



[Insert Provider logo]

Working Draft (22.6.2018)
NOT GOVERNMENT POLICY

**SERVICES AGREEMENT:
OPEN TERM**

Agreement

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

Key Terms

Key Term	Description
General	
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] (Provider)
Agreement ref. no.	[Insert reference no.]
Relationship Agreement date and ref.	[Insert date and reference no. of Relationship Agreement]
Execution Date	[Insert date this Agreement is signed]
Commencement Date	The date on which all of the Conditions Precedent have been satisfied or waived.
Conditions Precedent to be satisfied before the Commencement Date	This Agreement is conditional on: <ul style="list-style-type: none"> the Provider being a community housing provider registered under the HRTM Act as a Class 1: Social Landlord; and [Insert any others] The Provider must notify MSD once each condition is satisfied. See also clause 5(b) of the Relationship Agreement.
Date for satisfaction of Conditions Precedent	[Insert date] This Agreement will be at an end and of no further force or effect if all of the Conditions Precedent have not been met by that date, unless extended or waived by MSD in its sole discretion. See also clause 5(c) of the Relationship Agreement.
Term	From the Commencement Date until this Agreement is terminated in accordance with the Key Term immediately below.
Termination of this Agreement	Each of MSD and the Provider may terminate this Agreement by giving the other not less than 90 Business Days' notice.

W
O
R
K
I
N
G
D
R
A
F
T

Key Term	Description
	This Agreement may also be terminated in accordance with the Relationship Agreement.
General background	<ul style="list-style-type: none"> This Agreement sets out the key commercial terms and conditions on which MSD agrees to procure from the Provider, and the Provider agrees to make available public housing properties for Eligible Tenants on an open term basis, meaning that MSD pays the Provider for Tenancies in respect of Properties made available for the duration of that Tenancy (subject to any early termination or Abandonment). This Agreement is supplementary to the Relationship Agreement between MSD and the Provider referred to above and the terms of the Relationship Agreement form part of this Agreement. The Relationship Agreement contains further generic detail on some topics dealt with here. This Agreement prevails in the event of any conflict. By signing the relevant Contract Documents, MSD and the Provider agrees to be bound by and to perform in accordance with this Agreement (including the Schedules), the Relationship Agreement, any other Contract Documents and the Operational Manual.
Precedence	This Agreement prevails over the Relationship Agreement in the event of any conflict between the two agreements.
Interpretation	Interpretation rules for this Agreement are set out in Schedule 4.
Parties' representatives and contact details	<p>MSD</p> <p>[name title address DDI cell email]</p> <p>Provider</p> <p>[name title address DDI cell email]</p>
Properties and Services	
Services description	The Services to be provided by the Provider are set out in Schedule 1.
Services Location	[Insert city/town/other location].
No specific availability requirements	There are no specific availability requirements, but a Property let to an Eligible Tenant must be available for the duration of that Tenancy (subject to any early termination or Abandonment).

WORKING DRAFT

Key Term	Description		
Monitoring	<p>MSD may monitor the Provider to verify that all required processes under this Agreement (including the Operational Manual) have been implemented on a quarterly basis.</p> <p>MSD will give the Provider a copy of any report as to the outcome of the monitoring.</p>		
Property Management Requirements	As set out in the Operational Manual.		
Tenancy Management Requirements	As set out in the Operational Manual.		
Reporting			
Reporting	The Provider must provide to MSD the following regular reports, in accordance with the Operational Manual and as set out below:		
	Report type	Frequency	When due
	<ul style="list-style-type: none"> IRRS fortnightly schedule payment report and invoice, in accordance with the Operational Manual 	Fortnightly	Every second Monday
	<ul style="list-style-type: none"> Half yearly and yearly audited financial statements 	Semi-annually /annually	Within 2 months of half yearly/annual balance date
	<ul style="list-style-type: none"> Annual review report, containing: <ul style="list-style-type: none"> (i) minutes of annual review meeting; (ii) summary of: Property inspections, Tenancy satisfaction survey and example Tenancy Agreement from a selection of Properties (as directed by MSD). 	Annually	As specified in the Operational Manual
<ul style="list-style-type: none"> All other reports required by the Operational Manual 		As specified in the Operational Manual	
Financial			

WORKING DRAFT

Key Term	Description	
IRRS and related payments	<p>The IRRS will be paid fortnightly by MSD to the Provider, within 10 Business Days of receipt by MSD of a valid IRRS claim invoice and the relevant MSD Public Housing Client System fortnightly IRRS schedule, in the amount per tenanted Property calculated by MSD in accordance with the Operational Manual, as set out in the MSD Public Housing Client System.</p> <p>If a Tenant is found to be ineligible for IRRS, MSD will notify the Provider that the IRRS for that Tenant will no longer be paid and MSD may recover from the Provider any amount paid in respect of the ineligible Tenant.</p>	
Performance Measures	<p>The Provider is to meet the Performance Measures identified in Schedule 3. The consequences of a failure to meet the Performance Measures are set out in Schedule 3.</p>	
Insurance		
Insurances required	<ul style="list-style-type: none"> • Public liability • Material loss/damage • <i>[Insert any others]</i> 	<p><i>[Insert amount of cover required]</i>, per event or series of related events</p> <p>Full replacement value of each Property</p> <p><i>[Insert amount of cover required]</i></p>

WORKING DRAFT

EXECUTED on the _____ day of _____ 20____

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

Signatory name:
Signatory title:

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

Signatory name:
Signatory title:

Signatory name:
Signatory title:

WORKING DRAFT

SCHEDULE 1: THE SERVICES

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

1 Services

The Provider is to:

- (a) let Properties to Eligible Tenants, from time to time during the Term, in accordance with this Agreement and the Operational Manual;
- (b) be registered as a Class 1: Social Landlord under the HRTM Act for so long as it is providing Services under this Agreement;
- (c) maintain each Tenant's Property in accordance with the requirements of this Agreement, the standards applicable to a Class 1: Social Landlord as set out in the HRTM Act and all other relevant Laws (including the Residential Tenancies Act) and the requirements of the Operational Manual;
- (d) provide a copy of each Tenancy Agreement for a Property subject to this Agreement to MSD;
- (e) ensure it notifies the Tenant of all relevant information about the Property prior to signing of the Tenancy Agreement;
- (f) ensure all Properties are optimally utilised so that the bedroom count is appropriate, and the Property is otherwise appropriate (including as to any necessary modifications), for the relevant Eligible Tenant's needs;
- (g) not let a Property to a person who, at any time in the previous 3 month period, was a tenant of the Provider or any of its related entities in a non-public housing or non-transitional housing tenancy, except with MSD's prior written approval. Approval will be granted only where that person has had a significant change in circumstances that has severely impacted his or her current living arrangements or resulted in significant financial hardship;
- (h) give priority to providing Properties to Eligible Tenants which MSD has indicated as high priority;
- (i) let a Property for the duration of the applicable Tenancy Agreement (subject to any early termination or Abandonment), so long as the IRRS remains payable in respect of the Tenant for the duration of the Tenancy Agreement;
- (j) only charge the Tenant of a Property rent at the lower of IRR and Market Rent;
- (k) not request any additional charges from a Tenant other than the IRR, the provision of a bond and the actual costs of utilities in respect of the Property. This clause does not prevent the Provider from recovering any loss for which a Tenant is responsible or from enforcing any order made by the Tenancy Tribunal under the Residential Tenancies Act;
- (l) increase a Tenant's IRR only in accordance with the annual movement (increase or decrease) in the latest consumer price index for rentals in the

W
O
R
K
I
N
G
D
R
A
F
T

applicable city or region in which the Property is located, as published by Statistics New Zealand;

- (m) immediately notify MSD via the MSD Public Housing Client System of any Tenancy terminating and the circumstances of such termination;
- (n) seek MSD's approval before transferring a Tenant to any other approved Property;
- (o) notify the Tenant of any change to his or her IRR in accordance with the Residential Tenancies Act (following any receipt of notification from MSD that the relevant IRR has changed);
- (p) notify MSD via the MSD Public Housing Client System of any change to a Tenant's IRR or any change in circumstances of a Tenant that may affect the Tenant's rate of IRR of which the Provider becomes aware;
- (q) permit such monitoring and audit as MSD requires to verify the Provider's compliance with this Agreement; and
- (r) at all times observe the Operational Manual and all directions given by MSD, and comply with all relevant Laws.

2 Referrals of Eligible Tenants

MSD does not guarantee that it will make any referrals of Eligible Tenants to the Provider for the purposes of this Agreement.

3 Payment of IRRS

MSD will pay IRRS for each Property tenanted in accordance with this Agreement in accordance with Schedule 2.

4 Additional Services

In addition to the Services outlined in this Schedule 1, the Provider is to provide any Additional Services.

5 General

Without limiting any of the Provider's obligations under this Agreement and the Relationship Agreement, the Provider is to provide the Services and the Additional Services in accordance with:

- (a) all Laws, including the Residential Tenancies Act and the Housing Improvement Regulations 1947;
- (b) the Operational Manual (including the Tenancy Management Requirements and the Property Management Requirements);
- (c) the Performance Measures; and
- (d) any other requirements specified in the Key Terms.

W
O
R
K
I
N
G
D
R
A
F
T

SCHEDULE 2: PAYMENT OF IRRS**1 IRRS Eligibility**

- 1.1 MSD will only pay the IRRS for a Tenant that it has referred to the Provider, or otherwise approved, and only for the duration of the Tenant's tenancy pursuant to a Tenancy Agreement.
- 1.2 MSD will calculate the IRR for a Tenant and notify the Provider of each Tenant's IRR via the MSD Public Housing Client System. MSD will similarly notify the Provider of any change to the associated IRRS. No IRRS adjustment will take effect before the first date on which the rent could be adjusted under the Residential Tenancies Act, plus a period of 5 Business Days.
- 1.3 Where a Tenant is determined by MSD to be an Ineligible Tenant, MSD must within five Business Days of determining this ineligibility inform the Provider via the MSD Public Housing Client System of the Ineligible Tenant and when the IRRS for that Ineligible Tenant will finish.
- 1.4 The Provider, upon receiving notice from MSD under clause 1.3 of this Schedule 2, is to inform the relevant Tenant within five Business Days that:
 - (a) he or she is no longer eligible for public housing;
 - (b) his or her rent will no longer be subsidised with effect from the date of termination; and
 - (c) subject to clause 1.5 of this Schedule 2, that the Tenancy will be terminated with effect from the termination date (as determined pursuant to clause 1.3 of this Schedule 2).
- 1.5 Notwithstanding clause 1.4 of this Schedule 2, the Provider can elect to continue to provide accommodation to the relevant Ineligible Tenant at the same Property outside of the scope of this Agreement.
- 1.6 Any payment of IRRS made in respect of an Ineligible Tenant or a Tenant who has Abandoned his or her Property may be recovered by MSD in full from the Provider.

2 Payments

- 2.1 All payments under this Agreement will be made in accordance with the Relationship Agreement and the Operational Manual, subject to correct reporting and invoicing.
- 2.2 All IRRS amounts are GST-exclusive.

WORKING DRAFT

SCHEDULE 3 – PERFORMANCE MEASURES

1 Current Performance Measures

1.1 The Performance Measures set out in this clause 1.1 will apply during the Term (unless and until future performance measures apply in accordance with clause 2 of this Schedule 3).

Tier 1 – Providers with at least 100 Properties

Tier 2 – Providers with at least 20 but less than 100 Properties

Tier 3 – Providers with less than 20 Properties

[Drafting Note: these will be inserted once they are finalised. Please see the working draft of the Performance Measures.]

2 Future Performance Measures

2.1 MSD and the Provider acknowledge that the Performance Measures set out in clause 1.1 of this Schedule 3 are based on MSD's understanding of the public housing services sector in New Zealand as at the Commencement Date. Accordingly, the Provider agrees that MSD may, at its discretion, amend the Performances Measures set out in clause 1.1 of this Schedule 3 (including by way of adding new Performance Measures or amending or removing any Performance Measures) by notice in writing to the Provider, provided that:

- (a) to the extent MSD is updating the "Consequences of failure" column in respect of one or more of the Performance Measures set out in clause 1.1 of this Schedule 3, the relevant updated "Consequences of failure" may include:
- (i) any of the existing "Consequences of failure" specified for the Performance Measures; and/or
 - (ii) an Unavailability Deduction up to an amount no greater than [150%] of the highest Unavailability deduction specified in clause 1.1 of this Schedule 3,

and such updated "Consequences of failure" for the relevant Performance Measures are to apply for all or some of the subsequent Years of the Term; and

(b) to the extent MSD wishes to otherwise amend the Performances Measures set out in clause 1.1 of this Schedule 3, MSD must comply with the following principles:

(i) [•]; and

(ii) [•].

2.2 In electing whether to amend the Performance Measures set out in clause 1.1 of this Schedule 3 pursuant to clause 2.1 of this Schedule 3, MSD will take into account the information previously received by MSD from the Provider in relation to the application of the Performance Measures under clause 1.1 of this Schedule 3 to ensure the Services are delivered to meet the needs of Public Housing Clients to the standard required by MSD.

W
O
R
K
I
N
G
D
R
A
F
T

SCHEDULE 4: INTERPRETATION

1 Defined terms

- 1.1 In this Agreement, the following terms are used with the meanings set out below (and some other terms are as defined in the Relationship Agreement):

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

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

Agreement means this Services Agreement, including its Schedules, as it may be amended in writing from time to time, and which, for the avoidance of doubt, incorporates the terms set out in the Relationship Agreement;

Business Day means a day that is not a Saturday, Sunday or public holiday in New Zealand or any anniversary day in the Service Location listed in the Key Terms;

Commencement Date means the Commencement Date set out in the Key Terms;

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

Ineligible Tenant means a person who was an Eligible Tenant but has ceased to be eligible for an IRRS tenancy and is not otherwise eligible for public housing;

IRR means the income-related rent calculated by MSD for a Tenant in accordance with the applicable provisions of the HRTM Act;

IRRS means the income-related rent subsidy in respect of a Tenant payable by MSD to the Provider in accordance with Schedule 2 of this Agreement;

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

Market Rent means what a willing landlord might reasonably expect to receive, and a willing tenant might reasonably expect to pay, for the tenancy in comparison with rent levels for similar properties in similar areas;

Parties means MSD and the Provider;

Property means a property that:

- (a) is in the Services Location;
- (b) is listed in the MSD Public Housing Client System as vacant;

W
O
R
K
I
N
G
D
R
A
F
T

(c) has been approved by MSD in the MSD Public Housing Client System to let to an Eligible Tenant,

and **Properties** means each of them;

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

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

Services Location means the location of the Properties as described in the Key Terms;

Tenancy Agreement means a public housing tenancy agreement for a nominated Property between the Provider and an Eligible Tenant that complies with the Residential Tenancies Act, all other applicable Laws and the terms of this Agreement; and

Tenant means the person or household who is named as the tenant in a Tenancy Agreement and is occupying the Property nominated in the Tenancy Agreement.

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

Other capitalised terms used but not defined in clause 1.1 above have the meanings given to them in the Relationship Agreement or the Key Terms (as applicable).

3 **Interpretation**

In this Agreement, unless specifically stated otherwise:

- (a) the singular includes the plural and vice versa,
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to any legislation includes any amendment, consolidation, re-enactment or replacement of that legislation;
- (b) “including” and similar words do not imply any limitation;
- (c) the background and headings are for descriptive purposes only and do not form part of, or otherwise affect the interpretation of, this Agreement;
- (d) amounts are in NZ\$ and are stated after the calculation (and inclusion) of GST (if any);
- (e) references to a party or a person includes any form of entity and their respective successors, permitted assignees and representatives; and
- (f) references to clauses and Schedules are to clauses of and Schedules to this Agreement.