

**Schedule 1: CONSOLIDATED PARTNERING  
CONTRACT**

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**Wellington Regional Council**

**East by West Company Limited**

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## PARTNERING CONTRACT (as amended)

DATED 16 - 3 2021<sup>12</sup>

### PARTIES

1. **WELLINGTON REGIONAL COUNCIL**, a body corporate under the Local Government Act 2002, trading as **GREATER WELLINGTON REGIONAL COUNCIL (GWRC)**
2. **EAST BY WEST COMPANY LIMITED**, a company incorporated in New Zealand with company number 397588, with its registered office at Meridian Building, Waterside, North Queens Wharf, Wellington, New Zealand (**Operator**)

### BACKGROUND

- A. GWRC is responsible for meeting the public transport needs of the Wellington region by contracting operators to deliver "units" of public transport routes that are defined in the Wellington Regional Public Transport Plan (2014), as updated. The unit for ferry services in Wellington is unit 17 of that plan.
- B. The Operator has been providing public transport ferry services in Wellington since 1989.
- C. GWRC wishes to implement a public transport operating model, which seeks to build commercially based partnering relationships between GWRC and public transport operators.
- D. Under this Agreement, GWRC wishes to appoint the Operator to provide ferry public transport services in Wellington using a PTOM partnering delivery model.
- E. This Agreement records the terms on which GWRC appoints, and the Operator agrees to provide, public transport ferry services in Wellington.
- F. In return for the Operator providing public transport ferry services in Wellington, GWRC will pay the Operator a subsidy in respect of certain contracted ferry routes in accordance with the terms of this Agreement.

### THIS AGREEMENT RECORDS THAT:

#### 1. DEFINITIONS AND INTERPRETATION

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

**Advertising Policy** means GWRC's policy for the advertising of public transport services, as notified by GWRC to the Operator from time to time;

**Agreement** means this Partnering Contract;

**Alternative Transport** has the meaning given to that term in clause 28.1;

**Annual Business Plan** means:

- (a) the Operator's annual business plan for the first Contract Year, as approved by GWRC before the Commencement Date; or
- (b) the Operator's annual business plan for a subsequent Contract Year developed in accordance with clause 12.5;

**Approval** means any licence, certificate, registration or other regulatory approval required for the Operator to provide the Services in accordance with this Agreement, including:

- (a) an MTOC;
- (b) a certificate of survey for a Vessel; and
- (c) any other licence, certificate, registration or other approval required under the MTA or Maritime Rules;

**Audit Activity** has the meaning given to that term in clause 19.1;

**Authorised Representative** has the meaning given to that term in clause 9.1;

**Background IP** means, for a party:

- (a) all Intellectual Property in existence immediately before the Commencement Date and owned by the party or its third party licensors;
- (b) all Intellectual Property created by the party or its third party licensors independently of the Services and this Agreement; and
- (c) all Intellectual Property in the party's trade marks and methods of doing business,

and for GWRC includes the Intellectual Property specified in clause 20.2;

**Brand Guidelines** means GWRC's guidelines for use of the GWRC Brands, as notified by GWRC to the Operator from time to time;

**Business Day** means any day excluding Saturdays, Sundays and statutory public holidays in Wellington;

**Capital Component** means, for a period, a reasonable allocation of:

- (a) depreciation over the period on the Vessels and other assets the Operator uses to provide the Services; and
- (b) the Operator's return on capital over the period for the Vessels and other assets the Operator uses to provide the Services, calculated using the Cost of Capital for the period,

such allocation in each case reflecting the extent to which the Vessels and other assets are also used by the Operator to provide other services;

**Commencement Date** means 1 July 2019;

**Confidential Information** has the meaning given to that term in clause 30.1;

**Contract Year** means each period of 12 months during the Term commencing on 1 July and ending on 30 June of the subsequent year. The first Contract Year commences on the Commencement Date;

**Cost of Capital** means:

- (a) for the first Reset Period, [REDACTED] and
- (b) for subsequent Reset Periods, the percentage determined in accordance with clause 16,

and is a pre-tax cost of capital;

**Disclosing Party** has the meaning given to that term in clause 30.1;

**Disengagement Plan** has the meaning given to that term in clause 26.1;

**Dispute Notice** has the meaning given to that term in clause 31.1;

**Fares** means the fares payable by Passengers for the Services;

**Ferry Unit** means unit 17 for harbour ferry services under the Wellington Regional Public Transport Plan 2014 (as updated from time to time), which is a PTOM Unit and includes the Services;

**Force Majeure** means, in relation to either party (**Affected Party**), an event or circumstance which is beyond the reasonable control of the Affected Party and without the fault or negligence of the Affected Party, provided that event or circumstance is limited to the following:

- (a) strike, lock-out or other industrial disturbance by or amongst employees of a person other than the Affected Party;
- (b) fire, flood, storm, earthquake, land slide, volcanic eruption, epidemic or other forces of nature;
- (c) act of public enemy, or declared or undeclared war or threat of war;
- (d) terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party); or
- (e) change in Law (or interpretation or application of a Law by a court or Governmental Entity) that materially or adversely affects the performance by the Affected Party of its obligations under this Agreement,

but does not include any:

- (a) event or circumstance which could have been avoided by the exercise, by the Affected Party, of reasonable diligence and in accordance with Good Industry Practice;
- (b) mechanical breakdown of a Vessel;
- (c) the insolvency of the Operator or a Subcontractor or supplier of the Operator; or



(d) lack of funds or authority or power on the part of the Affected Party;

**General Item** has the meaning given to that term in clause 20.7;

**Good Industry Practice** means using standards, practices, methods and procedures conforming to all applicable Law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably be expected from a reputable, efficient, professionally qualified, competent and skilled organisation experienced in carrying out activities of a similar nature, scope and complexity to the Services, which in the case of the Operator means a public transport ferry service operator;

**Governmental Entity** means the Sovereign in right of New Zealand and any government, or any governmental or semi-governmental entity, person or authority, body politic (but excluding any political party), government department, regional or local government authority or statutory authority and includes (unless the context otherwise requires), the New Zealand Police, the Ministry of Transport, Maritime New Zealand, NZTA, Worksafe and the Wellington Harbourmaster;

**GST** means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985, at the rate prevailing at the relevant time;

**GWRC Brands** means:

- (a) the name "Metlink" and all Metlink logos; and
- (b) the name "Greater Wellington Regional Council" and all Greater Wellington Regional Council logos;

**GWRC Privacy Policy** means the document set out at clause 30.5(b)\_ (GWRC Privacy Policy) and any privacy statement or customer privacy policy as published on the GWRC website ([www.gw.govt.nz](http://www.gw.govt.nz)) or the Metlink website ([www.metlink.org.nz](http://www.metlink.org.nz)) as updated, amended or replaced by GWRC from time to time and notified to the Operator;

**HSWA** means the Health and Safety at Work Act 2015;

**Incoming Provider** has the meaning given to that term in clause 26.3;

**Insolvency Event** means, for a party:

- (a) the party enters into, or proposes, any arrangement, compromise or composition with its creditors;
- (b) the party goes into liquidation or has a receiver, administrator, statutory manager or similar officer appointed in respect of it (other than solely for the purpose of solvent amalgamation or solvent reconstruction);
- (c) an order is made, resolution passed or other step taken by any person (other than a frivolous or vexatious step that is contested in good faith by appropriate proceedings) for the dissolution of the party;
- (d) the party ceases to carry on a material part of its business or threatens to cease trading in a normal manner;

- (e) the party is unable to pay its debts as they become due as defined by the Companies Act 1993 or as determined under the general law; or
- (f) the party is subject to any analogous process or circumstance in any jurisdiction;

**Instalment** has the meaning given to that term in clause 17.1;

**Insurance Policies** has the meaning given to that term in clause 23.1;

**Intellectual Property** means patents, registered designs, petty patents, utility models, trade marks (including rights in logos and get-up), domain names, copyright, circuit layouts, rights in computer software and databases, rights in inventions, confidential information, trade secrets and all other intellectual property, , in each case whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world;

**Key Person** means a person listed in paragraph 2 of Schedule 1, or such replacement person as may be appointed in accordance with clause 9.3;

**KPI** means a key performance indicator specified in Schedule 3;

**KPI Achieve Benchmark** means the level of performance required for the Operator to achieve a KPI, as specified in Schedule 3;

**Law** means any rules of common law, statute, regulation, by-law, ordinance or subordinate legislation in force from time to time, and includes:

- (a) the Maritime Rules;
- (b) maritime codes of conduct generally recognised in New Zealand; and
- (c) international maritime protocols to which New Zealand is a signatory;

**Licensed Party** has the meaning given to that term in clause 20.7(c);

**Licensing Party** has the meaning given to that term in clause 20.7(a);

**Loss** means all liability, loss, damage, cost, and expense, including reasonable legal fees and disbursements and costs of investigations, litigation, settlement, judgment, interest and penalties;

**LTMA** means the Land Transport Management Act 2003;

**Maintenance Plan** means the plan for scheduled maintenance of the Vessels included in the approved Annual Business Plan;

**Maritime Rules** means the maritime rules made by the Minister of Transport under Part 4 of the MTA;

**Metlink Conditions of Carriage** means GWRC's conditions of carriage for the Wellington Public Transport Network, as they relate to the Ferry Unit, published on GWRC's website;



**Metlink Fare Policy** means GWRC's policy for fares for the Wellington Public Transport Network, as it relates to the Ferry Unit, contained in the *Regional Public Transport Plan* published on GWRC's website;

**MOSS** means a Maritime Transport Operator Safety System contained in an MTOP;

**MTOC** means a Maritime Transport Operator Certificate issued by the Director of Maritime New Zealand under the Maritime Rules;

**MTA** means the Maritime Transport Act 1994;

**MTOP** means a Maritime Transport Operator Plan approved by the Director of Maritime New Zealand under the Maritime Rules;

**Net Vessel Advertising Revenue** means, for a sale of Vessel Advertising Space, Vessel Advertising Revenue received by GWRC less Vessel Advertising Costs paid by GWRC;

**NZTA** means the New Zealand Transport Agency and is now referred to as Waka Kotahi;

**NZTA Index** means the "Ferry Index" published by NZTA on its website in the worksheet entitled "Table 3 - New Cost Indexes for Public Transport" or any replacement index nominated by NZTA from time to time;

**NZTA Procurement Manual** means the "Procurement manual for activities funded through the National Land Transport Programme" issued by NZTA;

**Operator's Share** has the meaning given to that term in clause 14.3(f);

**Partnering Group** means a group comprised of:

- (a) the Authorised Representative of GWRC and such other individuals as nominated by GWRC; and
- (b) the Authorised Representative of the Operator and such other individuals as nominated by the relevant Operator;

**Passenger** means a ferry passenger using or intending to use a Service;

**Performance Issue** has the meaning given to that term in clause 24;

**Performance Notice** means written notice of a Performance Issue given by GWRC to the Operator under clause 24.1;

**Personal Information** has the meaning given to that term in section 2 of the Privacy Act 1993;

**Personnel** means:

- (a) in relation to GWRC, GWRC's personnel (including representatives, employees, contractors and agents); and
- (b) in relation to the Operator, the Operator's and each Subcontractor's personnel (including representatives, employees, contractors and agents) involved in providing the Services;

**Privacy Obligations** mean the obligations of the Operator which relate to any Personal Information collected, used, disclosed, stored, managed, transferred or handled by or on behalf of the Operator and which arise under:

- (a) Law;
- (b) any codes of practice, guidelines or information directives issued by the Office of the New Zealand Privacy Commissioner; or
- (c) the Privacy Policy which the Operator is required to have under clause 30.5(a);

**Privacy Policy** means a policy, protocol, statement or procedure relating to privacy, Personal Information or data protection which apply to the Services or any Party's obligations under this Partnering Contract and includes provisions for:

- (a) any policy relating to data collected including, but not limited through CCTV; and
- (b) the GWRC Privacy Policy;

**PT Network Documents** means the documents referred to in paragraphs 3.19.1 (*Timetable Change Process*), 3.19.2 (*Customer Service Standards*), 3.19.3 (*Customer Communication and Information Systems*) and 3.19.5 (*Conditions of Carriage*) of the Regional Agreement, as they relate to the Ferry Unit;

**PTOM** has the meaning given to that term in clause 3;

**PTOM Operator** means a public transport operator that has entered into a contract with GWRC to provide "public transport services" (as defined in the LTMA) in relation to a PTOM Unit;

**PTOM Unit** means a "unit" as defined in section 5(1) of the LTMA;

**Qualifying Costs** means, for a period, the aggregate operating costs incurred by the Operator to provide the Services during the period:

- (a) excluding the cost of food and beverages; and
- (b) including a reasonable allocation of operating costs that relate to both the Services and other services provided by the Operator;

**Qualifying Revenue** means, for a period, the aggregate revenue earned by the Operator from Fares during the period, including SuperGold Funding;

**Receiving Party** has the meaning given to that term in clause 30.1(a);

**Regional Agreement** means the agreement between GWRC and PTOM Operators substantially in the form set out in Schedule 6, as amended or replaced from time to time in accordance with the process for changes to "PT Network Documents" under that agreement;

**Reset Period** means each successive period of three Contract Years. The first Reset Period commences on the Commencement Date;

**Requirements** means the specifications and other requirements for the Services set out in Schedule 2;

**Safety Law** means any Law in relation to health, safety and/or welfare of people including the LTMA, HSWA and MTA;

**Services** means public ferry services operated on the Subsidised Routes;

**Subcontractor** means any third party engaged by the Operator to carry out or supply any part of the Services on behalf of the Operator;

**Subsidised Routes** means the following ferry routes:

- (a) Queens Wharf to Days Bay direct (and vice versa);
- (b) Queens Wharf to Days Bay via Matiu/Somes Island (and vice versa);
- (c) Seatoun to Days Bay (and vice versa); and
- (d) Seatoun to Queens Wharf (and vice versa);

**Subsidy** has the meaning given to that term in clause 14.1;

**SuperGold Concession** means a fare concession for a Service or the Harbour Explorer Excursion to which a holder of a SuperGold Card is entitled;

**SuperGold Funding** has the meaning given to that term in clause 14.4;

**SuperGold Period** means:

- (a) 9.00am to 3.00pm Monday to Friday;
- (b) 6.30pm until the end of Services Monday to Thursday;
- (c) 6.30pm Friday to 6.30am Monday;
- (d) 10 minutes before each of the above periods begins and 10 minutes after each of the above periods ends; and
- (e) Saturdays, Sundays and public holidays;

**SuperGold Scheme** means the Government scheme under which holders of SuperGold Cards are entitled to, among other things, fare concessions on public transport;

**Term** means the term of this Agreement, as specified in clause 5.2;

**Timetable** means the timetable for the Wellington Public Transport Network, as it relates to the Services, as may be amended from time to time. The Timetable at the Commencement Date is appended to the Requirements;

**Unavailable Service** means a Service that:

- (a) is not provided in accordance with the Timetable, whether using a Vessel or Alternative Transport, except to the extent the Requirements do not require Alternative Transport to be provided for the Service; or
- (b) is deemed to be unavailable under clause 28.2;



**Unresolved Performance Notice** means written notice of an unremedied Performance Issue given by GWRC to the Operator under clause 24.3;

**Variation** means a variation to the Services or any provision of this Agreement;

**Variation Forms** means GWRC's standard forms for requesting and recording variations to PTOM partnering contracts;

**Vessel** means a vessel used for the Services and includes either diesel and/or electric (battery) powered vessels. The Vessels are set out in Requirements;

**Vessel Advertising Costs** means third party costs of selling Vessel Advertising Space and applying the corresponding advertising to the Vessels, including media agency fees;

**Vessel Advertising Revenue** means revenue from selling Vessel Advertising Space;

**Vessel Advertising Space** means advertising space on the Vessels;

**Wellington Public Transport Network** means the PTOM Units that make up the public transport network managed by GWRC; and

**Wellington Regional Public Transport Forum** means the forum described in paragraph 3.14 of the Regional Agreement.

**1.2 Interpretation:** In this Agreement, unless the context indicates otherwise:

- (a) **Defined Expressions:** expressions defined in the main body of this Agreement have the defined meaning throughout this Agreement, including the background;
- (b) **Headings:** clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;
- (c) **Parties:** references to any **party** include that party's executors, administrators, successors and permitted assigns;
- (d) **Persons:** references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) **Plural and Singular:** references to the singular include the plural and vice versa;
- (f) **Clauses/Schedules/Appendices:** references to clauses, schedules and appendices are to clauses in, and the schedules and appendices to, this Agreement. Each such schedule and appendix forms part of this Agreement;
- (g) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;

- (h) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (i) **Inclusive Expressions:** the term **includes** or **including** (or any similar expression) is deemed to be followed by the words **without limitation**;
- (j) **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form; and
- (k) **Control:** references to one person being **controlled** by another person mean that the other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) has the power to:
  - (i) appoint or remove the majority of the members of the governing body of that person;
  - (ii) appoint a member or members of the governing body of that person, with the power to exercise, or control the exercise of, more than 50% of the maximum number of votes that might be cast at a meeting of the governing body or the members of that person; or
  - (iii) control, by any other means, the affairs and policies of that person,

and, **control** and **change in control** have corresponding meanings.
- (l) Where this Partnering Contract requires that a Party shall use 'best endeavours', this does not require the Party to:
  - (i) act unreasonably, in breach of Safety Law or outside the Law;
  - (ii) interfere with or influence the exercise by any person of a statutory power or discretion;
  - (iii) in the case of GWRC only, exercise a power or discretion or otherwise act in a manner that either of them reasonably regards as not in the public interest.

## 2. REGIONAL AGREEMENT

- 2.1 **Partnering Principles, Behaviours and Objectives:** GWRC and the Operator acknowledge their respective obligations under the Regional Agreement to:
- (a) be guided by and give effect to the partnering principles in clause 3.9 of the Regional Agreement in connection with the exercise and performance of their respective rights and obligations under this Agreement and the Regional Agreement;
  - (b) exhibit the behaviours in clause 3.10 of the Regional Agreement in implementing and giving effect to the partnering principles, provided that neither party is restricted from exercising their respective rights and remedies under this Agreement; and



- (c) work towards the common objectives in clause 3.12 of the Regional Agreement, with the aim of reducing GWRC's reliance on public subsidies to cover the cost of providing the Services.

**2.2 Interpretation of Regional Agreement:** This Agreement constitutes the "Partnering Contract" between GWRC and the Operator referred to in the Regional Agreement. Where the Regional Agreement refers to a matter being defined in the "Partnering Contract" or as set out in the "Partnering Contract" (or the equivalent meaning) and such matter is not defined in or set out in this Agreement, the references in the Regional Agreement will be of no effect as between GWRC and the Operator.

**2.3 PT Network Documents and Variation Forms:** On or before the Commencement Date, and as soon as reasonably practicable after any update to them, GWRC will provide the Operator with copies of the PT Network Documents and Variation Forms.

### **3. NZTA PROCUREMENT PROCEDURES**

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GWRC and the Operator acknowledge that the legislative framework for the Public Transport Operating Model (**PTOM**) under the LTMA does not prescribe in detail the requirements for PTOM. As a result, NZTA, in collaboration with industry representation of public transport operators and GWRC, has developed a more detailed PTOM framework in the NZTA Procurement Manual. The requirements of the NZTA Procurement Manual may change (which could be a replacement of the NZTA Procurement Manual) during the course of this Agreement, and those changes may require modification of this Agreement in order for GWRC to comply with its legislative functions and obligations or to obtain central government funding for the operation of public transport services in Wellington.

### **4. CONDITIONS**

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The rights and obligations of GWRC and the Operator under this Agreement will not come into existence until all the conditions in paragraph 4 of Schedule 1 are fulfilled. If any of those conditions is not fulfilled to GWRC's reasonable satisfaction, or waived by GWRC, within 20 Business Days of the Commencement Date, GWRC may terminate this Agreement (with immediate effect) by written notice given to the Operator.

### **5. APPOINTMENT AND TERM**

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**5.1 Exclusive Appointment:** GWRC hereby appoints the Operator to provide, and the Operator agrees to provide, the Services in accordance with and subject to the terms and conditions of this Agreement for the Term. In accordance with clause 116(2) of the LTMA, GWRC must not appoint any other operator for the Services or any other services included in the Ferry Unit during the Term.

**5.2 Term:** This Agreement will commence on the Commencement Date and, subject to any earlier termination of this Agreement in accordance with its terms or at law, will continue for a term of nine years.

### **6. PROVISION OF THE SERVICES**

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**6.1 Services:** The Operator will provide the Services:

- (a) using the Vessels;
  - (b) to the Timetable;
  - (c) otherwise in accordance with the Annual Business Plan and Requirements; and
  - (d) in a manner that meets or exceeds the KPI Achieve Benchmarks.
- 6.2 Customer Service:** The parties will comply with the PT Network Documents titled *Customer Service Standards* and *Customer Communication and Information Systems* in respect of the Services. However, if there is a conflict between this Agreement and those PT Network Documents, this Agreement will prevail.
- 6.3 Wharf Access:** The Operator is responsible for ensuring it has all necessary consents to use such wharf, charging and dry dock facilities as are required to provide the Services and otherwise comply with its obligations under this Agreement. However, the Operator must not enter into any exclusive wharf or dry dock access arrangements that continue beyond the Term. The Operator will provide GWRC with details of its wharf, charging and dry dock access arrangements and will promptly notify GWRC in the event of any changes to those arrangements.
- 6.4 Fares:** Subject to paragraph 1.2 of Schedule 2, the Operator will charge Passengers the Fares, which must comply with the Requirements. All Fares will be collected by the Operator on its own behalf and not on behalf of GWRC.



- 6.5 SuperGold Scheme:** The Operator must:
- (a) participate in the SuperGold Scheme by offering SuperGold Concessions;
  - (b) offer SuperGold Concessions during the SuperGold Period, based on Vessel boarding time (not Timetabled Service departure time); and
  - (c) report any suspected misuse or attempted misuse of a SuperGold Card to GWRC, along with any details the Operator has identifying the person who is suspected of misusing or attempting to misuse the SuperGold Card.

- 6.6 Contracts for Carriage of Passengers:**
- (a) The Operator acknowledges that, despite anything to the contrary in the Regional Agreement or PT Network Documents, the contract for carriage of a Passenger is between the Operator and the Passenger and not between GWRC and the Passenger. The Operator must not make any contrary representation to any Passenger.
  - (b) The Operator will ensure it complies with, and requires the Passengers to comply with, the Metlink Conditions of Carriage. The parties will comply with the PT Network Document *Conditions of Carriage* for any changes to the Metlink Conditions of Carriage.

## 7. OPERATOR'S GENERAL OBLIGATIONS

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- 7.1 Operator Obligations:** The Operator must:
- (a) **Good Industry Practice:** provide the Services with reasonable skill, care and diligence and in accordance with Good Industry Practice;
  - (b) **Provide resources:** provide all Personnel, resources, facilities, systems, equipment and processes required to provide the Services in accordance with this Agreement and in a timely way;
  - (c) **Single point of contact:** manage all Subcontractors and Personnel involved in providing the Services and act as a single point of contact for GWRC;
  - (d) **Keep GWRC Informed:** keep GWRC fully advised of the provision of the Services, including all significant incidents affecting the Services;
  - (e) **Media:** not make any reference to the Services, this Agreement or the Operator's relationship with GWRC in the course of any interaction with the media, except where:
    - (i) the Operator first obtains GWRC's written consent; or
    - (ii) the interaction relates to a routine media enquiry regarding the availability of Services;
  - (f) **Assistance:** provide such assistance and information to GWRC and its Personnel as is necessary or desirable to enable GWRC to properly carry out any tasks or activities required of GWRC in relation to the Ferry Unit and to obtain the full benefit of the Services;

- (g) **Errors or Omissions:** notify GWRC, in a timely manner, of any error in or omission from information provided by the Operator to GWRC under this Agreement;
- (h) **Policies:** comply with, and ensure its Personnel comply with, all reasonable protocols, policies, codes of conduct and/or procedures (including any changes or updates to such protocols, policies, codes of conduct and/or procedures) notified by GWRC from time to time in relation to the Services;
- (i) **GWRC Directions:** comply with all reasonable directions notified by GWRC from time to time in relation to the Services (to the extent that such directions are not inconsistent with any express provision of this Agreement);
- (j) **GWRC Reputation:** not damage the reputation or goodwill of GWRC;
- (k) **Minimise Disruption:** use its best endeavours to avoid any unnecessary disruption of, or interference to, the business or other activities of GWRC;
- (l) **Co-operate with Third Parties:** act in good faith towards and work in co-operation with all third party service providers engaged by GWRC, including other PTOM Operators;
- (m) **Vessels:** ensure that the Vessels are only used, operated and maintained:
  - (i) by competent and properly qualified, trained and licensed Personnel using recognised methods and standards of operation or maintenance (as applicable);
  - (ii) in accordance with the Maintenance Plan and Good Industry Practice;
  - (iii) in accordance with the operational characteristics described in the technical specifications relevant to the Vessels;
  - (iv) in a manner that does not breach or invalidate any agreement, warranty or guarantee relating to the Vessels (to the extent such terms and conditions have been provided to the Operator by any person); and
  - (v) in accordance with any other reasonable requirements of the manufacturer, supplier or maintainer of the Vessels;
- (n) **Advertising:** ensure its advertising of the Services complies with the Advertising Policy.

- 7.2 Participation in Reviews:** The Operator will fully participate in:
- (a) all reviews by GWRC of the Operator's performance under this Agreement;
  - (b) if requested by GWRC or a Governmental Entity, any review of strategies, plans and objectives relating to the Ferry Unit; and
  - (c) if requested by GWRC or a Governmental Entity, any review of any Law or proposed change of Law relevant to the Services.
- 7.3 Notification:** The Operator will notify GWRC immediately when it becomes aware that it will be unable to provide any aspect of the Services in accordance with this Agreement, and:
- (a) unless GWRC requires otherwise, take all action reasonably available to the Operator to notify prospective Passengers of the disruption to the Services; and
  - (b) provide GWRC with sufficient information to enable GWRC to timeously notify stakeholders and prospective Passengers of the disruption to the Services.

## **8. REGULATORY REQUIREMENTS**

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- 8.1 Approvals:** The Operator will obtain and maintain, and ensure its Subcontractors and Personnel obtain and maintain, all Approvals.
- 8.2 Compliance:** The Operator will:
- (a) comply with, and ensure its Subcontractors and Personnel comply with all:
    - (i) Laws;
    - (ii) conditions of Approvals; and
    - (iii) notices, orders, directions and standards issued by a Governmental Entity which affect or relate to the Services;
  - (b) not, and ensure its Subcontractors and Personnel do not, take any action which will or is likely to result in the cancellation or suspension of any Approval, and immediately give written notice to GWRC upon becoming aware such cancellation or suspension has occurred or may occur; and
  - (c) immediately give written notice to GWRC upon becoming aware of any investigation of the Operator or any of its Subcontractors or Personnel for breach of any Law or any criminal or civil offence in relation to any ferry services operated by the Operator, providing details of the charge, the party or regulatory body that has raised the charge and the associated risks.



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## 9. AUTHORISED REPRESENTATIVES AND KEY PERSONS

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- 9.1 Authorised Representatives:** Each party will appoint a representative to act on its behalf in the performance of that party's obligations, and exercise of that party's rights, under this Agreement (**Authorised Representative**). Each party will ensure that it appoints an Authorised Representative with the appropriate skill, knowledge and authority reasonably required to perform such role. The parties' Authorised Representatives at the Commencement Date are set out at paragraph 1 of Schedule 1.
- 9.2 Changes to Authorised Representatives:** Either party may change its Authorised Representative by giving written notice to the other party identifying the new Authorised Representative and stating the date that the change will be effective. GWRC may, acting reasonably, require the Operator to change its Authorised Representative if GWRC is not satisfied that the Operator's current Authorised Representative has the appropriate skill, knowledge and authority reasonably required to perform the role.
- 9.3 Key Personnel:** The Operator will employ or engage the Key Persons in the roles specified in paragraph 2 of Schedule 1. The Operator may replace a Key Person only if:
- (a) the Operator has given GWRC at least one month's prior written notice of the proposed replacement, such notice to include full details of the replacement for the Key Person;
  - (b) GWRC has approved the replacement for the Key Person, such approval not to be unreasonably withheld; and
  - (c) the Operator, if required by GWRC, agrees on a transition plan with GWRC for the replacement Key Person and manages the replacement in accordance with such plan.

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## 10. PERSONNEL REQUIREMENTS

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- 10.1 Personnel Requirements:** The Operator will ensure that all Operator Personnel:
- (a) are properly trained and experienced to a level that would ordinarily be expected of an experienced, efficient and competent passenger transport operator engaged in the provision of services of a comparable scope, size and complexity as the Services;
  - (b) hold all Approvals necessary for their role;
  - (c) are not under the influence of alcohol, drugs or any other substance that may adversely impact their ability to perform their role;
  - (d) are kept informed of any changes to the Services, including to the Subsidised Routes, Fares and Timetable; and
  - (e) behave appropriately and courteously at all times when engaged in the provision of the Services.



- 10.2 Passenger-facing Personnel Requirements:** The Operator will ensure that all Operator Personnel with a Passenger-facing role, including those who crew the Vessels:
- (a) are capable of effectively communicating with Passengers in the English language; and
  - (b) take all measures required by Good Industry Practice to ensure the safety of Passengers.

## 11. GOVERNANCE AND MEETINGS

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**11.1 Wellington Regional Public Transport Forum:** The Operator will ensure that each Wellington Regional Public Transport Forum is attended by appropriate individuals nominated by the Operator's Authorised Representative who have reasonable knowledge of the matters to be considered at the forum.

**11.2 Partnering Group:** The functions of the Partnering Group are to:

- (a) discuss strategies, plans and objectives for the Services and Ferry Unit;
- (b) discuss and review performance under this Agreement, including the Operator's performance against the KPIs and budget for the Services;
- (c) discuss incidents and safety issues;
- (d) discuss innovations, improvements or opportunities for innovations or improvements, including submitted proposals as contemplated under clause 11.4;
- (e) consider and co-ordinate the preparation and implementation plans and programmes to resolve performance issues or improve performance of the Services;
- (f) discuss and improve risk management and co-ordinate initiatives to address areas of risk to the Services;
- (g) consider any proposed amendments to the Annual Business Plan for the current Contract Year, including any proposed re-forecast of the Operator's financial performance;
- (h) consider proposed Variations;
- (i) discuss issues requiring wider discussion with other PTOM Operators through the Wellington Regional Public Transport Forum constituted under the Regional Agreement;
- (j) endeavour to resolve disputes between GWRC and the Operator; and
- (k) discuss any other matters that a party considers relevant from time to time.

- 11.3 Partnering Group Meetings:** The Partnering Group will meet:
- (a) at least once every quarter, and in accordance with the schedule of Partnering Group meetings in the Annual Business Plan;
  - (b) as required to resolve any dispute or consider Variations; and
  - (c) otherwise, upon request by either party.
- 11.4 Innovation:** The Operator will actively explore and consider innovations or improvements to the Services (or opportunities for innovation or improvements) and present them to GWRC as part of the annual business planning process or at meetings of the Partnering Group.
- 11.5 Arrangements for Meetings:** Unless the parties otherwise agree, GWRC is responsible for scheduling, hosting and providing the facilities reasonably required for the Wellington Regional Public Transport Form and all Partnering Group meetings.

## **12. ANNUAL BUSINESS PLANNING**

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- 12.1 Goal:** The goal of the annual business planning process is to provide a mechanism for GWRC and the Operator to:
- (a) identify opportunities to grow patronage on, and increase revenue from, the Services;
  - (b) identify opportunities for the continuous improvement of the Services and to improve the performance of the obligations of the Operator under this Agreement, including by having a collaborative dialogue about customer feedback;
  - (c) identify opportunities to expand the Services to meet customer demand;
  - (d) identify opportunities to minimise the environmental impact of, and to improve the environmental outcomes of, the Services; and
  - (e) identify any safety issues or other matters relevant to providing a safe, integrated and reliable public transport network in Wellington.

The parties acknowledge that the annual business planning process does not prevent them from discussing such opportunities, issues and matters with one another on a more frequent basis outside of the annual business planning process.

- 12.2 Collaborative Working:** GWRC and the Operator will work together, acting reasonably and in good faith, to collaboratively develop and finalise each Annual Business Plan.
- 12.3 Meeting:** At a meeting of the Partnering Group before the end of February in each Contract Year, GWRC and the Operator will meet to discuss and agree:
- (a) the matters described in clause 12.1; and
  - (b) any other matters to be included in the Annual Business Plan for the next Contract Year to satisfy the requirements of clause 0.



- 12.4 Content:** Each Annual Business Plan will:
- (a) record any agreed initiatives to be implemented by the parties to achieve the goals described in clause 12.1;
  - (b) contain the budget for the Services for the upcoming Contract Year, in such format as approved by GWRC from time to time;
  - (c) contain a plan for scheduled maintenance of the Vessels for the upcoming Contract Year;
  - (d) contain a schedule of Partnering Group meetings for the Contract Year; and
  - (e) contain any other content the parties agree is appropriate for inclusion in the Annual Business Plan.

**12.5 Draft Annual Business Plan:** Before the end of March in each Contract Year, the Operator will provide GWRC with a draft Annual Business Plan that satisfies the requirements of clause 12.4. On receipt, GWRC will review the draft Annual Plan and, acting on a fair and reasonable basis:

- (a) approve the draft, in which case the draft becomes the final Annual Business Plan; or
- (b) reject the draft, in which case the Operator will prepare within a timeframe agreed to by both parties another draft Annual Business Plan containing amendments to the required parts of the draft Annual Business Plan and provide it to GWRC for review by GWRC under this clause 12.5.

**12.6 Compliance with Annual Business Plan:** The Operator must comply with each approved Annual Business Plan.

### 13. VARIATIONS

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**13.1 Schedule 5 Applies:** Subject to clause 13.2, no Variation is effective unless it is proposed and agreed in accordance with Schedule 5.

**13.2 Annual Business Plan:** The parties agree that where a matter is agreed under an Annual Business Plan (such as an initiative to be implemented as described in clause 12.1), the parties do not need to record the matter by way of a Variation in accordance with the Schedule 5.

### 14. FINANCIAL

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**14.1 Subsidy:** In consideration for the Operator providing the Services and complying with the other requirements of this Agreement, GWRC will pay the Operator a subsidy per Contract Year in respect of the Services, which:

- (a) Subject to clause 14.1(b), for the first Reset Period is [REDACTED] (exclusive of GST) per Contract Year, subject to adjustment in accordance with clause 15.1
- (b) with the addition of a new electric ferry into the Partnering Contract, increases to [REDACTED] (exclusive of GST) per Contract Year, pro-rated for the first such Contract Year of the electric ferry's operation;

- (c) for each subsequent Reset Period will be the amount per Contract Year agreed for the first Contract Year of the Reset Period in accordance with clause 16, subject to adjustment in accordance with clause 15.1,

(the **Subsidy**).

**14.2 Revenue and Costs:** GWRC and the Operator acknowledge and accept that:

- (a) the Operator is responsible for payment of all costs incurred by the Operator in providing the Services and any other services provided by the Operator;
- (b) subject to clause 14.3, the Operator is entitled to the revenue (including fare, food and beverage gross revenue) from the Services and any other services provided by the Operator; and
- (c) no subsidy is payable by GWRC in respect of any services provided by the Operator (including the Harbour Explorer Excursion) that are not part of the Services.

**14.3 Advertising on Vessels:** The Operator appoints GWRC as the exclusive seller of Vessel Advertising Space for the Term (including to the exclusion of the Operator). In carrying out this function GWRC will:

- (a) take into account and comply with all existing agreements for advertising on the Vessels notified to GWRC by the Operator;
- (b) consult with the Operator about each potential sale of Vessel Advertising Space before finalising the sale;
- (c) obtain reasonable commercial rates for all sales of Vessel Advertising Space;
- (d) receive the Vessel Advertising Revenue;
- (e) notify the Operator of the Net Vessel Advertising Revenue for a sale of Vessel Advertising Space as soon as practicable, along with information about how the Net Vessel Advertising Revenue was calculated;
- (f) pay the Operator an agreed percentage of the Net Vessel Advertising Revenue (**Operator's Share**) for each sale of Vessel Advertising Space. The Operator's Share will be invoiced by the Operator and paid by GWRC in agreed instalments at the same time and in the same manner as an Instalment; and
- (g) be entitled to retain all Net Vessel Advertising Revenue that is not the Operator's Share.

**14.4 SuperGold Funding:** GWRC will receive lump sum funding from NZTA for SuperGold Concessions for each Contract Year (**SuperGold Funding**). GWRC will:

- (a) notify the Operator of the SuperGold Funding for the Contract Year as soon as practicable; and
- (b) pay the SuperGold Funding to the Operator in equal monthly instalments over the Contract Year. Each instalment of the SuperGold Funding will be invoiced by the Operator and paid by GWRC at the same time and in the same manner as Instalments.



**14.5 SuperGold Funding Calculation Methodology:** The Operator acknowledges that, at the Commencement Date, SuperGold Funding is calculated in accordance with the following methodology:

- (a) The baseline for SuperGold Funding for a Contract Year is the SuperGold Funding for the previous Contract Year, or 2018/19 for the first Contract Year.
- (b) The SuperGold Funding for a Contract Year is the baseline SuperGold Funding multiplied by an adjustment factor for the Contract Year that reflects:
  - (i) increasing or decreasing SuperGold patronage as a proportion of total patronage during the SuperGold Period; and
  - (ii) the increasing or decreasing real cost or volume of Services and the Harbour Explorer Excursion during the SuperGold Period.
- (c) The adjustment factor for a Contract Year is calculated as follows, where:
  - (i) "closing period" means the Contract Year, and closing period values are forecast;
  - (ii) "opening period" means the relevant baseline year, and opening period values are actual; and
  - (iii) "offpeak" means the SuperGold Period:

$$\text{Annual Adjustment Factor} = \text{Demand Factor} \times \text{Supply Factor}$$

$$\text{Demand Factor} = \frac{\text{SuperGold Patronage Growth}}{\text{Non SuperGold Offpeak Patronage Growth}}$$

$$\text{Supply Factor} = \frac{\text{Offpeak Service Supply Measure (closing value)}}{\text{Offpeak Service Supply Measure (opening value)}}$$

$$\text{SuperGold Patronage Growth} = \frac{\text{SuperGold Patronage (closing value)}}{\text{SuperGold Patronage (opening value)}}$$

$$\text{Non SuperGold Patronage Growth} = \frac{\text{Non SuperGold Patronage (closing value)}}{\text{Non SuperGold Patronage (opening value)}}$$

- (d) The SuperGold Funding for the next Contract Year will be adjusted to take into account the difference between forecast and actual values for the variables used in the calculation of the adjustment factor for the previous Contract Year.



## 15. INDEXATION OF SUBSIDY

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- 15.1 Adjustment of Subsidy:** The Subsidy for the second and third Contract Years of each Reset Period will be adjusted as follows:

$$S_n = (S_{n-1} - CC) \times \left(1 + \frac{IDX_n - IDX_{n-1}}{IDX_{n-1}}\right) + CC$$

where:

**S<sub>n</sub>** is the Subsidy for Contract Year n (being the second or third Contract Year of the Reset Period);

**S<sub>n-1</sub>** is the Subsidy for Contract Year n-1;

**CC** is one third of the Capital Component for the Reset Period (as used to determine the Subsidy for each Contract Year of the Reset Period);

**IDX<sub>n</sub>** is the value of the NZTA Index as at 31 March in the year Contract Year n starts; and

**IDX<sub>n-1</sub>** is the value of the NZTA Index as at 31 March in the year before Contract Year n starts.

- 15.2 Notification of Adjustment:** GWRC will notify the Operator of the Subsidy for each of the second and third Contract Year of each Reset Period before the start of the relevant Contract Year, and as soon as reasonably practicable. GWRC's notice will contain reasonable supporting information to show how the Subsidy was calculated.
- 15.3 Subsidy for First Contract Year:** For the avoidance of doubt, the Subsidy for the first Contract Year of each Reset Period will be set in accordance with clause 16 and will not be calculated in accordance with clause 15.1.

## 16. SUBSIDY RESET

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- 16.1 Financial Incentive Mechanism:** GWRC and the Operator acknowledge and agree that:

- (a) the operation of this Agreement as a net cost contract; and
- (b) the Subsidy reset process,

are intended to operate together as a financial incentive mechanism for the purposes of the PTOM, with the intended purpose of incentivising collaboration between GWRC and the Operator to improve patronage in relation to public transport services. This financial incentive mechanism is intended to ensure that GWRC and the Operator have a mutual financial interest in the positive performance of the Ferry Unit.

- 16.2 Subsidy Reset Information:** At least three months before the end of each Reset Period, the Operator will provide to GWRC full information regarding:
- (a) the forecast Qualifying Costs for:
    - (i) the Reset Period, which must be based on actual Qualifying Costs to the extent they are known; and
    - (ii) the first Contract Year of the next Reset Period;
  - (b) the forecast Qualifying Revenue for:
    - (i) the Reset Period, which must be based on actual Qualifying Revenue to the extent it is known; and
    - (ii) the first Contract Year of the next Reset Period;
  - (c) the forecast Capital Component for:
    - (i) the Reset Period, which must be based on the actual Capital Component to the extent it is known; and
    - (ii) the next Reset Period, including justification for any proposed change to the Cost of Capital from the current Reset Period; and
  - (d) the amount the Operator proposes as the Subsidy per Contract Year for the next Reset Period, which must be based on:
    - (i) forecast Qualifying Costs for the first Contract Year of the next Reset Period; plus
    - (ii) one third of the forecast Capital Component for the next Reset Period; less
    - (iii) forecast Qualifying Revenue for the first Contract Year of the next Reset Period.
- 16.3 Subsidy Reset:** No later than two months before the end of each Reset Period, GWRC and the Operator will meet to discuss and agree the Subsidy for the first Contract Year of the next Reset Period, in light of the information provided by the Operator under clause 16.2. If GWRC and the Operator are unable to agree the Subsidy by the date which is one month before the end of the current Reset Period, either party may refer the matter to the dispute resolution process in clause 31.
- 16.4 Open Book Pricing:** The Operator must disclose its relevant financial information to GWRC on an open book basis for the purposes of Subsidy resets and must allow GWRC such access to the Operator's records and Personnel as GWRC reasonably requires to audit the financial information.



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**17. PAYMENT OF SUBSIDY**

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- 17.1 Subsidy Payable in Instalments:** Subject to the provisions of this clause 17, GWRC will pay the Subsidy to the Operator monthly in arrears in 12 equal instalments (each an **Instalment**).
- 17.2 Time of Invoicing and Payment:** The Operator will invoice GWRC for each Instalment within 10 Business Days of the end of the month to which the Instalment relates. Subject to clause 17.4, GWRC will pay each valid invoice on or before the 20<sup>th</sup> day of the month following the month to which the invoiced Instalment relates (or if such day is not a Business Day, the next Business Day).
- 17.3 Form of Invoice:** Each invoice submitted by the Operator to GWRC under this Agreement must:
- (a) be a valid tax invoice for GST purposes;
  - (b) be in the format specified by written notice given by GWRC to the Operator from time to time; and
  - (c) be accompanied by such other information as is reasonably requested by GWRC from time to time.
- 17.4 Disputed Invoices:** Where GWRC disputes any portion of any amount appearing as payable on an invoice issued by the Operator to GWRC under this Agreement:
- (a) GWRC will notify the Operator of such dispute at the earliest reasonable opportunity;
  - (b) the undisputed portion of the invoice will remain payable on the due date for payment; and
  - (c) GWRC will not be obliged to pay the disputed portion of that invoice until the parties' dispute has been resolved by agreement between the parties or, in the absence of such agreement, in accordance with clause 31.
- 17.5 Set Off and Tax:** GWRC may set off any refund or other amount owing to GWRC from the Operator against any amount payable by GWRC under this or any other agreement with the Operator.
- 17.6 Tax:** Other than GST, the Operator will be responsible for all taxes, levies or duties assessed on, or in relation to, the Operator's provision of the Services and the performance of its obligations under this Agreement. Subject to the Operator's compliance with paragraph 17.3(a), where GST is chargeable on a supply made by the Operator under this Agreement, GWRC will pay any applicable GST at the same time as the payments to which the GST relates are payable.

- 17.7 Adjustment for Unavailable Services:** If there are one or more Unavailable Services during a month, the Instalment for the month will be reduced as follows:

$$I_{adjusted} = I_{unadjusted} \times \left(1 - \frac{S_{unavailable}}{S_{total}}\right)$$

where:

**I<sub>adjusted</sub>** is the adjusted Instalment for the month;

**I<sub>unadjusted</sub>** is the unadjusted Instalment for the month;

**S<sub>unavailable</sub>** is the number of Unavailable Services during the month; and

**S<sub>total</sub>** is the total number of Services anticipated for the month, as determined from the Timetable.

## 18. RECORDS AND REPORTS

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- 18.1 Records:** The Operator will maintain, and will ensure that its Subcontractors maintain, accurate, up to date and complete records relating to:

- (a) the provision of the Services;
- (b) the Operator's performance against the KPIs;
- (c) the Operator's performance of its other obligations under this Agreement;
- (d) the Operator's financial performance in the provision of the Services, including Qualifying Costs and Qualifying Revenue; and
- (e) all other matters the Operator is required to report to GWRC about under Schedule 4,

and such records will be maintained securely by the Operator or its Subcontractors (as applicable) for the Term and for a period of two years following expiry or termination of this Agreement.

- 18.2 Reports:** The Operator will provide GWRC with the reports described in Schedule 4 at the frequency and times described in that Schedule.

- 18.3 Publication of Information in Reports:** GWRC may publish any information provided by the Operator in a report provided to GWRC under clause 18.2 (other than financial information relating to the Operator), either in the form provided or in an aggregated or otherwise processed form. For the avoidance of doubt, financial information relating to the Operator will be treated as the Operator's Confidential Information unless an exception in clause 30.1 applies, and clause 30 will apply to its use and disclosure accordingly.

**18.4 Additional Information:** Without prejudice to any other obligations of the Operator, the Operator will promptly provide such information as GWRC may reasonably request to enable GWRC to:

- (a) comply with any requirement to provide information in connection with the Services under a Law or to any Governmental Entity;
- (b) monitor the Operator's performance of its obligations under this Agreement; and
- (c) develop public transport policy or undertake public transport planning.

## 19. AUDIT ACTIVITIES

**19.1 Audit Activities:** The Operator must:

- (a) for the purposes of GWRC auditing:
  - (i) the Operator's compliance with this Agreement;
  - (ii) the accuracy of the Operator's invoices or any information the Operator has provided to GWRC;
  - (iii) the policies, procedures or systems the Operator uses to provide the Services; or
  - (iv) Passenger satisfaction with the Services; or
- (b) in order for GWRC to comply with any Law or request from a Governmental Entity,

allow GWRC and its Personnel to:

- (c) inspect and copy those of the Operator's accounts, records and documentation relating to the Services;
- (d) access the Operator's premises, Personnel, Vessels, buildings, facilities, equipment, systems, monitoring and recording systems (including CCTV), data and software used by the Operator in connection with the Services;
- (e) travel on the Vessels free of charge; and
- (f) carry out Passenger satisfaction surveys or interviews (provided GWRC's Personnel carry appropriate identification),

(each an **Audit Activity**) at all reasonable times required by GWRC.

**19.2 Timing:** GWRC and its Personnel may carry out an Audit Activity:

- (a) at any time without notice where such Audit Activity relates to an actual or suspected fraud, a safety issue or material breach by the Operator of this Agreement;
- (b) at any time without notice where GWRC is undertaking inspections of the Vessels in order to determine whether they comply with the requirements of this Agreement; or
- (c) otherwise, on at least 48 hours' notice to the Operator.



**19.3 Assistance and Non-interference:**

- (a) The Operator will promptly and efficiently give GWRC and its Personnel any assistance required by GWRC for the purposes of carrying out an Audit Activity.
- (b) GWRC will carry out each Audit Activity in a way that does not unreasonably disrupt Passengers, or otherwise unreasonably interfere with the Operator's provision of the Services or any other services.

Costs of Audit Activities: Audit Activities will be carried out at GWRC's cost. GWRC will not be charged any fees or costs by the Operator in connection with any Audit Activity or assistance for the Audit Activity.

**19.4 Subcontractors:** The Operator will ensure that each of its Subcontractors complies with clauses 19.1 to 0 as if it were the Operator.

**19.5 Identified Failure:** Where an Audit Activity identifies any failure by the Operator to comply with the requirements of this Agreement, the Operator will promptly, and at its cost, take any corrective action reasonably required by GWRC to remedy the failure.

**19.6 Performance Improvement:** If as a result of an Audit Activity GWRC determines that there has been a decline in the quality of the Services or any aspect of Services, including health and safety, that requires improving:

- (a) where applicable, GWRC will provide the Operator with a report on how the Operator performed in relation to the Services in the Passenger survey;
- (b) the Operator will report to GWRC its views on the likely reasons for the decline and its suggested steps for improving its performance; and
- (c) the Operator will develop with GWRC and agree actions to improve its performance, which must be at the Operator's cost, and these will then be incorporated into the Annual Business Plan.

**20. INTELLECTUAL PROPERTY**

**20.1 Ownership of Background IP:** Each party or its third party licensors owns, and will retain ownership of, that party's Background IP.

**20.2 GWRC's Background IP:** GWRC's Background IP includes all Intellectual Property rights in:

- (a) the GWRC Brands; and
- (b) the Timetable and all developments to it.

**20.3 Intellectual Property Rights in Reports:** GWRC owns all Intellectual Property rights in any reports prepared specifically for GWRC by the Operator under this Agreement or otherwise in the course of providing the Services.

**20.4 Other Intellectual Property Rights:** Subject to clauses 20.1, 20.2 and 20.3, any Intellectual Property rights created by a party in the course of providing or receiving

the Services, or performing its obligations or exercising its rights under this Agreement, will be owned by that party or its third party licensors.

**20.5 Licence of GWRC Brands:** Subject to clause 20.6, GWRC grants to the Operator a non-exclusive, non-transferable, royalty free licence for the Term to use the GWRC Brands on:

- (a) the Vessels;
- (b) Passenger tickets;
- (c) reproductions of the Timetable;
- (d) advertising and signage for the Services, including the Operator's website; and
- (e) Operator Personnel uniforms.

**20.6 Restrictions on Use of GWRC Brands:** The Operator must:

- (a) only use the GWRC Brands in accordance with the Brand Guidelines;
- (b) not use the GWRC Brands in proximity to any third party branding without GWRC's prior written approval; and
- (c) at the end of the Term:
  - (i) remove the GWRC Brands from the Vessel and any signage as soon as reasonably practicable, and in any event within 20 Business Days; and
  - (ii) immediately cease all other use of the GWRC Brands and destroy any printed material (including advertising and Passenger tickets) in its possession or control on which the GWRC Brands are used.

**20.7 General Licence:** The licence in this clause 20.7 applies to any item (a **General Item**):

- (a) in which a party (the **Licensing Party**) or its third party licensors own the Intellectual Property;
- (b) that is not subject to separate licence terms in this Agreement or any other agreement between the parties entered into before or after the Commencement Date; and
- (c) that the Licensing Party provides to the other party (the **Licensed Party**) under or in connection with the Services or this Agreement.

The Licensing Party grants to the Licensed Party a non-exclusive, non-transferable, royalty free licence for the Term to copy and use the General Item for the internal business purposes of the Licensed Party that are directly related to the Licensed Party providing or receiving the Services, performing its obligations under this Agreement, or exercising its rights under this Agreement.



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**21. WARRANTIES**

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- 21.1 Reciprocal Warranties:** Each party (**First Party**) warrants to the other party that:
- (a) it has full power and capacity to execute, deliver, and perform its obligations under, this Agreement;
  - (b) the First Party is not aware of any fact or circumstance which would, or might reasonably be expected to, prevent the First Party from performing its obligations under this Agreement, at the times and in the manner contemplated by this Agreement; and
  - (c) the obligations in this Agreement constitute valid and binding obligations on the First Party and are enforceable in accordance with their terms, in each case subject to any applicable Law.
- 21.2 Warranties Repeated:** The warranties in clause 21.1 will be deemed to be repeated continually during the Term.
- 21.3 Notice:** A party must promptly notify the other party in writing upon becoming aware that any warranty in clause 21.1 has become or is likely to become untrue in any material respect.
- 21.4 Acknowledgment:** The Operator acknowledges that GWRC has entered into this Agreement in reliance on the warranties in clause 21.1 given by the Operator.
- 21.5 No Reliance:** The Operator acknowledges that, before entering into this Agreement, it made all enquiries it wanted to make in relation to the Services and its obligations under this Agreement, and that in entering into this Agreement it did not rely on any representation, warranty, guarantee, assurance, undertaking or other statement made by or on behalf of GWRC.

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**22. LIABILITY AND INDEMNITY**

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- 22.1 Exclusions:** A party (**First Party**) will not be liable to the other party (**Second Party**) under or in connection with this Agreement (whether in contract, tort or otherwise) in respect of any:
- (a) indirect, consequential or special Loss suffered or incurred by the Second Party;
  - (b) loss of profit, revenue, opportunity or goodwill, in each case whether direct, indirect or consequential; or
  - (c) Loss suffered or incurred by the Second Party, to the extent to which this results from any act or omission by the Second Party.

This clause 22.1 does not exclude:

- (d) any liability the Operator may have for Losses suffered or incurred by GWRC as a result of re-tendering or re-awarding the Ferry Unit following termination of this Agreement; or
- (e) either party's liability under the indemnity in clause 22.5.

**22.2 Operator's Limitation of Liability:** Subject to clause 22.4, the maximum liability of the Operator to GWRC:

- (a) under the indemnity in clause 22.5 is limited, in aggregate in respect of all events, to [REDACTED] and
- (b) otherwise under or in connection with this Agreement (whether in contract, tort or otherwise) is limited, in aggregate in respect of all events, to [REDACTED]

**22.3 GWRC's Limitation of Liability:** Subject to clause 22.4, the maximum liability of GWRC to the Operator under or in connection with this Agreement (whether in contract, tort or otherwise) is limited, in aggregate in respect of all events occurring within any Contract Year, to the Subsidy in respect of that Contract Year.

**22.4 Exceptions:** The limitations of liability in clauses 22.2 and 22.3 will not apply to:

- (a) any Losses arising as a result of a breach by either party of clause 30 or the other party's Intellectual Property (including, in the Operator's case, a breach of the licence in clause 20.5);
- (b) GWRC's obligation to pay the Subsidy in accordance with this Agreement;
- (c) any fraudulent, intentionally tortious or unlawful acts or omissions of, or wilful misconduct by, a party; or
- (d) any injury to or death of any person or damage to any of GWRC's property caused by the negligence or wilful default of the Operator.

**22.5 Mutual Indemnity:** A party (**First Party**) will indemnify the other party (**Second Party**) against any Loss suffered or incurred by the Second Party which may result from:

- (a) any claim by a third party in relation to the Services to the extent caused by the First Party's failure to comply with this Agreement; or
- (b) any claim by a third party that the Second Party's proper use of any item the First Party provided to the Second Party under or in connection with the Services or this Agreement infringes the third party's or another person's Intellectual Property.

If there is a claim covered by this indemnity:

- (c) the Second Party will immediately notify the First Party of the claim and that it seeks recovery from the other party under this indemnity;
- (d) the Second Party will not make any payment or admission of any liability in relation to the claim, or take any other steps which may in any way prejudice the defence of the claim, without the prior written approval of the First Party;
- (e) the First Party may, in the name of the Second Party, but in consultation with the Second Party, defend any proceedings relating to the claim. The First Party will be entitled to deal with and defend the claim as it considers appropriate; and
- (f) the Second Party will provide the First Party with reasonable assistance to defend any proceedings relating to the claim.



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**23. INSURANCE**

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**23.1 Public Liability Insurance:** The Operator will obtain and maintain, at its own cost:

- (a) public liability insurance for the Services, providing cover of not less than ██████████ for any one claim or series of claims arising out of the same occurrence with no limit on the total payable in respect of all occurrences. The policy must include cover for the foreseeable public liability risks arising from the use of the Vessels to provide the Services; and
- (b) material damage insurance for the Vessels, providing cover of not less than the current market value of each Vessel for any one claim or series of claims arising out of the same occurrence with no limit on the total payable in respect of all occurrences,

(the **Insurance Policies**).

**23.2 Proof of insurance:** Where reasonably requested by GWRC, the Operator will provide to GWRC confirmation to GWRC's satisfaction, that each of the Insurance Policies remains in force.

**23.3 Co-operation:** The parties will co-operate with each other, as reasonably required, in relation to any claim made under the Insurance Policies. The Operator will not make an admission, offer, promise or payment in connection with an occurrence or claim to any third party for any loss covered by the Insurance Policies without first consulting with GWRC and with the prior written approval of the insurer. Unless otherwise agreed with GWRC, the Operator will apply any proceeds received under the Insurance Policies towards the costs incurred by it for the replacement, repair or reinstatement of assets owned by the Operator for the purpose of providing the Services.

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**24. PERFORMANCE NOTICE**

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**24.1 Issue of Performance Notice:** Without limiting any other rights or remedies of GWRC, GWRC may issue a Performance Notice to the Operator:

- (a) in respect of any breach of this Agreement by the Operator that is not a trivial breach (where a "trivial breach" is a breach that has no discernible adverse impact on GWRC);
- (b) in respect of any failure to achieve a KPI Achieve Benchmark;
- (c) if there is a notifiable event under any Safety Law arising out of the provision of the Services; or
- (d) if a Governmental Entity prosecutes the Operator for non-compliance with a Law in respect of the Services and the Operator is convicted of that offence,

(a **Performance Issue**). The Performance Notice must specify the Performance Issue.



- 24.2 Performance Rectification Process:** If GWRC issues a Performance Notice to the Operator, the Operator must, at its own cost and as soon as reasonably practicable:
- (a) investigate the cause of the Performance Issue, and provide GWRC with a written report, which describes the cause of the Performance Issue in detail and the actions proposed to be taken by the Operator in response to the Performance Issue; and
  - (b) take all reasonable actions to:
    - (i) remedy, or mitigate the effects of, the Performance Issue; and
    - (ii) prevent a recurrence of the Performance Issue,and provide GWRC with a written report of the actions taken.
- 24.3 Issue of Unresolved Performance Notice:** If a Performance Issue that is reasonably capable of remedy has not been remedied to GWRC's reasonable satisfaction within 15 Business Days after GWRC has issued the Performance Notice (or such longer period as may be specified in the Performance Notice), GWRC may issue to the Operator an Unresolved Performance Notice for the Performance Issue. The Unresolved Performance Notice must specify the Performance Issue.
- 24.4 Performance Notice Does Not Prevent Material Breach Claim:** The fact that GWRC issues, or does not issue, a Performance Notice or an Unresolved Performance Notice in relation to any breach of this Agreement does not prevent GWRC from claiming, at any time, that the breach is, or was, a material breach for the purposes of clause 25.1(a) or 25.1(b).

## 25. TERMINATION

- 25.1 Termination by GWRC:** Without limiting any other rights or remedies of GWRC, GWRC may terminate this Agreement immediately on written notice to the Operator (or by giving the Operator such longer period of written notice as GWRC sees fit) if:
- (a) the Operator has committed a material breach of this Agreement that is reasonably capable of being remedied within 15 Business Days, and the Operator has failed to comply with an earlier written notice given by GWRC:
    - (i) specifying that breach; and
    - (ii) requiring that the Operator remedy the breach within at least 15 Business Days of the notice;
  - (b) the Operator has committed a material breach of this Agreement that is not reasonably capable of being remedied within 15 Business Days;
  - (c) the Operator suffers an Insolvency Event;
  - (d) the Operator breaches clause 32.1;
  - (e) the Operator receives three or more valid Performance Notices during any period of six consecutive months;

- (f) the Operator receives, during any period of twelve consecutive months:
  - (i) at least one valid Unresolved Performance Notice; and
  - (ii) at least one other valid Unresolved Performance Notice or Performance Notice,such that the total number of valid Unresolved Performance Notices or Performance Notices received is three or more;
- (g) the Operator or any of its Subcontractors ceases to hold an Approval;
- (h) a Governmental Entity prosecutes the Operator for non-compliance with a Law in respect of the Services and the Operator is convicted of that offence;
- (i) the Operator provides materially misleading or inaccurate information to GWRC; or
- (j) the Operator has been unable, is unable, or is likely to be unable to provide a material proportion of the Services in accordance with the requirements of this Agreement for a continuous period of 90 days or more, including if caused by Force Majeure.

**25.2 Funding or Policy Constraints:** GWRC may terminate this Agreement by providing at least three months' prior written notice to the Operator if GWRC considers that:

- (a) there is insufficient funding available to GWRC requiring, in the opinion of GWRC, a general reduction in public ferry services in Wellington; or
- (b) there is a change in Law (or interpretation or application of a Law by a court or Governmental Entity) that results in GWRC being unable to satisfy its legislative objectives, functions and responsibilities through this Agreement.

**25.3 Termination for Convenience:** Either party may terminate this Agreement by providing at least 12 months' prior written notice to the other party.

**25.4 Consequences of Termination or Expiry:** On termination or expiry of this Agreement:

- (a) each party will, if and to the extent required by the other party in writing, deliver to the other party all documentation, information and property in the first party's possession or control that belongs to the other party, in accordance with the other party's reasonable directions;
- (b) the termination will be without prejudice to either party's rights and remedies in respect of any breach of this Agreement by the other party, where the breach occurred before the termination of this Agreement; and
- (c) the provisions of clauses 18, 19, 20, 22, 25.4, 26, 30, 31, 33 and 0, together with those other provisions of this Agreement which are incidental to and required in order to give effect to those clauses, will remain in full force and effect.



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**26. DISENGAGEMENT**

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- 26.1 Disengagement Plan:** GWRC may, at any time by written notice to the Operator, require the Operator to promptly prepare, and submit to GWRC for approval, a disengagement plan setting out the respective tasks and responsibilities of each party to facilitate an orderly transition of the Services (or any part of them) from the Operator to GWRC or another third party service provider (**Disengagement Plan**).
- 26.2 Update to Disengagement Plan:** At any time following expiry or termination of this Agreement, or any material change to the Services, GWRC may require the Operator to promptly prepare, and submit to GWRC for approval, an updated version of the Disengagement Plan, to take into account any material changes to the Services since the preparation of the current version of the Disengagement Plan.
- 26.3 Disengagement Assistance:** On termination or expiry of this Agreement, the Operator will, to the extent and for so long as GWRC may reasonably require in order to ensure an orderly transition of the relevant Services to GWRC or a third party service provider (**Incoming Provider**):
- (a) promptly provide such information, answer such questions and take such action as is reasonably required by GWRC to facilitate the safe and efficient transfer of responsibility for the provision of all or any part of the Services to an Incoming Provider in a manner which minimises disruption to Passengers; and
  - (b) without limiting the generality subclause (a), perform its allocated tasks and responsibilities as set out in the Disengagement Plan approved by GWRC, within the timeframes and in the manner required by the Disengagement Plan.
- 26.4 Re-tendering:** The Operator acknowledges that GWRC may on, before or after the end of the Term, invite any person (which may or may not include the Operator) to tender for the provision of all or any part of the Services (or services that are similar to the Services) after the termination or expiry of this Agreement.
- 26.5 Re-tendering Assistance:** The Operator will:
- (a) co-operate with GWRC and provide all such assistance as is reasonably required by GWRC in connection with the procurement and appointment of an Incoming Provider; and
  - (b) without limiting the generality of subclause (a), the Operator will, promptly following a request from GWRC (or otherwise within such timeframe as may be specified by GWRC acting reasonably):
    - (i) provide information to GWRC; and
    - (ii) respond to questions raised or forwarded to the Operator by GWRC,in each case to the extent reasonably required by GWRC to enable GWRC to procure and appoint an Incoming Provider.



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**27. FORCE MAJEURE**

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Neither party (**Non-Performing Party**) will be liable for any act, omission or failure by it under this Agreement to the extent that act, omission or failure results directly from a Force Majeure event, provided that the Non-Performing Party must:

- (a) as soon as reasonably practicable after becoming aware of the Force Majeure, notify the other party in writing of:
  - (i) the event or circumstance of Force Majeure;
  - (ii) the extent to which the event of Force Majeure prevents the Non-Performing Party from performing or complying with its obligations under this Agreement;
  - (iii) the expected duration of any delay arising directly out of the occurrence of the event of Force Majeure; and
  - (iv) the measures proposed to be adopted to mitigate the effects of the event of Force Majeure; and
- (b) by the exercise of Good Industry Practice, endeavour to:
  - (i) overcome, and mitigate the effects of, the Force Majeure;
  - (ii) agree arrangements with the other party to overcome, and mitigate the effects of, the Force Majeure; and
  - (iii) resume and complete the Non-Performing Party's obligations under this Agreement as soon as reasonably practicable.

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**28. ALTERNATIVE TRANSPORT**

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**28.1 Provision of Alternative Transport:** If the Operator is unable to provide a Service using a Vessel (whether due to Force Majeure, scheduled or unscheduled maintenance of the Vessel or otherwise), the Operator will immediately notify GWRC and will take all required steps to promptly provide alternative transport for Passengers in accordance with the Requirements (**Alternative Transport**). The Alternative Transport must stop at each Timetabled stop, or as close as reasonably practicable to each Timetabled stop, for the relevant Service.

**28.2 Deemed Unavailability:** GWRC may, at its discretion, deem a Service to be an Unavailable Service if the Service is not provided using a Vessel for a continuous period in excess of 10 days (or such longer period as the Maintenance Plan may specifically allow) whether or not the Service is provided using Alternative Transport. In this case the Service will be deemed to be an Unavailable Service only for the part of the continuous period that is in excess of the 10 days or longer period specifically allowed by the Maintenance Plan.

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**29. HEALTH AND SAFETY**

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- 29.1 Control of Risks:** The Operator must:
- (a) provide the Services in accordance with its MOSS;
  - (b) ensure, so far as is reasonably practicable, the health and safety of its Personnel while they are performing the Services;
  - (c) ensure, so far as is reasonably practicable, that the health and safety of Passengers and other persons is not put at risk from work carried out as part of the Services;
  - (d) notify GWRC immediately on becoming aware of any unplanned or uncontrolled incident in the course of the Services that exposes Personnel, Passengers or any other person to a serious risk to that person's health or safety, whether or not the incident is a notifiable incident under a Safety Law; and
  - (e) otherwise ensure that all activities carried out by the Operator under this Agreement are undertaken in a manner that complies with its obligations under Safety Laws.
- 29.2 Concurrent Duties:** Where both parties have a duty under a Safety Law in relation to the Services, the Operator must, so far as is reasonably practicable:
- (a) ensure the health and safety of Personnel, Passengers and other persons to the extent of its influence and control; and
  - (b) to that end, consult, co-operate with and coordinate with GWRC. This includes hazard and incident identification, communication, evaluation, response and notification.
- 29.3 Notifiable Events:** If there is a notifiable event under a Safety Law arising out of the provision of the Services, the Operator must:
- (a) give GWRC a copy of any information or notice the Operator gives to WorkSafe, Maritime New Zealand or any other Governmental Entity relating to the notifiable event, at the same time as the information or notice is given to the Governmental Entity;
  - (b) as soon as reasonably practicable, provide GWRC with a written report giving complete details of the notifiable event, including the results of the Operator's investigations of the notifiable event and any recommendations for the prevention of any similar events in the future; and
  - (c) co-operate fully with any GWRC investigation of the notifiable event.
- 29.4 Enforcement Action:** The Operator must immediately notify GWRC of any investigation, enforcement action or other proceedings against the Operator for breach of a Safety Law.
- 29.5 MOSS Audit:** The Operator must immediately notify GWRC of the results of any MOSS audit, including the Operator's risk profile as determined by Maritime New Zealand, audit schedules and outcomes, any changes to a certificate of survey, any conditions which require notifications to a recognised surveyor, and any notifications required to be made to the Director of Maritime New Zealand.



**29.6 Suspension:** If GWRC considers the Operator is not complying with its obligations under clause 29.1, GWRC may instruct the Operator to suspend the Services until the Operator has rectified the non-compliance to GWRC's satisfaction.

**29.7 Material Breach:** Any failure by the Operator to comply with its obligations under this clause 0 will be deemed to be a material breach of this Agreement by the Operator.

### 30. CONFIDENTIALITY AND PRIVACY

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**30.1 Confidential Information:** The **Confidential Information** of a party (the **Disclosing Party**) means all information:

- (a) obtained by the other party (the **Receiving Party**) as a result of negotiating, entering into or performing this Agreement; and
- (b) that relates to the business or operations of the Disclosing Party or its suppliers or customers, including (without limitation) any information:
  - (i) relating to the financial position of that person;
  - (ii) concerning that person's suppliers and customers or its agents or brokers;
  - (iii) relating to that person's internal management, structure, personnel or strategies; or
  - (iv) comprising the terms of this Partnering Contract; and
- (c) any Intellectual Property Material; and
- (d) any Personal Information collected, used, disclosed, stored, managed, transferred or handled by a Party,

except to the extent such information:

- (e) is in the public domain without fault on the part of the Receiving Party;
- (f) was or is developed independently by the Receiving Party without reference to any confidential information of the Disclosing Party; or
- (g) was or is disclosed to the Receiving Party by a third party other than in breach of confidence by the third party and in circumstances not importing an on-going obligation of confidence in respect of the information.

The terms of this Agreement are the Confidential Information of both parties, except to the extent they are in the public domain without fault on the part of a party.

**30.2 Restricted Use and Disclosure:** The Receiving Party must not disclose the Disclosing Party's Confidential Information except as permitted by this Agreement. The Receiving Party must not use the Disclosing Party's Confidential Information except:

- (a) to perform its obligations and take the intended benefit of its rights under this Agreement; and
- (b) in GWRC's case, to plan, manage or procure public transport services.

**30.3 Permitted Disclosure:** Clause 30.2 does not prohibit the Receiving Party from disclosing any of the Disclosing Party's Confidential Information:

- (a) with the express prior agreement of the Disclosing Party, including as set out in this Agreement;



- (b) on a confidential basis to its Personnel, contractors and agents with a need to know for the purposes of the Receiving Party:
  - (i) providing or receiving the Services; or
  - (ii) seeking or obtaining professional advice, including from solicitors, auditors and accountants,provided the Receiving Party informs such persons of the confidential nature of the Confidential Information;
- (c) to the extent required by Law, including in GWRC's case under the Local Government Official Information and Meetings Act 1987;
- (d) to the extent required under the rules of any registered stock exchange on which securities issued by the Receiving Party are listed or quoted;
- (e) to a bona fide potential purchaser of a significant portion of the assets or shares of any member of the Receiving Party, as reasonably required for the purposes of a due diligence exercise conducted by the purchaser, provided the purchaser has signed a confidentiality undertaking on terms reasonably acceptable to the Disclosing Party; and
- (f) in GWRC's case:
  - (i) to any Governmental Entity, provided GWRC uses reasonable endeavours to obtain an assurance from the Governmental Entity that it will treat the Confidential Information as confidential; and
  - (ii) to any Incoming Provider or its contractors and agents as reasonably required in order to ensure an orderly transition of the relevant Services to the Incoming Provider, provided the Incoming Provider has signed a confidentiality undertaking protecting the confidentiality of the Confidential Information.

**30.4 Return or Destruction of Confidential Information:** Promptly following the expiry or termination of this Agreement, the Receiving Party must return or destroy (at the Disclosing Party's election) all of the Disclosing Party's Confidential Information that is in the possession or control of the Receiving Party, its contractors or agents, and must confirm to the Disclosing Party when it has done so. This clause 30.4 also applies if the Disclosing Party requires all or any part of its Confidential Information to be returned or destroyed at any time on notice to the Receiving Party. However, nothing in this Clause 30.4 requires the Receiving Party to return or destroy Confidential Information:

- (a) to the extent stored in electronic backups made by the Receiving Party, its contractors or agents that cannot be easily purged of the Confidential Information; or
- (b) that it reasonably considers is still needed for it to:
  - (i) perform this Agreement;
  - (ii) enforce or take the benefit of any rights arising in connection with this Agreement;
  - (iii) resolve any dispute in progress or reasonably anticipated; or

- (iv) comply with Law.

- 30.5 Privacy:** The Operator must:
- (a) have a written privacy policy which complies and is consistent with the other Privacy Obligations and Good Industry Practice; and
  - (b) comply with all Privacy Obligations, including the GWRC Privacy Policy and all reasonable directions of GWRC that are consistent with the Privacy Obligations, when collecting, using, disclosing, deleting and otherwise managing Personal Information in the course of the Services.

- 30.6 Unauthorised Use or Disclosure:** If a party becomes aware of, or has reason to suspect the existence of, any incident involving the unauthorised use or disclosure of:

- (a) the other party's Confidential Information; or
- (b) Personal Information collected in the course of the Services,

the first party must immediately notify the other party of the details of the incident, including the Confidential Information or Personal Information involved and the extent of the unauthorised use or disclosure.

## 31. DISPUTES

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- 31.1 Good Faith Discussions:** If a dispute arises between the parties about this Agreement or the Services, the parties must attempt to resolve the dispute by good faith discussions. If those discussions do not resolve the dispute then either party may give notice to the other party requiring the dispute to be dealt with in accordance with Clauses 31.2 and 31.3 (**Dispute Notice**).
- 31.2 Further Discussions:** Promptly following the issue of a Dispute Notice, the Chief Executives (or their nominees) of the parties must meet to endeavour to resolve the dispute by further good faith discussions.
- 31.3 Mediation:** If the dispute has not been resolved within 10 Business Days of the Dispute Notice (or any longer period agreed by the parties), either party may give notice to the other party referring the dispute to mediation, in which case the mediation is to be conducted in Wellington and mediated in accordance with the then-current standard mediation rules of the Resolution Institute (formerly known as LEADR/IAMA). If the parties are unable to agree upon a mediator or his or her fee, these are to be determined by the Chair of the Resolution Institute (or his or her nominee). The parties must bear the mediator's fee in equal shares.
- 31.4 No Proceedings:** Neither party will commence any court proceedings in respect of a dispute about this Agreement or the Services unless and until the process in Clauses 31.1 to 31.3 has been followed and completed, other than to seek urgent interim relief.
- 31.5 No Suspension During Dispute:** Pending resolution of any dispute, the parties must continue to perform their obligations under the Agreement despite the dispute.



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**32. ASSIGNMENT AND SUBCONTRACTING**

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- 32.1 Assignment:** The Operator must not, without GWRC's prior written approval, which must not be unreasonably withheld, assign, pledge or transfer any of its rights or obligations under this Agreement. A charge or assignment in favour of the Operator's bankers of any monies due under this Agreement or the subrogation of insurers to the Operator's rights will not be considered an assignment. A change of control of the Operator is deemed to be an assignment of all of the Operator's rights and obligations under this Agreement. GWRC may impose such conditions on its approval as it sees fit, which may include a requirement that the Operator provides training or carries out other handover activities to ensure the continuous provision of the Services in accordance with this Agreement.
- 32.2 Subcontracting:** The Operator must not subcontract any of its obligations under this Agreement without GWRC's prior written approval. The Operator does not require such consent for:
- (a) purchases of fungible materials or parts; or
  - (b) engaging individuals to work as contract staff under the direct supervision of the Operator.
- 32.3 Responsibility:** The Operator is responsible for the acts and omissions of its Personnel, contractors and agents as fully as if they were the acts and omissions of the Operator.

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**33. NOTICES**

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Any written notice required under this Agreement must be signed by a duly authorised senior representative of the party giving that notice and will be deemed validly given if:

- (a) delivered by hand to the intended recipient's address as set out in Schedule 1, in which case the notice will be deemed to have been given upon delivery at the relevant address, or the next Business Day if the delivery is not on a Business Day or is after 5.00pm on a Business Day;
- (b) sent by fast pre-paid post to the intended recipient's address as set out in Schedule 1, in which case the notice will be deemed to have been given two Business Days after the date of posting; or
- (c) sent by email to the intended recipient's email address as set out in Schedule 1, in which case the notice will be deemed to have been given one Business Day after sending, unless within that time:
  - (i) the sender receives an automated notification that the message has not been delivered; or
  - (ii) the recipient acknowledges earlier receipt, which may be by way of automated notification.

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**34. GENERAL**

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- 34.1 Entire Arrangement:** This Agreement records the entire arrangement between the parties relating to the matters dealt with in this Agreement and supersedes all previous arrangements, understandings or representations whether written, oral or both, relating to these matters.
- 34.2 No Property Interest:** The Operator acknowledges and agrees that this Agreement does not confer on the Operator:
- (a) any property or proprietary interest or right in relation to the Ferry Unit or public transport service comprised in the Ferry Unit;
  - (b) any property or proprietary interest or right in any public transport or other service design, plan or strategy of GWRC; or
  - (c) any right to operate any public transport service, except as expressly provided for in this Agreement.
- 34.3 No Waiver:** Any waiver by either party of any of its rights or remedies under this Agreement will be effective only if it is recorded in writing, and signed by a duly authorised representative of that party. If the waiver relates to a breach of any provision of this Agreement this will not (unless stated otherwise) operate as a waiver of any other breach of that provision.
- 34.4 Governing Law and Jurisdiction:** This Agreement is governed by New Zealand law. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.
- 34.5 Severability:** If any provision contained in this Agreement is held to be illegal, invalid or unenforceable, it will be severable, will be deemed to be deleted from the body of this Agreement and will not affect the validity or enforceability of any other provisions in this Agreement.
- 34.6 Relationship of the Parties:** Notwithstanding the use of the word "partnering" or "partnership", nothing expressed or implied in this Agreement will constitute either party as the partner of the other party. Nothing expressed or implied in this Agreement will constitute either party as the agent, employee or officer of, or as a joint venturer with, the other party. Neither party will make any contrary representation to any other person. The relationship of the Operator to GWRC is that of an independent contractor.
- 34.7 Counterparts:** This Agreement may be executed in one or more counterpart, copies which, read together, will constitute one and the same instrument.
- 34.8 Copies:** Any copy of this Agreement that is received by facsimile or via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this Agreement) may be relied on by any party as though it were an original copy. This Agreement may be entered into on the basis of an exchange of such facsimile, PDF or other document reproduction format copies.
- 34.9 Costs:** Subject to any express contrary provision in this Agreement, each party will meet its own costs in connection with the negotiation, preparation, execution and implementation of this Agreement.

- 34.10 Remedies Cumulative:** The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law.
- 34.11 Further Assurances:** Each party will do all things and execute all documents reasonably required in order to give effect to the provisions and intent of this Agreement.

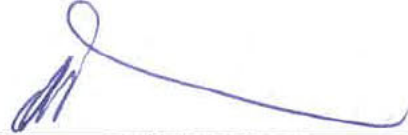


**SIGNATURES**

Signed by **WELLINGTON REGIONAL COUNCIL** by its authorised signatory

and

in the presence of:



Signature of Nigel Corry  
(Chief Executive)



Signature of Witness

Rebecca Adams

Executive Assistant

Occupation of Witness

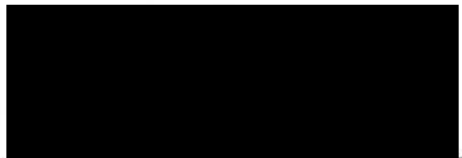
29 Palmer Cres, Upper Hutt

Address of Witness

Signed by **EAST BY WEST COMPANY LIMITED** by its authorised signatory

and

in the presence of:



Signature of [Redacted]  
(Managing Director)



Signature of Witness



Occupation of Witness



Address of Witness

# SCHEDULE 1

## AGREEMENT DETAILS

### 1. AUTHORISED REPRESENTATIVES AND ADDRESSES FOR NOTICES

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1.1 GWRC Authorised Representative: Greg Campbell

1.2 **EBW Authorised Representative:** [REDACTED]

1.3 **Addresses:** The addresses to which notices are to be delivered or sent are as follows:

(a) **Notices to GWRC:**

Contact Name: Nigel Corry

Email Address: Nigel.Corry@gw.govt.nz

Postal Address: PO Box 11646, Manners St, Wellington 6142

Physical Address: 100 Cuba Street, Te Aro, Wellington 6011

(b) **Notices to the Operator:**

Contact Name: [REDACTED]

Email Address: [REDACTED]

Postal Address: [REDACTED]

Physical Address: [REDACTED]

### 2. KEY PERSONS OF THE OPERATOR

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[REDACTED]

### 3. APPROVED SUBCONTRACTORS' DETAILS

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Subcontractor name	Subcontractor contact details (address and contact details)	Services to be provided by Subcontractor
No approved subcontractors as at the Commencement Date		

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#### 4. CONDITIONS PRECEDENT

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This amendment and restatement of the Agreement is conditional on, to the extent not previously provided as indicated below:

- (a) the Operator providing GWRC with:
  - (i) a copy of each insurance policy required under clause 23 or a written certification from the Operator's insurers identifying, for each policy, the risks and exclusions and insured amounts and deductibles of each of the insurance policies and confirming the terms of each of the Operator's insurance policies comply with the insurance requirements under clause 23 – previously provided in relation to existing Vessels. The Operator to provide confirmation from its insurers that policy cover operations of the Vessel Ika Rere (Maritime NZ registration number: 141039);
  - (ii) a copy of the Operator's MTOC – previously provided in relation to existing Vessels. The Operator to provide a copy of its MTOC covering operations of the Vessel Ika Rere (Maritime NZ registration number: 141039);
  - (iii) in relation to each Vessel, a copy of:
    - (A) the certificate of survey for the Vessel – previously provided in relation to existing Vessels. The Operator to provide the certificate of survey for the Vessel Ika Rere (Maritime NZ registration number: 141039) ; and
    - (B) the current health and licensing certification allowing the Operator to serve food and alcohol on the Vessel – previously provided in relation to existing Vessels. The Operator to provide a copy or written description of any additional wharf access agreements the Operator is party to in respect of the Vessel Ika Rere (Maritime NZ registration number: 141039) along with copies of the necessary certifications for operation of the charging infrastructure on the wharf to be used by Ika Rere;
  - (iv) a copy or written description of any wharf access agreements the Operator is party to in respect of the Services – previously provided in relation to existing Vessels. The Operator to provide a copy or written description of any additional wharf access agreements the Operator is party to in respect of the Vessel Ika Rere (Maritime NZ registration number: 141039);
  - (v) a copy of the Operator's privacy policy referred to in clause 30.5(a) – previously provided;
  - (vi) a copy of the latest Maintenance Plan – previously provided in relation to existing Vessels. The Operator to provide a copy of the latest Maintenance Plan that includes the Vessel Ika Rere (Maritime NZ registration number: 141039); and
  - (vii) a deed of accession to the Regional Agreement, in the form set out in Annexure 1 of the Regional Agreement, duly executed by the Operator – previously provided; and



- 
- (b) GWRC obtaining NZTA's approval for this Agreement – previously provided in relation to existing Vessels.

Until such time as any unfulfilled conditions are met, the Agreement as it was prior to this amendment and restatement of the Agreement, shall continue in force.

**SCHEDULE 2**  
**REQUIREMENTS**

**1. OPERATIONAL REQUIREMENTS**

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**1.1 Timetable**

See Appendix 1 to this Schedule.

**1.2 Fares**

The Fares must comply with the Metlink Fares Policy.

The Operator may offer discounted Fares at its discretion. If the Operator decides to offer a (non-SuperGold Concession) discounted Fare:

- (a) the Operator will give GWRC at least 10 Business Days' notice, or as much notice as reasonably practicable, unless:
  - (i) the discount is a patronage growth initiative in the Annual Business Plan; or
  - (ii) the discount relates to a school or disabled Passenger group or a Wellesley School term pass; and
- (b) the Operator must absorb the cost of the discount for the next Subsidy reset under clause 16.

**1.3 Service Cancellation and Alternative Transport**

Weather-related Service cancellation is at the discretion of the skipper of the Vessel taking into account tide, sea state and wharf berthing conditions. Seatoun Services may be cancelled first due to the exposed nature of Seatoun Wharf and the exposure to northwest winds and accompanying sea state at the wharf.

Indicatively, City Cat Services are typically cancelled in constant wind conditions of 25 to 30 knots and Cobar Cat Services are typically cancelled in constant wind conditions of 40 knots or more.

There are two stages of Service cancellation. These stages apply to all Service cancellations, whether caused by weather, Vessel maintenance, Vessel breakdown or otherwise:

*Stage 1 - RESTRICTED SAILINGS*

If City Cat Services are cancelled, a "restricted sailing schedule" applies using only the Cobar Cat. The peak Services are then:

<b>From Days Bay</b>	<b>From Queens Wharf</b>
6.50am	4.30pm
7.45am	5.30pm
8.45am	6.30pm

In this case, there is no Alternative Transport provided or required.

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## Stage 2 - ALL SAILINGS CANCELLED

If both City Cat and Cobar Cat Services are cancelled then, unless otherwise specifically stated in the Maintenance Plan, at least the following Alternative Transport is procured to replace the peak Services (or more if Passenger demand dictates):

From Days Bay	From Queens Wharf
6.50am (1 van)	8.20am (Wellesley shuttle: 2 vans)*
7.45am (3 vans)	4.30pm (3 vans)
8.45am (2 vans)	5.30pm (4 vans)
3.15pm (Wellesley shuttle: 2 vans)*	6.30pm (2 vans)

\* During school terms only

In this case there is no Alternative Transport provided or required for off peak Services, including weekend and public holiday services.

The Operator must offer a real-time text messaging service through which Passengers can be notified of Service cancellations and any Alternative Transport arrangements. The Operator must use the service to promptly notify Passengers of all Service cancellations and Alternative Transport arrangements.

## 2. BRANDING REQUIREMENTS

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The objective of GWRC branding is to create an integrated look and feel to the Wellington Public Transport Network. Accordingly, if required by GWRC, the Operator must include the GWRC Brands on the items listed in clause 20.5 (other than Operator Personnel uniforms) in a way that complies with the Brand Guidelines.

## 3. VESSEL REQUIREMENTS

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### 3.1 Vessels

City Cat  
Maritime NZ registration number: 105984  
Capacity: 91

Cobar Cat  
Maritime NZ registration number: 131989  
Capacity: 99

Ika Rere  
Maritime NZ registration number: 141039  
Capacity: 135

### 3.2 Accessibility



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The Vessels must incorporate wheelchair/mobility vehicle access where feasible. This may be by way of gangway design or the provision of additional crew to assist embarking/disembarking mobility-impaired Passengers.

Because of weight considerations, only top deck embarkation/disembarkation being possible due to wharf configurations, and steep internal staircases with no elevator lift facilities, GWRC recognises that for safety reasons some models of mobility vehicle cannot be accommodated on board the current Vessels.

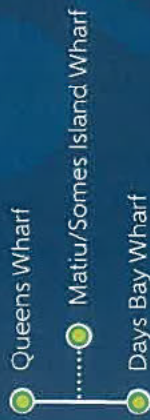
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**SCHEDULE 2, APPENDIX 1**  
**TIMETABLE**



Effective from 25 July 2021

# Wellington Harbour Ferry



## Thanks for travelling with Metlink.

Connect with Metlink for timetables and information about bus, train and ferry services in the Wellington region.

[metlink.org.nz](http://metlink.org.nz)  
**0800 801 700**  
[info@metlink.org.nz](mailto:info@metlink.org.nz)



Printed with minerals from 100% based vegetable inks on paper produced using Forestry Stewardship Council (FSC) certified, mixed source pulp that complies with environmentally responsible practices and principles. Please recycle and reuse if possible. Before having a printed timetable, check our timetables online or use the Metlink commuter app.



GW/11A-C-21/22 July 2021



## TO DAYS BAY WHARF MONDAY TO FRIDAY

Stops	6:15	6:45	7:15	7:45	8:15	8:45	9:10	9:40	10:00	10:45	12:00	2:05	3:50	4:30	5:00	5:30	6:00	6:30	7:00	
9997 Queens Wharf																				
9998 Maitu/Somes Island									10:25	12:25	2:30									
9999 Days Bay Wharf									10:40	12:40	2:45									
									M	M	M									

## TO QUEENS WHARF MONDAY TO FRIDAY

Stops	6:45	7:15	7:45	8:15	8:45	9:15	9:45	10:00	10:45	12:45	3:15	4:15	4:55	5:25	5:55	6:25	6:55	7:25	
9999 Days Bay Wharf																			
9998 Maitu/Somes Island									11:00	1:00	3:30								
9997 Queens Wharf									11:25	1:25	3:55	4:40	5:20	5:55	6:25	6:55	7:20	7:50	
									M	M	M								

## WEEKENDS & PUBLIC HOLIDAYS

Stops	10:00	12:00	2:10	3:45	5:05
9997 Queens Wharf					
9998 Maitu/Somes Island					
9999 Days Bay Wharf					
9998 Maitu/Somes Island					
9997 Queens Wharf					
	M	M	M	M	M

## ROUTE INFORMATION

M Sailing calls at Maitu/Somes Island on request

## FARES

### ONE WAY TICKET

Queens Wharf - Days Bay

Adult	Child
\$12.00	\$6.00

### RETURN TICKET

Queens Wharf - Days Bay

Queens Wharf - Maitu/Somes Island

Adult	Child
\$24.00	\$12.00
\$25.00	\$13.00

### 10-TRIP TICKET

Queens Wharf - Days Bay

Adult	Child
\$90.00	\$45.00

### 10-TRIP CONCESSION

Queens Wharf - Days Bay

Accessible Concession	Tertiary Concession
\$45.00	\$68.00

### MONTHLY PASS

Queens Wharf - Days Bay

Adult	Child
\$270.00	\$135.00

### ROUND TRIP TICKET

Queens Wharf - Maitu/Somes Island - Days Bay

Adult	Child
\$36.00	\$19.00

### FAMILY RETURN TICKET

Queens Wharf - Days Bay

Family
\$66.00
\$68.00

### How to pay your fare?

If you are travelling from Queens Wharf you can purchase tickets from the Queens Wharf office or on board.

If you are travelling from Days Bay all tickets can be purchased on board. You can pay by cash or using EFTPOS.

## FARE INFORMATION

### Child fares:

- are half the adult fares for the equivalent journeys on ferry sailings
- apply to all school children
- secondary school students must be in school uniform or present valid school photo ID, if requested
- passengers entitled to the Accessible Concession can also make one-way or return ferry trips via child cash tickets

### Children under 5 years:

accompanied children under 5 years travel for free

### SuperGold card holders:

can travel for free between 9:00am and 3:00pm and after 6:30pm Mon-Fri and all day weekends and public holidays

### Accessible Concession:

- provides discounted travel via 10 trip tickets
- applies to members of the Blind Foundation and Total Mobility Scheme
- allows eligible passengers to have a Carer to accompany them for the duration of their Journey at no cost

- requires valid Blind Foundation ID card or Total

Mobility card to be presented, if requested

### Tertiary Concession:

- provides discounted travel via 10 trip tickets
- applies to eligible full-time tertiary students
- requires a valid tertiary student ID card with a valid sticker to be presented, if requested

### Family:

includes 2 adults and up to 4 children

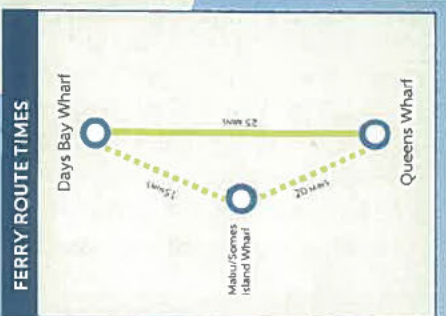
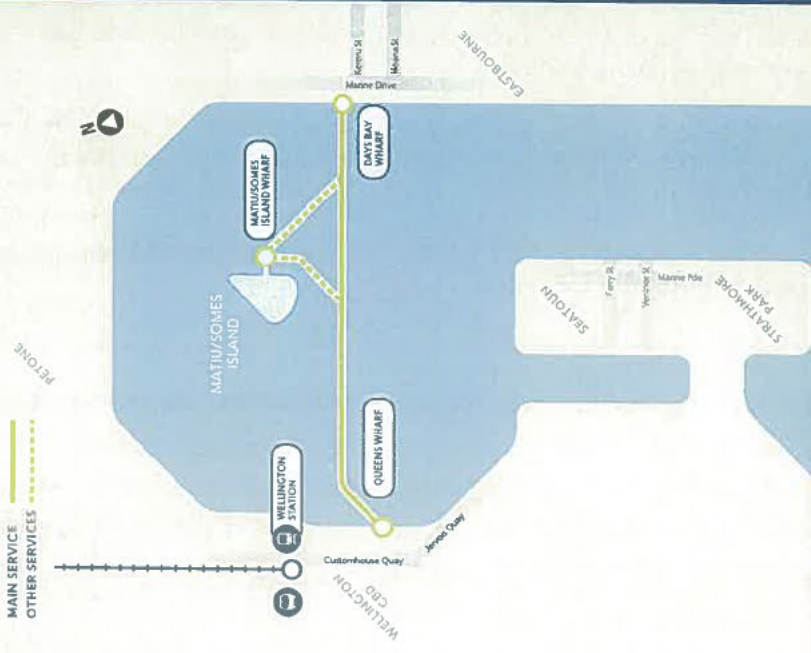
### 10-trip tickets:

cannot be used by more than 2 people at a time

### One-Way, 10-Trip, Concession and Monthly Tickets:

are not available for Maitu/Somes Island

## WELLINGTON HARBOUR FERRY MAP



# Planning your journey

[metlink.org.nz](http://metlink.org.nz)

Plan your journey on our online journey planner.



## METLINK APP



Scan the QR code or download from an app store.

## METLINK CONTACT CENTRE

0800 801 700

Monday – Friday: 6am – 10pm

Saturday: 7am – 9pm

Sunday and public holidays: 8am – 8pm





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## SCHEDULE 3

### KPIS

#### 1. STRUCTURE OF KPIS

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##### 1.1 KPI Specification: Each KPI is specified as follows:

- (a) **Purpose:** This provides a general overview of the KPI and is for information purposes only;
- (b) **Calculation methodology:** The Operator must apply the performance data collected in the relevant period to this calculation in order to produce a result which is compared against the benchmark for the KPI. All figures are to one decimal point;
- (c) **Data source:** This is a non-exhaustive list of the sources of performance data for use in the calculation methodology for the KPI;
- (d) **Reporting frequency:** This specifies how often the Operator must report its performance against the benchmark for the KPI; and
- (e) **KPI Achieve Benchmark:** This is the level of performance required for the Operator to achieve the KPI for the reporting period.

##### 1.2 Definitions: In the KPIs:

**Punctual** means, for a Service, that the Service departs from its origin:

- (a) no earlier than 4 minutes, 59 seconds before it is scheduled to depart according to the Timetable; and
- (b) no later than 9 minutes, 59 seconds after it is scheduled to depart according to the Timetable.

**Reliable** means, for a Service, that:

- (a) the Service:
  - (i) is the subject of a reasonable weather-related cancellation at the Vessel's skipper's discretion; and
  - (ii) the Operator provides Alternative Transport for the Service in accordance with the Requirements (to the extent the Operator is required to); or
- (b) the Service is not the subject of any unplanned cancellation, whether or not Alternative Transport is provided.



## 2. KPIS

<b>KPI #1</b>	<b>Reliability</b>
Purpose	To demonstrate the reliability of the Services
Calculation methodology	$X = A/B \times 100$ A = the total number of Services in the previous month that were Reliable B = the total number of scheduled Services in the previous month
Data source	Operator's records, maritime tracking data and/or any other on or off-board system nominated from time to time by GWRC, Timetable
Reporting frequency	Monthly
KPI Achieve Benchmark	$X \geq 95\%$

<b>KPI #2</b>	<b>Punctuality</b>
Purpose	To demonstrate the punctuality of the Services
Calculation methodology	$Y = A/B \times 100$ A = the total number of Services in the previous month that were Punctual, excluding Services provided using Alternative Transport B = the total number of scheduled Services in the previous month, excluding cancelled Services and Services provided using Alternative Transport
Data source	Operator's records, maritime tracking data and/or any other on or off-board system nominated from time to time by GWRC, Timetable
Reporting frequency	Monthly
KPI Achieve Benchmark	$Y \geq 95\%$

<b>KPI #3</b>	<b>Fuel efficiency</b>
Purpose	To demonstrate the Operator's performance in respect of fuel consumption and to allow for the calculation of emissions
Calculation methodology	<p>For diesel ferries:  <math>F = A/12</math></p> <p>A = Sum of litres of fuel (diesel) per Passenger per Subsidised Route for the previous month and the 11 months before that (taking into account months before the Commencement Date if necessary)</p> <p>For electric ferries:  <math>E = B/12</math></p> <p>B = Sum of kWh of electricity per Passenger per Subsidised route for the previous month and the 11 months before that (taking into account months before the electric ferry commences commercial operation if necessary)</p>
Data source	Operator's records Evidence of use of Certified Renewable Energy for the electric ferry
Reporting frequency	Monthly
KPI Achieve Benchmark	<p>For diesel ferries:  <math>F \leq 1.25</math> litre per Passenger per Subsidised Route</p> <p>For electric ferries:  Emissions: Use of Certified Renewable Energy resulting in 0g/km CO<sub>2</sub>-e emissions after 12 months of data for commercial operation is gained.</p>

<b>KPI #4</b>	<b>Passenger satisfaction</b>
Purpose	To measure Passenger satisfaction with the Operator and the Services and trends in Passenger satisfaction
Calculation methodology	<p><math>Z = A - B</math></p> <p>A = Overall Passenger satisfaction from the latest Passenger satisfaction survey carried out by GWRC (expressed as a percentage)</p> <p>B = Overall Passenger satisfaction from the previous Passenger satisfaction survey carried out by GWRC (expressed as a percentage)</p> <p>This KPI will not apply until GWRC has carried out at least two Passenger satisfaction surveys and the results reported</p>
Data source	Passenger satisfaction surveys carried out by GWRC

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Reporting frequency	Monthly, provided that no report is required if the result of a Passenger satisfaction survey carried out by GWRC has not been published during the previous month
KPI Achieve Benchmark	$A \geq 95\%$ or $Z > 0$



KPI #5	Lost Time Injuries
Purpose	To measure the Operator's health and safety performance.  <b>Lost Time Injury</b> means an injury incurred by Operator Personnel in the workplace that results in the injured person being absent from work for one or more shifts.
Measurement /calculation methodology	$W = A/12$  A = Sum of the number of Lost Time Injuries during the previous month and the 11 months before that (taking into account months before the Commencement Date if necessary)
Data source	Operator's records, GWRC health and safety audits
Reporting frequency	Monthly
KPI Achieve Benchmark	$W \leq 3/12$

### 3. NEW KPIS

GWRC may propose new or amended KPIs at any time. The Operator must not unreasonably withhold its agreement to any new or amended KPI proposed by GWRC, provided that the purpose of the new or amended KPI is directly related to the quality of the Operator's performance of its obligations under this Agreement.

## SCHEDULE 4

### REPORTING

#### 1. IMMEDIATE REPORTS

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In addition to its reporting obligations elsewhere in this Agreement, the Operator must immediately report to GWRC:

- (a) any significant unplanned disruption to the Services or Alternative Transport; and
- (b) any major Vessel failure, whether it causes a disruption to the Services or not.

The Operator will provide each such report to GWRC at the earliest opportunity and in any event:

- (c) within one hour of the relevant event occurring if the event is, has caused, or will cause a significant disruption to the Services or Alternative Transport; or
- (d) otherwise, within 2 hours of the relevant event occurring.

#### 2. MONTHLY PERFORMANCE REPORT

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2.1 The Operator must provide a monthly performance report to GWRC, in such format as GWRC may reasonably require from time to time, by the 15<sup>th</sup> day of the following month following the month to which the report relates. Each monthly performance report must contain the following information for the month to which the report relates:

- (a) total Fare revenue;
- (b) total number of Services provided by the Operator;
- (c) total kilometres travelled by the Vessels for the Services;
- (d) energy consumption per Vessel by quantity and fuel type for the Services, and a description of any Operator initiatives to reduce such energy consumption;
- (e) total number of passengers by type (e.g. adult, child, student, SuperGold); for the Services provided by the Operator;
- (f) summary of any notifiable events, investigations, enforcement action or other proceedings against the Operator under Safety Laws;
- (g) copies of any information referred to in clauses 29.3 to 29.4 provided to GWRC during the month;
- (h) summary of Passenger and other public feedback received directly by the Operator, including the amount of feedback, a description of the type of feedback, the method of receipt of the feedback, and the current status of any feedback requiring a response by the Operator;

- 
- (i) update on any Operator initiatives in the Annual Business Plan;
  - (j) update on any actions required under, or in order to comply or restore compliance with, the Operator's MTOP (including the Operator's MOSS);
  - (k) the Operator's performance against the KPIs;
  - (l) any expected upcoming disruption to the Services, including for planned maintenance of the Vessels; and
  - (m) any other information relating to the Services GWRC may reasonably request before the due date for the report.

### **3. FORM OF REPORTS**

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Each report referred to in this Schedule must:

- (a) be provided to GWRC in writing by such means as GWRC may reasonably require from time to time; and
- (b) be in such format as GWRC may reasonably require from time to time.



## SCHEDULE 5

### VARIATION PROCEDURE

#### 1. VARIATION PROCEDURE

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- 1.1 Variations may be proposed in accordance with paragraphs 2 and 3 of this Schedule 5.
- 1.2 The Operator acknowledges and agrees that:
- (a) GWRC will not be obliged to proceed with any Variation; and
  - (b) approval of all Variations is subject to funding available to GWRC in relation to the provision of metropolitan public transport services in Wellington.

#### 2. ROUTE, TIMETABLE OR FARE VARIATIONS

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- 2.1 From time to time, GWRC may require that a Subsidised Route, the Timetable or the Fares are varied (**Operational Change**) by providing written notice to the Operator describing:
- (a) the details of the Operational Change; and
  - (b) the date by which the Operational Change must be implemented by the Operator, such date to be at least 10 weeks from the date on which the notice is provided to the Operator,
- (**Operational Change Notice**).
- 2.2 GWRC will take a network-wide view in proposing Operational Changes, and Operational Changes may be required for the purpose of integration between the Ferry Unit and other PTOM Units.
- 2.3 The Operator will be required to implement each Operational Change with effect from the implementation date specified in the Operational Change Notice. Within 10 Business Days of the Operational Change Notice, the Operator will confirm whether:
- (a) it will implement the Operational Change without a change to the Subsidy; or
  - (b) it considers that the Operational Change requires a change to the Subsidy, in which case the Operator will provide the Operator's proposed change to the Subsidy and supporting information, in accordance with paragraph 4 of this Schedule 5.
- 2.4 The Operator may request a change to a Subsidised Route or the Timetable in accordance with paragraph 3 of this Schedule 5.
- 2.5 The parties will comply with the PT Network Document titled *Timetable Change Process* for any change to the Timetable. However, if there is a conflict between this Agreement and that PT Network Document, this Agreement will prevail.

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### 3. GENERAL VARIATIONS

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- 3.1** If either party wants to initiate a Variation, that party will describe the details of the Variation in reasonable detail in a written request to the other party (**Variation Request**).
- 3.2** The Operator will, at its cost, prepare an impact report (**Impact Report**) detailing an explanation of the Variation, including how the Variation is to be implemented and, to the extent relevant, detailing:
- (a) the feasibility of the Variation;
  - (b) the effect of the Variation on the Services and the ability of the Operator to meet its obligations under this Agreement, including with respect to performance against KPIs;
  - (c) any proposed change to the Subsidy, in accordance with paragraph 4 of this Schedule 5;
  - (d) any consequential material impacts of the Variation; and
  - (e) such other information which is likely to be material to GWRC.
- 3.3** The Operator will provide GWRC with the Impact Report as follows:
- (a) where it is the Operator that proposes the Variation Request, the Operator will provide the Impact Report to GWRC at the same time as the Operator provides the Variation Request; and
  - (b) where it is GWRC that proposes the Variation Request, the Operator will provide the Impact Report to GWRC within 10 Business Days of GWRC providing the Variation Request to the Operator.
- 3.4** GWRC will, within a reasonable period of time from receipt of the relevant Impact Report, notify the Operator of GWRC's decision in respect of a Variation Request including whether it:
- (a) accepts the proposed Variation, in which case GWRC will notify the Operator of the date on which the Variation takes effect;
  - (b) rejects the proposed Variation;
  - (c) proposes to amend the proposed Variation, in which case GWRC and the Operator will, without delay, negotiate in good faith to agree any such amendment; or
  - (d) requires additional information, in which case the Operator will provide (as soon as possible) any additional information reasonably required by GWRC. GWRC may then give further notice under this paragraph 3.4.
- 3.5** Where GWRC has given notice under paragraph 3.4(c) and the Operator and GWRC are unable to agree on the final form and content of the proposed Variation within 10 Business Days of issue of the notice, then, where the Variation was proposed by the Operator, the Operator may give notice that the Variation Request has been withdrawn, in which case the Variation Request will be of no effect.

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3.6 If GWRC accepts a proposed Variation, then GWRC and the Operator will sign and date a document recording the Variation (with any agreed amendments) (**Variation Order**). Each signed Variation Order will be contractually binding on the parties in accordance with its terms and will take effect as an amendment to this Agreement.

3.7 A party must not:

- (a) unreasonably refuse to agree to a Variation proposed by the other party;
- (b) demand unreasonable adjustment to the Subsidy for the Variation; or
- (c) impose and other unreasonable conditions on its agreement to the Variation.

3.8 All Variation Requests, Impact Reports and Variation Orders must, to the extent reasonably practicable, conform to the Variation Forms. In using the Variation Forms, the parties must apply reasonable discretion to determining whether a Variation is or is not minor.

#### 4. **SUBSIDY CHANGE**

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If there is a cost impact of a proposed Variation, then the parties will use genuine efforts to agree a reasonable adjustment to the Subsidy for the rest of the current Reset Period. The adjustment to the Subsidy must be based on the additional Qualifying Costs incurred or existing Qualifying Costs avoided by the proposed Variation. Clause 16.4 will apply to the adjustment as if it were a Subsidy reset.



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**SCHEDULE 6**  
**REGIONAL AGREEMENT**

As set out in the Agreement as it was prior to this amendment and restatement of the Agreement.