

Schedule 24: WTOC Arrangements

Part 1 – Entry into Service Level Agreement

1. Definitions

In addition to the definitions set out in clause 1 (Definitions) of the Base Agreement:

Car Park means one secure car park at the WTOC in a location to be advised from the Transport Agency from time to time;

Contractor Assets means all plant, equipment, hardware, fittings, fixtures and chattels necessary for the Contractor to undertake the Operational Services brought onto or installed in the Premises by the Contractor, including the Contractor's Network Communications but excluding the WTOC's ICT System;

Licence Fee means \$ [REDACTED] per annum;

Operations Centre means the Contractor's physical operations centre from which the Contractor will operate and monitor the TG Roads using the Contractor's ITS Devices and the WTOC's ICT System, but not including the Contractor's service depot or administrative offices;

Overnight Shift means the overnight shift between 7pm and 6am, during weekdays and weekends; and

Premises means sufficient space within the WTOC for one controller and a desk for one administrator, and the Car Park, to be identified on a plan appended to the Service Level Agreement.

2. Service Level Agreement

2.1 Acknowledgement of deferred agreement

- (a) The Contractor's Proposal included a request that the Operations Centre be located alongside the Transport Agency at the WTOC. The Transport Agency has accepted this proposal subject to the Transport Agency and the Contractor entering into a Service Level Agreement in respect of this arrangement.
- (b) Due to the operational nature of the Service Level Agreement and the time period between Financial Close and the Planned Service Commencement Date, the parties are unable to finalise the detail required for the Service Level Agreement prior to Financial Close and have agreed to enter into the Service Level Agreement closer to the Planned Service Commencement Date.

2.2 Purpose of Service Level Agreement

The purpose of the Service Level Agreement is:

- (a) to agree the terms on which the Contractor will access and use the Premises to provide the Operational Services, including in respect of licensing, security, shared space and equipment;

- (b) to agree the terms on which the Contractor will access and use the WTOC's ICT System;
- (c) to set out the operational interface between the Transport Agency and the Contractor, including in respect of communication, integration with the wider Wellington roading network, interface with Emergency Services and contingency and business continuity arrangements, in accordance with Schedule 12 (Service Requirements); and
- (d) to set out the arrangement between the parties as to the performance of the WTOC Functions,

subject, in each case, to paragraph 4 and the provisions of this Schedule 24.

2.3 Content of Service Level Agreement

- (a) Subject to paragraph 2.3(b), the Service Level Agreement must include:
 - (i) the provisions set out in this Part 1 (to the extent applicable); and
 - (ii) the provisions set out in Part 2; and
 - (iii) subject to this Schedule 24, standard provisions that are consistent with the equivalent clauses of the Base Agreement,

and must not include any provisions that are inconsistent with the requirements of this Schedule 24, except as otherwise agreed by the parties.
- (b) Where the Transport Agency and the Contractor agree an alternative location under paragraphs 6.1 or 6.2, the parties will proceed to agree and enter into the Service Level Agreement as contemplated by this Schedule 24, except to the extent required to reflect the alternative location.

3. Entry into Service Level Agreement

3.1 Early notice of location

- (a) The Transport Agency will, at least 36 months prior to the Planned Service Commencement Date, give notice to the Contractor that:
 - (i) the Transport Agency will permit the Contractor to locate its Operations Centre at the WTOC, in which case the parties will proceed to agree and enter into the Service Level Agreement as contemplated by this Schedule 24; or
 - (ii) the Transport Agency is unable to permit the Contractor to locate its Operations Centre at the WTOC, in which case paragraph 6 will apply.
- (b) The Transport Agency must notify the Contractor as soon as reasonably practicable if, following notice given by the Transport Agency under paragraph 3.1(a)(i), the Transport Agency is unable to permit the Contractor to locate its Operations Centre at the WTOC, in which case paragraph 6 will apply.

3.2 Entry into Service Level Agreement

- (a) The Contractor must, no later than 30 months prior to the Planned Service Commencement Date, provide to the Transport Agency a draft Service Level Agreement, in accordance with this Schedule 24.

- (b) Subject to paragraphs 4 and 5, the parties will, at least 24 months prior to the Planned Service Commencement Date, agree and enter into the Service Level Agreement in accordance with this Schedule 24.

3.3 Prior to commencement of Service Level Agreement

- (a) Subject to paragraph 3.3(b), the parties agree that:
- (i) prior to the execution of a Service Level Agreement:
 - (A) the parties' rights and obligations in relation to the Contractor's access to, and use of, the WTOC will be governed by this Schedule 24, provided that the provisions set out in Part 2 of this Schedule 24 will not have any effect and will not be enforceable by either party; and
 - (B) the Contractor will not, unless otherwise permitted by the Transport Agency or this Schedule 24, have access to the WTOC; and
 - (ii) on and from execution of the Service Level Agreement, the terms of this Schedule 24 will no longer apply and the parties' rights and obligations in relation to the Contractor's access to, and use of the Premises will be as set out in the Service Level Agreement.
- (b) Notwithstanding paragraph 3.3(a) and subject to paragraph 6, where the parties have not entered into a Service Level Agreement by the date at which the Contractor reasonably requires access to, and use of, the WTOC to comply with its obligations under this Agreement (such date to be no earlier than 12 months prior to the Planned Service Commencement Date), Part 2 of this Schedule 24 will apply until such time as the parties execute the Service Level Agreement, in which case paragraph 3.3(a)(ii) will apply.

3.4 Information on WTOC's ICT System

At the request of the Contractor, the Transport Agency will, as soon as reasonably practicable following such a request but no earlier than 36 months prior to the Planned Service Commencement Date, provide to the Contractor all relevant specifications with respect to the WTOC's ICT System (including any updates, upgrades, replacements or other changes that are expected to occur prior to the Planned Service Commencement Date), to the extent that the Contractor requires such specifications for the purpose of complying with its obligations under this Agreement.

4. No effect on Agreement

4.1 No effect on Agreement

The parties agree that, unless expressly agreed in writing, nothing in the Service Level Agreement will affect the parties' rights or the obligations under this Agreement.

4.2 No transfer of liability

Except as otherwise provided in this Agreement, the Transport Agency will not be liable under the Service Level Agreement to the Contractor for any Charges, Deductions, SFPs or other liabilities incurred by the Contractor, including as a result of any arrangement under which WTOC Personnel perform the WTOC Functions. For the avoidance of doubt, the Transport Agency will not enter into the Service Level Agreement where such entry would, or is likely to, result in an increased level of liability than that accepted by the Transport Agency under this Agreement.

5. Failure to agree Service Level Agreement

If the parties:

- (a) have not agreed and entered into the Service Level Agreement in accordance with this Schedule 24 at least 24 months prior to the Planned Service Commencement Date; or
- (b) consider that they are unlikely to agree and enter into the Service Level Agreement in accordance with this Schedule 24 at least 24 months prior to the Planned Service Commencement Date,

the parties will refer outstanding matters to the Disputes Panel in accordance with Part 21 (Dispute resolution) of the Base Agreement and the content of the Service Level Agreement will be determined in accordance with such procedures, provided that the Service Level Agreement must be consistent with this Schedule 24, unless otherwise agreed by the parties. The parties agree to negotiate in good faith to resolve the outstanding matters referred to the Disputes Panel in a timely manner and in accordance with this paragraph 5.

6. Alternative location

6.1 Offer of alternative location

- (a) If, at any time, the Transport Agency is unable to permit, or to continue to permit, the Contractor to locate its Operations Centre at the WTOC for any reason (except termination of the Service Level Agreement by the Transport Agency), the Transport Agency must, subject to paragraph 6.2, offer the Contractor an alternative location for its Operations Centre, which must be reasonably suitable for the location of a traffic operations centre.
- (b) If the Contractor accepts the Transport Agency's offer to locate its Operations Centre at an alternative location under paragraph 6.1(a), then:
 - (i) the parties will meet to discuss the alternative location offered by the Transport Agency, the manner in which the Contractor may access and use the alternative location and any ways in which the Contractor can mitigate the effects of locating its Operations Centre at the alternative location; and
 - (ii) the Transport Agency will initiate any change required to this Schedule 24, this Agreement or the Service Level Agreement under Part 12 (Changes) of the Base Agreement.
- (c) If the Contractor does not accept the Transport Agency's offer to locate its Operations Centre at an alternative location under paragraph 6.1(a), then:
 - (i) the parties will meet to discuss the alternative locations available to the Contractor, as appropriate for the location of an operations centre, and any ways in which the Contractor can mitigate the effects or costs of locating (or relocating) its Operations Centre;
 - (ii) the Transport Agency will initiate any change required to this Schedule 24, this Agreement or the Service Level Agreement under Part 12 (Changes) of the Base Agreement; and
 - (iii) the Transport Agency will not, unless otherwise agreed, be liable to pay to the Contractor any compensation in respect of a Change resulting under this paragraph 6.1(c) to the extent that such compensation would exceed the cost of

locating the Operations Centre at the alternative location offered under paragraph 6.1(a).

- (d) Notwithstanding this paragraph 6.1, the Contractor must continue to comply with its obligations under this Agreement and the Service Level Agreement to the extent it is reasonably able to do so (having regard to the Contractor's obligations with respect to business continuity).

6.2 **No access to WTOC or alternative location**

- (a) If, at any time, the Transport Agency is unable to permit, or to continue to permit, the Contractor to locate its Operations Centre at the WTOC for any reason (except termination of the Service Level Agreement by the Transport Agency), and the Transport Agency is unable, for any reason, to offer the Contractor an alternative location under paragraph 6.1, then:
 - (i) the parties will meet to discuss the alternative locations available to the Contractor, which must be reasonably suitable for the location of an operations centre, and any ways in which the Contractor can mitigate the effects or costs of locating its Operations Centre in that location; and
 - (ii) the Transport Agency will initiate any change required to this Schedule 24, this Agreement or the Service Level Agreement under Part 12 (Changes) of the Base Agreement.
- (b) Notwithstanding this paragraph 6.2, the Contractor must continue to comply with its obligations under this Agreement and the Service Level Agreement to the extent it is reasonably able to do so (having regard to the Contractor's obligations with respect to business continuity).

7. **Licence arrangements**

In the event that the Transport Agency is prohibited by Law from granting the licence contemplated by Part 2 of this Schedule 24:

- (a) the parties will meet to discuss the manner in which the Contractor's access rights to the Premises under this Schedule 24 are preserved; and
- (b) the Transport Agency will initiate any change required to this Schedule 24 or the Service Level Agreement under Part 12 (Changes) of the Base Agreement to preserve the Contractor's access rights to the Premises under this Schedule 24.

Part 2 – Content of Service Level Agreement

8. Operations

8.1 Operational protocols

Due to the operational nature of the Service Level Agreement, the parties will agree a process in the Service Level Agreement for the parties to agree and update (as required) operational protocols, including in relation to communication, integration with the wider Wellington roading network, interface with Emergency Services and contingency and business continuity arrangements, in accordance with the Contractor's obligations under the Agreement.

8.2 Innovation

Subject to clause 57 (Intellectual Property) of the Agreement, the Contractor will work collaboratively with the Transport Agency to develop and share:

- (a) new or improved ideas, processes, technology, methods or operational or organisational structures or practices; and
- (b) cost, safety or efficiency improvements in connection with existing ideas, processes, technology, methods or operational or organisational structures or practices,

that will actually or potentially improve efficiency, operational flexibility and/or outcomes in connection with the provision of the Operational Services or the roading sector generally.

9. Use of Premises

9.1 Use of Premises

The Contractor and relevant Contractor Personnel may, on and from the date at which the Contractor reasonably requires access to, and use of, the Premises to comply with its obligations under this Agreement (such date to be no earlier than 12 months prior to the Planned Service Commencement Date or as otherwise agreed with the Transport Agency), access and use the Premises, in accordance with the provisions set out in this Schedule 24, only for the purposes of:

- (a) installation, testing and maintenance of the Contractor Assets;
- (b) operation of the TG Roads, including operation of the WTOC's ICT System and the Contractor's ITS Equipment and maintenance of the Contractor's ITS Network Communications during the Operating Term; and
- (c) interface and co-operation with WTOC Personnel in respect of the operation of the TG Roads, including in respect of the WTOC Functions.

9.2 Alterations and additions to Premises

- (a) The Contractor must not make nor allow to be made any alterations or additions to any part of the Premises without the Transport Agency's prior written consent. The Transport Agency will not unreasonably withhold its approval to any proposed alterations that are necessary for the installation or operation of the Contractor's ITS Solution.

- (b) Clause 11.2 (Ownership of Fixtures and Fitout) of the Agreement will apply to the Contractor Assets, to the extent that the Contractor Assets constitute Fixtures or Fitout (in respect of the WTOC).

9.3 Hours of use

Except in the case of any emergency (including fire, power failure, hazard or potential hazard) and subject to compliance with the reasonable directions of the Transport Agency in the Transport Agency's capacity as the owner of the WTOC (including directions relating to the security of the WTOC and the safety and security of any person authorised to enter the WTOC), the Contractor may use and occupy the Premises at all times.

9.4 Security

- (a) The Contractor acknowledges that the Premises is a secure site. The Transport Agency will issue the Contractor with necessary access cards or keys to enable access to the Premises. The Contractor will then be responsible for ensuring the security of all such access cards and keys. The Contractor must return any such access cards or keys to the Transport Agency at the expiry or earlier termination of the Service Level Agreement.
- (b) The Contractor must comply with the reasonable security requirements of the Transport Agency, including appropriate vetting by the New Zealand Police of any persons under the control of the Contractor who will access the WTOC. For the avoidance of doubt, persons under the control of the Contractor must meet an equivalent standard of security clearance as that held by the Transport Agency's users of the WTOC.

9.5 Conditions of Use

In using the Premises, the Contractor must:

- (a) comply with the Transport Agency's code of conduct (as advised to the Contractor from time to time);
- (b) keep the Premises clean, free and clear from all rubbish to the reasonable satisfaction of the Transport Agency;
- (c) make good any damage to any part of the WTOC caused by the Contractor or persons under the control of the Contractor;
- (d) comply with any notices or orders, which may be given by any competent authority in respect of the WTOC or its use by the Contractor; and
- (e) immediately inform the Transport Agency of any matter that should reasonably be brought to the Transport Agency's attention in respect of the Contractor's access to, or use of, the Premises, including the loss of any access cards or keys.

9.6 Risk

The Contractor acknowledges that:

- (a) without prejudice to the Transport Agency's obligations under HSE Legislation in respect of the Premises, the Contractor and all persons authorised by the Contractor to have access to the Premises and to enter on the WTOC do so at their own risk; and

- (b) without prejudice to the parties' rights or obligations under the Agreement, the Transport Agency will not in any way be responsible for or liable to the Contractor for any loss of or damage to the Premises or the Contractor Assets howsoever sustained or caused and the Transport Agency will not in any way be responsible for or liable for the theft or loss of any of the Contractor Assets, except to the extent that the loss or damage is a direct consequence of an unlawful, wilful, reckless or negligent act or omission of an Indemnified Party.
- (c) the Contractor is solely responsible for the back-up of any content, data and any other files it requires for the performance of its obligations under this Agreement.

9.7 Suitability

- (a) Subject to paragraph 9.7(b):
 - (i) the Transport Agency does not in any way warrant that the Premises are or will remain suitable or adequate for the purposes of the Contractor and to the full extent permitted by Law all warranties as to suitability and adequacy implied by law are expressly negated; and
 - (ii) the Transport Agency will have no responsibility for providing any safety protection or measures to shield or protect the Contractor Assets or the use or operation thereof from potential interference or from fire, explosion, tempest, hazard or potential hazard whether emanating from the Premises (including equipment installed in the Premises) or externally.
- (b) The parties agree that paragraph 9.7(a) does not prejudice or derogate from the parties' rights and obligations under the Agreement (including any relief provided in Schedule 13 (Performance Regime) of the Agreement or the Contractor's rights of access to the Premises under paragraph 9.1(a)) or from the Transport Agency's health and safety obligations under HSE Legislation or otherwise at Law.

9.8 Nuisance and discharges

The Contractor must not commit, permit or suffer on the WTOC any act which may be a nuisance or annoyance to any neighbour and properties during its occupation, except to the extent reasonably required for the Contractor to comply with its obligations under this Agreement or the Service Level Agreement.

9.9 General

- (a) The licence granted to the Contractor under the Service Level Agreement does not create, or purport to create, a lease or a tenancy.
- (b) Any term implied by Law is, to the extent legally permissible, excluded from the licence granted to the Contractor under the Service Level Agreement.

10. Subcontractors

The Transport Agency acknowledges that the Contractor has subcontracted the performance of the Operational Services to the O&M Sub-contractor in accordance with the Agreement. Subject to clause 16 of the Agreement, the Contractor must procure that the Contractor Personnel comply with the Service Level Agreement, to the extent relevant to such personnel.

11. Compliance

- (a) The Contractor must at all times comply with all Laws affecting or relating to the WTOC or to the use or occupation of the WTOC and must also comply with all consents, licences, requisitions, notices or orders made or given by any Authority, local body or other authority in relation to the WTOC of which it has written notice.
- (b) The Transport Agency must procure that WTOC Personnel who perform the WTOC Functions comply with the Contractor's incident response plans as notified to the Transport Agency from time to time.

12. ICT arrangements

12.1 General

The Transport Agency will permit the Contractor:

- (a) to install the Contractor's Network Communications in the Premises;
- (b) to carry out the Configuration of the WTOC's ICT System; and
- (c) to access the WTOC's ICT System for the purpose of operating the TG Roads,

to the extent required to meet the Contractor's obligations under the Agreement and in accordance with this paragraph 12.

12.2 Access to WTOC's ICT System

- (a) The Contractor may only access the WTOC's ICT System for the purposes set out in paragraph 12.1. The Transport Agency is not required to permit the Contractor to access any other elements of the WTOC's ICT System.
- (b) The Contractor's access to, and use of the WTOC's ICT System, is at the Contractor's risk and cost. The Transport Agency makes no representation or warranty of any kind, whether express or implied, at any time:
 - (i) in relation to the suitability or fitness for any given purpose, availability, capacity or performance of the WTOC's ICT System; or
 - (ii) the compatibility of the WTOC's ICT System with the Contractor's ITS Solution,provided that this paragraph 12.3(b) does not prejudice the Contractor's other rights under the Agreement (including to any relief provided in Schedule 13 (Performance Regime) of the Agreement).
- (c) Notwithstanding clause 7.6 of the Agreement, but without prejudice to the Contractor's other rights under the Agreement (including to any relief provided in Schedule 13 (Performance Regime) of the Agreement):
 - (i) the Transport Agency will not be liable to the Contractor, nor will the Contractor be eligible for any relief in respect of its obligations under the Agreement, in respect of the performance or lack of availability of the WTOC's ICT System, or any inability to access or difficulties in accessing the WTOC's ICT System; and

- (ii) the Contractor's use of the WTOC's ICT System will not relieve the Contractor from its obligations under the Agreement.
- (d) Notwithstanding clause 16 of the Agreement, the Contractor must obtain the Transport Agency's consent (acting reasonably) prior to any IT services provider accessing the WTOC's ICT System or carrying out any upgrade, update, replacement or other change to the WTOC's ICT System. The Transport Agency may withhold its consent where it considers, acting reasonably, that the relevant IT services provider does not meet the requirements of clause 16.1(b) of the Agreement.

12.3 Implementation of Contractor's ITS Solution

- (a) The Contractor is responsible, at its cost and in accordance with this clause 12 and the ICT Implementation Plan, for implementing the Contractor's ITS Solution, including providing, procuring and maintaining all equipment, infrastructure and/or links as required to connect the Contractor's ITS Equipment to the WTOC's ICT System.
- (b) The Contractor must ensure that the Contractor's ITS Solution is implemented in a manner, and the WTOC's ICT System used in accordance with a design, that:
 - (i) recognises the importance of, and does not adversely affect, the continued operation of the WTOC's ICT System; and
 - (ii) does not interfere with, or cause interference to, the security, operation or functionality of the WTOC's ICT System or the ability of the Transport Agency to operate the wider roading network,

in accordance with the ICT Implementation Plan. For the avoidance of doubt, the Contractor must obtain the approval of the Transport Agency (not to be unreasonably withheld or delayed) prior to the Contractor connecting to the WTOC's ICT System or making any modifications to the WTOC's ICT System, in accordance with paragraph 12.4.

- (c) The Transport Agency will, at the Contractor's reasonable request, make available appropriately experienced personnel to consult with the Contractor about the installation, configuration testing, commissioning, maintenance, operation, upgrading, modification or replacement of the WTOC's ICT System.

12.4 Contractor modification of WTOC's ICT System

- (a) The Contractor must not implement any upgrade, update, replacement or other modification to the WTOC's ICT System without the prior consent of the Transport Agency (not to be unreasonably withheld or delayed). For the avoidance of doubt, the Transport Agency may withhold its consent to any upgrade, update, replacement or other modification that may adversely affect the security, integrity, functionality or continued operation of the WTOC's ICT System.
- (b) The Contractor must:
 - (i) not, without the prior consent of the Transport Agency, reproduce, translate, reverse-engineer, adapt, vary or modify any software comprised in the WTOC's ICT System;
 - (ii) not insert or permit to be inserted, in any part of the WTOC's ICT System, any programming code or virus which could or has the effect of disabling or otherwise denying the Transport Agency's full use of the WTOC's ICT System at any time; and

- (iii) comply with the Transport Agency's reasonable directions with respect to implementation of any upgrade, update, replacement or other modification to the WTOC's ICT System undertaken by the Contractor in accordance with this Schedule 24 or the Service Level Agreement.

12.5 General responsibilities of Contractor

The Contractor must:

- (a) ensure the integrity and security of the Contractor's ITS Equipment and the Contractor's Network Communications (including all software, services, hardware, data and images);
- (b) exercise all due care in the access to and use of the WTOC's ICT System;
- (c) access and use the WTOC's ICT System only for lawful purposes and in accordance with all applicable Laws;
- (d) ensure that Contractor Personnel that use the WTOC's ICT System are sufficiently trained and only have access to the WTOC's ICT System to the extent required to perform their duties;
- (e) comply with any instructions with respect to accessing and using the WTOC's ICT System notified to the Contractor from time to time, including with respect to the Transport Agency's IT user policies and security procedures;
- (f) not interfere with or interrupt the security, operation or functionality of the WTOC's ICT System, other than as contemplated by the ICT Implementation Plan or as otherwise agreed with the Transport Agency (acting reasonably);
- (g) immediately notify the Transport Agency of any problems or issues that arise in relation to the WTOC's ICT System; and
- (h) take all reasonable steps in accordance with Good Industry Practice (including erecting firewalls, providing protection against viruses and ensuring security of access to the WTOC's ICT System) to minimise the possibility that the integrity and security of the WTOC's ICT System or any part of it is compromised or jeopardised due to the Contractor access to, and use of, the WTOC's ICT System.

12.6 Maintenance and support

- (a) Subject to paragraph 12.6(b):
 - (i) The Transport Agency and/or its suppliers may, from time to time, make the WTOC's ICT System unavailable for certain periods of time in order to conduct repairs to, or maintain, replacement, upgrade and/or inspect of, some or all of the WTOC's ICT System. The Contractor acknowledges and agrees that some or all of the WTOC's ICT System will be unavailable during any period of maintenance and the availability of the WTOC's ICT System will be limited accordingly.
 - (ii) The Contractor must comply with the WTOC's ICT System maintenance, change and upgrade plans and will provide and maintain (at its own cost) sufficient resources (including human resources, technical support, equipment, software, network and other facilities) to enable it to perform its obligations on time and otherwise in accordance with the Agreement.

- (b) The parties agree that paragraph 12.6(a) does not prejudice or derogate from the Contractor's rights or obligations under the Agreement (including to any relief provided under Schedule 13 (Performance Regime) of the Agreement).

12.7 No rights in WTOC's ICT System

Subject to clause 57 (Intellectual Property) of the Agreement, the Contractor will not have any rights in respect of the WTOC's ICT System and must procure that the Transport Agency obtains all rights in respect of any modification to the WTOC's ICT System carried out by the Contractor. Subject to clause 57 (Intellectual Property) of the Agreement, any information, data and images that are stored on or that are required as an input or output from the WTOC's ICT System are the property of the Transport Agency.

12.8 Training

- (a) The Contractor will be responsible for providing all required training to Contractor Personnel in respect of the WTOC's ICT System to the extent required for the performance of the Operational Services.
- (b) The Contractor will be responsible for providing all training required for WTOC Personnel to the extent such personnel are required to perform the WTOC Functions, and must provide all instructions and procedures for WTOC Personnel to perform the WTOC Functions (excluding components of the system that are for Contractor Personnel use only). The dates, times and location of such training will be agreed between the parties, and the training, venue and equipment will be provided at the Contractor's cost.
- (c) Prior to commencing performance of the WTOC Functions, the relevant WTOC Personnel must complete the training provided by the Contractor pursuant to paragraph 12.8(b) to the Contractor's reasonable satisfaction. The Transport Agency must procure that the WTOC Personnel cooperate with the Contractor to meet the Contractor's reasonable training requirements.

12.9 Transport Agency modification of WTOC's ICT System

- (a) The Transport Agency will, prior to implementing any upgrade, update, replacement or other modification to the WTOC's ICT System:
 - (i) notify the Contractor of the upgrade, update, replacement or other modification; and
 - (ii) consult with the Contractor with respect to its plans for the upgrade, update, replacement or other modification to the WTOC's ICT System.
- (b) Subject to paragraph 12.9(c), the Contractor will be responsible for any reconfiguration, upgrade, replacement or other modification required to:
 - (i) the WTOC's ICT System; or
 - (ii) the Contractor's ITS Solution to ensure continued compatibility with the WTOC's ICT System,

to the extent required by the Contractor to comply with its obligations under the Agreement.
- (c) Any upgrade, update, replacement or other modification to the WTOC's ICT System will not constitute a Change for the purposes of Part 12 (Changes) of the Agreement, except where such upgrade, update, replacement or other modification:

- (i) occurs prior to the Service Commencement Date and requires a change to the Contractor's obligations in Schedule 11 (Works Requirements); or
- (ii) occurs on and from the Service Commencement Date, where the outcome of that upgrade, update, replacement or other modification is the incompatibility of the Contractor's ITS Equipment with the WTOC's ICT System and such incompatibility cannot be remedied by re-Configuration,

in which case such upgrade, update, replacement or other modification will be dealt with in accordance with Part 12 (Changes) of the Agreement to the extent it constitutes a Change.

12.10 Confidentiality

- (a) All information, data and images accessed or viewed by the Contractor from the WTOC's ICT System will be treated by the Contractor as Confidential Information.
- (b) The Contractor must comply with the Transport Agency's practices with respect to any request by the New Zealand Police or another third party for the use of, or access to, any information, data and images that are stored on or that are required as an input or output from the WTOC's ICT System (including any CCTV footage or images), except as otherwise provided in accordance with the Agreement.

13. Performance of WTOC Functions

13.1 Performance of WTOC Functions

- (a) The WTOC Personnel will operate the WTOC's ICT System in respect of the TG Roads during the Overnight Shift, on the instruction of the Contractor, and will alert the nominated Contractor Personnel of any Incidents or other events requiring the Contractor to make a decision or take action. For the avoidance of doubt, the WTOC Personnel will not be responsible for any Operational Services other than monitoring of the TG Roads and notification of any Incidents or other events to the nominated Contractor Personnel.
- (b) The Contractor must ensure that nominated Contractor Personnel are available during the Overnight Shift should any Incident or other event arise that requires the Contractor to make a decision or take action.
- (c) The Contractor will be liable to the Transport Agency, and must pay on receipt of a monthly invoice from the Transport Agency, the cost of one member of WTOC Personnel (a motorway controller) performing the WTOC Functions, which the parties agree is equal to [REDACTED]

13.2 Management of WTOC Personnel

- (a) Subject to the Transport Agency complying with its obligations as an employer, the Transport Agency will address any issues of WTOC Personnel underperformance with respect to the performance of the WTOC Functions by:
 - (i) ensuring that the duties associated with the performance of the WTOC Functions are reflected in the position description of the relevant WTOC Personnel; and

- (ii) where it considers that the relevant WTOC Personnel has failed to perform the WTOC Functions, and if it considers it appropriate, engaging the relevant WTOC Personnel in an appropriate and fair performance management process, which may include the commencement of a performance improvement plan.
- (b) Except as otherwise provided in the Agreement, the Contractor will not be entitled to make any Claim against, or otherwise have any recourse to, the Transport Agency or any WTOC Personnel for any act, omission or decision made by WTOC Personnel in the performance of the WTOC Functions pursuant to the Service Level Agreement.

13.3 Operation at Contractor's risk

- (a) The Contractor acknowledges that it has elected to have WTOC Personnel perform the WTOC Functions at its own risk. The Transport Agency will not be liable to the Contractor (or its Subcontractors) under the Service Level Agreement or the Agreement for any Charges, Deductions, SFPs or other liabilities incurred by the Contractor (or its Subcontractors) under any of the Project Documents as a result of any arrangement under which the WTOC Personnel perform the WTOC Functions.
- (b) The Contractor acknowledges that, where the WTOC Personnel perform the WTOC Functions, the WTOC Personnel will perform those functions in conjunction with the operation of the wider roading network, and will not be required to prioritise operation in respect of the TG Roads over the operation of the wider roading network, even where such actions could result in the Contractor incurring Charges, Deductions, SFPs or other liabilities under any of the Project Documents.

14. Payment

14.1 Payment of Licence Fee

The Contractor will at all times during the term of the Service Level Agreement duly and punctually pay the Licence Fee (free of all deductions and set-off) and all other moneys payable under the Service Level Agreement in respect of the Premises.

14.2 GST

All payments to be made pursuant to the Service Level Agreement are exclusive of GST and accordingly the Contractor will in addition pay to the Transport Agency (or otherwise as the Transport Agency directs) the GST payable by the Transport Agency in respect of any payments payable by the Contractor under the Service Level Agreement.

14.3 Arrears

Without prejudice to the other rights, powers and remedies of the Transport Agency if any other moneys payable under the Service Level Agreement are in arrears and unpaid for fourteen days after the due date for payment (whether formally demanded or not) the Contractor must pay to the Transport Agency interest on those moneys at the Prescribed Rate and calculated from the due date to the date of payment and the Transport Agency may recover such interest as if the same were a payment in arrears and payable by the Contractor.

15. Term and termination

15.1 Term

The Service Level Agreement will terminate automatically at the expiry of the Contract Term.

15.2 Notice of breach

- (a) If the Contractor breaches a material obligation under the Service Level Agreement, the Transport Agency may give written notice to the Contractor specifying the type and nature of the breach, giving reasonable details, and stating whether or not the breach can be remedied.
- (b) If the notice states that the breach can be remedied, then the Contractor must either:
 - (i) put forward a rectification programme that is acceptable to the Transport Agency (acting reasonably) within 15 Business Days after the date the Contractor receives the notice of breach, specifying:
 - (A) the timeframe within which the breach will be remedied;
 - (B) a work plan for the remedying of the breach within that timeframe;
 - (C) any temporary measures being put in place to mitigate the effects of the breach,

and rectify the breach in accordance with the Rectification Programme; or
 - (ii) remedy the breach within 20 Business Days (or such longer period as may be specified by the Transport Agency) after the date the Contractor receives the notice of breach.
- (c) If the notice of breach states that the breach cannot be remedied, the Contractor must submit a prevention plan that is acceptable to the Transport Agency (acting reasonably) within 15 Business Days after the date the Contractor receives the notice of breach, with the prevention plan setting out:
 - (i) any temporary measures being put in place to mitigate the effects of the breach;
 - (ii) how the Contractor intends to appropriately address the underlying circumstances that gave rise to the breach and prevent their recurrence; and
 - (iii) the timeframe within which the Contractor will appropriately address the consequences of the breach,

and the Contractor must implement the prevention plan in accordance with its terms.
- (d) The Contractor:
 - (i) must, during the implementation of the rectification programme or prevention plan (as applicable), keep the Transport Agency advised of progress against the timeframes set out therein;
 - (ii) may, where circumstances adversely affect the implementation of the rectification programme or prevention plan (as applicable) in accordance with its then-current terms, request a variation to such rectification programme or prevention plan for the Transport Agency to approve (acting reasonably), provided that the Contractor:
 - (A) notifies the Transport Agency of those circumstances, and submits the proposed variation no later than five Business Days prior to the due date for completion of the implementation of the rectification programme or prevention plan (as applicable);

- (B) has complied, and continues to comply, with the rectification programme or prevention plan (except to the extent adversely affected by the circumstances notified) and has been diligently pursuing such rectification or prevention consistently with Good Industry Practice; and
 - (C) while pursuing such rectification or prevention, did not cause or contribute to such circumstances by its negligence or failure to comply with its obligations under the Service Level Agreement or the Agreement.
- (e) Where the Contractor:
- (i) rectifies the breach in accordance with the rectification programme or within 20 Business Days after the date the Contractor receives the notice of breach (as applicable); or
 - (ii) implements the prevention plan in accordance with its terms,
- in each case to the satisfaction of the Transport Agency (acting reasonably) then in each case the relevant notice of breach will be deemed to be revoked and this Agreement will continue.
- (f) The Contractor may refer any Dispute under this paragraph 15.2 for resolution under the Accelerated Dispute Resolution Procedures under this Agreement, and must continue to diligently pursue the rectification programme or prevention plan (as applicable) pending determination of that Dispute.

15.3 Termination

- (a) If the timeframe for implementing the rectification programme or prevention plan (as applicable) has expired and the applicable notice of breach has not been revoked, then the Transport Agency may terminate this Service Level Agreement on 30 Business Days' written notice to the Contractor.
- (b) The termination of the Service Level Agreement is without prejudice to any accrued rights and remedies of the parties up to and including the date of termination, and to any of the provisions of the Service Level Agreement which, expressly or by implication, are intended to survive termination.

16. Liability and insurance

16.1 Contractor's risk

Without prejudice to the parties' rights or obligations under the Agreement (including to any relief provided under Schedule 13 (Performance Regime) of the Agreement), the Contractor will occupy and use the Premises at the Contractor's risk in all respects and the Contractor releases to the full extent permitted by Law the Transport Agency and its agents from all claims, demands and liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Premises, except to the extent that the accident, damage or injury is a direct consequence of an unlawful, wilful, reckless or negligent act or omission of an Indemnified Party.

16.2 No effect on Agreement

The parties agree that, unless expressly agreed in writing, nothing in the Service Level Agreement will affect the parties' rights or obligations under the Agreement.

16.3 Insurance

- (a) The Contractor and its invitees, employees, contractors, agents and any person under its control must not, during access to, or use of, the Premises, do anything or suffer or permit to be done, any act, matter or thing that it was aware of or, or should reasonably have been aware, might prejudice or make void or voidable any policy of insurance affected by the Transport Agency or increase the premiums payable in respect of that insurance (except to the extent expressly permitted by this Agreement or the Service Level Agreement).
- (b) The Contractor must maintain insurances in respect of its use of the Premises and the Contractor Assets.

17. Assignment

Either party may assign and/or transfer the whole or any part of its rights and/or obligations under this Agreement in the manner contemplated by clause 91 (Assignment) of the Agreement.

18. Precedence of documents

Where there is an ambiguity, inconsistency or conflict of obligations between the Service Level Agreement and the Agreement, then the obligation to which the Contractor is subject is that determined by the Transport Agency to be the most beneficial to the Transport Agency, even where the cost of performing or complying with that obligation is higher.