

Annexure 1

Timetable Change Process

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Part A - Introduction, definitions and process for changing this Annexure

1 Purpose of this Annexure

- 1.1 This Annexure sets out the Timetable Change Process that applies to GWRC and each PTOM Operator that is a party to a Partnering Contract. Each Partnering Contract requires the relevant PTOM Operator and GWRC to ensure that all changes to the Timetable or the relevant Unit Timetable occur in accordance with this Timetable Change Process.
- 1.2 For the avoidance of doubt, this Annexure shall not apply to any change to a Unit Timetable to the extent that such change is a consequence of, or arises in connection with, the provision by or on behalf of the relevant PTOM Operator of any Special Event Service.

2 Definitions used in this Annexure

- 2.1 Capitalised terms used in this Annexure are as defined in the Regional Agreement, or in the relevant Partnering Contract.

3 Process for changing this Annexure

- 3.1 Any changes to this Annexure shall only occur in accordance with the change process for PT Network Documents set out in the Regional Agreement.

Part B - Short form process for Timetable changes affecting a single PTOM Operator

3A Application of this Part B

3A.1 This Part B shall only apply where a proposed change to the Timetable or a Unit Timetable affects:

3A.1.1 one Unit Timetable and no other Unit Timetable; or

3A.1.2 Unit Timetables in respect of PTOM Units which are operated by the same PTOM Operator.

3A.2 Where paragraph 3A.1 does not apply to a proposed change to the Timetable or a Unit Timetable, the process contained in this Part B shall not apply and such change must be proposed and (if applicable) made in accordance with Part C of this Annexure.

3B Process

3B.1 If paragraph 3A.1 applies in respect of a proposed change to the Timetable or any Unit Timetable, then:

3B.1.1 Part C of this Annexure 1 (*Timetable Change Process*) shall not apply; and

3B.1.2 GWRC or the relevant PTOM Operator may propose the change by serving a written notice on the other setting out:

- (a) details of the proposed change, including a description of the routes and Scheduled Services affected;
- (b) a draft of the relevant part of the Unit Timetable and Working Timetable in a standard matrix timetable format specified by GWRC, including all proposed time and route variation details;
- (c) the reasons for the proposed change;
- (d) confirmation that the proposed change will not impact or affect the Unit Timetable in respect of any PTOM Unit operated by any other PTOM Operator;
- (e) the likely resource changes arising from the implementation of the proposed change;
- (f) in the case of any change relating to a bus Unit, any change to the PVR arising in connection with the proposed change;
- (g) the proposed date for implementation of the timetable change;

- (h) any cost implications arising from the proposed change, including:
 - (i) the Net Financial Impact of the proposed timetable change calculated in accordance with the provisions of the relevant Partnering Contract; and
 - (ii) the impact (if any) on GWRC's reliance on public subsidies needed to fund the proposed change; and
- (i) any other matter that the Party proposing the change considers relevant to the consideration of the proposed timetable change.

3B.2 Subject to paragraph 3B.3:

- 3B.2.1 as soon as reasonably practicable (and in any event within 5 Business Days) following the date of receipt by the receiving Party of a notice issued pursuant to paragraph 3B.1.2, GWRC and the relevant PTOM Operator shall meet for the purposes of discussing and agreeing matters related to the proposed change to the Unit Timetable(s); and
- 3B.2.2 within 10 Business Days following the meeting referred to in paragraph 3B.2.1, GWRC shall issue a written notice to the relevant PTOM Operator either:
 - (a) requiring the PTOM Operator to implement the proposed change to the relevant Unit Timetable(s), in which event:
 - (i) the PTOM Operator shall implement the proposed change with effect from the date specified in the notice given pursuant to paragraph 3B.1.2 (or such other date as may be agreed between GWRC and the PTOM Operator); and
 - (ii) the Services Fee shall be adjusted in accordance with the provisions of the relevant Partnering Contract; or
 - (b) rejecting or withdrawing the proposed change to the Unit Timetable, in which event:
 - (i) the PTOM Operator shall not implement the proposed change; and
 - (ii) the PTOM Operator shall have no rights or entitlement in connection with the proposed change to the Unit Timetable(s) (including rights to additional payment, compensation or relief from its obligations).

3B.3 In relation to bus Units only, where GWRC is required by paragraph 3.4.2 of Schedule 3 (*Passenger Services*) of the relevant Partnering Contract to issue a notice under paragraph 3B.1.2:

3B.3.1 the PTOM Operator shall implement the change to the relevant Bus Unit Timetable with effect from the date and time specified in paragraph 3.4.2 of Schedule 3 (*Passenger Services*) of the relevant Partnering Contract;

3B.3.2 paragraph 3B.2.2 above shall not apply; and

3B.3.3 the Services Fee shall be adjusted in accordance with the provisions of the relevant Partnering Contract.

3C Changes to the Rail Unit Timetable

Notwithstanding paragraph 3B.1, if the proposed change relates to the Rail Unit Timetable, paragraph 10 (*Changes to Rail Unit Timetable*) shall apply (with such changes as are necessary to give effect to this principle) as if the change were proposed under Part C of this Annexure.

Part C - Long form process for Timetable changes affecting more than one PTOM Operator

3D Application of this Part C

3D.1 Unless paragraph 3A.1 applies, all changes to the Timetable or a Unit Timetable shall be made in accordance with this Part C.

4 Nature of timetable changes that may be proposed

4.1 GWRC and PTOM Operators may each propose changes to the Timetable or a Unit Timetable in the following circumstances:

- 4.1.1 to respond to a change in patronage or to encourage an increase in patronage;
- 4.1.2 to address a safety issue;
- 4.1.3 to improve connections between scheduled services operating on the Wellington Public Transport Network (including the Scheduled Services);
- 4.1.4 to improve the reliability and punctuality of scheduled services operating on the Wellington Public Transport Network (including the Scheduled Services);
- 4.1.5 to implement initiatives approved as part of an annual business plan for a Unit under the relevant Partnering Contract;
- 4.1.6 to implement initiatives discussed at a Wellington Regional Public Transport Forum; or
- 4.1.7 any adjustment is required as a result of a post implementation review in accordance with paragraph 15.

4.2 In addition to the circumstances at paragraph 4.1:

- 4.2.1 a PTOM Operator may propose changes to the Timetable or the relevant Unit Timetable to improve the operational capability of a Unit;
- 4.2.2 GWRC may propose changes to the Timetable or the relevant Unit Timetable in the following circumstances:
 - (a) to improve performance of the Wellington Public Transport Network;
 - (b) to enable the implementation of the Wellington Regional Public Transport Plan;
 - (c) to enable the implementation of the GWRC Long Term Plan; or

- (d) to implement or otherwise facilitate PT Network Projects or, in the case of the Rail Partnering Contract, Additional PT Network Projects; and
- 4.2.3 a PTOM Operator may propose changes to the Timetable or the relevant Unit Timetable in connection with a Service Disruption (in the case of the Bus Partnering Contract) or any Planned Disruption or Unplanned Disruption (in the case of the Rail Partnering Contract) where such change shall not have any impact on the operations of another PTOM Operator, in which case the PTOM Operator which proposed the change and GWRC shall follow the process set out in Part B of this Annexure.

5 Principles to be applied in dealing with proposed timetable changes

- 5.1 GWRC and each PTOM Operator shall apply the following principles prior to proposing changes to the Timetable or a Unit Timetable and, in the case of GWRC, in the course of considering, reviewing or approving such proposed changes:
- 5.1.1 changes should, to the extent reasonably practicable, be proposed at least 6 months before the proposed date for implementation of the change;
 - 5.1.2 consideration should be given to the impact of the change on other Scheduled Services operating on the Wellington Public Transport Network;
 - 5.1.3 consideration should be given to the impact on traffic management;
 - 5.1.4 consideration should be given to the impact of the change on other PTOM Operators;
 - 5.1.5 consideration should be given to the impact of the change on other modes of transport;
 - 5.1.6 consideration should be given to the likely patronage growth or loss as a result of the change;
 - 5.1.7 consideration should be given to the impact of the change on customers, including the impacts arising from the proposed time of day in which the change will occur;
 - 5.1.8 consideration should be given to the number of customers that are likely to be affected by the change;
 - 5.1.9 consideration should be given to the impact on the broader community affected by the change;

- 5.1.10 consideration should be given to the impact of the change on PT Network Projects and in the case of the Rail Partnering Contract any relevant Additional PT Network Projects;
- 5.1.11 consideration should be given to the impact of the change on the Working Timetable; and
- 5.1.12 consideration should be given to the affordability of the change including:
 - (e) the estimated Net Financial Impact arising from the change; and
 - (f) the impact (if any) on GWRC's reliance on public subsidies needed to fund the proposed change.

6 Communication of proposed timetable changes

- 6.1 PTOM Operators shall communicate any intention to propose a change to the Timetable or the relevant Unit Timetable to GWRC at the earliest opportunity, including as part of:
 - 6.1.1 the Monthly Operational Report; and
 - 6.1.2 the Annual Business Plan.
- 6.2 GWRC shall communicate any intention to propose a change to the Timetable or the relevant Unit Timetable to the relevant PTOM Operators at the earliest opportunity.

7 Timetable Change Proposal

- 7.1 A party proposing a change to the Timetable or Unit Timetable shall prepare a written proposal setting out the information needed for the consideration of the proposed change, including:
 - 7.1.1 details of the proposed change, including a description of the rail lines or bus routes, and Scheduled Services affected;
 - 7.1.2 a draft of the relevant part of the Timetable or Unit Timetable (as applicable) and Working Timetable in a standard matrix timetable format specified by GWRC, including all proposed time and route variation details;
 - 7.1.3 the reasons for the proposed change;
 - 7.1.4 analysis of the impacts and other matters described at paragraph 5.1;
 - 7.1.5 the affected PTOM Operators;
 - 7.1.6 the likely resource changes arising from the implementation of the proposed change to each of the Working Timetable and the Unit Timetable;

- 7.1.7 in the case of changes affecting a Unit Timetable in respect of a bus Unit, any change to the PVR;
- 7.1.8 the proposed date for implementation of the timetable change;
- 7.1.9 a draft implementation plan setting out the steps required to consider, approve and implement the timetable change;
- 7.1.10 the proposed timeframe for the completion of the draft implementation plan;
- 7.1.11 any cost implications arising from the proposed timetable change, including:
 - (a) the Net Financial Impact of the proposed timetable change and any associated increase or decrease to the Services Fee calculated in accordance with the relevant Partnering Contract; and
 - (b) the impact (if any) on GWRC's reliance on public subsidies needed to fund the proposed change; and
- 7.1.12 any other matter that such party considers relevant to the consideration of the proposed timetable change,

(together the **Timetable Change Proposal**).

- 7.2 A copy of the Timetable Change Proposal shall be provided to GWRC and each affected PTOM Operator by the party proposing the change.

8 Timetable Review Meetings

- 8.1 GWRC may arrange a meeting of all PTOM Operators materially affected by the Timetable Change Proposal (**Timetable Review Meeting**) within 15 Business Days of receipt of a Timetable Change Proposal from a PTOM Operator or provision of a Timetable Change Proposal by GWRC to affected PTOM Operators, for the purpose of:
 - 8.1.1 allowing the proposing party to present and explain the reasons for the proposed change;
 - 8.1.2 receiving initial feedback on the Timetable Change Proposal;
 - 8.1.3 allowing materially affected PTOM Operators to discuss the proposed change;
 - 8.1.4 identifying any further consultation, work or approvals required to enable the Timetable Change Process to be properly considered and the change to be implemented;
 - 8.1.5 identifying any actions required to enable GWRC to determine any cost implications arising from the proposed timetable change, including changes in patronage revenue and any change to the

Services Fee payable by GWRC to an affected PTOM Operator under the relevant Partnering Contract; and

- 8.1.6 either recording the approval or otherwise by GWRC to the proposed change or scheduling a further Timetable Review Meeting (if required) to consider the outcome of any further consultation, work, approvals or actions required prior to a decision being made.
- 8.2 If GWRC elects to hold a Timetable Review Meeting, GWRC shall ensure that all PTOM Operators materially affected by the Timetable Change Proposal are invited to attend that Timetable Review Meeting and that each such PTOM Operator is given at least 5 Business Days' notice of the Timetable Review Meeting.
- 8.3 Each materially affected PTOM Operator shall:
 - 8.3.1 duly attend and participate in each Timetable Review Meeting to which it is invited pursuant to paragraph 8.2;
 - 8.3.2 act reasonably, in good faith and in accordance with the Partnering Principles at all times during the Timetable Review Meeting; and
 - 8.3.3 promptly carry out any actions reasonably allocated to it at a Timetable Review Meeting, within the timeframe allocated.

9 Decisions to approve a Timetable Change Proposal

- 9.1 Decisions about whether to approve or reject a Timetable Change Proposal and (if applicable) the date of implementation of a Timetable Change Proposal shall be made by GWRC, acting reasonably, in good faith and in accordance with the Partnering Principles.
- 9.2 Subject to paragraph 10, GWRC shall ensure that its decision whether to approve or reject a Timetable Change Proposal is communicated to all affected PTOM Operators in writing as soon as reasonably practicable.

10 Changes to Rail Unit Timetable

- 10.1 The Rail Operator and GWRC shall ensure that a Timetable Change Proposal that involves or requires a change to the Rail Unit Timetable is not approved by GWRC under paragraph 9.1 or implemented until it has first been approved by the Wellington Network Timetable Committee.
- 10.2 Each PTOM Operator:
 - 10.2.1 acknowledges that GWRC may not approve or implement a change to the Rail Unit Timetable until such change has first been approved by the Wellington Network Timetable Committee; and
 - 10.2.2 agrees that GWRC shall not be in breach of its obligations under this Timetable Change Process by virtue of it rejecting a Timetable

Change Proposal in circumstances where that change has been rejected by the Wellington Network Timetable Committee or by virtue of it delaying its decision as to whether or not to approve that Timetable Change Proposal until a decision has been made by the Wellington Network Timetable Committee in relation to that change.

11 Rejection of Timetable Change Proposal

- 11.1 If a Timetable Change Proposal is rejected by GWRC pursuant to paragraph 9.1, the Timetable Change Proposal shall be treated as withdrawn and not approved and shall not be implemented. For the avoidance of doubt, in such circumstances the affected PTOM Operators shall not be entitled under the terms of the relevant Partnering Contract to payment of any Net Financial Impact arising in connection with the Timetable Change Proposal.

12 Implementation by GWRC

- 12.1 Following the approval by GWRC of a Timetable Change Proposal pursuant to paragraph 9.1, without prejudice to any obligations of a PTOM Operator under the relevant Partnering Contract, GWRC shall ensure that the following occurs:
- 12.1.1 all PTOM Operators are informed about the change and provided with the updated Timetable;
 - 12.1.2 all PTOM Operators are informed about the implementation date for the change (which implementation date shall be reasonable);
 - 12.1.3 updated Timetables are communicated to customers:
 - (c) by posting the updated Timetable on the Metlink public website at least 10 Business Days prior to the implementation date; and
 - (d) in accordance with the other requirements set out in Annexure 3 (*Customer Communication and Information Systems*); and
 - 12.1.4 as soon as reasonably practicable following receipt by GWRC of the relevant information pursuant to paragraph 13.1.1, updated information (including Vehicle roster) regarding the new Timetable is uploaded to the RTPI System and any other necessary systems.

13 Implementation by affected PTOM Operators

- 13.1 Following the approval by GWRC of a Timetable Change Proposal pursuant to paragraph 9.1, affected PTOM Operators shall ensure that each of the following occurs:
- 13.1.1 the PTOM Operator amends the Working Timetable to accommodate the change and provides a copy of the revised Working Timetable and any other information required for the RTPI System to GWRC in

accordance with such timeframe that may be agreed between GWRC and the PTOM Operator but in any event by not less than 15 Business Days prior to the required implementation date (as notified to the PTOM Operator by GWRC pursuant to paragraph 12.1.2); and

- 13.1.2 Scheduled Services are operated by that PTOM Operator in accordance with the relevant updated Unit Timetable with effect from and including the required implementation date (as notified to that PTOM Operator by GWRC pursuant to paragraph 12.1.2).

14 Changes to Services Fees arising from an approved Timetable Change Proposal

- 14.1 Following the implementation of a Timetable Change Proposal approved by GWRC by an affected PTOM Operator in accordance with paragraph 13, the Services Fee payable by GWRC to the affected PTOM Operator pursuant to the relevant Partnering Contract shall be adjusted in accordance with the applicable provisions of the relevant Partnering Contract.

15 Post implementation review

- 15.1 GWRC and each affected PTOM Operator shall review any impacts arising from an approved Timetable Change Proposal within 3 months of the implementation of that timetable change.
- 15.2 Each post implementation review shall include:
- 15.2.1 considering any relevant feedback or Complaints relating to the Services received from customers;
 - 15.2.2 identifying any issues associated with the implementation of the timetable change; and
 - 15.2.3 identifying any operational or other improvements needed to address any difficulties related to the timetable change.
- 15.3 GWRC shall ensure that the outcome of each post implementation review is:
- 15.3.1 reported to affected PTOM Operators as soon as reasonably practicable following completion of the review; and
 - 15.3.2 tabled as an agenda item for discussion at the next Wellington Regional Public Transport Forum.

Annexure 2

Customer Service Standards

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1 Purpose of this Annexure

- 1.1 This Annexure sets out the baseline Customer Service Standards that GWRC requires PTOM Operators:
- 1.1.1 to adopt, implement and comply with; and
 - 1.1.2 other than the Bus Operators, to incorporate in the Customer Service Commitment that each PTOM Operator (other than Bus Operators) must adopt, publish and use best endeavours to comply with under the Partnering Contract made between GWRC and that PTOM Operator.

2 Definitions used in this Annexure

- 2.1 Capitalised terms used in this Annexure are as defined in the Regional Agreement, or in the relevant Partnering Contract.

3 Process for changing this Annexure

- 3.1 Any changes to this Annexure shall only occur in accordance with the change process for PT Network Documents set out in the Regional Agreement.

4 Customer Service Standards applicable to all PTOM Operators

- 4.1 The following baseline Customer Service Standards apply to all PTOM Operators and each PTOM Operator shall adopt, implement and comply with these baseline Customer Service Standards:
- 4.1.1 in performing services under the applicable Partnering Contract, the PTOM Operator is required at all times to:
 - (a) ensure that all services are delivered safely;
 - (b) ensure that all services offer a clean and comfortable travelling environment;
 - (c) ensure that all services run on time;
 - (d) keep all customers informed;
 - (e) treat all customers with respect and provide friendly and courteous service;
 - (f) ensure access for everyone; and
 - (g) respond to and act on feedback.
- 4.1A The following paragraphs 4.2, 4.3 and 5 do not apply to any Bus Operators.
- 4.2 Each PTOM Operator shall ensure that the Customer Service Commitment developed by that PTOM Operator meets or exceeds the baseline Customer Service Standards described at paragraph 4.1.
- 4.3 A PTOM Operator may only amend its Customer Service Commitment with the prior written consent of GWRC (not to be unreasonably withheld or delayed). Any

such amended Customer Service Commitment must meet or exceed the baseline Customer Service Standards described at paragraph 4.1 and must otherwise comply with the requirements of this Annexure.

5 Customer Service Commitment

- 5.1 At all times during the Term, each PTOM Operator shall adopt, publish and use best endeavours to implement and comply with a Customer Service Commitment that:
- 5.1.1 meets or exceeds the baseline Customer Service Standards described at paragraph 4.1; and
 - 5.1.2 is provided to customers and GWRC in a manner that meets the requirements at paragraphs 5.2 to 5.4, as far as applicable to that PTOM Operator.
- 5.2 Each PTOM Operator shall ensure that the document recording its Customer Service Commitment includes:
- 5.2.1 an invitation to customers to submit a complaint if a customer believes the PTOM Operator has failed to honour the Customer Service Commitment;
 - 5.2.2 an invitation to customers to submit a compliment if the customer believes the PTOM Operator has exceeded the Customer Service Commitment; and
 - 5.2.3 details about how to lodge a complaint or compliment, consistent with the requirements of the Customer Communication and Information Systems.
- 5.3 The Rail Operator shall ensure that its Customer Service Commitment is highly visible to customers by ensuring that a copy of the current Customer Service Commitment is displayed prominently in each of the display cases provided pursuant to clause 30.1 of the Rail Partnering Contract on:
- 5.3.1 all EMUs and each generator Carriage; and
 - 5.3.2 at the following Stations:
 - (a) Wellington Station;
 - (b) Johnsonville Station;
 - (c) Porirua Station;
 - (d) Plimmerton Station;
 - (e) Paraparaumu Station;
 - (f) Waikanae Station;
 - (g) Petone Station;
 - (h) Melling Station;
 - (i) Waterloo Station;

- (j) Taita Station;
- (k) Upper Hutt Station;
- (l) Featherston Station; and
- (m) Masterton Station.

5.4 The Ferry Operator shall ensure that its Customer Service Commitment is highly visible to customers by ensuring that a copy of the Customer Service Commitment is displayed prominently on all ferries operated by the Ferry Operator in provision of services under a Partnering Contract entered into with GWRC.

5.5 Each PTOM Operator shall also promptly provide GWRC with an electronic copy of the current Customer Service Commitment (including any amendments made in accordance with paragraph 4.3) for the purpose of GWRC:

5.5.1 posting the Customer Service Commitment on the Metlink website; and

5.5.2 providing a copy of the Customer Service Commitment to customers.

Annexure 3

Customer Communication and Information Systems

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1 Purpose of this Annexure

- 1.1 This Annexure sets out responsibilities and processes that apply to GWRC and PTOM Operators in relation to communicating information to the public relating to the Wellington Public Transport Network and all Scheduled Services.
- 1.2 References in this Annexure to the personnel or staff of a PTOM Operator include the Operator Associates and the personnel and staff of the Operator Associates.

2 Definitions used in this Annexure

- 2.1 Capitalised terms used in this Annexure are as defined in the Regional Agreement, or in the relevant Partnering Contract.

3 Process for changing this Annexure

- 3.1 Any changes to this Annexure shall only occur in accordance with the change process for PT Network Documents set out in the Regional Agreement.

4 Customer service communication and information channels

- 4.1 The customer service communication channels are as follows:
 - 4.1.1 Metlink website;
 - 4.1.2 Metlink social media;
 - 4.1.3 Metlink call centre;
 - 4.1.4 Metlink email address;
 - 4.1.5 Metlink apps, APIs, widgets including all future customer communication channels created by GWRC;
 - 4.1.6 RTPI System signs;
 - 4.1.7 printed Timetables;
 - 4.1.8 printed collateral such as brochures and posters;
 - 4.1.9 Operator personnel at Stations and on rail Vehicles (rail);
 - 4.1.10 in-Vehicle passenger information; and
 - 4.1.11 in-Vehicle announcements (rail and bus).
- 4.2 Specific obligations in relation to each customer service communication channel are set out in the following provisions of this Annexure.
- 4.3 GWRC and each PTOM Operator shall use best endeavours to ensure that the GWRC Systems and time keeping devices used to track and monitor Scheduled Services, Special Event Services and in the case of the Bus Partnering Contract, also the Alternative Services, use New Zealand Standard Time or New Zealand Daylight Time during the applicable period specified each year by the Department of Internal Affairs.

Metlink customer communication channels

- 4.4 GWRC provides the Metlink website, RTPI System, social media, call centre, CRM System (in the case of the Bus Partnering Contract), and email address to be the primary source of public transport information to customers about the Wellington Public Transport Network.
- 4.5 The purpose of the Metlink website is:
- 4.5.1 to be the primary online source of all public transport information to customers about the Wellington Public Transport Network including information about:
- (a) in the case of the Rail Partnering Contract, Timetables, Scheduled Services, Special Event Services, Planned Disruptions, Minor Disruptions and Unplanned Disruptions;
 - (b) in the case of the Bus Partnering Contract, Timetables, Scheduled Services, Special Event Services, Alternative Services and Service Disruptions;
 - (c) promotions and marketing initiatives to promote the Wellington Public Transport Network and grow patronage;
 - (d) fares and ticketing; and
 - (e) Customer Service Standards and Conditions of Carriage; and
- 4.5.2 to provide a portal for communication with customers and the public.
- 4.6 GWRC's obligations in relation to the Metlink website shall comprise:
- 4.6.1 managing and maintaining the website;
- 4.6.2 ensuring the website content is as up to date and accurate as reasonably practicable;
- 4.6.3 providing each PTOM Operator with access to the website to enable the PTOM Operator to upload and update information regarding in the case of a Rail Operator, Unplanned Disruptions, in the case of a Bus Operator, Service Disruptions and, in the case of a Ferry Operator, such information regarding disruptions as GWRC and the Ferry Operator may agree from time to time;
- 4.6.4 to the extent reasonably practicable, ensuring that the website is accessible as an online communication channel 24 hours per day;
- 4.6.5 advising PTOM Operators and customers if the website is unavailable for an extended period, and when service resumes;
- 4.6.6 responding promptly to address and resolve technical issues;
- 4.6.7 monitoring the website to identify trends in visitor numbers and content views; and

- 4.6.8 upgrading the website to reflect new developments in information and communications technology where GWRC considers it reasonable to do so.
- 4.7 GWRC's obligations in relation to Metlink's social media communications shall comprise:
 - 4.7.1 managing and maintaining social media channels;
 - 4.7.2 communicating via social media in an ethical and socially responsible manner and in accordance with any guidance material that GWRC may issue from time to time regarding the style and content of information to be provided through the relevant channel; and
 - 4.7.3 monitoring traffic and comments in the social media space to identify trends and customer responses and perceptions.
- 4.8 GWRC shall operate the Metlink call centre to answer and respond to telephone calls and other messages received in connection with the operation of public transport services on the Wellington Public Transport Network.
- 4.9 GWRC shall maintain a Metlink email address (info@metlink.org.nz) to enable customers to contact GWRC via email and ask questions, seek information and provide feedback about the Wellington Public Transport Network.
- 4.10 GWRC's obligations in relation to the Metlink call centre and Metlink email address shall comprise:
 - 4.10.1 managing, maintaining and resourcing the call centre;
 - 4.10.2 managing and maintaining the email address and email capabilities;
 - 4.10.3 providing relevant staff with appropriate training;
 - 4.10.4 ensuring that customer questions and feedback are responded to promptly and effectively;
 - 4.10.5 ensuring that staff provide a friendly, polite, accurate and helpful service;
 - 4.10.6 monitoring calls and messages to the Metlink call centre, email traffic addressed to the Metlink email address, and messages received through Metlink social media, including content, to identify trends in numbers, response times and the number and nature of queries and feedback;
 - 4.10.7 sharing customer feedback with affected or implicated PTOM Operators;
 - 4.10.8 upgrading the call centre and email management system to reflect new developments in information and communications technology where GWRC considers it reasonable to do so;
 - 4.10.9 ensuring that the call centre is accessible as a phone-based communication channel between the hours of at least 7am and 9pm Monday to Saturday, and 8am and 8pm on Sundays and public holidays in Wellington;

- 4.10.10 during the hours referred to in paragraph 4.10.9, providing staff and other resources to respond to calls and messages received by the call centre and to open and respond to emails sent to the Metlink email address and messages received through Metlink social media; and
- 4.10.11 responding promptly to address and resolve technical issues.

PTOM Operator obligations

- 4.11 In relation to the Metlink website, Metlink social media, Metlink call centre and Metlink email address, each PTOM Operator shall ensure that:
 - 4.11.1 the PTOM Operator includes a valid link to the Metlink website from the homepage of the PTOM Operator's website;
 - 4.11.2 if the PTOM Operator uses social media, it is not used for the purposes of providing public transport customer information and the PTOM Operator includes a link to Metlink social media from the PTOM Operator's social media;
 - 4.11.3 the PTOM Operator does not provide any information on the PTOM Operator's website or through any social media communication channels that is available on the Metlink website or Metlink social media;
 - 4.11.4 the PTOM Operator's personnel provide up to date, accurate and timely information to GWRC's Authorised Representative about, in the case of the Rail Partnering Contract, the Scheduled Services, Planned Disruptions (including alternative transport arrangements) and Special Event Services, in the case of the Bus Partnering Contract, Scheduled Services, Special Event Services, Alternative Services and Service Disruptions and, in the case of the Ferry Partnering Contract, such information regarding services and disruptions as GWRC may from time to time specify to enable information to be effectively communicated via the Metlink website, Metlink social media, Metlink call centre and Metlink email address, such information to be provided promptly and in any event in accordance with any relevant time periods provided for in the relevant Partnering Contract; and
 - 4.11.5 the PTOM Operator's personnel are helpful, responsive and promptly provide accurate information to GWRC personnel in response to requests for information about in the case of the Rail Partnering Contract, Scheduled Services, Special Event Services, Planned Disruptions, Minor Disruptions and Unplanned Disruptions, in the case of the Bus Partnering Contract, Scheduled Services, Special Event Services, Alternative Services and Service Disruptions and, in the case of the Ferry Partnering Contract, such information regarding services and disruptions as GWRC may from time to time specify and, in each case, to assist GWRC personnel to respond to customer questions, feedback or Complaints.

- 4.12 Without prejudice to any other obligations of a PTOM Operator, each PTOM Operator shall ensure that:
- 4.12.1 its personnel refer customers seeking information about in the case of the Rail Partnering Contract, the Timetable, Rail Unit Timetable, Scheduled Services, Special Event Services, Planned Disruptions and Unplanned Disruptions, in the case of the Bus Partnering Contract, the Timetable, Bus Unit Timetable, Scheduled Services, Special Event Services, Alternative Services and Service Disruptions and, in the case of the Ferry Partnering Contract, such information regarding timetables, services and disruptions as GWRC may from time to time specify to the Metlink website, Metlink social media and/or Metlink call centre;
 - 4.12.2 its personnel refer customers wishing to provide feedback on or make a complaint about the Wellington Public Transport Network, to the Metlink website and/or call centre;
 - 4.12.3 the PTOM Operator advises the Authorised Representative of GWRC within 1 Business Day following receipt by the PTOM Operator or its personnel of any customer feedback about the Metlink website, Metlink social media, Metlink call centre or Metlink email address;
 - 4.12.4 the PTOM Operator advises the Authorised Representative of GWRC as soon as possible after the PTOM Operator becomes aware of any informational error or technical issues in relation to the Metlink website, Metlink social media, Metlink call centre or Metlink email address; and
 - 4.12.5 the PTOM Operator considers and identifies as part of the Annual Business Plan process described at Schedule 5 (*Planning, Reporting and Meetings*) any opportunities to change, improve or correct the Metlink website, social media or call centre.
- 4.13 In order to ensure that the Metlink website and social media channels become the single focal point for customers, the PTOM Operators shall not provide (or permit any Operator Associate to provide) information relating to the Services or the Wellington Public Transport Network on any other website or on any other social media communication channels.

Rail Operator obligations in respect of Planned Disruptions

- 4.14 The Rail Operator shall provide the following information to GWRC at least 6 weeks prior to any Planned Disruption taking place:
- 4.14.1 full details of the Planned Disruption (including the reason for the Planned Disruption, the date on which the Planned Disruption will commence, the anticipated duration of the Planned Disruption, in the case of the Rail Partnering Contract the Lines that will be affected, the Scheduled Services and Special Event Services that will be affected and the date on which the

- Rail Operator expects normal Scheduled Services and Special Event Services to be resumed); and
- 4.14.2 details of the alternative transport arrangements that will be provided by or on behalf of the Rail Operator in accordance with its obligations under Schedule 3 (*Passenger Services*).
- 4.15 From the date falling at least 4 weeks prior to any Planned Disruption commencing until the date on which the Planned Disruption ceases and normal Scheduled Services and Special Event Services are resumed, the Rail Operator shall:
- 4.15.1 prominently display in a manner which is highly visible to customers full details of the Planned Disruption (including those matters specified in paragraph 4.14.1) at locations (as notified by GWRC to the Rail Operator from time to time) at each Station on the Line(s) that will be affected by the Planned Disruption; and
- 4.15.2 ensure that personnel at the Stations and on board Vehicles respond appropriately to any request for information in respect of the Planned Disruption received from customers.
- 4.16 In the event that any information provided by the Rail Operator in connection with a Planned Disruption ceases to be correct or otherwise becomes out of date, the Operator shall promptly:
- 4.16.1 provide an update to GWRC; and
- 4.16.2 update the information provided to customers pursuant to paragraph 4.15.1.

PTOM Operator obligations in respect of Unplanned Disruptions and Service Disruptions

- 4.17 In the case of the Rail Partnering Contract, in the event of an Unplanned Disruption or Minor Disruption, each PTOM Operator shall:
- 4.17.1 in the case of Unplanned Disruptions only, immediately notify the GWRC Authorised Representative and each other PTOM Operator likely to be affected by the Unplanned Disruption and provide to each of them the information described in paragraph 4.17.2;
- 4.17.2 immediately notify the Metlink call centre of the Unplanned Disruption (including providing details of the nature and reason for the Unplanned Disruption, the estimated duration of the Unplanned Disruption, the Lines or routes that will be affected, the Scheduled Services and Special Event Services that will be affected and any alternative transport arrangements that will be provided by or on behalf of the PTOM Operator) in accordance with any guidance material that GWRC may issue from time to time regarding the style and content of information to be provided in those circumstances;

- 4.17.3 immediately upload information to the Metlink website regarding the Unplanned Disruption (including the details referred to in paragraph 4.17.2) in accordance with any guidance material that GWRC may issue from time to time regarding the style and content of information to be provided in those circumstances;
- 4.17.4 ensure that its personnel on Vehicles make frequent, up to date and accurate announcements to the passengers about the Minor Disruption or Unplanned Disruption (including the details referred to in paragraph 4.17.2) in accordance with any guidance material that GWRC may issue from time to time regarding the style and content of information to be provided in those circumstances;
- 4.17.5 ensure that its personnel at Stations provide frequent, up to date and accurate announcements and information including signage about the Minor Disruption or Unplanned Disruption (including the details referred to in paragraph 4.17.2) in accordance with any guidance material that GWRC may issue from time to time regarding the style and content of information to be provided in those circumstances;
- 4.17.6 maintain regular and accurate communications throughout the duration of the Unplanned Disruption with the Metlink call centre and the GWRC Authorised Representative (including promptly notifying the Metlink call centre and GWRC Authorised Representative if any information previously provided in relation to the Unplanned Disruption ceases to be correct or accurate or if new information comes to light);
- 4.17.7 provide frequent updates to the GWRC Authorised Representative and each other PTOM Operator in relation to Unplanned Disruptions and their effects;
- 4.17.8 immediately notify the Metlink call centre, the GWRC Authorised Representative, each other PTOM Operator and all passengers at each affected Station and on board affected Vehicles when the Unplanned Disruption ceases;
- 4.17.9 keep the information on the Metlink website regarding the Unplanned Disruption up to date throughout the disruption;
- 4.17.10 ensure that its personnel respond politely, accurately and helpfully to, and appropriately manage, customer questions and feedback relating to the Minor Disruption or Unplanned Disruption;
- 4.17.11 report to GWRC on customer questions, feedback and Complaints received in relation to the Unplanned Disruption as part of the relevant Weekly Operational Report; and
- 4.17.12 promptly provide such other information in relation to the Unplanned Disruption as GWRC may reasonably require.

- 4.18 In the case of the Bus Partnering Contract, in the event of a Service Disruption, each PTOM Operator shall:
- 4.18.1 in accordance with paragraph 3.7 of Schedule 3 (*Passenger Services*) notify the Metlink call centre and the GWRC Authorised Representative of the Service Disruption (including providing details of the nature, reason and estimated duration of the Service Disruption, Routes that will be affected, the Scheduled Services and Special Event Services that will be affected and any Alternative Services that will be provided by or on behalf of the PTOM Operator) in accordance with any guidance material that GWRC may issue from time to time regarding the style and content of information to be provided in those circumstances;
 - 4.18.2 promptly update the RTPI System messaging in respect of the Service Disruption in accordance with any guidance material that GWRC may issue from time to time regarding the style and content of information to be provided in those circumstances, and update the RTPI System messaging with the status of any Scheduled Services, Special Event Services or Alternative Services in accordance with paragraph 5 and with the Bus Services Equipment Operations Manual without delay;
 - 4.18.3 ensure that its personnel on Vehicles make frequent, up to date and accurate announcements to the passengers about the Service Disruption in accordance with any guidance material that GWRC may issue from time to time regarding the style and content of information to be provided in those circumstances;
 - 4.18.4 maintain regular and accurate communications throughout the duration of the Service Disruption with the Metlink call centre and the GWRC Authorised Representative (including promptly notifying the Metlink call centre and GWRC Authorised Representative if any information previously provided in relation to the Service Disruption ceases to be correct or accurate or if new information comes to light);
 - 4.18.5 immediately notify the Metlink call centre and the GWRC Authorised Representative, and all passengers on board affected Vehicles when the Service Disruption ceases;
 - 4.18.6 immediately remove Service Disruption messaging from the RTPI System once the effects of the Service Disruption have ceased;
 - 4.18.7 ensure that its personnel respond politely, accurately and helpfully to, and appropriately manage, customer questions and feedback relating to the Service Disruption;
 - 4.18.8 report to GWRC on customer questions, feedback and Complaints received in relation to the Service Disruption as part of the relevant Weekly Operational Report; and

- 4.18.9 promptly provide such other information in relation to the Service Disruption as GWRC may reasonably require.

Questions, feedback and Complaints

- 4.19 In regard to customer questions, feedback and Complaints received by a PTOM Operator:
- 4.19.1 the PTOM Operator shall record, handle, store, transfer and otherwise manage such questions, feedback and Complaints in accordance with the Privacy Obligations and the privacy policy which the Operator is required to implement under the Ferry Partnering Contract or clauses 61.2 and 61.3 (*Operator's Privacy Policy*) of the Bus Partnering Contract or clauses 70.1 and 70.2 of the Rail Partnering Contract (as applicable);
- 4.19.2 notwithstanding paragraph 4.19.1, the PTOM Operator shall report customer questions, feedback and Complaints (whether provided verbally or in writing) to GWRC within 1 Business Day of receipt thereof in the form and method specified by GWRC and also as part of the Weekly Operational Report;
- 4.19.3 where a customer question, feedback or Complaint which relates to the Services is designated as serious (or similarly described) by GWRC, then, the PTOM Operator will provide its proposed response to GWRC (within 1 Business Day of receipt of the question, feedback or Complaint (as applicable)) and GWRC shall manage the communication with the customer;
- 4.19.4 GWRC shall manage the responses to all customer questions, feedback and Complaints; and
- 4.19.5 if requested to do so by GWRC (acting reasonably) a PTOM Operator shall:
- (a) as soon as reasonably practicable following such a request, provide GWRC with a proposed formal response including a written description of the incident and actions to be taken to resolve the question, feedback or Complaint; and
 - (b) take any necessary and reasonable action which GWRC requests to resolve a customer question, feedback or Complaint which relates to the Services within 5 Business Days of receipt of such request.
- 4.20 In regard to questions, feedback and Complaints received by GWRC:
- 4.20.1 GWRC shall record all customer questions, feedback and Complaints;
- 4.20.2 GWRC shall manage the responses to all customer questions, feedback and Complaints;

- 4.20.3 without prejudice to a PTOM Operator's obligations under paragraphs 4.20.4 and 4.20.5, GWRC shall work directly with the affected customers to resolve any Complaints;
- 4.20.4 where a customer question, feedback or Complaint relating to the Services is designated as serious (or similarly described) by GWRC, then the relevant PTOM Operator will provide its proposed response to GWRC (within 1 Business Day of receipt of the question, feedback or Complaint (as applicable)) and GWRC shall manage the communication with the customer; and
- 4.20.5 if requested to do so by GWRC (acting reasonably) a PTOM Operator shall:
- (a) as soon as reasonably practicable following such a request, provide GWRC with a proposed formal response including a written description of the incident and actions to be taken to resolve the question, feedback or Complaint; and
 - (b) take any necessary and reasonable action which GWRC requests to resolve any customer question, feedback or Complaint which relates to the Services within 5 Business Days of receipt of request.

Accessing the Metlink website

- 4.21 In accessing the Metlink website, each PTOM Operator shall ensure that:
- 4.21.1 it does so in accordance with the security policies and processes notified to it by GWRC from time to time and only for permitted purposes; and
 - 4.21.2 all information uploaded by the PTOM Operator to the Metlink website complies with any guidance material that GWRC may issue from time to time regarding the style and content of information to be provided through the Metlink website.

Printed Timetables and other collateral

- 4.22 GWRC shall be responsible for the development, design and production of printed collateral relating to the Wellington Public Transport Network, including Timetables. GWRC may use brochures and other printed collateral to inform and educate customers, to promote Metlink-related marketing and sponsorship activities and events and otherwise to promote the Wellington Public Transport Network.
- 4.23 GWRC shall ensure that printed Timetables are available on request to enable customers to be provided with accurate Timetable information in a hard copy format for use to plan journeys on the Wellington Public Transport Network.
- 4.24 GWRC obligations in relation to printed Timetables and any other printed brochures and collateral shall comprise:

- 4.24.1 developing, designing and printing Timetables and any other printed brochures and collateral that are accurate and fit for purpose;
 - 4.24.2 except in the case of displays on buses, designing, approving, supplying and installing Metlink displays to hold printed Timetables and any other printed brochures and collateral; and
 - 4.24.3 distributing printed Timetables and any other printed brochures and collateral to PTOM Operators for use in approved Metlink displays.
- 4.25 Each PTOM Operator shall:
- 4.25.1 if the PTOM Operator is a Bus Operator only, ensure that space is provided on Vehicles for approved Metlink displays;
 - 4.25.2 if the PTOM Operator is the Rail Operator, supply, install and maintain any approved Metlink displays;
 - 4.25.3 if required by GWRC appropriately display Timetables, brochures and other collateral provided to it by GWRC on board the Vehicles in accordance with the Metlink Branding Manual (as defined in the Bus Partnering Contract), the Metlink Brand Guidelines (as defined in the Rail Partnering Contract) and, in the case of a Ferry Operator, such manual or guidelines as GWRC may specify from time to time;
 - 4.25.4 when requested to do so by GWRC, promptly replace the Timetables, brochures or other collateral displayed on Vehicles with replacements provided by GWRC from time to time;
 - 4.25.5 promptly notify GWRC if the PTOM Operator becomes aware that any of the printed Timetables, brochures or collateral are out of date or inaccurate;
 - 4.25.6 inform GWRC about the nature of any additional printed brochures or collateral that the PTOM Operator considers are necessary; and
 - 4.25.7 undertake all other activities reasonably required by GWRC to ensure that the approved Metlink displays relevant to the Scheduled Services operated by the PTOM Operator are adequately stocked with printed Timetables, brochures or other collateral that is accurate and up to date.

PTOM Operator personnel

- 4.26 Each PTOM Operator shall ensure that all members of its personnel (including personnel engaged by an Operator Associate) who interact with customers face to face (whether at Stations, on board Vehicles, in ticket offices, at Depots, on board Vehicles, at bus stop locations, or otherwise):
- 4.26.1 are engaged and trained in accordance with the requirements set out in the Ferry Partnering Contract, at clause 15 (*Training requirements*) of the Rail Partnering Contract and clause 14 (*Training and driver requirements*) of the Bus Partnering Contract and in accordance with the Transition Plan;

- 4.26.2 have the knowledge and communication skills to respond appropriately to customer questions, feedback, Complaints and requests for information;
- 4.26.3 act all times in a polite, helpful and courteous manner;
- 4.26.4 wear uniforms that meet the requirements of the Ferry Partnering Contract, clause 16 (*Branding, uniforms and livery*) of the Rail Partnering Contract and clause 15 (*Branding, uniforms and livery*) of the Bus Partnering Contract;
- 4.26.5 comply with the requirements of the Customer Service Standards; and
- 4.26.6 comply with the relevant requirements of this Annexure.

Personnel at Stations and on rail Vehicles

- 4.27 Not used.
- 4.28 The Rail Operator shall ensure that sufficient numbers of its personnel are available at Stations and on board Vehicles to ensure that:
 - 4.28.1 customers receive personal service, information and assistance to make efficient journeys by public transport; and
 - 4.28.2 tickets are made available to passengers in accordance with the Fares, Ticketing and Enforcement Requirements.

In-Vehicle passenger information

- 4.29 The PTOM Operator shall ensure that electronic passenger information signs on each Vehicle provide accurate information to customers, in the format specified by GWRC.
- 4.30 GWRC may require the PTOM Operator to display particular information in the passenger information signs located on the Vehicles. If it does so then:
 - 4.30.1 GWRC shall ensure that:
 - (a) the PTOM Operator is supplied with accurate information for display in the electronic passenger information signs; and
 - (b) the PTOM Operator is informed about the period that the display information is required to run; and
 - 4.30.2 the PTOM Operator shall ensure that such information is displayed in the passenger information signs on each Vehicle for the duration specified by GWRC (acting reasonably).

In-Vehicle announcements

- 4.31 Without prejudice to any other obligations of the PTOM Operator under this Annexure 3, each PTOM Operator shall ensure that on board Vehicle announcements are made to ensure that passengers are kept fully informed of incidents, emergencies and disruptions affecting passenger services provided by that PTOM Operator, including in the case of the Rail Partnering Contract, Planned

Disruptions, Minor Disruptions and Unplanned Disruptions and in the case of the Bus Partnering Contract, Service Disruptions.

- 4.32 The PTOM Operators' obligations in regard to announcements to passengers on board Vehicles shall include ensuring that:
- 4.32.1 up to date and accurate information is provided to passengers;
 - 4.32.2 personnel making announcements comply with the Customer Service Standards and the requirements of this Annexure; and
 - 4.32.3 announcements comply with any guidance material that GWRC may issue from time to time regarding the style and content of information to be provided in those circumstances.

Failure of IFT System

- 4.33 In the event of any failure or faults in respect of ticketing systems or equipment affecting passengers travelling on the Scheduled Services or Special Event Services (including in the case of the Rail Partnering Contract, IFT System or IFT System Equipment and in the case of the Bus Partnering Contract, Ticketing System or Ticketing Equipment), the relevant PTOM Operator shall ensure that appropriate announcements and instructions are provided to passengers on board each Vehicle and (in the case of the Rail Operator) at each Station.

Media management

- 4.34 GWRC and each PTOM Operator will work together to implement the Partnering Principles set out in the Regional Agreement and in particular to present a unified and cooperative image to the public in regard to the running of public transport services on the Wellington Public Transport Network. To that end, in relation to media management:
- 4.34.1 GWRC shall coordinate and manage all strategic relationships and communications regarding the Wellington Public Transport Network with all news media including bloggers, and with community groups, interest groups and other stakeholders. Each PTOM Operator shall promptly provide such information and assistance as GWRC may reasonably request in connection therewith;
 - 4.34.2 each PTOM Operator shall ensure that all media queries and any approaches for comment from news media representatives (or similar) regarding the Wellington Public Transport Network in general and strategic issues associated with it, which are received by it are immediately referred to the GWRC Authorised Representative;
 - 4.34.3 GWRC and each PTOM Operator will take a 'no surprises' approach to media management and will engage with each other to the extent reasonably necessary in responding to media enquiries; and

- 4.34.4 a PTOM 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, public announcement or comment (including comments to news media, bloggers, community groups, interest groups or other stakeholders) relating to the Wellington Public Transport Network, any Partnering Contract or the Services, except to the extent permitted by the relevant Partnering Contract (including clause 69 (*Media Management*) of the Rail Partnering Contract and clause 60 (*Media Management*) of the Bus Partnering Contract).

5 RTPI System

Purpose of RTPI System

- 5.1 The RTPI System allows the real time tracking of Vehicles to provide for:
- 5.1.1 real time predictions of departure times of:
- (a) in the case of the Rail Partnering Contract, scheduled services on the Wellington Public Transport Network on display signs at key bus stops and stations; and
 - (b) in the case of the Bus Partnering Contract, Scheduled Services, Special Event Services and Alternative Services on the Wellington Public Transport Network on display signs at selected facilities,
- and other off-street locations such as hospitals, shopping malls and workplaces (as applicable to the Vehicle in question), so that customers can make informed decisions about their public transport options and journeys;
- 5.1.2 real time predictions of departure times of, in the case of the Rail Partnering Contract, scheduled services, and in the case of the Bus Partnering Contract, graphic depictions of Scheduled Services, Special Event Services and Alternative Services on the Wellington Public Transport Network for publication on the Metlink website and by mobile phone internet applications and in order for the Metlink call centre to respond to telephone enquiries and other messages;
- 5.1.3 real time Vehicle location information to be accessed through the Metlink website and related mobile applications, and available as open data;
- 5.1.4 bus priority at selected signal controlled junctions;
- 5.1.5 joint PTOM Operator and GWRC optimisation and development of schedule planning and service design;
- 5.1.6 an information basis that may be used to respond to Complaints made to a PTOM Operator or to GWRC by members of the public about scheduled services provided on the Wellington Public Transport Network;

- 5.1.7 use by a PTOM Operator in support of its operational management and business optimisation requirements, including:
 - (a) fleet management; and
 - (b) adherence to timetable obligations;
- 5.1.8 GWRC to monitor Scheduled Services, and in the case of the Bus Partnering Contract, also Special Event Services and Alternative Services in accordance with the Reliability KPI, the Punctuality KPI and the PIs set out in the Partnering Contract; and
- 5.1.9 any other purpose set out in an Annual Business Plan or agreed in writing between GWRC and the relevant PTOM Operator(s) from time to time.

Title and control of RTPI System

- 5.2 GWRC and each PTOM Operator acknowledges and agrees that:
 - 5.2.1 title to the RTPI System (in the case of the Bus Partnering Contract, except for any Optional Equipment or any Optional System Functionality procured by Bus Operators) shall at all times remain with GWRC; and
 - 5.2.2 control over the RTPI System shall remain with GWRC, subject to any licence or other right to use the RTPI System granted to a PTOM Operator under the relevant Partnering Contract.

RTPI System signs at Stations and bus stops

- 5.3 GWRC shall ensure that:
 - 5.3.1 subject to paragraph 5.3.2, RTPI System signs are in working order; and
 - 5.3.2 any RTPI System signs that are damaged are, to the extent practicable, replaced or reinstated subject, at GWRC's sole discretion, to any limitations associated with the cost of doing so.
- 5.4 Each PTOM Operator shall not (and shall procure that its Operator Associates shall not) damage any part of the RTPI System, and in the case of the Bus Partnering Contract, the RTPI System or RTPI Equipment.
- 5.5 Each PTOM Operator shall:
 - 5.5.1 continuously monitor the RTPI System signs located:
 - (a) on board the Vehicles operated by that PTOM Operator; and
 - (b) at facilities serviced by Vehicles operated by that PTOM Operator,and shall promptly notify GWRC's Authorised Representative of any performance issues, damage or general wear and tear thereto; and
 - 5.5.2 if that PTOM Operator is entitled to access the RTPI System in order to put information on the RTPI System signs, do so in accordance with any

guidance material that GWRC may issue from time to time regarding the style and content of information to be provided through the RTPI System.

RTPI System and RTPI Equipment on Vehicles

- 5.6 Without prejudice to any other obligations of the PTOM Operator, the PTOM Operator shall use its best endeavours to ensure that the RTPI System (and in the case of the Bus Partnering Contract, RTPI Equipment) in respect of the relevant Unit is in working order at all times during the hours of operation of the Scheduled Services and Special Event Services.
- 5.7 GWRC and the PTOM Operator acknowledge and agree that the operation of the RTPI System for the Rail Unit and the Bus Unit depends on:
- 5.7.1 in the case of the Bus Partnering Contract, PTOM Operator compliance with the Bus Services Equipment Operations Manual;
 - 5.7.2 in the case of the Rail Partnering Contract, 'KMC' units on rail Vehicles and in the case of the Bus Partnering Contract, RTPI Equipment on Vehicles which provide communication, tracking and data logging functionality for operational systems, and also provide GPS tracking capability for the RTPI System. This GPS data is provided in real time to the RTPI system via a web service interface;
 - 5.7.3 in the case of the Rail Partnering Contract, the operational management system and web service interface owned and maintained by the Access Provider; and
 - 5.7.4 in the case of the Bus Partnering Contract, suitable interface between Ticketing System and the RTPI System for the transfer of journey information.
- 5.8 The Rail Operator shall in the case of the Rail Partnering Contract:
- 5.8.1 create daily journey plans in the operational management system;
 - 5.8.2 promptly update the daily journey plans in the operational management system in cases of disruptions or any other events requiring an amendment to the daily journey plans; and
 - 5.8.3 manage and provide service status and disruption information to customers by promptly updating the RTPI System signs in accordance with paragraph 5.5.2.

Annexure 4 – not used

Annexure 5

Transfer Agreement

Date *[insert]*

Transfer Agreement

Relating to Bus Unit(s)

[Insert name of Operator] (**Operator**)

and

[Insert name of Transferring Asset Related Party No. 1]
(Transferring Asset Related Party No. 1)

and

[Insert name of Transferring Asset Related Party No. 2]
(Transferring Asset Related Party No. 2)

and

[Insert name of Wellington Regional Council or its nominee]
(Purchaser)

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Transfer Agreement

Parties

- 1 [Operator] (company number [insert]) (**Operator**);
- 2 [Transferring Asset Related Party No. 1] (company number [insert]) (**Transferring Asset Related Party No. 1**);
- 3 [Transferring Asset Related Party No. 2] (company number [insert]) (**Transferring Asset Related Party No. 2**); and
- 4 [Wellington Regional Council or its nominee] (**Purchaser**).

[Note - this pro-forma document assumes there will be two Transferring Asset Related Parties (as defined in the Partnering Contract). If, in practice, there are more or fewer Transferring Asset Related Parties, the parties clause and definition of Transferring Asset Related Parties shall be amended accordingly. Other mechanical changes will also be required throughout the document to reflect this position.]

Background

- A GWRC and the Operator have entered into the Partnering Contract for the provision of the Services.
- B The Operator has used the Transferring Assets in the provision of the Services.
- C The Operator and Transferring Asset Related Parties have agreed to transfer their respective rights, title and interest in the Transferring Assets and Transferring Asset Agreements (and the Purchaser has agreed to acquire such rights, title and interest) on the Transfer Date.
- D This Transfer Agreement sets out the terms and conditions of the transfer of the Transferring Assets and Transferring Asset Agreements.

Operative provisions

1. Interpretation

Definitions

1.1 The following definitions apply in this Transfer Agreement unless the context requires otherwise:

"Arm's Length Terms" includes (without limiting the ordinary meaning of that term) arrangements, dealings and transactions that:

- (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:

- (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.

"Business Day" means a day (other than a Saturday, Sunday or Public Holiday) on which banks are generally open for business in Wellington.

"Calculated Price" means, in respect of Transferring Vehicle, the "Transferring Vehicle Price" in respect of that Transferring Vehicle which shall be calculated in accordance with paragraph 2 (*Transferring Vehicle Price*) of Schedule 2 (*Transfer Price*) as if such Transferring Vehicle were an Owned Transferring Asset.

"Claim" means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) whether under or in connection with this Transfer Agreement 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.

"Companies Act" means the Companies Act 1993.

"Completion" means completion of the sale and purchase of the Owned Transferring Assets and the novation of the Transferring Asset Agreements contemplated by this

Transfer Agreement on the Transfer Date and "Complete" shall be construed accordingly.

"Confidential Information" means:

- (a) all commercially sensitive information and trade secrets already communicated or subsequently communicated under or in connection with this Transfer Agreement including (without limitation) any information obtained:
 - (i) in the course of negotiations leading to the conclusion of this Transfer Agreement; or
 - (ii) in the performance of this Transfer Agreement;
- (b) any information about the business or property of a person including (without limitation) any information:
 - (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 Transfer Agreement;
- (c) any Intellectual Property Material; and
- (d) any Personal Information collected, used, disclosed, stored, managed, transferred or handled by a Party.

"Dispute" means any dispute, difference of opinion, or disagreement between the Parties, including any Claim, arising out of or in connection with this Transfer Agreement.

"Expert" means a person appointed by the Parties pursuant to clause 17.10 or 17.11.

"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 Commercial Vehicle Investigation Unit of the New Zealand Police and the New Zealand Transport Agency.

"GST" means tax chargeable under the GST Act.

"GST Act" means the Goods and Services Tax Act 1985.

"GWRC" means Wellington Regional Council, a public statutory body constituted under the Local Government Act 2002.

"Insolvency Event" means, in relation to a person, the occurrence of any of the following events:

- (a) the cessation by that person of its business;
- (b) it stops or suspends payment of all or a class of its debts or threatens to do so;
- (c) it is, or under applicable law, is presumed or taken to be, insolvent other than as a result of a failure to:
 - (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 the other Parties, 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 relevant Party demonstrates to the satisfaction of the other Parties that an application is frivolous or vexatious);
- (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
- (g) that person admits in writing to being insolvent or unable to pay its debts as and when they fall due,

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.

"Intellectual Property Material" 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.

"Intellectual Property Rights" means rights in patents, registered designs, petty patents, utility 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.

"Law" means:

- (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.

"LGOIMA" means the Local Government Official Information and Meetings Act 1987.

"Loss" means:

- (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.

"Notice of Dispute" means a written notice in respect of a Dispute served by one Party on another Party and containing the information referred to in clause 17.3.

"Novation Deed" means a deed substantially in the form set out in Schedule 3 (*Novation Deed*).

"Owned Transferring Assets" means those Transferring Assets which are identified in paragraph 1 (*Transferring Depots*) or 2 (*Transferring Vehicles*) of Schedule 1 (*Agreement details*) as being "Owned Transferring Assets".

"Partnering Contract" means the contract entitled "Partnering Contract [*insert ref*] relating to the [*insert name of bus unit*] Bus Unit" executed on [*insert*] between GWRC and the Operator. [*Note - if the Transferring Assets are used by the Operator under more than one Partnering Contract, this definition to be amended accordingly and consequential amendments to be made throughout the document (e.g. pluralising reference to the "Partnering Contract")*]

"Party" means a party to this Transfer Agreement.

"Personal Information" has the same meaning given in section 2 of the Privacy Act 1993.

"Public Holiday" means a day which is a public holiday in Wellington in accordance with the Holidays Act 2003.

"Recipient" has the meaning given in clause 18.3.

"Related Company" means a "related company" as defined in the Companies Act 1993 provided that each reference to "company" in that definition shall be deemed to also include any other body corporate.

"Remaining Payments" means, in respect of a Transferring Vehicle, the total payments which will be required to be made under the relevant Transferring Asset Agreement in respect of that Transferring Vehicle after the date on which the Transferring Asset Agreement is novated to the Purchaser in accordance with this Transfer Agreement, such payments to be discounted to the Transfer Date at the discount rate of r (as such term is defined in paragraph 2 (*Transferring Vehicle Price*) of Schedule 2 (*Transfer Price*)).

"Security Interest" means each and all of the following:

- (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 17.4.

"Services" has the meaning given to it in the Partnering Contract.

"Supplier" has the meaning given in clause 18.3.

"Termination Date" means the date on which the Partnering Contract expires or is terminated in accordance with its terms.

"Third Party Transferring Asset" means each Transferring Asset which is not an Owned Transferring Asset.

"Transfer Date" means, subject to any deferral pursuant to clause 2.2.2:

- (a) if the Partnering Contract expires by effluxion of time, the Termination Date;
or
- (b) if the Partnering Contract is terminated in accordance with its terms, the later of:
 - (i) the Termination Date; and
 - (ii) the date falling 20 Business Days after the date on which GWRC or the Operator has served a notice on the other terminating the Partnering Contract.

"Transfer Price" means the amount calculated in accordance with Schedule 2 (*Transfer Price*) plus GST (if any).

"Transferring Assets" means the Transferring Vehicles and the Transferring Depots.

"Transferring Asset Agreement" means each lease, licence or other arrangement in respect of a Third Party Transferring Asset referred to in paragraph 3 (*Transferring Asset Agreements*) of Schedule 1 (*Agreement details*).

"Transferring Asset Related Parties" means Transferring Asset Related Party No. 1 and Transferring Asset Related Party No. 2.] [*Note - definition to be amended to reflect the actual number of Transferring Asset Related Parties (as defined in the Partnering Contract)*]

"Transferring Asset Related Party Direct Deed" means a deed of that name made between GWRC and a Transferring Asset Related Party.

"Transferring Depot" means those facilities referred to in paragraph 1 (*Transferring Depots*) of Schedule 1 (*Agreement details*) including all fixtures, fittings, equipment and other items specified in that paragraph.

"Transferring Vehicles" means those vehicles identified in paragraph 2 (*Transferring Vehicles*) of Schedule 1 (*Agreement details*).

"Use" means:

- (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
- (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 the Transferring Assets.

"Valuer" means a registered property valuer who is a full member of not less than 5 years' standing of the Property Institute of New Zealand Incorporated and who:

- (a) has had not less than 5 years' experience valuing premises of a similar kind as the relevant Transferring Depot; and
- (b) is independent of the Parties.

"Warranties and Representations" means the warranties and representations set out in Schedule 5 (*Warranties and Representations*).

Rules for interpreting this Transfer Agreement

- 1.2 The following rules apply unless the context requires otherwise:
 - 1.2.1 headings are for convenience only and do not affect interpretation;
 - 1.2.2 the singular includes the plural and conversely;
 - 1.2.3 a gender includes all genders;
 - 1.2.4 if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - 1.2.5 a reference to a person, corporation, trust, partnership, unincorporated body, organisation or other entity includes any of them;
 - 1.2.6 a reference to a clause, Schedule, Annexure or Appendix is a reference to a clause of or a Schedule, Annexure or Appendix to, this Transfer Agreement, and a reference to a paragraph is to a paragraph of the same clause, Schedule, Annexure or Appendix unless the context requires otherwise;

- 1.2.7 a reference to an agreement or document (including a reference to this Transfer Agreement) is to the agreement or document as amended, varied or supplemented, novated or replaced, except to the extent prohibited by this Transfer Agreement or that other agreement or document;
- 1.2.8 a reference to a person includes that person's successors, permitted substitutes and permitted assigns (and, where applicable, that person's legal personal representatives);
- 1.2.9 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;
- 1.2.10 a reference to conduct includes an act, omission, statement and undertaking, whether or not in writing;
- 1.2.11 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;
- 1.2.12 a reference to dollars and \$ is to New Zealand currency;
- 1.2.13 a reference to a month or to a year is to a calendar month or a calendar year;
- 1.2.14 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;
- 1.2.15 a reference to a Party is a reference to each of those persons separately;
- 1.2.16 a reference to writing includes an email and any other means of reproducing words in a tangible and permanently visible form;
- 1.2.17 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;
- 1.2.18 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;

- 1.2.19 a reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;
- 1.2.20 a reference to includes or including or other similar words should be construed without limitation;
- 1.2.21 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;
- 1.2.22 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 an event or circumstance occurring;
- 1.2.23 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; and
- 1.2.24 if but for this clause 1.2.24 any amount is payable under this Transfer Agreement on a day which is not a Business Day, that amount shall instead be payable on the next Business Day to occur after that day.

Consents or approvals

- 1.3 If the doing of any act, matter or thing under this Transfer Agreement 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.

Transferring Asset Related Parties

- 1.4 An obligation in this Transfer Agreement imposed on a Transferring Asset Related Party applies only in respect of:
- 1.4.1 the relevant Transferring Assets that are owned by, or leased or licensed to, that Transferring Asset Related Party; and

1.4.2 the relevant Transferring Asset Agreements to which that Transferring Asset Related Party is party.

1.5 The Operator shall ensure that each Transferring Asset Related Party complies with its respective obligations under this Transfer Agreement.

2. Commencement Date and Transfer Date

2.1 This Transfer Agreement shall take effect and be binding upon the Parties from and including the date of this Transfer Agreement.

2.2 To the extent that the Purchaser is required to obtain any approval under the Overseas Investment Act 2005 or any other approval from the Overseas Investment Office prior to acquiring any interest in the Transferring Assets or Transferring Asset Agreements:

2.2.1 the Purchaser shall use its best endeavours to obtain such approvals prior to the Transfer Date; and

2.2.2 if, without prejudice to clause 2.2.1, the Purchaser has been unable to obtain such approvals prior to the Transfer Date:

(a) the Purchaser shall ensure that all such approvals are obtained as soon as reasonably possible thereafter; and

(b) the Transfer Date shall be deferred until the date on which all such approvals have been obtained.

3. Sale and purchase of Owned Transferring Assets

3.1 On the Transfer Date, the Operator and each Transferring Asset Related Party shall transfer to the Purchaser full legal and beneficial ownership and title in and to the Owned Transferring Assets:

3.1.1 in consideration of payment of the Transfer Price in accordance with clause 5 (*Transfer Price*);

3.1.2 free from any Security Interests; and

3.1.3 in relation to each Transferring Depot which is an Owned Transferring Asset, on the terms and conditions set out in Schedule 4 (*Terms and conditions applicable to the sale of a Transferring Depot which is an Owned Transferring Asset*).

4. Novation of Transferring Asset Agreements

- 4.1 On the Transfer Date, the Operator and each Transferring Asset Related Party in each case as the lessee, licensee or other beneficiary under a Transferring Asset Agreement shall novate to the Purchaser (and the Purchaser shall accept the novation of) all of the Operator's or Transferring Asset Related Party's (as applicable) rights, benefit and interest in those Transferring Asset Agreements to which it is a party, subject to and in accordance with the terms of the Novation Deed.
- 4.2 The Operator and each Transferring Asset Related Party shall:
- 4.2.1 on the date of this Transfer Agreement, duly execute a Novation Deed in respect of each Transferring Asset Agreement to which it is party;
 - 4.2.2 procure that each other party to that Transferring Asset Agreement provides a duly executed Novation Deed to the Purchaser as soon as reasonably practicable and in any event prior to the Transfer Date; and
 - 4.2.3 comply with each Novation Deed to which it is party.
- 4.3 The Purchaser shall duly execute a Novation Deed in respect of each Transferring Asset Agreement on or before the Transfer Date.
- 4.4 Where a Transferring Asset Agreement in respect of one or more Transferring Vehicles will be novated to the Purchaser pursuant to this Transfer Agreement and the Remaining Payments in respect of any such Transferring Vehicle exceed the Calculated Price of that Transferring Vehicle, the Operator shall pay the difference between the Remaining Payments and the Calculated Price to the Purchaser at Completion by bank cheque or telegraphic transfer into an account nominated by the Purchaser.
- 4.5 The Purchaser shall be entitled to set off and deduct any amount payable by the Operator pursuant to clause 4.4 from any amount (including the Transfer Price) payable by the Purchaser under this Transfer Agreement.

5. Transfer Price

- 5.1 Subject to clause 4.5 in consideration of the transfer of the Owned Transferring Assets in accordance with clause 3 (*Sale and purchase of Owned Transferring Assets*) and the performance by the Operator and the Transferring Asset Related Parties of their respective obligations under clause 4 (*Novation of Transferring Asset Agreements*), at Completion the Purchaser shall pay the Transfer Price to the Operator by bank cheque or telegraphic transfer to an account nominated by the Operator.

- 5.2 The Transferring Asset Related Parties acknowledge and agree that payment of the Transfer Price in accordance with this clause 5 shall constitute good receipt by them of the Transfer Price and that no other amount shall be payable by the Purchaser to the Transferring Asset Related Parties in connection with the transfer by the Transferring Asset Related Parties of any Owned Transferring Assets or the performance by them of their obligations under clause 4 (*Novation of Transferring Asset Agreements*) or any other provision of this Transfer Agreement.
- 5.3 For the purposes of the financial arrangement rules in the Income Tax Act 2007 the Parties agree to all of the following:
- 5.3.1 the Transfer Price is the lowest price that they would have agreed for the sale and purchase of the Transferring Assets on the date this Transfer Agreement was entered into if payment was required in full at the time the first right in the Transferring Assets was transferred (as that term is understood for the purposes of section EW 32 of the Income Tax Act 2007);
- 5.3.2 the Transfer Price is the value of the Transferring Assets and so no income or expenditure arises under those rules; and
- 5.3.3 they will calculate their income and expenses for the relevant period on the basis that the Transfer Price includes no capitalised interest and they will file their tax returns accordingly.

6. Due diligence

- 6.1 The Operator and the Transferring Asset Related Parties shall each permit the Purchaser, any Valuer appointed pursuant to paragraph 3.1.1 of Schedule 2 (*Transfer Price*) and each of their respective nominees access to each Transferring Asset on reasonable notice to conduct due diligence or a valuation in respect of the Transferring Assets, including without limitation due diligence as to the condition of the Transferring Assets, maintenance plans and records, any improvements made to the Transferring Assets and, where applicable, site and ground conditions (including the extent of any contamination).

7. Completion

Time and place

- 7.1 Completion will take place at [2.00 am] on the Transfer Date at such venue in Wellington, New Zealand as may be notified in writing by the Purchaser to the Operator and the Transferring Asset Related Parties.

Obligations of the Operator and each Transferring Asset Related Party

- 7.2 At Completion, the Operator and each Transferring Asset Related Party (as relevant) shall deliver to the Purchaser:
- 7.2.1 physical possession of all of the Transferring Depots (including for the avoidance of doubt all fixtures, fittings, equipment and other items falling within the definition of the Transferring Depots);
 - 7.2.2 physical possession of all of the Transferring Vehicles at such location in Wellington as may be specified by the Purchaser;
 - 7.2.3 duly executed transfer documentation for any Owned Transferring Assets that the Purchaser reasonably requires to vest the Owned Transferring Assets in the Purchaser, in registrable form where applicable;
 - 7.2.4 all documents of title relating to the Owned Transferring Assets;
 - 7.2.5 a Novation Deed in respect of each Transferring Asset Agreement duly executed by the Operator or Transferring Asset Related Party (as applicable) and each other party to the Transferring Asset Agreement;
 - 7.2.6 duly executed discharges or releases of all Security Interests over the Transferring Assets;
 - 7.2.7 duly executed forms or consents reasonably required by the Purchaser to enable the utility services (including gas, water, electricity, sewerage, telephone and other communication services) provided at the Transferring Depots to be transferred to the Purchaser with effect from the Transfer Date;
 - 7.2.8 all keys and codes required to gain access to the Transferring Assets;
 - 7.2.9 all certificates, permits and consents relating to the Transferring Assets including the current "Certificate of Fitness" in respect of each Transferring Vehicle;
 - 7.2.10 copies of all operating and maintenance manuals, maintenance logs, warranties, guarantees and other material documents relating to the Transferring Assets; and
 - 7.2.11 any other document or thing reasonably necessary to give full effect to this Transfer Agreement.
- 7.3 The Operator and each Transferring Asset Related Party shall use its best endeavours to procure an assignment to the Purchaser of all its rights, title and interest in, to and

under any warranty or guarantee relating to the Transferring Assets, such assignment to take effect on the Transfer Date.

- 7.4 At Completion, the Operator shall pay to the Purchaser any amount which is payable pursuant to clause 4.4.

Purchaser's obligations

- 7.5 At Completion, the Purchaser agrees to:

- 7.5.1 deliver to the Operator or relevant Transferring Asset Related Party duly executed counterparts of any transfer document to which the Purchaser is party;
- 7.5.2 a Novation Deed duly executed by the Purchaser in respect of each Transferring Asset Agreement; and
- 7.5.3 pay the Transfer Price in accordance with clause 5 (*Transfer Price*).

Simultaneous actions at Completion

- 7.6 In respect of Completion:

- 7.6.1 the obligations of the Parties under this Transfer Agreement are interdependent; and
- 7.6.2 all actions required to be performed are taken to have occurred simultaneously on the Transfer Date.

Completion obligations breached

- 7.7 Without prejudice to any other rights or remedies of the Parties, if at the time scheduled under clause 7.1 for Completion on the Transfer Date, the Operator or a Transferring Asset Related Party (on the one hand) or the Purchaser (on the other hand) has not complied in any material respect with any of its obligations under this clause 7, the Purchaser (where the defaulting Party is the Operator or a Transferring Asset Related Party) or the Operator or Transferring Asset Related Party (where the defaulting Party is the Purchaser) may, at its discretion:

- 7.7.1 defer Completion to any subsequent Business Day agreed between the Parties (acting reasonably and in good faith);
- 7.7.2 waive the requirement to fulfil those obligations, in whole or in part, and, following that waiver, Complete; or
- 7.7.3 Complete subject to excluding from the sale under clause 3 (*Sale and purchase of Owned Transferring Assets*) and the novation under clause 4

(*Novation of Transferring Asset Agreements*) the relevant Owned Transferring Asset or Transferring Asset Agreement to which the breach relates.

8. Title and risk

8.1 Subject to clause 7.7:

8.1.1 possession of, and risk relating to, the Transferring Assets passes to the Purchaser at Completion; and

8.1.2 title to the Owned Transferring Assets passes to the Purchaser at Completion.

9. Intellectual property

9.1 To the extent that the Purchaser needs to Use any Intellectual Property Material forming part of, or embedded in, any of the Transferring Assets or any Intellectual Property Material otherwise delivered to the Purchaser under clause 7.2 or the underlying Intellectual Property Rights:

9.1.1 to use, operate and/or maintain the Transferring Assets;

9.1.2 to enable the Purchaser or a subcontractor or Related Company of the Purchaser to perform its obligations under any contract entered into by it with GWRC under which the Purchaser or a subcontractor or Related Company of the Purchaser is obliged to provide public passenger services; or

9.1.3 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 services which are similar to any of the Services (other than a purpose that involves the commercialisation by the Purchaser of the Intellectual Property Rights or Intellectual Property Material),

then the Operator and each Transferring Asset Related Party (as relevant) grants (and shall ensure that any relevant third party consents to the Operator or Transferring Asset Related Party granting) to the Purchaser a perpetual, irrevocable, free of any licence fee or royalty, non-exclusive, transferable licence (including the right to grant sub-licences) to Use the relevant Intellectual Property Materials and underlying Intellectual Property Rights for any purpose contemplated by clause 9.1.

10. Use of Transferring Assets pending transfer

- 10.1 From and including the Termination Date until the date on which the transfer of a Transferring Asset or the novation of a Transferring Asset Agreement is Completed in accordance with this Transfer Agreement, the Operator and the Transferring Asset Related Parties shall permit the Purchaser and its nominees (at the absolute discretion of the Purchaser) to do any or all of the following:
- 10.1.1 access, take possession and control of, occupy and use the relevant Transferring Asset;
 - 10.1.2 Use the Intellectual Property Materials and underlying Intellectual Property Rights to be licensed to the Purchaser under clause 9.1, in the manner contemplated by clause 9.1, free of charge;
 - 10.1.3 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;
 - 10.1.4 exercise the rights of the Operator or Transferring Asset Related Party (as applicable) under the relevant Transferring Asset Agreement and/or under any warranty relating to the Transferring Asset; and
 - 10.1.5 perform any or all of the obligations of the Operator or Transferring Asset Related Party (as applicable) under any relevant Transferring Asset Agreement in accordance with the terms thereof.
- 10.2 Subject to clause 10.3, within 5 Business Days following a demand, the Operator or Transferring Asset Related Party (as applicable) shall pay to the Purchaser any costs incurred by the Purchaser or its nominee arising in connection with those matters referred to in clause 10.1.3 or clause 10.1.5 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 this Transfer Agreement.
- 10.3 Subject to clause 10.4, to the extent that:
- 10.3.1 the Purchaser accesses, takes possession and control of, occupies or uses a Transferring Asset pursuant to clause 10.1.1; and
 - 10.3.2 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 (as defined in the Partnering Contract) or a Transferring Asset Related Party,

the Operator or Transferring Asset Related Party (as applicable) shall not be liable for costs under clause 10.2 and the Purchaser 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 10.1, provided that there shall be no double recovery by the Operator or any Transferring Asset Related Party of the same amounts, whether under the Partnering Contract, a Transferring Asset Related Party Direct Deed, this Transfer Agreement or otherwise.

- 10.4 Clause 10.3 shall not apply where the Partnering Contract has been (or is in the process of being) terminated pursuant to clause 47 (*Termination for Termination Events*) of the Partnering Contract.

11. Indemnities in relation to Transferring Asset Agreements

- 11.1 The Operator and each Transferring Asset Related Party shall (to the maximum extent permitted by Law) indemnify the Purchaser (and keep it so indemnified) on demand from and against any Claim or Loss that the Purchaser may suffer or incur arising out of or in connection with any breach, non-performance or non-observance by the Operator or Transferring Asset Related Party (as applicable) of any obligations under:

- 11.1.1 a Transferring Asset Agreement arising prior to the time at which that Transferring Asset Agreement is novated to the Purchaser in accordance with a Novation Deed; or
- 11.1.2 this Transfer Agreement (including a breach of any representation, warranty or undertaking given by the Operator or that Transferring Asset Related Party (as applicable) under this Transfer Agreement).

- 11.2 The Purchaser shall (to the maximum extent permitted by Law) indemnify the Operator and each Transferring Asset Related Party (and keep them so indemnified) on demand from and against any Claim or Loss that the Operator or Transferring Asset Related Party (as applicable) may suffer or incur arising out of or in connection with any breach, non-performance or non-observance by the Purchaser of any obligations under a Transferring Asset Agreement arising after the time at which that Transferring Asset Agreement is novated to the Purchaser in accordance with a Novation Deed.

12. Warranties and representations

- 12.1 Each of the Warranties and Representations are given by the Operator and each Transferring Asset Related Party in favour of the Purchaser on the date of this Transfer Agreement and shall be deemed repeated on each day thereafter up to and including the date of Completion by reference to the facts existing on each such day.

- 12.2 The Operator and each Transferring Asset Related Party acknowledges that the Purchaser enters into this Transfer Agreement in reliance on the Warranties and Representations.
- 12.3 Each of the Warranties and Representations:
- 12.3.1 remains in full force and effect until (and including) the date falling 60 Business Days after the date of Completion;
 - 12.3.2 is separate and independent and not limited or restricted by any other Warranty and Representation or any other provision of this Transfer Agreement; and
 - 12.3.3 is not affected by any due diligence or other investigation made by or on behalf of the Purchaser or any other information relating to the Transferring Assets or Transferring Asset Agreements of which the Purchaser has actual or constructive knowledge.
- 12.4 The Operator and each Transferring Asset Related Party shall immediately notify the Purchaser in writing upon becoming aware of any fact, matter, event or circumstance which has caused any Warranty and Representation to become untrue, incorrect or misleading in whole or in part or which will or is likely to cause any Warranty and Representation to become untrue, incorrect or misleading in whole or in part at the time at which such Warranty and Representation is deemed repeated.
- 12.5 Without limiting any other provision of this Transfer Agreement, the Operator and each Transferring Asset Related Party shall (to the maximum extent permitted by Law) indemnify the Purchaser (and keep it so indemnified) on demand from and against any Claim or Loss that the Purchaser may suffer or incur arising out of or in connection with:
- 12.5.1 any breach by the Operator or that Transferring Asset Related Party (as applicable) of any Warranty and Representation; or
 - 12.5.2 any Warranty and Representation being untrue, incorrect or misleading in whole or in part at the time at which it is given or deemed repeated by the Operator or that Transferring Asset Related Party (as applicable).
- 13. Not Used**
- 14. Further assurance**
- 14.1 Each Party agrees to do (within the time periods specified in this Transfer Agreement, or if not expressly specified, promptly) at its own expense, everything reasonably

necessary (including completing, executing, filing and lodging documents) to give full effect to this Transfer Agreement and any transaction contemplated by it.

- 14.2 The Parties shall not through their acts or omissions prevent, restrict, frustrate or hinder the transfer of any Transferring Asset or the novation of any Transferring Asset Agreement as contemplated by this Transfer Agreement.
- 14.3 The Operator and each Transferring Asset Related Party for valuable consideration (receipt of which is hereby acknowledged):
- 14.3.1 irrevocably appoints the Purchaser (and any person nominated by the Purchaser) as its attorney with full power and authority to do anything they consider necessary (including completing and entering into agreements, contracts, deeds and transferring rights or assets) to effect the transfer of the Owned Transferring Assets and the novation of the Transferring Asset Agreements in accordance with this Transfer Agreement, provided that the Purchaser (and any person nominated by the Purchaser) may only exercise a power of attorney granted pursuant to this clause 14.3.1 if the Operator or Transferring Asset Related Party (as applicable) 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 the Purchaser;
- 14.3.2 agrees to immediately ratify and confirm whatever action is taken by the Purchaser or its nominee referred to in clause 14.3.1, provided that such action is not unlawful or negligent; and
- 14.3.3 agrees that it shall promptly on request by the Purchaser execute and deliver to the Purchaser a separate power of attorney on the terms of this clause 14.3 by way of a deed or otherwise in such form as the Purchaser may reasonably require.
- 14.4 The Operator and each Transferring Asset Related Party agrees that an attorney appointed under clause 14.3 is not liable for any Loss the Operator or the Transferring Asset Related Parties 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 14.3.

15. Purchaser and its nominees not mortgagee in possession or liable

- 15.1 To the extent permitted by applicable Law, the Purchaser and its nominees:
- 15.1.1 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 Transfer Agreement; and

15.1.2 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 Transfer Agreement, or any failure or delay in exercising such right or remedy.

16. Not used

17. Dispute Resolution Procedure

Application of procedure

- 17.1 Any Dispute shall be dealt with under this clause 17 provided that nothing in this clause 17 will prevent a Party from applying to a court of competent jurisdiction to seek urgent or interim relief.
- 17.2 Except as provided for in clause 17.1, no Party may commence court proceedings unless and until the steps provided by this clause 17 have been undertaken, or one Party has attempted to follow the steps and one or more other relevant Parties has failed to participate, and the steps have not resolved the Dispute.

Referral to Senior Executives Meeting

- 17.3 A Party may refer a Dispute for resolution by the Senior Executives Meeting by serving a Notice of Dispute on to the other relevant 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.
- 17.4 Within 3 Business Days after the referral to the Senior Executives Meeting under clause 17.3, each of the relevant Parties 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.
- 17.5 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 relevant 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.
- 17.6 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

- 17.7 If any Dispute is referred to mediation in accordance with clause 17.6, 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:
- 17.7.1 by a single mediator agreed upon between the relevant Parties; or
 - 17.7.2 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.
- 17.8 If the Dispute is not resolved by mediation:
- 17.8.1 the relevant Parties may by written agreement refer the Dispute to Expert determination within 5 Business Days after the conclusion of the mediation; or
 - 17.8.2 provided no referral to Expert determination is made under clause 17.8.1, any relevant Party may commence proceedings to have the Dispute determined by a court of competent jurisdiction.

Expert determination

- 17.9 For those disputes required by this Transfer Agreement to be referred directly to Expert determination or which this Transfer Agreement otherwise expressly envisages may be referred to Expert determination, and for any Dispute that is agreed by the Parties pursuant to clause 17.8.1 to be referred to Expert determination, the procedure set out in clauses 17.10 to 17.15 shall apply.
- 17.10 The relevant 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 relevant Parties shall promptly appoint the relevant person as the Expert.
- 17.11 If within 10 Business Days of referral to Expert determination, the relevant Parties have not agreed upon the appointment of the Expert, the relevant Parties shall request:
- 17.11.1 the then president of the Chartered Accountants Australia and New Zealand (for technical, financial, valuation, economic or accounting issues); or
 - 17.11.2 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 17.11.1 and other issues, the relevant Parties shall request the then president of the New Zealand Bar Association to provide the nomination. The relevant Parties shall promptly appoint the person so nominated pursuant to this clause 17.11.

17.12 The relevant Parties shall instruct the Expert to:

17.12.1 determine the Dispute within the shortest practicable time, and in any event within 30 Business Days unless otherwise agreed by the relevant Parties; and

17.12.2 deliver a report to the relevant Parties stating the Expert's determination and setting out the reasons for the determination.

17.13 The procedures for the conduct of the process in order to make the determination will be determined by the Expert and shall provide each relevant Party with a fair opportunity to make submissions in relation to the matter in dispute.

17.14 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 relevant 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.

17.15 Each Party shall bear its own costs of and incidental to any Expert determination under this clause 17. The costs of the Expert will be shared equally between the Parties to the Dispute.

Performance of obligations pending resolution of dispute

17.16 Despite the existence of a Dispute, each Party shall continue to perform its obligations under this Transfer Agreement.

Survival

17.17 This clause 17 survives the expiry or termination of this Transfer Agreement.

18. GST

18.1 In this clause 18 words and phrases defined in the GST Act have the meaning given in the GST Act, unless the context requires otherwise.

- 18.2 Unless expressly provided to the contrary in this Transfer Agreement, any consideration payable for a supply made under this Transfer Agreement is stated before the addition of any GST chargeable on that supply.
- 18.3 The Parties agree that where GST is chargeable on a supply made by one Party (the "**Supplier**") to another Party (the "**Recipient**") under this Transfer Agreement, 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.
- 18.4 The Supplier shall promptly provide the Recipient with any information reasonably requested by the Recipient in relation to the amount of GST chargeable on a supply made under this Transfer Agreement and payable by the Recipient.
- 18.5 The Parties agree that where a supply made under this Transfer Agreement wholly or partly consists of land then section 11(1)(mb) of the GST Act will apply to zero-rate that supply. For the purposes of that provision and section 78F of the GST Act:
- 18.5.1 the Supplier warrants and represents that it is registered for GST;
- 18.5.2 the Recipient warrants and represents that:
- (a) it is, and will be at the Transfer Date, a GST registered person;
 - (b) it is acquiring the land and any other goods being supplied with the intention of using them for making taxable supplies; and
 - (c) it does not intend to use the land as a principal place of residence for itself or a person associated with it under section 2A(1)(c) of the GST Act.
- 18.5.3 The Recipient shall provide its GST registration number to the Supplier prior to the Transfer Date.

19. Survival of obligations

- 19.1 The expiry or termination of this Transfer Agreement shall be without prejudice to the accrued rights, liabilities and obligations of each Party as at the date of such expiry or termination.
- 19.2 Clauses 1, 2, 9, 11 and 15 to 34 inclusive and any provision of this Transfer Agreement which is expressly or impliedly to apply after the termination or expiry of this Transfer Agreement shall survive such termination or expiry.

20. Confidentiality and Media Management

General obligations

20.1 Subject to clause 20.2, each Party shall keep confidential and not make or cause any disclosure of any of the other Party's Confidential Information without the prior written consent of that other Party.

Exceptions

20.2 The Parties' obligations in clause 20.1 do not apply to disclosure to the extent that the disclosure is:

20.2.1 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 this Transfer Agreement (or the transactions contemplated hereunder) or for the purpose of advising that Party in relation thereto, provided that the Party disclosing the Confidential Information shall ensure that the recipient:

- (a) is made aware of this clause 20; and
- (b) shall keep such information confidential on the same terms as this clause 20;

20.2.2 of information which is at the time lawfully in the possession of the disclosing Party through sources other than another 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;

20.2.3 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, where the disclosing Party is the Operator or a Transferring Asset Related Party, the disclosing Party provides written notice to the Purchaser of the required disclosure promptly on receipt of notice of the required disclosure (if it is permitted to do so by law);

20.2.4 required in connection with legal proceedings, arbitration, mediation or expert determination relating to this Transfer Agreement or for the purpose of advising a Party in relation thereto; or

20.2.5 by the Purchaser to GWRC, provided that the Purchaser shall ensure that GWRC shall keep such information confidential on the same terms as this clause 20 except to the extent:

- (a) GWRC is permitted to disclose such information under the terms of the Partnering Contract or relevant Transferring Asset Related Party Direct Deed; or
- (b) GWRC determines in its sole discretion to disclose such information in response to a request for information under LGOIMA.

21. Assignment

21.1 The Parties shall not, whether directly or indirectly, assign, novate or otherwise transfer any of their respective rights or obligations under this Transfer Agreement without the prior written consent of the other Parties.

22. Notices

22.1 Any notice required to be given in relation to this Transfer Agreement will, except where otherwise expressly provided, be in writing and in English and delivered to the relevant addressee in accordance with clause 22.3.

22.2 This clause 22.2 is subject to clause 22.4. A notice may be:

- 22.2.1 personally delivered, in which case it will be deemed to be given upon delivery at the relevant address; or
- 22.2.2 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
- 22.2.3 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
- 22.2.4 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

22.2.5 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.

22.3 The initial addressee, addresses and other relevant details of each Party are set out below:

[insert notice details of each Party including nominated recipient's name or job title]

A Party may provide written notice to the other Parties of any change to the addressee, 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.

22.4 Where any notice is deemed given pursuant to clause 22.2:

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

22.4.2 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 22.4 the place of receipt of a notice is the applicable postal address for the receiving Party in accordance with clause 22.3, irrespective of whether the notice is communicated by email or otherwise.

23. Relationship between Parties

23.1 Notwithstanding the use of the word "partnering" or "partnership", nothing in this Transfer Agreement, 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 Transfer Agreement) be liable for the acts or omissions of one of the other Parties.

23.2 Except as expressly provided in this Transfer Agreement, nothing in this Transfer Agreement shall be deemed to be construed to authorise any Party to act as an agent for any other Party for any purpose.

24. Entire agreement and amendments

24.1 This Transfer Agreement contains the entire agreement between the Parties with respect to its subject matter and supersedes any earlier agreements or understandings between the Parties in connection with its subject matter.

24.2 This Transfer Agreement may only be amended by way of a written agreement duly executed by each of the Parties.

25. No reliance

25.1 The Operator and each Transferring Asset Related Party acknowledges that, before entering into this Transfer Agreement, it made all enquiries it wanted to make in relation to its obligations under this Transfer Agreement and that in entering into this Transfer Agreement, it:

25.1.1 did not rely on any representation, warranty, guarantee, assurance, undertaking or other statement made by or on behalf of GWRC;

25.1.2 has made its own assessment of the rights provided to it and the obligations imposed on it by this Transfer Agreement; and

25.1.3 has made its own assessment as to the quality of all other material and other information provided by or on behalf of GWRC in connection with this Transfer Agreement.

26. No waiver

26.1 No waiver of any breach of, or failure to enforce any provision of, this Transfer Agreement, 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 provision of this Transfer Agreement. 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.

26.2 No waiver by a Party of any part of this Transfer Agreement is binding unless it is made in writing by the Party granting that waiver.

27. Contracts (Privity) Act 1982

27.1 This Transfer Agreement is not intended to create any obligation enforceable at the suit of any person who is not a Party to this Transfer Agreement.

27.2 A person who is not a Party to this Transfer Agreement shall have no right under the Contracts (Privity) Act 1982 to enforce any term of this Transfer Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

28. Rights cumulative

28.1 Subject to any express provision in this Transfer Agreement to the contrary, the rights, powers and remedies of a Party under this Transfer Agreement 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.

29. No merger

29.1 The rights and obligations of the Parties shall not merge on the completion of any transaction contemplated by this Transfer Agreement. 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.

30. Costs and expenses

30.1 Subject to any express provision to the contrary in this Transfer Agreement, 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 Transfer Agreement.

31. Severability of provisions

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

32. Governing law

32.1 This Transfer Agreement and the transactions contemplated by this Transfer Agreement are governed by and are to be construed in accordance with New Zealand law and, subject to clause 17 (*Dispute Resolution Procedure*), the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

33. Operation of indemnities

- 33.1 No indemnity in this Transfer Agreement limits the effect or operation of any other indemnity in this Transfer Agreement.
- 33.2 Unless expressly provided otherwise, each indemnity in this Transfer Agreement is a continuing obligation, separate and independent from the other obligations of the Parties.
- 33.3 Each indemnity in this Transfer Agreement survives the expiry or termination of this Transfer Agreement.
- 33.4 A Party may recover a payment under an indemnity in this Transfer Agreement before it makes the payment in respect of which the indemnity is given.

34. Counterparts

34.1 This Transfer Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

Execution

Date:

[Operator] by

Authorised signatory

Name

Title

[Transferring Asset Related Party] by

Authorised signatory

Name

Title

[Transferring Asset Related Party] by

Authorised signatory

Name

Title

[Purchaser] by

Authorised signatory

Name

Title

[Note - Execution blocks to be tailored as necessary to ensure due execution by each of the Parties]

Schedule 1 - Agreement details

1 Transferring Depots

1.1 The following facilities are "Transferring Depots":

Identification of Transferring Depot (including fixtures, fittings, equipment and other items)	Owned Transferring Asset (Y/N) - If "Y" identify the relevant owner

[Note - this will describe all of those depot facilities (including fixtures, fittings, equipment and other items) that fall within the definition of "Transferring Depots" in the Partnering Contract (excluding any such depot facilities which have been disposed of in accordance with the Partnering Contract and Transferring Asset Related Party Direct Deed and any depot facilities to which clauses 7.1.1, 7.1.2, 7.1.3 or 7.3 of the Transferring Asset Related Party Direct Deed or clauses 55.17.1, 55.17.2, 55.17.3 or 55.20 of the Partnering Contract apply). If legal title of a Transferring Depot (including fixtures, fittings, equipment and other items) is vested in the Operator or Transferring Asset Related Party, it will be identified in the table as being an "Owned Transferring Asset" and the name of the relevant owner will be specified.]

2 Transferring Vehicles

2.1 The following vehicles are "Transferring Vehicles":

Identification of Transferring Vehicle	Owned Transferring Asset (Y/N) - If "Y" identify the relevant owner

[Note - this will specify the registration numbers of all those vehicles that fall within the definition of "Transferring Vehicles" in the Partnering Contract (excluding any such vehicles which have been disposed of in accordance with the Partnering Contract and Transferring Asset Related Party Direct Deed and any vehicles to which clauses 7.1.1, 7.1.2, 7.1.3 or 7.3 of the Transferring Asset Related Party Direct Deed or clauses 55.17.1, 55.17.2, 55.17.3 or 55.20 of the Partnering Contract apply). If legal title of a Transferring Vehicle is vested in the Operator or Transferring Asset Related Party, it will be identified in the table as being an "Owned Transferring Asset" and the name of the relevant owner will be specified. Where the Partnering Contract expires by effluxion of time, such that any Transferring Asset Agreement in respect of the Transferring Vehicles expires as contemplated by clauses 55.9B and 55.9C of the Partnering Contract and clauses 6.7 and 6.8 of the Transferring Asset Related Party Direct Deed, all relevant Transferring Vehicles will comprise Owned Transferring Assets for these purposes.]

3 Transferring Asset Agreements

3.1 The following leases, licences and other arrangements in respect of the Third Party Transferring Assets are "Transferring Asset Agreements":

[Note - this will specify details (including parties and dates) of each lease, licence or other arrangement which falls within the definition of "Transferring Asset Agreements" under the Partnering Contract, excluding:

- (a) any such "Transferring Asset Agreements" which are no longer in effect;*
- (b) any "Transferring Asset Agreements" to which clause 7.1.1, 7.1.2, 7.1.3 or 7.3 of the Transferring Asset Related Party Direct Deed or clauses 55.17.1, 55.17.2, 55.17.3 or 55.20 of the Partnering Contract apply - these provisions relate to expired Transferring Asset Agreements, Transferring Asset Agreements which have already been novated under the Lessor*

Direct Deed and Transferring Asset Agreements which are required to be kept by the Operator/Transferring Asset Related Party to enable the provision of services under another Partnering Contract; and

- (c) *where the Partnering Contract expires by effluxion of time, any Transferring Asset Agreements in respect of Transferring Vehicles (as the Partnering Contract requires all such Transferring Asset Agreements to expire at the same time, such that the Transferring Vehicles become Owned Transferring Assets) which are transferred under clause 3 instead.]*

Schedule 2 - Transfer Price

1 Transfer Price

- 1.1 The Transfer Price payable by the Purchaser in respect of the Transferring Assets is calculated as follows:

$$\text{Transfer Price} = \text{Transferring Vehicle Price} + \text{Depot Price}$$

where:

Transferring Vehicle Price = the aggregate of the amounts calculated in accordance with paragraph 2 of this Schedule 2 in respect of each Transferring Vehicle which is an Owned Transferring Asset.

Depot Price = the aggregate amounts calculated in accordance with paragraph 3 of this Schedule 2 in respect of the Transferring Depots that are Owned Transferring Assets.

2 Transferring Vehicle Price

- 2.1 Subject to paragraph 2.2, the Transferring Vehicle Price payable in respect of each Transferring Vehicle "(n)" which is an Owned Transferring Asset shall be calculated in accordance with the following formula:

$$TVP_n = CC_n \times (1 + i)^m - \left(\frac{P_n}{i} \times ((1 + i)^m - 1) \right)$$

where:

TVP_n is the Transferring Vehicle Price for the Transferring Vehicle;

CC_n is the capital cost for the Transferring Vehicle as recorded in the column of the table headed ["Capital cost (which amounts shall not be indexed)"] set out at Appendix 11 (*Transferring Vehicles*) of Schedule 2 (*Agreement details*) of the Partnering Contract;

m is the number of months (rounded up to the nearest whole number) that have elapsed between the date on which the Transferring Vehicle was first made available to the Operator for the provision of the Services (as identified in Appendix 11 (*Transferring Vehicles*) of Schedule 2 (*Agreement details*) of the Partnering Contract) and the Transfer Date;

r is the Swap Rate (expressed as a decimal) on the first day of the month in which the Transferring Vehicle was first made available to the Operator for the provision of the Services (as such date is identified in Appendix 11 (*Transferring Vehicles*) of Schedule 2 (*Agreement details*) of the Partnering Contract) plus a margin of [Note - insert the margin specified in paragraph 14A (*Swap Rate for Transferring Vehicles*) of Schedule 2 (*Agreement Details*) of the Partnering Contract].

Swap Rate is the New Zealand 10 year swap market closing rate published by NZdata as New Zealand swap market closes, and as set by the market under the supervision of the New Zealand Financial Markets Association.

i is the monthly interest rate calculated in accordance with the following formula:

$$i = (1 + r)^{1/12} - 1$$

P_n is the capital and interest payments on the capital cost of the Transferring Vehicle, as determined in accordance with the following formula:

$$P_n = \frac{i \times (CC_n)}{1 - (1 + i)^{-MDOM}}$$

where: **MDOM** is 180 less the age of the Transferring Vehicle (in months) when it was first used in the provision of the Services (as recorded in the column of the table headed ["Age when first made available for the provision of Services (months)"] set out at Appendix 11 (*Transferring Vehicles*) of Schedule 2 (*Agreement details*) of the Partnering Contract), provided that if the Transferring Vehicle has never been used for passenger carrying services anywhere in the world, then the value of **MDOM** shall be 180.

- 2.2 The Transferring Vehicle Price for any Transferring Vehicle in respect of which [MDOM] months or more have passed since it was first made available to the Operator for the provision of the Services (as calculated by reference to Appendix 11 (*Transferring Vehicles*) of Schedule 2 (*Agreement details*) of the Partnering Contract) shall be nil.
- 2.3 For the avoidance of doubt, the Transfer Price shall not include any amount in respect of a Transferring Vehicle which is not an Owned Transferring Asset.
- 2.4 The Transferring Vehicle Price calculated pursuant to this paragraph 2 is exclusive of any GST.

3 Depot Price

- 3.1 The Depot Price payable in respect of each Transferring Depot which is an Owned Transferring Asset will be determined as follows:
- 3.1.1 each of the Purchaser and the Operator or relevant Transferring Asset Related Party (as applicable) shall appoint a Valuer to determine the market value (exclusive of GST) of the Transferring Depot in accordance with paragraph 3.2 within [5] Business Days following the date of this Transfer Agreement;

- 3.1.2 the Purchaser and the Operator or relevant Transferring Asset Related Party (as applicable) must provide to each other the valuations produced by each Valuer appointed pursuant to paragraph 3.1.1 within 1 Business Day of receipt of such valuation and must use these valuations as the basis for discussions in order to agree the market value of the Transferring Depot;
- 3.1.3 if the Purchaser and the Operator or relevant Transferring Asset Related Party (as applicable) are unable to reach agreement as to the current market value of the Transferring Depot in accordance with paragraph 3.1.2 within [15] Business Days following the date of this Transfer Agreement, the relevant Parties shall within [2] Business Days thereafter instruct the Valuers appointed pursuant to paragraph 3.1.1 to discuss their respective valuations and attempt to agree a common valuation of the Transferring Depot or to revise their respective valuations and provide the outcome of such discussion to the Parties within [1] Business Day thereafter;
- 3.1.4 the Purchaser and the Operator or relevant Transferring Asset Related Party (as applicable) must use the common valuation or revised valuations provided pursuant to paragraph 3.1.3 as the basis for discussions in order to agree the market value of the Transferring Depot;
- 3.1.5 if the Purchaser and the Operator or relevant Transferring Asset Related Party (as applicable) are unable to reach agreement as to the current market value of the Transferring Depot in accordance with paragraph 3.1.4 within [10] Business Days following receipt of valuations pursuant to paragraph 3.1.3, the relevant Parties shall within [5] Business Days thereafter jointly appoint a Valuer in accordance with paragraph 3.2. If the relevant Parties are unable to agree on the identity of the Valuer to be so appointed prior to the relevant date, the Purchaser shall immediately request the President of Property Institute of New Zealand Incorporated to nominate a Valuer and the relevant Parties shall immediately jointly appoint such Valuer in accordance with paragraph 3.2 as the Valuer for these purposes; and
- 3.1.6 the determination of the Valuer appointed pursuant to paragraph 3.1.5 shall be final and binding on the Parties and will not be subject to clause 17 (*Dispute Resolution Procedure*).
- 3.2 Where a Valuer is appointed pursuant to paragraphs 3.1.1 or 3.1.5:
- 3.2.1 the relevant Parties shall instruct the Valuer to:
- (a) determine the market value of the Transferring Depot for the purposes of use as a bus depot (and associated facilities) on the

basis of Arm's Length Terms between a willing buyer and a willing seller;

- (b) ensure that the market value determined by the Valuer reflects any actual or likely contamination of, or contamination liability attached or related to, the Transferring Depot;
- (c) determine the market value of the Transferring Depot as soon as reasonably practicable and in any event within [5] Business Days of being appointed;
- (d) have due regard to any timely submissions reasonably made by the relevant Parties in relation to the market value of the Transferring Depot but otherwise to act independently of the Parties;
- (e) act in good faith in determining the market value; and
- (f) determine the market value exclusive of any GST; and

3.2.2 the Valuer will act as a property valuer (and not as an arbitrator).

3.3 The fees of any Valuers appointed pursuant to:

3.3.1 paragraph 3.1.1 shall be the responsibility of the appointing Party; and

3.3.2 paragraph 3.1.5 shall be shared equally by the relevant Parties.

3.4 The market value of any Transferring Depot agreed or determined pursuant to this paragraph 3 shall be exclusive of GST.

3.5 For the avoidance of doubt, any calculation pursuant to this paragraph 3 shall not include:

3.5.1 any amount in respect of any GWRC Assets installed within, or otherwise located at, the relevant Transferring Depot; and

3.5.2 any amount in respect of a Transferring Depot which is not an Owned Transferring Asset.

Schedule 3 - Novation Deed

See document contained in DSM with file name “Novation Deed – Transferring Assets”.

Schedule 4 - Terms and conditions applicable to the sale of a Transferring Depot which is an Owned Transferring Asset

General terms	The General Terms of the then current edition of the Real Estate Institute of New Zealand/Auckland District Law Society form of agreement for sale and purchase of real estate
Vendor	Operator or Associated Operator that is the registered proprietor of the Transferring Depot
Purchaser	Purchaser under this Transfer Agreement
Property	The estate and legal description of the Transferring Depot as set out in paragraph 1 (Transferring Depots) of Schedule 1 (<i>Agreement details</i>)
Purchase price	Transfer Price for the Transferring Depot as set out in Schedule 2 (<i>Transfer Price</i>), plus GST (if any)
Deposit	Nil
Settlement date	Transfer Date
Interest rate for late settlement	10% per annum
Conditions	Nil
Tenancies	Vacant possession
Further terms	Nil

Schedule 5 - Warranties and Representations

1 Warranties and Representations

- 1.1 To the extent that a Warranty and Representation contained in this Schedule is given in respect of the Transferring Assets or Transferring Asset Agreements, such Warranty and Representation is given by the Operator and each Transferring Asset Related Party only to the extent that it owns, leases or licences the Transferring Asset or is party to the Transferring Asset Agreement (as applicable).
- 1.2 The Operator and each Transferring Asset Related Party warrants and represents to the Purchaser that:
- 1.2.1 (**title**) to the extent that it is identified in Schedule 1 (*Agreement details*) as being the owner of an Owned Transferring Asset, it is (or will, prior to the Transfer Date, become) the absolute legal and beneficial owner of that Owned Transferring Asset and has full capacity to transfer the unencumbered full title in the Owned Transferring Asset as contemplated by this Transfer Agreement;
 - 1.2.2 (**no security interests**) at Completion, there will be no Security Interests over or affecting any of the Transferring Assets and it is not a party to any agreement to grant any such Security Interest over the Transferring Assets;
 - 1.2.3 (**information provided**) all information and documents given by it (or anyone acting on its behalf) to GWRC, the Purchaser or anyone acting on either of their behalves under or relating to this Transfer Agreement, the Transferring Assets or the Transferring Asset Agreements was when given, and remains, true, complete and accurate in all material respects;
 - 1.2.4 (**provision of information**) if called upon to do so by the Purchaser, it will promptly provide the Purchaser with such information relating to the Transferring Assets and the Transferring Asset Agreements as the Purchaser may reasonably require (including such information as may be necessary to Complete this Transfer Agreement);
 - 1.2.5 (**insurance**) it will not do anything that may invalidate any insurance policy held by or on behalf of the Purchaser in relation to the Transferring Assets;
 - 1.2.6 (**compliance with Laws etc.**) it has duly observed and complied in all respects with the provisions of all applicable laws and all orders, notices, awards and determinations made by any Governmental Entity (which, for the purposes of this paragraph 1.2.6 only, shall exclude GWRC in its

capacity as principal under the Partnering Contract) in any way relating to or binding on any of the Transferring Assets;

- 1.2.7 (**compliance with contractual obligations**) in the case of the Operator, it has complied with and will continue to comply with its obligations under clauses 10.9A, 11.7 and 55 (*Provisions relating to Transferring Assets*) of the Partnering Contract and, in the case of each Transferring Asset Related Party, it has complied with and will continue to comply with the obligations of each Transferring Asset Related Party Direct Deed to which it is party;
- 1.2.8 (**compliance with the Partnering Contract**) each Transferring Asset complies with all applicable requirements of the Partnering Contract and is fit for its intended purpose;
- 1.2.9 (**no default**) it has not breached the terms of any Transferring Asset Agreement to which it is party and no circumstances exist which (whether immediately or with the passing of time) may result in the termination, rescission or suspension of any Transferring Asset Agreement to which it is party;
- 1.2.10 (**no changes to Transferring Asset Agreements**) in relation to each Transferring Asset Agreement to which it is party:
- (a) that Transferring Asset Agreement is in full force and effect;
 - (b) there are no grounds existing which would permit any party to a Transferring Agreement to avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of that Transferring Asset Agreement or to suspend the performance of any of its obligations under that Transferring Asset Agreement;
 - (c) it has not waived or granted any indulgence in respect of a material provision of that Transferring Asset Agreement except with the prior consent of GWRC given under the Partnering Contract or Transferring Asset Related Party Direct Deed (as applicable);
 - (d) it has not assigned, novated or otherwise transferred any or all of its rights or obligations under that Transferring Asset Agreement to any person except for:
 - (i) a novation to the Purchaser in accordance with a Novation Deed; or

- (ii) with the prior consent of GWRC given under the Partnering Contract or Transferring Asset Related Party Direct Deed (as applicable); and
 - (e) the last version of the Transferring Asset Agreement provided by it to GWRC remains true, accurate and complete and there has been no subsequent amendment, variation, supplementation or replacement to the Transferring Asset Agreement which has not been notified by it to GWRC;
- 1.2.11 (**assets not held as trustee**) it does not hold any of the Transferring Assets as the trustee or responsible entity of any trust;
- 1.2.12 (**facts and circumstances**) it is not aware of any facts or circumstances that have not been disclosed to the Purchaser in writing that would, if disclosed, be likely to materially adversely affect the decision of a prudent and reasonable person considering whether or not to enter into this Transfer Agreement in the role of "Purchaser";
- 1.2.13 (**status**) it is validly existing under the laws of its place of incorporation or registration;
- 1.2.14 (**power**) it has the power to enter into and perform its obligations under this Transfer Agreement, to carry out the transactions contemplated by this Transfer Agreement and to carry on its business as now conducted or contemplated;
- 1.2.15 (**not a trustee**) in entering into this Transfer Agreement, it is not acting as responsible entity or trustee of any trust or settlement or as an agent on behalf of another entity;
- 1.2.16 (**corporate action**) it has taken all necessary corporate action to authorise the entry into and performance of this Transfer Agreement and to carry out the transactions contemplated by this Transfer Agreement;
- 1.2.17 (**valid and binding**) this Transfer Agreement creates valid and binding obligations and is enforceable in accordance with its terms, subject to any necessary stamping and registration, laws generally affecting creditors' rights and general principles of equity;
- 1.2.18 (**no violation**) the execution and performance by it of this Transfer Agreement and each transaction contemplated by this Transfer Agreement did not and will not violate in any respect a provision of:
 - (a) any applicable law;

- (b) its constitution or other constituent documents; or
- (c) any other document or agreement that is binding on it or its assets;

1.2.19 (**legal proceedings**) no litigation, arbitration or other proceedings are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect upon it or its ability to perform its obligations under this Transfer Agreement;

1.2.20 (**financial status**) there has been no material change in its financial condition which would prejudice its ability to perform its obligations under this Transfer Agreement;

1.2.21 (**Insolvency Event**) no Insolvency Event exists in relation to it;

1.2.22 (**judgments**) there is no unsatisfied judgment against it which may prejudice its ability to perform its obligations under this Transfer Agreement; and

1.2.23 (**authorisations**) each authorisation that is required in relation to:

- (a) the execution, delivery and performance by it of this Transfer Agreement and the transactions contemplated by this Transfer Agreement;
- (b) the validity and enforceability of this Transfer Agreement; and
- (c) its business as now conducted or contemplated,

has been obtained or effected and remains in full force and effect, it is in compliance with them and it has paid all applicable fees in respect of them.

Annexure 6

Fares, Ticketing and Enforcement Requirements

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1 Purpose of this Annexure

1.1 This Annexure sets out the requirements in respect of fares, ticketing and enforcement measures that GWRC requires PTOM Operators to comply with under the Partnering Contract made between GWRC and that PTOM Operator. The issues addressed in this Annexure are as follows:

1.1.1 fares - sets out the terms and conditions associated with public transport fares in the Wellington region;

1.1.2 ticketing - sets out the methods of ticketing and revenue collection to be used by PTOM Operators; and

1.1.3 enforcement - sets out the revenue protection processes and controls used to minimise fare evasion and avoidance.

2 Definitions used in this Annexure

2.1 Capitalised terms used in this Annexure are as defined in the Regional Agreement, or in the relevant Partnering Contract.

3 Process for changing this Annexure

3.1 Any changes to the requirements set out in this Annexure shall occur in accordance with the change process for PT Network Documents set out in the Regional Agreement.

4 Fares

4.1 The PTOM Operator must implement and comply with, and charge fares in accordance with, the GWRC Fare Media Transition Plan and the Conditions of Carriage.

5 IFT Programme and IFT System

Rail Unit

5.1 The following paragraphs 5.2 to 5.3 relate only to the Rail Operator.

5.2 Schedule 13 (*IFT Programme*) sets out an overview of the IFT Programme and the Rail Operator's role in the development and implementation of the IFT Programme.

5.3 It is anticipated that the IFT Programme will impact on fares, ticketing and enforcement in the following manner:

5.3.1 *fares*: in IFT Phase One and IFT Phase Two there will be a progressive change and rationalisation of the fares and fare products, details of which are set out in the GWRC Fare Media Transition Plan;

5.3.2 *ticketing*: on and from the ETS Implementation Date, the Rail Operator will have a more limited role in ticketing than in IFT Phase One; and

- 5.3.3 *enforcement*: during IFT Phase Two, the revenue enforcement methodology will be as set out in paragraph 7 (*Enforcement*) with the main difference being that technology will be employed in all elements of enforcement.

Bus Units

- 5.4 The following paragraphs 5.5 to 5.6 relate only to Bus Operators.
- 5.5 Clauses 12.38 and 12.39 of the relevant Partnering Contract provide for the Bus Operator's role in the development and implementation of the IFT Programme.
- 5.6 It is anticipated that the IFT Programme will impact on ticketing, enforcement and fares in the following manner:
- 5.6.1 *ticketing*: on and from the Commencement Date, an electronic ticketing system will be implemented on all Bus Operators' Vehicles. As part of the IFT Programme, the ticketing solution may change and require upgrade as explained further in clause 12 (*Other assets and systems used in the provision of the Services*) of the Bus Partnering Contract;
- 5.6.2 *enforcement*: the revenue enforcement methodology will be as set out in paragraph 7 (*Enforcement*); and
- 5.6.3 *fares and fare products*: there will be a progressive change and rationalisation of the fares and fare products, details of which are set out in the GWRC Fare Media Transition Plan.
- 5.7 Not used

6 Ticketing

- 6.1 This section sets out the methods of ticketing and collection of Farebox Revenue to be implemented by the PTOM Operator.

Rail Unit

- 6.2 The following paragraphs 6.3 to 6.6 relate only to the Rail Operator.
- 6.3 The following paragraphs (inclusive) shall apply:
- 6.3.1 at all times from the Commencement Date, paragraphs 6.1 to 6.6;
- 6.3.2 IFT Phase One: from the Commencement Date up to and including the earlier of the IFT Programme Phase One Expiry Date and the Termination Date, paragraphs 6.17 to 6.21; and
- 6.3.3 IFT Phase Two: on and from the ETS Implementation Date until the Termination Date, paragraphs 6.22 to 6.33.
- 6.4 The process for depositing and transferring Farebox Revenue is set out in clause 48 (*Farebox Revenue and other Revenue*) of the Rail Partnering Contract.
- 6.5 The Rail Operator shall comply with the GWRC Fare Media Transition Plan.

6.6 A ticket issued by or on behalf of a Rail Operator remains the property of GWRC at all relevant times.

Bus Units

6.7 The following paragraphs 6.8 to 6.16 relate only to Bus Operators.

6.8 Ticket media shall include paper tickets and electronic fare payment media.

6.9 The Bus Operator shall accept and collect Farebox Revenue on board Vehicles by the following means:

6.9.1 allowing customers to tag on and off with an electronic fare payment device; and

6.9.2 selling paper tickets to customers for cash payment.

6.10 All fare collection and ticketing must be recorded by the Bus Operator using the Operator Ticketing Equipment, clearly identifying any concessionary fares by reference to the specific category of concession (e.g. SuperGold).

6.11 A ticket issued by or on behalf of a Bus Operator remains the property of GWRC at all relevant times.

6.12 The Operator shall not be responsible for the sale, reloading and renewing of electronic fare payment media.

6.13 The process for depositing and transferring Farebox Revenue is set out in clause 39 (*Farebox Revenue and other Revenue*) of the Bus Partnering Contract.

6.14 GWRC shall be responsible for developing the branding of the Ticketing System.

6.15 The Bus Operator shall sell and accept the fare products set out in and comply with the GWRC Fare Media Transition Plan at the prices and in accordance with the conditions set out therein.

6.16 The Bus Operator shall be responsible for procuring all ticketing consumables to be used on the Vehicles.

IFT Phase One - Rail Unit

6.17 The following paragraphs 6.18 to 6.33 relate only to the Rail Operator.

6.18 The Rail Operator shall sell tickets and collect Farebox Revenue:

6.18.1 on board trains by cash;

6.18.2 at Ticket Offices and through Ticket Agents by cash, cheque and electronic payment; and

6.18.3 through the Operator's online payment facility for monthly passes which the Operator shall ensure is accessed by customers via a link from GWRC's Metlink website.

- 6.19 The Rail Operator shall, and shall procure that all Ticket Agents:
- 6.19.1 sell the fare products set out in the GWRC Fare Media Transition Plan at the prices set out therein;
 - 6.19.2 procure and keep sufficient stocks of paper tickets that meet GWRC's requirements; and
 - 6.19.3 keep accurate records of all paper ticket stock ordered, held and sold and report to GWRC in the revenue reports referred to in Schedule 5 (*Planning, Reporting and Meetings*) all paper tickets which are lost, stolen or not accounted for in the Rail Operator's records.
- 6.20 Revenue collection and transfer to the Farebox Account shall be in accordance with clause 48 (*Farebox Revenue and other Revenue*) of the Rail Partnering Contract.
- 6.21 The Rail Operator shall bear the cost associated with ticket sales, including:
- (a) ticketing staff;
 - (b) credit card fees;
 - (c) Ticket Agent commission;
 - (d) costs for collecting and depositing revenue into the Farebox Account;
 - (e) equipment required in order to carry out ticket sales, including EFTPOS machines; and
 - (f) any other costs relating to ticket sales.

IFT Phase Two - Rail Unit

- 6.22 The Rail Operator shall not sell tickets on board trains.
- 6.23 The Rail Operator shall sell tickets at Ticket Offices and collect Farebox Revenue by the following means:
- 6.23.1 selling paper printed tickets; and
 - 6.23.2 sale and top up of fare media.
- 6.24 The Rail Operator shall collect Farebox Revenue via the following payment channels:
- 6.24.1 cash;
 - 6.24.2 cheque; and
 - 6.24.3 electronic payment.
- 6.25 If buses are used as an alternative transport arrangement in accordance with the Rail Partnering Contract:
- 6.25.1 where such buses are not IFT Compatible, the Rail Operator shall use the Operator IFT System Equipment to ensure that all customers tag on and

off the bus or have purchased a paper ticket prior to boarding the replacement service; or

- 6.25.2 where such buses are IFT Compatible, ensure that the IFT System Equipment has been programmed to allow customers to tag on and off the bus and that the bus driver checks that all customers either tag on or have purchased a paper ticket prior to boarding the replacement service.
- 6.26 The Rail Operator shall sell the fare products set out in the GWRC Fare Media Transition Plan at the prices set out therein.
- 6.27 Ticket media shall include paper tickets and other fare media.
- 6.28 Fare media may be supplied by either GWRC or third parties.
- 6.29 Fare media may be sold and reloaded/renewed by the Operator at all Ticket Offices.
- 6.30 Fare media may be sold and reloaded/renewed by other IFT System Equipment, on-line and through the Metlink call centre, each of which shall be GWRC's responsibility.
- 6.31 The Rail Operator shall not sell paper tickets other than through the Operator IFT System Equipment provided for this purpose.
- 6.32 The Rail Operator shall not permit any anti-public transport advertising or messaging to be printed on paper ticket media. The Rail Operator shall seek GWRC's consent to use the reverse of paper ticket media for advertising / messaging.
- 6.33 GWRC shall be responsible for developing the branding of the IFT System.

7 Enforcement

Background - Rail Unit

- 7.1 The following paragraphs 7.2 to 7.11 relate only to the Rail Operator.
- 7.2 The following paragraphs (inclusive) shall apply:
- 7.2.1 at all times from the Commencement Date, paragraphs 7.1 to 7.6;
- 7.2.2 IFT Phase One: from the Commencement Date up to and including the earlier of the IFT Programme Phase One Expiry Date and the Termination Date, paragraphs 7.7 to 7.9; and
- 7.2.3 IFT Phase Two: on and from the ETS Implementation Date until the Termination Date, paragraphs 7.10 to 7.11.
- 7.3 Revenue protection covers the activities for ensuring that people travelling on public transport have paid the appropriate fare to travel. Revenue protection is a series of processes and controls that are implemented to ensure that fare evasion and avoidance are minimised and that all revenues collected are fully accounted for and are applied to the intended parties.

Revenue protection obligations - Rail Unit

- 7.4 The Rail Operator shall minimise fare evasion by:
- 7.4.1 employing revenue protection officers to enforce Ticket Offences and, during IFT Phase Two, carry out the functions referred to in the GWRC Revenue Protection Strategy;
 - 7.4.2 providing a visible and effective deterrent to committing Ticket Offences; and
 - 7.4.3 during IFT Phase Two, implementing and complying with the GWRC Revenue Protection Strategy.
- 7.5 The Rail Operator shall comply with the Rail Operator's Revenue Protection Plan developed under Schedule 5 (*Planning, Reporting and Meetings*) and as updated for IFT Phase Two to reflect and be consistent with the GWRC Revenue Protection Strategy.
- 7.6 The means of measuring the Rail Operator's compliance with its revenue protection obligations and the consequences of failure by the Rail Operator to comply with its obligations are set out in Schedule 3 (*Passenger Services*) and Schedule 6 (*Financial and Performance Regime*).

IFT Phase One - Rail Unit

- 7.7 If a customer commits a Ticket Offence the Rail Operator shall request that the customer purchase a ticket for the customer's journey or shall request that the customer leaves the train at the next Station.
- 7.8 The Rail Operator shall comply with the Revenue Protection Plan.
- 7.9 The Rail Operator shall check tickets as set out in further detail in the GWRC Fare Media Transition Plan, including:
- 7.9.1 monthly passes shall be sighted; and
 - 7.9.2 single journey tickets shall be hole punched.

IFT Phase Two - Rail Unit

- 7.10 If a customer commits a Ticket Offence, the Rail Operator shall either:
- 7.10.1 issue an invoice for a Penalty Fare to be paid by the customer at a Ticket Office; or
 - 7.10.2 charge the Penalty Fare onto the customer's fare media.
- 7.11 The Rail Operator shall comply with the Revenue Protection Plan provided in accordance with paragraph 3.63 of Schedule 3 (*Passenger Services*) and updated in accordance with Schedule 5 (*Planning, Reporting and Meetings*).

Background and acknowledgement - Bus Units

- 7.12 The following paragraphs 7.13 to 7.20 relate only to Bus Operators.

- 7.13 Revenue protection covers the activities for ensuring that people travelling on public transport have paid the appropriate fare to travel. Revenue protection is a series of processes and controls that are implemented to ensure that fare evasion and avoidance are minimised and that all revenues collected are fully accounted for and are applied to the intended parties.
- 7.14 The Operator acknowledges and agrees that GWRC may use the closed circuit television system installed on Vehicles in order to carry out revenue protection activities.

Revenue protection obligations - Bus Units

- 7.15 The Bus Operator shall minimise fare evasion by:
- 7.15.1 not used;
 - 7.15.2 enforcing the Conditions of Carriage and, without prejudice to the foregoing, taking all reasonably practicable steps to ensure that passengers comply with the Conditions of Carriage to the extent that they relate to fares and tickets; and
 - 7.15.3 giving effect to the Partnering Principles in clause 3 (*Partnering Principles*) of the Bus Partnering Contract by working with GWRC to reduce Ticket Offences.
- 7.16 The Bus Operator shall comply with the Bus Operator's Revenue Protection Plan, developed under Schedule 5 (*Planning, Reporting and Meetings*).
- 7.17 The means of measuring the Bus Operator's compliance with its revenue protection obligations and the consequences of failure by the Bus Operator to comply with its obligations are set out in Schedule 5 (*Planning, Reporting and Meetings*) and Schedule 6 (*Financial and Performance Regime*).
- 7.18 The Bus Operator must take all reasonably practicable steps to ensure that passengers have a ticket valid for the Scheduled Service or Special Event Service on which the customer is travelling and that passengers do not commit a Ticket Offence by:
- 7.18.1 drivers ensuring that passengers either purchase a ticket or tag on using the Operator Ticketing Equipment as they board a Vehicle;
 - 7.18.2 if the passenger has a concession ticket or a concession entitlement card, drivers requiring such passengers to provide an identification document to demonstrate that the passenger is entitled to that concession;
 - 7.18.3 in respect of electronic fare media, drivers monitoring passengers for their compliance with requirements of the Operator Ticketing Equipment, including monitoring any passengers who tag off at a Bus Stop which is not the Bus Stop at which the passenger alights from the Vehicle; and
 - 7.18.4 complying with the GWRC Fare Media Transition Plan and the Conditions of Carriage.

- 7.19 If a customer has committed a Ticket Offence, the Bus Operator must enforce the Operator's Revenue Protection Plan.
- 7.20 Without limiting and subject to any 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, for the purposes of determining whether a Ticket Offence has been committed:
- 7.20.1 electronic fare media is valid for a Trip or entry into a Designated Area if a passenger has validated his or her stored value card at the Ticketing Equipment provided for that purpose shortly after either boarding a Vehicle for that Trip or entering that Designated Area and information stored in or on the electronic fare media has not been altered or destroyed or made inaccessible in any material particular;
- 7.20.2 a paper ticket is valid for a Trip or entry into a Designated Area if:
- (a) any fare for the Trip or entry has been paid;
 - (b) the whole of the Trip or the entry is authorised on the face of the ticket;
 - (c) in the case of a concession ticket, it either itself constitutes, or is accompanied by, evidence of a current concession entitlement to rely on that ticket; and
 - (d) it is used in accordance with all other conditions for its use applicable in respect of that class of ticket;
- 7.20.3 only the person who first uses a paper ticket for a Trip or an entry to a Designated Area is entitled to use that ticket for that Trip or entry and any subsequent Trip or entry to a Designated Area authorised by the ticket;
- 7.20.4 a paper ticket is invalid if:
- (a) it has been altered, defaced or mutilated in any material particular; or
 - (b) it becomes, or has been made, illegible in any material particular; or
 - (c) not used;
- 7.20.5 a concession entitlement card or concession ticket may only be used by a passenger if that passenger provides an identification document to demonstrate that the passenger is entitled to use that concession; and
- 7.20.6 evidence of a concession entitlement is invalid if the card or other document which constitutes that evidence (other than a ticket):
- (a) has been altered, defaced or mutilated in any material particular; or
 - (b) becomes, or has been made, illegible in any material particular.

Annexure 7

Conditions of Carriage

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1 Purpose of this Annexure

- 1.1 This Annexure sets out the requirements for the Conditions of Carriage that GWRC requires PTOM Operators to adopt, implement, enforce and comply with under the Partnering Contract made between GWRC and that PTOM Operator.

2 Definitions used in this Annexure

- 2.1 Capitalised terms used in this Annexure are as defined in the Regional Agreement, or in the relevant Partnering Contract.

3 Process for changing this Annexure

- 3.1 Any changes to this Annexure shall only occur in accordance with the change process for PT Network Documents set out in the Regional Agreement.
- 3.2 It is anticipated that this Annexure will be amended in accordance with such change process to reflect changes that result from the implementation of the IFT Programme, which changes shall take effect from the date notified by GWRC in writing.
- 3.3 In the event GWRC adopts or agrees new terms and conditions as a result of the implementation of the IFT Programme, then GWRC shall promptly provide an electronic copy of such amended Conditions of Carriage to each PTOM Operator.
- 3.4 Notwithstanding anything to the contrary in the relevant Partnering Contract, the Regional Agreement or any other Transaction Document, any amendments to this Annexure or to the Conditions of Carriage which arise in connection with, or as a consequence of, the implementation of the IFT Programme, or in the case of the Rail Partnering Contract the implementation of the RS1 Project, shall not constitute or give rise to a Contract Variation.

4 Process for adopting and implementing Conditions of Carriage

- 4.1 In the case of the Rail Partnering Contract, it is acknowledged that the Conditions of Carriage will not be finalised by the date of execution of the Rail Partnering Contract. GWRC shall consult with the Rail Operator regarding the Conditions of Carriage prior to the Commencement Date.

Amendments to the Conditions of Carriage

- 4.2 If GWRC considers in its sole discretion that any of the provisions of the Conditions of Carriage need to be amended, then GWRC shall promptly amend the Conditions of Carriage to reflect and incorporate the amended provisions and shall promptly provide an electronic copy of such amended Conditions of Carriage to the PTOM Operators.
- 4.3 The Parties agree and acknowledge that an up to date electronic version of the Conditions of Carriage shall be made available through the Metlink website at all times. On request by a customer, GWRC will provide hard copies of the Conditions of Carriage to the customer.

Implementing Conditions of Carriage

- 4.4 The PTOM Operator shall at all times adopt, implement, enforce and comply with the Conditions of Carriage.
- 4.5 The PTOM Operator shall (and shall procure that the Operator Associates shall) act reasonably when refusing to carry any customer on board a Vehicle or requiring any customer to leave a Vehicle in accordance with the Conditions of Carriage. Notwithstanding anything to the contrary in the Conditions of Carriage, a PTOM Operator shall not (and shall ensure that the Operator Associates shall not) remove a customer from a Vehicle if it is not safe to do so.

5 Passenger contract with GWRC

- 5.1 The Parties acknowledge and agree that the contract that passengers make for carriage on the passenger carrying services in consideration of the payment of the applicable fare is a contract with GWRC.

Annexure 8

Customer Satisfaction Survey

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1 Purpose of this Annexure

1.1 This Annexure sets out following information about the Customer Satisfaction Survey questions that will be used in relation to Performance Indicator #9 (*Customer Satisfaction Survey*) set out in Appendix 6 (*Performance Indicators*) of Schedule 5 (*Planning, Reporting and Meetings*):

- 1.1.1 the questions that form part of the Customer Satisfaction Survey;
- 1.1.2 the timing and frequency of the Customer Satisfaction Survey; and
- 1.1.3 the appointment of the Surveying Organisation.

1.2 Capitalised terms used in this Annexure are as defined in this Partnering Contract.

2 Process for changing this Annexure

2.1 Any changes to this Annexure shall only occur as a Contract Variation or Minor Contract Variation in accordance with the relevant provisions relating to Contract Variations or Minor Contract Variations (as applicable) contained in Schedule 14 (*Change Events and Net Financial Impact*).

3 Questions that make up the Customer Satisfaction Survey

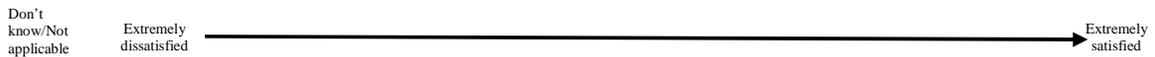
3.1 The Customer Satisfaction Survey shall include the questions set out at paragraph 3.2 below.

3.2 The Customer Satisfaction Survey shall include the following questions:

Thinking about the bus, train or harbour ferry you are on now, how satisfied or dissatisfied are you with...

Please circle one number in each row

Please use this scale to rate your response.



NA	0	1	2	3	4	5	6	7	8	9	10
----	---	---	---	---	---	---	---	---	---	---	----

The service being on time (keeping to the timetable)	NA	0	1	2	3	4	5	6	7	8	9	10
The helpfulness of the driver/staff	NA	0	1	2	3	4	5	6	7	8	9	10
The attitude of the driver/staff	NA	0	1	2	3	4	5	6	7	8	9	10
The comfort of the inside temperature of the vehicle	NA	0	1	2	3	4	5	6	7	8	9	10
The cleanliness of the vehicle	NA	0	1	2	3	4	5	6	7	8	9	10
Your personal security during this trip	NA	0	1	2	3	4	5	6	7	8	9	10
The smoothness of the ride (meaning whether the driver was driving	NA	0	1	2	3	4	5	6	7	8	9	10

carefully and consistently). This excludes things outside the driver’s control such as uneven road surface or interference by other traffic.													
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4 Timing and frequency of Customer Satisfaction Survey

- 4.1 GWRC shall procure that the Customer Satisfaction Survey shall be conducted only by the Surveying Organisation and once per Year in or around April in each Year, with the questions that make up the Customer Satisfaction Survey being included as part of a broader public transport satisfaction survey that meets any specific requirements of the Transport Agency.
- 4.2 Operators are not required to conduct their own survey, however if an Operator wishes to do so, the survey must be in accordance with the requirements of the Transport Agency as set out in Appendix K of the Procurement Manual and the timing of the survey decided in consultation with GWRC.
- 4.3 The results of the Customer Satisfaction Surveys shall be calculated and displayed separately for each Operator (aggregated across this Bus Unit and all Associated Bus Units in respect of which the Operator is a party to the relevant Associated Partnering Contract) and the results for the Operator (aggregated across this Bus Unit and all Associated Bus Units in respect of which the Operator is a party to the relevant Associated Partnering Contract) will apply to this Partnering Contract (including for the purposes of assessing the Operator's compliance with Performance Indicator #9 set out in Appendix 6 (*Performance Indicators*) of Schedule 5 (*Planning, Reporting and Meetings*)).

5 Appointment and role of Surveying Organisation

- 5.1 No later than 20 Business Days prior to the first day of a month in which a Customer Satisfaction Survey is to be undertaken, GWRC shall appoint an independent surveying organisation to undertake that Customer Satisfaction Survey in accordance with this Annexure 8.
- 5.2 Each person appointed as the Surveying Organisation shall be independent of the Parties and shall have the appropriate skills, qualifications, resources and experience to undertake the Customer Satisfaction Survey.
- 5.3 The Surveying Organisation shall be appointed by GWRC on reasonable commercial terms.
- 5.4 Each Surveying Organisation's fees shall be paid by GWRC.
- 5.5 Under the terms of its appointment, the Surveying Organisation shall be required to:
 - 5.5.1 randomly select the passengers to be engaged in the Customer Satisfaction Survey on vehicles at varying parts of each PTOM Unit, so as to ensure that the persons surveyed are representative of the passengers using the bus services provided in those PTOM Units;

- 5.5.2 engage passengers in the Customer Satisfaction Survey at various different times of the day and on a mixture of Business Days, Saturdays, Sundays and Public Holidays (if any Public Holidays fall in the period in which the Customer Satisfaction Survey is being carried out), in order to ensure that the sample is representative of demand distribution;
- 5.5.3 ensure that the number of passengers who complete and return the Customer Satisfaction Survey is sufficient to ensure that the results are statistically significant;
- 5.5.4 complete the Customer Satisfaction Survey within the time frame specified in the terms and conditions of its appointment (which time frame shall be reasonable); and
- 5.5.5 within 30 Business Days of completion of the Customer Satisfaction Survey, provide each of GWRC and the Operator with:
- (a) a full copy of the results of the Customer Satisfaction Survey in so far as it relates to the Operator and the services provided by the Operator under this Partnering Contract and any Associated Partnering Contract; and
 - (b) an informative and meaningful summary of the results of the Customer Satisfaction Survey in so far as it relates to the Operator and the services provided by the Operator under this Partnering Contract and any Associated Partnering Contract, including:
 - (i) identifying the average response (expressed as a percentage to one decimal point) to each question contained in the Customer Satisfaction Survey; and
 - (ii) in relation to the second and any subsequent Customer Satisfaction Surveys, identifying the extent to which the Operator has met or exceeded the Customer Satisfaction Thresholds.

Setting the Customer Satisfaction Threshold

- 5.6 At the time of the provision by the Surveying Organisation of the results of the first Customer Satisfaction Survey undertaken pursuant to paragraph 4.1, the Surveying Organisation shall be required to:
- 5.6.1 calculate the average responses (expressed as a percentage to one decimal point) to the questions contained in the first Customer Satisfaction Survey conducted in respect of the Operator and the services provided by the Operator under this Partnering Contract and any Associated Partnering Contract (such average responses being the initial Customer Satisfaction Threshold); and

- 5.6.2 notify GWRC and the Operator in writing of the initial Customer Satisfaction Threshold.
- 5.7 At the time of provision by the Surveying Organisation of the results of:
- 5.7.1 the third Customer Satisfaction Survey undertaken after notification of the initial Customer Satisfaction Threshold under paragraph 5.6.2; and
- 5.7.2 each third Customer Satisfaction Survey undertaken thereafter,
- the Surveying Organisation shall be required to recalculate and notify to GWRC and the Operator in writing the average response (expressed as a percentage to one decimal point) to the questions contained in the Customer Satisfaction Survey in respect of the Operator and the services provided by the Operator under this Partnering Contract and any Associated Partnering Contract, based on the aggregate results of the last three Customer Satisfaction Surveys.
- 5.8 For the purpose of calculating the average response to the questions in a Customer Satisfaction Survey under paragraphs 5.6.1 and 5.7, the following principles shall apply:
- 5.8.1 any question not answered, answered ambiguously or answered "NA" by a respondent is not included in the analysis;
- 5.8.2 each question carries equal weighting;
- 5.8.3 the number on the scale circled or ticked as the response equates to the score given by that respondent for that question;
- 5.8.4 the average score for a question (for the purposes of paragraph 5.8.5 below) is the aggregate of all scores divided by the number of survey responses to that question in respect of the Operator (in each case excluding those to be ignored in accordance with paragraph 5.8.1); and
- 5.8.5 the average response to the questions contained in a Customer Satisfaction Survey is the total of the average score for each question in that Customer Satisfaction Survey, divided by the number of questions, expressed as a percentage to one decimal point.
- 5.9 Subject to paragraph 5.11, if the average response calculated in accordance with paragraph 5.7 is higher than the then current Customer Satisfaction Threshold, the Customer Satisfaction Threshold shall be replaced with that higher value for the purposes of the next Customer Satisfaction Survey.
- 5.10 Subject to paragraph 5.11, if the average response calculated in accordance with paragraph 5.7 is equal to or less than the then current Customer Satisfaction Threshold, the Customer Satisfaction Threshold shall remain as it was for the purposes of the next Customer Satisfaction Survey.
- 5.11 If the average response calculated in accordance with paragraph 5.7 is equal to or higher than 90%, the Customer Satisfaction Threshold shall be deemed for each

subsequent Customer Satisfaction Survey until the end of the Term to be 90% and paragraphs 5.7 to 5.10 shall cease to apply.

- 5.12 For the avoidance of doubt, the Customer Satisfaction Threshold may only be increased pursuant to the provisions of 5.7 to 5.11 and will in no circumstances be reduced.

Annexure 9

Parent Company Guarantee

Parent Company Guarantee

relating to Partnering Contract in respect of
Wellington Regional Bus Services

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THIS DEED is made on [*insert date*]

BETWEEN:

[*INSERT NAME OF GUARANTOR*] a company incorporated and registered under the laws of [*insert*] with company number [*insert*] with its principal place of business at [*insert*] ("**Guarantor**").

In favour of:

WELLINGTON REGIONAL COUNCIL, a public statutory body constituted under the Local Government Act 2002 ("**Beneficiary**").

BACKGROUND:

- A The Operator has entered into or intends to enter into the Partnering Contract with the Beneficiary.
- B At the request of the Beneficiary, the Guarantor has agreed to guarantee the performance of the Relevant Documents by the Operator in accordance with the terms hereof.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this deed the following terms have the following meanings:

"Bus Unit" means [*insert description of Bus Unit to which this PCG relates*];

"Claim" means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) under or in connection with any Relevant 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;

"Guaranteed Obligations" means all of the terms, conditions, obligations, warranties, representations, undertakings and agreements contained in the Relevant Documents including, without limitation, the payment of all moneys at any time due or owing by the Operator under or in connection with the Relevant Documents;

"Loss" means:

- (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;

"Partnering Contract" means the document entitled Partnering Contract (reference [*insert*]) made between the Beneficiary and the Operator and dated on or about the date of this deed, pursuant to which the Operator is obliged to provide (amongst other things) regional bus services and associated services in respect of the Bus Unit; and

"Relevant Documents" means each of the following:

- (a) the Partnering Contract; and
- (b) any other Transaction Document to which the Operator is a party.

1.2 Unless otherwise defined in this deed, capitalised terms have the meaning given to them in the Partnering Contract.

Interpretation

1.3 Unless a contrary indication appears, any reference in this deed to:

- 1.3.1 the Operator, the Guarantor or the Beneficiary shall be construed so as to include its respective successors in title, permitted assigns and permitted transferees;
- 1.3.2 this deed, the Partnering Contract, any other Relevant Document or any other agreement, document or instrument is a reference to this deed, the Partnering Contract, that Relevant Document or that other agreement, document or instrument (as applicable) as amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time (however fundamentally and even if any of the same increases the Operator's or the Guarantor's respective obligations or liabilities);
- 1.3.3 "including" or "includes" means including or includes without limitation;
- 1.3.4 Guaranteed Obligations includes obligations and liabilities which would be treated as such but for the occurrence of an Insolvency Event (or analogous proceeding) affecting any person;
- 1.3.5 a person includes any individual, company, body corporate, partnership (whether incorporated or unincorporated), joint venture (whether incorporated or unincorporated), association, government, government department, government agency, semi-governmental entity, authority, agency, body politic or statutory authority;
- 1.3.6 a provision of law is a reference to that provision as amended, replaced or re-enacted from time to time;
- 1.3.7 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;

- 1.3.8 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;
 - 1.3.9 a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;
 - 1.3.10 an amount for which a person is contingently liable includes an amount that that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability actually arises;
 - 1.3.11 writing includes an email and any other means of reproducing words in a tangible and permanently visible form; and
 - 1.3.12 the singular includes the plural and vice versa.
- 1.4 References to clauses are to be construed, unless otherwise stated, as references to clauses of this deed.
- 1.5 Clause headings are for ease of reference only and shall not affect the construction of this deed.
- 1.6 If the Beneficiary reasonably considers that an amount paid by the Guarantor under this deed or by the Operator under a Relevant Document is capable of being avoided or otherwise set aside on the occurrence of an Insolvency Event in respect of the Guarantor or the Operator, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.
- 1.7 No provision of this deed shall be construed adversely against a party solely on the ground that that party was responsible for the preparation of this deed or that provision.

2 GUARANTEE AND INDEMNITY

Guarantee

- 2.1 Subject to clause 2.3, the Guarantor irrevocably and unconditionally:
- 2.1.1 guarantees to the Beneficiary the due, proper and punctual observance, compliance and performance by the Operator of all of the Guaranteed Obligations; and
 - 2.1.2 undertakes to the Beneficiary that whenever the Operator fails in whole or in part to observe, perform or comply with any of the Guaranteed Obligations, the Guarantor shall immediately fully and properly observe, perform and comply with (or cause to be fully and properly observed, performed and complied with) each such Guaranteed Obligation, make good (or cause to be made good) any breach by the Operator of a Guaranteed Obligation and pay any amount due from the Operator to the Beneficiary as if it were the principal obligor under the Relevant Documents.

Indemnity

- 2.2 Subject to clause 2.3, as a separate and independent obligation the Guarantor shall (to the maximum extent permitted by Law) irrevocably and unconditionally indemnify the Beneficiary on demand (and keep it so indemnified) from and against any Claim or Loss suffered, incurred or arising in connection with any of:
- 2.2.1 the Operator breaching or otherwise failing to observe, perform or comply with any of the Guaranteed Obligations;
 - 2.2.2 the occurrence of a Termination Event or the termination of the Partnering Contract arising from the occurrence of a Termination Event;
or
 - 2.2.3 any Guaranteed Obligation or any of the obligations of the Guarantor under this deed being or becoming unenforceable, void, voidable, invalid or illegal for any reason (whether or not known to the Beneficiary or any other person).

Limitation

- 2.3 The liability of the Guarantor under this deed will not exceed the liability which the Guarantor would have had to the Beneficiary arising under the Relevant Documents if the Guarantor had been named in the Relevant Documents as being the Operator.

3 NATURE OF OBLIGATIONS**Continuing obligations**

- 3.1 This deed and each guarantee and indemnity contained in it is a continuing obligation, separate and independent from the other obligations of the parties and will extend to the ultimate balance of all the Guaranteed Obligations, regardless of any intermediate payment or discharge in whole or in part.
- 3.2 No indemnity in this deed limits the effect or operation of any other indemnity in this deed.
- 3.3 The Beneficiary may recover a payment under an indemnity in this deed before it makes the payment in respect of which the indemnity is given.
- 3.4 The liability of the Guarantor under this deed is not subject to the performance of any condition precedent or subsequent.
- 3.5 This deed shall remain in full force and effect until all of the Guaranteed Obligations and all other moneys owing or which may become owing (contingently or otherwise) by the Guarantor under this deed or by the Operator under the Relevant Documents have been irrevocably and unconditionally performed or paid (as applicable) in full.
- 3.6 This deed and the obligations of the Guarantor under it shall survive the termination of expiry of any Relevant Document.

Additional and separate rights and remedies

- 3.7 This deed and the rights and remedies of the Beneficiary under it are in addition to, and without prejudice to and shall not merge with, any other right, remedy, guarantee or Security Interest which the Beneficiary may at any time have:
- 3.7.1 in relation to any of the Guaranteed Obligations; or
 - 3.7.2 in relation to any Associated Partnering Contracts.
- 3.8 Each obligation of the Guarantor under this deed is a principal obligation and is not to be treated as ancillary or collateral to any other right or obligation.

Immediate recourse

- 3.9 This deed is enforceable against the Guarantor without the Beneficiary (or any trustee or agent on its behalf) being required to take any steps to proceed against or enforce any other rights, remedies or security or claim payment from any person before claiming from the Guarantor under this deed.

4 REINSTATEMENT

- 4.1 The Guarantor acknowledges and agrees that if any payment by the Operator, the Guarantor or any other surety who has provided security to the Beneficiary in respect of any of the Guaranteed Obligations is at any time avoided in whole or in part for any reason (including but not limited to the occurrence of any Insolvency Event), then:
- 4.1.1 the liability of the Guarantor and the rights and remedies of the Beneficiary are the same as if that payment had not been made; and
 - 4.1.2 the Guarantor shall promptly do anything (and shall procure that the Operator promptly does anything) reasonably required by the Beneficiary (including the execution of documents) to restore to the Beneficiary the benefit of this deed to which they would have been entitled but for such avoidance.

5 WAIVER OF DEFENCES

- 5.1 The Guarantor acknowledges and agrees that the obligations and liabilities of the Guarantor under or in connection with this deed will not be discharged, released, impaired or otherwise affected by any act, omission, matter or thing (whether negligent or not) which, but for this clause 5, might have that effect (whether or not known to the Guarantor or the Beneficiary) including but not limited to:
- 5.1.1 any time, waiver, consent or any indulgence granted to, or composition with, the Operator, the Guarantor or any other person;
 - 5.1.2 the release (including without limitation a release as part of any novation) or discharge of the Operator, any other surety or any other person,

- whether under the terms of any composition or arrangement with any creditor or howsoever else arising;
- 5.1.3 the termination, disclaimer, rescission, repudiation, breach or expiry (in each case in whole or in part) of any Relevant Document or any other agreement or instrument or the cessation of any person's obligations (in whole or in part) under any Relevant Document or any other agreement or instrument;
- 5.1.4 any:
- (a) taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Operator, any other surety or any other person;
 - (b) non-presentation or non-observance of any formality or other requirement in respect of any instrument;
 - (c) failure to realise the full value of any security; or
 - (d) prejudice to or loss of any rights of subrogation;
- 5.1.5 any:
- (a) legal limitation, disability, incapacity;
 - (b) lack of power, authority or legal personality; or
 - (c) dissolution or change in the name, status or constitution, of the Operator, the Beneficiary, the Guarantor or any other person;
- 5.1.6 any assignment, novation, transfer, amendment, variation, supplement, extension, restatement or replacement of any Relevant Document or any other document or security (in each case, however fundamental);
- 5.1.7 any increase in the Guaranteed Obligations or the Guarantor's liability under this deed (in each case, however fundamental);
- 5.1.8 any Relevant Document or any other agreement or instrument becoming (in whole or in part) illegal, void, voidable, invalid or otherwise unenforceable;
- 5.1.9 the Beneficiary:
- (a) exercising or enforcing; or
 - (b) delaying or refraining from enforcing (whether permanently or temporarily);
- any right against the Operator, the Guarantor or any other person;
- 5.1.10 obtaining a judgment or determination against the Operator, the Guarantor or any other person;

- 5.1.11 any payment to the Beneficiary by the Operator, the Guarantor or any other person, including any payment which is or at any time becomes (in whole or in part) illegal, void, voidable, avoided or unenforceable;
- 5.1.12 any amount in relation to the Guaranteed Obligations being or becoming irrecoverable for any reason;
- 5.1.13 the giving of any notice by any person under or in connection with any Relevant Document or any other agreement or instrument or the failure or delay by any person to give such notice;
- 5.1.14 the Guarantor not being aware of, or not being made aware of, any breach, default or termination event arising under or in respect of any Relevant Document;
- 5.1.15 the grant of any Security Interest by any person;
- 5.1.16 any moratorium or other suspension of any right of the Beneficiary against any person under the Relevant Documents or under any other agreement or instrument;
- 5.1.17 any arrangement, transaction, composition or compromise entered into by the Beneficiary or any other person (on the one hand) with the Operator or any other person (on the other hand); or
- 5.1.18 the occurrence of any Insolvency Event or similar proceedings in respect of any person or any steps being taken to bring about the occurrence of such Insolvency Event or similar proceedings.

6 GUARANTOR INTENT

- 6.1 Without prejudice to the generality of clause 5, the Guarantor expressly acknowledges and agrees that:
 - 6.1.1 it intends that its obligations and liabilities under this deed and the guarantees and indemnities contained in it to extend to any amendment, variation, increase, extension or addition (in each case, however fundamental) from time to time of or to the Relevant Documents or the Guaranteed Obligations; and
 - 6.1.2 the amendment or variation of the Relevant Documents in accordance with their terms after the date of this deed is in the purview and contemplation of the Guarantor.
- 6.2 In the event that a Relevant Document is amended or varied in accordance with its terms, the Guarantor shall, promptly following a request to do so, provide a duly executed and binding acknowledgement to the Beneficiary (in such form as the Beneficiary may reasonably require) confirming that:
 - 6.2.1 such amendment or variation does not release, prejudice, impair or discharge any of its obligations or liabilities under this deed; and

- 6.2.2 to the extent that the amendment or variation increases, varies or amends the obligations or liabilities of the Operator under the Relevant Documents, the Guarantor consents to the same and confirms that its obligations and liabilities under this deed shall be similarly increased, varied and amended.
- 6.3 The Guarantor shall not at any time assert (or procure the assertion on its behalf) that this deed or its obligations or liabilities under this deed:
- 6.3.1 are in any way released, prejudiced, impaired or discharged as a consequence of any amendment or variation to the terms of a Relevant Document; or
- 6.3.2 do not extend to include any variation or amendment to the obligations and liabilities of the Operator under the Relevant Documents.
- 6.4 The Guarantor shall (to the maximum extent permitted by Law) irrevocably and unconditionally indemnify the Beneficiary on demand (and keep the Beneficiary so indemnified) from and against any Claim or Loss suffered, incurred or arising in connection with any of:
- 6.4.1 a breach by the Guarantor of clause 6.2 or 6.3; and
- 6.4.2 a court, arbitrator or any other person with jurisdiction to make such determination holding that this deed or the obligations or liabilities of the Guarantor under this deed are in any way released, prejudiced, impaired or discharged as a consequence of any amendment or variation to the terms of a Relevant Document.

7 APPROPRIATIONS

- 7.1 All monies received or recovered by the Beneficiary from the Guarantor, the Operator or any other person in respect of the Guaranteed Obligations may be applied by the Beneficiary to reduce any part of the Guaranteed Obligations.
- 7.2 Any such appropriation shall override any appropriation by the Guarantor.

8 DEFERRAL OF GUARANTOR'S RIGHTS

Deferral of rights and no security

- 8.1 Until the Guaranteed Obligations and all other moneys owing or which may become owing (contingently or otherwise) by the Guarantor or the Operator under this deed or any Relevant Document have been irrevocably and unconditionally performed or paid (as applicable) in full, the Guarantor shall not:
- 8.1.1 exercise or seek to exercise any rights which it may otherwise have:
- (a) to claim or prove in the insolvency, liquidation, dissolution, winding-up, bankruptcy of the Operator (or any analogous procedure in respect of the Operator under the law of any

- jurisdiction in which the Operator carries on business or has property);
- (b) to be subrogated to the Beneficiary; or
 - (c) to call on the Beneficiary to sue or take proceedings against the Operator or to otherwise enforce any of its rights against the Operator; or
- 8.1.2 have or take from the Operator or any other surety for any Guaranteed Obligation any security in respect of the Guarantor's liability under this deed or in respect of any other obligation or liability which the Operator has or may in future have to the Guarantor.

Proceeds held on trust

- 8.2 If the Guarantor receives any benefit, payment or distribution in breach of clause 8.1 it shall:
- 8.2.1 hold that benefit, payment, security or distribution on trust for the Beneficiary; and
 - 8.2.2 promptly pay or transfer the same to the Beneficiary (or as the Beneficiary may otherwise direct) for application in or towards discharge of the Guaranteed Obligations.

9 UNDERTAKINGS, WARRANTIES AND REPRESENTATIONS OF THE GUARANTOR

General

- 9.1 The Guarantor gives the undertakings and makes the representations and warranties set out in this clause 9 to the Beneficiary. Each of the representations and warranties in this deed will be deemed to be repeated continuously so long as this deed remains in effect by reference to the facts and circumstances then existing.

Status

- 9.2 It is a company, duly incorporated and validly existing under the law of [*insert*] and it has the power to own its assets and carry on its business as it is now being conducted.

Binding obligations

- 9.3 This deed has been duly executed and delivered by the Guarantor and the obligations expressed to be assumed by the Guarantor in this deed are valid, legal, binding and enforceable obligations.

Non-conflict with other obligations

- 9.4 The entry into and performance by the Guarantor of this deed and the transactions contemplated by it do not and will not conflict with:
- 9.4.1 any law or regulation applicable to it; or

9.4.2 the constitutional documents of the Guarantor; or

9.4.3 any Security Interest, agreement or other obligation binding on the Guarantor or any of its assets.

Power and authority

9.5 It has the full power and authority to enter into, perform and deliver this deed and its obligations under this deed.

Knowledge of Relevant Documents

9.6 It has received a copy of the Relevant Documents and is aware of the extent of the Operator's obligations and actual and potential liabilities thereunder.

Validity and admissibility in evidence

9.7 All governmental and other authorisations, approvals, licences and consents required or desirable to enable it lawfully to enter into, exercise its rights and comply with its obligations under this deed, and to make this deed admissible in evidence in New Zealand have been obtained or effected and are in full force and effect.

No immunity

9.8 It does not, and its assets do not, enjoy immunity from any suit, proceeding or execution.

Equal ranking

9.9 Its obligations under this deed rank at least equally and rateably with all other unsecured obligations of the Guarantor (except for obligations mandatorily preferred by law or arising in equity).

Commercial benefit

9.10 The entry into of this deed by the Guarantor and the performance by the Guarantor of its obligations under this deed is for its commercial benefit and is in its commercial interests.

Disposals

9.11 The Guarantor undertakes that until the Guaranteed Obligations and all other moneys owing or which may become owing (contingently or otherwise) under this deed have been irrevocably and unconditionally performed or paid (as applicable) in full, it shall not without the prior written consent of the Beneficiary (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially adversely affect:

9.11.1 the ability of the Operator to perform its obligations under the Relevant Documents; or

9.11.2 the ability of the Guarantor to perform its obligations under this deed; or

9.11.3 the rights and remedies of the Beneficiary under any of the Relevant Documents or this deed.

10 PAYMENT

Currency

10.1 All payments to be made by the Guarantor under or in connection with this deed shall be made in New Zealand dollars.

Payments

10.2 Subject to clause 10.3, all payments to be made by the Guarantor under or in connection with this deed shall be made without (and free and clear of, and without any deduction for or on account of):

10.2.1 any set-off or counterclaim; and

10.2.2 except to the extent compelled by law, any deduction or withholding for or on account of tax.

Gross-up

10.3 If the Guarantor is compelled by law to make any deduction or withholding from any sum payable under this deed to the Beneficiary, the sum so payable by the Guarantor shall be increased so as to result in the receipt by the Beneficiary of a net amount equal to the amount that would have been received by it had the Guarantor not been so compelled.

Set-off

10.4 The Beneficiary may (but shall not be obliged to) without notice to the Guarantor, the Operator or any other person, set off and apply amounts owed to it from time to time by the Guarantor against amounts which the Beneficiary owes from time to time to the Guarantor or to the Operator.

11 COSTS AND EXPENSES

11.1 The Guarantor shall promptly pay to the Beneficiary the amount of all costs, charges and expenses reasonably and properly incurred by the Beneficiary in connection with the enforcement, exercise or preservation (or the attempted enforcement, exercise or preservation) of any of its rights under this deed or any document referred to in this deed.

12 DEFAULT INTEREST

12.1 Any amount which is not paid under this deed when due shall bear 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.

13 CHANGES TO THE PARTIES AND CHANGE OF OWNERSHIP

The Guarantor

- 13.1 The Guarantor shall not without the Beneficiary's prior written consent, assign, novate or otherwise transfer any or all of its rights or obligations under this deed.
- 13.2 The Guarantor shall not permit a Change of Ownership to occur other than in accordance with the terms of the Partnering Contract.

The Beneficiary

- 13.3 The Beneficiary may assign, charge, novate or otherwise transfer all or any part of its rights under this deed without the consent of the Guarantor. The Guarantor shall, immediately upon being requested to do so by the Beneficiary and at the cost of the Guarantor, enter into such documents as may be necessary or desirable to effect such transaction.

14 MISCELLANEOUS

Partial invalidity

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

Amendments

- 14.2 Any provision of this deed may be amended only if the Beneficiary and the Guarantor so agree in writing.

Entire agreement

- 14.3 This deed contains the entire agreement between the parties with respect to its subject matter and supersedes any earlier agreements or understandings between the parties in connection with its subject matter.

Waivers

- 14.4 No failure to exercise, nor any delay in exercising, on the part of the Beneficiary, any right or remedy under or in connection with this deed or any Relevant Document shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy.
- 14.5 Any breach of this deed may be waived before or after it occurs only if the Beneficiary so agrees in writing. A waiver given or consent granted by the Beneficiary under this deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

Rights cumulative

- 14.6 This deed and the rights and remedies of the Beneficiary under this deed are cumulative with and in addition to and do not merge with, postpone, lessen or otherwise prejudicially affect any other right or remedy of the Beneficiary, whether under this deed, any other agreement, at law or howsoever else arising.

Stamp duty

- 14.7 Any stamp duty (or analogous duty, tax or fee) payable in respect of this deed shall be paid when due by the Guarantor.

Attorneys

- 14.8 Each of the attorneys executing this deed states that the attorney has no notice of the revocation of that attorney's power of attorney.

15 DISCLOSURE

- 15.1 The Beneficiary (and its assignees and transferees) may disclose to a prospective assignee, novatee or transferee or to any other person who may propose entering into contractual relations with the Beneficiary in relation to any Relevant Document or any of the Services such information about the Guarantor or this deed as they may consider appropriate.

16 NOTICES

- 16.1 Any notice required to be given in relation to this deed will, except where otherwise expressly provided, be in writing and in English, marked for the attention of the relevant person referred to in clause 16.2 and delivered to the email address or postal address of the recipient party referred to in clause 16.2.
- 16.2 The relevant contact details for the parties for receipt of notices as at the date of this deed are set out below. Any party may provide written notice to the other parties of any change to its 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.

Wellington Regional Council	For the attention of:	[insert]
	Postal address:	[insert]
	Email address:	[insert]
Guarantor	For the attention of:	[insert]
	Postal address:	[insert]
	Email address:	[insert]

- 16.3 This clause 16.3 is subject to clause 16.4. A notice may be:
- 16.3.1 personally delivered, in which case it will be deemed to be given upon delivery at the relevant address; or
 - 16.3.2 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
 - 16.3.3 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
 - 16.3.4 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
 - 16.3.5 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.
- 16.4 Where any notice is deemed given pursuant to clause 16.3:
- 16.4.1 before 9.00 am or after 5.30 pm (local time) at the place of receipt; or
 - 16.4.2 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 16.4 the place of receipt of a notice is the applicable postal address for the receiving party in accordance with clause 16.2, irrespective of whether the notice is communicated by email or otherwise.

17 FURTHER ASSURANCES

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 deed.

18 NO MERGER

The rights and obligations of the parties shall not merge on the completion of any transaction contemplated by this deed or any of the Relevant Documents. 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.

19 Contract and Commercial Law Act 2017

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

20 GOVERNING LAW AND JURISDICTION

20.1 This deed and the transactions contemplated by this deed are governed by and are to be construed in accordance with New Zealand law.

20.2 Each party submits to the non-exclusive jurisdiction of the courts of New Zealand in connection with the matters concerning this deed.

21 COUNTERPARTS

21.1 This deed may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

EXECUTED AND DELIVERED AS A DEED:

Executed by **Wellington Regional Council** by its Attorney Gregory Campbell

in the presence of:

Signature of Gregory Campbell
(Chief Executive)

Signature of witness

Name of witness

Occupation of witness

Address of witness

[GUARANTOR execution block to be inserted]

CERTIFICATE OF NON REVOCATION OF POWER OF ATTORNEY

I, **Gregory Campbell** of Wellington, Chief Executive Officer of Wellington Regional Council hereby certify:

1. That by a Deed dated the 30th day of September 2014, Wellington Regional Council appointed me its Attorney on the terms and subject to the conditions set out in the said Deed.
2. That at the date hereof I have not received any notice or information of the revocation of that appointment.

SIGNED at Wellington this day of 2017

Gregory Campbell

Chief Executive Officer
Wellington Regional Council

Annexure 10

Bond

Bond

To: Wellington Regional Council, a public statutory body constituted under the Local Government Act 2002 (the "**Principal**")

For: [Insert name and company number of the Operator] (the "**Customer**")

Date: [#]

This undertaking relates to the partnering contract between Wellington Regional Council and the Customer dated [*insert date*] pursuant to which the Customer is or will be required, among other things, to provide regional bus services and associated services in respect of the [*insert details of Bus Unit to which this bond relates*] ("**Partnering Contract**").

In this undertaking, reference to "Business Day" means a day (other than a Saturday, Sunday or public holiday) on which registered banks are open for business in the location of the branch of the Issuer at which a demand is made under this undertaking.

At the request of the Customer and in respect of the Customer's obligations under the Partnering Contract, [*Name of Issuer*] [*Company #*] of [*Address*] (the "**Issuer**") unconditionally and irrevocably undertakes to pay to the Principal, on written demand by the Principal, any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of NZ\$[#] ("**Maximum Aggregate Sum**"). [*Note - maximum aggregate sum to be the relevant amount specified in Schedule 2 (Agreement details) of the Partnering Contract.*]

Each payment under this undertaking must be made by the Issuer forthwith and without deduction, set-off or counterclaim to the account number nominated by the Principal on its demand and:

- 1 without reference to the Customer, any other person (other than the Issuer) or the Partnering Contract;
- 2 without enquiring into the performance or non-performance under the Partnering Contract;
- 3 despite any notice to, or request by, the Customer or any other person for the Issuer not to make such payment (in whole or in part);
- 4 despite anything which but for this provision may operate to release, prejudicially affect or discharge or in any way relieve the Issuer from any obligation including, without limitation:

- (a) any variation or alteration to the Partnering Contract or any other agreement between the Principal and the Customer; or
- (b) the grant to any person of any time, waiver or other indulgence, or the discharge or release of any person; and

5 in New Zealand dollars.

This undertaking expires on the earlier of:

- 1 ***[insert date]; [Note - the expiry date to be the relevant date specified in the Partnering Contract.]***
- 2 the date on which the Principal notifies the Issuer in writing that this undertaking has been replaced by another undertaking;
- 3 the date the Principal notifies the Issuer in writing that this undertaking is no longer required; or
- 4 the date the Issuer has paid the Maximum Aggregate Sum to the Principal pursuant to this undertaking.

The Issuer may at any time without being required to do so pay to the Principal the Maximum Aggregate Sum less any amount or amounts it may previously have paid under this undertaking and thereupon the liability of the Issuer hereunder shall immediately cease.

The Principal may assign the benefit of this undertaking to any person without the prior consent of the Issuer provided that the Principal has given notice to the Issuer prior to such assignment.

A demand issued under this undertaking may be made on any Business Day to the Issuer at any branch of the Issuer in Wellington, Auckland or Sydney.

The Issuer agrees that payment or payments due to the Principal will be payable to the credit of a nominated account of the Principal in same day funds on the same Business Day as the written demand is made, unless the demand is made after 1.00pm (local time at the place at which the demand is made), in which case the payment must be made by 3.00pm (local time at the place at which the demand is made) on the next Business Day.

This undertaking is governed by and construed in accordance with the laws of New Zealand.

EXECUTED AND DELIVERED AS A DEED:

Each attorney executing this deed states that [he/she] has no notice of revocation or suspension of [his/her] power of attorney.

[Insert execution clause of Issuer and complete certificate of non-revocation if execution is through power of attorney]

CERTIFICATE OF NON REVOCATION OF POWER OF ATTORNEY

I, **[name]** of [address], [position] of [organisation] hereby certify:

1. That by a Deed dated the [date], [organisation] appointed me its Attorney on the terms and subject to the conditions set out in the said Deed.
2. That at the date hereof I have not received any notice or information of the revocation of that appointment.

SIGNED at [place] this day of 2017

[name]

[position]

[organisation]

Annexure 11

Preliminary Commencement Certificate

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Preliminary Commencement Certificate

Date:

To: Wellington Regional Council

1 Confirmation by the Operator

1.1 By signing this Preliminary Commencement Certificate, the Operator hereby confirms in accordance with Appendix 2 (*Milestone Dates*) to Schedule 13 (*Transition Plan*) of this Partnering Contract that the Operator has been granted a Licence and any other Consent which the Operator is required to hold by Law in respect of the operation of, or in connection with, the Services.

2 Commencement Date and Transfer Time

- 2.1 The Commencement Date shall be [*GWRC to insert*].
- 2.2 The Transfer Time shall be [*GWRC to insert - this will be 3.00am on the Commencement Date unless GWRC specifies an alternative time in this certificate*].

3 Definitions

3.1 Capitalised terms used in this Annexure are as defined in the Partnering Contract made between the Operator and GWRC on or about [*insert date*].

.....

Signed for and on behalf of the Operator by its Authorised Representative

.....

Signed for and on behalf of GWRC by its Authorised Representative

Annexure 12

Incoming Operator Confidentiality Undertaking

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THIS DEED is made on [*insert date*]

BY

- (1) [*insert full legal name and corporate details of recipient entity/entities*] (the "**Recipient**")

IN FAVOUR OF

- (2) [*Insert name of existing operator*];
- (3) Wellington Regional Council, a public statutory body constituted under the Local Government Act 2002,

(individually a "**Beneficiary**" and collectively the "**Beneficiaries**").

1 DEFINITIONS

1.1 In this Deed, the following definitions apply unless the context otherwise requires:

Affiliate	means, in relation to an entity (first entity), any other entity which: <ul style="list-style-type: none"> (a) is a holding company or a subsidiary of the first entity; (b) is another subsidiary of the same holding company as the first entity; (c) Controls the first entity; (d) is Controlled by the first entity; or (e) is Controlled by the same entity as the first entity.
Confidential Information	means all information (including information imparted orally) relating to regional passenger bus services in Wellington, the Tender Process and/or the New Contract.
Control	means in relation to a body of any kind: <ul style="list-style-type: none"> (a) where that body is a company, having 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) where that body is a limited partnership,

	<p>having control or influence of, or having the capacity to control or influence, the general partner(s) of that limited partnership;</p> <p>(c) being in a position to cast, or control the casting of, more than 20 per cent of the voting rights attributable to the total shareholding, membership or partnership interests of that body; or</p> <p>(d) 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 securities of that body.</p>
Funder	means any actual or potential provider of financial accommodation to the Recipient (whether by way of debt or equity or otherwise and whether directly or indirectly) in connection with the performance of the works and/or services under the New Contract.
Intellectual Property Rights	means rights in patents, registered designs, petty patents, utility models, trademarks (including logos and trade dress), domain names, copyright, circuit layouts, rights in computer software and databases, rights in inventions, know-how and business processes 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.
New Contract	means a contract for the provision of passenger bus services in the Wellington region and/or other associated works and services anticipated to be awarded by Wellington Regional Council.
Purpose	<p>means the Recipient's preparation of, and/or inclusion in, a tender or offer for the New Contract and activities undertaken in relation to the New Contract, including:</p> <p>(a) participation in the Tender Process;</p> <p>(b) negotiation of the terms of the New Contract;</p> <p>(c) preparation for performance of, and actual performance of, obligations under the New Contract;</p> <p>(d) securing financial accommodation in connection with the performance of obligations under the New Contract; and/or</p> <p>(e) negotiating and agreeing terms of subcontracts</p>

	and supply contracts in relation to the performance of obligations under the New Contract.
Tender Process	means the competitive tender process or other negotiations or process implemented by or on behalf of Wellington Regional Council in connection with the award of the New Contract.

2 RECIPIENT'S OBLIGATIONS

2.1 The Recipient shall:

- 2.1.1 keep the Confidential Information secret;
- 2.1.2 only disclose the Confidential Information to any officer, employee, subcontractor, consortium member, supplier, Affiliate, Funder or advisor of the Recipient who is necessarily engaged in the Purpose and the Recipient shall ensure that each such person keeps the Confidential Information secret; and
- 2.1.3 use the Confidential Information only for the Purpose.

3 INDEMNITY

The Recipient indemnifies the Beneficiaries (and agrees to keep them so indemnified on demand) from and against any loss, damage, costs and expenses suffered or incurred by any of them arising from or in connection with the Recipient's breach of paragraph 2 or the Recipient's use of the Confidential Information other than for the Purpose (including from any claim that such use breaches the Intellectual Property Rights of a third party).

4 INFORMATION IS THE DISCLOSER'S PROPERTY

The Recipient acknowledges that the Confidential Information, and the media and tangible property recording it, is the absolute property of the Beneficiaries or one or more of them. The Recipient shall, on request by a Beneficiary at any time, return to that Beneficiary the Confidential Information provided by that Beneficiary including any copies, notes, drawings or recordings made of the Confidential Information (or, where applicable and if the relevant Beneficiary so requests, the Recipient shall destroy or erase the same).

5 EXCEPTIONS

5.1 The Recipient's obligations under this Deed shall not extend to Confidential Information which the Recipient can prove to the Beneficiaries' reasonable satisfaction:

- 5.1.1 which is now in, or after the date of this Deed comes into, the public domain (other than by breach of this Deed);
- 5.1.2 is required to be disclosed by law or so as to satisfy the requirements of any recognised stock exchange;
- 5.1.3 was already in the Recipient's possession without any obligation of confidentiality prior to disclosure by a Beneficiary; and/or
- 5.1.4 becomes available to the Recipient from a source other than the Beneficiaries provided that the Recipient has no reason to believe such source is itself bound by an obligation of confidence or is otherwise prohibited by law from disclosing such information.

6 GOVERNING LAW

This Deed and any disputes or claims arising out of or in connection with it (including non-contractual disputes or claims) is governed by, and is to be construed in accordance with, the laws of New Zealand. The Recipient irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Deed (including any non-contractual obligations arising in connection herewith).

7 WAIVER

Any failure by any Beneficiary at any time to enforce any provision of this Deed shall not prejudice any future enforcement of any right under this Deed.

8 JOINT AND SEVERAL LIABILITY

- 8.1 The obligations and liabilities under this Deed of the Recipient, if more than one person, are joint and several. Each person constituting the Recipient agrees that it will be responsible for the acts and omissions (including breaches of this Deed) of the other as if those acts or omissions were its own and the Beneficiaries may proceed against any one or all of them.

8.2 The rights conferred on the Beneficiaries by this Deed are conferred on each of them individually and on all of them collectively and may be exercised by one or more of the Beneficiaries on any number of occasions.

Executed by the Recipient(s) as a Deed

Full legal name of Recipient by:

Signature of director

Signature of director/ authorised person

Name of director

Name of director/ authorised person

Witness to above signatures

Signature of witness:

Witness name:

Occupation:

Address:

Full legal name of Recipient by:

Signature of director

Signature of director/ authorised person

Name of director

Name of director/ authorised person

Witness to above signatures

Signature of witness:

Witness name:

Occupation:

Address:

[Notes:

1. *If the Recipient is not a New Zealand company and/or does not execute this document by two directors, it should also provide a letter of undertaking together with evidence that this document has been duly executed as a deed by the Recipient and is binding on it.*
2. *If the Recipient comprises a consortium, to be signed by each member of consortium.]*

Annexure 13

Access Indemnity

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THIS DEED is made on [*insert date*]

BY

(1) [*insert name*] corporate number [*insert*] (the "**Visitor**")

IN FAVOUR OF

(2) [*Insert name of existing operator*] ("**Current Operator**");

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

(individually a "**Beneficiary**" and collectively the "**Beneficiaries**").

1 DEFINITIONS

1.1 In this Deed, the following definitions apply unless the context otherwise requires:

Associates	means the Visitor's employees, agents, advisors, consultants and officers and any other person acting on behalf of the Visitor.
Partnering Contract(s)	means [<i>insert details of relevant Partnering Contracts made between GWRC and the Current Operator</i>].
Premises	means any land, buildings or other premises at which a Transferring Asset is located at the time at which such Transferring Asset is accessed, inspected or otherwise surveyed by the Visitor or its Associates.
Transferring Asset	means those assets which are "Transferring Assets" for the purposes of the Partnering Contract(s).

2 VISITOR'S OBLIGATIONS

2.1 The Visitor shall (and shall procure that its Associates shall) while accessing any of the Transferring Assets or any of the Premises:

- 2.1.1 comply with all health and safety rules or other access requirements notified to it by any Beneficiary;
- 2.1.2 not unreasonably interfere with any activities of any Beneficiary;
- 2.1.3 not cause any damage to any part of the Transferring Assets or the Premises and (at the request of any relevant Beneficiary) promptly make good any damage caused thereto by the Visitor or any of its Associates;
and

- 2.1.4 take all steps necessary to minimise any disruption or inconvenience to the Beneficiaries and their invitees and to minimise any disruption to passenger carrying services provided (or to be provided) by or on behalf of either Beneficiary.

3 INDEMNITY

- 3.1 The Visitor indemnifies the Beneficiaries to the extent permitted by law (and agrees to keep them indemnified on demand) from and against any loss, damage, costs and expenses suffered or incurred by any of them arising out of or in connection with:
 - 3.1.1 any access to the Transferring Assets and/or the Premises by or on behalf of the Visitor or any of its Associates; or
 - 3.1.2 any breach by the Visitor of its obligations under this Deed.

4 GOVERNING LAW

This Deed and any disputes or claims arising out of or in connection with it (including non-contractual disputes or claims) is governed by, and is to be construed in accordance with, the laws of New Zealand. The Visitor irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Deed (including any non-contractual obligations arising in connection herewith).

5 WAIVER

Any failure by any Beneficiary at any time to enforce any provision of this Deed shall not prejudice any future enforcement of any right under this Deed.

6 JOINT AND SEVERAL LIABILITY

- 6.1 The obligations and liabilities under this Deed of the Visitor, if more than one person, are joint and several. Each person constituting the Visitor agrees that it will be responsible for the acts and omissions (including breaches of this Deed) of the other as if those acts or omissions were its own and the Beneficiaries may proceed against any one or all of them.

6.2 The rights conferred on the Beneficiaries by this Deed are conferred on each of them individually and on all of them collectively and may be exercised by one or more of the Beneficiaries on any number of occasions.

Executed by the Visitor as a deed.

[VISITOR] by:

Signature of director

Signature of director

Name of director

Name of director

*[Note - this access indemnity to be executed by each entity participating in the award of a new contract and **not** each individual employee, consultant, officer etc. who is engaged by that entity]*

Annexure 14

Form of Payment Claim

Minimum invoice content**Relevant Month to which this invoice relates: [Insert]****Operational payments**

Base Service Fee	\$	
Indexation Payment	\$	
Special Event Services Fee	\$	
<i>Subtotal</i>		\$

Deductions

Performance Deductions - Reliability KPI	-\$	
Performance Deductions - Punctuality KPI	-\$	
Reporting Error Deductions	-\$	
Fleet Deductions	-\$	
<i>Subtotal</i>		-\$

Incentives

Punctuality Performance Payment	\$	
Performance Payment	\$	
<i>Subtotal</i>		\$

FIM

FIMA	\$	
FIMD	-\$	
<i>Subtotal</i>		\$/-\$

TOTAL **\$**

Annexure 15

Variation Forms

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Part A - Form of Variation Proposal

Variation Proposal

Partnering Contract: Variation Number *[Insert Number]* – *[Insert name of Variation Proposal]*

Minor Contract Variation – GWRC to complete the form of notice below

[If the Variation is not a Minor Contract Variation the table below can be deleted]

Minor Contract Variation Notice (Only GWRC may initiate – refer paragraph 5.2, Schedule 14 (Change Events and Net Financial Impact))	
Contract Identifier	<i>[GWRC to insert reference to the parts of the Contract that the Minor Contract Variation applies to, e.g. Schedule 3 (Passenger Services), paragraphs [insert] to [insert]]</i>
Contract Variation Number	GWRC: <i>[GWRC to add Ourspace file reference here]</i> Operator: <i>[add the Operator file reference here when Operator response is provided]</i>
Date of issue of Minor Contract Variation Notice	<i>[GWRC to insert]</i>
Details of the Minor Contract Variation	<i>[GWRC to insert]</i>
Date by which the Minor Contract Variation must be implemented	Subject to issue of approved Variation Order by GWRC (see Part C below)
Methodology and process by which the Operator must implement the Minor Contract Variation	<i>[GWRC to insert]</i>
Extent to which GWRC (acting reasonably) considers that the Operator will require relief from its obligations under the Partnering Contract as a result of the implementation of the Minor Contract Variation	<i>[GWRC to insert]</i>
Any further information regarding the Minor Contract Variation as GWRC wishes to provide	<i>[GWRC to insert]</i>
Any other particulars GWRC requires from the Operator in its Minor Contract Variation Quote (refer paragraph 5.3.2 of Schedule 14)	<i>[GWRC to insert]</i>
Signature of GWRC Authorised Representative	<div style="text-align: center; margin-bottom: 10px;"> <hr style="width: 20%; margin: 0 auto;"/> (Signature) </div> Name: <i>[Insert]</i> Position: GWRC Authorised Representative Date:

Minor Contract Variation Quote – to be completed by Operator – refer paragraph 5.3, Schedule 14	
<p>Estimate of Net Financial Impact arising from the proposed Minor Contract Variation, calculated in accordance with Part C of Schedule 14 (<i>Change Events and Net Financial Impact</i>) and with such estimate provided on an Open Book Basis and accompanied by all working papers and other documentation required to support the estimate (as required by paragraph 5.3 of Schedule 14)</p>	<p><i>[Operator to complete within 3 Business Days of receipt of this Minor Contract Variation Notice].</i></p> <p><i>[If there is no Net Financial Impact – insert Nil]</i></p>
<p>Any other particulars specified by GWRC in the Minor Contract Variation Notice as being required</p>	<p><i>[Operator to complete within 3 Business Days of receipt of this Minor Contract Variation Notice].</i></p>
<p>Signature of Operator Authorised Representative</p>	<p style="text-align: center;">_____</p> <p style="text-align: center;">(Signature)</p> <p>Name: [Insert]</p> <p>Position: Operator Authorised Representative</p> <p>Date:</p>

A GWRC initiated Variation Proposal that is not a Minor Contract Variation – complete Part A and B below

[If the Variation is a Minor Contract Variation or an Operator initiated Contract Variation Parts A and B below can be deleted]

Part A GWRC initiated Contract Variation (refer paragraph 6, Schedule 14)	
Details of Variation Proposal	
Contract Identifier	<i>[Insert reference to the parts of the Contract that the Variation applies to e.g. Schedule 3 (Passenger Services) – paragraphs [insert] to [insert]]</i>
Contract Variation Number	GWRC: <i>[GWRC to add Ourspace file reference here]</i> Operator: <i>[Add the Operator's file reference here]</i>
Date of issue of Variation Proposal	<i>[Insert date of issue]</i>
Proposed date on which the Contract Variation is to take effect	Subject to the issue of approved Variation Order by GWRC.
Details of proposed Contract Variation	<i>[Insert details of proposal]</i>
Reason for change	<i>[Insert brief summary of the reasons for the variation being proposed]</i>
Details of any additional services to be performed by Operator	<i>[If there are no additional services to be performed by the Operator – insert "Nil"]</i>
Summary of the amendments required to the Transaction Documents (other than the Partnering Contract) to achieve the proposed Contract Variation (if any)	<i>[If there is no change required to a Transaction Document – insert "Nil"]</i>
Does the Operator need to conduct a tender process in accordance with paragraph 13 of Schedule 14?	<i>[yes /no]</i> <i>[If no, the basis for that conclusion to be set out]</i>
Any further information relevant to the Variation Proposal – provided by GWRC or required to be provided by Operator as part of the Variation Response	<i>[GWRC to insert any additional information relevant to the Variation Proposal and / or record any information that GWRC requires the Operator to provide as part of the Variation Response.</i> <i>If no additional information is required – insert "Nil"]</i>
Signature of GWRC Authorised Representative	<hr style="width: 20%; margin: auto;"/> (Signature) Name: <i>[Insert]</i> Position: GWRC Authorised Representative Date:

Part B - Form of Variation Response

Part B Form of Variation Response – refer paragraphs 6.4 to 6.8 Schedule 14) (Operator to complete and add necessary detail as Attachments)	
Date of issue of Variation Response	[Operator to insert]
Name of proposed Contract Variation	[Operator to insert as per the name in the relevant Variation Proposal]
Reference No	[Operator to insert as per the reference number in the relevant Variation Proposal]
Date of Variation Proposal	[Operator to insert as per the date set out in the relevant Variation Proposal]
Estimate of Net Financial Impact arising from the proposed Contract Variation, calculated in accordance with paragraph 6.6 (Variation Response) and Part C (including paragraphs 10.5 to 10.9 (Indexation of Net Financial Impact) of Schedule 14 (Change Events and Net Financial Impact))	<p>[Operator to insert.</p> <p><i>This will be an amount specified in actual values (i.e. real without indexation) as at the date of either the Indexation Base Date or the third Quarter of the sixth Year in accordance with paragraph 10.5 (Indexation of Net Financial Impact) of Schedule 14 (Change Events and Net Financial Impact). Note also the requirement in paragraph 6.6 of Schedule 14 (Change Events and Net Financial Impact) to provide supporting documentation]</i></p> <p>[If there is no Net Financial Impact – insert Nil]</p>
Timeframe within which the proposed Contract Variation will be implemented	[Operator to insert. Note the requirement in paragraph 6.7 of Schedule 14 (Change Events and Net Financial Impact) that this must be consistent with any timeframe proposed by GWRC at Section A of this Variation Proposal (to the extent reasonably practicable)]
Full details of the methodology and process by which the Operator proposes to implement the proposed Contract Variation	[Operator to insert]
Full details of any increase or decrease required to the Peak Vehicle Requirement (if any) and changes required to Vehicle Acquisition Plan or Depot Acquisition Programme (if any)	<p>[Operator to insert]</p> <p>[If there is no effect – insert “Nil”]</p>
Full details of the effect (if any) that the proposed Contract Variation will have on the Operator’s ability to meet the requirements of, or achieve (as applicable) the Reliability KPI, the Punctuality KPI or the PI Achieve Benchmarks, and the Passenger Services Objectives and Outcomes	<p>[Operator to insert]</p> <p>[If there is no effect – insert “Nil”]</p>
Full details of effects (if any) that the proposed Contract Variation will have on the Operator’s ability to perform its obligations in accordance with Transaction Documents	<p>[Operator to insert]</p> <p>[If there is no effect – insert “Nil”]</p>

<p>Full details of effects (if any) that the proposed Contract Variation will have on the safe and lawful operation of the Services</p>	<p>[Operator to insert] [If there is no effect – insert “Nil”]</p>
<p>Full details of effects (if any) that the proposed Contract Variation will have on the condition, value, or whole of life cost of any Vehicle, Depot, GWRC Assets, or any of the other assets or systems described at clause 12 (Other assets and systems used in the provision of the Services) or on the safe and lawful use of any of the foregoing</p>	<p>[Operator to insert] [If there is no effect – insert “Nil”]</p>
<p>Full details of effects (if any) that the proposed Contract Variation will have on any warranty or guarantee (including any claim thereunder) given by a supplier or manufacturer in relation to any Vehicle, Depot, GWRC Assets, or any of the other assets or systems described at clause 12 (Other assets and systems used in the provision of the Services) (to the extent that the terms of such warranty or guarantee have been provided to the Operator by any person) or on any other obligations or liabilities of such supplier or manufacturer (to the extent that the Operator has been made aware of the same)</p>	<p>[Operator to insert] [If there is no effect – insert “Nil”]</p>
<p>Full details of effects (if any) that the proposed Contract Variation will have on the GWRC’s bus performance measurement system known as ‘Real Time Information Business Solution’</p>	<p>[Operator to insert] [If there is no effect – insert “Nil”]</p>
<p>Full details of effects (if any) that the proposed Contract Variation will have on GWRC’s customer complaint management system known as ‘GWRC Resolve Complaints Management System’</p>	<p>[Operator to insert] [If there is no effect – insert “Nil”]</p>
<p>Full details of any relief sought from the Operator’s obligations under this Partnering Contract to the extent reasonably required in order to implement the Contract Variation</p>	<p>[Operator to insert] [If there is no relief sought – insert “Nil”]</p>
<p>Other information (if any) reasonably requested by GWRC in the Variation Proposal</p>	<p>[Operator to insert] [If there is other information requested by GWRC – insert “Nil”]</p>
<p>Is implementation of the Contract Variation reasonably likely to require the Operator to incur Capital Expenditure in excess of \$100,000?</p>	<p>[Operator to complete – Yes/ No] [If yes, the basis for that conclusion to be set out]</p>
<p>Does the Operator need to conduct a tender process in accordance with paragraph 13 of Schedule 14?</p>	<p>[Operator to complete – yes /no - should be yes if GWRC requires Operator to carry out a tender procedure] [If no, the basis for that conclusion to be set out]</p>

Signature of Operator Authorised Representative	<p style="text-align: center;">_____ (Signature)</p> <p>Name: <i>[Insert]</i> Position: Operator Authorised Representative Date:</p>
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Operator initiated Contract Variation – Operator to complete the following form

[If the Variation is a Minor Contract Variation or a GWRC initiated Contract Variation this part of the form should be deleted]

Operator initiated Contract Variation (refer paragraph 8, Schedule 14) Details of Variation Proposal	
Contract Identifier	<i>[Insert reference to the parts of the Contract that the Variation applies to e.g. Schedule 3 (Passenger Services), paragraphs [insert] to [insert]]</i>
Contract Variation Number	GWRC: <i>[GWRC to add Ourspace file reference here]</i> Operator: <i>[Add Operator's file reference here]</i>
Date of issue of Variation Proposal	
Proposed date on which the Contract Variation is to take effect	Subject to the issue of approved Variation Order by GWRC.
Details of proposed Contract Variation	<i>[Insert details of proposal]</i>
Reason for the proposed Contract Variation	<i>[Insert brief summary of the reasons for the Contract Variation being proposed]</i>
Operator's estimate of the Net Financial Impact arising from the proposed Contract Variation, calculated in accordance with Part C of Schedule 14 (Change Events and Net Financial Impact) and on an Open Book Basis and supported by working papers and other documentation to support the estimate	<i>[Insert estimate of Net Financial Impact]</i>
Timeframe within which the proposed Contract Variation will be implemented	<i>[Insert timeframe]</i>
Full details of the methodology and process by which the Operator proposes to implement the proposed Contract Variation	<i>[Insert details of the methodology and process]</i>
Full details of the effect (if any) that the proposed Contract Variation will have on the Operator's ability to meet the requirements of, or achieve, (as applicable) the Reliability KPI, the Punctuality KPI or the PI Achieve Benchmarks and the Passenger Services Objectives and Outcomes	<i>[Insert details of the effect]</i> <i>[If there is no effect – insert "Nil"]</i>
Effect (if any) that the proposed Contract Variation will have on the Operator's ability to perform its obligations in accordance with the Transaction Documents	<i>[Insert details of the effect]</i> <i>[If there is no effect – insert "Nil"]</i>
Effect (if any) that the proposed Contract Variation will have on the safe and lawful operation of passenger services on the Wellington Region Bus Network	<i>[Insert details of the effect]</i> <i>[If there is no effect – insert "Nil"]</i>
Effect (if any) that the proposed Contract Variation will have on the condition, value, or whole of life cost of any Transferring Asset,	<i>[Insert details of the effect]</i> <i>[If there is no effect – insert "Nil"]</i>

<p>GWRC Asset or on the safe and lawful use of any of the foregoing</p>	
<p>Effect (if any) that the proposed Contract Variation will have on any warranty or guarantee (including any claim thereunder) given by a supplier or manufacturer in relation to any Transferring Asset, GWRC Asset or any of the other assets or systems described at clause 12 (<i>Other assets and systems used in the provision of the Services</i>) (to the extent that the terms of the warranty or guarantee have been provided to the Operator by any person) or on any other obligations or liabilities of such supplier or manufacturer (to the extent that the Operator has been made aware of the same)</p>	<p><i>[Insert details of the effect]</i></p> <p><i>[If there is no effect – insert “Nil”]</i></p>
<p>The value for money for GWRC arising from the proposed Contract Variation</p>	<p><i>[Insert details of the value for money]</i></p> <p><i>[If there is no effect – insert “Nil”]</i></p>
<p>Any additional information requested by GWRC in connection with the proposed Contract Variation</p>	<p><i>[Insert (if any)]</i></p>
<p>Signature of Operator Authorised Representative</p>	<p style="text-align: center;">_____</p> <p style="text-align: center;">(Signature)</p> <p>Name: <i>[Insert]</i></p> <p>Position: Operator Authorised Representative</p> <p>Date:</p>

Part C - Form of Variation Order

Approved Variation Order – complete Part C below

Part C Form of approved Variation Order (Must be completed, signed and issued to the Operator by GWRC)	
Date of issue of Variation Order	[GWRC to insert]
Reference number	[GWRC to insert]
Name of proposed Contract Variation or Minor Contract Variation (as applicable)	[GWRC to insert]
This Variation Order relates to	<p>[Delete the options below that do not apply]</p> <p>A Minor Contract Variation (as set out in the Minor Contract Variation Notice above) and is issued pursuant to clause 5 (<i>Minor Contract Variations</i>) of Schedule 14 (<i>Change Events and Net Financial Impact</i>).</p> <p>[or]</p> <p>A GWRC initiated Contract Variation (as set out at Part A and Part B above) and is issued pursuant to clause 6 (<i>GWRC initiated Contract Variations</i>) of Schedule 14 (<i>Change Events and Net Financial Impact</i>).</p> <p>[or]</p> <p>An Operator initiated Contract Variation (as set out in the above table) and is issued pursuant to clause 8 (<i>Operator initiated Contract Variations</i>) of Schedule 14 (<i>Change Events and Net Financial Impact</i>).</p>
Net Financial Impact arising from the proposed Contract Variation or Minor Contract Variation (as applicable)	<p>[GWRC to insert in accordance with Schedule 14 (<i>Change Events and Net Financial Impact</i>). This will be an amount specified in actual values (i.e. real without indexation) as at the date of either the Indexation Base Date or the third Quarter of the sixth Year in accordance with paragraph 10.5 (<i>Indexation of Net Financial Impact</i>) of Schedule 14 (<i>Change Events and Net Financial Impact</i>).]</p> <p>[If there is no Net Financial Impact – insert Nil]</p>
Timeframe within which the proposed Contract Variation or Minor Contract Variation (as applicable) will be implemented	[GWRC to insert.]
Any conditions attached to the Contract Variation or Minor Contract Variation (as applicable)	<p>[GWRC to insert]</p> <p>[If there are no conditions – insert Nil]</p>
Other relevant matters (if any)	[GWRC to insert - to include any matters which paragraph 6.19 of Schedule 14 (<i>Change Events and Net Financial Impact</i>) contemplates being included in the Variation Order or, in the case of an Operator initiated Contract Variation, any conditions attaching to GWRC's approval of such Contract Variation and the basis on which it is to be implemented, including any relief from obligations (as referred to in paragraph 8.9 of Schedule 14 (<i>Change Events and Net Financial Impact</i>))]

Notice to proceed	GWRC by completing and issuing this Variation Order to the Operator directs the Operator to implement this [<i>Contract Variation / Minor Contract Variation</i>] in the timeframe set out above.
Signature of GWRC Authorised Representative	<p style="text-align: center;">_____ (Signature)</p> <p>Name: <i>[Insert]</i> Position: GWRC Authorised Representative</p> <p>Date:</p>

Annexure 16 – not used

Annexure 17

Transferring Asset Related Party Direct Deed

Date [insert]

**Transferring Asset Related Party
Direct Deed**

Relating to Bus Unit(s)

Wellington Regional Council (**GWRC**)

and

[Transferring Asset Related Party] (**Transferring Asset
Related Party**)

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Transferring Asset Related Party Direct Deed

Parties

- 1 Wellington Regional Council, a public statutory body constituted under the Local Government Act 2002 (**GWRC**); and
- 2 [*Transferring Asset Related Party*] (company number [*insert*]) (**Transferring Asset Related Party**).

Background

- A GWRC and the Operator have entered into the Partnering Contract for the provision of the Services.
- B The Transferring Asset Related Party has agreed to make certain Transferring Assets available to the Operator for use in the provision of the Services.
- C This Deed sets out the Parties' respective rights and obligations in relation to those Transferring Assets.

Operative provisions

1. Interpretation

Definitions

1.1 The following definitions apply in this Deed unless the context requires otherwise:

"Business Day" means a day (other than a Saturday, Sunday or Public Holiday) on which banks are generally open for business in Wellington.

"Claim" means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) whether under or in connection with this Deed, any other 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.

"Commencement Date" has the meaning give to it in the Partnering Contract.

"Confidential Information" means:

- (a) all commercially sensitive information and trade secrets already communicated or subsequently communicated under or in connection with this Deed or with respect to the subject matter of this Deed including (without limitation) any such information obtained:
 - (i) in the course of negotiations leading to the conclusion of this Deed; or
 - (ii) in the performance of this Deed;
- (b) any information about the business or property of a person including (without limitation) any information:
 - (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 Deed;
- (c) any Intellectual Property Material; and

- (d) any Personal Information collected, used, disclosed, stored, managed, transferred or handled by a Party.

"Dispute" means any dispute, difference of opinion, or disagreement between the Parties, including any Claim, arising out of or in connection with this Deed.

"Expert" means a person appointed by the Parties pursuant to clause 18.10 or 18.11.

"Financing Acceleration Event" means when any person providing financing under a Financing Agreement:

- (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 Transferring Asset Related Party.

"GST" means tax chargeable under the GST Act.

"GST Act" means the Goods and Services Tax Act 1985.

"Insolvency Event" has the meaning given to it in the Partnering Contract as if references in that definition to "Operator" were to the "Transferring Asset Related Party".

"Lessor" any person who is not themselves a "Transferring Asset Related Party" (as defined in the Partnering Contract) who makes a Third Party Transferring Asset available to the Transferring Asset Related Party.

"Lessor Direct Deed" means an agreement substantially in the form set out at Annexure 22 (*Lessor Direct Deed*) of the Partnering Contract or in such other form as GWRC (acting reasonably) may agree.

"LGOIMA" means the Local Government Official Information and Meetings Act 1987.

"Loss" means:

- (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.

"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 18.3.

"Open Book Basis" includes (without limiting the natural meaning of that term):

- (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;
- (b) the provision of a full breakdown of all relevant preliminaries, labour, equipment, materials and other costs, losses and margins in a clear and transparent manner; and
- (c) the conduct by or on behalf of GWRC of such audits and inspections of financial records and other documentation of the Transferring Asset Related Party in order to enable GWRC to verify the relevant calculation or other matter.

"Operator" means *[insert details]*.

"Partnering Contract" means the contract entitled "Partnering Contract *[insert ref]*" relating to the *[insert name of bus unit]* Bus Unit executed on *[insert]* between GWRC and the Operator. *[Note - if the TARP Transferring Assets are provided for the Operator's use under more than one Partnering Contract, this definition to be amended accordingly and consequential amendments to be made throughout the document (e.g. pluralising reference to the "Partnering Contract" and amendments to reflect there is more than one Commencement Date).]*

"Party" means a party to this deed.

"Personal Information" has the same meaning given in section 2 of the Privacy Act 1993.

"Prohibited Act" has the meaning given to it in the Partnering Contract provided that references to the Operator in that definition shall be deemed to be references to the Operator or the Transferring Asset Related Party.

"Public Holiday" means a day which is a public holiday in Wellington in accordance with the Holidays Act 2003.

"Recipient" has the meaning given in clause 20.3.

"Related Company" means a "related company" as defined in the Companies Act 1993 provided that each reference to "company" in that definition shall be deemed to also include any other body corporate.

"Restricted Confidential Information" means the amount of any Transfer Price payable in respect of the transfer of the TARP Transferring Assets or the TARP Transferring Asset Agreements.

"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 Transferring Asset Related Party 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 (*Secured Lender Confirmation*) of the Partnering Contract.

"Security Interest" means each and all of the following:

- (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 18.4.

"Specific Breach" means a breach by the Operator of any of those provisions referred to in clause 12.1 or of the Transfer Agreement.

"Supplier" has the meaning given in clause 20.3.

"TARP Transferring Asset" means a Transferring Asset which is owned by, or leased, licensed or otherwise made available to, the Transferring Asset Related Party.

"TARP Transferring Asset Agreement" means any Transferring Asset Agreement under which a Third Party Transferring Asset is made available to the Transferring Asset Related Party for use by the Operator.

"Termination Date" means the date on which the Partnering Contract expires or is terminated in accordance with its terms.

"Transfer Agreement" means an agreement in the form set out in Annexure 5 (*Transfer Agreement*) of the Partnering Contract.

"**Transfer Price**" has the meaning given to it in the Transfer Agreement.

Definitions in Partnering Contract

1.2 Subject to clause 1.1, terms that are defined in the Partnering Contract have the same meanings in this Deed.

Rules for interpreting this Deed

- 1.3 The following rules apply unless the context requires otherwise:
- 1.3.1 headings are for convenience only and do not affect interpretation;
 - 1.3.2 the singular includes the plural and conversely;
 - 1.3.3 a gender includes all genders;
 - 1.3.4 if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - 1.3.5 a reference to a person, corporation, trust, partnership, unincorporated body, organisation or other entity includes any of them;
 - 1.3.6 a reference to a clause, Schedule, Annexure or Appendix is a reference to a clause of or a Schedule, Annexure or Appendix to, this Deed, and a reference to a paragraph is to a paragraph of the same clause, Schedule, Annexure or Appendix unless the context requires otherwise;
 - 1.3.7 a reference to an agreement or document (including a reference to this deed) is to the agreement or document as amended, varied or supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document;
 - 1.3.8 a reference to a person includes that person's successors, permitted substitutes and permitted assigns (and, where applicable, that person's legal personal representatives);
 - 1.3.9 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;
 - 1.3.10 a reference to conduct includes an act, omission, statement and undertaking, whether or not in writing;
 - 1.3.11 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;
- 1.3.12 a reference to dollars and \$ is to New Zealand currency;
- 1.3.13 a reference to a month or to a year is to a calendar month or a calendar year;
- 1.3.14 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; [*Drafting note - depending on the final legal structure of the Transferring Asset Related Party we may need to tailor these provisions further.*]
- 1.3.15 a reference to a Party is a reference to each of those persons separately;
- 1.3.16 a reference to writing includes an email and any other means of reproducing words in a tangible and permanently visible form;
- 1.3.17 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;
- 1.3.18 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;
- 1.3.19 a reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;
- 1.3.20 a reference to includes or including or other similar words should be construed without limitation;
- 1.3.21 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;
- 1.3.22 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 an event or circumstance occurring; and

- 1.3.23 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

- 1.4 If the doing of any act, matter or thing under this Deed 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.

2. Commencement Date

- 2.1 The following provisions of this Deed shall take effect and be binding upon the Parties from and including the date of this Deed:
- 2.1.1 Clauses 1 (*Interpretation*) to 6 (*Restrictions in relation to TARP Transferring Asset Agreements*), clause 9 (*Further assurance and power of attorney*), clause 10 (*Acknowledgements and provision of information*) and clauses 12 (*Equitable relief*) to 40 (*Counterparts*); and
- 2.1.2 any other provision of this Deed which expressly obliges the Transferring Asset Related Party to perform an obligation prior to the Commencement Date.
- 2.2 Except as provided for in clause 2.1, the provisions of this Deed shall take effect and become binding on the Parties from and including the Commencement Date.

3. Obligation to make TARP Transferring Assets available to the Operator during the Term and restrictions in relation to TARP Transferring Assets

- 3.1 Except to the extent that:
- 3.1.1 the Operator is entitled under the Partnering Contract to Dispose of its right, title or interest in or to a TARP Transferring Asset;
- 3.1.2 the Transferring Asset Related Party is entitled under this Deed to Dispose of its right, title or interest in or to any TARP Transferring Asset; or

- 3.1.3 the Transferring Asset Related Party is required to novate the relevant TARP Transferring Asset Agreement pursuant to a Lessor Direct Deed, the Transferring Asset Related Party shall make the TARP Transferring Assets available to the Operator for use in the provision of the Services at all times during the Term.
- 3.2 Notwithstanding anything to the contrary in any Transaction Document, the Transferring Asset Related Party shall only acquire Transferring Vehicles or the use of Transferring Vehicles which are TARP Transferring Assets to the extent that GWRC has provided its prior written agreement to this pursuant to clause 10.9A of the Partnering Contract, including its agreement in relation to those matters specified in clause 10.9A of the Partnering Contract.
- 3.3 Promptly following a request to do so, the Transferring Asset Related Party 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 TARP Transferring Assets which are Transferring Vehicles and which may impact on the calculation of the Transfer Price (including a breakdown of how such costs have been calculated).
- 3.4 For the purposes of clause 3.2, GWRC hereby agrees to the acquisition and use of those Transferring Vehicles specified in Appendix 11 (*Transferring Vehicles*) of Schedule 2 (*Agreement details*) to the Partnering Contract as at the date of the Partnering Contract. The Transferring Asset Related Party acknowledges and agrees that in the event that GWRC agrees to the acquisition of, or use of, any additional Transferring Vehicles pursuant to clause 10.9A of the Partnering Contract, Appendix 11 (*Transferring Vehicles*) of Schedule 2 (*Agreement details*) to the Partnering Contract shall be updated by the Operator and GWRC to record the matters as agreed by GWRC pursuant to clause 10.9A of the Partnering Contract.
- 3.5 The Transferring Asset Related Party must not make any improvements, alterations or changes to any TARP Transferring Asset which is a 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 the Partnering Contract).

4. Lessor Direct Deed

4.1 In respect of each TARP Transferring Asset which is a Third Party Transferring Asset that is made available to the Transferring Asset Related Party by a Lessor, the Transferring Asset Related Party shall:

4.1.1 execute a Lessor Direct Deed;

4.1.2 ensure that the Lessor duly executes a Lessor Direct Deed; and

4.1.3 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 Deed and the date on which the Lessor first makes that TARP Transferring Asset available for use by the Transferring Asset Related Party.

5. Security Interests and disposals

5.1 The Transferring Asset Related Party shall not create or allow to exist any Security Interest (other than a Permitted Security Interest) over any TARP Transferring Asset or any TARP Transferring Asset Agreement where such Security Interest will or is likely to adversely affect:

5.1.1 the transfer to GWRC or its nominee of a TARP Transferring Asset or the transfer of a TARP Transferring Asset Agreement, in each case in accordance with clause 7 (*Acquisition of TARP Transferring Assets*) and the terms of the Transfer Agreement or a Lessor Direct Deed;

5.1.2 the rights of GWRC under any Transaction Document;

5.1.3 the provision of the Services in accordance with the Partnering Contract;
or

5.1.4 the Transferring Asset Related Party's ability to comply with its obligations under this Deed.

5.2 Except for a transfer to GWRC or its nominee in accordance with clause 7 (*Acquisition of TARP Transferring Assets*) and the terms of a Transfer Agreement or a Lessor Direct Deed, the Transferring Asset Related Party shall not Dispose directly or indirectly of:

5.2.1 any TARP Transferring Asset; or

5.2.2 any right, title or interest in, to or in respect of any TARP Transferring Asset,

without the prior written consent of GWRC (such consent not to be withheld where the relevant TARP Transferring Asset has, subject to clause 10.9A of the Partnering Contract, 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*) of the Partnering Contract).

5.3 Subject to the terms and conditions of this Deed:

5.3.1 the Transferring Asset Related Party 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 TARP Transferring Assets to secure the performance of the Transferring Asset Related Party's obligations in respect of those TARP Transferring Assets under this Deed;

5.3.2 the rights of GWRC under this clause 5.3 are in addition to, and not in substitution for, any other rights or interests of GWRC under this Deed or otherwise, including, without limitation, any ownership claim to any assets for which ownership and title has not passed; and

5.3.3 the Transferring Asset Related Party:

- (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 Deed;
- (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.

6. Restrictions in relation to TARP Transferring Asset Agreements

6.1 Subject to clause 6.2, the Transferring Asset Related Party 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 the 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.

- 6.2 The Parties acknowledge that the terms of those Transferring Asset Agreements identified in paragraph 19 (*Approved Transferring Asset Agreements*) of Schedule 2 (*Agreement details*) of the Partnering Contract in the versions set out at Annexure 21 (*Approved Transferring Asset Agreements*) of the Partnering Contract have been approved by GWRC for the purposes of clause 6.1.
- 6.3 The Transferring Asset Related Party shall not without the prior written consent of GWRC:
- 6.3.1 amend, vary, supplement or replace any TARP Transferring Asset Agreement or permit any other party to such TARP Transferring Asset Agreement to do so;
 - 6.3.2 avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of any TARP Transferring Asset Agreement;
 - 6.3.3 suspend the performance of any of its obligations under any TARP Transferring Asset Agreement;
 - 6.3.4 do or permit anything to be done that would enable or give grounds to another person to do anything referred to in clauses 6.3.2 or 6.3.3 in relation to any TARP Transferring Asset Agreement;
 - 6.3.5 waive or grant any indulgence in respect of a material provision of any TARP Transferring Asset Agreement; or
 - 6.3.6 assign, novate or otherwise transfer or Dispose of any or all of its rights or obligations under any TARP Transferring Asset Agreement to any person except for an assignment, novation or transfer to GWRC or its nominee in accordance with this Deed and a Transfer Agreement or a Lessor Direct Deed.
- 6.4 GWRC's consent to any matter referred to in clause 6.3 shall not be unreasonably withheld or delayed, provided that GWRC may withhold such consent in its absolute discretion where GWRC (acting reasonably) considers that the proposed action will (or is likely) to:
- 6.4.1 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 TARP Transferring Asset or any TARP Transferring Asset Agreement;
 - 6.4.2 increase the Transfer Price;
 - 6.4.3 adversely affect any person's ability to perform its obligations in accordance with the Transaction Documents; or
 - 6.4.4 hinder or prevent the transfer of any TARP Transferring Asset Agreement or TARP Transferring Asset in accordance with the Partnering Contract, the Transfer Agreement or any Lessor Direct Deed.
- 6.5 The Transferring Asset Related Party shall ensure that each TARP Transferring Asset Agreement:
- 6.5.1 does not contain any provision which would prevent, restrict or hinder the transfer of that TARP Transferring Asset Agreement to GWRC or its nominee in accordance with this Deed, a Transfer Agreement or a Lessor Direct Deed;
 - 6.5.2 requires the counterparty to transfer the TARP 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;
 - 6.5.3 in respect of those TARP Transferring Assets that are Transferring Vehicles, allows for the Transferring Asset Related Party to terminate the TARP Transferring Asset Agreement and for title in those TARP Transferring Assets to vest in the Transferring Asset Related Party upon payment of any outstanding amounts under the TARP Transferring Asset Agreement; and
 - 6.5.4 may be terminated by the Transferring Asset Related Party in the event that an Insolvency Event occurs in respect of the relevant Lessor.
- 6.6 The Transferring Asset Related Party shall ensure that the term of each TARP 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 the Partnering Contract expires in accordance with clause 4.4 (*Expiry of Term*) of the Partnering Contract (or would have so expired but for any early termination of the Partnering Contract).
- 6.7 The Transferring Asset Related Party shall ensure that each TARP Transferring Asset Agreement in respect of a Transferring Vehicle provides that on:
- 6.7.1 the date of expiry of the Partnering Contract by effluxion of time; and

- 6.7.2 the date on which all amounts due and payable by the Transferring Asset Related Party under the TARP Transferring Asset Agreement have been paid,
- then:
- 6.7.3 the term of the TARP Transferring Asset Agreement shall expire; and
- 6.7.4 full legal and beneficial ownership and title in and to the Transferring Vehicle automatically transfers to the Transferring Asset Related Party free from any Security Interests.
- 6.8 In respect of those TARP Transferring Asset Agreements which relate to TARP Transferring Assets that are Transferring Vehicles, the Transferring Asset Related Party shall take such action (including enforcing its rights and performing its obligations under the TARP Transferring Asset Agreements and paying any amounts payable under the TARP Transferring Asset Agreements) to ensure that:
- 6.8.1 full legal and beneficial ownership and title in and to those Transferring Vehicles transfers to the Transferring Asset Related Party free from Security Interests, so that such Transferring Vehicles are "Owned Transferring Assets" (as defined in the Transfer Agreement); and
- 6.8.2 such TARP Transferring Asset Agreements expire,
- in each case on the date on which the 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 7.1.
- 6.9 The Transferring Asset Related Party shall provide GWRC with a certified copy of each TARP Transferring Asset Agreement entered into by the Transferring Asset Related Party within 3 Business Days following the later of:
- 6.9.1 the date of this Deed; and
- 6.9.2 the date on which such TARP Transferring Asset Agreement has been executed by all parties.
- 6.10 Without prejudice to clause 6.1, 6.3 or 6.4, if at any time a TARP Transferring Asset Agreement is:
- 6.10.1 avoided, released, surrendered, terminated, rescinded, repudiated, discharged or otherwise ceases to be in full force and effect, the Transferring Asset Related Party shall immediately notify GWRC and

shall, promptly following a request, provide such information in connection therewith as GWRC may reasonably request; or

- 6.10.2 amended, varied, supplemented or replaced, the Transferring Asset Related Party shall immediately provide a certified copy of the TARP Transferring Asset Agreement as amended, varied, supplemented or replaced to GWRC.

7. Acquisition of TARP Transferring Assets

7.1 Subject to clause 7.3, on termination or expiry of the Partnering Contract, the Transferring Asset Related Party shall transfer to GWRC or its nominee (and GWRC shall acquire or shall procure that its nominee shall acquire) all of the Transferring Asset Related Party's right, title and interest in the TARP Transferring Assets and the TARP Transferring Asset Agreements subject to and in accordance with the terms of the Transfer Agreement, provided that this clause 7.1 (and the Transfer Agreement) shall not apply to:

- 7.1.1 any TARP Transferring Asset to the extent that the Transferring Asset Related Party has Disposed of that TARP Transferring Asset or its right, title or interest in or to the TARP Transferring Asset in accordance with this Deed;
- 7.1.2 any TARP Transferring Asset Agreement to the extent that the TARP Transferring Asset Agreement is no longer in effect (including those TARP Transferring Asset Agreements which expire on the date of expiry of the Partnering Contract as contemplated by clauses 6.7 and 6.8); or
- 7.1.3 any TARP 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 an Event of Default*) of a Lessor Direct Deed.

7.2 Subject to clause 7.3, the Transferring Asset Related Party shall and GWRC shall (or shall procure that its nominee will) enter into a Transfer Agreement in respect of the TARP Transferring Assets and the TARP Transferring Asset Agreements no later than:

- 7.2.1 60 Business Days prior to the Termination Date (where the Partnering Contract expires by effluxion of time); or
- 7.2.2 2 Business Days after the date on which GWRC notifies the Transferring Asset Related Party in writing that GWRC or the Operator has served a notice terminating the Partnering Contract in accordance with its terms.

- 7.3 Clauses 7.1 and 7.2 and the Transfer Agreement shall not apply to the extent that:
- 7.3.1 as at the Termination Date, the Operator or the Transferring Asset Related Party is party to any other contract with GWRC which is in effect and under which the Operator or the 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
 - 7.3.2 the TARP Transferring Assets and TARP Transferring Asset Agreements are reasonably required by the Operator or the Transferring Asset Related Party to perform its obligations under the contract referred to in clause 7.3.1.

If the Transferring Asset Related Party (acting reasonably) considers that this clause 7.3 applies (or is likely to apply) it shall immediately notify GWRC in writing specifying the relevant TARP Transferring Assets and TARP Transferring Asset Agreements and the Transferring Asset Related Party shall promptly provide such other information relating to the matters referred to in clauses 7.3.1 and 7.3.2 as GWRC may request.

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

8. Due Diligence

- 8.1 Without prejudice to any other rights of GWRC under this Deed or any other Transaction Document, the Transferring Asset Related Party grants to GWRC and its nominees the right of access to each TARP 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 TARP Transferring Assets, any improvements made to the TARP Transferring Assets and, where applicable, site and ground conditions (including the extent of any Contamination).

9. Further assurance and power of attorney

- 9.1 Subject to clause 7.3, the Transferring Asset Related Party shall facilitate the transfer of the TARP Transferring Assets and TARP Transferring Asset Agreements in accordance with clause 7.1 and the Transfer Agreement, and the Transferring Asset Related Party shall promptly take all necessary action (including executing, filing and lodging documents) required to give effect thereto.
- 9.2 The Transferring Asset Related Party shall not through its acts or omissions prevent, restrict, frustrate or hinder the transfer of any TARP Transferring Asset or TARP

Transferring Asset Agreement as contemplated by this Deed and the terms of the relevant Transfer Agreement.

9.3 Subject to clause 7.3, the Transferring Asset Related Party for valuable consideration (receipt of which is hereby acknowledged):

9.3.1 irrevocably appoints GWRC (and any person nominated by GWRC) as its 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 TARP Transferring Assets and TARP Transferring Asset Agreements in accordance with clause 7.1 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 9.3.1 if the 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:

9.3.2 agrees to immediately ratify and confirm whatever action is taken by GWRC or its nominee referred to in clause 9.3.1, provided that such action is not unlawful or negligent; and

9.3.3 agrees that it shall promptly on request by GWRC execute and deliver to GWRC a separate power of attorney on the terms of this clause 9.3 by way of a deed or otherwise in such form as GWRC may reasonably require.

9.4 The Transferring Asset Related Party agrees that an attorney appointed under clause 9.3 is not liable for any Loss the Transferring Asset Related Party 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 9.3.

10. Acknowledgements and provision of information

10.1 The Transferring Asset Related Party:

10.1.1 acknowledges that GWRC has rights to access and inspect (or to procure that its nominees access and inspect) the TARP Transferring Assets under the Partnering Contract; and

10.1.2 agrees that it shall not through its acts or omissions prevent, restrict, frustrate or hinder the exercise by GWRC of such rights.

10.2 The Transferring Asset Related Party acknowledges that a failure by it to comply with the terms of this Deed may give rise to an Event of Default or a Termination Event

(each as defined in the Partnering Contract) and could result in the Partnering Contract being terminated.

- 10.3 As soon as reasonably practicable to do so following a request from GWRC (but no later than 15 Business Days following such request) the Transferring Asset Related Party shall provide to GWRC:
- 10.3.1 its reasonable estimate of the current market value of each of those TARP Transferring Assets that are Transferring Depots;
 - 10.3.2 its estimate of the current Transfer Price payable under the Transfer Agreement in respect of the TARP Transferring Assets, the estimate to be in such format and contain such content and breakdown as is reasonably required by GWRC; and
 - 10.3.3 such documentation and other supporting evidence as GWRC may reasonably require to verify the estimates provided by the Transferring Asset Related Party.
- 10.4 The Transferring Asset Related Party 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 Transferring Asset Related Party. The Transferring Asset Related Party 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.
- 10.5 The Transferring Asset Related Party agrees that GWRC may provide any Potential Incoming Operator, Incoming Operator or Purchaser (as defined in the Transfer Agreement) with:
- 10.5.1 copies of any TARP Transferring Asset Agreement (including copies of any amendment, variation, supplement or replacement thereto); and
 - 10.5.2 any information given by or on behalf of the Transferring Asset Related Party to GWRC in relation to the TARP Transferring Assets or TARP Transferring Asset Agreements,

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

11. Use of TARP Transferring Assets pending transfer

- 11.1 From and including the Termination Date until the date on which the transfer of a TARP Transferring Asset or TARP Transferring Asset Agreement is completed in

accordance with the Transfer Agreement, the Transferring Asset Related Party shall permit GWRC and its nominees (at the absolute discretion of GWRC) to do any or all of the following:

- 11.1.1 access, take possession and control of, occupy and use the relevant TARP Transferring Asset;
 - 11.1.2 insure the relevant TARP 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;
 - 11.1.3 exercise the rights of the Transferring Asset Related Party under the relevant TARP Transferring Asset Agreement and/or under any warranty relating to the TARP Transferring Asset; and
 - 11.1.4 perform any or all of the obligations of the Transferring Asset Related Party under any relevant TARP Transferring Asset Agreement in accordance with the terms thereof.
- 11.2 Subject to clause 11.3, within 5 Business Days following a demand, the Transferring Asset Related Party shall pay to GWRC any costs incurred by GWRC or its nominee arising in connection with those matters referred to in clause 11.1.2 or clause 11.1.4 and which relate to the period prior to the date on which the transfer of the TARP Transferring Asset or TARP Transferring Asset Agreement (as applicable) is completed in accordance with the Transfer Agreement, except to the extent that:
- 11.2.1 GWRC recovers the same from the Operator under the Partnering Contract; or
 - 11.2.2 the Purchaser (as defined in the Transfer Agreement) recovers the same under the Transfer Agreement.
- 11.3 Subject to clause 11.4, to the extent that:
- 11.3.1 GWRC or its nominees access, take possession and control of, occupy or use a TARP Transferring Asset pursuant to clause 11.1; and
 - 11.3.2 the delay in completing the transfer of a TARP Transferring Asset or TARP Transferring Asset Agreement was not caused or contributed to by the Operator, the Operator Associates, the Transferring Asset Related Party or any other "Transferring Asset Related Party" (as defined in the Partnering Contract),

the Transferring Asset Related Party shall not be liable for costs under clause 11.2 and GWRC shall pay (or shall procure that its nominee shall pay) to the Transferring

Asset Related Party the reasonable and substantiated costs incurred by the Transferring Asset Related Party in making the TARP Transferring Asset available pursuant to clause 11.1, provided that there shall be no double recovery by the Operator or the Transferring Asset Related Party of the same amounts, whether under the Partnering Contract, this Deed, the Transfer Agreement or otherwise.

- 11.4 Clause 11.3 shall not apply where the Partnering Contract is (or is in the process of being) terminated pursuant to clause 47 (*Termination for Termination Events*) of the Partnering Contract.

12. Equitable relief

- 12.1 Without limiting any other provisions of this Deed or any other right or remedy of GWRC, the Transferring Asset Related Party acknowledges that damages may not be an adequate remedy for any breach by it of clause 5 (*Security Interests and disposals*), 6 (*Restrictions in relation to TARP Transferring Asset Agreements*), 7 (*Acquisition of TARP Transferring Assets*), 8 (*Due Diligence*), 9 (*Further assurance and power of attorney*), 10 (*Acknowledgements and provision of information*), or 11 (*Use of TARP Transferring Assets pending transfer*) of this Deed or any breach by it of the Transfer Agreement.

- 12.2 The Transferring Asset Related Party 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 Transferring Asset Related Party and the Transferring Asset Related Party 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.

13. GWRC and its nominees not mortgagee in possession or liable

- 13.1 To the extent permitted by applicable law, GWRC and its nominees:
- 13.1.1 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 Deed; and
 - 13.1.2 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 Deed, or any failure or delay in exercising such right or remedy.

14. Secured Lender Confirmations

- 14.1 Within 10 Business Days following the date of this Deed, the Transferring Asset Related Party 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.
- 14.2 If, after the date of this Deed, any other person becomes a Secured Lender, the Transferring Asset Related Party 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 Transferring Asset Related Party in favour of that person.
- 14.3 The Transferring Asset Related Party 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.

15. Financing Acceleration Events

- 15.1 Within 3 Business Days following the occurrence of a Financing Acceleration Event or of the Transferring Asset Related Party becoming aware that a Financing Acceleration Event is reasonably likely to occur, the Transferring Asset Related Party 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 Transferring Asset Related Party and the steps that will be taken by the Transferring Asset Related Party to rectify or otherwise deal with such Financing Acceleration Event.
- 15.2 The Transferring Asset Related Party shall update GWRC regularly as to the status of the Financing Acceleration Event and, if requested to do so by GWRC, shall promptly provide such further information in relation to the Financing Acceleration Event as GWRC may reasonably require from time to time.

16. Representations and warranties

- 16.1 The Transferring Asset Related Party represents and warrants to GWRC that:
- 16.1.1 **(Prohibited Act)** neither it nor any one acting on its behalf have committed any Prohibited Act;
- 16.1.2 **(information provided)** all information and documents given by the Transferring Asset Related Party (or anyone acting on its behalf) to GWRC under or relating to this Deed, the Transfer Agreement, the TARP

Transferring Assets or the TARP Transferring Asset Agreements was when given, and remains, true, complete and accurate in all material respects;

- 16.1.3 **(status)** it is validly existing under the laws of its place of incorporation or registration;
- 16.1.4 **(power)** it has the power to enter into and perform its obligations under the this Deed and the Transfer Agreement, to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated;
- 16.1.5 **(not a trustee)** in entering into this Deed and the Transfer Agreement, it is not acting as responsible entity or trustee of any trust or settlement or as an agent on behalf of another entity;
- 16.1.6 not used;
- 16.1.7 **(corporate action)** it has taken all necessary corporate action to authorise the entry into and performance of this Deed and the Transfer Agreement and to carry out the transactions contemplated by those documents;
- 16.1.8 **(valid and binding)** this Deed creates (and the Transfer Agreement will when executed create) valid and binding obligations and will be enforceable in accordance with its terms, subject to any necessary stamping and registration, Laws generally affecting creditors' rights and general principles of equity;
- 16.1.9 **(no violation)** The execution and performance by it of this Deed and the Transfer Agreement and each transaction contemplated under those documents did not and will not violate in any respect a provision of:
- (a) any applicable law;
 - (b) its constitution or other constituent documents; or
 - (c) any other document or agreement that is binding on it or its assets;
- 16.1.10 **(legal proceedings)** no litigation, arbitration or other proceedings are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect upon it or its ability to perform its obligations under this Deed, the Transfer Agreement or any TARP Transferring Asset Agreement;

- 16.1.11 **(financial status)** there has been no material change in the financial condition of the Transferring Asset Related Party which would prejudice its ability to perform its obligations under this Deed, the Transfer Agreement or any TARP Transferring Asset Agreement;
- 16.1.12 **(Insolvency Event)** no Insolvency Event has occurred in relation to it;
- 16.1.13 **(judgments)** there is no unsatisfied judgment against it;
- 16.1.14 **(authorisations)** each authorisation that is required in relation to:
- (a) the execution, delivery and performance by it of this Deed and the Transfer Agreement and the transactions contemplated by those documents;
 - (b) the validity and enforceability of this Deed and the Transfer Agreement; and
 - (c) its business as now conducted or contemplated,
- has been obtained or effected and remains in full force and effect, it is in compliance with them and it has paid all applicable fees in respect of them;
- 16.1.15 **(assets not held as trustee)** it does not hold any assets (including the TARP Transferring Assets) as the trustee or responsible entity of any trust except to the extent that this has been disclosed to GWRC and GWRC has provided its written consent (such consent not to be unreasonably withheld);
- 16.1.16 **(facts and circumstances)** it is not aware of any facts or circumstances that have not been disclosed to GWRC in writing that would, if disclosed, be likely to materially adversely affect the decision of a prudent and reasonable public sector entity considering whether or not to enter into this Deed or a Transfer Agreement with it;
- 16.1.17 **(provision of information)** if called upon to do so by GWRC, the Transferring Asset Related Party will promptly provide GWRC with such information relating to the TARP Transferring Assets and the TARP Transferring Asset Agreements as GWRC may reasonably require (including such information as may be required to complete the Transfer Agreement) provided that any disclosure by GWRC of such information shall be subject to clause 22;
- 16.1.18 **(insurance)** it will not do anything that may invalidate:

- (a) any insurance policy held by the Operator in relation to the TARP Transferring Assets; or
 - (b) any insurance policy held by GWRC in relation to the TARP Transferring Assets to the extent that the Transferring Asset Related Party has been made aware of the terms of any such insurance policy held by GWRC;
- 16.1.19 **(compliance)** it has duly observed and complied in all respects with the provisions of all applicable Laws and all orders, notices, awards and determinations made by any Governmental Entity in any way relating to or binding on any of the TARP Transferring Assets;
- 16.1.20 **(no default)** it has not breached the terms of any TARP Transferring Asset Agreement and no circumstances exist which (whether immediately or with the passing of time) may result in the termination, rescission or suspension of any TARP Transferring Asset Agreement; and
- 16.1.21 **(compliance with the Partnering Contract)** each TARP Transferring Asset complies with all applicable requirements of the Partnering Contract and is fit for its intended purpose.
- 16.2 The representations and warranties in clause 16.1 are given by the Transferring Asset Related Party on the date of this Deed 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.
- 16.3 The Transferring Asset Related Party shall immediately notify GWRC in writing upon becoming aware that any representation or warranty given or deemed repeated by it under this Deed has become untrue, incorrect or misleading in any material respect at any time prior to the Termination Date.
- 16.4 The Transferring Asset Related Party acknowledges that GWRC has entered into or will enter into this Deed and/or any other Transaction Document to which it is party in reliance on the representations and warranties given by the Transferring Asset Related Party in clause 16.1.

17. Indemnity

- 17.1 The Transferring Asset Related Party shall (to the maximum extent permitted by Law) indemnify GWRC (and keep GWRC so indemnified) on demand from and against any Claim or Loss that GWRC may suffer or incur arising out of or in connection with a breach by the Transferring Asset Related Party of this Deed or the Transfer Agreement (including a breach of any representation, warranty or undertaking given by the Transferring Asset Related Party under this Deed or the Transfer Agreement).

18. Dispute resolution procedure

Application of Procedure

- 18.1 Any Dispute shall be dealt with under this clause 18 provided that nothing in this clause 18 will prevent a Party from applying to a court of competent jurisdiction to seek urgent or interim relief.
- 18.2 Except as provided for in clause 18.1, no Party may commence court proceedings unless and until the steps provided by this clause 18 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

- 18.3 A Party may refer a Dispute for resolution by the Senior Executives Meeting by serving a Notice of Dispute on to 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.
- 18.4 Within 3 Business Days after the referral to the Senior Executives Meeting under clause 18.3, each of the Parties 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.
- 18.5 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.
- 18.6 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

- 18.7 If any Dispute is referred to mediation in accordance with clause 18.6, 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:
- 18.7.1 by a single mediator agreed upon between the Parties; or

18.7.2 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.

18.8 If the Dispute is not resolved by mediation:

18.8.1 the Parties may by written agreement refer the Dispute to Expert determination within 5 Business Days after the conclusion of the mediation; or

18.8.2 provided no referral to Expert determination is made under clause 18.8.1, either Party may commence proceedings to have the Dispute determined by a court of competent jurisdiction.

Expert determination

18.9 For those disputes required by this Deed to be referred directly to Expert determination or which this Deed otherwise expressly envisages may be referred to Expert determination, and for any Dispute that is agreed by the Parties pursuant to clause 18.8.1 to be referred to Expert determination, the procedure set out in clauses 18.10 to 18.15 shall apply.

18.10 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.

18.11 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:

18.11.1 the then president of the Chartered Accountants Australia and New Zealand (for technical, financial, valuation, economic or accounting issues); or

18.11.2 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 18.11.1 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 18.11.

18.12 The Parties shall instruct the Expert to:

- 18.12.1 determine the Dispute within the shortest practicable time, and in any event within 30 Business Days unless otherwise agreed by the Parties; and
 - 18.12.2 deliver a report to the Parties stating the Expert's determination and setting out the reasons for the determination.
- 18.13 The procedures for the conduct of the process in order to make the determination will be determined by the Expert and shall provide each Party with a fair opportunity to make submissions in relation to the matter in dispute.
- 18.14 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 either 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.
- 18.15 Each Party shall bear its own costs of and incidental to any Expert determination under this clause 18. The costs of the Expert will be shared equally between GWRC and the Transferring Asset Related Party.

Performance of obligations pending resolution of dispute

- 18.16 Despite the existence of a Dispute, each Party shall continue to perform its obligations under this Deed and the Transfer Agreement.

Survival

- 18.17 This clause 18 survives the expiry or termination of this Deed.

19. Set off

- 19.1 GWRC may at any time deduct from any amount payable to the Transferring Asset Related Party:

19.1.1 any Moneys Owing to GWRC; and

19.1.2 any Claim to Moneys Owing that GWRC may have against the Transferring Asset Related Party,

whether under this Deed, any Transfer Agreement or any other Transaction Document or otherwise.

19.2 The Transferring Asset Related Party shall not at any time deduct or set-off from any amount otherwise due to GWRC under or in connection with this Deed or any other Transaction Document:

19.2.1 any money due from GWRC to the Transferring Asset Related Party; or

19.2.2 any Claim to money that the Transferring Asset Related Party may have against GWRC,

whether under or in connection with this Deed or any other Transaction Document or otherwise.

20. Goods and Services Tax

20.1 In this clause 20, words and phrases defined in the GST Act have the meaning given in the GST Act, unless the context requires otherwise.

20.2 Unless expressly provided to the contrary in this Deed, any consideration payable for a supply made under this Deed is stated before the addition of any GST chargeable on that supply.

20.3 The Parties agree that where GST is chargeable on a supply made by one Party (the "**Supplier**") to the other Party (the "**Recipient**") under this Deed, 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.

20.4 The Transferring Asset Related Party 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 Deed and payable by GWRC.

21. Survival of obligations

21.1 The expiry or termination of this Deed shall be without prejudice to the accrued rights, liabilities and obligations of each Party as at the date of such expiry or termination.

21.2 Clauses 1, 2, 12, 13 and 17 to 40 (inclusive) and any provision of this Deed which is expressly or impliedly to apply after the termination or expiry of this Deed shall survive such termination or expiry.

22. Confidentiality

General Obligations

22.1 Subject to clauses 10.5 and 22.2, GWRC and the Transferring Asset Related Party shall keep confidential and not make or cause any disclosure of any of the other Party's Confidential Information without the prior written consent of that other Party.

Exceptions

22.2 The Parties' obligations in clause 22.1 do not apply to disclosure to the extent that the disclosure is:

22.2.1 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 this Deed (or the transactions contemplated hereunder) or for the purpose of advising that Party in relation thereto, provided that the Party disclosing the Confidential Information shall ensure that the recipient:

- (a) is made aware of this clause 22; and
- (b) shall keep such information confidential on the same terms as this clause 22;

22.2.2 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;

22.2.3 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, where the disclosing Party is the Transferring Asset Related Party, the Transferring Asset Related Party provides written notice to GWRC of the required disclosure promptly on receipt of notice of the required disclosure (if it is permitted to do so by Law);

22.2.4 required in connection with legal proceedings, arbitration, mediation or expert determination relating to this Deed, the Transfer Agreement or any other Transaction Documents or for the purpose of advising a Party in relation thereto;

22.2.5 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, provided that the Incoming Operator or Potential Incoming Operator (as applicable) has provided a duly executed Incoming Operator Confidentiality Undertaking;

- 22.2.6 by GWRC of, or in connection with, the "commerciality ratio" of a PTOM Unit (as contemplated by the Procurement Manual), any League Table, Farebox Revenue or patronage information; or
- 22.2.7 made by GWRC in accordance with clauses 22.3 to 22.5 (*LGOIMA*).

LGOIMA

- 22.3 The Transferring Asset Related Party 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.
- 22.4 Subject to clause 22.5, if GWRC receives a request under LGOIMA for any information held by the Transferring Asset Related Party in its capacity as the Transferring Asset Related Party, then:
 - 22.4.1 GWRC shall notify the Transferring Asset Related Party of the request;
 - 22.4.2 GWRC will consult with the Transferring Asset Related Party 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
 - 22.4.3 either:
 - (a) if the Transferring Asset Related Party considers the request relates to the Transferring Asset Related Party's Confidential Information, within 2 Business Days of receiving such notification pursuant to clause 22.4.1, the Transferring Asset Related Party 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 Transferring Asset Related Party'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 Transferring Asset Related Party shall provide such information to GWRC within 3 Business Days of a written request from GWRC.

22.5 For the avoidance of doubt, nothing in this clause 22 shall cause or require GWRC to breach GWRC's obligations under LGOIMA.

23. Media Management

23.1 Except to the extent that the Transferring Asset Related Party is expressly obliged to do so under this Deed or is otherwise required to do so by Law or the requirements of any recognised stock exchange having jurisdiction over the Transferring Asset Related Party or a Related Company of the Transferring Asset Related Party, the Transferring Asset Related Party 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 Deed or any other Transaction Document without the prior written approval of GWRC. Where GWRC has granted its approval to any such press release or public announcement, the Transferring Asset Related Party shall ensure that such press release or public announcement (as applicable) is in the form approved by GWRC

24. Assignment

24.1 The Transferring Asset Related Party shall not create or allow a Security Interest over or in any other way, whether directly or indirectly, assign, novate, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with any of its rights or obligations under this Deed or any other Transaction Document to which it is a Party without the prior written consent of GWRC.

24.2 The Transferring Asset Related Party shall provide any request for consent under clause 24.1 at least 20 Business Days prior to the proposed effective date of the relevant action.

24.3 GWRC may assign, novate, transfer or otherwise dispose of any right or obligation under this Deed 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 Transferring Asset Related Party hereby consents to the same. The Transferring Asset Related Party shall promptly execute any such documents as GWRC may reasonably require to give effect to such transaction.

25. Notices

25.1 Any notice required to be given in relation to this Deed will, except where otherwise expressly provided, be in writing and in English and delivered to the relevant addressee in accordance with clause 25.3.

25.2 This clause 25.2 is subject to clause 25.4. A notice may be:

- 25.2.1 personally delivered, in which case it will be deemed to be given upon delivery at the relevant address; or
 - 25.2.2 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
 - 25.2.3 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
 - 25.2.4 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
 - 25.2.5 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.
- 25.3 The initial addressee, addresses and other relevant details of each Party are set out below:

[insert notice details of each Party including nominated recipient's name or job title]

A Party may provide written notice to the other Parties of any change to the addressee, 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.

- 25.4 Where any notice is deemed given pursuant to clause 25.2:

- 25.4.1 before 9.00 am or after 5.30 pm (local time) at the place of receipt; or
- 25.4.2 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 25.4 the place of receipt of a notice is the applicable postal address for the receiving Party in accordance with clause 25.3, irrespective of whether the notice is communicated by email or otherwise.

26. Relationship between Parties

- 26.1 Notwithstanding the use of the word "partnering" or "partnership", nothing in this Deed, 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 Deed) be liable for the acts or omissions of one of the other Parties.
- 26.2 Except as expressly provided in this Deed, nothing in this Deed shall be construed to authorise any Party to act as an agent for any other Party for any purpose.

27. Entire Agreement and amendments

- 27.1 This Deed and the Transfer Agreement 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.
- 27.2 This Deed may only be amended by way of a written agreement duly executed by each of the Parties.

28. No reliance

- 28.1 The Transferring Asset Related Party acknowledges that, before entering into this Deed or any other Transaction Document, it made all enquiries it wanted to make in relation to its obligations under this Deed and the other Transaction Documents and that in entering into this Deed and the other Transaction Documents, it:
- 28.1.1 did not rely on any representation, warranty, guarantee, assurance, undertaking or other statement made by or on behalf of GWRC;
 - 28.1.2 has made its own assessment of the rights provided to it and the obligations imposed on it by the Transaction Documents; and
 - 28.1.3 has made its own assessment as to the quality of all other material and other information provided by or on behalf of GWRC in connection with this Deed and the other Transaction Documents.

29. No waiver

- 29.1 No waiver of any breach of, or failure to enforce any provision of, this Deed 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 Deed 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.

29.2 No waiver by a Party of any part of this Deed or any other Transaction Document is binding unless it is made in writing by the Party granting that waiver.

30. Contract and Commercial Law Act 2017

30.1 This Deed is not intended to create any obligation enforceable at the suit of any person who is not a Party to this Deed.

30.2 A person who is not a Party to this Deed shall have no right under the Contract and Commercial Law Act 2017 to enforce any term of this Deed. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

31. Rights cumulative

31.1 Subject to any express provision in this Deed to the contrary, the rights, powers and remedies of a Party under this Deed 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.

32. Further action

32.1 Each Party agrees at its own expense to do (within the time periods specified in this Deed, or if not expressly specified, promptly) everything necessary (including executing documents) to give full effect to this Deed and any transaction contemplated by it.

33. No merger

33.1 The rights and obligations of the Parties shall not merge on the completion of any transaction contemplated by this Deed 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.

34. Costs and expenses

34.1 Subject to any express provision to the contrary in this Deed, 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 Deed.

35. Severability of provisions

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

36. Governing law

36.1 This Deed and the transactions contemplated by this Deed are governed by and are to be construed in accordance with New Zealand law and, subject to clause 18 (*Dispute resolution procedure*), the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

37. GWRC Action

37.1 The Transferring Asset Related Party 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 Deed, nothing in this Deed or any other Transaction Document:

37.1.1 requires GWRC to exercise, or use, any regulatory or legislative powers in order to influence or affect an outcome; or

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

38. Operation of indemnities

38.1 No indemnity in this Deed limits the effect or operation of any other indemnity in this Deed.

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

38.3 Each indemnity in this Deed survives the expiry or termination of this Deed.

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

39. Requirement to use 'best endeavours' or 'reasonable endeavours'

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

- 39.1.1 act unreasonably or in breach of any applicable law;
- 39.1.2 interfere with or influence the exercise by any person of a statutory power or discretion;
- 39.1.3 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
- 39.1.4 provide any performance bond, guarantee or Security Interest other than as specifically required under this Deed.

40. Counterparts

40.1 This Deed may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

Execution

Executed as a Deed

Date:

**Executed by Wellington
Regional Council by its
Attorney Gregory Campbell**

in the presence of:

Signature of Gregory Campbell
(Chief Executive)

Signature of witness

Name of witness

Occupation of witness

Address of witness

[Transferring Asset Related Party] by

Authorised signatory

Authorised signatory

Name

Name

Title

Title

[Note - Execution block for the Transferring Asset Related Party to be amended if necessary depending on the status and structure of the Transferring Asset Related Party to ensure compliance with the requirements of NZ law.]

CERTIFICATE OF NON REVOCATION OF POWER OF ATTORNEY

I, **Gregory Campbell** of Wellington, Chief Executive Officer of Wellington Regional Council hereby certify:

1. That by a Deed dated the 30th day of September 2014, Wellington Regional Council appointed me its Attorney on the terms and subject to the conditions set out in the said Deed.
2. That at the date hereof I have not received any notice or information of the revocation of that appointment.

SIGNED at Wellington this day of

Gregory Campbell

Chief Executive Officer
Wellington Regional Council

Annexure 18

Key Subcontractor Direct Deed

Date [insert]

**Key Subcontractor
Direct Deed**

relating to the [insert ref/name] Bus Unit

Wellington Regional Council (**GWRC**)

and

[Operator] (**Operator**)

[Subcontractor] (**Subcontractor**)

[Subcontractor Guarantor] (**Subcontractor Guarantor**)

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Key Subcontractor Direct Deed

Parties

- 1 Wellington Regional Council, a public statutory body constituted under the Local Government Act 2002 (**GWRC**);
- 2 [Operator] (company number [insert]) (**Operator**);
- 3 [Subcontractor] (company number [insert]) (**Subcontractor**); and
- 4 [Subcontractor Guarantor] (company number [insert]) (**Subcontractor Guarantor**).

Background

- A GWRC and the Operator have entered into the Partnering Contract for the provision of the Services.
- B The Operator and the Subcontractor have entered into the Subcontract for, amongst other things, [insert brief description of subcontracted services].
- C The Operator, the Subcontractor and the Subcontractor Guarantor have entered into the Subcontractor Guarantee to secure the Subcontractor's obligations under the Subcontract.
- D The Parties are entering into this Deed so that, amongst other things, GWRC may exercise certain rights upon a default occurring under the Partnering Contract or the Subcontract.

Operative provisions

1. Interpretation

Definitions

1.1 The following definitions apply in this Deed unless the context requires otherwise:

"Associate" means:

- (a) in respect of the Operator, each Operator Associate;
- (b) in respect of the Subcontractor or the Subcontractor Guarantor, each Subcontractor Associate and/or each Subcontractor Guarantor Associate (as the context requires); and
- (c) in respect of GWRC, each GW Associate (as defined in the Partnering Contract).

"Authorised Representative" means, in relation to a Party, the individual that is the primary contact person of that Party for the purpose of this Deed, being the individual specified in clauses 1.6 to 1.8 as amended from time to time in accordance with clause 1.8.

"Business Day" means a day (other than a Saturday, Sunday or Public Holiday) on which banks are generally open for business in Wellington.

"Claim" 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 Project 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.

"Confidential Information" means:

- (a) all commercially sensitive information and trade secrets already communicated or subsequently communicated under or in connection with this Deed or with respect to the Services or otherwise with respect to the subject matter of the Partnering Contract or the Subcontract Documents including (without limitation) any information obtained:
 - (i) in the course of negotiations leading to the conclusion of the Partnering Contract, this Deed or the Subcontract Documents; or

- (ii) in the performance of the Partnering Contract, this Deed or the Subcontract Documents;
- (b) any information about the business or property of a person including (without limitation) any information:
 - (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 Deed, the Partnering Contract or the Subcontract Documents;
- (c) any Intellectual Property Material; and
- (d) any Personal Information collected, used, disclosed, stored, managed, transferred or handled by a Party.

"Consent Date" means the date on which the Subcontractor and the Subcontractor Guarantor consent or are deemed to have consented to a novation pursuant to a Proposed Novation Notice or a Revised Proposed Novation Notice.

"Default Notice" means a notice given by the Subcontractor under clause 3.2.

"Dispute" means any dispute, difference of opinion, or disagreement between any of the Parties, including any Claim, arising out of or in connection with this Deed.

"Expert" means any person appointed by the relevant Parties pursuant to clause 9.10 or 9.11.

"GWRC Cure Notice" means a written notice given by the Operator to GWRC containing the information required by clause 3.4.

"Insolvency Event" has the meaning given to it in the Partnering Contract as if references in that definition to "Operator" were to the "Operator", "Subcontractor" or "Subcontractor Guarantor" (as applicable).

"LGOIMA" means means the Local Government Official Information and Meetings Act 1987.

"Notice of Dispute" means a written notice in respect of a Dispute served by one Party on the other relevant Parties and containing the information referred to in clause 9.3 (*Referral to Senior Executives Meeting*).

"Notice of Step In" has the meaning given in clause 3.8.

"Novation Agreement" means a deed of novation in form and substance satisfactory to the Subcontractor and the Subcontractor Guarantor (acting reasonably) and GWRC (acting reasonably) and which reflects clause 4.15.1.

"Novation Effective Date" means the date falling 3 Business Days after the Consent Date.

"Operator Associate" means any "Operator Associate" as defined in the Partnering Contract but excluding the Subcontractor and its subcontractors of any tier.

"Party" means a party to this Deed.

"Partnering Contract" means the contract entitled "Partnering Contract [*insert reference*] relating to the [*insert ref/name*] Bus Unit" executed on [*insert*] between GWRC and the Operator.

"Permitted Security Interest" means those security interests approved by GWRC in writing from time to time.

"Project Documents" means the Transaction Documents, the Subcontract Documents and this Deed.

"Proposed Novation Date" means the date specified in a Proposed Novation Notice as being the date on which the proposed novation is to take effect.

"Proposed Novation Notice" means a notice served by GWRC under clause 4.1 specifying that GWRC:

- (a) wishes itself or another person to assume, by way of novation, the rights and obligations of the Operator under the Subcontract and the Subcontractor Guarantee; and
- (b) wishes all rights, title and interest to any retention account, bank guarantee, performance bond, letter of credit and other security held by the Operator to secure the obligations of the Subcontractor under the Subcontract to vest in the GWRC or another person.

"Proposed Substitute" means GWRC or any other person specified by GWRC.

"Public Holiday" means a day which is a public holiday in Wellington in accordance with the Holidays Act 2003.

"Revised Proposed Novation Notice" means a notice served by GWRC under clause 4.13.1.

"Senior Executives Meeting" means each panel established under clause 9.3.

"Services" has the meaning given to it in the Partnering Contract and/or the Subcontract (as applicable).

"Step In Date" means the date specified in a notice given by GWRC under clause 3.8.

"Step In Period" means the period from the Step In Date until the earliest of:

- (a) the Step Out Date;
- (b) the date on which the Subcontractor validly terminates the Subcontract in accordance with its terms and the terms of this Deed; and
- (c) the date of any novation under clause 4 (*Novation*).

"Step In Rights" has the meaning given in clause 3.7.

"Step Out Date" means the date specified in any notice given by GWRC under clause 3.15.

"Subcontract" means the contract between the Operator and the Subcontractor entitled [*insert*] and executed on [*insert date*].

"Subcontract Documents" means each and all of the following:

- (a) the Subcontract; and
- (b) the Subcontractor Guarantee.

"Subcontract Event of Default" means:

- (a) a breach or default by the Operator under the Subcontract which entitles the Subcontractor to terminate (or give notice terminating), rescind or accept the repudiation of the Subcontract or suspend the performance of any or all of its obligations under the Subcontract; and/or
- (b) the occurrence of any Insolvency Event in respect of the Operator or Operator Associates.

"Subcontractor Associate" means:

- (a) any Related Company of the Subcontractor;
- (b) any person that is engaged (directly or indirectly and at any tier) as a subcontractor to the Subcontractor; and
- (c) any director, advisor, officer, employee, delegate or agent of, or contractor to:
 - i. the Subcontractor; or
 - ii. any person referred to in paragraphs (a) or (b) of this definition,

in each case:

- (d) acting in connection with any of the Project Documents;
- (e) acting in connection with the Vehicles or the Depots; or
- (f) involved in any activity, function or task related to the Services or the services delivered under any Associated Partnering Contract.

"Subcontractor Guarantee" means the guarantee between the Operator, the Subcontractor and the Subcontractor Guarantor entitled [*insert*] and executed on [*insert*].

"Subcontractor Guarantor Associate" means:

- (a) any Related Company of the Subcontractor Guarantor;
- (b) any person that is engaged (directly or indirectly and at any tier) as a subcontractor to the Subcontractor Guarantor; and
- (c) any director, advisor, officer, employee, delegate or agent of, or contractor to:
 - i. the Subcontractor Guarantee; or
 - ii. any person referred to in paragraphs (a) or (b) of this definition,

in each case:

- (d) acting in connection with any of the Project Documents;
- (e) acting in connection with the Vehicles or the Depots; or
- (f) involved in any activity, function or task related to the Services or the services delivered under any Associated Partnering Contract.

"Termination Date" means the date on which this Deed shall terminate, being the date of performance and satisfaction of all of the obligations under the Subcontract.

Definitions in Partnering Contract

- 1.2 Subject to clause 1.1, terms that are defined in the Partnering Contract have the same meanings in this Deed.

Rules for interpreting this Deed

- 1.3 The following rules apply unless the context requires otherwise:
- 1.3.1 headings are for convenience only and do not affect interpretation;
 - 1.3.2 the singular includes the plural and conversely;
 - 1.3.3 a gender includes all genders;
 - 1.3.4 if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - 1.3.5 a reference to a person, corporation, trust, partnership, unincorporated body, organisation or other entity includes any of them;
 - 1.3.6 a reference to a clause, Schedule, Annexure or Appendix is a reference to a clause of or a Schedule, Annexure or Appendix to, this Deed, and a reference to a paragraph is to a paragraph of the same clause, Schedule, Annexure or Appendix unless the context requires otherwise;
 - 1.3.7 a reference to an agreement or document (including a reference to this deed) is to the agreement or document as amended, varied or supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document;
 - 1.3.8 a reference to a person includes that person's successors, permitted substitutes and permitted assigns (and, where applicable, that person's legal personal representatives);
 - 1.3.9 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;
 - 1.3.10 a reference to conduct includes an act, omission, statement and undertaking, whether or not in writing;

- 1.3.11 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;
- 1.3.12 a reference to dollars and \$ is to New Zealand currency;
- 1.3.13 a reference to a month or to a year is to a calendar month or a calendar year;
- 1.3.14 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;
- 1.3.15 a reference to a Party or Parties is a reference to each of those persons separately;
- 1.3.16 a reference to writing includes an email and any other means of reproducing words in a tangible and permanently visible form;
- 1.3.17 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;
- 1.3.18 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;
- 1.3.19 a reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;
- 1.3.20 a reference to includes or including or other similar words should be construed without limitation;
- 1.3.21 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;

- 1.3.22 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
- 1.3.23 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

- 1.4 If the doing of any act, matter or thing under this Deed 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 between Subcontract Documents and this Deed

- 1.5 If there is any inconsistency between the provisions of this Deed and the provisions of the Subcontract Documents, the provisions of this Deed will prevail to the extent of such inconsistency.

Representatives

- 1.6 GWRC and the Operator's Authorised Representatives
- 1.6.1 GWRC and the Operator have each appointed Authorised Representatives in accordance with the terms of the Partnering Contract.
- 1.7 Representatives of the Subcontractor and the Subcontractor Guarantor
- 1.7.1 Each of the Subcontractor and Subcontractor Guarantor shall appoint an Authorised Representative with primary responsibility for:
- (a) managing the relationship between the Parties;
 - (b) administering this Deed;
 - (c) providing a designated point of contact for the other Parties in connection with this Deed; and
 - (d) ensuring the relevant Party's contractual obligations under this Deed are met.

1.7.2 Each of the Subcontractor and Subcontractor Guarantor shall ensure that it appoints an Authorised Representative with the appropriate skill, knowledge and authority reasonably required to undertake the role of any authorised representative of the Subcontractor or the Subcontractor Guarantor (as the case may be) in this Deed.

1.8 General

1.8.1 The Parties' Authorised Representatives at the Commencement Date are: *[insert details of Authorised Representatives]*.

1.8.2 Each Party may treat the acts of the other Party's Authorised Representative as being the acts of that other Party.

1.8.3 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 Deed.

1.8.4 GWRC and the Operator may change their Authorised Representative by following the process set out in clause 20 (*Authorised Representatives*) of the Partnering Contract and providing written notice to the other Parties to this Deed.

1.8.5 If the Subcontractor and Subcontractor Guarantor wish to change their Authorised Representatives the Subcontractor and Subcontractor Guarantor shall:

- (a) ensure that the proposed appointees will meet the requirements set out in clause 1.7;
- (b) provide sufficient information about the proposed appointees (including the date that the proposed change will be effective) to enable GWRC to establish that the proposed appointees satisfy the requirements set out in clause 1.7 and to approve the change; and
- (c) obtain GWRC's prior written approval before making any change to its Authorised Representative (such approval not to be unreasonably withheld or delayed).

Project Documents

1.9 Each of the Subcontractor and the Subcontractor Guarantor acknowledges that it has received a copy of each Project Document which one or more of the Parties to this Deed is or is proposed to be party.

Subcontractor's Liability

- 1.10 For the avoidance of doubt, and notwithstanding any other provision in this Deed:
- 1.10.1 the Subcontractor will have no greater obligations or liabilities to GWRC under, arising out of, or in connection with, this Deed, than it would have had if GWRC had been named as the Operator under the Subcontract; and
 - 1.10.2 the liability of the Subcontractor under, arising out of, or in connection with, this Deed, will not exceed the difference between the maximum liability of the Subcontractor under the Subcontract and the liability incurred (from time to time) by the Subcontractor to the Operator under the Subcontract.

2. Conditions precedent

- 2.1 The following provisions of this Deed shall take effect and be binding upon the Parties from and including the date of this Deed: clauses 1, 2, 5, 6, 7, 9 and 10 to 29.
- 2.2 Except as provided for in clause 2.1, the provisions of this Deed shall take effect and become binding on the Parties from and including the Commencement Date of the Partnering Contract.

3. Subcontract default and step in rights

Restriction on right to terminate or suspend

- 3.1 The Subcontractor is only entitled to terminate (or give notice terminating), rescind or accept the repudiation of the Subcontract or suspend the performance of any or all of its obligations under the Subcontract if:
 - 3.1.1 the Subcontractor has given GWRC a Default Notice and a GWRC Cure Notice;
 - 3.1.2 the Subcontractor has complied (and continues to comply) with its obligations under clauses 3.2 to 3.6;
 - 3.1.3 either:
 - (a) the relevant time period specified in or contemplated by the GWRC Cure Notice has expired and GWRC has not (and has not procured that another person has) taken the action specified in or contemplated by the GWRC Cure Notice; or
 - (b) GWRC has notified the Subcontractor in writing that it elects not to remedy the Subcontract Event of Default;

- 3.1.4 the Subcontractor is not prevented from doing so under clause 3.10, 4.3 or 4.13.2; and
- 3.1.5 the relevant Subcontract Event of Default is subsisting and the Subcontractor is entitled to take such action in accordance with the terms of the Subcontract.

Default Notice

- 3.2 Promptly following the occurrence of a Subcontract Event of Default, the Subcontractor shall notify GWRC in writing of the occurrence of the Subcontract Event of Default, setting out the following information:
 - 3.2.1 full detail of the Subcontract Event of Default identifying all material facts;
 - 3.2.2 the steps reasonably required to cure or remedy the Subcontract Event of Default (if reasonably capable of remedy or cure);
 - 3.2.3 details of any unpaid amount which is due and payable by the Operator to the Subcontractor under the Subcontract at the time of such Default Notice;
 - 3.2.4 the nature and, to the best of the Subcontractor's knowledge and belief, the amount of any monetary claim asserted by the Subcontractor against the Operator under or arising out of the Subcontract Event of Default; and
 - 3.2.5 if applicable, any other relief or remedy sought by the Subcontractor in accordance with the terms of the Subcontract.

GWRC Cure Notice

- 3.3 The Subcontractor shall, within 5 Business Days of issuing a Default Notice, give GWRC a written notice in accordance with clause 3.4.
- 3.4 The GWRC Cure Notice shall specify:
 - 3.4.1 if the Subcontract Event of Default is a failure by the Operator to pay any amount due and payable by the Operator under the terms of the Subcontract, that GWRC will, subject to clause 3.22, have a period of 15 Business Days from receipt of the GWRC Cure Notice (or such longer period as is permitted under the Subcontract) within which to remedy such Subcontract Event of Default;
 - 3.4.2 if the Subcontract Event of Default is the occurrence of an Insolvency Event in respect of the Operator or any Operator Associate, that GWRC

will, subject to clause 3.22, have a period of 60 Business Days from receipt of the GWRC Cure Notice (or such longer period as is permitted under the Subcontract) within which to remedy such Subcontract Event of Default or (without prejudice to clause 4.3 and to the Subcontractor's and Subcontractor Guarantor's respective obligations under this Deed) to procure a novation of the Subcontract in accordance with clause 4 (*Novation*);

- 3.4.3 if the Subcontract Event of Default is not one of those circumstances referred to in clause 3.4.1 or 3.4.2 but is otherwise reasonably capable of remedy, that GWRC will, subject to clause 3.22, have a period of 25 Business Days from receipt of the GWRC Cure Notice (or such longer period as is permitted under the Subcontract) within which to remedy the Subcontract Event of Default;
- 3.4.4 if the Subcontract Event of Default is not one of those circumstances referred to in clause 3.4.1 or 3.4.2 and is not reasonably capable of remedy, and the Default Notice contains a claim for reasonable compensation for the Subcontract Event of Default and the Subcontractor has not received that compensation, that GWRC will, subject to clause 3.22, have a period of 25 Business Days from receipt of the GWRC Cure Notice (or such longer period as is permitted under the Subcontract) to pay that compensation; or
- 3.4.5 if the Subcontract Event of Default is not one of those circumstances referred to in clause 3.4.1 or 3.4.2 and is not reasonably capable of remedy, and the Default Notice does not contain a claim for reasonable compensation for the Subcontract Event of Default, that GWRC will, subject to clause 3.22, have a period of 25 Business Days from receipt of the GWRC Cure Notice (or such longer period as is permitted under the Subcontract) within which to commence and continue to perform the Operator's obligations under the Subcontract.
- 3.5 On receiving a GWRC Cure Notice, GWRC may (but is not obliged to) take the steps specified in the GWRC Cure Notice.
- 3.6 Save to the extent expressly provided otherwise in clauses 3.10 to 3.14, the Subcontractor and the Subcontractor Guarantor each acknowledge and agree that any action taken by GWRC following the issue of a GWRC Cure Notice will not be construed as an assumption by GWRC of the liabilities or obligations of the Operator under the Subcontract.

Assumption by GWRC

- 3.7 Without prejudice to GWRC's other rights under this Deed at any time on or after receipt of a GWRC Cure Notice, GWRC may by notice under clause 3.8 to the Subcontractor and the Subcontractor Guarantor assume (or procure that a third party assumes) all of the Operator's rights under the Subcontract and the Subcontractor Guarantee (such action being **Step In Rights**).
- 3.8 Subject to clause 3.8A, GWRC shall give the Subcontractor and the Subcontractor Guarantor at least 5 days' prior written notice of any action to be taken by it referred to in clause 3.7 (**Notice of Step In**).
- 3.8A GWRC or its nominee may exercise the Step In Rights prior to giving a Notice of Step In where in GWRC's opinion the circumstances require the urgent exercise of the Step In Rights, but shall give the Subcontractor and the Subcontractor Guarantor a Notice of Step In as soon as reasonably practicable thereafter.
- 3.9 The Operator, the Subcontractor and the Subcontractor Guarantor each acknowledge and agree that the exercise by GWRC of its rights pursuant to clause 3.7 will not of itself contravene the Partnering Contract, the Subcontract or the Subcontractor Guarantee or constitute a Subcontract Event of Default.

Step in period

- 3.10 Without prejudice to clause 3.1, the Subcontractor shall not terminate (or give notice terminating), rescind or accept the repudiation of the Subcontract or suspend the performance of any or all of its obligations under the Subcontract during the Step In Period on grounds:
- 3.10.1 that GWRC has taken any action referred to in clause 3.7; or
- 3.10.2 arising prior to the Step In Date except where:
- (a) those grounds are non-payment of an amount due and payable to the Subcontractor under the terms of the Subcontract; and
- (b) that amount has been notified to GWRC under clause 3.4.1 and GWRC has failed to pay that amount to the Subcontractor within the time period specified in that clause.
- 3.11 Subject to clause 3.10, during the Step In Period the Subcontractor shall be entitled to terminate, rescind, or accept the repudiation of the Subcontract or suspend the performance of any or all of its obligations under the Subcontract on grounds arising after the Step In Date, in each case in accordance with the terms of the Subcontract.

- 3.12 Each of the Subcontractor and the Subcontractor Guarantor shall deal with GWRC (or the relevant third party nominated by it) in place of the Operator during the Step In Period.
- 3.13 During the Step In Period, the Subcontract and the Subcontractor Guarantee shall remain in full force and effect. The Subcontractor and the Subcontractor Guarantor shall continue diligently to perform all of their respective obligations thereunder as though GWRC (or the relevant third party nominated by it) was directly party to the Subcontract and the Subcontractor Guarantee in place of the Operator to the extent that GWRC (or its nominee) has assumed the rights of the Operator pursuant to clause 3.7.
- 3.14 During the Step In Period, GWRC (or the relevant third party nominated by it) shall be entitled to enforce all of the rights of the Operator under the Subcontract and the Subcontractor Guarantee in place of the Operator.

Step out

- 3.15 GWRC may, at any time during the Step In Period, with at least 30 days' prior written notice to the Subcontractor and the Subcontractor Guarantor, terminate the Step In Period with effect from the date specified in that notice.
- 3.16 With effect from the Step Out Date, GWRC (and any relevant third party that was nominated by it to perform its obligations and/or exercise its rights under clauses 3.7 to 3.9) will be released from any and all obligations and liabilities to the Subcontractor and the Subcontractor Guarantor:
- 3.16.1 under the Subcontract;
 - 3.16.2 under the Subcontractor Guarantee; and
 - 3.16.3 under this Deed.
- 3.17 The release under clause 3.16 will not affect or prejudice the continuation of the Operator's obligations to the Subcontractor under the Subcontract.

Miscellaneous

- 3.18 The Subcontractor warrants and represents to GWRC that all information contained in a Default Notice and a GWRC Cure Notice will be true, complete and accurate.
- 3.19 GWRC, any relevant third party nominated by GWRC to perform its obligations and/or exercise its rights under clauses 3.7 to 3.9 and each Proposed Substitute shall be entitled to rely on the information contained within any Default Notice or GWRC Cure Notice for the purpose of determining the extent of the matters relating to a

Subcontract Event of Default and the requirements to effect the cure or remedy of that Subcontract Event of Default.

- 3.20 The information contained in a Default Notice will be conclusive evidence in favour of GWRC, any relevant third party nominated by GWRC to perform its obligations and/or exercise its rights under clauses 3.7 to 3.9 and any Proposed Substitute that the Subcontractor has waived and abandoned all claims then known (or which ought reasonably to have been known to the Subcontractor) arising out of or in connection with the Subcontract prior to the date of the Default Notice (other than those claims set out in the Default Notice).
- 3.21 Clauses 3.18, 3.19, and 3.20 are without prejudice to the rights of the Subcontractor to pursue any claims against the Operator following the end of the Step In Period.
- 3.22 GWRC shall be entitled to dispute the amount of any Claim by the Subcontractor, the existence of any Subcontract Event of Default or any other matter specified in a GWRC Cure Notice or a Default Notice. In the case of any such dispute:
- 3.22.1 the dispute shall be referred for Expert determination in accordance with clause 9 (*Dispute Resolution Procedure*); and
- 3.22.2 during the period of dispute resolution, all Parties shall continue to perform their respective obligations under the Project Documents.
- 3.23 The Operator, the Subcontractor and the Subcontractor Guarantor each acknowledge and agree that, to the maximum extent permitted by law, GWRC will not have any liability, (nor will the Operator, the Subcontractor or the Subcontractor Guarantor be entitled to make, continue or enforce any claim against GWRC), arising out of or in respect of or in connection with, the Partnering Contract, the Subcontract, the Subcontractor Guarantee or this Deed by reason only of:
- 3.23.1 the exercise or performance by GWRC or its nominated third party of any of the Operator's rights or obligations under the Subcontract Documents; or
- 3.23.2 GWRC taking any action (or procuring that a third party takes action) to remedy a Subcontract Event of Default or GWRC otherwise performing (or procuring that a third party performs) any action contemplated by a GWRC Cure Notice,
- other than, and then only to the extent of, liability for fraudulent, unlawful or negligent acts of GWRC or such third party.

4. Novation

Proposed Novation Notice

4.1 GWRC may:

- 4.1.1 at any time during the Step In Period or otherwise after receipt of a GWRC Cure Notice;
- 4.1.2 at any time after the occurrence of an Insolvency Event in respect of the Operator or any Operator Associates,

give a Proposed Novation Notice to the Subcontractor and the Subcontractor Guarantor.

4.2 The Proposed Novation Notice shall specify:

- 4.2.1 whether the circumstances in clauses 4.1.1 or 4.1.2 apply; and
- 4.2.2 the Proposed Novation Date (which shall fall not later than 30 Business Days after the date of the Proposed Novation Notice).

4.3 Without prejudice to (and save as permitted by) clause 4.21, the Subcontractor and the Subcontractor Guarantor shall not exercise or seek to exercise any right that may be or become available to it to terminate or rescind or treat as terminated or repudiated the Subcontract or the Subcontractor Guarantee or discontinue or suspend the performance of any duties or obligations under the Subcontract or the Subcontractor Guarantee:

- 4.3.1 during the notice period specified in a Proposed Novation Notice; or
- 4.3.2 against any Proposed Substitute that is party to a Novation Agreement.

4.4 The Operator, the Subcontractor and the Subcontractor Guarantor each acknowledge and agree that the exercise by GWRC of its rights under this clause 4 and any novation given effect to hereunder does not of itself contravene the Partnering Contract, the Subcontract or the Subcontractor Guarantee and does not entitle any of them to exercise any right or remedy (including any right to terminate) under the Partnering Contract, the Subcontract or the Subcontractor Guarantee.

4.5 Nothing in this clause 4 operates to require GWRC or the Proposed Substitute to assume any obligations or liabilities arising, or which are required to be performed under the Subcontract or the Subcontractor Guarantee, except to the extent expressly provided in this clause 4.

Proposed Substitute

- 4.6 Where the Proposed Substitute is not GWRC, any other Governmental Entity or a Related Company of GWRC or any other Governmental Entity, GWRC shall (as soon as reasonably practicable) supply the Subcontractor with the following information:
- 4.6.1 the name and registered address of the Proposed Substitute;
 - 4.6.2 the names of the directors of the Proposed Substitute;
 - 4.6.3 details of the means by which it is proposed to finance the Proposed Substitute (including, where relevant, the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
 - 4.6.4 the resources that are to be available to the Proposed Substitute to enable it to perform its obligations under the Subcontract.

Consent to novation

- 4.7 The Subcontractor Guarantor hereby irrevocably consents to any novation proposed under this clause 4, irrespective of the identity of the Proposed Substitute.
- 4.8 Where the Proposed Substitute is GWRC, any other Governmental Entity or a Related Company of GWRC or any other Governmental Entity, the Subcontractor hereby irrevocably consents to the proposed novation under this clause 4.
- 4.9 Where the Proposed Substitute is not GWRC, any other Governmental Entity or a Related Company of GWRC or any other Governmental Entity, the Subcontractor is deemed to consent to the proposed novation, unless the Subcontractor demonstrates to GWRC's reasonable satisfaction that:
- 4.9.1 the Proposed Substitute does not have the legal capacity, power and authorisation to become a party to and perform the relevant obligations of the Operator under the Subcontract; or
 - 4.9.2 the technical competence and financial standing of, and the technical and financial resources available to, the Proposed Substitute are not sufficient to enable it to perform the relevant obligations of the Operator under the Subcontract.
- 4.10 Where the Proposed Substitute is not GWRC, any other Governmental Entity or a Related Company of GWRC or any other Governmental Entity, GWRC shall provide such additional information as the Subcontractor may reasonably require to enable it to determine whether the criteria referred to in clauses 4.9.1 and 4.9.2 are met,

provided that the Subcontractor shall request such information within 5 Business Days following receipt by it of the information referred to in clause 4.6.

- 4.11 Where the Proposed Substitute is not GWRC, any other Governmental Entity or a Related Company of GWRC or any other Governmental Entity, within 10 Business Days of the later of receipt of a Proposed Novation Notice and all information required to be provided under clause 4.6 and 4.9, the Subcontractor shall:
- 4.11.1 notify GWRC in writing as to whether or not it is seeking to withhold its consent under clause 4.9; and
 - 4.11.2 where it is seeking to withhold that consent, provide an explanation of the reasons why it believes the grounds in clause 4.9 apply so as to permit it to do so.
- 4.12 Where the Proposed Substitute is not GWRC, any other Governmental Entity or a Related Company of GWRC or any other Governmental Entity, the Subcontractor is deemed to have given its consent to the novation of the Subcontract and the Subcontractor Guarantee if the Subcontractor:
- 4.12.1 fails to serve notice in writing on GWRC within the period required by clause 4.11; or
 - 4.12.2 serves notice within such time period but such notice does not demonstrate to GWRC's reasonable satisfaction that the circumstances specified in clauses 4.9.1 or 4.9.2 apply.
- 4.13 If, in accordance with clauses 4.7 to 4.12, the Subcontractor serves notice under clause 4.11 seeking to withhold its consent to a proposed novation:
- 4.13.1 GWRC shall be entitled to give one or more subsequent Proposed Novation Notices, pursuant to the provisions of clauses 4.1 to 4.5 containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute, provided that:
 - (a) only one Proposed Novation Notice may be outstanding at any one time; and
 - (b) any revised Proposed Novation Date shall be a date falling not later than 15 Business Days after the date of the Revised Proposed Novation Notice;
 - 4.13.2 the Subcontractor and the Subcontractor Guarantor shall not:

- (a) exercise or seek to exercise any right that may be or become available to it to terminate, rescind or treat as terminated or repudiated the Subcontract or the Subcontractor Guarantee; or
- (b) discontinue or suspend the performance of any duties or obligations under the Subcontract or the Subcontractor Guarantee,

during the notice period specified in a Revised Proposed Novation Notice;
and

- 4.13.3 the foregoing provisions of this clause 4 will apply in relation to that Revised Proposed Novation Notice, as if that notice was a Proposed Novation Notice.

Implementation of novation

- 4.14 Within 3 Business Days of the Consent Date, the Operator shall (subject to the Proposed Substitute first providing a confidentiality undertaking in a form reasonably acceptable to the Operator) give the Proposed Substitute an updated copy of all information in the possession of the Operator in relation to the Subcontract and the Subcontractor Guarantee.

- 4.15 The Parties agree that on the Novation Effective Date:

- 4.15.1 the Proposed Substitute shall be granted all of the rights of the Operator under the Subcontract and the Subcontractor Guarantee (including those rights arising prior to the Novation Effective Date) and the Proposed Substitute shall assume all of the obligations and liabilities of the Operator under the Subcontract and the Subcontractor Guarantee in accordance with clause 4.16;
- 4.15.2 if requested by GWRC, the Subcontractor, the Subcontractor Guarantor and the Operator shall validly execute and deliver a Novation Agreement and any other requisite agreements in each case reflecting clause 4.15.1 and GWRC shall procure that the Proposed Substitute validly executes such Novation Agreement and any other such requisite agreements;
- 4.15.3 the Operator, the Subcontractor and the Subcontractor Guarantor shall execute and deliver any other documentation reasonably required to vest in the Proposed Substitute the Operator's right, title and interest to any retention account, bank guarantee, performance bond, letter of credit or other security held by the Operator to secure the obligations of the Subcontractor under the Subcontract; and

- 4.15.4 if requested by GWRC, the Subcontractor and the Subcontractor Guarantor shall execute and deliver a side deed in favour of GWRC in substantially the same form as this Deed in respect of the Subcontract, as novated pursuant to this clause 4. Without prejudice to the accrued rights and liabilities of the Subcontractor and the Subcontractor Guarantor under this Deed, with effect from the date on which such new side deed becomes effective, the Subcontractor and the Subcontractor Guarantor shall be released from any liabilities or obligations arising under this Deed after that date.
- 4.16 Unless otherwise agreed, the assumption by the Proposed Substitute of the obligations and liabilities of the Operator under the Subcontract will:
- 4.16.1 not include:
- (a) any payment obligations arising prior to the Consent Date except to the extent the relevant amount was specifically included in the Default Notice;
 - (b) any payment obligations of the Operator that are in dispute as at the Consent Date, provided that (subject to clause 4.16.1(c)) GWRC shall, on the determination of such dispute, procure that the Proposed Substitute shall assume such obligation in accordance with that determination; and/or
 - (c) any payment for the performance of obligations by the Subcontractor under the Subcontract to the extent that GWRC has already paid the Operator for the performance by it of equivalent obligations under the terms of the Partnering Contract; and
- 4.16.2 only include (in relation to any other obligation of the Operator (not being an obligation to pay money)) those obligations that fall due to be performed as at or following the Consent Date.
- 4.17 On and after the Novation Effective Date, the Subcontractor and the Subcontractor Guarantor will owe its relevant respective obligations under the Subcontract and the Subcontractor Guarantee to the Proposed Substitute and will be bound by (and they shall comply with) the terms of the Subcontract and the Subcontractor Guarantee for the benefit of the Proposed Substitute as if the Proposed Substitute were the Operator.
- 4.18 Nothing in this deed or the Novation Agreement will prevent the Proposed Substitute from disputing any of the obligations and liabilities assumed by it under the Novation Agreement in accordance with the dispute resolution procedures provided for in the

Subcontract (or, where no such dispute resolution procedures exist, in a court of law having jurisdiction in respect of the Subcontract).

- 4.19 With effect from the Consent Date, the Subcontractor and the Subcontractor Guarantor shall each use best endeavours to agree (and GWRC shall use best endeavours to procure that the Proposed Substitute agrees), any amendments to the Subcontract and the Subcontractor Guarantee that are necessary to reflect this clause 4 and the fact that the Partnering Contract may have terminated at the time of the Novation Effective Date.

Operator's obligations to continue

- 4.20 Until the Novation Effective Date, the Operator shall continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Subcontract and the Subcontractor Guarantee notwithstanding:
- 4.20.1 the service of a Proposed Novation Notice or any Revised Proposed Novation Notice; or
- 4.20.2 any other provision of this Deed.

Termination after Novation

- 4.21 After any Novation Effective Date, the Subcontractor shall only be entitled to exercise its rights of termination under the Subcontract in accordance with the Subcontract:
- 4.21.1 in respect of any Subcontract Event of Default first arising after the Novation Effective Date; or
- 4.21.2 if, subject to the Proposed Substitute's rights to dispute any obligations and liabilities, the Proposed Substitute does not discharge, within 60 Business Days following the Novation Effective Date (or such later date as may be permitted under the Subcontract), the obligations and liabilities assumed by it as contemplated under clause 4.15.1 that relate to matters arising prior to the Novation Effective Date.

5. Operator, Subcontractor and Subcontractor Guarantor acknowledgements and agreements

- 5.1 Except in accordance with the terms of this Deed, each of the Subcontractor and the Subcontractor Guarantor acknowledges and agrees that:
- 5.1.1 GWRC is not responsible for, and has no liability (actual or contingent); and

5.1.2 the Subcontractor and the Subcontractor Guarantor have no cause of action against GWRC,

in relation to a Subcontract Event of Default, or any other event, act or omission of the Operator or any other party, in relation to the Subcontract or the Subcontractor Guarantee.

5.2 Notwithstanding anything to the contrary in the Subcontract or any other agreement, the Subcontract will not terminate on termination of the Partnering Contract until the earliest date on which the Subcontractor is entitled to terminate the Subcontract under the terms of this Deed.

5.3 The Operator, Subcontractor and Subcontractor Guarantor acknowledge and agree that:

5.3.1 where the Subcontractor is expressed in the Subcontract to have a right (or possible right) to compensation or relief that is dependent on or determined by reference to the Subcontract:

- (a) this does not of itself expand the Subcontractor's rights, or GWRC's liability, under the Partnering Contract to include the compensation or relief to which the Subcontractor is or may become entitled under the Subcontract;
- (b) the Operator's rights, and GWRC's liability, under the Partnering Contract will be determined solely in accordance with the terms of the Partnering Contract;
- (c) as between GWRC (on the one hand) and the Operator, Subcontractor Guarantor and Subcontractor (on the other hand), the Operator, Subcontractor and Subcontractor Guarantor accept and will bear the risk of any ambiguity, discrepancy or inconsistency between the terms of the Subcontract or the Subcontractor Guarantee (on the one hand) and the Partnering Contract (on the other hand); and
- (d) notwithstanding anything to the contrary in the Subcontract but save as expressly contemplated by this Deed, the Subcontractor has no right to deal directly with GWRC or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
 - (i) expressly provided to the contrary in the Partnering Contract; or

- (ii) GWRC consents.

6. Representations and warranties

GWRC's representations and warranties

6.1 GWRC represents and warrants to the Operator, Subcontractor and the Subcontractor Guarantor that:

- 6.1.1 it has power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed; and
- 6.1.2 this Deed constitutes a valid and binding obligation on GWRC and is enforceable in accordance with its terms, in each case subject to any applicable laws.

Operator, Subcontractor and Subcontractor Guarantor general representations and warranties

6.2 Each of the Operator, the Subcontractor and the Subcontractor Guarantor represents and warrants to GWRC that:

Prohibited Act

- 6.2.1 Neither it nor any of its Associates or anyone employed by any of them or acting on behalf of any of them have committed any Prohibited Act.

Information provided

- 6.2.2 All information which has been given by it or its Associates or anyone employed by any of them or acting on behalf of any of them to GWRC was (when given, whether in the Tender, correspondence, negotiations or otherwise) true and remains true, complete and accurate in all material respects.

Corporate

- 6.2.3 It is a [corporation duly incorporated in New Zealand and is validly existing under the Companies Act].
- 6.2.4 It has the power to enter into and perform its obligations under the Project Documents to which it is a party, to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated.

- 6.2.5 Its constitution produced to GWRC at the date of this Deed and signed by its solicitors for the purposes of identification is its full constitution including all resolutions affecting it.
- 6.2.6 In entering into the Project Documents, it is not acting as responsible entity or trustee of any trust or settlement or as an agent on behalf of another entity.

Tax status

- 6.2.7 Not used

Project Documents

- 6.2.8 It has taken all necessary corporate action to authorise the entry into and performance of the Project Documents to which it is a party and to carry out the transactions contemplated by those documents.
- 6.2.9 Each Project Document to which it is a party creates valid and binding obligations and is enforceable in accordance with its terms, subject to any necessary stamping and registration, laws generally affecting creditors' rights and general principles of equity.
- 6.2.10 The execution and performance by it of the Project 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:
- (a) any Law;
 - (b) its constitution or other constituent documents; or
 - (c) any other document or agreement that is binding on it or its assets.

Legal proceedings and insolvency

- 6.2.11 No litigation, arbitration or other proceedings are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect upon it or its ability to perform its obligations under the Project Documents.
- 6.2.12 There has been no material change in the financial condition of it or its Associates (since the date of their last audited accounts provided by it to GWRC) which would prejudice its ability to perform its obligations under the Project Documents.

6.2.13 No Insolvency Event has occurred in relation to it.

6.2.14 There is no unsatisfied judgment against it.

Authorisations

6.2.15 Each authorisation that is required in relation to:

- (a) the execution, delivery and performance by it of the Project Documents to which it is a party and the transactions contemplated by those documents;
- (b) the validity and enforceability of the Project Documents to which it is a party; and
- (c) its business as now conducted or contemplated,

has been obtained or effected and remains in full force and effect, it is in compliance with them and it has paid all applicable fees in respect of them.

Title and security

6.2.16 None of its property is subject to any Security Interest (other than a Permitted Security Interest).

6.2.17 It does not hold any assets as the trustee or responsible entity of any trust except to the extent that this has been disclosed to GWRC and GWRC has provided its written consent (such consent not to be unreasonably withheld).

Other

6.2.18 It is not aware of any facts or circumstances that have not been disclosed to GWRC in writing that would, if disclosed, be likely to materially adversely affect the decision of a prudent and reasonable public sector entity considering whether or not to enter into this Deed with it.

Representations and warranties regarding the Subcontract

6.3 The Subcontractor represents and warrants to GWRC that:

6.3.1 it has carried out and will continue to carry out all its obligations and duties under and in accordance with and to the standards required by the Subcontract; and

6.3.2 without prejudice to the generality of clause 6.3.1:

- (a) it has exercised and will continue to exercise, in accordance with Good Industry Practice, a level of skill, care and diligence reasonably expected of the relevant profession, in performing its duties under the Subcontract;
- (b) it has exercised and will continue to exercise reasonable skill, care and diligence in connection with the selection and supervision of its employees, agents, subcontractors and suppliers;
- (c) it has taken out and will continue to maintain those insurances that it is required to take out and maintain under the terms of the Subcontract, that such insurances are valid and the premiums for the current periods of insurance have been duly paid, that the Subcontractor is not aware (after having made due and careful enquiry) of any circumstances likely to give rise to any claim under such insurances, and that the Subcontractor will maintain such insurances for so long as any liability may arise under the Subcontract;
- (d) if called upon to do so by GWRC, the Subcontractor will promptly provide GWRC with such information relating to the services to be provided by it under the Subcontract as GWRC may reasonably require provided always that neither the provision of such information nor any inspection of such services by GWRC or the Operator or any of their representatives shall limit or discharge the obligations of the Subcontractor under the Subcontract or relieve the Subcontractor from any liability which it may have thereunder; and
- (e) it will not do anything that may invalidate any insurance policy held by GWRC or the Operator in relation to the Project, the Transferring Assets, the GWRC Assets (or any other insurance policy required to be effected and maintained under the Partnering Contract or the Subcontract).

Representations and warranties regarding the Subcontractor Guarantee

- 6.4 Each of the Subcontractor and the Subcontractor Guarantor represents and warrants to GWRC that it has carried out and will continue to carry out all its obligations and duties under and in accordance with the Subcontractor Guarantee.

General

- 6.5 The representations and warranties in clauses 6.2.1 to 6.2.18 are given by the Operator, the Subcontractor and the Subcontractor Guarantor (as appropriate) on the date of this Deed 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.
- 6.6 Each of the Operator, Subcontractor and Subcontractor Guarantor shall immediately notify GWRC in writing upon becoming aware that any representation or warranty given or deemed repeated by it under this Deed has become untrue, incorrect or misleading in whole or in part at any time prior to the Termination Date.
- 6.7 Each of the Operator, Subcontractor and Subcontractor Guarantor acknowledges that GWRC has entered into or will enter into this Deed in reliance on the representations and warranties given by each of the Operator, Subcontractor and Subcontractor Guarantor in this clause 6.

7. Amendment and waiver

- 7.1 Each of the Operator, the Subcontractor and the Subcontractor Guarantor shall:
- 7.1.1 not without GWRC's prior written consent make or permit any material variation or amendment to, material departure from, termination or assignment or replacement of a Subcontract Document; and
- 7.1.2 not without GWRC's prior written consent compromise or waive any material claim it may have under or in connection with any Subcontract Document.

8. Indemnity

- 8.1 The Operator shall indemnify GWRC (and keep it so indemnified) on demand from and against any Loss that GWRC suffers or incurs arising out of or in connection with GWRC:
- 8.1.1 taking any action to prevent the Subcontractor from terminating (or giving notice terminating), rescinding or accepting the repudiation of the Subcontract or suspending the performance of any or all of the Subcontractor's obligations under the Subcontract;
- 8.1.2 taking any action to remedy a Subcontract Event of Default or otherwise taking action contemplated by a GWRC Cure Notice; or
- 8.1.3 otherwise exercising its rights under clause 3 (*Subcontract default and step in rights*) or clause 4 (*Novation*),

including any amount payable by GWRC to a Proposed Substitute or any other person in connection with the Proposed Substitute assuming any accrued obligations or liabilities of the Operator pursuant to the terms of the Novation Agreement.

- 8.2 Without prejudice to clause 8.1, the Operator shall indemnify GWRC (and keep it so indemnified) on demand from and against all Loss incurred by GWRC in connection with the administration, and any actual or attempted preservation or enforcement, of any rights under this Deed including legal expenses on a full indemnity basis and expenses incurred in engaging consultants.

9. Dispute Resolution Procedure

Application of Procedure

- 9.1 Any Dispute shall be dealt with under this clause 9 provided that nothing in this clause 9 will prevent a Party from applying to a court of competent jurisdiction to seek urgent or interim relief.
- 9.2 Except as provided for in clause 9.1, no Party may commence court proceedings unless and until the steps provided by this clause 9 have been undertaken, or one or more of the Parties has attempted to follow the steps and the other relevant Party has failed to participate, and the steps have not resolved the Dispute.

Referral to Senior Executives Meeting

- 9.3 A Party may refer a Dispute for resolution by a Senior Executives Meeting by serving a Notice of Dispute on the other relevant Parties, 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.
- 9.4 Within 3 Business Days after the referral to the Senior Executives Meeting under clause 9.3, each of the relevant Parties 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.
- 9.5 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 shall be made by unanimous agreement of the members of the Senior Executives Meeting. Any decision of the Senior Executives Meeting is binding on the relevant 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.
- 9.6 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

- 9.7 If any Dispute is referred to mediation in accordance with clause 9.6, 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:
- 9.7.1 by a single mediator agreed upon between the relevant Parties; or
 - 9.7.2 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.
- 9.8 If the Dispute is not resolved by mediation:
- 9.8.1 the relevant Parties may by written agreement refer the Dispute to Expert determination within 5 Business Days after the conclusion of the mediation; or
 - 9.8.2 provided no referral to Expert determination is made under clause 9.8.1, any relevant Party may commence proceedings to have the Dispute determined by a court of competent jurisdiction.

Expert determination

- 9.9 For those Disputes required by this Deed to be referred directly to Expert determination or which this Deed otherwise expressly envisages may be referred to Expert determination, and for any Dispute that is agreed by the relevant Parties pursuant to clause 9.8.1 to be referred to Expert determination, the procedure set out in clauses 9.10 to 9.15 shall apply.
- 9.10 The relevant Parties shall, within 5 Business Days of referral to Expert determination, endeavour to agree upon a single expert (who shall be independent of the Parties and shall 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.
- 9.11 If within 10 Business Days of referral to Expert determination, the relevant Parties have not agreed upon the appointment of the Expert, the relevant Parties shall request:
- 9.11.1 the then president of the Chartered Accountants Australia and New Zealand (for technical, financial, valuation, economic or accounting issues); or

9.11.2 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 9.11.1 and other issues, the relevant Parties shall request the then president of the New Zealand Bar Association to provide the nomination. The relevant Parties shall promptly appoint the person so nominated pursuant to this clause 9.11.

9.12 The relevant Parties shall instruct the Expert to:

9.12.1 determine the Dispute within the shortest practicable time, and in any event within 30 Business Days unless otherwise agreed by the relevant Parties; and

9.12.2 deliver a report to the relevant Parties stating the Expert's determination and setting out the reasons for the determination.

9.13 The procedures for the conduct of the process in order to make the determination will be determined by the Expert and shall provide each relevant Party with a fair opportunity to make submissions in relation to the matter in dispute.

9.14 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 relevant 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.

9.15 Each Party shall bear its own costs of and incidental to any Expert determination under this clause 9. The costs of the Expert will be shared equally between the Parties to the Dispute.

Performance of obligations pending resolution of dispute

9.16 Despite the existence of a Dispute, each Party shall continue to perform its obligations under this Deed and the Novation Agreement.

Survival

9.17 This clause 9 survives the expiry or termination of this Deed.

10. Survival of obligations

- 10.1 The expiry or termination of this Deed shall be without prejudice to the accrued rights, liabilities and obligations of each Party as at the date of such expiry or termination.
- 10.2 The obligations contained in clauses 1, 2, 6, to 29 (inclusive) and any provision of this Deed which is expressly or impliedly to apply after the termination or expiry of this Deed shall survive such termination or expiry.

11. Confidentiality

General Obligations

- 11.1 Subject to clause 11.3, GWRC, the Operator, the Subcontractor and the Subcontractor Guarantor 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.
- 11.2 The Operator, the Subcontractor and the Subcontractor Guarantor acknowledge that their confidentiality obligations under or in connection with the Procurement Documents continue notwithstanding the coming into effect of this Deed.

Exceptions

- 11.3 The Parties' obligations in clause 11.1 do not apply to disclosure to the extent that the disclosure is:
- 11.3.1 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 Project Document or TPTD (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:
- (a) is made aware of this clause 11; and
 - (b) shall keep such information confidential on the same terms as this clause 11;
- 11.3.2 of information which is at the time lawfully in the possession of the disclosing Party through sources other than another 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;

- 11.3.3 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, where the disclosing Party is any of the Operator, the Subcontractor or the Subcontractor Guarantor, the disclosing Party provides written notice to GWRC of the required disclosure promptly on receipt of notice of the required disclosure (if it is permitted to do so by Law);
- 11.3.4 required in connection with legal proceedings, arbitration, mediation or expert determination relating to this Deed or the Project Documents or for the purpose of advising a Party in relation thereto;
- 11.3.5 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, provided that the Incoming Operator or Potential Incoming Operator (as applicable) has provided a duly executed Incoming Operator Confidentiality Undertaking;
- 11.3.6 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
- 11.3.7 made by GWRC in accordance with clauses 11.4 to 11.5.3(a) (*LGOIMA*).

LGOIMA

- 11.4 Each of the Operator, the Subcontractor and the Subcontractor Guarantor acknowledge 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.
- 11.5 Subject to clause 11.6, if GWRC receives a request under LGOIMA for any information held by the Operator, the Subcontractor or the Subcontractor Guarantor (as applicable) in its capacity as the Operator, the Subcontractor or the Subcontractor Guarantor (as applicable) then:
 - 11.5.1 GWRC shall notify the Operator, the Subcontractor or the Subcontractor Guarantor (as applicable) of the request; and
 - 11.5.2 GWRC will consult with the the Operator, the Subcontractor or the Subcontractor Guarantor (as applicable) 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

11.5.3 either:

- (a) if the Operator, the Subcontractor or the Subcontractor Guarantor (as applicable) considers the request relates to the Operator, the Subcontractor or the Subcontractor Guarantor's (as applicable) Confidential Information, within 2 Business Days of receiving such notification pursuant to clause 11.5.1, the Operator, the Subcontractor or the Subcontractor Guarantor (as applicable) 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, the Subcontractor or the Subcontractor Guarantor's (as applicable) 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, the Subcontractor or the Subcontractor Guarantor (as applicable) shall provide such information to GWRC within 3 Business Days of a written request from GWRC.

11.6 For the avoidance of doubt, nothing in this clause 11 shall cause or require GWRC to breach GWRC's obligations under LGOIMA.

12. Media Management

12.1 Subject to clause 12.2, except to the extent that the Operator, the Subcontractor or the Subcontractor Guarantor is expressly obliged to do so under this Deed or is otherwise required to do so by Law or the requirements of any recognised stock exchange having jurisdiction over the Operator, the Subcontractor or the Subcontractor Guarantor or any of their respective Related Companies, the Operator, the Subcontractor and the Subcontractor Guarantor shall not make or issue any press release or other public announcement relating to this Deed or 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, the Subcontractor or the Subcontractor Guarantor (as applicable) shall ensure that such press release or public announcement (as applicable) is in the form approved by GWRC.

12.2 The restriction in clause 12.1 shall not apply to the making of announcements to passengers in relation to the status of any Scheduled Service or Special Event Service.

13. Assignment

Assignment by Operator, Subcontractor and Subcontractor Guarantor

- 13.1 The Operator, the Subcontractor and the Subcontractor Guarantor 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:
- 13.1.1 any of its rights or obligations under this Deed or any other Project Document to which it is a party other than under a Permitted Security Interest, in accordance with the terms of this Deed or with the prior written consent of GWRC; or
 - 13.1.2 any of the GWRC Assets, except with the prior written consent of GWRC.
- 13.2 The Operator, Subcontractor and Subcontractor Guarantor (as applicable) shall provide any request for approval under clause 13.1 at least 20 Business Days prior to the proposed effective date of any such assignment, transfer, disposal or interest.

Assignment by GWRC

- 13.3 GWRC may assign, novate, transfer or otherwise dispose of any right or obligation under this Deed or any other Project 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, the Subcontractor and the Subcontractor Guarantor each hereby consents to the same. The Operator, the Subcontractor and the Subcontractor Guarantor shall promptly execute any such documents as GWRC may reasonably require to give effect to such transaction.

14. Notices

- 14.1 Any notice required to be given in relation to this Deed will, except where otherwise expressly provided, be in writing and in English and delivered to the Party's Authorised Representative.
- 14.2 This clause 14.2 is subject to clause 14.4. A notice may be:
- 14.2.1 personally delivered, in which case it will be deemed to be given upon delivery at the relevant address; or
 - 14.2.2 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

- 14.2.3 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
- 14.2.4 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
- 14.2.5 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.

14.3 The initial addresses and other relevant details of each Party are set out below:

[insert notice details of each Party]

A Party may provide written notice to the other Parties 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.

14.4 Where any notice is deemed given pursuant to clause 14.2:

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

14.4.2 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 14.4 the place of receipt of a notice is the applicable postal address for the receiving Party in accordance with clause 14.3, irrespective of whether the notice is communicated by email or otherwise.

15. Relationship between Parties

15.1 Nothing in this Deed is to be construed or interpreted as constituting the relationship between any of the Parties as a partnership, quasi-partnership, association or any other relationship in which a Party may (except as expressly provided for in this Deed) be liable for the acts or omissions of one of the other Parties.

15.2 Except as expressly provided in this Deed, nothing in this Deed shall be construed to authorise any Party to act as an agent for any other Party for any purpose.

16. Entire Agreement and amendments

16.1 This Deed and the other Project 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.

16.2 This Deed may only be amended by way of a written agreement duly executed by each of the Parties.

17. No reliance

17.1 Each of the Operator, the Subcontractor and the Subcontractor Guarantor acknowledges that, before entering into this Deed or any other Project Document, it made all enquiries it wanted to make in relation to its obligations under this Deed and the other Project Documents and that in entering into this Deed and the other Project Documents, it:

17.1.1 did not rely on any representation, warranty, guarantee, assurance, undertaking or other statement made by or on behalf of GWRC;

17.1.2 has made its own assessment of the rights provided to it and the obligations imposed on it by the Project Documents; and

17.1.3 has made its own assessment as to the quality of all other material and other information provided during the tender process.

18. No waiver

18.1 No waiver of any breach of, or failure to enforce any provision of, this Deed or any other Project 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 Deed or any other Project 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.

18.2 No waiver by a Party of any part of this Deed or any other Project Document is binding unless it is made in writing by the Party granting that waiver.

19. Contract and Commercial Law Act 2017

19.1 Except as provided in clause 19.2, this Deed is not intended to create any obligation enforceable at the suit of any person who is not a Party to this Deed and a person who is not a Party to this Deed shall have no right under the Contract and Commercial Law

Act 2017 to enforce any term of this Deed. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

19.2 To the extent that this Deed purports to confer any right or benefit on a third party nominated by GWRC for the purposes of clause 3.7, this Deed is enforceable by such nominee against the Operator, the Subcontractor Guarantor and the Subcontractor.

19.3 Notwithstanding clause 19.2, the Parties may vary or terminate this Deed by agreement in writing between them and they shall not require the consent of any nominee referred to in clause 19.2 in respect of any such variation or termination.

20. Rights cumulative

20.1 Subject to any express provision in this Deed to the contrary, the rights, powers and remedies of a Party under this Deed 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.

21. Further assurances

21.1 Each of the Operator, the Subcontractor and the Subcontractor Guarantor shall (at GWRC's expense in the case of the Subcontractor and the Subcontractor Guarantor only), promptly take whatever action GWRC may require (including executing, filing and lodging documents and the giving of any notice, order or direction) to facilitate and perfect any step in, novation or release under this Deed or which is otherwise necessary or desirable to give full effect to the provisions of this Deed, including:

21.1.1 the execution of any novation or assignment; and

21.1.2 the transfer of any retention account, bank guarantee, performance bond, letter of credit and other security held by the Operator to secure the obligations of the Subcontractor under the Subcontract.

21.2 The Operator, the Subcontractor and the Subcontractor Guarantor shall not through their respective acts or omissions prevent, restrict, frustrate or hinder GWRC from enforcing its rights under this Deed or the novation of the Subcontract and the Subcontractor Guarantee as contemplated by this Deed.

21.3 Each of the Operator, the Subcontractor and the Subcontractor Guarantor for valuable consideration (receipt of which is hereby acknowledged):

21.3.1 irrevocably appoints GWRC (and any person nominated by GWRC) as its attorney with full power and authority to:

- (a) do anything necessary or desirable in the reasonable opinion of GWRC or the attorney to give full effect to the terms of this Deed or to effect the novation of the Subcontract Documents in accordance with the terms of this Deed;
- (b) do anything which the appointing Party is required to do by this Deed; and
- (c) execute any deed or other document as contemplated by this Deed,

provided that GWRC (and any person nominated by GWRC) may only exercise a power of attorney granted pursuant to this clause 21.3.1 if the Operator, the Subcontractor or the Subcontractor Guarantor (as applicable) 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;

- 21.3.2 agrees to immediately ratify and confirm whatever action is taken by GWRC or its nominee referred to in clause 21.3.1, provided that such action is not unlawful or negligent; and
- 21.3.3 agrees that it shall promptly on request by GWRC execute and deliver to GWRC a separate power of attorney on the terms of this clause 21.3 by way of a deed or otherwise in such form as GWRC may reasonably require.

- 21.4 Each of the Operator, the Subcontractor and the Subcontractor Guarantor agrees that an attorney appointed under clause 21.3 is not liable for any Loss that the Operator, the Subcontractor or the Subcontractor Guarantor may suffer or incur as a result of the attorney's actions, other than to the extent such actions are not contemplated by clause 21.3.

22. No merger

- 22.1 The rights and obligations of the Parties shall not merge on the completion of any transaction contemplated by this Deed or any other Project 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.

23. Costs and expenses

- 23.1 Subject to any express provision to the contrary in this Deed, 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 Deed.

24. Severability of provisions

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

25. Governing law

25.1 This Deed and the transactions contemplated by this Deed are governed by and are to be construed in accordance with New Zealand law and, subject to clause 9 (*Dispute Resolution Procedure*), the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

26. GWRC Action

- 26.1 Each of Operator, Subcontractor and Subcontractor Guarantor acknowledge 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 Deed, nothing in this Deed:
- 26.1.1 requires GWRC to exercise, or use, any regulatory or legislative powers in order to influence or affect an outcome; or
 - 26.1.2 shall restrict or affect in any way the manner in which GWRC may act in the exercise of its regulatory or legislative rights, powers and duties as a local authority.

27. Counterparts

27.1 This Deed may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

28. Operation of indemnities

- 28.1 No indemnity in this Deed limits the effect or operation of any other indemnity in this Deed.
- 28.2 Unless expressly provided otherwise, each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties.
- 28.3 Each indemnity in this Deed survives the expiry or termination of this Deed.
- 28.4 A Party may recover a payment under an indemnity in this Deed before it makes the payment in respect of which the indemnity is given.

29. Requirement to use 'best endeavours' or 'reasonable endeavours'

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

- 29.1.1 act unreasonably or in breach of any applicable law;
- 29.1.2 interfere with or influence the exercise by any person of a statutory power or discretion;
- 29.1.3 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
- 29.1.4 provide any performance bond, guarantee or Security Interest other than as specifically required under this Deed.

Execution

Executed and delivered as a Deed

Date:

Wellington Regional Council
by

Witnessed by

Signature of authorised person

Signature of witness

Name of authorised person

Name of witness

Title of authorised person

Occupation of witness

Address of witness

[Operator] by

Authorised signatory

Authorised signatory

Name

Name

Title

Title

[Sub-contractor] by

Authorised signatory

Authorised signatory

Name

Name

Title

Title

[Sub-contractor Guarantor]

by

Authorised signatory

Authorised signatory

Name

Name

Title

Title

[Note - Execution block for the Operator, Subcontractor and Subcontractor Guarantor to be amended if necessary depending on the status and structure of each entity to ensure compliance with the requirements of NZ law.]

Annexure 19

GWRC Privacy Policy



Privacy Policy

A policy to ensure that Greater Wellington Regional Council manages personal information consistently with the Privacy Act 1993, that Privacy Act requests are promptly brought to the attention of the Privacy Officer and are dealt with appropriately

Policy owner	General Manager, People and Capability
Position administering this policy	Privacy Officer (Manager, Democratic Services)
Date policy comes into effect	The first working day following the date of approval by the Chief Executive.
Related policies and legislation	Privacy Act 1993 Local Government Official Information and Meetings Act 1987 Local Government (Rating) Act 2002 Local Government Act 2002 Public Records Act 2005 Resource Management Act 1991 Archives New Zealand's General Disposal Authority 6: Common Corporate Service Public Records Greater Wellington Regional Council's Human Resources policies and Code of Conduct
Policy review date	By 31 December 2018
Policy history	This is a reviewed policy.

Approved: Greg Campbell
Chief Executive

Date: 12 February 2015

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1. Purpose

This policy is designed to ensure that Greater Wellington Regional Council handles personal information in a way that is consistent with the Privacy Act 1993. It sits alongside Greater Wellington Regional Council's process for handling Local Government Official Information and Meetings Act 1987 (LGOIMA) requests,¹ and ensures that Privacy Act requests are promptly brought to the attention of the Privacy Officer.²

2. Background

The Privacy Act restricts the collection, storage, use and disclosure of personal information, and allows individuals to access and correct records of personal information about themselves.

Greater Wellington Regional Council collects and stores information relating to members of the public and its employees.

Staff involved with the collection and storage of personal information are encouraged to familiarise themselves with the information privacy principles so that they manage personal information consistently with the Privacy Act. Staff should also consult the Privacy Officer in cases of doubt surrounding Privacy Act issues.

3. Definitions

The Privacy Act contains a number of definitions. Those relevant to this policy are summarised as follows:

Agency is any person or body of persons, whether corporate or unincorporate, and whether in the public sector or the private sector, and includes a Department.

Greater Wellington Regional Council is an "agency" under the Privacy Act, and Greater Wellington Regional Council can transfer requests to another agency if that request is more closely related to that agency.

Evaluative material is assessment or opinion material that is collected and compiled solely for determining the suitability, eligibility, or qualifications of the individual to whom the material relates.

An **individual** is a person other than a deceased person.

The Privacy Act does not apply in the same way to a person who has died.

Personal information is "information about an identifiable individual" and includes any information that Greater Wellington Regional Council might hold about a member of the public or staff.

¹ Step by Step Guide to Considering Requests for Official Information pursuant to the Local Government Official Information and Meetings Act.

² The Manager, Democratic Services is Greater Wellington Regional Council's Privacy Officer.

Typical kinds of personal information held by Greater Wellington Regional Council include information held in the:

- *Contacts Database;*
- *Rating Database;*
- *Pest Plants Database;*

and information held by:

- *Environmental Regulation (under the Resource Management Act 1991); and*
- *Human Resources (such as job applications, curricula vitae, employment agreements, performance assessments and training records).*

4. Information privacy principles

When collecting, accessing and correcting, using and disclosing personal information on behalf of Greater Wellington Regional Council, staff must comply with the following information privacy principles. Consult with the Privacy Officer to determine whether any of the listed exceptions to the information privacy principles apply.

- 1 Only collect personal information for lawful purposes necessary for Greater Wellington Regional Council's functions or activities.
- 2 Collect personal information directly from the person concerned, unless:
 - the information is publicly available;
 - the individual authorised the collection of the information from someone else;
 - collecting the information from someone else would not prejudice the interests of the individual concerned;
 - given the purpose of the collection (e.g. detection of a crime) it is not appropriate for the individual to know about the collection;
 - collecting the information directly from the person concerned would prejudice the purpose of collection;
 - collecting the information directly from the person concerned is not reasonably practicable in the circumstances of the case; or
 - the information will not be used in a form in which the individual concerned is identified, or will be used for statistical or research purposes and will not be published in a form that identifies the individual.
- 3 When collecting personal information from an individual ensure the individual is aware of:
 - the fact of collection;
 - the purpose for collection;
 - the intended recipients of the information;
 - any law that requires/authorises the collection (and, if so, whether the supply of information is voluntary or mandatory);
 - any consequences of not providing the information; and
 - the individual's rights under the Privacy Act of access to, and correction of, that information.

For example, when members of the public provide submissions they should be made aware that they can ask for exclusion of personal details (unless a particular law or the purpose of collection requires disclosure), and this should be noted on the file.

However, Greater Wellington Regional Council does not have to comply with the above requirements regarding collection if:

- the individual concerned has consented to the non-compliance;
- the individual's interests would not be prejudiced;
- non-compliance is necessary to uphold the law;
- compliance would prejudice the purposes of collection;
- compliance is not reasonably practicable in the circumstances of the case; or
- the information will not be used in a form in which the individual concerned is identified, or will be used for statistical or research purposes and will not be published in a form that identifies the individual.

- 4 Personal information must be collected in a lawful and fair manner. Greater Wellington Regional Council must not collect information in an unreasonably intrusive way, particularly with regard to the personal affairs of the individual.

For example, when conducting reference checks as part of the recruitment process, the individual's consent to reference checks will be obtained before the checks are carried out.

- 5 Securely store personal information so as to prevent it being lost, or accessed or disclosed without authorisation. Ensure that where contractors or other agents are used to collect or process personal information, steps are taken (including under a contract) to prevent unauthorised use or disclosure of the information.³

For example, personal files will be kept in a secure, locked area and access will be restricted to the appropriate people.

- 6 Individuals are entitled to obtain confirmation of whether or not Greater Wellington Regional Council holds their personal information, and to have access to that information, unless a specific exception applies.

For example, staff can make a request to Human Resources to see their personal file. If information is found to be incorrect, employees can request to have it corrected. Staff will not be granted access to their evaluative material (e.g. reference checks) as it is the subject of an express or implied promise of confidentiality: see section 29(1)(b) and 29(3) of the Privacy Act.

- 7 If Greater Wellington Regional Council holds personal information it must, if requested by the individual concerned or on its own initiative,

³ When considering cloud storage and related technology options for external storage of personal information the Privacy Commissioner's publication "Cloud Computing – a guide to making the right choices" provides useful guidance.

take reasonable steps to correct that information so that the information is accurate, up to date, complete and not misleading.

If Greater Wellington Regional Council does not wish to correct the personal information in this manner, it must (if requested) attach any statement provided by that individual of the correction sought (but not made) to the information so that it will always be read with the information.

Greater Wellington Regional Council must inform the person to whom the personal information has been disclosed of the steps referred to above and the action taken as a result of the request.

8 Greater Wellington Regional Council must not use personal information without checking that (having regard to the purpose for which it is to be used) it is accurate, up to date, complete, relevant and not misleading.

9 Greater Wellington Regional Council must not keep personal information for longer than is required for its intended use.⁴

10 Greater Wellington Regional Council must not use personal information for any other purpose than for which it was collected, unless:

- the source of the information is a publicly available publication;

For example, information, such as property owner details, publicly available on the public Rating Information Databases can be used by Greater Wellington Regional Council for council purposes (other than rating)..

- the use of the information for another purpose is authorised by the individual concerned;
- using the information for a different purpose is necessary to:
 - uphold the law; or
 - to prevent a serious threat to public health or public safety; or
 - to prevent a serious threat the life or health of the individual concerned or another individual; or
- the information is used in a form in which the individual concerned is not identified; or is used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned.

11 Greater Wellington Regional Council must not disclose personal information for any other purpose than it was collected for, unless:

- the source of the information is a publicly available publication;
- disclosure is to, or is authorised by, the individual concerned;
- disclosing the information for a different purpose is necessary to:

⁴ General Disposal Authority 6: Common Corporate Service Public Records issued by Archives New Zealand in June 2014 sets out procedures and guidelines relating to the storage (retention and destruction) of personal information for the purpose of recruitment or employment.

- uphold the law; or
- to prevent a serious threat to public health or public safety; or
- to prevent a serious threat the life or health of the individual concerned or another individual;
- disclosure of the information is necessary to facilitate the sale or other disposition of a business as a going concern; or
- the information is to be used in a form in which the individual concerned is not identified; or is to be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned.

For example, managers requested to give an opinion on an individual's performance must be certain that the person requesting it has the permission of the individual concerned to obtain such opinions or has informed the individual ahead of time that they will be doing so.

5. Privacy Act requests

From time to time Greater Wellington Regional Council receives requests from individuals for access to, and correction of, their personal information. This section outlines the procedure that staff must follow when receiving such requests.

As soon as a request for information is received, a decision must be made as to whether it should be logged onto Greater Wellington Regional Council's central system. Registration is done by forwarding the request (by email or internal mail) to Information Services. They will record:

- the name of the requester;
- the date the request is received; and
- a processing timeframe for the request.⁵

Information Services will also determine which Act is to apply to the request.

The Privacy Act applies where individuals request personal information about themselves, including through their agents or representatives. An exception exists when a person makes a request for an explanation as to the reasons why a decision or recommendation was made about them. In that case section 22 of LGOIMA applies.

LGOIMA applies to all other information and requests, including:

- requests for personal information about other individuals and organisations; and
- requests made by companies.

Requests for personal information which comprise of a mix of information about the requester and information about other persons may be covered by the

⁵ A decision must be made on a request as soon as practicable, and no later than 20 working days after the receipt of the request, unless the request is transferred or an extension is available.

Privacy Act and LGOIMA, depending upon the nature of the information at issue in a particular case.

If Information Services determines that the request is for personal information, it will be sent to the Privacy Officer for response. A letter to the requestor acknowledging Greater Wellington Regional Council's receipt of their request will also be sent at this time. The Privacy Officer (or his or her delegated representative) will deal with the request, in accordance with the Privacy Act.⁶

6. Complaints

The Privacy Act provides for individuals to make a complaint to the Privacy Commissioner if they consider that there has been an interference with their privacy. If you receive a complaint from a member of the public in relation to their personal information, contact the Privacy Officer. The Privacy Officer will work through the problem and will work with the Privacy Commissioner in relation to any investigation the Privacy Commissioner makes as a result of the complaint.

Greater Wellington Regional Council takes breaches of the Privacy Act seriously. A breach could result in penalties from the Human Rights Review Tribunal, damages awarded to individuals, legal fees and costs, political embarrassment and/or Greater Wellington Regional Council's reputation suffering because of resulting bad publicity. It is therefore crucial that Greater Wellington Regional Council staff carefully apply this policy, and seek advice from the Privacy Officer in cases of doubt.

7. Further information

Further information on the Privacy Act and its compliance can be obtained from:

- SOLGM Good Practice Toolkit, Privacy Act Module
- The Office of the Privacy Commissioner (www.privacy.org.nz or the Enquiries Line 0800 803 909)
- The Privacy Officer.

⁶ The Privacy Officer will consider the application of other Acts: the Privacy Act is subject to other legislation relating to the obtaining or availability of personal information (e.g. the Local Government Official Information and Meetings Act 1987), and this legislation may override the restrictions of the Privacy Act.

Annexure 20 – not used

Annexure 21

Approved Transferring Asset Agreements

There are no Transferring Asset Agreements which, as at the date of the Partnering Contract, have been approved by GWRC for the purposes of clause 55.5.

Annexure 22

Lessor Direct Deed

Date [insert]

**Lessor
Direct Deed**

**relating to the [insert brief description of relevant assets]
used in connection with the [insert Bus Unit]**

Wellington Regional Council (**GWRC**)

and

[Lessor] (**Lessor**)

and

[Operator/Transferring Asset Related Party¹] (**TAA
Counterparty**)

¹ This will be the Operator (where the Operator is party to the Transferring Asset Agreement) or the Transferring Asset Related Party (where the Transferring Asset Related Party is party to the Transferring Asset Agreement).

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Lessors Direct Deed

Parties

- 1 Wellington Regional Council, a public statutory body constituted under the Local Government Act 2002 (**GWRC**);
- 2 [Lessor] (company number [insert]) (**Lessor**); and
- 3 [*Operator/Transferring Asset Related Party*²] (company number [insert]) (**TAA Counterparty**).

Background

- A GWRC and the Operator have entered into the Partnering Contract under which the Operator is required (amongst other things) to provide public transport services by bus.
- B The Lessor and the TAA Counterparty have entered into the Transferring Asset Agreement(s), pursuant to which the Lessor has agreed to make the Transferring Assets available for use by the TAA Counterparty.
- C The Transferring Assets are used by or on behalf of the Operator in connection with the performance of its obligations under the Partnering Contract.
- D The Parties are entering into this Deed so that, amongst other things, GWRC may exercise certain rights in respect of the Transferring Assets and Transferring Asset Agreement(s) upon termination or expiry of the Partnering Contract or in the event of a default under the Transferring Asset Agreement(s).

² This will be the Operator (where the Operator is party to the Transferring Asset Agreement) or the Transferring Asset Related Party (where the Transferring Asset Related Party is party to the Transferring Asset Agreement).

Operative provisions

1. Interpretation

Definitions

1.1 The following definitions apply in this Deed unless the context requires otherwise:

"Business Day" means a day (other than a Saturday, Sunday or Public Holiday) on which banks are generally open for business in Wellington.

"Claim" means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) whether under or in connection with this Deed, any Transferring Asset Agreement 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.

"Confidential Information" means:

- (a) all commercially sensitive information and trade secrets already communicated or subsequently communicated under or in connection with this Deed or with respect to the subject matter of this Deed including (without limitation) any such information obtained:
 - (i) in the course of negotiations leading to the conclusion of this Deed; or
 - (ii) in the performance of this Deed;
- (b) any information about the business or property of a person including (without limitation) any information:
 - (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 Deed;
- (c) any Intellectual Property Material; and
- (d) any Personal Information collected, used, disclosed, stored, managed, transferred or handled by a Party.

"Default Notice" means a notice given by the Lessor under clause 3.2.

"Dispute" means any dispute, difference of opinion, or disagreement between any of the Parties, including any Claim, arising out of or in connection with this Deed.

"Event of Default" means:

- (a) a breach or default by the TAA Counterparty under a Transferring Asset Agreement which entitles the Lessor to:
 - (i) terminate (or give notice terminating), rescind or accept the repudiation of the Transferring Asset Agreement or suspend the performance of any or all of its obligations under the Transferring Asset Agreement; and/or
 - (ii) exercise or enforce any Security Interest over any of the Transferring Assets; or
- (b) the occurrence of any Insolvency Event in respect of the TAA Counterparty.

"Expert" means any person appointed by the Parties pursuant to clause 8.10 or 8.11.

"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 and the New Zealand Transport Agency.

"GWRC Cure Notice" means a notice given by the Lessor under clause 3.3.

"Incoming Operator" means any person succeeding the Operator in the provision of all or any part of the services provided by the Operator under the Partnering Contract (or any services which are substantially similar those services) and includes any entity nominated by such person to perform or operate any part of such services.

"Insolvency Event" means, in relation to a person, the occurrence of any of the following events:

- (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:
 - (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 1993) 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 and the Lessor, 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 person demonstrates to GWRC's and the Lessor's satisfaction that an application is frivolous or vexatious);
- (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
- (g) that person admits in writing to being insolvent or unable to pay its debts as and when they fall due,

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.

"Intellectual Property Material" 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.

"Intellectual Property Rights" means rights in patents, registered designs, petty patents, utility 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.

"LGOIMA" means the Local Government Official Information and Meetings Act 1987.

"Loss" means:

- (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.

"Notice of Dispute" means a written notice in respect of a Dispute served by one Party on the other Parties and containing the information referred to in clause 8.3.

"Notice of Step In" has the meaning given in clause 3.8.

"Novation Deed" means a deed substantially in the form set out in Schedule 1 (*Novation Deed*), as amended in accordance with clause 4.15 to the extent applicable.

"Novation Effective Date" means the date on which the novation of a Transferring Asset Agreement is to take effect in accordance with the terms of the Novation Deed.

"Operator" means *[Insert details]*.

"Partnering Contract" means the contract entitled "Partnering Contract *[insert reference]*" relating to the *[insert ref/name]* Bus Unit" executed on *[insert]* between GWRC and the Operator.

"Party" means a party to this Deed.

"Permitted Security Interest" means those security interests approved by GWRC in writing from time to time.

"Personal Information" has the same meaning given in section 2 of the Privacy Act 1993.

"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.

"Proposed Novation Date" means the date nominated by GWRC in a Proposed Novation Notice as the date on which the proposed novation is to take effect.

"Proposed Novation Notice" means a notice given by GWRC to the Lessor under clause 4.1 that it wishes a Proposed Substitute to assume, by way of novation, the

rights and obligations of the TAA Counterparty under the relevant Transferring Asset Agreement.

"Proposed Substitute" means GWRC or another person nominated in a notice given by GWRC under clause 4.1.

"Public Holiday" means a day which is a public holiday in Wellington in accordance with the Holidays Act 2003.

"Purchaser" means any person to whom any of the Transferring Assets or Transferring Asset Agreements are to be transferred or novated (as applicable).

"Related Company" means a "related company" as defined in the Companies Act 1993, provided that each reference to "company" in that definition shall be deemed to also include any other body corporate.

"Restricted Confidential Information" means the amounts payable under the Transferring Asset Agreements.

"Revised Proposed Novation Notice" means any Proposed Novation Notice given under clause 4.13.1.

"Security Interest" means each and all of the following:

- (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 8.4.

"Step In Date" means the date specified in a notice given by GWRC under clause 3.8.

"Step In Period" means the period from the Step In Date until the earliest of:

- (a) the Step Out Date;
- (b) the date on which the Lessor validly terminates the relevant Transferring Asset Agreement in accordance with its terms and the terms of this Deed;
- (c) the date of any novation of the relevant Transferring Asset Agreement under clause 4 (*Novation following an Event of Default*); and

(d) the date falling 12 months after the Step In Date.

"Step In Rights" has the meaning given in clause 3.7.

"Step Out Date" means the date specified in any notice given by GWRC under clause 3.15.

"Transferring Asset Agreement(s)" means the following agreements:

- (a) agreement dated [*insert date*] between the Lessor and the TAA Counterparty relating to [*insert brief description of relevant Transferring Assets*];
- (b) agreement dated [*insert date*] between the Lessor and the TAA Counterparty relating to [*insert brief description of relevant Transferring Assets*].

"Transferring Asset Agreement (Vehicle)" means a Transferring Asset Agreement pursuant to which the Lessor makes available one or more vehicles to the TAA Counterparty.

"Transferring Assets" means those Transferring Assets (as defined in the Partnering Contract) to be made available by the Lessor to the TAA Counterparty under the Transferring Asset Agreement(s).

1.2 Subject to clause 1.1, terms that are defined in the Partnering Contract have the same meaning in this Deed.

Rules for interpreting this Deed

1.3 The following rules apply unless the context requires otherwise:

- 1.3.1 headings are for convenience only and do not affect interpretation;
- 1.3.2 the singular includes the plural and conversely;
- 1.3.3 a gender includes all genders;
- 1.3.4 if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 1.3.5 a reference to a person, corporation, trust, partnership, unincorporated body, organisation or other entity includes any of them;
- 1.3.6 a reference to a clause, Schedule, Annexure or Appendix is a reference to a clause of or a Schedule, Annexure or Appendix to, this Deed, and a reference to a paragraph is to a paragraph of the same clause, Schedule, Annexure or Appendix unless the context requires otherwise;

- 1.3.7 a reference to an agreement or document (including a reference to this deed) is to the agreement or document as amended, varied or supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document;
- 1.3.8 a reference to a person includes that person's successors, permitted substitutes and permitted assigns (and, where applicable, that person's legal personal representatives);
- 1.3.9 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;
- 1.3.10 a reference to conduct includes an act, omission, statement and undertaking, whether or not in writing;
- 1.3.11 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;
- 1.3.12 a reference to dollars and \$ is to New Zealand currency;
- 1.3.13 a reference to a month or to a year is to a calendar month or a calendar year;
- 1.3.14 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;
- 1.3.15 a reference to a Party is a reference to each of those persons separately;
- 1.3.16 a reference to writing includes an email and any other means of reproducing words in a tangible and permanently visible form;
- 1.3.17 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;
- 1.3.18 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;

- 1.3.19 a reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;
- 1.3.20 a reference to includes or including or other similar words should be construed without limitation;
- 1.3.21 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;
- 1.3.22 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 an event or circumstance occurring; and
- 1.3.23 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

- 1.4 If the doing of any act, matter or thing under this Deed 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 between Transferring Asset Agreement and this Deed

- 1.5 If there is any inconsistency between the provisions of this Deed and the provisions of any Transferring Asset Agreement, the provisions of this Deed will prevail to the extent of such inconsistency.

2. Novation on termination or expiry of the Partnering Contract

- 2.1 In the event that GWRC notifies the Lessor in writing that:

- 2.1.1 the Partnering Contract is to expire by effluxion of time or one party to the Partnering Contract has served a notice on the other party terminating the Partnering Contract in accordance with its terms; and
- 2.1.2 GWRC requires the Lessor to enter into a Novation Deed with GWRC (or its nominee) pursuant to which the Transferring Asset Agreement(s) will be novated to GWRC (or its nominee),

the Lessor shall, within 5 Business Days following receipt of such notice, provide a duly executed Novation Deed in respect of the Transferring Asset Agreements to GWRC.

- 2.2 The Lessor acknowledges and agrees that the exercise by GWRC of its rights under this clause 2 and any novation given effect to hereunder does not of itself contravene any Transferring Asset Agreement and does not entitle the Lessor to exercise any right or remedy under or in connection with any Transferring Asset Agreement (including enforcement of any Security Interest and any right of termination).
- 2.3 The obligations of the Lessor and the rights of GWRC pursuant to this clause 2 are in addition (and without prejudice) to the Parties' respective rights and obligations under clauses 3 (*Default under the Transferring Asset Agreement(s)*) and 4 (*Novation following an Event of Default*) of this Deed.

3. Default under the Transferring Asset Agreement(s)

Restriction on right to terminate or suspend etc.

- 3.1 The Lessor may only terminate (or give notice terminating), rescind or accept the repudiation of a Transferring Asset Agreement or suspend the performance of any or all of its obligations under a Transferring Asset Agreement or exercise or enforce any Security Interest over any of the Transferring Assets, if:
 - 3.1.1 the Lessor has given GWRC a Default Notice and a GWRC Cure Notice;
 - 3.1.2 the Lessor has complied (and continues to comply) with its obligations under clauses 3.2 to 3.6;
 - 3.1.3 either:
 - (a) the relevant time period specified in or contemplated by the GWRC Cure Notice has expired and GWRC has not (and has not procured that another person has) taken the action specified in or contemplated by the GWRC Cure Notice; or

- (b) GWRC has notified the Lessor in writing that it elects not to remedy the Event of Default;
- 3.1.4 the Lessor is not prevented from doing so under clause 3.10, 4.3 or 4.13.2; and
- 3.1.5 the relevant Event of Default is subsisting and the Lessor is entitled to take such action in accordance with the terms of the relevant Transferring Asset Agreement.

Default Notice

- 3.2 Promptly following the occurrence of an Event of Default, the Lessor shall notify GWRC in writing of the occurrence of the Event of Default, setting out the following information:
 - 3.2.1 the details of the relevant Transferring Asset Agreement;
 - 3.2.2 full details of the Event of Default identifying all material facts;
 - 3.2.3 the steps reasonably required to cure or remedy the Event of Default (if reasonably capable of remedy or cure);
 - 3.2.4 details of any unpaid amount which is due and payable by the TAA Counterparty to the Lessor under the relevant Transferring Asset Agreement at the time of such Default Notice;
 - 3.2.5 the nature and, to the best of the Lessor's knowledge and belief, the amount of any monetary claim asserted by the Lessor against the TAA Counterparty under or arising out of the Event of Default; and
 - 3.2.6 if applicable, any other relief or remedy sought by the Lessor in accordance with the terms of the Transferring Asset Agreement.
- 3.2A The Lessor shall ensure that each Default Notice issued to GWRC is accompanied by a fully completed draft of any notice, warning or other communication which the Lessor would, but for the terms of this Deed, be entitled or required to issue under the Transferring Asset Agreement in relation to the Event of Default.

GWRC Cure Notice

- 3.3 The Lessor shall, within 5 Business Days of issuing a Default Notice, give GWRC a written notice in accordance with clause 3.4.
- 3.4 The GWRC Cure Notice shall specify:

- 3.4.1 if the Event of Default is a failure by the TAA Counterparty to pay any amount due and payable by it under the terms of the Transferring Asset Agreement, that GWRC will, subject to clause 3.22, have a period of 15 Business Days from receipt of the GWRC Cure Notice (or such longer period as is permitted under the Transferring Asset Agreement) within which to remedy such Event of Default;
- 3.4.2 if the Event of Default is the occurrence of an Insolvency Event in respect of the TAA Counterparty, that GWRC will, subject to clause 3.22, have a period of 60 Business Days from receipt of the GWRC Cure Notice (or such longer period as is permitted under the Transferring Asset Agreement) within which to remedy such Event of Default or (without prejudice to clause 4.3 and to the Lessor's obligations under this Deed) to procure a novation of the Transferring Asset Agreement in accordance with clause 4 (*Novation following an Event of Default*);
- 3.4.3 if the Event of Default is not one of those circumstances referred to in clause 3.4.1 or 3.4.2 but is otherwise reasonably capable of remedy, that GWRC will, subject to clause 3.22, have a period of 25 Business Days from receipt of the GWRC Cure Notice (or such longer period as is permitted under the Transferring Asset Agreement) within which to remedy the Event of Default;
- 3.4.4 if the Event of Default is not one of those circumstances referred to in clause 3.4.1 or 3.4.2 and is not reasonably capable of remedy, and the Default Notice contains a claim for reasonable compensation for the Event of Default and the Lessor has not received that compensation, that GWRC will, subject to clause 3.22, have a period of 25 Business Days from receipt of the GWRC Cure Notice (or such longer period as is permitted under the Transferring Asset Agreement) to pay the compensation; or
- 3.4.5 if the Event of Default is not one of those circumstances referred to in clause 3.4.1 or 3.4.2 and is not reasonably capable of remedy, and the Default Notice does not contain a claim for reasonable compensation for the Event of Default, that GWRC will, subject to clause 3.22, have a period of 25 Business Days from receipt of the GWRC Cure Notice (or such longer period as is permitted under the Transferring Asset Agreement) within which to commence and continue to perform the TAA Counterparty's obligations under the Transferring Asset Agreement.
- 3.5 On receiving a GWRC Cure Notice, GWRC may (but is not obliged to) take the steps specified in the GWRC Cure Notice.

- 3.6 Save to the extent expressly provided otherwise in clause 3.10 to 3.14, the Lessor and the TAA Counterparty each acknowledge and agree that any action taken by GWRC following the issue of a GWRC Cure Notice will not be construed as an assumption by GWRC of the liabilities or obligations of the TAA Counterparty under the relevant Transferring Asset Agreement.

Assumption by GWRC

- 3.7 Without prejudice to GWRC's other rights under this Deed, at any time on or after receipt of a GWRC Cure Notice, GWRC may by notice under clause 3.8 to the Lessor assume (or procure that a third party assumes) all of the TAA Counterparty's rights under the relevant Transferring Asset Agreement (such action being **Step In Rights**).
- 3.8 Subject to clause 3.8A, GWRC shall give the Lessor at least 5 days' prior written notice of any action to be taken by it referred to in clause 3.7 (**Notice of Step In**).
- 3.8A GWRC or its nominee may exercise the Step In Rights prior to giving a Notice of Step In where in GWRC's opinion the circumstances require the urgent exercise of the Step In Rights, but shall give the Lessor a Notice of Step In as soon as reasonably practicable thereafter.
- 3.9 The Lessor and the TAA Counterparty each acknowledge and agree that the exercise by GWRC of its rights pursuant to clause 3.7 will not of itself contravene any Transferring Asset Agreement or constitute an Event of Default.

Step in period

- 3.10 Without prejudice to clause 3.1, the Lessor shall not terminate (or give notice terminating), rescind or accept the repudiation of a Transferring Asset Agreement or suspend the performance of any or all of its obligations under a Transferring Asset Agreement or exercise or enforce any Security Interest over any of the Transferring Assets during the Step In Period on grounds:
- 3.10.1 that GWRC has taken any action referred to in clause 3.7; or
- 3.10.2 arising prior to the Step In Date except where:
- (a) those grounds are non-payment of an amount due and payable to the Lessor under the terms of the Transferring Asset Agreement; and
 - (b) that amount has been notified to GWRC under clause 3.4.1 and GWRC has failed to pay that amount to the Lessor within the time period specified in that clause.

- 3.11 Subject to clause 3.10, during the Step In Period the Lessor shall be entitled to terminate, rescind, or accept the repudiation of a Transferring Asset Agreement or suspend the performance of any or all of its obligations under the Transferring Asset Agreement or exercise or enforce any Security Interest over the Transferring Assets on grounds arising after the Step In Date, in each case in accordance with the terms of the relevant Transferring Asset Agreement.
- 3.12 The Lessor shall deal with GWRC (or the relevant third party nominated by it) in place of the TAA Counterparty during the Step In Period.
- 3.13 During the Step In Period, the relevant Transferring Asset Agreement shall remain in full force and effect. The Lessor shall continue diligently to perform all of its obligations thereunder as though GWRC (or the relevant third party nominated by it) was directly party to the Transferring Asset Agreement in place of the TAA Counterparty to the extent that GWRC (or its nominee) has assumed the rights of the TAA Counterparty pursuant to clause 3.7.
- 3.14 During the Step In Period, GWRC (or the relevant third party nominated by it) shall be entitled to enforce all of the rights of the TAA Counterparty under the relevant Transferring Asset Agreement in place of the TAA Counterparty.

Step out

- 3.15 GWRC may, at any time during the Step In Period, with at least 30 days' prior written notice to the Lessor, terminate the Step In Period with effect from the date specified in that notice.
- 3.16 With effect from the Step Out Date, GWRC (and any relevant third party that was nominated by it to perform its obligations and/or exercise its rights under clauses 3.7 to 3.9) will be released from any and all obligations and liabilities to the Lessor:
- 3.16.1 under the relevant Transferring Asset Agreement; and
- 3.16.2 under this Deed.
- 3.17 The release under clause 3.16 will not affect or prejudice the continuation of the TAA Counterparty's obligations to the Lessor under the Transferring Asset Agreements.

Miscellaneous

- 3.18 The Lessor warrants and represents to GWRC that all information contained in a Default Notice and a GWRC Cure Notice will be true, complete and accurate.
- 3.19 GWRC, any relevant third party nominated by GWRC to perform its obligations and/or exercise its rights under clauses 3.7 to 3.9 and each Proposed Substitute shall

be entitled to rely on the information contained within any Default Notice or GWRC Cure Notice for the purpose of determining the extent of the matters relating to an Event of Default and the requirements to effect the cure or remedy of that Event of Default.

- 3.20 The information contained in a Default Notice will be conclusive evidence in favour of GWRC, any relevant third party nominated by GWRC to perform its obligations and/or exercise its rights under clauses 3.7 to 3.9 and any Proposed Substitute that the Lessor has waived and abandoned all claims then known (or which ought reasonably to have been known to the Lessor) arising out of or in connection with the relevant Transferring Asset Agreement prior to the date of the Default Notice (other than those claims set out in the Default Notice).
- 3.21 Clauses 3.18, 3.19, and 3.20 are without prejudice to the rights of the Lessor to pursue any claims against the TAA Counterparty following the end of the Step In Period.
- 3.22 GWRC shall be entitled to dispute the amount of any Claim by the Lessor, the existence of any Event of Default or any other matter specified in a GWRC Cure Notice or Default Notice. In the case of any such dispute:
- 3.22.1 the dispute shall be referred for expert determination in accordance with clause 8 (*Dispute Resolution Procedure*); and
- 3.22.2 during the period of dispute resolution, the Lessor shall continue to perform its obligations under the Transferring Asset Agreements and this Deed notwithstanding the dispute.
- 3.23 The Lessor and the TAA Counterparty each acknowledge and agree that, to the maximum extent permitted by law, GWRC will not have any liability (nor will the Lessor or the TAA Counterparty be entitled to make, continue or enforce any claim against GWRC), arising out or in respect of or in connection with the Transferring Asset Agreements or this Deed by reason only of:
- 3.23.1 the exercise or performance by GWRC or its nominated third party of any of the TAA Counterparty's rights or obligations under a Transferring Asset Agreement; or
- 3.23.2 GWRC taking any action (or procuring that a third party takes action) to remedy an Event of Default or GWRC otherwise performing (or procuring that a third party performs) any action contemplated by a GWRC Cure Notice,

other than, and then only to the extent of, liability for fraudulent, unlawful or negligent acts of GWRC or such third party.

4. Novation following an Event of Default

Proposed Novation Notice

- 4.1 Without prejudice to clause 2 (*Novation on termination or expiry of the Partnering Contract*), GWRC may:
- 4.1.1 at any time during the Step In Period or otherwise after receipt of a GWRC Cure Notice;
 - 4.1.2 at any time after the occurrence of an Insolvency Event in respect of the TAA Counterparty,
- give a notice to the Lessor that it wishes itself or another person to assume, by way of novation, the rights and obligations of the TAA Counterparty under the relevant Transferring Asset Agreement.
- 4.2 The Proposed Novation Notice shall specify:
- 4.2.1 whether the circumstances in clause 4.1.1 or 4.1.2 apply; and
 - 4.2.2 a date on which the proposed novation is to take effect. The Proposed Novation Date shall fall not later than 30 Business Days after the date of the Proposed Novation Notice.
- 4.3 Without prejudice to (and save as permitted by) clause 4.21, the Lessor shall not exercise or seek to exercise any right that may be or become available to it to terminate or rescind or treat as terminated or repudiated the relevant Transferring Asset Agreement or discontinue or suspend the performance of any duties or obligations under the relevant Transferring Asset Agreement or enforce or seek to enforce any Security Interest over the relevant Transferring Assets:
- 4.3.1 during the notice period specified in a Proposed Novation Notice; or
 - 4.3.2 against any Proposed Substitute that is party to a Novation Deed.
- 4.4 The Lessor acknowledges and agrees that the exercise by GWRC of its rights under this clause 4 and any novation given effect to hereunder does not of itself contravene any Transferring Asset Agreement and does not entitle the Lessor to exercise any right or remedy (including any right to terminate or to enforce any Security Interest) under any Transferring Asset Agreement.
- 4.5 Nothing in this clause 4 operates to require GWRC or the Proposed Substitute to assume any obligations or liabilities arising, or which are required to be performed under any Transferring Asset Agreement, except to the extent expressly provided in this clause 4.

Proposed Substitute

- 4.6 Where the Proposed Substitute is not GWRC, any other Governmental Entity or a Related Company of GWRC or any other Governmental Entity, GWRC shall (as soon as reasonably practicable) supply the Lessor with the following information:
- 4.6.1 the name and registered address of the Proposed Substitute;
 - 4.6.2 the names of the directors of the Proposed Substitute;
 - 4.6.3 details of the means by which it is proposed to finance the Proposed Substitute (including, where relevant, the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
 - 4.6.4 the resources that are to be available to the Proposed Substitute to enable it to perform its obligations under the relevant Transferring Asset Agreement.

Consent to novation

- 4.7 The TAA Counterparty hereby irrevocably consents to any novation proposed under this clause 4, irrespective of the identity of the Proposed Substitute.
- 4.8 Where the Proposed Substitute is GWRC, any other Governmental Entity or a Related Company of GWRC or any other Governmental Entity, the Lessor hereby irrevocably consents to the proposed novation under this clause 4.
- 4.9 Where the Proposed Substitute is not GWRC, any other Governmental Entity or a Related Company of GWRC or any other Governmental Entity, the Lessor is deemed to consent to the proposed novation, unless the Lessor demonstrates to GWRC's reasonable satisfaction that:
- 4.9.1 the Proposed Substitute does not have the legal capacity, power and authorisation to become a party to and perform the relevant obligations of the TAA Counterparty under the relevant Transferring Asset Agreement;
 - 4.9.2 the financial standing of, and the financial resources available to, the Proposed Substitute are not sufficient to enable it to perform the relevant obligations of the TAA Counterparty under the relevant Transferring Asset Agreement;
 - 4.9.3 the Proposed Substitute does not meet the Lessor's reasonable standard requirements relating to creditworthiness or credit concentrations; or

- 4.9.4 the Proposed Substitute does not comply with the reasonable standard policy and regulatory requirements of the Lessor.
- 4.10 Where the Proposed Substitute is not GWRC, any other Governmental Entity or a Related Company of GWRC or any other Governmental Entity, GWRC shall provide such additional information as the Lessor may reasonably require to enable it to determine whether the criteria referred to in clauses 4.9.1 to 4.9.4 are met, provided that the Lessor shall request such information within 5 Business Days following receipt by it of the information referred to in clause 4.6.
- 4.11 Where the Proposed Substitute is not GWRC, any other Governmental Entity or a Related Company of GWRC or any other Governmental Entity, within 10 Business Days of the later of receipt of a Proposed Novation Notice and all information required to be provided under clauses 4.6 and 4.10, the Lessor shall:
- 4.11.1 notify GWRC in writing as to whether or not it is seeking to withhold its consent under clause 4.9; and
- 4.11.2 where it is seeking to withhold that consent, provide an explanation of the reasons why it believes the grounds in clause 4.9 apply so as to permit it to do so.
- 4.12 Where the Proposed Substitute is not GWRC, any other Governmental Entity or a Related Company of GWRC or any other Governmental Entity, the Lessor is deemed to have given its consent to the novation of the relevant Transferring Asset Agreement if the Lessor:
- 4.12.1 fails to serve notice in writing on GWRC within the period required by clause 4.11; or
- 4.12.2 serves notice within such time period but such notice does not demonstrate to GWRC's reasonable satisfaction that the circumstances specified in clauses 4.9.1, 4.9.2, 4.9.3 or 4.9.4 apply.
- 4.13 If, in accordance with clauses 4.8 to 4.12, the Lessor serves notice under clause 4.11 seeking to withhold its consent to a proposed novation:
- 4.13.1 GWRC shall be entitled to give one or more subsequent Proposed Novation Notices pursuant to the provisions of clauses 4.1 to 4.5 containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute, provided that:
- (a) only one Proposed Novation Notice may be outstanding in respect of the relevant Transferring Asset Agreement at any one time; and

- (b) any revised Proposed Novation Date shall be a date falling not later than 15 Business Days after the date of the Revised Proposed Novation Notice;

4.13.2 the Lessor shall not:

- (a) exercise or seek to exercise any right that may be or become available to it to terminate, rescind or treat as terminated or repudiated the relevant Transferring Asset Agreement; or
- (b) discontinue or suspend the performance of any duties or obligations under the relevant Transferring Asset Agreement; or
- (c) enforce or seek to enforce any Security Interest over any Transferring Asset,

during the notice period specified in a Revised Proposed Novation Notice; and

4.13.3 the foregoing provisions of this clause 4 will apply in relation to that Revised Proposed Novation Notice, as if that notice was a Proposed Novation Notice.

Implementation of novation

4.14 Within 3 Business Days of the date on which the Lessor consents or is deemed to have consented to a novation pursuant to a Proposed Novation Notice or a Revised Proposed Novation Notice, the Lessor shall (subject to the Proposed Substitute first providing a confidentiality undertaking in a form reasonably acceptable to the Lessor) give the Proposed Substitute an updated copy of all information in the possession of the Lessor in relation to the relevant Transferring Asset Agreement and Transferring Assets.

4.15 Subject to clause 3.22 and clause 4.16, where a novation of a Transferring Asset Agreement (Vehicle) is to be effected pursuant to this clause 4 (*Novation following an Event of Default*), the form of Novation Deed in respect of that Transferring Asset Agreement (Vehicle) shall be amended:

- 4.15.1 so as to require the Proposed Substitute to assume the outstanding obligations and liabilities of the TAA Counterparty under that Transferring Asset Agreement (Vehicle) as at the Novation Effective Date, to the extent only that such obligations and liabilities are expressly specified in the Default Notice; and

- 4.15.2 to expressly permit the Proposed Substitute to dispute those obligations and liabilities in accordance with the dispute resolution provisions contained in the Transferring Asset Agreement (Vehicle) (or, where no such dispute resolution provisions exist, in a court of law having jurisdiction in respect of the Transferring Asset Agreement (Vehicle)).
- 4.16 The amendments to the Novation Deed contemplated by clause 4.15 only apply to the extent that a Transferring Asset Agreement (Vehicle) is novated pursuant to this clause 4 (*Novation following an Event of Default*) and do not apply to the extent that a Transferring Asset Agreement (Vehicle) is novated pursuant to clause 2 (*Novation on termination or expiry of the Partnering Contract*).
- 4.17 Within 5 Business Days after the date on which the Lessor consents or is deemed to have consented to a novation pursuant to a Proposed Novation Notice or a Revised Proposed Novation Notice:
- 4.17.1 the Lessor and the TAA Counterparty shall duly execute; and
- 4.17.2 GWRC shall procure that the Proposed Substitute shall duly execute, a Novation Deed (as amended in accordance with clause 4.15 if applicable) in respect of the relevant Transferring Asset Agreement.

Transfer of physical possession etc.

- 4.18 Where a novation of a Transferring Asset Agreement is to take effect pursuant to this clause 4 (*Novation following an Event of Default*), on the Novation Effective Date the TAA Counterparty shall deliver to the novatee:
- 4.18.1 physical possession of all of the Transferring Assets which are the subject of the relevant Transferring Asset Agreement (including for the avoidance of doubt all fixtures, fittings, equipment and other items falling within the definition of any relevant "Transferring Depots" as defined in the Partnering Contract);
- 4.18.2 duly executed forms or consents reasonably required to enable the utility services (including gas, water, electricity, sewerage, telephone and other communication services) provided at any land and buildings comprising the relevant Transferring Assets to be transferred to the novatee with effect from the Novation Effective Date;
- 4.18.3 all keys and codes required to gain access to the Transferring Assets which are the subject of the relevant Transferring Asset Agreement;

- 4.18.4 all certificates, permits and consents relating to the Transferring Assets which are the subject of the relevant Transferring Asset Agreement including the current "Certificate of Fitness" in respect of each vehicle;
 - 4.18.5 copies of all operating and maintenance manuals, maintenance logs, warranties, guarantees and other material documents relating to the Transferring Assets which are the subject of the relevant Transferring Asset Agreement; and
 - 4.18.6 any other document or thing reasonably necessary to give full effect to this Deed.
- 4.19 The Lessor and the TAA Counterparty shall each use its best endeavours to procure an assignment to the novatee of all its respective rights, title and interest in, to and under any warranty or guarantee relating to the Transferring Assets which are the subject of the relevant Transferring Asset Agreement, such assignment to take effect on the Novation Effective Date.

TAA Counterparty's obligations to continue

- 4.20 Until the Novation Effective Date, the TAA Counterparty shall continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Transferring Asset Agreements notwithstanding:
- 4.20.1 the service of a Proposed Novation Notice or any Revised Proposed Novation Notice; or
 - 4.20.2 any other provision of this Deed.

Termination after novation

- 4.21 After any Novation Effective Date, the Lessor shall only be entitled to exercise its rights of termination under the relevant Transferring Asset Agreement or to enforce its Security Interests in respect of the relevant Transferring Assets in accordance with the Transferring Asset Agreement:
- 4.21.1 in respect of any Event of Default first arising after Novation Effective Date; or
 - 4.21.2 if, subject to the Proposed Substitute's rights to dispute any obligations and liabilities, the Proposed Substitute does not discharge, within 60 Business Days following the Novation Effective Date (or such later date as may be permitted under the relevant Transferring Asset Agreement), the obligations and liabilities assumed by it as contemplated by clause 4.15 that relate to matters arising prior to the Novation Effective Date.

5. Lessor and TAA Counterparty acknowledgements and agreements and Security Interests

5.1 Except in accordance with the terms of this Deed, each of the Lessor and the TAA Counterparty acknowledges and agrees that:

5.1.1 GWRC is not responsible for, and has no liability (actual or contingent); and

5.1.2 the Lessor and the TAA Counterparty have no cause of action against GWRC,

in relation to an Event of Default, or any other event, act or omission of the TAA Counterparty in relation to any Transferring Asset Agreement.

5.2 Notwithstanding anything to the contrary in a Transferring Asset Agreement or any other agreement, a Transferring Asset Agreement will not terminate on termination of the Partnering Contract until the earliest date on which the Lessor is entitled to terminate the Transferring Asset Agreement under the terms of this Deed.

5.3 The Lessor shall not create or allow to exist any Security Interest over any Transferring Asset or any Transferring Asset Agreement except for a Permitted Security Interest.

5.4 Without prejudice to the respective rights and obligations of the Parties under this Deed, at any time following the occurrence of an Event of Default if requested to do so by GWRC, the Parties shall promptly negotiate and seek to agree the terms on which title to the Transferring Assets will be transferred to GWRC or its nominee. The Parties shall act reasonably and in good faith in so doing.

5.5 Subject to the terms and conditions of this Deed:

5.5.1 the Lessor 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 Lessor's obligations in respect of those Transferring Assets under this Deed;

5.5.2 the rights of GWRC under this clause 5.5 are in addition to, and not in substitution for, any other rights or interests of GWRC under this Deed or otherwise, including, without limitation, any ownership claim to any assets for which ownership and title has not passed; and

5.5.3 the Lessor:

- (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 Deed;
- (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.

6. Amendment and waiver

6.1 The Lessor shall not without the prior written consent of GWRC:

- 6.1.1 amend, vary, supplement or replace any Transferring Asset Agreement or permit any other party to such Transferring Asset Agreement to do so;
- 6.1.2 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 Deed.

6.2 GWRC's consent to any matter referred to in clause 6.1 shall not be unreasonably withheld or delayed, provided that GWRC may withhold such consent in its absolute discretion where GWRC (acting reasonably) considers that the proposed action will (or is likely to):

- 6.2.1 increase the obligations or liabilities of GWRC (or its nominee) or of a Purchaser:
 - (a) under any contractual arrangement relating to the transfer of the Transferring Asset or Transferring Asset Agreement (including a Novation Deed); or
 - (b) otherwise in relation to any Transferring Asset or any Transferring Asset Agreement;
- 6.2.2 increase the amount payable by GWRC or the Purchaser in connection with the transfer of any Transferring Asset or Transferring Asset Agreement;

- 6.2.3 adversely affect any person's ability to perform its obligations in accordance with any Transaction Document (as defined in the Partnering Contract); or
 - 6.2.4 hinder or prevent the transfer of any Transferring Asset Agreement or Transferring Asset in accordance with the Partnering Contract or this Deed.
- 6.3 The Lessor agrees that GWRC may provide any Potential Incoming Operator, Incoming Operator or Purchaser with:
- 6.3.1 copies of any Transferring Asset Agreement (including copies of any amendment, variation, supplement or replacement thereto); and
 - 6.3.2 any information given by or on behalf of the Lessor to the TAA Counterparty or GWRC in relation to the Transferring Assets or Transferring Asset Agreements.

7. Indemnity

- 7.1 The TAA Counterparty shall indemnify GWRC (and keep it so indemnified) on demand from and against any Loss that GWRC suffers or incurs arising out of or in connection with GWRC:
- 7.1.1 taking any action to prevent the Lessor from terminating (or giving notice terminating), rescinding or accepting the repudiation of a Transferring Asset Agreement or suspending the performance of any or all of the Lessor's obligations under a Transferring Asset Agreement or exercising or enforcing any Security Interest over any of the Transferring Assets;
 - 7.1.2 taking any action to remedy an Event of Default or otherwise taking action contemplated by a GWRC Cure Notice; or
 - 7.1.3 otherwise exercising its rights under clause 3 (*Default under the Transferring Asset Agreement(s)*) or 4 (*Novation following an Event of Default*),
- including any amount payable by GWRC to a Proposed Substitute or any other person in connection with the Proposed Substitute assuming any accrued obligations or liabilities of the TAA Counterparty pursuant to the terms of the Novation Deed.
- 7.2 Without prejudice to clause 7.1, the TAA Counterparty shall indemnify GWRC (and keep it so indemnified) on demand from and against all Loss incurred by GWRC in connection with the administration, and any actual or attempted preservation or

enforcement, of any rights under this Deed including legal expenses on a full indemnity basis and expenses incurred in engaging consultants.

8. Dispute Resolution Procedure

Application of procedure

- 8.1 Any Dispute shall be dealt with under this clause 8 provided that nothing in this clause 8 will prevent a Party from applying to a court of competent jurisdiction to seek urgent or interim relief.
- 8.2 Except as provided for in clause 8.1, no Party may commence court proceedings unless and until the steps provided by this clause 8 have been undertaken, or one or more of the Parties has attempted to follow the steps and the other relevant Party has failed to participate, and the steps have not resolved the Dispute.

Referral to Senior Executives Meeting

- 8.3 Any Party may refer a Dispute for resolution by a Senior Executives Meeting by serving a Notice of Dispute on the other Parties, 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.
- 8.4 Within 3 Business Days after the referral to the Senior Executives Meeting under clause 8.3, each of the relevant Parties 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.
- 8.5 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 shall be made by unanimous agreement of the members of the Senior Executives Meeting. Any decision of the Senior Executives Meeting is binding on the relevant 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.
- 8.6 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

- 8.7 If any Dispute is referred to mediation in accordance with clause 8.6, 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:
- 8.7.1 by a single mediator agreed upon between the Parties; or
 - 8.7.2 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.
- 8.8 If the Dispute is not resolved by mediation:
- 8.8.1 the Parties may by written agreement refer the Dispute to Expert determination within 5 Business Days after the conclusion of the mediation; or
 - 8.8.2 provided no referral to Expert determination is made under clause 8.8.1, any Party may commence proceedings to have the Dispute determined by a court of competent jurisdiction.

Expert determination

- 8.9 For those disputes required by this Deed to be referred directly to Expert determination or which this Deed otherwise expressly envisages may be referred to Expert determination, and for any Dispute that is agreed by the Parties pursuant to clause 8.8.1 to be referred to Expert determination, the procedure set out in clauses 8.10 to 8.15 shall apply.
- 8.10 The relevant Parties shall, within 5 Business Days of referral to Expert determination, endeavour to agree upon a single expert (who shall be independent of the Parties and shall have qualifications and experience appropriate to the matter in dispute) to whom the matter will be referred for determination. The relevant Parties shall promptly appoint the relevant person as the Expert.
- 8.11 If within 10 Business Days of referral to Expert determination, the relevant Parties have not agreed upon the appointment of the Expert, the relevant Parties shall request:
- 8.11.1 the then president of the Chartered Accountants Australia and New Zealand (for technical, financial, valuation, economic or accounting issues); or
 - 8.11.2 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 8.11.1 and other issues, the relevant Parties shall request the then president of the New Zealand Bar Association to provide the nomination. The relevant Parties shall promptly appoint the person so nominated pursuant to this clause 8.11.

8.12 The relevant Parties shall instruct the Expert to:

8.12.1 determine the Dispute within the shortest practicable time, and in any event within 30 Business Days unless otherwise agreed by the relevant Parties; and

8.12.2 deliver a report to the relevant Parties stating the Expert's determination and setting out the reasons for the determination.

8.13 The procedures for the conduct of the process in order to make the determination will be determined by the Expert and shall provide each relevant Party with a fair opportunity to make submissions in relation to the matter in dispute.

8.14 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 relevant 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.

8.15 Each Party shall bear its own costs of and incidental to any Expert determination under this clause 8. The costs of the Expert will be shared equally between the Parties to the Dispute.

Performance of obligations pending resolution of dispute

8.16 Despite the existence of a Dispute, each Party shall continue to perform its obligations under this Deed and the Novation Deed.

Survival

8.17 This clause 8 survives the expiry or termination of this Deed.

9. Survival of obligations

- 9.1 The expiry or termination of this Deed shall be without prejudice to the accrued rights, liabilities and obligations of each Party as at the date of such expiry or termination.
- 9.2 The obligations contained in clause 1 and clauses 6 to 28 (inclusive) and any provision of this Deed which is expressly or impliedly to apply after the termination or expiry of this Deed shall survive such termination or expiry.

10. Confidentiality

General obligations

- 10.1 Subject to clauses 6.3 and 10.2, GWRC, the Lessor and the TAA Counterparty 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.

Exceptions

- 10.2 The Parties' obligations in clause 10.1 do not apply to disclosure to the extent that the disclosure is:
- 10.2.1 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 this Deed (or the transactions contemplated hereunder) or for the purpose of advising that Party in relation thereto, provided that the Party disclosing the Confidential Information shall ensure that the recipient:
- (a) is made aware of this clause 10; and
 - (b) shall keep such information confidential on the same terms as this clause 10;
- 10.2.2 of information which is at the time lawfully in the possession of the disclosing Party through sources other than another 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;

- 10.2.3 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, where the disclosing Party is the Lessor or the TAA Counterparty, the disclosing Party provides written notice to GWRC of the required disclosure promptly on receipt of notice of the required disclosure (if it is permitted to do so by law);
- 10.2.4 required in connection with legal proceedings, arbitration, mediation or expert determination relating to this Deed or for the purpose of advising a Party in relation thereto;
- 10.2.5 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, provided that the Incoming Operator or Potential Incoming Operator (as applicable) has provided the Lessor with a confidentiality undertaking in such form as the Lessor reasonably requires;
- 10.2.6 by GWRC of, or in connection with, the "commerciality ratio" of the relevant bus unit (as contemplated by the New Zealand Transport Agency's Procurement Manual), any league table, farebox revenue or patronage information; or
- 10.2.7 made by GWRC in accordance with clauses 10.3 to 10.5 (*LGOIMA*).

LGOIMA

- 10.3 Each of the Lessor and the TAA Counterparty 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.
- 10.4 Subject to clause 10.5, if GWRC receives a request under LGOIMA for any information held by the Lessor or the TAA Counterparty in their respective capacities as the Lessor and the TAA Counterparty, then:
 - 10.4.1 GWRC shall notify the Lessor or the TAA Counterparty (as applicable) of the request;
 - 10.4.2 GWRC will consult with the Lessor or the TAA Counterparty (as applicable) 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
 - 10.4.3 either:

- (a) if the Lessor or the TAA Counterparty (as applicable) considers the request relates to the Lessor or the TAA Counterparty's (as applicable) Confidential Information, within 2 Business Days of receiving such notification pursuant to clause 10.4.1, the Lessor or the TAA Counterparty (as applicable) 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 Lessor or the TAA Counterparty's (as applicable) 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 Lessor or the TAA Counterparty (as applicable) shall provide such information to GWRC within 3 Business Days of a written request from GWRC.

10.5 For the avoidance of doubt, nothing in this clause 10 shall cause or require GWRC to breach GWRC's obligations under LGOIMA.

Lessor's ability to provide information to GWRC

10.6 The TAA Counterparty acknowledges and agrees that, notwithstanding any confidentiality provisions contained in this Deed or the Transferring Asset Agreement(s) or any other obligation of confidentiality howsoever arising, the Lessor shall be permitted to provide any information which it is required to provide to GWRC under this Deed (including information required to be contained in a Default Notice or a GWRC Cure Notice) and the provision of such information shall not be a breach of such confidentiality provisions or obligations.

11. Media management

11.1 Except to the extent that the Lessor or the TAA Counterparty is expressly obliged to do so under this Deed or is otherwise required to do so by applicable law or the requirements of any recognised stock exchange having jurisdiction over the Lessor or the TAA Counterparty or any of their respective Related Companies, the Lessor and the TAA Counterparty shall not make or issue any press release or other public announcement relating to this Deed without the prior written approval of GWRC. Where GWRC has granted its approval to any such press release or public announcement, the Lessor or the TAA Counterparty (as applicable) shall ensure that such press release or public announcement (as applicable) is in the form approved by GWRC.

12. Assignment

- 12.1 The Lessor and the TAA Counterparty shall not create or allow a Security Interest over, or in any other way whether directly or indirectly, assign, novate, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with any of its rights or obligations under this Deed without the prior written consent of GWRC.
- 12.2 The Lessor or the TAA Counterparty (as applicable) shall provide any request for consent under clause 12.1 at least 20 Business Days prior to the proposed effective date of the relevant action.
- 12.3 GWRC may assign, novate, transfer or otherwise dispose of any right or obligation under this Deed to any local authority or council controlled organisation of a local authority (each as defined in the Local Government Act 2002) or to any other Governmental Entity and each of the Lessor and the TAA Counterparty hereby consents to the same. The Lessor and the TAA Counterparty shall promptly execute any such documents as GWRC may reasonably require to give effect to such transaction.

13. Notices

- 13.1 Any notice required to be given in relation to this Deed will, except where otherwise expressly provided, be in writing and in English and delivered to the relevant addressee in accordance with clause 13.3.
- 13.2 This clause 13.2 is subject to clause 13.4. A notice may be:
- 13.2.1 personally delivered, in which case it will be deemed to be given upon delivery at the relevant address; or
 - 13.2.2 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
 - 13.2.3 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
 - 13.2.4 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

13.2.5 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.

13.3 The initial addressee, addresses and other relevant details of each Party are set out below:

[insert notice details of each Party including nominated recipient's name or job title]

A Party may provide written notice to the other Parties of any change to the addressee, 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.

13.4 Where any notice is deemed given pursuant to clause 13.2:

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

13.4.2 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 13.4 the place of receipt of a notice is the applicable postal address for the receiving Party in accordance with clause 13.3, irrespective of whether the notice is communicated by email or otherwise.

14. Relationship between Parties

14.1 Notwithstanding the use of the word "partnering" or "partnership", nothing in this Deed is to be construed or interpreted as constituting the relationship between any of the Parties as a partnership, quasi-partnership, association or any other relationship in which a Party may (except as expressly provided for in this Deed) be liable for the acts or omissions of one of the other Parties.

14.2 Except as expressly provided in this Deed, nothing in this Deed shall be construed to authorise any Party to act as an agent for any other Party for any purpose.

15. Entire agreement and amendments

15.1 This Deed contains the entire agreement between the Parties with respect to its subject matter and supersedes any earlier agreements or understandings between the Parties in connection with its subject matter.

15.2 This Deed may only be amended by way of a written agreement duly executed by each of the Parties.

16. No reliance

16.1 Each of the Lessor and the TAA Counterparty acknowledges that, before entering into this Deed, it made all enquiries it wanted to make in relation to its obligations under this Deed and that in entering into this Deed, it:

16.1.1 did not rely on any representation, warranty, guarantee, assurance, undertaking or other statement made by or on behalf of GWRC;

16.1.2 has made its own assessment of the rights provided to it and the obligations imposed on it by this Deed; and

16.1.3 has made its own assessment as to the quality of all other material and other information provided by or on behalf of GWRC in connection with this Deed.

17. No waiver

17.1 No waiver of any breach of, or failure to enforce any provision of, this Deed 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 Deed. 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.

17.2 No waiver by a Party of any part of this Deed is binding unless it is made in writing by the Party granting that waiver.

18. Contract and Commercial Law Act 2017

18.1 Except as provided in clause 18.2, this Deed is not intended to create any obligation enforceable at the suit of any person who is not a Party to this Deed and a person who is not a Party to this Deed shall have no right under the Contract and Commercial Law Act 2017 to enforce any term of this Deed. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

18.2 To the extent that this Deed purports to confer any right or benefit on a third party nominated by GWRC for the purposes of clause 3.7, this Deed is enforceable by such nominee against the Lessor and the TAA Counterparty.

18.3 Notwithstanding clause 18.2, the Parties may vary or terminate this Deed by agreement in writing between them and they shall not require the consent of a third

party nominated by GWRC for the purposes of clause 3.7 in respect of any such variation or termination.

19. Rights cumulative

19.1 Subject to any express provision in this Deed to the contrary, the rights, powers and remedies of a Party under this Deed 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.

20. Further assurances

20.1 The Lessor and the TAA Counterparty shall promptly take all necessary action (including executing, filing and lodging documents and the giving of any notice, order or direction) required to facilitate and perfect any step in, novation or release under this Deed or otherwise necessary or desirable to give full effect to the provisions of this Deed.

20.2 The Lessor and the TAA Counterparty shall not through their respective acts or omissions prevent, restrict, frustrate or hinder GWRC from enforcing its rights under this Deed or the novation of any Transferring Asset Agreement as contemplated by this Deed.

20.3 Each of the Lessor and the TAA Counterparty for valuable consideration (receipt of which is hereby acknowledged):

20.3.1 irrevocably appoints GWRC (and any person nominated by GWRC) as its attorney with full power and authority to:

- (a) do anything necessary or desirable in the reasonable opinion of GWRC or the attorney to give full effect to the terms of this Deed or to effect the novation of a Transferring Asset Agreement in accordance with the terms of this Deed;
- (b) do anything which the appointing Party is required to do by this Deed; and
- (c) execute any deed or other document as contemplated by this Deed,

provided that GWRC (and any person nominated by GWRC) may only exercise a power of attorney granted pursuant to this clause 20.3.1 if the Lessor or TAA Counterparty (as applicable) 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;

- 20.3.2 agrees to immediately ratify and confirm whatever action is taken by GWRC or its nominee referred to in clause 20.3.1, provided that such action is not unlawful or negligent; and
- 20.3.3 agrees that it shall promptly on request by GWRC execute and deliver to GWRC a separate power of attorney on the terms of this clause 20.3 by way of a deed or otherwise in such form as GWRC may reasonably require.
- 20.4 Each of the Lessor and the TAA Counterparty agrees that an attorney appointed under clause 20.3 is not liable for any Loss that the Lessor or the TAA Counterparty may suffer or incur as a result of the attorney's actions, other than to the extent such actions are not contemplated by clause 20.3.

21. No merger

- 21.1 The rights and obligations of the Parties shall not merge on the completion of any transaction contemplated by this Deed. 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.

22. Costs and expenses

- 22.1 Subject to any express provision to the contrary in this Deed, 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 Deed.

23. Severability of provisions

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

24. Governing law

- 24.1 This Deed and the transactions contemplated by this Deed are governed by and are to be construed in accordance with New Zealand law and, subject to clause 8 (*Dispute Resolution Procedure*), the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

25. GWRC action

25.1 Each of the Lessor and the TAA Counterparty acknowledge that GWRC is the local authority in the Greater Wellington region and that, notwithstanding anything to the contrary in this Deed, nothing in this Deed:

25.1.1 requires GWRC to exercise, or use, any regulatory or legislative powers in order to influence or affect an outcome; or

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

26. Operation of indemnities

26.1 No indemnity in this Deed limits the effect or operation of any other indemnity in this Deed.

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

26.3 Each indemnity in this Deed survives the expiry or termination of this Deed.

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

27. Requirement to use 'best endeavours' or 'reasonable endeavours'

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

27.1.1 act unreasonably or in breach of any applicable law;

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

27.1.3 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

27.1.4 provide any performance bond, guarantee or Security Interest other than as specifically required under this Deed.

28. Counterparts

28.1 This Deed may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

Execution

Executed and delivered as a Deed

Date:

Wellington Regional Council
by

Witnessed by

Signature of authorised person

Signature of witness

Name of authorised person

Name of witness

Title of authorised person

Occupation of witness

Address of witness

[Lessor] by

Authorised signatory

Authorised signatory

Name

Name

Title

Title

[TAA Counterparty] by

Authorised signatory

Authorised signatory

Name

Name

Title

Title

[Note - Execution block for the Lessor and the TAA Counterparty to be amended if necessary depending on the status and structure of that entity so as to ensure compliance with the requirements of NZ law.]

Schedule 1 – Novation Deed

See document contained in DSM with file name “Novation Deed – Transferring Assets”.

Annexure 23

Secured Lender Confirmation

[To be printed on Secured Lender's letterhead]

To: Wellington Regional Council, a public statutory body constituted under the Local Government Act 2002 ("**GWRC**")

From: [Insert name and company number of the Secured Lender] of [Insert address] (the "**Secured Lender**")

In respect of: [Insert name and company number of the Operator/Transferring Asset Related Party/ Related Party (as applicable)] of [Insert address] (the "**Security Provider**")

Date: [#]

1. We refer to the Partnering Contract dated [#] between [insert Operator name] and GWRC ("**Partnering Contract**"). Unless otherwise defined in this deed poll, capitalised terms used herein shall have the meaning given to them in the Partnering Contract.
2. In this deed poll, the following terms shall have the meanings given below:

Loan Agreements means [insert details of the relevant facility/loan agreements in respect of which security has been granted by the Security Provider].

Market Value means the market value of the relevant assets as agreed by GWRC and the Secured Lender or, if agreement is unable to be reached within 5 Business Days, as determined by an independent valuer with appropriate expertise appointed jointly by GWRC and the Secured Lender.

Outstanding Debt Proportion means that percentage of the outstanding Secured Indebtedness which is equivalent to the Partnering Contract Asset Percentage.

Partnering Contract Asset Percentage means the amount calculated as follows:

$$PCAP = (PCA \div TSA) \times 100$$

Where:

PCAP is the Partnering Contract Asset Percentage;

PCA is the total Market Value of those Transferring Assets that are subject to the Security Interests granted by the Security Provider and in respect of which GWRC requires the Secured Lender not to enforce its Security Interests;

TSA is the total Market Value of the assets of the Security Provider over which Security Interests exist in favour of the Secured Lender.

Secured Indebtedness means the aggregate amount of moneys owing under the Loan Agreements, the repayment of which is secured by the relevant Security Interests granted in favour of the Secured Lender.

3. The Secured Lender acknowledges and recognises:
 - a. the rights of GWRC under the Transaction Documents in relation to the Transferring Assets and the Transferring Asset Agreements; and
 - b. the obligations of the Security Provider and the restrictions imposed on the Security Provider under the Transaction Documents in relation to the Transferring Assets and/or Transferring Asset Agreements.
4. The Secured Lender shall provide not less than 5 Business Days' prior written notice to GWRC before enforcing any Security Interests granted in favour of the Secured Lender where such enforcement would (or is likely to) prevent, hinder or materially adversely affect the ability of GWRC to exercise its rights or the ability of the Security Provider to perform its obligations referred to in paragraph 3.
5. For as long as GWRC undertakes to the Secured Lender to pay the Outstanding Debt Proportion in accordance with the terms of the Loan Agreements (and subject to GWRC complying with such undertaking), the Secured Lender shall not enforce any Security Interests where such enforcement would (or is likely to) prevent, hinder or materially adversely affect the ability of GWRC to exercise its rights or the ability of the Security Provider to perform its obligations referred to in paragraph 3.
6. The Secured Lender shall promptly provide such information to GWRC as is required to enable GWRC to determine whether or not to give the undertaking referred to in paragraph 5.
7. Notices and information to be provided under paragraph 4 and paragraph 6 shall be sent by the Secured Lender by email to *[insert GWRC email address]* or by post to *[insert GWRC postal address]* or such other email or postal address as may be notified to the Secured Lender by GWRC from time to time.
8. This deed poll is governed by and construed in accordance with the laws of New Zealand.

EXECUTED AND DELIVERED AS A DEED BY THE SECURED LENDER

Each attorney executing this deed poll states that [he/she] has no notice of revocation or suspension of [his/her] power of attorney.

[Insert execution clause of Secured Lender]

