

Partnering Contract

GWRC

and

Operator

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Partnering Contract

Part One – Preliminary

1. Definitions and interpretation

- 1.1 The definitions and interpretation provisions set out at Schedule 1 (*Definitions and interpretation*) of this Partnering Contract apply unless the context requires otherwise.

2. Conditions precedent

Clauses having effect from the date of this Partnering Contract

- 2.1 The following provisions of this Partnering Contract shall take effect and be binding upon the Parties from and including the date of this Partnering Contract:
- 2.1.1 clauses 1 (*Definitions and Interpretation*), 2 (*Conditions precedent*), 3 (*Partnering Principles*), 5 (*Transition*), 6.2 (*Operator Licence requirement*), 7 (*Warranties and representations*), 9.3 (*Participation in reviews*) to 9.9 (*Correction Notices*) (inclusive), 9.12 (*Quality and environmental systems*), 9.13 to 9.14 (*Transaction Documents*) (inclusive), 9.15 (*Coordination*), 9.16 (*PPSA Security*), 10.4 to 10.8A (*GWRC inspection*) (inclusive), 10.9 to 10.16 (*Acquisition of Vehicles and Fleet List*) (inclusive), 10.17 to 10.19 (*Use of Vehicles for any other purpose*) (inclusive), 11 (*Depots*), 12 (other than clauses 12.9 to 12.11 (*Installation of Ticketing System and RTPI System on board Vehicles acquired after the Commencement Date*) (inclusive) and 12.14 (*New RTPI Equipment or Ticketing Equipment*)), 14 (*Training and driver requirements*), 15.7 to 15.9 (*Metlink Branding Manual*) (inclusive), 15.10 (*Changes to the Metlink brand, Uniform Specification or livery requirements*), 16.1 to 16.2 (*General Marketing*) (inclusive), 16.10, 17 (*Subcontracting, delegations and Key Personnel*), 20 (*Authorised Representatives*), 24 (*Audit and inspection rights*), 25 (*Background IP*) to 32 (*Miscellaneous*) (inclusive), 33 (*General health and safety obligations*), 36 (*Set off*), 38 (*GST, rates, taxation and utilities*), 41 (*Indemnities*), 42 (*Insurance*), 43 (*Reinstatement of Transferring Assets*), 44 (*Financial performance and security*), 45 (*Dispute resolution procedure*), 46 (*Events of Default and Cure Plan*) to 49 (*Termination by GWRC for convenience*) (inclusive), 50 (*Force Majeure*), 51 (*Exclusive rights of termination*), 52 (*Retendering and continuation of Services*) to 54 (*Return of GWRC Assets*) (inclusive), 55 (*Provisions relating to Transferring Assets*) (other than clauses 55.14 to 55.30 (inclusive)) and 58 (*Survival of obligations*) to 78 (*Indemnities etc. held on trust*) (inclusive);
- 2.1.2 Schedule 1 (*Definitions and interpretation*), Schedule 2 (*Agreement details*), paragraphs 3.32 to 3.35 (*Working Timetable*) (inclusive) and paragraph 4 (*Vehicle Service Requirements*) of Schedule 3 (*Passenger Services*), Schedule 4 (*Vehicle Quality Standards*), Appendix 1 (*Plans*) of Schedule 5 (*Planning, Reporting and Meetings*), Schedule 8 (*Warranties and Representations*), Schedule 10 (*Regional Agreement*), Schedule 11 (*Handover Package for Transferring Assets*), Schedule 13 (*Transition Plan*), Schedule 14 (*Change Events and Net Financial Impact*) and Schedule 15 (*Operator's Proposals*);
- 2.1.3 Annexure 9 (*Parent Company Guarantee*), Annexure 10 (*Bond*), Annexure 11 (*Preliminary Commencement Certificate*), Annexure 12 (*Incoming Operator Confidentiality Undertaking*), Annexure 13 (*Access Indemnity*), Annexure 15 (*Variation Forms*), Annexure 17 (*Transferring Asset*

Related Party Direct Deed), Annexure 18 (*Key Subcontractor Direct Deed*), Annexure 19 (*GWRC Privacy Policy*), 21 (*Approved Transferring Asset Agreements*) and Annexure 22 (*Lessor Direct Deed*); and

2.1.4 any other provision of this Partnering Contract which expressly obliges the Operator to perform an obligation prior to the Commencement Date.

2.2 Except as provided for in clause 2.1, the provisions of this Partnering Contract shall take effect and become binding on the Parties from and including the Commencement Date.

Conditions Precedent

2.3 Subject to clause 2.5 (*Waiver of Conditions Precedent and Milestones*), the occurrence of the Commencement Date is conditional on all of the Conditions Precedent being satisfied.

Time for satisfaction

2.4 The Operator shall satisfy:

2.4.1 all Milestones by the applicable Milestone Date; and

2.4.2 all Operator Conditions Precedent by the Conditions Precedent Date for Satisfaction, and, without prejudice to the foregoing, otherwise in accordance with the Transition Plan.

Waiver of Conditions Precedent and Milestones

2.5 GWRC may:

2.5.1 waive any of the Conditions Precedent and Milestones; or

2.5.2 waive or extend any time period within which the Conditions Precedent and Milestones must be satisfied,

with or without conditions, by notice in writing to the Operator.

2.6 Subject to clause 2.16, the Operator acknowledges that the Milestones and the Conditions Precedent are for the benefit of GWRC and that the Operator shall have no right to waive, or to require GWRC to waive, any such Conditions Precedent or Milestones or to waive or extend, or to require GWRC to waive or extend, any time period within which they must be satisfied.

Preliminary Commencement Certificate

2.7 GWRC shall execute, complete and return a copy of the Preliminary Commencement Certificate to the Operator to confirm the Transfer Time and the Commencement Date as soon as reasonably practicable after GWRC:

2.7.1 has received the draft Preliminary Commencement Certificate issued by the Operator in accordance with the requirements in Appendix 2 (*Milestone Dates*) to Schedule 13 (*Transition Plan*); and

2.7.2 is satisfied (acting reasonably) that each of the Conditions Precedent have been satisfied by the Operator or by GWRC (as applicable), waived by GWRC or the time period within which they must be satisfied extended by GWRC under clause 2.5 to a period after the Commencement Date.

Plan to mitigate delays

2.8 The Operator shall:

2.8.1 on the last Business Day of each calendar month until the Commencement Date; and

2.8.2 promptly and in any event within 2 Business Days following a request at any other time from GWRC,

confirm the date on which the Operator expects to have satisfied each of the Milestones and Operator Conditions Precedent, including the date on which the Operator anticipates that it will issue a completed draft Preliminary Commencement Certificate to GWRC.

2.9 The Operator shall within 3 Business Days provide GWRC with a plan setting out the steps which the Operator will take to mitigate any delay or likely delay in the event that:

2.9.1 the Operator becomes aware of any matter which will, or is likely to, give rise to a delay in satisfying any Operator Conditions Precedent or any Milestones; or

2.9.2 GWRC notifies the Operator that it considers (acting reasonably) that the Operator will or is likely to be delayed in satisfying any Operator Conditions Precedent or any Milestones,

and the Operator acknowledges and agrees that in the circumstances contemplated by this clause 2.9, GWRC may be required to give notice to relevant Existing Operators under the provisions of the TPTDs in order to negotiate the continuation of the TPTD Bus Services.

2.10 Within 2 Business Days of receipt of the plan provided pursuant to clause 2.9, GWRC shall (acting reasonably) either approve or reject such plan and give written notice of such approval or rejection (with reasons) to the Operator.

2.11 If GWRC has rejected a written plan pursuant to clause 2.10, the Operator shall amend the plan to take account of the comments of GWRC and shall resubmit such amended plan to GWRC within 3 Business Days of receipt of the notice of rejection, in which case clause 2.10 and this clause 2.11 shall reapply.

2.12 The Operator shall immediately implement and comply with any plan approved by GWRC pursuant to clause 2.10.

2.13 The Operator shall promptly provide such information as GWRC may reasonably request in connection with any matter referred to in clause 2.8 or 2.9.

Circumstances reasonably beyond the Operator's and the Operator Associates' control

2.14 If any circumstances reasonably beyond the Operator's and the Operator Associates' control cause, or will cause, the Operator to be delayed in satisfying:

2.14.1 any of the Milestones by the applicable Milestone Date; or

2.14.2 any of the Operator Conditions Precedent by the Conditions Precedent Date for Satisfaction,

the Operator shall within 5 Business Days after the commencement of such circumstance submit a written claim to GWRC for an extension to either or both of the applicable Milestone Date and the Conditions Precedent Date for Satisfaction, which claim shall:

2.14.3 give detailed particulars of the delay and the circumstance causing the delay; and

2.14.4 state the number of days for which the extension of time is claimed.

2.15 GWRC may, within 5 Business Days after receiving the Operator's claim for an extension of time under clause 2.14, by written notice to the Operator request additional information in relation to the claim. The Operator shall, within 5 Business Days of receiving such request, provide GWRC with the information requested.

- 2.16 If GWRC is satisfied (acting reasonably) that:
- 2.16.1 the Operator has given the claims and information required by clauses 2.14 and 2.15;
 - 2.16.2 the cause of the delay was beyond the reasonable control of the Operator and the Operator Associates and neither the Operator nor the Operator Associates caused or contributed to the delay or the cause of the delay; and
 - 2.16.3 the Operator is actually, or will be, delayed in satisfying any of the Milestones or Operator Conditions Precedent by the applicable Milestone Date or the Conditions Precedent Date for Satisfaction,
- GWRC shall within 20 Business Days after the latest of the Operator's claim under clause 2.14 and provision by the Operator of any additional information requested by GWRC pursuant to clause 2.15, extend either or both of the applicable Milestone Date and the Conditions Precedent Date for Satisfaction by a reasonable period, such period to be as stated by GWRC and notified to the Operator.
- 2.17 GWRC may in its absolute discretion, for any reason and at any time, unilaterally extend either or both of the Milestone Dates and the Conditions Precedent Date for Satisfaction by giving notice in writing to the Operator.
- 2.18 The failure of GWRC to grant any extension of time or to waive any of the Milestone Dates or Conditions Precedent (whether within the time prescribed by clause 2.16 or otherwise), will not cause either or both of the applicable Milestone Date and the Conditions Precedent Date for Satisfaction to be set at large or prevent GWRC from subsequently exercising its discretion under clause 2.17.
- 2.19 Without limiting the Operator's right under paragraph 4 (*Compensation Events*) of Schedule 14 (*Change Events and Net Financial Impact*) to claim any Net Financial Impact resulting from a Compensation Event and except as expressly provided for in clause 2.16, the Operator accepts the risk of all delays in, and disruption to, the performance of the Operator's obligations under the Transaction Documents, both before and after the Commencement Date.

Liquidated Damages

- 2.20 If any or all of the Operator Conditions Precedent are not satisfied by the Conditions Precedent Date for Satisfaction and such Operator Conditions Precedent have not been waived, or the time period within which they must be satisfied has not been waived or extended, by GWRC under clause 2.5, the Operator shall owe to GWRC (without any requirement for further notice, certificate or demand by GWRC) liquidated damages at the Liquidated Damages Rate for each calendar day from (and including) the Conditions Precedent Date for Satisfaction until (and including) the earlier of:
- 2.20.1 GWRC being satisfied (acting reasonably) that each of the Operator Conditions Precedent have been satisfied by the Operator or waived by GWRC in accordance with clause 2.5;
 - 2.20.2 the date on which the total number of calendar days for which Liquidated Damages are payable by the Operator reaches the Liquidated Damages Cap; and
 - 2.20.3 the date on which this Partnering Contract is terminated in accordance with its terms.
- 2.21 The Parties acknowledge and agree that:
- 2.21.1 the Parties require a liquidated amount to apply in respect of the losses, costs, expenses and detriments which GWRC may incur if the Operator fails to satisfy any or all of the Operator

- Conditions Precedent by the Conditions Precedent Date for Satisfaction and the Parties require such liquidated amount to be readily applied without unnecessary administrative costs, delay or difficulty;
- 2.21.2 the Liquidated Damages and regime set out in this clause 2:
- (a) meet the requirements set out in clause 2.21.1;
 - (b) reflect a genuine pre-estimate of the anticipated or actual liability and Loss that GWRC will or may suffer if any or all of the Operator Conditions Precedent are not satisfied by the Conditions Precedent Date for Satisfaction; and
 - (c) do not constitute a penalty in any respect;
- 2.21.3 the total number of calendar days for which Liquidated Damages are payable by the Operator shall not exceed the Liquidated Damages Cap; and
- 2.21.4 the Liquidated Damages will be recoverable by GWRC on demand as a debt immediately due and payable and may be deducted from any amount otherwise due from GWRC to the Operator.
- 2.22 If the Operator has paid, or GWRC has recovered, Liquidated Damages and a Dispute in respect of:
- 2.22.1 whether the Operator Conditions Precedent were satisfied by the Conditions Precedent Date for Satisfaction; or
 - 2.22.2 whether GWRC has acted reasonably (to the extent that GWRC is expressly required to act reasonably under Appendix 2 (*Milestone Dates*) to Schedule 13 (*Transition Plan*) in respect of the relevant Operator Conditions Precedent which have not been satisfied),
- is resolved in favour of the Operator, GWRC shall repay to the Operator the amount of any Liquidated Damages paid by the Operator which it is determined under the Dispute Resolution Procedure that GWRC should repay.
- 2.23 If the Liquidated Damages (or any part of them) are held by a court or arbitrator or are otherwise determined to constitute a penalty or are otherwise unenforceable for any reason, the Parties acknowledge and agree that GWRC shall be entitled to claim, and the Operator will be liable for, and will indemnify GWRC on demand for, any Loss suffered or incurred by GWRC as a result of a failure of the Operator to satisfy the Operator Conditions Precedent by the Conditions Precedent Date for Satisfaction.
- 2.24 Subject to clause 2.23, GWRC's sole monetary remedy against the Operator in respect of any delay in satisfying the Operator Conditions Precedent by the Conditions Precedent Date for Satisfaction is the payment of Liquidated Damages by the Operator, but nothing in this clause 2 shall otherwise affect, limit or reduce in any way, GWRC's rights:
- 2.24.1 in relation to any act, omission, breach or default of the Operator or any other event or circumstances, except for the delay itself; and
 - 2.24.2 in relation to or arising as a result of an Event of Default under clause 46 (*Events of Default and Cure Plan*) or termination under clause 47 (*Termination for Termination Events*) or clause 49 (*Termination by GWRC for convenience*).

3. Partnering Principles

3.1 GWRC and the Operator each agree to be guided by and give effect to the following principles in connection with the exercise and performance of their respective rights and obligations under this Partnering Contract and the Regional Agreement:

3.1.1 to the extent relevant, the principles set out at section 115(1) of the LTMA and copied below:

- (a) regional councils and public transport operators should work in partnership and collaborate with territorial authorities to deliver the regional public transport services and infrastructure necessary to meet the needs of passengers;
- (b) the provision of public transport services should be coordinated with the aim of achieving the levels of integration, reliability, frequency and coverage necessary to encourage passenger growth;
- (c) competitors should have access to regional public transport markets to increase confidence that public transport services are priced efficiently;
- (d) incentives should exist to reduce reliance on public subsidies to cover the cost of providing public transport services; and
- (e) the planning and procurement of public transport services should be transparent; and

3.1.2 the following methods of working together collectively:

- (a) Interdependence: meaning that the Operator and GWRC are mutually dependant and neither of them will be wholly successful if individual success is to the detriment of others;
- (b) Individual imperatives: meaning that the Operator and GWRC will share common goals and work together to achieve them, while recognising that each has their own business objectives. The extent to which each of the Operator and GWRC acknowledges and accommodates each other's individual imperatives will be a clear demonstration of the maturity of the partnering relationship;
- (c) Integrity: meaning that the Operator and GWRC will act with integrity and in a manner that promotes trust and confidence in each other;
- (d) Mutual accountability: meaning that the Operator and GWRC shall be accountable for their respective roles in delivering safe, reliable, punctual and efficient Scheduled Services for customers;
- (e) Openness and transparency: meaning that the Operator and GWRC will, to the extent reasonably required, share information on a full and open basis and in a timely way so that surprises do not occur;
- (f) Collaboration: meaning that mutual success will be best achieved by working collaboratively and cooperatively rather than in an adversarial manner;
- (g) Domain expertise, trust and definition of roles: meaning that the Operator and GWRC will bring unique knowledge and domain expertise to their respective obligations and mutual objectives and trust each other to apply their knowledge and domain expertise for the achievement of their mutual objectives;

- (h) Responsiveness: meaning that the Operator and GWRC will be available and accessible to each other to the extent reasonably required and will, to the extent reasonably required, provide information, make decisions and complete actions in a prompt and efficient manner so that transaction costs of doing business are minimised to the extent reasonably practicable. Responsiveness will depend on a high degree of communication and cooperation across and within the various parts of GWRC and the Operator's organisation;
- (i) Alignment of incentives: meaning the Operator and GWRC will acknowledge that it is in the interests of all Parties to share in rewards gained by improvements in efficiency, effectiveness and customer service, and it is intended that the performance management regime set out in this Partnering Contract will encourage such improvements;
- (j) Unified public image: meaning that the Operator and GWRC will, to the extent reasonably practicable, present a unified and cooperative image to the public so that collectively they achieve and maintain public confidence and trust.

3.2 For the purpose of exercising powers or performing functions under Part 5 of the LTMA, GWRC and the Operator shall be guided by the principles (to the extent relevant) at section 115(1) of the LTMA and the Parties acknowledge and agree that this will be effected by:

- 3.2.1 GWRC requiring PTOM Operators to become parties to a Regional Agreement setting out (amongst other things) the agreed partnering principles (consistent with the principles at section 115(1) of the LTMA) developed, adopted, implemented and updated from time to time by GWRC and PTOM Operators;
- 3.2.2 GWRC and the Operator ensuring that they each deal fairly and co-operatively with each other and other PTOM Operators in accordance with those partnering principles;
- 3.2.3 GWRC convening and facilitating the Wellington Regional Public Transport Forum in accordance with provisions set out in the Regional Agreement and for the purposes set out in the Regional Agreement; and
- 3.2.4 GWRC and the Operator agreeing and implementing Annual Business Plans in accordance with clause 19 (*Annual Business Plans*) and the other requirements of this Partnering Contract.

3.3 Without limiting the provisions of clause 2 and Appendix 2 (*Milestone Dates*) to Schedule 13 (*Transition Plan*), promptly following a request from GWRC to do so, the Operator shall duly execute a deed of accession to the Regional Agreement in the form set out in Annexure 1 of the Regional Agreement.

3.4 For the avoidance of doubt, clause 3.1, clause 3.2, the Partnering Principles (as defined in this Partnering Contract) and the partnering principles (as defined in the Regional Agreement) shall not restrict GWRC or the Operator from exercising any of their rights under this Partnering Contract or any other Transaction Documents.

4. Appointment and Term

Appointment

4.1 The Operator agrees to provide the Services in accordance with and subject to the terms and conditions of this Partnering Contract for the Term.

4.2 GWRC acknowledges that, to the extent required by section 116 of the LTMA, it must contract for the provision of the Services in connection with the Bus Unit on an exclusive basis.

Commencement of Term

4.3 The Term will commence from the Transfer Time.

Expiry of Term

4.4 Subject to being terminated earlier in accordance with this Partnering Contract and subject to Part Nine (*Obligations associated with Change of Operator*) and clause 58 (*Survival of Obligations*), this Partnering Contract shall expire at 2.00am or such other time as notified by GWRC to the Operator in writing on the later of:

4.4.1 the Initial Expiry Date;

4.4.2 if GWRC issues a notice pursuant to clause 4.5, the last day of the Extension Period.

Extension of Term

4.5 If GWRC considers it necessary and appropriate to extend the Term of this Partnering Contract, GWRC may (in its sole discretion) extend the Term of this Partnering Contract by giving written notice to this effect to the Operator no later than 6 months prior to the Initial Expiry Date or 3 months prior to the end of any Extension Period. Such notice shall specify the Extension Period. GWRC may issue any number of extension notices under this clause 4.5 provided that such extensions have been approved by the Transport Agency or are consistent with the Procurement Manual.

4.6 The terms of this Partnering Contract (including the Services Fee as may be indexed in accordance with clause 34 (*Indexation*) and paragraph 8 (*Calculation of the Indexation Payment*) of Schedule 6 (*Financial and Performance Regime*)) as at the date on which a notice is issued by GWRC pursuant to clause 4.5 will continue to apply during the Extension Period, except that:

4.6.1 GWRC and the Operator will work together (each acting reasonably and in good faith) in order to determine the application of the requirements in clauses 10.1.10, 10.15.6 and 10.15.7 in respect of the Age and Average Age (and the associated Fleet Deduction in paragraph 7 (*Calculation of Fleet Deductions*) of Schedule 6 (*Financial and Performance Regime*)) during the Extension Period; and

4.6.2 the Base Service Fee shall be that applying to the Year in which the Initial Expiry Date falls, as set out in Appendix 6 (*Base Service Fee Table*) of Schedule 2 (*Agreement details*).

Extension of Term not a Contract Variation or Minor Contract Variation

4.7 The Parties acknowledge and agree that any extension of the Term pursuant to the foregoing provisions of this clause 4 shall not constitute or be deemed to constitute a Contract Variation or a Minor Contract Variation.

No entitlement to extension or new contract

4.8 Subject to agreeing contractual terms with the Operator, GWRC may (in its sole discretion) elect to directly appoint the Operator under a new contract pursuant to which the Operator will provide services the same as, or similar to, all or part of the Services with effect from or after the Termination Date. Any such election by GWRC will take into account the performance of the Operator under this Partnering Contract during the Term and any other considerations which GWRC deems appropriate at that time.

4.9 The Operator acknowledges and agrees that:

- 4.9.1 any extension of the Term pursuant to this clause 4 and any direct award of a new contract as referred to in clause 4.8 shall each be at GWRC's sole discretion;
- 4.9.2 it has no right to an extension of the Term or to the direct award of a new contract as referred to in clause 4.8; and
- 4.9.3 it has no rights, entitlement or Claim against GWRC arising from or in connection with any decision by GWRC not to extend the Term or not to directly award a new contract as referred to in clause 4.8.

5. Transition

General obligations

- 5.1 During the Transition-In Period, the Operator shall:
 - 5.1.1 take all reasonable steps and co-operate promptly, honestly and in good faith with GWRC, any relevant Existing Operator and any other relevant incoming operator notified to it by GWRC, to enable the Operator to commence the safe and efficient operation of the Services on and from the Transfer Time in a manner which minimises disruption to passengers; and
 - 5.1.2 not directly or indirectly interfere with or adversely affect the provision of TPTD Bus Services by the Existing Operators.

Transition Plan

- 5.2 The Transition Plan shall apply and have effect from the date of this Partnering Contract until the date falling 6 months after the Commencement Date or such other date agreed by GWRC and the Operator in writing.
- 5.3 During the Transition-In Period, the Operator shall fully adopt, implement and comply with the Transition Plan.
- 5.4 Subject to clause 5.5, after the date of this Partnering Contract the Transition Plan may only be amended by written agreement of the Parties.
- 5.5 If at any time after the date of this Partnering Contract either of the Operator or GWRC become aware that any aspect of, or information contained in, the Transition Plan is incorrect or out-of-date, it must promptly notify the other Party and propose amendments to rectify the relevant aspects of, or information contained in, the Transition Plan. The Operator will amend the Transition Plan accordingly and submit it to GWRC for its review and approval in writing. Within 10 Business Days of receipt of the amended Transition Plan, GWRC must by notice to the Operator accept the amended Transition Plan or request further amendments to the Transition Plan. The Operator must provide a further amended Transition Plan within 5 Business Days of receipt of any request by GWRC for further amendments to the Transition Plan and the approval process under this clause 5.5 shall continue until GWRC confirms its acceptance of the amended Transition Plan by notice to the Operator.
- 5.6 The Operator acknowledges and agrees that any amendment to, or GWRC's approval of any amendment to, the Transition Plan in accordance with this Partnering Contract will not relieve the Operator from any of its obligations, liabilities and responsibilities under this Partnering Contract.

Regional Transition Plan

- 5.7 Without limiting the Operator's obligations in respect of the Transition Plan, the Operator shall:
 - 5.7.1 in conjunction with GWRC and the other PTOM Operators, contribute to the development of the Regional Transition Plan;

- 5.7.2 if requested by GWRC, ensure that it is represented at each meeting and consultation called by GWRC in respect of the Regional Transition Plan by personnel of appropriate seniority and responsibility and those senior managers or such other individuals in governance roles that are reasonably requested by GWRC to be in attendance; and
- 5.7.3 perform its obligations under, and otherwise give effect to, the Regional Transition Plan from the date of this Partnering Contract until the date falling 6 months after the Commencement Date or such other date agreed by GWRC and the Operator in writing.

5.8 In the event of any inconsistency or conflict between:

- 5.8.1 this Partnering Contract;
- 5.8.2 the Transition Plan; and
- 5.8.3 the Regional Transition Plan,

then the descending order of precedence set out in clauses 5.8.1 to 5.8.3 shall apply to the extent of such inconsistency or conflict (with the standards and requirements referred to in clause 5.8.1 having the highest precedence and the standards and requirements referred to in clause 5.8.3 having the lowest precedence).

TPTDs

- 5.9 The Operator hereby acknowledges the terms of the TPTDs and the Operator shall not, and shall ensure that the Operator Associates shall not, through its or their acts or omissions cause or contribute to any breach by GWRC of any of the TPTDs.
- 5.10 The Operator acknowledges and agrees that in respect of TPTD Bus Services, the relevant Existing Operator has no obligations whatsoever in relation to facilitating the transfer or achieving the outcomes expressed at clause 16.1 of the relevant TPTD following the Transfer Time, as responsibility for those outcomes will reside solely with the Operator. The acknowledgement and agreement of the Operator in this clause 5.10 creates a right under the Contract and Commercial Law Act 2017 which right may be enforced by the Existing Operators.

6. Operator Licence requirement

- 6.1 At all times during the Term, the Operator shall hold a valid and current Licence.
- 6.2 In the event that the Operator does not hold a valid and current Licence as at the date of this Partnering Contract, the Operator shall ensure that such Licence is granted to it as soon as reasonably practicable following the date of this Partnering Contract (and in any event prior to the Commencement Date).

7. Warranties and representations

Warranties correct

- 7.1 The Operator represents and warrants to GWRC that each of the statements in Schedule 8 (*Warranties and Representations*) is true, correct and not misleading. Such representations and warranties given under:
- 7.1.1 paragraphs 1.1 (*Prohibited Act*), 1.14 and 1.15 (*Title and security*) of Schedule 8 (*Warranties and Representations*) are given on the date of this Partnering Contract and shall be deemed repeated on each day thereafter up to and including the Termination Date by reference to the facts existing on that day;
- 7.1.2 paragraph 1.2 (*Information Provided*) of Schedule 8 (*Warranties and Representations*) are given on the date on which the relevant information was provided, whether in the Tender, correspondence,

negotiations, pursuant to this Partnering Contract or otherwise, and on the date of this Partnering Contract if provided prior to such date; and

- 7.1.3 Schedule 8 (*Warranties and Representations*), other than those referred to in clauses 7.1.1 and 7.1.2, are given by the Operator on the date of this Partnering Contract.

Notification of change

- 7.2 A Party must immediately notify the other Party in writing upon becoming aware that any representation or warranty given or deemed repeated by it under this Partnering Contract has or is likely to become untrue, incorrect or misleading in any material respect at any time prior to the Termination Date.

Reliance on representations and warranties

- 7.3 The Operator acknowledges that GWRC has entered into or will enter into this Partnering Contract and the other Transaction Documents in reliance on the representations and warranties given by the Operator in this clause 7 and in Schedule 8 (*Warranties and Representations*).

GWRC warranties

- 7.4 GWRC represents and warrants to the Operator that:
- 7.4.1 it has power to enter into and perform its obligations under this Partnering Contract and the other Transaction Documents to which it is expressed to be a party, and to carry out the transactions contemplated by those documents;
 - 7.4.2 this Partnering Contract and each other Transaction Document to which it is party constitute valid and binding obligations on GWRC and are enforceable in accordance with their terms, in each case subject to any applicable laws; and
 - 7.4.3 the execution and performance by GWRC of the Transaction Documents to which it is a party and each transaction contemplated under those documents did not and will not violate in any respect a provision of any Law or any other document or agreement that is binding on GWRC or its assets.

Part Two – Parties' obligations and rights

8. Services

Scope of Services

- 8.1 With effect from the Transfer Time until and including the Termination Date, the Operator shall in return for payment of the Services Fee and subject to the terms and conditions of this Partnering Contract, provide, perform and comply with the following:
- 8.1.1 Passenger Services in accordance with Schedule 3 (*Passenger Services*);
 - 8.1.2 compliance with the warranties and representations set out at Schedule 8 (*Warranties and Representations*);
 - 8.1.3 the obligations, warranties and representations of the Operator under the Transition Plan to be performed in accordance with clause 5 (*Transition*);
 - 8.1.4 hand over services in accordance with Part Nine (*Obligations associated with change of Operator*); and
 - 8.1.5 all the other obligations, warranties and representations of the Operator under this Partnering Contract.
- 8.2 For the avoidance of doubt, the Operator shall commence provision of the Passenger Services in respect of the Bus Unit with effect from the Transfer Time. Notwithstanding anything to the contrary in this Partnering Contract, nothing in this Partnering Contract obliges or entitles the Operator to operate the Passenger Services in respect of the Bus Unit prior to the Transfer Time.

Objectives, outcomes and outputs for Services

- 8.3 The Operator shall provide the Services in a manner and to a standard that facilitates the achievement of:
- 8.3.1 the Passenger Services Objectives and Outcomes; and
 - 8.3.2 the requirements set out in the Annual Business Plan.

9. Licence, Laws and standards

Overarching requirements

- 9.1 Without prejudice to any other provision of this Partnering Contract, the Operator shall for the duration of the Term hold, maintain, comply with, ensure that the Vehicles and Depots comply with, and perform the Services in accordance with (and the Operator shall ensure that the Operator Associates shall at all times during the Term comply with):
- 9.1.1 all applicable Law (including Safety Law and all applicable Rules);
 - 9.1.2 the Operator's Licence (including complying with and discharging any conditions to which the Licence is subject);
 - 9.1.3 any other Consent;
 - 9.1.4 all notices, orders and directions issued or given by a Governmental Entity which affect or relate to the Vehicles, the Depots or any other assets or systems from time to time used by the Operator or the Operator Associates in connection with the Services;

- 9.1.5 the terms of this Partnering Contract (excluding the Operator's Proposals);
- 9.1.6 the Operator's Proposals;
- 9.1.7 Good Industry Practice.

9.2 In the event of any inconsistency or conflict between any of the standards and requirements specified in clauses 9.1.1 to 9.1.7, then the descending order of precedence set out in clauses 9.1.1 to 9.1.7 shall apply to the extent of such inconsistency or conflict (with the standards and requirements referred to in clause 9.1.1 having the highest precedence and the standards and requirements referred to in clause 9.1.7 having the lowest precedence).

Participation in reviews

9.3 Without prejudice to any other obligation of the Operator under any Transaction Document, if requested to do so by GWRC or any Governmental Entity, the Operator shall (acting reasonably and in good faith) duly participate in a review of any change proposed in respect of any Laws or other standards which are relevant to the Services (including the introduction of new standards or Laws).

Laws, licences, permits and consents

9.4 The Operator shall use reasonable endeavours to advise GWRC as soon as reasonably practicable of any likely breaches by it or any Operator Associate of any applicable Law, any Licence or any other Consent.

9.5 The Operator shall immediately provide written notice to GWRC of:

- 9.5.1 any actual or investigated breaches by it or any Operator Associate of any applicable Law, any Licence or any other Consent;
- 9.5.2 any actual or proposed repeal, revocation, cancellation, termination, suspension, surrender or deemed surrender of the Operator's Licence or any other Consent;
- 9.5.3 the expiry of the Operator's Licence or any other Consent, in each case in circumstances where the same has not been renewed prior to such expiry taking effect;
- 9.5.4 any actual or proposed material variations to the Operator's Licence or any other Consent (including actual or proposed material variations to any conditions thereof or the actual or proposed imposition of new conditions in relation thereto); or
- 9.5.5 any investigation being undertaken by the Police, the Transport Agency, WorkSafe or any other regulator which may result in a variation to the Operator's Licence or any other Consent.

Correction Notices

9.6 If the Operator or any Operator Associate receives a Correction Notice, including if a Vehicle on the Fleet List receives a Vehicle Sticker (regardless of whether or not the Vehicle is being used to provide Passenger Services at the time of inspection) from any Governmental Entity notifying the Operator or the Operator Associate that in respect of the Services or any Vehicles on the Fleet List:

- 9.6.1 there has been a breach or non-compliance of any Law, Licence or other Consent; or
 - 9.6.2 action is required in order to prevent or rectify any such breach or non-compliance,
- the Operator shall:
- 9.6.3 immediately notify GWRC by issuing an Immediate Report;

- 9.6.4 provide GWRC with a copy of such Correction Notice; and
- 9.6.5 provide all relevant details of the reason for the Correction Notice being issued and to which Vehicle it relates (if applicable).
- 9.7 Within 3 Business Days of receipt by the Operator or an Operator Associate of a Correction Notice, the Operator shall either:
 - 9.7.1 notify GWRC that it will dispute or appeal the Correction Notice; or
 - 9.7.2 if the Operator does not intend to dispute or appeal the Correction Notice, provide a written plan to GWRC setting out the Operator's proposals to:
 - (a) proactively investigate the matters referred to in the Correction Notice;
 - (b) undertake corrective action in order to promptly remedy the matters referred to in the Correction Notice and to prevent such matters from reoccurring; and
 - (c) mitigate the effect of any matter referred to in the Correction Notice.
- 9.8 The Operator shall immediately implement and comply with any plan submitted to GWRC pursuant to clause 9.7.2.
- 9.9 If the Operator notifies GWRC that it will dispute or appeal the Correction Notice pursuant to clause 9.7.1 and:
 - 9.9.1 the Operator does not dispute or appeal the Correction Notice within 3 Business Days of notifying GWRC; or
 - 9.9.2 the Operator's dispute or appeal in respect of the Correction Notice is not resolved in favour of the Operator,the Operator must immediately provide GWRC with a written plan containing the information referred to in clause 9.7.2.

Standards of operation

- 9.10 The Operator shall ensure that the Transferring Vehicles, the Transferring Depots and the GWRC Assets (to the extent that the Operator is permitted or required to use or Maintain the GWRC Assets) are only used, operated and Maintained:
 - 9.10.1 by competent and properly qualified, trained and licensed personnel using recognised methods and standards of operation or maintenance (as applicable);
 - 9.10.2 in accordance with Good Industry Practice;
 - 9.10.3 in accordance with the operational characteristics described in the technical specifications relevant to that asset;
 - 9.10.4 in a manner that does not breach or invalidate any agreement, warranty or guarantee relating to that asset (to the extent that such terms and conditions have been provided to the Operator by any person); and
 - 9.10.5 in accordance with any other reasonable requirements of the manufacturer or supplier of that asset.

Quality and environmental systems

- 9.11 At all times during the Term, the Operator shall maintain, implement, comply with and provide the Services in accordance with:
- 9.11.1 the Quality Management System; and
 - 9.11.2 the Environmental Management System.
- 9.12 Prior to the Conditions Precedent Date for Satisfaction and in accordance with Appendix 2 (*Milestone Dates*) to Schedule 13 (*Transition Plan*), the Operator shall provide GWRC with a copy of the Quality Management System and the Environmental Management System. In the event that the Operator amends, updates or replaces the Quality Management System or the Environmental Management System at any time during the Term, it shall:
- 9.12.1 ensure that the amended, updated or replacement document complies with the requirements of the definition of Quality Management System or Environmental Management System (as applicable) as set out in Schedule 1 (*Definitions and interpretation*); and
 - 9.12.2 promptly provide GWRC with a copy of such document as so amended, updated or replaced.

Transaction Documents

- 9.13 The Operator shall:
- 9.13.1 comply with the terms of each Transaction Document to which it is party; and
 - 9.13.2 ensure that the Operator and Operator Associates do not cause or contribute to any:
 - (a) breach by GWRC of the terms of; or
 - (b) liability of GWRC under,any Transaction Document to which GWRC is party.
- 9.14 Without the prior written consent of GWRC (not to be unreasonably withheld or delayed), the Operator shall not (in whole or in part):
- 9.14.1 terminate, rescind, accept the repudiation of or agree to the termination, rescission or repudiation of any of the Transaction Documents (excluding termination of this Partnering Contract by the Operator pursuant to clause 48 (*Termination for non-payment*));
 - 9.14.2 make or agree to any variation of any Transaction Document;
 - 9.14.3 depart from its obligations or (except in the case of this Partnering Contract) waive or allow to lapse any material rights it may have under any Transaction Document; or
 - 9.14.4 enter into (or permit the entry into by any other person of) any agreement replacing all or part of, or otherwise materially affecting the interpretation of, any Transaction Document,
- regardless of any termination, rescission, repudiation or breach of, or the variation or replacement to, or any waiver or lapse under any Associated Partnering Contract or Associated Bundled Partnering Contract.

Coordination

- 9.15 The Operator and GWRC shall each perform their respective obligations under this Partnering Contract:
- 9.15.1 in coordination with any other services or activities performed or undertaken by or for the Operator or GWRC in respect of any other PTOM Units; and

- 9.15.2 using best endeavours to avoid any unnecessary disruption of, or interference to, the business or other activities of GWRC or its subsidiaries or the Operator.

PPSA Security

- 9.16 Subject to the terms and conditions of this Partnering Contract:
- 9.16.1 the Operator grants to GWRC a security interest (within the meaning ascribed to that term under section 17 of the Personal Property Securities Act 1999) in respect of all GWRC Assets and any other assets or items in respect of which GWRC is the legal owner or licensor and which are held by, leased, licensed or under bailment to, or in the possession and control of the Operator from time to time in accordance with this Partnering Contract;
- 9.16.2 the Operator grants to GWRC a security interest (within the meaning ascribed to that term under section 17 of the Personal Property Securities Act 1999 or under any other equivalent law in the relevant jurisdiction) in respect of the Transferring Assets to secure the performance of the Operator's obligations in respect of those Transferring Assets under this Partnering Contract;
- 9.16.3 the rights of GWRC under this clause 9.16 are in addition to, and not in substitution for, any other rights or interests of GWRC under this Partnering Contract or otherwise, including, without limitation, any ownership claim to any assets for which ownership and title has not passed; and
- 9.16.4 the Operator:
- (a) agrees that sections 114(1), 133 and 134 of the Personal Property Securities Act 1999 shall not apply to any Security Interest created in accordance with this Partnering Contract;
 - (b) agrees that none of the rights as debtor under sections 116,120(2), 121,125, 126,127, 129 and 131 of the Personal Property Rights Act 1999 apply; and
 - (c) waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to any Security Interest.

10. Vehicles

General requirements and Maintenance

- 10.1 The Operator shall ensure that at all times during the Term, each Vehicle:
- 10.1.1 complies with the Vehicle Quality Standards whilst the Vehicle is providing Passenger Services or otherwise carrying passengers;
- 10.1.2 is registered on the New Zealand "Motor Vehicle Register" (or any successor thereof) in accordance with Part 17 of the Land Transport Act and is continuously licensed;
- 10.1.3 whilst the Vehicle is providing Passenger Services or otherwise carrying passengers, has all certificates and permits required by Law to enable it to be used for the purposes of providing the Services (including a Certificate of Fitness) and the Operator shall ensure that all such certificates and permits are kept current and valid;
- 10.1.4 whilst the Vehicle is providing Passenger Services or otherwise carrying passengers, is installed with all relevant on-board RTPI Equipment and Ticketing Equipment;

- 10.1.5 is installed with any other equipment required by GWRC from time to time which, except to the extent specified otherwise in this Partnering Contract, shall be installed at GWRC's cost;
 - 10.1.6 in respect of the Transferring Vehicles is, without limiting clause 9.10, Maintained in accordance with the Fleet Maintenance Plan;
 - 10.1.7 is, whilst the Vehicle is providing Passenger Services or otherwise carrying passengers, clean and tidy and that any graffiti is removed from the Vehicle within the applicable time period specified in paragraphs 4.7 and 4.8 (*Cleaning*) of Schedule 3 (*Passenger Services*);
 - 10.1.8 is inspected and cleaned in accordance with the Vehicle Inspection and Cleaning Plan;
 - 10.1.9 and any equipment fitted to the Vehicle (including bicycle racks), is otherwise kept, Maintained and preserved in accordance with Good Industry Practice;
 - 10.1.10 has an Age which does not exceed the Maximum Age Threshold; and
 - 10.1.11 displays in such form as GWRC reasonably requires that Vehicle's unique identification code notified to the Operator by GWRC.
- 10.2 The Operator shall not (without the written permission of GWRC and then only on a temporary basis) at any time use a Vehicle for the purposes of providing any Passenger Services if that Vehicle does not:
- 10.2.1 appear on the Fleet List or on the "Fleet List" of an Associated Partnering Contract; or
 - 10.2.2 meet the applicable Vehicle Size Classification.

Condition failures and non-compliant Vehicles

- 10.3 Subject to paragraphs 3.44 to 3.47 (*Functioning GWRC equipment*) of Schedule 3 (*Passenger Services*), where GWRC notifies the Operator, or the Operator otherwise becomes aware, of any Vehicle:
- 10.3.1 Minor Non-Compliance, the Operator may continue to use the Vehicle to provide Passenger Services and the Operator must rectify the Minor Non-Compliance within 5 Business Days;
 - 10.3.2 Major Non-Compliance, the Operator must not use that Vehicle to provide Passenger Services during the period beginning 24 hours after the non-compliance being identified and the Operator must rectify the Major Non-Compliance within 3 Business Days;
 - 10.3.3 Severe Non-Compliance:
 - (a) while the Vehicle is being used to provide a Scheduled Service or Special Event Service, the Operator must not use that Vehicle to provide Passenger Services after the completion of the Scheduled Service or Special Event Service immediately subsequent to the service during which the non-compliance was identified and the Operator must rectify the Severe Non-Compliance within 3 Business Days; or
 - (b) while the Vehicle is not being used to provide a Scheduled Service or Special Event Service, the Operator must not use that Vehicle to provide Passenger Services and the Operator must rectify the Severe Non-Compliance within 3 Business Days; or
 - 10.3.4 non-compliance with Schedule 4 (*Vehicle Quality Standards*), any defect or fault (but excluding any Minor Non-Compliance, Major Non-Compliance or Severe Non-Compliance), the Operator must

rectify the non-compliance, defect or fault prior to or at the next Vehicle routine maintenance check following the date,

of the non-compliance, defect or fault being identified.

10.3A If any Vehicle non-compliance, defect or fault:

10.3A.1 is rectified by the Operator, the Operator may, subject to and without limiting the other requirements of this Partnering Contract, use that Vehicle to provide Passenger Services; or

10.3A.2 is not rectified by the Operator within the time required by clause 10.3, the Operator must not (unless GWRC expressly permits otherwise by notice in writing to the Operator, with or without conditions) use or must continue to not use (as applicable) that Vehicle to provide Passenger Services until the non-compliance, defect or fault is rectified.

10.3B If GWRC expressly permits the Operator to use a Vehicle to provide Passenger Services in accordance with clause 10.3A.2, the Operator must comply with the conditions of the permission (if any) and rectify the relevant non-compliance, defect or fault within any period specified in GWRC's notice, or if no period is specified, as soon as reasonably practicable thereafter.

GWRC inspection

10.4 Prior to a Vehicle first being used by the Operator in the provision of Passenger Services:

10.4.1 the Operator shall provide to GWRC:

- (a) full technical details of that model, including the model and scaled evaluation drawings of the Vehicle specification;
- (b) evidence from the Vehicle manufacturer and test results demonstrating that the Vehicle's noise output is equal to or less than the Noise Output Maximum Level;
- (c) evidence that all Consents required to use the Vehicle to provide Passenger Services have been obtained (other than GWRC's consent provided pursuant to clause 10.4.4); and
- (d) drawings of the Vehicle demonstrating compliance with the Vehicle Quality Standards, including in respect of branding and livery;

10.4.2 the Operator shall permit GWRC and its nominees to inspect the Vehicle (subject to clause 10.4.3) within the Wellington region:

- (a) at a reasonable time no later than 10 Business Days prior to the Conditions Precedent Date for Satisfaction if the Vehicle is intended to be used from the Commencement Date; or
- (b) otherwise, at such time as is agreed by GWRC and the Operator (each acting reasonably);

10.4.3 if the Operator requires GWRC (and GWRC agrees) to inspect a Vehicle outside of the Wellington region, the Operator shall reimburse GWRC its reasonable travel expenses incurred in carrying out such inspection within 14 days of a written request to do so;

10.4.4 within 5 Business Days following the date of such inspection, GWRC shall by written notice to the Operator either:

- (a) if the Vehicle complies with the requirements of this Partnering Contract (including the Vehicle Quality Standards), approve the use by the Operator of that Vehicle in the provision of Passenger Services; or
 - (b) if the Vehicle does not comply with any of the requirements of this Partnering Contract (including the Vehicle Quality Standards), reject the use by the Operator of that Vehicle in the provision of Passenger Services and provide an assessment form detailing any non-compliances identified by GWRC.
- 10.5 If GWRC (acting reasonably) notifies the Operator that a Vehicle does not comply with any of the requirements of this Partnering Contract (including the Vehicle Quality Standards) pursuant to clause 10.4.4(b):
 - 10.5.1 the Operator shall promptly provide full details of proposed modifications to the Vehicle which will correct the non-compliances (including evidence that the modifications will ensure that the Vehicle will comply with the relevant requirements of this Partnering Contract) for GWRC's approval prior to the commencement of the modifications. Such evidence may comprise, for example, a written statement or assurance from an independent, recognised Vehicle supplier, repairer or maintainer that the modifications can be made and will result in the Vehicle complying with this Partnering Contract; and
 - 10.5.2 if GWRC has provided its approval pursuant to clause 10.5.1, the Operator shall promptly correct the non-compliance (at the Operator's expense) by implementing the modifications proposed under clause 10.5.1 and the Parties must follow the process in clause 10.4 again until GWRC provides its approval pursuant to clause 10.4.4(a).
- 10.6 Where the fleet of Vehicles comprises more than one Vehicle of the same type, GWRC may (in its absolute discretion) elect to inspect a sample (which may comprise any number of such Vehicles as is specified by GWRC) of that type of Vehicles. Any approval or rejection given by GWRC under clause 10.4.4 in respect of such sample of Vehicles shall apply to all of the Vehicles of that same type, unless otherwise specified by GWRC in writing.
- 10.7 The Operator shall not use (and shall ensure that the Operator Associates shall not use) any Vehicle in the provision of Passenger Services unless:
 - 10.7.1 GWRC has approved the use of such Vehicle in writing pursuant to clause 10.4.4(a);
 - 10.7.2 GWRC has approved in writing the use of such Vehicle under clause 10.4.4(a) of an Associated Partnering Contract; or
 - 10.7.3 otherwise agreed in writing by GWRC.
- 10.8 The Operator acknowledges and agrees that:
 - 10.8.1 subject to clause 41.2 (*Indemnity provided by GWRC*), neither GWRC nor its nominees owe a duty of care to the Operator or any Operator Associate in inspecting any Vehicle or approving any modification pursuant to clauses 10.4 or 10.5 or clauses 10.4 or 10.5 of an Associated Partnering Contract; and
 - 10.8.2 the inspection of a Vehicle and the giving of any approval under clauses 10.4 or 10.5 or clauses 10.4 or 10.5 of an Associated Partnering Contract does not:

- (a) relieve the Operator from, or alter or affect, the Operator's liabilities, obligations or responsibilities whether under a Transaction Document or otherwise according to Law;
- (b) prejudice GWRC's rights and remedies against the Operator, whether under any Transaction Document or otherwise according to Law;
- (c) give rise to an entitlement for the Operator to make any Claim arising out of or in any way in connection with such approval; or
- (d) give rise to any liability on the part of GWRC or any GW Associate.

10.8A Without limiting clause 10.8 and GWRC's rights and remedies against the Operator in respect of any breach by the Operator of this Partnering Contract, if GWRC approves the use by the Operator of any Vehicle in the provision of Passenger Services pursuant to clause 10.4.4(a) GWRC shall not be entitled to subsequently withdraw the approval given under clause 10.4.4(a).

Acquisition of Vehicles and Fleet List

10.9 The Operator shall:

- 10.9.1 subject to clause 10.9A, acquire Vehicles (or the use of Vehicles) for the performance of its obligations under this Partnering Contract in accordance with the Vehicle Acquisition Plan;
- 10.9.2 use each such Vehicle in the performance of its obligations under this Partnering Contract with effect from the relevant date contemplated in the Vehicle Acquisition Plan;
- 10.9.3 ensure that each Vehicle which is a Transferring Vehicle complies at all times with any relevant specification set out in the Vehicle Acquisition Plan or which is otherwise agreed by GWRC in accordance with clause 10.9A;
- 10.9.4 immediately upon acquiring any Vehicle or upon any Vehicle first being made available to the Operator for use in the provision of the Services, notify GWRC in writing and provide a copy of the updated Fleet List to GWRC in accordance with clause 10.14; and
- 10.9.5 subject to clauses 10.9A to 10.9C, update the then current Vehicle Acquisition Plan in accordance with Schedule 5 (*Planning, Reporting and Meetings*):
 - (a) in order to ensure that the Fleet List and Vehicles used in providing the Services comply with this Partnering Contract; and
 - (b) to provide for the acquisition of additional Brand New Vehicles to meet an increase in the PVR resulting from a Contract Variation, a Minor Contract Variation or a change to the Bus Unit Timetable (each being a **Change**) under this Partnering Contract, except to the extent that:
 - A. there is a directly associated or contemporaneous Change under one or more Associated Partnering Contracts which results in an equivalent decrease to the PVR under that Associated Partnering Contract; and
 - B. the Vehicles no longer required to provide services under the Associated Partnering Contracts as a result of the Change to those contracts will be used to provide Services under this Partnering Contract as amended by the Change to this Partnering Contract.

The Operator shall provide the updated Vehicle Acquisition Plan required under this clause 10.9.5(b) within 5 Business Days of the Change for GWRC's approval

- 10.9A Notwithstanding anything to the contrary in any Transaction Document, the Operator shall (and shall ensure that the Transferring Asset Related Parties shall) only acquire Transferring Vehicles or the use of Transferring Vehicles to the extent that GWRC has provided its prior written agreement to this, including its agreement in relation to:
- (a) the manufacturer, Vehicle Size Classification and unique identifier of the relevant Transferring Vehicles;
 - (b) the date on which the Transferring Vehicles will first be made available for use in the provision of the Services;
 - (c) the Age of the Transferring Vehicles when they will first be made available for use in the provision of the Services; and
 - (d) the capital cost payable in respect of the Transferring Vehicles and any costs which may impact on any Transfer Price payable under a Transfer Agreement.

Promptly following a request to do so, the Operator shall (on an Open Book Basis) provide GWRC with such information and evidence as GWRC reasonably requests in respect of any costs related to the acquisition of Transferring Vehicles which may impact on the calculation of the Transfer Price (including a breakdown of how such costs have been calculated).

- 10.9B For the purposes of clause 10.9A, GWRC hereby agrees to the acquisition and use of those Transferring Vehicles specified in Appendix 11 (*Transferring Vehicles*) of Schedule 2 (*Agreement details*) as at the date of this Partnering Contract. The Parties acknowledge and agree that in the event that GWRC agrees to the acquisition of, or the use of, any additional Transferring Vehicles pursuant to clause 10.9A, Appendix 11 (*Transferring Vehicles*) of Schedule 2 (*Agreement details*) shall be promptly updated by the Parties to record the matters as agreed by GWRC pursuant to clause 10.9A and the Parties hereby consent to such amendment to that Appendix. Such amendment shall not constitute a Contract Variation or Minor Contract Variation.
- 10.9C The Operator shall promptly amend the Vehicle Acquisition Plan to reflect any matter agreed by GWRC pursuant to clause 10.9A in relation to the acquisition of a new Transferring Vehicle. Such amendment shall not constitute a Contract Variation or Minor Contract Variation.
- 10.10 Within 3 Business Days following the date on which the Operator acquires a Transferring Vehicle or the date on which a Transferring Vehicle is first made available to the Operator for the purposes of providing the Services, the Operator shall update the Fleet Maintenance Plan to provide for Maintenance of that Transferring Vehicle and shall provide a copy of such updated Fleet Maintenance Plan to GWRC.
- 10.11 If the Fleet Maintenance Plan has been updated to include a type or specification of Transferring Vehicle which is different to those Transferring Vehicles in the version of Fleet List which was current prior to the Transferring Vehicle being purchased or being made available to the Operator, GWRC shall within 5 Business Days of receipt of the updated Fleet Maintenance Plan either approve or reject such updated Fleet Maintenance Plan (acting reasonably) and give written notice of such approval or rejection (with reasons) to the Operator.
- 10.12 If GWRC has rejected a Fleet Maintenance Plan pursuant to clause 10.11, the Operator shall amend the Fleet Maintenance Plan to take account of the comments of GWRC and shall resubmit such amended Fleet

Maintenance Plan to GWRC within 3 Business Days of receipt of the notice of rejection, in which case clause 10.11 and this clause 10.12 shall reapply.

- 10.13 Without prejudice to clause 10.9, the Operator shall ensure that at all times during the Term it has sufficient Vehicles available for its use to enable it to provide the Services in accordance with this Partnering Contract. The Operator bears all risk associated with procuring ownership or use of the Vehicles required to enable it to perform its obligations under this Partnering Contract.
- 10.14 Subject to clause 10.15, the Operator shall:
- 10.14.1 ensure that the Fleet List is kept accurate, up to date and complete at all times and lists only those Vehicles which the Operator has acquired or has acquired the use of for the performance of the Services;
 - 10.14.2 within 3 Business Days following any amendment to the Fleet List, provide an electronic copy of the revised Fleet List to GWRC;
 - 10.14.3 provide GWRC with a hard copy of the current Fleet List promptly following a request to do so; and
 - 10.14.4 without prejudice to clauses 55.3 to 55.13, if a Vehicle is permanently withdrawn from use in providing the Services, the Operator shall promptly remove it from the Fleet List.
- 10.15 The Operator must ensure that:
- 10.15.1 on the Commencement Date, at least 50% of the Vehicles on the Fleet List are New Vehicles and the balance of Vehicles on the Fleet List are Existing Vehicles;
 - 10.15.2 New Vehicles are not removed from the Fleet List at any time during the Term without the prior written consent of GWRC;
 - 10.15.3 the Vehicle Acquisition Plan provides for the Operator to acquire (or acquire the use of) New Vehicles only;
 - 10.15.4 without limiting the terms of this clause 10.15, the Fleet List must only be amended:
 - (a) to reflect the acquisition of Vehicles (or the use of Vehicles) and disposal of Vehicles in accordance with the Vehicle Acquisition Plan;
 - (b) in accordance with a Variation Order;
 - (c) in accordance with a change to the Peak Vehicle Requirement approved by GWRC in accordance with the Timetable Change Process or Schedule 14 (*Change Events and Net Financial Impact*); or
 - (d) as otherwise agreed in writing by GWRC; and
 - 10.15.5 the Fleet List must not contain Vehicles which appear on a "Fleet List" in any Associated Partnering Contract;
 - 10.15.6 in all Relevant Months, the Age of each Vehicle on the Fleet List must not exceed the Maximum Age Threshold;
 - 10.15.7 in all Relevant Months, the Average Age of the Vehicles on the Fleet List must not exceed the Average Age Threshold; and

10.15.8 the Vehicle Acquisition Plan and Fleet List are compliant with the requirements of paragraph 4.1 (*Vehicle emissions*) of Schedule 3 (*Passenger Services*).

10.16 The Operator may provide Passenger Services under this Partnering Contract using Vehicles which appear on a "Fleet List" in any Associated Partnering Contract provided that such Vehicles comply with the requirements of this Partnering Contract.

Use of Vehicles for any other purpose

10.17 Subject to clauses 10.18 and 10.19, the Operator may use the Vehicles for purposes other than the provision of the Services provided that:

10.17.1 such use does not bring the Metlink brand, GWRC or the Operator into disrepute;

10.17.2 such use does not interfere with, adversely impact or otherwise prevent the performance by the Operator of its obligations in accordance with the Transaction Documents; and

10.17.3 such use does not interfere with, adversely impact or otherwise prevent the performance by the Operator of its obligations under any Associated Partnering Contract.

10.18 If a Vehicle is to be used by any person for the purposes of providing charter services, the Operator shall ensure that at all times whilst the Vehicle is being used for such purposes the destination display(s) on that Vehicle clearly indicate that the Vehicle is being used for such charter purposes and is not available for public use.

10.19 The Operator may only use a Vehicle (or permit a Vehicle to be used) in the provision of an Exempt Service with the prior written consent of GWRC (to be given or withheld by GWRC acting reasonably).

11. Depots

Maintenance of Transferring Depots

11.1 The Operator shall ensure that at all times during the Term and as at the date of transfer in accordance with clause 55, each Transferring Depot:

11.1.1 is in proper working order and good condition and repair;

11.1.2 is and has been Maintained in accordance with the requirements of this Partnering Contract; and

11.1.3 is and has been otherwise kept, Maintained and preserved in accordance with Good Industry Practice.

Acquisition of Depots and Depot List

11.2 The Operator shall:

11.2.1 acquire or develop Depots to be used by it in the performance of its obligations under this Partnering Contract in accordance with the Depot Acquisition Programme;

11.2.2 use each such Depot in the performance of its obligations under this Partnering Contract with effect from the relevant date contemplated in the Depot Acquisition Programme;

11.2.3 ensure that each Transferring Depot complies at all times during the Term with any applicable specification set out in the Depot Acquisition Programme and contains all fixtures, fittings, equipment and other items identified in the Depot Acquisition Programme;

- 11.2.4 immediately upon acquiring any Depot or upon a Depot first being made available to the Operator for the purposes of providing the Services, notify GWRC in writing and provide a copy of the updated Depot List to GWRC in accordance with clause 11.5;
- 11.2.5 discuss and agree (acting reasonably and in good faith) with GWRC, during the process of developing each Annual Business Plan, any proposed amendments to the Depot Acquisition Programme and any proposed disposals, renewals or acquisitions of Depots; and
- 11.2.6 prior to the Conditions Precedent Date for Satisfaction and in accordance with Appendix 2 (*Milestone Dates*) to Schedule 13 (*Transition Plan*), update the Depot Acquisition Programme to include all fixtures, fittings, equipment or other items which will be included in the transfer of the Transferring Depots and:
- (a) the Operator shall provide a copy of such updated Depot Acquisition Programme to GWRC;
 - (b) GWRC shall within 5 Business Days of receipt of the updated Depot Acquisition Programme either approve or reject such updated Depot Acquisition Programme (acting reasonably) and give written notice of such approval or rejection (with reasons) to the Operator; and
 - (c) if GWRC has rejected a Depot Acquisition Programme pursuant to clause 11.2.6(b), the Operator shall amend the Depot Acquisition Programme to take account of the comments of GWRC and shall resubmit such amended Depot Acquisition Programme to GWRC within 3 Business Days of receipt of the notice of rejection, in which case clause 11.2.6(b) and this subclause (c) shall reapply.
- 11.3 Within 30 Business Days following the date on which the Operator acquires a Transferring Depot or the date on which a Transferring Depot is first made available to the Operator for the purposes of providing the Services, the Operator shall update the Handover Package and shall provide a copy of such updated Handover Package to GWRC.
- 11.4 Without prejudice to clause 11.2, the Operator shall ensure that at all times during the Term it has sufficient Depot facilities (including fixtures, fittings and equipment) available for its use to enable it to provide the Services in accordance with this Partnering Contract. The Operator bears all risk associated with procuring ownership or use of the Depot facilities (including fixtures, fittings and equipment) required to enable it to perform its obligations under this Partnering Contract.
- 11.5 Subject to clause 11.6, the Operator shall:
- 11.5.1 ensure that the Depot List is kept accurate, up to date and complete at all times;
 - 11.5.2 within 3 Business Days following any amendment to the Depot List, provide an electronic copy of the revised Depot List to GWRC;
 - 11.5.3 provide GWRC with a hard copy of the current Depot List promptly following a request to do so; and
 - 11.5.4 ensure that each Depot is specified in the Depot List, provided that without prejudice to clauses 55.3 to 55.13 if a Depot is Disposed of, the Operator shall ensure that the Depot List is promptly amended accordingly.
- 11.6 The Operator must ensure that the Depot List must only be amended:

- 11.6.1 to reflect the acquisition of Depots (or the use of Depots) and disposal of Depots in accordance with the Depot Acquisition Programme;
 - 11.6.2 in accordance with a Variation Order; or
 - 11.6.3 as otherwise agreed in writing by GWRC (acting reasonably).
- 11.7 The Operator shall not make any improvements, alterations or changes to any Transferring Depot (or permit such improvements, alterations or changes to be made) where this will (or is likely to) materially affect the Transfer Price payable under a Transfer Agreement without GWRC's prior written consent (such consent not to be unreasonably withheld and to be promptly provided if the improvements, alterations or changes are reasonably required in order to allow the Operator to comply with its obligations in this Partnering Contract).

Contamination

- 11.8 Within 60 Business Days following the date on which the Operator acquires a Transferring Depot (which term, for the purposes of clauses 11.8 to 11.14, includes any land on which the Operator will construct a Transferring Depot) or the date on which a Transferring Depot is first made available to the Operator for the purposes of providing the Services, the Operator shall:
- 11.8.1 obtain, at its own cost, a Baseline Contamination Report in a form and with content satisfactory to GWRC (acting reasonably) prepared by an independent and suitably qualified third party approved by GWRC (acting reasonably); and
 - 11.8.2 provide GWRC with a copy of the Baseline Contamination Report.
- 11.9 The Operator shall (at its own cost) as soon as reasonably practicable (or in the time period specified in a Clean Up Notice, if any) take all steps necessary to:
- 11.9.1 dispose of, or otherwise deal with, all Contamination on, under, emanated or emanating from each Transferring Depot (whether identified in the Baseline Contamination Report or otherwise); and
 - 11.9.2 remediate the Transferring Depot,
- to the extent necessary to ensure that the Transferring Depot:
- 11.9.3 is suitable to be used for the Services (to a remediation standard to be agreed by the author of the Baseline Contamination Report and an expert to be appointed by GWRC as being suitable for the proposed use); and
 - 11.9.4 complies with all applicable Laws (including Environmental Laws) and with any applicable Clean Up Notices,
- with any necessary Consents required for such activities to be sought and obtained by the Operator.
- 11.10 The Operator shall at all times during the Term (and, in the case of the Transferring Depots, as at the date of transfer in accordance with clause 55) ensure that all Depots comply with Law (including Environmental Law) and are not allowed to be used so that:
- 11.10.1 Contamination is discharged unlawfully;
 - 11.10.2 a condition of pollution arises or is likely to arise;
 - 11.10.3 a breach of any Environmental Law occurs;
 - 11.10.4 any industrial waste or potentially hazardous substance is abandoned or dumped at a Depot; or

- 11.10.5 any industrial waste or potentially hazardous substance is handled in a manner which causes or is likely to cause a hazard in respect of the Environment.
- 11.11 The Operator shall:
- 11.11.1 obtain, maintain and comply with any Consent required under Environmental Law in order to comply with its obligations in clauses 11.8 to 11.14;
 - 11.11.2 obtain and maintain in full force and effect and comply with the terms of all Consents required in order to release or emit anything from a Transferring Depot into the air or water or on to the ground or into the Environment;
 - 11.11.3 permit GWRC to enter any Transferring Depot on reasonable notice to enable GWRC to satisfy itself that the Transferring Depot has not been Contaminated and that no breach of an Environmental Law has occurred;
 - 11.11.4 advise GWRC of the existence of any Contamination of, or emanation from, a Transferring Depot contrary to any Environmental Law not referred to in the Baseline Condition Report as soon as the Operator becomes aware of the matter; and
 - 11.11.5 as soon as reasonably practicable, and in any event within 2 Business Days, after receipt of any abatement notice, infringement notice, enforcement order application or prosecution under any Environmental Law in relation to a Transferring Depot, give full details of it and copies of any notices, directions, or other instruments to GWRC.
- 11.12 Without limiting any other obligations of the Operator, the Operator shall ensure that at all times during the Term and as at the date of transfer of a Transferring Depot in accordance with clause 55, any Contamination on, under, emanated or emanating from that Transferring Depot is in the same or better condition than the condition reported in the Baseline Contamination Report for that Transferring Depot.

Clean Up Notice for Transferring Depots

- 11.13 If a Clean Up Notice relating to Contamination on, under, emanated or emanating from a Transferring Depot is served during the Term then:
- 11.13.1 the party that receives the Clean Up Notice shall promptly provide the other party with a copy of the Clean Up Notice; and
 - 11.13.2 the Operator shall comply with the Clean Up Notice (at the Operator's own cost) regardless of whether:
 - (a) it is addressed to the Operator, GWRC or any other person; or
 - (b) the Clean Up Notice relates to Contamination identified in the Baseline Contamination Report or otherwise.
- 11.14 Subject to its obligations at Law, the Operator shall not (and will ensure that the Operator Associates shall not) do anything with the intent, directly or indirectly, of causing or being likely to cause the service of a Clean Up Notice.

12. Other assets and systems used in the provision of the Services

Bus Services Equipment Operations Manual

- 12.1 The Parties acknowledge that the Bus Services Equipment Operations Manual contains detailed provisions relating to the Ticketing System, RTPI System and associated equipment. The Parties shall comply with and give effect to the Bus Services Equipment Operations Manual and the Operator shall operate, maintain and otherwise deal with the Ticketing System and RTPI System in accordance with the Bus Services Equipment Operations Manual.
- 12.2 GWRC may at any time update, amend or replace the Bus Services Equipment Operations Manual provided that:
- 12.2.1 GWRC shall act reasonably in so doing; and
- 12.2.2 GWRC shall consult with the Operator prior to implementing any such update, amendment or replacement and shall consider any reasonable comments made by the Operator in connection therewith.
- 12.3 Any update, amendment or replacement to or of the Bus Services Equipment Operations Manual pursuant to clause 12.2 shall not constitute or give rise to a Contract Variation or Minor Contract Variation.
- 12.4 To the extent of any inconsistency or conflict between any provision of the Bus Services Equipment Operations Manual and any other provision of this Partnering Contract, that other provision shall prevail and take precedence over the Bus Services Equipment Operations Manual.

Installation of Ticketing System and RTPI System on board Vehicles as at the Commencement Date

- 12.5 Prior to the Commencement Date, subject to the Operator's compliance with clauses 12.6 and 12.8.3 and the Vehicle Quality Standards, GWRC shall (at its own cost and at such times as are set out in the Transition Plan and Appendix 2 (*Milestone Dates*) of Schedule 13 (*Transition Plan*), or at such other times agreed pursuant to clauses 12.9, 12.10 or 12.14):
- 12.5.1 install the Ticketing Equipment and the RTPI Equipment on those Vehicles which are to be used by the Operator with effect from the Commencement Date; and
- 12.5.2 ensure that it has a stock of Ticketing Equipment and RTPI Equipment to provide replacements in accordance with clause 12.17.
- 12.6 The Operator shall, in accordance with the Transition Plan and Appendix 2 (*Milestone Dates*) of Schedule 13 (*Transition Plan*) or in accordance with clauses 12.9, 12.10 or 12.14 (as applicable), make available to GWRC the Vehicles for installation of the Ticketing Equipment and the RTPI Equipment.
- 12.7 In relation to the installation of RTPI Equipment and Ticketing Equipment on any Existing Vehicle or any New Vehicle which is not a Brand New Vehicle, the Operator shall:
- 12.7.1 (at its own cost) ensure that, prior to the date on which GWRC is required to install the RTPI Equipment and Ticketing Equipment on board that Vehicle pursuant to clause 12.5, 12.9, 12.10 or 12.14 (as applicable), the Operator:
- (a) installs suitable ducting on board the Vehicle in accordance with any instructions and specifications provided by GWRC and in accordance with the Vehicle Quality Standards; and
- (b) ensures that the Vehicle is not fitted with any ticketing or vehicle tracking equipment and associated installation kits, including wiring looms, brackets or antennae, that is not required

as part of the Installation Kits, RTPI Equipment and Ticketing Equipment, unless agreed otherwise with GWRC,

in order to enable subsequent installation by GWRC of the Installation Kits, RTPI Equipment and Ticketing Equipment; and

12.7.2 other than where clause 12.14.2 applies, pay the costs incurred by GWRC of installing the Installation Kits at the rates set out in paragraph 18 (*Rates for installation of Installation Kits*) of Schedule 2 (*Agreement Details*) pursuant to this clause 12.7 within 10 Business Days following a demand therefor and GWRC may, without limiting clause 36, set off this amount from any subsequently payable Services Fees.

12.8 In relation to the installation of RTPI Equipment and Ticketing Equipment on any Brand New Vehicle:

12.8.1 the Operator shall provide reasonable advance notice of the date on which it requires GWRC to provide the Installation Kits in respect of that Brand New Vehicle;

12.8.2 subject to clause 12.8.1, GWRC shall (at its own cost) provide the Installation Kits for that Brand New Vehicle to the Operator on or prior to the date notified to it by the Operator in accordance with clause 12.8.1; and

12.8.3 the Operator shall (at its own cost) ensure that, prior to the date on which GWRC is required to install the RTPI Equipment and Ticketing Equipment on board that Vehicle pursuant to clause 12.5, 12.9, 12.10 or 12.14 (as applicable), the Operator:

- (a) installs suitable ducting to enable subsequent installation of wiring looms for RTPI Equipment and Ticketing Equipment; and
- (b) procures that the manufacturer of the Brand New Vehicle installs the Installation Kits provided by GWRC,

on board the Vehicle in accordance with any instructions and specifications provided by GWRC and in accordance with the Vehicle Quality Standards.

Installation of Ticketing System and RTPI System on board Vehicles acquired after the Commencement Date

12.9 If, after the Commencement Date, the Operator acquires any additional Vehicles (or the use of any additional Vehicles) as a result of a change to the PVR in accordance with Schedule 14 (*Change Events and Net Financial Impact*) or the Timetable Change Process, then the provisions of clauses 12.5 to 12.8 shall apply to the installation of Ticketing Equipment, RTPI Equipment and Installation Kits on board such additional Vehicles, provided that the date of such installation and the date on which the Operator must make the Vehicle available for such installation shall be such date as may be agreed by the Operator and GWRC (acting reasonably).

12.10 If, after the Commencement Date, the Operator acquires any Vehicle (or the use of any Vehicle) in circumstances other than those contemplated by clause 12.9, then the provisions of clauses 12.5 to 12.8 shall apply to the installation of Ticketing Equipment, RTPI Equipment and Installation Kits on board such additional Vehicles, provided that:

12.10.1 GWRC may swap Ticketing Equipment, RTPI Equipment and Installation Kits from an existing Vehicle which will no longer be used in the provision of the Services onto the replacement Vehicle and the Operator must make the existing Vehicle available for this purpose;

- 12.10.2 the date of such de-installation and installation and the date on which the Operator must make the Vehicle available for such de-installation and installation shall be such date as may be agreed by the Operator and GWRC (acting reasonably);
- 12.10.3 the Operator shall pay the costs incurred by GWRC pursuant to this clause 12.10 within 10 Business Days following a demand therefor.
- 12.11 If, after the Commencement Date, the Operator disposes of any Vehicle (or the use of any Vehicle) or if a Vehicle is permanently withdrawn from use in providing the Services, then to the extent that the Ticketing Equipment, RTPI Equipment or Installation Kits are not swapped from that Vehicle onto a replacement Vehicle as contemplated by clause 12.10, the Operator shall:
- 12.11.1 permit GWRC (or its nominee) to de-install the Ticketing Equipment, RTPI Equipment and Installation Kits from that Vehicle at such date and time as is agreed with GWRC; and
- 12.11.2 pay the costs incurred by GWRC in connection with de-installing the Ticketing Equipment, RTPI Equipment and Installation Kits within 10 Business Days following a demand therefor.

Installation of Ticketing System and RTPI System at Depots

- 12.12 To the extent that GWRC requires any Ticketing Equipment or RTPI Equipment to be installed in a Depot which is to be used by the Operator with effect from the Commencement Date:
- 12.12.1 GWRC shall (at its own cost and at such times as are set out in the Transition Plan or at such other times agreed pursuant to clause 12.14), install such Ticketing Equipment and RTPI Equipment (if any) in that Depot; and
- 12.12.2 the Operator shall:
- (a) provide access to that Depot to GWRC and its nominees at the times set out in the Transition Plan and Appendix 2 (*Milestone Dates*) of Schedule 13 (*Transition Plan*) for the purposes of GWRC performing its obligations under clause 12.12.1; and
 - (b) provide space within the Depot in accordance with the Bus Services Equipment Operations Manual that is appropriate to enable GWRC to install the Ticketing Equipment and RTPI Equipment (if any); and
 - (c) provide suitable live electricity connections and high speed data connections to which GWRC may connect the Ticketing Equipment and to enable the Operator to utilise the RTPI System.
- 12.13 If, after the Commencement Date, the Operator ceases using a Depot which has been installed with Ticketing Equipment or RTPI Equipment (if any) and:
- 12.13.1 commences using a new Depot, the Operator shall be responsible (at its own cost) for transferring the Ticketing Equipment and RTPI Equipment (if any) from the original Depot to the new Depot using a contractor nominated by GWRC to carry out such transfer; or
- 12.13.2 does not propose to use a replacement Depot (other than in the circumstances contemplated in clause 54.3), the Operator shall be responsible (at its own cost) for promptly de-installing the Ticketing Equipment and RTPI Equipment (if any) from the Depot using a contractor nominated by GWRC to carry out such de-installation.

New RTPI Equipment or Ticketing Equipment

- 12.14 If at any time after the Commencement Date GWRC elects to replace or upgrade any Ticketing Equipment or RTPI Equipment (except where this is due to the original equipment being damaged or defective, in which case clause 12.17 shall apply), GWRC shall:
- 12.14.1 de-install any existing Ticketing Equipment, RTPI Equipment or Installation Kits (if required) from the Vehicles and Depots to the extent such equipment is to be replaced; and
 - 12.14.2 procure and install the relevant Installation Kits (if required) and the new Ticketing Equipment or RTPI Equipment and the provisions of:
 - (a) clauses 12.5 to 12.8 shall apply to the installation of the new Ticketing Equipment or RTPI Equipment (as applicable) on board Vehicles; and
 - (b) clause 12.12 shall apply to the installation of the new Ticketing Equipment or RTPI Equipment (as applicable) at the Depot(s),

provided that the date of such de-installation and installation and the date on which the Operator must make the Vehicles and Depots available for such de-installation and installation shall be such date as may be agreed by the Operator and GWRC (acting reasonably).

Care of the RTPI System, Ticketing System and any other GWRC Assets

- 12.15 The Operator shall use the Ticketing Equipment and the RTPI Equipment for the purposes of providing the Services (and not for any other purposes unless otherwise agreed by GWRC acting reasonably in writing).
- 12.15A The Operator shall be responsible for loss of or damage to any part of the Ticketing System, the RTPI System, the Installation Kits or any other GWRC Assets installed or to be installed on or in the Vehicles or Depots on and from the earlier of the date of installation and the date on which the Installation Kits, RTPI Equipment, Ticketing Equipment or any other GWRC Assets are delivered to the premises of the Operator, any Operator Associate or a Vehicle manufacturer.
- 12.16 The Operator shall ensure that any installation, de-installation or transfer of Ticketing Equipment, RTPI Equipment and Installation Kits is carried out by it or on its behalf pursuant to this clause 12 is carried out:
- 12.15.1 in accordance with the Bus Services Equipment Operations Manual;
 - 12.15.2 in accordance with such other reasonable instructions, manuals and policies as may be provided by GWRC; and
 - 12.15.3 in any event in accordance with Good Industry Practice.
- 12.17 Subject to clause 12.15A and 12.18 and without limiting the Operator's obligations in clauses 10.3, 10.3A and 10.3B (*Condition failures and non-compliant Vehicles*) and paragraphs 3.44 to 3.47 (*Functioning GWRC equipment*) of Schedule 3 (*Passenger Services*), if:
- 12.17.1 any of the RTPI Equipment is materially damaged or defective, GWRC shall be responsible for procuring the replacement or repair of such RTPI Equipment and the Operator shall comply with the Bus Services Equipment Operations Manual and make the relevant Depot and/or Vehicle and the damaged or defective RTPI Equipment available to GWRC for these purposes at such times and dates as are agreed by GWRC and the Operator (acting reasonably); or
 - 12.17.2 any of the Ticketing Equipment is materially damaged or defective, GWRC shall be responsible for procuring the replacement or repair of such Ticketing Equipment and the Operator shall comply with

the Bus Services Equipment Operations Manual and make the relevant Depot and/or Vehicle and the damaged or defective Ticketing Equipment available to GWRC for these purposes at such times and dates as are agreed by GWRC and the Operator (acting reasonably), provided that the Operator shall promptly (at its own cost):

- (a) replace the Ticketing Equipment (as specified in the Bus Services Equipment Operations Manual) with any replacement provided for this purpose by GWRC; and
- (b) return the Ticketing Equipment (as specified in the Bus Services Equipment Operations Manual) which has been so replaced to GWRC.

- 12.18 The Operator shall (to the maximum extent permitted by Law) indemnify GWRC (and keep GWRC so indemnified) on demand from and against any Claim or Loss (including data recovery costs and any costs incurred by GWRC pursuant to clause 12.17) arising from or in connection with any loss of or damage to any part of the Ticketing System, the RTPI System, the Installation Kits or any other GWRC Assets installed or to be installed on or in the Vehicles or Depots on and from the earlier of the date of installation and the date on which the Installation Kits, RTPI Equipment, Ticketing Equipment or any other GWRC Assets are delivered to the premises of the Operator, any Operator Associate or a Vehicle manufacturer (except to the extent caused by normal wear and tear or covered by any warranty provided to GWRC by the supplier or manufacturer of the RTPI System, the Ticketing System, the Installation Kits or any other GWRC Assets (as applicable)).
- 12.19 Where GWRC is required to procure the replacement or repair of any Ticketing Equipment or RTPI Equipment in accordance with clause 12.17, it shall use all reasonable endeavours to do so within 10 Business Days of receipt of the report of the relevant damage or fault from the Operator pursuant to clause 12.20.3.
- 12.20 The Operator shall (and must procure that the Operator Associates shall):
- 12.20.1 ensure that the Ticketing Equipment and the RTPI Equipment is securely stored and operated in accordance with the Bus Services Equipment Operations Manual and Good Industry Practice;
 - 12.20.2 ensure that the RTPI Equipment and Ticketing Equipment is cleaned, inspected and maintained in accordance with the Bus Services Equipment Operations Manual;
 - 12.20.3 immediately report to GWRC all damage to and faults in the Ticketing System or RTPI System in accordance with the Bus Services Equipment Operations Manual, including:
 - (a) a fully detailed written description of such damage and faults;
 - (b) in respect of damage, high quality images of such damage; and
 - (c) full details of the steps taken by the Operator in accordance with clause 12.20.2;
 - 12.20.4 provide assistance and information requested by GWRC in investigating such damage and faults; and
 - 12.20.5 provide GWRC and its contractors, at times and dates as are agreed by GWRC and the Operator (acting reasonably) and in accordance with the Bus Services Equipment Operations Manual, to access the Ticketing Equipment and RTPI Equipment installed in the Depots and on the Vehicles (by making the Vehicles available at the Depots) for the purposes of carrying out maintenance.

Unauthorised connections

- 12.21 The Operator shall not connect or interface any Ticketing Equipment, RTPI Equipment or any wiring associated with the Ticketing Equipment or RTPI Equipment to any other equipment without GWRC's prior written consent, including any:
- 12.21.1 connection or interface for the purposes of obtaining a power supply for any other equipment;
 - 12.21.2 connection or interface for the purposes of data interfacing with any other equipment; or
 - 12.21.3 connection or interface for the purposes of sharing installation infrastructure with any other equipment.
- 12.22 Without limiting the Operator's obligations and liabilities in clauses 12.18 and 12.21, the Operator shall pay to GWRC as a debt due and payable on demand the cost:
- 12.22.1 of any damage caused to any part of the Ticketing System or the RTPI System; and
 - 12.22.2 arising in relation to loss of data and/or revenue,
- in each case to the extent caused or contributed to by an unauthorised connection to, or interface with, the Ticketing Equipment or RTPI Equipment.

Wilful or accidental damage

- 12.23 Without limiting any other provision of this Partnering Contract, where there has been wilful or accidental damage to the RTPI Equipment, Ticketing Equipment or Installation Kits, then the Operator shall promptly:
- 12.23.1 record the nature of the damage, including taking high quality images of such damage and providing such images to GWRC;
 - 12.23.2 follow the process referred to in the GWRC Bus Services Equipment Operations Manual; and
 - 12.23.3 investigate and report the cause of the damage to GWRC.

Exempt Services

- 12.24 The Operator may wish that an Exempt Service it provides (if any) in the Greater Wellington region is tracked by the RTPI System and/or that the Operator is able to utilise the Ticketing System to collect revenue for that Exempt Service.
- 12.25 If the Operator requests GWRC to add such Exempt Service to the RTPI System or Ticketing System, then GWRC may (without being obliged to do so) agree a separate agreement with the Operator in respect of the same.
- 12.26 The Operator shall not use the RTPI System or the Ticketing System in relation to an Exempt Service other than in accordance with any agreement made with GWRC pursuant to clause 12.25.

Optional Equipment and Optional System Functionality

- 12.27 Subject to approval by GWRC, the Operator may at its own cost, but in consultation with GWRC, negotiate with the Equipment Supplier for the provision of Optional Equipment and/or Optional System Functionality, provided that the Operator shall ensure that such Optional Equipment and/or Optional System Functionality (as applicable) shall not:
- 12.27.1 interfere with the operation of the RTPI System or the Ticketing System;

- 12.27.2 interfere with the Equipment Supplier's performance of its obligations under any agreement made between the Equipment Supplier and GWRC relating to the supply, operation or maintenance of the RTPI System or the Ticketing System;
 - 12.27.3 increase any costs or liabilities of GWRC (including any costs payable under any agreement between the Equipment Supplier and GWRC); or
 - 12.27.4 otherwise prevent or hinder the Operator from performing the Services.
- 12.28 The Operator shall not procure any Optional Equipment or Optional System Functionality other than in accordance with clause 12.27.
- 12.29 If the Operator procures Optional Equipment and/or Optional System Functionality, then the Operator shall make its own arrangements with the Equipment Supplier for additional maintenance and support of the Optional Equipment and/or Optional System Functionality, at the Operator's own cost.
- 12.30 If the Optional Equipment and/or Optional System Functionality (as applicable) procured by or on behalf of the Operator give rise to any of the effects referred to in clauses 12.27.1 to 12.27.4, then the Operator shall ensure that such Optional Equipment and/or Optional System Functionality (as applicable) is de-installed immediately and (without prejudice to any other liabilities of the Operator) the Operator will be liable for any costs involved in de-installing the Optional Equipment and/or Optional System Functionality (as applicable).

Obligations in relation to the GWRC Assets

- 12.31 Without limiting clauses 10.17 to 10.19 (*Use of Vehicles for any other purpose*), the Operator shall only use the GWRC Assets for:
- 12.31.1 the purposes of providing the Services;
 - 12.31.2 the purpose of performing any obligation imposed on the Operator under any Transaction Document;
 - 12.31.3 the purpose expressly provided for in any Transaction Document; or
 - 12.31.4 any other purpose approved in writing by GWRC (acting reasonably).
- 12.32 Without prejudice to any other obligation or liability of the Operator, the Operator shall not through its acts or omissions (and shall procure that the Operator Associates and all directors, advisors, officers, employees, delegates and agents of, and contractors to, the Operator or the Operator Associates shall not through their acts or omissions) cause or contribute to any loss of, destruction of, or damage to any of the GWRC Assets.
- 12.33 Without limiting clause 24 (*Audit and inspection rights*) or any other obligations of the Operator, the Operator must provide GWRC and its nominees with access to the Vehicles and Depots at times agreed between GWRC and the Operator (each acting reasonably) for the purposes of inspecting, changing, replacing, installing, de-installing, testing, commissioning and maintaining the GWRC Assets.
- 12.34 To the extent that any person has provided the Operator with the terms of:
- 12.34.1 any agreement entered into by GWRC or its nominee with the Equipment Supplier or any other supplier, manufacturer or maintainer of any of the GWRC Assets; or
 - 12.34.2 any warranty or guarantee relating to any of the GWRC Assets,

the Operator shall not through its acts or omissions (and shall ensure that the Operator Associates and all directors, advisors, officers, employees, delegates and agents of, and contractors to, the Operator or the Operator Associates shall not through their acts or omissions):

- 12.34.3 breach the terms of such agreement, warranty or guarantee;
- 12.34.4 cause or contribute to any breach by GWRC of such agreement, warranty or guarantee;
- 12.34.5 cause any such agreement, warranty or guarantee to be terminated, invalid, void or voidable (in each case in whole or in part); or
- 12.34.6 otherwise prejudice any:
 - (a) rights and entitlement of GWRC under or in connection with such agreement, warranty or guarantee; or
 - (b) Claim which may be brought by or on behalf of GWRC under or in connection with such agreement, warranty or guarantee.

12.35 GWRC shall provide the Operator with access to and use of the Ticketing Equipment and RTPI Equipment on and from the date it is installed on the Vehicles and Depots (as required) or with effect from such other time as is set out in the Transition Plan for the Operator's use in accordance with the terms and conditions set out in this Partnering Contract, subject to the Operator complying with its obligations under this clause 12 (*Other assets and systems used in the provision of the Services*).

Ownership of certain assets

- 12.36 Subject to clause 12.37 and paragraph 5.2 (*Title and control of RTPI System*) of Annexure 3 (*Customer Communication and Information Systems*), the Operator acknowledges and agrees that legal and beneficial ownership of the GWRC Assets shall (as between GWRC and the Operator) at all times remain vested in GWRC or its nominee notwithstanding that such items may have been installed on or within the Vehicles or Depots.
- 12.37 The Operator acknowledges and agrees that to the extent that any of the GWRC Assets or any other assets, systems or items referred to in clause 12.36 comprise or include Intellectual Property Rights or Intellectual Property Material, the provisions of Part Four (*Intellectual Property*) apply and the Operator's rights and entitlement in relation thereto shall only be as provided for in Part Four (*Intellectual Property*).

IFT Programme

- 12.38 As part of the implementation of the IFT Programme, the Operator must:
- 12.38.1 provide access to the Vehicles in accordance with the foregoing provisions of this clause 12; and
 - 12.38.2 train the Operator Associates in accordance with clause 14 (*Training and driver requirements*).
- 12.39 The parties acknowledge and agree that:
- 12.39.1 subject to clause 12.18, GWRC shall be responsible for the costs of procuring and installing on the Vehicles any replacement or upgraded Ticketing Equipment or RTPI Equipment provided as part of the IFT Programme;
 - 12.39.2 payments in respect of the activities and the scope of the Operator's role during the IFT Programme is included within the amount of the Base Service Fee and the Operator shall not be entitled to any additional payment in respect of the performance of such activities and role;

- 12.39.3 if any changes to the requirements of this Partnering Contract relating to the Vehicles (including the Vehicle Quality Standards but excluding changes to the Ticketing Equipment or RTPi Equipment) are required by GWRC as a result of the IFT Programme, such changes shall be implemented as a Contract Variation or Minor Contract Variation (as applicable); and
- 12.39.4 GWRC is not obliged to implement the IFT Programme and GWRC's decision not to proceed with the IFT Programme shall be deemed not to be an act or omission by GWRC (including a breach of contract) under or in connection with this Partnering Contract and shall not entitle the Operator to make any Claim against GWRC.

13. Facilities Protocol, use of Bus Stops and Facilities

13.1 During the Term:

- 13.1.1 GWRC shall use its best endeavours, including by collaborating with PTOM Operators, to make the Facilities (other than the terminal locations and layover spaces) available for use by the Operator; and
- 13.1.2 the Operator shall (and shall procure that the Operator Associates shall) comply with the Facilities Protocol and only use such Facilities in accordance with the Facilities Protocol.

13.2 If GWRC is unable to provide the Operator with access to and use of the Interchanges despite using its best endeavours in accordance with clause 13.1, this shall constitute a Compensation Event to the extent such failure has not been caused or contributed to by a breach of this Partnering Contract by the Operator (including a failure to comply with the Facilities Protocol).

13.3 Except as expressly provided for in the Facilities Protocol or in clause 13.1 or 13.2, the Operator acknowledges and agrees that it shall be solely responsible (at its own cost) for negotiating and agreeing the rights to use the terminal locations, the layover spaces and any other facilities to the extent required to enable it to perform its obligations under this Partnering Contract. Any failure or inability by the Operator to negotiate or agree such rights or to otherwise secure such use shall not relieve it from its obligations under this Partnering Contract or any other Transaction Document.

13.4 Without limiting clause 13.1.2, the Operator shall not use a Vehicle in a manner to deliberately impede the lawful use of any Bus Stop by another vehicle.

13.5 The Operator acknowledges and agrees that the information provided in Appendix 5 (*Bus Unit termini, facilities and layover spaces*) of Schedule 2 (*Agreement Details*) is based on agreements with road authorities, including the Transport Agency and Wellington City Council, as at the date of this Partnering Contract and is subject to further amendments as notified by GWRC to the Operator from time to time. Such amendments shall not constitute or give rise to a Contract Variation or Minor Contract Variation.

14. Training and driver requirements

14.1 The Operator shall ensure that all Operator Associates who are engaged in or in connection with the provision of the Services (or any part of the Services):

- 14.1.1 are properly trained and experienced to a level that would ordinarily be expected of an experienced, efficient and competent passenger transport operator and vehicle maintainer engaged in the provision of services of a comparable scope, size and complexity as the Services;

- 14.1.2 are kept informed of any updates to Annexure 6 (*Fares, Ticketing and Enforcement Requirements*), the GWRC Fare Media Transition Plan, the Conditions of Carriage and the Revenue Protection Plan; and
- 14.1.3 behave appropriately and courteously at all times when engaged in the provision of any of the Services.
- 14.2 Without prejudice to any other obligations of the Operator and subject to paragraph 9 (*General provisions relating to Contract Variations*) of Schedule 14 (*Change Events and Net Financial Impact*), the Operator shall comply with (and shall procure that the Operator Associates shall comply with) all GWRC policies provided by GWRC to the Operator (as such policies are updated, amended or replaced from time to time and after feedback has been sought from Operators in respect of such GWRC policies) to the extent that such policies are relevant to training and driver requirements.
- 14.3 Without prejudice to clauses 9.10 and 14.1, the Operator shall ensure that all Operator Associates with a customer-facing role and that all drivers operating the Vehicles in the course of providing Passenger Services or otherwise carrying passengers:
- 14.3.1 in respect of drivers only, have all current and valid consents, safety checks, licences and permits necessary to permit them to lawfully operate the Vehicles for the purposes of providing Passenger Services, including a valid driver's licence in respect of the class of Vehicle that they will be operating with a current passenger (P) endorsement;
- 14.3.2 are properly and appropriately authorised, accredited, trained and experienced;
- 14.3.3 in respect of drivers only, have obtained the National Certificate in Passenger Service (Level 3) with the Urban Bus Driver strand (or such equivalent standard as may be specified by GWRC from time to time) within 12 months after the date of that driver's employment contract with the Operator or an Operator Associate and thereafter maintains such qualification;
- 14.3.4 without prejudice to the foregoing, have undertaken appropriate and comprehensive training:
- (a) on at least annual intervals in relation to:
- A. key competencies and training requirements for each key staff discipline (i.e. drivers, on board staff, maintenance staff, etc.), including the requirement to meet the Customer Service Standards; and
- B. health and safety;
- (b) in respect of drivers only, as often as is reasonably necessary in relation to:
- A. the operation of all equipment fitted to the Vehicles (including bicycle racks) and, if applicable, how to assist passengers to use this equipment;
- B. safe driving techniques to be used when any such equipment is deployed on the Vehicle (including when bicycle racks are in use);
- C. assisting passengers who have disabilities or other impairments; and
- D. compliance with any relevant policies and guidelines provided to the Operator by GWRC or published on the Metlink website (www.metlink.org.nz) from time to time

(including the 'Travelling with Cycles & Scooters' guidelines and the Metlink 'Bike Racks on Buses' guidelines);

- 14.3.5 comply with all applicable Laws (including the Rules);
 - 14.3.6 where the relevant Passenger Service is a "regulated service" as defined in the Vulnerable Children Act 2014, are "safety checked" as defined and required by that Act and do not pose any material risk to the safety of children as a "children's worker";
 - 14.3.7 are not under the influence of alcohol, drugs or any other substance that may adversely impact their ability to perform their role and, in the case of drivers, to safely and lawfully operate the Vehicle or provide Passenger Services (as appropriate); and
 - 14.3.8 are capable of effectively communicating with passengers in the English language.
- 14.4 The Operator shall:
- 14.4.1 implement a procedure to ensure that drivers who provide Passenger Services have a current "P" endorsement granted by the Transport Agency at all times; and
 - 14.4.2 take all measures required by Good Industry Practice to ensure the safety of passengers.
- 14.5 The Operator shall implement and give effect to the Drug & Alcohol Policy and shall ensure that all Operator Associates comply with the Drug & Alcohol Policy. Promptly following a request to do so, the Operator shall provide such evidence as GWRC may reasonably require to verify that the Operator has complied and is complying with its obligations under this clause 14.5.
- 14.6 Without limiting clause 14.1:
- 14.6.1 GWRC shall provide, or procure the provision of, training (and all necessary training materials and training equipment) to not more than 5 employees of the Operator or Operator Associates on:
 - (a) the functions of the Ticketing Equipment, the Ticketing System, the RTPI Equipment, the RTPI System and any other GWRC Assets to be used in providing the Services (such training, training equipment and training materials to be provided not less than 25 Business Days prior to the Conditions Precedent Date for Satisfaction, or such earlier date as GWRC and the Operator may agree); and
 - (b) the functions of any changes to the Ticketing Equipment, the Ticketing System, the RTPI Equipment, the RTPI System or any other GWRC Assets implemented by GWRC after the Commencement Date or any other equipment provided by GWRC after the Commencement Date to be used by the Operator in providing the Services,to enable those employees to provide training to other employees on the Ticketing Equipment, the Ticketing System, the RTPI Equipment, the RTPI System, any other GWRC Assets and any other equipment provided by GWRC (as applicable); and
 - 14.6.2 the Operator shall procure that the employees who have completed the training referred to in clause 14.6.1 provide training (using the training materials and training equipment provided by or on behalf of GWRC) on the functions of such equipment to all of the Operator Associates who are engaged in or in connection with the provision of the Services (or any part of the Services) prior to those Operator Associates first being in a customer-facing role and prior to them first using the Ticketing

Equipment, the Ticketing System, the RTPi Equipment, the RTPi System, the other GWRC Assets and any other equipment provided by GWRC (as applicable).

15. Branding, uniforms and livery

Branding

15.1 The Operator acknowledges and agrees that all:

15.1.1 Timetable information and promotional material relating to the Services (which shall be managed and produced by GWRC only, in accordance with Annexure 3 (*Customer Communication and Information Systems*)); and

15.1.2 tickets sold by the Operator or any Operator Associate (including any ticket media), shall bear the Metlink brand (or such other brand as GWRC may notify the Operator from time to time) and shall not bear any brand, logo or other mark relating to the Operator or any Operator Associate.

15.2 GWRC must provide the Metlink brand (or such other brand as GWRC may notify the Operator from time to time) in a format that can be used by the Operator to comply with its obligations in clause 15.1.

Uniforms

15.3 With effect from and including the Commencement Date, the Operator shall ensure that all personnel undertaking customer-facing roles and all drivers engaged from time to time by it or any Operator Associate shall wear a uniform at all times whilst providing the Passenger Services which:

15.3.1 complies with the Uniform Specification;

15.3.2 complies with any applicable Safety Law and incorporates all reasonable safety features;

15.3.3 fits the person correctly; and

15.3.4 is smart, clean and in good condition.

15.4 Except as provided for in clause 15.10, the Operator shall be responsible for the cost of acquiring the uniforms required to comply with its obligations under clause 15.3.

15.5 The Operator acknowledges that GWRC may elect at any time to undertake a procurement exercise to select a preferred supplier of uniforms, in which event the Operator may elect to use such GWRC preferred supplier for these purposes but shall not be obliged to do so.

Livery and other Vehicle characteristics

15.6 The Operator shall:

15.6.1 ensure that from and including the Commencement Date, the livery and characteristics of the interior and exterior of all Vehicles comply with the VQS;

15.6.2 prior to placing any orders in respect of any livery, designs, logos, fabrics, floor coverings or other design or features for a Vehicle as set out in the Metlink Branding Manual and the VQS, the Operator shall obtain GWRC's prior written approval to such designs or features of such Vehicle (through the provision of samples, drawings, images or mock ups as appropriate); and

15.6.3 ensure that each Vehicle is at all times whilst being used in the performance of the Passenger Services compliant with the approvals given under clause 15.6.2.

Metlink Branding Manual

- 15.7 Subject to paragraphs 3.9A and 3.9B of the VQS, the Operator shall comply with the Metlink Branding Manual.
- 15.8 GWRC may at any time update, amend or replace the Metlink Branding Manual provided that:
- 15.8.1 GWRC shall act reasonably in so doing; and
- 15.8.2 GWRC shall consult with the Operator prior to implementing any such update, amendment or replacement and shall consider any reasonable comments made by the Operator in connection therewith.
- 15.9 Any update, amendment or replacement to or of the Metlink Branding Manual pursuant to clause 15.8 shall not constitute or give rise to a Contract Variation or Minor Contract Variation.

Changes to the Metlink brand, Uniform Specification or livery requirements

- 15.10 If, after the date of this Partnering Contract, GWRC changes the Metlink brand (or such other brand as may be notified by GWRC pursuant to clause 15.1), the Uniform Specification or the Vehicle livery requirements, GWRC shall pay the reasonable costs incurred by the Operator in complying with its obligations under this clause 15 and the Metlink Branding Manual to the extent that such costs:
- 15.10.1 would not have been incurred but for the change being made; and
- 15.10.2 were agreed in writing between the Operator and GWRC prior to the Operator incurring the costs.

16. Marketing and Advertising**General marketing**

- 16.1 Except to the extent otherwise agreed in the applicable Annual Business Plan, GWRC shall be solely responsible for promoting public transport in the Wellington region (including the Passenger Services to be provided on the Routes) as it sees fit. The Operator shall provide such assistance and information as GWRC may reasonably require in connection with such marketing.
- 16.2 The Operator shall not market any aspect of the Bus Unit (including the Passenger Services to be provided on any of the Routes) except to the extent that the applicable Annual Business Plan requires the Operator to do so. To the extent that the applicable Annual Business Plan requires the Operator to undertake such marketing, the Operator shall do so in accordance with that Annual Business Plan.

Advertising

- 16.3 At all times from and including the Commencement Date, the Operator shall make available all exterior and interior advertising space (including electronic display screens) on the Vehicles to GWRC at no cost to GWRC and, subject to the following provisions of this clause 16, shall permit GWRC to display such advertising on the Vehicles as GWRC considers appropriate.
- 16.4 The management, marketing and sales (including installation, maintenance and removal) of advertising on and inside the Vehicles and on fare media will be undertaken on behalf of GWRC by the Media Agency (at GWRC's cost).
- 16.5 The Operator shall make the Vehicles available to the Media Agency (at the Operator's cost) at a Depot specified by the Operator (acting reasonably) and shall permit the representatives of the Media Agency to access the relevant Depot and the relevant Vehicles (at the Operator's cost) for the purposes of installation, maintenance and

removal of advertising on the Vehicles at such times as may be reasonably required by the Media Agency, subject to:

16.5.1 the Media Agency or GWRC giving reasonable prior notice to the Operator;

16.5.2 clause 16.6; and

16.5.3 the Media Agency's (or its nominees') compliance with the Operator's health and safety requirements made known to the Media Agency,

16.6 The Operator shall:

16.6.1 co-ordinate directly with the Media Agency in relation to the installation, maintenance and removal of advertising from the Vehicles;

16.6.2 act (and shall procure that the Operator Associates act) co-operatively, reasonably and in good faith when dealing with the Media Agency;

16.6.3 provide such assistance as the Media Agency may reasonably require to enable it to perform its duties;

16.6.4 not (and shall procure that the Operator Associates shall not) prevent or hinder the Media Agency in the performance of any of its duties; and

16.6.5 comply with all policies and procedures provided by GWRC to the Operator from time to time in respect of advertising.

16.7 GWRC shall (to the maximum extent permitted by Law) indemnify the Operator (and keep the Operator so indemnified) on demand from and against the cost of rectification of damage caused by the Media Agency to the Vehicles.

16.8 The Operator acknowledges and agrees that it shall have no entitlement to any advertising revenue received by GWRC or the Media Agency.

16.9 The Operator shall (to the maximum extent permitted by Law) indemnify GWRC (and keep GWRC so indemnified) on demand from and against any Claim or Loss relating to loss of or damage to advertising materials or media on board any Vehicle (including lost advertising revenue and the costs of replacing or reinstating advertising materials or media) to the extent such loss or damage is caused or contributed to by the acts or omissions of the Operator, any Operator Associate or any director, advisor, officer, employee, delegate or agent of, or contractor to, the Operator or the Operator Associates.

16.10 The Operator shall not use any of the Vehicles or fare media (or permit any of the Vehicles or fare media to be used) for marketing or advertising of any kind, except to the extent:

16.10.1 contemplated by the provisions of this clause 16;

16.10.2 otherwise approved in writing by GWRC; or

16.10.3 expressly provided for in the applicable Annual Business Plan.

17. **Subcontracting, delegations and Key Personnel**

Key Subcontracts

17.1 The Operator shall:

- 17.1.1 employ those Key Subcontractors (if any) specified in paragraph 10 (*Key Subcontractors*) of Schedule 2 (*Agreement details*) in the relevant role specified in that paragraph and on terms approved in writing by GWRC (acting reasonably); and
- 17.1.2 if the Operator subcontracts all or substantially all of the Scheduled Services or Special Event Services to a Key Subcontractor, ensure that on or prior to the date of the relevant Key Subcontract(s) or at such other date as may be notified by GWRC to the Operator, the Operator delivers to GWRC a direct deed substantially in the form set out in Annexure 18 (*Key Subcontractor Direct Deed*) duly executed by the Operator, the relevant Key Subcontractor and any person who has provided (or will provide) a guarantee in favour of the Operator in respect of the performance by the Key Subcontractor of its obligations under the Key Subcontract.
- 17.2 Without the prior written consent of GWRC (which, in the case of clauses 17.2.2 and 17.2.3 will be given provided the proposed action will not have a material adverse effect on GWRC or on the performance of the Services), the Operator shall not:
- 17.2.1 appoint any Key Subcontractor (other than as required by clause 17.1);
- 17.2.2 materially amend the terms of any Key Subcontract; or
- 17.2.3 terminate, rescind, accept the repudiation of or agree to the termination, rescission or repudiation of any Key Subcontract.
- 17.3 GWRC shall act reasonably in determining whether to provide its consent to any matter referred to in clause 17.2 and may give its consent subject to such conditions as it sees fit (acting reasonably), in which event the Operator shall (and shall procure that the proposed new Key Subcontractor shall) duly comply with such conditions.
- 17.4 The Operator shall promptly provide such information as GWRC may reasonably request in connection with any matter referred to in clause 17.2.

General provisions relating to subcontracting

- 17.5 The Operator:
- 17.5.1 is not relieved of any of its obligations or liabilities under this Partnering Contract or any other Transaction Document as a result of:
- (a) it appointing any contractor, subcontractor, supplier, agent or delegate; or
 - (b) the acts or omissions of any contractor, subcontractor, supplier, agent or delegate;
- 17.5.2 remains responsible for all:
- (a) works and services carried out; and
 - (b) supplies made,
- in each case in connection with the Services;
- 17.5.3 is responsible for the acts and omissions of:
- (a) the Operator Associates; and
 - (b) any director, advisor, officer, employee, delegate or agent of the Operator or the Operator Associates,

as if they were the acts and omissions of the Operator; and

17.5.4 shall ensure that:

- (a) any arrangements entered into by it in connection with the appointment of any contractors, subcontractors, agents or delegates relating to the whole or any part of the Services; and
- (b) any supply contracts entered into by it in connection with the performance of the Services, are entered into, and continue to be, on Arm's Length Terms.

Key Personnel

17.6 The Operator shall employ the Key Personnel specified in paragraph 3 (*Operator's Key Personnel*) of Schedule 2 (*Agreement details*) in the relevant role specified in Schedule 2 (*Agreement details*).

17.7 Without prejudice and in addition to the Operator's obligations under clause 20.6 (*Changes to Authorised Representatives*), the Operator shall:

17.7.1 where any person who comprises Key Personnel is to cease undertaking their relevant role, ensure that they are promptly replaced with replacement Key Personnel who have the appropriate skill, knowledge and authority reasonably required to undertake that role; and

17.7.2 promptly give GWRC notice of the details of any replacement Key Personnel.

Part Three – Management of this Partnering Contract

18. Performance management

Component elements

- 18.1 Without prejudice to any other obligation of the Operator or GWRC or any rights or remedies of GWRC or the Operator, the Parties acknowledge that throughout the Term the desired objectives, outcomes and outputs set out at clause 8.3 (*Objectives, outcomes and outputs for Services*) shall be achieved by:
- 18.1.1 the management of this Partnering Contract in accordance with the provisions at this Part Three (*Management of this Partnering Contract*);
 - 18.1.2 the application of the performance management regime contained in Schedule 5 (*Planning, Reporting and Meetings*) and Schedule 6 (*Financial and Performance Regime*);
 - 18.1.3 the management of issues that have impacts across the Wellington Public Transport Network in accordance with the Partnering Principles and the provisions set out in the Regional Agreement; and
 - 18.1.4 the prompt and efficient attention by a Party to any actions or obligations for which it has responsibility.

Performance Management Regime

- 18.2 The performance management regime under this Partnering Contract consists of the following components:
- 18.2.1 the payment to the Operator of the Base Service Fee and the Special Event Services Fee calculated in accordance with Schedule 6 (*Financial and Performance Regime*);
 - 18.2.2 the Reliability KPI and the Punctuality KPI and the application of Performance Deductions in accordance with Schedule 6 (*Financial and Performance Regime*);
 - 18.2.3 the application of Reporting Error Deductions in accordance with Schedule 6 (*Financial and Performance Regime*);
 - 18.2.4 the application of Fleet Deductions in accordance with Schedule 6 (*Financial and Performance Regime*);
 - 18.2.5 the Performance Indicators and the payment to the Operator of any Performance Payments and Punctuality Performance Payments in accordance with Schedule 6 (*Financial and Performance Regime*); and
 - 18.2.6 the application of the Financial Incentive Mechanism described at paragraph 10 (*Calculation of the FIM Adjustment*) of Schedule 6 (*Financial and Performance Regime*).
- 18.3 The performance of the Operator in providing the Services, including its timeliness in complying with its obligations under this Partnering Contract, shall be monitored and measured in accordance with clause 22 (*Reports*) and Schedule 5 (*Planning, Reporting and Meetings*) and any incentive payments or abatements shall be calculated in accordance with Schedule 6 (*Financial and Performance Regime*).

19. Annual Business Plans

Initial Annual Business Plan

- 19.1 The Initial Annual Business Plan shall apply to the Bus Unit and shall be the Annual Business Plan for the Bus Unit for the period from the Commencement Date until a subsequent Annual Business Plan is finalised in accordance with Schedule 5 (*Planning, Reporting and Meetings*). The Operator shall comply with and give effect to the Initial Annual Business Plan (including for the avoidance of doubt any plan, initiative or proposal forming part of the Initial Annual Business Plan) at all times during the period specified in this clause 19.1

Annual Business Plans

- 19.2 The Operator and GWRC shall work together annually throughout the Term to develop and finalise subsequent Annual Business Plans in accordance with the requirements at Schedule 5 (*Planning, Reporting and Meetings*). The Operator shall comply with and give effect to each such Annual Business Plan (including for the avoidance of doubt any plan, initiative or proposal forming part of such Annual Business Plan).

Compliance with the Plans

- 19.3 Without prejudice to the foregoing, the Operator shall perform its obligations under, and otherwise give effect to, each of the Plans during the Year to which that Plan relates.

20. Authorised Representatives

Appointment

- 20.1 Each Party shall appoint an Authorised Representative with primary responsibility for:
- 20.1.1 managing the relationship between the Parties;
 - 20.1.2 administering this Partnering Contract;
 - 20.1.3 providing a designated point of contact for the other Party in connection with this Partnering Contract; and
 - 20.1.4 ensuring the relevant Party's contractual and reporting obligations under this Partnering Contract and the other Transaction Documents are met.
- 20.2 Each Party shall ensure that it appoints an Authorised Representative with the appropriate skill, knowledge and authority reasonably required to perform such role.
- 20.3 The Parties' Authorised Representatives at the Commencement Date are set out at paragraph 4 (*Authorised Representatives*) of Schedule 2 (*Agreement details*).
- 20.4 Each Party may treat the acts of the other Party's Authorised Representative as being the acts of that other Party.
- 20.5 The appointment by a Party of an Authorised Representative does not relieve that Party of, limit or otherwise affect that Party's, obligations and liabilities under this Partnering Contract.

Changes to Authorised Representatives

- 20.6 If the Operator wishes to change its Authorised Representative the Operator shall:
- 20.6.1 ensure that the proposed appointee will meet the requirements set out in clause 20.2;
 - 20.6.2 provide sufficient information about the proposed appointee (including the date that the proposed change will be effective) to enable GWRC, acting reasonably, to establish that the proposed appointee satisfies the requirements set out in clause 20.2 and to approve the change; and

20.6.3 notify GWRC of any change to the Authorised Representative prior to the date that the change will be effective.

20.7 GWRC may change its Authorised Representative by giving written notice to the Operator identifying the new appointee or appointees and stating the date that the change will be effective.

21. Meetings

21.1 The Parties shall comply with their respective obligations under paragraph 4 (*Meetings*) of Schedule 5 (*Planning, Reporting and Meetings*).

22. Reports

Operator's obligation to provide reports

22.1 The Operator shall provide each of the reports specified in Schedule 5 (*Planning, Reporting and Meetings*) to GWRC's Authorised Representative within the applicable timeframe specified in Schedule 5 (*Planning, Reporting and Meetings*) or if no such timeframe is specified, within 5 Business Days of a written request by GWRC to provide such report.

Operator's obligation to provide additional information

22.2 Without prejudice to any other obligations of the Operator but subject to clause 59 (*Confidentiality*), the Operator shall promptly provide such information as GWRC may reasonably request to enable GWRC to:

22.2.1 provide information to the Transport Agency in connection with the Services, the Transaction Documents, the Operator's performance of its obligations or the process which resulted in the award of this Partnering Contract to the Operator or to otherwise enable GWRC to comply with and participate in any audit or value for money exercise conducted by or on behalf of the Transport Agency;

22.2.2 comply with any other reporting or monitoring requirements of the Transport Agency from time to time;

22.2.3 comply with any requirement to provide information in connection with the Services to any elected member or Minister of the Crown or any Governmental Entity;

22.2.4 monitor the Operator's performance of its obligations;

22.2.5 respond to general enquiries; or

22.2.6 develop public transport policy or undertake service planning.

23. Publication of performance data, records and information

Publication of reports, data and information

23.1 GWRC will generate and provide to the Operator a Monthly Summary Performance Report of the Operator's performance for each Relevant Month.

23.2 Within 5 Business Days of GWRC having provided the Monthly Summary Performance Report pursuant to clause 23.1, the Operator shall display in such form as GWRC reasonably requires a copy of that Monthly Summary Performance Report on each electronic screen installed on the Vehicles until such time as the Operator is required by this clause 23 to display a subsequent Monthly Summary Performance Report.

- 23.3 The Operator acknowledges and agrees that GWRC may upload that Monthly Summary Performance Report onto the Metlink website and otherwise publish the information contained in that Monthly Summary Performance Report through such media and in such form as GWRC considers fit.

Operator to maintain records

- 23.4 The Operator shall (and shall ensure that all Operator Associates shall) maintain accurate, true, up to date and complete records relating to:
- 23.4.1 the provision of the Services;
 - 23.4.2 the Operator's operational performance in the delivery of Scheduled Services;
 - 23.4.3 all information under its control that GWRC requires in order to satisfy GWRC's reporting requirements under the LGA, LTMA, Safety Law or any other Law; and
 - 23.4.4 the performance of the Operator's other obligations under this Partnering Contract and the other Transaction Documents.
- 23.5 The Operator shall (and shall ensure that all Operator Associates shall):
- 23.5.1 store such records in a manner that reasonably ensures their continued safety from destruction or loss and their confidentiality;
 - 23.5.2 where records are kept in electronic form, ensure they are backed up and copied in accordance with Good Industry Practice for the retention and safety of records of such a nature;
 - 23.5.3 maintain accurate and complete records in relation to Handover Packages provided under clause 52.3 (*Handover Packages for Transferring Assets*); and
 - 23.5.4 on request by GWRC, promptly provide copies of all such records to GWRC.
- 23.6 Subject to clause 59 (*Confidentiality*) all information held by or on behalf of the Operator to the extent relevant to the provision of the Services or the Operator's performance under this Partnering Contract (excluding the Operator's internal accounts not related to Farebox Revenue) shall be made available to GWRC within 5 Business Days of GWRC issuing a written request for that information.

Access to and recording of information and data

- 23.7 GWRC shall ensure that the Operator shall have remote access to the data generated by the RTPI System to the extent such data relates to the Services to be provided by the Operator pursuant to this Partnering Contract.
- 23.8 As soon as reasonably practicable following a request from the Operator to do so, GWRC shall:
- 23.8.1 provide the Operator with a detailed breakdown as to how GWRC has calculated the Actual Patronage; and
 - 23.8.2 save to the extent that the Operator has remote access to data pursuant to clause 23.7, provide the Operator with access to all relevant information and data produced by the RTPI System, the Ticketing Equipment and the Ticketing System to the extent that such information is reasonably required by the Operator to meet its obligations under this Partnering Contract.
- 23.9 GWRC shall provide the Operator with remote access to, and use of, the CRM System. The Operator shall use the CRM System for the purposes of:
- 23.9.1 managing customer complaints and feedback relating to the Services;

- 23.9.2 monitoring driver performance; and
 - 23.9.3 investigating accidents which may require further action,
- and for no other purpose.

23.10 The Operator shall (and shall ensure that the Operator Associates shall):

- 23.10.1 ensure that the information and data recorded on the CRM System by the Operator or the Operator Associates is complete, accurate and up to date; and
- 23.10.2 comply with all reasonable instructions provided by GWRC from time to time relating to the use of the CRM System.

24. **Audit and inspection rights**

- 24.1 For the purposes of auditing the Operator's compliance with this Partnering Contract and the other Transaction Documents, the Operator shall permit GWRC and its representatives to survey passengers on-board Scheduled Services and to inspect each Depot, the Vehicles (including when the Vehicles are being used in service), the GWRC Assets and any CCTV recordings, financial records, books, records (including maintenance records), information, material, systems (including the Vehicles' on board diagnostic system, emissions control system and engine monitoring system and any information from such systems) and procedures held or used by or on behalf of the Operator.
- 24.1A The Operator shall permit GWRC, GWRC's representatives and any person authorised in the GWRC Revenue Protection Strategy to travel on Vehicles and to enter Designated Areas for the purpose of revenue protection.
- 24.2 GWRC and its representatives shall be permitted to take copies of any books, records, information or other materials that they inspect under clause 24.1 for the purposes of carrying out the inspection pursuant to clause 24.1.
- 24.3 The representatives of GWRC and any person authorised in the GWRC Revenue Protection Strategy shall be entitled to enter Designated Areas and to travel free of charge on any Scheduled Service or Special Event Service for the purposes of carrying out any inspection pursuant to clause 24.1 or any revenue protection activities pursuant to clause 24.1A.
- 24.4 GWRC and its representatives may complete an inspection under clause 24.1 at any time where:
- 24.4.1 such inspection relates to an actual or suspected fraud, material safety issue or material breach by the Operator of this Partnering Contract or any other Transaction Document; or
 - 24.4.2 GWRC is undertaking inspections of the Vehicles in order to determine whether they comply with the requirements of this Partnering Contract.
- 24.5 Where clause 24.4 does not apply, GWRC shall give the Operator at least 48 hours' notice of any inspection that GWRC or its representatives wish to carry out under clause 24.1.
- 24.5A GWRC, GWRC's representatives and any person authorised in the GWRC Revenue Protection Strategy may travel on Vehicles and enter Designated Areas for the purpose of revenue protection at any time.
- 24.6 When carrying out any inspection pursuant to clause 24.1 or any revenue protection activities pursuant to clause 24.1A, GWRC shall (and shall ensure that its representatives shall) use reasonable endeavours to minimise any

disruption caused to the provision of the Services and comply with the Operator's health and safety requirements made known to GWRC.

- 24.7 The Operator shall ensure that the Operator and the Operator Associates cooperate fully with GWRC and its representatives when conducting an inspection under clause 24.1 or any revenue protection activities pursuant to clause 24.1A, including by providing such information and statements to GWRC or its representatives as may be reasonably required for the purposes of the inspection or revenue protection activities.
- 24.8 The Operator acknowledges and agrees that compliance with the Operator's obligations under this clause 24, including the provision of access to Vehicles in service, shall not give rise to an entitlement for the Operator to make any Claim against GWRC.
- 24.9 GWRC shall bear the costs of any inspection undertaken pursuant to clause 24.1 and any revenue protection activities undertaken pursuant to clause 24.1A, unless the inspection or activities reveal that:
- 24.9.1 information previously supplied to GWRC by the Operator or an Operator Associate was in any material respect incomplete, inaccurate, false or misleading; or
- 24.9.2 the Operator has breached or is in breach of the terms of this Partnering Contract or any other Transaction Document or any Key Subcontract,
- in which case the Operator shall pay the external costs incurred by GWRC in carrying out (or procuring the carrying out of) such inspection or revenue protection activities (as applicable) within 5 Business Days of demand thereof.
- 24.10 The Operator shall ensure that it is not restricted or prevented from providing:
- 24.10.1 any books, records, information, material, systems or procedures to GWRC or its representatives for the purpose of the inspection and audit rights under clause 24.1, except to the extent that any such books, records, information, material, systems or procedures are subject to legal professional privilege; or
- 24.10.2 information about the existence of, and (upon request) complete copies of, any contract relating to the Services to which the Operator is a party (including all Key Subcontracts), together with any documents and information provided or received under or in relation to such contract, either for the purpose of the inspection and audit rights under clause 24.1 or for the purpose of the preparation of Handover Packages and the performance of the Operator's obligations at Part Nine (*Obligations associated with change of Operator*).
- 24.11 To the extent relevant to the Operator, GWRC shall
- 24.11.1 disclose to the Operator the results of any check or audit of the performance of the GWRC Assets carried out by or on behalf of GWRC;
- 24.11.2 give the Operator an opportunity to comment on the factual accuracy of such check or audit (other than the conclusion reached by GWRC in respect of such check or audit); and
- 24.11.3 consider the Operator's comments provided pursuant to clause 24.11.2 (other than any comments on the conclusion reached by GWRC in respect of such check or audit).

Part Four - Intellectual Property

25. Background IP

25.1 The Operator acknowledges and agrees that GWRC (or its relevant licensor) is and remains the owner of all GW IP. Neither the Operator, nor any of the Operator Associates, has (by virtue of this Partnering Contract or otherwise) any Claim on, entitlement to, or rights in relation to any GW IP except to the extent provided in this Part Four (*Intellectual Property*).

25.2 GWRC acknowledges and agrees that the Operator or an Operator Associate or their respective licensor is and remains the owner of all Operator Background IP. Neither GWRC nor any of the GW Associates, has (by virtue of this Partnering Contract or otherwise) any Claim on, entitlement to, or rights in relation to any Operator Background IP except under clause 41 (*Indemnity from Operator*) or to the extent provided in this Part Four (*Intellectual Property*).

26. Operator Developed IP

26.1 Subject to clause 27 (*Licensing of Operator Developed IP*), ownership in all Operator Developed IP vests in the Operator at the time of its creation and at each and every stage of its development.

27. Licensing of Operator Developed IP

27.1 Subject to clause 29 (which applies in relation to Third Party Licensed Software), to the extent that GWRC needs to use any Operator Developed IP:

27.1.1 to receive the benefit of the Services;

27.1.2 to use, maintain or Dispose of the Transferring Assets; or

27.1.3 to otherwise exercise rights under this Partnering Contract or any other Transaction Document;

27.1.4 to sub-license any Operator Developed IP to an Incoming Operator; or

27.1.5 for any purpose associated with the provision of public transport on the Wellington Public Transport Network, including but not limited to the provision of any of the Services (or services which are similar to any of the Services) or any type of services contemplated by the Transaction Documents,

the Operator grants (and shall ensure that the Operator Associates grant and that any relevant third party consents to the Operator or Operator Associate granting) to GWRC a perpetual, irrevocable, free of any licence fee or royalty, non-exclusive licence (including the right to grant sub-licences) to Use the Operator Developed IP for any purpose contemplated by clause 27.1. The licence granted under this clause 27.1 is transferable to any entity to which GWRC may assign, novate, transfer or otherwise dispose of any right or obligation under this Partnering Contract pursuant to clause 62.8, but is otherwise non-transferable.

28. Licensing of Operator Background IP and Third Party Intellectual Property

28.1 Subject to clause 29 (which applies in relation to Third Party Licensed Software), to the extent that GWRC needs to use any Operator Background IP or Third Party Intellectual Property:

28.1.1 to receive the benefit of the Services;

28.1.2 to use, maintain or Dispose of the Transferring Assets; or

28.1.3 to otherwise exercise rights under this Partnering Contract or any other Transaction Document, the Operator grants (and shall ensure that the Operator Associates grant and that any relevant third party consents to the Operator or Operator Associate granting) to GWRC an irrevocable, free of any licence fee or royalty, non-exclusive licence (including the right to grant sub-licences) to Use the Operator Background IP and Third Party Intellectual Property for any purpose contemplated by clause 28.1 for its internal business purposes. The licence granted under this clause 28.1 is transferable to any entity to which GWRC may assign, novate, transfer or otherwise dispose of any right or obligation under this Partnering Contract pursuant to clause 62.8, but is otherwise non-transferable.

28.2 GWRC must not, without the Operator's prior written consent:

28.2.1 commercialise the Operator's Background IP or Third Party Intellectual Property; or

28.2.2 sublicense any Operator Background IP or Third Party Intellectual Property to an Incoming Operator except solely to the extent necessary for the Incoming Operator to use and maintain the Transferring Assets.

28.3 The licence in clause 28.1 is:

28.3.1 perpetual in relation to any Operator Background IP or Third Party Intellectual Property comprised in:

- (a) any material required to be provided as part of a Handover Package in relation to a Transferring Asset (to the extent that materials do not comprise GW IP); and
- (b) maintenance records in respect of Transferring Assets or any other Intellectual Property Rights and Intellectual Property Materials relating to the Transferring Assets; and

28.3.2 limited to the Term plus 3 months in relation to any Operator Background IP or Third Party Intellectual Property not described in clause 28.3.1.

29. **Third party Licensed Software**

29.1.1 The licences in clauses 27 and 28 do not apply to Third Party Licensed Software, except to the extent specified in clause 29.1.2.

29.1.2 To the extent that GWRC requires a licence to use Third Party Licensed Software during the Term or in relation to Transferring Assets in order to:

- (a) receive the benefit of the Services;
- (b) use, maintain or Dispose of the Transferring Assets; or
- (c) otherwise exercise rights under this Partnering Contract or any other Transaction Document,

then GWRC's use of that Third Party Licensed Software will be subject to all terms and conditions imposed by the third party licensor on the Operator or any sub-licensee in respect of such licensed Intellectual Property Rights, as advised by Operator to GWRC prior to incorporating or making that Third Party Licensed Software available to GWRC.

29.1.3 If any Third Party Licensed Software described in clause 29.1.2 is not able to be accessed by GWRC or sublicensed to GWRC on terms suitable to GWRC, then Operator will, on request,

provide GWRC with reasonable assistance to procure a licence to the Third Party Licensed Software from the licensor.

30. **Preservation of rights**

30.1 The Operator shall ensure that none of the Operator Background IP or Operator Developed IP is assigned, transferred, sold or made subject to an exclusive licence to use for the benefit of any third party during or after the Term, unless it preserves for GWRC and the GW Associates the rights granted under clause 27 (*Licensing of Operator Developed IP*) and clause 28 (*Licensing of Operator Background IP and Third Party Intellectual Property*).

31. **Licensing of GW IP**

31.1 Subject to clause 31.3 and 31.4, GWRC:

31.1.1 shall, make available to the Operator the GW IP to the extent necessary for the purpose of the performance of the Services in accordance with this Partnering Contract; and

31.1.2 hereby grants to the Operator a non-exclusive, free of any licence fee or royalty, non-transferable and irrevocable (except where the Operator is in breach of this Partnering Contract in which case such licence is revocable by GWRC on written notice to the Operator) licence or sub-licence to use such GW IP during the Term solely to the extent necessary for the purpose of the performance of the Operator's obligations under this Partnering Contract; and

31.1.3 may, at its absolute discretion and by giving written notice to the Operator, impose restrictions (in addition to those restrictions already imposed) on the Operator's use of all or part of the GW IP, provided that such restrictions must not cause the Operator to be unable to perform its obligations under this Partnering Contract.

31.2 Each sub-licence granted under clause 31.1.2 in respect of the GW Third Party Licensed IP is subject to all terms and conditions imposed by the third party licensor on GWRC or any sub-licensee in respect of such licensed Intellectual Property Rights.

31.3 Any licence granted to the Operator under this clause 31 includes the right on the part of the Operator to grant a sub-licence to an Operator Associate, so long as:

31.3.1 such sub-licence does not breach any restrictions imposed pursuant to clauses 31.1.2, 31.1.3 or 31.2;

31.3.2 the Operator gives GWRC reasonable prior notice of its intention to grant such sub-licence; and

31.3.3 if so required by GWRC, that Operator Associate first enters into a direct undertaking with GWRC on terms reasonably satisfactory to GWRC.

31.4 No sub-licence of GW IP may be granted by the Operator, except in accordance with this clause 31.

31.5 GWRC warrants that possession or use of the GW IP by Operator or Operator Associate in accordance with this Partnering Contract will not infringe the Intellectual Property Rights of any third party. GWRC gives no other warranty as to the suitability for the Operator's purpose of any GW IP licensed under this clause 31.

31.6 The Operator must not, by any act or omission, in any way prejudice ownership by GWRC (or its licensors) of any GW IP.

32. Miscellaneous

Compliance

- 32.1 The Operator shall:
- 32.1.1 throughout the Term, establish, maintain and implement appropriate processes to monitor the Operator's compliance with this Part Four (*Intellectual Property*);
 - 32.1.2 if requested by GWRC to do so, attend meetings to enable GWRC to monitor compliance by the Operator with this Part Four (*Intellectual Property*); and
 - 32.1.3 incorporate into any agreements relating to Third Party Intellectual Property any terms and conditions that GWRC may reasonably require to give effect to this Part Four (*Intellectual Property*) or that the Operator considers are necessary to give effect to this Part Four (*Intellectual Property*).

Moral rights

- 32.2 The Operator shall procure the consent of the Operator Associates not to enforce any and all Moral Rights that those individuals may have, presently or in the future, arising from the performance of the Services and/or the Intellectual Property Rights vested in GWRC under this Partnering Contract.

Further action

- 32.3 The Operator shall (and shall ensure that the relevant Operator Associates shall) execute all documents or instruments, and do all other things reasonably required by GWRC, in order to give effect to this Part Four (*Intellectual Property*).

Privity

- 32.4 This Part Four (*Intellectual Property*) is (for the purposes of the Contract and Commercial Law Act 2017) intended to confer benefits in favour of, and to be enforceable by, GWRC, any GW Associate and any Incoming Operator.

IP Register

- 32.5 The Operator shall maintain throughout the Term (and provide to GWRC on request) a complete and accurate IP Register in a form satisfactory to GWRC.
- 32.6 The Operator shall ensure that the IP Register includes, at a minimum, full details of the category of, registration and expiry of, ownership of, licensed rights to exercise, and all restrictions on the exercise of, the Intellectual Property Rights recorded in the IP Register. The Operator is not liable for failure to include details of the GW IP (including GW Third Party Licensed IP) to the extent that GWRC does not provide this information to the Operator.
- 32.7 The Parties acknowledge and agree that the purpose of the IP Register is to enable GWRC to easily understand its ownership of and licensed rights to exercise Intellectual Property Rights and to minimise the risk of inadvertently infringing or misusing the rights of others in exercising such Intellectual Property Rights.
- 32.8 For the avoidance of doubt, and notwithstanding anything contained in the IP Register, no information contained in the IP Register is intended to, or will have the effect of, limiting or overriding this Partnering Contract.

GW Data

- 32.9 Notwithstanding any other provision of this Partnering Contract, the Operator agrees and acknowledges that as between the Operator and GWRC, GWRC owns the GW Data, including all Intellectual Property Rights in the GW Data.
- 32.10 These ownership rights vest in GWRC upon creation of the GW Data. To the extent necessary to give effect to this, the Operator assigns to GWRC all of its rights, title and interest in the GW Data and will sign any documents or do anything reasonably considered necessary by GWRC to give effect to this clause.

No warranty as to fitness for purpose

- 32.11 Operator gives no warranty as to the suitability for GWRC's or any Incoming Operator's purpose of any Intellectual Property Rights licensed under clause 27 or 28.

Unauthorised use of Intellectual Property Rights

- 32.12 GWRC is liable to Operator for any unauthorised use by GWRC's sublicensees of Intellectual Property Rights licensed to GWRC under clause 27, 28 or 29.

Part Five – Health and safety

33. General health and safety obligations

Health and safety paramount

- 33.1 Without prejudice to any other obligation of the Operator, the Operator shall perform the Services recognising that the safety of people is of paramount importance.

Compliance with Safety Law

- 33.2 The Operator shall comply with (and shall procure that the Operator Associates shall comply with) all applicable obligations under Safety Law. Without limiting the foregoing, the Operator shall also comply with (and shall procure that the Operator Associates comply with) any additional health and safety instructions, directions, codes of practice, policies and procedures as notified by any Governmental Entity or any other regulatory authority to the Operator from time to time.

General safety obligations

- 33.3 Without limiting its other obligations under this Partnering Contract (including its obligations under clause 9 (*Licence, Laws and Standards*)), the Operator shall ensure, so far as is reasonably practicable, the health and safety of those to whom it owes a duty under Safety Law, including by:
- 33.3.1 ensuring, so far as is reasonably practicable:
- (a) the health and safety of any person is not put at risk from work or services carried out by or on behalf of the Operator or the Operator Associates under this Partnering Contract or from any other act or omission by the Operator or any Operator Associate in performing the Services; and
 - (b) that the Vehicles, Depots and any other premises used in connection with the Services, the means of entering and exiting the Vehicles, Depots and any other premises used in connection with the Services and any fixtures, fittings, chattels and plant associated with the Vehicles, Depots or any other premises used in connection with the Services, are without risks to the safety of any person;

- 33.3.2 ensuring that, before commencing any work in connection with the Services, all the Operator Associates involved in the work are fully inducted and trained in connection with the health and safety matters, including in the safe use of all plant, equipment, objects, substances and personal protective clothing that they are or may be required to handle or use, that they are informed about, and comply with, their obligations under Safety Law, the Operator's Health and Safety Management Plan and any additional health and safety instructions, policies and procedures as notified by any Governmental Entity or any other regulatory authority to the Operator from time to time;
- 33.3.3 supervising and monitoring all the Operator Associates involved in performing the Services, taking into account the nature of the work to be carried out by the Operator and the relevant Operator Associate, the risks associated with the work and the control measures the Operator or another person having obligations under Safety Law has implemented to deal with these risks;
- 33.3.4 ensuring that every subcontractor engaged at any tier in the performance of the Services is reputable, reliable, and suitable to perform the relevant Services in accordance with this Partnering Contract. In particular the Operator shall ensure that all subcontractors engaged at any tier have and maintain sufficient suitably trained, skilled, experienced and qualified workers to properly perform the Operator's relevant obligations under this Partnering Contract, and that the Operator vets and monitors all subcontractors (at any tier) to ensure they meet, and continue to meet, appropriate selection criteria with regard to their health and safety performance; and
- 33.3.5 regularly monitoring and assessing health and safety risks arising from, or in connection with, the Services including by way of internal audits, and taking all reasonably practicable steps to eliminate those risks, or to the extent that elimination is not reasonably practicable, to minimise them.

Health and Safety Management Plan

- 33.4 The Operator shall update the Health and Safety Management Plan from time to time in accordance with applicable Law and Good Industry Practice. The Operator shall provide an up to date copy of the Health and Safety Management Plan to the Operator Associates and GWRC promptly but not later than 10 Business Days after any material update to the Health and Safety Management Plan.
- 33.5 In addition to its obligations under clause 33.4, the Operator shall provide updated versions of the Health and Safety Management Plan as part of the Annual Business Plan in accordance with Schedule 5 (*Planning, Reporting and Meetings*).
- 33.6 The Health and Safety Management Plan must set out in detail the health and safety procedures applying in connection with the Services, including:
- 33.6.1 risks and hazards identified and control measures to be undertaken to eliminate or minimise and monitor those risks and hazards, including through the provision and use of safety equipment;
- 33.6.2 methods for systematically identifying, assessing, managing and recording new risks and hazards;
- 33.6.3 emergency procedures, including emergency plans required under Safety Law;
- 33.6.4 procedures relating to the provision of, and access to, first aid equipment and persons trained to administer first aid;
- 33.6.5 procedures for the safe use, repair and maintenance of all equipment used in connection with the Services and the need for use of (and provision of) correct personal protective equipment;

- 33.6.6 procedures for reporting and recording accidents, incidents and near misses in any way related directly or indirectly to the Services that result in, or could reasonably have resulted in, injury to persons;
- 33.6.7 procedures for consulting, co-operating and co-ordinating with other persons having duties the same or similar to the Operator's duties under Safety Law in connection with the Services;
- 33.6.8 lines of accountability and responsibilities for training and supervision;
- 33.6.9 practices for personnel engagement, consultation and participation in the monitoring and improvement of health and safety;
- 33.6.10 internal audit procedures and procedures for responding to GWRC requests to audit the Operator and the Operator Associates' compliance with this Part Five (*Health and Safety*);
- 33.6.11 any matters which any Governmental Entity or any other regulatory authority may require as a condition of the Licence or as a result of an accident, incident or near miss;
- 33.6.12 a drug and alcohol policy intended to ensure that Operator Associates whose role (or any part thereof) is safety sensitive or customer facing are not engaged in the provision of any part of the Services at times when they may be under the influence of drugs or alcohol and which allows and requires the Operator to test Operator Associates for drug and alcohol use in each of the following circumstances:
- (a) pre-employment;
 - (b) post incident (including all accidents and near misses);
 - (c) where the Operator considers there to be reasonable cause to do so;
 - (d) randomly; and
 - (e) as part of a monitoring programme; and
- 33.6.13 any other relevant matters that GWRC may reasonably determine should be included, or that the Parties may otherwise agree from time to time, are desirable to include in the Health and Safety Management Plan or that are required to ensure that the Health and Safety Management Plan provides a safety system based on quality management principles of continuous improvement.

Monitoring, reporting and investigation obligations

- 33.7 The Operator shall actively monitor its performance, and that of the Operator Associates, with respect to health and safety matters, and shall:
- 33.7.1 without prejudice to any other obligations of the Operator under Safety Law, immediately upon becoming aware of the same, report to GWRC (by issuing an Immediate Report), the emergency services (if appropriate) and any relevant Governmental Entity or any other regulatory authority if any Notifiable Event occurs;
- 33.7.2 proactively investigate all Notifiable Events (and any other health and safety events as reasonably required by GWRC) and implement (or ensure the implementation of), so far as is reasonably practicable, any corrective actions identified as a result of such investigations, or as otherwise notified by GWRC;

- 33.7.3 maintain an up to date and accurate register of all Notifiable Events (and any other health and safety events as reasonably required by GWRC) and any investigations or corrective actions undertaken in connection therewith (and the Operator shall make a copy of such register available to GWRC promptly following a request therefor);
- 33.7.4 provide to GWRC written reports in accordance with Schedule 5 (*Planning, Reporting and Meetings*) and detailing the health and safety performance of the Operator and the Operator Associates, in connection with the Services, including at least, with reference to lead and lag indicators in accordance with Good Industry Practice, the steps being taken to comply with its health and safety obligations under this Partnering Contract, and the outcomes of any health and safety audits or reviews undertaken;
- 33.7.5 meet with GWRC at its request to:
- (a) review the Operator's written report and to discuss steps being taken by or on behalf of the Operator to address any issues identified; or
 - (b) otherwise to review and discuss any aspect of health and safety performance under this Partnering Contract or in relation to the Services; and
- 33.7.6 ensure that health and safety performance is a key agenda item at all operations meetings convened pursuant to paragraph 4 (*Meetings*) of Schedule 5 (*Planning, Reporting and Meetings*) including reporting on:
- (a) any defects in Vehicles or equipment used by the Operator to provide the Services which could reasonably be regarded as posing a risk to the health and safety of any person and the actions which have or will be undertaken by the Operator to rectify such defect;
 - (b) any failure by any of the drivers to comply with applicable Law and road rules whilst operating a Vehicle (including any breach by a driver of licensing requirements and any enforcement action taken against a driver for road rule infringements);
 - (c) any new health and safety risks identified and the steps being taken to eliminate or minimise those risks;
 - (d) details of accidents, injuries and near-misses and the steps being taken to investigate these;
 - (e) the outcomes of any investigations undertaken; and
 - (f) the corrective actions being taken to prevent reoccurrence of health and safety risks.

Safety programmes and Operator Rating System

- 33.8 The Operator shall:
- 33.8.1 participate in the "Fleet Safety Programme" jointly developed by the Accident Compensation Corporation, the Transport Agency, the New Zealand Police and the Ministry of Business, Innovation & Employment (including any successor programme) and provide to GWRC copies of the reports and actions of the programme; and
- 33.8.2 participate in the Transport Agency's "Operator Rating System" (including any successor system) and shall:

- (a) co-operate with the Transport Agency and provide the Transport Agency with such information as it requires in connection therewith;
- (b) provide GWRC with confirmation of its rating (with supporting evidence) promptly following a request to do so;
- (c) promptly notify GWRC in the event that its rating is changed (including providing full details of the new rating); and
- (d) without prejudice to clause 9.6, provide copies to GWRC of any correspondence, reports or other documents received by the Operator from the Transport Agency relating to its rating or the "Operating Rating System" (including any successor system and the outcome of any inspections or investigations) promptly following receipt thereof by the Operator.

33.9 The Operator shall immediately provide GWRC with copies of all notices and information received by the Operator from, or sent by the Operator or the Operator's Associates to, any Governmental Entity or any other regulatory authority which relates to the matters covered in clause 33.8.

GWRC health and safety related obligations

33.10 At all times during which any staff, personnel, representatives or contractors of GWRC are present at the premises or Vehicles of the Operator or any Operator Associate whilst acting on behalf of GWRC for any purpose in connection with this Partnering Contract, GWRC shall ensure that such persons shall comply with any health and safety requirements made known to them by the Operator or Operator Associate (as applicable).

Part Six – Financial

34. Indexation

Meaning of Indexed

34.1 Subject to clause 34.2, **Indexed** means, in relation to any amount, that amount multiplied with effect from each Year Date until the day immediately prior to the next Year Date by:

$$\frac{Index_1}{Index_2}$$

where $Index_1$ is the value of the Transport Agency Index published in the February (which index shall be in respect of the previous Quarter ending in December) prior to the Year Date on which the adjustment for Indexation takes effect pursuant to this clause 34.1 and $Index_2$ is the value of the Transport Agency Index published in respect of the Quarter in which the Indexation Base Date occurs.

Amounts to be Indexed

34.2 All monetary amounts expressed as a number in this Partnering Contract shall be Indexed even if the relevant provision does not specifically provide for such amount to be Indexed, other than:

- 34.2.1 any amounts expressly stated to be not subject to Indexation;
- 34.2.2 the Transfer Price and any amount taken into account in the calculation of the Transfer Price (including the amounts referred to in Appendix 11 (*Transferring Vehicles*) of Schedule 2 (*Agreement details*));
- 34.2.3 the amounts referred to in Appendix 6 (*Base Service Fee Table*) of Schedule 2 (*Agreement details*) (except for the purposes of the definition of Performance Base as specified in paragraph 5.2 of Schedule 6 (*Financial and Performance Regime*));
- 34.2.4 subject to paragraph 7.5 of Schedule 6 (*Financial and Performance Regime*), the amounts referred to in Appendix 8 (*Net Financial Impact*) of Schedule 2 (*Agreement details*);
- 34.2.5 Indexation Payments;
- 34.2.6 Net Financial Impact; and
- 34.2.7 the Liability Cap.

GWRC to provide notification

34.3 As soon as reasonably practicable after GWRC has calculated the Indexation of any monetary amount in accordance with the foregoing provisions of this clause 34, GWRC shall notify the Operator of the resulting adjustment (if any) to that monetary amount.

Errors in the Transport Agency Index

34.4 Subject to clause 34.6, if an error in any Transport Agency Index has had an impact on the calculation of Indexation under this Partnering Contract:

- 34.4.1 where the error has resulted in an overpayment to the Operator, the Operator shall be required to pay the amount of such overpayment to GWRC and where the error has resulted in an underpayment to the Operator, GWRC shall be required to pay the amount of such underpayment to the Operator; and

- 34.4.2 the relevant monetary amount shall be Indexed with effect from the date on which the Transport Agency publishes the corrected Transport Agency Index in accordance with clause 34.1 and, for the purposes of clause 34.1, Index₁ is the value of the corrected Transport Agency Index.
- 34.5 Any amounts payable under clause 34.4.1 shall be paid by the relevant Party to the other Party within 15 Business Days following the date on which the Transport Agency publishes the corrected Transport Agency Index.
- 34.6 Clause 34.4 shall only apply where the error is identified and the Transport Agency publishes the corrected Transport Agency Index on or before the date falling 12 months after the Year Date on which the relevant calculation of Indexation was undertaken pursuant to this Partnering Contract. If the error is identified or corrected after the date falling 12 months after such Year Date, clause 34.4 will not apply.
- 34.7 Notwithstanding anything to the contrary in this Partnering Contract, the Parties acknowledge and agree that their only rights and entitlement in relation to any error in the Transport Agency Index are as set out in clauses 34.4 to 34.6.

Other provisions relating to indexation

- 34.8 This clause 34 is without limitation to the application of the Transport Agency Index in paragraph 8 (*Calculation of the Indexation Payment*) of Schedule 6 (*Financial and Performance Regime*) and paragraphs 10.5 to 10.9 (*Indexation of Net Financial Impact*) of Schedule 14 (*Change Events and Net Financial Impact*).

35. Payments

Payment obligation

- 35.1 Subject to the following provisions of this Part Six (*Financial*), clause 50 (*Force Majeure*) and Schedule 6 (*Financial and Performance Regime*), from the Commencement Date until the Termination Date GWRC shall, in consideration of the provision of the Services, pay the Services Fee to the Operator in accordance with this Part Six (*Financial*). The Services Fee payable by GWRC shall be calculated in accordance with the provisions at Schedule 6 (*Financial and Performance Regime*).

Payment claims

- 35.2 Not used
- 35.3 Within 5 Business Days after the end of each Relevant Month, the Operator shall give GWRC a claim for payment on account of the Services Fee and any other amounts payable in respect of that Relevant Month.
- 35.4 The Operator shall ensure that each payment claim submitted pursuant to clause 35.3:
- 35.4.1 is substantially in the form set out in Annexure 14 (*Form of Payment Claim*) or such other form as GWRC may from time to time specify;
 - 35.4.2 sets out all amounts in New Zealand dollars and cents, with cents being shown to two decimal places;
 - 35.4.3 is accompanied by a report setting out full details of the Operator's performance during the Relevant Month as against each Performance Indicator, the Reliability KPI and the Punctuality KPI, which report must contain no material Reporting Error and must be consistent with the information that will be provided by the Operator in the Monthly Performance Report in respect of the Relevant Month;

- 35.4.4 is accompanied by the supporting documentation referred to in paragraph 3.24 (*Special Event Services Fee - supporting documentation*) of Schedule 3 (*Passenger Services*) if the payment claim includes a claim for payment of any Special Event Services Fee;
- 35.4.5 is accompanied by such other information as is reasonably required to support and justify the amount claimed; and
- 35.4.6 is in the form of a valid tax invoice for the amount (if any) claimed by the Operator, calculated in accordance with this Partnering Contract.
- 35.5 Within 3 Business Days of a request therefor, the Operator shall provide to GWRC such other evidence of, and justification for, the amounts claimed by it in a payment claim as GWRC may reasonably request.

Payment after payment claim

- 35.6 Subject to clauses 35.7, 35.9, 35.10 and 36 (*Set Off*) and provided that the Operator has complied with its obligations under clauses 35.3 to 35.5, then on or before the 20th day of the month following the end of the Relevant Month (or if such day is not a Business Day, on the next Business Day), GWRC shall:
- 35.6.1 pay the Operator:
- (a) the amount claimed in the relevant payment claim; or
 - (b) such lesser amount as GWRC reasonably determines is due and payable under this Partnering Contract; and
- 35.6.2 if GWRC determines that a lesser amount is due and payable, give the Operator a statement setting out the reasons why GWRC considers that to be the case.
- 35.7 In the event that the Operator has not provided a claim for payment in respect of a Relevant Month or any other document or information required under clauses 35.4 or 35.5 on or before the relevant date specified in this clause 35, the time for performance of GWRC's obligations under clause 35.6 shall be the later of:
- 35.7.1 the 20th day of the month following the end of the Relevant Month (or if such day is not a Business Day, on the next Business Day); and
- 35.7.2 the date falling 7 Business Days after the date on which the Operator has provided all documents and information which it is required to provide under clauses 35.3, 35.4 and 35.5.
- 35.8 If GWRC gives a statement under clause 35.6.2, the Operator shall promptly issue a debit note or credit note (as applicable) for the relevant amount to GWRC.

Net amount due from the Operator to GWRC

- 35.9 If a payment claim shows, or GWRC reasonably determines, that a net amount is due from the Operator to GWRC, the Operator shall (at GWRC's election):
- 35.9.1 pay that amount to GWRC within 15 Business Days of written demand therefor; or
- 35.9.2 otherwise carry forward the amount and set it off against the amount claimed to be payable to the Operator in the next payment claim submitted by the Operator.

Valid tax invoices

35.10 Without prejudice to any obligation of the Operator under this Partnering Contract and notwithstanding anything to the contrary in this Partnering Contract, no moneys are payable to the Operator by GWRC unless GWRC is in receipt of a valid tax invoice from the Operator in relation to the relevant amount.

Late Payment

35.11 If any Party fails to pay an undisputed amount on or before the date on which it falls due and payable under this Partnering Contract, such amount shall incur (and the paying Party shall be liable for) simple interest (both before and after judgment and payable on demand) calculated at the Default Rate from (and including) the day after the date on which the payment fell due and payable until (and including) the actual date of payment.

Payment on account

35.12 Any payment of moneys (including the Services Fee) by GWRC to the Operator is not:

35.12.1 evidence of the value of services provided by the Operator or that the obligations of the Operator have been satisfactorily carried out in accordance with this Partnering Contract or any other relevant Transaction Document;

35.12.2 an admission of liability; or

35.12.3 approval by GWRC of the Operator's performance or compliance with any Transaction Document, but is only taken to be payment on account and will not prejudice, or be construed as a waiver of, any rights, remedies or powers of GWRC, whether under this Partnering Contract, any other Transaction Document or otherwise according to Law or equity.

Acknowledgements

35.13 The Operator and GWRC hereby acknowledge and agree that:

35.13.1 the Services Fee shall not be subject to any upwards adjustment except as expressly provided for in this Partnering Contract;

35.13.2 the Services Fee includes the Operator's profits and overheads and all costs and expenses that the Operator may incur in performing its obligations under this Partnering Contract except as expressly provided otherwise in this Partnering Contract;

35.13.3 the Parties require a formula for the calculation of losses, costs, expenses and detriments which GWRC may incur if the Operator fails to provide any of the Services in accordance with the requirements of this Partnering Contract (including any failure to comply with the requirements of the Reliability KPI or the Punctuality KPI) and the Parties require such formula to be readily applied without unnecessary administrative costs, delay or difficulty;

35.13.4 it is in the economic and other best interests of the Operator that a formula of the nature referred to in clause 35.13.3 applies in respect of this Partnering Contract;

35.13.5 the formulae, mechanisms and regime set out in Schedule 6 (*Financial and Performance Regime*):

(d) meet the requirements set out in clause 35.13.3;

(e) reflect a genuine pre-estimate of the diminished value to GWRC if the Operator fails to provide any of the Services in accordance with the requirements of this Partnering Contract (including the requirements of the Punctuality KPI and the Reliability KPI); and

(f) do not constitute a penalty in any respect; and

35.13.6 the Operator:

- (a) is contracting with GWRC on Arm's Length Terms;
- (b) has undertaken its own due diligence and obtained its own advice as to the formulae, mechanisms and regime set out in Schedule 6 (*Financial and Performance Regime*) and the potential implications thereof and has not relied on any statements, warranties or representations in connection therewith (whether express or implied) made by or on behalf of GWRC;
- (c) enters into this Partnering Contract without duress, coercion, undue influence or any other form of unconscionable conduct on the part of GWRC;
- (d) enters into this Partnering Contract with the intention that the formulae, mechanisms and regime set out in Schedule 6 (*Financial and Performance Regime*) are legally binding, valid and enforceable; and
- (e) to the maximum extent permissible by Law, hereby unconditionally and irrevocably waives any right of the benefit of the application of any legal rule or norm (including under statute, equity and common law) relating to the non-enforceability of the formulae, mechanisms and regime set out in Schedule 6 (*Financial and Performance Regime*) or the characterisation thereof as penalties.

Currency

35.14 All moneys payable to or by any Party under this Partnering Contract are to be invoiced and paid in New Zealand Dollars.

36. Set off

GWRC's rights of set off

36.1 GWRC may at any time deduct from any amount payable to the Operator:

36.1.1 any Moneys Owing to GWRC; and

36.1.2 any Claim to Moneys Owing that GWRC may have against the Operator, whether under this Partnering Contract or any other Transaction Document or otherwise.

36.2 GWRC shall provide the Operator with reasonable details of the basis on which it is setting off any amount pursuant to clause 36.1.

Interest on withheld amount

36.3 An amount which is finally determined in accordance with clause 45 (*Dispute Resolution Procedure*) as having been incorrectly withheld by GWRC shall incur (and GWRC shall pay) simple interest at the Default Rate, from (and including) the day after the date on which payment of that amount fell due and payable until (and including) the actual date of payment.

Operator shall not set off

36.4 The Operator shall not at any time deduct from any amount otherwise due to GWRC (including any Moneys Owing to GWRC) under or in connection with this Partnering Contract or any other Transaction Document:

- 36.4.1 any money due from GWRC to the Operator; or
 - 36.4.2 any Claim to money that the Operator may have against GWRC,
- whether under or in connection with this Partnering Contract or any other Transaction Document or otherwise.

37. **Disputes about payments**

- 37.1 Pending agreement or determination in respect of a disputed amount, GWRC may withhold the payment of any amount invoiced by the Operator that GWRC considers on reasonable grounds is not an amount to which the Operator is entitled under the terms of this Partnering Contract as at the relevant payment date.
- 37.2 GWRC shall pay any amount invoiced by the Operator that is not disputed by GWRC on or before the relevant date for payment under this Partnering Contract.
- 37.3 Subject to clause 37.4, either Party shall be entitled to refer a dispute relating to any matter arising from:
 - 37.3.1 a Monthly Performance Report;
 - 37.3.2 any payment claim;
 - 37.3.3 the issue by GWRC of a statement pursuant to clause 35.6.2 to the effect that GWRC has determined that a lesser amount is due and payable than the amount specified by the Operator in the relevant payment claim; or
 - 37.3.4 the calculation of any amount due and payable by any Party under this Partnering Contract, for resolution by an Expert in accordance with clauses 45.9 to 45.15 without such dispute first having to be referred to mediation under clauses 45.7 and 45.8.
- 37.4 If the Operator receives a statement issued by GWRC under clause 35.6.2, the Operator may refer any dispute in relation to the calculation of the Services Fee or any other matter referred to in clause 37.3 in respect of that statement for resolution if, and only if, the dispute is referred by the Operator for determination by an Expert pursuant to clauses 45.9 to 45.15 within 20 Business Days of receipt by the Operator of the relevant statement issued by GWRC under clause 35.6.2. If such matter is not referred by the Operator for determination within such time period, then the Operator will not be entitled to make any Claim in respect of such dispute.

38. **GST, rates, taxation and utilities**

Goods and Services Tax

- 38.1 In this clause 38, words and phrases defined in the GST Act have the meaning given in the GST Act, unless the context requires otherwise.
- 38.2 Unless expressly provided to the contrary in this Partnering Contract, any consideration payable for a supply made under this Partnering Contract is stated before the addition of any GST chargeable on that supply.
- 38.3 The Parties agree that where GST is chargeable on a supply made by one Party (the "**Supplier**") to any other Party (the "**Recipient**") under this Partnering Contract, the Supplier shall issue a valid tax invoice to the Recipient and the Recipient shall pay to the Supplier the GST chargeable on that supply, in addition to the consideration payable for that supply. The Recipient shall pay the GST to the Supplier at the same time as the consideration is paid by the Recipient to the Supplier.

38.4 The Operator shall promptly provide GWRC with any information reasonably requested by GWRC in relation to the amount of GST chargeable on a supply made under this Partnering Contract and payable by GWRC to the Operator.

Rates and Taxes

38.5 GWRC shall not be liable to the Operator for any Rates and Taxes assessed on the Operator.

Utilities

38.6 The Operator is responsible for and shall pay all charges in respect of utility services (including water, gas, electricity, telephone, drainage, sewerage and communications but excluding all charges in respect of the Facilities) in relation to the performance of the Services, the use of any Depot and the carrying out by it of its activities.

Fringe Benefit Tax

38.7 The Operator shall be liable for any tax payable in respect of any fringe benefits (as defined in the Income Tax Act 2007) provided to any of its employees from time to time (including any such tax payable in respect of free travel offered to employees) and the Operator shall be responsible for quantifying the value of all such fringe benefits and for filing any necessary tax returns relating thereto.

39. Farebox Revenue and other Revenue

Farebox Revenue and ticket sales

39.1 The Parties agree that as part of GWRC's obligation to provide public transport services for the Wellington region, GWRC hereby appoints the Operator to sell tickets and collect Farebox Revenue as an agent for GWRC in accordance with this clause 39 and Annexure 6 (*Fares, Ticketing and Enforcement Requirements*) and the Operator hereby accepts such appointment.

39.2 The Operator shall bear all costs and expenses relating directly or indirectly to compliance with its obligations under this clause 39 and Annexure 6 (*Fares, Ticketing and Enforcement Requirements*), including bank charges and staff costs.

39.3 The Operator shall:

39.3.1 sell fares on the terms and conditions set out in, and shall otherwise comply with, Annexure 6 (*Fares, Ticketing and Enforcement Requirements*) (except to the extent directed otherwise by GWRC in writing);

39.3.2 ensure that the availability and accessibility of fares is not reduced and not offer fares for sale other than those referred to in Annexure 6 (*Fares, Ticketing and Enforcement Requirements*), unless otherwise agreed by GWRC in writing;

39.3.3 ensure that fares sold in printed form are branded in the form specified by GWRC in accordance with clause 15.1; and

39.3.4 subject to clause 39.5, ensure that the Operator Associates do not commit a Ticket Offence.

39.4 Subject to clause 39.5, in the event that the Operator wishes to provide "free travel" on the Passenger Services to its staff, this shall be at the Operator's cost such that the Operator shall pay for and ensure that each such staff member has a valid ticket for his or her journey.

39.5 To the extent that it is necessary for the Operator's staff to travel on a Passenger Service while performing their obligations as employees of the Operator or it is necessary for GWRC (or its nominees and representatives) to comply with its obligations or exercise its rights under this Partnering Contract, such persons may travel on that Passenger Service for free without requiring a ticket and this will not constitute a Ticket Offence.

Collecting Farebox Revenue

39.6 The Operator shall comply with its ticketing obligations set out in Annexure 6 (*Fares, Ticketing and Enforcement Requirements*).

39.7 The Operator shall ensure that all Farebox Revenue received by the Operator or any Operator Associate other than by electronic payment is:

- 39.7.1 deposited into the Farebox Account as soon as reasonably practicable after such Farebox Revenue is received by the Operator or any Operator Associate;
- 39.7.2 kept safe, secure and separate from any other moneys until the time at which it is deposited into the Farebox Account and subsequently the GWRC Account pursuant to this clause 39;
- 39.7.3 deposited into the Farebox Account and transferred to the GWRC Account in accordance with this clause 39 without setting off or deducting any amounts, including any costs or expenses referred to in clause 39.2; and
- 39.7.4 recorded on the Ticketing Equipment.

39.8 The Operator shall:

- 39.8.1 collect all non-electronic payments made through the Ticketing Equipment; and
- 39.8.2 ensure that the Operator Ticketing Equipment has sufficient cash float.

39.9 The Operator shall not be responsible for transferring to the Farebox Account or GWRC Account any revenue paid to the Ticketing Equipment electronically or paid by cash to any Ticketing Equipment which is not Operator Ticketing Equipment.

39.9A The Operator shall indemnify GWRC and keep it indemnified on demand from and against any Losses arising from any Farebox Revenue not being collected as a result of the deliberate acts or omissions of the Operator, any Operator Associate or any director, advisor, officer, employee, delegate or agent of, or contractor to, the Operator or the Operator Associates.

Transfer of balance of the Farebox Account

39.10 The Parties agree that:

- 39.10.1 GWRC will provide a GWRC Farebox Report on or before 12:00 p.m. on the first Business Day after Sunday of each week (or such other period notified to the Operator in writing by GWRC) in accordance with paragraph 3.14.1 of Schedule 5 (*Planning, Reporting and Meetings*);
- 39.10.2 subject to clause 39.10.3, prior to 3pm on the first Business Day after Sunday of each week (or such other period notified to the Operator in writing by GWRC), the Operator must transfer to the GWRC Account the amount referred to in the report provided by GWRC pursuant to clause 39.10.1 on that day; and

- 39.10.3 GWRC may provide the Operator with a GWRC Farebox Report at any time prior to or following termination or expiry of this Partnering Contract and the Operator must transfer to the GWRC Account the amount referred to in the report provided by GWRC pursuant to this clause 39.10.3 prior to 3pm on the next Business Day.

Operation of the Farebox Account and GWRC Account and dealing with Farebox Revenue

- 39.11 The Operator shall ensure that at all times it has transferred the amounts referred to in clause 39.10 to the GWRC Account in accordance with clause 39.10.
- 39.12 If the Operator has failed to comply with clause 39.11, the Operator shall pay to GWRC on demand:
- 39.12.1 simple interest at the Default Rate on the difference between the amount which the Operator transferred to the GWRC Account and the amount the Operator should have transferred pursuant to clause 39.10. Such interest shall accrue from and including the date on which the Operator should have transferred the relevant amount pursuant to clause 39.10 until and including the date on which the Operator has paid sufficient additional funds (not comprising Farebox Revenue subsequently received by the Operator or Operator Associates and payable into the GWRC Account in accordance with this clause 39) into the GWRC Account to make up the shortfall and has notified GWRC in writing that it has done so;
 - 39.12.2 any bank charges or fees incurred by GWRC as a result of the shortfall referred to in clause 39.12.1; and
 - 39.12.3 the difference between the amount which the Operator transferred to the GWRC Account and the amount the Operator should have transferred pursuant to clause 39.10.
- 39.13 The Operator shall not (and shall procure that the Operator Associates shall not):
- 39.13.1 pay the Farebox Revenue into any account other than the Farebox Account and GWRC Account;
 - 39.13.2 dispose of, assign, transfer or otherwise deal with the Farebox Revenue in any manner other than that contemplated by this clause 39;
 - 39.13.3 make any withdrawals or transfers from the Farebox Account or the GWRC Account except to the extent permitted by this clause 39;
 - 39.13.4 pay any amount into the Farebox Account or GWRC Account other than Farebox Revenues and the additional funds referred to in clause 39.12;
 - 39.13.5 use the Farebox Account or GWRC Account for any purpose other than that contemplated by this clause 39;
 - 39.13.6 permit the balance of the Farebox Account to fall below zero;
 - 39.13.7 close, transfer or seek to close or transfer the Farebox Account at any time except as required by clause 39.15.1; or
 - 39.13.8 create any Security Interest over the Farebox Account or GWRC Account (including its proceeds) or over any or all of the Farebox Revenue, or permit such Security Interest to be created or to subsist at any time.
- 39.14 The Operator shall ensure that the bank with which the Farebox Account is held is an Approved Bank. If at any time during the Term such bank ceases to be an Approved Bank, the Operator shall:

- 39.14.1 promptly notify GWRC of that circumstance; and
- 39.14.2 within 5 Business Days of such circumstance occurring, open a new bank account with a bank which is an Approved Bank.
- 39.15 On the date on which a new bank account is opened pursuant to clause 39.14.2:
- 39.15.1 the Operator shall:
- (a) provide written details of the new bank and the new account (including account number and local clearing code) to GWRC;
 - (b) transfer the balance of the Redundant Farebox Account to that new bank account; and
 - (c) close the Redundant Farebox Account; and
- 39.15.2 the new account shall become the Farebox Account for the purposes of this Partnering Contract in place of the Redundant Farebox Account and shall be operated in accordance with the provisions of this clause 39.
- 39.16 The Operator shall be responsible for paying any fee, fine or other penalty in connection with the Farebox Account (including any Redundant Farebox Account) and any transfers or deposits made to the GWRC Account pursuant to this clause 39. To the extent that any such fee, fine or other penalty is deducted from the balance of the Farebox Account or GWRC Account, the Operator shall immediately pay the amount of such deduction into the Farebox Account or GWRC Account (as applicable).
- 39.17 To the extent that:
- 39.17.1 any interest accrues on the balance of the Farebox Account; and
- 39.17.2 the Operator is not required to transfer the amount of such interest from the Farebox Account to the GWRC Account in accordance with this clause 39,

the Operator shall be entitled to such interest.

Farebox Revenue held on trust

- 39.18 The Operator acknowledges and agrees that all Farebox Revenue is the absolute property of GWRC and that the Operator holds such Farebox Revenue as bare trustee at all times for GWRC (whether or not such Farebox Revenue has been paid into the Farebox Account).
- 39.19 In the event that any or all of the Operator's obligations in respect of the collection of Farebox Revenue are subcontracted to any person (whether by the Operator or by any subcontractor of any tier), the Operator shall ensure that each such subcontract (of any tier) shall contain a provision whereby the relevant subcontractor acknowledges and agrees that all Farebox Revenue is the absolute property of GWRC and that the subcontractor holds such Farebox Revenue as bare trustee at all times for GWRC.

Provision of information to GWRC

- 39.20 Without prejudice to clause 24 (*Audit and inspection rights*) and any other obligations of the Operator, within 3 Business Days following a request therefor, the Operator shall provide to GWRC (on an Open Book Basis) such information as GWRC may reasonably request from time to time and permit GWRC and its nominees to inspect or audit financial records, books, records, information, material, systems and procedures held or used by or on behalf of the Operator for any or all of the following reasons:

- 39.20.1 to evidence the gross amount of Farebox Revenue received by the Operator or any Operator Associate;
- 39.20.2 to evidence the amounts deposited from time to time into the Farebox Account and GWRC Account;
- 39.20.3 to evidence the type of fares sold;
- 39.20.4 to evidence the net amount of Farebox Revenue transferred from the Farebox Account to the GWRC Account in accordance with this clause 39; and
- 39.20.5 to verify the extent to which the Operator has complied and is complying with this clause 39, and shall provide any other information required by GWRC for accounting or GST purposes.

Other revenue received by the Operator or Operator Associates (excluding Farebox Revenue)

- 39.21 The Operator shall (and shall procure that Operator Associates) only provide additional revenue generating services or facilities in connection with Passenger Services (such as the provision of WIFI on board Vehicles for use by passengers) to the extent that the Operator is permitted to do so as:
 - 39.21.1 contemplated by the approved Annual Business Plan; or
 - 39.21.2 otherwise approved in advance in writing by GWRC.
- 39.22 If the Operator is entitled to provide one or more Approved Revenue Services, then the Operator shall:
 - 39.22.1 provide GWRC with the calculation of the Aggregate Approved Revenue Service Profit Amount (including a detailed break down and supporting documentation); and
 - 39.22.2 provided that the Aggregate Approved Revenue Service Profit Amount is a positive number, pay 50% (or such other percentage as may be specified in the applicable approved Annual Business Plan) of the Aggregate Approved Revenue Service Profit Amount to GWRC,
 - 39.22.3 in each case at such times as are contemplated by the applicable Annual Business Plan or otherwise agreed by the Operator and GWRC in writing.
- 39.23 The Operator shall promptly provide such information and evidence as GWRC reasonably requires to verify the information provided by the Operator pursuant to clause 39.22.
- 39.24 The Operator acknowledges and agrees that:
 - 39.24.1 it shall bear all risks, costs and losses associated with the provision of any Approved Revenue Services;
 - 39.24.2 to the extent that the Aggregate Approved Revenue Service Profit Amount is at any time negative, GWRC shall not bear any share of the Aggregate Approved Revenue Service Profit Amount and the Operator shall not be entitled to any compensation or additional payment for any losses incurred by it in connection with the provision of any Approved Revenue Service; and
 - 39.24.3 the inclusion of any Approved Revenue Services within any Annual Business Plan, the approval by GWRC of any Approved Revenue Service as contemplated by clause 39.21.2 or the provision of any Approved Revenue Service shall not:
 - (a) constitute or give rise to a Contract Variation or a Minor Contract Variation; or
 - (b) entitle the Operator to any additional payment, compensation or relief from its obligations under this Partnering Contract or any other Transaction Document.

40. **Commerciality**

40.1 If requested to do so by GWRC:

40.1.1 the Operator shall consult with GWRC in good faith and promptly provide GWRC with such information as is reasonably required to enable GWRC to ascertain and evaluate whether it may be viable or appropriate for any or all of the passenger carrying services provided by the Operator pursuant to this Partnering Contract to be delivered as Commercial Services; and

40.1.2 the Operator shall promptly provide GWRC with its opinions and ideas as to how passenger carrying services in relation to the Bus Unit may be altered or reconfigured to improve their commerciality, including providing opinions and ideas as to how to increase operational efficiency of the Services.

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42. Insurance

Insurance cover provided by Operator

42.1 The Operator shall:

42.1.1 take out and maintain the following insurances during the period specified in clause 42.1.2:

- (a) Material Damage Policy for the replacement value of Transferring Depots and any other depot plant and equipment and any other assets used in the provision of the Services, and which shall be for a value not less than the relevant amount specified in row 1 of the table in Appendix 9 (*Insurance Policy*) of Schedule 2 (*Agreement details*);
- (b) Public Liability Policy, which must:

- A. provide cover for claims for death, personal injury and loss or damage to real and personal property in relation to the provision of the Services and the operation of the Bus Unit; and
 - B. be for a value of not less than the amount set out in row 2 of the table in Appendix 9 (*Insurance Policy*) of Schedule 2 (*Agreement details*) for any one claim or series of claims arising out of the same occurrence with no limit on the total payable in respect of all occurrences; and
 - (c) Motor Vehicle Policy, including third party cover, in relation to all Vehicles including the RTPI Equipment, Ticketing Equipment and any other GWRC Assets which are installed on those Vehicles, and which shall be for a value of not less than the amount set out in row 3 of the table in Appendix 9 (*Insurance Policy*) of Schedule 2 (*Agreement details*) for any one claim or series of claims arising out of the same occurrence with no limit on the total payable in respect of all occurrences;
- 42.1.2 ensure that each of the insurances referred to in clause 42.1.1 is in full force and effect at all times:
- (a) from and including 25 Business Days prior to the Conditions Precedent Date for Satisfaction; and
 - (b) to and including 2.00 am on the date of termination or expiry of this Partnering Contract (whichever is the earlier), including by the renewal of this insurance cover on an annual basis; and
- 42.1.3 take out and maintain any other insurance in connection with the performance by the Operator of its obligations under this Partnering Contract or any other Transaction Document as may be required from time to time by Law or by Good Industry Practice (such as director and officer liability, statutory liability and business interruption insurance) and ensure that each such insurance is in full force and effect at all such times as may be required by Law and Good Industry Practice.
- 42.2 The Operator shall ensure that at all times during the period specified in clause 42.1.2, each Insurance Policy shall:
- 42.2.1 be provided by Reputable Insurers;
 - 42.2.2 be effected on terms (including as to amount of any deductibles) approved by GWRC (such approval not to be unreasonably withheld);
 - 42.2.3 provide that if a claim is made and accepted, the amount of cover will automatically be reinstated to the full cover, provided that this requirement shall not apply to the Public Liability Policy; and
 - 42.2.4 not be cancelled without at least 20 Business Days prior written notice by the insurer to GWRC and to the Operator.
- 42.3 The Operator must ensure that:
- 42.3.1 to the extent legally possible, the Material Damage Policy is in the names of the Operator and GWRC as co-insured for their respective separate rights, obligations and interests;
 - 42.3.2 each of the Material Damage Policy and the Motor Vehicle Policy;

- (a) extends to indemnify each insured party and any other party having a pecuniary or economic interest in the Insured Property (Material Damage) or Insured Property (Motor Vehicle) (as applicable);
- (b) requires the insurer to pay all amounts payable relating to Transferring Assets under the policy into the Joint Insurance Account;
- (c) includes a waiver of subrogation clause in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;
- (d) a cross liability clause for the purposes of which the insurer accepts the term "insured" as applying to each of the persons comprising insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result); and
- (e) contains a provision to the effect that where the insured consists of more than one legal entity that is named on the schedule:
 - A. each shall be considered as a separate entity and the word "insured" shall apply to each as if a separate policy had been issued to each provided that nothing contained in this condition shall result in an increase of the insurer's maximum liability in respect of any occurrence or period of insurance;
 - B. any act, error, omission, neglect or breach of the policy of or by an individual party will not prejudice the rights of the remaining party/parties; and
 - C. the insurer shall not impute to any insured any knowledge or intention or state of mind possessed or allegedly possessed by any other insured; and

42.3.3 the Public Liability Policy contains an agreement by the insurer that the Operator's entry into this Partnering Contract or any other Transaction Documents does not fall within any policy exclusion for liability assumed by agreement.

42.4 Without prejudice to any obligation of the Operator under this clause 42, the Operator shall be entitled to satisfy its obligations under clause 42.1.1, by using its general group insurance policies provided that such general group insurance policies comply with all applicable requirements of this Partnering Contract.

42.5 Neither failure to comply nor full compliance with the insurance provisions of this Partnering Contract shall limit or relieve the Operator of any of its liabilities or obligations under or in connection with this Partnering Contract or any other Transaction Document.

Evidence of policies and renewal certificates

42.6 The Operator shall provide to GWRC:

42.6.1 prior to the Conditions Precedent Date for Satisfaction and in accordance with Appendix 2 (*Milestone Dates*) to Schedule 13 (*Transition Plan*), a Certificate of Currency in respect of each Insurance Policy;

- 42.6.2 no later than 5 Business Days before the expiry of an existing Insurance Policy, a copy of the renewal certificate in respect of that Insurance Policy or a Certificate of Currency in respect of a replacement Insurance Policy (as applicable);
- 42.6.3 on replacement of an existing Insurance Policy, a Certificate of Currency in respect of the replacement Insurance Policy no later than 5 Business Days before the expiry or cancellation of the existing Insurance Policy;
- 42.6.4 copies of the terms of any Insurance Policy within 5 Business Days of a request therefor;
- 42.6.5 immediately on becoming aware of the same, written notice of any cancellation or proposed cancellation of any Insurance Policy by the insurer or the Operator; and
- 42.6.6 promptly following a request therefor, any other information reasonably requested by GWRC from time to time in connection with the Insurance Policies.

Premiums and other charges

- 42.7 The Operator shall at all times be responsible for, and shall punctually pay:
 - 42.7.1 all insurance premia, commissions, taxes, charges and other fees necessary to obtain and maintain the Insurance Policies and any other insurance policy which the Operator is obliged to obtain and maintain under any other Transaction Document; and
 - 42.7.2 any tax that it is liable to pay pursuant to section HD 16 of the Income Tax Act 2007 where any insurance premium is derived by a foreign insurer.
- 42.8 Promptly following a request therefor, the Operator shall provide GWRC with such evidence as GWRC may reasonably require to demonstrate that all amounts referred to in clause 42.7 have been duly paid by the Operator.

Failure to maintain

- 42.9 In the event that the Operator fails to:
 - 42.9.1 take out, maintain, renew or replace any Insurance Policy in accordance with the requirements of this Partnering Contract;
 - 42.9.2 pay any premium or other amount in respect of an Insurance Policy when such premium or other amount falls due and payable;
 - 42.9.3 provide GWRC with a Certificate of Currency or renewal certificate in respect of an Insurance Policy in accordance with its obligations under clause 42.6;
 - 42.9.4 not used; or
 - 42.9.5 provide GWRC with the evidence required under clause 42.8,GWRC may (in its sole discretion) take out and maintain the relevant Insurance Policy and pay any premia or other amount in connection therewith.
- 42.10 Within 5 Business Days following a demand therefor, the Operator shall reimburse GWRC all costs incurred by GWRC in connection with the taking out and maintaining of any Insurance Policy as contemplated by clause 42.9, including the amount of any tax that GWRC is liable to pay pursuant to section HD 16 of the Income Tax Act 2007 on behalf of a foreign insurer.

General obligations in respect of Insurance Policies

- 42.11 The Operator shall:
- 42.11.1 if in GWRC's opinion (acting reasonably) the limits of liability specified in clause 42.1 or Appendix 9 (*Insurance Policy*) of Schedule 2 (*Agreement details*) are no longer sufficient, increase such limits of liability for the remaining period referred to in clause 42.1.2 within 10 Business Days of GWRC's notice to the Operator to do so and this shall be deemed to constitute a Minor Contract Variation;
 - 42.11.2 ensure that any person that is engaged (directly or indirectly and at any tier) as a subcontractor to the Operator in the provision of Services is insured in accordance with Good Industry Practice;
 - 42.11.3 at all times comply with all terms of each Insurance Policy;
 - 42.11.4 promptly take all such measures and precautions as are reasonably necessary to protect and preserve the respective rights and entitlements of the Operator and GWRC under the Insurance Policies;
 - 42.11.5 inform GWRC in writing immediately upon becoming aware of any matter which has or is likely to prejudice any Insurance Policy or any claim thereunder;
 - 42.11.6 not do, permit to be done or omit to do anything which prejudices or is likely to prejudice any Insurance Policy or any claim thereunder;
 - 42.11.7 without prejudice to clause 42.11.6, immediately rectify any matter which, if not rectified, would or is likely to prejudice any Insurance Policy or any claim thereunder;
 - 42.11.8 not cancel, vary or terminate any Insurance Policy and not allow any Insurance Policy to lapse, be cancelled or terminated without the prior written consent of GWRC;
 - 42.11.9 without prejudice to clause 42.11.8, immediately reinstate or replace any Insurance Policy which lapses, is cancelled or terminated with an Insurance Policy which complies with the requirements of this Partnering Contract and which is provided by a Reputable Insurer;
 - 42.11.10 fully and promptly disclose all material information to the insurers providing the Insurance Policies;
 - 42.11.11 in respect of the Material Damage Policy and the Motor Vehicle Policy, immediately notify the relevant insurers in writing (copied to GWRC) if there is an increase in the number of Transferring Assets or a material increase in the value of any of the Transferring Assets covered by that Insurance Policy and increase the policy limit accordingly, if required to so by the terms of the Insurance Policy in order to ensure that the Operator complies with its obligations in this clause 42;
 - 42.11.12 promptly notify GWRC in writing of any claim being made on any Insurance Policy which exceeds \$20,000 (excluding any deductible), giving full details of the claim and the event giving rise to such claim; and
 - 42.11.13 promptly notify GWRC in writing in the event that any risk is or becomes uninsurable under the relevant Insurance Policy.

Enforcement

- 42.12 The Operator shall do all things reasonably necessary (including providing all documents, evidence and information reasonably necessary) to enable GWRC to claim, collect or recover any moneys due or which become due to GWRC under or in respect of any Insurance Policy under which GWRC is an insured party.

Value of Transferring Assets

42.13 The Operator shall immediately notify GWRC in writing if there is a material increase or a material decrease in the value of any of the Transferring Assets covered by the Material Damage Policy or the Motor Vehicle Policy.

43. Reinstatement of Transferring Assets

Allocation of risk

43.1 The Operator shall bear the risk of any loss of, or damage to, the Transferring Assets, irrespective of whether or not the proceeds of the Material Damage Policy or the Motor Vehicle Policy are sufficient to reinstate, repair or replace the Transferring Assets following their loss or damage.

43.2 The Operator shall bear any deductible which applies in respect of any claim made under the Material Damage Policy or the Motor Vehicle Policy in relation to the Transferring Assets.

Proceeds of Material Damage Policy and Motor Vehicle Policy

43.3 If the Operator makes a claim or claims on the Material Damage Policy or the Motor Vehicle Policy in relation to any of the Transferring Assets in respect of a single event or a series of related events and the proceeds of such claim or claims exceed \$25,000 (which amount shall not be Indexed) in aggregate, the Operator shall ensure that all such proceeds to the extent they relate to the Transferring Assets are paid directly by the insurer into the Joint Insurance Account. GWRC and the Operator shall operate the Joint Insurance Account so as to give effect to the provisions of, and the withdrawals contemplated by, this clause 43.

43.4 The Operator shall not at any time create or permit to subsist any Security Interest over the Joint Insurance Account or the proceeds of the Joint Insurance Account.

43.5 Subject to clause 43.17, all proceeds received by the Operator under the Material Damage Policy or the Motor Vehicle Policy shall be applied to repair, reinstate and replace each part or parts of the Transferring Assets in respect of which such proceeds were received.

Reinstatement plan

43.6 In the event of any material damage to or loss of any of the Transferring Assets, the Operator shall:

43.6.1 promptly notify GWRC of the occurrence of such damage or loss and promptly provide any information requested by GWRC in connection therewith; and

43.6.2 provide a draft reinstatement plan to GWRC setting out the Operator's proposals to repair, reinstate or replace the relevant Transferring Assets (including by using any contractor or supplier GWRC may specify for the purpose of repair, reinstatement or replacement of the RTP1 Equipment, Ticketing Equipment or any other GWRC Assets which are installed on those Vehicles) and including the proposed timetable for such repair, reinstatement or replacement, such plan to be provided within 10 Business Days of such damage or loss occurring (or such longer period as GWRC may agree, acting reasonably).

43.7 The Operator shall ensure that each draft reinstatement plan provided by it under clause 43.6.2 will, if implemented in accordance with its terms, be sufficient to ensure that the relevant Transferring Asset:

43.7.1 complies with all applicable Laws;

43.7.2 complies with any applicable Consents;

43.7.3 meets or exceeds any applicable requirements of this Partnering Contract; and

- 43.7.4 will be in such a condition and of such a standard to enable the Operator to perform its obligations in accordance with this Partnering Contract and to meet or exceed the requirements of the Reliability KPI and the Punctuality KPI and to achieve the PI Achieve Benchmarks.
- 43.8 The Operator shall promptly amend any draft reinstatement plan prepared by it pursuant to clause 43.6.2 to incorporate the reasonable comments of GWRC and shall promptly resubmit the amended draft reinstatement plan to GWRC. This clause 43.8 shall reapply until GWRC confirms in writing that it approves the reinstatement plan. GWRC shall not unreasonably withhold such approval.
- 43.9 The Operator shall:
- 43.9.1 promptly following approval of the reinstatement plan by GWRC, repair, reinstate or replace (as applicable) the relevant Transferring Assets in accordance with the terms of the Approved Reinstatement Plan (including any timetable contained therein); and
- 43.9.2 without prejudice to clauses 43.1 and 43.2 but subject to clauses 43.13 (*GWRC may reinstate*) and 43.17 (*Joint Insurance Account proceeds following termination or expiry*), be entitled to withdraw amounts standing to the credit of the Joint Insurance Account in accordance with clause 43.12 in order to fund the costs of performing its obligations under clause 43.9.1 to the extent that such costs relate to the repair, reinstatement or replacement of the Transferring Assets in respect of which such amounts were received under the Material Damage Policy or the Motor Vehicle Policy.
- 43.10 The Operator shall not be relieved from its obligations to repair, reinstate or replace (as applicable) the Transferring Assets by reason of the cause of the relevant loss or damage having been a Compensation Event or a Force Majeure Event.
- 43.11 The Operator shall provide GWRC with evidence of the costs incurred or to be incurred by it in performing its obligations under clause 43.9.1 promptly following a request to do so.
- 43.12 Subject to clause 43.17 (*Joint Insurance Account proceeds following termination or expiry*), provided that the Approved Reinstatement Plan has been fully implemented and all works and activities contemplated thereunder have been completed to the reasonable satisfaction of GWRC, then GWRC shall permit the withdrawal by the Operator of any amount standing to the credit of the Joint Insurance Account to the extent that such amount was received under the Material Damage Policy or the Motor Vehicle Policy in respect of the repair, reinstatement or replacement of those Transferring Assets which were the subject of the Approved Reinstatement Plan.

GWRC may reinstate

- 43.13 Without limiting anything else in this Partnering Contract, if the Operator does not comply with any of its obligations under clause 43.6 to clause 43.9 (inclusive) within 5 Business Days after a request to do so from GWRC, GWRC may elect (in its sole discretion) to repair, reinstate or replace the relevant Transferring Assets (either itself or through its nominee).
- 43.14 To the extent that proceeds received under the Material Damage Policy or the Motor Vehicle Policy in connection with the relevant loss of or damage to the relevant Transferring Assets have been paid into the Joint Insurance Account, GWRC shall be entitled to withdraw such proceeds from the Joint Insurance Account to pay for (or reimburse it for) the costs and expenses incurred or to be incurred by GWRC in undertaking or procuring such repair, reinstatement or replacement referred to in clause 43.13.
- 43.15 If any proceeds received under the Material Damage Policy or the Motor Vehicle Policy are insufficient to pay GWRC for (or reimburse it for) the costs and expenses incurred or to be incurred by GWRC in undertaking or

procuring the repair, reinstatement or replacement referred to in clause 43.13, then the amount by which those insurance proceeds is less than such actual costs and expenses shall be a debt immediately due and payable by the Operator to GWRC.

- 43.16 The Operator shall not make any Claim against GWRC in respect of any repair, reinstatement or replacement undertaken by or on behalf of GWRC pursuant to clause 43.13 and the Operator shall (to the maximum extent permitted by Law) indemnify GWRC (and keep GWRC so indemnified) on demand from and against any Claim or Loss arising from, incurred or suffered in connection with such repair, reinstatement or replacement.

Joint Insurance Account proceeds following termination or expiry

- 43.17 With effect from the Termination Date:

- 43.17.1 the Operator shall cease to have any interest in, or control over, the Joint Insurance Account;
- 43.17.2 any amounts standing to the credit of the Joint Insurance Account (including any interest accrued) on the Termination Date shall be for the account of GWRC and GWRC shall be entitled to withdraw such amounts and apply them as it sees fit; and
- 43.17.3 if on the Termination Date the Operator has only partly implemented the Approved Reinstatement Plan and the works and activities contemplated thereunder have only been partly completed to the reasonable satisfaction of GWRC, then GWRC may elect to:
- (a) permit the Operator to complete such works after the Termination Date and, if such works are completed, the Operator shall be entitled to withdraw amounts in accordance with clause 43.12; or
 - (b) reimburse the Operator for its costs of carrying out such partly completed works from any amount standing to the credit of the Joint Insurance Account to the extent that:
 - A. such amount was received under the Material Damage Policy or the Motor Vehicle Policy in respect of the repair, reinstatement or replacement of those Transferring Assets which were the subject of the Approved Reinstatement Plan; and
 - B. after withdrawal of amounts to reimburse the Operator, GWRC considers (acting reasonably) that there will be a sufficient amount standing to the credit of the Joint Insurance Account to cover the costs of GWRC completing the implementation of the Approved Reinstatement Plan and the works and activities contemplated thereunder.

Power of Attorney

- 43.18 For valuable consideration (receipt of which is hereby acknowledged), the Operator hereby irrevocably appoints GWRC as the Operator's attorney with full power and authority to perform such activities and take such action as required to permit GWRC to make withdrawals from the Joint Insurance Account in accordance with clauses 43.14 and 43.17.2 and the Operator:
- 43.18.1 agrees to immediately ratify and confirm all such activities performed and action taken by GWRC;
- 43.18.2 agrees that it shall promptly on request by GWRC execute a separate power of attorney on the terms of this clause 43.18 by way of a deed or otherwise in such form as GWRC may reasonably require; and

- 43.18.3 agrees that an attorney appointed under this clause 43.18 is not liable for any Loss the Operator may suffer or incur as a result of the attorney's actions.

44. Financial performance and security

Provision of initial Performance Bond

- 44.1 No later than 10 Business Days after the date of this Partnering Contract, the Operator shall provide to GWRC a duly executed unconditional on demand performance bond in the form set out in Annexure 10 (*Bond*) for an amount equal to the Performance Bond Amount and with an expiry date not earlier than the date falling two months after the first anniversary of the date of this Partnering Contract.

Provision of subsequent Performance Bonds

- 44.2 On each anniversary of the date of this Partnering Contract, the Operator shall provide to GWRC a new duly executed unconditional on demand performance bond in the form set out in Annexure 10 (*Bond*) which shall:
- 44.2.1 be for an amount equal to the Performance Bond Amount;
 - 44.2.2 subject to clause 44.3, have an expiry date not earlier than the date falling two months after the next anniversary of the date of this Partnering Contract; and
 - 44.2.3 replace the existing Performance Bond held by GWRC at that date.
- 44.3 In the case of the last Performance Bond to be provided under clause 44.2 prior to the date of expiry of the Term by effluxion of time, the Operator shall ensure that such Performance Bond has an expiry date not earlier than the date falling 60 Business Days after the date of expiry of the Term.

Provision of Rectification Bond

- 44.4 The Operator may elect to provide a Rectification Bond in accordance with clause 56.8.

Release of Performance Bonds

- 44.5 Subject to GWRC's right to have recourse to the Performance Bonds prior to GWRC returning such Performance Bonds under this clause 44.5, GWRC shall:
- 44.5.1 provided that the Operator has provided a new Performance Bond to GWRC in accordance with clause 44.2, return and release the existing Performance Bond in exchange for the Operator providing the new Performance Bond;
 - 44.5.2 subject to clause 44.6, if this Partnering Contract expires by effluxion of time, return and release any Performance Bond no later than the date falling 30 Business Days after the date of expiry of the Term;
 - 44.5.3 subject to clause 44.6, if this Partnering Contract is terminated in accordance with its terms, return and release any Performance Bond:
 - (a) no later than the date falling 6 months after the Termination Date if the termination is pursuant to clause 47 (*Termination for Termination Events*); or
 - (b) no later than the date falling 30 Business Days after the Termination Date if the termination is not pursuant to clause 47 (*Termination for Termination Events*).

- 44.6 If, as at the date on which GWRC is required by clause 44.5.2 or 44.5.3 to return and release any Performance Bond, there are bona fide disputes between the Operator and GWRC in relation to this Partnering Contract or any other Transaction Document, GWRC shall only be required to return and release that Performance Bond:
- 44.6.1 in exchange for a replacement bond provided by the Operator which has a face value equal to the aggregate amount which is the subject of the relevant disputes, has an expiry date acceptable to GWRC and which otherwise meets the requirements of clause 44.8 (*Requirements of Bonds*) and such replacement bond will itself be released not later than 30 Business Days after the date on which the last dispute has been finally resolved and the Operator has fully complied with the determination thereof; or
- 44.6.2 if no replacement bond is provided under clause 44.6.1, no later than the date falling 30 Business Days after the date on which the last dispute has been finally resolved and the Operator has complied with the determination thereof.

Release of Rectification Bond

- 44.7 Subject to GWRC's right to have recourse to the Rectification Bond, GWRC shall return and release the Rectification Bond in accordance with clause 56.10.2 or 56.14.4 (as applicable).

Requirements of Bonds

- 44.8 The Operator shall ensure that each Bond shall be:
- 44.8.1 in the form set out in Annexure 10 (*Bond*);
- 44.8.2 in favour of GWRC;
- 44.8.3 payable in New Zealand dollars;
- 44.8.4 duly executed by the issuer, unconditional and in full force and effect from the date that it is provided to GWRC;
- 44.8.5 at all times provided by an issuer which:
- (a) is acceptable to GWRC;
 - (b) maintains the Required Rating; and
 - (c) is the holder of a current banking licence or authorisation to carry on banking business issued by the Reserve Bank of New Zealand or the Australian Prudential Regulation Authority; and
- 44.8.6 payable at an office of the issuer in Wellington, Auckland or Sydney.

Replacement Bonds

- 44.9 **Required Rating or lack of authorisation:** Without prejudice to the Operator's obligations under clause 44.2, if the issuer of a Bond ceases to have the Required Rating or ceases to be the holder of a current banking licence or authorisation to carry on banking business issued by the Reserve Bank of New Zealand or Australian Prudential Regulation Authority, then the Operator shall:
- 44.9.1 promptly notify GWRC of that circumstance; and
- 44.9.2 within 5 Business Days of such circumstance occurring, provide a duly executed unconditional replacement bond to GWRC which:

- (a) shall have a face value equal to the undrawn amount of the Bond which is to be replaced;
- (b) shall have an expiry date which is not earlier than the date of expiry of the Bond which is to be replaced; and
- (c) satisfies the requirements of clause 44.8 (*Requirements of Bonds*).

44.10 **Expiry: If:**

- 44.10.1 any Performance Bond then held by GWRC will expire prior to the relevant Release Date; and
- 44.10.2 the Operator is not obliged under clause 44.2 to provide a new Performance Bond prior to the Release Date,

the Operator shall, no later than the date falling one month prior to the earlier of the Termination Date and the expiry date of such Performance Bond, provide a duly executed unconditional replacement performance bond to GWRC which:

- 44.10.3 shall have a face value equal to the Performance Bond Amount;
- 44.10.4 shall have an expiry date which is not earlier than the applicable Release Date; and
- 44.10.5 satisfies the requirements of clause 44.8 (*Requirements of Bonds*).

- 44.11 Subject to GWRC's right to have recourse to the Bonds prior to GWRC returning such Bonds under this clause 44.11, if the Operator provides a replacement Bond in accordance with clause 44.9 or 44.10 GWRC shall return and release the existing Bond that is to be replaced by that new Bond in exchange for the Operator providing the new Bond.

Failure to provide replacement Bond

- 44.12 If the Operator fails to provide:

- 44.12.1 a subsequent Performance Bond in accordance with clause 44.2; or
- 44.12.2 a replacement Bond in accordance with clause 44.9 or 44.10,

GWRC may make any number of demands on any Bond then held by it and shall be entitled to hold and apply the proceeds of such demands as security for the performance by the Operator of its obligations under this Partnering Contract until the subsequent or replacement bond is provided in accordance with clause 44.2, 44.9 or 44.10 (as applicable).

Demands

- 44.13 GWRC may only make a demand under a Bond:

- 44.13.1 for any:
 - (a) Moneys Owing to GWRC; and
 - (b) any Claim to Moneys Owing that GWRC may have against the Operator, whether under this Partnering Contract or any other Transaction Document or otherwise;
- 44.13.2 in respect of any Loss arising from or in connection with a breach by the Operator or the Guarantor (if applicable) of any Transaction Document to which they are party (including any costs incurred by GWRC in procuring the provision of services to replace any or all of the Services or to replace or repair any or all of the Transferring Assets);

- 44.13.3 in accordance with clause 44.12 (*Failure to provide replacement Bond*);
- 44.13.4 in the case of a Rectification Bond, in accordance with clause 56.12.3 (*If the Operator does not comply with its obligations*);
- 44.13.5 in accordance with clause 56.7; or
- 44.13.6 as otherwise expressly provided for in this Partnering Contract.

44.14 If and to the extent that:

- 44.14.1 GWRC makes a demand under a Bond; and
- 44.14.2 it is subsequently determined that such demand was made in breach of clause 44.13; and
- 44.14.3 GWRC is required to repay the amount received by it as a result of such demand and, without double counting, any charges or fees paid to the Bond issuer as a result of such demand,

then:

- 44.14.4 the Operator shall promptly provide to GWRC a replacement Bond which:
 - (a) has a face value equal to the face value of the Bond on which the demand was made immediately prior to that demand being made;
 - (b) has an expiry date which is not earlier than the date of expiry of the Bond on which the demand was made; and
 - (c) otherwise satisfies the requirements of clause 44.8 (*Requirements of Bonds*); and
- 44.14.5 subject to GWRC's right to have recourse to the Bonds prior to GWRC returning such Bonds under this clause 44.14.5, if the Operator provides a replacement Bond pursuant to clause 44.14.4, GWRC shall return and release the existing Bond that is to be replaced by that new Bond in exchange for the Operator providing the new Bond.

No injunction

- 44.15 The Operator shall not, and shall procure that the Operator Associates shall not, take any steps to injunct or otherwise restrain:
 - 44.15.1 the issuer of a Bond from paying GWRC pursuant to a Bond;
 - 44.15.2 GWRC from making a demand under a Bond or receiving payment under a Bond; or
 - 44.15.3 GWRC from using the proceeds of a Bond as it sees fit.

No trust

- 44.16 If GWRC makes a demand under a Bond, it does not hold the proceeds on trust for the Operator.

No interest

- 44.17 GWRC is not obliged to pay the Operator interest on any Bond or the proceeds of any Bond.

Parent Company Guarantee

- 44.18 Except where paragraph 24 (*Guarantor*) of Schedule 2 (*Agreement Details*) provides that the Operator is not required to provide a Parent Company Guarantee, no later than 5 Business Days after the date of this Partnering Contract the Operator shall provide to GWRC the Parent Company Guarantee duly executed by the Guarantor.

Part Seven – Dispute Resolution

45. Dispute resolution procedure

Application of Procedure

- 45.1 Any Dispute must be dealt with under this clause 45 provided that nothing in this clause 45 will prevent a Party from applying to a court of competent jurisdiction to seek urgent or interim relief.
- 45.2 Except as provided for in clause 45.1, no Party may commence court proceedings unless and until the steps provided by this clause 45 have been undertaken, or one Party has attempted to follow the steps and the other Party has failed to participate, and the steps have not resolved the Dispute.

Referral to Senior Executives Meeting

- 45.3 A Party may refer a Dispute to a Senior Executives Meeting by serving a Notice of Dispute on the other Party, setting out a brief description (to be no more than 5 pages in length) of the Dispute and an indication of the amount involved (if any) as well as the relief or remedy sought.
- 45.4 Within 3 Business Days after the referral to the Senior Executives Meeting under clause 45.3, each of GWRC and the Operator shall nominate a senior representative (being a General Manager or Managing Director or equivalent) with the authority to settle the Dispute who shall attend the Senior Executives Meeting.
- 45.5 The Senior Executives Meeting will determine its own procedures (if any) for the resolution of the Dispute as expeditiously as possible. Decisions of the Senior Executives Meeting must be made by unanimous agreement of the members of the Senior Executives Meeting. Any decision of the Senior Executives Meeting is binding on the Parties once reduced to writing and signed by all of the members of the Senior Executives Meeting. All discussions of the Senior Executives Meeting are held on a without prejudice basis unless expressly agreed otherwise.
- 45.6 If the Dispute is not resolved by the Senior Executives Meeting within 10 Business Days after referral to the Senior Executives Meeting (or such other period agreed by the Senior Executives Meeting), the Dispute will be deemed to be not resolved and any Party may, as the next step, refer the Dispute to mediation.

Mediation

- 45.7 If any Dispute is referred to mediation in accordance with clause 45.6, the mediation must be conducted in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc.. The mediation must be conducted:
- 45.7.1 by a single mediator agreed upon between the Parties; or
- 45.7.2 in default of such agreement within 10 Business Days after the Dispute is referred to mediation, by a single mediator selected by the Arbitrators' and Mediators' Institute of New Zealand Inc..
- 45.8 If the Dispute is not resolved by mediation:
- 45.8.1 the Parties may by written agreement refer the Dispute to Expert determination within 5 Business Days after the conclusion of the mediation; or
- 45.8.2 provided no referral to Expert determination is made under clause 45.8.1 any Party may commence proceedings to have the Dispute determined by a court of competent jurisdiction.

Expert determination

- 45.9 For those disputes required by this Partnering Contract to be referred directly to Expert determination or which this Partnering Contract otherwise expressly envisages may be referred to Expert determination, and for any Dispute that is agreed by the Parties pursuant to clause 45.8.1 to be referred to Expert determination, the procedure set out in clauses 45.10 to 45.15 shall apply.
- 45.10 The Parties shall, within 5 Business Days of referral to Expert determination, endeavour to agree upon a single expert (who must be independent of the Parties and must have qualifications and experience appropriate to the matter in dispute) to whom the matter will be referred for determination. The Parties shall promptly appoint the relevant person as the Expert.
- 45.11 If within 10 Business Days of referral to Expert determination, the Parties have not agreed upon the appointment of the Expert, the Parties shall request:
- 45.11.1 the then president of Chartered Accountants Australia and New Zealand (for technical, financial, valuation, economic or accounting issues); or
- 45.11.2 the then president of the New Zealand Bar Association (for all other issues),
- to nominate the person to be appointed as the Expert, provided that if a dispute involves both issues falling within clause 45.11.1 and other issues, the Parties shall request the then president of the New Zealand Bar Association to provide the nomination. The Parties shall promptly appoint the person so nominated pursuant to this clause 45.11.
- 45.12 The Parties shall instruct the Expert to:
- 45.12.1 determine the Dispute within the shortest practicable time, and in any event within 30 Business Days unless otherwise agreed by the Parties; and
- 45.12.2 deliver a report to the Parties stating the Expert's determination and setting out the reasons for the determination.
- 45.13 The procedures for the conduct of the process in order to make the determination will be determined by the Expert and must provide each Party with a fair opportunity to make submissions in relation to the matter in dispute.
- 45.14 Any process or determination by the Expert will be made as an expert and not as an arbitrator. The determination of the Expert will be final and binding on the Parties, except in the case of a manifest error in the process of determination or the determination itself or in the event of the determination being influenced by fraud or corruption of the Expert or any of the Parties, in which case any Party (except a Party whose fraud or corruption influenced the determination) may commence court proceedings to challenge or to resist the enforcement of the determination of the Expert.
- 45.15 Each Party must bear its own costs of and incidental to any Expert determination under this clause 45. The costs of the Expert will be shared equally between GWRC and the Operator.

Performance of obligations pending resolution of dispute

- 45.16 Despite the existence of a dispute, each Party must continue to perform its obligations under this Partnering Contract.

Part Eight – Breach and termination

46. Events of Default and Cure Plan

Events of Default

46.1 Each of the following events is an Event of Default:

- 46.1.1 **(Material breach)** A material breach by the Operator of any of its material obligations under any Transaction Document including a material breach of any Plan (in each case other than a breach as a result of which a Performance Deduction or a Reporting Error Deduction has been or will be made from the Services Fee in accordance with Schedule 6 (*Financial and Performance Regime*));
- 46.1.2 **(Persistent Breach)** GWRC issues a Notice of Persistent Breach pursuant to clause 46.7;
- 46.1.3 **(Failure to satisfy Milestone Date or Operator Conditions Precedent)** The Operator has failed to satisfy:
- (a) any or all of the Milestones by the applicable Milestone Date and such Milestones have not been waived by GWRC in accordance with clause 2.5; or
 - (b) any or all of the Operator Conditions Precedent by the Conditions Precedent Date for Satisfaction and such Operator Conditions Precedent have not been waived by GWRC in accordance with clause 2.5;
- 46.1.4 **(Subcontracting)** The Operator breaches its obligations in clause 17 (*Subcontracting, delegations and Key Personnel*);
- 46.1.5 **(Security)** The Operator breaches any of its obligations under clause 44 (*Financial performance and security*) or any Bond or the Parent Company Guarantee ceases to be in full force and effect (excluding, in respect of Bond, any expiration of a Bond where such expiration is permitted by this Partnering Contract and excluding, in respect of the Parent Company Guarantee, where paragraph 24 (*Guarantor*) of Schedule 2 (*Agreement Details*) provides that the Operator is not required to provide a Parent Company Guarantee);
- 46.1.6 **(Failure to report)** Except to the extent that the same constitutes a Termination Event (in which case clause 47 shall apply), the Operator fails to comply with its reporting obligations under this Partnering Contract or a report issued by the Operator under this Partnering Contract contains a material discrepancy or is otherwise materially inaccurate;
- 46.1.7 **(Failure to comply with revenue obligations)** The Operator fails to comply with any of its obligations under clause 39 (*Farebox Revenue and other Revenue*);
- 46.1.8 **(Failure to effect or maintain the insurances)** The Operator fails to effect or maintain any of the insurances that it is required to effect and maintain in accordance with clause 42 (*Insurance*);
- 46.1.9 **(Failure to comply with reinstatement obligations)** The Operator fails to comply with clause 43 (*Reinstatement of Transferring Assets*);
- 46.1.10 **(Transferring Assets)** The Operator breaches any of its obligations under clause 55 (*Provisions relating to Transferring Assets*);

- 46.1.11 (**Breach of Transferring Asset Related Party Direct Deed**) A Transferring Asset Related Party fails to comply with the terms of its Transferring Asset Related Party Direct Deed;
- 46.1.12 (**Safety Law**) The Operator is convicted of an offence under any Safety Law;
- 46.1.13 (**Failure to acquire Vehicles**) The Operator fails to comply with or implement the Vehicle Acquisition Plan in accordance with its terms;
- 46.1.14 (**Failure to acquire Depots**) The Operator fails to comply with or implement the Depot Acquisition Programme in accordance with this terms;
- 46.1.15 (**Performance - KPIs**) During any period of three consecutive Relevant Months, the Operator incurs Performance Deductions due to:
 - (a) more than 1% of the Scheduled Services which the Operator was required by this Partnering Contract to provide in that period failing to meet the requirements of the Reliability KPI; or
 - (b) more than 10% of the Scheduled Services which the Operator was required by this Partnering Contract to provide in that period failing to meet the requirements of the Punctuality KPI;
- 46.1.16 (**Vehicle Age**) The Operator fails to comply with clause 10.15.6 or 10.15.7;
- 46.1.17 (**Emissions Device etc**) Any Vehicle is tampered with, modified or installed with any device where doing so has the effect of (or which is intended to have the effect of) falsifying the emissions levels of that Vehicle or the compliance by that Vehicle with its emissions classification;
- 46.1.18 (**Vehicles and assets**) The Operator fails to comply with clauses 10.3, 10.3A or 10.3B (*Condition failures and non-compliant Vehicles*) or clause 12 (*Other assets and systems used in the provision of the Services*); and
- 46.1.19 (**Deemed Event of Default**): any other event which is expressly deemed to be an Event of Default in accordance with this Partnering Contract.

Cure Plan or Prevention and Mitigation Plan

- 46.2 If an Event of Default has occurred, GWRC may give the Operator a Notice of Default:
 - 46.2.1 stating that an Event of Default has occurred;
 - 46.2.2 giving reasonable details of the event or circumstance constituting the Event of Default;
 - 46.2.3 specifying whether (acting reasonably) the Event of Default is capable of remedy; and
 - 46.2.4 stating that it is a "notice of default" issued under this clause 46.2.
- 46.3 The Operator shall:
 - 46.3.1 if the Notice of Default specifies that the Event of Default is capable of remedy, either:
 - (a) if the Event of Default is capable of being remedied within 10 Business Days, remedy the Event of Default within 10 Business Days of receipt of the Notice of Default; or
 - (b) if the Event of Default is not capable of being remedied within 10 Business Days, submit to GWRC a Cure Plan within 5 Business Days of receipt of the Notice of Default setting out the proposed actions to be undertaken by the Operator to remedy the Event of Default as soon as

reasonably possible and specifying the date by which the Event of Default will be remedied (which date shall be as soon as reasonably possible); or

- 46.3.2 if the Notice of Default specifies that the Event of Default is not capable of remedy, submit to GWRC a Prevention and Mitigation Plan within 5 Business Days of receipt of the Notice of Default setting out the proposed actions to be undertaken by the Operator to mitigate the impact of the Event of Default and prevent the recurrence of the same Event of Default.
- 46.4 Within 5 Business Days of receipt of a Cure Plan or a Prevention and Mitigation Plan, GWRC shall (acting reasonably) either approve or reject such plan and give written notice of such approval or rejection (with reasons) to the Operator.
- 46.5 If GWRC has rejected a Cure Plan or a Prevention and Mitigation Plan pursuant to clause 46.4, the Operator must amend the relevant plan to reflect the comments of GWRC and resubmit such plan to GWRC within 3 Business Days of receipt of the notice of rejection, in which case clause 46.4 will reapply. GWRC is not required to grant the Operator more than one opportunity to amend a Cure Plan or Prevention and Mitigation Plan.
- 46.6 Without prejudice to the Operator's obligations under clause 46.3, the Operator shall:
- 46.6.1 at all times after the occurrence of an Event of Default that is capable of remedy until the Event of Default is remedied, diligently pursue the remedy of the Event of Default;
- 46.6.2 at all times after the occurrence of an Event of Default that is not capable of remedy, mitigate the impacts of that Event of Default and use its best endeavours to prevent the recurrence of that Event of Default; and
- 46.6.3 implement each Cure Plan and Prevention and Mitigation Plan immediately following its approval by GWRC pursuant to clause 46.4 and continue at all times to fully comply with such Cure Plan or Prevention and Mitigation Plan (as applicable).

Persistent Breach

- 46.7 If a Persistent Breach occurs, then GWRC may give the Operator a Notice of Persistent Breach:
- 46.7.1 identifying the breach;
- 46.7.2 giving reasonable details of the event or circumstance constituting the breach;
- 46.7.3 stating that such breach is a breach which, if it recurs frequently or continues may result in termination of this Partnering Contract; and
- 46.7.4 stating that it is a "notice of persistent breach" issued under this clause 46.7,
- and this shall constitute an Event of Default under clause 46.1.2.

47. Termination for Termination Events

Termination by GWRC on occurrence of Termination Event

- 47.1 Without limiting GWRC's rights under clause 48, GWRC may, on or after the occurrence of a Termination Event, terminate this Partnering Contract by serving a Notice of Termination on the Operator:
- 47.1.1 identifying the Termination Event;

- 47.1.2 specifying the date on which the termination will take effect; and
- 47.1.3 stating that it is a "notice of termination" issued under this clause 47.1.

47.2 This Partnering Contract will terminate on the date specified in the Notice of Termination.

47.3 No failure to exercise, or delay in exercising, GWRC's rights under clause 47 will operate as a waiver or cause GWRC's rights in relation to the occurrence of the Termination Event to lapse or be otherwise diminished.

Termination Events

47.4 Each of the following events is a Termination Event:

- 47.4.1 **(Liability Cap):** The liability of the Operator to GWRC under this Partnering Contract in respect of any Liability Event is equal to or greater than the Liability Cap;
- 47.4.2 **(Liquidated Damages Cap):** The total number of calendar days for which Liquidated Damages are payable by the Operator reaches or exceeds the Liquidated Damages Cap;
- 47.4.3 **(Performance - KPIs)** During any period of three consecutive Relevant Months, the Operator incurs Performance Deductions due to:
 - (a) more than 5% of the Scheduled Services which the Operator was required by this Partnering Contract to provide in that period failing to meet the requirements of the Reliability KPI; or
 - (b) more than 15% of the Scheduled Services which the Operator was required by this Partnering Contract to provide in that period failing to meet the requirements of the Punctuality KPI;
- 47.4.4 **(Persistent Breach)** GWRC has issued a Notice of Default in respect of the Event of Default in clause 46.1.2 (*Persistent Breach*) and the relevant breach:
 - (a) continued beyond a further period of 20 Business Days; or
 - (b) recurred twice or more in the 3 month period after the date of receipt of the Notice of Default; or
 - (c) recurred five times or more in the 12 month period after the date of receipt of the Notice of Default;
- 47.4.5 **(Failure to prepare approved Cure Plan or Prevention and Mitigation Plan)** The Operator fails to prepare a Cure Plan or Prevention and Mitigation Plan (as applicable) that is approved by GWRC pursuant to clause 46.4 within 20 Business Days of the receipt of a Notice of Default;
- 47.4.6 **(Failure to comply with Cure Plan or Prevention and Mitigation Plan)** The Operator fails to implement and comply with an approved Cure Plan or an approved Prevention and Mitigation Plan (as applicable) or otherwise fails to comply with its obligations under clause 46.6;
- 47.4.7 **(Failure to remedy Event of Default)** Where clause 46.3.1(a) applies, the Operator fails to remedy the Event of Default within the period specified in clause 46.3.1(a);
- 47.4.8 **(Suspension or cancellation of licence etc.)** The Operator's Licence or any other Consent which the Operator is required to hold by Law in order to provide the Services:
 - (a) is repealed, revoked, terminated, surrendered or deemed surrendered;
 - (b) expires without a renewal taking effect prior to the date of expiry;

- (c) is modified or amended or conditions are attached to it, and such modification, amendment or conditions are unacceptable to GWRC (acting reasonably) and have not been amended to the reasonable satisfaction of GWRC within 5 Business Days of such modification, amendment or imposition of conditions taking place; or
- (d) is suspended due to the fault of the Operator, any Operator Associate or any director, advisor, officer, employee, delegate or agent of, or contractor to, the Operator or the Operator Associates and such suspension subsists for greater than 3 Business Days,

and the Operator has not satisfied GWRC (acting reasonably) within 5 Business Days of the event occurring that the Operator will be able to lawfully continue providing the Services in accordance with this Partnering Contract despite the occurrence of such event;

- 47.4.9 **(Termination of Transaction Document)** A Transaction Document (excluding this Partnering Contract) is terminated due to any breach, act or omission of the Operator or any Operator Associate or a counterparty to a Transaction Document (excluding this Partnering Contract) becomes entitled to terminate the Transaction Document due to any breach, act or omission of the Operator or any Operator Associate and, in each case, the Operator has not satisfied GWRC (acting reasonably) within 5 Business Days of the event occurring that the Operator will be able to continue providing the Services in accordance with this Partnering Contract despite the occurrence of such event;
- 47.4.10 **(Misrepresentation)** A written representation, warranty or statement by or on behalf of the Operator in a Transaction Document, or a document provided under or in connection with a Transaction Document, is not true in a material respect or is misleading when made or repeated which, if it had been known to GWRC when entering into this Partnering Contract would, in the reasonable opinion of GWRC, have resulted in GWRC not entering into this Partnering Contract or entering into this Partnering Contract on materially different terms;
- 47.4.11 **(Prohibited Act)** The Operator or any Operator Associate or anyone employed by any of them has committed, or any action taken on behalf of any of them constitutes, a Prohibited Act;
- 47.4.12 **(Insolvency – Operator or holding company)** An Insolvency Event occurs in relation to the Operator or a holding company (as defined in the Companies Act) of the Operator;
- 47.4.13 **(Insolvency - Guarantor)** Except where paragraph 24 (*Guarantor*) of Schedule 2 (*Agreement Details*) provides that the Operator is not required to provide a Parent Company Guarantee, without prejudice and in addition to clause 47.4.12, an Insolvency Event occurs in relation to the Guarantor and the Operator does not within 10 Business Days thereafter provide a guarantee in the form set out in Annexure 9 (*Parent Company Guarantee*) duly executed by an entity acceptable to GWRC (acting reasonably) as replacement guarantor;
- 47.4.14 **(Disposal of assets)** The Operator or the Guarantor (if applicable) disposes of or agrees to dispose of (in each case either by way of a single transaction or series of transactions, whether related or not and whether voluntary or involuntary) all or a substantial part of its assets which are or were being used in the provision of Services and such disposal materially adversely affects the ability of the Operator or the Guarantor (if applicable) to perform its obligations under any Transaction Document or is reasonably likely to have such effect;

- 47.4.15 **(Assignment and Change of Ownership)** The Operator breaches clause 62.1 or a Change of Ownership occurs without the prior written consent of GWRC which is not a Permitted Change of Ownership;
- 47.4.16 **(Abandonment)** The Operator abandons or ceases all or a substantial part of the provision of the Services or expresses an intention to do so;
- 47.4.17 Not used
- 47.4.18 **(Failure to commence)** The Operator fails to commence the provision of a material part of the Services within 48 hours after the Transfer Time and either:
- (a) fails to agree with GWRC within 72 hours after the Transfer Time a time and date when the provision of such Services will be commenced; or
 - (b) agrees with GWRC within 72 hours after the Transfer Time a time and date when the provision of such Services will be commenced and fails to commence the provision of such Services at the agreed time and date; and
- 47.4.19 **(Cross default)** GWRC becomes entitled to terminate any Associated Bundled Partnering Contract due to any breach or default by the Operator or a Related Company of the Operator or due to the occurrence of any other Termination Event (as defined in the Associated Bundled Partnering Contract) or similarly defined event, unless the Operator has satisfied GWRC (in its absolute discretion), within 10 Business Days after GWRC becoming entitled to terminate any Associated Bundled Partnering Contract, that the Operator will be able to provide the Services in accordance with this Partnering Contract until the date on which this Partnering Contract expires in accordance with clause 4.4 (Expiry of Term) without any change or variation to the terms of the Partnering Contract (including any changes in respect of the Services Fee).

Payments

- 47.5 If this Partnering Contract is terminated by GWRC in accordance with this clause 47 (*Termination for Termination Events*) or clause 48 (*Termination for non-payment*):
- 47.5.1 GWRC must, within 30 days of the date of termination, pay the Operator any outstanding Services Fee for Services performed in accordance with this Partnering Contract up to the date of termination (less any amounts that GWRC is entitled to set off under this Partnering Contract); and
- 47.5.2 the Operator shall (to the maximum extent permitted by Law) indemnify GWRC (and keep GWRC so indemnified) on demand from and against any Claim or Loss arising as a result of, or in connection with, the termination of this Partnering Contract and the event giving rise to such termination.

48. Termination for non-payment

Right to require payment

- 48.1 If a Debtor Party fails to make an Outstanding Payment to a Creditor Party within 20 Business Days after such amount becomes due and payable, the Creditor Party may serve a notice on the Debtor Party which shall:
- 48.1.1 specify the amount of the Outstanding Payment and the date on which the Outstanding Payment first became due and payable under this Partnering Contract; and

48.1.2 request payment of the Outstanding Payment.

Right to terminate

48.2 If by the date falling 20 Business Days after receipt by the Debtor Party of a notice under clause 48.1:

48.2.1 the Debtor Party has not paid the Outstanding Payment to the Creditor Party; and

48.2.2 the Outstanding Payment has not become the subject of a good faith dispute,

the Creditor Party may serve a further notice on the Debtor Party stating that this Partnering Contract will terminate on the date falling 10 Business Days after the date of receipt by the Debtor Party of such notice.

48.3 If the Creditor Party serves a notice in accordance with clause 48.2, this Partnering Contract will terminate on the date falling 10 Business Days after the date of receipt by the Debtor Party of that notice, unless prior to such date the Debtor Party pays the Creditor Party the Outstanding Payment.

48.4 Nothing in this clause 48 shall affect, limit or reduce in any way, GWRC's rights, including GWRC's rights in clauses 46 and 47.

49. Termination by GWRC for convenience

GWRC's right to terminate for convenience

49.1 Without limiting GWRC's other rights in the Transaction Documents but subject to clause 49.2, GWRC may terminate this Partnering Contract at any time by not less than 6 months' written notice to the Operator. Termination of this Partnering Contract will take effect from the date specified in that notice.

49.2 GWRC shall not be entitled to issue a notice pursuant to clause 49.1 in order to conduct a tender procedure for, or award a contract to an alternative operator for, the provision of the services that are the same or substantially the same as the Services in respect of this Bus Unit.

49.3 Without limiting clause 49.6 or clause 75 (*GWRC action*) or requiring GWRC to:

49.3.1 interfere with or influence the exercise by any person of a statutory power or discretion;

49.3.2 exercise a power or discretion or otherwise act in a manner that GWRC regards as not in the public interest; or

49.3.3 incur any material cost,

after the date on which GWRC issues a notice under clause 49.1, GWRC and the Operator must work together in good faith in order to mitigate the impact of termination on the Operator.

Termination payment

49.4 Subject to clause 49.5, if this Partnering Contract is terminated pursuant to clause 49.1, GWRC shall, within 60 days after the date of termination, pay to the Operator (without double-counting):

49.4.1 any outstanding Services Fees for Services performed in accordance with this Partnering Contract up to (but excluding) the date of termination (less any amounts GWRC is entitled to set-off under this Partnering Contract); and

[REDACTED]



[Redacted]

(b) the aggregate of:

A. the costs [Redacted] reasonably, properly and demonstrably incurred by the Operator as a direct result of the termination of this Partnering Contract but only to the extent that:



- i. such costs are incurred in connection with the provision of the Services;
- ii. such costs are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial Arm's Length Terms; and
- iii. the Operator and any relevant Operator Associate have each used their reasonable endeavours to minimise such costs;

plus

B. an amount equal to [Redacted] on those Vehicles contained in the current Fleet List and which:



- i. are not transferred to GWRC or its nominee (or in respect of which the relevant Transferring Asset Agreement is not transferred to GWRC or its nominee) pursuant to the terms of a Transfer Agreement (excluding where this is caused or contributed to by a breach by the Operator of clause 55 or by a breach by the Operator or any Transferring Asset Related Party of any Transfer Agreement or Transferring Asset Related Party Direct Deed to which it is party); and
- ii. are not re-deployed, provided that the Operator shall use its best endeavours to re-deploy such Vehicles;

plus

C. an amount equal to the lesser of:

- i. [Redacted] of the Base Service Fee that would have been payable by GWRC for 5 years from the Termination Date; or
- ii. [Redacted] of the Base Service Fee that would have been payable by GWRC from the Termination Date to the Initial Expiry Date.



49.5 GWRC's obligation to make any payment pursuant to clause 49.4 shall be conditional upon the Operator having complied with its obligations under Part Nine (*Obligations associated with change of Operator*).

49.6 Payment by GWRC of the amount which is due and payable under clause 49.4 (which may be zero if the condition specified in clause 49.5 has not been met) shall be in full and final settlement of the Operator's rights and entitlement against GWRC in connection with termination of this Partnering Contract pursuant to clause 49.1. The Operator:

- 49.6.1 hereby irrevocably waives any other right or claim howsoever arising (including any rights in tort, which shall include actions brought in negligence) that it might otherwise have in connection with termination of this Partnering Contract under clause 49.1; and
- 49.6.2 will not be entitled to make any claim (including in negligence) against GWRC in connection with termination of this Partnering Contract under clause 49.1 other than a claim for payment of any amount which is due and payable pursuant to clause 49.4.

50. Force Majeure

Force Majeure Event

- 50.1 A Force Majeure Event is an event or circumstance which is beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent, provided that event or circumstance is limited to the following:
- 50.1.1 riot, war, invasion, act of foreign enemies, acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;
- 50.1.2 ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- 50.1.3 pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and
- 50.1.4 the declaration under the Civil Defence Emergency Management Act 2002 of a state of national emergency or of a state of local emergency in respect of the Wellington region.

Notification of Force Majeure Event

- 50.2 An Affected Party shall immediately give written notice to the other Party if it is, or reasonably considers it may be, prevented in whole or in part from carrying out its obligations under this Partnering Contract by a Force Majeure Event. A notice given under this clause must set out:
- 50.2.1 full particulars of the Force Majeure Event;
- 50.2.2 the obligations affected by the Force Majeure Event and the extent to which they cannot be performed or are delayed;
- 50.2.3 an estimate of the time required to overcome the Force Majeure Event;
- 50.2.4 the proposed actions to be taken by the Affected Party to mitigate or avoid the consequences of the Force Majeure Event; and
- 50.2.5 the extent to which the Force Majeure Event and its effects are covered by insurance.
- 50.3 If from time to time, following the issue of a notice under clause 50.2 the Affected Party becomes aware of any further information relating to the Force Majeure Event or the effect of the Force Majeure Event on the performance by the Affected Party of its obligations, it shall give written notice of that further information to the other Party as soon as reasonably practicable.

Suspension of obligations

- 50.4 Subject to clauses 50.5, 50.6 and 50.21, the Affected Party's obligations under this Partnering Contract shall be suspended, but only to the extent that the Affected Party:

- 50.4.1 has complied with clause 50.6; and
- 50.4.2 is prevented from performing those obligations by the Force Majeure Event.

50.5 The occurrence of a Force Majeure Event will not relieve the Affected Party of any obligation to pay money.

Obligation to mitigate

50.6 The Affected Party shall promptly:

- 50.6.1 use (and continue to use) all reasonable endeavours (including but not limited to the reasonable expenditure of money, the rescheduling of manpower and resources and the implementation of reasonable and appropriate temporary measures) to cure, mitigate or avoid the consequences of the Force Majeure Event;
- 50.6.2 use all reasonable endeavours to mitigate any Loss suffered by the other Party or any passengers as a result of the Affected Party's failure or inability to perform its obligations under this Partnering Contract due to the Force Majeure Event; and
- 50.6.3 if the Force Majeure Event constitutes a Service Disruption, comply with its obligations in paragraphs 3.4 to 3.14 of Schedule 3 (*Passenger Services*).

End of Force Majeure Event

50.7 Subject to clause 50.15, immediately following the date on which the Force Majeure Event ceases or no longer causes the Affected Party to be prevented from performing its obligations under this Partnering Contract:

- 50.7.1 the Affected Party shall notify the other Party in writing that this is the case; and
- 50.7.2 the Affected Party shall recommence performance of all of its obligations under this Partnering Contract on the terms existing immediately prior to the occurrence of the Force Majeure Event.

Force Majeure Event substantially preventing provision of the Scheduled Services

50.8 If a Force Majeure Event directly or indirectly prevents or is reasonably likely to directly or indirectly prevent the Operator from providing all or a substantial proportion of the Scheduled Services for a continuous period which exceeds 10 Business Days, the Operator and GWRC shall promptly meet to discuss and agree in writing (each acting reasonably and in good faith) appropriate measures to:

- 50.8.1 mitigate, avoid or overcome the effects of the Force Majeure Event;
- 50.8.2 facilitate (to the extent reasonably practicable) the continued provision of the Scheduled Services; and
- 50.8.3 otherwise manage the risk and effects of the Force Majeure Event.

50.9 GWRC and the Operator shall promptly implement any measures agreed by them pursuant to clause 50.8 in accordance with the terms of such agreement.

50.10 If:

- 50.10.1 GWRC and the Operator are unable to agree on the measures referred to in clause 50.8 within 20 Business Days after the date on which the Force Majeure Event first prevented the Operator from providing all or a substantial proportion of the Scheduled Services; and
- 50.10.2 the Force Majeure Event is continuing to have that effect,

GWRC shall either:

- 50.10.3 serve a Force Majeure Termination Notice on the Operator (in which case, clauses 50.11 to 50.14 shall apply); or
- 50.10.4 serve a Force Majeure Continuation Notice on the Operator (in which case, clauses 50.15 to 50.18 shall apply).

Effect of issue of Force Majeure Termination Notice

- 50.11 If GWRC serves a Force Majeure Termination Notice pursuant to clause 50.10.3, this Partnering Contract shall terminate on the date falling 10 Business Days after the date of receipt by the Operator of the Force Majeure Termination Notice.
- 50.12 Subject to clause 50.13, within 60 days after the date of termination pursuant to clause 50.11, GWRC shall pay to the Operator (without double-counting):
 - 50.12.1 subject to clause 50.15.4 if a Force Majeure Continuation Notice has been issued prior to the issue of a Force Majeure Termination Notice, the outstanding Services Fee for Services performed in accordance with this Partnering Contract up to (but excluding) the date of termination and any other outstanding amounts which are due and payable by GWRC to the Operator under this Partnering Contract as at the date of termination (in each case less any amounts that GWRC is entitled to set-off under this Partnering Contract);

plus

- 50.12.2 the costs [REDACTED] reasonably, properly and demonstrably incurred by the Operator as a direct result of the termination of this Partnering Contract but only to the extent that:
 - (a) such costs are incurred in connection with the provision of the Services;
 - (b) such costs are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial Arm's Length Terms;
 - (c) the Operator and any relevant Operator Associate have each used their reasonable endeavours to minimise such costs; and
 - (d) such costs are not recoverable by the Operator under any Insurance Policy and the cause of such non-recoverability is not a breach by the Operator of any of its obligations under any Transaction Document in relation to insurance;

plus

- 50.12.3 an amount equal to [REDACTED] and which:
 - (e) are not transferred to GWRC or its nominee (or in respect of which the relevant Transferring Asset Agreement is not transferred to GWRC or its nominee) pursuant to the terms of a Transfer Agreement (excluding where this is caused or contributed to by a breach by the Operator of clause 55 (*Provisions relating to Transferring Assets*) or by a breach by the



Operator or any Transferring Asset Related Party of any Transfer Agreement or Transferring Asset Related Party Direct Deed to which it is party); and

- (f) are not re-deployed, provided that the Operator shall use its best endeavours to re-deploy such Vehicles.

50.13 GWRC's obligation to make any payment pursuant to clause 50.12 shall be conditional upon the Operator having complied with its obligations under Part Nine (*Obligations associated with change of Operator*).

50.14 Payment by GWRC of the amount which is due and payable under clause 50.12 (which may be zero if the condition specified in clause 50.13 has not been met) shall be in full and final settlement of the Operator's rights and entitlement against GWRC in connection with termination of this Partnering Contract pursuant to clause 50.11 and the Force Majeure Event giving rise thereto. The Operator:

50.14.1 hereby irrevocably waives any other right or claim howsoever arising (including any rights in tort, which shall include actions brought in negligence) that it might otherwise have in connection with termination of this Partnering Contract under clause 50.11 or the Force Majeure Event giving rise thereto; and

50.14.2 will not be entitled to make any claim (including in negligence) against GWRC in connection with termination of this Partnering Contract under clause 50.11 or the Force Majeure Event giving rise thereto, other than a claim for payment of any amount which is due and payable pursuant to clause 50.12.

Effect of issue of Force Majeure Continuation Notice

50.15 If GWRC serves a Force Majeure Continuation Notice pursuant to clause 50.10.4:

50.15.1 subject to clauses 50.5, 50.6 and 50.21, during the Suspension Period the Operator's obligations under this Partnering Contract shall be suspended to the extent it is prevented from performing those obligations by the Force Majeure Event;

50.15.2 GWRC shall serve a written notice on the Operator specifying the Service Commencement Date on which GWRC requires the Operator to recommence the provision of those obligations that have been suspended under clause 50.15.1, provided that the Service Commencement Date shall not be earlier than:

- (a) the date falling 10 Business Days after the date of receipt by the Operator of the notice served under this clause 50.15.2; and
- (b) the date on which the effects of the Force Majeure Event have been remedied, avoided or otherwise overcome so that the Force Majeure Event shall have ceased to prevent performance by the Operator of all or substantially all of the suspended obligations;

50.15.3 with effect from the Service Commencement Date, the Operator shall recommence performance of all of its obligations under this Partnering Contract on the terms existing immediately prior to the occurrence of the Force Majeure Event; and

50.15.4 the Services Fee payable by GWRC in respect of the Suspension Period shall be reduced by the aggregate of:

- (a) the amount of the reduction in the Operator's costs of performing its obligations under this Partnering Contract during the Suspension Period; and
- (b) the amounts recoverable by the Operator in respect of its lost revenue or income (including amounts representing lost or reduced Services Fee) pursuant to any Insurance Policy or which would have been so recoverable had the Operator complied with its obligations under the Transaction Documents in relation to insurance.

50.16 The Operator shall (and shall procure that the Operator Associates shall) use all reasonable endeavours to maximise the reduction in the Services Fee pursuant to clause 50.15.4.

50.17 Within 3 Business Days following a request therefor, the Operator shall:

50.17.1 provide such information on an Open Book Basis as GWRC reasonably requires in order to verify the amount of the reduction in the Operator's costs referred to in clause 50.15.4(a); and

50.17.2 provide to GWRC such information as GWRC may reasonably require to enable it to ascertain the extent to which amounts referred to in clause 50.15.4 are recoverable by the Operator pursuant to an Insurance Policy or would have been so recoverable had the Operator complied with its obligations under the Transaction Documents in relation to insurance.

50.18 GWRC may at any time during the Suspension Period serve a Force Majeure Termination Notice pursuant to clause 50.10.3, in which case this Partnering Contract shall terminate in accordance with clause 50.11.

No breach

50.19 To the extent that a Party's obligations are suspended in accordance with this clause 50:

50.19.1 the failure by that Party to perform the obligations which are so suspended will not be a breach of this Partnering Contract by that Party; and

50.19.2 where the relevant Party whose obligations have been suspended is the Operator:

- (a) the failure by the Operator to perform the obligations which are so suspended will not constitute a Termination Event; and
- (b) subject to clause 50.15.4 and paragraph 11 (*Major Service Disruptions, Force Majeure Events and Deemed Performance*) of Schedule 6 (*Financial and Performance Regime*), the provisions of Schedule 6 (*Financial and Performance Regime*) shall continue to apply notwithstanding the suspension of any of the Operator's obligations; and
- (c) for the purposes of assessing whether an Event of Default has occurred under clause 46.1.15 (*Performance - KPIs*) or a Termination Event has occurred under clause 47.4.3 (*Performance - KPIs*), any Performance Deductions incurred as a direct result of the failure by the Operator to comply with those suspended obligations shall be disregarded.

No additional payment

50.20 Except to the extent that GWRC is obliged to make a payment under clause 50.12, the Operator will not be entitled to any additional payment or any increase to the Services Fee as a result of or in connection with a Force Majeure Event and the performance by the Operator of its obligations under this clause 50 shall not constitute or be deemed to constitute a Contract Variation or Minor Contract Variation.

Obligation to satisfy Milestones and Operator Conditions Precedent

50.21 Without limiting the Operator's rights under clauses 2.14 to 2.19 (*Circumstances reasonably beyond the Operator's and the Operator Associates' control*), the Operator is not entitled to claim, and GWRC is not required to grant to the Operator, relief from its obligations in clause 2.4 (*Time for Satisfaction*) under this clause 50.

51. Exclusive rights of termination

51.1 The Parties acknowledge and agree that, to the maximum extent permitted by Law:

51.1.1 the only rights available to them to terminate, rescind or accept the repudiation of this Partnering Contract are those expressly set out in this Partnering Contract; and

51.1.2 no Party shall be entitled to exercise a right to terminate or rescind or accept the repudiation of this Partnering Contract under any other rights whether arising in common law, equity, statute or otherwise howsoever.

Part Nine – Obligations associated with change of Operator

52. Retendering and continuation of Services

Retendering of Services

52.1 The Operator acknowledges that GWRC may on, before or after the end of the Term, invite any person (which may or may not include the Operator) to tender for the provision of all or any part of the Services (or services that are similar to the Services) after the termination or expiry of this Partnering Contract.

52.2 Not used.

Handover Package for Transferring Assets

52.3 The Operator shall:

52.3.1 no later than 6 months after the Commencement Date, prepare and provide to GWRC an initial Handover Package which must be current and correct as at the date that it is provided to GWRC;

52.3.2 at all times after the provision of the initial Handover Package, keep the Handover Package up to date and provide a copy of the updated Handover Package to GWRC on the first day of each Year (and the Operator shall ensure that the information contained in each updated Handover Package is current and correct as at the date that it is provided to GWRC); and

52.3.3 provide a copy of the current Handover Package to GWRC, or make the current Handover Package available to GWRC for inspection, within 3 Business Days following a request from GWRC and permit GWRC to provide this Handover Package to an Incoming Operator or a Potential Incoming Operator.

General obligations

52.4 The Operator shall:

52.4.1 co-operate with GWRC and provide all such assistance as is reasonably required by GWRC in connection with the procurement of an Incoming Operator; and

52.4.2 promptly take all such action as is reasonably required by GWRC to facilitate the safe and efficient transfer of responsibility for the provision of all or any part of the Services to an Incoming Operator in a manner which minimises disruption to passengers.

Preparation for appointment of Incoming Operator

52.5 Without prejudice to the generality of clause 52.4, the Operator shall, promptly following a request from GWRC (or otherwise within such timeframe as may be specified by GWRC acting reasonably):

52.5.1 provide information to GWRC; and

52.5.2 respond to queries and questions raised or forwarded to the Operator by GWRC;

in each case to the extent reasonably required by GWRC to enable GWRC to:

52.5.3 conduct a tender process or otherwise select or appoint an Incoming Operator or negotiate terms and conditions with a Potential Incoming Operator; or

52.5.4 ensure the safe and efficient transfer of responsibility for the provision of all or any part of the Services to an Incoming Operator in a manner which minimises disruption to passengers.

- 52.6 The Operator shall respond to all requests received from GWRC pursuant to clauses 52.4 and 52.5 acting honestly and in good faith.
- 52.7 The Operator acknowledges and agrees that, notwithstanding anything to the contrary in this Partnering Contract, GWRC is entitled to:
- 52.7.1 use any information, drawings or other documents provided by the Operator under this clause 52 for any purpose related to the selection or appointment of an Incoming Operator or otherwise in connection with securing the safe and efficient transfer of responsibility for the provision of all or any part of the Services to an Incoming Operator in a manner which minimises disruption to passengers;
 - 52.7.2 disclose such information, drawings or other documents received from the Operator under this clause 52 to any Incoming Operator or the officers, employees, agents, consultants, contractors and advisors of any Incoming Operator provided that the Incoming Operator has first executed a confidentiality undertaking in substantially the same form as that set out in Annexure 12 (*Incoming Operator Confidentiality Undertaking*); and
 - 52.7.3 disclose the Handover Package to an Incoming Operator or a Potential Incoming Operator.
- 52.8 The Operator warrants to GWRC that all information, documents or drawings provided by it under clause 52.3, 52.4 or 52.5 will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.

Access

- 52.9 Subject to clause 52.10 and subject to GWRC providing reasonable prior notice to the Operator, the Operator shall permit each Potential Incoming Operator (and any person authorised by the Potential Incoming Operator) to have supervised physical access to all aspects of the Transferring Assets and permit each of them to carry out inspections and surveys of the same to the extent reasonably required by them.
- 52.10 GWRC shall ensure that, prior to any Potential Incoming Operator (or any person authorised by the Potential Incoming Operator) first having physical access pursuant to clause 52.9, the relevant Potential Incoming Operator executes an access indemnity substantially in the form set out in Annexure 13 (*Access Indemnity*).

Personal information

- 52.11 Nothing in this clause 52 shall oblige the Operator to provide private or personal information in respect of the Services Employees.

53. Securing continuity

Non-frustration of transfer

- 53.1 The Operator shall not do anything, and shall procure that the Operator Associates shall not do anything, which directly or indirectly avoids, or materially prejudices or frustrates:
- 53.1.1 the efficient and effective selection and appointment of an Incoming Operator (including any tender process or negotiations relating thereto);
 - 53.1.2 the safe and efficient transfer of responsibility for the provision of all or any part of the Services (or services which are substantially similar to any of the Services) to an Incoming Operator in a manner which minimises disruption to passengers; or

- 53.1.3 a provision of a Transaction Document which is intended in whole or in part for the purpose of facilitating the transfer of responsibility for the provision of all or any part of the Services (or services which are substantially similar to any of the Services) to an Incoming Operator.

Assistance in securing continuity

53.2 Without prejudice to any other obligations of the Operator under this Partnering Contract:

53.2.1 at all times following the service of a notice terminating this Partnering Contract;

53.2.2 at all times following the occurrence of a Termination Event; and

53.2.3 at all times during the two year period preceding the end of the Term (where the Term will, disregarding any early termination, expire by effluxion of time),

(as applicable), the Operator shall (and shall procure that the Operator Associates shall):

53.2.4 take all reasonable steps and co-operate fully with GWRC, any Incoming Operator and each of their nominees so that the continued provision of the Services (or services substantially similar to any of the Services) after such termination or expiry is achieved with the minimum disruption and so as to prevent or mitigate any inconvenience or risk to health or safety of any person or property;

53.2.5 liaise with GWRC, the Incoming Operator and each of their nominees and promptly provide reasonable assistance and advice concerning the Services, the GWRC Assets, the Transferring Assets and the Bus Unit;

53.2.6 allow GWRC, the Incoming Operator and each of their nominees access (at reasonable times and on reasonable notice) to the Transferring Assets;

53.2.7 promptly provide GWRC and the Incoming Operator with such information concerning the Services, the GWRC Assets, the Transferring Assets and the Bus Unit as is reasonably required to enable the safe and efficient transfer of responsibility for the provision of all or any of the Services (or services which are substantially similar to any of the Services) to the Incoming Operator;

53.2.8 promptly following a request from GWRC, meet with GWRC, the Incoming Operator and any of their respective nominees to:

- (a) discuss any matter in connection with the Services, the GWRC Assets, the Transferring Assets and the Bus Unit and to answer any questions which GWRC, the Incoming Operator and either of their respective nominees may have in connection therewith; and
- (b) agree transitional arrangements and handover protocols, key issues and risk registers, safety issues and actions to be undertaken by the Operator and the Incoming Operator, in each case so as to facilitate the safe and effective transfer of responsibility for the provision of the relevant Services (or services which are substantially similar to any of the Services) to the Incoming Operator in a manner which minimises disruption to passengers,

provided that nothing in this clause 53.2 shall require the Operator to provide private or personal information in respect of the Services Employees.

53.3 The Operator shall ensure that each meeting held pursuant to clause 53.2.8 is attended on behalf of the Operator by personnel having the relevant experience, qualifications and knowledge of the Services and who are authorised by the Operator to agree matters on its behalf. The Operator shall ensure that any information

provided by or on behalf of the Operator pursuant to clause 53.2 is, at the time it is provided, true and correct in all material respects and is not misleading, by omission or otherwise.

53.4 Nothing in clauses 53.2.5, 53.2.7 or 53.2.8 requires the Operator or any Operator Associate to engage additional temporary staff or consultants solely for the purposes of performing the Operator's obligations under clauses 53.2.5, 53.2.7 or 53.2.8 unless GWRC agrees in writing to reimburse the reasonable direct costs of the Operator or Operator Associate in so doing.

54. Return of GWRC Assets

54.1 Subject to clause 54.3, on the Termination Date, the Operator shall make physical possession of all GWRC Assets available to GWRC or its nominee at such location as GWRC (acting reasonably) may notify the Operator.

54.2 The Operator acknowledges and agrees that, except as provided for in clause 54.3, compliance with its obligations under clause 54.1 will require the Operator to de-install and remove all relevant GWRC Assets from the Vehicles and Depots (excluding those Vehicles and Depots which are Transferring Assets). The Operator shall undertake such de-installation and removal in accordance with:

54.2.1 the Bus Services Equipment Operations Manual;

54.2.2 Good Industry Practice; and

54.2.3 such other reasonable instructions, manuals and policies as may be provided by GWRC.

54.3 GWRC shall be responsible (at its own cost) for de-installing and removing the Ticketing Equipment and RTPI Equipment from the Vehicles and the Depots (excluding those Vehicles and Depots which are Transferring Assets) on the Termination Date (or such other date as may be agreed by the Operator and GWRC acting reasonably). Subject to clause 54.4, GWRC may also de-install and remove any Installation Kits. On the relevant date, the Operator shall provide GWRC and its nominees with access to the Vehicles (at such location as GWRC (acting reasonably) may notify the Operator) and the Depots for these purposes.

54.4 For the avoidance of doubt, nothing in clause 54.3 or any other provision of this Partnering Contract shall oblige GWRC to procure the de-installation or removal of any wiring, ducting, brackets, fixings or any other item contained in any Installation Kits.

54.5 The Operator shall ensure that on the Termination Date (and notwithstanding any de-installation or removal by or on behalf of the Operator), the GWRC Assets are operational and in substantially the same condition that they were in when they were first made available by GWRC for use by the Operator pursuant to this Partnering Contract (subject to fair wear and tear consistent with the operation and maintenance of the GWRC Assets by the Operator and Operator Associates in accordance with the terms of this Partnering Contract).

55. Provisions relating to Transferring Assets

Transferring Asset Related Party Direct Deeds

55.1 The Operator shall:

55.1.1 ensure that each Transferring Asset Related Party duly executes a Transferring Asset Related Party Direct Deed substantially in the form set out in Annexure 17 (*Transferring Asset Related Party Direct Deed*) or in such other form as GWRC (acting reasonably) may agree; and

- 55.1.2 provide a certified copy of such executed Transferring Asset Related Party Direct Deed to GWRC,
- in each case on or before the later of the date of this Partnering Contract and the date on which that Transferring Asset Related Party first makes any Transferring Asset available for use by the Operator in the provision of the Services.

Lessor Direct Deed

- 55.2 In respect of each Third Party Transferring Asset which is made available to the Operator or a Transferring Asset Related Party by a Lessor, the Operator shall:
- 55.2.1 where the Operator is counterparty to the relevant Transferring Asset Agreement with the Lessor, itself execute a Lessor Direct Deed or where a Transferring Asset Related Party is counterparty to the relevant Transferring Asset Agreement with the Lessor, ensure that the Transferring Asset Related Party executes a Lessor Direct Deed;
- 55.2.2 ensure that the Lessor duly executes a Lessor Direct Deed; and
- 55.2.3 provide a certified copy of such executed Lessor Direct Deed to GWRC,
- in each case on or before the later of the date of this Partnering Contract and the date on which the Lessor first makes that Third Party Transferring Asset available for use by the Operator or the Transferring Asset Related Party.

Security Interests and disposals

- 55.3 The Operator shall not (and shall ensure that the Operator Associates and the Transferring Asset Related Parties shall not) create or allow to exist any Security Interest (other than a Permitted Security Interest) over any Transferring Asset or any Transferring Asset Agreement where such Security Interest will or is likely to adversely affect:
- 55.3.1 the transfer to GWRC or its nominee of a Transferring Asset or the transfer of a Transferring Asset Agreement, in each case in accordance with clause 55.17 and the terms of the Transfer Agreement or a Lessor Direct Deed;
- 55.3.2 the rights of GWRC under any Transaction Document; or
- 55.3.3 the provision of the Services in accordance with this Partnering Contract.
- 55.4 Except for a transfer to GWRC or its nominee in accordance with clause 55.17 and the terms of a Transfer Agreement or a Lessor Direct Deed, the Operator shall not (and shall ensure that the Operator Associates and the Transferring Asset Related Parties shall not) Dispose directly or indirectly of:
- 55.4.1 any Transferring Asset; or
- 55.4.2 any right, title or interest in, to or in respect of any Transferring Asset,
- without the prior written consent of GWRC (such consent not to be withheld where the relevant Transferring Asset has, subject to clause 10.9A, been replaced with a new Transferring Asset in accordance with the Vehicle Acquisition Plan or the Depot Acquisition Programme (as applicable) or has been replaced in accordance with clause 43 (*Reinstatement of Transferring Assets*)).

Restrictions in relation to Transferring Asset Agreements

- 55.5 Subject to clause 55.6, the Operator shall not (and shall ensure that the Transferring Asset Related Parties shall not) enter into any lease, licence or other arrangement under which a Third Party Transferring Asset is made available for use by the Operator or a Transferring Asset Related Party (excluding any lease, licence or other arrangement between the Transferring Asset Related Party and the Operator under which the Third Party Transferring Asset is made available by the Transferring Asset Related Party for use by the Operator) unless the terms thereof have been approved in writing by GWRC.
- 55.6 The Parties acknowledge that the terms of those Transferring Asset Agreements identified in paragraph 19 (*Approved Transferring Asset Agreements*) of Schedule 2 (*Agreement details*) in the versions set out at Annexure 21 (*Approved Transferring Asset Agreements*) have been approved by GWRC for the purposes of clause 55.5.
- 55.7 The Operator shall not (and shall ensure that the Operator Associates and the Transferring Asset Related Parties shall not) without the prior written consent of GWRC:
- 55.7.1 amend, vary, supplement or replace any Transferring Asset Agreement or permit any other party to such Transferring Asset Agreement to do so;
 - 55.7.2 avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of any Transferring Asset Agreement;
 - 55.7.3 suspend the performance of any of its obligations under any Transferring Asset Agreement;
 - 55.7.4 do or permit anything to be done that would enable or give grounds to another person to do anything referred to in clauses 55.7.2 or 55.7.3 in relation to any Transferring Asset Agreement;
 - 55.7.5 waive or grant any indulgence in respect of a material provision of any Transferring Asset Agreement; or
 - 55.7.6 assign, novate or otherwise transfer or Dispose of any or all of its rights or obligations under any Transferring Asset Agreement to any person except for an assignment, novation or transfer to GWRC or its nominee in accordance with this Partnering Contract and a Transfer Agreement or a Lessor Direct Deed.
- 55.8 GWRC's consent to any matter referred to in clause 55.7 shall not be unreasonably withheld or delayed, provided that GWRC may withhold such consent where GWRC (acting reasonably) considers that the proposed action will (or is likely to):
- 55.8.1 increase the obligations or liabilities of GWRC (or its nominee) or of a Purchaser (as defined in the Transfer Agreement):
 - (a) under any Transaction Document or any Novation Deed (as defined in the Transfer Agreement and any Lessor Direct Deed); or
 - (b) otherwise in relation to any Transferring Asset or any Transferring Asset Agreement;
 - 55.8.2 increase the Transfer Price;
 - 55.8.3 adversely affect any person's ability to perform its obligations in accordance with the Transaction Documents; or

- 55.8.4 hinder or prevent the exercise by GWRC of its rights under the Transaction Documents or the transfer of any Transferring Asset Agreement or Transferring Asset in accordance with this Partnering Contract, the Transfer Agreement or any Lessor Direct Deed.
- 55.9 The Operator shall ensure that each Transferring Asset Agreement:
- 55.9.1 does not contain any provision which would prevent, restrict or hinder the exercise by GWRC of its rights under the Transaction Documents or the transfer of that Transferring Asset Agreement to GWRC or its nominee in accordance with this Partnering Contract, a Transfer Agreement or a Lessor Direct Deed;
- 55.9.2 requires the counterparty to transfer the Transferring Asset Agreement and to enter into a Novation Deed (as defined in the Transfer Agreement and the Lessor Direct Deed), in each case as contemplated by the Transfer Agreement and the Lessor Direct Deed;
- 55.9.3 in respect of Transferring Vehicles, allows for the Operator or a Transferring Asset Related Party (as applicable) to terminate the Transferring Asset Agreement and for title in the Transferring Asset to vest in the Operator or the Transferring Asset Related Party upon payment of any outstanding amounts under the Transferring Asset Agreement; and
- 55.9.4 may be terminated by the Operator or the Transferring Asset Related Party (as applicable) in the event that an Insolvency Event occurs in respect of the relevant Lessor.
- 55.9A The Operator shall ensure (and shall procure that each relevant Transferring Asset Related Party shall ensure) that the term of each Transferring Asset Agreement in respect of a Transferring Depot will expire on (but not before) the date falling 24 months after the date on which this Partnering Contract expires in accordance with clause 4.4 (*Expiry of Term*) (or would have so expired but for any early termination of this Partnering Contract).
- 55.9B The Operator shall ensure (and shall procure that each relevant Transferring Asset Related Party shall ensure) that each Transferring Asset Agreement in respect of a Transferring Vehicle provides that on:
- 55.9B.1 the date of expiry of this Partnering Contract by effluxion of time; and
- 55.9B.2 the date on which all amounts due and payable by the Operator or the Transferring Asset Related Party (as applicable) under the Transferring Asset Agreement have been paid,
- then:
- 55.9B.3 the term of the Transferring Asset Agreement shall expire; and
- 55.9B.4 full legal and beneficial ownership and title in and to the Transferring Vehicle automatically transfers to the Operator or the Transferring Asset Related Party (as applicable) free from any Security Interests.
- 55.9C In respect of those Transferring Asset Agreements which relate to Transferring Vehicles, the Operator shall (and shall ensure that each relevant Transferring Asset Related Party shall) take such action (including enforcing its rights and performing its obligations under the Transferring Asset Agreements and paying any amounts payable under the Transferring Asset Agreements) to ensure that:
- 55.9C.1 full legal and beneficial ownership and title in and to those Transferring Vehicles transfers to the Operator or Transferring Asset Related Party (as applicable) free from Security

Interests, so that such Transferring Vehicles are "Owned Transferring Assets" (as defined in the Transfer Agreement); and

55.9C.2 such Transferring Asset Agreements expire,

in each case on the date on which this Partnering Contract expires by effluxion of time in order to enable those Transferring Vehicles to be transferred to GWRC or its nominee as contemplated by clause 55.17.

55.10 The Operator shall provide GWRC with a certified copy of each Transferring Asset Agreement entered into by the Operator or a Transferring Asset Related Party within three Business Days following the later of:

55.10.1 the date of this Partnering Contract; and

55.10.2 the date on which such Transferring Asset Agreement has been executed by all parties.

55.11 The Operator agrees that GWRC may provide any Potential Incoming Operator, Incoming Operator or Purchaser (as defined in the Transfer Agreement) with:

55.11.1 copies of any Transferring Asset Agreement (including copies of any amendment, variation, supplement or replacement thereto); and

55.11.2 any information given by or on behalf of the Operator to GWRC in relation to the Transferring Assets or Transferring Asset Agreements,

in each case provided that such recipient has provided a duly executed Incoming Operator Confidentiality Undertaking.

55.12 If called upon to do so by GWRC, the Operator shall promptly provide GWRC with such information relating to the Transferring Assets and the Transferring Asset Agreements as GWRC may reasonably require (including such information as may be required to complete a Transfer Agreement).

55.13 Without prejudice to clause 55.5, 55.7 or 55.8, if at any time a Transferring Asset Agreement is:

55.13.1 avoided, released, surrendered, terminated, rescinded, repudiated, discharged or otherwise ceases to be in full force and effect, the Operator shall immediately notify GWRC and shall, promptly following a request, provide such information in connection therewith as GWRC may reasonably request;

55.13.2 amended, varied, supplemented or replaced, the Operator shall immediately provide a certified copy of the Transferring Asset Agreement as amended, varied, supplemented or replaced to GWRC.

Acquisition of Transferring Assets

55.14 As soon as reasonably practicable to do so following a request from GWRC (but no later than 15 Business Days following such request), the Operator shall provide to GWRC:

55.14.1 its reasonable estimate of the current market value of each of the Transferring Depots;

55.14.2 its estimate of the current Transfer Price payable under the Transfer Agreement, the estimate to be in such format and contain such content and breakdown as is reasonably required by GWRC; and

55.14.3 such documentation and other supporting evidence as GWRC may reasonably require to verify the estimates provided by the Operator.

- 55.15 The Operator shall permit any person appointed by GWRC (or its nominee) to undertake a valuation of the Transferring Depots, subject to GWRC giving reasonable prior notice to the Operator. The Operator shall provide reasonable assistance to any such person and shall not hinder, restrict or prevent a valuation taking place. Such valuations may be undertaken as many times as GWRC (acting reasonably) considers appropriate.
- 55.16 Not used.
- 55.17 Subject to clause 55.20, on termination or expiry of this Partnering Contract, the Operator shall transfer to GWRC or its nominee (and GWRC shall acquire or shall procure that its nominee shall acquire) all of the Operator's right, title and interest in the Transferring Assets and the Transferring Asset Agreements subject to and in accordance with the terms of the Transfer Agreement, provided that this clause 55.17 (and the Transfer Agreement) shall not apply to:
- 55.17.1 any Transferring Asset to the extent that the Operator has Disposed of that Transferring Asset or its right, title or interest in or to the Transferring Asset in accordance with this Partnering Contract;
 - 55.17.2 any Transferring Asset Agreement to the extent that the Transferring Asset Agreement is no longer in effect (including those Transferring Asset Agreements which expire on the date of expiry of this Partnering Contract as contemplated by clauses 55.9B and 55.9C); or
 - 55.17.3 any Transferring Asset Agreement that has been novated pursuant to clause 2 (*Novation on termination or expiry of the Partnering Contract*) or clause 4 (*Novation Following Event of Default*) of a Lessor Direct Deed.
- 55.18 Not used.
- 55.19 Subject to clause 55.20, the Operator shall (and shall procure that each Transferring Asset Related Party will) and GWRC shall (or shall procure that its nominee will) enter into a Transfer Agreement in respect of the Transferring Assets and the Transferring Asset Agreements no later than:
- 55.19.1 60 Business Days prior to the Termination Date (where this Partnering Contract expires by effluxion of time); or
 - 55.19.2 2 Business Days after the date on which a Party receives a notice from the other Party terminating this Partnering Contract in accordance with its terms.
- 55.20 Clause 55.17 and the Transfer Agreement shall not apply to the extent that:
- 55.20.1 as at the Termination Date, the Operator or the relevant Transferring Asset Related Party is party to any other contract with GWRC which is in effect and under which the Operator or Transferring Asset Related Party (as applicable) is (or, subject to the satisfaction of conditions precedent, will be) required to provide passenger services in respect of a PTOM Unit; and
 - 55.20.2 the Transferring Assets and Transferring Asset Agreements are reasonably required by the Operator or that Transferring Asset Related Party to perform its obligations under the contract referred to in clause 55.20.1.

If the Operator (acting reasonably) considers that this clause 55.20 applies (or is likely to apply) it shall immediately notify GWRC in writing specifying the relevant Transferring Assets and Transferring Asset Agreements and the Operator shall promptly provide such other information relating to the matters referred to in clauses 55.20.1 and 55.20.2 as GWRC may request.

55.21 The Parties shall comply with their respective obligations under each Transfer Agreement.

Due Diligence

55.22 Without prejudice to any other rights of GWRC, the Operator grants (and shall procure that each Operator Associate and each Transferring Asset Related Party grants) to GWRC and its nominees the right of access to each Transferring Asset on reasonable notice to carry out the usual purchaser's due diligence and valuations, including without limitation due diligence as to the condition of the Transferring Assets, any improvements made to the Transferring Assets and, where applicable, site and ground conditions (including the extent of any Contamination).

Further assurance and power of attorney

55.23 Subject to clause 55.20, the Operator shall facilitate (and shall procure that each Operator Associate and each Transferring Asset Related Party shall facilitate) the transfer of the Transferring Assets and Transferring Asset Agreements in accordance with clause 55.17 and the Transfer Agreement and the Operator shall (and shall procure that each Operator Associate and each Transferring Asset Related Party shall) promptly take all necessary action (including executing, filing and lodging documents) required to give effect thereto.

55.24 The Operator shall not (and shall ensure that the Operator Associates and Transferring Asset Related Parties shall not) through their respective acts or omissions prevent, restrict, frustrate or hinder the transfer of any Transferring Asset or Transferring Asset Agreement as contemplated by this clause 55 and the terms of the relevant Transfer Agreement.

55.25 Subject to clause 55.20, the Operator for valuable consideration (receipt of which is hereby acknowledged):

55.25.1 irrevocably appoints (and shall ensure that each Transferring Asset Related Party irrevocably appoints) GWRC (and any person nominated by GWRC) as the Operator's or Transferring Asset Related Party's (as applicable) attorney with full power and authority to do anything they consider necessary (including completing and entering into agreements, contracts, deeds (including a Transfer Agreement) and transferring rights or assets) to effect the transfer of the Transferring Assets and Transferring Asset Agreements in accordance with clause 55.17 and the Transfer Agreement, provided that GWRC (and any person nominated by GWRC) may only exercise a power of attorney granted pursuant to this clause 55.25.1 if the Operator or Transferring Asset Related Party fails to execute a required document or perform any of its obligations within 3 Business Days of being requested in writing to do so by GWRC;

55.25.2 agrees to immediately ratify and confirm (and shall procure that the relevant Transferring Asset Related Party shall immediately ratify and confirm) whatever action is taken by GWRC or its nominee referred to in clause 55.25.1, provided that such action is not unlawful or negligent; and

55.25.3 agrees that it shall promptly on request by GWRC execute and deliver (and shall procure that each relevant Operator Associate promptly executes and delivers) to GWRC a separate power of attorney on the terms of this clause 55.25 by way of a deed or otherwise in such form as GWRC may reasonably require.

55.26 The Operator agrees that an attorney appointed under clause 55.25 is not liable for any Loss the Operator may suffer or incur as a result of the attorney's actions, other than to the extent that such actions are not contemplated by clause 55.25.

Use of Transferring Assets pending transfer

- 55.27 From and including the Termination Date until the date on which the transfer of a Transferring Asset or Transferring Asset Agreement is completed in accordance with the Transfer Agreement, the Operator shall permit (and shall ensure that the Operator Associates and Transferring Asset Related Parties shall permit) GWRC and its nominees (at the absolute discretion of GWRC) to do any or all of the following:
- 55.27.1 access, take possession and control of, occupy and use the relevant Transferring Asset;
 - 55.27.2 insure the relevant Transferring Asset on terms which are consistent with the then current standard market practice in New Zealand for insuring assets which are similar to the Transferring Asset;
 - 55.27.3 exercise the rights of the Operator or the Transferring Asset Related Party under the relevant Transferring Asset Agreement and/or under any warranty relating to the Transferring Asset; and
 - 55.27.4 perform any or all of the obligations of the Operator or the Transferring Asset Related Party under any relevant Transferring Asset Agreement in accordance with the terms thereof.
- 55.28 Subject to clause 55.29, within 5 Business Days following a demand, the Operator shall pay to GWRC any costs incurred by GWRC or its nominee arising in connection with those matters referred to in clause 55.27.2 or clause 55.27.4 and which relate to the period prior to the date on which the transfer of the Transferring Asset or Transferring Asset Agreement (as applicable) is completed in accordance with the Transfer Agreement except to the extent that:
- 55.28.1 GWRC recovers the same from a Transferring Asset Related Party under a Transferring Asset Related Party Direct Deed; or
 - 55.28.2 the Purchaser (as defined in the Transfer Agreement) recovers the same under the Transfer Agreement.
- 55.29 Subject to clause 55.30, to the extent that:
- 55.29.1 GWRC or its nominees access, take possession and control of, occupy or use a Transferring Asset pursuant to clause 55.27.1; and
 - 55.29.2 the delay in completing the transfer of a Transferring Asset or Transferring Asset Agreement was not caused or contributed to by the Operator, the Operator Associates or any Transferring Asset Related Party,
- the Operator shall not be liable for costs under clause 55.28 and GWRC shall pay (or shall procure that its nominee shall pay) to the Operator or relevant Transferring Asset Related Party (as applicable) the reasonable and substantiated costs incurred by the Operator or the relevant Transferring Asset Related Party (as applicable) in making the Transferring Asset available pursuant to clause 55.27, provided that there shall be no double recovery by the Operator or any Transferring Asset Related Party of the same amounts, whether under this Partnering Contract, a Transferring Asset Related Party Direct Deed, the Transfer Agreement or otherwise.
- 55.30 Clause 55.29 shall not apply where this Partnering Contract is (or is in the process of being) terminated pursuant to clause 47 (*Termination for Termination Events*).

Equitable relief

- 55.31 Without limiting any other provisions of this Partnering Contract or any other Transaction Document or any other right or remedy of GWRC, the Operator acknowledges that damages may not be an adequate remedy for any breach by it of clauses 55.3 or 55.4 (*Security Interests and disposals*), 55.5 to 55.11 inclusive (*Restrictions in relation to Transferring Asset Agreements*), 55.14 to 55.21 inclusive (*Acquisition of Transferring Assets*), 55.22 (*Due Diligence*), 55.23 to 55.26 inclusive (*Further assurance and power of attorney*) or 55.27 to 55.28 inclusive (*Use of Transferring Assets pending transfer*) of this Partnering Contract or any breach by it of the Transfer Agreement.
- 55.32 The Operator agrees that, without limiting any other right, remedy or action GWRC may have in connection with any actual or threatened Specific Breach, GWRC is entitled to seek equitable relief and remedies (including specific performance or injunctive or declaratory relief) to restrain, rectify or compensate it for any actual or threatened Specific Breach by the Operator and the Operator agrees not to oppose the granting of such relief or remedies on the basis that GWRC has not or will not suffer any actual loss or damage.

GWRC and its nominees not mortgagee in possession or liable

- 55.33 To the extent permitted by applicable law, GWRC and its nominees:
- 55.33.1 shall not be, nor account or be liable as, mortgagee in possession due to the existence or exercise of any right or remedy under or in connection with this Partnering Contract; and
- 55.33.2 shall not be liable to anyone for any Loss in relation to an exercise or attempted exercise of a right or remedy under or in connection with this clause 55, or any failure or delay in exercising such right or remedy.

Secured Lender Confirmations

- 55.34 Within 10 Business Days following the date of this Partnering Contract, the Operator shall provide to GWRC a duly executed Secured Lender Confirmation from each person who as at the date of this Partnering Contract is a Secured Lender.
- 55.35 If, after the date of this Partnering Contract, any other person becomes a Secured Lender, the Operator shall provide GWRC with a Secured Lender Confirmation from that person within 10 Business Days of the date on which any Security Interest is granted by the Operator in favour of that person.
- 55.35A The Operator shall (to the maximum extent permitted by Law) indemnify GWRC (and keep GWRC so indemnified) on demand from and against any Claim or Loss incurred by GWRC as a consequence of GWRC giving a Secured Lender an undertaking referred to in paragraph 5 of the Secured Lender Confirmation, including any costs incurred in obtaining a valuation of any assets as contemplated by the Secured Lender Confirmation.

Financing Acceleration Events

- 55.36 Within 3 Business Days following the occurrence of a Financing Acceleration Event or of the Operator becoming aware that a Financing Acceleration Event is reasonably likely to occur, the Operator shall provide written notice to GWRC setting out full details of that Financing Acceleration Event, the impact that the Financing Acceleration Event is likely to have on the Operator and the steps that will be taken by the Operator to rectify or otherwise deal with such Financing Acceleration Event.

56.5.3 specify the Estimated Cost of undertaking such rectification and maintenance work.

56.6 If clause 56.5 applies, the Operator shall pay to GWRC the costs incurred by GWRC in carrying out (or procuring the carrying out of) the Transferring Asset Inspection within 5 Business Days of demand therefor.

Withheld amounts for rectification or provision of Rectification Bond

56.7 Subject to clause 56.8, if the Operator has been notified under clause 56.5 that rectification and/or maintenance work is required, GWRC may:

56.7.1 withhold from any or all payments of the Services Fee and/or any other amounts (including any amounts due under clauses 47.5 or 49.4) due to the Operator under this Partnering Contract (in each case which fall due and payable after a notice has been issued under clause 56.5); and

56.7.2 where the Transferring Asset Inspection is undertaken after the end of the Term, without limiting clause 56.7.1, make a demand on any Rectification Bond previously provided or enforce any other Performance Bond for,

an amount not exceeding 110% of the Estimated Cost of undertaking such rectification and maintenance work. To the extent that the aggregate amount of such Services Fee, other amounts due to the Operator and (where clause 56.7.2 applies) amounts callable under a Performance Bond or Rectification Bond is or will be less than 110% of the Estimated Cost of undertaking such rectification and maintenance work, GWRC may withhold the total amount of all such payments and the Operator shall pay the Excess to GWRC within 5 Business Days of demand therefor.

56.8 If, within 3 Business Days of receipt of a notice under clause 56.5, the Operator provides to GWRC a duly executed and unconditional irrevocable on demand Rectification Bond which:

56.8.1 is in the form set out at Annexure 10 (*Bond*);

56.8.2 is for an amount not less than 110% of the Estimated Cost;

56.8.3 has an expiry date not earlier than 6 months after the last day of the Rectification Period; and

56.8.4 otherwise complies with the requirements of clause 44.8 (*Requirements of Bonds*),

clause 56.7 shall not apply.

Operator to carry out rectification and maintenance work

56.9 Prior to the end of the Rectification Period, the Operator shall carry out such rectification and maintenance work as is notified to it under clause 56.5 to GWRC's reasonable satisfaction. The Operator shall bear the cost incurred by it in undertaking such rectification and maintenance work.

If the Operator complies with its obligations

56.10 Provided that the Operator carries out and completes the required rectification and maintenance work to GWRC's reasonable satisfaction within the Rectification Period, GWRC will:

56.10.1 where the Operator has not provided a Rectification Bond, pay the Withheld Amount to the Operator within 10 Business Days after the end of the Rectification Period; or

56.10.2 where the Operator has provided a Rectification Bond, return the Rectification Bond to the Operator within 10 Business Days after the end of the Rectification Period.

56.11 The Operator shall bear the risk of the Withheld Amount or value of the Rectification Bond being less than the cost incurred by it in carrying out the required rectification and maintenance work and shall not be entitled to any further payment in respect of such work.

If the Operator does not comply with its obligations

56.12 To the extent that the Operator does not carry out and complete the required rectification and maintenance work to GWRC's reasonable satisfaction within the Rectification Period, GWRC shall be entitled:

56.12.1 to carry out itself, or procure the carrying out of, such required rectification and maintenance work;

56.12.2 where the Operator has not provided a Rectification Bond, to retain for its own benefit such amount from the Withheld Amount as is required to meet the costs incurred or to be incurred by GWRC in carrying out (or procuring the carrying out of) such required rectification and maintenance work; and

56.12.3 where the Operator has provided a Rectification Bond, to make a demand under the Rectification Bond for an amount equal to the lesser of the undrawn value of the Rectification Bond and the costs incurred or to be incurred by GWRC in carrying out (or procuring the carrying out of) such required rectification and maintenance work.

56.13 If clause 56.12 applies then to the extent that (as applicable):

56.13.1 the Withheld Amount is insufficient to meet the costs incurred or to be incurred by GWRC in carrying out (or procuring the carrying out of) such required rectification and maintenance work; or

56.13.2 the amount recovered by GWRC under the Rectification Bond is less than the costs incurred or to be incurred by GWRC in carrying out (or procuring the carrying out of) such required rectification and maintenance work,

the Operator shall, within 5 Business Days of demand therefor, pay to GWRC the difference between:

56.13.3 the Withheld Amount or the amount recovered by GWRC under the Rectification Bond (as applicable); and

56.13.4 the costs incurred by GWRC in carrying out (or procuring the carrying out of) such required rectification and maintenance work.

56.14 If clause 56.12 applies then, provided that:

56.14.1 all of the rectification and maintenance work identified by GWRC under clause 56.5 has been carried out and completed to GWRC's reasonable satisfaction; and

56.14.2 the costs incurred or to be incurred by GWRC in carrying out (or procuring the carrying out) of such required rectification and maintenance work have been recovered in full by GWRC pursuant to clauses 56.12 and 56.13,

then:

56.14.3 where the Operator has not provided a Rectification Bond, GWRC shall pay to the Operator the Withheld Amount less any amount which GWRC is entitled to retain therefrom under clause 56.12.2; or

56.14.4 where the Operator has provided a Rectification Bond, GWRC shall return the Rectification Bond to the Operator subject to any demand made by GWRC under clause 56.12.3.

General

56.15 This clause 56 shall be without prejudice to any other rights or remedies which GWRC may have against the Operator or any other person, whether pursuant to this Partnering Contract or howsoever else arising.

57. **Not used**

Part Ten – Miscellaneous

58. Survival of obligations

- 58.1 The expiry or termination of this Partnering Contract shall be without prejudice to the accrued rights, liabilities and obligations of each Party as at the Termination Date.
- 58.2 The following provisions of this Partnering Contract, together with any other provisions which are expressly or impliedly to apply after the Termination Date, shall survive the termination or expiry of this Partnering Contract:
- 58.2.1 clause 1 (*Definitions and Interpretation*);
 - 58.2.2 clauses 2.1 and 2.2 (*Clauses having effect from the date of this Partnering Contract*);
 - 58.2.3 clauses 2.20 to 2.24 (*Liquidated Damages*);
 - 58.2.4 clauses 4.8 and 4.9 (*No entitlement to extension or new contract*);
 - 58.2.5 clause 5.10 (*TPTDs*);
 - 58.2.6 clause 9.16 (*PPSA Security*);
 - 58.2.7 clause 10.9A (*Acquisition of Vehicles and Fleet List*);
 - 58.2.8 clause 11.7 (*Acquisition of Depots and Depot List*);
 - 58.2.9 Part Four (*Intellectual Property*);
 - 58.2.10 clauses 39.10.3, 39.18 and 39.19 (*Farebox Revenue and other Revenue*);
 - 58.2.11 clause 41 (*Indemnities*);
 - 58.2.12 clause 44 (*Financial performance and security*) (excluding clauses 44.1 (*Provision of initial Performance Bond*) and 44.2 (*Provision of subsequent Performance Bonds*));
 - 58.2.13 clause 45 (*Dispute resolution procedure*);
 - 58.2.14 clause 47 (*Termination for Termination Events*);
 - 58.2.15 clause 48 (*Termination for non-payment*);
 - 58.2.16 clauses 49.4 to 49.6 (*Termination payment*);
 - 58.2.17 clauses 50.11 to 50.14 (*Effect of issue of Force Majeure Termination Notice*);
 - 58.2.18 Part Nine (*Obligations associated with Change of Operator*);
 - 58.2.19 this Part Ten (*Miscellaneous*) (excluding clauses 62.3 to 62.7 (*Change of Ownership*));
 - 58.2.20 Schedule 1 (*Definitions and interpretation*);
 - 58.2.21 Schedule 2 (*Agreement Details*) (excluding paragraphs 15 (*Bus Unit Specific Obligations*) and 17 (*Timetabled Service Connections*));
 - 58.2.22 Schedule 11 (*Handover Package for Transferring Assets*);
 - 58.2.23 Annexure 5 (*Transfer Agreement*);
 - 58.2.24 Annexure 12 (*Incoming Operator Confidentiality Undertaking*);
 - 58.2.25 Annexure 13 (*Access Indemnity*);

- 58.2.26 Annexure 17 (*Transferring Asset Related Party Direct Deed*);
- 58.2.27 Annexure 21 (*Approved Transferring Asset Agreements*); and
- 58.2.28 Annexure 22 (*Lessor Direct Deed*).

59. Confidentiality

General Obligations

- 59.1 Subject to clauses 52.7, 55.11 and 59.3, GWRC and the Operator shall keep confidential and not make or cause any disclosure of any of another Party's Confidential Information without the prior written consent of that other Party.
- 59.2 The Operator and GWRC acknowledge that their respective confidentiality obligations under or in connection with the Procurement Documents continue notwithstanding the coming into effect of this Partnering Contract.

Exceptions

- 59.3 The Parties' obligations in clause 59.1 do not apply to disclosure to the extent that the disclosure is:
 - 59.3.1 by a Party to its financiers, subcontractors, legal or other professional advisers, auditors or other consultants or employees of that Party or a shareholder or Related Company of that Party, in each case for the purpose of enabling that Party to perform its obligations or exercise its rights in relation to a TPTD or a Transaction Document (or the transactions contemplated thereunder) or for the purpose of advising that Party in relation thereto, provided that the Party disclosing the Confidential Information shall ensure that the recipient:
 - (c) is made aware of this clause 59; and
 - (d) shall keep such information confidential on the same terms as this clause 59;
 - 59.3.2 of information which is at the time lawfully in the possession of the disclosing Party through sources other than the other Party, provided that the disclosing Party has no reason to believe that such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited by Law from disclosing such information;
 - 59.3.3 required by Law or by a lawful requirement of any judicial authority, Governmental Entity or recognised stock exchange having jurisdiction over a Party or its Related Company provided that the disclosing Party provides written notice to the other Party of the required disclosure promptly on receipt of notice of the required disclosure (if it is permitted to do so by Law);
 - 59.3.4 required in connection with legal proceedings, arbitration, mediation or expert determination relating to this Partnering Contract, the Transaction Documents or any Key Subcontract or for the purpose of advising a Party in relation thereto;
 - 59.3.5 of the Handover Package by GWRC to a proposed or prospective Incoming Operator or any Potential Incoming Operator or any such person's officers, employees, agents, consultants, contractors, financiers and advisors for the purposes set out in clauses 52.5.3 or 52.5.4, provided that the Incoming Operator or Potential Incoming Operator (as applicable) has provided a duly executed Incoming Operator Confidentiality Undertaking in favour of the Operator;

- 59.3.6 by GWRC of, or in connection with, the "commerciality ratio" of the Bus Unit (as contemplated by the Procurement Manual), any League Table, Farebox Revenue or patronage information; or
- 59.3.7 made by GWRC in accordance with clauses 59.4 to 59.5 (*LGOIMA*).

LGOIMA

- 59.4 The Operator acknowledges that GWRC is subject to LGOIMA and may be obliged to disclose information (including Confidential Information and any other information held by contractors engaged by GWRC) in accordance with the provisions of LGOIMA.
- 59.5 Subject to clause 59.6, if GWRC receives a request under LGOIMA for any information held by the Operator in relation to the provision of Existing Services then:
- 59.5.1 GWRC shall notify the Operator of the request;
- 59.5.2 GWRC will consult with the Operator on whether the request relates to Confidential Information and whether or not there are grounds for withholding disclosure of all or part of the relevant Confidential Information; and
- 59.5.3 either:
- (a) if the Operator considers the request relates to the Operator's Confidential Information, within 2 Business Days of receiving such notification pursuant to clause 59.5.1, the Operator shall demonstrate to GWRC the grounds (if any) under LGOIMA for withholding disclosure of all or part of the relevant Confidential Information; or
- (b) if the request does not relate to the Operator's Confidential Information or if GWRC reasonably considers that there are no grounds under LGOIMA for withholding disclosure of all or part of the relevant Confidential Information, the Operator shall provide such information to GWRC within 3 Business Days of a written request from GWRC.
- 59.6 For the avoidance of doubt, nothing in this clause 59 shall cause or require GWRC to breach GWRC's obligations under LGOIMA.

60. Media Management

- 60.1 Subject to clause 60.2, except to the extent that the Operator is expressly obliged to do so under this Partnering Contract or is otherwise required to do so by Law or the requirements of any recognised stock exchange having jurisdiction over the Operator or a Related Company of the Operator, the Operator shall not, by itself, in conjunction with other PTOM Operators, indirectly through any industry association or otherwise, make, participate in or issue any press release or other public announcement relating to this Partnering Contract or any of the Services without the prior written approval of GWRC. Where GWRC has granted its approval to any such press release or public announcement, the Operator shall ensure that such press release or public announcement (as applicable) is in the form approved by GWRC.
- 60.2 The restriction in clause 60.1 shall not apply to the making of announcements to passengers in relation to the status of any Scheduled Service or Special Event Service.

61. Privacy and Data Protection

Personal Information

- 61.1 In performing the Services, the Operator shall:
- 61.1.1 comply with all Privacy Obligations;
 - 61.1.2 only collect, use, disclose, store, manage, transfer or handle Personal Information in accordance with Law and the Privacy Obligations;
 - 61.1.3 not through its acts or omissions (or the acts or omissions of an Operator Associate) cause or contribute to any breach by GWRC of any Privacy Obligations;
 - 61.1.4 not disclose any Personal Information unless:
 - (a) required to do so by Law; or
 - (b) it does so in accordance with the Privacy Obligations;
 - 61.1.5 take all reasonable steps to ensure that all Personal Information that it or any of the Operator Associates holds from time to time is protected against misuse and loss and from unauthorised access, modification or disclosure, including by ensuring that the Operator's and Operator Associates' data storage systems have appropriate data security and comply with Good Industry Practice;
 - 61.1.6 ensure that only those Operator Associates who are authorised and require access to any Personal Information to enable them to perform their duties in respect of this Partnering Contract are given such access and ensure that those persons are made aware that they must not (and the Operator shall ensure that they do not) access, use, disclose or retain Personal Information except to the extent necessary to perform their duties and in accordance with the Privacy Obligations; and
 - 61.1.7 comply with any reasonable requests, directions or guidelines given to it by GWRC relating to compliance with the Privacy Obligations.

Operator's Privacy Policy

- 61.2 At all times during the Term, the Operator shall implement, maintain and comply with (and shall ensure that the Operator Associates comply with) a privacy policy which:
- 61.2.1 complies and is consistent with this clause 61, the Privacy Obligations and Good Industry Practice;
 - 61.2.2 describes how the Operator will collect, store and use Personal Information acquired in connection with the provision of the Services; and
 - 61.2.3 describes how the Operator will deal with customer related information (such as questions, feedback and Complaints) in a manner consistent with its obligations under this Partnering Contract.
- 61.3 The Operator shall make a copy of such privacy policy freely available to any person (including GWRC) upon request. The Operator shall promptly update the privacy policy to incorporate any reasonable comments received from GWRC from time to time.

Advising of any breach

- 61.4 The Operator shall promptly notify GWRC in writing and comply with any reasonable direction of GWRC in response to such notification if the Operator:

- 61.4.1 becomes aware of any breach by it or any of the Operator Associates of the obligations in this clause 61; or
- 61.4.2 receives any complaint, or any notification from a Governmental Entity that a complaint has been made, concerning the collection, use, disclosure, storage, management, transfer or handling of Personal Information.

Ticketing Equipment and Ticketing System data protection

- 61.5 Subject to paragraph 9 (*General provisions relating to Contract Variations*) of Schedule 14 (*Change Events and Net Financial Impact*), the Operator shall comply at all times with (and shall procure that the Operator Associates shall at all times comply with) the data protection and data retrieval policies in respect of the Ticketing Equipment and the Ticketing System provided by GWRC (as may be amended by GWRC from time to time).

62. Assignment and Change of Ownership

Assignment by Operator

- 62.1 The Operator shall not create or allow a Security Interest over, or in any other way either directly or indirectly assign, novate, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with:
 - 62.1.1 any of its rights or obligations under this Partnering Contract or any other Transaction Document other than under a Permitted Security Interest or with the prior written consent of GWRC;
 - 62.1.2 any of the GWRC Assets except with the prior written consent of GWRC.
- 62.2 The Operator shall provide any request for consent under clause 62.1 at least 20 Business Days prior to the proposed effective date of the relevant action.

Change of Ownership

- 62.3 Subject to clause 62.7, the Operator shall not permit a Change of Ownership to occur without the prior written consent of GWRC.
- 62.4 If a Change of Ownership is proposed, the Operator shall notify GWRC of that proposed Change of Ownership as soon as it becomes aware of the same.
- 62.5 The Operator shall promptly provide such particulars relating to the proposed Change of Ownership as GWRC may reasonably require, including:
 - 62.5.1 the identity of each proposed Controller and its Related Companies;
 - 62.5.2 the legal and beneficial owners of the proposed Controller and the proposed Controller's ultimate holding company;
 - 62.5.3 the extent and nature of the proposed Change of Ownership; and
 - 62.5.4 any other information necessary for GWRC to determine whether or not to consent to the Change of Ownership.
- 62.6 GWRC may withhold its consent to a Change of Ownership if:
 - 62.6.1 it has not been given all of the information required under clause 62.5;

- 62.6.2 GWRC determines that the proposed Controller:
- (a) is not solvent or reputable; or
 - (b) is an Unsuitable Third Party;
- 62.6.3 GWRC determines that the proposed Change of Ownership:
- (a) is against the public interest; or
 - (b) is likely to have a material adverse effect on the ability of the Operator to perform its obligations under any Transaction Document or on the rights of GWRC under any Transaction Document; or
 - (c) would result in an increase in the level of risk or liabilities of GWRC or any GW Associate; or
- 62.6.4 the proposed Change of Ownership would, or is reasonably likely to, result in the Operator and its Interconnected Bodies Corporate operating (or having the right or obligation to operate) in aggregate a percentage of the total Region Wide Passenger Service Kilometres which GWRC (acting reasonably) considers may undermine the contestable objectives of PTOM.

62.7 Clause 62.3 does not apply in respect of a Change of Ownership which is a Permitted Change of Ownership.

Assignment by GWRC

62.8 GWRC may assign, novate, transfer or otherwise dispose of any right or obligation under this Partnering Contract or any other Transaction Document to any local authority or council controlled organisation of a local authority (each as defined in the LGA) or to any other Governmental Entity and the Operator hereby consents to the same. The Operator shall promptly execute any such documents as GWRC may reasonably require to give effect to such transaction.

63. Notices

63.1 Any notice required to be given in relation to this Partnering Contract will, except where otherwise expressly provided, be in writing and in English and delivered to the Party's Authorised Representative.

63.2 This clause 63.2 is subject to clause 63.4. A notice may be:

- 63.2.1 personally delivered, in which case it will be deemed to be given upon delivery at the relevant address; or
- 63.2.2 if sent from and to places within New Zealand, sent by fast pre-paid post, in which case it will be deemed to have been given 2 Business Days after the date of posting; or
- 63.2.3 if sent from or to any place outside New Zealand, sent by pre-paid priority airmail, in which case it will be deemed to have been given 10 Business Days after the date of posting; or
- 63.2.4 sent by email, in which case it will be deemed to have been given at the time at which it arrives in the recipient's information system, provided that if there is any dispute as to when an email has been received, the email shall be deemed to have been received at the time at which the email was sent as evidenced by a printed copy of the email provided by the sender which evidences that the email was sent to the correct email address of the recipient; or
- 63.2.5 delivered by courier requiring signature as proof of receipt to the relevant address, in which case it will be deemed to have been given when signed for.

63.3 The initial addresses and other relevant details of each Party are set out in paragraph 2 (*Addresses for notices*) of Schedule 2 (*Agreement details*). A Party may provide written notice to the other Party of any change to the address or other relevant details, provided that such notification will only be effective on the date specified in such notice or 5 Business Days after the notice is given, whichever is the later.

63.4 Where any notice is deemed given pursuant to clause 63.2:

63.4.1 before 9.00 am or after 5.30 pm (local time) at the place of receipt; or

63.4.2 on a day which is a Saturday, Sunday or a public holiday in the place of receipt,

then such notice will be deemed given at 9.00 am (local time) on the next day at the place of receipt which is not a Saturday, Sunday or public holiday. For the purposes of this clause 63.4 the place of receipt of a notice is the applicable postal address for the receiving Party in accordance with clause 63.3, irrespective of whether the notice is communicated by email or otherwise.

64. **Relationship between Parties**

64.1 Notwithstanding the use of the word "partnering" or "partnership", nothing in this Partnering Contract (including in clause 3.1 or 3.2 (*Partnering Principles*)) or an Annual Business Plan, is to be construed or interpreted as constituting the relationship between the Parties as a partnership, quasi-partnership, association or any other relationship in which a Party may (except as expressly provided for in this Partnering Contract) be liable for the acts or omissions of the other Party.

64.2 Except as expressly provided in this Partnering Contract, nothing in this Partnering Contract or an Annual Business Plan shall be construed to authorise any Party to act as an agent for any other Party for any purpose.

65. **Requirement to use 'best endeavours' or 'reasonable endeavours'**

65.1 Where this Partnering Contract requires that a Party shall use 'best endeavours' or 'reasonable endeavours', this does not require the Party to:

65.1.1 act unreasonably, in breach of Safety Law or outside the Law;

65.1.2 interfere with or influence the exercise by any person of a statutory power or discretion;

65.1.3 in the case of GWRC only, exercise a power or discretion or otherwise act in a manner that GWRC regards as not in the public interest; or

65.1.4 provide any performance bond, guarantee or Security Interest other than as specifically required under this Partnering Contract.

66. **Entire Agreement and amendments**

66.1 This Partnering Contract and the other Transaction Documents contain the entire agreement between the Parties with respect to their subject matter and supersede any earlier agreements or understandings between the Parties in connection with their subject matter.

66.2 Except as contemplated by Schedule 14 (*Change Events and Net Financial Impact*) in the context of Contract Variations and Annexure 1 (*Timetable Change Process*) in the context of changes to the Bus Unit Timetable or otherwise expressly provided for in this Partnering Contract, this Partnering Contract may only be amended by way of a written agreement duly executed by each of the Parties.

67. No reliance

- 67.1 The Operator acknowledges that, before entering into this Partnering Contract or any other Transaction Document, it made all enquiries it wanted to make in relation to the Services and the Operator's obligations under this Partnering Contract and the other Transaction Documents and that in entering into this Partnering Contract and the other Transaction Documents, the Operator:
- 67.1.1 did not rely on any representation, warranty, guarantee, assurance, undertaking or other statement made by or on behalf of GWRC or any Existing Operator;
 - 67.1.2 has made its own assessment of the rights provided to the Operator and the obligations imposed on the Operator by the Transaction Documents;
 - 67.1.3 has made its own assessment of the nature and quality of the Vehicles, each Depot and any GWRC Assets; and
 - 67.1.4 has made its own assessment as to the quality of all other material and other information provided during the tender and negotiation process and the process of agreeing the terms of this Partnering Contract.
- 67.2 The Operator acknowledges and agrees that GWRC and the Existing Operators are not responsible and will not have any liability for any Loss resulting from any information provided by or on behalf of GWRC or any Existing Operator or from the Operator's decision to enter into and comply with this Partnering Contract.
- 67.3 Clauses 67.1 and 67.2 create rights under the Contract and Commercial Law Act 2017 which may be enforced by the Existing Operators.

68. No waiver

- 68.1 No waiver of any breach of, or failure to enforce any provision of, this Partnering Contract or any other Transaction Document, nor any delay in exercising any right, power or remedy by a Party in any way affects, limits or waives the right of such Party thereafter to enforce and compel strict compliance with the provisions of this Partnering Contract or any other Transaction Document. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- 68.2 No waiver by a Party of any part of this Partnering Contract or any other Transaction Document is binding unless it is made in writing by the Party granting that waiver.

69. Rights cumulative

- 69.1 Subject to any express provision in this Partnering Contract to the contrary, the rights, powers and remedies of a Party under this Partnering Contract are cumulative and are in addition to (and do not exclude or limit) any right, power or remedy provided by Law or equity or by any agreement.

70. Further assurances

- 70.1 Each Party agrees to execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Partnering Contract and any other Transaction Document.

71. No merger

71.1 The rights and obligations of the Parties shall not merge on the completion of any transaction contemplated by this Partnering Contract or any other Transaction Document. The rights and obligations of the Parties will survive the execution and delivery of any assignment or other document entered into for the purposes of implementing any such transaction.

72. Costs and expenses

72.1 Subject to any express provision to the contrary in this Partnering Contract, each Party shall bear its own costs and expenses relating directly or indirectly to the negotiation, preparation, execution of and performance of its obligations under this Partnering Contract.

73. Severability of provisions

73.1 The illegality, invalidity or unenforceability at any time of any provision of this Partnering Contract under any Law will not affect the legality, validity or enforceability of the remaining provisions of this Partnering Contract nor the legality, validity or enforceability of those provisions under any other law.

74. Governing law

74.1 This Partnering Contract and the transactions contemplated by this Partnering Contract are governed by and are to be construed in accordance with New Zealand law and, subject to clause 45 (*Dispute Resolution Procedure*), the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

75. GWRC action

75.1 The Operator acknowledges that GWRC is the local authority in the region in which the Services are to be provided and that, notwithstanding anything to the contrary in this Partnering Contract, nothing in this Partnering Contract:

75.1.1 requires GWRC or any other Governmental Entity to exercise, or use, any regulatory or legislative powers in order to influence or affect an outcome; or

75.1.2 shall restrict or affect in any way the manner in which GWRC or any other Governmental Entity may act in the exercise of its regulatory or legislative rights, powers and duties as a local authority.

76. Contract and Commercial Law Act 2017

76.1 Except to the extent any term of this Partnering Contract expressly states otherwise, a person who is not a Party to this Partnering Contract shall have no right under the Contract and Commercial Law Act 2017 to enforce any term of this Partnering Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

77. Operation of indemnities

77.1 No indemnity in this Partnering Contract limits the effect or operation of any other indemnity in this Partnering Contract.

77.2 Unless expressly provided otherwise, each indemnity in this Partnering Contract is a continuing obligation, separate and independent from the other obligations of the Parties.

77.3 Each indemnity in this Partnering Contract survives the expiry or termination of this Partnering Contract.

77.4 A Party may recover a payment under an indemnity in this Partnering Contract before it makes the payment in respect of which the indemnity is given.

78. Indemnities etc. held on trust

78.1 To the extent that any indemnity or release given by the Operator under this Partnering Contract is in favour of, or contemplates benefitting, any Indemnified Person, GWRC declares that it holds on trust for each Indemnified Person:

78.1.1 the benefit of that indemnity or release (as applicable) in favour of the Indemnified Person; and

78.1.2 each right in this Partnering Contract to the extent that such right is expressed to be for the benefit of the Indemnified Person.

78.2 The Operator acknowledges and consents to the existence of such trusts and consents to:

78.2.1 GWRC exercising rights in relation to, or otherwise enforcing, such indemnities, releases and rights on behalf of the Indemnified Persons; and

78.2.2 the Indemnified Persons exercising rights in relation to, or otherwise enforcing, the indemnities, releases and those rights as if they were a party to this Partnering Contract.

78.3 The Parties agree that notwithstanding clauses 78.1 and 78.2, the consent of the Indemnified Persons (or any of them) is not required to amend or waive any provision of this Partnering Contract.

Schedules and Annexures

Schedules

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Schedule 1 – Definitions and interpretation

Definitions

1. The following definitions apply unless the context requires otherwise:

Accidents	any incident or accident involving Vehicles which results in damage or injury to persons or property (other than an incident or accident which only results in minor damage to Vehicles).
Actual Patronage	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Affected Party	means a Party that is affected by the occurrence of a Force Majeure Event.
After-Midnight Route	means a Route described as "After-Midnight" or "After-Midnight Route" in the Bus Unit Timetable or Schedule 2 (<i>Agreement Details</i>).
Age	means in respect of a Vehicle the number of years and months that have elapsed between the Manufacture Date of that Vehicle and the Relevant Month.
Aggregate Approved Revenue Service Profit Amount	<p>means an amount calculated as follows:</p> $AARSPA = AI - AC$ <p>Where:</p> <p>AARSPA is the Aggregate Approved Revenue Service Profit Amount;</p> <p>AC is the aggregate direct marginal costs reasonably and properly incurred by the Operator in the ordinary course of business in connection with the provision of the Approved Revenue Services during the Relevant Period (including depreciation on assets acquired and used solely for the purposes of providing the Approved Revenue Services), provided that:</p> <ul style="list-style-type: none"> (a) where such costs relate to amounts payable by the Operator to third parties, they shall only be included in the calculation to the extent that such costs have been incurred by the Operator on reasonable commercial Arm's Length Terms; and (b) no amount shall be included in respect of overheads or indirect costs; <p>AI is the aggregate income received by the Operator and any Operator Associate during the Relevant Period from charges paid by the users of the Approved Revenue Services.</p>

Alternative Services	means the services to be provided in accordance with paragraph 3.4 (<i>Alternative Services</i>) of Schedule 3 (<i>Passenger Services</i>) as an alternative to Scheduled Services.
Annual Business Plan	means the Initial Annual Business Plan and each subsequent annual business plan approved by GWRC in accordance with Schedule 5 (<i>Planning, Reporting and Meetings</i>) (as may be amended by the agreement of GWRC and the Operator).
Approved Bank	means a bank which: <ul style="list-style-type: none"> (a) is the holder of a current banking licence or authorisation issued by the Reserve Bank of New Zealand or the Australian Prudential Regulation Authority; and (b) holds a long term credit rating of no less than A from Standard & Poor's, a division of McGraw-Hill Financial, or the successor to its ratings business.
Approved Reinstatement Plan	means a reinstatement plan provided by the Operator under clause 43.6 and (if applicable) amended in accordance with clause 43.8 and which has been approved by GWRC under clause 43.8.
Approved Revenue Service	means additional revenue generating services or facilities in connection with the Services which the Operator is entitled to provide pursuant to clause 39.21.
Arm's Length Terms	includes (without limiting the ordinary meaning of that term) arrangements, dealings and transactions that: <ul style="list-style-type: none"> (a) do not include elements that parties in their respective positions would usually omit; or (b) do not omit elements that parties in their respective positions would usually include, if the parties were: <ul style="list-style-type: none"> (c) connected or related only by the arrangement, dealing or transaction in question; (d) acting independently; and (e) each acting in their own respective best interests.
Articles of Agreement	means the document entitled Articles of Agreement between GWRC and the Operator relating to this Bus Unit executed on or about [insert date].

Associated Bundled Partnering Contract	means each contract identified at paragraph 5 of Schedule 2 (<i>Agreement details</i>) as being an "Associated Bundled Partnering Contract" (if any).
Associated Bus Unit	means each PTOM Unit the subject of the Associated Partnering Contracts.
Associated Partnering Contract	means each contract identified at paragraph 6 of Schedule 2 (<i>Agreement details</i>) as being an "Associated Partnering Contract" (if any).
Authorised Representative(s)	means, in relation to a Party, the individual that is the primary contact person of that Party for the purpose of this Partnering Contract and the other Transaction Documents, being the individual specified in paragraph 4 (<i>Authorised Representatives</i>) of Schedule 2 (<i>Agreement details</i>) as amended from time to time in accordance with clauses 17.7 (<i>Key Personnel</i>), 20.6 and 20.7 (<i>Changes to Authorised Representatives</i>).
Average Age	the aggregate of the Ages of all Vehicles on the Fleet List divided by the number of Vehicles on the Fleet List.
Average Age Threshold	10 years, 0 months.
AVL Unit	means the "ACIS Automatic Vehicle Location Unit", which is an electronic device that is a part of the RTPI Equipment and that: <ul style="list-style-type: none"> (a) is installed in a Vehicle and powered from the Vehicle's electrical system; (b) provides information from a Vehicle to the RTPI System via interface with on-board ticketing equipment, including the Vehicle's geographical location and route details; (c) is used to enable the RTPI System to operate as intended, and to receive information from the RTPI System for display to the driver of the Vehicle; (d) may, with additional equipment, be used to facilitate the display of information from the RTPI System to passengers in the Vehicle; and (e) may support additional functionality (such as driver duress calls or driving performance monitoring and reporting) for operational management purposes.
Background IP	means Intellectual Property Rights and Intellectual Property Material,

	<p>whether owned or licensed, which is:</p> <p>(a) already in existence at the Commencement Date; or</p> <p>(b) brought into existence other than by virtue of the performance of this Partnering Contract or any of the Transaction Documents or any arrangement contemplated by this Partnering Contract or any Transaction Document,</p> <p>and which is utilised as part of the Services or for the purposes of the Services, this Partnering Contract or any other Transaction Document.</p>
Base Customer Satisfaction Survey	means the first Customer Satisfaction Survey to be undertaken under Annexure 8 (<i>Customer Satisfaction Survey</i>).
Base Route	means that part of a Route described in Appendix 3 (<i>Route directions: Public Routes</i>) to Schedule 2 (<i>Agreement details</i>) to which an On Request Segment may be added.
Base Service Fee	means the base service fee payable in connection with the provision of the Services calculated in accordance with paragraph 2 (<i>Calculation of the Base Service Fee</i>) of Schedule 6 (<i>Financial and Performance Regime</i>) and Appendix 6 (<i>Base Service Fee Table</i>) of Schedule 2 (<i>Agreement details</i>), as may be increased or decreased in accordance with Schedule 14 (<i>Change Events and Net Financial Impact</i>).
Base Service Fee Table	means the table set out at Appendix 6 (<i>Base Service Fee Table</i>) of Schedule 2 (<i>Agreement details</i>).
Baseline Contamination Report	means a report regarding the existing condition of the relevant Transferring Depot in respect of Contamination (including the existence of any Contamination on, under, emanated or emanating from each Transferring Depot) and which complies with the requirements of clause 11.8.1.
Bond	means each Performance Bond and each Rectification Bond.
Brand New Vehicle	means a Vehicle which will be manufactured for the purposes of providing Passenger Services in connection with this Partnering Contract.
BSF Indexed	has the meaning given in paragraph 8.3 of Schedule 6 (<i>Financial and Performance Regime</i>).
Bus Operator	means a PTOM Operator that provides scheduled passenger services in regard to a bus "unit" (as defined in section 5(1) of the LTMA).

Bus Services Equipment Operations Manual	means the document entitled "Bus Services Equipment Operations Manual" dated 8 June 2017 (a copy of which has been provided to the Operator), as amended, updated or replaced from time to time in accordance with clause 12.2.
Bus Stop	means a designated place where Vehicles stop for passengers to embark onto or disembark from the Vehicles, as detailed in the Bus Unit Timetable.
Bus Unit	means the PTOM Unit described at paragraph 1 (<i>Bus Unit</i>) of Schedule 2 (<i>Agreement details</i>).
Bus Unit Timetable	means the timetables for the Routes comprised within the Bus Unit, the current versions of which as at the date of this Partnering Contract are set out in Appendix 2 (<i>Bus Unit Timetable</i>) of Schedule 2 (<i>Agreement details</i>), as such timetables are amended from time to time in accordance with the Timetable Change Process and subsequently provided by GWRC to the Operator in writing.
Business Continuity Plan	means the plan contemplated by paragraph 1.4.9 of Appendix 1 (<i>Plans</i>) to Schedule 5 (<i>Planning, Reporting and Meetings</i>), the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
Business Day	means a day (other than a Saturday, Sunday or Public Holiday) on which banks are generally open for business in Wellington.
Capital Expenditure	means any expenditure treated as capital expenditure in accordance with "generally accepted accounting practice" (as such term is defined in section 5 of the Financial Reporting Act 2013).
Certificate of Currency	means a certificate issued by or on behalf of the relevant insurer: <ul style="list-style-type: none"> (a) identifying the relevant insurer and the relevant insurance policy to which it relates; (b) evidencing that the relevant insurance policy is in place and the period of cover; (c) detailing the applicable cover limits and deductibles; and (d) detailing any major inclusions and exclusions which apply to the insurance policy.
Certificate of Fitness or CoF	has the meaning given in Schedule 4 (<i>Vehicle Quality Standards</i>).

<p>Change in Law</p>	<p>means the coming into effect after the date of this Partnering Contract of:</p> <ul style="list-style-type: none"> (a) any Law (including a Law that repeals or amends an existing Law); or (b) any applicable judgment of a relevant court of law that changes or creates a binding precedent, <p>but does not but does not include the coming into effect of such Law or applicable judgement which:</p> <ul style="list-style-type: none"> (c) was published on or before the date of this Partnering Contract in a bill or draft bill, as part of a government consultation paper, in a draft statutory instrument or otherwise in a public document, in each case in substantially the same form as the relevant Law or applicable judgement eventuating after the date of this Partnering Contract; (d) was contained or referred to in the Procurement Documents or any Transaction Document, in substantially the same form as the relevant Law or applicable judgement eventuating after the date of this Partnering Contract; (e) a person experienced and competent in the provision of services similar to the Services would have reasonably foreseen or anticipated prior to the date of this Partnering Contract; (f) is a change in the way in which a Law applies or is interpreted as a result of a court decision other than as described in paragraph (b); (g) comprises or results in a change to a Consent; (h) comprises a change to any Law to the extent relating to Tax or GST; or (i) has been brought into effect as a consequence of the acts (excluding acts expressly contemplated by this Partnering Contract) or omissions of the Operator or any Operator Associate.
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Change of Ownership	<p>means:</p> <ul style="list-style-type: none"> (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Operator or the Guarantor (if applicable); (b) any change in Control in respect of the Operator or the Guarantor (if applicable); and/or (c) any other arrangements that have or may have or that result in the same effect as those described in any of paragraphs (a) and (b).
Christmas Timetable	<p>means the timetable of Scheduled Services for the Christmas period (as described in Appendix 2 (<i>Bus Unit Timetable</i>) of Schedule 2 (<i>Agreement details</i>)) the current version of which timetable as at the date of this Partnering Contract is set out in Appendix 2 (<i>Bus Unit Timetable</i>) of Schedule 2 (<i>Agreement details</i>), as such timetable is amended from time to time in accordance with the Timetable Change Process and subsequently provided by GWRC to the Operator in writing.</p>
Claim	<p>means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) whether under or in connection with any Transaction Document or otherwise at law, under statute or in equity, including in tort (whether for negligence or otherwise), for negligent misrepresentation, for strict liability, for breach or for restitution, including in each case for payment of money (including damages) or for an extension of time.</p>
Clean Up Notice	<p>means any notice served by, or a direction from, a Governmental Entity or under any Law, in each case relating to Contamination in, under or emanating from any Transferring Depot, including:</p> <ul style="list-style-type: none"> (a) an enforcement order under section 314 of the Resource Management Act 1991; and (b) an abatement notice under section 322 of the Resource Management Act 1991.
Commencement Date	<p>means the date on which the Services are to commence as specified by GWRC in the Preliminary Commencement Certificate which, provided that all of the Conditions Precedent have been waived by GWRC in writing or satisfied by the Initial Conditions Precedent Date for Satisfaction, will be the date specified as the anticipated Commencement Date in paragraph 11 (<i>Key dates</i>) of Schedule 2 (<i>Agreement details</i>).</p>

Commercial Services	means passenger carrying services operated on the basis that the operator retains some or all relevant Farebox Revenue in return for nil public subsidy.
Companies Act	means the Companies Act 1993.
Compensable Change in Law	means: <ul style="list-style-type: none"> (a) a Specific Change in Law occurring after the date of this Partnering Contract; or (b) a General Change in Law occurring after the date of this Partnering Contract where compliance with such General Change in Law will require the Operator to incur Capital Expenditure.
Compensation Event	means each of: <ul style="list-style-type: none"> (a) a breach by GWRC of its obligations under this Partnering Contract (excluding an obligation to pay money); (b) a Compensable Change in Law; and (c) the event referred to in clause 13.2.
Compensation Event Notice	means a notice given by the Operator in respect of a Compensation Event containing the information specified in paragraph 4.3.1 (<i>Claim for relief or compensation</i>) of Schedule 14 (<i>Change Events and Net Financial Impact</i>).
Complaint	means any complaint or criticism received by the Operator, GWRC, the Metlink call centre, the Metlink website or other social media in respect of the Services.
Conditions of Carriage	means the conditions of carriage provided to the Operator by GWRC (including any amendments to, or replacements of, such conditions of carriage as may be issued by GWRC to the Operator from time to time).
Conditions Precedent or CPs	means each of the conditions precedent set out in the column entitled 'Conditions Precedent' in the table contained in Appendix 2 (<i>Milestone Dates</i>) to Schedule 13 (<i>Transition Plan</i>) and any additional Conditions Precedent set out in Schedule 2 (<i>Agreement Details</i>) if any.
Conditions Precedent Date for Satisfaction or CPDS	means the Initial Conditions Precedent Date for Satisfaction plus any extension granted (if any) under clause 2.16.

Confidential Information	<p>means:</p> <ul style="list-style-type: none"> (a) all commercially sensitive information and trade secrets already communicated or subsequently communicated under or in connection with this Partnering Contract or with respect to the Services or otherwise with respect to the subject matter of this Partnering Contract including (without limitation) any such information obtained: <ul style="list-style-type: none"> (i) in the course of negotiations leading to the conclusion of this Partnering Contract; or (ii) in the performance of this Partnering Contract; (b) any information about the business or property of a person including (without limitation) any information: <ul style="list-style-type: none"> (i) relating to the financial position of that person; (ii) concerning that person's suppliers and customers or its agents or brokers; (iii) relating to that person's internal management, structure, personnel or strategies; or (iv) comprising the terms of this Partnering Contract; (c) any Intellectual Property Material; and (d) any Personal Information collected, used, disclosed, stored, managed, transferred or handled by a Party.
Connecting Service	<p>has the meaning given in paragraph 17.5 (if any) of Schedule 2 (<i>Agreement Details</i>).</p>
Consent	<p>means:</p> <ul style="list-style-type: none"> (a) any consent, authorisation, permit, registration, filing, agreement, notarisation, certificate, licence, approval, or exemption from, by or with, a Governmental Entity, judicial body or stock exchange that is required to enable the Operator to observe, comply with or perform any of its obligations under this Partnering Contract (and includes consents required to comply with Laws or as a result of the rights or discretions of any third party); and (b) in relation to any act, matter or thing that will be prohibited or restricted in whole or in part if a Governmental Entity, judicial body or stock exchange intervenes or acts in any way within a specified period after lodgement, filing, registration or notification of such act, matter or thing, the expiry of such

	period without such intervention or action.
Consequential or Indirect Loss	<p>means any:</p> <p>(a) loss of revenue, loss of profit, loss of financial opportunity, loss of investment return, loss of business or loss of business opportunity, loss of contract (other than the loss of this Partnering Contract or a Transaction Document), loss of goodwill or failure to realise anticipated savings (whether the loss is direct or indirect); or</p> <p>(b) any loss, damage, cost, expense or liability that does not fall within any of the following:</p> <p>(i) a loss, damage, cost, expense or liability that may fairly and reasonably be considered to arise naturally (being according to the usual course of things) from the breach or relevant matter; or</p> <p>(ii) a loss, damage, cost, expense or liability such as may reasonably be supposed to have been contemplated by the Parties at the date of this Partnering Contract as the probable result of the breach or relevant matter.</p>
Contamination	<p>means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance of any kind which makes or may make the environment unsafe, unfit or harmful for habitation, use or occupation by any person or animal or is such that any part of the Environment does not satisfy the contamination criteria or standards published by the Ministry for the Environment or other relevant authority or department from time to time, and the word "Contaminant" shall have a corresponding meaning.</p>
Contract Variation	<p>means any change or variation to the Services (including any addition, reduction, increase, decrease, omission or removal to or from the Services), the method of performing the Services or the assets used to perform the Services but excludes:</p> <p>(a) any changes made to the Timetable or the Bus Unit Timetable in accordance with the Timetable Change Process; and</p> <p>(b) any Special Event Services;</p> <p>(c) any Alternative Services; and</p> <p>(d) any other matter which this Partnering Contract expressly provides does not constitute a Contract Variation.</p>

Control	<p>means, in relation to a body corporate (of any kind):</p> <ul style="list-style-type: none"> (a) control or influence of, or having the capacity to control or influence, the composition of the board as defined in section 7 of the Companies Act 1993; (b) being in a position to cast, or control the casting of: <ul style="list-style-type: none"> (i) more than 20 per cent of the maximum number of votes that may be cast at a general meeting; or, (ii) where the body corporate is a limited partnership, more than 20% of the voting rights (however described) attributable to the shareholding or partnership interests; (c) having a relevant interest (as defined in sections 235 to 237 of the Financial Markets Conduct Act 2013) in more than 20 per cent of the voting securities; or (d) where that body corporate is a limited partnership, having control or influence of, or having the capacity to control or influence, the general partner(s), <p>of that body corporate (whether alone or together with any Related Company).</p>
Controller	<p>means, in relation to a Change of Ownership, (as the context may require) the person or body corporate that is then exercising Control or the person or body corporate to whom Control is intended to pass.</p>
Core Route	<p>means a Route referred to in Appendix 1 (<i>Bus Unit Route specifications</i>) of Schedule 2 (<i>Agreement Details</i>) as a 'Core Route' or 'Core', which term is defined in the Wellington Regional Public Transport Plan.</p>
Correction Notice	<p>means an order, direction or other notification from any Governmental Entity relating to any matter referred to in clause 9.6.1 or 9.6.2.</p>
Creditor Party	<p>means a Party to which an amount is due and payable by the other Party.</p>
CRM System	<p>means the customer relationship management system provided by GWRC for the purposes contemplated at clause 23.9.</p>
Cure Plan	<p>means, in respect of an Event of Default, a plan submitted by the Operator in accordance with the requirements of clause 46.3.1(b).</p>
Customer Communication and Information Systems	<p>means the systems, requirements and other matters set out at Annexure 3 (<i>Customer Communication and Information Systems</i>), as amended or replaced from time to time in accordance with the process for changes to PT Network Documents under the Regional Agreement.</p>

Customer Satisfaction Survey	means each survey to be undertaken in accordance with Annexure 8 (<i>Customer Satisfaction Survey</i>).
Customer Satisfaction Threshold	means, in respect of each Customer Satisfaction Survey for the Operator, the Customer Satisfaction Threshold for that Customer Satisfaction Survey calculated in accordance with paragraphs 5.6 to 5.12 of Annexure 8 (<i>Customer Satisfaction Survey</i>).
Customer Service Standards	means the standards set out at Annexure 2 (<i>Customer Service Standards</i>), as amended or replaced from time to time in accordance with the process for changes to PT Network Documents under the Regional Agreement.
CVIU	means the Commercial Vehicle Investigation Unit of the New Zealand Police (including its successors).
Daily Situational Report	means each daily situational report to be provided by the Operator in accordance with this Partnering Contract and containing the matters referred to in paragraph 3.5 of Schedule 5 (<i>Planning, Reporting and Meetings</i>).
Data Storage Medium or DSM	means the CD Rom, data stick or other data storage medium (including any online data room) which forms part of the Articles of Agreement as referred to in paragraph 2 of the Articles of Agreement.
Debtor Party	means a Party which owes an amount the other Party.
Deed of Accession to the Regional Agreement	means the deed of accession to be executed by the Operator in accordance with clause 3.3.
Default Rate	means, in respect of a period, 2% above the official cash rate (set by the Reserve Bank) applicable from time to time during that period.
Depot	means any depot, Vehicle maintenance or Vehicle stabling facility used by the Operator or the Operator Associates in connection with the provision of the Services, including the Transferring Depots.
Depot Acquisition Programme	means the depot acquisition programme set out in paragraph 16 (<i>Depot Acquisition Programme</i>) of Schedule 2 (<i>Agreement details</i>) which must include the address and specification of Transferring Depots, including all fixtures, fittings, equipment or other items which will be included in the transfer of the Transferring Depots, as amended: (a) pursuant to clauses 11.2.5 and 11.2.6 and Schedule 14 (Change Events and Net Financial Impact); or

	(b) by written agreement of the Parties.
Depot List	<p>means an electronic database using software approved by GWRC (acting reasonably) which identifies the Depots and which specifies for each Depot:</p> <p>(a) the address;</p> <p>(b) whether or not it is a Transferring Depot (and, if so, any fixtures, fittings, equipment or other items falling within the definition of Transferring Depot);</p> <p>(c) the owner of the Depot;</p> <p>(d) technical drawings of the Depot;</p> <p>(e) the details of any Transferring Asset Agreement applicable to the Depot including any fixtures, fittings, equipment or other items falling within the definition of Transferring Depot (including the date of that Transferring Asset Agreement and its counterparties); and</p> <p>(f) such other information as GWRC may from time to time require (acting reasonably).</p>
Designated Area	means the area on-board a Vehicle and any other specified by GWRC from time to time in writing.
Destination	has the meaning given in paragraph 5.2 (<i>Calculation of Performance Deductions</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Directly Appointed Unit or DAU	means those Bus Units to which a PTOM Operator is appointed in accordance with an ITP, rather than in accordance with a RFT and which are specified as being "Directly Appointed Units" in paragraph 1.2 (<i>Bus Unit</i>) of Schedule 2 (<i>Agreement Details</i>).
Dispose	means to transfer, assign, sell, grant an exclusive licence over, create or allow to exist any new interest in respect of, grant a lease over or otherwise part with possession of something.
Dispute	means any dispute, difference of opinion, or disagreement between the Parties, including any Claim, arising out of or in connection with any Transaction Document but excluding any dispute required by this Partnering Contract to be referred to Expert determination.
Dispute Resolution Procedure	means the procedure set out in clause 45.

Double Decker or DD	means a twin level Vehicle (including both rigid two and three axle Vehicles) with a passenger capacity applicable to "Double Decker (DD)" set out in Table 1 (<i>Vehicle sizes</i>) row T1.4 of Schedule 4 (<i>Vehicle Quality Standards</i>) and with a Vehicle length equal to or less than the applicable maximum Vehicle length in Table 1 (<i>Vehicle sizes</i>) row T1.4.
Drug & Alcohol Policy	means a drug and alcohol policy which complies with the requirements of clause 33.6.12 and which forms part of the Health and Safety Management Plan.
Electronic Revenue Protection Survey	means each survey undertaken by GWRC from time to time using the passenger count system (if any), the CCTV system, the Ticketing System and any other system in order to assess the number of passengers who committed a Ticket Offence.
Emergency Management, Service Disruption and Incident Response Plan	means the plan contemplated by paragraph 1.4.6 of Appendix 1 (<i>Plans</i>) to Schedule 5 (<i>Planning, Reporting and Meetings</i>), the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
Emission Limits	means the emissions levels applicable to the type of engine in, the Age of and the class of the Vehicle, as such levels are specified in: <ul style="list-style-type: none"> (a) the Vehicle manufacturer's standards and specifications; (b) the applicable Emission Standards; and (c) any relevant Law and Consent.
Emission Profile	means the engine type profile for the fleet of Vehicles as set out in Appendix 13 (<i>Emission Profile</i>) of Schedule 2 (<i>Agreement details</i>).
Emission Standard	means the emission standard applicable to the type of engine in, the Age of and the class of Vehicle, as such standards are specified in: <ul style="list-style-type: none"> (a) the Land Transport Rule: Vehicle Exhaust Emissions 2007 (Rule 33001/2); or (b) in respect of Euro VI, the regulations referred to in the definition of that term in this Schedule 1, or any replacement or amendment thereto.
Environment	includes all aspects of the surroundings of human beings including: <ul style="list-style-type: none"> (a) the physical characteristics of those surroundings such as land,

	<p>water and the atmosphere;</p> <p>(b) the biological characteristics of those surroundings such as animals, plants and other forms of life; and</p> <p>(c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.</p>
Environmental Law	the Resource Management Act 1991 and all regulations, subordinate legislation and amendments thereto, together with all other Laws concerning the Environment.
Environmental Management Plan	means the plan contemplated by paragraph 1.4.8 of Appendix 1 (<i>Plans</i>) to Schedule 5 (<i>Planning, Reporting and Meetings</i>), the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
Environmental Management System	<p>means an environmental management system which complies and is consistent with:</p> <p>(a) ISO 14001:2004 (whether or not such system has in fact received formal certification of compliance with such standard from an accredited certifying organisation);</p> <p>(b) any applicable Law; and</p> <p>(c) any other environmental management related standard applicable to a road vehicle maintenance provider in New Zealand or public transport operator providing passenger services on roads and highways in New Zealand.</p>
Equipment Supplier	means any person who from time to time provides any part of the Ticketing System, Ticketing Equipment, RTPI System or RTPI Equipment directly or indirectly to GWRC (including such person's subcontractors, successors and permitted assigns).
Estimated Cost	means GWRC's reasonable estimate of the cost of undertaking the rectification and maintenance work notified to the Operator under clause 56.5, as set out in the notice given by GWRC pursuant to clause 56.5.
Euro III	has the meaning given in the Land Transport Rule: Vehicle Exhaust Emissions 2007 (Rule 33001/2), or any replacement or amendment thereto.
Euro IV	has the meaning given in the Land Transport Rule: Vehicle Exhaust Emissions 2007 (Rule 33001/2), or any replacement or amendment thereto.

Euro V	has the meaning given in the Land Transport Rule: Vehicle Exhaust Emissions 2007 (Rule 33001/2), or any replacement or amendment thereto.
Euro VI	means the emissions standard for heavy duty vehicles set out in: <ul style="list-style-type: none"> (a) Regulation 595/2009/EC of the European Parliament and the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC; and (b) Commission Regulation (EU) 582/2011 of 25 May 2011 implementing and amending Regulation (EC) No 595/2009 of the European Parliament and of the Council with respect to emissions from heavy duty vehicles (Euro VI) and amending Annexes I and III to Directive 2007/46/EC of the European Parliament and of the Council.
Event of Default	means each of those events listed in clause 46.1.
Excess	means the difference (expressed as a positive figure) between: <ul style="list-style-type: none"> (a) 110% of the Estimated Cost of undertaking the rectification and maintenance work as notified to the Operator under clause 56.5; and (b) the aggregate amount of the Services Fee and other amounts payable to the Operator under this Partnering Contract, in each case which fall due and payable to the Operator under this Partnering Contract after the date on which GWRC issues a notice under clause 56.5, and (where clause 56.7.2 applies) amounts callable under a Performance Bond or Rectification Bond.
Exempt Service	has the meaning given to it in the LTMA.
Existing Operator	means each of the "Operators" (as defined in the TPTDs) that are party to the TPTDs.
Existing Vehicle	means a Vehicle that has been used to provide passenger services in New Zealand prior to the Commencement Date (other than any passenger services provided in connection with this Partnering Contract).

Expert	means any person appointed by the Parties pursuant to clause 45.10 or 45.11.
Express Segment	means a segment of a Passenger Operating Service described in Appendix 3 (<i>Route directions: Public Routes</i>) or Appendix 4 (<i>Route directions: School Routes</i>) (as applicable) of Schedule 2 (<i>Agreement details</i>) as running non-stop between two points.
Extension Period	the period (if any) by which the Term of this Partnering Contract is extended pursuant to clause 4.5, as specified in the notice given by GWRC under that clause.
Facilities	means the Interchanges and any other facilities referred to in Appendix 5 (<i>Bus Unit termini, facilities and layover spaces</i>) of Schedule 2 (<i>Agreement Details</i>).
Facilities Protocol	means Schedule 9 (<i>Facilities Protocol</i>).
Farebox Account	has the meaning given in paragraph 21 (<i>Farebox Account</i>) of Schedule 2 (<i>Agreement details</i>).
Farebox Revenue	means the value of tickets sold (including "top-ups" and penalty fares) in respect of the Wellington Public Transport Network (including the Scheduled Services and Special Event Services) and the value of any travel benefits provided in respect of the Wellington Public Transport Network under clause 39.4 (<i>Farebox Revenue and ticket sales</i>).
Fares, Ticketing and Enforcement Requirements	means Annexure 6 (<i>Fares, Ticketing and Enforcement Requirements</i>), as amended or replaced from time to time in accordance with the process for changes to PT Network Documents under the Regional Agreement.
Ferry Operator	means a PTOM Operator that provides scheduled passenger services in regard to a ferry "unit" (as defined in section 5(1) of the LTMA).
FIM or Financial Incentive Mechanism	means the Financial Incentive Mechanism to encourage patronage growth set out at paragraph 10 (<i>Calculation of the FIM Adjustment</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
FIM Adjustment	has the meaning given in paragraph 10.1 (<i>Calculation of the FIM Adjustment</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
FIM Calculation Year	has the meaning given in paragraph 10.1 (<i>Calculation of the FIM Adjustment</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).

FIM Cap	has the meaning given in paragraph 10.1 (<i>Calculation of the FIM Adjustment</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
FIM Collar	has the meaning given in paragraph 10.1 (<i>Calculation of the FIM Adjustment</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
FIM Objectives	has the meaning given in paragraph 10.1 (<i>Calculation of the FIM Adjustment</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Financial Reporting Error	has the meaning given in paragraph 6.3 of Schedule 6 (<i>Financial and Performance Regime</i>).
Financial Year	means each period from 1 July to the next 30 June.
Financing Acceleration Event	means when any person providing financing under a Financing Agreement: <ul style="list-style-type: none"> (a) accelerates repayment of the debt; (b) declares any indebtedness due and payable prior to its specified maturity; (c) cancels the financing; or (d) enforces any Security Interest.
Financing Agreement	means any agreement or other arrangement under which financing of any kind is provided to the Operator.
Fleet Deductions	means deductions from the Services Fee calculated in accordance with paragraph 7 (<i>Calculation of Fleet Deductions</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Fleet List	means an electronic database using software approved by GWRC (acting reasonably) which identifies the Vehicles to be used by the Operator in connection with the provision of the Services and which specifies for each Vehicle: <ul style="list-style-type: none"> (a) the make and model; (b) the registration number; (c) the Registration Date; (d) the Manufacture Date; (e) the fuel type; (f) the engine technology classification (e.g. Euro IV, Euro V, EEV, Hybrid);

	<p>(g) the year of manufacture of the engine;</p> <p>(h) the maximum seating capacity and standing capacity (if any);</p> <p>(i) length;</p> <p>(j) the tare weight;</p> <p>(k) whether or not it is a Transferring Vehicle;</p> <p>(l) the owner of the Vehicle;</p> <p>(m) the details of any Transferring Asset Agreement applicable to the Vehicle (including the date of that Transferring Asset Agreement and its counterparties); and</p> <p>(n) such other information as GWRC may from time to time require (acting reasonably).</p>
Fleet Maintenance Plan	means the plan contemplated by paragraph 1.4.2 of Appendix 1 (<i>Plans</i>) to Schedule 5 (<i>Planning, Reporting and Meetings</i>) in respect of maintenance to Transferring Vehicles, the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
Force Majeure Continuation Notice	means a notice served by GWRC on the Operator specifying that this Partnering Contract is to continue in effect notwithstanding the Force Majeure Event.
Force Majeure Event	means an event or circumstance which meets the requirements specified in clause 50.1.
Force Majeure Termination Notice	means a notice served by GWRC on the Operator specifying that this Partnering Contract is to terminate.
Full Year Operational Report	means each full year operational report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in paragraph 3.10.1 of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and which forms part of the Full Year Performance Report.
Full Year Performance Report	means each full year performance report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in paragraph 3.10 of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and consisting of the Full Year Operational Report and the Full Year Strategic Report.
Full Year Strategic Report	means each full year operational report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in paragraph 3.10.2 of Schedule 5 (<i>Planning, Reporting and</i>

	<i>Meetings</i>) and which forms part of the Full Year Performance Report.
General Change in Law	means a Change in Law that is not a Specific Change in Law.
Good Industry Practice	means using standards, practices, methods and procedures conforming to all applicable Law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably be expected from a reputable, efficient, professionally qualified, competent and skilled organisation experienced in carrying out activities of a similar nature, scope and complexity to the Services and seeking in good faith to comply with its contractual obligations and all duties owed by it.
Governmental Entity	means the Sovereign in right of New Zealand and any government, or any governmental or semi-governmental entity, person or authority, body politic (but excluding any political party), government department, local government authority or statutory authority and includes (unless the context otherwise requires) GWRC, the New Zealand Police, the CVIU and the Transport Agency.
GST	means tax chargeable under the GST Act.
GST Act	means the Goods and Services Tax Act 1985.
Guarantor	if applicable, has the meaning given in paragraph 24 (<i>Guarantor</i>) of Schedule 2 (<i>Agreement details</i>).
GW Associates	means any member, officer, nominee, employee, agent, contractor, consultant or adviser of or to GWRC but excludes the Operator and the Operator Associates.
GW Data	means all data: <ul style="list-style-type: none"> (a) generated, collected, processed, or transmitted by any of the GWRC Assets (other than data originally input or provided by the Operator which is commercially sensitive and which forms part of the Operator Developed IP); or (b) given by or on behalf of GWRC to the Operator for the purposes of this Partnering Contract.
GW IP	means Intellectual Property Rights (provided to or accessed by the Operator as part of the Services or for the purposes of the Services, this Partnering Contract or any other Transaction Document) in the following: <ul style="list-style-type: none"> (a) Background IP which is owned by GWRC;

	<p>(b) GW Third Party Licensed IP;</p> <p>(c) additions to, or adaptations, customisations or enhancements of or deletions or derivatives from GWRC's Background IP or GW Third Party Licensed IP, whether created by or on behalf of GWRC or its licensors or by or on behalf of the Operator or Operator Associates;</p> <p>(d) GW Data; and</p> <p>all Intellectual Property Rights and Intellectual Property Materials generated or acquired on or after the Commencement Date by or on behalf of GWRC (other than the Operator Developed IP).</p>
GW Third Party Licensed IP	<p>means the Intellectual Property Rights and Intellectual Property Material licensed to GWRC under:</p> <p>(a) the agreement between GWRC and Advanced Communication and Information Systems Limited dated 4 September 2009, in relation to the supply of the RTPI System (as subsequently novated to Vix Technology (Aust) Ltd);</p> <p>(b) any other contracts notified by GWRC to the Operator.</p>
GWRC Account	<p>has the meaning given in paragraph 22 (<i>GWRC Account</i>) of Schedule 2 (<i>Agreement details</i>).</p>
GWRC Assets	<p>means the following systems, assets and items provided by GWRC:</p> <p>(a) the RTPI System and RTPI Equipment;</p> <p>(b) the Ticketing Equipment;</p> <p>(c) the Ticketing System;</p> <p>(d) Installation Kits;</p> <p>(e) the CRM System;</p> <p>(f) the GWRC Systems;</p> <p>(g) any other equipment provided by GWRC from time to time which GWRC requires be installed on the Vehicles pursuant to clause 10.1.5; and</p> <p>(h) any other system, asset or item provided by GWRC to the Operator from time to time,</p> <p>as may be modified, varied or replaced pursuant to clause 12 (<i>Other assets and systems used in the provision of the Services</i>).</p>
GWRC Fare Media Transition Plan	<p>means the plan for the transition of fares and fare products detailing the fare products to be sold by the Operator and the rules applying to</p>

	such fare products, as may be updated by GWRC and provided to the Operator from time to time.
GWRC Farebox Report	means a report provided by GWRC to the Operator containing the information referred to in paragraph 3.14.1 of Schedule 5 (<i>Planning, Reporting and Meetings</i>).
GWRC Long Term Plan	means the long term plan (or equivalent) prepared by GWRC in accordance with the requirements set out in the LGA.
GWRC Monthly Patronage Report	means each monthly patronage report which may be provided by GWRC in accordance with this Partnering Contract, containing the matters referred to in paragraph 3.14.3 of Schedule 5 (<i>Planning, Reporting and Meetings</i>).
GWRC Privacy Policy	means the document set out at Annexure 19 (<i>GWRC Privacy Policy</i>) and any privacy statement or customer privacy policy as published on the GWRC website (www.gw.govt.nz) or the Metlink website (www.metlink.org.nz) as updated, amended or replaced by GWRC from time to time and notified to the Operator.
GWRC Revenue Protection Strategy	means the strategy for revenue protection, as provided by GWRC to the Operator from time to time.
GWRC System	means the following systems provided by GWRC in relation to the operation of the Wellington Public Transport Network: <ul style="list-style-type: none"> (a) the RTPI System; (b) any system associated with the IFT Programme; and (c) the Ticketing System.
Hail and Ride Segment	means a segment of a Passenger Operating Service described in Appendix 3 (<i>Route directions: Public Routes</i>) or Appendix 4 (<i>Route directions: School Routes</i>) (as applicable) of Schedule 2 (<i>Agreement details</i>) as being 'hail and ride'.
Hail and Ride Services	means a Passenger Operating Service described in Appendix 3 (<i>Route directions: Public Routes</i>) or Appendix 4 (<i>Route directions: School Routes</i>) (as applicable) of Schedule 2 (<i>Agreement details</i>) as being a 'hail and ride' service.
Half Year	has the meaning given in paragraph 9.1 (<i>Calculation of Performance Payments</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Handover Package	means a package prepared and provided by the Operator which

	contains (as a minimum) the information set out in Schedule 11 (<i>Handover Package for Transferring Assets</i>) and such other information as GWRC may reasonably specify from time to time.
Health and Safety Management Plan	means the plan contemplated by paragraph 1.4.3 of Appendix 1 (<i>Plans</i>) to Schedule 5 (<i>Planning, Reporting and Meetings</i>) and clause 33, the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
HSW Act	means the Health and Safety at Work Act 2015.
IFT Programme	means the integrated fares and ticketing programme being undertaken by GWRC, involving: <ul style="list-style-type: none"> (a) review and simplification of fares and fare products; (b) planning, procurement, development, testing and implementation of a new fares and ticketing system using smart ticketing technology for use on all Scheduled Services and Special Event Services that will be: <ul style="list-style-type: none"> (i) implemented on all PTOM Units; and (ii) integrated across the Wellington Public Transport Network.
Immediate Report	means each immediate report to be provided by the Operator in accordance with this Partnering Contract and containing the matters referred to in paragraphs 3.2, 3.3 and 3.4 of Schedule 5 (<i>Planning, Reporting and Meetings</i>).
Incoming Operator	means any person succeeding the Operator in the provision of all or any part of the Services or any services which are substantially similar to the Services (and includes any entity nominated by such person to perform or operate any part of such Services or services).
Incoming Operator Confidentiality Undertaking	means an undertaking substantially in the form set out at Annexure 12 (<i>Incoming Operator Confidentiality Undertaking</i>).
Indemnified Person	means, in relation to any indemnity or release given by the Operator under this Partnering Contract, any person other than GWRC whom such indemnity or release is in favour of, or contemplates benefitting.
Indexation Base Date	means 24 November 2016.

Indexation Payments	means indexation payments calculated in accordance with paragraph 8 (<i>Calculation of the Indexation Payment</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Indexed	has the meaning given in clause 34.1.
Initial Annual Business Plan	means the initial annual business plan that GWRC has confirmed is acceptable pursuant to Appendix 2 (<i>Milestone Dates</i>) to Schedule 13 (<i>Transition Plan</i>).
Initial Conditions Precedent Date for Satisfaction	means the date specified as such in paragraph 11 (<i>Key dates</i>) of Schedule 2 (<i>Agreement details</i>).
Initial Expiry Date	has the meaning given in paragraph 12 (<i>Initial Expiry Date</i>) of Schedule 2 (<i>Agreement details</i>).
Insolvency Event	<p>means, in relation to a person, the occurrence of any of the following events:</p> <ul style="list-style-type: none"> (a) the cessation by that person of its business in New Zealand; (b) it stops or suspends payment of all or a class of its debts or threatens to do so; (c) it is, or under Law, is presumed or taken to be, insolvent other than as a result of a failure to: <ul style="list-style-type: none"> (i) pay a debt or claim the subject of a good faith dispute; or (ii) comply with a statutory demand (within the meaning of section 289 of the Companies Act) where the debt or claim to which the statutory demand relates is discharged within 15 Business Days of the failure; (d) an administrator, liquidator, receiver, statutory manager or similar official is appointed to it or all or any of its assets or undertakings; (e) except for the purpose of a solvent reconstruction or amalgamation previously approved by GWRC, an application or order is made, proceedings are commenced, a resolution is passed, an application to a court is made or other steps are taken against or in respect of it for its winding up, dissolution or administration or for it to enter an arrangement, compromise or composition with, or assignment for the benefit of, its creditors, a class of them, or any of them (except where the Operator demonstrates to GWRC's satisfaction that an application is

	<p>frivolous or vexatious);</p> <p>(f) any step is taken to enforce security over or a distress, attachment, execution, garnishee order, mareva injunction or other similar process is levied, enforced or served against all or any of its assets or undertaking, or</p> <p>(g) that person admits in writing to being insolvent or unable to pay its debts as and when they fall due,</p> <p>or any event occurs which, under the laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.</p>
Installation Kit	<p>means each kit containing items required to enable GWRC to install:</p> <p>(a) the Ticketing Equipment; or</p> <p>(b) the RTPI Equipment,</p> <p>on board the relevant Vehicle pursuant to clause 12.5, 12.9, 12.10 or 12.14 (as applicable), which kit may (without limitation) include items such as wiring loom(s), brackets, antennae and fixings. References in this Partnering Contract to "Installation Kits" refers to the Installation Kit for the Ticketing Equipment and the Installation Kit for the RPTI Equipment.</p>
Insurance Policy	<p>means each insurance policy which the Operator is required to take out and maintain pursuant to the terms of this Partnering Contract.</p>
Insured Property (Material Damage)	<p>means the property, assets and items which from time to time are covered by the terms of the Material Damage Policy.</p>
Insured Property (Motor Vehicle)	<p>means the property, assets and items which from time to time are covered by the terms of the Motor Vehicle Policy.</p>
Intellectual Property Claim	<p>means any actions, claims and/or demands made against GWRC that possession or Use of the Operator Background IP, the Operator Developed IP, Third Party Licensed Software or the Third Party Intellectual Property infringes the Intellectual Property Rights of any third party.</p>
Intellectual Property Material	<p>means any software, firmware, documented methodology or process, documentation or other material whatsoever (including any reports, specification, plans, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions) in either or both human readable or computer readable form which wholly or partly embody or contain Intellectual Property Rights.</p>
Intellectual Property	<p>means rights in patents, registered designs, petty patents, utility</p>

Rights	models, trademarks (including logos and trade dress), domain names, copyright, circuit layouts, rights in computer software and databases, rights in inventions, knowhow and business process and methods, (in each case) whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection that are capable of intellectual property protection under Law.
Interchanges	means Wellington Station and any other vehicle interchanges which GWRC notifies the Operator in writing will be considered "Interchanges" for the purposes of this Partnering Contract.
Interconnected Bodies Corporate	has the meaning given to it in the Commerce Act 1986.
Intermediate Timing Points	means each of the Bus Stops for a Scheduled Service indicated as "Timing Points" in the applicable Bus Unit Timetable, excluding the Origin and Destination for that Scheduled Service.
IP Register	means a register of all GW IP (including GW Third Party Licensed IP), Operator Background IP, Operator Developed IP, Third Party Intellectual Property and Third Party Licensed Software.
IIP	means the invitation to price and associated documentation (in each case as amended from time to time) issued by GWRC in relation to the award of this Partnering Contract.
Joint Insurance Account	has the meaning given in paragraph 23 (<i>Joint Insurance Account</i>) of Schedule 2 (<i>Agreement details</i>).
Key Personnel	means the persons listed in paragraph 3 (<i>Operator's Key Personnel</i>) of Schedule 2 (<i>Agreement details</i>) who are to carry out the roles and functions described in that Schedule, as amended from time to time in accordance with clause 17.7 and, in the case of a change to the Operator's Authorised Representative, clause 20.6.
Key Subcontract	means any arrangement entered into by the Operator under which the counterparty is to provide any Scheduled Services or Special Event Services on any Route.
Key Subcontractor	means each of: <ul style="list-style-type: none"> (a) those persons specified as being Key Subcontractors in paragraph 10 of Schedule 2 (<i>Agreement details</i>); and (b) any party (other than the Operator) to a Key Subcontract.

Land Transport Act	means the Land Transport Act 1998.
Land Transport Rules	means the rules of that name available on the Transport Agency's website, as such rules are amended, updated or replaced from time to time.
Large Vehicle or LV	means a Vehicle (including both rigid two and three axle Vehicles) with a passenger capacity applicable to "Large Vehicle (LV)" set out in Table 1 (<i>Vehicle Sizes</i>) row T1.3 of Schedule 4 (<i>Vehicle Quality Standards</i>) and with a Vehicle length equal to or less than the applicable maximum Vehicle length in Table 1 (<i>Vehicle Sizes</i>) row T1.3 (but which is not a Double Decker).
Last Relevant Month	has the meaning given in paragraph 8.1 (<i>Calculation of Indexation Payment</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Law	means: <ul style="list-style-type: none"> (a) any statute, regulation or subordinate legislation in force in New Zealand; and (b) the common law and principles of equity applied from time to time in New Zealand, and without limiting the foregoing includes each of the Rules and any regulation made pursuant to the Land Transport Act.
League Table	means the league table in respect of the PTOM Units required to be published by GWRC on an annual basis in accordance with the Procurement Manual.
Lessor	means any person other than a Transferring Asset Related Party who makes a Third Party Transferring Asset available to the Operator or to a Transferring Asset Related Party.
Lessor Direct Deed	means an agreement substantially in the form set out at Annexure 22 (<i>Lessor Direct Deed</i>) or in such other form as GWRC (acting reasonably) may agree.
LGA	means the Local Government Act 2002.
LGOIMA	means the Local Government Official Information and Meetings Act 1987.
Liability Cap	has the meaning given in paragraph 26 (<i>Liability Cap</i>) of Schedule 2 (<i>Agreement details</i>).

Liability Event	an individual event, circumstance, breach, act or omission which gives rise to the Operator being liable to GWRC under this Partnering Contract.
Licence	means a Passenger Service Licence granted in accordance with section 30L or 30M of the Land Transport Act and which permits the Operator to operate the Passenger Services.
Liquidated Damages	means liquidated damages payable by the Operator pursuant to clause 2.20.
Liquidated Damages Cap	has the meaning given in paragraph 27.2 (<i>Liquidated Damages</i>) of Schedule 2 (<i>Agreement details</i>).
Liquidated Damages Rate	has the meaning given in paragraph 27.1 (<i>Liquidated Damages</i>) of Schedule 2 (<i>Agreement details</i>).
Local Route	means a Route referred to in Appendix 1 (<i>Bus Unit Route specifications</i>) of Schedule 2 (<i>Agreement Details</i>) as a 'Local Route' or 'Local', which term is defined in the Wellington Regional Public Transport Plan.
Loss	means: <ul style="list-style-type: none"> (a) any cost, expense, loss, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent; and (b) without being limited by paragraph (a) and only to the extent not prohibited by applicable law, any fine or penalty.
Lost Time Injury	an occurrence that resulted in a fatality, permanent disability or time lost from work of at least one day or shift.
LTMA	means the Land Transport Management Act 2003.
Maintenance	means planned and responsive inspections, examinations, condition assessments, maintenance, servicing, cleaning, adjustments, alterations, modifications, repairs, reconditioning, renewals, refurbishments and replacements of component parts and " Maintain " shall be construed accordingly.
Major Non-Compliance	has the meaning given in Schedule 4 (<i>Vehicle Quality Standards</i>).
Major Service Disruption	means a Service Disruption which is deemed to be a Major Service Disruption in accordance with paragraph 3.13 (<i>Major Service</i>

	<i>Disruptions</i>) of Schedule 3 (<i>Passenger Services</i>).
Manufacture Date	means the date on which a Vehicle has been certified as complete by the manufacturer of that Vehicle.
Margin	means the amount of the "Margin" referred to in Appendix 8 (<i>Net Financial Impact</i>) of Schedule 2 (<i>Agreement details</i>).
Material Damage Policy	means the Insurance Policy specified in clause 42.1.1(a).
Maximum Age Threshold	means 20 years, 0 months from the Manufacture Date of the relevant Vehicle.
Maximum Half Year Performance Payment Amount	has the meaning given in paragraph 9.1 (<i>Calculation of Performance Payments</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Media Agency	means any media or advertising agency (or similar entity) authorised by GWRC and notified to the Operator from time to time.
Medium Vehicle or MV	means a Vehicle with a passenger capacity applicable to "Medium Vehicle (MV)" set out in Table 1 (<i>Vehicle Sizes</i>) row T1.2 of Schedule 4 (<i>Vehicle Quality Standards</i>) and with a Vehicle length equal to or less than the applicable maximum Vehicle length in Table 1 (<i>Vehicle Sizes</i>) row T1.2 (but which is not a Large Vehicle or a Double Decker).
Metlink	means the Metlink brand and any other GWRC approved brand notified by GWRC to the Operator from time to time and which is used by GWRC for the communication of information to customers, including in regard to: <ul style="list-style-type: none"> (a) the Metlink website; (b) the Metlink call centre; (c) mobile apps; (d) printed timetable information; and (e) materials used to market or promote the Wellington Public Transport Network.
Metlink Branding Manual	means the document entitled "Metlink Branding Manual Bus Services" dated 3 May 2016 (a copy of which has been provided to the Operator), as amended, updated or replaced by GWRC from time to time in accordance with clause 15.8.

Mid-Life Update	means the mid-life update of the Vehicles to be carried out by the Operator in accordance with paragraphs 4.9 - 4.13 (<i>Mid-Life updates</i>) of Schedule 3 (<i>Passenger Services</i>).
Metlink Branding Manual Mid-Life Update Items	has the meaning given in paragraph 3.9A.2 of the VQS.
Milestone	means each milestone set out in the columns entitled 'Milestone #1 & Milestone Date #1', 'Milestone #2 & Milestone Date #2', 'Milestone #3 & Milestone Date #3' and 'Milestone #4 & Milestone Date #4' in the table contained in Appendix 2 (<i>Milestone Dates</i>) to Schedule 13 (<i>Transition Plan</i>) and any additional Milestones set out in Schedule 2 (<i>Agreement Details</i>) if any, excluding those Milestones which are specified in the table as being GWRC's responsibility to satisfy.
Milestone Date	means for each Milestone, the applicable date set out in the table contained in Appendix 2 (<i>Milestone Dates</i>) to Schedule 13 (<i>Transition Plan</i>) and any additional Milestone Dates set out in Schedule 2 (<i>Agreement Details</i>) if any, plus any extension to any of those dates granted (if any) by GWRC under clause 2.16.
Minor Contract Variation	means any Contract Variation which in GWRC's reasonable opinion will not require the Operator to incur Capital Expenditure and/or Operating Expenditure in excess of \$100,000 (which amount shall not be Indexed) in aggregate over the remainder of the Term, but excludes: <ul style="list-style-type: none"> (a) any changes made to the Timetable or the Bus Unit Timetable in accordance with the Timetable Change Process; (b) any Special Event Services; (c) any Alternative Services; and (d) any other matter which this Partnering Contract expressly provides does not constitute a Minor Contract Variation.
Minor Contract Variation Notice	means a notice given by GWRC setting out the information specified in paragraph 5.2 (<i>GWRC may issue Minor Contract Variation Notice</i>) of Schedule 14 (<i>Change Events and Net Financial Impact</i>).
Minor Contract Variation Quote	means a quote provided by the Operator to GWRC setting out the information specified in paragraph 5.3 (<i>Operator to provide Quote</i>) of Schedule 14 (<i>Change Events and Net Financial Impact</i>).
Minor Non-Compliance	has the meaning given in Schedule 4 (<i>Vehicle Quality Standards</i>).

Moneys Owing	means all moneys that the Operator, alone or together with any other person, at any time becomes actually liable to pay to, or for the account of, GWRC (alone or together with any other person) on any account whatsoever under or in relation to this Partnering Contract or any other Transaction Document (including by way of principal or interest, fees, costs, charges, expenses, indemnity or damages).
Monthly Farebox Report	means each monthly farebox report to be provided by the Operator in accordance with this Partnering Contract and containing the matters referred to in paragraph 3.8 of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and forming part of the Monthly Performance Report.
Monthly Operational Report	means each monthly operational report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in Appendix 4 (<i>Weekly, monthly and annual reports</i>) of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and forming part of the Monthly Performance Report.
Monthly Performance Report	means each monthly performance report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in paragraph 3.9 of Schedule 5 (<i>Planning, Reporting and Meetings</i>), and consisting of the Monthly Operational Report, the Monthly Strategic Report (including the Monthly Revenue Protection Report) and the Monthly Farebox Report.
Monthly Revenue Protection Report	means each monthly revenue protection report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in Appendix 4 (<i>Weekly, monthly and annual reports</i>) of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and forming part of the Monthly Strategic Report.
Monthly Strategic Report	means each monthly strategic report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in Appendix 4 (<i>Weekly, monthly and annual reports</i>) of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and forming part of the Monthly Performance Report.
Monthly Summary Performance Report	means a monthly summary performance report containing the information referred to in paragraph 3.14.4 of Schedule 5 (<i>Planning, Reporting and Meetings</i>) provided by GWRC to the Operator.
Moral Rights	means the rights conferred on authors of copyright works under Part 4 of the Copyright Act 1994 or any similar moral rights under the law of any jurisdiction.

Motor Vehicle Policy	means the Insurance Policy specified in clause 42.1.1(c).
Natural Disaster	means: (a) earthquake, tsunami, volcanic activity, hydrothermal activity, geothermal activity or subterranean fire; (b) fire occasioned by, through or in consequence of any perils set out in paragraph (a) of this definition.
Net Financial Impact	has the meaning given in paragraph 2 (<i>Definitions</i>) of Schedule 14 (<i>Change Events and Net Financial Impact</i>).
New Vehicle	means a Vehicle with a Manufacture Date which is after 30 June 2016.
NFI Event	has the meaning given in paragraph 2 (<i>Definitions</i>) of Schedule 14 (<i>Change Events and Net Financial Impact</i>).
NFI Indexed	has the meaning given in paragraph 10.7 of Schedule 14 (<i>Change Events and Net Financial Impact</i>).
Noise Output Maximum Level	means: (a) in respect of noise tested outside: (i) a New Vehicle, the noise limits set by ECE 51 Revision 2 applicable to the type or class of Vehicle for the drive-by test (constant speed and acceleration), the stationary test and the compressed air test, each test being conducted in accordance with ECE 51 Revision 2; and (ii) an Existing Vehicle, the noise limits set by: (A) the Land Transport Rule: Vehicle Equipment 2004 (Rule 32017) applicable to the type or class of Vehicle, tested in accordance with that rule; and (B) ECE 51 Revision 2 applicable to the type or class of Vehicle for the compressed air test, tested in accordance with ECE 51 Revision 2; and (b) in respect of noise tested inside a New Vehicle or an Existing Vehicle, the maximum internal noise output levels for an empty Vehicle are: (i) 73 dBa @ 50km/h measured as the average of the readings from the 5 positions; (ii) 76 dBa @ 70km/h measured as the average of the

	<p>readings from the 5 positions; and</p> <p>(iii) 77 dB at any test position at either test speed in paragraphs (b)(i) or (b)(ii),</p> <p>each of paragraphs (b)(i) to (b)(iii) tested in accordance with the following methodology:</p> <p>(iv) the test shall be carried out with an empty Vehicle (that must be compliance with the terms of this Partnering Contract and with the air condition turned off) driven at a constant speed of 50km/h and 70km/h on a flat sealed road;</p> <p>(v) the microphone shall be placed centrally above the driver’s seat, centrally above the outer seat either side of the aisle at the mid-point of the Vehicle, and centrally above the outer seat either side of the aisle at the last row of seats;</p> <p>(vi) for each position the microphone shall be positioned 1200mm above the Vehicle floor;</p> <p>(vii) the sound level meter needs to be an integrating-averaging sound level meter Class 1 in accordance with IEC 61672-1: 2013 Electroacoustics - Sound Level Meters - Part 1: Specifications; and</p> <p>(viii) the measurements shall be carried out with the meter set to Leq with A-frequency weighting and measurements made until a steady Leq reading is obtained at each measurement location.</p>
Noise Target Levels	means the relevant Noise Output Maximum Level and the requirements of any relevant Law and Consent.
Nominated Performance Indicator	has the meaning given in paragraph 9.1 (<i>Calculation of Performance Payments</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Nominated Performance Payment Amount	has the meaning given in paragraph 9.1 (<i>Calculation of Performance Payments</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Nominated Time	means such time on the Termination Date as may be specified by GWRC in a written notice to the Operator.
Notice of Default	means a written notice in respect of an Event of Default which is given by GWRC under clause 46.2.
Notice of Dispute	means a written notice in respect of a Dispute served by one Party on

	the other Party and containing the information referred to in clause 45.3 (<i>Referral to Senior Executives Meeting</i>).
Notice of Persistent Breach	means a written notice in respect of a Persistent Breach which is given by GWRC under clause 46.7.
Notice of Termination	means a written notice in respect of a Termination Event which is given by GWRC under clause 47.1.
Notice to Proceed	means a notice given by GWRC under paragraph 6.24 (<i>GWRC may issue Notice to Proceed</i>) of Schedule 14 (<i>Change Events and Net Financial Impact</i>), requiring the Operator to carry out a Contract Variation.
Notifiable Event	<p>means any event involving the Operator or any of the Operator Associates while providing the Services and which:</p> <ul style="list-style-type: none"> (a) the Operator, or any of the Operator Associates, is required to notify to any Governmental Entity or any other regulatory authority under Safety Law; or (b) involves any of the following: <ul style="list-style-type: none"> (i) any passenger injury; (ii) any passenger entrapment (regardless of whether injury has occurred); (iii) any Lost Time Injury; or (iv) any injury to any other person who is not an Operator Associate or a passenger.
Off Peak Times	has the meaning given in paragraph 25.2 (<i>Peak Times and Off Peak Times</i>) of Schedule 2 (<i>Agreement details</i>).
On Request Segment	means a segment of a Route described in Appendix 3 (<i>Route directions: Public Routes</i>) or Appendix 4 (<i>Route directions: School Routes</i>) (as applicable) to Schedule 2 (<i>Agreement details</i>) as being travelled only on request.
Open Book Basis	<p>includes (without limiting the natural meaning of that term):</p> <ul style="list-style-type: none"> (a) the provision of all information reasonably required to be able to assess all savings, costs, losses and margins (where payable) and any other relevant financial or non-financial calculation, whether that information is held by the Operator or an Operator Associate; (b) the provision of a full breakdown of all relevant preliminaries,

	<p>labour, equipment, materials and other costs, losses and margins in a clear and transparent manner; and</p> <p>(c) the conduct by or on behalf of GWRC of such audits and inspections of financial records and other documentation of the Operator or any Operator Associate,</p> <p>in each case, for the purpose of allowing GWRC to verify or assess the relevant calculation or matter.</p>
Operating Expenditure	means expenditure which is not Capital Expenditure.
Operator Associates	<p>means:</p> <p>(a) any Related Company of the Operator;</p> <p>(b) any person that is engaged (directly or indirectly and at any tier) as a subcontractor to the Operator; and</p> <p>(c) any director, advisor, officer, employee, delegate or agent of, or contractor to:</p> <p style="padding-left: 20px;">(i) the Operator; or</p> <p style="padding-left: 20px;">(ii) any person referred to in paragraphs (a) or (b) of this definition,</p> <p>involved in providing or engaged to provide the Services or the 'Services' (as defined in any Associated Partnering Contract);</p> <p>(d) any Transferring Asset Related Party; and</p> <p>(e) the Guarantor.</p>
Operator Background IP	means Background IP of the Operator or any Operator Associate.
Operator Conditions Precedent	means each of the Conditions Precedent which are specified in Appendix 2 (<i>Milestone Dates</i>) to Schedule 13 (<i>Transition Plan</i>) as being the Operator's responsibility to satisfy.
Operator Developed IP	<p>means all Intellectual Property Rights and Intellectual Property Materials created by or on behalf of the Operator or the Operator Associates (and whether alone or jointly with any other person):</p> <p>(a) that is used (or is intended to be used) for customer-facing purposes and that is developed as part of the Services or for the purposes of the Services or this Partnering Contract or any other Transaction Document;</p> <p>(b) comprising additions to or adaptations, customisations or enhancements of or deletions or derivatives from Operator Background IP (other than Third Party Licensed Software)</p>

	<p>solely to the extent that they are used (or intended to be used) for customer-facing purposes and are developed as part of the Services or for the purposes of the Services or this Partnering Contract or any other Transaction Document;</p> <p>(c) comprising reports, data or information created and delivered to GWRC under this Partnering Contract during the Term, including under Schedule 5 (Planning, Reporting and Meetings) and under the Bus Services Equipment Operations Manual; or</p> <p>(d) comprising operational data created and provided to GWRC throughout the Term, including operating plans and schedules (including the Working Timetable).</p>
Operator Ticketing Equipment	means those parts of the Ticketing Equipment identified in paragraph 8.2 (<i>Ticketing Equipment & Operator Ticketing Equipment</i>) of Schedule 2 (<i>Agreement details</i>) as being "Operator Ticketing Equipment", as may be altered, upgraded or replaced pursuant to clause 12 (<i>Other assets and systems used in the provision of the Services</i>) or the Bus Services Equipment Operations Manual or otherwise by GWRC (acting reasonably).
Operator's Proposals	means the Operator's proposals for the performance of the Services set out in Schedule 15 (<i>Operator's Proposals</i>).
Optional Equipment	means equipment which is additional to the Ticketing Equipment and the RTPI Equipment and which is designed to be compatible with and expand the scope of the Ticketing System or the RTPI System.
Optional System Functionality	means additional operational management functionality of the RTPI System or Ticketing System, offered by the relevant supplier.
Origin	has the meaning given in paragraph 5.2 (<i>Calculation of Performance Deductions</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Outstanding Payment	<p>means an amount due and payable by either:</p> <p>(a) GWRC to the Operator; or</p> <p>(b) the Operator to GWRC,</p> <p>under this Partnering Contract which is not the subject of a good faith dispute and which exceeds \$100,000 (which amount shall not be Indexed) in aggregate.</p>
P_n	has the meaning given in paragraph 2 (<i>Definitions</i>) of Schedule 14 (<i>Change Events and Net Financial Impact</i>).

Parent Company Guarantee	means a guarantee given by the Guarantor in the form set out in Annexure 9 (<i>Parent Company Guarantee</i>).
Partnering Contract	has the meaning given in paragraph 2 of the Articles of Agreement.
Partnering Principles	means the principles and methods of working together described at clause 3.1 (<i>Partnering Principles</i>).
Party	means each of the Operator and GWRC and "Parties" shall be construed accordingly.
Passenger Operating Services	means the services described at paragraph 3 (<i>Passenger Operating Services</i>) of Schedule 3 (<i>Passenger Services</i>).
Passenger Service Licence	has the meaning given in the Land Transport Act.
Passenger Services	means the obligations of the Operator and the services to be provided by the Operator in each case set out at Schedule 3 (<i>Passenger Services</i>), including: <ul style="list-style-type: none"> (a) Passenger Operating Services; and (b) PT Network Project Services.
Passenger Services Objectives and Outcomes	means the objectives and outcomes described at paragraph 2.1 (<i>Objectives and Passenger Services outcomes</i>) of Schedule 3 (<i>Passenger Services</i>).
Patronage Excess	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Patronage Projection	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Patronage Shortfall	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Payment Schedule	has the meaning given in paragraph 2 (<i>Definitions</i>) of Schedule 14 (<i>Change Events and Net Financial Impact</i>).
Peak Times	has the meaning given in paragraph 25.1 (<i>Peak Times and Off Peak Times</i>) of Schedule 2 (<i>Agreement details</i>).
Peak Vehicle Requirement or PVR	means the maximum number of Vehicles required at any time to provide Passenger Services in accordance with the Bus Unit Timetable (excluding any Spare Vehicles), as specified in paragraph 9 of

	Schedule 2 (<i>Agreement details</i>).
Performance Base	has the meaning given in paragraph 5.2 (<i>Calculation of Performance Deductions</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Performance Bond	means: <ul style="list-style-type: none"> (a) the initial performance bond to be provided by the Operator pursuant to clause 44.1; (b) each subsequent performance bond to be provided by the Operator pursuant to clause 44.2; and (c) any replacement or additional performance bond required to be provided pursuant to clauses 44.6, 44.9, 44.10 or 44.14.4.
Performance Bond Amount	has the meaning given in paragraph 28 (<i>Performance Bond Amount</i>) of Schedule 2 (<i>Agreement details</i>).
Performance Deductions	means deductions from the Services Fee calculated in accordance with paragraph 5 (<i>Calculation of Performance Deductions</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Performance Indicators or PIs	means the performance indicators set out in Appendix 6 (<i>Performance Indicators</i>) of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and any amended or additional performance indicators notified to the Operator in writing by GWRC (in its absolute discretion) from time to time (provided that any change to Performance Indicator #1 (<i>Reliability</i>) and Performance Indicator #2 (<i>Punctuality</i>) shall be effected through a Minor Contract Variation or Contract Variation (as applicable)).
Performance Payment Period	has the meaning given in paragraph 9.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Performance Payments	means performance payments calculated in accordance with paragraph 9 (<i>Calculation of Performance Payments</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Period	means each of the Financial Years specified in the first column of the Base Service Fee Table under the heading "Period".
Permitted Change of Ownership	has the meaning given to in paragraph 29.1 of Schedule 2 (<i>Agreement details</i>).
Permitted Security Interest	means any Security Interests: <ul style="list-style-type: none"> (a) referred to in paragraph 29.2 of Schedule 2 (<i>Agreement details</i>) as Permitted Security Interests as at the date of this Partnering

	<p>Contract (if any); or</p> <p>(b) in respect of which GWRC has provided its prior written consent after the date of this Partnering Contract to be Permitted Security Interests (not to be unreasonably withheld or delayed), provided that GWRC must provide such consent in respect of Security Interests over Vehicles and Depots where:</p> <p>a. GWRC has been provided with an executed Secured Lender Confirmation in respect of that Security Interest in accordance with the Transaction Documents; and</p> <p>b. in respect of Security Interests over any Transferring Assets or Transferring Asset Agreements, the terms of the Security Interest will enable:</p> <p>i. the Operator to comply with its obligations in clauses 55.9B and 55.9C and the Transferring Asset Related Party to comply with its obligations in clauses 6.7 and 6.8 of the relevant Transferring Asset Related Party Direct Deed;</p> <p>ii. the transfer of Owned Transferring Assets (as defined in the Transfer Agreement) free from Security Interests in accordance with clause 3 of the Transfer Agreement; and</p> <p>iii. the transfer of Transferring Asset Agreements free from Security Interests in accordance with a Novation Deed (as defined in the Transfer Agreement and any Lessor Direct Deed).</p>
Persistent Breach	<p>means a particular breach of this Partnering Contract by the Operator (other than a breach that is an Event of Default, Termination Event, or for which Performance Deductions or Reporting Error Deductions will be applied) where such breach has:</p> <p>(a) continued for more than 20 Business Days; or</p> <p>(b) occurred more than twice in any 3 month period; or</p> <p>(c) occurred five times or more in any 12 month period.</p>
Personal Information	has the same meaning given in section 2 of the Privacy Act.
PI Achieve Benchmark	means, in respect of a Performance Indicator, the 'PI Achieve Benchmark' applicable to that Performance Indicator as set out in Appendix 6 (<i>Performance Indicators</i>) of Schedule 5 (<i>Planning, Reporting and Meetings</i>).

Plans	means each and all of: (a) Special Events Plan; (b) Fleet Maintenance Plan; (c) Health and Safety Management Plan; (d) Risk Management Plan; (e) Staff Training Plan; (f) Emergency Management, Service Disruption and Incident Response Plan; (g) Quality Assurance Plan; (h) Environmental Management Plan; (i) Business Continuity Plan; (j) Service Cancellation Plan; (k) Revenue Protection Plan; (l) Vehicle Inspection and Cleaning Plan; and (m) Vehicle Acquisition Plan.
Platform and Layover Allocation Map	means the map setting out the allocation between the Units of the platforms and layover locations at Wellington Station or any other Interchange, as provided by GWRC to the Operator from time to time.
Potential Incoming Operator	means each person who submits or expresses an expression of interest in connection with being appointed as an Incoming Operator or who otherwise participates in a tender process or other discussions or negotiations in connection with such appointment, together with each Related Company, partner, joint venture, financier and consortium member of such person who is also participating in such tender process or negotiations.
Preliminary Commencement Certificate	means the certificate issued by GWRC to the Operator in accordance with clause 2.7 (<i>Preliminary Commencement Certificate</i>).
Prevention and Mitigation Plan	means, in respect of an Event of Default, a plan submitted by the Operator in accordance with the requirements of clause 46.3.2.
Privacy Act	means the Privacy Act 1993.
Privacy Obligations	mean the obligations of a Party which relate to any Personal Information collected, used, disclosed, stored, managed, transferred or

	<p>handled by or on behalf of that Party and which arise under:</p> <ul style="list-style-type: none"> (a) the Privacy Act; (b) any codes of practice, guidelines or information directives issued by the Office of the New Zealand Privacy Commissioner from time to time; (c) any Privacy Policies; or (d) any other Law in respect of Personal Information.
Privacy Policy	<p>means a policy, protocol, statement or procedure relating to privacy, Personal Information or data protection which apply to the Services or any Party's obligations under this Partnering Contract and includes:</p> <ul style="list-style-type: none"> (a) any policy relating to data collected through the Ticketing Equipment or the Ticketing System; (b) the GWRC Privacy Policy; and (c) the privacy policy which the Operator is required to implement pursuant to clauses 61.2 and 61.3 (<i>Operator's Privacy Policy</i>).
Procurement Documents	<p>means either:</p> <ul style="list-style-type: none"> (a) if paragraph 1.2 (<i>Bus Unit</i>) of Schedule 2 (<i>Agreement details</i>) indicates that this Partnering Contract is a Directly Appointed Unit, the ITP; or (b) if paragraph 1.2 (<i>Bus Unit</i>) of Schedule 2 (<i>Agreement details</i>) indicates that this Partnering Contract is not a Directly Appointed Unit, the RFT.
Procurement Manual	<p>means the "Procurement Manual" published by the Transport Agency, as such manual is updated, amended or replaced from time to time.</p>
Prohibited Act	<p>means:</p> <ul style="list-style-type: none"> (a) offering, giving or agreeing to give to any employee or agent of, or contractor to, GWRC, the Crown or any other Governmental Entity any gift or consideration of any kind as an inducement or reward: <ul style="list-style-type: none"> (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Partnering Contract or any Transaction Document; or (ii) for showing or not showing favour or disfavour to any person in relation to this Partnering Contract or any

	<p>Transaction Document;</p> <p>(b) entering into this Partnering Contract or any Transaction Document in connection with which commission has been paid or has been agreed to be paid by the Operator or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to GWRC;</p> <p>(c) committing any offence under any laws in any jurisdiction creating offences in respect of corrupt or fraudulent acts, in connection with the tender process for, or the award, entering into or performance of, this Partnering Contract or any Transaction Document.</p>
PT Network Documents	has the meaning given to that term in the Regional Agreement.
PT Network Projects	<p>means:</p> <p>(a) the IFT Programme; and</p> <p>(b) any other project included in an Annual Business Plan in order to:</p> <p style="padding-left: 40px;">(i) support the objectives and goals set out in the Wellington Regional Public Transport Plan;</p> <p style="padding-left: 40px;">(ii) support the public transport activities set out in the GWRC Long Term Plan; or</p> <p style="padding-left: 40px;">(iii) satisfy the legal requirements of the Transport Agency or any other Governmental Entity.</p>
PT Network Project Services	<p>means:</p> <p>(a) in respect of the IFT Programme, the Operator's obligations in clause 12.38; and</p> <p>(b) in respect of the projects referred to in paragraph (b) of the definition of PT Network Projects, the Operator's obligations in the Annual Business Plan and clause 19 (<i>Annual Business Plans</i>).</p>
PTOM	means New Zealand's public transport operating model.
PTOM Operator	means a public transport operator that has entered into a contract with GWRC to provide "public transport services" (as defined in the LTMA) in relation to a "unit" (as defined in the LTMA).

PTOM Unit	means a unit (as defined in section 5(1) of the LTMA) specified in the Wellington Regional Public Transport Plan.
Public Holiday	means a day which is a public holiday in Wellington in accordance with the Holidays Act 2003. References with respect to Public Holidays to: <ul style="list-style-type: none"> (a) "actual" means the date on which the Public Holiday falls as set out in section 44(1); and (b) "observed" means the date on which the public holiday is observed by GWRC pursuant to sections 45 or 45A of the Holidays Act 2003 or otherwise (if this is different to the "actual" date).
Public Liability Policy	means the Insurance Policy specified in clause 42.1.1(b).
Public Route	means a Route identified as a "Public Route" in Appendix 1 (<i>Bus Unit Route specifications</i>) of Schedule 2 (<i>Agreement details</i>).
Punctuality KPI	means the requirements set out at paragraph 5.6 (<i>Punctuality KPI</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Punctuality Performance Payments	means performance payments calculated in accordance with paragraph 4 (<i>Punctuality Performance Payment</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
PVR Variation Rate	means the rate of that name in Appendix 8 (<i>Net Financial Impact</i>) of Schedule 2 (<i>Agreement details</i>).
Quality Assurance Plan	means the plan contemplated by paragraph 1.4.7 of Appendix 1 (<i>Plans</i>) to Schedule 5 (Planning, Reporting and Meetings), the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
Quality Management System	means a quality management system which complies and is consistent with: <ul style="list-style-type: none"> (a) the principles of ISO 9001:2008 (whether or not such system has in fact received formal certification of compliance with such standard from an accredited certifying organisation); (b) any applicable Law; and (c) any other quality management related standard applicable to a road vehicle maintenance provider in New Zealand or a public transport operator providing passenger services on roads and

	highways in New Zealand.
Quarter	means each calendar period comprising: (a) 1 April to 30 June; (b) 1 July to 30 September; (c) 1 October to 31 December; or (d) 1 January to 31 March.
Rail Operator	means a PTOM Operator that provides scheduled passenger services in regard to a rail "unit" (as defined in section 5(1) of the LTMA).
Rail Unit	means the PTOM Unit which is for the provision of rail services.
Rates	means all rates (as defined in the Local Government (Rating) Act 2002).
Recipient	has the meaning given in clause 38.3.
Rectification Bond	means a bond provided by the Operator to GWRC in accordance with clause 56.8 (<i>Withheld amounts for rectification or provision of Rectification Bond</i>) and any replacement thereof provided pursuant to clause 44.9 or 44.14.4.
Rectification Period	means the period of time specified by GWRC pursuant to clause 56.5.2 in relation to rectification and maintenance work to be undertaken by the Operator.
Redundant Farebox Account	means a Farebox Account held with a bank which ceases to be an Approved Bank.
Region Wide Passenger Service Kilometres	means the aggregate number of kilometres travelled by vehicles whilst open to fare paying passengers to be operated by PTOM Operators in respect of PTOM Units over the 12 months following the date of this calculation based on the applicable timetables for the PTOM Units, but excluding any kilometres to be operated by rail or ferry.
Regional Agreement	means the agreement between GWRC and PTOM Operators substantially in the form set out in Schedule 10 (<i>Regional Agreement</i>), as amended or replaced from time to time in accordance with the process for changes to PT Network Documents under that agreement.
Regional Transition Plan	means the plan for the transition to the bus services that will be provided by PTOM Operators under the PTOM Units, as amended or replaced by GWRC from time to time and provided to the Operator by

	GWRC.
Regional Transport Response Team or RTRT	means the joint initiative inclusive of the Transport Agency, the New Zealand Police, Territorial Councils, transport operators and GWRC, created to permit integrated management of the transport network to facilitate the optimal movement of people where speed is of the essence to minimising risk and inconvenience during disruption events, including any successor initiative.
Registration Date	means the date on which the Vehicle is first registered with a transport authority (including compliance with licensing and taxation requirements of that transport authority) in New Zealand or any other country.
Related Company	means a "related company" as defined in the Companies Act provided that each reference to "company" in that definition shall be deemed to also include any other body corporate.
Release Date	means the date on which GWRC is obliged to return and release the relevant Performance Bond pursuant to clause 44.5.2, 44.5.3 or 44.6 (as applicable).
Relevant Month	means each calendar month during the Term provided that: <ul style="list-style-type: none"> (a) the first Relevant Month shall commence on the Commencement Date and end on the last day of the calendar month in which the Commencement Date falls; and (b) the final Relevant Month shall end on the Termination Date.
Relevant Period	means in relation to the calculation of the Aggregate Approved Revenue Service Profit Amount, each period as is contemplated by the applicable Annual Business Plan or otherwise agreed by the Operator and GWRC in writing.
Reliability KPI	means the requirements set out at paragraph 5.3 (<i>Reliability KPI</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Reporting Error	means any error, inaccuracy, anomaly or omission in respect of: <ul style="list-style-type: none"> (a) any of the reports to be provided by the Operator pursuant to paragraph 3 (<i>Reports</i>) of Schedule 5 (<i>Planning, Reporting and Meetings</i>) or any other provision of this Partnering Contract; or (b) any of the information to be provided by the Operator pursuant to clause 35.4.3.
Reporting Error	means deductions to be made in accordance with paragraph 6

Deductions	<i>(Calculation of Reporting Error Deductions)</i> of Schedule 6 (<i>Financial and Performance Regime</i>).
Reputable Insurer	means a financially sound and reputable insurer which is fully authorised to carry on insurance business and which has a credit rating of no less than the Required Rating.
Required Rating	means: <ul style="list-style-type: none"> (a) for the purposes of the issuer of a Bond, a long term credit rating of no less than A from Standard & Poor's, a division of McGraw-Hill Financial (or the successor to its ratings business); or (b) for the purposes of an insurer, a long term credit rating of no less than A- from Standard & Poor's, a division of McGraw-Hill Financial (or the successor to its ratings business) or the equivalent long term credit rating from Moody's Investors Service Inc.
Revenue Protection Plan	means the plan contemplated by paragraph 1.4.11 of Appendix 1 (<i>Plans</i>) to Schedule 5 (<i>Planning, Reporting and Meetings</i>), the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
Revenue Protection Report	has the meaning given in Appendix 7 (<i>Revenue Protection Survey</i>) to Schedule 5 (<i>Planning, Reporting and Meetings</i>).
Revenue Protection Survey	means the survey to be undertaken by the Surveyor in accordance with Appendix 7 (<i>Revenue Protection Survey</i>) to Schedule 5 (<i>Planning, Reporting and Meetings</i>).
Revenue Protection Survey Period	means the period during which GWRC will audit the Operator's compliance with PI #4 (either by engaging a Surveyor in accordance with Appendix 7 (<i>Revenue Protection Survey</i>) of Schedule 5 (<i>Planning, Reporting and Meetings</i>) or carrying out an Electronic Revenue Protection Survey), which period must not fall within public school holiday periods.
Revenue Service Hour	means an hour during which a Vehicle is travelling and open to fare paying passengers for Scheduled Services or Special Event Services (as applicable), which shall: <ul style="list-style-type: none"> (a) in the case of a Scheduled Service, be calculated by reference to the Bus Unit Timetable; and (b) in the case of a Special Event Service, be the number of

	Revenue Service Hours in respect of that Special Event Service as agreed by GWRC and the Operator in advance.
Revenue Service Kilometre	<p>means a kilometre travelled by a Vehicle whilst open to fare paying passengers for Scheduled Services or Special Event Services (as applicable), which shall:</p> <p>(a) in the case of a Scheduled Service, be calculated using the method described below in this definition by reference to the distance travelled between the Origin and Destination specified in Appendix 2 (<i>Bus Unit Timetable</i>) of Schedule 2 (<i>Agreement details</i>) (as amended by Bus Unit Timetable changes and Contract Variations); and</p> <p>(b) in the case of a Special Event Service, be the number of Revenue Service Kilometres in respect of that Special Event Service as agreed by GWRC and the Operator in advance using the method described below in this definition.</p> <p>The method used for calculating the Revenue Service Kilometres in respect of Scheduled Services and Special Event Services will be the road centreline distances between the Origin and Destination for each Scheduled Service or Special Event Service (as applicable) as calculated by GWRC's scheduling software 'INIT Mobile Plan'. Bus Stop co-ordinates are maintained by GWRC based on the global position system (GPS) location of Bus Stops. Road centreline data used is from OpenStreetMap® and is typically updated once a year in INIT Mobile Plan. OpenStreetMap® is open data, licensed under the Open Data Commons Open Database License (ODbL) by the OpenStreetMap Foundation (OSMF).</p>
RFT	means the request for tenders and associated documentation (in each case as amended from time to time) issued by GWRC in relation to the award of this Partnering Contract.
Risk Management Plan	means the plan contemplated by paragraph 1.4.4 of Appendix 1 (<i>Plans</i>) to Schedule 5 (<i>Planning, Reporting and Meetings</i>), the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
Route	means each route comprised within the Bus Unit along which the Operator is to provide Passenger Services between specified termini, as described in Appendix 1 (<i>Bus Unit Route specifications</i>) and which follows the directions set out at Appendix 3 (<i>Route directions: Public Routes</i>) or Appendix 4 (<i>Route directions: School Routes</i>) (as applicable) to Schedule 2 (<i>Agreement details</i>) and as varied from time to time pursuant to Schedule 14 (<i>Change Events and Net Financial</i>

	<i>Impact</i>).
RTPI Equipment	means the equipment, systems and items specified in paragraph 7 (<i>RTPI Equipment</i>) of Schedule 2 (<i>Agreement details</i>) as may be altered, upgraded or replaced pursuant to clause 12 (<i>Other assets and systems used in the provision of the Services</i>) or the Bus Services Equipment Operations Manual or otherwise by GWRC (acting reasonably).
RTPI System	means the real time passenger information system used for the purposes contemplated by this Partnering Contract, including the RTPI Equipment, as may be altered, upgraded or replaced pursuant to clause 12 (<i>Other assets and systems used in the provision of the Services</i>) or the Bus Services Equipment Operations Manual or otherwise by GWRC (acting reasonably).
Rules	has the meaning given to it in the Land Transport Act.
Run Board	<p>means the Operator's scheduled sequential allocation of journeys to be undertaken by a specific Vehicle during a defined time period, provided that:</p> <ul style="list-style-type: none"> (a) this shall include all movements which the Vehicle is expected to make during the defined time period, from when the Vehicle departs a Depot to when the Vehicle returns to a Depot; (b) this shall include both in-service and dead-running Vehicle movements; (c) the run board shall relate to the Vehicle movements only and not the driver shift; (d) the same run board number shall apply to weekday trips that operate during both school term and school holiday periods; and (e) trip times must not overlap (that is where a Vehicle is scheduled to conclude a journey after it is scheduled to start a subsequent journey).
Safety Law	<p>means any Law in relation to health, safety and/or welfare of people including the following:</p> <ul style="list-style-type: none"> (a) the LTMA; (b) HSW Act; (c) Machinery Act 1950; (d) Land Transport Act;

	<ul style="list-style-type: none"> (e) the Vulnerable Children Act 2014; (f) Dog Control Act 1996, in particular section 75 relating to disability assist dogs; (g) any Rule and any regulation or subordinate legislation made under the above statutes; (h) any of the following statutes (or any regulations or subordinate legislation made under the following statutes) under which WorkSafe has functions: <ul style="list-style-type: none"> (i) Electricity Act 1992; (ii) Gas Act 1992; (iii) Hazardous Substances and New Organisms Act 1996; and (i) any approved codes of practice enforceable under any of the above mentioned statutes, regulations or subordinate legislation.
Scheduled Service	means any single, one way passenger service forming part of the Bus Unit Timetable and any Alternative Services (including Public Routes and School Routes).
School Route	means a Route identified as a "School Route" in Appendix 1 (<i>Bus Unit Route specifications</i>) of Schedule 2 (<i>Agreement details</i>).
Secured Lender	means any person who from time to time has (or holds the benefit of) a Security Interest over any or all of the assets, rights, interests or business of the Operator or over its undertaking (in whole or in part).
Secured Lender Confirmation	means the written confirmation to be provided by a Secured Lender in the form set out in Annexure 23 (<i>Secured Lender Confirmation</i>).
Security Interest	means each and all of the following: <ul style="list-style-type: none"> (a) any mortgage, charge, lien, conditional sale agreement (including an agreement to sell subject to retention of title), hire purchase agreement, pledge or other security interest securing the obligation of any person or any other agreement or arrangement having a similar effect; and (b) any security interest within the meaning ascribed to that term under section 17 of the Personal Property Securities Act 1999.
Senior Executives Meeting	means each panel established under clause 45.4 (<i>Referral to Senior Executives Meeting</i>).
Service Cancellation	means the plan contemplated by paragraph 1.4.10 of Appendix 1

Plan	(Plans) to Schedule 5 (<i>Planning, Reporting and Meetings</i>), the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
Service Disruption	means a temporary disruption or delay of greater than or equal to 15 consecutive minutes to any Scheduled Services or Special Event Services, including disruptions caused by: <ul style="list-style-type: none"> (a) 3rd party works; (b) road works; (c) street events and other road changes; (d) weather and other disaster events; and (e) Operator or Operator Associate planned activity [REDACTED]
Service Hours Rate	means the rate of that name in Appendix 8 (<i>Net Financial Impact</i>) of Schedule 2 (<i>Agreement details</i>).
Service Kilometres Rate	means the rate of that name in Appendix 8 (<i>Net Financial Impact</i>) of Schedule 2 (<i>Agreement details</i>).
Service Recommencement Date	means the date specified by GWRC as being the "service recommencement date" in a notice given under clause 50.15.2 (<i>Effect of issue of Force Majeure Continuation Notice</i>).
Services	means the services, obligations, warranties and representations of the Operator referred to in clause 8.1.
Services Employees	means individuals employed (or otherwise engaged) by the Operator or an Operator Associate wholly or mainly in the provision of the Services (including casual or temporary workers).
Services Fee	means, subject to clause 50.15.4 (<i>Effect of issue of Force Majeure Continuation Notice</i>), the fee determined in accordance with paragraph 1.2 (<i>Services Fee</i>) of Schedule 6 (<i>Financial and Performance Regime</i>) as adjusted from time to time in accordance with the provisions of this Partnering Contract.
Severe Non-Compliance	has the meaning given in Schedule 4 (<i>Vehicle Quality Standards</i>).
Shadow Fare	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).



Shareholder	means any person from time to time holding share capital in the Operator or the Guarantor.
Small Vehicle or SV	means a Vehicle with a passenger capacity applicable to "Small Vehicle (SV)" set out in Table 1 (<i>Vehicle Sizes</i>) row T1.1 of Schedule 4 (<i>Vehicle Quality Standards</i>) and with a Vehicle length equal to or less than the applicable maximum Vehicle length in Table 1 (<i>Vehicle Sizes</i>) row T1.1 (but which is not a Medium Vehicle, a Large Vehicle or a Double Decker).
Spare Vehicle	means a passenger service vehicle which complies with: <ul style="list-style-type: none"> (a) all applicable Law; and (b) all requirements of this Partnering Contract that apply to the Vehicles, and which forms part of the Fleet List and is suitable for use in provision of Passenger Operating Services but is additional to the maximum number of Vehicles required at any time to provide Passenger Services in accordance with the Bus Unit Timetable.
Special Event Notice	means a notice in relation to Special Event Services which is given by GWRC pursuant to paragraph 3.18 of Schedule 3 (<i>Passenger Services</i>).
Special Event Service	means any single, one way passenger service provided in relation to Special Events and which are additional to Scheduled Services and: <ul style="list-style-type: none"> (a) specified in the relevant Special Events Plan approved as part of the Annual Business Plan; or (b) approved by GWRC in accordance with paragraph 3.22.3 of Schedule 3 (<i>Passenger Services</i>).
Special Event Services Fee	means the fee payable in connection with the provision of a Special Event Service calculated in accordance with paragraph 3 (<i>Calculation of the Special Event Services Fee</i>) of Schedule 6 (<i>Financial and Reporting Regime</i>) and Appendix 7 (<i>Special Event Services Rates</i>) of Schedule 2 (<i>Agreement details</i>).
Special Events	means events as determined by GWRC which take place in the Wellington region including those of a sporting, cultural or community nature and for which it is unlikely that the Scheduled Services provided by the Operator and other PTOM Operators will be sufficient to meet public demand.

Special Events Plan	means the plan setting out the Special Event Services which the Operator will provide and containing the information specified at paragraph 1.4.1 of Appendix 1 (<i>Plans</i>) of Schedule 5 (<i>Planning, Reporting and Meetings</i>) the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
Specific Breach	means a breach by the Operator of any of those provisions referred to in clause 55.31 or of the Transfer Agreement.
Specific Change in Law	means a Change in Law the terms of which apply specifically to the provision of public transport services on roads in New Zealand by way of "motor vehicles" which are "large passenger service vehicles" but not to the provision of public transport services by way of any other transport mode or using any other "vehicle", provided that: <ul style="list-style-type: none"> (a) for the avoidance of doubt, any Change of Law which applies to the provision of public transport services by way of "light rail vehicle" or "rail vehicle" shall not be a Specific Change in Law for the purposes of this Partnering Contract; and (b) for the purposes of this definition, terms which appear in quotation marks shall have the meaning ascribed to them in the Land Transport Act.
Staff Training Plan	means the plan contemplated by paragraph 1.4.5 of Appendix 1 (<i>Plans</i>) to Schedule 5 (<i>Planning, Reporting and Meetings</i>), the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
Sub-Region	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Supplier	has the meaning given in clause 38.3.
Surveying Organisation	means each person appointed by GWRC pursuant to paragraph 5 (<i>Appointment and role of Surveying Organisation</i>) of Annexure 8 (<i>Customer Satisfaction Survey</i>) to undertake a Customer Satisfaction Survey.
Surveyor	means a person or entity appointed by GWRC pursuant to Appendix 7 (<i>Revenue Protection Survey</i>) to Schedule 5 (<i>Planning, Reporting and Meetings</i>) to undertake Revenue Protection Surveys.
Suspension Period	means the period commencing on the date on which a Force Majeure

	Continuation Notice is received by the Operator and ending on the earlier of the Service Recommencement Date and the Termination Date.
Targeted Route	means a Route referred to in Appendix 1 (<i>Bus Unit Route specifications</i>) of Schedule 2 (<i>Agreement Details</i>) as a 'Targeted Route' or 'Targeted', which term is defined in the Wellington Regional Public Transport Plan.
Tax	means any present or future tax, levy, impost, deduction, charge, duty or withholding of any nature (other than GST) which is levied or imposed by a Governmental Entity, together with interest, penalties, charges, fees, or other amounts (if any) imposed or made on or in respect of the above and Taxation will be construed accordingly.
Tender	means the Operator's final submission provided to GWRC during the procurement process for this Partnering Contract in response to the Procurement Documents.
Term	means the period from and including the Transfer Time until and including the earlier of: <ul style="list-style-type: none"> (a) the date on which this Partnering Contract is terminated in accordance with its terms; and (b) the date on which this Partnering Contract expires in accordance with clause 4.4 (<i>Expiry of Term</i>).
Termination Date	the date on which this Partnering Contract terminates or expires.
Termination Event	means each of those events listed in clause 47.4.
Third Party Intellectual Property	means Intellectual Property Rights and Intellectual Property Materials owned by third parties (other than Operator Associates) which the Operator or an Operator Associate uses in connection with the performance of obligations under this Partnering Contract or any other Transaction Documents.
Third Party Licensed Software	means Third Party Intellectual Property comprising standard off-the-shelf software provided by the Operator to GWRC under this Partnering Contract.
Third Party Transferring Asset	means a Transferring Asset legal title of which is vested in a person other than the Operator or a Transferring Asset Related Party.
Ticket Offence	means travelling on a Scheduled Service or Special Event Service, or

	<p>entering into a Designated Area:</p> <p>(a) without holding a valid entitlement to travel on those services or to be present in the Designated Area; or</p> <p>(b) in manner which constitutes an offence at Law in connection with fraudulent or ticketless travel or the holding of or failure to hold a valid ticket, concession or other fare media,</p> <p>further details of which are set out in paragraph 7.20 of Annexure 6 (<i>Fares, Ticketing and Enforcement Requirements</i>) and the Conditions of Carriage, subject to any circumstances in which the Conditions of Carriage may specify that a passenger is deemed to have not committed a Ticket Offence.</p>
Ticketing Equipment	means the equipment to be used by the Operator in its ticketing and revenue protection obligations in this Partnering Contract, as detailed in paragraph 8 (<i>Ticketing Equipment & Operator Ticketing Equipment</i>) of Schedule 2 (<i>Agreement details</i>), as may be altered, upgraded or replaced pursuant to clause 12 (<i>Other assets and systems used in the provision of the Services</i>) or the Bus Services Equipment Operations Manual or otherwise by GWRC (acting reasonably).
Ticketing System	means the fares and ticketing system to be procured by GWRC as detailed in the Bus Services Equipment Operations Manual and including the Ticketing Equipment, as may be altered, upgraded or replaced pursuant to clause 12 (<i>Other assets and systems used in the provision of the Services</i>) or the Bus Services Equipment Operations Manual or otherwise by GWRC (acting reasonably).
Timetable	means the timetable for every route or line making up the Wellington Public Transport Network.
Timetable Change Process	means the process set out in Annexure 1 (<i>Timetable Change Process</i>), as amended or replaced from time to time in accordance with the process for changes to PT Network Documents under the Regional Agreement.
Timetable Change Proposal	has the meaning given in paragraph 7.1 of Annexure 1 (<i>Timetable Change Process</i>).
Timetable Review Meeting	has the meaning given in paragraph 8.1 of Annexure 1 (<i>Timetable Change Process</i>).
Timetabled Service Connections	means connections between "public transport services" (as defined in the LTMA), as referred to in Appendix 2 (<i>Bus Unit Timetable</i>) to Schedule 2 (<i>Agreement details</i>) and summarised in paragraph 17

	<i>(Timetabled Service Connections)</i> of Schedule 2 <i>(Agreement details)</i> .
TPTD	<p>means each of the following Tender Participation and Transition Deeds, copies of which have been provided to the Operator:</p> <ul style="list-style-type: none"> (a) dated 2 November 2016 between GWRC and New Zealand Bus Limited and its wholly owned subsidiaries Cityline (NZ) Limited, North City Bus Limited, and Wellington City Transport Limited; (b) dated 7 September 2016 between GWRC and Tranzit Group Limited; (c) dated 7 September 2016 between GWRC and Uzabus Limited; (d) dated 7 September 2016 between GWRC and Mana Coach Services Limited.
TPTD Bus Services	means the existing bus passenger services performed by Existing Operators, as identified in the TPTDs.
Transaction Document	<p>means:</p> <ul style="list-style-type: none"> (a) this Partnering Contract; (b) the Parent Company Guarantee (if applicable); (c) each Bond; (d) the Regional Agreement; (e) the Deed of Accession to the Regional Agreement; (f) each direct deed entered into pursuant to clause 17.1.2 (<i>Key Subcontracts</i>); (g) each Transfer Agreement entered into pursuant to this Partnering Contract or pursuant to a Transferring Asset Related Party Direct Deed; (h) each Transferring Asset Related Party Direct Deed entered into pursuant to clause 55.1; (i) each Lessor Direct Deed entered into pursuant to clause 55.2 or pursuant to a Transferring Asset Related Party Direct Deed; (j) any other document or agreement that GWRC and the Operator agree is to be a Transaction Document for the purpose of this Partnering Contract; and (k) a document or agreement between GWRC and/or the Operator and/or any other party which is entered into or provided under or in connection with or for the purposes of amending or novating

	any of the above.
Transfer Agreement	means an agreement in the form set out in Annexure 5 (<i>Transfer Agreement</i>).
Transfer Price	means the price payable for a Transferring Asset under a Transfer Agreement as calculated in accordance with the Transfer Agreement.
Transfer Time	means 3:00am (or such other time as GWRC may specify in the Preliminary Commencement Certificate) on the Commencement Date.
Transferring Asset Agreement	means: <ul style="list-style-type: none"> (a) those documents set out at Annexure 21 (<i>Approved Transferring Asset Agreements</i>) and which for ease of reference are identified in paragraph 19 (<i>Approved Transferring Asset Agreements</i>) of Schedule 2 (<i>Agreement details</i>); and (b) any lease, licence or other arrangement under which a Third Party Transferring Asset is made available for use by the Operator or a Transferring Asset Related Party, the terms of which have been approved in writing by GWRC pursuant to clause 55.5 (but excluding any lease, licence or other arrangement between the Transferring Asset Related Party and the Operator under which the Third Party Transferring Asset is made available by the Transferring Asset Related Party for use by the Operator).
Transferring Asset Inspection	means an inspection of the Transferring Assets carried out by or on behalf of GWRC pursuant to clause 56.1 (<i>Conduct of inspection</i>).
Transferring Asset Related Party	means: <ul style="list-style-type: none"> (a) any subcontractor of the Operator; (b) any Related Company of the Operator; or (c) any other person that Controls, or is Controlled by, the Operator (directly or indirectly), in each case who makes any Transferring Asset available to the Operator for use in the provision of the Services.
Transferring Asset Related Party Direct Deed	means an agreement in the form set out in Annexure 17 (<i>Transferring Asset Related Party Direct Deed</i>).
Transferring Assets	means the Transferring Vehicles and the Transferring Depots, as may be replaced (subject to clause 10.9A in the case of the Transferring

	Vehicles) in accordance with the Vehicle Acquisition Plan or the Depot Acquisition Programme (as applicable).
Transferring Depot	means those facilities referred to in paragraph 13 (<i>Transferring Depots</i>) of Schedule 2 (<i>Agreement details</i>), including all fixtures, fittings, equipment and other items specified in that paragraph or otherwise listed in the Depot Acquisition Programme.
Transferring Vehicles	means those Vehicles referred to in paragraph 14 (<i>Transferring Vehicles</i>) of Schedule 2 (<i>Agreement details</i>) and any other "Transferring Vehicle" which GWRC has agreed the Operator may acquire (or acquire the use of) pursuant to clause 10.9A.
Transition-In Period	means the periods during which the Transition Plan and the Regional Transition Plan are to apply and have effect, as specified in clauses 5.2 and 5.7 respectively.
Transition Plan	means the transition plan set out at Appendix 1 (<i>Operator's Transition Plan</i>) of Schedule 13 (<i>Transition Plan</i>), as amended from time to time in accordance with clauses 5.4 to 5.6.
Transport Agency	means the New Zealand Transport Agency established under section 93 of the LTMA and includes its successors.
Transport Agency Index	means the "Bus Index" published by the Transport Agency in the worksheet entitled "Table 3: New Cost Indices for Public Transport" of the spreadsheet maintained and published by the Transport Agency entitled "Latest Cost Index Value for Public Transport" or any successor or replacement index thereto as nominated by the Transport Agency.
Trip	means that portion of a Scheduled Service travelled by a passenger on a single Route.
Uniform Specification	means the specification and requirements in respect of the uniform set out in the Metlink Branding Manual.
Unsuitable Third Party	means any person: <ul style="list-style-type: none"> (a) whose activities are, in the reasonable opinion of GWRC, incompatible with any operations or activities carried out by GWRC for the purposes contemplated by the Transaction Documents or any other of GWRC's legal duties or other functions; and/or (b) who is, in the reasonable opinion of GWRC, inappropriate because of specific information received by GWRC from the Serious Fraud Office, the New Zealand Police or other applicable

	law enforcement agency, about the unsuitability of that person to act in relation to the Services.
Use	<p>means:</p> <p>(a) in relation to any Intellectual Property Rights and Intellectual Property Material that is not software, the accessing, possessing, using, storing, copying, and adapting of that right or material, and includes the incorporation of that Intellectual Property Right or Intellectual Property Material with other materials and the creation of new versions of or derivatives from those Intellectual Property Rights or Intellectual Property Materials; and</p> <p>(b) in relation to software that is embedded in a Transferring Asset, the accessing, possessing, and using of the software in connection with the operation and maintenance of such Transferring Assets.</p>
User Workstation	a desktop personal computer with multiple visual display units and "ACIS RTPI" software applications including ACIS Horizon, which provides the Operator's user interface with the RTPI System.
Valid Trip	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Variation Order	has the meaning given in paragraph 2.1 of Schedule 14 (<i>Change Events and Net Financial Impact</i>).
Variation Proposal	means a notice given by GWRC under paragraph 6.2 (<i>Issue of Variation Proposal</i>) of Schedule 14 (<i>Change Events and Net Financial Impact</i>) setting out details of a proposed Contract Variation which GWRC is considering.
Variation Response	means a response from the Operator to GWRC under paragraph 6.4 (<i>Variation Response</i>) of Schedule 14 (<i>Change Events and Net Financial Impact</i>).
Vehicle	means each vehicle (as defined in the Land Transport Act) from time to time used by the Operator or an Operator Associate in the provision of the Passenger Services or which is acquired under the Vehicle Acquisition Plan and in each case includes all assets, items and systems installed or located thereon.
Vehicle Acquisition Plan	means the plan contemplated by paragraph 1.4.13 of Appendix 1 (<i>Plans</i>) to Schedule 5 (<i>Planning, Reporting and Meetings</i>), the initial version of which is set out in the Initial Annual Business Plan, and, subject to clause 10.9A, as updated or replaced from time to time in accordance with this Partnering Contract.

Vehicle Inspection and Cleaning Plan	means the plan contemplated by paragraph 1.4.12 of Appendix 1 (<i>Plans</i>) to Schedule 5 (<i>Planning, Reporting and Meetings</i>), the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
Vehicle Quality Standards or VQS	means Schedule 4 (<i>Vehicle Quality Standards</i>).
Vehicle Size Classification	means the size of Vehicle (either a Small Vehicle, Medium Vehicle, Large Vehicle or Double Decker, each as defined in this Schedule 1 by reference to the VQS, or a different Vehicle type referred to in paragraph 15 (<i>Bus Unit specific obligations</i>) of Schedule 2 (if applicable)) that must be used to provide a Scheduled Service. The Bus Unit Timetable specifies for Scheduled Services on: (a) Public Routes, the size of Vehicle which must be used; and (b) School Routes, the size of Vehicle which must be used.
Vehicle Sticker	means any sticker (excluding any "passed inspection sticker") or other correction notice issued by the CVIU.
Waiting Vehicle	has the meaning given in paragraph 17.5 (if any) of Schedule 2 (<i>Agreement Details</i>).
Weekly Operational Report	means each weekly operational report to be provided by the Operator in accordance with this Partnering Contract and containing the matters referred to in Appendix 4 (<i>Weekly, monthly and annual reports</i>) of Schedule 5 (<i>Planning, Reporting and Meetings</i>).
Wellington Network Timetable Committee	has the meaning given to it in clause 1.1 of the common access terms dated 20 June 2012, a copy of which is attached as Schedule 12 of the "Wellington Network Agreement" between KiwiRail Holdings Limited and GWRC dated 27 June 2013.
Wellington Public Transport Network	means the PTOM Units that make up the public transport network managed by GWRC.
Wellington Region Bus Network	means the PTOM Units that make up the bus element of the Wellington Public Transport Network.
Wellington Regional Public Transport Forum	has the meaning given to it in the Regional Agreement.
Wellington Regional	means the regional public transport plan for Wellington adopted under

Public Transport Plan	the LTMA (as amended, updated, supplemented or replaced from time to time).
Withheld Amount	means any amounts withheld or drawn down by GWRC under clause 56.7 plus the amount of Excess (if any) which the Operator pays to GWRC under clause 56.7.
Working Timetable	means the working timetable prepared and updated in accordance with paragraphs 3.32 to 3.35 of Schedule 3 (<i>Passenger Services</i>) and used by the Operator for the management of all Vehicle movements required for Scheduled Services and Special Event Services, which must only include the information required in paragraph 3.32 of Schedule 3 (<i>Passenger Services</i>).
WorkSafe	means WorkSafe New Zealand established by section 5 of the WorkSafe New Zealand Act 2013.
Year	means each of the following periods: (a) the initial period starting on the Commencement Date and ending on the next 30 June; (b) after the end of the initial period referred to in paragraph (a), each subsequent period commencing on 1 July in any year and ending on 30 June in the following year, provided that the last Year shall end on the Termination Date.
Year Date	means the first day of each Year.

Interpretation

2. The following rules apply unless the context requires otherwise:

- 2.1. Headings are for convenience only and do not affect interpretation;
- 2.2. The singular includes the plural and conversely;
- 2.3. A gender includes all genders;
- 2.4. If a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 2.5. A reference to a person, corporation, trust, partnership, unincorporated body, organisation or other entity includes any of them;
- 2.6. A reference to a clause, schedule, annexure or appendix is a reference to a clause of or a schedule, annexure or appendix to, this Partnering Contract, and a reference to a paragraph is to a paragraph of the same clause, schedule, annexure or appendix unless the context requires otherwise;

- 2.7. A reference to an agreement or document (including a reference to this Partnering Contract) is to the agreement or document as amended, varied or supplemented, novated or replaced, except to the extent prohibited by this Partnering Contract or that other agreement or document;
- 2.8. A reference to a person includes that person's successors, permitted substitutes and permitted assigns (and, where applicable, that person's legal personal representatives);
- 2.9. A reference to legislation or a rule or to a provision of legislation or rule includes a modification or re-enactment of it, a legislative provision or rule substituted for it and a regulation or statutory instrument issued under it;
- 2.10. A reference to conduct includes an act, omission, statement and undertaking, whether or not in writing;
- 2.11. A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- 2.12. A reference to dollars and \$ is to New Zealand currency;
- 2.13. A reference to a month or to a year is to a calendar month or a calendar year;
- 2.14. A reference to a right or an obligation of any two or more persons confers that right, or imposes that obligation as the case may be, on each of them severally and all of them jointly;
- 2.15. A reference to a Party or Parties is a reference to each of those persons separately;
- 2.16. A reference to writing includes an email and any other means of reproducing words in a tangible and permanently visible form;
- 2.17. A reference to an asset includes any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived from, the property or asset;
- 2.18. A reference to any governmental department, professional body, committee, council, local authority, council controlled organisation or other body includes the successors to that body or any relevant activity or function of that body;
- 2.19. A reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;
- 2.20. A reference to includes or including or other similar words should be construed without limitation;
- 2.21. Where the time for performing an obligation or exercising a right is expressed by reference to a period of one or more months before or after a specified date (the **reference date**) that time period will be determined by calculating the number of months specified from the reference date, with the period expiring on the date which is

the equivalent date to the reference date, or if there is no such date in the final month, the last day of that final month;

- 2.22. Except in the case of references to any Immediate Report, where the time for performing an obligation or exercising a right is expressed as being "immediately" following or after an event or circumstance occurring, it means as soon as reasonably practicable but no later than 24 hours following or after that event or circumstance occurring; and
- 2.23. A reference to obligations includes indemnities, warranties, representations and undertakings and a reference to breach or breach of obligations includes breach of any indemnities, warranties, representations and undertakings.

Consents or approvals

3. If the doing of any act, matter or thing under this Partnering Contract is dependent on the consent or approval of a Party or is within the discretion of a Party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the Party at its absolute discretion unless express provision to the contrary is made.

Priority within and between Transaction Documents

4. If there is any inconsistency between the provisions of any two or more Transaction Documents or between two or more provisions of this Partnering Contract, the Transaction Documents or the provisions in this Partnering Contract (as applicable) will be given priority in interpretation in the following order to the extent of any inconsistency:
 - 4.1. paragraphs 1 to 3 of the Articles of Agreement;
 - 4.2. subject to paragraph 11 (*Key dates*) of Schedule 2 (*Agreement details*), Schedule 2 (*Agreement details*);
 - 4.3. clauses 1 to 78 of this Partnering Contract;
 - 4.4. all other Schedules and Annexures to this Partnering Contract; and
 - 4.5. any other Transaction Document.

Schedules and Annexures

Schedule 2 - Agreement details	(see Articles of Agreement)
Schedule 3 – Passenger Services	(see DSM)
Schedule 4 – Vehicle Quality Standards	(see DSM)
Schedule 5 – Planning, Reporting and Meetings	(see DSM)
Schedule 6 – Financial and Performance Regime	(see DSM)
Schedule 7 – Not used	(see DSM)
Schedule 8 – Warranties and Representations	(see DSM)
Schedule 9 – Facilities Protocol	(see DSM)
Schedule 10 – Regional Agreement	(see DSM)
Schedule 11 – Handover Package for Transferring Assets	(see DSM)
Schedule 12 – Not used	(see DSM)
Schedule 13 - Transition Plan	(see DSM)
Schedule 14 - Change Events and Net Financial Impact	(see DSM)
Schedule 15 - Operator's Proposals	(see DSM)
Annexure 1 – Timetable Change Process	(see DSM)
Annexure 2 –Customer Service Standards	(see DSM)
Annexure 3 – Customer Communication and Information Systems	(see DSM)
Annexure 4 – Not used	(see DSM)
Annexure 5 – Transfer Agreement	(see DSM)
Annexure 6 – Fares, Ticketing and Enforcement Requirements	(see DSM)
Annexure 7 – Conditions of Carriage	(see DSM)
Annexure 8 - Customer Satisfaction Survey	(see DSM)
Annexure 9 – Parent Company Guarantee	(see DSM)
Annexure 10 – Bond	(see DSM)
Annexure 11 – Preliminary Commencement Certificate	(see DSM)
Annexure 12 – Incoming Operator Confidentiality Undertaking	(see DSM)
Annexure 13 – Access Indemnity	(see DSM)
Annexure 14 - Form of Payment Claim	(see DSM)
Annexure 15 - Variation Forms	(see DSM)
Annexure 16 - Not used	(see DSM)
Annexure 17 - Transferring Asset Related Party Direct Deed	(see DSM)
Annexure 18 - Key Subcontractor Direct Deed	(see DSM)
Annexure 19 - GWRC Privacy Policy	(see DSM)

Annexure 20 - Not used	(see DSM)
Annexure 21 - Approved Transferring Asset Agreements	(see DSM)
Annexure 22 - Lessor Direct Deed	(see DSM)
Annxure 23 – Secured Lender Confirmation	(see DSM)