



[Insert Provider logo]

**Revised Working Draft 1 (03.27.2018)**  
**NOT GOVERNMENT POLICY**

**SERVICES AGREEMENT:  
OPEN TERM**

**Guidance note:** *This Agreement applies to a contractual relationship with a different level of commitment by both the Provider and MSD in relation to the supply and funding of Housing and Housing Services, compared to Housing and Housing Services supplied and funded under a Services Agreement: Capacity or 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
<b>General</b>	
<b>Parties</b>	Her Majesty, the Queen in right of New Zealand acting by and through the Ministry of Social Development ( <b>MSD</b> ) [Insert full legal name of Provider] ( <b>Provider</b> )
<b>Agreement ref. no.</b>	[Insert reference no.]
<b>Relationship Agreement date and ref.</b>	[Insert date and reference no. of Relationship Agreement]
<b>Execution Date</b>	[Insert date this Agreement is signed]
<b>Commencement Date</b>	The date on which all of the Conditions Precedent have been satisfied or waived.
<b>Conditions Precedent to be satisfied before the Commencement Date</b>	This Agreement is conditional on: <ul style="list-style-type: none"><li>the Provider being a community housing provider registered under the HRTM Act as a Class 1: Social Landlord; and</li><li>[Insert any others]</li></ul> The Provider must notify MSD once each condition is satisfied. See also clause 5(b) of the Relationship Agreement.
<b>Date for satisfaction of Conditions Precedent</b>	[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. <del>See also clause 5(c) of the Relationship Agreement.</del>

Key Term	Description
<b>Term</b>	From the Commencement Date until this Agreement is terminated in accordance with the Key Term immediately below. <u>See also clause 5(d) of the Relationship Agreement.</u>
<b>Termination of this Agreement</b>	Each of MSD and the Provider may terminate this Agreement by giving the other not less than 950 Business Days' notice. This Agreement may also be terminated in accordance with the Relationship Agreement.
<b>General background</b>	<ul style="list-style-type: none"> <li>This Agreement sets out the key commercial terms and conditions on which MSD agrees to procure from the Provider, and the Provider agrees to make available, <del>public housing properties</del> <u>public housing properties</u> for Eligible Tenants on an open term basis, meaning that MSD pays the Provider <u>IRRS in respect of Tenants placed in Properties for the duration of each relevant Tenancies in respect of Properties made available for the duration of that Tenancy Agreement</u> (subject to any early termination or Abandonment).</li> <li>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.</li> <li>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.</li> </ul>
<b>Precedence</b>	This Agreement prevails over the Relationship Agreement in the event of any conflict between the two agreements.
<b>Interpretation</b>	<u>Clause 2(a) of the Relationship Agreement applies to this Agreement as if it were set out in full in this Agreement</u> <del>Interpretation rules for this Agreement are set out in Schedule 4.</del>
<b>Parties' representatives and contact details (including for the purposes of the Relationship Management Group)</b>	<p><b><u>MSD's Representative</u></b></p> <p>[name title address DDI cell email]</p> <p><b><u>Provider's Representative</u></b></p> <p>[name title address DDI cell email]</p>

WORKING DRAFT

Key Term	Description
<b>Properties and Services</b>	
<b>Services description</b>	The Services to be provided by the Provider are set out in Schedule 1.
<b>Services Location(s)</b>	-[Insert city/town/other location(s)].
<b>No specific availability requirements</b>	<del>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).</del>
<b>Monitoring</b>	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.  MSD will give the Provider a copy of any report as to the outcome of the monitoring.
<b>Property Management Requirements</b>	<del>The Provider is to comply with the Property Management Requirements set out in Schedule 5As set out in the Operational Manual.</del>
<b>Tenancy Management Requirements</b>	<del>The Provider is to comply with the Tenancy Management Requirements set out in Schedule 6As set out in the Operational Manual.</del>
<b>Additional Services</b>	<del>[Insert any additional services (over and above those set out in Schedule 1) to be provided by the Provider]. A failure to provide these Additional Services will be a material breach of this Agreement.</del>
<b>Annual Relationship Meeting Reporting</b>	

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Key Term	Description												
<b><u>Annual Relationship Meeting</u></b>	<p>Without limiting clause 7 of the Relationship Agreement, the Relationship Management Group is to hold an annual relationship meeting within 20 Business Days of each anniversary of the Commencement Date to review how the partnership between MSD and the Provider is working. The Relationship Management Group should discuss the following topics at each annual relationship meeting:</p> <ul style="list-style-type: none"><li>• <u>health and safety incidents;</u></li><li>• <u>Tenant complaints;</u></li><li>• <u>general operational processes;</u></li><li>• <u>Tenant satisfaction;</u></li><li>• <u>Tenancy terminations;</u></li><li>• <u>compliance with the Contract Documents and any issues in relation to the Contract Documents;</u></li><li>• <u>occupancy rates in relation to the Properties;</u></li><li>• <u>forward-looking plans;</u></li><li>• <u>views of Housing and Housing Services demand;</u></li><li>• <u>wrap-around support interface; and</u></li><li>• <u>key learnings in relation to Housing and the Housing Services.</u></li></ul>												
<b>Reporting</b>	<p>The Provider must provide to MSD the following regular reports, in accordance with the Operational Manual and as set out below:</p> <table><tr><th>Report type</th><th>Frequency</th><th>When due</th></tr><tr><td><ul style="list-style-type: none"><li>• <del>IRRS fortnightly schedule payment report and invoice, in accordance with the Operational Manual</del></li></ul></td><td>Fortnightly</td><td>Every second Monday</td></tr><tr><td><ul style="list-style-type: none"><li>• <del>Half yearly and yearly audited financial statements</del></li></ul></td><td>Semi-annually /annually</td><td>Within 2 months of half yearly/annual balance date</td></tr><tr><td><ul style="list-style-type: none"><li>• <del>Annual review report, containing:</del><ul style="list-style-type: none"><li><del>(i) minutes of annual review meeting;</del></li><li><del>(ii) summary of: Property inspections, Tenancy satisfaction survey and example Tenancy Agreement from a</del></li></ul></li></ul></td><td>Annually</td><td>As specified in the Operational Manual</td></tr></table>	Report type	Frequency	When due	<ul style="list-style-type: none"><li>• <del>IRRS fortnightly schedule payment report and invoice, in accordance with the Operational Manual</del></li></ul>	Fortnightly	Every second Monday	<ul style="list-style-type: none"><li>• <del>Half yearly and yearly audited financial statements</del></li></ul>	Semi-annually /annually	Within 2 months of half yearly/annual balance date	<ul style="list-style-type: none"><li>• <del>Annual review report, containing:</del><ul style="list-style-type: none"><li><del>(i) minutes of annual review meeting;</del></li><li><del>(ii) summary of: Property inspections, Tenancy satisfaction survey and example Tenancy Agreement from a</del></li></ul></li></ul>	Annually	As specified in the Operational Manual
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<ul style="list-style-type: none"><li>• <del>Half yearly and yearly audited financial statements</del></li></ul>	Semi-annually /annually	Within 2 months of half yearly/annual balance date											
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Key Term	Description
	<p><del>selection of Properties (as directed by MSD).</del></p> <p>• <del>All other reports required by the Operational Manual</del></p> <p>As specified in the Operational Manual</p>
<b>Financial and reporting</b>	
<b><u>Agreed Rent</u></b>	<u>The IRRS is based, among other things, on the Agreed Rent for each Property. The Agreed Rent is set out in Schedule 3 as at the Commencement Date. If the Parties agree to amend the Agreed Rent during the Term of this Agreement, they will enter into a variation agreement in the form attached as Schedule 7 to delete and replace Schedule 3 from time to time.</u>
<b><u>IRRS fortnightly schedule payment report and invoice</u></b>	<u>The Provider must provide MSD, by every second Monday during the Term, an IRRS fortnightly schedule payment report and invoice in respect of each Payment Period in a form acceptable to MSD, acting reasonably.</u>
<b><u>IRRS and related payments</u></b>	<p><del>The IRRS will be paid fortnightly by MSD to the Provider, in accordance with Schedule 2 and in respect of each Tenant who has been let a Property in accordance with this Agreement, within [5]10 Business Days of receipt by MSD of a valid IRRS fortnightly schedule payment report and invoice 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. <b>[Drafting note: MSD is considering the payment period.]</b></del></p> <p><del>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.</del></p>
<b><u>Performance Data Measures</u></b>	<p><u>Within 20 Business Days of the anniversary of each Commencement Date, the Provider is to provide a written data report to MSD's Representative, identifying each of the following in relation to the 12 month period prior to the relevant anniversary:</u></p> <ul style="list-style-type: none"> <li>• <u>the Tenant occupancy rate for Properties, measured as:</u> [•]</li> <li>• <u>the Tenant turnover rate for Properties, measured as:</u> [•]</li> <li>• <u>Tenant satisfaction rates for Properties, measured as:</u> [•]</li> <li>• <u>the percentage of rent arrears over 21 days; and</u></li> <li>• <u>the average time to respond to urgent Property-related and Tenant-related queries.</u></li> </ul>

Key Term	Description						
	<del>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.</del>						
<b><u>Data Measures outcomes</u></b>	<p>If MSD (acting reasonably) considers that the Data Measures provided by the Provider above are not satisfactory in the context of the Services and the principles set out in clause 3.3 of the Relationship Agreement, then the Relationship Management Group will meet as frequently as required and work together co-operatively to seek to improve the Data Measures.</p> <p>If, after a period of three months or longer, MSD (acting reasonably) considers that the Data Measures have not been improved to a satisfactory level, then MSD may undertake increased monitoring of the Provider in accordance with clause 10.2(d) of the Relationship Agreement.</p>						
<b><u>Insurances Required</u></b>	The Provider is to hold and maintain the insurance policies at the specified levels of cover required and approved by the Regulatory Authority, provided that if and to the extent the Regulatory Authority no longer requires the Provider to hold and maintain the insurance policies at the specified levels of cover required and approved by it as at the date of this Agreement (the <b>Initial Insurances</b> ), then the Provider will nonetheless continue to be required under this Agreement to hold and maintain the Initial Insurances.						
<b><u>Insurance</u></b>							
<b><u>Insurances required</u></b>	<table> <tr> <td>• <del>Public liability</del></td><td><del>{Insert amount of cover required}, per event or series of related events</del></td></tr> <tr> <td>• <del>Material loss/damage</del></td><td><del>Full replacement value of each Property</del></td></tr> <tr> <td>• <del>{Insert any others}</del></td><td><del>{Insert amount of cover required}</del></td></tr> </table>	• <del>Public liability</del>	<del>{Insert amount of cover required}, per event or series of related events</del>	• <del>Material loss/damage</del>	<del>Full replacement value of each Property</del>	• <del>{Insert any others}</del>	<del>{Insert amount of cover required}</del>
• <del>Public liability</del>	<del>{Insert amount of cover required}, per event or series of related events</del>						
• <del>Material loss/damage</del>	<del>Full replacement value of each Property</del>						
• <del>{Insert any others}</del>	<del>{Insert amount of cover required}</del>						

**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*]

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## SCHEDULE 1: THE SERVICES

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

### 1 **Services and Additional Services**

The Provider is to:

(a) ~~provide the Services and the Additional Services (if applicable) in accordance with the Key Terms, all relevant Laws, the Tenancy Management Requirements, the Property Management Requirements and the Operational Manual;~~

~~(a)~~(b) let Properties to Eligible Tenants, from time to time during the Term, in accordance with this Agreement, the Tenancy Management Requirements and the Operational Manual;

~~(b)~~(c) be registered as a Class 1: Social Landlord under the HRTM Act for so long as it is providing Services under this Agreement;

~~(c)~~(d) maintain each Tenant's Property in accordance with the Property Management Requirements and all other requirements of this Agreement, the standards applicable to a Class 1: Social Landlord as set out in the HRTM Act and all other relevant Laws ~~(including the Residential Tenancies Act)~~ and the requirements of the Operational Manual;

~~(d)~~(e) ensure it notifies the Tenant of all relevant information about the Property prior to signing of the Tenancy Agreement;

~~(e)~~(f) ~~provide ensure it has a copy of each a~~ Tenancy Agreement for each Property ~~let to a Tenant and is to maintain all Tenancy Agreements as part of the Service Record~~ subject to this Agreement to MSD;

~~(f)~~(g) ensure all Properties are optimally utilised so that the bedroom count is appropriate having regard to the relevant Tenant, and the Property is otherwise appropriate (including as to any necessary modifications), for the relevant ~~Eligible~~ Tenant's needs;

~~(g)~~(h) ~~I~~ 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 is in significant financial hardship or has had a significant change in circumstances that has severely impacted his or her current living arrangements or resulted in significant financial hardship; **[Drafting Note: "sitting Tenant" position still outstanding.]**

~~(h)~~(i) give priority to providing Properties to Eligible Tenants which MSD has indicated as high priority;

~~(i)~~(j) 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)~~(k) only charge the Tenant of a Property rent at the lower of IRR and Market Rent;

(l) not request or require any additional charges from a Tenant other than:

(i) the IRR;

(ii) the provision of a bond; ~~and~~

(iii) the actual costs of utilities in respect of the Property; and

(iv) [any reasonable amounts (having regard to the fact that housing affordability is to be maintained) the Tenant has agreed in writing to pay the Provider where the Provider has agreed to provide services to the Tenant in relation to the Tenant's obligations under section 39(3) of the Residential Tenancies Act (for example, lawn-mowing and rubbish collection)] **[Drafting note: MSD is considering whether this will have any unintended consequences on IRRS.]**

~~—provided that~~ ~~T~~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;

~~(k)~~(m) [increase ~~Market Rent~~ Tenant's IRR only 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;] **[Drafting note: market reviews and indexation being considered by MSD.]**

~~(l)~~(n) ~~immediately~~ promptly (but in any event within 2 Business Days) notify MSD via the MSD ~~Public~~-Housing Client System of any Tenancy terminating and the circumstances of such termination;

~~(m)~~(o) [seek MSD's approval before transferring a Tenant to any other approved Property;] **[Drafting note: outstanding point.]**

~~(n)~~(p) ~~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);~~

~~(o)~~(q) notify MSD via the MSD ~~Public~~-Housing Client System as soon as practicable (but in any event within five Business Days) of becoming aware of any change to a Tenant's IRR or any change in circumstances of a Tenant (or any change in circumstances of any other applicable person likely to result in the payment of a higher IRR by a Tenant) that may affect the Tenant's rate of IRR or its Housing need of which the Provider becomes aware, and remind the Tenant within that same time period that the Tenant is required to notify MSD of its change in circumstances;

~~(p)~~(r) permit such monitoring and audit as MSD requires in accordance with clause 10 of the Relationship Agreement to verify the Provider's compliance with this Agreement; and

~~(q)~~(s) at all times observe the Operational Manual and all reasonable directions given by MSD's ~~Representative~~, ~~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~~
- ~~any other requirements specified in the Key Terms.~~

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

1.3 MSD ~~will~~ **may, from time to time, recalculate the IRR for each Tenant and will** ~~similarly~~ notify the Provider of any change to:

(a) the **IRR**, and the reasons for the change in IRR (including if the change is due to a change in the Tenant's circumstances or the circumstances of any other applicable persons, and, if so, the date the change in circumstances occurred); and

(b) the **associated change in IRRS as a result of the change in IRR under clause 1.3(a) of this Schedule 2,**

(together, an **IRR Change Notification**).

1.4 If the Provider receives a notification from MSD under clause 1.3 of this Schedule 2, then in accordance with section 94(1) of the HRTM Act:

(a) the Provider is to, unless, in the Provider's opinion, it would not result in a material difference to the IRR charged for the relevant Property, give the Tenant written notice stating the date on which the increased IRR takes effect (**the Effective Date**):

(b) the Effective Date must be a date no earlier than 61 days after the date stated in the IRR Change Notification that the change in circumstances occurred; and

(c) the Provider must give the notice to the Tenant at least two weeks before the Effective Date.

(a) ~~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.~~

1.5 The Provider is to, as soon as practicable following (but in any event within five Business Days of) notifying the Tenant under clause 1.4 of this Schedule 2, confirm to MSD via the MSD Housing Client System that it has notified the Tenant of the increased IRR and the Effective Date.

~~1.21.6~~ 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.~~

1.7 The Provider, upon receiving notice from MSD under clause ~~1.6-1.5~~ of this Schedule 2, is to calculate the IRRS cessation date (IRRS Cessation Date) for that Tenant which will be a date that is no later than a date that allows for:

(a) the minimum amount of notice to be given to the Tenant of the tenancy termination, as required by the Residential Tenancies Act; and

(b) an additional 10 Business Days,

counted from the date that notice is given by MSD in accordance with clause 1.6 of this Schedule 2.

~~1.3~~1.8 ~~inform the relevant Tenant w~~Within five Business Days of receipt of a notice from MSD under clause 1.7 of Schedule 2, MSD will inform the relevant Tenant that:

(a) he or she is no longer eligible ~~for to be a public h~~Housing Client;

(b) his or her rent will no longer be subsidised with effect from the IRRS Cessation d~~Date of termination~~; and

(c) subject to clause 1.9 of this Schedule 2, that the Tenancy will be terminated with effect from the termination Cessation d~~Date (as determined pursuant to clause 1.4 of this Schedule 2.~~

~~1.4~~1.9 Notwithstanding clause 1.7 of this Schedule 2, the Provider can elect to continue to provide accommodation to the relevant Ineligible Tenant following the Cessation Date at the same Property outside of the scope of this Agreement.

~~1.5~~1.10 Any payment of IRRS made in respect of an Ineligible Tenant (following a Cessation Date or where the Provider has failed to notify MSD of a change in circumstances in accordance with clause 1(p) of Schedule 2) 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.



[Insert Provider logo]

**Revised Working Draft 1 (03.27.2018)**  
**NOT GOVERNMENT POLICY**

### SCHEDULE 3 – 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 Housing Client System. If MSD and the Provider agree to amend this Schedule 3 in accordance with the Key Terms (see Agreed Rent), then the information contained in this Schedule will be updated by MSD periodically in the MSD Housing Client System, and each updated version of the information contained in this Schedule takes precedence and supersedes each prior version in the MSD Housing Client System.*

<u>Property ID</u>	<u>Typology</u>	<u>Address</u>	<u>Legal Description</u>	<u>Value of Property</u>	<u>Market Rent per Payment Period*</u>	<u>Agreed Rent per Payment Period*</u>

*\* Note that the amounts shown in this Schedule 3 will be adjusted appropriately to take account of any applicable shorter Payment Period to cater for the beginning and end of the Term.*

## **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 Performance 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 Performance 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.~~



## 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;

**Agreed Rent** means the fortnightly rent for a Property for the purposes of this Agreement, as set out in the Key Terms, based on the Market Rent;

**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(s) 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 ~~subsequently ceased to be an Eligible Tenant~~~~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 the Key Terms and 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 the market rent for each Property set out in Schedule 3 (as amended from time to time in accordance with the Key Terms (see Agreed Rent))~~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 is in the Services Location(s) and has been let to an Tenant in accordance with this Agreement or a property that:

- (a) is in the Services Location; and
- (b) is listed in the MSD ~~Public~~-Housing Client System as vacant;
- (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, as the context requires;

**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-h~~Housing tenancy agreement for a nominated Property between the Provider and an Eligible Tenant that complies with the Residential Tenancies Act and the HRTM Act (as applicable), 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.~~

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**SCHEDULE 5: PROPERTY MANAGEMENT REQUIREMENTS**

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**SCHEDULE 6: TENANCY MANAGEMENT REQUIREMENTS**

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## **SCHEDULE 7: FORM OF VARIATION AGREEMENT**

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

**between** (1) **Her Majesty the Queen in right of New Zealand acting by and through the Chief Executive of the Ministry of Social Development (MSD)**

**and** (2) [insert name of Provider] (**Provider**)

### **Introduction**

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

### **It is agreed**

#### **1 Definitions and Interpretation**

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

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

#### **2 Variation**

With effect on and from [insert date] (**Effective Date**), the Agreement is varied by deleting Schedule 3 and replacing Schedule 3 with the new Schedule 3 attached to this Variation Agreement.

#### **3 Confirmation**

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

#### **4 General**

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

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#### **4.2 Counterparts:**

- (a) This Variation Agreement may be signed in any number of counterparts all of which, when taken together, constitute one and the same instrument. A party may enter into this Variation Agreement by executing any counterpart.
- (b) This Variation Agreement may be executed on the basis of an exchange of scanned copies and execution of this Variation Agreement by such means is to be a valid and sufficient execution.

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

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

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

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

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

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

**EXECUTION**

**Executed** as a variation agreement.

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

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

Signatory title:

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

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Signatory name:

Signatory title:

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**Attachment: New Schedule 3**

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