

NEW ZEALAND RAILWAYS CORPORATION

FORGOTTEN WORLD ADVENTURES LIMITED

**LEASE AGREEMENT RELATING TO
STRATFORD OKAHUKURA LINE**

LEASE AGREEMENT

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AGREEMENT dated

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PARTIES

NEW ZEALAND RAILWAYS CORPORATION ("KiwiRail")

FORGOTTEN WORLD ADVENTURES LIMITED ("Lessee")

9(2)(a) Privacy ("Guarantor")

INTRODUCTION

- A. KiwiRail is a statutory corporation established under the New Zealand Railways Corporation Act 1981 ("NZRC Act").
- B. Pursuant to the NZRC Act, KiwiRail is responsible for and controls the right to grant interests in property vested in the Crown for railway purposes.
- C. The Land incorporates the Line. KiwiRail has ceased railway operations on the Line and the Line is no longer part of the National Rail Network.
- D. The Lessee has requested KiwiRail grant it a lease of the Land.
- E. The parties enter into this Agreement to record the terms and conditions on which the above will occur.

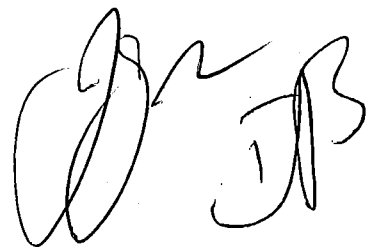
AGREEMENT

KiwiRail shall grant to the Lessee and the Lessee shall take a lease from KiwiRail of the Land on the terms and conditions specified in the Schedules attached to this Agreement, subject to such Third Party Rights in existence as at the Commencement Date.

SIGNATURES

9(2)(a) Privacy

Land Manager
Occupation
Wellington
Address

A handwritten signature in black ink, appearing to be 'JTB' or similar, located in the bottom right corner of the page.

9(2)(a) Privacy

Executed as an agreement by **Forgotten World Adventures Limited** as lessee:

9(2)(a) Privacy

9(2)(a) Privacy

Executed as an agreement by **9(2)(a) Privacy** as guarantor:

9(2)(a) Privacy



FIRST SCHEDULE

- ITEM 1. LAND:** All of the Rail Land between the 0.360km point (east side of Orlando St Stratford) on the Stratford to Ohakukura Line to the 142.900km point (West side of the SH4 overbridge) on the same line.
Land generally shown bounded "red" on the plans attached as Schedule 3 with Leases to third parties bounded "blue"
- ITEM 2. COMMENCEMENT DATE:** 1 May 2012
- ITEM 3. TERM OF LEASE:** 10 years from the Commencement Date.
- ITEM 4. RIGHTS OF RENEWAL:** Two (2) rights of renewal of ten (10) years each so that the term if all the rights of renewal are exercised shall be thirty (30) years.
- ITEM 5. RENEWAL DATES:** 1 May 2022, 1 May 2032
- ITEM 6. EXPIRY DATE OF INITIAL TERM:** 30 April 2022
- ITEM 7. FINAL EXPIRY DATE:** If all renewals are exercised, 30 April 2042.
- ITEM 8. RENT:** 9(2)(i) Commercial activities
- ITEM 9. RENT PAYMENT DATE:** 9(2)(i) Commercial activities
- ITEM 10. RENT REVIEW DATES:** 9(2)(i) Commercial activities
- ITEM 11. PERMITTED USE:** Rail Based Tourism, agricultural and Tourism related activities.
- ITEM 12. DEFAULT INTEREST RATE:** 9(2)(i) Commercial activities
- ITEM 13. MINIMUM AMOUNT OF PUBLIC RISK INSURANCE:** 9(2)(i) Commercial activities
- ITEM 14. DIRECTORY:**

	KIWIRAIL	LESSEE
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Address:	National Lease Manager KiwiRail Limited Wellington Railway Station Bunny Street PO Box 593 Wellington 6140	Forgotten World Adventures Limited
Telephone:	(04) 495 3000	9(2)(a) Privacy
Facsimile:	(04) 498 3331	N/A
Email:		9(2)(a) Privacy

**ITEM 15. SCHEDULES
FORMING PART OF THIS
AGREEMENT:**

First Schedule: Reference Schedule
 Second Schedule: Provisions of this Agreement
 Third Schedule: Plan

SECOND SCHEDULE

1. DEFINITIONS AND INTERPRETATION

1.1 Throughout this Agreement and in the attached Schedules the following words and phrases shall, unless the context otherwise requires, have the meanings ascribed to them:

"Agreement" means this Agreement together with the First to Third (inclusive) Schedules attached hereto;

"Authority" means any local body, government, statutory or non-statutory authority having jurisdiction, or authority over, or in respect of, the construction, use or occupation of the Land or any part thereof including, without limitation the Line;

"Buildings" means any machinery, buildings or structures which the Lessee may erect or place on the Land, including (without limitation) those machinery, buildings or structures erected or placed on the Land at the Commencement Date, or in accordance with clause 7.2 and all goods and property contained therein. For insurance purposes Structures excludes bridges and tunnels;

"Business Continuity" means an event on the National Rail Network that disrupts the ability of KiwiRail to carry on rail operations;

"Commencement Date" means that date specified in Item 2 of the First Schedule;

"Default Interest Rate" means the default interest rate specified in Item 12 of the First Schedule;

"Force Majeure" means an event or action outside of the control of KiwiRail;

"GST" means goods and services tax charged in accordance with the Goods and Services Tax Act 1985;

"KiwiRail" means KiwiRail together with its successors and permitted assigns and, where not repugnant to the context, its employees, servants and agents;

"Land" means the land or any part thereof specified in Item 1 of the First Schedule;

"Lessee" means the Lessee, together with its executors or administrators and includes its successors and permitted assigns and, where not repugnant to the context, its employees, servants and agents;

"Line" means the Stratford to Okahukura Line of approximately 143 kilometres in length, from kilometrage 0.36km to 142.9km and as more particularly shown on the Plan;

"Outgoings" means those outgoings to be paid by the Lessee in accordance with clause 6;

"Plan" means the plan annexed to this Agreement as the Third Schedule;

"Permitted Use" means the permitted use specified in Item 13 of the First Schedule;

"Railway Infrastructure" shall adopt the meaning given to that term in the Railways Act 2005;

"Rent" means the rent specified in Item 8 of the First Schedule or as adjusted in accordance with clause 4;

"Rent Payment Date" means the date specified in Item 9 of the First Schedule;

"Rent Review Date" means each rent review date specified in Item 10 of the First Schedule;

"Renewal Date" means the date(s) specified in Item 5 of the First Schedule;

"Term" means the term of this Agreement specified in Item 3 of the First Schedule together with any renewal thereof or if earlier terminated either for breach, or by mutual agreement then to the date of such termination;

"Third Party Rights" means all rights of occupation enjoyed by third parties in relation to the Land whether by way of formal lease, tenancy or licence existing at the Commencement Date; and

"Working Day" means any day of the year other than Saturdays, Sundays, the provincial anniversary as observed in Auckland, Wellington and the province where the Land is situated, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day and any day in the period commencing 24 December and ending on 5 January the next year (both days inclusive).

1.2 In this Agreement and unless a contrary intention is expressed:

- (a) **Headings:** clause and other headings are for ease of reference only and do not form any part of the context or affect the interpretation of this Agreement;
- (b) **Plural and Singular:** words importing the singular include the plural and vice versa;
- (c) **Schedules:** the schedules to this Agreement and the provisions and conditions contained in those schedules have the same effect as if set out in the body of this Agreement;
- (d) **Parties:** references to parties are references to parties to this Agreement;
- (e) **Joint and Several:** any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;
- (f) **Sections, Clauses and Schedules:** references to sections, clauses and schedules are references to sections, clauses and schedules respectively of this Agreement;

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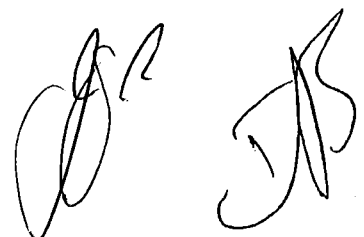
- (g) **Persons:** references to persons include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities in each case whether or not having separate legal personality;
- (h) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
- (i) **Statutes and Regulations:** references to a statute include references to regulations, orders or notices made under that statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise and a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions.

2. TERM

- 2.1 **Commencement of Term:** The Term shall commence on the Commencement Date, and shall expire at midnight on the last day of the Term subject to the provisions of clause 14.
- 2.2 **Monthly tenancy:** If KiwiRail permits the Lessee to continue to occupy the Land after the expiry of the Term, the Lessee shall do so as a tenant on a month to month basis only, at a rent payable monthly in advance, the first such payment to be made on the day following the expiry of the Term, and to be equal to one twelfth of the amount of the Rent payable under this Agreement, immediately prior to the expiry of the Term.
- 2.3 **Terms of monthly tenancy:** The monthly tenancy granted pursuant to clause 2.2 shall be on the terms and conditions of this Agreement but amended to reflect the monthly nature of the tenancy.
- 2.4 **Termination of monthly tenancy:** Any tenancy created under clause 2.2 may be terminated at any time by either party giving 20 Working Days' notice to the other party, but otherwise the tenancy shall continue on the same provisions (so far as applicable to a monthly tenancy) as are contained in this Agreement.

3. RENT

- 3.1 **Payment:** Subject to clause 3.2, the Lessee shall pay to KiwiRail the Rent in advance on every Rent Payment Date without demand from KiwiRail and without any set off or deduction, with the first such payment to be made on the Commencement Date.
- 3.2 **Broken Periods:** If this Agreement commences on a day other than a Rent Payment Date, then the Lessee shall, as well as the Rent, pay KiwiRail on the next Rent Payment Date following the Commencement Date a proportion of the Rent calculated on a daily basis for the period from the Commencement Date to the next Rent Payment Date following the Commencement Date.



3.3 **Method of payment:** The Lessee shall pay the Rent and any other moneys payable under this Agreement by electronic funds transfer into KiwiRail's bank account (details to be provided to the Lessee before the Commencement Date) or such other method as KiwiRail may from time to time direct.

3.4 **KiwiRail may backdate money payable:** No omission or failure by KiwiRail to charge the Lessee for any money payable by the Lessee under this Agreement at the time such charge should have been made shall constitute a waiver of KiwiRail's rights, and KiwiRail may in the event of such omission or failure backdate the charge to the time when it should have been made.

4. RENT REVIEW

4.1 **KiwiRail to serve notice:** KiwiRail shall be entitled to commence a rent review:

- (a) no earlier than three months prior to a Rent Review Date; or
- (b) no later than the date of the following Rent Review Date,

by giving written notice to the Lessee specifying the new rent ("Review Notice"), with the new rent to be determined by a review and adjustment pursuant to the consumer price index movement.

4.2 The consumer price index movement shall be calculated in accordance with the following formula:

$$a = b \times (c / d)$$

where:

- a = the rent payable from, and including, the relevant Rent Review Date;
- b = the rent payable under this lease immediately prior to the Rent Review Date;
- c = the consumer price index (all groups) last published before the relevant Rent Review Date;
- d = the consumer price index (all groups) last published before the immediately preceding Rent Review Date.

4.3 The parties agree in relation to this clause 4 that the annual rent payable by the tenant following a Rent Review Date must never be less than the annual rent payable on the Commencement Date of that lease Term, nor more than 105% of the annual rent payable in the period preceding the relevant Rent Review Date.

5. GOODS AND SERVICES TAX

- 5.1 **Lessee to pay GST:** The Lessee shall pay to KiwiRail the GST payable by KiwiRail in respect of the Rent or any other payments payable by the Lessee under this Agreement. The GST in respect of the Rent shall be payable on each date for payment of the Rent and in respect of any other payment shall be payable upon demand.
- 5.2 **Default:** If the Lessee defaults in making any payment of the Rent or any other payment payable under this Agreement and KiwiRail becomes liable to pay additional or default GST then the Lessee shall on demand pay to KiwiRail the additional or default GST. In relation to additional or default GST which becomes payable, KiwiRail shall be under no duty to mitigate the amount of additional or default GST which becomes payable as a result of the Lessee's breach.

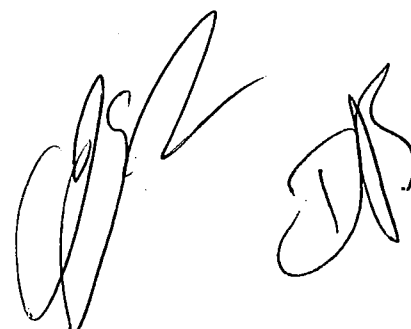
6. OUTGOINGS

- 6.1 **Lessee to pay outgoing:** The Lessee shall pay:
- (a) all rates, charges, duties, impositions, fees, taxes and assessments together with any GST charged thereon which are now or may at any time hereafter be assessed, charged or imposed upon the Land, any Buildings on the Land or on KiwiRail; and
 - (b) all charges for water, gas, electricity, telecommunications, line charges and all other utility and other services connected to the Land.

(together the "Outgoings").

Where the Lessee shares any of the Outgoings with third parties and such Outgoings are not separately assessed, the Lessee shall pay a fair apportionment of such Outgoings as determined by KiwiRail. For the avoidance of doubt, insurance costs if any do not form part of the Outgoings

- 6.2 **Default:** If the Lessee defaults on payment of any of the Outgoings, KiwiRail may pay the same and forthwith recover the amount paid from the Lessee as if the same were rent in arrears.
- 6.3 **Estimate and Wash Up:** KiwiRail may estimate in advance the annual amount of the Outgoings and require payment of such amount by monthly instalments in advance. KiwiRail's estimate may be revised by it from time to time and the Lessee's monthly instalments adjusted accordingly. At the end of each anniversary of this Agreement KiwiRail shall provide evidence of the actual outgoings payable for the prior twelve month period and any deficiency shall be paid by the Lessee promptly on demand and any excess shall be promptly refunded by KiwiRail to the Lessee.



7. DEVELOPMENT AND USE OF THE LAND

7.1 Use of the Land: The Lessee shall use the Land only for the Permitted Use and such use shall comply with the requirements of the Resource Management Act 1991, and any other statutory provisions relating to resource management of the legal use of the Land.

7.2 Development of the Land: If at any time the Lessee desires to:

- (a) erect or construct any Building, including any Railway Infrastructure;
- (b) carry out any alterations, demolition or removal of a Building or Railway Infrastructure; or
- (c) undertake any excavation, earthmoving or other works on the Land,

(together the "**Lessee's Works**")

the Lessee must first obtain the necessary approvals and consents of the relevant Authority to the Lessee's Works and then submit for approval to KiwiRail the plans, elevations, sections and specifications of the Lessee's Works.

7.3 Standard of work: The Lessee shall ensure that the Lessee's Works are carried out in a good and workmanlike manner by reputable and appropriately qualified contractors in accordance with the approved plans, elevations, sections and specifications of the Lessee's Works and in strict accordance with all applicable building by-laws, regulations of the Authority and otherwise in strict accordance with the general law for the time being in force. Following completion of the Lessee's Works, the Lessee will provide KiwiRail with as-built plans and specifications of the Lessee's Works.

7.4 No warranty as to use: The Lessee acknowledges and accepts that railway operations have ceased on the Line and it has been removed from the National Rail Network and KiwiRail does not in any way warrant that the Land or any Building, any Railway Infrastructure or other improvements on the Land are suitable or adequate for the Lessee's access, occupation and use for any purpose whatsoever. To the full extent permitted by law all warranties as to suitability and to adequacy for any use are expressly excluded. Where any of the purposes of the Lessee are permissible only with the consent of any Authority under or pursuant to any statute, ordinance, regulation, by-law or other enactment or order of a Court, the Lessee shall obtain such consent at the sole cost and expense of the Lessee, including but not limited to any costs of complying with any conditions of any such consent. The Lessee will be fully responsible for the safety and training of all persons permitted onto the Land for the Permitted Use.

7.5 Offensive acts: The Lessee shall not at any time during the continuance of this Agreement do, exercise or carry on or permit or suffer any other person or persons to do, exercise or carry out on the Land or any part of the Land (including the Line) any noxious, harmful, or offensive act, trade, business, occupation or calling or any act, matter or thing whatsoever which shall or may be or become or cause annoyance, nuisance, damage or disturbance to the occupiers or owners of any adjoining or adjacent land to KiwiRail. This clause 7.5 shall not apply to restrict the



conduct of a Permitted Use but shall apply to the manner in which that Permitted Use is carried on.

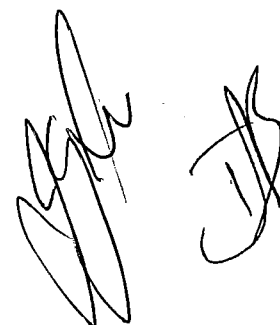
- 7.6 **Compliance with enactments:** The Lessee will at all times observe and comply with all statutes, ordinances, regulations, by-laws or other enactments affecting or relating to the use of the Land, the Buildings, Railway Infrastructure and all other improvements thereon and with all requirements which may be given by any Authority, including, but not limited to, holding and maintaining all necessary licences to authorise the Permitted Use from the relevant Authority and all obligations and requirements exercised under statute or regulation from time to time and the Lessee shall indemnify KiwiRail in respect of any such non-compliance by the Lessee.
- 7.7 **No subdivision of the Land:** The Lessee shall not subdivide the Land (or any part thereof) in accordance with the Resource Management Act 1991 or the Unit Titles Act 2010 or otherwise.
- 7.8 **Compliance with fire requirements:** The Lessee shall at all times and in all respects comply with the requirements of all competent Authorities and with the requirements of any relevant statute, regulation, by-law or other notice issued by any Authority relating to fires and fire protection.
- 7.9 **No fencing liability on KiwiRail:** KiwiRail shall not be liable nor be called upon by the Lessee to erect or repair or contribute towards the cost of such erection or repair of any boundary fence between the Land, third party land and any adjoining land now or at any time owned by KiwiRail.
- 7.10 **Fencing Obligations:** The Lessee shall not have any fencing obligations that are greater than those obligations of KiwiRail under the Railways Act 2005.
- 7.11 **Signs:** The Lessee shall not apply to, or paint in any way, or place or erect on the Land any sign, name plate, signboard, advertisement or placard ("**signage**") nor permit or suffer the same to be done unless the signage is to the entire satisfaction of the relevant Authority and the Lessee obtains and maintains throughout the Term the consent of the relevant Authority from time to time for the installation and operation of the signage and complies with all such consents.
- 7.12 **Right to inspect:** Provided KiwiRail has given reasonable prior notice to the Lessee, the Lessee shall permit KiwiRail and its agents, servants or contractors at any time or times during usual business hours and with a minimum of inconvenience to the Lessee to enter upon the Land to inspect the condition thereof AND the following provisions shall apply:
- (a) following such inspection, KiwiRail may give notice in writing to the Lessee specifying any defects or breaches of this Agreement for which the Lessee may be liable;
 - (b) the Lessee shall within 10 Working Days of such notice, unless otherwise agreed in writing with KiwiRail, make good such defects or breaches which are set out in the notice;
 - (c) if the Lessee fails to comply with such notice within the time specified, KiwiRail may, at its option and without prejudice to any other rights,

powers or remedies, take such steps, expend such moneys and do such other acts and things as KiwiRail shall consider necessary to make good such failure and any moneys expended by KiwiRail in so doing, together with interest at the Default Interest Rate computed from the time or respective times such moneys are actually expended by KiwiRail until actual payment thereof by the Lessee to KiwiRail, shall be payable by the Lessee to KiwiRail on demand as if the same were rent in arrears payable by the Lessee.

- 7.13 **Compliance with easements:** The Lessee shall perform and observe the obligations of KiwiRail in connection with any easement of any kind for the time being affecting the Land (whether as dominant or servient tenement), including the carrying out, effecting or contributing to any works, repairs or maintenance.
- 7.14 **Removal of soils or other substances:** The Lessee shall not excavate, remove, sell nor dispose of any earth, clay, gravel, ballast, shingle, or sand from the Land, or any Railway Infrastructure, including but not limited to, track, sleepers, ballast or rail traffic control equipment, except in so far as shall be necessary for the execution of any Lessee's Works approved in accordance with clause 7.2 and then only in strict accordance with any conditions imposed by KiwiRail.
- 7.15 **Contamination of Land:** The Lessee covenants that during the continuance of this Agreement the Lessee:
- (a) shall not use or permit to be used or stored at the Land any radioactive, toxic or hazardous chemicals, wastes or substances, except in concentrations and quantities permitted by the relevant Authority and in accordance with any licences, permits or authorisations required by law and in accordance with the conditions imposed by such Authority or under such licences, permits or authorisations;
 - (b) shall not use or permit to be used on the Land any chemicals or herbicides except those recommended by an Authority and in concentrations not exceeding that recommended by any Authority;
 - (c) shall not bring or allow to be brought on to the Land any diseased or contaminated stock;
 - (d) shall comply with the demands, notices and requirements of any Authority in respect of any contamination of the Land caused by the Lessee, including notices to remediate the Land;
 - (e) shall notify KiwiRail within 10 Working Days after receiving any demand or notice from any Authority in respect of the contamination of the Land.

8. ASSIGNMENT/SUBLETTING

- 8.1 The Lessee shall not, assign, transfer, sublet, mortgage, charge or otherwise part with the possession of the Land, or any part or parts thereof, or any estate or interest in this Agreement other than in accordance with this clause 8.



8.2 **Control on Assignment:** In the case of an assignment, the Lessee may assign all, but not part, of its rights under this Agreement, provided that:

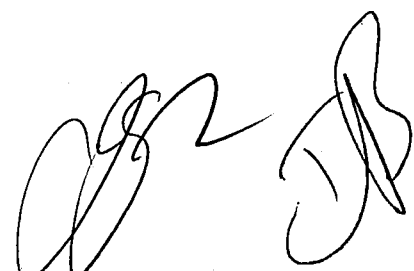
- (a) the Lessee (or any subsequent assignor) shall obtain KiwiRail's written consent to the proposed assignment (which shall not be unreasonably withheld or delayed);
- (b) the Lessee (or any subsequent assignor) shall demonstrate to the satisfaction of KiwiRail that any proposed assignee is respectable, responsible, solvent and of sound financial standing and intending to use the Land for the Permitted Use and holds all necessary operating licences to authorise its intended business operations from the relevant Authority;
- (c) all Rent, Outgoings and other moneys payable by the Lessee to KiwiRail have been paid in full as at the date of the proposed assignment;
- (d) there is not any existing unremedied breach of any of the terms of this Agreement;
- (e) the Lessee (or any subsequent assignor) pays KiwiRail's reasonable expenses in respect of the approval or preparation of the assignment documentation (whether or not the proposed assignment proceeds to completion);
- (f) the Lessee shall procure the execution by the assignee of a covenant with KiwiRail that the assignee will at all times during the Term:
 - (i) duly pay the Rent payable under this Agreement in accordance with the terms of this Agreement; and
 - (ii) observe and perform all the covenants, conditions and agreements herein contained or implied on the part of the Lessee to be observed and performed,

provided however that execution of such a covenant shall not operate to release the Lessee from the Lessee's obligations to pay the Rent reserved and observe and perform the other covenants and conditions on the part of the Lessee contained or implied in this Agreement;

8.3 For the avoidance of doubt, the parties acknowledge that clause 8.2 shall apply whether the assignment in question is an assignment by the Lessee or any permitted assignee from the Lessee.

8.4 **Control on Subletting:** In the case of a subletting or other parting with possession, the Lessee shall not sublet or otherwise part with the possession of the Land, or any part thereof, or any estate or interest in this Agreement to any person, without first complying with all the following requirements:

- (a) **Sublease or Transfer of All:** in the case of a sublease, transfer or other parting of possession of all of the Land, the Lessee shall:



- (i) obtain KiwiRail's written consent to the proposed subletting or parting with possession (not to be unreasonably withheld or delayed);
 - (ii) the Lessee shall demonstrate to the satisfaction of KiwiRail, that any proposed sublessee or transferee is respectable, responsible, solvent and of sound financial standing and intending to use the Land for the Permitted Use and holds all necessary operating licences, consents and approvals to authorise its intended business operations from the relevant Authority;
 - (iii) all Rent, Outgoings and other monies payable by the Lessee to KiwiRail have been paid in full as at the date of the proposed sublease or transfer;
 - (iv) procure the execution by the sublessee of a sublease, or in the case of a transfer, the execution of such other instrument as is appropriate in the circumstances, in all cases in such form as is reasonably acceptable to KiwiRail, such document to provide that the sublessee or transferee (as the case may be) will at all times during the Term:
 - (aa) observe and perform all the covenants, conditions and agreements imposed on the Lessee under this Agreement (with the exception of the covenant to pay the Rent) regarding the Land; and
 - (bb) in the event that the Lessee is in default of its obligations under this Agreement, the sublessee or transferee shall pay the rental (but not to exceed the Rent) and all other money payable by the sublessee or transferee to KiwiRail and in such manner as KiwiRail directs, upon receipt of a written demand from KiwiRail to do so;
 - (v) all costs incurred by KiwiRail (whether or not the proposed sublease or transfer proceeds to completion) have been paid by the Lessee;
 - (vi) where the proposed sub-lessee or transferee is a company, KiwiRail may require the directors and/or controlling shareholders of such company to enter into an agreement guaranteeing the performance by that company of the terms of this Agreement, such guarantee to be in a form acceptable to KiwiRail and the costs incurred by KiwiRail in the preparation and execution of such guarantee shall be paid by the Lessee; and
- (b) **Sublease or Transfer of Part:** in the case of a sublease, transfer or other parting with possession of part of the Land, the Lessee may sublease any part of the Land which does not comprise the Line, provided that in doing so, the Lessee complies with the requirements of clause 8.4(a) and in

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addition to those requirements such documentation provides that any further subletting shall be prohibited.

- 8.5 **Documentation:** A duplicate copy of each document recording the assignment, sublease or other disposition by the Lessee shall be provided to KiwiRail on every request for consent.
- 8.6 **Change in shareholding:** For the purposes of clause 8.2, where any Lessee is a company which is not listed on the main board of a public stock exchange, then any change in the legal or beneficial ownership of its shares or issue of new capital which in either case has the effect of changing the effective management or control of the Lessee shall be deemed to be an assignment of this Agreement.
- 8.7 **Application to sublease:** Where KiwiRail consents to a sublease under clause 8.4, such consent shall extend only to such sublease and shall not be considered or construed to permit any subsequent transfer, assignment or other dealing with such sublease without the consent of KiwiRail (such consent not to be unreasonably withheld).
- 8.8 **Grazing Leases/Licenses:** the parties agree that the provisions of this clause 8 shall not apply where the Lessee grants a grazing license or sub lease with a term of not more than three (3) years and the Lessee agrees to keep records of all such licenses or leases which shall be provided to KiwiRail upon request.
- 8.9 **Use of Line:** The Lessee agrees that no sublease, grazing lease or license granted pursuant to this clause 8 shall obstruct the linear continuity of the Line.

9. LESSEE'S MAINTENANCE AND REPAIR OBLIGATIONS

- 9.1 **Maintenance of the Land by the Lessee:** The Lessee shall, at the Lessee's cost, in a proper and workmanlike fashion and to the reasonable requirements of KiwiRail:
- (a) keep the Land clear from gorse, briar, broom and noxious weeds at all times during the Term and shall in particular comply with the provisions of, and all notices pursuant to, the Biosecurity Act 1993 and its amendments;
 - (b) keep clean, clear and maintain the Land, any Railway Infrastructure on the Land and any other improvements, including all services, sealed areas, drainage, pipes, culverts, bridges, grounds, and utilities in the same order of repair and condition as they were at the Commencement Date (subject to fair wear and tear) including, ensuring that at all times all drainage pipes and culverts do not obstruct the natural course and flow of any waterway;
 - (c) arrange for the regular collection and removal of all Lessee's rubbish from the Land and keep all rubbish bins and containers in a tidy condition;
 - (d) arrange for the removal of all trade waste and other goods or rubbish not removable in the ordinary course by any Authority;

- (e) ensure that all water, electrical power, gas, telecommunications and sewerage systems are kept and maintained in good and safe order from the point where they enter the Land;
- (f) make good any damage caused by improper or careless use of the Land by the Lessee, and its agents, employees, contractors, guests or invitees;
- (g) at all times maintain, repair, redecorate, renew and keep any Building and Railway Infrastructure, together with all conveniences, amenities and appurtenances relating thereto in good and substantial repair, order and condition in all respects and as nearly as possible in the same condition as at the time of erection or installation of the same, but subject to fair wear and tear.

9.2 **Yielding up in good condition:** Subject to clause 9.1, the Lessee shall, upon the expiration of the Term or sooner termination of this Agreement, peaceably surrender and yield up to KiwiRail the Land, together with the Railway Infrastructure thereon, clean and free from rubbish and in the same order of repair and condition as they were at the Commencement Date;

9.3 **Limitations to Maintenance by the Lessee:** The obligations under clause 9.1 and clause 9.2 shall be subject to fair wear and tear, and in no case shall the Lessee's obligations in respect of clause 9.1 and 9.2 extend to the replacement of any item destroyed by an act of God or catastrophic event.

9.4 **Removal of Buildings:** Unless otherwise agreed in writing by KiwiRail, the Lessee shall before the expiration of the Term or sooner termination of this Agreement

- (a) remove all the Buildings including any Building on the Land as at the Commencement Date from the Land;
- (b) level off the surface of that part of the Land and resurface the same in accordance with KiwiRail's reasonable requirements; and
- (c) clear the Land of all of the Lessee's improvements, structures, rubbish and debris,

but shall, for the avoidance of doubt, not be required to remove any Railway Infrastructure.

9.5 **Failure to comply:** If the Lessee fails to comply with clauses 9.2 and 9.4, any costs incurred by KiwiRail as a result of such failure shall be fully recoverable from the Lessee as a debt due recoverable on demand.

9.6 **Final meter readings:** The Lessee shall arrange for final meter readings to be taken by the appropriate supplier for all utilities and other services supplying the Land and provide KiwiRail with a copy of the readings.

9.7 **Removal of signs:** Upon vacating the Land or otherwise at the request of KiwiRail the Lessee will at the Lessee's expense remove any signs, names, advertisements, notices or hoardings erected, painted, displayed, affixed or exhibited upon to or within the Land by or on behalf of the Lessee and make good any damage or

disfigurement caused by reason of such erection, painting, displaying, affixing, exhibiting or removal thereof.

- 9.8 **No Compensation for Lessee's Buildings:** If upon the expiration of the Term or sooner termination of this Agreement, and provided the Lessee has sought and obtained KiwiRail's written consent to the Lessee not removing any Buildings on the Land in accordance with clause 9.3, then any Buildings on the Land shall be deemed to have become and to be the sole and exclusive property of KiwiRail without KiwiRail being required to pay any compensation whatsoever to the Lessee.

10. INSURANCE

- 10.1 **Lessee to Insure Buildings:** The Lessee shall insure any Buildings on the Land and keep any such Buildings insured to its full replacement value or to its full insurable value on an indemnity cover basis against loss, damage or destruction by fire, earthquake, fire consequent upon earthquake, flood, lightning, storm, tempest, water damage, impact damage, electric fusion, boiler explosion and machinery breakdown and against such other risks as the Lessee may deem necessary or desirable, and the Lessee shall pay the premium for such insurance as it falls due.
- 10.2 **KiwiRail not responsible:** KiwiRail shall not be liable to insure any Buildings or Railway Infrastructure on the Land, or to pay any amounts in respect of insuring any Buildings or Railway Infrastructure on the Land during the Term of this Agreement. Pursuant to section 271 of the Property Law Act 2007, the Lessee acknowledges that as KiwiRail is not responsible for taking out or maintaining any insurance in relation to the Land or any Buildings or Railway Infrastructure that the provisions of sections 268 and 269 of the Property Law Act 2007 do not apply to this Agreement.
- 10.3 **Public risk insurance:** The Lessee shall keep current at all times during the Term of this Agreement a policy of public risk insurance applicable to the Land and the use thereof for an amount not less than the amount stated in Item 15 of the First Schedule (being the amount which may be paid out arising out of any one single accident or event) or such higher amount as is reasonably required from time to time by KiwiRail.

11. INDEMNITIES

- 11.1 **Lessee to occupy Land at own risk:** The Lessee will access, occupy and use the Land at the Lessee's sole risk and releases KiwiRail to the full extent permitted by law from all claims and demands of any kind, and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Land or a Building or Railway Infrastructure or other improvement on the Land.
- 11.2 **Indemnity by Lessee:** The Lessee will indemnify and hold harmless KiwiRail from and against all actions, claims, demands, losses, damages, costs and expenses for which KiwiRail shall or may be or become liable in respect of and arising from:
- (a) negligent use, waste or abuse by the Lessee of any water, gas, electricity, oil, lighting or other services and facilities in or about the Land;

- (b) loss, damage or injury from any cause whatsoever to property or persons caused or contributed to by the access, use or occupation of the Land by the Lessee or by condition of the Land or any part thereof;
- (c) loss, damage or injury from any cause whatsoever to property or person within or without the Land occasioned or contributed by any act, omission, neglect, breach or default on the part of the Lessee; and
- (d) the contamination of the Land by noxious activities that leave the Land unsuitable for any use during the Term of this Agreement or in the future.

12. QUIET ENJOYMENT

- 12.1 **Quiet enjoyment:** If the Lessee pays the Rent and complies with the obligations of the Lessee under this Agreement, subject to the Third Party Rights which the Lessee acknowledges it takes the Land subject to, KiwiRail shall permit the Lessee to quietly hold and enjoy the Land, without interruption by KiwiRail, or by any person claiming under KiwiRail (except as permitted under this Agreement), until the expiry or sooner termination of the Term.

13. **12.2 THIRD PARTY RIGHTS: KIWI RAIL WARRANTS THAT THE THIRD PARTY RIGHTS EXCLUDE THE AREA OF THE RAILWAY TRACKS. . KIWI RAIL WILL USE IT'S BEST ENDEAVOURS NOT TO DISRUPT THE OPERATION OF THE LESSEE IN THE GRANTING OF ANY OTHER ACCESS AGREEMENTS DEFAULT**

- 13.1 **Default by Lessee:** If at any time during the Term of this Agreement:

- (a) any Rent or other moneys payable by the Lessee are in arrears for more than 10 Working Days from the due date for payment and the Lessee has failed to pay such rent in arrears to KiwiRail within 10 Working Days after service of a notice on the Lessee by KiwiRail in accordance with section 245 of the Property Law Act 2007; or
- (b) the Lessee commits, permits or suffers to occur any breach or default in the due and punctual observance and performing of any of the covenants, conditions, agreements and restrictions of this Agreement (other than a covenant to pay Rent) and such default is not remedied by the Lessee within the period specified in a notice served on the Lessee by KiwiRail in accordance with section 246 of the Property Law Act 2007; or
- (c) execution is levied against any of the assets of the Lessee; or
- (d) the Lessee not being a company:
 - (i) is declared bankrupt or insolvent according to law; or
 - (ii) assigns his or her estate or enters into a deed or arrangement for the benefit of creditors; or

- (e) the Lessee being a company:
- (i) an order is made or a resolution is passed for the winding up of the Lessee; or
 - (ii) goes into liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation approved in writing by KiwiRail); or
 - (iii) enters into any assignment or other compromise or scheme of arrangement with the Lessee's creditors or any class thereof; or
 - (iv) is or is deemed to be unable to pay the Lessee's debts under section 287 of the Companies Act 1993; or
 - (v) has a receiver, manager or receiver and manager appointed relating to any of the Lessee's assets,

then notwithstanding any prior waiver or failure to take action by KiwiRail or any indulgence granted by KiwiRail to the Lessee in respect of any such matter or default whether past or continuing, KiwiRail or any person duly authorised by KiwiRail may re-enter upon the Land or any part thereof in the name of the whole and determine the estate of the Lessee without releasing the Lessee from any liability in respect of the breach or non-observance of any covenants, conditions, agreements and restrictions of this Agreement and without prejudice to any action or other remedy which KiwiRail has or might have for arrears of Rent or breach of covenant or for damage as a result of any such event.

- 13.2 **Acknowledgement of time:** The Lessee acknowledges for the purposes of section 246 of the Property Law Act 2007 that in the event of one or more of the matters set out in clauses 13.1(c) to 13.1(e) arising, there shall be no possibility of the default being remedied and as such the Agreement may be cancelled immediately.
- 13.3 **No waiver:** The acceptance by KiwiRail of arrears of Rent or other monies shall not constitute a waiver of the Lessee's obligation to pay the Rent or other monies when they are due.
- 13.4 **Interest on unpaid moneys:** Without prejudice to the other rights, powers and remedies of KiwiRail under this Agreement, if any Rent or other moneys owing by the Lessee to KiwiRail on any account whatsoever pursuant to this Agreement shall be in arrear and unpaid for 10 Working Days after the due day for payment (regardless of whether any formal or legal demand for payment has been made by KiwiRail) such moneys shall bear interest computed in respect of each calendar day from such due date until the date of payment in full of such moneys at the Default Interest Rate and shall be recoverable in like manner as rent in arrears.
- 13.5 **KiwiRail may Remedy Lessee's Default:** Without prejudice to the other rights, powers and remedies of KiwiRail, KiwiRail may elect to remedy at any time following the delivery of 10 Working Days' notice to the Lessee any default by the Lessee under this Agreement and whenever KiwiRail so elects all costs and

expenses incurred by KiwiRail (including legal costs and expenses) in remedying such default shall be paid by the Lessee to KiwiRail forthwith on demand.

14. RENEWAL

14.1 **Renewal:** If the Lessee has duly observed the terms and conditions of this Agreement and the Lessee has given KiwiRail not less than 6 months' notice in writing prior to the expiry of the Term of the Lessee's intention to renew this Agreement, then KiwiRail will at the cost of the Lessee grant to KiwiRail a new lease of the Land:

- (a) for the renewal term specified in Item 4 of the First Schedule, commencing on the day after the expiry of the Term;
- (b) at the rental to be determined in accordance with clause 4 however in no event shall the rental for the renewed term be less than the rental payable immediately prior to the renewal; and
- (c) otherwise such new lease shall be upon and subject to the like covenants conditions and restrictions as are contained herein with all necessary modifications.

14.2 **Option for further right of renewal:** If the Lessee is granted a right of renewal pursuant to clause 14.1 such right, unless otherwise agreed, shall entitle the Lessee to a further right of renewal in the manner and subject to the conditions set out in clause 14.1 for the further term(s) set out for the purposes of this clause in Item 4 of the First Schedule, provided that in no event will this Agreement and any right of renewal be granted for a Term expiring later than the Final Expiry Date specified in Item 7 of the First Schedule.

15. FIBRE OPTIC CABLE

15.1 **Cable located on Land:** Clear Communications Limited ("Clear") and KiwiRail have certain ownership, access and other rights in respect of a fibre optic system ("System") located on the Land by virtue of an agreement dated 28 September 1990 ("Fibre Optic Cable Agreement"). Where future extensions to the System are constructed on or under the Land, Clear's and KiwiRail's rights under the Fibre Optic Cable Agreement shall take precedence over the Lessee's rights under this Agreement to the extent of any conflict, and the Lessee acknowledges that this Agreement shall be subordinate to, and shall not derogate from, those rights.

15.2 **Lessee's covenants in respect of the cable:** The Lessee covenants and agrees:

- (a) not to interfere with or disturb the System;
- (b) not to do anything which might cause increased maintenance or operating expenses of the System, or reduce the System's efficacy;
- (c) to indemnify Clear and KiwiRail for any liability, claim, damage or loss arising out of installation maintenance or use by the Lessee of its facilities

or interference with the use, operation or maintenance of the System or failure to comply with this clause of the Agreement;

- (d) to reimburse Clear and KiwiRail for the costs of any relocation which Clear or KiwiRail carries out to meet the Lessee's requirements;
- (e) that either Clear or KiwiRail shall be entitled to seek injunctive relief restraining any actual or threatened breach of this Agreement by the Lessee causing interference with or disturbance to the System; and
- (f) that for the purpose of the Contracts (Privity) Act 1982, Clear and KiwiRail are each designated to benefit under this Agreement in respect of their respective rights under the Fibre Optic Cable Agreement.

15.3 **Access for future extensions to system:** KiwiRail agrees that this clause 15 shall be subject to the requirement that any works shall minimise any interference with the Lessee's right to quiet enjoyment or disrupt the Lessee in its use of the Land.

15.4 **Limitation of access:** In respect of the two metre strip centred on the fibre optic cable of the System, the Lessee shall have no right of entry (except for normal use in passing over the strip (without obstructing it)) or excavation or subterranean activities, without notifying and obtaining the prior written consent of KiwiRail and Clear.

15.5 **New Cables and other Linear Infrastructure:** KiwiRail may itself or may enter into contracts with other utility operators or infrastructure owners to lay cables, pipes or other linear infrastructure on the corridor. The Lessee will not be compensated for any disruption or disturbance that results.

16. EARLY TERMINATION

16.1 If at any time during the Term of this Agreement KiwiRail decides that it requires the Premises for railway purposes, KiwiRail shall be entitled to terminate this Agreement by serving 12 months' written notice on the Lessee. KiwiRail will not be required to provide the Lessee details of the particular reasons for such early termination.

16.2 The Lessee shall be entitled to terminate this Agreement, at any time, by serving 12 months written notice on KiwiRail and KiwiRail will not be entitled to any compensation from such date.

16.3 This Agreement and the parties' respective rights and obligations under this Agreement will cease from the effective date of termination but without prejudice to any rights of the parties which have accrued up to the date of termination.

16.4 **Force Majeure and Business Continuity Resumption:** In addition and without limitation to KiwiRail's rights under clause 16.1, KiwiRail shall be entitled at any time during the Term of this Agreement following the occurrence of an act of God, Force Majeure or Business Continuity event on any part of the National Rail Network outside of the Land which materially inhibits KiwiRail's rail operations, to require the Lessee to enter into good faith negotiations for KiwiRail to immediately resume the

Land and determine this Agreement. KiwiRail's notice to the Lessee (**Notice**) will set out sufficient information as is reasonably necessary to inform the Lessee of the reasons for the resumption. Within 40 Working Days of the Notice, the parties will meet and, each acting in good faith, use their best endeavours to agree upon the terms and conditions upon which the resumption can proceed, including the level of compensation payable to the Lessee for such immediate resumption, taking into account KiwiRail's ability under clause 16.1 to resume on 12 months' notice without compensation. If the parties are unable to agree upon a basis for resumption within 40 Working Days, then either party may refer the matter for determination by a single expert in accordance with the following:

- (a) The referral will be commenced by a party serving written notice on the other stating the subject matter and details of the dispute and requiring the dispute to be determined by an expert appointed by the parties.
- (b) Failing agreement within 10 Working Days after service of written notice, the expert will be appointed by the President of the New Zealand Law Society.
- (c) The expert will decide the dispute, and determine the terms and conditions upon which KiwiRail's resumption can proceed and will deliver to each party a written determination. Such decision will be final and binding upon the parties save in the presence of manifest error.
- (d) The parties and the expert will keep confidential and will not except as required by law disclose to anyone not involved any information unless such disclosure is made in any subsequent proceedings to enforce such decision.
- (e) Referral to an expert will not be a submission to arbitration for the purposes of the arbitration statutes of New Zealand and the provisions of those statutes will not apply to, or govern such referral.

- 16.5 In the event that subsequent to KiwiRail issuing a Notice under clause 16.4 but prior to KiwiRail resuming the Land KiwiRail determines that the Land is no longer required to address the occurrence of the act of god, Force Majeure or Business Continuity event, KiwiRail must provide the Lessee with the opportunity to resume occupation of the Land on the same terms and conditions as this Agreement.

17. DISPUTES RESOLUTION

- 17.1 **Arbitration:** Any dispute arising from or touching this Agreement shall be referred to arbitration in terms of the Arbitration Act 1996.

18. GENERAL

- 18.1 **Costs:** The Lessee and KiwiRail shall each pay:

- (a) Their own costs of and incidental to this Agreement and their own costs in obtaining any consents or approvals associated with the granting of this Agreement (or any variation) or in obtaining any consents or approvals required to undertake any action pursuant to this Agreement; and
 - (b) all costs, charges and expenses for which KiwiRail shall become liable in consequence of or in connection with any breach or default by the Lessee in the performance or observance of any of the terms, covenants and conditions of this Agreement.
- 18.2 **Exclusion of Statutory Provisions:** To the greatest extent permissible by law, the covenants conditions agreements and restrictions implied herein by the Property Law Act 2007 and its amendments are hereby modified or negated to the extent that the same are inconsistent with or contradictory or repugnant to the covenants, conditions, agreements and restrictions contained in this Agreement, but not otherwise.
- 18.3 **KiwiRail's Consent:** Where KiwiRail's consent or approval is required pursuant to any provision of this Agreement, such consent or approval may be given or withheld by KiwiRail in its absolute unfettered discretion unless otherwise provided in this Agreement or by law. Such consent or approval shall be required from KiwiRail for each separate occasion notwithstanding any prior consent or approval obtained for the like purpose on a prior occasion.
- 18.4 **Waiver or failure to act:** No waiver or failure to act by KiwiRail in respect of any one or more breaches by the Lessee of any obligation imposed on the Lessee under this Agreement shall operate as a waiver of another breach of any such obligation.
- 18.5 **Governing Law:** The law governing this Agreement shall be the law of New Zealand and the parties submit themselves to the non-exclusive jurisdiction of the Courts of New Zealand.
- 18.6 **Entire Agreement:** The Lessee acknowledges that this Agreement contains the entire agreement as concluded between the parties notwithstanding any negotiations or discussions prior to the execution of this Agreement and notwithstanding anything contained in any brochure, report or other document, and the Lessee acknowledges by the execution of this Agreement that the Lessee has not been induced to enter into this Agreement by any representation, verbal or otherwise, made by or on behalf of KiwiRail and the Lessee has relied entirely on the Lessee's own skill and judgment.
- 18.7 **Notices:**
- (a) **Delivery:** Any notice permitted or required to be given under this Agreement shall be in writing and shall either be:
 - (i) delivered in any manner provided for in section 353 or 354 of the Property Law Act 2007;
 - (ii) delivered personally;
 - (iii) mailed by pre-paid registered mail;

Two handwritten signatures in black ink, one larger and more stylized than the other, located at the bottom right of the page.

- (iv) sent by facsimile transmission; or
- (v) sent by email;

to the addressee at the addressee's last known address, facsimile number or email address in New Zealand or, in the case of a corporation to its registered office.

- (b) **Authority for notice:** Any notice or other document or writing served or given by KiwiRail under this Agreement or implied by statute shall be valid and effectual, if served, or given under the hand of any attorney, officer, employee, servant, agent or solicitor of KiwiRail or other authorised representative for the time being of KiwiRail.
- (c) **Receipt of notices:** Any notice sent by registered mail shall be deemed to have been received on the third Working Day following the date of mailing. Any notice sent by facsimile transmission or email during a Working Day between 8 am and 5 pm shall be deemed to be received upon completion of transmission, and in every other case shall be deemed to be received at 8.00 am on the next Working Day after it is sent.
- (d) **Delivery of notices by KiwiRail:** Where KiwiRail wishes to serve a notice on the Lessee, and KiwiRail is unaware of the Lessee's last known address in New Zealand, the Lessee's facsimile number or email address, any notice placed conspicuously on any part of the Land shall be deemed to have been served on the Lessee on the Working Day following such affixing.

19. RAILWAY DESIGNATION NOT TRANSFERRED BY LEASE

- 19.1 KiwiRail and the Lessee acknowledge and agree that the rail designation provided for in the Stratford and Ruapehu District Plans, which KiwiRail holds ("the Rail Designation") is not transferred from KiwiRail to the Lessee or any other party by virtue of KiwiRail entering into this Agreement, or under section 180 of the Resource Management Act 1991, or for any other reason.
- 19.2 KiwiRail agrees not to remove the Rail Designation without the prior written approval of the Lessee.

20. ENABLING WORKS

- 20.1 KiwiRail warrants that it has undertaken the works required to remove all active alarms from the level crossings present on the Line. KiwiRail will provide written notice to the Lessee following the completion of such works. The Lessee shall not use the Line for the Permitted Use until such time as KiwiRail has confirmed that such works are completed and the Lessee has installed appropriate replacement level crossing alarms and undertaken all other required enabling and safety works to the satisfaction of New Zealand Transport Agency and at all times from the date of execution of this Agreement, the Lessee shall remain responsible for the safety of all persons permitted on to the Land.

20.2 KiwiRail shall at its cost, undertake the work with the New Zealand Transport Agency and such other appropriate road controlling Authority to erect and install appropriate safety related road signage on those parts of the roading network which are adjacent to the Land and the Line and KiwiRail and the Lessee agree that the Lessee shall not be required to pay the Rent until the works in this clause 20.2 have been completed.

21. **ACCESS**

21.1 The Lessee (together with the Lessee's consultants, architects, builders, contractors, or other agents) shall be able to enter the Land as they require after the signing of this Agreement, , to:

- (a) prepare the Lessee's business operations ready for trading on the Commencement Date; and
- (b) to carry out pilot testing of the rail carts.

22. **THIRD PARTY RIGHTS (not currently contemplated)**

22.1 In the event that KiwiRail and the Lessee agree to appoint the Lessee as KiwiRail's agent to administer the Third Party Rights and to collect the rent and outgoings (if any).

22.2 The parties agree that the Lessee shall be under no obligation to account to KiwiRail for the payments received pursuant to the Third Party Rights because the administration costs will be borne by the Lessee, but the Lessee shall be required to keep written records of such and to provide these records to KiwiRail upon request.

22.3 For the purpose of administering the Third Party Rights, KiwiRail shall provide the Lessee with copies of all Third Party Rights agreements prior to the Commencement Date.

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THIRD SCHEDULE
PLAN