

National Ticketing Solution Participation Agreement

in relation to the governance of and access to the
National Ticketing Solution

Waka Kotahi New Zealand Transport Agency
Auckland Transport
Canterbury Regional Council
Wellington Regional Council
Bay of Plenty Regional Council
Gisborne District Council
Hawke's Bay Regional Council
Invercargill City Council
Manawatu-Wanganui Regional Council
Nelson City Council
Northland Regional Council
Otago Regional Council
Taranaki Regional Council
Waikato Regional Council

CONFIDENTIAL

Participation Agreement

National Ticketing Solution

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Details

Date 14 October 2022

Parties

Name	Waka Kotahi New Zealand Transport Agency, a crown entity established under section 93 of the Land Transport Management Act 2003
Short form name	Waka Kotahi
Name	Auckland Transport, a council-controlled organisation established under section 38 of the Local Government (Auckland Council) Act 2009
Short form name	AT
Name	Canterbury Regional Council, a body corporate under the Local Government Act 2002, trading as Environment Canterbury
Short form name	ECan
Name	Wellington Regional Council, a body corporate under the Local Government Act 2002, trading as Greater Wellington Regional Council
Short form name	GWRC
Name	Bay of Plenty Regional Council, a body corporate under the Local Government Act 2002
Short form name	Bay of Plenty Regional Council
Name	Gisborne District Council, a body corporate under the Local Government Act 2002
Short form name	Gisborne District Council
Name	Hawke's Bay Regional Council, a body corporate under the Local Government Act 2002
Short form name	Hawke's Bay Regional Council
Name	Invercargill City Council, a body corporate under the Local Government Act 2002
Short form name	Invercargill City Council
Name	Manawatu-Wanganui Regional Council, a body corporate under the Local Government Act 2002, trading as Horizons Regional Council
Short form name	Horizons Regional Council
Name	Nelson City Council, a body corporate under the Local Government Act 2002
Short form name	Nelson City Council

Name Northland Regional Council, a body corporate under the Local Government Act 2002

Short form name **Northland Regional Council**

Name Otago Regional Council, a body corporate under the Local Government Act 2002

Short form name **Otago Regional Council**

Name Taranaki Regional Council, a body corporate under the Local Government Act 2002

Short form name **Taranaki Regional Council**

Name Waikato Regional Council, a body corporate under the Local Government Act 2002

Short form name **Waikato Regional Council**

Each a “Party” and together the “Parties”.

Background

- A The Parties have been participating in Project NEXT to procure an NTS that enables and processes payments for public transport and other authorised services using a nationwide solution, while retaining the autonomy of each PTA to execute their legislated duties.
- B The arrangements between the Parties for the Project NEXT procurement have been recorded in a Multi-Party Funding Agreement dated 27 July 2018 (**MPFA**) and a Participation Agreement (Part 1) dated 10 December 2020.
- C The Participation Agreement (Part 1) contemplated a separate agreement that would outline the terms on which governance, funding and provision of, and access to, the NTS will occur (among other things). That agreement contemplated that Waka Kotahi would act as the shared services organisation and the scheme operator for the purpose of the NTS.
- D As the shared services organisation, the Parties wish Waka Kotahi to contract with and manage the NTS Service Providers for the benefit of PTAs and Waka Kotahi, to facilitate the provision of the NTS to PTAs and Waka Kotahi in accordance with this Agreement. As the scheme operator for the NTS, the Parties wish Waka Kotahi to act for purpose of ensuring the integrity of the NTS, through (amongst other things) recommending the draft NTS Rules with which, once the recommended rule becomes an NTS Rule (as described in this Agreement), each Party must comply, and monitoring compliance with the NTS Rules.
- E Before executing this Agreement, each Party has had the opportunity to review the current or near-current drafts of the Operating Model, the TSMSA, the Detailed Business Case, the Communications Protocol, Funding Model, and an outline of the NTS Services Catalogue to apply to this Agreement. The NTS Steering Group has recommended that those documents, as at 3 October 2022, are in a form that is fit for purpose.
- F Accordingly, the Parties wish to record their agreement in relation to the governance, cost allocation, transition planning, establishment, implementation, transition for each PTA and operation of the NTS, as set out in this Agreement.

Agreed terms

1. Purpose and scope

This Agreement including the attached schedules (being 1 – 6) sets out the basis on which the Parties will work together to govern, plan for transition, establish, implement, transition into, operate and allocate costs for the NTS, being a nationwide ticketing and payments solution that enables and processes payments for journeys on public transport and other authorised services while retaining the autonomy of each Participant to comply with its legislative duties.

2. Overview

2.1 Context

- (a) The Parties have a shared intention: to procure and operate a better ticketing and payments solution for public transport, provide a better payment experience for public transport Customers, and get better data, than exists at the date of this Agreement.
- (b) The Parties intend to use their aggregated economies of scale and public sector relationships to procure and operate a New Zealand-wide ticketing and payments solution for public transport and other authorised services.
- (c) The Parties recognise that achieving their ambition, intentions and the Objectives will require their collective effort, good governance and multiple service providers.
- (d) The Parties agree that they each should be represented in the governance arrangements for the NTS (either directly or indirectly) through the NTS Governance Board.
- (e) The NTS Governance Board is intended to make decisions and recommendations, generally by consensus, on matters of strategic importance for the NTS and matters referred to it or reserved for its decision and recommendation under this Agreement.
- (f) The Parties have agreed that Waka Kotahi will act as the SSO and the Scheme Operator for the NTS.
- (g) Waka Kotahi intends to provide the bulk of the funding for NTS' implementation and ongoing operation through funding allocated from the NLTF.
- (h) Each PTA is expected to pay for their own costs of transitioning into the NTS and 'front office' operating costs, unless otherwise agreed.
- (i) The Parties anticipate that, while the NTS will be a nationwide solution, the NTS will allow for certain variances for a PTA through taking a multi-tenanted approach.
- (j) Each Party expects that it and each other Party will implement the NTS Governance Board's recommendations and decisions (as required by that recommendation or decision) unless specifically provided for otherwise in this Agreement.
- (k) The Parties intend the NTS and the arrangements between the Parties to continue over decades, potentially, and to adapt over time.
- (l) Each Party operates within a public sector context, which provides additional safeguards, standards, restrictions and scrutiny (including on public value) compared to most arms-length private sector relationships.

On the basis of the above shared intentions, the Objectives, the terms of this Agreement, and the current or near-current drafts of the Detailed Business Case, an agreed Operating Model, the Initial MSAs, the NTS Services Catalogue for this Agreement, and the Communications Protocol, each Party has committed to the NTS by executing this Agreement.

2.2 Waka Kotahi as SSO and Scheme Operator

The Parties have agreed that the optimal contracting model to achieve their collective intent and Objectives, is to appoint Waka Kotahi as the SSO and the Scheme Operator for the NTS. As elaborated in the Operating Model and this Agreement, each Party agrees that Waka Kotahi, in its role as SSO, will:

- (a) be the sole Party who contracts with each NTS Service Provider under the relevant MSA for the benefit of the PTAs and itself in relation to the NTS;
- (b) be primarily responsible for managing the relationship with each NTS Service Provider;
- (c) manage each MSA for the purpose of ensuring the relevant NTS Service Provider's compliance with their obligations under that MSA and manage any non-compliance by that NTS Service Provider with that MSA in a reasonable manner (subject to compliance with this Agreement in respect of any Reserved Matter);
- (d) facilitate the provision of the NTS and each NTS Service Provider's services to the performance standards set out in the NTS Services Catalogue;
- (e) facilitate the PTA's transition planning and actual transition in collaboration with the PTA and the relevant NTS Service Provider;
- (f) provide SSO Services in its own right; and
- (g) not have greater liability to a PTA (either alone or in aggregate) under this Agreement than Waka Kotahi can recover from other persons, apart from limited exceptions,

and Waka Kotahi, in its role as Scheme Operator, will act for the purpose of ensuring the overall integrity of the NTS, including by:

- (h) identifying, developing and recommending to the NTS Steering Group or the NTS Governance Board (as appropriate) the rules and requirements that it considers are necessary and/or appropriate for each Party to comply with to ensure the integrity of the NTS;
- (i) holding the relationship with the providers of the relevant Scheme Rules;
- (j) being primarily responsible for maintaining the Transit Payment Guidelines, and managing the relationships with those who implement those guidelines, including arranging periodic reviews to ensure alignment between those guidelines, the Scheme Rules and the relevant banks;
- (k) managing each NTS Service Provider for the purpose of ensuring that the NTS Service Provider's provision of services and solution and that the NTS (as an end-to-end solution):
 - (i) complies with the relevant NTS Rules to the extent that compliance with the NTS Rules (or an equivalent obligation) is required under the relevant MSA; and
 - (ii) does not cause a Party to breach the relevant NTS Rules;
- (l) providing advice and recommendations to the NTS Governance Board (including to support the board's decision-making), and/or (where Waka Kotahi considers it appropriate) the relevant PTA, to ensure the integrity of the NTS and compliance with NTS Rules. The scope of that advice can include:
 - (i) communications and brand recognition: ensuring that the NTS Governance Board and relevant PTAs are aware of the relevant NTS Rules relating to branding, style and communications rules;
 - (ii) certifications (including in relation to PCI DSS) required by the relevant NTS Rules;
 - (iii) the relevant NTS Rules that relate to a Party's systems: including configuration management of, and integrations with, a Party's systems that can affect compliance with the relevant NTS Rules;
 - (iv) the NTS Rules relating to information security, including in relation to the organisation of information security, classification of information objects, the physical security, confidentiality, integrity and availability of Data;

- (v) how to ensure that neither the NTS nor a Party causes a breach of the relevant NTS Rules;
- (m) be primarily responsible for arranging the monitoring and assurance to comply with, and assess compliance with, the relevant NTS Rules.

2.3 Consequences of the NTS framework

- (a) The Parties intend that the NTS will provide more benefits overall than each Party could achieve by contracting individually with a service provider for its own ticketing and payment solution.
- (b) Each Party acknowledges that:
 - (i) each PTA will retain its autonomy in certain areas, including the areas described in clause 6.3(a);
 - (ii) each Party will retain its autonomy where it is necessary for the fulfilment by a Party of its statutory purpose and compliance with its legislative obligations.

However (but subject to those acknowledgements), the New Zealand-wide, multi-party, governance, operating, commercial and contracting framework of the NTS creates some constraints, including that:

 - (iii) each Party will have to comply with the limitations in the agreed Operating Model and Communications Protocol;
 - (iv) a PTA will not have direct access to all rights available to Waka Kotahi under an MSA; and
 - (v) a PTA will not have the same autonomy as if the NTS was the PTA's own ticketing and payments solution, such as for agreeing variations or managing disputes with a service provider.
- (c) Each Party (including Waka Kotahi acting in its capacity as SSO) will use reasonable endeavours to identify areas where the NTS and/or the NTS Rules require additional services, support, or improvements in order to operate effectively, efficiently and compliantly, notify the NTS Governance Board of those areas and, where appropriate, provide recommendations to the NTS Governance Board about how to address those areas. Subject to clause 6.5, any resulting recommendation and/or decision by NTS Governance Board must be made unanimously (and not by majority vote).

3. Intent and relationship principles

Subject to the other terms of this Agreement and the right of each PTA to take a Regional Focus, and without any Party abandoning its own interests, each Party agrees to:

- (a) focus on the Customer (including Access Customers), the primary lens through which key decisions should be made;
- (b) take a New Zealand-wide approach, whilst recognising that nothing in this Agreement will limit the legal and local autonomy of each Party, each Party's statutory duties and the right of a PTA to maintain a Regional Focus, or the rights or responsibilities of a PTA described in clause 6.3(a);
- (c) act in a trusting and trustworthy manner, where each Party is open, honest and straightforward to deal with;
- (d) work together in a partnering, collaborative, collegial, respectful, and timely manner;
- (e) proactively manage issues in a constructive and transparent manner;
- (f) be future opportunity focussed;
- (g) act towards a single mandate being a centralised NTS;

- (h) use reasonable endeavours to provide shared resourcing of people to make one national team;
- (i) act in good faith in all matters relating to this Agreement;
- (j) make a mutual commitment to success and to manage risk;
- (k) pro-actively participate in matters involving the NTS;
- (l) work on a “no surprises” basis with early notification;
- (m) wherever practicable, and provided it is consistent with a Party’s statutory purposes and duties, keep the NTS (or relevant component) in its out-of-the-box form and be configured (rather than customised) for the Parties;
- (n) wherever practicable, ensure that processes under this Agreement align with processes under the relevant MSA;
- (o) focus on fixing, problem solving and sharing what each has learnt;
- (p) give the benefit of the doubt to each other;
- (q) enable all Parties to be involved in governance, either directly or indirectly;
- (r) wherever possible, make decisions by consensus rather than majority decision-making (noting clause 6.5(b));
- (s) create a positive user experience, including for the Customer;
- (t) focus on health and safety; and
- (u) enable the Objectives to be achieved.

4. Regional Focus

Each Party acknowledges and agrees:

- (a) each PTA has statutory duties in relation to public transport within that PTA’s Region;
- (b) those duties include delivery of an effective transport system;
- (c) there is a benefit for the population of each PTA’s Region to have a common ticketing and payment solution nationwide; and
- (d) when considering the Customer under this Agreement, a PTA is allowed to give priority to the interests of Customers within that PTA’s Region where it conflicts with the interests of Customers in other regions or nationwide,

together, a **Regional Focus**.

5. Objectives for the NTS

Subject to the other terms of this Agreement and unless otherwise agreed by the NTS Governance Board, the Parties agree the objectives of delivering a NTS are to:

- (a) put the Customer at the centre of the service proposition;
- (b) create an easier to use, more sustainable public transport system that enables and encourages increases in public transport patronage;
- (c) utilise economies of scale to procure and operate a nationwide NTS through Waka Kotahi as a single purchaser;
- (d) enable implementation of the *Government Policy Statement on Land Transport and Regional Land Transport Plans*;
- (e) provide public value in taxpayer and ratepayer investment in a national ticketing system for the benefit of all regions and that can be coordinated across New Zealand;

- (f) enable information about public transport usage to be collected and analysed so as to inform each Party's decision-making processes;
- (g) maximise the benefits of a single central solution while allowing each PTA sufficient flexibility to meet its fare, Customer and product requirements and take a Regional Focus;
- (h) improve the effectiveness and efficiency of fare revenue collection;
- (i) enhance public transport operations and other authorised transport-related services; and
- (j) help enable the relevant Parties to implement (in a timely manner) any government funded concessions, where the relevant PTA agrees for those concessions to be implemented.

6. Governance

6.1 Overview

- (a) Subject to the specific terms in the remainder of this clause 6, the governance structure for the operation of the NTS is, in summary:
 - (i) Waka Kotahi, in its capacity as the SSO, will be responsible for managing the day-to-day operation of the NTS; and
 - (ii) the NTS Governance Board will be responsible for providing oversight and strategic leadership for the NTS, reviewing and, where appropriate, providing guidance for the decisions of Waka Kotahi in the day-to-day operation of the NTS, ensuring that in implementing the NTS, the interests of Waka Kotahi and each PTA's Region are not overlooked.
- (b) The Parties, through a decision of the NTS Governance Board, may agree to establish further governance or advisory bodies considered necessary or desirable.
- (c) A diagram of the governance arrangements and the NTS Governance Board's Terms of Reference are stored in the Common Repository.

6.2 Waka Kotahi's role under this Agreement

- (a) Subject to clause 6.2(b), Waka Kotahi will:
 - (i) be responsible for managing and making decisions in relation to the day-to-day operations of the NTS and TTP within the Annual Budget and Plan and the 3 Year Plan;
 - (ii) be entitled to make all decisions necessary to perform its obligations and exercise its rights in accordance with this Agreement; and
 - (iii) use all reasonable endeavours to implement the Annual Budget and Plan in accordance with that Annual Budget and Plan and this Agreement.
- (b) Waka Kotahi:
 - (i) will refer any Reserved Matter to the NTS Governance Board; and
 - (ii) may refer any other matter to the NTS Governance Board.
- (c) Subject to clause 6.2(d) and 6.2(e), each Party acknowledges that, for the purpose of this Agreement, Waka Kotahi is performing its obligations under this Agreement in its capacity as SSO and Scheme Operator and is not acting under this Agreement in its capacity as a regulator, nor the funder of the NTS programme nor the administrator of the NLTF.
- (d) Notwithstanding clause 6.2(c), for the purpose of clause 12.1 and Schedule 5, Waka Kotahi is committing to the Funding Model in its capacity as funder of the NTS programme. Each Party acknowledges that clause 2.1(g) and paragraph (e) of Schedule 2 refer to Waka Kotahi in its capacity as funder of the NTS programme.
- (e) Notwithstanding clause 6.2(c), for the purpose of the NTS Governance Board, Waka Kotahi:

- (i) may instruct the members it appoints to the NTS Governance Board to act in Waka Kotahi's capacity as funder of the NTS programme; and
- (ii) will instruct the members it appoints to the NTS Governance Board to act in Waka Kotahi's capacity as funder of the NTS programme when the NTS Governance Board assesses the SSO's performance as part of an annual report of the performance of the NTS,

in which case, those board members will act in that capacity, but without being limited from acting in Waka Kotahi's capacity as SSO and/or Scheme Operator. This clause 6.2(e) will not apply to any independent NTS Governance Board member appointed by Waka Kotahi.

6.3 Each PTA's role

- (a) Nothing in this Agreement limits a PTA's right or responsibility to maintain a Regional Focus or its right to set its own public transport strategy, local fare policy, structure and pricing, transport networks and infrastructure (including network routes), local branding (subject to the NTS Rules), and Customer engagement/communications (taking into account agreed guidelines to enable national coordination and subject to the Communications Protocol), and the delivery of public transport services in accordance with the PTA's legislative roles, functions and responsibilities.
- (b) Each PTA may refer any matter to the NTS Governance Board. The NTS Governance Board (in its sole discretion) will have the right to decide whether or not to pursue that matter.
- (c) Each PTA will:
 - (i) provide such information and feedback to Waka Kotahi as reasonably required to enable Waka Kotahi to prepare the reports to be provided by Waka Kotahi, the draft Annual Budget and Plan, and the draft 3 Year Plan, and make decisions in relation to the day-to-day operation of the NTS; and
 - (ii) review the quarterly reports, draft Annual Budget and Plan, and draft 3 Year Plan, and provide any feedback (including any concerns) the PTA may have to the NTS Governance Board so that such feedback and concerns may be considered by the NTS Governance Board and subsequent guidance may be given to Waka Kotahi.
 - (iii) implement the Annual Budget and Plan in accordance with any responsibilities and/or obligations that the plan describes as that PTA's responsibility and/or obligation.
- (d) Each Party acknowledges that, for the purpose of this Agreement, each PTA is not acting in its capacity as a regulator.

6.4 NTS Governance Board's role

- (a) The NTS Governance Board is responsible for overseeing the NTS and has the duties and authority specified in the NTS Governance Board's Terms of Reference.
- (b) Initially, the NTS Governance Board will comprise a maximum of eleven (11) members in total, with each Party in the following table being entitled to have the corresponding number of board members at any one time:

Name of the Party who is entitled to appoint a board member to the NTS Governance Board	Number of board members that the Party may have on the NTS Governance Board at any one time
Auckland Transport	2
Canterbury Regional Council	1
Waka Kotahi	2
Wellington Regional Council	1
On behalf of the following PTAs:	1

Name of the Party who is entitled to appoint a board member to the NTS Governance Board	Number of board members that the Party may have on the NTS Governance Board at any one time
Bay of Plenty Regional Council, Invercargill City Council, Gisborne City Council, Hawkes Bay Regional Council, Manawatu-Wanganui Regional Council, Nelson City Council, Northland Regional Council, Taranaki Regional Council, Otago Regional Council, Waikato Regional Council.	

(c) The Parties agree that:

- (i) initially, the NTS Governance Board will include four (4) independent board members;
- (ii) the appointment of independent board members on the NTS Governance Board will continue until the earlier of:
 - (A) December 2026;
 - (B) the date agreed by the Mobility Payments Chief Executives Group; or
 - (C) until all the PTAs under this Agreement have transitioned onto the NTS, at which time, all independent NTS Governance Board members appointment terms will expire;
- (iii) Waka Kotahi will appoint one of the then current independent board members as the chair for the NTS Governance Board after consulting with the Mobility Payments Chief Executives Group;
- (iv) each independent board member of the NTS Governance Board will be appointed and remunerated by Waka Kotahi (in consultation with the other Parties).
- (d) Waka Kotahi will be responsible for paying the remuneration of the independent board members of the NTS Governance Board. The Parties agree that the cost of that remuneration will be recognised in the Annual Budget and Plan.
- (e) Each Party will ensure that each board member it appoints to the NTS Governance Board has the appropriate skills, experience and delegations so that, generally, the NTS Governance Board can act autonomously.
- (f) Each Party will ensure that each board member it appoints to the NTS Governance Board acts within the NTS Governance Board's Terms of Reference and in accordance with this Agreement.
- (g) At the commencement of the NTS Governance Board and from time to time, each Party will advise the Chair of the alternate for the NTS Governance Board member that the Party has the right to appoint. Notwithstanding the previous sentence, there will be no alternate for an independent board member. Any alternate who wishes to attend a meeting must be notified to the Chair in advance of that meeting. The Chair will list that notified alternate on the relevant meeting agenda and minutes. For the meeting that the notified alternate is attending, the notified alternate will be deemed to have the rights of the NTS Governance Board member for which they are the alternate.
- (h) The NTS Governance Board may decide to invite and/or allow observers to attend any NTS Governance Board meeting. A Party who has more attendees at a NTS Governance Board meeting than the number identified in clause 6.4(b) will notify the chair at the beginning of or in advance of the meeting, who is that Party's observer and who is that Party's board member for the meeting.

- (i) At or around the time that the last PTA to transition onto the NTS achieves its Operations Commencement Date (but, in any event, no later than the end of 2026), the Parties agree that the Mobility and Payments Chief Executives Group will carry out a review of:
 - (i) this Agreement; and
 - (ii) the governance arrangements for the NTS programme, including whether the Parties consider that independent NTS Governance Board members are necessary,
 in each case, to assess their fitness for purpose in the then current and reasonably foreseeable future context. Any changes to this Agreement or the governance arrangements for the NTS programme following such review must be agreed unanimously by the Mobility and Payments Chief Executives Group, and where a unanimous decision cannot be reached on the governance arrangements for the NTS, the NTS Governance Board will reflect the membership described in clause 6.4(b) (except that the number of members will be seven (7)) as soon as clause 6.4(c)(ii) is triggered.

6.5 Methods of determining decisions and urgent matters

- (a) Without limiting clauses 19 and 22, in considering any matter, the NTS Governance Board may use methods to assist with reaching consensus including:
 - (i) requiring each member of the NTS Governance Board that is appointed by a Participant's council or board to consult with that Party's relevant governance or management body (as applicable) for further consideration of and/or guidance on the matter; and/or
 - (ii) arranging a third party to help facilitate, mediate or provide specialist expertise on the matter,
 each in accordance with the NTS Governance Board's Terms of Reference.
- (b) If a matter (other than the matters set out in clauses 6.5(c), 6.5(d), 6.5(e) and below) is referred to the NTS Governance Board and the NTS Governance Board does not reach a consensus decision on that matter, then the decision may be made by a majority vote of the NTS Governance Board. If deadlock exists as a result of the vote, the then current chair of the NTS Governance Board may exercise a casting vote which, if exercised, will decide the matter.
- (c) Clause 6.5(b) will not apply to the following matters, which must only be decided by the unanimous decision of the NTS Governance Board:
 - (i) the adoption of or any modification to the Operating Model, Communications Protocol, Detailed Business Case, and/or the NTS Services Catalogue;
 - (ii) any matter to decide whether to commercialise NTS Data, and/or to decide any rights or restrictions placed on Processing NTS Data by a Party who did not collect or generate that NTS Data;
 - (iii) any matter which, if recommended or decided:
 - (A) requires a Party to act or not to act; and
 - (B) that act or omission to act would breach legislation; and
 - (C) that Party notifies the NTS Governance Board before any recommendation or decision is made;
 - (iv) any decision to appoint the manager of the TTP (noting that the NTS Governance Board will have an oversight-only role over the appointment of any other key leadership role in the TTP);
 - (v) any decision that will have a material impact on a significant group of Customers;
 - (vi) any decision that will have a material impact on a Party's operations or systems;
 - (vii) any decision that will have a material impact on Fare Revenue and fund flows;
 - (viii) any matter specified in an Annual Budget and Plan to be a Reserved Matter;

- (ix) any decision that will result in a material change to the NTS, which is an exception to the Annual Budget and Plan;
 - (x) the timing of service commencement for the NTS;
 - (xi) allowing any party which is not a PTA to access/use the NTS other than in accordance with the prior agreed approach; or
 - (xii) the entry into or material variation to an MSA.
- (d) Clause 6.5(b) will not apply to any matter to decide or recommend a change to the NTS Governance Board Terms of Reference. That decision or recommendation must only be decided by a consensus decision (and not a majority vote) of the Mobility and Payments Chief Executives Group.
- (e) Clause 6.5(b) will not apply to the adoption of or any modification of the NTS Rules. That decision or recommendation must only be decided by the unanimous decision of the NTS Governance Board and not majority vote. Notwithstanding the previous two sentences, each Party agrees that, if Waka Kotahi recommends to the NTS Governance Board that:
- (i) any Scheme Rule be included or addressed as an NTS Rule; or
 - (ii) any NTS Rule that is described in clause (i) above be varied or removed,
- then the rule or removal of the rule (as applicable and as recommended by Waka Kotahi, acting reasonably) will be deemed an NTS Rule and no decision of the NTS Governance Board is required in relation to that rule or the variation or removal of that rule.
- (f) Clause 6.5(b) will not apply to any matter to decide or recommend a change to the Annual Budget and Plan, including any increase in the operating budget of a proposed Annual Budget and Plan. That decision or recommendation must only be decided by the consensus (and not a majority vote) of the NTS Governance Board. Notwithstanding the previous two sentences, the Parties agree that, until any Annual Budget and Plan is changed, Waka Kotahi is entitled to consider the operating budget in the then current Annual Budget and Plan will be re-applied for the Annual Budget and Plan being considered by the NTS Governance Board along with any increase that Waka Kotahi considers (acting reasonably) is necessary for the continuing business-as-usual activities of the NTS.

6.6 Compliance with NTS Governance Board decision

- (a) Subject to clause 6.6(b), each Party will comply with or implement a recommendation or decision of the NTS Governance Board, which requires that Party to act or not to act (in each case, once unconditional, if conditions apply).
- (b) Where a recommendation or decision of the NTS Governance Board requires additional approval for the funding and/or its use (**Additional Approval**) then that Party will seek that Additional Approval but may decline to implement the recommendation or decision until the Additional Approval is obtained.

6.7 Authority

Each Party agrees that nothing in this Agreement:

- (a) limits a Party's representative from disclosing information to its elected members or board (as applicable) provided such disclosure is in accordance with the Communications Protocol and clause 14;
- (b) expressly reserves any specific matter for a Party's elected members or board (as applicable) to decide; or
- (c) requires any Party to act outside its legislative roles, functions and/or responsibilities, including for Waka Kotahi in relation to the administration of the NLTF.

6.8 Reports, planning and reviews

- (a) Each Party will provide any reports specified in the NTS Services Catalogue, Operating Model, and/or Communications Protocol as being that Party's responsibility to provide, in each case, in

accordance with the NTS Service Catalogue, Operating Model and/or Communications Protocol (as applicable). Without limiting the previous sentence, each quarter, Waka Kotahi will provide a report to the NTS Governance Board on the matters described in the Operating Model for that quarterly report, including a summary of activities that the SSO carried out in the preceding quarter and planned activities for the next quarter.

- (b) Waka Kotahi will develop each draft Annual Budget and Plan and a longer-term plan based on a rolling three-year cycle in accordance with Waka Kotahi's planning processes and submit these for approval by the NTS Governance Board, as contemplated by this Agreement.
- (c) In collaboration with AT, GWRC, ECan and a representative of the other PTAs, Waka Kotahi will develop a roadmap to indicate how the NTS platform can be evolved and/or developed during and from the second year after the Operations Commencement Date for ECan. Without limiting Waka Kotahi's obligations under clause 6.2, nothing in that roadmap obliges a Party to implement or seek to implement that roadmap.
- (d) As reasonably requested by Waka Kotahi, each PTA will participate in, provide all information for and act in a timely manner, for the purposes of the planning processes described in clause 6.8(b). Each Party acknowledges that the Annual Budget and Plan may specify that certain matters are Reserved Matters.
- (e) At the end of each Financial Year, Waka Kotahi will provide the NTS Governance Board with an annual report of the performance of the NTS against the Annual Budget and Plan for that Financial Year and the performance of the TTP against the service measures described in the Operating Model that apply at the relevant time. Waka Kotahi will ensure that the annual report is in a form suitable for reporting to a Party's elected members or board.
- (f) The Parties agree that, on or about each 3-year anniversary of the date of this Agreement (or other frequency decided by the NTS Governance Board), the NTS Governance Board will undertake a review of this Agreement to assess the suitability of this Agreement for its then current and foreseeable purposes.

7. Status of this Agreement and relationship to Master Services Agreements

7.1 This Agreement

- (a) The Parties agree that this Agreement, once executed by all Parties:
 - (i) is a legally binding agreement between the Parties; and
 - (ii) establishes a framework for the entry into and execution of each Statement of Work between Waka Kotahi and the PTA who signs that Statement of Work.
- (b) The Parties agree that each such Statement of Work will be enforceable only by the parties to that Statement of Work.

7.2 Conditional upon executing each Initial MSA

Each Party agrees that this Agreement (excluding the obligations set out in clause 7.3) is conditional upon and subject to Waka Kotahi executing each Initial MSA in the form recommended by the NTS Steering Group as being fit for purpose. That condition is inserted for each Party's benefit and may be waived only with each Party's written agreement.

7.3 Executing final form of each Initial MSA

If:

- (a) the NTS Steering Group recommends the terms of each Initial MSA as being fit for purpose; and
 - (b) each PTA listed in the details section of this Agreement executes this Agreement,
- then, Waka Kotahi will seek all necessary approvals to execute and, once the approvals are obtained, Waka Kotahi will execute the finalised form of each recommended Initial MSA.

7.4 Relationship between this Agreement and each MSA

The Parties agree that:

- (a) each PTA will have no liability or enforceable rights under any MSA;
- (b) each PTA will not bring a claim directly against an NTS Service Provider that arises out of or in relation to any MSA; and
- (c) Waka Kotahi will ensure that each NTS Service Provider is prohibited contractually from bringing a claim arising under or in relation to an MSA directly against a PTA, a TSO, a TO, a ticketing concession owner, any of their respective Personnel and/or a Customer.

8. Mutual obligations

- (a) Each Party agrees:
 - (i) without abandoning its own interests, to demonstrate honesty, integrity, openness, reasonableness, and accountability in its dealings with each other Party;
 - (ii) to discuss any matters affecting this Agreement whenever necessary;
 - (iii) to implement and perform its role and responsibilities as set out in the Operating Model; and
 - (iv) comply with the NTS Rules.
- (b) Each Party will perform its obligations under this Agreement:
 - (i) with due diligence, care and skill and using a standard of diligence, care and skill no lower than that expected of an experienced and well-resourced organisation performing that obligation;
 - (ii) in accordance with the specified timeframes or, if no timeframe is specified, then within a reasonable period;
 - (iii) in accordance with all applicable laws, regulations and, where legally binding upon that Party, codes and standards of practice;
 - (iv) using appropriately trained, qualified, experienced and supervised Personnel;
 - (v) using sufficient resources, including human resources, capability, equipment and technology;
 - (vi) in accordance with each policy and protocol that the NTS Governance Board agrees is to be a policy and/or protocol for the purpose of this clause, including the Communications Protocol;
 - (vii) in accordance with the "Standards of Integrity and Conduct" issued by the Public Service Commission (see www.publicservice.govt.nz); and

in a manner that:

 - (viii) is culturally appropriate for Māori, Pacific and other ethnic or indigenous groups; and
 - (ix) respects the personal privacy and dignity of all participants and stakeholders.
- (c) If the Operating Model requires a Party to be PCIDSS compliant and that Party is required to comply with PCIDSS obligations under its Statement of Work, then that Party will ensure that, at all times, it complies with any PCIDSS obligations in that Statement of Work, which may include providing a PCIDSS certificate of compliance at the time or in the circumstances described in that Statement of Work. If a Party is obliged to be PCIDSS-compliant under this Agreement and hold a PCIDSS certificate of compliance (a **Certificate Holder**), then, upon another Party's request from time to time, that Certificate Holder will provide its then current PCIDSS certificate of compliance as soon as reasonably practicable (which, in any event, does not need to be earlier than the time the Certificate Holder is obliged to obtain the relevant

certificate under this Agreement). Where Waka Kotahi is the Certificate Holder, that PCIDSS certificate of compliance may be in respect of Waka Kotahi and/or an NTS Service Provider.

- (d) Each Party will not cause another Party or the NTS to be non-compliant with the relevant PCIDSS obligations, as those obligations are described in the Operating Model.
- (e) No Party will act fraudulently or maliciously, for example, by attempting to bypass any security mechanisms in place on the NTS, another Party's system, or use any of the NTS or a Party's systems or services to attempt to bypass any security mechanisms in place on any remote system, or accessing or attempting to access or use any part of the NTS or another Party's systems that the Party knows or reasonably should know that it is not authorised to access in the manner or to the extent attempted.

9. Services

9.1 NTS Services commitment

- (a) Subject to clause 9.3(g), each PTA agrees to:
 - (i) transition into, integrate with and use the NTS Services for each mode of public transport that it provides;
 - (ii) use best endeavours to ensure that, for each mode of public transport that the PTA provides, transition onto the NTS occurs on or before the date set out in the Conceptual Roadmap (or, if another date is agreed in a Statement of Work with that PTA, that date) for that mode of transport, where that transition is completed to a fully operational production, non-testing state; and
 - (iii) use all reasonable endeavours to complete those transitional arrangements and that decommissioning by the date for each that is described in the Statement of Work (or otherwise agreed in writing) between Waka Kotahi and that PTA.
- (b) From the date of this Agreement, Waka Kotahi, in its role as SSO, will provide each PTA with the SSO Services that are described in the relevant Statement of Work with that PTA.
- (c) From the relevant Operations Commencement Date for a PTA's mode of public transport, Waka Kotahi, in its role as SSO, will:
 - (i) provide that PTA with the relevant SSO Services that are Operational Services; and
 - (ii) use best endeavours to provide that PTA with the Third Party Services that are Operational Services,

in each case, for that mode of public transport and to a standard no lower than the performance standards set out in the NTS Services Catalogue for that mode and any service level agreed with the relevant PTAs in writing from time to time.

9.2 Fare Revenue allocation

Unless specified otherwise in the relevant Statement of Work, each Party agrees that, from the Operations Commencements Date for the relevant PTA's mode of transport:

- (a) where one Party provides or is responsible for the entire public transport service or other authorised service for which Fare Revenue is paid, the corresponding Fare Revenue received by Waka Kotahi will be released to that Party;
- (b) where more than one Party provides the public transport service and/or other authorised service, the Parties that provide that service will agree the allocation of Fare Revenue between them and notify Waka Kotahi of that allocation;
- (c) Waka Kotahi will be required to release only the Fare Revenue it receives and is not required to take credit risk on any Customer;

- (d) each PTA will be responsible for collecting, handling and managing any cash used to pay for a public transport journey on that PTA's public transport network or through any ticketing vending machine or kiosk in that PTA's Region;
- (e) each Party who collects payment for:
 - (i) the purchase of a transit card and/or smart ticket; and/or
 - (ii) a top-up of a transit card account,
 (as each is further described in the relevant MSA) will release those payments promptly and without set-off to the bank account nominated by Waka Kotahi; and
- (f) Waka Kotahi will use best endeavours to provide or make available to that PTA, reconciliation details for cash collected on each mode for that PTA's public transport network and through ticketing vending machines and kiosks in that PTA's Region, as those reconciliation details are elaborated in the NTS Services Catalogue.

9.3 Statements of work for a PTA

- (a) Without limiting clause 9.1(a), each Party agrees that any contractual commitment to actual transition planning or actual transition services for a PTA will only become effective and unconditional if:
 - (i) that PTA and Waka Kotahi execute a Transition Planning SOW and/or Transition SOW (as applicable); and
 - (ii) Waka Kotahi and the TSP execute a corresponding statement of work under the TSMSA, which that PTA executes as an acknowledging party.
- (b) The Parties agree that the PTA executing as acknowledging party in clause 9.3(a)(ii) does not affect or limit clause 7.4(a).
- (c) When developing a transition planning statement of work or a transition statement of work under the TSMSA that relates to a PTA, Waka Kotahi will involve that PTA in the manner and to the extent reasonably requested by that PTA. It will be reasonable for a PTA to request it attends all workshops, meetings and negotiations with the TSP in relation to developing those statements of work.
- (d) Waka Kotahi and each PTA agree to duly complete the Transition Planning SOW Template for that PTA's transition planning and the Transition SOW Template under this Agreement for that PTA's transition into the NTS.
- (e) Waka Kotahi and each PTA agree that, where any MSA (including any statement of work under an MSA) contemplates the direct exercise of certain rights or the performance of certain obligations by a PTA (the **PTA Actions**), those PTA Actions will be included in that PTA's Transition Planning SOW and/or Transition SOW under this Agreement, as appropriate, as an obligation to be performed or right to be exercised by that PTA.
- (f) Waka Kotahi and each PTA will not change the form or format of its Transition Planning SOW or Transition SOW compared to the Transition Planning SOW Template or Transition SOW Template, without obtaining the NTS Governance Board's approval to that change.
- (g) Without limiting a Party's rights under clause 25, a PTA will be entitled not to proceed with or execute a draft Transition SOW under this Agreement only if, acting reasonably and in good faith:
 - (i) that PTA decides that the PTA's cost of implementing the draft Transition SOW or the PTA's cost of using the NTS exceeds the costs set out in the "*National Ticketing Solution Detailed Business Case*" (iteration 6, version 1.0, that was endorsed by the Waka Kotahi board on 7 July 2022) by more than 10%, based on the total cost to the PTA of implementing the draft Transition SOW and transitioning to the NTS, taking into account the deliverables provided under the relevant Transition Planning SOW for that PTA (the total costs to the PTA as described above, plus the 10%, being the **Funding Amount**);

- (ii) that PTA is unable to obtain the Funding Amount; and/or
- (iii) that PTA decides there are material shortcomings in terms of:
 - (A) performance and/or quality by the NTS Service Providers and/or Waka Kotahi; and/or
 - (B) meeting the relevant requirements for the NTS, as described in the relevant MSA,

compared to what should have occurred by that time, and that PTA considers it unlikely that those shortcomings will be resolved in a timeframe that is appropriate for that PTA,

each decision under clause 9.3(g)(i), (ii) and/or (iii) being a **Not to Proceed Decision** or **NTP Decision**,

- (iv) that PTA gives the NTS Governance Board written notice of the PTA's NTP Decision (**NTP Notice**) promptly after making the NTP Decision;
 - (v) upon the NTS Governance Board's and/or Waka Kotahi's reasonable request after receiving the NTP Notice, that PTA provides the NTS Governance Board with any information relating to the PTA's NTP Decision; and
 - (vi) that PTA's NTP Decision is endorsed by the NTS Governance Board; or
 - (vii) within thirty (30) Working Days of giving the NTP Notice, that PTA cannot agree a plan with the NTS Governance Board and/or Waka Kotahi to resolve the shortcoming and/or unaffordability issues notified in the NTP Notice.
- (h) Without limiting clause 9.3(g), if the NTS is not available in time for a PTA's Operations Commencement Date to be achieved (as agreed by the NTS Steering Group or the NTS Governance Board from time to time), the executives of Waka Kotahi and each affected PTA will work constructively together (which may be through the NTS Governance Board) for the purpose of developing a "plan B".
- (i) Each Party acknowledges that a PTA may require additional approval for funding the implementation of the draft Transition SOW.
- (j) For the avoidance of doubt, a Statement of Work (whether in draft or not) will not be a Transition Planning SOW or a Transition SOW for the purpose of clause 9.3 unless that Statement of Work expressly states that it is a Transition Planning SOW or a Transition SOW (as applicable). Accordingly, unless a PTA expressly agrees otherwise in writing, any Statement of Work (other than the Transition Planning SOW or draft Transition SOW) will not affect a PTA's rights or obligations under clause 9.3 (g).

9.4 Agreements with commercial operators and for exempt services

The Parties agree that Waka Kotahi will be the counter-party to any agreement to provide NTS-related services in relation to an 'excluded passenger service' or 'exempt service', as those terms are defined under the *Land Transport Management Act 2003*. When contracting with any such TSO, Waka Kotahi will use the standard form of agreement that is approved by the NTS Governance Board from time to time, in which case, once duly completed, no further approval from the NTS Governance Board is required for Waka Kotahi to contract with that TSO, unless there is a material variation from that standard form.

10. Performance standards

Each Party agrees that:

- (a) the NTS Services Catalogue will set out the service levels for the NTS Services that originate from a NTS Service Provider; and
- (b) any performance levels required specifically of a Party will be set out in the Operating Model and/or the NTS Services Catalogue.

11. PTA's obligations

Each PTA agrees:

- (a) to provide the support reasonably requested of it by another Party to enable a better transition to and operation of the NTS, which may include a PTA facilitating the input of its stakeholders;
- (b) that, without limiting the Funding Model, the cost allocation of any such support requested under clause 11(a) will be as agreed in writing by the Parties providing and receiving that support;
- (c) except as expressly permitted under this Agreement or a Statement of Work, not to rent, timeshare, sub-license, use for a subscription or bureau service, host, assign, transfer or novate the benefit or burden of any part of this Agreement, including the NTS Services and any access to the NTS;
- (d) except as expressly permitted under this Agreement or a Statement of Work, not to attempt to copy, frame or mirror any part or content of the NTS Services or NTS; and
- (e) not to attempt to access, modify, use, or disclose any NTS Service Provider's source or object code for the NTS, except as expressly permitted under a Statement of Work.

12. Cost allocation and payment of costs

12.1 Cost allocation and Funding Model

Without limiting clauses 6.2(d) and/or 6.2(e), each Party agrees that the Funding Model will apply to the funding arrangements between Waka Kotahi and each PTA in relation to the NTS.

12.2 Payment

Subject to the terms of this clause 12 and unless specified otherwise in a Statement of Work that applies to the Equipment for the relevant PTA, that PTA will pay Waka Kotahi the costs for the Equipment provided by Waka Kotahi to that PTA under this Agreement and the relevant Statement of Work but only where the Equipment is not 100% funded through the NLTF.

12.3 Invoicing

- (a) Unless specified otherwise in the relevant Statement of Work, Waka Kotahi will provide each PTA with an invoice at the invoicing dates set out in the Statement of Work for that PTA. If no due date for payment is specified in the applicable Statement of Work, Waka Kotahi may invoice the relevant PTA for the portion of the Equipment that is not funded through the NLTF, at the times that enable Waka Kotahi to be paid before the relevant Waka Kotahi payment for the Equipment is due.
- (b) Waka Kotahi will ensure that each invoice is in the form of a tax invoice that complies with the requirements of the GST Act (**Valid Tax Invoice**).
- (c) Each PTA must pay each Valid Tax Invoice by the 20th of the month following the date of the Valid Tax Invoice.

12.4 No set off

Unless the PTA with the paying obligation and Waka Kotahi agree otherwise in writing, each PTA will pay any amount due and owing to Waka Kotahi under or in connection with this Agreement in full, without deduction, set-off or counter-claim.

13. Intellectual Property, information and data

13.1 Title and interest in Intellectual Property and data

- (a) Except as specified otherwise in this Agreement, nothing in this Agreement confers upon a Party any right, title or interest in another Party's Intellectual Property or the NTS Data.

- (b) Each Party will not do anything by its act or omission to cause Waka Kotahi to breach the provisions relating to intellectual property, confidentiality or data in an MSA.

13.2 NTS Data

Each Party agrees that:

- (a) Waka Kotahi will be responsible for ensuring the NTS Data is held in a repository for that data; and
- (b) the data held in a repository described in clause 13.2(a) will be deemed to be current and correct as the single 'source of truth' for the NTS Data for the purposes of this Agreement. The Parties agree that the 'single source of truth' is intended to be the one source or system of record that stores the NTS Data, to ensure that each Party can base decisions on and interact with Customers using the same data.

13.3 Updates to NTS Data

Unless the NTS Governance Board decides otherwise or the Operations Model states otherwise, each Party will use best endeavours to ensure that:

- (a) any updates or additions made by or on behalf of the Party to NTS Data will be made available in the relevant part of the NTS in real time; and
- (b) any data entered by or on behalf of that Party is accurate at the time of entry into the NTS for the purpose the data was entered.

13.4 Ensuring rights for Information use

Each Party will ensure it has the rights to:

- (a) disclose the information, material and/or data (**Information**) it provides or makes available to another Party (**Recipient**) under this Agreement for the purpose for which that Information is provided or made available; and
- (b) enable the Recipient to Process that data, and disclose that Information to the relevant person, to the extent, in the manner and for the purpose for which that Information is provided or made available. For the purpose of this clause, the relevant person may include Waka Kotahi, each NTS Service Provider, the relevant PTA, the relevant concession holder, relevant TO, and other relevant stakeholders (in each case, as is applicable for the relevant data).

13.5 Required terms in Customer-facing contract

If the NTS Governance Board decides that certain required terms (**Required Terms**) must be included in the Customer Terms, each Party agrees to ensure that the Required Terms are included and/or addressed in that Party's Customer Terms. For the purpose of this clause, "Customer Terms" includes a party's website terms and conditions and/or any other Customer-facing contract within its control and, in a PTA's case, that PTA's "conditions of carriage". The Party may make drafting changes to the Required Terms to the extent necessary to align with the Customer Terms (such as using consistent defined terms) but, in any event, must still achieve the intent and purpose of the Required Terms.

13.6 Access to and use of NTS Data

- (a) Notwithstanding clause 13.4, a PTA may only download or access NTS Data:
 - (i) that relates to a Customer and that Customer has authorised the relevant PTA's access and use;
 - (ii) in accordance with the Operating Model;
 - (iii) as decided by the NTS Governance Board, where any such decision must be made by consensus (and not by majority vote);
 - (iv) to the extent the NTS Data (including any Personal Information) relates directly to a journey taken on that PTA's transport network;
 - (v) [to the extent the NTS Data directly relates to Waka Kotahi's provision of the NTS Service to that PTA]; and/or

- (vi) to the extent required by law.
- (b) Notwithstanding clause 13.4, Waka Kotahi may only access or download NTS Data:
 - (i) in accordance with the Operating Model;
 - (ii) as decided by the NTS Governance Board, where any such decision must be made by consensus (and not by majority vote);
 - (iii) that is necessary for Waka Kotahi to perform its obligations as SSO in accordance with this Agreement, including under a Statement of Work;
 - (iv) that is Personal Information collected by Waka Kotahi;
 - (v) that is Personal Information collected by a PTA about a Customer, but only to the extent necessary to perform Waka Kotahi's obligations as SSO under a Statement of Work with that PTA and/or this Agreement and/or to the extent required by law; and/or
 - (vi) that is not Personal Information, but only to use for or in pursuance of Waka Kotahi's statutory duties, functions and/or purposes.
- (c) To the extent a Party is entitled to download or access NTS Data under clauses 13.6(a) or 13.6(b), that Party may do so only in accordance with all applicable laws and in compliance with this Agreement.
- (d) Subject to clauses 13.6(a) and 13.6(b), Waka Kotahi will use best endeavours to make available, and each Party may access, the NTS Data in real time, but only in the manner described in the Operating Model and/or any Statement of Work with that Party.

13.7 Open data

Waka Kotahi will make NTS Data available under the government's open data arrangements, but only as set out in the Operating Model.

13.8 Commercialising NTS Data

A Party may commercialise any NTS Data created by or processed through the NTS and/or any NTS Data downloaded and Processed by a Party, only if:

- (a) that data has been made available as "open data"; or
- (b) that Party obtains the NTS Governance Board's prior written authorisation to that commercialisation; or
- (c) where the Party is a PTA:
 - (i) the data being commercialised by that PTA directly relates to a journey (or the part of the journey) taken on that PTA's public transport network, and is not for the part of a journey involving another PTA's public transport network; or
 - (ii) the Customer has consented to that commercialisation by that PTA; and
 - (iii) in advance of that commercialisation, the PTA has notified the NTS Governance Board of the NTS Data that is to be commercialised, how the NTS Data is to be commercialised and the persons involved in the commercialisation; and
 - (iv) the commercialisation does not cause a Party to breach any law.

14. Confidentiality

14.1 Acknowledgements

Each Party acknowledges and agrees that:

- (a) the existence and contents of this Agreement are not confidential;

- (b) each Party must comply with public sector-specific laws and policies relevant to that Party, relating to information management and disclosure and nothing in this Agreement seeks to limit the application of those laws and/or policies;
- (c) nothing in this Agreement is intended to limit a Party's obligations under the *Local Government and Meetings and Official Information Act 1987*, the *Official Information Act 1982* or other government policy.

14.2 Protection of Confidential Information

- (a) Without limiting clause 14.1 and subject to clause 14.3, each Party will treat as confidential, and not disclose to any person nor use for its own benefit, any Confidential Information provided under this Agreement by another Party.
- (b) Each PTA will not cause Waka Kotahi to breach any confidentiality or security obligation in an MSA.
- (c) Each Party will not cause another Party to breach any confidentiality or security obligation in the other Party's agreements with its service providers where the Party knew, or ought reasonably to have known, that its act or omission was likely to cause the breach.

14.3 Permitted disclosure

A Party (the **Recipient**) may disclose Confidential Information if:

- (a) the Confidential Information is in the public domain through no breach of this Agreement by the Recipient; or
- (b) disclosure is required by law, in which case, the Recipient:
 - (i) (if permitted by law) will notify the disclosing Party as soon as reasonably practicable of the requirement, the information the Recipient will disclose and the date the Recipient will disclose the information; and
 - (ii) will comply with that notice; or
- (c) the disclosure is authorised by this Agreement; or
- (d) disclosure is to a Party's Personnel or professional advisers, or any of its third party suppliers (each a **Third Party Recipient**), the disclosure does not breach a non-disclosure obligation under an MSA and the Third Party Recipient is subject to maintaining the confidentiality of any such information on terms no less onerous than those set out in this clause 14 and an MSA.

15. Communications

Each Party will comply with the Communications Protocol as approved by the NTS Governance Board from time to time.

16. Privacy

- (a) Waka Kotahi will:
 - (i) be responsible for carrying out a privacy impact assessment on an iterative basis for the purpose of the NTS;
 - (ii) ensure that the privacy impact assessment is carried out in conjunction with the design process for the Operating Model; and
 - (iii) ensure that the privacy impact assessment is completed in final form before the Operations Commencement Date.
- (b) From time to time, the NTS Governance Board may require a new or updated privacy impact assessment to be carried out in relation to all or part of the NTS or a Party's NTS-related operations.

- (c) Each PTA (at its own cost) will provide all assistance reasonably requested by Waka Kotahi in relation to a privacy impact assessment carried out under this Agreement and will do so in a timely manner.
- (d) The NTS Governance Board will consider any recommendations made as a result of a privacy impact assessment carried out under this Agreement. Subject to clause 6.5(c), each Party will implement any recommendation made by the NTS Governance Board in relation to a privacy impact assessment carried out under this Agreement.
- (e) Each Party will comply with all privacy-related laws and not do anything to cause another Party to breach those laws.
- (f) Each Party will Process personal information created or processed through the NTS only as allowed under law.
- (g) Each Party agrees that the Operating Model will include a process for handling breaches of the Privacy Act, notifiable breaches under the Privacy Act, and requests for personal information disclosure and correction.

17. Security

- (a) Each PTA will ensure that:
 - (i) any NTS Data held by or on behalf of that PTA; and
 - (ii) all Confidential Information held by or on behalf of that PTA,
 is protected by such security safeguards as it is reasonable in the circumstances to take against:
 - (iii) loss; and
 - (iv) access, use, modification, or disclosure, except with authority from that PTA; and
 - (v) other misuse.
- (b) Subject to clause 17(c), Waka Kotahi will ensure that:
 - (i) any NTS Data held by or on behalf of Waka Kotahi; and
 - (ii) all Confidential Information held by or on behalf of Waka Kotahi,
 is protected by such security safeguards as it is reasonable in the circumstances to take against:
 - (iii) loss; and
 - (iv) access, use, modification, or disclosure, except with authority from Waka Kotahi; and
 - (v) other misuse.
- (c) Without limiting Waka Kotahi's obligations under clause 2.2 and its role as the SSO and Scheme Operator, clause 17(b) does not apply to Waka Kotahi for an NTS Service Provider's non-compliance with the NTS Service Provider's obligations relating to the NTS Data under or in relation to an MSA.
- (d) For the purpose of clauses 17(a), 17(b) and 17(c), a reference to NTS Data includes a reference to any:
 - (i) downloaded and/or Processed NTS Data carried out by or on behalf of that Party; and
 - (ii) Processed Confidential Information carried out by or on behalf of that Party.

18. Health and safety

Each Party will:

- (a) comply with its obligations under the HSW Act and not cause another party to breach that Act;
- (b) so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other PCBUs who have a duty in relation to the same matter;
- (c) ensure that it and its Personnel (each a **Visitor**) comply with the health and safety policy of the person controlling the relevant place where the work is being carried out (**Host**). However, if the Visitor identifies an inconsistency between the Host's and the Visitor's health and safety policy, the Visitor will notify the Host of the inconsistency for that work in that area. Before starting work, the parties will agree how the health and safety obligations will be managed for that inconsistency before the Visitor starts the work that will be affected by that inconsistency. This clause (c) does not limit clause 18(b) and is subject to any written agreement between the relevant PCBUs; and
- (d) ensure it and its subcontractors each have, maintain, implement and comply with a health and safety operational risk management plan as it relates to any matter under this Agreement, with appropriate input from other PCBUs who have a duty in relation to the same matter.

19. Significant Event Process

19.1 Notification of Significant Event

Each PTA will notify Waka Kotahi, and/or Waka Kotahi will notify each Party (in accordance with the Communications Protocol), as soon as reasonably practicable upon becoming aware of an actual or likely:

- (a) **Significant failure:** significant failure (or series of related failures which together are significant) of the NTS or an NTS Service Provider to perform its obligations in accordance with its MSA, whether or not that failure amounts to a breach of the relevant agreement;
- (b) **Reputational Event:** event which is likely to cause a Party, the TSP, the government, its personnel and/or subcontractors significant adverse media or parliamentary attention in relation to the NTS, and in any event, if there is a change in the criminal record of an NTS Service Provider;
- (c) **Security Event:** security event, breach or likely breach that compromises or is likely to compromise the integrity or security of a Party, the NTS Services, assets (including any technology system) or NTS Data (such event, breach or likely breach being a **Security Event**); and
- (d) **Regulatory Event:** event, or a near miss, that would cause a Party to notify a regulator, including any health and safety regulator, the office of the Privacy Commissioner and/or a financial services regulator, in each case, in relation to the NTS,

(each such event, circumstance, breach or failure being a **Significant Event** and any notifiable event under the HSW Act being a **Notifiable Event**).

19.2 Response and rectification process

Each Party acknowledges the incident management and escalation processes set out in the Operating Model and that this clause 19 is in addition to those processes. If a Party advises any other Party of a Significant Event, Waka Kotahi and the affected Parties will endeavour to agree a course of action and each Party will implement its obligations or responsibilities assigned to it under any such agreed course of action.

If:

- (a) no course of action is agreed within the timeframes advised by Waka Kotahi (which, depending on the nature of the Significant Event, could be required within an hour); and
- (b) Waka Kotahi considers (acting reasonably) that the integrity of the NTS is affected and urgently needs to be addressed; and
- (c) Waka Kotahi requests,

then:

- (d) **Co-operate:** each affected PTA must co-operate with Waka Kotahi and any other third party specified by Waka Kotahi;
- (e) **Follow instructions:** except to the extent a PTA will otherwise breach the law or contractual obligations, each affected PTA must follow any instructions given by Waka Kotahi (acting reasonably), including any instruction to stop following a previous instruction (or any part of it) and, if the Significant Event is related to a Notifiable Event, near miss, or breach, Waka Kotahi's instruction may include:
 - (i) to stop performing the act or omission to perform (or any part of them); and/or
 - (ii) to suspend any work being carried out under or in relation to this Agreement by a Party and/or its Personnel until Waka Kotahi (in its sole discretion) considers the health and safety risk has been eliminated or adequately mitigated;
- (f) **Update:** each affected Party must update Waka Kotahi on regular basis of any subsequent developments relating to the Significant Event; and
- (g) **Remedy/Mitigate:** each affected Party must take reasonable steps to remedy or mitigate the immediate effects on that Party of the Significant Event, or the circumstances or issue giving rise to the Significant Event, as soon as reasonably practicable, in the manner reasonably requested by Waka Kotahi and provide Waka Kotahi with a report (in writing, if Waka Kotahi requests) of the action taken. Waka Kotahi will take reasonable steps to remedy or mitigate the effects of the Significant Event, including on Waka Kotahi and the other Parties.

20. Change management process

The Parties agree that:

- (a) any change that is a Reserved Matter, will be made only in accordance with clause 6;
- (b) any change that is subject to a process in the Operating Model will be made in accordance with clause 6.5;
- (c) any change to the other parts of this Agreement (excluding any Statement of Work) will be binding on a Party only if agreed in accordance with clause 6.5 or, if that clause does not apply to the change, in accordance with clause 28.3;
- (d) any change to a Statement of Work will be binding on the Parties to that Statement of Work only if both of those Parties agree in writing to that change; and
- (e) any change required as a result of a legislative change will occur as a change in accordance with the Operating Model.

21. Audit and assurance

- (a) As part of the public sector, each Party acknowledges the need to ensure transparency and accountability in the use of public funds, and the cost and resource involved in carrying out an audit and/or assurance process. Accordingly, the NTS Governance Board will identify an appropriate audit frequency and scope but, in any event, each Party must have default rights of audit and/or assurance.

- (b) The Parties agree the intention for the end-to-end financial and operating audit of the NTS transactions and Fare Revenue allocation to occur at least annually, as set out in the Operations Manual.
- (c) A PTA (the **Requesting Party**) (acting reasonably) may request an assurance of the NTS (or any part of it) by giving no less than five (5) Working Days prior written notice to Waka Kotahi and the NTS Governance Board (**Assurance Notice**). Any such assurance reasonably requested must be carried out subject to and in accordance with the following:
 - (i) the Requesting Party will engage an independent third party who is approved by the NTS Governance Board specifically for that engagement, or who has otherwise been pre-approved by the NTS Governance Board as part of a panel of assurance providers, to carry out the assurance review described in the Assurance Notice (**Independent Reviewer**);
 - (ii) the Requesting Party will ensure the Independent Reviewer complies with the reasonable security, health and safety and confidentiality requirements of Waka Kotahi and any of Waka Kotahi's Personnel who may be involved in the assurance review;
 - (iii) subject to clause 21(c)(iv) and the Requesting Party's compliance with clauses 21(c)(i) and (ii), Waka Kotahi will provide access to the NTS to the extent necessary for the Independent Reviewer to carry out the reasonably requested assurance review described in the Assurance Notice;
 - (iv) each PTA acknowledges the limitations in each MSA, and agrees that, unless the NTS Governance Board decides otherwise, to the extent compliance with the Requesting Party's Assurance Notice would require an out-of-cycle audit or would be outside the audits provided as part of an NTS Service Provider's services, Waka Kotahi will not be obliged to provide the access to the NTS Service Providers, its Personnel, systems materials and/or facilities needed for the Independent Reviewer to carry out their assurance review; and
 - (v) the Requesting Party will bear its and Waka Kotahi's costs of any such assurance review.
- (d) Each Party acknowledges and agrees that:
 - (i) Waka Kotahi has rights to audit each PTA under its existing funding arrangements with that PTA; and
 - (ii) nothing in this Agreement will limit the rights of Waka Kotahi to conduct an audit of a PTA under those funding arrangements.
- (e) Waka Kotahi may audit and/or inspect a PTA and the PTA's Personnel if Waka Kotahi (acting reasonably) considers that audit or inspection is necessary or desirable to:
 - (i) ensure the PTA is complying with this Agreement and not causing Waka Kotahi to breach an MSA;
 - (ii) assess compliance with the NTS Rules, including the relevant PCIDSS obligations; or
 - (iii) comply with a right of audit or inspection being exercised under and in accordance with an MSA.
- (f) Waka Kotahi will ensure that any audit or inspection carried out under clause 21(e) is carried out subject to and in accordance with the following:
 - (i) Waka Kotahi will give no less than five (5) Working Days prior written notice to the PTA to be audited or inspected (the **Audited PTA**) and the NTS Governance Board;
 - (ii) Waka Kotahi may carry out the audit or inspection itself or through a third party who is approved by the Audited PTA (such approval not to be unreasonably withheld) (each an **Auditor**);

- (iii) Waka Kotahi will ensure that the Auditor complies with the reasonable security, health and safety and confidentiality requirements of the Party and any of that Party's Personnel who may be involved in the audit or inspection;
- (iv) subject to Waka Kotahi's compliance with clause 21(f)(i)-(iii), the Audited PTA will provide access to its and its Personnel's systems, premises and Personnel to the extent necessary for the Auditor to carry out the assurance review described in the Assurance Notice; and
- (v) each Party will bear its own costs of any such assurance review.
- (g) Waka Kotahi and each Requesting Party will make available the draft results of any audit and/or assurance (as applicable) conducted under this clause 21, the Operating Model and/or an Annual Budget and Plan to each other Party and the NTS Governance Board for review and comment before making the final results of any audit and/or assurance available to all Parties.
- (h) Subject to clause 21(c)(iv), each Party will (and will ensure that each of its Personnel will) provide reasonable access and assistance to the relevant auditor carrying out the audit and the Independent Reviewer carrying out the assurance under and in accordance with this clause 21.
- (i) Each Party will make available suitably qualified and experienced personnel to support any audit or assurance process under this Agreement (including a process described in the Operating Model or an Annual Budget and Plan).

22. Dispute resolution

- (a) If any Party (acting reasonably) considers there is a dispute arising out of this Agreement or its implementation, which that Party wishes to raise as a dispute, that Party will:
 - (i) promptly notify the NTS Governance Board in writing, giving details of the dispute (**Dispute**); and
 - (ii) endeavour to resolve the Dispute amicably with each other Party to the Dispute.
- (b) If a Party to the Dispute refers the Dispute to the NTS Governance Board for resolution and the NTS Governance Board decides to assist with resolution of the Dispute, the NTS Governance Board will endeavour to resolve or facilitate a resolution of the Dispute between the relevant Parties. Any decision of the NTS Governance Board in relation to the resolution of the Dispute must be made by consensus (and not a majority vote).
- (c) If a Dispute is referred to the NTS Governance Board for resolution and the NTS Governance Board does not resolve the Dispute, then:
 - (i) either Party to the Dispute may refer the Dispute to each disputing Party's chief executive, in which case, those chief executives (or the relevant chief executive's nominee) will endeavour to resolve the Dispute by negotiation;
 - (ii) if, the Dispute has not been resolved following referral to each disputing Party's chief executive, then either disputing Party may refer the Dispute to each Party's council or board (as applicable), in which case the relevant Party's council or board (or their respective nominees) will endeavour to agree the Dispute by negotiation.
- (d) Without limiting clauses 22(a) or (b) and (c), to the extent permitted by law, the Parties agree that, in no circumstances, will a Party start proceedings in a court against another Party under or in relation to this Agreement, including for any interim relief or injunction, unless taking such action has been decided by the NTS Governance Board (whether by consensus or a majority vote).

23. Liability and the process for claims

23.1 A Party's limited liability

Subject to clauses 23.2 and 23.7 but without limiting any other provision in this clause 23, each Party (a **Liable Party**) will be liable to another Party (**Claiming Party**) in respect of any Loss suffered or incurred by the Claiming Party that arises out of or in connection with this Agreement or its subject matter (whether in contract, tort (including negligence) or generally at common law, equity or otherwise) only to the extent that the Loss arose from an act or omission of the Liable Party that constituted:

- (a) a wilful default of this Agreement; or
- (b) gross negligence in relation to this Agreement; or
- (c) a fraud under or in relation to this Agreement.

23.2 Exception for insurance claim

If, in the absence of clause 23.1, a Liable Party (**Insured Party**) would be:

- (a) liable to a Claiming Party for a Loss; and
 - (b) entitled to an insurance payment or indemnity from its insurer in respect of such Loss;
- then:
- (c) to the extent necessary to permit a valid claim by the Insured Party against its insurer in respect of its liability for such Loss, clause 23.1 will not apply; and
 - (d) the amount of any such Insured Party's liability to any and all Claiming Parties will be:
 - (i) limited to the Insured Party's applicable insurance limits, including any per-claim or aggregate limits; and
 - (ii) subject to and limited by any limitations and/or exclusions of cover under the Insured Party's insurance policy.

23.3 Claims process

Each Party agrees that any claim by a Party under or in relation to this Agreement against another Party must be made subject to and in accordance with clauses 22 and 23.

23.4 Loss caused by an NTS Service Provider

- (a) If a PTA reasonably considers that it is entitled to a remedy or has incurred Loss under or in relation to this Agreement where Waka Kotahi may be entitled to a remedy under or in relation to the relevant MSA, which that PTA wishes to pursue, then that PTA will notify Waka Kotahi and the NTS Governance Board as soon as reasonably practicable (unless Waka Kotahi has notified that PTA first) (**Claim Notice**).
- (b) Where Waka Kotahi receives a Claim Notice or Waka Kotahi is (or reasonably considers it is) entitled to a remedy under or in relation to the relevant MSA in respect of an event or circumstance (a **Potential Claim**):
 - (i) Waka Kotahi will consult with each PTA from time to time to ascertain that PTA's Loss which that PTA wishes Waka Kotahi to claim for that Potential Claim and which would be (or Waka Kotahi reasonably considers is likely to be) payable under the relevant MSA (**PTA Loss**) and/or any other remedy that the PTA wishes to pursue (if any); and
 - (ii) Waka Kotahi will ascertain any Loss of Waka Kotahi from time to time, which Waka Kotahi wishes to claim for that Potential Claim and which would be (or Waka Kotahi reasonably considers is likely to be) payable under the relevant MSA (**Waka Kotahi Loss**) and/or any other remedy that Waka Kotahi wishes to pursue (if any),

(together, the PTA Loss and Waka Kotahi Loss to be the **Combined Loss**);
- (c) Each Party agrees that, when calculating the PTA Loss or Waka Kotahi Loss under and in relation to this Agreement, the following principles will apply:

- (i) a Party should not benefit to the extent of its wrongdoing or to the extent that it caused the Loss in question;
 - (ii) a Party's Loss should not include any amount that it could reasonably have mitigated; and
 - (iii) a Party should not be entitled to double recovery of the same Loss.
- (d) If Waka Kotahi does not choose to pursue the Potential Claim against the relevant NTS Service Provider, it will refer the matter to the NTS Governance Board within 20 Working Days of being notified by the PTA of the Potential Claim. If the NTS Governance Board recommends (which may be by a consensus or a majority vote decision) that Waka Kotahi should pursue the Potential Claim against the relevant NTS Service Provider, Waka Kotahi will pursue and use its best endeavours to seek recovery from the relevant NTS Service Provider for the Combined Loss in relation to the Potential Claim and/or pursue any other remedy, in each case, as recommended by the NTS Governance Board (a **Claim**).
- (e) If:
 - (i) the NTS Governance Board decides not to or does not recommend that Waka Kotahi pursues the Potential Claim against the relevant NTS Service Provider; and
 - (ii) after two (2) months from the date the PTA first notified Waka Kotahi of its PTA Loss, that PTA gives Waka Kotahi written notice requiring Waka Kotahi to pursue the relevant PTA's Potential Claim against the relevant NTS Service Provider; and
 - (iii) the amount of PTA Loss attributable to the PTA(s) who give notice under clause 23.4(e)(ii) exceeds \$2,000,000 (two million dollars), and that amount is the PTA Loss arising out of the same Potential Claim,
 then:
 - (iv) Waka Kotahi will be obliged to pursue that Potential Claim, which will then be known in this clause as a **Claim**; and
 - (v) to the extent that Waka Kotahi's reasonable costs are not met by the amounts recovered from the NTS Service Provider for that Claim, the PTA will reimburse Waka Kotahi for Waka Kotahi's reasonable costs of pursuing the Claim.
- (f) If the criteria in clauses 23.4(e)(i), 23.4(e)(ii) and 23.4(e)(iii) are not met, and a PTA (by notice to the NTS Governance Board) requests a claim be made against an NTS Service Provider under an MSA, the chief executive of Waka Kotahi and the chief executive of that PTA will endeavour to agree an action plan to address the Potential Claim. If the chief executives agree that Waka Kotahi will pursue the relevant PTA's potential claim against the relevant NTS Service Provider, then:
 - (i) unless and to the extent that the chief executives agree otherwise, the Potential Claim will be a "Claim" for the purpose of clause 23.4; and
 - (ii) any legal counsel used to advise on the Claim will be identified from a list of legal counsel decided by the NTS Governance Board.
- (g) In bringing or defending any Claim described in this clause 23.4, Waka Kotahi will:
 - (i) keep each relevant PTA and the NTS Governance Board updated on the progress of the conduct of the Claim, including Waka Kotahi's costs (which may include internal and external costs) and expenses in pursuing the Claim or Potential Claim; and
 - (ii) take into account the advice of each relevant PTA in relation to the conduct of the Claim or Potential Claim.
- (h) If the chief executives cannot agree an action plan to address the Potential Claim under clause 23.4(f), then the relevant PTA may refer the lack of agreement about the action plan to that PTA's and Waka Kotahi's council or board (as applicable), in which case the relevant PTA's council or board and Waka Kotahi (or their respective nominees) will endeavour to agree an action plan to address the Potential Claim by negotiation.

23.5 Distributing Recovered Amounts and Party v Party claims

- (a) The Parties agree that Waka Kotahi is entitled to be reimbursed for any reasonable costs and expenses, including legal costs and expenses on a solicitor and own client basis, incurred by Waka Kotahi, and Waka Kotahi's internal and external costs, in connection with pursuing any Claim (together, **Claim Expenses**).
- (b) Unless the NTS Governance Board decides otherwise, where any amount of damages is paid by an NTS Service Provider to Waka Kotahi in respect of a Claim, Waka Kotahi will first deduct the Claim Expenses from that amount (the balance being the **Recovered Amount**).
- (c) Where the Recovered Amount is:
 - (i) the same as the Combined Loss, Waka Kotahi will pay the relevant PTA its PTA Loss; or
 - (ii) is less than the Combined Loss, Waka Kotahi will pay each PTA a pro-rated amount calculated by reference to the proportion of that PTA's Loss of the Combined Loss.
- (d) Subject to clause 23.5(e), any liability paid or payable by a Party due to the application of clause 23.1 or 23.2 will be:
 - (i) paid by that Party to Waka Kotahi in the first instance (if that Liable Party is a PTA); and
 - (ii) treated in the same manner as damages paid by the NTS Service Provider for the purpose of clause 23.5(b).
- (e) If a PTA brings a claim against another Party in accordance with this clause 23 and Waka Kotahi has not incurred any Claim Expenses in relation to that claim, any damages will be paid between those Parties as agreed in writing by those Parties or otherwise awarded by the relevant court.

23.6 Excluded liability

Without limiting clause 23.2 or 23.4, no Party shall be liable to another Party under or in relation to this Agreement for:

- (a) any indirect or consequential Loss unless and to the extent that such Loss arises as a result of the wilful default, gross negligence or fraud by the Liable Party described in clause 23.1; or
- (b) notwithstanding clause 23.6(a), any Loss of or to any Customer.

23.7 Loss claimed by an NTS Service Provider

- (a) Subject to clause 23.7(b), to the extent that Waka Kotahi is liable under or in relation to an MSA due to a PTA's breach of this Agreement or that PTA's other act or omission, then the PTA will be liable to Waka Kotahi under this Agreement for any remedy given by Waka Kotahi under or in relation to that NTS Service Provider's MSA.
- (b) If an NTS Service Provider claims against Waka Kotahi or gives a dispute notice to Waka Kotahi where the claim is due to a PTA's actual or alleged breach of this Agreement or that PTA's other act or omission, or Waka Kotahi (acting reasonably) considers a PTA has or may have contributed to Waka Kotahi's actual or alleged breach (the PTA being the **Named PTA** and the claim being the **NTS SP Claim**), then the following procedure will apply:
 - (i) Waka Kotahi will immediately give notice of the NTS SP Claim to the Named PTA and the NTS Governance Board;
 - (ii) Waka Kotahi will have sole control of the conduct of the NTS SP Claim, and will take into account the preference of the Named PTA (acting reasonably) regarding Waka Kotahi's choice of legal representative;
 - (iii) upon Waka Kotahi's reasonable request, the Named PTA will provide all cooperation and support to Waka Kotahi in relation to the NTS SP Claim;

- (iv) the Named PTA will not enter into any negotiations, settlement or compromise with the NTS Service Provider without the prior written consent of Waka Kotahi (not to be unreasonably withheld or delayed);
- (v) Waka Kotahi will keep each Named PTA and the NTS Governance Board informed of the progress of the conduct of the NTS SP Claim, including Waka Kotahi's costs and expenses in pursuing the NTS SP Claim;
- (vi) Waka Kotahi will consider (acting reasonably) the views or advice provided by each Named PTA in relation to the conduct of the NTS SP Claim and endeavour to agree a strategic approach with each Named PTA for the conduct of the NTS SP Claim. If Waka Kotahi and each Named PTA cannot agree that strategic approach, then either Waka Kotahi and/or that Named PTA may refer the issue of the strategic approach to their respective chief executives, in which case, the chief executives will endeavour to agree a strategic approach;
- (vii) if the chief executives cannot agree a strategic approach under clause 23.7(b)(vii), then the relevant PTA may refer the lack of agreement about the action plan to that PTA's and Waka Kotahi's council or board (as applicable), in which case the relevant PTA's council or board and Waka Kotahi (or their respective nominees) will endeavour to agree an action plan to address the Potential Claim by negotiation;
- (viii) no Party will make any payment to the NTS Service Provider, settlement or admission of liability in respect of the NTS SP Claim, for which the Named PTA is to be liable under this Agreement, without the prior written consent of the Named PTA's chief executive. The Named PTA will not unreasonably withhold or delay its consent under this clause 23.7(b)(vii); and
- (ix) if the Named PTA consents, or it is determined through the dispute resolution process under or in relation to a MSA, that Waka Kotahi is liable under or in relation to an MSA due to the Named PTA's breach of this Agreement or that Named PTA's other act or omission, then:
 - (A) the Named PTA will pay Waka Kotahi for the amount that Waka Kotahi is liable for under or in relation to the MSA and Waka Kotahi's internal and external costs and expenses (together, the **Liability Amount**); and
 - (B) the exclusions of liability in clauses 23.1 and 23.6 will not apply in respect of that Named PTA for that liability.

23.8 General

- (a) Waka Kotahi will not be obliged to pay a PTA its PTA Loss that is caused by an NTS Service Provider and/or another PTA until and to the extent that Waka Kotahi receives any corresponding amount owing from that NTS Service Provider and/or PTA (as applicable).
- (b) Each limitation or exclusion of this clause 23 and each protection given to a Party or any of each of its officers, employees, or agents by any provision of this clause 23 is:
 - (i) to be construed as a separate limitation or exclusion applying and surviving even if, for any reason, any of the provisions is held inapplicable in any circumstances; and
 - (ii) is intended to be for the benefit of and enforceable by those officers, employees, and agents.
- (c) Each provision in this clause 23 will apply only to the extent permitted by law.
- (d) Each party acknowledges that each Initial MSA contains (and each MSA may contain) limitations on liability that limit the amount:
 - (i) that Waka Kotahi can claim against the NTS Service Provider under or in relation to the relevant MSA; and
 - (ii) of Waka Kotahi's liability under or in relation to the relevant MSA, which, in turn, may limit the amount that an NTS Service Provider can claim against Waka Kotahi and, therefore, the amount of an NTS SP Claim in respect of a Named PTA.

24. Insurance

Each Party will be responsible for ensuring it has adequate insurance for the purposes of this Agreement.

25. Term and termination

25.1 Term of this Agreement

This Agreement will take effect from the date of this Agreement unless the NTS Governance Board decides otherwise, in which case, the date will be that decided by that board.

25.2 Termination of this Agreement

This Agreement continues until it is terminated, and it terminates on the earlier of:

- (a) a decision of the NTS Governance Board to terminate this Agreement; or
- (b) by written agreement of all Parties.

25.3 Withdrawal by a Party

Notwithstanding clauses 9.3(g) or 25.2, a PTA will withdraw from this Agreement if:

- (a) it gives written notice of its requested withdrawal to the NTS Governance Board (**Withdrawal Notice**) and the withdrawal is:
 - (i) approved by the NTS Governance Board (such withdrawal will take effect from the date specified in the Withdrawal Notice); or
 - (ii) not approved by the NTS Governance Board and the PTA has not withdrawn its request within sixty (60) days of the date of the Withdrawal Notice. In that case, the requesting Party's withdrawal will take effect:
 - (A) if the Withdrawal Notice is given before the Actual Go Live Date for that PTA, on the date specified in the Withdrawal Notice; or
 - (B) if the Withdrawal Notice is given after the Actual Go Live Date for that PTA, no earlier than [3] years after the date of that PTA's Withdrawal Notice; or
- (b) it transfers all of its responsibilities pursuant to clause 25.4, with effect from the date of the transfer.

For the purpose of clause 25.3(a), **Actual Go Live Date** means the date on which the first Customer payment transaction is processed for a public transport journey using that mode of transport by the relevant PTA in live operational production, not being for testing purposes. The parties acknowledge that a pilot, trial or field test is deemed not to take place in live operational production. For the avoidance of doubt, where a PTA uses elements of the NTS for a mode of transport under a Statement of Work that is not called a Transition SOW or a Transition Planning SOW then such use will not be considered the Actual Go Live Date for the relevant mode of transport. The definition of go-live in this context may be different from a definition of go-live in other contexts.

25.4 Transfer of a PTA's responsibilities

A PTA will transfer all or any part of its responsibility for all or part of the public transport that it has at the relevant time (including because of a transfer of responsibilities to another party) only if:

- (a) that PTA gives written notice to and consults with the NTS Governance Board over the impact of the proposed transfer relating to the NTS and this Agreement; and
- (b) the person who assumes all or any part of that PTA's responsibility for providing public transport becomes a party to this Agreement (and that PTA ceases to be responsible for all or that part (as the case may be) of the public transport responsibilities that it has transferred).

25.5 No other termination rights

Subject to withdrawal in accordance with clause 25.3, no Party can, on its own, terminate this Agreement, or its inclusion in this Agreement.

25.6 Acknowledgement of termination of Participation Agreement (Part 1)

Each Party acknowledges that, upon each Party executing this Agreement and this Agreement being unconditional:

- (a) the Participation Agreement (Part 1) dated 10 December 2020 is terminated; and
- (b) the Surviving Provisions (as that term is defined in the Participation Agreement (Part 1)) survive termination of that agreement.

26. Transition-out/Disengagement

Acknowledging the principle in clause 3(n) and that each MSA contains a disengagement process, each Party agrees that, upon:

- (a) termination of this Agreement or in anticipation of termination of this Agreement, the NTS Governance Board will decide the process and terms of disengagement to apply; and
- (b) notice of a PTA's requested withdrawal from this Agreement being given under clause 25.3 and in anticipation of actual withdrawal, that PTA and the NTS Governance Board will agree the process and terms of disengagement.

27. Consequences of termination

- (a) Each Party's rights and remedies that accrued under this Agreement prior to the termination of this Agreement will survive termination.
- (b) If a Party withdraws from this Agreement in accordance with clause 25.3, then all rights and remedies that accrued under this Agreement prior to that withdrawal will survive that withdrawal.
- (c) Each Party agrees that the acknowledgement in clause 9.3(h) is relevant if a Party withdraws from this Agreement.
- (d) Clauses 7.4, 13.1, 14, 16(e), 17, 22, 23, 25, 26, 27 and 28 will survive termination of this Agreement or the withdrawal of any Party.
- (e) Clause 21 will survive termination of this Agreement or the withdrawal of any Party but only for eighteen (18) months following the termination of this Agreement.

28. General

28.1 Notices

- (a) Any written notice required under this Agreement must be signed by a duly authorised representative of the Party giving that notice and will be deemed to be validly given if:
 - (i) delivered by hand to the intended recipient's physical address as set out in Schedule 4 – Notices, as that address may be unilaterally changed from time to time by written notice from the recipient to all Parties; or
 - (ii) sent by email to the intended recipient's email address as set out in Schedule 4 - Notices, as that address may be unilaterally changed from time to time by written notice from the recipient to all Parties.
- (b) Any notice transmitted by email or delivered after 5.00pm on a Working Day, or at any time on a non-Working Day, will be deemed received at 9.00am on the next Working Day (being, in each case, the time of day at the intended place of receipt of that notice).

- (c) If a notice applies only in respect of a Statement of Work, a notice may be given only to the other Party to that Statement of Work.
- (d) Unless this Agreement states otherwise, a notice given under this Agreement must be given to all Parties at the same time.

28.2 Assignment, novation

Subject to clause 25.4, no Party may assign, novate, transfer or otherwise dispose of the whole or any part of its rights and/or obligations under this Agreement without first obtaining the consent of the NTS Governance Board.

28.3 Variation

Unless expressly stated otherwise in this Agreement, this Agreement may be varied only by agreement in writing signed by all the Parties.

28.4 Costs

Each Party will bear its own costs and expenses in connection with the negotiation, preparation, implementation, maintenance and review of this Agreement.

28.5 Privity of contract

Except as expressly stated otherwise, nothing in this Agreement will confer a benefit or any enforceable rights upon any party who is not a Party to this Agreement. No consent is required for any variation to this Agreement from any party who is not a Party to the Agreement.

28.6 Relationship of the parties

Nothing expressed or implied in this Agreement will require a party to abandon its own interests, create any fiduciary relationship, or be deemed to constitute any Party as a partner, joint venturer, employer/employee or (except as specified otherwise in this Agreement) agent of another Party.

28.7 Waiver

- (a) No Party will be deemed to have waived any right under this Agreement unless the waiver is in writing and signed by the Party giving the waiver.
- (b) Any failure or delay by a Party to exercise any right or power under this Agreement will not operate as a waiver of that right or power.
- (c) Any waiver by a Party of any breach, or failure to exercise any right, under this Agreement will not constitute a waiver of any subsequent breach or continuing right.

28.8 Remedies cumulative

Except as is expressly stated otherwise in this Agreement:

- (a) the rights, powers and remedies provided in this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law or under this Agreement; and
- (b) the exercise of any rights, powers and remedies provided in this Agreement will not prejudice the exercise of any other right, power or remedy under this Agreement or existing at law.

28.9 Entire agreement

This Agreement is the entire agreement between the Parties and supersedes all and any communications, negotiations, arrangements and agreements, whether oral or written, between the Parties in respect of the matters that are the subject of this Agreement.

28.10 Governing law and jurisdiction

This Agreement is governed by the laws of New Zealand. Without limiting clause 22, the Parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.

28.11 Partial Invalidity

If any provision of this Agreement is or becomes invalid or unenforceable, that provision will be deemed modified to the minimum extent necessary to render that provision valid and enforceable or, if the Parties cannot agree (each acting reasonably) to such modification, will be deleted from this Agreement. The invalidity or unenforceability of that provision will not affect the other provisions of this Agreement, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

28.12 Counterparts

This Agreement may be executed in any number of counterparts, all of which, when taken together and each party has a signed copy from each other Party, shall constitute one and the same instrument.


28.13 Execution by a Party

By executing this Agreement, each Party warrants that it has obtained all necessary approvals to fully perform its obligations under this Agreement.

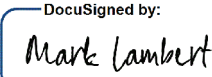
Signing page

EXECUTED as an agreement


Signed for and on behalf of
**WAKA KOTAHI NEW ZEALAND TRANSPORT
AGENCY** by:

DocuSigned by:

9E8750C96A14457...
Signature of authorised signatory
Nicole Rosie
Name of authorised signatory
Chief Executive Waka Kotahi -New Zealand Transport Agency
Title
07 October 2022
Date


Signed for and on behalf of
AUCKLAND TRANSPORT by:

DocuSigned by:

8BB089628CFC452...
Signature of authorised signatory
Mark Lambert
Name of authorised signatory
Interim Chief Executive
Title
14 October 2022
Date

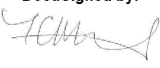
Signed for and on behalf of
CANTERBURY REGIONAL COUNCIL by:

DocuSigned by:

0BF5A7EDE4D5453...
Signature of authorised signatory
Stefanie Rixecker
Name of authorised signatory
Chief Executive
Title
06 October 2022
Date


Signed for and on behalf of
WELLINGTON REGIONAL COUNCIL by:

DocuSigned by:

4A26E6ED6F074F4...
Signature of authorised signatory
Nigel Corry
Name of authorised signatory
Chief Executive
Title
06 October 2022
Date

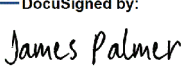
Signed for and on behalf of
BAY OF PLENTY REGIONAL COUNCIL by:

DocuSigned by:

ED8C78631C86475...
Signature of authorised signatory
Fiona McTavish
Name of authorised signatory
Chief Executive
Title
14 October 2022
Date

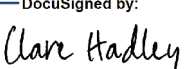
Signed for and on behalf of
GISBORNE DISTRICT COUNCIL by:

DocuSigned by:

EC53B071860C452...
Signature of authorised signatory
Nedine Thatcher Swann
Name of authorised signatory
Chief Executive
Title
12 October 2022
Date


Signed for and on behalf of
HAWKE'S BAY REGIONAL COUNCIL by:

DocuSigned by:

BAEB37F7C355463...
Signature of authorised signatory
James Palmer
Name of authorised signatory
Chief Executive
Title
07 October 2022
Date


Signed for and on behalf of
INVERCARGILL CITY COUNCIL by:

DocuSigned by:

F9B39CBD9E77408...
Signature of authorised signatory
Clare Hadley
Name of authorised signatory
Chief Executive
Title
07 October 2022
Date

Signed for and on behalf of
MANAWATU-WANGANUI REGIONAL COUNCIL
by:

DocuSigned by:

CE3F08CC58674BC...
Signature of authorised signatory
Michael McCartney
Name of authorised signatory
Chief Executive Officer
Title
06 October 2022
Date

Signed for and on behalf of
NELSON CITY COUNCIL by:

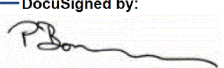
DocuSigned by:

5141FAADA012429...
Signature of authorised signatory
Pat Dougherty
Name of authorised signatory
Chief Executive
Title
06 October 2022
Date

Signed for and on behalf of
NORTHLAND REGIONAL COUNCIL by:


DocuSigned by:

1154A2A9632E439...
Signature of authorised signatory
Victoria Harwood
Name of authorised signatory
Group Manager Community Resilience
Title
07 October 2022
Date

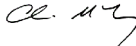
Signed for and on behalf of
OTAGO REGIONAL COUNCIL by:

DocuSigned by:

2464FD09E80B4EF...
Signature of authorised signatory
Pim Borren
Name of authorised signatory
Dr
Title
06 October 2022
Date

Signed for and on behalf of
TARANAKI REGIONAL COUNCIL by:

DocuSigned by:

F8CC029F4264488...
Signature of authorised signatory
Steve Ruru
Name of authorised signatory
Chief Executive
Title
07 October 2022
Date

Signed for and on behalf of
WAIKATO REGIONAL COUNCIL by:

DocuSigned by:

B1AFF0CE381244A...
Signature of authorised signatory
Chris McLay
Name of authorised signatory
Chief Executive
Title
12 October 2022
Date

Schedule 1 - Definitions and interpretation

1. Definitions

- 1.1 Unless the context requires otherwise, defined terms in this Agreement have the following meanings:

3 Year Plan means a plan that is longer-term than the Annual Budget and Plan and is based on a rolling three-year cycle, which is approved by the NTS Governance Board.

Access Customer means a customer that is challenged to access public transport (or the relevant authorised service) either because of a disability, poverty, lower socio-economic status, language barrier or other reason.

Agreement means this National Ticketing Solution Participation Agreement, its attached schedules, the Operating Model, Communications Protocol, the NTS Governance Board's Terms of Reference, NTS Services Catalogue, NTS Rules and each Statement of Work.

Annual Budget and Plan means the annual budget and plan for a Financial Year, which is approved by the NTS Governance Board.

Common Repository means the common repository that stores or is to store the documents and artefacts, as the documents and artefacts are agreed by the NTS Governance Board from time to time.

Communications Protocol means the communications protocol for the NTS, as approved by the NTS Governance Board from time to time.

Conceptual Roadmap means the conceptual roadmap approved by the NTS Steering Group or NTS Governance Board (as applicable) from time to time.

Confidential Information means:

- (a) all information which is marked as, or ought reasonably considered to be, confidential;
- (b) all information and trade secrets already communicated or subsequently communicated under or in connection with this Agreement, including information obtained during the negotiation of this Agreement or any MSA or in the performance of this Agreement or any MSA;
- (c) any information about the business or property of a Party or its Personnel, including any information:
 - (i) relating to the financial position of that Party and/or its Personnel;
 - (ii) concerning that Party's suppliers and/or customers; or
 - (iii) relating to that Party and/or its Personnel's internal management, structures, their respective Personnel or strategies;
- (d) any personal information (as defined in the Privacy Act) Processed under or in relation to this Agreement; and
- (e) confidential information provided by or made available by or on behalf of a Party, a Customer, or a third party provider contracted by Waka Kotahi, in each case, in relation to the NTS.

Customer means an end user customer or potential customer who uses the NTS and includes a passenger but does not include a TSO or TO.

Detailed Business Case means the shared detailed business case relating to the NTS, as initially signed off by the NTS Steering Group and Waka Kotahi, and as may be amended from time to time by a unanimous decision of the NTS Governance Board.

Equipment means the equipment that Waka Kotahi procures from the relevant NTS Service Provider and that is stated in a Statement of Work to be provided to a PTA.

Fare Revenue means the revenue paid or payable (which may be zero) by a Customer for the public transport or other authorised service, and includes any fare revenue for inter-region travel.

Financial Year means Waka Kotahi's financial year, which at the date of this Agreement is 1 July to 30 June.

Funding Model means the most recent funding principles that are endorsed by a unanimous decision of the NTS Governance Board (and not by a majority vote) and approved by Waka Kotahi (in its capacity as administrator of the NLTF and not under this Agreement) from time to time, where the initial principles are as set out in Schedule 5.

GST Act means the *Goods and Services Tax Act 1985*.

HSW Act means the *Health and Safety at Work Act 2015*.

Initial MSA means each of:

- (a) the TSMSA; and
- (b) each agreement that is executed for the purposes of the NTS between Waka Kotahi and:
 - (i) the transit card program manager;
 - (ii) the merchant acquirer; and
 - (iii) the retail network manager.

Intellectual Property means all rights to and any interests in any patent, design, trademark, copyright, know-how, trade secret, confidential information and any other proprietary right or other form of intellectual property (whether protected or protectable by registration or not).

LTMA Approval means an approval of funding under section 20 of the *Land Transport Management Act 2003*.

Loss means any loss, cost, expense, damage or claim.

Mobility and Payments Chief Executives Group means the group of that name (or any other name that the group decides), comprising the chief executives of Waka Kotahi, AT, GWRC, ECan and a single chief executive representative acting on behalf of the other PTAs to this Agreement.

MSA means:

- (a) the Initial MSAs; and
- (b) any agreement that Waka Kotahi enters into (or proposes to enter into) with a goods and/or services provider after the date of this Agreement, where the subject matter of the agreement is, or would have the effect of being, a Reserved Matter.

NLTF means the National Land Transport Fund.

NTS means the national ticketing solution that processes or is to process payments for journeys on public transport and other authorised services in New Zealand, as described in, and elaborated in accordance with, the MSAs.

NTS Data means:

- (a) all data and information created by or Processed through the NTS; and
- (b) any data that is updated or modified in the NTS by the NTS, a Party, a TSO, TO, a Customer, an NTS Service Provider, and/or a concession provider,

but excludes

- (c) any NTS Data which is not retained or which is deleted, in each case, as described in the data retention policy for the NTS that forms part of the Operating Model.

NTS Governance Board means the governance board for the NTS described in clause 6.4, as that board may exist or be re-named from time to time.

NTS Governance Board's Terms of Reference means the most recent terms of reference for the NTS Governance Board, as initially signed off by the group known as the Mobility and Payments Governance Group, and subsequently as may be amended from time to time by the consensus decision (and not a majority vote) of the Mobility and Payments Chief Executives Group.

NTS Rules means:

- (a) each rule that is defined by Waka Kotahi (in its role as Scheme Operator) and unanimously approved by the NTS Steering Group or NTS Governance Board from time to time; and
- (b) any Scheme Rule that Waka Kotahi (in its role as Scheme Operator) recommends to the NTS Steering Group or NTS Governance Board be included or addressed as an NTS Rule.

NTS Service means:

- (a) Third Party Services; and
- (b) the SSO Services.

NTS Services Catalogue means the services catalogue for the NTS that applies to this Agreement, as initially signed off by the NTS Steering Group and may be amended subsequently from time to time by the NTS Governance Board.

NTS Service Provider means a service provider who, at the relevant time, is contracted with Waka Kotahi in relation to the NTS for an MSA.

NTS Steering Group means the steering group for the NTS that existed immediately prior to the formation of the NTS Governance Board.

Objectives means the objectives of the NTS, as set out in clause 5.

Operational Services means the services described in the NTS Services Catalogue as operational services.

Operations Commencement Date means the date stated as the 'go live' date in the relevant Statement of Work between Waka Kotahi and a PTA under this Agreement for the relevant mode of transport, as that date may be amended by those two parties.

Operating Model means the most recent operating model for the NTS and Parties to this Agreement, as initially signed off by the NTS Steering Group and may be amended subsequently from time to time by a unanimous decision of the NTS Governance Board.

PCBU has the meaning set out in the HSW Act.

PCIDSS means the Payment Card Industry Data Security Standard.

Personnel includes any employee, subcontractor, key personnel, agent, officer, director, partner, principal, agent, officer and independent contractor representative.

Privacy Act means the *Privacy Act 2020*.

Process in relation to information (including data), means an operation or set of operations which is performed on information, or on sets of information, including:

- (a) collection, recording, organisation, structuring or storage;
- (b) adaptation or alteration;
- (c) retrieval, consultation or use;
- (d) disclosure by transmission, dissemination or otherwise making available;
- (e) alignment or combination; or
- (f) restriction, erasure or destruction,

and other grammatical forms of "Process" will be interpreted accordingly.

PTA or Public Transport Authority means each party to this Agreement, excluding Waka Kotahi.

PTA's Region means the geographic region or district for which, under statute or regulation, the relevant PTA is responsible for public transport.

Regional Focus has the meaning set out in clause 4.

Reserved Matters means the initial reserved matters listed in Schedule 3, as may be amended from time to time by the unanimous decision of the NTS Governance Board.

Scheme Operator means the scheme operator for the NTS, as described in clause 2.2.

Scheme Rules mean the relevant card scheme rules for each of Visa, Mastercard, UnionPay International and American Express.

SSO means the shared services organisation, currently known as the TTP, which is appointed and engaged by Waka Kotahi to operate and manage the NTS including the function of Scheme Operator, and may change from time to time.

SSO Services means services that are specified in the NTS Services Catalogue to be provided by Waka Kotahi directly to a PTA in Waka Kotahi's own right, but excludes services first provided to Waka Kotahi under an MSA.

Statement of Work means a statement of work executed by Waka Kotahi and a PTA, which states that it is incorporated into this Agreement.

Third Party Services means services that are provided or to be provided to Waka Kotahi by a NTS Service Provider or under any other agreement with a third party, in each case, as specified in the NTS Services Catalogue.

TO means a transport operator contracted to a TSO, who operates or is to operate a transport service for the TSO.

Transit Payment Guidelines means the document titled "New Zealand Transit Payment Guidelines", dated 12 June 2018, as amended from time to time in accordance with its terms.

Transition Planning SOW means a Statement of Work for a PTA's transition planning under this Agreement.

Transition Planning SOW Template means the template set out in Common Repository.

Transition SOW means a Statement of Work for a PTA's transition under this Agreement, which will include the obligations to be performed by each of that PTA and Waka Kotahi, identifying, if relevant, any Third Party Services and SSO Services.

Transition SOW Template means the template set out in the Common Repository.

TSMSA means the ticketing solution master services agreement that is executed between the TSP and Waka Kotahi.

TTP means the transport ticketing and payments team, which is appointed by Waka Kotahi from time to time, to perform Waka Kotahi's obligations as the SSO and Scheme Operator in relation to the NTS (as that team may be known by any other name).

TSO means a transport service owner, which includes the PTA and a TO who owns and operates its own transport service.

TSP means the ticketing solution provider who is party to the TSMSA.

Working Day means any day excluding Saturdays, Sundays and statutory public holidays in Wellington, New Zealand and excluding any day in the period beginning on 25 December in any year and ending on 10 January in the following year.

2. Interpretation

Unless the context requires otherwise:

- (a) headings are not to be used in the interpretation of this Agreement;
- (b) a reference to the singular includes a reference to the plural and vice versa;
- (c) a reference to a law or regulation is to that law or regulation as modified or substituted from time to time;
- (d) a reference to a document is to that document as modified or replaced from time to time;
- (e) a reference to "includes" means "includes without limitation" and other grammatical forms of "includes" will be interpreted accordingly;

- (f) a reference to a Party includes its assigns and successors;
- (g) any monetary amount in this Agreement is stated in New Zealand dollars before the addition of GST; and
- (h) any reference to time in this Agreement is reference to New Zealand time as adjusted for daylight savings.

3. Priority

In the event of any conflict between any of the documents comprising this Agreement, a document listed higher will take priority over a lower listed document to the extent of that conflict:

- (a) each PTA's executed Transition SOW;
- (b) each PTA's executed Transition Planning SOW;
- (c) the general terms of this Agreement;
- (d) NTS Rules;
- (e) Operating Model;
- (f) NTS Services Catalogue; and
- (g) Communications Protocol.

Schedule 2 – Documents held in Common Repository

The following documents will be held in the Common Repository:

- (a) Operating Model;
- (b) Communications Protocol;
- (c) diagram of the governance arrangements;
- (d) NTS Governance Board Terms of Reference;
- (e) Funding Model (as approved by Waka Kotahi);
- (f) Detailed Business Case;
- (g) NTS Participation Agreement;
- (h) the Transit Payment Guidelines;
- (i) the MSAs, including the requirements set out in the Service Catalogue to the TSMSA;
- (j) the Transition Planning SOW Template; and
- (k) the Transition SOW Template.

Schedule 3 – Reserved Matters

The following comprise the initial Reserved Matters, which are to be decided or recommended by the NTS Governance Board:

- (a) any material impact on a significant group of Customers;
- (b) any impact on a PTA's TSO, which is an exception to the Operating Model, or a Statement of Work to which that PTA is a party;
- (c) any material impact on a Party's operations or systems;
- (d) any material impact on Fare Revenue and fund flows;
- (e) the adoption of or change to each Annual Budget and Plan, the Communications Protocol and/or the Operating Model;
- (f) a material change to the NTS (e.g. technology upgrades) which is an exception to the Annual Budget and Plan;
- (g) any material variation to an MSA, which includes any variation to the requirements of a MSA, as "requirements" are defined in that MSA;
- (h) any matter specified in an Annual Budget and Plan to be a Reserved Matter;
- (i) any matter specified in the Operating Model and/or the Communications Protocol to be a Reserved Matter;
- (j) any other matter that Waka Kotahi considers appropriate;
- (k) any change to Waka Kotahi being the single contracting point of contact and accountability in relationships with the NTS Service Providers and conduit of NTS Services to PTAs;
- (l) the timing of service commencement for the NTS (i.e. the Go Live date, which may vary depending on how transition occurs);
- (m) any change to the timing of a PTA transitioning onto the NTS (i.e. a change to the Conceptual Roadmap);
- (n) any step to end the operation of the NTS;
- (o) any step to develop, expand or apply the NTS into or for other transport-related services;
- (p) any step to change the control of the TTP; and
- (q) allowing any party who is not a PTA to access/use the NTS otherwise than in accordance with the prior agreed approach,

as each matter relates to this Agreement.

Schedule 4 – Notices

Waka Kotahi:

By hand:

if to Waka Kotahi, to:

Waka Kotahi New Zealand Transport Agency

50 Victoria Street

Wellington 6141

Attention: Charles Ronaldson

By email:

Charles.Ronaldson@nzta.govt.nz

AT:

By hand:

if to AT, to:

Auckland Transport

20 The Viaduct Harbour

Auckland Central

Attention: Mark Lambert

By email:

mark.lambert@at.govt.nz

cc: roger.jones@at.govt.nz

ECan:

By hand:

if to ECan, to:

Environment Canterbury

200 Tuam Street

Christchurch

Attention: Stewart Gibbon

By email:

Stewart.gibbon@ecan.govt.nz

GWRC:

By hand:

if to GWRC, to:

Greater Wellington Regional Council

Shed 39, Fryatt Quay

Pipitea, Wellington

Attention: (Acting) Manager, Legal and Procurement

By email:

samantha.gain@gw.govt.nz

**Bay of Plenty
Regional Council:**

By hand:

if to Bay of Plenty Regional Council, to:

Bay of Plenty Regional Council

Regional House

1 Elizabeth Street

Tauranga, 3110

Attention: Mat Taylor

By email:

Mat.Taylor@boprc.govt.nz

Gisborne District Council:

if to Gisborne District Council, to:

By hand: Gisborne District Council
Awarua
15 Fitzherbert Street
Gisborne, 4010

By email: John.Tamoua@gdc.govt.nz

Hawke's Bay Regional Council:

if to Hawke's Bay Regional Council, to:

By hand: Hawke's Bay Regional Council
159 Dalton Street
Napier, 4110
Attention: Katie Nimon

By email: katie.nimon@hbrc.govt.nz

Invercargill City Council:

if to Invercargill City Council, to:

By hand: Invercargill City Council
101 Esk Street
Invercargill, 9810
Attention: Russell Pearson

By email: Russell.pearson@icc.govt.nz

Horizons Regional Council:

if to Horizons Regional Council, to:

By hand: Manawatu-Wanganui Regional Council
11-15 Victoria Avenue
Palmerston North, 4410
Attention: Ged Shirley

By email: Ged.Shirley@horizons.govt.nz

Nelson City Council:

if to Nelson City Council, to:

By hand: Nelson City Council
Civic House
110 Trafalgar Street
Nelson, 7040
Attention: Jane McLeod

By email: marg.parfitt@ncc.govt.nz

Northland Regional Council:

if to Northland Regional Council, to:

By hand: Northland Regional Council
36 Water Street
Whangarei, 0110
Attention: Chris Powell

By email: chrisp@nta.govt.nz

Otago Regional Council:

if to Otago Regional Council, to:

By hand: Otago Regional Council
70 Stafford Street
Dunedin, 9054
Attention: Nick Donnelly

By email: Nick.donnelly@orc.govt.nz

Taranaki Regional Council:

if to Taranaki Regional Council, to:

By hand: Taranaki Regional Council
47 Cloten Road
Stratford
Attention: Mike Nield

By email: Mike.Nield@trc.govt.nz

Waikato Regional Council:

if to Waikato Regional Council, to:

By hand: Waikato Regional Council
401 Grey Street
Hamilton East
Hamilton
Attention: Mark Tamura

By email: Mark.Tamura@waikatoregion.govt.nz

Schedule 5 – Funding Model

The Funding Model describes who funds which costs of the NTS implementation, transition, and operation.

Waka Kotahi will provide the bulk of the funding for the implementation and ongoing operation of the NTS through funding allocated from the NLTF. The key funding principles are that:

- There is no intention for cross charging or pass-through invoicing – the funding model is premised on simplicity.
- The annual planning and budgeting process is aligned to the NLTF.
- Each PTA will be responsible for their local costs (including transition) via normal FAR arrangements.
- There are a set of processes to manage spend within the SSO including an agreed framework that SSO will operate within. Anything outside this will be subject to approvals.
- There will be constraints driven by the way engagement with suppliers is set up and managed.

The funding of costs under the funding model is summarised in the table below.

Costs	Capex	Opex
PTA local ticketing costs Staff, contact centres local networks, phase out of existing systems, transition, local integration	Normal FAR	Normal FAR
Ticketing solution provider costs Hardware costs, design, build, test, implementation costs with supplier, Contracted 3 rd party front & back-office costs	Fully funded by Waka Kotahi	Fully funded by Waka Kotahi
Financial services costs Payment gateways, merchant acquirers, retail networks	Fully funded by Waka Kotahi	Fully funded by Waka Kotahi
Shared services / SSO	Fully funded by Waka Kotahi	Fully funded by Waka Kotahi

Funding will be applied as follows:

Waka Kotahi will fully fund the following capital, establishment, and operating costs:

- software and licences
- equipment (both back office and front office)
- compliance and certification
- design build & test
- merchant acquirer set up and operating costs (if any)
- transit card set up and programme manager operating costs
- retail manager set up and retail network operating costs
- SSO set up and operating costs.

Each PTA will fund:

- maintenance of its front office equipment
- ticketing solution costs for frontline service customer support
- transition costs of moving to the NTS
- closure of their existing system.

Each PTA will receive its normal FAR for the costs that it will fund.

Schedule 6 – Transition Revenue Loss

Waka Kotahi, as funder of the NTS, will provide cover for loss of revenue suffered by a PTA (“**Revenue Loss**”) and costs of providing customer services (“**Customer Service Costs**”) (in each case, from the NLTF - PT Activity Class) for each PTA for the period immediately after that PTA’s transition on to the NTS, but only as follows.

Revenue Loss

- (a) In respect of Revenue Loss, Waka Kotahi will provide cover only to the extent that the loss is as a direct result of:
 - (i) the transition activity causing issues under the Operations SOW under this Agreement and/or the corresponding statement of work for operations under the TSMSA; and
 - (ii) underperformance of the NTS,meaning that, after the Operations Commencement Date, the NTS does not enable the collection, settlement and allocation of fares that would otherwise be due to that PTA, within a reasonable time, for Customer journeys on that PTA’s public transport service.
- (b) Revenue Loss will be calculated as follows:
 - (i) Where the actual number of passengers has been recorded by public transport operators for the relevant period, the Revenue Loss will be:

that actual number of passengers recorded on each route multiplied by the fare that should have been charged for that route

\$

less revenue received for passengers on those routes in that period

\$

= Subsidy claimable from Waka Kotahi

\$
 - (ii) Where the actual number of passengers has not been recorded by public transport operators for the relevant period, the Revenue Loss will be:

historic baseline revenue on the route (PT Service)

\$

less revenue received on the route in that period

\$

= Subsidy claimable from Waka Kotahi

\$
- (c) When considering historic baseline revenue on the route for the purpose of calculating Revenue Loss (where the number of passenger journeys has not been collected accurately for the relevant period), cognisance will be given to the time of year, average passenger loadings applicable in the previous 14 days and the same period of the year in previous years and any other factor which may have caused anomalously reduced passenger levels in previous years (including, for example, a pandemic), to assess what a ‘normal’ baseline would be.

Customer Service Costs

- (d) In respect of Customer Service Costs, Waka Kotahi will provide cover for the cost to that PTA for any reasonable additional customer service costs, including advertising costs and the additional cost of any staff member engaged by the PTA (above that PTA’s normal number) to attend to a material increase in Customer queries, as a direct result of:
 - (i) the transition activity causing issues under the Operations SOW under this Agreement and/or the corresponding statement of work for operations under the TSMSA; and
 - (ii) underperformance of the NTS,

but only as it relates to Revenue Loss, as defined above.

- (e) Any calculation of Revenue Loss and Customer Service Costs will apply from Limited Go Live, as defined in the relevant PTA's Transition SOW or (if no Limited Go Live Date is defined in that SOW) the Operations Commencement Date.
- (f) Waka Kotahi will not be required to pay, and this schedule does not entitle the PTA to claim for, any Customer acquisition costs, marketing costs, gratis/goodwill payments to a Customer, loss of Customers or inability to grow Customer patronage.
- (g) Claims for Revenue Loss and Customer Service Costs will be submitted by the PTA for approval by Waka Kotahi on a monthly basis and paid once agreed. Any disputes will be dealt with as outlined in this Agreement.
- (h) Waka Kotahi may set off any amount paid to a PTA under this Schedule against any fares that are held by Waka Kotahi at a later time for a journey that is subject to a claim and would otherwise be allocated to that PTA.
- (i) Once the NTS collects, settles and allocates fares as required under the Operations SOW under the P2 Agreement for that PTA, for all modes of that PTA's public transport and for integration of fares across those modes, then this Schedule will not apply to any subsequent event or circumstance that may affect a PTA, including the PTA's receipt or allocation of fare revenue and/or the operation of the NTS.