

Media Agency Master Services Agreement

PARTIES

Wellington Regional Council

Go Media Limited

Reference number: **PT1038**

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AGREEMENT dated _____ day of _____

PARTIES

Wellington Regional Council, a public statutory body constituted under the Local Government Act 2002
("GWRC")

Go Media Limited, (company number **5101362** a duly incorporated company having its registered office at **EY Law Ltd Level 9, 2 Takutai Square, Britomart, Auckland 1010 NZ**
("Media Agency")

INTRODUCTION

- A. GWRC issued a Request for Proposal (**RFP**) on 11 May 2023 seeking proposals for the provision of certain services and deliverables in relation to advertising and media services.
- B. The Media Agency carries on the business of Outdoor Media Solutions, which includes the management of digital and static assets for the purpose of selling and publishing advertising in the out of home advertising market.
- C. The Media Agency has represented that it has the capacity and skills to provide the advertising and media services and/or related services and deliverables to GWRC, in accordance with GWRC's requirements.
- D. The Media Agency agrees to provide the Services and Deliverables to GWRC and the parties have entered into this Agreement to record the terms and conditions on which that provision is to occur.

AGREEMENT

1. INTERPRETATION

1.1 **Definitions:** In this Agreement unless the context otherwise requires:

Advertiser Production Costs means the cost (without any application of margin) incurred by the Media Agency in the print, installation, maintenance and upload (for digital) of advertisements, with the costs to be set following the process set out in clauses 9, 10 and Schedule 1, and capable of audit in accordance with the provisions of this Agreement.

Advertising Policy means GWRC's advertising policy as notified to the Media Agency in writing from time to time.

Advertising Revenue means **any** revenue and or other income (including non- cash items) generated by the Media Agency as a result of providing the Services.

Advertising Gross Revenue means Advertising Revenue less Production Costs.

Advertising Revenue Statement means a statement setting out the Advertising Revenue received by the Media Agency each month in connection with the Services.

Agreement means this agreement, including all schedules and Statements of Work.

Applicable Requirements means all statutes, regulations, statutory instruments, by-laws, delegated or subordinated legislation and codes of practice that are applicable:

- (a) to the provision of the Services,
- (b) to the performance by the Media Agency of its obligations under this agreement,
- (c) to GWRC or any Authorised Third Party and notified by GWRC or any Authorised Third Party to the Media Agency as applicable to the provision of the Services.

Asset means (as the context requires) a Bus, a Rail Asset, online or web-based tool, website, application or physical digital infrastructure (digital kiosks) used by GWRC to promote the Wellington Public Transport Network.

Asset Controller means the owner or controller of a particular Asset including, but not limited to, GWRC, GWRL, PT Operators and KiwiRail.

Authorised Third Party means any Asset Controller and any of the following:

- (a) A third party authorised by GWRC to give instructions to the Media Agency under this agreement;
- (b) Any Asset Controller who the Media Agency (or any subcontractor) is required to obtain consent from to access an Asset or Site to provide the Services; or
- (c) any party who holds a duty of care towards the Media Agency under the Railways Act or HSW Act in connection with its performance of the Services.

Bus means a bus operated by a PT Operator as part of the Wellington Bus Network.

Best Industry Practice means that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, reasonable and experienced operator providing media and advertising services in the same or similar circumstances.

Business Day means any day other than a Saturday, Sunday, or a statutory public holiday in Wellington, New Zealand.

Change of Control means, in relation to a person (the **first person**), where a person acquires Control of the first person or where a person who Controls the first person ceases to do so.

Change Request means a request by either party to change or vary the scope or nature of the Services and Deliverables, in accordance with the process and requirements set out in clause 12.

Change Request Process means the process set out in clause 12.

Commencement Date has the meaning given to that term in clause 3.1.

Confidential Information means the provisions of this Agreement and all other information of a confidential nature (reasonably determined) obtained by one party from the other party under or in connection with this Agreement and, in relation to GWRC, includes the GWRC Data and any information or records, in whatever format, provided by or on behalf of GWRC (including from or through any Authorised Third Party) to the Media Agency in connection with this Agreement.

Control means in relation to a person (the **first person**), the ability of another person (the **second person**) to ensure that the activities and business of the first person are conducted in accordance with the wishes of the second person, whether through direct or indirect ownership of voting shares, contract or otherwise. Without limitation, the direct or indirect beneficial ownership of more than 50% of the voting rights in a body corporate is deemed to constitute Control.

Deliverables means any or the relevant deliverable to be provided by the Media Agency to GWRC under any of the relevant Statement of Work, or any other thing to be provided, created or developed by the Media Agency to meet GWRC's requirements in accordance with this Agreement, including any Assets.

Disengagement Services means all services reasonably required by GWRC to ensure a smooth and orderly end to this Agreement, which may include transition of the Services to GWRC and/or one or more alternative service provider(s).

Dispute has the meaning in clause 31.1.

Dispute Notice has the meaning in clause 31.1.

Documentation means any reference manuals, user guides, technical documents and other information or material, in electronic form or hardcopy or other format, required to be prepared or provided under this Agreement.

Existing Material means, in respect of any party, all documentation and other materials used or provided by the party under or in connection with this Agreement that are:

- (a) owned by, or licensed to, that party prior to the date of this Agreement; or
- (b) developed independently from this Agreement by that party, and that are not developed, commissioned or created under or in connection with this Agreement,

and including, in the case of GWRC, all GWRC Data.

Expiry Date has the meaning given to that term in clause 3.1.

Force Majeure Event means in relation to either party (the **Affected Party**), an event or circumstance which:

- (a) prevents the Affected Party from performing the whole or part of its obligations under this Agreement; and
- (b) is beyond the reasonable control of the Affected Party (including acts of God, acts of public enemy, or declared or undeclared war or threat of war, a terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration

(other than one caused by the Affected Party) and not arising from that Affected Party's fault or insolvency; and

- (c) could not have been avoided by the Affected Party taking reasonable precautions (including the Affected Party's exercise of business continuity or other practices in accordance with Best Industry Practice), or overcome by the Affected Party taking reasonable steps to remedy or mitigate the event or circumstance,

but which shall not include strikes, lock-outs or any other form of labour dispute or any other form of delay caused by contractual or labour relations between the Media Agency and any of its employees, agents, or subcontractors, or inability to perform due to lack of funds.

Government Agency means any government and any governmental, local governmental, semi-governmental, judicial, statutory or regulatory entity, authority, body or agency or any person charged with the administration of any law.

Grounds for Step-in has the meaning given to that term in clause 27.

GST means goods and services tax chargeable, or to which a person may be liable, under the Goods and Services Tax Act 1985, and any penalties, additional tax or interest payable in respect of goods and services tax.

GST Act means the Goods and Services Tax Act 1985.

GWRC Data means all data, documents, and other information including Personal Information (in any form) owned, held, used or created by or on behalf of GWRC, including:

- (a) all GWRC and third party data, documents, outputs and other information stored or made available on or through any Service or Deliverable from time to time;
- (b) data related to GWRC's operations and clients, including all client data, documents and other information on any system created by the Media Agency; and
- (c) all information, data or business knowledge about GWRC which is provided or made available by GWRC to the Media Agency, or is created by or on behalf of GWRC as part of the Media Agency's performance of this Agreement.

GWRC Property means equipment, tools or other property owned or leased by GWRC.

GWRC's Representative means the person identified as GWRC's representative in Schedule 2 or a Statement of Work or such other person as GWRC may nominate in place of that person from time to time.

HSE Laws means the Health and Safety at Work Act 2015 and all other health and safety legislation as amended or re-enacted, regulations, approved codes of practice and WorkSafe best practice guidelines.

Indemnified Parties has the meaning given to that term in clause 20.1.

Insolvency Event means an event by which a party:

- (a) is, becomes or is deemed to be bankrupt or insolvent;

- (b) is placed in or under receivership, receivership and management, liquidation or official management or administration;
- (c) is liquidated or wound up or a resolution is made for the liquidation or winding up;
- (d) is made subject to any arrangement, assignment or composition (otherwise than as a result of voluntary corporate reconstruction); or
- (e) is subject to any other event that has similar effect to any of the events described in (a) to (d) in this definition.

Intellectual Property Rights means, in respect of any person, all intellectual and industrial property rights and interests (including common law rights and interests) owned or held by that person, or lawfully used by that person, including:

- (a) patents, trade marks, service marks, copyright, registered and unregistered design rights, trade names, symbols and logos;
- (b) patent applications and applications to register trade marks, service marks and designs; and
- (c) formulae, methods, plans, data, drawings, specifications, characteristics, domain names, internet addresses, equipment, designs, inventions, discoveries, improvements, know-how, experience, software products, trade secrets, price lists, costings, brochures and other information used by that person.

IP Claim has the meaning given to that term in clause 20.1.

Key Personnel means:

- (a) in relation to any Statement of Work, the Personnel named or positions named or listed as the key personnel for the Services provided under that Statement of Work; and
- (b) in relation to this Agreement generally, the Personnel named or positions named or listed in 14.5.

Kinetic is the trading name of the operator that was formally known as NZ Bus

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

KiwiRail means KiwiRail Holdings Limited (Company Number 487638) or, as the context requires, any one of its subsidiary companies.

KPI means a key performance indicator as set out in Appendix 1 of Schedule 2 or any relevant Statement of Work.

ManaBus means ManaBus.Com Limited (Company Number 4961839).

Media Agency's Representative means the person identified as the Media Agency's representative at Schedule 2 or any relevant Statement of Work or such other person as the Media Agency may nominate in place of that person from time to time and as may be approved by GWRC (such approval not to be unreasonably withheld).

Metlink means the “Metlink” brand and any other approved brand notified by GWRC to the Media Agency from time to time and which is used by GWRC for the communication of information to customers, including in regard to:

- (a) the Metlink website;
- (b) the Metlink call centre;
- (c) mobile apps;
- (d) printed timetable material information; and
- (e) materials used to market or promote the Wellington Public Transport Network.

Minimum Annual Guarantee means the sum of \$~~7(2)(b)(ii)~~ payable to GWRC per contract year by the Media Agency from Advertising Revenue for the first three years of the Term of this Agreement. For each Renewal Period the Minimum Annual Guarantee will be agreed as part of the Annual Plan process detailed in clause 9.

Nominated Contractor has the meaning given to that term in clause 27.

NZ Bus means New Zealand Bus Limited (Company Number 565179).

Overage has the meaning given to that term is clause 2.1 (b) of Schedule 1

Performance Bond has the meaning given to that term in clause 9.4 (a)

Performance Issue has the meaning given to that term in clause 11.2.

Personal Information has the meaning given to that term in the Privacy Act 2020.

Personnel includes employees, agents, representatives, officers, contractors, and Subcontractor (of any tier).

Privacy Breach has the meaning given to that term in the Privacy Act 2020.

Procurement Process means the procurement process through which GWRC sought to procure the services and/or deliverables contemplated in this Agreement.

Production Costs means the cost (without any application of margin) incurred by the Media Agency in the print, installation, maintenance and upload (for digital) of advertisements requested by GWRC, with the costs to be established following the processes set out in clauses 9, 10 and Schedule 1, and capable of audit in accordance with the provisions of this Agreement.

Proposal means any proposal submitted by the Media Agency as part of the Procurement Process, including in response to any request for proposal for Services released by GWRC, together with any written material provided to GWRC by the Media Agency to supplement, explain or expand on that proposal.

PT Operator means a public transport operator that has entered into a contract with GWRC to provide “public transport services” as defined in the Land Transport Management Act 2003 (**LTMA**) in relation to a “unit” as defined in the LTMA.

Rail Assets means:

- (a) the rail Vehicles owned by GWRL and leased to, operated and maintained by Transdev (as a PT Operator) for the provision of public transport services on the Wellington Rail Network;
- (b) the station buildings owned by GWRL located on land leased from KiwiRail;
- (c) carparks provided by GWRC for use as “park and ride facilities” for use in relation to the provision of passenger rail services.

Rail Participant has the definition given to that term in the Railways Act.

Rail Personnel has the definition given to that term in the Railways Act.

Railways Act means the Railways Act 2005 and includes any replacement legislation.

Rate Card means the fees charged by the Media Agency for advertising space.

Representative means GWRC's Representative and/or the Media Agency's Representative (as the case may be).

Records means information, whether in its original form or otherwise, including a document, a signature, a seal, text, images, sound, speech or data compiled, recorded or stored, as the case may be:

- (a) in written form on any material;
- (b) on film, negative, tape or other medium so as to be capable of being reproduced; or
- (c) by means of any recording device or process, computer, or other electronic device or process.

Related Entity means in relation to GWRC, a council organisation or council controlled organisation any other local authority (as those phrases are defined in the Local Government Act 2002).

Release Event means any one or more of the following events:

- (a) the Media Agency is in breach of its obligations to provide support and/or maintenance services in relation to the Deliverable, or has refused or is unable to support or maintain the Deliverable;
- (b) the Media Agency (or the licensor as applicable) becomes subject to an Insolvency Event;
- (c) the Media Agency (or the licensor as applicable) is in breach of its obligations under this Agreement or any Statement of Work;
- (d) the primary, or all, of the business activities of the Media Agency (or the licensor as applicable) cease for more than five consecutive Business Days.

Remedial Plan has the meaning given to that term in clause 11.2.

Required Action has the meaning given to that term in clause 27.

Revenue Share means the percentage share of Advertising Gross Revenue agreed by the Parties and set out in Schedule 1

Services means:

- (a) the services as described in Schedule 2 of this Agreement and in each Statement of Work to be provided by the Media Agency, including consultancy services, implementation services, support and maintenance services, training services, and Disengagement Services (if any);
- (b) all services reasonably incidental to, or required for the proper performance of, the services described in sub-clause (a) above; and
- (c) all other services agreed in writing by the parties from time to time.

Sites means the sites specified by GWRC from time to time at or from which the Media Agency will provide the Services and may include Sites controlled by parties other than GWRC.

Specifications means the functional, technical and operational specifications for the applicable Service which may be comprised of (in order of priority from highest to lowest to the extent of any inconsistency between the following documents):

- (a) the specifications for the applicable Service as agreed between the parties as set out in Schedule 2, any relevant Statement of Work, and in any relevant correspondence between the Parties;
- (b) GWRC's requirements for the applicable Service as communicated to the Media Agency in writing and/or through the Procurement Process; and
- (c) the Media Agency's Proposal.

Statement of Work means the relevant document setting out the details of particular Services to be provided by the Media Agency to GWRC, using the template form attached at Schedule 4 (Statement of Work Template), including any applicable appendix or attachment.

Statement of Work Commencement Date means, in respect of any Statement of Work, the date the Media Agency is required to commence provision of the relevant Services and/or Deliverables in that Statement of Work, as specified in the relevant Statement of Work.

Subcontractor means any person to whom either party has subcontracted any part of its obligations under this Agreement and includes the employees and contractors of that person and like terms will be construed accordingly.

Third Party Material means all, databases, equipment, devices, infrastructure, Documentation and other materials, including any Intellectual Property Rights, which are owned by a person other than the parties and used by the Media Agency in the supply of the Services.

Third Party Supplier means any third party engaged by GWRC to supply goods and/or services (other than the Media Agency).

Transdev means Transdev Wellington Limited (Company Number 5164521).

Tranzit means Tranzit Group Limited (Company Number 5086) or, as the context requires, any one of its subsidiaries.

UZABus means Madge Coachlines Limited (Company Number 1196014).

Vehicle means:

- (a) a bus operated and used by a PT Operator for the provision of public transport services on the Wellington Bus Network.
- (b) a rail vehicle that is a Rail Asset owned by GWRL and leased to, operated and maintained by Transdev (as a PT Operator) for the provision of public transport services on the Wellington Rail Network.

Weighted Average KPI Score means a weighted average KPI score calculated at each KPI review undertaken in accordance with clause of this Agreement.

Wellington Bus Network means the bus “units” that form part of the Wellington Public Transport Network.

Wellington Public Transport Network means the public transport “units” that make up the public transport network managed by GWRC.

Wellington Rail Network means the public transport rail network and lines (being the Hutt Valley, Melling, Johnsonville, Kapiti and Wairarapa lines) that make up the “rail unit” as part of the Wellington Public Transport Network.

1.2 **References:** In this Agreement unless the context otherwise requires:

- (a) references to clauses and schedules are to clauses and schedules of this Agreement;
- (b) headings are inserted for convenience only and should be ignored in construing this Agreement;
- (c) the singular includes the plural and vice versa;
- (d) derivations of any defined word shall have a corresponding meaning;
- (e) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this Agreement);
- (f) reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;
- (g) reference to a party, person or entity includes:
 - (i) an individual, partnership, firm, company, body corporate, corporation, association, trust, estate, state, government or any agency thereof,

municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and

- (ii) an employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person or entity;
- (h) all amounts payable under this Agreement are expressed exclusive of GST and in New Zealand dollars;
- (i) the words "include", "included" and "including" are to be construed without limitation;
- (j) in respect of performance of the Media Agency's obligations under this Agreement, time is of the essence;
- (k) any obligation falling due for performance on or by a day other than a Business Day shall be performed on or by the Business Day immediately following that day; and
- (l) an obligation not to do something includes an obligation not to allow or cause that thing to be done.

1.3 **Conflict:** In the event of any conflict between any part or parts of this Agreement, the following order of precedence (highest to lowest) shall apply to the extent of the inconsistency:

- (a) the provisions contained in clauses 1 to 34 of this Agreement;
- (b) the schedules to this Agreement; and
- (c) any Statement of Work.

2. APPOINTMENT

2.1 **Appointment:** GWRC appoints the Media Agency to provide, and the Media Agency agrees to provide, the Services to GWRC on the terms and conditions set out in this Agreement.

2.2 **Exclusive appointment:** The parties agree that:

- (a) the Media Agency's appointment under this Agreement is exclusive for all Services described in Schedule 2 Statement of Works; and
- (b) new services not described in Schedule 2 (**New Services**) will be managed through the Change Request process as detailed in clause 12 and the Media Agency will have the opportunity to demonstrate that they are best suited to provide GWRC with these additional services.

2.3 **Exclusivity exception:** In the event that the Media Agency declines or is unable to provide any of the New Services required by GWRC, GWRC may appoint third parties to provide such services using the procurement process it deems the most suitable in the circumstances.

2.4 **Key objectives:** The key objectives of GWRC in entering into this Agreement are to:

- (a) Confirm the provision of the advertising and media services that will be provided from the Commencement Date;
- (b) Setup a Master Services Agreement to confirm the terms and conditions for any additional advertising and media services.

2.5 **Reliance:** The Media Agency acknowledges that GWRC is relying on:

- (a) the Media Agency's specialist skills, knowledge, experience and expertise in the subject matter covered by this Agreement; and
- (b) all statements, representations, proposals and commitments made or given by or on behalf of the Media Agency during the Procurement Process, including in the Proposal or in any written material provided to GWRC regarding the Media Agency's or its Personnel's skills, experience and expertise and the functions, quality and performance of the Services and Deliverables.

2.6 **Media Agency confirmation:** The Media Agency acknowledges that it had opportunity during the Procurement Process to assess and enquire into its ability to provide the services and deliverables that are or might be required under this Agreement, and is satisfied that it has the capacity and is capable of providing the Services and Deliverables in accordance with the terms and conditions of this Agreement. The Media Agency, therefore, shall not be excused from performance of the Services or Deliverables arising as a result of the Media Agency not having the capacity or capability to provide the Services or Deliverables.

3. TERM

3.1 This Agreement commences on s7(2)(b)(ii)
[REDACTED]
[REDACTED] However, notwithstanding the expiry of this Agreement:

- (a) each Statement of Work entered prior to the Expiry Date will remain in full force and effect in accordance with its provisions, and the provisions of this Agreement will continue to apply in respect of each Statement of Work until the expiry date of such Statement of Work, unless terminated earlier in accordance with the terms of this Agreement or the relevant Statement of Work; or
- (b) where Disengagement Services are provided and clause 28 applies, without limiting the other provisions of this Agreement, the term of this Agreement and the relevant Statement of Work shall be extended in accordance with the provisions of that clause.

3.2 **Renewal:** GWRC may extend the term of this Agreement for up to 2 periods of two years each (**Renewal Period**), by giving the Media Agency notice in writing at least three months before the Expiry Date or the expiry of the relevant renewal period, as the case may be.

4. RELATIONSHIP PRINCIPLES

4.1 **Acknowledgement:** The Media Agency acknowledges that GWRC is seeking to develop a relationship with the Media Agency as a long-term strategic partner. Accordingly, the Media Agency confirms its commitment to ensuring that, for the term of this Agreement, it has

adequate and appropriate resources and Personnel available that are committed to developing a long-term strategic relationship with GWRC and otherwise delivering all aspects contemplated by this Agreement in a manner that meets GWRC's requirements and the Specifications.

4.2 **Relationship principles:** Without limiting any of the Media Agency's obligations under this Agreement, the parties agree to:

- (a) act in good faith and demonstrate honesty, integrity, openness, and accountability in their dealings with each other;
- (b) deal with each other in a collaborative, collegial and respectful manner; and
- (c) promptly raise for discussion with each other any matters affecting this Agreement or the provision of the Services.

5. OUTCOMES

5.1 **Media Agency acknowledgement:** The Media Agency acknowledges that GWRC has appointed the Media Agency under this Agreement to deliver the Outcomes. Such Outcomes include implementing and delivering Services:

- (a) that meets the GWRC requirements and the Specifications;
- (b) in a manner that maximises Advertising Revenue;
- (c) and associated broader outcomes as agreed from time to time in the KPI regime;
- (d) that can be implemented in accordance with GWRC's reasonable timeframes, and with all necessary support from the Media Agency (and appropriate Personnel of the Media Agency),

together with the Outcome(s) as specified in any of the Statement(s) of Work.

5.2 **Media Agency agreement:** With respect to the Services that the Media Agency provides, the Media Agency shall:

- (a) adopt a proactive leadership approach in relation to identifying and communicating to GWRC what would be required to ensure the successful and timely delivery of the Services and achievement of the Outcomes, and the risks and mitigations of such risks;
- (b) where in providing the Services the Media Agency becomes aware of any issues that may adversely affect the achievement of the Outcomes, even where these are not linked to any breach of this Agreement by the Media Agency, the Media Agency shall proactively and promptly notify the same to GWRC;
- (c) maintain open channels of communications with GWRC to ensure issues or potential issues are raised with GWRC as soon as possible to minimise any adverse impact from such issues; and
- (d) when it communicates with GWRC in relation to this Agreement, it does so in such manner through such channels, and with such GWRC personnel, so as to ensure

that GWRC fairly and fully understands the significance and implications of the matters being communicated and the particular impact(s) on the Outcomes.

5.3 **Achievement of Outcomes:** The Media Agency shall perform its obligations in this Agreement so as to achieve the Outcomes. If at any time the Media Agency is of the view that any of the Outcomes will not, or is likely to not, be achieved, the Media Agency shall immediately alert GWRC of this concern and shall provide GWRC with such details as are necessary for GWRC to fully understand and address the concern (including the root causes of the relevant issues). The Media Agency must communicate such concerns in writing.

6. GWRC RESPONSIBILITIES

6.1 **General:** In addition to its other obligations under this Agreement GWRC will:

- (a) provide the Media Agency with all information reasonably requested by it to enable it to perform the Services and will take all reasonable steps to ensure that such information is accurate and complete;
- (b) give the Media Agency reasonable access to the GWRC's Personnel to liaise with the Media Agency's Personnel in relation to the GWRC's business, technical and operational requirements;
- (c) give the Media Agency reasonable access to any GWRC owned and controlled facilities or Sites during business hours subject to compliance by the Media Agency with its obligations under this Agreement relating to access to and conduct on GWRC owned facilities and Sites;
- (d) be responsible for its compliance with laws applicable to GWRC.

6.2 **Specific responsibilities:** GWRC will comply with any specific responsibilities in relation to the Services set out in the relevant Schedule or Statement of Work.

6.3 **Sole responsibility:** Except to the extent provided by clauses 6.1 and 6.2, the Media Agency has sole responsibility for the performance of the Services and the supply of the Deliverables.

7. MEDIA AGENCY RESPONSIBILITIES

7.1 **General:** In performing its obligations under this Agreement, the Media Agency will:

- (a) provide the Services in accordance with the terms of this Agreement;
- (b) provide the Services in a manner that is culturally appropriate for Māori and other ethnic or indigenous groups, and take the Treaty of Waitangi (Te Tiriti o Waitangi) principles into account when providing the Services. The Media Agency acknowledges and agrees that GWRC and the Media Agency's performance of this Agreement will have due regard to the Treaty of Waitangi (Te Tiriti o Waitangi);
- (c) provide all personnel, processes and resources necessary for the Media Agency to deliver the Services, and otherwise to perform its obligations under this Agreement;

- (d) ensure that all Media Agency Personnel are suitably skilled, experienced, qualified, and hold all necessary licences, approvals and permits, for the relevant tasks or responsibilities undertaken by such Personnel;
- (e) comply with, and ensure all of its Personnel comply with:
 - (i) all applicable New Zealand laws, codes and standards, including (without limitation) the Local Government Act 2002; and
 - (ii) all GWRC policies, procedures, security and access requirements, standards and reasonable directions relevant to the performance of its obligations under this Agreement, as updated from time to time by GWRC and notified in writing to the Media Agency, including GWRC's Code of Conduct and Advertising Policy;
- (f) comply with the reasonable directions of GWRC;
- (g) as applicable, provide, design, customise, install and implement the Services in accordance with the terms of this Agreement and each relevant Statement of Work;
- (h) provide all equipment, tools, materials and other resources necessary for the provision of the Services;
- (i) take full responsibility for the performance of all tasks and activities necessary to provide the Services in accordance with this Agreement and each Statement of Work, other than tasks or activities specifically identified as being out of scope;
- (j) without limiting the Media Agency's other obligations, keep GWRC fully advised of the progress of the provision of the Services and changes or possible changes to the scope or timing;
- (k) not damage or adversely affect the property, operations, reputation or goodwill of GWRC, any Related Entity or any Asset Controller;
- (l) not disrupt GWRC's or an Asset Controller's operations and other activities;
- (m) work co-operatively and collaboratively in good faith with GWRC and all other contractors and service providers to GWRC (including Third Party Suppliers and Asset Controllers) at all times to ensure the Services and all products and services related to them are delivered to GWRC efficiently, seamlessly and as required by GWRC;
- (n) comply with all its obligations under law and maintain all licences, approvals, consents and permits required in order to provide the Services and otherwise to perform its other obligations under this Agreement;
- (o) proactively, carefully and critically consider and assess, in accordance with Best Industry Practice and based on the Media Agency's specialist knowledge, skills and expertise, the completeness, appropriateness and accuracy of GWRC's Specifications in relation to the Services, and advise GWRC in writing of any suggested changes or additions to such Specifications on the basis of such consideration and assessment;

- (p) without limiting the Media Agency's other obligations, promptly notify GWRC in writing of:
 - (i) any breach or likely breach of the Media Agency's obligations under this Agreement; and
 - (ii) any matter that may impact on the Media Agency's ability to perform its obligations in accordance with this Agreement; and
- (q) without limiting subclauses 7.1(a) to (p) above, exercise that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, reasonable and experienced operator in the same or similar circumstances, with reference to Best Industry Practice.

7.2 **Multi-source environment:** Without limiting clause 7.1, the Media Agency acknowledges that:

- (a) it may be providing the Services in the multi-source environment alongside Third Party Suppliers and Authorised Third Parties;
- (b) as a result, GWRC must be able to implement, change and manage issues in a co-ordinated and efficient manner and must have the final discretion to determine which supplier(s) (including the Media Agency) or Asset Controllers, as the case may be, should take responsibility for the resolution of any issue with or in any specific instance; and
- (c) when an issue arises, without limiting GWRC's other rights and remedies, GWRC may adopt an approach where identifying responsibility for the cause of the issue is of secondary importance to be determined only after the impact of the issue has been appropriately managed and minimised.

7.3 **Co-operation with Third Party Suppliers and Authorised Third Parties:** The Media Agency must work co-operatively and collaboratively in good faith with GWRC, Third Party Suppliers and Authorised Third Parties, including sharing of relevant information, to maximise the Media Agency's performance under this Agreement and will participate in any multi-party meetings requested by GWRC, at GWRC's sole discretion.

7.4 **Interfaces:** Without limiting any of the Media Agency's other obligations under this Agreement, the Media Agency will, in relation to all applicable interfaces between any party involved in or affected by the provision of the Services (**Interfaces**):

- (a) take all necessary steps within its power to resolve any problems or incidents with those Interfaces (including third party Interfaces);
- (b) be primarily responsible for managing the resolution of any problems or incidents with those Interfaces, including by taking such action as may be required as part of the Services;
- (c) take all preventative and reactive steps reasonably practicable to ensure that those Interfaces are effectively managed;
- (d) take all reasonable steps to ensure that the Services are not compromised as a result of any of those Interfaces. For the avoidance of doubt, the Media Agency

acknowledges that GWRC will rely on the Media Agency's expertise to ensure that all Interfaces are appropriately managed to achieve the Outcomes.

7.5 **Continuous improvement:** The Media Agency will:

- (a) continually plan and cater for the evolution of the Services and seek to improve its performance throughout the Term; and
- (b) keep GWRC up to date with changes in relevant technology, practices, standards, and methodologies and the Media Agency's strategies and policies, that will or could improve or have a significant effect on the Services, or otherwise benefit GWRC.

7.6 **Access to Sites and Assets:**

- (a) The parties acknowledge that the Sites over, on and under which the Services are to be provided/undertaken are owned or controlled by a number of different parties and are subject to varying access rights available to GWRC and the Media Agency.
- (b) The Media Agency is required to, and is liable for, obtaining the necessary consents for obtaining access to carry out any part of the Services as required for each particular Site.
- (c) GWRC will provide the Media Agency with all reasonable assistance required to obtain the necessary consents to allow access to Sites that are owned or controlled by third parties in order to carry out the Services.

7.7 **Directions:** If the Media Agency is required to have or has access to any Sites or Assets under or in connection with this Agreement, the Media Agency must:

- (a) satisfy any Asset Controller's health, safety, operational and security requirements or other clearance prior to having access to the relevant Sites or Assets (including as may be required under clause 14.2);
- (b) use the Sites and Assets:
 - (i) for the sole purpose of complying with its obligations under this Agreement and for no other purpose; and
 - (ii) only to the extent necessary to comply with its obligations under this Agreement;
- (c) comply, and ensure all its Personnel comply, with all directions regarding the use of the Sites and Assets given by GWRC or the appropriate Asset Controller from time to time.

7.8 **Approval:** To avoid doubt, the Media Agency's obligations under this Agreement shall not be limited by GWRC or any other Asset Controller providing any direction, approval, consent or otherwise under this Agreement or any Statement of Work.

8. WARRANTIES

8.1 **General:** The Media Agency warrants that:

- (a) all information supplied to GWRC under this Agreement, and its representations to GWRC under this Agreement (including about any Services and all information provided in any Proposal) are complete and accurate, not misleading or deceptive, and may be relied on by GWRC in entering into and continuing with this Agreement, any Statement of Work, or any variation or amendment to this Agreement;
- (b) it has full corporate power and has obtained the required authority and authorisations to enter into and perform its obligations under this Agreement;
- (c) it will not during the term of this Agreement, engage in any activity that will or is likely to compromise its ability to perform its obligations under this Agreement fairly and independently;
- (d) it holds all licences, approvals and permits required by law to fulfil its obligations under this Agreement;
- (e) all advice provided by the Media Agency in connection with the Services is provided to a high standard of skill, care and diligence, and to a level reflective of, and in accordance with, Best Industry Practice.

8.2 **Services:** The Media Agency warrants that:

- (a) it has all necessary facilities and equipment to provide the Services;
- (b) it has the necessary financial standing and ability to pay any Establishment Costs;
- (c) each Service will be provided with all due care and skill that would be expected of a skilled professional and in accordance with Best Industry Practice;
- (d) each Service will be provided in accordance with the requirements of this Agreement; and
- (e) each Service will comply with the Specifications and all applicable laws.

8.3 **Intellectual property warranty and representation:** The Media Agency warrants to GWRC that:

- (a) the Media Agency has all requisite ownership rights and licences to fully perform its obligations under this Agreement; and
- (b) the use by GWRC of the Services and the use by GWRC or any relevant Asset Controller of the Intellectual Property Rights used, licensed and provided by the Media Agency (if any) in accordance with this Agreement will not infringe or impair in any way the Intellectual Property Rights of any third party.

8.4 **Documentation:** The Media Agency warrants that all Documentation provided by the Media Agency under or in connection with this Agreement will:

- (a) contain sufficient information for the full and efficient operation of the relevant Services to which the Documentation relates in the manner contemplated by GWRC;
- (b) be accurate and correctly represent the attributes of the subject matter to which it relates;
- (c) be written or delivered in language and at a level appropriate for the intended audience.

8.5 **Privacy, security and health and safety:** The Media Agency warrants that it:

- (a) has not suffered any actual or suspected Privacy Breach which has, or could have, compromised the Media Agency's ability to protect any information provided to the Media Agency by GWRC;
- (b) has not suffered any actual or suspected security breach (including unauthorised access to the Media Agency's Systems, records or facilities), which has, or could have, compromised the Media Agency's ability to protect any information provided to the Media Agency by GWRC or any relevant Asset Controller;
- (c) has appropriate measures (in accordance with Best Industry Practice) in place to mitigate the occurrence of any privacy or security breach of the kind described in (a) and (b) above, respectively;
- (d) has not been issued any improvement or prohibition notice, or been the subject of any enforcement action or a prosecution under any health and safety legislation (including the Health and Safety at Work Act 2015); and
- (e) has in place, and maintains, an appropriate Business Continuity Plan that will enable it to manage risks of loss, damage or disruption due to the occurrence of a Disaster or other unplanned disruption.

8.6 **Third party warranties:** The Media Agency will, without limiting any of the other warranties given under this Agreement, assign to GWRC, or if it is unable to do so, hold for the sole benefit of GWRC, all warranties and guarantees provided by third parties to the Media Agency in respect of the provision of any Services under this Agreement. Any warranties provided by third parties are in addition to, and shall not displace, any warranties provided by the Media Agency.

8.7 **Warranties repeated:** The representations and warranties set out in this clause 8 will be deemed to be repeated each time a Statement of Work is agreed between the parties.

8.8 **Remedies for failure:** If the Media Agency breaches any warranty set out in clause 8, then, without limiting GWRC's other rights or remedies, the Media Agency must promptly remedy the breach at its cost on receipt of notice in writing from GWRC requiring the breach to be remedied.

8.9 **Continuance:** To avoid doubt, the Media Agency shall continue to provide the Services and Deliverables under this Agreement notwithstanding GWRC exercising of any of the remedies contemplated in clause 8.8.

8.10 **Replacements:** The warranties and the other provisions of this Agreement apply equally to any re-performed Service.

8.11 **Warranty:** The Media Agency warrants that any and all faults arising during the term of this Agreement and, if applicable, during the provision of any Disengagement Services, which result from faults in the delivery of the Services on the date on which GWRC accepted the Services will be fixed promptly on request by GWRC, at no cost to GWRC.

9. REVENUE

9.1 Annual Plan:

- (a) Prior to the commencement of the Services, and not later than one month prior to each anniversary of the Commencement Date, the Media Agency will provide GWRC (for its approval) with a business plan and budget (including an estimate of Production Costs) outlining how the Media Agency intends to provide the Services and generate revenue for the following year (**Annual Plan**).
- (b) If GWRC does not approve the Annual Plan provided to it under clause 9.1(a), GWRC may request that the Media Agency make any reasonable changes required by GWRC.

9.2 Rate Card:

- (a) For transparency, planning and monitoring purposes and to enable GWRC to understand the market value of the advertising space across the Assets, the Media Agency agrees to provide GWRC with its Rate Card for each year of the Term;
- (b) The Rate Card is provided to GWRC in confidence and is the Media Agency's Confidential Information. GWRC agrees to store the Rate Cards securely and only provide access to the same to the Business Development Specialist and Commercial and Investment team manager.

9.3 Advertising Revenue: The Media Agency will, on an ongoing and regular basis:

- (a) Collect Advertising Revenue from advertising agencies and businesses;
- (b) Manage accounts with advertising agencies and businesses to ensure regular payment;
- (c) Ensure that in respect of advertising agencies who may be existing or new clients of the Media Agency as at the Commencement Date, that all Advertising Revenue is payable to the Media Agency by the last day of the month following placement; and
- (d) Ensure that in respect of advertisers who are existing or new direct clients of the Media Agency as at the Commencement Date, all Advertising Revenue is payable to the Media Agency by the last day of the month following placement.

9.4 Performance Bond

- (a) s7(2)(b)(ii)

- [REDACTED]
- [REDACTED]
- (b) If at any time during the Agreement the Media Agency terminates its relationship with its banking partner, the Media Agency must inform GWRC and agree a similar arrangement their new banking partner.

10. PAYMENT

- 10.1 **General:** The Media Agency will pay the agreed percentage of the Advertising Gross Revenue to GWRC plus, where a valid GST tax invoice is received, GST, calculated in the manner detailed in Schedule 1 and being at a minimum the amount specified as the Minimum Annual Guarantee (**Payment Sum**).
- 10.2 **Statements:** Within five business days of the end of each month, the Media Agency must submit an Advertising Revenue Statement to GWRC to the addresses specified by GWRC in writing from time to time outlining the Advertising Revenue received by the Media Agency for the previous month, calculating the Advertising Gross Revenue for that month and the Payment Sum owed to GWRC .
- 10.3 **Content:** Each Advertising Revenue Statement must specify:
- (a) GWRC's contract reference in respect of the Services covered by the statement;
 - (b) the Services supplied and the dates of supply;
 - (c) the Advertising Revenue received in the relevant month;
 - (d) any Advertising Revenue yet to be received in the relevant month or that is not expected to be received until a later time;
 - (e) the Media Agency's calculation of the Advertising Gross Revenue for that month;
 - (f) the Minimum Annual Guarantee for that month
 - (g) the Payment Sum for that month;
 - (h) details of any variations that have been agreed to and/or carried out by the Media Agency during that period;
 - (i) any information specified in a Statement of Work where applicable; and
 - (j) such other information as GWRC may reasonably request from time to time.
- 10.4 **Invoicing and Payment:** Subject to clauses 10.5 to 10.7:
- (a) Within five business days of receipt of the Advertising Revenue Statement, GWRC will issue a 'buyer generated invoice' to the Media Agency for the agreed monthly Minimum Annual Guarantee;
 - (b) The Media Agency will pay the amount of the Minimum Annual Guarantee due to GWRC at the end of the month of receipt of the 'buyer generated invoice' provided to it under clause 1.1(a);

- (c) At the Annual review GWRC, and The Media Agency will agree any **Overage** payment in line with Schedule 1 Clause 2.1 Adjustments

10.5 **Disputed invoices:**

- (a) If any item or part of an item contained in an Advertising Revenue Statement is disputed by GWRC, GWRC will give prompt notice to the Media Agency with reasons for disputing such item.
- (b) Following the raising of a dispute by GWRC under clause 10.5(a) the Representatives will meet to resolve the dispute and if the matter cannot be resolved within five business days, then either party may refer the matter to the dispute resolution process set out in clause 31 (noting that clause 31.3 will not be applicable).

10.6 **No deduction:** Despite a dispute being raised, the Media Agency must not withhold, deduct or set-off any amounts owing to GWRC.

10.7 **Resolution:** Once the dispute has been resolved, GWRC will issue a new 'buyer generated invoice' and provide the same to the Media Agency setting out the Payment Sum payable

10.8 **Survival:** If the Media Agency receives Advertising Revenue in connection with this Agreement following the termination or expiry of this agreement (as a result of long term campaigns), it will be required to pay the same to GWRC in accordance with clauses 9 and 10.

11. **PERFORMANCE**

11.1 **Performance issues:** The parties acknowledge that problems with provision of the Services may be caused by a variety of factors, including acts or omissions by third parties, not easily identified at the time a problem arises. Without limiting the parties' other obligations under this Agreement or any Statement of Work, the Media Agency will use all reasonable endeavours to promptly remedy any performance issues, without having to first allocate or apportion responsibility for the cause of the problem.

11.2 **Performance measures:** GWRC will assess the Media Agency's provision of the Services under the Agreement and any relevant Statement of Work through a KPI regime.

11.3 **KPI assessment:**

- (a) The KPIs will be assessed on the review points listed in Appendix 1 to Schedule 2 and/or as set out in any relevant Statement of Work. Each category will be graded using the key outlined in Appendix 1.
- (b) The first assessment will be undertaken 6 months from the Commencement Date followed by regular assessments every three months after the initial assessment throughout the Term.
- (c) An Annual KPI assessment will be undertaken the month following the annual anniversary of Commencement Date

11.4 **Results:** The results of the KPI assessment will be discussed at a meeting (**KPI Assessment Meeting**) to be held at a time, place and in a manner to be agreed between the parties within one month of an assessment under clause 11.3 being completed.

11.5 **Surveys:** The Media Agency agrees that GWRC may:

- (a) at any time request to contact businesses or advertisers engaged by the Media Agency in relation to this Agreement;
- (b) ask that the businesses and advertisers complete surveys in relation to the Media Agency and its performance of the Services,

and the Media Agency will facilitate the above approaches by providing relevant contact information in relation to each business and advertiser with which it engages in relation to this Agreement.

11.6 **Request for Remedial Plan:** Without limiting any right or remedy available to GWRC, if at any time:

- (a) GWRC reasonably considers that the Media Agency has breached, or will imminently breach, any of its obligations under this Agreement or any Statement of Work;
- (b) the Media Agency has given GWRC notice of a breach or likely breach of any of its obligations under this Agreement or any Statement of Work; or
- (c) the Media Agency receives an average KPI assessment result of 3 or less,

(in each case, a "**Performance Issue**"), which may include any breach of the warranties set out in clause 6, GWRC may by notice to the Media Agency require the Media Agency to prepare a plan to remedy the Performance Issue ("**Remedial Plan**").

11.7 **Preparation of Remedial Plan:** As soon as possible after receipt of a notice from GWRC under clause 11.6 (and, in any event, within five days or such other period as the parties may agree in writing), the Media Agency will, in consultation with GWRC, prepare and provide to GWRC a proposed Remedial Plan setting out:

- (a) full details of the Performance Issue (including its cause(s), expected duration and impact on its obligations under this Agreement);
- (b) a plan (including milestones) setting out the steps it will take to eliminate, and mitigate the effect of, the Performance Issue and prevent the Performance Issue from reoccurring (as applicable); and
- (c) success criteria to determine whether the Performance Issue has been rectified.

11.8 **Implementation:** Once the parties have (acting reasonably) agreed the Remedial Plan, the Media Agency will implement its part in the Remedial Plan in accordance with that Remedial Plan.

11.9 **Non-compliance:** If the Media Agency does not comply with any request or direction under clauses 11.6 and 11.7 within the period specified, GWRC may (without limitation):

- (a) Rectify or engage another person to rectify the defect, deficiency or non-compliance and the cost of this work will be a debt due from the Media Agency to GWRC;
- (b) Where the defect, deficiency or non-compliance or its rectification cause the carrying out of abortive work or rework, assess the cost of that work which cost will be a debt due from the Media Agency to GWRC;

11.10 **Material Breach:** For the purpose of clause 1.1(a) the Media Agency will have breached a 'material obligation' if any KPI assessment results in a Weighted Average KPI Score of 2 or less in any three consecutive 3-monthly reviews.

12. CHANGE REQUESTS

12.1 **Change Request:** At any time during the term of this Agreement, either party may request changes or variations to the scope or nature of, or the method of providing any Service or any new services together with any consequential changes or variations to this Agreement (including any Statements(s) of Work), by submitting a Change Request to the other party in accordance with this clause 12.

12.2 **Contents of Change Request:** Where:

- (a) the party making the Change Request is GWRC, that Change Request must outline the proposed change and contain such information as is reasonably necessary to enable the Media Agency to respond promptly to GWRC in writing, in the manner contemplated in clause 12.3; or
- (b) the party making the Change Request is the Media Agency, the Change Request will contain a full description of the changes proposed, together with additional information of the type contemplated by clause 12.4.

12.3 **Media Agency's response:** The Media Agency must review a Change Request received from GWRC and respond to GWRC by providing GWRC with a submission which contains the information described in clause 12.4 ("**Submission**") within 10 Business Days (or such other period as agreed by the parties in writing) of receipt of such Change Request.

12.4 **Further information:** Each Change Request from the Media Agency and each Submission, must include the following:

- (a) details as to the feasibility of the Change Request;
- (b) details as to any effect which the Change Request if implemented, may have on the functionality and performance of the existing Services;
- (c) details of any modifications to the Services as a result of the Change Request;
- (d) details of the effect of any change on the warranties provided under this Agreement;
- (e) the resource implications of the Change Request (including GWRC resource implications);

- (f) a timeline for implementation and commencement of the Change Request including any significant interim milestones (as applicable);
- (g) any changes to the existing Services;
- (h) any amendments or variations to this Agreement (including to specific Statements of Work) required to effect the Change Request; and
- (i) all other relevant information, including information concerning any assumptions made by the Media Agency.

12.5 **Refusal:** The Media Agency may refuse any Change Request from GWRC only if the Media Agency demonstrates to GWRC's satisfaction that:

- (a) in the Media Agency's reasonable opinion, the change is not technically feasible; or
- (b) implementation of the Change Request can be evidenced to be outside of the Media Agency's areas of core competency.

12.6 **Notification:** Following receipt of a Change Request from the Media Agency or a Submission, GWRC must consider the Change Request or Submission (as the case may be) and notify the Media Agency that it:

- (a) accepts the Change Request or Submission, in which case clause 12.7 will apply;
- (b) wishes to negotiate the Change Request or Submission, in which case the parties will then promptly negotiate, and once agreement is reached then clause 12.7 will apply;
- (c) withdraws the Change Request originally made by GWRC to which the Submission relates; or
- (d) rejects the Change Request received from the Media Agency providing always that if the Media Agency identifies any such Change Request as critical to the ongoing provision of the relevant Services, GWRC must first give the Media Agency the opportunity to propose an alternative solution before deciding whether to exercise its right of rejection.

To avoid doubt, GWRC may at any time and at the relevant time exercise any of its options under subclauses (a) to (d) above.

12.7 **Amendment:** Once agreement has been reached on a Change Request from the Media Agency or a Submission, this Agreement and the relevant Statement(s) of Work (if any) will be drafted and/or amended by negotiation based on the terms of the Change Request or Submission as so agreed. To avoid doubt, until such Statement of Work or Statement of Work amendment is agreed in writing between the parties, the terms of this Agreement shall continue under its then existing terms notwithstanding the agreed Change Request or Submission.

13. GOVERNANCE, MEETINGS AND REPORTING

13.1 **Governance:** The parties will comply with the governance and relationship management procedures set out under Schedule 6 (Governance) and in each relevant Statement of Work (as applicable).

13.2 **Meetings:** The parties will meet together in the manner and at the frequency set out in each Statement of Work to achieve the objectives for those meetings as described in each Statement of Work and as otherwise reasonably requested by GWRC to:

- (a) monitor progress of the Media Agency in providing the Services;
- (b) review resource needs and detail timing for upcoming tasks;
- (c) as far as able, settle and agree any issues arising in the course of providing the Services, and review risks and agree risk management actions;
- (d) monitor compliance by each party of any other of their respective obligations under this Agreement; and
- (e) monitor the Change Request Process.

14. PERSONNEL

14.1 **Personnel:** The Media Agency:

- (a) must ensure the Services are provided using appropriately experienced, skilled and qualified Personnel who are capable of providing the Services and Deliverables to the standards required under this Agreement;
- (b) is responsible for all acts and omissions of the Personnel as if they were the acts or omissions of the Media Agency;
- (c) must ensure that all Personnel comply with the terms of this Agreement and with all of GWRC's policies, procedures and reasonable directions; and
- (d) must ensure that it has adequate resourcing and Personnel at all times to deliver any Statement of Work in accordance with the terms of that Statement of Work.

14.2 **Background and security checks:** The Media Agency:

- (a) must ensure that each Personnel who is to have, or has, access to any Sites, Assets, GWRC Property and/or GWRC Data, if required by GWRC is willing to and does undergo security and other probity and clearance checks (including a check for criminal convictions) prior to accessing any Sites, Assets, GWRC Property and/or GWRC Data. Checks may be required by GWRC to be completed at any time or times (including annually), and will be at the Media Agency's cost;
- (b) must promptly, on GWRC's request obtain written consent from each Personnel to undergo the security and other probity and clearance checks, and provide such personal details of such Personnel to enable the security and other probity and clearance checks to be carried out;

- (c) if any Personnel fails to meet the clearance standards required by GWRC, the Media Agency shall immediately replace such Personnel as required by GWRC (to avoid doubt, the provisions of this clause shall also apply to such replacement Personnel); and
- (d) must promptly inform GWRC if any Personnel has a criminal charge laid or criminal conviction recorded against them. The Media Agency must immediately stand-down or replace any such Personnel (in relation to the provision of Services), if directed by GWRC.

14.3 **Key Personnel:** The Media Agency acknowledges that:

- (a) the Key Personnel will directly affect the quality of Services and Deliverables provided to GWRC by the Media Agency; and
- (b) it will use its best endeavours to manage critical dependencies on Key Personnel during the term of the relevant Statement of Work.

14.4 **Replacement of Key Personnel:** The Media Agency may only replace any Key Personnel if:

- (a) that person is unavailable due to resignation, termination of employment/engagement, illness or death;
- (b) the Media Agency has given GWRC at least 20 Business Days' notice of the proposed replacement, such notice to include full details of the replacement for the Key Person;
- (c) the replacement person is, in the reasonable opinion of GWRC, appropriately experienced, skilled, qualified and briefed to perform the applicable role;
- (d) the Media Agency first obtains GWRC's written consent to the replacement person (such consent not to be unreasonably withheld);
- (e) the Media Agency bears all costs relating to replacing that Key Person and upskilling of the Key Personnel; and
- (f) the Media Agency, if GWRC requests, agrees on a transition plan with GWRC for the replacement of the Key Person, and manages the replacement in accordance with such plan.

14.5 **Key Personnel for Agreement:** As at the date of this Agreement, the Key Personnel for this Agreement shall be as set out in Schedule 2.

14.6 **Amended Key Personnel:** GWRC may from time to time:

- (A) change the persons or positions designated as Key Personnel; and
- (B) designate a person as Key Personnel, provided that GWRC first advises the Media Agency of the change.

14.7 **Media Agency's responsibilities:** The Media Agency:

- (a) will ensure that, during the term of the Agreement and any relevant Statement of Work, the Key Personnel are engaged in the provision of the Services;
- (b) will ensure that the Key Personnel are not distracted from performance of their required services in connection with this Agreement, by the Media Agency's servicing of any other client or unreasonably distracted by the Media Agency's internal requirements; and
- (c) will maintain an active succession plan for each of the Key Personnel.

14.8 **Replacement of Personnel:** If GWRC considers (acting reasonably) that any of the Personnel are unsatisfactory or unsuitable then, without limiting any other rights of GWRC, GWRC may, by written notice, require the Media Agency to replace the relevant Personnel and the Media Agency will do so as soon as practicable at its own cost, but in any event no later than five Business Days, or as agreed with GWRC, after receipt by the Media Agency of the notice. In the case of any replacement of Key Personnel, clause 14.4 will apply.

14.9 **Non-solicitation:** The Media Agency agrees not to actively solicit for employment any employee or individual contractor of GWRC who has been engaged by GWRC in connection with, or has been designated by GWRC to work in connection with, the Services. This clause does not prevent the Media Agency from employing any person who responds to a genuine public advertisement placed by the Media Agency.

14.10 **Subcontracting:**

- (a) The Media Agency must not subcontract the whole of the performance of any of its obligations under this Agreement without GWRC's consent.
- (b) The Media Agency must ensure that each Subcontractor is appropriately qualified and has the relevant experience to perform the work it is engaged to perform.
- (c) The Media Agency is and remains fully responsible for all work carried out by any Subcontractor and for any act or omission of a Subcontractor.
- (d) The Media Agency will, unless otherwise agreed in writing by GWRC, ensure that any subcontract contains obligations on the Subcontractor that are consistent with the relevant terms of this Agreement, including clause 7 (Responsibilities), this clause 14 (Personnel), clause 8 (Warranties), clause 17 (Conflict of Interest), clause 18 (LGOIMA), clause 19 (Intellectual Property), clause 22 (Health and Safety), clause 23 (Privacy), clause 24 (Security and Data Protection), and clause 26 (Termination).
- (e) GWRC may, at its discretion, require the Media Agency to include in a subcontract the right for GWRC to enforce the terms of the sub-contract as if it were the Media Agency and a provision enabling the Media Agency to assign, novate and otherwise transfer any of its rights and/or obligations under the subcontract to the GWRC, such provision to be exercised subject to the consent of the subcontractor.
- (f) If GWRC terminates this Agreement under clause 1.1(a) and GWRC has required the Supplier to include "step-in" rights, GWRC may request (and if requested, the Media Agency must arrange) the assignment, novation and transfer its rights and/or obligations under the subcontract to the GWRC, such provision to be exercised subject to the consent of the subcontractor.

15. DOCUMENTATION AND RECORDS

- 15.1 **Documentation:** The Media Agency will supply GWRC with the Documentation in accordance with the requirements set out in each Statement of Work.
- 15.2 **Records:** Without limiting its other obligations under this Agreement or at law, the Media Agency must create and maintain, and must ensure that each subcontractor creates and maintains, full, accurate and accessible Records relating to the provision of the Services and Deliverables and the Charges charged under this Agreement, to the standards required under the Public Records Act 2005.
- 15.3 **Content of Records:** Without limiting clause 15.2:
- (a) the Records created and maintained under clause 15.2 must, at a minimum, describe or specify:
 - (i) the nature and scope of the Services provided under this Agreement;
 - (ii) the transactions that took place in the provision of all Services; and
 - (iii) the basis on which each Advertising Revenue Statement has been prepared and submitted to GWRC under this Agreement; and
 - (iv) any other information reasonably required by GWRC from time to time; and
 - (b) the Media Agency must ensure the Records created and maintained under clause 15.2 are:
 - (i) maintained in a form accessible by GWRC;
 - (ii) retained for the term and seven years after expiry or termination of this Agreement; and
 - (iii) provided to GWRC in a form accessible by GWRC on termination or expiry of this Agreement or the relevant Statement of Work and at any other time on GWRC's request.

16. AUDIT

- 16.1 **Audit:** GWRC may at any time notify the Media Agency that GWRC wishes to audit any or all of the Media Agency's:
- (a) provision of the Services;
 - (b) generation of Advertising Revenue;
 - (c) payment of Advertising Gross Revenue including calculation of and deduction of Production Costs; and
 - (d) compliance with the terms of this Agreement.

16.2 **Notice of audit:** GWRC will notify the Media Agency of the date on which the audit will commence, which must be at least two Business Days after receipt of a notice under clause 16. The Media Agency must give GWRC or its nominee full access to inspect:

- (a) any premises at which or from which the Media Agency provides the Services and/or Deliverables;
- (b) any Personnel; and
- (c) any systems, information, data, accounts, documents and records relevant to the provision of the Services and Deliverables operated or held by or on behalf of the Media Agency or any Personnel,

on and from the date notified by GWRC during GWRC's normal business hours for the purpose of conducting the audit. GWRC will comply with the Media Agency's reasonable security and confidentiality requirements in conducting any audit under this clause 16.2.

16.3 **Assistance:** The Media Agency will assist GWRC in a timely manner with any audit conducted under clause 16.2 and will ensure its Personnel and subcontractors also assist GWRC, including by making their relevant premises, personnel, systems, information, data, accounts, documents and records available to GWRC or its nominee if requested.

16.4 **Costs:** GWRC will meet its costs of any audit unless the audit discloses fraud or a breach of this Agreement (other than an inconsequential breach) or if there are discrepancies of 2% or more are discovered in GWRC's favour. In that case, the Media Agency will meet GWRC's audit costs.

16.5 **Non-compliance:** Without limiting any of GWRC's other rights or remedies, if any audit conducted under clause 16 discloses any failure to comply with this Agreement by the Media Agency, the Media Agency will promptly remedy the non-compliance. The Media Agency will remediate any underpayment of Gross Advertising Revenue by the Media Agency within five Business Days of completion of an audit and delivery of an audit report.

17. CONFLICT OF INTEREST

17.1 **Conflicts of interest:** The Media Agency must maintain a high standard of honesty and integrity at all in times in the performance of this Agreement and must not enter into any agreement or arrangement that will, or is likely to:

- (a) prejudice the Media Agency's ability to meet its obligations under this Agreement;
or
- (b) create a conflict of interest for the Media Agency.

17.2 **Warranty:** The Media Agency warrants that as at the date of this Agreement, it has no conflict of interest in providing the Services or entering into this Agreement.

17.3 **Resolve conflict:** Without limiting clause 17.1, the Media Agency must:

- (a) immediately notify GWRC in writing if the Media Agency is, or is likely to be, conflicted in the performance of its obligations under this Agreement; and
- (b) take all actions reasonably required by GWRC to resolve any such conflict.

17.4 **Managing conflicts:** If the Media Agency does not take the actions required by GWRC under clause 17.3 (b), or GWRC considers that it cannot satisfactorily manage the conflict of interest, GWRC, at its sole election, may terminate the relevant Statement of Work, or if applicable, this Agreement, immediately upon written notice to the Media Agency.

18. LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT

18.1 **LGOIMA:** The Media Agency acknowledges that GWRC is subject to the LGOIMA. Accordingly, notwithstanding anything else in this Agreement:

- (a) the Media Agency agrees to co-operate fully in providing GWRC with any documents or other information that GWRC is required to provide pursuant to a request made under the LGOIMA concerning this Agreement;
- (b) if during the term of this Agreement or at any time thereafter the Media Agency or any of its Personnel receive any request for "official information" (as defined in the LGOIMA) in connection with this Agreement or GWRC, the Media Agency shall immediately refer the request to GWRC; and
- (c) where the Media Agency holds information that GWRC reasonably considers must be disclosed pursuant to a request under the LGOIMA, then at GWRC's request the Media Agency will promptly provide copies of that information to GWRC.

19. INTELLECTUAL PROPERTY

19.1 **No rights:** Nothing in this Agreement confers on a party any right or interest in, or licence to use, or permit to be used, any of the other party's Intellectual Property Rights except as specifically provided for in this Agreement.

19.2 **Ownership of existing Intellectual Property Rights:**

- (a) To avoid doubt, each party or its licensors retain ownership of all Intellectual Property Rights in Existing Material belonging to that party or its licensors.
- (b) All GWRC Data, and modifications, enhancements and derivative works of the same, shall be owned by GWRC (its licensors, or in the case of Personal Information, the individuals to which that information relates) at all times.

19.3 **New Intellectual Property:**

- (a) Any new Intellectual Property Rights which are created as a result of, or in connection with, the provision of the Services, or otherwise in connection with this Agreement, shall be owned by GWRC, unless otherwise specified in the relevant Statement of Work.
- (b) The Media Agency must execute, and will procure that its employees, agents, officers and subcontractors execute, all documents and do all things required to give effect to clause 19.3(a).

19.4 **Licence to the Media Agency:** GWRC grants to the Media Agency, and the Media Agency accepts from GWRC a non-exclusive licence during the term of this Agreement to use GWRC's Intellectual Property Rights and the GWRC Data for the sole purpose of and only to

the extent required to give effect to and perform its obligations under this Agreement. That licence will expire immediately on termination of this Agreement.

19.5 **Know-how:** Nothing in this clause 19 restricts either party from using, in any way the party deems appropriate, the know-how, ideas and concepts contributed to, or developed by, it during the performance of its obligations under this Agreement, provided that such use does not breach any of the confidentiality obligations under clause 29 or otherwise infringe the other party's Intellectual Property Rights.

19.6 **Third Party Materials:** The Media Agency must not incorporate:

- (a) any Third Party Materials into any Service without GWRC's agreement in writing; and
- (b) any of the Media Agency's Intellectual Property Rights or any Third Party Materials into a Service unless those items will vest in GWRC under clause 19.3 or be licensed to GWRC.

20. INTELLECTUAL PROPERTY INDEMNITY

20.1 **Indemnity by Media Agency:** The Media Agency will indemnify and keep indemnified GWRC (including each of its personnel, agents and other representatives) ("**Indemnified Parties**") against all actions, proceedings, losses, liabilities, damages, claims, demands, costs and expenses (including all legal costs and expenses on a solicitor and own client basis) suffered or incurred by an Indemnified Party arising out of or in connection with any claim (or threatened claim alleging) that:

- (a) the provision of any Service by the Media Agency; or
- (b) the undertaking of any act by the Media Agency in connection with the Services; or
- (c) the use or possession of the Services (or any other information, rights or materials supplied by the Media Agency under the Agreement) by an Indemnified Party in accordance with this Agreement; or
- (d) the use or possession of any of the Media Agency's Intellectual Property Rights by an Indemnified Party,

infringes the Intellectual Property Rights of a third party ("**IP Claim**").

20.2 **CCLA:** This clause 20 is intended to give benefit to all Indemnified Parties and is enforceable by those parties in terms of subpart 1 of part 2 of the Contract and Commercial Law Act 2017.

20.3 **Procedure:**

- (a) Each party will promptly notify the other party in writing on becoming aware of such IP Claim.
- (b) Unless otherwise required by GWRC, the Media Agency will control the conduct of the defence of any IP Claim and all negotiations for its settlement or compromise, but in all cases will:

- (i) consult with GWRC and keep GWRC fully informed of such matters;
 - (ii) ensure that GWRC's name and reputation are not adversely affected by any steps taken by or on behalf of the Media Agency, including following any reasonable GWRC directions relevant to the defence or settlement of the claim to minimise any adverse effect to GWRC's business or reputation; and
 - (iii) obtain GWRC's prior written approval to any proposed settlement or compromise.
- (c) If required by GWRC, at GWRC's sole discretion, GWRC or its appointed representative will control the conduct of the defence of any IP Claim and GWRC is entitled to obtain representation or advice as appropriate in relation to the IP Claim.

20.4 **GWRC remedies:** If GWRC is unable to use any of the Services because they infringe or are likely to infringe any third party's Intellectual Property Rights, the Media Agency will, at the Media Agency's own cost and expense and without prejudice to any other rights of GWRC, immediately secure all necessary consents for GWRC's continued undisturbed use of the Services, or if this is not possible:

- (a) modify the Services to GWRC's satisfaction so these become non-infringing; or
- (b) if the modifications under subclause (a) cannot be made to GWRC's satisfaction, secure for GWRC replacement services,

provided that the Media Agency must ensure that the remedy does not materially affect the performance of the Service or GWRC's use of it, and in the case of subclause (b) above, the replacement must be provided on terms no less favourable than this Agreement.

20.5 **Termination:** Without prejudice to any other rights or remedies in this Agreement, GWRC may terminate this Agreement if the Media Agency is unable to remedy the IP Claim in accordance with clause 20.4 within two months of GWRC's request.

21. TITLE AND RISK

21.1 **Risk in Media Agency materials:** Responsibility and risk in any of the Media Agency's equipment or materials at any Site remains with the Media Agency at all times.

22. HEALTH AND SAFETY

22.1 **Avoidance of accidents:** In performing its obligations under this Agreement, the Media Agency must provide all Services with the health and safety of (as applicable) the Personnel, GWRC's personnel and Asset Controller personnel in mind, and take all necessary steps to ensure that its performance of this Agreement will not cause physical injury or damage to:

- (a) GWRC's personnel and the Personnel and their respective property; and
- (b) Authorised Third Party Personnel and their respective property.

22.2 **Health and safety:** Without limiting its other obligations under this Agreement, the Media Agency will, when working on a Site:

- (a) consult, co-operate and coordinate with GWRC or the relevant Authorised Third Party to ensure that GWRC, the Media Agency and any Authorised Third Party will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to this Agreement;
- (b) perform its, and ensure that its Personnel perform their, obligations under this Agreement in compliance with its and their obligations under the Health and Safety at Work Act 2015, this Agreement, and any applicable GWRC or Authorised Third Party policies;
- (c) comply with all reasonable directions of GWRC or the relevant Authorised Third Party relating to health, safety and security; and
- (d) report any health and safety incident, injury or near miss, or any notice issued under the Health and Safety at Work Act 2015, to the relevant Authorised Third Party and GWRC to the extent that it relates to, or affects, this Agreement.

22.3 **Warranty:** Without limiting clause 1.1(n) the Media Agency warrants and covenants that:

- (a) it shall, while undertaking the Services, take all practical steps to ensure that no act or omission does or is likely to give rise to the issue of an improvement or prohibition notice, enforcement proceedings or a prosecution under any health and safety legislation against GWRC, an Authorised Third Party or the Media Agency;
- (b) it will advise GWRC and the relevant Authorised Third Party as soon as possible of:
 - (i) any risks the Media Agency identifies or creates; and
 - (ii) all accidents, incidents and near misses;and the Media Agency shall follow GWRC's or the relevant Authorised Party's (as applicable) reasonable instructions in relation to any such hazard, accident, incident and/or near miss; and
- (c) if contacted by any authority regarding any health, safety and/or environmental matter relating in any way to the Services, the Media Agency will:
 - (i) unless prohibited by law, advise GWRC and the relevant Authorised Party immediately of that fact, and the nature of any questions asked of, and/or information requested from, the Media Agency; and
 - (ii) not admit any liability or fault for any act or omission relating to the Services.

22.4 **Onsite work plan:** If the Media Agency is performing any Services on a Site, prior to commencing work at that site, the Media Agency shall, if required by GWRC or the Authorised Third Party:

- (a) meet and consult on the security, health and safety policies, safety and works requirements and any other local instructions at that Site; and

- (b) develop an onsite work plan detailing those agreed safety processes that all parties are required to follow when performing any Services on that Site.

22.5 **Right of removal:** GWRC or the relevant Authorised Third Party may reasonably require the Media Agency to promptly remove from any Site any Personnel performing the Services.

22.6 **Notification:** The Media Agency must promptly notify GWRC of any health and safety incident or accident involving the Media Agency, even if the incident or accident is not related to the Services. The Media Agency will endeavour to provide this notification to GWRC before the incident or accident becomes public knowledge. In addition, clause 29.5 also applies to media and public announcements.

Railways Act

22.7 **Rail Assets:** Where the Media Agency provides the Services in relation to Rail Assets and requires access to Sites that host Rail Assets (including stations, depot facilities, stabling yards and car parks), the Media Agency will ensure that it and its Personnel at all times complies with the Railways Act, and any safety duties, rules or regulations under that Act. In these instances, the Media Agency will be acting on the instructions of Authorised Third Parties, some of whom are Rail Participants for the purposes of the Railways Act.

22.8 **Rail Personnel:** By entering into this Agreement, and providing the Services in relation to Rail Assets, the Media Agency may become Rail Personnel under the Railways Act.

22.9 **General Duties:** Section 7 of the Railways Act sets out general duties of all Rail Participants and persons working for Rail Participants as follows:

- (a) A Rail Participant must take all practicable steps on its part to ensure that none of the rail activities for which it is responsible causes, or is likely to cause, the death of, or serious injury to, individuals.
- (b) No Rail Personnel of a Rail Participant may do or omit to do anything in respect of a rail vehicle, railway infrastructure, or railway premises if he or she knows or ought reasonably to know that act or omission will cause, or will be likely to cause the death of, or serious injury to, individuals.

22.10 **Railways Act:** The Railways Act contains various other provisions imposed on Rail Personnel in respect of obtaining access to and carrying out the Services on rail premises. These obligations are primarily set out in the following parts of the Railways Act:

- (a) Part 2 - Safety, Subpart 1 (duties of rail participants and other persons);
- (b) Part 2 - Safety, Subpart 4 (safety assessments);
- (c) Part 2 - Safety, Subpart 5 (rules and regulations);
- (d) Part 2 - Safety, Subpart 6 (offences and remedies); and
- (e) Part 3 - Rail Corridor - Subpart 1, (protection of rail corridor), noting however that there are general obligations regarding safety and access to railway premises and other areas within any Site.

No Limitation: Details of the Railways Act have been included so as to assist the Media Agency to understand its obligations under that Act. The inclusion of this clause does not limit or abrogate from the Media Agency's obligations to meet the requirements of the Railways Act as set out in the Act itself.

23. PRIVACY

23.1 **Privacy:** The Media Agency shall:

- (a) comply with the Privacy Act 2020 and any relevant code under that Act.
- (b) without limiting the obligations in clauses 1.1(c)(i) and 24.3, ensure that all Personal Information the Media Agency holds about any GWRC Personnel is protected by reasonable security safeguards against loss or unauthorised access, use modification or disclosure;
- (c) appoint a privacy officer;
- (d) have a privacy policy that includes appropriate measures in accordance with Best Industry Practice in place to mitigate the occurrence of any Privacy Breach, including of the kind detailed in clause 23.3; and
- (e) comply with all reasonable GWRC policies and directions notified by GWRC to the Media Agency in relation to privacy.

23.2 **Assessment:** The Media Agency agrees that GWRC may assess its privacy policy and practice. The Media Agency will co-operate with any privacy assessment, including completing self-assessments on request.

23.3 **Protocol for Privacy Breach:** The Media Agency will comply with the following privacy protocol:

- (a) the Media Agency shall, where required by GWRC from time to time, provide to GWRC all information required by GWRC about any Privacy Breach and near miss that relates to this Agreement;
- (b) the Media Agency shall escalate a Privacy Breach or near miss to GWRC under the following procedure:
 - (i) any Privacy Breach or near miss will be notified to GWRC's representative by phone and email as soon as the Media Agency is aware of the breach; and
 - (ii) the Media Agency and GWRC will then work together to manage consequences and implications of the breach, including by:
 - (aa) the Media Agency making such Personnel available to GWRC to assist it to manage the implications for it and any relevant Authorised Third Party arising from the breach; and
 - (bb) implementing reasonable procedures to prevent such breaches or near misses in the future; and

- (iii) the Media Agency will not comment publicly, including to the media about the breach, without the prior written permission of GWRC.

23.4 **Declaration:** The Media Agency shall at least 14 days prior to each six monthly meeting, provide GWRC with a signed declaration confirming that the Media Agency has complied with clauses 23.1 to 23.3 and has not exposed GWRC to any undue risk around privacy requirements in the preceding six months.

24. SECURITY AND DATA PROTECTION

24.1 General security requirements:

- (a) Subject to clause 14.2, if the Media Agency requires access to any GWRC Technology Environment from time to time to provide the Services, the Media Agency shall:
 - (i) comply with any security requirements notified to the Media Agency by GWRC from time to time; and
 - (ii) ensure that its Personnel are aware of and comply with those security requirements.
- (b) The Media Agency shall:
 - (i) ensure that its Personnel undertake and satisfy the requirements of any security checks or clearances as required by GWRC; and
 - (ii) notify GWRC of any changes to circumstances that may affect the Media Agency's capacity to provide the Services in accordance with the security requirements contained in this Agreement and such requirements notified to the Media Agency from time to time.
- (c) The Media Agency must promptly report to GWRC any instance in which it is known or suspected that material furnished or generated pursuant to this Agreement has been lost or disclosed to unauthorised persons.

24.2 **Media Agency access to GWRC Data:** Subject to the Media Agency complying with clause 24.3 and GWRC's security and confidentiality requirements, policies and procedures, GWRC will provide the Media Agency such access to the GWRC Data as is reasonably required to provide the Services in accordance with this Agreement and any applicable Statement of Work.

24.3 **Media Agency obligations in relation to GWRC Data:** Without limiting clause 23.1, the Media Agency must:

- (a) use, access, store, process or transmit the GWRC Data only to the extent necessary to provide the Services and otherwise in accordance with GWRC's written instructions;
- (b) not copy, reproduce, publish, sell, let, modify, extract or otherwise part with possession of the whole or any part of the GWRC Data or relay or disseminate the same to any third party;

- (c) where using or processing GWRC Data, do so in accordance with any applicable data protection laws (including the Privacy Act 2020);
- (d) not permit any GWRC Data to be transferred, stored, or made available to any person, outside New Zealand, unless expressly authorised by GWRC in writing in advance, which may be subject to conditions;
- (e) where GWRC Data is held by the Media Agency:
 - (i) maintain technical and all other reasonable safeguards to protect GWRC Data against any destruction, unauthorised access, loss, loss of integrity, alteration, misuse or disclosure, including by implementing and maintaining adequate virus protection;
 - (ii) ensure that such GWRC Data is encrypted and backed up at least daily and that copies of such back-ups are available at all times to GWRC on request and in a format reasonably specified or required by GWRC;
 - (iii) not store, or allow to be stored, the GWRC Data, on the servers or any other data storage equipment on which any other person's data is stored, without GWRC's consent;
 - (iv) not allow the GWRC Data to be combined with the Media Agency's, or any other person's, data in any way, except to the extent agreed to by GWRC (where the Media Agency has first described to GWRC the extent and implication of the data being combined);
 - (v) not provide the GWRC Data to, or allow the provision of GWRC Data or access to the GWRC Data by, any agents or subcontractors of the Media Agency without the prior written consent of GWRC;
 - (vi) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful transmission, transfer, processing and storage of GWRC Data and/or accidental loss, destruction or damage to GWRC Data; and
 - (vii) in the event of any loss or damage to GWRC Data, without limiting the Media Agency's other obligations under this Agreement, use best endeavours to restore the lost or damaged GWRC Data from the latest back-up of such GWRC Data maintained by the Media Agency.

24.4 **Required disclosure:** The Media Agency shall provide prior written notice to GWRC where any GWRC Data is required to be disclosed to any relevant Government Agency in any jurisdiction (including in accordance with the provisions of the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism Act 2001 (US) and the Foreign Intelligence Surveillance Act 1978 (US)) but only to the extent providing prior notice is permitted under the law of that jurisdiction.

24.5 **Security breaches:** If the Media Agency becomes aware of a security incident related in any way to this Agreement, any actual, threatened or suspected cyber attack or other cyber incident, or any breach in the confidentiality, availability or integrity of GWRC Data and the GWRC Operating Environment (in each case, a "**Security Breach**"), the Media Agency must:

- (a) immediately notify GWRC of the Security Breach;
- (b) to the extent the Security Breach arises from or in connection with any act or omission of the Media Agency:
 - (i) as soon as practicable identify the cause of the Security Breach and do all things within its power to remedy the Security Breach and its consequences; and
 - (ii) as soon as practicable provide GWRC with a report detailing the cause of, and steps taken to remedy, the Security Breach, and certifying that the Media Agency has, and all applicable subcontractors have, taken all reasonable action to prevent any recurrence of the Security Breach;
- (c) in any event, assist and work together with GWRC to defend against, address, respond to, and mitigate adverse impacts from, such Security Breach including by making all necessary Personnel available to assist with the consequences and implications arising from the Security Breach; and
- (d) without limiting the Media Agency's other obligations under this Agreement, keep confidential the occurrence of, or suspected occurrence of, cyberattacks, data breaches and other cyber incidents (as applicable) to the extent possible under law.

24.6 GWRC rights: In the event of any Security Breach GWRC may:

- (a) take all reasonable steps available to it to cease such Security Breach and/or prevent it from reoccurring, including (without prejudice to any of its rights or remedies under this Agreement or at law) suspending the provision of the Services at the Media Agency's cost; and
- (b) require the Media Agency to immediately ensure that any relevant Personnel is no longer engaged in providing the Services and that a suitably skilled, qualified and experienced replacement is engaged.

No Limitation: Nothing in this clause limits or restricts any rights granted to GWRC under this Agreement and/or any applicable Statement of Work.

25. INSURANCE

25.1 Insurance policies: The Media Agency must effect and maintain insurance coverage in amounts and against risks that are normal for businesses similar to that of the Media Agency, on terms consistent with standard market terms for such policies, providing cover for the vicarious liability of GWRC, and with an insurer of AA rated or better, for the term of this Agreement and, in relation to professional indemnity insurance, for six years following termination or expiry, including:

(b) (7)(C) (i) (ii)

[REDACTED]

[REDACTED]

- (c) other insurance as required by law or reasonably required by GWRC.
- 25.2 **Evidence of Insurance:** The Media Agency is required to provide GWRC with evidence that its current insurances comply with this Agreement on the commencement of this Agreement and at any time upon request by GWRC.
- 25.3 **Failure to maintain:** If the Media Agency fails to maintain any insurance it is required to maintain under this agreement or to provide evidence of insurance as required under clause 25.2, GWRC may arrange or maintain insurances on its behalf and in such sums as it thinks expedient. The Media Agency must reimburse GWRC on demand for each of the following:
 - (a) Any premiums paid by GWRC.
 - (b) Any other fees, charges or costs reasonably incurred by GWRC in arranging or maintaining the insurance.
- 25.4 **Subcontractors:** The Media Agency will ensure that where any Subcontractors are used under this Agreement they have insurance in place which is acceptable to GWRC (acting reasonably).
- 25.5 **No benefit:** No insurance arranged or held by GWRC will affect the Media Agency's obligations to insure and the Media Agency will not be entitled to claim the benefit of any such insurance.
- 25.6 **Prompt information:** The Media Agency must promptly inform GWRC of:
 - (a) any claims relating to this Agreement against the insurance policies referred to in clause 25.1; and
 - (b) any material change to, cancellation or non-renewal of, such policies.

26. TERMINATION

- 26.1 **Default:** Either party may immediately terminate this Agreement by written notice to the other party, if the other party:
 - (a) breaches, or fails to properly or promptly perform, any material obligation of that party under this Agreement, a Statement of Work:
 - (i) which cannot be remedied by that defaulting party; or
 - (ii) if it can be remedied and the defaulting party fails to remedy the breach or perform the obligation to the other party's satisfaction within 10 Business Days after receiving notice from the other party specifying the breach or failure and requiring remedy; or
 - (b) commits two or more of the same or similar breaches of this Agreement (whether material or not and whether or not remedied) in any three month period;
 - (c) that party ceases to carry on all or substantially all of its business or operations; or
 - (d) that party is subject to an Insolvency Event,

provided that, if GWRC is the defaulting party, the Media Agency is not entitled to terminate this Agreement if GWRC agrees to remedy its breach and pay any direct and reasonable losses suffered by the Media Agency arising from that breach.

26.2 **Termination by GWRC:** GWRC may terminate this Agreement by written notice to the Media Agency at any time:

- (a) by giving the Media Agency not less than 6 months prior notice to the Media Agency;
- (b) if the Media Agency engages in conduct which, in the reasonable opinion of GWRC, might injure the reputation or business of GWRC, an Asset Controller, or a Related Entity;
- (c) if GWRC reasonably considers that the Media Agency has acted fraudulently;
- (d) if the Media Agency does not take the actions required by GWRC under clause (b), or GWRC considers that it cannot satisfactorily manage a conflict of interest relating to the Media Agency's ability to perform its obligations under this Agreement or any Statement of Work;
- (e) if the Media Agency is unable to remedy an IP Claim in accordance with clause 20.4 within two months of GWRC's request; or
- (f) if the Media Agency undergoes a Change of Control without GWRC's prior written approval (at its sole discretion).

26.3 **Right to terminate for Force Majeure Event:**

- (a) GWRC may terminate this Agreement by notice to the Media Agency, with immediate effect on the date specified in that notice, if the Media Agency has been unable to provide all, or a substantial part, of the relevant Services in accordance with this Agreement as a result of a Force Majeure Event for a continuous period of two months.
- (b) The Media Agency may terminate this Agreement by notice to GWRC, with immediate effect on the date specified in that notice, if GWRC has been unable to provide access to all, or a substantial part, of the relevant Assets in accordance with this Agreement as a result of a Force Majeure Event for a continuous period of two months.

26.4 **Effect of termination:**

- (a) **Expiry or termination of this Agreement:** Any termination or expiry of this Agreement or any Statement of Work is without prejudice to and will not affect any rights, powers, remedies or obligations of a party that have accrued before termination or expiry, or limit either party's rights to recover damages from the other party under this Agreement or pursue any additional or alternative remedies provided by law.
- (b) **Statements of Work continue:** Unless terminated earlier, each Statement of Work will remain in full force and effect in accordance with its provisions, and the

provisions of this Agreement will continue to apply in respect of each such Statement of Work until the expiry or termination of this Agreement.

- (c) **Other consequences of termination:** On termination or expiry of this Agreement or one or more Statement(s) of Work:
- (i) on receipt of a written request from GWRC and at GWRC's option, return, destroy, and/or permanently delete from any media in or on which Confidential Information is stored, all Confidential Information in the possession or control of the Media Agency or any Personnel;
 - (ii) where one or more Statement(s) of Work are terminated or expire, the Media Agency shall, on receipt of a written request from GWRC and at GWRC's option, return, destroy, and/or permanently delete from any media in or on which Confidential Information is stored, all Confidential Information in the possession or control of the Media Agency or any Personnel relating to those Statement(s) of Work; and
 - (iii) the Media Agency will provide any Disengagement Services as set out in the relevant Statement of Work and in accordance with clause 28. Where this applies, the term of this Agreement and the relevant Statement of Work shall be extended to such time as the Media Agency completes performance of the services and obligations.

26.5 Partial termination:

- (a) Where GWRC has a right to terminate this Agreement, GWRC may at its sole discretion and to the extent practicable, instead of termination of this Agreement in full, terminate any affected Service or Statement of Work in whole or in part.
- (b) If GWRC elects to terminate in part, any variations to this Agreement, including to the Services, revenue and payment provisions, and any Statement of Work shall be agreed via the Change Request Process.
- (c) Without limiting any other rights or remedies GWRC may have, if at any time GWRC considers that any aspect of the partial termination is not proceeding to its satisfaction, it may by notice to the Media Agency convert the partial termination to a full termination.
- (d) If GWRC terminates this Agreement without terminating all of the then current Statement(s) of Work, then the provisions of this Agreement that are necessary for the performance or enforcement of those Statement(s) of Work shall survive as necessary to perform or enforce those Statement(s) of Work.

27. STEP IN

- (a) If:
 - (i) there has been a breach or non-performance by the Media Agency under this Agreement, or a Statement of Work, that materially prevents, degrades or delays the performance of the Services; or

- (ii) GWRC is entitled to terminate any Statement of Work under clause 26.1 of this Agreement,

(in each case "**Grounds for Step-in**") GWRC may address the circumstances giving rise to the Grounds for Step-in by:

- (iii) Assisting the Media Agency, in discharging its obligations under this Agreement or the relevant the Statement of Work;
 - (iv) taking control of any support services relating to the Grounds for Step-in; or
 - (v) appointing any person or persons to assist with or carry out on behalf of GWRC the actions permitted under this clause 27 ("**Nominated Contractor**").
- (b) Before GWRC takes any action under this clause 27, GWRC will give a notice to the Media Agency setting out:
- (i) the action GWRC will take;
 - (ii) the reason for, and the objective of, taking the action; and
 - (iii) the date the action will commence and the estimated time it will continue.
- (c) Following GWRC giving a notice to the Media Agency under subclause (b):
- (i) GWRC may take the action set out in the notice and any consequential or additional action it reasonably believes to be appropriate (together the "**Required Action**"); and
 - (ii) the Media Agency will provide all necessary or desirable assistance and co-operation required by GWRC or any Nominated Contractor (as applicable), including access to all relevant Personnel and all relevant tangible and intangible Media Agency assets (including software, equipment, facilities, documentation or other items) used by or for the benefit of the Media Agency to provide the Services in order to:
 - (aa) remedy the circumstances giving rise to the Grounds for Step-in; and
 - (bb) assist with the Required Action.
- (d) If GWRC takes any Required Action:
- (i) the Media Agency acknowledges that the Required Action is designed to mitigate GWRC's loss and that taking the Required Action will not relieve the Media Agency of any of its obligations or prevent GWRC from pursuing any of its other rights or remedies;
 - (ii) GWRC may cease the Required Action at any time;

- (iii) following any notice of termination, GWRC may continue to take the Required Action (or to require any Nominated Contractor to continue to take the Required Action) in order to mitigate any loss;
- (iv) the Media Agency indemnifies GWRC for their reasonable costs incurred in taking the Required Action;
- (v) the Media Agency will bear its own costs of GWRC taking the Required Action; and
- (vi) the Media Agency will, to the extent requested by GWRC, perform any of the Disengagement Services that GWRC may require.

28. DISENGAGEMENT SERVICES

28.1 **Commencement:** Commencing at any time before or from the termination of this Agreement or all or any part of a Statement of Work for any reason, the Media Agency shall, at the request of GWRC, provide the Disengagement Services required by GWRC to GWRC and/or its nominated alternative service provider(s).

28.2 **Duration:** The Media Agency shall provide the Disengagement Services for up to 3 months after such termination or expiry of this Agreement or of the relevant Statement of Work or any part of it, as required by GWRC.

28.3 **Disengagement Services:**

- (a) The Media Agency will provide GWRC, within 43 Business Days of the Statement of Work Commencement Date, with a draft disengagement / transition plan detailing the Disengagement Services that are likely to be required by GWRC to end this Agreement in a smooth and orderly manner, including to value, transfer, relocate or dispose of tangible property from the Media Agency to GWRC or a nominated third party, and transition the relevant support services to GWRC and/or alternative service provider(s) as required by GWRC. The Media Agency shall ensure that the plan is approved by GWRC within 3 months of the Statement of Work Commencement Date (as applicable), and if required to obtain such approval, incorporate such changes as required by GWRC.
- (b) GWRC may, at any time and from time to time (including on termination of this Agreement or any Statement of Work), notify the Media Agency of the Disengagement Services required, which, at GWRC's option, may include any of the following:
 - (i) continued performance of the Services to the extent required by GWRC. The relevant terms of this Agreement and the relevant Statement of Work continue to apply to the performance of the Services in accordance with this 28.3;
 - (ii) promptly assisting GWRC to prepare a disengagement plan specifying the key tasks to be performed by each party to enable the smooth and orderly end or transition of the provision of the Services and the timeframes for the performance of such tasks, and implementing its role in the disengagement plan within the required timeframes;

- (iii) delivery to GWRC of any Documentation or other materials relating to the Services as they exist as at the date of termination;
- (iv) answering questions and providing information requested by GWRC and/or its nominated alternative service provider(s);
- (v) providing reasonable assistance for GWRC to to access and use software, facilities, equipment, documentation and other resources used by the Media Agency to manage the digital kiosks;
- (vi) valuing, transferring, relocating or disposing of tangible property from the Media Agency to GWRC or a nominated third party;
- (vii) returning to GWRC intellectual property and other intangible property of GWRC;
- (viii) migrating the performance of Services to GWRC or an alternative service provider, in such manner and format reasonably specifically or required by GWRC;
- (ix) decommissioning services;
- (x) training reasonably required by GWRC; and
- (xi) providing any additional Disengagement Services specified in the relevant Statement of Work.

28.4 **Minimise the Charges:** The Media Agency must do all things practical to minimise any costs payable by GWRC during the period in which the Media Agency is providing the Disengagement Services.

28.5 **Other rights and remedies:** Nothing in this clause limits the Media Agency's or GWRC's rights to recover damages from the other party under this Agreement or to pursue any additional or alternative remedies provided by law.

29. CONFIDENTIALITY

29.1 **Confidentiality obligation:** Except as permitted by clause 29.2, each party shall keep the other party's Confidential Information absolutely secret and confidential, and shall not disclose that Confidential Information to any person or use that Confidential Information for any purpose other than the purpose of this Agreement (which, in the case of GWRC, will include obtaining the full benefit of the Agreement and all rights under it).

29.2 **Exceptions:** A party may disclose Confidential Information:

- (a) to:
 - (i) its Related Companies, directors, employees or contractors who need to know such information for the purpose of this Agreement;
 - (ii) its professional advisers, auditors or bankers for a proper purpose; or
 - (iii) in the case of GWRC:

- (aa) any of GWRC's advisers (including relevant third parties) or any Related Entity or Authorised Third Party; or
- (bb) an third party supplier, to the extent that disclosure of the Confidential Information is required for the third party supplier to provide services and/or deliverables to GWRC,

provided that party ensures that each such person complies with the restrictions in this clause as if such person were a party to this Agreement;

- (b) if and to the extent disclosure is required by law (including under the LGOIMA), the rules of any registered securities exchange on which the party's securities are listed, or any Government Agency, minister of the Crown or parliamentary officer or body, provided that party gives the other party notice, to the extent permitted by the applicable law, of the requirement as soon as practicable and consults in good faith with the other party before such disclosure is made;
- (c) if and to the extent the information:
 - (i) is disclosed to the receiving party on a non-confidential basis by a third party who has the right to make such disclosure without requiring the information to be kept confidential by the receiving party;
 - (ii) was known to the receiving party without breach of any confidentiality obligation before the information was disclosed to it;
 - (iii) is generally available to the public through no fault of the receiving party; or
 - (iv) is developed by the receiving party without breach of any confidentiality obligation and independently of the information disclosed by the disclosing party; or
- (d) if and to the extent required in connection with legal proceedings relating to this Agreement.

29.3 **Confidential Information (personnel):** Each party will ensure that its personnel:

- (a) are aware of and comply with the confidentiality obligations in this Agreement; and
- (b) do not use or disclose any of the other party's Confidential Information, except as permitted by this Agreement.

29.4 **Prior notification and consultation:** If either party is required by clause 29.3(b) to make a disclosure or announcement (including to an incident under clause 22.6), it shall, before doing so:

- (a) give to the other party the maximum notice reasonably practicable in the circumstances, specifying the requirement under which it is required to disclose Information, and the precise Confidential Information which it is required to disclose;

- (b) comply with all reasonable directions by the other party to contest or resist the requirement to disclose Confidential Information; and
- (c) consult in good faith with the other party with a view to agreeing upon the form and timing of the disclosure or announcement.

29.5 **Public announcements and media:** The Media Agency shall not make any media release or other public announcement (including relating to an incident under clause 22.6), relating to the existence of this Agreement except as permitted by clause 29.2 or with the prior written consent of GWRC. The Media Agency will provide the Services on a no-surprises basis. The Media Agency will immediately notify GWRC verbally of any event affecting the Media Agency or the provision of Services and that attracts, or is likely to attract, media attention.

29.6 **Misuse or breach:** The Media Agency will notify GWRC in writing immediately on becoming aware of any:

- (a) potential, threatened or actual misuse or unauthorised disclosure or use of Confidential Information by any person to whom the Media Agency makes any disclosure in accordance with clause 29.2; or
- (b) breach of the Media Agency's obligations under this clause 29,

and will take all reasonable steps to mitigate the effects of such disclosure and fully cooperate with GWRC in preventing or limiting such misuse, unauthorised disclosure or breach, at the cost of the Media Agency.

29.7 **Return of information:** The Media Agency must, at GWRC's written direction at any time, whether during the term of this Agreement or following the expiry or termination of this Agreement for any reason, and at no additional cost to GWRC:

- (a) delete or destroy; or
- (b) return to GWRC,

all Confidential Information of GWRC (including GWRC Data) in the Media Agency's possession or control. Where any direction from GWRC pursuant to this clause 29.7 relates to the return of GWRC Data, the Media Agency must return the GWRC Data to GWRC in a standard electronic format that meets GWRC's format, system, compatibility and delivery needs, as may be advised by GWRC to the Media Agency from time to time.

30. FORCE MAJEURE

30.1 **Force Majeure Event:** Subject to any performance adjustments agreed under Schedule 1 of this Agreement, neither party shall be liable for any failure or delay in complying with any obligation imposed on such party under this Agreement (excluding any payment obligation) if:

- (a) the failure or delay arises from, or in connection with, a Force Majeure Event;
- (b) that party, on becoming aware of the Force Majeure Event, promptly notifies the other party in writing of the nature of, the expected duration of, and the obligation(s) affected by, the Force Majeure Event; and

- (c) that party uses its best endeavours to:
- (i) mitigate the effects of the Force Majeure Event on the performance of that party's obligations under this Agreement;
 - (ii) perform that party's obligations which are not affected by the Force Majeure Event; and
 - (iii) perform that party's obligations under this Agreement on time despite the Force Majeure Event,

in each case without limiting clause 26.3.

31. DISPUTE RESOLUTION

- 31.1 **Dispute:** If a dispute, disagreement, question or difference ("**Dispute**") arises between the parties, then either party may notify the other party in writing setting out the particulars of the Dispute, naming its representative for negotiations and requiring that the Dispute be determined in accordance with this clause ("**Dispute Notice**"). The party receiving the Dispute Notice must, within [five] Business Days of the date of the Dispute Notice, notify the other party in writing of its representative for negotiations.
- 31.2 **Negotiation:** The persons designated as authorised representatives of the parties shall meet promptly as many times as necessary to discuss the matter and to negotiate to resolve the Dispute.
- 31.3 **Mediation:** If the parties do not resolve the Dispute through negotiation within 20 Business Days, or such later time as the parties agree, of the date of the Dispute Notice, then either party may refer the Dispute to mediation, by notice in writing to the other party ("**Mediation Notice**"). The mediation will be determined by a sole mediator (being a New Zealand resident) as soon as possible in Wellington, New Zealand. If the parties cannot agree on an mediator within five Business Days of the giving of the Mediation Notice, the mediator will be appointed by the President of the Arbitrators and Mediators' Institute of New Zealand or his/her nominee. The mediator will determine the procedure and timetable for mediation. The costs of the mediation shall (subject to any award by the arbitrator) be borne equally by the parties to the Dispute.
- 31.4 **Condition precedent:** Subject to any right any party may have to apply to a court for any interim or preliminary relief in respect of the Dispute, completion or termination of the negotiation as set out in clause 31.2 shall be a condition precedent to the commencement of mediation under clause 31.3.
- 31.5 **Restrictions on use of information:** The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to clause 31.2 is to attempt to settle the Dispute between the parties. No party may use any information or documents obtained solely by reason of clause 31.2 for any purpose other than in an attempt to settle the Dispute.
- 31.6 **Continuation of performance:** Notwithstanding the Dispute, each party shall continue to perform their respective obligations in accordance with this Agreement to the maximum extent possible (having regard to the nature of the Dispute).

31.7 **Urgent relief:** Nothing in this clause 31 will preclude a party from seeking urgent interlocutory relief before a court.

32. ASSIGNMENT AND SUBCONTRACTING

32.1 **Media Agency assignment:** The Media Agency shall not directly or indirectly assign, novate, transfer or otherwise dispose of any of its rights or interests in, or any of its obligations or liabilities under, or in connection with, this Agreement except with the prior consent of GWRC (at its sole discretion). For the purposes of this clause 32.1, a Change of Control shall be deemed to be an assignment by the Media Agency.

32.2 **GWRC assignment:** GWRC may at its sole discretion (including if required by law or any governmental direction) assign, transfer or novate any or all of its rights and obligations under this Agreement to any Related Entity by giving notice in writing to the Media Agency.

32.3 **Subcontracting:**

- (a) The Media Agency shall not subcontract the performance of any of the obligations of the Media Agency under this Agreement except with the prior consent of GWRC (at its sole discretion) which may be subject to any conditions specified by GWRC.
- (b) The Media Agency shall provide to GWRC, when seeking the approval of GWRC to any subcontracting, full particulars of the Media Agency's obligations which it proposes to be subcontracted, together with financial and other relevant details of the proposed subcontractor(s).
- (c) The Media Agency must:
 - (i) ensure that an appropriate written agreement is in place between the Media Agency and the subcontractor that is consistent with the terms of this Agreement in all material respects; and
 - (ii) ensure that the agreement referred to in clause 32.3(c)(i) acknowledges the benefit to GWRC for the purposes of subpart 1 of part 2 of the Contract and Commercial Law Act 2017 and is therefore enforceable by GWRC.
- (d) The Media Agency will, notwithstanding any permitted subcontracting, remain liable to GWRC for the performance of the obligations of the Media Agency under this Agreement and will be responsible for all acts, omissions and negligence of any subcontractors as if they were the acts, omissions or negligence of the Media Agency.
- (e) The entry by the Media Agency into an agreement with a subcontractor will not:
 - (i) create a contractual relationship between GWRC and the subcontractor except as described in clause 32.3(c)(ii); or
 - (ii) relieve the Media Agency from liability for the performance of any obligations under this Agreement.
- (f) If:

- (i) GWRC considers (acting reasonably) the performance of any subcontractor in relation to any Services to be unsatisfactory, unacceptable or inadequate; or
- (ii) a subcontractor has failed to comply with a term of this Agreement that is applicable to the Media Agency,

GWRC may, by written notice to the Media Agency, require the Media Agency to, and the Media Agency will, remove that subcontractor from the provision of the relevant Services within such reasonable period as GWRC may require.

- (g) The Media Agency must obtain GWRC's prior written consent to the replacement of any subcontractor, and the provisions in this clause 32.3 will apply to all replacement subcontractors.

33. NOTICES

33.1 **Notices:** Each notice or other communication given under this Agreement (each a **notice**) shall be in writing and delivered personally or sent by email or courier post to the address of the relevant party set out in clause 33.3 or to any other address from time to time designated for that purpose by at least five Business Days' prior notice to the other party.

33.2 **Receipt:** A notice under this Agreement is deemed to be received if:

- (h) **Delivery:** delivered personally, when delivered;
- (d) **Courier Post:** posted, five Business Days after posting or, in the case of international post, seven Business Days after posting; and
- (i) **Email:** sent by email:
 - (i) if sent between the hours of 9am and 5pm (local time) on a Business Day, at the time of transmission; or
 - (ii) if subclause (i) does not apply, at 9am (local time) on the Business Day most immediately after the time of sending,

provided that an email is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.

33.3 **Addresses:** For the purposes of this clause the address details of each party are:

GWRC:

Attention: Manager Commercial and Investment Metlink
Physical address: 100 Cuba Street Te Aro Wellington 6011
Postal address: PO Box 1146, M1146, Street, Wellington 6142
Email address: Richard.baker@gw.govt.nz

Media Agency:

Attention: General Manager

Physical address: 1 Albert Steet, Auckland CBD 1010
Postal address: PO Box 106021, Auckland 1143
Email address: simon@gomedia.co.nz

34. GENERAL

34.1 Amendments: No:

- (a) amendment to this Agreement;
- (b) agreement between the parties for the purpose of, or referred to in, this Agreement; or
- (c) consent or approval for the purposes of, or referred to in, this Agreement,

is effective unless it is in writing and signed (if subclauses (a) or (b) apply) by both parties or (if subclause (c) applies) the party required to give the consent or approval.

34.2 Communications: All communications and documents relating to and in connection with this Agreement shall be in English.

34.3 Costs: Each party shall pay its own costs and expenses for preparing, negotiating, implementing and enforcing this Agreement. A party who has an obligation to do anything under this Agreement will perform that obligation at its own cost, unless expressly stated otherwise in this Agreement.

34.4 Counterparts: This Agreement is deemed to be signed by a party if that party has signed or attached that party's signature to any of the following formats of this Agreement:

- (a) an original; or
- (b) a photocopy; or
- (c) an electronic copy;

and if each party has signed or attached that party's signature to any such format and delivered it in any such format to the other party, the executed formats shall together constitute a binding agreement between the parties.

34.5 Entire agreement: This Agreement (including, to avoid doubt, all Statements of Work pursuant to this Agreement) constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes and cancels any previous agreement, understanding or arrangement whether written or oral.

34.6 Further assurance: Each party shall make all applications, execute all documents and do or procure all other acts and things reasonably necessary to implement and to carry out its obligations under, and the intention of, this Agreement.

34.7 Fair Trading Act 1986: Nothing in this Agreement is intended to limit (or contract out of) a party's rights or obligations under the Fair Trading Act 1986.

34.8 No partnership, joint venture: Nothing in this Agreement shall create or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the

parties, and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. A party shall not have authority to act for, or to incur any obligation on behalf of, the other party, except as expressly provided for in this Agreement.

- 34.9 **Privity:** A person who is not a party shall not have any rights under or in connection with this Agreement by virtue of subpart 1 of part 2 of the Contract and Commercial Law Act 2017.
- 34.10 **Severance:** If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, that provision shall be read down to the extent necessary to make it legal, valid and enforceable or, if it cannot be read down, deemed severed from this Agreement. Such change shall not affect the legality, validity and enforceability of the other provisions of this Agreement.
- 34.11 **Survival:** Following termination or expiry of this Agreement, the provisions of clauses 6 (Warranties), 19 (Intellectual Property), 20 (Intellectual Property Indemnity), 21 (Title and risk), 23 (Privacy), 24 (Security and data protection), 25 (Insurance), 26 (Termination), 28 (Disengagement Services), 29 (Confidentiality), 30 (Force majeure), 31 (Dispute resolution), 33 (Notices) and 34 (General), together with any provisions that by their nature are intended to survive, will remain in full force and effect.
- 34.12 **Waiver:** No failure or forbearance by a party to exercise, or delay in exercising, (in whole or in part) any right, power or remedy under, or in connection with, this Agreement shall operate as a waiver of that right, power or remedy. A waiver of any breach of any provision of this Agreement shall not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach. No single or partial exercise of a right shall restrict the further exercise of that or any other right.
- 34.13 **Governing law and jurisdiction:** This Agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any proceedings arising out of or relating to this Agreement.

SIGNATURES

SIGNED for and on behalf of)

WELLINGTON REGIONAL COUNCIL)

by:)

Print Name)

Signature

Position

SIGNED for and on behalf of)

Go Media Limited by:)

MICHAEL GRAY)

Print Name)



Signature

MANAGING DIRECTOR)

Position)

**SCHEDULE 1
BUSINESS PLAN AND BUDGET**

1. Business Plan

1.1 **Annual budgets:** The Media Agency has provided the following budget outlining how the Media Agency intends to calculate Advertising Revenue (including an estimate of Production Costs associated with providing the Services) and the proportion of that Advertising Revenue payable to GWRC under clauses 9 and 10 of the Agreement (**Business Plan**)

Static Media Train

	Term		
	Year 1	Year 2	Year 3
	s7(2)(b)(ii)		

*excludes production incidents

Static Media Bus

	Term		
	Year 1	Year 2	Year 3
	s7(2)(b)(ii)		

Digital Media

Term			
Year 1	Year 2	Year 3	
s7(2)(b)(ii)			

1.2 **Assumptions:** The following assumptions affecting the budget and amounts estimated to be owed to GWRC have been identified:

Assumption (Static)	Implication if assumption not met
Assumes no new ad-formats are installed, that may cannibalise Bulkhead and Poster revenue.	There may be less demand for these products if new formats are preferred by advertisers
Factored flat-line 4% inflation p.a. to cover print material and installation subcontractor labour cost increases.	Actual costs may differ
There is enough margin in our existing print & install prices to absorb some inflation.	Go Media may not be able to absorb all inflation if it continues to be high

Assumption (Digital)	Implication if assumption not met
Assumes no change to the 49-screen digital network	More or less screens may require a forecast of expected revenue
No Production Costs for Digital	If we do incur unforeseen production costs this will reduce revenue

Dependencies: No dependencies have been identified:

2. PERFORMANCE ADJUSTMENTS

2.1 **Adjustments:** The Payment Sum owed to GWRC will be adjusted to reflect the performance of the Services by the Media Agency in the following manner:

- (a) If the Media Agency **achieves** the total forecast Advertising Gross Revenue across digital and static formats as per the Annual Plan (see clause 9 of the Agreement and clause 1.1 above) the payment will switch from a MAG to a Revenue Share of the Overage. The Overage Revenue Share shall be calculated as set out in Clause 2.1 (b) of this Schedule.
- (b) when the Media Agency **exceeds** the total forecast Advertising Gross Revenue (the amount by which it has been exceeded being an **Overage**) as per the Annual Plan (see clause 9 of the Agreement and clause 1.1 above), the Media Agency shall pay GWRC an additional minimum sum **s7(2)(b)(ii)**
[REDACTED]
[REDACTED]
[REDACTED]

For the avoidance of doubt the table below represents the Revenue Share percentages paid on Overage per annum

Advertising Gross Revenue Overage	Percentage share to GWRC
s7(2)(b)(ii)	

- (c) If the Media Agency is unable to meet the MAG due to the effect of a Force Majeure Event that does not result in termination of this Agreement under clause 26.3, the amount due to GWRC in lieu of the MAG will be a share of the revenue generated by the Media Agency **s7(2)(b)(ii)**
[REDACTED]
[REDACTED] This clause applies for the period that is mutually agreed the Force Majeure is in effect.

2.2 **Wash-up:**

- (a) The annual KPI scoresheet comprising the weighted average of the quarterly reviews will determine what percent of the Overage will be paid out to GWRC. The minimum share GWRC will receive of this annual Overage will be calculated in accordance with Clause 2.1 (b) and Clause 2.2 (b-e)
- (b) The annual KPI review will be conducted in October and the wash up calculated following that meeting. The invoice will be generated at the beginning of November and payment will be due at the end of November.
- (c) The percentage of the annual Overage to be received by the Media Agency will depend on the Media Agency's Weighted Average KPI Score, as outlined in the Appendix in Schedule 2 (**Appendix**).

- (d) The overall KPI rating achieved across the 8 criteria detailed in the Appendix will determine the percentage share of annual Overage the Media Agency is entitled to receive:

Weighted Average KPI Score	Percentage Share of Overage payment
s7(2)(b)(ii)	

- (e) To avoid confusion: every averaged KPI 0.5 or greater will be rounded up, and below 0.5 rounded down. For example, s7(2)(b)(ii)

[Redacted text block]

3. PRODUCTION INCIDENTS

3.1 **Risk Minimisation:** From time to time the Media Agency may wish to mitigate risks associated with running bus advertising and these activities may result in the Media Agency incurring additional cost (**Additional Production Costs**). For example, the Media Agency may pay for additional print and installs when PT Operators fail to deliver or the Advertiser is unsatisfied with how the artwork looks on a particular Bus i.e. the bus-grid may detrimentally impact the message.

3.2 **Delivery failures:** Situations when the PT Operators will have failed to deliver include:

- (a) The advertiser's Bus being damaged and taken off the road;
- (b) The advertiser's Bus moving to a different depot or route;
- (c) The Advertiser's Bus being changed to a school route, and the message is now in breach of ASA guidelines e.g. HFSS foods cannot target children.

3.3 **Cost Deduction:** The Media Agency:

- (a) will keep a ledger of such instances for inclusion in the relevant reports.
- (b) with GWRC's agreement, may deduct Additional Production Costs from the Overage payable to GWRC immediately after the final KPI Assessment Review Meeting.

- (c) or with GWRC's agreement may deduct additional Production Costs in the month following the costs being incurred if it is agreed in writing by GWRC.

RATE CARD/S COMMERCIAL IN CONFIDENCE AS AT 1 OCTOBER 2023 SUBJECT TO CHANGE

s7(2)(b)(ii)

Media Rate Card Bus

Production Rate Card

s7(2)(b)(ii)

**SCHEDULE 2
STATEMENT OF WORK FOR SERVICES AT COMMENCEMENT DATE**

1. INTRODUCTION

1.1 **Go Media Limited ("Media Agency")** and the Wellington Regional Council ("**GWRC**") executed a Media Agency Master Services Agreement dated _____ ("**Agreement**") under which the Media Agency agreed to provide Services to GWRC, under separately executed Statements of Work on the terms set out in the Agreement.

1.2 The Media Agency agrees to provide the Services set out in this Statement of Work. Once executed, this Statement of Work will form part of the Agreement.

2. INTERPRETATION

2.1 Unless the context otherwise requires, all terms defined in the Agreement will have the same meaning in this Statement of Work. In addition:

"**Statement of Work Commencement Date**" means 1st October 2023

"**Term**" has the meaning given to that term in section **Error! Reference source not found.** of this Statement of Work.

3. ENGAGEMENT

3.1 The Media Agency will provide to GWRC the Services as further described in section **Error! Reference source not found.** of this Statement of Work so that they meet the Service Levels and the other requirements of this Statement of Work and the Agreement. The individual tasks and obligations do not limit the Media Agency's other obligations under this Agreement.

4. OUTCOMES

4.1 **Outcomes:** The Outcomes to be achieved by the Media Agency under this Statement of Work are agreement for the Media Agency to deliver to GWRC the MAG per annum by sales of out of home advertising across GWRC Public Transport Assets. These assets are:

- (a) Static Advertising across the bus fleet operated by Kinetic, Tranzurban, Mana Coach Services and Uzabus including the Airport Service and the On Demand Fleet in Tawa
- (b) Static Bulkhead Advertising on bus, currently available on 50 kinetic vehicles, but is not limited to this fleet
- (c) Train Bulkheads and A3 poster holders on the rail fleet
- (d) The Digital Kiosk Network with 49 Screens at Wellington, Johnsonville, Porirua, Tawa, Paraparaumu, Melling, Upper Hutt, Waterloo and Petone Railway Stations

5. TERM

- 5.1 Subject to earlier termination of this Statement of Work in accordance with the terms of the Agreement, this Statement of Work will commence on the Statement of Work Commencement Date and will expire on the 30th September 2026

6. SERVICES

- 6.1 **Services:** The following Services will be provided by the Media Agency under this Statement of Work in accordance with the Specifications:

#	Service	Specifications
1.	Marketing and promotion	<ul style="list-style-type: none"> Approach the market and seek businesses who wish to advertise their goods and services on the Assets that make up the Wellington Public Transport Network Develop new ways to attract businesses and advertisers Promote the Assets that make up the Wellington Public Transport Network as an effective form of marketing.
2.	Revenue generation	<ul style="list-style-type: none"> Proactively seek all opportunities that could generate and increase Advertising Revenue for GWRC Engage with all relevant parties (including, but not limited to, other advertisers, advertising agencies, graphic designers, sign writers, screen and design printers) to secure contracts to advertise using the available Assets Provide strategic input and advice to GWRC to maximise use of the available Assets and GWRC's advertising channels
4.	Continuous service improvement	<ul style="list-style-type: none"> Liaise with other advertisers, advertising agencies, technology companies, graphic designers, sign writers, screen and design printers to create new methods and technologies of advertising goods and services through bus and rail services
5.	Campaign development and reporting	<ul style="list-style-type: none"> Work with prospective advertisers to develop advertising plans and strategies Develop advertising briefs and development strategies so that all relevant parties (including GWRC) are aware of the content and details of each advertising campaign Provide GWRC with advertising briefs and development strategies upon request or when finalised
4.	Campaign delivery	<ul style="list-style-type: none"> Design, install, and distribute (including digitally) or arrange for the design, installation and distribution of advertisements Maintain and update advertisements and other media placed on the Assets at the conclusion of an advertising campaign or when reasonably directed by GWRC Remove, or arrange for the removal of, advertising and other media upon the conclusion of an advertising campaign or when reasonably directed by GWRC

12.	Relationship management	<ul style="list-style-type: none"> On GWRC's behalf, maintain strong and lasting relationships with advertisers, advertising agencies, graphic designers, sign writers, screen and design printers and incentivise long-term relationships
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6.2 Allocation of Assets: The following allocations terms apply to the Services:

- (a) s7(2)(b)(ii) will be made available for GWRC, or any of its Related Entities that it designates, for communications (**Communications**) on the following basis:
- (i) GWRC will not be obliged to make any payments to the Media Agency associated with the placement of Communications in accordance with this clause 6.2, other than for Production Costs of the relevant Communication; and
 - (ii) the location of each Asset on which a Communication will be placed will be determined by GWRC's Representative in consultation with the Media Agency. The final decision on the location of each such Asset will lie with GWRC's Representative.
 - (iii) notwithstanding any other provision in this Agreement, GWRC may advertise their own services and that of its Related Entities
 - (iv) GWRC will advise the Media Agency of the space is wishes to book with fair notice ideally being no later than 14 days in advance of the in-market live date;
 - (v) should GWRC or any Related Entity not provide a booking confirmation to use their allotted space by the 14 day prior in-market live date, the Media Agency may release the remaining space to their sales team.

6.3 Scope of engagement: To avoid doubt, the following Services are not included in this Statement of Work:

- (a) Train Wraps, Digital Assets such as Apps, websites and Wi-Fi landing pages, digital on-board buses and trains, floor decals on train buses and at stations, park and ride facilities, cycle shelters and station buildings

6.4 Assumptions: The following assumptions have been identified:

Assumption	Implication if assumption not met
All buses and Trains contracted under PTOM will be available for the sale of advertising	Media Agency may not be able to meet the MAG
The digital network will be available for the distribution of clients advertising	Media Agency may not be able to meet the MAG
There will be no major changes to the GWRC advertising policy during the term	Depending on the change this may impact the Media Agency Sales

6.5 Dependencies: No dependencies have been identified:

7. KEY PERSONNEL AND REPRESENTATIVES

7.1 **Key Personnel of Media Agency:** The Key Personnel under this Statement of Work are:

Name	Position	Responsibilities
s7(2)(a)		

7.2 **Representatives:** The GWRC and Media Agency Representatives for this Statement of Work are:

Name	Position	Contact Details
s7(2)(a)		

8. REVENUE AND PAYMENT

8.1 As per clauses 9 and 10 of the Agreement.

9. PERFORMANCE MEASURES

9.1 **KPI Assessments:** To be conducted in accordance with clauses 11.3 and 11.4 of the Agreement and Appendix 1 of this Statement of Work.

10. DISENGAGEMENT SERVICES

10.1 On termination or expiry of this Statement of Work, in addition to complying with clause 28 of the Agreement, the following Disengagement Services will apply:

- (a) The Media Agency is required to get permission to sell any media where the installation/distribution will either
 - (i) be contracted for a period beyond the Expiry Date

- (ii) requires installation and/or distribution after the Expiry Date
- (b) The Media Agency will write to GWRC 90 days before the Expiry Date of the contract, listing any media that has been sold past the Expiry Date and how it will be managed.

11. REPORTING REQUIREMENTS

- 11.1 Within 10 Business Days of the end of each month, or other reporting period as described below, the Media Agency will provide the following reports in respect of the Services and Deliverables provided under this Statement of Work:

Report Name	Description	Frequency
Financial	<p>A report including:</p> <ul style="list-style-type: none"> (a) all Advertising Revenue received in that month and to what it relates; (b) all Advertising Revenue that is yet to be collected for advertising that has already been installed; (c) all production costs; (d) projected costs for the following month; (e) expenditure to date; (f) an up to date forecast of Advertising Revenue to be received for the full year, compared to the business plan and budget to be prepared in accordance with clause 9.1; (g) any other information that relates to Advertising Revenue or costs incurred by the Media Agency that GWRC reasonably requests from time to time. 	Monthly
Advertising	<p>A report including:</p> <ul style="list-style-type: none"> (a) a detailed summary of what actions and steps it has undertaken under clause 6 of this Statement of Work; (b) a detailed summary of what actions and steps it intends to undertake under clause 6 of this Statement of Work in the following month; (c) the names of businesses and advertisers who have placed advertisements within GWRC's transport network; (d) the top 10 business and advertisers in terms of Advertising Revenue generated; (e) the types of advertisements that are being used within the transport network; 	Monthly

	<ul style="list-style-type: none"> (f) a breakdown of the transport services (by volume and proportion) that are being used for advertising; (g) Advertising Revenue and production cost breakdown analysis and information about any GWRC Production Costs GWRC has incurred to advertise and; (h) any advertising campaigns currently being carried out that are due to last for more than six months; and (i) copies of any available research provided to businesses or advertisers on the effectiveness of campaigns involving assets similar to the Assets, or specific campaigns involving the Assets. 	
Performance	<p>A written report including:</p> <ul style="list-style-type: none"> (a) an update on how the Media Agency is tracking in relation to the KPI's; (b) any issues that could cause the Media Agency not to meet a Weighted Average KPI Score of more than 2; (c) a high-level report detailing the performance of any Subcontractors and any breaches of agreements with Subcontractors; (d) details of any complaints made to the Advertising Standards Authority within the reporting period; and (e) any issues that could prevent the Media Agency from carrying out its obligations under this agreement or that could prevent GWRC from generating the maximum Advertising Revenue possible from its transport network. 	Quarterly
Health and Safety	A health and safety summary that identifies any health and safety issues, events or incidents that have occurred or any risks or hazards that the Media Agency has come across and need to be remedied	Monthly
Site Access	A summary that details any issues with access to Sites or Assets	Monthly
Other	Any other information that GWRC, acting reasonably, requires the Media Agency to provide	On request

11.2 Requirements:

- (a) A face to face presentation of the monthly report should be conducted for the first few months of appointment. During this time, the parties will refine any reporting

amendments that may be required. Thereafter, the monthly report may be delivered as a soft copy.

- (b) A formal in-person presentation of the report, with senior team members of Media Agency present, will be conducted quarterly.

12. DISRUPTIONS TO ACTIVITIES

12.1 In the provision of the Services, the following disruptions will or are likely occur, which may affect GWRC's or an Authorised Third Party's activities:

- a) The application or removal of advertising delays public transport services. The Media Agency will manage and mitigate any disruptions set out in this clause by working closely with public transport operators to schedule Services at convenient times.

13. PROJECT MANAGEMENT

13.1 **Management:** GWRC and the Media Agency must each appoint a Representative authorised to act on its behalf. The initial Representatives of each party are named as such in clause 7.2 of this Statement of Work. The Media Agency Key Personnel may only be changed in accordance with clause 14.4 of the Agreement.

13.2 **Representatives:** The Representatives will regularly discuss matters relating to the performance of the obligations of each party under this Agreement.


13.3 **Escalation:** If in the reasonable opinion of the Representative of either party a matter has arisen which threatens the ability of the Media Agency to fulfil its obligations in accordance with this Statement of Work and the Agreement, either party may refer the matter for resolution in accordance with clause 31 of the Agreement.

13.4 **Project Steering Committee:** At GWRC's request, the Media Agency shall make available such of the Media Agency's personnel as may reasonably be required by GWRC to attend meetings of a project steering committee which may comprise GWRC Personnel, Media Agency Personnel, and Authorised Third Party Supplier Personnel, Asset Controller Personnel or to attend any GWRC project board meetings, to ensure the co-operation of all parties in relation to the implementation of GWRC's objectives and strategy in relation to the this Statement of Work. Attendance may be through telephone conference or secure video conferencing.

14. OTHER TERMS

Not Used

SIGNATURES

For Wellington Regional Council:	For Go Media Limited:
	
_____ Signature	_____ Signature
Name: _____	Name: <u>MICHAEL GRAY</u>
Position: _____	Position: <u>MANAGING DIRECTOR</u>
Date: _____	Date: <u>26 SEPTEMBER 2023</u>

Appendix to Schedule 2 -

CATEGORY	DESCRIPTION	MEASURE	GRADE (1-5)	WEIGHT
Legal Compliance	Adherence to GWRC Advertising Policy.	Number of upheld ASA complaints.	s7(2)(b)(ii)	
Broader outcomes	Good Impressions	<p>Go Media and GWRC to agree a KPI related to the number of good impressions that benefit the Greater Wellington region through the Media Agencies good impressions programme partners. These partners are renewed each year.</p> <p>KPI target to be agreed in writing no later than 1 December 2023 and annually thereafter for the Term.</p>		
Broader outcomes		<p>Media agency to provide plan detailing employment strategy for Rangatahi workforce development.</p> <p>KPI target to be agreed in writing no later than 1 December 2023 and annually thereafter for the Term.</p>		

CATEGORY	DESCRIPTION	MEASURE	GRADE (1-5)	WEIGHT
Broader Outcomes		Go Media to have the Toitu baseline in place by 1 October 2024 from Toitu Audit and measure. The KPI to be agreed in writing by 1 November 2024	s7(2)(b)(ii)	
Operator Service	Satisfaction of PT Operators with the Media Agency interactions	Number of substantiated complaints that require Media Agency redress.		
Health and Safety	Compliance with the health and safety provisions in the Agreement	Number of formal notifications issued by WorkSafe Minor breach = provisional improvement notice Non-Minor breach = infringement notice		
Reporting	Compliance with reporting obligations in Agreement	Reports delivered on time (averaged over the period)		
Payment	Payments are made to GWRC in full compliance with the terms of the Agreement	Payments to GWRC made on time (averaged over the period)		

CATEGORY	DESCRIPTION	MEASURE	GRADE (1-5)	WEIGHT
			s7(2)(b)(ii)	
Summary	Overall rating			
Comments Key improvements areas				

SCHEDULE 3
STATEMENT OF WORK FOR – Cleaning and Maintenance Services for Advertising Services –
Digital kiosk Communications Network

1. INTRODUCTION

1.1 **Go Media Limited ("Media Agency")** and the Wellington Regional Council ("**GWRC**") executed a Media Agency Master Services Agreement dated ("**Agreement**") under which the Media Agency agreed to provide Services to GWRC, under separately executed Statements of Work on the terms set out in the Agreement.

1.2 The Media Agency agrees to provide the Services and Deliverables set out in this Statement of Work. Once executed, this Statement of Work will form part of the Agreement.

2. INTERPRETATION

2.1 Unless the context otherwise requires, all terms defined in the Agreement will have the same meaning in this Statement of Work. In addition:

"**Statement of Work Commencement Date**" means 1 October 2023.

"**Term**" has the meaning given to that term in section **Error! Reference source not found.** of this Statement of Work.

3. ENGAGEMENT

3.1 The Media Agency will provide to GWRC as further described in section **Error! Reference source not found.** of this Statement of Work so that they meet the Service Levels and the other requirements of this Statement of Work and the Agreement, by the applicable Milestone Dates.

4. OUTCOMES

4.1 **Outcomes:** The Outcomes to be achieved by the Media Agency under this Statement of Work are: Cleaning and Maintenance of the Digital Kiosk Network across the Wellington Rail Network in line with Appendix 3 of this Statement of Work.

5. TERM

5.1 Subject to earlier termination of this Statement of Work in accordance with the terms of the Agreement, this Statement of Work will commence on the Statement of Work Commencement Date and will expire on 30 September 2026, being a 3-year Term.

6. SERVICES

6.1 **Services:** The following Cleaning and Maintenance Services for the Digital Kiosk Network will be provided by the Media Agency under this Statement of Work (see Appendix 3 for details):

	Description of Service	Milestone Date	Service Level	Duration
1.	Monthly	Month 1 and 2 of each quarter	100%	For duration of this Statement of Work
2.	Quarterly	Month 3 of Quarters 1, 2 and 3	100%	For duration of this Statement of Work
3.	Annually	Month 3 of Quarter 4	100%	For duration of this Statement of Work
4.	Ad Hoc	Within the timeframes as advised by GWRC for the requirement	As agreed before commencement	For duration of this Statement of Work

6.2 **Installation Schedule:** The following installation schedule will apply to installation

Not Applicable to this Statement of Work

6.3 **Scope of engagement:** To avoid doubt, the following Services and Deliverables are not included in this Statement of Work:

(a) Installation, Relocation and/or Removal of Equipment.

6.4 **Assumptions:** The following assumptions have been identified:

Assumption	Implication if assumption not met
The equipment/hardware subject to the cleaning and maintenance requirements are as listed in Appendix 1 (Identifiable Locations) and assume no change or relocation.	Cost review required.
The equipment/hardware descriptions and specifications are as described in Appendix 2 and assume no change.	Cost review required.

6.5 **Dependencies:** The following dependencies have been identified:

Dependency	Consequence of delay or failure
Kiwi Rail Permits to Access the Rail Network	Without Permits the Media Agency will not be able to deliver the required Outcomes in this Statement of Work

7. SPECIFICATIONS

7.1 **Specifications:** The following Specifications apply in respect of the Services provided under this Statement of Work:

Not Applicable for this Statement of Work

8. KEY PERSONNEL

8.1 **Key Personnel of Media Agency:** The Key Personnel under this Statement of Work are:

Name	Position	Responsibilities
s7(2)(a)		

8.2 **Representatives:** The GWRC and Media Agency Representatives for this Statement of Work are:

Name	Position	Contact Details
s7(2)(a)		

9. REVENUE AND PAYMENT

9.1 **Revenue and Payment:** No payment is applicable under this Statement of Work.

10. PERFORMANCE MEASURES:

10.1 **KPI Assessments:** See Appendix 3 for job/task list and Clause 6.1 above for required Service Level.

11. DISENGAGEMENT SERVICES

11.1 On termination or expiry of this Statement of Work, the Media Agency will comply with clause 28 of the Agreement, as they apply to this Statement of Work.

12. REPORTING REQUIREMENTS

12.1 Within 10 Business Days of the end of each month, or other reporting period as described below, the Media Agency will provide the following reports in respect of the Services and Deliverables provided under this Statement of Work:

Report Name	Description	Frequency	Recipient	Data Source	Media
Monthly Activity Report	Soft copy of detailed activity in provision of the Services including on any Ad Hoc Services	Monthly within 3 business days of month end	s7(2)(a)	N/A	N/A

Performance Against KPI's	Soft copy of detailed performance against Clause 6.1	Quarterly Within 2 weeks of quarter end	s7(2)(a)	N/A	N/A

13. DISRUPTIONS TO GWRC ACTIVITIES

13.1 In the provision of the Services, the following disruptions will or are likely occur, which may affect GWRC's or an Authorised Third Party's activities:

(a) Not applicable for this Statement of Work.

13.2 The Media Agency will manage and mitigate any disruptions set out in clause **Error! Reference source not found.** of this Statement of Work as follows:

(a) Not applicable for this Statement of Work.

14. PROJECT MANAGEMENT

14.1 **Management:** GWRC and the Media Agency must each appoint a Representative authorised to act on its behalf. The initial Representative of each party is named as such in clause 8.1 this Statement of Work. The Project Manager is Key Personnel and may only be changed in accordance with clause 14.4 of the Agreement.

14.2 **Representatives:** The Representatives will regularly discuss matters relating to the performance of the obligations of each party under this Agreement.


14.3 **Escalation:** If in the reasonable opinion of the Representative of either party a matter has arisen which threatens the ability of the Media Agency to fulfil its obligations in accordance with this Statement of Work and the Agreement, either party may refer the matter for resolution in accordance with clause 31 of the Agreement.

14.4 **Project Steering Committee:** At GWRC's request, the Media Agency shall make available such of the Media Agency's personnel as may reasonably be required by GWRC to attend meetings of a project steering committee which may comprise GWRC Personnel, Media Agency Personnel, and Authorised Third Party Supplier Personnel, Asset Controller Personnel or to attend any GWRC project board meetings, to ensure the co-operation of all parties in relation to the implementation of GWRC's objectives and strategy in relation to the this Statement of Work. Attendance may be through telephone conference or secure video conferencing.

15. OTHER TERMS

Not Applicable for this Statement of Work

SIGNATURES

For Wellington Regional Council:	For Go Media Limited:
<p>_____</p> <p>Signature</p> <p>Name: _____</p> <p>Position: _____</p> <p>Date: _____</p>	<p></p> <p>_____</p> <p>Signature</p> <p>Name: <u>MICHAEL GRAY</u></p> <p>Position: <u>MANAGING DIRECTOR</u></p> <p>Date: <u>26 SEPTEMBER 2023</u></p>

Appendix 1 - Identifiable locations:

	Double sided	Single sided	
Central	8	8	
Porirua	1	2	
Tawa	1		
Johnsonville		1	
Paraparaumu	1	2	
Petone		3	
Melling	1		
Waterloo		6	
Upper Hutt	1	1	
faces	26	23	

Faces	
Total	49

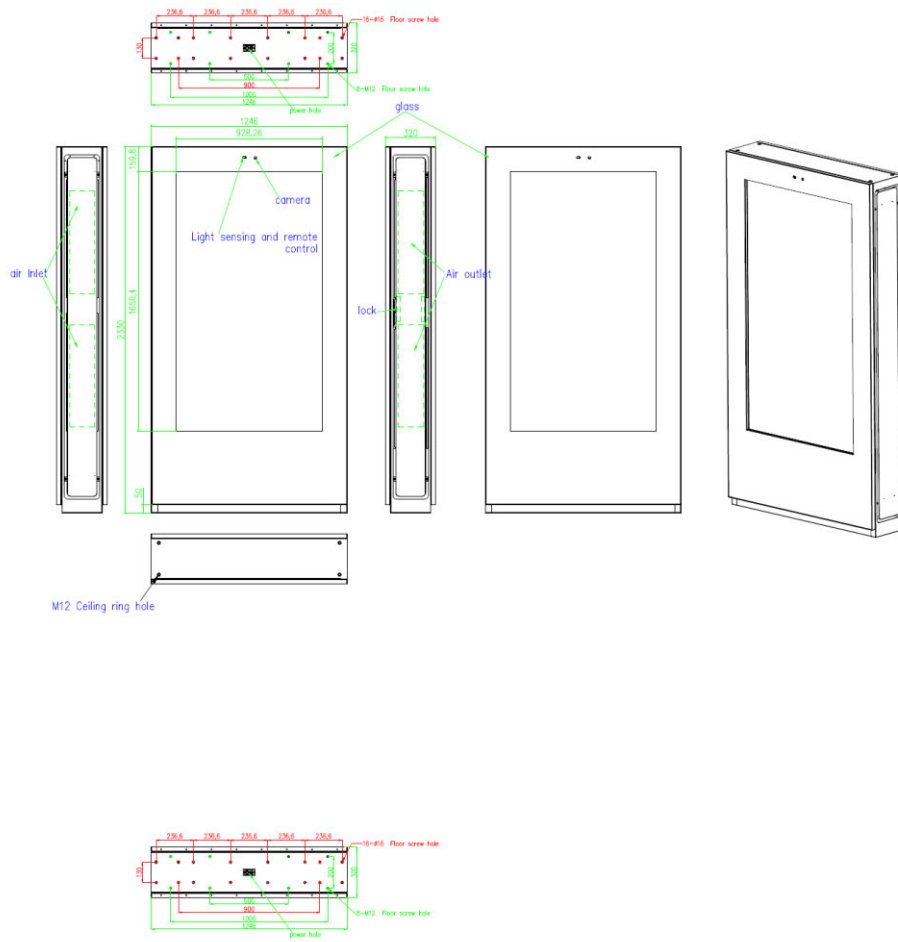
1. Wellington Station; Central
2. Petone Station;
3. Waterloo Station;
4. Upper Hutt Station;
5. Melling Station;
6. Porirua Station;
7. Tawa Station;
8. Paraparaumu Station;
9. Johnsonville Station.

Appendix 2 Equipment specifications

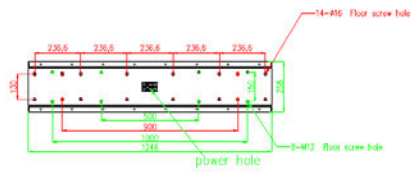
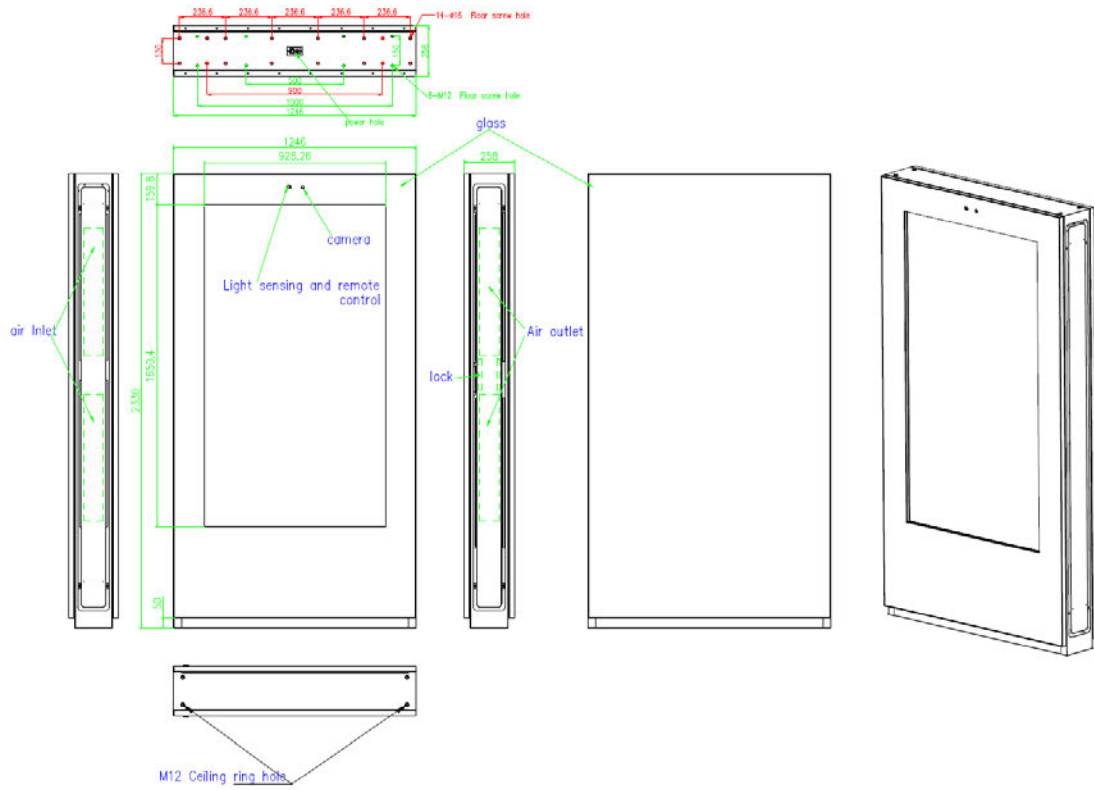
The units are a black powder coated steel cabinet, the sides containing removable venting hatches to cover vents and the locking mechanisms. The faces hinge open to allow access to service. The faces are a steel framed door with a full glass facing. Inside the cabinet is the media player, Communications hardware, the screen/s ventilation system and the power and control systems

Fig 1 Screen *In situ*





Single Sided (Camera is removed)



Appendix 3 Cleaning and Maintenance Plan

Monthly:

- visual inspection, internally and externally
- Clean filters and refit
- Wipe and clean exterior with salt removal detergent
- Document and schedule any concerns or work required

Quarterly:

- As per monthly
- Vacuum internally, open screen hinging and internal checks
- Reboot player, router, and controllers
- Rust preventative treatments internally and externally as required
- Dry wipe screens inside and inside glass
- Remove any debris from side covers
- Repaint any scratching

Annually:

- As per quarterly
- Update media player software and firmware
- Update firmware router

Ad hoc:

- Subject to any findings from any inspections
- Subject to any GW or other party notification

**SCHEDULE 4
STATEMENT OF WORK - TEMPLATE**

1. STATEMENT OF WORK FOR [Insert]

1.1 **[Media Agency's name]** ("**Media Agency**") and the Wellington Regional Council ("**GWRC**") executed a Media Agency Master Services Agreement dated **[insert date]** ("**Agreement**") under which the Media Agency agreed to provide Services to GWRC, under separately executed Statements of Work on the terms set out in the Agreement.

1.2 The Media Agency agrees to provide the Services and Deliverables set out in this Statement of Work. Once executed, this Statement of Work will form part of the Agreement.

2. INTERPRETATION

2.1 Unless the context otherwise requires, all terms defined in the Agreement will have the same meaning in this Statement of Work. In addition:

"**Statement of Work Commencement Date**" means **[insert date from which Services and/or Deliverables are to be provided under this Statement of Work]**.

"**Term**" has the meaning given to that term in section **Error! Reference source not found.** of this Statement of Work.

3. ENGAGEMENT

3.1 The Media Agency will provide to GWRC as further described in section **Error! Reference source not found.** of this Statement of Work so that they meet the Service Levels and the other requirements of this Statement of Work and the Agreement, by the applicable Milestone Dates.

4. OUTCOMES

4.1 **Outcomes:** The Outcomes to be achieved by the Media Agency under this Statement of Work are: **[insert description of Outcomes]**

5. TERM

5.1 Subject to earlier termination of this Statement of Work in accordance with the terms of the Agreement, this Statement of Work will commence on the Statement of Work Commencement Date and will expire on **[insert date or reference the completion of the Services and Deliverables under this Statement of Work]**.

6. SERVICES

[Note: Delete clauses below where such Services are not provided under this Statement of Work.]

6.1 **Services:** The following Services will be provided by the Media Agency under this Statement of Work:

	Description of Service	Milestone Date	Service Level	Duration
1.	[Insert]	[Insert]	[Insert, eg see Services Level [x] in paragraph 9.2 below]	[Insert]
2.	[Insert]	[Insert]	[Insert, eg see Services Level [x] in paragraph 9.2 below]	[Insert]
3.	[Insert]	[Insert]	[Insert, eg see Services Level [x] in paragraph 9.2 below]	[Insert]
4.	[Insert]	[Insert]	[Insert, eg see Services Level [x] in paragraph 9.2 below]	[Insert]
5.	[Insert]	[Insert]	[Insert, eg see Services Level [x] in paragraph 9.2 below]	[Insert]

6.2 **Installation Schedule:** The following installation schedule will apply to installation of [what is being installed?]: [insert details of any dates / scheduling in respect of installation]

6.3 **Scope of engagement:** To avoid doubt, the following Services and Deliverables are not included in this Statement of Work:

(b) [insert description of out-of-scope Services].

6.4 **Assumptions:** The following assumptions have been identified:

Assumption	Implication if assumption not met
[Insert description of Assumption]	[Insert]
[Insert description of Assumption]	[Insert]

6.5 **Dependencies:** The following dependencies have been identified:

Dependency	Consequence of delay or failure
[Insert description of Dependency and party responsible]	[Insert]
[Insert description of Dependency and party responsible]	[Insert]

7. SPECIFICATIONS

7.1 **Specifications:** The following Specifications apply in respect of the Services provided under this Statement of Work:

[Insert description of any Specifications / GWRC requirements for the Services]

8. KEY PERSONNEL

8.1 **Key Personnel of Media Agency:** The Key Personnel under this Statement of Work are:

Name	Position	Responsibilities
[insert name]	[Project Manager]	[insert]
[insert name]	[insert position]	[insert]
[insert name]	[insert position]	[insert]
[insert name]	[insert position]	[insert]

8.2 **Representatives:** The GWRC and Media Agency Representatives for this Statement of Work are:

Name	Position	Contact Details
[insert name]	[insert position]	[insert]
[insert name]	[insert position]	[insert]
[insert name]	[insert position]	[insert]
[insert name]	[insert position]	[insert]

9. REVENUE AND PAYMENT

9.1 **Revenue and Payment:** As per clause [?] of the Agreement.

[OR]

9.2 **Revenue:** The following revenue calculations shall apply in respect of the Services provided under this Statement of Work:

(a) [insert negotiated revenue calculation as per SoW proposal regime]

10. PERFORMANCE MEASURES:

10.1 **KPI Assessments:** To be conducted in accordance with clause [?] of the Agreement and Appendix 1 of this Statement of Work.

[OR]

10.2 **KPI Assessments:** [inset SoW specific regime as negotiation on SoW proposal process]

11. DISENGAGEMENT SERVICES

11.1 On termination or expiry of this Statement of Work, in addition to complying with clause 28 of the Agreement, the following Disengagement Services will apply:

- (a) [insert any Disengagement Services specific to the Services and Deliverables provided under this Statement of Work]

12. REPORTING REQUIREMENTS

12.1 Within 10 Business Days of the end of each month, or other reporting period as described below, the Media Agency will provide the following reports in respect of the Services and Deliverables provided under this Statement of Work:

Report Name	Description	Frequency	Recipient	Data Source	Media

13. DISRUPTIONS TO GWRC ACTIVITIES

13.1 In the provision of the Services, the following disruptions will or are likely occur, which may affect GWRC's or an Authorised Third Party's activities:

- (a) [insert details of disruptions, effect on activities].

13.2 The Media Agency will manage and mitigate any disruptions set out in clause **Error! Reference source not found.** of this Statement of Work as follows:

- (a) [insert details of management and mitigation required to be undertaken by the Media Agency].

14. PROJECT MANAGEMENT

14.1 **Management:** GWRC and the Media Agency must each appoint a Representative authorised to act on its behalf. The initial Representative of each party is named as such in clause **Error! Reference source not found.** this Statement of Work. The Project Manager is Key Personnel and may only be changed in accordance with clause 14.6 of the Agreement.

14.2 **Representatives:** The Representatives will regularly discuss matters relating to the performance of the obligations of each party under this Agreement.

14.3 **Escalation:** If in the reasonable opinion of the Representative of either party a matter has arisen which threatens the ability of the Media Agency to fulfil its obligations in accordance with this Statement of Work and the Agreement, either party may refer the matter for resolution in accordance with clause 31 of the Agreement.

14.4 **Project Steering Committee:** At GWRC's request, the Media Agency shall make available such of the Media Agency's personnel as may reasonably be required by GWRC to attend meetings of a project steering committee which may comprise GWRC Personnel, Media Agency Personnel, and Authorised Third Party Supplier Personnel, Asset Controller Personnel

or to attend any GWRC project board meetings, to ensure the co-operation of all parties in relation to the implementation of GWRC's objectives and strategy in relation to the this Statement of Work. Attendance may be through telephone conference or secure video conferencing.

15. OTHER TERMS

15.1 [insert any additional terms and/or changes to the terms of the Agreement that apply (eg around intellectual property). If not applicable then delete this clause]

SIGNATURES

For Wellington Regional Council:	For Go Media Limited]:
<p>_____</p> <p>Signature</p> <p>Name: _____</p> <p>Position: _____</p> <p>Date: _____</p>	<p>_____</p> <p>Signature</p> <p>Name: _____</p> <p>Position: _____</p> <p>Date: _____</p>

**SCHEDULE 5
PERFORMANCE BOND**

GWRC To Insert Execute Performance Bond Here

**SCHEDULE 6
GOVERNANCE**

[GWRC to insert governance framework]