



01 OCT 2020

Tēnā koe

On 25 August 2020, you spoke with a Central Processing Officer at the Ministry of Social Development (the Ministry) regarding a new washing machine you are receiving from the Ministry. You informed the Central Processing Officer that you were disappointed that the Ministry supplies Fisher and Paykel Appliances Limited whiteware and requested to see the contract the Ministry has with Fisher & Paykel Appliances Limited.

On 25 August 2020, your request was transferred to the Ministry's Ministerial and Executive Services team to be answered under the Official Information Act 1982 (the Act).

On 21 September 2020, the Ministry contacted you to inform you that further time was required to consult on the documents in scope of your request.

The Ministry uses Government Electronic Tender Service (GETS) to advertise potential tender opportunities. GETS is platform designed to promote open, fair competition to the New Zealand government market. It was also established to meet international trade agreement commitments by providing information about New Zealand government business opportunities to the open market. The platform is free, but all companies must register their details to view listed government opportunities. More information about GETS can be found at the following link: [www.procurement.govt.nz/suppliers-2/gets/](http://www.procurement.govt.nz/suppliers-2/gets/).

In 2018, the Ministry tendered a partnership opportunity on GETS to the open market to supply whiteware goods and services to clients. Fisher & Paykel Appliances Limited were the successful applicant of this tender and are now the sole contracted supplier of whiteware to Ministry clients.

The demand for whiteware from clients is significant, with an average of over 3,000 units requested per month. The Ministry required a well-established organisation to manage this demand, deliver manufacturing and engage in the sales and servicing of the products. Having one supplier means the Ministry does not have to coordinate across various manufacturers, retailers and service technicians.

The range of products may be seen as limited; however, the majority of the range is exclusive to Ministry clients. This means there is a consistent price and volume of stock coming in and they will not be affected by demand from other retailers.

The core range of small, medium and large washing machines and fridge freezers were chosen by the Ministry in order to meet the immediate and essential needs of clients - this ranges from single residents to large families. When selecting the products, the Ministry prioritised function over form.

In regard to your request, please find the following two contracts the Ministry has with Fisher & Paykel Appliances Limited attached:

- *Contract for Commercial Services for the Provision of Whiteware Goods & Services Between the Ministry of Social Development and Fisher & Paykel Appliances Limited, dated 8 June 2018*
- *Contract Variation 1: Contraction for Commercial Services for the Provision of Whiteware Goods & Services Effective 3<sup>rd</sup> September 2018 Between the Ministry of Social Development and Fisher & Paykel Appliances Limited, dated 10 October 2019*

You will note that the names and contact details of some individuals are 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.

Additionally, some information is withheld under section 9(2)(b)(ii) of the Act as, if released, it would be likely to prejudice the commercial position of the person who supplied or who is the subject of the information. The greater public interest is in ensuring that the commercial position can be maintained.

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

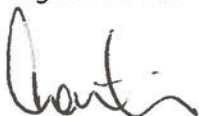
- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

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. The Ministry will do this by publishing this letter and attachments 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](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with this response regarding the contract the Ministry has with Fisher & Paykel Appliances Limited, 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](http://www.ombudsman.parliament.nz) or 0800 802 602.

Ngā mihi nui



Shane Carter  
**Manager, Partnerships and Services**



# **MINISTRY OF SOCIAL DEVELOPMENT**

TE MANATŪ WHAKAHIATO ORA

## **CONTRACT FOR COMMERCIAL SERVICES**

### **FOR THE PROVISION OF WHITEWARE GOODS & SERVICES**

#### **BETWEEN**

**THE MINISTRY OF SOCIAL DEVELOPMENT**

#### **AND**

**FISHER & PAYKEL APPLIANCES LIMITED**



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**Agreement** signed this 8<sup>th</sup> day of June 2018.

## **Parties**

- 1 The Sovereign in Right of New Zealand acting by and through the Chief Executive of the Ministry of Social Development ("**the Ministry**")
- 2 Fisher & Paykel Appliances Limited, Registered company number 43285, Registered offices at 78 Springs Road, East Tamaki, Auckland, 2013, New Zealand ("**the Provider**")

## **Background**

- A The Ministry and the Provider are entering into an Agreement for the provision of Whiteware Goods and Services for the Ministry's Clients.
- B On 1<sup>st</sup> February 2018 the Ministry issued a Request for Proposal (RFP) for the supply of Whiteware Goods and Services. The Provider responded to the RFP and was subsequently selected as the Ministry's supplier.
- C The Provider agrees to provide Whiteware Goods and Services to the Ministry's Clients in accordance with the terms of this Agreement.
- D The Ministry wishes to engage the Provider to provide the Whiteware Goods and Services in accordance with the terms of this Agreement.

## **Agreement**

### **1 Definitions and Interpretation**

- 1.1 In this Agreement (including the Background), unless the context otherwise requires:

**"Accepted Range"** means the designated range of Whiteware Goods and Services agreed between the parties.

**"Agreement"** means this Contract for Whiteware Goods and Services together with its Schedules.

**"Amended Purchase Order"** means a written notification altering the details of a Purchase Order.

**"Commencement Date"** means the date specified as such in clause 3 (*Term*).

**"Confidential Information"** means any information of a confidential nature or relating to the Services that the Ministry discloses to the Provider or the Provider obtains in the course of carrying out the Services including:

- (a) personal information relating to people associated with the Services;

- (b) information relating to the administration, business affairs, or financial or commercial arrangements of the Ministry;
- (c) information relating to any product, process or methodology associated with the Services.

**"Deliverables"** means all items specified as Deliverables in Schedule 1 (Deliverables) including any warranties.

**"Delivery Date"** means the date for delivery of the Deliverables ordered by the Ministry for Ministry Clients specified in the Purchase Order or Amended Purchase Order, as the case may be, being not more than the time for delivery specified in Schedule 1, Delivery and Installation, Service Level Agreement.

**"Expiry Date"** means the date specified as such in clause 3 (*Term*).

**"Fee"** means the amount payable by the Ministry for the Deliverables, as specified in Schedule 2 (*Payments*).

**"Price"** means the amount payable by the Ministry for the Deliverables, as specified in the Schedule 2 (*Payments*).

**"Purchase Order"** means a written order from the Ministry in respect of Deliverables under the Agreement.

**"Ministry Client"** means a Client of the Ministry who is receiving a benefit and/or hardship assistance.

**"the Ministry"** means the Ministry of Social Development or MSD.

**"Services"** includes Deliverables and are described in Schedule 1 (Deliverables).

**"Social Welfare Number"** refers to an individual Client number that identifies a Ministry Client.

**"Whiteware"** in relation to the Agreement means Washing Machines, Separate Refrigerators, Separate Freezers and Combined Refrigerator-Freezers, as specified in the Schedule 1 (Product Range, Quality and Supply).

**"Working Day"** means any day of the week other than a Saturday, Sunday or public or statutory holiday.

1.2 Unless the context otherwise requires, the following rules of interpretation shall apply to this Agreement:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender includes the other gender;
- (c) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (d) a reference to a person includes a body corporate, an unincorporated body of persons, or any other entity;



- (e) a reference to a section, clause, or schedule is to a section, clause, or schedule in this Agreement;
- (f) a reference to any party in this Agreement includes that party's successors or permitted assigns; and
- (g) a reference to any legislation includes any amendment, consolidation, re-enactment or replacement of that legislation.

## **2 Engagement**

- 2.1 The Ministry engages the Provider to provide the Services and the Provider accepts the engagement on the terms and conditions of this Agreement.

## **3 Term**

- 3.1 This Agreement commences on 3<sup>rd</sup> September 2018 (Commencement Date) and expires on 2<sup>nd</sup> September 2021 (Expiry Date) unless terminated earlier in accordance with this Agreement.
- 3.2 The Ministry has two (2) subsequent rights of renewal, each for a further period of two (2) years.
- 3.3 If the Ministry wishes to exercise its rights of renewal the following will apply:
- (a) the Ministry will give the Provider written notice to renew this Agreement under the current terms and conditions, of at least three (3) months before the Expiry Date;
  - (b) The Provider, will within 10 Days of receipt of the Ministry's notice, submit any new Pricing for the renewal period, in the same form and subject to the same conditions as of this Agreement;
  - (c) the Ministry will give written notice to the Provider of its acceptance or otherwise the new Price within one month of the Expiry Date;
  - (d) If the Ministry accepts the Provider's new Price then this Agreement will be renewed by way of a variation signed by both parties; and
  - (e) the Ministry will not be bound to accept any new Price submitted by the Provider or give any reason for its rejection.

## **4 Relationship between the Parties**

- 4.1 **Independent Contractor.** The relationship between the Ministry and the Provider is that of principal and contractor and nothing in this Agreement will be taken as constituting the Provider to be an employee, partner, or agent of the Ministry for any purpose. The Provider has no right or authority to assume or create any obligations of any kind or to make any representations or warranties for or on behalf of the Ministry.
- 4.2 **Non-Exclusivity.** The Provider acknowledges that this Agreement is not an exclusive arrangement and the Ministry may purchase any goods or services from other suppliers.

4.3 **Good Faith.** The parties must communicate with each other honestly and in good faith during the term of this Agreement, including communicating any known risks.

4.4 **Relationship Principles and Management.** The parties must adhere to the relationship principles and relationship management process as described in Schedule 4 (*Relationship Management and Reporting*).

## 5 Responsibilities of the Provider

5.1 **Provider Responsibilities.** The Provider must:

- (a) perform the Services and deliver the Deliverables with all due care, skill and diligence and to the highest industry standards, including maintaining sufficient resources;
- (b) comply with all relevant New Zealand law and such other requirements that may apply to the Deliverables or this Agreement;
- (c) work with the Ministry's employees and contractors as required, in a competent and professional manner;
- (d) comply with the Ministry's reasonable directions and instructions in relation to the performance of the Services;
- (e) comply with, and ensure that its personnel comply with the Ministry's reasonable requests for the Provider's personnel to submit to checks (for example, bankruptcy or criminal conviction checks) or complete any declaration forms (for example, conflicts of interest or benefit history) as necessary and appropriate in the context of the Services being provided;
- (f) make its personnel available at reasonable times for meetings with representatives of the Ministry in relation to the performance of the Services;
- (g) comply with, and ensure that its personnel comply with, any Ministry policy (including Health and Safety policies, and email and internet usage policies) while working on the Ministry's premises. The Ministry must provide copies of any policies to the Provider at the Provider's request;
- (h) correct any errors in the Services detected by the Ministry up to one month after purported completion of the relevant Services at the Ministry's request. The Provider shall carry out such correction work as is necessary immediately, at its own cost, and without unnecessary inconvenience to the Ministry, its employees or contractors; and
- (i) not accept work from other sources that will in any way impair or affect its ability to provide the Services in accordance with the terms of this Agreement.

5.2 **Removal of Personnel.** Where the Provider becomes aware that any of the Provider's personnel, including agents or sub-contractors engaged in providing the Services:

- (a) commits any act of dishonesty;

- (b) in any way brings the Ministry into disrepute;
- (c) commits an act that in the Ministry's reasonable opinion is inconsistent with 5.1 above;
- (d) is convicted of a criminal offence or engages in criminal behaviour; or
- (e) is otherwise unable to perform the Services to the Ministry's reasonable satisfaction,

the Provider must immediately remove the personnel from providing the Services or being in direct contact with the Ministry.

**5.3 Audit.** The Ministry may carry out an assessment of the performance of the Services and Fees for the purpose of ascertaining that the information that is provided to the Ministry in accordance with this Agreement is accurate. The Provider must cooperate with any assessment and allow the Ministry or its authorised agents access to:

- (a) the Provider's premises and any of its sub-contractor's premises where Services are delivered or applicable records are kept;
- (b) personnel involved in providing the Services;
- (c) records and information about the Services and any Fees charged under this Agreement.

The Ministry will:

- (a) give the Provider at least 5 Working Days' notice of any assessment;
- (b) visit during normal business hours or other reasonable times depending on the matter being assessed; and
- (c) provide the Provider with feedback on the results of the assessment.

#### **5.4 Health and Safety**

The Provider will:

- (a) consult, cooperate and coordinate with the Ministry to the extent required by the Ministry to ensure that the Ministry and the Provider will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to the Contract;
- (b) Perform its, and ensure that its Personnel perform their obligations under the Contract in compliance with its and their obligations under the Health and Safety at Work Act 2015;
- (c) comply with all reasonable directions of the Ministry relating to health, safety, and security;
- (d) report any health and safety matter, as determined by the Ministry's policy, or any notice issued under the Health and Safety at Work Act 2015, to the Ministry to the extent that it relates to, or affects, the Contract.



## 6 Warranties

- 6.1 The Provider warrants that it is authorised to enter this Agreement and when providing the Services, it shall at all times:
- (a) use personnel who possess adequate skills and have the knowledge, ability and qualifications necessary to provide the Services;
  - (b) use appropriate materials and resources of high quality;
  - (c) have sufficient professional indemnity insurance to cover all liabilities arising as a result of this Agreement; and
  - (d) ensure that the personnel used in providing the Services have been properly vetted (including checks required by the Ministry such as criminal conviction or bankruptcy checks) by the Provider to the intent that such personnel are of good, honest and reputable character.
- 6.2 The Provider further warrants that in providing the Services the Provider shall not be:
- (a) in breach of any obligation to any other person or entity;
  - (b) infringing any rights (including intellectual property rights) of any other person or entity; or
  - (c) in a position of actual, potential or perceived conflict of interest with any other party or entity that might affect the Provider's performance of the Services or its contractual relationship with the Ministry.
- 6.3 The Provider warrants that:
- (a) all Deliverables supplied to Ministry's Clients will be New Condition and will be used (except to the extent necessary for the testing and inspection of the Deliverable by the Provider) by the Ministry Client.
  - (b) ownership of each Deliverable will pass to the appropriate Ministry Client when delivery of the Deliverable is made to the appropriate Ministry Client.
- 6.4 Despite any inspection, acceptance or payment by Ministry, the Provider warrants for a period of 2 years (24 months) after delivery to a Ministry client; that the Deliverables will be free from any defects, will be of a good and merchantable quality, and fit for the purpose for which the Deliverable was supplied. Any Deliverable that fails to meet the condition outlined within the clause above will be either:
- (a) repaired to a suitable standard and fit for the purpose for which the Deliverable was supplied, or
  - (b) replaced with an equivalent or better Deliverable.
- 6.5 The parties acknowledge that the Deliverables under this Agreement are not for Ministry business purposes, but for Ministry Client personal use, and accordingly the guarantees and warranties provided under the Consumer Guarantees Act

1993 shall apply to the Deliverables and may be exercised by a relevant Ministry Client once ownership is taken.

- 6.6 The Provider warrants that the guarantees and warranties provided under the Consumer Guarantees Act 1993 may be exercised by a Ministry Client in relation to any Deliverable that the Ministry Client has received and has therefore taken ownership of.
- 6.7 Additionally the Provider shall provide the Deliverables in accordance with the Fair Trading Act 1986.

## **7 Payment**

- 7.1 The Ministry must pay the Provider the Fee in accordance with Schedule 2 (*Payments*) and this clause.
- 7.2 **Payment.** Payments will only be made by the Ministry:
  - (a) upon receipt of a valid invoice and sufficient particulars for the Ministry to confirm that the invoice is correct;
  - (b) in respect of Services that have been provided in accordance with the requirements of this Agreement; and
  - (c) where the Provider has performed all of its obligations in accordance with this Agreement that are required to be performed at the due date for payment.
- 7.3 **Disbursements.** Except as provided in Schedule 2 (*Payments*) of this Agreement, the Provider is not entitled to any payments or reimbursements of any disbursements or costs incurred by it in the performance of the Services or its obligations under this Agreement.
- 7.4 **Disputed Invoice.** If the Ministry disputes the payment of any invoice or part thereof, the Ministry will pay any undisputed part of the invoice and the dispute will be resolved in accordance with clause 13.3 (*Dispute Resolution*).
- 7.5 **Payment Process.** The parties agree to apply the following payment processes:
  - (a) the Ministry will pay the Provider for Whiteware goods and services ordered by the next Working Day, following the confirmation of the Whiteware Goods or Services ordered.
  - (b) the Ministry will pay the Fee by direct credit to the Provider's nominated bank account.
- 7.6 **Taxes.** The Ministry is only obliged to pay goods and services tax payable under the Goods and Services Tax Act 1985 ("GST") in respect of the Fee and any other payment under this Agreement to the Provider on presentation of valid and appropriate invoices. If required under the Tax Administration Act 1994 or Income Tax Act 2007, the Ministry shall deduct any withholding taxes applicable from the Fee. The Provider is responsible for obtaining any exemption or reduced rate certificates for any applicable withholding taxes applying in New Zealand and the Ministry shall be entitled to deduct withholding taxes if, in its sole opinion, there may be a liability to deduct. The Provider is responsible for all

taxes and other liabilities, including (without limitation) levies under the Accident Compensation Act 2001, in respect of its employees. The Provider indemnifies the Ministry in respect of any liability resulting from its failure to meet its responsibilities in this clause.

## **8 Confidentiality**

8.1 The Provider must not at any time, without the Ministry's written consent in each instance, disclose, or allow to be disclosed, to any third party any Confidential Information except:

- (a) as required by law;
- (b) if the Provider is a company subject to the New Zealand Stock Exchange Rules, as required by those rules;
- (c) to its professional advisors;
- (d) information already in the public domain other than by breach of any duty of confidentiality; or
- (e) as permitted by this Agreement.

8.2 The Provider must maintain security arrangements appropriate to the circumstances in relation to all Confidential Information.

8.3 The Provider must ensure that its personnel and any permitted agents, consultants, subcontractors and assigns are aware of and comply with the provisions of this clause. The Provider shall be liable for any breach of this clause by any of its personnel and any permitted agents, consultants, subcontractors or assigns.

8.4 The Provider fully indemnifies the Ministry for all costs, claims, or damages, incurred or suffered by the Ministry as a consequence of any breach of this clause.

## **9 Ministry Reporting Obligations**

9.1 **Information Held by Provider.** Any information held by the Provider for the purpose of this Agreement is treated as if held by the Ministry for reporting purposes. The Provider must supply any such information the Ministry requests to enable it to comply with its reporting obligations including:

- (a) under the Official Information Act 1982;
- (b) Parliamentary questions; or
- (c) any other applicable reporting requirements.

9.2 **Official Information Act 1982.** The Provider acknowledges that the Ministry is subject to the provisions of the Official Information Act 1982 and may be required to disclose information pursuant to that Act. The Provider should mark any information "Commercial: In Confidence" if the Provider wishes to protect specific commercial information. The Ministry does not guarantee, however, that such



marked information will be protected from disclosure. The Provider must immediately forward any request made under the Official Information Act 1982 received by the Provider to the Ministry.

## **10 Publication**

10.1 Neither party may make any public statement about the other party, this Agreement, or the Services without the other party's written consent in each instance.

## **11 Ownership**

11.1 The parties agree that all title and property in all Deliverables provided pursuant to this Agreement vests in the Ministry's Clients as and when such Deliverables provided has been paid for in full by the Ministry.

## **12 Indemnities**

12.1 **Third Party.** Unless prohibited by law, the Provider indemnifies the Ministry for any costs, claims, or damages arising out of, and shall at the Ministry's request, and subject to any conditions imposed at the Ministry's discretion, at its own cost defend or settle, any claim, action or proceedings brought against the Ministry:

- (a) based upon a claim of intellectual property rights infringement in relation to the Services; or
- (b) arising from any negligent or wilful acts or omissions of the Provider.

12.2 **Physical Damage to Property.** The Provider indemnifies the Ministry for any costs, claims, or damages arising out of physical damage to the Ministry's property caused by any negligent or wilful acts or omissions of the Provider.

## **13 Force Majeure**

13.1 Neither party will be liable for any default or delay in any obligation of this Agreement caused by an event reasonably beyond its control, provided that the party claiming force majeure could not have reasonably been expected to make provision for that event.

13.2 The party who claims the protection of this clause must:

- (a) immediately give the other party notice of the circumstances and the likely period of the delay; and
- (b) take all reasonable steps to mitigate the default or reduce the period of the delay.

13.3 If an event referred to in this clause has the effect of preventing compliance with the obligations of a party for more than 30 days, either party may terminate this Agreement by giving 30 days written notice to the other party.

## 14 Dispute Resolution

- 14.1 **Compliance with This Clause.** Neither party may commence any court or arbitration proceedings relating to any dispute arising from this Agreement until it has complied with this clause and followed the correct escalation process in Schedule 4 (*Relationship Management and Reporting*), unless proceedings are necessary to preserve the rights of either party.
- 14.2 **Notice and Good Faith.** The party claiming that a dispute exists must give written notice to the other party specifying the nature of the dispute. When a notice is received both parties must use their best endeavours to cooperate to resolve the dispute in good faith.
- 14.3 **Mediation.** If the dispute is not settled within 10 Working Days of the notice, the parties shall participate in mediation with a mutually acceptable mediator. If the parties cannot agree on a mediator within 5 Working Days of the notice, the Chairperson of LEADR New Zealand Incorporated will appoint the mediator. The mediation fee will be divided equally between the parties.
- 14.4 **Arbitration.** If the dispute is not settled within 30 days of the start of the process, the parties shall refer the matter to a single arbitrator. If the parties cannot agree on the arbitrator, each party shall appoint one arbitrator and these two arbitrators will jointly umpire. The arbitration will be conducted in accordance with the Arbitration Act 1996. The arbitration costs will be divided equally between the parties.
- 14.5 **Continuation of Agreement.** Both parties must continue to comply with their obligations in this Agreement until the dispute is resolved, except that payments may be withheld to the extent that they are disputed.

## 15 No Assignment or Sub-Contracting

- 15.1 The Provider may not assign, transfer or sub-contract any of its rights or obligations under this Agreement without the written consent of the Ministry.
- 15.2 If the Ministry consents to a sub-contractor being appointed the Provider shall not be relieved of its obligations under this Agreement.

## 16 E-Commerce

- 16.1 The Provider and the Ministry will endeavour to utilise technology to fully automate the procurement process. The Ministry will manage the negotiation and agreement of development and implementation responsibilities.
- 16.2 The Provider and the Ministry will ensure that any technology development and application is consistent with the Ministry policy and security requirements where systems will be implemented on, or access will be available from, the Ministry's information technology networks.
- 16.3 The Ministry and the Provider will be individually responsible for the costs of developing any e-commerce solution within their respective corporate IT systems. The cost of interfacing any IT systems will be negotiated between the parties.
- 16.4 Both parties agree to work toward a fully integrated electronic business process

## **17 Transition-in**

### **17.1 The Provider will:**

- (a) Compile and manage a low risk transition-in plan with the Ministry that will provide the effective implementation of this Agreement between the two parties;
- (b) Provide the transition-in plan based on an agreed timeline to the Ministry. The timeline will ensure the transition-in plan is agreed and endorsed by the Ministry prior to the Commencement Date;
- (c) Cover any internal costs associated with the transition;
- (d) Ensure that all stakeholders are well informed or engaged;
- (e) Ensure the transition-in addresses all the electronic procurement requirements for data transmission and receipt, including the required information contained within each Purchase Order and catalogue.

### **17.2 The Ministry and the Provider will, during the transition-in period, implement and adhere to the transition-in plan.**

## **18 Transition-out**

### **18.1 The Provider will co-operate fully with the Ministry and other parties prior to the expiry or termination of this Agreement to effect an efficient transition to new Deliverable arrangements.**

### **18.2 During the transition-out period both parties will protect and enhance the goodwill that has been established.**

### **18.3 The Provider will co-operate with the Ministry to develop a detailed transition-out plan that is practical and flexible. This high level transition-out plan will specify the approach the Provider will adopt to ensure that the Ministry Clients receives full continuity of Deliverables during the transition-out period without any disruption attributable to the Provider.**

### **18.4 Key components of the Provider's transition-out plan will include:**

- (a) The availability of all the Ministry documents, manuals, records and other items necessary for the effective delivery of Deliverables and return of all documents to the Ministry.
- (b) Completion of all outstanding Deliverables in progress or negotiate suitable alternative arrangements.
- (c) The offer of any other assistance to the Ministry and the new Provider that may be required that could reasonably be expected from a professional customer focused organisation.
- (d) The ability to negotiate with the Ministry and the new Provider to provide a continuation of the current Provider's resources if necessary, after the expiry of this Agreement.



## 19 Termination

**19.1 Termination by the Ministry.** The Ministry may terminate this Agreement on written notice if the Provider:

- (a) commits a material breach of this Agreement which is not capable of being remedied;
- (b) breaches clause 8 (*Confidentiality*) whether intentionally or accidentally;
- (c) breaches this Agreement and fails to remedy the breach within 30 days of receiving written notice of the breach;
- (d) has repeatedly breached this Agreement and irrespective of whether or not the breaches are remedied, the Ministry determines that the Provider is unable or unwilling to consistently perform the Agreement to the Ministry's satisfaction;
- (e) ceases to conduct any substantial part of its business in a normal manner or threatens to do so; is the subject of a bankruptcy order; is or is deemed to be unable to pay its debts as they fall due; becomes insolvent for the benefit of its creditors; has any of its assets subject to any form of seizure; goes into voluntary or compulsory liquidation; has a receiver, administrator or any similar officer appointed; is wound-up; or suffers any analogous event.

**19.2 Suspension.** Rather than terminate this Agreement for breach, the Ministry may, at its discretion and without affecting its right to terminate, suspend payment of any Fees until such time as the breach has been remedied.

**19.3 Partial Termination.** The Ministry may, at its discretion, partially terminate this Agreement in respect of those parts which have not yet been performed by the Provider and can reasonably be severed from the remainder of the Agreement.

**19.4 Termination by the Provider.** The Provider may terminate this Agreement immediately on written notice if the Ministry fails to pay in full any sum of money due to the Provider under this Agreement within 30 days from the date for payment and the Ministry fails to remedy the default within a further 7 days after notice of the default unless the amount unpaid is disputed.

**19.5 Termination for Convenience.** The Ministry may terminate this Agreement at its convenience by giving the Provider at least 30 days' notice in writing.

**19.6 Process Following Termination.** Following the expiry or termination of this Agreement:

- (a) all Fees and other payments outstanding prior to the date of expiry or termination will become immediately due and payable;
- (b) the Ministry shall be entitled to recover any Fees paid to the Provider for Services that have not yet been performed or completed;
- (c) each party shall, as and when reasonably requested in writing by the other party, promptly deliver to the other (or at the party's option destroy) all of the other party's property, including intellectual property, and Confidential

Information in its possession or under its control, and certify that it has done so; and

- (d) provided all invoices have been paid in accordance with the Agreement, the Provider shall promptly deliver to the Ministry all work in progress on any Deliverables in the Provider's possession or control.

**19.7 Effects of Termination.** The expiry or termination of this Agreement will:

- (a) be without prejudice to the rights of the parties accrued up to the date of such expiry or termination; and
- (b) not affect any clauses that were intended to have a continuing effect, including clauses 6 (*Warranties*), 8 (*Confidentiality*), 9 (*Ministry Reporting Obligations*), 10 (*Publication*), 11 (*Ownership*), 13.3 (*Dispute Resolution*), 19.6 (*Process following termination*), and 19.7 (*Effects of termination*).

## **20 Changes Following a Government Directive**

20.1 The Provider accepts that the Ministry is acting on behalf of the Government and must implement Government instructions. If there is a change of Government policy or a new Government instruction that materially affects the parties' rights and obligations under this Agreement, then the parties will agree between them how to vary this Agreement.

20.2 If agreement under clause 20.1 is not reached between the parties within 30 days, then the Ministry may terminate the terms of this Agreement by giving the Provider 30 days' written notice of any such termination.

## **21 No Expectation Regarding Further or Other Agreements**

21.1 Neither this Agreement, nor the fact that the Provider provides the Services to the Ministry, creates any obligation upon either party to enter into any further Agreement with the other.

## **22 Waiver**

22.1 No waiver of any breach of this Agreement shall be deemed to be a waiver of any other or any subsequent breach. The failure of either party to enforce any provision of the Agreement at any time shall not be a waiver of such provision.

## **23 Cumulative Rights**

23.1 The rights of each party under this Agreement are cumulative upon and not exclusive of any rights provided by law.

## **24 Further Assurances**

24.1 Each party to this Agreement will take all steps as may reasonably be required by the other party to give full effect to the terms of this Agreement.

## 25 Severance

25.1 Any clause of this Agreement that is found to be unenforceable, illegal or invalid shall be deleted and shall not affect any other clause.

## 26 Notice

26.1 Any notice to be given by one party to the other for the purposes of this Agreement (including notice of change of address for service) may be given by personal delivery, mail, fax, or email. If the date of arrival cannot be proved notice by mail shall be treated as having been delivered on the 3rd Work Day after it is posted, provided that the letter was properly addressed. A fax or email that arrives after 5pm on a non-Working Day shall be treated as having been delivered on the next Working Day.

26.2 The initial address for service of the Ministry is

Procurement Practice,  
National Office,  
Ministry of Social Development,  
P O Box 1556  
Wellington 6140  
New Zealand

Level 1,  
Arorua House  
56 The Terrace,  
Wellington 6011

Facsimile/email Section 9(2)(a) [msd.govt.nz](mailto:msd.govt.nz)  
Attention: Section 9(2)(a) Procurement Practice

26.3 The initial address for service of the Provider is:

Fisher & Paykel Appliances Ltd  
78 Springs Road,  
East Tamaki,  
Auckland

Facsimile Section 9(2)(a)  
Attention: Section 9(2)(a) NZ Sales & Marketing

## 27 Costs

27.1 Each party shall pay its own costs in connection with the preparation and execution of this Agreement.

## 28 Variation

28.1 No variation to this Agreement shall be effective unless it is in writing and signed by an authorised representative of both parties.

## **29 Solicitation for Employment**

29.1 Neither party shall, without the prior written agreement of the other party, during the term of this Agreement and for six months following its expiry, directly or indirectly employ in any capacity any person who was employed by the other party during the term of this Agreement.

## **30 Entire Agreement**

30.1 This document records the entire agreement between the parties and supersedes all previous oral or written agreements or understandings dealing with the same subject matter.

## **31 Law**

31.1 This Agreement is governed by and interpreted in accordance with the laws of New Zealand.

## **32 Intellectual Property**

32.1 The Ministry and the Provider acknowledge that each party has existing Intellectual Property, including their respective business processes, procedures and systems, at the date of this Agreement which Intellectual Property rights remain and be unaffected by this Agreement.

### 33 Privity of Contract

33.1 No third party may enforce this Agreement.

#### Execution

**Signed for the Ministry of Social Development by** Ruth Bound, Deputy Chief Executive  
Service Delivery

I have a delegation under section 41 of the State Sector Act 1988 to sign for the Ministry.



Signed

8/6/18

Date

**Signed by** Mark Baillie COO - NZ Distributor & Global Support Centre, Fisher and Paykel  
Appliances Limited

I have authority to sign for the Provider.



Signed

14 / 6 / 2018

Date



## Schedule 1: Deliverables

This Schedule outlines details of the deliverables for Whiteware Goods and Services.

### 1 Purchase Orders

- 1.1. The Ministry may place Purchase Orders for any Deliverables from the Accepted range by sending the Provider a Purchase Order from time to time.
- 1.2. The Ministry does not guarantee any minimum level of business throughout the term of this agreement.
- 1.3. Each order must
  - (a) Be in writing or via the F & P helpline (for servicing requests)
  - (b) Be sent by phone, fax, email, e-procurement system or other electronic means;
  - (c) Specify the volume and type of Deliverables ordered, and
  - (d) Be in any form that is agreed between the Ministry and the Provider.
- 1.4. The Deliverables are supplied under the terms of this Agreement. Any supply terms and conditions stated in its sales order form, delivery receipt, e-procurement systems or elsewhere will not apply.
- 1.5. The Provider and the Ministry will follow the Purchasing Orders and Delivery Protocol in accordance with the Schedule 5.
- 1.6. **Accepting Goods Purchase Orders:** The Provider will promptly (within two hours following receipt of each Purchase Order) advise the Ministry whether or not the Purchase Order is accepted by emailing an Order Acknowledgement to the appropriate person within the Ministry.
- 1.7. **Accepting Servicing Purchase Orders:** The Provider will confirm with the Ministry Client following receipt of the service fee, the agreed time for the Serviceperson to attend the Client premises to complete the service request.

### 2 Product Range, Quality and Supply

- 2.1. The Provider will:
  - (a) Ensure that all Whiteware goods supplied under this agreement meet all current and future Standards and Regulations applicable at the time and ensure the Whiteware goods meet all legal requirements for the sale into the New Zealand market.
  - (b) Ensure sufficient stock of contracted goods is available to meet the Ministry Purchase Order volume requirements in the Accepted Range.
  - (c) Maintain business continuity planning to ensure the security of supply and delivery of Deliverables to the Ministry's Clients. Additionally, the Provider will mitigate any risks posed by disruption to their supply chain that maybe caused by events within their second and third tier supply chains; and

- (d) Provide satisfactory quality Deliverables that are the best value for money and meet fit, form and function. Satisfactory quality of the Deliverables includes functionality, appearance, safety, durability and free from defects or minor faults.

## 2.2. Accepted Range.

Product Description (Standard)	Brand/Model #	Size/ Capacity	Energy Rating	Water Rating	Warranty Period
Washing Machine (S) Top Loader	Haier HWT60FW2	6kg	2	3	2 years
Washing Machine (M) Top Loader	Haier HWT70FW2	7kg	2	3	2 years
Washing Machine (L) Top Loader	Haier HWT80AW1	8kg	2.5	3.5	2 years
Combine Fridge/Freezer (S)	Haier HRF220 TW	220L	3	N/A	2 years
Combine Fridge/Freezer (M)	Haier HRF360 TW	360L	3.5	N/A	2 years
Combine Fridge/Freezer (L)	Haier HRF454 TW	454L	3	N/A	2 years
Standalone Refrigerator (S)	Haier HRZ-241	241L	1.5	N/A	2 years
Standalone Refrigerator (M)	Haier HRZ-322	322L	2	N/A	2 years
Standalone Refrigerator (L)	Haier HRF-382	382L	2	N/A	2 years
Standalone Freezer (S)	Haier HFZ-238	245L	3	N/A	2 years
Standalone Freezer (M)	Haier HCF384	376L	2.5	N/A	2 years
Standalone Freezer (L)	Haier HCF524	524L	2.5	N/A	2 years
Product Description (Special Orders)	Brand/Model #	Size/ Capacity	Energy Rating	Water Rating	Warranty Period
Fridge Freezer (L) Bottom Freezer, Accessibility	Haier HBM450WH1	450L	4	N/A	2 years
Fridge Freezer (S/M) Bottom Freezer, Accessibility	Haier HRB227W	233L	2	N/A	2 years
Front Load Washing Machine 7.5kg Accessibility/Disability	Haier HWF75AW1	7.5kg	3.5	4.5	2 years
Refrigerator (XS) Under bench Fridge for Medical Requirements	Haier HRZ-113	115L	1	N/A	2 years

### 3 Product Packaging

3.1. The Provider will provide adequate packaging of Deliverables delivered to the Ministry's Clients to prevent damage that may occur in transit.

### 4 Alternative Sourcing

4.1. When the Accepted Range of Deliverables are out of stock or end-of-life, the Provider will advise the Ministry of the issue and will be capable of providing suitable alternatives to meet the needs of the Ministries Clients.

4.2. In the event that a catalogue product ordered is substituted by an agreed alternative where its price is greater than the catalogue products, the substituted products will be charged at the catalogued price. Where the prices are less than the catalogued price, the Ministry will pay the lower price.

### 5 Deliverables Standards

5.1. The Provider will have a high level of knowledge and experience of their products ranges to provide the professional levels of Deliverables required by the Ministry to fulfil the commitments in this Agreement.

5.2. The Provider will provide the Ministry and Ministry Clients with the following specific Deliverables:

Service	Response/Frequency	Contact
Contact Centre, Helpdesk, Products Support and Sourcing <ul style="list-style-type: none"><li>Access to specialist's technical staff.</li><li>Assistance with sourcing new or alternative products. Purchase Orders for products that are not included in the agreed catalogue will not be filled without prior approval of the Ministries Representative.</li></ul>	Contact Centre 24/7  Email, response within two hours.	Ordering & Product Support/Service Support Phone: <b>0800 673 424</b>  Sales Desk: email address <a href="mailto:msdsupport@haier.co.nz">msdsupport@haier.co.nz</a>
Emergency after hours contact	24 hours, 7 days per week, 365 per year.	Phone <b>0800 673 424</b>
Electronic catalogues	As and when required but not more than once per week.	Relationship Manager
Training on how to safely operate the Deliverables.	Upon installation, access to operating manuals	Relationship Manager

## **6 Electronic Catalogue Development and Maintenance**

6.1. The Provider will:

- (a) At their cost develop and maintain an electronic catalogue containing, specifications, images and pricing of the Accepted Range of Deliverables. The catalogue will only be altered by mutual consent during the life of this Agreement.
- (b) Make available the electronic file containing the catalogue to the Ministries Representative as and when required. This file will meet the Ministries catalogue format specifications as provided by the Ministry Representative.

## **7 Product Development Awareness**

7.1. The Provider will:

- (a) Provide regular updates on changes in availability and development of Deliverables. These updates will cover product obsolescence, substitutes and advice on new Deliverables;
- (b) Work with the Ministry to develop innovative solutions via new and/or more cost effective Deliverables that meet the Ministries requirements and expectations; and
- (c) Provide new and innovative Deliverables where relevant to the Ministry for trialling purposes under the control and direction of Ministries Representative.

## **8 Fault Resolution**

8.1. The Provider will:

- (a) Maintain records of all reported faults and warranty claims and present these reports on a quarterly basis; and
- (b) Track the progress of all claims through their system. The Ministries Representative will have access to the active claims report/register to enable reporting to the appropriate stakeholders.

## **9 Faulty Products**

9.1. Notwithstanding the warranties clause in this Agreement, in the case of faulty Deliverables received by Ministry Clients, at no extra cost to the Ministry or Ministry Clients, the Provider will:

- (a) Replace the faulty Deliverable; or
- (b) Arrange for the prompt repair of the Deliverable;
- (c) The Provider will undertake replacements and repairs within the Service Level Agreements specified in this Schedule 1; clause 22.
- (d) **Immediately** recall any Deliverable that could pose a safety risk where the products tested showed results outside of operating parameters; and



- 9.2. Where a Deliverable fails within the warranty period and needs to be repaired or replaced the Provider will provide a free on loan replacement for the duration of the replacement or repair of the faulty Deliverable. If an identical replacement is not available, an alternative will be provided. The Ministry deems any product that has a total failure within ten days of installation and normal use and which cannot be fixed will be replaced within less than three days or an agreed time, at no extra cost to the Ministry or Ministry Client.

## **10 Known Faults Advice**

- 10.1. The Provider will advise the Ministry and Ministry Clients of any known manufacturer faults relevant to the Deliverables supplied in a timely manner and will:
- (a) Immediately recall any Deliverables supplied to the Ministry where manufacturer defects become known, and
  - (b) Work with the Ministry to minimise any impact and assisting with replacement and/or repair of the faulty Deliverable.

## **11 Fronting Service Requests to Manufactures**

- 11.1. The Provider will maintain direct relationship with their manufacturers and suppliers to fulfil the requirements of this Agreement and will be responsible for:
- (a) Receiving, recording and managing to their conclusion all Ministry Client service requests and faults lodged i.e. repair turn-around for faulty Deliverables;
  - (b) Providing repairs and replacement services from a certified, experienced, fully qualified local repairer from Monday to Friday 8am to 6pm and Saturday 8am to 1pm as a minimum.
  - (c) Managing escalations and achieving agreed service levels; and
  - (d) Coordinating or compiling reports that require their suppliers and or manufacturers input.
- 11.2. The Ministry may request that the Provider's manufacturers or suppliers representatives attend meetings as required.

## **12 Purchase Orders and Invoicing Requirements**

- 12.1. The Provider will:
- (a) Provide a central point for receiving and processing of all Ministry Purchase Orders;
  - (b) Be unable to request changes to the Purchase Orders; and
  - (c) Invoice the Ministry for Deliverables ordered in a format containing the key elements required for data matching and payment within the Ministry's payment system as provided by the Ministries Representative.

- 12.2. In achieving this, The Provider will accept any costs associated with the development, interface with, maintenance and support of their electronic solution to deliver the service to the Ministry.

### **13 Sustainability**

- 13.1. The Provider will support the Ministry's commitment to sustainability through the following actions:
- (a) Use suppliers and or manufacturers who demonstrate sound sustainability practices, including disclosure of packaging, disposal practices and energy efficient policies.
  - (b) Source Deliverables from suppliers and or manufacturers who have Corporate Social Responsibility (CSR) policies and are actively seeking ways to incorporate environmental standards and specifications into their products. The sourcing of Deliverables extends to delivery design practices, facilitating recycling methods and minimising resource consumption.
  - (c) Monitor supplier and or manufacturers performance to ensure they assist the Ministry in meeting its sustainability responsibilities in relation to this Agreement.

### **14 Disposals**

- 14.1. The Provider as a minimum will maintain a recycling programme which includes:
- (a) Collection, recycling and degassing of old Ministry Clients Whiteware Goods;
  - (b) Collection and recycling of plastic wrapping and polystyrene from Ministry Clients Whiteware Goods;
  - (c) Companywide collection and recycling of cardboard and paper; and
  - (d) Collection and recycling of plastic wrapping and polystyrene from their distribution centre.

### **15 Resource Efficiency**

- 15.1. The Provider will create awareness within their company and or suppliers/manufacturers that the Ministry's preferred Deliverables should use minimum resources and create the least amount of waste in manufacture, shipping, use and disposal.

### **16 Spare Parts**

- 16.1. The Provider shall carry sufficient inventories to assure ex-stock supply of consumable spares (spare parts) for the Deliverables at any given time during the Agreement.
- 16.2. The Provider shall ensure the availability of new spare parts for Deliverables supplied for at least ten years from date of purchase.

## **17 Toxic Substances**

17.1. The Provider will:

- (a) Ensure that Deliverables supplied to Ministry Clients contain the least possible amount of toxic substances. Where products contain toxic substances, these will be replaced with less toxic alternatives.
- (b) Have a continuous improvement program and be active in recycling items that cause harm to the environment; and
- (c) Take the lead to encourage this to be adopted by their suppliers and or manufacturers.

17.2. All Deliverables are expected to fully comply with all New Zealand laws relating to the restriction on the use of Hazardous Substances in Electrical and Electronic Equipment.

## **18 Packaging**

18.1. The Provider will:

- (a) Reduce waste packaging and will be seen to promote general waste reduction.
- (b) Where possible, reduce and recycle excess boxes and packaging, (e.g. consolidated shipment and packaging disposal).
- (c) Give preference to protective packaging made from materials with reduced environment impact such as:
  - (i) Bio-based and recyclable (e.g. moulded paper or starch-based loose fill).
  - (ii) Of non-renewable origin but recyclable in New Zealand, and Recyclable paper and courier bags.

## **19 Ministry Client Locations for Delivery**

19.1. The Provider will deliver the Deliverables to the places specified in the Purchase orders, in alignment with the Ministry's 11 Work and Income regions nationally. These regions being:

1. Northland
2. Auckland
3. Waikato
4. Bay of Plenty
5. East Coast
6. Taranaki, King Country & Wanganui
7. Central
8. Wellington
9. Nelson, Marlborough & West Coast
10. Canterbury
11. Southern

## 20 Delivery and Installation, Service Level Agreement (SLA)

20.1. The Provider will fulfil Purchase Orders in accordance with the table.

Product Type	Auckland/Christchurch Metro Areas	Other Main Urban Centres	All other areas
Section 9(2)(b)(ii)			

20.2. The Provider will advise the Ministry and Ministry Clients should any delivery not meet the Delivery Date and time required in the Purchase Order.

## 21 Servicing, Service Level Agreement(SLA)

21.1. The Provider will fulfil Servicing Orders in accordance with the table.

Product Type	Auckland/Christchurch/ Wellington Metro Areas	Other Main Urban Centres	All other areas
Section 9(2)(b)(ii)			

## 22 Loan or Replacement of faulty Goods, Service Level Agreement (SLA)

22.1. The Provider will fulfil a product loan or replacement Orders in accordance with the table.

Product Type	Auckland/Christchurch Metro Areas	Other Main Urban Centres	All other areas
Section 9(2)(b)(ii)			

## 23 Recovery of Damages

23.1. All losses, damages, costs and expenses incurred by Ministry and recoverable from the Provider, may be deducted from any moneys due, or becoming due to the Provider.

## Schedule 2: Payments

This Schedule set out the Whiteware Goods and Services pricing/fees the Provider has agreed under this contract.

### 1 Whiteware Goods Pricing

- 1.1 The Ministry must pay the Provider for the Deliverables delivered and invoiced as set out in Table 1.
- 1.2 Fixed pricing applies for the term of the contract.
- 1.3 Payment prices include cost of the goods, delivery and installation, removal of packaging and removal of the old appliance (upon request) at the Ministry client's place of residence.
- 1.4 The Provider has the right to review pricing annually, on the anniversary of the contract start date.

Table 1: Whiteware Goods Price Schedule

Product Description (Standard Catalogue)	Brand Model #	Margin %	Purchase Price (ex GST)	Purchase price (incl GST)
Washing Machine (S) Top Loader	Haier HWT60FW2	Section 9(2)(b)(ii)		
Washing Machine (M) Top Loader	Haier HWT70FW2			
Washing Machine (L) Top Loader	Haier HWT80AW1			
Combine Fridge/Freezer (S)	Haier HRF220 TW			
Combine Fridge/Freezer (M)	Haier HRF360 TW			
Combine Fridge/Freezer (L)	Haier HRF454 TW			
Standalone Refrigerator (S)	Haier HRZ-241			
Standalone Refrigerator (M)	Haier HRZ-322			
Standalone Refrigerator (L)	Haier HRF-382			
Standalone Freezer (S)	Haier HFZ-238			
Standalone Freezer (M)	Haier HCF384			



Standalone Freezer (L)	Haier HCF524	15%	\$650	\$747.50
Product Description (Special Catalogue)	Brand Model #	Margin %	Purchase Price (ex GST)	Purchase price (Incl GST)
Fridge Freezer 450L Bottom Freezer, Accessibility	Haier HBM450WH1	Section 9(2)(b)(ii)		
Fridge Freezer 233L, Bottom Freezer, Accessibility	Haier HRB227W			
Front Load Washing Machine 7.5kg Accessibility/Disability/injury	Haier HWF75AW1			
Refrigerator (XS) 115lt Under bench Fridge for Medicine	Haier HRZ-113			

## 2 Whiteware Servicing Pricing

- 2.1 The Ministry or Ministry clients must pay the fees to Provider for the Servicing performed as set out in Table 2 below.
- 2.2 Fixed pricing applies as set out in Table 2 below.
- 2.3 Servicing payment prices include the cost of the service call out fee; service persons travel time and labour costs at the Ministry client's place of residence.
- 2.4 Costs of parts are additional to the servicing call out fee.
- 2.5 The Provider has the right to review pricing annually, on the anniversary of the contract start date.

Table 2: Whiteware Servicing Price

Appliance Type	Service Price (ex GST)	Service Price (Incl GST)	Additional Information/Notes
Washing Machine	Section 9(2)(b)(a)		Covers all Labour and Travel costs, excluding parts
Refrigeration			Covers all Labour and Travel costs, excluding parts
Parts are supplied at trade price.			

## 3 Disbursements

- 3.1 The Provider is not entitled to any payments or reimbursements of any disbursements or costs incurred by it in the performance of the Deliverables or its obligations under this Agreement.

**4 Payment Process.** The parties agree to apply the following payment process:

**Whiteware Goods**

- 4.1 The Ministry will issue a Purchase Order to the Provider.
- 4.2 The Provider will email an Order Acknowledgement confirming that they have received the Purchase Order.
- 4.3 The Provider will electronically invoice the Ministry on the day that the Purchase Order was placed.
- 4.4 The Ministry will use reasonable endeavours to pay the Price by direct credit to the Provider's nominated bank account within 48 hours. However, if this date is missed, the Ministry will not be liable for any interest or additional costs.

**Whiteware Servicing**

- 4.5 The Ministry Client will contact F & P customer service helpdesk regarding the service requirement.
- 4.6 The Provider will confirm if a service call out is required, a service number and an appointment time is confirmed
- 4.7 The Provider will confirm with the client how payment will made, if financial assistance is required from the Ministry, the client will seek approval and if approved the Ministry will pay the fee via direct credit.
- 4.8 If after the servicing is completed and identified that it is a warranty fault, the fee for the call out will be refunded to the client's debt obligation, via the Ministry.
- 4.9 The Ministry will use reasonable endeavours to pay the Fee by direct credit to the Provider's nominated bank account within 48 hours. However, if this date is missed, the Ministry will not be liable for any interest or additional costs.
- 4.10 The Provider and the Ministry will both accord with the Purchasing Order and Deliverable Protocol, as appended in Schedule 5.

**5 Pricing for the Deliverables (Goods and Services)**

- 5.1 All prices payable by the Ministry are inclusive of GST and are priced in New Zealand dollars with no dependency on foreign exchange rates.
- 5.2 The Provider will supply the Deliverables at the purchase price. Where a Purchase Order states a value greater than the agreed price of the Deliverable under this Agreement, The Provider will invoice the Ministry at the agreed price of the Deliverable.
- 5.3 The Providers purchase price for all Deliverables is calculated as:  
Purchase Price = (Base Price + Delivery & Other Overheads) x Margin %.
  - a) Base price, is the price at which the respondents source the deliverables from its suppliers.

- b) Delivery & other overheads are the delivery, installation, disposal of packaging, old appliance and any other associated cost for each Deliverable at any Ministry client's place of residence.
- c) Margin is the mark-up of the base product.
- d) At the commencement of this Agreement the Margin varies by item. Details are given in the Schedule 2, table 1.

## **6 Price Review**

- 6.1 Prices for the Agreement will be reviewed at each anniversary of the contract.
- 6.2 The review will be undertaken on an open book basis and will take into account the price of the products, variable cost, and general market conditions.
- 6.3 On request by the Ministry, the Provider will provide timely evidence of the Base Price and of any product to verify the calculation the purchase price.
- 6.4 If required, the Provider will grant access to the Ministry or the Ministry's appointed agents to the Providers accounts records for the purpose of verifying cost information.

## **7 Price Benchmarking**

- 7.1 For the duration of this Agreement, The Provider will ensure the Ministry receives competitive pricing for pricing by:
  - a) Conducting an annual and/or ad-hoc assessment and review of the pricing of products against the following:
    - i. Similar Deliverables provided by the Provider.
    - ii. Similar Deliverables provided by the Provider to the Provider's Clients.
    - iii. Similar freight charges provided to the Provider's other Clients.
  - b) Publishing the results to the Ministry of a benchmark that compares the Ministry pricing with the results of the assessment above as required.
  - c) Negotiating with their suppliers and or manufacturers to improve prices if any benchmarking anomalies are found.

## **8 Pricing for Substituted Products**

- 8.1 In the event that a Deliverable in the Ministry electronic catalogue is substituted by and agreed alternative (not end-of-life), the Provider will invoice the Ministry at the catalogued Deliverable price and not the substituted Deliverable's price.

### Schedule 3: Key Performance Indicators (KPIs) and Continuous Improvement

This Schedule sets out the Performance Levels associated with the Management of the Deliverables.

#### 1 Key Performance Indicators (KPI's)

1.1 The Delivery & Installation SLA & KPI's are:

Delivery & Installation, Deliverable Performance Measure	Auckl/Chch Metro Areas	Other Main Urban Centres	All other areas
Section 9(2)(b)(ii)			

1.2 Loan or Replacement of faulty Goods, SLA & KPI's are::

Loan/Replacement, Deliverable Performance Measure	Auckl/Chch Metro Areas	Other Main Urban Centres	All other areas
Section 9(2)(b)(i)			

### 1.3 Servicing Repair/Faults, SLA & KPI's are:

Servicing, Deliverable Performance Measure	Auckl/Chch/Wgtn Metro Areas	Other Main Urban Centres	All other areas
Section 9(2)(b)(ii)			

1.4 Other SLA & KPI's are:

Other, Deliverable Performance Measure	KPI Target Levels	100% Target by	Measurement
<div>Section 9(2)(b)(ii)</div> <div>RELEASABLE INFORMATION</div>			



## **2 Continuous Improvement**

- 2.1 The Provider will manage a continuous improvement program that will result in both a reduction in the operating costs for the Ministry and improve the Provider's profitability throughout the term of this Agreement.

## **3 Corrective Action**

- 3.1 The Corrective Action request (CAR) provides a process and mechanism for the Ministry to engage with the Provider for corrective action when service failure occurs.
- 3.2 The CAR is used to highlight concerns about individual transactions, complaints, trends or problems that develop thus providing the means for analysis of areas where improvements need to take place.
- 3.3 The Provider's Representative will liaise with the Ministry's Representative to resolve all matters arising from a CAR.

## Schedule 4: Relationship Management and Reporting

### 1 Objectives

- 1.1 **Relationship Principles.** The parties shall work together in a manner that reflects the following relationship principles:

Relationship Principles
<ul style="list-style-type: none"><li>• Open, honest and transparent communication.</li><li>• Effective engagement across strategic and operational levels.</li><li>• Providing proactive and timely feedback.</li><li>• Display high levels of commitment, proactivity, flexibility, adaptability and timeliness.</li><li>• Work within a relationship framework that includes executive engagement, customer satisfaction measures and business planning as key processes.</li><li>• Provide personnel that have the requisite skills, attitude and attributes to add value to the relationship.</li></ul>

- 1.2 **Objectives of the Parties.** The parties' objectives for this Agreement are described below for reference purposes. A party may update its Objectives from time to time on written notice to the other. Except as provided elsewhere in this Agreement, neither party has any responsibility for achieving the other party's Objectives.

Ministry Objectives	Provider Objectives
<ul style="list-style-type: none"><li>• Development of a positive relationship.</li><li>• Work closely with the Provider to ensure it has a strong understanding of the Ministry's business.</li><li>• Effective engagement across all levels to support the delivery of the Ministry's core objectives.</li><li>• Drive continual improvement in the services provided throughout the term of the Agreement.</li><li>• Obtain feedback from the Provider on new or updated services that may best support the Ministry's business objectives.</li><li>• Create shared strategies to maximise the value of the relationship to all parties for mutual benefit.</li><li>• Manage the Services in a cost effective manner with the aim of reducing total cost of ownership and improving value for money.</li></ul>	<ul style="list-style-type: none"><li>• Positive reference site.</li><li>• Development of a positive relationship.</li><li>• Prompt and accurate invoicing.</li><li>• Provision of proactive reporting and advice that positively contributes to improving the overall outcomes of the Services and facilitates identification of opportunities for further development of the relationship with the Ministry.</li><li>• Commitment to continuous improvement for solutions and services provided by the Provider.</li><li>• Proactive feedback from the Ministry regarding the Services provided.</li><li>• Commitment to achieving on-going and improving value for money outcomes for the Ministry.</li></ul>

- 1.3 **Interpretation.** The Objectives are not intended to expand the scope of the parties' obligations under this Agreement or to alter the plain meaning of this Agreement. However, to the extent this Agreement does not address a particular circumstance or is otherwise unclear or ambiguous, this Agreement is to be interpreted so as to give full effect to the Objectives.

## 2 Good Faith

- 2.1 Each party must act in good faith in all matters relating to this Agreement including, without abandoning its own interests, acting fairly, honestly, reasonably, faithfully to any agreed common purpose and consistently with the reasonable expectations of the other party.

## 3 Personnel

- 3.1 **Relationship Managers.** Each party must maintain the appointment of a suitably qualified and experienced person as its relationship manager for this Agreement. Each party may change its appointee on written notice without formal variation of this Agreement to the other from time to time, and will ensure adequate handover between appointees. At the commencement of this Agreement, the appointees are:

Ministry	The Provider
Section 9(2)(a)	Section 9(2)(a)

- 3.2 **Relationship Roles.** Each party must maintain the involvement of suitably qualified and experienced people in the roles below. Each party may change its appointee on written notice without formal variation of the Agreement to the other from time to time, and will ensure adequate handover between appointees. At the commencement of this Agreement, the appointees are:

### (a) The Provider's Roles

Title	Role	Appointee
Relationship Owner	Ultimate responsibility for the Provider's relationship with the Ministry. Highest escalation point.	Mark Baillie
Relationship Manager	Developing the relationship between the parties. The Ministry's main contact point. Responsible for strategic planning, executive relationships, and service escalations.	Section 9(2)(a)
Service Manager	Overall coordination of the Services. Provision of quotes, custom services and information.	Section 9(2)(a)
Account Manager	Fully accountable for the Ministry account on a daily basis. Provides day-to-day account planning, pricing and Provider resource coordination. Responds to the Ministry's requests for account information.	Section 9(2)(a)
Contract Manager	Contract administration throughout the term of the Agreement.	Section 9(2)(a)

(b) **The Ministry's Roles**

<b>Title</b>	<b>Role</b>	<b>Appointee</b>
Relationship Owner	Ultimate responsibility for Ministry's relationship with the Provider. Highest escalation point.	Section 9(2)(a)
Relationship Manager	Developing the relationship between the parties.	Section 9(2)(a)
Day-to-Day Manager	Monitoring provision of the Services. Management of the commercial arrangements. Discuss business development objectives and opportunities. Attend and contribute to review meetings. Ensure the Provider is meeting the Ministry's expectations. Provides feedback on score cards and performance. Responsible for service escalations.	Section 9(2)(a)
Contract Manager	Contract administration throughout the term of the Agreement.	Section 9(2)(a)

**4 Reports**

- 4.1 The Provider shall provide the Ministry with the following reports. In this clause a Quarter means three months from and including 1 July, 1 October, 1 January or 1 April:

<b>Report name</b>	<b>Content</b>	<b>When</b>
<b>Annual Report</b>	<ul style="list-style-type: none"> <li><b>Year in review.</b> Summary of the relationship, Services and key initiatives over the past year.</li> <li><b>Objectives.</b> Extent to which each party's Objectives are, in the Provider's opinion, being met, plus any risks in meeting each party's Objectives, and how each risk should be managed.</li> <li><b>Future influences.</b> Significant events expected in the upcoming year, including key initiatives, business strategies, technology changes and the wider environment.</li> <li><b>Options/recommendations.</b> Description of options and recommended changes to the relationship, services or agreement.</li> </ul>	5 Working Days before the Annual Review Meeting
<b>Quarterly Reporting and</b>	<b>Past quarter performance.</b> Including the following: <ul style="list-style-type: none"> <li>Volumes/number of goods ordered and delivered by month during the quarter, Details required:</li> </ul>	5 Working Days before the Quarterly



<b>Presentations</b>	<ul style="list-style-type: none"> <li>○ Total volumes by clients, products ordered, \$ value of products ordered.</li> <li>• Number of appliances requiring servicing at the client site, Reported by month, for: <ul style="list-style-type: none"> <li>○ Warranty products</li> <li>○ Non-warranty products</li> <li>○ Product type</li> <li>○ Total service charges per month</li> <li>○ Servicing KPIs</li> <li>○ Significant unresolved Service or Product Issues, causes; and Provider's recommendations for resolving them.</li> </ul> </li> <li>• Delivery KPIs by month, for each quarter. <ul style="list-style-type: none"> <li>○ By 11 W &amp; I regions</li> <li>○ # Within KPI</li> <li>○ # outside KPI</li> </ul> </li> <li>• Service Centre/Help Desk monthly activity: <ul style="list-style-type: none"> <li>○ # calls, queries</li> <li>○ Type of issues, calls vs. email</li> </ul> </li> <li>• Future performance, Including: <ul style="list-style-type: none"> <li>○ Changes in the Provider's Objectives for this Agreement, if any.</li> <li>○ Main risks in meeting each party's Objectives, and how each risk should be managed.</li> </ul> </li> <li>• Outstanding actions. Status of any plans/actions agreed in previous Quarterly meetings.</li> </ul>	Review Meeting
<b>Monthly Service Performance Reports</b>	As per quarterly reporting or as agreed by both parties	By the 5 <sup>th</sup> day of each new month (unless the Ministry agrees otherwise)
<b>Risk Register</b>	<p>For each significant risk relating to this Agreement:</p> <ul style="list-style-type: none"> <li>• A description of the risk and its impact should the event occur.</li> <li>• Probability of its occurrence and a summary of the planned response should the event occur.</li> <li>• Summary of the mitigation (the actions taken in advance to reduce the probability and/or impact of the event).</li> </ul>	5 Working Days before the Quarterly Meetings
<b>Ad Hoc Reports</b>	<p>The Provider shall provide written reports as reasonably requested by the Ministry. Any report supplied must:</p> <ul style="list-style-type: none"> <li>• Identify the actions and deliverables that have been completed, identify any problems or circumstances that have arisen or may arise that may impact the Services provided by the Provider</li> </ul>	Within 10 Working Days of receiving a request from the Ministry



## 5 Meetings

### 5.1 Annual Review. The parties shall meet as follows:

<b>Chair/Convener</b>	The Ministry	
<b>Location/timing</b>	On the anniversary of the commencement of the agreement, at the providers location or Wellington.	
<b>Objectives</b>	<ul style="list-style-type: none"> <li>• Review Objectives</li> <li>• Review performance including customer satisfaction and Service delivery</li> <li>• Discuss future influences</li> </ul>	
	<b>The Ministry</b>	<b>The Provider</b>
<b>Attendees</b>	<ul style="list-style-type: none"> <li>• Relationship Owner</li> <li>• Relationship Manager</li> <li>• Invitees</li> </ul>	<ul style="list-style-type: none"> <li>• Relationship Owner</li> <li>• Relationship Manager</li> <li>• Invitees</li> </ul>
<b>Input</b>	<ul style="list-style-type: none"> <li>• Agenda</li> <li>• Previous minutes</li> </ul>	<ul style="list-style-type: none"> <li>• Annual Report</li> <li>• Comments on agenda</li> </ul>
<b>Output</b>	<ul style="list-style-type: none"> <li>• Minutes</li> <li>• Communication to team</li> </ul>	<ul style="list-style-type: none"> <li>• Communication to team</li> </ul>

### 5.2 Quarterly Review. The parties shall meet as follows:

<b>Chair/Convener</b>	The Ministry	
<b>Location/timing</b>	Each quarter. At the providers location or Wellington.	
<b>Objectives</b>	<ul style="list-style-type: none"> <li>• Review significant Service trends and issues</li> <li>• Agree significant changes to policies, the Services and this Agreement (if required)</li> </ul>	
	<b>The Ministry</b>	<b>The Provider</b>
<b>Attendees</b>	<ul style="list-style-type: none"> <li>• Relationship Manager</li> <li>• Day-to-Day Manager</li> </ul>	<ul style="list-style-type: none"> <li>• Relationship Manager</li> <li>• Service Manager</li> </ul>
<b>Input</b>	<ul style="list-style-type: none"> <li>• Agenda</li> <li>• Previous minutes</li> </ul>	<ul style="list-style-type: none"> <li>• Reports <ul style="list-style-type: none"> <li>◦ Quarterly Report</li> </ul> </li> <li>• Comments on agenda</li> </ul>
<b>Output</b>	<ul style="list-style-type: none"> <li>• Minutes</li> <li>• Communication to team</li> </ul>	<ul style="list-style-type: none"> <li>• Communication to team</li> </ul>

**5.3 Monthly Service Meeting.** The parties shall meet as follows or as agreed by mutual agreement.

<b>Chair/Convener</b>	The Provider	
<b>Location/timing</b>	One hour each month. At the providers location or Wellington.	
<b>Objectives</b>	<ul style="list-style-type: none"> <li>• Review Service trends and issues</li> <li>• Agree non-significant changes to policies, the Services and this Agreement</li> </ul>	
	<b>The Ministry</b>	<b>The Provider</b>
<b>Attendees</b>	<ul style="list-style-type: none"> <li>• Day-to-Day Manager</li> </ul>	<ul style="list-style-type: none"> <li>• Service Manager</li> </ul>
<b>Input</b>	<ul style="list-style-type: none"> <li>• Comments on agenda</li> </ul>	<ul style="list-style-type: none"> <li>• Reports <ul style="list-style-type: none"> <li>◦ Risk Register</li> <li>◦ Action Register</li> </ul> </li> <li>• Agenda</li> <li>• Previous minutes</li> </ul>
<b>Output</b>	<ul style="list-style-type: none"> <li>• Communication to team</li> </ul>	<ul style="list-style-type: none"> <li>• Minutes</li> <li>• Updated <ul style="list-style-type: none"> <li>◦ Risk Register</li> <li>◦ Issues Register</li> <li>◦ Action Register</li> </ul> </li> <li>• Communication to team</li> </ul>

## 6 Relationship Issues

**6.1 Escalation.** If a problem in relation to this Agreement is not, to the reasonable satisfaction of either party, being resolved at the operational level, then either party may escalate the problem in accordance with the levels set out below. Contacts at the appropriate level of escalation will use reasonable endeavours to promptly resolve the problem. If the escalation process fails to bring about a satisfactory solution, either party may commence dispute resolution procedures in accordance with clause 13.3 (*Dispute Resolution*).

<b>Escalation Level</b>	<b>Ministry Contact</b>	<b>The Provider Contact</b>
First	Day-to-Day Manager	Service Manager
Second	Relationship Manager	Relationship Manager
Third	Relationship Owner	Relationship Owner

## Schedule 5: Purchase Orders and Delivery Protocols

### **Purchase orders for Whiteware Goods, delivery, installation, removal packaging and removal of old whiteware goods (upon client request):**

1. The Ministry staff member assesses the Clients eligibility for this assistance; upon approval the Client will select the appropriate item from the catalogue.
2. The payment is **endorsed** by the Ministry Case Manager with the Client's Social Welfare Number (SWN) as the payment reference and the application is referred to the Ministry's Centralised Services team for processing.
3. The centralised services team will **approve** the payment; then place the order on the Fisher & Paykel online ordering portal (Cool Blue World) which will include any details or specific notes relating to the Client application. **Note:** Access to Cool Blue World ordering system, will be limited to the authorised Ministry centralised services users for Whiteware processors only.
4. If the Provider does not have current stock of a particular accepted range of goods (for whatever reason) at the time of the Ministry placing the order, the Provider will contact the Ministry Client and advise of any delays or actions taken to resolve the non-supply, if the Delay exceeds 2 business days over and above the delivery Service Level Agreement.
5. The Ministry centralised services staff member will receive an automatic email to confirm payment has been approved and the order has been placed. Immediate email confirmations are received from [coolblueworld@fisherpaykel.com](mailto:coolblueworld@fisherpaykel.com)
6. The payment will be direct credited overnight to the Provider's bank account.
7. The Ministry Case Manager will confirm with the Client that the Provider will contact them to arrange a delivery time and issue a delivery fact sheet and application summary for acceptance by the Ministry Client.
8. The Provider will commence delivery process via their delivery subcontractor, currently Mainfreight.
9. The Delivery Subcontractor will:
  - a. Deliver the whitewares good/s to the Ministry Clients premises only,
  - b. Unpack and remove all packaging relating to the whitewares good/s,
  - c. Install the whitewares good/s at the Ministry Clients premises,
  - d. Remove the unwanted old whitewares good/s from the Ministry Clients premises (upon the Clients request)
  - e. The above are **Mandatory requirements**, if for any reason the Delivery Subcontractor is unable to fulfil these mandatory requirements, the Delivery Subcontractor will advise Fisher and Paykel and the Ministry of the situation and work with all parties to resolve the issue.

10. Whiterwares good/s that fails to operate upon installation or have visible damage, the Delivery Subcontractor will immediately notify Fisher and Paykel, who will arrange for an immediate replacement.

**Purchase orders for Whiterware Servicing:**

1. Ministry client calls the F & P Service help line to organise a call out for service or assessment for service of the Whiterware appliance.
2. F&P will try to diagnose (error codes & dialogue with client) the issue with the client whilst on the phone to identify if a warranty issues or user error. If a Serviceperson is required at the client premises the F&P agent will advise the Ministry clients that a service fee will be payable on completion and discuss payment options.
3. If the client requires assistance for the service costs, the client will seek approval from the Ministry for assistance. If the payment is approved by the Ministry Case Manager/Contact Centre representative, the payment for the fee will be made via Direct Credit by the next business day to F&P, with the Client's SWN and Service reference number.
4. Once the fee is confirmed as received with F&P, they will contact the client to organise a time for a service person to attend the clients residence to commence the Service.
5. If the Service person identifies the issues is a user error or the appliance is out of warranty, the issues is fixed and no further action required, unless replacement parts are required, then the Client is required to top up the Service fee to include the parts, via the Ministry.
6. If the issues are assessed as a warranty issues then the Service fee paid by the Ministry is refunded back to the Ministry and the fee applied back to the client's debt obligations, the next month.





**MINISTRY OF SOCIAL  
DEVELOPMENT**

TE MANATŪ WHAKAHIATO ORA

**CONTRACT VARIATION 1**

**CONTRACT FOR COMMERCIAL  
SERVICES  
FOR THE PROVISION  
OF WHITEWARE GOODS & SERVICES  
EFFECTIVE 3<sup>rd</sup> SEPTEMBER 2018**

**BETWEEN  
MINISTRY OF SOCIAL DEVELOPMENT  
AND  
FISHER & PAYKEL APPLIANCES LTD**

Commercial In Confidence



## **Contract Variation No 1, dated 10 October 2019**

### **Parties**

1. The Sovereign in Right of New Zealand acting by and through the Chief Executive of Ministry of Social Development ("MSD")
2. Fisher and Paykel Appliances Ltd ("the Provider")

### **Background**

- A. MSD and the Provider have entered into an Agreement for the provision of Whiteware Goods and Services for MSD's Clients.
- B. MSD and the Provider together wish to amend the Second Schedule (Price & Delivery) to include new prices following a Price Review from the Provider as allowed for in the agreement, schedule 2 section 6.

### **Agreement**

1. The words and expressions used in this Contract Variation have the same meanings as in the Agreement.
2. The Second Schedule Section 1 Whiteware Goods Pricing is to be replaced in its entirety by the Second Schedule Section 1 attached to this Contract Variation document.
3. The parties confirm that all other terms and conditions of the Agreement remain unchanged and continue to have full force and effect.

## Execution

**Signed by,** Section 9(2)(a) Manager Procurement Practice.

On behalf of the **Ministry of Social Development**

_____ Signed	<div style="background-color: black; width: 200px; height: 100px; display: flex; align-items: center; justify-content: center;"><span style="color: red; font-size: 0.8em;">Section 9(2)(a)</span></div>	_____ 10 October 2019 Date
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**Signed by** Mark Baillie, Chief Operating Officer NZ Distributor

On behalf of **Fisher & Paykel Appliances Ltd**

_____ Signed	_____ Date
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## 1 Whiteware Goods Pricing

- 1.1 The Ministry must pay the Provider for the Deliverables delivered and invoiced as set out in Table 1.
- 1.2 Fixed pricing applies for the term of the contract.
- 1.3 Payment prices include cost of the goods, delivery and installation, removal of packaging and removal of the old appliance (upon request) at the Ministry client's place of residence.
- 1.4 The Provider has the right to review pricing annually, on the anniversary of the contract start date.

**Table 1: Whiteware Goods Price Schedule**

Product Description (Standard Catalogue)	Brand Model #	Margin %	Purchase Price (ex GST)	Purchase price (Incl GST)
Washing Machine (S) Top Loader	Haier HWT60FWW2	Section 9(2)(b)(i)		
Washing Machine (M) Top Loader	Haier HWT70FWW2			
Washing Machine (L) Top Loader	Haier HWT80AW1			
Combine Fridge/Freezer (S)	Haier HRF220 TW			
Combine Fridge/Freezer (M)	Haier HRF360 TW			
Combine Fridge/Freezer (L)	Haier HRF454 TW			
Standalone Refrigerator (S)	Haier HRZ-241			
Standalone Refrigerator (M)	Haier HRZ-322			
Standalone Refrigerator (L)	Haier HRF-382W2			
Standalone Freezer (S)	Haier HFZ-238			
Standalone Freezer (M)	Haier HCF384			

Standalone Freezer (L)	Haier HCF524W2	Section 9(2)(b)(ii)		
Product Description (Special Catalogue)	Brand Model #	Margin %	Purchase Price	Purchase price
Fridge Freezer 450L Bottom Freezer, Accessibility	Haier HBM450WH1	Section 9(2)(b)(ii)		
Fridge Freezer 233L, Bottom Freezer, Accessibility	Haier HRB227W			
Front Load Washing Machine 7.5kg Accessibility/Disability/injury	Haier HWF75AW2			
Refrigerator (XS) 115lt Under bench Fridge for Medicine	Haier HRZ-113			