



Term Service Agreement

Total Mobility Transport Operator Agreement (template)

Between

Auckland Transport

and

Insert Operator name



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## Contract Signing Page

*\*Date once both parties have signed (Transport Operator to sign first)*

Procurement number and name:

This agreement is made the \_\_\_\_\_ day of \_\_\_\_\_ (year) \_\_\_\_\_

Between **Auckland Transport** (“AT”)  
And \_\_\_\_\_ (“Transport Operator”)

### Background

- A. The Total Mobility scheme is a national scheme which supports people who cannot use public transport to travel, all or some of the time because of a physical or mental impairment. The Total Mobility scheme is one of the mechanisms by which Waka Kotahi NZ Transport Agency (“**Waka Kotahi**”) fulfils its responsibilities towards assisting those who are disadvantaged in terms of accessing and using a means of transport.
- B. AT administers the Total Mobility scheme in the Auckland Region and operates and funds the Total Mobility services as part of its provision of the regional public transport services. In Auckland, people who are eligible for participation in the Total Mobility scheme receive (1) a subsidised rate (currently a 50% discount up to a maximum subsidy of \$40 per journey) on contracted taxis or small service passenger vehicles for door-to-door transport and (2) an accessibility concession allowing travel on public transport at a reduced fare.
- C. AT makes the Total Mobility scheme available to eligible users through Assessment Agencies and Transport Operators which provide the Total Mobility services.
- D. AT’s objective in providing the Total Mobility scheme is to ensure that the scheme is used effectively, efficiently and safely for the benefit of the greatest number of eligible users.
- E. AT wishes to engage the Transport Operator to provide transport services and deliverables that comprise the Total Mobility services.
- F. The Transport Operator has represented that it has the skills, experience and resources to supply the required Services in a manner that meets AT’s business requirements.

### Agreement

On the basis of the Transport Operator’s representations referred to in the Background recitals and contained in this Agreement, AT appoints the Transport Operator to perform and supply, and the Transport Operator agrees to perform and supply, the Services upon the terms and conditions of this Agreement.

This Agreement sets out the terms and conditions that govern the supply of the Services, and AT’s relationship with the Transport Operator in relation to the Services. The documents forming this Agreement are this Contract Signing Page, the Schedules and Appendices (including those annexed to this Contract Signing Page), and the General Terms for the Term Services Agreement, together with agreed variations.



**Important:** By signing this Agreement, the Transport Operator acknowledges that:

- It has read and understood the terms of this Agreement
- It has had the opportunity to seek advice about this Agreement before signing it
- It is satisfied as to the amounts payable for performance of its obligations.

## Execution

Signed for and on behalf of  
**Auckland Transport** by:

Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position

Signed for and on behalf of  
by:

Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position

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## Schedule 1: Contract details

Item Number	Clause Number	Details
Item 1	Purpose	The purpose of this Agreement is to engage the Transport Operator to provide the Services to enable AT to fulfil its obligations to administer the Total Mobility scheme and operate and co-fund Total Mobility services in the Auckland region.
Item 2	Contact Details	<p><b>Auckland Transport</b>            Private Bag 92250            Auckland 1142            For the attention of: On Demand Mobility Manager            Email: Totalmobility@at.govt.nz</p> <p><b>Transport Operator's Address:</b>            Address</p> <p><b>For the attention of:</b>            Email:</p> <p><b>Transport Operator's GST number:</b></p>
Item 3	Term	<p><b>Commencement Date:</b> TBC  <b>Expiry Date:</b> TBC  <b>Renewals:</b></p>
Item 4	Termination Notice Period (see clause Error! Reference source not found.)	60 Business Days.
Item 5	Schedules	<ol style="list-style-type: none"> <li>1. This Contract's Details Schedule</li> <li>2. Services and Specifications Schedule</li> <li>3. Service Levels Schedule</li> <li>4. Reporting Schedule</li> <li>5. Payment Schedule</li> <li>6. Personnel Schedule</li> <li>7. Governance Schedule</li> </ol>
Item 6	Business Continuity Plan (see clause Error! Reference source not found. Error! Reference	<p>The Supplier must prepare and keep up to date a Business Continuity Plan that allows for the following:</p> <p>(1) for any scenario for which AT or the Supplier considers a Business Continuity Plan is necessary including, but not limited to, the following scenarios:</p> <ol style="list-style-type: none"> <li>a. a technical failure involving a Vehicle but not the In-Vehicle System: the Supplier will ensure that the Business Continuity Plan for this</li> </ol>



Item Number	Clause Number	Details
	source not found.)	<p>scenario includes a procedure for reallocating a Vehicle or Vehicles with a TM qualified Driver to ensure that all passengers affected by the failure are able to complete their Journeys; or</p> <p>b. a technical failure involving the In-Vehicle System: the Supplier will ensure that the Business Continuity Plan for this scenario is developed in collaboration with the In-Vehicle System provider to minimise the time in which the In-Vehicle System is faulty or not operational.</p>
Item 7	<b>Limitation of Liability</b> (see clause Error! Reference source not found.)	The Transport Operator's liability is not limited.
Item 8	<b>Insurance</b> (see clause Error! Reference source not found.)	<p>The amount of public liability insurance required shall be for a minimum of \$5,000,000 for any one claim.</p> <p>-----</p> <p>Professional Indemnity insurance is not required.</p> <p>-----</p> <p>Statutory liability insurance is not required.</p> <p>-----</p> <p>Commercial general insurance is not required.</p> <p>-----</p> <p>Property insurance is not required.</p> <p>-----</p> <p>Technology and cyber liability insurance is not required.</p> <p>-----</p> <p>The amount of motor vehicle third party liability insurance shall be for a minimum of \$2,000,000 for any one claim.</p> <p>-----</p> <p>Plant insurance is not required.</p>
Item 9	<b>Bond</b>	Not required.



## Schedule 2: Deviations from General Terms

The General Terms are amended as follows:

Provision (clause reference and heading)	Amendment

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## Schedule 3: Services and Specifications

### 1 Definitions and Interpretation

1.1 In addition to clause 2 of the General Terms and Conditions, the following definitions are used in this Agreement:

**Assessment Agency** means an organisation that has been approved or appointed by Auckland Transport to provide qualified assessments for the eligibility of people with impairments for entry in to the Total Mobility scheme;

**Auckland Region** means the area within the Auckland Council boundaries, the current boundaries which are enclosed at Appendix 4;

**Companion Driving Service** means any services provided to a Total Mobility client that is not transportation from one location to another, or the use of a wheelchair hoist in conjunction with such transport;

**Customer** means a person with an impairment who has been approved by an Assessment Agency as being eligible to use the Total Mobility scheme and to whom a Total Mobility ID Card or verification letter has been issued;

**Customer Information** has the meaning given to that term in the Services and Specifications schedule;

**Driver** means any individual driver employed or sub-contracted by the Transport Operator to provide Services who complies with the requirements for drivers (and any other relevant requirements) in this Agreement;

**Fare** means the amount owed for the Journey as calculated at the Journey's completion or the total pre-agreed fare as advised to the Customer prior to the Journey starting;

**In-Vehicle System** means the "in-vehicle" electronic swipe card reader and tracking system used by the Driver for recording transactions and Services. The System must support the most up-to-date version of RideWise throughout the Term;

**Journey** means a single journey undertaken by a Customer under the Total Mobility scheme. A Journey does not include the provision of Companion Driving Services;

**Manual Transaction** has the meaning given to that term in the Services and Specifications Schedule;

**Maximum Subsidy** means the subsidy that AT shall pay the Transport Operator per Journey, being the lower of:

- (a) half the cost of the Journey; or
- (b) \$40.

The Maximum Subsidy may be adjusted by Auckland Transport at its sole discretion from time to time, provided that any adjustments are notified to the Transport Operator in accordance with the terms of this Agreement;

**Registered Fare Schedule** means the Transport Operator's fare schedule, which is registered with Waka Kotahi and AT (as set out in clause 11);



**RideWise** means the RideWise administrative management software solution (or such replacement solution that may be notified by AT to the Transport Operator in writing) used to manage the Total Mobility scheme, and to which the Parties have access. **Ridewise v2** means the updated version of Ridewise to be introduced during the Term;

**Total Mobility ID Card** means a Total Mobility photograph identity card issued by AT to a person with an impairment who has been assessed by an Assessment Agency as eligible to use the Total Mobility scheme and includes a Total Mobility AT HOP Card and any other valid photograph identity card issued prior to the introduction of the Total Mobility AT HOP Card that remains valid for participation in the Total Mobility scheme and which may be updated by AT from time to time;

**Total Mobility scheme** means the scheme that assists people with impairments to enhance their quality of life and community participation by accessing appropriate transport through their use of the Services;

**Transport Operator** means the Transport Operator;

**Vehicle** means a small passenger vehicle or a Wheelchair Accessible Vehicle used by the Transport Operator to provide the Services that complies with the requirements for vehicles (and any other relevant requirements) in this Agreement;

**Verification Letter** means a letter issued by AT confirming that a person is eligible to participate in the Total Mobility scheme as a Customer;

**Wheelchair Accessible Vehicle** means a vehicle capable of transporting a customer whilst in their wheelchair, and without the customer having to exit their wheelchair whilst being loaded or unloaded into the vehicle.

## 2 Services

- 2.1 The Transport Operator will be a small passenger service operator as defined in the *Land Transport Rule: Operator Licensing 2017* or any applicable replacement rule or legislation. The *Land Transport Rule: Operator Licensing 2017* will apply to both the Transport Operator and all Drivers.
- 2.2 The Transport Operator will supply small passenger transport services to Customers for travel within the Auckland Region and all other services required by this Agreement, which together will be the Services.
- 2.3 The Transport Operator will charge the Customer and the Customer will pay the Transport Operator the Fare (as set out in the Transport Operator's Registered Fare Schedule) less the Maximum Subsidy for the Journey.
- 2.4 AT will subsidise each journey taken by a Customer in accordance with this Agreement by paying the Transport Operator the remainder of the Fare (being the Maximum Subsidy for that Journey) which is not paid by the Customer.
- 2.5 In summary, the Services will be provided in the following manner:
  - (a) A Customer will book a Journey in accordance with the Transport Operator's booking procedure, for example, by telephone or using a booking App;
  - (b) Upon making the booking, the Customer will notify the Transport Operator that he or she is an eligible participant in the Total Mobility scheme and will present a Total Mobility ID Card or verification letter to the Driver at the commencement of a Journey;



- (c) The Transport Operator will allocate a Vehicle and Driver to pick up and provide the Journey to the Customer;
- (d) Upon pick up, the Customer will present his or her Total Mobility ID Card or Verification Letter to the Driver and the Driver will enter the details on the Total Mobility ID Card or Verification Letter into the In-Vehicle System;
- (e) Provided that the Driver is satisfied that the Total Mobility ID Card or Verification Letter is valid and has been issued to the person who has booked the Journey, the Driver will charge the Customer and the Customer will pay only the Fare (as set out in the Transport Operator's Registered Fare Schedule) less the Maximum Subsidy for the Journey;
- (f) The Transport Operator will be entitled to claim the remainder of the Fare for the Journey from AT by submitting an invoice to AT in accordance with the requirements of this Agreement.

2.6 The Transport Operator will be entitled to provide the Services 24 hour per day, 7 days per week.

2.7 The Total Mobility scheme does not include Companion Driving Services.

### **3 Transport Operator's Obligation to provide small passenger vehicle services to a Customer**

3.1 Upon receiving a booking from a Customer, the Transport Operator will use its reasonable endeavours to provide the small passenger service requested by the Customer. The Transport Operator will allocate and despatch a Vehicle and Driver to pick up the Customer and complete the Journey.

3.2 Where a Customer flags down a small passenger vehicle on the street and requests a Journey, the Transport Operator will provide the Journey if the vehicle flagged down is a Vehicle and the driver is a Driver within the meaning of this Agreement.

### **4 Customer Experience, Dignity and Safety**

4.1 The Transport Operator will ensure that, in providing the Services, it complies with all requirements of the (Code of Health and Disability Services Consumer Rights) Regulations 1996 and all other health and safety requirements set out in this Agreement or otherwise required by law

4.2 The Transport Operator must take account of the particular needs of Customers so that there are no barriers to access or communication. For clarity, this means that all customer touch-points with the Transport Operator's organisation (including the interaction each Customer has with a Driver) must support the dignity and safety of Customers by ensuring that Transport Operator:

- (a) communicates with Customers in a professional and courteous way;
- (b) provides accurate and timely information;
- (c) makes all communication channels (including Apps if supported by the Transport Operator) accessible to Customers; and
- (d) supports Customers in accessing and entering and exiting a Vehicle.



- 4.3 **Complaints:** The Transport Operator will resolve all complaints or reports of abuse or misuse or poor service made by (or on behalf of) a Customer through AT's Customer Relationship Management tool (Microsoft Dynamics 365 or any replacement tool notified by AT to the Transport Operator in writing) when it becomes available. Until access to the Customer Relationship Management tool can be granted, the Transport Operator will notify AT of any complaint it receives from Customers within three (3) Business Days of receiving that complaint. The Transport Operator will comply with any investigation of complaints being undertaken by AT and use its best endeavours to enable AT to resolve all complaints within five (5) Business Days of receipt by the Transport Operator.

## 5 Mandatory standards

- 5.1 The Transport Operator must at all times comply with and demonstrate compliance with systems and requirements, or plans, to achieve compliance with all relevant standards, laws, regulations, codes of practice, and requirements, including but not limited to:
- (a) Land Transport Rule: Operator Licensing 2017;
  - (b) Health and Safety at Work Act 2015;
  - (c) Land Transport Act 1998;
  - (d) Health and Disability Commissioner (Code of Health and Disability Services Consumer Rights) Regulations 1996; and
  - (e) AS/NZS 10542:2009: *Technical systems and aids for people with disability - Wheelchair tiedown and occupant-restraint systems - Part 1: Requirements and test methods for all systems and Part 2: Four-point strap-type tiedown systems* .

## 6 Health and Safety of Employees and Safety of Customers

- 6.1 The Transport Operator will comply with all Health & Safety legislation associated with operating services under a small passenger service licence (as defined in the Land Transport Rule: Operator Licensing 2017 or any applicable replacement rule or legislation). The Transport Operator must have an Occupational Health & Safety Management System that meets the principles defined in ISO 45001.
- 6.2 The Transport Operator will, for any Notifiable Event occurring during or affecting any Journey:
- (a) notify AT and any other relevant agency, including Worksafe, immediately where practicable and, otherwise, within 60 minutes of becoming aware of a Notifiable Event; and
  - (b) notify the AT Call Centre (09 366 6400) of all health and safety incidents or accidents resulting in:
    - (i) a Notifiable Incident resulting in harm to a Driver or the Transport Operator's employees or subcontractors;
    - (ii) a Notifiable Incident resulting in harm to a member of the public;
    - (iii) a critical incident resulting in any safety related defects to plant and equipment, or actual or potential damage to the environment.



- (c) subsequently complete the notification of a Noticythrough AT's incident management portal within five (5) Business Days (refer to Schedule 4: Reporting).
- (d) Provide to AT within five (5) Business Days of any incident an interim written investigation report of that incident. Fully investigate incidents and identify their cause and any actions taken to minimise the likely reoccurrence and advise AT with 15 business days;
- (e) Maintain a register of all health and safety incidents, including accidents and near misses;
  - (i) Notify AT as soon as it becomes aware of any driver breach and enforcement action of driver licencing and road rule infringements;
  - (ii) AT or its representative may inspect the H&S Occupational Management Plan and associated documents at any time.
  - (iii) AT or its representative may without notice conduct a special health & safety audit in relation to a Notifiable Event.

### **Health and Safety Requirements when transporting a Customer travelling in a wheelchair**

6.3 When transporting a Customer travelling in a wheelchair in a Wheel Chair Accessible Vehicle, the Transport Operator must ensure that, (subject to paragraph 6.4 of this Schedule 3), Drivers:

- (a) take all practicable steps to ensure that the Customer is restrained by a harness, lap or lap-sash belt (as defined in the Australian/New Zealand Standard AS/NZS 10542:2009 (Parts 1 and 2)) that is connected to floor-mounted anchor fittings ("Seat Belt") at the rear of the wheelchair to stop any forward, rearward or lateral motion of the Customer;
- (b) do not transport a Customer who refuses to wear or apply the appropriate Seat Belt when such Seat Belt is available and capable of being worn or applied.

6.4 An exception to paragraph 6.3 of this Schedule 3 will be permitted only where the Customer provides the Driver with the appropriate Waka Kotahi exemption document or a medical certificate which exempts the Customer from wearing a seatbelt or similar restraint.

## **7 Vehicles to be used to provide the Services and additional obligations in respect of Wheelchair Accessible Vehicles**

7.1 The Transport Operator will provide the Services using only a Vehicle as defined in this Agreement.

7.2 The Transport Operator will ensure that each Vehicle:

- (a) is registered, has a Certificate of Fitness, complies with all requirements of Waka Kotahi (including safety requirements and specifications) and meets all other criteria required by law; and
- (b) in relation to Vehicle Age, is no older than:
  - (i) 15 years from date of manufacture (i.e. up to 14 years, 364 days) where that Vehicle is being used to provide the Services upon the Commencement Date (referred to as a "Current Vehicle"); or



- (ii) five (5) years as calculated from the date of first registration anywhere in the world as recorded on the Certificate of Registration or, if the date of first registration is unknown, as calculated from date of its manufacture, where that Vehicle is introduced to provide the Services after the Commencement Date (referred to as a “Vehicle entering the Total Mobility fleet”); or
  - (iii) has an ANCAP(Australasian New Car Assessment programme) 5-star rating; or
  - (iv) has an UCSR (Used Car Safety Rating) 5 star Rating.
- (c) is maintained, as a whole vehicle and each of its individual components, in accordance with the manufacturers' specifications, Certificate of Fitness standards, and any specifications or safety regulations issued by Waka Kotahi, at all times;
  - (d) is fit for the purpose of providing the Services and presented in a clean and tidy condition and complies with any Government public health advice on vehicle cleaning regimes;
  - (e) complies with all Waka Kotahi requirements (which may be amended from time to time) in relation to branding and signage; and
  - (f) is fitted with an In-Vehicle System which is capable of operating the most up-to-date version of RideWise (including RideWise 2 when that software is made available by AT) and that the In-Vehicle System is installed and maintained such that RideWise (and RideWise 2) are operational to the minimum uptime as specified by the In-Vehicle System provider;

7.3 In addition to the Transport Operator's obligations in paragraph 7.2 of this Schedule 3, in respect of all Wheelchair Accessible Vehicles, the Transport Operator will ensure that:

- (a) all wheelchair hoists (and/or ramps) are inspected and certified as safe for use by a Waka Kotahi or AT approved engineer of low volume vehicles;
- (b) all wheelchair hoists (and/or ramps) comply with all applicable specifications or safety regulations issued by Waka Kotahi or AT at all times;
- (c) all wheelchair hoists (and/or ramps) are serviced in accordance with the equipment manufacturer's requirements;
- (d) all Wheelchair Accessible Vehicles have a harness, lap or lap-sash belt (as defined in the Australian/New Zealand Standard AS/NZS 10542:2009 (Part 1 and Part 2) installed and that each such restraint is connected to floor-mounted anchor fittings to fit to the rear of a wheelchair to stop any forward, rearward or lateral motion of the wheelchair.

## 8 Drivers and Driver Training

8.1 The Transport Operator will ensure that the Services are provided only by drivers who meet the requirements of this Agreement (each a Driver as defined in paragraph 1 of this Schedule 3).

8.2 The Transport Operator will notify AT through RideWise of any new Driver before he or she commences providing the Services by "creating" the Driver in the Ridewise system. Similarly, the Transport Operator will notify AT if a Driver is no longer providing or is no longer eligible to provide Total Mobility services by updating RideWise by selecting the option “Driver Suspended”.



- 8.3 The Transport Operator must notify AT as soon as reasonably practicable if it or a Driver is granted any exemption to the *Land Transport Rule: Operator Licensing 2017* or any other relevant rule or regulation by Waka Kotahi New Zealand Transport Agency, the Ministry of Transport or any other body under any applicable legislation or regulation.
- 8.4 The Transport Operator must ensure that each Driver:
- (a) holds a current New Zealand Driver Licence and P-Endorsement as required by New Zealand law;
  - (b) has completed the following NZQA Unit Standards (or the equivalent replacement standard if updated during the Term) prior to providing any Services:
    - (i) 1734 - *Demonstrate knowledge of stress, health and fatigue for driving*;
    - (ii) 1748 – *Transport passengers with impairments or disabilities*;
    - (iii) 1750 – *Foster effective passenger relations*;
    - (iv) 3462 – *Demonstrate knowledge of traffic law for the purpose of safe driving*;
    - (v) 17593 – *Apply safe work practices in the workplace*; and
    - (vi) 15165 – *Transport passengers in wheelchairs using total mobility vehicles equipped with hoist or ramp if the Driver is a driver of a Wheelchair Accessible Vehicle (except where a Driver will not be operating a wheelchair hoist in delivering the Services)*;
  - (c) holds current first aid certificates complying with NZQA Unit Standards Unit 6401 – *Provide First Aid* and Unit 6402 – *Provide Basic Life Support* (or the equivalent replacement standards if updated during the Term);
  - (d) has completed all training required by Waka Kotahi and will complete all additional training as may be required by Waka Kotahi from time to time within a timeframe to be agreed with Waka Kotahi and AT;
  - (e) has completed and completes all training set out in paragraphs 8.4 and 8.4 of this Schedule 3; and
  - (f) provides the Services in accordance with all health and safety, customer experience and dignity requirements set out in this Agreement
- 8.5 The Transport Operator shall ensure it provides the following training and/or continuing development (at its sole cost) and procures that each Driver attends such training and/or continuing development:
- (a) the equivalent of two half-days of training and continuing development per Driver per annum during the Term the subject matter of which is to be determined by the Transport Operator;
  - (b) any training or continuing development AT directs Drivers to attend to advance the central tenets of the Total Mobility scheme (with such training or continuing development to count towards or fulfil [as the case may be] the Transport Operator's obligation to provide two half-days of training and/or continuing development).



- (c) training and continuing development on an *ad hoc* basis to individual Drivers as AT or the Transport Operator deems necessary to ensure that each Driver has the necessary skills to meet the needs of an individual Customer or to address a complaint made by a Customer;
  - (d) appropriate training so that each Driver can operate each Vehicle safely during any public health emergency such that any risk to the health or safety of the Driver, the Customer and any other person is minimised.
- 8.6 If AT so requests, the Transport Operator shall submit a training plan which demonstrates how the Transport Operator will meet the training requirements set out in paragraphs 8.4 and 8.5 of this Schedule 3 and how it will ensure that Drivers operating a Vehicle receive appropriate training. The Transport Operator is to maintain a record of training undertaken by each Driver which AT may inspect from time to time as necessary.
- 8.7 AT, at its sole discretion, may exclude a Driver from being able to participate in the Total Mobility scheme if it has reasonable grounds to believe that the Driver has:
- (a) failed to treat a client with dignity and courtesy;
  - (b) failed to operate a vehicle in a safe manner;
  - (c) charged a client an incorrect fare;
  - (d) retained a client's Total Mobility ID Card or verification letter without good reason;
  - (e) does not hold or no longer holds all necessary driving licences and training qualifications; and
  - (f) has operated the vehicle without a valid Certificate of Fitness.

## 9 Data Integrity

- 9.1 The Transport Operator will ensure that all Driver and Vehicle data held within RideWise is complete, correct, current, accurate, verified and restricted at all times during the Term and that all transactional data associated with each Journey is accurate and correctly formatted for entry into RideWise. Data anomalies that arise will lead to red flags being generated in RideWise which must be cleared by the Transport Operator and the data corrected prior to monthly invoices being submitted. The Transport Operator will also ensure that all data held in RideWise is secured and only used for its intended purpose.
- 9.2 The Transport Operator shall ensure that all automated and manual records of transactions under the Total Mobility scheme are fully auditable and that it will respond to queries from AT regarding any such transactions within three (3) Business Days.

### *Confidentiality, Privacy, Health Information and Disability Services Consumers' Rights*

- 9.3 AT and the Transport Operator each acknowledge that during and after the Term, each may acquire or hold confidential information (including any health information) relating to Customers ("**Customer Confidential Information**"). If AT or the Transport Operator acquire any Customer Confidential Information, AT and the Transport Operator will be permitted to use the Customer Confidential Information only to the extent necessary to perform their respective obligations under this Agreement





and will not disclose the Customer Confidential Information except as required by law.

- 9.4 The Transport Operator must establish and maintain processes to ensure that Customer Confidential Information is kept confidential and in accordance with any requirements imposed by any relevant law and as required by AT. In particular, but without limiting the foregoing, any disclosure of information by the Transport Operator identifying any natural person must comply with the Health Act 1956, the [Privacy Act 2020](#) and the Health Information Privacy Code 2020, as applicable. The Transport Operator warrants (now and as a continuing warranty obligation) that any information including Customer Confidential Information provided to AT whether under this Agreement or not is provided lawfully.

#### *Sharing of Information*

- 9.5 The Transport Operator agrees to the accessing and sharing of information between government purchasers of small passenger services (including but not limited to AT, Waka Kotahi, the Ministry of Education and regional local authorities and District Health Boards) in relation to safety issues, the provision of Services, customer experiences and Transport Operator engagement.

### **10 Sharing of Data between AT and Waka Kotahi**

- 10.1 The Transport Operator agrees to AT and Waka Kotahi accessing and sharing information in relation to the Services covered by this Agreement, in particular, information from:

- (a) the Motor Vehicle Register (MVR) to confirm the current ownership and ownership history of the Vehicles;
- (b) the Land Automotive Transport Inspection System (LATIS) to retrieve and provide details of the Certificate of Fitness inspections of a Vehicle, including details of faults and re-inspections to each vehicle carried out during the Term;
- (c) other Waka Kotahi information systems to retrieve and provide details of events including roadside inspections of Vehicles, and traffic offences related to the operation of such vehicles;
- (d) AT seeking advice from Waka Kotahi Vehicle Standards Advisors and Transport Regulatory Advisors; and
- (e) the Transport Operators reporting requirements under this Agreement.

### **11 Payments and Invoicing**

#### *Fares*

- 11.1 A transaction submitted for a Journey will be reimbursed at the Maximum Subsidy per journey, with a separate subsidy amount for the use of a wheelchair hoist, provided that the subsidy amount for wheel chair hoist forms part of the Transport Operator's Registered Fare Schedule.
- 11.2 The Transport Operator must ensure that all transactions submitted are in accordance with the RideWise Training Manual (Operator).

#### *Fare Schedule*



- 11.3 The Transport Operator will submit a Registered Fare Schedule that provides the basis on which fares and other charges (including the fee for the use of a wheelchair hoist) are set to AT and Waka Kotahi. AT will publicise the Registered Fare Schedule to all Customers on AT's website.
- 11.4 The Registered Fare Schedule shall provide the rate to be charged to Customers. It is the Transport Operator's responsibility to ensure that all Drivers are aware of, and comply with, the Registered Fare Schedule.
- 11.5 The Transport Operator shall give AT and Waka Kotahi a minimum of 15 Business Days' written notice of changes to the Registered Fare Schedule prior to such changes being implemented. AT will publicise the changed Registered Fare Schedule to all Customers.
- 11.6 The Total Mobility scheme does not fund Companion Driving Services. Any Companion Driving Service component of a Journey must be excluded from the fare and is not reimbursed by AT.

#### *Invoices and Payments*

- 11.7 The Transport Operator shall submit one invoice on a monthly basis for reimbursement of the Maximum Subsidy for each Journey provided under the Total Mobility scheme (and in accordance with this Agreement) inside the Auckland Region to AT. Each invoice shall be accompanied by the all transaction information required under this Agreement. AT will make no payment in respect of transactions which are not submitted to AT in an invoice and with the transaction information required under this Agreement.
- 11.8 One invoice for reimbursement of wheelchair hoist flat fee payments under the Total Mobility scheme inside the Auckland Region shall be submitted to AT on a monthly basis. Each invoice shall be accompanied by the all transaction information required under this Agreement. AT will make no payment in respect of transactions which are not submitted to AT in an invoice and with the transaction information required under this Agreement.
- 11.9 Each invoice submitted to AT under this Agreement will provide the number of separate journeys or wheelchair hoist lifts provided.
- 11.10 The Transport Operator is prohibited from sub-contracting its invoicing function for the Total Mobility services without the prior written approval of AT. Where AT permits the Transport Operator's invoicing function to be sub-contracted, all invoices submitted to AT must be the name of the Transport Operator. The accuracy and validity of invoicing remains the responsibility of the Transport Operator at all times and the Transport Operator is responsible for any over charging or other errors made by a sub-contractor.
- 11.11 Provided the Agreement conditions and any other requirements have been met to its satisfaction AT, will reimburse the Transport Operator in accordance with this Agreement.

#### *Manual Transactions*

- 11.12 Transactions shall only be entered manually ("**Manual Transactions**") if the Customer has a valid Total Mobility ID Card (or Total Mobility Verification Letter) and the In-Vehicle System hardware is not o. The Transport Operator shall be responsible for checking the validity of all Manual Transactions before submitting invoices containing claims for Manual Transactions to AT.
- 11.13 If the In-Vehicle System is not working (such that it is unable to provide the data required under this Agreement for each Journey) the Transport Operator must ensure that it is repaired within five (5)



Business Days of the In-Vehicle System ceasing to work. The cost of repairs or replacement shall be borne solely by the Transport Operator.

- 11.14 If a Customer is unable to provide a readable Total Mobility ID Card, the Driver must advise the Customer to seek a replacement card immediately and charge a full fare (i.e. the Fare without any deduction) to the Customer.
- 11.15 Where a Customer lives outside the Auckland Region and they have not yet been issued with a Total Mobility ID Card by their home region, proof of membership of the Total Mobility scheme in that region may be used. These "out of town" vouchers shall be processed as per standard recording and invoicing processes.
- 11.16 The Transport Operator shall be responsible for checking the validity of all claims for payment of the Maximum Subsidy before submitting invoices to AT.

*Information to be supplied for each Journey*

- 11.17 The Transport Operator must ensure the following data is provided in the RideWise transaction submitted for each journey (and such other information in relation to the Transport Operator's provision of the Services as may be reasonably requested by AT) to AT at no cost to AT:
- (a) Vehicle number;
  - (b) driver identifier;
  - (c) Total Mobility ID Card magnetic journey number (19 digits);
  - (d) process batch number;
  - (e) tariff number;
  - (f) full fare and Total Mobility scheme subsidy;
  - (g) Transport Operator code;
  - (h) date of journey;
  - (i) start and end time of journey;
  - (j) location from/to;
  - (k) total kilometers travelled;
  - (l) whether hoist used;
  - (m) number of passengers; and
  - (n) number of passengers in a wheelchair (travelling with a valid Total Mobility ID Card).
- 11.18 AT will conduct reviews of the Transport Operator's transactional data relating to the provision of the Services at any time throughout the Term. If AT identifies any anomalies within the transaction file relating to Total Mobility services, the Transport Operator will be required by AT to investigate the anomalies, report its findings to AT and secure AT's agreement to measures (to be proposed by the



Transport Operator) to rectify any defects or anomalies prior to AT paying any further invoices submitted by the Transport Operator. The Transport Operator may be held financially accountable in cases of anomaly including but not limited to the duplication of transaction data or any other instance leading to a breach of the terms and conditions of this Agreement.

## 12 Rules Of Operation

### *Total Mobility ID Card Rules*

- 12.1 The terms and conditions applicable to Customers are set out on the Total Mobility conditions of use on [AT's website](#). The following terms and conditions are drawn to operators' attention.
- 12.2 Only one one-way Journey can be charged in relation to a Total Mobility ID Card as one transaction. For the avoidance of doubt, this means that a return journey requires two separate transactions. The only exception, when a return journey is acceptable on the same transaction, is when the waiting time between the two Journeys does not exceed five minutes, and the subsidy for the return journey is under the Maximum Subsidy. Where there is more than one Customer travelling on a Journey only one Total Mobility ID Card may be used for that Journey.
- 12.3 It is not acceptable usage for a Customer to repeatedly undertake a series of Journeys where less than five minutes has elapsed between each Journey. AT will refuse payment of the Maximum Subsidy to the Transport Operator where more than three (3) consecutive Journeys are taken by a Customer in any one day unless the Transport Operator can demonstrate that each Journey was taken in good faith and in accordance with this paragraph and all other the terms of this Agreement.
- 12.4 AT will permit Customers to have other passengers in the Vehicle with them, but the purpose of the Journey must be to provide transport for the Customer (taking that Journey in good faith and in accordance with this paragraph and all other the terms of this Agreement), not the purpose of any other passenger.
- 12.5 Caregivers of a Customer may accompany him or her on a Journey, but the Total Mobility ID Card user must be in the Vehicle for the entire Journey.
- 12.6 Total Mobility ID Cards may be used 24 hours per day, 7 days per week for any transport purpose allowed in the document titled *Waka Kotahi Total Mobility scheme: policy guide for local authorities (March 2018)* and the Transport Operator is responsible for familiarising themselves which services are not included in the Total Mobility scheme. For example, the following services are not included in the Total Mobility scheme as the scheme is not allowed to be used as a substitute for transport services:
- (a) Transport services that are the responsibility of (and must be paid for by) a rest home provider, or used by a rest home to provide transport for organised activities including transporting residents for stipulated health and medical services, including needs assessment and service coordination services, laboratory services, radiological services, dental services, specialist medical services and podiatry services; or
  - (b) Transport services that are more appropriately the responsibility of other government agencies, such as those in the education and health sectors or provided by the Accident Compensation Corporation (ACC), or that would be appropriate for employers to provide.
- 12.7 Total Mobility ID Cards and vouchers from other regions will be accepted but the Auckland Region's



Maximum Subsidy will apply.

- 12.8 The Transport Operator or a Driver may not under any circumstances hold a Total Mobility ID Card on behalf of a Customer.
- 12.9 The Fare charged to Customers (from which the Maximum Subsidy is deducted) shall be no more than that set out in the Registered Fare Schedule.
- 12.10 AT will verify, at any time, all transactions submitted by the Transport Operator in its invoices and may verify amounts claimed against sample fares for the same distance and require the Transport Operator to adjust the amount paid on an invoice accordingly if errors are evident.
- 12.11 AT may refuse to reimburse the Transport Operator in relation to a Journey where details of that Journey have been altered or where full information is not supplied.
- 12.12 The Transport Operator shall be responsible for ensuring its Drivers view and swipe the Customer's Total Mobility ID card prior to the Journey commencing. N.B. Cards with the printed expiry date of 30.06.2019 remain valid, notwithstanding the printed expiry date.
- 12.13 The Transport Operator agrees that any transaction files and all information received by AT under this paragraph of this Schedule 3 shall become and remain the property of AT.

### **13 Performance review**

- 13.1 The Transport Operator and AT will meet on an agreed frequency to discuss the delivery and management of this Agreement's deliverables as per Governance Schedule 7. A standing agenda will be agreed between the Transport Operator and AT.

### **14 AT may change Terms and Conditions at its discretion**

- 14.1 AT may, from time to time, with at least ten (10) Business Days' written notice to the Transport Operator, make changes to the Total Mobility scheme or the Services. These changes may include adjusting the Maximum Subsidy. In the event that the Transport Operator does not wish to continue with the Agreement following any such change, it may terminate this Agreement by giving 60 Business Days' written notice to AT pursuant to the General Terms. Costs incurred by the Transport Operator due to any such changes shall be borne by the Transport Operator.

### **15 AT's right to monitor provision of Services**

- 15.1 AT or its representative shall have the right to observe the operations of the Transport Operator, including the delivery of Services, including the rights to:
- (a) conduct interviews with any person, including Drivers, involved in the delivery of Services providing no less than three (3) Business Days' notice is given to the Transport Operator (except in the case of a health and safety audit in relation to an incident where 24 hours of notice may be given); and
  - (b) Access the CCTV and GPS records for each Vehicle upon 24 hours of notice in writing be given to the Transport Operator.



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## Schedule 4: Service Levels

### Health and Safety

- 1) Notifiable Events: The Transport Operator must:
  - a) report Notifiable Events to AT and any other organisation to which Notifiable Events must be reported (including Worksafe) immediately where practicable otherwise within one hour of the Notifiable Event occurring or the Transport Operator becoming aware of the Notifiable Event – 100%; and
  - b) investigate all Notifiable Events and report the findings of the investigation back to AT within five (5) Business Days – 100%.

### Customer Satisfaction

- Customer complaints: reported to AT within three (3) business days of receipt (as detailed in Schedule 2, Section 4.5) – 100% in three Business Days.
- Customer complaint resolved within five business days of receipt (as detailed in Schedule 2, Section 4) – 100%

### Data and Invoicing

- 100% of data is correct in RideWise at all times and checked for accuracy each month before that month's invoice is submitted;
- Red flag - All Red Flags to be 100% resolved (or explanation provided) by Transport Operator prior to invoice submission;
- Transaction / invoicing accuracy – 100% submitted and correct in accordance with policy.



## Schedule 5: Reporting

Report	Detailed requirements
Synergi Life Reporting	The Transport Operator shall complete a monthly Health and Safety report by the fifth Business Day of each month. This report must be completed via the AT on-line reporting tool called <a href="#">Synergi Life</a> (or any replacement reporting mechanism as notified by AT to the Transport Operator in writing) and must be a true and accurate report of the preceding month's health and safety activities.
Other Health and Safety Reporting	<p>The Transport Operator must also report all incidents in accordance with the AT Incident reporting, recording and management procedure as listed under <a href="http://at.govt.nz/health-safety">at.govt.nz/health-safety</a>.</p> <p>The Transport Operator must provide to AT with the contract Health and Safety Representative Details: contact details, including email and mobile phone number, of the person responsible for Health and Safety reporting.</p> <p><b>Transport Operator's Health and Safety Representative:</b></p> <p>Name:</p> <p>Telephone: [insert Transport Operator's H&amp;S representative telephone number]</p> <p>E-mail:</p>





## Schedule 6: Payment

### Price

The Transport Operator will be reimbursed the Maximum Subsidy for each Journey that has been provided to a Customer and the wheelchair hoist flat fee payment based on their Registered Fare Schedule provided that the invoice for each reimbursement is correctly submitted in accordance with this Agreement.

Please also refer to Schedule 2, Section 11.

### Expenses

No extra expenses will be reimbursed

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## Schedule 7: Personnel

The Transport Operator will maintain the level of resource specified in their response to the Invitation to Qualify dated [insert date from Transport Operator's returned ITQ] in relation to this procurement and shall notify AT of changes to nominated staff.

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## Schedule 8: Governance

Meetings	Details:
<b>Contract Management and Compliance Meeting</b>	<p>AT and the Supplier will arrange and attend a Contract Management and Compliance Meeting at least once every six (6) months or more frequently if agreed between the parties . The Agenda of such meetings will include:</p> <ul style="list-style-type: none"><li>• Health and Safety<ul style="list-style-type: none"><li>○ Incidents/near misses</li><li>○ Reporting</li></ul></li><li>• Customer Experience, including complaints</li><li>• Vehicles<ul style="list-style-type: none"><li>○ Certificates of Fitness</li><li>○ Ages, and replacement programme</li></ul></li><li>• Drivers<ul style="list-style-type: none"><li>○ Training<ul style="list-style-type: none"><li>▪ LCP</li><li>▪ Two half-days additional training</li></ul></li><li>○ Licensing</li></ul></li><li>• Data Integrity and Red Flag Management</li><li>• Invoicing</li><li>• Relationship Management and Issue Resolution Issues</li><li>• Any Other Business<ul style="list-style-type: none"><li>○ SPSL Currency</li><li>○ Insurance</li></ul></li></ul> <p>Attendees:</p> <ul style="list-style-type: none"><li>• Operational Manager</li><li>• Owner/Escalation Manager (at least once per year if meeting is held more frequently)</li></ul>



## Schedule 9: Statement of Work Template

Not used.

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## Schedule 10: Service Change Request Template

Not used.

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## Schedule 11: Performance bond

Not used.

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## Appendix A: RFP

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## Appendix B (Proposal)

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## Appendix 3: Contractual Documentation

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## Appendix 4: Auckland Council Boundaries





# General Terms for Term Services Agreement (Version 2 15 Sep 2016)

## 1. STRUCTURE OF AGREEMENT

1.1 **Documents forming part of the Agreement:** This Agreement comprises these General Terms, the applicable Contract Signing Page, all Statements of Work, all Schedules and all Appendices agreed between AT and the Supplier (including those annexed to the applicable Contract Signing Page), and all documents related to the Services referred to in a Schedule or Appendix, each as varied in accordance with the General Terms (“**Agreement**”). Each instance of an Agreement incorporating these General Terms constitutes a separate agreement between AT and the Supplier identified on the applicable Contract Signing Page.

1.2 **Precedence:** In the event of any conflict of meaning or ambiguity, the documents that comprise this Agreement shall have the order of precedence set out below:

- (a) any Variations to this Agreement agreed in writing between the parties after the date of this Agreement;
- (b) the Deviations from General Terms Schedule;
- (c) the General Terms;
- (d) the Schedules;
- (e) the Statements of Work;
- (f) the Contractual Documentation;
- (g) the Proposal; and
- (h) the RFP.

1.3 **Priority over other terms:** In the event of any conflict between this Agreement and any other terms or conditions proposed or supplied by the Supplier or any of its suppliers, this Agreement shall prevail, and those other terms shall have no effect. For the avoidance of doubt, the Supplier’s standard business terms shall not apply to this Agreement, or to the Services and deliverables supplied hereunder.

## 2. DEFINITIONS AND INTERPRETATION

2.1 **Definitions:** Unless the context otherwise requires, the following terms have the following meanings:

**Agreement** has the meaning given to that term in clause **Error! Reference source not found.**

**AMINZ** has the meaning given to that term in clause **Error! Reference source not found.**

**Appendix** means each appendix annexed to the applicable Contract Signing Page, including the RFP, Proposal, and Contractual Documentation.

**Approved Codes of Practice** means the then-current codes of practice issued under the Health and Safety at Work Act 2015 (or under the Health and Safety in Employment Act 1992 to the extent that a relevant code

issued under that Act has not been superseded or replaced by a code issued under the Health and Safety at Work Act 2015).

**AT’s Data** means data, software, or information owned or supplied by AT to which the Supplier is provided access pursuant to this Agreement as well as data, software, or information which may be generated, compiled, arranged, developed, processed, or stored under or pursuant to this Agreement.

**AT Role** means that role (if any) set out for AT in the relevant Statement of Work.

**ATPACE** means ‘Performance Assessment by Coordinated Evaluation’, which is AT’s formal contract performance evaluation system.

**Attorney** has the meaning given to that term in clause **Error! Reference source not found.**

**Audit Notice** has the meaning given to that term in clause **Error! Reference source not found.**

**Bonded Amount** has the meaning given to that term in clause 18.1.

**Business Continuity Plan** means a document prepared by the Supplier (in a form acceptable to AT) which identifies:

- (a) all material risks that may interrupt or hinder performance of the Services; and
- (b) ways in which the material risks identified can be managed, avoided, reduced or transferred so as to minimise the impact of these risks on AT and to enable the Supplier to continue to perform its obligations as required under this Agreement.

**Business Day** means any day of the week (other than a Saturday, Sunday or public holiday in Auckland including Auckland Anniversary Day).

**Commencement Date** means the commencement date set out in Item 3 of the Contract Details Schedule.

**Confidential Information** means information of a confidential nature. “**Confidential Information**” of AT includes all AT’s Data, information, know-how, ideas, concepts, clients or business knowledge of a confidential nature relating to the business or activities of AT, and information relating to the Services, including any data or information generated from or as part of the Services.

**Contact Address** means, in relation to a party, each of the physical and postal addresses, facsimile number, and email address specified for purposes of communications under this Agreement, as set out in Item 2 of the Contract Details Schedule, or as notified by that party to the other party from time to time.



**Contract Details Schedule** means Schedule 1 (Contract details) annexed to the applicable Contract Signing Page.

**Contract Signing Page** means a contract signing page that refers to these General Terms.

**Contractual Documentation** means documentation between the parties clarifying aspects of the RFP or the Proposal, copies of which are annexed as Appendix C (Contractual Documentation) to the applicable Contract Signing Page.

**COVID-19** is the novel coronavirus capable of causing severe respiratory illness which was added to the list of infectious diseases notifiable to a medical officer of health in Section B of Part 1 of Schedule 1 of the Health Act 1956 by the Infectious and Notifiable Diseases Order 2020.

**Deviations from General Terms Schedule** means Schedule 2 (Deviations from General Terms) annexed to the applicable Contract Signing Page.

**Expense** means the specific expenses and costs set out in the applicable Payment Schedule, and other expenses agreed in writing by AT prior to expenditure, to be reimbursed by AT under this Agreement.

**Expiry Date** means the expiry date set out in Item 3 of the Contract Details Schedule.

**Governance Schedule** means Schedule 8 (Governance) annexed to the applicable Contract Signing Page.

**GST** means goods and services tax prescribed by the provisions of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.

**Individual Services** has the meaning given to that term in clause **Error! Reference source not found.**

**Insolvency Event** means, in relation to a person, anything that reasonably indicates that there is a significant risk that the person is insolvent or is or will become unable to pay its debts as they fall due including:

- (a) any step being taken to make the person bankrupt, wind up the person's business or to have a receiver, receiver and manager, administrator, liquidator or statutory manager appointed to or in respect of the person or any of its assets;
- (b) any statutory demand being served on the person, or any proceedings being brought or threatened against the person for recovery of a liquidated or undisputed debt;
- (c) any secured creditor exercising powers against the Supplier;
- (d) the person ceasing to carry on its business; or
- (e) a meeting of the person's creditors being called or held or the person entering into any type of arrangement with, or assignment for the benefit of all or any of its creditors.

**Intellectual Property** means all and any patents, patent applications, trade marks, service marks, trade

names, registered designs, unregistered design rights, copyrights, know how, trade secrets, domain names, internet addresses, rights in confidential information, and all and any other intellectual property, whether registered or unregistered, and including all applications and rights to apply for any of the same.

**Key Milestone** means each date identified in the relevant Statement of Work as a 'Key Milestone' or a date by which milestones or essential tasks or activities must be completed.

**Key Persons** means the persons identified in the Personnel Schedule.

**LGOIMA** means Local Government Official Information and Meetings Act 1987.

**Notifiable Event** has the meaning given to that term in clause **Error! Reference source not found.**

**Party Representative** means, as the context requires, the 'AT Representative' and 'Supplier Representative' set out in Item 2 of the Contract Details Schedule, or anyone else who is appointed by a party (and duly notified to the other party) to discharge such role from time to time in lieu of the person specified in Item 2 of the Contract Details Schedule.

**Payment Schedule** means either Schedule 6 (Payment) annexed to the applicable Contract Signing Page or the payment schedule incorporated into the applicable Statement of Work, as the case may be.

**Performance Bond** has the meaning given to that term in clause 18 (Performance bond).

**Performance Bond Schedule** means Schedule 11 (Performance bond) annexed to the applicable Contract Signing Page.

**Performance Notice** has the meaning given to that term in clause **Error! Reference source not found.**

**Performance Rebates** means the amount or percentage by which the Price may be reduced where the Supplier fails to meet one or more Service Levels, which amounts shall be calculated as set out in the Service Levels Schedule or Payment Schedule, as the case may be.

**Personnel Schedule** means Schedule 7 (Personnel) annexed to the applicable Contract Signing Page.

**Price** means the consideration payable for the Services, and which shall be calculated as set out in the Payment Schedule.

**Probity Event** means, any of the following:

- (a) **Inducement.** Where AT, in its sole discretion, considers that an inducement, reward, or benefit has been or may be provided on behalf of the Supplier to any of AT's staff, representatives, or suppliers in return for showing or not showing disfavoured to any person in relation to this Agreement;
- (b) **Offence or breach:** Where the Supplier commits, or is charged with committing, any offence involving or relating to fraud or



dishonest acts, or breaches the Commerce Act 1986 in relation to this Agreement;

- (c) **Defrauding:** Where the Supplier defrauds or deceives, or attempts or conspires to defraud or deceive, AT;
- (d) **Reputational damage:** An event, matter or thing for which the Supplier is responsible that in the opinion of AT is or is likely to have a material adverse effect on the reputation of AT; or
- (e) **Ethical wrongdoing:** Where the Supplier engages or participates in governance, ethical or business practices which are fundamentally incompatible with AT's values or policies or the local government accountability and legislative framework.

**Proposal** means the Supplier's proposal in response to the RFP, a copy of which is annexed as Appendix B (Proposal) to the applicable Contract Signing Page.

**Purpose** means the key purpose for the Services or this Agreement, as set out in Item 1 of the Contract Details Schedule.

**Records** has the meaning given to that term in clause **Error! Reference source not found.**

**Regulatory Capacity** has the meaning given to that term in clause **Error! Reference source not found.**

**Renewal Term** has the meaning given to that term in clause **Error! Reference source not found.**

**Reporting Schedule** means Schedule 5 (Reporting) annexed to the applicable Contract Signing Page.

**Request for Proposal (or RFP)** means AT's request for proposal or request concerning the Services, a copy of which is annexed to Appendix A (Request for Proposal) of the applicable Contract Signing Page.

**Required Service Commencement Date** means the required service commencement date set out in Item 3 of the Contract Details Schedule.

**Schedule** means each schedule annexed to the applicable Contract Signing Page, including each of the schedules identified in Item 5 of the Contract Details Schedule.

**Security Interest** has the meaning set out in the Personal Property and Securities Act 1999.

**Service Change Request Procedure** means the service change request procedure in clause **Error! Reference source not found.** (Service change request procedure).

**Service Change Request Template** means the service change request template annexed to Schedule 10 (Service Change Request Template) of the applicable Contract Signing Page.

**Service Levels** means the performance criteria which the Supplier must satisfy throughout the Term, as identified in Schedule 4 (Service Levels) annexed to the applicable Contract Signing Page.

**Services** means the services to be provided to AT under this Agreement as identified in clause **Error! Reference source not found.**, the Services and Specifications Schedule, or in any Statement of Work.

**Services and Specifications Schedule** means Schedule 3 (Services and Specifications) annexed to the applicable Contract Signing Page.

**SOW Delay** has the meaning given to that term in clause **Error! Reference source not found.**

**Specifications** means AT's requirements for the Services, including the specifications identified in the RFP or Services and Specifications Schedule, and other specifications as may be agreed in writing between the parties.

**Statement of Work** means any statement of work agreed in writing by both parties in accordance with clause **Error! Reference source not found.** (Statements of Work).

**Statement of Work Template** means the statement of work template annexed to Schedule 9 (Statement of Work Template) annexed to the applicable Contract Signing Page.

**Subcontractor** means any person to whom the Supplier has subcontracted any part of its obligations under this Agreement, or who is a supplier to the Supplier in respect of this Agreement and "Subcontractor" includes every employee and subcontractor of a Subcontractor.

**Term** has the meaning given to that term in clause **Error! Reference source not found.**

**Transition Plan** has the meaning given to that term in clause 3.5(a).

**Transition Services** means the transition services (if any) set out in the Services and Specification Schedule.

**Variation** has the meaning set out in clause 9.6.

**Worker** has the definition given to the term in section 19(1) of the Health and Safety at Work Act 2015.

2.2 **Interpretation:** Unless the context otherwise requires, or as otherwise stated, this Agreement shall be interpreted and applied in accordance with the following principles:

- (a) **Clauses, schedules, and appendices:** references to clauses, Schedules, or Appendices are to clauses in the General Terms and the Schedules or Appendices to this Agreement;
- (b) **Currency:** all monetary amounts are stated and are payable in New Zealand dollars;
- (c) **Employees and subcontractors:** references to the Supplier includes the Supplier's employees, agents, officers, and Subcontractors;
- (d) **Including:** "including", "includes" and similar words do not imply any limitation and must be read as if they are followed by the phrase 'without limitation';



- (e) **Initial capitals:** words with initial capitals shall have the meaning given to them within this Agreement;
- (f) **Legislation:** all references to legislation include all subordinate legislation, any re-enactment of or amendment to that legislation and all legislation passed in substitution for that legislation;
- (g) **Negative obligations:** an obligation on the Supplier not to do something includes a reference to the Supplier ensuring that its Workers and anyone else for whom it is responsible do not do that thing;
- (h) **Party:** references to any “party” means a party to this Agreement and includes that party’s successors and permitted assigns;
- (i) **Persons:** references to a “person” include an individual, firm, company, corporation, association or other entity or body of persons, any public, territorial or regional authority, any government, and any agency of any government or of any such authority, whether incorporated or not, and whether or not having a separate legal personality; and
- (j) **Singular and plural:** the singular includes the plural and vice versa.

### 3. TERM AND APPOINTMENT

#### 3.1 Commencement and Term:

- (a) This Agreement commences on the Commencement Date and, unless sooner terminated earlier in accordance with the provisions of this Agreement or at law, shall continue until the later of the Expiry Date and the expiry of the then-current Renewal Term (“Term”).
- (b) AT may, in its sole discretion, renew the term of this Agreement for the number of times and for the periods as set out in the Contract Details Schedule (if any) by written notice to the Supplier prior to expiry of the then-current Term (each a “Renewal Term”).

3.2 **Terms of renewal:** Any changes to this Agreement in relation to any Renewal Term will be documented by way of a written Variation to this Agreement, which may be raised under the Service Change Request Procedure. The terms (including pricing) applicable during any Renewal Term will otherwise be the terms and conditions of this Agreement in force at the time immediately prior to the commencement of the Renewal Term (except that the remaining number of rights to renewal, if any, shall be decreased by one).

3.3 **No exclusivity:** The appointment of the Supplier under this Agreement is non-exclusive. AT may contract with others for services identical or similar to the Services or may perform any of the Services itself.

3.4 **AT’s obligations:** In order to assist the Supplier to perform its obligations in accordance with this Agreement AT will:

- (a) when requested upon reasonable notice, make available to the Supplier information, data,

access to AT’s property and such other assistance as may be reasonably required by the Supplier for the performance of the Supplier’s obligations under this Agreement. The Supplier must comply with any security requirements notified by AT in relation to such information or data, and must on demand meet AT’s reasonable costs incurred in providing such access or assistance;

- (b) consider and determine reasonable requests by the Supplier in relation to this Agreement or the Services to be provided under this Agreement in a timely manner; and
- (c) fulfil the AT Role in relation to each Statement of Work. AT acknowledges that to the extent that AT materially fails to fulfil the AT Role and such failure materially delays the completion of the Services in accordance with this Agreement, the Supplier may (acting reasonably) raise a Service Change Request.

3.5 **Transition:** Prior to the Required Service Commencement Date:

- (a) the Supplier will, in association with AT and the suppliers of services being replaced by the Supplier, prepare and submit to AT a plan detailing how the Supplier will implement the orderly handover of responsibilities, information, and processes from those suppliers to the Supplier (“Transition Plan”). The Supplier will promptly make all changes to the Transition Plan as reasonably requested by AT and resubmit the Transition Plan. Once AT has approved the Transition Plan, it shall be governed by this Agreement and the Supplier shall perform its obligations under the Transition Plan.
- (b) The Supplier must ensure that it is ready to perform the Services and shall prepare its resources and Workers, and take any other action that may be necessary to ensure that the Supplier is ready to commence provision of the Services with effect from the Required Service Commencement Date.
- (c) Notwithstanding any other provision of this Agreement, the Supplier is not entitled to any payment for any work or services performed unless AT agrees in writing to pay specific amounts.
- (d) If AT is not satisfied with the Transition Plan or the Supplier’s performance of the Transition Plan, AT may, at its option, do one or more of the following:
  - (i) require the Supplier to re-perform any one or more tasks or activities identified in Transition Plan within two Business Days (or such other period specified by AT);
  - (ii) acting reasonably, require the Supplier to perform any other task or activity;
  - (iii) suspend performance of this Agreement, or require the Supplier to cease any or all tasks



or activities identified in the Transition Plan, until further notice;

- (iv) terminate this Agreement with immediate effect by giving written notice of termination to the Supplier.

#### 4. SERVICES

##### 4.1 Services scope: The Services include:

- (a) all services falling within any general specification or description under this Agreement that AT reasonably expects the Supplier to perform, whether or not further particularised; and
- (b) the provision of any incidental services or function required for the proper performance and provision of the Services,

except to the extent any services are expressly identified as out-of-scope in this Agreement.

##### 4.2 Prior services: If the Supplier performs any Services prior to the Required Service Commencement Date (and those services are not subject to another agreement between the Supplier and AT), those Services are deemed to have been provided subject to the terms of this Agreement but AT shall have no obligation to pay the Supplier any amount in relation to such Services unless agreed in writing by AT.

##### 4.3 Supplier's obligations: The Supplier shall perform the Services and its obligations under this Agreement promptly, efficiently, safely, and effectively and:

- (a) give highest priority to the provision of the Services;
- (b) procure and maintain such resources as may be required to ensure that the Services are always performed in accordance with the Service Levels and the Services and Specifications Schedule;
- (c) use the highest levels of skill, diligence, and judgement of a professional services provider with particular knowledge and experience in the supply of services the same or substantially the same as the Services;
- (d) co-operate with all third party service providers and suppliers to AT in a helpful and constructive manner, including as set out in the Services and Specifications Schedule and in the manner advised by AT from time to time;
- (e) in a manner that is consistent with AT's processes and requirements, as advised by AT from time to time;
- (f) in accordance with:
  - (i) all laws, regulations, bylaws, industry codes of practice, ethical and professional standards, and licensing and consent requirements that are applicable to the Supplier's performance of the Services and its obligations under this Agreement;
  - (ii) all laws, regulations, bylaws, industry codes of practice, ethical and

professional standards set out in this Agreement or notified by AT from time to time;

- (iii) all specific requirements for the Services, as identified in the Services and Specifications Schedule, and AT's reasonable directions; and
- (iv) AT's policies;
- (g) so as not to interfere unreasonably with:
  - (i) or disrupt AT's business or operations;
  - (ii) the use of any property by AT or any third party;
  - (iii) the convenience of the public; or
  - (iv) the access, use or condition of public or private property, highways, roads, rail corridor, cycleways, bridges or footpaths; and
- (h) ensuring all relevant property is kept clean, tidy and in a safe condition at all times;
- (i) in compliance with the Supplier's health and safety obligations in clause **Error! Reference source not found.**;
- (j) keeping AT fully advised and informed of:
  - (i) progress of each Statement of Work and promptly notify AT of any matter, problem, or anticipated problem of which the Supplier becomes aware, that may affect the Supplier's ability to perform its obligations in accordance with this Agreement;
  - (ii) all important issues associated with the Services;
  - (iii) proposed or actual change of effective management or control of the Supplier;
  - (iv) conflict of interest relating to or affecting the Supplier or any Workers; and
  - (v) any complaint or claim that the Supplier has breached any law, including privacy law;
- (k) demonstrating to AT's satisfaction improvement and cost effectiveness in the performance of the Services throughout the Term;
- (l) adhering to all outcomes agreed through each operational meeting, relationship management meeting, or escalation process, including those meetings and processes set out in the Governance Schedule;
- (m) where possible, in a manner best likely to achieve the Purpose.

##### 4.4 Licences and consents: The Supplier must:

- (a) maintain at its cost all licences, consents, approvals, permits and authorisations required in order for it to perform its obligations under this Agreement; and



- (b) ensure that all its Workers engaged in the provision of the Services hold all licences, authorisations, permits and registrations necessary to perform the Services.
- 4.5 **Sustainability:** The Supplier acknowledges that AT has an ambition to make Auckland the most liveable city in the world. To assist AT in meeting this objective the Supplier shall, where requested, work collaboratively with AT to:
- (a) monitor and report on the effects on the environment of the Services; and
- (b) investigate and consider how any adverse effects on the environment of the Services might be reduced.
- 4.6 **Achievement of Service Levels:** The Supplier must perform all Services within agreed timeframes and provide the agreed resources and co-operation set out in this Agreement. The Supplier shall ensure that all Services comply with the Service Levels.
- 4.7 **Failure to achieve Service Levels:** Without prejudice to its other obligations and liabilities under this Agreement (including the Supplier's obligation to pay one or more Performance Rebates under clause 8.3), the Supplier must correct, at no cost to AT, and within timeframes that are acceptable to AT any failure to perform the Services in accordance with this Agreement. The Supplier shall notify AT and commence action to rectify any fault or failure immediately after becoming aware of such failure and shall work continuously until the fault is resolved.
- 4.8 **Right to reduce scope of Services:** AT may by giving written notice to the Supplier of not less than ninety (90) days at any time, with or without cause, terminate the Services or any part of the Services and in which case, the terminated Services ("**Individual Services**") shall be deleted from the Services and Specifications Schedule from the effective date of such termination of Individual Services, but without prejudice to the obligations to provide and pay for the Services prior to the effective date of such termination of Individual Services. The Price will automatically reduce by the amount of the Price attributable to the Individual Services with immediate effect from the date that such termination of those Individual Services becomes effective.
- 4.9 **Continuing performance of remaining Services:** Termination of Individual Services shall not affect other provisions of this Agreement in respect of the remaining Services. The Supplier must continue to perform the remaining Services accordance with the Specifications and Service Levels for those Services notwithstanding the termination by AT of individual Services.
5. **PERSONNEL AND SUBCONTRACTING**
- 5.1 **Personnel:**
- (a) The Supplier shall use the Key Persons to perform the Services and not remove or substitute any Key Person without AT's prior written consent.
- (b) If AT has any reasonable concerns with any of the Workers that are not resolved within a timeframe acceptable to AT, then the Supplier shall, on AT's request, replace such Workers with other Workers acceptable to AT.
- (c) The Supplier shall ensure that at all times its Workers carry proper identification displaying the name and photograph of the Workers and any other information reasonably required by AT.
- 5.2 **Responsibility:** The Supplier is solely responsible for the due and proper performance of the Services, and for meeting all costs and expenses incurred to do so (except as expressly provided in the Services and Specifications Schedule), including Workers, capital equipment, parts, components, and operating assets.
- 5.3 **Subcontracting:**
- (a) The Supplier may not subcontract any of its obligations under this Agreement except with the prior written approval of AT.
- (b) Any Subcontractor engaged by the Supplier shall be obliged by the Supplier to comply with the terms of this Agreement as if that Subcontractor were a party to it. The Supplier will remain responsible for all subcontracted obligations and shall be liable to AT for acts, defaults, negligence, and omissions of Subcontractors as fully as if they were acts, defaults, negligence, or omissions of the Supplier (including for the purposes of clause **Error! Reference source not found.**).
- (c) If the Supplier engages any Subcontractor the Supplier shall arrange for AT, the Supplier and the Subcontractor to consult, cooperate, and coordinate activities so far as reasonably practicable in the provision of the Services by the Subcontractor in order to ensure that the Supplier, the Subcontractor, and AT understand the nature of the Services, identify the health and safety risks arising from the Services, and the controls to be implemented to control and mitigate those risks, and to provide ongoing verification that the risks are being controlled and the Services are being performed in accordance with this Agreement.
- (d) AT shall not have any liability to Subcontractors, and it is the Supplier's sole responsibility to pay its Subcontractors.
- (e) AT reserves the right to pay Subcontractors directly on behalf of the Supplier and deduct those sums from the amounts payable to the Supplier where the Supplier has failed to pay Subcontractors without reasonable cause.
- 5.4 **Subcontractor step-in rights:** The Supplier must ensure that any subcontracting arrangement it enters into with a Subcontractor provides, and continues to provide:
- (a) for the novation of the subcontracting arrangement to AT or its nominee upon request by AT, at no cost to AT, and with AT or its nominee assuming no liability to the





Subcontractor for any breach by the Supplier;  
and

- (b) a right for AT to exercise the Supplier's rights under the subcontracting arrangement, including a Contracts (Privity) Act clause in favour of AT.

## 6. PARTIES' RELATIONSHIP

6.1 **Representatives:** The Party Representatives are the primary contact persons in relation to this Agreement, except to the extent otherwise provided in this Agreement or agreed in writing by the parties.

6.2 **Periodic meetings:** The Party Representatives shall meet with each other as provided in the Governance Schedule and regularly at agreed intervals to discuss the Services and raise and resolve issues, and shall meet otherwise as requested by either party.

6.3 **No surprises:** The Supplier shall communicate regularly with AT about performance of the Services, including promptly raising and escalating any issues relating to the Services, this Agreement, or of likely concern to AT.

6.4 **Unresolved issues:** Each Party Representative shall immediately notify the Party Representative of the other party if he or she considers there is an unresolved issue relating to the Services. The Party Representatives shall meet within two Business Days after receipt of such written notification to discuss the problem and will each use their best efforts to agree to a resolution of the problem that recognises the reasonable interests of AT and the Supplier. The Party Representatives will document and carry out such resolution.

6.5 **Publicity and reputation:** The Supplier acknowledges that its activities may affect the goodwill and reputation of AT, and accordingly:

- (a) **Disrepute:** The Supplier must not do anything which brings, or would be likely to bring, AT into disrepute.
- (b) **Public communication:** Supplier shall not make, be involved in or permit any public communications (including statements, interviews, media coverage) concerning this Agreement, the Services or AT without AT's prior written consent.
- (c) **Notice:** Supplier shall immediately alert AT to any potential reputation, media, or publicity issues of which the Supplier becomes aware.

6.6 **Co-ordination of Services:** In undertaking the Services the Supplier will so far as reasonably practicable consult, cooperate and coordinate activities with AT and any other relevant party in the provision of the Services to ensure:

- (a) the orderly conduct of AT's activities; and
- (b) the Supplier and AT understand the nature of the Services, identify the health and safety risks arising from the Services, and the controls to be implemented to mitigate those risks, and to provide ongoing verification that the risks are being controlled and the Services are being performed in accordance with this Agreement.

## 6.7 Conflicts of interest:

- (a) The Supplier undertakes that it has disclosed, and that it will disclose, to AT in writing any actual, potential or perceived conflict with the interests of AT under this Agreement or in any other material way.
- (b) The Supplier shall manage all conflicts in consultation with AT. If AT considers that a conflict is not being, or cannot be, appropriately managed by the Supplier, then AT, at its sole discretion, may immediately terminate this Agreement or any particular Service by written notice to the Supplier without further liability to the Supplier.

6.8 **Independent supplier:** The Supplier acknowledges that it is an independent supplier and neither it nor any subcontractor is by virtue of this Agreement an employee, agent, partner, joint venturer or subsidiary of AT. The Supplier shall not represent or do anything to the contrary, nor pledge the credit of AT or make any representation on AT's behalf, except as expressly authorised under this Agreement.

## 7. STATEMENTS OF WORK

7.1 **Initiation:** AT shall prepare and submit to the Supplier, or AT may request the Supplier to prepare and submit to AT, a proposed Statement of Work if AT wishes the Supplier to undertake work that is not within scope of the Services. Where AT requests the Supplier to prepare a proposed Statement of Work, the Supplier shall submit that proposed Statement of Work to AT within the time period specified by AT or, if no time period is specified, within five Business Days of AT's request.

7.2 **Statements of Work:** Unless otherwise agreed, Statements of Work shall be in the form prescribed in the Statement of Work Template.

7.3 **Negotiation:** Each party shall, in a timely and diligent manner, negotiate and endeavour to agree the terms of each proposed Statement of Work. If the parties are unable to agree the terms of a proposed Statement of Work within a timeframe that is acceptable to AT then AT may engage an alternative supplier to supply any services described in that proposed Statement of Work.

7.4 **Agreement:** Each Statement of Work, once finalised and agreed in writing by the parties, shall be subject to the terms of this Agreement and the Supplier shall perform that Statement of Work in accordance with this Agreement and the terms set out in that Statement of Work. Each party shall bear its own costs in preparing, negotiating, and finalising any Statement of Work.

7.5 **Additional Statements of Work:** Entry into a Statement of Work does not oblige AT to enter into additional or subsequent Statements of Work. AT has full discretion as to the scope of any requested Statement of Work and the nature of the work requested under a Statement of Work.

## 8. PRICE AND PAYMENT

8.1 **Price:** In consideration of the Supplier properly performing the Services and the Supplier's obligations



under this Agreement, and subject to clause **Error! Reference source not found.**, AT shall pay the Supplier the Price, and reimburse Expenses (if any), at the rates or amounts set out in the Payment Schedule, and otherwise on the terms of this Agreement. The Price and Expenses are the only amounts payable by AT in relation to the Services or other work performed by the Supplier under or in relation to this Agreement.

8.2 **Most favoured customer:** If the Supplier's rates for any services that are comparable to any of the Services are reduced below the then-current Price for such Services, then the Price for those Services payable under this Agreement shall be reduced so that AT is paying no more than the Supplier's generally available rates for those Services.

8.3 **Performance Rebates:** The Price shall be subject to reduction through application of the Performance Rebates. The Supplier shall deduct Performance Rebates from the next invoice rendered in the month immediately following month in which the Supplier failed to meet the applicable Service Level. The Supplier shall not at any time assert that any Performance Rebates are unreasonable or constitute an unenforceable penalty and/or is not payable or words similar.

8.4 **Invoice requirements:** The Supplier shall punctually raise and submit tax invoices to AT in accordance with the Payment Schedule by sending those invoices to [invoices@at.govt.nz](mailto:invoices@at.govt.nz), specifying (or accompanied by):

- (a) AT's contract purchase order number (430000XXXX) for the Services;
- (b) AT Representative name;
- (c) the amount payable by AT, being the Price that would have been payable, less all Performance Rebates deducted by the Supplier;
- (d) the Services supplied and dates of supply;
- (e) a breakdown the basis for calculating the Price, including (if applicable) the amounts and rates charged for specific Workers;
- (f) any other information relevant to the invoice that AT reasonably requests; and
- (g) all information required for a valid GST tax invoice (including as required under clause **Error! Reference source not found.**).

8.5 **Invoice form:** Invoices, and all information in them, must be printed and not hand-written. AT is not required to reimburse any Expenses that have not been incurred with AT's prior written approval and properly accounted for by a written invoice rendered by the Supplier.

8.6 **Payment timing:** Except as provided otherwise in the Payment Schedule, payments shall be made monthly in arrears. Subject to this clause **Error! Reference source not found.** and there not being manifest errors or discrepancies, correctly rendered invoices will be paid on the 20<sup>th</sup> of the month following the date of the receipt of the invoice provided that the invoice is received and able to be goods-receipted by AT no later than the 5<sup>th</sup> of the month.

*Example: For monthly Services provided in January:*

- An invoice dated 31 January and received by 5<sup>th</sup> February will be paid on 20<sup>th</sup> February.
- An invoice dated 1 February and received by 5<sup>th</sup> February will not be paid until 20<sup>th</sup> March.

8.7 **Invoice accuracy:**

- (a) The Supplier must ensure all invoices and invoice information are accurate in respect of the Services performed, and the amounts payable are correctly calculated including with respect to Service Levels, Performance Rebates, or other Price-relevant criteria.
- (b) The Supplier shall use automated information collection and calculation systems, which systems and all relevant data shall be reviewable by AT on request.

8.8 **Payment conditions:**

- (a) **Disputed invoices:** If AT disputes any invoice or any part of an invoice, AT shall promptly notify the Supplier and may withhold payment until the dispute is resolved.
- (b) **Payment not acceptance:** No payment by AT constitutes, or is deemed to constitute, acceptance of the scope or quality of any aspect of the Services performed by the Supplier or is an acknowledgement of the correctness of the amount paid or invoiced.
- (c) **Overpayments:** Without limitation to any other right or remedy of AT, the Supplier must immediately repay any overpayments upon request.
- (d) **Probity Event:** If AT has reason to suspect that a Probity Event has occurred, then AT may suspend payment of any amount owing to the Supplier under this Agreement or any agreement until that event or suspected event has been investigated and determined by AT.
- (e) **Set-off:** AT set-off or deduct amounts (including in respect of any overpayments or claims of AT, whether liquidated or not, or on any other account) against any amounts that would otherwise be payable under this Agreement.
- (f) **Final invoice:** On termination or expiry of this Agreement, AT shall have no obligation to pay the final invoice rendered by the Supplier until after AT has completed a proper reconciliation and adjustment for any claims by AT. AT will expedite the reconciliation and final payment as far as reasonably possible.

8.9 **No other payment:** The Supplier shall not seek or accept payment or benefit from any other person in respect of any of the Services or other obligations performed by the Supplier pursuant to this Agreement without AT's prior written consent.

8.10 **Taxes:**

- (a) **GST:** All amounts stated in this Agreement are exclusive of GST, but are inclusive of any taxes, duties, fees or Government charges, levies, or



required deductions. AT will pay the applicable GST at the rate applicable at the time of supply upon receipt of a valid tax invoice.

- (b) **Withholding tax:** AT shall be entitled to deduct any withholding tax required by law to be withheld from payments made to the Supplier. In such event, AT may present to the Supplier withholding tax certificates in lieu of the payment of the amounts specified in the certificates.

## 9. SERVICE CHANGE REQUEST PROCEDURE

9.1 **General:** The Supplier acknowledges that AT's requirements for the Services are likely to change over the Term, and as a result AT may require changes to the nature or scope of the Services, or new services, from time to time. The Supplier agrees to accommodate all requests by AT for changes to the Services or for new services in a flexible and responsive manner so that AT's requirements are continuously met in a timely, efficient and cost-effective manner.

9.2 **Routine changes:** Routine changes for which procedures are defined in the Schedules shall be dealt with under the relevant procedures set out in the Schedules. In addition, where AT considers that a change is minor, the parties may agree in writing a fast-track change process. Where AT seeks a change that is not provided for in the Schedules or is not the subject of a fast-track change process, the request for that change shall be deemed a '**Service Change Request**' and the procedures set out below shall apply.

9.3 **Service Change Requests:** Either party may at any time request changes or variations to the nature or scope of the Services or the requirements for the Services. Each Service Change Request shall be substantially in the form of the Service Change Request Template. Following submission of a Service Change Request, the parties shall, within a timeframe acceptable to AT, meet to discuss the feasibility of the requested change together with any proposed changes to this Agreement.

9.4 **Change consequences:** Within five Business Days of receipt of AT requesting a variation, the Supplier (acting reasonably) must advise AT in writing of the extent to which the Supplier reasonably considers that the Service Change Request, if implemented, would:

- (a) increase or decrease the Price and the basis of its valuation of any increase or decrease;
- (b) affect the quality or timing of the provision of the Services; or
- (c) introduce any new hazards and how those hazards are to be controlled.

9.5 **Supplier's obligations:** The Supplier shall ensure that all its responses to Service Change Requests or questions concerning Service Change Requests are fair, reasonable and accurate and will not seek to impose any unreasonable conditions. The Supplier shall not unreasonably decline to perform any Service Change Request nor seek to impose any unreasonable charges.

9.6 **Agreement to Service Change Request:** AT may accept or decline the Supplier's proposed terms of the variation in its discretion. If agreement is reached to the Service Change Request, the Service Change Request shall be signed by the respective Party Representatives of each party. The Service Change Request, together with all agreed changes to the contractual arrangements between the parties, shall then be deemed incorporated into and constitute a variation to this Agreement ("**Variation**"). If agreement is not reached to the Service Change Request such disagreement shall be resolved in accordance with clause **Error! Reference source not found.** (Dispute resolution).

9.7 **Costs:** AT shall not be liable to pay for any requested variations or any work carried out by the Supplier that have not been authorised pursuant to the above procedures. Unless otherwise agreed in writing, each party shall bear its own costs of investigating and responding to Service Change Requests.

9.8 **Statements:** AT may rely on any statement in writing made by the Supplier that a person appointed to act on the Supplier's behalf in relation to a Service Change Request has the authority to implement the Service Change Request, regardless of whether the person is an employee or a Subcontractor of the Supplier.

9.9 **Acceptance:** The Supplier's completion and implementation of each Service Change Request shall be subject to AT's acceptance.

## 10. MILESTONES

10.1 **General:** Without limiting the Supplier's other obligations under this Agreement, each party will perform its responsibilities as specified in the relevant Statement of Work. Any responsibilities agreed in a Statement of Work supplement, but do not replace, any other obligations or responsibilities under this Agreement. Subject to the due performance by AT of its agreed responsibilities specified in the Statement of Work, where milestones have been agreed, the Supplier shall ensure that all milestones are achieved by the respective date specified in the relevant Statement of Work.

10.2 **Achievement of milestones:** Where milestones have been agreed in the relevant Statement of Work, each milestone will be deemed achieved when AT confirms to the Supplier in writing that AT is satisfied that the Supplier has successfully achieved that milestone in accordance with such Statement of Work.

10.3 **SOW Delays:** Where milestones have been agreed in the relevant Statement of Work, without limiting any other rights or remedies available to AT, if the Supplier fails, or is likely to fail, to complete a milestone by the relevant milestone date (a "**SOW Delay**"):

- (a) the Supplier must immediately provide full details of the SOW Delay to AT in writing;
- (b) the Supplier must (at its own cost) immediately take all steps available to it to avoid and minimise the effects of the SOW Delay (and AT will do likewise in the event that AT has failed to perform its agreed responsibilities specified in the Statement of Work);



- (c) the parties shall, if requested by AT, meet to review the reasons for the SOW Delay;
- (d) the Supplier shall, if so requested by AT, promptly prepare and deliver a comprehensive rectification plan setting out how it intends to complete the milestone, the relevant time frames for such completion and any other details requested by AT, and will submit such plan to AT for its approval; and
- (e) the Supplier shall, if so requested by AT, comply with any rectification plan approved by AT, together with any reasonable modifications to the rectification plan or other requirements notified by AT.

## 11. LIQUIDATED DAMAGES

11.1 **Liquidated damages:** The Supplier acknowledges the importance to AT of the timely performance of the Services and each Statement of Work. In the event that any Key Milestone is not met the Supplier agrees to pay liquidated damages, if requested to do so at the discretion of AT, on the basis specified in the relevant Statement of Work. AT may deduct the liquidated damages to which AT is entitled from any payments that would otherwise be due to the Supplier.

11.2 **Genuine estimate of loss:** It is expressly agreed and acknowledged by the Supplier and AT that liquidated damages payable under clause 11.1 have been calculated having regard to the criticality of the delay and the likely severity of the consequences to AT and that such payments represent a genuine estimate in advance of the minimum loss which AT will suffer in the event that the Supplier fails to meet a Key Milestone. The Supplier agrees that it shall not at any time assert that any sum stipulated in terms of this clause Error! Reference source not found. constitutes an unenforceable penalty and/or is not payable or words similar.

11.3 **Other rights and remedies:** Nothing in this clause Error! Reference source not found. shall prevent AT from exercising all other rights it may have against the Supplier in relation to any failure by the Supplier to perform its obligations under this Agreement.

## 12. HEALTH AND SAFETY

12.1 **Health and safety laws, codes, and policies:** When undertaking any activity pursuant to or for the purposes of providing the Services under this Agreement the Supplier will ensure that it and its Workers at all times comply with:

- (a) all applicable legislation and regulations in force including the Health and Safety at Work Act 2015 and the Human Rights Act 1993;
- (b) all relevant Approved Codes of Practice, New Zealand Standards and guidance material, and international standards and guidance material, regarding good practice requirements for providing services of the type of the Services; and
- (c) AT's health and safety 'Management Policy Statement' and all related policies, standards, guidelines, and procedures notified by AT, and

with all reasonable directions given by AT (to the extent to which such directions, policies, standards or guidelines are not contrary to any express provision of this Agreement).

Where applicable health and safety legislation or the Supplier's own health and safety policies establish a lower standard than the requirements prescribed by AT, the Supplier shall comply with the latter.

12.2 **Health and safety processes:** The Supplier must:

- (a) maintain a health and safety management plan that is appropriate for the Services and which includes procedures for identifying and controlling the risks involved with performing the Services, training and supervising Workers, and confirming valid authorisations, and procedures for recording and reporting all accidents, injuries or illnesses, and near misses;
- (b) actively monitor and manage its employees and Workers with respect to health and safety matters;
- (c) continuously assess health and safety risks arising from, or in connection with, the provision of the Services, and take all reasonably practicable steps to eliminate those risks, or to the extent that elimination is not reasonably practicable, to minimise them. If, at any time, an issue is raised by AT regarding health and safety in respect of the Services the Supplier shall promptly rectify the situation so far as reasonably practicable;
- (d) participate in, or facilitate (at the Supplier's own cost), any health and safety audits conducted by AT, and in any training or orientation required by AT;
- (e) report to AT as soon as practicable:
  - (i) the occurrence of any event that occurs in connection with the provision of the Services that the Supplier is required to notify to WorkSafe New Zealand under the Health and Safety at Work Act 2015, including all 'notifiable events' (as that term is defined in that Act); or
  - (ii) any accident, injury or illness, near miss, or exposure the Supplier becomes aware of in the course of undertaking the Services,(each a "Notifiable Event");
- (f) provide AT with such assistance as AT may require to conduct an investigation into any Notifiable Events (including using reasonable endeavours to procure all Workers to provide any information requested by AT);
- (g) proactively investigate all Notifiable Events, and any other health and safety events as required by AT; and
- (h) implement, so far as is reasonably practicable, any corrective actions identified as a result of



such investigations, or as otherwise notified by AT; and

- (i) report to AT on a monthly basis on the health and safety performance of the Supplier and its Workers in connection with the provision of the Services in the manner notified by AT from time to time and otherwise as described in the Reporting Schedule.

12.3 **Regulator visits:** The Supplier must notify AT as soon as practicable of any visits or inspections by WorkSafe New Zealand or any other regulator in relation to the activities of the Supplier, its Workers, or conditions at any workplace where the Services have been, are, or will be undertaken. The Supplier must provide comprehensive details (and copies of any relevant documentation) to AT in respect of any engagement with WorkSafe New Zealand as a consequence of any visit or inspection.

12.4 **Random audits:** The Supplier consents to random health and safety audits which may be conducted by AT, at AT's sole cost.

12.5 **AT-owned or controlled sites:** If the Supplier is working on an AT owned or controlled site then:

- (a) the Supplier must, if requested, participate in an orientation of AT's emergency procedures, workstation assessment and any other relevant matter;
- (b) the Supplier must, if requested, participate in AT's worker participation practices; and
- (c) the Supplier must identify and address any special needs requirements.

If the Supplier is likely to be working on a AT owned or controlled site for longer than six months then the Supplier's Workers will attend AT's work station safety training as soon as possible.

12.6 **Legal obligations:** Clauses **Error! Reference source not found.** to **Error! Reference source not found.** do not limit the Supplier's obligations under any other part of this Agreement or at law.

## 13. RISK MANAGEMENT, RECORDS AND DATA

13.1 **Risk management:**

- (a) **Business continuity:** The Supplier must ensure that it maintains business continuity management systems that are consistent with best industry practice for business continuity in New Zealand, including in accordance with any requirements for a Business Continuity Plan in Item 6 of the Contract Details Schedule (if any) or as otherwise reasonably required by AT.
- (b) **Quality assurance:** The Supplier shall maintain quality assurance measures and procedures appropriate for its business, and in accordance with this Agreement or as reasonably required by AT. The Supplier must provide information about these to AT on request and make changes to those measures or procedures as reasonably requested by AT.

- (c) **Financial review:** Where AT has a reasonable concern about the Supplier's financial viability or ability to continue properly to perform the Services, the Supplier will at AT's request promptly provide all relevant information to AT and cooperate fully in taking steps to mitigate the situation. The Supplier hereby irrevocably authorises AT to seek and obtain any one or more credit checks of the Supplier.
- (d) **Health and safety:** The Supplier shall maintain health and safety systems appropriate for its business, and in accordance with this Agreement, or as reasonably required by AT.

13.2 **Computer systems:**

- (a) **Policies:** The Supplier and its Workers must adhere to AT's computer systems regulations and technology policies in force from time to time. The Supplier must not disclose any passwords or any other information pertaining to AT's computer system to any person and must adhere to AT's directions and requests in relation to AT's computer system.
- (b) **Systems integration:** The Supplier shall take all steps to configure and integrate its computer systems with all AT's relevant computer systems (to AT's satisfaction) as notified to the Supplier from time to time. The Supplier shall liaise with AT, and provide AT with all reasonably requested information, regarding such integration.

13.3 **Records and information:** The Supplier must keep full records and documentation in relation to the Services and this Agreement, including file notes, time records, calculations of costs, records concerning Services provided and amounts invoiced ("**Records**") and comply with any directions, instructions or policies relating to Records provided to the Supplier from AT. Without limiting any of the Supplier's obligations under this clause **Error! Reference source not found.**, the Supplier will perform and complete its obligations with regards to record keeping and management in accordance with, and to a standard no less than that required by, the Public Records Act 2005.

13.4 **Record provision:** Any information held by the Supplier for the purpose of this Agreement or for providing the Services is treated and will be and deemed as if held by AT. The Supplier must:

- (a) immediately on request (or within such period as AT may specify), supply to AT any such information to enable AT to comply with its obligations under LGOIMA, any other relevant statute, and any other reporting or disclosure requirements, and provide all other necessary assistance as reasonably requested; and
- (b) at the times set out in accordance with the Services and Specifications Schedule and immediately upon request, provide to AT copies of Records and copies of any other information concerning or relating to this Agreement that is within the Supplier's possession or control.



13.5 **Request for information:** The Supplier agrees to pass on to AT, for AT's instruction or action, immediately upon receipt any request for information that it receives from a regulator or third party, including requests made under the LGOIMA or the Health and Safety at Work Act 2015.

13.6 **Information sharing:** The Supplier will follow the then-current information sharing protocol notified by AT from time to time, which may include the Supplier or AT providing information regarding the Services to other suppliers who provide services directly or indirectly related to, or dependant on, or affected by, the Services.

13.7 **Privacy:** In performing its obligations under this Agreement, the Supplier may obtain access to 'personal information' (as that term is defined in the Privacy Act 2020). The Supplier must comply with all Information Privacy Principles and other provisions of the Privacy Act 2020 that apply to personal information to which the Supplier has access.

13.8 **AT's Data:**

- (a) The Supplier shall implement adequate access conditions and security measures to ensure third parties do not gain on-line or physical access to any of AT's Data in the possession or under the control of the Supplier without the prior authorisation of AT in each case. Without limiting the generality of the foregoing, the Supplier must ensure that the access conditions and security measures implemented are sufficient to ensure compliance with the European Union Data Protection Directive (Directive 95/46/EC) or the EU-US Privacy Shield, or are otherwise approved and accepted by AT as providing adequate protection for AT's Data.
- (b) The Supplier must not store or process any of AT's Data outside New Zealand except, and only to the extent that, AT has given its prior written consent for the Supplier to do so and only upon such terms as AT may approve in writing.
- (c) If AT's Data are lost, destroyed, or altered whilst in the Supplier's possession or control, then without limiting the Supplier's liability or AT's rights, the Supplier shall at its own cost and regardless of convenience or technical difficulty immediately restore the data without additional charge to AT.
- (d) The Supplier must, upon request, return or destroy any of AT's Data that are in the Supplier's possession or control as directed by AT.

14. **CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

14.1 **Confidential information:** Subject to clause **Error! Reference source not found.**, each party must keep confidential the Confidential Information of the other party, however it comes to the party's knowledge, and not copy, use or disclose it to any person except as reasonably required for purposes of this Agreement.

Each party may keep copies of Confidential Information necessary for internal record keeping and audit purposes. This clause **Error! Reference source not found.** does not limit a party's rights or obligations at law or equity with regard to confidential information.

14.2 **Disclosure:** Each party may use or disclose Confidential Information of the other party to the extent necessary to comply with any law or court order (subject to escalating the matter to the other party first), or obtain professional advice in relation to this Agreement, or on the case of AT, where the disclosure is to a government agency or a related party or in response to a request made pursuant to the LGOIMA.

14.3 **Information markings:** The Supplier may mark any information "Commercial: In Confidence" which it reasonably believes may be exempt from disclosure under the LGOIMA, but acknowledges that such marking will be of indicative value only. The Supplier acknowledges that AT shall be entitled to determine in its absolute discretion what information, including information marked "Commercial: in Confidence" must be disclosed in order to comply with its obligations under the LGOIMA and may disclose such information without consulting the Supplier.

14.4 **Common interest privilege:** The Supplier and AT acknowledge a common interest between them in investigating and defending any criminal or regulatory proceedings that may arise out of any work place incident arising from or otherwise involving the Services. Any information created by the Supplier as part of the investigation or defence of any incident is Confidential Information and confidentiality and any privilege in the information must be preserved by the Supplier. In the course of investigating any such incident AT and the Supplier shall collaborate, communicate, and share all information created or obtained by the Supplier about the incident. Information will be shared on the basis that any legal advice privilege or litigation privilege is preserved and may not be waived without the prior consent of the privilege holder.

14.5 **Security:** Each party must maintain effective security measures to protect the Confidential Information, and ensure all persons having access to the Confidential Information comply with the party's confidentiality obligations (and sign any non-disclosure agreement reasonably requested by AT).

14.6 **Intellectual Property:**

- (a) **Pre-existing IP:** Nothing in this Agreement transfers ownership of any intellectual property owned by either party as at the Commencement Date.
- (b) **New IP:** Any new intellectual property subsisting in any deliverable or output created under or for the purposes of this Agreement, and all data and information relating to the Services or generated, processed, or created pursuant to this Agreement, shall be owned by AT. The Supplier shall ensure all moral rights are waived in such intellectual property.
- (c) **Licences:** Without limiting clause **Error! Reference source not found.**



**Reference source not found.** and **Error! Reference source not found.**

- (i) the Supplier hereby grants AT a perpetual, fully-paid, irrevocable, licence to use, copy, and modify all items in which the Supplier intellectual property subsists (whether or not included in, or part of, the Services) as necessary for AT's business purposes; and
- (ii) AT grants the Supplier a non-exclusive, non-transferable, non-sublicensable, revocable, licence to use intellectual property of AT for the Term to the extent necessary to perform the Services only. The Supplier must comply with all branding requirements set out in Item 10 of the Contract Details Schedule;
- (iii) subject to clause **Error! Reference source not found.**, each party has a continuing free right to use, for any purposes, any general methodologies, skills and know-how arising from the Services or under this Agreement.

## 15. PERFORMANCE MANAGEMENT AND AUDIT

15.1 **Reporting:** The Supplier shall provide AT with regular reports on the performance of the Services and its other obligations under this Agreement, in accordance with the Reporting Schedule or as reasonably requested by AT. All reporting under this Agreement is to the Supplier's account, and the Supplier must not invoice AT any amount for reporting or producing reports.

15.2 **Performance management:** The Supplier shall cooperate with respect to periodic reviews undertaken by AT in accordance with the Services and Specifications Schedule or as otherwise required by AT, including:

- (b) **Performance review (outputs):** Review of the Supplier's delivery of Services and performance under this Agreement, including compliance with the Specifications and Service Levels and other Supplier obligations.
- (c) **Contract review (outcomes):** Review of this Agreement's alignment to AT's ongoing requirements for the Services, including:
  - (i) continuous improvement and efficiency;
  - (ii) cost savings or potential cost savings;
  - (iii) Auckland Plan objectives and Mayoral vision for Auckland as the world's most liveable city;
  - (iv) environmentally sustainable working and business practices; and
  - (v) any other areas of mutual advantage.

The Supplier shall engage constructively with AT on any proposed amendments to this Agreement resulting from contract reviews, and must not unreasonably decline, or require unreasonable conditions for, such amendments. No approval, inspection, or review of the

Services by AT will relieve the Supplier of any of its obligations under this Agreement.

15.3 **Performance Notice:** If the Supplier has breached any of its obligations under this Agreement, including failure to meet a Service Level or a breach of the Services and Specifications Schedule, or if AT has an issue with the Supplier's performance of its obligations under this Agreement, then AT may, within four months of becoming aware of the breach or issue, issue to the Supplier a performance notice ("**Performance Notice**") identifying the breach or issue. Unless expressly stated otherwise in the Performance Notice, the Supplier shall, following the issue of a Performance Notice:

- (a) investigate, identify and provide a written report to AT with ten (10) Business Days detailing the cause of the breach or issue and the actions the Supplier has taken and will take to rectify each breach or issue;
- (b) resolve and remedy the breach or issue (including its root cause) as soon as practicable and in any event within a timeframe reasonably acceptable to AT.
- (c) advise AT in writing of the status of the resolution, at stages determined by AT; and
- (d) ensure and certify to AT that all reasonable action has been taken to prevent a recurrence of the breach or issue.

This clause **Error! Reference source not found.** does not limit or prejudice any other right or remedy that may be available to AT under this Agreement or at law.

15.4 **ATPACE:** The Supplier must cooperate fully with all ATPACE performance evaluations undertaken by AT.

15.5 **Audits:** The Supplier will cooperate fully with all audits undertaken or requested by AT from time to time. Audits will be performed by AT or an agent, and be at AT's expense unless any discrepancy, deficiency, defect, or breach is discovered, in which case the relevant audit or audits will be at the Supplier's expense. The audits that may be undertaken or requested by AT include:

- (a) An audit of payments for Services;
- (b) An audit of health and safety matters, including compliance with health and safety obligations under this Agreement or at law; and
- (c) A physical audit of any Services performed to confirm that such work was completed correctly.

15.6 **Audit issues:** Where a defect or deficiency is identified as a result of an audit, AT will notify the Supplier by written notice ("**Audit Notice**"). Following receipt of an Audit Notice, the Supplier will immediately at its own cost rectify the issue, or refund the monies paid to the Supplier for any Service or deliverable that has not been properly performed or delivered, unless otherwise directed by AT.

15.7 **Audit dispute:** If the Supplier disputes any of the audit findings, then the Supplier must comply with clause **Error! Reference source not found.** and then within



seven Business Days of the date of the Audit Notice provide to AT a written notice of dispute setting out detailed reasons for the Supplier's dispute. The parties shall then use their reasonable endeavours to attempt to resolve the dispute. If the Supplier and AT are unable to resolve the dispute within seven Business Days, the parties shall jointly engage an independent auditor to review the issues in dispute and report the results of its review in writing to AT and the Supplier within ten Business Days of such engagement. The independent auditor's determination shall be final and binding on the parties except for fraud or manifest error. The fees and expenses of the independent auditor shall be paid by the Supplier.

## 16. WARRANTIES

16.1 **General warranties:** The Supplier represents, warrants, and undertakes on a continuing basis that:

- (a) **Enforceable:** this Agreement is valid, binding and enforceable and it has taken all necessary action to authorise the execution and performance of this Agreement;
- (b) **Solvency:** no Insolvency Event has occurred in respect of the Supplier;
- (c) **No inducements:** no form of inducement or reward has been or will be directly or indirectly provided or offered by the Supplier to any of AT's employees, agents, officers or representatives in connection with this Agreement or the Services; and
- (d) **Tax resident:** unless notified otherwise to AT in writing prior to the date of this Agreement, the Supplier is a New Zealand tax resident.
- (e) **Default:** the Supplier is not in default under any agreement to which it is a party or which is binding on its assets.

16.2 **Performance of the Services:** The Supplier represents, warrants and undertakes on a continuing basis that:

- (a) **Skills:** The Supplier has, and its Workers have, the requisite skill, judgment, ability, capacity and experience necessary to perform the Services;
- (b) **Amount of price:** The Supplier has satisfied itself as to the correctness and sufficiency of the Price for performing the Services and its obligations under this Agreement;
- (c) **Fit for purpose:** the Services (and any goods, equipment or materials provided or used in connection with the Services) will be fit for all purposes contemplated by this Agreement;
- (d) **No breach:** performance of the Services by the Supplier, and use of the Services by AT (including all goods and materials used in connection with the Services), will not cause the Supplier or AT to be in breach of any law or third party rights, including intellectual property rights and laws, or invalidate any warranty in relation to any equipment;
- (e) **Correct information:** all information and representations made by the Supplier (prior to or

after the Commencement Date, including in any procurement process leading to this Agreement) are true, complete and correct, and not misleading in any way, including through non-disclosure;

(f) **New and unused:** all goods and materials used or supplied in connection with the Services will be new and unused (unless otherwise agreed in writing by AT) and will be free from all adverse claims, interests or encumbrances including any Security Interest; and

(g) **Third party warranties:** The Supplier will pass to AT, or if it is unable to do so, will hold for the benefit of AT, all warranties and guarantees provided by third parties in respect of the goods and materials used in connection with the Services or the supply of any Services under this Agreement.

16.3 **Reliance:** The Supplier acknowledges that AT has, in entering into this Agreement, relied on the Supplier's representations in clauses **Error! Reference source not found.** and **Error! Reference source not found.**

16.4 **Non-compliance:** If either party becomes aware at any time of any non-compliance with the above warranties, then that party will immediately notify the other party. Without limiting its liability for breach of the warranty, upon becoming aware of the defect the Supplier will work continuously to modify, repair, or replace the relevant item, material, or service to achieve full compliance with the above warranties at no additional cost to AT.

## 17. INSURANCE

17.1 **General:** The Supplier must effect and maintain in force (at the Supplier's own cost) adequate insurance with a reputable insurance company in respect of potential liability, loss or damage arising at common law or under any statute, in respect of claims for loss of or damage to property, personal injury, public liability, statutory liability, technology and cyber liability, and professional indemnity relevant to the performance of the Supplier's obligations under this Agreement for such values as should be insured against in accordance with prudent commercial practice and any other insurance reasonably required by AT from time to time.

17.2 **Specific insurances:** Without limiting the generality of clause **Error! Reference source not found.**, the Supplier must effect and maintain:

- (a) Public liability insurance with a minimum cover of the amount referred to in item 8 of the Contract Details Schedule. All public liability insurance will provide cover for the vicarious liability of AT.
- (b) Professional indemnity insurance for an amount not less than the amount referred to in item 8 of the Contract Details Schedule in respect of any single occurrence and in the aggregate for liability arising from a breach of professional duty whether owed in contract, tort or otherwise or by reason of any act or omission by the Supplier. The Supplier must keep the professional indemnity cover





required by this Agreement in force for six years after the termination or expiry of this Agreement.

- (c) Statutory liability insurance with a minimum cover of the amount referred to in item 8 of the Contract Details Schedule.
- (d) All other insurances specified in item 8 of the Contract Details Schedule.

17.3 **Acceptability of insurance:** All insurance procured for the purposes of this clause **Error! Reference source not found.** must be on terms and with insurers reasonably acceptable to AT. The Supplier must produce on demand, to AT's satisfaction, evidence of the insurance effected and maintained in accordance with this clause **Error! Reference source not found.** If AT is not satisfied that the Supplier has effected and maintained such insurance AT may, at its option, arrange such insurance at the Supplier's expense and recover the cost of such insurance as a debt from the Supplier or set off such cost against any amounts that would otherwise be payable to the Supplier.

17.4 **Insurance certificates:** The Supplier is to require its insurer to complete AT's standard insurance certificates for the insurance required by this clause **Error! Reference source not found.** The insurance certificates are to be provided to AT at the time of execution of this Agreement and on the anniversary date for any insurance that is required by this Agreement in place at that time.

17.5 **Changes or cancellation:** The Supplier must immediately notify AT in the event that any policy effected and maintained (or required to be effected or maintained) in accordance with this clause **Error! Reference source not found.** is cancelled or reviewed, or changes in any way, including a change to any insurance limit, and must promptly provide AT with an updated certificate of currency for that policy.

17.6 **Subcontractors insurance:** The Supplier must ensure that where any Subcontractors are approved under this Agreement they have insurance in place which is acceptable to AT (acting reasonably).

## 18. PERFORMANCE BOND

18.1 **General:** The Supplier must within ten Business Days after the Commencement Date provide AT with performance bond for the amount set out in Item 9 of the Contract Details Schedule ("**Bonded Amount**") and in the form set out in the Performance Bond Schedule ("**Performance Bond**"). The surety must be a New Zealand registered bank or an insurance company with a credit rating of no less than A-registered with the Reserve Bank of New Zealand. Refer to - <http://www.rbnz.govt.nz/regulation-and-supervision/banks/prudential-requirements/credit-ratings>. No payment otherwise due under this Agreement shall be payable until the Supplier and the surety have executed and delivered the Performance Bond to AT. The cost of providing and maintaining the Performance Bond shall be borne by the Supplier.

18.2 **Alterations to bond:** If at any time AT considers that the Bonded Amount is insufficient or AT becomes concerned with the ability of the surety to meet its obligations under the Performance Bond, AT may

request in writing a replacement Performance Bond or additional security. The Supplier must provide comply with this request within ten Business Days.

18.3 **Return or release:** Upon expiry of the Term (including any Renewal Term), AT shall return the Performance Bond to the Supplier (or consent to the release of the Performance Bond) provided that the Supplier has properly performed all of its obligations under this Agreement by that date.

18.4 **Cash sum:** In the In the event that the Surety pays AT the "cash sum" (as defined in Schedule 11), the following shall apply:

- (a) The cash sum shall replace the Performance Bond and references to the Performance Bond in this Contract shall be read accordingly;
- (b) AT is entitled to draw upon the cash sum on the same basis that AT may call up the Performance Bond under this Agreement;
- (c) AT shall release the cash sum to the Supplier on the same basis that AT is required to release the Performance Bond under this Agreement;
- (d) AT may retain the benefit of any interest earned on the cash sum (or part thereof) on or before the date on which it is payable to the Supplier under this Agreement.

## 19. REMEDIES

19.1 **Defective services:** If AT reasonably considers that any Services (including any goods and materials used or supplied in connection with the Services) are non-compliant, defective, or fail to meet the required standards set out in or expected under this Agreement (including in clause **Error! Reference source not found.**) or quality required by this Agreement, AT may require the Supplier to rectify the non-compliance, failure, or defect, and (if not promptly rectified) AT may at its discretion and without limiting its other rights under this Agreement or at law:

- (a) acting reasonably, reduce the Price payable for the Services to reflect the reduction in value to AT due to the non-compliance, failure, or defect; and/or
- (b) following written notice to the Supplier, rectify or engage another person to rectify the non-compliance, failure, or defect, whereupon the cost of this work will be a debt due from the Supplier to AT payable on demand.

19.2 **Damage by Supplier:** If, in carrying out the Services, the Supplier does anything or fails to do anything that damages or leads to damage to the property, including systems, of AT or any other person, the Supplier will promptly:

- (a) notify AT of the nature and extent of that damage and such other details as AT may require; and
- (b) notify its insurer and undertake all actions necessary so as to not prejudice such insurance cover or the response by any insurance policy, except to the extent inconsistent with its insurer's instructions, notify the owner of the property of the damage and arrange, at the Supplier's cost,



for the damage to be repaired (or replaced, if necessary) to the reasonable satisfaction of the property owner.

## 20. LIABILITY

20.1 **Exclusion of consequential liability:** Save in respect of any liability in respect of a breach of clause **Error! Reference source not found.** or for any injury or death of any person, to the extent permitted by law, neither party (nor any of their respective officers, employees, subcontractors or agents) shall be liable, whether in contract, tort (including negligence), under statute or otherwise under or in connection with this Agreement, for any loss of profits or revenue, or for any indirect or consequential loss or damage.

20.2 **Limitation of liability:** Save in respect of any liability in respect of breach of confidentiality or infringement of Intellectual Property rights, to the extent permitted by law, the aggregate liability of a party, whether in contract, tort (including negligence), under statute or otherwise, under or in connection with this Agreement shall not exceed:

- (a) in the case of the Supplier, the greater of:
  - (i) five times the total Price and expenses paid or payable in the 12 month period immediately preceding the most recent event giving rise to a claim; and
  - (ii) the amount specified in Item 7 of the Contract Details Schedule and, if no such amount is specified, the Supplier's liability is unlimited.
- (b) in the case of AT, the value of invoices that are properly rendered for the supply of Services under this Agreement less any amounts which may be set off or deducted pursuant to this Agreement.

20.3 **Direct losses:** The parties acknowledge and agree that each of the following types of loss or expense is a direct loss to AT and that the Supplier's liability to AT for such losses or expenses is not excluded or limited by clauses **Error! Reference source not found.** or **Error! Reference source not found.**:

- (a) a breach of clause **Error! Reference source not found.**;
- (b) loss of, or corruption to, AT's Data or AT's information;
- (c) liability arising out of or in connection with personal injury or death to any person;
- (d) damage to or loss of any real or tangible property;
- (e) liability occasioned by any negligent, wilful or fraudulent act or omission by the Supplier or its Workers;
- (f) additional personnel or project costs incurred by AT (including backfilling of staff).

## 21. TERMINATION AND EXPIRY

21.1 **Termination at will:** AT may terminate this Agreement in its sole discretion (and with or without cause) by

giving the required period of written notice to the Supplier specified in Item 4 of the Contract Details Schedule.

21.2 **Termination by AT:** AT may immediately terminate (or suspend the Supplier's performance of) this Agreement in whole or in part by written notice to the Supplier if any of the following applies:

- (a) the Supplier commits a breach of this Agreement and fails to remedy the breach within ten (10) Business Days of written notice of the breach from AT;
- (b) clause 3.5(d);
- (c) the Supplier suffers an Insolvency Event;
- (d) a Probity Event occurs (or AT has reason to suspect that a Probity Event has occurred);
- (e) the Supplier has repeatedly committed breaches of this Agreement and, irrespective of whether or not the breaches are remedied, AT considers that the Supplier is not able to perform its obligations to AT's reasonable satisfaction;
- (f) the amounts proposed by the Supplier for performance of a Service Change Request are unacceptable to AT, or the parties are unable to agree the terms for performance of a Service Change Request within a timeframe that is acceptable to AT; or
- (g) the Supplier breaches any of clauses **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.**, or **Error! Reference source not found.**, or the Supplier has breached clause **Error! Reference source not found.** through any material misrepresentation or non-disclosure.

No other provision, right, or remedy of or under this Agreement (including Performance Rebates paid or payable) limits AT's rights under this clause **Error! Reference source not found.**

21.3 **Persistent failure to meet Service Levels:** Without limiting AT's rights to terminate under clauses **Error! Reference source not found.** or **Error! Reference source not found.**, AT shall be entitled to terminate this Agreement (or any part or Services), immediately on written notice to the Supplier, if the Supplier:

- (a) fails to meet a Service Level for three (3) consecutive months; or
- (b) fails to meet a Service Level on more than six (6) occasions in any 12 month period.

No other provision, right, or remedy of or under this Agreement (including Performance Rebates paid or payable) limits AT's rights under this clause **Error! Reference source not found.**

21.4 **Termination by Supplier:** The Supplier may terminate this Agreement:



- (a) by written notice to AT, if AT commits a material breach of this Agreement and fails to remedy the breach within thirty (30) Business Days of written notice of the breach from the Supplier;
- (b) by written notice to AT, if AT suspends performance of this Agreement for more than six (6) months; or
- (c) by not less six (6) months' notice to AT, if AT has reduced the scope of Services under clause **Error! Reference source not found.** and it is not commercially viable for the Supplier to provide the remaining Services as a result of that reduction in Services scope.

21.5 **Running on:** AT may by written notice to the Supplier require the Supplier to continue performance of this Agreement after expiry of the Term for one or more consecutive periods of two months each, otherwise on the terms of this Agreement, each terminable by AT on one month's prior written notice to the Supplier.

21.6 **Consequences of termination or expiry:** On termination or expiry of this Agreement:

- (a) subject to clause **Error! Reference source not found.** and the Supplier's full compliance with **Error! Reference source not found.** below, AT will pay the Supplier for Services validly invoiced and performed prior to the effective date of expiry or termination;
- (b) AT may nominate outstanding Services that AT requires the Supplier to complete, and this Agreement shall continue to apply to such Services until such Services are completed; and
- (c) the Supplier must cease using and (as requested) return to AT any property, including items in which AT's intellectual property subsists, Confidential Information, or equipment used or supplied as part of the Services, or that is owned by AT and is in the Supplier's possession or control.

21.7 **Accrued rights:** Termination or expiry of this Agreement is without prejudice to the accrued rights of the parties, and any express rights under this Agreement are additional to any other right or remedy a party may have.

21.8 **Survival:** Any provisions intended to survive expiry or termination (including clauses **Error! Reference source not found.** to **Error! Reference source not found.** (inclusive), together with those other provisions of this Agreement which are incidental to, and required in order to give effect to those clauses) will remain in full force and effect.

## 22. DISENGAGEMENT

22.1 **General:** Upon expiry or termination of this Agreement or any Services for any reason, the Supplier shall provide AT upon request with all assistance which is reasonably necessary to enable the smooth and efficient handover of data, documentation and records to AT or to a third party nominated by AT in a manner that will enable services similar to the Services or in replacement for the Services to be provided to AT internally or by another service provider.

22.2 **Handover and transition:** Without limiting the generality of clause **Error! Reference source not found.**, upon expiry or termination of this Agreement:

- (a) **Transition services:** The Supplier shall perform, and AT shall pay for, the Transition Services (if any) set out in the Services and Specification Schedule.
- (b) **Handover:** If no Transition Services are required, but the Services are of a type required by AT on a continuing basis, the Supplier shall cooperate as reasonably required by AT, at the Supplier's cost, on the orderly and efficient handover of the Services to AT or any new supplier prior to expiry or (where known in advance) termination, and in the month following expiry or termination.

22.3 **Data migration:** At AT's request any time during or after the Term, the Supplier will fully and promptly cooperate with AT export to AT's nominated platform of all AT's Data and all data and information concerning the Services. The Supplier will permit AT and its agents full access to the Supplier's IT systems for this purpose, and will not be entitled to any additional payment.

22.4 **No charge upon termination for Supplier breach:** If AT has terminated this Agreement or any Services for breach by the Supplier then the Services and assistance under this clause **Error! Reference source not found.** shall be provided by the Supplier at no charge to AT.

## 23. DISPUTE RESOLUTION

23.1 **General:** The parties will attempt to settle any disputes arising from or relating to this Agreement in accordance with this clause **Error! Reference source not found.** before resorting to litigation, except where a party seeks urgent interlocutory relief.

23.2 **Notice:** A party claiming that a dispute has arisen under or relating to this Agreement will immediately notify the other party in writing specifying the nature of the dispute.

23.3 **Informal resolution:** Immediately following receipt of the notice, and in any event within 10 Business Days, the parties will use all reasonable endeavours to resolve the dispute by discussion, consultation, negotiation or other informal means.

23.4 **Senior managers:** If the dispute is not resolved by the parties within 10 Business Days of such notice, then it will be referred in writing to senior managers of each party.

23.5 **Further escalation:** If the dispute is not resolved by the parties within 10 Business Days of referral to their senior managers, then it will be referred in writing to the Chief Executive Officer (or equivalent) of the Supplier and a member of AT's Executive Management Team.

23.6 **Mediation:** If, within 10 Business Days of referral of the dispute to the Supplier's Chief Executive Officer (or equivalent) and a member of AT's Executive Management Team, the parties do not agree (acting reasonably) on a dispute resolution process or if the dispute is not resolved, then either party may refer the dispute to mediation. The mediation will be conducted



in terms of the Arbitrators' and Mediators' Institute of New Zealand Inc. ("AMINZ") standard mediation protocol. Failing agreement between the parties on the appointment of a mediator within three Business Days of referral to mediation, the mediator will be selected and his/her fee determined by the President for the time being of AMINZ (or his nominee). Each party is to bear its own costs in mediation and pay half the costs of the mediation. If the dispute is not resolved within 30 Business Days of referral to mediation, then either party may resort to litigation.

23.7 **Continuing performance:** In the event of any dispute, the Supplier must continue supplying the Services and performing its obligations as required by this Agreement pending resolution of any dispute, unless otherwise agreed in writing by AT.

24. **UNFORESEEN CIRCUMSTANCES**

A party is not liable for any act, omission or failure under this Agreement (except failure to meet an obligation to pay money) if that act, omission or failure arises directly from circumstances beyond the reasonable control of that party, (including but not limited to extreme weather conditions or civil disruption or unforeseen consequences of COVID-19), provided that the party seeking to rely on this clause **Error! Reference source not found.** will:

- (a) notify the other party in writing, including reasons and perceived impacts, that such an event has or is likely to occur; and
- (b) take all reasonably practicable steps to limit the effects of that event on the performance of its obligations under this Agreement and continue to carry out its obligations under this Agreement to the extent possible.

If normal performance of this Agreement cannot be resumed within three (3) months, AT may by notice to the Supplier terminate this Agreement without further liability to the Supplier.

25. **NOTICES**

25.1 **General:** Notices under this Agreement are to be given in writing by facsimile, personal delivery or by post and must be:

- (a) addressed to the Contact Address designated in writing by each party for that purpose from time to time; and
- (b) marked for the attention of the designated person or office holder (if any).

25.2 **Business address:** Where no such address has been designated for this purpose, notices may be delivered to the main place of business in New Zealand of the party to whom the notice is to be given.

25.3 **Deemed receipt:** A notice under this Agreement will be deemed to be received:

- (a) in the case of a letter, on the third Business Day after posting;
- (b) in the case of a facsimile, as soon as the sender receives from the sender's facsimile machine a

report of an error free transmission to the correct facsimile number; and

(c) in the case of personal delivery, when delivered.

Express acknowledgement by the relevant Party Representative that it has received an email copy of the notice constitutes delivery of that copy. Notices delivered after 5 pm on a Business Day, or on a non-Business Day, will be deemed received on the next Business Day.

26. **GENERAL**

26.1 **Entire agreement:** This Agreement constitutes the entire agreement between the parties in relation to its subject-matter, and supersedes all prior oral and written representations, understandings, arrangement and agreements except to the extent expressly retained under the terms of this Agreement.

26.2 **Severability:** If any provision of this Agreement is or becomes unlawful or unenforceable it shall be treated as severable from the other provisions of this Agreement which shall remain in full force and effect.

26.3 **Assignments and transfers:** The Supplier must not assign, novate, or transfer in any way any part or all of its rights or obligations under this Agreement without the prior written consent of AT. Any change in management, control, or beneficial ownership of the Supplier shall be deemed an assignment for purposes of this clause **Error! Reference source not found.** If AT consents to the assignment, novation, or transfer, the Supplier will pay AT's reasonable legal and other costs relating to consent and assignment or transfer and will remain liable to AT for any breach of this Agreement.

26.4 **Further assurances:** Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this Agreement and all transactions incidental to it.

26.5 **Appointment of Attorney:** For the purposes of enabling AT to obtain the full benefit of this Agreement (including clauses **Error! Reference source not found.**, **Error! Reference source not found.**, and **Error! Reference source not found.**), the Supplier irrevocably appoints AT (or any director or officer of AT jointly and severally) to be the attorney of the Supplier (each an "**Attorney**"). The Attorney may:

- (a) in the name of the Supplier, and at the Supplier's expense in all things, do anything which the Supplier has agreed to do under the provisions of this Agreement or which, in the Attorney's opinion, is necessary or expedient to give effect to any right, power or remedy conferred on AT by this Agreement, by law or otherwise;
- (b) delegate its powers (including this power of delegation) to any person for any period, and revoke a delegation; and
- (c) exercise or concur in exercising its powers even if the Attorney has a conflict of duty in exercising



its powers or has a direct or personal interest in the means or result of that exercise of powers.

- 26.6 **Ratification:** The Supplier hereby ratifies, and will ratify, anything done by an Attorney (or delegate) appointed pursuant to clause **Error! Reference source not found.** AT shall use all reasonable endeavours to notify the Supplier of any exercise by an Attorney of its rights under clause **Error! Reference source not found.** before such rights are exercised, and shall, as soon as practicable after such exercise, use all reasonable endeavours to notify the Supplier of the action taken by the Attorney in exercising such rights.
- 26.7 **No waiver:** A provision or a right under this Agreement may not be waived except in writing signed by the party granting the waiver. Other than as expressly provided in a written waiver, any waiver by either party in respect of any right provided for in this Agreement shall not be construed to be a waiver of any further or future right arising under this Agreement.
- 26.8 **Rights cumulative:** A party may exercise a right, power or remedy under this Agreement in its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party under this Agreement does not prevent a further exercise of that or of any other right, power or remedy.
- 26.9 **Variation:** This Agreement may not be varied except by agreement in writing signed by the parties.
- 26.10 **Regulatory capacity:** The parties acknowledge that to the extent that AT has regulatory authority or powers ("**Regulatory Capacity**"), this Agreement does not bind or fetter AT (or any other entity in the Auckland Council group) in its Regulatory Capacity. AT, acting in its Regulatory Capacity, is not bound to grant any consent or permission which AT or the Supplier or anyone else needs to give effect to this Agreement. The Supplier shall not be entitled to any damages or other payment should AT (or any other entity in the Auckland Council group), acting in its Regulatory Capacity, either decline any consent or permission, or issue that consent or permission on terms that are unsatisfactory to any party.
- 26.11 **Relationship with Auckland Council:** The Supplier acknowledges and agrees that:
- AT may, in its discretion, share any benefits or rights under this Agreement with any of Auckland Council's council-controlled organisations;
  - AT is a separate legal entity from Auckland Council. AT is entering the Agreement on its own behalf and not on behalf of the Auckland Council; and
  - except to the extent previously provided under this Agreement, the Auckland Council shall have no liability under this Agreement in relation to any act or omission of AT.
- 26.12 **Joint and individual liability and benefits:** Except as otherwise set out in this Agreement, any Agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.
- 26.13 **Tax:** Subject to any written notice to the contrary provided to AT prior to the date of this Agreement, the Supplier warrants that it is a New Zealand tax resident.
- 26.14 **Governing law and jurisdiction:** This Agreement is governed by the law of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts, and shall not object to the exercise of jurisdiction by those courts.
- 26.15 **Counterparts:** This Agreement may be executed by facsimile or scanned copy delivered to the other party, and in any number of counterparts all of which will be deemed an original and together be taken as a single instrument.
- 26.16 **Branding:** The Supplier will not use any of Auckland Transport trade marks, service marks, logos or other brand identifiers (each an AT brand) without the prior written approval of the Auckland Transport. The Supplier will, if required by Auckland Transport, use Auckland Transport brands in any signage, correspondence or other documentation relating to this Agreement. Any use of an Auckland Transport brand will be for the purposes of this Agreement and provision of Services only, and is to be in accordance with the branding requirements notified by the Auckland Transport to the Supplier or as otherwise available on the Auckland Transport website ([www.at.govt.nz](http://www.at.govt.nz)).