Dated 12 May 2025

AGREEMENT

for Wellington public transport ferry services

Between

WELLINGTON REGIONAL COUNCIL

and

EAST BY WEST COMPANY LIMITED

CONTENTS

1.	REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS	1
2.	TRANSACTION DOCUMENTS AND ARRANGEMENTS FOR EXISTING AGREEMENT	2
3.	TERM	3
4.	SERVICES	4
5.	AUTHORISED REPRESENTATIVES	4
6.	GOVERNANCE	5
7.	SERVICE STANDARDS	7
8.	DOCUMENT APPROVAL PROCESS	9
9.	HEALTH AND SAFETY	10
10.	BUSINESS PLAN	14
11.	CHANGE IN LAW	14
12.	VARIATIONS	15
13.	GW ASSETS	16
14.	SUBCONTRACTING	16
15.	RECORDS, ACCOUNTS AND AUDIT	17
16.	PAYMENTS TO THE OPERATOR	19
17.	INTELLECTUAL PROPERTY	20
18.	CONFIDENTIALITY	23
19.	PRIVACY	25
20.	DATA SYSTEMS SECURITY	25
21.	ANNOUNCEMENTS, PUBLIC RELATIONS AND MEDIA	27
22.	INDEMNITY	28
23.	FORCE MAJEURE	30
24.	BOND	35
25.	GUARANTEE	37
26.	INSURANCE	37
27.	VOLUNTARY IMPROVEMENT PLAN	40
28.	CALL IN	40
29.	DEFAULT EVENTS	42
30.	STEP-IN	46
31.	TERMINATION	50
32.	TERMINATION FOR FUNDING OR POLICY CONSTRAINTS	53
33.	DISPUTE RESOLUTION PROCEDURE	54
34.	TRANSFER	55
35.	RIGHTS OF THIRD PARTIES	56
36.	GENERAL PROVISIONS	56
SCHI	EDULE 1: DEFINITIONS AND INTERPRETATION	61
SCHI	EDULE 2: CONTRACT PARTICULARS	86
SCHI	EDULE 3: REPRESENTATIONS AND WARRANTIES	89
SCHI	EDULE 4: PASSENGER SERVICES	92

SCHEDULE 5: PLANNING AND MANAGEMENT SERVICES	111
SCHEDULE 6: VESSEL SERVICES	119
SCHEDULE 7: BUSINESS PLAN	133
SCHEDULE 8: PAYMENTS	139
SCHEDULE 9: VARIATIONS	148
SCHEDULE 10: PERFORMANCE	156
SCHEDULE 11: RESTRICTIONS ON OPERATOR	169
SCHEDULE 12: TRANSITION-OUT SERVICES	172
SCHEDULE 13: FORM OF BOND	176
SCHEDULE 14: FORM OF GUARANTEE	179

PARTIES

- WELLINGTON REGIONAL COUNCIL, a public statutory body constituted under the Local Government Act 2002 (known as Greater Wellington Regional Council) (GW); and
- 2. EAST BY WEST COMPANY LIMITED (the Operator).

INTRODUCTION

- A. GW is responsible for the procurement of public transport ferry services in Wellington.
- B. GW proposes to engage the Operator to provide public transport ferry services in the Wellington region in accordance with this Agreement.
- C. The Operator will provide those services in accordance with this Agreement.
- D. The Operator is a wholly-owned subsidiary of the Guarantor. GW has entered into this Agreement on the condition that the Guarantor provides the Guarantee to GW in relation to the obligations of the Operator under this Agreement.

AGREEMENT

- 1. REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS
- 1.1 **Operator**: The Operator:
 - represents and warrants in favour of GW that each statement in schedule 3 (Representations and warranties) is complete, accurate and not misleading as at the Appointment Date and the Operations Commencement Date;
 - (b) will immediately notify GW on becoming aware of:
 - (i) any non-compliance with clause 1.1(a); or
 - (ii) a representation or warranty given by the Operator or a Related Company under any other Services Document becoming incomplete, inaccurate or misleading as at the Operations Commencement Date; and
 - (c) acknowledges that GW has entered into the Services Documents in reliance on the representations and warranties in schedule 3 (Representations and warranties).
- 1.2 Transport Agency: The Operator acknowledges that, although the Transport Agency provides funding to GW for the provision of public transport ferry services in Wellington, except in the case of novation or transfer of this Agreement to the Transport Agency (as applicable), the Transport Agency is not liable to the Operator or to any other person in relation to this Agreement. The acknowledgement provided by the Operator under this clause 1.2 is for the benefit of, and enforceable by, the Transport Agency in terms of Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017.

- 1.3 **No property interest and no restriction**: This Agreement does not confer on the Operator:
 - (a) any property or proprietary interest or right in relation to any Services, or any unit under the LTMA or public transport service comprised in that unit;
 - (b) any real or personal property, right or interest, including intellectual property rights; or
 - (c) any right to operate any public transport service, except as expressly provided for in this Agreement.
- 1.4 Revenue and cost risk: GW and the Operator acknowledge and accept that, for the Unit:
 - (a) the Operator is liable for, and will pay, all costs and expenses incurred by the Operator in operating the Unit and otherwise complying with the other requirements of this Agreement;
 - (b) GW will be entitled to the revenue relating to the Unit; and
 - (c) GW will pay to the Operator the Services Payment for the operation of the Services specified in this Agreement and complying with the other requirements of this Agreement.

2. TRANSACTION DOCUMENTS AND ARRANGEMENTS FOR EXISTING AGREEMENT

2.1 Condition - transaction documents

- (a) This Agreement is conditional on the Operator, no later than 2 Business Days after the Appointment Date, providing to GW:
 - (i) (Bond) a bond that satisfies the requirements of clause 24 (Bond);
 - (ii) **(Guarantee)** the Guarantee duly executed by the Guarantor;
 - (iii) **(Insurance policies)** a copy of each insurance policy that the Operator is required to obtain and maintain under this Agreement;
 - (iv) (MTOC) a copy of the Marine Transport Operator Certificate that the Operator is required to obtain and maintain under this Agreement;
 - (v) (Vessel specific) a copy of:
 - (1) the Vessel Certificate of Survey that the Operator is required to obtain and maintain under this Agreement; and
 - (2) satisfactory evidence that the Operator is licenced to serve food and beverages (including alcohol),-

for each Vessel;

- (vi) (Access agreement) a copy of the Access Agreement; and
- (vii) (Privacy policy) a copy of the Operator's current privacy policy.
- (b) This condition is for the sole benefit of GW and may be waived by GW at any time by written notice to the Operator.
- (c) If GW has not confirmed the satisfaction or waiver (as applicable) of this condition by the date that is 5 Business Days after the Appointment Date, then GW may, by written notice to the Operator, terminate this Agreement.

- (d) If this Agreement is terminated under clause 2.1(c), then:
 - (i) this Agreement will have no further effect; and
 - (ii) neither GW nor the Operator will have any claim under or in connection with that termination or this Agreement, other than in relation to any breach of this Agreement occurring before termination.
- 2.2 **Operations commencement date**: The Operations Commencement Date will be the date that is 2 Business Days after the Appointment Date, unless otherwise agreed in writing between the parties.
- 2.3 **Existing agreement**: With effect on and from the Operations Commencement Date:
 - the existing partnering contract between GW and the Operator in relation to the provision of public transport ferry services and dated 29 June 2019 (the Existing Agreement) is cancelled;
 - (b) each party will be discharged from its obligations under the Existing Agreement (except for any obligations that are expressly stated to survive termination and the Operator's obligations in relation to the additional funding under clause 2.4); and
 - (c) no party will have a claim against the other party in connection with the cancellation of the Existing Agreement, provided that the parties will be liable for any pre-existing default under the Existing Agreement.

2.4 Section 7(2)(b)(ii)

Section 7(2)(b)(ii)

3. TERM

- 3.1 **Appointment**: GW appoints the Operator to provide the Services in accordance with this Agreement. This Agreement will take effect on and from the Appointment Date.
- 3.2 GW extension: GW may, at its sole discretion, extend the Term (on one or more occasions) for the applicable Renewal Period of up to a maximum period of 4 years from the Initial Expiry Date (the GW Extension Period). Any such extension will be by written notice from GW to the Operator issued no later than 3 months prior to the scheduled Expiry Date. The provisions of this Agreement will continue to apply for any such GW Extension Period, unless otherwise agreed in writing between the parties.
- 3.3 **Expiry**: This Agreement will continue in force until the Expiry Date unless terminated earlier. This Agreement will expire at 03:00 hours on the day immediately following the Expiry Date or any earlier date of termination.

- 3.4 **Service delivery**: The Operator will, in providing the Services:
 - (a) put the customers' experience at the forefront of decision making around the operation and delivery of the Services;
 - (b) deliver the Services effectively and efficiently;
 - (c) do nothing to harm GW's reputation in the delivery of the Services;
 - (d) provide value for money in relation to the operation of public transport ferry services in a way that is financially sustainable for the Operator and affordable for GW;
 - (e) strive to continually improve the provision of the Services (whether through the reduction of costs, increase in quality, improvement in service design or otherwise);
 - (f) actively explore and consider innovations (or opportunities for innovation) with GW at meetings of the Management Committee; and
 - (g) work to deliver the Services safely, with consideration given to the safety of its Representatives and passengers through all aspects of the delivery of the Services.

4. SERVICES

- 4.1 **Scope**: The Operator will provide to GW:
 - (a) on and from the Operations Commencement Date:
 - (i) the Passenger Services in accordance with schedule 4 (Passenger services);
 - (ii) the Planning and Management Services in accordance with schedule 5 (Planning and management services); and
 - (iii) the Vessel Services in accordance with schedule 6 (Vessel services); and
 - (b) the Transition-Out Services in accordance with schedule 12 (Transition-out services).
- 4.2 Additional requirements: GW and the Operator will comply with:
 - (a) schedule 7 (Business plan);
 - (b) schedule 8 (Payments);
 - (c) schedule 9 (Variations);
 - (d) schedule 10 (Performance); and
 - (e) schedule 11 (Restrictions on Operator).
- 4.3 **Units**: For the purposes of section 116A of the LTMA, the Route and the Services related to that Route comprise a separate "unit" for the purposes of the LTMA.

5. AUTHORISED REPRESENTATIVES

- 5.1 **Appointment**: Each party:
 - (a) appoints as its Authorised Representative the individual specified as such in the Contract Particulars; and

- (b) will ensure that the individual appointed as its Authorised Representative has the appropriate skill, knowledge and authority reasonably required to undertake the role of an Authorised Representative of GW or the Operator (as the case may be) under this Agreement.
- 5.2 **Authority**: GW and the Operator each authorise its Authorised Representative to act on its behalf in matters relating to the performance of its obligations, and exercise of its rights, under this Agreement, such that for a matter for which an Authorised Representative is so authorised:
 - (a) a direction or notice given to an Authorised Representative:
 - (i) will be regarded as having been given to the party that appointed the Authorised Representative; and
 - (ii) constitutes a direction or notice to the party that appointed the Authorised Representative;
 - (b) matters within the knowledge of an Authorised Representative will be regarded as being within the knowledge of the party that appointed the Authorised Representative; and
 - (c) each Authorised Representative may delegate its authority to another person with the appropriate level of delegated authority within the relevant party by prior written notice to the other party.

5.3 Change

- (a) GW and the Operator may each change their Authorised Representative by giving written notice to the Management Committee identifying the new appointee and stating the date that the change will be effective.
- (b) Any change to any Authorised Representative will be recorded by way of an update to the Contract Particulars.

6. GOVERNANCE

6.1 Management committee

- (a) **General**: GW and the Operator will establish the Management Committee.
- (b) **Committee members**: GW and the Operator will procure that their respective Management Committee Members:
 - act, and will ensure that the Management Committee will operate, in accordance with the provisions of this Agreement;
 - (ii) will ensure that the Management Committee considers the strategies and plans of GW and the Transport Agency relating to transport in the Wellington region;
 - (iii) otherwise perform the obligations and functions of the Management Committee stated in this Agreement; and
 - (iv) do everything properly and reasonably within that person's control necessary to enable the Management Committee to perform its functions under this Agreement.
- (c) **Meetings audio visual**: Meetings of the Management Committee may be held in person or by way of audio-visual communication provided that, throughout the meeting, all

individuals participating in the meeting are able to communicate interactively and simultaneously with all other individuals participating in the meeting. Participation in a meeting in this manner constitutes presence in person at the meeting.

6.2 Purpose, composition, etc.

- (a) **Purpose**: The purpose and function of the Management Committee is to:
 - review and discuss all strategic and operational issues in relation to the Services and this Agreement;
 - (ii) review the performance of the Operator; and
 - (iii) resolve day-to-day "operational and service delivery matters" that arise under this Agreement, to give effect to this Agreement and to deliver an ethos of continuous improvement.

(b) Composition

- (i) The Management Committee will comprise up to 6 Management Committee Members, up to 3 of whom will be appointed by GW and up to 3 of whom will be appointed by the Operator. GW and the Operator will, unless otherwise agreed, each appoint and maintain the persons specified in the Contract Particulars as their respective Management Committee Members on the Management Committee (each a Management Committee Member in relation to the party appointing that individual).
- (ii) The chairperson of the Management Committee is specified in the Contract Particulars.
- (iii) GW and the Operator may each invite an additional person who is not a Management Committee Member to attend any meeting of the Management Committee in an observer capacity, subject to providing the Operator with no less than 24 hours notification of attendance by the additional person and procuring that the additional person invited to a meeting of the Management Committee under this clause is subject to confidentiality obligation that is no less onerous than stated in clause 18 (Confidentiality).

(c) Meetings:

- (i) The Management Committee will meet:
 - (1) at least once in every Quarter by the date that is 20 Business Days after the end of each Quarter or at such other times as agreed between the Management Committee Members; and
 - (2) otherwise on reasonable request by any party.
- (ii) The quorum for each meeting will be 4, comprising at least 2 GW Management Committee Members and 2 Operator Management Committee Members. GW and the Operator may also agree to other attendees, on a by invitation, as required basis, to attend a Management Committee meeting. Any attendees invited to participate in a Management Committee meeting under this clause (or under clause 6.2(b)(iii)) will not count or form part of the quorum for any meeting unless agreed by both parties.

- (iii) GW and the Operator will, on a rotating Financial Year basis, take responsibility for ensuring that minutes are kept of all proceedings of the Management Committee and distributed to members of the Management Committee by the date that is 5 Business Days after the relevant meeting.
- (iv) The Management Committee will, no later than 6 months after the establishment of the Management Committee, decide the terms of reference for the Management Committee (including details of the delegated authority and any applicable limitations of the Management Committee) based on the functions specified in clause 6.2(a).

(d) Decisions

- (i) Subject to clause 6.2(d)(ii), decisions of the Management Committee will be made by unanimous agreement.
- (ii) If the Management Committee is unable to reach unanimous agreement, for any matter excluding the role of the Management Committee in the Dispute Resolution Procedure, then the matter may be referred to the Dispute Resolution Procedure commencing with clause 33.3.

7. SERVICE STANDARDS

7.1 **General obligations**: The Operator will:

- (a) perform the Services and its other obligations under this Agreement:
 - (i) in accordance with the provisions of this Agreement;
 - (ii) with the care, skill, diligence and foresight reasonably expected of a prudent, appropriately qualified, competent and efficient provider of public transport ferry services experienced in undertaking activities of a similar type, scope, nature and complexity to the activities required to be performed by the Operator under this Agreement; and
 - (iii) without limiting clauses 7.1(a)(i) and 7.1(a)(ii), in accordance with:
 - (1) the Business Plan;
 - (2) any asset management or maintenance plans approved by GW; and
 - (3) Good Industry Practice;
- (b) ensure that the performance of its obligations under this Agreement is undertaken by Operator Employees (and, if permitted, subcontractors) who have the knowledge, qualifications, skills and experience appropriate to provide the Services, and who have been trained and instructed appropriately to provide the Services;
- (c) not take any action that will, or is likely to, result in the cancellation or suspension of any licence, certificate or other Authorisation; and
- (d) use best endeavours to ensure that requests for additional services or timetable changes are addressed effectively and efficiently during the Term balancing the enhancement of customer experience on the public transport ferry services and value for money for GW.

- 7.2 **Applicable laws and authorisations**: The Operator will, in providing the Services and performing its other obligations under this Agreement:
 - (a) comply with all Applicable Laws;
 - (b) procure, maintain and comply with each Maritime Transport Operator Certificate, certificate of survey for each Vessel under the Maritime Transport Act 1994 and all other Authorisations required to perform its obligations under this Agreement;
 - (c) provide GW with any assistance, advice and information required of the Operator by GW to enable GW to obtain, maintain and comply with any Authorisation where such Authorisation will be obtained or maintained in the name of GW and cannot, under the relevant Applicable Law, be obtained by, or in the name of, the Operator;
 - (d) comply with all requirements made of it by GW in connection with this Agreement that arise out of:
 - (i) the requirements of any Applicable Law or Authorisation; or
 - (ii) a requirement, or reasonable request, made of GW by a Governmental Agency; and
 - (e) comply with any applicable direction or other requirement of Maritime New Zealand or the Harbourmaster for Wellington.
- 7.3 **Notification**: The Operator will notify GW, as soon as reasonably practicable and in any event no later than 48 hours after the date that the Operator becomes aware, or ought reasonably to have become aware, of any:
 - (a) actual or likely breach or non-compliance by the Operator, or any Operator Associate, of any Authorisation held by the Operator or of any Applicable Law;
 - (b) actual or proposed repeal, revocation, cancellation, suspension, termination or expiry of any Authorisation held by the Operator;
 - (c) actual or proposed material variation to any Authorisation held by the Operator;
 - investigation being undertaken by any Governmental Agency related to any Authorisation or the Services or other obligations that the Operator has under this Agreement or Applicable Law;
 - (e) notification provided by any Governmental Agency, including notification or audit under Applicable Law, of a safety improvement plan, ordinary safety assessment, special safety assessment, remedial action, infringement notice, improvement notice, prohibition notice, reminder notice, compliance advice letter or warning letter; and
 - (f) infringement fee, fine, charging document or other enforcement proceeding issued by any Governmental Agency or any other person relating to the Services performed by the Operator or its other obligations under or in connection with this Agreement.
- 7.4 **Supporting documentation**: The Operator will provide to GW (with the relevant notice under clause 7.3) a copy of all relevant documentation, including any notice, warning, order, direction, charging document, proceedings or related correspondence.

7.5 Notification: The Operator will, without prejudice to any other provision of this Agreement, promptly provide to GW a copy of any report (including any draft report), notification, order, directive or requirement (including any charge against the Operator, or any of its directors or Senior Management in relation to any offence relating to the provision or operation of the Services or failure to comply with any safety notification or directive or other notification or directive of any Governmental Agency or material breach of any of the Authorisations) issued or received by the Operator to or from a Governmental Agency.

8. DOCUMENT APPROVAL PROCESS

- 8.1 **Process for approval**: If this Agreement requires the Operator to provide a document (including any plan) (in each case and for the purposes of this clause 8 only, a **Document**) for approval by GW and either does not specify a document approval process for the Document or specifies that the document approval process in this clause 8 will apply to such Document.
- 8.2 **Compliance certificate**: If this Agreement specifies any form or content requirement for any Document provided by the Operator to GW for approval in accordance with this clause 8, then the Operator will provide GW with a compliance certificate certifying that the Document satisfies the relevant form or content requirement when submitting the Document to GW.
- 8.3 **Review**: GW will, no later than 20 Business Days after the date on which GW receives a Document (or such other period as specified in the relevant clause or by GW (acting reasonably having regard to the nature of the Document)), notify the Operator in writing whether it:
 - (a) approves the Document; or
 - (b) rejects the Document, in which case GW will specify the reasons for its rejection and describe the amendments that must be made to the Document before GW will approve the Document.
- 8.4 **Updates**: The Operator will, no later than 10 Business Days after GW rejects a Document under clause 8.3(b) (or such other period as is specified by GW (acting reasonably)), submit a modified version of the Document, incorporating GW's requested amendments (if any).
- 8.5 **Further review**: GW will respond to the revised draft Document submitted by the Operator under clause 8.4 in accordance with clause 8.2 and the process in this clause will continue until the draft Document is approved by GW in accordance with clause 8.3(a).
- 8.6 **Amendments**: If the Operator is required to, or proposes to, update any Document following its approval by GW, then the Operator will submit its proposed amendments to the Document to GW including:
 - (a) an itemised list setting out the Operator's proposed amendments to the Document;
 - (b) a clean copy of the Document incorporating the Operator's proposed amendments;
 - (c) a marked-up copy of the Document clearly showing the Operator's proposed amendments to the Document; and
 - (d) the process in clauses 8.2 to 8.5 (inclusive) will apply.

8.7 **Original to remain in effect**: To avoid doubt, the original Document will remain in effect unless and until a proposed amendment to a Document is approved by GW in accordance with clause 8.3(a).

9. HEALTH AND SAFETY

9.1 Health and safety paramount

- (a) The Operator will, without limiting its other obligations under this Agreement, perform the Services and its other obligations under this Agreement recognising that the safety of all users of the Wellington Network (including members of the public, passengers, personnel and any other persons whose activities in carrying out work are influenced or directed by the Operator) is of paramount importance.
- (b) GW and the Operator will, so far as is reasonably practicable:
 - (i) co-operate, consult and co-ordinate with each other to enable them to comply with their respective obligations under Relevant Health and Safety Legislation; and
 - (ii) ensure that, to the extent it engages any PCBU in relation to any work performed or to be performed under this Agreement in New Zealand, that it will procure that such PCBU will co-operate, consult and co-ordinate through the engaging party to enable all parties to comply with their respective obligations under Relevant Health and Safety Legislation.
- (c) The Operator will, when performing the Services and its other obligations under this Agreement, ensure so far as reasonably practicable, that it does not cause, or is not likely to cause the death of, or serious injury to, an individual, a Notifiable Injury or an illness or a Notifiable Incident, or significant damage to property.
- (d) The Operator will manage its operations and apply sufficient resources to continually improve safety and safety standards in relation to the Services.
- 9.2 **Compliance with relevant health and safety legislation and authorisations**: The Operator will, without limiting clause 7 (Service standards), ensure its Representatives comply with:
 - (a) Relevant Health and Safety Legislation;
 - (b) the Operator's health and safety policies and health and safety plan relating to the Services;
 - (c) any policies of GW in relation to health and safety; and
 - (d) all lawful rules, requirements, directions, instructions and guidelines of any Governmental Agency, including GW, and co-operate with any Governmental Agency in relation to workplace health and safety, including any accident, incident or safety investigations or implementing any recommendations resulting from such investigations.
- 9.3 Operator's health and safety expertise: The Operator has control of the GW Assets (if any) and the performance of the Services under this Agreement. The Operator recognises that GW does not monitor any such GW Assets (if any), the Wellington Network or any place where the Services are to be performed and that GW is relying on the Operator's expertise in relation to the health and safety aspects of the Services, including relying on:

- (a) the Operator's expertise in passenger and workplace health and safety and navigational, vessel (including operations and maintenance) safety and other maritime safety matters as described in clauses 7.1(a)(ii) and 7.1(b);
- (b) the Operator to comply with its obligations under the Relevant Health and Safety Legislation and its Authorisations; and
- (c) this clause 9 and the reporting obligations of the Operator under schedule 5 (Planning and management services) to ensure the health and safety of the public, passengers, personnel and other persons at all times.

9.4 General health and safety obligations

- (a) The Operator will manage and control the workplaces where the work related to the provision of the Services is performed, including controlling the means of access to and egress from any such workplaces.
- (b) The Operator will not, at any location at which the Services may be performed (each, a Service Location), store, sell, or allow the consumption of, or permit any person to be under the influence of, any alcohol or controlled drug (as defined in the Misuse of Drugs Act 1975). The Operator will, and will procure that the Operator Employees and all other persons authorised or permitted by the Operator to have access to or use of any Service Location will, comply with any alcohol and drugs policy notified by GW to the Operator. To avoid doubt, this clause 9.4(b) will not apply to:
 - (i) any concession to sell alcohol on a Vessel that the Operator has (and GW has approved) as at the Appointment Date; and
 - (ii) any alcohol stored by the Operator at its office / administrative premises.
- (c) The Operator will ensure so far as reasonably practicable:
 - the provision and maintenance of a work environment that is consistent with Good Industry Practice;
 - (ii) the provision and maintenance of safe plant and structures;
 - (iii) the provision and maintenance of safe systems of work;
 - (iv) the safe use, handling, and storage of plant, substances and structures;
 - the provision of adequate facilities for the welfare at work of workers, including ensuring access to those facilities;
 - (vi) training, instruction, or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the Business;
 - (vii) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing injury or illness of workers arising from the conduct of the Business:

- (viii) that no act or omission causes a hazard, significant hazard, harm or serious harm to any Operator Employee or any other person at their place of work or in the vicinity of their place of work;
- (ix) that no act or omission of the Operator is a breach of duty or obligation of the Operator or of GW under Relevant Health and Safety Legislation; and
- (x) that no act or omission of the Operator does or is likely to give rise to any notification or event referred to in clauses 9.4(c)(viii) to 9.4(c)(ix) (inclusive).

(d) The Operator will:

- (i) consult, co-operate with, and co-ordinate activities (for overlapping duties) with GW and all other persons that GW identifies to the Operator as having a duty under Relevant Health and Safety Legislation in relation to the same matter;
- (ii) ensure that, if and to the extent a specific policy of the Operator on a particular health and safety matter does not exist, then any applicable policy of GW will take effect. If and to the extent an Operator policy conflicts with or does not cover to the same extent the requirements of GW's policy, then the parties will apply the principles of PCBUs with overlapping duties to ensure mutual consensus on changes or creation of policy; and
- (iii) provide, in co-operation and co-ordination with GW, reasonable opportunities for joint PCBU worker engagement, participation and representation forums to discuss health and safety concerns where there is a duty in relation to the same matter.

9.5 Notification of an incident, occurrence or other notifiable event

- (a) The Operator will notify GW as soon as reasonably practicable, and in any event no later than 4 hours, after the time that the Operator becomes aware or ought reasonably to have become aware, of any:
 - (i) Incident or occurrence associated with the operation of a Vessel or the use of any GW Assets or other assets controlled or used by the Operator that causes the death of, or serious injury to, individuals, or loss or significant damage to property;
 - (ii) direction of any Governmental Agency or Health and Safety Representative in relation to health and safety; or
 - (iii) notifiable event giving rise to a requirement to notify any Governmental Agency under Relevant Health and Safety Legislation.
- (b) The Operator will use all reasonable endeavours to ensure that it becomes aware of the occurrence of any of the events referred to in clause 9.5(a) and the Operator will, in relation to any such event, promptly:
 - (i) provide to GW any information, records or documents including any available CCTV recordings, other surveillance data or information which record, relate to or are otherwise connected with the event;
 - (ii) answer correctly and comprehensively any questions by GW relating to or connected with the event;

- (iii) provide GW with such assistance as GW may require conducting an investigation into any notifiable event in relation to the Services (including, using reasonable endeavours to procure all Representatives provide any information reasonably requested by GW);
- (iv) proactively investigate all notifiable events in relation to the Services as required by GW; and
- (v) implement, so far as is reasonably practicable, any corrective action identified as a result of such investigations, or as otherwise notified by GW.
- (c) The Operator will provide GW with a copy of any certificate, report and/or finding resulting from any audit or investigation conducted in relation to any event referred to in clause 9.5(a).

9.6 Emergency and crisis management

- (a) The Operator will comply with its relevant obligations under:
 - (i) the Civil Defence Emergency Management Act 2002;
 - (ii) the National Civil Defence Emergency Management Plan Order 2015; and
 - (iii) the Civil Defence Emergency Management Regulations 2003;
 - (iv) the Maritime Transport Act 1994; and
 - (v) the SOLAS Regulations,-

(together, the Emergency Legislation) and will:

- develop and implement all necessary plans to support its obligations under the Emergency Legislation;
- (2) ensure that it is able to operate the Services to the fullest possible extent, even though this may be at a reduced level, during and after an emergency;
- (3) participate, to the extent required under clause 9.6(a)(i) to 9.6(a)(iii) (inclusive), in the development of national civil defence emergency management strategies and civil defence emergency management plans;
- (4) provide any technical advice reasonably required by the Wellington Region Emergency Management Office (the **WREMO**) or the Director of Civil Defence and Emergency Management; and
- (5) actively participate in the WREMO as required by GW.
- (b) The Operator will provide to GW a copy of any certificate, report or finding resulting from an audit conducted by the Operator as required under the Civil Defence Emergency Management Act 2002 promptly after the Operator is required to provide it to the relevant Minister.
- 9.7 **Reporting and audit of compliance**: The Operator will monitor its performance in relation to health and safety matters and will:
 - (a) no later than 20 Business Days after the first anniversary of the Operations Commencement Date and every third anniversary following that date engage with Maritime New Zealand and

undertake a 'MOSS' audit. The Operator will, as part of each 'MOSS' audit, review and certify its compliance with:

- (i) the Authorisations;
- (ii) Relevant Health and Safety Legislation; and
- (iii) the health and safety provisions in this Agreement;
- (b) procure that any such audit is conducted in accordance with best practice and the current industry standards that apply at the time of the audit;
- (c) provide to GW a copy of any certificate, report and/or presentation of findings, outcomes and/or recommendations resulting from any self-monitoring, assessment or evaluation conducted by the Operator as required under the Emergency Legislation; and
- (d) permit and co-operate with any health and safety audits that GW undertakes in relation to the Services.

10. BUSINESS PLAN

- 10.1 **Approved plan**: The Initial Business Plan will apply and be the Approved Business Plan until a revised Business Plan is submitted to GW and approved by the Management Committee under paragraph 5 (Finalisation of plans) of schedule 7 (Business plan).
- 10.2 Implementation: The Operator will, without limiting the obligations of the Operator under this Agreement, implement the relevant Approved Business Plan in accordance with the provisions of this Agreement.

11. CHANGE IN LAW

- 11.1 **Compliance costs**: If there is a Change in Law after the Appointment Date that results in a direct and demonstrable increase or reduction in the costs to the Operator of performing its obligations under this Agreement (the **Operator Compliance Costs**), then if the Change in Law results in:
 - (a) an increase in the Operator Compliance Costs, then the Operator will be entitled to an adjustment to the Services Payment to compensate it for such increase if and to the extent that the negative Net Financial Impact of the Change in Law over the remaining Initial Term will exceed (which amount will be indexed using the Index Multiplier on the basis specified in paragraph 3.2 of schedule 8 (Payments)); and
 - (b) a reduction in the Operator Compliance Costs, then GW will be entitled to an adjustment to the Services Payment to reimburse it for such reduction if and to the extent that the positive Net Financial Impact of the Change in Law over the remaining Initial Term will exceed (which amount will be indexed using the Index Multiplier on the basis specified in paragraph 3.2 of schedule 8 (Payments)).
- 11.2 **Notification**: If clause 11.1 applies, then:
 - (a) the Operator may notify GW that it wishes to seek Change in Law compensation, or
 - (b) GW may notify the Operator that it wishes to seek Change in Law reimbursement,-

and any such notice will identify the Change in Law to which the notice relates and will be provided as soon as reasonably practicable after the party becomes aware of the Change in Law.

- 11.3 **Supporting documents**: The Operator will, following issue of a notice under clause 11.2, provide to GW:
 - (a) a detailed calculation of the Net Financial Impact of the Change in Law (whether positive or negative) determined in accordance with paragraph 7 (Net financial impact) of schedule 9 (Variations) together with supporting evidence of such calculation; and
 - (b) such other information as GW may request in relation to the impact of the Change in Law on the Operator Compliance Costs.
- 11.4 **GW** assessment: GW will, following the receipt of information required under clause 11.3, determine (acting reasonably):
 - (a) whether it is satisfied that a Change in Law has occurred and, if so, whether the positive or negative Net Financial Impact of the Change in Law will exceed the threshold specified in clause 11.1(a) or 11.1(b) (as applicable); and
 - (b) if GW is satisfied as to the matters specified in clause 11.4(a), the amount of the Net Financial Impact of the Change in Law and the corresponding adjustment to be made to the Services Payment payable to the Operator in accordance with schedule 8 (Payments).
- 11.5 **GW extension period**: If GW extends the Term under clause 3.2, then any:
 - (a) Change in Law compensation paid to the Operator by GW; or
 - (b) Change in Law reimbursement reimbursed to GW by the Operator,-

under this clause 11, will be subject to an adjustment to reflect the length of the applicable GW Extension Period and the extent to which the relevant Change in Law continues to result in an increase or decrease in Operator Compliance Costs. The parties will comply with clauses 11.2 to 11.4 (inclusive and amended as necessary) in relation to any adjustment under this clause 11.5.

11.6 **Dispute**: If GW and the Operator are in dispute over any matter arising under this clause 11, then either party may refer the matter for resolution or determination in accordance with the Dispute Resolution Procedure, with GW having the right to require that the dispute be determined by an expert under clause 33.4.

12. VARIATIONS

- 12.1 **GW**: GW may, by no less than 8 weeks' written notice to the Operator, require a Variation to the Services to be provided or obligations to be performed by the Operator under a Services Document in accordance with schedule 9 (Variations).
- 12.2 **Operator**: The Operator may propose or request a Variation to the Services or other obligations of the Operator under a Services Document in accordance with schedule 9 (Variations).

13. GW ASSETS

- 13.1 **GW** assets: The GW Assets (if any) for this Agreement as at the Appointment Date are specified in the Contract Particulars. GW may include or remove an asset from the GW Assets by written notice to the Operator.
- 13.2 **Availability of GW assets**: GW will make available to the Operator the GW Assets (if any) in accordance with the provisions of this Agreement.

14. SUBCONTRACTING

- 14.1 Consent to subcontract: The Operator will not subcontract or delegate the performance of any of its obligations under a Services Document without the prior written approval of GW (such approval not to be unreasonably withheld or delayed). GW may approve the terms of a specific subcontract or delegation, or a class or type of subcontracts or delegations in the Business Plan or otherwise in writing.
- 14.2 **No release**: The Operator acknowledges and accepts that neither the entry into any subcontract, nor any approval by GW under clause 14.1, will relieve or release the Operator from liability for the performance of any of its obligations under any Services Document.
- 14.3 Ongoing responsibility: The Operator is, and remains, fully liable for all work carried out by a subcontractor, all materials used by a subcontractor, and for any act or omission on the part of a subcontractor, whether or not GW has given approval for, or is aware of, the Operator's engagement of that subcontractor. Failure by a subcontractor to comply with the obligations of the Operator under a Services Document is a breach or failure by the Operator.
- 14.4 Subcontract terms: If the Operator subcontracts the performance of any of its obligations under a Services Document, then the Operator will procure that the applicable subcontract is entered into in accordance with the contractual restrictions and requirements in schedule 11 (Restrictions on Operator).
- 14.5 **Termination of subcontract**: Despite any approval given by GW under clause 14.1, if GW, acting reasonably, considers that:
 - a subcontractor's performance of any aspect of the Services is materially deficient, and such
 deficiency is not remedied by the date that is 20 Business Days after GW notifies Operator in
 writing of the deficiency; or
 - (b) the subcontractor or a member of the subcontractor's personnel has engaged in conduct that:
 - (i) breaches any Applicable Law or any Authorisation;
 - (ii) exposes, or may reasonably be expected to expose, GW to any claim or liability; or
 - (iii) may bring GW into disrepute,-

then GW:

- (c) will consult with the Operator about the applicable subcontracting matter; and
- (d) to the extent GW is not satisfied with the outcome of its consultation with the Operator, may notify the Operator and the Operator will, if notified by GW under this clause 14.5, remove and replace the subcontractor or relevant subcontractor personnel without delay.

15. RECORDS, ACCOUNTS AND AUDIT

- 15.1 **Records**: The Operator will ensure that it maintains in its possession and control, accurate, up-to-date and complete Records to a standard that would be expected of a prudent, appropriately qualified, competent and efficient provider of services the same as or similar to the Services (and that each of the Operator's subcontractors does the same).
- 15.2 **Reconciliation**: The Operator will, without limiting clause 15.1, ensure that the Records maintained will provide sufficient detail to enable GW to reconcile those records with the financial reports, invoices, performance data and other information that is provided by the Operator to GW under this Agreement.

15.3 Access to and availability of records

- (a) The Operator will make the Records available to GW or the Auditor for inspection in the Wellington office of the Operator for the purposes of:
 - (i) verifying or auditing any information provided to GW under this Agreement; and
 - (ii) verifying compliance by the Operator with this Agreement; or
 - (iii) GW complying with its statutory obligations or functions.
- (b) GW will provide no less than 3 Business Day's written notice (or no less than 5 Business Days' written notice where the Records are known by GW to be physically archived and not available in electronic form) to the Operator of any inspection to be performed under this clause 15.3.
- (c) GW will, in conducting an inspection under this clause 15.3:
 - (i) comply with the reasonable security and workplace health and safety requirements of the Operator while performing the inspection; and
 - (ii) minimise any disruption to the Operator's business.
- (d) GW may take copies of such Records or, where it is not practical or convenient for GW to take such copies, the Operator will provide them to GW on request.
- 15.4 **Format**: The Operator will hold and make available to GW all Records required to be maintained under this clause 15 in a standard electronic format and made available to GW in hard copy, on request by GW.
- 15.5 **Security of records**: The Operator will store all Records in accordance with good commercial practice and in a manner which reasonably ensures their continued safety from destruction or loss and their confidentiality. If the Records are held in electronic form, then the Operator will ensure that they are backed-up and copied in accordance with good commercial practice for the retention and safety of records of such a nature, and in a manner that ensures that they can be readily restored and retrieved if the original Record is lost or damaged.
- 15.6 **Ownership and return of records**: Without limiting clause 15.3 but subject to schedule 12 (Transition-out services), the parties acknowledge and accept that the Records are owned by the Operator. The Operator will, during the End of Term Period and on termination of this Agreement, provide to GW:

- (a) full and complete details of what Records are held by the Operator; and
- (b) all such Records as are requested by GW.
- 15.7 **Public Records Act**: GW may, without limiting any other provision of this Agreement, require the Operator to provide to GW a copy of any Records where receipt of such Records may be required for GW to comply with any of its obligations under the Public Records Act 2005 and the Local Government Official Information and Meetings Act 1987.
- 15.8 **Asset register**: The Operator will maintain and hold an accurate, up-to-date and complete register of all of the assets (including the Intellectual Property Rights and Data Systems) used by the Operator. The Operator will, with each Business Plan or on request by GW, provide a copy of such asset register to GW in a form acceptable to GW (acting reasonably).
- 15.9 **Cost of audit**: Each party will be liable for, and will pay, its own costs in relation to any audit undertaken in accordance with this clause 15 unless the audit reveals a failure by the Operator to comply with the provisions of this Agreement, in which case the Operator will be liable for, and will pay to GW on demand, such amount as will reimburse GW for its actual and reasonable costs in performing any audit.
- 15.10 **Inspection rights**: GW may, in addition to any other right under this Agreement:
 - (a) inspect and audit any Services and any GW Asset (if any) or Operator Asset at all times including undertaking any site and facility visits;
 - (b) inspect and test the materials used or proposed to be used in the manufacture, construction or maintenance of any GW Asset (if any) or Operator Asset or the performance of any Services:
 - (c) reject any material or workmanship not conforming with the requirements of this Agreement; and
 - (d) require the Operator to provide any technical information, performance details of operational trials, and any other information to assist GW to progressively ascertain the performance of the Operator.
- 15.11 **Access**: The Operator will make available such reasonable resources, suitable office space and equipment (including access to its IT systems) to enable GW to exercise its rights under this clause 15. This may include, if required, providing documents and data in a readable electronic format in English.

15.12 Assistance with GW audit: The Operator will:

- (a) give GW (and any other person authorised in writing by GW) access to any premises or facilities where any Records are held or Services are performed and permit those persons to inspect, review and audit the Records and any GW Asset (if any) or Operator Asset and the performance of any Services in accordance with GW's instructions;
- (b) provide full co-operation and assistance to the persons conducting any such inspection, review or audit; and

- (c) answer all inquiries and provide complete and accurate information regarding the Records, the any GW Asset (if any) or Operator Asset and the performance of the Services upon request.
- 15.13 **Implementation of GW review or audit findings**: If any inspection, review or audit by GW finds that the Operator is in breach of its obligations under this Agreement or reveals material deficiencies in the Services that are caused by the failure of the Operator to perform its obligations in accordance with this Agreement, then, in addition to any other remedy GW may have, the Operator will resolve any such findings as soon as practicable.

16. PAYMENTS TO THE OPERATOR

- 16.1 **Payment categories**: GW will pay the Services Payment to the Operator in accordance with schedule 8 (Payments) and this clause 16.
- 16.2 **Direct payment by GW on behalf of the Operator**: GW may pay direct to any supplier of the Operator, on behalf of the Operator, any amount payable under the relevant supply agreement, with the approval of the Operator (not to be unreasonably withheld). Any such amount paid by GW is in satisfaction of the obligation of GW to pay an amount to the Operator under this Agreement in relation to that supply and the Service Payment will be reduced by the amount of such payment.

16.3 Invoice disputes

- (a) Payment of any money by GW to the Operator is not evidence of the value of the obligations of the Operator under this Agreement or evidence that such obligations have been performed in accordance with the provisions of this Agreement, but is a payment on account only.
- (b) If GW disagrees with an amount (or a portion of an amount) claimed in an invoice or any amount alleged to be due to or from the Operator (a **Disputed Amount**), then, without prejudice to any right or remedy of GW under or in connection with this Agreement, GW may notify the Operator of the Disputed Amount and the nature of the dispute no later than 10 Business Days after receipt of the relevant invoice by GW.
- (c) GW may withhold payment of a Disputed Amount until the dispute is resolved.
- (d) The Operator will promptly acknowledge receipt of GW's notice and both parties will use all reasonable endeavours to promptly resolve the invoice dispute. If the invoice dispute is not resolved by the date that is 10 Business Days after GW's notice, then it will then be resolved in accordance with the Dispute Resolution Procedure, with GW having the right to require that the dispute be determined by an expert under clause 33.4.
- (e) On resolution of the dispute, the party liable to pay a sum will pay it by the date that is 5 Business Days after the later of the date of settlement of the dispute and the original due date for payment of the Disputed Amount, together with, if GW is liable to pay such sum to the Operator, interest calculated in accordance with clause 16.6. The recipient will issue a new Tax Invoice or credit note (as the case may be) to reflect the resolution of the dispute. No interest will be payable by GW to the Operator if it is resolved that a Disputed Amount is payable to GW.
- (f) The existence of a dispute as to payment does not relieve the Operator from its obligations under this Agreement while that dispute remains unresolved.

16.4 Set off and suspension

- (a) GW may deduct from any amount that would otherwise be due and payable by GW to the Operator any overpayment made to the Operator, any amount which is payable by the Operator to GW, any payment, credit, refund or other amount which GW is entitled to claim from the Operator and any amount which GW is obliged to withhold or deduct, by Applicable Law, from any amount (including any relevant taxable amount that GW is required to deduct or withhold and pay to the New Zealand Inland Revenue Department on account of any tax).
- (b) If any deduction made under this clause 16.4 is insufficient to satisfy the relevant amount owed to GW, then the Operator will be liable for, and will pay to GW on demand such balance remaining unpaid to GW.
- (c) If a Default Event or Termination Event occurs, then GW may, by written notice to the Operator, suspend payment of such part of any of the amounts payable by GW under this Agreement that GW considers to be required to compensate it for any Loss of GW that may arise as a result of a Default Event or Termination Event, provided that such suspension of payment may not be made to the extent that such Loss was caused by any default or negligence of GW.
- (d) GW's exercise of its rights under this clause 16.4 does not affect any other right or remedy available to GW.
- 16.5 **Entire payment liability**: Except as expressly stated in this Agreement or under any court award or judgment, claim or settlement, the obligation to pay an amount under clause 16.1 and schedule 8 (Payments) will constitute the entire payment liability of GW to the Operator in relation to the Services and the performance of any other obligation of the Operator under or in connection with this Agreement.
- 16.6 **Default interest**: If a party (in this clause 16.6, the **Payee**) does not receive, when due, an amount payable to it under this Agreement (the amount due having been determined net of any rights of set off or deduction of GW), then, without prejudice to any other right exercisable by the Payee, the party obliged to make the payment is to pay interest on that overdue amount (including interest payable under this clause 16.6) at the Default Interest Rate calculated from its due date to the date of its receipt by the Payee (after as well as before judgment). This obligation to pay default interest is to arise without any requirement for notice or demand.
- 16.7 **All payments on business days**: If a payment to be made under this Agreement is due on a day which is not a Business Day, then the due date will be the immediately succeeding Business Day.
- 16.8 **Mode of payments**: Any payment due by either party to the other party under this Agreement is to be made by direct credit on the due date to the bank account of GW or the Operator (as the case may be) as notified by GW or the Operator to the other.

17. INTELLECTUAL PROPERTY

17.1 **Existing intellectual property**: All Intellectual Property Rights owned or licenced or otherwise held by either party and existing prior to the Appointment Date (the **Existing Intellectual Property Rights**) will continue to be owned, licenced to or otherwise held by that party during the Term and afterwards. To avoid doubt, any Intellectual Property Rights held or created by the Operator in

- relation to the electric Vessel known as 'Ika Rere' will be Existing Intellectual Property for the purposes of this Agreement.
- 17.2 Developed intellectual property: All Intellectual Property Rights that are created by the Operator or any of its Representatives in connection with the Services, including all Data (the Developed Intellectual Property Rights) will vest in and be assigned to GW on creation. The Operator will, and will procure that its Representatives will, execute all documents and do all things required to give effect to this clause 17.2.
- 17.3 **Licence**: The Operator grants to GW a royalty free, non-exclusive, transferable, irrevocable and perpetual licence (with the right to sub-license) of the Existing Intellectual Property Rights held by the Operator and used for the purposes of this Agreement (including the Services) for the purposes associated with providing public transport services in the Wellington region. The Operator will, in relation to any licence to use any Existing Intellectual Property Rights referred to in clause 17.1:
 - (a) continue to hold such licence during the Term and afterwards; and
 - (b) take such action as reasonably required to procure the granting of a licence to GW on the terms of this clause 17 to enable GW to use such Existing Intellectual Property Rights.
- 17.4 Restrictions on the Operator granting a licence to any member of the Operator group: The Operator will not grant to any member of the Operator Group any licence to use any Developed Intellectual Property Rights, except with the prior written approval of GW.
- 17.5 **Subcontracts**: The Operator will, unless otherwise agreed in writing by GW and without limiting the provisions of schedule 11 (Restrictions on Operator), ensure that the terms of any subcontract between the Operator and any subcontractor will result in GW having the rights specified in clauses 17.2 or 17.3 for any Intellectual Property Rights used or created by that subcontractor in connection with the performance of the relevant subcontract (the **Third Party Intellectual Property Rights**). This includes (where applicable) the Operator taking such action as reasonably required to procure the granting of a licence to GW on the terms of clause 17.3 to enable GW to use such Third Party Intellectual Property Rights used or created by that subcontractor.

17.6 **Operator relief**: The Operator:

- (a) may request the prior written approval of GW to be relieved of any one or more of its obligations under clause 17.5 (and GW will relieve the Operator of such obligations) if the Operator can demonstrate to the satisfaction of GW (acting reasonably) that the Operator:
 - (i) cannot comply with that obligation because of a genuine refusal by a third party (other than an Operator Associate) to grant the Operator the rights or consents required to comply with that obligation; and
 - (ii) has used all reasonable endeavours to obtain those rights or consents (including, to avoid doubt, investigating the use of an alternative supplier);
- (b) acknowledges and accepts that it will be reasonable for GW to withhold its approval if the Intellectual Property Rights that are the subject of the Operator's claim for relief under clause 17.6(a) are, in the opinion of GW, necessary or desirable:
 - (i) for ensuring the continuity of the Services during or following the termination or expiry of this Agreement;

- (ii) for enabling the ongoing operation of the Business during or following the termination or expiry of this Agreement;
- (iii) for the operation, maintenance or modification of any asset (including, to avoid doubt, any GW Asset) comprised or used in the Business;
- (iv) for safety reasons; or
- (v) to minimise transfer costs or delays on transfer of the Business to any New Operator,and, to avoid doubt, GW may withhold its approval under clause 17.6(a) even though the conditions specified in this clause 17.6(b) are satisfied;
- (c) will maintain an accurate and complete register of any approval requested from GW under clause 17.6(a) in accordance with the relevant records and reporting requirements specified in clause 15 (Records, accounts and audit) and schedule 5 (Planning and management services); and
- (d) ensure that an electronic copy of the register referred to in clause 17.6(c) is securely uploaded and delivered to GW by the date that is 5 Business Days after the Operator receives any approval from GW under clause 17.6(a).
- 17.7 **Transfer of licence**: GW may transfer any licence granted to GW under clauses 17.3 or 17.5 to any person for the purposes associated with providing public transport services in the Wellington region.
- 17.8 **Branding**: GW will determine the branding of the Operator, the GW Assets (if any), the Operator Assets and the Passenger Services (including employee and subcontractor uniforms). GW may require the name of the Operator to be clearly stated on any GW Assets (if any), Operator Assets or other assets (including employee and subcontractor uniforms) used by the Operator in providing the Services in accordance with the specifications of GW. GW may continue to use the name of the Operator on the GW Assets (if any), the Operator Assets or other assets (including employee and subcontractor uniforms) for such period of time following termination or expiry of this Agreement as GW requires during any period of transition to the New Operator. The Operator will promptly remove any GW branding on an Operator Asset that is:
 - (a) sold or leased for use on non-'Metlink' branded services;
 - (b) no longer part of the approved Fleet Register; or
 - (c) no longer used on the Services.
- 17.9 **Licence to Operator**: GW grants to the Operator a non-exclusive, royalty-free licence for the Term to use:
 - (a) the GW Existing Intellectual Property Rights; and
 - (b) any Developed Intellectual Property Rights vested in GW under clause 17.2,-

provided by or on behalf of GW to the Operator for the purposes of the Services, solely for the purpose of performing the Operator's obligations under this Agreement and for no other purpose unless otherwise agreed in writing by GW. The Operator may grant a non-exclusive, royalty-free sub-licence to an Operator Associate to the extent necessary for the performance by the Operator Associate of the obligations of the Operator under this Agreement subject to requirements

equivalent to the requirements of this Agreement in relation to the licence granted by GW to the Operator under this clause 17.9.

- 17.10 **Confidentiality of intellectual property**: Without limiting its obligations under clause 18 (Confidentiality), the Operator:
 - (a) will keep all GW Existing Intellectual Property Rights and Developed Intellectual Property Rights confidential and will not use or disclose any GW Existing Intellectual Property Rights or Developed Intellectual Property Rights except to the extent necessary to perform its obligations under this Agreement; and
 - (b) acknowledges and accepts that GRWC's property in, and rights to, the GW Existing Intellectual Property Rights and Developed Intellectual Property Rights extends to any modification, improvement or addition of or to those GW Existing Intellectual Property Rights or Developed Intellectual Property Rights whether due to, or arising from, improvements effected by the Operator or otherwise.

The obligations under this clause 17.10 will apply only until any GW Existing Intellectual Property Rights or Developed Intellectual Property Rights cease to be proprietary or confidential to GW, other than by reason of any breach by the Operator of its obligations under this Agreement.

- 17.11 **Indemnity**: The Operator is liable for, and indemnifies GW, each GW Associate and any person licenced or otherwise authorised by GW, including any New Operator, (each a **Licensee**) from and against, any Loss that may be suffered or incurred by any or all of them as a result of or in connection with a claim by a third party that any Licensee's or the Operator's use of Developed Intellectual Property Rights, the Operator's Existing Intellectual Property Rights or Third Party Intellectual Property Rights (in this clause 17.11, the **Relevant IP**):
 - (a) infringes any third-party rights (including Intellectual Property Rights and similar personal rights); or
 - (b) gives rise to a right entitling any third party to make a claim against 1 or more of the Licensees whether for the payment of compensation, royalties or otherwise, or to make any attribution or acknowledgement or rectification in relation to the Relevant IP,-

unless the claim is the direct result of a modification made by the relevant Licensee to the Relevant IP.

18. CONFIDENTIALITY

- 18.1 **Confidential information**: The Operator will keep confidential the Confidential Information and will not allow or make:
 - (a) any disclosure of or in relation to any Confidential Information except where permitted under clause 18.2; or
 - (b) use any Confidential Information other than for the purposes of performing the Services or as contemplated by this Agreement.
- 18.2 **Exceptions**: Clause 18.1 will not apply to any disclosure to the extent that the disclosure is:
 - (a) to GW or another person with the prior written approval of GW;

- (b) required by or permitted by a Services Document;
- (c) to its insurers, financiers or an auditor appointed under a Services Document;
- (d) of information that is, at the time, lawfully in the possession of the proposed recipient of the information through sources other than a breach of this Agreement by the Operator;
- required by Applicable Law or by a lawful requirement of any Governmental Agency or recognised stock exchange having jurisdiction over the Operator and then only as permitted under clause 18.3;
- (f) required in connection with legal proceedings, arbitration or expert determination relating to any Services Document or for the purpose of advising the Operator in relation to any Services Document; or
- (g) of information that is, at the time, generally and publicly available other than as a result of breach of confidence by the Operator.

18.3 Additional obligations:

- (a) The Operator will, before any disclosure by the Operator in reliance on clause 18.2(e):
 - (i) as soon as reasonably practicable notify GW giving full details of the circumstances of the proposed disclosure in reliance on clause 18.2(e) and of the relevant information to be disclosed; and
 - (ii) take all reasonable steps to preserve the confidentiality of the information being disclosed (for example, by making an application for an order that the information be disclosed only in a confidential exhibit or in proceedings heard in closed court).
- (b) If the Operator discloses information under clause 18.2(b) or to any insurer (appointed by the Operator) under clause 18.2(c), then:
 - (i) it will ensure that such information is:
 - (1) kept confidential by the recipient of the information; and
 - (2) only used for the purposes for which GW has provided its prior written approval; and
 - (ii) GW may at any time request the Operator to (and the Operator will immediately) procure that the recipient of the information signs a confidentiality undertaking in favour of GW agreeing to be bound by substantially the same confidentiality obligations as apply to the Operator under this clause 18.
- (c) The Operator will remain liable at all times for any misuse or failure to keep information confidential in accordance with clause 18.3(b).

18.4 **GW - LGOIMA**

(a) The Operator acknowledges and accepts that GW is subject to the Local Government Official Information and Meetings Act 1987 and may be required to disclose information that relates to the Operator or is provided by the Operator and designated by the Operator as confidential (the **Operator Confidential Information**).

(b) If GW is obliged to disclose Operator Confidential Information under the Local Government Official Information and Meetings Act 1987, then GW will use reasonable endeavours to notify the Operator of such obligation to disclose as soon as reasonably practical.

19. PRIVACY

- 19.1 **Compliance**: Without limiting the other obligations of the Operator, the Operator will comply with and will procure that each Operator Associate complies with any protocol, guidelines or direction issued by GW regarding how to comply with the Privacy Obligations in relation to any Passenger Services Personal Information.
- 19.2 **Contractors etc.**: The Operator will procure that any contractor to the Operator that receives or has access to any Passenger Services Personal Information enters into a formal written agreement with the Operator containing terms no less onerous on the contractor than the terms of this clause 19 are on the Operator.

20. DATA SYSTEMS SECURITY

- 20.1 **GW systems and software**: The Operator will, in using or accessing any GW System:
 - (a) use and access the GW Systems only for the purpose of performing its obligations under this Agreement, and for any other purpose expressly authorised by GW in writing;
 - (b) ensure that the use of and access to the GW Systems is limited to those Operator Employees authorised by GW in writing;
 - (c) comply with Good Industry Practice in relation to its security and operational practices;
 - (d) comply with all GW directions and policies relating to the GW Systems and information security:
 - (e) immediately notify GW if it becomes aware of or suspects any unauthorised use of or access to GW Systems; and
 - (f) enter into such agreements or give such undertakings as may be required by GW.
- 20.2 Key software systems: If requested by GW prior to the end of the Term and subject always to the Privacy Laws, then the Operator will use reasonable endeavours to transfer or make available to GW (at no cost if the system is owned by a member of the Operator Group) the key software systems relating to the Services including passenger counting, customer feedback, staff training, and any other systems specified by GW.
- 20.3 **Ownership of data and licence to use data**: The Operator acknowledges and accepts that clauses 17.2 and 17.9 apply to Data and governs, amongst other things, the ownership of Data and the Operator's right to use Data.
- 20.4 Data security measures: The Operator will:
 - do all things that a reasonable and prudent person would do to ensure all Data is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person;

- (b) provide protective measures for Data that are no less rigorous than Good Industry Practice and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, Data including:
 - (i) protective measures to keep the Data Systems safe and secure from, and to mitigate their functionality and performance from being reduced by:
 - (1) unauthorised access (including hacking for fare evasion);
 - (2) denial of service attacks; or
 - (3) other attacks or abuse;
 - having adequate intrusion detection and monitoring systems to detect Data Security
 Breaches when they occur and to contain and minimise any resulting adverse impacts;
 and
 - ensuring all Data is stored and transmitted securely in accordance with the Data Security Obligations and Good Industry Practice;
- (c) without limiting clause 20.4(a) or 20.4(b), comply with all security regulations, standards, guidelines or directions as are specified in the Services Documents or given by GW regarding any aspect of security of, or access to, Data or the Data Systems; and
- (d) without limiting clause 20.4(a), 20.4(b), or 20.4(c), regularly monitor, review and update its data security measures to respond to the evolving security risk environment.
- 20.5 **Data security breach**: If the Operator becomes aware of any actual, threatened or suspected:
 - (a) action taken through the use of computer networks that result in an actual or potentially adverse effect on the Data Systems or the Data;
 - (b) unauthorised or accidental access to, use by or disclosure to a third party of, or misuse, damage, modification, alteration or destruction by any person relating to, the Data Systems or the Data; or
 - (c) action that prevents GW or the Operator from accessing the Data Systems or Data on either a temporary or permanent basis,-

(each, a Data Security Breach), then the Operator will immediately:

- (d) (and, in any event, no later than 2 hours after becoming aware of the Data Security Breach) provide written notice to GW (or its nominee) of the Data Security Breach;
- take all steps required to promptly remedy the Data Security Breach and reinstate any affected Data Systems or Data; and
- (f) comply with any other directions issued by GW in connection with the Data Security Breach including in relation to:
 - notifying the 'Computer Security Incident Response Team' of GW and any other person notified by GW to the Operator;
 - (ii) obtaining evidence about how, when and by whom the Data Systems or Data have or may have been compromised, providing such evidence to GW on request, and

- preserving and protecting that evidence for a period of up to 12 months (or such longer period notified by GW);
- (iii) implementing security improvements to the Business (including any mitigation strategies) to reduce the impact of the Data Security Breach or the likelihood or impact of any future similar incident;
- (iv) preserving and protecting Data (including as necessary reverting to any backup or alternative site or taking other action to recover Data) and the Data Systems; and
- (v) providing all assistance required by GW to reinstate any affected parts of the IT Environment of GW or any GW Associate.
- 20.6 **Subcontractors**: The Operator will, without prejudice to clause 14 (Subcontracting), ensure that:
 - (a) all subcontracts which may allow or provide access to Data Systems or Data contain no provisions that are inconsistent with this clause 20;
 - (b) only Operator Associates who require access to the Data Systems or Data in order to perform obligations under the Services Documents are permitted to access and use the Data Systems or Data (as applicable); and
 - (c) all Operator Associates who have access to the Data Systems or Data comply with this clause 20.

21. ANNOUNCEMENTS, PUBLIC RELATIONS AND MEDIA

21.1 **Public announcements**: The Operator will not make or issue any press or public announcement in connection with this Agreement or the subject matter of it except with the prior written approval of GW or in accordance with this clause 21.

21.2 Permitted announcements

- (a) The Operator may only make or issue such press or public announcements if the Operator:
 - (i) consults with GW prior to the making or despatch of the public announcement;
 - (ii) so far as may be reasonable, takes account of the comments of GW in relation to the content, timing and manner of the making or despatch of the public announcement; and
 - (iii) does not communicate any Confidential Information relating to GW or its business except in accordance with clause 18 (Confidentiality) and protects the interests of GW.
- (b) The Operator may make or issue press or public announcements in relation to the development and operation of the electric Vessel known as 'lka Rere' provided always that such press or public announcements do not communicate any Confidential Information relating to this Agreement, the Services or GW or its business except in accordance with clause 18 (Confidentiality) and protects the interests of GW.

21.3 Public relations and media: The Operator will:

- refer to GW all media enquiries in relation to the Services including enquiries regarding the relationship of the Operator with any Governmental Agency and the Transport Agency (in relation to the delivery of the Services); and
- (b) co-operate with GW in the management of stakeholders, public affairs and media issues as reasonably required.

22. INDEMNITY

22.1 Operator indemnity

- (a) The Operator is liable for, and indemnifies GW and each GW Associate from and against, any Loss that may be suffered or incurred by GW and each GW Associate as a result of or in connection with:
 - (i) any representation or warranty made by the Operator or any Operator Associate under a Services Document being incomplete, inaccurate or misleading;
 - (ii) any fraud or theft by, or default or negligence of, the Operator or any Operator Associate, including the occurrence of a Default Event or a Termination Event;
 - (iii) any personal injury or death or damage to property or infringement of Intellectual Property Rights:
 - to the extent caused or contributed to by the Operator or any Operator Associate; or
 - (2) to the extent arising as a consequence of the provision of the Services or the performance or non-performance by the Operator or any Operator Associate of its obligations under a Services Document;
 - (iv) any loss or damage suffered by passengers or by any other third party using or affected by the Services to the extent caused or contributed to by the Operator or any Operator Associate;
 - (v) any Contamination or Pollution to the extent caused or contributed to by the Operator or any Operator Associate on and from the Operations Commencement Date.
- (b) The indemnity in clause 22.1(a) does not apply to the extent the Loss is caused or contributed to by the default or negligence of GW or a GW Associate under a Services Document.
- 22.2 **Mitigation**: GW will use, and will procure that any relevant GW Associate uses, reasonable endeavours to mitigate the Loss that may be incurred or sustained by each of them respectively for which they are indemnified under clause 22.1.
- 22.3 **Insurance not to limit indemnity**: To avoid doubt, no provision of clause 26 (Insurance), or the holding of any insurance policy required by clause 26 (Insurance), will limit the Operator's liability in relation to any indemnity contained in any Services Document.

22.4 **No requirement for expense before enforcement of indemnity**: The indemnity in clause 22.1 will apply, and be enforceable by GW, regardless of whether or not GW or any GW Associate has actually made payment for, or in relation to, any Loss.

22.5 Exclusion of liability for consequential or indirect loss

- (a) Subject to clause 22.5(b), but otherwise despite any other provision of this Agreement, the liability of a party under or in connection with this Agreement (whether in contract, tort (including negligence), under any indemnity or otherwise) does not include, and neither party is entitled to make any claim in relation to, liability for Consequential or Indirect Loss.
- (b) This clause 22.5 does not operate to limit or restrict the liability of a party in relation to:
 - (i) Consequential or Indirect Loss recovered from a third party or that would have been recovered from a third party had the party diligently pursued a claim against the third party (provided that a party is not required to pursue such a claim where doing so is uneconomic);
 - (ii) Consequential or Indirect Loss arising from any criminal acts, fraud or wilful misconduct on the part of a party;
 - (iii) non-contractual liabilities to third parties under Applicable Law including in relation to property damage, personal injury, nervous shock or death;
 - (iv) liability of the Operator for Abatements;
 - (v) liability incurred by GW or a GW Associate (including third party costs) in rectifying any damage or defect in the GW Assets (if any), or otherwise reinstating, repairing or rectifying the GW Assets (if any), in each case for which the Operator is liable under any Services Document;
 - (vi) amounts:
 - (1) payable to the Operator or an Operator Associate under an insurance policy in relation to the event or circumstances giving rise to the Loss; or
 - (2) that would have been payable to the Operator or an Operator Associate in relation to the event or circumstances giving rise to the Loss but for a failure by the Operator or an Operator Associate to comply with a Services Document; and
 - (vii) liability for any insurance excess or any additional cost or expense payable under any insurance policy caused by or arising out of or in connection with any breach of a Services Document or the relevant insurance policy by the Operator or an Operator Associate.
- (c) To avoid doubt, nothing in this clause 22.5 is intended to limit the obligations of:
 - (i) GW under this Agreement in relation to the payment of the Services Payment; or
 - (ii) the Operator under this Agreement in relation to the payment of the Daily Fare Reconciliation Payment, the Mātiu / Somes Island Service Rebate or the Cancelled Service Rebate.

22.6 Release

- (a) Subject to the other provisions of this Agreement, the Operator releases, to the maximum extent permitted by Applicable Law, GW and each GW Associate from all Loss caused by, arising out of or in connection with:
 - (i) the provision of the Services;
 - (ii) the performance of the Services Documents by the Operator or any Operator Associate; and
 - (iii) the use or occupation by the Operator or any Operator Associate of any GW Assets.
- (b) The release in this clause 22.6 will not apply to the extent that the Loss is caused by, or arises out of or is contributed to by, fraud, breach, negligent act or negligent omission on the part of GW or an GW Associate under a Services Document.
- 22.7 **Lost or damaged assets**: If, at any time during the Term any Vessel or Non-Vessel Asset is lost or damaged beyond economic repair (the **Lost or Damaged Asset**), then the Operator will:
 - (a) immediately notify GW of that loss or damage;
 - (b) take all action reasonably practicable to avoid or mitigate the effect of the Lost or Damaged Asset being lost or damaged; and
 - (c) either:
 - (i) replace the Lost or Damaged Asset with an equivalent asset, with such replacement asset to be of equal or better specification than the replaced Lost or Damaged Asset as it existed immediately prior to it being lost or damaged, and that otherwise complies with the requirements of this Agreement for a Vessel or (if applicable) a Non-Vessel Asset; or
 - (ii) if the Lost or Damaged Asset is a GW Asset, pay to GW such amount as will reimburse GW for such loss or damage.
- 22.8 **Repair generally**: The Operator will repair and reinstate any other damage to any Vessel or Non-Vessel Assets, unless otherwise expressly provided for in this Agreement.

23. FORCE MAJEURE

- 23.1 **Definition**: In this Agreement, **Force Majeure Event** means:
 - (a) explosion, or any unforeseeable or irresistible action of natural forces including fire, flood, tsunami, earthquake, land slide or volcanic eruption;
 - (b) an Operational Cancellation Event;
 - strikes or other industrial action (other than strikes, lockouts or labour disputes involving primarily some or all of the Operator Employees or any employees of a member of the Operator Group);
 - (d) ionising radiation or nuclear accident;
 - (e) act of public enemy, war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic or pandemic;

- (f) embargo, water shortage or a shortage or interruption in the Wellington electricity supply provided the Operator establishes that the shortage or interruption is more than a localised deficit (ie, at a substation level) in supply and is a genuine shortage at origin or destination;
- (g) declarations under the Civil Defence Emergency Management Act 2002 of a state of national emergency or of local emergency in respect of the Wellington region;
- (h) a breach by the Access Provider under the Access Agreement that is not a result of the breach of the Access Agreement or negligence of the Operator or an Operator Associate; or
- (i) any other event or circumstance that GW determines, by written notice to the Operator under this Agreement, to be a Force Majeure Event for the purposes of this Agreement (including, to avoid doubt, the Operator responding to a maritime emergency within the operational limits for the applicable Vessel).

However, the following events and circumstances will not be Force Majeure Events on which the Operator is entitled to rely:

- (j) any adverse weather conditions, unless such weather conditions constitute Operational Cancellation Event;
- (k) an event that could have been prevented, avoided, overcome, remedied or mitigated by the Operator by:
 - (i) implementation of contingency plans; or
 - exercising a standard of care and diligence consistent with that of a prudent and competent person under the circumstances (including the expenditure of reasonable sums of money and the application of technology known to such a prudent and competent person);
- (I) any event or circumstance to the extent caused or contributed to by the default or negligence of the Operator or other member of the Operator Group;
- (m) any act or omission of a subcontractor or supplier of the Operator unless and to the extent that the subcontractor or supplier was itself affected by an event, which if it occurred in relation to the Operator would have been a Force Majeure Event; or
- (n) the insolvency of the Operator or other member of the Operator Group, or a subcontractor or supplier of the Operator or other member of the Operator Group, or lack of funds for any reason (except as a direct result of GW failing to pay any amount due and payable by GW to the Operator in accordance with this Agreement).
- 23.2 **No default**: No party will be deemed to be in default of this Agreement to the extent that a Force Majeure Event has caused such default. If and to the extent that the Operator is prevented or delayed from performing any of its obligations under this Agreement due to the occurrence or existence of a Force Majeure Event, then:
 - (a) the occurrence of the Force Majeure Event will not be taken into consideration when evaluating the performance of the Services under schedule 10 (Performance) except to the extent expressly provided in schedule 10 (Performance); and

(b) (without limiting clause 23.5(b)) GW may adjust any Performance Indicator, Abatement (or any Maximum Abatement Amount in relation to an Abatement) to reflect the effect of a Force Majeure Event in a manner that is reasonable having regard to the nature of the Force Majeure Event and the consequential effect on performance.

23.3 Notice

- (a) If a Force Majeure Event affects a party (the Affected Party), then the Affected Party will as soon as practicable after it becomes aware of the occurrence of that Force Majeure Event, and, in any event, no later than 5 Business Days after the occurrence of the Force Majeure Event provide written notice to the other party (a Force Majeure Event Notice) specifying:
 - (i) the nature of the Force Majeure Event;
 - (ii) the obligations of the Affected Party which the Affected Party is prevented from performing or complying with by that Force Majeure Event (the **Affected Obligations**);
 - (iii) the extent to which the Force Majeure Event prevents the Affected Party from performing or complying with the Affected Obligations (the **Precluded Extent**) including, if the Affected Party is the Operator, any relief sought in relation to any Abatement and an estimate of the impact on the Performance Indicators attributable to the Force Majeure Event;
 - (iv) the reasons why the Affected Party considers that the occurrence of the Force Majeure Event prevents the Affected Party from performing or complying with the Affected Obligations to the Precluded Extent;
 - the expected duration of any delay arising directly out of the occurrence of the Force Majeure Event; and
 - (vi) the measures proposed to be adopted to remedy or minimise the effects of the Force Majeure Event.
- (b) An Affected Party will, no later than 20 Business Days after the Force Majeure Event has ceased to occur, provide to the other party all necessary supporting evidence of the matters referred to in clause 23.3(a).
- (c) If, following the issue of a notice under clause 23.3(a), 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, then it will give written notice of that further information to the other party as soon as practicable.
- 23.4 **Objection to force majeure event notice**: If a party that receives a Force Majeure Event Notice does not consider that a Force Majeure Event has occurred in relation to the Affected Party, then it may:
 - refer the matter to the Dispute Resolution Procedure no later than 5 Business Days after receiving that Force Majeure Event Notice; or
 - (b) exercise such other rights as are available to it under this Agreement.
- 23.5 **Effect of notice**: If the Affected Party complies with clause 23.3 then, subject to the outcome of any Dispute Resolution Procedure:

- (a) the Affected Party's obligation to comply with, or perform, the Affected Obligations as a result of it being unable to perform those Affected Obligations will be suspended to the Precluded Extent, for the time (the **Period of Suspension**) the Affected Party is prevented from complying with, or performing, those Affected Obligations as a direct result of that Force Majeure Event;
- (b) from the date of service of the Force Majeure Event Notice each party's obligation to perform any obligations dependent on the Affected Obligations (including any payment obligations directly referable to the Affected Obligations (other than in relation to any payment of the Services Payment)) will be suspended until the Affected Party can resume full performance of its obligations; and
- (c) if the Affected Party is the Operator and the Services are adversely affected by the Force Majeure Event, then the Services Payment will not be reduced or increased to reflect the extent and standard to which such Services are being provided except:
 - to the extent the Operator is granted relief in accordance with schedule 10 (Performance); and
 - (ii) as provided in clause 23.6(d).
- (d) To avoid doubt, the Term will not be extended by the Period of Suspension.

23.6 **Mitigation or avoidance**: During the Period of Suspension:

- (a) the Affected Party will do everything that is practicable to avoid or mitigate the effect of it being prevented from complying with, or performing, the Affected Obligations;
- (b) the Affected Party will take all action reasonably practicable to mitigate any Loss suffered by the other party or any passengers as a result of the Affected Party's failure to carry out its obligations under this Agreement;
- (c) each party will endeavour to agree such reasonable arrangements with the other party, that both parties believe to be prudent, to avoid or mitigate the Affected Party's inability to perform the Affected Obligations; and
- (d) to the extent that the action taken by the Affected Party to mitigate the effect of it being prevented from complying with, or performing the Affected Obligations:
 - results in a cost saving arising in relation to items which in the normal course would fall
 within the scope of services attributable to the Services Payment (taking into account
 any increased costs in complying with any mitigation plan agreed under this
 clause 23.6 or clause 23.8(a)); and
 - (ii) is recoverable under any insurance policy held by the Affected Party (the Insured Amount),-

then that cost saving or an amount equivalent to the Insured Amount (as the case may be) will be reimbursed to GW by the Operator.

- 23.7 **End of period of suspension**: Subject to clause 23.8, immediately following the date on which the Force Majeure Event ceases or no longer prevents the Affected Party from performing or complying with the Affected Obligations to the Precluded Extent, the Affected Party will:
 - (a) provide written notice to the other party to that effect, identifying the relevant date; and
 - (b) recommence performance of all of its obligations under this Agreement on the terms existing immediately prior to the occurrence of the Force Majeure Event.

23.8 Termination

- (a) If a Force Majeure Event occurs and continues to adversely affect provision by the Operator of 50% or more of the Ferry Services for a period of not less than 20 Business Days from the date of service of the relevant Force Majeure Event Notice on GW, then the Operator and GW will promptly meet to discuss and agree in writing (each acting reasonably) appropriate measures to:
 - (i) mitigate, avoid or overcome the effects of the Force Majeure Event in accordance with clause 23.6;
 - (ii) facilitate (to the extent reasonably practicable) the continued performance of this Agreement; and
 - (iii) otherwise manage the risks and effects of the Force Majeure Event.
- (b) GW and the Operator will promptly implement any measures agreed by them under clause 23.8(a) in accordance with the terms of such agreement.
- (c) If:
 - (i) GW and the Operator are unable to agree on the measures referred to in clause 23.8(a) by the date that is 60 Business Days after the date of service of the relevant Force Majeure Event Notice on GW; and
 - (ii) the Force Majeure Event is continuing to adversely affect provision by the Operator of 25% or more of the Ferry Services,-

then GW may give written notice of termination of this Agreement to the Operator (a Force Majeure Event Termination Notice).

- 23.9 Payment to the Operator: If GW gives a Force Majeure Event Termination Notice under clause 23.8(c), then termination will take effect from the date specified in GW Force Majeure Event Termination Notice (which will be no more than 12 months and no fewer than 20 Business Days after the date of receipt by the Operator of the Force Majeure Event Termination Notice) (such date being the Force Majeure Event Termination Date). Subject to clause 32.3, GW will, no later than 30 Business Days after the date that the amount payable under this clause 23.9 is either agreed with the Operator or determined in accordance with the Dispute Resolution Procedure, pay to the Operator (without double counting):

- (b) such reasonable costs, properly and demonstrably incurred by the Operator as a direct result of termination by GW of this Agreement under this clause 23.9, including any costs incurred by the Operator and agreed with GW as a result of the early termination of any applicable lease arrangements, costs of redundancy in relation to Senior Management and such other reasonable costs incurred by the Operator as a result of the early termination of any contractual arrangements, but only to the extent that:
 - (i) such costs are incurred in connection with providing the Services;
 - (ii) such costs are incurred under agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable arms' length commercial terms; and
 - (iii) the Operator and any relevant member of the Operator Group have each used all reasonable endeavours to minimise such costs.
- 23.10 **Agreement**: The parties will use all reasonable endeavours to agree the amount payable as determined under clause 23.9. If the parties are unable to agree the amount payable under clause 23.9(a) or 23.9(b) and a dispute arises, then either party may refer the matter for resolution or determination in accordance with the Dispute Resolution Procedure, with GW having the right to require that the dispute be determined by an expert under clause 33.4.
- 23.11 **Continued performance**: Until termination of this Agreement has taken effect, each party will continue to perform those of its respective obligations that:
 - (a) are not the Affected Obligations; or
 - (b) are not obligations the performance of which is dependent on the performance by the other party of the Affected Obligations.

24. BOND

- 24.1 **On-demand bond**: In order to secure the performance by the Operator of its obligations under this Agreement, the Operator will ensure that GW holds a bond (the **Bond**) that:
 - (a) is an on-demand bond and in the form specified in schedule 13 (Form of bond) (or in such other form as GW may approve);
 - (b) has a face amount of not less than the Bond Amount;
 - (c) is issued by a New Zealand registered bank that has
 - 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,
 - (ii) a long-term Standard & Poor's issuer credit rating of no less than A and
 - (iii) a branch in Wellington;
 - (d) is available to be drawn in Wellington; and
 - (e) has an expiry date of not less than 1 year after the termination or expiry of this Agreement.

24.2 **Top up**: If GW extends the Term under clause 3.2, then the Operator will ensure that the amount that is available to GW for drawdown under the Bond as at the first day of the (and as applicable, each) GW Extension Period is not less than the Bond Amount.

24.3 Recourse - bond

- (a) GW may have recourse to the Bond in relation to any amount if:
 - (i) GW considers that such amount is payable (but has not been paid) by the Operator to GW or a GW Associate as a result of a Default Event or Termination Event;
 - (ii) the Operator fails to pay a written demand from GW for such amount due to GW under this Agreement by the date that is 3 Business Days after the date of the relevant written demand; or
 - (iii) such recourse is otherwise provided for in this Agreement.
- (b) GW may have recourse to the Bond in relation to an amount referred to in clause 24.3(a) irrespective of whether or not the amount is, or the circumstances relating to the amount are, in dispute or subject to the Dispute Resolution Procedure or any court or other proceedings.
- 24.4 **Application of funds**: If GW receives any amount under the Bond, then it will apply the amount received as follows:
 - (a) first, the amount received will be offset against any amount that is or may be payable by the Operator under this Agreement; and
 - (b) if the amount received exceeds the aggregate amounts that are or may be payable by the Operator under this Agreement, then GW will hold the amount of that excess for the Operator (but subject to this Agreement) until the Operator procures a new Bond to replace the existing Bond with the approval of GW (such approval not to be unreasonably withheld).

24.5 Replacement: The Operator:

- (a) may procure a new Bond to replace an existing Bond with the approval of GW (such approval not to be unreasonably withheld); and
- (b) will procure the issue to GW of one or more replacement bonds (as applicable) that comply with clause 24.1 if any of the requirements under clause 24.1 are no longer met in relation to the Bond.
- 24.6 **Termination event**: Without limiting any other provision of this Agreement, it will be a Termination Event if, at any time, the aggregate value of claims outstanding against the Operator exceed the amount then available to be drawn under the Bond.
- 24.7 **Return of bond**: GW will return the Bond to the Operator not later than 3 months after expiry or earlier termination of this Agreement provided that, to the extent that payments are outstanding from the relevant surety under the Bond, such payment obligations will survive what would otherwise be the return date and GW will only be required to return the Bond in exchange for a replacement bond of a value equal to the amount outstanding.

25. GUARANTEE

25.1 **Guarantee**: In order to secure the performance by the Operator of its obligations under this Agreement, the Operator will procure, and deliver to GW no later than 5 Business Days after the Appointment Date, the Guarantee duly executed by the Guarantor (and, if the Guarantor is an overseas entity, a legal opinion regarding the validity of the guarantee and certificates from a director of the Guarantor as to the net assets and adequacy of insurance policies of the Guarantor).

26. INSURANCE

- 26.1 **Marine insurance**: The Operator will obtain and maintain a marine insurance policy including third party cover, in relation to the Vessels (the **Marine Insurance Policy**) that will provide:
 - (a) cover for the market value of each Vessel against:
 - (i) fire and usual marine risks (including hull, machinery and increased value insurance on an agreed value basis);
 - (ii) war risk on an agreed value basis;
 - (iii) third party risk loss or damage to property and personal injury and death;
 - (iv) any other risk that should be effected as a matter of Good Industry Practice; and
 - (v) usual protection and indemnity risks (including risks in relation to pollution or other contamination of the sea and environment); and
 - (b) that both the Operator and GW are directly notified by the insurer where there is any material change to, or cancellation of, the policy,-

and otherwise comply with clause 26.7 and be on usual commercial terms having regard to the nature of the risks insured.

- 26.2 **Public liability insurance**: The Operator will obtain and maintain a general public liability insurance policy (the **Public Liability Insurance Policy**), a copy of which the Operator will provide to GW, that will:
 - (a) provide cover of not less than the amount specified in the Contract Particulars for any one claim or series of claims arising out of the same occurrence with no limit on the total payable in response to all occurrences;
 - (b) extend cover to the vicarious liability of GW arising out of the Operator's performance of this Agreement;
 - (c) include policy extensions for exemplary and punitive damages with specified limits acceptable to GW, acting reasonably; and
 - (d) provide that both the Operator and GW are directly notified by the insurer where there is any material change to, or cancellation of, the policy,-

and otherwise comply with clause 26.7 and be on usual commercial terms having regard to the nature of the risks insured.

- 26.3 Material damage insurance: The Operator will obtain and maintain a material damage insurance policy in relation to any applicable GW Assets and Operator Assets that are not Vessels (the Non-Vessel Assets), which policy will provide:
 - (a) for each Non-Vessel Asset to be insured for replacement value;
 - (b) first party damage cover in relation to the Non-Vessel Asset; and
 - (c) that the maximum policy excesses specified in the Contract Particulars apply.
- 26.4 **Operator assets**: In this clause 26 and elsewhere in this Agreement where there is a reference to the Operator Assets that must be insured under the material damage policy, references to the Operator Assets means all tangible assets of the Operator including:
 - (a) plant and equipment (including, to avoid doubt, tools); and
 - (b) spares, rotable parts and consumables.
- 26.5 **Proceeds**: All proceeds received by the Operator under a material damage policy will be applied to repair, reinstate and replace each part or parts of the Vessel or Non-Vessel Asset (as applicable) in relation to which such proceeds were received.
- 26.6 **Other operator arranged insurance**: The Operator will obtain and maintain such other insurance as may be required by any Variation.
- 26.7 **Operator arranged insurance general**: The Operator will, without limiting any other obligations of the Operator under this clause 25:
 - (a) ensure that any insurance policy it is required to obtain and maintain under this Agreement:
 - provides cover for no less than the minimum insured amount specified in the Contract Particulars (for each event or occurrence or, in relation to any professional indemnity insurance policy, for each and every claim and in the aggregate);
 - (ii) carries no more than the maximum excess specified in the Contract Particulars (for each event or occurrence);
 - (iii) is provided by a financially sound and reputable insurer, which is fully authorised to carry on insurance business in New Zealand and which has a long-term credit rating of no less than A- from Standard & Poor's (or the successor to its ratings business) or the equivalent long term credit rating from Moody's Investor Service Inc.; and
 - (iv) is a policy that:
 - (1) includes a waiver of any right of subrogation against an insured and GW;
 - (2) includes a provision to the effect that the actions or omissions of one insured do not affect the rights of the other insured;
 - (3) provides that a loss payable to an insured is payable despite the deliberate act or default or negligence of any other insured or other person, or a breach or violation of a warranty or condition;
 - (4) is governed by New Zealand law and is subject to the jurisdiction of the New Zealand courts;

- (5) requires the insurer to provide to GW with no less than 10 Business Days prior written notice of cancellation, expiry or termination of a policy; and
- (6) does not contain an average clause or a deductible that is not an excess;
- (b) not do, permit or omit to do, anything that may prejudice any insurance policy it is required to maintain under this Agreement or the availability of cover for any claim under any such policy;
- (c) procure that each insurer from which the Operator obtains insurance cover complies with the insurance requirements applicable to that insurer;
- (d) provide to GW:
 - (i) immediate written notice of cancellation of any insurance policy that the Operator is required to obtain and maintain under this Agreement; and
 - (ii) no less than 10 Business Days prior written notice of the cancellation, expiry or termination, or material amendment of the terms and conditions of any insurance policy the Operator is required to obtain and maintain under this Agreement;
- (e) do everything necessary or desirable to enable GW or any other person insured under any policy that the Operator is required to maintain under this Agreement to claim and to collect or recover money due under or in connection with that insurance policy; and
- (f) on, or prior to, the Operations Commencement Date, at the end of each Financial Year and on request by GW, provide to GW:
 - a copy of each insurance policy that the Operator is required to obtain and maintain under this Agreement and either the receipts for payment of the current premiums or certificates of currency; and
 - (ii) a certificate from a director of the Operator confirming that the Operator is complying with the requirements of all insurance policies it is required to obtain and maintain under this Agreement (and stating any exception).
- 26.8 **GW's right to obtain insurance**: If the Operator fails to obtain or maintain any insurance policy as required by this Agreement or fails to provide the insurance information to GW required under clause 26.7(f), then GW may, after notifying the Operator in writing, arrange or keep in force the required insurance, and may pay any premium(s) and deduct the amount from the Services Payment.
- 26.9 Co-operation: The parties will co-operate with each other, as reasonably required, in relation to any actual or potential claim made under any insurance policy the Operator is required to obtain and maintain under this Agreement. No party will make an admission, offer, promise, settlement or payment in connection with an occurrence or claim to any third party for any loss covered by any such insurance policy without first consulting with the other party and obtaining the prior written approval of the insurer.
- 26.10 **Continuing liability**: The obligations of the Operator under or in connection with this Agreement will not be deemed to be released or limited by the Operator being named as a party to, or obtaining, any insurance policy required under this clause 26.

27. VOLUNTARY IMPROVEMENT PLAN

- 27.1 **Negative trend**: If GW or the Operator identifies a negative trend in the performance of any Services (whether identified in the Performance Indicators or otherwise, and whether or not it is a Call-in Event), then the Operator may propose, or GW may by written notice require the Operator to prepare, a plan for voluntary improvement by the Operator to rectify the relevant negative trend (in each case, a **Voluntary Improvement Plan**).
- 27.2 **Plan**: The Operator will prepare and provide to GW a proposed Voluntary Improvement Plan for review and, if acceptable to GW (with or without modification required by GW), acceptance by GW.
- 27.3 **Implementation:** The Operator will, immediately following the acceptance by GW of a Voluntary Improvement Plan, implement diligently and expeditiously that Voluntary Improvement Plan.

28. CALL IN

28.1 Call-in events

- (a) Without limiting clause 28.1(b) or any other provision of this Agreement, each of the following is a **Call-in Event**:
 - (i) GW identifies a negative trend in the performance of the Services (whether identified in the Performance Indicators or otherwise) over 3 successive months (or 3 months in any 6-month period) that it considers is affecting, or will or is likely to affect, a Performance Indicator (a **Performance Call-in Event**);
 - (ii) GW considers (acting reasonably) that the Operator has not followed or implemented any aspect of the Business Plan;
 - (iii) a Significant Incident has occurred; or
 - (iv) material failings identified in any asset condition audit report.
- (b) If GW considers that the Operator is not performing any of its obligations under a Services Document in accordance with the relevant Services Document, then GW may elect to treat the non-performance as a Call-in Event. To avoid doubt, this clause 28.1 does not prevent GW from exercising any of its rights or remedies under any Services Document arising from the non-performance.
- 28.2 **Operator notification**: The Operator will notify GW of the occurrence or the likely occurrence of a Call-In Event as soon as it becomes aware of it.
- 28.3 **Call-in notice**: Subject to clause 28.3, GW will, before exercising its rights under clause 28.4, provide to the Operator written notice that:
 - (a) states that a Call-in Event has occurred;
 - (b) provides summary information of the Call-in Event (based on the information known to GW at the time);
 - (c) states whether GW considers that the Call-in Event is capable of remedy (and, if so, whether it is capable of immediate remedy without a Remedial Plan); and
 - (d) states that it is a Call-in Notice under this clause 28.3,-

(in each case, a Call-in Notice).

- 28.4 **Call-in events options**: GW may, on the occurrence of a Call-in Event and after providing to the Operator a Call-in Notice:
 - (a) if GW considers the Call-in Event is capable of immediate remedy without the requirement for a Remedial Plan, require the Operator to remedy the Call-in Event immediately (and, in any event, no later than 5 Business Days after the date of the applicable Call-in Notice);
 - (b) if GW considers that the Call-in Event is not capable of remedy, require the Operator to provide a Prevention and Mitigation Plan (Call-in Event) in accordance with clause 28.5(a); or
 - (c) if GW considers that the Call-in Event is capable of being remedied with a Remedial Plan, require the Operator to provide a Remedial Plan in accordance with clause 28.6(a).

28.5 **Prevention and mitigation plan**

- (a) If GW advises the Operator in a Call-in Notice that it considers the Call-in Event is not capable of remedy, then the Operator will, no later than 5 Business Days after the date of the applicable Call-in Notice, provide to GW a draft prevention and mitigation plan (for the applicable Call-in Event) for review and (if acceptable) approval under the Document Approval Process (in each case and once approved, the Prevention and Mitigation Plan (Call-in Event)).
- (b) The Operator will, immediately following the approval of a Prevention and Mitigation Plan (Call-in Event), implement and pursue diligently and expeditiously that Prevention and Mitigation Plan (Call-in Event).
- (c) If GW considers that:
 - (i) the Prevention and Mitigation Plan (Call-in Event) is unsatisfactory or ineffective at preventing the reoccurrence of the applicable Call-in Event; or
 - (ii) the Operator is not implementing and pursuing diligently and expeditiously that Prevention and Mitigation Plan (Call-in Event),-

then GW may treat such failure as a Default Event.

28.6 Remedial plan

- (a) If:
 - (i) GW advises the Operator in a Call-in Notice that it considers that Call-in Event is capable of being remedied with a Remedial Plan; or
 - (ii) the Operator failed to remedy the Call-in Event after being required to by GW under clause 28.4(a),-

then the Operator will, no later than 5 Business Days after the date of the applicable Call-in Notice (or the date of the Operator's failure (as applicable)), provide to GW a draft remedial plan (for the applicable Call-in Event) for review and (if acceptable) approval under the Document Approval Process (in each case and once approved, the **Remedial Plan**).

(b) The Operator will, immediately following the approval of a Remedial Plan, implement and pursue diligently and expeditiously that Remedial Plan.

- (c) If GW considers that:
 - (i) the Remedial Plan is unsatisfactory or ineffective at remediating the applicable Call-in Event; or
 - (ii) the Operator is not implementing or pursuing diligently and expeditiously that Remedial Plan.-

then GW may treat such failure as a Default Event.

28.7 Multiple call-in events

- (a) If GW notifies the Operator of a Call-in Event of the same type 3 times within, in relation to:
 - (i) a Performance Call-in Event, 12 months; or
 - (ii) any other Call-in Event, 24 months,-

then the notification of the third Call-in Event may, if GW so elects, constitute a Default Event and each subsequent notification of a Call-in Event of the same type within that 12-month period or 24-month period (as applicable) may, if GW so elects, also constitute a Default Event.

- (b) GW will, when notifying the Operator of the third or subsequent Call-in Event, notify the Operator whether a Default Event has occurred and identify the previous Call-in Events which have resulted in the Default Event, but GW is not required to request further information, meetings or remedial plans before exercising its rights in relation to the Default Event in accordance with clause 29.3.
- (c) In this clause 28.3:
 - a reference to a 12-month period is a reference to any 12-month period commencing on the date GW serves a Call-in Notice under clause 28.3 and ending 12 months after that date;
 - (ii) a reference to a 24-month period is a reference to any 24-month period commencing on the date GW serves a Call-in Notice under clause 28.3 and ending 24 months after that date; and
 - (iii) a reference to a Call-in Event of the same type in relation to:
 - (1) a Performance Call-in Event, is a reference to a Performance Call-in Event in relation to the same Performance KPI referred to in another Call-in Notice; and
 - (2) any other Call-in Event, is a reference to:
 - A. a Call-in Event arising under the same clause or schedule; or
 - B. a Call-in Event relating to the same or a substantially similar failure,as the Call-in Event referred to in another Call-in Notice.

29. DEFAULT EVENTS

- 29.1 **Default events**: In this Agreement, a **Default Event** means:
 - (a) any failure by the Operator to comply with its obligations under any Services Document;

- (b) a Performance Default Event; or
- (c) a fact, matter or circumstance designated as a Default Event (or similar event) under any other Services Document, including multiple Call-in Events under clause 28.3.
- 29.2 **Operator's notification**: The Operator will immediately notify GW of the occurrence or the likely occurrence of a Default Event as soon as the Operator becomes aware of it.
- 29.3 **Default notice**: GW will, before exercising its rights under clause 29.4, provide to the Operator a written notice of a Default Event (in each case, a **Default Notice**).
- 29.4 **Default events- options**: GW may, on the occurrence of a Default Event and after providing to the Operator a Default Notice, exercise 1 or more of the following rights of GW:
 - (a) if GW considers the Default Event is capable of immediate remedy without the requirement for a Cure Plan, then Operator will remedy the Default Event immediately (and, in any event, no later than 5 Business Days after the date of the applicable Default Notice);
 - (b) if GW considers that the Default Event is not capable of remedy, require the Operator to provide a Prevention and Mitigation Plan (Default Event) in accordance with clause 29.5(a);
 - (c) if GW considers that the Default Event is capable of being remedied with a Cure Plan, require the Operator to provide a Cure Plan in accordance with clause 29.6(a); or
 - (d) exercise its rights under clause 30.1 (subject to the Default Event being of the type contemplated under clause 30.1(b)).

29.5 Prevention and mitigation plan

- (a) If GW advises the Operator in a Default Notice that it considers the Default Event is not capable of remedy, then the Operator will, no later than 5 Business Days after the date of the applicable Default Notice, provide to GW a draft prevention and mitigation plan (for the applicable Default Event) for review and (if acceptable) approval under the Document Approval Process (in each case and once approved, the Prevention and Mitigation Plan (Default Event)).
- (b) The Operator will, immediately following the approval of a Prevention and Mitigation Plan (Default Event), implement and pursue diligently and expeditiously that Prevention and Mitigation Plan (Default Event).
- (c) If GW considers that:
 - (i) the Prevention and Mitigation Plan (Default Event) is unsatisfactory or ineffective at preventing the reoccurrence of the applicable Default Event; or
 - (ii) the Operator is not implementing and pursuing diligently and expeditiously that Prevention and Mitigation Plan (Default Event),-

then GW may, if it so elects, treat such failure as a Termination Event.

29.6 Cure plan: If:

(a) GW advises the Operator in a Default Notice that it considers that a Default Event is capable of being remedied with a Cure Plan; or

(b) the Operator failed to remedy the Default Event after being required to by GW under clause 29.4(a),-

then the Operator will, no later than 5 Business Days after the date of the applicable Default Notice (or the date of the Operator's failure (as applicable)), provide to GW a draft cure plan (for the applicable Default Event) for review and (if acceptable) approval by the Management Committee in accordance with clause 29.8 (in each case and once approved, the **Cure Plan**).

29.7 Cure plan - components: A Cure Plan will detail:

- (a) the actions to be taken by the Operator to correct the Default Event (if remediable), the date by which such Default Event will be corrected and the preventative measures to be implemented by the Operator to prevent a re-occurrence of such Default Event;
- (b) any temporary measures to be taken to mitigate the impact of the issue raised by the notice issued in accordance with clause 29.2, pending implementation of the Cure Plan;
- (c) a work plan identifying each task to be undertaken and milestones and periods within which the Operator will remedy the Default Event (or the events or circumstances giving rise to the Default Event);
- (d) the resources being allocated to implement the Cure Plan;
- (e) the review process, being the process (including dates or time periods) in which the Operator will review the status of the implementation of the Cure Plan and provide to GW reports on the status in compliance with the Cure Plan; and
- (f) without limiting any of clauses 29.7(a) to 29.7(e) (inclusive), a Cure Plan will comprise the following parts:
 - (i) an explanation of the matter giving rise to the Default Event including the current performance statistics;
 - (ii) an analysis of contributing factors; and
 - (iii) the measures which the Operator considers are required and intends to implement in order to remedy the Default Event or prevent the recurrence of the events or circumstances giving rise to the Default Event.
- 29.8 **Review of cure plan**: The Cure Plan required to be provided by the Operator to GW under clause 29.6 will be presented to the Management Committee for consideration. GW will, following presentation to the Management Committee, review each Cure Plan provided by the Operator under this Agreement and, no later than 5 Business Days after receipt of the Cure Plan from the Operator either:
 - (a) approve the Cure Plan; or
 - (b) reject the Cure Plan and provide reasons for the rejection, in which case the Operator will provide to GW a revised Cure Plan no later than 5 Business Days after receipt of such notice of rejection.

29.9 Implementation of cure plan: The Operator will:

(a) implement and diligently pursue each Cure Plan approved by GW; and

- (b) unless otherwise requested by GW, provide reports to the Management Committee, as to the status of any Cure Plan and evidence that the Operator has diligently pursued and is continuing to diligently pursue a remedy in accordance with the Cure Plan. The Operator will provide these reports and evidence:
 - (i) in accordance with the reporting requirements in the Cure Plan; or
 - (ii) if requested to do so by GW (and not later than 5 Business Days after GW requesting the Operator to do so, such other period approved by GW).

29.10 Extension to cure period

- (a) If the Operator wishes to request an extension to the Cure Period (other than for a Financial Default Event), then it will, as soon as possible and, in any event, no later than the expiration of the current Cure Period, provide to GW:
 - (i) a revised Cure Plan; and
 - (ii) evidence that:
 - (1) the Operator has diligently pursued and is continuing to diligently pursue a feasible and practicable program of rectification of the Default Event;
 - (2) the Default Event cannot, with reasonable diligence, be cured within the current Cure Period; and
 - (3) if the Default Event falls into any of the categories listed in clause 30.1(b), the impacts of the Default Event described in that clause have been overcome.
- (b) GW will not unreasonably refuse to grant an extension to the Cure Period where the Operator has satisfied the requirements of clause 29.10(a).
- (c) Unless otherwise agreed by GW (such agreement not to be unreasonably withheld), the Operator may only apply once for an extension of the Cure Period in relation to a Default Event specified in a Default Notice.
- (d) The Operator will, irrespective of whether GW agrees to any request by the Operator for an extension to a Cure Period, diligently pursue implementation of each Cure Plan.
- (e) To avoid doubt, the Operator will not apply for an extension to a Cure Period for a Financial Default Event.
- 29.11 **Repeat events**: Any event that is of the same nature or due to the same cause as an event that is the subject of the development or implementation of a Cure Plan will not constitute a new Default Event. If any such event occurs after the Operator has implemented the relevant Cure Plan (whether or not such implementation remedied the Default Event), then such event will constitute a new Default Event and GW reserves the right to issue further notices under clause 29.3 in relation to that Default Event.

29.12 Failure to rectify a cure plan: If:

(a) the Operator has, in relation to the Default Event, provided a Cure Plan to GW in accordance with clause 29.6; and

- (b) the Operator has:
 - (i) failed to implement the requirements of the Cure Plan; or
 - (ii) implemented the requirements of the Cure Plan,-

in each case, such that the Default Event remains unremedied,-

then GW may require the Operator to make changes to its business or arrangements with a view to protecting GW's rights under this Agreement or any other Services Document, including:

- (c) changes to the organisation of the Operator;
- (d) the withdrawal of employees, contractors or agents;
- (e) the termination or appointment of subcontractors;
- (f) changes to financial arrangements or reporting requirements;
- (g) increasing the amount required to be available to be drawn under the Bond; and
- (h) restricting any distributions of profits by the Operator to its shareholder(s),-

until the Default Event has been remedied or, if and to the extent the Default Event is not remediable, until the effects of the Default Event have been overcome to GW's reasonable satisfaction.

30. STEP-IN

30.1 Step-in right: If:

- (a) a Termination Event has occurred and is subsisting;
- (b) a Default Event has occurred, is subsisting and GW considers:
 - (i) materially adversely affects the Operator's ability to provide any or all of the Services;
 - (ii) materially disrupts, restricts or prevents the operation of all or any of the Ferry Services for more than 24 hours;
 - (iii) gives rise to a serious risk to the health or safety of persons or property;
 - (iv) gives rise to a serious risk of harm to the Environment; or
 - (v) directly or indirectly avoids or materially prejudices or frustrates the transfer of the Business as a going concern to a New Operator;
- (c) in the opinion of GW, action should be taken in connection with the Services:
 - (i) because a serious risk to the health or safety of persons or property exists;
 - (ii) because a serious risk of harm to the Environment exists; or
 - (iii) to discharge a statutory duty,-

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

- 30.2 **Notice**: Subject to clause 30.3, if GW intends to exercise the Soft Step-in Rights or any or all of the Step-in Rights, then GW will give the Operator written notice (in each case, a **Step-in Notice**):
 - (a) identifying the Step-in Event;
 - (b) specifying the date on which GW or its nominee will commence exercise of the Soft Step-in Rights or the Step-in Rights (unless such exercise has already commenced); and
 - (c) stating that it is a "Step-in Notice" issued under this clause 30.2.
- 30.3 **Urgent exercise**: GW may exercise the Soft Step-in Rights or the Step-in Rights prior to giving a Step-in Notice where in GW's opinion the nature of the Step-in Event requires the urgent exercise of the Soft Step-in Rights or the Step-in Rights, but will give the Operator a Step-in Notice as soon as reasonably practicable thereafter.
- 30.4 **Scope**: GW or its nominee may:
 - (a) in exercising the Soft Step-in Rights, take such action as GW or its nominee considers necessary or appropriate having regard to the nature of the Step-in Event to:
 - (i) assist the Operator to address the Step-in Event;
 - (ii) monitor the Operator's progress in relation to the Step-in Event;
 - (iii) make recommendations to GW on whether GW should take further action, including whether GW should exercise the Step-in Rights or provide a Show Cause Notice or a Termination Notice:
 - (iv) ensure that the Operator's existing organisation capability is not diminished as far as practicable; and
 - (b) in exercising the Step-in Rights, take such action as GW or its nominee considers necessary or appropriate having regard to the nature of the Step-in Event, including:
 - taking any action in relation to the provision of all or any part of the Services, including exercising any or all of the 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;
 - (ii) taking any action in relation to any Services Document or any other document that the Operator is a party to and that relates to the Wellington Network or the Services (including enforcing any or all of the rights of the Operator and/or performing any or all of the obligations of the Operator under any Services Document) as if it were the Operator and to the exclusion of the Operator;
 - (iii) entering into, remaining in possession of and using any or all assets used in the provision of the Services, including the GW Assets (if any) and the Operator Assets;
 - (iv) doing anything GW or its nominee considers necessary to remedy the relevant Step-in Event or to overcome any risk or mitigate any consequences resulting from the relevant Step-in Event; and
 - (v) anything incidental to the above.

30.5 Acknowledgement and obligations of the Operator

- (a) The Operator acknowledges and accepts that:
 - (i) GW is under no obligation to exercise either the Soft Step-in Rights or any Step-in Rights;
 - (ii) in exercising the Soft Step-in Rights or the Step-in Rights, neither GW nor its nominee is under any obligation to:
 - remedy a Termination Event, a Default Event or any breach by the Operator of any Services Document; or
 - (2) mitigate, remedy or minimise any event (or the effects of any event) that triggered the exercise of the Soft Step-in Rights or the Step-in Rights; and
 - (iii) unless GW gives written notice otherwise, GW does not waive its rights under this Agreement in relation to the event that triggered the exercise of the Soft Step-in Rights or the Step-in Rights.
- (b) The Operator will fully co-operate with GW and its nominee in connection with the exercise of the Soft Step-in Rights or the Step-in Rights and will promptly provide such information, advice and assistance as GW or its nominee may reasonably require in connection with the exercise of the Soft Step-in Rights or any such Step-in Rights. The Operator will not (and will procure that the Operator Associates do not) in any way prevent, hinder or disrupt GW or its nominee from exercising the Soft Step-in Rights or the Step-in Rights.
- (c) Without limiting clause 30.5(b), at all times during which GW or its nominee is exercising:
 - (i) the Soft Step-in Rights or the Step-in Rights, the Operator will provide access to GW and its nominee to:
 - (1) all of the Operator Assets and the GW Assets (if any) and will permit GW and its nominee to use the same; and
 - (2) the Operator Employees,-
 - to the extent required by GW or its nominee to exercise the Step-in Rights; and
 - (ii) the Step-in Rights, the Operator will ensure that the Operator Associates accept the directions, instructions and requirements of GW and its nominee in place of (and to the exclusion of) the Operator's directions, instructions and requirements.
- (d) If and to the extent that the Step-in Rights are exercised as a result of:
 - (i) the circumstances referred to in clause 30.1(a) or 30.1(b); or
 - (ii) a breach by the Operator of this Agreement,-

then the Operator will, to the maximum extent permitted by Applicable Law, be liable for, and will indemnify GW (and, if applicable, its nominee) from and against any Loss that may be suffered or incurred by GW or its nominee as a result of, or in connection with, exercising the Step-in Rights. The indemnity in this clause 30.5(d) does not apply to the extent the Loss is caused or contributed to by fraud, breach, negligent act or negligent omission on the part of GW or a GW Associate under this Agreement.

- (e) If and to the extent that GW exercises the Step-in Rights other than as a result of:
 - (i) the circumstances referred to in clause 30.1(a) or 30.1(b); or
 - (ii) a breach by the Operator of this Agreement,-

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:

- (1) the Operator will be relieved of its obligations to provide such part of the Services; and
- (2) the Services Payment will be calculated as if the Operator were satisfying all of its obligations in relation to the affected Services, but there will be deducted from the Services Payment 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 30.5(e)(ii)(1).

30.6 Protection of GW in exercising step-in rights:

- (a) Subject to clause 30.6(b), the Operator acknowledges and accepts that, to the maximum extent permitted by Applicable Law, neither GW nor its nominee will be liable to the Operator or any Operator Associate in relation to any Loss suffered or incurred by the Operator or any Operator Associate which arises out of or in connection with the exercise of the Soft Step-in Rights or the Step-in Rights (including any act, omission, conduct or delay arising in connection therewith) and the Operator irrevocably releases (and will procure that each Operator Associate irrevocably releases) GW and its nominee from all such claims.
- (b) Clause 30.6(a) will not apply to the extent that such Loss arises from fraud, breach, negligent act or negligent omission on the part of GW (or its nominee) under this Agreement.
- (c) The Operator:
 - (i) irrevocably and unconditionally appoints GW (and any person nominated by GW) as the Operator's attorney with full power and authority to do anything they consider necessary (including giving instructions to the Operator's Employees, 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;
 - (ii) will immediately ratify and confirm whatever action is taken by GW and its nominee in the course of exercising the Step-in Rights, provided that such action is not unlawful; and
 - (iii) will promptly on request by GW execute a separate power of attorney on the terms of this clause by way of a deed or otherwise in such form as GW may reasonably require and which will cease immediately upon the Step-out Date.

30.7 Step-out

(a) GW or its nominee (as applicable) will cease to exercise the Soft Step-in Rights or the Step-in Rights (as applicable) as soon as reasonably practicable following resolution to GW's reasonable satisfaction of the event(s) which gave rise to the exercise of the Step-in Rights.

- (b) GW will give written notice to the Operator of the date on which GW (or its nominee) will cease to exercise the Soft Step-in Rights or the Step-in Rights (as applicable) (the Step-out Date) at least 5 Business Days prior to the Step-out Date.
- (c) The Operator will, immediately on and from the Step-out Date, recommence performance of all of its obligations under this Agreement on the terms existing immediately prior to GW exercising the Soft Step-in Rights or the Step-in Rights (as applicable).

31. TERMINATION

- 31.1 **Termination events**: Each of the following is a **Termination Event**:
 - (a) (Default Event) any 1 or more of the following Default Events occurs which, if capable of remedy, is not cured within the Cure Period for that Default Event:
 - (i) a Financial Default Event;
 - (ii) a Performance Default Event;
 - (iii) an event of default (or similar terminology), or a matter entitling GW to terminate a Services Document, occurs under any other Services Document; or
 - (iv) a material breach by the Operator of any one or more of its obligations under any Services Document, which includes a Termination Event under clause 24.6 and a failure to comply with clause 34 (Transfer);
 - (b) (Persistent or repeated breach) the Operator persistently or repeatedly fails to comply with any one or more of its obligations under the Services Documents in circumstances where GW has previously notified the Operator of the failure or non-compliance and has put the Operator on notice that continued failure or non-compliance would constitute a persistent or repeated failure or non-compliance for the purposes of this clause 31.1;
 - (c) (Misrepresentation) any representation or warranty by the Operator under a Services Document is incomplete, inaccurate or is misleading when made or repeated as at the relevant date;
 - (Access agreement) a termination event (however described) occurs under the Access
 Agreement as a result of the fraud, negligence or default (unless as a result of a Force
 Majeure Event) of the Operator, whether or not acting in an agency capacity;
 - (e) (**Financial viability**) the Operator has a Debt to Equity Ratio greater than the Maximum Permitted Debt to Equity Ratio;
 - (f) (Insolvency) an Insolvency Event occurs in relation to the Operator or the Guarantor (or any member of the Operator Group which is also a holding company of the Operator);
 - (g) (Abandonment) this Agreement ceases to be, or is claimed by the Operator not to be, in full force and effect, or the validity or enforceability of this Agreement is contested by the Operator, or the Operator does or causes to be done an act, omission, matter or thing evidencing an intention to repudiate this Agreement or to abandon the Business;
 - (h) (Material adverse change) in the reasonable opinion of GW, a Material Adverse Change occurs in relation to the Operator or Guarantor;

- (i) (Authorisations) the revocation or suspension of an Authorisation or the Operator is convicted of an offence in relation to non-compliance with an Authorisation or an Applicable Law;
- (j) (**Unlawful**) it is or will become unlawful for the Operator to perform or comply with any of its obligations under this Agreement in any material respect;
- (k) (Change of Control) there is any Change of Control of the Operator, other than a Permitted Change of Control;
- (Unenforceable securities) the Bond ceases to be, or is claimed by the surety not to be, in full force and effect or the Guarantee ceases to be, or is claimed by the Guarantor not to be, in full force and effect;
- (m) (Resolution that causes a Default Event) any meeting of directors or shareholders of any member of the Operator Group is called for the purposes of considering and, if thought fit, passing any resolution the passing or the performance of which would cause a Default Event;
- (n) (Material deprival of benefit) an event has occurred that has deprived or is likely to deprive
 GW of substantially all the benefit of this Agreement;
- (o) (More than 30% of Ferry Services not delivered) the Operator having not operated at least 30% (measured by services delivered of the Ferry Services) in accordance with the requirements of this Agreement, for a period of more than 20 Business Days for reasons other than due to a Force Majeure Event;
- (p) (Deemed termination event) a fact, matter or circumstance designated as a Termination Event (or similar event) under this Agreement or any other Services Document.
- 31.2 **Termination by GW**: GW may at any time after the occurrence of a Termination Event:
 - (a) require the Operator to provide, within the period stated in the notice, a written response specifying the reasons why the Operator considers that GW should not terminate this Agreement as a result of the occurrence of the relevant Termination Event (a **Show Cause Notice**). GW will provide a written response no later than 10 Business Days after receipt of such Show Cause Notice advising the Operator of its decision to terminate under clause 31.2(b); or
 - (b) terminate this Agreement on written notice to the Operator (a Termination Notice). This Agreement will terminate immediately or on any later date specified in that notice. No failure to exercise, nor any delay in exercising, GW's rights under this clause 31 will operate as a waiver or cause the rights of GW under this clause 31 to lapse or be otherwise diminished. This termination right is without prejudice to GW's rights under clauses 30 (Step-in) and 32 (Termination for funding or policy constraints) in relation to Default Events and GW's right to exercise all legal and equitable rights and remedies available to GW in relation to the Termination Event.
- 31.3 **Termination notice consequence**: On the issue of a Termination Notice, GW may (by separate notice or in any such notice given by GW) without limiting any other right or remedy of GW:
 - (a) have recourse to the Bond and the Guarantee; and

(b) exercise its rights under clause 30 (Step-in).

31.4 Attorney

- (a) The Operator irrevocably and unconditionally appoints GW, with effect on and from the Operations Commencement Date (but exercisable only from the date of issue of a Termination Notice), as its attorney (with full power to appoint substitutes and sub-delegates) on behalf of the Operator and in its name or otherwise and at the Operator's expense (in the case of a Termination Event) to complete, execute and otherwise perfect all assignments, transfers, Security Interests and other documents and generally do all other acts and things, that the Operator is obliged to do under this Agreement or any Services Document.
- (b) The Operator:
 - ratifies and confirms to each person dealing with each such attorney, whatever such attorney does in the exercise of any rights conferred on that person under this Agreement; and
 - (ii) will promptly on request by GW execute a separate power of attorney on the terms of this clause by way of a deed or otherwise in such form as GW may reasonably require.
- (c) GW will not exercise its rights under this clause 31.4 until or unless it has given to the Operator such period of notice (if any) which is reasonable in the circumstances of its intention to do so.
- 31.5 **Transition-out services**: GW may, without limiting the rights of GW under clause 31.3, require (by at least 10 Business Days' prior written notice to the Operator) the Operator to perform the Transition-Out Services in accordance with any timetable requirements reasonably specified by GW in anticipation of termination or expiry of this Agreement.
- 31.6 **Effect of termination**: Termination or expiry of this Agreement will:
 - (a) not affect any accrued rights or liabilities of either party at the date of termination;
 - (b) be without prejudice to any other rights or remedies that either party may have under this Agreement or at Applicable Law;
 - (c) not affect the continuance in force of any provision of this Agreement to the extent it is expressed or by implication intended to continue in force after termination; and
 - (d) not affect a defaulting party's obligations under this Agreement during any Termination Notice period.
- 31.7 **Waiver of claim of restitution**: If this Agreement is lawfully terminated by GW, then the Operator waives any rights it might otherwise have to pursue a claim of restitution of any kind including a claim for unjust enrichment.
- 31.8 **No other right to terminate**: Despite any rule of law or equity to the contrary, this Agreement may not be terminated except as provided in clause 31.2 or as otherwise expressly provided in this Agreement.
- 31.9 **Notification of termination events**: The Operator will notify GW of the occurrence of any Termination Event or anything that, with the giving of notice or passage of time, or both, would become a Termination Event, immediately after becoming aware of it.

32. TERMINATION FOR FUNDING OR POLICY CONSTRAINTS

- 32.1 **Funding or policy constraints**: GW may terminate this Agreement by providing at least 6 months' prior written notice to that effect (a **Termination Notice**) to the Operator if GW considers that there is:
 - (a) insufficient funding available to the Transport Agency requiring, in the opinion of GW, a general reduction in public transport ferry services; or
 - (b) a change in Applicable Law (or interpretation of Applicable Law by a court of competent jurisdiction or the Transport Agency after the Appointment Date) that results in GW being unable to satisfy its legislative objectives, functions and responsibilities through this Agreement.
- 32.2 **Payment to Operator**: If GW elects to terminate this Agreement under clause 32.1, then termination will take effect from the date specified in GW's Termination Notice (the **Termination Date**). Subject to clause 32.3, GW will, no later than 40 Business Days after the date that the amount payable under this clause 32.2 is either agreed or determined in accordance with the Dispute Resolution Procedure pay to the Operator (without double counting):
 - (a) any outstanding Services Payments for Services performed in accordance with this Agreement up to (but excluding) the Termination Date (less any amounts that GW is entitled to deduct or set-off under this Agreement); and
 - (b) such reasonable costs, properly and demonstrably incurred by the Operator as a direct result of termination by GW of this Agreement under this clause 32.2, but only to the extent that:
 - (i) such costs are incurred in connection with providing the Services;
 - (ii) such costs are incurred under agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable arms' length commercial terms; and
 - (iii) the Operator and any relevant member of the Operator Group have each used all reasonable endeavours to minimise such costs.

The parties will use all reasonable endeavours to agree the amount payable as determined under this clause 32.2. If the parties are unable to agree the amount payable under this clause 32.2(a) or clause 32.2(b) and a dispute arises, then either party may refer the matter for resolution or determination in accordance with the Dispute Resolution Procedure, with GW having the right to require that the dispute be determined by an expert under clause 33.4.

- 32.3 **Termination notice consequence**: On the issue of a Termination Notice under this clause 32:
 - (a) the Operator will perform the Transition-Out Services which it is required to perform under this Agreement to the extent the Transition-Out Services have not been performed; and
 - (b) clause 31.6 will apply.
- 32.4 **Operator's obligation to perform transition-out services**: GW's obligation to make any payment under clause 32.2 will be conditional on the Operator fully complying with its obligations under clause 32.3, including its obligation to perform the Transition-Out Services.

- 32.5 **Full and final settlement**: Payment by GW of the amount which is due and payable under clause 32.2 (which the Operator acknowledges and accepts may be zero if the conditions specified in clause 32.3 and clause 32.4 have not been complied with by the Operator) will be in full and final settlement of the Operator's rights and entitlements against GW in connection with GW's termination of this Agreement under clause 32.2. The Operator:
 - (a) irrevocably waives any other right or claim howsoever arising (including any claim in tort (including negligence)) that it may otherwise have in connection with GW's termination of this Agreement under clause 32.2; and
 - (b) will not be entitled to make any claim (including in negligence) against GW in connection with GW's termination of this Agreement under clause 32.2, other than a claim for payment of any amount which is due and payable under clause 32.2.

33. DISPUTE RESOLUTION PROCEDURE

- 33.1 **General**: If any dispute arises between the parties, then the parties will:
 - (a) follow the process in this clause 33; and
 - (b) undertake to use all reasonable efforts to resolve any such dispute.
- 33.2 **Notice of dispute**: A party will, as soon as reasonably practicable, give written notice of a dispute to the other party to that dispute. Any dispute will be referred in the first instance to the Management Committee for resolution at its next meeting. The notice will include brief details of the dispute so that the other party is made aware of the nature of the dispute. The respective members of the Management Committee will use all reasonable endeavours to resolve the dispute in a timely manner and, in any event, no later than 10 Business Days after each member of the Management Committee has received notice of the dispute.
- 33.3 **Executive resolution**: If, on expiry of the time set out in clause 33.2 for resolution, the dispute remains unresolved, then either party may refer the dispute by written notice to the General Manager of GW and the Chief Executive Officer of the Operator (or such other person of similar authority) for resolution. They will each use all reasonable endeavours to resolve the dispute in a timely manner and, in any event, not later than 10 Business Days after GW's General Manager and the Operator's Chief Executive Officer have received notice of the dispute.
- 33.4 **Expert determination**: Despite clauses 33.1 to 33.3 (inclusive), if expressly provided for in this Agreement, then the applicable party may by written notice served on the other party require a dispute to be determined by an expert. The expert will be appointed:
 - (a) by agreement of the parties; or
 - (b) failing such agreement by the date that is 5 Business Days after serving written notice, by GW acting reasonably.
- 33.5 **Independent expert**: The expert will act as an independent expert and not as an arbitrator. The dispute will be resolved as soon as possible in accordance with the guidelines determined by the expert. The costs of the expert will be paid by the Operator and GW equally. Reference to the expert will not be a submission to arbitration and the Arbitration Act 1996 will not apply to the resolution of such disputes.

- 33.6 **Final decision**: The decision of the expert (including the right to determine damages) will be final and binding on the parties (in the absence of manifest error).
- 33.7 **Litigation**: If a dispute that is not subject to a final and binding decision of an expert under clause 33.6 remains unresolved after completion of the process in this clause 33, then a party may commence legal proceedings in relation to that dispute.
- 33.8 **Equitable relief**: Nothing in this clause 33 will preclude any party from taking immediate steps to seek urgent equitable relief before a New Zealand court.
- 33.9 **Continuity**: If a dispute arises, then the parties will continue to perform their obligations under this Agreement.

34. TRANSFER

- 34.1 **Continuation**: This Agreement will be binding on and will enure for the benefit of the parties and their respective successors and their permitted assignees or transferees.
- 34.2 **No transfer by the Operator**: Subject to clause 34.4, the Operator will not assign, novate, transfer or otherwise dispose of any of its rights or obligations under this Agreement without the prior written approval of GW, which approval will be sought by the Operator in accordance with clause 34.3. For the purposes of this clause 34.2, a Change of Control of the Operator is deemed to be an assignment by the Operator. Any breach of this clause will be deemed to be a material breach by the Operator of this Agreement and will constitute a Termination Event.

34.3 Approval process

- (a) The Operator will, as soon as possible, provide written notice to GW of any proposed assignment, novation, transfer or other disposal (which includes a Change of Control of the Operator) (each, for the purposes of this clause 34.3, a **Transfer**). Any such notice will include details of the proposed Transfer, including:
 - (i) the identity of the proposed transferee and its Related Companies;
 - the legal and beneficial owners of the proposed transferee and the proposed transferee's Ultimate Holding Company;
 - (iii) the extent and nature of the proposed Transfer;
 - (iv) the Operator's plan for implementing the proposed Transfer; and
 - (v) any other information required for GW to determine whether or not to approve the Transfer.
- (b) The Operator will provide the information described in clause 34.3(a) promptly following such information being available to the Operator, and no later than 20 Business Days prior to the proposed date of Transfer.
- (c) GW may withhold its approval to any request for a Transfer under this clause 34.3, or may grant its approval subject to conditions.
- 34.4 **Permitted change**: Clauses 34.2 and 34.3 do not apply in relation to a Change of Control that is a Permitted Change of Control. If a Permitted Change of Control is proposed, then the Operator will notify GW of the proposed Permitted Change of Control no less than 20 Business Days before it is

proposed to occur and will provide GW with all information relating to the proposed Permitted Change of Control that GW reasonably requests. The Operator will, without limiting the foregoing, also notify GW in writing at the time the Permitted Change of Control occurs.

- 34.5 **Costs**: The Operator is liable for, and will pay to GW on demand, all costs incurred by GW in connection with a Transfer (including any proposed Transfer, irrespective of whether or not the Transfer proceeds) or Permitted Change of Control under this clause 34.
- 34.6 **Transfer by GW**: GW may, by providing no less than 15 Business Days prior written notice to the Operator assign, novate, transfer or otherwise dispose of any of its rights or obligations under this Agreement or any other Services Document to any Local Authority or CCO of a Local Authority, or to any other Governmental Agency, and the Operator consents to the same. The Operator will promptly execute any documents that GW (acting reasonably) requires to give effect to such a transaction.

35. RIGHTS OF THIRD PARTIES

Rights conferred on the New Operator and any GW Associate under this Agreement are for the benefit of, and enforceable by, the New Operator and the relevant GW Associate (respectively) in terms of Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017.

36. GENERAL PROVISIONS

36.1 **Defined terms**: The definitions and interpretation provisions in schedule 1 (Definitions and interpretation) to this Agreement apply to this Agreement.

36.2 Notices

- (a) Except as provided in this clause, each notice or other communication under this Agreement (including any communication by the Management Committee to any party) will be in writing and delivered personally or sent by post or email to the address of the relevant party specified in the Contract Particulars and marked for the attention of the person or office holder (if any) or to any other address from time to time designated for that purpose by a party by not less than 5 Business Days' prior notice to the other party.
- (b) A notice under this Agreement is deemed to be received if by:
 - (i) personal delivery, when delivered;
 - (ii) post, 5 Business Days after posting or, in the case of international post, 7 Business Days after posting; or
 - (iii) email, 1 hour after the time it is sent provided that no error message is received to indicate that the email did not reach its intended destination and, if required by the recipient if the delivery is disputed, in a confirmation of delivery report from the sender's information system which indicates that the email was sent to the email address of the recipient,-

provided that any notice deemed received after 5pm or on a non-Business Day will be deemed to have been received on the next Business Day.

36.3 **GST**

- (a) If any amount payable by GW or the Operator (in this clause, the **Payer**) under this Agreement is consideration for a Taxable Supply by GW or the Operator (as the case may be) (in this clause, the **Payee**) to the Payer, then the Payer will pay to the Payee, in addition to and at the same time as any other amount payable for that Taxable Supply, an amount equal to the GST chargeable on that Taxable Supply, provided that (subject to clause 36.3(b)(ii)), the Payee has issued a valid Tax Invoice to the Payer in relation to that Taxable Supply.
- (b) In relation to a Taxable Supply by the Operator to GW under this Agreement:
 - (i) GW may issue buyer created Tax Invoices under section 19K(4) of the GST Act in relation to those Taxable Supplies;
 - (ii) the Operator will not (and will not be required under clause 36.3(a) to) issue a Tax Invoice in relation to those Taxable Supplies;
 - (iii) both parties acknowledge and accept that GW is in a better position to calculate the consideration for the Taxable Supplies; and
 - (iv) GW will comply with the relevant record keeping requirements under section 75 of the GST Act in relation to the buyer created Tax Invoices issued to the Operator.
- (c) The Operator will immediately notify GW if it ceases to be a registered person for the purposes of the GST Act.
- (d) For the purposes of calculating any payment due to the Operator under schedule 8 (Payments) all amounts will be calculated net of any GST deduction or input tax credit to which the Operator (or its representative member if it is a member of a group of companies formed under section 55 of the group registered under the GST Act) is entitled under the GST Act.

36.4 Exercise of rights

- (a) The exercise of any of the rights and remedies provided for under this Agreement by GW will not prejudice any other rights or remedies which GW may have, nor will GW be precluded from exercising any other such rights or remedies available to it.
- (b) The Operator acknowledges and accepts that monetary damages alone may not be adequate compensation to GW for a breach of its obligations under this Agreement and that an order for specific performance of those obligations may be an appropriate remedy.
- 36.5 **Enforceable rights**: GW's rights under this Agreement will remain enforceable to the fullest extent, although GW may have made payment for, used or otherwise accepted any Services provided under this Agreement.
- 36.6 **Survival of provisions**: Following the termination or expiry of this Agreement, clauses 1.2, 9.3, 16.4, 16.6, 17 (Intellectual property), 18 (Confidentiality), 19 (Privacy), 21 (Announcements, public relations and media), 22 (Indemnity), 24 (Bond), 25 (Guarantee), 26 (Insurance) 31.3, 31.4, 31.5, 31.6, 31.7, 32.4, 32.5, 33 (Dispute resolution procedure), 35 (Rights of third parties), 36 (General provisions), together with any other provisions that are, by their nature, intended to survive, will remain in effect.

- 36.7 **No waiver**: No waiver of a right or remedy under this Agreement or at Applicable Law (a **right**) will be effective unless the waiver is in writing and signed by that party. No delay or omission by a party to exercise any right will constitute a waiver of that right. Any waiver of a right will not constitute a waiver of any subsequent or continuing right. No single or partial exercise of a right will restrict the further exercise of that or any other right.
- 36.8 **Implied terms**: All implied terms, conditions and warranties, including any implied duty of good faith, are, to the maximum extent permitted by Applicable Law, excluded from this Agreement.
- 36.9 **Entire agreement**: This Agreement, the Bond and the Guarantee constitute the entire agreement of the parties and supersedes all prior agreements, arrangements, understandings and representations (whether oral or written) given by or made between the parties relating to the matters dealt with in this Agreement or any other Services Document.
- 36.10 **Further assurances**: Each party will, at its own expense, promptly sign and deliver any documents, and do all things, which are reasonably required to give full effect to the provisions of this Agreement.
- 36.11 **No merger**: The warranties, undertakings and indemnities given under this Agreement will not merge on any completion or settlement under this Agreement or any other agreement between the parties, but will remain enforceable to the fullest extent permissible, despite any rule of law to the contrary.
- 36.12 **Severance**: If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, then that provision will be read down to the extent necessary to make it legal, valid and enforceable or, if it cannot be read down, deemed severed from this Agreement. Such change will not affect the legality, validity and enforceability of the other provisions of this Agreement.

36.13 Counterparts

- (a) This Agreement may be signed in any number of counterparts (including scanned PDF counterpart), each of which will be deemed an original, but all of which, when taken together, will constitute one and the same instrument. No counterpart will be effective until each party has executed at least one counterpart. A party may execute this document by Electronic Signature.
- (b) Each party:
 - consents to the use of Electronic Signature and receiving this Agreement in electronic or digital form;
 - (ii) acknowledges and accepts that:
 - (1) the use of Electronic Signature is an appropriately reliable method for the purposes of this Agreement to identify each signatory for each party and to indicate that signatory's intention in relation to the contents of this Agreement;
 - (2) a requirement for writing or written form or physical or vellum form may be satisfied in electronic or digital form; and
 - (3) a requirement for this Agreement (or any document, notice or communication under it) to be executed may be satisfied by Electronic Signature;

- (iii) warrants to the other party that, if this Agreement has been executed using an Electronic Signature, they have applied (or their duly authorised signatories have applied) the Electronic Signature to this Agreement, or approved the application of the Electronic Signature to this Agreement on their behalf; and
- (iv) acknowledges and accepts that Electronic Signature is legally effective execution and conclusive as to their intention to be bound by this Agreement as if signed by the manuscript signature of that party (or any of its duly authorised signatories).
- 36.14 **Governing law**: This Agreement is governed by and is to be construed in accordance with New Zealand law and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

EXECUTION

Executed as an agreement.

SIGNED for and on behalf of WELLINGTON REGIONAL COUNCIL by

Signature

Position

SIGNED for and on behalf of EAST BY WEST COMPANY LIMITED by

Section 7(2)(a)

[Print Name]

Section 7(2)(a)

Signature

Section 7(2)(a)

Position

SCHEDULE 1: DEFINITIONS AND INTERPRETATION

1. Definitions and interpretation

1.1 **Definitions**: In this Agreement, unless the context otherwise requires:

Abatement has the meaning given to that term in schedule 10 (Performance);

Access Agreement means;

- (a) the licence agreement relating to land at Queens Wharf between Wellington Waterfront Limited and the Operator (undated); or
- (b) the licence agreement relating between Wellington Waterfront Limited and the Operator (undated);

Additional Funding has the meaning given to that term in clause 2.4(a);

Adjustment Event has the meaning given to that term in schedule 9 (Variations);

Affected Obligations has the meaning given to that term in clause 23.3(a)(ii);

Affected Party has the meaning given to that term in clause 23.3(a);

Annual Gross Price has the meaning given to that term in schedule 8 (Payments);

Annual Report has the meaning given to that term in schedule 5 (Planning and management services);

Annual Services Payment has the meaning given to that term in schedule 8 (Payments);

Applicable Law means any statute, legislation, regulation, proclamation, by-law, directive, statutory instrument, rule, order or other subordinate form of rule-making of any Governmental Agency, law or equity, any binding court order or judgement or any Authorisation (including any condition or requirement under any such Authorisation), applicable to the Services or otherwise applicable to GW, the Guarantor or the Operator;

Appointment Date means the date of this Agreement;

Approved Business Plan means the draft Business Plan that has been approved by the Management Committee under paragraph 5.6 of schedule 7 (Business plan);

Asset Register has the meaning given to that term in schedule 6 (Vessel services);

Auditors means the auditors appointed by GW;

Authorisation means:

- (a) any accreditation, consent, authorisation, permit, registration, filing, agreement, notarisation, certificate, permission, licence, approval or exemption by or with a Governmental Agency, including any navigational safety bylaw and any certification, rule, requirement, direction or guideline under the Martime Transport Act 1994; and
- (b) in relation to any act, matter or thing that will be prohibited or restricted in whole or in part if a Governmental Agency 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;

Authorised Representative means for each of GW and the Operator, the individuals specified in the Contract Particulars or as notified to the other party in accordance with clause 5.3;

Bill Rate means the average rate per annum (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page displaying substantially the same information) under the heading FRA for bank accepted bills having a term of 3 months as fixed at 10.45 am on the first Business Day following the due date (and on the first Business Day next following the expiration of each succeeding three month period after the due date thereafter);

Board has the meaning given to that term in the Companies Act;

Bond has the meaning given to that term in clause 24.1;

Bond Amount means the amount specified in the Contract Particulars, as that amount may be adjusted in accordance with this Agreement less the aggregate amount of any amounts received by GW under the Bond up to and including that date;

Business means the business of providing the Services and any business or activity associated with the Services;

Business Day means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Wellington;

Business Plan means

- (a) from the period no later than 60 Business Days (or such later period as the parties agree in writing) after the Operations Commencement Date, the Initial Business Plan; and
- (b) after that date, the then current revision of the Business Plan (under paragraph 2.3 of schedule 7 (Business plan));

Call-in Event has the meaning given to that term in clause 28.1(a);

Call-in Notice has the meaning given to that term in clause 28.3;

Cancelled Service Rebate means the amount calculated in accordance with paragraph 7 (Cancelled service rebate) of schedule 8 (Payments);

Cancelled Service Rebate Rate has the meaning given to that term in schedule 8 (Payments);

Capital Expenditure has the meaning given to that term in schedule 11 (Restrictions on operator);

Capital Expenditure and Maintenance Plan has the meaning given to that term in schedule 7 (Business plan);

CCO means council-controlled organisation, as that term is defined in section 6 of the Local Government Act 2002:

CCTV means closed-circuit television;

Change in Law means the coming into effect after Appointment Date of:

(a) any Applicable Law (including an Applicable Law that repeals or amends an existing Applicable Law); or

(b) any applicable judgment of a relevant court of law that changes or creates a binding precedent,-

but does not include the coming into effect of any Applicable Law or applicable judgement that:

- (c) was published on or before the Appointment Date 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 Applicable Law enacted or applicable judgement eventuating after the Appointment Date;
- (d) was contained or referred to in any Services Document, in substantially the same form as the relevant Applicable Law enacted or applicable judgement eventuating after the Appointment Date;
- (e) a party experienced and competent in providing services similar to the Services would have reasonably foreseen or anticipated prior to the Appointment Date;
- (f) is a change in the way in which an Applicable Law applies or is interpreted as a result of a court decision other than as described in paragraph (b);
- (g) to avoid doubt, comprises or results in a non-mandatory change to an Authorisation;
- (h) comprises a change to any Applicable Law to the extent relating to tax or GST (excluding, to avoid doubt, a change to the 'compulsory employer contribution rate' under Subpart 3A of the KiwiSaver Act 2006); or
- (i) has been brought into effect as a consequence of the acts (excluding acts expressly contemplated by this Agreement) or omissions of the Operator or any Operator Associate;

Change of Control means, in relation to a body corporate, where:

- (a) a person acquires Control of the body corporate where no person previously had Control of the body corporate;
- (b) the Ultimate Holding Company of the body corporate ceases to have Control of the body corporate;
- (c) a person acquires Control of the Ultimate Holding Company of the body corporate; or
- (d) a person who is not under the Control of the Ultimate Holding Company of the body corporate acquires Control of the body corporate;

Companies Act means the Companies Act 1993;

Component has the meaning given to that term in schedule 6 (Vessel services);

Concessionary Fare has the meaning given to that term in schedule 4 (Passenger services);

Conditions of Carriage means the terms and conditions of carriage for passengers travelling on a Ferry Service;

Confidential Information means the provisions of this Agreement and (except to the extent provided otherwise under this Agreement):

(a) all studies, findings and forecasts relating to the Services or the Wellington Network (or terminals or wharfs):

- (a) the terms of all agreements between GW and Third Party Providers; and
- (b) any information that is provided to the Operator by GW and is designated by GW as confidential, regardless of form;

Consequential or Indirect Loss means any loss of revenue, loss of profit, loss of financial opportunity, loss of contract (other than this Agreement or another Services Document), or loss of goodwill under any agreement (other than this Agreement or another Services Document) or failure to realise anticipated savings (whether the loss is direct or indirect);

Contaminant has the meaning given to that term in section 2 of the RMA and **Contamination** has a corresponding meaning;

Contract Particulars means the contract particulars in schedule 2 (Contract particulars);

Control means, in relation to a body corporate (of any kind):

- (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; or
- (b) having a relevant interest (as defined in sections 235 to 237 of the Financial Markets Conduct Act 2013) in more than 20% of the voting securities,-

of that body corporate (whether alone or together with a Related Company);

Cure Period means in relation to:

- (a) a Financial Default Event, 15 Business Days from and including the date of service of a Default Notice;
- (b) a Default Event listed in clause 29.1(b), such reasonable period (from and including the date of service of the Default Notice) as GW may determine having regard to the nature of the Default Event and the actual or likely effect of the Default Event on any Service; and
- (c) any other Default Event:
 - (i) 1 month; or
 - (ii) any longer period granted by GW under clause 29.10,-

from and including the date of service of a Default Notice;

Cure Plan has the meaning given to that term in clause 29.6;

Customer Experience Services has the meaning given to that term in schedule 4 (Passenger services);

Customer Information Services has the meaning given to that term in schedule 4 (Passenger services);

Customer Information System means any customer information system forming part of the GW Systems;

Customer Satisfaction Incentive has the meaning given to that term in schedule 10 (Performance);

Customer Satisfaction PI has the meaning given to that term in schedule 10 (Performance);

Customer Satisfaction Target means the target stated in schedule 10 (Performance);

Customer Satisfaction Survey means the surveys carried out by GW (or a third party for GW) to record the customer satisfaction levels in relation to Ferry Services;

Daily Fare Reconciliation Payment means the amount calculated in accordance with paragraph 5.1 of schedule 8 (Payments);

Daily Fare Reconciliation Report has the meaning given to that term in schedule 5 (Planning and management services);

Data means any information generated, processed, obtained, received, collected, held, stored, managed, used, disclosed, transferred or transmitted by or on behalf of the Operator including all data and expressions of data comprising:

- (a) reports generated or prepared by or on behalf of the Operator; and
- (b) Passenger Services Personal Information;

Data Security Breach has the meaning given to that term under clause 20.5;

Data Security Obligation means:

- (a) any obligation under Information Privacy Principle 5 of the Privacy Act 2020 (or any replacement thereof);
- (b) any other Applicable Law that relates to data security; and
- (c) any GW Data Security Policy;

Data System includes:

- (a) information technology for the generation, transmission, processing or storage of Data including infrastructure, hardware, software and systems;
- (b) non-electronic means for storage of Data; and
- (c) any procedure for dealing with Data including by use of information technology and nonelectronic means,-

used by or on behalf of the Operator in connection with the Operator performing its obligations under this Agreement or any other Services Document or otherwise in connection with the Business;

Debt to Equity Ratio means, in relation to the Operator for a period ending on a particular date, the ratio of A to B where:

"A" is the aggregate of all Section 7(2)(b)(ii) of the Operator; and

"B" is the aggregate (without double counting) of:

- (a) Equity;
- (b) retained earnings of the Operator;
- (c) current earnings of the Operator;
- (d) reserves of the Operator; and

(e) share premium of the Operator,-

in each case for the 12 months ending on that date;

Default Event has the meaning given to that term under clause 29.1;

Default Interest Rate means the rate that is 5% per annum above the Bill Rate;

Default Notice has the meaning given to that term under clause 29.3;

Designated Marine Surveyor has the meaning given to that term in schedule 6 (Vessel services);

Destination has the meaning given to that term in schedule 10 (Performance);

Developed Intellectual Property Rights has the meaning given to that term in clause 17.2;

Direct Costs means reasonable and demonstrable costs which are:

- (a) incremental in nature;
- (b) directly attributable to, and would not have been incurred but for, the Operator's performance of the obligations in respect of which it is claiming such costs; and
- (c) net of any reimbursement or payment the Operator receives directly from a consultant or contractor engaged by it to perform the Operator's obligations;

Disaster Recovery and Business Continuity Plan has the meaning given to that term schedule 7 (Business plan);

Dispute Resolution Procedure means the dispute resolution procedure in clause 33 (Dispute resolution procedure);

Disputed Amount has the meaning given to that term in clause 16.3(b);

Document has the meaning given to that term in clause 8.1;

Document Approval Process means the process for approving a Document in clause 8 (Document approval process);

Draft Timetable has the meaning given to that term in schedule 4 (Passenger services);

Energy Savings Initiative has the meaning given to that term in schedule 6 (Vessel services);

Energy Savings Proposal has the meaning given to that term in schedule 6 (Vessel services);

Enterprise Asset Management System has the meaning given to that term in schedule 6 (Vessel services);

Electronic Signature means:

- (a) an encrypted signature applied using a proprietary program (for example DocuSign or AdobeSign) which is applied following verification of an individual's identity;
- (b) the digital image of an individual's manuscript signature (regardless of whether it is a digitally generated image, or a scanned copy of a physically signed document); or
- (c) any other electronic process by which an individual accepts the terms of this Agreement for themselves or on behalf of another person;

Emergency Legislation has the meaning given to that term in clause 9.6(a);

End of Term Period means the period commencing on the earlier of the date that:

- (a) is 12 months prior to the date of expiry of the Term under clause 3.3;
- (b) GW notifies the Operator that the period has commenced as a result of a Termination Event; and
- (c) GW notifies the Operator of termination of this Agreement under clause 23.8 or clause 32 (Termination for funding or policy constraints),-

and ending on the expiry or termination of the Term, except that the End of Term Period will end immediately if GW notifies the Operator of an extension of the Term in accordance with clause 3.2, in which case the End of Term Period will commence again (or will be deemed to have commenced again) on the earlier of the dates set out in paragraphs (a) to (c) and will end on the expiry or termination of the Term;

Environment has the meaning given to that term in section 2 of the RMA and includes all or any part of the following media (alone or in combination):

- (a) air (including the air within the building and the air within other natural or man-made structures, whether above or below ground;
- (b) water (including sea, water under or within land or in drains or sewers and coastal and inland waters; and
- (c) land (including land under water);

Equity means the aggregate of the consolidated book value of all of the Operator's assets excluding intangible assets, advances to directors and shareholders, investments in related and associated companies and future asset revaluations (except as individually approved by GW), in each case determined in accordance with NZ GAAP;

Existing Agreement has the meaning given to that term in clause 2.3(a);

Existing Intellectual Property Rights has the meaning given to that term in clause 17.1;

Expiry Date means the Initial Expiry Date or, if this Agreement is extended under clause 3.2, then the expiry date determined by reference to the GW Extension Period;

Fare means the consideration that may be charged to a passenger for a Ferry Service;

Fare Evasion has the meaning given to that term in schedule 4 (Passenger services);

Fare Revenue means, in relation to a Ferry Service, the total Fare revenue attributed to that Ferry Service:

Ferry Service means a single service operated by the Operator on the Wellington Network using the Vessel for the carriage of passengers in accordance with this Agreement having:

- (a) an Origin;
- (b) a Destination;
- (c) stopping pattern (if any);
- (d) arrival time at Destination and departure time at Origin and intermediary Terminals; and

(e) a unique service identification number,-

all as set out in the Timetable or a Special Timetable (as the case may be);

Final Timetable has the meaning given to that term in schedule 4 (Passenger services);

Financial Default Event means a failure by the Operator to pay when due any money which it is obliged to pay to GW under a Services Document;

Section 7(2)(b)(ii)

Financial Statement means:

- (a) the statement of financial performance;
- (b) the statement of financial position;
- (c) the statement of cashflows,-

for the relevant Operator Financial Year, each prepared in accordance with NZ GAAP and the Companies Act (or equivalent legal requirements of the jurisdiction of incorporation of the relevant reporting entity);

Financial Year means the financial year of GW for accounting purposes, being:

- (a) the period from the Operations Commencement Date to the first occurrence of 30 June after the Operations Commencement Date; and
- (b) subsequently, each consecutive 12 month period beginning on 1 July and ending on 30 June of the following year, provided that if the Expiry Date is not 30 June of a year, then the last Financial Year will be the period from 1 July of the year immediately preceding the Expiry Date to the Expiry Date;

Fleet has the meaning given to that term in schedule 6 (Vessel services);

Fleet Register has the meaning given to that term in schedule 6 (Vessel services);

Force Majeure Event has the meaning given to that term in clause 23.1;

Force Majeure Event Notice has the meaning given to that term in clause 23.3(a);

Force Majeure Event Termination Date has the meaning given to that term in clause 23.9;

Force Majeure Event Termination Notice has the meaning given to that term in clause 23.8(c);

Good Industry Practice means the utilisation of up-to-date and advanced proven processes, techniques, technology or methodologies, and will be interpreted having regard to:

- any prevailing industry standards in relation to ferry passenger services similar to the Services in jurisdictions other than New Zealand, including Australia, Europe and Singapore; and
- (b) any process, technique, technology or methodology utilised by other service providers;

Governmental Agency means the Sovereign in right of New Zealand and any government or governmental or semi-governmental entity, person or authority, body politic (but excluding a political party), government department, local government authority or statutory authority and includes (unless the context otherwise requires) GW (in its regulatory), TAIC, Martime New Zealand and the Harbourmaster;

GST means tax charged under the GST Act;

GST Act means the Goods and Services Tax Act 1985 (and any predecessor or successor legislation);

Guarantee means the deed of guarantee between the Guarantor and GW in relation to this Agreement in the form set out in schedule 14 (Form of guarantee);

Guarantor means each entity specified in the Contract Particulars;

GW Annual Plan means the annual plan provided by GW to the Transport Agency;

GW Asset means any asset identified in the Contract Particulars;

GW Associate means any Representative of GW or any CCO of GW;

GW Advertising Policy has the meaning given to that term in schedule 4 (Passenger services);

GW Branding Guidelines means the principles applying to all passenger communications to ensure consistency and clarity across the GW brand, as advised by GW;

GW Data Security Policy means any policy, standard or guidance of GW relating to data security, as published by GW or otherwise notified by GW to the Operator;

GW Extension Period has the meaning given to that term in clause 3.2;

GW Privacy Policy means any policy of GW relating to the handling of Personal Information, as published by GW or otherwise notified by GW to the Operator;

GW Systems means the real time tracking system, public address announcement system, CCTV system and Vessel integration suite (as may be provided by GW) and such other customer relationship management systems and other information technology systems which are owned by or licensed to GW and made available to the Operator for the purposes of providing the Services;

GW Terms of Use has the meaning given to that term in schedule 4 (Passenger services);

Handover Package has the meaning given to that term in schedule 12 (Transition-out services);

Harbourmaster means a harbourmaster appointed under Part 3A of the Maritime Transport Act 1994;

Headway Management has the meaning given to that term in schedule 4 (Passenger services);

Health and Safety Representative has the meaning given to that term in the HSW Act;

HSW Act means the Health and Safety at Work Act 2015;

Impact Statement has the meaning given to that term in schedule 9 (Variations);

Incentive has the meaning given to that term in schedule 10 (Performance);

Incident has the meaning given to that term in schedule 6 (Vessel services);

Incident Report has the meaning given to that term in schedule 6 (Vessel services);

Incremental Costs has the meaning given to that term in schedule 9 (Variations);

Index Multiplier has the meaning given to that term in schedule 8 (Payments);

Initial Business Plan means the plan prepared by the Operator in accordance with paragraph 2.2 of schedule 7 (Business plan);

Initial Expiry Date means the date specified in the Contract Particulars;

Initial Term means the period from the Appointment Date to the Initial Expiry Date;

Initial Vessel Maintenance Plan has the meaning given to that term in schedule 6 (Vessel services);

In-Service has the meaning given to that term in schedule 9 (Variations);

In-Service Hour means, in relation to a Ferry Service, the time, measured in whole and part hours, to undertake the relevant Ferry Service;

Insolvency Event means, in relation to a person:

- (a) the presentation of an application for the liquidation or removal from the New Zealand Companies Register of that person that is not discharged within 5 Business Days of its filing or which is not demonstrated to the other party prior to the expiry of that 5 Business Day period as being an application that is frivolous or vexatious;
- (b) a distress, attachment, execution or other legal process being levied or enforced on or against the assets of that person that is not discharged or stayed within 5 days or a receiver, trustee, manager, administrator or similar officer being appointed in respect of that person or their assets; or
- (c) that person being declared at risk under the Corporations (Investigation and Management)
 Act 1989, or a statutory manager is appointed or any step taken with a view to any such
 appointment in respect of it under that Act (including a recommendation by, or submission by
 any person to, the Financial Markets Authority supporting such an appointment); or
- (d) any step taken in, or towards, the making of any compromise, proposal or deed of arrangement with all or some of the creditors of that person;
- (e) the appointment of a liquidator, receiver, administrator, statutory manager, or similar official, to that person;
- (f) that person being unable to pay its debts as they fall due in the ordinary course of business;
- (g) the suspension or threatened suspension by that person of the payment of its debts;
- (h) the enforcement of any security against the whole, or a substantial part, of the assets of that person; or
- (i) any other Insolvency Event or proceedings analogous to any of the foregoing occurring;

Insurance Policy means an insurance policy that the Operator is required to have under clause 26 (Insurance);

Insured Amount has the meaning given to that term in clause 23.6(d)(ii);

Intellectual Property Rights means all copyright, database rights, trade marks, designs, patents, rights to extract data, trade or other proprietary rights or rights derivative of those rights (including licence rights), whether registered or unregistered, as well as any other rights in intellectual property which are recognised or protected under law, but does not include moral rights (if any) subsisting in any particular work;

Inter-Peak means, in relation to Ferry Services, the period between morning and evening Peak periods on Operating Days;

IT Environment means an entity's information technology environments including all infrastructure, hardware, software and systems;

Licensee has the meaning given to that term in clause 17.11;

Local Authority has the meaning given to that term in the Local Government Act 2002;

Loss means any loss, liability (whether actual, contingent or prospective and including any liabilities arising from actions or proceedings), cost or expense (including legal costs and expenses of whatever nature or description and experts' and consultants' fees), charge (whether actual, contingent or prospective and including any charge arising from actions or proceedings), fine, penalty, damage or demand suffered or incurred by a party;

Lost or Damaged Asset has the meaning given to that term in clause 22.7;

LTMA means the Land Transport Management Act 2003;

Maintenance Work has the meaning given to that term in schedule 6 (Vessel services);

Major Service Change has the meaning given to that term in schedule 9 (Variations);

Management Committee means the Management Committee referred to in clause 6 (Governance);

Management Committee Members means any person authorised to represent GW or the Operator on the Management Committee, as specified in the Contract Particulars;

Marine Insurance Policy has the meaning given to that term in clause 26.1;

Maritime New Zealand means the authority continued by Part 29 of the Maritime Transport Act 1994;

Maritime Transport Operator Certificate means a maritime transport operator certificate issued by Maritime New Zealand;

Master means an individual with a current master certificate issued by Maritime New Zealand;

Master and Crew Services has the meaning given to that term in schedule 4 (Passenger services);

Material Adverse Change means, in relation to the Operator or the Guarantor, any matter, event or circumstance that occurs, or series of related matters, events or circumstances that occur, and that does, or is reasonably likely to materially and adversely affect:

- (a) the expected outcome of its operations, results of operation, business or assets taken as a whole;
- (b) the financial or trading position or prospects; or

(c) its ability to perform its obligations under or otherwise comply with this Agreement or other Services Document (as applicable);

Material Adverse Effect means any matter, event or circumstance that occurs, or a series of related matters, events or circumstances that occur, and that does, or is reasonably likely to, materially and adversely affect the ability of:

- (a) GW exercising its Step-In Rights;
- (b) the Operator performing its obligations under or otherwise complying with this Agreement or any other Services Document; or
- (c) the Operator or GW effecting the transition of the Business to a New Operator;

Mātiu / Somes Island Service Rate has the meaning given to that term in schedule 8 (Payments);

Mātiu / Somes Island Service Rebate means the amount calculated in accordance with paragraph 6 (Mātiu / somes island service rebate) of schedule 8 (Payments);

Margin% means the percentage stated as the Margin% in schedule 9 (Variations);

Maximum Permitted Debt to Equity Ratio means the amount stated as the maximum permitted debt to equity ratio in the Contract Particulars;

Mean Hours between Service Failures has the meaning given to that term in schedule 6 (Vessel services);

Mean Hours between System Failures has the meaning give to that term in schedule 6 (Vessel services);

Metlink Website has the meaning given to that term in schedule 4 (Passenger services);

MMS has the meaning given to that term in schedule 6 (Vessel services);

Monthly Report has the meaning given to that term in schedule 5 (Planning and management services);

Monthly Service Payment has the meaning given to that term in schedule 10 (Performance);

Net Financial Impact has the meaning given to that term in schedule 9 (Variations);

New Operator means any person replacing the Operator in the conduct or operation of all or any part of the Services (and includes any person nominated by the New Operator to conduct part of the Services) and such person may be GW;

Nominated Performance Indicator has the meaning given to that term in schedule 10 (Performance);

Nominated Performance Indicator Incentive has the meaning given to that term in schedule 10 (Performance);

Non-Vessel Asset has the meaning given to that term in clause 26.3;

Notifiable Injury has the meaning given to that term in the HSW Act;

Notifiable Incident has the meaning given to that term in the HSW Act;

NZ GAAP means the generally accepted accounting practice in New Zealand as defined in section 8 of the Financial Reporting Act 2013 including New Zealand equivalents of International Financial Reporting Standards;

Off-Peak Service means a Ferry Service that is not a Peak Service and, for the purposes of schedule 10 (Performance), includes Inter-Peak Services;

On-time has the meaning given to that term in schedule 10 (Performance);

Operational Cancellation Event means:

- (a) constant wind above 40 knots (for Ferry Services on the Vessel known as 'Cobar Cat') or 35 knots (for Ferry Services on the Vessels known as 'City Cat' or 'Ika Rere');
- (b) logs and other flotsam, tides and swell, and abnormally strong winds, that in the reasonable opinion of the Master requires cancellation (either before or during that Ferry Service) of the relevant Ferry Service; or
- (c) any other event or circumstance that GW and the Operator agree in writing is to be a Force Majeure Event for the purposes of the calculation of one or more Abatements,-

that results in cancellation of the relevant Ferry Service, but does not include an event or circumstance that satisfies the requirements of paragraphs (b) or (c) of this definition as result of lower operating thresholds for a particular Master, insufficient crew or a deficiency in the Vessel;

Operational Performance Indicator has the meaning given to that term in schedule 10 (Performance);

Operator Assets means all the real and personal property, contractual rights and choses in action, Intellectual Property Rights, receivables and any Authorisation or other assets of the Operator including:

- (a) any plant and equipment;
- (b) any Vessels and vehicles;
- (c) any health and safety, operational, maintenance and other manuals, instructions and records and other know-how;
- (d) any spares, consumables and other assets; and
- (e) the MMS,-

but excluding (to avoid doubt) any GW Asset (if any);

Operator Associate means:

- (a) any member of the Operator Group; and
- (b) any Representative of a member of the Operator Group;

Operator Compliance Costs has the meaning given to that term in clause 11.1;

Operator Confidential Information has the meaning given to that term in clause 18.4(a);

Operator Employee means an individual employed by the Operator or an Operator Associate wholly or mainly in the provision of the Services (including casual or temporary workers);

Operator Group means the Operator and the Guarantor and any Related Company of the Operator or the Guarantor;

Operating Day means a day on which there are Timetabled Ferry Services;

Operations Commencement Date means the date determined by GW under the Agreement;

Origin has the meaning given to that term in schedule 10 (Performance);

parties means GW and the Operator and party means either of them;

Passenger Services means the services and other obligations of the Operator under schedule 4 (Passenger services);

Passenger Services Personal Information means any Personal Information that the Operator accesses, receives, collects, stores, uses, generates, discloses or processes under or in connection with the provision of the Services, the Business or otherwise under any Services Document;

Patronage Incentive has the meaning given to that term in schedule 10 (Performance);

Patronage Target has the meaning given to that term in schedule 10 (Performance);

Payment Misrepresentation has the meaning given to that term in schedule 8 (Payments);

Payment Period has the meaning given to that term in schedule 8 (Payments);

PCBU has the meaning given to that in the HSW Act;

Peak Service has the meaning given to that term in schedule 10 (Performance);

Performance Call-in Event has the meaning given to that term in clause 28.1(a)(i);

Performance Default Event means:

- (a) GW deciding that multiple Performance Call-in Events constitute a Default Event; or
- (b) a Performance KPI being less than the Performance KPI Minimum for that Performance KPI in any Reporting Period;

Performance Indicator has the meaning given to that term in schedule 10 (Performance);

Performance KPI means:

- (a) the Service Reliability KPI; and
- (b) the Service Punctuality KPI;

Performance KPI Minimum has the meaning given to that term in schedule 10 (Performance);

Period of Suspension has the meaning given to that term in clause 23.5(a);

Permitted Change of Control means a Change of Control that:

- (a) has the prior written approval of GW;
- (b) arises from a transfer of the shares of the Operator to a wholly-owned subsidiary of the Guarantor as part of a solvent corporate reorganisation and such subsidiary remains a wholly-owned subsidiary of the Guarantor;

- (c) arises from a transfer of the shares of a shareholder of the Operator to a wholly-owned subsidiary as part of a solvent corporate reorganisation and such subsidiary remains a wholly-owned subsidiary of the Guarantor;
- (d) arises from a change to the directors of the Board of the Operator which is in the ordinary course of business and, other than the change to the directors, is not otherwise a Change of Control; or
- (e) results from a Change of Control of the Guarantor if all of the shares in the Guarantor are listed on a recognised public stock exchange and the Change in Control occurs as a result of trading in the shares of the Guarantor on that stock exchange;

Personal Information means information or opinion about an individual whose identity is apparent, or can reasonably be ascertained, including 'personal information' as that term is defined in the Privacy Laws;

Planned Disruption has the meaning given to that term in schedule 4 (Passenger services);

Planning and Management Services means the services and other obligations of the Operator under schedule 5 (Planning and management services);

Planning Period has the meaning given to that term in schedule 7 (Business plan);

Pollution means a discharge, emission or deposit which brings about a detrimental change in the condition of the Environment and the word Pollutant has a corresponding meaning;

Precluded Extent has the meaning given to that term in clause 23.3(a)(iii);

Prevention and Mitigation Plan (Call-in Event) has the meaning given to that term in clause 28.5(a);

Prevention and Mitigation Plan (Default Event) has the meaning given to that term in clause 28.5(a);

Privacy Consent means an individual's consent to the Operator or GW (as the case may be):

- (a) collecting, using or disclosing Personal Information about them; and
- (b) disclosing their Personal Information to the Operator, GW or any other person nominated by GW;

Privacy Laws means the Privacy Act 2020 and all other Applicable Law in any jurisdiction in relation to the collection, use, processing, disclosure, storage or granting of access rights to Personal Information;

Privacy Notice means a notice provided for the purposes of satisfying any Information Privacy Principle(s) in the Privacy Laws or any other Privacy Obligation in a format approved by GW after consultation with the Operator;

Privacy Obligations means:

- (a) obligations imposed on public sector agencies under the Privacy Laws;
- (b) obligations imposed on the Operator under the Privacy Laws;

- (c) any other applicable laws which relate to the privacy and protection of Personal Information, including the Unsolicited Electronic Messages Act 2007;
- (d) any privacy codes of conduct or similar instruments in relation to privacy protection which are industry standards and applicable to the Passenger Services;
- (e) any Privacy Notice or Privacy Consent issued by GW; and
- (f) any GW policy relating to privacy compliance, including the GW Privacy Policy;

Procurement Process has the meaning given to that term in schedule 12 (Transition-out services);

Public Liability Insurance Policy has the meaning given to that term in clause 26.2;

Punctuality Failure has the meaning given to that term in schedule 10 (Performance);

Quarter or Quarterly means:

- the period commencing on the Operations Commencement Date to the first occurrence of 31 December, 31 March, 30 June or 30 September (whichever is earliest after the Operations Commencement Date); and
- (a) subsequently, each consecutive 3-month period commencing on 1 October, 1 January, 1 April and 1 July (as the case may be), provided that if the Expiry Date is not at the expiry of any such 3-month period, then the last 3-month period will end on the Expiry Date;

Record means any document, plan, specification, model, Data, or financial or non-financial record or other information held by or under the control of the Operator or any other information held by an Operator Associate in relation to a GW Asset (if any), Operator Asset, the Services or the obligations of the Operator under this Agreement, in any form, including:

- (a) any Authorisation; and
- (b) any information relating to compliance with an Authorisation or Applicable Law;

Related Company has the meaning given to that term in section 2(3) of the Companies Act;

Relevant Health and Safety Legislation means the HSW Act and the Maritime Transport Act 1994, all regulations, bylaws, rules, requirements, directions, guidelines, certifications, standard operating procedures and local operating procedures made under these Acts and all other legislation, regulations, rules, standards, approved codes of practice and any other regulatory requirement relating to passenger or workplace health and safety or ferry operation or vessel safety or navigation;

Relevant IP has the meaning given to that term in clause 17.11;

Reliability Failure has the meaning given to that term in schedule 10 (Performance);

Remedial Plan has the meaning given to that term in clause 28.6(a);

Renewal Period has the meaning given to that term in the Contract Particulars;

Reporting Failure Payment has the meaning given to that term in schedule 5 (Planning and management services);

Reporting Period has the meaning given to that term in schedule 10 (Performance);

Reporting Services has the meaning given to that term in schedule 5 (Planning and management services);

Representative means, in relation to a party, any director, officer, employee, agent, contractor or consultant of that party;

Right has the meaning given to that term in clause 36.7;

RMA means the Resource Management Act 1991;

Route has the meaning given to that term in schedule 4 (Passenger services);

Route or Timetable Variation has the meaning given to that term schedule 9 (Variations);

Safety and Security Services has the meaning given to that term in schedule 4 (Passenger services);

Security Interest has the meaning given to that term in section 17 of the PPSA;

Senior Management means in relation to the Operator, the persons specified in the Contract Particulars:

Services means the:

- (a) Passenger Services;
- (b) Planning and Management Services
- (c) Vessel Services; and
- (d) Transition-Out Services;

Service Contract means, for a ferry service operator or vessel operator other than the Operator, any agreement (including an operations/services agreement) between GW (or any other Governmental Agency) and that operator regulating the rights and obligations of the operator in relation to its ferry services or vessels;

Services Document means:

- (a) this Agreement;
- (b) the Guarantee;
- (c) the Bond;
- (d) any other document or agreement that GW and the Operator agree is to be a Services Document for the purposes of this Agreement; and
- (e) a document or agreement between GW and the Operator and any other person that is entered into or provided in connection with or for the purposes of amending, assigning, novating or otherwise transferring any of the above;

Service Failure has the meaning given to that term in schedule 10 (Performance);

Service Grouping has the meaning given to that term in schedule 4 (Passenger services);

Service Hours has the meaning given to that term in schedule 4 (Passenger services);

Service Location has the meaning given to that term in clause 9.4(b);

Service Punctuality Abatement has the meaning given to that term in schedule 10 (Performance);

Service Punctuality KPI has the meaning given to that term in schedule 10 (Performance);

Service Punctuality KPI Minimum has the meaning given to that term in schedule 10 (Performance);

Service Reliability Abatement has the meaning given to that term in schedule 10 (Performance);

Service Reliability KPI has the meaning given to that term in schedule 10 (Performance);

Service Reliability KPI Minimum has the meaning given to that term in schedule 10 (Performance);

Services Payment means the amounts payable to the Operator under schedule 8 (Payments), subject to adjustment under clause 11 (Change in law) and schedule 9 (Variations);

Show Cause Notice has the meaning given to that term in clause 31.2(a);

Signage means any decals, posters, stickers, branding and other signage;

Significant Change has the meaning given to that term in schedule 10 (Performance);

Significant Incident means any failure by or action or omission of the Operator in relation to a Service that GW, acting reasonably, considers likely to impair GW's reputation as a provider of safe, reliable, efficient and customer friendly passenger ferry services, including any Incident or event attributable to any act or omission of the Operator that:

- (a) adversely affects a significant number of passengers;
- (b) causes serious disruption or inconvenience to one or more passengers; or
- (c) causes operational disruption for the Operator, any Operator Associate or subcontractor,GW, the Access Provider or any third party;

Soft Step-in Rights means the rights specified in clause 30.4(a);

SOLAS Regulations means the 'Safety of Life at Sea' regulations established and maintained by the International Maritime Organisation;

Special Event means events determined by GW that take place in the Wellington region including those of sporting, cultural or community nature and for which Timetabled Ferry Services will not be sufficient to service;

Special Event Ferry Service means a Ferry Service that is part of a Special Event;

Special Event Hour means the aggregate hours operated by all Vessels in connection with the servicing of Special Events, including travel for fuelling, maintenance, positioning and ancillary movements but, to avoid doubt, excluding any In-Service Hours associated with the delivery of Ferry Services, as provided for in the Timetable, that are also travelled as part of servicing the Special Event;

Special Event Hour Rate has the meaning given to that term in schedule 8 (Payments);

Special Event Kilometre Rate has the meaning given to that term in schedule 8 (Payments);

Special Event Payment means the amount calculated in accordance with paragraph 4 (Special event payment) of schedule 8 (Payments);

Special Event Rate has the meaning given to that term in schedule 8 (Payments);

Special Timetable has he meaning given to that term in schedule 4 (Passenger services);

Staff Complaint has the meaning given to that term in schedule 10 (Performance);

Staff Complaints Incentive has the meaning given to that term in schedule 10 (Performance);

Staff Complaints Maximum has the meaning given to that term in schedule 10 (Performance);

Staff Complaints PI has the meaning given to that term in schedule 10 (Performance);

Step-in Event means the events set out in clauses 30.1(a) to 30.1(c) (inclusive);

Step-in Notice has the meaning given to that term in clause 30.2;

Step-in Rights means the rights set out in clause 30.4(b);

Step-out Date has the meaning given to that term in clause 30.7(b);

Strategic Plan has the meaning given to that term in schedule 7 (Business plan);

Subcontractor Auditable Items has the meaning given to that term in schedule 11 (Restrictions on operator);

System has the meaning given to that term in schedule 6 (Vessel services);

System Failure has the meaning given to that term in schedule 6 (Vessel services);

TAIC means the Transport Accident Investigation Commission;

Tax Invoice has the meaning given in the GST Act;

Taxable Supply has the meaning given in the GST Act;

Term means the term of this Agreement, being the period on and from the Appointment Date until expiry or earlier termination of this Agreement or completion of the Transition-Out Services (whichever is the later);

Terminal means the ferry terminals known as:

- (a) Queens Wharf;
- (b) Days Bay; and
- (c) Mātiu / Somes Island;

Termination Date has the meaning given to that term in clause 32.2;

Termination Event has the meaning given to that term in clause 31.1;

Termination Notice means:

- (a) a Termination Notice issued by GW under clause 31.2(b) or 32.1; or
- (b) a Force Majeure Event Termination Notice;

Third Party Intellectual Property Rights has the meaning given to that term in clause 17.5;

Third Party Provider means any person providing goods or services to either of GW or the Operator, but excluding each member of the Operator Group;

Ticketed Passengers has the meaning given to that term in schedule 10 (Performance);

Ticketing and Revenue Protection Services has the meaning to that term in schedule 4 (Passenger services);

Timetable means the then current timetable for Ferry Services determined in accordance with this Agreement;

Timetable Change has the meaning given to that term in schedule 10 (Performance);

Timetable Service Change has the meaning given to that term in schedule 4 (Passenger services);

Timetable Service Change Implementation Date has the meaning given to that term in schedule 4 (Passenger services);

Timetable Service Change Request has the meaning given to that term in schedule 4 (Passenger services);

Timetable Specification has the meaning given to that term in schedule 4 (Passenger services);

Timetabled Ferry Service means a Ferry Service in the Timetable;

Total Patronage has the meaning given to that term in schedule 10 (Performance);

Transfer has the meaning given to that term in clause 34.3(a);

Transition-Out Plan has the meaning given to that term in schedule 12 (Transition-out services);

Transition-Out Services means the services and other obligations of the Operator under schedule 12 (Transition-out services);

Transport Agency means NZ Transport Agency Waka Kotahi established under the LTMA;

Transport Agency Ferry Index has the meaning given to that term in schedule 8 (Payments);

Transport Agency Ferry Index (Electric) has the meaning given to that term in schedule 8 (Payments);

Ultimate Holding Company means, in relation to a body corporate, the person (if any) which is not itself subject to Control but which has Control of the body corporate, either directly or indirectly;

Unplanned Disruption is any disruption or event affecting Ferry Services that is not a Planned Disruption;

Variation means a variation to:

- (a) the Ferry Services;
- (b) any Service; or
- (c) any provision of this Agreement,-

under clause 12 (Variations) or clause 22.7 or schedule 9 (Variations);

Variation Implementation Date has the meaning given to that term in schedule 9 (Variations);

Variation Proposal has the meaning given to that term in schedule 9 (Variations);

Variation Rate Calculation has the meaning given to that term in schedule 9 (Variations);

Vessel means a vessel used by the Operator to provide Ferry Services;

Vessel Cleaning Plan has the meaning given to that term in schedule 6 (Vessel services);

Vessel Maintenance Plan means the maintenance plan for the relevant Vessel under schedule 6 (Vessel services);

Vessel Quality Standards has the meaning given to that term in schedule 6 (Vessel services);

Vessel Services means the services and other obligations of the Operator under schedule 6 (Vessel services);

Vessel Services Standards has the meaning given to that term in schedule 6 (Vessel services);

Voluntary Improvement Plan has the meaning given to that term in clause 27.1;

Wellington Network means that public transport ferry network specified by GW for the purposes of this Agreement;

Workplace Health and Safety Plan has the meaning given to that term in schedule 7 (Business plan);

WREMO has the meaning given to that term in clause 9.6(a); and

Zero Fare Concession Ticket means a 'zero fare' concession ticket issued by GW to any:

- (a) GW 'Transport Officers' (to the extent such 'Transport Officers' are carrying out GW related duties on the applicable Ferry Service);
- (b) GW 'Customer Experience Officers' (to the extent such 'Customer Experience Offices' are duties on the applicable Ferry Service);
- (c) Māori Wardens of New Zealand;
- (d) members of the Kaitiaki Board; and
- (e) GW employees (to the extent such employees are carrying out GW duties on the applicable Ferry Service).
- 1.2 **General references**: In this Agreement, unless the context otherwise requires, any references to:
 - (a) a gender includes each other gender;
 - (b) the singular includes the plural and vice versa;
 - (c) an agreement or instrument includes that agreement or instrument as modified, supplemented, novated or substituted from time to time;
 - (d) a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the Appointment Date);

- (e) a person includes:
 - (i) an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state and an agency of state, in each case, whether or not having a separate legal personality; and
 - (ii) a reference to the person's successors, substitutes (including, persons taking by novation) and permitted assigns;
- (f) \$ or dollars is a reference to the lawful currency of New Zealand;
- (g) clauses, schedules and paragraphs are references to clauses of, and schedules to, this Agreement and paragraphs of the relevant schedule;
- (h) the consent, approval or acceptance of a person requires the prior written consent, approval or acceptance of that person;
- (i) an obligation to not do something includes an obligation to not suffer, permit or cause that thing to be done;
- (j) including and other similar words do not imply any limitation;
- (k) an approval also includes a consent, authorisation, exemption, filing, licence, order, permit, recording and registration (and references to obtaining approvals are to be construed accordingly);
- (I) an agreement, undertaking, representation or warranty in favour of more than one person is for the benefit of them jointly and severally. An agreement, undertaking, representation or warranty from more than one person is from them both jointly and severally;
- (m) a month is a calendar month;
- (n) a day is 24 consecutive hours from (but excluding) 24:00 on the previous calendar day, and any reference to any named day of the week will be to such period commencing on that named day;
- (o) XX:20 means, as an example of this notation, 20 minutes past the hour;
- (p) all monetary amounts are stated in this Agreement exclusive of any GST;
- (q) headings are to be ignored in construing this Agreement; and
- (r) no provision of this Agreement will be construed against a party on the basis that this Agreement or the provision in question was put forward or drafted by that party.
- 1.3 Contractors, agents, etc: An act or omission of any director, employee, contractor, sub-contractor or agent of a party is deemed to be an act or omission of that party and reference to any act or omission by the Operator:
 - (a) includes the permitting or allowing by the Operator of such act or omission; and
 - (b) includes any act or omission of an Operator Employee (whether or not acting within the scope of their employment) and any other Operator Associate.

- 1.4 Approvals: In any express provision in this Agreement for the giving of consent or approval by GW, the Management Committee or an Authorised Representative:
 - (a) that consent or approval may be given unconditionally or subject to conditions or withheld by GW, the Management Committee or the Authorised Representative (as the case may be), unless otherwise stated;
 - (b) if a consent or approval is given conditionally, the Management Committee or the Operator (as the case may be) will comply with each condition; and
 - (c) a consent for, or approval of, one thing does not apply to any other thing.

1.5 Priority between services documents

- (a) Subject to paragraph 1.5(d), if there is any inconsistency, ambiguity or discrepancy between this Agreement and any other Services Document, then the following order of precedence applies (highest to lowest):
 - (i) this Agreement; and
 - (ii) any other Services Document.
- (b) Subject to paragraph 1.5(d), if there is an inconsistency, ambiguity or discrepancy between the body and schedules or the body and annexures to any Services Document, then the body of the Services Document prevails.
- (c) Subject to paragraph 1.5(d), if there is an inconsistency, ambiguity or discrepancy between any Services Document and any Business Plan, then the Services Document prevails.
- (d) If any part or provision of a Services Document or Business Plan imposes a greater or higher requirement, standard, quality, level of service, quantum or scope on the Operator than any other part or provision of the same or another Services Document or Business Plan, then, unless the context requires otherwise, the greater or higher requirement, standard, quality, level of service, quantum or scope prevails.
- (e) If either party identifies any material inconsistency, ambiguity or discrepancy outlined in paragraphs 1.5(a), 1.5(b) or 1.5(c), then that party will notify the other party of the inconsistency, ambiguity or discrepancy as soon as possible and, in any event, not later than 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.
- (f) If the Operator issues or receives a notice under paragraph 1.5(e), then it will not take any further action in connection with the inconsistency, ambiguity or discrepancy until it receives a direction from GW in accordance with paragraph 1.5(g).
- (g) GW will, no later than 5 Business Days after issuing or receiving a notice under paragraph 1.5(e), direct the Operator as to how to resolve the inconsistency, ambiguity or discrepancy having regard to:
 - (i) the parties' mutual understanding under paragraph 1.5(d); and
 - (ii) the order of precedence in paragraph 1.5(a), 1.5(b) or 1.5(c) (as applicable).

1.6 **Delegation**

- (a) GW may delegate any right or obligation that GW has under any Services Document. Any such delegation may be:
 - (i) revoked, changed or delegated; and
 - (ii) limited or may be subject to such conditions as GW determines.
- (b) The Operator may request details of the delegation of any right or obligation by GW under any Services Document where a person purports to be acting under such a delegation. Once the Operator obtains such details, it may rely on them unless and until given notice of revocation of that delegation.
- (c) Any person to whom a right or obligation is delegated by GW has, to the extent of that delegation and subject to compliance with the terms and conditions of that delegation, full power and authority to act for and on behalf of and to bind GW under the relevant Services Document.

1.7 Transfer of functions

- (a) The Operator acknowledges and accepts that GW may be reconstituted, renamed or replaced and that any of the rights or obligations of GW may be transferred to or vested in another Governmental Agency.
- (b) If GW is reconstituted, renamed or replaced or if some or all of GW's rights or obligations are transferred to or vested in another Governmental Agency, then references in the Services Documents to GW will be deemed to refer, as applicable, to that reconstituted, renamed or new entity to the extent that it has assumed or has had transferred to it or vested in it those rights or obligations.

1.8 Relationship between the parties: Except as expressly provided in a Services Document:

- (a) nothing in any Services Document is to be considered or interpreted as constituting the relationship between the parties as a partnership, quasi partnership, association or any other relationship in which a party may be liable for the acts or omissions of the other party;
- (b) nothing in any Services Document will be deemed or construed to authorise any party to act as an agent for any other party for any purpose. In their relations with each other under any Services Document, the parties will not be considered fiduciaries except as expressly provided in the relevant Services Document; and
- (c) no party has the authority to incur any obligation or make any representation or warranty on behalf of, or to pledge the credit of, any other party.

1.9 Statutory and regulatory framework

- (a) Nothing in any Services Document in any way:
 - (i) restricts or affects the unfettered discretion of GW to exercise any of its rights, functions or responsibilities under any Applicable Law;
 - (ii) requires GW to interfere with or influence the exercise by any person or Governmental Agency of any statutory function or responsibility;

- (iii) requires GW to exercise any right, function or responsibility or otherwise act in a manner that it regards as not in the public interest; or
- (iv) requires GW or any GW Associate to develop or implement policy, or take any steps to procure legislation, by reference only or predominantly to the interests, objectives or expected outcomes of any Services Document.
- (b) Anything GW or an GW Associate does, fails to do or purports to do in connection with its rights, functions or responsibilities under Applicable Law will be deemed not to be, or not to cause, an act or omission of GW under a Services Document and will not entitle the Operator to make any claim against GW under a Services Document or otherwise.
- (c) To avoid doubt, GW is not relieved from any claim that the Operator may have against GW in relation to GW exercising any of its rights or obligations under Applicable Law in a manner contrary to an express obligation of GW under a Services Document and the existence of such obligations, and the existence and amount of such claim, is to be assessed in accordance with the terms of the relevant Services Document assuming paragraphs 1.9(a)(i) and 1.9(b) do not apply.

SCHEDULE 2: CONTRACT PARTICULARS

ITEM	CONTRACT PARTICULARS	REFERENCE			
1.	Authorised Representative	1.1	For GW, Samantha Gain (General Manager – Metlink) For the Operator, Section 7(2)(a)		5 (Authorised representatives)
2.	Bond Amount	An amount equal to 8% of the average projected Services Payment for any 12-month period, subject to any adjustment in relation to any GW Extension Period.			2.1 and 24 (Bond)
3.	Guarantor	Name: East by West TLC Limited Address: Section 7(2)(a)		2.1, 25 (Guarantee) and schedule 1 (Definitions and interpretation)	
_		Registration No.: Section 7(2)(a)			10.1
5.	GW Assets Initial Expiry Date	None as at the Appointment Date. 30 June 2028.			3 (Term) and schedule 1 (Definitions and interpretation)
6.	Insurance	6.1 Public liability: \$section 7(2)(5)(0)			26.2
		6.2 Maximum excess: \$			26.3(c)
7.	Maximum Permitted Debt to Equity Ratio	2.0			31.1 and schedule 3 (Representations and warranties)
8.	Management Committee	8.1	GW:	Matthew Chote (Principal Account Manager - Metlink) Quentin Townsend (Senior Commercial Advisor – Metlink) Paul Zimmerman (Manager Contracts and Partnerships – Metlink)	6 (Governance)

		8.2	Operator:	Section 7(2)(a)	
		8.3	Chairperson:	The chairperson of the Management Committee will rotate, on Financial Year basis, between a GW Management Committee Member as nominated by GW and an Operator Management Committee Member. If the chairperson is absent from a Management Committee meeting, then the chairperson will be agreed by the other GW Management Committee Members or Operator Management Committee Members or Operator Management Committee Members (as applicable — depending on whether GW or the Operator holds the chairperson role at the time).	
9.	Notices	9.1	GW:	Wellington Regional Council	36.2
			Attention:	Samatha Gain Group Manger Metlink	
			Address:	100 Cuba Street, Te Aro	
				Wellington 6011	
				PO Box 11646, Wellington 6142	
			Email:	Samatha.gain@gw.govt .nz	
		9.2	Operator:	East by West Company Limited	

			Attention: Address: Email:	Mat Jonsson Meridian Building (waterside), 55 Lady Elizabeth Lane, Queens Wharf. PO Box 5077, Wellington 6140 Section 7(2)(a)	
9.	Renewal Period	A perio	d of up to 4 yea	3.2	
10.	Senior Management	Section 7(2)(a)			7.5, 32.2(b) and
		membe	er with any othe ers of the senior ance board)	schedule 1 (Definitions and interpretation)	

SCHEDULE 3: REPRESENTATIONS AND WARRANTIES

1. GENERAL REPRESENTATIONS AND WARRANTIES

- 1.1 **Status**: It is a company duly incorporated and validly existing under the laws of New Zealand.
- 1.2 **Power**: It has the power to:
 - (a) enter into and perform its obligations under this Agreement and all other Services Documents;
 - (b) perform the transactions contemplated by this Agreement and all other Services Documents;
 - (c) undertake its business as now conducted or contemplated.
- 1.3 **Tax status**: On and from the Appointment Date and throughout the Term, it is and will remain registered as a single entity under the Income Tax Act 2007 and the GST Act.
- 1.4 **Authorisations and consents**: Everything required to be done (including the obtaining of any necessary consents and the passing of all necessary resolutions) to:
 - (a) enable it lawfully to enter into, exercise its rights and perform and comply with its obligations under this Agreement and all other Services Documents;
 - (b) ensure that those obligations are legal, valid, binding and enforceable in accordance with their respective terms; and
 - (c) make this Agreement and all other Services Documents admissible in evidence in the courts of New Zealand,-

has been duly done.

- 1.5 Non-contravention: Its entry into, and the exercise of its rights and performance of and compliance with its obligations under, this Agreement and all other Services Documents do not and will not:
 - (a) contravene any law to which it is subject;
 - (b) contravene any of the documents constituting it;
 - (c) exceed any limitation on, or constitute an abuse of, the powers of its directors or officers;
 - (d) contravene any agreement to which it is a party or which is binding on any of its assets; or
 - (e) result in the creation of (or oblige it (absolutely or contingently) to create or permit to exist) any Security Interest over or affecting any of the Operator Assets.

1.6 **Obligations binding**: Its obligations under this Agreement and all other Services Documents are legal, valid, binding and enforceable in accordance with their respective terms.

2. OTHER REPRESENTATIONS AND WARRANTIES

- 2.1 **No default**: It is not in default under:
 - (a) any agreement relating to indebtedness for borrowed money, including indebtedness for and in relation to money borrowed and raised by any means (including acceptances, deposits and financial leases) or for the deferred purchase price of assets or services;
 - (b) any guarantee; or
 - (c) any other agreement,-

to an extent or in a manner which, has or could have a Material Adverse Effect on the Operator Group.

- 2.2 **Solvency**: It satisfies the solvency test (as defined in section 4 of the Companies Act).
- 2.3 **Debt to equity**: It has a Debt to Equity Ratio of less than or equal to the Maximum Permitted Debt to Equity Ratio.

2.4 Litigation

- (a) No litigation, arbitration or administrative proceeding is current or pending or, to its knowledge, threatened:
 - to restrain its entry into, or the exercise of its rights or the performance of or compliance with or enforcement of its obligations under, this Agreement or any other Services Document; or
 - (ii) which has or could have a Material Adverse Effect on it or on the ability of GW to exercise or enforce any right or remedy under or in connection with this Agreement or any other Services Document.
- (b) There is no unsatisfied judgment against it.

2.5 Statutory requirements

- (a) There are no notices or other requirements of any Governmental Agency outstanding against it
- (b) All Authorisations necessary for the conduct of the Business are validly subsisting and are held by it.
- 2.6 **No trust**: It does not hold any assets as the trustee of any trust.

2.7 Intellectual property

- (a) Its performance of each Services Document in accordance with their respective terms will not infringe any Intellectual Property Rights of any other person.
- (b) The use by GW of the Operator's Existing Intellectual Property Rights or the Developed Intellectual Property Rights in accordance with the terms of this Agreement will not cause GW to, or result in, GW infringing any Intellectual Property Rights of any other person.

- 2.8 **No property or proprietary interest**: Its entry into this Agreement or any other Services Document does not confer on the Operator:
 - (a) any property or proprietary interest or right in:
 - (i) relation to any applicable Service or Route; or
 - (ii) any network plan, services designs or any other plan or strategy of GW; or
 - (b) except as expressly stated for in the relevant Services Document, any other right or interest to operate any ferry or other transport services.

SCHEDULE 4: PASSENGER SERVICES

1. **DEFINITIONS**

1.1 In this Agreement, unless the context requires otherwise:

Concessionary Fare means a GW-approved concession for the relevant public transport services passengers such as:

- (a) a 'Community Connect', child, secondary or tertiary student concession;
- (b) a 'SuperGold' or senior citizen concession; or
- (c) an accessibility concession;
- (d) a Zero Fare Concession Ticket;

Customer Experience Services means the customer experience services described in paragraph 7 (Customer experience services);

Customer Information Services means the customer information services described in paragraph 9 (Customer information services);

Draft Timetable has the meaning given to that term in paragraph 5.4(b);

Fare Evasion means a passenger boarding by an individual who is not a Ticketed Passenger;

Final Timetable has the meaning given to that term in paragraph 5.4(d)(i);

GW Advertising Policy means the then current 'Metlink Advertising Policy' available from the Metlink Website;

GW Terms of Use means the then current 'Metlink Conditions of Carriage' available from the Metlink Website:

Headway Management means practices to maintain or reinstate the frequency (time between services) of Ferry Services for a Route;

Master and Crew Services means the Master and crew services described in paragraph 4 (Master and crew services);

Metlink Website means <u>www.metlink.org.nz</u> (or such other replacement website notified by GW to the Operator);

Planned Disruption has the meaning given to that term in paragraph 3.7(a);

Route means:

- (a) Queens Wharf Terminal to Days Bay Terminal and Days Bay Terminal to Queens Wharf Terminal;
- (b) Queens Wharf Terminal to Days Bay Terminal and Days Bay Terminal to Mātiu/Somes Island Terminal and Mātiu/Somes Island Terminal to Queens Wharf Terminal;
- (c) Queens Wharf Terminal to Mātiu/Somes Island Terminal and Mātiu/Somes Island Terminal to Queens Wharf Terminal; and

(d) Days Bay Terminal to Mātiu/Somes Island Terminal and Mātiu/Somes Island Terminal to Days Bay Terminal;

Safety and Security Services means the safety and security services described in paragraph 6 (Safety and security services);

Service Grouping means Ferry Services that have been grouped by GW in accordance with the Origin, the Destination, the route path and the stopping pattern (if any);

Service Hours means the aggregate hours operated by all Vessels for the provision of Ferry Services for a Route as provided for in the Timetable, including time scheduled between arrival and departure for the boarding and disembarking of passengers;

Special Timetable has the meaning given to that term in 3.7;

Ticketing and Revenue Protection Services means the ticketing and revenue protection services described in paragraph 10 (Ticketing and revenue protection services);

Timetable Service Change has the meaning given to that term in paragraph 5.1(a);

Timetable Service Change Implementation Date has the meaning given to that term in paragraph 5.5(a);

Timetable Service Change Request means a request submitted by the Operator under paragraph 5.3(a); and

Timetable Specification means a specification issued by GW that describes, in relation to the Timetable, by Service Grouping or Route:

- (a) the required hours of operation;
- (b) the minimum service headways;
- (c) the maximum sectional run times;
- (d) the minimum capacity by time period;
- (e) priorities for the allocation of Vessels and maximum capacity by Vessel type; and
- (f) any other requirements that GW may consider appropriate for service alignment to GW's strategic plans.

2. SCOPE OF PASSENGER SERVICES

- 2.1 **Scope**: The Operator will provide:
 - (a) the Ferry Services;
 - (b) the Master and Crew Services;
 - (c) the services required for a Timetable Service Change;
 - (d) the Safety and Security Services;
 - (e) the Customer Experience Services;
 - (f) the Customer Information Services; and
 - (g) the Ticketing and Revenue Protection Services,-

in each case, as specified in this schedule.

2.2 No limitation: To avoid doubt, the obligations of the Operator in this schedule are in addition to and do not limit the obligations of the Operator under this Agreement or Applicable Law. Nothing in this schedule will require the Operator to prevent or discourage a Master from undertaking their duties under applicable maritime laws in relation to the operation of the relevant Vessels.

3. FERRY SERVICES

- 3.1 **Requirements**: The Operator will ensure that the Ferry Services are provided in a manner that enables the Operator to:
 - (a) provide the Ferry Services in accordance with the Timetable;
 - (b) provide the Ferry Services every day for the Term other than Christmas Day, with the applicable weekend Timetable (ie, summer or winter weekend Timetable) being provided on all public holidays and for the days that occur after Boxing Day up to (but excluding) the first Monday after New Year's Day; and
 - (c) operate the Vessels for the purposes for which the Vessels were designed and not in excess of the maximum capacity for which the Vessels were designed and in accordance with the requirements of the relevant manufacturer or supplier.

3.2 Timetable development

- (a) GW will develop a Timetable for each Ferry Service based on available data and a methodology designed to provide customers with the most likely chance of arriving at their location on time as well as providing the Operator with adequate opportunity to achieve the relevant Performance KPIs for On-time performance. The parties may agree to optimise Timetables to achieve efficiencies.
- (b) The Operator acknowledges and accepts that GW intends to develop and operate a 'summer' and 'winter' Timetable for each Ferry Service and the exact dates and time periods for such Timetables will be determined by the 'General Transit Feed Specification' developed and implemented by GW.
- 3.3 **Timetable information provided**: The Timetables to be provided by GW will show in time-order:
 - (a) scheduled departure time from the first departure point;
 - (b) major intermediate timing-points (if any); and
 - (c) scheduled arrival time at the final destination,-

and, to avoid doubt, times shown at all points other than the Ferry Service completion are departure times, and times at Ferry Service completion are arrival times.

- 3.4 **Initial timetable**: The Timetable as at the Operations Commencement Date will be the Timetable in this Agreement.
- 3.5 Timetable bedding-in period: GW will permit from the commencement date for any Major Service Change, a 6-month bedding-in period for the delivery of the Ferry Services or such other bedding-in period as agreed by both parties. During this period, the Service Punctuality Abatement and Service Reliability Abatement in schedule 10 (Performance) will continue to be administered to

assess performance levels, but no Service Punctuality Abatement or Service Reliability Abatement will apply for this period.

3.6 **Timetable distribution**: GW may prepare and distribute Timetable publications. The Operator will, if requested by GW, distribute on-Vessel publications at no cost.

3.7 Special timetable

- (a) The Operator will prepare, as required, a draft temporary timetable amending the then current Timetable as required for any scheduled:
 - (i) Special Event; or
 - (ii) maintenance of:
 - (1) the Wellington Network or any GW Asset;
 - (2) a Vessel (to the extent that such maintenance and resulting Planned Disruption has been approved by the Management Committee); or
 - (3) any other scheduled interruption,-

(in each case, a **Planned Disruption**) that will have a material impact on the Ferry Services,-

(a Special Timetable). To avoid doubt, a Special Timetable will not constitute a Variation.

- (b) The Operator will, for each Special Timetable, notify GW of:
 - (i) the reason for the Special Timetable, date, start time, finish time, location and estimated number of passengers affected;
 - (ii) the number of Service Hours and Special Event Hours and the number of Ferry Services, Origin and Destination, to be run (in excess of any Ferry Services scheduled under the Timetable) to deliver the Special Timetable;
 - (iii) the timetable for those additional or modified Ferry Services;
 - (iv) a summary of relevant customer service information to be provided on the day of the Planned Disruption or Special Event to passengers;
 - (v) any other relevant additional controls and mitigation measures to be delivered by the Operator; and
 - (vi) the revenue protection measures the Operator will undertake in relation to the Special Timetable.
- (c) The Operator will prepare each draft Special Timetable in accordance with any instructions provided to the Operator by GW regarding that draft Special Timetable or the preparation of Special Timetables generally.
- (d) GW will, no later than 10 Business Days after receipt of a draft Special Timetable, review the draft Special Timetable in accordance with the Document Approval Process.
- (e) An approved Special Timetable will take effect as the timetable for the period specified by GW.

4. MASTER AND CREW SERVICES

- 4.1 **General**: The Operator acknowledges and accepts:
 - the importance of professional and competent Masters and crew in the delivery of Ferry Services;
 - (b) that the safety of Masters and crew and safe Master and crew behaviour is paramount to the delivery of the Services;
 - (c) that the successful daily interaction between Master and crew and customers is critical to both customer satisfaction and to attract Ferry passengers and that continued focus on this aspect is required through the Term of this Agreement to improve this interface;
 - (d) that customer safety, customer communications and customer management are key areas of the responsibility of Masters and crew, and the Operator will ensure that all Masters and crew have suitable training and development opportunities to discharge this responsibility; and
 - (e) the training and development of Masters and crew is essential for the delivery of Ferry Services.

4.2 Requirements

- (a) Training: The Operator will promote and provide continued training to its Masters and crew in all aspects of their role, including health and safety, customer service training including deescalation of situations, and the Operator acknowledges the importance of accessibility awareness and sustainability awareness.
- (b) **Training components**: Training may include:
 - (i) any Transport Agency or GW training programmes (including annual accessibility and disability (visible and invisible) awareness training), which may be monitored in conjunction with the 'Public Transport Advisory Group';
 - (ii) conflict awareness and de-escalation training;
 - (iii) customer empathy training; and
 - (iv) consideration of attainment of Transport Agency unit standards for customer service.
- (c) Master and crew reward and recognition: The Operator will devise, develop and implement a Master and crew reward and recognition programme that encourages staff development, staff retention and a positive staff culture.
- (d) End of term employment: The Operator will work with GW and Governmental Agencies (as required) in the development of workforce arrangements that allow for the transfer of Masters and crew through any future legislative or operational policy changes that may ensure continuous employment for Masters and crew when the operating arrangements may change.

- (e) **Recruitment of masters and crew**: The Operator will ensure that Masters and crew are capable of communicating with customers in the English language in a clear and unambiguous manner. The Operator acknowledges and accepts that:
 - recruitment policies should focus on the whole of Master and crew skillset and experience required to undertake the Ferry Services; and
 - (ii) while the technical skill of driving the Vessel is important, consideration of skills associated with customer relations and the ability to relate to people are considered equally important by GW.

(f) Master and crew terms and conditions

- (i) GW is committed to securing improved terms and conditions for Masters and crew (as compared to such terms and conditions as at the Appointment Date) and notes that the terms and conditions for Masters and crew is an important aspect of public transport development.
- (ii) GW is working towards attaining additional funding to secure a minimum hourly rate for Masters and crew above the 'Living Wage' as determined by the Living Wage Movement Aotearoa NZ Incorporated (Incorporation No. 2578903).
- (iii) GW supports the provision of penal rates for overtime.
- (g) Master and crew appearance: Despite paragraph 7.4(a), the Operator acknowledges and accepts that Master and crew appearance is an important part of the Master and Crew Services and the customer experience more generally.

5. TIMETABLE SERVICE CHANGE

5.1 **General**

- (a) The Operator acknowledges and accepts that there may, during the Term, be a requirement for the Timetable to be amended to reflect changes in passenger travel trends or demand, or modification of existing infrastructure or development of new infrastructure on the Wellington Network, changes to Vessels or other factors (in each case, a **Timetable Service Change**).
- (b) The management of Timetable Service Changes will be undertaken collaboratively and in a structured manner to ensure that they are implemented appropriately, cost effectively, and that customer experience is not harmed during the changeover.
- (c) The efficient and timely delivery of Timetable Service Changes is of paramount importance to GW if public transport ferry services are to be responsive to customer needs and changing demands. As a result, it is important that the process to undertake Timetable Service Changes is agile, adaptive and efficient.
- (d) The requirement to undertake a Timetable Service Change will usually be to enhance customer experience and patronage, but could also be due to, without limitation, changing customer demand levels, network planning requirements, infrastructure works, residential or commercial development or travel of choice shift.
- (e) The Operator will, promptly following any Timetable Service Change being uploaded onto GW's integrated fare systems, upload all required system changes onto the on-board devices

- of the relevant Vessels at the earliest opportunity and, in any event, no later than 24 hours after the Timetable Service Change has been successfully updated onto GW's integrated fare systems.
- (f) The Operator will ensure that all affected Operator Employees are informed in a timely and consistent way of all Timetable Service Changes (including Route changes, Timetable Changes or Vessel allocation changes).

5.2 Timetable service changes required by GW

- (a) GW may require a Timetable Service Change by written notice to the Operator that:
 - (i) outlines GW's requirements for a Timetable Service Change by issuing a Timetable Specification (which also will include GW's expected outcomes of, and the expected Operator resource required to implement, the Timetable Service Change); and
 - (ii) specifies the proposed date or range of dates on which the Timetable Service Change will take effect, which will be a reasonable date or range of dates having regard to the nature of the proposed Timetable Service Change and its likely effect on Ferry Services.
- (b) The Operator will prepare and provide a written response to GW's proposed Timetable Specification no later than 10 Business Days after receipt of GW's notice unless otherwise agreed between GW and the Operator.

5.3 Request for timetable service changes proposed by the Operator

- (a) The Operator may propose a Timetable Service Change by submitting a Timetable Service Change Request to GW if the Operator considers that:
 - the current Timetable does not adequately reflect changes in passenger travel trends or demand, insufficient or excessive run time, or modification of infrastructure or development of new infrastructure on the Wellington Network, or
 - (ii) an alternative operation may deliver a better customer service or more efficient provision of the Services.
- (b) The Operator will include, with any Timetable Service Change Request submitted by the Operator, for the proposed Timetable Service Change, the impacts on Vessel and Operator Employee resources, the estimated operating and capital costs (if any, and only if the Timetable Service Change relates to a Major Service Change), the timescales for implementation and the estimated customer impacts (positive and negative) that will result from the proposed Timetable Service Change.

5.4 Timetable service change preparation

- (a) GW will, following receipt of Operator feedback to a Timetable Specification under paragraph 5.2(b), or GW accepting a Timetable Service Change proposed by the Operator, commence preparation of the Timetable Service Change.
- (b) GW will prepare and submit to the Operator a draft timetable to reflect the Timetable Service Change (the **Draft Timetable**). The Draft Timetable will contain sufficient detail and information for it to be appropriately considered by the Operator but, as a minimum, will

- specify the number of Service Hours itemised by Vessel, by Route, direction (inbound/outbound), Origin and Destination, to be run (in excess of any Ferry Services scheduled in the current Timetable) to deliver the Timetable Service Change.
- (c) The Operator will, no later than 10 Business Days after the date of receipt of the Draft Timetable, submit to GW the details of any feedback to the Draft Timetable which will specify:
 - (i) any proposed changes to the Draft Timetable;
 - (ii) any modification to the Business Plan required by, or resulting from, the proposed Timetable Service Change;
 - (iii) the expected effect of the proposed Timetable Service Change on operational performance and any Services Document;
 - (iv) any relevant additional changes, controls or measures to be made to or delivered under any Services Document as a result of the Timetable Service Change;
 - (v) any other relevant additional controls and mitigation measures to be delivered by the Operator, including each Performance Indicator as a result of the Timetable Service Change;
 - (vi) any changes in the Vessel capacity on existing Timetabled Ferry Services as a result of the Timetable Service Change;
 - (vii) an operational performance impact statement;
 - (viii) whether the proposed Timetable Service Change is, in the Operator's view, a Major Service Change; and
 - (ix) specify any items excluded from scope.
- (d) GW will, no later than 10 Business Days after receipt of any feedback received under 5.4(c), notify the Operator whether it accepts or rejects any changes to the Draft Timetable proposed by the Operator and:
 - (i) if GW accepts any changes to the Draft Timetable proposed by the Operator, then GW will issue a final timetable incorporating the changes (the **Final Timetable**), which will form the basis of a Variation implementing the Timetable Service Change, which will be implemented in accordance with schedule 9 (Variations);
 - (ii) if GW rejects the changes to the Draft Timetable proposed by the Operator, then GW will promptly arrange and hold a meeting with the Operator to discuss the reason(s) why the proposed changes to the Draft Timetable have been rejected and, may propose further changes to the Draft Timetable and, acting reasonably, request any additional information from the Operator to attempt to formulate a Final Timetable; or
 - (iii) if after 20 Business Days of GW's initial response under paragraph 5.4(d), the parties have not agreed and are unable to agree a Final Timetable, the matter will be raised under the Dispute Resolution Procedure, with GW having the right to require that the dispute be determined by an expert under clause 33.4.

5.5 Implementation of timetable service change

- (a) The Operator will, no later than 10 Business Days after GW issues the Final Timetable, work together, in good faith and in accordance with the applicable requirements of the Document Approval Process, to agree with GW a date for the Timetable Service Change to be introduced (the **Timetable Service Change Implementation Date**), such agreement by the Operator not to be inconsistent with the dates proposed in the Timetable Service Change Request or Timetable Specification (whichever is relevant). In any event, the parties will use reasonable endeavours to implement the Timetable Service Change by the date that is 40 Business Days after GW issues the Final Timetable unless otherwise agreed with GW. If changes resulting from the Timetable Service Change are deemed minor, then GW and the Operator may agree to a shorter implementation timeframe.
- (b) If the Timetable Service Change extends or shortens the journey times for any one or more Ferry Services, then GW may, in consultation with the Operator, notify the Operator that it considers that one or more Operational Performance Indicators should be adjusted under paragraph 3 (Operational performance – adjustment) of schedule 10 (Performance) to take account of the new journey times.
- (c) To avoid doubt, the resolution of any revised Operational Performance Indicators will not delay the implementation of the Timetable Service Change, and the parties will continue to work in good faith, acting reasonably, to resolve any outstanding related matters. If the matter has not been resolved by the date that is 20 Business Days prior to the Timetable Service Change Implementation Date, then the matter will be raised under the Dispute Resolution Procedure, with GW having the right to require that the dispute be determined by an expert under clause 33.4.
- 5.6 **Timetable service change by agreement**: Nothing in this schedule will prevent GW and the Operator agreeing a Timetable Service Change by a process, and on terms, different from those contained in this schedule.

6. SAFETY AND SECURITY SERVICES

- 6.1 Safety services: As part of the Passenger Services, the Operator will:
 - (a) if notified by GW that GW requests the Operator to act on GW's behalf, act as GW's representative in the safe provision of the Passenger Services and provide representation on all matters as required by GW including:
 - (i) the Operator's role as the holder of a 'Transport Service Licence';
 - (ii) participating (including, if required by GW, as GW's representative) in any ferry safety education programmes required by Maritime New Zealand; and
 - (iii) participation, as required, in any emergency planning required under clause 9.6,and, to avoid doubt, unless GW has notified the Operator prior to the relevant event that GW
 requests the Operator to act on GW's behalf, the Operator reserves the right to act on its own
 behalf and not as GW's representative;

- (b) establish a 'zero-tolerance' drug and alcohol policy which is appropriate for a prudent and competent ferry services operator and ensure all Operator Employees in any way connected with providing the Services comply with any such policy; and
- (c) ensure that Vessels are smoke and vape free zones at all times.

6.2 **Security services**: The Operator will:

- (a) as soon as reasonably practicable, inform GW, and, where required by Applicable Law or the Operator considers it desirable, Maritime New Zealand, and/or emergency services (as applicable) of any observed or reported accident or incident involving injury to any person sustained in relation to the Passenger Services;
- (b) promptly inform GW of any observed or reported event involving any act of criminal or wilful damage to property, on or within the Wellington Network, Vessels, a GW Asset (if any) or an any location owned, occupied or managed by GW, of which the Operator becomes aware;
- (c) assist GW in maintaining records relating to all recurrent or reported security incidents on board or relating to Vessels and investigate each incident to assist in the development of appropriate security response plans;
- (d) store any CCTV images from cameras on board Vessels for at least 14 days from the date of recording and, if reasonably required by GW, hold specified imagery for a period of up to 6 months from the date requested by GW, and provide GW with access to such images;
- (e) participate as reasonably required by GW in any liaison group with the police and interested local groups (including representatives of GW) to meet on a regular basis to discuss and agree local action plans for specific Terminals or Ferry Services which are particularly susceptible to anti-social behaviour occurring on or within any GW Asset (if any), GW managed location or the Wellington Network or require increased security on or within a Vessel, GW Asset (if any), GW managed location or the Wellington Network; and
- (f) if control of an incident is escalated to a crisis incident management team (or similar) led by GW or an emergency service or WREMO, then provide suitable personnel to act on the Operator's behalf.

7. CUSTOMER EXPERIENCE SERVICES

- 7.1 **Operator obligations**: The Operator will, in the provision of the Passenger Services:
 - (a) deliver a 'put the customer first' philosophy;
 - (b) support and deliver GW customer experience principles as provided to the Operator from time to time;
 - (c) support any new methodology or assessment practices proposed or introduced by GW to measure customer sentiment and/or satisfaction (or similar);
 - (d) work with GW to develop automated systems to improve visibility of service delivery and performance, including making available to GW's nominated control function operations information that will assist in the real-time management of service delivery by both parties (eg, Master and crew runsheets);

- (e) monitor and assess the provision of customer experience and report to GW in a timely manner any areas of perceived improvement, and provide proposals to GW to enhance the customer experience where such opportunities are identified;
- (f) provide insights, innovation and suggestions to and collaborate with GW to improve customer experience for customers and stakeholders;
- (g) communicate with customers in accordance with communications guidance as may be provided by GW; and
- (h) permit authorised GW representatives to travel on Ferry Services under a Zero Fare Concession Ticket for the purpose of conducting passenger interviews or surveys and to undertake monitoring exercises relevant to this Agreement or to undertake the planning or development of the Wellington Network. Such travel may include travel on positioning runs.

7.2 **Passengers**: The Operator will:

- (a) **GW terms of use**: ensure that all Operator Employees are familiar with the GW Terms of Use;
- (b) **Conditions of carriage**: ensure that all Operator Employees are familiar with the Conditions of Carriage;
- (c) **Carry all passengers**: subject to any regulatory requirements and paragraphs 7.2(a) and 7.2(d), use reasonable endeavours to carry all customers who wish to use the relevant Ferry Service; and
- (d) **Refusal to carry passengers**: ensure that all passengers are carried on the relevant Ferry Service in all circumstances other than when:
 - the passenger is a danger to themselves, other passengers or Operator Employees;
 - (ii) the passenger is threatening or abusive;
 - (iii) the passenger does not have a valid ticket for their nominated journey;
 - (iv) the passenger is unable or refuses to pay the Fare;
 - the passenger is an individual identified in a trespass notice in relation to any GW property, Operator property or Operator Asset, including Vessels;
 - (vi) the Vessel's maximum passenger capacity will be exceeded (or the Master and crew reasonably consider that the Vessel's safety may be compromised);
 - (vii) the person authorised by the Operator to control the boarding, alighting and safety of passengers (usually the Master and crew) refuses to carry any passenger or requires that passenger to alight the Vessel in accordance with the Conditions of Carriage;
 - (viii) a person authorised by GW who is responsible for the security of customers at a
 Terminal, refuses carriage to any passenger or requires that passenger to leave the

 Terminal in the interest of public safety;
 - (ix) a person authorised by GW who is responsible for revenue protection on board a Ferry Service, refuses carriage to any passenger or requires that passenger to alight the Vessel or leave a Terminal in the interest of revenue enforcement; or

(x) the passenger contravenes the Conditions of Carriage and an Operator Employee responsible for monitoring the health and safety of the passengers using the Ferry Services considers that contravention to be a health and safety risk to other passengers.

7.3 **Passenger welfare**: The Operator will provide:

- (a) first response to any passenger, or any member of the public, with whom the Operator engages, who requires assistance by way of basic first aid provision, customer information or general assistance;
- (b) first response to feedback received from customers, or any member of the public, with whom the Operator engages, on board Ferry Services;
- (c) a suitable customer service presence on board Vessels to provide passengers with assistance relating to the safe boarding and disembarking of Ferry Services, customer information, general assistance, and at Terminals, to direct and assist customers onto any public transport services (or other arrangements);
- (d) the monitoring of passenger comfort issues on board Ferry Services, and
- (e) timely notification to GW of any other witnessed systemic passenger comfort issues, which could negatively impact on passenger welfare or the customer experience,-

with the expected outcome of improving customer experience.

7.4 Operator employee appearance and behaviour: The Operator will:

- (a) employ competent passenger, and other customer, facing Operator Employees who will wear the agreed specified uniform;
- undertake sufficient police criminal record checks on all Operator Employees, subject to the Criminal Records (Clean Slate) Act 2004;
- (c) have recruitment and training processes in place to ensure its Operator Employees who have contact with the public act in a professional, courteous and safe manner;
- (d) have recruitment and training processes in place to ensure that Operator Employees are suitably trained in the use of the Vessels and GW Assets (if any); and
- (e) ensure that any Operator Employee training, selection procedures and minimum standards are implemented, regularly updated and subject to quality management review.

7.5 **Customer feedback**: The Operator will:

- (a) ensure that all customer feedback (including complaints) is managed through GW's customer relationship management system;
- (b) provide information and input in an appropriate manner, not later than 5 Business Days after receipt, to enable GW to accurately respond to any letters or other correspondence received from a customer, the public or a Governmental Agency relating to Wellington public transport ferry services, or will contact the customer directly and close the case themselves as agreed with GW on a case-by-case basis; and

(c) ensure that all complaints of a sensitive nature are dealt with as a priority and in line with GW's case management process for complaints of a sensitive nature (GW acknowledges that it will deal with all complaints relating to Timetable and service design unless stated otherwise in this Agreement).

7.6 **Customer satisfaction**: The Operator:

- (a) will participate in, and facilitate the delivery of, the Customer Satisfaction Surveys undertaken by GW or its nominated supplier;
- (b) will work with GW (as required by GW) to ensure that the methodology used to survey passengers is robust;
- (c) acknowledges and accepts that the Customer Satisfaction Surveys undertaken by GW will cover passenger perception (including perception of the Wellington Network); and
- (d) will, no later than 15 Business Days after receipt of the result of any Customer Satisfaction Survey, identify any shortfalls between actual performance and customer expectation, and (if required by GW) provide to the Management Committee details and commentary of the actions that the Operator will perform to remedy any identified shortfalls.

7.7 Business development, marketing and promotion

- (a) The Operator will participate in a quarterly public transport network-wide forum, to be established by GW, to discuss public transport issues that have implications for more than one operator, including promotional activity and business development.
- (b) GW is responsible for the development and implementation of marketing campaigns to promote the use of public transport in Wellington.
- (c) Provided that the Operator is not required to incur any material additional cost, the Operator will use all reasonable endeavours to ensure the successful implementation of any such promotional initiative which will, unless otherwise agreed with GW, contain the GW branding.
- (d) The Operator will provide to any GW Representative reasonable physical access to Vessels during operational hours at no cost to GW for the purposes of public transport promotional activities, including transport safety communications by GW (which, to avoid doubt, does not include use of the Vessel).

7.8 **Branding**

- (a) The objective of branding in relation to the Ferry Services is to create a balanced and integrated look and feel to the Wellington Network while maintaining Operator responsibility for providing Ferry Services.
- (b) GW will develop the GW Branding Guidelines in consultation with the Operator and other public transport services operators, that may include:
 - (i) non-regulatory internal Vessel signage;
 - (ii) internal fabric seat covers;
 - (iii) external Vessel appearance, including suitable reference to the Operator;

- (iv) customer communications templates (including digital, posters and audio service announcements); and
- (v) the wearing of Operator Employee name badge or identification.
- (c) The Operator will:
 - (i) ensure that each Vessel is:
 - clearly identified with the name of the Operator in a form acceptable to GW (regardless of whether the Operator owns the Vessel or it is a replacement Vessel owned by another operator); and
 - (2) easily identified by name or Maritime New Zealand number internally and externally; and
 - (ii) at all times, comply with the GW Branding Guidelines, except to the extent agreed by GW in writing.
- (d) The Operator acknowledges and accepts that the Transport Agency, as a co-investor, may wish to display its logo or other brand identification to publicly acknowledge its investment in transport services and infrastructure. GW may require the Operator to display the Transport Agency logo or brand identifier on Operator Assets (including Vessels).

7.9 **Signage**: The Operator will:

- (a) place or install on or in the Vessels all Signage as required by GW;
- (b) not install any unauthorised or Operator Signage without the prior written approval of GW;
- (c) at GW's request, provide to GW written records of the location, number, scale, measurements and other information in relation to Signage on or in the Vessels;
- (d) permit GW or its subcontractors or agents to place or install Signage on or in the Vessels, provided such activity does not unreasonably interfere with the operation or maintenance of the Vessels; and
- (e) replace any defaced, damaged or torn Signage on or in the Vessels.

7.10 Revenue from services and other activities

- (a) The Operator will not enter into an agreement to use or charter a Vessel that will, or has potential to, adversely impact on the Operator's ability to perform the Services in accordance with this Agreement.
- (b) The Operator will not, in any rolling 12-month period, use or charter a Vessel for other services and activities (ie, services and activities that are not Ferry Services) for more than 200 hours per Vessel without obtaining the prior written approval of GW. The Operator acknowledges and accepts that it may be a condition of GW's approval under this paragraph 7.10(b) that the Operator makes a payment to GW, as a deduction from the Services Payment, in relation to increased maintenance and Vessel depreciation costs.
- (c) The Operator acknowledges and accepts that all Fare Revenue for Special Events, including revenue that may form part of integrated event tickets, will be payable to GW as part of the Daily Fare Reconciliation Payment.

8. ADVERTISING

- 8.1 **Application**: This paragraph 8 will:
 - (a) not apply unless and until GW provides written notice to the Operator that it requires that this paragraph 8 apply, in which case, this paragraph 8 will apply on and from the date that is 12 months following the date that GW provides such written notice to the Operator; and
 - (b) not apply to the Operator's existing advertising arrangements as at the Appointment Date (including the Operator's existing advertising arrangements with Meridian Energy Limited) provided that the Operator will proactively engage with GW in relation to any proposed amendment or renewal or extension of such advertising arrangements passed the expiry of the current term of such arrangements.
- 8.2 **General**: The parties acknowledge and accept that:
 - (a) as between GW and the Operator, GW has the right to advertise and place advertisements, and grant rights to third parties to advertise or place advertisements (and any associated access rights in relation to the same), in each case, on or within a Vessel; and
 - (b) GW will retain all proceeds it receives from the sale or provision of space on board the Vessels for the purposes of advertising.
- 8.3 Third party enquiries: The Operator will:
 - (a) not enter into any agreement or other arrangement in relation to advertising arrangements on or within a Vessel without the prior written approval of GW; and
 - (b) ensure that all advertising on board Vessels or at facilities will comply with GW's Advertising Policy.
- 8.4 **Co-operation**: The Operator will provide reasonable co-operation to GW and GW's media agency to develop and implement any advertising arrangements as required by GW (including providing suitable access to the Vessels and any Operator Asset to enable marketing or advertising material to be installed or removed).

9. CUSTOMER INFORMATION SERVICES

- 9.1 **Co-operation**: GW is responsible for:
 - (a) the 'GW Customer Service Centres' at locations on the public transport network that GW considers are sufficiently important for such centres; and
 - (b) publishing Timetable information that will be distributed through the GW Customer Service Centre, the Metlink Website and other channels (for example, the 'Metlink' mobile app and other digital channels).
- 9.2 Access to customer information systems: GW will provide to the Operator access to use the Customer Information Systems for the purposes of providing real-time information to passengers and other customers. Such access will not be provided to the Operator on an exclusive basis and GW may access the Customer Information Systems for any purpose including the provision of customer information messaging to the public.

9.3 Operator's obligations: The Operator will:

- (a) provide (or support GW to provide) a suitable real-time positioning feed to GW of, but not limited to, Vessel identification, Vessel position, and the Ferry Service to which the Vessel is allocated;
- (b) use the GW Systems, including Customer Information Systems, to enable real-time notification to customers of service performance;
- (c) ensure that any Ferry Service that is cancelled by the Operator:
 - before it is due to commence is cancelled in the Customer Information System (and the Operator acknowledges and accepts that GW will record any such cancelled Ferry Service that is not cancelled in the applicable GW Systems prior to commencement as a Reliability Failure); and
 - (ii) after it has commenced as a result of a Force Majeure Event, that all Ticketed Passengers receive refunds (and, to avoid doubt, to the Operator has refunded Ticketed Passengers, such Fare Revenue will be excluded from the Daily Fare Reconciliation Payment);
- undertake service and operational performance management, provision of customer information and service disruption management in real-time, primarily from the Operator's own control function centre (which may be staffed remotely);
- (e) report in a timely and clear manner any operational performance issue, accident or incident that may occur in relation to the Services, to GW's nominated control function (currently the 'Metlink Operational Team'). If additional control is required from GW's nominated control function (the 'Metlink Operational Team'), then the Operator will provide suitable personnel to act on the Operator's behalf as notified by GW;
- (f) report in a timely and clear manner any problem with infrastructure facilities relating to the Ferry Services to GW's nominated control function (currently the 'Metlink Operational Team'); and
- (g) during the Peak Service period, ensure that Operator Employees in the Operator's control room are available for immediate liaison with GW.
- 9.4 **Training**: The Operator will ensure that all relevant Operator Employees are appropriately trained in the use of Customer Information Systems, and the Operator will provide training and response material on the use of such systems to Operator Employees as required by GW.

9.5 **Customer Information Systems**: The Operator will:

- (a) provide to GW 'real time' information for customers in relation to Ferry Services that is complete, accurate and consistent across all channels and customer-focused using the Customer Information System, including:
 - (i) creating, maintaining, administering and updating Ferry Service information (including delayed or cancelled services information) within the GW real-time Customer Information System to present real-time Ferry Service information to customers immediately or as soon as reasonably practical after, any delay or cancellation is

- known by the Operator; and
- (ii) real-time performance statistics and 'network status' summary reports as required by GW:
- (b) provide information to GW and any other nominated recipients, in the format required by GW (acting reasonably); and
- (c) use all Customer Information Systems in accordance with GW policy notified to the Operator at the Operations Commencement Date and any changes to policy agreed between GW and the Operator.

9.6 Unplanned disruptions

- (a) The Operator will provide, on a 'real-time' basis:
 - (i) to GW and any other nominated recipients of GW:
 - (1) details of any Unplanned Disruption that will, or is likely to, result in delays or cancellations to Ferry Services over a period of more than 30 minutes, including a brief explanation of the cause of any delay, the expected duration and reasonable details of any alternative routes or services, such details are to be repeated regularly while the Unplanned Disruption is in place; and
 - (2) information pertaining to delayed or cancelled services within the GW real-time Customer Information System, in a format appropriate for the level of disruption to Ferry Services being experienced; and
 - (ii) on resumption of Timetabled Ferry Services, to GW and any other nominated recipients of GW, an update as to the cause of any delay or cancellation.
- (b) The Operator will ensure that information provided under this paragraph 9.6 will be complete, accurate, passenger and other customer focused, concise and relevant to the affected Ferry Services.

10. TICKETING AND REVENUE PROTECTION SERVICES

10.1 Ticketing

- (a) The Operator will charge all passengers who request to purchase a ticket, or otherwise do not possess a ticket for the correct Fare, the relevant Fare in accordance with the fare schedule as published and updated from time to time on the Metlink Website.
- (b) GW will provide the Operator with written notice specifying the date of application of any change in Fares (or additional Fares) no later than 20 Business Days prior to the date such changes are to apply.
- (c) The Operator will support GW in the introduction of any technical innovations with the existing ticketing system and with the development and implementation of any replacement ticketing system; and GW will consider through the Variation process in accordance with schedule 9 (Variations) reimbursement of any fair and reasonable costs that the Operator may incur in delivery of any such services identified under this paragraph 8.1(c).
- (d) The Operator will support the implementation of any changes which may be made to

- Concessionary Fares.
- (e) The entitlement of a passenger to travel paying a Fare under a class of Concessionary Fare will be in accordance with the rules for Concessionary Fares as published on the Metlink Website.
- (f) The value of the Fare to be paid by a passenger paying a class of Concessionary Fare will be in accordance with the Fares published for the relevant Ferry Service on the Metlink Website.
- (g) GW has agreed to participate in the SuperGold Card Scheme as long as New Zealand Government funding is made available for it. To enable GW to fulfil its obligations as a participant in the SuperGold Card Scheme:
 - (i) the Operator will:
 - (1) participate in the SuperGold Card Scheme in accordance with this Agreement;
 - (2) comply with the current GW SuperGold Card Scheme concessions specified in any applicable GW policy; and
 - (3) allow customers to tag-on and board a Ferry Service up to 10 minutes before its scheduled departure time so as to enable the passenger to board the Ferry Service within the SuperGold Card Scheme timeframe; and
 - (ii) the Operator acknowledges and accepts that:
 - (1) the tag-on or tag-off time of each individual passenger trip using a Ferry Service, not the scheduled or actual start or end time of that service, determines whether the SuperGold Card Scheme applies;
 - (2) the SuperGold Card Scheme is conditional upon sufficient ongoing funding from the New Zealand Government being made available for the SuperGold Card Scheme. If there is insufficient funding, then GW may in its sole discretion vary the terms of this Agreement that relate to the SuperGold Card Scheme;
 - (3) the SuperGold Card Scheme is independent from the Services Payment and any change to the SuperGold Card Scheme will not change the Services Payment;
 - (4) the Operator does not have the right to cancel or change its participation in the SuperGold Card Scheme under this Agreement; and
 - (5) a change to or cancellation of the Operator's participation in the SuperGold Card Scheme by GW will not affect the terms of this Agreement except those in this paragraph 10.1.
- 10.2 **Integrated fares**: GW and the Operator will participate in and comply with any integrated fares system issued by GW and as amended from time to time by GW.
- 10.3 **Revenue protection**: The Operator will:
 - (a) develop and implement suitable targeted revenue protection strategies to ensure (without limitation) compliance with valid entitlements to travel, the valid application of concession discounts and to encourage the uptake of any digital ticketing system as may be notified by

GW);

- (b) take the appropriate action where a passenger does not possess a valid ticket in accordance with the GW Terms of Use, which may include asking a passenger to procure the correct Fare, refusing a passenger carriage on board the Ferry Service or notifying GW of the Fare Evasion so that GW may take appropriate action;
- (c) notify the Management Committee of any observed, or known, regular occurrence or instance of Fare Evasion in the Wellington Network;
- (d) assist GW in the identification, scoping, assessment and provision (as required) of solutions to improve the provision of revenue protection policies and strategies within the Wellington Network; and
- (e) support GW Transport Officers, or similar, in the performance of their functions in relation to Ferry Services.

11. SPECIAL EVENTS

11.1 **GW**: GW may, by no less than 8 weeks' written notice to the Operator, require the Operator to provide Special Event Ferry Services. The Operator will provide Special Event Ferry Services unless it can reasonably demonstrate to GW that the Operator does not have either the Vessel or Operator Employee capacity available for the Special Event.

11.2 Operator

- (a) The Operator may request that it provide Special Event Ferry Services.
- (b) If GW:
 - (i) approves the Operator's request under this paragraph 11.2, then the Operator may provide such Special Event Ferry Services requested under this paragraph 11.2 in accordance with the conditions and requirements of that approval from GW; or
 - (ii) does not approve the Operator's request under this paragraph 11.2, then GW will not unreasonably withhold its approval of (or otherwise prevent) the Operator from using or chartering a Vessel in relation to a Special Event provided always that such use or charter does not adversely impact on the Operator's ability to perform the Services and its other obligations in accordance with this Agreement.
- 11.3 **Payment**: GW will pay the Special Event Payment to the Operator in accordance with schedule 8 (Payments) for any Special Event Ferry Services provided by the Operator.

SCHEDULE 5: PLANNING AND MANAGEMENT SERVICES

1. **DEFINITIONS**

1.1 In this Agreement, unless the context requires otherwise:

Annual Report means the report described in paragraph 2.4(c) and prepared by the Operator in accordance with annexure 3 (Annual report);

Daily Fare Reconciliation Report means the report described in paragraph 2.4(a) and prepared by the Operator in accordance with annexure 1 (Daily fare reconciliation report);

Monthly Report means the report described in paragraph 2.4(b) and prepared by the Operator in accordance with annexure 2 (Monthly report);

Reporting Failure Payment has the meaning given to that term in paragraph 2.5; and

Reporting Services means the reporting services described in paragraph 2 (Reporting services).

2. REPORTING SERVICES

- 2.1 Reporting systems: The Operator:
 - (a) will operate and maintain effective monitoring and recording systems and processes that accurately record and report on the performance of the Services in a manner that provides the information reasonably required to satisfy GW that the Services have been performed in accordance with this Agreement;
 - (b) in a timely manner, will provide GW with all reasonable assistance and information that may be required by GW in relation to the Services and public transport in Wellington generally, including any information required for the performance of the obligations of GW under this Agreement; and
 - (c) acknowledges and accepts that the information provided to GW may be used by GW:
 - to respond to customer feedback, or any requests for information received by GW under the Local Government Official Information and Meetings Act 1987;
 - (ii) for the development or procurement of public transport services or public transport related assets; and
 - (iii) in response to any requests received from any Governmental Agency or the Transport Agency.

2.2 Record management: The Operator will:

- (a) if requested by GW, promptly provide access to, or copies of, any on-board CCTV footage (if any), subject to the Operator's compliance with Applicable Law;
- (b) maintain, administer and manage a suitable services performance monitoring system that allows delivery of agreed reporting on the cause, occurrence and extent, and attribution, of failures in relation to each Performance KPI;
- (c) maintain a register that is compatible with or uses GW's nominated health and safety information technology system, of all ferry operating, and workplace health and safety,

accidents and incidents (including harm, serious harm, near misses and notifiable events) of which the Operator becomes aware involving any:

- (i) Vessels;
- (ii) Operator Employees;
- (iii) other Representatives of the Operator; or
- (iv) members of the public,-

in each case, relating to the performance of the applicable Services;

- (d) maintain an accurate and complete set of:
 - (i) training material;
 - (ii) management processes documentation;
 - (iii) joint operating plans (JOPs) (as may be required and agreed between the parties);
 - (iv) standard operating procedures (SOPs);
 - (v) all plans required under this Agreement, including those required under:
 - schedule 4 (Passenger services);
 - (2) this schedule;
 - (3) schedule 6 (Vessel services);
 - (4) schedule 7 (Business plan); and
 - (5) schedule 12 (Transition-out services); and
 - (vi) contractor and supplier records (together with fully traceable supply chain and materials records).
- 2.3 **Significant event notification**: The Operator will immediately notify GW of the occurrence of any event or circumstance (including a service delay) that is significant and has or is likely to have an adverse effect on the reputation of GW in terms of the provision of safe, reliable, efficient and customer-focussed passenger ferry services. The Operator will:
 - (a) provide regular and up to date information to GW in relation to the nature and the cause of the significant event or circumstance, the ongoing impact of the event and the action that the Operator is taking to resolve the event or circumstance;
 - (b) report to GW details of any damage or non-operation of any GW Assets (if any) or Operator Assets occurring as a result of the significant event or circumstance and, if reasonably requested by GW, any plans, costs and timings to recover and rectify the affected GW Assets (if any); and
 - (c) take all reasonable action to investigate and identify the cause of the significant event or circumstance.
- 2.4 **Reports**: The Operator will prepare and provide to GW:
 - (a) a daily fare reconciliation report (the **Daily Fare Reconciliation Report**), by no later than
 17:00 on the next Business Day (ie, the Daily Fare Reconciliation Report for Friday, Saturday)

- and Sunday will be prepared and provided to GW on the Monday (to the extent the Monday is a Business Day));
- (b) a monthly report (the **Monthly Report**), by no later than 17:00 hours 10 Business Days after the end of the relevant month in relation to the previous month; and
- (c) an annual report (the **Annual Report**), by no later than 17:00 hours 15 Business Days after the end of the relevant Financial Year in relation to the previous Financial Year,-

and, in each case, in accordance with the applicable requirements of this schedule and in a format required by GW.

- 2.5 **Failure to submit**: If the Operator fails to provide to GW any:
 - (a) Daily Fare Reconciliation Report in accordance with the requirements specified in annexure 1;
 - (b) Monthly Report in accordance with the requirements specified in annexure 2; or
 - (c) Annual Report in accordance with the requirements specified in annexure 3,in each case, within the relevant timeframe specified in paragraph 2.4, then GW may require the
 Operator pay to GW the sum of:
 - (d) in relation to the Daily Fare Reconciliation Report, for each, and part of each 24-hour period that passes until such time as the Operator provides to GW a Daily Fare Reconciliation Report of a standard and quality satisfactory to GW (acting reasonably); and
 - (e) in relation to the Monthly Report and the Annual Report, for each, and part of each, 24-hour period that passes until such time as the Operator provides to GW a Monthly Report or Annual Report (as applicable) of a standard and quality satisfactory to GW (acting reasonably),-
 - (a Reporting Failure Payment).
- 2.6 **GW discretion**: GW will, in considering whether to exercise its rights under paragraph 2.5, have regard to the impact on the timely submission of the applicable report of any:
 - (a) significant changes to the applicable Services or the Wellington Network; or
 - (b) circumstances not reasonably foreseeable by a prudent, appropriately qualified, competent and efficient provider of public transport ferry services.

ANNEXURE 1: DAILY FARE RECONCILIATION REPORT

- 1. **Daily fare reconciliation report**: The Daily Fare Reconciliation Report will:
 - report on the delivery of the Ferry Services by the Operator for the previous day with a focus
 on the total number of boardings by Ticketed Passengers on the Ferry Services and Fare
 Revenue;
 - (b) be in a format required by GW
 - (c) in accordance with paragraph 2.4(a), by no later than 17:00 on the next Business Day (ie, the Daily Fare Reconciliation Report for Friday, Saturday and Sunday will be prepared and provided to GW on the Monday (to the extent the Monday is a Business Day));
 - (d) contain, for the previous day:
 - a signed declaration that the contents of the report are a true and accurate reflection of the Operator's performance during the day;
 - (ii) the Operator's calculation of the Daily Fare Reconciliation Payment, including details of:
 - (1) the total number of boardings by Ticketed Passengers on the Ferry Services;
 - (2) the Fare for each Ticketed Passenger; and
 - (3) the Fare Revenue collected by the Operator (or that should have been collected by the Operator but for a failure to comply with a Services Document),-

and to the extent that the Operator's calculation of the Daily Fare Reconciliation Payment is different to the revenue that should have been collected by the Operator having regard to the total number of boardings by Ticketed Passengers on the Ferry Services and the Fare for each Ticketed Passenger) the reason for such difference;

- (iii) the Operator's calculation of any Special Event Payment (if any), including details of the number of Special Event Ferry Services (if any);
- (iv) the Operator's calculation of the Mātiu / Somes Island Service Rebate, including details of:
 - number of Special Event Ferry Services involving passengers disembarking at Mātiu / Somes Island (if any); and
 - (2) the number of commercial ferry services (using a Vessel) involving passengers disembarking at Mātiu / Somes Island (if any); and
- (v) the Operator's calculation of any Cancelled Service Rebate, inlcuding details of the number of Ferry Services that a Cancelled Service Rebate will apply to

together with such other reporting information required by GW (acting reasonably) in relation to operation and delivery of the Ferry Services and the calculation of, without limitation, the Fare Reconciliation Payment, the Special Event Payment, the Mātiu / Somes Island Service Rebate and the Cancelled Service Rebate for that day.

2. **Weekly reconciliation items**: The Daily Fare Reconciliation Report (and associated Daily Fare Reconciliation Payment) for each Monday (to the extent the Monday is a Business Day, otherwise

the next Business Day) will contain, for the previous week, the Fare Revenue collected by the Operator (or that that should have been collected by the Operator but for a failure to comply with a Services Document) in relation to online bookings and group bookings (eg, school groups).

ANNEXURE 2: MONTHLY REPORT

- 1. Monthly report: The Monthly Report will:
 - report on the delivery of the Business by the Operator for the previous month with a focus on ensuring that the operation and delivery of the Ferry Services continues in an efficient, effective, safe and reliable manner;
 - (b) be in a format required by GW;
 - (c) in accordance with paragraph 2.4(b), be received by GW not later than 17:00 hrs 10 Business Days after the end of the relevant month in relation to the previous month; and
 - (d) contain, for the previous month:
 - (i) a signed declaration that the contents of the report are a true and accurate reflection of the Operator's performance during the month;
 - (ii) an executive summary, including highlights and any lowlights for the month;
 - (iii) an operations delivery component, including:
 - (1) a summary of the delivery of the Services for the month, including a commentary assessment of underlying issues impacting on performance, areas of improvement and mitigation identified, and measures taken to address any service performance failure; and
 - any general operational commentary regarding the delivery of the Services, including any operational concerns reported from the Wellington Network;
 - (iv) a safety and security component, including:
 - (1) a summary of any safety and security incidents involved with the provision of the Passenger Services, including details of the actions taken by the Operator to mitigate the effect and prevent the reoccurrence of such incidents; and
 - (2) details of any infringement fee, fine, charging document or other enforcement proceeding issued by any Governmental Agency or any other person relating to the performance of the Passenger Services; and
 - a Vessels component, describing in reasonable detail the Vessel Services undertaken during the relevant month (with a summary of projected Vessel Services for the next month),-

together with such other reporting information in relation to operation and delivery of the Ferry Services for the previous month required by GW (acting reasonably).

ANNEXURE 3: ANNUAL REPORT

- 1. **Annual report**: The Annual Report will:
 - (a) at a general level, provide a review of the performance of the Operator as against this Agreement and the Business Plan for the relevant Financial Year;
 - (b) be in a format required by GW;
 - (c) in accordance with paragraph 2.4(c), be received by GW not later than 17:00 hours 15 Business Days after the end of the relevant Financial Year in relation to the previous Financial Year; and
 - (d) contain, for the Financial Year:
 - (i) a signed declaration that the contents of the report are a true and accurate reflection of the Operator's performance during the Financial Year;
 - (ii) an executive summary, including highlights and any lowlights, and details and commentary of key risks and opportunities encountered;
 - (iii) an operations delivery component, including a summary of the delivery of the Services for the Financial Year, including a commentary assessment of underlying issues impacting on performance, areas of improvement and mitigation identified, and measures taken to address any service performance failure; and
 - (iv) a safety and security component, including details, trend analysis and commentary of the health and safety performance of the Operator, and its suppliers, during the relevant Financial Year, including a summary of any safety and security incidents and learnings that have occurred during the Financial Year involved with the provision of the Services;
 - (v) a Business Plan review component, including a description of the extent to which the Operator has undertaken the initiatives and other tasks contained in the Business Plan;
 - (vi) a Vessels component, providing a comprehensive report on:
 - (1) Vessel availability and reliability, system reliability and any recommendations, suggestions or modifications to the Vessels, equipment used in the Services and processes under this schedule that the Operator considers could or would increase Vessel availability and reliability, system reliability and improve the operational performance of the Vessels; and
 - (2) the Vessel Services undertaken during the relevant Financial Year, including a description of the extent to which the Operator has undertaken the initiatives and other tasks contained in the Vessel Maintenance Plans; and
 - (vii) a financial performance component, including details of the:
 - (1) Capital Expenditure estimated to be incurred compared with the cost budget approved in the Capital Expenditure and Maintenance Plan; and
 - (2) overall applicable Services Payment (including any wash-up), comparing the actual applicable Services Payment payable as against the cost budget

approved in the Business Plan and showing, and explaining the reasons for, the resultant variance together with the steps that the Operator proposes to take to address such variance (the Operator may redact its profit and any financial performance information to which GW is not entitled access under this Agreement),-

together with such other reporting information in relation not the performance of the Operator as against this Agreement and the Business Plan for the relevant Financial Year required by GW (acting reasonably).

SCHEDULE 6: VESSEL SERVICES

1. **DEFINITIONS**

1.1 **Definitions**: In this Agreement, unless the context otherwise requires:

Asset Register has the meaning given to that term in paragraph 3.3;

Component means any plant, equipment, system, parts (including spare parts), consumables and other components of a Vessel or required for the Vessel Services (as applicable);

Designated Marine Surveyor means the Maritime New Zealand approved marine surveyor appointed by GW with the authority to approve engineering design changes, modifications and the Vessel Maintenance Plans under a system which complies with AS/NZS ISO 9001: Quality Management Systems or similar standard and Maritime New Zealand Part 40 and all regulatory codes and standards applicable in New Zealand

Energy Savings Initiative has the meaning given to that term in paragraph 9.1(a);

Energy Savings Proposal has the meaning given to that term in paragraph 9.1(c);

Enterprise Asset Management System has the meaning given to that term in paragraph 5.2(a)(i);

Fleet means all of the Vessels used by the Operator to perform the Ferry Services;

Fleet Register means the Fleet Register as described and updated in accordance with paragraph 3 (Fleet register);

Incident means an out of course event that results in damage to people, property, business processes or the environment;

Incident Report has the meaning given to that term in paragraph 5.4(d);

Initial Vessel Maintenance Plan means, in relation to a Vessel, the plan for Maintenance Works for the Vessel required under this Agreement, as accepted by GW as at the Appointment Date;

Maintenance Work means the planned and unplanned maintenance activities in relation to Vessels (including software and other systems), including inspection, examination, condition assessment, servicing, adjustment, addition, modification, repair, recondition, overhaul, refurbishment and replacement and survey and the supply and management of plant, equipment, systems, parts (including spare parts), consumables and other components of a Vessel or required for any such activities or the Services:

Mean Hours between Service Failures means, in relation to each Vessel, the mean number of hours between Service Failures attributable to the applicable Vessel;

Mean Hours between System Failures means, in relation to each Vessel, the mean number of hours between System Failures attributable to the applicable Vessel;

MMS has the meaning given to that term in paragraph 5.2(a)(i);

System means each key system and equipment within or for the Vessels, including propulsion, battery management, telematics, HVAC, lighting, PIS, APC onboard data communications and CCTV:

System Failure means, in relation to a Vessel, the failure or non-performance of a grouping of independent but interrelated components or entities working together to serve a common objective;

Vessel Cleaning Plan means the plan for cleaning of the Vessels required under this Agreement, as accepted by GW under paragraph 10.1;

Vessel Maintenance Plan means each Initial Vessel Maintenance Plan as each plan is updated in accordance with paragraph 4 (Vessel maintenance plans);

Vessel Quality Standards means the any vessel quality standards for public transport ferry services notified by GW to the Operator; and

Vessel Services Standards means:

- (a) any regulatory or mandatory standard, code or other requirement imposed by Applicable Law or any Governmental Agency in relation to all or part of a Vessel or any Vessel Service;
- (b) any standard, code or other requirement in relation to all or part of the Vessel that is required or recommended by the manufacturer or supplier of the Vessel or the relevant part of the Vessel;
- (c) any standard, code or other requirements in relation to all or part of a Vessel or any Vessel Service with which a prudent, appropriately qualified, competent and efficient public transport ferry vessel manager exercising due care, skill, diligence and foresight would comply having regard to the nature of the relevant Vessels and the Vessel Services; and
- (d) without limiting paragraph (a) or (b), the standards, codes and other requirements specified in annexure 1 (including each such standard, code or other requirements as amended or replaced from time to time).
- 1.2 Maintenance definitions: Except where otherwise defined in this Agreement or the context otherwise requires, all terms used in this schedule which are defined in BS-EN-13306-2017 (Maintenance definitions) will have the meanings given to them in BS-EN-13306-2017 (Maintenance definitions).

2. MAINTENANCE OBLIGATION

- 2.1 **General obligations**: Without limiting the other obligations of the Operator under this Agreement, the Operator will undertake and complete Maintenance Work for each Vessel:
 - (a) to ensure that each Vessel complies with the Vessel Quality Standards, the Vessel Services Standards and is always in a condition that:
 - enables the Operator to comply with its obligations under this Agreement and any other Services Document;
 - (ii) does not compromise the operation of the Wellington transport network as an integrated transport system; and
 - (iii) complies with its Maritime Transport Operator Certificate and all other relevant Authorisations and Applicable Law;

- (b) in proper working order and condition and in good repair, so that the Vessels are always capable of being operated fully, efficiently and safely for the purpose, and to the capacity, for which they were designed; and
- (c) without limiting the preceding paragraphs, undertake the Maintenance Work in relation to the Vessels in accordance with, and otherwise comply with, the applicable Vessel Maintenance Plan.
- 2.2 **Standard of services**: Without limiting the obligations of the Operator under this Agreement, the Operator will, in the performance of the Vessel Services:
 - (a) use a 'whole of life' approach to asset maintenance and management;
 - (b) use materials that are new and of a quality consistent with the quality of materials which would be used by a prudent, efficient and experienced public transport ferry services operator and maintainer, having regard to asset life cycle requirements;
 - (c) replace and renew any asset that requires replacement or renewal with a modern equivalent asset of similar function in accordance with the relevant Vessel Maintenance Plan; and
 - (d) ensure that the Vessel Services do not void, breach or have an adverse effect on any warranty or guarantee given in relation to any Vessel or equipment used for the Services.

3. FLEET REGISTER

- 3.1 General: The Operator will prepare, maintain and provide to GW, on request, an accurate and complete Fleet Register. The Fleet Register will identify, among other things, for each Vessel in the Fleet:
 - (a) the make and model;
 - (b) the fuel/energy type;
 - (c) the year of manufacture of engine and, if applicable, battery;
 - (d) the seating capacity and the maximum number of standing passengers (if any) allowed; and
 - (e) the length and weight.
- 3.2 **Minimum requirements**: The Operator will ensure that any Vessel used in the provision of the Services:
 - (a) is specified in the Fleet Register;
 - (b) complies with the Vessel Quality Standards; and
 - (c) is fitted with and operates compliant integrated fare systems (if any) and 'GPS AVL' equipment or such other equipment required by GW (subject to GW paying the Operator's Direct Costs for the supply and installation of that equipment).
- 3.3 **Asset register**: The Operator will, on and from 1 April 2026, prepare and maintain, an asset register (the **Asset Register**) that will, among other things, enable GW to extract data (including through an interface with the Enterprise Asset Management System) on a daily basis that is

accurate and complete and that is specific to each Vessel, the Components, and fault or failure type, and that records the asset condition of each Vessel, including:

- (a) all manufacturing information for each Vessel or Component;
- (b) all testing, commissioning and acceptance results and other information (including dates) for each Vessel or Component;
- (c) the asset condition of the Vessel as at acceptance and as at each inspection undertaken in accordance with the applicable Vessel Maintenance Plan;
- (d) the Maintenance Work history for each Vessel;
- (e) the configuration of each Vessel including all Systems and equipment, including component assembly, serial numbers, etc;
- (f) full records of the sourcing of Components;
- (g) any warranty terms or documentation;
- (h) performance records for each Vessel, including dates and times when each Vessel recorded a fault for the purposes of a Service Failure or other failure as may be defined in any Services Document;
- (i) for each rolling 12-month period:
 - (i) the Mean Hours between Service Failures for each Vessel; and
 - (ii) the Mean Hours between System Failures for each System;
- (j) defects and other faults, including faults identified when the Vessel is In-Service and faults identified during planned or unplanned maintenance or modification;
- (k) incident history;
- (I) any records that GW may reasonably require for tax, accounting and/or legal purposes; and
- (m) such other information relating to the maintenance or condition of the Vessels as required by GW.

4. VESSEL MAINTENANCE PLANS

- 4.1 **Vessel maintenance plans**: The Operator will prepare, maintain and provide to GW a Vessel Maintenance Plan for each Vessel.
- 4.2 **General requirements**: The Vessel Maintenance Plan for each Vessel will:
 - (a) satisfy the requirements of this Agreement and the other Services Documents;
 - (b) be in the same form as the Initial Vessel Maintenance Plan for the applicable Vessel and otherwise be in the form or format (electronic or otherwise) notified by GW for the applicable Vessel Maintenance Plan; and
 - (c) reflect all standards, codes and other requirements with which a reputable, competent, skilled and experienced operator and maintainer of public transport ferries exercising due skill, care, diligence, prudence and foresight would comply having regard to the nature of the Vessels and the Vessel Services.

- 4.3 **Specific requirements**: Each Vessel Maintenance Plan will be prepared on a whole-of-life 'lookforward' basis and will:
 - (a) reflect the technical maintenance requirements applicable to the Vessel as determined from time to time by the Designated Marine Surveyor for the relevant Vessel, such technical maintenance requirements as at the Appointment Date being the requirements specified in annexure 2;
 - (b) reflect the requirements for each Vessel Maintenance Plan as determined from time to time by GW, such requirements as at the Appointment Date being the requirements described in annexure 3;
 - reflect any identified maintenance requirements as determined from time to time by the Designated Marine Surveyor for the relevant Vessel;
 - (d) be prepared in accordance with best maintenance practice, international standards as related to the design and maintenance processes and practices, and evidential measurable continuous reliability improvements; and
 - (e) include, as required by GW, details of:
 - the condition of the Vessels together with a description of the scope and methodology of the Vessel Services;
 - (ii) the technical maintenance requirements for the Vessels;
 - (iii) the procurement and supply chain arrangements of the Operator in relation to the procurement of Components required for the Vessels or Vessel Services; and
 - (iv) to the extent that the Operator proposes to retire a Vessel, the procedure for the Operator to decommission and retire the applicable Vessel; and
 - (f) contain any additional information requested by GW in relation to technical maintenance requirements.
- 4.4 Initial vessel maintenance plans and approval process: The Initial Vessel Maintenance Plan for a Vessel will apply and be the Vessel Maintenance Plan for the applicable Vessel until a new Vessel Maintenance Plan for the applicable Vessel is approved by GW under this paragraph. The Operator will provide a draft revised Vessel Maintenance Plan to GW for approval in accordance with clause 8 (Document approval process) no later than:
 - (a) 3 months prior to the start of each Financial Year; and
 - (b) 20 Business Days after the occurrence of a relevant event described in paragraph 4.5.
- 4.5 **Vessel maintenance plans review and revision**: The Operator will review and revise a Vessel Maintenance Plan for a Vessel:
 - (a) if there is a material change in circumstances relevant to the obligations of the Operator under the applicable Vessel Maintenance Plan;
 - (b) to address relevant changes in technology, operating practice and work methodology;
 - (c) to address changes in Applicable Law, Good Industry Practice or the Vessel Services Standards:

- (d) as and when required by this Agreement (and any other Services Document);
- (e) whenever it, acting as a reputable, competent, skilled and experienced operator and maintainer of public transport ferries exercising due skill, care, diligence, prudence and foresight and having regard to the nature of the Vessels and the Vessel Services, considers that a Vessel Maintenance Plan requires revision; and
- (f) whenever GW, acting reasonably, considers that a Vessel Maintenance Plan requires revision and provides the Operator with written notice to do so, such notice summarising the reasons why GW considers that the Vessel Maintenance Plan requires revising and the timeframe in which the revision must occur (such timeframe being reasonable having regard to the amount of work required to revise the Vessel Maintenance Plan).

5. MAINTENANCE AND OPERATIONAL SUPPORT

5.1 **General**: The Operator will:

- (a) establish and maintain a real-time technical support facility that operates at all times during which any Vessel is in operational service by providing reasonable assistance to Masters, crew and all other relevant persons in problem solving and fault rectification in relation to the Vessels;
- undertake investigations and maintain detailed records of the causes of Service Failures in a manner and format that enables GW to easily and seamlessly carry out analyses of the Vessel;
- (c) notify GW of any recommendations, suggestions or modifications to Vessels or equipment used for the Services or processes under this Agreement that the Operator considers could or would increase the availability and/or reliability of the Vessels, or otherwise improve the technical or operational performance of the Vessels;
- (d) assist GW with responding to queries and/or complaints submitted by members of the public in relation to technical or operational aspects of the Vessels; and
- (e) co-ordinate and co-operate with third party contractors engaged by GW to perform services or undertake works in relation to the Vessels or the Wellington Network.

5.2 Maintenance management system

- (a) The Operator will:
 - comply with any requirements notified by GW for the establishment of an interface between any maintenance management system used by the Operator (the MMS) and an enterprise asset management system maintained by GW (the Enterprise Asset Management System);
 - (ii) ensure that the Vessel Maintenance Plan applicable to the Vessels is stored in the MMS; and
 - (iii) at all times make available to GW by way of physical and remote access to the MMS all records and data stored in the MMS.

- (b) The Operator will ensure that, on the expiry or earlier termination of this Agreement, it is entitled to:
 - (i) permit GW to continue using the MMS under the terms of clause 17 (Intellectual property); or
 - (ii) under the terms of the licence for use of the MMS software, assign or otherwise transfer to GW or GW's nominee the contractual licence to use the MMS,-

for the purposes of maintaining and otherwise managing the Vessels and Components, for such period as GW thinks fit.

(c) If paragraph 5.2(b) applies, then the Operator will execute such documents and do such other things as are necessary to effect the assignment or transfer of the licence and responsibilities for use of the MMS to GW or its nominee as from the date of expiry or earlier termination of this Agreement.

5.3 Mobile assistance and recovery: The Operator will:

- (a) provide an appropriately equipped and trained mobile response team to provide all required assistance in management of Incidents, including Vessel ferrying or removal and relocation to an agreed location on short notice on all parts of the Wellington Network at all times, including Terminals, berths or lay-over facilities; and
- (b) if requested by GW, to the extent reasonably possible, repairing (in full or in part) the Vessels at the location at which any Vessel failure or fault (including any Service Failure) occurs.

5.4 **Incident support**: The Operator will:

- (a) advise GW of the occurrence of any Incidents involving any Vessel;
- (b) at the occurrence of any Incident involving any Vessel and as soon as practicable upon the Operator becoming aware of the Incident, or otherwise as required by GW, provide all assistance required by GW in relation to the Incident, which may include:
 - (i) investigation of the Incident and the initiation and undertaking of any corrective actions;
 - (ii) cooperation with Governmental Agencies, the Harbourmaster, Maritime New Zealand, the TAIC and any other regulatory bodies and safety investigators and commissions (and, to avoid doubt, the Operator may prioritise its cooperation with such entities (to the extent such cooperation is required by Applicable Law) over and above its obligations to GW under this paragraph 5.4); and
 - (iii) site management work, including co-ordinating the Vessel Services to be and/or being undertaken in relation to the Incident;
- (c) preparing accurate, complete and timely (reflective of urgency and seriousness) reports of all Incidents directly or indirectly involving any Operator Employee or any Representatives, suppliers or visitors of the Operator;
- (d) promptly preparing, and providing to GW, a full report of each Incident, which will include the report prepared in accordance with paragraph 5.4(c) (as applicable), and a description of the nature and extent of damage, the cause of the Incident, and a photographic record of the resulting damage (in each case, an **Incident Report**); and

(e) obtaining and mobilising all resources (including suitably qualified Operator Employees) necessary to undertake the Incident support services described in paragraphs 5.4(a) and 5.4(d).

6. NEW AND MODIFIED VESSELS

- 6.1 **Modification works**: The Operator will not undertake works to enhance, change or add to or remove from any Vessel or shore-based infrastructure (each a **modification**) except:
 - (a) under a Variation in accordance with schedule 9 (Variations); or
 - (b) otherwise with the prior written approval of GW (and always in accordance with the agreed process for incurring Capital Expenditure).
- 6.2 Modifications: If and to the extent that the Operator proposes a modification to a Vessel or shore-based infrastructure, then the Operator will provide to GW details of the proposed modification (including satisfactory evidence that the modifications will ensure that the Vessel or shore-based infrastructure will comply with the requirements of this Agreement), as a proposed modification plan, for review by GW.
- 6.3 **Temporary vessels**: The Operator may add to, or remove from, the Fleet a Vessel on a temporary basis if:
 - (a) any such new Vessel complies with the Vessel Quality Standards and other requirements of this Agreement; and
 - (b) the Operator has obtained prior approval from GW (and complied with any conditions required by GW as part of its approval) for such addition or removal.

7. INSPECTION

- 7.1 **Inspection right**: GW may, at its cost, instruct a person who is suitably qualified to inspect or assess the safety of Vessels including survey and any Vessel records to ensure compliance by the Operator with this Agreement and any other Services Document.
- 7.2 **Location**: The Operator will present Vessels for such inspection or assessment at any time and place reasonably designated by GW.

7.3 Unfit vessels:

- (a) If the person appointed by GW under paragraph 7.1 reasonably considers that a Vessel does not comply with any safety requirements under this Agreement or any other Services Document, then:
 - (i) GW may, by written notice (including supporting information based on the information known to GW at the time) notify the Operator that GW considers that the Vessel is not capable of safely providing the Services; and
 - (ii) the Operator may, at its cost, promptly instruct a person who is suitability qualified to inspect of assess the safety of Vessels to provide a second opinion.

(b) If the Operator

(i) elects not to obtain a second opinion under paragraph 7.3(a)(ii); or

(ii) obtains a second opinion under paragraph 7.3(a)(ii) and the second opinion confirms that the Vessel does not comply with any safety requirements under this Agreement or any other Services Document,-

then the Operator will either immediately remedy the defect, or replace the Vessel with a compliant Vessel.

8. EMISSION AND AIR QUALITY

- 8.1 **General**: The Operator will:
 - (a) participate in GW's air quality programme and work with GW to:
 - establish data on the existing Fleet performance in relation to emission standards and fuel consumption (and report such data to GW on a monthly basis as part of the Monthly Report);
 - (ii) test and develop vessel emission reduction strategies; and
 - (iii) implement strategies and progressively monitor the effect on the emission standards across the Fleet; and
 - (b) provide access to Vessels for GW to undertake exhaust emission testing on at least an annual basis to check the level of exhaust, smoke and noise emissions appropriate to the type of engine and age of Vessel in accordance with the manufacturer's standards or any relevant national or council regulation. If and to the extent GW identifies excessive amounts of emissions, then GW may, by written notice to the Operator, require the Operator to reduce the emission levels to a level which is satisfactory to GW. Such rectification will be completed within such period as GW specifies, acting reasonably and the Operator will provide to GW evidence confirming such rectification.
- 8.2 **Emissions standards**: GW may regularly test emission standards of any Vessel and update and publish the test performance data of the Fleet or any Vessel.
- 8.3 **Charging**: The Operator will collect data relating to the operation and performance of electric Vessels and the recharging of electric Vessels (including the operation and performance of the recharging facilities) and provide any and all such data (at an aggregated level) to GW as reasonably requested.

9. ELECTRIC VESSEL POWER CHARGES

9.1 Energy efficiency obligations

- (a) The Operator will:
 - (i) take all measures reasonably practicable to ensure that it uses power efficiently in performing its obligations under this Agreement; and
 - (ii) continually monitor industry developments to identify energy efficiency and savings initiatives in relation to the consumption of energy which could be implemented in relation to the Business (the **Energy Savings Initiatives**).
- (b) If the Operator identifies any potential Energy Savings Initiatives, then the Operator will promptly undertake a cost benefit analysis of that Energy Savings Initiative.

- (c) If the Operator identifies any net benefits under paragraph 9.1(b), then the Operator will prepare and submit to GW an energy cost savings sharing regime that will include:
 - the expected Capital Expenditure required to implement the identified Energy Savings Initiative;
 - (ii) the energy efficiency and savings expected to be generated by the identified Energy Savings Initiative, including their expected value; and
 - (iii) a methodology to be used to quantify the actual value generated by the identified Energy Savings Initiative,-

(the Energy Savings Proposal).

- (d) If and to the extent that GW approves the Energy Savings Proposal, then the Operator will:
 - (i) promptly implement the approved Energy Savings Initiatives, including undertaking any Capital Expenditure works required; and
 - (ii) quantify the value generated by the approved Energy Savings Initiatives in accordance with the methodology in paragraph 9.1(c)(iii).
- (e) The value generated by the approved Energy Savings Initiatives will be applied:
 - (i) first, to repay the Capital Expenditure undertaken under paragraph 9.1(d)(ii) to the party that funded it (ie, GW or the Operator); and
 - (ii) once the Capital Expenditure has been repaid, to share any additional value (net of operating costs) 50:50 between the Operator and GW.

10. CLEANING AND GRAFFITI

10.1 Cleaning:

- (a) The Operator will provide a draft Vessel Cleaning Plan to GW for approval in accordance with clause 8 (Document approval process) no later than 20 Business Days after the Appointment Date. The Operator will review and revise the Vessel Cleaning Plan (in accordance with clause 8 (Document approval process)) whenever GW, acting reasonably, considers that the Vessel Cleaning Plan requires review or revision and provides the Operator with written notice to do so.
- (b) The Operator will ensure that each Vessel is cleaned, at a minimum, in accordance with the Vessel Cleaning Plan.
- (c) The cleanliness and condition of each Vessel will be monitored through the periodic auditing by GW and customer perception of cleanliness measured through the customer satisfaction surveys.
- (d) The Operator will, immediately following a request by GW and as part of the Customer Experience Services, change the scope or frequency (or both) of its interior cleaning to respond to an epidemic or pandemic affecting the Wellington region.
- 10.2 **Graffiti**: The Operator will ensure that each Vessel does not enter operational service (ie, is cleaned immediately) with offensive graffiti, graffiti that may pose a health and safety risk to either the passengers or the safe operation of the Ferry Service, dangerous material or human waste.

10.3 **Scope – smoke and vape free**: The Operator will ensure that each Vessel is a smoke and vape free zone at all times.

11. OPERATION

- 11.1 **Operation**: The Operator will operate each Vessel:
 - (a) only by competent and properly qualified, trained and licensed personnel and by recognised methods and standards of operation; and
 - (b) in accordance with:
 - (i) the operational characteristics specified in the technical specifications relevant to that Vessel:
 - (ii) any operating instructions received from time to time from the manufacturer or supplier of that Vessel;
 - (iii) any operational manuals and instructions developed by the previous operator and handed over to the Operator at the Operations Commencement Date; and
 - (iv) any other reasonable requirements of the manufacturer or supplier of that Vessel including any warranty or guarantee requirements and so as not to void, breach or adversely affect any warranty or guarantee claim.
- 11.2 **Proper purpose**: The Operator may only use the Vessels for:
 - (a) the provision of Ferry Services, commissioning and testing and Master and crew training;
 - (b) the provision of services or for purposes ancillary or incidental to the purposes specified in paragraph 11.2(a);
 - (c) undertaking any obligation imposed on the Operator under any Services Document; and
 - (d) any other purpose approved by GW,-

in each case subject to compliance with any limitations or requirements specified in the manufacturer's instructions and the relevant Vessel Maintenance Plan.

- 11.3 **Other users**: The Operator will ensure that no Vessel is used in such a way as to deliberately impede the lawful use of any Terminal, berth or lay-over facility by another public transport ferry services operator.
- 11.4 **Defects**: If and to the extent the Operator becomes aware of any defect in any Vessel or equipment used for the Services (whether owned, hired, leased or on loan by the Operator), then the Operator will not use such Vessel or equipment until it is, in the reasonable opinion of the Operator, fit for use.

12. REPORTING

12.1 **Reporting – vessel services**: The Operator will report on the delivery of the Vessel Services in the Monthly Report and Annual Report (in each case, in accordance with the requirements detailed in schedule 5 (Planning and management services)).

ANNEXURE 1 - STANDARDS

1. MAINTENANCE AND ASSET MANAGEMENT STANDARDS

- 1.1 **Specific standards**: The standards, as at the Operations Commencement Date, are as described in the operation and maintenance recommendations and requirements of the manufacturers and suppliers of all or part of the relevant Vessel.
- 1.2 Hierarchy for additional standards: If there is more than one standard covering the same subject matter with which the Operator is required to comply under paragraph (b) of the definition of Vessel Services Standards, then the following hierarchy will apply:
 - (a) New Zealand standards;
 - (b) Australian standards;
 - (c) British standards;
 - (d) European standards;
 - (e) US standards; and
 - (f) other standards.

2. DESIGN STANDARDS FOR MODIFICATIONS TO EXISTING FLEET AND SOURCING OF MATERIALS

2.1 **Application**: The standards in this paragraph 2 apply to the provision of the Vessel Services which require any modification to the Vessels and the sourcing of materials.

2.2 General:

- (a) The Vessels will provide a safe, comfortable, accessible and appealing environment for passengers, Masters and crew. The Vessels will, as far as is reasonably practicable, provide a similar experience for all passengers, including those with disabilities.
- (b) The Vessels will provide standards of design, finish, economy, reliability, availability, and performance that will enable GW and the Operator to achieve their objectives of:
 - (i) increased patronage on the Wellington Network; and
 - (ii) safe, cost-effective operation of the Fleet.
- (c) The Operator will ensure that the Vessels use, and are manufactured and constructed using, proven technologies and equipment that have been successfully used in a similar manner for Vessels operating in comparable operating environments.
- 2.3 **Mandatory standards**: All design, manufacturing, installation and testing will conform to each Vessel's individual survey requirements, Maritime New Zealand Part 40 and all regulatory codes, standards and other requirements applicable in New Zealand.
- 2.4 **Reference standards**: The reference standards stated in the Capital Expenditure and Maintenance Plan.

ANNEXURE 2 – TECHNICAL MAINTENANCE REQUIREMENTS

The technical maintenance requirements, as at the Appointment Date and for the purpose of paragraph 4.3(a), are stated in the Capital Expenditure and Maintenance Plan.

ANNEXURE 3 - VESSEL MAINTENANCE PLAN REQUIREMENTS

The Operator will, when preparing each Vessel Maintenance Plan, include, as a minimum, appropriate minimum requirements based on Good Industry Practice and the other requirements of this Agreement, in relation to the following categories:

- Asset Condition
- Maintenance
- Cleaning
- Performance
- Components
- Appendices

SCHEDULE 7: BUSINESS PLAN

1. **DEFINITIONS**

1.1 In this Agreement, unless the context requires otherwise:

Capital Expenditure and Maintenance Plan has the meaning given to that term in paragraph 4.1(b);

Disaster Recovery and Business Continuity Plan has the meaning given to that term in paragraph 4.1(c);

Planning Period means the period of time which the respective plan covers;

Strategic Plan has the meaning given to that term in paragraph 4.1(d); and

Workplace Health and Safety Plan has the meaning given to that term in paragraph 4.1(d).

2. GENERAL

- 2.1 **Purpose**: The purpose of the Business Plan is to describe, among other things, the management and operational strategies, plans and deliverables for the Services for the Planning Period of that Business Plan.
- 2.2 **Initial business plan**: The Operator will, no later than 20 Business Days, prepare and provide its initial Business Plan to the Management Committee for review:
 - (a) for the period starting on the Operations Commencement Date and continuing on a look forward basis until the end of the then current Financial Year; and
 - (b) in accordance with the requirements:
 - of paragraphs 3 (Content) and 4 (Component plans) (except that the Operator will not be required to prepare a Disaster Recovery and Business Continuity Plan or a Strategic Plan in the Initial Business Plan); and
 - (ii) GW and the Management Committee.
- 2.3 **Annual revision**: The Operator will, no later than 31 January of each Financial Year preceding the Planning Period (or such later date as the parties may agree in writing), prepare and provide an annual revision to the Business Plan to the Management Committee for review:
 - (a) for the period starting on the first day of the next Financial Year and continuing on a 1-year look-forward basis (and, in relation to the Strategic Plan, a 3-year look forward basis); and
 - (b) that is in the same form or substantially the same form as the version of the then current Business Plan (as parties may agree in writing), subject to any requirements stated in this schedule or unless otherwise accepted or required by a Variation.
- 2.4 **Acknowledgment**: GW and the Operator acknowledge and accept that the components of each Business Plan that relate to:
 - (a) the next Financial Year of that Business Plan, will take effect as the Business Plan for that Financial Year and will comprise an obligation on the Operator to do all things reasonably

necessary to implement and manage the components of the Business Plan that apply to that Financial Year; and

(b) any other Financial Years will be non-binding indicative guidance only.

3. CONTENT

- 3.1 **General description**: Each Business Plan (and each component of a Business Plan) will:
 - (a) at the time of submission be a complete and accurate description of the Operator's intended management and operational strategies relevant to the Services, plans and deliverables for the Services, and any other expected activities of the Operator and Business that the Operator considers important for GW to be aware of, for the Planning Period of that Business Plan; and
 - (b) without limiting any specific requirements in relation to the Business Plan, the Business Plan will:
 - (i) describe the activities that will be undertaken, and the outcomes sought from the undertaking of such activities, under each plan component;
 - (ii) describe the various interfaces between the different components of the Business Plan, together with other related strategies, plans and deliverables;
 - (iii) include a detailed assessment of the key risks, mitigations, opportunities and actions relevant to the applicable Planning Period;
 - (iv) summarise the key issues and risks identified from the different components of the Business Plan to the extent these have had, or will potentially have, a material impact on the customer, service delivery, infrastructure and assets, possible future funding requirements by GW or any obligations of the Operator under this Agreement;
 - (v) comply with the requirements of this schedule; and
 - (vi) will contain such other information as required by GW to make an informed assessment of the accuracy and completeness of that Business Plan for the purposes of the Services Documents.
- 3.2 **Principles**: Each Business Plan (and each component of a Business Plan) will:
 - (a) contribute to and support the delivery of the Services;
 - (b) provide GW with sufficient detail and understanding of key risks and exposures that may exist in relation to the Services, adopting a 'no-surprises' approach;
 - (c) be presented in a manner that is consistent (across component plans) and is able to be easily understood by GW;
 - not commit the Operator to incur any material expenditure which is not already contemplated by the Services Payment unless that expenditure has been agreed as part of an approved Variation; and
 - (e) be prepared in accordance with Good Industry Practice.

4. COMPONENT PLANS

- 4.1 **Component plans**: In accordance with paragraph 3 (Content), each Business Plan will include:
 - (a) an executive summary;
 - (b) a Capital Expenditure and Maintenance Plan, including, at a minimum:
 - (i) an asset / capital investment plan for the Planning Period;
 - (ii) a maintenance plan for the Planning Period (to avoid doubt, this will interface with the Vessel Maintenance Plans); and
 - (iii) a combined project calendar for Capital Expenditure implementation and major maintenance works;
 - (c) a **Disaster Recovery and Business Continuity Plan**, describing, at a minimum, the processes and other matters required to mitigate the damage and adverse public transport effects of potential emergency events such as earthquake, fire, natural disasters, terrorist threats, significant incidents involving serious casualties and deaths (to avoid doubt, the Operator will, no later than 1 August 2026, prepare and provide to GW a Disaster Recovery and Business Continuity Plan (ie, the Operator will not be required to prepare and provide a Disaster Recovery and Business Continuity Plan as part of the Initial Business Plan under paragraph 2.2); and
 - (d) a Strategic Plan, describing, on a 3-year look-forward basis, the Operator's strategic direction for the delivery of the Services and continuous improvement of the Business (to avoid doubt, the Operator will not be required to prepare a Strategic Plan until the Business Plan for the second Financial Year of this Agreement);
 - (e) a Workplace Health and Safety Plan, describing, at a minimum:
 - (i) in relation to workplace health and safety:
 - (1) the processes that the Operator will implement to manage workplace health and safety, including certification, inspection, audit programs, training and induction programs, communication processes and dispute resolution procedures;
 - (2) how the Operator will ensure workplace activities are performed in compliance with workplace health and safety legislation and any other Applicable Laws;
 - (3) addressing matters specified in the Relevant Health and Safety Legislation; and
 - (4) how the Operator will measure and report workplace health and safety outcomes;
 - (ii) in relation to crisis and incident management:
 - (1) the actions that the Operator will undertake to respond to incidents and manage associated disruptions, including a description of the Operator's Coordinated Incident Management System (CIMS) framework; and
 - (2) the Operator's approach to stakeholder management and coordination, customer communications, staff and public safety, training and how the Operator will liaise and integrate with GW during incidents,-

together with any other plan that GW considers is reasonable to support the development of the Services by the Operator (including, to avoid doubt and without limitation, an electric Vessel charging plan / strategy).

5. FINALISATION OF PLANS

- 5.1 **GW review**: GW will, on receipt of a draft Business Plan (which includes a draft revised Business Plan) provided by the Operator in accordance with the requirements of paragraph 3 (Content), review and provide to the Operator a response on the draft Business Plan in a timely manner. GW may provide a response to the Operator after receipt of additional information provided under paragraph 5.2 or modifications to the Business Plan received under paragraph 5.3.
- 5.2 **Additional information**: GW may request reasonable additional information from the Operator (including any request for written answers to questions or meetings with GW) in order to assess a draft Business Plan for the purposes of a Services Document. The Operator will provide to GW the additional information requested by GW promptly following such request (and, in any event, no later than 10 Business Days after a request).
- 5.3 **Modifications to business plan**: The Operator will provide to GW a revised draft Business Plan that accommodates and recognises any response by GW to the draft Business Plan under this paragraph 5. The Operator will provide to GW the revised draft Business Plan promptly (and, in any event, no later than 20 Business Days after receipt of GW's response).
- 5.4 **Management committee**: The draft Business Plan will be provided to the Management Committee for approval by 31 January of the Financial Year preceding the Financial Year in which that Business Plan is to take effect.
- 5.5 **Management committee considerations**: The Management Committee will, in deciding whether to approve the draft Business Plan:
 - (a) consider the process undertaken by GW and the Operator in developing the draft Business Plan in accordance with this paragraph 5; and
 - (b) consider the views of GW and the Operator with regards to the adequacy of the draft
 Business Plan and its achievement of the objectives previously agreed by the Management
 Committee and set out between the parties.
- 5.6 **Approval**: If the draft Business Plan is:
 - (a) approved by the Management Committee, then it will become the Business Plan; or
 - (b) not approved by the Management Committee, then the Management Committee will provide its reasons for not providing its approval and GW will jointly work with the Operator to further develop the draft Business Plan to address those reasons and the draft Business Plan (as further developed under this paragraph 5.6) will then be provided to the Management Committee for approval and, if necessary, will continue to be developed and provided to the Management Committee until the Management Committee gives its approval.

- 5.7 **Failure to finalise plan**: If the Management Committee has not approved a draft Business Plan by the date that is:
 - (a) in relation to the Initial Business Plan, 20 Business Days after the draft Business Plan has been submitted for review and approval; or
 - (b) in relation to the annual revision of the Business Plan, 20 Business Days prior to the first day of the next Financial Year,-

then either party may refer the matter for resolution or determination in accordance with the Dispute Resolution Procedure with GW party having the right to require that the dispute be determined by an expert under clause 33.4.

5.8 **Management of the business plan**: The Management Committee will review the performance of the Operator in delivering against the Business Plan and make recommendations in relation to updates to the Business Plan and any new Business Plans.

6. FUNDING PROCESS

- 6.1 Conditional approval: Approval of a draft Business Plan by the Management Committee will be conditional on receipt by GW of requisite funding approvals from GW's external funding providers as part of the GW Annual Plan development and approval process. Pending confirmation of such approvals, the delivery of any initiatives or projects requiring funding in excess of the Services Payment as specified in schedule 8 (Payments) will be delayed until the GW Annual Plan is approved.
- 6.2 **Operator acknowledgment**: The Operator acknowledges and accepts that, in relation to the draft GW Annual Plan:
 - (a) GW has the discretion to determine any amount included in the draft GW Annual Plan in relation to the provision of the Services or any other matter relating to the provision of the Ferry Services or any other matter relating to this Agreement;
 - (b) GW will consult on the draft GW Annual Plan before the adoption of the draft GW Annual Plan as the GW Annual Plan in accordance with the Local Government Act 2002; and
 - (c) if the draft Business Plan has not been approved by the Management Committee, then it will be deemed to be the submission of the Operator regarding the draft GW Annual Plan.
- 6.3 Inconsistencies: If the GW Annual Plan is inconsistent with the Business Plan, or the draft Business Plan has not been approved, then the Management Committee will meet as soon as reasonably practicable, but in any event no later than 10 Business Days after the adoption of the GW Annual Plan, to determine any changes to be made to the scope or specification of the Services or to the Business Plan or the draft Business Plan (as the case may be) required in order to comply with the GW Annual Plan.

7. GW ROLE - NO LIABILITY

7.1 **No liability**: The participation by GW (including as a member of the Management Committee) in the development or modification of any Business Plan (including any acceptance, non-objection

opinion, endorsement or similar given by GW in connection with a draft or final Business Plan) will not:

- (a) give rise to any liability of GW (and GW does not owe any duty of care or other obligation to the Operator) to identify any error, omission or non-compliance with this Agreement or other defect in relation to any Business Plan;
- (b) relieve the Operator from any obligation or limit or affect the liability of the Operator under or in connection with this Agreement;
- (c) prejudice any right or remedy of GW under or in connection with a Services Document; or
- (d) evidence or constitute confirmation or a representation by GW that:
 - (i) a Business Plan is fit for purpose, consistent with any obligations of the Operator under a Services Document;
 - (ii) implementation of any Business Plan will be sufficient to discharge the relevant obligations of the Operator under a Services Document or will not cause the Operator to be in breach of a Services Document; or
 - (iii) any part of the Services has or will be provided in accordance with any Services Document.
- 7.2 **No entitlement to variation**: The Operator acknowledges and accepts that the development and acceptance of any Business Plan or any annual update or other modification to any Business Plan under this Agreement does not of itself constitute or otherwise give rise to a Variation or any other entitlement to additional relief for the Operator.

SCHEDULE 8: PAYMENTS

1. **DEFINITIONS**

1.1 In this Agreement, unless the context requires otherwise:

Annual Gross Price means the price calculated in accordance with paragraph 3 (Annual gross price);

Annual Services Payment means the amount stated as the annual service payment in annexure 1;

Cancelled Service Rebate Rate means the amount stated as the cancelled service rebate rate in annexure 1;

Index Multiplier means the index multiplier determined in accordance with paragraph 3.2;

Mātiu / Somes Island Service Rate means the amount stated as the Mātiu / Somes Island service rate in annexure 1;

Payment Misrepresentation has the meaning given to that term in paragraph 2.8;

Payment Period means each calendar month during the Term, provided that:

- (a) the first Payment Period will commence on the Operations Commencement Date and end on the last day of the calendar month in which the Operations Commencement Date falls; and
- (b) the last Payment Period will commence on the first day of the calendar month in which the Term ends and end on the last day of the Term;

Special Event Hour Rate means the amount stated as the special event hour rate in annexure 1;

Special Event Kilometre Rate means the amount stated as the special event kilometre rate in annexure 1;

Special Event Rate means the amount stated as the special event rate in annexure 1;

Transport Agency Ferry Index means the Transport Agency ferry index published each Quarter by the Transport Agency (refer to the Transport Agency's website); and

Transport Agency Ferry Index (Electric) has the meaning given to that term in paragraph 3.4.

2. SERVICES PAYMENT

2.1 Calculation of services payment

- (a) The Services Payment for each Payment Period during the Term will equal the aggregate of the payment components listed in the table in paragraph 2.2.
- (b) Each payment component will be calculated in accordance with the provisions of this schedule, or other provision of or schedule to this Agreement, as specified under the heading "Paragraph reference" in the table in paragraph 2.2 and, unless otherwise specified, may be a positive amount (that is payable by GW to the Operator) or a negative amount (that is payable by the Operator to GW).

- (c) If a payment component is shown under the heading 'Period' to be payable:
 - (i) 'monthly', then it will be included in the calculation of the Services Payment for each Payment Period; and
 - (ii) 'monthly (if applicable)', then it will be included in the calculation of the Services Payment for each Payment Period to which the component applies.

In any other case the component will be included in the calculation of the Services Payment for a Payment Period or periods determined in accordance with the paragraphs specified.

- (d) Any dispute about the quantum or calculation of any payment component will be resolved under the Dispute Resolution Procedure, with GW having the right to require that the dispute be determined by an expert under clause 33.4.
- 2.2 **Services payment components**: The payment components, and related payment periods, for the Services Payment are:

Component	Paragraph reference	Period
Annual Gross Price	Paragraph 3 (Annual gross price) of this schedule	Monthly (in advance)
Special Event Payment	Paragraph 4 (Special event payment)	Monthly (if applicable) (in arrears)
Service Reliability Abatement	Schedule 10 (Performance)	Monthly (if applicable) (in arrears)
Service Punctuality Abatement	Schedule 10 (Performance)	Monthly (if applicable) (in arrears)
Nominated Performance Indicators	Schedule 10 (Performance)	As specified in the Nominated Performance Indicators (if applicable) (in arrears)

2.3 Payment summary

- (a) GW will, no later than 5 Business Days after the end of each Payment Period, prepare and provide to the Operator a payment summary stating its calculation of the Services Payment and any other amounts payable by GW for that Payment Period.
- (b) The Operator will, no later than 5 Business Days after receipt of a payment summary, notify GW that the Operator:
 - (i) approves the payment summary, in which case GW will make payment to the Operator of the amount stated in the relevant payment summary in accordance with paragraph 2.4; or
 - (ii) does not approve the payment summary, in which case the Operator will provide details of why the Operator does not approve the payment summary (together with such information as is reasonably required to support and justify why the Operator does not approve the payment summary).

- (c) If the Operator has not provided notice to GW in relation to a payment summary provided to the Operator under paragraph 2.3(b) before the relevant date required, then:
 - (i) the Operator will be deemed to approve the payment summary; and
 - (ii) GW will make payment to the Operator of the amount stated in the relevant payment summary in accordance with paragraph 2.4.
- 2.4 **Payment after payment summary is approved**: Provided that the Operator has complied with its obligations under paragraph 2.3, GW will, on or before the 20th day of the month following the end of the Payment Period (or if such day is not a Business Day, on the next Business Day), pay to the Operator the amount stated in the relevant approved payment summary.
- 2.5 Valid tax invoices: Without prejudice to any obligation of the Operator under this Agreement and despite anything to the contrary in this Agreement, no moneys are payable to the Operator by GW unless and until:
 - (a) the Operator has approved a payment summary under paragraph 2.3(b) (or be deemed to have approved a payment summary under paragraph 2.3(c)); and
 - (b) GW has generated and processed a valid buyer created Tax Invoice under section 19K(4) of the GST Act in relation to the amount stated in the relevant approved payment summary.
- 2.6 No double recovery: If the Operator is entitled to be compensated for a cost, expense or similar amount it incurs for an activity it undertakes under one provision of this Agreement or any other Services Document, then it is not entitled to recover compensation for the same cost, expense or similar amount or activity twice under any other provision of this Agreement or any other Services Document.
- 2.7 **Cooperation**: GW and the Operator will cooperate with each other to ensure that the payments to be made under this Agreement or any other Services Document are determined correctly and efficiently on the basis of all the information available to each of them from time to time.
- 2.8 **False information**: If the Operator provides information used in calculation of payments under this Agreement or any other Services Document that is false or misleading in any material respect or takes any action to artificially inflate the calculation of payments to be made to the Operator or to deflate artificially the calculation of payments to be made by the Operator under this Agreement or any other Services Document (in either case, a **Payment Misrepresentation**), then this may, at GW's election, be treated as a Default Event and a Termination Event and (in addition to its rights in relation to the Default Event and Termination Event) GW may:
 - (a) refuse to make any payments affected by the Payment Misrepresentation; and
 - (b) demand a repayment of any payment made under this Agreement or any other Services Document relating to the Payment Misrepresentation.
- 2.9 Labour rate protection: The Operator will ensure that any part of a Services Payment (including any payment made by GW in relation to a Variation) that is attributable to the hourly wage rate or other remuneration payable to a Master or other Operator Employee is paid to such Master or Operator Employee in accordance with the applicable employment agreement.

3. ANNUAL GROSS PRICE

3.1 **Calculation of annual gross price**: The Annual Gross Price for a Payment Period is calculated in accordance with the following formula:

$$AGP = \left(\left(ASP \times \left(\frac{PM}{PP} \right) \right) \times IM \right) + \left(\sum SVAR \times (PM/PP) \times IM \right)$$

where:

AGP is the Annual Gross Price for the Payment Period.

ASP is the Annual Services Payment for the Financial Year in which the Payment

Period occurs.

SVAR is the sum of any adjustments to the Annual Gross Price (which may be positive

or negative) resulting from Variations that were implemented prior to the Payment

Period, in each case determined in accordance with schedule 9 (Variations).

PM is 1 unless the Payment Period is less than a full calendar month, in which case

PM is calculated as:

PM = NDPP / NDCM

where:

NDPP is the number of days in the Payment Period; and

NDCM is the number of days in the calendar month in which the Payment

Period falls.

PP is 12.

IM is the Index Multiplier determined in accordance with paragraph 3.2.

- 3.2 **Index multiplier**: The Index Multiplier:
 - is applied Quarterly in accordance with movements in the applicable Transport Agency Ferry Index for the preceding Quarter and commencing in the first complete Quarter following the Operations Commencement Date; and
 - (b) formula (for the application of the Index Multiplier, described in paragraph 3.2(a)), for each Payment Period in a Quarter is, subject to the adjustment under paragraph 3.3:

$$IM = (W/X)$$

where:

IM is the Index Multiplier for the Quarter;

W is the value of the Transport Agency Ferry Index under paragraph 3.2(a) for the

Quarter preceding the relevant Payment Period; and

X is the value of the Transport Agency Ferry Index under paragraph 3.2(a) for the

first complete Quarter following the Appointment Date.

- 3.3 **Acknowledgement**: The parties acknowledge and accept that the Transport Agency Ferry Index for a Quarter is published during the next Quarter (typically published at the end of the second Payment Period in each Quarter). As a result, for each Quarter:
 - (a) the Annual Gross Price for the Payment Periods in that Quarter that occur on or before publication of the Transport Agency Ferry Index for the preceding Quarter cannot be adjusted in accordance with paragraph 3.2; and
 - (b) in order to give effect to paragraph 3.2, the Annual Gross Price for the Payment Period in that Quarter that occurs immediately after publication of the Transport Agency Ferry Index for the preceding Quarter will be adjusted so that the Index Multiplier is applied to the Annual Gross Price for the Payment Periods referred to in paragraph 3.3(a) based on the movement of the Transport Agency Ferry Index for the preceding Quarter.
- 3.4 Ferry index (electric vessels): The parties acknowledge and accept that the Transport Agency may, during the Term, publish a Transport Agency ferry index for electric vessels (the Transport Agency Ferry Index (Electric)). If the Transport Agency publishes a Transport Agency Ferry Index (Electric) during the Term, then GW may adjust the application of the Index Multiplier under this Agreement in a manner that is reasonable having regard to the use of (and allocation between) diesel Vessels and electric Vessels by the Operator to provide Ferry Services under this Agreement.
- 3.5 **Payment of annual gross price advance payment**: The parties acknowledge and accept that the Annual Gross Price component of the Services Payment will be calculated, and paid by GW to the Operator, on a monthly 'in advance' basis. To avoid doubt, all other components of the Services Payment will be calculated, and paid by GW on an 'in arrears' basis.

4. SPECIAL EVENT PAYMENT

- 4.1 Calculation of special event payment: The Special Event Payment for a Payment Period is calculated by multiplying the number of Special Event Ferry Services per Route in the applicable Payment Period by the applicable Special Event Rate. If and to the extent it is not possible to apply a Special Event Rate to a Special Event Ferry Service, then GW may, acting reasonably but in its sole discretion, substitute the Special Event Rate for a rate calculated:
 - (a) by reference to, either:
 - (i) the Special Event Hour Rate; or
 - (ii) Special Event Kilometre Rate; or
 - (b) in accordance with paragraph 3 (Route or timetable variation) to schedule 9 (Variations); or
 - (c) in accordance with paragraph 7 (Net financial impact) to schedule 9 (Variations).
- 4.2 Payment of special event payment: The Operator will notify GW of the Special Event Payment to be made in relation to a Payment Period no later than 20 Business Days after the Payment Period to which a Special Event Payment relates occurs. The Operator will with each notification include reasonable detail of the basis of each Special Event Payment. The Special Event Payment will be included in the calculation of the Services Payment for the month after it is notified under this paragraph 4.2.

5. DAILY FARE RECONCILIATION PAYMENT

- 5.1 Calculation of daily fare reconciliation payment: The Daily Fare Reconciliation Payment is the Fare Revenue collected by the Operator (or that should have been collected by the Operator but for a failure to comply with a Services Document) for a day that the Operator provides Ferry Services under this Agreement.
- 5.2 **Payment of daily fare reconciliation payment**: The Operator will be liable for, and will pay to GW no later than 17:00 on the next Business Day (ie, the Daily Fare Reconciliation Payment for Friday, Saturday and Sunday will be paid to GW on the Monday (to the extent the Monday is a Business Day)) the Daily Fare Reconciliation Payment.
- 5.3 **Weekly reconciliation items**: The parties acknowledge and accept that Fare Revenue collected by the Operator (or that that should have been collected by the Operator but for a failure to comply with a Services Document) in relation to online bookings and group bookings (eg, school groups) will be reconciled by the Operator and paid to GW on a weekly basis and included in the Daily Fare Reconciliation Payment each Monday (to the extent the Monday is a Business Day, otherwise the next Business Day) for the previous week.

6. MĀTIU / SOMES ISLAND SERVICE REBATE

- 6.1 **Rebate**: If the Operator operates a:
 - (a) Special Event Ferry Service; or
 - (b) a commercial ferry service (using a Vessel),-

that involves passengers disembarking at Mātiu / Somes Island in a Payment Period, then the Operator will be liable for, and will pay to GW as part of the next Daily Fare Reconciliation Payment, the Mātiu / Somes Island Service Rebate. To avoid doubt, this paragraph 6.1 does not require the Operator to collect Fare Revenue on such Special Event Ferry Services or commercial ferry services (using a Vessel) to the extent that such Fare Revenue has already been collected.

- 6.2 **Mātiu / Somes Island service rebate**: The Mātiu / Somes Island Service Rebate is calculated by multiplying the number of passengers that disembarked at Mātiu / Somes Island in the applicable Payment Period by the applicable Mātiu / Somes Island Service Rate.
- 6.3 **Acknowledgment**: The parties acknowledge and accept that any Special Event Ferry Services or commercial ferry services (using a Vessel) that involves passengers disembarking at Mātiu/Somes Island are subject to the access arrangements for Mātiu/Somes Island.

7. CANCELLED SERVICE REBATE

- 7.1 **Rebate**: If a Ferry Service is cancelled as a result of or in connection with any fraud, breach, negligent act or negligent omission on the part of the Operator or an Operator Associate under this Agreement, then the Operator will be liable for, and will pay to GW no later than 20 Business Days after the end of each Quarter, the Cancelled Service Rebate.
- 7.2 **Cancelled service rebate amount**: The Cancelled Service Rebate is calculated by multiplying the number of cancelled Ferry Services per Route in the applicable Financial Year by the applicable Cancelled Service Rebate Rate.

8. DISPUTE

Any dispute between the parties under this schedule will be resolved in accordance with the Dispute Resolution Procedure, with GW having the right to require that the dispute be determined by an expert under clause 33.4.

ANNEXURE 1: PARTICULARS

ITEM	PARTICULARS	REFERENCE	
1.	Annual Services Payment	\$Section 7(2)(b)(ii) (exclusive of GST)	Paragraph 3.1
2.	Cancelled Service Rebate Rate:	\$ (Queens Wharf Terminal to Days Bay Terminal or Days Bay Terminal to Queens Wharf Terminal)	Paragraph 6.1
		\$ (Queens Wharf Terminal to Mātiu/Somes Island Terminal or Mātiu/Somes Island to Queens Wharf Terminal)	
		\$ (Days Bay Terminal to Mātiu/Somes Island Terminal or Mātiu/Somes Island to Days Bay Terminal),-	
		in each case, per Ferry Service. The above amounts will be indexed using the Index Multiplier on the basis specified in paragraph 3.2.	
3.	Mātiu / Somes Island Service Rate	If: (a) a Special Event Service, then an amount equal to the then current GW public transport ferry fare and the then applicable visitor fee (being the amount payable to the Department of Conservation and the Mātiu/Somes island's Kaitiaki Board); or (b) a commercial ferry service (using a Vessel), then an amount equal to the then current GW public transport ferry fare and the then applicable visitor fee (being the amount payable to the Department of Conservation and the Mātiu/Somes island's Kaitiaki Board) less an amount equal to the Special Event Rate for the Ferry	Paragraph 6

4.	Special Event Rate	\$ (Queens Wharf Terminal to Days Bay Terminal or Days Bay Terminal to Queens Wharf Terminal) \$ (Queens Wharf Terminal to Mātiu/Somes Island Terminal or Mātiu/Somes Island to Queens Wharf Terminal) \$ (Days Bay Terminal to Mātiu/Somes Island Terminal or Mātiu/Somes Island Terminal or Mātiu/Somes Island Terminal or Mātiu/Somes Island to Days Bay Terminal),- in each case, per Ferry Service.	Paragraph 4
		The above amounts will be indexed using the Index Multiplier on the basis specified in paragraph 3.2.	
5.	Special Event Hour Rate	per hour operated by all Vessels in connection with the servicing of Special Events, including travel for fuelling, maintenance, positioning and ancillary movements but, to avoid doubt, excluding any hours associated with the delivery of Ferry Services as provided for in the Timetable, that are also travelled as part of servicing the Special Event.	Paragraph 4
6.	Special Event Kilometre Rate	sper kilometre for the Vessel known as 'Cobar Cat'; per kilometre for the Vessel known as 'City Cat'; and per kilometre for the Vessel known as 'Ika Rere',- in each case operated by all Vessels in connection with the servicing of Special Events, including travel for fuelling, maintenance, positioning and ancillary movements but, to avoid doubt, excluding any kilometres associated with the delivery of Ferry Services as provided for in the Timetable, that are also travelled as part of servicing the Special Event.	Paragraph 4

SCHEDULE 9: VARIATIONS

1. **DEFINITIONS**

1.1 In this Agreement, unless the context requires otherwise:

Adjustment Event has the meaning given to that term in paragraph 7.1(b);

Impact Statement means, in relation to a Variation Proposal, a statement identifying and describing in reasonable detail the impact, in relation to the Services and this Agreement, of the Variation Proposal and will include a description in reasonable detail of:

- (a) an estimate of the Net Financial Impact of or Variation Rate Calculation for (as applicable), or any other adjustment to any part of the Services Payment for, the proposed Variation;
- (b) any Authorisations required as a result of the Variation and the effect of the Variation on existing Authorisations;
- (c) the effect the Variation will have on the ability of the Operator to satisfy its obligations under this Agreement (including under the Business Plan and any other plan under this Agreement), including the expected effect on In-Service Hours, peak vessel requirements, patronage, trips, routes, timetable and operational performance;
- (d) the impact of the Variation on the Vessels, the Operator Assets, or other assets required to perform the Services, including any requirement for additional Vessels or Non-Vessel Assets or for assets to be used in a different way;
- (e) any consequential material impacts, dependencies, assumptions or risks in relation to the Variation Proposal;
- (f) resources (including personnel) required to be provided or investment (above any adjustment to the Annual Gross Price) required to be made, to achieve the Variation; and
- (g) all other information which either GW or the Operator considers is likely to be material to either party in relation to the proposed Variation;

Incremental Costs means any reasonable increase or reduction in costs (including, for the purposes of this definition, labour and direct and indirect overhead costs) of the Operator caused by an event determined:

- (a) on the basis that, in the case of an increase in costs, only costs (not including any margin that would not be incurred but for the event are taken into account and costs that existed prior to and after the event are excluded);
- (b) on the basis that, in the case of a reduction in costs, only savings (not including margin) that would not have been made but for the event are taken into account and costs that existed prior to and after the event are excluded; and
- (c) by applying Margin% to the aggregate increase or decrease in costs except for any costs that are determined on the basis of the tendered variation rates, such as the hourly labour rates specified in annexure 1;

In-Service means the operation of a Ferry Service from the Origin to the Destination as specified in the Timetable, but excluding (to avoid doubt) travel to and from a stop or layover or fuelling or maintenance facilities and positioning and any other ancillary movements of Vessels;

In-Service Hour Rate means the amount stated as the in-service hour rate in annexure 1;

Major Service Change has the meaning given to that term in paragraph 4.1(a);

Margin% means the amount stated as the margin% in annexure 1;

Net Financial Impact means the net financial impact of an Adjustment Event as determined under paragraph 7 (Net financial impact);

Route or Timetable Variation means a Variation requested under paragraph 3 (Route or timetable variation);

Variation Implementation Date has the meaning given to that term in paragraph 6.4(c);

Variation Proposal means:

- (a) a requirement for a Variation by GW under paragraph 6.1; or
- (b) a request for a Variation by the Operator under paragraph 6.2; and

Variation Rate Calculation means the calculation of the amount of the adjustment to the Annual Gross Price (which may be positive or negative) for a Route or Timetable Variation and calculated on the basis of the changed In-Service Hours multiplied by the In-Service Hours Rate.

2. VARIATIONS - GENERAL

- 2.1 **Purpose**: The purpose of this schedule is to provide clarity of the requirements that enable the Services and this Agreement to flex to deliver effective and efficient public transport ferry services.
- 2.2 **Types of variation**: A variation to this Agreement may be made by:
 - (a) a Route or Timetable Variation under paragraph 3 (Route or timetable variation);
 - (b) a Major Service Change under paragraph 4 (Major service change variation); or
 - (c) a variation under paragraph 6 (Variation mechanism).

3. ROUTE OR TIMETABLE VARIATION

3.1 General

- (a) GW may require a variation to a Route and/or Timetable under this Agreement.
- (b) The Operator may request a variation to a Route and/or Timetable.
- 3.2 **Variation proposal**: If a variation to a Route or Timetable is required or requested (as applicable) under this paragraph 3, then the party proposing the Variation will:
 - (a) provide a Variation Proposal to the other party in accordance with paragraph 6 (Variation mechanism) and paragraph 6 (Variation mechanism) will apply to that Variation Proposal;
 and
 - (b) include in the Variation Proposal a summary of any proposed Route change or Timetable Change compared against the existing Routes and Timetable.

- 3.3 **Requirements**: For a Variation Proposal under this paragraph 3:
 - (a) any change to In-Service Hours between the different Routes or Timetables will be calculated, and will form the basis of the Variation Rate Calculation; and
 - (b) GW will take a network-wide view in making such changes.
- 3.4 **Net financial impact**: To avoid doubt, GW and the Operator may agree to assess a variation to a Route and/or Timetable as an Adjustment Event under paragraph 7 (Net financial impact).

4. MAJOR SERVICE CHANGE VARIATION

- 4.1 If GW proposes, following consultation with the Operator, to make a Variation that is a network-wide development that will result in the Annual Gross Price being reduced by more than 20% over a twelve-month period after applying the Variation Rate Calculation (a **Major Service Change**), then GW will:
 - (a) by written notice, notify the Operator of the proposed Variation; and
 - (b) negotiate in good faith with the Operator in relation to any alternative solution to the proposed Variation including alternative timetables, potential redeployment of resources and implementation of transitional periods.

5. OPERATOR OPERATIONAL CHANGE

- 5.1 If the Operator proposes to make operational changes to the Services (which include processes, onboard engine monitoring, Operator Employee duty and rescheduling) that do not adversely affect the performance of its obligations under this Agreement (including the Timetabled Services and the Business Plan), then the Operator may do so without a Variation if the Operator has provided to GW:
 - (a) appropriate prior written notice of the proposed change;
 - (b) prior to the change, any information required by GW in relation to the proposed change; and
 - (c) sufficient information in a timely manner so that GW is properly informed of the progress and consequences of the proposed change.

6. VARIATION MECHANISM

- 6.1 **GW**: GW may, by 1 month's written notice to the Operator, require a Variation to the Services to be provided or obligations to be performed by the Operator under this Agreement.
- 6.2 **Operator**: The Operator may, by 1 month's written notice to GW, request a variation to the Services.
- 6.3 **No duplication with other provisions**: GW may not use a Variation under this paragraph 6 to:
 - (a) make an adjustment to the Services Payment for a Route or Timetable Variation on the basis (and to the extent) that the mechanism for making payment adjustments for a Route or Timetable Variation is separately provided for in this schedule; or
 - (b) generally implement changes where the mechanism for implementing the change and making any payment adjustment in relation to the change is separately provided for in this Agreement.

- 6.4 **Variation proposal**: A Variation Proposal will specify the particulars of the Variation, including:
 - (a) the drafted amendments, or a description of the amendments, required to the Services Document for the Variation;
 - (b) any implementation plan prepared under paragraph 6.5; and
 - (c) the date (such date being the **Variation Implementation Date**) on which the Variation will take effect, which will be after a reasonable time taking into account the nature of the Variation, input from the Operator and the timetable prescribed in any implementation plan prepared under paragraph 6.5.
- 6.5 **Implementation plan**: GW may, or may require the Operator to, prepare an implementation plan in relation to a proposed Variation (which will include, at a minimum, a proposal for revised Routes and Timetable). If GW requires the Operator to prepare an implementation plan, then the Operator will prepare such implementation plan within a reasonable time of GW's Variation Proposal but no later than 30 Business Days after GW's Variation Proposal. An implementation plan will, if required by GW, include an Impact Statement.
- 6.6 **Services payment adjustment calculations**: If GW requires a Variation under paragraph 6.1, then the Operator will, no later than 20 Business Days after GW's Variation Proposal (or such other date as agreed with GW), provide to GW:
 - (a) its determination of the required adjustment to the Services Payment (which may be an estimate of the Net Financial Impact, if applicable) under this Agreement for the proposed Variation; and
 - (b) the working papers supporting that adjustment.
- 6.7 **Direction to proceed**: GW may notify the Operator that it will:
 - (a) proceed with the proposed Variation;
 - (b) not proceed with the proposed Variation; or
 - (c) issue a revised proposed Variation under this paragraph 6,-

by no later than 1 month after receipt of the Operator's determination of the required adjustment to the Services Payment under paragraph 6.6 or the implementation plan under paragraph 6.5 (as applicable). A decision by GW to proceed with a Variation under this paragraph 6.7 is without prejudice to GW's right to dispute the Operator's calculation of the required adjustment to the Services Payment in relation to the Variation in accordance with the Dispute Resolution Procedure, with GW having the right to require that the dispute be determined by an expert under clause 33.4.

- 6.8 **Implementation of variation**: If GW notifies the Operator that GW will proceed with a proposed Variation under this schedule, then, on and from the Variation Implementation Date (whether or not the adjustment to the Services Payment has been agreed or determined by an expert by the Variation Implementation Date):
 - (a) the Variation will take effect;
 - (b) the Operator will comply with the Variation;

- (c) the relevant Services Documents will be deemed to have been amended in accordance with the Variation; and
- (d) any such variation to the Services to be provided or obligations to be performed by the Operator will be a "Variation" for the purposes of this Agreement and any other Services Document.
- 6.9 **Adjustment to services payment**: The Services Payment will be adjusted in accordance with the provisions of this schedule with effect from the Variation Implementation Date or, if later, the date that the Operator begins to comply with the Variation in accordance with paragraph 6.8.
- 6.10 **Cost of variation impact reports, etc**: Each party is liable for, and will pay, its own costs in relation to the initiation, preparation, negotiation and finalisation of each Variation.

7. NET FINANCIAL IMPACT

7.1 NFI adjustment events

- (a) This paragraph 7 describes the principles and mechanisms to be applied in calculating adjustments to the Services Payment for the Net Financial Impact of an Adjustment Event or as otherwise specified in this Agreement.
- (b) In this schedule, an Adjustment Event is:
 - a proposed Variation given effect to as a Variation under paragraph 6 (Variation mechanism), excluding a Route or Timetable Variation (but for clarity excludes a Special Event);
 - (ii) a material change by GW to the Vessel Quality Standards; or
 - (iii) an event or circumstance for which this Agreement states is to be subject to a Net Financial Impact adjustment in relation to the Services Payment in accordance with this paragraph 7.

7.2 **General principles**: The principles and mechanisms are:

- (a) The Net Financial Impact calculations will be prepared in real dollars on an Incremental Costs basis at the time of the Adjustment Event (ignoring the expected impacts of inflation over the period of the Adjustment Event).
- (b) The Net Financial Impact for each Financial Year will be deflated to the Operations Commencement Date in accordance with the following formula:

$NFICD = NFIFY \times 1/IM$

where:

NFICD is the Net Financial Impact for a Financial Year in real dollars at the Operations Commencement Date;

NFIFY is the Net Financial Impact for a Financial Year in real dollars at the time of the Adjustment Event; and

IM is the Index Multiplier, except that IM will be 1 if the Adjustment Event is a one-off event that does not result in an on-going change to the Services

and GW elects to make a single lump sum payment in the same Financial Year as the Adjustment Event occurs.

- (c) The calculations will reflect only the cashflow impacts of the Adjustment Event, including any payments to be made by either the Operator or GW on expiry or termination of this Agreement. The estimated cashflow impacts for each Financial Year (or part of a Financial Year, where relevant) will be assessed over the life of the impact of the Adjustment Event, up to a maximum of the remaining Term, including any extension period.
- (d) The cashflows included in the calculations will reflect amounts exclusive of GST.
- (e) The cashflows will reflect commercial arms-length arrangements in relation to revenue (and other cash inflows) and costs (and other cash outflows).
- (f) The Net Financial Impact calculations will be prepared on a pre-income tax basis. However, where the nature of the Adjustment Event is such that there are likely to be significant tax timing or permanent differences, these will be taken into account.
- (g) GW retains the right to require a third-party review of the Net Financial Impact calculations prepared by the Operator and the recommended adjustments to the Annual Gross Price. The Operator will cooperate with any third party engaged by GW for this purpose.
- 7.3 **Cash flows to be included**: The principles and mechanisms also include:
 - (a) Cash inflows will include the proceeds of any asset sales which are able to be initiated by the Operator as a result of or in connection with the Adjustment Event.
 - (b) All operating cost impacts will be included in the calculations including changes in operating and maintenance costs, and start-up costs associated with the Adjustment Event.
 - (c) Cash outflows associated with capital expenditure will be included.
 - (d) The Operator will consult with GW and propose a funding proposal for any capital expenditure associated with an Adjustment Event. GW may nominate whether that capital expenditure:
 - (i) is to be funded by the Operator's funding proposal or by GW's own funding arrangements; or
 - (ii) will not be undertaken.
 - (e) Cash outflows will reflect operating or capital expenditure or other costs to be borne by the Operator only and will not include any amounts that GW agrees to fund directly.
- 7.4 **Adjustment or payments**: Following determination of any Net Financial Impact, at GW's election:
 - (a) the Services Payment for the balance of the Term will be adjusted to:
 - increase the amount payable by GW in the case of a net cost increase; or
 - (ii) decrease the amount payable by GW in the case of a net cost saving,-

and GW will determine which components of the Services Payment are to be adjusted having regard to any recommendation or preference expressed by the Operator; or

(b) GW may:

- (i) in the case of net cost increase, make a single lump-sum payment or other periodical payments to the Operator equal to the net cost increase; or
- (ii) in the case of net cost saving, require a lump sum or other periodical payments to be made by the Operator to GW equal to the net cost saving.

7.5 Ability to revisit calculations

- (a) Given that some of the expected cashflow impacts associated with an Adjustment Event are likely to be difficult to assess at or prior to the Adjustment Event being implemented, GW may, acting reasonably, provide for Net Financial Impact calculations (or specific components of them) to be reviewed after implementation.
- (b) GW will, acting reasonably, determine at the time the Adjustment Event is initially contemplated whether it is of such a nature that the cashflow impacts should be reviewed after the Adjustment Event comes into effect and the period within which such a review should be undertaken and completed. It is intended that the right to review will only be required where there are unpredictable or contingent cashflow impacts associated with the Adjustment Event.
- (c) If a review is undertaken and the Net Financial Impact is determined to be materially different from that reflected in the initial calculations, then GW will determine the adjustments to the Services Payment required to reflect this difference. The adjustment may include retrospective adjustments in relation to payments already made based on the original calculation. Either party may engage a third party to review the adjustments proposed under this paragraph 7.5.

8. DISPUTE

Any dispute between the parties under this schedule will be resolved in accordance with the Dispute Resolution Procedure, with GW having the right to require that the dispute be determined by an expert under clause 33.4.

ANNEXURE 1

1. PARTICULARS:

ITEM	PARTICULARS		REFERENCE
7.	In-Service Hour Rate	Securion Y(4)(5)(6)	Paragraph 1.1 – definition of In- Service Hour Rate
8.	Margin%	Section :	Paragraph 1.1 – definition of Incremental Cost

2. VARIATIONS AND OTHER NET FINANCIAL IMPACT ADJUSTMENTS

2.1 **Rates**: The per Vessel rates for the purposes of schedule 9 (Variations) are specified in the following table. The Operator acknowledges and accepts that GW has discretion to apply each capacity' rate as it considers fair and reasonable, however intends to apply the 'Average' capacity rate.

CAPACITY	COBAR CAT	CITY CAT	IKA RERE
FULL	Section 7(2)(b)(ii)		
EMPTY	Section 7(2)(b)(ii)		
AVERAGE	Section 7(2)(t)(ii)		

SCHEDULE 10: PERFORMANCE

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions**: In this Agreement, unless the context requires otherwise:

Abatement means

- (a) a Service Punctuality Abatement; or
- (b) a Service Reliability Abatement;

Customer Satisfaction Incentive means the amount calculated in accordance with paragraph 6.3;

Customer Satisfaction PI means the amount calculated in accordance with paragraph 6.1

Customer Satisfaction Target means the target stated in annexure 1;

Destination means, in relation to a Ferry Service, the end termination point of the Ferry Service as described in the Timetable;

Incentive means each Nominated Performance Indicator Incentive;

Monthly Services Payment means, for a Reporting Period, the Services Payment for the relevant month that includes the end of that Reporting Period;

Nominated Performance Indicator has the meaning given to that term in paragraph 5.1;

Nominated Performance Indicator Incentive has the meaning given to that term in paragraph 5.2(c);

On-time means, in relation to a Ferry Service, that the Ferry Service departs from its Origin:

- (a) no earlier than 4 minutes and 59 seconds before, its timetabled departure time; and
- (b) no later than 9 minutes and 59 seconds after, its timetabled departure time;

Operational Performance Indicator means the:

- (a) Service Reliability KPI; and
- (b) Service Punctuality KPI;

Origin means, in relation to a Ferry Service, the commencement point of that Ferry Service as described in the Timetable;

Patronage Incentive means the amount calculated in accordance with paragraph 8.1;

Patronage Target means, in relation to a Reporting Period, a patronage target for Ferry Services for the relevant Reporting Period determined by GW under paragraph 8.1;

Peak Service means a Ferry Service commencing from its timetabled Origin between:

- (a) 0630 and 0930; or
- (b) 1500 and 1800,-

in each case, on a Business Day;

Performance Indicator means:

- (a) an Operational Performance Indicator; and
- (b) each Nominated Performance Indicator:

Performance KPI Minimum means

- (a) the Service Punctuality KPI Minimum; and
- (b) the Service Reliability KPI Minimum,-

Punctuality Failure means a Ferry Service (as identified by its unique service number in the Timetable) that is not On-time (excluding a Ferry Service that is cancelled, or should have been recorded as cancelled, in the Customer Information System);

Reliability Failure means a Ferry Service (as identified by its unique service number in the Timetable) that:

- (a) did not depart its Origin, which includes a Ferry Service that is cancelled, or should have been cancelled, in the Customer Information System; or
- (b) did not arrive at its Destination,-

provided that if and to the extent that, a Ferry Service has more than 1 Reliability Failure, as calculated under paragraphs (a) to (b) of this definition, then that Ferry Service will be deemed to have incurred 1 Reliability Failure only;

Reporting Period means each successive month or other applicable period stated in annexure 1, and:

- (a) the first Reporting Period starts on the Operations Commencement Date (or other date stated in annexure 1); and
- (b) the last Reporting Period ends on expiry or termination of this Agreement;

Service Failure means:

- (a) a Punctuality Failure; or
- (b) a Reliability Failure;

Service Punctuality Abatement has the meaning given to that term in paragraph 4.6;

Service Punctuality KPI has the meaning given to that term in paragraph 4.5;

Service Punctuality KPI Minimum means the amount stated in annexure 1;

Service Reliability Abatement has the meaning given to that term in paragraph 4.4;

Service Reliability KPI has the meaning given to that term in paragraph 4.3;

Service Reliability KPI Minimum means the amount stated in annexure 1;

Significant Change has the meaning given to that term in paragraph 3.2(a);

Staff Complaint means any complaint or criticism received by the Operator, GW, the Metlink call centre, the Metlink website or other social media about a person who is a Representative of the Operator Group;

Staff Complaints Incentive means the amount calculated in accordance with paragraph 7.3;

Staff Complaints Maximum means the applicable maximum amounts stated in annexure 1;

Staff Complaints PI means the amount calculated in accordance with paragraph 7.1;

Ticketed Passengers means, in relation to a passenger on a Ferry Service, an individual who holds a valid ticket that is current for the journey that the individual is undertaking (as determined by GW):

Timetable Change has the meaning given to that term in paragraph 3.2(b); and

Total Patronage means, for a Reporting Period, the total number of boardings by Ticketed Passengers on Ferry Services during the applicable Reporting Period calculated in accordance with a verifiable and auditable method (as determined by GW).

2. INCENTIVES AND ABATEMENTS GENERALLY

- 2.1 **Reporting period**: The calculation of each Performance Indicator will commence on and from the Operations Commencement Date. The entitlement of the Operator to accrue an Incentive or incur an Abatement will not occur until the date that is 6 months after the Operations Commencement Date.
- 2.2 Payment or deduction: GW will pay an Incentive with, or deduct an Abatement from, as applicable, the Services Payment applicable to the Reporting Period. That payment will be made with the Services Payment that is 2 Reporting Periods after the relevant Reporting Period for that Incentive or Abatement. Any Abatement applied in a Reporting Period will be a debt due and payable by the Operator to GW.
- 2.3 **Operator acknowledgements**: The Operator acknowledges and accepts that:
 - (a) it is difficult, and in some instances impossible, to calculate with precision the diminution in value of the Services that GW may suffer or incur in connection with a Service Failure;
 - (b) despite paragraph 2.3(a), each Abatement and the application of the Abatements for each Service Failure:
 - (i) reflects a genuine pre-estimate of, and is proportionate to, the diminution in value of the Services (including having regard to related mitigation and other costs) that GW may suffer or incur in connection with that Service Failure; and
 - (ii) has been agreed to protect the legitimate interests of GW in the performance of the Services in accordance with the requirements of this Agreement;
 - (c) the parties require a formula for calculation of the diminution in value of the Services that GW may suffer or incur in connection with each Service Failure referred to in paragraph 2.3(a) that is able to be readily applied without unnecessary administrative cost, delay or difficulty; and
 - (d) GW has entered into this Agreement on the basis and in reliance on the acknowledgement and acceptance by the Operator described in this paragraph 2.3.
- 2.4 **Other liability**: The Operator acknowledges and accepts that if any Abatement under this Agreement is held to be void, unlawful or unenforceable, then this will not limit the liability of the

Operator to GW under this Agreement or otherwise at law for any loss or liability suffered or incurred by GW as a consequence of the relevant Service Failure referred to in paragraph 2.3(a).

- 2.5 **GW** discretion: GW may waive an Abatement (in whole or in part) by written notice to the Operator. A waiver of an Abatement does not:
 - (a) constitute acceptance by GW of the relevant Service Failure;
 - (b) operate as a waiver of any other Service Failure; or
 - (c) prejudice any right or remedy of GW.
- 2.6 **Timing**: An Abatement will be attributed to the Reporting Period in which the corresponding Service Failure is reported under the Monthly Report, irrespective of when it occurs.
- 2.7 Apportionment: Subject to paragraph 2.1, if the amount of any Abatement or Incentive is required to be calculated for a part of a Reporting Period, then the relevant amount will be adjusted proportionately having regard to the number of days in the partial Reporting Period as a percentage of the total number of days in the full Reporting Period.
- 3. OPERATIONAL PERFORMANCE ADJUSTMENT
- 3.1 **General**: The Operator acknowledges and accepts that an Operational Performance Indicator may be adjusted by GW during the Term under this paragraph 3 to reflect:
 - (a) changes to the Wellington Network during the Term, including the effect of Force Majeure Events; and
 - (b) the enduring commitment of GW to improve the Wellington Network and Ferry Services.
- 3.2 **GW adjustment**: Without limiting paragraph 3.1, GW may, acting reasonably and using reasonable endeavours to consult with the Operator, adjust an Operational Performance Indicator during the Term if and to the extent that:
 - (a) there has been an enduring and non-transient change to the operating environment for the Services that has a material and demonstrable impact on the performance of the Business and such impact continues for a period of more than 6 months (a **Significant Change**); or
 - (b) either:
 - (i) GW approves a change to the Timetable; or
 - (ii) there is a change to the manner in which arrival and departure times are reflected in the Timetable,-

that, in each case, extends or reduces the journey time for one or more Ferry Services (a **Timetable Change**).

- 3.3 **Operator proposal**: If the Operator considers that an Operational Performance Indicator should be adjusted as a result of:
 - (a) a Significant Change; or
 - (b) a Timetable Change,-

then the Operator may provide written notice to GW specifying its reasons for why such an adjustment is appropriate (together with all relevant supporting information required by GW to assess such a notice).

- 3.4 **GW response**: GW will, promptly following receipt of a notice from the Operator under paragraph 3.3, give due consideration to the relevant circumstances and notify the Operator whether it approves the Operator's proposal to adjust the Operational Performance Indicator.
- 3.5 **GW constraint**: GW will act reasonably in relation to any decision to adjust an Operational Performance Indicator under paragraph 3.1 or 3.2.
- 3.6 **Mutual adjustment**: The parties may also agree to adjust an Operational Performance Indicator under this paragraph 3.6:
 - (a) If either party considers that an Operational Performance Indicator should be adjusted, then that party may provide written notice to the other party specifying the reasons why it considers that the relevant Operational Performance Indicator should be adjusted.
 - (b) The party receiving a notice under paragraph 3.6(a) will, promptly following receipt of the relevant notice, give due consideration to the relevant circumstances and notify the other party whether it approves the other party's proposal to adjust the relevant Operational Performance Indicator.

4. OPERATIONAL PERFORMANCE - RELIABILITY AND PUNCTUALITY

- 4.1 Validation: GW may require validation of any matter relating to the reporting or determination of an Operational Performance Indicator by other means such as closed-circuit television, GPS tracking or communication records or any recorded manual information or other available sources and the reporting and determination of any such Operational Performance Indicator will be subject to such validation to the satisfaction of GW.
- 4.2 Access to records: The Operator will ensure that GW has access to any such records or source data in accordance with clause 15 (Records, accounts and audit) to enable GW to calculate and validate the accuracy of any Incentive or Abatement as contemplated in this schedule, including the use of, and supply of information and interface with, any GW System or new equipment or system used or introduced by GW. If, as a result of any fault in any GW System or for any other reason, an Operational Performance Indicator cannot be reasonably determined, then GW may, in its absolute discretion:
 - (a) determine the Operational Performance Indicator based on any other means such as closedcircuit television, GPS tracking, communication records or any recorded manual information or other available sources; or
 - (b) ignore a Ferry Service in relation to which the Operational Performance Indicator cannot be reasonably determined by GW in calculating whether an Abatement is payable by excluding the Ferry Service from the total number of Timetabled Ferry Services for the relevant Reporting Period in both the numerator and the denominator.

4.3 Service reliability KPI: The Service Reliability KPI for a Reporting Period is calculated as:

$$SRKPI = \frac{TFS - OPRF - (PRF \times PSRM)}{TFS} \times 100$$

where:

SRKPI the Service Reliability KPI for the relevant Reporting Period;

TFS the total number of Timetabled Ferry Services for the relevant Reporting Period;

OPRF the total number of Reliability Failures for Off-Peak Services for the relevant

Reporting Period that are not attributable to a Force Majeure Event;

PRF the total number of Reliability Failures for Peak Services for the relevant

Reporting Period that are not attributable to a Force Majeure Event;

PSRM the Peak Service Reliability Multiplier (as stated in annexure 1),-

expressed as a percentage and rounded to two decimal places.

4.4 **Service reliability abatement**: The **Service Reliability Abatement** for a Reporting Period is calculated as:

$$SRA = SRMAA \times MSP \times \left(\frac{(SRKPI - SRT)}{(SRPM - SRT)}\right)$$

where:

SRA the Service Reliability Abatement (if SRKPI is equal to or less than the SRT) for

the relevant Reporting Period;

SRMAA the Service Reliability Maximum Abatement Amount (if SRKPI is equal to or less

than the SRT) (as stated in annexure 1) for the relevant Reporting Period (as

stated in annexure 1);

MSP the Monthly Services Payment for the relevant Reporting Period;

SRKPI the Service Reliability KPI for the relevant Reporting Period;

SRT the Service Reliability Target (as stated in annexure 1) for the relevant Reporting

Period (as stated in annexure 1); and

SRPM the Service Reliability Performance Minimum (if SRKPI is equal to or less than the

SRT) (as stated in annexure 1) for the relevant Reporting Period (as stated in

annexure 1),-

expressed to two decimal places. To avoid doubt, the SRA can never be higher than the SRMAA x MSP for any Reporting Period.

4.5 Service punctuality KPI: The Service Punctuality KPI for a Reporting Period is calculated as:

$$\textit{SPKPI} = \frac{(\textit{TFS} - \textit{TFSPF}) - \textit{OPPF} - (\textit{PPF} \times \textit{PSPM})}{(\textit{TFS} - \textit{TFSPF})} \times 100$$

where:

SPKPI the Services Punctuality KPI for the relevant Reporting Period;

TFS the total number of Timetabled Ferry Services for the relevant Reporting Period;

TFSPF the total number of Ferry Services for the relevant Reporting Period that incurred

a Punctuality Failure;

OPPF the total number of Off-Peak Services recorded as not On-time for the relevant

Reporting Period that are not attributable to a Force Majeure Event;

PPF the total number of Peak Services recorded as not On-time for the relevant

Reporting Period that are not attributable to a Force Majeure Event;

PSPM the Peak Service Punctuality Multiplier (as stated in annexure 1),-

expressed to two decimal places.

4.6 **Service punctuality abatement**: The **Service Punctuality Abatement** for a Reporting Period will be calculated as:

$$SPA = SPMAA \times MSP \times \left(\frac{(SPKPI - SPT)}{(SPPM - SPT)}\right)$$

where:

SPA the Service Punctuality Abatement (if SPKPI is equal to or less than the SPT) for

the relevant Reporting Period;

SPMAA the Service Punctuality Maximum Abatement Amount (if SPKPI is equal to or less

than the SPT) (as stated in annexure 1) for the relevant Reporting Period (as

stated in annexure 1);

MSP the Monthly Services Payment for the relevant Reporting Period;

SPKPI the Service Punctuality KPI for the relevant Reporting Period;

SPT the Service Punctuality Target (as stated in annexure 1) for the relevant Reporting

Period (as stated in annexure 1); and

SPPM the Service Punctuality Performance Minimum (if SPKPI is equal to or less than

the SPT) (as stated in annexure 1) for the relevant Reporting Period (as stated in

annexure 1),-

expressed to two decimal places. To avoid doubt, the SPA can never be higher than the SPMAA x MSP for any Reporting Period.

- 4.7 **Operational performance default event minimums**: If, in any 2 consecutive Reporting Periods (or any 2 Reporting Periods in any 6-month period):
 - (a) the Service Reliability KPI is less than the Service Reliability KPI Minimum, then this will constitute a Performance Default Event; and
 - (b) the Service Punctuality KPI is less than the Service Punctuality KPI Minimum, then this will constitute a Performance Default Event.

5. NOMINATED PERFORMANCE INDICATORS

5.1 Nominated performance indicators

- (a) GW may, no later than 3-months prior to the start of each Financial Year, propose to the Operator up to 2 additional performance indicators to be included in the next annual revision of the Business Plan and relating to the next Financial Year to which the Business Plan relates (in each case, a Nominated Performance Indicator).
- (b) The Operator acknowledges and accepts that the purpose of this paragraph 5 and the use of Nominated Performance Indicators in connection with this Agreement is to provide a flexible mechanism for GW that responds to any changing performance requirements in relation to the Business.
- (c) To avoid doubt, the Operator may suggest or propose Nominated Performance Indicators to GW.
- 5.2 **Specific requirements**: GW will, in each Nominated Performance Indicator that it proposes to the Operator, provide comprehensive detail in relation to:
 - (a) the scope of the Nominated Performance Indicator;
 - (b) how GW will assess the Operator's achievement (or otherwise) of the Nominated Performance Indicator; and
 - (c) any incentive (financial or otherwise) available to the Operator if it achieves the Nominated Performance Indicator and how such incentive will be calculated and paid to the Operator (each financial incentive, a **Nominated Performance Indicator Incentive**).
- 5.3 **General requirements**: GW will, in addition to the specific requirements in paragraph 5.2, use reasonable endeavours to ensure that each proposed Nominated Performance Indicator that it proposes under this paragraph 5 will be sufficiently:
 - (a) specific (ie, not a general statement or approach);
 - (b) measurable (ie, quantified or milestone based);
 - (c) attainable by the Operator using the resources available to it at the time (or, to the extent the Nominated Performance Indicator will generate further income for the Operator, attainable by the Operator using such additional resources as the Operator can afford as a result of such further income);
 - (d) relevant (ie, of real value to GW or members of the public who use the Wellington Network);and
 - (e) timebound (ie, able to be achieved by a certain date).
- 5.4 **Confirmation**: GW will, no later than 1 month prior to the start of the next Financial Year, confirm to the Operator those Nominated Performance Indicators that will be implemented for the next Financial Year and each Nominated Performance Indicator will be deemed included in the next annual revision of the Business Plan and the Operator will promptly provide to GW the relevant revised Business Plan.

- 5.5 **Maximum amount**: The aggregate amount of Incentives:
 - (a) for a Reporting Period will not exceed an amount equal to 1.25% of the Services Payment for that Reporting Period; and
 - (b) for a Financial Year will not exceed an amount equal to 1.25% of the Services Payment for that Financial Year.

6. CUSTOMER SATISFACTION

6.1 Application

- (a) There will not be an entitlement to a Customer Satisfaction Incentive for the period on and from the Appointment Date until GW confirms that the Customer Satisfaction Incentive is a Nominated Performance Indicator that will be implemented in the next Financial Year in accordance with paragraph 5.4.
- (b) The Operator will, on and from the date that GW has completed 2 Customer Satisfaction Surveys and despite paragraph 6.1(a), monitor and report to GW promptly following each Reporting Period, the Customer Satisfaction PI for the applicable Reporting Period.
- 6.2 Customer satisfaction PI: The Customer Satisfaction PI for a Reporting Period is calculated as:

$$CSPI = CSS - CSS(P)$$

where:

CSPI the Customer Satisfaction PI for the applicable Reporting Period; and

the 'Customer Satisfaction Score' (as determined by GW and notified to the Operator) from the most recent Customer Satisfaction Survey; and

CSS(P) the 'Customer Satisfaction Score (Previous)' (as determined by GW and notified to the Operator) from the Customer Satisfaction Survey carried out immediately prior to the most recent Customer Satisfaction Survey,-

expressed as a percentage.

- 6.3 **Customer satisfaction incentive**: The **Customer Satisfaction Incentive** will be, if the Customer Satisfaction PI for the applicable Reporting Period is:
 - (a) less than or equal to the Customer Satisfaction Target for the applicable Reporting Period, zero; and
 - (b) greater than 100% of the Customer Satisfaction Target for the applicable Reporting Period, an amount up to 1.25% of the Services Payment for that Reporting Period (as determined by GW having regard to the number of Nominated Performance Indicators in operation in the applicable Reporting Period).

7. STAFF COMPLAINTS

7.1 Application

(a) There will not be an entitlement to a Staff Complaints Incentive on and from the Appointment Date until 1 July 2025.

- (b) The Operator will, on and from the Appointment Date and despite paragraph 7.1(a) monitor and report to GW promptly following each Reporting Period, the Staff Complaints PI for the applicable Reporting Period.
- 7.2 Staff complaints PI: The Staff Complaints PI for a Reporting Period is calculated as:

$$SCPI = \left(\frac{TSC}{TP}\right) x 375$$

where:

SCPI the Staff Complaints PI for the applicable Reporting Period;

TSC the total number of Staff Complaints per discreet event for the applicable

Reporting Period; and

TP the Total Patronage for the applicable Reporting Period,-

expressed to two decimal places.

- 7.3 **Staff complaints incentive**: The **Staff Complaints Incentive** will be, if the Staff Complaints PI for the applicable Reporting Period is:
 - (a) equal to or greater than the Staff Complaints Maximum for the applicable Reporting Period, zero; and
 - (b) less than the Staff Complaints Maximum, an amount up to 1.25% of the Services Payment for that Reporting Period (as determined by GW having regard to the number of Nominated Performance Indicators in operation in the applicable Reporting Period).

8. PATRONAGE

8.1 Application

- (a) There will not be an entitlement to a Patronage Incentive on and from the Appointment Date until GW confirms that the Patronage Incentive is a Nominated Performance Indicator that will be implemented in the next Financial Year in accordance with paragraph 5.4.
- (b) The Operator will, on and from the Appointment Date and despite paragraph 8.1(a) monitor and report to GW promptly following each Reporting Period, the Total Patronage for the applicable Reporting Period.
- 8.2 Patronage target: The Patronage Target is the total number of boardings of Ticketed Passengers on Ferry Services for the applicable Reporting Period that is determined by GW to be the Patronage Target and notified to the Operator, for the applicable Reporting Period. To avoid doubt, the determination of the Patronage Target by GW will not be subject to the Dispute Resolution Procedure.
- 8.3 **Patronage incentive**: The Patronage Incentive will be, if the Total Patronage for the applicable Reporting Period is:
 - (a) less than or equal to the Patronage Target for the applicable Reporting Period, zero; and
 - (b) greater than 100% of the Patronage Target for the applicable Reporting Period, an amount up to **** of the Services Payment for that Reporting Period (as determined by GW having

regard to the number of Nominated Performance Indicators in operation in the applicable Reporting Period).

9. DISPUTES

- 9.1 **Dispute resolution procedure**: All disputes in relation to this schedule, including any dispute in relation to the amount of an Incentive or Abatement (whether or not that Incentive or Abatement has been paid) will be resolved under the Dispute Resolution Procedure, with GW having the right to require that the matter be resolved by an independent expert in accordance with clause 33.4.
- 9.2 **Time limit**: The Operator may not dispute the amount of any Incentive or Abatement unless the dispute is notified within 2 months of the expiry of the relevant Reporting Period.
- 9.3 **Consequential adjustments**: If, following determination or resolution of a dispute under the Dispute Resolution Procedure, any adjustments are required to be made to a previous Incentive or Abatement, then those adjustments will become due and payable in the next Reporting Period.

ANNEXURE 1: PARTICULARS

1. PARTICULARS

ITEM	PERFORMANCE SCHEDULE PARTICULARS REFERENCE			REFERENCE	
1.	Maximum Amounts	1.1	Service Reliability Maximum Abatement Amount	\$section 772(b))	Paragraph 4.4
		1.2	Service Punctuality Maximum Abatement Amount	\$Boction Y(Z)(D)].	Paragraph 4.6
2.	Performance KPI Default	2.1	Service Reliability KPI Minimum:	90%	Paragraph 4.7(a)
	Event Minimums	2.2	Service Punctuality KPI Minimum	90%	Paragraph 4.7(b)
3.	Performance	3.1	Service Reliability	Target: 95%	Paragraph 4.4
	Targets, Performance Minimums and			Performance Minimum: 90%	
	Tagets	3.2	Service Punctuality	Target: 95%	Paragraph 4.6
				Performance Minimum: 90%	
		3.3	Customer Satisfaction Target	95%	Paragraph 6.3
		3.4	Staff Complaints Maximum	Monthly: 3 6-Monthly: 18	Paragraph 7.3
4.	Reporting Periods	4.1	Operational Performance	Monthly	Paragraph 4 (Operational performance – reliability and punctuality)
		4.2	Customer Satisfaction	Annual	Paragraph 5 (Customer satisfaction)
		4.3	Staff Complaints	Monthly Half-yearly	Paragraph 7 (Staff complaint)
		4.3	Patronage	Annual	Paragraph 8 (Patronage)

5.	Service Reliability and Punctuality	5.1	Peak Service Reliability Multiplier (PSRM)	1	Paragraph 4.3
		5.2	Peak Service Punctuality Multiplier (PSPM)	1	Paragraph 4.5

SCHEDULE 11: RESTRICTIONS ON OPERATOR

1. **DEFINITIONS**

1.1 In this Agreement, unless context requires otherwise:

Capital Expenditure means payments of expenditure under which NZ GAAP are regarded as capital expenditure; and

Subcontractor Auditable Items has the meaning given to that term in paragraph 4.4(a)(vi).

2. CORPORATE RESTRICTIONS

- 2.1 **Governance**: The Operator:
 - (a) will procure that the chairperson of its board of directors (as that term is defined in the Companies Act) (the **Board**) and at least 1 other director of the Board is a resident in New Zealand during the Term; and
 - (b) acknowledges and accepts that GW Representatives may request to meet with the Board in Wellington, and the Operator will use all reasonable endeavours to facilitate that request.
- 2.2 **Capital expenditure**: The Operator will not, without the prior written approval of GW, incur any Capital Expenditure that is Capital Expenditure not provided for in the Capital Expenditure and Maintenance Plan for the relevant period.

2.3	Section 7(2)(b)(ii)

2.4 **Debt to equity**: The Operator will maintain a Debt to Equity Ratio of less than or equal to the Maximum Permitted Debt to Equity Ratio.

3. OPERATIONAL RESTRICTIONS

- 3.1 **Activities**: The Operator will not, without the prior written approval of GW:
 - (a) create or permit to exist any Security Interest over or affecting its assets including its rights under any Services Document;
 - (b) act in a manner that is contrary to its constitution;
 - (c) make a substantial change in the nature or scope of its business as conducted at the Operations Commencement Date; or
 - (d) either by a single transaction or series of transactions, whether related or not and whether involuntary or not, except to the extent expressly provided for in the relevant Business Plan dispose of all or a substantial part of its assets used in providing the Services.
- 3.2 Assets required for services: The Operator will own or lease all assets required for the provision of the Services, other than the GW Assets (if any) made available to the Operator under the provisions of this Agreement. To avoid doubt, the Operator will not, without the prior written approval of GW, enter into any sale and leaseback arrangements in relation to the Vessels.

4. GENERAL CONTRACTUAL RESTRICTIONS

- 4.1 **Operator may subcontract**: The Operator may enter into a subcontract for any part of the Services or for any input required for the provision of the Services where such subcontract has been:
 - (a) if the subcontract is material to the Operator or any of the categories of Services, approved by GW in accordance with clause 14 (Subcontracting); and
 - (b) entered into in accordance with this paragraph 4.
- 4.2 **Operator responsible**: Subject to clause 14 (Subcontracting), the Operator is solely responsible for the selection of each counterparty to a subcontract so as to ensure, in each case, that the relevant counterparty is qualified, credit worthy and has the relevant experience to perform the work it is required to undertake for or the input it is required to provide to the Operator.

4.3 Arms' length contracting

- (a) The Operator will ensure that any subcontract is, and continues to be, on an arms' length basis unless otherwise approved by GW.
- (b) The Operator will make any or all warranty claims on goods or services provided by a contractual counterparty in connection with the Services, at no cost to GW.
- (c) Despite the provision of any guarantee or warranty by a counterparty to a subcontract, the Operator remains liable for the fulfilment of all its obligations under this Agreement.
- (d) No counterparty to a subcontract will be deemed to be a party to, or have the right to enforce all or any part of, this Agreement.
- 4.4 **Terms of subcontracts**: The Operator will, without limiting its other obligations under this Agreement and unless otherwise approved by GW:
 - (a) ensure that every subcontract it enters into:
 - contains appropriate warranties having regard to the nature of the goods and services provided by the counterparty, including warranties that the goods and services provided by the counterparty are fit for purpose and suitable for their intended use;
 - (ii) provides that the benefits of all warranties that are the subject of that subcontract are also to be available for the benefit of a New Operator;
 - (iii) provides that the benefits of all indemnities and rights of recourse available to the Operator under the subcontract will also be available for the benefit of a New Operator;
 - (iv) contains no provisions inconsistent with the provisions of this Agreement or any other Services Document;
 - (v) contains an acknowledgement by the relevant counterparty that the subcontract may, at GW's request, be assigned, novated or otherwise transferred to a New Operator on termination or expiry of this Agreement, and agreement that the counterparty will consent to any such transfer at no cost to the Operator, the New Operator or GW. To avoid doubt, the Operator will not include any provision the relevant subcontract that limits the counterparty's right to contract with any New Operator or GW following

- termination or expiry of this Agreement (whether by way of a restraint of trade or otherwise), or otherwise do anything to obstruct or hinder the ability of GW to communicate (including the provision of information) or work with the counterparty at any time;
- (vi) permits GW to have access to all accounts, records, documentation, data or plans and any other information relevant to the counterparty's performance and compliance with the terms of the subcontract (as the case may be) (the Subcontractor Auditable Items). The Operator will make such Subcontractor Auditable Items available for inspection by GW on 1 Business Days' notice from the Operator (or on 3 Business Days' notice where those records are archived). Subject only to the foregoing notice requirements, such access will be available to GW unconditionally and without restriction at any time during the Term and upon its termination and permit GW to take copies of any Subcontractor Auditable Items or, where it is not practical or convenient for GW to take such copies, the counterparty will provide them to GW upon request;
- (vii) contains the intellectual property provisions required under clause 17.5;
- (viii) requires that the counterparty keep strictly confidential all Confidential Information that it receives in connection with the subcontract, and imposes the same obligations on the counterparty in relation to Confidential Information as apply to the Operator under clause 18 (Confidentiality); and
- otherwise includes terms that give effect to any of the terms of this Agreement and any other Services Documents by which the Operator will, by implication or otherwise, procure a counterparty to do, or not to do, something.
- (b) The Operator will provide GW with a copy of each subcontract (certified true and correct) to which the Operator is a party no later than 10 Business Days after the date of its signing by both parties.

SCHEDULE 12: TRANSITION-OUT SERVICES

1. **DEFINITIONS**

1.1 In this Agreement, unless the context requires otherwise:

Handover Package has the meaning given to that term in paragraph 3.2;

Procurement Process has the meaning given to that term in paragraph 3.1.; and

Transition-Out Plan has the meaning given to that term in paragraph 4.1.

2. PURPOSE

2.1 The purpose of the Transition-Out Services is to provide clarity to the Operator and GW in terms of the safe, effective and efficient transfer of the Services to a New Operator on termination or expiry of this Agreement.

3. RETENDERING OF SERVICES

- 3.1 Retendering of services: The Operator acknowledges and accepts that GW may, at any time on, before or after the expiry or termination of this Agreement, undertake a tender or other procurement process for any person (which may or may not include the Operator) to provide all or any part of the Services (or services that are similar to the Services) for the period commencing after expiry or termination of this Agreement (the Procurement Process). The Procurement Process may be any form of procurement process, including:
 - (a) an open or selective tender process;
 - (b) an invitation to negotiate with one or more parties;
 - (c) a single source negotiation;
 - (d) transfer of responsibility for provision of the applicable Services to GW or another Governmental Agency; or
 - (e) any other process that GW considers appropriate.

3.2 Handover package:

- (a) The Operator will, no later than 12 months after the Operations Commencement Date, prepare and provide to GW the information required to ensure that any New Operator could have immediate access to relevant information following its engagement by GW to provide all or any part of the Services (a **Handover Package**). The parties:
 - (i) will use all reasonable endeavours to agree the content of the Handover Package no later than 9 months following the Operations Commencement Date; and
 - (ii) acknowledge and accept that the Handover Package will include, at a minimum, sufficient information in relation to:
 - (1) the Services provided by the Operator and details of all Intellectual Property Rights owned, licenced or used by the Operator in performing the Services;

- (2) the assets and premises used to perform or support the performance of the Services;
- (3) the contracts and other arrangements necessary or desirable to perform or support the performance of the Services (including, to avoid doubt, the Access Agreement);
- (4) a list of all personnel engaged in providing the Services (including identification of personnel occupying key positions who are essential to providing the Services, and whether an employee or contractor);
- (5) a list and description of all systems used (computer and otherwise) for the provision of the Services;
- (6) electronic copies of, and a list of the locations of, any other information relevant to the daily provision of the Services; and
- (7) any safety information applicable to the provision of the Services.
- (b) The Operator will:
 - ensure that the information in the Handover Package is kept up to date, accurate and complete and is recorded at all times in an easily accessible form and kept safe and secure:
 - (ii) provide access to the Handover Package to GW:
 - (1) no later than 12 months prior to the Expiry Date; or
 - (2) to the extent this Agreement expires or is terminated earlier than the Expiry Date, then as soon as reasonably practicable after the Operator has knowledge of such early expiry or termination; and
 - (iii) if there is a material change to the information contained in a Handover Package at any time, as soon as reasonably practicable provide GW with a copy of such part of the information in the Handover Package to which the material change relates with an accurate and complete explanation of the change.

4. PREPARATION FOR APPOINTMENT OF NEW OPERATOR

- 4.1 **General**: Subject to the terms of any plan or other process agreed in writing between GW and the Operator in relation to a Procurement Process or transition of the Services and any assets to a New Operator (the **Transition-Out Plan**), the Operator will:
 - (a) co-operate with GW and provide all such assistance as is reasonably required by GW in connection with a Procurement Process; and
 - (b) take all such action as is reasonably required by GW to facilitate the safe, effective and efficient transfer of responsibility for the provision of all or any part of the Services to a New Operator and in a manner that minimises disruption to customers.
- 4.2 **Support**: The Operator will, without prejudice to the generality of paragraph 4.1:
 - (a) provide to GW:
 - (i) copies of, or otherwise make available to GW, any information that GW has the right to

access under the relevant Services Document (including the Handover Package); and

- (ii) access as required under clause 15 (Records, accounts and audit);
- (b) provide all assistance under paragraph 4.2(a) within the timeframe specified by GW (acting reasonably) or, where no timeframe is specified, within a reasonable time; and
- (c) following a request from GW (or otherwise within such timeframe as may be specified by GW acting reasonably), provide information to GW and respond to questions or requests for information raised or forwarded to the Operator by GW (to the extent reasonably required by GW) provided such a request does not place the Operator in a position of a conflict of interest, to enable GW to:
 - (i) conduct a Procurement Process or otherwise select or appoint a New Operator or negotiate terms and conditions of a contract with a potential New Operator; or
 - (ii) ensure the safe and efficient transfer of responsibility for the provision of all or any part of the Services to a New Operator and in a manner that minimises disruption to passengers.

4.3 **Acknowledgement**: Nothing in this schedule:

- (a) restricts any other provision of any Services Document, including clause 17 (Intellectual property) and clause 18 (Confidentiality); and
- (b) permits GW to disclose any of the Operator's Confidential Information or Intellectual Property Rights to any New Operator, potential New Operator or any other third party without the prior written approval of the Operator (not to be unreasonably withheld), except to the extent stated in this Agreement.

4.4 **Access**: Subject to:

- (a) GW providing reasonable prior notice to the Operator; and
- (b) compliance by GW's and any New Operator with the Operator's applicable policies (including workplace health and safety),-

the Operator will permit each New Operator and potential New Operator (and any person authorised by the potential New Operator) to have supervised physical access to all aspects of the GW Assets (if any) and permit each of them to carry out inspections of the GW Assets to the extent reasonably required by them. Any access to the GW Assets (if any) for the purposes of inspection will be provided outside of normal operating hours for the GW Assets.

4.5 **Personal information**: Nothing in this paragraph 4 will oblige the Operator to provide Personal Information in relation to the Operator's Employees in excess of what is required to facilitate the applicable transfer arrangement.

4.6 Non-frustration of services and transfer

- (a) GW will ensure that any New Operator will not do anything that materially prejudices or frustrates the Operator's provision of the applicable Services.
- (b) The Operator will not do anything, and will procure that the Operator Associates will not do

anything, that materially prejudices or frustrates:

- the efficient and effective selection and appointment of a New Operator by GW (including any related Procurement Process or negotiations); or
- (ii) the safe, effective 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 a New Operator and in a manner that minimises disruption to customers.

5. ASSISTANCE IN SECURING CONTINUITY

- 5.1 **Assistance**: Without prejudice to any other obligations of the Operator under this Agreement:
 - (a) following a Termination Notice; and
 - (b) at all times during the 2 year period preceding the end of the Term (being the date on which the Term will, disregarding any early termination, expire by effluxion of time),-

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

- (c) take all reasonable action to co-operate with GW, any New 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 loss of or damage to property (including, to avoid doubt, transferring its interest in the Access Agreement to GW or any New Operator (on terms required by GW));
- (d) provide reasonable assistance concerning the Services and the GW Assets (if any) to enable the safe, effective and efficient transfer of responsibility for the provision of all or any of the Services (or services that are substantially similar to any of the Services) to the New Operator and in a manner that minimises disruption to passengers; and
- (e) agree transitional arrangements and handover protocols, and actions to be undertaken by the Operator and the New Operator, in relation to the transfer of responsibility for the provision of the Services (or services which are substantially similar to any of the Services).
- 5.2 **No additional temporary staff**: Nothing in this schedule requires the Operator (or any Operator Associate) to:
 - (a) engage additional temporary staff or consultants (or use additional staff or staff time from the Operator's commercial business); or
 - (b) incur any third party cost or expenses,-

for the purposes of performing the Operator's obligations under this schedule unless required by GW and GW undertakes to pay the applicable direct cost to the Operator.

SCHEDULE 13: FORM OF BOND

THIS DEED POLL is made on [date]

BY KIWIBANK LIMITED at Wellington (the Surety)

IN FAVOUR OF WELLINGTON REGIONAL COUNCIL, a public statutory body constituted under the Local Government Act 2002 (known as Greater Wellington Regional Council), at Wellington (the **Principal**)

IT IS MADE IN THE FOLLOWING CIRCUMSTANCES:

- A. East by West Company Limited (the **Operator**) has entered into a services agreement with the Principal in relation to certain public transport ferry services in Wellington (the **Agreement**).
- B. The Agreement requires the Operator to provide the Principal with security in the form of a bond to ensure the performance of the obligations of the Operator under the Agreement.

IN CONSIDERATION of the Principal agreeing to accept the form of this Deed, the Surety provides this Deed to the Principal and undertakes in favour of the Principal on the terms and conditions which appear in this Deed.

BY THIS DEED

- 1. The Surety unconditionally and irrevocably undertakes to the Principal to pay on demand to a bank account advised by the Principal in Wellington (and subject to clause 2) any amount that may from time to time be demanded by the Principal under or in connection with the Agreement up to a maximum amount of \$[•] (inclusive of GST, if any) (the **Guaranteed Amount)** and is bound for payment of the Guaranteed Amount to the Principal.
- 2. If the Surety is provided with a written notice, purporting to be signed by the Principal, that the Principal requires payment to be made of the whole or part of the Guaranteed Amount, then it is unconditionally agreed that such payment or payments will be made to the Principal immediately without enquiry as to and without having regard to, the position as between the Operator and the Principal, without further reference to the Operator and despite any notice given by the Operator to the Surety not to pay all or any part of the Guaranteed Amount.
- 3. The Principal may make more than 1 demand under this Deed and on payment by the Surety of any amount to the Principal under this Deed, the available Guaranteed Amount will be reduced by the amount paid to the Principal.
- 4. Subject to clause 5, the undertakings contained in this Deed will be continuing undertakings and the liability of the Surety under this Deed will not be affected in any way for any reason, and without limitation, the Surety will not be released from any liability by:
 - (a) any alteration of the terms of the Agreement;
 - (b) an alteration in the extent or nature of the obligations to be completed, observed or performed by the Operator under or in connection with the Agreement;
 - (c) any allowance of time by the Principal under or in connection with the Agreement;

- (d) any forbearance or waiver by the Principal in relation to any of the obligations of the
 Operator, or any default or termination event (however described), under or in connection with the Agreement;
- (e) the insolvency, bankruptcy, liquidation, winding up, removal from the Companies Register or reorganisation of the Operator, including, without limitation, where the Operator is placed into receivership, statutory administration or voluntary administration;
- (f) the termination of the Agreement, or the appointment of the Operator under the Agreement, or by the Principal exercising any Step-in Right or other right or remedy under or in connection with the Agreement; or
- (g) any default or negligence of the Principal.
- 5. This Deed will expire on the earlier of:
 - (a) payment by the Surety of the Guaranteed Amount in aggregate in accordance with clause 1;
 - (b) the date that the Principal notifies the Surety in writing that this Deed is no longer required; or
 - (c) the date that is 1 year after the termination or expiry of the Agreement.
- 6. Any demand for payment of any moneys which may become payable under this Deed will be deemed to have been sufficiently made if made in writing and signed by the Principal or by any director, employee or officer of the Principal, and if served personally on, or posted as a registered letter addressed to the Surety at its registered office, or its principal place of business in New Zealand, or any other address notified to the Principal by the Surety. If sent by registered post, then such demand for payment will be deemed to be received by the Surety on the third day following the day it was handed into the care of an office of the New Zealand postal system.
- 7. The Principal may, by written notice to the Surety, assign or otherwise transfer any right of the Principal under this Deed to any person that is also the assignee of the Principal under the Service Contract. From the time of such assignment or transfer, such assignee or transferee (the **New Principal**) will have all of the rights of the Principal and otherwise all of the benefits of this Deed as if it were the original Principal to whom this Deed is granted and as though references to the original Principal in this Deed were references to the New Principal.
- 8. This Deed is governed by New Zealand law and the Surety irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts.

EXECUTION

EXECUTED as a DEED POLL for and on behalf of KIWIBANK LIMITED by its Authorised signatory / Attorney))	Signature of authorised signatory/attorney
	_	Signature of authorised signatory/attorney
Witness signature		Name of authorised signatory/attorney
Full name	-	
Address	-	
Occupation	-	

- Note:
 -Person authorised by constitution signature must be witnessed
 -Attorney appointed under s181 Companies Act signature does not need to be witnessed

SCHEDULE 14: FORM OF GUARANTEE

Dated 12 MAY 2025

DEED OF GUARANTEE AND INDEMNITY

relating to the agreement with **EAST BY WEST COMPANY LIMITED** for Wellington public transport ferry services

by
EAST BY WEST TLC LIMITED

in favour of WELLINGTON REGIONAL COUNCIL

BY

1. EAST BY WEST TLC LIMITED, INCORORATED IN HONG KONG AND REGISTRATION NUMBER 61773214-000-07-24-8 (the Guarantor).

IN FAVOUR OF

2. WELLINGTON REGIONAL COUNCIL, a public statutory body constituted under the Local Government Act 2002 (known as Greater Wellington Regional Council) (GW).

INTRODUCTION

GW has agreed to enter into the Agreement with the Operator on the condition that the Guarantor enters into this Deed.

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions**: In this Deed, terms defined in the Agreement and not defined in this Deed have the same meaning in this Deed and, unless the context otherwise requires:

Agreement means the agreement for Wellington public transport services between GW and the Operator dated on or about the date of this Deed;

Associated Person has the meaning given to that term in section 12 of the Financial Markets Conduct Act 2013;

Collateral Security means each security agreement, guarantee or other agreement (present or future) expressed or intended to be security for any Guaranteed Obligation;

Full Year means the period starting on 1 July of each year and ending on 30 June of that year;

Guarantee means this Deed and any other deed (in substantially the same form as this Deed) by a Guarantor in favour of GW in relation to the Guaranteed Obligations;

Guaranteed Obligation means any obligation or liability of any nature (whether present or future, express or implied, actual or contingent, secured or unsecured and whether incurred alone, jointly, severally, or jointly and severally, as principal, surety or otherwise) of the Operator under or in connection with the Agreement, any Services Documents or any other documentation entered into by the Operator in connection with the Agreement;

Operator means East by West Company Limited (company number 397588);

Maximum Liability Amount means \$Section 7(2)(b)(ii);

Relevant Document means each Services Document and each other agreement (present or future) relating to any Guaranteed Obligation;

Relevant Party means the Guarantor, the Operator and each other party to a Relevant Document (other than GW); and

Suspense Account has the meaning given to that term in paragraph 2.5.

- 1.2 **Construction of certain references**: In this Deed, unless the context otherwise requires:
 - (a) something having a material adverse effect on a person is a reference to it having a material adverse effect on:
 - (i) that person's financial condition or operations; or
 - (ii) its ability to comply with its obligations under any Relevant Document,and references to material adverse change are to be construed accordingly;
 - (b) **tax(es)** includes any tax, levy, impost, stamp or other duty and any other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same); and
 - (c) if GW reasonably considers that an amount paid by the Operator or the Guarantor under a Relevant Document is capable of being avoided or otherwise set aside on the liquidation of the Operator or the Guarantor (as the case may be), then that amount will not be considered to have been irrevocably paid for the purposes of the Relevant Documents.

1.3 Interpretation

- (a) Paragraphs 1.2, 1.3, 1.6, 1.7 and 1.8 of schedule 1 (Definitions and interpretation) to the Agreement apply to the interpretation of this Deed with any necessary modifications.
- (b) Headings and the table of contents are to be ignored in construing this Deed.

2. GUARANTEE AND INDEMNITY

2.1 Guarantee and indemnity: The Guarantor:

- (a) unconditionally and irrevocably guarantees to GW the due and punctual performance by the Operator of each Guaranteed Obligation; and
- (b) is liable for, and separately indemnifies GW from and against, any Loss that may be suffered or incurred by GW in connection with any failure or delay by the Operator in the due and punctual performance of any Guaranteed Obligation.

2.2 Payment and performance: If the Operator:

- (a) does not pay when due any amount that, from time to time, forms part of the Guaranteed Obligations, then the Guarantor will pay to GW that amount no later than 10 Business Days after the date on which GW provides written notice to the Guarantor that payment is required under this Deed; or
- (b) defaults in the due and punctual performance of any Guaranteed Obligation and GW provides no less than 10 Business Days written notice to the Guarantor of the default, then (without limiting its obligations under clause 2.1(a)) the Guarantor will cause the default to be remedied in accordance with the Relevant Document.
- 2.3 **Limited liability**: The maximum aggregate liability of the Guarantor under this Deed is the Maximum Liability Amount. Despite any other provision of this Deed (but subject to clauses 2.3(a) and 2.4):
 - (a) the liability and obligations of the Guarantor under this Deed are limited to and will not exceed the liability or obligations which the Guarantor would have had to GW arising out of or in

- connection with the Relevant Document or the Guaranteed Obligations if the Guarantor had been named in the Relevant Document as being jointly and severally liable with the Operator; and
- (b) if the Guarantor is performing a Guaranteed Obligation, then the Guarantor will not be required to perform such Guaranteed Obligation in a manner any different than that required by the Relevant Document.
- 2.4 Unenforceability of obligations: As a separate and continuing undertaking, the Guarantor unconditionally and irrevocably undertakes to GW that, if any Guaranteed Obligation is not enforceable (or any amount owing to GW in relation to any Guaranteed Obligation is not recoverable) from the Operator under any Relevant Document for any reason, including a provision of any Relevant Document or an obligation (or purported obligation) of the Operator to perform or make payment in relation to any Guaranteed Obligation being or becoming void, voidable, unenforceable or otherwise invalid, whether or not that reason is or was known to GW and whether or not that reason is:
 - (a) a defect in or lack of powers of the Operator or the irregular exercise of those powers;
 - (b) a defect in or lack of authority by a person purporting to act on behalf of the Operator;
 - (c) a legal or other limitation (whether under the Limitation Act 2010 or otherwise), disability or incapacity of the Operator;
 - (d) an Insolvency Event, a liquidation, removal from the Companies Register, amalgamation, change in status or constitution, reconstruction or reorganisation (or similar matter) of the Operator (or the commencement of steps to effect the same); or
 - (e) any act, matter or circumstance that is substantially equivalent or similar to the matters described in paragraphs (a) to (d) (inclusive) of this definition,-

then the Guarantor will, as a separate and independent obligation, pay to GW on demand the amount that GW would otherwise have been able to recover (on a full indemnity basis). In this clause, the expression **Guaranteed Obligation** includes any obligation or liability that would have been included in that expression but for anything referred to in this clause.

- 2.5 Suspense account: All amounts received by GW in respect of a Guaranteed Obligation from or on account of the Guarantor may be placed in a suspense account (the Suspense Account) with a view to preserving the rights of GW, to the extent permitted by law, to prove for the whole of the Guaranteed Obligations in the event of any proceeding in, or analogous to, liquidation, removal from the Companies Register, amalgamation, change in status or constitution, reconstruction or reorganisation of a Relevant Party. Any interest paid on the amount for the time being in the Suspense Account will not be payable by GW to the Guarantor.
- 2.6 Interest on overdue amounts: If GW does not receive, when due, any amount payable to it under this Deed, then the Guarantor will pay interest on that overdue amount from its due date to the date of its receipt by GW (after as well as before judgment). Default interest will be payable by the Guarantor, without the need for demand, on the last day of successive periods selected by GW and, if not paid, will compound as from the last day of each such period. The rate of default interest will be 4% per annum above the 'Wholesale interest rate' set by the Reserve Bank of New Zealand (Te Pūtea Matua).

3. NATURE OF GUARANTEE AND INDEMNITY OBLIGATIONS

- 3.1 **Liability as sole principal**: As between the Guarantor and GW, the Guarantor is liable under this Deed in relation to the Guaranteed Obligations as a sole and principal obligor and not as a surety or a secondary ancillary obligor, to the intent that, without limiting in any way the operation of any of the other provisions of this Deed, any limitation on the liability of the Guarantor which would otherwise arise by reason of its status as a guarantor, co-guarantor, indemnifier or co-indemnifier, is negatived.
- 3.2 **No discharge**: The Guarantor is not discharged, nor are its obligations affected, by:
 - (a) any time, indulgence, waiver or consent at any time given to a Relevant Party or another person;
 - (b) an amendment (however fundamental) to, or replacement of, a Relevant Document or to another security interest, guarantee or other agreement (whether or not that amendment increases the liability of the Guarantor);
 - (c) the existence, validity or enforceability of, or the enforcement of or failure to enforce, or the release of any person or property from, any Relevant Document or other security interest, guarantee or agreement;
 - (d) the liquidation, amalgamation, change in status or constitution, reconstruction or reorganisation of any Relevant Party or another person (or the commencement of steps to effect any of these); or
 - (e) anything else whatsoever.

GW is not liable to the Guarantor in relation to any of these matters, even though the Guarantor's rights in subrogation or otherwise may be prejudiced as a result.

- 3.3 **Continuing guarantee**: This Deed, and each of the obligations of the Guarantor under this Deed, is:
 - (a) a continuing security, despite intermediate payments, settlement of accounts or anything else;
 - (b) in addition to, and not to be merged in, any Collateral Security; and
 - (c) to remain in full force and effect until the execution by GW of an unconditional discharge of the obligations of the Guarantor under this Deed,-

provided that this Deed will expire on the date that is 18 months after the expiry of the Term (but without prejudice to any claim by GW against a Relevant Party in relation to a Guaranteed Obligation on or before that expiry date).

- 3.4 Unconditional discharge of Guarantee: If GW considers that:
 - (a) the Operator has performed all the Guaranteed Obligations; and
 - (b) GW is not required to make available any further payment or other financial accommodation in relation to any Guaranteed Obligation or the Relevant Documents,-

then GW will, at the request and cost of the Guarantor, execute an unconditional discharge of the obligations of the Guarantor under this Deed. All documents that are necessary in connection with this discharge are to be in the form required by GW.

- 3.5 **Claim on Operator**: GW is not required to make any demand or other claim on the Operator, or to enforce any Relevant Document, or any other right or remedy against the Operator, before making any demand or other claim on the Guarantor.
- 3.6 **Absolute liability**: The liability of the Guarantor under this Deed is absolute and is not subject to the performance of any condition precedent or condition subsequent by the Operator or GW.

4. NO COMPETITION WITH GW

- 4.1 **No competition**: The Guarantor will not, without the prior written approval of GW:
 - (a) take, accept or hold a Security Interest, guarantee, indemnity or other encumbrance from the Operator or, in relation to any Guaranteed Obligation, from another person;
 - (b) take steps to recover (whether directly or by set-off, counterclaim or otherwise) or accept money or other property or exercise or enforce rights in relation to any liability, indebtedness or other obligation of the Operator to the Guarantor or, in relation to any Guaranteed Obligations, any liability, indebtedness or other obligation of another person to the Guarantor;
 - (c) claim, prove or accept payment in composition by, or a liquidation of, the Operator or, in relation to Guaranteed Obligations, another person; or
 - (d) claim any right of contribution or indemnity from the Operator or any person who gives a guarantee, indemnity, Security Interest or other encumbrance in connection with a Relevant Document or any other amount payable under this Deed,-

and until such time as the Guaranteed Obligations have been fully paid and performed, the Guarantor waives all rights of subrogation to which it would otherwise be entitled by reason of performance of the obligations of the Guarantor under this Deed. If, despite this clause, the Guarantor holds or receives any such Security Interest, guarantee, indemnity, money or property, then the Guarantor will pay or transfer it to GW immediately and, pending that payment or transfer, will hold it on trust for GW.

5. REPRESENTATIONS

- 5.1 **Representations**: The Guarantor represents and warrants to GW that:
 - (a) it is a company duly incorporated and validly existing under the law of the jurisdiction stated in the description of "Guarantor" in this Deed;
 - (b) it has the power to enter into and perform its obligations under this Deed;
 - (c) everything required to be done (including the obtaining of any necessary consents and the passing of all necessary resolutions) to:
 - enable it lawfully to enter into, exercise its rights and perform and comply with its obligations under this Deed;
 - (ii) ensure that those obligations are legal, valid, binding and enforceable in accordance with their respective terms; and

- (iii) make this Deed admissible in evidence in the courts of New Zealand,has been duly done;
- (d) its entry into, and the exercise of its rights and performance of and compliance with its obligations under this Deed does not and will not:
 - (i) contravene any law to which it is subject;
 - (ii) contravene any of the documents constituting it;
 - exceed any limitation on, or constitute an abuse of, the powers of its directors or officers;
 - (iv) contravene any agreement to which it or any Associated Person is a party or which is binding on any of its/their assets; or
 - result in the creation of, or oblige it or any Associated Person (absolutely or contingently) to create or permit to exist, any Security Interest over or affecting its/their assets;
- (e) each obligation under this Deed is legal, valid, binding and enforceable in accordance with its respective terms;
- (f) it is not, nor is any Associated Person, to an extent or in a manner which has or could have a material adverse effect on it, in default under any:
 - agreement relating to indebtedness for borrowed money, including indebtedness for and in relation to money borrowed and raised by any means (including acceptances, deposits, financial leases, debt factoring with recourse and sale and repurchase agreement) and for the deferred purchase price of assets and services;
 - (ii) guarantee; or
 - (iii) other agreement, to an extent or in a manner which has or could have a material adverse effect on it or the Operator;
- (g) it satisfies the solvency test (as defined in section 4 of the Companies Act) as if it was a company for the purposes of the Companies Act;
- (h) no Security Interest exists over or affects, nor is there any agreement to give or permit to exist any Security Interest over or affecting, any asset of the Operator, other than as provided for by any Relevant Document;
- (i) there has been no material adverse change in relation to the Guarantor or any Associated Person of the Guarantor since the balance date in its most recent Financial Statements provided to GW under a Relevant Document or as part of a procurement process undertaken by GW under which the Operator has been engaged by GW to provide public transport bus services in Wellington;
- (j) no litigation, arbitration or administrative proceeding is current or pending or, to its knowledge, threatened:
 - to restrain its entry into, or the exercise of its rights or the performance of or compliance with or enforcement of its obligations under, this Deed; or

- (ii) which has or could have a material adverse effect on it or on GW's ability to exercise or enforce its rights under this Deed;
- (k) under the law of its jurisdiction of incorporation it is not necessary that any stamp, registration or similar tax be paid on or in relation to this Deed or the transactions contemplated by this Deed;
- (I) the Guarantor does not, and its assets do not, enjoy immunity from any suit or execution; and
- (m) the obligations under this Deed rank at least equally and rateably with all other unsecured obligations of the Guarantor except for obligations mandatorily preferred by law or arising in equity.
- 5.2 **Representations continuing**: Each of the representations and warranties in this clause 5 will be deemed to be repeated continuously so long as this Deed remains in effect by reference to the facts and circumstances then existing.
- 5.3 **No Representation by GW**: The Guarantor acknowledges and accepts that it has not entered into this Deed in reliance on any representation, statement, undertaking or inducement to the Guarantor by or on behalf of GW, the Operator or any other person.

6. PAYMENTS

- 6.1 **Mode of payments**: Each payment to GW under a Relevant Document is to be made on the due date in immediately available freely transferable funds in the manner specified by GW by notice to the Guarantor.
- 6.2 **Payments to be free and clear**: Each payment by the Guarantor to GW under this Deed or a Relevant Document is to be made:
 - (a) free of any restriction or condition; and
 - (b) free and clear of and (except to the extent required by law) without any deduction or withholding for or on account of tax or on another account, whether by way of set-off, counterclaim or otherwise.
- 6.3 **Reinstatement**: If a payment made by the Guarantor to GW under this Deed or a Relevant Document is avoided by law, then:
 - (a) that payment will be deemed not to have discharged or affected the relevant obligation of the Guarantor; and
 - (b) GW and the Guarantor will be deemed to be restored to the position in which each would have been if that payment had not been made.

6.4 **Gross-up**: If:

- (a) the Guarantor is required by law to make a deduction or withholding for or on account of tax from an amount paid or payable by the Guarantor to GW under a Relevant Document; or
- (b) GW is required by law to make a payment on, or calculated by reference to, an amount paid or payable by the Guarantor to GW under a Relevant Document (excluding tax on its overall net income),-

then the amount in relation to which that deduction, withholding or payment is required to be made is to be increased so that GW actually receives and retains (free from any liability in relation to any deduction, withholding or payment) a net amount equal to the amount that it would have received and retained had no deduction, withholding or payment been made.

7. GENERAL PROVISIONS

- 7.1 **Nature of indemnities**: Each indemnity in this Deed is unconditional, irrevocable and survives payment of the Guaranteed Obligations and is not to be discharged or impaired by any act, omission, matter or thing that might discharge or impair it but for this clause.
- 7.2 **No obligation to marshal**: GW is not required to marshal, enforce or apply under any Security Interest, guarantee or other entitlement held at any time by it or any money or property that it holds at any time or is entitled to receive.
- 7.3 **Benefit and burden of this Deed**: This Deed is binding upon and enures for the benefit of the Guarantor and GW and each of their respective successors and permitted assignees or transferees.

7.4 Transfer

- (a) GW may assign or transfer any of its rights or obligations under or in connection with this Deed without the approval of the Guarantor to the extent that the relevant assignee or transferee also has assigned or transferred to it the relevant Services Document, or part of the relevant Services Document, or as required by law. Each assignee or transferee is to have the same rights and remedies against the Guarantor under this Deed as if named in this Deed as GW.
- (b) The Guarantor may not assign or transfer, declare any trust in relation to or otherwise deal with all or any of its rights or obligations under or in connection with this Deed without the prior written approval of GW (such approval may be withheld in the sole discretion of GW).
- 7.5 **Further assurance**: The Guarantor irrevocably undertakes to GW to do any act (including execute and provide any notice, agreement or other instrument) as GW may reasonably require to effect or perfect any assignment or transfer permitted under clause 7.4 and (if the Guarantor fails to do so) irrevocably authorises GW to do any such act (including execute and provide any such notice, agreement or other instrument) on behalf or in the name of the Guarantor.
- 7.6 **Disclosure of information**: GW may disclose, on a confidential basis (if obtained confidentially), to a potential assignee, transferee or other person with whom contractual relations in connection with this Deed are contemplated, any information about the Guarantor whether or not that information was obtained in confidence and whether or not that information is publicly available.
- 7.7 Notices: Each notice or other communication under this Deed is to be made in writing and sent by personal delivery, by post or by email to the addressee at the address or email, and marked for the attention of the person or office holder (if any), designated for the purpose by the addressee to the Guarantor or GW, as applicable. The initial address, email address and relevant person or office holder of each of the Guarantor and GW is specified under its name in schedule 1 (Notice details).

No communication will be effective until received. A communication to the Guarantor is, however, deemed to be received if:

(a) **Delivery**: delivered personally, when delivered;

- (b) Posted: posted, 5 Business Days after posting or, in the case of international post, 7Business Days after posting; and
- (c) Email: sent by email, 1 hour after the time it is sent provided that there is produced a delivery receipt email which indicates that the email was delivered to the email address of the recipient and no error message or out of office message is received to indicate that the email did not reach its intended destination or that the intended recipient is out of the office. In the case of the intended recipient being out of the office, the email will be deemed to be received by the addressee on the date indicated in the out of office email that the recipient will return to the office.
- 7.8 **Costs**: The Guarantor is liable for, and will pay to GW on demand, such amount as will reimburse GW for its costs incurred in relation to:
 - (a) the registration and release of this Deed;
 - (b) each amendment to, waiver in relation to, or discharge of, this Deed; and
 - (c) the exercise, protection or enforcement of any right or remedy of GW under or in connection with this Deed,-

in each case on a full indemnity basis.

- 7.9 **Remedies and waivers**: Time is of the essence in relation to all dates and times for compliance by the Guarantor with the Guarantor's obligations under this Deed. However, no failure to exercise, and no delay in exercising, a right of GW under this Deed will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by GW of its rights under this Deed is effective unless it is in writing signed by GW.
- 7.10 **Rights cumulative**: The rights of GW under this Deed are cumulative and not exclusive of any rights provided by law.
- 7.11 **Amendments**: No amendment to this Deed is effective unless it is in writing and signed by GW and the Guarantor.
- 7.12 **Partial invalidity**: The illegality, invalidity or unenforceability of a provision of this Deed under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.
- 7.13 **Certificates**: A certificate by GW of any amount payable under this Deed may be used by GW as *prima facie* evidence of the quantum of such amount payable for all purposes, including for any proceedings, except for fraud or manifest error.
- 7.14 **Counterparts**: This Deed may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into this Deed by executing any counterpart.
- 7.15 Contract and Commercial Law Act 2017: The Guarantor acknowledges and accepts that, in terms of the Contract and Commercial Law Act 2017, this Deed is made for the benefit of, and is intended to be enforceable by, GW.

- 7.16 **No obligation to gain consent**: No consent is required from the Guarantor to, nor is it necessary for the Guarantor to be made aware of, any event referred to in clause 3.2, any transaction between GW and the Operator or any particulars concerning any Guaranteed Obligation.
- 7.17 **Delivery**: Without limiting any other mode of delivery, this Deed will be delivered by the Guarantor on the earlier of:
 - (a) physical delivery of an original of this Deed, executed by the Guarantor, into the custody of GW or its solicitors; and
 - (b) transmission by the Guarantor, its solicitors or any other person authorised in writing by the Guarantor of a photocopied or scanned copy of an original of this Deed, executed by the Guarantor, to GW or its solicitors.

8. GOVERNING LAW AND JURISDICTION

8.1 **Governing law**: This Deed is governed by and is to be construed in accordance with New Zealand law.

8.2 Jurisdiction

- (a) The Guarantor irrevocably and unconditionally agrees that the Courts of New Zealand will have jurisdiction to hear and determine each suit, action or proceeding (**proceedings**), and to settle disputes, that may arise out of or in connection with this Deed and for these purposes irrevocably submits to the jurisdiction of those Courts.
- (b) This submission to jurisdiction does not limit the rights of GW to take proceedings against the Guarantor in another court of competent jurisdiction.
- 8.3 **Service in New Zealand**: The Guarantor agrees that the process by which any suit, action or proceeding in New Zealand is begun may be served on it by being delivered to the Operator without prejudice to any other lawful means of service.
- 8.4 **Waiver of immunity**: The Guarantor irrevocably and unconditionally:
 - agrees that should GW bring proceedings against it or its property in relation to this Deed, no immunity from those proceedings (which will be deemed also to include enforcement) will be claimed by or on behalf of it with respect to its property;
 - (b) waives any rights of immunity that it now has or may acquire later; and
 - (c) consents generally in respect of proceedings that may arise out of or in connection with this Deed to the giving of relief or the issue of any process in connection with those proceedings including the making, enforcement or execution against any property (irrespective of their use or intended use) of any order or judgment that may be made or given in those proceedings.

EXECUTION

EXECUTION

Note:

-Person authorised by constitution – signature must be witnessed

EXECUTED as a DEED POLL for and on behalf of EAST BY WEST TLC LIMITED by its Authorised signatory / Attorney)

Section 7(2)(a)

Witness signature

Section 7(2)(a)

Witness Full name

Section 7(2)(a)

Witness Address

Director of Shanghai Express Travel Service company Limited Witness Occupation

Section 7(2)(a)

Signature of authorised signatory/attorney

Section 7(2)(a)

Associate Jingtian & Gongcheng, Shanghai Office

Name of authorised signatory/attorney

-Attorney appointed under s181 Companies Act – signature does not need to be witnessed

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, Section 7(2)(a) (full name), certify that, at the time of signing this deed as the attorney of EAST BY WEST TLC LIMITED under a Power of Attorney dated 2025/05/02 (insert date), I have not received notice of revocation of, or any limitation of my powers under, that Power of Attorney.

Section 7(2)(a)

Signature of attorney

Date: 12 MAY 2025

SCHEDULE 1 - NOTICE DETAILS

To GW: Address: Wellington Office, PO Box 11646,

Manners Street, Wellington 6142,

New Zealand

Email: samantha.gain@gw.govt.nz

Attention: Samatha Gain Group Manager

Metlink

To the Guarantor Address: RM 2804, 28/F Rykadan Capital

Tower, 135 Hoi Bun Road, Kwun

Tong KL, Hong Kong

Email: Section 7(2)(a)

Attention: Section 7(2)(a)