

Dated *10* March 2016

**Partnering Contract
PT0416**

GREATER WELLINGTON METRO RAIL SERVICE

Wellington Regional Council (**GWRC**)

Greater Wellington Rail Limited (**GWRL**)

and

Transdev Wellington Limited (**Operator**)


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Partnering Contract

Parties

- 1 Wellington Regional Council, a public statutory body constituted under the Local Government Act 2002 (**GWRC**);
- 2 Greater Wellington Rail Limited (company number 1846367) (**GWRL**); and
- 3 Transdev Wellington Limited (company number 5164521) (**Operator**).

Background

- A The 2014 Wellington Regional Public Transport Plan sets the direction for public transport in the Wellington region for the 10 years commencing 1 July 2014 consistent with principles set out at section 115(1) of the LTMA as follows:
- (i) that GWRC and public transport operators should work in partnership to deliver public transport services and infrastructure necessary to meet the needs of passengers;
 - (ii) the provision of public transport services should be coordinated with the aim of achieving the levels of integration, reliability, frequency and coverage necessary to encourage passenger growth;
 - (iii) potential operators should have access to regional public transport markets to increase confidence that public transport services are priced efficiently;
 - (iv) incentives should exist to reduce reliance on public subsidies to cover the cost of providing public transport services; and
 - (v) the planning and procurement of public transport services should be transparent.
- B The LTMA requires the allocation of all public transport services in the Wellington region (except for those that are exempt) to 'units' made up of unique service routes or groups of routes with passenger services for each unit delivered under contract between GWRC and the relevant public transport operator.
- C This Partnering Contract relates to the Rail Unit.
- D GWRL is a wholly owned subsidiary of GWRC and the owner of Vehicles and other assets required for the operation of the public transport services to be provided in regard to the Rail Unit.
- E The Operator has agreed to provide the Services using the Vehicles and other assets provided by GWRL and GWRC in accordance with this Partnering Contract.
- F GWRC has agreed to pay for the Services on the terms set out in this Partnering Contract.

Operative provisions

Part One – Preliminary

1. Definitions and interpretation

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

2. GWRL's rights, powers and benefits

2.1 Except in the case of rights, powers and benefits relating to the Farebox Revenue, to the extent that this Partnering Contract confers a right, power or benefit on GWRC, such right, power or benefit also extends to GWRL and GWRC holds that right, power or benefit on its own behalf and on behalf of GWRL and such right, power or benefit may be exercised by GWRL independently from GWRC and by GWRC independently from GWRL.

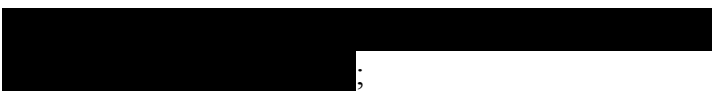

2.2 The Parties acknowledge that GWRL has appointed GWRC to act as its agent on behalf of GWRL in relation to all matters under this Partnering Contract including in respect of the rights and powers which GWRL has under this Partnering Contract. Where GWRC so acts, GWRL is bound by those acts as though they were the acts of GWRL. Such appointment of GWRC does not prevent GWRL from itself exercising any right or power which it has under this Partnering Contract.

3. Conditions precedent

Conditions

3.1 The following provisions of this Partnering Contract shall take effect and be binding upon the Parties from and including the date of this Partnering Contract:

- 3.1.1 this Part One (*Preliminary*) (excluding GWRL's obligations under clause 8.2);
- 3.1.2 clauses 11 (*MMIS provided by the Operator*), 16.2 to 16.5 inclusive (*Uniforms*), 18 (*Subcontracting, delegations and Key Personnel*), 24 (*Partnering Principles*), 27 (*Authorised Representatives*), 45 (*Set off*), 46 (*Disputes about payments*), 47 (*GST, rates, taxation, utilities and accounting principles*), 48.23 (*Ticket Agents*), 50 (*Insurance*) and 52 (*Financial performance and security*);
- 3.1.3 Part Eight (*Dispute Resolution*);
- 3.1.4 clause 56 (*Termination for Termination Events*);
- 3.1.5 clause 60 (*Exclusive rights of termination*);
- 3.1.6 Part Eleven (*Miscellaneous*);

- 3.1.7 Schedule 1 (*Definitions and Interpretation*) and Schedule 2 (*Agreement Details*);
 - 3.1.8 Paragraph 3.7.1 (*Working Timetable*) of Schedule 3 (*Passenger Services*);
 - 3.1.9 Paragraphs 2.4B and 2.4C (*Matangi 2 EMU Testing and Commissioning*) of Schedule 4 (*Vehicle Services*);
 - 3.1.10 Paragraph 1 (*Introduction*) of Schedule 5 (*Planning, Reporting and Meetings*);
 - 3.1.11 Schedule 7 (*Operator Insurance Requirement*), Schedule 8 (*Warranties and Representations*) and Schedule 17 (*Employee Transfer*);
 - 3.1.12 Paragraph 4.1 (*Process for adopting and implementing Conditions of Carriage*) of Annexure 7 (*Conditions of Carriage*);
 - 3.1.13 the Transition Plan and the Operator's Proposals, in each case to the extent that the same contain provisions relating to the satisfaction or furtherance of any of the conditions precedent set out in clause 3.3 (*Conditions*); and
 - 3.1.14 any other provision of this Partnering Contract which expressly obliges the Operator to perform an obligation prior to the Commencement Date.
- 3.2 Except as provided for in clause 3.1, the provisions of this Partnering Contract shall take effect and become binding on the Parties from and including the Commencement Date.
- 3.3 Subject to clause 3.4 (*Waiver of conditions precedent*), the occurrence of the Commencement Date is conditional on:
- 3.3.1 GWRC having received from the Operator copies of each of the following Transaction Documents duly executed by each party thereto (excluding GWRC and GWRL to the extent relevant) and otherwise completed in accordance with clause 3.3.2:
 - (a) the Deed of Accession to the Wellington Network Agreement;
 - (b) the Deed of Accession to the Common Access Terms;
 - (c)  ;
 - (d) the initial Performance Bond to be provided by the Operator pursuant to clause 52.1;
 - (e) not used;
 - (f) the Vehicle Services Subcontract;

- (g) the Carriage Locomotive and Carriage Shunt Service Agreement;
- (h) Ticket Agent Agreements with each Ticket Agent (excluding the Ticket Agent Agreement relating to the Freemans Lotto and News Agency as referred to in paragraph (a) of the definition of Ticket Agent); and
- (i) direct deeds in the form set out in Annexure 22 (*Key Subcontractor Direct Deed*) executed by the Operator and each Key Subcontractor (excluding in respect of the Carriage Locomotive and Carriage Shunt Service Agreement);

3.3.2 GWRC being satisfied that each of the Transaction Documents provided under clause 3.3.1 has been executed in a form approved by GWRC and is in full force and effect or is conditional only on the occurrence of the Commencement Date including by the Operator providing to GWRC and GWRL legal opinions in a form and from a law firm satisfactory to them in respect of capacity of, due execution by and enforceability against the Operator, [REDACTED] and Vehicle Services Subcontractor;

3.3.3 GWRC having received a draft Preliminary Commencement Certificate completed by the Operator in the form attached at Annexure 12 (*Preliminary Commencement Certificate*) confirming that the Operator has:

- (a) been granted an Interim Licence or a Licence (as applicable) 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; and
- (b) established in writing to the Access Provider's reasonable satisfaction, the matters set out at clause 4.8.4(b) of the Wellington Network Agreement;

3.3.4 GWRC having received from the Operator a certified copy of the Interim Licence or the Licence (as applicable) granted to the Operator and such other evidence as GWRC reasonably requests as to the matters stated in the draft Preliminary Commencement Certificate provided under clause 3.3.3;

3.3.5 GWRC having received from the Operator:

- (a) a certified copy of each Insurance Policy and any other insurance policies that the Operator is required to effect under the other Transaction Documents or a written confirmation from the Operator's insurers confirming that the terms of each Insurance Policy and any such other

- insurance policies that the Operator is required to effect comply with the insurance requirements under this Partnering Contract or the relevant Transaction Document (as applicable);
- (b) a Certificate of Currency for each Insurance Policy and any other insurance policies which the Operator is required to effect under the other Transaction Documents; and
 - (c) any other evidence reasonably required by GWRC to satisfy it that the Operator has effected insurance in accordance with this Partnering Contract and the other Transaction Documents and that such insurance is in full force and effect;
- 3.3.6 the Operator having performed its obligations under clause 5.2 (*Employees*);
- 3.3.7 GWRC being satisfied (acting reasonably) that the Operator has installed and tested the MMIS in accordance with the requirements of clause 11 (*MMIS provided by Operator*) and that the MMIS will be fit for purpose and ready for use on the Commencement Date;
- 3.3.8 GWRC having approved the design of the uniforms in writing pursuant to clause 16.3 and the Operator having demonstrated to GWRC's satisfaction (acting reasonably) that the Operator has acquired sufficient uniforms complying with the approved design to enable the Operator to comply with its obligations under clause 16.4;
- 3.3.9 GWRC having received the initial Working Timetable in accordance with paragraph 3.7.1 (*Working Timetable*) of Schedule 3 (*Passenger Services*);
- 3.3.10 the Operator providing evidence to the reasonable satisfaction of GWRC that the Operator has readily available to it the use of a spares warehouse facility in accordance with the requirements of clause 12.2;
- 3.3.11 the Operator providing evidence to the reasonable satisfaction of GWRC (including copies of the relevant agreements) that it has entered into appropriate agreements with Third Party Transport Operators pursuant to which those Third Party Transport Operators will provide alternative transport arrangements on behalf of the Operator in accordance with the requirements of Schedule 3 (*Vehicle Services*);
- 3.3.12 GWRC having received from the Operator an updated version of:
- (a) the draft initial annual business plan attached at Annexure 20 (*Draft Initial Annual Business Plan*) (including each of the plans referred to in Appendix 1 (Plans) of Schedule 5 (*Planning, Reporting and Meetings*));

- (b) the draft initial annual heavy maintenance plan attached at Annexure 15 (*Initial Annual Heavy Maintenance Plan*);
- (c) the draft initial three year heavy maintenance plan attached at Annexure 16 (*Initial Three Year Heavy Maintenance Plan*);
- (d) the draft overarching heavy maintenance plan attached at Annexure 17 (*Overarching Heavy Maintenance Plan*),

which in each case GWRC has (acting reasonably) confirmed in writing is acceptable to it;

- 3.3.13 GWRC being satisfied (acting reasonably) that the Operator has implemented the requirements of paragraph 2.1 (*Operator's Proposals to be implemented prior to the Commencement Date*) of Schedule 18 (*Operator's Proposals*);
- 3.3.14 GWRC having received from the Operator an updated version of the Matangi Fleet Maintenance Plan in accordance with paragraph 24 of Schedule 15 (*Transition Plan*) which GWRC has (acting reasonably) confirmed in writing is acceptable to it;
- 3.3.15 GWRC having received from the Operator a copy of each Key Subcontract which the Operator requires to have in effect in order to perform the Services in accordance with this Partnering Contract from the Commencement Date; and
- 3.3.16 GWRC having received from the Operator the Matangi 2 EMU Testing and Commissioning Services Budget in accordance with paragraph 2.4B of Schedule 4 (*Vehicle Services*) which GWRC has (acting reasonably) confirmed in writing is acceptable to it.

Waiver of conditions precedent

- 3.4 GWRC may, in its discretion, waive any of the conditions precedent in clause 3.3 (*Conditions*) by notice in writing to the Operator.
- 3.5 The Operator acknowledges that the conditions precedent set out in clause 3.2 (*Conditions*) are for the benefit of GWRC and that the Operator shall have no right to waive any such conditions precedent.

Preliminary Commencement Certificate

- 3.6 GWRC shall execute, complete and return a copy of the Preliminary Commencement Certificate to the Operator to confirm the Transfer Time and the Commencement Date as soon as reasonably practicable after GWRC:
 - 3.6.1 has received the draft Preliminary Commencement Certificate issued by the Operator in accordance with the requirements at clause 3.3.3; and

- 3.6.2 is satisfied (at GWRC's sole discretion) that each of the conditions in clause 3.3 (*Conditions*) has been satisfied by the Operator or waived by GWRC.

Consequences of non-fulfilment

- 3.7 Without prejudice to any other rights or remedies of GWRC and GWRL, a failure by the Operator to satisfy any of the conditions in clause 3.3 (*Conditions*) may give rise to a Termination Event pursuant to clause 56.1.1.

4. Appointment and Term

Appointment

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

Commencement of Term

- 4.2 The Term will commence from the Transfer Time.

Extension of Term

- 4.3 In this Partnering Contract:

- 4.3.1 the "**End of Term Measurement Period**" means the period of 36 Relevant Months ending on the seventh anniversary of the last day of the calendar month in which the Commencement Date falls;
- 4.3.2 each of the following requirements is an "**End of Term Performance Measure**" and the End of Term Performance Measures will only be deemed to have been met if, as at the seventh anniversary of the last day of the calendar month in which the Commencement Date falls, all of them have been met:
- (a) the number of Scheduled Services during the End of Term Measurement Period in respect of which the Operator incurs Performance Deductions due to a failure to meet the Reliability KPI does not exceed 1% of Scheduled Services;
 - (b) the number of Scheduled Services during the End of Term Measurement Period in respect of which the Operator incurs Performance Deductions due to a failure to meet the Punctuality KPI does not exceed 5% of Scheduled Services;
 - (c) the Operator has received or is entitled to at least one Customer Satisfaction Payment in respect of any period forming part of the End of Term Measurement Period and/or the results of any Customer Satisfaction Survey undertaken during the End of Term Measurement Period demonstrate that the average response (expressed as a percentage to two decimal points) to the questions contained in the Customer Satisfaction Survey

- exceeds the initial Customer Satisfaction Threshold calculated by the Surveying Organisation in accordance with paragraph 6.6 (*Setting the Customer Satisfaction Threshold*) of Annexure 9;
- (d) the Transport Agency has confirmed in writing to GWRC and the Operator that there are no material matters concerning the Operator's safety record that may have implications for the Extension Period, provided that such confirmation shall not be dated earlier than the date falling six years and nine months after the Commencement Date; and
 - (e) there are no unremedied Events of Default and no Termination Events subsisting.
- 4.4 Subject to clauses 4.5 to 4.8, the Operator may by notice in writing to GWRC given no later than the date falling seven years and 20 Business Days after the last day of the calendar month in which the Commencement Date falls, extend the Term for the Extension Period.
- 4.5 If the Operator wishes to serve a notice under clause 4.4, it shall first issue a written notice (**Request for Confirmation**) to GWRC providing evidence that it has met all of the End of Term Performance Measures and requesting GWRC to confirm whether or not it agrees. Such Request for Confirmation shall be issued within 5 Business Days after the seventh anniversary of the last day of the calendar month in which the Commencement Date falls.
- 4.6 The Operator shall promptly provide such information as GWRC may reasonably require to determine the extent to which the Operator has met the End of Term Performance Measures. It shall be the Operator's responsibility to procure that the Transport Agency provides the confirmation referred to in clause 4.3.2(d).
- 4.7 Within 10 Business Days of receipt of a Request for Confirmation, GWRC shall confirm in writing whether or not it agrees that the Operator has met the End of Term Performance Measures. If the Operator disputes GWRC's view as to whether or not the Operator has met the End of Term Performance Measures, it may refer the matter for determination by the Expert in accordance with clauses 53.9 to 53.15 (*Expert determination*) and the period for service of the Operator's notice under clause 4.4 shall be suspended during the period from the date of such referral until the date of such determination.
- 4.8 The Operator shall only be entitled to serve a notice extending the Term under clause 4.4 if:
- 4.8.1 GWRC has confirmed in writing that it agrees the Operator has met the End of Term Performance Measures; or
 - 4.8.2 where the Operator has referred the matter for determination by the Expert pursuant to clause 4.6, the Expert has determined that the Operator has met the End of Term Performance Measures.

- 4.9 If the Term is extended in accordance with clauses 4.4 to 4.8, the terms and conditions of this Partnering Contract (excluding clauses 4.4 to 4.8) will continue to apply during the Extension Period, subject to any earlier termination of this Partnering Contract.
- 4.10 If the Operator:
- 4.10.1 is not entitled to issue a notice extending the Term due to the operation of clause 4.8;
 - 4.10.2 notifies GWRC that it does not wish to serve a notice extending the Term; or
 - 4.10.3 subject to clause 4.7, does not serve notice under clause 4.4 by the date specified in clause 4.4,
- GWRC may, by written notice to the Operator, extend the Term beyond the Initial Expiry Date for the period of time specified in such notice (which period shall not be longer than three years after the Initial Expiry Date).
- 4.11 If GWRC serves a notice under clause 4.10, the terms and conditions of this Partnering Contract (excluding clause 4.10) will continue to apply during the period specified in such notice, subject to any earlier termination of this Partnering Contract.

Expiry of Term

- 4.12 Subject to being terminated earlier in accordance with this Partnering Contract and subject to clause 67 (*Survival of Obligations*), this Partnering Contract shall expire at 2.00am on the later of:
- 4.12.1 the Initial Expiry Date;
 - 4.12.2 if the Term is extended in accordance with clauses 4.4 to 4.9 (*Extension of Term*), the expiry date of the Extension Period;
 - 4.12.3 if GWRC issues a notice under clause 4.10, the last day of the period of extension specified in such notice; and
 - 4.12.4 a date agreed in writing by GWRC and the Operator.

5. Transition

Employees

- 5.1 The Operator shall, within 3 Business Days following the date of this Partnering Contract use its best endeavours to meet with the GWRC representative, the relevant KiwiRail representative and the relevant representative from the Rail & Maritime Transport Union to confirm and obtain up to date information about Existing Employees, including such information that the Operator may reasonably require to enable offers of employment to be made to the Existing Employees.

5.2 Prior to 18 March 2016, the Operator shall demonstrate to GWRC's reasonable satisfaction that, with effect from 21 March 2016, the Operator or its subcontractors will employ sufficient numbers of appropriately qualified, experienced and trained employees (whether they be Existing Employees or otherwise) to enable the Operator to perform the Services in accordance with this Partnering Contract.

5.3 Not used.

Licence and MMIS Plan

5.4 Prior to 18 March 2016, the Operator shall submit to GWRC a draft plan updating the information in the Transition Plan to set out in more detail how the Operator shall:

5.4.1 discharge its obligations under clause 11 (*MMIS provided by Operator*), such plan to specify the key dates and milestones which will apply in relation to the installation and testing of the MMIS by the Operator; and

5.4.2 obtain the Interim Licence in accordance with clause 6.2 and obtain the full Licence by the date specified in clause 6.8, such plan to specify the key dates and milestones which will apply in connection therewith (which dates shall be consistent with the Operator's obligations under clause 6 (*Licence Requirement*)).

5.5 The draft plan submitted by the Operator pursuant to clause 5.4 shall be consistent with the Transition Plan (to the extent relevant).

5.6 Within 5 Business Days of receipt by GWRC of the draft plan, GWRC shall (acting reasonably) either:

5.6.1 approve the plan in writing; or

5.6.2 provide written comments on the draft plan.

5.7 If GWRC has provided comments on the draft plan pursuant to clause 5.6.2, the Operator shall duly amend the draft plan to incorporate and reflect those comments and shall resubmit the amended draft plan to GWRC within 3 Business Days following receipt by the Operator of GWRC's comments. Clause 5.6 and this clause 5.7 shall reapply until such plan is approved in writing by GWRC.

5.8 The Operator shall:

5.8.1 implement and comply with the plan as approved by GWRC pursuant to clause 5.6.1; and

5.8.2 within three Business Days of a request, provide an update to GWRC as to the extent to which the obligations, steps and actions identified in such plan have been commenced and completed.

Transition Plan

- 5.9 The Transition Plan shall apply and have effect from the date of this Partnering Contract until the date falling 6 months after the Commencement Date or such other date agreed by GWRC and the Operator in writing.
- 5.10 During the period specified in clause 5.9, the Operator shall fully adopt, implement and comply with the Transition Plan.

TPTA

- 5.11 The Operator hereby acknowledges the terms of the TPTA and, without prejudice to the generality of the foregoing, specifically acknowledges the provisions of and those matters referred to in:
- 5.11.1 clause 6.2 (*Transitional arrangements*) of the TPTA; and
 - 5.11.2 clause 6.3 (*Access to KiwiRail Personnel*) of the TPTA.
- 5.12 The Operator shall not, and shall ensure that the Operator Associates shall not, through its or their acts or omissions cause or contribute to any breach by GWRC or GWRL of the TPTA.
- 5.13 To the extent that the Operator reasonably requires GWRC to procure a novation of any Material Contract (as defined in the TPTA) pursuant to clause 10.12.1 of the TPTA, the Operator shall notify GWRC as soon as reasonably practicable and in any event prior to the Commencement Date.
- 5.14 In accordance with clause 16.3 (*No responsibility by KiwiRail*) of the TPTA, the Operator hereby confirms that it accepts full responsibility for assessing the requirements and cost of the Services and for otherwise entering into and complying with this Partnering Contract, and the Operator hereby acknowledges and agrees that:
- 5.14.1 it has entered into this Partnering Contract at its own risk;
 - 5.14.2 it has made its own assessment as to the quality of the material and other information provided during the Tender Process (as defined in the TPTA);
 - 5.14.3 KiwiRail, GWRC and GWRL are not responsible and will not have any liability for any cost, loss or liability resulting from the Operator's decision to enter into and comply with this Partnering Contract including (without limitation) any failure to assess the quality of the material or other information provided during the Tender Process (as defined in the TPTA), the nature and quality of the Transferring Assets (as defined in the TPTA) or to estimate the difficulty or cost of the transition and providing the Services;
 - 5.14.4 it will not make or threaten to make any claim against KiwiRail, GWRC or GWRL for any costs, loss or liability resulting from the Operator's decision to enter into and comply with this Partnering

Contract including (without limitation) any failure to assess the quality of the material or other information provided during the Tender Process (as defined in the TPTA) or to estimate the difficulty or cost of the transition and providing the Services; and

- 5.14.5 the above commitments create a right under the Contracts (Privity) Act 1982 which may be enforced by KiwiRail.
- 5.15 If reasonably requested to do so by the Operator, GWRC shall use all reasonable endeavours to enforce its rights under the TPTA.

Carriage Locomotive and Carriage Shunt Service Agreement

- 5.16 GWRC shall procure that KiwiRail Limited executes the Carriage Locomotive and Carriage Shunt Service Agreement on or prior to the Commencement Date provided that GWRC shall not be in breach of this clause 5.16 to the extent it fails to procure such execution due to any failure by the Operator and KiwiRail Limited to agree:
- 5.16.1 the identity of the guarantor for the purposes of the CLCSA; or
- 5.16.2 arrangements for the Operator to provide support to KiwiRail Limited in respect of the Capital Connection and Northern Explorer services.
- 5.17 If GWRC requests the Operator to do so in writing, the Operator shall serve on KiwiRail an Early Termination Notice (as defined in the CLCSA) on such terms as GWRC may specify. GWRC shall have the conduct of all discussions, negotiations and proceedings on behalf of the Operator in respect of the amount of the Early Termination Fee (as defined in the CLCSA). GWRC may settle and agree the amount of such Early Termination Fee in its absolute discretion and GWRC shall pay the amount of such Early Termination Fee (if any) to KiwiRail on the Operator's behalf. The Operator shall do all things reasonably required by GWRC in connection with such discussions, negotiations and proceedings.

Technical Support Agreement

- 5.18 The Parties acknowledge that the Technical Support Agreement has been, or will prior to the Commencement Date be, terminated and agree that the Operator shall:
- 5.18.1 provide the technical support services specified in paragraph 16A (*Technical support services*) of Schedule 4 (*Vehicle Services*); and
- 5.18.2 provide the Matangi 2 EMU Testing and Commissioning Services in accordance with Schedule 4 (*Vehicle Services*) of this Partnering Contract.
- 5.19 Not used.
- 5.20 Not used.

Simulator Specification and procurement

- 5.21 From the date of this Partnering Contract, the Operator shall provide reasonable assistance to GWRC in connection with the procurement, testing and commissioning of the Simulator by GWRL. In particular, promptly following a request to do so the Operator shall (acting reasonably and in good faith) consult with GWRC and provide comments on the draft Simulator Specification and as to the terms and conditions on which the Simulator will be procured.
- 5.22 The Parties acknowledge and agree that as at the date of this Partnering Contract any versions of the Simulator Specification provided to the Operator are drafts only and that it is their intention that the Simulator Specification will be further developed, refined and amended by GWRC (in consultation with the Operator) following the date of this Partnering Contract. Subject to any budgetary constraints, GWRC shall use reasonable endeavours to ensure that the final version of the Simulator Specification reflects the reasonable comments provided by the Operator.
- 5.23 Once the final version of the Simulator Specification has been agreed by GWRC the Operator shall update the Matangi Fleet Maintenance Plan to include the requirements for maintaining the Simulator and submit such plan to GWRC for approval.
- 5.24 Within 10 Business Days of receipt by GWRC of the updated Matangi Fleet Maintenance Plan pursuant to clause 5.23, GWRC may either:
- 5.24.1 acting reasonably, provide written comments to the Operator in respect of the updated draft plan; or
 - 5.24.2 notify the Operator that it has no comments on the draft plan.
- 5.25 If GWRC provides comments on the updated Matangi Fleet Maintenance Plan pursuant to clause 5.24.1, the Operator shall promptly amend the draft Matangi Fleet Maintenance Plan to reflect such comments and resubmit the amended draft plan to GWRC, in which event clauses 5.24 and 5.25 shall reapply.
- 5.26 Any amendment to, or replacement of the Simulator Specification or updating of the Matangi Fleet Maintenance Plan as contemplated by clauses 5.21 to 5.25 shall not constitute or give rise to a Contract Variation or Minor Contract Variation.
- 5.27 Notwithstanding anything to the contrary in this Partnering Contract, GWRC may elect not to proceed with the procurement of the Simulator and shall have no liability to the Operator in connection with such election.
- 5.28 The Operator shall comply with its obligations under the deed of confidentiality that the Operator has executed relating to the Simulator Specification.

Electric Shunt Procurement

- 5.29 The Parties acknowledge and agree that:

- 5.29.1 GWRL is, at the date of this Partnering Contract, contemplating the potential acquisition of one or more Electric Shunts;
- 5.29.2 the Vehicle Services Fee does not, at the date of this Partnering Contract, include the cost (if any) of Maintenance Works in respect of the Electric Shunts;
- 5.29.3 the availability of up to two Electric Shunts would create Operator efficiencies compared to the diesel shunt by enabling reduced downtime, reduced staffing requirements, and reduced risk of false fire alarm evacuations; and
- 5.29.4 if GWRL elects to acquire Electric Shunts:
- (a) it shall notify the Operator of such election, including the quantity, specification and expected date of delivery of such Electric Shunts;
 - (b) GWRL shall provide such other information as the Operator may reasonably request to enable the Operator to understand the Maintenance Works that would be required in respect of such Electric Shunts;
 - (c) GWRC shall issue a Minor Contract Variation Notice to the Operator requesting that the Operator submit a Minor Contract Variation Quote setting out the Operator's estimate of the Net Financial Impact of assuming the obligation to carry out Maintenance Works in respect of the Electric Shunts;
 - (d) the assumption by the Operator of the obligation to perform Maintenance Works in respect of the Electric Shunts shall be deemed to be a Minor Contract Variation and paragraph 5 (*Minor Contract Variations*) of Schedule 16 (*Change Events and Net Financial Impact*) shall apply to it whether or not it in fact falls within the definition of "Minor Contract Variation", and
 - (e) notwithstanding anything to the contrary in this Partnering Contract, the Operator shall not be obliged to carry out Maintenance Works in respect of any Electric Shunt and will not be obliged to comply with paragraph 2.5.2(c) (*Hand Back Standards*) of Schedule 4 (*Vehicle Services*) in respect of any Electric Shunt unless and until GWRC issues a Variation Order pursuant to paragraph 5.5 (*GWRC may direct Minor Contract Variation*) of Schedule 16 (*Change Events and Net Financial Impact*) in respect of such Minor Contract Variation Quote.
- 5.30 Notwithstanding anything to the contrary in this Partnering Contract, GWRL may elect not to proceed with the procurement of any Electric Shunt and shall have no liability to the Operator in connection with such election.

No warranty

- 5.31 Neither GWRC nor GWRL:
- 5.31.1 give any representation, warranty or undertaking; or
 - 5.31.2 shall have any liability to the Operator,
- in respect of the condition or quality of the Simulator or Electric Shunts or their fitness for use by the Operator in the provision of the Services or for any other purpose.

6. Licence requirement

Interim Licence

- 6.1 The Parties acknowledge that the Transport Agency may grant an Interim Licence to the Operator under section 17(2) of the Railways Act if:
- 6.1.1 the Operator is taking over and continuing an existing "rail activity" previously carried out by another "rail participant" (each as defined in the Railways Act); and
 - 6.1.2 the Operator has applied for a full Licence, but is yet to have its:
 - (a) Safety Case approved, or
 - (b) application for a full Licence determined by the Transport Agency.
- 6.2 The Operator shall ensure that an Interim Licence is granted to the Operator as soon as reasonably practicable following the date of this Partnering Contract.
- 6.3 The Operator shall keep GWRC fully informed as to the status of its application for an Interim Licence, including promptly informing GWRC of the date on which the Operator submits the application and promptly informing GWRC when the Operator receives feedback in regard to the application from the Transport Agency (with a copy of such feedback).
- 6.4 GWRC may at any time request the Operator to confirm the date on which it expects to have satisfied all of the conditions precedent set out in clause 3.3 and the date on which the Operator anticipates that it will issue a completed draft Preliminary Commencement Certificate to GWRC in accordance with clause 3.3.3. The Operator shall respond to any such request promptly and in any event within 2 Business Days.
- 6.5 If the Operator considers that for any reason it may be unable to obtain the grant of an Interim Licence or satisfy any of the other conditions precedent set out in clause 3.3:
- 6.5.1 prior to 30 June 2016;
 - 6.5.2 prior to any date notified to GWRC in accordance with clause 6.4; or

6.5.3 otherwise in accordance with the plan approved by GWRC pursuant to clause 5.6.1 or the Transition Plan,

the Operator shall immediately notify GWRC in writing of the reasons for delay, the steps being taken to address outstanding matters and the proposed date by which the Operator reasonably expects to have been granted the Interim Licence and to have satisfied the conditions precedent set out in clause 3.3 . The Operator acknowledges and agrees that in such circumstances, GWRC may be required to give notice to KiwiRail under the provisions at clause 4.2 of the TPTA in order to extend the term of the existing contractual arrangements with KiwiRail.

6.6 The Operator shall promptly provide such information as GWRC may reasonably request in connection with any matter referred to in clause 6.5.

Full Licence

6.7 The Parties acknowledge that the Transport Agency may grant a Licence to the Operator only if the Transport Agency has determined that the matters set out at section 17(1) of the Railways Act have been satisfied.

6.8 The Operator shall ensure that a full Licence is granted to it on or before the date falling 5 months after the Commencement Date.

6.9 The Operator shall keep GWRC fully informed as to the status of its application for a full Licence, including promptly informing GWRC of the date on which the Operator submits the application and promptly informing GWRC when the Operator receives feedback in regard to the application from the Transport Agency (with a copy of such feedback).

6.10 Without prejudice to clause 6.9, if the Operator considers that it may be unable for any reason to obtain the grant of a full Licence prior to the date specified in clause 6.8, it shall immediately notify GWRC in writing of the reasons for delay, the steps being taken to address outstanding matters and the proposed date by which such full Licence will be obtained. The Operator shall promptly provide such further information as GWRC may reasonably request in connection with any matter referred to in this clause 6.10.

6.11 Immediately upon the grant of the full Licence the Operator shall provide a certified copy of the Licence to GWRC.

Operator confirmation

6.12 The Operator shall ensure that it has submitted its application for a full Licence and received initial feedback from the Transport Agency in regard to its application on or before 21 March 2016.

6.13 On or before 21 March 2016, the Operator shall:

6.13.1 provide written confirmation to GWRC (with supporting evidence) that it has submitted its application for a full Licence;

- 6.13.2 provide written confirmation to GWRC that it has received initial feedback from the Transport Agency in relation to its application for a full Licence (including the draft Safety Case), together with a copy of such feedback;
- 6.13.3 provide written confirmation to GWRC that the Operator has fully considered all feedback from the Transport Agency and based on this feedback has established (acting reasonably) that:
- (a) there is no foreseeable obstacle of which the Operator is aware that is likely to prevent the Transport Agency from issuing an Interim Licence by the date specified in clause 6.5.1 or from issuing a full Licence by the date specified in clause 6.8; or
 - (b) there are foreseeable obstacles of which the Operator is aware that are likely to prevent the Transport Agency from issuing an Interim Licence by the date specified in clause 6.5.1 and/or from issuing a full Licence by the date specified in clause 6.8, in which case the Operator shall provide full details thereof, including its proposals for overcoming those obstacles and its reasonable estimate as to when the Interim Licence and full Licence will be granted; and
- 6.13.4 notify GWRC whether it considers that GWRC should require KiwiRail to continue to provide the Existing Services (as defined under the TPTA) under clause 4 of the TPTA beyond 30 June 2016 and, if so, for what period.
- 6.14 The Operator shall promptly provide such information as GWRC may reasonably request in connection with any confirmation or notification issued by the Operator pursuant to clause 6.13.

7. **Employment of Existing Employees and vulnerable employees**

- 7.1 The Parties shall comply with their respective obligations under Schedule 15 (*Transition Plan*) and Schedule 17 (*Employee Transfer*).

8. **Operator purchase of Initial Transferring Assets**

Confirmation of Initial Transferring Assets and Aggregate Book Value

- 8.1 On the day prior to the Commencement Date, GWRC or GWRL shall undertake a stock take (including in respect of assets ordered but not yet received) and shall confirm to the Operator in writing:
- 8.1.1 the nature and quantity of the Initial Transferring Assets to be transferred to the Operator pursuant to this clause 8, with each Initial Transferring Asset allocated into one of the following categories:
 - (a) Spares (excluding Rotable Items and Consumables);

- (b) Rotable Items;
 - (c) General Tools;
 - (d) Special Tools;
 - (e) Consumables; or
 - (f) Other Assets;
- 8.1.2 a reasonable assessment of the condition of each of the Initial Transferring Assets (excluding the Consumables and any Other Assets); and
- 8.1.3 the aggregate book value of the Initial Transferring Assets as determined by GWRL in its absolute discretion and adjusted by GWRL (acting reasonably) to reflect the condition of each of the Initial Transferring Assets as identified pursuant to clause 8.1.2 (**Aggregate Book Value**), provided that for the purposes of calculating the Aggregate Book Value, the total aggregate book value in respect of all Consumables and any Other Assets comprising the Initial Transferring Assets shall be \$20.00 (which amount shall not be Indexed).

Transfer of ownership

- 8.2 On:
- 8.2.1 the Commencement Date; or
 - 8.2.2 in the case of Initial Transferring Assets not in the ownership of GWRL as at the Commencement Date, the later of the date of delivery to the Operator or the date on which ownership passes to GWRL,
- GWRL shall transfer the full legal and beneficial ownership of the Initial Transferring Assets to the Operator or the Vehicle Services Subcontractor, as directed by the Operator.

Invoice

- 8.3 On the Commencement Date, GWRL shall issue a valid tax invoice to the Operator for the amount of the Aggregate Book Value.

Payment of Aggregate Book Value

- 8.4 The Parties acknowledge that the Operator has budgeted to pay GWRL an amount equal to the Provisional Sum in consideration of the transfer to it of the Initial Transferring Assets.
- 8.5 The Operator shall pay an amount equal to the Aggregate Book Value to GWRL in consideration of the transfer to the Operator of the Initial Transferring Assets within 3 Business Days after receipt of the invoice pursuant to clause 8.3. The Parties believe that the Aggregate Book Value best reflects the fair market value of the Initial Transferring Assets.

- 8.6 If the Aggregate Book Value is greater than the Provisional Sum, then the Passenger Services Fee payable in respect of the first Year shall be increased by an amount calculated as follows:

$$SFI = Excess \times Margin$$

Where:

SFI is the amount by which the Passenger Services Fee is to be increased;

Excess is the amount by which the Aggregate Book Value exceeds the Provisional Sum; and

Margin is the rate per annum which is 1 per cent per annum above the 90 day bank bill bid settlement rate displayed on page BKBM (or its successor page) of the Reuters Monitor Screen at 10.45am on the Commencement Date.

- 8.7 If the Aggregate Book Value is less than the Provisional Sum, then the Passenger Services Fee payable in respect of the first Year shall be decreased by an amount calculated as follows:

$$SFD = Underage \times Margin$$

Where:

SFD is the amount by which the Passenger Services Fee is to be decreased;

Underage is the amount by which the Aggregate Book Value is less than the Provisional Sum; and

Margin is the rate per annum which is 1 per cent per annum above the 90 day bank bill bid settlement rate displayed on page BKBM (or its successor page) of the Reuters Monitor Screen at 10.45am on the Commencement Date.

No warranty

- 8.8 Except to the extent otherwise required by applicable Law, neither GWRC nor GWRL:

8.8.1 give any representation, warranty or undertaking; or

8.8.2 shall have any liability to the Operator,

in respect of the condition or quality of the Initial Transferring Assets or their fitness for use by the Operator in the provision of the Services or for any other purpose. The Operator acknowledges and agrees that it has undertaken its own due diligence in this regard.

9. Warranties and representations

Warranties correct

- 9.1 The Operator represents and warrants to GWRC that each of the statements in Schedule 8 (*Warranties and representations*) is true, correct and not misleading. Such representations and warranties are given by the Operator on the date of this

Partnering Contract and shall be deemed repeated on each day thereafter up to and including the Termination Date by reference to the facts existing on that day.

Notification of change

9.2 The Operator must immediately notify GWRC in writing upon becoming aware that any representation or warranty given or deemed repeated by the Operator under this Partnering Contract has become untrue, incorrect or misleading in whole or in part at any time prior to the Termination Date.

Reliance on representations and warranties

9.3 The Operator acknowledges that GWRC has entered into or will enter into this Partnering Contract and the other Transaction Documents in reliance on the representations and warranties given by the Operator in this clause 9 and in Schedule 8 (*Warranties and representations*).

GWRC warranties

9.4 GWRC represents and warrants to the Operator that:

9.4.1 it has power to enter into and perform its obligations under this Partnering Contract and the other Transaction Documents to which it is expressed to be a party, and to carry out the transactions contemplated by those documents; and

9.4.2 this Partnering Contract and each other Transaction Document to which it is party constitute a valid and binding obligation on GWRC and are enforceable in accordance with their terms, in each case subject to any applicable laws.

GWRL warranties

9.5 GWRL represents and warrants to the Operator that:

9.5.1 it has power to enter into and perform its obligations under this Partnering Contract and the other Transaction Documents to which it is expressed to be a party, and to carry out the transactions contemplated by those documents; and

9.5.2 this Partnering Contract and each other Transaction Document to which it is party constitute a valid and binding obligation on GWRL and are enforceable in accordance with their terms, in each case subject to any applicable laws.

Part Two – Operator obligations and rights

10. Services

Scope of Services

- 10.1 With effect from the Transfer Time until and including the Termination Date, the Operator shall in return for payment of the Services Fee and subject to the terms and conditions of this Partnering Contract, provide and perform the following:
- 10.1.1 Passenger Services in accordance with Schedule 3 (*Passenger Services*);
 - 10.1.2 Vehicle Services in accordance with Schedule 4 (*Vehicle Services*);
 - 10.1.3 Planning and Management Services in accordance with the provisions at Part Four (*Partnering and management of this Partnering Contract*) and Schedule 5 (*Planning, Reporting and Meetings*);
 - 10.1.4 compliance with the warranties and representations set out at Schedule 8 (*Warranties and representations*);
 - 10.1.5 the obligations, warranties and representations of the Operator under the Transition Plan to be performed in accordance with clauses 5.9 and 5.10 (*Transition Plan*);
 - 10.1.6 hand over services in accordance with Part Ten (*Obligations associated with change of Operator*); and
 - 10.1.7 all the other obligations, warranties and representations of the Operator under this Partnering Contract,
- together the ‘**Services**’.
- 10.2 For the avoidance of doubt, the Operator shall commence provision of passenger carrying services on the Wellington Rail Network with effect from the Transfer Time. Notwithstanding anything to the contrary in this Partnering Contract, nothing in this Partnering Contract obliges or entitles the Operator to operate passenger carrying services on the Wellington Rail Network prior to the Transfer Time.

Objectives, outcomes and outputs for Services

- 10.3 The Operator shall provide the Services in a manner and to a standard that ensures achievement of:
- 10.3.1 the Passenger Services Objectives and Outcomes;
 - 10.3.2 the Vehicle Services Objectives and Outcomes;
 - 10.3.3 the Vehicle Use in Service Outputs;
 - 10.3.4 the Hand Back Standards; and
 - 10.3.5 the requirements set out in the Annual Business Plan.

11. MMIS provided by Operator

11.1 The Operator shall supply and provide a MMIS capable of managing the Vehicle Services.

11.2 The Operator shall install the MMIS at the EMU Depot and test the MMIS at the EMU Depot in accordance with:

11.2.1 the Transition Plan;

11.2.2 the plans approved by GWRC pursuant to clause 5.6.1 (Licence and MMIS Plan); and

11.2.3 the MMIS technical specification set out in Appendix 2 of Schedule 4 (*Vehicle Services*),

and ensure that such MMIS is fully operational and available for remote access (including from the Carriage Depot) on or before the Commencement Date and remains fully operational and available for remote access in accordance with the above throughout the Term.

11.3 Before the Commencement Date, the Operator shall demonstrate to GWRC's reasonable satisfaction that it has installed and tested the MMIS in accordance with the requirements of this clause 11 (*MMIS provided by Operator*) and that the MMIS will be fit for purpose and ready for use on the Commencement Date.

11.4 The Operator shall ensure that, throughout the Term, it complies with paragraph 8 (*MMIS Management Services*) of Schedule 4 (*Vehicle Services*).

12. Wellington Network, Vehicles, assets and systems used in provision of Services

General

12.1 The Operator shall provide the Services:

12.1.1 in accordance with the rights to use the Wellington Rail Network for the purpose of carrying on metro services as set out in the Wellington Network Agreement and otherwise in accordance with the requirements of the Wellington Network Agreement, the Common Access Terms, the Deed of Accession to the Wellington Network Agreement and the Deed of Accession to the Common Access Terms;

12.1.2 using the Vehicles, EMU Depot Plant and Equipment, Stations (excluding Wellington Station), Depot Facilities and the GWRL Systems provided by GWRL in accordance with clause 19 (*GWRL provision of Vehicles, Stations, Depot Facilities and related assets*);

12.1.3 using Wellington Station, the GWRC Assets and GWRC Systems provided by GWRC in accordance with clause 20 (*GWRC Provision of Wellington Station, GWRC Assets and GWRC Systems*);

- 12.1.4 using the MMIS provided by the Operator in accordance with clause 11 (*MMIS provided by Operator*);
- 12.1.5 using the Initial Transferring Assets acquired from GWRL in accordance with clause 8 (*Operator purchase of Initial Transferring Assets*);
- 12.1.6 using the locomotives (with associated drivers) and the shunts provided by KiwiRail Limited under the Carriage Locomotive and Carriage Shunt Service Agreement;
- 12.1.7 on and from the ETS Implementation Date, using the IFT System Equipment provided by GWRC in accordance with clause 20 (*GWRC Provision of Wellington Station, GWRC Assets and GWRC Systems*); and
- 12.1.8 using such other appropriate assets, materials and systems that the Operator considers are required (at the Operator's own cost).

Spares warehouse

- 12.2 For the duration of the Term, the Operator shall ensure that it has readily available to it the use of a spares warehouse facility which is:
 - 12.2.1 suitable for the storage of Spares and Rotable Items that cannot be stored at the Depot Facilities;
 - 12.2.2 approximately 1200 square metres in size;
 - 12.2.3 situated in an appropriate location; and
 - 12.2.4 kept reasonably secure at all times,and the Operator shall use such facility for the purposes contemplated by clause 12.2.1.

Maintained Assets

- 12.3 Without prejudice to any other obligations of the Operator, the Operator shall ensure that it undertakes such Maintenance Works as are necessary to ensure that all of the Maintained Assets are kept, maintained, protected and preserved:
 - 12.3.1 in proper working order;
 - 12.3.2 in good repair and condition and in compliance with all applicable Law and Consents; and
 - 12.3.3 in accordance with Good Industry Practice.

IFT System Equipment

- 12.4 On and from the ETS Implementation Date:
 - 12.4.1 subject to clause 12.4.2, GWRC shall procure the replacement or repair of all IFT System Equipment which is damaged or defective;

- 12.4.2 the Operator shall (to the maximum extent permitted by Law) indemnify GWRC and GWRL (and keep them so indemnified) on demand from and against any Claim or Loss (including data recovery costs) relating to loss of or damage to:
- (a) the Operator IFT System Equipment, except to the extent caused by normal wear and tear or covered by any warranty provided by the IFT System Provider to GWRC; or
 - (b) the IFT System to the extent caused by the acts or omissions of the Operator or any Operator Associate;
- 12.4.3 in respect of any systems or equipment of the Operator or the Operator Associates, the Operator shall (and shall procure that the Operator Associates shall):
- (a) not connect or interface such equipment or systems with the IFT System without GWRC's prior written consent; and
 - (b) comply with all policies and procedures provided by GWRC; and
- 12.4.4 the Operator shall (and must procure that the Operator Associates shall):
- (a) ensure that all Operator IFT System Equipment is securely stored and operated only in accordance with Good Industry Practice;
 - (b) follow all procedures and processes specified from time to time by GWRC in respect of the operation, maintenance and repair of IFT System Equipment;
 - (c) promptly report to GWRC all damage to and faults in the IFT System Equipment and the IFT System, including a description and images of such damage and faults and the steps taken by the Operator in accordance with clause 12.4.4(b); and
 - (a) provide assistance and information requested by GWRC in investigating such damage and faults.

13. Use of Vehicles, assets and systems for proper purpose

- 13.1 Subject to clause 13.2, the Operator shall only use:
- 13.1.1 the Wellington Rail Network in accordance with the terms and conditions of the Wellington Network Agreement, the Common Access Terms, the Deed of Accession to the Wellington Network Agreement and the Deed of Accession to the Common Access Terms;
 - 13.1.2 the Vehicles for the purposes permitted under, and otherwise in accordance with, the Operating Lease;

- 13.1.3 the Stations, Depot Facilities and the EMU Depot Plant and Equipment for the relevant purposes permitted under Schedule 9 (*Stations and Depot Facilities*);
- 13.1.4 the GWRC Assets, GWRC Systems, GWRL Assets, GWRL Systems and any other assets and systems described at clause 12.1 (*Wellington Network , Vehicles, assets and systems used in provision of Services*), in each case to the extent such items are not referred to in clauses 13.1.1 to 13.1.3, for:
 - (a) the purposes of providing the Services;
 - (b) the purpose of performing any obligation imposed on the Operator under any other Transaction Document; or
 - (c) any other purpose approved in writing by GWRC.
- 13.2 To the extent that any person has provided the Operator with the terms of:
 - 13.2.1 any agreement entered into by GWRC and/or GWRL with any supplier, manufacturer or maintainer of any GWRC Asset, GWRC System, GWRL Asset, GWRL System, Spare, Rotable Item, Special Tool, General Tool, EMU Depot Plant and Equipment or any of the other assets or systems described at clause 12.1; or
 - 13.2.2 any warranty or guarantee relating to any of the items referred to in clause 13.2.1,the Operator shall not through its acts or omissions (and shall ensure that the Operator Associates shall not through their acts or omissions):
 - 13.2.3 breach the terms of such agreement, warranty or guarantee;
 - 13.2.4 cause or contribute to any breach by GWRC or GWRL of such agreement, warranty or guarantee;
 - 13.2.5 cause any such agreement, warranty or guarantee to be terminated, invalid, void or voidable (in each case in whole or in part); or
 - 13.2.6 otherwise prejudice any:
 - (a) rights and entitlement of GWRC or GWRL under or in connection with such agreement, warranty or guarantee; or
 - (b) Claim which may be brought by or on behalf of GWRC or GWRL under or in connection with such agreement, warranty or guarantee.

14. Licence, Laws and standards

Overarching requirements

- 14.1 Without prejudice to any other provision of this Partnering Contract, the Operator shall perform the Services in accordance with:

- 14.1.1 all applicable Law;
 - 14.1.2 the Operator's Licence and any Interim Licence (as applicable);
 - 14.1.3 any other Consent;
 - 14.1.4 the NRSS and all applicable Codes;
 - 14.1.5 the terms of this Partnering Contract (excluding the Operator's Proposals);
 - 14.1.6 the Operator's Proposals; and
 - 14.1.7 Good Industry Practice.
- 14.2 In the event of any inconsistency or conflict between any of the standards and requirements specified in clauses 14.1.1 to 14.1.7, then the descending order of precedence set out in clauses 14.1.1 to 14.1.7 shall apply to the extent of such inconsistency or conflict (with the standards and requirements referred to in clause 14.1.1 having the highest precedence and the standards and requirements referred to in clause 14.1.7 having the lowest precedence).

Participation in reviews

- 14.3 Without prejudice to any other obligation of the Operator under any Transaction Document (including its obligations under clause 10.2 (*Rail Network material changes*) of the Common Access Terms), if requested to do so by GWRC, the Access Provider or any Governmental Entity, the Operator shall (acting reasonably and in good faith) duly participate in a review of any change proposed by the Access Provider or a Governmental Entity in respect of the NRSS, the Codes or any Laws or other standards which are relevant to the Services (including the introduction of new standards, Codes or Laws).

Laws, licences, permits and consents

- 14.4 The Operator shall for the duration of the Term hold, maintain, comply with, ensure that the Maintained Assets comply with, and perform the Services in accordance with (and the Operator shall ensure that the Operator Associates shall at all times during the Term comply with):
- 14.4.1 the Operator's Licence and any Interim Licence (as applicable);
 - 14.4.2 any other Consents;
 - 14.4.3 all Laws and Consents that affect or relate to the Trains, the Vehicles or any other assets or systems described at clause 12.1 (*Wellington Network, Vehicles, assets and systems used in provision of Services*) or their use, regardless of whether the Law requires such compliance to be undertaken by GWRC, GWRL, the Operator or any other person; and
 - 14.4.4 all notices, orders and directions issued or given by a Governmental Entity which affect or relate to the Trains, the Vehicles or any other assets or systems described at clause 12.1 (*Wellington Network,*

Vehicles, assets and systems used in provision of Services) or their use, regardless of whether the notice, order or direction is addressed to or requires such compliance to be undertaken by GWRC, GWRL, the Operator or any other person.

- 14.5 The Operator shall, to the extent required by Law, ensure that all Operator Associates engaged in or in connection with the delivery of the Services are acceptable to or approved by the Transport Agency.
- 14.6 The Operator shall immediately provide written notice to GWRC of:
- 14.6.1 any actual or likely breach by it or any Operator Associate of the NRSS, any applicable Codes, any applicable Law, any Licence, any Interim Licence or any other Consent;
 - 14.6.2 any actual or proposed repeal, revocation, cancellation, termination or suspension of the Operator's Licence, Interim Licence or any other Consent;
 - 14.6.3 the expiry of the Operator's Licence, Interim Licence or any other Consent, in each case in circumstances where the same has not been renewed prior to such expiry taking effect;
 - 14.6.4 any actual or proposed material variations to the Operator's Licence, Interim Licence or any other Consent (including actual or proposed material variations to any conditions thereof or the actual or proposed imposition of new conditions in relation thereto); or
 - 14.6.5 any investigation being undertaken by the Transport Agency, WorkSafe or any other regulator which may result in a variation to the Operator's Licence, Interim Licence or any other Consent.

Correction Notices

- 14.7 If the Operator or any Operator Associate receives a warning, order, direction or other notification (each a "**Correction Notice**") from any Governmental Authority notifying the Operator or the Operator Associate that:
- 14.7.1 there has been or is likely to be a breach or non-compliance by the Operator or any Operator Associate of:
 - (a) the NRSS or any Code;
 - (b) any Law; or
 - (c) any Licence, Interim Licence or any other Consent; or
 - 14.7.2 action is required in order to prevent or rectify any such breach or non-compliance,
- the Operator shall immediately notify GWRC and provide GWRC with a copy of such Correction Notice.

- 14.8 Within 3 Business Days of receipt by the Operator or an Operator Associate of a Correction Notice, the Operator shall provide a written plan to GWRC setting out the Operator's proposals to:
- 14.8.1 proactively investigate the matters referred to in the Correction Notice;
 - 14.8.2 undertake corrective action in order to promptly remedy the matters referred to in the Correction Notice and to prevent such matters from reoccurring; and
 - 14.8.3 mitigate the effect of any matter referred to in the Correction Notice.
- 14.9 Within 5 Business Days of receipt of the written plan, GWRC shall (acting reasonably) either approve or reject such plan and give written notice of such approval or rejection (with reasons) to the Operator.
- 14.10 If GWRC has rejected a written plan pursuant to clause 14.9, the Operator shall amend the plan to take account of the comments of GWRC and shall resubmit such amended plan to GWRC within 3 Business Days of receipt of the notice of rejection, in which case clause 14.9 and this clause 14.10 shall reapply.
- 14.11 The Operator shall immediately implement and comply with any plan approved by GWRC pursuant to clause 14.9.

Operator's Proposals

- 14.12 Without prejudice to clauses 14.1 and 14.2, if it should be found that any of the Operator's Proposals are inconsistent with any of the Operator's other obligations under this Partnering Contract, the Operator shall promptly amend the Operator's Proposals to rectify such inconsistency so as to ensure that following the amendment, the Services will be of an equivalent or better standard of performance to that set out in the Operator's Proposals prior to their amendment. Any such amendment to the Operator's Proposals shall:
- 14.12.1 be subject to the prior written approval of GWRC (in its sole discretion);
 - 14.12.2 not constitute a Contract Variation or Minor Contract Variation; and
 - 14.12.3 not entitle the Operator to any payment (or other compensation) or to any relief from the performance of any of its obligations under this Partnering Contract or any other Transaction Document.
- 14.13 If at any time the Operator wishes to amend, replace or supplement the Operator's Proposals other than to the extent it is required to do so pursuant to clause 14.12, such amendment, replacement or supplement shall constitute a Contract Variation initiated by the Operator and the provisions of paragraph 8 (*Operator initiated Contract Variations*) of Schedule 16 shall apply.

Standards of operation

- 14.14 The Operator shall ensure that the GWRC Assets, GWRL Assets, GWRC Systems, GWRL Systems and Operator Assets are only used, operated and maintained:

- 14.14.1 by competent and properly qualified, trained and licensed personnel using recognised methods and standards of operation or maintenance (as applicable);
- 14.14.2 in accordance with the operational characteristics described in the technical specifications relevant to that system or asset;
- 14.14.3 subject in respect of the Heavy Maintenance Services to Schedule 4 (*Vehicle Services*), in accordance with operating or maintenance instructions received from time to time from the relevant original manufacturer or supplier of that system or asset;
- 14.14.4 in accordance with the terms and conditions of any agreement, warranty or guarantee relating to that system or asset (to the extent that such terms and conditions have been provided to the Operator by any person); and
- 14.14.5 in accordance with any other reasonable requirements of the manufacturer or supplier of that system or asset.

Quality, safety and environmental systems

- 14.15 At all times during the Term, the Operator shall maintain, implement, comply with and provide the Services in accordance with:
 - 14.15.1 the Safety Case;
 - 14.15.2 the Safety System;
 - 14.15.3 the Quality Management System; and
 - 14.15.4 the Environmental Management System.
- 14.16 Promptly following approval of the Safety Case and Safety System by the Transport Agency, the Operator shall provide a copy of the Safety Case and Safety System (as approved by the Transport Agency) to GWRC. The Operator shall only update, amend or replace the Safety Case and the Safety System to the extent permitted by Law and approved by the Transport Agency. The Operator shall promptly notify GWRC in the event that it does so update, amend or otherwise replaces the Safety Case or Safety System and as soon as reasonably practicable following a request to do so, the Operator shall provide GWRC with an up to date version of the Safety Case and Safety System.
- 14.17 On or prior to the Commencement Date, the Operator shall provide GWRC with a copy of the Quality Management System and the Environmental Management System. In the event that the Operator amends, updates or replaces the Quality Management System or the Environmental Management System at any time during the Term, it shall:
 - 14.17.1 ensure that the amended, updated or replacement document complies with the requirements of the definition of Quality Management System

or Environmental Management System (as applicable) as set out in Schedule 1; and

- 14.17.2 promptly provide GWRC with a copy of such document as so amended, updated or replaced.

Transaction Documents

14.18 The Operator shall:

14.18.1 comply with the terms of each Transaction Document to which it is party; and

14.18.2 ensure that the Operator and Operator Associates do not cause or contribute to any:

(a) breach by GWRC or GWRL of the terms of; or

(b) liability of GWRC or GWRL under,

any Transaction Document to which GWRC or GWRL are party.

14.19 The Operator shall not (in whole or in part):

14.19.1 terminate, rescind, accept the repudiation of or agree to the termination, rescission or repudiation of any of the Transaction Documents (excluding termination of this Partnering Contract by the Operator pursuant to clause 57 (*Termination by the Operator for non-payment*));

14.19.2 make or agree to any variation of any Transaction Document except in the case of the Vehicle Services Subcontract, where the Operator shall not (in whole or in part) make or agree to any material variation of the Vehicle Services Subcontract;

14.19.3 depart from its obligations or (except in the case of this Partnering Contract) waive or allow to lapse any material rights it may have under any Transaction Document except by the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters in respect of management of the Vehicle Services Subcontract;

14.19.4 enter into (or permit the entry into by any other person of) any agreement replacing all or part of, or otherwise materially affecting the interpretation of, any Transaction Document; or

14.19.5 without prejudice to clauses 14.19.1 and 14.19.4, in respect of the Carriage Locomotive and Carriage Shunt Service Agreement:

(a) agree with KiwiRail under clause 5.3.1 (*Special Event Services*) of the CLCSA the rate to be used for the calculation of the Special Event Locomotive Service Fee (as defined in the CLCSA);

- (b) issue any notice to KiwiRail or reach any agreement with KiwiRail under clause 6.4 (*Specification in respect of Locomotives and Drivers*) of the CLCSA in connection with any modifications to the Locomotives (as defined in the CLCSA);
- (c) issue any notice to KiwiRail or reach any agreement with KiwiRail under clause 8.3 (*Specification in respect of Shunts*) of the CLCSA in connection with any modifications to the Shunts (as defined in the CLCSA);
- (d) use any diesel fuel provided by KiwiRail under the CLCSA for any purpose other than those specified in clauses 10.1 and 10.2 (*Provision of diesel fuel*) of the CLCSA;
- (e) serve an Early Termination Notice (as defined in the CLCSA) under clause 16.1 of the CLCSA or agree the amount of any Early Termination Fee (as defined in the CLCSA) or any component thereof;
- (f) reach any agreement in respect of indexation under paragraph 7.4 (*Changes to CPI*) of Appendix 2 (*Monthly Services Fee*) of the CLCSA; or
- (g) serve any notice, reach any agreement or do anything else under or in connection with the CLCSA which would have the effect of increasing the Locomotive Services Fee payable by GWRC to the Operator under Schedule 6 (*Financial and Performance Regime*) of this Partnering Contract,

without the prior written consent of GWRC (not to be unreasonably withheld or delayed).

14.20 The Operator shall serve notice on KiwiRail such notices under the CLCSA as may be requested by GWRC in writing from time to time.

15. Training requirements

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

- 15.1.1 properly trained and experienced to a level that would ordinarily be expected of an experienced, efficient and competent passenger operator and rolling stock maintainer in the provision of services of a comparable scope, size and complexity as the Services provided under this Partnering Contract;
- 15.1.2 kept informed of any updates to Annexure 6 (*Fares, Ticketing and Enforcement Requirements*) in order to allow effective implementation of the IFT Programme; and

- 15.1.3 trained using the Simulator (if any) to be procured under clauses 5.21 to 5.27.
- 15.2 Without limiting clause 15.1, on and from the ETS Implementation Date:
 - 15.2.1 GWRC shall provide training, or procure that training is provided, to not more than 5 employees of the Operator or Operator Associates on the functions of the IFT System to enable these employees to provide training to the Operator Associates on the IFT System;
 - 15.2.2 the Operator shall procure that the employees who have completed the training referred to in clause 15.2.1 provide training on the functions of the IFT System to all of the Services Employees who are engaged in or in connection with the provision of the Services (or any part of the Services) prior to those Services Employees being in a customer-facing role.

16. Branding, uniforms and livery

Branding

- 16.1 The Operator acknowledges and agrees that all:
 - 16.1.1 Timetable information and advertising and promotional material relating to the Services (which shall be managed and produced by GWRC only, in accordance with Annexure 3 (*Customer Communication and Information Systems*)); and
 - 16.1.2 tickets sold by the Operator, any Operator Associate or any Ticket Agent,shall bear the Metlink brand (or, at GWRC's cost, such other brand as GWRC may notify the Operator from time to time) and shall not bear any brand, logo or other mark relating to the Operator, any Operator Associate or any Ticket Agent.

Uniforms

- 16.2 GWRC's requirements in respect of the uniforms to be worn by all personnel who are likely to be visible to passengers (including drivers of the Vehicles) engaged by the Operator or an Operator Associate in the provision of the Services are as follows:
 - 16.2.1 all articles of clothing comprising the uniform (including hats) shall be in the Metlink primary colour palette as per the Metlink Brand Guidelines;
 - 16.2.2 all articles of clothing comprising the uniform which are intended to be worn above the waist (including hats) shall carry the Metlink brand on the left side and no part of the uniform shall carry the Operator's or any other brand;

- 16.2.3 the Metlink brand shall be applied to the uniform in accordance with the Metlink Brand Guidelines;
 - 16.2.4 the uniform shall be smart, respectable, appropriate, reasonably clean and in good condition; and
 - 16.2.5 the uniform shall be fit for purpose, compliant with any applicable Safety Law and incorporate all reasonable safety features.
- 16.3 The Operator shall as soon as reasonably practicable consult with affected personnel in respect of proposed uniform design. Within 10 Business Days following the conclusion of such consultation process but in any event not later than 31 May 2016, the Operator shall submit its proposed design (including drawings or other visual depictions) of the uniform for written approval by GWRC (acting reasonably). The Operator shall ensure that such design complies with the requirements set out in clause 16.2.
- 16.4 With effect from and including the Commencement Date, the Operator shall ensure that:
- 16.4.1 all personnel who are likely to be visible to passengers, (including drivers of the Vehicles) engaged from time to time by it or any Operator Associate in the provision of the Services shall wear the uniform (as approved by GWRC pursuant to clause 16.3) at all times whilst at work; and
 - 16.4.2 all such uniforms shall comply with the requirements set out in clause 16.2.
- 16.5 In the event that GWRC materially amends the Metlink Brand Guidelines or the Metlink brand after the date of this Partnering Contract and the Operator is required by GWRC to replace or alter the uniform to comply with the amended Metlink Brand Guidelines or to be consistent with the new Metlink brand, GWRC shall pay the reasonable costs incurred by the Operator in so doing provided that such costs shall be agreed by the Operator and GWRC in writing in advance.
- 16.6 The Operator acknowledges that GWRC may elect at any time to undertake a procurement exercise to select a preferred supplier of uniforms, in which event the Operator may elect to use such GWRC preferred supplier for these purposes but shall not be obliged to do so.

Livery

- 16.7 The Operator shall ensure that:
- 16.7.1 subject to clause 16.7.2, the livery of the Vehicles remains materially the same as at the Commencement Date; and
 - 16.7.2 each of the Vehicles bears the Metlink logo in such sizes and locations as are approved in writing by GWRC (acting reasonably).

16.8 In the event that there is a change to the Metlink logo after the date of this Partnering Contract and the Operator is required by GWRC to replace the logos on the Vehicles with the new logos, GWRC shall pay the reasonable costs incurred by the Operator in so doing provided that such costs shall be agreed by the Operator and GWRC in writing in advance.

17. Marketing and Advertising

17.1 Except to the extent otherwise agreed in the applicable Annual Business Plan, GWRC shall be solely responsible for promoting public transport in Wellington (including the passenger services to be provided on the Wellington Rail Network) as it sees fit. The Operator shall provide such assistance and information as GWRC may reasonably require in connection with such marketing.

17.2 The Operator shall not market any aspect of the Wellington Rail Network (including the passenger services to be provided on the Wellington Rail Network) except to the extent that the applicable Annual Business Plan requires the Operator to do so. To the extent that the applicable Annual Business Plan requires the Operator to undertake such marketing, the Operator shall do so in accordance with that Annual Business Plan.

17.3 The Operator shall permit GWRC to display such advertising at the Stations and Depot Facilities and on the Vehicles, other GWRL Assets, GWRL Systems, GWRC Systems and GWRC Assets as GWRC considers appropriate. The Operator shall:

17.3.1 permit GWRC (or its nominee) to access the Stations and Depot Facilities for such purposes; and

17.3.2 make the Vehicles, other GWRL Assets, GWRL Systems, GWRC Systems and GWRC Assets available to GWRC (or its nominee) for such purposes,

in each case as reasonably required by GWRC.

17.4 Except to the extent:

17.4.1 contemplated by clause 17.3; or

17.4.2 otherwise approved in writing by GWRC or expressly provided for in the applicable Annual Business Plan,

the Operator shall not:

17.4.3 use any of the Vehicles (or permit any of the Vehicles to be used) for marketing or advertising of any kind; or

17.4.4 use any of the Depot Facilities, Stations or any other GWRL Asset, GWRL System, GWRC Asset or GWRC System for marketing or advertising of any kind or permit any of the same to be used for such purposes.

18. Subcontracting, delegations and Key Personnel

Key Subcontracts

- 18.1 The Operator shall:
- 18.1.1 Not used;
 - 18.1.2 ensure that on or prior to the date of a Key Subcontract, the Operator delivers to GWRC a direct deed substantially in the form set out in Annexure 22 (*Key Subcontractor Direct Deed*) duly executed by the Operator and the relevant Key Subcontractor (excluding in respect of the Carriage Locomotive and Carriage Shunt Service Agreement); and
 - 18.1.3 where the Operator is unable to have a Key Subcontractor enter into a direct deed in accordance with clause 18.1.2 then the Operator must notify GWRC in writing prior to entering into the Key Subcontract with the Key Subcontractor. Except in the case of the Vehicle Services Subcontractor, provided that the Operator has used all reasonable commercial endeavours to have a Key Subcontractor enter into a direct deed in accordance with clause 18.1.2, GWRC may, acting reasonably, instead require the Operator to procure that the relevant Key Subcontractor enters into a modified form of the direct deed in a form acceptable to GWRC.
- 18.2 The Operator shall not:
- 18.2.1 appoint any Key Subcontractor;
 - 18.2.2 materially amend the terms of any Key Subcontract; or
 - 18.2.3 terminate, rescind, accept the repudiation of or agree to the termination, rescission or repudiation of any Key Subcontract,
- without the prior written consent of GWRC.
- 18.3 GWRC shall act reasonably in determining whether to provide its consent to any such proposed appointment, amendment or termination (as applicable) and may give its consent subject to such conditions as it sees fit (acting reasonably), including conditions relating to:
- 18.3.1 the proposed terms of such appointment, amendment or termination (as applicable); and/or
 - 18.3.2 the provision of warranties, guarantees, bonds or other performance security in favour of GWRC and/or GWRL in respect of the obligations of a proposed new Key Subcontractor,
- in which event the Operator shall (and shall procure that the proposed new Key Subcontractor shall) duly comply with such conditions.
- 18.4 The Operator shall promptly provide such information as GWRC may reasonably request in connection with any proposed:

- 18.4.1 appointment of a Key Subcontractor; or
- 18.4.2 material amendment to the terms of a Key Subcontract; or
- 18.4.3 termination, acceptance of repudiation or rescission of a Key Subcontract,

including, where applicable, the proposed terms thereof.

Requirements in respect of all subcontractors and suppliers

- 18.5 Prior to appointing any subcontractor or supplier (including any Key Subcontractor) in connection with any part of the Services, the Operator shall ensure that:
 - 18.5.1 the proposed subcontractor or supplier is creditworthy and reputable and is appropriately trained, experienced, equipped and resourced to perform its obligations under the proposed arrangements safely and to the relevant standards required by this Partnering Contract;
 - 18.5.2 the proposed subcontractor or supplier is lawfully able to perform its obligations under the proposed arrangements; and
 - 18.5.3 the Operator's obligations at clause 42.3 (*General safety obligations*) have been met and will continue to be met notwithstanding the appointment of the proposed subcontractor or supplier.

General provisions relating to subcontracting

- 18.6 The Operator:
 - 18.6.1 is not relieved of any of its obligations or liabilities under this Partnering Contract or any other Transaction Document as a result of it appointing any contractor, subcontractor, supplier, agent or delegate;
 - 18.6.2 remains responsible for all:
 - (a) works and services carried out; and
 - (b) supplies made,in each case in connection with the Services;
 - 18.6.3 is responsible for the acts and omissions of the Operator Associates as if they were the acts and omissions of the Operator; and
 - 18.6.4 shall ensure that:
 - (a) any arrangements entered into by it in connection with the appointment of any contractors, subcontractors, agents or delegates relating to the whole or any part of the Services; and
 - (b) any supply contracts entered into by it in connection with the performance of the Services,are entered into, and continue to be, on Arm's Length Terms.

Key Personnel

- 18.7 The Operator shall employ the Key Personnel specified in item 3 (*Operator's Key Personnel*) of Schedule 2 (*Agreement details*) in the relevant role specified in Schedule 2 (*Agreement details*).
- 18.8 Without prejudice and in addition to the Operator's obligations under clause 27.7 (*Changes to Authorised Representatives*), the Operator shall:
- 18.8.1 give GWRC prior written notice of any intention by the Operator to terminate or replace any Key Personnel or any other matter which would result in any Key Personnel ceasing to undertake the relevant role;
 - 18.8.2 where any person who comprises Key Personnel is to cease undertaking their relevant role, ensure that they are promptly replaced with replacement Key Personnel who have the appropriate skill, knowledge and authority reasonably required to undertake that role; and
 - 18.8.3 give GWRC notice of the details of any replacement Key Personnel.

Part Three – GWRC/GWRL obligations and rights

19. **GWRL provision of Vehicles, Stations, Depot Facilities and related assets**

19.1 Subject to the terms and conditions set out at clause 13 (*Use of Vehicles, assets and systems for proper purpose*), GWRL shall provide the Operator with access to and use of:

19.1.1 the Vehicles in accordance with the Operating Lease;

19.1.2 the Stations (excluding Wellington Station), Depot Facilities and EMU Depot Plant and Equipment in accordance with Schedule 9 (*Stations and Depot Facilities*); and

19.1.3 the GWRL Systems,

for the Operator's use in accordance with the terms and conditions set out at clause 13 (*Use of Vehicles, assets and systems for proper purpose*).

20. **GWRC Provision of Wellington Station, GWRC Assets and GWRC Systems**

20.1 GWRC shall provide the Operator with access to and use of:

20.1.1 Wellington Station in accordance with the terms and conditions of Schedule 9 (*Stations and Depot Facilities*); and

20.1.2 the GWRC Assets and GWRC Systems for the Operator's use in accordance with the terms and conditions set out at clause 13 (*Use of Vehicles, assets and systems for proper purpose*).

21. **Ownership of certain assets**

21.1 Subject to clause 21.2, the Operator acknowledges and agrees that legal and beneficial ownership of the GWRL Systems, GWRC Systems, GWRC Assets and GWRL Assets shall (as between GWRC, GWRL and the Operator) at all times remain vested in GWRC or GWRL (as applicable).

21.2 The Operator acknowledges and agrees that to the extent that any of the GWRL Systems, GWRL Assets, GWRC Assets or GWRC Systems comprise or include Intellectual Property Rights or Intellectual Property Material, the provisions of Part Five (*Intellectual Property*) apply and the Operator's rights and entitlement in relation thereto shall only be as provided for in Part Five (*Intellectual Property*).

21.3 Ownership in any item (including any Rotable Items or other Spares) fitted to or installed on a Vehicle from time to time or otherwise forming part of a Vehicle from time to time shall vest in GWRL with effect from the date on which such item is first fitted to, installed on or otherwise forms part of, that Vehicle, provided that when a Rotable Item is removed from a Vehicle for the purposes of repair or refurbishment, ownership in such Rotable Item shall vest in the Operator or

Vehicle Services Subcontractor until such time as that Rotable Item is reinstalled on a Vehicle and the Operator shall and shall procure that the Vehicle Services Subcontractor shall account for such Rotable Item during such period in accordance with clause 47.12.4.

21.4 The Operator shall ensure that at the time at which ownership in any item transfers to GWRL in accordance with clause 21.3, such item is free from any Security Interest.

21.5 Subject to clause 21.3, ownership in any Spares, Rotable Items, Special Tools, General Tools or Consumables acquired or used by the Operator or the Operator Associates in connection with the provision of the Services shall (as between GWRC, GWRL and the Operator) vest in the Operator at all times, provided that to the extent such Spares, Rotable Items, Special Tools, General Tools or Consumables:

21.5.1 comprise Initial Transferring Assets, ownership in such items shall not vest in the Operator or the Vehicle Services Subcontractor until the relevant date specified in clause 8.2; and

21.5.2 comprise Transferring Operator Assets, the Operator shall (or shall procure that the relevant person that owns the Transferring Operator Assets shall) transfer ownership in accordance with clause 63.8.

22. Access to Wellington Rail Network

Wellington Network Agreement

22.1 With effect from the Transfer Time, GWRC shall nominate the Operator as the "Metro Service Operator" in accordance with the provisions of the Wellington Network Agreement. At all times during the Term the Operator shall perform the obligations of a "Metro Service Operator" under the Wellington Network Agreement and shall otherwise comply with those terms of the Wellington Network Agreement which apply to a "Metro Service Operator".

GWRC rights and obligations under the Wellington Network Agreement

22.2 GWRC shall ensure that it performs the rights and obligations of GWRC set out in the Wellington Network Agreement, provided that GWRC shall not be liable for any breach of this clause 22.2 to the extent that it is unable to perform such rights and obligations due to the acts or omissions of the Operator or any Operator Associate.

23. GWRC's and GWRL's general obligations

23.1 GWRC shall comply with its obligations under this Partnering Contract, including its obligations:

23.1.1 under clause 44 (*Payments*);

- 23.1.2 under Schedule 13 (*IFT Programme*) in respect of the IFT Programme and the IFT System;
 - 23.1.3 under Schedule 14 (*RSI Project*) in respect of the RS1 Project;
 - 23.1.4 under Annexure 1 in respect of the Timetable Change Process;
 - 23.1.5 under Annexure 2 in respect of the Customer Service Standards;
 - 23.1.6 under Annexure 3 in respect of the Customer Communication and Information Systems;
 - 23.1.7 under Annexure 4 in respect of security services;
 - 23.1.8 under Annexure 6 in respect of fares, ticketing and enforcement;
 - 23.1.9 under Annexure 7 in respect of the Conditions of Carriage; and
 - 23.1.10 in respect of the GWRC Assets and the GWRC Systems.
- 23.2 GWRL shall comply with its obligations under this Partnering Contract, including its obligations:
- 23.2.1 under clause 8.2 (*Transfer of Ownership*);
 - 23.2.2 under clause 19 (*GWRL provision of Vehicles, Stations, Depot Facilities and related assets*);
 - 23.2.3 under Annexure 4 in respect of security services.

Part Four – Management of this Partnering Contract

24. Partnering Principles

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

24.1.1 the principles set out at section 115(1) LTMA; and

24.1.2 the following methods of working together collectively:

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

required and will, to the extent reasonably required, provide information, make decisions and complete actions in a prompt and efficient manner so that transaction costs of doing business are minimised to the extent reasonably practicable.

Responsiveness will depend on a high degree of communication and cooperation across and within the various parts of GWRC and the Operator's organisation;

- (i) Alignment of incentives: meaning the Operator and GWRC will acknowledge that it is in the interests of all Parties to share in rewards gained by improvements in efficiency, effectiveness and customer service, and it is intended that the performance management regime set out in each Partnering Contract will encourage such improvements;
- (j) Unified public image: meaning that the Operator and GWRC will, to the extent reasonably practicable, present a unified and cooperative image to the public so that collectively they achieve and maintain public confidence and trust,

(together the **Partnering Principles**).

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

- 24.2.1 GWRC requiring PTOM Operators to become parties to a Regional Agreement setting out (amongst other things) the agreed partnering principles (consistent with the principles at section 115(1) of the LTMA) developed, adopted, implemented and updated from time to time by GWRC and PTOM Operators;
- 24.2.2 GWRC and the Operator ensuring that they each deal fairly and co-operatively with each other and other PTOM Operators in accordance with those partnering principles;
- 24.2.3 GWRC convening and facilitating the Wellington Regional Public Transport Forum in accordance with provisions set out in the Regional Agreement and for the purposes set out in the Regional Agreement; and
- 24.2.4 GWRC and the Operator agreeing and implementing Annual Business Plans in accordance with clause 26 (*Annual Business Plans*) and the other requirements of this Partnering Contract.

24.3 Promptly following a request from GWRC to do so, the Operator shall duly execute a deed of accession to the Regional Agreement in the form set out in Annexure 1 of the Regional Agreement.

24.4 For the avoidance of doubt, clause 24.1, 24.2, the Partnering Principles (as defined in this Partnering Contract) and the partnering principles (as defined in the Regional Agreement) shall not restrict GWRC, GWRL or the Operator from exercising any of their rights under this Partnering Contract or any other Transaction Documents.

25. Performance management

Component elements

25.1 Without prejudice to any other obligation of the Operator or any rights or remedies of GWRC or GWRL, the Parties acknowledge that throughout the Term the desired objectives, outcomes and outputs set out at clause 10.3 (*Objectives, outcomes and outputs for Services*) shall be achieved by:

- 25.1.1 the management of this Partnering Contract in accordance with the provisions at this Part Four;
- 25.1.2 the application of the performance management regime contained in Schedule 6 (*Financial and Performance Regime*);
- 25.1.3 the management of issues that have impacts across the Wellington Public Transport Network in accordance with the Partnering Principles and the provisions set out in the Regional Agreement; and
- 25.1.4 the prompt and efficient attention by a Party to any actions or obligations for which it has responsibility.

Performance Management Regime

25.2 The performance management regime under this Partnering Contract consists of the following components:

- 25.2.1 the payment to the Operator of the Passenger Services Fee, Vehicle Services Fee, Additional Vehicle Services Fee, Special Event Services Fee, Vehicle Availability Payments, Alternative Transport Fee and Locomotive Services Fee, calculated in accordance with Schedule 6 (*Financial and Performance Regime*);
- 25.2.2 the Reliability KPI and the Punctuality KPI and the application of Performance Deductions in accordance with Schedule 6 (*Financial and Performance Regime*);
- 25.2.3 the application of Reporting Failure Deductions in accordance with Schedule 6 (*Financial and Performance Regime*);
- 25.2.4 the payment to the Operator of any Customer Satisfaction Payments in accordance with Schedule 6 (*Financial and Performance Regime*);
- 25.2.5 the Performance Indicators and the payment to the Operator of any Performance Payments in accordance with Schedule 6 (*Financial and Performance Regime*); and

- 25.2.6 the application of the Financial Incentive Mechanism described at paragraph 10 (*Calculation of the FIM Adjustment*) of Schedule 6 (*Financial and Performance Regime*).
- 25.3 The performance of the Operator in providing the Services, including its timeliness in complying with its obligations under this Partnering Contract, shall be monitored and measured in accordance with clause 29 (*Reports*), Schedule 5 (*Planning, Reporting and Meetings*) and any incentive payments or abatements shall be calculated in accordance with Schedule 6 (*Financial and Performance Regime*).

Continuous improvement

- 25.4 The Operator shall use best endeavours to improve continuously all aspects of the Services and the performance of its obligations under this Partnering Contract including in relation to:
- 25.4.1 ensuring the safety of customers, Rail Participants and Rail Personnel;
 - 25.4.2 achieving patronage growth;
 - 25.4.3 the Services provided by the Operator;
 - 25.4.4 customer satisfaction;
 - 25.4.5 the Operator's performance under and as against the Performance Indicators, the Reliability KPI, the Punctuality KPI and the performance management regime contained in Schedule 6 (*Financial and Performance Regime*);
 - 25.4.6 the effective communication of information to GWRC and customers;
 - 25.4.7 minimising fare evasion;
 - 25.4.8 improving the condition and cleanliness of the Vehicles; and
 - 25.4.9 any other specified improvement aspects identified in the Annual Business Plan.

26. Annual Business Plans

Initial Annual Business Plan

- 26.1 The Initial Annual Business Plan shall apply and shall be the Annual Business Plan for the Rail Unit for the period from the Commencement Date until 30 June 2017. The Operator shall comply with and give effect to the Initial Annual Business Plan (including for the avoidance of doubt any plan, initiative or proposal forming part of the Initial Annual Business Plan) at all times during the period specified in this clause 26.1

Annual Business Plans

- 26.2 The Operator and GWRC shall work together annually throughout the Term to develop and finalise subsequent Annual Business Plans in accordance with the

requirements at Schedule 5 (*Planning, Reporting and Meetings*). The Operator shall comply with and give effect to each such Annual Business Plan (including for the avoidance of doubt any plan, initiative or proposal forming part of such Annual Business Plan).

27. **Authorised Representatives**

Appointment

- 27.1 Each Party shall appoint an Authorised Representative with primary responsibility for:
- 27.1.1 managing the relationship between the Parties;
 - 27.1.2 administering this Partnering Contract;
 - 27.1.3 providing a designated point of contact for the other Parties in connection with this Partnering Contract; and
 - 27.1.4 ensuring the relevant Party's contractual and reporting obligations under this Partnering Contract and the other Transaction Documents are met.
- 27.2 Each Party shall ensure that it appoints an Authorised Representative with the appropriate skill, knowledge and authority reasonably required to perform such role.
- 27.3 GWRC and GWRL may appoint either separate Authorised Representatives or a common Authorised Representative.
- 27.4 The Parties' Authorised Representatives at the Commencement Date are set out at paragraph 4 of Schedule 2 (*Agreement Details*).
- 27.5 Each Party may treat the acts of the other Party's Authorised Representative as being the acts of that other Party.
- 27.6 The appointment by a Party of an Authorised Representative does not relieve that Party of, limit or otherwise affect that Party's, obligations and liabilities under this Partnering Contract.

Changes to Authorised Representatives

- 27.7 If the Operator wishes to change its Authorised Representative the Operator shall:
- 27.7.1 ensure that the proposed appointee will meet the requirements set out in clause 27.2;
 - 27.7.2 provide sufficient information about the proposed appointee (including the date that the proposed change will be effective) to enable GWRC to establish that the proposed appointee satisfies the requirements set out in clause 27.2 and to approve the change; and

27.7.3 obtain GWRC's prior written approval before making any change to its Authorised Representative (such approval not to be unreasonably withheld or delayed).

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

28. Meetings

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

29. Reports

Operator's obligation to provide reports

29.1 The Operator shall provide each of the reports specified in paragraph 3.1 of Schedule 5 (*Planning, Reporting and Meetings*) to GWRC's Authorised Representative within the applicable timeframe specified in paragraph 3.2 of Schedule 5 (*Planning, Reporting and Meetings*) or if no such timeframe is specified, within 5 Business Days of a written request by GWRC to provide such report.

Operator's obligation to provide additional information

29.2 Without prejudice to any other obligations of the Operator, the Operator shall promptly provide such information as GWRC may reasonably request to enable GWRC to:

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

29.2.2 comply with any other reporting requirements of the Transport Agency from time to time;

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

29.2.4 monitor the Operator's performance of its obligations; or

29.2.5 develop public transport policy.

30. Publication of performance data, records and information

Publication of performance data

- 30.1 On or prior to the Commencement Date or as soon as reasonably practicable following the Commencement Date, GWRC or GWRL shall procure that an appropriate number of display cases suitable for the use contemplated by clause 30.3.1 are installed on each EMU, each generator Carriage and at the Stations specified at paragraph 5.3 of Annexure 2 (*Customer Service Standards*) in locations where their contents will be readily visible to passengers. The Operator shall provide such access to the Vehicles and Stations as is reasonably required by GWRC or GWRL for these purposes.
- 30.2 The Operator shall provide a draft copy of the Monthly Summary Performance Report for each Relevant Month as part of the relevant Monthly Performance Report for written approval by GWRC (such approval not to be unreasonably withheld). The Operator shall promptly amend the draft copy of the Monthly Summary Performance Report to reflect the reasonable comments of GWRC and resubmit the amended draft copy to GWRC for its written approval (such approval not to be unreasonably withheld). This process shall continue to apply until the relevant Monthly Summary Performance Report is approved in writing by GWRC.
- 30.3 Within 5 Business Days of GWRC having approved a draft Monthly Summary Performance Report in writing pursuant to clause 30.2, the Operator shall:
- 30.3.1 display in such form as GWRC reasonably requires a copy of that Monthly Summary Performance Report in each display case installed pursuant to clause 30.1 until such time as the Operator is required by this clause 30 to display a subsequent Monthly Summary Performance Report; and
 - 30.3.2 provide an electronic copy of that Monthly Summary Performance Report to GWRC in such form as GWRC reasonably requires to enable GWRC to upload that Monthly Summary Performance Report onto the Metlink website.
- 30.4 The Operator shall ensure that each draft Monthly Summary Performance Report provided by it pursuant to clause 30.2, each Monthly Summary Performance Report displayed by it pursuant to clause 30.3.1 and each Monthly Summary Performance Report provided by it to GWRC pursuant to clause 30.3.2 is true, accurate, complete, user-friendly, clear, easy to read and written in English and otherwise complies with any reasonable requirements of GWRC.

Operator to maintain records

- 30.5 The Operator shall (and shall ensure that all Operator Associates shall) maintain accurate, true, up to date and complete records relating to:
- 30.5.1 the provision of the Services;
 - 30.5.2 the Operator's operational performance in the delivery of Scheduled Services;

- 30.5.3 all information under its control that GWRC or GWRL may require in order to satisfy GWRC or GWRL reporting requirements under the LGA, LTMA, Safety Law or any other Law; and
- 30.5.4 the performance of the Operator's other obligations under this Partnering Contract and the other Transaction Documents.
- 30.6 The Operator shall (and shall ensure that all Operator Associates shall):
 - 30.6.1 store such records in a manner that reasonably ensures their continued safety from destruction or loss and their confidentiality;
 - 30.6.2 where records are kept in electronic form, ensure they are backed up and copied in accordance with good industry practice for the retention and safety of records of such a nature;
 - 30.6.3 maintain accurate and complete records in relation to Hand Over Packages provided under clause 61.3 (*Handover Packages*); and
 - 30.6.4 on request by GWRC or GWRL, promptly provide copies of all such records to them.
- 30.7 Subject to clause 68 (*Confidentiality*) all information held by or on behalf of the Operator in regard to the Services or the Operator's performance under this Partnering Contract shall be made available to GWRC within 5 Business Days of GWRC issuing a written request for that information.

Information and data to be provided to the Operator

- 30.8 GWRC shall ensure that the Operator shall have remote access to the data generated by the RTPi System.
- 30.9 As soon as reasonably practicable following a request from the Operator to do so, GWRC shall:
 - 30.9.1 provide the Operator with a detailed breakdown as to how GWRC has calculated the Actual Patronage; and
 - 30.9.2 save to the extent that the Operator has remote access to data pursuant to clause 30.8, provide the Operator with access to all relevant information and data produced by the GWRC Systems and GWRL Systems that is reasonably required by the Operator in order to support the provision of the Services.

31. Audit and inspection rights

- 31.1 The Operator shall permit and procure that the Vehicle Services Subcontractor permits GWRC and its representatives to inspect the premises used by the Operator or the Vehicle Services Subcontractor, the Depot Facilities, the Stations, the Maintained Assets (including their output and contents if applicable), the MMIS (and its output or contents), the FRACAS (and its output or contents), the IFT System Equipment and any ticketing systems, financial records books, records,

- information, material, systems and procedures held or used by or on behalf of the Operator or the Vehicle Services Subcontractor, in each case in order to:
- 31.1.1 check or audit the Operator's compliance with the provisions of this Partnering Contract or any other Transaction Documents or any Key Subcontract for the purpose of investigating any material performance failures or safety issues;
 - 31.1.2 audit the Operators' or the Vehicle Services Subcontractor's health and safety records, practices and procedures;
 - 31.1.3 check the Operator's or the Vehicle Services Subcontractor's compliance with its Privacy Obligations;
 - 31.1.4 complete an asset condition assessment;
 - 31.1.5 check and verify the amount of Farebox Revenue received (or which should have been received) by the Operator or any Operator Associate or otherwise audit use of the Farebox Account;
 - 31.1.6 check and verify the Aggregate Approved Revenue Service Profit Amount;
 - 31.1.7 check or audit any information supplied to GWRC under this Partnering Contract or any other Transaction Document;
 - 31.1.8 check or audit the performance of the IFT System; and/or
 - 31.1.9 check or audit performance by the Operator as against the Reliability KPI, the Punctuality KPI and the PIs.
- 31.2 GWRC and its representatives shall be permitted to take copies of any books, records, information or other materials that they inspect under clause 31.1. The representatives of GWRC shall be entitled to travel free of charge on any Scheduled Service or Special Event Service for the purposes of carrying out any inspection pursuant to clause 31.1.
- 31.3 GWRC and its representatives may complete an inspection under clause 31.1 at any time where such inspection relates to an actual or suspected fraud, material safety issue or material breach by the Operator of this Partnering Contract or any other Transaction Document.
- 31.4 Subject to clause 31.3, GWRC shall give the Operator at least 48 hours' notice of any other inspection that GWRC or its representatives wish to carry out under clause 31.1.
- 31.5 When carrying out any inspection pursuant to clause 31.1, GWRC shall (and shall ensure that its representatives shall) use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Operator.
- 31.6 The Operator shall ensure that the Operator and the Operator Associates cooperate fully with GWRC and its representatives when conducting an inspection under

- clause 31.1, including by providing such information and statements to GWRC or its representatives as may be reasonably required for the purposes of the inspection.
- 31.7 GWRC shall bear the costs of any inspection undertaken pursuant to clause 31.1 unless the inspection reveals that:
- 31.7.1 information previously supplied to GWRC by the Operator or an Operator Associate was in any material respect incomplete, inaccurate, false or misleading; or
 - 31.7.2 the Operator has breached or is in breach of the terms of this Partnering Contract or any other Transaction Document or any Key Subcontract,
- in which case the Operator shall pay the external costs incurred by GWRC in carrying out (or procuring the carrying out of) such inspection within 5 Business Days of demand thereof.
- 31.8 The Operator shall ensure that it is not restricted or prevented from providing:
- 31.8.1 any books, records, information, material, systems or procedures to GWRC or its representatives for the purpose of the inspection and audit rights under clause 31.1 except to the extent that any such books, records, information, material, systems or procedures are subject to legal professional privilege; or
 - 31.8.2 information about the existence of, and (upon request) complete copies of, any contract relating to the Services to which the Operator is a party (including all Key Subcontracts), together with any documents and information provided or received under or in relation to such contract, either for the purpose of the inspection and audit rights under clause 31.1 or for the purpose of the preparation of Handover Packages and the performance of the Operator's obligations at Part Ten (*Obligations associated with change of Operator*).
- 31.9 To the extent relevant to the Operator, GWRC shall disclose to the Operator the results of any check or audit of the performance of the IFT System carried out by or on behalf of GWRC.

Part Five - Intellectual Property

32. Background IP

- 32.1 The Operator acknowledges and agrees that GWRC, GWRL or their respective licensors is and remains the owner of all GW Background IP. Neither the Operator, nor any of the Operator Associates, has (by virtue of this Partnering Contract or otherwise) any Claim on, entitlement to, or rights in relation to any GW Background IP except to the extent provided in this Part Five (*Intellectual Property*).
- 32.2 GWRC acknowledges and agrees that the Operator or an Operator Associate or their respective licensors is and remains the owner of all Operator Background IP. None of GWRC, GWRL, or any of the GW Associates, has (by virtue of this Partnering Contract or otherwise) any Claim on, entitlement to, or rights in relation to any Operator Background IP except under clause 49 (*Indemnity from Operator*) or to the extent provided in this Part Five (*Intellectual Property*).

33. Developed IP

- 33.1 Subject to clause 36 (*Licensing of GW Background IP and Developed IP*), ownership in all Developed IP vests in GWRC and GWRL at the time of its creation and at each and every stage of its development.
- 33.2 The Operator shall ensure, where necessary, that it secures the right to undertake such vesting and shall do all such things and sign all such documents required to ensure that all Developed IP is transferred and assigned to GWRC or GWRL, as directed by GWRC, to ensure compliance with clause 33.1. The Operator shall mark any copyright work comprising Developed IP with the legend "© Wellington Regional Council copyright [*insert the year of generation of the work*]" or "© Greater Wellington Rail Limited copyright [*insert the year of generation of the work*]" as directed by GWRC.

34. Licensing of Operator Background IP

- 34.1 To the extent that GWRC or GWRL needs to use any Operator Background IP:
- 34.1.1 to receive the benefit of the Services or Developed IP;
 - 34.1.2 to otherwise exercise rights under this Partnering Contract or any other Transaction Document (including by GWRC's nominees in the exercise of Step-in Rights);
 - 34.1.3 to sub-license any Operator Background IP (other than the Operator's logo) to an Incoming Operator; or
 - 34.1.4 for any purpose associated with the provision of public transport on the Wellington Public Transport Network, including but not limited to the provision of any of the Services (or services which are similar to any of the Services) or any type of services contemplated by the Transaction

Documents (other than a purpose that involves the commercialisation by GWRC or GWRL of the Operator's Background IP),

the Operator grants (and shall ensure that the Operator Associates grant) to GWRC and GWRL a perpetual, irrevocable, free of any licence fee or royalty, non-exclusive, transferable licence (including the right to grant sub-licences) to Use the Operator Background IP for the purposes specified in clause 34.1. The Parties acknowledge that after three months following the end of the Term, the Operator is not required to provide any software support or maintenance services in relation to any software licensed or supplied to GWRC and GWRL under this Partnering Contract, unless otherwise agreed between the Parties under a separate agreement.

34.2 The licence granted in clause 34.1 does not entitle GWRC, GWRL or the Incoming Operator (or any sub-licensee or transferee) to commercialise (by distributing to the public or making a profit from sub-licensing) the Operator Background IP.

35. **Preservation of rights**

35.1 The Operator shall ensure that none of the Operator Background IP is assigned, transferred, sold or made subject to an exclusive licence to Use for the benefit of any third party during or after the Term, unless it preserves for GWRC, GWRL and the GW Associates the rights granted under clause 34 (*Licensing of Operator Background IP*).

36. **Licensing of GW Background IP and Developed IP**

36.1 Subject to clause 36.3 and 36.4, GWRC or GWRL (as the context requires):

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

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

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

- 36.2 Each sub-licence granted under clause 36.1.2 in respect of the GW Third Party Licensed IP is subject to all terms and conditions imposed by the third party licensor on GWRC, GWRL or any sub- licensee in respect of such licensed Intellectual Property Rights.
- 36.3 Any licence granted to the Operator under this clause 36 includes the right on the part of the Operator to grant a sub-licence to an Operator Associate, so long as:
- 36.3.1 such sub-licence does not breach any restrictions imposed pursuant to clause 36.1.3 or 36.2;
 - 36.3.2 the Operator gives GWRC reasonable prior notice of its intention to grant such sub-licence; and
 - 36.3.3 if so required by GWRC or GWRL, that Operator Associate first enters into a direct undertaking with GWRC and/or GWRL on terms reasonably satisfactory to GWRC and/or GWRL.
- 36.4 No sub-licence of GW Background IP or Developed IP may be granted by the Operator, except in accordance with this clause 36.
- 36.5 GWRC and GWRL give no warranty as to the suitability for the Operator's purpose of any GW Background IP or Developed IP licensed under this clause 36. The Operator must not, by any act or omission, in any way prejudice ownership by GWRC or GWRL of any Background IP or Developed IP.

37. Third Party Intellectual Property

Third Party Intellectual Property

- 37.1 In respect of all Third Party Intellectual Property, the Operator grants to GWRC and GWRL a perpetual, irrevocable, free of any licence fee or royalty, non-exclusive, transferable licence (including the right to grant sub-licences) to Use that Third Party Intellectual Property for any purpose associated with the provision of public transport on the Wellington Public Transport Network, including but not limited to the provision of any of the Services (or services which are similar to any of the Services) or any type of services contemplated by the Transaction Documents, except to the extent that the Operator:
- 37.1.1 is unable to comply with the obligation contained in this clause due to a genuine refusal by a third party (other than a Related Company) to grant the Operator the necessary rights or consents to comply with the obligations;
 - 37.1.2 has used reasonable efforts to obtain those rights or consents; and
 - 37.1.3 GWRC has granted the Operator relief under clause 37.6.
- 37.2 The licence granted in clause 37.1 (*Third Party Intellectual Property*) commences with effect from the date the relevant Third Party Intellectual Property is first Used by the Operator in connection with the performance of its obligations under this

Partnering Contract or any other Transaction Document. The licence subsists until the relevant licence of the Third Party Intellectual Property by the Operator is transferred to GWRL, GWRC or to GWRC's nominee pursuant to clause 63 (*Transfer of Operator Assets*) or if no such transfer occurs then the licence is granted in perpetuity.

37.3 On or before the Termination Date, the Operator shall obtain legally effective consents from any third parties necessary to assign or novate from the Termination Date, the rights and obligations in connection with the Third Party Intellectual Property not owned by the Operator and which are Used in connection with the Services.

37.4 Where any third party:

37.4.1 refuses to or otherwise does not provide the relevant consent or other agreement required by clause 37.1 or clause 37.3; or

37.4.2 will not provide any consent or agreement without a variation to the relevant contract terms affecting the Incoming Operator which is not acceptable to GWRC,

the Operator shall:

37.4.3 notify GWRC as soon as reasonably practicable;

37.4.4 assist GWRC, GWRL and the Incoming Operator to replace the relevant Third Party Intellectual Property with equivalent assets and Intellectual Property Rights and procure new agreements for the relevant Intellectual Property Rights; and

37.4.5 (to the maximum extent permitted by Law) indemnify and at all times keep indemnified on demand GWRC, GWRL, the GW Associates, any GWRC nominee exercising a Step-in Right and the Incoming Operator from and against any costs, losses or payments which are required to give effect to clause 37.4.4 (including payments of any licence fees).

37.5 The Operator may seek GWRC's consent to be relieved of any one or more of its obligations under clauses 37.1 to 37.4.5 if it can demonstrate to GWRC's satisfaction that it cannot comply because of a genuine refusal by a third party (other than a Related Company) to grant the necessary rights to comply with that obligation and the Operator has used best endeavours to obtain those rights or consents.

37.6 GWRC shall act reasonably in determining whether or not to grant all or part of the relief sought by the Operator under clause 37.5. The Operator acknowledges that it will be reasonable for GWRC to withhold its consent under this clause if the relevant Third Party Intellectual Property is necessary or desirable for:

37.6.1 enabling the ongoing operation of Services during and after the Term;
or

- 37.6.2 the operation, maintenance or modification of any GWRC Asset, GWRC System, GWRL System, GWRL Asset, Operator Asset or Maintained Asset.
- 37.7 GWRC giving its consent under clause 37.6 does not excuse the Operator from any of its other obligations under this Partnering Contract or the other Transaction Documents.
38. **Not used**
39. **Not used**
40. **Not used**
41. **Miscellaneous**

Compliance

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

Moral rights

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

Further action

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

Privity

- 41.4 This Part Five (*Intellectual Property*) is (for the purposes of the Contracts (Privity) Act 1982) intended to confer benefits in favour of, and to be enforceable by,

GWRC, GWRL, any GW Associate, any nominee of GWRC exercising step-in rights and any Incoming Operator.

IP Register

- 41.5 The Operator shall maintain throughout the Term (and provide to GWRC on request) a complete and accurate register of all GW Background IP, Operator Background IP, Developed IP, GW Third Party Licensed IP and Third Party Intellectual Property, in a form satisfactory to GWRC (**IP Register**).
- 41.6 The Operator shall ensure that the IP Register includes, at a minimum, full details of the category of, registration and expiry of, ownership of, licensed rights to exercise, and all restrictions on the exercise of, the Intellectual Property Rights recorded in the IP Register.
- 41.7 The Parties acknowledge and agree that the purpose of the IP Register is to enable GWRC and GWRL to easily understand their ownership of, and licensed rights to exercise Intellectual Property Rights and to minimise the risk of inadvertently infringing or misusing the rights of others in exercising such Intellectual Property Rights.
- 41.8 For the avoidance of doubt, and notwithstanding anything contained in the IP Register, no information contained in the IP Register is intended to, or will have the effect of, limiting or overriding this Partnering Contract.

Part Six – Health and safety

42. General health and safety obligations

Health and safety paramount

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

Compliance with Safety Law

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

General safety obligations

42.3 Without limiting its other obligations under this Partnering Contract (including its obligations under clause 14 (*Licence, Laws and Standards*)), the Operator shall ensure, so far as is reasonably practicable, the health and safety of those to whom it owes a duty under Safety Law, including by:

42.3.1 ensuring, so far as is reasonably practicable:

- (a) the health and safety of any person is not put at risk from work or services carried out by or on behalf of the Operator or the Operator Associates under this Partnering Contract or from any other act or omission by the Operator or any Operator Associate in performing the Services; and
- (b) that the Vehicles and the Railway Premises used in connection with the Services, the means of entering and exiting the Vehicles and the Railway Premises used in connection with the Services and any fixtures, fittings, chattels and plant associated with the Vehicles and the Railway Premises used in connection with the Services, are without risks to the safety of any person;

42.3.2 ensuring that, before commencing any work in connection with the Services, all the Operator Associates involved in the work are fully inducted and trained in connection with the health and safety matters, including in the safe use of all plant, objects, substances and protective clothing that they are or may be required to handle, that they are informed about, and comply with, their obligations under Safety Law, the Operator's approved Safety Case and Safety System, the Operator's Health and Safety Management Plan and any additional health and

safety instructions, policies and procedures as notified by any regulatory authority to the Operator from time to time;

- 42.3.3 supervising and monitoring all the Operator Associates involved in performing the Services, taking into account the nature of the work to be carried out by the Operator and the relevant Operator Associate, the risks associated with the work and the control measures the Operator or another person having obligations under Safety Law has implemented to deal with these risks;
- 42.3.4 ensuring that every subcontractor engaged at any tier in the performance of the Services is reputable, reliable, and suitable to perform the relevant Services in accordance with this Partnering Contract. In particular the Operator shall ensure that all subcontractors engaged at any tier have and maintain sufficient suitably trained, skilled, experienced and qualified workers to properly perform the Operator's relevant obligations under this Partnering Contract, and that the Operator vets and monitors all subcontractors (at any tier) to ensure they meet, and continue to meet, appropriate selection criteria with regard to their health and safety performance; and
- 42.3.5 regularly monitoring and assessing health and safety risks arising from, or in connection with, the Services including by way of internal audits, and taking all reasonably practicable steps to eliminate those risks, or to the extent that elimination is not reasonably practicable, to minimise them.

Health and Safety Management Plan

- 42.4 The Operator shall update the Health and Safety Management Plan from time to time in accordance with applicable Law and Good Industry Practice. The Operator shall provide an up to date copy of the Health and Safety Management Plan to the Operator Associates and GWRC promptly but not later than 10 Business Days after any material update to the Health and Safety Management Plan.
- 42.5 The Operator shall provide updated versions of the Health and Safety Management Plan as part of the Annual Business Plan in accordance with Schedule 5 (*Planning, Reporting and Meetings*).
- 42.6 The Health and Safety Management Plan must set out in detail the health and safety procedures applying in connection with the Services, including:
 - 42.6.1 risks and hazards identified and control measures to be undertaken to eliminate or minimise and monitor those risks and hazards, including through the provision and use of safety equipment;
 - 42.6.2 methods for systematically identifying, assessing and recording new risks and hazards;
 - 42.6.3 emergency procedures;

- 42.6.4 procedures for the safe use, repair and maintenance of all equipment used in connection with the Services;
- 42.6.5 procedures for reporting and recording accidents, incidents and near misses in any way related directly or indirectly to the Services that result in, or could reasonably have resulted in, injury to persons;
- 42.6.6 procedures for consulting and liaising with other persons having obligations under Safety Law in respect of any premises or equipment used in connection with the Services;
- 42.6.7 lines of accountability and responsibilities for training and supervision;
- 42.6.8 practices for personnel engagement, consultation and participation in the monitoring and improvement of health and safety;
- 42.6.9 internal audit procedures and procedures for responding to GWRC or GWRL requests to audit the Operator and the Operator Associates' compliance with this Part Six (*Health and Safety*);
- 42.6.10 any matters which any regulatory authority may require as a condition of the Licence, any Interim Licence or as a result of an accident, incident or near miss; and
- 42.6.11 any other relevant matters that GWRC may reasonably determine should be included, or that the Parties may otherwise agree from time to time, are desirable to include in the Health and Safety Management Plan or that are required to ensure that the Health and Safety Management Plan provides a safety system based on quality management principles of continuous improvement.

Monitoring, reporting and investigation obligations

- 42.7 The Operator shall actively monitor its performance, and that of the Operator Associates, with respect to health and safety matters, and shall:
 - 42.7.1 without prejudice to any other obligations of the Operator under Safety Law, promptly report to GWRC, the Access Provider, the emergency services (if appropriate) and any relevant regulatory authority the occurrence of any event that occurs in connection with the Services that the Operator, or any of the Operator Associates, is required to notify to any regulatory authority under Safety Law (**Notifiable Event**);
 - 42.7.2 proactively investigate all Notifiable Events, and any other health and safety events as reasonably required by GWRC, and implement (or ensure the implementation of), so far as is reasonably practicable, any corrective actions identified as a result of such investigations, or as otherwise notified by GWRC;
 - 42.7.3 provide to GWRC on a monthly basis as part of the Monthly Strategic Report a written report detailing the health and safety performance of

the Operator and the Operator Associates, in connection with the Services, including at least, with reference to lead and lag indicators, the steps being taken to comply with its health and safety obligations under this Partnering Contract, and the outcomes of any health and safety audits or reviews undertaken;

- 42.7.4 meet with GWRC or GWRL at its request to:
- (a) review the Operator's written report and to discuss steps being taken by or on behalf of the Operator to address any issues identified; or
 - (b) otherwise to review and discuss any aspect of health and safety performance under this Partnering Contract or in relation to the Services; and
- 42.7.5 ensure that health and safety performance is a key agenda item at all weekly operations meetings convened pursuant to paragraph 4 (*Meetings*) of Schedule 5 (*Planning, Reporting and Meetings*), including reporting on any new health and safety risks identified, the steps being taken to eliminate or minimise those risks, details of accidents, injuries and near-misses, the steps being taken to investigate these, the outcomes of any investigations undertaken, and the corrective actions being taken to prevent reoccurrence.

Part Seven– Financial

43. Indexation

Meaning of Indexed

43.1 Subject to paragraph 12.5 (*Indexation of Net Financial Impact*) of Schedule 16 (*Change Events and Net Financial Impact*), **Indexed** means, in relation to any amount, that amount multiplied with effect from each 1 July (starting 1 July 2017) until the following 30 June during the Term by:

$\frac{Index_1}{Index_2}$

where $Index_1$, is the value of CPI published for the December prior to the relevant calculation date and $Index_2$ is the value of CPI for December 2015.

Amounts to be Indexed

43.2 Unless expressly provided otherwise in this Partnering Contract and subject to paragraph 12.5 (*Indexation of Net Financial Impact*) of Schedule 16 (*Change Events and Net Financial Impact*), all monetary amounts expressed as a number in any currency in this Partnering Contract shall be Indexed even if the relevant provision does not specifically provide for such amount to be Indexed.

GWRC to provide notification

43.3 As soon as reasonably practicable after GWRC has calculated the Indexation of any monetary amount in accordance with the foregoing provisions of this clause 43, GWRC shall notify the Operator of the resulting adjustment (if any) to that monetary amount.

Changes to CPI

43.4 If there is a material change in the nature or basis of CPI, or if CPI is discontinued, GWRC and the Operator shall agree on an alternative index that replicates CPI as closely as possible, and such consequential changes shall be made to the calculations provided for in this Partnering Contract as are necessary to ensure that amounts to be adjusted with reference to CPI under this Partnering Contract shall be adjusted in a manner as similar as possible to the manner in which such amounts would have been adjusted if such change or discontinuation had not occurred. If no such agreement is reached within 60 days of a request by either GWRC or the Operator, either GWRC or the Operator may refer the matter for determination by the Expert in accordance with the relevant provisions of the Dispute Resolution Procedure and the Expert shall have power to determine such alternative index and consequential changes as he or she deems reasonable.

Errors in CPI

43.5 If Statistics New Zealand or its successor reports any error in the CPI as previously reported by it, the error shall be taken into account in calculating amounts due to be

paid after the date on which such error is reported but there shall be no retrospective adjustment to amounts previously paid.

44. **Payments**

Payment obligation

44.1 Subject to the following provisions of this Part Seven, clause 59 (*Force Majeure*) and Schedule 6 (*Financial and Performance Regime*), from the Commencement Date until the Termination Date GWRC shall, in consideration of the provision of the Services, pay the Services Fee to the Operator in accordance with this Part Seven. The Services Fee payable by GWRC shall be calculated in accordance with the provisions at Schedule 6 (*Financial and Performance Regime*).

Payment claims

44.2 On the second Business Day of each Relevant Month, the Operator shall provide to GWRC a reasonable estimate of the Services Fee that will be payable in respect of that Relevant Month, including full details as to how that amount has been calculated by reference to each component part of the calculation of the Services Fee provided for in Schedule 6 (*Financial and Performance Regime*).

44.3 Within 5 Business Days after the end of each Relevant Month, the Operator shall give GWRC a claim for payment on account of the Services Fee and any other amounts payable in respect of that Relevant Month.

44.4 The Operator shall ensure that each payment claim submitted pursuant to clause 44.3:

44.4.1 is substantially in the form set out in Annexure 18 (*Form of payment claim*) or such other form as GWRC may from time to time specify;

44.4.2 sets out all amounts in New Zealand dollars and cents, with cents being shown to two decimal places;

44.4.3 is accompanied by a correct Monthly Performance Report in respect of the Relevant Month with no material Reporting Error;

44.4.4 is accompanied by the supporting documentation referred to in paragraph 3.41 (*Special Event Services Fee - supporting documentation*) of Schedule 3 if the payment claim includes a claim for payment of any Special Event Services Fee;

44.4.5 is accompanied by such other information as is reasonably required to support and justify the amount claimed; and

44.4.6 is in the form of a valid tax invoice for the amount (if any) claimed by the Operator, calculated in accordance with this Partnering Contract.

44.5 Within 3 Business Days of a request therefor, the Operator shall provide to GWRC such other evidence of, and justification for, the amounts claimed by it in a payment claim as GWRC may reasonably request.

Payment after payment claim

44.6 Subject to clauses 44.7, 44.9, 44.10 and 45 (*Set Off*) and provided that the Operator has complied with its obligations under clauses 44.2 to 44.5, then on or before the 20th day of the month following the end of the Relevant Month (or if such day is not a Business Day, on the next Business Day), GWRC shall:

44.6.1 pay the Operator:

- (a) the amount claimed in the relevant payment claim; or
- (b) such lesser amount as GWRC reasonably determines is due and payable under this Partnering Contract; and

44.6.2 if GWRC determines that a lesser amount is due and payable, give the Operator a statement setting out the reasons why GWRC considers that to be the case.

44.7 In the event that the Operator has not provided a claim for payment in respect of a Relevant Month or any other document or information required under clause 44.2, 44.4 or 44.5 on or before the relevant date specified in this clause 44, the time for performance of GWRC's obligations under clause 44.6 shall be the later of:

44.7.1 the 20th day of the month following the end of the Relevant Month (or if such day is not a Business Day, on the next Business Day); and

44.7.2 the date falling 7 Business Days after the date on which the Operator has provided all documents and information which it is required to provide under clauses 44.2, 44.3, 44.4 and 44.5.

44.8 If GWRC gives a statement under clause 44.6.2, the Operator shall promptly issue a debit note or credit note (as applicable) for the relevant amount to GWRC.

Net amount due from the Operator to GWRC

44.9 If a payment claim shows, or GWRC reasonably determines, that a net amount is due from the Operator to GWRC, the Operator shall (at GWRC's election):

44.9.1 pay that amount to GWRC within 15 Business Days of written demand therefor; or

44.9.2 otherwise carry forward the amount and set it off against the amount claimed to be payable to the Operator in the next payment claim submitted by the Operator.

Valid tax invoices

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

Late Payment

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

Payment on account

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

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

44.12.2 an admission of liability; or

44.12.3 approval by GWRC of the Operator's performance or compliance with any Transaction Document,

but is only taken to be payment on account and will not prejudice, or be construed as a waiver of, any rights, remedies or powers of GWRC or GWRL, whether under this Partnering Contract, any other Transaction Document or otherwise according to Law or equity.

Operator Acknowledgements

44.13 The Operator hereby acknowledges and agrees that:

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

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

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

44.13.4 it is in the economic and other best interests of the Operator that a formula of the nature referred to in clause 44.13.3 applies in respect of this Partnering Contract;

- 44.13.5 the formulae, mechanisms and regime set out in Schedule 6 (*Financial and Performance Regime*):
- (a) meet the requirements set out in clause 44.13.3;
 - (b) reflect a genuine pre-estimate of the diminished value to GWRC and GWRL if the Operator fails to provide any of the Services in accordance with the requirements of this Partnering Contract (including the requirements of the Punctuality KPI and the Reliability KPI); and
 - (c) do not constitute a penalty in any respect; and
- 44.13.6 the Operator:
- (a) is contracting with GWRC and GWRL on an arm's length basis;
 - (b) has undertaken its own due diligence and obtained its own advice as to the formulae, mechanisms and regime set out in Schedule 6 (*Financial and Performance Regime*) and the potential implications thereof and has not relied on any statements, warranties or representations in connection therewith (whether express or implied) made by or on behalf of GWRC or GWRL;
 - (c) enters into this Partnering Contract without duress, coercion, undue influence or any other form of unconscionable conduct on the part of GWRC or GWRL;
 - (d) enters into this Partnering Contract with the intention that the formulae, mechanisms and regime set out in Schedule 6 (*Financial and Performance Regime*) are legally binding, valid and enforceable;
 - (e) to the maximum extent permissible by Law, hereby unconditionally and irrevocably waives any right of the benefit of the application of any legal rule or norm (including under statute, equity and common law) relating to the non-enforceability of the formulae, mechanisms and regime set out in Schedule 6 (*Financial and Performance Regime*) or the characterisation thereof as penalties; and
 - (f) shall upon request of GWRC, issue an irrevocable payment direction to require the Vehicle Availability Payment for the Relevant Month to be paid directly to GWRL in full and final satisfaction of any obligation to pay the Vehicle Availability Payment for that Relevant Month to the Operator. The Operator shall execute any required documentation to effect such payment direction promptly following any such request from GWRC.

Currency

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

45. Set off

GWRC's and GWRL's rights of set off

45.1 Each of GWRC and GWRL may at any time deduct from any amount payable to the Operator (other than the Vehicle Availability Payments which shall not be subject to reduction or deduction):

45.1.1 any Moneys Owing to GWRC and/or GWRL; and

45.1.2 any Claim to Moneys Owing that the GWRC and/or GWRL may have against the Operator,

whether under this Partnering Contract or any other Transaction Document or otherwise.

45.2 GWRC shall provide the Operator with reasonable details of the basis on which it or GWRL is setting off any amount pursuant to clause 45.1.

Interest on withheld amount

45.3 An amount which is finally determined in accordance with clause 53 (*Dispute Resolution Procedure*) as having been incorrectly withheld by either GWRC or GWRL shall incur (and GWRC or GWRL (as applicable) shall pay) simple interest at the Default Rate, from (and including) the day after the date on which payment of that amount fell due and payable until (and including) the actual date of payment.

Operator shall not set off

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

45.4.1 any money due from GWRC and/or GWRL to the Operator; or

45.4.2 any Claim to money that the Operator may have against GWRC and/or GWRL,

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

46. Disputes about payments

46.1 Pending agreement or determination in respect of a disputed amount, GWRC may withhold the payment of any amount invoiced by the Operator that GWRC considers on reasonable grounds is not an amount to which the Contractor is entitled under the terms of this Partnering Contract as at the relevant payment date.

- 46.2 GWRC shall pay any amount invoiced by the Operator that is not disputed by GWRC on or before the relevant date for payment under this Partnering Contract.
- 46.3 Subject to clause 46.4, any party shall be entitled to refer a dispute relating to any matter arising from:
- 46.3.1 a Monthly Performance Report;
 - 46.3.2 any payment claim;
 - 46.3.3 the issue by GWRC of a statement pursuant to clause 44.6.2 to the effect that GWRC has determined that a lesser amount is due and payable than the amount specified by the Operator in the relevant payment claim; or
 - 46.3.4 the calculation of any amount due and payable by any Party under this Partnering Contract,
- for resolution by an Expert in accordance with clauses 53.9 to 53.15
- 46.4 The Operator may refer any dispute in relation to the calculation of the Services Fee or any other matter referred to in clause 46.3 for resolution if, and only if, the dispute is referred by the Operator for determination by an Expert pursuant to clauses 53.9 to 53.15 within 15 Business Days of receipt by the Operator of the relevant statement issued by GWRC under clause 44.6.2. If such matter is not referred by the Operator for determination within such time period, then the Operator:
- 46.4.1 is not entitled to make any Claim in respect of such dispute; and
 - 46.4.2 in relation to that payment, unconditionally and irrevocably waives any right to Claim in respect of any incorrect determination by GWRC under clause 44.6.2 and releases GWRC and GWRL from all liability in respect thereof.

47. **GST, rates, taxation, utilities and accounting principles**

Goods and Services Tax

- 47.1 In this clause 47, words and phrases defined in the GST Act have the meaning given in the GST Act, unless the context requires otherwise.
- 47.2 Unless expressly provided to the contrary in this Partnering Contract, any consideration payable for a supply made under this Partnering Contract is stated before the addition of any GST chargeable on that supply.
- 47.3 The Parties agree that where GST is chargeable on a supply made by one party (the "**Supplier**") to any other party (the "**Recipient**") under this Partnering Contract, the Supplier shall issue a valid tax invoice to the Recipient and the Recipient shall pay to the Supplier the GST chargeable on that supply, in addition to the consideration payable for that supply. The Recipient shall pay the GST to

the Supplier at the same time as the consideration is paid by the Recipient to the Supplier.

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

Rates and Taxes

- 47.5 As between themselves and the Operator, GWRC or GWRL are responsible for and shall pay all Rates assessed on or in relation to the land and property which is the subject of the Wellington Station Lease, the Station Lease, the Carriage Depot Licence or the EMU Depot Lease.
- 47.6 Subject only to clause 47.5, the Operator shall pay all Rates and Taxes assessed on it.
- 47.7 Not used.

Utilities

- 47.8 Subject to clause 47.9 of this Partnering Contract and Schedule 9 (*Stations and Depot Facilities*), the Operator is responsible for and shall pay all charges in respect of utility services (including water, gas, electricity, telephone, drainage, sewerage and communications) in relation to the performance of the Services, the use of the Depot Facilities and the carrying out by it of its activities.
- 47.9 Except to the extent that:
- 47.9.1 the Operator is required to pay electricity charges under the terms of any other Transaction Document; or
- 47.9.2 electricity charges are included within any amount payable by the Operator as a consequence of GWRC having delegated any of its obligations under the Wellington Network Agreement to the Operator,
- the Operator shall not be responsible for the payment of traction electricity charges which directly relate to the performance of the Passenger Operating Services.

Fringe Benefit Tax

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

Accounting principles

- 47.11 The Operator shall ensure that:
- 47.11.1 (**Arm's Length Terms**): except as provided otherwise in clause 8 in relation to the Initial Transferring Assets, any arrangement entered into

by the Operator or an Operator Associate in connection with the acquisition, refurbishment or repair of an Operator Asset is entered into, and continues to be at all times, on Arm's Length Terms;

- 47.11.2 **(Actual costs recorded)**: the costs of the acquisition of each Operator Asset and any refurbishment or repair of an Operator Asset shall be recorded in the accounts of the Operator or relevant Operator Associate as the actual direct cost of such acquisition, refurbishment or repair (as applicable) incurred by the Operator or relevant Operator Associate;
- 47.11.3 **(General Accounting and depreciation practices)**: subject to clause 47.12, for the purposes of determining the Adjusted Book Value of any Operator Asset, the accounting and depreciation practices of the Operator and the Operator Associates in respect of Operator Assets shall comply at all times with "generally accepted accounting practice" as such term is defined in section 8 of the Financial Reporting Act 2013, provided that:
- (a) costs of inventory items shall be assigned using a weighted average cost formula approved in writing by GWRC (acting reasonably); and
 - (b) the Operator Assets shall be depreciated using the straight line method and using depreciation rates which are approved by the New Zealand Inland Revenue Department.
- 47.12 The Operator acknowledges and agrees that, notwithstanding anything to the contrary in this Partnering Contract:
- 47.12.1 **(No adjustment in respect of Initial Transferring Assets)**: it shall not, and shall procure that any relevant Operator Associate shall not, at any time re-value the Initial Transferring Assets;
- 47.12.2 **(Accounting treatment in respect of Special Tools and General Tools)** the costs incurred by the Operator or Operator Associates in connection with the acquisition of General Tools and Special Tools:
- (a) shall for the purposes of determining their Adjusted Book Value, be capitalised and depreciated in accordance with clause 47.11.3; and
 - (b) are recovered by the Operator during the Term through the payment of the Vehicle Services Fee or any other amounts payable by GWRC pursuant to this Partnering Contract which are calculated in accordance with the Heavy Maintenance Rate Card, subject to payment pursuant to clause 63.10 in respect of Transferring Operator Assets;
- 47.12.3 **(Accounting treatment in respect of Spares including Rotable Items)**: the costs incurred by the Operator or Operator Associates in

connection with the acquisition of Spares (including Rotable Items) or the refurbishment or repair of Rotable Items:

- (a) notwithstanding clause 47.11.3, shall, for the purposes of determining their Adjusted Book Value, not be depreciated; and
- (b) are recovered by the Operator during the Term through the payment of the Vehicle Services Fee or any other amounts payable by GWRC pursuant to this Partnering Contract which are calculated in accordance with the Heavy Maintenance Rate Card, subject to payment pursuant to clause 63.10 in respect of Transferring Operator Assets;

47.12.4 **(Refurbishment or repair of Rotable Items)**: in relation to Rotable Items for the purposes of determining their Adjusted Book Value:

- (a) when a Rotable Item is removed from a Vehicle for the purposes of refurbishment or repair it shall, for accounting purposes, be placed into "unrefurbished stock" and have a value of zero; and
- (b) after refurbishment or repair of the Rotable Item in accordance with this Partnering Contract it shall, for accounting purposes, be placed into "refurbished stock" and be valued at the actual direct cost incurred by the Operator in connection with such refurbishment or repair; and

47.12.5 **(Maximum book values)**: at no time shall:

- (a) the aggregate book value in respect of all General Tools and Special Tools included within the Operator Assets exceed \$1,000,000 (which amount shall not be Indexed); and
- (b) the aggregate book value in respect of all Spares (including for the avoidance of doubt Rotable Items) included within the Operator Assets exceed \$20,000,000 (which amount shall not be Indexed),

without the prior written consent of GWRC (which may be given or withheld in GWRC's absolute discretion).

48. **Farebox Revenue and other Revenue**

Farebox Revenue and ticket sales

48.1 The Parties agree that:

- 48.1.1 as part of GWRC's obligation to provide public transport services for the Wellington region, GWRC hereby appoints the Operator to sell tickets and collect Farebox Revenue as agent for GWRC in accordance with this clause 48 and Annexure 6 (*Fares, Ticketing and Enforcement Requirements*) and the Operator hereby accepts such appointment;

- 48.1.2 GWRC authorises the Operator to appoint the Ticket Agents as sub-agents of the Operator on the terms of the Ticket Agent Agreements; and
- 48.1.3 the following clauses (inclusive) shall apply in regard to Farebox Revenue:
- (a) at all times from the Commencement Date, clauses 48.1 to 48.3A, clauses 48.14 to 48.26 inclusive and clause 48.32;
 - (b) from the Commencement Date up to and including the IFT Programme Phase One Expiry Date, clauses 48.4 to 48.8 inclusive; and
 - (c) on and from the ETS Implementation Date until the Termination Date, clauses 48.9 to 48.13 inclusive.
- 48.2 The Operator shall bear all costs and expenses relating directly or indirectly to compliance with its obligations under this clause 48 and Annexure 6 (*Fares, Ticketing and Enforcement Requirements*), including bank charges, staff costs (including the cost of complying with its obligations under clause 48.3.6) and, up to and including the IFT Programme Phase One Expiry Date, credit card fees and commission payable to Ticket Agents.
- 48.3 The Operator shall:
- 48.3.1 sell fares on the terms and conditions set out in, and shall otherwise comply with, Annexure 6 (*Fares, Ticketing and Enforcement Requirements*);
 - 48.3.2 ensure that the availability and accessibility of fares is not reduced and not offer fares for sale other than those referred to in Annexure 6 (*Fares, Ticketing and Enforcement Requirements*), unless otherwise agreed by GWRC in writing;
 - 48.3.3 ensure that fares sold in printed form are branded in the form specified by GWRC;
 - 48.3.4 ensure that the Operator Associates do not commit a Ticket Offence;
 - 48.3.5 provide free rail travel for all of the Operator's employees engaged in providing Services and the Vehicle Services Subcontractor's employees engaged in providing Vehicle Services, travelling in uniform or holding a valid staff pass to and from work on Scheduled Services or on Special Event Services to the extent required by a relevant collective agreement or individual employment agreement; and
 - 48.3.6 provide any additional travel benefits other than the free travel described at clause 48.3.5 for all of the Operator's employees to the extent required by a relevant collective agreement or individual employment agreement.

48.3A In respect of free travel entitlements described at clause 48.3.5, the Parties agree that the Operator is not required to pay GWRC the cost of providing tickets to its employees and the Vehicle Services Subcontractor's employees, for the purposes of complying with clause 48.3.5 but the Operator shall be responsible to meet the cost of (and where applicable pay GWRC) for any other travel benefits provided under clause 48.3.6.

Collecting Farebox Revenue up to and including IFT Programme Phase One Expiry Date

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

48.5 The Operator shall ensure that all Farebox Revenue either received by the Operator or any Operator Associate (including by way of cash payment, cheque and electronic payment) or to be paid to GWRC under clause 48.3A is:

48.5.1 deposited into the Farebox Account in accordance with such reasonable procedures as GWRC may from time to time notify to the Operator and:

(a) in the case of Farebox Revenue received by the Operator or any Operator Associate (excluding the Ticket Agents), as soon as reasonably practicable and in any event by 10 a.m. on the next Business Day after such Farebox Revenue is received, provided that if Farebox Revenue is collected by way of electronic payment, the Operator shall ensure that such payments shall be paid into the Farebox Account directly and immediately; or

(b) in the case of Farebox Revenue received by any Ticket Agent, as soon as received by the Operator from a Ticket Agent which must be at the latest on or prior to the last Business Day of the month in which the Farebox Revenue is collected by the Ticket Agent;

48.5.2 kept safe, secure and separate from any other moneys until the time at which it is deposited into the Farebox Account pursuant to clause 48.5.1; and

48.5.3 deposited into the Farebox Account in accordance with this clause 48.5 without setting off or deducting any amounts, including any costs or expenses referred to in clause 48.2.


Transfer of balance of the Farebox Account up to and including the IFT Programme Phase One Expiry Date

48.6 Before 4.00 pm on each Business Day, the Operator shall transfer to GWRC from the Farebox Account, as a same day cleared payment:

48.6.1 if the Operator has provided a Daily Farebox Report that day in accordance with its obligations under Schedule 5 (*Planning, Reporting and Meetings*), the amount specified in that Daily Farebox Report as

being the total amount to be paid to GWRC from the Farebox Account;
or

48.6.2 if the Operator has not provided a Daily Farebox Report in accordance with its obligations under Schedule 5 (*Planning, Reporting and Meetings*), the average daily value of tickets sold by the Operator and the Operator Associates during the preceding calendar month (or, in the case of the first Relevant Month, GWRC's reasonable estimate of the daily value of tickets sold by the Operator and the Operator Associates) multiplied by the number of days for which a Daily Farebox Report should have been provided. If any Daily Farebox Report is incorrect or misleading in any way (including resulting from mistake, fraud or otherwise) (such matter being an "**Error**") resulting in GWRC not being paid the full amount in respect of unaccounted for tickets or Farebox Revenue from the Farebox Account at any time:

- (a) the Operator shall pay to GWRC on demand the amount of the shortfall plus interest thereon calculated at the Default Rate from (and including) the day after the date on which the Error arose until (and including) the actual date that GWRC receives payment; and
- (b) without prejudice to any other rights or remedies of GWRC under this Partnering Contract (including the right to make Reporting Failure Deductions in accordance with Schedule 6) at GWRC's election the Operator shall pay to GWRC on demand the sum of  in respect of each such Error.

48.7 Not used.

48.8 The Parties acknowledge and agree that:

48.8.1 the amount referred to in clause 48.6.2(b) is a genuine pre-estimate of the damages, costs and losses (including administrative costs) that may be incurred by GWRC in connection with an Error and that such amount has been agreed by the Parties in good faith;

48.8.2 the Parties wish to avoid the difficulty of calculation of damages, costs and losses in connection with an Error;

48.8.3 payment by the Operator of such amount is reasonable and is not intended to be a penalty; and

48.8.4 to the maximum extent permissible by Law, the Operator hereby unconditionally and irrevocably waives any right of the benefit of the application of any legal rule or norm (including under statute, equity and common law) relating to the non-enforceability of clause 48.6.2(b) or the characterisation thereof as a penalty.

Collecting Farebox Revenue on and from ETS Implementation Date

- 48.9 The Operator shall comply with its ticketing obligations set out in Annexure 6 (*Fares, Ticketing and Enforcement Requirements*).
- 48.10 The Operator shall ensure that all Farebox Revenue received by the Operator or any Operator Associate by way of cash payment and cheque is:
- 48.10.1 deposited into the Farebox Account as soon as reasonably practicable and in any event by 10.00 am on the next Business Day after such Farebox Revenue is received by the Operator or any Operator Associate, in accordance with such reasonable procedures as GWRC may from time to time notify to the Operator;
 - 48.10.2 kept safe, secure and separate from any other moneys until the time at which it is deposited into the Farebox Account pursuant to clause 48.10.1;
 - 48.10.3 deposited into the Farebox Account in accordance with this clause 48.10 without setting off or deducting any amounts, including any costs or expenses referred to in clause 48.2; and
 - 48.10.4 recorded on the Operator IFT System Equipment.
- 48.11 The Operator shall:
- 48.11.1 collect all cash payments made through the Operator IFT System Equipment;
 - 48.11.2 ensure that the Operator IFT System Equipment has sufficient cash float; and
 - 48.11.3 collect all cash and cheque payments for tickets sold by the Operator or an Operator Associate for travel on vehicles providing alternative transport arrangements which replace disrupted Scheduled Services or Special Event Services.
- 48.12 The Operator shall not be responsible for transferring to the Farebox Account any revenue paid by cash to the IFT System Equipment (other than the Operator IFT System Equipment) or paid to the IFT System Equipment electronically.

Transfer of balance of the Farebox Account on and from ETS Implementation Date

- 48.13 The Parties agree that:
- 48.13.1 GWRC may provide a GWRC Farebox Report on each Business Day in accordance with paragraph 3.3 of Schedule 5 (*Planning, Reporting and Meetings*); and
 - 48.13.2 before 4.00 pm on each Business Day, the Operator shall transfer to GWRC from the Farebox Account, as a same day cleared payment the amount referred to in the report provided by GWRC pursuant to clause 48.13.1 on that day.

Operation of the Farebox Account and dealing with Farebox Revenue

- 48.14 The Operator shall ensure that at all times the balance of the Farebox Account is sufficient to enable the Operator to transfer to GWRC the amounts referred to in clauses 48.6 and 48.13.
- 48.15 If the Operator has failed to comply with clause 48.14, the Operator shall pay to GWRC on demand simple interest at the Default Rate on the difference between the amount which GWRC is entitled to receive from the Operator pursuant to clause 48.6 or 48.13 (as applicable) and the amount actually paid pursuant to clause 48.6 or 48.13 (as applicable). Such interest shall accrue from and including the date on which GWRC is entitled to receive the relevant amount pursuant to clause 48.6 or 48.13 (as applicable) until and including the date on which the Operator has paid sufficient additional funds (not comprising Farebox Revenue subsequently received by the Operator or Operator Associates and payable into the Farebox Account in accordance with this clause 48) into the Farebox Account to make up the shortfall, transferred the amount owing to GWRC and has notified GWRC in writing that it has done so.
- 48.16 The Operator shall not (and shall procure that the Operator Associates shall not):
- 48.16.1 pay the Farebox Revenue into any account other than the Farebox Account;
 - 48.16.2 Not used;
 - 48.16.3 dispose of, assign, transfer or otherwise deal with the Farebox Revenue in any manner other than that contemplated by this clause 48;
 - 48.16.4 make any withdrawals or transfers from the Farebox Account except to the extent permitted by this clause 48;
 - 48.16.5 Not used;
 - 48.16.6 pay any amount into the Farebox Account other than Farebox Revenues and the additional funds referred to in clause 48.15;
 - 48.16.7 use the Farebox Account for any purpose other than that contemplated by this clause 48;
 - 48.16.8 permit the balance of the Farebox Account to fall below zero;
 - 48.16.9 close, transfer or seek to close or transfer the Farebox Account at any time except as required by clause 48.18.1; or
 - 48.16.10 create any Security Interest over the Farebox Account (including its proceeds) or over any or all of the Farebox Revenue, or permit such Security Interest to be created or to subsist at any time.
- 48.17 The Operator shall ensure that the bank with which the Farebox Account is held is an Approved Bank. If at any time during the Term such bank ceases to be an Approved Bank, the Operator shall:

- 48.17.1 promptly notify GWRC of that circumstance; and
 - 48.17.2 within 5 Business Days of such circumstance occurring, open a new bank account with a bank which is an Approved Bank.
- 48.18 On the date on which a new bank account is opened pursuant to clause 48.17.2:
- 48.18.1 the Operator shall:
 - (a) provide written details of the new bank and the new account (including account number and local clearing code) to GWRC;
 - (b) transfer the balance of the Redundant Farebox Account to that new bank account;
 - (c) not used;
 - (d) close the Redundant Farebox Account; and
 - 48.18.2 the new account shall become the Farebox Account for the purposes of this Partnering Contract in place of the Redundant Farebox Account and shall be operated in accordance with the provisions of this clause 48.
- 48.19 The Operator shall be responsible for paying any fee, fine or other penalty in connection with the Farebox Account (including any Redundant Farebox Account). To the extent that any such fee, fine or other penalty is deducted from the balance of the Farebox Account, the Operator shall immediately pay the amount of such deduction into the Farebox Account.
- 48.20 Without prejudice to the Operator's obligations to transfer from the Farebox Account to GWRC in accordance with this clause 48, to the extent that:
- 48.20.1 any interest accrues on the balance of the Farebox Account; and
 - 48.20.2 the Operator is not obliged to transfer the amount of such interest from the Farebox Account to GWRC in accordance with this clause 48,
- the Operator shall be entitled to such interest.

Farebox Revenue held on trust

- 48.21 The Operator acknowledges and agrees that all Farebox Revenue is the absolute property of GWRC and that the Operator holds such Farebox Revenue as bare trustee at all times for GWRC (whether such Farebox Revenue has been paid into the Farebox Account or not).
- 48.22 In the event that any or all of the Operator's obligations in respect of the collection of Farebox Revenue are subcontracted to any person (whether by the Operator or by any subcontractor of any tier) or the collection of Farebox Revenue is undertaken by Ticket Agents other than Ticket Agents appointed under the Ticket Agent Agreements, the Operator shall ensure that each such subcontract (of any tier) or agreement with the Ticket Agent (as applicable) shall contain a provision whereby the relevant subcontractor or Ticket Agent (as applicable) acknowledges and agrees

that all Farebox Revenue is the absolute property of GWRC and that the subcontractor or Ticket Agent (as applicable) holds such Farebox Revenue as bare trustee at all times for GWRC.

Ticket Agents

- 48.23 Prior to the Commencement Date, the Operator shall duly execute and deliver a Ticket Agent Agreement with each of the Ticket Agents substantially in the form set out in Annexure 21 (*Ticket Agent Agreement*).
- 48.24 If required to do so by GWRC, on the day falling immediately before the earlier of:
- 48.24.1 the Termination Date; and
 - 48.24.2 the ETS Implementation Date,
- the Operator shall, if required by GWRC, either:
- 48.24.3 duly execute and deliver a deed of novation in respect of each of the Ticket Agent Agreements in such form as GWRC reasonably requests and pursuant to which the Operator novates its rights and obligations (excluding accrued obligations) in respect of the Ticket Agent Agreements to GWRC or its nominee;
 - 48.24.4 terminate each Ticket Agent Agreement in accordance with its terms.
- 48.25 The Operator shall not:
- 48.25.1 make any modification, variation or amendment of a material nature to, or terminate or surrender; or
 - 48.25.2 permit the novation, assignment or substitution of any counterparty's right, obligation or interest in,
- any Ticket Agent Agreement, or enter into any new agency relationship in respect of the Operator's obligations under this Partnering Contract, without GWRC's prior written consent.

Provision of information to GWRC

- 48.26 Without prejudice to any other obligations of the Operator, within 3 Business Days following a request therefor, the Operator shall provide to GWRC (on an Open Book Basis) such information as GWRC may reasonably request from time to time:
- 48.26.1 to evidence the gross amount of Farebox Revenue received by the Operator or any Operator Associate;
 - 48.26.2 to evidence the amounts deposited from time to time into the Farebox Account;
 - 48.26.3 to evidence the type of fares sold broken down by:
 - (a) description of fares sold;
 - (b) numbers of fares sold;

- (c) the amount and nature of any agency or other fees (if any) deducted in relation to the fares sold; and
 - (d) any other information required by GWRC for accounting of GST purposes;
- 48.26.4 to evidence the net amount of Farebox Revenue transferred from the Farebox Account to GWRC by the Operator in accordance with this clause 48; and/or
- 48.26.5 to verify the extent to which the Operator has complied and is complying with this clause 48.

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

- 48.27 The Operator shall only provide additional revenue generating services or facilities in connection with passenger carrying services (such as the provision of WIFI or catering facilities on board Trains for use by passengers) to the extent:
- 48.27.1 contemplated by the approved Annual Business Plan; or
 - 48.27.2 otherwise approved in advance in writing by GWRC.
- 48.28 If the Operator is entitled to provide one or more Approved Revenue Services, then the Operator shall:
- 48.28.1 provide GWRC with the calculation of the Aggregate Approved Revenue Service Profit Amount (including a detailed break down and supporting documentation); and
 - 48.28.2 provided that the Aggregate Approved Revenue Service Profit Amount is a positive number, pay 50% of the Aggregate Approved Revenue Service Profit Amount to GWRC,
- in each case at such times as are contemplated by the applicable Annual Business Plan or otherwise agreed by the Operator and GWRC in writing.
- 48.29 The Operator shall promptly provide such information and evidence as GWRC reasonably requires to verify the information provided by the Operator pursuant to clause 48.28.
- 48.30 The Operator acknowledges and agrees that:
- 48.30.1 it shall bear all risks, costs and losses associated with the provision of any Approved Revenue Services;
 - 48.30.2 to the extent that the Aggregate Approved Revenue Service Profit Amount is at any time negative, neither GWRC nor GWRL shall bear any share of the Aggregate Approved Revenue Service Profit Amount and the Operator shall not be entitled to any compensation or additional payment for any losses incurred by it connection with the provision of any Approved Revenue Service; and

- 48.30.3 the inclusion of any Approved Revenue Services within any Annual Business Plan, the approval by GWRC of any Approved Revenue Service as contemplated by clause 48.27.2 or the provision of any Approved Revenue Service shall not:
 - (a) constitute or give rise to a Contract Variation, a Minor Contract Variation or an Additional Modification Service; or
 - (b) entitle the Operator to any additional payment, compensation or relief from its obligations under this Partnering Contract or any other Transaction Document.

48.31 The Parties acknowledge and agree that:

48.31.1 GWRC may provide the Operator with a notice from time to time requesting that the Operator provide wheel lathe services to KiwiRail Limited in respect of KiwiRail Limited's freight and scenic rolling stock (the **Wheel Lathe Services**);

48.31.2 the Operator shall undertake the Wheel Lathe Services as soon as reasonably practicable after receipt of the notice referred to in clause 48.31.1;

48.31.3 the Operator shall issue an invoice to GWRC or, if GWRC requests, KiwiRail Limited requesting payment for the Wheel Lathe Services

[REDACTED]

and

48.31.4 the Operator shall not be required to provide any revenue generated from the Wheel Lathe Services (or the provision of any other third party wheel lathe services) to GWRC as part of the Aggregate Approved Revenue Service Profit Amount required under clause 48.28.

Account for payment

48.32 The Operator shall pay amounts to be paid to GWRC under this clause 48 into such account as GWRC may nominate to the Operator in writing from time to time.

49. [REDACTED]

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50. Insurance

Insurance cover provided by Operator

- 50.1 The Operator shall:
 - 50.1.1 take out and maintain each of those insurances described in Schedule 7 (*Operator Insurance requirement*) and ensure that each such insurance is in full force and effect at all times during the relevant period of insurance specified in Schedule 7 (*Operator Insurance requirement*); and
 - 50.1.2 take out and maintain any other insurance in connection with the performance by the Operator of its obligations under this Partnering Contract or any other Transaction Document as may be required from time to time by Law and ensure that each such insurance is in full force and effect at all such times as may be required by Law.
- 50.2 The Operator shall ensure that at all times during the period specified in clause 50.1, each Insurance Policy shall:
 - 50.2.1 be provided by Reputable Insurers;
 - 50.2.2 in the case of those Insurance Policies described in Schedule 7 (*Operator Insurance Requirement*), comply with, and include the

relevant terms and requirements specified in, Schedule 7 (*Operator Insurance requirement*);

- 50.2.3 provide for a maximum deductible which:
- (a) if a maximum deductible is specified in respect of that Insurance Policy in Schedule 7 (*Operator Insurance requirement*), does not exceed the maximum deductible so specified; or
 - (b) if a maximum deductible is not specified in respect of that Insurance Policy in Schedule 7 (*Operator Insurance requirement*), is reasonable and appropriate for a prudent commercial enterprise engaged in the provision of services similar to the Services and in the performance of obligations similar to the Operator's obligations under the Transaction Documents and in any event is no greater than [REDACTED] which amount shall not be Indexed); and
- 50.2.4 in the case of those Insurance Policies described in Schedule 7 (*Operator Insurance Requirement*), to the extent legally possible, be in the names of the relevant parties specified in Schedule 7 (*Operator Insurance requirement*) as co-insured for their respective separate rights, obligations and interests.

50.3 Without prejudice to any obligation of the Operator under this clause 50, the Operator shall be entitled to use its general group insurance policies to satisfy its obligations under clause 50.1, provided that such general group insurance policies comply with all applicable requirements of this Partnering Contract.

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

Evidence of policies and renewal certificates

- 50.5 The Operator shall provide to GWRC:
- 50.5.1 within 5 Business Days of the date of this Partnering Contract and in any event prior to the Commencement Date, a Certificate of Currency in respect of each Insurance Policy;
 - 50.5.2 within 5 Business Days of the expiry of an existing Insurance Policy, a copy of the renewal certificate in respect of that Insurance Policy or a Certificate of Currency in respect of a replacement Insurance Policy (as applicable);
 - 50.5.3 on replacement of an existing Insurance Policy, a Certificate of Currency in respect of the replacement Insurance Policy no later than 5 Business Days after the expiry or cancellation of the existing Insurance Policy;

- 50.5.4 copies of the terms of any Insurance Policy within 5 Business Days of a request therefor, or where the terms of a general group insurance policy do not permit the provision of a copy of the Insurance Policy, then a summary from the insurer or an insurance broker confirming the limits, endorsements and exclusions of the Insurance Policy;
- 50.5.5 immediately on becoming aware of the same, written notice of any cancellation or proposed cancellation of any Insurance Policy by the insurer or the Operator; and
- 50.5.6 promptly following a request therefor, any other information reasonably requested by GWRC from time to time in connection with the Insurance Policies.

Premiums and other charges

- 50.6 The Operator shall at all times be responsible for, and shall punctually pay:
 - 50.6.1 all insurance premia, commissions, taxes, charges and other fees necessary to obtain and maintain the Insurance Policies and any other insurance policy which the Operator is obliged to obtain and maintain under any other Transaction Document; and
 - 50.6.2 any tax that it is liable to pay pursuant to section HD 16 of the Income Tax Act 2007 where any insurance premium is derived by a foreign insurer.
- 50.7 Promptly following a request therefor, the Operator shall provide GWRC with such evidence as GWRC may reasonably require to demonstrate that all amounts referred to in clause 50.6 have been duly paid by the Operator.

Failure to maintain

- 50.8 In the event that the Operator fails to:
 - 50.8.1 take out, maintain, renew or replace any Insurance Policy in accordance with the requirements of this Partnering Contract;
 - 50.8.2 pay any premium or other amount in respect of an Insurance Policy when such premium or other amount falls due and payable;
 - 50.8.3 provide GWRC with a Certificate of Currency or renewal certificate in respect of an Insurance Policy in accordance with its obligations under clause 50.5; or
 - 50.8.4 provide GWRC with the evidence required under clause 50.7,GWRC may (in its sole discretion) take out and maintain the relevant Insurance Policy and pay any premia or other amount in connection therewith.
- 50.9 Within 5 Business Days following a demand therefor, the Operator shall reimburse GWRC all costs incurred by GWRC in connection with the taking out and maintaining of any Insurance Policy as contemplated by clause 50.8, including the

amount of any tax that GWRC is liable to pay pursuant to section HD 16 of the Income Tax Act 2007 on behalf of a foreign insurer.

General obligations in respect of Insurance Policies

- 50.10 The Operator shall:
- 50.10.1 at all times comply with all terms of each Insurance Policy;
 - 50.10.2 promptly take all such measures and precautions as are reasonably necessary to protect and preserve the respective rights and entitlements of the Operator, GWRC and GWRL under the Insurance Policies;
 - 50.10.3 inform GWRC in writing immediately upon becoming aware of any matter which has or is likely to prejudice any Insurance Policy or any claim thereunder;
 - 50.10.4 not do, permit to be done or omit to do anything which prejudices or is likely to prejudice any Insurance Policy or any claim thereunder;
 - 50.10.5 without prejudice to clause 50.10.4, immediately rectify any matter which, if not rectified, would or is likely to prejudice any Insurance Policy or any claim thereunder;
 - 50.10.6 not cancel, vary or terminate any Insurance Policy and not allow any Insurance Policy to lapse, be cancelled or terminated without the prior written consent of GWRC;
 - 50.10.7 without prejudice to clause 50.10.6, immediately reinstate or replace any Insurance Policy which lapses, is cancelled or terminated with an Insurance Policy which complies with the requirements of this Partnering Contract and which is provided by a Reputable Insurer;
 - 50.10.8 fully and promptly disclose all material information to the insurers providing the Insurance Policies;
 - 50.10.9 in respect of the Material Damage Policy, if required to do so by GWRC immediately notify the relevant insurers in writing (copied to GWRC) if there is a material increase in the value of any of the Insured Property covered by that Insurance Policy;
 - 50.10.10 promptly notify GWRC in writing of any claim being made on any Insurance Policy, giving full details of the claim and the event giving rise to such claim except that, in relation to any claim being made on the Operator's general group public liability insurance policy, the Operator's obligation to notify under this clause 50.10.10 is limited to claims which relate to the Services or that may otherwise adversely affect the Services or this Partnering Contract; and
 - 50.10.11 promptly notify GWRC in writing in the event that any risk is or becomes uninsurable under the relevant Insurance Policy.

Enforcement

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

Value of Insured Property

50.12 The Operator shall immediately notify GWRC and GWRL in writing if there is a material increase or a material decrease in the value of any of the Insured Property covered by the Material Damage Policy.

50.13 For the avoidance of doubt, GWRC may at any time propose a Contract Variation requiring the Operator to increase or decrease the declared values of the Insured Property for the purposes of the Material Damage Policy and/or to increase or decrease any of the limits of liability applicable to the Material Damage Policy, by serving a Minor Contract Variation Notice or a Variation Proposal (as applicable) in which event the relevant provisions of Schedule 16 (*Change Events and Net Financial Impact*) shall apply.

51. Reinstatement

Allocation of risk

51.1 Except to the extent that GWRC nominates GWRL to reinstate damage pursuant to clauses 51.18 to 51.21 (*Reinstatement of the EMU Depot*) (if applicable), the Operator shall bear the risk of any loss of, or damage to, the Insured Property up to the applicable limit of liability specified in Schedule 7 in respect of the Material Damage Policy (as such limit of liability is adjusted from time to time in accordance with clause 50.13).

51.2 To the extent that the proceeds of the Material Damage Policy are insufficient to reinstate, repair or replace the Insured Property following its loss or damage as a result of the operation of the applicable limit of liability under the Material Damage Policy, then GWRC shall, subject to clauses 51.3 and 51.4, be responsible for bearing the cost of the deficit.

51.3 The Operator shall bear any deductible which applies in respect of any claim made under the Material Damage Policy except:

51.3.1 as otherwise provided for in clause 51.21 (*Reinstatement of the EMU Depot*) (if applicable);

51.3.2 to the extent that such deductible applies to Exceptional Repair Work (for which the Operator shall be reimbursed in accordance with paragraph 13 (*Exceptional Repair Work*) of Schedule 4).

51.4 To the extent that a breach by the Operator of its obligations under this Partnering Contract or any other Transaction Document (including any failure by the Operator to increase the applicable limit of liability under the Material Damage Policy to the

extent it is obliged to do so pursuant to this Partnering Contract) or any wilful misconduct by the Operator or any Operator Associate causes:

- 51.4.1 the proceeds of any claim under the Material Damage Policy to be reduced; or
- 51.4.2 the relevant insurer to not be obliged to respond to a claim under the Material Damage Policy,

which in turn gives rise to a deficit in insurance proceeds, the Operator shall be responsible for and shall bear such deficit.

Proceeds of Material Damage Policy

- 51.5 If the Operator makes a claim or claims on the Material Damage Policy in respect of a single event or a series of related events and the proceeds of such claim or claims exceed \$50,000 (which amount shall not be Indexed) in aggregate, the Operator shall ensure that all such proceeds are paid directly by the insurer into the Joint Insurance Account. GWRC, GWRL and the Operator shall operate the Joint Insurance Account so as to give effect to the provisions of, and the withdrawals contemplated by, this clause 51.
- 51.6 The Operator shall not at any time create or permit to subsist any Security Interest over the Joint Insurance Account or the proceeds of the Joint Insurance Account.
- 51.7 Subject to clause 51.22, all proceeds received by the Operator under the Material Damage Policy shall be applied to repair, reinstate and replace each part or parts of the Insured Property in respect of which such proceeds were received.

Reinstatement plan

- 51.8 In the event of any material damage to or loss of any Insured Property, the Operator shall:
 - 51.8.1 promptly notify GWRC of the occurrence of such damage or loss and promptly provide any information requested by GWRC in connection therewith; and
 - 51.8.2 provide a draft reinstatement plan to GWRC setting out the Operator's proposals to repair, reinstate or replace the relevant Insured Property and including the proposed timetable for such repair, reinstatement or replacement, which plan shall be provided:
 - (a) where the relevant damage or loss is to the EMU Depot or any EMU Depot Plant and Equipment, within 5 Business Days of receipt by the Operator of an EMU Depot Reinstatement Notice specifying that the Operator shall be responsible for reinstating the EMU Depot and/or the EMU Depot Plant and Equipment (as applicable); or

- (b) where the damage or loss is not to the EMU Depot or the EMU Depot Plant and Equipment, within 5 Business Days of such damage or loss occurring.
- 51.9 The Operator shall ensure that each draft reinstatement plan provided by it under clause 51.8.2 will, if implemented in accordance with its terms, be sufficient to ensure that the relevant Insured Property:
- 51.9.1 complies with all applicable Laws;
 - 51.9.2 complies with any applicable Consents;
 - 51.9.3 meets or exceeds any applicable requirements of this Partnering Contract; and
 - 51.9.4 will be in such a condition and of such a standard to enable the Operator to perform its obligations in accordance with this Partnering Contract and to meet or exceed the requirements of the Reliability KPI and the Punctuality KPI and to achieve the PI Achieve Benchmarks.
- 51.10 The Operator shall promptly amend any draft reinstatement plan prepared by it pursuant to clause 51.8.2 to incorporate the reasonable comments of GWRC and shall promptly resubmit the amended draft reinstatement plan to GWRC. This clause 51.10 shall reapply until GWRC confirms in writing that it approves the reinstatement Plan. GWRC shall not unreasonably withhold such approval.
- 51.11 The Operator shall:
- 51.11.1 promptly following approval of the reinstatement plan by GWRC, repair, reinstate or replace (as applicable) the relevant Insured Property in accordance with the terms of the Approved Reinstatement Plan (including any timetable contained therein); and
 - 51.11.2 without prejudice to clauses 51.3 and 51.4 but subject to clauses 51.16 (*GWRC may reinstate*), 51.21 (*Reinstatement of the EMU Depot*) (if applicable) and 51.22 (*Joint Insurance Account proceeds following termination or expiry*), be entitled to withdraw amounts standing to the credit of the Joint Insurance Account to fund the costs of performing its obligations under clause 51.11.1 to the extent that such costs relate to the repair, reinstatement or replacement of the Insured Property in respect of which such amounts were received under the Material Damage Policy.
- 51.12 The Operator shall not be relieved from its obligations to repair, reinstate or replace (as applicable) the Insured Property by reason of the cause of the relevant loss or damage having been a Compensation Event or a Force Majeure Event.
- 51.13 The Operator shall provide GWRC with evidence of the costs incurred or to be incurred by it in performing its obligations under clause 51.11.1 promptly following a request to do so.

51.14 Subject to clause 51.21 (*Reinstatement of the EMU Depot*) (if applicable) and subject always to clause 51.22 (*Joint Insurance Account proceeds following termination or expiry*) (if applicable), provided that the Approved Reinstatement Plan has been fully implemented and all works and activities contemplated thereunder have been completed to the reasonable satisfaction of GWRC, then GWRC and GWRL shall permit the withdrawal by the Operator of any amount standing to the credit of the Joint Insurance Account to the extent that such amount was received under the Material Damage Policy in respect of the repair, reinstatement or replacement of the Insured Property which was the subject of the Approved Reinstatement Plan.

GWRC may reinstate

51.15 Without limiting anything else in this Partnering Contract, if the Operator does not comply with any of its obligations under clause 51.8 to clause 51.11 (inclusive) within 5 Business Days after a request to do so from GWRC, GWRC may elect (in its sole discretion) to repair, reinstate or replace the relevant Insured Property (either itself or through its nominee).

51.16 To the extent that proceeds received under the Material Damage Policy in connection with the relevant loss of or damage to the relevant Insured Property have been paid into the Joint Insurance Account, GWRC shall be entitled to withdraw such proceeds from the Joint Insurance Account to pay for (or reimburse it for) the costs and expenses incurred or to be incurred by GWRC in undertaking or procuring such repair, reinstatement or replacement referred to in clause 51.15.

51.17 The Operator shall not make any Claim against GWRC or GWRL in respect of any repair, reinstatement or replacement undertaken by or on behalf of GWRC pursuant to clause 51.15 and the Operator shall (to the maximum extent permitted by Law) indemnify GWRC and GWRL (and keep them so indemnified) on demand from and against any Claim or Loss arising from, incurred or suffered in connection with such repair, reinstatement or replacement.

Reinstatement of the EMU Depot

51.18 Within 1 Business Day of its occurrence, the Operator shall notify GWRL (as the owner of the EMU Depot and the EMU Depot Plant and Equipment) of any material damage to, or loss of, the EMU Depot or the EMU Depot Plant and Equipment.

51.19 Within 5 Business Days following receipt by GWRL of a notice under clause 51.18, GWRC shall provide a written notice (**EMU Depot Reinstatement Notice**) to the Operator specifying whether GWRL or the Operator shall be responsible for reinstating the EMU Depot and/or the EMU Depot Plant and Equipment (as applicable). In the event that the Operator has failed to comply with its obligations under clause 51.18, GWRL may at any time after GWRL becomes aware of any material damage to or loss of the EMU Depot or the EMU Depot Plant and

Equipment which has not been rectified, issue an EMU Depot Reinstatement Notice to the Operator.

51.20 If an EMU Depot Reinstatement Notice specifies that the Operator shall be responsible for reinstating the EMU Depot or the EMU Depot Plant and Equipment, the provisions of this clause 51 except for clause 51.21 shall apply.

51.21 If an EMU Depot Reinstatement Notice specifies that GWRL shall be responsible for reinstating the EMU Depot or the EMU Depot Plant and Equipment:

51.21.1 the Operator shall not (and shall procure that the Operator Associates shall not) make any claim under the Material Damage Policy in connection with the relevant loss or damage to the EMU Depot or the EMU Depot Plant and Equipment;

51.21.2 the Operator shall have no entitlement to any proceeds held within the Joint Insurance Account to the extent that they relate to such damage to, or loss of, the EMU Depot or EMU Depot Plant and Equipment;

51.21.3 without prejudice to clause 51.21.1, to the extent that the Operator or any Operator Associate makes or has made any claim under the Material Damage Policy in connection with the relevant loss or damage to the EMU Depot or the EMU Depot Plant and Equipment:

(a) the Operator shall ensure that the proceeds of such claim are immediately paid in full to GWRL or, where such proceeds have been paid into the Joint Insurance Account, GWRL shall be entitled to withdraw such proceeds from the Joint Insurance Account; and

(b) the Operator hereby acknowledges and agrees that neither it nor any Operator Associate has any right or entitlement in respect of such proceeds;

51.21.4 clauses 51.8 to 51.14 (*Reinstatement Plan*) shall not apply in respect of such damage or loss;

51.21.5 GWRL shall procure the reinstatement, repair or replacement of the EMU Depot or the EMU Depot Plant and Equipment (as applicable) as soon as reasonably practicable;

51.21.6 subject to clause 51.21.8, GWRL shall bear any deductible which applies in respect of any claim made under the Material Damage Policy in respect of the relevant loss or damage;

51.21.7 to the extent that the proceeds of the Material Damage Policy are insufficient to reinstate, repair or replace the EMU Depot or the EMU Depot Plant and Equipment following the relevant loss or damage, then GWRL or GWRC shall, subject to clause 51.21.8, be responsible for bearing the cost of the deficit;

51.21.8 to the extent that any deficit referred to in clause 51.21.7 is directly caused by:

- (a) the proceeds of any claim under the Material Damage Policy being reduced; or
- (b) the relevant insurer not being obliged to respond to a claim under the Material Damage Policy,

in each case to the extent caused by a breach by the Operator of its obligations under this Partnering Contract or any other Transaction Document (including any failure by the Operator to increase the applicable limit of liability under the Material Damage Policy to the extent it is obliged to do so pursuant to this Partnering Contract) or any wilful misconduct of the Operator or any Operator Associate, then the Operator shall pay the amount of such deficit to GWRC within 5 Business Days of demand therefor; and

51.21.9 for the avoidance of doubt, clauses 51.5 to 51.7 (*Proceeds of Material Damage Policy*) inclusive and clauses 51.22 (*Joint Insurance Account proceeds following termination or expiry*) and 51.23 (*Power of Attorney*) and the Parties' respective rights and obligations thereunder shall not be affected.

Joint Insurance Account proceeds following termination or expiry

51.22 With effect from the date of termination or expiry of this Partnering Contract:

51.22.1 the Operator shall cease to have any interest in, or control over, the Joint Insurance Account; and

51.22.2 any amounts standing to the credit of the Joint Insurance Account (including any interest accrued) on the date of termination or expiry of this Partnering Contract shall be for the account of GWRL and GWRL shall be entitled to withdraw such amounts and apply them as it sees fit.

Power of Attorney

51.23 The Operator hereby irrevocably appoints GWRC as the Operator's attorney with full power and authority to perform such activities and take such action as required to permit GWRC or GWRL to make withdrawals from the Joint Insurance Account in accordance with clauses 51.16, 51.21.3 or 51.22.2 and the Operator:

51.23.1 agrees to immediately ratify and confirm all such activities performed and action taken by GWRC; and

51.23.2 agrees that it shall promptly on request by GWRC execute a separate power of attorney on the terms of this clause 51.23 by way of a deed or otherwise in such form as GWRC may reasonably require.

52. Financial performance and security

Provision of initial Performance Bond

52.1 No later than 5 Business Days after the date of this Partnering Contract, the Operator shall provide to GWRC a duly executed unconditional on demand performance bond in the form set out in Annexure 11 (*Bond*) for an amount equal to the Performance Bond Amount and with an expiry date not earlier than the date falling two months after the first anniversary of the date of this Partnering Contract.

Provision of subsequent Performance Bonds

52.2 On each anniversary of the date of this Partnering Contract, the Operator shall provide to GWRC a new duly executed unconditional on demand performance bond in the form set out in Annexure 11 (*Bond*) which shall:

52.2.1 be for an amount equal to the Performance Bond Amount less any amount previously received by GWRC or GWRL pursuant to a demand under any other Performance Bond;

52.2.2 subject to clause 52.3, have an expiry date not earlier than the date falling two months after the next anniversary of the date of this Partnering Contract; and

52.2.3 replace the existing Performance Bond held by GWRC at that date.

52.3 In the case of the last Performance Bond to be provided under clause 52.2 prior to the date of expiry of the Term by effluxion of time, the Operator shall ensure that such Performance Bond has an expiry date not earlier than the date falling 60 Business Days after the date on which the Term will expire.

Provision of Rectification Bond

52.4 The Operator may elect to provide a Rectification Bond in accordance with clause 64.8.

Release of Performance Bonds

52.5 Subject to GWRC's and GWRL's right to have recourse to the Performance Bonds, GWRC and GWRL shall:

52.5.1 provided that the Operator has provided a new Performance Bond to GWRC in accordance with clause 52.2, return and release the existing Performance Bond that is to be replaced by that new Performance Bond within 10 Business Days of the date of receipt of the new Performance Bond;

52.5.2 subject to clause 52.6, if this Partnering Contract expires by effluxion of time, return and release any Performance Bond no later than the date falling 30 Business Days after the Termination Date;

- 52.5.3 subject to clause 52.6, if this Partnering Contract is terminated in accordance with its terms, return and release any Performance Bond:
- (a) no later than the date falling 6 months after the Termination Date if the termination is pursuant to clause 56 (*Termination for Termination Events*); or
 - (b) no later than the date falling 30 Business Days after the Termination Date if the termination is not pursuant to clause 56 (*Termination for Termination Events*).
- 52.6 If, as at the date on which GWRC and GWRL are required by clause 52.5.2 or 52.5.3 to return and release any Performance Bond, there are bona fide disputes between the Operator (on the one hand) and GWRC and/or GWRL (on the other hand) in relation to this Partnering Contract or any other Transaction Document, GWRC and GWRL shall only be required to return and release that Performance Bond:
- 52.6.1 in exchange for a replacement bond provided by the Operator which has a face value equal to the aggregate amount which is the subject of the relevant disputes, has an expiry date acceptable to GWRC and which otherwise meets the requirements of clause 52.8 (*Requirements of Bonds*) and which replacement bond will itself be released not later than 30 Business Days after the date on which the last dispute has been finally resolved and the Operator has fully complied with the determination thereof; or
- 52.6.2 if no replacement bond is provided under clause 52.6.1, no later than the date falling 30 Business Days after the date on which the last dispute has been finally resolved and the Operator has complied with the determination thereof.

Release of Rectification Bond

- 52.7 Subject to GWRC's and GWRL's right to have recourse to the Rectification Bond, GWRC and GWRL shall return and release the Rectification Bond in accordance with clause 64.10.2 or 64.14.5 (as applicable).

Requirements of Bonds

- 52.8 The Operator shall ensure that each Bond shall be:
- 52.8.1 in the form set out in Annexure 11 (*Bond*);
 - 52.8.2 in favour of GWRC and GWRL;
 - 52.8.3 payable in New Zealand dollars;
 - 52.8.4 duly executed by the issuer, unconditional and in full force and effect from the date that it is provided to GWRC;
 - 52.8.5 at all times provided by an issuer which:

- (a) is acceptable to GWRC;
- (b) maintains the Required Rating; and
- (c) is the holder of a current banking licence or authorisation to carry on banking business issued by the Reserve Bank of New Zealand or the Australian Prudential Regulation Authority; and

52.8.6 payable at an office of the issuer in Wellington, Auckland or Sydney.

Replacement Bonds

52.9 **Required Rating or lack of authorisation:** If the issuer of a Bond ceases to have the Required Rating or ceases to be the holder of a current banking licence or authorisation to carry on banking business issued by the Reserve Bank of New Zealand or Australian Prudential Regulation Authority, then the Operator shall:

52.9.1 promptly notify GWRC of that circumstance; and

52.9.2 within 5 Business Days of such circumstance occurring, provide a duly executed unconditional replacement bond to GWRC which:

- (a) shall have a face value equal to the undrawn amount of the Bond which is to be replaced;
- (b) shall have an expiry date which is not earlier than the date of expiry of the Bond which is to be replaced; and
- (c) satisfies the requirements of clause 52.8 (*Requirements of Bonds*).

52.10 **Expiry:** If:

52.10.1 any Performance Bond then held by GWRC and GWRL will expire prior to the date (**Release Date**) on which they are obliged to return and release that Performance Bond pursuant to clause 52.5.2, 52.5.3 or 52.6 (as applicable); and

52.10.2 the Operator is not obliged under clause 52.2 to provide a new Performance Bond prior to the Release Date,

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

52.10.3 shall have a face value equal to the undrawn amount of the Performance Bond which is to be replaced;

52.10.4 shall have an expiry date which is not earlier than the applicable Release Date; and

52.10.5 satisfies the requirements of clause 52.8 (*Requirements of Bonds*).

52.11 Subject to GWRC's and GWRL's right to have recourse to the Bonds, if the Operator provides a replacement bond in accordance with clause 52.9 or 52.10

GWRC and GWRL shall, promptly following their receipt of the replacement bond, surrender the Bond which the replacement bond is intended to replace.

Failure to provide replacement Bond

52.12 If the Operator fails to provide:

52.12.1 a subsequent Performance Bond in accordance with clause 52.2; or

52.12.2 a replacement Bond in accordance with clause 52.9 or 52.10,

GWRC may make any number of demands on any Bond then held by it and shall be entitled to hold and apply the proceeds of such demands as security for the performance by the Operator of its obligations under this Partnering Contract until the subsequent or replacement bond is provided in accordance with clause 52.2, 52.9 or 52.10 (as applicable).

Demands

52.13 GWRC and GWRL may only make a demand under a Bond:

52.13.1 if the Operator fails to pay an amount which is due and payable by the Operator to GWRC or GWRL under or in connection with this Partnering Contract or any other Transaction Document (including any amount which is due and payable under an indemnity given by the Operator and any amount which becomes due and payable as a result of the termination of this Partnering Contract);

52.13.2 in respect of any Loss arising from or in connection with a breach by the Operator or the [REDACTED] of any Transaction Document to which they are party;

52.13.3 in accordance with clause 52.12 (*Failure to provide replacement Bond*);

52.13.4 in the case of a Rectification Bond, in accordance with clause 64.12.3 (*Inspections prior to end of Term and rectification*);

52.13.5 in accordance with clause 65.2 (*Rectification post Termination*); or

52.13.6 as otherwise expressly provided for in this Partnering Contract.

52.14 If and to the extent that:

52.14.1 GWRC or GWRL makes a demand under a Bond;

52.14.2 it is subsequently determined that such demand was made in breach of clause 52.13; and

52.14.3 GWRC or GWRL (as applicable) is required to repay the amount received by it as a result of such demand,

then:

52.14.4 the Operator shall promptly provide to GWRC a replacement Bond which:

- (a) has a face value equal to the face value of the Bond on which the demand was made immediately prior to that demand being made;
- (b) has an expiry date which is not earlier than the date of expiry of the Bond on which the demand was made; and
- (c) otherwise satisfies the requirements of clause 52.8 (*Requirements of Bonds*); and

52.14.5 subject to GWRC's and GWRL's right to have recourse to the Bonds, promptly following receipt by GWRC of the replacement Bond pursuant to clause 52.14.4, GWRC and GWRL shall surrender the Bond on which that demand was incorrectly made.

No injunction

52.15 The Operator shall not, and shall procure that the Operator Associates shall not, take any steps to injunct or otherwise restrain:

52.15.1 the issuer of a Bond from paying GWRC or GWRL (as applicable) pursuant to a Bond;

52.15.2 GWRC or GWRL from making a demand under a Bond or receiving payment under a Bond; or

52.15.3 GWRC or GWRL from using the proceeds of a Bond as they see fit.

No trust

52.16 If GWRC or GWRL makes a demand under a Bond, it does not hold the proceeds on trust for the Operator.

No interest

52.17 Neither GWRC nor GWRL is obliged to pay the Operator interest on any Bond or the proceeds of any Bond.

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[REDACTED]

Part Eight – Dispute Resolution

53. Dispute resolution procedure

Application of Procedure

- 53.1 Any Dispute must be dealt with under this clause 53 provided that nothing in this clause 53 will prevent a Party from applying to a court of competent jurisdiction to seek urgent or interim relief.
- 53.2 Except as provided for in clause 53.1, no Party may commence court proceedings unless and until the steps provided by this clause 53 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

- 53.3 Any Party may by written notice (**Notice of Dispute**) to 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, refer a Dispute for resolution by a Senior Executives Meeting.
- 53.4 Within 3 Business Days after the referral to the Senior Executives Meeting under clause 53.3, each of GWRC and the Operator shall nominate a senior

representative (being a General Manager or Managing Director or equivalent) with the authority to settle the Dispute who shall attend the Senior Executives Meeting. GWRL shall be represented at the Senior Executives Meeting by the person so nominated by GWRC.

- 53.5 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.
- 53.6 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

- 53.7 If any Dispute is referred to mediation in accordance with clause 53.6, 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:
- 53.7.1 by a single mediator agreed upon between the Parties; or
 - 53.7.2 if no such agreement is reached 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..
- 53.8 If the Dispute is not resolved by mediation:
- 53.8.1 within 5 Business Days after the conclusion of the mediation, the Parties may by written agreement refer the Dispute to Expert determination; or
 - 53.8.2 no earlier than 5 Business Days after the conclusion of the mediation, any Party may commence proceedings to have the Dispute determined by a court of competent jurisdiction.

Expert determination

- 53.9 For those disputes required by this Partnering Contract to be referred directly to Expert determination or which this Partnering Contract otherwise expressly envisages may be referred to Expert determination, and for any Dispute that is agreed by the Parties pursuant to clause 53.8.1 to be referred to Expert determination, the procedure set out in clauses 53.10 to 53.15 shall apply.
- 53.10 The Parties shall, within 5 Business Days of referral to Expert determination, endeavour to agree upon a single independent expert (**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.

53.11 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:

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

53.11.2 the then current Pacific Region representative of the International Union of Railways (UIC) (for all technical issues); or

53.11.3 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 53.11.1 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 53.11.

53.12 The Parties shall instruct the Expert to:

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

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

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

53.14 Any process or determination by the Expert will be made as an expert and not as an arbitrator. The determination of the Expert will be final and binding on the Parties, except in the case of a manifest error in the process of determination or the determination itself or in the event of the determination being influenced by fraud or corruption of the Expert or any of the Parties, in which case any Party (except a Party whose fraud or corruption influenced the determination) may commence court proceedings to challenge or to resist the enforcement of the determination of the Expert.

53.15 Each Party must bear its own costs of and incidental to any Expert determination under this clause 53. The costs of the Expert will be shared equally between GWRC and the Operator.

Performance of obligations pending resolution of dispute

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

Part Nine – Breach and termination

54. Step in

Step-in Right

54.1 If:

54.1.1 a Termination Event has occurred and is subsisting;

54.1.2 an Event of Default has occurred and is subsisting which in the opinion of GWRC:

- (a) materially adversely affects the Operator's ability to provide any or all of the Services;
- (b) materially disrupts, restricts or prevents the operation of all or any of the Scheduled Services for more than 24 hours;
- (c) gives rise to a right of a party to a Transaction Document to terminate that Transaction Document;
- (d) gives rise to a serious risk to the health or safety of persons or property;
- (e) gives rise to a serious risk of harm to the environment;
- (f) directly or indirectly avoids or materially prejudices or frustrates the transfer of the provision of any of the Services as a going concern to an Incoming Operator; or
- (g) is likely to give rise to any of the above, or

54.1.3 in the opinion of GWRC, action needs to be taken in connection with the Services:

- (a) because a serious risk exists to the health or safety of persons or property;
- (b) because a serious risk of environmental harm exists; or
- (c) to discharge a statutory duty,

then GWRC may (itself or through a nominee) exercise all or any of the Step-in Rights.

54.2 Subject to clause 54.3, if GWRC intends to exercise any or all of the Step-in Rights, GWRC shall give the Operator written notice (**Notice of Step-in**):

54.2.1 identifying the Step-in Event;

54.2.2 specifying the date on which GWRC (or its nominee) will commence exercise of the Step-in Rights (unless such exercise has already commenced); and

54.2.3 stating that it is a "notice of step-in" issued under this clause 54.2.

- 54.3 GWRC may exercise the Step-in Rights prior to giving a Notice of Step-in where in GWRC's opinion the nature of the Step-in Event requires the urgent exercise of the Step-in Rights, but shall give the Operator a Step-in Notice as soon as reasonably practicable thereafter.
- 54.4 GWRC or its nominee may take such action as GWRC or its nominee (in each case acting reasonably) considers necessary or appropriate having regard to the nature of the Step-in Event, including but not limited to:
- 54.4.1 taking any action in respect of the provision of all or any part of the Services, including exercising any or all of the powers or rights of the Operator in connection with the Services and/or performing any or all of the obligations of the Operator in connection with the Services;
 - 54.4.2 taking any action in respect of any Transaction Document or any other document to which the Operator is a party and which relates to the Wellington Rail Network or the Services (including enforcing any or all of the rights of the Operator and/or performing any or all of the obligations thereunder) as if it were the Operator and to the exclusion of the Operator;
 - 54.4.3 entering into, remaining in possession of and utilising any or all assets used in the provision of the Services, including the GWRL Assets, the GWRL Systems, the GWRC Assets, the GWRC Systems, the Operator Assets and the Maintained Assets; and
 - 54.4.4 anything incidental to the above.

Acknowledgement and obligations of the Operator

- 54.5 The Operator acknowledges and agrees that:
- 54.5.1 GWRC is under no obligation to exercise any Step-in Rights;
 - 54.5.2 in exercising the Step-in Rights, neither GWRC or its nominee is under any obligation to:
 - (a) remedy a Termination Event an Event of Default or any breach by the Operator of any Transaction Document; or
 - (b) mitigate, remedy or minimise any event (or the effects of any event) that triggered the exercise of the Step-in Rights; and
 - 54.5.3 unless GWRC gives written notification otherwise, GWRC does not waive its rights under this Partnering Contract in relation to the event that triggered the exercise of the Step-in Rights.
- 54.6 The Operator shall fully co-operate with GWRC (and its nominee) in connection with the exercise of the Step-in Rights and shall promptly provide such information, advice and assistance as GWRC or its nominee may reasonably require in connection with the exercise of such Step-in Rights. The Operator shall

not (and shall procure that the Operator Associates shall not) in any way prevent, hinder or disrupt GWRC (or its nominee) from exercising the Step-in Rights.

54.7 Without limiting clause 54.6, at all times during which GWRC (or its nominee) is exercising the Step-in Rights, the Operator shall:

54.7.1 provide access to GWRC (and its nominee) to:

(a) all of the assets used in the provision of the Services, including the GWRL Assets, the GWRL Systems, the GWRC Assets, the GWRC Systems, the Operator Assets and the Maintained Assets and shall permit GWRC (and its nominee) to use the same; and

(b) the Services Employees,
to the extent required by GWRC (or its nominee) to exercise the Step-in Rights; and

54.7.2 ensure that the Operator Associates accept the directions, instructions and requirements of GWRC and its nominee in place of (and to the exclusion of) the Operator's directions, instructions and requirements.

54.8 To the extent that the Step-in Rights are exercised as a result of:

54.8.1 the circumstances referred to in clause 54.1.1 or 54.1.2; or

54.8.2 a breach by the Operator of this Partnering Contract,

the Operator shall, to the maximum extent permitted by Law, indemnify GWRC (and, if applicable, its nominee) and keep them so indemnified on demand against any Claim or Loss suffered or incurred by GWRC or its nominee as a result of, or in connection with, exercising the Step-in Rights.

54.9 To the extent that the Step-in Rights are exercised other than as a result of:

54.9.1 the circumstances referred to in clause 54.1.1 or 54.1.2; or

54.9.2 a breach by the Operator of this Partnering Contract,

then for so long as, and to the extent that, the Operator is prevented from providing any part of the Services as a result of the exercise of the Step-in Rights:

54.9.3 the Operator shall be relieved of its obligations to provide such part of the Services; and

54.9.4 the Services Fee shall be calculated as if the Operator were satisfying all its obligations in respect of the affected Services, but there shall be deducted therefrom an amount equal to any reduction in the Operator's costs arising as a result of the exercise of the Step-in Rights and any relief granted under clause 54.9.3.

Protection of GWRC in exercising Step-in Rights

54.10 Subject to clause 54.11, the Operator acknowledges and agrees that, to the maximum extent permitted by law, neither GWRC nor its nominee will be liable to

the Operator or any Operator Associate in respect of any Claim or Loss suffered or incurred by the Operator or an Operator Associate which arises out of or in connection with the exercise of the Step-in Rights (including any act, omission, conduct, delay, negligence or breach arising in connection therewith) and the Operator hereby irrevocably releases (and shall procure that each Operator Associate shall irrevocably release) GWRC and its nominee from all such claims.

54.11 Clause 54.10 shall not apply to the extent that such Claim or Loss arises from fraud or gross negligence on the part of GWRC (or its nominee).

54.12 The Operator:

54.12.1 irrevocably appoints GWRC (and any person nominated by GWRC) as the Operator's attorney with full power and authority to do anything they consider necessary (including giving instructions to the Operator's employees and contractors, entering into contracts and deeds and transferring or licensing rights or assets) in connection with the provision of the Services when exercising the Step-in Rights;

54.12.2 agrees to immediately ratify and confirm whatever action is taken by GWRC and its nominee in the course of exercising the Step-in Rights, provided that such action is not unlawful or negligent; and

54.12.3 agrees that it shall promptly on request by GWRC execute a separate power of attorney on the terms of this clause 54.12 by way of a deed or otherwise in such form as GWRC may reasonably require.

Step-out

54.13 GWRC (or its nominee, as applicable) shall cease to exercise the Step-in Rights as soon as reasonably practicable following resolution to GWRC's reasonable satisfaction of the event(s) which gave rise to the exercise of the Step-in Rights.

54.14 GWRC shall give written notice to the Operator of the date on which GWRC (or its nominee) will cease to exercise the Step-in Rights (**Step-out Date**) at least 5 Business Days prior to the Step-out Date.

54.15 On and from the Step-out Date, the Operator must immediately recommence performance of all of its obligations under this Partnering Contract on the terms existing immediately prior to GWRC exercising the Step-in Rights.

55. Events of Default, Cure Plan and Persistent Breach

Events of Default

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

55.1.1 (**Material breach**) A material breach by the Operator of any of its obligations under any Transaction Document (other than a breach as a result of which a Performance Deduction has been or will be made from the Services Fee in accordance with Schedule 6 (*Financial and Performance Regime*));

- 55.1.2 **(MMIS)** The Operator fails to comply with any of its obligations in clause 11 (*MMIS provided by Operator*);
- 55.1.3 **(Subcontracting)** The Operator breaches its obligations in clause 18 (*Subcontracting, delegations and Key Personnel*);
- 55.1.4 **(Security)** The Operator breaches any of its obligations under clause 52 (*Financial performance and security*) or any Bond [REDACTED] ceases to be in full force and effect (excluding any expiration of a Bond where such expiration is permitted by this Partnering Contract);
- 55.1.5 **(Failure to report)** Except to the extent that the same constitutes a Termination Event (in which case clause 56 shall apply), the Operator fails to comply with its reporting obligations under this Partnering Contract or a report issued by the Operator under this Partnering Contract contains a material discrepancy or is otherwise materially inaccurate;
- 55.1.6 **(Failure to comply with revenue obligations)** The Operator fails to comply with any of its obligations under clause 48 (*Farebox Revenue and other Revenue*);
- 55.1.7 **(Failure to effect or maintain the insurances)** The Operator fails to effect or maintain any of the insurances that it is required to effect and maintain in accordance with clause 49 (*Insurance*);
- 55.1.8 **(HSE Act)** The Operator is convicted of an offence under the HSE Act.

Cure Plan

- 55.2 If an Event of Default has occurred, GWRC may give the Operator written notice (**Notice of Default**):
 - 55.2.1 stating that an Event of Default has occurred;
 - 55.2.2 giving reasonable details of the event or circumstance constituting the Event of Default;
 - 55.2.3 specifying whether the Event of Default is capable of remedy; and
 - 55.2.4 stating that it is a "notice of default" issued under this clause 55.2.
- 55.3 The Operator shall:
 - 55.3.1 if the Notice of Default specifies that the Event of Default is capable of remedy, either:
 - (a) if the Event of Default is capable of being remedied within 10 Business Days, remedy the Event of Default within 10 Business Days of receipt of the Notice of Default; or

- (b) if the Event of Default is not capable of being remedied within 10 Business Days, submit to GWRC (within 5 Business Days of receipt of the Notice of Default) a plan setting out the proposed actions to be undertaken by the Operator to remedy the Event of Default as soon as reasonably possible and specifying the date by which the Event of Default will be remedied (which date shall be as soon as reasonably possible) (**Cure Plan**); or
- 55.3.2 if the Notice of Default specifies that the Event of Default is not capable of remedy, within 5 Business Days of receipt of the Notice of Default submit to GWRC a plan setting out the proposed actions to be undertaken by the Operator to mitigate the impact of the Event of Default and prevent the recurrence of the same Event of Default (**Prevention and Mitigation Plan**).
- 55.4 Within 5 Business Days of receipt of a Cure Plan or a Prevention and Mitigation Plan, GWRC shall (acting reasonably) either approve or reject such plan and give written notice of such approval or rejection (with reasons) to the Operator.
- 55.5 If GWRC has rejected a Cure Plan or a Prevention and Mitigation Plan pursuant to clause 55.4, the Operator must amend and resubmit such plan to GWRC within 3 Business Days of receipt of the notice of rejection, in which case clause 55.4 will reapply. GWRC is not required to grant the Operator more than one opportunity to amend a Cure Plan or Prevention and Mitigation Plan.
- 55.6 Without prejudice to the Operator's obligations under clause 55.3, the Operator shall:
 - 55.6.1 at all times after the occurrence of an Event of Default that is capable of remedy until the Event of Default is remedied, diligently pursue the remedy of the Event of Default;
 - 55.6.2 at all times after the occurrence of an Event of Default that is not capable of remedy, mitigate the impacts of that Event of Default and use its best endeavours to prevent the recurrence of that Event of Default; and
 - 55.6.3 implement each Cure Plan and Prevention and Mitigation Plan immediately following its approval by GWRC pursuant to clause 55.4 and continue at all times to fully comply with such Cure Plan or Prevention and Mitigation Plan (as applicable).

Persistent breach

- 55.7 If the Operator commits a particular breach of this Partnering Contract (other than a breach that is an Event of Default, Termination Event, or for which Performance Deductions will be applied) and such breach has:
 - 55.7.1 continued for more than 20 Business Days; or
 - 55.7.2 occurred more than twice in any 3 month period; or

- 55.7.3 occurred five times or more in any 12 month period,
 - then GWRC may give the Operator written notice (**Notice of Persistent Breach**):
 - 55.7.4 identifying the breach;
 - 55.7.5 giving reasonable details of the event or circumstance constituting the breach;
 - 55.7.6 stating that such breach is a breach which, if it recurs frequently or continues may result in termination of this Partnering Contract; and
 - 55.7.7 stating that it is a "notice of persistent breach" issued under this clause 55.7.
- 55.8 If, following the issue of a Notice of Persistent Breach, the breach specified has:
- 55.8.1 continued beyond a further 20 Business Days; or
 - 55.8.2 recurred twice or more in the 3 month period after the date of receipt of the Notice of Persistent Breach; or
 - 55.8.3 recurred five times or more in the 12 month period after the date of receipt of the Notice of Persistent Breach,
- GWRC may give the Operator written notice (**Final Notice of Persistent Breach**):
- 55.8.4 identifying the Notice of Persistent Breach to which the notice relates;
 - 55.8.5 identifying the further breaches that have occurred since the issue of the Notice of Persistent Breach;
 - 55.8.6 stating that if such breach continues for more than a further 20 Business Days or recurs twice or more within the 3 month period after the date of receipt of the notice or recurs five times or more within the 12 month period after the date of receipt of the notice, this Partnering Contract may be terminated; and
 - 55.8.7 stating that it is a "final notice of persistent breach" issued under this clause 55.8.

56. Termination for Termination Events

Termination Events

- 56.1 Each of the following events is a Termination Event:
 - 56.1.1 (**Failure to satisfy conditions precedent**): The Operator has not satisfied all of the conditions in clause 3.3 (*Conditions*) before 30 June 2016 or, where GWRC has required KiwiRail to continue to provide the Existing Services (as defined under the TPTA) under clause 4 of the TPTA beyond 30 June 2016, then such later date as GWRC and the Operator may agree in writing, and the unsatisfied conditions have not been waived by GWRC in writing pursuant to clause 3.4 prior to that date;

- 56.1.2 **(Performance)** The number of Scheduled Services during any period of three consecutive Relevant Months in respect of which the Operator incurs Performance Deductions due to a failure to meet:
- (a) any of the requirements of the Reliability KPI exceeds 5% of the Scheduled Services which the Operator was required by this Partnering Contract to provide in that period; or
 - (b) any of the requirements of the Punctuality KPI exceeds 15% of Scheduled Services which the Operator was required by this Partnering Contract to provide in that period;
- 56.1.3 **(Persistent breach)** GWRC has issued a Final Notice of Persistent Breach and the relevant breach:
- (a) continued beyond a further 20 Business Days; or
 - (b) recurred twice or more in the 3 month period after the date of receipt of the Final Notice of Persistent Breach; or
 - (c) recurred five times or more in the 12 month period after the date of receipt of the Final Notice of Persistent Breach;
- 56.1.4 **(Failure to prepare approved Cure Plan or Prevention and Mitigation Plan)** The Operator fails to prepare a Cure Plan or Prevention and Mitigation Plan (as applicable) that is approved by GWRC pursuant to clause 55.4 within 20 Business Days of the receipt of a Notice of Default;
- 56.1.5 **(Failure to comply with Cure Plan or Prevention and Mitigation Plan)** The Operator fails to implement and comply with an approved Cure Plan or an approved Prevention and Mitigation Plan (as applicable) or otherwise fails to comply with its obligations under clause 55.6;
- 56.1.6 **(Failure to remedy Event of Default)** Where clause 55.3.1(a) applies, the Operator fails to remedy the Event of Default within the period specified in clause 55.3.1(a);
- 56.1.7 **(Suspension or cancellation of licence etc)** The Operator's Licence (or if applicable, Interim Licence), or any other Consent which the Operator is required to hold by Law to provide the Services:
- (a) is repealed, revoked or terminated;
 - (b) expires without a renewal taking effect prior to the date of expiry;
 - (c) is modified or amended or conditions are attached to it, and such modification, amendment or conditions are unacceptable to GWRC (acting reasonably) and have not been amended to the reasonable satisfaction of GWRC within 5 Business Days of

such modification, amendment or imposition of conditions taking place; or

- (d) is suspended due to the fault of the Operator or any Operator Associate and such suspension subsists for greater than 3 Business Days;

56.1.8 **(Failure to obtain Licence)** The Operator fails to obtain a full Licence on or before the date specified in clause 6.8 (*Full Licence*);

56.1.9 **(Termination of Transaction Document)** A Transaction Document (excluding this Partnering Contract) is terminated due to any breach, act or omission of the Operator or any Operator Associate or a counterparty to a Transaction Document (excluding this Partnering Contract) becomes entitled to terminate the Transaction Document due to any breach, act or omission of the Operator or any Operator Associate;

56.1.10 **(Misrepresentation)** A representation, warranty or statement by or on behalf of the Operator in a Transaction Document, or a document provided under or in connection with a Transaction Document, is not true in a material respect or is misleading when made or repeated which, if it had been known to GWRC or GWRL in entering into this Partnering Contract would, in the reasonable opinion of GWRC or GWRL, have resulted in GWRC or GWRL not entering into this Partnering Contract or entering into this Partnering Contract on materially different terms;

56.1.11 **(Prohibited Act)** The Operator or any Operator Associate or anyone employed by any of them has committed, or any action taken on behalf of any of them constitutes, a Prohibited Act;

56.1.12 **(Insolvency – Operator or holding company)** An Insolvency Event occurs in relation to the Operator or a holding company (as defined in the Companies Act) of the Operator;

56.1.13 **(Insolvency [REDACTED])** Without prejudice and in addition to clause 56.1.12, an Insolvency Event occurs in relation to [REDACTED] and the Operator does not within 5 Business Days thereafter provide a guarantee in the relevant form set out in Annexure 10 [REDACTED] [REDACTED] duly executed by an entity acceptable to GWRC (in its sole discretion) as replacement guarantor;

56.1.14 **(Disposal of assets)** The Operator or [REDACTED] disposes of, or threatens or agrees to dispose of (in each case either by way of a single transaction or series of transactions, whether related or not and whether voluntary or involuntary) all or a substantial part of its assets;

- 56.1.15 **(Assignment and Change of Ownership)** The Operator breaches clause 71.1 or a Change of Ownership occurs without the prior written consent of GWRC which is not a Permitted Change of Ownership;
- 56.1.16 **(Abandonment)** The Operator abandons or ceases all or a substantial part of the provision of the Services or it threatens or expresses an intention to do so;
- 56.1.17 **(Failure to pay)** The Operator fails to make payment to GWRC and/or GWRL of an amount of money exceeding \$100,000 (which amount shall not be Indexed) in aggregate that is due and payable by the Operator to GWRC and/or GWRL and is not the subject of a good faith dispute within 20 Business Days of receipt of a notice from GWRC or GWRL requiring payment;
- 56.1.18 **(Failure to commence)** The Operator fails to commence the provision of a material part of the Services within 48 hours after the Commencement Date;
- 56.1.19 **(Failure to execute the Deed of Accession to the Regional Agreement)** The Operator fails to deliver to GWRC the duly executed copy of the Deed of Accession to the Regional Agreement within 20 Business Days after the date GWRC requests the Operator to do so in writing.

Termination by GWRC on occurrence of Termination Event

- 56.2 GWRC may, on or after the occurrence of a Termination Event, terminate this Partnering Contract by written notice (**Notice of Termination**) to the Operator:
 - 56.2.1 identifying the Termination Event;
 - 56.2.2 specifying the date on which the termination will take effect; and
 - 56.2.3 stating that it is a "notice of termination" issued under this clause 56.2.
- 56.3 This Partnering Contract will terminate on the date specified in the Notice of Termination.
- 56.4 No failure to exercise, or delay in exercising, GWRC's rights under clause 56.2 will operate as a waiver or cause GWRC's rights in relation to the occurrence of the Termination Event to lapse or be otherwise diminished.

Payments

- 56.5 If this Partnering Contract is terminated in accordance with this clause 56 (*Termination for Termination Events*):
 - 56.5.1 GWRC must, within 30 days of the date of termination, pay the Operator any outstanding Services Fee for Services performed in accordance with this Partnering Contract up to the date of termination (less any amounts that GWRC or GWRL are entitled to set-off under this Partnering Contract); and

- 56.5.2 the Operator shall, to the maximum extent permitted by Law, indemnify GWRC and GWRL on demand (and keep them so indemnified) from and against any Claim or Loss arising as a result of, or in connection with, the termination of this Partnering Contract and the event giving rise to such termination.

57. Termination by the Operator for non-payment

Operator's right to require payment

- 57.1 If GWRC fails to make a payment to the Operator under this Partnering Contract of an amount of money exceeding \$100,000 (which amount shall not be Indexed) in aggregate that is due and payable (and is not the subject of a good faith dispute) within 20 Business Days after such amount becomes due and payable (**Outstanding Payment**), the Operator may serve a notice on GWRC which shall:
- 57.1.1 specify the amount of the Outstanding Payment and the date on which the Outstanding Payment first became due and payable under this Partnering Contract; and
- 57.1.2 request payment of the Outstanding Payment.

Operator's right to terminate

- 57.2 If by the date falling 20 Business Days after receipt by GWRC of a notice under clause 57.1:
- 57.2.1 GWRC has not paid the Outstanding Payment; and
- 57.2.2 the Outstanding Payment has not become the subject of a good faith dispute,
- the Operator may serve a further notice on GWRC stating that this Partnering Contract will terminate on the date falling 10 Business Days after the date of receipt by GWRC of such notice.
- 57.3 If the Operator serves a notice in accordance with clause 57.2, this Partnering Contract will terminate on the date falling 10 Business Days after the date of receipt by GWRC of that notice, unless prior to such date GWRC pays the Operator the Outstanding Payment.

58. Termination by GWRC for convenience

GWRC's right to terminate for convenience

- 58.1 GWRC may terminate this Partnering Contract at any time by not less than 20 Business Days written notice to the Operator. Termination of this Partnering Contract will take effect from the date specified in that notice.

Termination payment

58.2 Subject to clause 58.3, if this Partnering Contract is terminated pursuant to clause 58.1, GWRC shall, within 60 days after the date of termination, pay to the Operator (without double-counting):

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

plus

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

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

plus

58.2.3 if the date of termination occurs:

- (a) on or before the fifth anniversary of the Commencement Date, an amount equal to [REDACTED] of the aggregate Passenger Services Fee and Vehicle Services Fee paid by GWRC in respect of the period commencing two years before the Termination Date and ending on the day before the Termination Date;
- (b) after the fifth anniversary of the Commencement Date, an amount equal to [REDACTED] of the aggregate Passenger Services Fee and Vehicle Services Fee paid by GWRC in respect of the period commencing one year before the Termination Date and ending on the day before the Termination Date.

58.3 GWRC's obligation to make any payment pursuant to clause 58.2 shall be conditional upon the Operator having complied with its obligations under Part 10 (*Obligations associated with change of Operator*).

58.4 Payment by GWRC of the amount which is due and payable under clause 58.2 (which may be zero if the condition specified in clause 58.3 has not been met) shall be in full and final settlement of the Operator's rights and entitlement against GWRC and GWRL in connection with termination of this Partnering Contract pursuant to clause 58.1. The Operator:

- 58.4.1 hereby irrevocably waives any other right or claim howsoever arising (including any rights in tort, which shall include actions brought in negligence) that it might otherwise have in connection with termination of this Partnering Contract under clause 58.1; and
- 58.4.2 will not be entitled to make any claim (including in negligence) against GWRC or GWRL in connection with termination of this Partnering Contract under clause 58.1 other than a claim for payment of any amount which is due and payable pursuant to clause 58.2.

59. Force Majeure

Force Majeure Event

- 59.1 An event of force majeure (**Force Majeure Event**) is an event or circumstance which is beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent, provided that event or circumstance is limited to the following:
- 59.1.1 riot, war, invasion, act of foreign enemies, acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;
- 59.1.2 ionising radiation or contamination, radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- 59.1.3 pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- 59.1.4 earthquakes, landslides, tsunamis, flood or other physical natural disaster, but excluding weather conditions regardless of severity; and
- 59.1.5 the declaration under the Civil Defence Emergency Management Act 2002 of a state of national emergency or of a state of local emergency in respect of the Wellington region.

Notification of Force Majeure Event

- 59.2 A Party affected by a Force Majeure Event (**Affected Party**) shall immediately give written notice to the other Parties if it is, or reasonably considers it may be, prevented in whole or in part from carrying out its obligations under this Partnering Contract by a Force Majeure Event. A notice given under this clause must set out:
- 59.2.1 full particulars of the Force Majeure Event;
- 59.2.2 the obligations affected by the Force Majeure Event and the extent to which they cannot be performed or are delayed;
- 59.2.3 an estimate of the time required to overcome the Force Majeure Event;
- 59.2.4 the proposed actions to be taken by the Affected Party to mitigate or avoid the consequences of the Force Majeure Event; and

59.2.5 the extent to which the Force Majeure Event and its effects are covered by insurance.

59.3 If from time to time, following the issue of a notice under clause 59.2 the Affected Party becomes aware of any further information relating to the Force Majeure Event or the effect of the Force Majeure Event on the performance by the Affected Party of its obligations, it shall give written notice of that further information to the other Parties as soon as reasonably practicable.

Suspension of obligations

59.4 Subject to clause 59.5 and 59.6, the Affected Party's obligations under this Partnering Contract shall be suspended, but only to the extent that the Affected Party:

59.4.1 has complied with clause 59.6; and

59.4.2 is prevented from performing those obligations by the Force Majeure Event.

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

Obligation to mitigate

59.6 The Affected Party shall promptly:

59.6.1 use (and continue to use) all reasonable endeavours (including but not limited to the reasonable expenditure of money, the rescheduling of manpower and resources and the implementation of reasonable and appropriate temporary measures) to cure, mitigate or avoid the consequences of the Force Majeure Event; and

59.6.2 use all reasonable endeavours to mitigate any Loss suffered by the other Parties or any passengers as a result of the Affected Party's failure or inability to perform its obligations under this Partnering Contract due to the Force Majeure Event.

End of Force Majeure Event

59.7 Subject to clause 59.15, immediately following the date on which the Force Majeure Event ceases or no longer causes the Affected Party to be prevented from performing its obligations under this Partnering Contract:

59.7.1 the Affected Party shall notify the other Parties in writing that this is the case; and

59.7.2 the Affected Party shall recommence performance of all of its obligations under this Partnering Contract on the terms existing immediately prior to the occurrence of the Force Majeure Event.

Force Majeure Event substantially preventing provision of the Scheduled Services

- 59.8 If a Force Majeure Event directly or indirectly prevents or is reasonably likely to directly or indirectly prevent the Operator from providing all or a substantial proportion of the Scheduled Services for a continuous period which exceeds 10 Business Days, the Operator and GWRC shall promptly meet to discuss and agree in writing (each acting reasonably and in good faith) appropriate measures to:
- 59.8.1 mitigate, avoid or overcome the effects of the Force Majeure Event;
 - 59.8.2 facilitate (to the extent reasonably practicable) the continued provision of the Scheduled Services; and
 - 59.8.3 otherwise manage the risk and effects of the Force Majeure Event.
- 59.9 GWRC and the Operator shall promptly implement any measures agreed by them pursuant to clause 59.8 in accordance with the terms of such agreement.
- 59.10 If:
- 59.10.1 GWRC and the Operator are unable to agree the measures referred to in clause 59.8 within 20 Business Days after the date on which the Force Majeure Event first prevented the Operator from providing all or a substantial proportion of the Scheduled Services; and
 - 59.10.2 the Force Majeure Event is continuing to have that effect,
GWRC shall either:
 - 59.10.3 serve a termination notice ("**Force Majeure Termination Notice**") on the Operator; or
 - 59.10.4 serve a notice ("**Force Majeure Continuation Notice**") on the Operator specifying that this Partnering Contract is to continue in effect.

Effect of issue of Force Majeure Termination Notice

- 59.11 If GWRC serves a Force Majeure Termination Notice pursuant to clause 59.10.3, this Partnering Contract shall terminate on the date falling 10 Business Days after the date of receipt by the Operator of the Force Majeure Termination Notice.
- 59.12 Subject to clause 59.13, within 60 days after the date of termination pursuant to clause 59.11, GWRC shall pay to the Operator:
- 59.12.1 subject to clause 59.15.4 if a Force Majeure Continuation Notice has been issued prior to the issue of a Force Majeure Termination Notice, the outstanding Services Fee for Services performed in accordance with this Partnering Contract up to (but excluding) the date of termination and any other outstanding amounts which are due and payable by GWRC to the Operator under this Partnering Contract as at the date of termination (in each case less any amounts that GWRC or GWRL are entitled to set-off under this Partnering Contract); **plus**

- 59.12.2 the costs reasonably, properly and demonstrably incurred by the Operator as a direct result of the termination of this Partnering Contract but only to the extent that:
- (a) such costs are incurred in connection with the provision of the Services;
 - (b) such costs are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial Arm's Length Terms;
 - (c) the Operator and any relevant Operator Associate have each used their reasonable endeavours to minimise such costs; and
 - (d) such costs are not recoverable by the Operator under any Insurance Policy and the cause of such non-recoverability is not a breach by the Operator of any of its obligations under this Partnering Contract in relation to insurance.
- 59.13 GWRC's obligation to make any payment pursuant to clause 59.12 shall be conditional upon the Operator having complied with its obligations under Part 10 (*Obligations associated with change of Operator*).
- 59.14 Payment by GWRC of the amount which is due and payable under clause 59.12 (which may be zero if the condition specified in clause 59.13 has not been met) shall be in full and final settlement of the Operator's rights and entitlement against GWRC and GWRL in connection with termination of this Partnering Contract pursuant to clause 59.11 and the Force Majeure Event giving rise thereto. The Operator:
- 59.14.1 hereby irrevocably waives any other right or claim howsoever arising (including any rights in tort, which shall include actions brought in negligence) that it might otherwise have in connection with termination of this Partnering Contract under clause 59.11 or the Force Majeure Event giving rise thereto; and
 - 59.14.2 will not be entitled to make any claim (including in negligence) against GWRC or GWRL in connection with termination of this Partnering Contract under clause 59.11 or the Force Majeure Event giving rise thereto, other than a claim for payment of any amount which is due and payable pursuant to clause 59.12.

Effect of issue of Force Majeure Continuation Notice

- 59.15 If GWRC serves a Force Majeure Continuation Notice pursuant to clause 59.10.4:
- 59.15.1 subject to clauses 59.5 and 59.6, during the Suspension Period the Operator's obligations under this Partnering Contract shall be suspended to the extent it is prevented from performing those obligations by the Force Majeure Event;

- 59.15.2 GWRC shall serve a written notice on the Operator specifying the date ("**Service Recommencement Date**") on which GWRC requires the Operator to recommence the provision of those obligations that have been suspended under clause 59.15.1, provided that the Service Recommencement Date shall not be earlier than:
- (a) the date falling 10 Business Days after the date of receipt by the Operator of the notice served under this clause 59.15.2; and
 - (b) the date on which the effects of the Force Majeure Event have been remedied, avoided or otherwise overcome so that the Force Majeure Event shall have ceased to prevent performance by the Operator of all or substantially all of the suspended obligations;
- 59.15.3 with effect from the Service Recommencement Date, the Operator shall recommence performance of all of its obligations under this Partnering Contract on the terms existing immediately prior to the occurrence of the Force Majeure Event; and
- 59.15.4 the Services Fee payable by GWRC in respect of the Suspension Period shall be reduced by the aggregate of:
- (a) the amount of the reduction in the Operator's costs of performing its obligations under this Partnering Contract during the Suspension Period; and
 - (b) the amounts recoverable by the Operator in respect of its lost revenue pursuant to any Insurance Policy or which would have been so recoverable had the Operator complied with its obligations under this Partnering Contract in relation to insurance.
- 59.16 The Operator shall (and shall procure that the Operator Associates shall) use all reasonable endeavours to maximise the reduction in the Services Fee pursuant to clause 59.15.4.
- 59.17 Within 3 Business Days following a request therefor, the Operator shall:
- 59.17.1 provide such information on an Open Book Basis as GWRC reasonably requires in order to verify the amount of the reduction in the Operator's costs referred to in clause 59.15.4(a); and
 - 59.17.2 provide to GWRC such information as GWRC may reasonably require to enable it to ascertain the extent to which amounts referred to in clause 59.15.4 are recoverable by the Operator pursuant to an Insurance Policy or would have been so recoverable had the Operator complied with its obligations under this Partnering Contract in relation to insurance.

59.18 GWRC may at any time during the Suspension Period serve a Force Majeure Termination Notice pursuant to clause 59.10.3, in which case this Partnering Contract shall terminate in accordance with clause 59.11.

No breach

59.19 To the extent that a Party's obligations are suspended in accordance with this clause 59:

- 59.19.1 the failure by that Party to perform the obligations which are so suspended will not be a breach of this Partnering Contract by that Party; and
- 59.19.2 where the relevant Party whose obligations have been suspended is the Operator:
 - (a) the failure by the Operator to perform the obligations which are so suspended will not constitute a Termination Event; and
 - (b) subject to clause 59.15.4, the provisions of Schedule 6 (*Financial and Performance Regime*) shall continue to apply notwithstanding the suspension of any of the Operator's obligations; and
 - (c) for the purposes of assessing whether a Termination Event has occurred under clause 56.1.2 (*Performance*) or whether the End of Term Performance Measures under clauses 4.3.2(a) (*Reliability KPI*) or 4.3.2(b) (*Punctuality KPI*) have been met, any Performance Deductions incurred as a direct result of the failure by the Operator to comply with those suspended obligations shall be disregarded.

No additional payment or increase to the Services Fee

59.20 Except to the extent that GWRC is obliged to make a payment under clause 59.12, the Operator will not be entitled to any additional payment or any increase to the Services Fee as a result of or in connection with a Force Majeure Event and the performance by the Operator of its obligations under this clause 59 shall not constitute or be deemed to constitute a Contract Variation or Minor Contract Variation.

60. Exclusive rights of termination

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

- 60.1.1 the only rights available to them to terminate, rescind or accept the repudiation of this Partnering Contract are those expressly set out in this Partnering Contract; and
- 60.1.2 no Party shall be entitled to exercise a right to terminate or rescind or accept the repudiation of this Partnering Contract under any other

rights whether arising in common law, equity, statute or otherwise
howsoever.

Part Ten – Obligations associated with change of Operator

61. Retendering and continuation of Services

Retendering of Services

- 61.1 The Operator acknowledges that GWRC and/or GWRL may on, before or after the end of the Term, invite any person (which may or may not include the Operator) to tender for the provision of all or any part of the Services (or services that are similar to the Services) after the termination or expiry of this Partnering Contract.
- 61.2 The Operator shall at all times manage its business and the provision of the Services in a way that an Incoming Operator would be reasonably able to immediately:
- 61.2.1 take over the provision of the Services as a going concern; and
 - 61.2.2 secure continuity of the provision of the Services on terms substantially the same as those of this Partnering Contract.

Handover Packages

- 61.3 The Operator shall:
- 61.3.1 no later than 6 months after the Commencement Date, prepare and provide to GWRC an initial handover package (**Handover Package**), which must:
 - (a) contain at a minimum the information set out in Schedule 12 (*Handover Package*) and such other information as GWRC may reasonably specify from time to time; and
 - (b) be current and correct as at the date that it is provided to GWRC;
 - 61.3.2 at all times after the provision of the initial Handover Package, keep the Handover Package up to date and provide a copy of the updated Handover Package to GWRC on the first day of each Year (and the Operator shall ensure that the information contained in each updated Handover Package is current and correct as at the date that it is provided to GWRC);
 - 61.3.3 ensure that each Potential Incoming Operator and the Incoming Operator have access to the current Handover Package on the date(s) notified by GWRC to the Operator in writing;
 - 61.3.4 at the request of GWRC (which request may be made no more than once in each Year), provide a report from the Operator's auditors addressed to GWRC which confirms that the Handover Package contains the required information and complies with the requirements of this clause 61.3; and

- 61.3.5 provide a copy of the current Handover Package to GWRC, or make the current Handover Package available to GWRC for inspection, within 3 Business Days following a request from GWRC.

General obligations

61.4 The Operator shall:

- 61.4.1 co-operate with GWRC and provide all such assistance as is reasonably required by GWRC in connection with the procurement of an Incoming Operator; and
- 61.4.2 promptly take all such action as is reasonably required by GWRC to facilitate the safe and efficient transfer of responsibility for the provision of all or any part of the Services to an Incoming Operator in a manner which minimises disruption to passengers.

Preparation for appointment of Incoming Operator

61.5 Without prejudice to the generality of clause 61.4, the Operator shall (and shall procure that the Operator Associates shall), promptly following a request from GWRC (or otherwise within such timeframe as may be specified by GWRC acting reasonably):

- 61.5.1 provide any information, drawings or other documents relating to the Services, the GWRL Assets, the GWRL Systems, the GWRC Assets, the GWRC Systems, the Operator Assets, the Maintained Assets, the Wellington Rail Network (including its Infrastructure) or the Rail Unit held by the Operator or any Operator Associate, however the Operator need not include detailed internal pricing information which is specific to the Operator or the Operator Associates;
- 61.5.2 provide access for GWRC (and its representatives or advisors) to the Services Employees for the purposes of enabling GWRC (and its representatives or advisors) to obtain information from the Services Employees; and
- 61.5.3 respond to queries and questions raised or forwarded to the Operator by GWRC;

in each case to the extent reasonably required by GWRC to enable GWRC to conduct a tender process or otherwise select or appoint an Incoming Operator or to otherwise ensure the safe and efficient transfer of responsibility for the provision of all or any part of the Services to an Incoming Operator in a manner which minimises disruption to passengers.

61.6 The Operator shall:

- 61.6.1 respond to all requests received from GWRC pursuant to clauses 61.4 and 61.5 acting honestly and in good faith; and

- 61.6.2 ensure that all Services Employees to whom access is provided under clause 61.5.2 act honestly and in good faith in providing any information to GWRC.
- 61.7 The Operator acknowledges and agrees that, notwithstanding anything to the contrary in this Partnering Contract, GWRC is entitled to:
- 61.7.1 use any information, drawings or other documents provided by the Operator or any Services Employee under this clause 61 for any purpose related to the selection or appointment of an Incoming Operator or otherwise in connection with securing the safe and efficient transfer of responsibility for the provision of all or any part of the Services to an Incoming Operator in a manner which minimises disruption to passengers; and
- 61.7.2 disclose such information, drawings or other documents received from the Operator or the Services Employees under this clause 61 to any Potential Incoming Operator or the officers, employees, agents, consultants, contractors and advisors of any Potential Incoming Operator provided that the Potential Incoming Operator has first executed a confidentiality undertaking in substantially the same form as that set out in Annexure 13 (*Incoming Operator Confidentiality Undertaking*).
- 61.8 The Operator warrants to GWRC that all information, documents or drawings provided by it or any Services Employee under clause 61.3, 61.4 or 61.5 will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.

Access

- 61.9 Subject to clause 61.10 and subject to GWRC providing reasonable prior notice to the Operator, the Operator shall permit each Potential Incoming Operator (and any person authorised by the Potential Incoming Operator) to have supervised physical access to all aspects of the GWRL Assets, the GWRL Systems, the GWRC Assets, the GWRC Systems, the Operator Assets, the Maintained Assets and the Wellington Rail Network and permit each of them to carry out inspections and surveys of the same to the extent reasonably required by them and, in any event, in accordance with the requirements of the Operator's Health and Safety Management Plan.
- 61.10 GWRC shall ensure that, prior to any Potential Incoming Operator (or any person authorised by the Potential Incoming Operator) first having physical access pursuant to clause 61.9, the relevant Potential Incoming Operator executes an access indemnity substantially in the form set out in Annexure 14 (*Incoming Operator Access Indemnity*).

62. Securing continuity

Non-frustration of transfer

- 62.1 The Operator shall not do anything, and shall procure that the Operator Associates shall not do anything, which directly or indirectly avoids, or materially prejudices or frustrates:
- 62.1.1 the efficient and effective selection and appointment of an Incoming Operator (including any tender process relating thereto);
 - 62.1.2 the transfer as a going concern of the provision of all or any part of the Services (or services which are substantially similar to any of the Services) to an Incoming Operator;
 - 62.1.3 the safe and efficient transfer of responsibility for the provision of all or any part of the Services (or services which are substantially similar to any of the Services) to an Incoming Operator in a manner which minimises disruption to passengers; or
 - 62.1.4 a provision of a Transaction Document which is intended in whole or in part for the purpose of facilitating the transfer of responsibility for the provision of all or any part of the Services (or services which are substantially similar to any of the Services) to an Incoming Operator.

Assistance in securing continuity

- 62.2 Without prejudice to any other obligations of the Operator under this Partnering Contract:
- 62.2.1 at all times following the service of a notice terminating this Partnering Contract;
 - 62.2.2 at all times following the occurrence of a Termination Event; and
 - 62.2.3 at all times during the two year period preceding the end of the Term (where the Term will, disregarding any early termination, expire by effluxion of time),
- (as applicable), the Operator shall (and shall procure that the Operator Associates shall):
- 62.2.4 take all reasonable steps and co-operate fully with GWRC, any Incoming Operator and each of their nominees so that the continued provision of the Services (or services substantially similar to any of the Services) after such termination or expiry is achieved with the minimum disruption and so as to prevent or mitigate any inconvenience or risk to health or safety of any person or property;
 - 62.2.5 liaise with GWRC, the Incoming Operator and each of their nominees and promptly provide reasonable assistance and advice concerning the Services, the GWRL Assets, the GWRL Systems, the GWRC Assets,

the GWRC Systems, the Operator Assets, the Maintained Assets and the Rail Unit;

- 62.2.6 allow GWRC, the Incoming Operator and each of their nominees access (at reasonable times and on reasonable notice) to the GWRL Assets, GWRL Systems, the GWRC Assets, the GWRC Systems, the Operator Assets, the Maintained Assets and the Rail Unit;
- 62.2.7 promptly provide to GWRC and the Incoming Operator such information concerning the Services, the Services Employees, the GWRL Assets, GWRL Systems, the GWRC Assets, the GWRC Systems, the Operator Assets, the Maintained Assets and the Wellington Rail Network as is reasonably required to enable the safe and efficient transfer of responsibility for the provision of all or any of the Services (or services which are substantially similar to any of the Services) to the Incoming Operator;
- 62.2.8 promptly following a request from GWRC, meet with GWRC, the Incoming Operator and either of their respective nominees to:
- (a) discuss any matter in connection with the Services, the Services Employees, the GWRL Assets, the GWRL Systems, the GWRC Assets, the GWRC Systems, the Operator Assets, the Maintained Assets and the Rail Unit and to answer any questions which GWRC, the Incoming Operator and either of their respective nominees may have in connection therewith; and
 - (b) agree transitional arrangements and handover protocols, key issues and risk registers, safety issues and actions to be undertaken by the Operator and the Incoming Operator, in each case so as to facilitate the safe and effective transfer of responsibility for the provision of the relevant Services (or services which are substantially similar to any of the Services) to the Incoming Operator in a manner which minimises disruption to passengers;
- 62.2.9 not dispose of any Operator Assets;
- 62.2.10 maintain an appropriate level of Spares for use in connection with the Services in accordance with Good Industry Practice and which, without prejudice and in addition to the foregoing:
- (a) includes, as a minimum, Spares which are in a fully refurbished condition in the applicable quantities specified in the column of the spreadsheet contained in Schedule 19 headed "*To be made available by the Operator for the purposes of clause 62*"; and
 - (b) is sufficient to enable GWRC, GWRL, either of their nominees or an Incoming Operator to operate and maintain the

Maintained Assets to the standards required by this Partnering Contract for a period of at least 12 months following the Termination Date, having regard to the lead times that are likely to apply to any orders for Spares placed by GWRC, GWRL, their nominees or the Incoming Operator (as applicable) after the Termination Date;

- 62.2.11 allow GWRC and the Incoming Operator such access to any Services Employees as GWRC or the Incoming Operator may reasonably require for the purpose of informing and consulting with such Services Employees over the terms and conditions on which their employment will be transferred (to the extent that this is the case); and
- 62.2.12 not without the prior written consent of GWRC:
- (a) make, or promise to make, any material alteration in the terms or conditions of employment of the Services Employees (including in respect of notice periods, term of employment, remuneration and superannuation benefits, terms of participation in any superannuation scheme, benefits to be provided on termination of employment and the terms of any relevant collective agreement) which would not reasonably be made by an operator in the ordinary course of providing the Services in accordance with Good Industry Practice;
 - (b) appoint new employees or assign other personnel to be engaged in any way in the performance of the Services who would not reasonably be so appointed or assigned by an operator in the ordinary course of providing the Services in accordance with Good Industry Practice;
 - (c) materially increase the proportion of working time spent in the performance of the Services by any of the Services Employees;
 - (d) terminate (or give notice to terminate) employment of any Services Employee unless such termination is reasonably necessary in the ordinary course of providing the Services in accordance with Good Industry Practice; or
 - (e) include within the terms of employment of the Services Employees any provision which would prevent, restrict or hinder the Services Employees from working for an Incoming Operator.
- 62.3 The Operator shall ensure that each meeting held pursuant to clause 62.2.8 is attended on behalf of the Operator and Operator Associates by personnel having the relevant experience, qualifications and knowledge of the Services and who are authorised by the Operator to agree matters on its behalf. The Operator shall ensure that any information provided by or on behalf of the Operator pursuant to clause

62.2 is, at the time it is provided, true and correct in all material respects and is not misleading, by omission or otherwise.

- 62.4 Nothing in clauses 62.2.5, 62.2.7 or 62.2.8 requires the Operator or any Operator Associate to engage additional temporary staff or consultants solely for the purposes of performing the Operator's obligations under clauses 62.2.5, 62.2.7 or 62.2.8 unless GWRC agrees in writing to reimburse the reasonable direct costs of the Operator or Operator Associate in so doing.

63. Transfer of Operator Assets

Identification of Transferring Operator Assets

- 63.1 Within 3 Business Days following the date of issue of a notice terminating this Partnering Contract and, where this Partnering Contract is to expire by effluxion of time, at least 40 Business Days prior to the last day of the Term, the Operator shall:
- 63.1.1 give GWRC and any Incoming Operator a written inventory of all Operator Assets in a form reasonably acceptable to GWRC and which otherwise complies with the requirements of clause 63.3; and
 - 63.1.2 permit (or, where an Operator Asset is owned by a third party, procure that the person that owns the Operator Assets permits) GWRC, the Incoming Operator and each of their nominees to inspect the Operator Assets (at reasonable times and subject to reasonable prior notice).
- 63.2 Without prejudice to any of the Operator's other obligations, the Operator shall ensure that, as at the date on which the Operator provides the inventory and as at the Termination Date, the Operator Assets include a level of fully refurbished Spares which complies with the requirements of clause 62.2.10.
- 63.3 The Operator shall ensure that any inventory provided under clause 63.1:
- 63.3.1 is up to date and accurate;
 - 63.3.2 sets out the current book value of all of the Operator Assets determined in accordance with this Partnering Contract (with supporting evidence);
 - 63.3.3 contains the following information in respect of each Operator Asset:
 - (a) the nature of the Operator Asset and its purpose or use in relation to the Services;
 - (b) an accurate assessment as to the current condition of the Operator Asset;
 - (c) the Operator's reasonable estimate of the Adjusted Book Value of that Operator Asset (with supporting evidence) assuming that such Operator Asset is a Transferring Operator Asset;
 - (d) current numbers or levels (as appropriate) of that Operator Asset held by or on behalf of the Operator;

- (e) the owner of the Operator Asset;
- (f) the current location of the Operator Asset (if applicable);
- (g) in the case of items ordered but not yet delivered, the expected date of delivery;
- (h) in the case of Operator Assets which are provided, leased or licensed by third parties, details of the arrangement with the relevant third party (and a copy of any such third party agreement, lease or licence); and
- (i) details of any warranties and guarantees held by the Operator or an Operator Associate in connection with the Operator Asset (and a copy of the relevant terms of such warranty or guarantee shall be appended to the inventory); and

63.3.4 clearly categorises each Operator Asset as being a Spare (excluding Rotable Items and Consumables), a Rotable Item, a General Tool, a Special Tool, a Consumable or an Other Asset (as applicable).

Notification of Transferring Operator Assets

63.4 Within 15 Business Days of receipt by GWRC of the inventory pursuant to clause 63.1, GWRC shall notify the Operator in writing of those Operator Assets (**Transferring Operator Assets**) which GWRC requires to be transferred to GWRL, GWRC or its nominee, provided that the list of Transferring Operator Assets shall only exclude Operator Assets to the extent that such Operator Assets are:

- 63.4.1 obsolete, discontinued or life expired;
- 63.4.2 relate to Vehicles, Maintained Assets or other Operator Assets which are themselves obsolete, discontinued or life expired; or
- 63.4.3 would not reasonably be required by an efficient provider of services similar to the Services.

Determining the Adjusted Book Value

63.5 GWRC and the Operator shall (each acting reasonably and in good faith) seek to agree the Adjusted Book Value of the Transferring Operator Assets (including assets ordered but not yet received but excluding any Consumables and Other Assets) as soon as reasonably practicable after GWRC has notified the Operator of the Transferring Operator Assets pursuant to clause 63.4.

63.6 To the extent that GWRC and the Operator are unable to agree the Adjusted Book Value of any of the Transferring Operator Assets (including assets ordered but not yet received but excluding any Consumables and Other Assets) within 10 Business Days of receipt by the Operator of GWRC's notification of the Transferring Operator Assets pursuant to clause 63.4, GWRC and the Operator shall refer the matter for determination by the Expert in accordance with clauses 53.9 to 53.15.

63.7 The Parties believe the Adjusted Book Value as agreed or determined in accordance with clauses 63.5 and 63.6 best reflects the fair market value of the relevant Transferring Operator Assets.

Transfer of Transferring Operator Assets on expiry or termination

63.8 On the Termination Date or such later date as may be notified by GWRC to the Operator in writing, the Operator shall (or shall procure that the relevant person that owns the Transferring Operator Assets shall) transfer full legal and beneficial ownership in the Transferring Operator Assets (free from any Security Interest) to GWRL, GWRC or GWRC's nominee.

63.9 The total price payable in respect of the transfer of all of the Transferring Operator Assets shall be the aggregate of:

63.9.1 the Adjusted Book Value of each of the Transferring Operator Assets (including assets ordered but not yet received but excluding the Consumables and the Other Assets) as agreed by GWRC and the Operator or as otherwise determined by the Expert as contemplated by clause 63.6; and

63.9.2 \$20.00 (which amount shall not be Indexed) in respect of all Consumables and Other Assets which are included in the Transferring Operator Assets,

being the "**Transferring Operator Assets Transfer Price**".

63.10 The Transferring Operator Assets Transfer Price shall be paid by GWRC, GWRL or GWRC's nominee to the Operator within 30 Business Days of the later of:

63.10.1 the date of agreement or determination of the Adjusted Book Value of all of the Transferring Operator Assets (including assets ordered but not yet received but excluding the Consumables and other Assets); and

63.10.2 the date of transfer of all of the Transferring Operator Assets to GWRL, GWRC or GWRC's nominee in accordance with clause 63.8.

63.11 The Operator shall ensure that each other person that owns the Transferring Operator Assets immediately prior to such transfer under clause 63.8 acknowledges and agrees that the payment to the Operator referred to in clause 63.10 constitutes good receipt by that person of any price payable in consideration of such transfer. The Operator shall provide such evidence to GWRC as GWRC may reasonably request of such acknowledgement and agreement on the date of such transfer.

General provisions relating to transfer

63.12 On the Operator Asset Transfer Date, the Operator shall (at no cost) also transfer (or shall procure that the relevant person that owns the Transferring Operator Asset transfers) to GWRC, GWRL or GWRC's nominee:

63.12.1 all manuals and instructions relating to the Transferring Operator Assets; and

- 63.12.2 a copy of, and the benefit of, any unexpired warranties and guarantees held by the Operator or that other person in connection with any of the Transferring Operator Assets.
- 63.13 On or before the Operator Asset Transfer Date, the Operator shall at its own cost:
 - 63.13.1 procure any consents or approvals which are necessary to effect the transfer of the Transferring Operator Assets; and
 - 63.13.2 execute (or procure that any other person that owns a Transferring Operator Asset executes) all documents necessary to effect the transfer of the Transferring Operator Assets in accordance with this Partnering Contract.
- 63.14 On the Operator Asset Transfer Date, the Operator shall make physical possession of:
 - 63.14.1 each Transferring Operator Asset; and
 - 63.14.2 the GWRC Assets, GWRC Systems, GWRL Assets and GWRL Systems,
available to GWRC, GWRL or GWRC's nominee at such location as GWRC (acting reasonably) may notify the Operator.

MMIS and FRACAS data

- 63.15 Without prejudice to any other obligation of the Operator, on the Termination Date the Operator shall (at its own cost) transfer to GWRC (or its nominees) all of the data then contained within or related to the MMIS and the FRACAS (including for the avoidance of doubt any FRACAS related reports and records contemplated by paragraph 10.3 (*Provision of the FRACAS and Warranty Management Services*) of Schedule 4 (*Vehicle Services*) in such format as GWRC may reasonably require.

64. Inspections prior to end of Term and rectification

Conduct of inspection

- 64.1 At any time during the 18 months prior to the end of the Term, GWRC may carry out (or may procure that GWRC's nominee carries out) an inspection of the Maintained Assets to assess whether they have been and are being operated and maintained by the Operator in accordance with this Partnering Contract (**End of Term Inspection**).
- 64.2 GWRC shall give the Operator not less than 5 Business Days' notice in advance of any End of Term Inspection being undertaken.
- 64.3 The Operator must provide, and must procure the Services Employees and the Operator Associates provide, reasonable assistance to GWRC (and, if applicable, its nominee) in carrying out the End of Term Inspection, including:
 - 64.3.1 making available for inspection all log books and maintenance records held by or on behalf of the Operator; and

- 64.3.2 making available, and providing access to, the Maintained Assets at the required time.
- 64.4 When carrying out an End of Term Inspection, GWRC shall (or shall procure that its nominee, if applicable, shall) use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Operator.
- 64.5 If the End of Term Inspection shows that the Operator has not or is not complying with any of obligations under this Partnering Contract, GWRC shall:
- 64.5.1 give written notice to the Operator setting out the rectification and/or maintenance work which must be undertaken to bring the Maintained Assets into the condition they would have been in had the Operator fully complied with its obligations under this Partnering Contract;
- 64.5.2 specify a time (**Rectification Period**) within which the Operator must carry out such rectification or maintenance (such time to be reasonable having regard to the nature of the work required to be undertaken); and
- 64.5.3 specify the Estimated Cost of undertaking such rectification and maintenance work.
- 64.6 If clause 64.5 applies, the Operator shall pay to GWRC the costs incurred by GWRC in carrying out (or procuring the carrying out of) the End of Term Inspection within 5 Business Days of demand therefor.

Withheld amounts for rectification or provision of Rectification Bond

- 64.7 Subject to clause 64.8, if the Operator has been notified under clause 64.5 that rectification and/or maintenance work is required, GWRC may withhold from any or all payments of the Services Fee and/or any other amounts due to the Operator under this Partnering Contract (in each case which fall due and payable after a notice has been issued under clause 64.5), an amount not exceeding 110% of the Estimated Cost of undertaking such rectification and maintenance work. To the extent that the aggregate amount of such Services Fee and other amounts due to the Operator is or will be less than 110% of the Estimated Cost of undertaking such rectification and maintenance work, GWRC may withhold the total amount of all such payments and the Operator shall pay the Excess to GWRC within 5 Business Days of demand therefor.
- 64.8 If, within 3 Business Days of receipt of a notice under clause 64.5, the Operator provides to GWRC a duly executed and unconditional irrevocable on demand Rectification Bond which:
- 64.8.1 is in the form set out at Annexure 11 (*Bond*);
- 64.8.2 is for an amount not less than 110% of the Estimated Cost;
- 64.8.3 has an expiry date not earlier than 6 months after the last day of the Rectification Period; and

- 64.8.4 otherwise complies with the requirements of clause 52.8 (*Requirements of Bonds*),
clause 64.7 shall not apply.

Operator to carry out rectification and maintenance work

- 64.9 Prior to the end of the Rectification Period, the Operator shall carry out such rectification and maintenance work as is notified to it under clause 64.5 to GWRC's reasonable satisfaction. The Operator shall bear the cost incurred by it in undertaking such rectification and maintenance work.

If the Operator complies with its obligations

- 64.10 Provided that the Operator carries out and completes the required rectification and maintenance work to GWRC's reasonable satisfaction within the Rectification Period and provided that no termination notice has been given under this Partnering Contract, GWRC will:
- 64.10.1 where the Operator has not provided a Rectification Bond, pay the Withheld Amount to the Operator within 10 Business Days after the end of the Rectification Period; or
 - 64.10.2 where the Operator has provided a Rectification Bond, return the Rectification Bond to the Operator within 10 Business Days after the end of the Rectification Period.
- 64.11 The Operator shall bear the risk of the Withheld Amount or value of the Rectification Bond being less than the cost incurred by it in carrying out the required rectification and maintenance work and shall not be entitled to any further payment in respect of such work.

If the Operator does not comply with its obligations

- 64.12 To the extent that the Operator does not carry out and complete the required rectification and maintenance work to GWRC's reasonable satisfaction within the Rectification Period, GWRC shall be entitled:
- 64.12.1 to carry out itself, or procure the carrying out of, such required rectification and maintenance work;
 - 64.12.2 where the Operator has not provided a Rectification Bond, to retain for its own benefit such amount from the Withheld Amount as is required to meet the costs incurred or to be incurred by GWRC in carrying out (or procuring the carrying out of) such required rectification and maintenance work; and
 - 64.12.3 where the Operator has provided a Rectification Bond, to make a demand under the Rectification Bond for an amount equal to the lesser of the undrawn value of the Rectification Bond and the costs incurred or to be incurred by GWRC in carrying out (or procuring the carrying out of) such required rectification and maintenance work.

- 64.13 If clause 64.12 applies then to the extent that (as applicable):
- 64.13.1 the Withheld Amount is insufficient to meet the costs incurred or to be incurred by GWRC in carrying out (or procuring the carrying out of) such required rectification and maintenance work; or
 - 64.13.2 the amount recovered by GWRC under the Rectification Bond is less than the costs incurred or to be incurred by GWRC in carrying out (or procuring the carrying out of) such required rectification and maintenance work,
- the Operator shall, within 5 Business Days of demand therefor, pay to GWRC the difference between:
- 64.13.3 the Withheld Amount or the amount recovered by GWRC under the Rectification Bond (as applicable); and
 - 64.13.4 the costs incurred by GWRC in carrying out (or procuring the carrying out of) such required rectification and maintenance work.

- 64.14 If clause 64.12 applies then, provided that:
- 64.14.1 all of the rectification and maintenance work identified by GWRC under clause 64.5 has been carried out and completed to GWRC's reasonable satisfaction; and
 - 64.14.2 the costs incurred or to be incurred by GWRC in carrying out (or procuring the carrying out) of such required rectification and maintenance work have been recovered in full by GWRC pursuant to clauses 64.12 and 64.13; and
 - 64.14.3 no termination notice has been served under this Partnering Contract,
- then:
- 64.14.4 where the Operator has not provided a Rectification Bond, GWRC shall pay to the Operator the Withheld Amount less any amount which GWRC is entitled to retain therefrom under clause 64.12.2; or
 - 64.14.5 where the Operator has provided a Rectification Bond, GWRC shall return the Rectification Bond to the Operator subject to any demand made by GWRC under clause 64.12.3 or under clause 65.2.

General

- 64.15 This clause 64 shall be without prejudice to any other rights or remedies which GWRC may have against the Operator or any other person, whether pursuant to this Partnering Contract or howsoever else arising.

65. Rectification post termination

Notification

- 65.1 At any time in the period between the date on which a notice of termination is served under this Partnering Contract and the date falling 60 Business Days after the date on which this Partnering Contract is terminated in accordance with its terms, GWRC may serve on the Operator a notice (**Termination Rectification Notice**) specifying:
- 65.1.1 the details of any matters or things (if any) which GWRC considers have arisen as a result of the Operator not having fully complied with its obligations under this Partnering Contract; and
 - 65.1.2 the cost which GWRC considers (acting reasonably) will be incurred by it in procuring the rectification and remediation of those things or matters and in ensuring that the Maintained Assets are in the condition they would have been in had the Operator fully complied with its obligations under this Partnering Contract (**Termination Rectification Costs**).
- 65.2 If GWRC serves a Termination Rectification Notice, the Termination Rectification Costs shall be a debt immediately due and payable by the Operator to GWRC and GWRC shall be entitled to:
- 65.2.1 retain the estimated Termination Rectification Costs from any Withheld Amount held by GWRC;
 - 65.2.2 make a demand on any Rectification Bond for the amount of the estimated Termination Rectification Costs;
 - 65.2.3 set-off the estimated Termination Rectification Costs from any amount due and payable to the Operator under this Partnering Contract; and/or
 - 65.2.4 enforce any other Performance Bond [REDACTED] in order to recover the estimated Termination Rectification Costs,
- provided that the aggregate amount recovered by GWRC under this clause 65.2 shall not exceed the estimated Termination Rectification Costs set out in the Termination Rectification Notice.
- 65.3 If and to the extent that the Recovered Amount is greater than the actual costs incurred by GWRC in procuring the rectification and remediation of those things or matters specified in the Termination Rectification Notice and in ensuring that the Maintained Assets are in the condition they would have been in had the Operator fully complied with its obligations under this Partnering Contract, then within 20 Business Days of completion of such rectification and remediation measures, GWRC shall pay to the Operator the amount by which the Recovered Amount exceeds such actual costs.
- 65.4 If and to the extent that the Recovered Amount is less than the actual costs incurred by GWRC in procuring the rectification and remediation of those things or matters specified in the Termination Rectification Notice and in ensuring that the

Maintained Assets are in the condition they would have been in had the Operator fully complied with its obligations under this Partnering Contract, then the amount by which the Recovered Amount is less than such actual costs shall be a debt immediately due and payable by the Operator to GWRC.

- 65.5 This clause 65 shall be without prejudice to any other rights or remedies which GWRC may have against the Operator or any other person, whether pursuant to this Partnering Contract or howsoever else arising.

66. Transfer of Services Employees

Availability of Services Employees to Incoming Operator

- 66.1 The Operator shall ensure, and shall procure that each of the Operator Associates ensures, that:
- 66.1.1 each of the Services Employees (excluding any such Services Employees that GWRC consents to being excluded under clause 66.2) are available to be employed by an Incoming Operator with effect from the Termination Date; and
 - 66.1.2 the Services Employees (whether employed under a collective agreement or an individual employment agreement or otherwise) are all employed on terms which do not entitle any Services Employee to redundancy payments or similar compensation in circumstances where the Incoming Operator or a subcontractor or Related Company of the Incoming Operator offers to employ the relevant Services Employee:
 - (a) for those employed under a collective agreement, either on terms and conditions that are the same or more favourable than the employee's existing terms and conditions with the Operator or Operator Associate (as the context requires) and which treat the employee's service as continuous or otherwise in accordance with the technical redundancy clause in the relevant collective agreement so as to prevent payment of redundancy compensation upon a technical redundancy; and
 - (b) for those employed under individual employment agreements on the same or similar terms as the employees' existing terms and conditions with the Operator or Operator Associate (as the context requires) in the same city or wider regional area and with comparable duties or responsibilities and which treat the employees' service as continuous or otherwise in accordance with the technical redundancy clause in the relevant individual employment agreement so as to prevent payment of redundancy compensation upon a technical redundancy.
- 66.2 The Operator may by notice in writing to GWRC request that any of the Services Employees are excluded from the employees that are to be available to be

employed by an Incoming Operator. If GWRC consents in writing, then such Services Employees shall be excluded from the Transferring Employees and should such exclusion of any employee mean a liability for redundancy compensation arises, then such liability shall be borne solely by the Operator.

- 66.3 GWRC will not be responsible for any redundancy compensation which may be payable in respect of any of the Services Employees (whether or not such employees are to transfer to the Incoming Operator).

Incoming Operator to make offers of employment

- 66.4 On expiry or termination of this Partnering Contract, GWRC shall procure that the Incoming Operator makes offers of employment to the Transferring Employees:

66.4.1 for those employed under a collective agreement, either on terms and conditions that are the same or more favourable than the employee's existing terms and conditions with the Operator or Operator Associate (as the context requires) and which treat the employee's service as continuous or otherwise in accordance with the technical redundancy clause in the relevant collective agreement so as to prevent payment of redundancy compensation upon a technical redundancy; and

66.4.2 for those employed under an individual employment agreement on the same or similar terms as the employees' existing terms and conditions with the Operator or Operator Associate (as the context requires) in the same city or wider regional area and with comparable duties or responsibilities and which treat the employees' service as continuous or otherwise in accordance with the technical redundancy clause in the relevant individual employment agreement so as to prevent payment of redundancy compensation upon a technical redundancy; and

on the basis that:

66.4.3 employment with the Incoming Operator becomes effective on the Termination Date; and

66.4.4 such terms and conditions will provide those Transferring Employees that accept such offers of employment with access to a superannuation and/or KiwiSaver scheme and other benefits that meet the requirements of clauses 66.4.1 and 66.4.2 or, if this is not possible, then on such terms and conditions as may be agreed between the Incoming Operator, the relevant employee and/or unions and GWRC, with the Incoming Operator (or relevant Operator Associate) accepting any redundancy compensation liability that arises as a result.

Incoming Operator liabilities in respect of Transferring Employees' entitlements

- 66.5 To the extent that the Transferring Employees accept an offer of employment from the Incoming Operator, GWRC shall procure that the Incoming Operator shall assume the outstanding obligations of the Operator (or relevant Operator Associate

where the Transferring Employee is employed by an Operator Associate) in respect of the untaken holiday entitlements and any accrued long service leave entitlements and days in lieu of those Transferring Employees accrued up to the Termination Date. In consideration, the Operator shall pay, or shall procure the relevant Operator Associate shall pay, to GWRC (or, at the written request of GWRC, to the Incoming Operator), within 30 days of the Termination Date, the full amount necessary to enable that Incoming Operator to meet the costs of providing such accrued holiday entitlements and any accrued long service leave entitlements and days in lieu as at the Termination Date.

- 66.6 Save to the extent required by law, except as specified in clause 66.5, nothing in this Partnering Contract shall oblige GWRC to procure that the Incoming Operator accept any Accrued Liabilities. The Operator shall indemnify and keep GWRC and the Incoming Operator indemnified on demand from and against all Accrued Liabilities. The indemnity under this clause 66.6 is enforceable by any Incoming Operator under the Contracts (Privity) Act 1982.
- 66.7 As between the Parties, the Operator shall, except as specified in clause 66.5, be liable for Transferring Employees' personal grievances and Claims that rely on alleged events or omissions arising before the Termination Date and shall indemnify the Incoming Operator and keep it indemnified on demand from and against any Losses arising in connection with such grievances or Claims. The indemnity under this clause 66.7 is enforceable by any Incoming Operator under the Contracts (Privity) Act 1982.

Operator to Cooperate regarding offers to Transferring Employees

- 66.8 The Operator shall (and shall procure that the Operator Associates shall) cooperate with the Incoming Operator in good faith and otherwise provide such assistance as is reasonably required to enable the Incoming Operator to make offers of employment to the Transferring Employees in accordance with this clause 66. Without prejudice to the foregoing, the Operator shall (and shall procure that the Operator Associates shall) take all reasonable steps to facilitate consultation between the Services Employees, relevant unions and the Incoming Operator at such times as are reasonably requested by the Incoming Operator or GWRC or as required by law.
- 66.9 In the event that any Transferring Employee wishes to accept an offer of employment from the Incoming Operator, the Operator shall (and shall procure that the Operator Associates shall) release that Transferring Employee from employment with effect from the Termination Date (or such earlier date as may be agreed by the Operator (or relevant Operator Associate) and the Transferring Employee).
- 66.10 The Operator shall (and shall procure that the Operator Associates shall) cooperate with the Incoming Operator in good faith so as to enable the Incoming Operator to

comply with the provisions of this clause 66 and its obligations at law in relation to the Transferring Employees.

Operator obligations regarding vulnerable employees

66.11 The Operator shall, and shall procure its Operator Associates and any subcontractor (as applicable) cooperate with any Incoming Operator and its affiliates and subcontractor (as applicable) and will otherwise take all reasonable steps within its control to meet and discharge the legal obligations arising under Part 6A of the Employment Relations Act 2000 (Continuity of employment if employees' work affected by restructuring) in respect of cleaning staff employed by the Operator, the Operator Associates or subcontractors (as applicable).

Part Eleven – Miscellaneous

67. Survival of obligations

- 67.1 The expiry or termination of this Partnering Contract shall be without prejudice to the accrued rights, liabilities and obligations of each Party as at the Termination Date.
- 67.2 The following provisions of this Partnering Contract, together with any other provisions which are expressly or impliedly to apply after the Termination Date, shall survive the termination or expiry of this Partnering Contract:
- 67.2.1 clause 2 (*GWRL's rights, powers and benefits*);
 - 67.2.2 Part Five (*Intellectual Property*);
 - 67.2.3 clause 49 (*Indemnity from Operator*);
 - 67.2.4 clause 52 (*Financial Performance and Security*) (excluding clauses 52.1 (*Provision of initial Performance Bond*), 52.2 (*Provision of subsequent Performance Bonds*) and 52.4 (*Provision of Rectification Bond*));
 - 67.2.5 clause 53 (*Dispute Resolution Procedure*);
 - 67.2.6 clause 56 (*Termination for Termination Events*);
 - 67.2.7 clauses 58.2 to 58.4 (*Termination Payment*);
 - 67.2.8 clauses 59.11 to 59.14 (*Effect of issue of Force Majeure Termination Notice*);
 - 67.2.9 Part Ten (*Obligations associated with Change of Operator*); and
 - 67.2.10 this Part 11 (*Miscellaneous*) (excluding clauses 71.3 to 71.7 (*Change of Ownership*)).

68. Confidentiality

General Obligations

- 68.1 Subject to clause 68.3, GWRC and GWRL and the Operator shall keep confidential and not make or cause any disclosure of any of another Party's Confidential Information without the prior written consent of that other Party (which consent may be given or withheld, in that other Party's sole discretion).
- 68.2 The Operator acknowledges that its confidentiality obligations under or in connection with the RFT continue notwithstanding the coming into effect of this Partnering Contract.

Exceptions

- 68.3 The Parties' obligations in clause 68.1 do not apply to disclosure to the extent that the disclosure is:

- 68.3.1 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 Transaction Document (or the transactions contemplated thereunder) or for the purpose of advising that Party in relation thereto, provided that the Party disclosing the Confidential Information shall ensure that the recipient:
- (a) is made aware of this clause 68; and
 - (b) shall keep such information confidential on the same terms as this clause 68;
- 68.3.2 of information which is at the time lawfully in the possession of the disclosing Party through sources other than a 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;
- 68.3.3 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 the Operator, the Operator 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);
- 68.3.4 required in connection with legal proceedings, mediation, arbitration or expert determination relating to this Partnering Contract or the Transaction Documents or any Key Subcontract or for the purpose of advising a Party in relation thereto;
- 68.3.5 by GWRC or GWRL to any elected member, Minister of the Crown, Auckland Transport or any Governmental Entity;
- 68.3.6 by GWRC or GWRL 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 in favour of the Operator; or
- 68.3.7 made by GWRC or GWRL in accordance with clauses 68.4 to 68.7 (*LGOIMA*).

LGOIMA

- 68.4 The Operator acknowledges that GWRC and GWRL are subject to LGOIMA and are obliged to disclose information, including Confidential Information, Restricted

Confidential Information and any other information held by contractors engaged by GWRC under LGOIMA if so requested and there is no good reason under the terms of LGOIMA to withhold that information.

68.5 If GWRC or GWRL receives a request for any information (including any Confidential Information) under LGOIMA then, to the extent that such request does not relate to Restricted Confidential Information, GWRC or GWRL (as applicable) shall determine in its sole discretion the extent to which any disclosure of the information is made in order to comply with the requirements of LGOIMA.

68.6 Subject to clause 68.7, if GWRC or GWRL receives a request for Confidential Information under LGOIMA then to the extent that such request relates to Restricted Confidential Information:

68.6.1 GWRC or GWRL (as applicable) shall notify the Operator of the request;

68.6.2 within two Business Days' of receipt of such notification pursuant to clause 68.6.1, the Operator shall demonstrate to GWRC or GWRL (as applicable) the grounds (if any) under LGOIMA for withholding disclosure of the relevant Restricted Confidential Information;

68.6.3 to the extent that it is reasonably practical under the circumstances GWRC or GWRL (as applicable) shall consult with the Operator in relation to the Restricted Confidential Information that GWRC or GWRL (as applicable) is required to disclose under LGOIMA to comply with the request; and

68.6.4 notwithstanding the foregoing, GWRC or GWRL (as applicable) shall determine in its sole discretion the extent to which any Restricted Confidential Information is disclosed in order to comply with the requirements of LGOIMA.

68.7 Nothing in clauses 68.3 or 68.6 shall require GWRC or GWRL to breach any requirements of LGOIMA and neither of them shall be required to comply with the provisions of clauses 68.3 or 68.6 to the extent that such compliance will or is likely to result in a breach of LGOIMA.

69. **Media Management**

69.1 Subject to clause 69.2, except to the extent that the Operator is expressly obliged to do so under this Partnering Contract or is otherwise required to do so by Law or the requirements of any recognised stock exchange having jurisdiction over the Operator or a Related Company of the Operator, the Operator shall not make or issue any press release or other public announcement relating to this Partnering Contract 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 shall ensure that such press release or public announcement (as applicable) is in the form approved by GWRC.

69.2 The restriction in clause 69.1 shall not apply to the making of announcements to passengers in relation to the status of any Scheduled Service or Special Event Service (including in respect of any alternative transport arrangements to be provided by or on behalf of the Operator in connection therewith)

70. Privacy and Data Protection

Personal Information

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

Operator's privacy policy

70.2 At all times during the Term, the Operator shall implement, maintain and comply with (and shall ensure that the Operator Associates comply with) a privacy policy which:

- 70.2.1 complies and is consistent with this clause 70, the Privacy Obligations and Good Industry Practice; and
 - 70.2.2 outlines the collection and use of Personal Information in connection with the provision of the Services.
- 70.3 The Operator shall make a copy of such privacy policy freely available to any person (including GWRC) upon request. The Operator shall promptly update the privacy policy to incorporate any reasonable comments received from GWRC from time to time.

Advising of any breach

- 70.4 The Operator shall promptly notify GWRC in writing and comply with any reasonable direction of GWRC in response to such notification if the Operator:
- 70.4.1 becomes aware of any breach by it or any of the Operator Associates of the obligations in this clause 70; or
 - 70.4.2 receives any Complaint, or any notification from a Governmental Entity that a complaint has been made, concerning the collection, use, disclosure, storage, management, transfer or handling of Personal Information.

IFT System data protection

- 70.5 On and from the ETS Implementation Date, the Operator shall comply with (and shall procure that the Operator Associates shall comply with) the data protection and data retrieval policies in respect of the IFT System provided by GWRC (as may be amended by GWRC from time to time).

71. Assignment and Change of Ownership

Assignment by Operator

- 71.1 The Operator shall not create or allow a Security Interest over, or in any other way either directly or indirectly assign, novate, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with:
- 71.1.1 any of its rights or obligations under this Partnering Contract or any other Transaction Document other than under a Permitted Security Interest or with the prior written consent of GWRC; or
 - 71.1.2 any of the GWRL Assets, the GWRL Systems, the GWRC Assets or the GWRC Systems except with the prior written consent of GWRC.
- 71.2 The Operator shall provide any request for approval under clause 71.1 at least 20 Business Days prior to the proposed effective date of any such assignment, transfer, disposal or interest.

Change of Ownership

- 71.3 Subject to clause 71.7, if a Change of Ownership occurs without the prior written consent of GWRC, this will be deemed, for the purposes of this Partnering Contract, to be a breach by the Operator of this Partnering Contract.
- 71.4 If a Change of Ownership is proposed, the Operator shall notify GWRC of that proposed Change of Ownership as soon as it becomes aware of the same.
- 71.5 The Operator shall promptly provide such particulars relating to the proposed Change of Ownership as GWRC may reasonably require, including:
- 71.5.1 the identity of each proposed Controller and its Related Companies;
 - 71.5.2 the legal and beneficial owners of the proposed Controller and the proposed Controller's ultimate holding company;
 - 71.5.3 the extent and nature of the proposed Change of Ownership; and
 - 71.5.4 any other information necessary for GWRC to determine whether or not to consent to the Change of Ownership.
- 71.6 GWRC may withhold its consent to a Change of Ownership if:
- 71.6.1 it has not been given all of the information required under clause 71.5;
 - 71.6.2 GWRC determines that the proposed Controller:
 - (a) is not solvent or reputable; or
 - (b) is an Unsuitable Third Party;
 - 71.6.3 GWRC determines that the proposed Change of Ownership:
 - (a) is against the public interest; or
 - (b) is likely to have a material adverse effect on the ability of the Operator to perform its obligations under any Transaction Document or on the rights of GWRC or GWRL under any Transaction Document; or
 - (c) would result in an increase in the level of risk or liabilities of GWRC, GWRL or any GW Associate.
- 71.7 Clause 71.3 does not apply in respect of a Change of Ownership which is a Permitted Change of Ownership.

Assignment by GWRC/GWRL

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

72. Notices

- 72.1 Any notice required to be given in relation to this Partnering Contract will, except where otherwise expressly provided, be in writing and in English and delivered to the Party's Authorised Representative.
- 72.2 This clause 72.2 is subject to clause 72.4. A notice may be:
- 72.2.1 personally delivered, in which case it will be deemed to be given upon delivery at the relevant address; or
 - 72.2.2 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
 - 72.2.3 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
 - 72.2.4 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
 - 72.2.5 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.
- 72.3 The initial addresses and other relevant details of each Party are set out in paragraph 2 (*Addresses for notices*) of Schedule 2 (*Agreement Details*). A Party may provide written notice to the other 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.
- 72.4 Where any notice is deemed given pursuant to clause 72.2:
- 72.4.1 before 9.00 am or after 5.30 pm (local time) at the place of receipt; or
 - 72.4.2 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 72.4 the place of receipt of a notice is the applicable postal address for the receiving Party in accordance with clause 72.3, irrespective of whether the notice is communicated by email or otherwise.

73. Relationship between Parties

- 73.1 Notwithstanding the use of the word "partnering" or "partnership", nothing in this Partnering Contract including in clause 24 (*Partnering Principles*) or in any Annual Business Plan, is to be construed or interpreted as constituting the relationship between the Parties as a partnership, quasi-partnership, association or any other relationship in which a Party may (except as expressly provided for in this Partnering Contract) be liable for the acts or omissions of one of the other Parties.
- 73.2 Except as expressly provided in this Partnering Contract, nothing in this Partnering Contract or in any Annual Business Plan shall be construed to authorise any Party to act as an agent for any other Party for any purpose.
- 73.3 Notwithstanding any other provision of this Partnering Contract, but without prejudice to GWRC's and GWRL's rights under the direct deed to be entered into by the Vehicle Services Subcontractor, the Operator, GWRC and GWRL on or about the date of this Partnering Contract in accordance with clause 3.3.1(i) of this Partnering Contract, the Parties agree that:
- 73.3.1 the Vehicle Services Subcontractor is not a party to this Partnering Contract;
 - 73.3.2 all references in this Partnering Contract to Rotem, Vehicle Services Subcontractor, Vehicle Services Subcontract, and Transaction Documents (which includes the Vehicle Services Subcontract) are not intended to, nor create any obligations on the Vehicle Services Subcontractor in addition to those obligations under the Vehicle Services Subcontract; and
 - 73.3.3 the obligations of the Vehicle Services Subcontractor to perform Services are limited to those obligations set out under the Vehicle Services Subcontract.

74. Requirement to use 'best endeavours'

- 74.1 Where this Partnering Contract requires that a Party shall use 'best endeavours', this does not require the Party to:
- 74.1.1 act unreasonably, in breach of Safety Law or outside the Law;
 - 74.1.2 interfere with or influence the exercise by any person of a statutory power or discretion;
 - 74.1.3 in the case of GWRC or GWRL only, exercise a power or discretion or otherwise act in a manner that either of them regards as not in the public interest; or
 - 74.1.4 provide any performance bond, guarantee or Security Interest other than as specifically required under this Partnering Contract.

75. Entire Agreement and amendments

- 75.1 This Partnering Contract and the other Transaction Documents contain the entire agreement between the Parties with respect to their subject matter and supersede any earlier agreements or understandings between the Parties in connection with their subject matter.
- 75.2 Except as contemplated by Schedule 16 (*Change Events and Net Financial Impact*) in the context of Contract Variations, this Partnering Contract may only be amended by way of a written agreement duly executed by each of the Parties.
- 75.3 Notwithstanding anything to the contrary in this Partnering Contract or the Regional Agreement, GWRC may, up to and including the Commencement Date, amend or replace the PT Network Documents and provide these to the Operator, which shall:
- 75.3.1 not constitute or give rise to a Contract Variation, Minor Contract Variation or the change process for PT Network Documents referred to in paragraphs 3.21 to 3.24 of Schedule 11 (*Regional Agreement*);
 - 75.3.2 not entitle the Operator to make any Claim in respect of such amendment or replacement of any of the PT Network Documents; and
 - 75.3.3 be provided by GWRC to the Operator within 5 Business Days of any change being made.
- 75.4 The Operator acknowledges and agrees that the versions of the PT Network Documents annexed to this Partnering Contract are the current versions as at the date of this Partnering Contract and are subject to further amendments in accordance with clause 75.3 above and the Regional Agreement.

76. No reliance

- 76.1 Without prejudice to clause 5.14, the Operator acknowledges that, before entering into this Partnering Contract or any other Transaction Document, it made all enquiries it wanted to make in relation to the Services and the Operator's obligations under this Partnering Contract and the other Transaction Documents and that in entering into this Partnering Contract and the other Transaction Documents, the Operator:
- 76.1.1 did not rely on any representation, warranty, guarantee, assurance, undertaking or other statement made by or on behalf of GWRC or GWRL;
 - 76.1.2 has made its own assessment of the rights provided to the Operator and the obligations imposed on the Operator by the Transaction Documents, including the rights and obligations of the Operator under the Common Access Terms;

- 76.1.3 has made its own assessment of the nature and quality of the Initial Transferring Assets, the GWRC Assets, the GWRC Systems, the GWRL Assets and the GWRL Systems; and
- 76.1.4 has made its own assessment as to the quality of all other material and other information provided during the tender process.

77. No waiver

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

78. Rights cumulative

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

79. Further assurances

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

80. No merger

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

81. Costs and expenses

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

82. **Severability of provisions**

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

83. **Governing law**

83.1 This Partnering Contract and the transactions contemplated by this Partnering Contract are governed by and are to be construed in accordance with New Zealand law and, subject to clause 53 (*Dispute Resolution Procedure*), the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

84. **GWRC and GWRL Action**

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

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

84.1.2 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.

85. **Contracts (Privity) Act 1982**

85.1 Except to the extent any term of this Partnering Contract expressly states otherwise, a person who is not a Party to this Partnering Contract shall have no right under the *Contracts (Privity) Act 1982* to enforce any term of this Partnering Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

86. **Operation of indemnities**

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

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

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

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

87. Indemnities etc held on trust

87.1 To the extent that any indemnity or release given by the Operator under this Partnering Contract is in favour of, or contemplates benefitting, any person other than GWRC or GWRL (such person being an **Indemnified Person**), GWRC declares that it holds on trust for each Indemnified Person:

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

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

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

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

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

87.3 The Parties agree that notwithstanding clauses 87.1 and 87.2, the consent of the Indemnified Persons (or any of them) is not required to amend or waive any provision of this Partnering Contract.

88. Counterparts

88.1 This Partnering Contract is properly executed if each Party executes either this document or an identical document.

88.2 If more than one copy of this Partnering Contract is executed by the Parties:

88.2.1 this Partnering Contract will take effect when the separately executed copies are exchanged between the Parties; and

88.2.2 after exchange, each executed copy of this Partnering Contract will be an original and all of the copies together will constitute the same document.

89. PPSA Security

89.1 Subject to the terms and conditions of this Partnering Contract:

89.1.1 the Operator grants (and shall procure that the Vehicle Services Subcontractor grants) to GWRC and GWRL a security interest (within the meaning ascribed to that term under section 17 of the Personal Property Securities Act 1999) in all GWRC Assets, GWRC Systems, GWRL Assets, GWRL Systems and any other assets or items in respect of which GWRC or GWRL is the legal owner or licensor which is held

by, leased or licensed to, or in the possession and control of, the Operator, or the Vehicle Services Subcontractor (as the case may be) from time to time in accordance with this Partnering Contract;


89.1.2 the rights of GWRC and GWRL under this clause 89 are in addition to, and not in substitution for, any other rights or interests of GWRC and GWRL under this Partnering Contract or otherwise, including, without limitation, any ownership claim to any assets for which ownership and title has not passed;

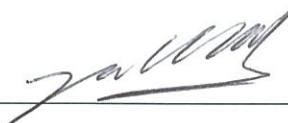
89.1.3 the Operator agrees that:

- (a) sections 114(1), 133 and 134 of the Personal Property Securities Act 1999 shall not apply to any Security Interest created in accordance with this Partnering Contract;
- (b) 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 shall apply; and
- (c) the Operator waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to any Security Interest.

Execution

SIGNED for and on behalf of
Wellington Regional Council


Signature of witness

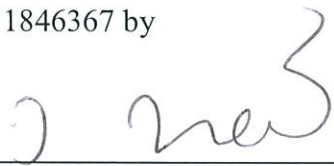

Signature of Gregory Campbell
(Chief Executive)


KATE MCKENZIE
Name of witness

SOLICITOR
Occupation of witness

DVA PIPER, 1 EAGLE ST, BRISBANE
Address of witness

SIGNED for and on behalf of
**Greater Wellington Rail
Limited** Company Number
1846367 by



Signature of director


Signature of director

Samantha Suenif
Name of director

Barbara Donaldson
Name of director

SIGNED for and on behalf of
Transdev Wellington Limited
Company Number 5164521 by
the party's attorney pursuant to
power of attorney dated 4 March
2016



Signature of witness

NATHAN LANTHOIS

Name of witness

GENERAL COUNSEL

Title of witness

NATHAN JOHN LANTHOIS
Level 8, 469 La Trobe St, Melbourne VIC 3000
An Australian legal practitioner within the meaning
of the Legal Profession Uniform Law (Victoria).

Address of witness



Signature of authorised person

PETER LODGE

Name of authorised person

DIRECTOR

Title of authorised person


**CERTIFICATE OF NON REVOCATION OF
POWER OF ATTORNEY**

I, Peter Stewart Lodge of 38 Highfield Road, Canterbury, Victoria, Australia, Director of Transdev Wellington Limited hereby certify:

1. That by a Deed dated the 4th March 2016, Transdev Wellington Limited 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 10 day of March 2016



Peter Stewart Lodge

Director
Transdev Wellington Limited


Schedules and Annexures

Schedules

1. Definitions and interpretation
2. Agreement details
3. Passenger Services
4. Vehicle Services
5. Planning, Reporting and Meetings
6. Financial and Performance regime
7. Operator Insurance requirement
8. Warranties and Representations
9. Station and Depot Facilities
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11. Regional Agreement
12. Handover Package
13. IFT Programme
14. RS1 Project
15. Transition Plan
16. Change Events and Net Financial Impact
17. Employee Transfer
18. Operator's Proposals
19. Minimum Initial Transferring Assets

Annexures

1. Timetable Change Process
2. Customer Service Standards

3. Customer Communication and Information Systems
4. Security Service Specification
5. Minimum Vehicle Operating Standards
6. Fares, Ticketing and Enforcement Requirements
7. Conditions of Carriage
8. Not Used
9. Customer Satisfaction Survey
10. [REDACTED] 
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12. Preliminary Commencement Certificate
13. Incoming Operator Confidentiality Undertaking
14. Incoming Operator Access Indemnity
15. Initial Annual Heavy Maintenance Plan
16. Initial Three Year Heavy Maintenance Plan
17. Overarching Heavy Maintenance Plan
18. Form of Payment Claim
19. Variation Forms
20. Draft Initial Annual Business Plan
21. Ticket Agent Agreement
22. Key Subcontractor Direct Deed
23. GWRC Privacy Policy

Schedule 1 – Definitions and interpretation

Definitions

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

2010 RRP	has the meaning in paragraph 2.1 of Schedule 14 (<i>RSI Project</i>).
Access Provider	means KiwiRail Holdings Limited (together with its successors and permitted assigns).
Accrued Liabilities	means any actual or potential liabilities to, or personal grievances or Claims of, any Services Employee which are incurred or arise prior to the Termination Date.
Actual Patronage	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Adapter Couplers	has the meaning given in the Operating Lease.
Additional Modification Services	means work to enhance or modify Vehicles or the EMU Depot Plant and Equipment that is completed in accordance with paragraph 15 (<i>GWRC funded Additional Modification Services</i>) of Schedule 4 (<i>Vehicle Services</i>).
Additional PT Network Projects	means any project included in the Annual Business Plan in order to: <ul style="list-style-type: none"> (a) support the objectives and goals set out in the Wellington Regional Public Transport Plan; (b) support the public transport activities set out in the GWRC Long Term Plan; or (c) satisfy the legal requirements of the Transport Agency or any other Governmental Entity.
Additional Vehicle Services Fee	means the fee payable by GWRC to the Operator for the provision of Exceptional Repair Work, Heavy Maintenance Services and GWRC funded Additional Modification Services calculated in accordance with paragraph 4 (<i>Calculation of the Additional Vehicle Services Fee</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).

Additional Vehicle Services Rate Card	means the table set out in appendix 7 (<i>Additional Vehicle Services Rate Card</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Adjusted Actual Patronage	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Adjusted Book Value	means the demonstrable book value of a Transferring Operator Asset (including assets ordered but not yet received but excluding any Consumables or any Other Asset) determined in accordance with this Partnering Contract, as decreased to reflect and take account of the condition of that Transferring Operator Asset.
Affected Party	has the meaning given to it in clause 59.2.
Aggregate Approved Revenue Service Profit Amount	<p>means an amount calculated as follows:</p> $AARSPA = AI - AC$ <p>Where:</p> <p><i>AARSPA</i> is the Aggregate Approved Revenue Service Profit Amount;</p> <p><i>AC</i> is the aggregate direct marginal costs reasonably and properly incurred by the Operator in the ordinary course of business in connection with the provision of the Approved Revenue Services during the Relevant Period (including depreciation on assets acquired and used solely for the purposes of providing the Approved Revenue Services), provided that:</p> <ul style="list-style-type: none"> (a) where such costs relate to amounts payable by the Operator to third parties, they shall only be included in the calculation to the extent that such costs have been incurred by the Operator on reasonable commercial Arm's Length Terms; and (b) no amount shall be included in respect of overheads or indirect costs; <p><i>AI</i> is the aggregate income received by the Operator and any Operator Associate during the Relevant Period from charges paid by the users of the Approved Revenue Services.</p>
Aggregate Book Value	has the meaning given in clause 8.1.

Alternative Transport Fee	means the alternative transport fee calculated in accordance with paragraph 12 of Schedule 6 (<i>Financial and Performance Regime</i>).
Alternative Transport Plan	means the plan contemplated by paragraph 1.3.2 of Appendix 1 (<i>Plans</i>) to Schedule 5, the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
Ancillary Access Rights	means a right of access and/or occupation which is ancillary to and necessary for the Operator or the Operator Associates to carry out the Services.
Ancillary Movements	has the meaning given to it in clause 1.1 of the Common Access Terms.
Annual Business Plan	means the Initial Annual Business Plan and each subsequent annual business plan approved by GWRC in accordance with Schedule 5 (<i>Planning, Reporting and Meetings</i>).
Annual Heavy Maintenance Budget	means in respect of any Year, the budget set out in the approved Annual Heavy Maintenance Plan for that Year including any Underspend which is to be added to that budget in accordance with paragraph 14.9 of Schedule 4 (<i>Vehicle Services</i>) (if applicable).
Annual Heavy Maintenance Plan	means: (a) in respect of the first Year, the Initial Annual Heavy Maintenance Plan; and (b) in respect of each subsequent Year, the annual heavy maintenance plan for that Year approved by GWRC pursuant to paragraph 14.4 of Schedule 4 (<i>Vehicle Services</i>).
Approved Bank	means a bank which: (a) is the holder of a current banking licence or authorisation issued by the Reserve Bank of New Zealand or the Australian Prudential Regulation Authority; and (b) holds a long term credit rating of no less than A from Standard & Poor's, a division of McGraw-Hill Financial, or the successor to its ratings business.


<p>Approved Engineering Process</p>	<p>means an analytical process, including verification and validation, that is implemented under a system that is based on the principles stated in ISO/IEC 15288:2008 Systems and Software Engineering - System LifeCycle processes or similar standard, as applicable to rolling stock providers and which considers the cause, effect, consequences and frequency of occurrence of Vehicle failures to determine the need for preventative maintenance and modifications which are subject to the approval of the Transport Agency's rail regulation unit or such other Governmental Entity responsible for the powers held by the Minister under Subpart 5 of the Railways Act.</p>
<p>Approved Modification Services</p>	<p>means the services described at paragraph 5 (<i>Operator funded Approved Modification Services</i>) of Schedule 4 (<i>Vehicle Services</i>).</p>
<p>Approved Reinstatement Plan</p>	<p>means a reinstatement plan provided by the Operator under clause 51.8 and (if applicable) amended in accordance with clause 51.10 and which has been approved by GWRC under clause 51.10.</p>
<p>Approved Revenue Service</p>	<p>means additional revenue generating services or facilities in connection with the Services which the Operator is entitled to provide pursuant to clause 48.27.</p>
<p>Arm's Length Terms</p>	<p>includes (without limiting the ordinary meaning of that term) arrangements, dealings and transactions that:</p> <ul style="list-style-type: none"> (a) do not include elements that parties in their respective positions would usually omit; or (b) do not omit elements that parties in their respective positions would usually include, <p>if the parties were:</p> <ul style="list-style-type: none"> (c) connected or related only by the arrangement, dealing or transaction in question; (d) acting independently; and (e) each acting in their own respective best interests.
<p>Assumed Trips Table</p>	<p>has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).</p>

<p>Authorised Representative(s)</p>	<p>means, in relation to a Party, the individual that is the primary contact person of that Party for the purpose of this Partnering Contract and the other Transaction Documents, being the individual specified in Schedule 2 (<i>Agreement Details</i>) as amended from time to time in accordance with clauses 18.8 (<i>Key Personnel</i>), 27.7 and 27.8 (<i>Changes to Authorised Representatives</i>).</p>
<p>Background IP</p>	<p>means Intellectual Property Rights and Intellectual Property Material, whether owned or licensed, which is:</p> <ul style="list-style-type: none"> (a) already in existence at the Commencement Date; or (b) brought into existence other than by virtue of the performance of this Partnering Contract or any of the Transaction Documents or any arrangement contemplated by this Partnering Contract or any Transaction Document, <p>and which is utilised as part of the Services or for the purposes of the Services, this Partnering Contract or any other Transaction Document.</p>
<p>Base Customer Satisfaction Surveys</p>	<p>means the first two Customer Satisfaction Surveys to be undertaken under Annexure 9 (<i>Customer Satisfaction Survey</i>).</p>
<p>Bond</p>	<p>means each Performance Bond and each Rectification Bond.</p>
<p>Bus Operator</p>	<p>means a PTOM Operator that provides scheduled passenger services in regard to a bus "unit" (as defined in section 5(1) of the LTMA).</p>
<p>Business Continuity Plan</p>	<p>means the plan contemplated by paragraph 1.3.11 of Appendix 1 (<i>Plans</i>) to Schedule 5, the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.</p>
<p>Business Day</p>	<p>means a day (other than a Saturday, Sunday or public holiday) on which banks are generally open for business in Auckland and Wellington.</p>

<p>C1 Check, C2 Check, C3 Check, C4 Check, C5 Check and C6 Check</p>	<p>shall each be as described in the Matangi Fleet Maintenance Plan, and for the avoidance of doubt, the terms "C1 Service Check", "C2 Service Check", "C3 Service Check", "C4 Service Check", "C5 Service Check" and "C6 Service Check" shall have the same meanings as the terms "C1 Check", "C2 Check", "C3 Check", "C4 Check", "C5 Check" and "C6 Check" respectively.</p>
<p>Capital Expenditure</p>	<p>means any expenditure treated as capital expenditure in accordance with "generally accepted accounting practice" (as such term is defined in section 5 of the Financial Reporting Act 2013).</p>
<p>Car Park Lease</p>	<p>means the "Lease Agreement for Carparking" made between New Zealand Railways Corporation (KiwiRail) and GWRL (as Lessee) dated 3 April 2012.</p>
<p>Carriage</p>	<p>means each of the Vehicles making up the Carriage Fleet.</p>
<p>Carriage Depot</p>	<p>has the meaning given to the term, "Licensed Area", in the Carriage Depot Licence.</p>
<p>Carriage Depot Access Areas</p>	<p>has the meaning given in paragraph 6.2 of Schedule 9 (<i>Stations and Depot Facilities</i>).</p>
<p>Carriage Depot Ancillary Access Right</p>	<p>has the meaning given in paragraph 6.2 of Schedule 9 (<i>Stations and Depot Facilities</i>).</p>
<p>Carriage Depot Licence</p>	<p>means the licence to occupy the Thorndon Carriage Wash Building and Thorndon Carriage Depot made between KiwiRail Limited (as licensor) and GWRL (as licensee) and dated 3 April 2012.</p>
<p>Carriage Fleet</p>	<p>means:</p> <ul style="list-style-type: none"> (a) the 24 "SE Passenger Carriages" and "SW Passenger Carriages"; and (b) the AG wagon, <p>included within the Vehicles and provided by GWRL to the Operator in accordance with Schedule 10 (<i>Operating Lease</i>).</p>

<p>Carriage Fleet Maintenance Plan</p>	<p>means the files with references set out in Appendix 4 (<i>Carriage Fleet Maintenance Plan</i>) of Schedule 4 (<i>Vehicle Services</i>) and saved on the disk marked "Carriage Fleet Maintenance Plan" and initialled by the Parties for the purpose of identification on or about the date of this Partnering Contract and as amended from time to time in accordance with paragraph 17 (<i>Changes to Vehicle maintenance, EMU Depot Plant and Equipment Manual or Electric Shunt Manual</i>) of Schedule 4 (<i>Vehicle Services</i>), provided that in the event of any discrepancy between the file number set out in Appendix 4 of Schedule 4 (<i>Vehicle Services</i>) and the file saved on the disk, the file saved on the disk shall prevail.</p>
<p>Carriage Fleet Refurbishment</p>	<p>means the mid-life refurbishment that may be carried out by GWRC in respect of the Carriage Fleet in accordance with paragraph 15A of Schedule 4 (<i>Vehicle Services</i>).</p>
<p>Carriage Locomotive and Carriage Shunt Service Agreement or CLCSA</p>	<p>means the agreement relating to the provision of locomotives and/or shunt vehicles and/or associated services made between the Operator and KiwiRail Limited.</p>
<p>Carriage Train</p>	<p>means a Train comprising a locomotive and one or more Carriages.</p>
<p>Certificate of Currency</p>	<p>means a certificate issued by or on behalf of the relevant insurer:</p> <ul style="list-style-type: none"> (a) identifying the relevant insurer and the relevant insurance policy to which it relates; (b) evidencing that the relevant insurance policy is in place and the period of cover; (c) detailing the applicable cover limits and deductibles; and (d) detailing any major inclusions and exclusions which apply to the insurance policy.

Change in Law	<p>means the coming into effect after the date of this Partnering Contract of:</p> <ul style="list-style-type: none">(a) any Law (including a Law that repeals or amends an existing Law); or(b) any applicable judgment of a relevant court of law that changes or creates a binding precedent, <p>but does not include the coming into effect of such Law or applicable judgement which:</p> <ul style="list-style-type: none">(i) was published on or before the date of this Partnering Contract in a bill or draft bill, as part of a government consultation paper, in a draft statutory instrument or otherwise in a public document, in each case in substantially the same form as the relevant Law or applicable judgement eventuating after the date of this Partnering Contract;(ii) was contained or referred to in the RFT or any Transaction Document, in substantially the same form as the relevant Law or applicable judgement eventuating after the date of this Partnering Contract;(iii) a party experienced and competent in the provision of services similar to the Services would have reasonably foreseen or anticipated prior to the date of this Partnering Contract;(iv) is a change in the way in which a Law applies or is interpreted as a result of a court decision other than as described in paragraph (b);(v) comprises or results in a change to a Consent;(vi) comprises a change to any Law to the extent relating to Tax or GST; or(vii) has been brought into effect as a consequence of the acts (excluding acts expressly contemplated by this Partnering Contract) or omissions of the Operator or any Operator Associate.
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<p>Change in Standards</p>	<p>means the coming into effect after the date of this Partnering Contract of:</p> <ul style="list-style-type: none"> (a) any new Code; or (b) any amendment to a Code or the NRSS, <p>but does not include the coming into effect of such new Code or amendment which:</p> <ul style="list-style-type: none"> (i) was published on or before the date of this Partnering Contract in a bill or draft bill, as part of a government consultation paper, in a draft statutory instrument or otherwise in a public document, in each case in substantially the same form as the relevant new Code or amendment eventuating after the date of this Partnering Contract; (ii) was contained or referred to in the RFT or any Transaction Document, in substantially the same form as the relevant new Code or amendment eventuating after the date of this Partnering Contract; (iii) a party experienced and competent in the provision of services similar to the Services would have reasonably foreseen or anticipated prior to the date of this Partnering Contract; (v) comprises or results in a change to a Consent; or (vii) has been brought into effect as a consequence of the acts (excluding acts expressly contemplated by this Partnering Contract) or omissions of the Operator or any Operator Associate.
<p>Change of Ownership</p>	<p>means:</p> <ul style="list-style-type: none"> (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Operator [REDACTED];  (b) any change in Control in respect of the Operator; and/or (c) any other arrangements that have or may have or that result in the same effect as those described in any of paragraphs (a) and (b).

Christmas Timetable	means the timetable of Scheduled Services for the Christmas period notified by GWRC to the Operator (in writing) following consultation with the Operator.
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 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.
Codes	means the technical and safety codes, standards and rules that set out the requirements on the Access Provider and/or the Operator for operating Vehicles on the Wellington Rail Network set out in or adopted under the NRSS, as amended or replaced from time to time.
Commencement Date	means the date on which the Services are to commence as specified by GWRC in the Preliminary Commencement Certificate.
Common Access Terms	means the common access terms dated 20 June 2012, a copy of which is attached as Schedule 12 of the Wellington Network Agreement.
Companies Act	means the Companies Act 1993.
Compensable Change in Law	means: <ul style="list-style-type: none"> (a) a Specific Change in Law occurring after the date of this Partnering Contract; or (b) a General Change in Law occurring after the date of this Partnering Contract where compliance with such General Change in Law will require the Operator to incur Capital Expenditure.
Compensable Change in Standards	means a Change in Standards which occurs after the date of this Partnering Contract but to the extent only that the Operator is not entitled to compensation in connection therewith pursuant to the Common Access Terms or the Wellington Network Agreement.

Compensation Event	means each of: (a) a breach by GWRC or GWRL of its obligations under this Partnering Contract (excluding an obligation to pay money); (b) a Compensable Change in Law; and (c) a Compensable Change in Standards.
Compensation Event Notice	has the meaning given in paragraph 3.3 of Schedule 16 (<i>Change Events and Net Financial Impact</i>).
Complaint	means any complaint or criticism received by the Operator, GWRC, the Metlink call centre, the Metlink website or other social media in respect of the Operator or the Services.
Conditions of Carriage	means the conditions of carriage provided to the Operator by GWRC and as amended by GWRC from time to time.

Confidential Information	<p>means:</p> <ul style="list-style-type: none">(a) all information and trade secrets already communicated or subsequently communicated under or in connection with this Partnering Contract or with respect to the Services or otherwise with respect to the subject matter of this Partnering Contract including (without limitation) any information obtained:<ul style="list-style-type: none">(i) in the course of negotiations leading to the conclusion of this Partnering Contract; or(ii) in the performance of this Partnering Contract;(b) any information about the business or property of a person including (without limitation) any information:<ul style="list-style-type: none">(i) relating to the financial position of that person;(ii) concerning that person's suppliers and customers or its agents or brokers;(iii) relating to that person's internal management, structure, personnel or strategies; or(iv) comprising the terms of this Partnering Contract; and(c) any Intellectual Property Material; and(d) any Personal Information collected, used, disclosed, stored, managed, transferred or handled by a Party.
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<p>Consent</p>	<p>means:</p> <p>(a) any consent, authorisation, permit, registration, filing, agreement, notarisation, certificate, licence, approval, or exemption from, by or with, a Governmental Entity, judicial body or stock exchange that is required to enable the Operator to observe, comply with or perform any of its obligations under this Partnering Contract (and includes consents required to comply with Laws or as a result of the rights or discretions of any third party); and</p> <p>(b) in relation to any act, matter or thing that will be prohibited or restricted in whole or in part if a Governmental Entity, judicial body or stock exchange intervenes or acts in any way within a specified period after lodgement, filing, registration or notification of such act, matter or thing, the expiry of such period without such intervention or action.</p>
<p>Consequential or Indirect Loss</p>	<p>means any:</p> <p>(a) loss of revenue, loss of profit, loss of financial opportunity, loss of investment return, loss of business or loss of business opportunity, loss of contract (other than the loss of this Partnering Contract or a Transaction Document), loss of goodwill or failure to realise anticipated savings (whether the loss is direct or indirect); or</p> <p>(b) any loss, damage, cost, expense or liability that does not fall within any of the following:</p> <p>(i) a loss, damage, cost, expense or liability that may fairly and reasonably be considered to arise naturally (being according to the usual course of things) from the breach or relevant matter; or</p> <p>(ii) a loss, damage, cost, expense or liability such as may reasonably be supposed to have been contemplated by the Parties at the date of this Partnering Contract as the probable result of the breach or relevant matter.</p>
<p>Consumables</p>	<p>means items which are consumable in nature and which are required to be replenished on a regular basis, such as oil, grease and fasteners.</p>

<p>Contract Variation</p>	<p>means any change or variation to the Services (including any addition, reduction, increase, decrease, omission or removal to or from the Services), the method of performing the Services or the assets used to perform the Services but excludes:</p> <ul style="list-style-type: none"> (a) the implementation of a Pre Priced Option following the issue of an order given by GWRC pursuant to paragraph 4.1 (<i>Implementation of Pre Priced Options</i>) of Schedule 16; and (b) any changes made to the Timetable or the Rail Unit Timetable in accordance with the Timetable Change Process, any changes made to the Rail Network Timetable and, in either case, any associated changes to the Working Timetable; and (c) any Special Event Services.
<p>Control</p>	<p>means, in relation to a body corporate (of any kind):</p> <ul style="list-style-type: none"> (a) control or influence of, or having the capacity to control or influence, the composition of the board as defined in section 7 of the Companies Act 1993; (b) being in a position to cast, or control the casting of, more than 20 per cent of the maximum number of votes that may be cast at a general meeting; or (c) having a relevant interest (as defined in sections 235 to 237 of the Financial Markets Conduct Act 2013) in more than 20 per cent of the voting securities, <p>of that body corporate (whether alone or together with any Related Company).</p>
<p>Controller</p>	<p>means, in relation to a Change of Ownership, (as the context may require) the person or body corporate that is then exercising Control or the person or body corporate to whom Control is intended to pass.</p>
<p>Core Lease</p>	<p>means the Core Lease Variation and Restatement of Lease entered into between KiwiRail Limited, New Zealand Railways Corporation and the respective Ministers of Finance and State Owned Enterprise, and dated 20 February 2013 (as varied or renewed from time to time).</p>
<p>Correction Notice</p>	<p>has the meaning given in clause 14.7.</p>

CPI	means the “all groups” consumers price index as published by Statistics New Zealand (or its successor) or any successor or replacement index thereto as nominated by Statistics New Zealand (or its successor).
Cure Plan	has the meaning given to it in clause 55.3.1.
Customer Communication and Information Systems	means the systems, requirements and other matters set out at Annexure 3 (<i>Customer Communication and Information Systems</i>), as amended or replaced from time to time in accordance with the process for changes to PT Network Documents under the Regional Agreement.
Customer Satisfaction Payments	means amounts calculated in accordance with paragraph 1.2.10 of Schedule 6 (<i>Financial and Performance Regime</i>).
Customer Satisfaction Survey	means each survey to be undertaken in accordance with Annexure 9 (<i>Customer Satisfaction Survey</i>).
Customer Satisfaction Threshold	means, in respect of each Customer Satisfaction Survey, the Customer Satisfaction Threshold for that Customer Satisfaction Survey calculated in accordance with paragraphs 6.6 to 6.12 of Annexure 9 (<i>Customer Satisfaction Survey</i>).
Customer Service Commitment	means the commitment prepared by the Operator and published in accordance with the requirements set out at paragraph 5 of Annexure 2 (<i>Customer Service Standards</i>).
Customer Service Standards	means the standards set out at Annexure 2 (<i>Customer Service Standards</i>), as amended or replaced from time to time in accordance with the process for changes to PT Network Documents under the Regional Agreement.
D1 Check, D2 Check and D3 Check	shall each be as described in the Carriage Fleet Maintenance Plan and for the avoidance of doubt the terms "D1 Service Check", "D2 Service Check" and "D3 Service Check" shall have the same meanings as the terms "D1 Check", "D2 Check" and "D3 Check" respectively.
Daily Farebox Report	means each daily farebox report to be provided by the Operator in accordance with this Partnering Contract and containing the matters referred to in paragraph 3.1.6 of Schedule 5 (<i>Planning, Reporting and Meetings</i>).

Daily Operational Report	means each daily operational report to be provided by the Operator in accordance with this Partnering Contract and containing the matters referred to in paragraph 3.1.5 of Schedule 5 (<i>Planning, Reporting and Meetings</i>).
Day 1 of RS1 Operations	means the date notified by GWRC to the Operator in an order given pursuant to paragraph 4.1 of Schedule 16 as being the date on which the Operator is required to commence provision of Scheduled Services in accordance with the revised Rail Unit Timetable.
Deed of Accession to the Common Access Terms	means a deed of accession executed by the Operator in the form set out in Schedule 8 (<i>Form of Deed of Accession to the Common Access Terms</i>) to the Common Access Terms.
Deed of Accession to the Regional Agreement	means the deed of accession to be executed by the Operator in accordance with clause 24.3.
Deed of Accession to the Wellington Network Agreement	means a deed of accession in the form set out at Schedule 10 (<i>Form of Deed of Accession</i>) to the Wellington Network Agreement (or such other form as is agreed between GWRC, the Operator and the Access Provider) under which the Operator becomes party to the Wellington Network Agreement.
Default Rate	means, in respect of a period, 2% above the official cash rate (set by the Reserve Bank) applicable from time to time during that period.
Depot Facilities	means the EMU Depot and the Carriage Depot.
Designated Area	means the area on-board a Vehicle and, during IFT Phase Two, the gated areas in the Stations as notified to the Operator by GWRC in writing from time to time.
Destination	has the meaning given in paragraph 6.2 of Schedule 6 (<i>Financial and Performance Regime</i>).

<p>Developed IP</p>	<p>means all Intellectual Property Rights and Intellectual Property Materials created or developed by or on behalf of the Operator or the Operator Associates (and whether alone or jointly with any other person) in connection with providing the Services or otherwise performing its obligations under this Partnering Contract or any other Transaction Document, including:</p> <ul style="list-style-type: none"> (a) information, data, databases, records, reports, documents, drawings and specifications (including all information, data, records and reports relating to the Services); (b) the FRACAS, the MMIS and associated data; (c) documented instructions, methodologies, processes, procedures and training materials; (d) maintenance, management and financial plans; (e) customer satisfaction surveys (including the design of , all data collected for, and all reports and other documents generated in connection with, customer satisfaction surveys); (f) photographs and video footage (including CCTV footage); (g) software (including source code); and (h) operating plans and schedules (including the Working Timetable and rosters), <p>and includes additions to, or adaptations, customisations or enhancements of or deletions or derivatives from Background IP.</p>
<p>Dispute</p>	<p>means any dispute, difference of opinion, or disagreement between any of the Parties, including any Claim, arising out of or in connection with any Transaction Document but excluding any dispute required by this Partnering Contract to be referred to Expert determination.</p>
<p>Dispute Resolution Procedure</p>	<p>means the procedure set out in clause 53.</p>
<p>Electric Shunt</p>	<p>means the road/rail electric shunt vehicle(s) which may be acquired by GWRL to be used for the purposes of shunting Vehicles within the EMU Depot, in particular in and out of road 1 (as shown in Appendix 4 (EMU Depot Plan) to Schedule 9 (<i>Stations and Depot Facilities</i>)) and the wheel lathe building.</p>

Electric Shunt Manual	means the Electric Shunt manual prepared by the manufacturer of the Electric Shunts and provided by GWRC to the Operator, as amended from time to time in accordance with paragraph 17 (<i>Changes to Vehicle maintenance, EMU Depot Plant and Equipment Manual or Electric Shunt Manual</i>) of Schedule 4 (<i>Vehicle Services</i>).
Emergency Management and Incident Response Plan	means the plan contemplated by paragraph 1.3.8 of Appendix 1 (<i>Plans</i>) to Schedule 5, the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
EMU	means a 2- car electrical multiple unit forming part of the Matangi Fleet.
EMU Depot	means the EMU depot and wheel lathe building and any GWRL improvements on the "Land" or "Carpark Land" as defined in the EMU Depot Lease.
EMU Depot Access Areas	has the meaning given in paragraph 5.2 of Schedule 9 (<i>Stations and Depot Facilities</i>).
EMU Depot Ancillary Access Right	has the meaning given in paragraph 5.2 of Schedule 9 (<i>Stations and Depot Facilities</i>).
EMU Depot Lease	means the lease agreement for the lease of the EMU Depot, wheel lathe and carpark land between KiwiRail Limited (as lessor), GWRL (as lessee) and New Zealand Railways Corporation (as head lessor) dated 3 April 2012.

<p>EMU Depot Plant and Equipment</p>	<p>means the plant and equipment located in the EMU Depot including:</p> <ul style="list-style-type: none"> (a) Atlas Copco GA 15 air compressor; (b) Heggenscheidt wheel lathe; (c) Kapiti Engnrg 3000kg SWL- road 5 dropt table; (d) Kapiti Engnrg 3000 SWL – road 1; (e) Monocrane 15 tonne 1; (f) Monocrane 15 tonne 2; (g) Jib crane; (h) Monorail crane; (i) Twin section train wash system; (j) Windhoff train jacking system; (k) Wheel lathe air compressor; (l) Wheel lathe winch and capstans; and (m) 250kg jib crane.
<p>EMU Depot Plant and Equipment Management Services</p>	<p>means the services described at paragraph 9 (<i>EMU Depot Plant and Equipment Management Services</i>) of Schedule 4 (<i>Vehicle Services</i>).</p>
<p>EMU Depot Plant and Equipment Manual</p>	<p>means the files with references set out in Appendix 5 (<i>EMU Depot Plant and Equipment Manual</i>) of Schedule 4 (<i>Vehicle Services</i>) and saved on the disk marked "EMU Depot Plant and Equipment Manual" and initialled by the Parties for the purpose of identification on or about the date of this Partnering Contract and as amended from time to time in accordance with paragraph 17 (<i>Changes to Vehicle maintenance, EMU Depot Plant and Equipment Manual or Electric Shunt Manual</i>) of Schedule 4 (<i>Vehicle Services</i>), provided that in the event of any discrepancy between the file number set out in Appendix 5 of Schedule 4 (<i>Vehicle Services</i>) and the file saved on the disk, the file saved on the disk shall prevail.</p>
<p>EMU Depot Project Space</p>	<p>means the area shaded green and marked "GWRC" in the EMU Depot Access Areas Plan attached at Appendix 4 to Schedule 9 (<i>Stations and Depot Facilities</i>).</p>
<p>EMU Depot Reinstatement Notice</p>	<p>has the meaning given in clause 51.19 (<i>Reinstatement of the EMU Depot</i>).</p>



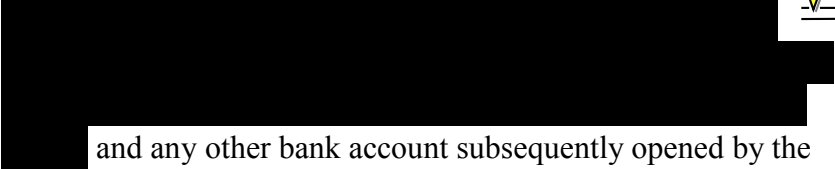
EMU Train	means a Train comprising one or more EMUs.
End of Term Inspection	has the meaning given in clause 64.1.
End of Term Measurement Period	has the meaning given in clause 4.3 (<i>Extension of Term</i>).
End of Term Performance Measures	has the meaning given in clause 4.3 (<i>Extension of Term</i>).
Endemic Defect	<p>means a defect of the same type and cause which has occurred during a consecutive period of:</p> <ul style="list-style-type: none"> (a) 12 months in respect of any 20% or more Matangi 1 EMUs, Matangi 2 EMUs or "SW Passenger Carriages" or 2 or more "SE Passenger Carriages"; (b) 18 months in respect of any 30% or more Matangi 1 EMUs, Matangi 2 EMUs or "SW Passenger Carriages" or 2 or more "SE Passenger Carriages"; or (c) 18 months in respect of any 30% or more of the component assemblies (interchangeable units) or subassemblies of the same type or 30% or more of individual components having the same function in respect of all those Vehicles forming part of the Matangi Fleet or all those Vehicles forming part of the Carriage Fleet; <p>provided that the defect has not been caused by:</p> <ul style="list-style-type: none"> (d) a failure by the Operator to maintain the Vehicles in accordance with Good Industry Practice or the applicable Carriage Fleet Maintenance Plan or Matangi Fleet Maintenance Plan; (e) misuse, unacceptable driving practices or abuse of the Vehicles by the Operator; or (f) the expiry of a reasonably expected asset life.
Environmental Management Plan	means the plan contemplated by paragraph 1.3.10 of Appendix 1 (<i>Plans</i>) to Schedule 5, the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.

Environmental Management System	<p>means an environmental management system which complies with:</p> <ul style="list-style-type: none"> (a) ISO 14001:2004 (whether or not such system has in fact received formal certification of compliance with such standard from an accredited certifying organisation); (b) the NRSS; and (c) any other environmental management related standard applicable to a rolling stock maintenance provider or a passenger rail operator operating on the Wellington Rail Network.
Error	has the meaning given in clause 48.6.2.
Estimated Cost	means GWRC's reasonable estimate of the cost of undertaking the rectification and maintenance work notified to the Operator under clause 64.5, as set out in the notice given by GWRC pursuant to clause 64.5.
ETS Implementation Date	means the date on which the IFT System first becomes operational and available for use by passengers in respect of all Scheduled Services forming part of the Rail Unit Timetable.
ETS Patronage Measurement Adjustment	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Event of Default	means each of those events listed in clause 55.1.
Exceptional Repair Work	has the meaning given to it at paragraph 13.1 (<i>Exceptional Repair Work</i>) of Schedule 4 (<i>Vehicle Services</i>).
Excess	<p>means the difference (expressed as a positive figure) between:</p> <ul style="list-style-type: none"> (a) 110% of the Estimated Cost of undertaking the rectification and maintenance work as notified to the Operator under clause 64.5; and (b) the aggregate amount of the Services Fee and other amounts payable to the Operator under this Partnering Contract, in each case which fall due and payable to the Operator under this Partnering Contract after the date on which GWRC issues a notice under clause 64.5.
Excusing Event	means each of the following events:

	<p>(a) any</p> <p>(i) material failure by the Access Provider to provide the Operator with access to, and use of, the Wellington Rail Network in breach of the Wellington Network Agreement;</p> <p>(ii) material failure of infrastructure maintained by the Access Provider; or</p> <p>(iii) direction from the Access Provider, which in each case disrupts the provision of the Passenger Services or Vehicle Services;</p> <p>(b) a Force Majeure Event (as defined under the Common Access Terms) which results in a material failure by the Access Provider to provide the Operator with access to the Wellington Rail Network in accordance with the Wellington Network Agreement;</p> <p>(c) KiwiRail Limited fails to provide the Locomotive Services or Shunts (each as defined in the Carriage Locomotive and Carriage Shunt Service Agreement):</p> <p>(i) in breach of its obligations under the Carriage Locomotive and Carriage Shunt Service Agreement; or</p> <p>(ii) as a result of a Force Majeure Event (as defined in the Carriage Locomotive and Carriage Shunt Service Agreement);</p> <p>(d) any power failure;</p> <p>(e) a train operated by any other operator (excluding the Operator and the Operator Associates) disrupts the provision of the Passenger Services as a result of that train breaking down or operating in degraded mode;</p> <p>(f) a Force Majeure Event;</p> <p>(g) a Compensation Event in respect of which the Operator is entitled to relief from its obligations and/or compensation pursuant to paragraph 3.10 (<i>Net Financial Impact and other relief</i>) of Schedule 16 (<i>Change Events and Net Financial Impact</i>);</p> <p>(h) strikes or industrial disputes which affect the performance of an essential portion of the Operator's obligations but excluding any strikes or industrial disputes which affect only the Operator and/or an</p>
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	<p>Operator Associate but no other person;</p> <p>(i) GWRC refuses to approve the carrying out of Exceptional Repair Work under paragraph 13.4 (<i>Exceptional Repair Work</i>) of Schedule 4 (<i>Vehicle Services</i>), provided that the Operator has complied with its obligations pursuant to paragraphs 13.1 and 13.2 of Schedule 4 and has provided all information required thereunder in relation to such Exceptional Repair Work;</p> <p>(j) a direction is given by the emergency services, which disrupts the provision of the Passenger Services;</p> <p>(k) Vehicle unavailability due to the undertaking of Unplanned Maintenance Services arising from damage to the relevant Vehicle (including vandalism), provided that:</p> <p>(i) the Operator has complied and is complying with its obligations under this Partnering Contract in respect of the performance of those Unplanned Maintenance Services; and</p> <p>(ii) without prejudice to paragraph (i) above, the Operator is using all reasonable endeavours to complete the Unplanned Maintenance Services as soon as reasonably practicable;</p> <p>(ka) Vehicle unavailability due to the undertaking of Exceptional Repair Work (or work which would be Exceptional Repair Work but for the application of paragraph 13.1.2(b)(v) of Schedule 4 (<i>Vehicle Services</i>)), provided that:</p> <p>(i) the Operator has complied and is complying with its obligations under this Partnering Contract in respect of the performance of such work; and</p> <p>(ii) without prejudice to paragraph (i) above, the Operator is using all reasonable endeavours to complete the work as soon as reasonably practicable;</p> <p>(l) Vehicle unavailability due to the undertaking of Operator funded Approved Modification Services or GWRC funded Additional Modification Services, provided that:</p> <p>(i) the Operator is permitted to perform those</p>
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	<p>Operator funded Approved Modification Services or GWRC funded Additional Modification Services in accordance with the terms of this Partnering Contract;</p> <p>(ii) the Operator has complied and is complying with its obligations under this Partnering Contract in respect of the performance of those Approved Modification Services or GWRC funded Additional Modification Services; and</p> <p>(iii) without prejudice to paragraph (ii) above, the Operator is using all reasonable endeavours to complete the Approved Modification Services or GWRC funded Additional Modification Services as soon as reasonably practicable;</p> <p>(m) a Planned Disruption, provided the Operator complies with its obligations under Schedule 3 (<i>Passenger Services</i>) and paragraph 6.3.2 (<i>Reliability KPI</i>) of Schedule 6 in respect of that Planned Disruption (including in respect of the provision of alternative transport arrangements);</p> <p>(n) unavailability of no more than one SE Passenger Carriage (as referred to in the definition of Carriage Fleet), provided that:</p> <p>(i) the Operator has complied and is complying with its obligations under this Partnering Contract in respect of that SE Passenger Carriage; and</p> <p>(ii) without prejudice to paragraph (i) above, the Operator is using all reasonable endeavours to rectify the unavailability as soon as reasonably practicable,</p> <p>(o) a failure by GWRC to commence the Carriage Fleet Refurbishment by 31 December 2020 or complete the Carriage Fleet Refurbishment by 30 June 2023, where this materially adversely impacts the ability of the Operator to perform the Services in accordance with this Partnering Contract,</p> <p>in each case provided that such events (or the effects thereof) are not caused or contributed to by any act or omission of the</p>
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	Operator or any Operator Associate.
Existing Employees	means the employees listed in Appendix 1 (<i>List of Existing Employees</i>) to Schedule 17 (<i>Employee Transfer</i>).
Expert	has the meaning given in clause 53.10 (<i>Expert determination</i>).
Expression of Interest	means the Operator's expression of interest provided to GWRC during the tender process for this Partnering Contract.
Extension Period	means the period commencing at 2.00 am on the Initial Expiry Date and ending at 2.00 am on the date falling 6 years after the Initial Expiry Date.
Fare Media Transition Plan	means the plan of this name provided by GWRC to the Operator, as amended from time to time.
Farebox Account	means the bank account    and any other bank account subsequently opened by the Operator pursuant to clause 48.17.
Farebox Revenue	means the value of tickets sold (including "top-ups" and penalty fares) in respect of the Wellington Public Transport Network (including the Scheduled Services, Special Event Services and the value of any travel benefits provided in respect of the Wellington Public Transport Network under clause 48.3.6).
Fares, Ticketing and Enforcement Requirements	means Annexure 6 (<i>Fares, Ticketing and Enforcement Requirements</i>), as amended or replaced from time to time in accordance with the process for changes to PT Network Documents under the Regional Agreement.
Ferry Operator	means a PTOM Operator that provides scheduled passenger services in regard to a ferry "unit" (as defined in section 5(1) of the LTMA).
FIM or Financial Incentive Mechanism	means the Financial Incentive Mechanism to encourage patronage growth set out at paragraph 10 of Schedule 6 (<i>Financial and Performance Regime</i>).
FIM Adjustment	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).


FIM Cap	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
FIM Collar	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
FIM Calculation Year	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
FIM Objectives	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Final Notice of Persistent Breach	has the meaning given to it in clause 55.8.
Final Operator Concept of Operations for RS1	has the meaning given to it in paragraph 5.3 of Schedule 14 (<i>RSI Project</i>).
Financial Reporting Error	has the meaning given in paragraph 7.2 of Schedule 6 (<i>Financial and Performance Regime</i>).
Force Majeure Continuation Notice	has the meaning given in clause 59.10.4.
Force Majeure Event	has the meaning given to it in clause 59.1.
Force Majeure Termination Notice	has the meaning given in clause 59.10.3.
Forecast Vehicle Kilometres Table	means the table set out at Appendix 1 (<i>Forecast Vehicle Kilometres Table</i>) of Schedule 4 (<i>Vehicle Services</i>).
FRACAS	means the failure reporting and corrective action system used by the Operator to perform the FRACAS and Warranty Management Services.
FRACAS and Warranty Management Services	means the services described at paragraph 10 (<i>FRACAS and Warranty Management Services</i>) of Schedule 4 (<i>Vehicle Services</i>).
Full Year Financial Report	means each full year financial report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in paragraph 3.1.10(b) of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and which forms part of the Full Year Performance Report.

Full Year Operational Report	means each full year operational report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in paragraph 3.1.10(a) of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and which forms part of the Full Year Performance Report.
Full Year Performance Report	means each full year performance report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in paragraph 3.1.10 of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and consisting of the Full Year Operational Report, Full Year Financial Report and Full Year Strategic Report.
Full Year Strategic Report	means each full year operational report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in paragraph 3.1.10(c) of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and which forms part of the Full Year Performance Report.
General Change in Law	means a Change in Law that is not a Specific Change in Law.
General Tools	means the tools required by the Operator or Operator Associates to undertake the Maintenance Works, excluding the Special Tools and any hand tools owned by the Operator's maintenance staff or an Operator Associate's maintenance staff.
Good Industry Practice	means using standards, practices, methods and procedures conforming to all applicable Law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably be expected from a large, reputable, efficient, professionally qualified, competent and skilled organisation experienced in carrying out activities of a similar nature, scope and complexity to the Services and seeking in good faith to comply with its contractual obligations and all duties owed by it.
Governmental Entity	means the Sovereign in right of New Zealand and any government, or any governmental or semi-governmental entity, person or authority, body politic (but excluding any political party), government department, local government authority or statutory authority and includes (unless the context otherwise requires), GWRC and the Transport Agency.
GST	means tax chargeable under the GST Act.

GST Act	means the Goods and Services Tax Act 1985.
[REDACTED]	[REDACTED]
GW Associates	means any member, officer, employee, agent, contractor, consultant or adviser of or to GWRC or GWRL but excludes the Operator and the Operator Associates.
GW Background IP	means Background IP which is: <ul style="list-style-type: none"> (a) owned by GWRC or GWRL; or (b) GW Third Party Licensed IP.
GW Third Party Licensed IP	means the Intellectual Property Rights and Intellectual Property Material licensed to GWRC or GWRL under: <ul style="list-style-type: none"> (a) clause 18.7 of the Matangi 2 Supply Agreement; (b) the agreement between GWRC and Advanced Communication and Information Systems Limited dated 4 September 2009, in relation to the supply of the RTPI System (as subsequently novated to Vix Technology (Aust) Ltd); (c) the contracts (if any) which may during the Term be entered into by GWRC and/or GWRL for the supply of the IFT System; (d) the contracts (if any) which may from time to time be entered into by GWRL in regard to the provision of the GWRL Security Systems; (e) the contracts (if any) which may from time to time be entered into by GWRC and/or GWRL for the supply of the Simulator; and (f) the contracts (if any) which may from time to time be entered into by GWRC and/or GWRL for the supply of any Electric Shunt.
GWRC Assets	means, with effect on and from the ETS Implementation Date, the IFT System Equipment.
GWRC Budget	has the meaning given in the Wellington Network Agreement.

GWRC Fare Media Transition Plan	means the plan for the transition of fare structure and fare products during the IFT Programme detailing the fare products to be sold by the Operator and the rules applying to such fare products, as provided by GWRC to the Operator from time to time.
GWRC Farebox Report	has the meaning given in paragraph 3.3 of Schedule 5 (<i>Planning, Reporting and Meetings</i>).
GWRC Long Term Plan	means the long term plan (or equivalent) prepared by GWRC in accordance with the requirements set out in the LGA.
GWRC Privacy Policy	means the document set out at Annexure 23 (<i>GWRC Privacy Policy</i>) and any privacy statement or customer privacy policy as published on the GWRC website (www.gw.govt.nz) or the Metlink website (www.metlink.org.nz) as updated, amended or replaced by GWRC from time to time and notified to the Operator.
GWRC Revenue Protection Strategy	means the strategy for revenue protection, as provided by GWRC to the Operator from time to time.
GWRC Systems	means the following systems provided by GWRC in relation to the operation of the Wellington Public Transport Network: <ul style="list-style-type: none"> (a) the RTPI System; (b) the Matangi Telemetry System (excluding the passenger count and data collection system hardware installed on the Matangi Fleet which shall instead comprise a GWRL System); and (c) the IFT System.


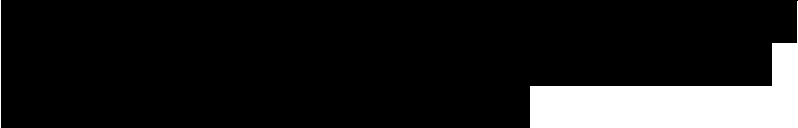
GWRL Assets	<p>means the following assets owned by or leased or licensed to GWRL and provided to the Operator for use by the Operator in the provision of the Services:</p> <ul style="list-style-type: none"> (a) the Vehicles; (b) the Stations; (c) the EMU Depot; (d) the EMU Depot Plant and Equipment; (e) the EMU Depot Plant and Equipment Manual; (f) Matangi Fleet Maintenance Plan; (g) Carriage Fleet Maintenance Plan; (h) Electric Shunt Manual; (i) MMIS data; and (j) FRACAS data.
GWRL Security Systems	<p>has the meaning given in paragraph 6.2 of Annexure 4 (<i>Security Service Specification</i>).</p>
GWRL Systems	<p>means:</p> <ul style="list-style-type: none"> (a) the GWRL Security Systems; (b) the diagnostic software for all computer based systems on the EMUs including the diagnostic software used in relation to the Special Tools; and (c) the passenger count and data collection system hardware installed on the Matangi Fleet forming part of the Matangi Telemetry System.
Half Year	<p>has the meaning given in paragraph 9.1 of Schedule 6 (<i>Financial and Performance Regime</i>).</p>
Hand Back Standards	<p>has the meaning given to it in paragraph 2.5 (<i>Hand Back Standards</i>) of Schedule 4 (<i>Vehicle Services</i>).</p>
Handover Package	<p>has the meaning given to it in clause 61.3.1.</p>
Health and Safety Management Plan	<p>means the plan contemplated by paragraph 1.3.5 of Appendix 1 (<i>Plans</i>) to Schedule 5 and clause 42, the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.</p>

Heavy Maintenance Check	means each C1 Check, C2 Check, C3 Check, C4 Check, C5 Check, C6 Check, D1 Check, D2 Check and D3 Check.
Heavy Maintenance Plans	means the Overarching Heavy Maintenance Plan, the applicable Three Year Heavy Maintenance Plan and the applicable Annual Heavy Maintenance Plan.
Heavy Maintenance Rate Card	means the table set out in appendix 6 (<i>Heavy Maintenance Rate Card</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Heavy Maintenance Services	means the performance of each Heavy Maintenance Check.
HSE Act	means the Health and Safety in Employment Act 1992.
HSW Act	means the Health and Safety at Work Act 2015.
Hutt Valley Line	means track sections 770 to 772 being part of the "Wairarapa-Metro" sub-segment as identified in Schedule 1 to the Common Access Terms.
IFT Compatible	means a vehicle installed with such systems and equipment as are required to enable passengers to validly "tag on" and "tag off" that vehicle using electronic tickets as part of the IFT System.
IFT Implementation Date	means the date on which the IFT System first becomes operational and available for use by passengers in respect of all relevant transport modes in the Greater Wellington region.
IFT Phase One	means the period from the date of this Partnering Contract until the earlier of the IFT Programme Phase One Expiry Date and the Termination Date.
IFT Phase Two	means the period from and including the ETS Implementation Date until the Termination Date.
IFT Programme	means the integrated fares and ticketing programme described at Schedule 13 (<i>IFT Programme</i>).
IFT Programme Implementation Fee	means [REDACTED] 
IFT Programme Phase One Expiry Date	means the day falling immediately prior to the ETS Implementation Date.

IFT Programme Pre Priced Option	means the implementation of phase two of the IFT Programme (as described in Schedule 13 (<i>IFT Programme</i>)) including performance by the Operator of the activities, role and obligations ascribed to it in respect of phase two of the IFT Programme in Appendix B of Schedule 13.
IFT System	means the integrated fares and ticketing system which may be implemented by GWRC as contemplated in Annexure 6 (<i>Fares, Ticketing and Enforcement Requirements</i>).
IFT System Equipment	means the equipment installed at stations, Ticket Offices, and in Vehicles, and all other equipment, systems, assets and devices forming part of the IFT System (including the Operator IFT System Equipment).
IFT System Provider	means the person selected by GWRC to provide and install the IFT System.
Immediate Report	means each immediate report to be provided by the Operator in accordance with this Partnering Contract and containing the matters referred to in paragraph 3.1.4 of Schedule 5 (<i>Planning, Reporting and Meetings</i>).
Incoming Operator	means any person succeeding the Operator in the provision of all or any part of the Services or any services which are substantially similar to the Services (and includes any entity nominated by such person to perform or operate any part of such Services or services).
Incoming Operator Confidentiality Undertaking	means an undertaking substantially in the form set out at Annexure 13 (<i>Incoming Operator Confidentiality Undertaking</i>).
Indemnified Person	has the meaning given in clause 87.1.
Indexed	has the meaning given in clause 43.1.
Infrastructure	has the meaning given to the term "railway infrastructure" in the Railways Act.
Initial Annual Business Plan	means the initial annual business plan that GWRC has pursuant to clause 3.3.12 confirmed is acceptable.

Initial Annual Heavy Maintenance Plan	means the updated version of the plan set out at Annexure 15 (<i>Initial Annual Heavy Maintenance Plan</i>) that GWRC has pursuant to clause 3.3.12 confirmed is acceptable.
Initial Expiry Date	means the date falling 9 years after the Commencement Date.
Initial Operator Concept of Operations for RS1	means the document set out at Appendix 1 of Schedule 14 (<i>RSI Project</i>).
Initial Passenger Services Fee	means the Passenger Services Fee set out in the columns of the Services Fee Table headed "Initial Passenger Services Fee".
Initial Three Year Heavy Maintenance Plan	means the updated version of the plan set out at Annexure 16 (<i>Initial Three Year Heavy Maintenance Plan</i>) that GWRC has pursuant to clause 3.3.12 confirmed is acceptable.
Initial Transferring Assets	means the Spares, Rotable Items, Special Tools, General Tools and Other Assets in the ownership of GWRL as at the Commencement Date (or which GWRL has at that date ordered but not yet received) and which GWRL notifies the Operator in writing that it is willing and able to transfer to the Operator for use in providing the Services, provided that this shall include (as a minimum) each of those items described in Schedule 19 (<i>Minimum Initial Transferring Assets</i>) as updated pursuant to paragraph 16.3 of Schedule 15 (<i>Transition Plan</i>) in the quantities specified therein.
Initial Vehicle Services Fee	means the Vehicle Services Fee set out in the columns of the Services Fee Table headed "Initial Vehicle Services Fee".
Insolvency Event	<p>means, in relation to a person, the occurrence of any of the following events:</p> <ul style="list-style-type: none"> (a) the cessation by that person of its business in New Zealand; (b) it stops or suspends payment of all or a class of its debts or threatens to do so; (c) it is, or under Law, is presumed or taken to be, insolvent other than as a result of a failure to: <ul style="list-style-type: none"> i. pay a debt or claim the subject of a good faith dispute; or ii. comply with a statutory demand (within the meaning of section 289 of the Companies Act) where the debt or claim to which the statutory demand relates is

	<p>discharged within 15 Business Days of the failure;</p> <p>(d) an administrator, liquidator, receiver, statutory manager or similar official is appointed to it or all or any of its assets or undertakings;</p> <p>(e) except for the purpose of a solvent reconstruction or amalgamation previously approved by GWRC, an application or order is made, proceedings are commenced, a resolution is passed, an application to a court is made or other steps are taken against or in respect of it for its winding up, dissolution or administration or for it to enter an arrangement, compromise or composition with, or assignment for the benefit of, its creditors, a class of them, or any of them (except where the Operator demonstrates to GWRC's satisfaction that an application is frivolous or vexatious);</p> <p>(f) any step is taken to enforce security over or a distress, attachment, execution, garnishee order, mareva injunction or other similar process is levied, enforced or served against all or any of its assets or undertaking, or</p> <p>(g) that person admits in writing to being insolvent or unable to pay its debts as and when they fall due,</p> <p>or any event occurs which, under the laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.</p>
<p>Insurance Policy</p>	<p>means each insurance policy which the Operator is required to take out and maintain pursuant to the terms of this Partnering Contract.</p>
<p>Insured Property</p>	<p>means the property, assets and items which from time to time are covered by the terms of the Material Damage Policy.</p>
<p>Intellectual Property Claim</p>	<p>means any actions, claims and/or demands made against GWRC or GWRL that possession or Use by either of them of the Operator Background IP, the Developed IP or the Third Party Intellectual Property infringes the Intellectual Property Rights of any third party.</p>

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, trade marks (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.
Interim Licence	means an interim licence granted in accordance with section 17(2) of the Railways Act covering each class of Rail Participant specified in section 15(1) of the Railways Act applicable to a person providing the Services.
Intermediate Station	has the meaning given in paragraph 6.2 of Schedule 6 (<i>Financial and Performance Regime</i>).
IP Register	has the meaning given in clause 41.5.
Johnsonville Line	means the "Johnsonville" sub-segment (also referred to as the JVL line) as identified in Schedule 1 to the Common Access Terms.
Joint Insurance Account	means the joint bank account  
Kapiti Line	means the "NIMT-Wellington" sub-segments as identified in Schedule 1 to the Common Access Terms.
Key Personnel	means the persons listed in item 3 (<i>Operator's Key Personnel</i>) of Schedule 2 (<i>Agreement details</i>) who are to carry out the roles and functions described in that Schedule, as amended from time to time in accordance with clause 18.8 and, in the case of a change to the Operator's Authorised Representative, clause 27.7.

<p>Key Subcontract</p>	<p>means each of the following:</p> <ul style="list-style-type: none"> (a) any arrangement entered into by the Operator under which the counterparty is to provide any Scheduled Services or Special Event Services on any part of the Wellington Rail Network; (b) the Vehicle Services Subcontract and any other arrangement entered into by the Operator which relates to the provision of any of the following: <ul style="list-style-type: none"> (i) the Vehicle and Asset Cleaning Services; (ii) the Vehicle and Asset Security Services; or (iii) the Heavy Maintenance Services; (c) any arrangement under which the Operator subcontracts the provision of all or a substantial part of the Services; (d) any arrangement entered into by the Operator under which the counterparty is to provide alternative transport arrangements as contemplated by Schedule 3 (<i>Passenger Services</i>); (e) any arrangement entered into by the Operator in connection with the performance of any part of the Services in respect of which the aggregate amount payable by the Operator to the relevant counterparty during any Year exceeds or is expected to exceed \$250,000 (which amount shall not be Indexed).
<p>Key Subcontractor</p>	<p>means each of:</p> <ul style="list-style-type: none"> (a) those persons performing the roles specified as being roles of Key Subcontractors in Schedule 2 (<i>Agreement details</i>); and (b) any party (other than the Operator) to a Key Subcontract.
<p>KiwiRail</p>	<p>means KiwiRail Holdings Limited and KiwiRail Limited and each and both of them.</p>
<p>KiwiRail Operating Agreement</p>	<p>means the contract for the provision of suburban rail services for the Wellington region between Toll NZ Consolidated Limited (now KiwiRail Limited) and GWRC and dated 21 November 2006, as amended from time to time.</p>

KiwiRail Reserved Access Documents	means those covenants, easements or other interests, instruments or agreements which Wellington Station is transferred subject to, and which bind the owner of Wellington Station to allow, grant or otherwise provide over or through Wellington Station rights of way (pedestrian or vehicular) and/or rights of access in connection with the provision of rail services.
Land Transport Act	means the Land Transport Act 1998.
Law	means: <ul style="list-style-type: none"> (a) any statute, regulation or subordinate legislation in force in New Zealand; and (b) the common law and principles of equity applied from time to time in New Zealand, and includes any rules and regulations made from time to time pursuant to Subpart 5 (<i>Rules and Regulations</i>) of the Railways Act.
LGA	means the Local Government Act 2002.
LGOIMA	means the Local Government Official Information and Meetings Act 1987.
Licence	means a licence granted in accordance with section 17(1) of the Railways Act covering each class of Rail Participant specified in section 15(1) of the Railways Act applicable to a person providing the Services and, for the avoidance of doubt, does not include an Interim Licence.
Licensed Operator	means, in relation to alternative transport arrangements, a driver that holds the required licence to lawfully operate the vehicle.
Line	means each of the Hutt Valley Line, the Johnsonville Line, the Kapiti Line, the Melling Line and the Wairarapa Line.
Locomotive Services Fee	means the locomotive services fee calculated in accordance with paragraph 13 of Schedule 6 (<i>Financial and Performance Regime</i>).

Loss	<p>means:</p> <p>(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</p> <p>(b) without being limited by paragraph (a) and only to the extent not prohibited by applicable law, any fine or penalty.</p>
Lost Property Office	<p>has the meaning given in paragraph 3.69.1 of Schedule 3 (<i>Passenger Services</i>).</p>
LTMA	<p>means the Land Transport Management Act 2003.</p>
Maintained Assets	<p>means:</p> <p>(a) the Operator Assets;</p> <p>(b) the GWRL Assets (other than the Stations and the EMU Depot);</p> <p>(c) the Initial Transferring Assets and all Spares, Rotable Items, Special Tools and General Tools; and</p> <p>(d) all other all assets, items and systems used, or to be used, by the Operator or any Operator Associate in connection with the Services,</p> <p>but excluding:</p> <p>(e) Infrastructure (to the extent such Infrastructure does not fall within any of paragraphs (b) to (d) above);</p> <p>(f) the IFT System and the IFT System Equipment;</p> <p>(g) those components of the RTPi System and Matangi Telemetry System which are not installed or located on a Vehicle;</p> <p>(h) assets which are owned by a subcontractor (of any tier) of the Operator or Vehicle Services Subcontractor and not used wholly or mainly in the provision of the operation of the Passenger Services and/or maintenance of the items listed in paragraph (a) to (d) above; and</p> <p>(i) GWRL Security Systems.</p>

Maintenance Works	means planned and responsive inspections, examinations, condition assessments, maintenance, servicing, cleaning, adjustments, alterations, modifications, repairs, reconditioning, renewals, refurbishments and replacements of component parts, in relation to the Maintained Assets.
Matangi 1 EMUs	means the 48 EMUs acquired by GWRL under the Matangi 1 Supply Agreement and which are included within the Vehicles to be provided by GWRL to the Operator in accordance with Schedule 10 (<i>Operating Lease</i>).
Matangi 1 Supply Agreement	means the agreement dated 13 November 2007 between the Vehicle Supplier and GWRL relating to the supply of the Matangi 1 EMUs.
Matangi 2 EMU Testing and Commissioning Services	means the obligations of the Operator set out in Appendix 3 (<i>Matangi 2 EMU Testing and Commissioning Services</i>) of Schedule 4 (<i>Vehicle Services</i>).
Matangi 2 EMU Testing and Commissioning Services Budget	means a budget that GWRC has pursuant to clause 3.3.16 confirmed as acceptable.
Matangi 2 EMUs	means the 35 EMUs acquired by GWRL under the Matangi 2 Supply Agreement and which are included within the Vehicles to be provided by GWRL to the Operator in accordance with Schedule 10 (<i>Operating Lease</i>).
Matangi 2 Supply Agreement	means the agreement dated 19 June 2013 between the Vehicle Supplier and GWRL relating to the supply of the Matangi 2 EMUs and the supply of retrofits in respect of the Matangi 1 EMUs.
Matangi Fleet	means the Matangi 1 EMUs and the Matangi 2 EMUs.

<p>Matangi Fleet Maintenance Plan</p>	<p>means the files with references set out in Appendix 6 (<i>Matangi Fleet Maintenance Plan</i>) of Schedule 4 (<i>Vehicle Services</i>) and saved on the disk marked "Matangi Fleet Maintenance Plan" and initialled by the Parties for the purpose of identification on or about the date of this Partnering Contract and as amended from time to time in accordance with paragraph 24 of Schedule 15 (<i>Transition Plan</i>), paragraph 17 (<i>Changes to Vehicle maintenance, EMU Depot Plant and Equipment Manual or Electric Shunt Manual</i>) of Schedule 4 (<i>Vehicle Services</i>) or clause 5.23 (<i>Simulator Specification and procurement</i>), provided that in the event of any discrepancy between the file number set out in Appendix 6 of Schedule 4 (<i>Vehicle Services</i>) and the file saved on the disk, the file saved on the disk shall prevail.</p>
<p>Matangi Fleet Post RS1 Assignment Plan</p>	<p>means a fleet assignment plan prepared by the Operator which:</p> <ul style="list-style-type: none"> (a) defines the duty/diagram each EMU will undertake each day from and including Day 1 of RS1 Operations so that its Vehicle Kilometres and due dates for maintenance can be accurately monitored on an ongoing basis; and (b) demonstrates the Train / EMU rotation through the Rail Unit Timetable so that all Trains have a relatively even usage and return to the EMU Depot for cleaning and maintenance on a regular basis.
<p>Matangi Fleet Refurbishment</p>	<p>means the mid-life refurbishment that may be carried out by GWRC in respect of the Matangi Fleet in accordance with paragraph 15B of Schedule 4 (<i>Vehicle Services</i>).</p>
<p>Matangi Telemetry System</p>	<p>means:</p> <ul style="list-style-type: none"> (a) the passenger count and data collection system hardware installed on the Matangi Fleet, at the EMU Depot, the "north yard" and "west yard" Vehicle Stabling Facilities and at the Wellington Station server room; and (b) the data collection system software installed in the Matangi Fleet and on GWRC's server.
<p>Material Damage Policy</p>	<p>means the Insurance Policy specified in paragraph 2 of Schedule 7 (<i>Operator Insurance requirement</i>).</p>
<p>Maximum Half Year Performance Payment Amount</p>	<p>has the meaning given in paragraph 9.1 of Schedule 6 (<i>Financial and Performance Regime</i>).</p>

MDBF	means mean distance between failures.
Melling Line	means the "Melling" sub-segment (also referred to as the MEL line) as identified in Schedule 1 to the Common Access Terms.
Metlink	means the Metlink brand and any other GWRC approved brand notified by GWRC to the Operator from time to time and which is used by GWRC for the communication of information to customers, including in regard to: <ul style="list-style-type: none"> (a) the Metlink website; (b) the Metlink call centre; (c) mobile apps; (d) printed timetable information; and (e) materials used to market or promote the Wellington Public Transport Network.
Metlink Brand Guidelines	means the document entitled "Metlink Brand Guidelines" developed by GWRC, as amended or replaced by GWRC and notified to the Operator from time to time.
Metro Service Operator	has the meaning given to it in the Wellington Network Agreement.
Minimum Vehicle Operating Standards	means the standards set out Annexure 5 (<i>Minimum Vehicle Operating Standards</i>).
Minor Contract Variation	means any Contract Variation which in GWRC's reasonable opinion will not require the Operator to incur Capital Expenditure and/or Operating Expenditure in excess of \$100,000 (which amount shall not be Indexed) in aggregate over the remainder of the Term, but excludes: <ul style="list-style-type: none"> (a) the implementation of a Pre Priced Option following the issue of an order given by GWRC pursuant to paragraph 4.1 (<i>Implementation of Pre Priced Options</i>) of Schedule 16; and (b) any changes made to the Timetable or the Rail Unit Timetable in accordance with the Timetable Change Process, any changes made to the Rail Network Timetable and, in either case, any associated changes to the Working Timetable; and (c) any Special Event Services.

Minor Contract Variation Notice	has the meaning given in Schedule 16 (<i>Change Events and Net Financial Impact</i>).
Minor Contract Variation Quote	has the meaning given in Schedule 16 (<i>Change Events and Net Financial Impact</i>).
Minor Disruption	means a disruption to a Scheduled Service or a Special Event Service that is not a Planned Disruption or an Unplanned Disruption.
MMIS	means the maintenance management information system to be provided by the Operator in accordance with clause 11 (<i>MMIS provided by Operator</i>).
MMIS Management Services	means the services described at paragraph 8 (<i>MMIS Management Services</i>) of Schedule 4 (<i>Vehicle Services</i>).
Moneys Owning	means all moneys that the Operator, alone or together with any other person, at any time becomes actually liable to pay to, or for the account of, GWRC and/or GWRL (alone or together with any other person) on any account whatsoever under or in relation to this Partnering Contract or any other Transaction Document (including by way of principal or interest, fees, costs, charges, expenses, indemnity or damages).
Monthly Financial Report	means each monthly financial report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in paragraph 3.1.8(c) of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and forming part of the Monthly Performance Report.
Monthly Farebox Report	means each monthly farebox report to be provided by the Operator in accordance with this Partnering Contract and containing the matters referred to in paragraph 3.1.9 of Schedule 5 (<i>Planning, Reporting and Meetings</i>).
Monthly Operational Report	means each monthly operational report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in paragraph 3.1.8(b) of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and forming part of the Monthly Performance Report.



<p>Monthly Patronage Report</p>	<p>means each monthly patronage report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in paragraph 3.1.8(d) of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and forming part of the Monthly Performance Report.</p>
<p>Monthly Performance Report</p>	<p>means each monthly performance report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in paragraph 3.1.8 of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and consisting of the Monthly Strategic Report, the Monthly Operational Report, the Monthly Financial Report, Monthly Patronage Report, Monthly Revenue Protection Report and draft Monthly Summary Performance Report.</p>
<p>Monthly Rental Amount</p>	<p>has the meaning given in Schedule 10 (<i>Operating Lease</i>).</p>
<p>Monthly Revenue Protection Report</p>	<p>means each monthly revenue protection report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in paragraph 3.1.8(e) of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and forming part of the Monthly Performance Report.</p>
<p>Monthly Strategic Report</p>	<p>means each monthly strategic report to be provided by the Operator in accordance with this Partnering Contract, containing the matters referred to in paragraph 3.1.8(a) of Schedule 5 (<i>Planning, Reporting and Meetings</i>) and forming part of the Monthly Performance Report.</p>
<p>Monthly Summary Performance Report</p>	<p>means a monthly summary performance report containing the information referred to in paragraph 3.1.8(f) of Schedule 5 and which is prepared by the Operator and approved by GWRC in accordance with clause 30.2.</p>
<p>Moral Rights</p>	<p>means the rights conferred on authors of copyright works under Part 4 of the Copyright Act 1994 or any similar moral rights under the law of any jurisdiction.</p>


Natural Disaster	means: (a) earthquake, tsunami, volcanic activity, hydrothermal activity, geothermal activity or subterranean fire; (b) fire occasioned by, through or in consequence of any perils set out in paragraph (a) of this definition.
Net Financial Impact	has the meaning given in paragraph 2 (<i>Definitions</i>) of Schedule 16 (<i>Change Events and Net Financial Impact</i>).
Network Access Services	means the obligations of the Operator described at paragraph 4 (<i>Network Access Services</i>) of Schedule 3 (<i>Passenger Services</i>).
Network Controller	has the meaning given at clause 1.1 of the Common Access Terms.
NFI Event	has the meaning given in paragraph 2 (<i>Definitions</i>) of Schedule 16 (<i>Change Events and Net Financial Impact</i>).
NFI Event Rate Card	means the table set out in appendix 8 (<i>NFI Event Rate Card</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
NFI Indexed	has the meaning given in paragraph 12.7 (<i>Indexation of Net Financial Impact</i>) of Schedule 16 (<i>Change Events and Net Financial Impact</i>).
Nominated Performance Indicator	has the meaning given in paragraph 9.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Nominated Performance Payment Amount	has the meaning given in paragraph 9.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Nominated Time	means such time on the Termination Date as may be specified by GWRC in a written notice to the Operator.
Notice of Default	has the meaning given to it in clause 55.2.
Notice of Dispute	has the meaning given in clause 53.3 (<i>Referral to Senior Executives Meeting</i>).
Notice of Persistent Breach	has the meaning given to it in clause 55.7.
Notice of Step-in	has the meaning given to it in clause 54.2.

Notice of Termination	has the meaning given to it in clause 56.2.
Notice to Proceed	has the meaning given in Schedule 16 (<i>Change Events and Net Financial Impact</i>).
Notifiable Event	has the meaning given in clause 42.7.1.
NRSS	means the National Rail System Standards produced by the NRSS Executive and approved for adoption by the Transport Agency that provide policy guidance for high level safety system elements and ensure consistency of operational practices for the NRS.
NRS	means the New Zealand National Rail System.
Off Peak Service	has the meaning given in paragraph 6.2 of Schedule 6 (<i>Financial and Performance Regime</i>).
OEM	means the original equipment manufacturer in regard to a Vehicle (or part of a Vehicle), the EMU Depot Plant Equipment (or a part of the EMU Depot Plant and Equipment), any Special Tools, any General Tools or any Spares, as recorded in the Matangi Fleet Maintenance Plan, Carriage Fleet Maintenance Plan, Electric Shunt Manual, the EMU Depot Plant and Equipment Manual or other applicable maintenance manual.
Open Book Basis	includes (without limiting the natural meaning of that term): <ul style="list-style-type: none"> (a) the provision of all information reasonably required to be able to assess all savings, costs, losses and margins (where payable), whether that information is held by the Operator or an Operator Associate; (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 Operator or any Operator Associate in order to enable GWRC to verify the relevant calculation or other matter.
Operating Expenditure	means expenditure which is not Capital Expenditure.
Operating Lease	means the terms of the lease of the Vehicles granted by GWRL to the Operator, as set out in Schedule 10 (<i>Operating Lease</i>).

Operating Lease Permitted Use	has the meaning given to it in the Operating Lease.
Operator Asset Transfer Date	means the date on which the Operator is required to transfer (or to procure the transfer) of ownership of any Transferring Operator Assets pursuant to clause 63.8.
Operator Assets	<p>all assets and rights leased, licensed or owned by (or otherwise provided to) the Operator or an Operator Associate and required to enable GWRC, GWRL or an Incoming Operator to provide the Services on terms which are substantially the same as those contained in this Partnering Contract, including:</p> <ul style="list-style-type: none"> (a) any plant, machinery and equipment; (b) any vehicles; (c) any manuals, instructions, books and records, health and safety manuals and other know-how; (d) any Consumables and other assets, (e) Spares, Rotable Items, Special Tools, General Tools and any Other Assets; (f) the MMIS; (g) the FRACAS; (h) any Intellectual Property Rights; and (i) any other contractual rights (including the right to receive items ordered), <p>but excluding any asset or item which is installed in or on a Vehicle, the GWRC Assets, the GWRC Systems, the GWRL Assets, the GWRL Systems and any other asset or item in respect of which GWRC or GWRL is the legal owner.</p>

<p>Operator Associates</p>	<p>means:</p> <ul style="list-style-type: none"> (a) any Related Company of the Operator; (b) any person that is engaged (directly or indirectly and at any tier) as a subcontractor to the Operator in connection with this Partnering Contract including the Vehicle Services Subcontractor and its subcontractors (of any tier); (c) any Ticket Agent; and (d) any director, advisor, officer, employee, delegate or agent of, or contractor to: <ul style="list-style-type: none"> i. the Operator; or ii. any person referred to in paragraphs (a), (b) or (c) of this definition.
<p>Operator Background IP</p>	<p>means Background IP of the Operator or any Operator Associate.</p>
<p>Operator IFT System Equipment</p>	<p>means all handheld devices and the retail sales and/or ticketing machines to be located in the Ticket Offices forming part of the IFT System.</p>
<p>Operator's Proposals</p>	<p>means the Operator's proposals for the performance of the Services set out in Schedule 18 (<i>Operator's Proposals</i>) as amended, replaced or supplemented from time to time in accordance with clause 14.12 or 14.13.</p>
<p>Origin</p>	<p>has the meaning given in paragraph 6.2 of Schedule 6 (<i>Financial and Performance Regime</i>).</p>
<p>Origin Point</p>	<p>means, in regard to a Scheduled Service or an Ancillary Movement, an origin at any of the following:</p> <ul style="list-style-type: none"> (a) a Depot Facility; (b) a Vehicle Stabling Facility; or (c) a Station.
<p>Other Assets</p>	<p>means any assets, rights or items (excluding the Vehicles) which do not comprise Spares, Rotable Items, General Tools, Special Tools or Consumables.</p>
<p>Outsourced Element</p>	<p>has the meaning given to it in paragraph 2.4A of Schedule 4 (<i>Vehicle Services</i>).</p>

Outstanding Payment	has the meaning given to it in clause 57.1.
Overall Heavy Maintenance Budget	means the annual and aggregate budget set out in Appendix 5 (<i>Overall Heavy Maintenance Budget</i>) of Schedule 6 (<i>Financial and Performance Regime</i>), subject to any variation to such budget agreed or determined pursuant to paragraph 14.13 (<i>Budget</i>) of Schedule 4 (<i>Vehicle Services</i>).
Overarching Heavy Maintenance Plan	means the updated version of the plan set out at Annexure 17 (<i>Overarching Heavy Maintenance Plan</i>) that GWRC has pursuant to clause 3.3.12 confirmed is acceptable.
Parent Company Guarantee	means  
Parties	means the parties to this Partnering Contract.
Partnering Contract	means this document, including the Schedules, Annexures, Appendices and any other documents incorporated by reference.
Partnering Principles	has the meaning given in clause 24.1 (<i>Partnering Principles</i>).
Passenger Operating Services	means the services described at paragraph 3 (<i>Passenger Operating Services</i>) of Schedule 3 (<i>Passenger Services</i>).
Passenger Services	means the services set out at Schedule 3 (<i>Passenger Services</i>) including: (a) Passenger Operating Services; (b) Network Access Services; and (c) PT Network Project Services.
Passenger Services Fee	means the passenger services fee calculated in accordance with paragraph 1.2.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Passenger Services Objectives and Outcomes	means the objectives and outcomes described at paragraph 2.1 (<i>Objectives and Passenger Services Outcomes</i>) of Schedule 3 (<i>Passenger Services</i>).
Patronage Excess	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).

Patronage Projection	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Patronage Shortfall	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Payment Schedule	has the meaning given in Schedule 16 (<i>Change Events and Net Financial Impact</i>).
Peak Service	has the meaning given in paragraph 6.2 of Schedule 6 (<i>Financial and Performance Regime</i>).
Penalty Fare	means the maximum adult fare payable for the relevant journey (as defined in Annexure 6 (<i>Fares, Ticketing and Enforcement Requirements</i>)).
Performance Bond	means: <ul style="list-style-type: none"> (a) the initial performance bond to be provided by the Operator pursuant to clause 52.1; (b) each subsequent performance bond to be provided by the Operator pursuant to clause 52.2; and (c) any replacement or additional performance bond required to be provided pursuant to clause 52.6, 52.9, 52.10 or 52.14.4.
Performance Bond Amount	means [REDACTED] 
Performance Deductions	means deductions from the Services Fee calculated in accordance with paragraph 6 (<i>Calculation of Performance Deductions</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Performance Indicators or PIs	means the performance indicators set out at paragraph 7 (<i>Performance Indicators (PIs)</i>) of Schedule 3 (<i>Passenger Services</i>) and paragraph 19 (<i>Performance Indicators (PIs)</i>) of Schedule 4 (<i>Vehicle Services</i>).
Performance Payments	means performance payments calculated in accordance with paragraph 9 (<i>Calculation of Performance Payments</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Performance Payment Period	has the meaning given in paragraph 9.1 of Schedule 6 (<i>Financial and Performance Regime</i>).

Period	means each of the periods specified in the first column of the Services Fees Table under the heading "Period".
Permitted Change of Ownership	<p>means:</p> <ul style="list-style-type: none"> (a) any Change of Ownership as part of an intra-group transfer, restructure or reorganisation of the group of companies of which a Shareholder is a member as at the date of this Partnering Contract and there is no resulting change in ultimate beneficial shareholding; (b) any Change of Ownership where the transferee is an existing Shareholder as at the date of this Partnering Contract; (c) any Change of Ownership where the transferee is a corporate or unincorporated fund managed by, or under common management or Control with, the transferor; or (d) if the [REDACTED] is listed on a stock exchange, any Change of Ownership in the [REDACTED] which occurs due to the acquisition of a relevant interest (as defined in sections 235 to 237 of the Financial Markets Conduct Act 2013) in 20 per cent or less of the voting securities of the [REDACTED].
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.
PI Achieve Benchmark	means, in respect of a Performance Indicator, the 'PI Achieve Benchmark' applicable to that Performance Indicator as set out at paragraph 7 (<i>Performance Indicators (PIs)</i>) of Schedule 3 (<i>Passenger Services</i>) or paragraph 19 (<i>Performance Indicators (PIs)</i>) of Schedule 4 (<i>Vehicle Services</i>) (as applicable).
Planned Disruption	means a disruption to Scheduled Services or Special Event Services on a Line that occurs as a result of a scheduled Track Possession on that Line.

<p>Planned Maintenance Services</p>	<p>means in regard to the Vehicles any planned or non-responsive repairs, refurbishment or replacement or other Maintenance Works to be carried out by the Operator in order to comply with the Operator’s obligations, meet the requirements of the Reliability KPI or the Punctuality KPI or achieve any PI Achieve Benchmark under this Partnering Contract, but excluding:</p> <ul style="list-style-type: none"> (a) Unplanned Maintenance Services; (b) Approved Modification Services; (c) FRACAS and Warranty Management Services; (d) Exceptional Repair Work; (e) Heavy Maintenance Services; and (f) Additional Modification Services.
<p>Planning and Management Services</p>	<p>means the obligations of the Operator described at Part Four (<i>Management of this Partnering Contract</i>) and at Schedule 5 (<i>Planning, Reporting and Meetings</i>).</p>
<p>Plans</p>	<p>means each and all of:</p> <ul style="list-style-type: none"> (a) the Special Events Plan; (b) the Alternative Transport Plan; (c) the Vehicle, Depot Facilities and Related Asset Management Plan; (d) the Security Management Plan; (e) the Health and Safety Management Plan; (f) the Risk Management Plan; (g) the Staff Training Plan; (h) the Emergency Management and Incident Response Plan; (i) the Quality Assurance Plan; (j) the Environmental Management Plan; (k) the Business Continuity Plan; (l) the Revenue Protection Plan; and (m) the Workplace Management Plan.

<p>Potential Incoming Operator</p>	<p>means each person who submits an expression of interest in connection with being appointed as an Incoming Operator or who otherwise participates in a tender process or other 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.</p>
<p>Pre Priced Option</p>	<p>means each of:</p> <ul style="list-style-type: none"> (a) the IFT Programme Pre Priced Option; and (b) the RS1 Project Pre Priced Option.
<p>Preliminary Commencement Certificate</p>	<p>means the certificate issued by GWRC to the Operator in accordance with clause 3.6 (<i>Preliminary Commencement Certificate</i>).</p>
<p>Prevention and Mitigation Plan</p>	<p>has the meaning given in clause 55.3.2.</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>Privacy Act</p>	<p>means the Privacy Act 1993.</p>
<p>Privacy Obligations</p>	<p>mean the obligations of a Party which relate to any Personal Information collected, used, disclosed, stored, managed, transferred or handled by or on behalf of that Party and which arise under:</p> <ul style="list-style-type: none"> (a) the Privacy Act; (b) any codes of practice, guidelines or information directives issued by the Office of the New Zealand Privacy Commissioner from time to time; (c) any Privacy Policies; or (d) any other Law in respect of Personal Information.
<p>Privacy Policy</p>	<p>means a policy, protocol, statement or procedure relating to privacy, Personal Information or data protection which apply to the Services or any Party's obligations under this Partnering Contract and includes:</p>

	<p>(a) any policy relating to data collected through the IFT System; and</p> <p>(b) the GWRC Privacy Policy.</p>
Prohibited Act	<p>means:</p> <p>(a) offering, giving or agreeing to give to any employee or agent of, or contractor to, GWRC, GWRL, the Crown or any other Governmental Entity any gift or consideration of any kind as an inducement or reward:</p> <ul style="list-style-type: none"> i. for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Partnering Contract, any Transaction Document or any other contract with the Crown or another Governmental Entity; or ii. for showing or not showing favour or disfavour to any person in relation to this Partnering Contract, any Transaction Document or any other contract with the Crown or another Governmental Entity; <p>(b) entering into this Partnering Contract, any Transaction Document or any other contract with the Crown or another Governmental Entity in connection with which commission has been paid or has been agreed to be paid by the Operator or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to GWRC;</p> <p>(c) engaging in any fraud or collusive or misleading or deceptive conduct in connection with the tender process for, or the award, entering into or performance of, this Partnering Contract or any other contract with the Crown or another Governmental Entity; or</p> <p>(d) committing any offence under any laws in any jurisdiction creating offences in respect of corrupt or fraudulent acts.</p>
Provisional Sum	means \$14,000,000 (which amount shall not be Indexed).
PT Network Documents	has the meaning given to that term at paragraph 3.19 (<i>Change process for PT Network Documents</i>) of Schedule 11 (<i>Regional Agreement</i>).


PT Network Projects	means the IFT Programme, the RS1 Project and any Additional PT Network Projects.
PT Network Project Services	has the meaning given at paragraph 5 (<i>PT Network Project Services</i>) of Schedule 3 (<i>Passenger Services</i>).
PTOM	means New Zealand's public transport operating model.
PTOM Operator	means a public transport operator that has entered into a contract with GWRC to provide "public transport services" (as defined in the LTMA) in relation to a "unit" (as defined in the LTMA).
PTOM Unit	means a unit (as defined in section 5(1) of the LTMA) specified in the Wellington Regional Public Transport Plan.
Public Holiday	means a day which is a public holiday in Wellington in accordance with the Holidays Act 2003.
Public Liability Policy	means the Insurance Policy specified in paragraph 3 of Schedule 7 (<i>Operator Insurance requirement</i>).
Punctuality KPI	means the requirements set out at paragraph 6.7 (<i>Punctuality KPI</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Quality Assurance Plan	means the plan contemplated by paragraph 1.3.9 of Appendix 1 (<i>Plans</i>) to Schedule 5, the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
Quality Management System	means a quality management system which complies with: <ul style="list-style-type: none"> (a) the principles of ISO 9001:2008 (whether or not such system has in fact received formal certification of compliance with such standard from an accredited certifying organisation); (b) the NRSS; and (c) any other quality management related standard applicable to a rolling stock maintenance provider or a passenger rail operator operating on the Wellington Rail Network.

Rail Monitoring Centre	means: (a) until the date of relocation in accordance with the Relocation Plan, the premises located at No.9 Helston Road, Johnsonville, Wellington and provided free of rent and outgoings by the Transport Agency; and (b) thereafter, the premises contemplated for such purposes in the Relocation Plan.
Rail Network Timetable	means the applicable timetable developed from time to time under clause 4 (<i>Timetabling and Access Allocation</i>) of the Common Access Terms.
Rail Operator	means a PTOM Operator that provides scheduled passenger services in regard to a rail "unit" (as defined in section 5(1) of the LTMA).
Rail Participant	has the meaning given to that term in the Railways Act.
Rail Personnel	has the meaning give to that term in the Railways Act.
Rail Unit	means the PTOM Unit described at paragraph 1 (<i>Rail Unit</i>) of Schedule 2 (<i>Agreement details</i>).
Rail Unit Timetable	means the timetable for each Line, the current version of which as at the date of this Partnering Contract is published on the Metlink website (www.metlink.org.nz), as such timetable is amended from time to time in accordance with the Timetable Change Process and subsequently published on the Metlink website (www.metlink.org.nz) or any other website notified by GWRC to the Operator from time to time.
Railway Premises	has the meaning given to that term in the Railways Act and to avoid doubt includes the EMU Depot, the Carriage Depot and all Stations.
Railways Act	means the Railways Act 2005.
Rates	means all rates (as defined in the Local Government (Rating) Act 2002).
Recipient	has the meaning given in clause 47.3.
Recovered Amount	means the aggregate amount retained or recovered by GWRC pursuant to clause 65.2.

Rectification Bond	means a bond provided by the Operator to GWRC in accordance with clause 64.8 (<i>Withheld amounts for rectification or provision of Rectification Bond</i>) and any replacement thereof provided pursuant to clause 52.9 or 52.14.4.
Rectification Period	has the meaning given to it in clause 64.5.2.
Redundant Farebox Account	means a Farebox Account held with a bank which ceases to be an Approved Bank.
Regional Agreement	means the agreement between GWRC and PTOM Operators substantially in the form set out in Schedule 11 (<i>Regional Agreement</i>), as amended or replaced from time to time in accordance with the process for changes to PT Network Documents under that agreement.
Related Company	means a "related company" as defined in the Companies Act provided that each reference to "company" in that definition shall be deemed to also include any other body corporate.
Release Date	has the meaning given in clause 52.10.1.
Relevant Month	means each calendar month during the Term provided that: <ul style="list-style-type: none"> (a) the first Relevant Month shall commence on the Commencement Date and end on the last day of the calendar month in which the Commencement Date falls; and (b) the final Relevant Month shall end on the Termination Date.
Relevant Period	means in relation to the calculation of the Aggregate Approved Revenue Service Profit Amount, each period as is contemplated by the applicable Annual Business Plan or otherwise agreed by the Operator and GWRC in writing.
Reliability KPI	means the requirements set out at paragraph 6.3 <i>Reliability KPI</i> of Schedule 6 (<i>Financial and Performance Regime</i>).
Relocation Plan	means the plan to be approved by GWRC in respect of the relocation of the Rail Monitoring Centre contemplated by paragraph 7.2A of Annexure 4 (<i>Security Service Specification</i>).


Remaining New Units	means those (up to a maximum of eight) EMUs supplied or to be supplied under the Matangi 2 Supply Agreement and which GWRC notifies the Operator remain to be fully commissioned and tested.
Reporting Error	means any error, inaccuracy, anomaly or omission in respect of any of the reports to be provided by the Operator pursuant to paragraph 3 (<i>Reports</i>) of Schedule 5 (<i>Planning, Reporting and Meetings</i>).
Reporting Failure Deductions	means deductions to be made in accordance with paragraph 7 (<i>Calculation of Reporting Failure Deductions</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Reputable Insurer	means a financially sound and reputable insurer which is fully authorised to carry on insurance business and which has a credit rating of no less than the Required Rating.
Request for Confirmation	has the meaning given in clause 4.5 (<i>Extension of Term</i>).
Required Rating	<p>means:</p> <ul style="list-style-type: none"> (a) for the purposes of the issuer of a Bond, a long term credit rating of no less than A from Standard & Poor's, a division of McGraw-Hill Financial (or the successor to its ratings business); or (b) for the purposes of an insurer, a long term credit rating of no less than A- from Standard & Poor's, a division of McGraw-Hill Financial (or the successor to its ratings business) or the equivalent long term credit rating from Moody's Investors Service Inc.

<p>Restricted Confidential Information</p>	<p>means the following Confidential Information:</p> <ul style="list-style-type: none"> (a) the amount of the Services Fee including individual cost components of the calculation of the Services Fee; (b) details of employment related processes undertaken by or on behalf of the Operator and their outcomes (other than a description of the process itself); (c) details of the Operator's organisation charts; (d) liability caps of the [REDACTED]; (e) the percentage figures set out in clause 58.2.3 of this Partnering Contract; (f) patronage modelling including the fifteen year modelling included within the Operator's tender, patronage growth and mobility studies and reports provided by the Operator to GWRC prior to the Commencement Date; (g) the Operator's business plans (excluding the Annual Business Plans, other than the financial information contained within the Annual Business Plans); (h) the Vehicle Services Subcontract (including all schedules and annexures); (i) the Operator's revenue information (excluding the Farebox Revenue); and (j) personal customer information.
<p>Revenue Protection Plan</p>	<p>means the plan contemplated by paragraph 1.3.12 of Appendix 1 (<i>Plans</i>) to Schedule 5, the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.</p>
<p>Revenue Protection Report</p>	<p>has the meaning given in paragraph c)(vi) of Appendix 2 (Revenue Protection Survey) to Schedule 3 (<i>Passenger Services</i>).</p>
<p>Revenue Protection Survey</p>	<p>means the survey to be undertaken by the Surveyor in accordance with Appendix 2 (Revenue Protection Survey) to Schedule 3 (<i>Passenger Services</i>).</p>
<p>Revenue Protection Survey Period</p>	<p>has the meaning given in paragraph c)(iii) of Appendix 2 (Revenue Protection Survey) to Schedule 3 (<i>Passenger Services</i>).</p>

Revenue Service Kilometre	means a kilometre travelled by a Train whilst open to fare paying passengers, calculated by reference to the number of kilometres shown in the table in Schedule 1 (<i>Line Segments</i>) of the Common Access Terms.
Risk Management Plan	means the plan contemplated by paragraph 1.3.6 of Appendix 1 (<i>Plans</i>) to Schedule 5, the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
RFT	means the request for tenders and associated documentation (in each case as amended from time to time) issued by GWRC in relation to the award of this Partnering Contract.
Rotable Items	means the constituent items of the Vehicles which are capable of being reconditioned or repaired.
RS1	means the re-organisation of Scheduled Services to spread the morning peak period and to match capacity and frequency to peak demand, as more particularly described in Schedule 14 (<i>RS1 Project</i>).
RS1 Project	means the implementation of RS1 as described in Schedule 14 (<i>RS1 Project</i>).
RS1 Project Implementation Fee	means [REDACTED] 
RS1 Project Phase One	means phase one of the implementation of the RS1 Project (relating to infrastructure implementation), as more particularly described in paragraphs 3.1.1 and 4 of Schedule 14 (<i>RS1 Project</i>).
RS1 Project Phase Three	means phase three of the implementation of the RS1 Project (relating to operational delivery), as more particularly described in paragraphs 3.1.3 and 4 of Schedule 14 (<i>RS1 Project</i>).
RS1 Project Phase Three Commencement Date	means the date specified in an order given by GWRC to the Operator pursuant to paragraph 4.1 (<i>Implementation of Pre Priced Options</i>) of Schedule 16 as being the date on which GWRC requires the Operator to commence implementation of the RS1 Project Pre Priced Option.

RS1 Project Phase Two	means phase two of the implementation of the RS1 Project (relating to operational planning), as more particularly described in paragraphs 3.1.2 and 4 of Schedule 14 (<i>RSI Project</i>).
RS1 Project Pre Priced Option	means the implementation of RS1 Project Phase Three, including the performance by the Operator of the activities, role and obligations ascribed to it in respect of RS1 Project Phase Three in the table headed "RS1 Project Phase Three - Operational delivery" set out at paragraph 4 of Schedule 14 (<i>RSI Project</i>).
RTPI System	means the real time passenger information system installed on Vehicles and used for the purposes contemplated by paragraph 5 (<i>RTPI System</i>) of Annexure 3.
Safety Case	means a safety case (as defined in the Railways Act) prepared by the Operator which complies with the requirements of the Railways Act and all other applicable Law and which has been approved by the Transport Agency.
Safety Law	<p>means any Law in relation to health, safety and/or welfare of people including the following:</p> <ul style="list-style-type: none"> (a) the LTMA; (b) HSE Act; (c) HSW Act; (d) Machinery Act 1950; (e) Railways Act; (f) Land Transport Act; (g) any regulation or subordinate legislation made under the above statutes; (h) any of the following statutes (or any regulations or subordinate legislation made under the following statutes) under which WorkSafe has functions: <ul style="list-style-type: none"> i. Electricity Act 1992; ii. Gas Act 1992; iii. Hazardous Substances and New Organisms Act 1996; and (i) any approved codes of practice enforceable under the above statutes, regulations or subordinate legislation.

Safety System	means a safety system (as defined in section 4(1) of the Railways Act) which complies with AS/NZ 4801:2011, OHSAS 18001, AS4292:2006, Safety Law, the NRSS and any other safety management related standard applicable to a rolling stock maintenance provider or a passenger rail operator operating on the Wellington Rail Network.
Scheduled Service	means any single, one way passenger service forming part of the Rail Unit Timetable.
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Security Cost	has the meaning given in paragraph 5.1 (<i>Calculation of Special Event Services Fee</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
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.
Security Management Plan	means the plan contemplated by paragraph 1.3.4 of Appendix 1 (<i>Plans</i>) to Schedule 5, the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
Security Service Specification	means Annexure 4 (<i>Security Service Specification</i>).
Senior Executives Meeting	means each panel established under clause 53.4 (<i>Referral to Senior Executives Meeting</i>).
Service Outcomes	means each of the matters defined as "Service Outcomes" under Appendix 3 (<i>Matangi 2 EMU Testing and Commissioning Services</i>) of Schedule 4 (<i>Vehicle Services</i>).

Service Recommencement Date	has the meaning given in clause 59.15.2.
Services	has the meaning given in clause 10.1.
Services Employees	means individuals employed (or otherwise engaged) by the Operator or an Operator Associate wholly or mainly in the provision of the operation of Passenger Services and/or maintenance of Maintained Assets (including casual or temporary workers).
Services Fee	means, subject to clause 59.15.4 (<i>Effect of issue of Force Majeure Continuation Notice</i>), the fee determined in accordance with paragraph 1.2 (<i>Services Fee</i>) of Schedule 6 (<i>Financial and Performance Regime</i>) as adjusted from time to time in accordance with the provisions of this Partnering Contract.
Services Fee Table	means the table set out at Appendix 1 (<i>Services Fee Table</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Shadow Fare	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Shareholder	means any person from time to time holding share capital in the Operator or the [REDACTED]. 
Simulator	means a driver training simulator which complies with the Simulator Specification.
Simulator Specification	means the specification provided by GWRC as updated, amended or replaced from time to time in accordance with clauses 5.21 to 5.23.
Site	means each of the sites and locations identified in Appendix 1 (<i>Sites</i>) to Annexure 4 (<i>Security Service Specification</i>).
SPAD	means signal passed at danger,

<p>Spares</p>	<p>means such components, parts and Consumables as may reasonably be required from time to time to undertake Maintenance Works, including but not limited to:</p> <ul style="list-style-type: none"> (a) consumable spares; (b) planned maintenance spares, including Rotable Items; (c) unplanned maintenance spares, including contingency and insurance spares; (d) spares required to overhaul Rotable Items.
<p>Spares Inventory Services</p>	<p>means the services described at paragraph 6 (<i>Spares Inventory Services</i>) of Schedule 4 (<i>Vehicle Services</i>).</p>
<p>Special and General Tools Management Services</p>	<p>means the services described at paragraph 7 (<i>Special and General Tools Management Services</i>) of Schedule 4 (<i>Vehicle Services</i>).</p>
<p>Special Events</p>	<p>means events as determined by GWRC which take place in the Wellington region including those of a sporting, cultural or community nature and for which it is unlikely that the Scheduled Services provided by the Operator and other PTOM Operators will be sufficient to meet public demand.</p>
<p>Special Events Plan</p>	<p>means the plan setting out the Special Event Services which the Operator will provide and containing the information specified at paragraph 3.28 of Schedule 3 (<i>Passenger Services</i>) the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.</p>
<p>Special Event Notice</p>	<p>has the meaning given in paragraph 3.33 of Schedule 3 (<i>Passenger Services</i>).</p>
<p>Special Event Service</p>	<p>means passenger carrying services provided in relation to Special Events and which are:</p> <ul style="list-style-type: none"> (a) specified in the relevant Special Events Plan approved as part of the Annual Business Plan; or (b) approved by GWRC in accordance with paragraph 3.38.3 of Schedule 3 (<i>Passenger Services</i>).

Special Event Services Fee	means the fee payable in connection with the provision of a Special Event Service calculated in accordance with paragraph 5 (<i>Calculation of Special Event Services Fee</i>) and Appendix 2 of Schedule 6 (<i>Financial and Performance Regime</i>).
Special Tools	means the tools required to undertake the Maintenance Works in accordance with the requirements of this Partnering Contract and which are specifically designed and manufactured for use on or in connection with the Vehicles, Spares and/or the EMU Depot Plant and Equipment and which are not standard "off the shelf" items.
Specific Change in Law	means a Change in Law the terms of which apply specifically to: <ul style="list-style-type: none"> (a) the Wellington Rail Network but not to any other rail network; or (b) the provision of passenger carrying services on the Wellington Rail Network but not to the provision of passenger carrying services on any other rail network; or (c) the provision of public transport services on a railway line (as defined in the Railways Act) but not to the provision of public transport services by way of any other transport mode, provided that a Change in Law which applies to the provision of public transport services by way of light rail vehicle (as defined in the Railways Act) shall not be a Specific Change in Law irrespective of whether that Change in Law also applies in relation to other rail vehicles (as defined in the Railways Act).
Staff Training Plan	means the plan contemplated by paragraph 1.3.7 of Appendix 1 (<i>Plans</i>) to Schedule 5, the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
Station	means each of the station buildings described in the Station Lease and Wellington Station.
Station Access Areas	has the meaning given in paragraph 2.2 of Schedule 9 (<i>Stations and Depot Facilities</i>).
Station Ancillary Access Right	has the meaning given in paragraph 2.2 of Schedule 9 (<i>Stations and Depot Facilities</i>).

Station Lease	means the station lease agreement between New Zealand Railways Corporation (as lessor) and GWRL (as lessee) dated 3 April 2012.
Station Plans	means the station plans attached at Appendix 1 (<i>Wellington Station Access Areas Plan</i>) and Appendix 3 (<i>Station Access Areas Plans (excluding Wellington Station)</i>) of Schedule 9 (<i>Stations and Depot Facilities</i>).
Step-in Event	means those events set out in clauses 54.1.1, 54.1.2 and 54.1.3.
Step-in Rights	means those powers and rights set out in clause 54.4.
Step-out Date	has the meaning given to it in clause 54.14.
Structural Defect	means a defect which compromises the structural integrity of a Vehicle's car body structure or a bogie structure.
Supplier	has the meaning given in clause 47.3.
Surveying Organisation	means each person appointed pursuant to paragraph 6 (<i>Appointment and role of Surveying Organisation</i>) of Annexure 9 (<i>Customer Satisfaction Survey</i>) to undertake a Customer Satisfaction Survey.
Surveyor	means a person or entity appointed by GWRC to undertake Revenue Protection Surveys.
Suspension Period	means the period commencing on the date on which a Force Majeure Continuation Notice is received by the Operator and ending on the earlier of the Service Resumption Date and the Termination Date.
Tax	means any present or future tax, levy, impost, deduction, charge, duty or withholding of any nature (other than GST) which is levied or imposed by a Governmental Entity, together with interest, penalties, charges, fees, or other amounts (if any) imposed or made on or in respect of the above and Taxation will be construed accordingly.
Technical Support Agreement	means the agreement entitled "agreement for the Technical Support of New Electric Multiple Unit (EMU) Vehicle Configured as 2-Car Units Contract No. PT0034" made between GWRL, the Vehicle Supplier and Toll NZ Consolidated Ltd and dated 31 March 2008.

Tender	means the Operator’s tender provided to GWRC during the tender process for this Partnering Contract.
Term	means the period from and including the Commencement Date until and including the earlier of: (a) the date on which this Partnering Contract is terminated in accordance with its terms; and (b) the date on which this Partnering Contract expires in accordance with clause 4.12 (<i>Expiry of Term</i>).
Termination Date	the date on which this Partnering Contract terminates or expires.
Termination Event	means each of those events listed in clause 56.1.
Termination Point	means in regard to a Scheduled Service or an Ancillary Movement, a destination at any of the following: (a) a Depot Facility; (b) a Vehicle Stabling Facility; or (c) a Station.
Termination Rectification Costs	has the meaning given in clause 65.1.2.
Termination Rectification Notice	has the meaning given in clause 65.1.
Third Party Intellectual Property	means Intellectual Property Rights and Intellectual Property Materials owned by third parties (other than Operator Associates) which the Operator or an Operator Associate Uses in connection with the performance of obligations under this Partnering Contract or any other Transaction Documents.
Third Party Transport Operators	means bus operators and other transport operators engaged from time to time by the Operator to provide alternative transport arrangements in accordance with Schedule 3 (<i>Passenger Services</i>).

Three Year Heavy Maintenance Plan	means: (a) in respect of the first Year, the Initial Three Year Heavy Maintenance Plan; and (b) in respect of each subsequent Year, the three year heavy maintenance plan for that Year approved by GWRC pursuant to paragraph 14.4 of Schedule 4 (<i>Vehicle Services</i>).
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<p>Ticket Agent</p>	<p>means:</p> <ul style="list-style-type: none"> (a) Freemans Lotto and News Agency Ground Floor, Rutherford House, 23 Lambton Quay, Wellington - temporarily closed due to renovations to Rutherford House (completion around December 2016); (b) Regency Magazines 145 Willis St, Wellington; (c) Fix Cable Car Lane 280-292 Lambton Quay, Cable Car Centre, Wellington; (d) Fix Grand Arcade 16-18 Willis St, Wellington; (e) Fix Manners Mall 49 Manners Mall, Wellington; (f) Fix Cuba St 139 Cuba St, Wellington; (g) Fix Courtenay Place 57 Courtenay Place, Wellington; (h) Fix Courtenay Central 80 Courtenay Place, Wellington; (i) Panache 17 Mulgrave St, Thorndon, Wellington. (j) Mac's Photo and Lotto 182 Main Road, Tawa; (k) Paekakariki Village Grocery Store 11 Beach Road, Paekakariki; (l) Macks Tracks Plimmerton Railway Station, Steyne Avenue, Plimmerton; (m) Broderick Dairy 66 Broderick Road, Johnsonville; (n) Maclean Street Store 42 Maclean Street, Wallaceville; (o) Silverstream Cruise and Holiday Centre Corner of Kiln Street and Whiteman's Road, Silverstream; (p) Hardy St Dairy 21 Hardy Street, Waterloo; (q) Melling Station Pharazyn Street, Lower Hutt; (r) Greytown Motors 230 Main Road, Greytown; (s) Wairarapa Travel Carterton Railway Station, Carterton; (t) Wairarapa Travel Featherston Railway Station, Featherston; and (u) Wairarapa Travel Masterton Railway Station, Masterton, and any other persons agreed by GWRC from time to time.
<p>Ticket Agent Agreement</p>	<p>means each agreement between the Operator and a Ticket Agent, which shall be substantially in the form set out in Annexure 21 (<i>Ticket Agent Agreement</i>).</p>

Ticket Offence	means travelling on a Scheduled Service or Special Event Service, or entering into a Designated Area: (a) without holding a valid entitlement to travel on those services or to be present in the Designated Area; or (b) in a manner which constitutes an offence at Law in connection with fraudulent or ticketless travel or the holding of or failure to hold a valid ticket, concession or other fare media.
Ticket Offices	means the offices at the Stations from which the Operator must sell tickets.
Timetable	means the timetable for each route or line making up the Wellington Public Transport Network.
Timetable Change Process	means the process set out at Annexure 1 (<i>Timetable Change Process</i>), as amended or replaced from time to time in accordance with the process for changes to PT Network Documents under the Regional Agreement.
Timetable Change Proposal	has the meaning given in paragraph 7.1 of Annexure 1 (<i>Timetable Change Process</i>).
Timetable Review Meeting	has the meaning given in paragraph 8.1 of Annexure 1 (<i>Timetable Change Process</i>).
TPTA	means the Tender Participation and Transition Agreement dated 23 February 2015 between KiwiRail Holdings Limited, KiwiRail Limited, GWRL and GWRC.
Track Possession	has the meaning given to it in clause 1.1 of the Common Access Terms.
Track Possession Plan	has the meaning given to it in clause 1.1 of the Common Access Terms.
Track Possessions Subcommittee	has the meaning given in the Wellington Network Agreement.

<p>Train</p>	<p>means each of:</p> <ul style="list-style-type: none"> (a) a consist made up of an EMU (or multiple EMUs coupled together); (b) a consist made up of a Carriage (or multiple carriages coupled together) and including, where relevant, any locomotive to which such Carriages are coupled.
<p>Transaction Document</p>	<p>means:</p> <ul style="list-style-type: none"> (a) this Partnering Contract; (b) the Deed of Accession to the Wellington Network Agreement; (c) the Wellington Network Agreement; (d) the Deed of Accession to the Common Access Terms; (e) the Common Access Terms; (f) [REDACTED] (g) [REDACTED] (h) each Bond; (i) the Regional Agreement; (j) the Deed of Accession to the Regional Agreement; (k) the Carriage Depot Licence; (l) the EMU Depot Lease; (m) the Wellington Station Lease and Wellington Station Framework Agreement; (n) the Waterloo Quay Carparks Licence; (o) the Carriage Locomotive and Carriage Shunt Service Agreement and the parent company guarantee in respect of such agreement; (p) the Ticket Agent Agreements; (q) the Operating Lease; (r) each direct deed entered into pursuant to clause 18.1.2 (<i>Key Subcontracts</i>); (s) the Vehicle Services Subcontract; (t) any other document or agreement that GWRC and the Operator agree is to be a Transaction Document for the purpose of this Partnering Contract; and

	(u) a document or agreement between GWRC and the Operator and any other party which is entered into or provided under or in connection with or for the purposes of amending or novating any of the above.
Transfer Time	means 3:00am (or such other time as GWRC may specify in the Preliminary Commencement Certificate) on the Commencement Date.
Transferring Employees	means the Services Employees, excluding any such Services Employees that GWRC consents to being excluded under clause 66.2.
Transferring Operator Assets	has the meaning given in clause 63.4.
Transferring Operator Assets Transfer Price	has the meaning given in clause 63.9.
Transition Plan	means the transition plan set out at Schedule 15 (<i>Transition Plan</i>).
Transport Agency	means the New Zealand Transport Agency established under section 93 of the Land Transport Management Act.
Underspend	means, where paragraph 14.9 of Schedule 4 (<i>Vehicle Services</i>) applies in relation to any Year, the difference between: <ul style="list-style-type: none"> (a) the Annual Heavy Maintenance Budget for that Year; and (b) the aggregate of the total amount paid by GWRC and any amounts which are or will become payable by GWRC, in each case in respect of Heavy Maintenance Services provided in that Year and disregarding any amount which has been or will be set-off from such payment in accordance with clause 45 (<i>Set off</i>).

<p>Unplanned Disruption</p>	<p>means a disruption that is not a Planned Disruption and that will or is likely to result in:</p> <ul style="list-style-type: none"> (a) a suspension of Scheduled Services or Special Event Services; (b) a cancellation of any Scheduled Service or Special Event Service; or (c) 15 minutes or more of delay to any Scheduled Service or Special Event Service. <p>For the avoidance of doubt, an Unplanned Disruption includes any scheduled Track Possession to the extent that it goes over the scheduled time and has any of the consequences specified in paragraphs (a), (b) or (c) above.</p>
<p>Unplanned Maintenance Services</p>	<p>means in regard to the Vehicles any unplanned or responsive repairs, refurbishment or replacement or other Maintenance Works to be carried out by the Operator in order to comply with the Operator's obligations, meet the requirements of the Reliability KPI or the Punctuality KPI or achieve any PI Achieve Benchmark under this Partnering Contract, but excluding:</p> <ul style="list-style-type: none"> (a) Planned Maintenance Services; (b) Approved Modification Services; (c) FRACAS and Warranty Management Services; (d) Exceptional Repair Work; (e) Heavy Maintenance Services; and (f) Additional Modification Services.
<p>Unsuitable Third Party</p>	<p>means any person:</p> <ul style="list-style-type: none"> (a) whose activities are, in the reasonable opinion of GWRC, incompatible with any operations or activities carried out by GWRC or GWRL for the purposes contemplated by the Transaction Documents or any other of GWRC's or GWRL's legal duties or other functions; and/or (b) who is, in the reasonable opinion of GWRC, inappropriate because of specific information received by GWRC from the Serious Fraud Office, the police or other applicable law enforcement agency, about the unsuitability of that person to act in relation to the Services.

Use	means in relation to any Intellectual Property Rights and Intellectual Property Material, the accessing, possessing, using, storing, copying, translating, adapting, customising or enhancing 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.
Valid Trip	has the meaning given in paragraph 10.1 of Schedule 6 (<i>Financial and Performance Regime</i>).
Variation Order	has the meaning given in Schedule 16 (<i>Change Events and Net Financial Impact</i>).
Variation Proposal	has the meaning given in Schedule 16 (<i>Change Events and Net Financial Impact</i>).
Variation Response	has the meaning given in Schedule 16 (<i>Change Events and Net Financial Impact</i>).
Vehicles	has the meaning given to it in the Operating Lease.
Vehicle and Asset Cleaning Services	means the services described at paragraph 11 (<i>Vehicle and Asset Cleaning Services</i>) of Schedule 4 (<i>Vehicle Services</i>).
Vehicle and Asset Security Services	means the services described at paragraph 12 (<i>Vehicle and Asset Security Services</i>) of Schedule 4 (<i>Vehicle Services</i>).
Vehicle Availability Payments	means amounts payable to the Operator calculated in accordance with paragraph 11 (<i>Calculation of Vehicle Availability Payment</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).
Vehicle, Depot Facilities and Related Asset Management Plan	means the plan contemplated by paragraph 1.3.3 of Appendix 1 (<i>Plans</i>) to Schedule 5, the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
Vehicle Kilometre	means a kilometre travelled by a Carriage or EMU whether or not whilst open to fare paying passengers, calculated by reference to the number of kilometres shown in the table in Schedule 1 (<i>Line Segments</i>) of the Common Access Terms.

<p>Vehicle Services</p>	<p>means the services set out in Schedule 4 (<i>Vehicle Services</i>), including:</p> <ul style="list-style-type: none"> (a) Planned Maintenance Services; (b) Unplanned Maintenance Services; (c) Approved Modification Services; (d) Spares Inventory Services; (e) Special and General Tools Management Services; (f) MMIS Management Services; (g) EMU Depot Plant and Equipment Management Services; (h) FRACAS and Warranty Management Services; (i) Vehicle and Asset Cleaning Services; (j) Vehicle and Asset Security Services; (k) Exceptional Repair Work; (l) Heavy Maintenance Services; and (m) Additional Modification Services.
<p>Vehicle Services Fee</p>	<p>means the vehicle services fee for the provision of the Vehicle Services (excluding Exceptional Repair Work, Heavy Maintenance Services and GWRC funded Additional Modification Services) calculated in accordance with paragraph 3 (<i>Calculation of Vehicle Services Fee</i>) of Schedule 6 (<i>Financial and Performance Regime</i>).</p>
<p>Vehicle Services Objectives and Outcomes</p>	<p>has the meaning given in paragraph 2.1 (<i>Objectives and Vehicle Services Outcomes</i>) of Schedule 4 (<i>Vehicle Services</i>).</p>
<p>Vehicle Services Subcontract</p>	<p>means the arrangement entered into by the Operator and the Vehicle Services Subcontractor in respect of Vehicle Services.</p>
<p>Vehicle Services Subcontractor</p>	<p>means Hyundai Rotem Company corporate registration number 194211-0036336 and New Zealand overseas company register number NZBN: 9429031481144, or any other subcontractor subsequently appointed by the Operator and approved by GWRC in accordance with the processes set out in clause 18.</p>

<p>Vehicle Stabling Facilities</p>	<p>means the following Vehicle stabling facilities forming part of the Wellington Rail Network:</p> <ul style="list-style-type: none"> (a) the three Vehicle stabling facilities located at Wellington Station (comprising the "north yard" Vehicle stabling facility, the "west yard" Vehicle stabling facility and the "Carriage" Vehicle stabling facility); and (b) Vehicle stabling facilities located at each of the following Stations: <ul style="list-style-type: none"> (i) Masterton; (ii) Upper Hutt; (iii) Waikanae; and (iv) Paekakariki.
<p>Vehicle Supplier</p>	<p>means Hyundai Rotem Company (a company incorporated in Korea and formerly known as Rotem Company) and, in relation to the Matangi 1 Supply Agreement and Technical Support Agreement only, also includes Mitsui & Co., Ltd (a corporation organised under the laws of Japan).</p>
<p>Vehicle Use in Service Outputs</p>	<p>means the outputs described at paragraph 2.3 (<i>Vehicle availability and use in service outputs</i>) of Schedule 3 (<i>Passenger Services</i>) and paragraph 2.3 (<i>Vehicle availability and use in service outputs</i>) of Schedule 4 (<i>Vehicle Services</i>).</p>
<p>Wairarapa Line</p>	<p>means the "Wairarapa-Metro" sub-segments as identified in Schedule 1 to the Common Access Terms.</p>
<p>Waterloo Quay Carparks</p>	<p>subject to paragraph 4.7.9 of Schedule 9 (<i>Station and Depot Facilities</i>), has the meaning given in paragraph 4.1 of Schedule 9 (<i>Station and Depot Facilities</i>).</p>
<p>Waterloo Quay Carparks Licence</p>	<p>means the licence agreement between KiwiRail Limited (as licensor) and GWRL (as licensee) in respect of 70 carparks adjoining Wellington Station situated at Waterloo Quay, Wellington to be entered into on or about the date of this Partnering Contract.</p>
<p>Waterloo Quay Carparks Licence Termination Date</p>	<p>has the meaning given in paragraph 4.2 (<i>Waterloo Quay Carparks</i>) of Schedule 9 (<i>Station and Depot Facilities</i>).</p>

Weekly Operational Report	means each weekly operational report to be provided by the Operator in accordance with this Partnering Contract and containing the matters referred to in paragraph 3.1.7 of Schedule 5 (<i>Planning, Reporting and Meetings</i>).
Wellington Network Agreement	means the agreement between KiwiRail Holdings Limited as Access Provider and GWRC dated 27 June 2013 providing access rights for the Operator (referred to in that agreement as the Metro Service Operator) to the Wellington Rail Network .
Wellington Network Budget	has the meaning given in the Wellington Network Agreement.
Wellington Network Timetable Committee	has the meaning given to it in clause 1.1 of the Common Access Terms.
Wellington Public Transport Network	means the PTOM Units that make up the public transport network managed by GWRC.
Wellington Rail Network	means the Wellington Network as that term is described at clause 1.1 of the Common Access Terms.
Wellington Regional Public Transport Forum	has the meaning given to it in the Regional Agreement.
Wellington Regional Public Transport Plan	means the regional public transport plan for Wellington adopted under the LTMA.
Wellington Station Access Areas	subject to paragraph 3.8.9 of Schedule 9 (<i>Stations and Depot Facilities</i>), has the meaning given in paragraph 3.2 of Schedule 9 (<i>Stations and Depot Facilities</i>).
Wellington Station Ancillary Access Right	has the meaning given in paragraph 3.2 of Schedule 9 (<i>Stations and Depot Facilities</i>).
Wellington Station Framework Agreement	means the framework agreement in respect of Wellington Station to be entered into between KiwiRail Limited, KiwiRail Holdings Limited, Her Majesty the Queen acting by and through the New Zealand Railways Corporation and GWRC on or about the date of this Partnering Contract by which those parties have agreed to maintain the ongoing integrity of Wellington Station for rail services but also to recognise flexibility for the redevelopment of Wellington Station.

Wellington Station Head Lease	means the deed of lease dated 29 July 2009 between Her Majesty the Queen in Right of New Zealand acting by and through the New Zealand Railways Corporation as lessor and New Zealand Railways Corporation as lessee in respect of Wellington Station.
Wellington Station Lease	means the deed of sublease of parts of Wellington Station to be entered into between KiwiRail Holdings Limited (as lessor) and GWRC (as lessee) dated on or about the date of this Partnering Contract.
Wheel Lathe Services	has the meaning given in clause 48.31.1.
Withdrawn Contract Variation	has the meaning given in Schedule 16 (<i>Change Events and Net Financial Impact</i>).
Withdrawn Contract Variation Costs	has the meaning given in Schedule 16 (<i>Change Events and Net Financial Impact</i>).
Withheld Amount	means any amounts withheld by GWRC under clause 64.7 plus the amount of Excess (if any) which the Operator pays to GWRC under clause 64.7.
Working Timetable	means the working timetable prepared in accordance with paragraph 3.5 of Schedule 3 (<i>Passenger Services</i>) and updated in accordance with paragraph 3.6 of Schedule 3 and used by the Operator for the management of all Vehicle movements required for Scheduled Services, Special Event Services and Vehicle Services.
Workplace Management Plan	means the plan contemplated by paragraph 1.3.13 of Appendix 1 (<i>Plans</i>) to Schedule 5, the initial version of which is set out in the Initial Annual Business Plan, as updated or replaced from time to time in accordance with this Partnering Contract.
WorkSafe	means WorkSafe New Zealand established by section 5 of the WorkSafe New Zealand Act 2013.

Year	<p>means each of the following periods:</p> <p>(a) the initial period starting on the Commencement Date and ending on the next 30 June;</p> <p>(b) after the end of the initial period referred to in paragraph (a), each subsequent period commencing on 1 July in any year and ending on 30 June in the following year,</p> <p>provided that the last Year shall end on the Termination Date.</p>
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Interpretation

2. The following rules apply unless the context requires otherwise:
 - 2.1. Headings are for convenience only and do not affect interpretation;
 - 2.2. The singular includes the plural and conversely;
 - 2.3. A gender includes all genders;
 - 2.4. If a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - 2.5. A reference to a person, corporation, trust, partnership, unincorporated body, organisation or other entity includes any of them;
 - 2.6. A reference to a clause, schedule, annexure or appendix is a reference to a clause of or a schedule, annexure or appendix to, this Partnering Contract, and a reference to a paragraph is to a paragraph of the same clause, schedule, annexure or appendix unless the context requires otherwise;
 - 2.7. A reference to an agreement or document (including a reference to this Partnering Contract) is to the agreement or document as amended, varied or supplemented, novated or replaced, except to the extent prohibited by this Partnering Contract or that other agreement or document;
 - 2.8. A reference to a person includes that person's successors, permitted substitutes and permitted assigns (and, where applicable, that person's legal personal representatives);
 - 2.9. A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
 - 2.10. A reference to conduct includes an act, omission, statement and undertaking, whether or not in writing;
 - 2.11. A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a

document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;

- 2.12. A reference to dollars and \$ is to New Zealand currency;
- 2.13. A reference to month or to a year is to a calendar month or a calendar year;
- 2.14. A reference to a right or an obligation of any two or more persons confers that right, or imposes that obligation as the case may be, on each of them severally and each two or more of them jointly.
- 2.15. A reference to a party is a reference to each of those persons separately;
- 2.16. A reference to writing includes an email and any other means of reproducing words in a tangible and permanently visible form;
- 2.17. A reference to an asset includes any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- 2.18. A reference to any governmental department, professional body, committee, council, local authority, council controlled organisation or other body includes the successors to that body or any relevant activity or function of that body;
- 2.19. A reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;
- 2.20. A reference to includes or including or other similar words should be construed without limitation;
- 2.21. Where the time for performing an obligation or exercising a right is expressed by reference to a period of one or more months before or after a specified date (the **reference date**) that time period will be determined by calculating the number of months specified from the reference date, with the period expiring on the date which is the equivalent date to the reference date, or if there is no such date in the final month, the last day of that final month;
- 2.22. A reference to obligations includes indemnities, warranties, representations and undertakings and a reference to breach or breach of obligations includes breach of any indemnities, warranties, representations and undertakings.

Consents or approvals

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

Priority between Transaction Documents

4. If there is any inconsistency between the provisions of any two or more Transaction Documents, the Transaction Documents will be given priority in interpretation in the following order to the extent of any inconsistency:
 - 4.1. this Partnering Contract; and
 - 4.2. any other Transaction Document.




Schedule 2 – Agreement details

1 Rail Unit

1.1 The PTOM Unit consisting of the Lines and described as "unit number: 16, unit name: Rail" in the Wellington Regional Public Transport Plan, the approximate geographic location of which is indicated at a high level for information only in figure 21 (*Geographic location of units*) contained in section 5.7 of the Wellington Regional Public Transport Plan.


2 Addresses for notices

2.1 The Parties addresses for notices are:

GWRC	
Postal Address	P O Box 11646, Manners Street, Wellington 6142
Physical Address	Shed 39, Harbour Quays, Wellington
Email	[REDACTED] 
GWRL	
Postal Address	P O Box 11646, Manners Street, Wellington 6142
Physical Address	Shed 39, Harbour Quays, Wellington
Email	[REDACTED] 
Operator	
Postal Address	Level 8, 469 Latrobe Street, Melbourne, Victoria, 3000, Australia
Physical Address	Level 3, 17 Whitmore Street, Wellington
Email	[REDACTED] 

3 Operator's Key Personnel


3.1 The Operator's Key Personnel at the date of this Partnering Contract are:

Name of Key Personnel	Position description	Contact Details
Authorised Representative [REDACTED]	Authorised Representative	[REDACTED]  [REDACTED]

[REDACTED]		
Metro services manager [REDACTED]	Transdev Wellington managing director	[REDACTED] [REDACTED]
Passenger services manager [REDACTED] [REDACTED]	Transdev Wellington Chief operating officer	[REDACTED] [REDACTED] [REDACTED]
Fleet and maintenance manager [REDACTED] [REDACTED]	Hyundai Rotem Aftermarket team manager	[REDACTED] [REDACTED] [REDACTED]
Manager - people and culture [REDACTED]	Transdev Wellington Manager people and culture	[REDACTED] [REDACTED]
HR & admin manager - [REDACTED]	Transdev Wellington Manager people & culture	[REDACTED] [REDACTED]
Business partner HR & ER [REDACTED]	Transdev Wellington Manager people & culture	[REDACTED] [REDACTED]
Engineering manager [REDACTED] [REDACTED]	Hyundai Rotem Aftermarket engineering manager	[REDACTED] [REDACTED]
Finance manager – to be agreed between GWRC and the Operator	Transdev Wellington manager finance and commercial	To be agreed between the GWRC and the Operator.

4 Authorised Representatives

4.1 The Parties Authorised Representatives at the date of this Partnering Contract are:

Party	Name of Authorised Representative	Contact details 
GWRC	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]
GWRL	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]
Operator	[REDACTED]	[REDACTED] [REDACTED]

5 Not used

6 Not used

7 Key Subcontractors

7.1 Each first tier subcontractor of the Operator performing the following roles is a "Key Subcontractor":

7.1.1 undertaking the Vehicle Services;

7.1.2 provision of Vehicle and Asset Security Services including:

- (a) stabling and depot security;
- (b) mobile patrols;
- (c) incident response;
- (d) manning and full service of the Rail Monitoring Centre; and
- (e) Special Events crowd management;

7.1.3 provision of:

- (a) alternative transport arrangements;
- (b) rail replacement services utilising buses (including for Special Events); and
- (c) planned and unplanned alternative transport;


7.1.4 corporate support including;

- (a) payroll;
- (b) industrial relations;

- (c) human resources;
- (d) information technology & business systems;
- (e) legal;
- (f) project management;
- (g) safety;
- (h) procurement;
- (i) quality; and
- (j) risk management; and

7.1.5 carriage locomotive and carriage shunt services including;

- (a) provision of locomotives;
- (b) provision of shunts;
- (c) provision of training;
- (d) provision of diesel fuel, including for Carriage generators; and
- (e) Special Event Services.

- Schedule 3 – Passenger Services**
- Schedule 4 – Vehicle Services**
- Schedule 5 – Planning, Reporting and Meetings**
- Schedule 6 – Financial and Performance Regime**
- Schedule 7 – Operator Insurance requirement**
- Schedule 8 – Warranties and Representations**
- Schedule 9 – Stations and Depot Facilities**
- Schedule 10 - Operating Lease**
- Schedule 11 – Regional Agreement**
- Schedule 12 – Handover Package**
- Schedule 13 – IFT Programme**
- Schedule 14 – RS1 Project**
- Schedule 15 - Transition Plan**
- Schedule 16 - Change Events and Net Financial Impact**
- Schedule 17 – Employee Transfer**
- Schedule 18 - Operator's Proposals**
- Schedule 19 - Minimum Initial Transferring Assets**
- Annexure 1 – Timetable Change Process**
- Annexure 2 – Customer Service Standards**
- Annexure 3 – Customer Communication and Information Systems**
- Annexure 4 – Security Service Specification**
- Annexure 5 – Minimum Vehicle Operating Standards**
- Annexure 6 – Fares, Ticketing and Enforcement Requirements**
- Annexure 7 – Conditions of Carriage**
- Annexure 8 – Not Used**
- Annexure 9 - Customer Satisfaction Survey**
- Annexure 10 – [REDACTED] **
- Annexure 11 – Bond**
- Annexure 12 – Preliminary Commencement Certificate**
- Annexure 13 – Incoming Operator Confidentiality Undertaking**
- Annexure 14 – Incoming Operator Access Indemnity**
- Annexure 15 – Initial Annual Heavy Maintenance Plan**
- Annexure 16 – Initial Three Year Heavy Maintenance Plan**
- Annexure 17 - Overarching Heavy Maintenance Plan**
- Annexure 18 - Form of Payment Claim**

Annexure 19 - Variation Forms

Annexure 20 - Draft Initial Annual Business Plan

Annexure 21 - Ticket Agent Agreement

Annexure 22 - Key Subcontractor Direct Deed

Annexure 23 - GWRC Privacy Policy