



[Insert Provider logo]

**SERVICES AGREEMENT:
CAPACITY**

[Guidance note: This Agreement applies to a contractual relationship with a different level and longer-term 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: Open Term.]

Agreement

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

Key Terms

Key Term	Description
General	
Parties	Her Majesty, the Queen in right of New Zealand acting by and through the Ministry of Social Development (MSD) [Insert full legal name of Provider] (Provider)
Agreement ref. no.	[Insert reference no.]
Relationship Agreement date and ref. 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]]; and [Insert any others] <p>The Provider is to notify MSD once each condition is satisfied.</p> <p>See also clause 5(eb) 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></p>
Final 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 the <u>at final date set out immediately above</u> , unless <u>the date is</u> extended or

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Key Term	Description
	the Conditions Precedent are waived by MSD in its sole discretion. See also 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 <u>the Key Term immediately below.</u> See also clause 5(d) of the Relationship Agreement.
<u>Termination of this Agreement</u>	MSD may terminate this Agreement for convenience, without needing a specific reason, by giving the Provider not less than 95 days' notice of termination. This Agreement may also be terminated in accordance with the Relationship Agreement (except clause 22.1 of the Relationship Agreement, which will not apply to this Agreement).
Expiry Date	[Insert contract expiry date]
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 provide, make available, public housing p Properties for Eligible Tenants on a "capacity" basis. • _____ ; This means meaning that MSD <u>will pay</u> the Provider <u>a Services Payment, based on:</u> <ul style="list-style-type: none"> ○ _____ <u>IRRS in respect of Tenants who have been let Properties, for the duration of each relevant Tenancy (subject to any earlier termination or Abandonment);</u> ○ _____ <u>a Total Turnaround Payment; and</u> ○ _____ <u>a Total Top-up Payment for Tenancies in respect of Properties made Available for the duration of each of those Tenancies from an Agreed number of Properties.</u> • 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 herein this Agreement. • By signing the relevant Contract Documents, <u>MSD and</u> the Provider agrees to be bound by and to perform in accordance with this Agreement (including the Schedules), the Relationship Agreement, any other Contract Documents and the Operational Manual.
Precedence	This Agreement prevails over the Relationship Agreement in the event of any conflict between the two agreements. This Agreement and the Relationship Agreement are each subject to the terms of any Financier Direct Deed.

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Key Term	Description
Interpretation	<u>Clause 2(a) of the Relationship Agreement applies to this Agreement as if it were set out in full in this Agreement.</u> Interpretation rules for this Agreement are set out in Schedule 7.
Parties' Representatives <u>and contact details (including for the purposes of the Relationship Management Group)</u>	<p><u>MSD's Representative</u></p> <p>[name title DDI Cell email]</p> <p><u>Provider's Representative</u></p> <p>[name title DDI Cell email]</p> <p><u>Each party may replace its nominated representative above during the Term by notice to the other party.</u></p>
Properties and Services	
Services Description	<u>The Services to be provided by the Provider are set out in Schedule 1. Making Available public housing for Eligible Tenants at the Services Location, as further described in Schedule 1.</u>
Services Location(s)	[Insert <u>city/town/other location(s) of Public Housing Project</u>]
Property Management Requirements	<u>The Provider is to comply with the Property Management Requirements set out in Schedule 6As set out in the Operational Manual.</u>
Tenancy Management Requirements	<u>The Provider is to comply with the Tenancy Management Requirements set out in Schedule 7As set out in the Operational Manual.</u>
Additional Services	[Insert any additional services (over and above those set out in Schedule 1 (excluding clause 3)) to be provided by the Provider (including any value-adds offered in original proposal) —see Schedule 1, clause 6]. A failure to provide these Additional Services will be a material breach <u>of this Agreement</u> .
<u>Special Property Management Requirements</u>	[Insert any Special Property Management Requirements. See Schedule 1, clause 5]
<u>Special Tenancy Management Requirements</u>	[Insert any Special Tenancy Management Requirements. See Schedule 1, clause 5]
Volume and description of Properties	[Insert brief details], as more particularly set out in Schedule <u>45</u> (as that Schedule is updated by MSD, <u>in accordance with this Agreement</u> , from time to time on the MSD Public Housing Client System).

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Key Term	Description	
Agreed number of Properties	<i>[Insert max no. of Properties]</i>	
Methamphetamine Contamination	<p><i>[Select one of the following:</i></p> <p><i>[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.]</i></p> <p><i>[Methamphetamine Contamination means <i>[Insert relevant amount]</i></i></p> <p><i>(see clause 5.2 of Schedule 2)]</i></p>	
Methamphetamine Contamination Remediation Period	<i>[Insert relevant period (see clause 5.2 of Schedule 2)]</i>	
Annual Relationship Meeting Reporting		
Annual Relationship Meeting	<p><u>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 strategic partnering between MSD and the Provider is working. The Relationship Management Group should discuss the following topics at each annual relationship meeting:</u></p> <ul style="list-style-type: none"> • <u>health and safety incidents;</u> • <u>Tenant complaints;</u> • <u>general operational processes;</u> • <u>Tenant satisfaction;</u> • <u>Tenancy terminations;</u> • <u>compliance with the Contract Documents and any issues in relation to the Contract Documents;</u> • <u>Tenancy occupancy rates in relation to the Properties;</u> • <u>forward-looking plans;</u> • <u>views of demand for Housing and Housing Services;</u> • <u>wrap-around support interface; and</u> • <u>key learnings in relation to Housing and the Housing Services.</u> 	
Provider reporting (in addition to the reports required under the Relationship Agreement)	<p>Report</p> <p>IRRS fortnightly schedule payment report and invoice, in accordance with the Operational Manual.</p> <p>• Annual Review Report, containing:</p> <ul style="list-style-type: none"> (a) minutes of annual review; (b) Unavailability statistics; and (c) summary of Property inspection, Tenancy satisfaction survey and 	<p>When due</p> <p>Every second Monday</p> <p>Annually</p>

Key Term	Description	
	Tenancy Agreement from a selection of Properties (as directed by MSD).	
	<ul style="list-style-type: none"> • All other reports required by the Operational Manual. • Half yearly and audited yearly financial statements 	<p>In accordance with the Operational Manual</p> <p>Within 2 months of half yearly/annual balance date</p>
Financial and reporting		
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)]	
Services Payment	<p>Services Payment</p> <p>MSD will pay the Provider the Services Payment for each Payment Period in accordance with Schedule 2. <u>The Services Payment includes the Total IRRS Payment, the Total Turnaround Payment and the Total Top-up Payment.</u></p>	
<u>Services Payment report and invoice</u>	<p><u>The Provider must provide MSD, by every second Monday during the Term, a Services Payment report and tax invoice in respect of each Payment Period in a form acceptable to MSD, acting reasonably.</u></p> <p><u>The Services Payment report will specify the Services Payment for the Payment Period and will set out individually each item that has been taken into account in calculating the Services Payment.</u></p>	
<u>Agreed Rent</u>	<p><u>Agreed Rent</u></p> <p>The Services Payment<u>Total IRRS Payment</u> is based, among other things, on the Agreed Rent for each Property. The Agreed Rent is set out in Schedule 4<u>5</u> as at the Commencement Date. This includes an Operating Supplement (if any) in respect of a Property.</p> <p><u>If the Parties agree to: (i) amend the Agreed Rent during the Term of this Agreement pursuant to a Market Rent review or otherwise, or (ii) add any new or substituted Properties pursuant to clause 5 of Schedule 1, they will enter into a variation agreement in the form attached at Schedule 8 to delete and replace Schedule 4. Schedule 5 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 1.</u></p>	

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Key Term	Description
<u>Consumer price index adjustments to Agreed Rent</u>	<p><u>Indexing of Agreed Rent</u></p> <p>The <u>Market Rent component of the Agreed Rent for each Property will be CPI annually adjusted by the Relationship Management Group for annual changes in the relevant consumer price index annually in accordance with clause 4.14.1 of Schedule 1, except in respect of a year in which a Market Rent Review occurs. The Relationship Management Group will agree the relevant annual consumer price index adjustment date. Following any consumer price index-adjustment agreed and determined by the Relationship Management Group, the parties will enter into a variation agreement in the form attached at Schedule 8 to delete and replace Schedule 4.</u></p>
<u>Market Rent Review</u>	<p>The <u>Market Rent component of the Agreed Rent for each Property will be subject to a Market Rent review in accordance with clause 4 of Schedule 1 as soon as practicable following the fifth anniversary of the Commencement Date (or, if a Property becomes subject to this Agreement after the Commencement Date, the fifth anniversary of the date it became subject to this Agreement), and in each case, every subsequent five year anniversary thereafter. The Relationship Management Group will ensure that each Market Rent Review is undertaken in accordance with the requirements of clause 4 of Schedule 1.</u> <u>Market Rent review applicable (see clause 4.7 of Schedule 1)</u></p> <p>Yes / No</p>
	<p><u>Market Rent review dates</u> <i>[Insert relevant dates]</i></p>
<u>IRR</u>	<p>The collection of IRR from Tenants is the sole responsibility of the Provider, and MSD is not liable under this Agreement (including under Schedule 2) for any non-payment or late payment of IRR by any Tenant.</p>
<u>Compensation payable by MSD for any early termination of this Agreement for convenience</u>	<p>Yes / No</p> <p><i>[If yes, insert fair and reasonable compensation calculation, having regard to clause 23.1 of the Relationship Agreement and (if applicable) that the Provider is not at fault and/or has not acted negligently where MSD terminates this Agreement for convenience.]</i></p>
<u>Sharing of Data</u>	
<u>Data provided by MSD</u>	<p>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 relevant written data report (in each case, in comparison to a sector average and/or individual Housing and Housing Services providers on an anonymised basis):</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 and let a Property under this Agreement;</u>

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Key Term	Description
	<ul style="list-style-type: none"> • <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>
<p><u>Performance-Data Measures provided by Provider</u></p>	<p>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 6 month period prior to the relevant anniversary:</p> <ul style="list-style-type: none"> • <u>the Tenancy occupancy rate for Properties, measured as the average Tenancy occupancy rate versus the average Tenancy vacancy rate for the Provider's portfolio of Properties;</u> • <u>the Tenancy churn rate for each Property (including by reference to the specific Property identifier used by the Provider in the MSD Housing Client System);</u> • <u>the number of Tenancies which terminated for each Reason for Exit;</u> • <u>the percentage of rent arrears over 21 days; and</u> • <u>the average time to respond to urgent Property-related and Tenant-related queries.</u> <p>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:</p> <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> <p>The Provider is to meet the Performance Measures identified in Schedule 6. The consequences of a failure to meet the Performance Measures are set out in Schedule 6.</p>
<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 set 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</u></p>

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Key Term	Description
	<p><u>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>Data outcomes - ongoing</u></p>	<p><u>If, at any time during the Term, MSD (acting reasonably) considers that the 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, then the Relationship Management Group will meet as frequently as required and work together co-operatively to seek to improve the Data.</u></p> <p><u>If, after a period of three months or longer following the Relationship Management Group's first such meeting, MSD (acting reasonably) considers that the Data have not been improved to a satisfactory level having regard to regard to other relevant Housing and Housing Services providers, then MSD may undertake increased monitoring of the Provider in accordance with clause 10.2 of the Relationship Agreement.</u></p> <p><u>If after a period of three months or longer following increased monitoring by MSD, MSD (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>Security protection for MSD</u></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 3)]; and • Any other security or priority arrangement as may be required by MSD from time to time including those contemplated by Schedule 5 of this Agreement.
<p><u>Compensation payable by MSD for any early termination of this Agreement</u></p>	<p>[Insert fair and reasonable compensation calculation, having regard to clause 23.1 of the Relationship Agreement.]</p>
<p><u>Compensation payable by MSD for exercise of release</u></p>	<p>[Insert details of compensation for release, if applicable (see clause 4 of Schedule 1)]</p>
Insurance and Step-In Rights	
<p>Insurances required</p>	

Key Term	Description
	<p>The Provider is to hold and maintain the insurance policies at the specified levels of cover required and approved by the Regulatory Authority.</p> <ul style="list-style-type: none"> • Public liability <p>[Insert amount of cover required], per event or series of related events</p> <ul style="list-style-type: none"> • Material loss/damage <p>Full replacement value of each Property</p> <ul style="list-style-type: none"> • [Insert any others] <p>[Insert amount of cover required]</p>
<p>MSD Step-in Rights applicable (see Schedule 4)</p>	<p>MSD has Step-in Rights as set out in Schedule 3. <u>Yes / No</u></p>
<p>[Release]</p>	
<p>[Release option]</p>	<p><u>[If MSD is to have a release option, the following language (amended as appropriate) is to be included. If MSD will not have a release option, this section of the Key Terms should be deleted.]</u></p> <p><u>[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 [Insert percentage]% (or such other number as may be agreed by the Parties from time to time) from the total number of Properties as at the Commencement Date.</u></p> <p><u>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.</u></p> <p><u>The parties will enter into a variation agreement in the form attached as Schedule 8 to update the list of Properties in Schedule 4.]</u></p>
<p>[Compensation payable by MSD for exercise of release]</p>	<p><u>[Insert details of compensation for release, if applicable.]</u></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: SERVICES

This Schedule 1 describes the Services and related requirements.

- 1 ~~HRRS~~ **Services and Additional Services** [*Drafting note: please note that we have sought to align this Schedule 1 with Schedule 1 of the Open Term Services Agreement as far as possible, hence the number of drafting changes.*]
- 1.1 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) **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 again, the original unique identifier will be used for that Property;
 - (c) ~~Subject to clause 5.5 and clause 5.7 of this Schedule 1,~~ **Letting of Properties:** let ensure that the Properties are Available at all times to be tenanted exclusively by to Eligible Tenants during the Term referred by MSD, in accordance with this Agreement, the Tenancy Management Requirements and the Operational Manual;
 - (d) **Registration as Class 1: Social Landlord:** be registered as a Class 1: Social Landlord under the HRTM Act during the Term. If the Provider does not maintain its registration, this Agreement can be terminated by MSD in accordance with the Relationship Agreement;-
 - (e) **Property maintenance:** maintain each 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.
 - (f) **Information for Tenants:** ensure it notifies the Tenant of all relevant information about the Property prior to signing of the Tenancy Agreement;
 - (g) **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;
 - (h) **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

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- (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 1.1(h)(i) of this Schedule 1, throughout the duration of the Tenancy Agreement (including by utilising any Tenant transfer processes that may be available to the Provider);
- (i) **Previous tenants:** not let a Property to a person who, at any time in the previous 3 month period, was a client of the Provider or any of its related entities in a non-public housing or non-transitional housing 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;
- (j) **Priority to Eligible Tenants:** give priority to providing Properties to Eligible Tenants which MSD has indicated as high priority;
- (k) **Letting duration:** let a Property for the duration of the applicable Tenancy (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;
- (l) **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;
- (m) **Tenant rent:** only charge the Tenant of a Property rent at the lower of IRR and Agreed Rent;
- (n) **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),
- 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;

- ~~(o) **Termination of Tenancy:** promptly (but in any event within two Business Days) notify MSD via the MSD Housing Client System of any Tenancy terminating and the circumstances of such termination;~~
- ~~(p) **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;~~
- ~~(q) **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~~
- ~~(~~a~~)(r) **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 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.~~

~~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.~~

~~1.5 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.~~

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~~1.6 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.~~

~~1.7.1.3 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 for the Eligible Tenant by the start date specified in the Tenancy Agreement, the Provider is to provide suitable alternative accommodation to the Eligible Tenant (which is 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.~~

~~1.8 The Provider is to immediately notify MSD via the MSD Public Housing Client System of any Tenancy terminating and the circumstances of such termination.~~

~~1.9 The Provider is to only charge the Tenant of a Property rent at the lower of IRR and Market Rent.~~

~~The Provider cannot request any additional charges from a Tenant other than rent (as determined pursuant to clause 3.3 of this Schedule 1), 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.~~

~~1.10 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.~~

~~1.11 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.~~

~~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 IRRS Eligibility IRRS and IRR~~

~~*[Drafting note: Please note that this section 3 is identical (other than clause 3.1) to Schedule 2 of the working draft Open Term Services Agreement of 3 August 2018].*~~

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3.1 Subject to Schedule 2, MSD will only pay the ~~relevant~~ 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 the Tenancy Agreement for each Property that is Available.

3.2 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.

~~1.1~~ ~~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.~~

~~1.21.1~~ ~~The Provider, upon receiving notice from MSD under clause 2.2 of this Schedule 1, will inform the relevant Tenant within five Business Days that:~~

~~(a) he or she is no longer eligible for public housing;~~

~~(b)(a) his or her rent will no longer be subsidised with effect from the date of termination; and~~

~~(c)(a) (unless MSD provides its approval under clause 2.4 of this Schedule 1), that the Tenancy will be terminated with effect from the termination date (as determined pursuant to clause 2.2 of this Schedule 1).~~

~~1.31.1~~ ~~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)(a) 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 1.~~

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

(a) the - via the MSD Public Housing Client System if there is any change in the IRR, and the reasons for the change in the 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 3.3(a) of this Schedule 1,

to be paid by a Tenant (together, an **IRR Change Notification**), and clause 3.1 of this Schedule 1 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.~~

~~3.4 If the Provider receives a notification from MSD under clause 3.3 of this Schedule 1, 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.~~

~~3.5 The Provider is to, as soon as practicable following (but in any event within five Business Days of) notifying the Tenant under clause 3.3 of this Schedule 1, confirm to MSD via the MSD Housing Client System that it has notified the Tenant of the increased IRR and the Effective Date.~~

~~3.6 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 Ineligible Tenant. 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.~~

~~3.7 The Provider, upon receiving notice from MSD under clause 3.6 of this Schedule 1, 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 3.6 of this Schedule 1.~~

~~3.8 The Provider, upon receiving notice from MSD under clause 2.2 of this Schedule 1, will inform the relevant Tenant wWithin five Business Days of receipt of a notice from MSD under clause 3.7 of Schedule 1, 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 from the IRRS Cessation Date with effect from the date of termination; and~~

~~(c) (unless MSD provides its approval under clause 3.92-4 of this Schedule 1), that the Tenancy will be terminated with effect from the IRRS Cessation Date termination date (as determined pursuant to clause 1.1 of this Schedule 1).~~

3.9 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 5.1 of this Schedule 1. If MSD agrees, the Provider is to terminate the relevant Tenancy Agreement with the Tenant and is to enter into a new tenancy agreement in respect of the relevant property.~~

~~3.10 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 1.1(p) of this Schedule 1) or a Tenant who has Abandoned his or her Property may be recovered by MSD in full from the Provider.~~

~~2.5 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 Day of receiving notice from MSD pursuant to clause 2.5 of this Schedule 1):~~

~~(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 of the change in IRR.~~

~~3.5 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.~~

~~24 Agreed Rent and Market Rent~~

~~2.14.1 The initial Agreed Rent for each Property is set out in Schedule 45. The Market Rent component of the Agreed Rent is subject to annual indexation as identified in the Key Terms and on each anniversary of the Commencement Date throughout the Term in accordance with in accordance with the annual movement (increase or decrease (provided the Market Rent must always be equal to, or greater than, the Minimum Agreed Rent)) 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.~~

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~~2.24.2~~ 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 4. 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 pursuant to clause ~~3.34.4~~ of this Schedule 1.

4.3 For Properties that become subject to this Agreement as a result of an approved later addition or substitution pursuant to clause 45 of this Schedule 1, the Provider will propose a Market Rent for each Property, which Agreed Rent for that Property is will be agreed to or determined pursuant to clause 4.4 of this Schedule 1 by the Provider proposing a Market Rent to MSD.

~~2.34.4~~ MSD will then verify consider any that Market Rent proposed by the Provider pursuant to clauses -4.2 or 4.3 of this Schedule 1 rent by using 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:

- (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, and the parties will enter into a variation agreement in substantially the form attached as Schedule 7 to vary Schedule 4 of this Agreement to reflect the new 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~~ provided 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.

~~2.44.5~~ 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.

~~35~~ Availability, Substitutability and Release of Properties **Property additions and substitutions**

~~4~~ The Provider will make the Properties Available for Eligible Tenants at all times. The Provider is to make a Property Available on and from the Commencement Date, unless a different date is agreed with MSD.

~~4.15.1~~ 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. MSD is to respond to the request within 10 Business Days of receipt of notice.

4.25.2 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. MSD is to respond to the request as soon as is practicable (but in any event within five Business Days).

4.35.3 If MSD approves any additional or substitute property proposed by the Provider in accordance with either clause 5.14.2 or 5.24.3 of this Schedule 1, then clause 4.3 of this Schedule 1 will apply and the parties will enter into a variation agreement in substantially the form attached as Schedule 7 to vary Schedule 4 of this Agreement to reflect MSD will update the updated list of Properties (and new Agreed Rent pursuant to clause 4.3 of this Schedule 1). When a temporary substituted Property ceases to be required by the Provider, the parties will enter into a subsequent variation agreement in substantially the form attached as Schedule 7 to vary Schedule 4 of this Agreement to reflect the updated list of Properties to remove that temporary substitute Property in Schedule 5 accordingly (and in accordance with clause 4.3 of this Schedule 1). 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 5.

4.45.4 MSD may from time to time notify the Provider that one or more Properties is not required to be let to Eligible Tenants to be Available for an Eligible Tenant for a specified period (which shall be for a period of not less than four months (unless agreed otherwise)). Upon receipt of such notification, the Provider will take all reasonable steps to find a Short Term Private Rental tenant at a Market Rent for such Property ~~;~~ ~~or~~

~~(a) 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;~~

4.55.5 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.

~~3.2 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~~

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~~list of Properties in Schedule 5 to remove the selected released Properties with effect from the nominated release date.~~

~~3.3 Any Property released under clause 4.6 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.~~

~~3.4 Upon release of any Property, any security, encumbrance, caveat or land covenant in gross registered in respect of the Property pursuant to Schedule 3 must be discharged or removed by MSD as soon as practicable.~~

~~4 Additional Services~~

~~In addition to the other 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;~~

~~(d) any Tenancy Management Special Requirements;~~

~~(e) any Property Management Special Requirements; and~~

~~any other requirements specified in the Key Terms.~~

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SCHEDULE 2: SERVICES PAYMENT FOR PUBLIC HOUSING

1 Services Payment

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

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

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 2

~~**Total Vacant Day Total Turnaround Payment**~~ = the Total ~~Vacant Turnaround Day~~ Payment calculated in accordance with clause 3 of this Schedule 2

Total Top-up Payment = the Total Top-up Payment calculated in accordance with clause 4 of this Schedule 2

~~**Total Unavailability Deduction**~~ = ~~the Total Unavailability Deduction calculated in accordance with clause 5 of this Schedule 2~~

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 2) for ~~each Available Tenanted each Tenant who has been let a Property in accordance with this Agreement 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 2, 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 ~~each Tenant who has been let a Property in accordance with this Agreement 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. All IRRS amounts are GST-exclusive.

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~~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.~~

3 ~~Total Vacant Day~~ **Total Turnaround Payment**

~~3.1 **Total Turnaround**~~ **Total Vacant Day Payment:** The ~~Total Turnaround~~ **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~~ **relevant** Property during the Property's Turnaround Period, provided that the Provider must have:

~~(a) provided at least five Business Days' notice of the relevant Property's actual or impending vacancy to MSD; and~~

~~(b) completed the tenancy matching process set out in the Operational Manual within the required timeframes.~~

~~(a)(c) 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 2, 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,~~

~~(e) 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 2, 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).

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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 **General**

4.25.1 The Services Payment and all other payments under this Agreement will be made in accordance with the Key Terms, this Schedule 2, the Relationship Agreement and the Operational Manual.

~~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 2.

~~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	<p>The Property:</p> <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	<p>The Property remains vacant after the expiry of the Turnaround Period and MSD has provided the Provider with a list of suitable Eligible Tenants to fill the vacancy in accordance with its obligations under this Agreement.</p>	<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*.

WORKING DRAFT

Category of Unavailability	Criteria (alternatives)	Consequence
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 or more 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 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 tenaning) 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: <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 Property (excluding those covered in threshold one above).

WORKING DRAFT

Category of Unavailability	Criteria (alternatives)	Consequence
Unavailable Property due to maintenance or other property matters (for the period on and from three months or more 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 tenanted) 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	<p>The Property is not available to be let to an Eligible Tenant due to Methamphetamine Contamination which has not been remediated in the Methamphetamine Contamination Remediation Period following the expiry of the Turnaround Period.</p>	<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 Force Majeure Event	<p>The Property is not available to be let to an Eligible Tenant for more than six consecutive months due to a Force Majeure Event.</p>	<ul style="list-style-type: none"> • IRRS: The Provider will not receive IRRS for the Property. • Unavailability Deduction: Nil

WORKING DRAFT

Category of Unavailability	Criteria (alternatives)	Consequence
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 1.	<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 1.	<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;

A. 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 2);

(ii) 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

(iii) setting out any other matters required to be included in that report in accordance with the Contract Documents; and

WORKING DRAFT

~~(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 3: 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, 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 3 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 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 3, 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.~~

SCHEDULE 43: STEP-IN RIGHTS

~~This Schedule 4 applies if the Key Terms provide that MSD's Step-in Rights apply. 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.~~

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 ~~34 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, 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;

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- (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 accordingly, and MSD will not be required to make any payment (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.

~~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 2.~~

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 6: 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: the Performance Measures 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 6 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 6, 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 6,~~

~~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 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 6 pursuant to clause 2.1 of this Schedule 6, 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 6 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 75: 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):~~

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, the fortnightly weekly rent (based on Market Rent) for a Property for the purposes of this Agreement,~~ as set out in Schedule 45 (as amended from time to time in accordance with this Agreement); ~~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 1;~~

~~**Available Vacant Property** means a Property that is not Unavailable, that complies with clause 1.4 of Schedule 1 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 2 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 ~~Wellington~~ the Services Location listed in the Key Terms;

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:

- (a) was an Eligible Tenant but has subsequently ceased to be ~~eligible for an IRRS tenancy and is not otherwise eligible for public housing~~ an Eligible Tenant; 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 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 ~~Schedule 2 of~~ this Agreement;

Key Terms means the table of key commercial terms and details specific to the Properties 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 weekly market rent for each Property as set out in Schedule ~~45~~ (as amended from time to time in accordance with this Agreement)~~this Agreement~~) ~~or as determined pursuant to clause 4.3 of Schedule 1~~;

Market Rent Review means a review of Market Rent undertaken in accordance with the Key Terms and clause 4 of Schedule 1;

Minimum Agreed Rent means, in respect of a Property, the initial Agreed Rent for that Property as at the Commencement Date (or, if the Property is added to Schedule 4 after the Commencement Date, as at the date that Property is added) as listed in Schedule 4;

~~**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 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 listed in Schedule ~~45~~, as that list is ~~updated~~ amended from time to time in accordance with this Agreement (including so as to reflect any approved additions and substitutions and any released Properties (if applicable)); ~~in accordance with clauses 5.4 and 5.7 of Schedule 1 (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;

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;

~~**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 1 applies; or~~

~~(d) has not been selected by the Provider in accordance with clause 1.6 of Schedule 1;~~

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;

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 2;

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 let to Eligible Tenants ~~to be Available for an Eligible Tenant~~ for a specified period; or
- (b) the Provider obtaining MSD's prior written consent that a ~~n-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 ~~34~~;

Step-out Date means the date specified as such in a notice given by MSD pursuant to clause 6.1~~6.1~~ of Schedule ~~34~~;

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

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Tenant means ~~the a person or household~~ who is named as ~~the a~~ 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);

Total Top-up Payment has the meaning given in clause 1.1 of Schedule 2;

Total Turnaround Payment has the meaning given in clause 1.1 of Schedule 2; and

Turnaround Period means, in respect of a Property:

- (a) ~~the period commencing the day after a Tenancy ends Property becomes an Available Vacant Property~~ until the earlier of the 11th Business Day later and the day a new Tenancy Agreement commences; or
- (b) ~~where a Tenant can be reasonably considered to have Abandoned a Property,~~ the period beginning from the date upon which an order of the Tenancy Tribunal terminating the Tenancy which is the subject of the relevant Tenancy Agreement is made pursuant to the Residential Tenancies Act and until the earlier of the 5th 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 2.~~

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;~~
- (a) ~~where a word or phrase is defined, its other grammatical forms have a corresponding meaning;~~
- (a) ~~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 6: PROPERTY MANAGEMENT REQUIREMENTS

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SCHEDULE 7: TENANCY MANAGEMENT REQUIREMENTS

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SCHEDULE 8: 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

[Drafting Note: This 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 4 and replacing Schedule 4 with the new Schedule 4 attached to this Variation Agreement.]
- (b) [Clause *[insert clause number]* is deleted.]

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(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 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.

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:

Attachment: New Schedule 4

ATTACHMENT: FORM OF ENCUMBRANCE

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