



Heads of Agreement for Toll Involvement in the Procurement of New EMU Trains

Wellington Regional Council

[Toll NZ Consolidated Limited]

31 August 2006



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Parties

Wellington Regional Council a body corporate constituted under the Local Government Act 2002 (**Greater Wellington**)

Toll NZ Consolidated Limited a company having its registered office at Auckland (**Toll**)

Background

- A Greater Wellington is embarking on a procurement process to purchase new electrical multiple unit (**EMU**) trains expected to number about 58 passenger vehicles for operation on the Wellington rail system. In order to be eligible for funding from the National Land Transport Account, Greater Wellington's proposed procurement process must be approved by Land Transport New Zealand.
- B Toll is the current operator of the passenger rail services in Wellington, and owns and maintains the existing fleet. Toll also has a rail engineering professional services group which is well placed to provide services required by Greater Wellington in relation to the project.
- C It is intended that the new EMU trains will be supplied by a third party (**Supplier**), and owned by Greater Wellington or an entity controlled by it. Land Transport New Zealand has requested that in order for a fully competitive tender process to take place Toll does not take part in the procurement as a supplier of the new EMU trains.
- D To enhance the procurement process and obtain best value for money Greater Wellington wishes to involve Toll in the procurement of the new EMU trains through providing consultancy services contributing its technical knowledge and experience, and as Principal Engineer under the Supply Contract; and to give Toll the opportunity to undertake maintenance of the new EMU trains.
- E The purpose of this agreement is to record Toll's agreement that it will not seek to participate in the procurement as a Supplier, and to outline the scope of, and Greater Wellington's broad requirements of Toll for, consultancy and other services in relation to the procurement of the new EMU trains.

Operative provisions

1. Status of agreement

- 1.1 This agreement is subject to the written approval of both Land Transport NZ and the Greater Wellington Regional Council. If either the approvals are not confirmed by [29 September 2006] then notwithstanding any provision to the contrary, this agreement shall be at an end. The parties agree to be legally bound by the terms of this agreement on receipt of written notice confirming the required approvals.
- 1.2 The parties acknowledge that Greater Wellington may choose to own the new EMU trains through a separate entity controlled by it, and if it does so:
 - (a) Greater Wellington is entitled to novate this agreement to that entity; and



- (b) the terms of any contract affecting the new EMU trains must be consistent with this agreement and will require the approval of that entity.

2. Term

- 2.1 This agreement commences on execution.
- 2.2 For consultancy services, this agreement will continue until the earlier of:
 - 2.2.1 the entry by the parties into the Consultancy Contract; or
 - 2.2.2 the date of acceptance into service of the last EMU vehicle.
- 2.3 For maintenance services, this agreement will continue until the entry by the parties into the Maintenance Contract.
- 2.4 For commissioning services, this agreement will continue until the subcontract contemplated by clause 6.2 is entered into between the Supplier and Toll.
- 2.5 In all other respects this agreement will continue until the date of acceptance into service of the last EMU vehicle.

3. Toll involvement in procurement as bidder/potential Supplier

- 3.1 Toll agrees that neither it nor any Related Party will take part in the procurement of the new EMU trains as a bidder to be a Supplier on its own account or as part of a joint venture, consortium or any other association of parties, whether formal or informal.
- 3.2 Except as provided for in clause 3.3, Toll will not enter into discussions with, or undertake services for, any potential Supplier of the new EMU trains, without Greater Wellington's prior approval. Greater Wellington's approval may be withheld if Greater Wellington, acting reasonably considers that the contemplated discussions or services may represent a material conflict of interest or affect the competitiveness of the procurement process.
- 3.3 Nothing in this agreement prevents Toll from entering into discussions with, acquiring products or services from, or undertaking services for, any potential Supplier of the new EMU trains where such discussions or supply or acquisition of goods or services are unrelated to the potential supply of the new EMU trains and are carried out by Toll in the normal course of its operations. For the avoidance of doubt, this includes the supply of passenger rolling stock and maintenance services for Auckland urban operations.



4. Project management arrangements (procurement and commissioning only)

Procurement and commissioning

- 4.1 A Project Team will be established by Greater Wellington with the main objective being to ensure that the new EMU vehicles are procured and completed to the standards specified by Greater Wellington and the relevant statutory authorities, and on time.
- 4.2 The Project Team will include representatives of:
- (a) Greater Wellington;
 - (b) Halcrow (while appointed as Project Manager);
 - (c) Toll;
 - (d) the Preferred Supplier (once appointed).
- 4.3 Greater Wellington will act as Project Leader and be responsible for:
- (a) the execution of Greater Wellington's obligations under this agreement and any other contract relating to the new EMU vehicles;
 - (b) the overall direction of the Project Team;
 - (c) ensuring that the Project achieves its objectives;
 - (d) ensuring that contracted parties comply with their obligations under the Consultancy Contract, the Supply Contract and any other contracts relating to the procurement with regard to time, cost and quality;
 - (e) ensuring that payments due to consultants and the Supplier are made;
 - (f) managing and authorising variations as they arise;
 - (g) managing and authorising project delays.
- 4.4 Halcrow have been appointed by Greater Wellington to be Project Manager for the procurement of the EMU vehicles to the point of execution of the Supply Contract and will be part of the Project Team until then. Halcrow are responsible (subject to final approval by Greater Wellington) for:
- (a) the production of a 25 year EMU Fleet Modernisation and Replacement Strategy and Programme. This will cover not only the rolling stock itself, but also changes to maintenance facilities and fixed infrastructure;
 - (b) developing and managing a procurement strategy for the new EMU vehicles;



- (c) developing and gaining agreement on the procurement specifications (performance, technical and systems interface) for a fleet of new EMU vehicles in partnership with Toll, ONTRACK and Land Transport NZ;
 - (d) issuing the agreed procurement specifications, and managing the evaluation of manufacturer offers leading to the appointment of a Preferred Supplier.
- 4.5 Prior to execution of the Supply Contract, Toll will participate in the Project Team and provide assistance to Greater Wellington as specified in Schedule 1.
- 4.6 Following execution of the Supply Contract with the Supplier, Toll will provide project management services in accordance with Schedule 2 and Appendix 1. Toll will work with Halcrow to ensure that there is a smooth transition of the Project Manager role. This reflects the relationship that Halcrow must have with Toll as specified in the professional services contract between Greater Wellington and Halcrow. Toll will also be engaged as Project Engineer following appointment of a Supplier.

5. Services to be provided by Toll

Consultancy services

- 5.1 Toll will provide the consultancy services outlined in Schedules 1 and 2 and Appendix 1, to assist Greater Wellington in the procurement of the new EMU trains. The consultancy services outlined at Schedule 2 and Appendix 1 will only be required if a Supply Contract is awarded.
- 5.2 Toll represents that it possesses the necessary skills, personnel, organisation and equipment to provide the consultancy services in accordance with usual professional standards and practice.
- 5.3 Toll will provide Greater Wellington with detailed Curricula Vitae for its proposed staff and sub-contractors, and their proposed roles in the project management team. Greater Wellington shall be entitled on reasonable grounds to give notice stating reasons to Toll, requiring that any of the personnel provided by Toll be no longer employed on the project. Toll shall take all necessary action to comply with such request.
- 5.4 In providing the consultancy services Toll shall:
- (a) exercise all reasonable skill, care and diligence;
 - (b) provide timely and efficient service to Greater Wellington;
 - (c) provide all equipment, tools, materials and supplies required to perform the services;
 - (d) ensure that sufficient technical and secretarial support staff are available to ensure the timely completion and submission of all drawings, reports and other information required to be provided;



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- (e) comply with all applicable legislation (including without limitation the Resource Management Act 1991, the Building Act 1991 and the Health and Safety in Employment Act 1992) and shall ensure that any personnel performing services under the direction of Toll are appropriately qualified and maintain all certificates, licences and registrations which are reasonably required for them to perform such work;
- (f) provide reports (if any) and all other information at the time(s) and frequency as required for the carrying out of the services and as requested by Greater Wellington; and
- (g) have available for inspection and comply with a quality plan.

Commissioning services

5.5 Toll will provide appropriate staff, facilities and resources to enable the Supplier of the new EMU trains to deliver, test and have the new EMU trains commissioned, which will include:

- (a) providing the necessary services to transfer the new EMU vehicles from the New Zealand port of entry to the commissioning tracks at the EMU depot; and
- (b) providing necessary track access and operating resources to allow the Supplier to adequately test and commission the fleet. This will include the provision of a pool of test drivers and maintenance services to the Supplier during the period of vehicle testing and commissioning, at the times identified in the Supply Contract.

Maintenance

5.6 Subject to execution of the proposed Maintenance Contract under clause 6.5 of this agreement, Toll will be responsible for all maintenance on the new EMU vehicles to achieve reliability and availability targets (excluding any technical support to be provided by the Supplier) in accordance with the Supplier's maintenance plan agreed by Greater Wellington, Toll and the Supplier at the time of execution of the Supply Contract

6. Contracts

Consultancy services

6.1 The parties will use their best endeavours to agree the terms of the Consultancy Contract covering the services outlined at Schedules 1 and 2 and Appendix 1 as soon as practicably possible. Until the final terms of the Consultancy Contract are agreed, the terms of this Agreement shall apply to any consultancy services undertaken by Toll.



Commissioning services

- 6.2 Toll's role in commissioning of the new EMU trains as outlined in clause 5.5 will be covered as a nominated subcontract between the Supplier and Toll under the Supply Contract with the terms of such subcontract to be approved by Toll.

Maintenance

- 6.3 In the context of the Supply Contract negotiations, Greater Wellington in conjunction with Toll will agree with the Supplier the extent of technical support services for the new EMU vehicles to be provided by the Supplier, to be recorded in a separate contract between Greater Wellington and the Supplier. The services may include advice on changes to the vehicles and maintenance regime, training, provision of documentation and other technical support services.
- 6.4 On acceptance of the first new EMU train into service, the technical support contract between the Supplier and Greater Wellington will be novated to Toll who will then manage the contract and pay the Supplier for services, with all such costs being reimbursable to Toll under the Maintenance Contract.
- 6.5 Greater Wellington and Toll will use their best endeavours to agree a Maintenance Contract to cover the maintenance of the new EMU vehicles to be undertaken by Toll, and arrangements for Greater Wellington's oversight of, and payment for services delivered under, the technical support contract based on the general principles set out at Schedule 3.
- 6.6 The parties acknowledge that Greater Wellington may choose to own the new EMU trains through a separate entity controlled by it, and that if it does so;
- (a) the terms of any maintenance contract affecting the new EMU trains must be consistent with this agreement and will require the approval of that entity; and
 - (b) Greater Wellington is entitled to assign any such contract to that entity.

7. Payments

Consultancy services

- 7.1 The price for consultancy services will comprise the following three components plus any disbursements (excluding third party contractor charges) reasonably incurred by Toll (or any third party contractor) in the performance of the services:



- (a) For the work provided by Toll, prior to the execution of the Supply Contract as specified in Schedule 1, payment will be based on: actual time and hourly rates, with the hourly rates and maximum daily rates based on the rates specified in the table below; excluding the costs referred to in clause 5.4(c) of this agreement. Toll will provide weekly reports to Greater Wellington recording personnel (planned and actual time spent) and a moving projection of personnel and time likely to be required in the weeks up to the completion of work requirements under Schedule 1.
- (b) For work provided by Toll after execution of the Supply Contract payment will be based on a fixed fee for services instructed as a package or stage, based on the rates specified below, together with any disbursements reasonably incurred excluding the costs referred in clause 5.4(c) of this agreement.:

Nature of task/level of personnel	Maximum Daily Rate	Hourly Rate
General Manager Toll Rail Engineering Services	\$1,500	\$220
Manager Toll Professional Services Group (PSG)	\$1,200	\$180
Senior Engineer/Project Manager	\$1,020	\$150
Intermediate Engineer/Operator Managers or Specialists	\$800	\$120
Assistant Engineer/Technician Engineer/Designer	\$675	\$100
Railway Design-drafter	\$540	\$80
Subject matter experts	\$800-\$1,595	\$100-\$200

Note all rates are GST Exclusive

- (c) a project performance payment calculated and payable as stated under clause 7.4 and 7.5.

7.2 Payment for consultancy services under clause 7.1(b) shall be dealt with as follows:

- (a) Toll shall submit an invoice with supporting documentation to Greater Wellington in respect of services carried out in the preceding calendar month, provided that Toll shall only invoice up to a maximum of 90% of the price for services instructed as a package or stage, prior to completion of that package or stage. The balance 10% of the price for that package or stage may be invoiced following completion of that package or stage.

7.3 Payment for consultancy services under clause 7.1(a) and clause 7.1(b) (subject to clause 7.2) shall be dealt with as follows:



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- (a) Payment for services completed by Toll shall be made, subject to clause 7.3(b), within 20 Working Days of Toll submitting its claim for payment to Greater Wellington.
- (b) Greater Wellington may withhold payment of any invoice (or part of an invoice) issued by Toll under this agreement if and only to the extent to which:
 - (i) Toll has in providing any services, failed to comply with the requirements set out in this agreement including as to timeliness and quality of deliverables; and
 - (ii) Greater Wellington has notified Toll in writing within 10 Working Days of such failure, and such failure is not directly attributable to any act or omission by Greater Wellington under this agreement; and
 - (iii) Toll has not remedied the failure.
- (c) Any amounts withheld by Greater Wellington under clause 7.3(b) will be paid once the failure has been remedied.

7.4 Toll shall be entitled to project performance payments calculated under clause 7.5 and payable within 20 Working Days of Toll submitting its claim for payment to Greater Wellington, on achieving each of the following milestones on time and within budget and provided Toll has performed its obligations under the Consultancy Contract to Greater Wellington's reasonable satisfaction:

- (a) Type acceptance achieved;
- (b) Adequate train stabling for all vehicles is provided;
- (c) Operational acceptance for all vehicles achieved;
- (d) The first 8 vehicle train has been running in service to the standard specified in the contracted performance targets;
- (e) All subsequent vehicles have been running in service to the standard specified in the contracted performance targets, with the milestone being completed when the final vehicle is in service and meets the contracted performance targets.

7.5 The project performance payment for reaching each of the five milestones at clause 7.4 shall be 0.3% of the price of the vehicles under the Supply Contract at time of award payable on the achievement of each milestone to a maximum of 1.5% of the total price of the vehicle procurement as stated in the Supply Contract at time of award. The project performance payment will be reduced by an agreed percentage for each month delay beyond the Final Vehicle in Service Date. This will be agreed within the Consultancy Contract.

7.6 The intent of the parties is that:



- 7.5.1 similar milestones to those linked to the payments agreed under clause 7.5, excluding 7.4(b) as this will form part of an agreement between Greater Wellington and ONTRACK, will be incorporated in the Supply Contract and
- 7.5.2 Toll will not be penalised by reduction of the project performance payment due to a delay in achieving a milestone that is not attributable to Toll and that arises solely from a failure by of the Supplier, ONTRACK or any other party. However the project performance payment to Toll for a milestone will be delayed until the milestone is achieved.

Commissioning Services

- 7.7 Toll will provide Greater Wellington with a schedule of reasonable commercial rates for use of the facilities and resources outlined in clause 5.5 which, subject to written approval by Greater Wellington will then be provided to all potential Suppliers. If Greater Wellington is concerned with the rates it will seek clarification from Toll. If Greater Wellington fails to provide written approval of the schedule of rates provided by Toll, the parties will promptly appoint an independent party to review and approve the rates. Following written approval by the agreed independent party the approved rates will be provided to all potential Suppliers. Failure to agree, an independent party to approve the rates will be dealt with in accordance with the dispute resolution provisions at clause 8.
- 7.8 Payment for commissioning will be made by the Supplier on the terms set out in a nominated subcontract between the Supplier and Toll which will form part of the Supply Contract.

Maintenance

- 7.9 Payment for maintenance services will be set out in the Maintenance Contract and will take into account the principles set out at schedule 3:

8. Dispute resolution

- 8.1 If any dispute between the parties arises under this agreement, including any dispute over payment, either party may invoke the dispute resolution procedure provided by this clause by giving written notice.
- 8.2 The party to whom such notice is given shall promptly designate the chief executive officer with authority to settle the dispute. The chief executive officer shall within 10 Working Days of the designation follow whatever investigations each considers appropriate, in order to resolve the dispute.
- 8.3 If the dispute is not resolved within 10 Working Days from commencement of the investigations mentioned in clause 8.2 or such longer time as both parties may agree, the parties shall for a further 20 Working Days seek to resolve the dispute using mediation.
- 8.4 Any dispute which cannot be resolved during such time using mediation may be referred to arbitration by either party.



- 8.5 Where the dispute is referred to arbitration, it shall be referred to a single arbitrator if the parties can agree on one, or, if not, a person nominated by the President of the New Zealand Law Society, and their decision shall be final and binding on the parties. Such reference shall be deemed to be a submission under the Arbitration Act 1996 and unless the parties otherwise agree the reference shall proceed in accordance with the provision of that the Arbitration Act 1996.
- 8.6 Pending resolution of the dispute, the parties shall continue to perform all their obligations under this agreement except where it is impractical to continue performing any obligations, being the subject of the dispute and such obligations shall be suspended during the dispute.
- 8.7 Nothing in this clause 8 shall preclude any party from taking immediate steps to seek relief before a New Zealand Court, where the action is in relation to a matter in respect of which an arbitrator has no jurisdiction.

9. Definitions and interpretations

Definitions

- 9.1 In this agreement the following definitions apply:

Consultancy Contract means the contract to be agreed by the parties in accordance with clause 6.1, to provide the consultancy services outlined in Schedules 1 and 2 and Appendix 1.

ONTRACK means the New Zealand Railways Corporation and its successors and lawful assigns, a Government authority set up to maintain the rail network and infrastructure assets.

Land Transport NZ means Land Transport New Zealand or any successor entity to it.

Maintenance Contract means the contract to be agreed by the parties in accordance with clause 6.5, for Toll to provide the maintenance outlined in clause 5.5.

Preferred Supplier means the potential Supplier appointed as preferred bidder following evaluation of tenders received for the supply of new EMU trains.

Related Party in respect of a person means anyone who is an associated person under section OD8(3) of the Income Tax Act 1994.

Supplier means the party to whom the Supply Contract is awarded.

Supply Contract means the contract for the supply of the new EMU trains to Greater Wellington.



Working Day means a day on which registered banks are open for business in Wellington, excluding Saturdays and Sundays, the period between 25 December and the first working day after the New Year public holidays and Wellington and Auckland Anniversary day.

Interpretation

- 9.2 In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:
- 9.2.1 If the day on which any act, matter or thing is to be done under this agreement is not a Working Day, the act, matter or thing must be done on the next Working Day.
 - 9.2.2 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 9.2.3 Any schedules and attachments form part of this agreement.



Execution and date

Executed as an agreement.

Date: 2006

Signed on behalf of **Wellington Regional Council** in the presence of:

Witness signature: _____ Name:

Witness name:

Occupation:

Address:

Signed by) _____
[Toll NZ Consolidated Limited]) Authorised signatory
in the presence of:)

Witness signature:

Witness name:

Occupation:

Address:

Schedule 1 - Scope of consultancy services prior to execution of the Supply Contract

1. Prior to execution of the Supply Contract, Toll will provide following consultancy services to Greater Wellington:
 - (a) Expression of Interest (**EOI**)
 - (i) **Main body document** – Review and advise on the EOI document.
 - (ii) **EOI evaluation process** – Review and Advise on the EOI evaluation criteria and process.
 - (iii) **Train Outline** - Accept User Requirement document. Review draft schedule produced by Halcrow that summarises key requirements of this document for inclusion in the EOI. Sign off schedule.
 - (iv) **Commissioning** – Discuss with Halcrow the proposed arrangements for commissioning. Including:
 - Review draft schedule produced by Halcrow to describe facilities and services that will be made available to the supplier during commissioning.
 - Sign off schedule once completed.
 - For those services that will attract a charge identify the proposed charges to Greater Wellington.
 - (v) **Depot** – Discuss with Halcrow existing maintenance facility. Review the draft schedule produced by Halcrow that will:
 - describe existing depot and other maintenance facilities that will be used to maintain the new units; and
 - seek input from the supplier on the scope of any essential upgrades to maintain the new vehicles; and
 - seek input from the supplier on any upgrades that may provide for more cost effective whole life maintenance.
 - sign off draft depot and maintenance facility schedule once completed.
 - (vi) **Technical Support Agreement** – Discuss with Halcrow proposed arrangements for Supplier Technical Support



Agreement. Review draft schedule produced by Halcrow. Sign off schedule once completed.

(b) Expression of Interest Assessment

(i) **Review**

- Review proposals received from potential Suppliers and evaluate and score proposals in line with agreed criteria.
- Provide scoring and justification to Greater Wellington.
- Provide recommendations for items to be included/changed in the Request for Tender (RFT) on the basis of the review.

(c) Request for Tender (**RFT**)

(i) **Crashworthiness Review** -Review report prepared by Halcrow and provide input.

(ii) **Preliminary Hazard Review** - Review report produced by Halcrow. Provide comment and sign off.

(iii) **Performance Specification** - Discuss train performance requirements with Halcrow. Review draft performance specification produced by Halcrow and sign off. Gain acceptance of performance specification from Land Transport New Zealand with support from Halcrow.

Set up specification review meetings with train crew to confirm prior agreements are captured in document.



- (iv) **Interface Specification** - Review and provide comment on interface specification produced by Halcrow and Ontrack.
 - (v) **Tranzlog Unit** - Review draft interface specification produced by Halcrow, and provide all required information to complete this document. Confirm proposed price for Tranzlog units and procurement arrangement to provide this equipment to rolling stock supplier. [NB RFT to allow suppliers to provide their own solution if this is more cost effective.]
 - (vi) **Schedules to RFT** -Review proposed schedules attached to RFT produced by Halcrow. Some of these schedules will be developments (greater detail and contractual requirements) of those attached to the EOI. Provide information to complete the schedules. Sign off all schedules.
- (d) Tender Period
- (i) **Clarification Questions** - Provide support to assist with answering tender clarification questions in a timely manner.
- (e) Tender Assessment
- (i) **Attend tender presentations** - Engineering, maintenance and operating representatives to attend presentations made by suppliers on their proposed vehicles.
 - (ii) **Tender Assessment** - Working in conjunction with Halcrow in a joint team, review technical proposals and provide input to technical report to Greater Wellington to be written by Halcrow identifying:
 - issues of non-compliance for each tender;
 - any other areas of concern; and
 - any special advantages associated with any tender.



- (iii) **Maintenance Plan** - Review maintenance proposals and confirm acceptance of proposed maintenance regime for inclusion into Maintenance Agreement.
 - (iv) **Technical Support Agreement** – Review proposed Technical Support Agreement and confirm its proposed novation to Toll on acceptance of each individual vehicle.
 - (v) **Selection of Preferred Supplier** - Meet with Greater Wellington and Halcrow to review technical aspects of the tenders and answer Greater Wellington and Halcrow queries if required.
 - (vi) **Finalise Supply Contract** – Provide support to Greater Wellington and Halcrow in closing out all areas of non-compliance and concern for the preferred supplier. Support Greater Wellington and Halcrow in negotiations on tender value, engineering and whole life cost reduction.
 - (vii) **Infrastructure Changes** - Obtain agreement with Land Transport New Zealand and Ontrack for any changes to the vehicle acceptance and interface specification required for selected supplier and vehicle.
- (f) Handover - Work with Greater Wellington and Halcrow to take over Engineer role.
- (g) Other –Any other consultancy services as requested by Greater Wellington, in writing, in relation to the procurement process to purchase new electrical multiple unit (**EMU**) trains.
2. If agreement cannot be reached between Toll and Halcrow on any matter, the issue will be recorded in writing and presented to Greater Wellington for adjudication.
 3. The joint objective of the consultancy services provided by Toll (working with Halcrow and Greater Wellington) is to place into service a train that will have a minimum whole of life cost and is acceptable to the operator, maintainer, regulatory agencies, and Greater Wellington.
 4. Toll will ensure that the Greater Wellington Project Leader is informed of any formal meeting that Toll proposes to hold with ONTRACK, Tranz Metro Wellington, or any other stakeholder group in relation to the new EMU project, and Greater Wellington will have the right to attend any of these meetings as it sees fit.

Schedule 2 - Scope of consultancy services after execution of the Supply Contract

1. Greater Wellington will engage Toll to provide Greater Wellington's project management services as defined in this schedule for the new EMU Train Project effective from [execution of the Supply Contract]. Toll will utilise its professional services group and subcontractors approved by Greater Wellington in the provision of these services.
2. This engagement will be on an exclusive basis, except that Greater Wellington may retain the services of a specialist rail consultant(s), to the extent required to provide the advice needed to allow Greater Wellington to monitor Toll's delivery of the services.
3. Services will include:
 - (a) On behalf of Greater Wellington, providing integrated management of engineering, operational and acceptance matters for Greater Wellington.
 - (b) Acting as Greater Wellington's project manager and principal engineer (Engineer) for delivery of the project, once the Supplier has signed a final contract. This role to be generally in line with the role of "Engineer to Contract" as set out in Appendix 1. Subject to the excluded matters referred to at clause 4 of this Schedule this includes management of the Supplier's compliance with the Supply Contract, technical support to Greater Wellington relating to the Supply Contract, provision of services in association with commissioning and acceptance, and the provision at the Supplier's cost of training of depot and train operating staff for the new EMU trains.
 - (c) Co-ordinating activities with ONTRACK so that:
 - i. all upgrades to the rail network required to provide an interface consistent with that set out in the Supply Contract; and
 - ii. any works required to provide adequate train stabling for the new trains,are completed prior to the delivery of the first 8 vehicle train.
4. Toll will ensure that if an issue of interpretation of the Supply Contract or an instruction is necessary in the administration or implementation of the Supply Contract, in circumstances where that instruction or decision would normally be made by the Engineer, Toll as Engineer will have usual authority to make that decision or ruling except in the following circumstances:
 - (a) If any dispute between Toll acting in its role as 'Engineer to Contract' and the Supplier arises regarding the interpretation of the Supply Contract which is of a material nature, or an instruction for implementation of the Supply Contract which is of a material nature, the dispute must be referred to an agreed dispute resolution or arbitration process between Greater



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Wellington as principal and the Supplier or at Greater Wellington's election, to a separately appointed independent engineer (in circumstances where a prompt decision is required).

- (b) If any decision or ruling is required which will expose Greater Wellington to any increase in cost, delay, or which could compromise quality, Toll will refer the decision to Greater Wellington as principal. Greater Wellington may then elect to seek advice from a separate independent engineer before making the required decision or ruling.
- 5. Toll will provide a full organisation chart, job descriptions and detailed Curricula Vitae information to demonstrate its team and their competencies. Greater Wellington shall have the right to reject any staff proposed.
- 6. Toll will ensure that Greater Wellington's Project Leader is informed of any formal meeting that Toll proposes to hold with ONTRACK, Tranz Metro Wellington, or any other stakeholder group in relation to the new EMU project, and Greater Wellington will have the right to attend any of those meetings as it sees fit.

Appendix 1 – "Engineer to Contract" role

1. General

1.1.1 Toll will undertake the role of principal engineer (Engineer) for the new EMU Project, under the Supply Contract.

1.1.2 Throughout the Project, the Engineer will maintain an up to date programme of the Project activities drawing on the Supplier's programme developed under the Supply Contract. This should also include all local testing and commissioning activities, planning and execution of depot upgrades (including stabling facilities) by Toll and other infrastructure programmes implemented by ONTRACK.

1.2 Planning and workshops

1.2.1 A project start-up workshop will be lead by Greater Wellington. The Engineer and the Supplier will participate. The objectives of this workshop will be as follows:

- To make introductions.
- To define objectives and stakeholder requirements.
- To understand and agree the roles and responsibilities of each of the parties.
- To define an overall programme for the activities defined in this document that incorporates all contract milestone dates and activities.

1.2.2 A risk review workshop will be conducted by the Engineer on behalf of Greater Wellington. The purpose is to undertake an initial assessment of the risks to the Project building on the existing risk register produced for Greater Wellington by others. This should not just cover the technical aspects such as systems interface, but should look at more global issues such as communication, availability of resources, timing of activities, political issues etc.

1.2.3 Project Manual/Quality Plan – The Engineer will develop and supply to Greater Wellington a quality plan in relation to the Engineer's role in the implementation of the Project.

1.3 Project Assurance – Vehicles

1.3.1 The Engineer shall manage the design review process set out in the new EMU Supply Contract and undertake design review activities to ensure that the requirements of the Performance Specification are met. At the conclusion of the process, the Engineer shall supply a summary report to Greater Wellington which details the following.

- (a) Overall compliance of the design to the Performance Specification and status of outstanding non-compliances.



- (b) Short-term risk principally relating to Project implementation – timescale and quality.
 - (c) Long term risk principally relating to reliability, emergence of new safety legislation, life cycle support.
- 1.3.2 Greater Wellington may request and procure an independent review of critical systems and processes including but not limited to brakes, driver safety systems and systems assurance.
- 1.3.3 The Engineer shall ensure that inputs required from Greater Wellington, and other stakeholders into the design and supply of the vehicles are provided to the Supplier in a manner consistent with the Supply Contract. Greater Wellington may review and approve all inputs before they are provided to the Supplier.
- 1.3.4 The Engineer shall apply for vehicle design type acceptance from ONTRACK and Land Transport NZ to operate the vehicles and will work with the Supplier to resolve any issues to enable acceptance to be gained.
- 1.3.5 Greater Wellington supported by the Engineer shall liaise with local passenger and accessibility groups to gain their input to and 'acceptance' of the final vehicle design details. The Engineer shall manage the design development work of the Supplier to incorporate required elements into the vehicles.
- 1.3.6 The Engineer shall develop the final branding and styling of the vehicle, building on the work undertaken by the Engineer for the SW Cars project in liaison with and gaining approval from Greater Wellington. .
- 1.3.7 The Engineer shall manage and agree variations to the Supply Contract with the Supplier, gaining final acceptance from Greater Wellington. This will also include the management of the contract variations register. The Engineer has no authority to commit Greater Wellington to additional cost, make a decision which would compromise quality, or to extend the programme period.
- 1.3.8 The Engineer shall establish and implement a system to monitor the Supplier's progress against the timetable set out in the Supply Contract.
- 1.3.9 The Engineer shall establish with Greater Wellington and the Supplier a Quality Assurance and Control Plan to validate that the vehicles are being constructed and tested in accordance with and to the requirements of the Performance Specification, applicable standards and drawings.
- 1.3.10 The Engineer shall review and endorse (after necessary amendments have been made) the Supplier's Quality Assurance and Control Plan to be prepared under the Supply Contract.
- 1.3.11 The Engineer shall establish and implement a system to ensure that the Supplier meets the requirements of the Supplier's Quality Assurance and Control Plan, and that where non-conformances are identified, these are resolved by the Supplier to the satisfaction of the Engineer. It is envisaged that this will be by a series of audits, production inspection with resident engineers, witnessing and signing-off of testing and commissioning and first article inspections.



- 1.3.12 The Engineer shall establish and implement a vehicle acceptance process to ensure type and routine compliance with the Performance Specification on behalf of Greater Wellington.
- 1.3.13 The Engineer shall ensure that the Supplier has an effective configuration control process in place.
- 1.3.14 The Engineer shall obtain a variation to Toll's current Safety Case to include the vehicles and gain approval from ONTRACK and Land Transport NZ for the vehicles' operation. This shall also include the production of operating documents by Toll required under the safety licensing requirements. The Engineer will draw on the Supplier to provide supporting information for this.
- 1.3.15 The Engineer shall assist in the resolution of routine Project issues that may arise.
- 1.3.16 The Engineer shall submit monthly reports to Greater Wellington to record the Supplier's operations and the Engineer's activities. The report should further identify overall Project progress, key issues and risks.
- 1.3.17 The Engineer shall ensure that the Supplier has an effective Systems Assurance plan in place and carries out all necessary works.
- 1.4 **Project Assurance – Maintenance**
 - 1.4.1 The Engineer shall provide Greater Wellington with an asset management plan for the new EMU vehicles based on the maintenance requirements specified in the Supply Contract.
- 1.5 **New Zealand Testing and Commissioning Management**
 - 1.5.1 The Engineer shall manage testing and commissioning of the new EMU trains.
 - 1.5.2 The Engineer shall witness all type testing works necessary to ensure that the first vehicles are compliant with the Performance Specification and design requirements.
 - 1.5.3 The Engineer shall witness a proportion of routine testing works and audit Supplier activities to ensure that all vehicles meet the Performance Specification and design requirements.
 - 1.5.4 Prior to the new EMU vehicles entering service the Engineer shall provide a Testing Report to Greater Wellington that demonstrates the compliance status of each new vehicle against the Performance Specification, with action plans to remedy any areas of non-compliance.
 - 1.5.5 The Engineer shall apply for vehicle operational acceptance from ONTRACK and Land Transport NZ to enable the new EMU trains to operate on the Wellington rail system and will work with the Supplier to resolve any issues to enable acceptance to be gained.



1.6 **Training**

- 1.6.1 The Engineer will ensure that a suitable pool of train crew trainers and train maintenance trainers (if applicable) are made available for and trained by the Supplier and that these Toll trainers provide training to enable all train crews to operate the new vehicles, and all maintenance staff (if applicable) to undertake the required maintenance on the new vehicles.

Schedule 3 - General principles of proposed Maintenance Contract

1. Performance

The key measures of performance are:

- (a) trains not on time due to fault with rolling stock; and
- (b) vehicle availability (actual vs target),

both to be determined in line with the Supply Contract.

Toll's performance will be reported on a both weekly and monthly basis to facilitate measurement of performance.

2. Accounting Principles

Toll will structure the maintenance service unit with separate accounting (general ledger) structure to facilitate transparency of costs. The maintenance unit will be supported by UNIBIS financial/asset management systems.

3. Maintenance

- (a) **Warranty maintenance** – Toll will undertake any corrective maintenance required to rectify failures during the warranty period set out in the Supply Contract. Greater Wellington will include the following provisions in the Request for Tender for the Supply Contract:
 - (i) The cost of this warranty maintenance work will be recovered by Toll directly from Greater Wellington and Greater Wellington will make any subsequent claim from the Supplier under the provisions of the Supply Contract;
 - (ii) The Supplier will be required to provide replacement parts for those that have failed; and
 - (iii) The Supplier will have the right to audit Toll's preventative maintenance work and corrective maintenance work to confirm that this is undertaken in line with the Supplier's maintenance manuals.



- (b) **Preventative maintenance** – Toll will provide preventative maintenance in accordance with the Supplier’s maintenance plan agreed by Greater Wellington, Toll and the Supplier at the time of award of the Supply Contract (or as subsequently amended provided there is agreement between GW, Toll and the Supplier).
- (i) Payment for the maintenance of the vehicles will be based on a fixed price calculated using reasonable rates provided by Toll and the Supplier’s maintenance plan.
 - (ii) Any variances in the cost of maintenance from the agreed fixed price will be shared between Toll and Greater Wellington on a basis of an agreed percentage split provided the performance targets have been met and that the level of casualty maintenance does not change as a consequence of any reduction in preventative maintenance.
- (c) **Casualty maintenance** – Toll will carry out casualty maintenance. The casualty maintenance costs will be reimbursed by Greater Wellington subject to the defect not being caused as a result of:
- (i) Any failure by Toll to follow the Supplier’s maintenance plan;
 - (ii) Any negligence of Toll;

The casualty maintenance costs shall include direct labour costs and materials costs but will not cover any overhead or facility costs unless it is agreed that these are additional to those already included in the current operating contract.

4. **Spare Parts**

GW will own the all spare parts with Toll acting as the purchasing manager, except for spare parts provided by the Supplier as part of the Supply Contract. Toll will also act as store holding manager for all spare parts.. Greater Wellington reserves the right to audit Toll’s procurement activities to confirm that Toll is gaining best value for money and does not compromise any Supplier warranty and indemnity provisions in its procurement activity.