



[Insert Provider logo]

Working Draft (22.6.2018)
NOT GOVERNMENT POLICY

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

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. of this Agreement]
Relationship Agreement date and ref. no.	[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 having the following social sector accreditations: [Insert if relevant]]; the Provider having in place all other confirmed and unconditional funding contracts so as to meet the Development Costs of the Public Housing Project; the Provider obtaining any necessary consents and agreements to MSD registering or taking such mortgage, encumbrance, land covenant in gross, caveat or security interest as it determines necessary, pursuant to Schedule 5; and [Insert any others – note drawdown conditions are different] <p>The Provider is to notify MSD once each condition is satisfied. See also clause 5(c) of the Relationship Agreement.</p>
Date for satisfaction of Conditions Precedent	[Insert date – Note this is not the date for drawdown CPs] 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,

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Key Term	Description
	unless extended or waived by MSD in its sole discretion. See clause 5(c) of the Relationship Agreement.
Term	From the Commencement Date until the earlier of (i) the Expiry Date and (ii) the termination of this Agreement in accordance with its terms.
Expiry Date	The end of the term of the Public Housing Phase, being [<i>Insert date</i>].
General Background	<ul style="list-style-type: none"> • This Agreement sets out the key commercial terms and conditions on which MSD agrees to fund and to procure from the Provider, and the Provider agrees to make available, public housing properties for Eligible Tenants on a capacity basis (meaning that MSD pays the Provider for Tenancies in respect of Properties made Available for the duration of each of those Tenancies from an Agreed number of Properties). • 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. • By signing the relevant Contract Documents, 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	<p>This Agreement prevails over the Relationship Agreement in the event of any conflict between the two agreements.</p> <p>This Agreement and the Relationship Agreement are each subject to the terms of any Financier Direct Deed.</p>
Interpretation	Interpretation rules for this Agreement are set out in Schedule 9.
Parties' Representatives	<p>MSD</p> <p>[<i>name</i> <i>title</i> <i>DDI</i> <i>Cell</i> <i>email</i>]</p>
	<p>Provider</p> <p>[<i>name</i> <i>title</i> <i>DDI</i> <i>Cell</i> <i>email</i>]</p>
Properties and Services	
Public Housing Project: Development Obligations	The development of new build public housing to be made Available for income-related rent subsidy tenancies at the Services Location, as further described in Schedule 1 and in accordance with the following configurations:

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Key Term	Description	
	<i>[Insert configuration requirements, including in relation to minimum property size, relevant suburbs within the Services Location and number of bedrooms (see clause 1.2 of Schedule 1)]</i>	
Public Housing Project: Services Description	Making Available new build public housing for Eligible Tenants at the Services Location, as further described in Schedule 2.	
Services Location	<i>[Insert location of Public Housing Project]</i>	
Tenancy Management Requirements	As set out in the Operational Manual.	
Property Management Requirements	As set out in the Operational Manual.	
Special Property Management Requirements	<i>[Insert any Special Property Management Requirements. See Schedule 2, clause 5]</i>	
Special Tenancy Management Requirements	<i>[Insert any Special Tenancy Management Requirements. See Schedule 2, clause 5]</i>	
Volume and description of Properties	<i>[Insert brief details]</i> , as more particularly set out in Schedule 7 (as that Schedule is updated by MSD from time to time on the MSD Public Housing Client System).	
Agreed number of Properties	<i>[Insert max no. of Properties]</i>	
Term of Public Housing Phase	<i>[Insert capacity term eg. 25 years from the date on which the Development Phase ends]</i>	
Additional Services	<i>[Insert any additional services (over and above those set out in Schedule 1 (excluding clause 6)) to be provided by the Provider (including any value-adds offered in original proposal) - see Schedule 2, clause 6]. A failure to provide these Additional Services will be a material breach.</i>	
Plans and specifications	<i>[Refer to and/or attach a copy of the detailed plans and specifications for the Properties in the Public Housing Project, as approved by MSD.]</i>	
Project timeline and key milestone dates	<ol style="list-style-type: none"> 1 The Public Housing Project has all required consents for all Properties in the Development Phase and construction will commence within one month 2 The Public Housing Project receives one or more Code Compliance Certificate(s) (completion of the Development Phase) 	<p><i>[Insert date]</i></p> <p><i>[Insert date]</i></p>

Key Term	Description	
	3 Any minor omissions or defects have been rectified	[Insert date which is 28 days of completion of the end of the Development Phase]
	4 [Here insert any other key dates for the Project]	[Insert date]
Methamphetamine Contamination	<p>[Select one of the following:</p> <p>[Methamphetamine Contamination means the presence of methamphetamine at levels that would make a high-use area be regarded as contaminated in accordance with NZS 8510:2017.]</p> <p>[Methamphetamine Contamination means [Insert relevant amount] (see clause 5.2 of Schedule 4)]</p>	
Methamphetamine Contamination Remediation Period	[Insert relevant period (see clause 5.2 of Schedule 4)]	
Reporting		
Provider reporting (in addition to the reports required under the Relationship Agreement)	A. Development Phase	
	Report	When due
	<ul style="list-style-type: none"> • Quarterly Development Report covering: <ul style="list-style-type: none"> (a) use of Development Cost Funding, with itemised cost and expenditure; (b) progress on the Public Housing Project, including confirmation as to: <ul style="list-style-type: none"> (i) compliance with all regulatory requirements; (ii) adherence to the Project timeline; (iii) any difficulties or delays encountered, and the steps being taken by the Provider to mitigate and/or resolve the difficulties and delays; (iv) the projected Service Commencement Date for each Property; and (v) the projected date for Completion of Construction of the Development Phase as a whole. 	<p>By the last day of each of the following calendar months:</p> <ul style="list-style-type: none"> • September • December • March • June

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Key Term	Description	
	<ul style="list-style-type: none"> • Final Project Acquittal Report, containing information on: <ul style="list-style-type: none"> (a) the final cost of the Development Phase of the Public Housing Project; (b) itemised application and expenditure of the Development Cost Funding; and (c) any unexpended funds to be repaid to MSD under Schedule 3. • Monthly progress certificates from the registered architect or engineer to the relevant contract. • <i>[Insert any other reports]</i> • Any other report requested by MSD in respect of any aspect of the Public Housing Project, including: <ul style="list-style-type: none"> (a) consents required or held; (b) compliance with the Project Management Plan; (c) any variations altering the configuration, location or quality of the Public Housing Project; and (d) any dispute with a contractor or subcontractor, including relevant documents. 	<p>Within 30 Business Days of Completion of Construction of the Development Phase</p> <p>Within 5 Business Days of each month end</p> <p><i>[Insert relevant timing]</i></p> <p>Within 10 Business Days of request by MSD</p>
	B. Public Housing Phase	
	Report	When due

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Key Term	Description			
	<ul style="list-style-type: none"> • IRRS fortnightly schedule payment report and invoice, in accordance with the Operational Manual. • Annual Review Report, containing: <ol style="list-style-type: none"> minutes of annual review; Unavailability statistics; and summary of Property inspection, Tenancy satisfaction survey and Tenancy Agreement from a selection of Properties (as directed by MSD). 			<p>Every second Monday</p> <p>Annually</p>
	<ul style="list-style-type: none"> • All other reports required by the Operational Manual. 			In accordance with the Operational Manual.
	C. Other reports (during both phases)			
	Report			When due
	Half yearly and audited yearly financial statements			Within 2 months of half yearly/annual balance date
Financial				
Provider's External Financier(s) (if applicable)	[Insert name of Provider's External Financiers (if any)]			
Financier Direct Deed date and ref. no. (if applicable)	[Insert date and reference number of Financier Direct Deed (if any)]			
Development Cost Funding Amount	[Insert total amount (see clause 1.1 of Schedule 3), noting that this can be in the form of Development Cost Funding payments as set out below and/or in the form of an Operating Supplement which is part of the Services Payment by being part of the Agreed Rent]			
Payments				
A. Development Cost Funding:	Payment Number	Milestone	Payment Date	Instalment Amount
	001	Drawdown 1: on Commencement of Construction	Within seven Business Days of receipt of the Drawdown Notice and supporting	[\$[•]] (calculated at [•]% of the

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Key Term	Description			
			documentation for Drawdown 1 as specified in clause 2.2 of Schedule 3	Development Cost Funding Amount)
	002	Drawdown 2: on Completion of Construction	Within seven Business Days of receipt of the Drawdown Notice and supporting documentation for Drawdown 2 as specified in clause 2.2 of Schedule 3	\$[•] (calculated at [•]% of the Development Cost Funding Amount)
B. Services Payment:	Services Payment		MSD will pay the Provider the Services Payment for each Payment Period in accordance with Schedule 4.	
	Agreed Rent		The Services Payment is based, among other things, on the Agreed Rent for each Property. The Agreed Rent is set out in Schedule 7 as at the Commencement Date. This includes an Operating Supplement (if any) in respect of a Property. Schedule 7 will be updated by MSD during the Term to reflect (i) any amendments to the Agreed Rent in accordance with this Agreement, and (ii) the Agreed Rent for any new or substituted Properties pursuant to clause 5.4 of Schedule 2.	
	Indexing of Agreed Rent		The Agreed Rent will be CPI-adjusted annually in accordance with clause 4.1 of Schedule 2.	
	Market Rent review applicable (see clause 4.7 of Schedule 2)		Yes / No	
	Market Rent review dates		[Insert relevant dates]	
IRR	The collection of IRR from Tenants is the sole responsibility of the Provider and MSD is not liable under this Agreement (including under Schedule 4) for any non-payment or late payment of IRR by any Tenant.			
Performance Measures	The Provider is to meet the Performance Measures identified in Schedule 8. The consequences of a failure to meet the Performance Measures are set out in Schedule 8.			
Conditions Precedent to drawdown of Development Cost Funding	<p>For Drawdown 1:</p> <p>For any amount \$5 million or over, the conditions precedent set out in Schedule 3, clauses 2.2(c)(i)A and 2.2(c)(i)B and the following parts of clause 2.2(c)(i)C:</p>			

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Key Term	Description	
	<p>[Insert which of (i) to (ix) apply (use clause nos.)] plus: [Insert any other special conditions to Drawdown 1]</p> <p>For any amount under \$5 million, the conditions precedent set out in Schedule 3, clauses 2.2(c)(i)A and 2.2(c)(i)B and the following parts of clause 2.2(c)(i)C: [Insert which of (i) to (ix) apply (use clause nos.)] plus [insert any other special conditions to Drawdown 1]</p> <hr/> <p>For Drawdown 2:</p> <p>For any amount \$5 million or over, the conditions precedent set out in Schedule 3, clause 2.2(c)(ii)A and 2.2(c)(ii)B plus: [Insert any other special conditions to Drawdown 2]</p> <p>For any amount under \$5 million, the condition precedent specified in Schedule 3, clause 2.2(c)(ii)A plus: [Insert any other special conditions to Drawdown 2]</p>	
<p>Security protection for MSD</p>	<ul style="list-style-type: none"> • A registered encumbrance over each of the Properties in the form attached to this Agreement; • [Insert details of any special security or priority arrangement required by MSD known at the date of entry into this Agreement (see Schedule 5)] ; and • Any security or priority arrangement as may be required by MSD from time to time in accordance with Schedule 5 of this Agreement. 	
<p>Compensation payable by MSD for any early termination of this Agreement</p>	<p>[Insert fair and reasonable compensation calculation, having regard to clause 23.1 of the Relationship Agreement.]</p>	
<p>Compensation payable by MSD for exercise of release</p>	<p>[Insert details of compensation for release, if applicable (see clause 5.7 of Schedule 2)]</p>	
<p>Insurance and Step-In Rights</p>		
<p>Insurances required (Development Phase) (see further clause 5 of Schedule 1)</p>	<ul style="list-style-type: none"> • Public liability • Material loss/damage • Contract works (all risks) insurance • [Insert any others] 	<p>[Insert amount of cover required], per event or series of related events</p> <p>Full replacement value of all buildings comprised in the Public Housing Project</p> <p>[Insert amount of cover required]</p> <p>[Insert amount of cover required]</p>

Key Term	Description	
Insurances required (Public Housing Phase)	<ul style="list-style-type: none"> • Public liability • Material loss/damage • <i>[Insert any others]</i> 	<p><i>[Insert amount of cover required], per event or series of related events</i></p> <p>Full replacement value of each Property</p> <p><i>[Insert amount of cover required]</i></p>
MSD Step-in Rights applicable (see Schedule 6)	<p>Development Phase: Yes / No</p> <p>Public Housing Phase: Yes / No</p>	

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EXECUTED on the _____ day of _____ 20____

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

Signatory name:
Signatory title:

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

Signatory name:
Signatory title:

Signatory name:
Signatory title:

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SCHEDULE 1: DEVELOPMENT PHASE

This Schedule 1 describes the Development Phase obligations and related rights and obligations of the Parties during the Development Phase.

1 New build public housing properties

- 1.1 The Provider is to make Available new build public housing properties at the Services Location for Eligible Tenants by the end of the Development Phase and in accordance with the Project Management Plan. For this purpose, "new build" can include relocation and/or refurbishment of an existing structure provided it is of a standard acceptable to MSD.
- 1.2 Each of the new build public housing properties is to meet the specifications set out in the Key Terms including as to configuration (including size and number of bedrooms) and quality, have a Code Compliance Certificate and be Available, upon completion, for tenancy by Eligible Tenants approved by MSD, in accordance with Schedule 2.
- 1.3 Following completion of the Development Phase in respect of a Property, the Provider is to make that Property Available to the Target Group for public housing in accordance with Schedule 2, and manage it, for the remainder of the Term and in accordance with this Agreement and the Contract Documents. A Property may only be used for such purpose, and no other, for the duration of the Term. If required by MSD, this restriction will also be protected by way of registered caveat, land covenant in gross or encumbrance on the relevant Properties pursuant to Schedule 5.

2 Project Management Plan

The Provider is to complete and deliver the Public Housing Project in accordance with the Project Management Plan.

3 Project timeline

Without limiting clause 9(b) of this Schedule 1:

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

4 Building contract

The Provider is to enter into a binding written contract with a licensed building practitioner (as that term is defined in the Building Act 2004) and other reputable and licensed tradespeople, in order to deliver the Public Housing Project.

5 Risks and insurance

The Provider is to ensure all risks of the Public Housing Project are adequately and suitably covered, whether by insurance or otherwise. The Provider is to take out and keep current (and ensure that its contractors and subcontractors take out and keep current, if they are carrying out development and construction work) the following insurance policies with a reputable and financially sound insurer:

- (a) public liability insurance to the minimum amount specified in the Key Terms;
- (b) material loss and/or damage to the full replacement value of all of the buildings comprised in the Public Housing Project, including the cost of removal of debris and architects and legal fees, to the minimum amount specified in the Key Terms;
- (c) contracts works (all risks) insurance to the minimum amount specified in the Key Terms; and
- (d) such other insurance as is specified in the Key Terms.

6 Payment of Development Cost Funding

The Development Cost Funding will be paid by MSD in one or more separate Drawdowns against the specified milestones and otherwise as set out in Schedule 3. If the portion able to be drawn upon occurrence of the first milestone is not then fully drawn, it can be drawn upon completion of the second milestone. The Development Cost Funding will be repayable in the circumstances set out in Schedule 3 and otherwise in accordance with the Relationship Agreement. The Provider is to use the Development Cost Funding in or towards meeting its actual out of pocket costs and expenses incurred in connection with the Public Housing Project.

7 Failure to meet its obligations during the Development Phase

7.1 This clause 7 applies where:

- (a) the Provider fails to comply with the requirements of this Agreement during the Development Phase (including where it fails to meet any relevant Laws or the Operational Manual);
- (b) the Provider fails to provide MSD with a properly completed Drawdown Notice and/or the Required Supporting Documentation;
- (c) the Provider fails to deliver the Public Housing Project (or any part of it) to the specification required in this Agreement; and/or
- (d) an event occurs that would entitle MSD, acting reasonably, to terminate this Agreement in accordance with the applicable Contract Document(s).

7.2 Where this clause 7 applies, and subject to any relief available in relation to a Force Majeure Event under the Relationship Agreement, MSD:

- (a) is not obliged to pay any (or any further) amount of the Development Cost Funding to the Provider;
- (b) may withhold all or part of any payment otherwise due to the Provider until the non-compliance or event that may entitle MSD to terminate this Agreement is remedied or resolved to the reasonable satisfaction of MSD;
- (c) may require the Provider to repay all or a specified part of the Development Cost Funding in accordance with clause 9 of this Schedule 1; and/or
- (d) may suspend the Provider's further performance of this Agreement, or the Public Housing Project (or any part of it).

8 **Management of Development Cost Funding payments**

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

- (a) keep clear records of and account separately for all receipts of, and expenditure of, the Development Cost Funding; and
- (b) expend the Development Cost Funding only for the purposes of the Public Housing Project and in accordance with this Agreement.

9 **Repayment of Development Cost Funding**

- (a) MSD may require the Provider to repay any portion of the Development Cost Funding:
 - (i) reflective of the degree and materiality of any breach of this Agreement by the Provider, as determined by MSD in its sole discretion and acting reasonably (which determination may include agreement to provision of a lesser number of Properties than agreed or in a different configuration from that agreed);
 - (ii) that remains unspent at the end of the Development Phase, in accordance with Schedule 3 plus interest at the Prescribed Rate (less the 2% margin) accrued on a daily basis from the time of receipt of any Development Cost Funding until the date of repayment to MSD; and
 - (iii) otherwise in accordance with this Agreement in the event of a Provider default during the Public Housing Phase.
- (b) MSD may require the Provider to repay all of the Development Cost Funding if this Agreement is terminated because the Public Housing Project is not completed by the end of the Development Phase as set out in the Project Management Plan.
- (c) If required by the Key Terms, the Provider's repayment obligations may be secured by an encumbrance or other security interest over the Properties in favour of MSD in accordance with Schedule 5.

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10 **Additional Provider termination rights**

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

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

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SCHEDULE 2: SERVICES DURING PUBLIC HOUSING PHASE

This Schedule 2 describes the Services and related requirements during the Public Housing Phase.

1 IRRS Services

- 1.1 Subject to clause 5.5 and clause 5.7 of this Schedule 2, the Provider will ensure that the Properties are Available at all times during the Public Housing Phase to be tenanted exclusively by Eligible Tenants referred by MSD, in accordance with this Agreement.
- 1.2 Except as expressly permitted by this Agreement, the Provider will not, without the prior written consent of MSD:
- (a) rent out any Property to any person other than an Eligible Tenant referred to the Provider by MSD; or
 - (b) use any Property for any purpose other than renting to an Eligible Tenant referred to the Provider by MSD; or
 - (c) do, or permit to be done, anything that would compromise the Availability of any Property as contemplated by this Agreement.
- 1.3 The Provider is to ensure that any Available Vacant Property is kept available for an Eligible Tenant to take possession immediately.
- 1.4 The Provider is to maintain all Properties in accordance with the requirements of this Agreement, the standards applicable to a Class 1 Social Landlord, all relevant Laws (including the Residential Tenancies Act) and the requirements of the Operational Manual.
- 1.5 The Provider is to maintain registration as a Class 1 Social Landlord during the Term. If the Provider does not maintain its registration, this Agreement can be suspended or terminated by MSD in accordance with the applicable Contract Documents.
- 1.6 The Provider is to comply with the Operational Manual at all times, including with respect to the selection process of Eligible Tenants and tenancy management of Tenants. In particular, the Provider is to follow the shortlist selection process for referral set out in the Operational Manual so as to select suitable Eligible Tenants from highest priority down, on a one by one basis.
- 1.7 The Provider must not rent 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 only be granted 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.
- 1.8 The Provider is to ensure that each Available Vacant Property is available for an Eligible Tenant to take possession on the start date of the relevant Tenancy Agreement. If the relevant Property is not available by the start date, the

Provider is to provide suitable alternative accommodation satisfactory to the Eligible Tenant and MSD until the relevant Property becomes available, at the Provider's expense. The Provider is to notify MSD of any changes to the start date of the relevant Tenancy Agreement via the MSD Public Housing Client System.

- 1.9 The Provider is to immediately notify MSD via the MSD Public Housing Client System of any Tenancy terminating and the circumstances of such termination.

2 **IRRS Eligibility**

- 2.1 Subject to Schedule 4, MSD will pay the relevant IRRS to the Provider for each Property that is Available.

- 2.2 Where a Tenant is determined by MSD to be ineligible to receive an IRRS, MSD must within five Business Days of determining this ineligibility inform the Provider via the MSD Public Housing Client System of that Tenant's ineligibility and when the IRRS for that Tenant will finish. The time between notification and the termination date for that Tenancy will be the minimum period of notice for tenancy termination under the Residential Tenancies Act, plus 10 Business Days.

- 2.3 The Provider, upon receiving notice from MSD under clause 2.2 of this Schedule 2, will 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) (unless MSD provides its approval under clause 2.4 of this Schedule 2), that the Tenancy will be terminated with effect from the termination date (as determined pursuant to clause 2.2 of this Schedule 2).

- 2.4 If the Provider:

- (a) wishes to continue to provide accommodation to the relevant Tenant at the same Property outside of the scope of this Agreement; and
- (b) has another property suitable for inclusion as a Property,

the Provider can request in writing to MSD to substitute the new property for the existing Property in the list of Properties, in accordance with clause 5.2 of this Schedule 2.

- 2.5 MSD will from time to time calculate the IRR and notify the Provider via the the MSD Public Housing Client System if there is any change in the IRR to be paid by a Tenant and clause 3.1 of this Schedule 2 will apply. The time between notification and the IRR adjustment date will be at least the period of notice for rental adjustment under the Residential Tenancies Act, plus five Business Days.

- 2.6 Prior to a Tenant transferring to another property owned or managed by another registered community housing provider, the Provider must seek approval from MSD.

3 Tenancy Requirements

- 3.1 The Provider is to (within five Business Days of receiving notice from MSD pursuant to clause 2.5 of this Schedule 2):
- (a) advise each Tenant of any change to his or her IRR in accordance with the Residential Tenancies Act; and
 - (b) following such notification in clause 3.1(a), above, promptly confirm to MSD via the MSD Public Housing Client System that it has notified the Tenant of the change in IRR.
- 3.2 The Provider is to notify MSD of any change in circumstances of a Tenant that may affect a Tenant's rate of IRR of which the Provider becomes aware.
- 3.3 The Provider is to only charge the Tenant of a Property rent at the lower of IRR and Market Rent.
- 3.4 The Provider cannot request any additional charges from a Tenant other than rent (as determined pursuant to clause 3.3 of this Schedule 2), 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.
- 3.5 The Provider is to:
- (a) comply with the Tenancy Management Requirements;
 - (b) ensure that each Tenant has a written Tenancy Agreement that meets the requirements of the Residential Tenancies Act; and
 - (c) ensure that the Tenant is informed of all relevant information related to the Property prior to signing the Tenancy Agreement.
- 3.6 The Provider may transfer a Tenant to another Property, with MSD's prior approval, provided the Property vacated is re-let to another Eligible Tenant approved by MSD through the processes set out in clause 1 of this Schedule and the Operational Manual.

4 Agreed Rent

- 4.1 The initial Agreed Rent for each Property is set out in Schedule 7. The Market Rent component of the Agreed Rent is subject to annual indexation on each anniversary of the Service Commencement Date throughout the Term in accordance with the annual movement (increase or decrease) in the latest consumer price index for rentals in the applicable city or region in which the Property is located, as published by Statistics New Zealand.
- 4.2 If specified as applicable in the Key Terms, MSD and the Provider will undertake a Market Rent review for each of the Properties on the date(s) specified in the Key Terms. For this purpose, the Provider will propose a revised Market Rent for each Property which will be agreed or determined in the same manner as set out in clause 4.3 of this Schedule 2.

- 4.3 For Properties that become subject to this Agreement after commencement of the Public Housing Phase as a result of an approved later addition or substitution pursuant to clause 5 of this Schedule 2, the Agreed Rent for that Property is determined by the Provider proposing a Market Rent to MSD. MSD will then verify that rent by using data held by the Ministry of Business, Innovation and Employment in respect of bonds for comparable properties in the same or similar area and MSD's own published Maximum Market Rent (*MMR*) set out in MSD's published Public Housing Purchasing Strategy. If:
- (a) MSD agrees to the Market Rent proposed by the Provider for a Property, then such Market Rent plus any Operating Supplement (if any) in respect of a Property will become the Agreed Rent for that Property; or
 - (b) the Provider and MSD cannot agree on an Agreed Rent, either party may refer the determination of the Agreed Rent by reference to an independent market rent valuation by an agent agreeable to both Parties (noting that the Agreed Rent for a Property will always be capped at the applicable *MMR*), with the cost of the independent valuation shared equally between the Provider and MSD.
- 4.4 The Agreed Rent for a Property will not be affected by any Major Improvement made to that Property unless MSD has previously consented in writing to:
- (a) the Major Improvement; and
 - (b) any change to the Agreed Rent.

5 **Availability, Substitutability and Release of Properties**

- 5.1 The Provider will make the Properties Available for Eligible Tenants at all times during the Public Housing Phase. The Provider is to make a Property Available on and from the Service Commencement Date, unless a different date is agreed with MSD.
- 5.2 The Provider can make a request to MSD to add an additional property to this Agreement, or substitute a Property with an alternative property (should the alternative property be of the same number of bedrooms, in the same or an adjacent suburb, and of a similar Agreed Rent to the relevant Property, unless MSD agrees otherwise), by providing MSD with at least 15 Business Days' notice of the date on which the Provider proposes the requested additional property would become a Property or the requested substitution would take effect and seeking MSD's written approval to the addition or substitution.
- 5.3 Where, for reasons beyond its control (such as a Force Majeure Event), the Provider needs to substitute a Property rented to a Tenant with a different property, the Provider may make an urgent request to MSD seeking MSD's written approval to temporarily substitute the affected Property with another one of its properties, and to move the Tenant to that temporary substitute Property.
- 5.4 If MSD approves any additional or substitute property proposed by the Provider in accordance with either clause 4.2 or 4.3 of this Schedule 2, MSD will update the list of Properties in Schedule 7 accordingly (and in accordance with clause 4.3 of this Schedule 2). In the case of a temporary substitution in accordance with

clause 4.3, the agreed substituted property then becomes subject to this Agreement as a Property for so long as it is included in the update to Schedule 7.

- 5.5 MSD may from time to time notify the Provider that one or more Properties is not required to be Available for an Eligible Tenant for a specified period. Upon receipt of such notification, the Provider will:
- (a) take all reasonable steps to find a Short Term Private Rental tenant at a Market Rent for such Property; or
 - (b) take all reasonable steps to give effect to such other strategy as MSD and the Provider agree to mitigate against MSD's obligation to pay the IRRS in respect of the relevant Property,

and the amount of the IRRS will reduce by the amounts received by the Provider from the Short Term Private Rental tenant paying Market Rent or from such other arrangement agreed by the Provider and MSD.

- 5.6 A Property will not be considered to have failed to meet any required standard under this Agreement if that failure is caused by a Force Majeure Event.
- 5.7 MSD may at any time and from time to time during the Term require the release of nominated Properties from this Agreement, by giving notice specifying the typology, location and number of Properties so nominated and the nominated release date, provided the total number of Properties does not fall by more than 20% (or such other number as may be agreed) from the total number of Properties as at the Commencement Date. On receipt of a notice to release, the Provider is to select Properties to achieve the requested release, selecting in the first instance Properties that are not subject to a current Tenancy Agreement or those for which the Tenancy Agreement will have expired by the nominated release date and notify MSD of its selected release Properties. MSD will update the list of Properties in Schedule 7 to remove the selected released Properties with effect from the nominated release date.
- 5.8 Any Property released under clause 5.7 will be deemed to have become Unavailable (for payment purposes) within:
- (a) 30 days of the nominated release date, if not Tenanted; and
 - (b) 90 days of the nominated release date (or such other period as equates with the required notice period under the Residential Tenancies Act), if Tenanted.
- 5.9 Upon release of any Property, any security, encumbrance, caveat or land covenant in gross registered in respect of the Property pursuant to Schedule 5 must be discharged or removed by MSD as soon as practicable.

6 **Additional Services**

In addition to the other Services outlined in this Schedule 2, the Provider is to provide any Additional Services.

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7 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;
- (d) any Tenancy Management Special Requirements;
- (e) any Property Management Special Requirements; and
- (f) any other requirements specified in the Key Terms.

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SCHEDULE 3: PAYMENT OF DEVELOPMENT COST FUNDING**1 Development Cost Funding**

- 1.1 MSD will pay the Provider Development Cost Funding up to the Development Cost Funding Amount (GST exclusive) to assist with the delivery (by way of purchase and/or construction) of the Public Housing Project, subject to the Provider meeting the Conditions Precedent, providing relevant Drawdown Notices and otherwise complying with the terms and conditions of this Agreement.
- 1.2 The Development Cost Funding is provided subject to the provisions of this Agreement and this Schedule 3.
- 1.3 The Provider acknowledges MSD's right to withhold Development Cost Funding or seek repayment (in part or in full) should any events outlined in clause 7.1 of Schedule 1 occur.
- 1.4 Nothing in this Schedule 3 is to be interpreted as requiring MSD to increase its contribution to the Public Housing Project beyond the total amount specified in clause 1.1 of this Schedule 3, and the Provider acknowledges that it must meet any additional or unforeseen costs of completing the Public Housing Project that may arise beyond those initially budgeted for as presented to MSD.

2 Payment

- 2.1 **Payment of Development Cost Funding:** The payment of Development Cost Funding will be as set out in the Key Terms and in this Schedule 3.
- 2.2 **Drawdown Notice, invoice and supporting documentation:** Once a milestone set out in the Key Terms has been met (and within 12 months of the relevant milestone), the Provider is to submit to MSD:
- (a) a completed Drawdown Notice;
 - (b) a GST-compliant invoice (in a form previously approved by MSD) for the amount (if any) shown by the Drawdown Notice as owing to the Provider and to be paid by MSD to the Provider; and
 - (c) the Required Supporting Documentation, as specified in the Conditions Precedent to drawdown of Development Cost Funding in the Key Terms and as further described below:
 - (i) for Drawdown 1:
 - A. the Provider's nominated bank account for deposit of the Development Cost Funding;
 - B. a copy of all relevant building consents for the Public Housing Project;
 - C. a report from an independent quantity surveyor, who may be appointed jointly with the Provider's External Financier(s),

endorsed by a board member or trustee of the Provider certifying that:

- i) all requisite building consents and resource consents for the Public Housing Project are held and are not subject to any conditions that are likely not to be satisfied;
 - ii) the construction contracts and any relevant sub-contracts include appropriate liquidated damages regimes to incentivise full and timely performance and delivery of the Public Housing Project;
 - iii) they have seen and approved the form and content of any construction contract (including any relevant sub-contract) in relation to the Public Housing Project and that any such construction contract complies with the Project Management Plan, offers a fixed price and has been confirmed;
 - iv) the contractor(s) that will be involved in the construction under such contract are reputable contractors, to the best of his/her knowledge;
 - v) the procurement process undertaken in order to select the contractor(s) was fair and transparent and designed to obtain value-for-money;
 - vi) the value of the land used to support the development budget for the Public Housing Project is supported by an independent valuation;
 - vii) the fees under the contract are consistent with the Public Housing Project costings in the Project Management Plan and are fair and reasonable given the nature of the Public Housing Project;
 - viii) confirmation that construction has begun or is expected to begin within one month of the date the Drawdown Notice has been submitted; and
 - ix) the total operating costs for the life of the Term are fair and reasonable;
- D. a copy of each construction contract in relation to the Public Housing Project; and
- E. if the Provider is or will receive funding from any other source(s) to enable it to complete the Public Housing Project:
- i) key details of that funding (including as to security), together with evidence that demonstrates, to the satisfaction of MSD, that the Provider has an unconditional and binding commitment from the other funding source(s) that such funding will be provided

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sufficient (in addition to the Provider's own available financial resources) to enable completion of the Public Housing Project; and

- ii) a copy of any quantity surveyor's report that another funding source has required the Provider to obtain under the terms of that funding;

(ii) for Drawdown 2:

- A. a copy of the Code Compliance Certificate(s) issued for the completed Public Housing Project; and
- B. a final project acquittal report using the template contained in the Operational Manual, annexing a report from an independent quantity surveyor, who may be appointed jointly with the Provider's External Financier(s), that the relevant milestone for Drawdown 2 has been met.

2.3 **Invalid or incomplete documentation:** If the Provider submits a Drawdown Notice, invoice or Required Supporting Documentation that is incomplete, incorrect or fails to comply with clause 2.2 of this Schedule 3, MSD can reject the invoice. No money is payable to the Provider by MSD unless MSD has received a valid Drawdown Notice, invoice and Required Supporting Documentation from the Provider for the Payment Period to which that valid invoice relates. Payment of Development Cost Funding is otherwise governed by the Relationship Agreement.

2.4 **Unexpended funds:** The Provider agrees that all funds paid to it by MSD under this Agreement and not expended in accordance with this Agreement (together with any interest accrued in respect of any such funds) must be repaid, and a 'credit note' (that meets the requirements of section 25(3) of the Goods and Services Tax Act 1985) be issued for the associated invoice, to MSD within 35 Business Days following the final advance of funds under this Schedule 3.

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SCHEDULE 4: SERVICES PAYMENT FOR PUBLIC HOUSING**1 Services Payment**

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

$$\text{Services Payment} = \text{Total IRRS Payment} + \text{Total Vacant Day Payment} + \text{Total Top-up Payment} - \text{Total Unavailability Deduction}$$

where:

Services Payment	=	the Services Payment for the Payment Period
Total IRRS Payment	=	the Total IRRS Payment calculated in accordance with clause 2 of this Schedule 4
Total Vacant Day Payment	=	the Total Vacant Day Payment calculated in accordance with clause 3 of this Schedule 4
Total Top-up Payment	=	the Total Top-up Payment calculated in accordance with clause 4 of this Schedule 4
Total Unavailability Deduction	=	the Total Unavailability Deduction calculated in accordance with clause 5 of this Schedule 4

2 Total IRRS Payment

- 2.1 **Total IRRS Payment:** The Total IRRS Payment is an amount equal to the sum of the Daily IRRS (defined in clause 2.2 of this Schedule 4) for each Available Tenanted Property in the relevant Payment Period. If a Property satisfies any of the Unavailability criteria set out in the Unavailability table in clause 5.2 of this Schedule 4, it will not be an Available Tenanted Property and will not be included in the Total IRRS Payment calculation for that Payment Period.
- 2.2 **Daily IRRS:** The Daily IRRS in respect of an Available Tenanted Property is an amount equal to the Agreed Rent minus the IRR for that Available Tenanted Property, with the Agreed Rent and the IRR being pro-rated on a daily basis for each day falling within the Payment Period. Where the IRR for an Available Tenanted Property equals or exceeds the amount of the Agreed Rent for that Property the Daily IRRS will be zero.
- 2.3 **Tenant not referred:** MSD will be under no obligation to include in the Total IRRS Payment calculation any Available Tenanted Property where the Tenant was not referred to the Provider or approved by MSD as contemplated by this Agreement.

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3 **Total Vacant Day Payment**

3.1 **Total Vacant Day Payment:** The Total Vacant Day Payment is an amount equal to the sum of the Agreed Rent (pro-rated on a daily basis for each day falling within the relevant Payment Period) for each Available Vacant Property in the relevant Payment Period. If a Property satisfies any of the Unavailability criteria set out in the Unavailability table in clause 5.2 of this Schedule 4, it will not be an Available Vacant Property and will not be included in the Total Vacant Day Payment calculation for that Payment Period.

3.2 **Available Vacant Day Properties:** A Property will not be an Available Vacant Property in respect of any day where:

- (a) the Provider has provided less than five Business Days' notice of the Property's actual or impending vacancy to MSD; or
- (b) the Provider has not completed the matching and tenancy process set out in the Operational Manual within the required timeframe,

provided that where, as applicable:

- (c) the Provider subsequently provides at least five Business Days' notice of the Property's actual or impending vacancy to MSD; or
- (d) the Provider subsequently completes the matching and tenancy process set out in the Operational Manual within the required timeframe,

this clause 3.2 of Schedule 4 will not in and of itself prevent a Property from being an Available Vacant Property.

4 **Total Top-up Payment**

4.1 **Total Top-up Payment:** The Total Top-up Payment is an amount equal to the sum of the Agreed Rent for each Property that is a Short Term Private Rental less any rent received from the private tenant of that Short Term Private Rental less any amounts received by the Provider under clause 4.2 of this Schedule 4, in each case in the relevant Payment Period (with the Agreed Rent and the rent received from the private tenant of that Short Term Private Rental being pro-rated on a daily basis for each day falling within the Payment Period).

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

5 **Total Unavailability Deduction**

5.1 **Total Unavailability Deduction:** The Total Unavailability Deduction is an amount equal to the sum of the Unavailability Deductions for each applicable Property in the relevant Payment Period, calculated in accordance with the Unavailability table in clause 5.2 of this Schedule 4.

5.2 **Unavailability criteria:** The table below sets out the categories of Unavailability and the applicable consequences of such Unavailability:

Category of Unavailability	Criteria (alternatives)	Consequence
Unavailable Property for Ineligibility Reasons	The Property: <ul style="list-style-type: none"> • is tenanted by a Restricted Tenant; • is sub-let by the Tenant to a Restricted Tenant; or • continues to be tenanted by a person who MSD has assessed as having become an Ineligible Tenant. 	<ul style="list-style-type: none"> • IRRS: The Provider will not receive IRRS for the Property. • Unavailability Deduction: MSD is entitled to deduct \$100* per day per Property.
Unavailable Property due to delay in tenanting vacant Property	The Property remains vacant after the expiry of the Turnaround Period and MSD has provided the Provider a list of suitable Eligible Tenants to fill the vacancy in accordance with its obligations under this Agreement.	<ul style="list-style-type: none"> • IRRS: The Provider will not receive IRRS for the Property. • Unavailability Deduction: MSD is entitled to deduct \$100* per day per Property.
Unavailable Property due to Short Term Private Rental	The Property is occupied by a Short Term Private Rental tenant.	<ul style="list-style-type: none"> • IRRS: The Provider will not receive IRRS for the Property. • Unavailability Deduction: Nil.
Unavailable Property due to maintenance or other property matters (for the period up to three months after the expiry of the Turnaround Period)	The Property is not available to be let to an Eligible Tenant due to: <ul style="list-style-type: none"> • Property-related maintenance jobs that have not been responded to and completed in the Turnaround Period; • defects that have not been corrected in the Turnaround Period; or • the Provider removing the Property from circulation to complete maintenance (including getting it in a fit state for tenanting) after the 	<ul style="list-style-type: none"> • IRRS: The Provider will not receive IRRS for the Property. • Unavailability Deduction: <ul style="list-style-type: none"> • Threshold one: If over 5% (and up to 10%) of total Properties are in this category, MSD is entitled to deduct \$50* per day per Property. • Threshold two: If over 10% of total Properties are in this category, MSD is entitled to deduct \$100* per day per

Category of Unavailability	Criteria (alternatives)	Consequence
	expiry of the Turnaround Period.	Property (excluding those covered in threshold one above).
Unavailable Property due to maintenance or other property matters (for the period on and from three months after the expiry of the Turnaround Period)	<p>The Property is not available to be let to an Eligible Tenant due to:</p> <ul style="list-style-type: none"> • Property-related maintenance jobs that have not been responded to and completed in the three month period following the expiry of the Turnaround Period; • defects that have not been corrected in the three month period following the expiry of the Turnaround Period; or • the Provider removing the Property from circulation to complete maintenance (including getting it in a fit state for tenanting) for more than three months after the expiry of the Turnaround Period. 	<ul style="list-style-type: none"> • IRRS: The Provider will not receive IRRS for the Property. • Unavailability Deduction: MSD is entitled to deduct \$100* per day per Property.
Unavailable Property due to Methamphetamine Contamination	The Property is not available to be let to an Eligible Tenant due to Methamphetamine Contamination which has not been remediated in the High Level Methamphetamine Contamination Remediation Period following the expiry of the Turnaround Period.	<ul style="list-style-type: none"> • IRRS: The Provider will not receive IRRS for the Property. • Unavailability Deduction: MSD is entitled to deduct \$100* per day per Property.

Category of Unavailability	Criteria (alternatives)	Consequence
Unavailable Property due to Force Majeure Event	The Property is not available to be let to an Eligible Tenant for more than six consecutive months due to a Force Majeure Event.	<ul style="list-style-type: none"> • IRRS: The Provider will not receive IRRS for the Property. • Unavailability Deduction: Nil
Unavailable Property due to MSD release (previously a Tenanted Property)	The Tenanted Property is deemed to be Unavailable on the 101 st day after MSD has notified the Provider that the Property is to be released under clause 5.7 of Schedule 2.	<ul style="list-style-type: none"> • IRRS: The Provider will not receive IRRS for the Property. • Unavailability Deduction: Nil
Unavailable Property due to MSD release (previously an Available Vacant Property)	The Available Vacant Property is deemed to be Unavailable on the 31 st day after MSD has notified the Provider that the Property is to be released under clause 5.7 of Schedule 2.	<ul style="list-style-type: none"> • IRRS: The Provider will not receive IRRS for the Property. • Unavailability Deduction: Nil
<p>* All dollar amounts in this table are subject to annual adjustment on and from the Commencement Date in accordance with the annual movement (increase or decrease) in the consumer price index for rentals in the applicable city or region in which the Properties are located, as published by Statistics New Zealand.</p>		

6 Operational Manual and Unavailability

6.1 The Operational Manual contains further detailed information on the Unavailability of Properties.

7 Report and invoice

7.1 **Report and invoice:** No earlier than the first Business Day after the end of each Payment Period (and no later than 12 months after the relevant Payment Period), the Provider is to submit to MSD:

- (a) a report certified by the Provider:
- (i) specifying the Services Payment for the relevant preceding Payment Period;
 - (ii) setting out individually each item that has been taken into account in calculating the Services Payment (including the Total IRRS Payment, the Total Vacant Day Payment, the Total Top-up Payment and the Total Unavailability Deduction in accordance with this Schedule 4);

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- (iii) setting out the details of any relief claimed from the consequences of Unavailability in that Payment Period (for example, due to a Force Majeure Event); and
 - (iv) setting out any other matters required to be included in that report in accordance with the Contract Documents; and
- (b) a tax invoice (in the form set out in the Operational Manual or as otherwise approved by MSD) for the Services Payment (if any) shown by the report as payable by MSD to the Provider (or, if the invoice is for a negative amount, to be paid by the Provider to MSD).

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SCHEDULE 5: SECURITY**1 Encumbrance, land covenant and caveat**

In addition to the encumbrance to be registered by MSD pursuant to the Key Terms, to protect MSD's interests under this Agreement (during both the Development Phase and the Public Housing Phase), the Provider agrees that MSD may, at its discretion:

- (a) register an encumbrance (either including or not including an encumbrancee power of sale) and/or a land covenant in gross over the Properties in the form set out in the Operational Manual or as otherwise determined by MSD. Any encumbrance and/or land covenant in gross registered must rank first in priority to any mortgage or security to be provided in favour of another financier of the Provider; and
- (b) register a caveat against the titles to the Properties.

2 No objection

The Provider will do everything necessary to support the registration of any encumbrance, land covenant in gross and caveat pursuant to clause 1 of this Schedule 5 and the Key Terms, including execution of all necessary documents required for registration, and will procure such written consents and binding agreements as may be necessary from any security holder, financier or other third party having or seeking a security interest or other interest or estate in the Properties as are necessary. The overall security positions of MSD and any other security holder or financier to the Provider may require the entry into by the Provider, MSD and any other security holder or financier of a tripartite or multiparty security deed regulating those parties' respective rights and security positions. MSD may at its discretion require entry into such a deed as a condition of Development Cost Funding.

3 Alternative Security

MSD may, at its discretion, require a different form of security protection to that identified in clause 1 of this Schedule 5, such as a mortgage, and the Provider is to cooperate fully to provide MSD with the required security including any priority or other related documentation with any other financier. Any such alternative security, if required, is specified in the Key Terms.

4 Discharge

MSD will agree to discharge any encumbrance, land covenant in gross, other security or caveat in respect of a Property that permanently ceases to be subject to this Agreement.

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SCHEDULE 6: STEP-IN RIGHTS

This Schedule 6 applies if the Key Terms provide that MSD's Step-in Rights apply.

1 When Step-in Applies

- (a) If MSD reasonably considers that it needs to take action in connection with any of the Properties or the Services:
 - (i) because of serious injury or death to persons, serious risk to the health and safety of persons, serious risk of material damage or destruction or serious risk to property, or the Provider's registration under the HRTM Act has been revoked; or
 - (ii) to enable MSD to meet any statutory duty,

then MSD may take all or any of the steps described in clause 2 of this Schedule 6 but only if this is practicable having regard to who owns the Properties (for example, they may only be leased by the Provider and the Provider may need lessor consents which are not forthcoming) and the rights of any External Financiers.
- (b) Before exercising any Step-in Rights, MSD will first notify the Provider of its intention to do so, providing the reasons and relevant details around dates, the Services affected and details of any Step-in Agent appointed for the purpose. MSD may update this information from time to time. MSD need not give prior notice in an emergency, but will give notice as soon as practicable.
- (c) MSD acknowledges that any exercise of Step-in Rights could be difficult to implement well, particularly given the need for its Step-in Agent to have the same HRTM Act registration as the Provider and given the requirements of any External Financiers.

2 Step-in Rights

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

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

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

3 **Power of Attorney**

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

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

4 **Provider's Rights and Obligations on Step-in**

- 4.1 An exercise by MSD of Step-in Rights will suspend the Provider's rights and obligations accordingly, and MSD will not be required to make any payment under this Agreement until the Step-out Date.
- 4.2 The Provider is to cooperate with and assist MSD during any exercise of Step-in Rights, to ensure minimal disruption to Services and Tenants and a smooth and timely return to normal Services.

5 **Relief and Payments on Step-in**

- 5.1 MSD may recover from the Provider the direct Losses MSD incurs as a result of exercising its Step-in Rights following a Provider breach of this Agreement. MSD will not otherwise be entitled to compensation.
- 5.2 To the extent that MSD exercises its Step-in Rights other than as a result of a breach of the Provider's obligations under the Contract Documents, MSD will be liable to the Provider for any direct Losses resulting from any damage to property or any third party Claim against the Provider, to the extent attributable to the actions of the Step-in Agent. MSD will not, however, have any other Liability to the Provider as a result of its exercise of Step-in Rights and the Provider will not make any Claim against it.
- 5.3 MSD's exercise of Step-in Rights will not affect the Provider's entitlement to the IRRS in accordance with this Agreement except to the extent that entitlement is affected by the event giving rise to the exercise of the Step-in Rights or as a result of MSD being prevented by Laws from paying the IRRS, in accordance with Schedule 4.

6 **Step-out**

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

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

7 **No Obligation on MSD**

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

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SCHEDULE 7: SCHEDULE OF PROPERTIES

This Schedule sets out the Properties as at the Commencement Date and the information contained in this Schedule will be made available by MSD in the MSD Public Housing Client System. Please note that the information contained in this Schedule will be updated by MSD periodically in the MSD Public Housing Client System, and each updated version of the information contained in this Schedule takes precedence and supersedes each prior version in the MSD Public Housing Client System.

Property ID	Typology	Address	Legal Description	Unencumbered Value	Market Rent per Payment Period*	Operating Supplement per Payment Period*	Agreed Rent per Payment Period*

* Note that the amounts shown in this Schedule 7 will be adjusted as appropriate to take account of any applicable shorter Payment Period to cater for the beginning and end of the Term.

SCHEDULE 8 – 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 8).

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 8 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 8 (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 8, 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 8,

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 8, 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 8 pursuant to clause 2.1 of this Schedule 8, 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 8 to ensure the Services are delivered to meet the needs of Public Housing Clients to the standard required by MSD.

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SCHEDULE 9: INTERPRETATION

1 Defined terms

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

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

Agreed Rent means the fortnightly rent for a Property for the purposes of this Agreement, as set out in Schedule 7 (as amended from time to time), based on the Market Rent and any Operating Supplement;

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;

Available means, in respect of a Property, that the Property is an Available Tenanted Property or an Available Vacant Property;

Available Tenanted Property means a Property that is not Unavailable, is tenanted by a Tenant, and complies with clause 1.4 of Schedule 2;

Available Vacant Property means a Property that is not Unavailable, that complies with clause 1.4 of Schedule 2 and is vacant awaiting tenancy by an Eligible Tenant (and the Provider has fulfilled its obligations under the vacancy notification and Tenant selection requirements of the Operational Manual), but does not include any Property to which clause 3.2 of Schedule 4 applies;

Availability Report means the report described as the Availability Report in the Operational Manual;

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

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

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

Commencement of Construction means the date on which construction in respect of the Public Housing Project begins as indicated in the Project Management Plan;

Completion of Construction means the date on which construction in respect of the Public Housing Project will be completed and one or more Code Compliance Certificate(s) are issued;

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

Development Costs means the costs of relocating, refurbishing or building new properties in relation to the Public Housing Project (and which new properties are

intended to become Properties under this Agreement as described in Schedule 1 of this Agreement);

Development Cost Funding means the contributions paid by MSD towards the Development Costs under the terms and conditions contained in this Agreement, as set out in Schedule 3;

Development Phase means the period leading up to, and including, the construction, refurbishment, relocation and/or acquisition of properties as defined in the Project Management Plan and Schedules and ending in the issuance of a Code Compliance Certificate for all the Properties (excluding any later additions or substitutions);

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

Drawdown Notice means a Drawdown notice in (or substantially in) the form set out in the Operational Manual;

Ineligible Tenant means a person who:

- (a) was an Eligible Tenant but has ceased to be eligible for an IRRS tenancy and is not otherwise eligible for public housing; or
- (b) was a tenant in a Short Term Private Rental and continues to be a tenant in the Property after that tenancy has ended;

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

IRRS means the income-related rent subsidy in respect of a Tenant payable by MSD to the Provider in accordance with Schedule 4 of this Agreement;

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

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

Market Rent means the market rent for each Property as set out in Schedule 7 (as amended from time to time in accordance with this Agreement) or as determined pursuant to clause 4.3 of Schedule 2;

Operating Supplement means the additional payment (if any) from MSD to the Provider that is included in the Agreed Rent;

Parties means MSD and the Provider;

Payment Period means:

- (a) the period commencing on the first Service Commencement Date and ending on MSD's next billing cycle;

- (b) each subsequent 14-day period during the term of this Agreement starting on the Saturday and ending on the second Friday; and
- (c) the period from the end of the last full Payment Period to the last day of the term of this Agreement;

Project Management Plan means a robust and suitable project management plan provided by the Provider and approved by MSD in writing prior to the date of this Agreement;

Property means a property that is listed in Schedule 7, as that list is updated from time to time (including so as to reflect any approved additions and substitutions and any released Properties) in accordance with clauses 5.4 and 5.7 of Schedule 2 (and a property is not a Property for the purposes of this Agreement unless it is at the relevant time currently on that list), and **Properties** means all of them;

Public Housing Phase means the period during the term of this Agreement that immediately follows completion of the Development Phase, throughout which the Provider must make the Properties Available to Eligible Tenants;

Public Housing Project or **Project** means the public housing project described in the Key Terms, which Project comprises the Properties;

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

Required Supporting Documentation means the documentation that must be submitted by the Provider to satisfy the requirements for a Development Cost Funding payment in accordance with Schedule 3;

Restricted Tenant means a person who:

- (a) is not an Eligible Tenant;
- (b) is an Eligible Tenant but the Provider's Class 1: Social Landlord registration has been suspended;
- (c) is an Eligible Tenant but in respect of whom the rule in clause 1.7 of Schedule 2 applies; or
- (d) has not been selected by the Provider in accordance with clause 1.6 of Schedule 2;

Service Commencement Date means, in relation to a Property, the day on which that Property is due to be delivered and become available to let to an Eligible Tenant in accordance with the Project Management Plan;

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

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

Services Payment means the payment by MSD to the Provider in consideration for the Services provided (or to be provided) by the Provider, as set out in Schedule 4;

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

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

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

Step-in Rights means MSD's Step-in Rights set out in Schedule 6;

Step-out Date means the date specified as such in a notice given by MSD pursuant to clause 6.1 of Schedule 6;

Target Group means the type of public housing tenant for whom the Public Housing Project is being developed as agreed between the Provider and MSD;

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;

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;

Turnaround Period means the period commencing the day after a Property becomes an Available Vacant Property until the earlier of the 11th Business Day later and the day a new Tenancy Agreement commences in respect of that Property; and

Unavailable, in respect of a Property, means that the Property is unavailable for use by reference to the unavailability criteria set out in the table in clause 5.2 of Schedule 4.

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

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

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;

- (d) “including” and similar words do not imply any limitation;
- (e) the background and headings are for descriptive purposes only and do not form part of, or otherwise affect the interpretation of, this Agreement;
- (f) amounts are in NZ\$ and are stated after the calculation (and inclusion) of GST (if any);
- (g) references to a party or a person includes any form of entity and their respective successors, permitted assignees and representatives; and
- (h) references to clauses and Schedules are to clauses of and Schedules to this Agreement.

ATTACHMENT: FORM OF ENCUMBRANCE

Encumbrance instrument
Section 101, Land Transfer Act 1952

WORKING DRAFT

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

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Continuation of "Covenants and Conditions"

BACKGROUND

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

DEFINITIONS AND INTERPRETATION

2 **Definitions:** In this Encumbrance, unless the context indicates otherwise:

- (a) **Business Day** means a day (other than a Saturday or a Sunday) on which registered banks are open for general banking business in Wellington and Auckland;
- (b) **Encumbrance** means this encumbrance instrument;
- (c) **Encumbrancee** means Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Social Development and includes such other New Zealand government agency or Crown entity as may assume the role of purchaser of public housing provision on behalf of the New Zealand government in place of the Ministry of Social Development;
- (d) **Encumbrancer** means the person named as the Encumbrancer in this Encumbrance and includes any subsequent assignee of or successor to the party named as Encumbrancer;
- (e) **GST** means goods and services tax or any tax imposed pursuant to the provisions of the *Goods and Services Tax Act 1985* (or any act in substitution thereof);
- (f) **Land** means [insert legal description];
- (g) **Purpose** means:
 - (i) using the Land for public housing purposes in accordance with the terms of the Services Agreement; or
 - (ii) where there is no Services Agreement in place between the Encumbrancer and the Encumbrancee, using the Land in accordance with any public housing parameters notified in writing to the Encumbrancer by the Encumbrancee; or
 - (iii) such other purpose as may be agreed in writing between the Encumbrancer and the Encumbrancee;
- (h) **Rentcharge** means a rental charge of the higher of:
 - (i) \$[1.00] plus GST (if applicable) per day for each unit or dwelling located on the Land (including in a multi-storey development) in respect of which the Encumbrancer is in breach of its obligations and covenants under this Encumbrance, for the duration of any breach; and

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(ii) the amount payable (if any) by the Encumbrancer to the Encumbrancee under the Services Agreement for any breach of the Encumbrancer's obligations and covenants under this Encumbrance; and

(i) **Services Agreement** means the [*insert name*] Agreement dated [•] between the Encumbrancee and the Encumbrancer for the properties on the Land to be developed or refurbished and/or for the properties on the Land to be used for public housing purposes, including as renewed, amended or replaced from time to time.

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

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

ENCUMBRANCER'S COVENANTS

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

RENTCHARGE

5 Subject to clause 5 below, the Rentcharge is payable by the Encumbrancer to the Encumbrancee on 31 March every calendar year.

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

DELAY OR WAIVER

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

NOTICES

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

COSTS

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

GENERAL

- 15 This Encumbrance is intended to be registered at Land Information New Zealand ahead of, and will be binding on, all transferees, tenants, lessees, mortgagees, chargeholders and any other holder of any estate or interest in the Land and their respective successors in title and assigns.

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

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