



## USE OF KIWIRAIL API(S)

KiwiRail (“us” or “we”) are offering your organisation (“you”) access via application programming interface(s) (“API(s)”) to KiwiRail API systems (“System”) to integrate to KiwiRail electronic services (“Services”) or for such other purpose as we may agree with you acting reasonably (the “Purpose”). Your use of the API(s) is subject to compliance with these terms and conditions (“terms”).

1. By requesting a secure key to authenticate your organisation’s identity when you use the API(s) (“key”) and by otherwise using the API(s) you agree to comply with these terms. You must not use the API(s) if you do not agree to these terms. You warrant and represent that you are entitled to enter into these terms on behalf of your organisation.
2. You acknowledge and agree that:
  - (a) we do not guarantee that the System or API(s) will be available, uninterrupted or error free;
  - (b) you have read, understood and agree to (and will abide by) the Customer Interface Document;
  - (c) information provided or made available to you by us including timetables, routes and any other information relating to the System or the Services (“Information”) is supplied on an “as is” basis, without warranties of any kind;
  - (d) your use of the System, the API(s) and Information is at your sole risk; and
  - (e) this is not a contract of carriage. These terms govern your use of our API(s) to access the System.
3. To the extent permitted by law:
  - (a) any and all representations and warranties (whether express, implied or statutory) are excluded, including without limit, suitability, satisfactory quality, fitness for purpose, compatibility, non-infringement, accuracy, security, availability or completeness of any API, the System, Services or Information and you acknowledge that your access and use of the API(s) is for business purposes and the Consumer Guarantees Act 1993 does not apply; and
  - (b) we will not be liable for any damage, loss or expenses of any kind whatsoever whether direct or indirect suffered or incurred by you in connection with either your access to and/or use (or inability to use) of any API, the System, the Services or Information.
4. These terms take effect when your organisation first requests a key or otherwise uses the API(s) and will expire when you stop using the API(s) for any reason, including if we withdraw or otherwise terminate your access for any reason by any method.
5. We are not obliged to accept any booking made through the System until:
  - (a) you have complied with our booking requirements (including the Conditions of Carriage); and
  - (b) the freight which is the subject of your booking is presented for loading properly packed and in order (including in respect of documentation); and
  - (c) we have formally accepted the freight for carriage by us.
6. We may refuse to carry any freight if there is no available capacity, it is presented late, it does not comply with the Conditions of Carriage or we believe it may be unsafe.

### Secure key

7. We will supply you with a key to authenticate your organisation’s identity when you use the API(s) to access our System. The key will be refreshed monthly unless otherwise agreed by us.
8. You must:
  - (a) keep your key secure; and
  - (b) only allow the key to be used by people and/or systems in your organisation that require it for the Purpose and you will keep it secure and comply with these terms; and
  - (c) immediately notify us if the security of the key may be compromised or where you suspect unauthorised use of an API; and
  - (d) comply with section 19 and 20 of these terms.
9. Your organisation will be liable to pay for any Services booked where such Services are booked by anyone using the key which has been issued to you.

### Using the APIs



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10. By issuing you with a key, we grant your organisation a non-exclusive, non-transferable, and non sub-licensable right and licence to access and use the API(s) solely for the Purpose.
11. You must not use or access our APIs for any purpose other than the Purpose unless you have our prior written approval.
12. You must not disclose or transfer, in whole or in part, your key to any other organisation without our prior written consent. The use of APIs by your customers or partners (each a "licensee") is subject to our prior written agreement, including in respect of any arrangements for issuing of separate keys and/or any terms which may apply to such access including these terms.
13. We will use commercially reasonable efforts to maintain the System free of viruses and other harmful components. However, as the System is accessible by third parties, we cannot assume any responsibility for any viruses or other harmful components that may affect your computer equipment or other property as a result of your access to, viewing of, or downloading any data from the System. We do not warrant that the System, its servers or any data downloaded from the System is free from viruses, bugs, or other harmful components.
14. All information you provide in connection with your use of the API(s) and the System must be free of viruses, Trojan horses, trap doors, backdoors, Easter eggs, logic bombs, worms, time bombs, cancelbots, and/or other computer programming routines that may potentially damage, interfere with, intercept, or expropriate any API(s) or System data or information.

### Information

15. Information that is provided by or on behalf of third parties may be subject to third party terms and conditions as well as these terms and you agree to comply with all applicable terms and conditions.
16. You acknowledge that we have the right to collect, use, store and disclose data (which may include personal information) derived from your use of the API(s):
  - (a) as part of our business operations, including aggregate statistics obtained and/or derived in connection with your use of the API(s) in a manner that prevents individual identification of you or your personal information;
  - (b) your IP address;
  - (c) to operate, manage, test, maintain and enhance the API(s) and the System;
  - (d) to the protect the API(s) and/or the System from what, in our reasonable determination is a threat to the API(s) and/or the System; and/or
  - (e) if required by court order or law or required or requested by any governmental agency.
17. You may not collect, store, use or disclose personally identifiable information from any person without obtaining such person's express, affirmative and informed consent to do so.
18. We have the right (but not the obligation) to monitor any API(s) activity for any lawful purpose, including to ensure compliance with these terms and/or to improve the System and/or the Services. You will not interfere with or attempt to interfere with such monitoring or otherwise obscure from us your API(s) activity. We may use any technical means to overcome such interference.

### Conditions of use

19. You must not, and you must not permit any other person to:
  - (a) use or access the API(s), the System, the Services or the Information other than for the Purpose and in accordance with these terms;
  - (b) use or access the API(s), the System, the Services or the Information for the purpose of offering services that compete with the Services nor pass off the Services as your own;
  - (c) use or access the API(s), the System, the Services or the Information for any illegal, immoral, defamatory or unethical purposes, or in any way that breaches the rights of any person or that may damage our reputation or that of our customers;
  - (d) copy, modify or reverse engineer any content, software or Information you have access to via the API(s);
  - (e) damage, disrupt or interfere with the System including by introducing malicious software or code into the System; or
  - (f) otherwise misuse or exploit the API(s), the System or the Services in any way.



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20. You must, and must procure that your licensees, comply with all reasonable security requirements that we notify to you from time to time.

### Fees and payment

21. As at the date of these terms no fees are payable. If we charge fees for accessing and/or using our APIs or accessing the System, we will notify you and give you at least 60 days to cease using the APIs to avoid paying any new fees, or amended fees (as the case may be).

### Intellectual property and confidentiality

22. You acknowledge that we and our third party licensors own all rights, title and interest, including intellectual property rights, in and to:
- (a) the APIs and the Information;
  - (b) any of our branding and/or trade marks, and

you may not use our trade marks or logos (“Branding”) without our express written approval. Where you have our approval, you must comply with all guidelines and requirements issued by us regarding use of our Branding. “**Intellectual property right**” means any copyright, patent, trade mark; design right, trade secret, eligible layout, or other industrial or other intellectual property right. You may not represent nor pass off the Services as being provided by you by offering or marketing any Service under your name or corporate livery.

23. You agree to keep confidential all information obtained from us in any form, including all Information (“**Confidential Information**”) and will not disclose Confidential Information to any person or use it for any reason other than for the Purpose without our written consent and you will procure that your licensees (as applicable) comply with this obligation.
24. The obligations above do not apply if and to the extent that the Confidential Information:
- (a) is required to be disclosed by law;
  - (b) made available to the public without a breach of confidentiality obligations;
  - (c) was acquired from a third party who had the right to disclose it; or
  - (d) was already lawfully in your possession.

### Termination

25. Either you or we may terminate these terms and your access to the API(s) for any reason at any time upon no less than 30 days’ written notice.
26. We may suspend, terminate or otherwise withdraw your or your licensee’s access to the API(s) or key without notice if
- (a) we have reason to believe that the security of your key has been breached or that you have provided it to a third party without our consent; or
  - (b) we become aware of any breach of these terms or any circumstances that may affect your ability to make payment for Services; or
  - (c) any other agreement between us is terminated for any reason.
27. On termination of the agreement formed by these Terms for any reason:
- (a) you must cease, and you must ensure that any of your permitted licensees cease, all use of, and access to, the APIs, the Data and any of our other Intellectual Property Rights or Confidential Information;
  - (b) you must delete all keys and all Data in your possession or control; and
  - (c) those clauses of these Terms which by their nature are intended to survive termination will continue to apply.

### Liability and indemnity



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- 28. If we are liable to you or any third party under or in connection with these terms for any reason, our maximum aggregate liability, whether in contract, tort (including negligence), statute or otherwise, is limited to \$2,000.
29. You agree to hold harmless and indemnify us from and against any claim, proceeding, damage, liability, loss, cost or expense (including legal costs), whether arising in contract, tort (including for negligence), statute or otherwise, arising out of or in connection with breach of these terms or any act or omission by you or your licensees in relation to security of the key, and otherwise in relation to the use of the APIs, the System or the Services.

General

- 30. You agree to and to procure that your licensees will comply with your legal obligations with respect to accessing, using, possessing and securing the key, the API(s), the System, the Information and the Services, as applicable.
31. We are not liable for any failure or delay in complying with an obligation under these terms as a result of an act of God, natural disasters, extreme weather conditions, fire, explosion, war, act of terrorism, embargo, strike, government or court restraint or order of any other matter beyond our control.
32. You acknowledge that we are not restricted from offering or providing Services and may offer services that may be identical or similar to services provided by you using the APIs and/or the Information.
33. Notices or other communications that are required to be given under these terms may be given by email, delivery by hand or by post to the relevant addressee. The notice shall be deemed to be received:
(a) if by email, on receipt of transmission on the working day on which it is sent or, if it is sent after 5.00pm or on a non-working day (in the location of the recipient), on the next working day after the date it is sent;
(b) if by hand, upon delivery;
(c) if by post, on the third working day after posting.
34. No failure or delay by either of us to exercise any right or remedy under these terms will be construed or operate as a waiver of such right or remedy, nor will any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy. No waiver will be effective unless in writing and signed by the relevant party.
35. We may amend or modify these terms at any time. You agree to be bound by the revised terms. It is your responsibility to return to this page from time to time to review the most current terms. We do not assume any obligation to notify you of changes to these terms. If you do not agree with any of our updated terms, you must immediately cease using the API(s) and the System.
36. If any provision of these terms is held invalid, unenforceable or illegal for any reason, our agreement with you will remain otherwise in full force apart from such provisions, which will be deemed to have been deleted.
37. You acknowledge that the carriage of your freight is subject to the KiwiRail Freight Handling Code (including the General Conditions of Carriage set out at section 4) published at kiwirailfreight.co.nz (the "Conditions of Carriage"). To the extent that these terms conflict with the Conditions of Carriage the Conditions of Carriage shall be preferred.
38. These terms are subject to New Zealand law and we submit to the exclusive jurisdiction of the New Zealand Courts.

KiwiRail Client:.....
Name: ..... Name:.....
Position:..... Position:.....
Signature:..... Signature:.....