

31 January 2024

File Ref: OIAPR-1274023063

[REDACTED]

Tēnā koe [REDACTED]

Request for information 2023-282

I refer to your request for information dated 15 November 2023, which was received by Greater Wellington Regional Council (Greater Wellington) on 15 November 2023. You have requested the following:

“All correspondence , including but not limited to briefings, e-mails, records of meetings/calls and other relevant records, from Regional Council including Metlink concerning the impact of the changes to rest and meal break entitlements as a result of the Employment Relations Amendment Act 2018 - I'm particularly interested on details of any financial impact to the Regional Council and correspondence with other government agencies on the change to rest and meal breaks.”

On Wednesday 21 November 2023, you refined your request with an officer to: *“I'm really interested in any official papers like to the GWRC Transport Committee or the Council and the that clearly set out the implications of the impact of the legislative change to bus operators and to the Councils and how bus operators had to hire more staff, and buy more buses so they could provide the same level of services to regional councils due to the rest break legislation and if GWRC gave any feedback to the Government agencies on the impact on GWRC transport services.”*

On Wednesday 22 November 2023, a Greater Wellington officer clarified with you via phone call that you are more interested in the financial aspects of the changes to rest and meal breaks and primarily correspondence between Greater Wellington and New Zealand Transport Agency Waka Kotahi (NZTA). Our search was therefore restricted to this request.

On Wednesday 29 November 2023, a Greater Wellington officer sent you through some initial documents to ascertain whether they fit the scope of your request. You responded on Monday 18 December 2023 that the information *“did not cover what was the actual financial support provided by GWRC to PTOM operators (bus companies) following the change to the Employment Act following the change to the rest breaks. For example, I would guess there would be correspondence between*

the PTOM Operators and GWRC on this issue. Can you please provide the information (if available that confirms or not the above)."

On Tuesday 19 December 2023, you sent a follow up email requesting that *"copies of the deed should be in the package of docs to be released."*

- We understand you to be referring to the deeds of variation of the Partnering Contracts, relating to the ERAA changes. These are included as Attachments 10 – 14 in our response.

On 12 December 2023 we advised you we were extending the timeframe of our response to 31 January 2024 on the basis that the request required a search through a large quantity of information and consultations were necessary.

Background information

At a high level, the introduction of the Employment Relations Amendment Act 2018 (ERAA) and the requirement for operators to include more rest and meal breaks in their shift patterns had no direct financial impact on Greater Wellington as any additional cost to operators was funded by Government through NZTA.

This legislation was led by central government and Greater Wellington's role was to handle the partnership with our individual operators at a local level. If you are interested in further information relating to the financial arrangements and agreements, this information is owned and held by NZTA and the individual operators.

Greater Wellington's response follows:

In response to your request for information we provide the following documents, subject to withholding information as outlined below:

We are withholding written correspondence between operators and Greater Wellington discussing the financial aspects of the ERAA under section 7(2)(b)(ii) of the Local Government Official Information and Meetings Act 1987 (the Act), where releasing this information would be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information. However, **Attachment 9** includes a document which discusses the financial support granted between Greater Wellington, NZTA and the Operators.

Please refer to Greater Wellington's website for the Sustainable Transport Committee agenda dated 30 April 2019. Section 2.2 is relevant to your request.¹

Please note that the relevant committee of Greater Wellington at the time of introduction of the ERAA was the 'Sustainable Transport Committee', which was disestablished at the conclusion of the

¹ <https://www.gw.govt.nz/your-region/events-and-meetings/sustainable-transport-committee-14/>

2016-2019 triennium. The Council established the Transport Committee at the beginning of the 2019-22 and 2022-25 triennia, which has responsibility for public transport and mode-shift.

Please refer to **Attachment 1** which includes the ERAA presentation delivered to Council in 2019.

Please refer to **Attachment 2** which includes the Rest and Meal Breaks presentation delivered to the Transport Special Interest Group (TSIG) in 2020.

Please refer to **Attachment 3** which includes correspondence between NZTA and Greater Wellington which took place between March and September 2021. The attachments discussed in this correspondence are enclosed within this attachment.

Please refer to **Attachment 4** which includes the Stantec report, dated May 2021, as discussed in the above correspondence.

Please refer to **Attachment 5** titled, '*Assurance of implementation of rest and meal breaks for bus drivers under the ERAA*' which was received from NZTA on 8 October 2020.

Please refer to **Attachment 6** which includes the Memorandum of Understanding, dated April 2019.

Please refer to **Attachment 7** which includes the memo received from the Bus and Coach Association on behalf of their members on 6 March 2018 which discusses the impact the ERAA would have on the operators.

Please refer to **Attachment 8** which includes correspondence received from NZTA in October 2020.

Please refer to **Attachment 9** which includes approval from the CE on the additional costs associated with the Rest and Meal Breaks dated 28 November 2019. As mentioned above, this was funded through NZTA.

We have withheld the dollar amounts relating to each operator under section 7(2)(h) of the Act to enable Greater Wellington to carry out, without prejudice or disadvantage, commercial activities.

We have deleted information in this attachment where it is outside scope of your request.

Deeds of variation for each operator

Please refer to **Attachment 10** which includes the Rest and Meal Breaks (Wellington City Transport) Supplementary Deed dated 4 December 2019.

Please refer to **Attachment 11** which includes the Rest and Meal Breaks (Cityline (NZ BUS)) Supplementary Deed dated 4 December 2019.

Please refer to **Attachment 12** which includes the Rest and Meal Breaks (Madge Coachlines (Uzabus)) Supplementary Deed dated 4 December 2019.

Please refer to **Attachment 13** which includes the Rest and Meal Breaks (Mana Coach Services) Supplementary Deed dated 5 December 2019.

Please refer to **Attachment 14** which includes the Rest and Meal Breaks (Tranzurban/Tranzit Group) Supplementary Deed dated 4 December 2019.

The Supplementary Deeds refer to the Partnering Contract, which can be found on our website.²

We have withheld contractual information relevant to Tranzurban/Tranzit Group in **Attachment 14** under section 7(2)(b)(ii) of the Act where the making available of the information would be likely to prejudice the commercial position of the person who supplied or who is the subject of the information.

We have withheld the signatures of the operators in **Attachments 10-14** under section 7(2)(a) of the Act to protect the privacy of natural persons, including of deceased natural persons.

When withholding information under section 7 of the Act, we are required to assess the public interest. We have considered whether the public interest in the requested information outweighs Greater Wellington's need to withhold certain information. As a result, we do not consider that the public interest outweighs Greater Wellington's reason for withholding of the information under the grounds identified above.

If you have any concerns with the decision(s) referred to in this letter, you have the right to request an investigation and review by the Ombudsman under section 27(3) of the Act.

Please note that it is our policy to proactively release our responses to official information requests where possible. Our response to your request will be published shortly on Greater Wellington's website with your personal information removed.

Nāku iti noa, nā



Samantha Gain

Kaiwhakahaere Matua Waka-ā-atea | Group Manager Metlink

² <https://www.metlink.org.nz/assets/Contracts/Bus-Partnering-Contract-and-Schedule-Nov-22.pdf>



CONFIDENTIAL
TO COUNCIL

Employment Relations Amendment Act

metlink[®] on our way

Implications - for operators

- Trains
 - No issues (covered already by collective agreement)
 - May be limited but likely manageable issues for bus replacements
- Ferries
 - No issues
- Buses
 - Compliance issues for operators (previous 'override' removed)
 - Operators have advised that in order to comply they will need to:
 - Make scheduling changes; and
 - Buy more buses; and
 - Hire new drivers.
 - Operators estimate it will take 2 years to achieve
 - In the interim, operators advise that they will need to reduce service levels substantially



Employment Relations Amendment Act 2018

New legislation (tea and meal breaks)

- Comes into force 6 May 2019
- Eight-hour work day must include two 10-minute rest breaks (paid) and one 30-minute meal break (unpaid)
- Four-hour work day must include one 10-minute rest break (unpaid)
- Number and duration of breaks can't be changed (when they occur can be)

Current legislation

- Currently flexible – req to provide “reasonable” rest and meal breaks
- Land Transport Rule – 30 mins after 5.5 hours

Previous legislation

- Pre 2015 – similar provisions to new leg. However, had override provision which meant that the rest break requirements in the land transport legislation overrode the ERA entitlements.



Implications - for GW

- Additional cancellations across the entire network
- Customer disruptions (will impact on comms and complaints)
- Financial (if new buses req - maybe)
- Increased PT workload



What are we doing? - Practical

- Working with operators to assess potential operational effects
- Planning for changes can take place once operators have advised us of the scale of the issue for them (Due week beginning 1 April)
- May need to reschedule with operators/have contingency network scenario i.e. minimum viable product



What are we doing? - Advocacy

- GWRC advocacy to Minister of Transport
- Leading regional council coordination
- Working with sector advocacy group (BCA)





metlink on our way

PROACTIVE RELEASE

Rest and meal breaks



Update

- Progress towards compliance
- Overall all sides remain positive and believe compliance is possible by May, with further improvements happening after May

PROACTIVELY RELEASED

Update

- Concerns remain over Auckland given the strained relationships, impacted by the recent industrial action – with AT working with all sides to support progress
- BCA and the CTU are working up joint proposals for the next Steering Group to help resolve remaining challenges



Update

- NZTA are working on a paper on managing the price of additional resourcing required as a result of implementations of the ERA – beyond the initial transition period. This will be discussed at the next meeting
- The next Ministerial-led sector meeting will take place on 16 March – the invite has just gone out

Update

- Legal action on the definition of work period will now be considered by the ERA and not the employment court.
- Due to be in March

PROACTIVELY RELEASED



What does success look like?

- Not just technical compliance with ERAA
- Need to look at consequences for drivers, operators, PTAs and the community
- “It’s weird that giving people a break makes them worse off”

What does success look like?

- All parties satisfied with their involvement in the process
- Optimise outcomes – unions not expecting a perfect outcome immediately



From: [Andrew Washington](#)
To: [Luke Baron](#)
Subject: FW: ERRR Review Terms of Reference
Date: Tuesday, 9 March 2021 3:00:34 pm
Attachments: [FINAL Scheduling Terms of reference - review of bus operator scheduling decisions to provide rest and meal breaks under the E.docx](#)
[FINAL Pricing Terms of reference - Review of additional resource pricing by bus service operators to meet the requirements of.docx](#)

Hi Luke

FYI – doing some digging, more intel soon

It would also seem like Matthew Lear has signed off on this, so maybe worth a chat with him too

Cheers

AW

This message, together with any attachments, may contain information that is classified and/or subject to legal privilege. Any classification markings must be adhered to. If you are not the intended recipient, you must not peruse, disclose, disseminate, copy or use the message in any way. If you have received this message in error, please notify us immediately by return email and then destroy the original message. This communication may be accessed or retained by Waka Kotahi NZ Transport Agency for information assurance purposes.

Terms of Reference

Independent review of **additional resource pricing** by bus service operators to meet the requirements of the Employment Relations Amendment Act 2018

Purpose

1. To provide independent assurance to the Government (NZ Transport Agency) and councils that operators' pricing of additional resources required to meet new rest and meal break requirements for employees is consistent with agreed pricing approach and reasonable in the circumstances.

Background

2. On 6 May 2019, the Employment Relations Amendment Act 2018 (ERAA) came into force, providing workers with new minimum entitlements to rest and meal breaks. The main change mean is new minimum requirements round rest breaks, which were not mandatory before 6 May.
3. The complexity of service planning has made implementing these changes a significant challenge for the public transport sector, largely because many bus timetables, schedules and rosters have not been developed with extra breaks in mind. Accommodating these new requirements is expected to be a costly exercise and could result in the cancellation or disruption of bus services.
4. To manage these challenges, a Memorandum of Understanding (MoU) between Government, bus service operators, councils and unions was signed on 29 April 2019, committing all parties to work together to achieve the smoothest possible transition to amended rest and meal break provisions, while minimising service disruptions, safety risks and costs.
5. A temporary Land Transport Rule: Work Time in Large Passenger Service Vehicles 2019 was also passed by Government to give bus operators flexibility when scheduling rest breaks for bus drivers (e.g. at the beginning or end of a shift), over the next 12 months. The purpose of this Rule is to allow bus operators more flexibility in providing rest and meal breaks in the interim, while parties figure out how to become compliant with the new requirements, and what additional resources are needed to ensure services are still able to run.
6. The role of the NZ Transport Agency, under para 32.3 of the MoU, is to **'seek assurances, (with councils), that the disruption to services and additional costs from implementing rest and meal breaks have been minimised by bus service operators'** over the next 12 months and beyond. Under para 32.4 of the MoU, the NZ Transport Agency is also expected to enter cost sharing discussions with councils and bus operators 'to ensure costs are fairly borne.

Problem statement

7. The additional resources required to comply with new rest and meal break requirements while maintaining public transport services are significant and are expected to be expensive (in the order of 4% to 8% of total bus service costs). The NZ Transport Agency and councils need independent confirmation that the prices operators submit for additional resources are fair and reasonable.

8. This task is part of a broader assurance exercise to ensure that bus drivers are receiving their entitlements under the ERAA and that operators scheduling decisions are as efficient as possible within the parameters set by timetables and ERAA requirements.
9. Seeking an independent consultant to carry out this work also maintains the confidence of our MoU partners as it ensures there is a level of separation between the review of additional resource pricing and the parties of the MoU, who each have a role in the operation and funding of these additional resources.

Scope of services

10. The consultant will review operator pricing of additional resources in line with the approach to pricing agreed between councils (at time of writing this task is yet to be completed) and meets the principles of cost sharing under paragraph 32.4 of the MoU and partnering principles contained in contracts.
11. If there are concerns that additional resources have not been priced correctly the expectation is that this signalled early on to the relevant council and potentially the Agency to inform price discussions between the parties. Advice should clearly identify the nature of the concern. For example, if one operator's price is significantly higher than another for the same level of additional resourcing what explains the difference in price between the two?
12. The consultant will provide a final report for each council (potentially up to 14) and the NZ Transport Agency at the end of the review. Advice should cover:
 - Confirmation that the consultant has reviewed the pricing of additional resources and raised any pricing discrepancies with the relevant council(s) and operator(s).
 - Confirmation that operator pricing is (or is not) consistent with agreed pricing methodologies, the principles of the MoU and show the claim to recover the costs of compliance are fair and reasonable.

Dependencies

13. Under the MoU the NZ Transport Agency, councils and operators are expected to enter cost sharing discussions and agree a set of principles for how costs are to be shared between parties. At time of writing these discussions have yet to occur. The outcome of these discussions is important to this piece of work and this will be shared with the consultant when available.
14. During the transition the main approach being used to pricing additional resources is the use of existing variation rates contained in public transport contracts. However, the Transport Agency and councils are concerned that the variation rates were not designed with this situation in mind and potentially over-compensate operators.

Out of scope

15. The consultant is not expected to make alternative recommendations about how additional resources should/could be priced. This is the responsibility of the parties to the MoU and contracts to agree.
16. The consultant is not expected to advise on whether the level of additional resources is appropriate. This is the responsibility of the party engaged to review operator scheduling decisions.
17. The consultant is not responsible for resolving price discrepancies. This is the responsibility of the affected councils and operators to resolve. The consultant's role is identify price discrepancies and advise as to what explains the price discrepancy.

Response to terms of reference

18. The response to the terms of reference should contain:

- A proposed methodology that will outline how the review will be undertaken.
- Relevant skills that can be used in the review. For example, knowledge of bus operation business models.
- The types of data and information required to complete the review.
- What process the consultant has in place to protect sensitive commercial information.
- The amount of time required to complete a review (keeping in mind that full compliance with ERAA requirements is needed by May 2020).
- Initial cost estimates to carry out the review. Initial cost estimate to complete the review. We recommend that the consultant price on a council by council basis, as it may not be necessary to review all councils PT services. At a minimum prices should be submitted for Auckland Transport, Greater Wellington Regional Council, Environment Canterbury, Waikato Regional Council, Bay of Plenty Regional Council, and Otago Regional Council which collectively represent 95% of total public transport services in New Zealand (as measured by in-service kms). Pricing for the remaining councils can be discussed on a case-by-case basis.

Indicative review process

19. While the NZ Transport Agency is procuring and funding this review, it is expected that the primary point of contact for the consultant will be with each council, during the conduct of the review. It is expected that the consultant will notify the NZ Transport Agency if any issues arises.

Capabilities of consultant

20. The consultant should have sound commercial and financial skills.

21. The consultant will need to demonstrate they can develop good relationships with councils and bus service operators.

22. The consultant will need to have a sound knowledge and experience with bus operation business models.

23. The consultant will also need to have good systems and processes for managing sensitive information and be able to provide all parties with confidence that sensitive information is protected.

24. The consultant should expect to have to travel to engage with councils and operators directly. The most likely cities that the consultant may need to travel to are: Auckland, Wellington, Christchurch, Hamilton, Tauranga, and Dunedin.

Confidentiality requirements

25. Given the commercial sensitivities around the disclosure of operator scheduling and cost information, the sharing of information will be restricted to the operator, the council and the consultant (information must not be shared between operators or between [other councils]).

Appendix A – Overview of public transport in New Zealand

New Zealand Public Transport Governance

1. Public transport networks are largely run by regional councils or unitary authorities.¹ In Auckland the responsibility is passed on to a council-controlled organisation (Auckland Transport) and in the Southland region, the Southland Regional Council has delegated the provision of public transport services to the Invercargill City Council.
2. Councils have a range of obligations in providing public transport services. These include:
 - Planning, designing, procuring, funding and delivering public transport in their regions.
 - Providing public transport infrastructure, e.g. bus priority lanes and signals.
 - Setting fare policy.
 - Setting fare levels.
 - Achievement of nationally set targets (for example, the proportion of operations costs recovered through fare revenue).
3. Councils enter into contracts with public transport operators (PTOs) for the provision of services. While councils will design much of the public transport network like bus timetables or where bus stops are located, PTOs deal with the day to day delivery of public transport services. For example, they hire bus drivers and set working rosters for those drivers. Except for rail, PTOs also own key public transport assets such as vehicles and depots.
4. The Ministry of Transport and the New Zealand Transport Agency (NZTA) also play a role in the provision of public transport. The Ministry of Transport provides high level policy advice and is responsible for supporting the development of legislation and Government investment priorities, for public transport, through the development of the Government Policy Statement.
5. NZTA gives effect to Government policy direction for public transport in New Zealand and co-funds with councils the provision of public transport services and infrastructure. NZTA's role in public transport also includes:
 - Allocating funding through the National Land Transport Fund (NLTF) for public transport services (in a way that is in line with direction set by the GPS).
 - Develops operational policy, like the procurement manual.
 - Supports and partners with regional councils to deliver better public transport services.
 - Represents national policy interests.

Scale of public transport operations in New Zealand

6. 13 councils provide public transport services across New Zealand. Over the 2018/19 year, approximately 126 million trips were made on public bus services in New Zealand at an operational cost of approximately of \$580 million.

¹ Unitary authorities are local authorities that are both a regional council and a territorial authority, e.g. Nelson City Council or Gisborne District Council. They are typically referred to as councils.

7. Public transport operation, and its scale, varies from region to region and the operating environments in place. It is also influenced by local policies covering fare structure, products and pricing, and by variations in governance structures. The biggest public transport centres are Auckland, Canterbury and the Greater Wellington region accounting for over roughly 85% of public transport services in New Zealand.
8. The Table over the page provides a high level overview of the number of contracts and operators across the six biggest public transport providers in New Zealand. There may be a need to review

PROACTIVE RELEASE

Overview of the six largest public transport networks in New Zealand

Council	2018/19 Operating Expenditure on bus services (fare revenue/rates/ NLTF) (\$000)	Number of Operators	Number of Contracts
Auckland Transport	\$326,587	8	50
Greater Wellington Regional Council	\$107,239	4	16
Environment Canterbury	\$60,774	3	40*
Waikato Regional Council	\$14,649	3	11
Bay of Plenty Regional Council	\$15,532	3	5
Otago Regional Council	\$13,111	2	7

* Environment Canterbury has relatively far more contracts than other regions for historical reasons. ECAN is in the process of procuring new bus services contracts which will see the number of contracts reduce to eight.

Terms of Reference

Independent review of **scheduling of bus driver breaks** under the Employment Relations Amendment Act 2018

Purpose

1. To provide independent assurance to the Government (NZ Transport Agency) and councils that operators' scheduling decisions to deliver timetables while also complying with new rest and meal break requirements introduced under the Employment Relations Amendment Act 2018 (ERAA) are as efficient as possible in the circumstances. That is, that the operator has not over-estimated the additional resources required to deliver timetables and breaks due to inefficient scheduling decisions.

Background

2. On 6 May 2019, the ERAA came into force, providing workers with minimum entitlements to rest and meal breaks. These changes mean bus drivers are entitled to additional paid 10-minute breaks during typical driving shifts.
3. The complexity of service planning has made implementing these changes a significant challenge for the public transport sector, largely because many bus timetables, schedules and rosters have not been developed with extra breaks in mind. Accommodating these new requirements is expected to be a costly exercise and could result in the cancellation or disruption of some bus services.
4. To manage these challenges, a Memorandum of Understanding (MoU) between Government, bus service operators, councils and unions was signed on 29 April 2019, committing all parties to work together to achieve the smoothest possible transition to amended rest and meal break provisions, while minimising service disruptions, safety risks and costs.
5. A temporary Land Transport Rule: Work Time in Large Passenger Service Vehicles 2019 was also passed by Government to give bus operators flexibility when scheduling rest breaks for bus drivers (e.g. at the beginning or end of a shift), over the next 12 months. The purpose of this Rule is to allow bus operators more flexibility in providing rest and meal breaks in the interim, while parties figure out how to become compliant with the new requirements, and what additional resources are needed to ensure services are still able to run.
6. The role of the NZ Transport Agency, under para 26 of the MoU is to **'monitor the scheduling of rest and meal breaks'**. Under para 32.3 of the MoU, the NZ Transport Agency is also expected to **'seek assurances, (with councils), that the disruption to services and additional costs from implementing rest and meal breaks have been minimised by bus service operators'** over the next 12 months and beyond.

Problem statement

7. To fulfil our monitoring responsibilities under the MoU, the NZ Transport Agency and councils require independent confirmation that scheduling decision by operators to meet the requirements of the ERAA while maintaining services are as efficient as possible. Based on information provided to date the additional resources required to implement new rest and meal break requirements is large and expensive. Therefore we want to be confident that we are not paying for additional resources that may not be required.
8. Given the specialist nature of public transport scheduling, the NZ Transport Agency does not possess the technical expertise to carry out such a review. So, we are

seeking an independent consultant with the relevant skills to undertake the review on our behalf.

9. This task will be part of a broader assurance exercise to ensure that bus drivers are receiving their entitlements under the ERAA and that the pricing of additional resources are reasonable in the circumstances.
10. Seeking an independent consultant to carry out this work also maintains the confidence of our MoU partners as it ensures there is a level of separation between the review and the parties of the MoU, who each have a role in the provision of rest and meal breaks.

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Scope of services

11. The consultant will need to develop and provide a methodology for reviewing operator scheduling decisions and how they will provide assurance to the Government and councils that operator scheduling decisions are efficient and reasonable within the parameters set by timetables/roster requirements. The consultant should expect to have to explain their methodology to councils and bus operators before commencing the review to secure buy-in into methodology and process.
12. The methodology should cover:
 - The technical approach that will be used to review operator scheduling decisions and determine whether they are reasonable in the circumstances or could be managed more efficiently.
 - How the consultant proposes to share information / findings or suggestions for improvement with councils, operators and the NZ Transport Agency.
13. The consultant will need to engage with a range of councils and operators as it undertakes its review. The consultant will need to be able to explain the methodology to others and be able to gain the confidence and trust of councils and operators in the robustness of their methodology.
14. Operators and councils will provide the consultant with the relevant scheduling information to carry out their review. To that end the consultant will need to identify upfront the information they require to complete the review so that councils and operators can advise how easy/hard securing the information requested might be.
15. The consultant will provide a final report to councils and the NZ Transport Agency at the end of the review. Advice should cover:
 - Confirmation that the consultant has reviewed operator scheduling decisions as set out in the methodology.
 - Confirmation that operator scheduling practices by operators to meet the requirements of the ERAA and maintain services are (or are not) efficient and reasonable.
 - Confirmation that operator scheduling is (or isn't) consistent with the requirements of the ERAA, the principles of the MoU and minimises disruption to services.

Dependencies

16. Operators, unions (drivers) and councils need to agree to an industry wide approach to the scheduling of rest and meal breaks to comply with ERAA requirements. The outcome of this exercise will set the scheduling parameters for the rostering of breaks.
17. At the time of writing operators and unions (drivers) have yet to agree a national set of principles and a framework for the scheduling of breaks, but this will be shared with the consultant when available. Note that there may be variations at a regional level due to local circumstances. If this occurs this information will also be provided to the consultant.
18. Note the consultant can consider/suggest modifications to timetables if that is likely to have a significant impact on likely resources required to meet break requirements. There is an expectation by Government that councils will consider modifications to timetables and routes to help services stay efficient, provided it won't dramatically affect access to public transport by the public.

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Out of scope

19. The consultant is not asked to assess or comment on the pricing of any additional resources identified by the operator. Costs will be assessed as a separate exercise.
20. The consultant is not asked to assess or comment on whether the approach agreed to how breaks should be scheduled by operators and unions. The principles and framework that the parties develop should be taken as given.

Response to Terms of Reference

21. The response to the terms of reference should contain:

- A proposed methodology that will outline how the review will be undertaken and how it will approach reviewing scheduling across different public transport networks.
- Relevant skills that can be used in the review. For example, knowledge and experience with scheduling software.
- The types of data required from councils and operators to complete the review.
- The amount of time required to complete the review (ie how many weeks assuming all the information you need has been provided)– a breakdown by council would be useful.
- Initial cost estimate to complete the review. We recommend that the consultant price on a council by council basis, as it may not be necessary to review all councils PT services. In the appendix to this ToR is some background information on public transport networks across New Zealand. At a minimum prices should be submitted for Auckland Transport, Greater Wellington Regional Council, Environment Canterbury, Waikato Regional Council, Bay of Plenty Regional Council, and Otago Regional Council which collectively represent 95% of total public transport services in New Zealand (as measured by in-service kms). Pricing for the remaining councils can be discussed on a case-by-case basis.
- How the consultant will manage the collection, storage and use of information/data supplied to given the commercial sensitivity round a lot of the information that the consultant will have access to.

Indicative review process

22. While the Transport Agency is procuring and funding this review, it is expected that the primary point of contact for the consultant will be with each council, during the conduct of the review. However, the consultant will notify the NZ Transport Agency if there are any serious problems in carrying out the review.

Capabilities of reviewer

23. There is a large spectrum of scheduling capabilities amongst operators – ranging from manual calculation and driver communication to use of sophisticated software-based solutions. Therefore, the reviewer must be proficient in the use and interpretation of the following systems and processes:

- Manual scheduling (e.g. using spreadsheets)
- AUSTRICS

- HASTUS
- INIT mobile plan
- Other industry standard scheduling systems

24. The reviewer will need to demonstrate that they can develop good relationships with councils and operators.

25. The reviewer will also need to have good systems and processes for managing sensitive information and be able to provide all parties with confidence that sensitive information is protected.

Confidentiality requirements

26. Given the commercial sensitivities around the disclosure of operator scheduling, the storage, handling and sharing of information must be carefully managed. The consultant will need to demonstrate they have systems and processes in place for managing sensitive information.

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Appendix A – Overview of public transport in New Zealand

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4. The Ministry of Transport and the New Zealand Transport Agency (NZTA) also play a role in the provision of public transport. The Ministry of Transport provides high level policy advice and is responsible for supporting the development of legislation and Government investment priorities, for public transport, through the development of the Government Policy Statement.
5. NZTA gives effect to Government policy direction for public transport in New Zealand and co-funds with councils the provision of public transport services and infrastructure. NZTA's role in public transport also includes:
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6. 13 councils provide public transport services across New Zealand. Over the 2018/19 year, approximately 126 million trips were made on public bus services in New Zealand at an operational cost of approximately of \$580 million.

¹ Unitary authorities are local authorities that are both a regional council and a territorial authority, e.g. Nelson City Council or Gisborne District Council. They are typically referred to as councils.

7. Public transport operation, and its scale, varies from region to region and the operating environments in place. It is also influenced by local policies covering fare structure, products and pricing, and by variations in governance structures. The biggest public transport centres are Auckland, Canterbury and the Greater Wellington region accounting for over roughly 85% of public transport services in New Zealand.
8. The table over the page provides a high-level overview of the six main public transport network operations. Collectively these councils account for over 95% of public transport bus services in New Zealand.

PROACTIVE RELEASE

Operational Characteristics of the main public transport networks in New Zealand (plus Hawkes Bay)

Council	Public Transport Network	Operator	Peak Vehicle Requirement	Total buses (including spares)	Depots	Routes	Route Variants	Bus Stops
Auckland Transport	Auckland	RMTS	72	79	2	36	56	6000 (approx)
		Ritchies	280	313	3	138	264	
		Go Bus Ltd	188	193	3	106	158	
		Howick and Eastern	85	145	1	22	49	
		NZ BUS	446	473	6	137	261	
		Pavlovich	78	80	1	26	50	
		Tranzurban	35	38	1	1	4	
Greater Wellington Regional Council	Wellington	NZ BUS	145	169	5	95	158	3000 (approx)
		Tranzurban	221	241	6	127	296	
		Mana	22	33	1	9	22	
		Uzabus	17	22	1	17	40	
Environment Canterbury	Christchurch	Red Bus	93	102	1	41	44	2700 (approx)
		Go Bus Ltd	144	158	2	12	63	
		Ritchies	6	7	1	4	2	
	Timaru	Ritchies	7	8	1	6	7	260
Bay of Plenty Regional Council	Tauranga	NZ Bus	89	103	2	34	2	819 (approx)
	Eastern BoP	Uzabus	6	8	2	8	2	
	Rotorua	Ritchies	20	23	1	11	0	
Waikato Regional Council	Hamilton/Tokoroa/Cambridge/Te Awamutu	Go Bus Ltd	80	90	2	35	163	1300 (approx)
	Thames	Thames Taxi	1	1	1	1	2	
	Taupo	Waipawa Buses	2	2	1	3	8	
Otago Regional Council	Queenstown	Ritchies	17	20	1	4	0	96
	Dunedin	Go Bus Ltd	36	42	1	11	1	850
		Ritchies		32	32	1	8	
Hawkes Bay Regional Council	Napier/Hastings	Go Bus Ltd	21	23	2	21	3	391

Note – Hawkes Bay Regional Council has been included here since it has indicated that it is keen to participate in the assurance exercise and being a smaller network a good network to test proposed approach on.

Subject: FW: ERAA Assurance Reports

Kia ora Edward,
Some non-COVID bau if that's ok- checking if there is an update on the request below?

Ngā mihi,
Matthew

Matthew Lear *he/him*

Kaitohutohu Matua | Principal Advisor, Service Delivery

Metlink

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From: Matthew Lear

Sent: Wednesday, 28 July 2021 3:09 PM

To: 'Edward Wright' <Edward.Wright@nzta.govt.nz>

Subject: ERAA Assurance Reports

Hi Edward,

We are aware Deloitte and Stantec have provided Waka Kotahi with their final ERAA Assurance Reports.

Is it possible to give us a high level view of the next steps and timeline going forward? We would also like to share the applicable operator information with our operators; if it could be considered that a 'summary by operator' report be drafted that would be appreciated.

Ngā mihi,
Matthew

Matthew Lear *he/him*

Kaitohutohu Matua | Principal Advisor, Service Delivery

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From: [Edward Wright](#)
To: [Matthew Lear](#)
Subject: RE: ERAA Assurance Reports
Date: Wednesday, 1 September 2021 10:51:59 am
Attachments: [image002.png](#)
[image003.png](#)

Hi Matthew,

It is nice to have some BAU things in the mix alongside all the Covid stuff!

My apologies that I missed replying to your earlier email on this.

From our perspective when a region receives their final reports from Deloitte and Stantec that brings the process for that region to a close. The additional costs associated with the ERAA for this year will still need to be submitted as a cost scope adjustment for this financial year, and I think the hope for next financial year onwards is that they will become part of the continuous programme. We will send some communication with further details about this when the final reports have been received for all regions, there are still a couple that are being finalised.

You are welcome to share any of the information in the final report relevant to a particular operator with them. Unfortunately all of our budget for the audit work was in the last financial year, and we have no further budget available this year, so we're unable to ask Deloitte and Stantec to do any further work beyond their original scope.

Did you receive both the full and summary reports from Deloitte and Stantec? We only receive the summary reports which anonymises the operators (though the scale of km each operators means that you still get a fair sense which is which). If you haven't already received these we could send them through in case they are useful.

Thanks,
Edward

Edward Wright (he/him)

Principal Advisor, Public Transport
Multimodal and Innovation

Email: edward.wright@nzta.govt.nz

Phone: 04 894 5459

Mobile: 021 630 190

Waka Kotahi NZ Transport Agency

From: Matthew Lear <Matthew.Lear@gw.govt.nz>

Sent: Wednesday, 1 September 2021 8:28 AM

To: Edward Wright <Edward.Wright@nzta.govt.nz>

Rest and Meal Break Scheduling Assessment Detailed Report for Greater Wellington Regional Council | May 2021.



This report has been prepared for the benefit of the Greater Wellington Regional Council. No liability is accepted by this company or any employee or sub-consultant of this company with respect to its use by any other person.

This disclaimer shall apply notwithstanding that the report may be made available to the Greater Wellington Regional Council and other persons for an application for permission or approval or to fulfil a legal requirement.

Rev. no	Date	Description	Prepared by	Checked by	Reviewed by	Approved by
1	19/05/2021	Final Report	AS	AB	DW	DW

Glossary

ERAA	Employment Relations Amendment Act 2018
GWRC	Greater Wellington Regional Council
In service	Means the operation of a service trip from the starting point to the finishing point as specified in the timetable
MoT	Ministry of Transport
MoU	Memorandum of Understanding
Non-service	Travel to and from fueling or maintenance depots and vehicle positioning and other incidental or ancillary movements.
PTA	Public Transport Authority
PTOM	Public Transport Operating Model
PVR	Peak vehicle requirement, which is the number of vehicles required to operate the highest frequency service on a route.
Unit	Means a public transport Unit as defined in section 5(1) of the Land Transport Management Act (2003), which should correspond to a separate PTOM contract.
Waka Kotahi	Waka Kotahi New Zealand Transport Agency

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PROACTIVE RELEASE

1 Background

The ERAA requires that employers, including those within the bus industry to provide reasonable rest and meal break for employees during shifts based on the number of hours worked. ERAA break requirements are shown in Table 1.

Hours worked	ERAA 2019 break requirements
2.00 to 4.00 hours	1 x 10 minute paid rest break
4.01 to 6.00 hours	1 x 10 minute paid rest break
	1 x 30 minute unpaid meal break
6.01 to 10.00 hours	1 x 10 minute paid rest break
	1 x 30 minute unpaid meal break
	1 x 10 minute paid rest break
10.01 to 12 hours	1 x 10 minute paid rest break
	1 x 30 minute unpaid meal break
	1 x 10 minute paid rest break
	1 x 10 minute paid rest break
12.01 to 14 hours	1 x 10 minute paid rest break
	First 30 minute unpaid meal break
	1 x 10 minute paid rest break
	1 x 10 minute paid rest break
	Second 30 minute unpaid meal break
14.01 to 16 hours	1 x 10 minute paid rest break
	First 30 minute unpaid meal break
	1 x 10 minute paid rest break
	1 x 10 minute paid rest break
	Second 30 minute unpaid meal break
	1 x 10 minute paid rest break

Table 1: ERAA Break Requirements

This regulation required the commercial transport sector and the bus industry to achieve full compliance by May 2020. While the initial compliance date was in May 2019, a transition period of 12 months was granted to achieve compliance.

To support the smooth transition to implementing a rest and meal breaks regime for bus drivers, a MoU was signed by key industry parties effective from 29 April 2019 and an associated Steering Group was established. The Steering Group is comprised of representatives from Ministry of Transport, bus driver unions, bus service operators, Auckland Transport, councils/unitary authorities, and Waka Kotahi.

Section 32 of the MoU addressed the expectation that assurances would be sought by each Public Transport Authority (PTA)¹ and Waka Kotahi. Waka Kotahi is undertaking this resulting programme to confirm that:

- Operators have followed a process consistent with the requirements of the ERAA for the scheduling of breaks;
- Costs of implementing rest and meal break requirements are reasonable in the circumstances; and
- There is no undue passenger disruption or impact on driver working conditions.

Stantec has been engaged to provide independent assurance to the Steering Group that operators' scheduling decisions to meet new rest and meal break requirements for employees:

- (a) are fair and reasonable; and
- (b) have not led to undue passenger disruption or adversely impacted bus driver working conditions.

¹ Public transport authorities include regional councils, unitary authorities, Invercargill City Council, and Auckland Transport.

Deloitte has been engaged to provide parallel assurance that operators' pricing of additional resources required to meet new rest and meal break requirements for employees is consistent with an appropriate pricing approach and reasonable in the circumstances.

This detailed report has been prepared for the GWRC and outlines the key findings in relation to whether operators' scheduling decisions are considered to be appropriate and reasonable.

PROACTIVE RELEASE

2 Assessment Approach

Stantec's approach to the assessment comprises of three stages. Each council or PTA is initially assessed using Stages 1 or 2, which assess compliance with scheduling rest breaks, and consultation with councils/PTAs and unions. Stage 1 and 2 apply similar methodologies, however Stage 1 applies to councils and PTAs with smaller public transport networks that only have a small number of units, whilst Stage 2 applies to larger more complex networks. Stage 3 provides a more detailed assessment should any significant issues be identified during a Stage 1 or 2 review that require additional investigation. If no significant issues are identified in Stage 1 or 2, Stage 3 is not applied.

GWRC has been classified as a Stage 2 assessment.

The following process outlines the approach to the assessment of scheduling information. The approach to the Stage 1 and 2 assessments are based on information provided to Stantec by the council. The key steps in the process are outlined below:

- **Information** - Request cost and service level information by unit from the council to provide sufficient summary data to allow for a high-level assessment of changes to services as a result of ERAA scheduling. This includes annualised service hours (hrs), service kilometres (kms), service trips, changes to Peak Vehicle Requirement (**PVR**) and any timetable changes.
- **Interviews** – With councils, unions, and operators, to gain insights into the qualitative impacts to drivers and passengers resulting from the scheduling decisions and to provide further clarity and background to the information provided in the information template.
- **Analysis** – To assess impacts to driver working conditions and passenger disruptions across operators before and after implementation of the new regulations and ensure the scheduling approach taken to achieve ERAA compliance is reasonable. During a Stage 3 analysis, a deep dive into scheduling data may be required, including detailed review of scheduling outputs and approaches.
- **Draft report** - Issue a draft report outlining key findings and recommendations for fact checking by the council. Deloitte and Stantec have provided separate reports, which are cross referenced where relevant. The reports are structured to protect the confidential information of each council and operator involved at each review stage.
- **Final report** - Issue final detailed and summary reports that reflect any feedback received on the draft. Summary reports are provided to the MoU Steering Group, Waka Kotahi, target operators and consulted union, while detailed reports are provided to the target council only.

3 Regional Public Transport Overview

The Wellington region, located at the southern end of the North Island, includes Wellington, Porirua, Upper Hutt, and Lower Hutt cities, as well as the surrounding districts of Kāpiti Coast, Masterton, Carterton, and South Wairarapa. Total regional population stands at 506,814², with a significant portion of residents being located in the urban area that includes the four cities.

Greater Wellington Regional Council is the region's PTA, and operates a network of bus, rail, and ferry services under the Metlink brand. The network includes 16 bus units. A brief description of these and operating frequencies based on the GWRC's 2014 RPTP³ (updated with the variation documents on the GWRC website) is shown below:

- U1. North-South Spine: Operates along six routes which includes one core services that has a maximum 5-10 min AM & PM peak hour frequencies. Three targeted services operate during weekdays only and AM and PM peak hour frequencies of 10-30 mins. There are also two local service with 15-30min AM and PM peak hour frequencies operating seven days a week.
- U2. East-West Spine: Includes 10 service routes including the cross-town core service that operates at a maximum 5-10 min AM & PM peak hour frequencies. Excluding one low frequency commuter service, the remaining services are local and targeted services that operate with a maximum AM and PM peak hour frequencies between 10-30 mins. Only the local services operate seven days a week.
- U3. University: Three services (two local and one targeted) which all operate at a peak AM and PM frequency of 15-20 min. Both local services operate seven days a week.
- U4. Khandallah and Aro Valley: Three service (one targeted and two local) which all operate at a peak AM & PM frequency between 10-30mins. The local services operate seven days a week.
- U5. Central: Single local service which operates seven days a week with 10-15 maximum AM and PM peak hour frequency.
- U6. Taranaki: Includes one core service which operates seven days a week with a 5-10min peak hour frequency during AM and PM peaks. Also includes one targeted commuter service which operates 3 trips during AM and PM peak times.
- U7. Brooklyn and Ōwhiro Bay: Includes six services; two local, three targeted, and one core service. Both local services operate seven days a week with a peak hour AM and PM frequency between 15-30 mins. The targeted services are commuter services which operate during weekdays during AM and PM peak times only. The core service operates seven days a week with AM and PM peak hour frequency of 5-30 mins.
- U8. Newlands: Four services including three targeted and one local. All targeted services operate only at AM and PM peak times with frequency of 15-30 mins. The local service operates seven days a week with a maximum peak hour AM and PM frequency of 5-10 mins.
- U9. Lower Hutt: Six services including two core routes, two local routes, and two targeted routes. Both core routes operate seven days a week with a maximum AM and PM peak hour frequency of 15 mins. The targeted routes operate during weekdays with varying AM and PM peak hour frequencies between 20-60mins.
- U10. Upper Hutt: Five services including four local services and one core service route. Two local services operate seven days a week with an AM and PM peak hour frequency between 20-30mins. The other two local services operate on weekdays only with a maximum AM and PM peak hour frequency of 40mins. The core service routes operate seven days a week with an AM and PM peak hour frequency of 15 mins.
- U11. Wainuiomata: Two local services that operate seven days a week with maximum AM and PM peak hour frequencies of 20 mins.
- U12. Eastbourne: Four services including three targeted services and one local service. All targeted services operate at certain times during the AM and PM periods with varying frequencies between 15-30mins. The local service operates seven days a week with an AM and PM peak hour frequency of 30 mins.
- U13. Porirua: Six services including four local routes, one targeted service, and one core service. All local service operates seven days a week with AM and PM peak hour frequencies ranging from 20-30mins. The targeted

² Obtained from: <https://www.stats.govt.nz/tools/2018-census-place-summaries/wellington-region>, accessed on 16/02/2021.

³ Obtained from: <http://www.gw.govt.nz/assets/Transport/Regional-transport/RPTP/WGNDocs-1386111-v1-FinalRPTPdocWEBversion.PDF>, accessed on 18/05/2021

service operates only one service once a month. The core service operates seven days a week with an AM and PM peak hour frequency of 10-20 mins.

- U14. Kāpiti: Nine services including five local and four targeted services. All local service operates seven days a week with a maximum AM and PM peak hour frequencies between 20-30 mins. The targeted services operate at a low frequency, which only operate a couple times a day on certain days of the week.
- U15. Wairarapa: Seven targeted low frequency services. Three of these operate on weekends while the remaining operate at certain times of the day on weekdays only.
- U18. Tawa: three services including two local and one targeted service. The two local services operate seven days a week with an AM and PM peak hour frequency of 20-30 mins. The targeted service operated on weekdays only running four and two trips during the AM and PM peaks, respectively.

The frequencies and operations of the above units show that there are many high frequency urban bus services in the network. Excluding the low frequency service delivered through Unit 5, we can expect that most other units may have to implement resource changes to timetables, operations, and/or resources to accommodate the ERAA requirements.

PROACTIVE RELEASE

4 Information Request

An information template was sent to GWRC on 23 November 2020 and returned on 24 December 2020. Service level information was requested for the date amendments were made to the ERAA (6 May 2019) and the date from which the council expects to be fully compliant with the ERAA. The council was not asked to obtain any additional information from operators.

Table 2 outlines the information provided to date.

Information Provided	Comment
Quality and completeness of information	<p>Provided:</p> <ul style="list-style-type: none"> • Service kms before and after compliance. • Service hours before and after compliance. • Service trips before and after compliance. • Timetable changes. • PVR before and after compliance. • Anticipated compliance dates. • Scheduling statistics including dead running hours and kilometres, driver shift information and in service hours and kilometres.
Information Sources	<ul style="list-style-type: none"> • Information template. • Supporting information provided by operators to GWRC. • Engagement with council and unions. • Publicly available sources e.g., Timetables.
Engagement with council, unions, and operators	<ul style="list-style-type: none"> • Meeting held with GWRC on 5 May 2021. • Meeting held with Tramways Union on 7 May 2021. • Meeting held with Amalgamated Workers Union NZ on 4 May 2021.

Table 2 Information provided

Our assessment included analysis of supplementary information provided by GWRC. This information was specific to each operator, and the information provided was not always consistent between operators but provided valuable assistance to our analysis.

5 Network Operators

Table 3 outlines the current operators in the region, their share of service km (pre-compliance), the units that they operate, and the compliance date advised. Units 16 and 17, represent the region's rail and ferry services, have been excluded. While the units are named 1-18, the exclusion of these alternate transport modes means that there are only 16 public bus units. TranzUrban is the largest operator in the region, followed by NZ Bus, Uzabus, and Mana.

Operator (and share of total service km)	Share of total service km	Units	Compliance Date
TranzUrban (59.8%)	12.1% (1,856,838km)	U1 - North-South Spine	25 October 2020
	6.0% (926,470km)	U4 - Khandallah & Aro Valley	
	4.8% (737,755km)	U7 - Brooklyn & Owhiro Bay	
	12.2% (1,867,919km)	U9 - Lower Hutt	
	9.6% (1,469,467km)	U10 - Upper Hutt	
	5.6% (863,868km)	U11 - Wainuiomata	
	7.2% (1,109,951km)	U13 - Porirua	
	2.3% (348,804km)	U15 - Wairarapa	
NZ Bus (28.8%)	11.6% (1,786,808km)	U2 - East-West Spine	19 July 2020
	4.2% (637,953km)	U3 - University	
	3.1% (478,926km)	U5 - Central	
	3.6% (553,657km)	U6 - Taranaki	
	6.3% (971,087km)	U12 - Eastbourne	
Mana (5.6%)	3.4% (525,564km)	U8 - Newlands	5 July 2020
	2.2% (340,611km)	U18 - Tawa	
Uzabus (5.7%)	5.7% (877,252km)	U14 - Kāpiti	23 August 2020

Table 3 Operator Overview

6 Assessment Findings

6.1 Timetables

The assessment of timetables before and after compliance was undertaken to determine the scale and complexity of the network, the service span, the nature of the peak, and the service level impact of any changes made. This assisted in informing Stantec's judgement of the scheduling outcomes for ERAA compliance.

All 16 units within the GWRC public bus network have had timetable changes. These changes have generally been driven by service planning requirements, with consideration given to optimising scheduling efficiency related to ERAA implementation where possible. We noted Wellington's bus network was substantially reviewed prior to ERAA, resulting in efficient timetables.

6.2 Resources

A comparison of resources for before and after compliance (i.e., service hrs, service kms and PVR) was undertaken to determine whether any changes to these have been reasonable. Key metrics by operator for before and after compliance are shown in Appendix A. The following are the resource changes made by each operator within the region.

NZ Bus

Based on supplementary information provided, we note that:

- NZ Bus have rescheduled their rosters, due to timetable and ERAA implementation.
- NZ Bus have indicated a need to recruit 3 additional bus drivers for ERAA implementation. There was an overall increase in weekly roster costs of 8%. From this we assume driver worked hours have also increased by up to 8%, with most of the ERAA driver costs a consequence of increasing shift lengths and pay hours.
- Overall kilometres operated increased by 3% due to ERAA implementation.
- There was no change in PVR.

Stantec regards these resource changes as reasonable for NZ Bus, given their scheduling methodology and industrial agreements which have been applied appropriately.

TranzUrban

Based on supplementary information provided, we note that:

- TranzUrban have rescheduled their rosters, due to timetable changes for service improvements and ERAA implementation.
- TranzUrban required an extra 18 additional full-time drivers, and 5 additional part-time drivers, with an overall increase in operating hours of 6%. From this we assume most ERAA driver costs have been directed to additional shifts and drivers, with little change in shift lengths.
- Overall kilometres operated increased by 3% due to ERAA implementation; this being primarily driven by increases in dead running.
- PVR was increased by 2 buses.
- We note that, due to Covid, TranzUrban made changes to their scheduling to minimise on road driver reliefs (so that a driver will keep the same bus for their whole shifts). This resulted in a significant decrease in dead running operated by cars, which was instead operated by buses (at a higher cost). We understand this policy is now being reversed, and where appropriate cars will replace buses for dead running to/from reliefs.

Stantec regards these resource changes as reasonable for TranzUrban, including an appropriate approach to scheduling.

Mana

Based on supplementary information provided, we note that:

- Mana have made only small adjustments to their shifts, inserting rest breaks to existing shifts where possible, and adjusting shift length to accommodate rest breaks if necessary. It appears many existing shifts had an opportunity for rest breaks during layovers.

- Mana did not require any additional staff, nor dead running.
- Driver worked hours have increased by approximately 3% as a result of ERAA implementation; primarily additional hours for rest breaks where these could not already be accommodated.
- There has been no change in PVR related to ERAA.

Stantec regards these resource changes as reasonable for Mana, including an appropriate approach to scheduling.

Uzabus

Based on supplementary information provided, we note that:

- We do not have confirmation on Uzabus staff numbers (as this information was not requested as part of the data template), however as ERAA implementation increased PVR by one bus, we assume shift numbers increased by at least one. The PVR increase to achieve ERAA compliance was offset by an equal reduction in PVR from timetable design changes, resulting in no net actual change in PVR for the operator.
- Worked hours have increased by approximately 7% as a result of ERAA implementation, whilst all kilometres have increased by approximately 2%.

Stantec regards these resource changes as reasonable for Uzabus, including an appropriate approach to scheduling.

6.3 Driver Impacts

Based on the information provided, Stantec believes the impact on driver rosters has been reasonable and appropriate.

We note that driver shifts, and rosters have changed across all operators, both to achieve ERAA compliance and for implementation of new timetables. In combination, these have required significant changes to rosters, reflected in changes in operating statistics, including shift numbers. These changes to shifts have followed the standard practices of each operator for rostering and have also been designed to meet the rostering principles on ERAA implementation agreed between Metlink, operators, and driver representatives (described in section 6.5).

We also note that GWRC has been working with operators to provide suitable locations for rest breaks to be taken. Whilst this is ongoing, sufficient arrangements are in place for ERAA implementation.

We understand that:

- NZ Bus has required 3 additional drivers, with increases in rostered hours in their existing rosters.
- TranzUrban has required 18 additional full-time drivers, and 5 additional part-time drivers.
- We understand that Mana Bus has not required any additional drivers.
- We do not have data on whether Uzabus' driver requirements have increased, however due to ERAA increasing their PVR by one bus, we assume their driver requirements are likely to have increased by at least one.

6.4 Passenger Disruptions

Stantec believes the impact on passengers due to ERAA implementation has been minimal.

We note that where timetables have been changed, this has predominantly been due to service planning requirements rather than ERAA implementation. In particular, where service levels have been adjusted, this is due to service planning requirements and not ERAA implementation, ERAA timetable adjustments being limited to optimising provision of layover time within timetables to enable opportunities for scheduling of rest breaks.

We do however note that driver numbers have increased across all operators except Mana (see note in section 6.3 regarding Uzabus). Given the current difficulties in driver recruitment in Wellington, this has the potential risk of affecting service performance if insufficient drivers are available to operate the service, which could result in service cancellations and disruption.

6.5 Engagement

GWRC, operators and unions agreed on rostering principles prior to implementation of ERAA compliant rosters. The rostering principles are:

1. *AGREED: The 10-minute rest breaks should be taken at a time that is reasonable for both operators and drivers, avoiding where possible peak periods of demand for buses and drivers (i.e. the customer peaks).*
2. *AGREED: The 10-minute break should be taken. The intention is ensure through appropriate timetables, schedules and rosters to allow breaks to be taken. Notwithstanding this, due to operational factors it is*

recognised that on occasion it may not be possible for a break to be taken when scheduled, and on those occasions, first preference is for the operator to reschedule the break within the work period, and if that is not possible, payment in lieu must occur. Payment in lieu is an exception and trends in this should be monitored by the employer and steps to rectify this taken if it becomes a trend.

3. *AGREED: 10 minute rest breaks should be taken at a time that provides an actual break. This is defined as including the following principles:*
 - *That the driver is not in control of the vehicle, but remains responsible for the security of the vehicle.*
 - *That the driver remains responsible for their cash box.*
 - *That the driver is not responsible for any customers – whether on the bus or waiting for the next service.*
 - *That the driver is free and uninterrupted to attend to personal matters. This may include use of a restroom (if available), refreshments (the employer is not required to provide facilities to make a drink for this 10 minute break), making phone calls, or stepping away from the bus.*
 - *That the driver is not subject to unreasonable pressure to meet the start of the next trip.*
4. *AGREED: 30 minute meal breaks shall be taken as per the current operator specific collective or individual employment agreement requirements. No change is required here to current practice.*

The Tramways Union has members at all four Wellington bus operators and has provided feedback to Stantec on the application of the ERAA at each operator.

Stantec notes from the union's comments that:

- NZ Bus, Mana and Uzabus have implemented rest breaks appropriately in the Union's opinion (acknowledging the facilities issue below)
- Not all rest breaks are being provided at locations with facilities (this is permitted under the rostering principles); the union would prefer facilities to be provided for all rest breaks. We understand GWRC is continuing to work with operators on maximising the availability of facilities where appropriate. This was particularly mentioned in relation to NZ Bus and Uzabus.
- The union has a disagreement with TranzUrban over the interpretation of work periods in the ERAA. In particular, this means a third break in long shifts is unpaid under TranzUrban's interpretation (the union notes this contrasts with Mana's application of payment to third breaks). The Tramways Union has currently filed an authority to determine the correct interpretation of a work period and are likely to seek further resolution in the employment court. This could affect TranzUrban's driver costs.

Amalgamated Workers Union NZ also members within the region and has provided feedback to Stantec on the application of the ERAA at each operator.

Stantec notes from the union's comments that:

- *All ERAA breaks and changes were well consulted and undertaken effectively – no issues were raised, and drivers are satisfied that the changes have been undertaken effectively.*

Overall Stantec believes driver satisfaction is reasonable with the implementation of the ERAA, with the exception of the unresolved payment issue with TranzUrban.

7 Summary by Operator

ERAA scheduling compliance is summarised for all units in Table 5 below. Findings have been presented and rated according to the rating scale in Table 4.

Compliance Rating	Qualifying conditions for rating
Good	No significant point of concern in the scheduling response
Moderate	Some points of concern/clarification are observed and noted, however no follow up is required
Poor	Significant concerns noted and further investigation is required

Table 4: Compliance rating

TranzUrban	Compliance status	Commentary / Issues identified
Scheduling decisions		We note the temporary arrangements making greater use of buses instead of cars for reliefs. We recommend GWRC ensures this practice is fully reversed, and that any opportunities to further reduce dead running are investigated.
Driver impacts		The Tramways Union has advised of a disagreement on payment of third rest breaks. This matter is not yet resolved. It does not impact on the scheduling and rosters but may affect future labour costs.
Passenger disruption		Minimal passenger disruption.
NZ Bus	Compliance status	Commentary / Issues identified
Scheduling decisions		No scheduling issues were identified; process was reasonable and appropriate in Stantec's view.
Driver impacts		We note ongoing preferences by drivers for facilities at rest break locations, however also that current scheduling is in line with the rostering principles.
Passenger disruption		Minimal passenger disruption.
Mana	Compliance status	Commentary / Issues identified
Scheduling decisions		No scheduling issues were identified; process was reasonable and appropriate in Stantec's view.
Driver impacts		No driver impacts noted.
Passenger disruption		Minimal passenger disruption.
Uzabus	Compliance status	Commentary / Issues identified
Scheduling decisions		No scheduling issues were identified; process was reasonable and appropriate in Stantec's view.
Driver impacts		We note ongoing preferences by drivers for facilities at rest break locations, however also that current scheduling is in line with the rostering principles.
Passenger disruption		Minimal passenger disruption.

Table 5: Operator compliance summary

8 Conclusion

Stantec is satisfied that there are limited passenger and driver impacts as a result of the operator response to the ERAA, and that the scheduling approach taken to achieve compliance with the ERAA is appropriate and reasonable in the circumstances. No further action is recommended.

PROACTIVE RELEASE

Appendix A: Key Metrics by Operator

Operator	UNIT	Key Metrics	06-May-2019	Compliance Date
TranzUrban	U1 - North-South Spine	Service kilometres	1,856,838	1,835,472
		Non-service kilometres		
		Service hours	100,708	102,763
		No. of service Trips	121,436	117,014
		Timetable changes	Y	
		PVR	50	-
NZ Bus	U2 - East-West Spine	Service kilometres	1,786,808	1,804,568
		Non-service kilometres		
		Service hours	95,602	103,591
		No. of service Trips	167,260	76,120
		Timetable changes	Y	
		PVR	64	64
NZ Bus	U3 - University	Service kilometres	637,953	600,538
		Non-service kilometres		
		Service hours	31,729	32,949
		No. of service Trips	97,942	91,499
		Timetable changes	Y	
		PVR	20	17
TranzUrban	U4 - Khandallah & Aro Valley	Service kilometres	926,470	929,507
		Non-service kilometres		
		Service hours	47,318	47,464
		No. of service Trips	51,998	-
		Timetable changes	Y	
		PVR	27	-
NZ Bus	U5 - Central	Service kilometres	478,926	473,598
		Non-service kilometres		
		Service hours	28,361	29,641
		No. of service Trips	36,728	-
		Timetable changes	Y	
		PVR	26	22
NZ Bus	U6 - Taranaki	Service kilometres	553,657	540,664
		Non-service kilometres		
		Service hours	40,285	42,860
		No. of service Trips	64,545	-
		Timetable changes	Y	
		PVR	19	14
TranzUrban	U7 - Brooklyn & Owhiro Bay	Service kilometres	737,755	676,001
		Non-service kilometres		
		Service hours	40,475	40,896
		No. of service Trips	91,897	-
		Timetable changes	Y	
		PVR	26	-
Mana	U8 - Newlands	Service kilometres	525,564	551,418
		Non-service kilometres		
		Service hours	24,259	25,382
		No. of service Trips	30,299	-
		Timetable changes	Y	
		PVR	14	14
TranzUrban	U9 - Lower Hutt	Service kilometres	1,867,919	1,867,209
		Non-service kilometres		
		Service hours	71,713	71,672
		No. of service Trips	114,969	-
		Timetable changes	Y	
		PVR	39	-
TranzUrban	U10 - Upper Hutt	Service kilometres	1,469,467	1,468,728
		Non-service kilometres		

		Service hours	53,703	53,608
		No. of service Trips	76,742	-
		Timetable changes	Y	
		PVR	32	-
TranzUrban	U11 - Wainuiomata	Service kilometres	863,868	863,868
		Non-service kilometres		
		Service hours	28,353	28,353
		No. of service Trips	40,970	-
		Timetable changes	Y	
		PVR	16	-
NZ Bus	U12 - Eastbourne	Service kilometres	971,087	888,062
		Non-service kilometres		
		Service hours	34,837	33,925
		No. of service Trips	34,115	30,365
		Timetable changes	Y	
		PVR	16	16
TranzUrban	U13 - Porirua	Service kilometres	1,109,951	1,113,609
		Non-service kilometres		
		Service hours	43,058	43,143
		No. of service Trips	91,304	-
		Timetable changes	Y	
		PVR	24	-
Uzabus	U14 - Kāpiti	Service kilometres	877,252	875,021
		Non-service kilometres		
		Service hours	29,507	29,333
		No. of service Trips	77,392	-
		Timetable changes	Y	
		PVR	-	-
TranzUrban	U15 - Wairarapa	Service kilometres	348,804	368,895
		Non-service kilometres		
		Service hours	8,097	8,409
		No. of service Trips	13,210	-
		Timetable changes	Y	
		PVR	7	-
Mana	U18 - Tawa	Service kilometres	340,611	343,989
		Non-service kilometres		
		Service hours	12,194	12,194
		No. of service Trips	24,866	-
		Timetable changes	Y	
		PVR	8	8

08 October 2020

Councils, Auckland Transport, unions, operators, Bus & Coach Association
By Bcc email

Assurance of implementation of rest and meal breaks for bus drivers under the ERAA

Background

In order to support the smooth transition to implementing rest and meal breaks for bus drivers a Memorandum of Understanding (MoU) was signed by key industry parties effective from 29 April 2019 and an associated Steering Group was established. Section 32 of the MoU addressed the expectation that assurances would be sought by councils and Waka Kotahi New Zealand Transport Agency.

Now that almost all councils have advised that they have completed the transition to rest and meal break compliant timetables, schedules and driver rosters, Waka Kotahi is ramping up the assurance programme. The purpose of the assurance programme is to confirm that:

- operators followed a process consistent with the requirements of the Employment Relations Amendment Act 2018 (ERAA) for the scheduling of breaks
- costs of implementing rest and meal break requirements are reasonable in the circumstances
- there are no undue passenger disruption and driver impacts

The Steering Group will receive monthly updates on the progress of the assurance programme, as well as summarised compliance information (in line with confidentiality agreements).

Next steps

As part of the assurance programme, Waka Kotahi has appointed Deloitte and Stantec to provide independent confirmation that operators' submissions for additional resources are fair and reasonable.

Stantec's role is to confirm that operators' scheduling decisions to deliver timetables and comply with new rest and meal break requirements are reasonable in the circumstances, and do not introduce undue passenger disruption or driver impacts. That is, that the operator has not over-estimated the additional resources required to deliver timetables and breaks due to inefficient scheduling decisions.

Deloitte's role is to confirm that operators' pricing of additional resources required to meet new rest and meal break requirements for employees is consistent with an appropriate pricing approach and reasonable in the circumstances.

Waka Kotahi has developed a staged assurance process with Stantec and Deloitte to minimise any burden on councils, operators and unions. The process is intended to be proportional to the relative size of any compliance funding requested, any impacts on drivers, and the complexity of the bus network.

Your role

As part of the process, an information template will be provided for councils to complete to show how they have determined the funding implications of compliance. The template requires operational and financial information that will assist Deloitte and Stantec to provide their independent confirmation of pricing and scheduling. We ask that Councils complete the information template and return it within 6 weeks, or such time agreed on a case by case basis. The template will be released to Councils later in October and should be able to be completed from existing information held by Councils.

Once the completed information template is received, Deloitte and Stantec will be in contact with Councils, operators and unions to begin the next stage of the review process. This will involve interviews and further data collection as required.

Given the commercial sensitivities around the disclosure of scheduling and cost information, the sharing of information will be strictly managed and the content and distribution of reports from Stantec and Deloitte restricted. A confidentiality agreement between Stantec, Deloitte, councils and operators (as appropriate) will be circulated ahead of the staged review process to ensure sensitive information collected remains confidential.

Implications for contract payments

Now that we have moved from transition to compliance with the ERAA, operators have been submitting their compliance costings to councils for payment. Because the assurance work has only just started a number of councils have asked Waka Kotahi whether they can or should be making ERAA payments to operators prior to the assurance work being completed.

Waka Kotahi's view is that councils should pay operators for costs that they are incurring, but that any ERAA payments and associated changes to base contract payment and variation rates are subject to adjustments due to the outcomes of the assurance work. This process could result in higher or lower payments.

For clarity, an adjustment to an ERAA payment as a result of the ERAA assurance process should not be applied retrospectively but should apply going forward. The need for any retrospective adjustment of payments should only occur where there is an error in calculations. That is, an operator may accidentally charge for a cost it is not incurring and conversely may not be paid for a cost it is incurring.

If you have any questions, please do not hesitate to email Gemma Forlong (gemma.forlong@nzta.govt.nz).

Thank you for cooperation and input.

Yours sincerely



Deborah Hume

Public Transport Manager (interim)

Memorandum of Understanding

Rest and meal breaks for bus drivers

PROACTIVE RELEASE

This **Memorandum of Understanding** is effective from 29 April 2019.

Parties to this Memorandum of Understanding

This Memorandum of Understanding is made between:

- Hon Phil Twyford, Minister of Transport, for the Government (including the Ministry of Transport and the NZ Transport Agency)
- Hon Iain Lees-Galloway, Minister for Workplace Relations and Safety
- Barry Kidd, Bus & Coach Association, for bus service operators (listed in Schedule 1)
- Greg Campbell, Greater Wellington Regional Council, for regional councils, unitary authorities and Auckland Transport (listed in Schedule 2)
- Richard Wagstaff, New Zealand Council of Trade Unions, for unions (listed in Schedule 3)

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A Introduction

1. The Government is committed to growing public transport as a key part of its transport strategy and is investing significantly to support that objective.
2. The Government supports workers' rights and believes that bus drivers, like all workers, deserve fair working conditions, including rest and meal breaks.
3. On 6 May 2019, changes to the Employment Relations Act 2000 come into force that provide workers with minimum entitlements to rest and meal breaks. These changes will mean bus drivers are entitled to 10-minute breaks during typical driving shifts.
4. The complexity of service planning in the public transport industry makes implementing these changes a significant challenge for bus service operators, councils and unions. The Government is committed to working constructively and collaboratively with bus service operators, councils and unions to assist them to address these challenges.

B Outcome

5. The purpose of this Memorandum of Understanding is to achieve the smoothest possible transition to the implementation of the amended rest and meal break provisions of the Employment Relations Act 2000. This will ensure bus drivers receive the rest and meal breaks they are entitled to while minimising service disruption and safety risks, and costs to councils, bus operators and the Government.

C Steering Group established

6. A Steering Group has been established to oversee the implementation of this Memorandum of Understanding, recognising the context of each individual party. The Steering Group is comprised of:
 - Peter Mersi, Chief Executive, Ministry of Transport (Chair)
 - Brent Johnston, Manager, Mobility & Safety, Ministry of Transport
 - Richard Wagstaff, representing bus driver union members
 - Barry Kidd, representing bus service operators
 - Greg Campbell, representing regional councils, unitary authorities and Auckland Transport
 - Barbara Tebbs, NZ Transport Agency
 - Beth Houston, for the Minister of Transport

7. The Ministry of Transport will provide secretariat support to the Steering Group and free and frank advice to the Minister of Transport on matters relating to this Memorandum of Understanding.
8. The Ministry of Business, Innovation and Employment will support the Steering Group in an advisory capacity.
9. The Steering Group will meet regularly to:
 - 9.1 monitor and evaluate progress towards the outcome of this Memorandum of Understanding;
 - 9.2 address matters of concern related to the implementation of the Memorandum of Understanding raised by members of the Steering Group or by Parties to this Memorandum of Understanding.

D Acknowledgment of work

10. The Parties collectively acknowledge the considerable time and effort that each has contributed towards the development of this Memorandum of Understanding.
11. Current and ongoing work has and will include meetings and workshops between councils, bus service operators and unions. Working groups will be established to develop case studies to model the impacts of the changes to the Employment Relations Act 2000 on the scheduling of services and costs.

E Principles

12. The Parties agree to:
 - 12.1 work constructively and collaboratively, based on a spirit of goodwill and cooperation, to achieve the outcome of this Memorandum of Understanding;
 - 12.2 adopt a tripartite approach, under which bus service operators, unions and councils, facilitated by Government, will develop and implement an industry-wide solution to achieve the outcome of this Memorandum of Understanding;
 - 12.3 enable the free flow of information between the Parties as necessary to facilitate and provide assurance about the achievement of the outcome of this Memorandum of Understanding.

F Undertakings, roles and responsibilities

13. The Government will make a new Land Transport Rule (the Rule) to come into effect before 6 May 2019. The Rule will provide clear parameters for the application of rest and meal breaks for bus service operators and their employees.
14. Before 6 May, and through the transition period described in part G, bus service operators and unions agree to use their best endeavours to employ maximum flexibility in how rest and meal breaks are applied, acknowledging that breaks may be difficult to schedule in, or close to, the middle of shifts without significant service disruption.
15. Bus service operators will work with unions to ensure that all staff are supported to participate in discussion forums with unions. For those staff who choose not to participate in these forums, operators undertake to engage with those staff in good faith as part of normal business practice. If concerns emerge these will be addressed by the Steering Group in accordance with clause 9.2.
16. In giving effect to clause 15, to facilitate engagement, the Parties will, where appropriate, disseminate information in a manner consistent with clause 30.
17. Councils agree to work with bus service operators and representatives of bus drivers in good faith to allow maximum flexibility in the timetabling of bus services during the transition period described in part G, to minimise service disruption and customer impacts.
18. Bus service operators and unions agree to avoid undertaking any form of industrial action on matters relating to this Memorandum of Understanding during the transition period described in part G below.
19. Bus service operators and unions agree to raise with the Steering Group any matters relevant to this Memorandum of Understanding that may affect collective or individual bargaining.
20. Collectively, bus service operators, councils and unions undertake to:
 - 20.1 work together to facilitate the application of the provisions of the Rule as they relate to rest and meal breaks in good faith and to ensure the smoothest possible transition to the new requirements;
 - 20.2 contribute to or attend workshops or meetings during the transition period to facilitate that transition.

21. The initial focus of the Parties is achieving the smoothest possible transition to the implementation of the amended rest and meal break provisions of the Employment Relations Act 2000. However, the Parties also agree to use a tripartite industry process to progress work on:
 - 21.1 workforce development issues;
 - 21.2 a review of the Worktime and Logbooks Rule and compliance with it;
 - 21.3 achieving a living wage as a minimum standard.
22. The Parties agree to raise any concerns or issues related to the implementation of this Memorandum of Understanding through the forum of the Steering Group. The Steering Group is to be the initial point of recourse for those concerns or issues.
23. The undertakings in this Memorandum of Understanding may be varied by agreement between the Parties.
24. The undertakings in the Memorandum of Understanding cease at the end of the transition period described in Part G below, or earlier if agreed between the Parties.

G Transition Period

25. The Parties agree to a 'transition period' of up to 12 months commencing on 6 May 2019.
26. During the transition period, the NZ Transport Agency will monitor the scheduling of rest and meals breaks, and bus service operators and councils will facilitate access to information necessary for the Agency to perform its monitoring function.
27. During the transition period, and beyond, the Minister of Transport undertakes to investigate systemic issues in the industry that need addressing to grow and strengthen the industry. This includes improving service efficiency, management of service performance, addressing workforce recruitment and retention issues, ensuring adequate infrastructure provision, driver wages and conditions, and enhancing workplace relations.
28. During the transition period, councils will take into account the impact of rest and meal breaks in their management of service performance through public transport contracts with bus service operators.
29. During the transition period, councils, unions and bus service operators will work collaboratively to examine adjustments to scheduling, rostering and timetables in order to achieve a smooth transition and minimum disruption when the

legislation comes into effect. This will include examining the implementation of the Rule.

H Communications

30. The Parties agree to use and/or disseminate amongst their organisations, and to support one another as appropriate, all communications material provided by the Steering Group, and associated communications and consultation material required to implement this agreement.

I Funding

31. The Parties acknowledge that achieving the outcome of this Memorandum of Understanding will have funding implications. The parties agree to undertake discussions about cost-sharing arrangements in good faith leading up to 6 May and during the transition period.
32. The Parties agree to apply the following funding principles to the good faith discussions as follows:
- 32.1 central government (via the NZ Transport Agency), local government, and passengers share the costs of providing public transport services;
 - 32.2 there will be cost implications as a result of implementing new rest and meal breaks;
 - 32.3 councils and the NZ Transport Agency will seek assurances that the disruption to services and additional costs from implementing rest and meal breaks have been minimised by bus service operators;
 - 32.4 the Government (via the NZ Transport Agency), councils, and bus service operators will enter into cost sharing discussions to ensure costs are fairly borne and that these costs have been minimised and quantified with certainty.

J Confidentiality

24. All information and other correspondence between the Parties in respect of the matters contained in this Memorandum of Understanding must be kept confidential and must not be disclosed except to the extent:
- 24.5 required by law; or
 - 24.6 necessary for the Parties to monitor, share information and discuss the issues raised in this Memorandum of Understanding, consistent with any statutory or regulatory obligation or requirement, such information to be used by the Parties solely for the purposes for which it was provided; or
 - 24.7 otherwise agreed to between the Parties in writing.

K Conditions

25. Nothing in this Memorandum of Understanding shall make either party liable for the actions of the other, or create any new legal relationship between the parties.

Executed as a Memorandum of Understanding

Signed: 

Greg Campbell

Regional/Unitary Councils/Auckland Transport

Name

Signing for

24 April 2019

Date

Signed: 

Barry Kidd
Chief Executive
Bus & Coach Association

Bus operators listed in Schedule 1

Name

Signing for

24 April 2019

Date

Signed: 

Richard Wagstaff
President
NZ Council of Trade Unions

NZ Council of Trade Unions

Name

Signing for

25 April 2019

Date

Signed:



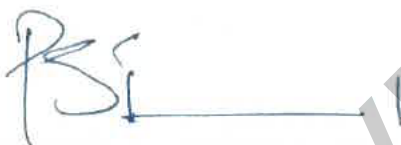
Hon Iain Lees-Galloway

Minister for Workplace Relations and Safety

Name

X

Signed:



Hon Phil Twyford

Minister of Transport

Name

29 April 2019

Date

Schedule 1: Bus Service Operators

Bus Service Operators who are party to this Memorandum of Understanding are listed below, along with the date on which they became a party.

Howick & Eastern Buses Ltd	24 April 2019
Mana Coach Services.	24 April 2019
Uzabus	24 April 2019
Pavlovich Coachlines	26 April 2019
Go Bus	26 April 2019
Nelson Coachlines	26 April 2019
NZ Bus	26 April 2019
Tranzit Coachlines	26 April 2019
Red Bus	26 April 2019
Ritchies Transport	29 April 2019
Ritchies Murphy Transport Solutions	29 April 2019

Schedule 2: Regional Councils, Unitary Authorities and Auckland Transport

Local authorities who are party to this Memorandum of Understanding are listed below, along with the date on which they became a party.

Auckland Transport	24 April 2019
Greater Wellington Regional Council	24 April 2019
Northland Regional Council	24 April 2019
Waikato Regional Council	24 April 2019
Bay of Plenty Regional Council	24 April 2019
Gisborne District Council	24 April 2019
Taranaki Regional Council	24 April 2019
Horizons Regional Council	24 April 2019
Hawkes Bay Regional Council	24 April 2019
Nelson City Council	24 April 2019
Marlborough District Council	24 April 2019
Environment Canterbury	24 April 2019
Otago Regional Council	24 April 2019
Invercargill City Council	24 April 2019
Environment Southland	24 April 2019

Schedule 3: Unions

Unions who are party to this Memorandum of Understanding are listed below, along with the date on which they became a party.

New Zealand Council of Trade Unions

25 April 2019

Unions to follow following consultation with members and delegates

PROACTIVE RELEASE

6 March 2018

Chris Laidlaw
Chair, Greater Wellington Regional Council

Email: chris.laidlaw@gw.govt.nz

Dear Chris

Rest and Meal Break Changes

The Bus and Coach Association (NZ) Incorporated (the BCA) is a membership organisation representing the interests of the bus and coach industry. Our members include the majority of New Zealand's bus and coach operators as well as domestic and international bus manufacturers and suppliers. Collectively we represent the interests of the operators of thousands of buses, shuttles, mini-vans and limousines across the country.

This letter is submitted on behalf of our membership to alert you to the issues your organisation and our members face because of changes to requirements for prescribed meal and rest breaks in the Employment Relations Amendment Act (ERAA). These changes come into effect on 6 May 2019 and will significantly impact your costs and the ability of our members to deliver your urban bus services.

The Changes

In a timetabling context, a driver who starts at 6:00am will, for a four-hour shift from 6 May 2019, be required to take a ten-minute break at 8:00am – the middle of peak time for most centres. For a driver working an eight-hour shift, bus operators will be required to include a paid 10-minute break after two hours of work, a 30-minute meal relief after four hours of work and a further paid 10-minute break after 6 hours. Currently drivers are required to have a 30-minute unpaid break after five and a half hours. While this appears to be a long period without a break, it is extremely rare for urban bus drivers to go for more than an hour without a break before re-commencing duties.

Cost Impact

Our members are currently modelling the cost and service impacts of these requirements. Early analysis indicates adverse cost impacts in terms of additional paid time, and a reduced ability to deliver current timetables. Members anticipate these changes will require additional drivers and vehicle resources to deliver current timetables during peak times. This is a serious issue for Council budgets.

Safety

The government stated rest breaks will benefit workplaces by helping employees work safely and productively. We believe these changes were unnecessary, as drivers must already adhere to Land Transport Work-time and Logbook Rule requirements (the Rule). These requirements were designed to improve safety and reduce fatigue issues for drivers of commercial vehicles and have been in place, and actively enforced, for many years.

Reduced Productivity

In factory and office workplaces, it is relatively easy to plan and re-roster staff for 2-hour work periods and subsequent 10-minute breaks. This is often not possible for urban bus services. Traffic and passenger issues aside, peak-hour trips are usually linked to further trips – with reduced recovery times when higher

frequencies operate. The impact of these 10-minute breaks is also likely to increase the number of vehicles required to maintain existing peak timetables.

Agreement

The ERAA states that if employers and employees cannot agree about when breaks will occur, then the legislation takes precedent. Driver duties are constructed around regular timetabled service requirements. These requirements are of varying durations and are necessarily delivered by a variety of staff over a week. Failing to get agreement with just one person about break scheduling could detrimentally impact bus service provision.

Reduced Income for Staff

It is highly likely many staff will lose income because of these changes. This is because shift lengths will need to reduce to allow roundtrips to be made without breaching either the ERAA or the maximum driving hour rules in both the Rule.

Increased Staff Requirement

You will also be aware of the nationwide driver shortage. These changes will compound this issue by increasing the number of drivers needed to deliver current service levels. The decreased income opportunities outlined above will also make driving less attractive to prospective recruits, making it harder to recruit and retain staff.

Insufficient Time to Prepare

As noted, implemented changes to rostering – and therefore likely changes to scheduling – are required by 6 May 2019. This gives your organisation and our members approximately two months to prepare. We are concerned this is not long enough for any necessary roster, cost and timetable changes.

Implementing these changes in the best way possible is critically important to the business of our members, and the service they and you provide your communities. We seek a discussion with you at the earliest opportunity to determine a way forward.

Yours faithfully



Barry Kidd
Chief Executive

CC Chief Executive Greg Campbell

From: [Matthew Lear](#)
To: [Josh Hayes](#); [Susan Wilson](#); [Luke Baron](#)
Subject: FW: Assurance work query
Date: Tuesday, 20 October 2020 3:58:30 pm
Attachments: [image001.png](#)
[image002.jpg](#)
[image003.jpg](#)
[image004.jpg](#)
[image005.jpg](#)
[image006.jpg](#)
[image013.png](#)
[image014.jpg](#)
[image015.jpg](#)
[image016.jpg](#)
[image017.jpg](#)
[image018.jpg](#)

Ngā mihi,
Matthew

Matthew Lear

Kaitohutohu Matua | Principal Advisor, Service Delivery

Metlink

DD 04 830 4038 | **M** 021 984 651

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From: Gemma Forlong <Gemma.Forlong@nzta.govt.nz>
Sent: Tuesday, 20 October 2020 3:14 PM
To: Matthew Lear <Matthew.Lear@gw.govt.nz>
Cc: Deborah Hume <Deborah.Hume@nzta.govt.nz>; Ian Stuart <Ian.Stuart@nzta.govt.nz>
Subject: RE: Assurance work query

Kia Ora Matthew,

If GW has already carried out due diligence (on shifts, schedules etc), GW should be paying the submitted prices from the date compliance was confirmed. In other words, GW should be making back payments now if you're comfortable with the information you have been provided with. GW should also be paying the submitted price going forward.

To be clear - Waka Kotahi does not support the approach you have suggested.

Holding off on full payments should only occur if due diligence was not able to be carried out, or if there are any major concerns about the submitted prices – But it sounds like GW isn't experiencing this issue. Please let us know if this isn't the case.

The assurance work is intended to confirm that what you are paying for (the submitted price) is reasonable. If the assurance work carried out by Deloitte and Stantec determines this is the case, GW would continue to pay the operator's submitted pricing.

If the assurance work finds that GW has been overpaying or underpaying, then the submitted price would be changed, and from then on, GW would pay the new recommended pricing. The recommended price should not be back-dated to the time of compliance.

In reference to your second question about payments going forward - the adjustments will only apply to future claims (i.e. no wash up to adjust for past overpayments).

Feel free to get in touch if you have any other questions.

Ngā mihi

Gemma

Gemma Forlong / Advisor
Transport System Policy
DDI +64 04 897 4615 / M +64 021 198 5217
E Gemma.Forlong@nzta.govt.nz / w nzta.govt.nz

Waka Kotahi NZ Transport Agency
Chews Lane Office / 50 Victoria Street
Private Bag 6995, Wellington 6141, New Zealand

rego-banner



From: Matthew Lear <Matthew.Lear@gw.govt.nz>
Sent: Monday, 19 October 2020 3:14 PM
To: Gemma Forlong <Gemma.Forlong@nzta.govt.nz>
Cc: Deborah Hume <Deborah.Hume@nzta.govt.nz>
Subject: RE: Assurance work query

Hi Gemma,
NZ Bus and Mana went live with their ERAA changes on 19 July, and Uzabus on 23 August (Tranzurban will go live on 25 October). We continued to pay operators the interim ERAA contract payments whilst we did some due diligence on the shifts and schedules, and understand

more on the Waka Kotahi assurance process.

Now we have a clear way forward identified for contract payments GW intends to back date operator payments to their ERAA fully compliant go-live date (if any). We will then apply any findings from the assurance process to that start date.

Would that approach be supported by Waka Kotahi?

Secondly,

Could you clarify one point of the Waka Kotahi letter. When the letter mentions adjustments to payments going forward, does that allow for:

Does it (1) allow a wash up applied against future payments, or (2) should the adjustment only apply to future claims (i.e. no wash up to adjust for past overpayments)

Thanks in advance!

Ngā mihi,
Matthew

Matthew Lear

Kaitohutohu Matua | Principal Advisor, Service Delivery

Metlink

DD 04 830 4038 | **M** 021 984 651

L2, 15 Walter St, Te Aro, Wellington 6011 | PO Box 11646, Manners St, Wellington 6142

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From: Gemma Forlong <Gemma.Forlong@nzta.govt.nz>

Sent: Monday, 19 October 2020 1:43 PM

To: Matthew Lear <Matthew.Lear@gw.govt.nz>

Cc: Deborah Hume <Deborah.Hume@nzta.govt.nz>

Subject: Assurance work query

Hey Matthew,

I've run your query past Deb, but we'd prefer it if you popped the question in writing – just so we appropriately deal with all parts of your question.

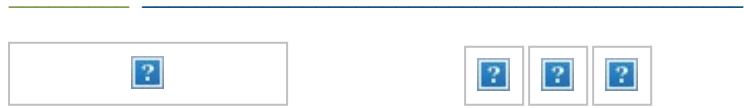
Could you please write up your question in an email and send it through when you have a spare moment?

Ngā mihi

Gemma

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Coversheet for CE's signature

DATE: 28 NOVEMBER 2019

WHEN REQUIRED BY: ASAP

1 Description of document to be signed off / payment to be authorised
(Reason for approval – What does it achieve?)

GWRC has entered into Partnering Contracts with Madge Coachlines Ltd, Tranzit Group Ltd, Mana Coach Services Ltd, Wellington City Transport Ltd and Cityline (NZ) Ltd (**Bus Operators**). The Employment Relations Amendment Act 2018 has amended the rights of workers (including the Drivers) to rest and meal breaks with effect from 6 May 2019. Compliance with the changes may cause the Bus Operators to incur additional costs in connection with the performance of their obligations under the Partnering Contracts.

A variation of the Partnering Contracts is not appropriate as the additional payments do not arise as a result of a change to the Services. Supplementary Deeds have been created to record the terms and conditions upon which the claims may be presented and paid and is supplementary to the existing Partnering Contracts.

GWRC is satisfied the Bus Operators have used reasonable endeavours to mitigate and minimise any disruption to the Services and the costs incurred.

Attached are the following documents for your approval and sign off:

• **Procurement Approval Memos:**

Bus Operator	Unit/s	section 7(2)(h)	
Madge Coachlines Ltd	14		
Tranzit Group Ltd	1, 4, 7, 9, 10, 11, 13 and 15		
Mana Coach Services Ltd	8 and 18		
Wellington City Transport Ltd (NZ Bus)	2, 3, 5, and 6		
Cityline (NZ) Ltd (NZ Bus)	12		
		\$474,320.00	\$493,680.00
		\$968,000.00	

• **Supplementary Deeds – Driver Rest and Meal Breaks:**

Bus Operator	Unit/s	outside scope (section 7(2)(h))
Madge Coachlines Ltd	14	
Tranzit Group Ltd	1, 4, 7, 9, 10, 11, 13 and 15	
Mana Coach Services Ltd	8 and 18	
Wellington City Transport Ltd (NZ Bus)	2, 3, 5, and 6	
Cityline (NZ) Ltd (NZ Bus)	12	

2 Representation

(Confirm the document is in order for CE sign-off / costs appropriate and within budget)

Attached is one copy of the Memorandum of Understanding dated 29 April 2019 and one copy of an email confirming funding from Andrew Washington, NZTA.

The total estimated cost across all Operators is \$968,000. GWRC's share would be \$474,320 and NZTA's share would be \$493,680 (i.e. 51% of \$968,000).

It is expected the Bus Operators will present the claims for payment in the FY20 financial year.

Note that this number could rise if timetables are amended further in 2020 or if operator costs increase (including retrospectively) as a result of a proposed Employment court case on the definition of a 'work period'.

3 Delegation

(Source of CE's delegated authority)

GWRC's financial delegations included in the Delegations Manual (updated 25 February 2019).

The attached Supplementary Deeds will need to be executed on behalf of Council under Power of Attorney.


Approval requested by **Greg Pollock**
General Manager, Public Transport


Greg Campbell
Chief Executive

Encl

Dated 04 December 2019

Bus Partnering Contracts

Supplementary Deed – Driver Rest and Meal Breaks

Wellington Regional Council (**GWRC**)

and

Wellington City Transport Limited (**Operator**)

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Supplementary Deed

Parties

- (1) Wellington Regional Council, a public statutory body constituted under the Local Government Act 2002 (**GWRC**); and
- (2) Wellington City Transport Limited (company number 484792) of 2-12 Allen Street, Level 1, Te Aro, Wellington 6011, New Zealand (**Operator**).

Background

- A. GWRC and the Operator have entered into the Partnering Contracts.
- B. Changes to the Employment Relations Act 2000 implemented by the Employment Relations Amendment Act 2018 have amended the rights of workers (including the Drivers) to rest and meal breaks with effect from 6 May 2019.
- C. Compliance with the changes referred to in paragraph B may require the Operator to schedule Driver breaks during typical driving shifts and this may cause the Operator to incur additional costs in connection with the performance of its obligations under the Partnering Contracts.
- D. GWRC has agreed to meet some of the additional costs incurred by the Operator during the Transition Period, subject to and in accordance with the terms of this Deed.
- E. Various relevant entities (including GWRC and the Operator) have signed up to a Memorandum of Understanding which documents their agreement to work constructively and collaboratively together in order to achieve the smoothest possible implementation of the changes referred to in paragraph B within the New Zealand bus industry. The desired outcome of the Memorandum of Understanding (as set out in clause 5 thereof) is to ensure that bus drivers receive the rest and meal breaks they are entitled to, whilst minimising service disruption, safety risks and costs to councils, bus operators and the Government.
- F. This Deed supplements the terms of the Partnering Contracts.

Operative provisions

1. Definitions and interpretation

1.1 The Parties agree that:

- 1.1.1 the definitions and interpretation provisions set out at Schedule 1 (*Definitions and interpretation*) of this Deed apply unless the context requires otherwise; and
- 1.1.2 unless otherwise defined in this Deed, capitalised terms have the meaning given to them in the Partnering Contracts.

2. Compliance with requirements

- 2.1 The Operator shall, at all times, comply with the Employment Relations Act (as amended by the Land Transport Rule) and the Memorandum of Understanding.
- 2.2 Nothing in this Deed shall relieve the Operator from its obligations under clause 2.1 or from any of its obligations under any Transaction Document.

3. Additional payment claims

Payment claims

- 3.1 If the Operator incurs Additional Driver Break Costs during the Transition Period, it may submit payment claims in respect of those Additional Driver Break Costs, provided that:
- 3.1.1 the aggregate amount (excluding GST) claimed by the Operator pursuant to this Deed in respect of Additional Driver Break Costs is agreed with GWRC; and
 - 3.1.2 each payment claim shall comply with the requirements of clause 3.2 and be submitted within the time period required by clause 3.4 or 3.5 (as applicable).
- 3.2 The Operator shall ensure that each payment claim submitted pursuant to this Deed:
- 3.2.1 refers to this Deed and PO number 254367;
 - 3.2.2 is submitted on a per Partnering Contract basis and clearly identifies the individual Partnering Contract to which it relates;
 - 3.2.3 identifies the time period to which it relates (which time period must fall within the Transition Period);
 - 3.2.4 sets out all amounts claimed in New Zealand dollars and cents, with cents being shown to two decimal places;
 - 3.2.5 is in the form of a valid tax invoice for the amount claimed by the Operator;
 - 3.2.6 is supported by Operator records that demonstrate:
 - (a) that the amounts claimed have been incurred by the Operator during the relevant period to which the payment claim relates (which period must fall within the Transition Period);
 - (b) full details of the nature of the amounts claimed broken down on a per Unit basis, including:
 - A. a detailed explanation as to what the amounts claimed relate to and why they have been incurred; and
 - B. sufficient detail to demonstrate that the amount claimed falls within the definition of Additional Driver Break

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Costs and does not include any amounts which contravene clause 4.4 (*No double recovery*), 4.6 (*No Timetable change costs*) or 4.7 (*Alternative compensation*);

- (c) details of the steps taken by the Operator to ensure compliance with its obligations under clauses 4.2 (*Obligation to mitigate*) and 4.3 (*Impact on Drivers*);
- (d) evidence demonstrating that, to the extent that the amounts claimed relate to additional payments to be made by the Operator to Drivers in accordance with the Rest and Meal Break Changes, such amounts have been paid in full to the relevant Drivers; and

3.2.7 includes a written statement confirming that each of the Conditions of Payment have been met.

3.3 Within 5 Business Days of a request thereof, the Operator shall provide to GWRC:

- 3.3.1 such evidence as GWRC may reasonably request to demonstrate that the Conditions of Payment have been satisfied; and
- 3.3.2 such other evidence of, and justification for, the amounts claimed by the Operator in a payment claim issued under this Deed as GWRC may reasonably request.

Timing of submission of payment claims

3.4 The Operator shall submit all payment claims in respect of those Additional Driver Break Costs which are Historic Additional Driver Break Costs on or before the date falling 20 Business Days after the end of the Historic Claims Period.

3.5 The Operator shall submit all payment claims in respect of those Additional Driver Break Costs which are Present Additional Driver Break Costs within 20 Business Days after the end of the calendar month in which such Present Additional Driver Break Costs were incurred by the Operator.

3.6 For the avoidance of doubt, the Operator may submit a supplementary payment claim for any increase in the amounts claimed under clauses 3.4 and 3.5, if the Historic Additional Driver Break Costs or the Present Additional Driver Break Costs increase as a result of the outcome of the Court Proceedings, provided that the Operator:

- 3.6.1 keeps GWRC informed regarding the progress and outcome of the Court Proceeding (including by providing GWRC with a copy of the decision of the Employment Court);
- 3.6.2 keeps GWRC informed about the nature and amount of any increase in the Historic Additional Driver Break Costs or the Present Additional

Break Costs that may be claimed as a result of the outcome of the Court Proceeding; and

3.6.3 submits any supplementary claim within 20 Business Days of a determination or declaration being made as an outcome of the Court Proceeding.

3.7 The Operator acknowledges and agrees that:

3.7.1 GWRC will not be liable in respect of any Additional Driver Break Costs; and

3.7.2 the Operator will be absolutely barred from making any Claim against GWRC in respect of any Additional Driver Break Costs,

unless the Operator submits the payment claim(s) in respect of those Additional Driver Break Costs in accordance with the requirements of clause 3.4, 3.5 or 3.6 (as applicable).

Conditions of payment

3.8 Notwithstanding anything to the contrary in this Deed or any Partnering Contract, GWRC shall not be liable to make any payment pursuant to this Deed unless and until it is satisfied (acting reasonably) that each of the Conditions of Payment has been satisfied.

Payment obligation

3.9 Subject to clauses 3.4 to 3.7 (*Timing of submission of payment claims*), 3.8 (*Conditions of Payment*), 4.8 (*Tax invoice*), 4.13 (*Set-off*) and 4.14 to 4.15 (*Disputes*) and provided that the Operator has complied with its obligations under clauses 3.2 to 3.5 inclusive, GWRC shall, on or before the relevant Payment Date, pay the Operator the amount claimed in a payment claim issued by the Operator in accordance with clause 3.1.

4. Payment related matters

Impact on Liability Cap

4.1 For the purposes of paragraph [26] (*Liability Cap*) of Schedule 2 (*Agreement Details*) of each Partnering Contract, the Services Fee under that Partnering Contract shall be deemed to be increased by an amount equal to the aggregate amounts payable by GWRC to the Operator under this Deed in respect of payment claims in connection with that Partnering Contract.

Obligation to mitigate

4.2 In complying with the Rest and Meal Break Changes and implementing the measures required to enable the Operator to comply with the Rest and Meal Break Changes, the Operator shall at all times:

4.2.1 use all reasonable endeavours to mitigate and minimise:

- (a) any disruption to the Services especially during Peak Times; and
- (b) the Additional Driver Break Costs incurred by the Operator; and

Impact on Drivers

4.3 In complying with the Rest and Meal Break Changes and implementing the measures required to enable the Operator to comply with the Rest and Meal Break Changes, the Operator shall at all times use all reasonable endeavours to minimise any adverse impact on the take home wages of the Drivers.

No double recovery

4.4 The Operator shall not include any amount within a payment claim submitted under this Deed to the extent that:

- 4.4.1 the Operator has already received payment from GWRC under any Partnering Contract in respect of that amount;
- 4.4.2 the Operator has included (or will include) such amount within any payment claim issued by it under any Partnering Contract; or
- 4.4.3 the Operator has included (or will include) such amount within any claim for payment pursuant to the Timetable Change Process or Schedule 14 (*Change Events and Net Financial Impact*) of any Partnering Contract,

and GWRC shall not be liable under this Deed for payment of any such amount.

4.5 The Operator acknowledges and agrees that, to the extent that it is entitled to payment in respect of any Additional Driver Break Costs under this Deed, it shall not be entitled to payment in respect of the same amount pursuant to any other Transaction Document and shall not seek to include such amount in any payment claim or other Claim pursuant to any other Transaction Document.

No Timetable change costs

4.6 The Operator agrees that the Additional Driver Break Costs shall not include any costs incurred by the Operator in connection with a change to the Bus Unit Timetable or any change to the PVR (whether or not arising in connection with the Rest and Meal Break Changes) and the Operator shall not include any such amounts within any payment claim issued pursuant to this Deed.

Alternative compensation

4.7 If any arrangement comes into effect (whether pursuant to the Memorandum of Understanding or otherwise) which GWRC (acting reasonably) considers will compensate the Operator for any costs incurred by the Operator during the Transition Period in connection with the Rest and Meal Break Changes, the Operator shall not be entitled to any payment in respect of such costs pursuant to this Deed and shall not include any such amounts within any payment claim issued pursuant to this Deed.

Tax invoice

- 4.8 Without prejudice to any obligations of the Operator and notwithstanding anything to the contrary in this Deed or any other Transaction Document, no moneys are payable to the Operator by GWRC under this Deed unless GWRC is in receipt of a valid tax invoice in relation to the relevant amount.

Currency

- 4.9 All moneys payable to or by any Party under this Deed are to be invoiced and paid in New Zealand dollars.

Late payment

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

Payment on account

- 4.11 Clause 35.12 (*Payment on account*) of the Partnering Contracts applies to any payment made under this Deed.

GST, rates, taxation and utilities

- 4.12 Clause 38 (*GST, rates, taxation and utilities*) of the Partnering Contracts applies as if expressly set out in this Deed but with references therein to "Partnering Contract" being construed as references to this Deed instead.

Set-off

- 4.13 Clause 36 (*Set-off*) of the Partnering Contracts applies to any amount payable under this Deed.

Disputes

- 4.14 Any dispute, difference of opinion or disagreement between the Parties, including any Claim, arising out of or in connection with this Deed shall be resolved in accordance with clause 45 (*Dispute Resolution Procedure*) of the Partnering Contracts as if it were a Dispute under the Partnering Contracts.
- 4.15 Clause 37 (*Disputes about payments*) of the Partnering Contracts shall apply to any disputed amount under this Deed but with references therein to "Partnering Contract" being construed as references to this Deed instead.

Full and final settlement

- 4.16 To the maximum extent permitted by Law but without limiting any agreement reached pursuant to the Memorandum of Understanding, the Operator acknowledges and agrees that this Deed and the rights and obligations contained in it is in full and final settlement of (and this Deed sets out all of):

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- 4.16.1 the Operator's rights, remedies, entitlements and Claims against GWRC in connection with the Rest and Meal Break Changes for the Transition Period; and
- 4.16.2 GWRC's liabilities and obligations to the Operator in connection with the Rest and Meal Break Changes for the Transition Period.
- 4.17 Without limiting clause 4.16 or GWRC's express obligations under this Deed or the Partnering Contracts, the Operator acknowledges that:
 - 4.17.1 this Deed and the agreement by GWRC to the terms hereof does not constitute any assurance (or set any precedent indicating) that GWRC will agree to pay any other claims brought by the Operator at any time in connection with the Rest and Meal Break Changes; and
 - 4.17.2 the Operator has no expectation that GWRC will agree to pay such other claims.
- 4.18 The Operator acknowledges and agrees that, notwithstanding anything to the contrary contained in the Partnering Contracts, it shall not be entitled to (and GWRC shall not be liable for) any payment in connection with the execution of this Deed or the performance by the Operator of any of its obligations under this Deed, in each case except to the extent expressly provided for in this Deed.

5. Operator's obligation to inform GWRC

Notification of issues

- 5.1 Without limiting any other obligations of the Operator under this Deed or the Memorandum of Understanding, if the Operator becomes aware of any issue arising in connection with the Rest and Meal Break Changes which it has not previously notified to GWRC and which will (or is likely to):
 - 5.1.1 materially adversely impact on the provision of the Services;
 - 5.1.2 cause material disruption to any of the Services; or
 - 5.1.3 materially increase the costs incurred or to be incurred by the Operator in connection with the provision of the Services,the Operator shall:
 - 5.1.4 promptly notify GWRC; and
 - 5.1.5 promptly provide such information as GWRC may reasonably request in connection therewith.

Changes to the Bus Unit Timetable

- 5.2 If the Operator identifies any changes to the Bus Unit Timetable or any other changes related to the Services, in each case which, if implemented, would reduce the costs incurred by the Operator in connection with the Rest and Meal Break

Changes, the Operator shall promptly notify GWRC of such change and provide details of the estimated cost saving.

5.3 If the Operator provides any notification pursuant to clause 5.2, the Operator shall:

5.3.1 promptly provide such information as GWRC may reasonably request in connection therewith; and

5.3.2 if requested to do so by GWRC, discuss the relevant changes with GWRC (and the Operator shall act co-operatively, collaboratively and in good faith in so doing).

6. Relationship with Partnering Contract provisions

6.1 GWRC and the Operator shall work together reasonably, in good faith and in accordance with the Partnering Principles to minimise the impact, service disruption, safety risks and costs (as applicable) that may arise in connection with the Rest and Meal Break Changes.

6.2 The provisions of this Deed do not limit (and are in addition to) the Timetable Change Process and the Contract Variation process set out in the Partnering Contracts.

6.3 Nothing in this Deed entitles the Operator to implement any change to the Bus Unit Timetable (including any adjustment to the PVR) or any Contract Variation in connection with the Rest and Meal Break Changes.

6.4 If the Operator wishes to propose:

6.4.1 a change to the Bus Unit Timetable; or

6.4.2 a Contract Variation,

in connection with the Rest and Meal Break Changes, it shall do so in accordance with the Timetable Change Process or Contract Variation process (as applicable) provided for in the Partnering Contracts.

6.5 This Deed shall not limit or otherwise affect GWRC's rights to reject a change proposed by the Operator under the Timetable Change Process or the Contract Variation process provided for in the Partnering Contracts.

7. Miscellaneous

Deed to comprise a Transaction Document

7.1 The Parties agree that, with effect from the date of this Deed, this Deed shall constitute a Transaction Document for the purposes of the Partnering Contracts.

Confidentiality

7.2 The Parties acknowledge and agree that the terms of this Deed constitute Confidential Information for the purposes of clause 59 of the Partnering Contracts.

Assignment by the Operator

- 7.3 The Operator shall not create or allow a Security Interest over, or in any other way either directly or indirectly assign, novate, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with any of its rights or obligations under this Deed, other than under a Permitted Security Interest or with the prior written consent of GWRC.
- 7.4 The Operator shall provide any request for consent under clause 7.3 at least 20 Business Days prior to the proposed effective date of the relevant action.

Assignment by GWRC

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

Notices

- 7.6 Any notice required to be given in relation to this Deed shall be given and deemed received in accordance with clause 63 (*Notices*) of the Partnering Contract.

Relationship between Parties

- 7.7 Nothing in this Deed is to be construed or interpreted as constituting the relationship between the Parties as a partnership, quasi-partnership, association or any other relationship in which a Party may (except as expressly provided for in this Deed) be liable for the acts or omissions of the other Party.
- 7.8 Except as expressly provided in this Deed, nothing in this Deed shall be construed to authorise any Party to act as an agent for any other Party for any purpose.

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

- 7.9 Where this Deed requires that a Party shall use 'best endeavours' or 'reasonable endeavours', this does not require the Party to:
- 7.9.1 act unreasonably, in breach of Safety Law or outside the Law;
 - 7.9.2 interfere with or influence the exercise by any person of a statutory power or discretion;
 - 7.9.3 in the case of GWRC only, exercise a power or discretion or otherwise act in a manner that GWRC regards as not in the public interest; or
 - 7.9.4 provide any performance bond, guarantee or Security Interest other than as specifically required under this Deed.

Entire Agreement and amendments

- 7.10 This Deed, the Partnering Contracts and the other Transaction Documents contain the entire agreement between the Parties with respect to their subject matter and

supersede any earlier agreements or understandings between the Parties in connection with their subject matter.

- 7.11 This Deed may only be amended by way of a written agreement duly executed by each of the Parties.

No reliance

- 7.12 The Operator hereby acknowledges that, before entering into this Deed, it made all enquiries it wanted to make in relation to its rights and obligations under this Deed and that in entering into this Deed it:

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

7.12.2 has made its own assessment of the rights provided to it and the obligations imposed on it by this Deed.

No waiver

- 7.13 No waiver of any breach of, or failure to enforce any provision of, this Deed, nor any delay in exercising any right, power or remedy by a Party in any way affects, limits or waives the right of such Party thereafter to enforce and compel strict compliance with the provisions of this Deed. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

- 7.14 No waiver by a Party of any part of this Deed is binding unless it is made in writing by the Party granting that waiver.

Rights cumulative

- 7.15 Subject to any express provision in this Deed to the contrary, the rights, powers and remedies of a Party under this Deed are cumulative and are in addition to (and do not exclude or limit) any right, power or remedy provided by Law or equity or by any other agreement.

Further assurances

- 7.16 Each Party agrees to execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Deed.

No merger

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

Costs and expenses

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

Severability of provisions

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

Governing law

7.20 This Deed and the transactions contemplated by this Deed are governed by and are to be construed in accordance with New Zealand law and, subject to clause 4.14 and 4.15 (*Disputes*) and the Dispute Resolution Procedure, the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

GWRC action

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

7.21.1 requires GWRC or any other Governmental Entity to exercise, or use, any regulatory or legislative powers in order to influence or affect an outcome; or

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

Contract and Commercial Law Act 2017

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

Operation of indemnities

7.23 No indemnity in this Deed limits the effect or operation of any other indemnity in this Deed or any other Transaction Document.

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

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

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

Counterparts

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

PROACTIVE RELEASE

**Executed and delivered as a
Deed:**

Wellington Regional Council
by



Signature of attorney acting
pursuant to a power of attorney
dated 30 September 2014

Gregory Campbell
Name of attorney

Chief Executive Officer
Title of attorney

Witnessed by



Signature of witness

Marsha Yamshikova
Name of witness

Executive Assistant
Occupation of witness

section 7(2)(a)

Address of witness

section 7(2)(a)

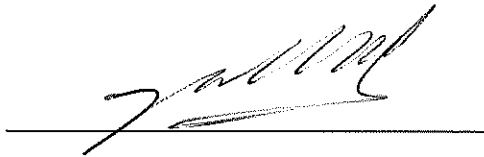
Wellington

CERTIFICATE OF NON REVOCATION OF POWER OF ATTORNEY

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

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

SIGNED at Wellington this *2nd* day of *December* 2019



Gregory Campbell

Chief Executive Officer
Wellington Regional Council

**Wellington City Transport
Limited by**

section 7(2)(a)



Signature of director

Signature of director

Scott Thorne

Name of director

Name of director

PROACTIVE RELEASE

Schedule 1 – Definitions and interpretation

Definitions

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

<p>Additional Driver Break Costs</p>	<p>means, subject to clauses 4.4 (<i>No double recovery</i>), 4.6 (<i>No Timetable change costs</i>) and 4.7 (<i>Alternative Compensation</i>), the additional costs reasonably and demonstrably incurred during the Transition Period by the Operator in the provision of the Services under the Partnering Contracts to the extent only that such costs are incurred directly and solely as a consequence of the Operator complying with (and implementing) the Rest and Meal Break Changes in respect of the Drivers, but excluding any other costs whatsoever.</p>
<p>Conditions of Payment</p>	<p>means the following conditions:</p> <ul style="list-style-type: none"> (a) the payment claim must only include amounts falling within the definition of Additional Driver Break Costs and, without limiting the foregoing, must not include any amounts which contravene clause 4.4 (<i>No double recovery</i>), 4.6 (<i>No Timetable change costs</i>) or 4.7 (<i>Alternative compensation</i>); (b) the payment claim must only relate to Additional Driver Break Costs incurred by the Operator during the Transition Period; (c) the Operator must have complied (and must be continuing to comply) with its obligations under clauses 4.2 (<i>Obligation to mitigate</i>) and 4.3 (<i>Impact on Drivers</i>); and (d) to the extent that the amounts claimed relate to additional payments to be made by the Operator to Drivers in accordance with the Rest and Meal Break Changes, such amounts must have been paid in full to the relevant Drivers.
<p>Court Proceeding</p>	<p>means an proceeding (to which a Bus Operator contracted to GWRC is a party) lodged with the Employment Relations Authority seeking consolidation and removal of proceedings to the Employment Court and a subsequent decision of the Employment Court on questions of law related to the interpretation of the Land Transport Rule.</p>

Drivers	means those persons engaged by the Operator from time to time in the operation of the Vehicles in the course of providing Passenger Services under the Partnering Contracts.
Employment Relations Act	means the Employment Relations Act 2000.
Employment Relations Amendment Act	means the Employment Relations Amendment Act 2018.
Historic Additional Driver Break Costs	means those Additional Driver Break Costs incurred by the Operator during the Historic Claims Period.
Historic Claims Period	means the period commencing on 6 May 2019 and ending on the last day of the calendar month in which the date of this Deed falls.
Land Transport Rule	means the rule entitled "Land Transport Rule: Work Time in Large Passenger Service Vehicles 2019" made by Order in Council on 29 April 2019 and which came into force on 6 May 2019.
Memorandum of Understanding	<p>means the memorandum of understanding in respect of rest and meal breaks for bus drivers effective from 29 April 2019 and made between:</p> <ul style="list-style-type: none"> (a) Hon Phil Twyford, Minister of Transport, for the Government (including the Ministry of Transport and the New Zealand Transport Agency); (b) Hon Iain Lees-Galloway, Minister for Workplace Relations and Safety; (c) Barry Kidd, Bus & Coach Association, for those bus service operators listed in Schedule 1 to the Memorandum of Understanding; (d) Greg Campbell, Greater Wellington Regional Council, for Auckland Transport and those regional councils and unitary authorities listed in Schedule 2 to the Memorandum of Understanding; and (e) Richard Wagstaff, New Zealand Council of Trade Unions, for those unions listed in Schedule 3 to the Memorandum of Understanding.
Parties	means the parties to this Deed.

Partnering Contracts	means the partnering contracts made between GWRC and the Operator in respect of PTOM Unit 2, 3, 5 and 6, in each case dated 13 June 2018.
Payment Date	means: (a) in relation to payment claims in respect of Historic Additional Driver Break Costs, the 20th day of the month following the end of the Historic Claims Period (or if such a day is not a Business Day, the next Business Day); and (b) in relation to payment claims in respect of Present Additional Driver Break Costs, the 20th day of the month following the end of the month to which the payment claim relates (or if such a day is not a Business Day, the next Business Day).
Present Additional Driver Break Costs	means those Additional Driver Break Costs incurred by the Operator during the Present Claims Period.
Present Claims Period	means the period commencing on the first day after the end of the Historic Claims Period and ending on the last day of the Transition Period.
PTOM Unit	means a unit (as defined in section 5(1) of the Land Transport Management Act 2003) specified in the Wellington Regional Public Transport Plan.
Rest and Meal Break Changes	means those amendments to Part 6D (<i>Rest and meal breaks</i>) of the Employment Relations Act implemented by sections 43 – 45 of the Employment Relations Amendment Act, as amended and applied to the bus industry by virtue of the Land Transport Rule.
Transition Period	means the period from (and including) 6 May 2019 until (and including) 5 May 2020.

Interpretation

2. The following rules apply unless the context requires otherwise:

- 2.1. Headings are for convenience only and do not affect interpretation;
- 2.2. The singular includes the plural and conversely;
- 2.3. A gender includes all genders;

CONFIDENTIAL AND LEGALLY PRIVILEGED

- 2.4. If a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 2.5. A reference to a person, corporation, trust, partnership, unincorporated body, organisation or other entity includes any of them;
- 2.6. A reference to a clause, schedule, annexure or appendix is a reference to a clause of or a schedule, annexure or appendix to, this Deed, and a reference to a paragraph is to a paragraph of the same clause, schedule, annexure or appendix unless the context requires otherwise;
- 2.7. A reference to an agreement or document (including a reference to this Deed or a Partnering Contract) is to the agreement or document as amended, varied or supplemented, novated or replaced, except to the extent prohibited by this Deed, the Partnering Contract or that other agreement or document;
- 2.8. A reference to a person includes that person's successors, permitted substitutes and permitted assigns (and, where applicable, that person's legal personal representatives);
- 2.9. A reference to legislation or a rule or to a provision of legislation or rule includes a modification or re-enactment of it, a legislative provision or rule substituted for it and a regulation or statutory instrument issued under it;
- 2.10. A reference to conduct includes an act, omission, statement and undertaking, whether or not in writing;
- 2.11. A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- 2.12. A reference to dollars and \$ is to New Zealand currency;
- 2.13. A reference to a month or to a year is to a calendar month or a calendar year;
- 2.14. A reference to a right or an obligation of any two or more persons confers that right, or imposes that obligation as the case may be, on each of them severally and all of them jointly;
- 2.15. A reference to a Party or Parties is a reference to each of those persons separately;
- 2.16. A reference to writing includes an email and any other means of reproducing words in a tangible and permanently visible form;
- 2.17. A reference to an asset includes any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived from, the property or asset;

- 2.18. A reference to any governmental department, professional body, committee, council, local authority, council controlled organisation or other body includes the successors to that body or any relevant activity or function of that body;
- 2.19. A reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;
- 2.20. A reference to includes or including or other similar words should be construed without limitation;
- 2.21. Where the time for performing an obligation or exercising a right is expressed by reference to a period of one or more months before or after a specified date (the **reference date**) that time period will be determined by calculating the number of months specified from the reference date, with the period expiring on the date which is the equivalent date to the reference date, or if there is no such date in the final month, the last day of that final month;
- 2.22. Where the time for performing an obligation or exercising a right is expressed as being "immediately" following or after an event or circumstance occurring, it means as soon as reasonably practicable but no later than 24 hours following or after that event or circumstance occurring; and
- 2.23. A reference to obligations includes indemnities, warranties, representations and undertakings and a reference to breach or breach of obligations includes breach of any indemnities, warranties, representations and undertakings.

Consents or approvals

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

Dated 04 December 2019

Bus Partnering Contract

Supplementary Deed – Driver Rest and Meal Breaks

Wellington Regional Council (**GWRC**)

and

Cityline (NZ) Limited (**Operator**)

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Supplementary Deed

Parties

- (1) Wellington Regional Council, a public statutory body constituted under the Local Government Act 2002 (**GWRC**); and
- (2) Cityline (NZ) Limited (company number 558674) of 2-12 Allen Street, Level 1, Te Aro, Wellington 6011, New Zealand (**Operator**).

Background

- A. GWRC and the Operator have entered into the Partnering Contract.
- B. Changes to the Employment Relations Act 2000 implemented by the Employment Relations Amendment Act 2018 have amended the rights of workers (including the Drivers) to rest and meal breaks with effect from 6 May 2019.
- C. Compliance with the changes referred to in paragraph B may require the Operator to schedule Driver breaks during typical driving shifts and this may cause the Operator to incur additional costs in connection with the performance of its obligations under the Partnering Contract.
- D. GWRC has agreed to meet some of the additional costs incurred by the Operator during the Transition Period, subject to and in accordance with the terms of this Deed.
- E. Various relevant entities (including GWRC and the Operator) have signed up to a Memorandum of Understanding which documents their agreement to work constructively and collaboratively together in order to achieve the smoothest possible implementation of the changes referred to in paragraph B within the New Zealand bus industry. The desired outcome of the Memorandum of Understanding (as set out in clause 5 thereof) is to ensure that bus drivers receive the rest and meal breaks they are entitled to, whilst minimising service disruption, safety risks and costs to councils, bus operators and the Government.
- F. This Deed supplements the terms of the Partnering Contract.

Operative provisions

1. Definitions and interpretation

1.1 The Parties agree that:

- 1.1.1 the definitions and interpretation provisions set out at Schedule 1 (*Definitions and interpretation*) of this Deed apply unless the context requires otherwise; and
- 1.1.2 unless otherwise defined in this Deed, capitalised terms have the meaning given to them in the Partnering Contract.

2. Compliance with requirements

- 2.1 The Operator shall, at all times, comply with the Employment Relations Act (as amended by the Land Transport Rule) and the Memorandum of Understanding.
- 2.2 Nothing in this Deed shall relieve the Operator from its obligations under clause 2.1 or from any of its obligations under any Transaction Document.

3. Additional payment claims

Payment claims

- 3.1 If the Operator incurs Additional Driver Break Costs during the Transition Period, it may submit payment claims in respect of those Additional Driver Break Costs, provided that:
- 3.1.1 the aggregate amount (excluding GST) claimed by the Operator pursuant to this Deed in respect of Additional Driver Break Costs is agreed with GWRC; and
 - 3.1.2 each payment claim shall comply with the requirements of clause 3.2 and be submitted within the time period required by clause 3.4, 3.5 or 3.6 (as applicable).
- 3.2 The Operator shall ensure that each payment claim submitted pursuant to this Deed:
- 3.2.1 refers to this Deed and PO number 254367
 - 3.2.2 is submitted on a per Partnering Contract basis and clearly identifies the individual Partnering Contract to which it relates;
 - 3.2.3 identifies the time period to which it relates (which time period must fall within the Transition Period);
 - 3.2.4 sets out all amounts claimed in New Zealand dollars and cents, with cents being shown to two decimal places;
 - 3.2.5 is in the form of a valid tax invoice for the amount claimed by the Operator;
 - 3.2.6 is supported by Operator records that demonstrate:
 - (a) that the amounts claimed have been incurred by the Operator during the relevant period to which the payment claim relates (which period must fall within the Transition Period);
 - (b) full details of the nature of the amounts claimed broken down on a per Unit basis, including:
 - A. a detailed explanation as to what the amounts claimed relate to and why they have been incurred; and
 - B. sufficient detail to demonstrate that the amount claimed falls within the definition of Additional Driver

Break Costs and does not include any amounts which contravene clause 4.4 (*No double recovery*), 4.6 (*No Timetable change costs*) or 4.7 (*Alternative compensation*);

- (c) details of the steps taken by the Operator to ensure compliance with its obligations under clauses 4.2 (*Obligation to mitigate*) and 4.3 (*Impact on Drivers*);
- (d) evidence demonstrating that, to the extent that the amounts claimed relate to additional payments to be made by the Operator to Drivers in accordance with the Rest and Meal Break Changes, such amounts have been paid in full to the relevant Drivers; and

3.2.7 includes a written statement confirming that each of the Conditions of Payment have been met.

3.3 Within 5 Business Days of a request thereof, the Operator shall provide to GWRC:

3.3.1 such evidence as GWRC may reasonably request to demonstrate that the Conditions of Payment have been satisfied; and

3.3.2 such other evidence of, and justification for, the amounts claimed by the Operator in a payment claim issued under this Deed as GWRC may reasonably request.

Timing of submission of payment claims

3.4 The Operator shall submit all payment claims in respect of those Additional Driver Break Costs which are Historic Additional Driver Break Costs on or before the date falling 20 Business Days after the end of the Historic Claims Period.

3.5 The Operator shall submit all payment claims in respect of those Additional Driver Break Costs which are Present Additional Driver Break Costs within 20 Business Days after the end of the calendar month in which such Present Additional Driver Break Costs were incurred by the Operator.

3.6 For the avoidance of doubt, the Operator may submit a supplementary payment claim for any increase in the amounts claimed under clauses 3.4 and 3.5, if the Historic Additional Driver Break Costs or the Present Additional Driver Break Costs increase as a result of the outcome of the Court Proceedings, provided that the Operator:

3.6.1 keeps GWRC informed regarding the progress and outcome of the Court Proceeding (including by providing GWRC with a copy of the decision of the Employment Court);

3.6.2 keeps GWRC informed about the nature and amount of any increase in the Historic Additional Driver Break Costs or the Present Additional

Break Costs that may be claimed as a result of the outcome of the Court Proceeding; and

3.6.3 submits any supplementary claim within 20 Business Days of a determination or declaration being made as an outcome of the Court Proceeding.

3.7 The Operator acknowledges and agrees that:

3.7.1 GWRC will not be liable in respect of any Additional Driver Break Costs; and

3.7.2 the Operator will be absolutely barred from making any Claim against GWRC in respect of any Additional Driver Break Costs,

unless the Operator submits the payment claim(s) in respect of those Additional Driver Break Costs in accordance with the requirements of clause 3.4, 3.5 or 3.6 (as applicable).

Conditions of payment

3.8 Notwithstanding anything to the contrary in this Deed or any Partnering Contract, GWRC shall not be liable to make any payment pursuant to this Deed unless and until it is satisfied (acting reasonably) that each of the Conditions of Payment has been satisfied.

Payment obligation

3.9 Subject to clauses 3.4 to 3.7 (*Timing of submission of payment claims*), 3.8 (*Conditions of Payment*), 4.8 (*Tax invoice*), 4.13 (*Set-off*) and 4.14 to 4.15 (*Disputes*) and provided that the Operator has complied with its obligations under clauses 3.2 to 3.5 inclusive, GWRC shall, on or before the relevant Payment Date, pay the Operator the amount claimed in a payment claim issued by the Operator in accordance with clause 3.1.

4. Payment related matters

Impact on Liability Cap

4.1 For the purposes of paragraph [26] (*Liability Cap*) of Schedule 2 (*Agreement Details*) of each Partnering Contract, the Services Fee under that Partnering Contract shall be deemed to be increased by an amount equal to the aggregate amounts payable by GWRC to the Operator under this Deed in respect of payment claims in connection with that Partnering Contract.

Obligation to mitigate

4.2 In complying with the Rest and Meal Break Changes and implementing the measures required to enable the Operator to comply with the Rest and Meal Break Changes, the Operator shall at all times:

4.2.1 use all reasonable endeavours to mitigate and minimise:

- (a) any disruption to the Services especially during Peak Times; and
- (b) the Additional Driver Break Costs incurred by the Operator; and

Impact on Drivers

4.3 In complying with the Rest and Meal Break Changes and implementing the measures required to enable the Operator to comply with the Rest and Meal Break Changes, the Operator shall at all times use all reasonable endeavours to minimise any adverse impact on the take home wages of the Drivers.

No double recovery

4.4 The Operator shall not include any amount within a payment claim submitted under this Deed to the extent that:

- 4.4.1 the Operator has already received payment from GWRC under any Partnering Contract in respect of that amount;
- 4.4.2 the Operator has included (or will include) such amount within any payment claim issued by it under any Partnering Contract; or
- 4.4.3 the Operator has included (or will include) such amount within any claim for payment pursuant to the Timetable Change Process or Schedule 14 (*Change Events and Net Financial Impact*) of any Partnering Contract,

and GWRC shall not be liable under this Deed for payment of any such amount.

4.5 The Operator acknowledges and agrees that, to the extent that it is entitled to payment in respect of any Additional Driver Break Costs under this Deed, it shall not be entitled to payment in respect of the same amount pursuant to any other Transaction Document and shall not seek to include such amount in any payment claim or other Claim pursuant to any other Transaction Document.

No Timetable change costs

4.6 The Operator agrees that the Additional Driver Break Costs shall not include any costs incurred by the Operator in connection with a change to the Bus Unit Timetable or any change to the PVR (whether or not arising in connection with the Rest and Meal Break Changes) and the Operator shall not include any such amounts within any payment claim issued pursuant to this Deed.

Alternative compensation

4.7 If any arrangement comes into effect (whether pursuant to the Memorandum of Understanding or otherwise) which GWRC (acting reasonably) considers will compensate the Operator for any costs incurred by the Operator during the Transition Period in connection with the Rest and Meal Break Changes, the Operator shall not be entitled to any payment in respect of such costs pursuant to this Deed and shall not include any such amounts within any payment claim issued pursuant to this Deed.

Tax invoice

4.8 Without prejudice to any obligations of the Operator and notwithstanding anything to the contrary in this Deed or any other Transaction Document, no moneys are payable to the Operator by GWRC under this Deed unless GWRC is in receipt of a valid tax invoice in relation to the relevant amount.

Currency

4.9 All moneys payable to or by any Party under this Deed are to be invoiced and paid in New Zealand dollars.

Late payment

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

Payment on account

4.11 Clause 35.12 (*Payment on account*) of the Partnering Contract applies to any payment made under this Deed.

GST, rates, taxation and utilities

4.12 Clause 38 (*GST, rates, taxation and utilities*) of the Partnering Contract applies as if expressly set out in this Deed but with references therein to "Partnering Contract" being construed as references to this Deed instead.

Set-off

4.13 Clause 36 (*Set-off*) of the Partnering Contract applies to any amount payable under this Deed.

Disputes

4.14 Any dispute, difference of opinion or disagreement between the Parties, including any Claim, arising out of or in connection with this Deed shall be resolved in accordance with clause 45 (*Dispute Resolution Procedure*) of the Partnering Contract as if it were a Dispute under the Partnering Contract.

4.15 Clause 37 (*Disputes about payments*) of the Partnering Contract shall apply to any disputed amount under this Deed but with references therein to "Partnering Contract" being construed as references to this Deed instead.

Full and final settlement

4.16 To the maximum extent permitted by Law but without limiting any agreement reached pursuant to the Memorandum of Understanding, the Operator acknowledges and agrees that this Deed and the rights and obligations contained in it is in full and final settlement of (and this Deed sets out all of):

- 4.16.1 the Operator's rights, remedies, entitlements and Claims against GWRC in connection with the Rest and Meal Break Changes for the Transition Period; and
- 4.16.2 GWRC's liabilities and obligations to the Operator in connection with the Rest and Meal Break Changes for the Transition Period.
- 4.17 Without limiting clause 4.16 or GWRC's express obligations under this Deed or the Partnering Contract, the Operator acknowledges that:
- 4.17.1 this Deed and the agreement by GWRC to the terms hereof does not constitute any assurance (or set any precedent indicating) that GWRC will agree to pay any other claims brought by the Operator at any time in connection with the Rest and Meal Break Changes; and
- 4.17.2 the Operator has no expectation that GWRC will agree to pay such other claims.
- 4.18 The Operator acknowledges and agrees that, notwithstanding anything to the contrary contained in the Partnering Contract, it shall not be entitled to (and GWRC shall not be liable for) any payment in connection with the execution of this Deed or the performance by the Operator of any of its obligations under this Deed, in each case except to the extent expressly provided for in this Deed.

5. Operator's obligation to inform GWRC

Notification of issues

- 5.1 Without limiting any other obligations of the Operator under this Deed or the Memorandum of Understanding, if the Operator becomes aware of any issue arising in connection with the Rest and Meal Break Changes which it has not previously notified to GWRC and which will (or is likely to):
- 5.1.1 materially adversely impact on the provision of the Services;
- 5.1.2 cause material disruption to any of the Services; or
- 5.1.3 materially increase the costs incurred or to be incurred by the Operator in connection with the provision of the Services,
- the Operator shall:
- 5.1.4 promptly notify GWRC; and
- 5.1.5 promptly provide such information as GWRC may reasonably request in connection therewith.

Changes to the Bus Unit Timetable

- 5.2 If the Operator identifies any changes to the Bus Unit Timetable or any other changes related to the Services, in each case which, if implemented, would reduce the costs incurred by the Operator in connection with the Rest and Meal Break

Changes, the Operator shall promptly notify GWRC of such change and provide details of the estimated cost saving.

5.3 If the Operator provides any notification pursuant to clause 5.2, the Operator shall:

5.3.1 promptly provide such information as GWRC may reasonably request in connection therewith; and

5.3.2 if requested to do so by GWRC, discuss the relevant changes with GWRC (and the Operator shall act co-operatively, collaboratively and in good faith in so doing).

6. Relationship with Partnering Contract provisions

6.1 GWRC and the Operator shall work together reasonably, in good faith and in accordance with the Partnering Principles to minimise the impact, service disruption, safety risks and costs (as applicable) that may arise in connection with the Rest and Meal Break Changes.

6.2 The provisions of this Deed do not limit (and are in addition to) the Timetable Change Process and the Contract Variation process set out in the Partnering Contract.

6.3 Nothing in this Deed entitles the Operator to implement any change to the Bus Unit Timetable (including any adjustment to the PVR) or any Contract Variation in connection with the Rest and Meal Break Changes.

6.4 If the Operator wishes to propose:

6.4.1 a change to the Bus Unit Timetable; or

6.4.2 a Contract Variation,

in connection with the Rest and Meal Break Changes, it shall do so in accordance with the Timetable Change Process or Contract Variation process (as applicable) provided for in the Partnering Contract.

6.5 This Deed shall not limit or otherwise affect GWRC's rights to reject a change proposed by the Operator under the Timetable Change Process or the Contract Variation process provided for in the Partnering Contract.

7. Miscellaneous

Deed to comprise a Transaction Document

7.1 The Parties agree that, with effect from the date of this Deed, this Deed shall constitute a Transaction Document for the purposes of the Partnering Contract.

Confidentiality

7.2 The Parties acknowledge and agree that the terms of this Deed constitute Confidential Information for the purposes of clause 59 of the Partnering Contract.

Assignment by the Operator

- 7.3 The Operator shall not create or allow a Security Interest over, or in any other way either directly or indirectly assign, novate, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with any of its rights or obligations under this Deed, other than under a Permitted Security Interest or with the prior written consent of GWRC.
- 7.4 The Operator shall provide any request for consent under clause 7.3 at least 20 Business Days prior to the proposed effective date of the relevant action.

Assignment by GWRC

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

Notices

- 7.6 Any notice required to be given in relation to this Deed shall be given and deemed received in accordance with clause 63 (*Notices*) of the Partnering Contract.

Relationship between Parties

- 7.7 Nothing in this Deed is to be construed or interpreted as constituting the relationship between the Parties as a partnership, quasi-partnership, association or any other relationship in which a Party may (except as expressly provided for in this Deed) be liable for the acts or omissions of the other Party.
- 7.8 Except as expressly provided in this Deed, nothing in this Deed shall be construed to authorise any Party to act as an agent for any other Party for any purpose.

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

- 7.9 Where this Deed requires that a Party shall use 'best endeavours' or 'reasonable endeavours', this does not require the Party to:
- 7.9.1 act unreasonably, in breach of Safety Law or outside the Law;
 - 7.9.2 interfere with or influence the exercise by any person of a statutory power or discretion;
 - 7.9.3 in the case of GWRC only, exercise a power or discretion or otherwise act in a manner that GWRC regards as not in the public interest; or
 - 7.9.4 provide any performance bond, guarantee or Security Interest other than as specifically required under this Deed.

Entire Agreement and amendments

- 7.10 This Deed, the Partnering Contract and the other Transaction Documents contain the entire agreement between the Parties with respect to their subject matter and

supersede any earlier agreements or understandings between the Parties in connection with their subject matter.

- 7.11 This Deed may only be amended by way of a written agreement duly executed by each of the Parties.

No reliance

- 7.12 The Operator hereby acknowledges that, before entering into this Deed, it made all enquiries it wanted to make in relation to its rights and obligations under this Deed and that in entering into this Deed it:

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

7.12.2 has made its own assessment of the rights provided to it and the obligations imposed on it by this Deed.

No waiver

- 7.13 No waiver of any breach of, or failure to enforce any provision of, this Deed, nor any delay in exercising any right, power or remedy by a Party in any way affects, limits or waives the right of such Party thereafter to enforce and compel strict compliance with the provisions of this Deed. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

- 7.14 No waiver by a Party of any part of this Deed is binding unless it is made in writing by the Party granting that waiver.

Rights cumulative

- 7.15 Subject to any express provision in this Deed to the contrary, the rights, powers and remedies of a Party under this Deed are cumulative and are in addition to (and do not exclude or limit) any right, power or remedy provided by Law or equity or by any other agreement.

Further assurances

- 7.16 Each Party agrees to execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Deed.

No merger

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

Costs and expenses

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

Severability of provisions

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

Governing law

7.20 This Deed and the transactions contemplated by this Deed are governed by and are to be construed in accordance with New Zealand law and, subject to clause 4.14 and 4.15 (*Disputes*) and the Dispute Resolution Procedure, the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

GWRC action

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

7.21.1 requires GWRC or any other Governmental Entity to exercise, or use, any regulatory or legislative powers in order to influence or affect an outcome; or

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

Contract and Commercial Law Act 2017

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

Operation of indemnities

7.23 No indemnity in this Deed limits the effect or operation of any other indemnity in this Deed or any other Transaction Document.

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

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

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

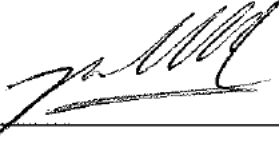
Counterparts

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

PROACTIVE RELEASE

**Executed and delivered as a
Deed:**

Wellington Regional Council
by



Signature of attorney acting
pursuant to a power of attorney
dated 30 September 2014

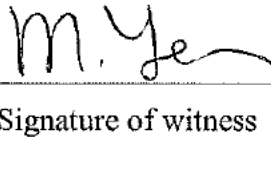
Gregory Campbell

Name of attorney

Chief Executive Officer

Title of attorney

Witnessed by



Signature of witness

Marsha Yamsnikova

Name of witness

Executive Assistant

Occupation of witness

section 7(2)(a)

Address of witness

section 7(2)(a)


Wellington

CERTIFICATE OF NON REVOCATION OF POWER OF ATTORNEY

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

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

SIGNED at Wellington this 2nd day of December 2019



Gregory Campbell

Chief Executive Officer
Wellington Regional Council

Cityline (NZ) Limited by
section 7(2)(a)



Signature of director

Scott Moine

Name of director

Signature of director

Name of director

PROACTIVE RELEASE

Schedule 1 – Definitions and interpretation

Definitions

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

<p>Additional Driver Break Costs</p>	<p>means, subject to clauses 4.4 (<i>No double recovery</i>), 4.6 (<i>No Timetable change costs</i>) and 4.7 (<i>Alternative Compensation</i>), the additional costs reasonably and demonstrably incurred during the Transition Period by the Operator in the provision of the Services under the Partnering Contract to the extent only that such costs are incurred directly and solely as a consequence of the Operator complying with (and implementing) the Rest and Meal Break Changes in respect of the Drivers, but excluding any other costs whatsoever.</p>
<p>Conditions of Payment</p>	<p>means the following conditions:</p> <ul style="list-style-type: none"> (a) the payment claim must only include amounts falling within the definition of Additional Driver Break Costs and, without limiting the foregoing, must not include any amounts which contravene clause 4.4 (<i>No double recovery</i>), 4.6 (<i>No Timetable change costs</i>) or 4.7 (<i>Alternative compensation</i>); (b) the payment claim must only relate to Additional Driver Break Costs incurred by the Operator during the Transition Period; (c) the Operator must have complied (and must be continuing to comply) with its obligations under clauses 4.2 (<i>Obligation to mitigate</i>) and 4.3 (<i>Impact on Drivers</i>); and (d) to the extent that the amounts claimed relate to additional payments to be made by the Operator to Drivers in accordance with the Rest and Meal Break Changes, such amounts must have been paid in full to the relevant Drivers.
<p>Court Proceeding</p>	<p>means an proceeding (to which a Bus Operator contracted to GWRC is a party) lodged with the Employment Relations Authority seeking consolidation and removal of proceedings to the Employment Court and a subsequent decision of the Employment Court on questions of law related to the interpretation of the Land Transport Rule.</p>

Drivers	means those persons engaged by the Operator from time to time in the operation of the Vehicles in the course of providing Passenger Services under the Partnering Contract.
Employment Relations Act	means the Employment Relations Act 2000.
Employment Relations Amendment Act	means the Employment Relations Amendment Act 2018.
Historic Additional Driver Break Costs	means those Additional Driver Break Costs incurred by the Operator during the Historic Claims Period.
Historic Claims Period	means the period commencing on 6 May 2019 and ending on the last day of the calendar month in which the date of this Deed falls.
Land Transport Rule	means the rule entitled "Land Transport Rule: Work Time in Large Passenger Service Vehicles 2019" made by Order in Council on 29 April 2019 and which came into force on 6 May 2019.
Memorandum of Understanding	<p>means the memorandum of understanding in respect of rest and meal breaks for bus drivers effective from 29 April 2019 and made between:</p> <ul style="list-style-type: none"> (a) Hon Phil Twyford, Minister of Transport, for the Government (including the Ministry of Transport and the New Zealand Transport Agency); (b) Hon Iain Lees-Galloway, Minister for Workplace Relations and Safety; (c) Barry Kidd, Bus & Coach Association, for those bus service operators listed in Schedule 1 to the Memorandum of Understanding; (d) Greg Campbell, Greater Wellington Regional Council, for Auckland Transport and those regional councils and unitary authorities listed in Schedule 2 to the Memorandum of Understanding; and (e) Richard Wagstaff, New Zealand Council of Trade Unions, for those unions listed in Schedule 3 to the Memorandum of Understanding.
Parties	means the parties to this Deed.

Partnering Contract	means the partnering contract made between GWRC and the Operator in respect of PTOM Unit 12 dated 13 June 2018.
Payment Date	means: (a) in relation to payment claims in respect of Historic Additional Driver Break Costs, the 20th day of the month following the end of the Historic Claims Period (or if such a day is not a Business Day, the next Business Day); and (b) in relation to payment claims in respect of Present Additional Driver Break Costs, the 20th day of the month following the end of the month to which the payment claim relates (or if such a day is not a Business Day, the next Business Day).
Present Additional Driver Break Costs	means those Additional Driver Break Costs incurred by the Operator during the Present Claims Period.
Present Claims Period	means the period commencing on the first day after the end of the Historic Claims Period and ending on the last day of the Transition Period.
PTOM Unit	means a unit (as defined in section 5(1) of the Land Transport Management Act 2003) specified in the Wellington Regional Public Transport Plan.
Rest and Meal Break Changes	means those amendments to Part 6D (<i>Rest and meal breaks</i>) of the Employment Relations Act implemented by sections 43 – 45 of the Employment Relations Amendment Act, as amended and applied to the bus industry by virtue of the Land Transport Rule.
Transition Period	means the period from (and including) 6 May 2019 until (and including) 5 May 2020.

Interpretation

2. The following rules apply unless the context requires otherwise:
 - 2.1. Headings are for convenience only and do not affect interpretation;
 - 2.2. The singular includes the plural and conversely;
 - 2.3. A gender includes all genders;
 - 2.4. If a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- 2.5. A reference to a person, corporation, trust, partnership, unincorporated body, organisation or other entity includes any of them;
- 2.6. A reference to a clause, schedule, annexure or appendix is a reference to a clause of or a schedule, annexure or appendix to, this Deed, and a reference to a paragraph is to a paragraph of the same clause, schedule, annexure or appendix unless the context requires otherwise;
- 2.7. A reference to an agreement or document (including a reference to this Deed or a Partnering Contract) is to the agreement or document as amended, varied or supplemented, novated or replaced, except to the extent prohibited by this Deed, the Partnering Contract or that other agreement or document;
- 2.8. A reference to a person includes that person's successors, permitted substitutes and permitted assigns (and, where applicable, that person's legal personal representatives);
- 2.9. A reference to legislation or a rule or to a provision of legislation or rule includes a modification or re-enactment of it, a legislative provision or rule substituted for it and a regulation or statutory instrument issued under it;
- 2.10. A reference to conduct includes an act, omission, statement and undertaking, whether or not in writing;
- 2.11. A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- 2.12. A reference to dollars and \$ is to New Zealand currency;
- 2.13. A reference to a month or to a year is to a calendar month or a calendar year;
- 2.14. A reference to a right or an obligation of any two or more persons confers that right, or imposes that obligation as the case may be, on each of them severally and all of them jointly;
- 2.15. A reference to a Party or Parties is a reference to each of those persons separately;
- 2.16. A reference to writing includes an email and any other means of reproducing words in a tangible and permanently visible form;
- 2.17. A reference to an asset includes any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived from, the property or asset;
- 2.18. A reference to any governmental department, professional body, committee, council, local authority, council controlled organisation or other body includes the successors to that body or any relevant activity or function of that body;

- 2.19. A reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;
- 2.20. A reference to includes or including or other similar words should be construed without limitation;
- 2.21. Where the time for performing an obligation or exercising a right is expressed by reference to a period of one or more months before or after a specified date (the **reference date**) that time period will be determined by calculating the number of months specified from the reference date, with the period expiring on the date which is the equivalent date to the reference date, or if there is no such date in the final month, the last day of that final month;
- 2.22. Where the time for performing an obligation or exercising a right is expressed as being "immediately" following or after an event or circumstance occurring, it means as soon as reasonably practicable but no later than 24 hours following or after that event or circumstance occurring; and
- 2.23. A reference to obligations includes indemnities, warranties, representations and undertakings and a reference to breach or breach of obligations includes breach of any indemnities, warranties, representations and undertakings.

Consents or approvals

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

Dated 04 December 2019

Bus Partnering Contract

Supplementary Deed – Driver Rest and Meal Breaks

Wellington Regional Council (**GWRC**)

and

Madge Coachines Limited (**Operator**)

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Supplementary Deed

Parties

- (1) Wellington Regional Council, a public statutory body constituted under the Local Government Act 2002 (**GWRC**); and
- (2) Madge Coachlines Limited (company number 5635) (**Operator**).

Background

- A. GWRC and the Operator have entered into the Partnering Contract.
- B. Changes to the Employment Relations Act 2000 implemented by the Employment Relations Amendment Act 2018 have amended the rights of workers (including the Drivers) to rest and meal breaks with effect from 6 May 2019.
- C. Compliance with the changes referred to in paragraph B may require the Operator to schedule Driver breaks during typical driving shifts and this may cause the Operator to incur additional costs in connection with the performance of its obligations under the Partnering Contract.
- D. GWRC has agreed to meet some of the additional costs incurred by the Operator during the Transition Period, subject to and in accordance with the terms of this Deed.
- E. Various relevant entities (including GWRC and the Operator) have signed up to a Memorandum of Understanding which documents their agreement to work constructively and collaboratively together in order to achieve the smoothest possible implementation of the changes referred to in paragraph B within the New Zealand bus industry. The desired outcome of the Memorandum of Understanding (as set out in clause 5 thereof) is to ensure that bus drivers receive the rest and meal breaks they are entitled to, whilst minimising service disruption, safety risks and costs to councils, bus operators and the Government.
- F. This Deed supplements the terms of the Partnering Contract.

Operative provisions

1. **Definitions and interpretation**
 - 1.1 The Parties agree that:
 - 1.1.1 the definitions and interpretation provisions set out at Schedule 1 (*Definitions and interpretation*) of this Deed apply unless the context requires otherwise; and
 - 1.1.2 unless otherwise defined in this Deed, capitalised terms have the meaning given to them in the Partnering Contract.

2. Compliance with requirements

2.1 The Operator shall, at all times, comply with the Employment Relations Act (as amended by the Land Transport Rule) and the Memorandum of Understanding.

2.2 Nothing in this Deed shall relieve the Operator from its obligations under clause 2.1 or from any of its obligations under any Transaction Document.

3. Additional payment claims

Payment claims

3.1 If the Operator incurs Additional Driver Break Costs during the Transition Period, it may submit payment claims in respect of those Additional Driver Break Costs, provided that:

3.1.1 the aggregate amount (excluding GST) claimed by the Operator pursuant to this Deed in respect of Additional Driver Break Costs is agreed with GWRC; and

3.1.2 each payment claim shall comply with the requirements of clause 3.2 and be submitted within the time period required by clause 3.4 or 3.5 (as applicable).

3.2 The Operator shall ensure that each payment claim submitted pursuant to this Deed:

3.2.1 refers to this Deed and PO number 254369

3.2.2 is submitted on a per Partnering Contract basis and clearly identifies the individual Partnering Contract to which it relates;

3.2.3 identifies the time period to which it relates (which time period must fall within the Transition Period);

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

3.2.5 is in the form of a valid tax invoice for the amount claimed by the Operator;

3.2.6 is supported by Operator records that demonstrate:

(a) that the amounts claimed have been incurred by the Operator during the relevant period to which the payment claim relates (which period must fall within the Transition Period);

(b) full details of the nature of the amounts claimed broken down on a per Unit basis, including:

A. a detailed explanation as to what the amounts claimed relate to and why they have been incurred; and

B. sufficient detail to demonstrate that the amount claimed falls within the definition of Additional Driver

Break Costs and does not include any amounts which contravene clause 4.4 (*No double recovery*), 4.6 (*No Timetable change costs*) or 4.7 (*Alternative compensation*);

- (c) details of the steps taken by the Operator to ensure compliance with its obligations under clauses 4.2 (*Obligation to mitigate*) and 4.3 (*Impact on Drivers*);
- (d) evidence demonstrating that, to the extent that the amounts claimed relate to additional payments to be made by the Operator to Drivers in accordance with the Rest and Meal Break Changes, such amounts have been paid in full to the relevant Drivers; and

3.2.7 includes a written statement confirming that each of the Conditions of Payment have been met.

3.3 Within 5 Business Days of a request thereof, the Operator shall provide to GWRC:

3.3.1 such evidence as GWRC may reasonably request to demonstrate that the Conditions of Payment have been satisfied; and

3.3.2 such other evidence of, and justification for, the amounts claimed by the Operator in a payment claim issued under this Deed as GWRC may reasonably request.

Timing of submission of payment claims

3.4 The Operator shall submit all payment claims in respect of those Additional Driver Break Costs which are Historic Additional Driver Break Costs on or before the date falling 20 Business Days after the end of the Historic Claims Period.

3.5 The Operator shall submit all payment claims in respect of those Additional Driver Break Costs which are Present Additional Driver Break Costs within 20 Business Days after the end of the calendar month in which such Present Additional Driver Break Costs were incurred by the Operator.

3.6 For the avoidance of doubt, the Operator may submit a supplementary payment claim for any increase in the amounts claimed under clauses 3.4 and 3.5, if the Historic Additional Driver Break Costs or the Present Additional Driver Break Costs increase as a result of the outcome of the Court Proceedings, provided that the Operator:

3.6.1 keeps GWRC informed regarding the progress and outcome of the Court Proceeding (including by providing GWRC with a copy of the decision of the Employment Court);

3.6.2 keeps GWRC informed about the nature and amount of any increase in the Historic Additional Driver Break Costs or the Present Additional

Break Costs that may be claimed as a result of the outcome of the Court Proceeding; and

3.6.3 submits any supplementary claim within 20 Business Days of a determination or declaration being made as an outcome of the Court Proceeding.

3.7 The Operator acknowledges and agrees that:

3.7.1 GWRC will not be liable in respect of any Additional Driver Break Costs; and

3.7.2 the Operator will be absolutely barred from making any Claim against GWRC in respect of any Additional Driver Break Costs,

unless the Operator submits the payment claim(s) in respect of those Additional Driver Break Costs in accordance with the requirements of clause clause 3.4, 3.5 or 3.6 (as applicable).

Conditions of payment

3.8 Notwithstanding anything to the contrary in this Deed or any Partnering Contract, GWRC shall not be liable to make any payment pursuant to this Deed unless and until it is satisfied (acting reasonably) that each of the Conditions of Payment has been satisfied.

Payment obligation

3.9 Subject to clauses 3.4 to 3.7 (*Timing of submission of payment claims*), 3.8 (*Conditions of Payment*), 4.8 (*Tax invoice*), 4.13 (*Set-off*) and 4.14 to 4.15 (*Disputes*) and provided that the Operator has complied with its obligations under clauses 3.2 to 3.5 inclusive, GWRC shall, on or before the relevant Payment Date, pay the Operator the amount claimed in a payment claim issued by the Operator in accordance with clause 3.1.

4. Payment related matters

Impact on Liability Cap

4.1 For the purposes of paragraph [26] (*Liability Cap*) of Schedule 2 (*Agreement Details*) of each Partnering Contract, the Services Fee under that Partnering Contract shall be deemed to be increased by an amount equal to the aggregate amounts payable by GWRC to the Operator under this Deed in respect of payment claims in connection with that Partnering Contract.

Obligation to mitigate

4.2 In complying with the Rest and Meal Break Changes and implementing the measures required to enable the Operator to comply with the Rest and Meal Break Changes, the Operator shall at all times:

4.2.1 use all reasonable endeavours to mitigate and minimise:

(a) any disruption to the Services especially during Peak Times; and

- (b) the Additional Driver Break Costs incurred by the Operator; and

Impact on Drivers

- 4.3 In complying with the Rest and Meal Break Changes and implementing the measures required to enable the Operator to comply with the Rest and Meal Break Changes, the Operator shall at all times use all reasonable endeavours to minimise any adverse impact on the take home wages of the Drivers.

No double recovery

- 4.4 The Operator shall not include any amount within a payment claim submitted under this Deed to the extent that:

- 4.4.1 the Operator has already received payment from GWRC under any Partnering Contract in respect of that amount;
- 4.4.2 the Operator has included (or will include) such amount within any payment claim issued by it under any Partnering Contract; or
- 4.4.3 the Operator has included (or will include) such amount within any claim for payment pursuant to the Timetable Change Process or Schedule 14 (*Change Events and Net Financial Impact*) of any Partnering Contract,

and GWRC shall not be liable under this Deed for payment of any such amount.

- 4.5 The Operator acknowledges and agrees that, to the extent that it is entitled to payment in respect of any Additional Driver Break Costs under this Deed, it shall not be entitled to payment in respect of the same amount pursuant to any other Transaction Document and shall not seek to include such amount in any payment claim or other Claim pursuant to any other Transaction Document.

No Timetable change costs

- 4.6 The Operator agrees that the Additional Driver Break Costs shall not include any costs incurred by the Operator in connection with a change to the Bus Unit Timetable or any change to the PVR (whether or not arising in connection with the Rest and Meal Break Changes) and the Operator shall not include any such amounts within any payment claim issued pursuant to this Deed.

Alternative compensation

- 4.7 If any arrangement comes into effect (whether pursuant to the Memorandum of Understanding or otherwise) which GWRC (acting reasonably) considers will compensate the Operator for any costs incurred by the Operator during the Transition Period in connection with the Rest and Meal Break Changes, the Operator shall not be entitled to any payment in respect of such costs pursuant to this Deed and shall not include any such amounts within any payment claim issued pursuant to this Deed.

Tax invoice

4.8 Without prejudice to any obligations of the Operator and notwithstanding anything to the contrary in this Deed or any other Transaction Document, no moneys are payable to the Operator by GWRC under this Deed unless GWRC is in receipt of a valid tax invoice in relation to the relevant amount.

Currency

4.9 All moneys payable to or by any Party under this Deed are to be invoiced and paid in New Zealand dollars.

Late payment

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

Payment on account

4.11 Clause 35.12 (*Payment on account*) of the Partnering Contract applies to any payment made under this Deed.

GST, rates, taxation and utilities

4.12 Clause 38 (*GST, rates, taxation and utilities*) of the Partnering Contract applies as if expressly set out in this Deed but with references therein to "Partnering Contract" being construed as references to this Deed instead.

Set-off

4.13 Clause 36 (*Set-off*) of the Partnering Contract applies to any amount payable under this Deed.

Disputes

4.14 Any dispute, difference of opinion or disagreement between the Parties, including any Claim, arising out of or in connection with this Deed shall be resolved in accordance with clause 45 (*Dispute Resolution Procedure*) of the Partnering Contract as if it were a Dispute under the Partnering Contract.

4.15 Clause 37 (*Disputes about payments*) of the Partnering Contract shall apply to any disputed amount under this Deed but with references therein to "Partnering Contract" being construed as references to this Deed instead.

Full and final settlement

4.16 To the maximum extent permitted by Law but without limiting any agreement reached pursuant to the Memorandum of Understanding, the Operator acknowledges and agrees that this Deed and the rights and obligations contained in it is in full and final settlement of (and this Deed sets out all of):

- 4.16.1 the Operator's rights, remedies, entitlements and Claims against GWRC in connection with the Rest and Meal Break Changes for the Transition Period; and
- 4.16.2 GWRC's liabilities and obligations to the Operator in connection with the Rest and Meal Break Changes for the Transition Period.
- 4.17 Without limiting clause 4.16 or GWRC's express obligations under this Deed or the Partnering Contract, the Operator acknowledges that:
 - 4.17.1 this Deed and the agreement by GWRC to the terms hereof does not constitute any assurance (or set any precedent indicating) that GWRC will agree to pay any other claims brought by the Operator at any time in connection with the Rest and Meal Break Changes; and
 - 4.17.2 the Operator has no expectation that GWRC will agree to pay such other claims.
- 4.18 The Operator acknowledges and agrees that, notwithstanding anything to the contrary contained in the Partnering Contract, it shall not be entitled to (and GWRC shall not be liable for) any payment in connection with the execution of this Deed or the performance by the Operator of any of its obligations under this Deed, in each case except to the extent expressly provided for in this Deed.

5. Operator's obligation to inform GWRC

Notification of issues

- 5.1 Without limiting any other obligations of the Operator under this Deed or the Memorandum of Understanding, if the Operator becomes aware of any issue arising in connection with the Rest and Meal Break Changes which it has not previously notified to GWRC and which will (or is likely to):
 - 5.1.1 materially adversely impact on the provision of the Services;
 - 5.1.2 cause material disruption to any of the Services; or
 - 5.1.3 materially increase the costs incurred or to be incurred by the Operator in connection with the provision of the Services,the Operator shall:
 - 5.1.4 promptly notify GWRC; and
 - 5.1.5 promptly provide such information as GWRC may reasonably request in connection therewith.

Changes to the Bus Unit Timetable

- 5.2 If the Operator identifies any changes to the Bus Unit Timetable or any other changes related to the Services, in each case which, if implemented, would reduce the costs incurred by the Operator in connection with the Rest and Meal Break

Changes, the Operator shall promptly notify GWRC of such change and provide details of the estimated cost saving.

5.3 If the Operator provides any notification pursuant to clause 5.2, the Operator shall:

5.3.1 promptly provide such information as GWRC may reasonably request in connection therewith; and

5.3.2 if requested to do so by GWRC, discuss the relevant changes with GWRC (and the Operator shall act co-operatively, collaboratively and in good faith in so doing).

6. Relationship with Partnering Contract provisions

6.1 GWRC and the Operator shall work together reasonably, in good faith and in accordance with the Partnering Principles to minimise the impact, service disruption, safety risks and costs (as applicable) that may arise in connection with the Rest and Meal Break Changes.

6.2 The provisions of this Deed do not limit (and are in addition to) the Timetable Change Process and the Contract Variation process set out in the Partnering Contract.

6.3 Nothing in this Deed entitles the Operator to implement any change to the Bus Unit Timetable (including any adjustment to the PVR) or any Contract Variation in connection with the Rest and Meal Break Changes.

6.4 If the Operator wishes to propose:

6.4.1 a change to the Bus Unit Timetable; or

6.4.2 a Contract Variation,

in connection with the Rest and Meal Break Changes, it shall do so in accordance with the Timetable Change Process or Contract Variation process (as applicable) provided for in the Partnering Contract.

6.5 This Deed shall not limit or otherwise affect GWRC's rights to reject a change proposed by the Operator under the Timetable Change Process or the Contract Variation process provided for in the Partnering Contract.

7. Miscellaneous

Deed to comprise a Transaction Document

7.1 The Parties agree that, with effect from the date of this Deed, this Deed shall constitute a Transaction Document for the purposes of the Partnering Contract.

Confidentiality

7.2 The Parties acknowledge and agree that the terms of this Deed constitute Confidential Information for the purposes of clause 59 of the Partnering Contract.

Assignment by the Operator

- 7.3 The Operator shall not create or allow a Security Interest over, or in any other way either directly or indirectly assign, novate, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with any of its rights or obligations under this Deed, other than under a Permitted Security Interest or with the prior written consent of GWRC.
- 7.4 The Operator shall provide any request for consent under clause 7.3 at least 20 Business Days prior to the proposed effective date of the relevant action.

Assignment by GWRC

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

Notices

- 7.6 Any notice required to be given in relation to this Deed shall be given and deemed received in accordance with clause 63 (*Notices*) of the Partnering Contract.

Relationship between Parties

- 7.7 Nothing in this Deed is to be construed or interpreted as constituting the relationship between the Parties as a partnership, quasi-partnership, association or any other relationship in which a Party may (except as expressly provided for in this Deed) be liable for the acts or omissions of the other Party.
- 7.8 Except as expressly provided in this Deed, nothing in this Deed shall be construed to authorise any Party to act as an agent for any other Party for any purpose.

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

- 7.9 Where this Deed requires that a Party shall use 'best endeavours' or 'reasonable endeavours', this does not require the Party to:
- 7.9.1 act unreasonably, in breach of Safety Law or outside the Law;
 - 7.9.2 interfere with or influence the exercise by any person of a statutory power or discretion;
 - 7.9.3 in the case of GWRC only, exercise a power or discretion or otherwise act in a manner that GWRC regards as not in the public interest; or
 - 7.9.4 provide any performance bond, guarantee or Security Interest other than as specifically required under this Deed.

Entire Agreement and amendments

- 7.10 This Deed, the Partnering Contract and the other Transaction Documents contain the entire agreement between the Parties with respect to their subject matter and

supersede any earlier agreements or understandings between the Parties in connection with their subject matter.

- 7.11 This Deed may only be amended by way of a written agreement duly executed by each of the Parties.

No reliance

- 7.12 The Operator hereby acknowledges that, before entering into this Deed, it made all enquiries it wanted to make in relation to its rights and obligations under this Deed and that in entering into this Deed it:

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

7.12.2 has made its own assessment of the rights provided to it and the obligations imposed on it by this Deed.

No waiver

- 7.13 No waiver of any breach of, or failure to enforce any provision of, this Deed, nor any delay in exercising any right, power or remedy by a Party in any way affects, limits or waives the right of such Party thereafter to enforce and compel strict compliance with the provisions of this Deed. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

- 7.14 No waiver by a Party of any part of this Deed is binding unless it is made in writing by the Party granting that waiver.

Rights cumulative

- 7.15 Subject to any express provision in this Deed to the contrary, the rights, powers and remedies of a Party under this Deed are cumulative and are in addition to (and do not exclude or limit) any right, power or remedy provided by Law or equity or by any other agreement.

Further assurances

- 7.16 Each Party agrees to execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Deed.

No merger

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

Costs and expenses

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

Severability of provisions

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

Governing law

7.20 This Deed and the transactions contemplated by this Deed are governed by and are to be construed in accordance with New Zealand law and, subject to clause 4.14 and 4.15 (*Disputes*) and the Dispute Resolution Procedure, the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

GWRC action

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

7.21.1 requires GWRC or any other Governmental Entity to exercise, or use, any regulatory or legislative powers in order to influence or affect an outcome; or

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

Contract and Commercial Law Act 2017

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

Operation of indemnities

7.23 No indemnity in this Deed limits the effect or operation of any other indemnity in this Deed or any other Transaction Document.

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

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

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

Counterparts

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

PROACTIVE RELEASE

**Executed and delivered as a
Deed:**

Wellington Regional Council
by



Signature of attorney acting
pursuant to a power of attorney
dated 30 September 2014

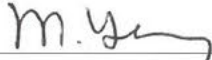
Gregory Campbell

Name of attorney

Chief Executive Officer

Title of attorney

Witnessed by



Signature of witness

Marsha Yamshtikova

Name of witness

Executive Assistant

Occupation of witness

section 7(2)(a)

Address of witness

section 7(2)(a)

Wellington

CERTIFICATE OF NON REVOCATION OF POWER OF ATTORNEY

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

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

SIGNED at Wellington this 2nd day of December 2019



Gregory Campbell

Chief Executive Officer
Wellington Regional Council

Madge Coachlines Limited by

section 7(2)(a)
[Redacted]

Signature of director

Justin Awan

Name of director

section 7(2)(a)
[Redacted]

Signature of director

John Allan

Name of director

PROACTIVE RELEASE

Schedule 1 – Definitions and interpretation

Definitions

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

<p>Additional Driver Break Costs</p>	<p>means, subject to clauses 4.4 (<i>No double recovery</i>), 4.6 (<i>No Timetable change costs</i>) and 4.7 (<i>Alternative Compensation</i>), the additional costs reasonably and demonstrably incurred during the Transition Period by the Operator in the provision of the Services under the Partnering Contract to the extent only that such costs are incurred directly and solely as a consequence of the Operator complying with (and implementing) the Rest and Meal Break Changes in respect of the Drivers, but excluding any other costs whatsoever.</p>
<p>Conditions of Payment</p>	<p>means the following conditions:</p> <ul style="list-style-type: none"> (a) the payment claim must only include amounts falling within the definition of Additional Driver Break Costs and, without limiting the foregoing, must not include any amounts which contravene clause 4.4 (<i>No double recovery</i>), 4.6 (<i>No Timetable change costs</i>) or 4.7 (<i>Alternative compensation</i>); (b) the payment claim must only relate to Additional Driver Break Costs incurred by the Operator during the Transition Period; (c) the Operator must have complied (and must be continuing to comply) with its obligations under clauses 4.2 (<i>Obligation to mitigate</i>) and 4.3 (<i>Impact on Drivers</i>); and (d) to the extent that the amounts claimed relate to additional payments to be made by the Operator to Drivers in accordance with the Rest and Meal Break Changes, such amounts must have been paid in full to the relevant Drivers.
<p>Court Proceeding</p>	<p>means a proceeding (to which a Bus Operator contracted to GWRC is a party) lodged with the Employment Relations Authority seeking consolidation and removal of proceedings to the Employment Court and a subsequent decision of the Employment Court on questions of law related to the interpretation of the Land Transport Rule.</p>

Drivers	means those persons engaged by the Operator from time to time in the operation of the Vehicles in the course of providing Passenger Services under the Partnering Contract.
Employment Relations Act	means the Employment Relations Act 2000.
Employment Relations Amendment Act	means the Employment Relations Amendment Act 2018.
Historic Additional Driver Break Costs	means those Additional Driver Break Costs incurred by the Operator during the Historic Claims Period.
Historic Claims Period	means the period commencing on 6 May 2019 and ending on the last day of the calendar month in which the date of this Deed falls.
Land Transport Rule	means the rule entitled "Land Transport Rule: Work Time in Large Passenger Service Vehicles 2019" made by Order in Council on 29 April 2019 and which came into force on 6 May 2019.
Memorandum of Understanding	<p>means the memorandum of understanding in respect of rest and meal breaks for bus drivers effective from 29 April 2019 and made between:</p> <ul style="list-style-type: none"> (a) Hon Phil Twyford, Minister of Transport, for the Government (including the Ministry of Transport and the New Zealand Transport Agency); (b) Hon Iain Lees-Galloway, Minister for Workplace Relations and Safety; (c) Barry Kidd, Bus & Coach Association, for those bus service operators listed in Schedule 1 to the Memorandum of Understanding; (d) Greg Campbell, Greater Wellington Regional Council, for Auckland Transport and those regional councils and unitary authorities listed in Schedule 2 to the Memorandum of Understanding; and (e) Richard Wagstaff, New Zealand Council of Trade Unions, for those unions listed in Schedule 3 to the Memorandum of Understanding.
Parties	means the parties to this Deed.

Partnering Contract	means the partnering contract made between GWRC and the Operator in respect of PTOM Unit 14 dated 16 June 2017.
Payment Date	means: (a) in relation to payment claims in respect of Historic Additional Driver Break Costs, the 20th day of the month following the end of the Historic Claims Period (or if such a day is not a Business Day, the next Business Day); and (b) in relation to payment claims in respect of Present Additional Driver Break Costs, the 20th day of the month following the end of the month to which the payment claim relates (or if such a day is not a Business Day, the next Business Day).
Present Additional Driver Break Costs	means those Additional Driver Break Costs incurred by the Operator during the Present Claims Period.
Present Claims Period	means the period commencing on the first day after the end of the Historic Claims Period and ending on the last day of the Transition Period.
PTOM Unit	means a unit (as defined in section 5(1) of the Land Transport Management Act 2003) specified in the Wellington Regional Public Transport Plan.
Rest and Meal Break Changes	means those amendments to Part 6D (<i>Rest and meal breaks</i>) of the Employment Relations Act implemented by sections 43 – 45 of the Employment Relations Amendment Act, as amended and applied to the bus industry by virtue of the Land Transport Rule.
Transition Period	means the period from (and including) 6 May 2019 until (and including) 5 May 2020.

Interpretation

2. The following rules apply unless the context requires otherwise:

- 2.1. Headings are for convenience only and do not affect interpretation;
- 2.2. The singular includes the plural and conversely;
- 2.3. A gender includes all genders;
- 2.4. If a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- 2.5. A reference to a person, corporation, trust, partnership, unincorporated body, organisation or other entity includes any of them;
- 2.6. A reference to a clause, schedule, annexure or appendix is a reference to a clause of or a schedule, annexure or appendix to, this Deed, and a reference to a paragraph is to a paragraph of the same clause, schedule, annexure or appendix unless the context requires otherwise;
- 2.7. A reference to an agreement or document (including a reference to this Deed or a Partnering Contract) is to the agreement or document as amended, varied or supplemented, novated or replaced, except to the extent prohibited by this Deed, the Partnering Contract or that other agreement or document;
- 2.8. A reference to a person includes that person's successors, permitted substitutes and permitted assigns (and, where applicable, that person's legal personal representatives);
- 2.9. A reference to legislation or a rule or to a provision of legislation or rule includes a modification or re-enactment of it, a legislative provision or rule substituted for it and a regulation or statutory instrument issued under it;
- 2.10. A reference to conduct includes an act, omission, statement and undertaking, whether or not in writing;
- 2.11. A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- 2.12. A reference to dollars and \$ is to New Zealand currency;
- 2.13. A reference to a month or to a year is to a calendar month or a calendar year;
- 2.14. A reference to a right or an obligation of any two or more persons confers that right, or imposes that obligation as the case may be, on each of them severally and all of them jointly;
- 2.15. A reference to a Party or Parties is a reference to each of those persons separately;
- 2.16. A reference to writing includes an email and any other means of reproducing words in a tangible and permanently visible form;
- 2.17. A reference to an asset includes any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived from, the property or asset;
- 2.18. A reference to any governmental department, professional body, committee, council, local authority, council controlled organisation or other body includes the successors to that body or any relevant activity or function of that body;

- 2.19. A reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;
- 2.20. A reference to includes or including or other similar words should be construed without limitation;
- 2.21. Where the time for performing an obligation or exercising a right is expressed by reference to a period of one or more months before or after a specified date (the **reference date**) that time period will be determined by calculating the number of months specified from the reference date, with the period expiring on the date which is the equivalent date to the reference date, or if there is no such date in the final month, the last day of that final month;
- 2.22. Where the time for performing an obligation or exercising a right is expressed as being "immediately" following or after an event or circumstance occurring, it means as soon as reasonably practicable but no later than 24 hours following or after that event or circumstance occurring; and
- 2.23. A reference to obligations includes indemnities, warranties, representations and undertakings and a reference to breach or breach of obligations includes breach of any indemnities, warranties, representations and undertakings.

Consents or approvals

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

Dated 05 December 2019

Bus Partnering Contracts

Supplementary Deed – Driver Rest and Meal Breaks

Wellington Regional Council (**GWRC**)

and

Mana Coach Services Limited (**Operator**)

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Schedule 1 – Definitions and Interpretation

Supplementary Deed

Parties

- (1) Wellington Regional Council, a public statutory body constituted under the Local Government Act 2002 (**GWRC**); and
- (2) Mana Coach Services Limited (company number 6003) (**Operator**).

Background

- A. GWRC and the Operator have entered into the Partnering Contracts.
- B. Changes to the Employment Relations Act 2000 implemented by the Employment Relations Amendment Act 2018 have amended the rights of workers (including the Drivers) to rest and meal breaks with effect from 6 May 2019.
- C. Compliance with the changes referred to in paragraph B may require the Operator to schedule Driver breaks during typical driving shifts and this may cause the Operator to incur additional costs in connection with the performance of its obligations under the Partnering Contracts.
- D. GWRC has agreed to meet some of the additional costs incurred by the Operator during the Transition Period, subject to and in accordance with the terms of this Deed.
- E. Various relevant entities (including GWRC and the Operator) have signed up to a Memorandum of Understanding which documents their agreement to work constructively and collaboratively together in order to achieve the smoothest possible implementation of the changes referred to in paragraph B within the New Zealand bus industry. The desired outcome of the Memorandum of Understanding (as set out in clause 5 thereof) is to ensure that bus drivers receive the rest and meal breaks they are entitled to, whilst minimising service disruption, safety risks and costs to councils, bus operators and the Government.
- F. This Deed supplements the terms of the Partnering Contracts.

Operative provisions

1. **Definitions and interpretation**
 - 1.1 The Parties agree that:
 - 1.1.1 the definitions and interpretation provisions set out at Schedule 1 (*Definitions and interpretation*) of this Deed apply unless the context requires otherwise; and
 - 1.1.2 unless otherwise defined in this Deed, capitalised terms have the meaning given to them in the Partnering Contracts.

2. Compliance with requirements

- 2.1 The Operator shall, at all times, comply with the Employment Relations Act (as amended by the Land Transport Rule) and the Memorandum of Understanding.
- 2.2 Nothing in this Deed shall relieve the Operator from its obligations under clause 2.1 or from any of its obligations under any Transaction Document.

3. Additional payment claims

Payment claims

- 3.1 If the Operator incurs Additional Driver Break Costs during the Transition Period, it may submit payment claims in respect of those Additional Driver Break Costs, provided that:
- 3.1.1 the aggregate amount (excluding GST) claimed by the Operator pursuant to this Deed in respect of Additional Driver Break Costs is agreed with GWRC; and
 - 3.1.2 each payment claim shall comply with the requirements of clause 3.2 and be submitted within the time period required by clause 3.4 or 3.5 (as applicable).
- 3.2 The Operator shall ensure that each payment claim submitted pursuant to this Deed:
- 3.2.1 refers to this Deed and PO number 254368
 - 3.2.2 is submitted on a per Partnering Contract basis and clearly identifies the individual Partnering Contract to which it relates;
 - 3.2.3 identifies the time period to which it relates (which time period must fall within the Transition Period);
 - 3.2.4 sets out all amounts claimed in New Zealand dollars and cents, with cents being shown to two decimal places;
 - 3.2.5 is in the form of a valid tax invoice for the amount claimed by the Operator;
 - 3.2.6 is supported by Operator records that demonstrate:
 - (a) that the amounts claimed have been incurred by the Operator during the relevant period to which the payment claim relates (which period must fall within the Transition Period);
 - (b) full details of the nature of the amounts claimed broken down on a per Unit basis, including:
 - A. a detailed explanation as to what the amounts claimed relate to and why they have been incurred; and
 - B. sufficient detail to demonstrate that the amount claimed falls within the definition of Additional Driver

Break Costs and does not include any amounts which contravene clause 4.4 (*No double recovery*), 4.6 (*No Timetable change costs*) or 4.7 (*Alternative compensation*);

- (c) details of the steps taken by the Operator to ensure compliance with its obligations under clauses 4.2 (*Obligation to mitigate*) and 4.3 (*Impact on Drivers*);
- (d) evidence demonstrating that, to the extent that the amounts claimed relate to additional payments to be made by the Operator to Drivers in accordance with the Rest and Meal Break Changes, such amounts have been paid in full to the relevant Drivers; and

3.2.7 includes a written statement confirming that each of the Conditions of Payment have been met.

3.3 Within 5 Business Days of a request thereof, the Operator shall provide to GWRC:

3.3.1 such evidence as GWRC may reasonably request to demonstrate that the Conditions of Payment have been satisfied; and

3.3.2 such other evidence of, and justification for, the amounts claimed by the Operator in a payment claim issued under this Deed as GWRC may reasonably request.

Timing of submission of payment claims

3.4 The Operator shall submit all payment claims in respect of those Additional Driver Break Costs which are Historic Additional Driver Break Costs on or before the date falling 20 Business Days after the end of the Historic Claims Period.

3.5 The Operator shall submit all payment claims in respect of those Additional Driver Break Costs which are Present Additional Driver Break Costs within 20 Business Days after the end of the calendar month in which such Present Additional Driver Break Costs were incurred by the Operator.

3.6 The Operator acknowledges and agrees that:

3.6.1 GWRC will not be liable in respect of any Additional Driver Break Costs; and

3.6.2 the Operator will be absolutely barred from making any Claim against GWRC in respect of any Additional Driver Break Costs,

unless the Operator submits the payment claim(s) in respect of those Additional Driver Break Costs in accordance with the requirements of clause 3.4 or 3.5 (as applicable).

Conditions of payment

3.7 Notwithstanding anything to the contrary in this Deed or any Partnering Contract, GWRC shall not be liable to make any payment pursuant to this Deed unless and until it is satisfied (acting reasonably) that each of the Conditions of Payment has been satisfied.

Payment obligation

3.8 Subject to clauses 3.6 (*Timing of submission of payment claims*), 3.7 (*Conditions of Payment*), 4.8 (*Tax invoice*), 4.13 (*Set-off*) and 4.14 to 4.15 (*Disputes*) and provided that the Operator has complied with its obligations under clauses 3.2 to 3.5 inclusive, GWRC shall, on or before the relevant Payment Date, pay the Operator the amount claimed in a payment claim issued by the Operator in accordance with clause 3.1.

4. Payment related matters

Impact on Liability Cap

4.1 For the purposes of paragraph [26] (*Liability Cap*) of Schedule 2 (*Agreement Details*) of each Partnering Contract, the Services Fee under that Partnering Contract shall be deemed to be increased by an amount equal to the aggregate amounts payable by GWRC to the Operator under this Deed in respect of payment claims in connection with that Partnering Contract.

Obligation to mitigate

4.2 In complying with the Rest and Meal Break Changes and implementing the measures required to enable the Operator to comply with the Rest and Meal Break Changes, the Operator shall at all times:

4.2.1 use all reasonable endeavours to mitigate and minimise:

- (a) any disruption to the Services especially during Peak Times; and
- (b) the Additional Driver Break Costs incurred by the Operator; and

Impact on Drivers

4.3 In complying with the Rest and Meal Break Changes and implementing the measures required to enable the Operator to comply with the Rest and Meal Break Changes, the Operator shall at all times use all reasonable endeavours to minimise any adverse impact on the take home wages of the Drivers.

No double recovery

4.4 The Operator shall not include any amount within a payment claim submitted under this Deed to the extent that:

4.4.1 the Operator has already received payment from GWRC under any Partnering Contract in respect of that amount;

4.4.2 the Operator has included (or will include) such amount within any payment claim issued by it under any Partnering Contract; or

4.4.3 the Operator has included (or will include) such amount within any claim for payment pursuant to the Timetable Change Process or Schedule 14 (*Change Events and Net Financial Impact*) of any Partnering Contract,

and GWRC shall not be liable under this Deed for payment of any such amount.

4.5 The Operator acknowledges and agrees that, to the extent that it is entitled to payment in respect of any Additional Driver Break Costs under this Deed, it shall not be entitled to payment in respect of the same amount pursuant to any other Transaction Document and shall not seek to include such amount in any payment claim or other Claim pursuant to any other Transaction Document.

No Timetable change costs

4.6 The Operator agrees that the Additional Driver Break Costs shall not include any costs incurred by the Operator in connection with a change to the Bus Unit Timetable or any change to the PVR (whether or not arising in connection with the Rest and Meal Break Changes) and the Operator shall not include any such amounts within any payment claim issued pursuant to this Deed.

Alternative compensation

4.7 If any arrangement comes into effect (whether pursuant to the Memorandum of Understanding or otherwise) which GWRC (acting reasonably) considers will compensate the Operator for any costs incurred by the Operator during the Transition Period in connection with the Rest and Meal Break Changes, the Operator shall not be entitled to any payment in respect of such costs pursuant to this Deed and shall not include any such amounts within any payment claim issued pursuant to this Deed.

Tax invoice

4.8 Without prejudice to any obligations of the Operator and notwithstanding anything to the contrary in this Deed or any other Transaction Document, no moneys are payable to the Operator by GWRC under this Deed unless GWRC is in receipt of a valid tax invoice in relation to the relevant amount.

Currency

4.9 All moneys payable to or by any Party under this Deed are to be invoiced and paid in New Zealand dollars.

Late payment

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

Payment on account

- 4.11 Clause 35.12 (*Payment on account*) of the Partnering Contracts applies to any payment made under this Deed.

GST, rates, taxation and utilities

- 4.12 Clause 38 (*GST, rates, taxation and utilities*) of the Partnering Contracts applies as if expressly set out in this Deed but with references therein to "Partnering Contract" being construed as references to this Deed instead.

Set-off

- 4.13 Clause 36 (*Set-off*) of the Partnering Contracts applies to any amount payable under this Deed.

Disputes

- 4.14 Any dispute, difference of opinion or disagreement between the Parties, including any Claim, arising out of or in connection with this Deed shall be resolved in accordance with clause 45 (*Dispute Resolution Procedure*) of the Partnering Contracts as if it were a Dispute under the Partnering Contracts.
- 4.15 Clause 37 (*Disputes about payments*) of the Partnering Contracts shall apply to any disputed amount under this Deed but with references therein to "Partnering Contract" being construed as references to this Deed instead.

Full and final settlement

- 4.16 To the maximum extent permitted by Law but without limiting any agreement reached pursuant to the Memorandum of Understanding, the Operator acknowledges and agrees that this Deed and the rights and obligations contained in it is in full and final settlement of (and this Deed sets out all of):
- 4.16.1 the Operator's rights, remedies, entitlements and Claims against GWRC in connection with the Rest and Meal Break Changes for the Transition Period; and
- 4.16.2 GWRC's liabilities and obligations to the Operator in connection with the Rest and Meal Break Changes for the Transition Period.
- 4.17 Without limiting clause 4.16 or GWRC's express obligations under this Deed or the Partnering Contracts, the Operator acknowledges that:
- 4.17.1 this Deed and the agreement by GWRC to the terms hereof does not constitute any assurance (or set any precedent indicating) that GWRC will agree to pay any other claims brought by the Operator at any time in connection with the Rest and Meal Break Changes; and
- 4.17.2 the Operator has no expectation that GWRC will agree to pay such other claims.
- 4.18 The Operator acknowledges and agrees that, notwithstanding anything to the contrary contained in the Partnering Contracts, it shall not be entitled to (and

GWRC shall not be liable for) any payment in connection with the execution of this Deed or the performance by the Operator of any of its obligations under this Deed, in each case except to the extent expressly provided for in this Deed.

5. Operator's obligation to inform GWRC

Notification of issues

- 5.1 Without limiting any other obligations of the Operator under this Deed or the Memorandum of Understanding, if the Operator becomes aware of any issue arising in connection with the Rest and Meal Break Changes which it has not previously notified to GWRC and which will (or is likely to):
- 5.1.1 materially adversely impact on the provision of the Services;
 - 5.1.2 cause material disruption to any of the Services; or
 - 5.1.3 materially increase the costs incurred or to be incurred by the Operator in connection with the provision of the Services,
- the Operator shall:
- 5.1.4 promptly notify GWRC; and
 - 5.1.5 promptly provide such information as GWRC may reasonably request in connection therewith.

Changes to the Bus Unit Timetable

- 5.2 If the Operator identifies any changes to the Bus Unit Timetable or any other changes related to the Services, in each case which, if implemented, would reduce the costs incurred by the Operator in connection with the Rest and Meal Break Changes, the Operator shall promptly notify GWRC of such change and provide details of the estimated cost saving.
- 5.3 If the Operator provides any notification pursuant to clause 5.2, the Operator shall:
- 5.3.1 promptly provide such information as GWRC may reasonably request in connection therewith; and
 - 5.3.2 if requested to do so by GWRC, discuss the relevant changes with GWRC (and the Operator shall act co-operatively, collaboratively and in good faith in so doing).

6. Relationship with Partnering Contract provisions

- 6.1 GWRC and the Operator shall work together reasonably, in good faith and in accordance with the Partnering Principles to minimise the impact, service disruption, safety risks and costs (as applicable) that may arise in connection with the Rest and Meal Break Changes.

- 6.2 The provisions of this Deed do not limit (and are in addition to) the Timetable Change Process and the Contract Variation process set out in the Partnering Contracts.
- 6.3 Nothing in this Deed entitles the Operator to implement any change to the Bus Unit Timetable (including any adjustment to the PVR) or any Contract Variation in connection with the Rest and Meal Break Changes.
- 6.4 If the Operator wishes to propose:
- 6.4.1 a change to the Bus Unit Timetable; or
- 6.4.2 a Contract Variation,
- in connection with the Rest and Meal Break Changes, it shall do so in accordance with the Timetable Change Process or Contract Variation process (as applicable) provided for in the Partnering Contracts.
- 6.5 This Deed shall not limit or otherwise affect GWRC's rights to reject a change proposed by the Operator under the Timetable Change Process or the Contract Variation process provided for in the Partnering Contracts.

7. Miscellaneous

Deed to comprise a Transaction Document

- 7.1 The Parties agree that, with effect from the date of this Deed, this Deed shall constitute a Transaction Document for the purposes of the Partnering Contracts.

Confidentiality

- 7.2 The Parties acknowledge and agree that the terms of this Deed constitute Confidential Information for the purposes of clause 59 of the Partnering Contracts.

Assignment by the Operator

- 7.3 The Operator shall not create or allow a Security Interest over, or in any other way either directly or indirectly assign, novate, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with any of its rights or obligations under this Deed, other than under a Permitted Security Interest or with the prior written consent of GWRC.
- 7.4 The Operator shall provide any request for consent under clause 7.3 at least 20 Business Days prior to the proposed effective date of the relevant action.

Assignment by GWRC

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

Notices

7.6 Any notice required to be given in relation to this Deed shall be given and deemed received in accordance with clause 63 (*Notices*) of the Partnering Contract.

Relationship between Parties

7.7 Nothing in this Deed is to be construed or interpreted as constituting the relationship between the Parties as a partnership, quasi-partnership, association or any other relationship in which a Party may (except as expressly provided for in this Deed) be liable for the acts or omissions of the other Party.

7.8 Except as expressly provided in this Deed, nothing in this Deed shall be construed to authorise any Party to act as an agent for any other Party for any purpose.

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

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

- 7.9.1 act unreasonably, in breach of Safety Law or outside the Law;
- 7.9.2 interfere with or influence the exercise by any person of a statutory power or discretion;
- 7.9.3 in the case of GWRC only, exercise a power or discretion or otherwise act in a manner that GWRC regards as not in the public interest; or
- 7.9.4 provide any performance bond, guarantee or Security Interest other than as specifically required under this Deed.

Entire Agreement and amendments

7.10 This Deed, the Partnering Contracts and the other Transaction Documents contain the entire agreement between the Parties with respect to their subject matter and supersede any earlier agreements or understandings between the Parties in connection with their subject matter.

7.11 This Deed may only be amended by way of a written agreement duly executed by each of the Parties.

No reliance

7.12 The Operator hereby acknowledges that, before entering into this Deed, it made all enquiries it wanted to make in relation to its rights and obligations under this Deed and that in entering into this Deed it:

- 7.12.1 did not rely on any representation, warranty, guarantee, assurance, undertaking or other statement made by or on behalf of GWRC; and
- 7.12.2 has made its own assessment of the rights provided to it and the obligations imposed on it by this Deed.

No waiver

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

Rights cumulative

- 7.15 Subject to any express provision in this Deed to the contrary, the rights, powers and remedies of a Party under this Deed are cumulative and are in addition to (and do not exclude or limit) any right, power or remedy provided by Law or equity or by any other agreement.

Further assurances

- 7.16 Each Party agrees to execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Deed.

No merger

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

Costs and expenses

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

Severability of provisions

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

Governing law

- 7.20 This Deed and the transactions contemplated by this Deed are governed by and are to be construed in accordance with New Zealand law and, subject to clause 4.14 and 4.15 (*Disputes*) and the Dispute Resolution Procedure, the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

GWRC action

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

7.21.1 requires GWRC or any other Governmental Entity to exercise, or use, any regulatory or legislative powers in order to influence or affect an outcome; or

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

Contract and Commercial Law Act 2017

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

Operation of indemnities

7.23 No indemnity in this Deed limits the effect or operation of any other indemnity in this Deed or any other Transaction Document.

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

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

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

Counterparts

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

**Executed and delivered as a
Deed:**

Wellington Regional Council
by



Signature of attorney acting
pursuant to a power of attorney
dated 30 September 2014

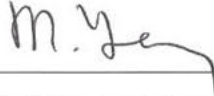
Gregory Campbell

Name of attorney

Chief Executive Officer

Title of attorney

Witnessed by



Signature of witness

Marsha Yamshikova

Name of witness

Executive Assistant

Occupation of witness

section 7(2)(a)

Address of witness Wellington

CERTIFICATE OF NON REVOCATION OF POWER OF ATTORNEY

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

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

SIGNED at Wellington this 2nd day of December 2019



Gregory Campbell

Chief Executive Officer
Wellington Regional Council

Mana Coach Services Limited

by
section 7(2)(a)
[Redacted Signature]

Signature of director

RAN LADD

Name of director

section 7(2)(a)
[Redacted Signature]

Signature of director

Amish Vallath

Name of director

PROACTIVE RELEASE

Schedule 1 – Definitions and interpretation

Definitions

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

<p>Additional Driver Break Costs</p>	<p>means, subject to clauses 4.4 (<i>No double recovery</i>), 4.6 (<i>No Timetable change costs</i>) and 4.7 (<i>Alternative Compensation</i>), the additional costs reasonably and demonstrably incurred during the Transition Period by the Operator in the provision of the Services under the Partnering Contracts to the extent only that such costs are incurred directly and solely as a consequence of the Operator complying with (and implementing) the Rest and Meal Break Changes in respect of the Drivers, but excluding any other costs whatsoever.</p>
<p>Conditions of Payment</p>	<p>means the following conditions:</p> <ul style="list-style-type: none"> (a) the payment claim must only include amounts falling within the definition of Additional Driver Break Costs and, without limiting the foregoing, must not include any amounts which contravene clause 4.4 (<i>No double recovery</i>), 4.6 (<i>No Timetable change costs</i>) or 4.7 (<i>Alternative compensation</i>); (b) the payment claim must only relate to Additional Driver Break Costs incurred by the Operator during the Transition Period; (c) the Operator must have complied (and must be continuing to comply) with its obligations under clauses 4.2 (<i>Obligation to mitigate</i>) and 4.3 (<i>Impact on Drivers</i>); and (d) to the extent that the amounts claimed relate to additional payments to be made by the Operator to Drivers in accordance with the Rest and Meal Break Changes, such amounts must have been paid in full to the relevant Drivers.
<p>Drivers</p>	<p>means those persons engaged by the Operator from time to time in the operation of the Vehicles in the course of providing Passenger Services under the Partnering Contracts.</p>
<p>Employment Relations Act</p>	<p>means the Employment Relations Act 2000.</p>

Employment Relations Amendment Act	means the Employment Relations Amendment Act 2018.
Historic Additional Driver Break Costs	means those Additional Driver Break Costs incurred by the Operator during the Historic Claims Period.
Historic Claims Period	means the period commencing on 6 May 2019 and ending on the last day of the calendar month in which the date of this Deed falls.
Land Transport Rule	means the rule entitled "Land Transport Rule: Work Time in Large Passenger Service Vehicles 2019" made by Order in Council on 29 April 2019 and which came into force on 6 May 2019.
Memorandum of Understanding	<p>means the memorandum of understanding in respect of rest and meal breaks for bus drivers effective from 29 April 2019 and made between:</p> <ul style="list-style-type: none"> (a) Hon Phil Twyford, Minister of Transport, for the Government (including the Ministry of Transport and the New Zealand Transport Agency); (b) Hon Iain Lees-Galloway, Minister for Workplace Relations and Safety; (c) Barry Kidd, Bus & Coach Association, for those bus service operators listed in Schedule 1 to the Memorandum of Understanding; (d) Greg Campbell, Greater Wellington Regional Council, for Auckland Transport and those regional councils and unitary authorities listed in Schedule 2 to the Memorandum of Understanding; and (e) Richard Wagstaff, New Zealand Council of Trade Unions, for those unions listed in Schedule 3 to the Memorandum of Understanding.
Parties	means the parties to this Deed.
Partnering Contracts	means the partnering contracts made between GWRC and the Operator in respect of PTOM Units 8 and 18, in each case dated 17 October 2017.
Payment Date	means:

	<p>(a) in relation to payment claims in respect of Historic Additional Driver Break Costs, the 20th day of the month following the end of the Historic Claims Period (or if such a day is not a Business Day, the next Business Day); and</p> <p>(b) in relation to payment claims in respect of Present Additional Driver Break Costs, the 20th day of the month following the end of the month to which the payment claim relates (or if such a day is not a Business Day, the next Business Day).</p>
Present Additional Driver Break Costs	means those Additional Driver Break Costs incurred by the Operator during the Present Claims Period.
Present Claims Period	means the period commencing on the first day after the end of the Historic Claims Period and ending on the last day of the Transition Period.
PTOM Unit	means a unit (as defined in section 5(1) of the Land Transport Management Act 2003) specified in the Wellington Regional Public Transport Plan.
Rest and Meal Break Changes	means those amendments to Part 6D (<i>Rest and meal breaks</i>) of the Employment Relations Act implemented by sections 43 – 45 of the Employment Relations Amendment Act, as amended and applied to the bus industry by virtue of the Land Transport Rule.
Transition Period	means the period from (and including) 6 May 2019 until (and including) 5 May 2020.

Interpretation

2. The following rules apply unless the context requires otherwise:

- 2.1. Headings are for convenience only and do not affect interpretation;
- 2.2. The singular includes the plural and conversely;
- 2.3. A gender includes all genders;
- 2.4. If a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 2.5. A reference to a person, corporation, trust, partnership, unincorporated body, organisation or other entity includes any of them;
- 2.6. A reference to a clause, schedule, annexure or appendix is a reference to a clause of or a schedule, annexure or appendix to, this Deed, and a reference to a

paragraph is to a paragraph of the same clause, schedule, annexure or appendix unless the context requires otherwise;

- 2.7. A reference to an agreement or document (including a reference to this Deed or a Partnering Contract) is to the agreement or document as amended, varied or supplemented, novated or replaced, except to the extent prohibited by this Deed, the Partnering Contract or that other agreement or document;
- 2.8. A reference to a person includes that person's successors, permitted substitutes and permitted assigns (and, where applicable, that person's legal personal representatives);
- 2.9. A reference to legislation or a rule or to a provision of legislation or rule includes a modification or re-enactment of it, a legislative provision or rule substituted for it and a regulation or statutory instrument issued under it;
- 2.10. A reference to conduct includes an act, omission, statement and undertaking, whether or not in writing;
- 2.11. A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- 2.12. A reference to dollars and \$ is to New Zealand currency;
- 2.13. A reference to a month or to a year is to a calendar month or a calendar year;
- 2.14. A reference to a right or an obligation of any two or more persons confers that right, or imposes that obligation as the case may be, on each of them severally and all of them jointly;
- 2.15. A reference to a Party or Parties is a reference to each of those persons separately;
- 2.16. A reference to writing includes an email and any other means of reproducing words in a tangible and permanently visible form;
- 2.17. A reference to an asset includes any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived from, the property or asset;
- 2.18. A reference to any governmental department, professional body, committee, council, local authority, council controlled organisation or other body includes the successors to that body or any relevant activity or function of that body;
- 2.19. A reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;
- 2.20. A reference to includes or including or other similar words should be construed without limitation;

- 2.21. Where the time for performing an obligation or exercising a right is expressed by reference to a period of one or more months before or after a specified date (the **reference date**) that time period will be determined by calculating the number of months specified from the reference date, with the period expiring on the date which is the equivalent date to the reference date, or if there is no such date in the final month, the last day of that final month;
- 2.22. Where the time for performing an obligation or exercising a right is expressed as being "immediately" following or after an event or circumstance occurring, it means as soon as reasonably practicable but no later than 24 hours following or after that event or circumstance occurring; and
- 2.23. A reference to obligations includes indemnities, warranties, representations and undertakings and a reference to breach or breach of obligations includes breach of any indemnities, warranties, representations and undertakings.

Consents or approvals

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

PROACTIVE RELEASE

Dated 04 December 2019

Bus Partnering Contracts

Supplementary Deed – Driver Rest and Meal Breaks

Wellington Regional Council (**GWRC**)

and

Tranzit Group Limited (**Operator**)

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Supplementary Deed

Parties

- (1) Wellington Regional Council, a public statutory body constituted under the Local Government Act 2002 (**GWRC**); and
- (2) Tranzit Group Limited (company number 5086) of 316 Queen Street, Masterton, 5810, New Zealand (**Operator**).

Background

- A. GWRC and the Operator have entered into the Partnering Contracts.
- B. Changes to the Employment Relations Act 2000 implemented by the Employment Relations Amendment Act 2018 have amended the rights of workers (including the Drivers) to rest and meal breaks with effect from 6 May 2019.
- C. Compliance with the changes referred to in paragraph B may require the Operator to schedule Driver breaks during typical driving shifts and this may cause the Operator to incur additional costs in connection with the performance of its obligations under the Partnering Contracts.
- D. GWRC has agreed to meet some of the additional costs incurred by the Operator during the Transition Period, subject to and in accordance with the terms of this Deed.
- E. Various relevant entities (including GWRC and the Operator) have signed up to a Memorandum of Understanding which documents their agreement to work constructively and collaboratively together in order to achieve the smoothest possible implementation of the changes referred to in paragraph B within the New Zealand bus industry. The desired outcome of the Memorandum of Understanding (as set out in clause 5 thereof) is to ensure that bus drivers receive the rest and meal breaks they are entitled to, whilst minimising service disruption, safety risks and costs to councils, bus operators and the Government.
- F. This Deed supplements the terms of the Partnering Contracts.

Operative provisions

1. **Definitions and interpretation**
 - 1.1 The Parties agree that:
 - 1.1.1 the definitions and interpretation provisions set out at Schedule 1 (*Definitions and interpretation*) of this Deed apply unless the context requires otherwise; and
 - 1.1.2 unless otherwise defined in this Deed, capitalised terms have the meaning given to them in the Partnering Contracts.

2. Compliance with requirements

2.1 The Operator shall, at all times, comply with the Employment Relations Act (as amended by the Land Transport Rule) and the Memorandum of Understanding.

2.2 Nothing in this Deed shall relieve the Operator from its obligations under clause 2.1 or from any of its obligations under any Transaction Document.

3. Additional payment claims

Payment claims

3.1 If the Operator incurs Additional Driver Break Costs during the Transition Period, it may submit payment claims in respect of those Additional Driver Break Costs, provided that:

3.1.1 the aggregate amount (excluding GST) claimed by the Operator pursuant to this Deed in respect of Additional Driver Break Costs is agreed with GWRC; and

3.1.2 each payment claim shall comply with the requirements of clause 3.2 and be submitted within the time period required by clause 3.4, 3.5 or 3.6(as applicable).

3.2 The Operator shall ensure that each payment claim submitted pursuant to this Deed:

3.2.1 refers to this Deed and PO number 254373

3.2.2 is submitted on a per Partnering Contract basis and clearly identifies the individual Partnering Contract to which it relates;

3.2.3 identifies the time period to which it relates (which time period must fall within the Transition Period);

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

3.2.5 is in the form of a valid tax invoice for the amount claimed by the Operator;

3.2.6 is supported by Operator records that demonstrate:

(a) that the amounts claimed have been incurred by the Operator during the relevant period to which the payment claim relates (which period must fall within the Transition Period);

(b) full details of the nature of the amounts claimed broken down on a per Unit basis, including:

A. a detailed explanation as to what the amounts claimed relate to and why they have been incurred;

B. sufficient detail to demonstrate that the amount claimed falls within the definition of Additional Driver

Break Costs and does not include any amounts which contravene clause 4.4 (*No double recovery*), 4.6 (*No Timetable change costs*) or 4.7 (*Alternative compensation*); and

- C. if applicable, the basis upon which indexation has been applied to the amounts described at clause 4.11;
 - (c) details of the steps taken by the Operator to ensure compliance with its obligations under clauses 4.2 (*Obligation to mitigate*) and 4.3 (*Impact on Drivers*);
 - (d) evidence demonstrating that, to the extent that the amounts claimed relate to additional payments to be made by the Operator to Drivers in accordance with the Rest and Meal Break Changes, such amounts have been paid in full to the relevant Drivers; and
- 3.2.7 includes a written statement confirming that each of the Conditions of Payment have been met.

3.3 Within 5 Business Days of a request thereof, the Operator shall provide to GWRC:

- 3.3.1 such evidence as GWRC may reasonably request to demonstrate that the Conditions of Payment have been satisfied; and
- 3.3.2 such other evidence of, and justification for, the amounts claimed by the Operator in a payment claim issued under this Deed as GWRC may reasonably request.

Timing of submission of payment claims

3.4 The Operator shall submit all payment claims in respect of those Additional Driver Break Costs which are Historic Additional Driver Break Costs on or before the date falling 20 Business Days after the end of the Historic Claims Period.

3.5 The Operator shall submit all payment claims in respect of those Additional Driver Break Costs which are Present Additional Driver Break Costs within 20 Business Days after the end of the calendar month in which such Present Additional Driver Break Costs were incurred by the Operator.

3.6 For the avoidance of doubt, the Operator may submit a supplementary payment claim for any increase in the amounts claimed under clauses 3.4 and 3.5, if the Historic Additional Driver Break Costs or the Present Additional Driver Break Costs increase as a result of the outcome of the Court Proceedings, provided that the Operator:

- 3.6.1 keeps GWRC informed regarding the progress and outcome of the Court Proceeding (including by providing GWRC with a copy of the decision of the Employment Court);

- 3.6.2 keeps GWRC informed about the nature and amount of any increase in the Historic Additional Driver Break Costs or the Present Additional Break Costs that may be claimed as a result of the outcome of the Court Proceeding; and
- 3.6.3 submits any supplementary claim within 20 Business Days of a determination or declaration being made as an outcome of the Court Proceeding.
- 3.7 The Operator acknowledges and agrees that:
- 3.7.1 GWRC will not be liable in respect of any Additional Driver Break Costs; and
- 3.7.2 the Operator will be absolutely barred from making any Claim against GWRC in respect of any Additional Driver Break Costs, unless the Operator submits the payment claim(s) in respect of those Additional Driver Break Costs in accordance with the requirements of clause 3.4, 3.5 or 3.6 (as applicable).

Conditions of payment

- 3.8 Notwithstanding anything to the contrary in this Deed or any Partnering Contract, GWRC shall not be liable to make any payment pursuant to this Deed unless and until it is satisfied (acting reasonably) that each of the Conditions of Payment has been satisfied.

Payment obligation

- 3.9 Subject to clauses 3.4 to 3.7 (*Timing of submission of payment claims*), 3.8 (*Conditions of Payment*), 4.8 (*Tax invoice*), 4.16 (*Set-off*) and 4.17 to 4.18 (*Disputes*) and provided that the Operator has complied with its obligations under clauses 3.2 to 3.5 inclusive, GWRC shall, on or before the relevant Payment Date, pay the Operator the amount claimed in a payment claim issued by the Operator in accordance with clause 3.1.

4. Payment related matters

Impact on Liability Cap

- 4.1 For the purposes of paragraph [26] (*Liability Cap*) of Schedule 2 (*Agreement Details*) of each Partnering Contract, the Services Fee under that Partnering Contract shall be deemed to be increased by an amount equal to the aggregate amounts payable by GWRC to the Operator under this Deed in respect of payment claims in connection with that Partnering Contract.

Obligation to mitigate

4.2 In complying with the Rest and Meal Break Changes and implementing the measures required to enable the Operator to comply with the Rest and Meal Break Changes, the Operator shall at all times:

4.2.1 use all reasonable endeavours to mitigate and minimise:

- (a) any disruption to the Services especially during Peak Times; and
- (b) the Additional Driver Break Costs incurred by the Operator; and

Impact on Drivers

4.3 In complying with the Rest and Meal Break Changes and implementing the measures required to enable the Operator to comply with the Rest and Meal Break Changes, the Operator shall at all times use all reasonable endeavours to minimise any adverse impact on the take home wages of the Drivers.

No double recovery

4.4 The Operator shall not include any amount within a payment claim submitted under this Deed to the extent that:

4.4.1 the Operator has already received payment from GWRC under any Partnering Contract in respect of that amount;

4.4.2 the Operator has included (or will include) such amount within any payment claim issued by it under any Partnering Contract; or

4.4.3 the Operator has included (or will include) such amount within any claim for payment pursuant to the Timetable Change Process or Schedule 14 (*Change Events and Net Financial Impact*) of any Partnering Contract,

and GWRC shall not be liable under this Deed for payment of any such amount.

4.5 The Operator acknowledges and agrees that, to the extent that it is entitled to payment in respect of any Additional Driver Break Costs under this Deed, it shall not be entitled to payment in respect of the same amount pursuant to any other Transaction Document and shall not seek to include such amount in any payment claim or other Claim pursuant to any other Transaction Document.

No Timetable change costs

4.6 The Operator agrees that the Additional Driver Break Costs shall not include any costs incurred by the Operator in connection with a change to the Bus Unit Timetable or any change to the PVR (whether or not arising in connection with the Rest and Meal Break Changes) and the Operator shall not include any such amounts within any payment claim issued pursuant to this Deed.

Alternative compensation

4.7 If any arrangement comes into effect (whether pursuant to the Memorandum of Understanding or otherwise) which GWRC (acting reasonably) considers will

compensate the Operator for any costs incurred by the Operator during the Transition Period in connection with the Rest and Meal Break Changes, the Operator shall not be entitled to any payment in respect of such costs pursuant to this Deed and shall not include any such amounts within any payment claim issued pursuant to this Deed.

Tax invoice

4.8 Without prejudice to any obligations of the Operator and notwithstanding anything to the contrary in this Deed or any other Transaction Document, no moneys are payable to the Operator by GWRC under this Deed unless GWRC is in receipt of a valid tax invoice in relation to the relevant amount.

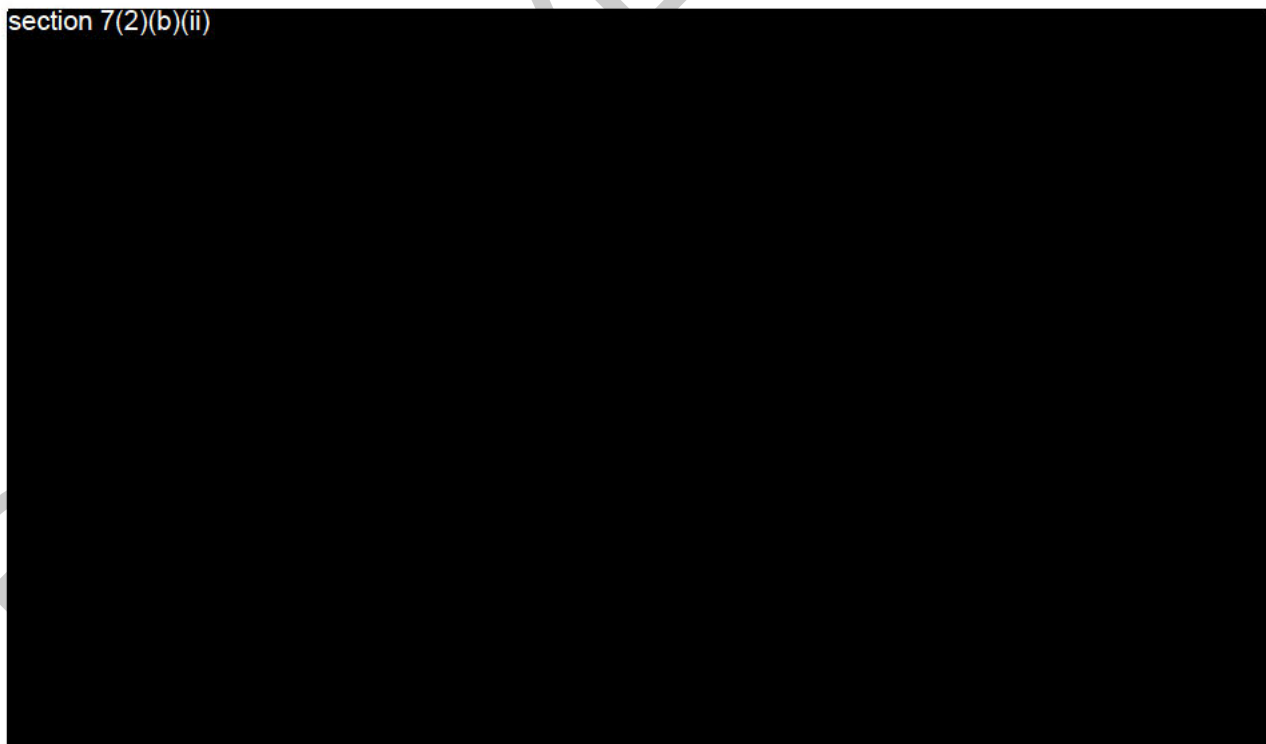
Currency

4.9 All moneys payable to or by any Party under this Deed are to be invoiced and paid in New Zealand dollars.

Late payment

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

section 7(2)(b)(ii)



Payment on account

4.14 Clause 35.12 (*Payment on account*) of the Partnering Contracts applies to any payment made under this Deed.

GST, rates, taxation and utilities

- 4.15 Clause 38 (*GST, rates, taxation and utilities*) of the Partnering Contracts applies as if expressly set out in this Deed but with references therein to "Partnering Contract" being construed as references to this Deed instead.

Set-off

- 4.16 Clause 36 (*Set-off*) of the Partnering Contracts applies to any amount payable under this Deed.

Disputes

- 4.17 Any dispute, difference of opinion or disagreement between the Parties, including any Claim, arising out of or in connection with this Deed shall be resolved in accordance with clause 45 (*Dispute Resolution Procedure*) of the Partnering Contracts as if it were a Dispute under the Partnering Contracts.
- 4.18 Clause 37 (*Disputes about payments*) of the Partnering Contracts shall apply to any disputed amount under this Deed but with references therein to "Partnering Contract" being construed as references to this Deed instead.

Full and final settlement

- 4.19 To the maximum extent permitted by Law but without limiting any agreement reached pursuant to the Memorandum of Understanding, the Operator acknowledges and agrees that this Deed and the rights and obligations contained in it is in full and final settlement of (and this Deed sets out all of):
- 4.19.1 the Operator's rights, remedies, entitlements and Claims against GWRC in connection with the Rest and Meal Break Changes for the Transition Period; and
 - 4.19.2 GWRC's liabilities and obligations to the Operator in connection with the Rest and Meal Break Changes for the Transition Period.
- 4.20 Without limiting clause 4.19 or GWRC's express obligations under this Deed or the Partnering Contracts, the Operator acknowledges that:
- 4.20.1 this Deed and the agreement by GWRC to the terms hereof does not constitute any assurance (or set any precedent indicating) that GWRC will agree to pay any other claims brought by the Operator at any time in connection with the Rest and Meal Break Changes; and
 - 4.20.2 the Operator has no expectation that GWRC will agree to pay such other claims.
- 4.21 The Operator acknowledges and agrees that, notwithstanding anything to the contrary contained in the Partnering Contracts, it shall not be entitled to (and GWRC shall not be liable for) any payment in connection with the execution of this Deed or the performance by the Operator of any of its obligations under this Deed, in each case except to the extent expressly provided for in this Deed.

5. Operator's obligation to inform GWRC

Notification of issues

- 5.1 Without limiting any other obligations of the Operator under this Deed or the Memorandum of Understanding, if the Operator becomes aware of any issue arising in connection with the Rest and Meal Break Changes which it has not previously notified to GWRC and which will (or is likely to):
- 5.1.1 materially adversely impact on the provision of the Services;
 - 5.1.2 cause material disruption to any of the Services; or
 - 5.1.3 materially increase the costs incurred or to be incurred by the Operator in connection with the provision of the Services,
- the Operator shall:
- 5.1.4 promptly notify GWRC; and
 - 5.1.5 promptly provide such information as GWRC may reasonably request in connection therewith.

Changes to the Bus Unit Timetable

- 5.2 If the Operator identifies any changes to the Bus Unit Timetable or any other changes related to the Services, in each case which, if implemented, would reduce the costs incurred by the Operator in connection with the Rest and Meal Break Changes, the Operator shall promptly notify GWRC of such change and provide details of the estimated cost saving.
- 5.3 If the Operator provides any notification pursuant to clause 5.2, the Operator shall:
- 5.3.1 promptly provide such information as GWRC may reasonably request in connection therewith; and
 - 5.3.2 if requested to do so by GWRC, discuss the relevant changes with GWRC (and the Operator shall act co-operatively, collaboratively and in good faith in so doing).

6. Relationship with Partnering Contract provisions

- 6.1 GWRC and the Operator shall work together reasonably, in good faith and in accordance with the Partnering Principles to minimise the impact, service disruption, safety risks and costs (as applicable) that may arise in connection with the Rest and Meal Break Changes.
- 6.2 The provisions of this Deed do not limit (and are in addition to) the Timetable Change Process and the Contract Variation process set out in the Partnering Contracts.

6.3 Nothing in this Deed entitles the Operator to implement any change to the Bus Unit Timetable (including any adjustment to the PVR) or any Contract Variation in connection with the Rest and Meal Break Changes.

6.4 If the Operator wishes to propose:

6.4.1 a change to the Bus Unit Timetable; or

6.4.2 a Contract Variation,

in connection with the Rest and Meal Break Changes, it shall do so in accordance with the Timetable Change Process or Contract Variation process (as applicable) provided for in the Partnering Contracts.

6.5 This Deed shall not limit or otherwise affect GWRC's rights to reject a change proposed by the Operator under the Timetable Change Process or the Contract Variation process provided for in the Partnering Contracts.

7. Miscellaneous

Deed to comprise a Transaction Document

7.1 The Parties agree that, with effect from the date of this Deed, this Deed shall constitute a Transaction Document for the purposes of the Partnering Contracts.

Confidentiality

7.2 The Parties acknowledge and agree that the terms of this Deed constitute Confidential Information for the purposes of clause 59 of the Partnering Contracts.

Assignment by the Operator

7.3 The Operator shall not create or allow a Security Interest over, or in any other way either directly or indirectly assign, novate, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with any of its rights or obligations under this Deed, other than under a Permitted Security Interest or with the prior written consent of GWRC.

7.4 The Operator shall provide any request for consent under clause 7.3 at least 20 Business Days prior to the proposed effective date of the relevant action.

Assignment by GWRC

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

Notices

7.6 Any notice required to be given in relation to this Deed shall be given and deemed received in accordance with clause 63 (*Notices*) of the Partnering Contract.

Relationship between Parties

- 7.7 Nothing in this Deed is to be construed or interpreted as constituting the relationship between the Parties as a partnership, quasi-partnership, association or any other relationship in which a Party may (except as expressly provided for in this Deed) be liable for the acts or omissions of the other Party.
- 7.8 Except as expressly provided in this Deed, nothing in this Deed shall be construed to authorise any Party to act as an agent for any other Party for any purpose.

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

- 7.9 Where this Deed requires that a Party shall use 'best endeavours' or 'reasonable endeavours', this does not require the Party to:
- 7.9.1 act unreasonably, in breach of Safety Law or outside the Law;
 - 7.9.2 interfere with or influence the exercise by any person of a statutory power or discretion;
 - 7.9.3 in the case of GWRC only, exercise a power or discretion or otherwise act in a manner that GWRC regards as not in the public interest; or
 - 7.9.4 provide any performance bond, guarantee or Security Interest other than as specifically required under this Deed.

Entire Agreement and amendments

- 7.10 This Deed, the Partnering Contracts and the other Transaction Documents contain the entire agreement between the Parties with respect to their subject matter and supersede any earlier agreements or understandings between the Parties in connection with their subject matter.
- 7.11 This Deed may only be amended by way of a written agreement duly executed by each of the Parties.

No reliance

- 7.12 The Operator hereby acknowledges that, before entering into this Deed, it made all enquiries it wanted to make in relation to its rights and obligations under this Deed and that in entering into this Deed it:
- 7.12.1 did not rely on any representation, warranty, guarantee, assurance, undertaking or other statement made by or on behalf of GWRC; and
 - 7.12.2 has made its own assessment of the rights provided to it and the obligations imposed on it by this Deed.

No waiver

- 7.13 No waiver of any breach of, or failure to enforce any provision of, this Deed, nor any delay in exercising any right, power or remedy by a Party in any way affects, limits or waives the right of such Party thereafter to enforce and compel strict compliance with the provisions of this Deed. A single or partial exercise of any

right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

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

Rights cumulative

7.15 Subject to any express provision in this Deed to the contrary, the rights, powers and remedies of a Party under this Deed are cumulative and are in addition to (and do not exclude or limit) any right, power or remedy provided by Law or equity or by any other agreement.

Further assurances

7.16 Each Party agrees to execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Deed.

No merger

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

Costs and expenses

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

Severability of provisions

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

Governing law

7.20 This Deed and the transactions contemplated by this Deed are governed by and are to be construed in accordance with New Zealand law and, subject to clause 4.17 and 4.18 (*Disputes*) and the Dispute Resolution Procedure, the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

GWRC action

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

7.21.1 requires GWRC or any other Governmental Entity to exercise, or use, any regulatory or legislative powers in order to influence or affect an outcome; or

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

Contract and Commercial Law Act 2017

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

Operation of indemnities

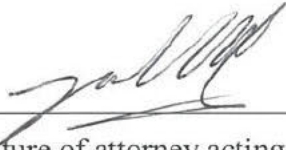
- 7.23 No indemnity in this Deed limits the effect or operation of any other indemnity in this Deed or any other Transaction Document.
- 7.24 Unless expressly provided otherwise, each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties.
- 7.25 Each indemnity in this Deed survives the expiry or termination of this Deed.
- 7.26 A Party may recover a payment under an indemnity in this Deed before it makes the payment in respect of which the indemnity is given.

Counterparts

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

**Executed and delivered as a
Deed:**

Wellington Regional Council
by



Signature of attorney acting
pursuant to a power of attorney
dated 30 September 2014

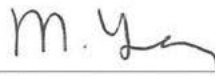
Gregory Campbell

Name of attorney

Chief Executive Officer

Title of attorney

Witnessed by



Signature of witness

Marsha Yamshikova

Name of witness

Executive Assistant

Occupation of witness

section 7(2)(a)

Address of witness Wellington

CERTIFICATE OF NON REVOCATION OF POWER OF ATTORNEY

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

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

SIGNED at Wellington this *2nd* day of *December* 2019



Gregory Campbell

Chief Executive Officer
Wellington Regional Council

Tranzit Group Limited by

section 7(2)(a)
[Redacted]

Signature of director
section 7(2)(a)
[Redacted]

Name of director

PAUL ALBERT SNEEGROVE

Signature of director

Kevin Snelgrove

Name of director

PROACTIVE RELEASE

Schedule 1 – Definitions and interpretation

Definitions

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

<p>Additional Driver Break Costs</p>	<p>means, subject to clauses 4.4 (<i>No double recovery</i>), 4.6 (<i>No Timetable change costs</i>) and 4.7 (<i>Alternative Compensation</i>), the additional costs reasonably and demonstrably incurred during the Transition Period by the Operator in the provision of the Services under the Partnering Contracts to the extent only that such costs are incurred directly and solely as a consequence of the Operator complying with (and implementing) the Rest and Meal Break Changes in respect of the Drivers, but excluding any other costs whatsoever.</p>
<p>Conditions of Payment</p>	<p>means the following conditions:</p> <ul style="list-style-type: none"> (a) the payment claim must only include amounts falling within the definition of Additional Driver Break Costs and, without limiting the foregoing, must not include any amounts which contravene clause 4.4 (<i>No double recovery</i>), 4.6 (<i>No Timetable change costs</i>) or 4.7 (<i>Alternative compensation</i>); (b) the payment claim must only relate to Additional Driver Break Costs incurred by the Operator during the Transition Period; (c) the Operator must have complied (and must be continuing to comply) with its obligations under clauses 4.2 (<i>Obligation to mitigate</i>) and 4.3 (<i>Impact on Drivers</i>); and (d) to the extent that the amounts claimed relate to additional payments to be made by the Operator to Drivers in accordance with the Rest and Meal Break Changes, such amounts must have been paid in full to the relevant Drivers.
<p>Court Proceeding</p>	<p>means a proceeding (to which a Bus Operator contracted to GWRC is a party) lodged with the Employment Relations Authority seeking consolidation and removal of proceedings to the Employment Court and a subsequent decision of the Employment Court on questions of law related to the interpretation of the Land Transport Rule.</p>

Drivers	means those persons engaged by the Operator from time to time in the operation of the Vehicles in the course of providing Passenger Services under the Partnering Contracts.
Employment Relations Act	means the Employment Relations Act 2000.
Employment Relations Amendment Act	means the Employment Relations Amendment Act 2018.
Historic Additional Driver Break Costs	means those Additional Driver Break Costs incurred by the Operator during the Historic Claims Period.
Historic Claims Period	means the period commencing on 6 May 2019 and ending on the last day of the calendar month in which the date of this Deed falls.
Land Transport Rule	means the rule entitled "Land Transport Rule: Work Time in Large Passenger Service Vehicles 2019" made by Order in Council on 29 April 2019 and which came into force on 6 May 2019.
Memorandum of Understanding	<p>means the memorandum of understanding in respect of rest and meal breaks for bus drivers effective from 29 April 2019 and made between:</p> <ul style="list-style-type: none"> (a) Hon Phil Twyford, Minister of Transport, for the Government (including the Ministry of Transport and the New Zealand Transport Agency); (b) Hon Iain Lees-Galloway, Minister for Workplace Relations and Safety; (c) Barry Kidd, Bus & Coach Association, for those bus service operators listed in Schedule 1 to the Memorandum of Understanding; (d) Greg Campbell, Greater Wellington Regional Council, for Auckland Transport and those regional councils and unitary authorities listed in Schedule 2 to the Memorandum of Understanding; and (e) Richard Wagstaff, New Zealand Council of Trade Unions, for those unions listed in Schedule 3 to the Memorandum of Understanding.
Parties	means the parties to this Deed.

Partnering Contracts	means the partnering contracts made between GWRC and the Operator in respect of PTOM Units 1, 4, 7, 9, 10, 11, 13 and 15 , in each case dated 16 June 2017.
Payment Date	means: (a) in relation to payment claims in respect of Historic Additional Driver Break Costs, the 20th day of the month following the end of the Historic Claims Period (or if such a day is not a Business Day, the next Business Day); and (b) in relation to payment claims in respect of Present Additional Driver Break Costs, the 20th day of the month following the end of the month to which the payment claim relates (or if such a day is not a Business Day, the next Business Day).
Present Additional Driver Break Costs	means those Additional Driver Break Costs incurred by the Operator during the Present Claims Period.
Present Claims Period	means the period commencing on the first day after the end of the Historic Claims Period and ending on the last day of the Transition Period.
PTOM Unit	means a unit (as defined in section 5(1) of the Land Transport Management Act 2003) specified in the Wellington Regional Public Transport Plan.
Rest and Meal Break Changes	means those amendments to Part 6D (<i>Rest and meal breaks</i>) of the Employment Relations Act implemented by sections 43 – 45 of the Employment Relations Amendment Act, as amended and applied to the bus industry by virtue of the Land Transport Rule.
Transition Period	means the period from (and including) 6 May 2019 until (and including) 5 May 2020.

Interpretation

2. The following rules apply unless the context requires otherwise:

- 2.1. Headings are for convenience only and do not affect interpretation;
- 2.2. The singular includes the plural and conversely;
- 2.3. A gender includes all genders;

- 2.4. If a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 2.5. A reference to a person, corporation, trust, partnership, unincorporated body, organisation or other entity includes any of them;
- 2.6. A reference to a clause, schedule, annexure or appendix is a reference to a clause of or a schedule, annexure or appendix to, this Deed, and a reference to a paragraph is to a paragraph of the same clause, schedule, annexure or appendix unless the context requires otherwise;
- 2.7. A reference to an agreement or document (including a reference to this Deed or a Partnering Contract) is to the agreement or document as amended, varied or supplemented, novated or replaced, except to the extent prohibited by this Deed, the Partnering Contract or that other agreement or document;
- 2.8. A reference to a person includes that person's successors, permitted substitutes and permitted assigns (and, where applicable, that person's legal personal representatives);
- 2.9. A reference to legislation or a rule or to a provision of legislation or rule includes a modification or re-enactment of it, a legislative provision or rule substituted for it and a regulation or statutory instrument issued under it;
- 2.10. A reference to conduct includes an act, omission, statement and undertaking, whether or not in writing;
- 2.11. A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- 2.12. A reference to dollars and \$ is to New Zealand currency;
- 2.13. A reference to a month or to a year is to a calendar month or a calendar year;
- 2.14. A reference to a right or an obligation of any two or more persons confers that right, or imposes that obligation as the case may be, on each of them severally and all of them jointly;
- 2.15. A reference to a Party or Parties is a reference to each of those persons separately;
- 2.16. A reference to writing includes an email and any other means of reproducing words in a tangible and permanently visible form;
- 2.17. A reference to an asset includes any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived from, the property or asset;

- 2.18. A reference to any governmental department, professional body, committee, council, local authority, council controlled organisation or other body includes the successors to that body or any relevant activity or function of that body;
- 2.19. A reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;
- 2.20. A reference to includes or including or other similar words should be construed without limitation;
- 2.21. Where the time for performing an obligation or exercising a right is expressed by reference to a period of one or more months before or after a specified date (the **reference date**) that time period will be determined by calculating the number of months specified from the reference date, with the period expiring on the date which is the equivalent date to the reference date, or if there is no such date in the final month, the last day of that final month;
- 2.22. Where the time for performing an obligation or exercising a right is expressed as being "immediately" following or after an event or circumstance occurring, it means as soon as reasonably practicable but no later than 24 hours following or after that event or circumstance occurring; and
- 2.23. A reference to obligations includes indemnities, warranties, representations and undertakings and a reference to breach or breach of obligations includes breach of any indemnities, warranties, representations and undertakings.

Consents or approvals

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