



[Insert Provider logo]

Working Draft (22.6.2018)  
NOT GOVERNMENT POLICY

# Relationship Agreement for Provision of Public Housing and Associated Services

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Her Majesty, the Queen in right of New Zealand acting by and  
through the Ministry of Social Development

[Insert full legal name of Provider]

Reference No: [●]

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Date:

## **PARTIES**

**Her Majesty, the Queen in right of New Zealand** acting by and through the Ministry of Social Development (*MSD*)

**[Insert full legal name of Provider and description]** (*Provider*)

(each a *party* and together, the *parties*)

## **BACKGROUND**

This section summarises the reasons for this Agreement and “sets the scene”. It is not part of the formal agreement.

- A. Stable housing offers a place from which individuals, families, and communities grow. It is crucial to ensuring physical and psychological well-being and central to social harmony and the achievement of positive education, health and labour market outcomes.
- B. In 2014, MSD was appointed under the Housing Restructuring and Tenancy Matters Act 1992 as the purchaser of public housing and associated services for the Crown. MSD wishes to work with the Provider, utilising a relationship-based, strategic partnering approach, to provide tenancies and associated services for its clients in need of public housing.
- C. The Provider is an expert in the delivery of quality, appropriate and stable public housing and/or services related to public housing in New Zealand and wishes to make the same available to clients referred or approved by MSD, in accordance with the following principles:
  - (a) together, we can achieve more for New Zealand, than if we act alone;
  - (b) the welfare of our tenants is at the centre of what we do;
  - (c) housing must be of the right size and configuration, and in areas of need;
  - (d) quality is essential, and innovation and sustainability are highly valued; and
  - (e) together, we must support the growth of a fair, efficient and effective community housing sector.
- D. This formal written Agreement is necessary in order to be clear about expectations, conditions and obligations. The parties see this Agreement as the founding document of what they hope will be a long term relationship, in which they will both act reasonably and in the best interests of the broader public housing outcomes. Individual transaction-based Services Agreements will be entered into by the parties from time to time, and will incorporate this Agreement.

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- E. The parties' intention is that the Relationship Management Group referred to in this Agreement will be the mechanism by which all relevant matters relating to this Agreement and each Services Agreement will be progressed, managed and addressed, and that they intend to invoke the formal contractual mechanisms included in this Agreement only where the Relationship Management Group has been unable to resolve a matter.

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**OPERATIVE PART**

The formal part of the Agreement begins here, starting in Part A with the defined terms used throughout. It then moves onto specific Parts, as follows:

Part B – Parties and Term

Part C – Services, Force Majeure Events and Changes

Part D – Payment

Part E – Confidentiality and Intellectual Property

Part F – Indemnities and liability

Part G – Step-in

Part H – Termination

Part I – Expiry and disengagement

Part J – Dispute resolution

Part K – Miscellaneous terms

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**PART A – DEFINED TERMS AND INTERPRETATION**

In this Part we define terms used throughout this Agreement and also include some rules on how to interpret this Agreement.

**1 DEFINITIONS****1.1 Defined terms**

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

*Agreement* means this Relationship Agreement for Provision of Public Housing and Associated Services, and includes the terms of any relevant Services Agreement;

*Availability Breach* means, on any date, that more than 10 per cent of all Properties have met one or more Unavailability Categories (if any);

*Available* has the meaning given in a Services Agreement;

*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;

*Change of Ownership* means:

- (a) any disposal of any direct or indirect 25 percent or more ownership interest in the Provider; or
- (b) any change in the effective management or control of the Provider;

*Claim* includes any claim, demand or legal proceeding, including by way of contribution or indemnity, for payment of money, for an extension of time or relief from performance of obligations, however arising;

*Commencement Date* means:

- (a) in relation to this Agreement, the date of this Agreement; and
- (b) in relation to any particular Services Agreement, the date on which that Services Agreement commences in accordance with its terms (including subject to any Conditions Precedent);

*Conditions Precedent* means the conditions precedent listed in the Services Agreement;

*Confidential Information* means all information made available by MSD or the Provider to the other (the *recipient*) about itself, its owners, its business, its financial situation, the Services and any Intellectual Property Materials, other than any information that:

- (a) is already in the public domain or known to the recipient;
- (b) is independently developed by the recipient; or

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(c) is required to be disclosed by virtue of any Laws, court order or stock exchange rules;

*Consent* means any consent, authorisation, permit, licence, registration or exemption issued by a governmental entity, judicial or regulatory body or stock exchange required to enable the Provider to perform under this Agreement;

*Contract Documents* means this Agreement, any Financier Direct Deed, any Services Agreement and all associated documents;

*Disengagement Period* means the period during which Disengagement Services are to be provided, upon the end of the relevant Term;

*Disengagement Plan* means the finalised disengagement plan established by the Provider as required by this Agreement or any Services Agreement;

*Disengagement Services* means the disengagement services (if any) to be provided by the Provider in accordance with this Agreement and/or the Operational Manual;

*Dispute* means any dispute or disagreement about any aspect of any Contract Document, as referred to in clause 26.1;

*Disputed Amount* has the meaning given in clause 13.4(a);

*Eligible Tenant* means an eligible tenant as that term is defined by section 92(7) of the HRTM Act and includes a person paying a market rent who is not eligible for an IRRS (as defined in the relevant Services Agreement) but is nonetheless eligible for public housing;

*Expert Determination* means determination by an Independent Expert in accordance with clause 27;

*Expiry Date*, in relation to any particular Services Agreement, means the date on which that Services Agreement is due to expire;

*Financial Records* means all financial information relating to the Services, as required under clause 9.2;

*Financier Direct Deed* means a deed made between, among others, MSD, the Provider and the Provider's external financiers (or an agent of them) that regulates their respective rights and powers as between them with regard to the Provider, in the form approved by MSD and identified as such in a Services Agreement;

*Force Majeure Event* means any circumstance or event beyond the reasonable control of the Provider and which could not have been prevented by the exercise of all proper care and diligence, good contingency planning or observance of Good Industry Practice;

*Good Industry Practice* means that degree of skill, care, prudence, foresight and operating practice that would reasonably be expected of a skilled and competent supplier of services of the type provided under this Agreement;

*GST* means goods and services tax chargeable under the GST Act;



*GST Act* means the Goods and Services Tax Act 1985;

*Housing Improvement Regulations* means the Housing Improvement Regulations 1947;

*HRTM Act* means the Housing Restructuring and Tenancy Matters Act 1992;

*Independent Expert* has the meaning given in clause 27(a);

*Insolvency Event* means, in relation to a person, that the person:

- (a) is insolvent;
- (b) is liquidated or has a liquidator, receiver, statutory manager, administrator or similar official appointed;
- (c) enters into any compromise with creditors or scheme of arrangement with creditors (except as part of a solvent reconstruction or amalgamation first approved by MSD in writing); or
- (d) threatens to suspend payment of its debts; or
- (e) ceases to carry on business in New Zealand; or
- (f) has any security enforced against the whole or a substantial part of its assets; or
- (g) has any similar event occur in relation to it;

*Intellectual Property* means all patents, registered designs, trade marks, logos, trade dress, copyright, domain names, rights in computer software and databases, rights in inventions, know-how and business process and methods (including applications for the grant of any of the foregoing);

*Intellectual Property Materials* means any software, firmware, documented methodology or process, documentation or other material whatsoever in either or both human readable or computer readable form that wholly or partly contain Intellectual Property;

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

*Laws* means those principles of New Zealand law established by the courts, statutes, regulations, ordinances, by-laws and any other subordinate forms of rule-making of government, any local authority, or any governmental entity as well as any Consents (and any conditions or requirements under them);

*Liability* includes any debt, obligation, expense, loss, damage, cost, charge or other liability of any kind;

*Losses* or *Loss* means all damages, losses, Liabilities, costs, expenses and charges;

*Material Adverse Effect* means a material adverse effect (including cost increase) on either party's rights or ability to perform under this Agreement or any Services Agreement;

*MSD Personnel* means:

- (a) any officer, employee, contractor, sub-contractor or agent of or to MSD (excluding the Provider and any of its sub-contractors);
- (b) any agency to whom MSD's powers have been delegated in accordance with the State Sector Act 1988 and any employee of or contractor to that agency;
- (c) any employees of or contractors to The Treasury, the Inland Revenue Department, the Department of Prime Minister and Cabinet and the State Services Commission;
- (d) the Auditor-General and any employee of, or contractor to, the Office of the Auditor-General (including their employees); and
- (e) any Minister of the New Zealand Government to whom the Chief Executive of MSD or The Treasury reports and any staff working in that Minister's office;

*MSD Public Housing Client System* means the online electronic communications system (and associated back-up system) which is operated by MSD to communicate with community housing providers, for purposes including:

- (a) to communicate with Eligible Tenants and Transitional Housing Eligible Tenants for a vacant or soon to be vacant Property;
- (b) to manage placements of Public Housing Clients in Properties;
- (c) to submit availability reporting and invoices; and
- (d) to communicate about changes to tenancies or about Tenants;

*MSD's Representative* means the person for the time being appointed by MSD as its representative under this Agreement and any Services Agreements;

*Occupant* means a Transitional Housing Eligible Tenant who has been provided a Property to reside in on a short term basis in accordance with a Services Agreement;

*Operational Manual* means the operational manual or guidelines as from time to time published by MSD on its website, containing the operational detail around how the Services should be provided, including as to monitoring and reporting;

*Payment Period* means:

- (a) each 14-day period during the Term starting on the first available Saturday and ending on the second next Friday; and
- (b) any applicable shorter period to cater for the beginning and end of the Term;

*Performance Breach* means a breach of the performance measures set out in the relevant Services Agreement;

*Persistent Availability Breach* means, on any date, that more than 10 percent of all Properties have met one or more Unavailability Categories (if any) in the preceding 12 months;

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*Persistent Failure* means, on any date, that in the preceding 12 months, the Provider has consistently failed to meet, or to remedy to MSD's satisfaction a breach of, its material obligations under this Agreement or a Services Agreement;

*Personal Information* means information about an identifiable individual, which includes personal information about Public Housing Clients;

*Prescribed Rate* means, as at any date, the rate that is 3% above the 90-day bank bill bid settlement rate displayed on page BKBM (or its successor page) of the Reuters Monitor Screen around 10:45 a.m. on that date;

*Property* means any property identified under a Services Agreement as a property to be made Available or to be let to a Public Housing Client, including any individual dwelling capable of being separately tenanted;

*Property Management Requirements* means the property management requirements and obligations on the Provider in relation to the Properties set out in the Operational Manual;

*Provider's Representative* means the person designated by the Provider as its representative under this Agreement and any Services Agreements;

*Public Housing Client* means an Eligible Tenant, a Transitional Housing Eligible Tenant and/or a Tenant (as the context requires);

*Qualifying Change in Law* has the meaning given in clause 12.4(a);

*Records* means the Service Records and the Financial Records;

*Regulatory Authority* means the authority appointed under section 159 of the HRTM Act, responsible for regulating community housing providers, known at the Commencement Date as the Community Housing Regulatory Authority;

*Relationship Management Group* means the relationship management group in respect of this Agreement and the Services Agreements, comprising of at least MSD's Representative and the Provider's Representative and such other members agreed by MSD's Representative and the Provider's Representative (provided that each party will (unless otherwise agreed by the parties) have an equal number of members of the relationship management group);

*Reports* means the reports the Provider is required to prepare and make available to MSD under this Agreement and a Services Agreement;

*Residential Tenancies Act* means the Residential Tenancies Act 1986;

*Service Records* means records relating to the Services as required under clause 9.1;

*Services* means, in respect of any Services Agreement, the public housing and associated services described in that Services Agreement to be provided by the Provider;

*Services Agreement* means any set of specific supply terms agreed from time to time between MSD and the Provider for the provision of specific public housing

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and/or associated services, that is to be read with, and incorporates the terms set out in, this Agreement;

*Services Payment* means, in respect of a Payment Period, the payment to be made by MSD to the Provider, calculated in accordance with the applicable Services Agreement;

*Step-in Rights* means MSD's rights to step in (if any) under Part G of this Agreement and the relevant Services Agreement;

*Tax* means any present or future tax, levy, impost, deduction, charge, duty or withholding of any type (other than GST) that is levied or imposed by a governmental entity, plus any associated interest, penalties, charges or fees also imposed;

*Tenancy Agreement* means a tenancy agreement between the Provider and a Tenant that complies with the Residential Tenancies Act, all other applicable Laws and the terms of this Agreement;

*Tenancy Management Requirements* means the tenancy management requirements and obligations on the Provider in relation to the Tenants set out in the Operational Manual;

*Tenant* means an Eligible Tenant who is the tenant named in a Tenancy Agreement and/or an Occupant (as the context requires);

*Term* means:

- (a) in respect of this Agreement, the period from the Commencement Date to the earlier of:
  - (i) the date the parties agree to terminate this Agreement under clause 5(c);
  - (ii) the date this Agreement terminates pursuant to clause 22.2; and
  - (iii) the Termination Date; and
- (b) in respect of a Services Agreement, the period from the Commencement Date to the earlier of:
  - (i) the Expiry Date; and
  - (ii) the date the Services Agreement is terminated pursuant to the Services Agreement or this Agreement;

*Termination Date* means the termination date specified in a Termination Notice;

*Termination Event* means a termination event as listed in clause 22.3(a) and clause 22.3(b);

*Termination Notice* means a notice of termination issued following the occurrence of a Termination Event in accordance with clause 22.3(a) or clause 22.3(f);

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*Transitional Housing Eligible Tenant* means a person who is identified in the MSD Public Housing Client System as being homeless (that is, living in inappropriate conditions, for example currently residing in cars, tents, garages, caravans, or sleeping rough), or who is otherwise able to prove the seriousness of their housing situation, who is either:

- (a) referred to the Provider by MSD; or
- (b) identified by, or has made themselves known to, the Provider in accordance with the requirements of a Services Agreement;

*Unavailable* means, in respect of a Property, that the Property meets any one or more of the Unavailability Categories and *Unavailability* will be construed accordingly;

*Unavailability Categories* means the categories of unavailability that are set out in the relevant Services Agreement (if applicable), being the situations where a Property is considered unavailable by MSD to house an Eligible Tenant;

*Unavailability Deduction* means, the daily amount due in respect of any Property that is Unavailable, depending on the reason for or circumstances of the Unavailability, on that day, as set out in the relevant Services Agreement;

*WorkSafe* means WorkSafe New Zealand or any successor regulator under the Health and Safety at Work Act 2015; and

*Year* means a year during the Contact Term, being the 12 month period from 1 January to 31 December in that year, and includes any shorter period during the first and last years of the Term.

## 2 PRINCIPLES OF INTERPRETATION

- (a) In this Agreement, unless the context otherwise requires, or any Services Agreement otherwise provides:
  - (i) references to public housing include including public housing, social housing, state housing, emergency housing and transitional housing (and/or any services related to any of them), in each case provided by MSD and/or procured by MSD from Housing New Zealand Limited, registered community housing providers or transitional and emergency housing providers (as applicable);
  - (ii) references to clauses, schedules or annexures are references to clauses, schedules or annexures of or to this Agreement;
  - (iii) a gender includes other genders;
  - (iv) different grammatical forms of defined expressions have corresponding meanings;
  - (v) the singular includes the plural and vice versa;
  - (vi) a reference to a person includes any form of legal entity or body of persons, including its successors and permitted assigns;

- (vii) any agreement not to do a thing is also an agreement not to permit or cause that thing to be done;
  - (viii) any reference to a security interest includes a security interest within the meaning of section 17 of the Personal Property Securities Act 1999;
  - (ix) any reference to approval, consent, notice or waiver being required is to prior written approval, consent, notice or waiver;
  - (x) any requirement to give notice or to advise or signal something means to do so in writing;
  - (xi) "includes" or "including" do not imply any limitation;
  - (xii) "written" and "in writing" include email communications;
  - (xiii) a reference to any legislation includes that legislation as modified or re-enacted and all regulations, orders in council, other instruments and/or standards rules under it;
  - (xiv) a reference to any document includes a reference to that document as varied, supplemented, novated, replaced or substituted from time to time;
  - (xv) headings are for reference only and do not affect interpretation;
  - (xvi) a reference to days is to calendar days of the year;
  - (xvii) a reference to currency is a reference to New Zealand currency;
  - (xviii) if something has to be done on or by a day that is not a Business Day, it can be done on the immediately succeeding Business Day;
  - (xix) this Agreement is not to be interpreted against MSD simply because it drafted it.
- (b) The Provider is to have regard to the principles set out in paragraph C of the Background to this Agreement when providing the Services, as well as the intention of the parties recorded in paragraph E of the Background to this Agreement. The obligations of the Provider under or in relation to this Agreement and each Services Agreement are to be interpreted to give effect to the principles set out in paragraph C of the Background to this Agreement.

**PART B – PARTIES AND TERM**

This Part describes the relationship between the parties and how generally they will work together, how this Agreement works with different sets of Services Agreements from time to time and what the contractual term is.

**3 PROVIDER AND MSD****3.1 Relationship and authority**

- (a) The Provider is an independent contractor to MSD. Nothing in this Agreement or in any Services Agreement creates any agency, employment, fiduciary, partnership, trust, or joint venture relationship between MSD and the Provider.
- (b) Neither MSD nor the Provider has authority to enter into contracts or incur debts on behalf of the other, and must not represent that it has any such authority.

**3.2 Relationship between this Agreement and a Services Agreement**

- (a) This Agreement sets out the core terms applicable to MSD's and the Provider's contracting arrangements for the provision of public housing. It continues in force until terminated in accordance with its terms.
- (b) The terms of this Agreement apply to all Services provided to MSD, and are incorporated into each Services Agreement that the Provider and MSD enter into on and from the Commencement Date.
- (c) A Services Agreement must be signed by both the Provider and MSD in respect of each particular set of Services that the Provider is to provide to MSD, and each Services Agreement is a distinct contract (and a tailored agreement as defined in the HRTM Act).
- (d) From time to time MSD may also publish an Operational Manual, other manuals and guidelines. These take second priority to this Agreement and any Services Agreement, but need to be observed. The Operational Manual and other manuals and guidelines may be replaced or updated from time to time (so long as such replacement or update does not add significant extra cost or risk to the Provider).

**3.3 Precedence of Contract Documents**

- (a) If there is any conflict between the terms of this Agreement and any Services Agreement, the terms of the Services Agreement will prevail, because it is important that flexibility be preserved to enable the needs of any particular public housing supply or transaction to be met.
- (b) The Contract Documents will otherwise have the order of precedence set out in the relevant Services Agreement.

**3.4 Mutual obligations**

MSD and the Provider each agree:

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- (a) that they wish to build a strong, relationship-based strategic partnership with each other to help the New Zealand Government meet its goal of making sure that those who need public housing get the assistance that they need;
- (b) to co-operate fully with each other to achieve the purposes of this Agreement and each Services Agreement in the spirit of good faith, openness and transparency, and consistently with the principles of innovation, accessibility and proportionality;
- (c) to share information in a timely fashion on a 'no surprises' basis, including anything that might adversely affect MSD's reputation or the Provider's reputation, or be of public interest;
- (d) to consult as early as practicable about anything that may materially affect its performance under this Agreement or about any possible or actual breach of this Agreement; and
- (e) not to do anything that would cause the other to be in breach of applicable Laws (but this does not affect any exercise of executive or legislative power).

### 3.5 Provider registration and consents

The Provider is to:

- (a) ensure that it maintains at all times such registration with the Regulatory Authority, under the HRTM Act, as is specified in any Services Agreement or is otherwise required under the HRTM Act;
- (b) ensure it holds such MSD social sector accreditations as are specified in any Services Agreement; and
- (c) hold and comply with all Consents required in relation to the Services.

### 3.6 Employees, agents, contractors and sub-contractors

- (a) The Provider may enter into a sub-contract in respect of any part of the Services provided the subcontractor is first approved by MSD.
- (b) MSD will be responsible for any MSD Personnel. The Provider will be responsible for the acts and omissions of its own personnel, including its officers, employees, agents, contractors and sub-contractors.
- (c) Each of MSD and the Provider will be taken to have at least the same knowledge as the MSD Personnel or the Provider's personnel (including its officers, employees, agents, contractors and sub-contractors), as the case may be, or that which ought reasonably to be held by any of them.

### 3.7 Provider warranties

- (a) MSD has entered into this Agreement and each Services Agreement in reliance on the warranties and representations made in this clause 3.7.
- (b) The Provider warrants and represents to MSD throughout the Term that:



- (i) it is a properly constituted legal entity and has the power and the authority to own its assets, to carry on its business and to enter into and perform under the Contract Documents;
- (ii) it is not immune from legal proceedings, the Contract Documents are not contrary to Laws or any court order or third party contract, and MSD will be able to enforce them against the Provider;
- (iii) MSD's use of information provided to it by the Provider will not breach the Intellectual Property rights of any third party; and
- (iv) the Provider is not subject to any actual, threatened or likely Claim that could have a Material Adverse Effect on it.

#### 4 **INFORMATION SHARING**

##### 4.1 **Accuracy of information**

Each of MSD and the Provider acknowledge that to the extent that it has provided the other with information collected from a Public Housing Client or other third party, it has no control over that information or its accuracy. Neither makes any warranty about any information it provides to the other, but will provide all information in good faith.

#### 5 **TERM AND CONDITIONS PRECEDENT**

- (a) This Agreement and each Services Agreement commence on the relevant Commencement Date.
- (b) The Conditions Precedent in respect of a Services Agreement (if any) must be met by the Provider by the date specified and otherwise as soon as possible (with notice of this to MSD), and to MSD's satisfaction. Only MSD can waive them. If they are not met by the due date, MSD may terminate the Services Agreement, which will then be of no further effect.
- (c) Subject to clause 22.1, this Agreement continues in force until the parties agree in writing to terminate it (or it is otherwise terminated in accordance with clause 22.2 or clause 22.3).
- (d) Each Services Agreement continues in force for the Term.

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**PART C – SERVICES, FORCE MAJEURE EVENTS AND CHANGES**

This Part describes the Services to be provided by the Provider and what it has to do to comply with MSD's requirements (including in relation to record keeping and reporting, what happens if it is prevented from performing its obligations because of force majeure, and how this Agreement can be changed).

**6 SERVICES****6.1 General**

- (a) The Provider is to provide the Services:
- (i) on the terms and conditions of this Agreement and the Services Agreement;
  - (ii) in a manner that ensures the personal privacy and dignity of Public Housing Clients is respected, and any disruption to them is minimised as far as practicable;
  - (iii) in a manner that respects and is appropriate to Public Housing Clients' religious and cultural beliefs and practices, age, gender and any disabilities;
  - (iv) in accordance with Good Industry Practice;
  - (v) in accordance with all applicable Laws, including all relevant environmental and planning Laws, the Residential Tenancies Act, the HRTM Act, the Housing Improvement Regulations, the Privacy Act, the Human Rights Act 1993, the Health and Safety at Work Act 2015 and, where the Provider is also providing children's services, the Vulnerable Children Act 2014;
  - (vi) in accordance with the Operational Manual (including the Tenancy Management Requirements and the Property Management Requirements) and other manuals and guidelines as MSD may publish from time to time; and
  - (vii) in accordance with MSD's reasonable directions, so long as they are not inconsistent with the terms of the Services Agreement.
- (b) If the Provider fails to undertake any required work in order for a Property to meet the requirements of this Agreement or the relevant Services Agreement (or for the Provider to comply with this Agreement or the relevant Services Agreement), MSD may undertake that work at the Provider's expense but will first notify the Provider that it intends to do so.
- (c) The Provider is to ensure it is listed in MSD's Family Services Directory (<http://www.familyservices.govt.nz/directory>) and that the necessary information is updated when required, unless the relevant Service being provided is exempt.

WORKING DRAFT

## 6.2 Co-ordination and co-operation

The parties acknowledge that a range of different organisations and people are involved in the provision of goods and services in relation to the Properties and Tenants. The Provider is to coordinate and cooperate with such other organisations and people in a positive and timely manner, including by providing access, assistance and information reasonably required and by abiding by and entering into any necessary coordination or interface agreements.

## 6.3 Advice to be given to MSD

The Provider is to promptly advise MSD of the following matters affecting or which may affect any Property or Services:

- (a) any material damage;
- (b) any event that could give rise to:
  - (i) a material health or safety risk; or
  - (ii) any serious accident or injury or fatality to do with the Provider or any sub-contractor;
- (c) any industrial action and the Provider's response to it;
- (d) any substantial dispute between the Provider or any of its related companies or sub-contractors and any governmental or semi-governmental entity or agency (including any local or statutory authority);
- (e) any Termination Event;
- (f) any Claim threatened or initiated against the Provider; and
- (g) any event or circumstance that could materially adversely affect the Provider's ability to perform under the Contract Documents or would, within time, become a Provider default under any Contract Document.

## 6.4 Health and safety

The Provider is to have a health and safety plan that adequately addresses its duties under this Agreement, any Services Agreements and the Health and Safety at Work Act 2015, and the parties are to consult, cooperate and coordinate with each other with regard to health and safety in respect of the Properties, the relevant Public Housing Clients and the Services.

## 6.5 Performance Measures

The Provider is to meet any performance measures included in any Services Agreement. To the extent the Provider does not meet any performance measures included in any Services Agreement, the relevant consequences set out in the relevant Services Agreement will apply.

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## 7 RELATIONSHIP MANAGEMENT

- (a) MSD and the Provider agree to work together in good faith in accordance with the roles and responsibilities outlined in this Agreement and to improve the social housing outcomes of New Zealanders in need. The Relationship Management Group will oversee the practical implementation and performance of this Agreement and each Services Agreement. The Relationship Management Group is to have regard to the parties' intention set out in paragraph E of the Background to this Agreement.
- (b) The Relationship Management Group is to liaise regularly to monitor performance, review the effectiveness of the Services and identify early any issues and any opportunities for improvement. The Relationship Management Group is to meet monthly or regularly as otherwise agreed, by whatever means suit, and at least one representative of each party must attend a meeting for it to have a quorum. MSD will provide a draft agenda and minutes, and these will then be finalised by the parties.
- (c) Each party is to:
  - (i) ensure that its members of the Relationship Management Group have regard to the relationship-based, strategic partnership approach set out in paragraph B of the Background to this Agreement, the obligations of the parties set out in clause 3.4, the principles set out in paragraph C of the Background to this Agreement and the parties' intention set out in paragraph E of this Background to this Agreement; and
  - (ii) vest sufficient authority in its members of the Relationship Management Group to enable them to discharge their role effectively. The members must communicate proactively and openly, to deliver the outcomes and objectives of this Agreement and each Services Agreement.
- (d) The Services Agreement may include additional requirements in relation to the Relationship Management Group, suitable to the circumstances of any particular Services Agreement.
- (e) Decisions of the Relationship Management Group are not intended to be binding on the parties or to detract from the contractual rights or obligations of either MSD or the Provider, unless implemented as an express written direction from MSD or as a formal change under clause 12 of this Agreement.

## 8 INFORMATION, RECORDS AND REPORTING

### 8.1 Records

Without limiting its obligation to comply with Laws generally, the Provider is to maintain sufficient records, and assist MSD when requested, so that MSD can meet its obligations under the Official Information Act 1982, the Ombudsmen Act 1975 and the Public Records Act 2005.

## 8.2 Regular reporting and compliance certificate

- (a) The Provider is to provide MSD with such reports and notifications as are required under, and within the timeframes stipulated in, any Services Agreement.
- (b) Subject to clause 8.4, the Provider is to also provide MSD with:
  - (i) a copy of any report provided to the Regulatory Authority (including pursuant to section 175 of the HRTM Act);
  - (ii) following request by MSD, a copy of every notice given to the Provider by the Regulatory Authority (including under section 177(3) of the HRTM Act relating to the Regulatory Authority's decision in respect of a complaint made about the Provider, and a copy of every subsequent decision or notice following any investigation of that complaint, including any appointment made to the Provider's governing body);
  - (iii) a copy of all reports made to WorkSafe in relation to notifiable events under the Health and Safety at Work Act 2015, at the same time they are provided to WorkSafe;
  - (iv) notification of any breach or likely breach by the Provider of any Contract Documents, including its obligations to comply with Laws and Consents;
  - (v) a "no surprises" notification of any adverse matter in terms of clause 3.4(c); and
  - (vi) any additional reports and information relating to the Services that MSD may reasonably request.
- (c) The Provider is to provide to MSD, within 10 Business Days of the end of each calendar quarter, a compliance certificate signed by a director or trustee (as applicable) in the form set out in the Operational Manual certifying compliance with the Provider's obligations under this clause 8.2 and clause 9.

## 8.3 Financial information

Subject to clause 8.4, the Provider is to provide to MSD the following, within five Business Days of their preparation:

- (a) if requested by MSD, its monthly management accounts;
- (b) if requested by MSD, its quarterly management accounts;
- (c) its annual audited and half yearly accounts, in each case prepared in accordance with GAAP (being "generally accepted accounting practice" as defined in the Financial Reporting Act 2013); and
- (d) its annual report and its annual business plan, including the Provider's budget for the current and next two financial years.

#### 8.4 Relaxation of requirements

MSD may relax, waive or modify the reporting requirements in clause 8.2 and/or clause 8.3, as well as the record-keeping requirements in clause 9, so as to reduce the reporting and record-keeping burden on the Provider and any duplication with the reporting required to the Regulatory Authority under the HRTM Act if an alternative means of sourcing the relevant information can be arranged that meets MSD's requirements. For this purpose, the Provider authorises MSD to liaise with the Regulatory Authority and consents to MSD receiving information about the Provider and its performance, systems and processes (and also consents to MSD relying on such information) directly from the Regulatory Authority. The Provider agrees that MSD may provide the Regulatory Authority with a copy of this consent if required by the Regulatory Authority.

### 9 RECORD KEEPING

#### 9.1 Service Records

- (a) The Provider is to maintain all information relating to the Services, including information relating to:
  - (i) the Provider's performance monitoring;
  - (ii) the Services carried out;
  - (iii) all insurance claims; and
  - (iv) notifiable events under the Health and Safety at Work Act 2015, near misses and incidents relating to security that have occurred during the Term (and in this regard, the Provider is to comply with the Public Records Act 2005).
- (b) MSD may disclose any of the above Service Records to a potential new provider in the course of retendering for the Services, but must first redact the Provider's commercially sensitive financial information.

#### 9.2 Financial Records

The Provider is to maintain all financial information relating to the provision of Services under this Agreement and any Services Agreements, including copies of all written consents and approvals, or waivers or releases in respect of any breaches by the Provider under its financing arrangements.

#### 9.3 Maintenance of Records

The Provider is to:

- (a) ensure that the Records are always up to date, in enough detail for MSD to reconcile all Reports and invoices;
- (b) hold Records and other required information in readily accessible and useable format, compatible with MSD's computer systems, so that MSD can access them;

- (c) ensure all Records are maintained such that an alternative provider can perform the Services if necessary;
- (d) retain Records for the Term and for at least seven years after it ends; and
- (e) only use Records for the purposes of this Agreement and the relevant Services Agreement.

#### 9.4 Unauthorised use of Records

If either the Provider or MSD becomes aware or suspects that any unauthorised person has accessed or tried to access any Records, Confidential Information or Personal Information, or that any person used any of them other than for the purposes of this Agreement or a Services Agreement, it will:

- (a) immediately notify the other party;
- (b) take all available steps available to it to identify those unauthorised persons; and
- (c) (in consultation with the other party) make such changes to its systems and operations as will prevent, as far as is practicable, the re-occurrence of such security breach.

#### 9.5 Access to and inspection of Records

- (a) The Provider is to ensure MSD has access to:
  - (i) all Records maintained by the Provider;
  - (ii) any other information relevant to the Provider's performance under this Agreement and each Services Agreement; and
  - (iii) the Provider's office systems, to enable MSD to have electronic access to all Records held electronically.
- (b) The Provider is to facilitate any physical inspection of Records by MSD Personnel.
- (c) MSD may take a copy of any Records during the course of any inspection.
- (d) The Provider is to provide a report on all or any of the Records to MSD as and when requested by MSD.

#### 9.6 Relaxation of record-keeping requirements

This clause 9 is subject to clause 8.4.

#### 9.7 Assistance in responding to Parliamentary questions

The Provider is to fully and promptly co-operate with MSD if information is required from the Provider to enable MSD or a Minister to respond to a Parliamentary or Select Committee question.

## 9.8 Controller and Auditor-General

The Provider is to permit, and procure that each sub-contractor permits, the Controller and Auditor General (or his or her appointee) to examine any Records for the purposes of the Public Audit Act 2001 and is to provide him or her with such explanations as may be needed.

## 10 MONITORING OF SERVICES

### 10.1 Provider monitoring

The Provider is to regularly monitor its performance under this Agreement and each Services Agreement.

### 10.2 MSD monitoring

- (a) MSD may undertake its own performance monitoring of the Provider, including to ensure that the Services are being provided in accordance with this Agreement and the relevant Services Agreement. The Provider is to assist MSD as required with that monitoring.
- (b) MSD will notify the Provider of the outcome of the performance monitoring exercise, and the Provider is to have due regard to MSD's comments in terms of how it provides the Services.
- (c) If MSD finds evidence of any misleading or incorrect Provider reporting or claims for payment, MSD may increase the level of:
  - (i) its own performance monitoring; and/or
  - (ii) the Provider's required monitoring of its own performance under this Agreement and the relevant Services Agreement.
- (d) The Provider will be required to meet MSD's reasonable costs of any increased monitoring.

## 11 FORCE MAJEURE EVENTS

### 11.1 No liability for breaches caused by Force Majeure Event

- (a) The Provider will not be liable for any default or delay in its performance if and to the extent that default or delay is caused by a Force Majeure Event. A Property will not be considered to have failed to meet any required standard under this Agreement or a Services Agreement if that failure is caused by a Force Majeure Event.
- (b) If it wishes to invoke this clause 11, the Provider is to give MSD notice that a Force Majeure Event has occurred as soon as it can, including:
  - (i) the nature of the Force Majeure Event;
  - (ii) when it occurred and how long it will likely last;
  - (iii) its expected effect on the Provider's ability to perform; and



(iv) which Properties and which Tenants are affected,

and the Provider is to keep MSD fully and accurately informed about the Force Majeure Event and its effect on an ongoing basis.

- (c) The Provider is to use reasonable endeavours to overcome or mitigate the effect of the Force Majeure Event as quickly as is practicable and to continue to perform under this Agreement, on time, including by sourcing alternative Properties, if practicable (but without the Provider being required to incur significant extra expense).
- (d) The Provider is to notify MSD, as soon as it can, once the Force Majeure Event has ceased.

### 11.2 **Alternative arrangements and Step-in Rights**

MSD may make its own arrangements for alternative means of providing any Service that has been suspended as a result of a Force Majeure Event, and in any such case MSD's Step-in Rights will be available. The Provider's right to relief because of a Force Majeure Event does not affect MSD's ability to exercise its Step-in Rights.

### 11.3 **Termination right**

MSD may terminate the relevant Services Agreement under clause 22.4 in relation to any extended Force Majeure Event.

### 11.4 **Disputes**

Either MSD or the Provider may refer to Expert Determination any disagreement between them about a Force Majeure Event.

## 12 **CHANGE PROCEDURE**

### 12.1 **How this Agreement can be changed**

This Agreement and any Services Agreement can only be changed in the manner specified in this Agreement or in the relevant Services Agreement.

### 12.2 **Change compensation principles**

MSD will only pay the Provider a compensation amount for a change of costs in respect of a change to this Agreement effected under this clause 12. In determining the amount of compensation payable, the following change compensation principles will apply:

- (a) appropriate regard must be had to the timing of cash flows;
- (b) the Provider is to do what it reasonably can to mitigate the effect of the change, including through obtaining competitive quotations where relevant;
- (c) there can be no double-counting; and
- (d) the compensation calculation must take full account of any insurance proceeds, damages and other amounts payable to the Provider (as if it had

insured, as required under the relevant Services Agreement, and actually made a claim).

### 12.3 Changing this Agreement generally

(a) MSD and the Provider may, acting reasonably, each propose a change to this Agreement (other than a change resulting from a change in Law which is dealt with under clause 12.4) (including to give effect to a MSD direction which results in additional cost) by giving notice to the other containing details of the proposed change, which notice must include:

- (i) the reasons for the proposed change, including a brief explanation of the costs and benefits to the parties;
- (ii) the feasibility of the change, and how and when it could be implemented or completed (as applicable);
- (iii) the impact of the change on the Services, timeframes, the terms of this Agreement and MSD or the Provider's (as applicable) ability to perform under it;
- (iv) if the result of a MSD direction, why it should be treated as a change;
- (v) any change in costs (on an open book basis);
- (vi) any competitive quotations received;
- (vii) any implications for the Provider's existing Tenants, and how they will be managed and disruption minimised;
- (viii) any implications in terms of the Provider's registration under the HRTM Act;
- (ix) the implications of not implementing the change; and
- (x) any other matter likely to be relevant,

and must also attach a draft amendment document recording the relevant change proposed to this Agreement.

(b) The Provider must not seek reimbursement of costs for any matter to the extent already covered by this Agreement, or to the extent it results from the Provider's own act or omission.

(c) The parties will act fairly and reasonably with regard to any proposed change to this Agreement, having regard to reasonably expected financial and operational implications for the parties, the principles set out in the Background to this Agreement, the terms agreed on in entering into this Agreement, what has triggered the perceived need for the change and what increased economic benefit or burden results to either party. However, MSD will be entitled ultimately to refuse a change proposed by the Provider or to impose a change on the Provider, so long as this clause 12.3(c) and clause 12.3(d) are complied with. Any Dispute about the change will need to be

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resolved through clauses 26.1 and 26.2 (and if that does not resolve it, either party may refer the dispute to Expert Determination for resolution).

- (d) The Provider may refuse an MSD-initiated change only where that Change would:
- (i) cause the Provider to incur any additional capital expenditure, unless MSD has agreed to fund it; or
  - (ii) require the Services to be performed by the Provider in a way that infringes any Law; or
  - (iii) be inconsistent with Good Industry Practice; or
  - (iv) cause any Consent to be revoked; or
  - (v) materially and adversely affect the health and safety of anyone living in or working on the Properties; or
  - (vi) cause the Provider to lose its registration as a Class 1 Social Landlord; or
  - (vii) cause any existing insurance policy or contract for insurance that is required to be procured, held and maintained by the Provider under this Agreement and any Services Agreement to become void or voidable.

#### 12.4 Change in Laws

- (a) The Provider is to comply with this Agreement even if relevant Laws change from their actual or reasonably foreseeable state as at the date of this Agreement or the relevant Services Agreement (for example, because change has been foreshadowed or announced). However, some financial relief may be available under clause 12.4(d)(i) where the change in Laws expressly and exclusively applies to the Properties, to public housing providers providing public housing and related services to MSD or to registered community housing providers (*Qualifying Change in Law*).
- (b) The Provider and MSD may each notify the other of an actual or impending Qualifying Change in Law, explaining the likely effects of the Qualifying Change in Law on the operation of this Agreement and each Services Agreement, as soon as practicable (and ideally before it comes into force). This notice must give details of:
- (i) the resulting necessary change to the Services and the steps that the Provider will need to take as a result of that Qualifying Change in Law being implemented;
  - (ii) any increase or decrease in the Provider's costs in complying with this Agreement as a result of the Qualifying Change in Law; and
  - (iii) any changes required to this Agreement,

and must also attach a draft amendment document recording the changes required to this Agreement.

- (c) The parties are to meet promptly to discuss and agree the likely effect (including financial consequences) of the Qualifying Change in Law and how the Provider can minimise or mitigate its effects.
- (d) Within 10 Business Days of that meeting, MSD is to either:
  - (i) accept the Provider's change proposal (or agree a variation of it), including in respect of any compensation payable for a change of costs as a result of the Qualifying Change in Law; or
  - (ii) amend this Agreement as far as necessary to avoid or mitigate the consequences of the Qualifying Change in Law; or
  - (iii) notify the Provider that it disputes the Provider's notice of change,

and any Dispute in relation to the above will be dealt with under clauses 26.1 and 26.2 (and if that does not resolve it, either party may refer it to Expert Determination).

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**PART D – PAYMENT**

This Part describes how the Provider is paid, how invoicing is to be done and how MSD may take a security interest or other protection for certain amounts repayable or due to it.

**13 SERVICES PAYMENT, UNAVAILABILITY DEDUCTION AND OTHER PAYMENTS****13.1 Obligation to pay**

- (a) In each Payment Period, MSD is to pay the Provider each Services Payment in accordance with the relevant Services Agreement.
- (b) A negative amount may be due, in which case this amount will then be owing to MSD by the Provider.
- (c) If provided for in the Services Agreement, the Services Payment will include Unavailability Deductions for Unavailability during a Payment Period.
- (d) The Unavailability Deductions represent the loss and damage that MSD will suffer as a result of Properties being Unavailable, and are a genuine pre-estimate of MSD's loss and not a penalty. The Provider confirms it has understood, prior to entering into this Agreement, the essential nature, intent and operation of the Availability regime, as key to ensuring Services are delivered to meet the needs of Public Housing Clients and to protect MSD's interests in receiving the Services as the purchaser of public housing and associated services for the Crown.
- (e) MSD and the Provider will also make such other payments, at the frequency and in accordance with the calculations, as specified in any Services Agreement.

**13.2 Reporting and invoicing**

- (a) Reporting for the purposes of payment calculations, and invoicing, will be as specified in the relevant Services Agreement. All invoices must be tax invoices in a form approved by MSD and be for the amount (if any) calculated to be payable by MSD, plus GST (if any).
- (b) MSD may reject as invalid a report or invoice that is incomplete, incorrect or fails to meet the requirements of the Services Agreement.

**13.3 Payment**

- (a) MSD will only pay the Provider if MSD has received a valid tax invoice from the Provider and the required reports for the Payment Period to which that invoice relates.
- (b) MSD will pay the amount stated in any valid invoice within 10 Business Days of receiving it, unless MSD disputes it.
- (c) MSD will make payments direct to the Provider's nominated bank account in New Zealand, for which the Provider must have provided a pre-printed deposit slip or other official bank confirmation.

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- (d) The mere fact of payment by MSD does not mean MSD accepts that the Provider has performed in that Payment Period, nor does it show any waiver of MSD's rights.
- (e) If a report shows a net amount owed by the Provider to MSD, the Provider will pay that amount to MSD within 10 Business Days following MSD's receipt of that report.
- (f) All late payments under this Agreement or any Services Agreement will bear interest at the Prescribed Rate from the due date until the date of actual payment.
- (g) All payments under this Agreement or any Services Agreement are to be invoiced and paid in New Zealand dollars.

#### 13.4 Disputed Amounts

- (a) MSD may withhold payment of any amount invoiced by the Provider if MSD considers it not to be due and payable as invoiced (a *Disputed Amount*), pending agreement or determination in relation to that Disputed Amount. Otherwise, MSD must pay any amount invoiced by the Provider on or before the date payment is due.
- (b) MSD will notify the Provider of any Disputed Amount within five Business Days of receipt by MSD of the relevant invoice, giving particulars of the Disputed Amount and any supporting evidence.
- (c) The Provider is to respond to MSD's notice of a Disputed Amount within a further five Business Days. If the Provider does not so respond, or agrees the Disputed Amount is not due and payable, MSD will not be required to pay the Disputed Amount.
- (d) If the Provider disputes MSD's notice of a Disputed Amount, the matter will be resolved under clauses 26.1 and 26.2 as a Dispute (and if that does not resolve it, it will be subject to Expert Determination).
- (e) If it is agreed or determined that:
  - (i) MSD has withheld an amount that the Provider was entitled to be paid; or
  - (ii) the Provider has claimed an amount that it was not entitled to be paid,the withheld amount or refund due must be paid, plus interest at the Prescribed Rate from the date on which the payment was due or the refund became owing to the date of payment in full.
- (f) The Provider is to continue to comply with this Agreement even if MSD has disputed an amount invoiced.

### 13.5 Recovery and set-off

- (a) If the Provider does not provide the Services as required, or if this Agreement or the relevant Services Agreement is terminated and any payment has been made by MSD in advance of the relevant Services being provided, MSD may:
  - (i) require the Provider to:
    - (A) repay a portion of the amount already paid to the Provider; or
    - (B) reduce the amount to be paid in respect of subsequent Payment Periods; or
  - (ii) suspend or delay future payments due until a remedy plan is agreed and implemented.
- (b) Any amount to be so repaid, reduced, suspended or delayed will be determined by MSD following discussion with the Provider.
- (c) Any repayment due from the Provider is to be paid within 10 Business Days of the date of MSD's notice to do so.

### 13.6 Goods and Services Tax

- (a) In this clause 13.6, words and phrases defined in the GST Act have the meaning given in that Act, unless the context requires otherwise.
- (b) Unless expressly provided to the contrary, any consideration payable for a supply made under this Agreement or any Services Agreement is stated before the addition of any GST chargeable on that supply.
- (c) Where GST is chargeable on a supply made (or deemed by the GST Act to be made) by one party (the *Supplier*) to the other party (the *Recipient*) under this Agreement, the Supplier will issue a tax invoice to the Recipient and the Recipient will pay to the Supplier the GST chargeable on that supply, in addition to and at the same time the consideration payable for that supply, unless section 5(23) of the GST Act applies to that supply.
- (d) Each party will provide the other with any information reasonably requested by it in relation to the amount of GST chargeable on a supply made under this Agreement.
- (e) If an amount payable under or in connection with this Agreement is calculated or determined by reference to an expense, cost, loss or outgoing of a party (the *Relevant Expense*), the Relevant Expense amount for the purpose of calculating the payment is to be reduced by an amount equal to any deductible input tax credit or any deduction from output tax available to the person in respect of that Relevant Expense.

### 13.7 Acknowledgement in respect of Services

The Provider acknowledges that the entirety of each Services Payment is consideration for the Provider providing the Services and making the Properties Available for use by Public Housing Clients in accordance with this Agreement. It is

not consideration for the supply of any other services by the Provider. Unless expressly provided for in any Services Agreement, no payment will be made by MSD to the Provider in respect of the Provider's supply of any other services.

### 13.8 Security interest or other MSD protection

- (a) To protect MSD's interests under this Agreement and any relevant Services Agreement, and in particular the Services Payments it is required to make to the Provider in accordance with each Services Agreement, the Provider agrees to MSD being entitled to register such mortgage, encumbrance (either including or not including an encumbrancee power of sale), land covenant in gross, other security interest and/or caveat (or an option to take a mortgage, encumbrance, land covenant in gross or other security interest) as may be specified in the Services Agreement and having, where relevant, such priority as may also be specified. The terms of such document will be in a form standard for MSD and will be presented to the Provider with the Services Agreement.
- (b) MSD agrees to release any such mortgage, encumbrance, land covenant in gross, other security interest and/or caveat on the Expiry Date or upon any earlier repayment in full by the Provider of all amounts paid by MSD under this Agreement, or as otherwise specified in the relevant Services Agreement.

### 13.9 Rates and Taxes

The Provider is responsible for and will pay all rates and Taxes assessed on or in relation to the Properties, or under or in connection with the Services, this Agreement and each Services Agreement.

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**PART E – CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

This Part records how MSD and the Provider will keep information confidential, and how each party will deal with its, and the other's, intellectual property.

**14 CONFIDENTIALITY OF INFORMATION****14.1 Non-disclosure**

Subject to clause 14.2, MSD and the Provider will each treat all Confidential Information of the other as strictly confidential, not disclose it to any third party or use it other than for the purposes of this Agreement or a Services Agreement, unless:

- (a) the disclosure is authorised by this Agreement or a Services Agreement; or
- (b) the disclosure is first approved by the other party; or
- (c) the disclosure is to the party's officers, employees, contractors, sub-contractors, agents or professional advisors on a need-to-know basis, and the proposed recipient is made aware of this clause 14 and agrees to observe it. The disclosing party will be responsible for ensuring confidentiality is observed.

**14.2 Further permitted disclosure by MSD**

MSD may disclose the Confidential Information of the Provider to:

- (a) Ministers, members of Cabinet and relevant Select Committees and in accordance with other parliamentary processes;
- (b) any potential new provider (except any Confidential Information that is commercially sensitive financial information);
- (c) the Regulatory Authority; and
- (d) any other government agency on a need-to-know basis,

provided that if MSD does make any disclosure as permitted above, it is to notify the Provider in writing of the relevant disclosure as soon as practicable after it has been made.

**14.3 Application of Official Information Act 1982 and Ombudsmen Act 1975**

The Provider acknowledges that MSD is subject to the Official Information Act 1982 and the Ombudsmen Act 1975 and may be obliged to disclose Confidential Information under those Acts. MSD will use its reasonable endeavours to advise the Provider of any such request received by it that relates to Confidential Information of the Provider.

**15 COLLECTION, USE, STORAGE AND DISCLOSURE OF PERSONAL INFORMATION****15.1 Provider's Obligations**

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The Provider is to:

- (a) comply with the Privacy Act 1993 when collecting, using and disclosing Personal Information, including Personal Information of Tenants and other Public Housing Clients;
- (b) only access the Personal Information of Public Housing Clients where it has appropriate authority to do so, and will ensure that all of its officers, employees, contractors sub-contractors and agents comply with this obligation;
- (c) only use Personal Information disclosed by MSD for the purposes of this Agreement;
- (d) securely dispose of any Public Housing Client's Personal Information when no longer needed, including at least by permanent and secure hard copy destruction or shredding, or permanent deleting of electronic documents;
- (e) ensure that all conflicts of interest (including those of its officers, employees, contractors, sub-contractors and agents) are appropriately managed, including by appropriate segregation and limitations on access to information;
- (f) take appropriate steps to verify the identity of any person asking for Personal Information before any disclosure is made, and only disclosing if permitted by the Privacy Act 1993;
- (g) redirect any person to MSD where that person believes that MSD holds Personal Information about him or her that is inaccurate and should be corrected; and
- (h) ensure that if a breach of the Privacy Act 1993 has or may have occurred in respect of any Personal Information of a Tenant, Public Housing Client or MSD Personnel, the Provider:
  - (i) responds to the breach in accordance with the current privacy breach guidelines (including voluntary guidelines) published by the Office of the Privacy Commissioner; and
  - (ii) cooperates with MSD to manage and address the breach.

## 15.2 Security of Personal Information

- (a) The Provider is to:
  - (i) ensure that all Personal Information held by it is protected from loss, unauthorised access, use, modification, disclosure or other misuse, including ensuring that all hard copy Public Housing Client records are securely stored when not in use;
  - (ii) immediately notify MSD of any actual or suspected loss, unauthorised access, use, modification, disclosure or other misuse of any Personal Information of a current or former Public Housing Client; and

- (iii) cooperate with MSD where any investigation is undertaken into any actual or suspected unauthorised access, use or disclosure of Personal Information.
- (b) Personal Information about Public Housing Clients may only be exchanged between MSD and the Provider through, and in accordance with, any Personal Information privacy policies applying to the MSD Public Housing Client System, as set out in the Operational Manual, except where:
  - (i) it is necessary to disclose Personal Information over the telephone, in which case the Provider is to take all reasonable care to ensure that Personal Information is only disclosed when the Provider is satisfied that they are speaking with MSD Personnel; or
  - (ii) this Agreement expressly provides otherwise; or
  - (iii) MSD expressly agrees otherwise in writing.

## 16 INTELLECTUAL PROPERTY

### 16.1 Pre-existing Intellectual Property

Each of MSD and the Provider will own, or be the licensee of, all Intellectual Property and Intellectual Property Material that it owns or has on licence before the Commencement Date or that it develops independently of the performance of this Agreement and/or any Services Agreement. Neither party acquires any rights or interest in that pre-existing Intellectual Property or Intellectual Property Material of the other by virtue of this Agreement and/or any Services Agreement.

### 16.2 Developed Intellectual Property

MSD will own all Intellectual Property and Intellectual Property Material developed by it from its pre-existing Intellectual Property and/or Intellectual Property Material referred to in clause 16.1. The Provider will own all other Intellectual Property and Intellectual Property Material developed as part of, or for the purposes of, the Services, this Agreement or a Services Agreement.

### 16.3 MSD licence

MSD licences to the Provider (on a royalty-free basis) its Intellectual Property and Intellectual Property Material referred to in clause 16.1 and clause 16.2 that needs to be used for the purposes of this Agreement or any Services Agreement, for the Term, provided it is only used for such purposes. MSD may impose such restrictions on use of that Intellectual Property and Intellectual Property Material as it considers fit.

### 16.4 Provider licence

- (a) The Provider grants to MSD, and to all other governmental entities or agencies with an interest in public housing, a non-exclusive, transferable, irrevocable, perpetual, royalty-free licence (including the right to grant sub-licences) to use and develop the Provider's Intellectual Property and Intellectual Property Material developed through performance of this

Agreement and/or any Services Agreement in order to obtain the full benefit of the Services.

- (b) The Provider will not limit the licence in clause 16.4(a) through any contract or arrangement entered into with another third party (subject to the licence terms of any off-the-shelf third party software).

#### 16.5 **No warranty**

Neither MSD nor the Provider gives any warranty to the other as to the suitability for the other's purposes of any Intellectual Property or Intellectual Property Material licensed under this clause 16. The Provider must not in any way prejudice ownership by MSD of any of MSD's Intellectual Property or Intellectual Property Material.

#### 16.6 **Licence to sub-contractors**

With MSD's prior written approval, the Provider may grant a licence of certain MSD Intellectual Property and/or Intellectual Property Material licensed to the Provider under clause 16.3 to a sub-contractor, solely to use that MSD Intellectual Property and/or Intellectual Property Material for performance by that sub-contractor. MSD may require a direct acknowledgement from the sub-contractor of the terms of this clause 16.

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**PART F – INDEMNITIES AND LIABILITY**

This Part records who is responsible if this Agreement is not observed or things otherwise go wrong. The aim is to allocate risk and responsibility.

**17 INDEMNITIES****17.1 General indemnities**

Subject to the limitations in clause 17.3 and except where the Provider is Housing New Zealand Corporation (or any other relevant Crown agent entity, Crown entity company or Public Finance Act Schedule 4A company that provides Services to MSD), the Provider is to indemnify MSD and all MSD Personnel from and against all Claims, Losses and Liabilities arising from:

- (a) death or personal injury;
- (b) loss of or damage to any property:
  - (i) belonging to MSD or for which MSD is responsible; or
  - (ii) belonging to any third party;
- (c) breach of statutory duty; and
- (d) third party Claims made against MSD or any MSD Personnel, arising from or in connection with:
  - (e) the Provider's provision of the Services or performance under this Agreement or the relevant Services Agreement;
  - (f) to the extent permitted by Law, any Provider breach of Law; or
  - (g) an Intellectual Property Claim (other than as a result of MSD engaging in any modification or updating of any Provider Intellectual Property Material or any breach by MSD of a licence under clause 16.4).

**17.2 Release of Indemnified Parties**

MSD and MSD Personnel will have no responsibility or liability to the Provider or any of its related companies or related entities (or any of its or their officers, employees, contractors, sub-contractors or agents) in connection with any Claims, Losses or Liabilities arising from the Provider's or any of its related companies' or related entities' (or any of its or their officers, employees', contractors', sub-contractor' or agents') use or occupation of any Property, and the Provider absolutely releases each of them from any such liability.

**17.3 Limits on indemnity cover**

The Provider is not obliged to indemnify MSD or any MSD Personnel to the extent that the Claims, Losses and Liabilities result directly from:

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- (a) the Provider acting in accordance with MSD's written directions implemented in accordance with this Agreement; or
- (b) an unlawful, reckless or negligent act or omission of MSD or any MSD Personnel; or
- (c) any MSD failure to perform under this Agreement or any Services Agreement; or
- (d) any valid claim of a Force Majeure Event.

#### 17.4 Privity

Clauses 17 and 18 are (for the purposes of sections 10 to 20 of the Contract and Commercial Law Act 2017) intended to confer benefits in favour of, and be enforceable by, all relevant MSD Personnel.

#### 18 MSD'S REMEDIES FOR PROVIDER NON-PERFORMANCE

MSD's remedies in respect of any Provider non-performance are any one or combination of the following (at MSD's election, but subject to clause 20):

- (a) payment of an Unavailability Deduction (if applicable) by the Provider;
- (b) the granting of an injunction, order for specific performance or other discretionary remedy by a court, including a right to damages for the direct losses it has suffered as a result of the non-performance (excluding any consequential loss);
- (c) Step-in Rights and recovery of direct Losses under clause 21 and associated provisions of the Services Agreement (if applicable);
- (d) termination rights under clause 22.3; and/or
- (e) any other right or remedy expressly provided for in the Contract Documents.

#### 19 INSURANCE AND PROVIDER'S CLAIMS

- (a) The Provider is to ensure that all insurance policies required by any Service Agreement are procured, effected, held and maintained (as applicable) for the duration of the Term.
- (b) If the Provider is required by any Services Agreement to hold insurance, it will not bring any Claim against MSD or any MSD Personnel if the Provider is able to recover the relevant Losses under insurance. If the Provider fails to hold, maintain, or voids, any such insurance, then it will have no Claim at all. MSD acknowledges that occasions may arise where it may not be possible or financially practicable for the Provider to obtain certain types of insurance, and the Services Agreement may reflect this accordingly.

#### 20 NO DOUBLE COUNTING

Notwithstanding any other provision of this Agreement and any Services Agreement, neither party is entitled to recover compensation or make a Claim under this Agreement or any Services Agreement in respect of any Loss that it has

incurred to the extent it has already been compensated in respect of that Loss under this Agreement, any Services Agreement or other Contract Document.

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**PART G – STEP-IN**

This Part describes how MSD can “step in” to perform the Services, instead of the Provider, if it needs to.

**21 STEP-IN RIGHTS**

MSD will have, as a discretionary remedy without prejudice to its other rights, remedies and powers, such Step-in Rights, if any, as may be specified in a Services Agreement. It is acknowledged that these will generally only apply in respect of Services Agreements that relate to the new supply of public housing and/or capacity. MSD will only exercise its Step-in Rights where it reasonably considers it needs to take action in connection with any of the Properties or Services in serious circumstances as described in the Services Agreement. Any exercise by MSD of its Step-in Rights will have such consequences as are specified in the Services Agreement, including the recovery of direct Losses.

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**PART H – TERMINATION**

This Part sets out when and how this Agreement and any Services Agreement can be terminated.

**22 TERMINATION EVENTS****22.1 Termination of this Agreement**

Notwithstanding any other provision of this Agreement or a Services Agreement, this Agreement cannot be terminated for so long as any Services Agreement remains in force (unless all Services Agreements are also terminated on the same effective date).

**22.2 Termination for Convenience**

Subject to clause 22.1, either party may at any time terminate this Agreement or any Services Agreement, for convenience, without needing a specific reason, unless the Services Agreement expressly negates the right to do so. To do so, the party terminating must give the other at least 60 Business Days' notice of termination. The Services Agreement may contain further provisions specific to termination.

**22.3 Termination on Provider default**

Without limiting any of its other rights or remedies but subject to clause 22.1, MSD may terminate this Agreement or any Services Agreement if the Provider defaults under this Agreement or any Services Agreement, in accordance with the following:

- (a) MSD may give a Termination Notice at any time after any of the following events or circumstances:
  - (i) the Provider definitively loses its registration under the HRTM Act;
  - (ii) the Provider assigns this Agreement or a Services Agreement in breach of clause 28.2;
  - (iii) a Provider Insolvency Event;
  - (iv) a Persistent Availability Breach; or
  - (v) the Provider or any of its officers, employees, contractors, sub-contractors or agents knowingly makes any materially false, misleading or incorrect statement in any report, notice or invoice to MSD (unless made without authority).
- (b) In the following events or circumstances, MSD must first give the Provider 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 22.3:
  - (i) the Provider has not complied with its insurance obligations under this Agreement or a Services Agreement;
  - (ii) the Provider has breached a Contract Document;

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- (iii) any Material Adverse Effect resulting from a breach of any of the warranties set out in clause 3.7;
  - (iv) a Performance Breach;
  - (v) an Availability Breach;
  - (vi) a Persistent Failure; or
  - (vii) it becomes unlawful for the Provider to provide the Services.
- (c) Within 15 Business Days of receiving MSD's notice under clause 22.3(b), the Provider is to:
- (i) propose a rectification programme that is reasonably acceptable to MSD, specifying:
    - (A) the timeframe within which the default will be remedied;
    - (B) a work plan for remedying the default within that timeframe; and
    - (C) any temporary measures being put in place to mitigate the effects of the default; and
  - (ii) remedy the default within a further 10 Business Days.
- (d) Where clause 22.3(b) applies, MSD may alternatively state in its notice that it does not believe the Provider's default can be remedied. In that case, the Provider is to within 20 Business Days submit a plan reasonably acceptable to MSD, setting out:
- (i) any temporary measures being put in place to mitigate the effects of the default;
  - (ii) how the Provider intends to address the underlying circumstances that gave rise to the default and prevent their recurrence; and
  - (iii) the timeframe within which the Provider will so act,
- and the Provider is to implement that prevention plan if it is accepted by MSD.
- (e) During the implementation of such rectification programme or prevention plan, 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.
- (f) If, notwithstanding the process in paragraphs 22.2(c) to (e) above, the Provider still has not remedied the default specified in MSD's original notice, to MSD's satisfaction, then MSD may give the Provider a Termination Notice on not less than 30 Business Days' notice.

#### 22.4 Prolonged Force Majeure Event

MSD may terminate the relevant Services Agreement in the event the Provider is unable to perform all or a material part of the Services due to a Force Majeure Event of six months' or more duration. MSD must give not less than 30 days' termination notice.

### 23 CONSEQUENCES OF TERMINATION

#### 23.1 Calculation of Compensation Amount

- (a) If this Agreement or any Services Agreement is terminated under:
  - (i) clause 22.2 MSD will pay such compensation for early termination as may be specified in that Services Agreement. Any such compensation must be based on principles of fairness to both parties and take into account all relevant factors, including the risk of future non-performance by the Provider; or
  - (ii) clauses 22.3 or 22.4, no compensation will be paid to the Provider, unless provided otherwise in the Services Agreement.
- (b) If any compensation is payable, it will be in full and final settlement of any and all Claims the Provider may have against MSD, but without affecting pre-existing or accrued rights or entitlements of MSD.

#### 23.2 Effect of Termination

Up until this Agreement and/or a Services Agreement (as applicable) is terminated in accordance with its terms:

- (a) the Provider will continue to provide the Services until the Termination Date;
- (b) MSD will continue to pay for the Services as provided for in the Services Agreement, until the Termination Date; and
- (c) clause 25.2 will apply.

#### 23.3 No effect on pre-existing obligations or other Services Agreement

Subject to clause 23.1(b) termination has no effect on any accrued or pre-existing obligations, nor does any termination in relation to one Services Agreement of itself have the effect of terminating any others.

#### 23.4 Provisions surviving termination

The following provisions survive any termination of this Agreement: clauses 8.1, 9, 14, 15, 16, 23, 24, 25, 26, 27, 30, 31, 35, 37 and 39.

**PART I – EXPIRY AND DISENGAGEMENT**

This Part describes how MSD and the Provider will disengage from each other at this end of this Agreement and/or any Services Agreement, to ensure a smooth transition.

**24 EXPIRY DATE OF SERVICES AGREEMENT**

On the Expiry Date of a Services Agreement:

- (a) subject to its set-off rights, MSD will make any payments due to the Provider pursuant to the relevant Services Agreement; and
- (b) the Provider is to pay all money it owes to MSD pursuant to the relevant Services Agreement.

**25 DISENGAGEMENT****25.1 Preparation**

The Provider is to prepare and maintain a Disengagement Plan if and as required under the Operational Manual.

**25.2 Disengagement Services**

During the Disengagement Period, the Provider will:

- (a) supply the Disengagement Services in accordance with the Disengagement Plan;
- (b) co-operate fully with MSD or its nominee and any new provider;
- (c) implement any transfers, assignments and novations;
- (d) implement any other transactions and operational handover activities; and
- (e) do all other things,

required by this Agreement, any other Contract Document or otherwise reasonably required by MSD, to support a seamless transfer of responsibility for the Properties and/or the Services to MSD or its nominee or any new provider.

**25.3 MSD as attorney**

The Provider irrevocably appoints MSD as the Provider's attorney and gives it full power and authority to carry out the Provider's obligations under this clause 25.

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**PART J – DISPUTE RESOLUTION**

This Part sets out how any disputes between MSD and the Provider will be resolved.

**26 DISPUTES****26.1 Notice of Dispute**

If a Dispute arises, then either party can provide a notice (a *Notice of Dispute*) to the other party, setting out in full the facts of the Dispute, the contractual context or other legal basis for it and what relief it seeks (if applicable). The fact of the Dispute does not relieve either party from its obligations under this Agreement or any Services Agreement, pending resolution of the Dispute.

**26.2 Informal Dispute resolution**

Once a Notice of Dispute has been given, each party is to first use its best efforts to resolve the dispute through good faith negotiations and informal dispute resolution techniques such as internal escalation within each party's organisation (including up to the chief executive level) or mediation.

**26.3 Disputes between MSD and Housing New Zealand (or other Crown entities)**

Clauses 26.4 to 26.8 and clause 27 do not apply to any Dispute between MSD and Housing New Zealand Corporation (or any other relevant Crown agent entity, Crown entity company or Public Finance Act Schedule 4A company that provides Services to MSD). Instead, if a Dispute between them cannot be resolved under clause 26.2, then it will be referred to their respective Ministers for resolution.

**26.4 Arbitration**

If:

- (a) the Dispute is not resolved under clause 26.2 within 15 Business Days from the date of the Dispute Notice being given;
- (b) this Agreement does not require that the Dispute be subject to Expert Determination; and
- (c) the parties have not otherwise agreed to refer the Dispute to Expert Determination,

then:

- (d) either party may notify the other that it wishes the Dispute to be referred to arbitration, in Wellington, by a named arbitrator and under the Arbitration Act 1996; and
- (e) if the parties then cannot agree on the arbitrator within five Business Days, the arbitrator will be chosen by the President of the New Zealand Law Society (or his or her nominee).

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### 26.5 Qualifications of arbitrator

Any arbitrator must be suitably qualified to resolve the Dispute and independent of both parties.

### 26.6 Award

The arbitrator's award must include reasons and will be final and binding on the parties, although either of them may appeal to the High Court on any question of law arising out of the award.

### 26.7 Costs

Costs will be borne in the manner determined by the arbitrator, or, if no determination as to costs is made by the arbitrator, each party will bear its own costs and an equal share of the costs of the arbitration.

### 26.8 Referral to Expert Determination

If the Dispute is not resolved informally and this Agreement requires it will be subject to Expert Determination, either party may notify the other that it wishes to refer the Dispute to Expert Determination under clause 27.

### 26.9 No court proceedings

Except for an appeal on a point of law, neither party will bring court proceedings if there is a Dispute. However, a party may nevertheless seek urgent injunctive, declaratory or urgent interlocutory relief from the courts.

## 27 EXPERT DETERMINATION

- (a) If either MSD or the Provider wishes to refer a Dispute to Expert Determination under this clause 27, the parties are to first agree on an appropriate independent expert, but if they cannot within five Business Days, a party can request the President of the Chartered Accountants Australia and New Zealand to appoint the independent expert if the Dispute is a financial Dispute or the President of the New Zealand Law Society to appoint the independent expert for all other Disputes. That person will be requested to appoint an independent expert suitably qualified and experienced in relation to the subject matter of the Dispute and who accepts the timeframes for determination set out in this Agreement (the *Independent Expert*).
- (b) Once the Independent Expert has been agreed or nominated, either party may within a further five Business Days, refer the Dispute to the Independent Expert by providing notice to the other party and the Independent Expert.
- (c) The Independent Expert must make the determination (including reasons for it) based on the information made available by the parties and will notify the parties of that determination within 30 Business Days of the referral.
- (d) Either party may make a written submission to the Independent Expert. Submissions will be provided to the Independent Expert and the other party no later than 10 Business Days after the referral of the matter to the Independent Expert.

- (e) Either party may submit a written response to the other party's written submissions within 15 Business Days of the referral.
- (f) The Independent Expert may call for further submissions, documents or information from either or both parties and/or may call a private conference between the parties (and, if they wish, their legal advisors).
- (g) The Independent Expert will decide how any conference is conducted as well as any other procedures or timeframes needed to resolve the Dispute.
- (h) In reaching a determination, the Independent Expert will have regard to the parties' written and oral submissions and the relevant terms of this Agreement. The Independent Expert may also:
  - (i) rely on his or her own knowledge, skill and experience in relation to the matter in Dispute;
  - (ii) review and revise any opinion, instruction, determination or decision given or made under this Agreement;
  - (iii) make his or her own enquiries without consulting the parties; and
  - (iv) after consulting with the parties, commission his or her own advisors or consultants.
- (i) In making his or her determination, the Independent Expert is not required to observe the rules of evidence.
- (j) The Independent Expert will act as an expert and not an arbitrator and his or her determination will be final and binding on the parties, unless there is some manifest error.
- (k) The parties will implement the determination in accordance with the Independent Expert's directions.
- (l) The Independent Expert must treat all information disclosed to him or her as confidential and will not disclose it to anyone other than to resolve the Dispute. All such information remains the property of the disclosing party.
- (m) Unless the Independent Expert orders otherwise, each party will meet its own costs in connection with resolution of the Dispute and the Independent Expert's and other costs will be borne equally.
- (n) The Independent Expert will not be liable to the parties in relation to the Expert Determination, except in the case of fraud or bad faith.

**PART K – MISCELLANEOUS TERMS**

This Part contains a range of general miscellaneous provisions necessary for the proper operation of this Agreement and any Services Agreement.

**28 ASSIGNMENT****28.1 Assignment by MSD**

MSD may only assign and/or transfer all or part of its rights and/or obligations under this Agreement and any other Contract Document without the prior written consent of the Provider to:

- (a) any part of the Crown, as that term is defined in section 2 of the Public Finance Act 1989; and
- (b) any other public body whose obligations under each Contract Document are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Provider) by the Crown,

where government policy so dictates and so long as the assignee enters into an acceptable deed of covenant to observe this Agreement.

**28.2 Assignment by Provider**

- (a) The Provider may at any time request, in writing, for MSD to consent to it transferring or assigning all or part of its right, title and interest in and under any Contract Document to another public housing provider.
- (b) The Provider is to provide any information that MSD requests in relation to the proposed transfer or assignment including information regarding the proposed transferee or assignee.
- (c) MSD may, in its absolute discretion, after receiving the information regarding the proposed transfer or assignment, decide whether to agree (with or without conditions) to the proposed transfer or assignment.
- (d) If MSD agrees to the proposed transfer or assignment, then:
  - (i) the Provider is to ensure that any conditions imposed by MSD are complied with to MSD's satisfaction;
  - (ii) the Provider is to procure the transferee or assignee to enter into an agreement with MSD in the form of the relevant Contract Documents; and
  - (iii) the Provider and the transferee or assignee must obtain all approvals in relation to the proposed transfer or assignment and execute all documents relating to the transfer or assignment.
- (e) MSD agrees:
  - (i) not to unreasonably withhold consent to any transfer; and,

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- (ii) to promptly do all things necessary to enable the transfer to occur.

## 29 CHANGE OF OWNERSHIP

### 29.1 Restriction on Provider Change of Ownership

A Change of Ownership may only occur if MSD determines (acting reasonably) that there are no grounds for withholding its consent under clause 29.3.

### 29.2 Notification

- (a) The Provider is to notify MSD of any proposed Change of Ownership, with particulars of the change.
- (b) The Provider will facilitate any probity investigations that MSD may need to undertake as a result.

### 29.3 MSD determination

MSD may withhold its consent to a Change of Ownership if it considers the Provider will not be as financially, technically or managerially capable as a result, or there would be some other adverse effect or increased risk to MSD in connection with this Agreement.

## 30 NOTICES

### 30.1 Notices and references

Each notice or communication under this Agreement (other than any communication that is required to be made through the MSD Public Housing Client System) must be made in writing by email, personal delivery or by post to the addressee at the relevant contact details as set out below (which may be updated in any Services Agreement or by notice).

### 30.2 Contact details

The initial contact details for MSD and the Provider are:

#### MSD

Addressee: [•]  
Address: [•]  
Email: [•]  
DDI: [•]

#### Provider

Addressee: [•]  
Address: [•]  
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### 30.3 Deemed delivery

A notice, consent or other communication for the purposes of this Agreement will be considered received at the earlier of time of actual receipt and:

- (a) in the case of a letter, on the fourth Business Day after posting;
- (b) in the case of an email, on the Business Day on which it arrives in the recipient's information system (or if received in that system after 5.00 p.m., on the next Business Day); and
- (c) in the case of personal delivery, when delivered.

### 31 Liability

Where at any time, the Provider consists of more than one person, each person shall be jointly and severally liable in respect of the obligations under this Agreement and each Services Agreement. If the Provider is acting in a trustee capacity, subject to being personally liable for liabilities incurred as a result of its fraud, negligence or wilful breach of the terms of the trust, its liability under this Agreement and each Services Agreement is otherwise limited to the assets that it holds in that trustee capacity.

### 32 COUNTERPARTS

This Agreement may be signed in different copies. A party may enter into this document by executing any counterpart.

### 33 SEVERABILITY

If any provision of this Agreement or any other Contract Document becomes unenforceable, illegal or invalid for any reason, it will be read as modified accordingly, to the extent necessary to remove that character, or severed from this Agreement or other Contract Document.

### 34 WAIVER

If MSD waives any rights on a particular occasion, that waiver only operates for that occasion and does not set any precedent.

### 35 PUBLIC DISCLOSURE

Any public disclosure by the Provider relating to the Contract Documents must be approved by MSD prior to its release.

### 36 ENTIRE AGREEMENT

The Contract Documents constitute all agreements about their respective subject matter.

### 37 FURTHER ASSURANCES

A party must, at its own expense and in a timely manner, do all things and execute all documents reasonably necessary to give effect to any Contract Document.

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38 **AMENDMENTS**

No amendment to this Agreement or any Services Agreement will be effective unless it is in writing and signed by duly authorised signatories of each party.

39 **GOVERNING LAW**

This Agreement and all Contract Documents are governed by New Zealand Laws and the New Zealand courts will have jurisdiction to determine any dispute.

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**EXECUTION**

Signed as an Agreement.

**EXECUTED** by the parties on the date appearing at the top of page 1.

**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]** by:

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Signatory name:  
Signatory title:

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

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