



[Insert Provider logo]

Revised Working Draft ~~1-(037-08-20182 (15.08.2018)~~
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
General	
Parties	Her Majesty, the Queen in right of New Zealand acting by and through the Ministry of Social Development (MSD) [Insert full legal name of Provider] (Provider)
Agreement ref. no.	[Insert reference no.]
Relationship Agreement date and ref.	[Insert date and reference no. of Relationship Agreement]
Execution Date	[Insert date this Agreement is signed]
Commencement Date	The date on which all of the Conditions Precedent have been satisfied or waived.
Conditions Precedent to be satisfied before the Commencement Date	This Agreement is conditional on: <ul style="list-style-type: none"> the Provider being a community housing provider registered under the HRTM Act as a Class 1: Social Landlord; and [Insert any others] The Provider must<u>is to</u> notify MSD once each condition is satisfied. See also clause 5(b) of the Relationship Agreement, <u>which requires the Provider to satisfy the Conditions Precedent by the final date for satisfaction of the Conditions Precedent set out below.</u>
DateFinal date for satisfaction of Conditions Precedent	[Insert date] This Agreement will be at an end and of no further force or effect if all of the Conditions Precedent have not been met by that <u>the final date set out immediately above</u> , unless <u>the date</u>

WORKING DRAFT

Key Term	Description
	<u>is</u> extended or <u>the Conditions Precedent are</u> waived by MSD in its sole discretion.
Term	From the Commencement Date until this Agreement is terminated in accordance with the Key Term immediately below. See also clause 5(d) of the Relationship Agreement.
Termination of this Agreement	Each of MSD and the Provider may terminate this Agreement <u>for convenience, without needing a specific reason</u> , by giving the other not less than 95 Business Days <u>days</u> ' notice <u>of termination</u> . This Agreement may also be terminated in accordance with the Relationship Agreement <u>(except clause 22.1 of the Relationship Agreement, which will not apply to this Agreement)</u> .
General background	<ul style="list-style-type: none"> This Agreement sets out the key commercial terms and conditions on which MSD agrees to procure from the Provider, and the Provider agrees to make available<u>provide</u>, Properties for Eligible Tenants on an <u>"open term"</u> basis, meaning. <u>This means</u> that MSD pays<u>will pay</u> the Provider IRRS in respect of Tenants placed in Properties for the duration of each relevant Tenancy Agreement (subject to any early termination or Abandonment). This Agreement is supplementary to the Relationship Agreement between MSD and the Provider referred to above and the terms of the Relationship Agreement form part of this Agreement. The Relationship Agreement contains further generic detail on some topics dealt with here. <u>This in this</u> Agreement prevails in the event of any conflict. By signing the relevant Contract Documents, MSD and the Provider agrees<u>agree</u> to be bound by and to perform in accordance with this Agreement (including the Schedules), the Relationship Agreement, any other Contract Documents and the Operational Manual.
Precedence	This Agreement prevails over the Relationship Agreement in the event of any conflict between the two agreements.
Interpretation	Clause 2(a) of the Relationship Agreement applies to this Agreement as if it were set out in full in this Agreement.
Parties' representatives and contact details (including for the purposes of the Relationship Management Group)	<p>MSD's Representative</p> <p>[name title address DDI cell email]</p> <p>Provider's Representative</p> <p>[name title address DDI]</p>

WORKING DRAFT

Key Term	Description
	<p><i>cell email]</i></p> <p>Each party may replace its nominated representative above during the Term by notice to the other party.</p>
Properties and Services	
Services description	The Services to be provided by the Provider are set out in Schedule 1.
Services Location(s)	<i>[Insert city/town/other location(s) of Housing].</i>
Monitoring	<p>MSD may monitor the Provider to verify that all required processes under this Agreement (including the Operational Manual) have been implemented on a quarterly basis.</p> <p>MSD will give the Provider a copy of any report as to the outcome of the monitoring.</p>
Property Management Requirements	The Provider is to comply with the Property Management Requirements set out in Schedule 5.
Tenancy Management Requirements	The Provider is to comply with the Tenancy Management Requirements set out in Schedule 6.
Additional Services	<i>[Insert any additional services (over and above those set out in Schedule 1) to be provided by the Provider].</i> A failure to provide these Additional Services will be a material breach of this Agreement.
Notification of properties and removal of Properties	<p>There is no minimum or agreed number of Properties for the purposes of this Agreement.</p> <p>The Provider is to notify MSD through the MSD Housing Client System of:</p> <ul style="list-style-type: none"> • any property that is in the Services Location that it is willing to provide to MSD in accordance with the terms of this Agreement. That property will become a Property for the purposes of this Agreement if it meets the criteria for a Property set out in Schedule 4; and • any Property that it is no longer willing to provide to MSD in accordance with this Agreement, on no less than 95 Business Days.
Annual Relationship Meeting	
Annual Relationship Meeting	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 strategic partnering between MSD and the Provider is working. The Relationship Management Group should

Key Term	Description
	<p>discuss the following topics at each annual relationship meeting:</p> <ul style="list-style-type: none"> • health and safety incidents; • Tenant complaints; • general operational processes; • Tenant satisfaction; • Tenancy terminations; • compliance with the Contract Documents and any issues in relation to the Contract Documents; • Tenancy occupancy rates in relation to the Properties; • forward-looking plans; • views of demand for Housing and Housing Services demand; • wrap-around support interface; and • key learnings in relation to Housing and the Housing Services.
	<ul style="list-style-type: none"> •
Financial and reporting	
Agreed Rent	<p>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.</p>
IRRS fortnightly schedule payment report and invoice	<p>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.</p>
IRRS and related payments	<p>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} Business Days of receipt by MSD of a valid IRRS fortnightly schedule payment report and tax invoice. {Drafting note: MSD is considering the payment period.} in accordance with the Key Term immediately below.</p>
IRRS payment report and invoice	<p>The Provider is to provide MSD, by every second Monday during the Term, an IRRS payment report and tax invoice in respect of each Payment Period in a form acceptable to MSD, acting reasonably.</p>

Key Term	Description
	<u>The IRRS payment report will specify the total IRRS amount payable by MSD for the Payment Period and will set out individually each item that has been taken into account in calculating the total IRRS amount payable.</u>
<u>Agreed Rent</u>	<u>The IRRS is based, among other things, on the Agreed Rent for each Property.</u>
<u>Market Rent Review</u>	<u>The Market Rent component of the Agreed Rent will be subject to an annual Market Rent Review in accordance with this Key Term and clause 3 of Schedule 1. The Relationship Management Group will agree the relevant annual Market Rent Review date. The Relationship Management Group will ensure that each Market Rent Review is undertaken as soon as practicable following each annual Market Rent Review date and otherwise in accordance with the requirements of clause 3 of Schedule 1.</u>
<u>IRR</u>	<u>The collection of IRR from Tenants is the sole responsibility of the Provider. MSD is not liable under this Agreement for any non-payment or late payment of IRR by any Tenant.</u>
<u>Sharing of Data</u>	
<u>Data provided by MSD</u>	<p><u>MSD is to provide a written data report to the Provider's Representative every six months during the Term, identifying each of the following in relation to the 6 month period prior to the written data report (in each case, in comparison to a sector average and/or individual relevant Housing and Housing Services providers on an anonymised basis):</u></p> <ul style="list-style-type: none"> <u>• the Provider's portfolio priority score, based on the percentage of Tenants in each priority [and sub-priority] category in the MSD Housing Client System;</u> <u>• the percentage of the Provider's Properties utilised on a plus or minus 1 bedroom basis;</u> <u>• the percentage of Tenants who were identified by the Provider (rather than MSD) and subsequently let a Property under this Agreement;</u> <u>• average number of days between one Tenancy ending and the next Tenancy beginning in respect of each Property; and</u> <u>• the Provider's average maintenance response times in respect of all Properties in relation to the Property job classifications set out in clause 4 of the Property Management Requirements.</u>
<u>Data Measures provided by Provider</u>	<p>Within 20 Business Days of the anniversary of each Commencement Date, the Provider is to provide a written data report to MSD's Representative<u>The Provider is to provide a written data report to MSD's Representative every six months during the Term, identifying each of the following in relation to the 126 month period prior to the relevant anniversary:</u></p> <ul style="list-style-type: none"> • the Tenant occupancy rate for Properties, measured as:<u>• Tenancy churn rate for each Property (including by</u>

WORKING DRAFT

Key Term	Description
	<p><u>reference to the specific Property identifier used by the Provider in the MSD Housing Client System);</u></p> <ul style="list-style-type: none"> • {•} • the Tenant turnover rate for Properties, measured as:<u>number of Tenancies which terminated for each Reason for Exit;</u> • {•} • Tenant satisfaction rates for Properties, measured as:<u>average number of days between one Tenancy ending and the next Tenancy beginning in respect of each Property;</u> • {•} • the percentage of rent arrears over 21 days; and • the average time to respond to urgent Property-related and Tenant-related queries. • <u>The Provider is to provide a written data report to MSD's Representative every 12 months during the Term, identifying Tenant satisfaction rates for each of the Properties in relation to the prior 12 month period, measured as:</u> <ul style="list-style-type: none"> • <u>Tenant satisfaction rates with the Tenant's contact point;</u> • <u>overall Tenant satisfaction; and</u> • <u>Tenant satisfaction in relation to repairs and maintenance.</u> • <u></u>
<p><u>Data outcomes following specified periods</u></p>	<p><u>Within 20 Business Days of MSD's Representative having received the first 6 month Data information as set out above following the first anniversary of the Commencement Date, the Relationship Management Group is to meet to review and discuss such Data.</u></p> <p><u>If the Relationship Management Group considers that such Data provided by the Provider above is not satisfactory in the context of the Services and the principles set out in clause 3.2 of the Relationship Agreement, the parties will seek to agree changes to this Agreement to improve the Provider's performance of the Services. The parties will enter into a variation agreement in the form attached as Schedule 8 to give effect to such agreed changes.</u></p> <p><u>If MSD considers, having received the fourth 6 month Data set as set out above following the second anniversary of the Commencement Date, that such Data provided by the Provider is not satisfactory in the context of the Services and the principles set out in clause 3.2 of the Relationship Agreement, MSD may, following consultation with the Provider and acting reasonably, and having regard to the principles set out in clause 3.2 of the Relationship Agreement and that the Services need to meet the needs of Housing Clients, impose a Data-related performance regime on the Provider by notice in writing to the Provider. The Provider is to comply with the requirements of MSD's Data-related performance regime.</u></p>

Key Term	Description
<p>Data Measures outcomes - ongoing</p>	<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 3.3.2 of the Relationship Agreement, then the Relationship Management Group will meet as frequently as <u>reasonably</u> required and work together co-operatively to seek to improve the such Data Measures.</p> <p>If, after a period of three months or longer <u>following the Relationship Management Group's first such meeting</u>, MSD (acting reasonably) considers that the Data Measures have not been improved to a satisfactory level <u>having regard to regard to other relevant Housing and Housing Services providers</u>, then MSD may undertake increased monitoring of the Provider in accordance with clause 10.2 <u>of the Relationship Agreement</u>.</p> <p><u>If after a period of three months or longer following increased monitoring by MSD, MSD (d) of the Relationship Agreement, acting reasonably) considers that the Data has not been improved to a satisfactory level, then MSD may, acting reasonably, and having regard to the principles set out in clause 3.2 of the Relationship Agreement and that the Services need to meet the needs of Housing Clients, impose a Data-related performance regime on the Provider by notice in writing to the Provider. The Provider is to comply with the requirements of MSD's Data-related performance regime.</u></p>
<p><u>Insurance and Step-In Rights</u></p>	
<p>Insurances Required</p>	<p>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 Initial Insurances), then the Provider will nonetheless continue to be required under this Agreement to hold and maintain the Initial Insurances.</p>
<p><u>MSD Step-in Rights</u></p>	<p><u>MSD has Step-in Rights as set out in Schedule 3.</u></p>

EXECUTED on the _____ day of _____ 20

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

Signatory name:
Signatory title:

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

Signatory name:
Signatory title:

Signatory name:
Signatory title:

WORKING DRAFT

[Insert Provider logo]

Revised Working Draft 2 (15.08.2018)
NOT GOVERNMENT POLICY

SCHEDULES: TABLE OF CONTENTS

SCHEDULE 1: ~~THE~~ SERVICES 1

SCHEDULE 2: PAYMENT OF IRRS..... 5

SCHEDULE 3: STEP-IN RIGHTS 1

SCHEDULE 4: INTERPRETATION 1

SCHEDULE 5: PROPERTY MANAGEMENT REQUIREMENTS 6

SCHEDULE 6: TENANCY MANAGEMENT REQUIREMENTS 7

SCHEDULE 7: FORM OF VARIATION AGREEMENT 8

SCHEDULE 1: 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) **General:** provide the Services and the Additional Services (if applicable) in accordance with the Key Terms, all relevant Laws, the Tenancy Management Requirements, the Property Management Requirements and the Operational Manual;
- (b) **Notification of properties:** notify MSD through the MSD Housing Client System of any property that is in the Services Location that it is willing to provide to MSD in accordance with the terms of this Agreement;
- (c) **Property identifier:** only use one unique identifier for each Property in the MSD Housing Client System, so that if a Property ceases to be a Property during the Term in accordance with this Agreement, but later becomes a Property, the original unique identifier will be used for that Property;
- (d) ~~(b)~~ **Letting of Properties:** 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;
- (e) ~~(e)~~ **Registration as Class 1: Social Landlord:** be registered as a Class 1: Social Landlord under the HRTM Act ~~for so long as it is providing Services under this~~ during the Term. If the Provider does not maintain its registration, this Agreement can be terminated by MSD in accordance with the Relationship Agreement;
- (f) ~~(d)~~ **Property maintenance:** 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 and the requirements of the Operational Manual;
- (g) ~~(e)~~ **Information for Tenants:** ensure it notifies the Tenant of all relevant information about the Property prior to signing of the Tenancy Agreement;
- (h) ~~(f)~~ **Tenancy Agreements:** ensure it has a Tenancy Agreement for each Property let to a Tenant, and is to maintain all Tenancy Agreements as part of the Service Records;
- (i) ~~(g)~~ **Utilisation:** ensure:
 - (i) all Properties are optimally utilised when the Provider enters into a Tenancy Agreement so that the bedroom count is appropriate having

regard to the relevant Tenant, and the Property is otherwise appropriate (including as to any necessary modifications), for the relevant Tenant's needs; (unless MSD approves otherwise); and

(ii) that it uses all reasonable endeavours to continue to ensure (so far as is reasonably practicable) that the Properties are optimally utilised in the manner contemplated by clause 1(i)(i) of this Schedule 1, throughout the duration of the Tenancy (including by utilising any Tenant transfer processes that may be available to the Provider);

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

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

- ~~(p) (m) [increase Market Rent 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.](n) **Termination of Tenancy:** promptly (but in any event within 2two Business Days) notify MSD via the MSD Housing Client System of any Tenancy terminating and the circumstances of such termination;~~
- ~~(o) [seek MSD's approval before transferring a Tenant to any other approved Property;] [Drafting note: outstanding point.](p)~~
- (q) **Change in Tenant circumstances:** notify MSD via the MSD Housing Client System as soon as practicable (but in any event within five Business Days) of becoming aware of any change in circumstances of a Tenant (or any change in circumstances of any other applicable person likely to result in the payment of a higher IRR by a Tenant) that may affect the Tenant's rate of IRR or its Housing need, and remind the Tenant within that same time period that the Tenant is required to notify MSD of its change in circumstances;
- (r) **Monitoring:** 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
- (s) **Operational Manual and MSD directions:** at all times observe the Operational Manual and all reasonable directions given by MSD's Representative (having regard to clauses 3.2 and 7 of the Relationship Agreement).

1.2 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.

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 Market Rent Reviews

3.1 The Market Rent component of the Agreed Rent for each Property is subject to a Market Rent Review to be undertaken by MSD and the Provider in accordance with the relevant Key Terms and this clause 3. For this purpose, the Provider will propose a revised Market Rent for each Property which will be agreed pursuant to clause 3.2 of this Schedule 1.

3.2 MSD will consider any Market Rent proposed by the Provider pursuant to clause 3.1 of this Schedule 1 by reference to the data held by the Ministry of Business, Innovation and Employment in respect of bonds for comparable properties in the same or similar area and MSD's own published Maximum Market Rent (MMR) set out in MSD's published Public Housing Purchasing Strategy. If MSD agrees to the Market

Rent proposed by the Provider for a Property, then such Market Rent in respect of a Property will become the Agreed Rent for that Property, and the parties will enter into a variation agreement in substantially the form attached as Schedule 7 to vary the Agreed Rent for that Property.

- 3.3 The Agreed Rent for a Property will not be affected by any Major Improvement made to that Property unless MSD has previously consented in writing to the Major Improvement and any change to the Agreed Rent.

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1 SCHEDULE 2: PAYMENT OF ~~IRRS~~ ~~IRRS~~ ~~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~~ 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 Housing Client System in accordance with section 106(1) of the HRTM Act.
- 1.3 MSD may, from time to time, recalculate the IRR for each Tenant and will notify the Provider of any change to:
- (a) the IRR, and the reasons for the change in 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~~ is to give the notice to the Tenant at least two weeks before the Effective Date.
- 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.
- 1.6 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 Housing Client System of the Ineligible Tenant.
- 1.7 The Provider, upon receiving notice from MSD under clause 1.6 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~~ 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.

1.8 Within five Business Days of receipt of a notice from MSD under clause ~~1.7~~1.6 of Schedule 2, MSD will inform the relevant Tenant that:

- (a) he or she is no longer eligible to be a Housing Client;
- (b) his or her rent will no longer be subsidised with effect from the IRRS Cessation Date; and
- (c) subject to clause 1.9 of this Schedule 2, that the Tenancy will be terminated with effect from the Cessation Date.

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.

1.10 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(~~pg~~) of Schedule ~~2~~1) 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 [Key Terms, this Schedule 2, the](#) Relationship Agreement and the Operational Manual.

2.2 All IRRS amounts are GST-exclusive.



[Insert Provider logo]

SCHEDULE 3 — SCHEDULE OF PROPERTIES: STEP-IN RIGHTS

~~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.~~

Property ID	Typology	Address	Legal Description	Value of Property	Market Rent per Payment Period*	Agreed Rent per Payment Period*

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

WORKING DRAFT

1 **When Step-in Applies**

(a) If MSD reasonably considers that the Provider is not managing a particular situation or circumstances to MSD's satisfaction and it needs to take action in connection with any of the Properties or the Services:

(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 of its statutory duties,

then MSD may take all or any of the steps described in clause 2 of this Schedule 3.

(b) Before exercising any Step-in Rights, MSD will first notify the Provider of its intention to do so, providing the reasons and relevant details around dates, the Services affected and details of any Step-in Agent appointed for the purpose. MSD may update this information from time to time. MSD need not give prior notice in an emergency, but will give notice as soon as practicable.

2 **Step-in Rights**

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

(a) temporarily assume total or partial management and control of all or some of the Properties, the management of Tenancies and/or the provision of the Services;

(b) take any steps, including complete or partial suspension of the Services, as MSD considers necessary or desirable to:

(i) remedy, mitigate or minimise the effects of the event or risk; or

(ii) continue the provision of the Services as required under this Agreement;

(c) do anything that the Provider should or could do under this Agreement; and

(d) do anything that MSD may do at Law or under any Contract Document.

2.2 In exercising its Step-in Rights, MSD will:

(a) try to remedy the reasons for step-in; and

(b) appoint a Step-in Agent to provide any of the relevant Services.

3 **Power of Attorney**

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

(a) appoints MSD and its nominees as the Provider's attorney and gives them full power and authority to exercise all or any of MSD's Step-in Rights;

- (b) agrees that MSD as attorney may delegate that power and authority to its Step-in Agent; and
- (c) agrees to ratify whatever action is taken by the attorney and the Step-in Agent, so long as that action is not unlawful or negligent.

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

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

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

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

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

5.1 MSD may recover from the Provider the direct Losses MSD incurs as a result of exercising its Step-in Rights following a Provider breach of this Agreement. MSD will not otherwise be entitled to compensation.

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

6 **Step-out**

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

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

7 **No Obligation on MSD**

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

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~~*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.~~

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SCHEDULE 4: INTERPRETATION

1 Defined terms

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

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

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

Agreed Rent means in respect of a Property:

(a) the weekly rent (based on Market Rent) proposed by the Provider and agreed to by MSD pursuant to the MSD Housing Client System when a Property becomes subject to this Agreement; and

(b) ~~the fortnightly rent for a Property for the purposes of this Agreement, as set out in the Key Terms, based on the Market~~ weekly rent for a Property subsequently agreed to by MSD pursuant to a Market Rent Review and as set out in a variation agreement between MSD and the Provider in substantially the form attached as Schedule 7 in respect of the varied Agreed 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~~ Wellington;

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

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

Ineligible Tenant means a person who was an Eligible Tenant but has subsequently ceased to be an Eligible Tenant;

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

IRRS means the income-related rent subsidy in respect of a Tenant payable by MSD to the Provider in accordance with ~~the Key Terms and Schedule 2 of~~ this Agreement, calculated as the Agreed Rent for the Property less the applicable IRR for each Tenant that has a Tenancy in respect of the Property;

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

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

Market Rent means ~~the market rent for each Property set out in Schedule 3 (as amended from time to time)~~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;

Market Rent Review means a review of Market Rent undertaken in accordance with the Key Terms ~~(see Agreed Rent)~~and clause 3 of Schedule 1;

Parties means MSD and the Provider;

Payment Period means:

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

Property means ~~a property that is in the Services Location(s) and has~~any property that has been let to an Eligible Tenant after having met the criteria set out below and any property that meets the criteria below but which has not yet been let to an Eligible Tenant ~~in accordance with this Agreement or a property that:~~

- (a) the property is in the Services Location;~~and~~
- (b) the property is listed in the MSD Housing Client System as vacant;
- (c) the property has been approved by MSD in the MSD Public Housing Client System to be let to an Eligible Tenant,

and **Properties** means each of them~~, as the context requires;~~

Reason for Exit means each of the following:

- (a) Residential Tenancies Act-related reasons:
 - (i) a 7 day notice is given by the Provider under section 59A(4) of the Residential Tenancies Act;
 - (ii) a 90 day notice is given by the Provider under section 51 of the Residential Tenancies Act;
 - (iii) eviction of a Tenant pursuant to a bailiff;

- (iv) the end of a Fixed Term Tenancy Agreement;
- (v) handover of a head lease;
- (vi) Abandonment of the Property;
- (vii) the Tenancy has been terminated pursuant to a Tenancy Tribunal order;
- (b) movement-related reasons:
 - (i) conflict with occupants in neighbouring properties;
 - (ii) death of a Tenant;
 - (iii) the Property is no longer suitable for the Tenant due to health reasons;
 - (iv) the Tenant has transferred to another Property;
 - (v) the Tenant has moved to be closer to, or has moved in with, family and/or friends;
 - (vi) the Tenant has moved to a private rental property;
 - (vii) the Tenant has moved into aged residential care;
 - (viii) the Tenant is in prison;
 - (ix) the Tenant has purchased a Property;
 - (x) the Tenant has returned to its own property following earthquake – related repairs;
 - (xi) the Tenant wanted a larger property;
 - (xii) the Tenant wanted a smaller property;
- (c) the Tenant is no longer eligible or interested in a Property, arising from:
 - (i) an MSD Tenancy review;
 - (ii) a Tenant change in circumstances;
- (d) no reason for exit:
 - (i) the Tenant refuses to provide a reason for exit of the Tenancy Agreement;
 - (ii) no reason given by the Tenant or readily identified by the Provider in respect of the Tenant;
 - (iii) Property refused after Tenancy acceptance;

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

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

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

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

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

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

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

Tenancy Agreement means a ~~Housing~~ tenancy agreement for a nominated Property between the Provider and an Eligible Tenant ~~that~~which provides for a periodic tenancy (as defined in the Residential Tenancies Act) (unless MSD has approved otherwise), complies with the Residential Tenancies Act and the HRTM Act (as applicable), all other applicable Laws and the terms of this Agreement; 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, together with any household members occupying the Property (as the context requires).

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).

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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~~ Agreed Rent for certain Properties subject to the Agreement, and are entering into this variation agreement to record those Agreed Rent amendments (**Variation Agreement**).¹
- C. MSD and the Provider have agreed to amend the Agreement on the terms set out in this variation agreement (**Variation Agreement**).¹

[Drafting note: select B or C above, as applicable for the relevant circumstances.]

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.~~ Agreed Rent for the Properties identified below is varied as follows (and the Agreed Rent for those Properties will be updated by MSD in the MSD Housing Client System to reflect each new Agreed Rent set out below):

<u>Property ID</u>	<u>Previous Market Rent</u>	<u>Previous Agreed Rent</u>	<u>New Market Rent</u>	<u>New Agreed Rent</u>
[●]	[●]	[●]	[●]	[●]

[Drafting note: use the clause above if the Agreed Rent is being amended pursuant to a Market Rent Review. Delete this clause if the Services Agreement is being amended, but not the Agreed Rent.]

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

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

(a) [by deleting Schedule [insert Schedule number] and replacing Schedule [insert Schedule number] with the new Schedule [insert Schedule number] attached to this Variation Agreement.]

(b) [Clause [insert clause number] is deleted.]

(c) [Clause [insert clause number] is amended by deleting the reference to [insert (e.g., "30 January 2019")] and replacing it with a reference to [insert (e.g., "30 June 2019").]

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

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

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

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

3 Confirmation

3.1 ~~Except as varied by this Variation Agreement, the~~ [The terms contained in the Agreement continue and remain in full force and effect.] [Drafting note: delete if the Services Agreement is being varied and not the Agreed Rent.]

3.2 ~~[Except as varied by this Variation Agreement, the terms contained in the Agreement continue and remain in full force and effect.]~~ [Drafting note: delete if only the Agreed Rent is being varied.]

4 General

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

4.2 **Counterparts:**

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

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

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

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

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

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

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

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EXECUTION

Executed as a variation agreement.

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

Signatory name:
Signatory title:

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

Signatory name:
Signatory title:

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~~Attachment: New Schedule 3~~

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Document comparison by Workshare 9.5 on Wednesday, 15 August 2018
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Document 2 ID	interwovenSite://OLYMPIANS/BellGully/23007975/11
Description	#23007975v11<BellGully> - Revised Working draft 2 (15.8.2018) - Open Term Services Agreement
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Deletion	
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Style change	
Format change	
Moved deletion	
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Deleted cell	
Moved cell	
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Padding cell	

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