



9 MAY 2018

Dear [REDACTED]

On 14 March 2018 you emailed the Ministry requesting, under the Official Information Act 1982, the following information:

- *A copy of the contracts between MSD and Emerge*

[REDACTED]

With regards to your request under the Official Information Act for the Ministry's contract with Emerge, please find attached a copy of the current and previous contract between the Ministry of Social Development and Emerge Aotearoa Limited. Details concerning the provision of service to clients at accommodation other than Siesta Motel has been considered out of scope.

Emerge Aotearoa Limited is a trusted provider contracted to support clients in Transitional Housing to provide a warm, safe and secure place to live.

You will note that the Service Delivery fee has been withheld under section 9(2)(b)(ii) of the Act as, if released, it would be likely to prejudice the commercial position of the Ministry to obtain further Emergency Housing support. The greater public interest is in ensuring that the commercial position can be maintained. You will also note that details of other properties that Emerge supports have been redacted as out of scope of this request. The Emerge contract also erroneously numbers page 12 as page 1 of 10, this is an administrative error.

In addition, the names of the units used for Emergency Housing at Siesta Motel have been withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The names of some individuals have also been withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

You may also be interested in the Ministry's Transitional Housing Operational Guidelines for Providers of Transitional Housing, this is publically available at: www.housing.msd.govt.nz/documents/information-for-housing-providers/emergency-housing-provider-forms/20170830-transitional-housing-operational-guidelines.pdf

The principles and purposes of the Official Information Act 1982 under which you made your request are:

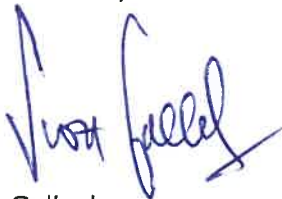
- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public shortly. The Ministry will do this by publishing this letter on the Ministry of Social Development's website. Your personal details will be deleted and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response concerning the Ministry's contract with Emerge, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Yours sincerely



Scott Gallacher
Deputy Chief Executive, Housing

Emergency Housing Support Services (Motel) Agreement

This Emergency Housing Support Services (Motel) Agreement is made on *20 November* 2017

between (1) Her Majesty the Queen in right of New Zealand acting by and through the Chief Executive of the Ministry of Social Development (MSD)

and (2) **Emerge Aotearoa Limited**, Incorporated under the Companies Act 1993 (Registration number: 3038730) and having its registered office at 320 Ti Rakau Drive, Botany, Auckland, 2013 (Provider)

(the Agreement).

Introduction

- A. MSD has secured a number of units in specified motels in which to place households (which may be one or more individuals) in need of emergency housing on a short-term basis (Households). The Provider is able to provide support services to those Households during their stay at the relevant motel.
- B. The parties have agreed to enter into this Agreement to set out the arrangements between them whereby MSD will make payments to the Provider in consideration for the Provider providing certain services specified in clause 5 below (Services), in accordance with the terms and conditions set out in this Agreement.

It is agreed

14.	Term	This Agreement commences on 01 December 2017 and expires on 31 March 2018 unless terminated earlier in accordance with this Agreement (the Term).
15.	Contract Reference	AKLC-18-00460
16.	Region	Auckland Region
17.	Units	Out of Scope

Please note pages 2 and 4 have been removed as they are out of scope.

Out of Scope

5 number of units at Siesta Motel, 70-72 Great South Road, Remuera, Auckland

Unit No.	Typology	Max. no. of people per room	Start Date	End Date	Unavailability Dates
9(2)(a) - Privacy of an Individual	2 x Single 1 x Queen	4	01/12/2017	31/03/2018	17 - 18 February 2018
	3 x Single 1 x Queen	6	01/12/2017	31/03/2018	N/A
	3 x Single 1 x Queen	6	01/12/2017	31/03/2018	17 - 18 February 2018
	3 x Single 1 x Queen	6	01/12/2017	31/03/2018	17 - 18 February 2018 1 - 4 March 2018
	1 x Single 1 x Queen	3	01/12/2017	31/03/2018	N/A

Out of Scope

		Out of Scope
		(the Units, with each an individual Unit).
18.	Services	<p>MSD will refer the Households to the Provider. The Provider will process Household referrals from MSD and will, while the Household is resident in the Unit (or Units, as applicable):</p> <ul style="list-style-type: none"> (a) work with each Household to identify and manage issues that arise in relation their stay at the Unit; (b) prepare an individualised transition plan in conjunction with each Household to clearly document: <ul style="list-style-type: none"> (i) actions to address any health and social issues affecting the Household (ii) actions to facilitate the transition from emergency housing to longer-term housing options; (c) support each Household to: <ul style="list-style-type: none"> (i) access appropriate support services to address any health and social needs; and (ii) carry out the actions identified in the Household's individualised transition plan, including assisting the Household to secure longer-term housing; and (d) use reasonable endeavours to ensure that each Household contributes, to the Provider, an amount up to 25% of the total income of that Household for the provision of the Services to that Household (such percentage to be calculated with reference to the period that Services are being provided to that Household) (the Services Subsidy).
19.	Performance measures	The Provider is to document all individualised plans in a form that can be easily understood and actioned by the client, the Provider, or any future alternative provider when the client moves on from the Unit(s).
20.	Level 3 MSD Approval	The Provider must ensure that by 31 August 2017, it has obtained, and at all times thereafter during the Term it maintains, level 3 MSD approval (as designated by MSD, in accordance with its approval framework, standards and requirements for organisations delivering social services, as described on MSD's website from time to time).
21.	Compliance with law	The Provider must ensure that the Services are provided by it and its personnel in accordance with all relevant laws, including the Privacy Act 1993, the Human Rights Act 1993 and the Health and Safety at Work Act 2015.
22.	Vulnerable children	Where the Provider is a provider of children's services in accordance with the Vulnerable Children Act 2014 (including where MSD gives notice to the Provider that in the opinion of the chief executive of MSD,

		<p>the Provider is providing children's services), the Provider must:</p> <ul style="list-style-type: none"> (a) as soon as is practicable, adopt a child protection policy that complies with the requirements set out in section 19 of the Vulnerable Children Act 2014; (b) keep that child protection policy under review during the Term in accordance with, and at the frequency required by, section 16(a)(iii) of the Vulnerable Children Act 2014; (c) make a copy of its child protection policy available to MSD, and provide any updated versions of such policy to MSD during the Term as soon as the policy is updated in final form; and (d) implement its child protection policy.
23.	Privacy	The Provider must provide the Services in a manner that ensures the personal privacy and dignity of Households is respected, including in particular, by ensuring that personal information held about any such individual or household is kept secure at all times.
24.	Emergency Housing Accommodation Operational Guidelines	The Provider must provide the Services in accordance with, and otherwise comply with the provisions of, the guidelines entitled "Social Housing Provider Operational Guidelines for Providers of Emergency Housing" published by MSD (dated 21 July 2015), including any modified, additional or replacement guidelines as may be notified to by MSD to the Provider from time to time in its sole discretion following consultation with relevant providers, including all specific privacy obligations except to the extent that such provisions conflict with the provisions of this Agreement (the Emergency Housing Accommodation Operational Guidelines).
25.	Reasonable directions	The Provider must follow the reasonable directions of MSD, such directions to be consistent with this Agreement.
26.	Provider Personnel	<p>The Provider must ensure that all Provider Personnel:</p> <ul style="list-style-type: none"> (a) are suitably qualified and are of good character; (b) have had a Police vetting report obtained in respect of them by the Provider and if such report does identify any previous convictions or pending prosecutions (other than minor road traffic offences and any matter to which the Criminal Records (Clean Slate Act) 2004 applies), the Provider Personnel may only be involved in the provision of Services if: <ul style="list-style-type: none"> (i) permitted by the Provider's relevant internal policy (a copy of which is to be provided to MSD upon request); and (ii) the Provider's Chief Executive has given their express written approval to the individual being involved in the provision of Services; (c) carry out their respective duties with due care, skill and diligence and otherwise in accordance with the requirements of this Agreement. <p>For the purpose of this Agreement, Provider Personnel means any sub-contractor, or any director, officer, employee or agent of, or contractor to, the Provider or any of the Provider's sub-contractors.</p>
27.	Service Delivery Fee, Assessment Fee and Services Subsidy	<ul style="list-style-type: none"> (a) The Service Delivery Fee is ^{9(2)(b)(ii) - Commercially Sensitive} per Unit per week. (If the Unit becomes available, or unavailable, part way through a week, the Service Delivery Fee will be calculated on a pro rata basis taking into account the number of days during a week that the Unit was available). (b) The Provider acknowledges that no other payments than the Service Delivery Fee will be payable by MSD to the Provider.

		(c) In addition to the right to invoice MSD for the Service Delivery Fee, the Provider has the right to collect the Services Subsidy from each Household.
28.	Invoicing	The Provider must send MSD a valid tax invoice (showing all GST payable) at the end of each month, for Services delivered during that month (the form of which must have been previously approved by MSD, such approval not to be unreasonably withheld or delayed).
29.	Payment	MSD must pay the Provider's invoice by the 20 th of the month following the month in which the invoice is received by MSD.
30.	Reporting Requirements	The Provider must submit a written report to MSD on a monthly basis, using the relevant template(s) set out in the Emergency Housing Accommodation Operational Guidelines.
31.	Relationship managers and meeting requirements	<p>(a) The parties will each appoint relationship managers, who will maintain regular contact with each other, and meet in person at least once a month.</p> <p>(b) The relationship managers shall be the first point of contact for one party to raise any questions or issues with the other party in respect of this Agreement.</p> <p>(c) The initial relationship managers are: MSD: ^{9(2)(a) - Privacy of an Individual} Regional Contracts Manager Provider: General Manager</p> <p>The appointing party may change its relationship manager at any time by giving notice to the other party.</p>
32.	Records	<p>(a) The Provider must at all times, and in accordance with good industry practice and any applicable laws, maintain up to date information relating to its delivery of the Services, and keep such information secure.</p> <p>(b) The Provider shall retain and make available to MSD on request (during the Term and for 7 years after the expiry or termination date of this Agreement) all such information as is required to enable MSD to comply with an enquiry or its statutory, parliamentary or other reporting obligations.</p>
33.	Audit	<p>(a) MSD may, from time to time, audit the Provider's compliance with the terms of this Agreement.</p> <p>(b) If MSD initiates an audit, it must give the Provider reasonable notice of when the audit is to be conducted, advise the identity of the person(s) who will conduct the audit and details of the Provider Personnel and/or premises that MSD wishes to have access to.</p> <p>(c) The Provider must: (i) provide such information, explanations and documentation requested by persons undertaking the audit for MSD that are relevant to the conduct of the audit; and (ii) arrange for those persons undertaking the audit on behalf of MSD to have access to the Provider's Personnel and/or premises, as required by MSD.</p>
34.	Confidentiality	<p>Each party confirms that it has adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use by third parties, and that it will not disclose to any third party or use for its own benefit (other than for the purposes of this Agreement) the other party's Confidential Information other than:</p> <p>(a) if the other party gives prior written approval to the use or</p>

		<p>disclosure;</p> <p>(b) If the use or disclosure is required by law (including under the Official Information Act 1982), Ministers or parliamentary convention, or</p> <p>(c) in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the parties.</p> <p>For the purposes of this clause, Confidential Information means information that:</p> <p>(a) is by its nature confidential;</p> <p>(b) is marked by either party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence';</p> <p>(c) is provided by either party or a third party 'in confidence';</p> <p>(d) either party knows or ought to know is confidential; or</p> <p>(e) is of a sensitive nature or commercially sensitive to either party, but, where the disclosing party is MSD, excludes the contents or existence of this Agreement, or any other information about this Agreement, including the Provider's name, the level of funding paid under this Agreement and the nature of the Services.</p>
35.	Notification and cooperation – confidentiality breach	<p>(a) The Provider must immediately notify MSD of any actual or suspected unauthorised use or disclosure of any information exchanged under or in relation to this Agreement.</p> <p>(b) The Provider will cooperate with MSD where any investigation is undertaken into any actual or suspected unauthorised use or disclosure of any information relating to persons in a Household.</p>
36.	Public disclosure by the Provider	All public disclosure by the Provider relating to the existence of and contents of this Agreement and any other information related to this Agreement, including the Provider's performance under this Agreement, shall be co-ordinated with and must first be approved in writing by MSD prior to its release. Such public disclosure includes promotional or marketing material but does not include any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements.
37.	Indemnity	The Provider will indemnify MSD against all losses suffered or incurred by MSD as a result of any claim by a third party that its rights have been breached as a consequence of the Provider's breach of this Agreement, except to the extent caused by MSD's negligence, breach of this Agreement or wilful misconduct.
38.	MSD's liability	The Provider releases, to the maximum extent permitted by Law, MSD from all claims, losses and liabilities resulting from any accident, damage, death or injury arising from the provision of Services. The release under this clause is absolute, except to the extent that the accident, damage, death or injury is a direct consequence of a fraudulent, negligent or wilful act or omission of MSD (or any of MSD's personnel, excluding the Provider).
39.	Insurance	It is the Provider's responsibility to ensure that its risks of doing business are adequately covered, whether by insurance or otherwise.
40.	Disputes	<p>(a) If any party wishes to raise a dispute concerning this Agreement (Dispute) it may do so by giving written notice to the other party detailing the nature of the Dispute (Dispute Notice).</p> <p>(a) The parties agree to use their best endeavours to resolve the Dispute during a period of sixty (60) days through informal dispute resolution techniques and internal escalation within each party's</p>

		<p>organisation, between their Relationship Managers in the first instance, and escalated as necessary.</p> <p>(b) If there is a Dispute, each party will continue to perform its obligations under this Agreement as far as is practical as if no Dispute had arisen, pending the final resolution of the Dispute.</p> <p>(c) Each party agrees not to start any court action in respect of a Dispute unless it has first complied with clauses 27(a) and 27(b), unless court action is necessary to preserve its rights.</p>
41.	Termination by either party for default	<p>Either party may terminate this Agreement by written notice to the other if the other party breaches any material obligation of that party under this Agreement and the breach is not:</p> <p>(a) capable of being remedied; or</p> <p>(b) remedied to the non-defaulting party's satisfaction within thirty (30) days of receipt of the notice from the non-defaulting party requiring such breach to be remedied.</p>
42.	MSD's additional termination rights for default	<p>MSD may terminate this Agreement:</p> <p>(a) immediately if the Provider has a liquidator, receiver, administrator, statutory manager, mortgagee's or chargee's agent appointed in respect of the Provider or any of its assets, becomes subject to any form of external administration, or ceases to continue in business for any reason;</p> <p>(b) the Provider or any Provider Personnel does something or fails to do something that, in MSD's opinion, results in damage to MSD's reputation, or any serious criminal act or dishonest behaviour is committed which does or may bring MSD's reputation into disrepute; or</p> <p>(c) the Provider fails to obtain Level 3 MSD Approval by 31 August 2017, or has its Level 3 MSD Approval status suspended or revoked at any time during the Term; or</p> <p>(d) the Provider attempts to provide, or provides, a form of personal inducement, reward or benefit to a MSD representative in relation to this Agreement or any other contract with MSD or another governmental entity; or</p> <p>(e) the Provider attempts to defraud, or defrauds, MSD or another governmental entity.</p>
43.	Termination for convenience	<p>MSD may terminate this Agreement at any time without cause by giving the Provider no less than thirty (30) days prior written notice.</p>
44.	Consequences of termination or expiry	<p>(a) The termination or expiry of this Agreement does not affect:</p> <p>(i) those rights of each party which accrued prior to the time of termination or expiry; or</p> <p>(ii) the continuing rights and obligations of the Provider and MSD under clauses that by their nature should remain in force on termination or expiry including clauses 19 (Records), 21 (Confidentiality), 24 (Indemnity), 25 (MSD's liability).</p> <p>(b) MSD will pay for Services provided before the expiry or termination date.</p>
45.	Addresses for notices	<p>Each notice or communication under this Agreement must, (unless expressly provided otherwise in the Emergency Housing Accommodation Operational Guidelines) be made in writing by email, personal delivery or by post to the following addresses:</p> <p>MSD</p>

		<p>9(2)(a) - Privacy of an Individual</p> <p>A communication will be deemed to be received:</p> <p>(a) in the case of a correctly addressed, fully prepaid letter, on the fourth business day after posting;</p> <p>(b) in the case of an email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error; and</p> <p>(c) in the case of personal delivery, when delivered.</p>
46.	Variation	Any variation to this Agreement must be in writing and signed by both parties.
47.	Conflict of Interest	<p>The Provider must advise MSD of whether, and whenever, it has any actual, potential or perceived Conflict of Interest in connection with the provision of the Services, and must follow the direction of MSD if MSD notifies the Provider that it has determined that the Provider has any actual, potential or perceived Conflict of Interest that must be managed by taking certain steps.</p> <p>For the purpose of this clause, "Conflict of Interest" means any matter, circumstance, interest or activity of the Provider or any Provider Personnel, or any other person with whom the Provider has a relationship arising by whatever means that directly or indirectly conflicts with:</p> <p>(a) the duties of the Provider and any of the Provider Personnel to MSD under the Agreement; or</p> <p>(b) the interests of MSD in relation to the Agreement or otherwise in respect of the provision of Services to MSD,</p> <p>or otherwise impairs or might appear to impair the ability of the Provider (or any of the Provider Personnel) to diligently and independently provide the Services to MSD under the Agreement.</p>
48.	General	<p>Interpretation</p> <p>In this Agreement, a reference to:</p> <p>(i) a party to this Agreement includes the party's permitted assigns; and</p> <p>(ii) including and similar words do not imply any limit.</p> <p>Independent contractor</p> <p>The Provider is an independent contractor of MSD. No other relationship (e.g. joint venture, agency, trust, employer/employee or partnership) exists under this Agreement.</p> <p>Subcontracting and assignment</p> <p>The Provider must not (i) assign, transfer or otherwise dispose of its rights or obligations under this Agreement or (ii) subcontract the performance of the whole or any part of the Services under this Agreement to any person, without first obtaining the prior written consent</p>

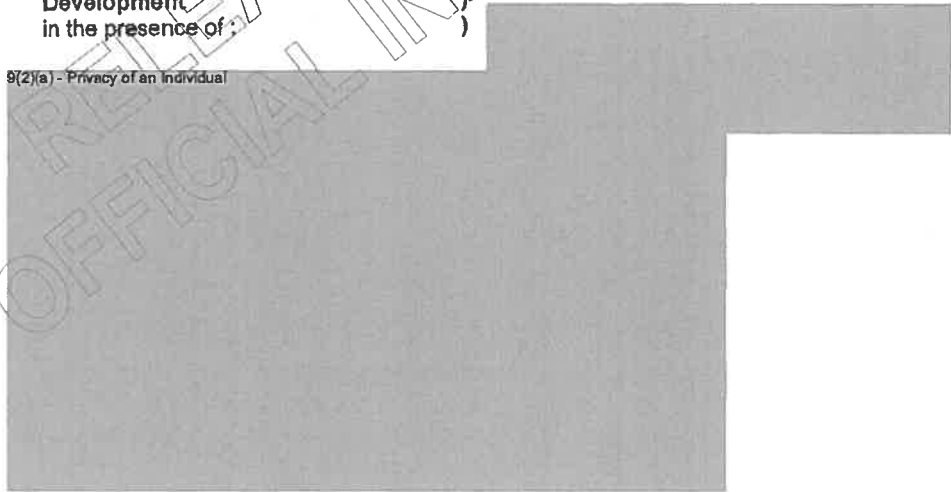
		<p>of MSD, such consent not to be unreasonably withheld. In the event of an approved subcontracting, the Provider remains liable for its obligations under this Agreement.</p> <p>No Waiver To waive a right under this Agreement, the waiver must be in writing and signed by the waiving party.</p> <p>Entire agreement This Agreement supersedes all previous agreements in respect of the Provider's provision of Service and embodies the entire agreement between the parties.</p> <p>New Zealand law This Agreement is governed by the laws of New Zealand and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand in relation to any Dispute connected with this Agreement.</p> <p>Counterparts This Agreement may be signed in counterparts, each of which constitutes an original and all of which constitute the same the agreement. A party may enter the Agreement by signing and sending a scanned copy to the other party.</p>
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Execution

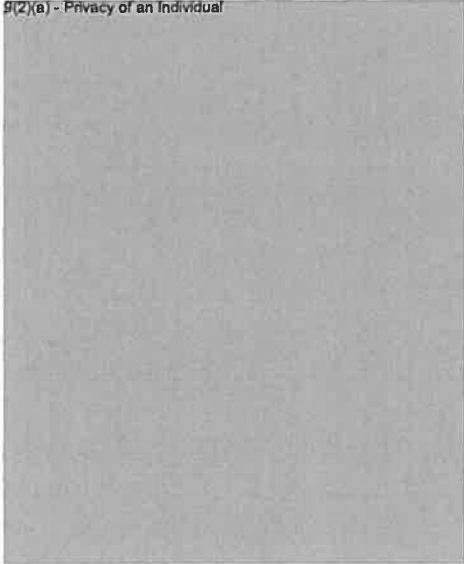
Executed as an emergency housing agreement.

SIGNED by Her Majesty the Queen In right of New Zealand acting by and through the Chief Executive of the Ministry of Social Development
in the presence of :)

9(2)(a) - Privacy of an Individual



Emerge Aotearoa Limited by
s(2)(a) - Privacy of an Individual



Director/Authorised Signatory

Print Name

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

This Amendment Agreement is made on

26 APRIL

2018

between (1) Her Majesty the Queen in right of New Zealand acting by and through the Chief Executive of the Ministry of Social Development (MSD)

and (2) Emerge Aotearoa Limited, Incorporated under the Companies Act 1993 (Registration number: 3038730) and having its registered office at 320 Ti Rakau Drive, Botany, Auckland, 2013 (Provider)

Introduction

- A. On 4th August 2017 MSD and the Provider entered into an agreement relating to the provision of support services by the Provider to persons in need of emergency housing who are staying in specified motels on a short-term emergency basis (**Support Services Agreement**).
- B. The parties have agreed to amend the Support Services Agreement on the terms set out in this amendment agreement (**Amendment Agreement**).

It is agreed

1. Definitions

Terms defined in the Support Services Agreement have the same meaning where they are used in this Amendment Agreement except as otherwise defined in this Amendment Agreement.

2. Amendment to Support Services Agreement

With effect from 30 April 2018, the Support Services Agreement is varied as follows:

- (a) Clause 4 in the *Units* row, the information is deleted and replaced with the following units/information:

Please note pages 2 to 6 have been removed as they are out of scope.

Out of Scope

RELEASED UNDER THE OFFICIAL INFORMATION ACT

8 number of units at Siesta Motel, 70-72 Great South Road, Remuera, Auckland

Unit No.	Typology	Max. no. of people per room	Start Date	End Date	Unavailability Dates
9(2)(a) - Privacy of an Individual	2 x Single 1 x Queen	4	07/08/2017	28/02/2019	17 - 18 February 2018
	3 x Single 1 x Queen	5	07/08/2017	28/02/2019	N/A
	3 x Single 1 x Queen	5	07/08/2017	28/02/2019	17 - 18 February 2018
	3 x Single 1 x Queen	5	07/08/2017	28/02/2019	17 - 18 February 2018 1 - 4 March 2018

(2)(a) - Privacy of an Individual	1 x Single 1 x Queen	3	07/08/2017	28/02/2019	N/A
	1 x Queen 2 x Single	4	10/04/2018	28/02/2019	N/A
	1 x Queen 2 x Single	4	10/04/2018	28/02/2019	N/A
	1 x Queen 2 x Single	4	01/04/2018	28/02/2019	N/A

Out of Scope

RELEASED UNDER THE OFFICIAL INFORMATION ACT

BD

Out of Scope

(the Units, with each an individual Unit).

3. Confirmation

Except as expressly amended by this Amendment Agreement, the terms contained and implied in the Support Services Agreement continue and remain in full force and effect.

4. General

4.1 Counterparts

- (a) This Amendment Agreement may be signed in any number of counterparts all of which, when taken together, constitute one and the same instrument. A party may enter into this Amendment Agreement by executing any counterpart.
- (b) This Amendment Agreement may be executed on the basis of an exchange of scanned copies and execution of this Amendment Agreement by such means is to be a valid and sufficient execution.

4.2 Severability

If any provision of this Amendment Agreement is or becomes unenforceable, illegal or invalid for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity. If such modification is not possible, then such provision shall be severed from this Amendment Agreement without affecting the enforceability, legality or validity of any other provision of this Amendment Agreement.

4.3 Governing law and jurisdiction

This Amendment Agreement is governed by, and is to be construed in accordance with, the Laws of New Zealand. Each party irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Amendment Agreement.

Execution

Executed as an amendment agreement.

SIGNED by Her Majesty the Queen in right
of New Zealand acting by and through the
Chief Executive of the Ministry of Social
Development by)
in the presence of :)

9(2)(a) - Privacy of an Individual

9(2)(a) - Privacy of an Individual

Emerge Aotearoa Limited by

9(2)(a) - Privacy of an Individual

Director/Authorised Signatory

Print Name

RD