



[Insert Provider logo]

**SERVICES AGREEMENT:  
NEW SUPPLY DEVELOPMENT FUNDING AND CAPACITY**

**[Guidance note:** *This Agreement applies to a contractual relationship with a different level and longer-term commitment by both the Provider and MSD in relation to the supply and funding of Housing and Housing Services, compared to Housing and Housing Services supplied and funded under a Services Agreement: Open Term. Please note that this is a template document, and will need to be populated by the parties and adapted as necessary to reflect the particular circumstances (including deleting the various notes in square brackets and italicised text). Except for Schedule 9 (see further the Operating Supplement Key Term in Part C below and the separate MSD guidance note), changes to the Schedules of this Agreement should not be made directly to the Schedules and should only be made pursuant to the "Variation to the Schedules" Key Term below.]*

**Agreement**

The Parties (identified below in the Key Terms) agree to be bound by the terms and conditions of this Agreement, as set out in the Key Terms below and the Schedules.

**Key Terms**

**Part A: General Key Terms**

Key Term	Description
<b>General</b>	
<b>Parties</b>	Her Majesty, the Queen in right of New Zealand acting by and through the Ministry of Social Development ( <b>MSD</b> )  [Insert full legal name of Provider] ( <b>Provider</b> )
<b>Agreement ref. no.</b>	[Insert reference no.]
<b>Relationship Agreement date and ref. no.</b>	[Insert date and reference no. of Relationship Agreement]
<b>Execution Date</b>	[Insert date this Agreement is signed]
<b>Commencement Date</b>	The date on which all of the Conditions Precedent have been satisfied or waived.
<b>Conditions Precedent to be satisfied before the Commencement Date</b>	This Agreement is conditional on: <ul style="list-style-type: none"> <li>the Provider being registered under the HRTM Act as a Class 1: Social Landlord; and</li> <li>[Insert any others]</li> </ul> <p>The Provider is to notify MSD once each condition is satisfied.</p> <p>See also clause 5(b) of the Relationship Agreement, which requires the Provider to satisfy the Conditions Precedent by the final date for satisfaction of the Conditions Precedent set out below.</p>

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Key Term	Description
<b>Final date for satisfaction of Conditions Precedent</b>	<p>[Insert date]</p> <p>This Agreement will be at an end and of no further force or effect if all of the Conditions Precedent have not been met by the final date set out immediately above, unless the date is extended or the Conditions Precedent are waived by MSD in its sole discretion.</p>
<b>Term</b>	<p>From the Commencement Date until the earlier of (i) the Expiry Date, and (ii) the termination of this Agreement in accordance with the Key Term immediately below. See also clause 5(d) of the Relationship Agreement.</p>
<b>Termination of this Agreement</b>	<p>MSD may terminate this Agreement for convenience, without needing a specific reason, by giving the Provider not less than 95 days' notice of termination. This Agreement may also be terminated in accordance with the Relationship Agreement (except clause 22.2 of the Relationship Agreement, which will not apply to this Agreement).</p>
<b>Expiry Date</b>	<p>[Insert number of years] from the date which is one day after the completion of the Development Phase.</p>
<b>General Background</b>	<ul style="list-style-type: none"> <li>• This Agreement sets out the key commercial terms and conditions on which MSD agrees to fund and to procure from the Provider, and the Provider agrees to provide, Properties for Eligible Tenants on a "capacity" basis.</li> <li>• This means that MSD will pay the Provider a Services Payment, based on: <ul style="list-style-type: none"> <li>○ IRRS in respect of Tenants who have been let Properties, for the duration of each relevant Tenancy (subject to any earlier termination or Abandonment);</li> <li>○ a Total Turnaround Payment; and</li> <li>○ a Total Top-up Payment.</li> </ul> </li> <li>• The Relationship Agreement sets out the core terms applicable to MSD's and the Provider's contracting arrangements for the provision of Housing and/or Housing Services.</li> <li>• The terms of the Relationship Agreement apply to all Services provided to MSD pursuant to any Services Agreement (see clause 3.6(b) of the Relationship Agreement), including this Agreement.</li> <li>• By signing the relevant Contract Documents, MSD and the Provider agree to be bound by and to perform their obligations in accordance with this Agreement (including the Schedules), the Relationship Agreement, any other Contract Documents and the Operational Manual.</li> </ul>
<b>Precedence</b>	<p>This Agreement and the Relationship Agreement are each subject to the terms of the Financier Direct Deed. The Financier Direct Deed will prevail over this Agreement and the Relationship Agreement in the event of any conflict between the Financier Direct Deed and this Agreement or the Relationship Agreement.</p> <p>This Agreement prevails over the Relationship Agreement in the event of any conflict between the two agreements.</p>

Key Term	Description
<b>Interpretation</b>	Clause 2(b) of the Relationship Agreement applies to this Agreement as if it were set out in full in this Agreement.
<b>Parties' representatives and contact details (including for the purposes of the Relationship Management Group)</b>	<p><b>MSD's Representative</b></p> <p><i>[name title address DDI cell email]</i></p>
	<p><b>Provider's Representative</b></p> <p><i>[name title address DDI cell email]</i></p> <p>Each party may replace its nominated representative above during the Term by notice to the other party.</p>
<b>Annual Relationship Meeting</b>	
<b>Annual Relationship Meeting</b>	<p>Without limiting clause 7 of the Relationship Agreement, the Relationship Management Group is to hold an annual relationship meeting within 20 Business Days of each anniversary of the Commencement Date to review how the strategic partnering between MSD and the Provider is working. The Relationship Management Group should discuss the following topics at each annual relationship meeting:</p> <ul style="list-style-type: none"> <li>• health and safety incidents;</li> <li>• Tenant complaints;</li> <li>• general operational processes;</li> <li>• Tenant satisfaction;</li> <li>• Tenancy terminations;</li> <li>• compliance with the Contract Documents and any issues in relation to the Contract Documents;</li> <li>• Tenancy occupancy rates in relation to the Properties;</li> <li>• forward-looking plans;</li> <li>• views of demand for Housing and Housing Services;</li> <li>• wrap-around support interface; and</li> <li>• key learnings in relation to Housing and the Housing Services.</li> </ul>

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## Part B: Capacity Phase Key Terms

Properties and Services	
<b>Services description</b>	The Services to be provided by the Provider are set out in Schedule 1.
<b>Services Location(s)</b>	[Insert city/town/other location(s) of Housing].
<b>Property Management Requirements</b>	The Provider is to comply with the Property Management Requirements set out in Schedule 6.
<b>Tenancy Management Requirements</b>	The Provider is to comply with the Tenancy Management Requirements set out in Schedule 7.
<b>Additional Services</b>	[Insert any additional services (over and above those set out in Schedule 1) to be provided by the Provider (including any value-adds offered in original proposal)]. A failure to provide these Additional Services will be a material breach of this Agreement.
<b>Volume and description of Properties</b>	<p>[Insert brief details of Properties available as at the Commencement Date (if any)] [A][, a]s set out in Schedule 4 (as that Schedule is updated by MSD, in accordance with this Agreement, from time to time on the MSD Housing Client System).</p> <p>Where the parties agree to add any New Supply Properties as Properties pursuant to clause 2.4 of Schedule 9, they will enter into a variation agreement substantially in the form set out in Schedule 8 to delete and replace Schedule 4.</p>
Financial and reporting	
<b>Services Payment</b>	MSD will pay the Provider the Services Payment for each Payment Period in accordance with Schedule 2. The Services Payment includes the Total IRRS Payment, the Total Turnaround Payment and the Total Top-up Payment.
<b>Services Payment report and invoice</b>	<p>The Provider must provide MSD, by every second Monday during the Term, a Services Payment report and tax invoice in respect of the prior Payment Period in a form acceptable to MSD, acting reasonably.</p> <p>The Services Payment report will specify the Services Payment for the prior Payment Period and will set out individually each item that has been taken into account in calculating the Services Payment.</p>
<b>Agreed Rent</b>	<p>The Total IRRS Payment is based, among other things, on the Agreed Rent for each Property. The Agreed Rent is set out in Schedule 4 as at the Commencement Date.</p> <p>If the Parties agree to: (i) amend the Agreed Rent during the Term of this Agreement pursuant to a Market Rent Review or otherwise, or (ii) add any new or substituted Properties pursuant to clause 5 of Schedule 1, they will enter into a variation agreement in the form attached at Schedule 8 to delete and replace Schedule 4.</p> <p>Where the parties agree to add any New Supply Properties as Properties pursuant to clause 2.4 of Schedule 9, the Agreed Rent to be included in the relevant variation agreement for the new</p>

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	<p>Properties will be <i>[[insert Agreed Rent amount of each type of New Supply Property]</i>, subject to annual changes in the relevant consumer price index for rentals in the Service(s) Location.]</p> <p>or</p> <p>[determined by an independent valuation by an independent registered valuer appointed by MSD and the Provider prior to the relevant variation agreement being entered into, subject to a cap of <i>[[insert cap for each type of New Supply Property]]</i>].</p> <p><i>[[Relevant method for determining Agreed Rent to be included and the other option deleted.]]</i></p>
<b>Consumer price index adjustments to Agreed Rent</b>	<p>The Market Rent component of the Agreed Rent for each Property will be annually adjusted by the Relationship Management Group for annual changes in the relevant consumer price index in accordance with clause 4.1 of Schedule 1, except in respect of a year in which a Market Rent Review occurs.</p> <p>The Relationship Management Group will agree the relevant annual consumer price index adjustment date. Following any consumer price index-adjustment agreed and determined by the Relationship Management Group, the parties will enter into a variation agreement in the form attached at Schedule 8 to delete and replace Schedule 4.</p>
<b>Market Rent Review</b>	<p>The Market Rent component of the Agreed Rent for each Property will be subject to a Market Rent review in accordance with clause 4 of Schedule 1 as soon as practicable following the fifth anniversary of the Commencement Date (or, if a Property becomes subject to this Agreement after the Commencement Date, the fifth anniversary of the date it became subject to this Agreement), and in each case, every subsequent five year anniversary thereafter.</p> <p>The Relationship Management Group will ensure that each Market Rent Review is undertaken in accordance with the requirements of clause 4 of Schedule 1.</p>
<b>IRR</b>	<p>The collection of IRR from Tenants is the sole responsibility of the Provider. MSD is not liable under this Agreement for any non-payment or late payment of IRR by any Tenant.</p>
<b>Compensation payable by MSD for any early termination of this Agreement for convenience</b>	<p>Yes / No</p> <p><i>[[If yes, insert fair and reasonable compensation calculation, having regard to clause 23.1 of the Relationship Agreement and (if applicable) that the Provider is not at fault and/or has not acted negligently where MSD terminates this Agreement for convenience.]]</i></p>
<b>Repayment of Upfront Development Cost Funding for termination of this Agreement during Capacity Phase</b>	<p>Where clause 10.2(b) of Schedule 9 applies, the Provider is to within 20 Business Days of the Termination Date repay all or some of the Upfront Development Cost Funding calculated as follows:</p> $A = B \times \left(\frac{C}{D}\right)$ <p>Where:</p> <p>A is amount payable by the Provider to MSD;</p> <p>B is the total Upfront Development Cost Funding received by the Provider;</p> <p>C is the remaining whole years between the Termination Date</p>

	and the Expiry Date, plus 1; and D is the duration of the Capacity Phase.
<b>Sharing of Data</b>	
<b>Data provided by MSD</b>	<p>MSD is to provide a written data report to the Provider's Representative (through the Relationship Management Group) every six months during the Capacity Phase, identifying each of the following in relation to the 6 month period prior to the relevant written data report (in each case, in comparison to a sector average and/or relevant individual Housing and Housing Services providers on an anonymised basis):</p> <ul style="list-style-type: none"> <li>the Provider's portfolio priority score, based on the percentage of Tenants in each priority and sub-priority category in the MSD Housing Client System;</li> <li>the percentage of the Provider's Properties utilised on a plus or minus 1 bedroom basis; and</li> <li>the percentage of Tenants who were identified by the Provider (rather than MSD) and subsequently let a Property under this Agreement.</li> </ul> <p>Following receipt of the Data referred to below from the Provider, MSD will also provide to the Provider a comparison of each item of such Data against the sector average and/or individual relevant Housing and Housing Services providers on an anonymised basis.</p>
<b>Data provided by Provider</b>	<p>The Provider is to provide a written data report to MSD's Representative (through the Relationship Management Group) every six months during the Capacity Phase, identifying each of the following in relation to the 6 month period prior to the written data report:</p> <ul style="list-style-type: none"> <li>the Tenancy occupancy rate for all the Properties, measured as the average Tenancy occupancy rate versus the average Tenancy vacancy rate for the Provider's portfolio of Properties;</li> <li>the Tenancy churn rate for all of the Properties;</li> <li>the number of Tenancies which terminated for each Reason for Exit (including sub-categories of each Reason for Exit, where applicable);</li> <li>the average number of days between one Tenancy ending and the next Tenancy beginning in respect of all of the Properties;</li> <li>the percentage of rent arrears over 21 days in respect of all of the Properties; and</li> <li>the average time to respond to urgent Property-related and Tenant-related queries across all of the Properties.</li> </ul> <p>The Provider is to provide a written data report to MSD's Representative (through the Relationship Management Group) every 12 months during the Capacity Phase, identifying Tenant satisfaction rates for the Properties in relation to the prior 12 month period, measured as:</p> <ul style="list-style-type: none"> <li>Tenant satisfaction rates with the Tenant's contact point;</li> <li>overall Tenant satisfaction; and</li> <li>Tenant satisfaction in relation to repairs and maintenance.</li> </ul>

<p><b>Data outcomes following specified periods</b></p>	<p>Within 20 Business Days of MSD’s Representative having received the second 6 month written Data report as set out above, the Relationship Management Group is to meet to review and discuss such Data.</p> <p>If the Relationship Management Group considers that such Data provided by the Provider above is not satisfactory in the context of the Services and the principles set out in clause 3.2 of the Relationship Agreement, the parties will seek to agree changes to this Agreement to improve the Provider’s performance of the Services. The parties will enter into a variation agreement in the form attached as Schedule 8 to give effect to such agreed changes.</p> <p>If MSD considers, having received the fourth 6 month written Data report as set out above, that such Data provided by the Provider is not satisfactory in the context of the Services and the principles set out in clause 3.2 of the Relationship Agreement, MSD may, following discussion with the Provider and acting reasonably, and having regard to the principles set out in clause 3.2 of the Relationship Agreement and that the Services need to meet the needs of Housing Clients, impose a performance regime on the Provider based on the Data by notice in writing to the Provider. The Provider is to comply with the requirements of such performance regime.</p>
<p><b>Data outcomes - ongoing</b></p>	<p>If, at any time during the Capacity Phase, MSD (acting reasonably) considers that the Data provided by the Provider above is not satisfactory in the context of the Services and the principles set out in clause 3.2 of the Relationship Agreement, then the Relationship Management Group will meet as frequently as reasonably required and work together co-operatively to seek to improve such Data.</p> <p>If, after a period of three months or longer following the Relationship Management Group’s first such meeting, MSD (acting reasonably) considers that the Data has not been improved to a satisfactory level having regard to other relevant Housing and Housing Services providers, then MSD may undertake increased monitoring of the Provider in accordance with clause 10.2 of the Relationship Agreement.</p> <p>If, after a period of three months or longer following increased monitoring by MSD, MSD (acting reasonably) considers that the Data has not been improved to a satisfactory level, then MSD may, acting reasonably, and having regard to the principles set out in clause 3.2 of the Relationship Agreement and that the Services need to meet the needs of Housing Clients, impose a performance regime on the Provider based on the Data by notice in writing to the Provider. The Provider is to comply with the requirements of such performance regime.</p>
<p><b>Insurance and Step-in Rights</b></p>	
<p><b>Insurances required</b></p>	<p>The Provider is to hold and maintain the insurance policies at (or greater than) the specified levels of cover required and approved by the Regulatory Authority.</p>
<p><b>MSD Step-in Rights</b></p>	<p>MSD has Step-in Rights as set out in Schedule 3.</p>

Variations to Schedules	
<b>Variations to Schedules</b>	<p><i>[If any Schedule is being amended, this Key Term should be populated with the agreed amendments to the Schedules. No changes should be made directly to the Schedules themselves. Please see the example formats below (note that not all of these will necessarily be used in each situation).]</i></p> <p>[This Agreement is amended as follows:</p> <ul style="list-style-type: none"> <li>• [Clause <i>[insert clause number]</i> of Schedule <i>[insert Schedule number]</i> is deleted.]</li> <li>• [Clause <i>[insert clause number]</i> of Schedule <i>[insert Schedule number]</i> is amended by deleting the reference to <i>[insert (e.g., "30 January 2019")]</i> and replacing it with a reference to <i>[insert (e.g., "30 June 2019")]</i>.</li> <li>• [Clause <i>[insert clause number]</i> of Schedule <i>[insert Schedule number]</i> is deleted and replaced with the following clause: <ul style="list-style-type: none"> <li><i>[insert clause number]: [insert replacement clause in italics]</i></li> </ul> </li> <li>• [A new clause <i>[insert new clause number (e.g., "3A" if the new clause is to be inserted between existing clauses 3 and 4)]</i> of Schedule <i>[insert Schedule number]</i> is added as follows: <p><i>[insert new clause number]: [insert new clause in italics]]]</i></p> </li> </ul>



## Part C: Development Phase Key Terms

Key Term	Description	
<b>Provider's External Financier(s) (if applicable)</b>	[Insert name of Provider's External Financiers (if any)]	
<b>Financier Direct Deed date and ref. no. (if applicable)</b>	[Insert date and reference number of Financier Direct Deed (if any)]	
<b>New Supply Housing Project</b>	<p>The Provider is to deliver the New Supply Properties to be let to Eligible Tenants at the Services Location, as further described in Schedule 9 and in accordance with the below configurations:</p> <p>[Insert high level configuration requirements, including in relation to minimum property size, relevant suburbs within the Services Location, number of bedrooms and minimum fit for purpose design requirements]</p> <p><b>(Configurations)</b></p>	
<b>Plans and Specifications</b>	<p>[Refer to and/or attach a copy of the detailed plans and specifications for the New Supply Properties in the New Supply Housing Project if available as at the date this Agreement is signed.</p> <p>If not available, include an appropriate note, e.g.:</p> <p>Provider to provide MSD with a copy of the detailed Plans and Specifications prior to requesting Drawdown</p> <p>All Plans and Specifications must be compliant with the Configurations. (see clause 3.3 of Schedule 9.)</p>	
<b>Primary Contracts</b>	<p>The Primary Contracts are:</p> <ul style="list-style-type: none"> <li>• [Insert a description of primary contracts that require MSD's approval (see clause 5.1(a) of this Schedule 9), for example:</li> <li>• Construction contract;</li> <li>• Agreement for sale and purchase;</li> <li>• Development agreement;</li> <li>• Deed of/agreement to lease.]</li> </ul>	
<b>New Supply Housing Project Timeline and Key Milestone Dates</b>	<b>Milestone</b>	<b>Date</b>
	<p>[Insert relevant milestones from the separate example milestones document, depending on procurement methodology.</p> <p>It should be noted that the Drawdowns of Upfront Development Funding Costs are tied into milestones, i.e., the milestone will provide the date for drawdown of Upfront Development Cost Funding. This should be taken into</p>	

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Key Term	Description
	<p><i>account when developing milestones for the New Supply Housing Project.]</i></p>
<p><b>Development Phase Reporting</b></p>	<p><b>Regular reporting</b></p> <p>During the Development Phase, the Provider must provide to MSD:</p> <ul style="list-style-type: none"> <li>• within 10 Business Days following the end of the relevant calendar month, the Quarterly Development Report for the calendar quarters ending 30 September, 31 December, 31 March, and 30 June;</li> <li>• <i>[Insert any other regular reporting requirements]</i></li> </ul> <p><b>Ad Hoc reporting</b></p> <p>The Provider must provide to MSD:</p> <ul style="list-style-type: none"> <li>• within 10 Business Days of a request to do so, any information MSD, acting reasonably, requires to satisfy itself that the terms of this Agreement are being complied with or any other related matter;</li> <li>• notice of any matter (including any variations to the New Supply Housing Project) that will, or is likely to, have a material impact on the New Supply Housing Project complying with the Project Management Plan, or the ability of the Provider to deliver the New Supply Housing Project immediately (or as soon as possible thereafter) upon becoming aware of such matter;</li> <li>• notice of the New Supply Properties passing their final inspection for their Code Compliance Certificate(s) within 10 Business Days of the Provider being notified;</li> <li>• notice of Code Compliance Certificate(s) being issued for the New Supply Properties within 5 Business Days of issue;</li> <li>• <i>[Insert any other ad hoc or irregular reporting requirements]</i></li> </ul>
<p><b>Operating Supplement</b></p>	<p><i>[Insert any Operating Supplement payable in respect of relevant Properties. The Agreed Rent in Part A of these Key Terms should also refer to the Operating Supplement if it applies. If only an Operating Supplement is payable in respect of the New Supply Properties (rather than any Upfront Development Cost Funding Amount), then the following four Key Terms in square brackets should be removed, and Schedule 9 will need amending to remove the relevant Upfront Development Cost Funding Payment provisions. Please refer to separate MSD guidance on relevant provisions to remove.]</i></p>
<p><b>[Upfront Development Cost Funding Amount]</b></p>	<p><i>[Insert %] of Development Costs, up to [Insert cap on total amount] (inclusive of GST, if any)</i></p> <p><i>[Note that where the Provider is not GST registered or cannot claim back GST in respect of the New Supply Housing Project, MSD's % contribution above will be calculated by reference to the GST inclusive amount of the total Development Costs.</i></p> <p><i>Where the Provider is GST registered and/or can claim back GST in respect of the New Supply Housing Project, MSD's % contribution above will be calculated by reference to the GST</i></p>

Key Term	Description		
	<p><i>exclusive amount of the total Development Costs.</i></p> <p><i>Please note that whether or not the % contribution will be calculated by reference to the GST inclusive or exclusive amount of the total Development Costs, the Upfront Development Cost Funding Amount will remain inclusive of GST, if any.]</i></p>		
<p><b>[Upfront Development Cost Funding Payments]</b></p> <p><i>[Insert relevant amounts which align with Milestone Dates]</i></p>	<b>Instalment Amount</b>	<b>Payment Date</b>	
	<p>\$[●] (calculated at [●]% of the Upfront Development Cost Funding Amount)</p>	<p>Within seven Business Days of satisfaction of the Conditions Precedent for Drawdown for Milestone 1</p>	
	<p>\$[●] (calculated at [●]% of the Upfront Development Cost Funding Amount)</p>	<p>Within seven Business Days of satisfaction of the Conditions Precedent for Drawdown for Milestone 2</p>	
<p>\$[●] (calculated at [●]% of the Upfront Development Cost Funding Amount)</p>	<p>Within seven Business Days of satisfaction of the Conditions Precedent for Drawdown for Milestone 3</p>		
<p><b>[Conditions Precedent to Drawdown]</b></p>	<b>Drawdown Stage</b>	<b>Conditions</b>	
	<p>Every Drawdown</p>	<p>The Provider is to submit:</p> <ul style="list-style-type: none"> <li>• a completed Drawdown Notice; and</li> <li>• a tax-compliant invoice (in a form previously approved by MSD) for the amount (if any) shown by the Drawdown Notice as owing to the Provider and to be paid by MSD to the Provider.</li> </ul>	
	<p><i>[Insert further relevant Conditions Precedent to Drawdown from separate Examples Conditions Precedent to Drawdown document, depending on procurement method.]</i></p>		
<p><b>[Security protection for MSD]</b></p>	<p>A registered encumbrance and/or registered land covenant in gross over each of the New Supply Properties and/or Properties in the form attached to Schedule 10 and in accordance with the provisions of Schedule 10.</p>		
<p><b>Compensation payable by MSD for any earlier termination of this Agreement during Development Phase</b></p>	<p>The equivalent provision in Part B of these Key Terms will not apply during the Development Phase, and instead this Key Term will apply during the Development Phase only.</p> <p><i>[Insert fair and reasonable compensation calculation, having regard to clause 23.1 of the Relationship Agreement and that the Provider is not at fault (if applicable) where MSD terminates this Agreement for convenience.]</i></p>		
<p><b>Insurances required during Development Phase</b></p>	<b>Insurance type</b>	<b>Required?</b>	<b>Amount of cover required</b>
	<p>Public liability</p>	<p><i>[Yes/No]</i></p>	<p><i>[Insert minimum amount of cover required], per</i></p>

Key Term	Description		
			event or series of related events
	Material loss/damage	[Yes/No]	Full replacement value of all buildings comprised in the New Supply Housing Project (including removal of debris and consultants, contractors, and legal fees), being at least  [Insert minimum amount of cover required]
	Contract works (all risks) insurance	[Yes/No]	[Insert minimum amount of cover required]
	[Insert any others]	[Yes/No]	[Insert minimum amount of cover required]
<b>Sunset Date</b>	<i>[Insert date by which the Development Phase must be completed and all New Supply Properties delivered. Failure to deliver by this date entitles MSD to terminate this Agreement, so there should be a reasonable allowance between this date and the expected date for completion, to give the Provider an opportunity to still complete the project even if there are delays.]</i>		
<b>Further Deliverables</b>	<p>MSD and the Provider agree to the following further deliverables: <i>[Insert any further documents, requirements to be met, or other items which are not covered elsewhere in the Key Terms or Schedules 9 and 10.</i></p> <p><i>For example, for Provider Lease developments:</i></p> <p><i>The Provider agrees to:</i></p> <ul style="list-style-type: none"> <li>• <i>within 10 Business Days of the date of this Agreement, provide MSD with a draft copy of the agreement to lease/deed of lease between [Landlord Entity] as landlord and the Provider as lessee of the New Supply Properties, for MSD's approval (acting reasonably); and</i></li> <li>• <i>on or before the issue of Code Compliance Certificates for the New Supply Properties, provide MSD with a copy of the signed agreement to lease/deed of lease between [Landlord Entity] as landlord and the Provider as lessee of the New Supply Properties substantially in the same form as approved by MSD.]</i></li> </ul>		

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**EXECUTED** on the \_\_\_\_\_ day of \_\_\_\_\_ 20

**Signed** for and on behalf of Her Majesty, the Queen in right of New Zealand acting by and through the **Ministry of Social Development** under delegated authority by:

\_\_\_\_\_  
Signatory name:  
Signatory title:

**Signed** for and on behalf of [*Insert full legal name of Provider*]:

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Signatory name:  
Signatory title:

\_\_\_\_\_  
Signatory name:  
Signatory title:

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## SCHEDULE 1: SERVICES

This Schedule 1 describes the Services to be provided by the Provider and related requirements.

### 1 Services and Additional Services

1.1 The Provider is to:

- (a) **General:** provide the Services and the Additional Services (if applicable) in accordance with the Key Terms, all relevant Laws, the Tenancy Management Requirements, the Property Management Requirements and the Operational Manual;
- (b) **Property identifier:** only use one unique identifier for each Property in the MSD Housing Client System, so that if a Property ceases to be a Property during the Term in accordance with this Agreement, but later becomes a Property again, the original unique identifier will be used for that Property;
- (c) **Letting of Properties:** let Properties to Eligible Tenants during the Term, in accordance with this Agreement, the Tenancy Management Requirements and the Operational Manual;
- (d) **Registration as Class 1: Social Landlord:** be registered as a Class 1: Social Landlord under the HRTM Act during the Term. If the Provider does not maintain its registration, this Agreement can be terminated by MSD in accordance with clause 22.3(a) of the Relationship Agreement;
- (e) **Property maintenance:** maintain each Property in accordance with the Property Management Requirements and all other requirements of this Agreement, the standards applicable to a Class 1: Social Landlord as set out in the HRTM Act and all other relevant Laws and the requirements of the Operational Manual;
- (f) **Information for Tenants:** ensure it notifies the Tenant of all relevant information about the Property prior to signing of the Tenancy Agreement;
- (g) **Tenancy Agreements:** ensure it has a Tenancy Agreement for each Property let to a Tenant, and is to maintain all Tenancy Agreements as part of the Service Records;
- (h) **Utilisation:** ensure:
  - (i) all Properties are optimally utilised when the Provider enters into a Tenancy Agreement so that the bedroom count is appropriate having regard to the relevant Tenant, and the Property is otherwise appropriate (including as to any necessary modifications), for the relevant Tenant's needs (unless MSD approves otherwise); and
  - (ii) that it uses all reasonable endeavours to continue to ensure (so far as is reasonably practicable) that the Properties are optimally utilised in the manner contemplated by clause 1.1(h)(i) of this Schedule 1, throughout

the duration of the Tenancy (including by utilising any Tenant transfer processes that may be available to the Provider);

- (i) **Previous tenants:** not let a Property to a person who, at any time in the previous 3 month period, was a client of the Provider or any of its related entities in a non-public housing or non-transitional housing programme, except with MSD's prior written approval (provided that MSD's approval is not required if the Provider's client was in a short-term residential programme at any time in the previous 4 month period). Approval will be granted only where that person is in significant financial hardship or has had a significant change in circumstances that has severely impacted his or her current living arrangements or resulted in significant financial hardship;
- (j) **Priority to Eligible Tenants:** give priority to providing Properties to Eligible Tenants who MSD has indicated as high priority;
- (k) **Letting duration:** let a Property for the duration of the applicable Tenancy (subject to any early termination or Abandonment), so long as the IRRS remains payable in respect of the Tenant for the duration of the Tenancy;
- (l) **Abandonment:** if a Property has been Abandoned, as soon as practicable (but in any event within two Business Days of the Abandonment) apply to the Tenancy Tribunal for an order of the Tenancy Tribunal terminating the Tenancy which is the subject of the relevant Tenancy Agreement pursuant to the Residential Tenancies Act;
- (m) **Tenant rent:** only charge the Tenant of a Property rent at the lower of IRR and Agreed Rent;
- (n) **Other Tenant charges:** not request or require any additional charges from a Tenant other than:
  - (i) the IRR;
  - (ii) the provision of a bond;
  - (iii) the actual costs of utilities in respect of the Property; and
  - (iv) any reasonable amounts (having regard to the fact that housing affordability is to be maintained) the Tenant has agreed in writing to pay the Provider where the Provider has agreed to provide services to the Tenant in relation to the Tenant's obligations under section 39(3) of the Residential Tenancies Act (for example, lawn-mowing and rubbish collection),

provided that this clause does not prevent the Provider from recovering any loss for which a Tenant is responsible or from enforcing any order made by the Tenancy Tribunal under the Residential Tenancies Act;

- (o) **Termination of Tenancy:** promptly (but in any event within two Business Days) notify MSD via the MSD Housing Client System of any Tenancy terminating and the circumstances of such termination;



- (p) **Change in Tenant circumstances:** notify MSD via the MSD Housing Client System as soon as practicable (but in any event within five Business Days) of becoming aware of any change in circumstances of a Tenant (or any change in circumstances of any other applicable person likely to result in the payment of a higher or lower IRR by a Tenant) that may affect the Tenant's rate of IRR or its Housing need, and remind the Tenant within that same time period that the Tenant is required to notify MSD of its change in circumstances;
  - (q) **Monitoring:** permit such monitoring and audit as MSD requires in accordance with the Relationship Agreement to verify the Provider's compliance with this Agreement; and
  - (r) **Operational Manual and MSD directions:** at all times observe the Operational Manual and all reasonable directions given by MSD's Representative (having regard to clauses 3.2 and 7 of the Relationship Agreement in relation to such reasonable directions).
- 1.2 Except as expressly permitted by this Agreement, the Provider will not, without the prior written consent of MSD:
- (a) rent out any Property to any person other than an Eligible Tenant referred to the Provider by MSD; or
  - (b) use any Property for any purpose other than renting to an Eligible Tenant referred to the Provider by MSD.
- 1.3 If the relevant Property is not available for the Eligible Tenant by the start date specified in the Tenancy Agreement, the Provider is to provide suitable alternative accommodation to the Eligible Tenant (which is satisfactory to the Eligible Tenant and MSD) until the relevant Property becomes available, at the Provider's expense. The Provider is to notify MSD of any changes to the start date of the relevant Tenancy Agreement via the MSD Housing Client System.

## 2 Referrals of Eligible Tenants

MSD will follow the processes set out in the Operational Manual and the MSD Housing Client System, but MSD does not guarantee that it will make any referrals of Eligible Tenants to the Provider for the purposes of this Agreement. MSD may notify the Provider that one or more Properties is not required to be let to Eligible Tenants pursuant to clause 5.4 of this Schedule 1.

## 3 IRRS and IRR

### *IRRS*

- 3.1 Subject to Schedule 2, MSD will only pay the IRRS for a Tenant that it has referred to the Provider, or otherwise approved, and only for the duration of the Tenant's Tenancy pursuant to the Tenancy Agreement.

### *IRR*

- 3.2 MSD will calculate the initial IRR for a Tenant and notify the Provider of each Tenant's IRR via the MSD Housing Client System in accordance with section 106(1) of the HRTM Act.

- 3.3 MSD may from time to time, recalculate the IRR for each Tenant and will notify the Provider of any change to:
- (a) the IRR, and the reasons for the change in the IRR (including if the change is due to a change in the Tenant's circumstances or the circumstances of any other applicable persons, and, if so, the date the change in circumstances occurred); and
  - (b) the associated change in IRRS as a result of the change in IRR under clause 3.3(a) of this Schedule 1,
- (together, an **IRR Change Notification**).
- 3.4 If the Provider receives a notification from MSD under clause 3.3 of this Schedule 1, then in accordance with section 94(1) of the HRTM Act:
- (a) the Provider is to, unless, in the Provider's opinion, it would not result in a material difference to the IRR charged for the relevant Property, give the Tenant written notice stating the date on which the increased IRR takes effect (the **Effective Date**);
  - (b) the Effective Date must be a date no earlier than 61 days after the date stated in the IRR Change Notification that the change in circumstances occurred; and
  - (c) the Provider is to give the notice to the Tenant at least two weeks before the Effective Date.
- 3.5 The Provider is to, as soon as practicable following (but in any event within five Business Days of) notifying the Tenant under clause 3.4 of this Schedule 1, confirm to MSD via the MSD Housing Client System that it has notified the Tenant of the increased IRR and the Effective Date.

*Ineligible Tenants*

- 3.6 Where a Tenant is determined by MSD to be an Ineligible Tenant, MSD is to:
- (a) within five Business Days of determining this ineligibility inform the Provider via the MSD Housing Client System of the Ineligible Tenant; and
  - (b) inform the Ineligible Tenant by notice in writing of such ineligibility.
- 3.7 The Provider, upon receiving notice from MSD under clause 3.6 of this Schedule 1, is to calculate the IRRS cessation date (**IRRS Cessation Date**) for that Tenant which will be a date that is no later than a date that allows for:
- (a) the minimum amount of notice to be given to the Tenant of the Tenancy termination, as required by the Residential Tenancies Act; and
  - (b) an additional 10 Business Days,

counted from the date that notice is given by MSD to the Provider in accordance with clause 3.6 of this Schedule 1, and is to notify MSD of such IRRS Cessation Date within five Business Days of receiving notice from MSD under clause 3.6 of this Schedule 1.

- 3.8 Within five Business Days of receipt of a notice from MSD under clause 3.6 of Schedule 1, the Provider will inform the relevant Tenant that:
- (a) he or she is no longer eligible to be a Housing Client;
  - (b) his or her rent will no longer be subsidised from the IRRS Cessation Date; and
  - (c) (unless MSD provides its approval under clause 3.9 of this Schedule 1), the Tenancy will be terminated with effect from the IRRS Cessation Date.
- 3.9 If the Provider:
- (a) wishes to continue to provide accommodation to the relevant Tenant at the same Property outside of the scope of this Agreement; and
  - (b) has another property suitable for inclusion as a Property,
- the Provider can request in writing to MSD to substitute the new property for the existing Property in the list of Properties, in accordance with clause 5.1 of this Schedule 1. If MSD agrees, the Provider is to terminate the relevant Tenancy Agreement with the Tenant and is to enter into a new tenancy agreement in respect of the relevant property.
- 3.10 Any payment of IRRS made in respect of an Ineligible Tenant (following an IRRS Cessation Date or where the Provider has failed to notify MSD of a change in circumstances in accordance with clause 1.1(p) of this Schedule 1) or a Tenant who has Abandoned his or her Property may be recovered by MSD in full from the Provider.
- 4 Agreed Rent and Market Rent**
- 4.1 The initial Agreed Rent for each Property is set out in Schedule 4. The Market Rent component of the Agreed Rent is subject to annual indexation as identified in the Key Terms and in accordance with the annual movement (increase or decrease (provided the Market Rent must always be equal to, or greater than, the Minimum Agreed Rent)) in the latest consumer price index for rentals in the applicable city or region in which the Property is located, as published by Statistics New Zealand.
- 4.2 The Market Rent component of the Agreed Rent for each Property is subject to a Market Rent Review to be undertaken by MSD and the Provider in accordance with the relevant Key Terms and this clause 4. For this purpose, the Provider will propose a revised Market Rent for each Property which will be agreed or determined pursuant to clause 4.4 of this Schedule 1.
- 4.3 For Properties that become subject to this Agreement as a result of an approved later addition or substitution pursuant to clause 5 of this Schedule 1, the Provider will propose a Market Rent for each Property, which will be agreed to or determined pursuant to clause 4.4 of this Schedule 1.
- 4.4 MSD will consider any Market Rent proposed by the Provider pursuant to clauses 4.2 or 4.3 of this Schedule 1 by reference to the data held by the Ministry of Business, Innovation and Employment in respect of bonds for comparable properties in the same or similar area and MSD's own published Maximum Market Rent (*MMR*) set out in MSD's published Public Housing Purchasing Strategy. If:

- (a) MSD agrees to the Market Rent proposed by the Provider for a Property, then such Market Rent in respect of a Property will become the Agreed Rent for that Property, and the parties will enter into a variation agreement in substantially the form attached as Schedule 8 to vary Schedule 4 of this Agreement to reflect the new Agreed Rent for that Property; or
  - (b) the Provider and MSD cannot agree on an Agreed Rent, either party may refer the determination of the Agreed Rent by reference to an independent market rent valuation by an agent agreeable to both Parties (provided that the Agreed Rent for a Property will always be capped at the applicable MMR), with the cost of the independent valuation shared equally between the Provider and MSD.
- 4.5 The Agreed Rent for a Property will not be affected by any Major Improvement made to that Property unless MSD has previously consented in writing to the Major Improvement and any change to the Agreed Rent.

## 5 **Property additions and substitutions**

- 5.1 The Provider can make a request to MSD to add an additional property to this Agreement, or substitute a Property with an alternative property (should the alternative property be of the same number of bedrooms and of a similar Agreed Rent to the relevant Property, unless MSD agrees otherwise), by providing MSD with at least 15 Business Days' notice of the date on which the Provider proposes the requested additional property would become a Property or the requested substitution would take effect, and seeking MSD's written approval to the addition or substitution. MSD is to respond to the request within 10 Business Days of receipt of notice.
- 5.2 Where, for reasons beyond its control (such as a Force Majeure Event), the Provider needs to substitute a Property rented to a Tenant with a different property, the Provider may make an urgent request to MSD seeking MSD's written approval to temporarily substitute the affected Property with another one of its properties, and to move the Tenant to that temporary substitute Property. MSD is to respond to the request as soon as is practicable (but in any event within five Business Days).
- 5.3 If MSD approves any additional or substitute property proposed by the Provider in accordance with either clause 5.1 or 5.2 of this Schedule 1, then clause 4.3 of this Schedule 1 will apply and the parties will enter into a variation agreement in substantially the form attached as Schedule 8 to vary Schedule 4 of this Agreement to reflect the updated list of Properties (and new Agreed Rent pursuant to clause 4.3 of this Schedule 1). When a temporary substituted Property ceases to be required by the Provider, the parties will enter into a subsequent variation agreement in substantially the form attached as Schedule 8 to vary Schedule 4 of this Agreement to reflect the updated list of Properties to remove that temporary substitute Property.
- 5.4 MSD may from time to time notify the Provider that one or more Properties is not required to be let to Eligible Tenants for a specified period (which shall be for a period of not less than four months (unless agreed otherwise)). Upon receipt of such notification, the Provider will take all reasonable steps to find a Short Term Private Rental tenant at a Market Rent for such Property. MSD agrees that any Short Term Private Rental under this clause 5.4 of this Schedule 1 will not be, and will not be deemed to be, a breach of any encumbrance or land covenant in gross registered over any relevant Property under Schedule 10.

- 5.5 A Property will not be considered to have failed to meet any required standard under this Agreement if that failure is caused by a Force Majeure Event.
- 5.6 The Provider acknowledges that as a condition of consent or approval under clause 5.1 of this Schedule 1 MSD may require the registration of an encumbrance and/or land covenant in gross pursuant to Schedule 10 over the additional or substitute property.

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## SCHEDULE 2: SERVICES PAYMENT FOR PUBLIC HOUSING

### 1 Services Payment

- 1.1 The Services Payment for any Payment Period will be calculated in accordance with the following formula:

$$\text{Services Payment} = \text{Total IRRS Payment} + \text{Total Turnaround Payment} + \text{Total Top-up Payment}$$

where:

**Services Payment** = the Services Payment for the Payment Period

**Total IRRS Payment** = the Total IRRS Payment calculated in accordance with clause 2 of this Schedule 2

**Total Turnaround Payment** = the Total Turnaround Payment calculated in accordance with clause 3 of this Schedule 2

**Total Top-up Payment** = the Total Top-up Payment calculated in accordance with clause 4 of this Schedule 2

### 2 Total IRRS Payment

- 2.1 **Total IRRS Payment:** The Total IRRS Payment is an amount equal to the sum of the Daily IRRS (defined in clause 2.2 of this Schedule 2) for each Tenant who has been let a Property in accordance with this Agreement in the relevant Payment Period.
- 2.2 **Daily IRRS:** The Daily IRRS is an amount equal to the Agreed Rent minus the IRR for each Tenant who has been let a Property in accordance with this Agreement, with the Agreed Rent and the IRR being pro-rated on a daily basis for each day falling within the Payment Period. Where the IRR equals or exceeds the amount of the Agreed Rent for that Property, the Daily IRRS will be zero. All IRRS amounts are GST-exclusive.

### 3 Total Turnaround Payment

- 3.1 **Total Turnaround Payment:** The Total Turnaround Payment is an amount equal to the sum of the Agreed Rent (pro-rated on a daily basis for each day falling within the relevant Payment Period) for each relevant Property during the Property's Turnaround Period, provided that the Provider must have:
- (a) provided at least five Business Days' notice of the relevant Property's actual or impending vacancy to MSD; and

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- (b) completed the tenancy matching process set out in the Operational Manual and the MSD Housing Client System within the required timeframes.

#### 4 **Total Top-up Payment**

4.1 **Total Top-up Payment:** The Total Top-up Payment is an amount equal to the sum of the Agreed Rent for each Property that is a Short Term Private Rental less any rent received from the private tenant of that Short Term Private Rental less any amounts received by the Provider under clause 4.2 of this Schedule 2, in each case in the relevant Payment Period (with the Agreed Rent and the rent received from the private tenant of that Short Term Private Rental being pro-rated on a daily basis for each day falling within the Payment Period).

4.2 **Private market rent for Short Term Private Rental:** The Provider is entitled to retain any amount by which the rent received in the private market for the Short Term Private Rental exceeds the Agreed Rent for the Property (in each case, in respect of the relevant Payment Period).

#### 5 **General**

5.1 The Services Payment and all other payments under this Agreement will be made in accordance with the Key Terms, this Schedule 2, the Relationship Agreement and the Operational Manual.

### **SCHEDULE 3: STEP-IN RIGHTS**

The parties acknowledge that they expect the Relationship Management Group to deal with issues that arise during the Term and that the provisions set out in this Schedule 3 are intended to be utilised only in exceptional or extraordinary circumstances which have serious implications for MSD and/or Housing Clients.

#### **1 When step-in applies**

- (a) If MSD reasonably considers that the Provider is not managing a particular situation or circumstances to MSD's satisfaction and it needs to take action in connection with any of the Properties or the Services because of any of the following:
- (i) serious injury or death to persons; or
  - (ii) serious risk to the health and safety of persons; or
  - (iii) serious risk of material damage or destruction or serious risk to property; or
  - (iv) the Provider's registration under the HRTM Act has been revoked; or
  - (v) to enable MSD to meet any statutory duties it may have under health and safety Laws or the Vulnerable Children Act 2014,
- then MSD may take all or any of the steps described in clause 2 of this Schedule 3.
- (b) Before exercising any Step-in Rights, MSD will first notify the Provider of its intention to do so, providing the reasons and relevant details around dates, the Services affected and details of any Step-in Agent appointed for the purpose. MSD may update this information from time to time. MSD need not give prior notice in an emergency, but will give notice as soon as practicable.

#### **2 Step-in Rights**

2.1 In exercising its Step-in Rights, MSD may:

- (a) temporarily assume total or partial management and control of all or some of the Properties, the management of Tenancies and/or the provision of the Services;
- (b) take any steps, including complete or partial suspension of the Services, as MSD considers necessary or desirable to:
  - (i) remedy, mitigate or minimise the effects of the event or risk; or
  - (ii) continue the provision of the Services as required under this Agreement;
- (c) do anything that the Provider should or could do under this Agreement; and
- (d) do anything that MSD may do at Law or under any Contract Document.



- 2.2 In exercising its Step-in Rights, MSD will:
- (a) try to remedy the reasons for step-in; and
  - (b) appoint a Step-in Agent to provide any of the relevant Services.

### 3 **Power of attorney**

To facilitate any step-in by MSD, the Provider irrevocably:

- (a) appoints MSD and its nominees as the Provider's attorney and gives them full power and authority to exercise all or any of MSD's Step-in Rights;
- (b) agrees that MSD as attorney may delegate that power and authority to its Step-in Agent; and
- (c) agrees to ratify whatever action is taken by the attorney and the Step-in Agent, so long as that action is not unlawful or negligent.

### 4 **Provider's rights and obligations on step-in**

- 4.1 An exercise by MSD of Step-in Rights will suspend the Provider's rights and obligations. MSD will only make payments (including IRRS) under this Agreement in respect of the period from when MSD exercised its Step-in Rights until the Step-out Date where:

- (a) the Provider is not in breach of this Agreement;
- (b) the Provider has not acted negligently; and
- (c) MSD is not prevented by Laws from paying IRRS.

- 4.2 The Provider is to cooperate with and assist MSD during any exercise of Step-in Rights, to ensure minimal disruption to Services and Tenants and a smooth and timely return to normal Services.

### 5 **Relief and payments on step-in**

- 5.1 MSD may recover from the Provider the direct Losses MSD incurs as a result of exercising its Step-in Rights following a Provider breach of this Agreement. MSD will not otherwise be entitled to compensation.
- 5.2 To the extent that MSD exercises its Step-in Rights other than as a result of a breach of the Provider's obligations under the Contract Documents or the Provider acting negligently, MSD will be liable to the Provider for any direct Losses resulting from any damage to property or any third party Claim against the Provider, to the extent attributable to the actions of the Step-in Agent. MSD will not, however, have any other Liability to the Provider as a result of its exercise of Step-in Rights and the Provider will not make any Claim against it.

### 6 **Step-out**

- 6.1 As soon as it is satisfied it has remedied the reasons for the step-in, MSD will notify the Provider of the Step-out Date, giving the Provider enough time to transition back to fully providing the Services.

6.2 On the Step-out Date the Provider is to immediately resume full performance of its obligations. MSD will help the Provider to ensure the process of transition is undertaken as smoothly as possible.

7 **No obligation on MSD**

MSD is not obliged to exercise Step-in Rights if the Provider is in breach of a Contract Document or some other trigger event has occurred. The exercise of Step-in Rights is entirely discretionary and does not affect any other rights or remedies available to MSD.

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## SCHEDULE 5: DEFINITIONS

### 1 Defined terms

In this Agreement, the following terms are used with the meanings set out below:

**Abandonment** means where a Tenant can reasonably be considered to have abandoned a Property with no intention to comply with the Tenancy Agreement (and that Tenant may not have given a termination notice) and **Abandoned** shall be construed accordingly;

**Additional Services** means any additional services to be provided by the Provider as set out in the Key Terms;

**Agreed Rent** means, in respect of a Property, the weekly rent (based on Market Rent) as set out in Schedule 4 (as amended from time to time in accordance with this Agreement);

**Agreement** means this Services Agreement, including its Schedules, as it may be amended in writing from time to time;

**Business Day** means a day that is not a Saturday, Sunday or public holiday in New Zealand or any anniversary day in the region in which the relevant Services are being provided;

**Capacity Phase** has the same meaning as set out in Schedule 9;

**Commencement Date** means the Commencement Date of this Agreement, as set out in the Key Terms;

**Conditions Precedent** means the Conditions Precedent to be satisfied before the Commencement Date, as set out in the Key Terms;

**Ineligible Tenant** means a person who:

- (d) was an Eligible Tenant but has subsequently ceased to be an Eligible Tenant; or
- (e) was a tenant in a Short Term Private Rental and continues to be a tenant in the Property after that tenancy has ended;

**IRR** means the income-related rent calculated by MSD for a Tenant in accordance with the applicable provisions of the HRTM Act and as set out in this Agreement;

**IRRS** means the income-related rent subsidy in respect of a Tenant payable by MSD to the Provider in accordance with this Agreement;

**Key Terms** means the table of key commercial terms and details specific to this Agreement, which table is subject to and to be read in light of the balance of this Agreement and the Relationship Agreement;

**Major Improvement** means any works or improvements to a Property that would be expected to alter the Market Rent;

**Market Rent** means the weekly market rent for each Property as set out in Schedule 4 (as amended from time to time in accordance with this Agreement);

**Market Rent Review** means a review of Market Rent undertaken in accordance with the Key Terms and clause 4 of Schedule 1;

**Minimum Agreed Rent** means, in respect of a Property, the initial Agreed Rent for that Property as at the Commencement Date (or, if the Property is added to Schedule 4 after the Commencement Date, as at the date that Property is added) as listed in Schedule 4;

**New Supply Properties** has the same meaning as set out in Schedule 9;

**Parties** means MSD and the Provider;

**Payment Period** means:

- (a) the period commencing on the Commencement Date and ending on MSD's next billing cycle;
- (b) each subsequent 14-day period during the term of this Agreement starting on the Saturday and ending on the second Friday; and
- (c) the period from the end of the last full Payment Period to the last day of the term of this Agreement;

**Property** means a property that is listed in Schedule 4, as that list is amended from time to time in accordance with this Agreement (including so as to reflect any approved additions and substitutions and any released Properties (if applicable));

**Reason for Exit** means each of the following:

- (a) a Provider-initiated transfer of the Tenant to another property;
- (b) a Tenant-initiated transfer to another property;
- (c) the death of a Tenant;
- (d) a Provider-initiated termination of the Tenancy due to one of the following:
  - (i) a breach by the Tenant of the Tenancy Agreement (with the breach to be specified, along with measures taken by the Provider and the Tenant to overcome and rectify the breach); or
  - (ii) the Tenant is no longer an Eligible Tenant (with the reason to be specified); or
  - (iii) a 90 day notice being given by the Provider under section 51 of the Residential Tenancies Act (with any background to this to be provided); or
  - (iv) any other reason not set out in paragraphs (i) to (iii) above, with the reason to be specified (for example, the Tenant is subject to a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment Act 1992 or a compulsory care order under

the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003); and

- (e) a Tenant-initiated termination of the Tenancy due to one of the following:
- (i) the Tenant has moved out of the area; or
  - (ii) the Tenant has moved to a private sector rental; or
  - (iii) the Tenant has moved into home ownership; or
  - (iv) the Property is no longer suited to the Tenant (with the reason to be specified); or
  - (v) the Tenant is in prison; or
  - (vi) the Tenant has Abandoned the Property; or
  - (vii) the Provider is unable to identify a specific reason;

**Relationship Agreement** means the Relationship Agreement between the Parties identified in the Key Terms;

**Services** means, at any given time, the services then-required to be provided by the Provider under this Agreement, including any Additional Services specified in the Key Terms;

**Services Location(s)** means the location(s) of the Properties as described in the Key Terms;

**Services Payment** means the payment by MSD to the Provider in consideration for the Services provided (or to be provided) by the Provider, as set out in Schedule 2;

**Short Term Private Rental** means a Property that has been let in the private rental market as a result of:

- (a) MSD notifying the Provider that the Property is not required to be let to Eligible Tenants for a specified period; or
- (b) the Provider obtaining MSD's prior written consent that a Property can be let to a private market tenant for a specified period;

**Step-in Agent** means any person appointed by MSD for the purpose of exercising some or all of its Step-in Rights;

**Step-in Rights** means MSD's step-in rights set out in Schedule 3;

**Step-out Date** means the date specified as such in a notice given by MSD pursuant to clause 6.1 of Schedule 3;

**Tenancy** means the period during which a Tenant is permitted to reside in a Property in accordance with a Tenancy Agreement;

**Tenancy Agreement** means a tenancy agreement for a nominated Property between the Provider and an Eligible Tenant which provides for a periodic tenancy

(as defined in the Residential Tenancies Act) (unless MSD has approved otherwise), complies with the Residential Tenancies Act and the HRTM Act (as applicable), all other applicable Laws and the terms of this Agreement;

**Tenant** means a person who is named as a tenant in a Tenancy Agreement and is occupying the Property nominated in the Tenancy Agreement, together with any household members occupying the Property (as the context requires);

**Total Top-up Payment** has the meaning given in clause 1.1 of Schedule 2;

**Total Turnaround Payment** has the meaning given in clause 1.1 of Schedule 2;

**Turnaround Period** means, in respect of a Property:

- (a) the period commencing the day after a Tenancy ends until the earlier of the 11<sup>th</sup> Business Day later and the day a new Tenancy Agreement commences; or
- (b) where a Tenant can be reasonably considered to have Abandoned a Property, the period beginning from the date upon which an order of the Tenancy Tribunal terminating the Tenancy which is the subject of the relevant Tenancy Agreement is made pursuant to the Residential Tenancies Act and until the earlier of the fifth Business Day later and the day a new Tenancy Agreement commences; and

**Upfront Development Cost Funding** has the same meaning as set out in Schedule 9.

## 2 **Definitions from Relationship Agreement and Key Terms**

Other capitalised terms used but not defined in clause 1 above have the meanings given to them in the Relationship Agreement or the Key Terms (as applicable).

**SCHEDULE 6: PROPERTY MANAGEMENT REQUIREMENTS**

Requirement	Detail
<b>1. General requirements</b>	
a. General maintenance	The Provider is to maintain all Properties in accordance with all relevant Laws and the standards and requirements applicable to a Class 1: Social Landlord.
b. Planned maintenance, unscheduled repairs and defect rectification	Planned maintenance, unscheduled repairs and defect rectification must be carried out in accordance with the relevant asset management plan for the Properties submitted to and approved by the Regulatory Authority (the <b>Asset Management Plan</b> ) and the Provider's internal policies and procedures in relation to the Services as submitted to and approved by the Regulatory Authority.
c. Records	The Provider is to maintain a system that contains all relevant information, data and records relating to the Properties.
<b>2. Specific requirements</b>	
a. Interior Hardware	All interior hardware (including all windows, cupboards, doors and latches) is to be functional. Appropriate privacy lock(s) will be present on all toilet and bathrooms doors.
b. Window safety mechanisms	All windows above ground level must comply with clause F4 of the New Zealand Building Code.
c. Stove security	Stand-alone stoves must have an anti-tip device and drop bolt fitted and operating. Built-in ovens must be adequately restrained.
d. Hot water cylinder	Seismic straps must be securely fitted to each hot water cylinder.
e. Gas fittings	Any gas fittings and appliances must be safe to operate and must be inspected and certified on a regular basis and in accordance with the Gas (Safety and Measurement) Regulations by a person authorised under the Plumbers, Gasfitters and Drainlayers Act 2006.
f. Curtains and blinds	Appropriate curtains or blinds must be fitted and fully functional on (at least) all windows in living rooms, dining rooms and bedrooms.
g. Childproof storage	If a child resides in a Property with a Tenant and there is storage space in the kitchen, bathroom or laundry, there must be childproof latches on such storage space.
h. Doors and windows	All exterior doors, windows and associated hardware must be functioning and sealing well.
i. Entry lighting	All entrance doors must have appropriate light fixtures and fittings.

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Requirement		Detail		
<b>3. 24/7 Contact Point and Inspections</b>				
a.	24/7 Contact Point	<p>The Provider is to maintain, and ensure the Tenant is aware of, a 24/7 telephone contact point (<b>24/7 Contact Point</b>) which allows the Tenant to contact the Provider free of charge to notify the Provider of any issue (including any emergency in relation to the Property and any Property-related jobs).</p> <p>All calls to the 24/7 Contact Point must be answered, or the Tenant must be able to leave a recorded message. The Provider is to respond to the Tenant within the required response period set out in section 4 below.</p>		
b.	Inspections	<p>The Provider is to inspect each Property and each Tenancy at least once every 12 months (an <b>Inspection</b>). For an Inspection to be considered as conducted, both the Property elements and Tenancy elements need to be completed, however the Property elements and Tenancy elements of the Inspection may be conducted together or at separate times.</p>		
c.	Property elements	<p>The Inspections must, in relation to the Property:</p> <ul style="list-style-type: none"> <li>• check the state of repair of the Property;</li> <li>• ascertain and record visible and notified defects;</li> <li>• check the Property complies with all applicable Laws;</li> <li>• check health and safety risks are appropriately managed; and</li> <li>• check smoke alarms.</li> </ul>		
d.	Tenancy elements	<p>The Inspection must undertake the Tenancy-related checks as required under paragraphs 3(e) and 3(f) of the Tenancy Management Requirements.</p>		
e.	Job logging	<p>Immediately following each Inspection, the Provider is to log, or ensure the Tenant logs, any defects and other jobs in relation to the Property with the 24/7 Contact Point.</p>		
<b>4. Property jobs and defects</b>				
a.	General	<p>Property jobs and defects must be responded to and rectified as set out below (but subject to paragraph 4(d) below).</p>		
	<b>Property job classification</b>	<b>Description</b>	<b>Required response period</b>	<b>Required rectification period</b>
	Emergency	<p>Required to be responded to urgently in order:</p> <ul style="list-style-type: none"> <li>• to protect from imminent danger or any other adverse effect on health, safety or security, or otherwise to comply with any health and safety</li> </ul>	Four hours	24 hours

Requirement	Detail
	<p>Laws;</p> <ul style="list-style-type: none"> <li>• to urgently reinstate an essential function or component of a Property that has failed, if it affects (or may affect) the health, safety or security of the Tenant; or</li> <li>• to meet the requirements of any applicable Laws or of any regulatory body with respect to security, provision of essential services or safety.</li> </ul> <p>By way of illustration only (and without limitation), includes work necessary to ensure:</p> <ul style="list-style-type: none"> <li>• there is a means of cooking;</li> <li>• there is a potable hot water supply and cold water supply;</li> <li>• there is a gas supply (if the Property uses gas services);</li> <li>• correction of all faults associated with sanitary appliances (toilets, showers, baths and hand basins) where those sanitary appliances would otherwise be unable to be used by the Tenant;</li> <li>• correction of all faults associated with waste and sewer drains (e.g., blocked sink or drain) where those waste and sewer drains would otherwise be unable to be used by the Tenant;</li> <li>• there is a power supply (e.g., restore power when lost to whole Property and restore lighting to communal areas);</li> <li>• the building exterior is secure (e.g., fixing broken exterior doors, locks, windows or door glazing, or window catches or stays);</li> <li>• there is electrical safety (e.g., detached or broken fittings, preventing shocks);</li> <li>• there is fire safety and a clear means of egress;</li> <li>• there is at least one working smoke alarm in each sleeping space of the Property (or otherwise within three metres of the entrance to each sleeping space); and</li> <li>• there is at least one smoke alarm installed on each storey or level in the habitable space of each Property.</li> </ul>

Requirement	Detail		
Urgent	<p>Required to be responded to urgently to protect the Property or restore Tenant amenity, but not required to protect from imminent danger or any other adverse effect on the health, safety or security of any person or to comply with any health and safety Laws.</p> <p>By way of illustration only (and without limitation), includes work necessary to ensure:</p> <ul style="list-style-type: none"> <li>• cooking appliances that are not fully functional are repaired;</li> <li>• correction of rainwater leaks into the building envelope (e.g., repairs to flashings around roof penetrations, repairs to windows or doors that are leaking);</li> <li>• correction of minor water supply pipe leaks;</li> <li>• repair or replacement of smoke detectors that are not functioning (provided that there must be at least one working smoke alarm in each sleeping space of the Property (or otherwise within three metres of the entrance to each sleeping space) and at least one smoke alarm installed on each storey or level in the habitable space of each Property);</li> <li>• repair of potential internal trip hazards (e.g., floor linings, etc.); and</li> <li>• functionality of clothes lines.</li> </ul>	One calendar day	Five calendar days
Specific Requirements	Maintenance or repair that does not fall within the above categories, and relates to the specific requirements set out in section 2 of these Property Management Requirements.	Two Business Days	The earlier of the next Inspection and six months
Other	<p>Reactive maintenance that does not fall within the above categories (and which does not fall into the job classification category immediately below), usually raised by Tenant notification or following an Inspection.</p> <p>Generally carried out to protect the Tenant or the Property, or required to meet the Provider's obligations under this Agreement, or required to meet the</p>	Two Business Days	The earlier of the next Inspection and six months

Requirement	Detail			
		<p>requirements of the Residential Tenancies Act or other applicable Laws.</p> <p>By way of illustration only (and without limitation), includes work necessary to ensure:</p> <ul style="list-style-type: none"> <li>• interior linings, floor coverings etc. are free of material damage;</li> <li>• exterior cladding, doors and windows are free from rot;</li> <li>• fences are in good repair;</li> <li>• graffiti is removed;</li> <li>• mould is removed and any associated mould preventative action is undertaken; and</li> <li>• borer or other infestation is treated.</li> </ul>		
	Planned maintenance in Asset Management Plan or annual maintenance plan	Reactive maintenance that would ordinarily fit within the "Other " job classification category immediately above, but where the job is already scheduled in the Provider's then-current Asset Management Plan or annual maintenance plan to take place as part of planned maintenance, provided the maintenance is shown in one or both of those documents as being planned to take place within the two year period commencing on the date that the relevant job is logged with the 24/7 Contact Point.	Two Business Days	Two years
b.	Tenant notification	The Provider is to notify the Tenant of its plans to determine the cause of each of the above jobs, rectify it and indicate how long that rectification is to take.		
c.	Utilities	Notwithstanding paragraph 4(a) above, the Provider is not responsible for ensuring that utilities supply or infrastructure is available to the Properties except to the extent that any unavailability is not due to an impediment on the Property that is preventing utility supply (such as broken or blocked water or gas pipes on the Property).		
d.	Temporary Rectification	<p>If the Provider is unable to permanently rectify an "Emergency" or "Urgent" job within the required rectification period set out in paragraph 4(a) above, it may act to temporarily ameliorate the consequences of the job whilst the job is being permanently rectified. In such case, the Provider is to specify in its Service Records:</p> <ul style="list-style-type: none"> <li>• the time by which permanent rectification will occur, which must be reasonable in the circumstances (taking into account the nature of the job and the Tenant's circumstances); and</li> <li>• the time by which the temporary amelioration of consequences</li> </ul>		

Requirement	Detail
	<p>will occur, which must be as soon as reasonably practicable in the circumstances and in no event later than the required rectification period set out in paragraph 4(a),</p> <p>each of which is to be notified to the Tenant and logged with the 24/7 Contact Point prior to the temporary work being commenced.</p>
<h3>5. Asset Management</h3>	
Whole of life solution	<p>The Provider is to:</p> <ul style="list-style-type: none"> <li>• provide and implement a robust and reliable whole of life asset management solution to the Properties;</li> <li>• adopt a proactive process of continuous improvement and innovation, including advising MSD once a year on any innovations that may allow MSD to improve its capabilities; and</li> <li>• focus its asset management activities in the Asset Management Plan in order to minimise interruption to Tenants and optimise asset performance and availability.</li> </ul>
Asset management planning	<p>The Provider is to provide asset management services that:</p> <ul style="list-style-type: none"> <li>• ensure Properties' assets meet or exceed the Asset Condition Standards referred to below;</li> <li>• deliver a planned approach to asset renewal and replacement which allows for flexibility and changes over time and ensures continuous improvement;</li> <li>• utilise an approach based on ISO55000 standards on asset management and New Zealand Asset Management Support (<b>NAMS</b>) documents; and</li> <li>• collect condition and maintenance history to facilitate accurate planning and maintenance.</li> </ul>

**SCHEDULE 7: TENANCY MANAGEMENT REQUIREMENTS**

Requirement		Detail
<b>1. General</b>		
a.	Compliance obligations	The Provider is to comply with all Laws, each Tenancy Agreement and the policies and procedures applicable to the operation and management of the Services as approved by the Regulatory Authority (the <b>Policies</b> ).
b.	MSD Housing Client System	Any notice or request made through the MSD Housing Client System will be taken to be received when the notice or request is logged as received.
c.	Tenant placement	The Provider will, when selecting each Housing Client in respect of a Property, act in accordance with this Agreement, the Operational Manual and any direction from MSD (including in accordance with the order of MSD's assigned priority rating). If the Provider wishes to depart from MSD's direction, it must have MSD's consent to do so.
<b>2. Tenanting vacant Properties process and notifications</b>		
a.	Tenanting Vacant Properties	The Provider is to follow the process set out in the Operational Manual and the MSD Housing Client System when a Property is ready to be let to a Housing Client.
b.	Tenant placement principle	<p>The Provider acknowledges that Properties must be allocated fairly, transparently and on the basis of need, balanced with achieving a sustainable match (taking into account specific characteristics of the Housing Client and the neighbourhood) (the <b>Tenant Placement Principle</b>).</p> <p>The Provider is to ensure its Policies give effect to the Tenant Placement Principle, and must be able to demonstrate compliance with the Tenant Placement Principle (including through written records demonstrating why a Housing Client was selected by the Provider).</p>
c.	No reliance on risk ratings or other information	<p>The Provider acknowledges that information about risk ratings assigned to Housing Clients is not definitive.</p> <p>To the extent permitted by law, the Provider releases MSD from all liability and Losses suffered by the Provider, and is to ensure that no claim is brought against MSD by any sub-contractor or Provider personnel in relation to such information.</p>
d.	Notification requirements	The Provider is to comply with the notification requirements set out in the Operational Manual and the MSD Housing Client System regarding Tenant and Tenant-related changes.
<b>3. Tenancy management services</b>		
a.	Bond Amount	The Provider is to collect the bond (as defined in the Residential Tenancies Act) (the <b>Bond Amount</b> ) (or the relevant part of the Bond

	Requirement	Detail
		Amount) from the Tenant, except where MSD has confirmed that it will be providing financial assistance to the Tenant in respect of the Bond Amount (in which case the Provider will collect the Bond Amount, or part of the Bond Amount, from MSD). The Provider is to comply with its obligations under the Residential Tenancies Act regarding the Bond Amount (including receipt and lodging requirements).
b.	Rent collection and notifications	<p>The Provider is responsible for:</p> <ul style="list-style-type: none"> <li>• collecting the IRR or any amount that is less than the IRR where section 92(5) of the HRTM Act applies (the <b>Rent Amount</b>) (and any Rent Amount that is payable in advance of the start of the Tenancy ) payable by the Tenant (or MSD if MSD has confirmed that it will be providing financial assistance or if MSD is redirecting some of the Tenant's MSD benefit payments);</li> <li>• notifying the Tenant if there is to be any change to his or her Rent Amount;</li> <li>• notifying MSD of Rent Amount arrears owing by the Tenant as soon as reasonably practicable following receipt of a request from MSD for that information;</li> <li>• assisting MSD in relation to any queries relating to Rent Amounts that may be in arrears by a Tenant or any matter relating to a potential refund to be made to a Tenant;</li> <li>• notifying MSD through the MSD Housing Client System of any change to a Tenant's Rent Amount no less than five Business Days prior to the effective date of that change; and</li> <li>• taking necessary debt recovery steps in accordance with its Policies and the Operational Manual, with termination of the Tenancy Agreement being a last resort.</li> </ul> <p>The Provider may not request any other payment from a Tenant other than as expressly permitted under this Agreement.</p>
c.	Tenancy Agreement	The Provider is to ensure that a written Tenancy Agreement is in place between the Provider and the Tenant which provides for a periodic term (unless MSD has approved otherwise) and otherwise complies with the requirements of this Agreement.
d.	24/7 Contact Point	The Provider is to maintain the 24/7 Contact Point as further described in the Property Management Requirements.
e.	Inspections	The Provider is to inspect each Property and each Tenancy at least once every 12 months (an <b>Inspection</b> ). For an Inspection to be considered as conducted, both the Property elements and Tenancy elements need to be completed, however the Property elements and Tenancy elements of the Inspection may be conducted together or at separate times.
f.	Tenancy elements	The Inspections must, in relation to a Tenancy, undertake the Tenant-related checks as specified in the Policies.
g.	Tenant meetings	The Provider is to comply with its Policies in relation to meeting with

Requirement		Detail
	and engagement	Tenants and handling Tenant complaints or incidents. The Policies must provide for the handling of any request from a Tenant where the Tenant wishes to meet with the Provider to discuss any issues that have arisen in relation to the Tenancy Agreement.
h.	Complaints and incidents	The Provider is to comply with its Policies in relation to responding to and addressing any complaints or incidents notified to the Provider or MSD (including about the behaviour of any Tenant or visitor to a Property).
i.	Enforcing maximum occupancy requirements	The Provider is to comply with its Policies and the Operational Manual to ensure that the maximum occupancy level for a Property is not exceeded. If it is exceeded, the Provider is to take appropriate action to ensure that the number of persons residing in the Property is brought back to the maximum occupancy level for the Property as soon as possible.
j.	Subletting	The Provider is to take all reasonable steps to ensure a Tenant does not sublet a Property and, if subletting does occur, take all reasonable steps to rectify any subletting that may occur.
k.	Suspected Housing fraud	<p>The Provider is to give written notice to MSD as soon as possible upon the Provider becoming aware of any suspected Housing fraud (as explained in the Operational Manual).</p> <p>The Provider is to provide all reasonable assistance to MSD in relation to any investigation into suspected Housing fraud and keep records in relation to any fraud reports, or actions taken in relation to fraud reports.</p>
l.	Child abuse and family violence	<p>The Provider is to, where it is providing children's services, comply with the Vulnerable Children Act 2014. This includes:</p> <ul style="list-style-type: none"> <li>• adopting and implementing a child protection policy that complies with section 19 of the Vulnerable Children Act 2014;</li> <li>• keeping its child protection policy under review (including updating as applicable) throughout the Term in accordance with section 16(a)(iii) of the Vulnerable Children Act 2014;</li> <li>• make a copy of its child protection policy (including as updated) available to MSD;</li> <li>• informing the appropriate authorities immediately upon the Provider becoming aware of the occurrence or possible occurrence of family violence (no matter how serious) either: <ul style="list-style-type: none"> <li>○ at a Property, or that has or may have been inflicted by or on, a Tenant or any other person residing at, or visiting, a Property; or</li> <li>○ otherwise notified to the Provider by any person; and</li> </ul> </li> <li>• providing all reasonable assistance and cooperation to the relevant authority investigating any potential or actual child abuse or family violence that may have occurred.</li> </ul>
m.	Tenant absences	The Provider is to take reasonable steps to ensure that it will receive



	Requirement	Detail
		<p>written notice from the Tenant where the Tenant is planning to be absent from the Property for more than eight weeks.</p> <p>The Provider is to give a copy of such notice to MSD through the MSD Housing Client System as soon as possible following the Provider receiving such notice.</p>
n.	Tenant disputes	The Provider is to act in accordance with its Policies to resolve any Tenant dispute that arises with the Tenant.
o.	Tenant-initiated transfers	<p>Where a Tenant requests to transfer to a different Property for any reason the Provider is to:</p> <ul style="list-style-type: none"> <li>• take all reasonable steps to manage the Tenant's expectations about the prospect of relocation;</li> <li>• explore all other reasonably viable solutions that could address the Tenant's underlying reason for the Tenant's request to transfer;</li> <li>• document, in a written form, the Tenant's request to transfer; and</li> <li>• ensure that it explains the requirements and rules for the tenant transfer process to the Tenant in a way that reasonably enables the Tenant to understand such requirements,</li> </ul> <p>and, following undertaking the above steps:</p> <ul style="list-style-type: none"> <li>• notify the Tenant of how the Tenant can contact MSD to request a needs assessment (and the associated process in relation to such assessment);</li> <li>• appropriately record the steps the Provider has taken; and</li> <li>• otherwise comply with the relevant parts of its Policies.</li> </ul>
p.	Provider-initiated transfer (other than due to a change in Tenant circumstances)	<p>Where the Provider wishes to transfer a Tenant to another Property and the reason for the proposed transfer is not connected to a Tenant's change in circumstances (e.g., for maintenance, redevelopment or improvement works in relation to the Property), the Provider is to notify MSD in advance of undertaking the transfer, and:</p> <ul style="list-style-type: none"> <li>• the transfer must be necessary and desirable;</li> <li>• the Provider is to identify a suitable alternative Property that is appropriate to the Tenant's housing needs (in respect of location and, if appropriate, configuration). An alternative Property will only be suitable if, in the case of maintenance, redevelopment or improvement works: <ul style="list-style-type: none"> <li>○ the alternative Property is available to the Tenant on a short, fixed-term basis or on a permanent basis; and</li> <li>○ which cannot be undertaken within 120 days (or such longer period as agreed by MSD), the alternative Property is available to the Tenant on a permanent basis.</li> </ul> </li> </ul> <p>Where a transfer is to occur, the Provider is required to:</p> <ul style="list-style-type: none"> <li>• facilitate the transfer, including by acting in accordance with its Policies and these Tenancy Management Requirements;</li> <li>• apply the process in the Operational Manual and the MSD</li> </ul>

Requirement		Detail
		<p>Housing Client System;</p> <ul style="list-style-type: none"> <li>• outline the options available to the Tenant in the circumstances (including by making the Tenant aware of any circumstances relating to the alternative Property (e.g., works that are pending));</li> <li>• make an offer of a new Property to the Tenant, in writing (specifying whether on a permanent or short-term basis, as applicable);</li> <li>• arrange (at the Provider's cost) for the Tenant to view the new Property prior to the Tenant's decision being required;</li> <li>• arrange and pay for all reasonable costs associated with the Tenant being relocated to the new Property;</li> <li>• if applicable, arrange and pay for all reasonable costs associated with the Tenant being relocated back to the original Property; and</li> <li>• notify MSD of the transfer having occurred through the MSD Housing Client System.</li> </ul>
q.	Provider-initiated transfer (due to a change in Tenant circumstances)	<p>If a change in Tenant circumstances occurs, the Provider is to notify MSD in accordance with the requirements of this Agreement so that MSD can reassess the Tenant's needs, and, following reassessment if the Provider wishes to transfer the Tenant to a different Property, the Provider is to:</p> <ul style="list-style-type: none"> <li>• facilitate the transfer; and</li> <li>• assess that Tenant's suitability against the needs of other Housing Clients (including by following the process in the Operational Manual and the MSD Housing Client System).</li> </ul>
r.	Managing join-ins	<p>When an existing Tenant makes a request to the Provider that another person or household member be added as a named tenant in the Tenancy Agreement (a <b>Join-in Request</b>), the Provider is to assess such request, including whether such join-in would:</p> <ul style="list-style-type: none"> <li>• pose any safety risk to MSD, the Provider or the local community; or</li> <li>• give rise to any overcrowding issues.</li> </ul> <p>If the Provider is willing to agree to the Join-in Request, the Provider is to refer the Join-in Request to MSD through the MSD Housing Client System for assessment.</p> <p>If MSD:</p> <ul style="list-style-type: none"> <li>• approves the Join-in Request, the Provider may (by agreement with the existing Tenant): <ul style="list-style-type: none"> <li>○ vary the existing Tenancy Agreement to include the new tenant as a Tenant; or</li> <li>○ terminate the existing Tenancy Agreement and arrange for a new Tenancy Agreement to be entered into with the existing Tenant and the new tenant; or</li> </ul> </li> <li>• does not approve the Join-in Request, the Provider will notify the Tenant of this decision.</li> </ul> <p>If either the Provider or MSD do not approve the Join-in Request, the</p>

Requirement	Detail
	<p>Provider may consider utilising the Tenant transfer process.</p> <p>The Provider is to make any MSD policy on join-ins freely and easily available to all Tenants (provided that MSD provides such policy to the Provider).</p>
s. Tenancy releases	<p>A Tenant may only be released from a Tenancy where there are two or more individuals named as joint tenants in a Tenancy Agreement (a <b>Joint Tenancy</b>) if such Tenant receives the consent of the Provider. The Provider must not withhold its consent unless there are genuine reasons that warrant refusing consent (e.g., suspected Housing fraud (e.g., the Tenant that is requesting to be released from the Joint Tenancy intends to remain living in the Property as an additional occupant)).</p> <p>If a person is released from being a Tenant under a Joint Tenancy, the Provider is to:</p> <ul style="list-style-type: none"> <li>• advise that person that they will no longer enjoy the rights that come with being a Tenant; and</li> <li>• notify MSD of the release through the MSD Housing Client System within three Business Days.</li> </ul>
t. Death of Tenant in a Joint Tenancy	<p>Where a Joint Tenancy is in place and one Tenant passes away, the Provider is to follow the process set out in the Operational Manual, including allowing one week to pass from the date of notification to the Provider of the death before contacting the remaining Tenant(s), except in cases of emergency or as otherwise agreed by MSD where the Provider requests that a longer period apply having regard to the particular circumstances.</p>
u. Death of Tenant - Sole Tenant	<p>Where a sole tenancy is in place and the Tenant passes away, the Provider is to:</p> <ul style="list-style-type: none"> <li>• if there are no other occupants residing in the Property, issue a 21 day notice to vacate the Property to the appropriate person e.g., next of kin, executor of estate or solicitor; or</li> <li>• if there are occupants still residing in the Property, follow the process outlined in the Operational Manual.</li> </ul>
v. Boarders	<p>The Provider is to notify MSD before agreeing to any Tenant request for a boarder to occupy a Property with the Tenant.</p> <p>If MSD becomes aware of any Tenant request made to MSD for a boarder to occupy a Property with a Tenant, it will notify the Provider.</p>
w. Home detention and bail	<p>The Provider is to notify MSD before agreeing to any Tenant request for use of a Property as an address for home detention or bail.</p> <p>If MSD becomes aware of any Tenant request made to MSD to use a Property as an address for home detention or bail, it will notify the Provider.</p>
x. Terminating Tenancy	<p>The Provider is to, when a Tenancy Agreement is terminating:</p> <ul style="list-style-type: none"> <li>• if appropriate, inform the Tenant(s) of the possibility that MSD</li> </ul>

Requirement		Detail
	Agreement	<p>may no longer consider it or them eligible to be a Housing Client;</p> <ul style="list-style-type: none"> <li>• if appropriate, provide the Tenant with a positive letter of referral;</li> <li>• undertake an inspection of the Property; and</li> <li>• give reasonable notice to MSD specifying the details for the terminating tenancy.</li> </ul>
Y.	Family Services Directory	The Provider is to ensure that it is listed in MSD's Family Services Directory and that its 'Necessary Information' is updated as required.
Z.	Tenancy reviews	The Provider will reasonably assist MSD if MSD is seeking to confirm whether a Tenant has had a change in circumstances that warrants a change to the Tenant's eligibility for Housing.
<b>4. Systems</b>		
a.	General responsibilities	<p>The Provider is to:</p> <ul style="list-style-type: none"> <li>• ensure that its information technology systems and its personnel can access the MSD Housing Client System;</li> <li>• use all reasonable endeavours to ensure the integrity and security of its information technology system and network communications;</li> <li>• exercise all due care in the access to and use of the MSD Housing Client System;</li> <li>• access and use the MSD Housing Client System only for lawful purposes;</li> <li>• ensure that Provider personnel that use the MSD Housing Client System are sufficiently trained and only have access to the MSD Housing Client System to the extent required to perform their duties;</li> <li>• comply with any instructions with respect to accessing and using the MSD Housing Client System notified to the Provider from time to time;</li> <li>• immediately notify MSD of any problems or issues that arise in relation to the MSD Housing Client System; and</li> <li>• de-provision an individual's MSD Housing Client System user account login when that individual ceases to be Provider personnel.</li> </ul>
b.	Maintenance and support	The Provider acknowledges that the primary part of the MSD Housing Client System may be unavailable from time to time in order to conduct system related maintenance, upgrades or other works and that the Provider may be required to utilise MSD's secondary back-up system during periods of unavailability.
c.	Training	MSD will make training available to the Provider in relation to the MSD Housing Client System. The Provider will ensure its relevant personnel attend any training provided by MSD, and is responsible for providing all other required training to Provider personnel in respect of the MSD Housing Client System.

Requirement		Detail
d.	MSD Housing Client System issues	If the Provider encounters any issue or has a query in relation to the MSD Housing Client System, the Provider should contact the appropriate MSD contact as notified to the Provider from time to time.

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**SCHEDULE 8: FORM OF VARIATION AGREEMENT**

This **Variation Agreement** is made on *[insert date]*

**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) *[insert name of Provider]* (**Provider**)

**Introduction**

- A. On *[insert date of the Services Agreement]* MSD and the Provider entered into a services agreement relating to the provision of housing and housing services on a capacity basis (**Agreement**).
- B. MSD and the Provider have agreed to amend the Agreement on the terms set out in this variation agreement (**Variation Agreement**).

**It is agreed****1 Definitions and Interpretation**

In this Variation Agreement (including the Introduction), unless the context otherwise requires:

- (a) capitalised terms which are defined in the Introduction have the meaning given to those terms in the Introduction;
- (b) capitalised terms used but not defined in this Variation Agreement shall (where those terms are defined in the Agreement) have the meaning given to those terms in the Agreement;
- (c) headings are inserted for convenience only and shall be ignored; and
- (d) any references to the singular includes the plural and vice versa.

**2 Variation**

***[Drafting Note: This clause should be populated with the proposed variations to the existing Agreement. Please see the example formats below (note that not all of these will necessarily be used in each situation).]***

With effect on and from *[insert date]* (**Effective Date**), the Agreement is varied as follows:

- (a) [by deleting Schedule 4 and replacing Schedule 4 with the new Schedule 4 attached to this Variation Agreement.]
- (b) [Clause *[insert clause number]* is deleted.]
- (c) [Clause *[insert clause number]* is amended by deleting the reference to *[insert (e.g., "30 January 2019")]* and replacing it with a reference to *[insert (e.g., "30 June 2019")]*].

- (d) [Clause [*insert clause number*] is deleted and replaced with the following clause:

*[insert clause number]: [insert replacement clause in italics]*

- (e) [A new clause [*insert new clause number (e.g., "3A" if the new clause is to be inserted between existing clauses 3 and 4)*] is added as follows:

*[insert new clause number]: [insert new clause in italics]*

### 3 Confirmation

- 3.1 Except as varied by this Variation Agreement, the terms contained in the Agreement continue and remain in full force and effect.

### 4 General

- 4.1 **Costs:** Each party shall pay its own costs in respect of this Variation Agreement.

#### 4.2 Counterparts:

- (a) This Variation 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 Variation Agreement by executing any counterpart.
- (b) This Variation Agreement may be executed on the basis of an exchange of scanned copies and execution of this Variation Agreement by such means is to be a valid and sufficient execution.

- 4.3 **Severability:** If one or more of the provisions of this Variation Agreement is illegal, invalid or unenforceable, the remaining provisions of this Variation Agreement will not be affected and will continue in full force and effect, to the extent permitted by law.

- 4.4 **Assignment:** Except as expressly provided otherwise in this Variation Agreement, neither party may assign, transfer, sub-contract or otherwise dispose of all or part of its rights and obligations under this Variation Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

- 4.5 **Entire agreement:** This Variation Agreement records the entire agreement between the parties in relation to its subject matter and supersedes and cancels and prior written or oral understanding, agreement or arrangement concerning the subject matter of this Variation Agreement.

- 4.6 **Further assurances:** Each party will execute all other documents and do all other acts and things as may be reasonable to implement and to carry out its obligations under, and the intent of, this Variation Agreement.

- 4.7 **No third party rights:** Except as expressly set out in this Variation Agreement, nothing in this Variation Agreement is intended to confer a benefit upon or be enforceable by any third party under the Contract and Commercial Law Act 2017.

- 4.8 **Governing law:** This Variation Agreement shall be governed by and construed in accordance with New Zealand law and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this Variation Agreement.

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**EXECUTION**

**Executed** as a variation agreement.

**Signed** for and on behalf of Her Majesty, the Queen in right of New Zealand acting by and through the **Ministry of Social Development** under delegated authority by:

---

Signatory name:  
Signatory title:

**Signed** for and on behalf of [*insert full legal name of Provider*]:

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Signatory name:  
Signatory title:

**Attachment: New Schedule 4**

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## SCHEDULE 9: DEVELOPMENT PHASE OBLIGATIONS

This Schedule 9 describes the Development Phase obligations and related rights and obligations of the Parties during the Development Phase. It also sets out certain Upfront Development Cost Funding repayment obligations during the Capacity Phase.

### 1 Additional definitions and interpretation

1.1 The following terms in this Schedule 9 are used with the meaning set out below:

**Capacity Phase** means the period commencing on the addition of one or more Properties to Schedule 4 in accordance with clause 2.4 of this Schedule 9 and ending on the Expiry Date (or earlier termination of this Agreement), during which the Provider must make the Properties available for letting to Eligible Tenants;

**Certificate for Public Use** has the meaning set out in the Building Act 2004;

**Code Compliance Certificate** has the meaning set out in the Building Act 2004;

**Conditions Precedent to Drawdown** means the conditions precedent to Drawdown as set out further in the Key Terms;

**Configurations** has the meaning set out in the Key Terms;

**Development Costs** means the Provider's costs of delivering the New Supply Properties in relation to the New Supply Housing Project;

**Development Phase** means the period leading up to, and including, the delivery of the New Supply Properties and ending in the issuance of a Code Compliance Certificate for, and availability for tenancy by Eligible Tenants under the Capacity Phase of, all the New Supply Properties (excluding any later additions or substitutions of any Properties);

**Drawdown** means a permitted drawdown of Upfront Development Cost Funding against the stipulated milestone, as set out in the Key Terms;

**Drawdown Notice** means a Drawdown notice in (or substantially in) the form notified by MSD to the Provider from time to time;

**Good Industry Practice** means the degree of skill, care, prudence, foresight, and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of goods and services engaged in the same type of undertaking as that of the Provider, contractors, subcontractors, consultants, or other such persons (as applicable), under the same or similar circumstances as those contemplated by this Agreement;

**New Supply Housing Project** means the development described in the Key Terms for the delivery of the New Supply Properties;

**New Supply Properties** means those properties being delivered by the Provider as part of the New Supply Housing Project, as set out further in the Project Management Plan;

**Plans and Specifications** means the plans and specifications identified in the Key Terms;

**Primary Contract** means any contract identified as a primary contract in the Key Terms;

**Project Management Plan** means a suitable and robust development plan agreed between MSD and the Provider;

**Quarterly Development Report** means the quarterly development report substantially in the form as notified by MSD to the Provider from time to time that the Provider is to provide to MSD as set out in the Key Terms;

**Sunset Date** means the date identified in the Key Terms;

**Upfront Development Cost Funding** means the contributions paid by MSD towards the Development Costs during the Development Phase under the terms and conditions contained in this Agreement; and

**Upfront Development Cost Funding Amount** means the percentage of the Provider's Development Costs MSD has agreed to pay, up to a maximum dollar figure amount, as Upfront Development Cost Funding as set out in the Key Terms.

- 1.2 In Schedule 9, unless specifically stated otherwise, "deliver" includes all actions required to fully deliver, including where appropriate development, construction, refurbishment, procurement and acquisition.
- 2 **New Supply Properties**
- 2.1 The Provider is to deliver the New Supply Properties at the Services Location for Eligible Tenants by the end of the Development Phase and in accordance with the Project Management Plan. For this purpose, New Supply Properties can include relocation and/or refurbishment of an existing structure provided it is of a standard acceptable to MSD.
- 2.2 By the end of the Development Phase, the Provider is to ensure that each New Supply Property:
- (a) is suitable for letting to Eligible Tenants and for the intended purpose of the New Supply Housing Project;
  - (b) complies with the Project Management Plan (including in relation to compliance with the Configurations and Plans and Specifications);
  - (c) is delivered in accordance with all relevant resource and building consents, has a Code Compliance Certificate, and complies with all relevant Laws;
  - (d) without limiting the warranties and guarantees implied at law, is delivered in accordance with Good Industry Practice;
  - (e) will be available, upon completion, for letting to Eligible Tenants approved by MSD, in accordance with Schedule 1; and
  - (f) complies with all other terms and conditions of this Agreement.

- 2.3 If during the Development Phase a New Supply Property is completed and complies with clause 2.2(a) to (f) of this Schedule 9 except in respect of a Code Compliance Certificate being issued, MSD and the Provider agree that the Capacity Phase can commence in respect of that New Supply Property, provided that:
- (a) the Provider has obtained a Certificate for Public Use for that New Supply Property;
  - (b) the Provider can safely and effectively carry out all of its duties during the Capacity Phase in respect of that New Supply Property;
  - (c) occupation and use of the New Supply Property for the Capacity Phase will not materially interfere with the Provider's ability to deliver the New Supply Housing Project;
  - (d) the New Supply Property can be safely occupied without undue interference with any occupants' use and enjoyment of the New Supply Property (including interference by noise, dust, vibrations, or smells from any source); and
  - (e) the Provider obtains a Code Compliance Certificate for the New Supply Property as soon as possible.
- 2.4 Following completion of the Development Phase in respect of a New Supply Property, the parties will enter into a variation agreement substantially in the form set out in Schedule 8 to add that New Supply Property as a Property, and the Provider is to provide that New Supply Property as a Property in accordance with Schedule 1, and manage it, for the remainder of the Term and in accordance with this Agreement and the Contract Documents.
- 2.5 Notwithstanding completion of the Development Phase, any minor omissions or defects in the New Supply Properties must be rectified within 90 days of the issue of the relevant Code Compliance Certificate(s).
- 3 Project Management Plan**
- 3.1 The Provider is to deliver the New Supply Housing Project in accordance with the Project Management Plan.
- 3.2 The Project Management Plan is to incorporate:
- (a) the Configurations and Plans and Specifications; and
  - (b) a project timeline which includes expected timeframes and dates for obtaining all relevant documentation, delivery of key parts of the New Supply Housing Project, and a due date for completion of the New Supply Housing Project,
- and shall require the delivery of the New Supply Properties in accordance with the Configurations, Plans and Specifications, and project timeline.
- 3.3 The Provider is to ensure that the Plans and Specifications are consistent with, and incorporate, the Configurations. In the event of any conflict between the

Configurations and the Plans and Specifications or any other documents, the Configurations will prevail unless MSD has expressly provided its prior written consent to such conflict.

#### 4 **Project timeline**

4.1 Notwithstanding clause 2.1 of this Schedule 9 and without limiting clause 11.5 of this Schedule 9:

- (a) the Provider is to use all reasonable endeavours to meet the project timeline and key milestone dates for the New Supply Housing Project delivery as set out in the Key Terms and the Project Management Plan; and
- (b) if the Provider considers that it will not, or is unlikely to, meet such project timeline and key milestone dates, it will notify MSD in writing as soon as practicable and the Provider is to minimise the delay in meeting such project timeline and key milestone dates.

#### 5 **Building contract and other contracts**

5.1 In relation to any contract (including any construction contract(s) and subcontracts) for the delivery of any part of the New Supply Housing Project, the Provider:

- (a) may only enter into any Primary Contract in relation to any part of the New Supply Housing Project with MSD's prior consent (not to be unreasonably withheld or delayed);
- (b) is not to materially vary, or permit or allow the material variation of, any Primary Contract without MSD's prior written approval (not to be unreasonably withheld or delayed);
- (c) is to ensure the contract:
  - (i) is in writing;
  - (ii) is consistent, and requires the delivery of the New Supply Housing Project in accordance, with the terms of this Agreement; and
  - (iii) requires the contracting third party to exercise Good Industry Practice in delivering its part of the New Supply Housing Project;
- (d) is to ensure each contracting third party is:
  - (i) suitably experienced and qualified, and has sufficient capacity and capability to deliver that part of the New Supply Housing Project contracted to them; and
  - (ii) fully aware of the Provider's obligations during the Development Phase;
- (e) is not relieved from any liability or obligation to deliver the New Supply Housing Project; and

(f) in respect of any construction contract, is to ensure that the contractor is a licenced building practitioner (as that term is defined in the Building Act 2004).

5.2 For the avoidance of doubt, in this clause 5 of this Schedule 9 “contract” includes any contract, agreement, or arrangement with any third party for the delivery of any part of the New Supply Housing Project, and may include a development agreement with a developer, design services agreement with a design consultant, or agreement for sale and purchase of any land or properties.

## 6 Risks and insurance

6.1 The Provider is to ensure all risks of the New Supply Housing Project are adequately and suitably covered, whether by insurance or otherwise.

6.2 Where any insurance policies are identified in the Key Terms, the Provider is to:

- (a) effect and maintain, or cause to be effected and maintained, the identified insurance policies:
  - (i) for at least the minimum amount specified in the Key Terms for any one occurrence and in the aggregate;
  - (ii) with a reputable and financially sound insurer;
  - (iii) on terms which a prudent and experienced person performing work of a nature similar to the work the subject of the insurance could reasonably be expected to obtain; and
  - (iv) from the date of the commencement of any construction works in relation to the New Supply Housing Project until the completion of the Development Phase;
- (b) within 10 Business Days of a request by MSD, provide MSD with evidence that the identified insurance policies are effected and maintained;
- (c) except for an amount of less than \$10,000.00 and where the claim is in relation to an event which does not affect the safe occupation of the New Supply Properties or delivery of the New Supply Housing Project, notify MSD of any claims under any of the identified insurance policies; and
- (d) subject to the terms of any Financier Direct Deed, use the proceeds of any claim under any of the identified insurance policies to reinstate the New Supply Properties, or as otherwise agreed by MSD and the Provider.

6.3 Without limiting the obligations of the Provider in clause 6.2 of this Schedule 9, the Provider is to ensure that any contractors, subcontractors, consultants, or other third parties involved with the delivery of the New Supply Housing Project effect insurance policies on terms and covering risks that a prudent and experienced person performing work of a nature similar to the work the subject of the insurance could reasonably be expected to maintain obtain.

## 7 Upfront Development Cost Funding

- 7.1 MSD will provide the Upfront Development Cost Funding Amount to cover the agreed percentage of the Provider's Development Costs (up to a maximum amount) as set out in the Key Terms, subject to the Provider satisfying any Conditions Precedent to Drawdown and otherwise complying with the terms and conditions of this Agreement.
- 7.2 The Upfront Development Cost Funding Amount will be paid by MSD in one or more separate Drawdowns against the specified milestones in the Key Terms.
- 7.3 The Provider acknowledges MSD's rights to withhold Upfront Development Cost Funding or seek repayment (in part or in full) in accordance with this Agreement and the Relationship Agreement.
- 7.4 Nothing in this Agreement is to be interpreted as requiring MSD to increase its contribution towards the New Supply Housing Project beyond the Upfront Development Cost Funding Amount, and the Provider acknowledges that it is to meet any additional or unforeseen costs of completing the New Supply Housing Project that may arise.

## 8 Payment of Upfront Development Cost Funding

- 8.1 MSD will pay to the Provider the amount set out in the Drawdown Notice (up to the amount of the Upfront Development Cost Funding the Provider may drawdown at the relevant milestone) within the timeframe set out in the Key Terms, provided that the Conditions Precedent to Drawdown have been satisfied in full.
- 8.2 No money is payable by MSD until the Provider has satisfied all relevant Conditions Precedent to Drawdown. If the Provider fails to submit any documentation required under, or otherwise comply with or satisfy, any Condition Precedent to Drawdown, MSD may (at its sole discretion) withhold payment of any Upfront Development Cost Funding.
- 8.3 If the portion able to be drawn upon at any given milestone is not fully drawn, the balance can be drawn upon at the next Drawdown (if any).
- 8.4 Unless MSD agrees otherwise, a Drawdown Notice must be submitted within 12 months of the milestone date for the relevant Drawdown, and in any event prior to the completion of the Development Phase.
- 8.5 Any dispute arising in relation to a payment under a Drawdown or Drawdown Notice shall be resolved in accordance with clause 13.5 of the Relationship Agreement, as if the Drawdown Notice was an invoice.

## 9 Management of Upfront Development Cost Funding payments

The Provider recognises that it needs to be a prudent and transparent manager of Upfront Development Cost Funding and will therefore:

- (a) keep clear records of and account separately for all receipts of, and expenditure of, the Upfront Development Cost Funding; and

- (b) only expend the Upfront Development Cost Funding in or towards meeting its actual out of pocket expenses incurred in connection with the New Supply Housing Project.

## 10 **Repayment of Upfront Development Cost Funding**

10.1 The Provider agrees that all funds paid to it by MSD under this Agreement and not expended in accordance with this Agreement (together with any interest accrued in respect of such funds) are to be repaid as follows:

- (a) within 20 Business Days of completion of the Development Phase the Provider is to issue MSD a report in the form notified by MSD to the Provider from time to time, together with such other evidence as MSD may reasonably require, which illustrates:
  - (i) the Provider's total Development Costs; and
  - (ii) MSD's share of the Development Costs (calculated in accordance with clause 7.1 of this Schedule 9); and
- (b) in the event that the Upfront Development Cost Funding received by the Provider exceeds MSD's share of the Development Costs as identified pursuant to clause 10.1(a)(ii) of this Schedule 9, the Provider must repay the difference, and issue a credit note (that meets the requirements of the Goods and Services Tax Act 1985), to MSD within 15 Business Days of issue of the report under clause 10.1(a) of this Schedule 9.

10.2 MSD may otherwise require the Provider to repay any portion of the Upfront Development Cost Funding:

- (a) during the Development Phase:
  - (i) reflective of the degree and materiality of any breach of this Agreement by the Provider to deliver the New Supply Property in accordance with this Agreement, as determined by MSD in its sole discretion and acting reasonably (which determination may include agreement to provision of a lesser number of New Supply Properties than agreed or in a different configuration from that agreed); or
  - (ii) in the event of termination of this Agreement pursuant to clause 11.4, 11.5 or 12(b) of this Schedule 9, or clause 22.3 of the Relationship Agreement; and
- (b) during the Capacity Phase, in the event of termination pursuant to clause 22.3 of the Relationship Agreement and as further set out in the Key Terms.

## 11 **Failure to meet its obligations during the Development Phase**

11.1 Without limiting any of its other rights or remedies under the Relationship Agreement or at law or equity, in the event that during the Development Phase:

- (a) the Provider has breached this Agreement;



- (b) the Provider has failed to meet the obligations to deliver the New Supply Housing Project as set out in this Agreement; or
- (c) the Provider has been required to repay any Upfront Development Cost Funding in accordance with this Agreement and fails to make such repayment,

MSD may give notice (with a copy to the Regulatory Authority) specifying the default in reasonable detail and requiring it to be remedied within an agreed timeframe following the process set out in this clause 11 of this Schedule 9.

- 11.2 Within 15 Business Days of receiving MSD's notice under clause 11.1 of this Schedule 9, the Provider is to:
- (a) propose a rectification programme that is reasonably acceptable to MSD, specifying:
    - (i) the timeframe within which the default will be remedied;
    - (ii) a work plan for remedying the default within that timeframe; and
    - (iii) any temporary measures being put in place to mitigate the effects of the default; and
  - (b) remedy the default within a timeframe reasonably acceptable to MSD.
- 11.3 During the implementation of such rectification programme:
- (a) the Provider is to keep MSD advised of progress against the agreed timeframes. MSD may agree to a reasonable variation of the relevant plan where circumstances beyond the Provider's reasonable control affect its implementation;
  - (b) MSD may withhold all or part of any payment otherwise due; and
  - (c) MSD may, acting reasonably, require the Provider to withhold the expenditure of any Upfront Development Cost Funding that the Provider holds.
- 11.4 If, after following the process in clauses 11.2 to 11.3 of this Schedule 9 above, the Provider still has not remedied the default specified in MSD's original notice, to MSD's satisfaction, then MSD may terminate this Agreement by giving 30 Business Days' notice to the Provider.
- 11.5 Notwithstanding any other provision of this Agreement, but subject to the Financier Direct Deed, if the Development Phase has not been completed and the Capacity Phase commenced for all New Supply Properties by the Sunset Date, MSD may terminate this Agreement by giving 30 Business Days' notice to the Provider.

## 12 **Additional Provider termination rights**

In addition to the termination rights available under the Relationship Agreement:

- (a) the Provider may apply to MSD to terminate this Agreement at any time. MSD will give reasonable consideration to such request and the basis on which it can be agreed to; and
- (b) the Provider may terminate MSD's involvement with the New Supply Housing Project on 15 Business Days' notice if MSD fails to pay any Upfront Development Cost Funding when due and payable, provided that the failure has not been remedied before the expiration of that notice period, subject to immediate repayment by the Provider to MSD of all amounts (including earlier advances of Upfront Development Cost Funding) already received.

### 13 **Review of documents by MSD**

- 13.1 The Provider has sole responsibility for the delivery of the New Supply Housing Project in accordance with this Agreement irrespective of any receipt, review, inspection, approval, consent, or acceptance by MSD of any documents or information supplied by the Provider, including Plans and Specifications, any documentation required under the Conditions Precedent to Drawdown, or other documentation or information required under this Agreement.
- 13.2 MSD assumes no responsibility or liability to the Provider or to any other person for the engineering or architectural soundness, safety, compliance with Laws, compliance with this Agreement, or suitability of any of the Configurations, Plans and Specifications or other plans and specifications, of the New Supply Housing Project, which remain the sole responsibility of the Provider.

### 14 **General**

- 14.1 MSD and the Provider agree to do all things necessary to perform or fulfil the Further Deliverables as set out in the Key Terms (if any).
- 14.2 Without limiting any of the Provider's obligations under this Agreement and the Relationship Agreement, the Provider is to deliver the New Supply Housing Project:
  - (a) in accordance with all Laws;
  - (b) in accordance with the terms of this Agreement;
  - (c) diligently, efficiently, and without undue delay.

## **SCHEDULE 10: SECURITY PROTECTION FOR MSD**

For the avoidance of doubt, this Schedule 10 is subject to the terms of any applicable Financier Direct Deed.

### **1 Encumbrance and land covenant**

To protect MSD's interests under this Agreement (during both the Development Phase and the Capacity Phase), MSD will, if provided for in the Key Terms, register an encumbrance in the form attached to this Schedule 10 or a land covenant in gross against the computer registers and/or records of titles to the New Supply Properties and the Properties. The encumbrance or land covenant in gross must rank first in priority to any mortgage or security to be provided in favour of another financier of the Provider.

### **2 No objection**

The Provider will do everything necessary to support the registration of any encumbrance or land covenant in gross pursuant to clause 1 of this Schedule 10 and the Key Terms, including execution of all necessary documents required for registration, and will procure such written consents and binding agreements as may be necessary from any security holder, financier or other third party having or seeking a security interest or other interest or estate in the Properties as are necessary. The overall security positions of MSD and any other security holder or financier to the Provider may require the entry into by the Provider, MSD and any other security holder or financier of a tripartite or multiparty security deed regulating those parties' respective rights and security positions. MSD may at its discretion require entry into such a deed as a condition of Upfront Development Cost Funding.

### **3 Discharge**

MSD will discharge any encumbrance or land covenant in gross in respect of a Property that permanently ceases to be subject to this Agreement. MSD shall not unreasonably withhold or delay any discharge of any encumbrance or land covenant in gross pursuant to clause 3 of this Schedule 10.

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## ATTACHMENT TO SCHEDULE 10: FORM OF ENCUMBRANCE

**Encumbrance instrument**  
**Section 101, Land Transfer Act 1952**

<b>Computer register(s)</b>	<b>All/part</b>	<b>Area/description of part or stratum</b>
[ CFRs ]	All	
<b>Encumbrancer</b>		<i>Surname(s) must be <u>underlined</u>.</i>
[ TBC ]		
<b>Encumbrancee</b>		<i>Surname(s) must be <u>underlined</u>.</i>
HER MAJESTY THE QUEEN in right of New Zealand acting by and through the Chief Executive of the MINISTRY OF SOCIAL DEVELOPMENT		
<b>Estate or interest to be encumbered</b>		<i>Insert, eg. fee simple, leasehold in lease number, etc.</i>
Fee simple		
<b>Encumbrance memorandum number</b>		
N/A		
<b>Nature of security</b>		<i>State whether sum of money, annuity, or rentcharge, and amount.</i>
As set out in the Annexure Schedule		
<b>Operative clause</b>		<i>Delete words in [    ], as appropriate.</i>
<p><b>The Encumbrancer encumbers for the benefit of the Encumbrancee</b> the land in the above computer freehold register(s) with the above sum of money, annuity, or rentcharge to be raised and paid in accordance with the terms set out below and in the <del>{above encumbrance memorandum}</del> Annexure Schedule and so as to incorporate in this encumbrance the terms and other provisions set out below and in the <del>{above encumbrance memorandum}</del> <del>{and}</del> Annexure Schedule for the better securing to the Encumbrancee the payment(s) secured by this encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.</p>		
<b>Terms</b>		<i>Continue in Annexure Schedule if required</i>
1	<b>Length of term:</b> [insert length of term of Services Agreement] years commencing on [insert date of commencement of Services Agreement]	
2	<b>Payment date(s):</b> As set out in the Annexure Schedule	
3	<b>Rate(s) of interest:</b> An interest rate being three (3) percentage points above the 90 day bank bill mid rate (expressed as a percentage per annum), as displayed at or about 10.45am on page BKBM (or its successor page) of the Reuters Monitor Screen (or an equivalent) on each day during which the default continues	
4	<b>Event(s) in which the sum, annuity, or rentcharge becomes payable:</b> As set out in the Annexure Schedule	
5	<b>Event(s) in which the sum, annuity, or rentcharge ceases to be payable:</b> Upon expiry of the term	
<b>Covenants and conditions</b>		<i>Continue in Annexure Schedule if required</i>
See Annexure Schedule		
<b>Modification of statutory provisions</b>		<i>Continue in additional Annexure Schedule if required</i>
Sections 23, 185, 203-205, 289, 302-306 and Schedule 4 of the Property Law Act 2007 and sections 97, 154 and 156 of the Land Transfer Act 1952 apply to this instrument but otherwise (and without prejudice to the Encumbrancee's rights of action at common law as a rentchargee) the Encumbrancee is entitled to none of the powers and remedies given to encumbrances or mortgagees by the Land Transfer Act 1952 and the Property Law Act 2007.		

## Annexure Schedule

### Insert type of instrument

Encumbrance

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*Continue in additional Annexure Schedule, if required.*

### Continuation of "Covenants and Conditions"

#### BACKGROUND

- A. The Encumbrancer is the registered proprietor of the Land.
- B. The Encumbrancee has provided or is providing funding to the Encumbrancer to enable the development of the Land and/or the use of the Land for public housing and requires this Encumbrance to be registered on the Land to ensure that the Land continues to be used for public housing purposes including on any transfer of the Land by the Encumbrancer to a third party.
- C. The Encumbrancer has agreed to encumber the Land for the benefit of the Encumbrancee as set out in this Encumbrance.

#### DEFINITIONS AND INTERPRETATION

- 2 **Definitions:** In this Encumbrance, unless the context indicates otherwise:
- (a) **Business Day** means a day (other than a Saturday or a Sunday) on which registered banks are open for general banking business in Wellington and Auckland;
  - (b) **Encumbrance** means this encumbrance instrument;
  - (c) **Encumbrancee** means Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Social Development and includes such other New Zealand government agency or Crown entity as may assume the role of purchaser of public housing provision on behalf of the New Zealand government in place of the Ministry of Social Development;
  - (d) **Encumbrancer** means the person named as the Encumbrancer in this Encumbrance and includes any subsequent assignee of or successor to the party named as Encumbrancer;
  - (e) **GST** means goods and services tax or any tax imposed pursuant to the provisions of the *Goods and Services Tax Act 1985* (or any act in substitution thereof);
  - (f) **Land** means [insert legal description];
  - (g) **Purpose** means:
    - (i) using the Land for public housing purposes in accordance with the terms of the Services Agreement; or
    - (ii) where there is no Services Agreement in place between the Encumbrancer and the Encumbrancee, using the Land in accordance with any public housing parameters notified in writing to the Encumbrancer by the Encumbrancee; or
    - (iii) such other purpose as may be agreed in writing between the Encumbrancer and the Encumbrancee;

## Annexure Schedule

### Insert type of instrument

Encumbrance

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*Continue in additional Annexure Schedule, if required.*

- (h) **Rentcharge** means a rental charge of \$[1.00] plus GST (if applicable) per day for each unit or dwelling located on the Land (including in a multi-storey development) in respect of which the Encumbrancer is in breach of its obligations and covenants under this Encumbrance, for the duration of any breach; and
- (i) **Services Agreement** means the [*insert name*] Agreement dated [•] between the Encumbrancee and the Encumbrancer for the properties on the Land to be developed or refurbished and/or for the properties on the Land to be used for public housing purposes, including as renewed, amended or replaced from time to time.

3 **Interpretation:** In this Encumbrance, unless the context indicates otherwise:

- (a) **Defined expressions:** expressions defined in the main body of this Encumbrance have the defined meaning throughout this Encumbrance, including the background;
- (b) **Headings:** clause and other headings are for ease of reference only and will not affect the interpretation of this Encumbrance;
- (c) **Parties:** references to any party include that party's executors, administrators, successors and assigns;
- (d) **Persons:** references to a person include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) **Plural and singular:** references to the singular include the plural and vice versa;
- (f) **Clauses/schedules/attachments:** references to clauses, schedules and attachments are to clauses in, and the schedules and attachments to, this Encumbrance. Each such schedule and attachment forms part of this Encumbrance;
- (g) **Statutory provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it; and
- (h) **Negative obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.

### ENCUMBRANCER'S COVENANTS

- 4 The Encumbrancer must not without the Encumbrancee's prior written consent, during the term of this Encumbrance, use the Land, do anything on the Land or permit anything to be done on the Land, for any purpose other than the Purpose. Without limiting the rights of the Encumbrancee to recover the Rentcharge pursuant to this Encumbrance, any breach of this covenant will found an action for breach of covenant and the Encumbrancer and Encumbrancee agree will also provide grounds for injunctive relief to compel performance or to prevent any use of the Land other than for the Purpose.

## Annexure Schedule

### Insert type of instrument

Encumbrance

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*Continue in additional Annexure Schedule, if required.*

### RENTCHARGE

- 5 Subject to clause 5 below, the Rentcharge is payable by the Encumbrancer to the Encumbrancee on 31 March every calendar year.
- 6 If, during the 12 months preceding the day on which the annual Rentcharge under clause 4 is payable there has not been any breach by the Encumbrancer of any of the covenants under this Encumbrance, then the annual Rentcharge will be deemed to have been paid. However if the Encumbrancer is in breach of any of its obligations or covenants under this Encumbrance, the Encumbrancee shall be entitled to make demand for payment of the Rentcharge.
- 7 Regardless of any other rights or remedies available to or exercised by the Encumbrancee under the Services Agreement or otherwise at equity or at law, the Rentcharge shall be payable, if demand has been made in writing by the Encumbrancee, within ten (10) working days of the date of the demand, and in respect of continuing breaches a further Rentcharge shall be payable in arrears on the first working day of every month for as long as the breach remains unremedied. For the sake of clarity, a new Rentcharge will be payable for subsequent breaches.
- 8 Any failure by the Encumbrancee to make demand for payment of the Rentcharge in respect of any breach shall not operate as a waiver in respect of that or any other breach of the Encumbrancer's obligations.
- 9 The Encumbrancer shall be liable to pay interest to the Encumbrancee on demand, calculated daily, on any late payment of the Rentcharge by the Encumbrancer, at the Rate of Interest set out on the front page of this Encumbrance.
- 10 If a default is continuing on a day that is not a Business Day, the Rate of Interest to apply to that day shall be the Rate of Interest that was calculated on the immediately preceding Business Day.

### DELAY OR WAIVER

- 11 No delay or failure by the Encumbrancee to enforce any of the Encumbrancer's obligations or covenants and no indulgence granted to the Encumbrancer will prejudice the Encumbrancee's rights of enforcement under this Encumbrance.

### NOTICES

- 12 Any notice to be served on the Encumbrancer shall be served on the Encumbrancer at its head office or principal place of business.
- 13 Any notice to be served on the Encumbrancee shall be served on the then current chief executive (or current acting chief executive) of the Ministry of Social Development or such other New Zealand Government agency or Crown entity as may assume the role of purchaser of public housing provision on behalf of the New Zealand government in place of the Ministry of Social Development.

## Annexure Schedule

### Insert type of instrument

Encumbrance

Dated

Page

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of

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Pages

*Continue in additional Annexure Schedule, if required.*

### COSTS

- 14 The Encumbrancer will pay the Encumbrancee's reasonable and proper legal costs attributable to the attempted enforcement, enforcement or discharge of this Encumbrance.

### GENERAL

- 15 This Encumbrance is intended to be registered at Land Information New Zealand ahead of, and will be binding on, all transferees, tenants, lessees, mortgagees, chargeholders and any other holder of any estate or interest in the Land and their respective successors in title and assigns.
- 16 The Encumbrancee consents to the registration of any subsequent mortgage, variation of a subsequent mortgage, discharge of a subsequent mortgage, easement, variation of easement and/or surrender of easement to be registered against the title of the Land (or any part of it).
- 17 Where this Encumbrance binds or benefits a party comprising more than one person, it shall bind or benefit those persons jointly and severally.
- 18 If at any time any provision of this Encumbrance is or becomes invalid, void, illegal or unenforceable in any respect whatsoever, then:
- (a) that part or provision shall be severed from this Encumbrance;
  - (b) such invalidity and severing shall not in any way affect or impair the validity, legality and enforceability of any other part or provision of this Encumbrance; and
  - (c) in any event the parties shall enter into appropriate substitute instrument(s) to give full and proper effect to the agreements and understandings in this Encumbrance.
- 19 The Encumbrancer acknowledges that this Encumbrance has been granted for valuable consideration received, in full compensation for the grant of this Encumbrance.
- 20 The Encumbrancer and the Encumbrancee acknowledge that the primary purpose of this Encumbrance is to secure the covenants of the Encumbrancer as set out in this Encumbrance. Any payments made pursuant to this Encumbrance, including any payment of the Rentcharge, will not release the Encumbrancer from or constitute the satisfaction of, the Encumbrancer's obligations under this Encumbrance.
- 21 The Encumbrancer covenants not to take any steps whatsoever to redeem or purport to redeem the Rentcharge.