that is necessary to restore the Wellington Network to operation (possibly at reduced capacity initially, but ultimately to pre-incident capacity and condition); and

2.1.5 determining, in consultation with affected parties, the level of remedial work to move from safe operations to pre-incident levels and any works re-prioritisation that may be needed as a result of the Incident.

3. Performance Indicators (PIs) for Incident Services

3.1 For the purpose of reporting its performance on the delivery of Incident Services the Access Provider will capture data and calculate the PI below:

Incident Services 1: Incident Response Time	
Performance Calculation Formula	The mean elapsed time (expressed in hh:mm format) between: <ul style="list-style-type: none"> the Access Provider becoming aware of the occurrence of an Incident ;and the arrival at the scene of the Incident of an incident controller appointed by the Access Provider when required by the Codes for all Incidents that occur within the Wellington Network during the relevant month.
Data sources	The IRIS log that records, for every Incident <ul style="list-style-type: none"> location

Wellington Metro Area Network Access Agreement
Schedule 8

	<ul style="list-style-type: none"> • time of Incident • time of arrival of the appointed Incident controller at the Incident scene.
Measurement and Reporting Frequency	In the month following the Incident
PI Fail Limit	Required data is not collected in the Incident Reporting Investigation System (IRIS) or reported.
PI Achieve Benchmark	Required data is collected in IRIS and reported.
Comment:	

Wellington Network Agreement
Schedule 9

Schedule 9 – Performance Incentive Regime and Key Performance Indicators

1. Performance Incentive Regime

- 1.1 The purpose of the Performance Incentive Regime is to exert positive influence on the performance of the Access Provider by associating particular KPIs with a scale of achievement targets and financial rewards or deductions for the duration of each Triennium.
- 1.2 The Performance Incentive Regime will comprise the following elements:
 - 1.2.1 the amount of the monthly Performance Fee including the GWRC Budget for the Performance Fee, payable by GWRC;
 - 1.2.2 the amount of any monthly Performance Rebate payable by the Access Provider; and
 - 1.2.3 the KPI or subset of the KPIs and the applicable scale and rating that will be used to determine KPI results relevant to determining the monthly Performance Fee or Performance Rebate.
- 1.3 Prior to the commencement of each Triennium, the elements of the Performance Incentive Regime set out in paragraph 1.2 above will be:
 - 1.3.1 proposed by the Metro Service Operator with the prior approval of GWRC;
 - 1.3.2 agreed with the Access Provider; and
 - 1.3.3 recorded by way of a variation in accordance with clause 6.12 of this Agreement.
- 1.4 In the event that GWRC, the Metro Service Operator and the Access Provider are unable to agree on the elements of the Performance Incentive Regime, the Performance Incentive Regime applicable in the previous Triennium shall continue until a new Performance Incentive Regime is agreed.

Performance Incentive Regime for the second and third Financial Years of the first Triennium

- 1.5 For the second and third Financial Years of the First Triennium:
 - 1.5.1 the GWRC Budget for the Performance Fee is set out in paragraph 4.6 of Schedule 3 (Determination of GWRC Budget and calculation of Fees);
 - 1.5.2 the KPI that determines the Performance Fee and the Performance Rebate is the Completed Trips KPI; and
 - 1.5.3 the Performance Incentive Regime has been set such that:

Wellington Network Agreement
Schedule 9

- (a) the 'KPI Achieve Benchmark' is aligned approximately with the actual reported performance of the Access Provider against the Completed Trips KPI during the year prior to the Commencement Date;
- (b) the 'KPI Achieve Benchmark' is associated with a monthly Performance Fee amount equivalent to 7.012% of the GWRC Budget for the Operations Fee and the Renewal Fee in the relevant Financial Year, divided by 12;
- (c) if in any month the actual performance of the Access Provider against the Completed Trips KPI is less than 90.5% the KPI Fail Limit will apply, resulting in a Performance Rebate payable by the Access Provider to GWRC; and
- (d) the maximum monthly amount of the Performance Rebate is intended to be approximately equivalent to 0.75 % of the GWRC Budget for the Operations Fee and the Renewal Fee for that Financial Year, divided by 12.

1.5.4 The actual amount of the monthly Performance Fee or the Performance Rebate will be determined by reference to table below and subject to Schedule 3 clause 6.3:

Scale: actual performance score for the Completed Trips KPI	Monthly Performance Fee (Performance Rebate):		
	KPI Fail Limit and % of GWRC Budget for Operations Fee and Renewal Fee	Financial Year 2013/2014	Financial Year 2014/2015
Less than 90.5%	KPI Fail Limit Approximately 0.75% of GWRC Budget for Operations Fee and Renewal Fee	\$ 9,741 (Performance Rebate)	\$10,000 (Performance Rebate)
90.5% to 92.49%	3 %	\$38,965	\$40,000
92.5% to 93.49%	4 %	\$51,954	\$53,333
93.5% to 94.49%	5 %	\$64,942	\$66,667
94.50% to 96.49%	6 %	\$77,931	\$80,000
96.5% to 97.49%	7%	\$90,919	\$93,333
97.5% to 99.49%	8 %	\$ 103,908	\$106,667
99.5% to 99.74%	9 % GWRC	\$116,896	\$120,000

Wellington Network Agreement
Schedule 10

	Budget for Operations Fee and Renewal Fee		
99.75% to 100%	11 %	\$142,873	\$146,667

1.6 GWRC and the Metro Service Operator agree that their respective remedy against the Access Provider for any failure by the Access Provider to meet obligations in relation to any KPIs (but, for the avoidance of doubt, not any other obligations whether or not having the same or a substantially similar cause) are solely:

1.6.1 the right to issue a Performance Notice and approve a Remedial Report, as set out in clauses 7.14 to 7.18 of this Agreement; and

1.6.2 if applicable, the payment of a monthly Performance Rebate by the Access Provider to GWRC as set out at paragraph 1.5.4 above.

2. KPIs

2.1 The KPIs:

2.1.1 measure outcomes arising from the Access Provider’s management of the Wellington Network; and

2.1.2 provide the basis for the calculation of the Performance Fee or Performance Rebate under the Performance Incentive Regime set out in section 1 of this Schedule.

2.2 The Key Performance Indicators (KPIs) are:

2.2.1 Punctuality KPI;

2.2.2 Reliability KPI;

2.2.3 Completed trips KPI;

2.2.4 Lost Time Minutes KPI;

2.2.5 Heat 40 KPI;

2.2.6 Track Possession time overruns KPI; and

2.2.7 Efficiency and use of Track Possessions KPI.

3. Principles underlying calculation of performance against KPIs

3.1 Subject to paragraphs 3.2. to 3.5 below, responsibility for each Train Service that is:

Wellington Network Agreement
Schedule 9

- 3.1.1 not on-time; or
- 3.1.2 cancelled,

will be attributed to the Access Provider, if the relevant Train Service was not "on-time" or was "cancelled" as a consequence of any fault with, or unavailability of, the Infrastructure or Network Services and such fault or unavailability is the responsibility of the Access Provider (including, for the avoidance of doubt, any subcontractor of the Access Provider).

- 3.2 Subject to paragraph 3.5 below, all reported faults with the Infrastructure or Network Control Services including those where no fault is found by the Access Provider will be deemed to be the responsibility of the Access Provider unless otherwise agreed at Metro Service Operator and Access Provider meetings.
- 3.3 Train Services that are not on-time or are cancelled as a consequence of another Train Service being not on-time or cancelled as a consequence of a fault with, or unavailability of, the Infrastructure or Network Services, and such fault or unavailability is the responsibility of the Access Provider, will be included in the KPI calculations as a Train Service which is not on-time or cancelled and attributed to the responsibility of the Access Provider.
- 3.4 Any Train Service which could not operate as a result of planned Track Possessions in the Track Possession Plan will not be included in the KPI calculations as a timetabled Train Service.
- 3.5 Where responsibility for any Train Service that is:
 - 3.5.1 not on-time; or
 - 3.5.2 cancelled,

is not attributed to the Access Provider, then those Train Services will be deemed to have been on-time or deemed not to have been cancelled (as the case may be) for the purposes of calculating the Punctuality and Completed Trips KPIs.

- 3.6 The Lost Time Minutes KPI Achieve Benchmark will be set such that the Timetable can be operated reliably.
- 3.7 Any delays or cancellations as a result of TSRs or heat alarm activations will be included in the Punctuality KPI, the Reliability KPI and Completed Trips KPI calculations described in section 4 of this Schedule.

2. KPIs calculation, definitions and measurement

KPI 1: Punctuality	
Performance Calculation Formula	For each Wellington Network Route and in total for all Wellington Network Routes, the number of actual on-time Train Services during the relevant month divided by the total number

Wellington Network Agreement
Schedule 10

	of actual Train Services during the relevant month, expressed as a percentage (rounded to the nearest two decimal places).
Definitions	A Train Service is not 'on time' if the Train Service fails to arrive at its final destination within 4:59 minutes of its timetabled arrival time; A Train Service is 'on-time' if it arrives at its final destination within 4:59 minutes of its Timetabled arrival time;
Data sources	OMS (to be replaced by RTI)
Measurement and Reporting Frequency	Monthly
KPI Fail Limit	Period 1: less than 90.50% for all Wellington Network Routes Period 2: TBC
KPI Achieve Benchmark	Period 1: between 96.50% and 97.49% for all Wellington Network Routes Period 2: TBC
KPI Exceed	Period 1: greater than 97.49% for all Wellington Network Routes Period 2: TBC
<p>Comment: The data source for this KPI will change from OMS to RTI. Therefore the Fail, Achieve and Exceed levels for this KPI will vary according to the following periods:</p> <p>Period 1: From the Commencement Date until RTI is fully commissioned and 3 months' robust data is available from RTI:</p> <p>Period 2: After 3 months robust data is available from RTI.</p>	

KPI 2: Reliability	
Performance Calculation Formula	For each Wellington Network Route and in total for all Wellington Network Routes, the number of Timetabled Train Services in the relevant month less the number of cancelled Train Services in the relevant month divided by the total number of Timetabled Train Services in the relevant month, expressed as a percentage (rounded to the nearest two decimal places)
Definitions	A Train Service is 'cancelled' if it: <ul style="list-style-type: none"> • does not run at all; • fails to commence or finish its journey at its Timetabled origin or destination (as the case may be); • fails to stop at all stations at which it is Timetabled to stop; or departs its timetabled origin earlier than its Timetabled departure time
Data sources	OMS (to be replaced by RTI)
Measurement and Reporting	Monthly

Wellington Network Agreement
Schedule 9

Frequency	
KPI Fail Limit	Period 1: less than 99.78% in total for all Wellington Network Routes Period 2: TBC:
KPI Achieve Benchmark	Period 1: between 99.78% and 99.94% in total for all Wellington Network Routes Period 2: TBC
KPI Exceed	Period 1: above 99.94% in total for all Wellington Network Routes Period 2: TBC
Comment: Refer comment at KPI 1	

KPI 3: Completed Trips	
Performance Calculation Formula	For each Wellington Network Route and in total for all Wellington Network Routes, the number of Timetabled Train Services in the relevant month less twice the number of cancelled Train Services in the relevant month, less the number of Train Services that are not on-time in the relevant month, divided by the total number of timetabled Train Services in the relevant month, expressed as a percentage (rounded to the nearest two decimal places).
Definitions	A Train Service is 'cancelled' if it: <ul style="list-style-type: none"> • does not run at all; • fails to commence or finish its journey at its Timetabled origin or destination (as the case may be); • fails to stop at all stations at which it is Timetabled to stop; or • departs its timetabled origin earlier than its Timetabled departure time. A Train Service is not 'on time' if the Train Service fails to arrive at its final destination within 4:59 minutes of its timetabled arrival time
Data sources	OMS (to be replaced by RTI)
Measurement and Reporting Frequency	Monthly
KPI Fail Limit	Period 1: less than 90.50% for all Wellington Network Routes (see table at paragraph 1.5.4) Period 2: TBC
KPI Achieve Benchmark	Period 1: between 96.50% and 97.49% for all Wellington Network Routes (see table at paragraph 1.5.4) Period 2: TBC
KPI Exceed	Period 1: greater than 97.49% for all Wellington Network Routes (see table at paragraph 1.5.4)

Wellington Network Agreement
Schedule 10

	Period 2: TBC
Comment: Refer comment at KPI 1	

KPI 4: Lost Time Minutes	
Performance Calculation Formula	For each Wellington Network Route (16 reports in total) the additional modelled time taken by a specified train to traverse a modelled route with TSRs in force at the relevant time entered into the model compared with the modelled time that that train takes to traverse the same route with only the relevant Permanent Speed Restrictions entered into the model ("Base Transit Time").
Definitions	A Lost Time Minute is a measure of the increase in the theoretical running time of a specified train due only to TSRs.
Data sources	OMS
Measurement and Reporting Frequency	Collected daily reported monthly on a rolling 12 month basis

Wellington Network Routes	KPI Fail Limit	KPI Achieve Benchmark	Exceed
Wellington to Upper Hutt Upper Hutt to Wellington	48 weeks - total > 2.0min for 8 weeks	48 weeks - total < 2.0min for 45 weeks <3.0min for 2 weeks < 5.0min for 1 week	48 weeks - total < 2.0min for 24 weeks <1.0min for 24 weeks
Wellington to Johnsonville Johnsonville to Wellington	48 weeks - total > 2.0min for 8 weeks	48 weeks - total < 2.0min for 45 weeks <3.0min for 2 weeks < 5.0min for 1 week	48 weeks - total < 2.0min for 24 weeks <1.0min for 24 weeks
Wellington to Melling Melling to Wellington	48 weeks - total > 2.0min for 8 weeks	48 weeks - total < 2.0min for 45 weeks <3.0min for 2 weeks < 5.0min for 1 week	48 weeks - total < 2.0min for 24 weeks <1.0min for 24 weeks
Wellington to Waikanae Waikanae to Wellington	48 weeks - total > 2.5min for 8 weeks	48 weeks - total < 2.5min for 45 weeks <3.5min for 2 weeks < 5.5min for 1 week	48 weeks - total < 2.5min for 24 weeks <1.5min for 24 weeks
Wellington to Masterton Masterton to Wellington	48 weeks - total > 8.0min for 6 weeks	48 weeks - total < 6.0min for 45 weeks <7.0min for 2 weeks < 9.0min for 1 week	48 weeks - total < 6.0min for 36 weeks <4.0min for 12 weeks

Wellington Network Agreement
Schedule 9

<p>Comments:</p> <p>1. Lost Time Minutes (LTM) provide an indicator of the extent to which the Infrastructure is able to support the on-time operation of Train Services which is independent of extraneous variables that can impact on on-time performance such as:</p> <ul style="list-style-type: none"> • driver behaviour; • passenger loadings; • operation of other Train Services; and • network control <p>2. The 48 week base reflects the fact that the Timetable Committee can agree each year a period of up to 4 weeks where this LTM KPI does not apply. It is intended that these weeks will be linked to major work programmes where it is agreed that efficient delivery of works should have a greater weighting than in the rest of the year.</p>			

KPI 5: Heat 40s	
Performance Calculation Formula	For each Wellington Network Route (10 reports in total) the additional modelled time taken by a specified train to traverse a modelled route with H40 restrictions in force at the relevant time entered into the model compared with the modelled time that that train takes to traverse the same route with only the relevant Permanent Speed Restrictions entered into the model ("Base Transit Time").
Definitions	H40 means a speed restriction placed on a particular section of track in the event the rail temperature exceeds 40C
Data sources	OMS Report
Measurement and Reporting Frequency	Monthly
KPI Fail Limit	Shows increasing trend of total calculated Loss Time Minutes due to track under H40 restrictions
KPI Achieve Benchmark	Shows no change of total calculated Loss Time Minutes due to track under H40 restrictions
KPI Exceed	Shows decreasing trend of total calculated Loss Time Minutes due to track under H40 restrictions
<p>Comment: Total calculated Loss Time Minutes refers to the OMS calculated Loss Time Minutes if all H40 restrictions recorded on OMS were activated. Heat 40 restrictions are not calculated continuously during year so data will be somewhat "granular" at times but objective is to encourage continuous management of Heat 40s throughout the year even if there are seasonal cycles to this effort.</p>	

KPI 6: Track Possession time overruns	
Performance Calculation	For each Track Possession calculate the difference between the actual and planned time handed back. Where there is an adverse variance whether this late hand-back impacted any of

Wellington Network Agreement
Schedule 10

	the KPIs 1-3 above
Definition	Track Possession time overruns means the late return to service of a section of the Wellington Network closed or partially closed for the purpose of conducting Scheduled Maintenance, or planned Renewal Services or Upgrade Services.
Data sources	Network Control Records OMS (to be replaced by RTI)
Measurement and Reporting Frequency	Monthly
KPI Fail Limit	Any overruns causing delay
KPI Achieve Benchmark	No overruns causing delay
Comment: This is a fairly coarse measure which may be redeveloped as metrics in this area are refined.	
KPI 7: Efficiency and use of Track Possessions	
Performance Calculation Formula	Comparison of : <ul style="list-style-type: none"> • number of days of Track Possession contemplated in the prevailing Track Possessions Plan with • actual number of days of Track Possessions utilised for the purpose of conducting Scheduled Maintenance, or planned Renewal Services or Upgrade Services. for the relevant period.
Definitions	Refer Schedule 1 (Definitions and Interpretation)
Data sources	Track Possession subcommittee
Measurement and Reporting Frequency	Quarterly
KPI Fail Limit	The number of days of Track Possession which are utilised to deliver Renewal Services in the relevant period exceeds the number of days of Track Possessions that are contemplated in the prevailing Track Possessions Plan
KPI Achieve Benchmark	The number of days of Track Possession which are required to undertake Renewal Services in the relevant period is not greater than the number of days of Track Possessions that are contemplated in the prevailing Track Possessions Plan
KPI Exceed	The number of days of Track Possession which are required to undertake Renewal Services in the relevant period is materially less than the number of days of Track Possessions that are contemplated in the prevailing Track Possessions Plan
Comment:	This is a simple measure but the Track Possessions Subcommittee will work to improve the usefulness of this KPI

Wellington Network Agreement
Schedule 10

Schedule 10 – Form of Deed of Accession

Deed of Accession

Relating to

Wellington Network Agreement

KiwiRail Limited

Wellington Regional Council

And

KiwiRail Holdings Limited

Wellington Network Agreement
Schedule 10

This **Deed Poll** is made on June 2013

- by (1) KiwiRail Limited (**Nominated Operator**)
and (2) Wellington Regional Council described in the Network Agreement
as Greater Wellington Regional Council (**GWRC**)
in favour of (3) KiwiRail Holdings Limited, trading as KiwiRail (**Access Provider**)

Background

- A. The Access Provider and GWRC have entered into the Network Agreement.
- B. Under clause 4.3 of the Network Agreement, GWRC may nominate the Metro Service Operator and require the Access Provider to grant Access Rights to the Metro Service Operator. GWRC has nominated the Nominated Operator.
- C. Under this deed, the Nominated Operator becomes a party to, and assumes all the rights and obligations of the Metro Service Operator under, the Network Agreement in accordance with the provision of this deed.

It is agreed

1. Definitions and Interpretation

Definitions

- 1.1 In this deed, words and expressions defined in the Network Agreement but not defined in this deed have the same meaning in this deed and, unless the context requires otherwise:

“**Network Agreement**” means the Wellington Network Agreement dated [xx] June 2013 between GWRC and the Access Provider, relating to the Wellington Network;

“**Effective Date**” means 1 July 2013.

Interpretation

- 1.2 In this deed, any references to:
- 1.2.1 a gender include each other gender;
 - 1.2.2 the singular includes the plural and vice versa;
 - 1.2.3 an agreement or instrument includes that agreement or instrument as modified, supplemented, novated or substituted from time to time;
 - 1.2.4 a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this deed);
 - 1.2.5 a person includes:

Wellington Network Agreement
Schedule 10

- (a) an individual, a body corporate an association of persons (whether corporate or not), a trust, a state and an agency of state, in each case, whether or not having a separate legal personality; and
- (b) a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;

1.2.6 clauses are references to clauses of this deed.

Headings are to be ignored in construing this deed.

2. Accession

2.1 With effect on and from the Effective Date:

- 2.1.1 the Nominated Operator becomes a party to the Network Agreement, and agrees to assume and perform the rights and obligations of the Metro Service Operator under, and be bound by, the Network Agreement;
- 2.1.2 all references in the Network Agreement to the Metro Service Operator will be interpreted as if they were references to the Nominated Operator; and
- 2.1.3 this deed shall be read as one with the Network Agreement so that any reference to "this Agreement" (or similar) in the Network Agreement is deemed to include this deed.

2.2 To avoid doubt, nothing in clause 2.1 above shall:

- 2.2.1 require the Nominated Operator to assume or perform obligations of the Metro Service Operator; or
- 2.2.2 grant to the Nominated Operator any rights of the Metro Service Operator,

under or in relation to the Network Agreement which relate to any time prior to the Effective Date.

2.3 Subject to clause 4.8.3, the Nominated Operator shall cease to have any rights or obligations of the Metro Service Operator under or in relation to the Network Agreement effective from the date a new Metro Service Operator becomes a party to the Network Agreement under clause 4.8.4 of the Network Agreement.

3. Warranty

3.1 With effect from the Effective Date, the Nominated Operator warrants that it:

Wellington Network Agreement
Schedule 10

- 3.1.1 holds a licence issued under the Railways Act 2005 to operate rail services on the Wellington Network (or relevant parts thereof) and all other licences, permits and approvals required under all applicable law; and
- 3.1.2 satisfies the insurance requirements set out in the Common Access Terms to be fulfilled by the Metro Service Operator as Operator (including the requirement to obtain public liability and other insurance cover).

4. Continuing Liability

- 4.1 The Nominated Operator agrees that the appointment of a new Metro Service Operator under the Network Agreement shall be without prejudice to, and shall not affect, the rights and remedies of the Access Provider and the Nominated Operator, which have accrued prior to such appointment and accession.

5. General Provisions

- 5.1 The illegality, invalidity or unenforceability of a provision of this deed (including a provision in the Network Agreement) under any law will not affect the legality, validity or enforceability of any other provision of this deed.
- 5.2 This deed is governed by and to be construed in accordance with New Zealand law and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

Wellington Network Agreement
Schedule 10

Execution

Executed as a deed poll
KiwiRail Limited By:

Director

Director/Authorised Signatory

Print Name

Print Name

Witness to both signatures (if not signed by
two directors)

Print Name

Occupation

Address

Signed by **Wellington Regional Council** by
David Benham, Chief Executive as its
Attorney

In the Presence of:

Witness to signature

Print Name

Occupation

Wellington Network Agreement
Schedule 10

Address

Wellington Network Agreement
Schedule 11

Schedule 11 – Form of Variation Agreement



Variation to Wellington Network Agreement

**KiwiRail Holdings Limited (Access Provider)
Greater Wellington Regional Council (GWRC)**

[xxxxx] (Metro Service Operator)

Wellington Network Agreement
Schedule 11

Variation to Wellington Network Agreement

Parties

KiwiRail Holdings Limited trading as KiwiRail (**Access Provider**).

And

Greater Wellington Regional Council (GWRC), a public statutory body constituted under the Local Government Act 2002

And

[xxxx] (**Metro Service Operator**)

Background

- A. The Access Provider and GWRC are parties to Wellington Network Agreement dated [xxx] 2013 (the **Wellington Network Agreement**) established to secure long term access to the Wellington Network for Metro Services and the provision of Network Services.
- B. The Metro Service Operator became a party to the Wellington Network Agreement by execution of a Deed of Accession dated [xxx] 20[xx].
- C. The Wellington Network Agreement requires the parties to complete a variation agreement prior to the beginning of each Triennium or as otherwise agreed.
- D. The parties, by this agreement (**Variation Agreement**) wish to record the following:
- i. The agreed changes to Schedule 3 (Determination of GWRC Budget and Fees) for the Triennium beginning 1 July [xxxx];
 - ii. The agreed changes to Schedule 9 (Performance Incentive Regime and Key Performance Indicators) for the Triennium beginning 1 July [xxxx]; and
 - iii. [*insert detail of any other agreed changes*]
- E. The parties by execution of this Variation Agreement have agreed that Wellington Network Access Agreement including all Schedules and Annexures will be updated and amended by the version of the Wellington Network Agreement, attached to this Variation Agreement.

Operative Provisions

1. Definitions and interpretation

1.1 In this Variation Agreement the following definitions apply:

Wellington Network Agreement
Schedule 11

“**Wellington Network Agreement**” means the original agreement executed by the Access Provider and GWRC dated [xxxx] 2013, [as updated and amended by the execution of [this] Variation Agreement] [and the following Variation Agreements:] [*insert description of prior Variation Agreements*]

1.2 Unless expressed otherwise the definitions and interpretation set out at Schedule 3 of the Wellington Network Agreement shall apply to this Variation Agreement, unless the context requires otherwise.

2. Variations to Wellington Network Agreement

2.1 The parties agree to the following variations to the Wellington Network Agreement:

- i. [*insert details of Schedule 3 change*]
- ii. [*insert details of Schedule 9 change*]
- iii. [*insert details of any other agreed changes*]

3. Consolidated Wellington Network Agreement

3.1 The parties agree that the Wellington Network Agreement attached at Schedule 1 of this Variation Agreement:

- (a) includes all of the agreed variations described at clause 2.1 of this Variation Agreement; and
- (b) amends and updates the prior version of the Wellington Network Agreement with effect from [insert date].

3.2 For the avoidance of doubt the original Wellington Network Agreement dated xxx 2013 as amended by this Variation Agreement [including the any prior Variation Agreements] continues to bind the parties and is not terminated.

Wellington Network Agreement
Schedule 11

Execution as an Agreement

Date:

Signed on behalf of)
KiwiRail Holdings Limited trading as) _____
KiwiRail) Signature
By:)

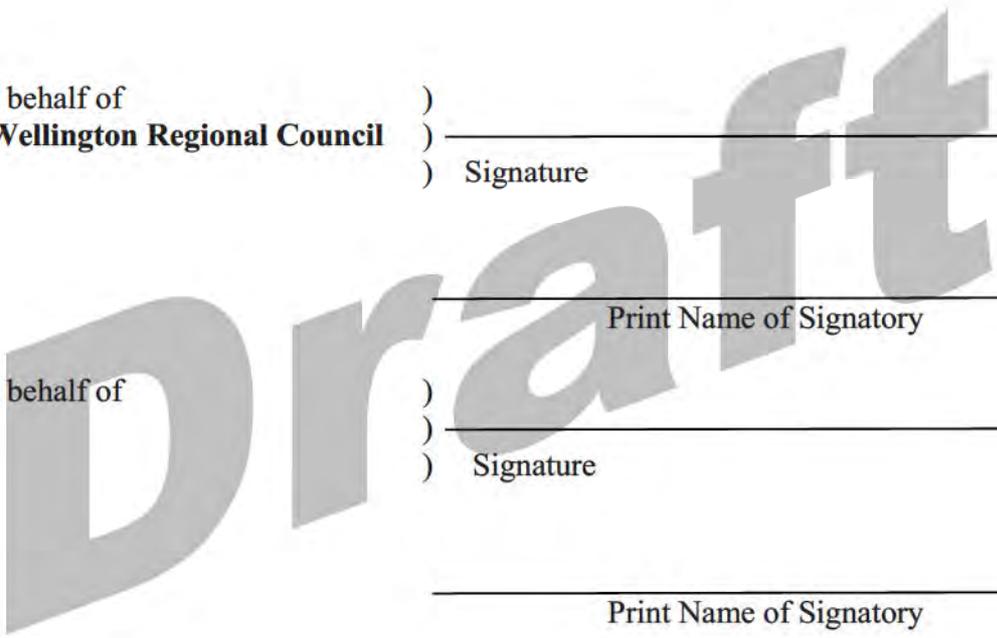
Print Name Signatory

Signed on behalf of)
Greater Wellington Regional Council) _____
By:) Signature

Print Name of Signatory

Signed on behalf of)
[xxxx]) _____
By:) Signature

Print Name of Signatory



Wellington Network Agreement
Schedule 11

Schedule 1: Variation – Wellington Network Agreement

Wellington Network Agreement
Schedule 12

Schedule 12 – Common Access Terms
As at the Commencement Date

[Copy attached]

COMMON ACCESS TERMS

20 ~~MAY~~ JUNE 2012

TABLE OF CONTENTS

1. INTERPRETATION	3
2. COMMENCEMENT	8
3. ACCESS	8
4. TIMETABLING AND ACCESS ALLOCATION	10
5. NETWORK DELAYS, EARLY AND LATE TRAINS	15
6. STEERING COMMITTEE.....	15
7. MANAGEMENT AND OPERATION OF THE NETWORK.....	17
8. NETWORK SAFETY	18
9. CHANGE IN LAW / REQUIREMENTS OF LAW.....	20
10. CHANGES TO INFRASTRUCTURE.....	20
11. PLATFORMS AND STRUCTURE GAUGE	22
12. TRESPASSERS	23
13. EMERGENCIES AND INCIDENTS	23
14. INDEMNITIES AND LIABILITIES	23
15. INSURANCE.....	30
16. CPI ADJUSTMENT.....	30
17. DISPUTE RESOLUTION.....	30
18. CONFIDENTIAL INFORMATION.....	32
19. MISCELLANEOUS PROVISIONS	33
SCHEDULE 1	35
Line Segments.....	35
SCHEDULE 2	38
Apportionment Table	38
SCHEDULE 3	40
National Priority Rules Table	40
SCHEDULE 4	42
Auckland Network Priority Rules Table	42
SCHEDULE 5	45
Wellington Network Priority Rules Table.....	45
SCHEDULE 6	48
Nominated Freight Services	48
SCHEDULE 7	49
The Peak	49
SCHEDULE 8	52
Form of Deed of Accession to the Common Access Terms	52

COMMON ACCESS TERMS

INTRODUCTION

These Terms record common rights and obligations of the Access Provider and of Operators in respect of the exercise of access rights to the Rail Network.

AGREEMENT

1. INTERPRETATION

1.1 **Definitions:** In these Terms, unless the context otherwise requires:

"**Access Agreement**" means an access agreement between the Access Provider and any Operator under which the Access Provider grants that Operator certain Access Rights to the Rail Network (or part thereof) for the purpose of conducting any of the Services.

"**Access Provider**" means New Zealand Railways Corporation.

"**Access Rights**" means an Operator's rights to use the Rail Network as granted to it by the Access Provider under an Access Agreement.

"**Ancillary Movements**" means the repositioning of Vehicles necessary for the purpose of providing any of the Services, the testing or servicing of Vehicles, movements of Vehicles for maintenance, sanding, fuelling, driver training or cleaning purposes, and emergency retrievals, including other similar necessary movements required to provide any of the Services.

"**Auckland Network**" is a subset of the Rail Network and means the rail network made up of Line Segments marked as the "Auckland Network" in Schedule 1, including all Infrastructure and associated infrastructure including yards, depots and sidings (but not including the electric multiple units depot constructed (or to be constructed) at Wiri, for Auckland Transport) making up those Line Segments, and any other additions or extensions to that rail network agreed under clause 10.2.

"**Auckland Network Timetable Committee**" means the committee described in clause 4.5(a)(ii).

"**Authority**" includes every minister, department of state, government authority, regional council, territorial authority or other statutory or regulatory authority having jurisdiction or authority to perform or exercise the relevant functions or powers, excluding for the avoidance of doubt, New Zealand Railways Corporation in its capacity as the Access Provider.

"**Business Day**" means a day (other than a Saturday, Sunday or public holiday) on which registered banks are open for business in Auckland and Wellington.

"**Charter Services**" means "one-off" passenger services which operate wholly or partly on the Rail Network.

"**Chief Executive**" means a chief executive of a party or, if a party has no chief executive, a person holding an equivalent position.

"**Codes**" means the technical and safety codes, standards and rules that set out the requirements on the Access Provider and/or Operators for operating Vehicles on the Rail Network set out in or adopted under the National Rail Safety System Standards.

"**Commencement Date**" means the date of these Terms.

"**Confidential Information**" means all information exchanged between the parties (including but not limited to any Incident Report) pursuant to these Terms or the relevant Access Agreement that is confidential or proprietary to a party, and information that relates to matters dealt with under these Terms which is confidential or proprietary to a third party and used or disclosed to a party under licence from, or with permission of, such third party, but does not include:

- (a) information which is independently developed by a party outside the scope of these Terms;
- (b) other confidential information obtained from sources independent of either party;
- (c) information which was publicly available at the time of receipt;
- (d) information which was known to a party at the time of receipt free from obligations of confidentiality, or becomes publicly available after the Commencement Date, through no fault of that party;
- (e) information required by these Terms to be disclosed;
- (f) information necessary to be disclosed to meet disclosure requirements of any stock exchange or trading market upon which the relevant party or any of its Related Companies or any securities of any of them, is listed or quoted;
- (g) the Codes; or
- (h) these Terms.

"**Crown**" means Her Majesty the Queen in right of New Zealand.

"**Document Controller**" means the person that has responsibility for a Code.

"**Evening Peak**" means, in relation to the train services, the periods set out in Schedule 7 to these Terms.

"**Force Majeure Event**" means any act beyond the reasonable control of a party, including any act of God or act of nature, confiscation or expropriation, embargo, public mains electrical supply failure, fire, flood, storm, explosion, nuclear accident, sabotage, revolution, riot, act of war whether declared or not, warlike operations, earthquake, land slide, volcanic eruption, epidemic, quarantine restriction, strike, lockout (other than a lockout by that party), work stoppage, or other labour hindrance or any other like event which prevents, hinders or interferes with the performance by the party of its obligations under these Terms or any relevant Access Agreement.

"**Freight Services**" means any freight train service (other than a Shunt) either within or passing through the Rail Network, or in the case of the Auckland Network or the Wellington Network respectively, terminating or originating within the Auckland Network or the Wellington Network or operating wholly within the Auckland Network or the Wellington Network (or a siding or branch line which joins the Auckland Network or Wellington Network).

"**GST**" means goods and services tax payable under the Goods and Services Tax Act 1985.

"**Incident**" means an event involving all or part of the Rail Network or any Vehicle on the Rail Network (including, to avoid doubt, damage to the Rail Network, or a Vehicle), or Personnel, customers or invitees of an Operator or the Access Provider on the Rail Network, or members of the public, whereby the safety or operation of the Rail Network, has been impaired or compromised (including a breakdown), or any event that the Access Provider or an Operator may be required to investigate under any applicable law or statutory requirement or agreement with any Authority, or is to be investigated by such an Authority that relates to the Rail Network, and includes:

- (a) an "Accident" or "Incident" as defined in the Railways Act; and
- (b) an "Occurrence" which means anything that results in or could result in damage or injury to people, property, business processes, the environment, Personnel or members of the public.

"**Infrastructure**" means the railway infrastructure (as defined in section 4(1) of the Railways Act) comprised in the Rail Network.

"**Interpeak**" means, in relation to train services, the periods between the Morning Peak hours and the Evening Peak hours.

"**Licence**" means a licence granted pursuant to section 17 of the Railways Act 2005.

"**Licensed Operator**" means a person who has a Licence as a rail operator.

"**Line Segment**" means a rail line (or part of a rail line) within the Rail Network specified in Schedule 1 to these Terms.

"**Long Distance Passenger Services**" means scheduled passenger services which are not Metro Services.

"**Material Access Rights**" means an Operator that pays in excess of \$500,000 (exclusive of goods and services tax and as adjusted by CPI pursuant to clause 16.1 below) in fees and other charges per annum to the Access Provider under the terms of the relevant Access Agreement (other than the Common Access Terms).

"**Metro Services**" means the Auckland or Wellington metro rail public transport services, including Primary Ancillary Movements for such services, in each case operated by the Metro Service Operator or its permitted sub-licensees.

"**Metro Service Operator**" or "**MSO**" means the person who, at the relevant time, is nominated by the Regional Authority to operate the Auckland or Wellington Metro Services.

"**Morning Peak**" means, in relation to the train services, the periods set out in Schedule 7 to these Terms.

"**National Network Timetable Committee**" means the committee described in clause 4.5(a)(i).

"**National Rail System Standards**" or "**NRSS**" means the Codes titled National Rail System Standard 1-13, or any amended or replacement standards performing an equivalent function from time to time.

"Network Controller" means the Access Provider acting in the role of the Rail Network controller to control movements on the Rail Network, manage Incidents and undertake the other roles specified in these Terms in respect of the Rail Network, (and includes, where the context so requires, the Network Controller's train controllers and local authorised representatives including signalmen and maintenance crews).

"Network Point" means any point on the Rail Network where the Network Controller measures the time at which a Vehicle movement occurs.

"Nominated Freight Services" means Freight Services identified as being more time critical than other services with respect to timetabling for the Rail Network, which as at the Commencement Date, are those Freight Services specified in Schedule 6, as amended from time to time pursuant to paragraph 2 of Schedule 6.

"Off-Peak" means all periods except the Peak and the Interpeak.

"Operator" means any person granted Access Rights by the Access Provider under an Access Agreement between that person and the Access Provider.

"Operator Incident" means an Incident involving an Operator's Vehicle or Vehicles, Personnel, customers or invitees.

"party" means a party to an Access Agreement who is bound by these Terms.

"Peak" means, in relation to the train services, the periods set out in Schedule 7 to these Terms.

"Personnel" means, in relation to a person, that person's employees, contractors, subcontractors and agents, and in relation to an Operator, includes also persons to whom the Operator has sublicensed any of the Operator's rights to use or operate on the Rail Network (or any part thereof) and in relation to the Access Provider, includes persons to whom the Access Provider has leased or licensed any of the Access Provider's rights to occupy or use the Rail Network or any part thereof, other than an Operator.

"Primary Ancillary Movement" means an Ancillary Movement operated as the immediate antecedent train movement to a Metro Service or Long Distance Passenger Service within the Auckland Network or the Wellington Network.

"Rail Network" means the rail network made up of Line Segments, (including all Infrastructure and associated infrastructure making up those Line Segments), and for the avoidance of doubt, includes the Auckland Network and the Wellington Network as shown in Schedule 1 and any other additions extensions or deletions to that rail network agreed under clause 10.2.

"Railways Act" means the Railways Act 2005.

"Regulator" means the New Zealand Transport Agency acting in the role of the "Agency" under the Railways Act, or its successor.

"Regional Authority" means in the case of the Auckland Metro Service Operator, Auckland Transport and in the case of the Wellington Metro Service Operator, Greater Wellington Regional Council.

"Related Company" has the meaning given to it in section 2(3) of the Companies Act 1993.

"Relationship Manager" means the person appointed by each Operator to perform the functions specified in clause 6.

"Safety Case" means, in respect of an Operator or the Access Provider, the document of that name approved by the Regulator under section 32 of the Railways Act 2005.

"Scheduled Time" means, in relation to a Service, the time scheduled for the departure or arrival of the relevant Service (including any such time for a stop by that Service) in accordance with the relevant Timetable.

"Services" means Long Distance Passenger Services, Charter Services, Metro Services, Shunts, Ancillary Movements, Freight Services and any other rail operations undertaken on the Rail Network by an Operator as authorised by the Access Provider.

"Shunts" means un-timetabled freight services operated solely for the purpose of moving rolling stock to and from sidings and freight yards connected to the Rail Network.

"Terms" means these common access terms.

"Timetable" means the applicable timetable developed under clause 4 from time to time.

"Timetable Committee" means each of, and the relevant, National Timetable Committee, Auckland Network Timetable Committee or Wellington Network Timetable Committee established pursuant to clause 4.5.

"Timetabled Service" means a train movement by an Operator in accordance with the Timetable.

"Track Possession" means the temporary closure of part or all of the Rail Network by the Access Provider for the purposes of carrying out work on the relevant part of the Rail Network (including on associated Infrastructure) with the result that a Timetabled Service will not be possible on the affected part of the Rail Network for the duration of the closure.

"Track Possession Plan" means a plan setting out relevant forecast Track Possessions as prepared by the Network Controller and agreed by the Timetable Committee.

"Unscheduled Maintenance" means maintenance or repairs carried out in response to an Incident, a Force Majeure Event or any other unforeseen event or circumstance, the nature of which requires immediate maintenance or repairs to be carried out to any part of the Rail Network.

"Vehicles" means electric multiple units, diesel multiple units, locomotives and other rail vehicles (as defined in section 4(1) of the Railways Act) used on the Rail Network by the Access Provider or an Operator, including any vehicle necessary to maintain any part of the Rail Network (including the Infrastructure) as used by the Access Provider (or any person contracted by the Access Provider).

"Wellington Network" is a subset of the Rail Network made up of Line Segments marked as the "Wellington Network" in Schedule 1, including all Infrastructure and associated infrastructure including yards, depots and sidings making up those Line Segments, and any other additions or extensions to that rail network agreed under clause 10.2.

"Wellington Network Timetable Committee" means the committee described in clause 4.5(a)(iii).

1.2 **Interpretation:** In these Terms, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) references to a month or a year are references to a calendar month or year, as the case may be;
- (c) references to dates and times are to dates and times in New Zealand;
- (d) references to "\$" or "dollars" are to New Zealand currency;
- (e) a reference to a party is a reference also to that party's successors and permitted assigns;
- (f) a reference to a "person" includes an individual, firm, company, body corporate, corporation or unincorporated body of persons, or any Authority, in each case whether or not having separate legal personality, and a reference to a "company" includes a person;
- (g) headings are for convenience only and do not affect interpretation;
- (h) references to clauses and schedules are references to clauses and schedules of these Terms unless specifically stated otherwise;
- (i) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (j) "including" and similar words do not imply any limitation.

2. **COMMENCEMENT**

2.1 **Effective Date:** These Terms shall take effect as from the Commencement Date and, for the avoidance of doubt, shall replace the terms set out in the document referred to as the Common Access Terms (for the Rail Network other than the Auckland Network) dated 30 June 2004 and the Common Access Terms (for the Auckland Network) dated 13 May 2002.

3. **ACCESS**

3.1 **Non exclusive rights:**

- (a) The Access Provider retains the right to grant Access Rights to any Licensed Operator on any terms, provided that such admittance is subject to these Terms and shall not deprive any other Operator of the reasonable and proper use of its Access Rights subject to these Terms and the relevant Access Agreement.
- (b) Each Operator that is granted Access Rights shall:
 - (i) be bound by and comply with these Terms;
 - (ii) subject to subclause (b)(iii) below, promptly upon its entry into an Access Agreement, deliver to the Access Provider and to each other Operator with Access Rights to the relevant part of the Rail Network at the relevant time, a deed of accession in the form set out in

Schedule 8 (Form of Deed of Accession to the Common Access Terms) to these Terms (customised only to the extent necessary) duly executed by that Operator;

- (iii) in the case of a Operator with Access Rights as at the Commencement Date, at the Commencement Date deliver to the Access Provider and to each other Operator with Access Rights to the relevant part of the Rail Network as at the Commencement Date, a deed of accession in the form set out in Schedule 8 (Form of Deed of Accession to the Common Access Terms) to these Terms (customised only to the extent necessary) duly executed by that Operator.
- (c) The Access Provider will not permit a Licensed Operator to use any part of the Rail Network unless that Licensed Operator has been either granted Access Rights by the Access Provider under clause 3.1(a) or sublicensed Access Rights by an Operator. Without limiting the forgoing, if the Access Provider is also a Licensed Operator, then the Access Provider is deemed to be an Operator for the purposes of these Terms in relation to the acts and omissions of the Access Provider as a Licensed Operator, but (to avoid doubt) excluding any acts or omissions in relation to the Access Provider and/or Network Controller roles or functions as contemplated in these Terms.

3.2 **No right, title or interest:** Neither these Terms nor any Access Agreement confer any proprietary right, title or interest to an Operator in respect of any part of the Rail Network, (or any land or Infrastructure forming part of, or related to, the Rail Network). Subject to clause 10.1, these Terms, and each Operator's Access Rights, in no way restrict the rights of:

- (a) the Access Provider to enter and use (and permit others to enter and use) the Rail Network (or any land or Infrastructure forming part of, or related to, the Rail Network); or
- (b) if the Access Provider is not the owner of the Rail Network, the owner of the Rail Network (or parts thereof) (and its lessees or licensees) to enter onto the relevant parts of the Rail Network (or any land or Infrastructure forming those parts of the Rail Network),

for the purposes of inspection, development, maintenance, renewal, repair, enhancement or other modification of the Rail Network (or any land or Infrastructure forming part of, or related to, the Rail Network) or for the purposes of complying with any law, or direction or order of any Authority, or for any other purpose not inconsistent with an Operator's Access Rights.

3.3 **Interoperability principles:** Subject to the express provisions of these Terms, the following principles shall be applied in good faith by the Access Provider and all Operators with respect to their use of the Rail Network:

- (a) They will each take due account of the impact of its operations on the others and will inform the others of any proposed or actual event which is likely to have a material adverse impact on the others and co-operate to minimise, as far as is practicable, the effect of such events.
- (b) They shall each act reasonably and in good faith in respect of any dispute relating to the Rail Network and/or the discussion of train control, timetabling, or otherwise under these Terms.

3.4 **Order of precedence:** In the event of any inconsistency between these Terms and/or the terms of an Access Agreement, these Terms shall prevail over the provisions of the Access Agreement.

3.5 **Financial security:**

- (a) The Access Provider may from time to time acting reasonably require an Operator to establish arrangements (which may include taking out performance bonds in the Access Provider's favour and on terms acceptable to the Access Provider) to secure to the Access Provider any sums that may become payable to the Access Provider under these Terms or the Operator's Access Agreement (including any amounts that might be payable under the indemnities in clause 14).
- (b) Where security arrangements have been established, the Access Provider may require the Operator to change those arrangements if the Access Provider reasonably considers those arrangements are no longer appropriate to secure the sums that may become payable.
- (c) Each Operator shall satisfy the requirements of the Access Provider under subclauses (a) and (b) as applicable.
- (d) This clause 3.5 does not apply to:
 - (i) a Metro Service Operator for so long as that Operator obtains its Access Rights pursuant to an Access Agreement between the Access Provider and the relevant Regional Authority; and
 - (ii) KiwiRail Limited in respect of its Freight and Long Distance Passenger Services for so long as it is ultimately wholly owned and controlled by the Crown or a statutory corporation solely accountable to the Crown.

3.6 **Changes to these Terms:** Subject to paragraph 2 of Schedule 6, the Access Provider may amend these Terms with the written consent (in the form of a signed variation to these Terms) of the Regional Authorities, the Metro Service Operators and each other Operator with Material Access Rights. Such amendments are binding on all Operators subject to these Terms.

3.7 **Non-discrimination:** The Access Provider agrees to use best endeavours to apply these Terms on a non-discriminatory basis as between different types of Services and Operators operating on the Rail Network.

3.8 **New access rights:** The Access Provider will not grant any right to use or otherwise access all or any part of the Rail Network to any new Licensed Operator unless the Services proposed to be operated under those access rights have been approved by the Timetable Committee in accordance with these Terms as if such proposed Services were proposed under clause 4.1. For the avoidance of doubt, the proposed new Licensed Operator is not a member of the Timetable Committee for the purposes of such approval.

4. TIMETABLING AND ACCESS ALLOCATION

4.1 Timetable development:

- (a) At least six months prior to the end of every six month period following the Commencement Date, each Operator shall propose to the Network Controller a timetable for the Services it wishes to run as timetabled services for the

following six month period on those parts of the Rail Network, for which it has Access Rights.

- (b) Concurrently with (a), the Network Controller shall submit its proposed works timetable (including Track Possession Plan) for the following six month period.
- (c) The Network Controller shall then develop a proposed integrated Timetable for all Timetabled Services (with the Timetabled Services for the Auckland Network and the Wellington Network also separately set out) and Track Possessions (based on the Track Possession Plan) for the relevant period.
- (d) The Network Controller shall, no later than four months prior to the following six month period, refer the proposed Timetable to the relevant Timetable Committee(s) for ratification or resolution of any conflicts in accordance with clause 4.5.
- (e) If the National Timetable Committee is unable to reach agreement and ratify the Network Controller's proposed Timetable no later than three months prior to the following six month period, any member of the National Timetable Committee may refer the proposed Timetable and the matters in dispute for resolution by an expert in accordance with clause 17.3(b).
- (f) In the event that an item is escalated to an expert in accordance with clause 17.3, until the Timetable is determined by expert, the then existing Timetable will continue to apply to activities on the Rail Network (or the relevant parts thereof).

4.2 **Timetabling Principles:** In determining the Timetable, the Network Controller and the Timetable Committee shall first apply the provisions of clauses 4.8(b) and (c) and then the following timetabling principles in the order of priority set out below:

- (a) Rail Network, Auckland Network or Wellington Network safety, including operating headways;
- (b) existing Timetabled Services for Metro Services, Long Distance Passenger Services and Freight Services;
- (c) the overall Access Rights of each Operator;
- (d) any capacity created for the benefit of an Operator through a material change under clause 10.2(b)(xi);
- (e) customer service; maximising equipment utilisation; minimising fuel usage and labour hours; and maximising efficiency of each Operator;
- (f) the relative prioritisation of the Services, which is:
 - (i) in respect of each of the Auckland Network and Wellington Network:
 - (aa) During the Peak: Metro Services, Nominated Freight Services, Long Distance Passenger Services, Freight Services, and other Services (including Charter Services);
 - (bb) During the Interpeak: Nominated Freight Services, Metro Services, Long Distance Passenger Services, Freight Services, and other Services (including Charter Services); and

- (cc) During the Off Peak: Nominated Freight Services, Metro Services, Long Distance Passenger Services, Freight Services, and other Services (including Charter Services);
 - (ii) in respect of the Rail Network (other than the Auckland Network and Wellington Network), Nominated Freight Services, Long Distance Passenger Services, Freight Services, and other Services (including Charter Services);
 - (g) for the Auckland Network and Wellington Network respectively the transport requirements of the Auckland region and the Wellington region as outlined in their respective "Long Term Plans";
 - (h) maximising utilisation of the Rail Network by Operators seeking to operate timetabled Services;
 - (i) the operation of Shunts (which will not be timetabled, although the Timetable must make allowance for the operation of Shunts but recognising the prioritisation rules in this clause 4.2); and
 - (j) in the Auckland Network and the Wellington Network, the operation of Ancillary Movements which will not be timetabled (other than Primary Ancillary Movements which will be timetabled), although the Timetable must make allowance for the operation of Ancillary Movements.
- 4.3 **Further principle:** In determining the Timetable, the Network Controller and relevant Timetable Committee shall also apply the principle that the Timetable must allow sufficient time for Rail Network maintenance, being both Scheduled and Unscheduled Maintenance, to be undertaken and that such maintenance shall be carried out with the intention of providing the minimum disruption practicable to the Services. The parties acknowledge that this principle is important for the continuing safety of the Rail Network.
- 4.4 **Disclosure of Access Agreements:** The Access Rights of each Operator as set out in the relevant Access Agreement shall be disclosed to the Network Controller, each Operator and the Timetable Committee, to enable the obligations set out in this clause 4 and the remainder of the Terms to be performed.
- 4.5 **Timetable Committees:**
- (a) There shall be three committees established to undertake the role of the Timetable Committee as contemplated in these Terms:
 - (i) a National Timetable Committee - this Timetable Committee shall carry out the functions of the Timetable Committee in relation to access to the Rail Network (other than the Auckland Network and the Wellington Network);
 - (ii) an Auckland Network Timetable Committee - this Timetable Committee shall carry out the functions of the Timetable Committee in relation to access to the Auckland Network; and
 - (iii) a Wellington Network Timetable Committee - this Timetable Committee shall carry out the functions of the Timetable Committee in relation to access to the Wellington Network.
 - (b) Each Timetable Committee will be made up of a representative of each of the Access Provider, the Network Controller and each Operator with Material Access Rights to the relevant Network, provided that KiwiRail Limited shall be

entitled to appoint to each relevant Timetable Committee two representatives, one in respect of Access Rights used to operate KiwiRail Limited Freight Services, and one in respect of Access Rights used to operate KiwiRail Limited Long Distance Passenger Services for so long as KiwiRail Limited Freight Services, KiwiRail Limited Long Distance Passenger Services and the Access Provider are all wholly owned and controlled by the Crown or a statutory corporation solely accountable to the Crown. Each relevant Regional Authority may nominate a representative to the relevant Auckland Network Timetable Committee or the Wellington Network Timetable Committee (as applicable).

- (c) Each representative must be a suitably qualified person with authority to represent and bind the person that he or she represents on matters dealt with by the relevant Timetable Committee.
 - (d) Subject to subclause (e) below, determinations of a Timetable Committee shall be by way of unanimous resolution.
 - (e) Any failure of the National Timetable Committee to reach agreement on any relevant Timetable matter will be dealt with by the expert dispute resolution procedure set out in clause 17.3.
 - (f) Any failure of the Auckland Network Timetable Committee to reach agreement on any relevant Timetable matter will be referred to the respective Chief Executives of Auckland Transport and the Access Provider for resolution in accordance with the provisions of clause 4.8(b) and the timetabling principles and priorities set out in clause 4.2 above (provided that any dispute in relation to a safety consideration as contemplated in clause 4.2(a) will be dealt with by the expert dispute resolution procedure set out in clause 17.3).
 - (g) Any failure of the Wellington Network Timetable Committee to reach agreement on any relevant Timetable matter will be referred to the respective Chief Executives of Greater Wellington Regional Council and the Access Provider for resolution in accordance with the timetabling principles and priorities set out in clause 4.2 above (provided that any dispute in relation to a safety consideration as contemplated in clause 4.2(a) will be dealt with by the expert dispute resolution procedure set out in clause 17.3).
 - (h) The Network Controller shall appoint a chairperson from one of the members of each Timetable Committee. The chairperson of each Timetable Committee shall not have any casting vote.
 - (i) Each Timetable Committee may appoint a sub-committee to develop and recommend a Track Possessions Plan to the Timetable Committee.
- 4.6 **Costs of Timetable Committees:** Each party shall meet the costs of their representative's involvement on a Timetable Committee. The Network Controller shall provide a secretariat function to a Timetable Committee for no additional charge except where such function requires additional services to be undertaken at the request of an Operator, in which case the Network Controller shall charge that Operator a reasonable fee for providing such additional services.
- 4.7 **Meetings of Timetable Committees:** Each Timetable Committee shall meet as often as necessary to enable it to perform the duties and obligations conferred on it under these Terms.

4.8 Procedure of the Timetable Committees:

- (a) Each Timetable Committee shall determine its own operating procedures and processes for fulfilling its role in accordance with and as set out in these Terms.
- (b) To ensure effect is given to the Auckland Network Access Agreement with Auckland Transport, the Auckland Network Timetable Committee shall not approve any Timetable that adversely affects the joint objective of the Access Provider and Auckland Transport of delivering Metro Services at 10 minute intervals during the Peak, without the agreement of Auckland Transport (in its capacity as a member of the Auckland Network Timetable Committee).
- (c) To ensure effect is given to the Wellington Network Access Agreement with Greater Wellington Regional Council, the Wellington Network Timetable Committee shall not approve any Timetable that adversely affects the joint objective of the Access Provider and Greater Wellington Regional Council of delivering Metro Services provided for in the Access Rights under the Wellington Network Access Agreement, without the agreement of Greater Wellington Regional Council (in its capacity as a member of the Wellington Network Timetable Committee).

4.9 Variations to the Timetable:

- (a) The Access Provider, the Network Controller, or an Operator may, by written notice to the Network Controller (with a copy to the relevant Timetable Committee), seek a variation to the Timetable. The request shall be processed promptly by the Network Controller and then considered at the next scheduled meeting of the relevant Timetable Committee, provided that where such variation is not material and has no material adverse impact on the rights of any other Operator and/or the Access Provider under the existing Timetable, the Network Controller shall give immediate, but temporary, effect to such variation until such variation is considered at the next scheduled meeting of the Timetable Committee. For the purposes of this clause 4.9, the Access Provider, Network Controller and each Operator acknowledge that a certain level of flexibility is required by Operators for the purpose of conducting Services and other operations on the Rail Network.
- (b) In considering any request for a variation to the Timetable, the Network Controller and the relevant Timetable Committee shall first apply the provisions of clauses 4.8(b) and (c) and then the timetabling principles and priorities in the order required in clause 4.2.

4.10 Unutilised time slots: Each Operator (each an "Access Holder") agrees to permit (following reasonable consultation) another Operator to utilise on a temporary basis the Access Rights of the Access Holder for that other Operator's Services (including Timetabled Services) provided that:

- (a) the Access Holder does not require such Access Rights for its own operational requirements; and
- (b) if the Access Holder reasonably requires for its own operational requirements the use of any Access Rights being used by another Operator under this clause, the Access Holder may give reasonable notice to the Network Controller and that other Operator in which event that other Operator shall at the end of such notice period cease using the relevant time slots.

4.11 **Cancellations:** An Operator must as soon as practicable notify the Access Provider and the Network Controller of any cancellation of any Timetabled Service.

4.12 **Unscheduled Maintenance:** The Network Controller shall, as soon as practicable after identifying the need to carry out Unscheduled Maintenance, use best endeavours to notify affected Operators of such maintenance and its potential impact on the Services and the Timetable.

5. NETWORK DELAYS, EARLY AND LATE TRAINS

5.1 **Network delay:** Once the Network Controller has determined that a Vehicle is late in crossing a Network Point, it shall until such time as the Timetable is restored:

- (a) use its reasonable endeavours to apply to the operation of Services the priority rules in:
 - (i) Schedule 4 and Schedule 5 on the Auckland Network and Wellington Network respectively; and then
 - (ii) Schedule 3 on the balance of the Rail Network, and
- (b) promptly notify affected Operators and the Access Provider that it will be implementing the priority rules in Schedule 3, 4 or 5.

5.2 **Repetitive delays:** Where over a reasonable period of time delays to Timetabled Services are occurring on an unacceptably frequent basis on all or part of the Rail Network, the Network Controller in conjunction with the relevant Timetable Committee will review the relevant Timetable to consider and, if necessary, approve changes to that Timetable with the aim of reducing delays.

5.3 **Early and late Services:** Where a Timetabled Service is running early or late but the Network Controller has not invoked the priority rules in Schedule 3, 4 or 5, the Network Controller will use its reasonable endeavours to accommodate that Service by providing a timeslot for that Service at the first available opportunity, subject to the applicable Timetable and the timetabling principles in clause 4.2. In such a case, the Network Controller and that Operator will, subject to these Terms, use their reasonable endeavours to ensure that the Service that is:

- (a) running late recovers the lost time; and
- (b) running early runs no earlier than the Scheduled Time, provided that where a Freight Service or Long Distance Passenger Service is running early, the Network Controller will use its reasonable endeavours to accommodate that early running Service where to do so would not affect the Timetabled Services.
- (c) Nothing in this clause requires the Network Controller to provide a timeslot where to do so would be inconsistent with the Timetable, the timetabling principles in clause 4.2 or the obligations of the Access Provider or the Network Controller to another Operator.

6. STEERING COMMITTEE

6.1 **Appointment of a Steering Committee:** Each of the Metro Service Operator, any other Operator which has been granted Material Access Rights and the Access Provider shall appoint up to two Steering Committee representatives and a Relationship Manager to the relevant Steering Committee. The Access Provider shall appoint a chairperson

from the members of the Steering Committee. The chairperson of the Steering Committee shall not have any casting vote. The Steering Committee will (if required by a Metro Service Operator, as appropriate) appoint sub-committees for each of the Auckland Network and the Wellington Network.

- 6.2 **Steering Committee provisions:** The other provisions of these Terms that apply to the Steering Committee also apply to the Auckland Network subcommittee and the Wellington Network subcommittee, with any necessary modifications.
- 6.3 **Responsibilities of Relationship Managers:** The principal responsibilities of each Relationship Manager are to:
- (a) be the initial point of contact for communications between the parties in respect of these Terms;
 - (b) manage the obligations of the parties that nominated them under these Terms, including identifying and resolving any disputes or difficulties, and identifying the need for amendments or variations to these Terms; and
 - (c) identify and resolve issues relating to the parties' joint use of the Rail Network.
- 6.4 **Steering Committee Meetings:** The Steering Committee will meet quarterly to resolve any issues which may have arisen in relation to the operation and administration of these Terms. Such meetings will take place more frequently, if requested by a member of the Steering Committee or as agreed between the Access Provider and all relevant Operators with Material Access Rights. The members of the Steering Committee may at these meetings exchange views as to how any party's operations might be changed or improved so as to assist in the better operation of the matters dealt with under these Terms.
- 6.5 **Performance issues:** If, as a result of any review or otherwise, a Steering Committee member identifies reasonable concerns regarding the performance of another member under these Terms, then:
- (a) the Steering Committee members shall work together to identify the reasons for the non-performance;
 - (b) the Steering Committee members shall use all reasonable efforts to agree on the improvements to be made, and a timetable for their performance; and
 - (c) the Steering Committee members shall promptly take those steps which are agreed for it to take to address and rectify the performance issue.
- 6.6 **Escalation:** If a Steering Committee member is not satisfied with the manner in which any issue is dealt with by another member, the matter will be escalated in accordance with clause 17.
- 6.7 **Complaints handling:** A copy of any material complaint received by a Relationship Manager in relation to the use of the Auckland Network or the Wellington Network by the Operator that appointed that Relationship Manager shall be forwarded to the other relevant Relationship Managers. Where a material complaint relates to the operations of all the Operators, the response to any such complaint shall be managed by the Access Provider and Network Controller with input from the Steering Committee representatives.
- 6.8 **Without prejudice to other rights:** Membership of the Steering Committee does not in any way prevent or restrict the Access Provider or any Operator from exercising any of

their rights and privileges or from performing any of their obligations under these Terms or the relevant Access Agreement.

7. MANAGEMENT AND OPERATION OF THE NETWORK

- 7.1 **Train movements - mainline:** The Network Controller has the exclusive right and responsibility for directing the movement of all Vehicles into, on, over, under, across and out of the Rail Network.
- 7.2 **Compliance:** Each Operator must, and must ensure its Personnel:
- (a) comply immediately with all directions (communicated in any form) from the Network Controller unless that Operator believes on reasonable grounds for safety reasons that it is not appropriate to comply with such directions;
 - (b) not move any Vehicle into, on, over, under, across or out of the Rail Network, without being so directed by the Network Controller,
 - (c) and without limitation to the generality of the foregoing, the Network Controller may issue directions and instructions regarding the speed of Vehicles, the configuration of Vehicles and the train paths that should be adopted.
- 7.3 **Train movements - yards:** Each Operator has responsibility for directing the movement of all the Vehicles operated by it or under its control, into, on, over, under, across and out of the yards and other areas controlled by the Operator unless the relevant Code operates to place such responsibility on another party.
- 7.4 **Rail Network control standards:** In performing the Network Controller's functions in respect of the Rail Network, the Network Controller shall use its reasonable endeavours to ensure that the Rail Network operates in accordance with the Timetable, the priority rules set out in Schedules 3, 4 and 5 and the remainder of these Terms.
- 7.5 **Operator standards:** In addition, each Operator shall use its reasonable endeavours to ensure that its Vehicles are operated in accordance with the Timetable.
- 7.6 **Operator reviews:** An Operator may, acting reasonably, by notice to the Network Controller ("**AP Review Notice**") undertake a review of the Network Controller's compliance with these Terms, as follows:
- (a) an AP Review Notice must specify the time, place, location and nature of the review, which shall not be less than 10 Business Days after the date of the Review Notice;
 - (b) to assist the Operator in undertaking any review under this clause, the Network Controller must provide to the Operator all documentation reasonably requested by the Operator; and
 - (c) following a review under this clause, the Operator must prepare a report of its review, a copy of which is to be provided to the Network Controller. If such a report identifies a material breach of these Terms, the Network Controller shall provide the Operator with an implementation plan to remedy any such breach within 20 Business Days of receiving the report. If the Network Controller considers that the contents of the report are not reasonable, then the matter may be escalated by the Network Controller in accordance with clause 17.

7.7 **Network Controller reviews:** The Network Controller may, acting reasonably, by notice to the Operator ("**Operator Review Notice**") undertake a review of the Operator's compliance with these Terms, as follows:

- (a) an Operator Review Notice must specify the time, place, location and nature of the review, which shall not be less than 10 Business Days after the date of the Operator Review Notice;
- (b) to assist the Network Controller in undertaking any review under this clause, the Operator must provide to the Network Controller all documentation reasonably requested by the Network Controller; and
- (c) following a review under this clause, the Network Controller must prepare a report of its review, a copy of which is to be provided to the Operator. If such a report identifies a material breach of these Terms, the Operator shall provide the Network Controller with an implementation plan to remedy any such breach within 20 Business Days of receiving the report. If the Operator considers that the contents of the report are not reasonable, then the matter may be escalated by the Operator in accordance with clause 17.

8. NETWORK SAFETY

8.1 **Network safety:** When the Access Provider exercises its rights and discretions as Access Provider under these Terms, it will use its best endeavours to do so in a manner consistent with the safety of the Rail Network. The Access Provider will require that any person appointed by it as Network Controller, when exercising that person's rights and discretions as Network Controller, will use its best endeavours to do so in a manner consistent with the safety of the Rail Network.

8.2 **Safety Cases and Codes:**

- (a) **Safety Case:** Each Operator must have a Licence and a Safety Case which provides for its operations on the relevant parts of the Rail Network.
- (b) **Use and ownership:** Each Operator shall have a royalty-free, non-transferable and non-exclusive licence to use and copy the Codes for its operations on the Rail Network for the duration of its Access Agreement.
- (c) **Access to Codes:** The Access Provider will make the Codes (as amended from time to time) available to each Operator.
- (d) **Variation to the Codes:**
 - (i) Subject to subclause (ii) below, any variation to an existing Code (including introduction of a new Code or replacement Code) on the Auckland Network or Wellington Network may be referred by the Access Provider, the Auckland MSO or Wellington MSO respectively, or any Operator with Material Access Rights, to the material change process set out in clause 10.2. Until that process has been concluded the variation shall not be introduced on the Auckland Network or Wellington Network unless such Operators agree otherwise.
 - (ii) The provisions of subclause (i) above shall not apply to any variation to any existing Code (including introduction of a new Code or replacement code) on the Auckland Network or the Wellington Network where such variation has been agreed to by the Auckland MSO or Wellington MSO as applicable, and all operators with Material Access

Rights on those relevant parts of the Rail Network, pursuant to the change process by the NRSS committee in accordance with the relevant NRSS provisions.

8.3 Access Provider and Operator's licences:

- (a) An Operator shall:
 - (i) comply with its Safety Case, Licence and all other applicable licences, permits, accreditations and authorisations required by any Authority for conduct or operation on the Rail Network ("**Operator Authorisations**"); and
 - (ii) keep the Network Controller fully informed of all proposed material changes to its Operator Authorisations where those changes impact or potentially impact the safety of the Rail Network or the Access Provider or Network Controller's operation.
- (b) The Access Provider shall (and shall procure the Network Controller to):
 - (i) comply with its Safety Case, Licence and all other licences, permits, accreditations and authorisations required by any Authority for conduct or operation of the Rail Network ("**Access Provider Authorisations**"); and
 - (ii) keep Operators informed of all proposed material changes to the Access Provider Authorisations where those changes impact or potentially impact the safety of the Rail Network, and otherwise the Operators' operations.

8.4 Safety notices, policies and bulletins: The Network Controller may from time to time issue (electronically and/or in writing) bulletins relating to the use of the Rail Network, including relating to urgent safety matters, engineering safety instructions, matters relating to the Rail Network which generally relate to one-off events or matters which the relevant Authority may pursuant to their respective legislative powers require, and each Operator must comply with such bulletins on receiving such bulletins.

8.5 Other safety requirements: In addition to its obligations under clause 8.3, an Operator, the Access Provider and the Network Controller shall maintain an injury prevention system that complies with (as a minimum requirement) ASNZ 4801.

8.6 Employee and others safety: Without limitation to its other obligations under this clause 8, an Operator must comply with respect to its Personnel and customers (and any other persons permitted by it to enter the Rail Network, and Vehicles used by the Operator) and the use of the Rail Network by such persons, with all applicable laws, including the Health and Safety in Employment Act 1992, the Railways Act and the Hazardous Substances and New Organisms Act 1996 (including all regulations and, where appropriate, Codes of Practice made under those Acts).

8.7 Operation of Vehicles: The Access Provider and each Operator shall, in relation to Vehicles under its control, ensure that:

- (a) powered Vehicles may only be operated by staff who have been certified and have all licences, approvals or knowledge requirements required by law, any Authority or referred to in the applicable Codes; and
- (b) only vehicles that have licences and approvals required by law or any Authority can be used on the Rail Network.

8.8 **Suspension Notices:** If the Network Controller reasonably considers that aspects of an Operator's train operations are such that they impair the safety of any part of the Rail Network or otherwise pose a significant safety risk (including to the safety of other Operators or their Personnel or other persons within the Rail Network), the Network Controller may, by notice ("**Suspension Notice**"), suspend:

- (a) one or more of the Operator's Personnel from operating a Vehicle on the Rail Network (including on the basis of pending further investigations, training or re-certification); or
- (b) one or more of the Operator's Vehicles from operating on the Rail Network; or
- (c) the Operator's Access Rights in respect of one or more of Services, or in respect of any Line Segment(s), pending the implementation of improved safety systems and procedures to the extent necessary to address safety risks; and

the Operator shall, at its own cost and expense, comply with such Suspension Notice immediately upon its receipt. The Network Controller shall revoke any Suspension Notice once it is satisfied that its safety concerns have been adequately addressed.

8.9 **Regulator required changes:** The provisions of these Terms and each Access Agreement do not limit the powers of the Regulator when acting in accordance with any applicable laws to consider, review or require changes to the process for issuing a Licence to any Operator, the Access Provider or the Network Controller.

9. CHANGE IN LAW / REQUIREMENTS OF LAW

9.1 **Legal requirements:** Where a change in law requires any alteration to be made to the Rail Network, any applicable Code, any aspect of an Operator's operations (including its Vehicles) or to any other matter affecting these Terms or any Access Agreement, the Access Provider and the affected Operators shall:

- (a) consult about the nature and extent of the alteration required;
- (b) implement that alteration in a timely manner and in any event, by no later than as required to comply with the change in law; and
- (c) negotiate in good faith to agree any amendment to these Terms or that Access Agreement that may be necessary as a consequence of that alteration.

9.2 **Costs:** Unless otherwise agreed between the relevant parties, each party shall bear its own costs incurred in implementing any such alteration and in complying with its obligations under clause 9.1.

10. CHANGES TO INFRASTRUCTURE

10.1 **Changes to Rail Network:** Subject to clause 10.2, the Access Provider may from time to time make any changes to the Rail Network (including by way of construction of new rail lines, or adding new, or modifying existing, Infrastructure). The Access Provider shall, as soon as practicable after identifying the works and timetable for such works, notify affected Operators of such works and their potential impact on the Services and the Timetable.

10.2 **Rail Network material changes:**

- (a) A material change to the Rail Network includes (without limitation):
- (i) An extension of lines, or creation of a new line;
 - (ii) The electrification or extension of electrification on a line;
 - (iii) Upgrading a line to enable materially decreased transit times, increased axle weights or increased timetabled capacity;
 - (iv) Down-grading a line with the result that transit times materially increase, permitted axle weights are reduced or timetabled capacity is materially reduced;
 - (v) Upgrading the support infrastructure (in particular train control and communications) to the extent that service capacity is materially increased or the risk or consequence of infrastructure failure is materially decreased;
 - (vi) Downgrading the support infrastructure (in particular train control and communications) to the extent that service capacity is materially diminished or the risk or consequence of infrastructure failure is materially increased;
 - (vii) Any upgrade following the occurrence of a Force Majeure Event;
 - (viii) Subject to clause 8.2(d)(ii), any changes to Codes which will have the effect of increasing the costs to Operators or the Access Provider, or of down-grading a line to the extent that transit times materially increase, permitted axle weights are reduced, or timetable capacity is materially reduced; or
 - (ix) Any changes to Vehicles to allow operation outside the existing parameters of the applicable points of the Rail Network, including changes to the structure gauge.
- (b) The following provisions of this clause shall apply where either the Access Provider or an Operator proposes a material change to the Rail Network:
- (i) The party wanting the change (the "**Proposer**") must submit to the other parties (including all other affected Operators) a detailed proposal setting out the specifics and timing of the proposed change with sufficient detail to enable the other parties to assess any possible impact of the proposed change on their operations. Each such proposal must include suggestions for any amendments to the applicable Codes of which the Proposer is aware would be required if the change was undertaken.
 - (ii) Once the Proposer has submitted its proposal to the other parties it may negotiate with the other parties any possible sharing of the costs or savings of making and maintaining the proposed change.
 - (iii) Each party agrees to consider and respond fairly and in good faith to each proposal received by it under this clause within a reasonable time period taking into account the particular factual situation. Each party shall bear its own cost in complying with this subclause (iii).
 - (iv) Any change proposed by an Operator shall be subject to the Access Provider's consent, such consent not to be unreasonably withheld.

- (v) In the event that the proposed change is to have an adverse impact, including temporary loss of access by an Operator to all or part of the Rail Network or a requirement for additional maintenance of or renewals on the Rail Network, the Proposer will reasonably compensate that other party to meet any additional costs reasonably incurred by that other party as a result of the change provided that the affected party must use reasonable endeavours to mitigate such costs.
- (vi) The Access Provider shall have the right to itself carry out the works relating to any Operator-initiated change or to require the Operator to carry out the work on such terms as the Access Provider reasonably requires.
- (vii) The Proposer will be responsible for the full cost of implementing the change (including all costs incurred by the Access Provider in respect of a change initiated by an Operator) and the ongoing maintenance costs of the change unless another party agrees to bear some of those costs.
- (viii) All changes will be undertaken with the view to minimising disruption to the Access Provider and the Operators and reasonable notice will be given to all affected parties prior to the undertaking of any changes.
- (ix) Any proposed change that requires changes to be made to any of the applicable Codes of which the Access Provider or Operator (as the case may be) is aware relating to the Rail Network cannot be initiated until those changes to such Codes have been made.
- (x) The ownership of all property interests relating to changes to the Rail Network, including changes initiated and paid for by Operators, shall vest absolutely in the owner of the Rail Network unless the owner agrees otherwise in writing.
- (xi) Provided that each Operator is not prevented from exercising its Access Rights, an Operator or the Operators who paid for the cost of an Operator-initiated change shall have priority over the other Operators to use the additional capacity created by that change.
- (xii) All changes must comply with all applicable Codes relating to the Rail Network (as amended to take account of the change, if applicable).

11. PLATFORMS AND STRUCTURE GAUGE

11.1 **Changes to Clearances:** Irrespective of the provisions of any other agreement between the Access Provider and an Operator, the Access Provider shall consult with all affected Operators prior to undertaking works which may vary:

- (a) the clearances between platform edges and track centrelines;
- (b) the vertical differences or gap between the rails and the top edge of the platform; or
- (c) the clearance between the track and overbridges.

12. TRESPASSERS

- (a) Subject to subclause (b), but without prejudice to the other provisions of these Terms, and subject to any legislative exemptions applicable to the Access Provider, Network Controller or each Operator, the Access Provider, the Network Controller and each Operator shall, in respect of each of their respective property and facilities, take such steps as are reasonable in the circumstances to limit trespass, vandalism and intrusions onto the Rail Network by animals and persons other than authorised Personnel of the Access Provider, the Network Controller, the Operators or any other authorised user of the Rail Network.
- (b) The parties acknowledge that none of the Access Provider, Network Controller and Operators are obliged to fence all or any part of the Rail Network for the purposes of this clause 12.

13. EMERGENCIES AND INCIDENTS

13.1 **Emergencies and Incidents:** Emergencies and Incidents on the Rail Network must be dealt with, and attended to, in accordance with the relevant Code.

13.2 **Operator obligations:**

- (a) If an emergency or Incident occurs, each Operator shall use all reasonable endeavours to assist the Network Controller to clear the track (if the track is blocked) or any affected Line Segment(s) so as to enable Services to resume as soon as reasonably possible on the Rail Network.
- (b) All costs of track clearance carried out by (or on behalf of) the Network Controller pursuant to subclause (a) shall be met by the relevant Operator in respect of an Operator Incident.

13.3 **Additional Incident requirements:**

- (a) An Operator must not dispose of or part with possession of any Vehicle involved in an Incident unless written permission to do so is given by the Network Controller.
- (b) An Operator must not dispose of or part with possession of any of the Operator's cargo which is involved in an Incident if the Network Controller advises the Operator not to do so.

13.4 **Reports to third parties:** Where the further investigation of an Incident is required to comply with a party's reporting obligations at law or to any Authority, the parties shall provide each other with reasonable access to their records (stored in any format) so as to enable the relevant party as the case may be to finalise and issue any such report arising from the further investigations. Subject to all applicable laws, the parties shall, where considered appropriate, consult with one another regarding the preparation of such reports. The costs of preparing such a report shall be for the party who is required to submit such report.

14. INDEMNITIES AND LIABILITIES

14.1 **Force Majeure Events:** No party has any liability to another party for a breach of these Terms or any relevant Access Agreement to the extent that the breach is caused by or arises from a Force Majeure Event, provided that:

- (a) a party affected by the Force Majeure Event ("**Affected Party**"), on becoming aware of the Force Majeure Event, promptly notifies the other parties of the nature, and the expected duration, of the Force Majeure Event and the obligation(s) affected by it; and
- (b) other than where the Force Majeure Event relates to an industrial relations issue, the Affected Party uses reasonable endeavours to mitigate the effects of the Force Majeure Event following its occurrence and performs the Affected Party's obligations which are not affected by the Force Majeure Event.

14.2 **Operator to Access Provider indemnity:** An Operator shall indemnify the Access Provider for and against all claims, costs, damages, expenses, losses, liabilities and proceedings ("**additional costs**" for the purposes of this clause 14.2) arising as a result of or in connection with:

- (a) the death or injury of any person;
- (b) damage to or loss of any property,

arising out of or in connection with:

- (c) the Operator's or its Personnel's negligence (in connection with these Terms or its Access Agreement including operation of its Services) or non-performance or breach of its obligations under or in connection with these Terms or its Access Agreement;
- (d) the use by the Operator of the Rail Network in breach of these Terms or its Access Agreement;
- (e) the presence upon or within the Rail Network of any property, Personnel, customers or other invitees of:
 - (i) the Operator; or
 - (ii) the Operator's Personnel or customers,

in breach of these Terms or its Access Agreement,

provided that the indemnity applies only in respect of any additional costs reasonably incurred by the Access Provider as a direct result of an event described in subclause (a) to (e) above.

Where the Access Provider or any related party of the Access Provider also acts as an Operator on the Rail Network, the indemnity contained in this clause shall not apply in respect of that party's capacity as an Operator, but clauses 14.3 and 14.4 shall apply as applicable.

14.3 **Operator to Operator indemnity:** Each Operator ("**Liable Operator**") shall indemnify the other Operators for all claims, costs, damages, expenses, losses, liabilities and proceedings ("**additional costs**" for the purposes of this clause 14.3) arising as a result of or in connection with:

- (a) the death or injury of any person;
- (b) damage to or loss of any property,

arising out of or in connection with:

- (c) the Liable Operator's or its Personnel's negligence (in connection with these Terms or its Access Agreement including operation of its Services) or non-performance or breach of the Liable Operator's obligations, under or in connection with these Terms or the Liable Operator's Access Agreement;
- (d) the use by the Liable Operator of the Rail Network in breach of these Terms or the Liable Operator's Access Agreement; or
- (e) the presence upon or within the Rail Network of any property, Personnel, customers or other invitees of:
 - (i) the Liable Operator; or
 - (ii) the Liable Operator's Personnel or customers,

in breach of these Terms or the Liable Operator's Access Agreement,

provided that the indemnity applies only in respect of any additional costs reasonably incurred by the Operator as a direct result of an event described in subclause (a) to (e) above.

14.4 Access Provider's indemnity: The Access Provider shall indemnify an Operator for all claims, costs, damages, expenses, losses, liabilities or proceedings ("**additional costs**" for the purposes of this clause 14.4) arising as a result of or in connection with:

- (a) the death or injury of any person; or
- (b) damage to or loss of any property,

arising out of or in connection with:

- (c) the Access Provider's or its Personnel's negligence (in connection with these Terms or the Access Agreement with that Operator including operation of the Rail Network) or non-performance or breach of the Access Provider's obligations under or in connection with these Terms or the Access Agreement with that Operator;
- (d) the use by the Access Provider of the Rail Network in breach of these Terms or the Access Agreement with that Operator; or
- (e) the presence upon or within the Rail Network of any property, Personnel, customers (but excluding any Operators) already covered by (d) or other invitees of:
 - (i) the Access Provider; or
 - (ii) the Access Provider's Personnel or customers (but excluding any Operators), in breach of these Terms or the Access Agreement with that Operator,

provided that the indemnity applies only in respect of any additional costs reasonably incurred by the Operator as a direct result of an event described in subclause (a) to (e) above.

14.5 CLEAR Agreement: Each Operator (excluding the Access Provider if it is an Operator) shall indemnify the Crown and the Access Provider (if a different person from the Crown) ("**Indemnified Parties**") for and against all claims which may be incurred by the Indemnified Parties under the CLEAR Agreement arising as a result of or in connection

with the acts or omissions of that Operator or its Personnel or customers upon or within the Rail Network (or any parts thereof). For the avoidance of doubt, clause 2.6 of the Transfer Agreement dated 2 September 2011 between the Access Provider and Auckland Transport is not affected by this Agreement.

14.6 **Claims handling - Third Party Claims:** In the event of any claim or proceedings of any nature being brought by a third party against a party to these Terms arising in connection with these Terms or the relevant Access Agreements (including, to avoid doubt, a claim which falls within the coverage of the indemnities set out in clauses 14.2, 14.3, 14.4 and 14.5) ("**Third Party Claim**"), in respect of which that party ("**Claimant Party**") makes, or may seek to make, any claim against another party to these Terms ("**Liable Party**"), the following provisions apply:

- (a) The Claimant Party shall promptly (and in any event not later than five Business Days after the making of the Claim) give notice of the Third Party Claim (including reasonable details) to the Liable Party and the Claimant Party shall not make any payment or admission of liability in respect of the Third Party Claim, or take any other steps which may in any way prejudice the defence of that claim, without the prior written consent of the Liable Party.
- (b) The Claimant Party shall ensure that the Liable Party may at the Liable Party's option (after full consultation with the Claimant Party), conduct all negotiations and prosecute or defend any proceedings relating to the Third Party Claim. For this purpose, the Claimant Party must make available to the Liable Party all information, books and records, and give other cooperation, as the Liable Party may reasonably require for this purpose.
- (c) The costs in respect of any Third Party Claim proceedings shall be borne by:
 - (i) if the third party claims or proceedings are wholly or substantially successful, the Claimant Party; and
 - (ii) in all other circumstances, the Liable Party.
- (d) Where any payment has been made by the Liable Party in respect of any Third Party Claim, the Claimant Party will, if called upon, assign to the Liable Party or its nominee, or otherwise hold in trust for it, the benefit of any debt, claim, cause of action, rights or other matter (if capable of assignment) in respect of which, the payment has been made.

14.7 **Limitations on Liability:** The liability of a party (the "**Liable Party**") to any other party (the "**Claimant Party**") under or in connection with these Terms and any relevant Access Agreement (including, for the avoidance of doubt the indemnities set out in clauses 14.2, 14.3, 14.4 and 14.5) shall be limited, restricted or reduced as follows:

- (a) the liability shall not extend to any claims, costs, damages, expenses, losses, liabilities or proceedings to the extent that the Claimant Party has, by its negligence, non performance or breach of these Terms, any agreement for maintenance of the Rail Network or any relevant Access Agreement, contributed to such liability, loss or damage (provided that this subclause shall not apply in respect to any liability to be apportioned under clause 14.8);
- (b) the liability will not extend to or include loss of profits, loss of revenues or other similar financial loss;
- (c) subject to clauses 14.7(d), 14.7(e), 14.7(f) and 14.8, the liability of the Access Provider to an Operator shall not extend to or include any claims, costs, damages, expenses, losses, liabilities or proceedings arising in relation to the

obligations of the Access Provider under these Terms or any relevant Access Agreement to the extent that the Operator (or any related company of that Operator) has contracted with the Access Provider to perform obligations or services in order to enable the Access Provider to meet the Access Provider's obligations;

- (d) notwithstanding anything in these Terms (but subject to subclause (f) below) or any Access Agreement with any Operator, the total aggregate liability of the Access Provider to all Operators and any other parties to any Access Agreement (including their sublicensees) shall not in any calendar year, in any circumstances, exceed \$4 million (plus GST) but without limiting the Access Provider's obligations to pay any service level rebate or similar payment to any Operator under any relevant Access Agreement. Where the Access Provider has liability to more than one Operator or party, and/or in respect of clause 14.4, and that total liability would, but for the limit in this clause, have exceeded \$4 million, the \$4 million payable by the Access Provider shall be apportioned pro-rata between such Operators and other parties in proportion to the total liability that would have otherwise accrued to such Operators and other parties;
- (e) the total aggregate liability of each Specified Operator to the Access Provider and all other Operators and any other parties to any Access Agreement (including their sub-licensees) in respect of clause 14.2 or 14.3 (as the case may be) shall not in any calendar year, in any circumstances, exceed \$4 million (plus GST) but without limiting the Specified Operator's obligations to pay any other sums payable by that Specified Operator to the Access Provider under its Access Agreement. Where any Specified Operator has liability to more than one party in respect of clause 14.2 or 14.3 (as the case may be) and that total liability would, but for the limit in this clause, have exceeded \$4 million, the \$4 million payable by the relevant Specified Operator shall be apportioned pro-rata between the such parties in proportion to the total liability that would have otherwise accrued to such parties;
- (f) without limiting the liability of the Access Provider under any Access Agreement with a Specified Operator, the total aggregate liability of:
 - (i) the Access Provider to any Operator (other than a Specified Operator) and its sublicensees;
 - (ii) each Operator (other than a Specified Operator) and its sublicensees to the Access Provider,
 - (iii) shall be as otherwise expressly agreed between the Access Provider and that Operator under the relevant Access Agreement; and
- (g) each Operator must procure (in a form to the reasonable satisfaction of the Access Provider) that each sublicensee of any of its Access Rights is bound for the benefit of the Access Provider and other Operators to clauses 14.7(d), 14.7(e), 14.7(f) and 14.8, as if they were Operators under these Terms.
- (h) In this clause 14.7, "**Specified Operator**" means the Metro Service Operators and KiwiRail Limited as the Freight Services Operator and Long Distance Passenger Services Operator (and any sub-licensee of that Operator).

14.8 Apportionment for minor incidents:

- (a) **Apportionment Table:** Where an event listed in Schedule 2 ("**Apportionment Table**") occurs ("**Apportionment Event**") and the costs of the Apportionment Event (as defined in paragraph 4 of Schedule 2) incurred by all affected

Operators and the Access Provider (including costs payable to its maintenance and network control subcontractor if any) are equal to or less than \$250,000 (plus GST) in aggregate, those costs will be apportioned between the Access Provider and Operators in accordance with the Apportionment Table.

- (b) **Apportionment:** For the purposes of the apportionment under clause 14.8(a), the Network Controller will reasonably determine the amounts payable by each party in respect of that Apportionment Event in accordance with the Apportionment Table and the provisions in Schedule 2, and each Operator agrees to accept the Network Controller's determination in respect of that Apportionment Event.
- (c) **Information:** Each Operator shall provide to the Network Controller accurate information in respect of that Operator's costs in respect of each Apportionment Event.
- (d) **Dispute:** Where a party disputes any allocation under this clause, it may refer the matter to dispute resolution under clause 17 (provided that any payments due under Schedule 2 must be paid on the due date, such payments to be without prejudice to subsequent dispute resolution procedures). No party may dispute the specified apportionment rates in the Apportionment Table.
- (e) **Sole liability:** No party shall have any other liability to any other party in respect of any Apportionment Event and to avoid doubt, the indemnities in this clause 14 shall not apply to any such Apportionment Event.
- (f) **Sub-licensees:** Each Operator agrees to pay all costs apportioned to it in accordance with these Terms, including on the account of a sub-licensee of that Operator.

14.9 **Damage:** Subject to clauses 14.10 and 14.11, where part of the Rail Network has been partially or totally damaged or destroyed as a result of the occurrence of any Force Majeure Event or Incident:

- (a) The Access Provider shall:
 - (i) advise the Operators with Access Rights on that part of the Rail Network (and the Crown and any person that holds the right to nominate a person for such Access Rights) (each, an "**Affected Person**") of the various options and alternatives for restoration; and
 - (ii) promptly consult with each Affected Person as to appropriate and necessary actions; and
 - (iii) except for an Apportionment Event, negotiate with each Affected Person the proportion that each Affected Person will pay towards restoration of the affected part of the Rail Network; and
 - (iv) use its reasonable endeavours (upon receiving the required funding or entering an unconditional agreement for the provision of the required funding) to restore the Rail Network as soon as possible to at least the condition or reasonably equivalent condition that existed immediately prior to the occurrence of the Force Majeure Event or the Incident.
- (b) The Access Provider may determine not to restore any part of the Rail Network other than the Auckland Network or the Wellington Network which has been damaged or destroyed, provided that in making such decision, it considers the

current and anticipated use of the affected part of the Rail Network and the consequences for that part of the Rail Network not being restored.

- (c) Where the Access Provider determines to restore the affected part of the Rail Network, each Operator shall provide such assistance as is reasonably requested by the Access Provider regarding such restoration.

14.10 Major Disasters: Notwithstanding clause 14.9:

- (a) where part of the Rail Network has been partially or totally damaged or destroyed as a result of any Force Majeure Event or Incident; and
- (b) the Access Provider acting reasonably estimates that the cost of restoring the affected part of the Rail Network would be:
 - (i) for insured events, in excess of the limit of cover under the Access Provider's relevant policy of material damage insurance; or
 - (ii) in all other cases, in excess of \$4 million (plus GST),

then:

- (c) the Access Provider, after calculating its estimate for such restoration costs, shall promptly consult in good faith with the Affected Persons on options and alternatives available for restoration of the affected part of the Rail Network, including the extent to which the Access Provider and the Affected Persons might bear uninsured costs and the extent to which, if at all, any costs borne by the Access Provider shall be recovered from the Affected Persons; and
- (d) if the Access Provider and some or all of the Affected Persons agree on an option to restore the affected part of the Rail Network under subclause (c), they shall negotiate appropriate documentation for those arrangements. Neither party shall be contractually bound until a contract is signed by both of them setting out those arrangements.

14.11 Restoration:

- (a) If the Access Provider and the Affected Persons cannot reach agreement under clause 14.10(d), an Affected Person may notify the Access Provider in writing that it elects to terminate its Access Rights in respect of the affected part of the Rail Network.
- (b) If some or all of the Affected Persons (or any other person) agree to fully meet the cost of restoration, the Access Provider shall proceed with the restoration work in consultation with (and subject to the approval of) those Affected Persons (including in relation to any tender and contract negotiations for such works required to restore the Rail Network).

14.12 Effect of termination: Where any Access Rights are terminated under clause 14.11 in respect of any part of the Rail Network, despite anything to the contrary in these Terms:

- (a) the Affected Person has no rights in respect of terminated parts of the Rail Network if the Access Provider decides to restore those parts at its own cost; and
- (b) with effect on and from such date of termination, any access fee paid by the Affected Person will be reduced commensurate with the reduction in the Affected Operator's Access Rights.

- 14.13 **Emergency repairs of restoration:** Notwithstanding any other provision of these Terms, the Access Provider shall be entitled to immediately undertake any emergency repairs or restoration of any part of the Rail Network following any damage or destruction of such part of the Rail Network due to any Force Majeure Event.
- 14.14 **Liability in tort excluded:** Subject to clauses 14.2, 14.3, 14.4, 14.5, and 14.8, no party shall be liable to the other party in tort (whether as a result of negligence or otherwise) for any reason whatsoever in relation to the subject matter of these Terms or any relevant Access Agreement, it being intended that the relationship of the parties in this regard shall be solely governed by contract. To avoid doubt, the rights of the Access Provider and the Network Controller to undertake inspections and reviews and similar rights do not create any duty of care to the Operator, any other Operators or to any Authority with respect to the safety or standard of the operations or otherwise on the Rail Network, Auckland Network or Wellington Network. The Access Provider and the Network Controller shall be under no liability to any Operator for any deficiency in that Operator's or any other Operator's operations or Vehicles.
- 14.15 **Dispute resolution:** Any dispute among the parties in respect of a claim for indemnification under clauses 14.2, 14.3, 14.4, and 14.5 or the application of the liability limitations in clauses 14.7 and 14.8 shall be resolved under the dispute resolution procedure set out in clause 17.

15. INSURANCE

- 15.1 **Insurance:** Each Operator and the Access Provider must obtain public liability insurance on terms reasonably satisfactory to the Access Provider with minimum cover of at least \$50,000,000.
- 15.2 **Copy of insurance policy:** Each Operator shall provide (on request by the Access Provider) the Access Provider with details of its insurance policy as required under clause 15.1 together with evidence to show that such policy is current. The Access Provider shall provide (on request by an Operator) such Operator with details of its insurance policy as required under clause 15.1 together with evidence to show that such policy is current.
- 15.3 **Operators as contractors:** Where an Operator is also directly or indirectly a contractor or subcontractor of the Access Provider for the provision of maintenance, network control or similar services, the indemnities and limitation of liability in clauses 14.2, 14.3, 14.5, 14.7 and 14.8 shall not apply to that Operator in respect of its capacity as contractor or sub-contractor.

16. CPI ADJUSTMENT

- 16.1 **CPI adjustments:** On the third anniversary of the Commencement Date, and every three years after that, the monetary amounts in clause 14.7 above will be increased with the upwards movement of the Capital Goods Price Index (or any similar or equivalent index if the Capital Goods Price Index ceases to be published) in the previous three year period.

17. DISPUTE RESOLUTION

- 17.1 **Internal review:** If there is a disagreement or dispute between any parties in respect of these Terms or the relevant Access Agreement ("**Dispute**") which remains unresolved for a period of 10 Business Days, any of the parties involved in the Dispute may, by 5 Business Days' written notice to the other parties involved, require one designated

senior manager or officer of each party involved to meet to review and use every reasonable effort to develop a workable resolution to the Dispute.

17.2 **Chief Executives:** If the Dispute remains unresolved for a further period of 10 Business Days following the giving of notice in accordance with clause 17.1, each of those parties will refer the Dispute to their respective Chief Executives who will use every reasonable effort to develop a workable resolution to the Dispute.

17.3 **Arbitration and third party expert:** Other than in relation to clauses 4.5(f) and 4.5(g) (where, except in relation to safety considerations, referral to arbitration or a third party expert under this clause 17.3 requires the agreement of both Chief Executives), if a Dispute remains unresolved for a further period of 10 Business Days following referral to the Chief Executives in accordance with clause 17.2, the Dispute may be referred:

- (a) to arbitration as follows, by any party giving written notice of the same to the other party or parties to the Dispute:
 - (i) by a single arbitrator, who shall be appointed by agreement of the parties, or, in the event that an arbitrator cannot be agreed by the parties within five Business Days after (and exclusive of) the date the referral notice is given, by the President from time to time of LEADR NZ;
 - (ii) in accordance with the Arbitration Act 1996; and
 - (iii) the arbitrator's decision, including as to costs, is final and binding on the parties; or
- (b) for determination by an agreed independent third party expert with the requisite skills and expertise in accordance with the following provisions:
 - (i) the referral shall be commenced by any party giving written notice on the other party or parties to the Dispute stating the subject matter and details of the Dispute and requiring the Dispute to be referred to an independent third party expert;
 - (ii) if the parties are unable to agree an independent third party expert within five Business Days after, and exclusive of the date of, giving of the referral notice is given, the expert shall, at the request of a party, be appointed by the President of the Institute of Professional Engineers of New Zealand or his or her delegate;
 - (iii) in reaching his or her decision, the expert shall have regard to any written submissions made by a party;
 - (iv) the parties must provide the expert with any assistance that he or she may request in order to reach a decision;
 - (v) the expert's decision (in the absence of a manifest error) is final and binding on the parties;
 - (vi) the expert shall act as an expert and not an arbitrator and the Arbitration Act 1996 shall not apply; and
 - (vii) unless otherwise agreed by the parties or the expert considers it unreasonable, the expert's fees shall be borne equally between the parties to the Dispute,

provided that, but subject to clause 17.5, if any party to the Dispute has referred the Dispute to either arbitration or expert determination in accordance with the above, none of the other parties to the Dispute may refer that Dispute to resolution by way of another alternative dispute resolution mechanism (being expert determination or arbitration respectively and as applicable).

- 17.4 **Decision:** The decision of an arbitrator or an expert will be final and binding (in the absence of manifest error).
- 17.5 **Time of the essence:** Where time is of the essence or where otherwise required by these Terms or a relevant Access Agreement a party to a Dispute may at any time refer the Dispute for determination by an independent third party expert in accordance with clause 17.3(b).
- 17.6 **Timely decisions:** Any Dispute referred to arbitration or a third party expert will be dealt with on an expeditious basis with both parties using all commercially reasonable efforts to obtain a timely decision of the arbitrator or expert. The parties shall implement any such decision in a timely fashion.
- 17.7 **Other proceedings:** Subject to the right of a party to apply to a court for any interim or preliminary relief in respect of a Dispute, no party shall bring any court proceedings with respect to any Dispute while the processes in clauses 17.1 to 17.3(b) are underway. To avoid doubt, absent manifest error by the person(s) determining the Dispute, no party shall bring any court proceeding with respect to any Dispute which has been determined under clause 17.3(a) or 17.3(b).

18. CONFIDENTIAL INFORMATION

- 18.1 **Confidential Information:** A party that holds Confidential Information or receives Confidential Information from another party shall:
- (a) not use or disclose the Confidential Information (nor allow it to be used) for any purpose other than for the purpose of performing that party's obligations or exercising that party's rights under, or for the purposes authorised by, these Terms or the relevant Access Agreement, such permitted purposes including:
 - (i) the disclosure of such information to a party's professional advisers and financiers (who owe a duty of confidentiality to the disclosing party);
 - (ii) information disclosed to a bona fide purchaser of the business (or shares) of a party involving the transfer of any Access Rights or Infrastructure, or any potential permitted assignee of any Access Rights, or any potential tenderer to a Regional Authority to become a Metro Service Operator, provided the relevant proposed purchaser, potential assignee or potential tenderer has executed an appropriate confidentiality undertaking in favour of the relevant other party or parties; or
 - (iii) disclosure with the consent of that other party (such consent not to be unreasonably withheld);
 - (b) keep all materials containing Confidential Information in secure custody that is appropriate having regard to the form in which such materials are stored and the nature of the Confidential Information contained in those materials;

- (c) exercise at least the same standard of care in the treatment and protection of the Confidential Information as it exercises for its own confidential information of a similar nature and sensitivity; and
- (d) at the request of a party to an Access Agreement that has been terminated, promptly return to that party all Confidential Information (including any copies of it) in its possession or control (unless retention of such Confidential Information is required at law, in which case, retention during the required period is permitted).

18.2 **Disclosure under law:** If a party is legally required to disclose any of another party's Confidential Information, it must, where possible, advise that party before disclosing the Confidential Information and must only disclose that part of the Confidential Information which the disclosing party's legal advisers reasonably believe is necessary under the relevant law.

18.3 **Scope of confidentiality:**

- (a) If there is any uncertainty as to whether information is Confidential Information or not, it shall be treated as Confidential Information until such time as the party to whom the Confidential Information relates advises that the information is not Confidential Information.
- (b) The parties' obligations under this clause 18 shall survive the termination of this agreement.

19. MISCELLANEOUS PROVISIONS

19.1 **Personnel:** Each party shall be responsible for its Personnel's acts and omissions in relation to matters the subject of these Terms, including ensuring compliance with that party's obligations under these Terms by such Personnel.

19.2 **Variation:** Any variation to these Terms must be recorded in writing and signed by the authorised representatives of each party.

19.3 **Notices:**

- (a) Each Operator and the Access Provider must notify the other parties of their address for service of notices under these Terms.
- (b) Notices under these Terms must be in writing and must be sent to the address notified by the applicable party under this clause.
- (c) Any notice or invoice sent by post to that contact address is deemed to have been delivered three Business Days after it is posted.
- (d) A notice may be sent by fax or email. Any notice sent by fax or email to a notified contact number or email address will be deemed to have been delivered:
 - (i) subject to subclauses (aa) and (bb) below, at the time of transmission.
A notice given by:
 - (aa) fax, is not deemed received unless (if receipt is disputed) the party giving notice produces a facsimile transmission report of the device from which the transmission was made which

evidences full transmission, free of errors, to the facsimile number of the party given notice;

(bb) email, is not deemed received unless (if receipt is disputed) the party giving notice produces a confirmation of delivery report from its information system, which evidences that the email was sent to the email address of the party given notice and the date and time at which it entered the party given notice's information system; and

(ii) if sent between the hours of 9am and 5pm on a Business Day, at the time of transmission, otherwise at 9am on the Business Day most immediately after the time of sending.

19.4 **Contracts (Privity) Act 1982:** These Terms are for the benefit of, and are intended to be enforceable by, any party who becomes bound by these Terms under the Contracts (Privity) Act 1982.

19.5 **No waiver:** No waiver of any breach, or failure to enforce any provision, of these Terms at any time by any party in any way affects, limits or waives the right of such party to later enforce and compel strict compliance with the provisions of these Terms. No consent under these Terms shall be valid unless it is in writing.

19.6 **No implied waivers:** A failure to exercise or delay in exercising any right under these Terms will not operate as a waiver of that right, nor will any single or partial exercise of any right preclude any other or further exercise of that right or the exercise of any other right.

19.7 **Relationship of the parties:** Nothing in these Terms is deemed or construed to constitute any party a partner or agent of the other or to create any trust.

19.8 **Governing law:** These Terms are governed by, and construed in accordance with, the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

19.9 **Further assurance:** Each party must promptly do everything reasonably required to give effect to these Terms according to their spirit and intent.

19.10 **Partial invalidity:** The illegality, invalidity or unenforceability at any time of any provision of these Terms under any law does not affect the legality, validity or enforceability of the remaining provisions of these Terms nor the legality, validity or enforceability of those provisions under any other law.

SCHEDULE 1

Line Segments

Rail Network

Line segment	Group	Sub segment	Line code	Line	Track section	Track section name	From km	To km	Route length
North of Huapai	5	Dargaville	85	DARG	823	Dargaville Branch	0.000	49.599	49.599
	5	Whangarei Port	87	WRIPT	825	Port Whangarei	0.000	2.250	2.250
	4	Waitakere-Whangarei	81	NAL	833	Huapai-Wellsford	45.570	119.115	73.545
	4	Waitakere-Whangarei	81	NAL	834	Wellsford-Waiotira	119.115	178.778	59.663
	4	Waitakere-Whangarei	81	NAL	835	Waiotira-Portland	178.778	199.300	20.522
	4	Waitakere-Whangarei	81	NAL	836	Portland-Whangarei	199.300	212.198	12.898
	5	North of Whangarei	81	NAL	837	Whangarei-Otiria	212.198	284.000	71.802
Auckland Network	1	NIMT-Auckland	01	NIMT	803	Pukekohe-Papakura	628.860	646.525	17.665
	1	NIMT-Auckland	01	NIMT	804	Papakura-Westfield	646.525	663.833	17.308
	1	NIMT-Auckland	01	NIMT	805	Westfield-Britomart	663.833	681.836	18.003
		Manukau	86	MNK	816	Manukau Branch	0.000	1.955	1.955
		Strand P1 and P2	82	NEW	815	Strand Link	680.400	3.000	0.600
	1	Newmarket-Quay Park	82	NQPL	815	Newmarket Branch	0.507	3.296	2.789
	1	Onehunga	83	ONEH	817	Onehunga Branch	0.000	3.499	3.499
	1	NAL-Metro	81	NAL	831	Westfield-Avondale	0.000	16.582	16.582
	1	NAL-Metro	81	NAL	832	Avondale-Waitakere	16.582	35.956	19.374
	Waitekere-Whangarei	81	NAL	833	Waitakere-Huapai	35.956	45.570	9.614	
Hamilton-Pukekohe	1	NIMT-Golden Triangle	01	NIMT	799	Hamilton-Te Rapa	541.454	543.417	1.963
	1	NIMT-Golden Triangle	01	NIMT	800	Te Rapa-Huntly	543.417	573.020	29.603
	1	NIMT-Golden Triangle	01	NIMT	801	Huntly-Te Kauwhata	573.020	590.060	17.040
	1	NIMT-Golden Triangle	01	NIMT	802	Te Kauwhata-Pukekohe	590.060	628.860	38.800
Golden Triangle	3	Golden Triangle Feeders	84	MISBS	819	Mission Bush Branch	0.000	17.890	17.890
	1	Metroport	51	ECMT	851	Hamilton-Morrinsville	0.000	30.853	30.853
	1	Metroport	51	ECMT	852	Morrinsville-Waharoa	30.853	52.007	21.154
	1	Metroport	51	ECMT	853	Waharoa-Tauranga	52.007	97.028	45.021
	1	Metroport	51	ECMT	854	Tauranga-Te Maunga	97.028	104.557	7.529
	2	Eastern Forestry	51	ECMT	855	Te Maunga-Hawkens	104.557	167.363	62.806
	2	Eastern Forestry	51	ECMT	856	Hawkens-Kawerau	167.363	183.500	16.137
	6	Taneatua	58	TNTUA	861	Hawkens-Taneatua	0.000	26.400	26.400
	3	Golden Triangle Feeders	54	WTOA	865	Morrinsville-Waitoa	0.000	11.500	11.500
	3	Waikato Forestry	55	KNLTH	868	Waharoa-Putaruru	0.000	35.695	35.695
	3	Waikato Forestry	55	KNLTH	869	Putaruru-Kinleith	35.695	66.200	30.505
	6	Rotorua	56	RTRUA	870	Putaruru-Rotorua	0.000	49.000	49.000
	3	Golden Triangle Feeders	52	RTWRO	872	Rotowaru Branch	0.000	8.000	8.000
	3	Golden Triangle Feeders	53	CAMB	874	Hautapu	0.000	15.500	15.500
	2	Metroport	57	MTMNG	876	Mt Maunganui Branch	0.000	6.600	6.600
	2	Eastern Forestry	59	MUPRA	881	Kawerau-Murupara	0.000	57.200	57.200
	3	Golden Triangle Feeders	50	KMHA	890	Kimihia Siding	0.000	3.300	3.300
Main Trunk North Island	1	Waikanae-Hamilton	01	NIMT	791	Waikanae-Otaki	55.850	70.900	15.050
	1	Waikanae-Hamilton	01	NIMT	792	Otaki-Palmerston North	70.900	135.405	64.505
	1	Waikanae-Hamilton	01	NIMT	793	Palmerston North-Marton	135.405	179.710	44.305
	1	Waikanae-Hamilton	01	NIMT	794	Marton-Ohakune	179.710	316.443	136.733
	1	Waikanae-Hamilton	01	NIMT	795	Ohakune-Owhango	316.443	371.140	54.697
	Waikanae-Hamilton	01	NIMT	796	Owhango-Okahukura	371.140	407.670	36.530	

Line segment	Group	Sub segment	Line code	Line	Track section	Track section name	From km	To km	Route length
	1	Waikanae-Hamilton	01	NIMT	797	Okahukura-Te Kuiti	407.670	475.376	67.706
	1	Waikanae-Hamilton	01	NIMT	798	Te Kuiti-Hamilton	475.376	541.454	66.078
Milk Route and Branches	3	MNPL branches	42	WANG	711	Wanganui Branch	0.000	8.400	8.400
	3	MNPL branches	43	CASTL	712	Castlecliff Branch	0.000	6.510	6.510
	3	MNPL branches	44	KPUNI	714	Kapuni Branch	0.000	11.200	11.200
	6	Stratford-Okahukura	46	SOL	721	Stratford-Okahukura	0.000	143.350	143.350
	1	Milk Route	41	MNPL	730	Marton-Easttown	0.000	40.411	40.411
	1	Milk Route	41	MNPL	731	Easttown-Whareroa	40.411	129.845	89.434
	4	Whareroa-New Plymouth	41	MNPL	732	Whareroa-Eltham	129.845	151.120	21.275
	4	Whareroa-New Plymouth	41	MNPL	733	Eltham-Stratford	151.120	160.859	9.739
	4	Whareroa-New Plymouth	41	MNPL	734	Stratford-Smart Road	160.859	203.826	42.967
	4	Whareroa-New Plymouth	41	MNPL	735	Smart Road-Breakwater	203.826	212.850	9.024
	1	Milk Route	75	PNGL	751	Palmerston North-Woodville	0.000	26.830	26.830
1	Milk Route	75	PNGL	752	Woodville-Oringi	26.830	44.577	17.747	
Other Central North Island	2	Oringi-Napier	75	PNGL	753	Oringi-Marakeke	44.577	96.017	51.440
	2	Oringi-Napier	75	PNGL	754	Marakeke-Hastings	96.017	159.736	63.719
	2	Oringi-Napier	75	PNGL	755	Hastings-Pandora	159.736	180.040	20.304
	5	Napier-Gisborne	75	PNGL	756	Pandora-Wairoa	180.040	294.097	114.057
	5	Napier-Gisborne	75	PNGL	757	Wairoa-Gisborne	294.097	391.610	97.513
	3	Napier Port	76	NPRPT	768	Ahuriri Branch	0.000	4.800	4.800
	5	Masterton-Woodville	71	WRAPA	774	Masterton-Woodville	91.600	171.143	79.543
4	Gracefield	73	GRAC	781	Gracefield Branch	0.000	3.100	3.100	
Wellington Network	1	Wairarapa-Metro	71	WRAPA	770	Kaiwharawhara-Petone	1.822	10.214	8.392
	1	Wairarapa-Metro	71	WRAPA	771	Petone-Woburn	10.214	14.082	3.868
	1	Wairarapa-Metro	71	WRAPA	772	Woburn-Upper Hutt	14.082	32.049	17.967
	1	Wairarapa-Metro	71	WRAPA	773	Upper Hutt-Masterton	32.049	91.600	59.551
	1	Melling	72	MEL	783	Melling Branch	0.000	2.997	2.997
	1	Johnsonville	74	JVIL	785	Johnsonville	0.000	10.420	10.420
	1	NIMT-Wellington	01	NIMT	786	Wellington-Kaiwharawhara	0.000	2.550	2.550
	1	NIMT-Wellington	01	NIMT	787	Kaiwharawhara-Porirua	2.550	17.199	14.649
	1	NIMT-Wellington	01	NIMT	788	Porirua-Plimmerton	17.199	24.480	7.281
	1	NIMT-Wellington	01	NIMT	789	Plimmerton-South Junction	24.480	32.097	7.617
1	NIMT-Wellington	01	NIMT	790	Sth Junction-Waikanae	32.097	55.850	23.753	
Main Trunk South Island	2	Addington-Grassmere	02	MNL	921	Addington-Rangiora	0.000	29.651	29.651
	2	Addington-Grassmere	02	MNL	922	Rangiora-Kaikoura	29.651	189.936	160.285
	2	Addington-Grassmere	02	MNL	923	Kaikoura-Lake Grassmere	189.936	283.670	93.734
	2	Grassmere-Picton	02	MNL	924	Lk Grassmere-Spring Crk	283.670	324.821	41.151
	2	Grassmere-Picton	02	MNL	925	Spring Creek-Picton	324.821	348.300	23.479
Lyttelton-Rolleston	2	Lyttelton Sidings	98	LYTT	949	Port Lyttelton	0.000	1.940	1.940
	2	Lyttelton-Rolleston	03	MSL	950	Lyttelton-Waltham	0.000	9.290	9.290
	2	Lyttelton-Rolleston	03	MSL	951	Waltham-Middleton	9.290	14.087	4.797
	2	Lyttelton-Rolleston	03	MSL	952	Middleton-Hornby	14.087	19.541	5.454
	2	Lyttelton-Rolleston	03	MSL	953	Hornby-Rolleston	19.541	31.005	11.464
West Coast	2	Midland	91	MID	901	Rolleston-Springfield	0.000	48.086	48.086
	2	Midland	91	MID	902	Springfield-Cass	48.086	91.950	43.864
	2	Midland	91	MID	903	Arthurs Pass-Otira	116.224	129.426	13.202
	2	Midland	91	MID	904	Otira-Stillwater	129.426	196.648	67.222
	2	Midland	91	MID	905	Stillwater-Greymouth	196.648	213.400	16.752
	2	Midland	91	MID	906	Cass-Arthurs Pass	91.950	116.224	24.274

Line segment	Group	Sub segment	Line code	Line	Track section	Track section name	From km	To km	Route length
	2	Hokitika	92	HKTKA	908	Hokitika Branch	0.000	39.300	39.300
	2	Rapahoe	95	RPHOE	911	Rapahoe Branch	0.000	9.560	9.560
	2	Stillwater-Ngakawau	93	SNL	913	Stillwater-Reefton	0.000	61.182	61.182
	2	Stillwater-Ngakawau	93	SNL	914	Reefton-Westport	61.182	134.327	73.145
	2	Stillwater-Ngakawau	93	SNL	915	Westport-Ngakawau	134.327	166.980	32.653
	3	Westport	94	WSPT	916	Westport Link	0.000	2.500	2.500
Southern South Island	3	Hornby	96	HRNBY	948	Hornby Industrial Line	0.000	4.535	4.535
	2	Rolleston-Dunedin	03	MSL	954	Rolleston-Tinwald	31.005	98.920	67.915
	2	Rolleston-Dunedin	03	MSL	955	Tinwald-Washdyke	98.920	164.905	65.985
	2	Rolleston-Dunedin	03	MSL	956	Washdyke-Timaru	164.905	170.140	5.235
	2	Rolleston-Dunedin	03	MSL	957	Timaru-Oamaru	170.140	253.133	82.993
	2	Rolleston-Dunedin	03	MSL	958	Oamaru-Palmerston	253.133	315.110	61.977
	2	Rolleston-Dunedin	03	MSL	959	Palmerston-Sawyers Bay	315.110	368.362	53.252
	2	Rolleston-Dunedin	03	MSL	960	Sawyers Bay-Dunedin	368.362	378.119	9.757
	2	Dunedin-Invercargill	03	MSL	961	Dunedin-Wingatui	378.119	390.816	12.697
	2	Dunedin-Invercargill	03	MSL	962	Wingatui-Balclutha	390.816	461.835	71.019
	2	Dunedin-Invercargill	03	MSL	963	Balclutha-Gore	461.835	537.612	75.777
	2	Dunedin-Invercargill	03	MSL	964	Gore-Invercargill	537.612	610.520	72.908
	3	Southland Feeders	66	BLUFF	974	Bluff Branch	0.000	27.510	27.510
	2	Southland Feeders	67	OHAI	975	Invercargill-Makarewa	0.000	12.000	12.000
	2	Southland Feeders	67	OHAI	976	Makarewa-Wairio	12.000	79.999	67.999
	3	Otago Feeders	64	TAI	981	Wingatui-End Of Branch	0.000	3.500	3.500
	2	Otago Feeders	61	PTCHS	990	Port Chalmers Branch	0.000	2.000	2.000
	3	Southland Feeders	65	FNGD	996	Finegand Branch	0.000	3.600	3.600

SCHEDULE 2

Apportionment Table

1. Categories of and percentages of liability for Apportionment Events:

Category of Apportionment Event	Operator	Access Provider
1. Derailments		
(a) When entering or leaving yards with mainline trains.	20	80
(b) Outside yards.	5	95
(c) Within yards	20	80
2. Level Crossing Accidents - Note: where a level crossing accident causes a mainline derailment, such derailment will be treated as a level crossing accident.	90	10
3. Collisions		
(a) Locomotive to locomotive (including shunts).	50	50
(b) Hi-Rail to locomotive.	20	80
(c) Hi-Rail to Hi-Rail.	0	100
(d) Locomotive with people or animals.	100	0
(e) Hi-Rail with people or animals.	0	100
4. Loading Irregularities		
(a) All loading irregularities which cause an accident.	100	0
5. Fires		
(a) All fires in connection with the operation of the Rail Network caused either by a Vehicle or any Operator/the Access Provider (not including fires at sites where neither the relevant Operator/Access Provider nor any related Operator has a presence).	60	40
6. Line Blockages		
(a) Caused by track irregularities including formation problems, track structure problems, and broken rail.	0	100

In this table "Locomotive" or "locomotive" means a Vehicle other than a Hi-Rail Vehicle. Where more than one Operator (or sublicensee) is involved in any Apportionment Event the Operator's liability under the above table shall be apportioned between them by the Network Controller on a fair and reasonable basis.

2. The Apportionment Events to be apportioned by the Network Controller in accordance with this Schedule 2 and clause 14.8 shall not include any Apportionment Event caused by a Force Majeure Event.
3. The costs and expenses to be apportioned by the Network Controller in accordance with this Schedule 2 and clause 14.8 shall comprise those costs and expenses related to:
 - (a) the Access Provider's Incident management, response and related services;
 - (b) damage to or loss of any property (including damage to the Rail Network); and
 - (c) the death or injury of any person,but shall exclude consequential loss (other than the cost of alternative transport relating to the relevant Apportionment Event), loss of profits, loss of revenues or other similar financial loss.
4. The parties agree to review the Apportionment Table on or around the first anniversary of the Commencement Date and at three yearly intervals after the date of the first review to consider how accurately the Apportionment Table reflects a fair and reasonable allocation of costs and expenses between the parties in respect of such events during the preceding period under review. Where the Apportionment Table does not achieve or accurately reflect such position, the parties agree to negotiate in good faith to amend the Apportionment Table so that it more accurately reflects a fair and reasonable allocation of such costs and expenses between the parties during the upcoming 3 year period.
5. An Operator must provide the Network Controller with details of its indicative costs and/or expenses in relation to an Apportionment Event as soon as possible after that Apportionment Event but no later than 20 Business Days after that Apportionment Event. The Network Controller will calculate indicative costs and/or expenses to be apportioned as referred to in paragraph 3 above. Following receipt of such details the Network Controller will promptly advise Operators and the Access Provider of the amounts allocated between them and the net amounts payable between them to give effect to the allocation. Following such advice being given, the Network Controller shall advise the parties of the payments due and the invoices to be issued and a party receiving such an invoice must pay the amount invoiced within 10 Business Days of receiving that invoice.
6. As soon as reasonably possible, Operators must submit to the Network Controller details of the final costs and expenses incurred by them in connection with the Apportionment Event. The Network Controller will re-calculate the allocation in accordance with the above and advise the parties if any adjusting payments which need to be made (such adjustment to be invoiced and paid in accordance with clause 5 above).

SCHEDULE 3

National Priority Rules Table

(EXCLUDES AUCKLAND NETWORK AND WELLINGTON NETWORK)

1. PRIORITY RULES: DEFINITIONS

1.1 The Network Controller may acting reasonably decide to order Vehicles other than in accordance with the priorities that follow if in the reasonable opinion of the Network Controller a different set of priorities will return the Rail Network to normal operations in a more efficient and timely manner, provided that in exercising this discretion the Network Controller acts in a non-discriminatory manner.

1.2 In this Schedule:

"On-time" means with respect to:

- (a) any Nominated Freight Service, the Service arriving at its Network Point any time after its Scheduled Time at that Network Point; and
- (b) any other Timetabled Service, the Service arriving within 30 minutes of its Scheduled Time at that Network Point.

"Late" means a Service that is not On-time.

2. PRIORITY RULES: TIMETABLED SERVICES

PRIORITY RULES TABLE - TIMETABLED SERVICES					
NETWORK DELAYS	On-Time Nominated Freight Service <i>READ DOWN</i> @	On-Time Long Distance Passenger Service	On-Time Freight Service	On-Time Charter Service	On-Time Scheduled Maintenance Service
LATE Nominated Freight Service <i>READ ACROSS</i> @	A	B	C	C	D
LATE Long Distance Passenger Service	B	A Run affected Nominated Freight Services correspondingly Late unless otherwise requested by the Operator. B Delay no longer than 15 minutes. C Delay no longer than 30 minutes.			
LATE Freight Service	B				

LATE Charter Service	C	D	Delay no longer than 60 minutes provided work can be carried out within the reduced maintenance window or as otherwise reasonably determined after consultation with affected Operators.
LATE Scheduled Maintenance Service	D	@	If a Service is late due to a Rail Network outage then treat as if On-time.

Where Nominated Freight Services already on the Rail Network have been delayed other Services will be delayed for the time periods set out in this priority table.

TGR – use the priority rules outlined in the TGR Access Agreement

Heritage Operators- conditions outlined in their specific Access Agreement take precedence over this table.

3. PRIORITY RULES: SIGNIFICANT NETWORK OUTAGES

PRIORITY RULES – SIGNIFICANT NETWORK OUTAGES – TIMETABLED SERVICES

1. When a significant Rail Network outage occurs and a significant backlog of Services results, the following shall prevail over the table in clause 2 of this Schedule to enable Services to return to the Timetable as soon as possible:
 - (a) Nominated Freight Services will have priority provided that:
 - (i) Long Distance Passenger Services will be delayed up to 15 minutes at any time
 - (ii) Services will be delayed up to 15 minutes; and
 - (ii) Freight Services will be delayed for 30 minutes;
 - (b) after the period of delay described in subclause (a) 1 train (in order being Nominated Freight, Long Distance Passenger Service, Freight Service) will be given priority;

4. PRIORITY RULES: NON TIMETABLED SERVICES

PRIORITY RULES – NON-TIMETABLED SERVICES

1. Non-timetabled Services and maintenance shall have the following order of priority after Timetabled Services (subject to (b) and (c) below):
 - (a) Recovery and servicing of the Vehicle which is causing a delay.
 - (b) Relief Vehicles for the Vehicle which is causing a delay: First priority if line is required to be cleared. If line is not required to be cleared, then same priority as the Service it is relieving.
 - (c) Maintenance except in the case of urgent maintenance that affects the safety of the operation of the Rail Network or which is needed to remedy a Vehicle delay, in which case such urgent maintenance shall be given first priority over all other services operating on the Rail Network.
 - (d) Shunts.
 - (e) Ancillary Movements.

SCHEDULE 4

Auckland Network Priority Rules Table

1. PRIORITY RULES: DEFINITIONS

1.1 The Network Controller may, acting reasonably, decide to order Vehicles other than in accordance with the priorities that follow, if in the reasonable opinion of the Network Controller a different set of priorities will return the Auckland Network to normal operations in a more efficient and timely manner, provided that in exercising this discretion the Network Controller acts in a non-discriminatory manner.

1.2 In this schedule:

"On-time" means with respect to:

- (a) an Auckland Metro Service, the Service arriving at its Network Point within 5 minutes of its Scheduled Time at that Network Point; and
- (b) any other Timetabled Service, the Service arriving at its Network Point within 30 minutes of its Scheduled Time at that Network Point.

"Late" means a Service that is not On-time.

2. PRIORITY RULES: TIMETABLED SERVICES

PRIORITY RULES TABLE - TIMETABLED SERVICES						
NETWORK DELAYS	On-Time Auckland Metro Service <i>READ DOWN</i> @	On-Time Nominated Freight Service	On-Time Long Distance Passenger Service	On-Time Freight Service	On-Time Charter Service	On-Time Scheduled Maintenance Service
LATE Auckland Metro Service <i>READ ACROSS</i> @	A	B	C	C	D	E
LATE Nominated Freight Service	B / # C	<p>A Run affected Auckland Metro Services correspondingly Late unless otherwise requested by the Auckland Metro Services Operator.</p> <p>B Delay no longer than 10 minutes.</p> <p>C Delay no longer than 30 minutes.</p> <p>D Delay no longer than 45 minutes.</p> <p>E Delay no longer than 60 minutes provided work can be carried out within the reduced maintenance window or as otherwise reasonably determined after consultation with affected Operators.</p> <p># If an Auckland Metro Service will be consequentially delayed by more than 10 minutes Off-Peak or 5 minutes Peak and Interpeak periods.</p>				
LATE Long Distance Passenger Service	B / # C					
LATE Freight Service	C / # D					
LATE Charter	C / # D					

Service			
LATE Scheduled Maintenance Service	E	@	Applies to Operator caused delays (eg. late crew, equipment) not Auckland Network outages (eg. trespass, signal failure). If a Service is late due to an Auckland Network outage then treat as if On-time.

Where Auckland Metro Services already on the Auckland Network have been delayed (other than when the delay is caused by the Auckland Metro Services Operator), other Services (Nominated Freight Services, Long Distance Passenger Services and Freight Services) will be delayed from entering the Auckland Network for the time periods set out in this priority table.

3. PRIORITY RULES: SIGNIFICANT AUCKLAND NETWORK OUTAGES

PRIORITY RULES – SIGNIFICANT AUCKLAND NETWORK OUTAGES – TIMETABLED SERVICES

1. When a significant Auckland Network outage occurs and a significant backlog of Services results, the following shall prevail over the table in clause 2 of this Schedule to enable Auckland Metro Services to return to the Timetable as soon as possible:
 - (a) Auckland Metro Services will have priority provided that:
 - (i) Nominated Freight Services will be delayed up to 15 minutes at any time
 - (ii) Long Distance Passenger Services will be delayed up to 15 minutes (30 minutes at Peak period); and
 - (ii) Freight Services will be delayed for 30 minutes (45 minutes Peak periods);
 - (b) after the period of delay described in subclause (a) 1 train (in order being Nominated Freight Service, Long Distance Passenger Service , Freight Service) will be given priority;
 - (c) after the giving of priority in accordance with subclause (b), any two Auckland Metro Services trains that have been delayed for longer than 5 minutes will be given priority provided that an Operator may at its election substitute a Shunt for a Long Distance Passenger Service or a Freight Service; and
 - (d) priority will be alternated on this basis (ie 2 Auckland Metro Services for every other Service be that Nominated Freight, Long Distance Passenger Service, Freight Service or Shunt) until the Services have returned to normal operations in the Network Controller's reasonable opinion.

2. Where Auckland Metro Services already on the Auckland Network have been delayed due to an Auckland Network outage, other Services (Nominated Freight, Long Distance Passenger Services, Freight Services and Shunts) shall:
 - (a) be delayed from entering the Auckland Network for the time periods set out in this Significant Auckland Network Outages section; and
 - (b) proceed once the Auckland Network outage is corrected in accordance with the priorities set out, provided that this clause 2 shall not apply where Services have been held or delayed on sections of the Auckland Network where crossing facilities are not available to organise Services in priority order or where that facility exists but establishing such priority order may lead to increased delay for Auckland Metro Services.

Interpretation of Table (examples)

- 1) Column 2/Row 5: If an Auckland Metro Service is 3 minutes late entering the Auckland Network (i.e. it is On-Time and a Freight Service is Late entering the Auckland Network the Freight Service may be delayed by up to 30 minutes, but if the Auckland Metro Service will be delayed by more than 10 minutes (5 minutes during Peak and Interpeak periods) then the Freight Service may be delayed by 45 minutes.
- 2) Column 5/Row 1: If an Auckland Metro Service is 10 minutes Late, and Freight Service is On-time, then Freight Service may be delayed by 30 minutes.

4. PRIORITY RULES: NON TIMETABLED SERVICES

PRIORITY RULES – NON-TIMETABLED SERVICES

1. Non-timetabled Services and maintenance shall have the following order of priority after Timetabled Services (subject to (b) and (c) below):
 - (a) Recovery and servicing of the Vehicle which is causing a delay.
 - (b) Relief Vehicles for the Vehicle which is causing a delay: First priority if line is required to be cleared. If line is not required to be cleared, then same priority as the Service it is relieving.
 - (c) Maintenance except in the case of urgent maintenance that affects the safety of the operation of the Auckland Network or which is needed to remedy a Vehicle delay, in which case such urgent maintenance shall be given first priority over all other services operating on the Auckland Network.
 - (d) Shunts.
 - (e) Ancillary Movements.

SCHEDULE 5

Wellington Network Priority Rules Table

1. PRIORITY RULES: DEFINITIONS

1.1 The Network Controller may, acting reasonably, decide to order Vehicles other than in accordance with the priorities that follow, if in the reasonable opinion of the Network Controller a different set of priorities will return the Wellington Network to normal operations in a more efficient and timely manner, provided that in exercising this discretion the Network Controller acts in a non-discriminatory manner.

1.2 In this Schedule:

"On-time" means with respect to:

- (a) a Wellington Metro Service, the Service arriving at its Network Point within 5 minutes of its Scheduled Time at that Network Point; and
- (b) any other Timetabled Service, the Service arriving at its Network Point within 30 minutes of its Scheduled Time at its Network Point.

"Late" means a Service that is not On-time.

2. PRIORITY RULES: TIMETABLED SERVICES

PRIORITY RULES TABLE - TIMETABLED SERVICES						
NETWORK DELAYS	On-Time Wellington Metro Service <i>READ DOWN</i> @	On-Time Nominated Freight Service	On-Time Long Distance Passenger Service	On-Time Freight Service	On-Time Charter Service	On-Time Scheduled Maintenance Service
LATE Wellington Metro Service <i>READ ACROSS</i> @	A	B	C	C	D	E
LATE Nominated Freight Service	B / # C	<p>A Run affected Wellington Metro Services correspondingly Late unless otherwise requested by the Wellington Metro Services Operator.</p> <p>B Delay no longer than 10 minutes.</p> <p>C Delay no longer than 30 minutes.</p> <p>D Delay no longer than 45 minutes.</p> <p>E Delay no longer than 60 minutes provided work can be carried out within the reduced maintenance window or as otherwise reasonably determined after consultation with affected Operators.</p>				
LATE Long Distance Passenger Service	B / # C					
LATE Freight Service	C / # D					

LATE Charter Service	C / # D	#	If a Wellington Metro Service will be consequentially delayed by more than 10 minutes Off-Peak or 5 minutes Peak and Interpeak periods.
LATE Scheduled Maintenance Service	E	@	Applies to Operator caused delays (eg. late crew, equipment) not Wellington Network outages (eg. trespass, signal failure). If a Service is late due to a Wellington Network outage then treat as if On-time.

Where Wellington Metro Services already on the Wellington Network have been delayed (other than when the delay is caused by the Wellington Metro Services Operator), other Services (Nominated Freight Services, Long Distance Passenger Services and Freight Services) will be delayed from entering the Wellington Network for the time periods set out in this priority table.

3. PRIORITY RULES: SIGNIFICANT WELLINGTON NETWORK OUTAGES

PRIORITY RULES – SIGNIFICANT WELLINGTON NETWORK OUTAGES – TIMETABLED SERVICES

1. When a significant Wellington Network outage occurs and a significant backlog of Services results, the following shall prevail over the table in clause 2 of this Schedule to enable Wellington Metro Services to return to the Timetable as soon as possible:
 - (a) Wellington Metro Services will have priority provided that:
 - (i) Nominated Freight Services will be delayed up to 15 minutes at any time
 - (ii) Long Distance Passenger Services will be delayed up to 15 minutes (30 minutes at Peak period); and
 - (ii) Freight Services will be delayed for 30 minutes (45 minutes Peak periods);
 - (b) after the period of delay described in subclause (a) 1 train (in order being Nominated Freight Service, Long Distance Passenger Service , Freight Service) will be given priority;
 - (c) after the giving of priority in accordance with subclause (b), any two Wellington Metro Services trains that have been delayed for longer than 5 minutes will be given priority provided that an Operator may at its election substitute a Shunt for a Long Distance Passenger Service or a Freight Service; and
 - (d) priority will be alternated on this basis (ie 2 Wellington Metro Services for every other Service be that Nominated Freight, Long Distance Passenger Service, Freight Service or Shunt) until the Services have returned to normal operations in the Network Controller's reasonable opinion.

2. Where Wellington Metro Services already on the Wellington Network have been delayed due to a Wellington Network outage, other Services (Nominated Freight, Long Distance Passenger Services, Freight Services and Shunts) shall:
 - (a) be delayed from entering the Wellington Network for the time periods set out in this Significant Wellington Network Outages section; and
 - (b) proceed once the Wellington Network outage is corrected in accordance with the priorities set out, provided that this clause 2 shall not apply where Services have been held or delayed on sections of the Wellington Network where crossing facilities are not available to organise Services in priority order or where that facility exists but establishing such priority order may lead to increased delay for Wellington Metro Services.

Interpretation of Table (examples)

- 1) Column 2/Row 5: If a Wellington Metro Service is 3 minutes late entering the Wellington Network (i.e. it is On-Time and a Freight Service is Late entering the Wellington Network the Freight Service may be delayed by up to 30 minutes, but if the Wellington Metro Service will be delayed by more than 10 minutes (5 minutes during Peak and Interpeak Periods) then the Freight Service may be delayed by 45 minutes.
- 2) Column 5/Row 1: If a Wellington Metro Service is 10 minutes Late, and Freight Service is On-time, then Freight

Service may be delayed by 30 minutes.

4. PRIORITY RULES: NON TIMETABLED SERVICES

PRIORITY RULES – NON-TIMETABLED SERVICES

1. Non-timetabled Services and maintenance shall have the following order of priority after Timetabled Services (subject to (b) and (c) below):
 - (a) Recovery and servicing of the Vehicle which is causing a delay.
 - (b) Relief Vehicles for the Vehicle which is causing a delay: First priority if line is required to be cleared. If line is not required to be cleared, then same priority as the Service it is relieving.
 - (c) Maintenance except in the case of urgent maintenance that affects the safety of the operation of the Wellington Network or which is needed to remedy a Vehicle delay, in which case such urgent maintenance shall be given first priority over all other services operating on the Wellington Network.
 - (d) Shunts.
 - (e) Ancillary Movements.

SCHEDULE 6

Nominated Freight Services

1. The "Nominated Freight Services" at the Commencement Date are:

(a) DOWN Trains (departing Auckland / arriving Wellington)

Nominated Freight Service	AK Departure Time (Westfield)	WGN Arrival Time
211	18:39	07:19
237	21:51	11:20
221	00:25	15:08

(b) UP Trains (departing Wellington / arriving Auckland)

Nominated Freight Service	AK Arrival Time	WGN Departure Time
210	08:20	18:50
220	03:13	11:59
228	11:55	20:00

2. Amendments to the Nominated Freight Services shall be proposed and agreed through the relevant Timetable Committee(s) affected by the relevant proposed amendments.

SCHEDULE 7

The Peak

1. The start and end times of the Peak are calculated by reference to the predominant passenger flow direction, towards Britomart and Wellington Railway Station in the morning (the "**Morning Peak**", as set out in the tables below) and away from those stations in the evening (the "**Evening Peak**" as set out in the tables below) on Business Days.
2. At locations between the Network Points specified in the tables below, the Peak is the time between the Start Time of the previous Network Point and the End Time of the next Network Point in the predominant flow direction. For example, between Waitakere and Swanson on the Western line of the Auckland Network in the Morning Peak, the Start Time is 05:30 and the End Time is 08:35 (i.e. the Waitakere Start Time and the Swanson End Time) and in the Evening Peak, the Start Time is 16:25 and the End Time is 19:30 (i.e. the Swanson Start Time and the Waitakere End Time).
3. In relation to Services in the predominant flow direction:
 - (a) for a Service to be a Peak Service, it must commence and complete its trip at or within the Start and End Times at both ends of its journey.
 - (b) In the non-predominant flow direction, a Service is a Peak Service only for that portion of its trip that is within a Peak period at a location. For example:
 - (i) a trip that starts at Waikanae at 05:45 and ends at Wellington Railway Station at 06:45 is a Peak Service (commencing and completing its trip within the Peak at each location in the predominant passenger flow direction).
 - (ii) a trip that begins at 09:05 at Wellington Railway Station and ends at 10:00 at Waikanae is a Peak Service until it reaches Tawa where the Peak ends at 09:15 (commencing its trip in the Peak and finishing outside the Peak in the non-predominant passenger flow direction).

4. For the Auckland Network, the Morning Peak and Evening Peak start and finish times at specific Network Points are as set out in the table below:

	Morning Peak		Evening Peak	
	Start Time	End Time	Start Time	End Time
Britomart Station	6:30	9:30	15:30	18:30
Newmarket	6:20	9:20	15:40	18:40
Southern & Eastern Line				
Pukekohe	5:20	8:20	16:40	19:40
Paerata	5:25	8:25	16:35	19:35
Papakura	5:35	8:35	16:25	19:25
Te Mahia	5:45	8:45	16:15	19:15
Wiri Junction	5:55	8:55	16:05	19:05
Papatoetoe	6:00	9:00	16:00	19:00
Otahuhu/ Westfield	6:05	9:05	15:55	18:55
Sylvia Park	6:10	9:10	15:50	18:50
Glen Innes	6:15	9:15	15:45	18:45
Meadowbank	6:20	9:20	15:40	18:40
Auckland Port	6:25	9:25	15:35	18:35
Western Line				
Waitakere	5:30	8:30	16:30	19:30
Swanson	5:35	8:35	16:25	19:25
Henderson	5:45	8:45	16:15	19:15
New Lynn	5:55	8:55	16:05	19:05
Avondale	6:00	9:00	16:00	19:00
Morningside	6:10	9:10	15:50	18:50
Onehunga to Newmarket				
Ohehunga	6:05	9:05	15:55	18:55
Penrose	6:10	9:10	15:50	18:50
Greenlane	6:15	9:15	15:45	18:45
Manukau Line				
Manukau	5:50	8:50	16:10	19:10

5. For the Wellington Network the Morning Peak and Evening Peak start and finish times at specific Network Points are as set out in the table below.

	Morning Peak		Evening Peak	
	Start Time	End Time	Start Time	End Time
Wellington Railway Station	6:30	9:30	15:30	18:30
Kaiwharawhara	6:25	9:25	15:35	18:35
Kapiti Line				
Waikanae	5:30	8:30	16:30	19:30
Paraparaumu	5:35	8:35	16:25	19:25
Paekakariki	5:45	8:45	16:15	19:15
Plimmerton	6:00	9:00	16:00	19:00
Porirua	6:10	9:10	15:50	18:50
Tawa	6:15	9:15	15:45	18:45
Upper Hutt & Melling Lines				
Upper Hutt	5:45	8:45	16:15	19:15
Taita	6:00	9:00	16:00	19:00
Melling	6:10	9:10	15:50	18:50
Petone	6:15	9:15	15:45	18:45
Johnsonville Line				
Johnsonville	6:10	9:10	15:50	18:50
Ngaio	6:20	9:20	15:40	18:40
Wairarapa Line				
Masterton	5:30	7:45	17:15	20:15
Featherston	5:30	8:15	16:45	19:45

SCHEDULE 8

Form of Deed of Accession to the Common Access Terms

ACCESSION DEED dated

INTRODUCTION

The Access Provider and [insert name of relevant Operator] ("New Operator") are parties to an Access Agreement under which the Access Provider grants Access Rights to the New Operator.

ACCESSION

1. With effect from and including the date of this deed, the New Operator, for the benefit of the Access Provider and each other Operator under the Common Access Terms dated _____ 2012 ("**Common Access Terms**"):
 - (a) confirms that it is an Operator for the purposes of the Common Access Terms; and
 - (b) agrees to assume and perform the rights and obligations of an Operator under, and be bound by, the relevant provisions of the Common Access Terms.
2. For the purposes of the Contract (Privity) Act 1982, the New Operator acknowledges and declares that its obligations (if any) under this deed constitute promises that are intended to confer benefits enforceable by the Access Provider and each other Operator under the Common Access Terms.
3. This deed is governed by and shall be construed in accordance with New Zealand law and the New Operator irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand.
4. Unless the context requires otherwise or otherwise defined in this deed, capitalised terms in this deed shall have the meaning given to them in the Common Access Terms.

EXECUTION

SIGNED as a **DEED** for and on behalf of
[] in the
presence of:

and witnessed by:

Signature

Signature of witness

Occupation

City/town of residence