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31 May 2016

Wayne Hastie
General Manager Public Transport
Greater Wellington Regional Council
PO Box 11646
Wellington 6142

Dear Wayne

Re: PTOM Bus Partnering Contract

Deloitte has been engaged by Greater Wellington Regional Council (GWRC) to provide financial advisory services in support of its implementation of the Public Transport Operating Model (PTOM) in the Wellington public transport market.

As part of our engagement (PTOM Financial Consultancy Services (PT0395)) we have undertaken a commercial review of the key commercial and payments related provisions of the Draft Bus Partnering Contract Version v3 dated 7 April 2016 ("the Contract").

The scope of our review did not include legal, taxation and accounting matters.

Key commercial terms

We have reviewed the Main Partnering Contract and related definitions in Schedule 1, excluding the following operational matters:

- Tender Participation and Transition Deeds (TPTD);
- Part Two (Parties' Obligations and Rights), except sections 10 (Vehicles), 11 (Depots) and 17 (Sub-contracting);
- Part Five (Health and Safety);
- Sections 42 (Insurance) and 44 (Financial Performance and Security - Bonds);
- Part Ten (Miscellaneous); and
- Schedules and Annexures, except Schedules 3 (Passenger Services), 6 (Financial and Performance Regime) and 14 (Change Events and Net Financial Impact) and Annexure 5 (Transfer Agreement).

We have specifically reviewed the contract amendments in response to the key commercial issues raised in written market feedback on the Draft Partnering Contract Version v2 from interested bidders.

Attachment A summarise changes made in the Partnering Contract Version v3 that adequately address the key commercial issues raised in market feedback.

The key commercial terms reviewed are fit for purpose and within the bounds of normal contracting approaches for urban bus services, subject to the:

- Differences in approach to reflect applicable NZTA Procurement Guidelines and the objectives and plans set out in the GWRC Regional Public Transport Plan.

Payment provisions

We have reviewed the following sections of the Contract:

- Schedule 6 (Financial and Performance Regime);
- Schedule 14 (Change Events and Net Financial Impact)
- Annexure 5 (Transfer Agreement); and
- Main Partnering Contract – Part Six, section 34.

We have undertaken a commercial review of the payment provisions. We have also tested the mechanical accuracy of the following payment formulae:

- Punctuality Performance Payment;
- Performance Deductions;
- Indexation Payment;
- Performance Payment (PIs);
- Financial Incentive Mechanism; and
- Fleet transfer price for transferring vehicles.

The payments formulae reviewed are fit for purpose.

Attachment B contains a summary of our review comments on the payment provisions, amendments made by GWRC in the Partnering Contract Version v3 and our comments on final positions.

Yours sincerely
DELOITTE

Tim Arbuckle
Partner

Attachment A – Key commercial areas of market feedback

Contract Section	Market feedback	Contract Amendment	Initial Deloitte Comment	GWRC Response	Final Deloitte Comment
2. Conditions Precedent	Obligations on GWRC are not specified and relief from liquidated damages (LD) due to delay caused by GWRC actions or inactions. Bond and Parent Company Guarantee sufficient, LD not required. LD rate and cap not specified.	Operator may request an extension of time for delay caused by circumstances reasonably beyond the operator's control. GWRC to act reasonably in assessing a claim [2.15] If an extension is granted the operator is not relieved from performance of obligations [2.19] A LD cap of [60] days applies [2.20.2, Sch 2]	Extension process provides reasonable protection for the operator from the cost of LDs due to delays caused by GWRC actions or inactions LD rate is based on expected GWRC losses and is capped LD is a lower cost form of security for GWRC than the cost of increasing the bond	Not required	Not required
4. Term	Explicit extension linked to league table	GWRC has a sole discretion to direct appoint the operator under a new contract after expiry [4.7]	Contract renewal decision needs to take into account a range of broader network issues in addition to the league table performance of an individual contract. It is appropriate therefore to not 'hard wire' a renewal process in the contract	Not required	Not required
4. Term	Notice periods are too short for GWRC extension options	Notice period of no less than 6 months for the first extension and 1 month for subsequent extensions up to a total term of 12 years [and 6 months] [4.4]. Length of extension periods removed.	Subsequent extension period could still be for an extended period of time meaning 1 month may be insufficient We note that the Base Service Fee Table in Appendix 6 of Schedule should be extended for a period of [13] years	We have changed this to 3 months' notice. We do not think it appropriate to extend the BSF Table in Appendix 6, Schedule 2. The contract term is 9 or 12 years and any extension is only to be exercised in extenuating circumstances. Payments during the extension period are covered in clause 4.6.	Adequately addressed

Contract Section	Market feedback	Contract Amendment	Initial Deloitte Comment	GWRC Response	Final Deloitte Comment
10. Vehicles	Allow operators to optimise vehicle maintenance which may vary from OEM requirements Allow for parties to agree changes to the vehicle acquisition programme Maintenance plans should be at a higher level than individual vehicle Leave operator to manage spares rather than specify To provide for efficiency, non-specialist vehicles should be able to be used for Exempt services	Requirement to comply with Fleet Management Plan [10.1.6] and reasonable requirements of manufacturer [9.12.4] is limited to transferring vehicles Vehicle acquisition plan to be updated annually, subject to GWRC approval (acting reasonably) [10.9.6] The operator must at all times have sufficient vehicles [10.13]. Reference to spares has been removed Vehicles may be used for Exempt services subject to GWRC approval [10.19]	Market feedback has been adequately addressed	Not required	Not required
12. Ticketing and RTPI	Not appropriate for operator to indemnify for ticketing product failure. Indemnity should be limited to operator acts or omissions (as per RTPI)	GWRC is responsible for commissioning costs of ticketing and RTPI at commencement [12.1] other than costs specified in the VQS, or change in PVR [12.2.8(d)]. Otherwise the operator is responsible for the costs of installation and de-installation for vehicle replacements [12.2.8] GWRC is responsible for replacement or repair of damaged or defective equipment [12.2.3] Operator indemnifies	GWRC should be responsible for decommissioning costs at end of term (or when IFT is introduced) otherwise the operator will price this cost which may not be incurred if the contract is retained or IFT is deferred. Market feedback on operator indemnity has been addressed	We have made it clearer that GWRC will be responsible for decommissioning costs at end of term (or when IFT is introduced).	Adequately addressed

Contract Section	Market feedback	Contract Amendment	Initial Deloitte Comment	GWRC Response	Final Deloitte Comment
		GWRC for loss or damage due to acts or omissions of operator [12.2.4]			
12. IFT	GWRC should be responsible for all commissioning and decommissioning	GWRC is responsible for commissioning costs [12.11] Operator is responsible for de-commissioning costs [12.2.8]	GWRC should be responsible for decommissioning costs at end of term otherwise the operator will price this cost which may not be incurred if the contract is retained.	We have made it clearer that GWRC will be responsible for decommissioning costs at end of term (or when IFT is introduced).	Adequately addressed
16. Subcontracts	GWRC approval of key subcontracts and requirement for direct deeds is unwarranted. Business issue for operator	Key subcontractors now limited to provision of scheduled services or special events [Sch 2, para 10]	Market feedback has been adequately addressed	Not required	Not required
20. Continuous improvement	Revise best endeavours to reasonable endeavours to allow for cost/benefit test	Removed. References to continuous improvement limited to principles for the health and safety management plan [33.6.13] and not expressed as an obligation on the operator	Market feedback has been adequately addressed	Not required	Not required
25. Background IP	Background IP is unrelated to the partnering contract and only developed IP should be licensed to GWRC	GWRC rights to Operator Background IP now limited to any licence granted under a TPTD [25.2] or required for transferring assets [28.1.2] and for the purposes of its rights under the Partnering Contract. GW licence to Operator Background IP in respect to transferring assets may be sub-licenced to an incoming	GW's has full right to sub-licence Operator Developed IP to an incoming operator. Operator Developed IP includes anything developed as part of the Services, including adaptations of Operator Background IP. The revised position will partially address the market feedback.	Definition of Operator Developed IP has been amended as follows: (i) para (a) is limited to customer facing developed IP; (ii) reference to "rosters" in para (c) has been replaced with "Working Timetable"	Adequately addressed

Contract Section	Market feedback	Contract Amendment	Initial Deloitte Comment	GWRC Response	Final Deloitte Comment
		operator [28.2.2] Operator also retains ownership of Developed IP [26.1] with GWRC entitled to a licence over Operator Developed IP in certain circumstances, including to sub-licence to an incoming operator [27.1.4]	We suggest consideration is given to limiting the sub-licencing of Operator Developed IP to matters relating to transferring assets, data and reports provided to GWRC during the contract term and customer facing developed IP (as per Auckland). Remove item (a) from definition in Schedule 1		
34. Indexation	Indexation should be applied to variation rates	The base services fee and service variation rates are specifically excluded from the monetary amounts to be indexation under the contract [34.2]	The indexation process in the Partnering Contract is complex. We suggest GWRC prepare an explanatory note for inclusion in the RFT clarifying the indexation process across each payment component and over time	We have included an explanatory note for Tenderers.	Adequately addressed
39. Free travel	Continue existing staff free travel for non-work purposes	No change. Free staff travel only for the purposes of performing duties as employees [39.5]	Operators still permitted to provide wider free travel for staff but would need to compensate GW for the cost of foregone fare revenue	Not required	Not required
41. Operator indemnities	Operator indemnities are inappropriately wider and unlimited. Should be proportionally reduced for acts and omissions by GWRC and indirect or consequential loss excluded	Corresponding indemnity by GWRC included but with exception of claims or losses arising from third party actions made against GWRC Exclusions and limitations	Consider extending GWRC indemnity to include third party actions so it mirrors operator indemnity	We have changed this to mirror indemnity.	Adequately addressed

Contract Section	Market feedback	Contract Amendment	Initial Deloitte Comment	GWRC Response	Final Deloitte Comment
		on operator liability added, including for consequential and indirect loss (except third party)			
49. Termination for convenience	Impact ability to finance assets and participate in tender Concern clause will be used for performance and cost reasons. Need to be clearer about events that may activate the clause	Termination for convenience for the purposes of retender of substantially the same services is now excluded Notice period extended from 20 business days to 6 months	Operator concerns that termination for convenience could be used for reasons of performance or cost have been addressed Operator has greater notice period to manage transition process New entrant operators will remain concerned about the investment risk associated with the termination for convenience provision, particularly in relation to unamortised mobilisation costs and non-transfer assets We suggest GWRC review the compensation payment further We note that Auckland provides for up to 5 years of margin as part of the termination payment, compared with 2 years for GWRC	We have changed margin payment to 5 years from Termination Date (or remaining period of term if lesser).	GWRC to clarify in drafting the lesser of 5 years or the remaining term
50. Force majeure	FM definition is limited and Major Service Disruption regime is not defined Include industrial action and failure of GWRC assets to	FM has been narrowed to remove earthquakes, landslides, tsunamis, flood or other physical natural disaster	We understand that performance standards will be set based on historical levels of disruption in order to minimise contract	We can confirm that severe irregular events which are localised will trigger an RTRT response. Therefore, it is not necessary to	Adequately addressed

Contract Section	Market feedback	Contract Amendment	Initial Deloitte Comment	GWRC Response	Final Deloitte Comment
	FM	Major Service Disruption defined as an integrated response to a disruption event has been activated through the RTRT Performance will be deemed to have met KPI targets if GWRC asset or data is unavailable or inaccurate [Sch 6, 11.5]	administration dealing with claims for regular disruption events. On this basis it is reasonable to exclude factors such as traffic accidents, road works, etc. However, operators will remain concerned about severe irregular events that are localised and do not trigger an integrated RTRT response or declared under a Civil Defence Emergency We suggest GWRC reconsider reinstating the FM matters removed from the definition and place a time threshold (e.g. > 3 days) on events such a landslides and floods that are more common across Wellington but typically localised and short in duration	reinstate the FM matters removed from the definition. We have amended contract as follows: (i) Definition of RTRT – replaced "Wellington City Council" with "Territorial Council"; and (ii) Made clearer that if RTRT service disruption is localised and only affects a few units, it does not mean that Operators of other units will be excused from performance.	
55. Transferring assets	Divergent views on scope of transferring assets and staff (incumbents do not want any transfer and Australian operators want full transfer)	Transferring assets are limited to the Depot Acquisition Programme and double deck vehicles (or other vehicles agreed by GWRC)	GWRC has adopted a minimal position in relation to the scope of end of term transfer of assets. End of term asset policy is complex and requires a balance across a range of factors that reflects local objectives and priorities We would expect new entrants will present alternative offers containing	Not required	Not required

Contract Section	Market feedback	Contract Amendment	Initial Deloitte Comment	GWRC Response	Final Deloitte Comment
			a wider scope of asset transfer. Some multi-national bidders may decide not participate in the tender		
A5. Lease novation	Financier is not compelled to novate lease for transferring assets	No change	It is not clear in Annexure 5 the circumstances under which a lease agreement will or will not be novated to the incoming operator	Clarification provided in the notes.	Adequately addressed
53. Retendering 59. Confidentiality	General obligation to manage its business to reasonably allow an incoming operator to immediately secure service continuity would require knowledge of incoming operator's business model Exclude operational informational Concern that provisions will transfer operator IP and disrupt competitive advantage and incentive to innovate Amend confidentiality accordingly	Organisation structure has been removed from the Handover Package to be made available to incoming operator. All other matters limited to information relating to transfer assets and the IP Register [Sch 11] Some specific information rights have been removed (e.g. run-boards, staff contact details) but general rights to information (including access to and information about employees) and disclosure to bidders remain [52.2, 52.4, 52.5, 52.7.2]	In the absence of any rights to transfer staff it appears inappropriate to have the right to access employees. We note that the definition of Confidential Information [Sch 1] may in fact limit what can be supplied to bidders in any case to the Handover Package	We have made it clearer that we are not seeking private staff information from the employees by replacing "Services Employee" with "Operator", where necessary.	Adequately addressed
S1. Compensable Change in Law	General change in law is compensable to the extent it involves the operator incurring capital expenditure. Definition should be extended to include operating expenditure	No change	Bus services are predominately an operating cost business. The reference to capital expenditure as a basis for sharing general change in law risk is therefore not as meaningful. An alternative approach used elsewhere is	We have provided explanation that the NZTA index covers operating increase in expenses.	Adequately addressed

Contract Section	Market feedback	Contract Amendment	Initial Deloitte Comment	GWRC Response	Final Deloitte Comment
			to apply monetary thresholds to all expenditure We suggest GWRC review the mechanism for sharing general change in law risk		
S1. Minor Contract Variation	$100,000 threshold is too high for an individual Contract Variation	No change. Threshold defines Minor vs Major Contract Variation. Operators still benefit from a contract variation.	No change required	Not required	Not required
S2. New network (Bus Unit Timetable)	New network introduction should coincide with contract commencement (rather than existing timetable for 4-6 weeks followed by new timetable)	Reference to existing timetable has been removed	Change is consistent with market feedback	Not required	Not required
S3. Service Disruptions	Concern over impact of service disruptions beyond the control of the operator on abatements, costs of alternative services and other PIs. Relief is currently limited to major service disruptions activated through RTRT or may be provided when alternative services are provided for 5 business days or more (at GWRC's discretion) Performance deductions still apply when Alternative Services are supplied	Refer Force Majeure and Major Service Disruption discussion above If the operator is required to provide Alternative Services for 5 days then GWRC must propose a timetable change and a Net Financial Impact adjustment to payments [3.7.2]	Refer Force Majeure and Major Service Disruption discussion above Certainty is now provided for operators that an extended period of Alternative Services will be treated as a change event	Not required	Not required

Contract Section	Market feedback	Contract Amendment	Initial Deloitte Comment	GWRC Response	Final Deloitte Comment
S6. Fuel costs	Provide for a separate fuel cost payment with specific monthly fuel price indexation	No change	NZTA uses a composite index including changes in fuel price. This is different to most Australian contracts which have separate fuel payments and indexation Bidders will assess the NZTA indexation as part of their RFT pricing	Not required	Not required
S6. FIM	Incumbent operators do not believe the FIM does not provide sufficient incentive We note that market participants will have divergence views on the appropriate level of patronage risk transfer appropriate with local operators generally favouring a higher risk setting and Australian operators preferring a lower setting Note that the FIM cap and collar were introduced based on earlier market feedback	The FIM rate is [redacted] of the average fare for fare paying passengers (excluding SuperGold) A cap of [redacted] and collar of [redacted] of the base service applies The FIM fits within a suite of upside financial incentives (expressed as % base services fee) for the operator to improve performance: • FIM: +[redacted] • PIs: +[redacted] • Punctuality: +[redacted] per 1% above [redacted] • Total: ~[redacted] Downside financial incentives are: • FIM: -[redacted] (collar) • Punctuality: -[redacted] (collar) • Reliability: -[redacted] for [redacted] (uncapped)	The FIM rate applies to any excess or surplus patronage above or below a 3 year rolling average of sub-region growth. The rolling average shelters both parties from the cumulative impact of external shocks affecting the sub-region and also means that it is not necessary to adjust the benchmark for actions by GWRC which may impact sub-region patronage equally (e.g. fare changes) which will 'wash through" the benchmark The operator must out-perform sub-region growth to earn a FIM incentive and will be exposed to the knock-on effect of patronage growth due service increases in other sub-region contracts (where there is more than one operator in a sub-region)	We have changed FIM objectives to recognise that both parties have obligations: FIM Objectives means "provision of appropriate mechanism to reflect relative responsibility and ability to control patronage growth." Deloitte comment: GWRC has proposed a revised FIM formula which reverts to unit growth from year 4 onwards once a 3 year time series has been established. This provides a reasonable balance between preserving consistency with rail and containing the implications of sub-region growth.	Adequately addressed

Contract Section	Market feedback	Contract Amendment	Initial Deloitte Comment	GWRC Response	Final Deloitte Comment
		• Total: [redacted] GWRC's stated objective is that the FIM should incentivise the parties to collaborate to grow patronage and fare revenue [10.1] Either party may request a meeting to review the FIM if it considers that its operation is not achieving the FIM objectives [10.9]	The settings for the FIM are within the bounds of the patronage incentives adopted in other jurisdictions (e.g. Sydney) where government retains control over service planning and fares. We suggest GWRC reviews the FIM objectives to further clarify that the settings reflect the patronage drivers under the control of each party We also suggest GWRC consider the implications of using the sub-region growth driver in the patronage benchmark setting		
S3.PT Network Projects	Operator cannot absorb the obligation to plan and resource for future PT Network Projects Should be subject to GWRC funding	No change [3.4.1(a) and 3.4.2(g)] Note that the obligation is to plan and resource to take account of patronage changes associated with PT Network Projects rather than to plan and resource the project itself.	Obligations on operator are limited by being reasonably foreseeable but not clear at what point in time this test applies We suggest GWRC consider reviewing the obligation in relation to future PT Network Projects which are unknown at time of RFT release	We have deleted paras 3.4 to 3.6.	Adequately addressed

Contract Section	Market feedback	Contract Amendment	Initial Deloitte Comment	GWRC Response	Final Deloitte Comment
S14. Service Variation rates	Rates should be reset where dead running is materially different to the network average at commencement	No change	Operators will carry dead running risk for the term of the Partnering Contract In some jurisdictions the service variation rates for timetable changes reset if certain timetable change thresholds are met, allowing rates to be adjusted for changes in dead running and unit costs relating to cumulative service changes. Other jurisdictions are similar to GWRC where there is no relief Bidders will assess this risk transfer as part of their RFT pricing	Not required	Not required
S14. Minor service variation	Operator is only relieved of its contract obligations to the extent specified in the variation notice. Relief should be same as GWRC Initiated Contract Variations GWRC should not direct a Minor Contract Variation where it would place the operator in breach	No change Operator not required to implement Minor Contract variation if it would put the operator in breach [5.1.1]	GWRC is required to act reasonably in assessing the extent to which relief is required [5.2.4] We suggest GWRC considers allowing the operator to request dispute resolution in relation to any relief or compensation determined by GWRC (as per the process for GWRC Initiated Contract Variations)	There is nothing to stop operators from invoking dispute resolution.	Adequately addressed
S14. Service variation – surplus vehicles	If surplus vehicles resulting from a service variation are transferring vehicles then GWRC should purchase	Payments for transferring vehicles that become surplus following a timetable change will continue [3.8(b)]	Market feedback has been adequately addressed	Not required	Not required

Contract Section	Market feedback	Contract Amendment	Initial Deloitte Comment	GWRC Response	Final Deloitte Comment
S14. Operator initiated contract variations	Operator should not be compelled to undertake an Operator Initiated Contract Variation on terms different to those proposed	Ability for GWRC to include conditions on the approval of an Operator Initiated Contract Variation has been removed [8.4.1]	Market feedback has been adequately addressed	Not required	Not required
S14. Directed procurement	Operator should make procurement decisions and not be directed by GWRC. If retained then internal costs of operator in running procurement should be compensated.	Right to direct a tender for capital expenditure associated with a GWRC Initiated Contract Variation has been retained with the $100,000 threshold removed [6.11] GWRC will pay reasonable external costs of preparing a GWRC Initiated Contract Variation that is subsequently withdrawn [7.7] provided the operator has notified GWRC and provided a quote [7.2]	Market feedback has been adequately addressed We suggest GWRC reinstate the threshold for capital expenditure	We have re-instated the $100,000 threshold.	Adequately addressed
A5. Debt margin	1% is too low (should be above 2%). Operators should be able to quote margin	Debt margin is now a bid item [Sch 2, 2.1]	Market feedback has been adequately addressed	Not required	Not required
A5. Delay in transfer	Incoming operator should meet the cost of use and access in the event the delay in transfer is outside the control of the outgoing operator	Operator will receives reasonable and substantiated costs in the vent it has not cause the delay [10.3]	Market feedback has been adequately addressed	Not required	Not required

Contract Section	Market feedback	Contract Amendment	Initial Deloitte Comment	GWRC Response	Final Deloitte Comment
A5. Transfer price for buses	Should be based on market value as per depots	No change	Depreciated cost based price for transferring fleet ensures GWRC funds the bid capital cost of the vehicles Neither party is exposed to the risk of over or under funding of transfer vehicles. In addition, vehicles are not appreciating assets	Not required	Not required

Attachment B – Payment formulae clarifications

Payment	Contract reference	Clarification	Initial Deloitte Comment	GWRC Response	Final Deloitte comment
Performance Deductions	Sch. 5 - Appendix 6	In March 2018, to calculate X: A = 995 of the Scheduled Services in March complied with the Reliability KPI; B = 1000 Scheduled Services are scheduled for March. $Y = \frac{995}{1000} \times 100 = 99.5\%$	Y should be X in the bottom formula	We have made this change.	Adequately addressed
Punctuality Performance Payment	Sch. 6 - Para 4	"the Operator will be entitled to a performance payment equal to [redacted] of the Performance Base in respect of that Relevant Month for every whole 0.1% by which "Y" for Performance Indicator #2 is above [redacted]"	Could be clearer that it will be rounded down	We think this is clear enough. The clause states that if the Operator's performance exceeds [redacted], it will be entitled to performance payment for EVERY WHOLE 0.1%.	Not material
Performance Deductions	Sch. 6 - Para 5.4 and 5.7	"...incurred for every 0.1% (or part thereof)…"	As above but rounded up.	We think this is clear enough.	Not material
Performance Deductions	Sch. 6 - Para 5	Are the reliability and punctuality deductions applicable from first year of operation?	Can't find anything which suggests otherwise	Refer Appendix 6 of Schedule 5. Reliability (PI#1) applies from the first year. Punctuality (PI#2) has a lower target for the first year of 90%.	Adequately addressed

Payment	Contract reference	Clarification	Initial Deloitte Comment	GWRC Response	Final Deloitte comment
Performance Payments	Sch. 6 - Para 9.6	"...if on each occasion which the Operator's performance is measured against a Nominated Performance Indicator..."	What is the measurement unit? Is it measured when reported monthly? Can they offset against better performance in other months in the Half Year?	The measurement and calculation methodology is set out in Appendix 6 of Schedule 5. Para 9.6 has been amended to "if the Operator has achieved the PI Achieve Benchmark against the relevant Nominated Performance Indicator for every Relevant Month within a Half Year in which the Operator's performance is measured in accordance with Appendix 6 of Schedule 5, the Operator shall be entitled to payment …"	Adequately addressed
Performance Payments	Sch. 6 - Para 9.5 "	"The aggregate amount of the Performance Payments available to the Operator in respect of any Half Year shall be the Maximum Half Year Performance Payment Amount."	Aggregate amount available = GWRC must set the nominated amounts to sum to the Maximum Half Year Performance Payment Amount?	GWRC confirms the intention that nominating amounts must sum to the maximum payment	No change required
FIM Adjustment	Sch. 6 - Para 10	Definitions table references to 'Year'	Consistent approach to wording around Years - i.e. falls within, starts before, ending on X and each prior one year period, ending on or prior to X, etc.	The definitions are correct and we don't consider this to be material enough to warrant any changes.	Not material
Indexation Payment	Sch. 6 - Para 8.1	"... on or prior to the first Quarter of the seventh Year, shall be a sum equal to: …"	Provide a formula as in paragraph 8.3, and/or have consistent ordering of Base Date/Last Relevant Quarter	Change made to ensure consistent ordering of Base Date/Last Relevant Quarter. Introduction of a formula not considered necessary.	Adequately addressed

Payment	Contract reference	Clarification	Initial Deloitte Comment	GWRC Response	Final Deloitte comment
FIM Adjustment	Sch. 6 – Para 10	Shadow Fare - ".. [redacted] of the average fare for a unit in the FIM Calculation Year in which 1 July 2018 falls (as Indexed in accordance with clause 34 (Indexation))."	Wording could be clearer around what is indexed - the Shadow Fare or the average fare? (for clarity) This results in too much inflation in the 2019/20 year as clause 34 uses September 2016 as the base date, and a 2018 dollar amount (the average fare) is being indexed by ~3 years' worth.	The Shadow Fare has been changed to be based in the actual average fare for a unit in each FIM Calculation Year. This change corrects for the issues raised.	Adequately addressed
Change Events and NFI	Sch. 14 – Paras 4, 5, 6 and 10	"4.10.2 if the Net Financial Impact is positive, then the Base Service Fee shall be increased by the amount (expressed as a positive figure) by which the Net Financial Impact is greater than zero; or 4.10.3 if the Net Financial Impact is negative, then the Base Service Fee shall be decreased by the amount (expressed as a positive figure) by which the Net Financial Impact is less than zero." Applies to all NFI calculations except bus unit timetable changes. Compared to Sch. 14 - Para 3.9 "...for the duration of the Changed Scheduled Service being effective (and this shall result in an decrease to the Base Service Fee)."	Is the BSF just increased for the period (i.e. that month) in which the event has occurred? Does GW have flexibility to apply a lump sum payment or spread it across the duration of the event? Timetable change NFI's wording specifies, e.g. "for the duration of the Changed Scheduled Service being effective (and this shall result in an decrease to the Base Service Fee)." (Note typo in Sch. 14 – Para 3.9 – "…an decrease")	The concept of a Payment Schedule has been introduced to allow for the flexibility of a one-off payment No change made based on advice from DLA. The comment provided by DLA was "In relation to the first point, we do not think the addition of these words is necessary and they could in fact give rise to ambiguity. Linking the change to the Service Fee to the duration of the NFI Event could give rise to unintended consequences. Instead, what matters is that the Services Fee is adjusted to reflect any increase or decrease in costs and this is already appropriate dealt with through the calculation of the Net Financial Impact." Now para 3.4(d). Typo corrected	Adequately addressed

Payment	Contract reference	Clarification	Initial Deloitte Comment	GWRC Response	Final Deloitte comment
			Sch. 14 para 10.9 acknowledges "..for the duration of the NFI Event being effective…", but consider for clarity having it in earlier paragraphs related to specific events, as well as whether GW wants flexibility.	10.9.1 amended to allow for payments in-line with an agreed Payment Schedule	
NFI Indexation	Sch. 14 – Para 10.5	NFI (except for the variation rates) calculated in real dollars as at Indexation Base Date up to and including Q1 FY7. After Q1 FY7, calculated in real dollars as at Q3 FY6. The NFI is then added/subtracted from the BSF. In Q1 FY7, the BSF has become BSF Indexed. "10.5.2 after the first Quarter…"	The NFI's in Q1 FY7 are still in tender close dollars (apart from timetable changes), added/subtracted from the BSF which has already had indexation rolled up. The indexation payment related to this Q1 FY7 is only one quarter of indexation multiplied by the aggregate BSF payment in the quarter before, which includes NFIs in FY16 dollars.	10.5.1 changed to be "Prior" ie deleting "On or" 10.5.2 changed to be "On or after" ie adding "On or"	Adequately addressed
NFI Indexation	Sch. 14 – Para 10.5	"10.5.1 on or prior to the first Quarter of the seventh Year, it shall be calculated in real dollars as at the date of the Indexation Base Date…" "10.5.2 after the first Quarter of the seventh Year, it shall be calculated in real dollars as at the third Quarter of the sixth Year … "	No explanation provided as to how the amounts will be calculated in real dollars	We do not consider any explanation is required.	Not material