



Public Transport - Contract Development Guidance

Integrated Procurement Resource

NZ Transport Agency Waka Kotahi

1 November 2025

DRAFT

Copyright information

Copyright ©. This copyright work is licensed under the Creative Commons Attribution 4.0 International licence. In essence, you are free to copy, distribute and adapt the work, as long as you attribute the work to NZ Transport Agency Waka Kotahi (NZTA) and abide by the other licence terms. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>.

Disclaimer

NZTA has endeavoured to ensure material in this document is technically accurate and reflects legal requirements. However, the document does not override governing legislation. NZTA does not accept liability for any consequences arising from the use of this document. If the user of this document is unsure whether the material is correct, they should refer directly to the relevant legislation and contact NZTA.

More information

NZ Transport Agency Waka Kotahi

Published [month] 2024

ISBN [number]

If you have further queries, call our contact centre on 0800 699 000 or write to us:

NZ Transport Agency Waka Kotahi

Private Bag 6995

Wellington 6141

This document is available on NZTA's website at www.nzta.govt.nz

Table of Contents

1. INTRODUCTION.....	4
PART A – PRINCIPLES	6
2. RELATIONAL CONTRACTING	6
3. TRANSPARENCY AND CONSISTENCY.....	9
4. RISK ALLOCATION	11
5. CONTRACTING FOR SERVICES AND ASSETS	15
PART B – PRACTICES.....	20
6. CONTRACT STRUCTURE	20
7. RELATIONAL CONTRACTING	21
8. TENURE.....	25
9. PAYMENT MODEL	28
10. PERFORMANCE	31
11. RELIEF EVENTS	33
12. WORKFORCE.....	35
13. VEHICLES.....	37
14. COMPLIANCE ENFORCEMENT REGIME	38
15. TERMINATION FOR CHANGE IN PTA'S SITUATION	40
16. CHANGES IN LAW	41
17. INDEMNITIES, WARRANTIES, LIMITATION OF LIABILITY	42
18. SECURITIES.....	44
19. DATA	49
20. END OF TERM.....	51

1. Introduction

1.1 Overview

This guidance provides practical advice on contracting in the New Zealand public transport sector. It is intended for use by public transport authorities (PTAs), public transport operators (PTOs) and other stakeholders involved in the procurement, management, and delivery of public transport services. While targeted primarily at bus operating contracts, the majority of principles and practices are applicable to other modes and activities. The principles and practices outlined in this document are designed to ensure transparency, accountability, and value for money in the contracting process, while also promoting consistency in contracts for PT services between PTAs and PTOs across New Zealand.

As public transport contracts are often complex with high levels of requirements and regulatory compliance to ensure the provision of effective, efficient and safe public transport services, it is essential that contracts are designed, managed and executed with appropriate consideration to the outcomes sought and the optimal risk allocation to achieve best value for money.

With public transport contracting in New Zealand devolved to multiple PTAs across the country, each with different levels of capability and capacity, and a comparatively small pool of PTOs, it is important that tendering and contracting approaches by PTAs are as consistent as practicable to reduce tendering workload for both PTAs and PTOs and support increased PTO participation in procurement processes.

1.2 Purpose

This guidance outlines the core principles and practices for contracting within the New Zealand public transport sector. It is designed to provide PTAs and PTOs with a comprehensive reference for developing and managing bus operating contracts (with applicability to other modes and activities) that deliver high-quality services while ensuring value for money, sustainability and compliance with all relevant legal frameworks. This includes establishing a recommended risk allocation framework that supports sustainable contractual relationships between PTAs and PTOs and minimises the potential for unnecessary risk premiums in contract pricing by allocating risks to the party that is in the best position to manage those risks.

A consistent approach to risk management in PT contracts also assists national benchmarking approaches by ensuring greater comparability of financial and performance metrics for PT delivery across the country.

This guidance is part of the PT Integrated Procurement Resources, a nationally consistent suite of guidance, tools and frameworks coordinated by NZTA to support efficiency in the procurement of PT activities.

1.3 PT Integrated Procurement Resources

This document is part of the PT Integrated Procurement Resources, a suite of resources designed to promote consistency, improve procurement practices, and deliver better value for money across New Zealand's public transport sector.

Together, the Integrated Procurement Resources offer a comprehensive framework for the effective procurement and contracting of PT services and include:

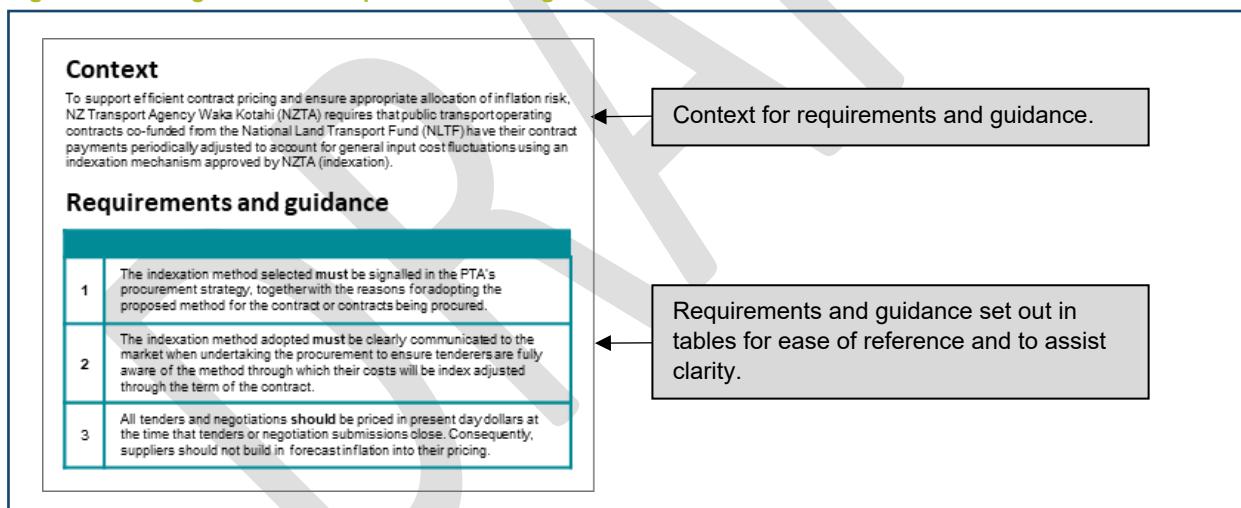
- **Public Transport Procurement Procedures Manual** – requirements guidance for developing procurement strategies describing the procurement procedures that PTAs intend to implement for different public transport activities and obtaining NZTA procurement approvals under the LTMA.
- **Supplier selection** (under development) – requirements and guidance for undertaking procurement processes to ensure effective competition and value for money outcomes.

- **Contract development** (this document) – Provides requirements and guidance for developing public transport operating contracts, promoting national consistency and greater value for money.
- **Pricing workbooks** (under development) – template tool to improve consistency in pricing information received through tender processes, including how prices are broken down into transparent cost components and indexation categories for ongoing contract management.
- **Contract variations** (under development) – requirements and guidance for the application of contract variations in public transport operating contracts.
- **Performance improvement** (under development) – requirements and guidance for performance monitoring and reporting to provide a shared foundation for how we understand, measure, and improve the performance of PT services.
- **Indexation** – requirements and guidance for the application of indexation by PTAs when setting up public transport operating contracts and applying indexation throughout the contract's life.
- **Requirements for Urban Buses (RUB)** – for bus contracts, the minimum requirements for all buses used in urban bus contracts is defined by RUB. The purpose of the RUB is to standardise urban bus requirements across PTAs to create efficiencies and improve the usability and accessibility, as well as environmental quality, of buses for all customers.

1.4 Using this document

For ease of reference and to assist clarity, this document tabulates requirements and guidance as illustrated in Figure 1 where relevant.

Figure 1 showing format for requirements and guidance.



The following terms are utilised to distinguish between requirements and guidance:

- **“Must”** denotes requirements. This term refers to content that PTAs must adhere to. These requirements can stem from either a statutory provision within the LTMA or statutory powers granted to NZTA under the LTMA, such as defining conditions of receiving funding from the NLTF or approving procurement procedures.
- **“Should”** and **“May”** denotes guidance. The term “should” indicates strong recommendations or best practices, while “may” suggests optional guidelines.

NZTA may update requirements and guidance from time to time.

PART A – PRINCIPLES

2. Relational contracting

2.1 Overview

No single party controls the entire public transport system. Instead, delivering efficient and effective public transport is a shared responsibility, with interdependencies across multiple stakeholders. These stakeholders rely on one another to achieve outcomes in the public interest, ensure a high-quality customer experience, and deliver operational excellence. Relational delivery is a way of working that recognises shared responsibility and interdependence and is particularly effective in complex and dynamic sectors like public transport.

Shifting the relationship between PTAs and PTOs to one follows the principles of relational delivery can considerably improve the delivery of services and the outcomes from an effective and efficient PT system.

The relationship between PTAs and PTOs in a relational delivery environment is formalised through relational contracting. Relational contracting is based on the premise that, while a contractual relationship exists between the parties, the contract is designed for adaptability, prudent risk-taking and sharing, fairness and a commitment to work together to advance shared objectives. Embedding a relational contracting approach is an ongoing process, not a one-off initiative. It should build on sector experiences and evolve over time. It requires careful ongoing planning, discussion and monitoring by all participating parties to realise the benefits and mitigate for potential challenges.

This approach contrasts with transactional delivery, which focuses on short-term or one-off exchanges. There is general agreement in the limitations of ‘transactional’ approaches that are overly prescriptive, inappropriately allocate risk and reward and are predominantly focused on compliance. Shifting to a relational approach in which there is recognition from both parties that outcomes will be enhanced for everyone when effort is put into understanding and aligning objectives, building trust and encouraging collaboration and the sharing of ideas.

Key principles of relational contracting include:

- **Shared goals for mutual benefit:** Both parties recognise the importance of aligning objectives to create mutually beneficial outcomes.
- **Accountability:** Holding each party accountable for the things they can directly control.
- **Focus on maximising value:** The contract is designed to maximize value rather than just minimize risk.
- **Trust and transparency:** There is open communication and information sharing between the parties who are committed to good faith negotiations and problem-solving.
- **Flexibility and adaptability:** The contract enables adjustments on a fair and reasonable basis to in response to changing circumstances and the parties work together to resolve issues dynamically.
- **Joint governance and decision-making:** Decisions are made collaboratively at appropriate formalised levels of seniority between the organisations. Dispute resolution mechanisms focus on escalation, mediation and cooperation rather than litigation.
- **Risk and reward sharing:** Risks and benefits are shared appropriately, aligned to the level of control and influence of each party.

2.2 Benefits of relational contracting

Benefits of relational contracting include:

- **Improved service delivery:** By working constructively together, PTAs and PTOs can deliver higher quality services more efficiently.
- **Cost savings:** Collaborative approaches to risk sharing and service enhancement can lead to improved cost efficiency through better resource utilisation, reduced transaction costs and lower pricing premiums attributed to inappropriate or unquantifiable risk.
- **Enhanced innovation:** A strong relationship culture encourages innovation and joint effort to continuously improve service delivery.
- **Increased accountability:** Both parties feel invested in the shared accountability for the performance and outcomes of the services, leading to better overall outcomes for all parties.

2.3 Embedding relational contracting

Shifting from transactional contracting to relational contracting will take time, effort and a joined up approach to progressively embed a relational contracting approach into the delivery of PT services. Key steps in the shift to relational contracting include:

- **Building a healthy relationship culture:** Recognising that healthy relationships are a function of trust and respect. PTA and PTO must each behave in a manner that earns the trust and respect of the other. Open communication and transparency are essential for fostering trust while delivering on commitments and undertaking are key to earning respect.
- **Common goals and objectives:** Ensuring joint understanding of what success looks like for both parties and how this can be achieved.
- **Shared principles:** Explicitly stating a set of shared principles in the contract provides an anchor point for the way in which the parties will behave and interact with one another, particularly for when dealing with unforeseen changes during the life of the contract.
- **Flexibility:** Relational contracts are designed to be flexible, allowing for adjustments and adaptations as circumstances change.
- **Collaboration:** Parties work closely together, sharing information and expertise to achieve better outcomes.
- **Common goals:** Both parties commit to shared objectives, such as enhancing public transport services and meeting community needs.
- **Risk and reward sharing:** Risks and rewards are appropriately allocated and shared between the parties, fostering a sense of joint responsibility and investment in the success of the services. It is important that PTAs take the time to appropriately consider which party is best able to manage different risks and to allocate accordingly. PTAs must avoid transferring risk to PTOs where PTOs are not the party best placed to manage the risk as this will result in a risk premium being applied to the pricing and/or increases the risk that the contract will become financially unsustainable for the PTO. PTAs must also incorporate appropriate remuneration reward in PT service contracts that provide achievable and meaningful financial incentives linked to performance outcomes that are within the PTO's control.
- **Long-term focus:** The emphasis is on maintaining a productive relationship over the long term, rather than focusing on short-term gains.

2.4 Critical success factors

The success of relational contracting hinges on several key factors. The critical elements include:

- **Clear and shared objectives:** Having clearly defined and mutually agreed-upon objectives ensures that both parties are aligned and working towards the same outcomes. This includes setting achievable and meaningful service quality standards and agreeing shared long-term goals.

- **Flexibility and adaptability:** Relational contracts should be flexible to accommodate changing circumstances and evolving needs. This allows both parties to adapt to new challenges and opportunities without renegotiating the entire contract.
- **Continuous improvement, innovation and joint planning:** Encouraging a culture of continuous improvement and innovation is crucial. Both parties should be committed to finding better ways of delivering services, improving efficiency and enhancing passenger experience. Relational contracts must include a process by which the parties will work together to foster a continuous improvement culture by leveraging the expertise of each party to jointly develop improvement plans. See section 7.4 below for further considerations in relation to joint planning.
- **Risk and reward sharing:** Appropriately sharing risks and rewards creates a sense of joint responsibility and investment in the success of the contract. This can be achieved through a collaboratively developed risk framework that identifies the level of control each party has over key risks and benefits and how these can be most effectively apportioned.
- **Strong governance and management:** Effective governance structures and management practices are vital for overseeing the contract and resolving any issues that arise. Regular meetings, performance reviews and conflict resolution processes that are appropriately scoped and attended by the right people at different levels of each organisation help keep the relationship and contract on track.
- **Long-term commitment:** A long-term perspective fosters a deeper commitment to the success of the relationship and contract. Both parties should be invested in maintaining a productive and cooperative relationship over the long haul based on transparency, honesty and trust.

Guidance and requirements

1	<p>To help give effect to relational contracting, PT operating contracts must include:</p> <ul style="list-style-type: none"> • A defined set of partnering or relationship principles that set the foundation and a reference point for how the PTA and PTO will work together throughout the term to deliver the shared objectives. • Requirements for the parties to undertake joint planning to deliver the shared objectives. • A defined relationship hierarchy and process to jointly govern the contract through different lenses, such as operations, planning and strategic oversight. <p>Further guidance is provided in section 8 below.</p>
---	--

3. Transparency and consistency

3.1 Transparency

Transparency plays a key role in Relational Contracting, allowing PTAs and PTOs to move beyond transactional relationships toward collaborative, trust-based partnerships. Through greater sharing of information, while respecting commercial sensitivity, both parties can gain a deeper understanding of each other's objectives, constraints, and operational drivers, leading to more effective decision-making and mutually beneficial outcomes.

In a relational delivery environment, transparency is not just a value, it is a practical enabler of trust, alignment, and joint action. When all parties have access to the same monitoring and performance information, they are better equipped to collaborate, solve problems, and make informed decisions.

The principle of transparency recognises that performance data is a shared resource, not a proprietary asset. It supports a culture where monitoring is not used to surprise or blame, but to build shared understanding and drive collective improvement.

Key outcomes of transparency

1. **Trust and cooperation** – Openness fosters stronger relationships between PTAs and PTOs, reducing adversarial contract enforcement and encouraging problem-solving in good faith.
2. **Improved cost management** – Cost visibility enables PTAs to understand cost drivers, assess the financial implications of decisions, and engage in constructive discussions around contract variations.
3. **Performance benchmarking** – Transparent data-sharing facilitates comparisons across operators and regions, promoting continuous improvements in service delivery.
4. **Policy and decision making** – Insights from transparent reporting can inform policy refinements and support better decision making in procurement, service design and operational strategies.

3.2 Consistency

Increased consistency in public transport procurement and contracting across New Zealand offers significant benefits, including improved efficiency, fairness, and long-term service quality. Standardising procurement approaches across PTAs helps streamline bidding processes, making it easier for PTAs to prepare tenders and easier for PTOs to respond. When key contracting elements, evaluation criteria, and pricing frameworks are aligned, the sector benefits from reduced duplication, reduced effort, greater transparency and enhanced benchmarking.

One key mechanism for achieving consistency is the use of standardised contract models, which define clear performance benchmarks, reporting requirements, and risk-sharing arrangements. A unified approach to procurement documentation allows operators to better understand expectations, reducing disputes and contract variations. Additionally, incorporating nationally aligned service metrics—such as customer satisfaction, punctuality, and fleet sustainability—ensures uniform service delivery standards regardless of location. This consistency fosters benchmarking across regions, enabling PTAs and NZTA to refine policies based on data-driven insights.

Guidance and requirements	
1	Transparency In addition to the promotion of open dialogue and general information sharing between PTAs and PTOs, to facilitate transparency, two key mechanisms must be applied by PTAs to procurement and contracting processes:

	<ol style="list-style-type: none"> 1. Utilisation of the NZTA price book template as the basis for pricing response forms issued with procurement processes for bus operating contracts. While the NZTA price book is adaptable, the core functionality requirements, layout and pricing conventions are to be retained to ensure the price book is fit for purpose and follows appropriate standards for consistency. The NZTA price book template and accompanying guidance are available as part of the Integrated Procurement Resources. 2. Inclusion of Net Financial Impact (NFI) as a mechanism for costing variations that can't be addressed through pre-priced mechanisms. The appropriate disclosure of information by PTOs in NFI mechanisms enables PTAs to understand the consequences of change decisions and helps ensure fair pricing and supports collaborative cost-efficiency initiatives.
2	<p>Consistency</p> <p>To achieve improved consistency across the PT sector PTAs must adopt the following practices:</p> <ul style="list-style-type: none"> • Standardised contract models and risk-sharing arrangements as described in this guidance • NZTA pricing workbook templates • Nationally aligned performance monitoring

4. Risk allocation

4.1 Introduction

One of the key principles of relational contracting is a risk-sharing approach that ensures contract mechanisms appropriately allocate risks to the party best placed to manage them and includes mechanisms to appropriately manage shared risk.

For PT service delivery contracts where there can be many unknowns and high levels of uncertainty, PTAs can achieve better long term value for money through a more collaborative and targeted approach to risk allocation, rather than a simple transfer of risk to PTOs.

The following sections provide recommendations for how risk treatment and allocation should be considered for managing key public transport risks under the relational service delivery model.

Guidance on managing key risks through contractual terms for PT operating contracts is provided in Part B.

Risk allocation key:



4.2 Supply and demand

Risk	Allocation	Considerations
Patronage risk		Most levers impacting patronage sit with the PTA, such as service frequency, capacity, fares and ticketing, or are external forces outside the control of the PTO, such as the cost or attractiveness of alternatives to PT. The main levers available to PTOs to influence patronage, such as service reliability, are better incentivised through other mechanisms. Consequently, patronage risk must sit with the PTA.
Revenue risk		As with patronage, the primary levers impacting revenue, planning, fares and ticketing sit with the PTA and therefore all revenue risk must sit with the PTA.
Daily specified capacity		PTO is responsible for delivering availability of existing fleet in accordance with PTA timetables and capacity specifications.
Long-term capacity		PTA is responsible for funding investment in increased asset and service levels to deliver capacity for long term growth (e.g. additional growth buses and increases in depot capacity).

4.3 Costs

Risk	Allocation	Considerations
Inflation		General input cost fluctuation risk due to inflation sits outside the control of PTOs. Therefore general inflation risk must sit with PTAs, with inflation adjustments to contract prices made in accordance with NZTA's technical note 'Contract price adjustment for cost fluctuation for public transport services contracts'.

Employee T&Cs		<p>Subject to indexation for labour costs, PTOs must be responsible for managing risks associated with the terms and conditions of their employees.</p> <p>PTAs must establish baseline T&Cs at time of contract pricing (tendering), such as minimum wages and/or end of term staff transfer provisions.</p> <p>PTAs have an influence on conditions such as expanse of work hours and the requirement for split shifts through network design and therefore must consider the impact on employee conditions when implementing changes to network design.</p>
Employee utilisation		<p>PTOs are responsible for rostering and schedule management and therefore must be responsible for the utilisation of their employees.</p> <p>PTAs have an influence on employee utilisation through network planning, but this should be factored into PTO utilisation assumptions at time of contract pricing (tendering).</p>
Service volume risk		<p>As the PTA is responsible for setting the service and timetable requirements, it is best placed to manage risks associated with unknown future changes to planned service volumes.</p> <p>PTOs must be compensated through service variation rates to keep the PTO whole for marginal cost and margin.</p>
Out-of-service volume risk		<p>The PTO is best placed to manage the efficient deployment of resources on the network to minimise out-of-service running based on tendered assumptions.</p> <p>The PTA should take out of service risk for service variations that result in material impacts on dead-running that could not have been foreseen by the PTO at the time of tender.</p>
Electricity cost price risk		<p>For PTO controlled depots – where PTOs control all aspects of depot development and electricity procurement they must take full electricity cost risk (excluding general inflation risk which sits with the PTA).</p> <p>For PTA controlled depots – the risk allocation is dependent on who is best placed to procure electricity (for example the PTA may have greater buying power than PTO).</p> <p>PTAs must consider how risk may be influenced by depot design and resultant charging strategy to take account of optimal electricity tariffs and lines charges (for example time of day (TOD), peak demand) and who is the best party to manage electricity pricing risk.</p>
Electricity consumption		<p>PTOs control consumption through vehicle choice and driving behaviour. PTAs have an influence on consumption through network planning, but this should be factored into PTO consumption assumptions at time of contract pricing (tendering).</p> <p>Where PTOs control all aspects of vehicle design and procurement, PTOs must take electricity consumption risk.</p> <p>Where PTAs control aspects of vehicle design and procurement, including through end of term transfer, they should provide detailed vehicle information to bidders to enable PTOs to</p>

	undertake due diligence on typical electricity consumption rates for EVs for bidding purposes. Where this is not possible, PTAs must include a risk sharing approach that enables costs attributed to vehicle assumptions to be adjusted to reflect actual consumption performance.
Electricity infrastructure	<p>Collaboration between PTAs and PTOs is required to get best outcomes.</p> <p>Consideration must be given to how additional/new infrastructure will be specified and funded during the contract term.</p>
Diesel price and consumption	PTOs are responsible for diesel supply for diesel buses and therefore diesel price (excluding general inflation risk which sits with the PTA), supply and consumption risk must solely sit with PTOs.
Change in law	Compliance with change in law must sit with PTOs, while material cost risk from changes in law must sit with PTAs. PTAs may choose to apply reasonable cost risk thresholds when considering compensation for change of law events.
External cost / performance shocks	<p>The PTO is best placed to and therefore must manage its supply chain risks and put in place mechanisms to mitigate events impacting its supply chain, including managing risks associated with its liquidity, balance sheet and any foreign exchange exposure.</p> <p>Risks outside the control of the PTO such as force majeure, excepted risk events and indexation risk must sit with the PTA.</p>

4.4 Performance

Risk	Allocation	Considerations
Performance (punctuality & reliability)		<p>PTOs must be responsible for performance that is under their control but must not be held responsible for performance impacting events that are outside their control (Refer [Requirements and guidance for performance monitoring of public transport operating contracts -underdevelopment] for more information).</p> <p>PTOs and PTAs must collaborate to consider impacts on performance requirements when establishing network and infrastructure changes.</p> <p>For PTA provided assets, PTAs are responsible for specifying and procuring assets that are fit for purpose to deliver on the performance standards. Non-performance risk of PTA provided assets must sit with the PTA, except where the non-performance is due to the actions of the PTO (e.g. damage or lack of maintenance to standards).</p>
Contract transition		<p>The PTO must be responsible for ensuring it is able to comply with Day One requirements of a new contract.</p> <p>The PTA must help to minimise contract transition risks by:</p> <ul style="list-style-type: none"> Establishing an appropriate transition timeframe

	<ul style="list-style-type: none"> • Facilitating access to the outgoing operator's employees for recruitment, training and onboarding purposes • Ensuring appropriate exit provisions are included in contracts and are complied with.
Major project interface event	 <p>Where prolonged, planned disruptions from major infrastructure projects are expected on the PTA's network during the term, the PTA must ensure the contract defines a clear process for baselining performance and costs, monitoring impacts and making adjustments to performance targets and payments to keep the PTO whole for disruptions out of its control.</p>

4.5 Assets

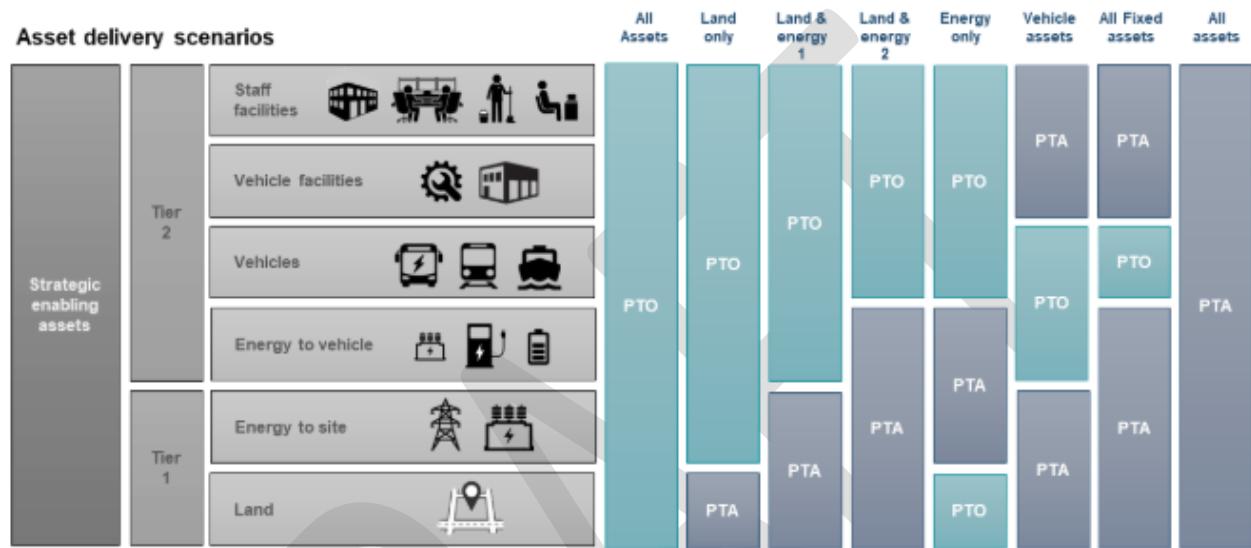
Risk	Allocation	Considerations
Cost for enabling assets		Different asset delivery models may be used to better manage cost of key assets.
Asset condition – PTO controlled assets		<p>The PTO must be responsible for the maintenance, condition and performance of the assets that it owns, including mid-life refurbishments, renewals, battery health and replacement and technology risk.</p> <p>For transferring assets, the PTO must be responsible for the end of term condition of the assets to the PTA's specified condition standard.</p>
Asset condition – PTA controlled assets		<p>Subject to the delivery model and scope of responsibilities, generally the PTO is responsible for the maintenance, condition and performance of the assets that the PTA owns and has assigned to the PTO during the contract term.</p> <p>The PTO must be responsible for any cost risk associated with providing the assets in a condition that satisfies the Return Condition requirements established in the contract. Condition risk associated with fair wear and tear should be retained by the PTA.</p> <p>The PTA must be responsible for specifying maintenance and condition standards (and auditing against these).</p> <p>The PTO must be responsible for managing battery and charger health (to specifications) and the PTA must be responsible for technology risk and cost of replacements where PTO has complied with specifications.</p>

5. Contracting for services and assets

5.1 Introduction

The different classes of assets necessary to deliver PT services can be provisioned or delivered in many different ways as illustrated in Figure 1. What is appropriate regarding the configuration of responsibilities and subsequent decisions on contracting for assets and services will depend on context, including location, funding, decarbonisation pathway, unit structure, potential effects on competition, service delivery model, etc.

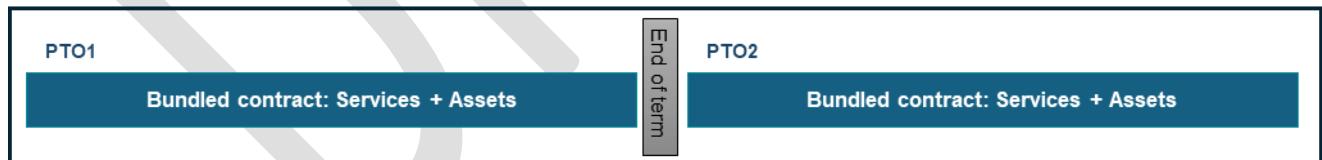
Figure 1: Strategic enabling assets – delivery model scenarios



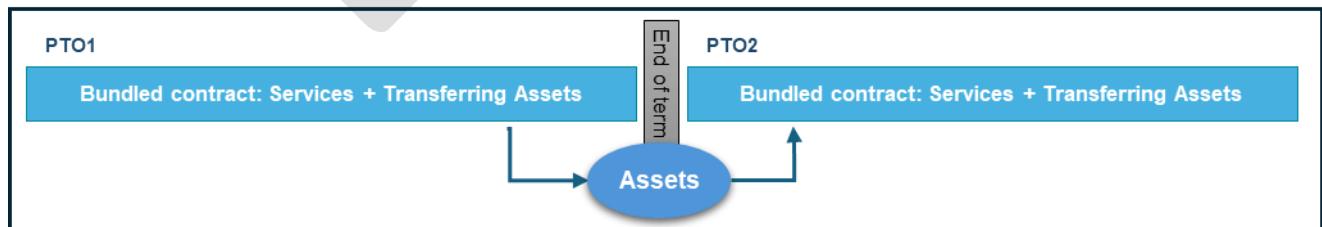
Under each of the different control scenarios there are implications for how assets and services are contracted as illustrated Figure 2 and described below.

Figure 2: Asset control – contracting scenarios

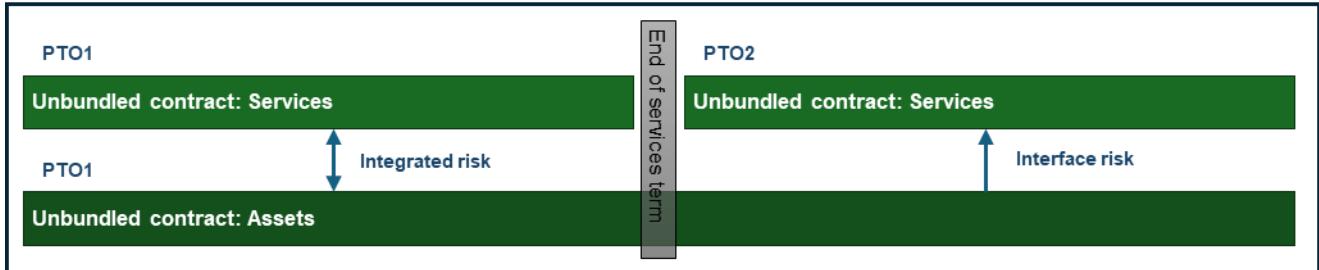
PTO provision of assets under a bundled services and assets model



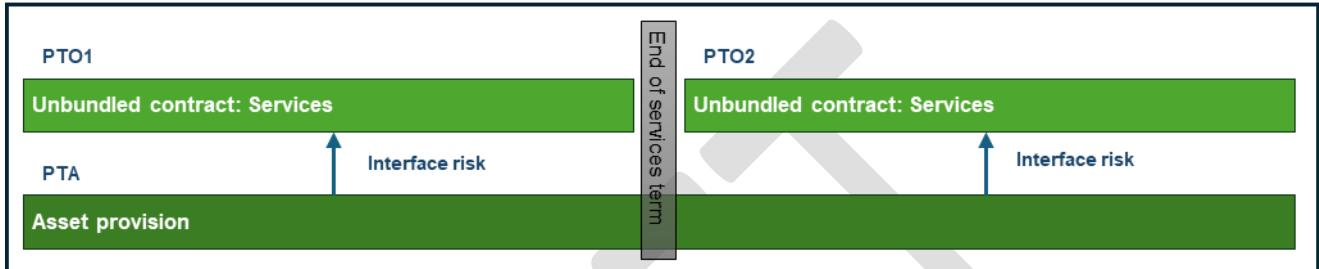
PTO provision of assets under a bundled model with transferring assets



PTO provision of assets under an unbundled model

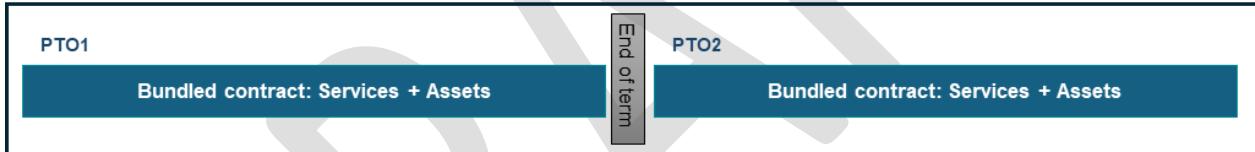


PTA provision of assets



5.2 Contract bundling

PTO provision of assets under a bundled services and assets model



Traditionally, PT operating contracts 'bundle' together the delivery of PT services and the assets provided by the PTO to deliver those services. Under bundled contracts, the provision of services and assets are linked and share the same commercial terms such as contract term, payment model, performance, termination rights, etc.

Bundled contracts link service delivery and asset delivery together within a single integrated contractual agreement, ensuring the PTO remains wholly responsible for the management of its assets and the performance of services. A key merit of this structure is the simplicity it offers, with one contract to administer and one set of performance standards, making monitoring and accountability more straightforward.

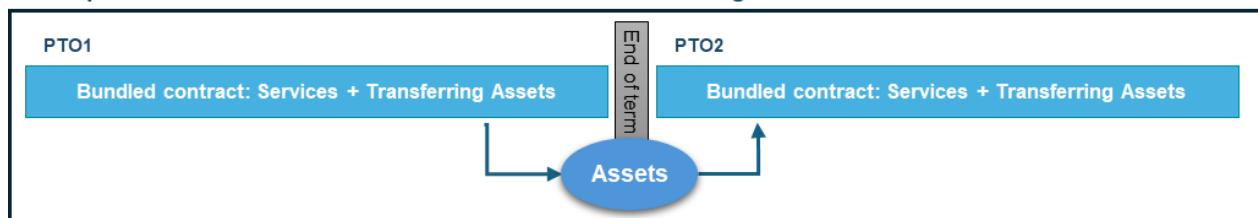
However, bundling service delivery and asset delivery together can create challenges when the economic life of assets exceeds the term that PTAs wish to contract for service delivery. It also creates challenges in raising barriers to entry and securing continuity of access to assets for subsequent service contracts.

The opportunities and challenges associated with traditional bundled contracts are summarised as follows.

Opportunities	Challenges
<ul style="list-style-type: none"> • Simple to administer • PTO integrated responsibility and asset ownership risk 	<ul style="list-style-type: none"> • Assets priced over shorter term with PTO margin on assets • Assets create barriers to entry • Continuity of asset provision risk

5.3 Contract bundling with asset transfers

PTO provision of assets under a bundled model with transferring assets



To address some of the challenges inherent within the bundled contract model in relation to asset pricing and barriers to entry, PTAs may nominate specific assets within a bundled contract to transfer to an incoming PTO in the subsequent term.

Under a transferring asset approach, the asset price may be lessened as the risk of a stranded asset is removed from the PTO and the asset can be depreciated over its economic life rather than initial contract term. A transparent pricing mechanism can be applied within the contract that sets out how the annual capital charge and end of term transfer price will be determined – providing certainty for all parties. This is particularly beneficial when assets are added or renewed near the end of term.

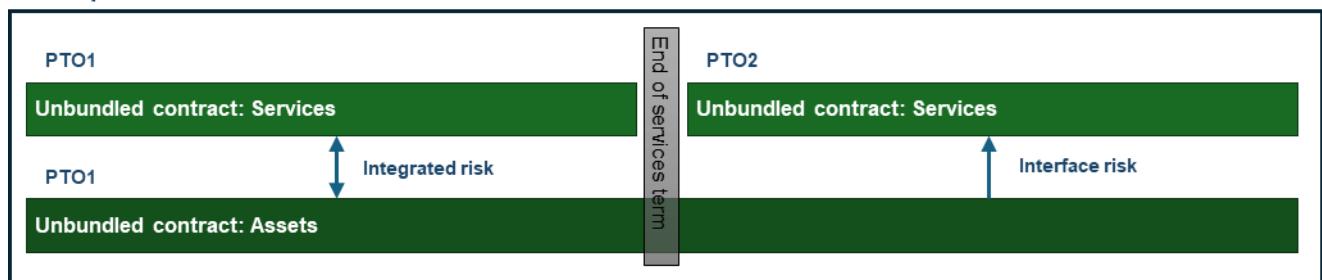
Under a transferring asset approach, asset ownership and performance responsibilities remain with the PTO. However, as the incoming PTO (PTO2 in the above diagram) is required to purchase a second hand asset from PTO1, an asset that the incoming PTO will have had no control over specifying or maintaining, the incoming PTO is taking on risk that is likely to be reflected in its tender pricing, unless appropriately mitigated. This risk can be mitigated through the opportunity for tenderers to undertake due diligence on the assets and associated maintenance records during the tender process. Alternatively, or additionally, the PTA may choose to provide contractual relief to the incoming PTO for issues associated with transferring assets – with the extent of contractual relief relative to the due diligence opportunity afforded to the incoming PTO as a tenderer.

The opportunities and challenges associated with bundled contracts featuring transferring assets are summarised as follows.

Opportunities	Challenges
<ul style="list-style-type: none"> • Barriers to entry reduced • Assets priced over longer term • Asset pricing transparency • PTO integrated responsibility and asset ownership risk • Continuity of asset provision within PTA control 	<ul style="list-style-type: none"> • PTO margin on assets remains • Asset condition risk on transfer – <ul style="list-style-type: none"> ➢ additional contract management by PTA to manage risk ➢ asset due diligence needed by tenderers to understand risk • Additional end of term administration

5.4 Unbundled contracting model

PTO provision of assets under an unbundled model



Depending on the PTA's approach to asset control, it may contract with a PTO for services and assets separately. Under this arrangement the commercial conditions may differ, including for example, the PTA's access to the PTO's assets surviving termination of the services contract, providing a longer term commitment that more appropriately reflects the economic life of an asset.

The unbundled contract model offers the benefits of integrated asset and service delivery during the first term with the added benefit of long term asset pricing and ownership. However, the concept introduces the potential for interface risk with an incoming PTO (PTO2) being required to utilise the outgoing PTO's (PTO1) assets under a lease or sub-lease arrangement. In this case ownership risk remains with PTO1 while service performance risk resides with PTO2.

As the incoming PTO is required to rely on existing assets owned by a third party, in this case the outgoing PTO, the incoming PTO is taking on performance risk utilising assets that it has had no control over specifying or maintaining, with this risk likely to be reflected in its tender pricing unless appropriately mitigated. Depending on the demarcation of responsibilities for the condition and performance of assets during the second term, there will be ongoing interface risk between service delivery responsibilities and asset provision responsibilities.

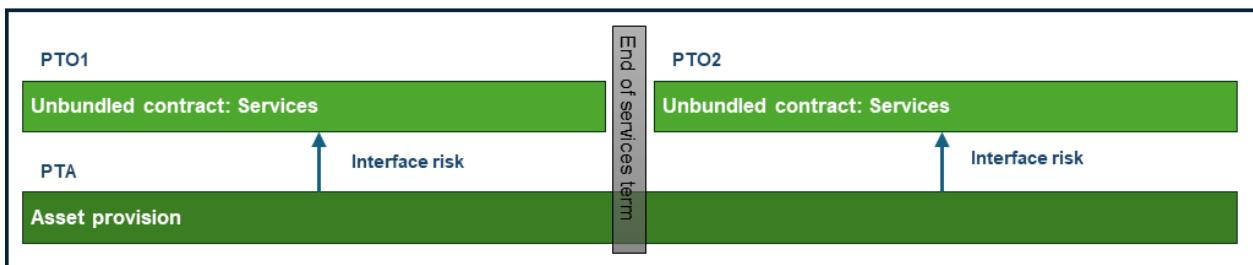
Some interface risk can be mitigated through the opportunity for tenderers to undertake due diligence on the assets and associated maintenance records during the tender process. However, it will be important that the contract clearly states the demarcation of responsibilities for asset condition and performance between the PTO and asset owner, whether that is PTO1 or another third party. To mitigate risk, PTO2 will require contractual relief for asset performance responsibilities that it does not control.

The opportunities and challenges associated with unbundled contracts are summarised as follows.

Opportunities	Challenges
<ul style="list-style-type: none"> • Barriers to entry reduced • Assets priced over longer term • Asset pricing transparency • PTO has integrated responsibility for assets and service in term 1 and retains asset ownership risk in term 2 	<ul style="list-style-type: none"> • More complex contract management • PTO1 margin on assets remains • Interface risk in term 2 <ul style="list-style-type: none"> ➢ requires clear delineation of responsibility for asset maintenance and performance • Asset condition risk – <ul style="list-style-type: none"> ➢ additional contract management by PTA to manage risk ➢ asset due diligence needed by tenderers to understand risk

5.5 PTA supplied assets

PTA provision of assets



Where the PTA owns and provides assets to PTOs for public transport provision, the PTA can benefit from increased competition through reduced barriers to entry and lower asset financing cost, assets able to be depreciated over the economic life of the asset and financed at the PTA's lower cost of capital without a PTO margin.

However, the concept introduces the potential for interface risk as PTOs are required to utilise the outgoing PTA's assets under a lease arrangement. In this case ownership risk sits with the PTA while service performance risk resides with the PTO.

Depending on the demarcation of responsibilities for the condition and performance of assets during the term, there will be ongoing interface risk between service delivery responsibilities and asset provision responsibilities.

Some interface risk can be mitigated through the involvement of PTOs in the specification and maintenance of assets procured by PTAs during the initial. In subsequent contract terms, interface risk may be mitigated through the opportunity for tenderers to undertake due diligence on the assets and associated maintenance records during the tender process. However, it will be important that the contract clearly states the demarcation of responsibilities for asset condition and performance between the PTA and PTO. To further mitigate risk, PTOs will require contractual relief for asset performance responsibilities that they do not control.

The opportunities and challenges associated with PTA supplied assets are summarised as follows.

Opportunities	Challenges
<ul style="list-style-type: none"> • Barriers to entry reduced • Assets costed over longer term without PTO margin • Asset pricing transparency • Continuity of asset provision within PTA control 	<ul style="list-style-type: none"> • More complex contract management • Interface risks <ul style="list-style-type: none"> ➢ requires clear delineation of responsibility for asset maintenance and performance • Asset performance risk on PTA • Asset condition risk <ul style="list-style-type: none"> ➢ asset due diligence needed by tenderers to understand risk

PART B – PRACTICES

6. Contract structure

The contract structure for contracted PT units should generally comprise a tiered contract structure comprising a Regional Agreement and a Unit Agreement, together comprising a Service Contract.

Requirement and guidance	
1	Terminology <p>For consistency, PT operating contracts must utilize the following terminology:</p> <ul style="list-style-type: none">• Regional Agreement – the overarching Agreement between a PTA and a PTO that comprises the terms and conditions applicable to all of the Units that may be operated by a PTO in a region.• Unit Agreement – an Agreement that contains the terms and requirements specific to a contracted Unit.• Service Contract – the enforceable contract formed between a Regional Agreement and a Unit Agreement.
2	Contract structure – regions with multiple units <p>In a region comprising multiple contracted units, a PTA must adopt a tiered contract structure in which a 'Regional Agreement' is entered into with each PTO that contains all terms that are common to the PTO, and that are generally common across PTOs, and 'Unit Agreements' that contain details and terms that are specific to each contracted Unit.</p>
3	Contract structure – regions with single units <p>To enable consistency in contract form across the country, regions comprising a single contracted unit, should also adopt a tiered contract structure in which a 'Regional Agreement' contains terms consistent with Regional Agreements in larger centres and a 'Unit Agreement' that contains details and terms that are specific to the contracted Unit.</p>
4	Illustrative tiered contract structure <pre>graph TD; PTA[PTA] --- Operator1[Operator 1]; PTA --- Operator2[Operator 2]; PTA --- Operator3[Operator 3]; subgraph OA []; RA1[Regional Agreement]; UA1[Unit Agreement]; RA2[Regional Agreement]; UA2[Unit Agreement]; RA3[Regional Agreement]; UA3[Unit Agreement]; end; RA3 -.-> UA3;</pre>
5	Alternative contract structures <p>Where a PTA chooses to adopt an alternative contract structure, it must be documented in the PTA's Procurement Strategy.</p>

7. Relational contracting

7.1 Overview

To give effect to, and secure the benefits of, relational contracting, there are a number of components that must be incorporated into PT operating contracts.

7.2 Partnering principles

Partnering principles are joint commitments to guide how the parties will work together to achieve mutual objectives through the life of the contract. They provide the foundation and a reference point for the relationship, helping to foster trust, align objectives and navigate uncertainty.

Requirement and guidance	
1	Agreeing partnering principles <p>While the PTA may establish an initial set of partnering principles for inclusion in the draft contract for tendering purposes, in the spirit of relational delivery, the principles should be reviewed and refined in conjunction with the PTO prior to contract execution to ensure buy-in and ownership by both parties.</p>
2	Example partnering principles <p>The following example principles are provided as a guide only. PTAs, in conjunction with PTOs, must develop a set of partnering principles that are aligned to the outcomes and context of the individual PT operating contract.</p> <p>Example partnering principles include:</p> <ul style="list-style-type: none">• Mutual trust and respect• Open and honest communication• Collaboration and joint problem solving• No surprises (transparency in risks, costs, and progress)• Equitable risk sharing• Continuous improvement and innovation• Focus on outcomes and value for money• Commitment to health, safety, and sustainability

7.3 Relationship hierarchy

Relational contracts rely not just on a legal framework but on strong working relationships. A clear relationship hierarchy enables structured forums at different levels of the organisations to manage day-to-day operations, medium-term planning and long-term governance. Without this structure, issues can escalate unnecessarily or, conversely, remain unresolved.

A right-sized relationship hierarchy ensures matters are handled at the appropriate level, decision-making is efficient and the relationship remains resilient. It embeds accountability, fosters collaboration and joint ownership and can proactively resolve issues and avoid escalation to formal enforcement mechanisms.

Requirement and guidance	
1	Relationship hierarchy <p>PTAs must define a relationship hierarchy within PT operations contracts that establishes a structured set of fora at different levels of the organisations to manage day-to-day operations, medium-term planning and long-term governance.</p>

	<p>For each forum, the contract must specify:</p> <ul style="list-style-type: none"> • Purpose and scope • Membership • Meeting frequency • Escalation pathway for unresolved decisions
2	<p>Example relationship hierarchy</p> <p>The extent and number of relationship forums should be contextual and right-sized to the complexity of contract and capacity of the parties involved. The following example forum cover the different lenses that should be used through the term of the contract to deliver the contract outcomes – PTAs may merge or expand the following examples but should ensure the focus areas are covered in the scope of the forums selected.</p> <p>At the operational level, frontline contract managers from both parties meet regularly to oversee service delivery, performance reporting and immediate issue resolution. This level should be focused on practical delivery, “no surprises” communication and continuous improvement in daily operations.</p> <p>At the planning or tactical level, senior managers from each party convene to address matters such as service planning, risk management, contract variations and resource allocation. This group translates strategic objectives into work programmes and ensures alignment with wider organisational priorities.</p> <p>At the governance level, senior executives or board representatives from each party come together to oversee the overall health of the relationship. Their role is to set strategic direction, monitor outcomes against objectives, provide guidance on unresolved disputes and maintain trust between organisations. Governance forums typically meet less frequently but provide the escalation path for significant issues or opportunities.</p>

7.4 Joint planning

Joint planning is central to the success of relational contracts by creating a structured process where both PTA and PTO align efforts toward shared outcomes. Where service delivery is dynamic and requires continuous adjustment, joint planning ensures that operational decisions, investment choices and service improvements are made collaboratively rather than unilaterally, leveraging the experience and perspective of both PTA and PTO. Joint planning can reduce conflict, build trust and enable the contract to adapt to changing customer needs, network priorities and policy objectives.

Key elements for successful joint planning include:

- Clear governance structures that set out who participates in joint planning forums and how decisions are escalated.
- Shared information and data access to enable evidence-based planning and transparency.
- Alignment with strategic objectives such as patronage growth, mode shift and decarbonisation.
- Defined planning cycles (annual, quarterly, or event-driven) so both parties commit to a regular rhythm of review and adjustment.
- Mechanisms for resolving disagreements quickly, to maintain service continuity.

Beyond the contract specific focus of joint planning between the PTA and PTO, joint planning should also incorporate the wider transport system, with periodic planning sessions between the PTA, all PTOs in a region, and other stakeholders such as the region's road controlling authorities, NZTA and KiwiRail to enable collaborative, improvement planning at a transport system level.

Requirement and guidance

1	<h3>Enablers</h3> <p>Key enablers that the PTA must ensure are in place for effective joint planning include:</p> <ul style="list-style-type: none">• good monitoring and reporting practices• leveraging technology to automate the provision of high-quality data and insights, requiring ongoing investment and effort from all participating parties• data and insights being equally accessible to PTAs and PTOs <p>More guidance on monitoring and reporting practices is provided in the Performance Improvement Guidance, provided as part of the PT Integrated Procurement Resources.</p>
2	<h3>Joint planning provisions</h3> <p>PTAs should consider adapting for their context the following example provisions in relation to joint planning into PT operating contracts.</p> <ul style="list-style-type: none">• Governance and participation<ul style="list-style-type: none">○ PTO must participate in joint planning forums with PTA at agreed intervals (e.g., quarterly or annually).○ Clearly defined roles, responsibilities and escalation pathways across each of the relationship hierarchy forums.• Information and data sharing<ul style="list-style-type: none">○ PTO must prepare required plans (such as annual business plan) in the form and scope reasonably required by the PTA and to provide regular reports on progress against plans.○ PTO must provide timely and accurate operational data.○ PTA must share relevant network, infrastructure, patronage and policy information.○ Both parties commit to use common data sets as the basis for planning decisions.• Planning processes<ul style="list-style-type: none">○ Annual joint service planning cycle to review service levels, capacity, timetables and resource allocations.○ Joint planning inputs to be documented in a service plan (or equivalent) endorsed by both parties.○ PTO to contribute to contingency and event-driven planning (e.g., major disruptions, special events, network changes).• Decision-making and alignment<ul style="list-style-type: none">○ Planning outcomes must align with the PTA's strategic objectives (e.g., patronage growth, decarbonisation, mode shift).○ PTO obligations to adopt agreed timetable and service changes within specified notice periods.○ Mechanisms to prioritise and integrate innovation (e.g., new technologies, on-demand services).• Dispute resolution<ul style="list-style-type: none">○ Disagreements in joint planning to be resolved first at operational level, then escalated to governance forums.

	<ul style="list-style-type: none">○ Fallback provisions for PTA to make final determinations where agreement cannot be reached, ensuring service continuity.● Integration with performance management<ul style="list-style-type: none">○ Performance regime linked to joint planning outcomes (e.g., potential for targeted incentives for agreed outcomes).○ Reporting requirements that track progress against jointly agreed plans.
--	---

DRAFT

8. Tenure

8.1 Contract term

PTAs have the flexibility to utilise different contract term lengths to support procurement outcomes intended to achieve long term value for money. The intended contract term length for a PT operating contract must be documented in the PTA's applicable procurement strategy.

8.2 Term extensions

Term extension options are important contractual mechanisms to provide flexibility for PTAs to enable short term extensions for planning related purposes (PTA Extension Option) and to reward PTOs with the opportunity to secure additional tenure in recognition of good performance (Performance Extension Option).

Requirement and guidance	
1	<p>Key dates</p> <p>A PT operating contract must specify the following key dates:</p> <ul style="list-style-type: none">• Contract Commencement – the date on which the contract comes into effect and the obligations of the PTA and PTO commence.• Services Commencement – the date on which the PTO is to commence delivering the unit specific services. This may differ for different unit agreements under a regional agreement.• Initial Expiry Date – the initial expiry date of a Service Contract prior to any term extensions• Expiry Date – the Initial Expiry Date or, if a Service Contract has been extended, the new expiry date of the extended Service Contract;• Regional Agreement Expiry – the date on which the contract expires, being the expiry of the last Service Contract remaining in force between the PTA and PTO.
2	<p>PTA Extension Option</p> <p>A PTA Extension Option provides PTAs with the flexibility to extend Service Contracts on the same terms and conditions for a specified period to enable the PTA to defer the commencement date of successor Service Contracts due to unforeseen future changes in circumstances.</p> <p>While all PT operating contracts should include a PTA Extension Option, the inclusion of such options should not be a reason for poor procurement planning, but rather as a mitigation for changing circumstances that require the commencement of a successor contract to be deferred.</p> <p>The principal circumstances in which a PTA Extension Option may be exercised is to optimise the timing of when successor contracts commence relative to a major network or infrastructure change. The PTA Extension Option also serves to safeguard a period of time for re-tendering if negotiations for a Performance Based Term Extension are unsuccessful.</p> <p>A PTA Extension Option should state:</p> <ul style="list-style-type: none">• The time period – recommended as “up to a maximum of two years”.• That the exercising of the option is at the absolute discretion of the PTA.• That the extension, if exercised, will be on the same terms and conditions as the existing contract.• The notice period that the PTA will notify the PTO that it wishes to exercise the option, e.g. nine months prior to the expiry of the first term of the contract.

	<ul style="list-style-type: none"> Appropriate obligations on the PTO to ensure it is able to comply with the PTA Extension Period, e.g. that it obtains right of renewal options on vehicle and/or depot leases exercisable within the timeframe of the PTA Extension Option notice period timeframe. <p>To secure efficient pricing and avoid the requirement to negotiate pricing for the period of an Extension Option, at the time of tendering (or negotiating for direct appointments) PTA's should request pricing for the Extension Option period (e.g. an additional two years beyond the intended term) within the tender price book template and include the additional period of pricing within the evaluation of prices.</p>
3	<h3>Performance Based Term Extensions</h3> <p>The potential to secure a Performance Based Term Extension provides a strong incentive for PTOs to meet performance criteria during the initial term.</p> <p>A Performance Based Term Extension offers a PTO the opportunity to either pre-price or enter into good faith negotiations with the PTA for an extended term should they satisfy a defined set of objectives and performance metrics during the initial term.</p> <p>PTAs must consider and document their approach to Performance Based Term Extensions in the relevant Procurement Strategy. In doing so, PTAs must consider the following two questions:</p> <ul style="list-style-type: none"> Should a PTO have more than one unit in a region, what are the implications for subsequent procurement rounds if the PTO satisfies the performance criteria under one unit but not the other? In a region with multiple PTOs, what are the implications for subsequent procurement rounds if one PTO satisfies the performance criteria but others do not? <p>If a Performance Based Term Extension is appropriate and the above questions can be satisfactorily addressed, other considerations in the design of a Performance Based Term Extension include:</p> <ul style="list-style-type: none"> Establishing an appropriate standard of performance across the initial term that the PTO must satisfy to qualify for a Performance Based Term Extension. The term of a Performance Based Term Extension. The timeframes and processes for implementing the option, ensuring there is appropriate elapsed time during the initial term to measure performance, conduct negotiations if necessary, and if unsuccessful, re-tender the relevant unit/s. Retaining some discretion for the PTA to withhold the option should circumstances change that make a term extension inappropriate, despite the PTO meeting the required performance standards. Pricing: <ul style="list-style-type: none"> If the planned Performance Based Term Extension is for a short extension tenure (i.e. no more than three years), it may be appropriate to seek pricing for this extension option period at the time of tendering – in the same manner as for the PTA Extension Option. If the planned Performance Based Term Extension is for longer than three years, to avoid long term price risk for PTOs and to give the PTA flexibility to amend the scope and specification of the services for the performance extension period, the option should not be pre-priced. Instead, the contract should specify that the parties will enter into negotiations to agree satisfactory terms for the extension period. If the terms of a Performance Based Term Extension are to be negotiated, the PTA should ensure that it has appropriate benchmarks and other knowledge to determine if negotiation outcomes represent value for money and to ensure that it retains the ability to

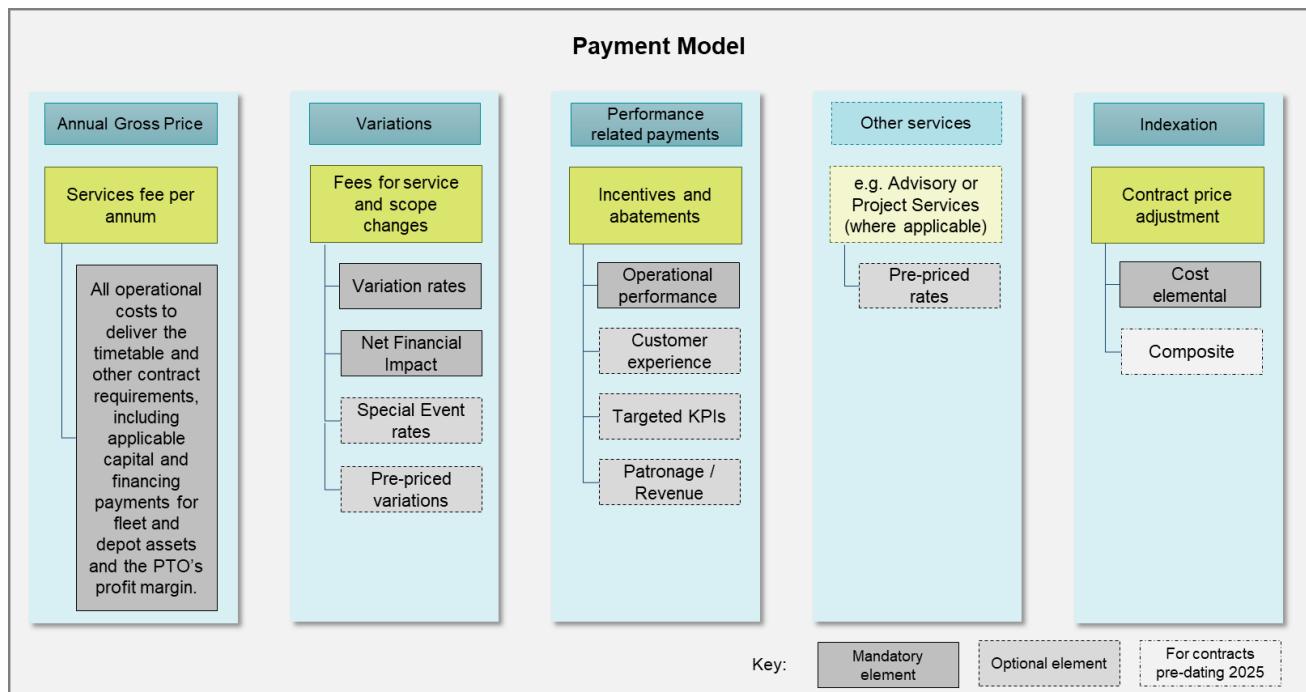
	<p>cease negotiations and revert to a tender process for the units in question if the negotiation outcomes do not represent value for money.</p>
4	<p>Future-proofing flexibility</p> <p>When building in term extension options, it is important to ensure other contract provisions retain flexibility to accommodate an extended term. This includes ensuring that any contract provisions that reference the Contract Term also reference the PTA Extension Option and Performance Based Term Extension (if applicable).</p> <p>Consideration of term extension options needs to be included within supporting contract mechanisms such as:</p> <ul style="list-style-type: none"> • Direct deeds with third parties • Performance bonds • Variations • Change in law thresholds

9. Payment model

9.1 Overview

The payment model addresses how the component parts of the PTO's services will be paid for, along with other key payment considerations. There are core elements of the payment model that are mandatory for all PT operating contracts, while others are optional depending on the scope and complexity of the services being delivered. The payment model elements are illustrated in Figure 3.

Figure 3: Payment model



9.2 Annual Gross Price

Requirement and guidance

1	AGP <p>The Annual Gross Price (AGP) is the total annualised price for the provision of public transport services and PTO contractual obligations for each Unit.</p> <p>The AGP includes the PTO's profit margin and the annual cost to deliver the timetable and other contract requirements as specified in the tender, including labour, fuel, energy, maintenance, overheads, etc plus, subject to the applicable operating model, capital and financing payments for fleet and depot assets.</p> <p>The AGP is unit specific and must be included within the relevant pricing section or schedule of a Unit Agreement.</p> <p>The AGP is established through tender or negotiated pricing and may be specified for each year of the contract term (including any applicable extension option periods) or specified as an average annual price, in which the same AGP is applied to each year of the contract.</p> <p>The AGP must be priced in the dollars of the quarter prior to the tender or negotiation closing date and is subject to indexation thereafter.</p>
---	--

2	Base Services Fee
For contracts with uncertain or highly variable levels of demand, such as on-demand PT (ODPT) services, an alternative to an AGP is a Base Services Fee, covering the PTO's fixed cost elements and a minimum guaranteed level of service volume. Variable Pricing is then used to price delivered volumes above the minimum guaranteed volume.	

9.3 Variations

Requirement and guidance	
1	PTAs must contract for and apply variations in a manner consistent with the requirements and guidance set out in the Contract Variations Guidance , provided as part of the PT Integrated Procurement Resources.

9.4 Pricing workbook

Requirement and guidance	
1	<p>Contract price elements must be defined in a pricing workbook that forms part of contract documentation between the PTA and PTO and is maintained over the term of the contract</p> <p>NZTA has developed a price book template for use by PTAs in procurement processes to request price information from respondents in a format that meets NZTA and PTA requirements for transparency, alignment with payment model and for price evaluation.</p> <p>Amongst other things, completed price book templates allow PTAs to organise pricing components into contract tables for accurate population of contract pricing schedules associated with Unit Agreements and for the application of indexation.</p> <p>The NZTA price book template and associated guidance is provided as part of the PT Integrated Procurement Resources.</p>

9.5 Indexation

Requirement and guidance	
1	Indexation supports efficient contract pricing by reducing the amount of general cost fluctuation risk that would otherwise be priced in by PTOs and to ensure that PTOs are not placed at financial risk due to exposure to unquantifiable cost fluctuation risk over the term of their contracts.
2	To support efficient contract pricing and ensure appropriate allocation of inflation risk, PT operating contracts must make provision for periodic contract price adjustment to account for general input cost fluctuations, otherwise referred to as indexation.
3	PTAs must contract for and apply indexation in a manner consistent with the requirements and guidance set out in Requirements and guidance for indexation of public transport operating contracts provided as part of the PT Integrated Procurement Resources.

9.6 Performance related payments

Requirement and guidance

1 Performance related payments are provided in the form of Incentives and Abatements and are defined by the performance regime.

PTAs **must** contract for and apply performance related payments in a manner consistent with the requirements and guidance set out in the [Requirements and guidance for performance monitoring of public transport operating contracts], provided as part of the PT Integrated Procurement Resources.

9.7 Other services

Requirement and guidance

1 For potential ancillary services during the term that a PTA may require of a PTO that cannot be scoped or clearly defined at the time of tender (e.g. project management or advisory services for particular initiatives, such as depot development or modification) the PTA **should** specify the payment mechanisms by which such services will be provided, together with the process for engaging the PTO to perform the services.

Payment mechanisms **may** include:

- direct cost-plus margin basis (which may include a risk sharing allocation between the parties);
- 'fixed price' basis (where the scope of services is sufficiently clear);
- hours reimbursed on the basis of an ancillary service rate card (ideally with a rate card included in the tender pricing submission).

10. Performance

Performance monitoring is how we ensure that public transport is delivering on its purpose. It is how we:

- Understand what's working and what's not
- Identify where improvements are needed and can be made
- Align day-to-day operations with long-term goals
- Build trust and accountability between partners
- Support better decision making.

Done well, performance monitoring is not just a compliance exercise, it is a strategic tool for continuous improvement and maximising public value.

Performance monitoring and reporting is a fundamental component of PT service delivery to ensure PTOs are delivering on the outcomes that they have been contracted to deliver and to identify opportunities for improvement. It is a critical input to relational contracting and into joint monitoring, reporting and improvement planning.

The performance regime within a PT service contract includes a variety of mechanisms to monitor and, for the most important metrics that the PTO is able to control, financially incentivise the operator to perform against agreed targets.

Requirement and guidance	
1	<p>Performance monitoring</p> <p>Performance and monitoring provisions must be included in all PT operating contracts to support the delivery and improvement of quality PT services. Performance measures provide a mechanism for:</p> <ul style="list-style-type: none">• identifying 'what matters' (for instance what is critical to encourage people to use PT services)• measuring progress toward desired objectives (for instance, national or regional PT objectives)• good contract management and informed decision making.
2	<p>Measurement</p> <p>In developing performance monitoring provisions PTAs must give consideration to:</p> <ul style="list-style-type: none">• relevance of a performance measure to providing a quality PT service• availability and reliability of data required to measure performance• ease and cost of collecting, measuring and reporting performance related data, including the technology systems available to the PTA and PTO for data collection and the capability and capacity of the parties to analyse and act on the data• how external factors that can impact on performance, but cannot be controlled, will be accounted for in assessing performance• reciprocal performance measures on the PTA that is critical to good contract performance (for instance, timetables should be achievable under generally expected conditions for the service). <p>More information on performance monitoring is provided in the [Requirements and guidance for performance monitoring of public transport operating contracts], provided as part of the PT Integrated Procurement Resources.</p>

3	<p>Bid commitments</p> <p>While a key focus of performance monitoring and contract management efforts is correctly on monitoring operational performance that has a direct impact on customers, PTAs must also have in place processes for monitoring the performance of the PTO at delivering on all contractual obligations.</p> <p>Contractual obligations that are often overlooked once contracts have transitioned and the focus is on day to day operations, are promises or undertakings made by PTOs in their tender or RFP responses. These undertakings include nominated key personnel and commitments to deliver specific employment, environmental or other broader outcomes, but may also include specific operational improvements which the PTO has included in their bid response to offer additional value to the PTA and present a point of differentiation from other PTOs. If such bid commitments contributed to the selection of the PTO, they represent value to the PTA. It is important therefore that the PTA receives the full value of the offer made by the PTO and ensures that all commitments made by the PTO are fulfilled during the contract term.</p> <p>To monitor the fulfilment of bid commitments, PTAs should record all bid commitments made by a PTO within the contract, such as in a Bid Commitment schedule, and include provisions for the reporting of progress against the fulfilment of each commitment. Where bid commitments are included, there must be a consequence of failure to fulfil, such as a Call-in Event or Breach.</p> <p>If the evaluation of nominated key personnel has contributed to the selection of the PTO, those key personnel must be recorded in the contract against the roles they have been nominated for. Where key personnel are listed, the contract must include a warranty by the PTO that the key personnel (or others of an equivalent level of experience and expertise) will perform the roles nominated for.</p>
4	<p>Detailed guidance</p> <p>PTAs must contract for and apply performance monitoring and measurement in a manner consistent with the requirements and guidance set out in the [Requirements and guidance for performance monitoring of public transport operating contracts], provided as part of the PT Integrated Procurement Resources.</p>

11. Relief events

PTOs are responsible for performance that is under their control, with risks that are outside the control of the operator that may impact performance, best sitting with the PTA.

Relief events, also known as Force Majeure events, are mechanisms that account for factors outside the control of the PTO which can impact the PTO's ability to meet its contractual obligations, including operational performance.

Relief events in PT operating contracts allows the obligations of the PTO to be suspended or modified when extraordinary events such as natural disasters, pandemics, extreme weather conditions or broad labour force strike action, as well as such matters as infrastructure defects or obligation failures by the PTA, restrict or impair performance of the PTO.

Inclusion of relief events in PT operating contracts ensures that PTOs are not unfairly penalised for non-performance due to circumstances outside their reasonable influence, reducing risk for PTOs and avoiding unnecessary risk premiums being built into the cost of PT service delivery.

Requirement and guidance	
1	Relief events <p>PTAs must include the following relief events, at a minimum, in PT operating contracts to ensure that PTOs are not unfairly penalised for non-performance due to circumstances outside their reasonable influence:</p> <ul style="list-style-type: none">• Fire, flood, earthquake, landslide, volcanic eruption, epidemic or pandemic;• Widespread Storm Events (see note below);• Strikes or labour disputes not primarily involving the Operator's employees or its direct subcontractors;• War, terrorism acts, sabotage and similar events;• Declarations under the Civil Defence Emergency Management Act 2002 of a state of national emergency or of local emergency in respect of the relevant PTA region;• Defects or other unavailability of infrastructure that is necessary to perform the services. <p>To constitute a relief event, the above events must not be caused or contributed to by the PTO.</p>
2	Widespread Storm Event requires definition within the contract to reduce ambiguity and avoid relief being granted for general adverse weather events. <p>For example: Widespread Storm Event means a severe storm that has a widespread significant adverse impact on the [city/region] regional public transport network. For the purposes of this definition, indicative evidence of the occurrence of a 'severe storm' will include extensive media coverage of the storm, the combined presence of 2 or more of lightning strikes, extremely heavy rainfall, localised flooding and very high winds, together with the existence of records of the National Institute of Water and Atmospheric Research showing that the rainfall or wind speeds widely experienced with the storm in the region or part of the region (as recorded at the applicable weather stations) are at the higher end of the historical range;</p> <p>The effects of Widespread Storm Events on Vehicles due to poor Vehicle design or maintenance, such as water leaks or water ingress, should be explicitly excluded from the definition of Relief Events.</p>
3	Mitigation

	Relief events should be considered as safeguards rather than loopholes for avoiding contractual obligations, consequently contracts should include obligations on PTOs to take reasonable steps to mitigate the impacts of relief events.
4	Further guidance For further guidance on the application of relief events to the operational performance of the PTO, please refer to the [Requirements and guidance for performance monitoring of public transport operating contracts], provided as part of the PT Integrated Procurement Resources.

DRAFT

12. Workforce

The public transport workforce is a vital component in an effective PT service. A reliable and highly functioning PT workforce is critical to achieving long term value for money. The importance of the PT workforce is enshrined as a principle contained in section 115 of the LTMA:

Fair and equitable employment or engagement of people in the public transport workforce should ensure that there is a sufficiently robust labour market to sustain and expand public transport services

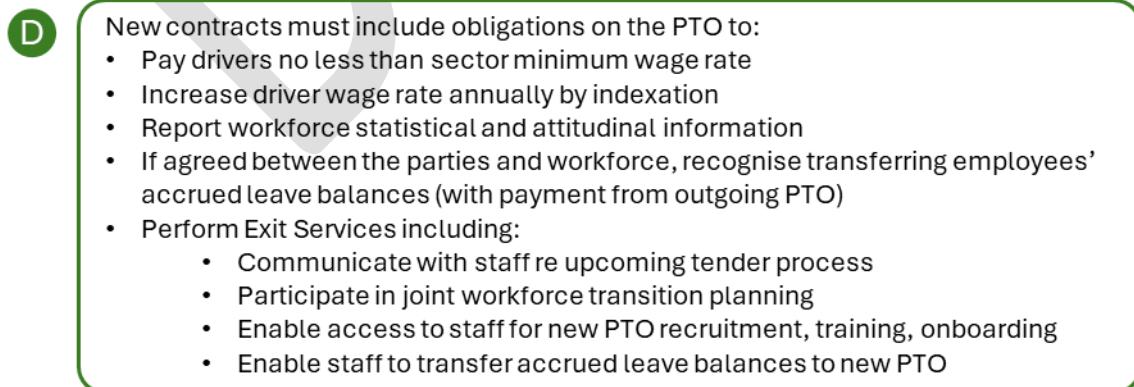
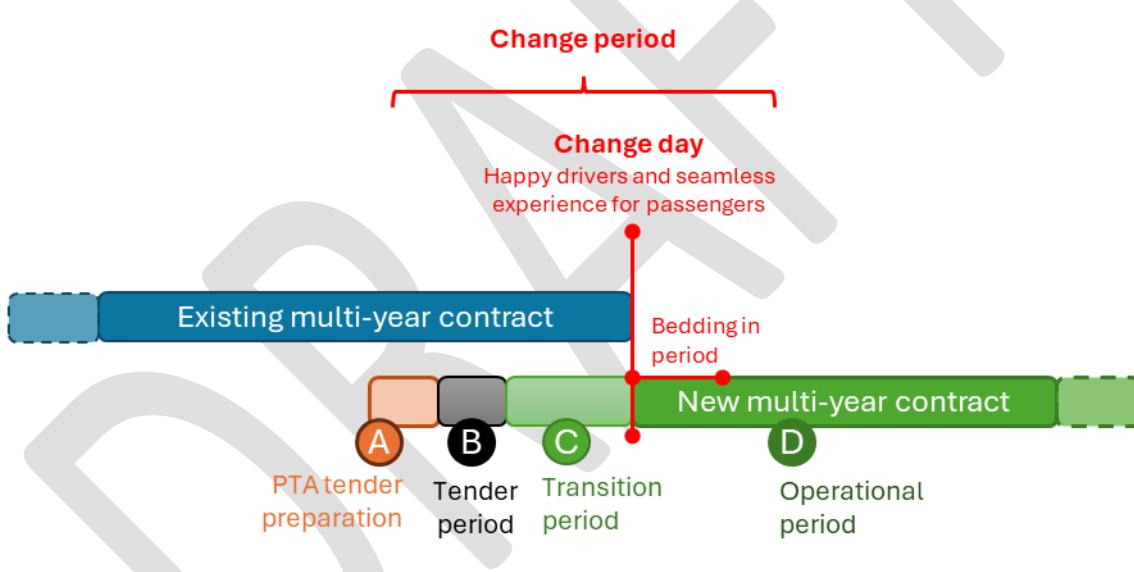
To help contribute to the conditions required to maintain a sustainable workforce, PTAs and PTOs must work together to ensure the following minimum requirements are met:

- Bus drivers are paid at the applicable sector minimum wage rate.
- Bus driver wages are increased at least annually by the relevant movement in the labour cost index of the NZTA bus indexation mechanism.
- PTOs must report on nationally consistent workforce statistical and attitudinal information to enable comparability and trend monitoring and to inform continuous improvement initiatives.
- PTAs and PTOs work together to jointly agree a set of Key Results Areas (KRAs) representing the workforce improvement focus areas to prioritise based on workforce monitoring insights.
- PTAs and PTOs collaborate to manage contract transitions to ensure that incoming operators have reasonable access to the existing workforce for recruitment, training and onboarding purposes.

Requirement and guidance	
1	Minimum wage PTAs must include in their PT operating contracts the requirement for the PTO to pay bus drivers no less than the index adjusted applicable sector minimum wage rate as specified in the applicable tender or negotiation process.
2	Annual wage increases PTAs must include in their PT operating contracts the requirement for the PTO to increase bus driver wages at least annually by the relevant movement in the labour cost index of the NZTA bus indexation mechanism.
3	Workforce monitoring and reporting PTAs must include in their PT operating contracts the requirement for the PTO to report on a nationally consistent workforce statistical and attitudinal information and other information as required by the PTA. PTAs must also include in their PT operating contracts the requirement for the PTA and PTO to work together to jointly agree a set of Key Results Areas (KRAs) representing the workforce improvement focus areas to prioritise based on workforce monitoring insights. PTAs must contract for and apply workforce monitoring requirements in accordance with the requirements and guidance set out in the Performance Improvement Guidance , provided as part of the PT Integrated Procurement Resources.
4	Transition PTAs must include in their PT operating contracts applicable obligations on the PTA, the outgoing PTO and the incoming PTO to work together to facilitate the smooth transition of services from the outgoing PTO to the incoming PTO, including through the reasonable availability of the outgoing PTO's workforce for recruitment, onboarding and training purposes by the incoming PTO.
5	Workforce entitlements

	<p>Where it is agreed between the parties and workforce that employees who move from the outgoing PTO to incoming PTO may choose to have all or some leave entitlements transferred rather than paid out, PTAs must include in their PT operating contracts obligations on the incoming PTO to recognise employees' service as continuous for the purpose of employment tenure related entitlements and to take on the statutory leave entitlements (annual leave and sick leave) for employees transitioning from the outgoing PTO.</p> <p>In doing so, the PTA must set a cap of no more than two weeks leave entitlement that may transfer with each employee to avoid the incoming operator inheriting excessive leave balances and including a financial payment obligation on the outgoing PTO to the incoming PTO for the value of the leave balances transferred with employees.</p>
6	<p>Training and qualification standards</p> <p>Where PTAs choose to specify particular workforce training or qualification requirements, a nationally recognised training standard or qualification should be specified to ensure recognition by all employers of the workforce qualifications held by members of the PT workforce and to ensure consistency in training standards by PTOs.</p>

Figure 4: Requirements for new bus operating contracts to improve workforce outcomes through the procurement and contracting lifecycle



13. Vehicles

Size, quality and type of vehicles are core elements in the delivery of PT services and can play a significant role in the attractiveness of PT as a mode choice.

For bus contracts, the minimum requirements for all buses used in urban bus contracts is defined by the [Requirements for Urban Buses in New Zealand](#) (the 'RUB') published by NZTA. The purpose of the RUB is to standardise urban bus requirements across PTAs to create efficiencies and improve the usability and accessibility, as well as environmental quality, of buses for all customers.

Requirement and guidance	
1	Minimum consistent standards To ensure tenders are priced on a relatively comparable basis and a minimum quality of vehicle can be expected by customers, PTAs must specify a base level of requirements in relation to vehicles in all PT operating contracts using RUB as the basis. PTAs must seek approval from NZTA to depart from any RUB requirements.
2	Additional standards PTAs may choose to include additional requirements in a regional vehicle quality standard, however the RUB is the standard for national bus quality and efficiency and takes precedence over regional vehicle quality standards. To maximise consistency and interoperability of urban buses across New Zealand and therefore value for money, PTAs must limit any additional requirements to the RUB to regionally specific requirements, such as livery, driver security, passenger information technology, advertising requirements.

14. Compliance enforcement regime

The compliance enforcement regime addresses the contractual mechanisms for escalating and resolving non-performance and compliance issues of the PTO.

A graduated enforcement regime as illustrated in Figure 5 provides mechanisms for managing contract default and performance issues of the PTO which fall short of constituting termination events. The regime provides the PTA with appropriate remedy tools to effectively manage different levels of performance and compliance issues.

While it is necessary to include a compliance enforcement regime in all PT operating contracts, the adoption of a relational contracting approach featuring an effective relationship hierarchy, joint monitoring and joint planning will enable early issue resolution that avoids escalation to the formal compliance enforcement regime.

Figure 5: Graduated enforcement regime



Requirement and guidance	
1	Call-in Designated Call-in Events address certain types of performance issues that are not necessarily breaches of the agreement but represent performance issues that the PTA wishes to address with the PTO on a more informal basis without the need to invoke a Cure Plan. Examples could include failure to satisfy service performance thresholds, failure to achieve specified health and safety or workforce metrics, failure to respond to complaints within the required timeframes, indiscretions by PTA employees. Call-in Events provide an opportunity for early intervention and to avoid performance issues progressing to the more formal breach and termination remedies. Early identification and intervention of potential problems allows the PTA and PTO to work together to develop corrective action plans, fostering the principle of relational contracting and proactively avoiding the need to impose stronger enforcement mechanisms. The use of Call-in Events in PT Service Contracts can reduce perceived risk by PTAs that they will not be exposed to the possibility of termination for non-material and inadvertent breaches of contract.
2	Default Event (also known as 'Breach') Specified events that constitute a contractual breach and require a Cure Plan to resolve. Default Events represent performance or compliance issues that, if not remedied under a Cure Plan, will result in termination. For example, a failure by the PTO to comply with specific obligations under any contract document, the occurrence of repeated Call-in Events over a rolling period, a failure of the PTO to fulfil a commitment it made to the PTA as part of its bid. Specified Default Events provides the PTO the opportunity to remedy such events (if capable of remedy) before proceeding to termination. The PTA's right of termination would only arise after the PTO has failed to remedy the Default Event in accordance with a Cure Plan within the required Cure Period.
3	Persistent Breach Persistent Breaches are a ground for Termination, representing the continued occurrence of designated Default Events over a specific period of time.
4	Termination

	Specified events which give the PTA a right to terminate the Service Contract. Termination Events may include designated Default Events that are not cured within the Cure Period, Persistent Breaches of a contract document which continue and reoccur over certain periods, change of control without the PTA's consent, insolvency of the PTO, if it becomes unlawful for the PTO to operate (e.g. due to the loss of licences).
5	<p>Step-in</p> <p>'Step-in Events' entitle the PTA to exercise step-in rights to perform the obligations of the PTO or mitigate the effects of a material contractual breach. The circumstances in which step-in may be a preferable remedy to immediate termination is where there has been a material breach of contract, the breach materially affects the provision of services, and the PTA needs to take immediate action to ensure the continuity of services.</p> <p>Step-in rights provide a further enforcement measure which allows the PTA (or nominee) to step-in and perform the obligations of the PTO on the occurrence of a Step-in Event. Step-in Events are significant events which may require the PTA to step in and perform the obligations of the PTO to ensure the continued provision of the services. Step-in may occur until, either the PTA steps-out and hands responsibility back to the PTO or, in the event that the contract is terminated, a new PTO is appointed and commences services.</p>

DRAFT

15. Termination for change in PTA's situation

It is important that PTAs have the flexibility to terminate contracts when requirements materially change or risks arise that mean that the agreement is no longer tenable. However, it is also important to recognise that the inclusion in contracts of unrestricted discretion by PTAs to terminate (also known as 'termination for convenience') is seen as a significant risk by the supplier market, which can impact competitive interest in the opportunity or otherwise attract a significant risk premium. Both outcomes negatively impacting value for money.

By restricting PTAs' discretionary termination rights to specified risk events, PTAs can protect themselves in the event that there are major funding or legislative changes, while reducing the level of perceived risk that potential tenderers would view from an unfettered termination clause (such as termination for convenience).

The notice period by which a PTA notifies PTOs of an intention to terminate is a trade-off between flexibility for the PTA and the practical consideration around the time required to plan for and transition out of an agreement.

Appropriate compensation is necessary to mitigate risk premiums applied to tender prices which would diminish value for money. PTOs will generally accept limited right termination clauses if there is appropriate compensation.

Requirement and guidance	
1	Termination reasons Termination for funding or policy constraints should be limited to the following reasons: <ol style="list-style-type: none">Funding constraints that require a reduction in the applicable public transport services that would materially affect the scope of the contract; orthere is a change in Applicable Law (or interpretation of) that results in the PTA being unable to satisfy its legislative objectives, functions and responsibilities within the contract.
2	Notice period A minimum six month notice period should be provided. A six month minimum notice period acknowledges that the triggers for invoking the option are likely to be signalled well in advance, i.e. legislative or material funding changes, while providing a managed transition out period that limits ongoing cost exposure for the PTA.
3	Compensation A compensation regime must be included that compensates the PTO for demonstrable and reasonable costs that are directly associated with the termination, together with a recognition of lost margin by the PTO and sunk investment in assets that cannot readily be recovered. Compensation for lost margin and sunk investment must be capped. For example, a compensation regime may include the payment of: <ul style="list-style-type: none">Outstanding Services Fees,Costs incurred by the Operator as a direct result of termination,An amount equal to [18 months] depreciation on operator owned assets not re-deployed elsewhere or transferred to the PTA (or nominee), andAn amount equal to an agreed margin (%) multiplied by the indexed AGP for three years or from the termination date to the initial expiry date, whichever is the lesser.

16. Changes in law, standards or PTA policy

Changes in law, standards or PTA policy can have a material effect on the costs of public transport delivery (positive or negative) where the change requires a change in investment or operating costs to comply. As such changes are outside the control of the PTO and cannot reasonably be foreseen when services are priced through tenders or negotiation, the cost risk associated with these changes should primarily sit with the PTA.

The net cost effect on the PTO from a change in law, standard or PTA policy should be accounted for by a variation to the contract using a net financial impact (NFI) mechanism.

Requirement and guidance	
1	<p>Conditions for variations as a result of change in law, standards or PTA policy</p> <p>Impacts on contract costs (positive or negative) as a result of a change in law, change in standard (e.g. RUB) or a change in a PTA policy (e.g. training, H&S) must be reflected in contract cost adjustments by variation determined using a NFI mechanism.</p> <p>Such variations must be subject to the following conditions:</p> <ul style="list-style-type: none">a) The change in law came into effect after the date of execution of the Service Contract and results in a direct and demonstrable increase or reduction in the costs to the PTO of performing its obligations under the relevant Service Contract.b) Where the effects of a pending change in law could not have been reasonably foreseen and priced into the Service Contract.c) Where the PTO has taken all practicable measures to minimise the cost impact of the change.<ul style="list-style-type: none">(i)

17. Indemnities, warranties, limitation of liability

17.1 Indemnities

Indemnities in a contract provide an agreement for one party to cover loss and damage of another party. Indemnities are important because they can create liability where it would not otherwise exist and provide compensation for a wider variety of losses than might be available under a common law action for damages.

The key aspects of indemnities in contracts include:

- the type of conduct covered by the indemnity (e.g. 'any act or omission');
- the type of loss captured by the indemnity (e.g. property damage, personal injury, liability to third parties, loss of profit/revenue);
- whether any losses are specifically excluded, such as consequential losses i.e. losses other than direct
- losses naturally arising from breach of contract; and
- the limitations that might apply (such as contributory negligence, monetary caps and to cover underinsurance policies).

Requirement and guidance	
1	Operator indemnities <p>Typical types of conduct and loss that PTAs should seek indemnity from PTOs relevant to performance of obligations under the relevant Service Contract by the PTO (and PTO Associates) include:</p> <ul style="list-style-type: none">a) breaches of obligationsb) breaches of representations or warrantiesc) negligent acts or omissionsd) third party actions or claims brought against the PTAe) occurrence of a Termination Eventf) fraud or theftg) inaccurate, incomplete or misleading representation or warrantyh) unauthorised use or infringement of licenced intellectual property rights (unless those rights were granted by the PTA and used in good faith by the PTO)i) death or personal injuryj) loss or damage suffered by passengers or third partiesk) contamination or pollution.
2	Exclusions and mitigation <p>PTOs should be excluded from liability where the indemnified conduct or loss is caused or contributed to by fraud, breach, negligent act or negligent omission on the part of the PTA or a PTA Associate.</p> <p>PTOs should be excluded from liability for consequential or indirect loss (other than certain specified instances of consequential or indirect loss).</p> <p>There should be obligations on the PTA to use reasonable endeavours to mitigate the loss for which they are being indemnified by the PTO.</p>

3	<p>Limitation of liability</p> <p>To limit the risk exposure of PTOs, the PTA should identify and specify liability events that are subject to a monetary cap. The limitation cap may be determined by different mechanisms, including</p> <ul style="list-style-type: none"> • set as a multiple of the AGP • set through another determinant of contract value • assessment of potential loss • equal to the PTO's required public liability insurance cover. <p>Limitation should not apply where the PTO is able to recover losses in excess of the limitation from insurance and other specified circumstances.</p>
4	<p>Release of liability</p> <p>The PTO should be required to release the PTA from certain liability, in particular liability to passengers and third parties. The PTO should also be required to acknowledge and agree that it will provide and operate the services without recourse to the PTA or government funds or guarantees, except as expressly provided in the contract.</p>

18. Securities

18.1 Introduction

In public transport service and asset delivery contracts, securities are mechanisms that help protect the PTA from financial and service delivery risks, such as supplier default, poor performance, insolvency or failure to maintain assets in the specified condition. Security instruments provide assurance that the PTO has the financial capacity and commitment to meet its obligations — and that the PTA has recourse if they don't.

Securities in PT contracts serve to:

- Mitigate risk of non-performance or default by the PTO
- Provide financial cover to the PTA for the cost of temporary replacement services, rectification or re-tendering in the event of default or termination
- Encourage performance discipline by the PTO by increasing consequences for failure, particularly in contracts where the risks to public investment, service continuity and reputation are high

Security mechanisms:

- **Performance bond** – Guarantee from a bank or insurer that pays out if the operator breaches service obligations or fails performance tests. Performance bonds come at a price but are the easiest form of security to claim against.
- **Rectification bond** – Similar to a performance bond but linked to the rectification of asset condition.
- **Parent company guarantee** – A legal commitment from a parent or holding company to assume the contractual obligations of the PTO if it fails to perform. Guarantees are not generally priced in the same way as bonds, but may attract a risk premium and are generally more difficult to claim against than a bond, hence PTAs should have both guarantees and bonds in their contracting toolbox.
- **Minimum equity** – Obligation for the PTO to maintain a set level of equity (capital) in the company delivering the services – generally used when a special purpose vehicle (SPV) or other shell type company is established to deliver the services being procured.

Requirement and guidance	
1	<p>Due diligence</p> <p>The security mechanisms listed in this section are all risk mitigation mechanisms. The extent to which they are required and the values applied to that are enforced. It is important that PTAs undertake appropriate due diligence on PTOs prior to contract award to understand the corporate structure and potential viability risks.</p>

18.2 Bonds

Requirement and guidance	
1	<p>Purpose</p> <p>Performance bonds serve as a financial guarantee that a PTO will fulfil its contractual obligations. They protect the PTA against the risk of non-performance, such as:</p> <ul style="list-style-type: none">• Failure to commence services on time

	<ul style="list-style-type: none"> • Persistent service delivery failures • Breach of key contractual terms • Insolvency or early contract termination <p>If the PTO defaults or fails to fulfil its obligations in some way, the PTA can call on the bond to recover financial losses or fund interim service provision.</p> <p>Rectification bonds serve as a financial guarantee that a PTO will maintain specified assets (such as PTA owned assets or transferring assets) to a specified condition. If, after a rectification notice, the PTO fails to satisfactorily rectify the condition of an asset or group of assets, the PTA can call on the rectification bond to recover the cost of rectifying the assets itself.</p> <p>Rectification bonds are best used when end of term asset risk is high due to large numbers or value of PTA owned or transferring assets. The cover and specific purpose provided by a rectification bond lessens the value of the required performance bond and can reduce the overall cost of bonding for the contract.</p>
2	<p>How they work</p> <p>When required by a contract, the PTO (principal) secures a bond from a surety (typically a bank or insurance company) in favour of the PTA (obligee) up to a specified amount, usually determined as a percentage of the annual contract value.</p> <p>Should the PTO fail to fulfil its obligations, the PTA can claim against the bond to cover costs of completing or correcting the failures. The surety then recovers any paid amounts from the PTO according to the bond terms.</p> <p>Bonds therefore can be considered as both a form of insurance cover and an incentive to perform by the PTO.</p> <p>A bond may be on-demand or conditional:</p> <ul style="list-style-type: none"> • On-demand bonds: PTA can claim the bond without proving breach (although there may be some terms attached). • Conditional bonds: PTA must demonstrate to the surety the nature of the PTO default. <p>Bonds remain valid for the contract duration (and sometimes a tail period to cover liabilities post contract expiry). To reduce cost, PTAs should consider if the bond should reduce in value over time where the likelihood or consequence of the risk of failure is expected to reduce over time.</p> <p>A rectification bond will generally cover the risk of asset condition at the end of term and therefore should only be required to be made available within a specified timeframe, e.g, within 18 months, of the end of term.</p>
3	<p>Value of bond</p> <p>Performance bonds in public transport contracts are often set at around 10-15% of the annual contract value.</p> <p>When determining the bond value, PTAs should conduct an assessment of their potential loss at risk under different scenarios of PTO default. For example, under a termination scenario, the direct and ongoing costs that the PTA will incur to implement interim services and conduct an emergency tender.</p> <p>Note that the full loss at risk does not need to be covered by the performance bond. The risk may be covered by a combination of performance bond and parent company guarantee.</p> <p>The value of rectification bonds should be set at an estimation of costs associated with rectifying poorly maintained assets and the non-performance of other exit obligations. As such an estimate could be like 'a piece of string', a recommended approach is to combine a base</p>

	amount of around 1–2% of annual contract value with a risk adjustment factor based on exit obligations or known performance concerns.
4	<p>Cost of bonds</p> <p>Bonds come at a cost in the form of an annual premium paid by the PTO to the surety. As this cost will generally be passed onto the PTA in contract pricing, PTAs should be aware of the potential cost of bonds.</p> <p>The PTO's risk profile to the surety will influence the premium (price) that the PTO will have to pay to secure the bond. The surety will evaluate the PTO's creditworthiness, track record and financial strength before issuing a bond.</p> <p>The annual price premium paid by the PTO are generally in the range of 1-4% of the bond value depending on risk to the surety, plus administration charges.</p> <p>As with any insurance cover, PTAs should give appropriate consideration to the required value of the bond.</p>
5	<p>Parameters</p> <p>Key parameters that should be specified in contracts in relation to bonds include:</p> <ul style="list-style-type: none"> • Amount of bond in NZD • Form of bond: Usually unconditional, irrevocable, and on-demand (but may also be conditional such as a rectification bond). A pro-forma bond template setting out the required conditions of the bond should be included as a schedule to the contract to ensure the PTO has a clear understanding of the form of bond that it must procure. • Validity: e.g. has an expiry date of not less than 1 year after the termination or expiry of the contract. • Issuer: Should be specified as a New Zealand registered bank with a minimum standard of credit rating, e.g. at least a long-term Standard & Poor's issuer credit rating of no less than A. • Drawdown location: As drawdowns must usually happen in person, the drawdown location should be specified as the city or town in which the PTA is located. • Top-up: If drawn down during the term, the PTO must ensure the bond is topped-up to the specified bond amount within a specified timeframe. • Drawdown or recourse triggers: The specific conditions that the PTA may have recourse to the bond. • Return of bond: the time period after contract expiry or termination that the PTA will return the bond to the PTO, subject to any outstanding liabilities.
6	<p>Use cases</p> <p>Performance bonds must be included in all PT operating contracts under a relational delivery model with an annual gross price (AGP) in excess of \$1m.</p> <p>Performance bonds may be included in PT operating contracts under a relational delivery model with an annual gross price (AGP) less than \$1m.</p> <p>Performance bonds should be included in contracts for strategic enabling assets such as Design, Build, Lease (DBL) and Build, Own, Operate, Transfer (BOOT) arrangements, subject to other protections within the contracts.</p> <p>Rectification bonds should be included in all contracts in which the assets are owned by or transfer to the PTA at the end of term where the inclusion of a rectification bond will lessen the overall cost of bonding for the contract.</p>

18.3 Guarantees

Requirement and guidance	
1	<p>Purpose</p> <p>Parent company guarantees (PCG) are provided by the holding company of the PTO as security for the PTO's payment obligations. A PCG obliges the parent company to meet the PTO's obligations to the PTA as if it were its own in the event that the PTO fails to perform in some way.</p> <p>PCGs are important security mechanisms where the PTO is a subsidiary of another company and has limited assets with which to cover any outstanding obligations. PCGs leverage the stronger credit and asset base of the parent to underwrite the subsidiary PTO's obligations.</p>
2	<p>How they work</p> <p>The applicable parent or holding company (guarantor) enters into a guarantee at the same time as the PT operating contract is executed. A pro-forma guarantee setting out the required conditions of the PCG should be included as a schedule to the contract to ensure the PTO and its parent company has a clear understanding of the parent's obligations at the time of tendering.</p> <p>The PCG includes back to back obligations with the PT operating contract.</p> <p>Should the PTO fail to fulfil its obligations, the PTA can make a claim for costs on the guarantor by invoking the terms of the PCG.</p> <p>PCGs provide additional security to the performance bond and should not be considered an alternative or replacement for the use of performance bonds.</p> <p>PCGs can be more difficult to claim against than a bond, hence PTAs should have both guarantees and bonds in their contracting toolbox.</p>
3	<p>Value of PCG</p> <p>The value of the PCG is a function of a limitation cap on liability and will generally mirror the limitation on liability of the PT operating contract.</p>
4	<p>Use cases</p> <p>The requirement for a PCG must be included in all PT operating contracts under a relational delivery model with an annual gross price (AGP) in excess of [\$1m] where the PTO is a subsidiary of another company.</p> <p>The guarantor must be the ultimate holding company of the PTO unless the PTA has undertake satisfactory due diligence that any other guaranteeing entity has the requisite assets and financial capacity to fulfil the obligations of the PTO in the event of default.</p>
5	<p>Due diligence</p> <p>It is important that PTAs undertake appropriate due diligence on PTOs prior to contract award to understand the corporate structure in which they fit and potential viability risks of both the PTO and its parent companies to inform who the PTA should be seeking a PCG from.</p>

18.4 Minimum equity

Requirement and guidance	
1	<p>Purpose</p> <p>A minimum equity requirement is a risk mitigation approach, helping to protect the solvency and on-going viability of the PTO by ensuring that it has the necessary working capital and access to finance to remain financially viable through the term of the contract.</p> <p>Important when the PTO is a special purpose vehicle (SPV) or other shell type company specifically established to deliver the services being procured and may be under-capitalised.</p>
2	<p>How they work</p> <p>The PTA sets a contractual requirement that the PTO must maintain a minimum level of equity throughout the term. May be combined with restrictions on dividend payments or debt increases.</p> <p>The minimum equity level can be a specified dollar amount relative to the contract value, such as a multiple of monthly contract payments, or a minimum equity ratio for the company.</p> <p>The equity level is monitored through reporting, audited accounts and/or compliance certificates throughout the term.</p> <p>Failure by the PTO to maintain equity at the required minimum level would constitute a contractual default that would require formal rectification.</p>
3	<p>Value of minimum equity requirement</p> <p>Setting the minimum level of equity should consider the level of working capital required to sustain the PTO's business in the event of cost shocks or a delay or drop in income and to protect against solvency risk.</p> <p>There are different methods available to PTAs to determine a minimum equity requirement, including:</p> <ol style="list-style-type: none"> 1. Depending on the risk profile of income payments for the PTO, the minimum equity level may be set as a multiple of monthly contract payments, indicatively of around 1-4 months or 5-10% of annual contract value. 2. Equity to debt ratio (gearing requirement), e.g. debt-to-equity $\leq 2:1$. 3. Equity cover relative to operating cost exposure, calculated as a percentage of average monthly operating costs, e.g. equity sufficient to cover 2-3 months of operating costs. 4. Risk-based assessment considering factors such as fleet size and asset ownership, PTO overall business risk profile, PTO revenue at risk, dependency on external financing. 5. Contractual liquidity, e.g. requiring a current ratio of ≥ 1.0 and an interest coverage ratio.
4	<p>Use cases</p> <p>A minimum level of equity in the PTO must be specified in PT operating contracts involving SPVs, joint ventures and thinly capitalised subsidiary companies.</p> <p>While final minimum equity requirements will be informed by due diligence on PTOs as part of supplier selection processes, the intention to enforce minimum equity requirements in specific use cases should be signalled during the tender phase to ensure bidders are aware of requirements.</p>

5

Due diligence

It is important that PTAs undertake appropriate due diligence on PTOs prior to contract award to understand the corporate structure of the PTO, its capitalisation and potential viability risks to inform final minimum equity requirements.

DRAFT

19. Data and intellectual property

19.1 Data access and records

A key element of relational contracting is transparency and information sharing. Consequently, it is important that PT operating contracts contain appropriate, reciprocal obligations on PTAs and PTOs to share information with the other necessary to achieve the end outcomes.

To supplement data from sources such as ticketing and real-time information systems, data generated by PTOs in the course of delivering PT services, such as from bus telematics, can provide an important source of additional information and verification for PTAs to support performance monitoring, network planning, issue resolution and resource allocation. Likewise, PTOs rely on data and information from PTAs. Contracts must ensure relevant obligations are in place to facilitate the sharing and access to information and relevant data feeds that each party requires, both real-time and stored information.

Requirement and guidance	
1	Data access PTAs must include in PT operating contracts, obligations on the PTO to provide access to key data systems that the PTA controls, such as bus telematics and on-board CCTV and obligations on the PTA to provide data and information necessary for the PTO to effectively perform its responsibilities.
2	Data records Contracts must provide clear obligations on PTOs to maintain systems and keep accurate records to enable the reporting and reconciliation of performance metrics, invoicing, asset usage and other information relevant to the services. Such record keeping must be to a standard that would be expected of a prudent, appropriately qualified, competent and efficient provider of the same or similar services and extend to the PTO's subcontractors (where applicable). Both NZTA and PTAs require information recorded and held by PTOs for their own planning and reporting purposes. Subject to confidentiality obligations, contracts must provide for the access by the PTA to the PTO's records to enable the PTA to: <ul style="list-style-type: none">• verify and audit any information or reports provided to it by the PTO,• verify the PTO's compliance with obligations under the contract,• comply with the PTA's statutory reporting and planning functions,• report aggregated data to NZTA for NZTA's reporting and planning functions,• comply with obligations under the Privacy Act 2020, Public Records Act 2005 and the Local Government Official Information and Meetings Act 1987.
3	Privacy When sharing information, each party must comply with relevant privacy legislation and policies.

19.2 Data protection and cybersecurity

As public transport becomes increasingly reliant on digital systems for fleet management, ticketing, real-time monitoring and fleet charging, cyber threats and data loss pose a significant risk to privacy, service continuity and vehicle and passenger safety. Specifying data protection measures and cybersecurity requirements in PT operating contracts ensure that PTOs implement and maintain robust protection against data breaches, ransomware attacks and operational disruptions that could compromise essential services.

Requirement and guidance

1	<h3>Cybersecurity standards</h3> <p>PTAs may wish to specify industry standards and frameworks that PTOs are required to align or comply with to ensure appropriate cybersecurity practices and measures are met. Examples of industry standards and frameworks include:</p> <ul style="list-style-type: none"> • NCSC Cyber Security Framework – framework for New Zealand organisations published by the NZ National Cyber Security Centre • ISO 27001 – information security management systems (ISMS) • IEC 62443 – cybersecurity rules for industrial automation and control systems (IACS) and other forms of operational technology • Essential Eight – a cybersecurity framework developed by the Australian Cyber Security Centre (ACSC), comprising eight strategies to reduce an organisation's exposure to cyber threats
2	<h3>PTA policies</h3> <p>PTAs must have specific policies on privacy, data and systems protection which should also apply to contractors and suppliers (including PTOs) who have access to PTA data and systems. Consequently, PTAs should require adherence by PTOs to PTA privacy, data and systems protection policies.</p> <p>In this case, such policies must be made available to PTOs, preferably at time of tender to enable suppliers the opportunity to understand their obligations when committing to contractual obligations in a tender process.</p>
3	<h3>Bus charging infrastructure</h3> <p>Electric bus charging infrastructure introduces new and unique cybersecurity vulnerabilities. As charging stations are usually networked and connected to operational platforms, as with other systems, they are exposed to potential cyberattacks. PTAs should ensure that PTO cybersecurity protections extend to electrical charging infrastructure to prevent the potential for interference and disruption.</p>

19.3 Intellectual property

Intellectual property (IP) is anything that is created using knowledge, skill, and expertise (intellect) as opposed to physical assets. In a bus contract, this can include things like data collected from bus operations, service plans, software, operating procedures, timetables, manuals and any new tools or documents developed while running the services. IP can be owned just like physical property and can be licensed, shared, assigned or protected from being used by others.

It is important to define IP rights in bus contracts for the following reasons:

- **Clarity over ownership:** Bus services generate large amounts of data, systems and documents. The contract must be clear about who owns this material so there is no confusion or dispute later. Both PTAs and PTOs will bring existing IP to a contract and may develop IP as part of a new contract – it is necessary to recognise the different rights each party will have to existing and developed IP.
- **Protects the PTA's investment:** If the PTO develops tools or data as part of the service that is being paid for by the PTA, the PTA needs to own or access that IP so it can utilise that IP to continue to improve the network over time.
- **Avoids lock-in to one operator:** Without clear IP rights, an outgoing PTO could keep hold of crucial information or software, making it hard or costly for a new PTO to take over.

- **Supports innovation and safety:** Defined rights allow both parties to safely share information, improve systems and adopt new technologies without legal risks.
- **Manages legal and privacy risks:** Setting out rights and obligations helps ensure data is used properly, kept secure and doesn't infringe third-party rights.

Requirement and guidance

1	<h3>Contract drafting requirements</h3> <p>Contracts must require that:</p> <ul style="list-style-type: none"> • Each party keeps ownership of its pre-existing IP, which remains with that party during and after the contract. • The PTO grants the PTA a royalty-free, perpetual licence to use the PTO's existing IP for public transport purposes and must secure equivalent rights for any subcontractor IP. • All developed IP created by the PTO or its subcontractors in delivering the services (including all data) is automatically owned by the PTA and must be assigned to the PTA. • The PTO cannot license developed IP to its related companies without PTA approval and must follow defined processes where third-party licensing restrictions prevent compliance. • The PTA may transfer licences to new operators to ensure continuity of services. • The PTA controls its branding on assets and uniforms. • The PTA grants the PTO a limited, royalty-free licence to use PTA existing IP and developed IP solely for delivering the services during the term. • All PTA IP (existing and developed) must be kept confidential and PTA ownership extends to any improvements or modifications. • The operator must indemnify the PTA and authorised users against any third-party IP infringement claims relating to existing, developed or subcontractor IP.
---	---

20. End of term

20.1 Exit services

Exit Services refers to the activities that the PTO will need to undertake at the end of term to support the PTA procure new Service Contracts and when transitioning out and handing over to an incoming PTO.

Requirement and guidance	
1	<p>Exit services</p> <p>The responsibilities and undertakings of the PTO nearing and at end of term to help facilitate the seamless transfer of services to an Incoming PTO.</p> <p>To facilitate the effective procurement of subsequent contracts and the smooth transition from an outgoing PTO to an incoming PTO, PT service contracts must include comprehensive Exit Services provisions, including:</p> <ul style="list-style-type: none">• Tendering support• Transition support• Asset transfers (where applicable)• PTA rights to withhold payments
2	<p>Tendering support</p> <p>Obligations on the PTO to support the PTA in a subsequent tender process.</p> <p>Obligations will vary depending on the presence of Transferring Assets, where source information is held and the requirements regarding the transfer of staff from an outgoing to an incoming PTO.</p> <p>Obligations on the PTO to provide tendering support must include</p> <ul style="list-style-type: none">• providing assistance, cooperation and access to information• verifying information• ensuring documentation is not restricted from being disclosed in any retender process• warranting that the information provided is true and correct• preparing a handover (also known as succession) package containing key information about the operations, assets and staff• where applicable, enabling access to and the inspection of Transferring Assets by tenderers.
3	<p>Transition support</p> <p>Obligations on the PTO to cooperate with transition and not 'frustrate' the process must include:</p> <ul style="list-style-type: none">• ensuring continuity of service and performance is maintained throughout the transition period• preparing an exit plan that sets out the obligations and activities of the PTO to assist the PTA to prepare for a tender process, ensure continuity of service in advance of a change of operator and to assist the transition in of an Incoming PTO• agreeing to a tri-partite transition plan between the PTO, PTA and incoming PTO• assisting in making staff available for the recruitment, training and onboarding of staff by an incoming PTO. <p>The tri-partite transition plan must acknowledge the PTA's role in helping to facilitate the transition, particularly in relation to employee transfers, by ensuring that the PTO is not disadvantaged during the transition process and service continuity is maintained. For example, the PTA should work with the PTO to plan for a reduced timetable for a temporary period to</p>

	<p>enable the PTO to release transferring employees for onboarding and training purposes with the incoming PTO.</p>
4	<p>Employees</p> <p>Obligations on the PTO in relation to the recruitment, training and onboarding of employees by an incoming PTO must include:</p> <ul style="list-style-type: none"> • In advance of the PTA conducting a procurement process, communicating with the PTO's employees about the end of term processes, including the PTA's procurement process, the potential impacts for the PTO's business, the potential impacts for employees, the options available to employees and the processes that will be followed to facilitate ongoing employment with the PTO and/or new employment with the incoming PTO. • Participating in a joint planning exercise with the PTA and incoming PTO to agree an Employee Transition Plan setting out how the parties will work together to facilitate the recruitment, selection, onboarding and training of the PTO's employees by the incoming PTO in a manner that will not disadvantage the PTO from a performance perspective or put service continuity at risk. • Where it is agreed between the parties that employees who move to the incoming PTO can choose to have leave entitlements transferred rather than paid out, paying the incoming PTO the value of such leave entitlements that transfer with employees. <p>Note that countervailing transition-in obligations for the employment of transferring employees must be included on the PTO in its role as an incoming PTO.</p>
5	<p>Asset transfers</p> <p>Where Transferring Assets are included in the Service Contract, obligations in relation to the transfer of assets, including:</p> <ul style="list-style-type: none"> • ensuring Transferring Assets are in the specified return condition, ability for the PTA to inspect and audit the assets at end of term and obligation to rectify any failures to maintain assets to the return condition. • enabling the unimpeded transfer of Transferring Assets in accordance with a Transfer Agreement. <p>See below for more guidance.</p>
6	<p>PTA rights to withhold payments and call on the performance bond</p> <p>Rights of the PTA to withhold payments from the PTO and/or call on the Performance Bond in the event that the PTO fails to comply with its end of term obligations, including where the Transferring Assets are not in the required Return Condition.</p>

20.2 Asset transfers and handover

Under an asset delivery model where the PTA supplies assets or the PTO owned assets are required to be transferred to an incoming PTO, the Service Contract requires comprehensive end of term asset transfer and handover provisions.

Under PTA asset ownership, the key provisions will relate to asset condition and the handover protocols from the outgoing PTO to the incoming PTO.

Under PTO ownership of assets that transfer at end of term, in addition to asset condition and handover protocols, it is necessary to include a Transfer Agreement to in the Services Contract to specify the terms on which the assets will transfer under a sale and purchase arrangement, including a valuation mechanism for determining how a transfer price for the assets will be agreed between the seller (outgoing PTO) and purchaser (incoming PTO).

Requirement and guidance	
1	<p>Asset scope</p> <p>It is important to clearly specify in the contract the exact assets that will transfer at end of term, including unique identification marks such as serial or registration numbers of each asset.</p> <p>Any ancillary assets and records necessary for the safe and efficient ongoing operation and maintenance of the transferring assets should also be specified for transfer, including:</p> <ul style="list-style-type: none"> • keys and codes required to access the assets • certificates, permits and consents • copies of operating and maintenance manuals, maintenance logs, service agreements, warranties, guarantees, etc • spares, maintenance equipment, software and specialist tools
2	<p>Asset condition</p> <p>When specifying end-of-term asset return conditions, contracts must clearly define the required condition of assets at end of term to ensure that they are returned to the PTA or transferred to an incoming PTO in a fit for purpose condition, allowing for fair wear and tear. Consideration needs to be given to the PTOs responsibilities to maintain the assets during the term to specified maintenance standards and the PTA's audit and inspection rights. Ensuring the PTO maintains comprehensive maintenance records throughout the term helps support compliance, enforceability and due diligence at end of term.</p> <p>Ensuring ongoing asset condition is maintained throughout the term is important to safeguard the return condition of assets at the end of term and in the event of early contract termination. PTAs should ensure that they employ suitable contract management practices to monitor that the required repairs and maintenance of transferring assets is being undertaken throughout the term.</p>
3	<p>Rectification</p> <p>While it is expected that assets will be maintained to the required standards during the term, safeguards are required to ensure any deferred maintenance or repairs are rectified at the PTO's cost.</p> <p>PTAs should include the right to appoint a suitably qualified Transfer Auditor to carry out a condition audit of any transferring assets in advance of the end of term or in the event that the PTA issues a notice of termination. The role of the Transfer Auditor is to identify any rectification, refurbishment and maintenance works ("Rectification Works") required to restore the condition of the Transferring Assets to the specified return condition and provide an estimate of cost to do so.</p> <p>The Operator should be given the opportunity to carry out any required Rectification Work at its expense and to the satisfaction of the Transfer Auditor.</p> <p>If the Operator fails to carry out the Rectification Work within the required timeframe, the PTA should reserve the right to commission the Rectification Work itself and to recover the cost from the PTO by:</p> <ul style="list-style-type: none"> • deducting or setting off the rectification cost against any payments due from the PTA to the PTO, or • making a demand under the Performance Bond and/or Guarantee.
4	<p>Security interest</p> <p>A Security Interest refers to a legal right or claim that a third party, such as a lender or financier, may hold over a PTO's assets as collateral for a loan or obligation. If such interests exist, they</p>

	<p>can interfere with the clean transfer of asset ownership or use from the outgoing to the incoming PTO.</p> <p>When drafting PT operating contracts that feature transferring assets, it is important to:</p> <ul style="list-style-type: none"> • Require that transferred assets be free of any Security Interests at the time of handover, ensuring they are unencumbered. • Include provisions obligating the PTO to disclose any existing or potential Security Interests during the contract term. • Allow the PTA to approve or restrict the creation of Security Interests on transferring assets. • Include enforcement mechanisms (e.g., indemnities or withholdings) if obligations around asset encumbrance are breached.
5	<p>Transfer Agreement</p> <p>A Transfer Agreement between the PTA, PTO and any related parties of the PTO with an ownership interest in the assets should be included as an annexure to the Services Contract. The Transfer Agreement should set out the terms and obligations of the parties in relation to the sale and purchase of the assets to an incoming PTO.</p> <p>The Transfer Agreement should cover:</p> <ul style="list-style-type: none"> • The sale and purchase process • The assets to be transferred • The required condition of the assets at the time of transfer, including rectification obligations • How the transfer price is determined • Due diligence rights of the PTA, tenderers and incoming PTO