



[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. *Please note that this is a template document, and will need to be populated by the parties and adapted as necessary to reflect the particular circumstances (including deleting the various notes in square brackets and italicised text). Changes to the Schedules of this Agreement should not be made directly to the Schedules and should only be made pursuant to the "Variation to the Schedules" Key Term below.*]

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) <i>[Insert full legal name of Provider] (Provider)</i>
Agreement ref. no.	<i>[Insert reference no.]</i>
Relationship Agreement date and ref. no.	<i>[Insert date and reference no. of Relationship Agreement]</i>
Execution Date	<i>[Insert date this Agreement is signed]</i>
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: <i>[Insert if relevant]</i>]; and <i>[Insert any others]</i> <p>The Provider is to notify MSD once each condition is satisfied.</p> <p>See also clause 5(b) of the Relationship Agreement, which requires the Provider to satisfy the Conditions Precedent by the final date for satisfaction of the Conditions Precedent set out below.</p>
Final date for satisfaction of	<i>[Insert date]</i>

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Key Term	Description
Conditions Precedent	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 final date set out immediately above, unless the date is extended or the Conditions Precedent are waived by MSD in its sole discretion.
Term	From the Commencement Date until the earlier of (i) the Expiry Date, and (ii) the termination of this Agreement in accordance with the Key Term immediately below. See also clause 5(d) of the Relationship Agreement.
Termination of this Agreement	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 22.24 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, Properties for Eligible Tenants on a "capacity" basis. • This means that MSD will pay the Provider a Services Payment, based on: <ul style="list-style-type: none"> ○ IRRS in respect of Tenants who have been let Properties, for the duration of each relevant Tenancy (subject to any earlier termination or Abandonment); ○ a Total Turnaround Payment; and ○ a Total Top-up Payment. • This Relationship Agreement sets out the core terms applicable to MSD's and the Provider's contracting arrangements for the provision of Housing and/or Housing Services. is supplementary to the Relationship Agreement between MSD and the Provider referred to above. The Relationship Agreement contains further generic detail on some topics dealt with in this Agreement. • <u>The terms of the Relationship Agreement apply to all Services provided to MSD pursuant to any Services Agreement (see clause 3.6(b) of the Relationship Agreement), including this Agreement.</u> • By signing the relevant Contract Documents, MSD and the Provider agree to be bound by and to perform <u>their obligations</u> 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(ba) of the Relationship Agreement applies to this Agreement as if it were set out in full in this Agreement.
Parties' Representatives and	MSD's Representative [name]

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Key Term	Description
contact details (including for the purposes of the Relationship Management Group)	<i>title</i> <i>address</i> <i>DDI</i> <i>cell</i> <i>email</i>
	Provider's Representative <i>[name</i> <i>title</i> <i>address</i> <i>DDI</i> <i>cell</i> <i>email]</i> Each party may replace its nominated representative above during the Term by notice to the other party.
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> .
Property Management Requirements	The Provider is to comply with the Property Management Requirements set out in Schedule 6.
Tenancy Management Requirements	The Provider is to comply with the Tenancy Management Requirements set out in Schedule 7.
Additional Services	<i>[Insert any additional services (over and above those set out in Schedule 1) to be provided by the Provider (including any value-adds offered in original proposal)]</i> . A failure to provide these Additional Services will be a material breach of this Agreement.
Volume and description of Properties	<i>[Insert brief details]</i> , as more particularly set out in Schedule 4 (as that Schedule is updated by MSD, in accordance with this Agreement, from time to time on the MSD Housing Client System).
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 strategic partnering between MSD and the Provider is working. The Relationship Management Group should discuss the following topics at each annual relationship meeting: <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

Key Term	Description
	<p>relation to the Contract Documents;</p> <ul style="list-style-type: none"> • Tenancy occupancy rates in relation to the Properties; • forward-looking plans; • views of demand for Housing and Housing Services; • wrap-around support interface; and • key learnings in relation to Housing and the Housing Services.
Financial and reporting	
Services Payment	MSD will pay the Provider the Services Payment for each Payment Period in accordance with Schedule 2. The Services Payment includes the Total IRRS Payment, the Total Turnaround Payment and the Total Top-up Payment.
Services Payment report and invoice	<p>The Provider must provide MSD, by every second Monday during the Term, a Services Payment report and tax invoice in respect of each the prior Payment Period in a form acceptable to MSD, acting reasonably.</p> <p>The Services Payment report will specify the Services Payment for the prior Payment Period and will set out individually each item that has been taken into account in calculating the Services Payment.</p>
Agreed Rent	<p>The Total IRRS Payment is based, among other things, on the Agreed Rent for each Property. The Agreed Rent is set out in Schedule 4 as at the Commencement Date.</p> <p>If the Parties agree to: (i) amend the Agreed Rent during the Term of this Agreement pursuant to a Market Rent rReview or otherwise, or (ii) add any new or substituted Properties pursuant to clause 5 Error! Reference source not found. of Schedule 1, they will enter into a variation agreement in the form attached at Schedule 8 to delete and replace Schedule 4.</p>
Consumer price index adjustments to Agreed Rent	<p>The Market Rent component of the Agreed Rent for each Property will be annually adjusted by the Relationship Management Group for annual changes in the relevant consumer price index -in accordance with clause 4.1 of Schedule 1, except in respect of a year in which a Market Rent Review occurs.</p> <p>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.</p>
Market Rent Review	<p>The 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.</p> <p>The Relationship Management Group will ensure that each Market</p>

Key Term	Description
	Rent Review is undertaken in accordance with the requirements of clause 4 of Schedule 1.
IRR	The collection of IRR from Tenants is the sole responsibility of the Provider. MSD is not liable under this Agreement (including under Schedule 2) for any non-payment or late payment of IRR by any Tenant.
Compensation payable by MSD for any early termination of this Agreement for convenience	Yes / No <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>
Sharing of Data	
Data provided by MSD	<p>MSD is to provide a written data report to the Provider's Representative <u>(through the Relationship Management Group)</u> 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 <u>relevant</u> individual Housing and Housing Services providers on an anonymised basis):</p> <ul style="list-style-type: none"> • 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; • the percentage of the Provider's Properties utilised on a plus or minus 1 bedroom basis; <u>and</u> • the percentage of Tenants who were identified by the Provider (rather than MSD) and subsequently let a Property under this Agreement; • average number of days between one Tenancy ending and the next Tenancy beginning in respect of each Property; and • 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. <p><u>Following receipt of the Data referred to below from the Provider, MSD will also provide to the Provider a comparison of each item of such Data against the sector average and/or individual relevant Housing and Housing Services providers on an anonymised basis.</u></p>
Data provided by Provider	<p>The Provider is to provide a written data report to MSD's Representative <u>(through the Relationship Management Group)</u> every six months during the Term, identifying each of the following in relation to the 6 month period prior to the <u>written data report</u>relevant anniversary:</p> <ul style="list-style-type: none"> • the Tenancy occupancy rate for <u>all the</u> Properties, measured as the average Tenancy occupancy rate versus the average Tenancy vacancy rate for the Provider's portfolio of Properties; • the Tenancy churn rate for each<u>all of the Properties</u>Property (including by reference to the specific Property identifier

Key Term	Description
	<p>used by the Provider in the MSD Housing Client System);</p> <ul style="list-style-type: none"> • <u>the number of Tenancies which terminated for each Reason for Exit (including sub-categories of each Reason for Exit, where applicable);</u> • <u>the average number of days between one Tenancy ending and the next Tenancy beginning in respect of all of the Properties;</u> • <u>the percentage of rent arrears over 21 days in respect of all of the Properties;</u> and • <u>the average time to respond to urgent Property-related and Tenant-related queries across all of the Properties.</u> <p>The Provider is to provide a written data report to MSD's Representative <u>(through the Relationship Management Group)</u> 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"> • Tenant satisfaction rates with the Tenant's contact point; • overall Tenant satisfaction; and • Tenant satisfaction in relation to repairs and maintenance.
<p>Data outcomes following specified periods</p>	<p>Within 20 Business Days of MSD's Representative having received the first-second 6 month <u>written Data set-report</u> 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.</p> <p>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.</p> <p>If MSD considers, having received the fourth 6 month <u>written Data set-report</u> 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 <u>consultation discussion</u> 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 <u>based on the Data</u> by notice in writing to the Provider. The Provider is to comply with the requirements of such MSD's Data-related performance regime.</p>
<p>Data outcomes - ongoing</p>	<p>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 <u>reasonably</u> required and work together co-operatively to seek to improve the such Data.</p> <p>If, after a period of three months or longer following the</p>

Key Term	Description
	<p>Relationship Management Group's first such meeting, MSD (acting reasonably) considers that the Data has 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.</p> <p>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 <u>based on the Data</u> by notice in writing to the Provider. The Provider is to comply with the requirements of such MSD's Data-related performance regime.</p>
Insurance and Step-in Rights	
Insurances required	The Provider is to hold and maintain the insurance policies at <u>(or greater than)</u> the specified levels of cover required and approved by the Regulatory Authority.
MSD Step-in Rights	MSD has Step-in Rights as set out in Schedule 3.
<u>Variations to Schedules</u>	
<u>Variations to Schedules</u>	<p><i>[If any Schedule is being amended, this Key Term should be populated with the agreed amendments to the Schedules. No changes should be made directly to the Schedules themselves. Please see the example formats below (note that not all of these will necessarily be used in each situation).]</i></p> <p><i>[This Agreement is amended as follows:</i></p> <ul style="list-style-type: none"> <i>• [Clause [insert clause number] of Schedule [insert Schedule number] is deleted.]</i> <i>• [Clause [insert clause number] of Schedule [insert Schedule 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")].</i> <i>• [Clause [insert clause number] of Schedule [insert Schedule number] is deleted and replaced with the following clause:</i> <i>[insert clause number]: [insert replacement clause in italics]]</i> <i>• [A new clause [insert new clause number (e.g., "3A" if the new clause is to be inserted between existing clauses 3 and 4)] of Schedule [insert Schedule number] is added as follows:</i> <i>[insert new clause number]: [insert new clause in italics]]</i>

Key Term	Description
[Release]	
[Release option]	<p>[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.]</p> <p>[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.</p> <p>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.</p> <p>The parties will enter into a variation agreement in the form attached as Schedule 8 to update the list of Properties in Schedule 4.]</p>
[Compensation payable by MSD for exercise of release]	[Insert details of compensation for release, if applicable.]

EXECUTED on the

day of

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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:

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SCHEDULE 1: SERVICES

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

- 1 **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) **Letting of Properties:** let Properties to Eligible Tenants during the Term, 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 clause 22.3(a) of 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
 - (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 at any time in the previous ~~43~~ 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 ~~whom~~ 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 or lower 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
- (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 in relation to such reasonable directions).
- 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.
- 1.3 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 Housing Client System.

2 Referrals of Eligible Tenants

MSD will follow the processes set out in the Operational Manual and the MSD Housing Client System, but MSD does not guarantee that it will make any referrals of Eligible Tenants to the Provider for the purposes of this Agreement. MSD may notify the Provider that one or more Properties is not required to be let to Eligible Tenants pursuant to clause 5.4 of this Schedule 1.

3 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}.

IRRS

- 3.1 Subject to Schedule 2, MSD will only pay the IRRS for a Tenant that it has referred to the Provider, or otherwise approved, and only for the duration of the Tenant's ~~†~~Tenancy pursuant to the Tenancy Agreement.

IRR

- 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.
- 3.3 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 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,
- (together, an **IRR Change Notification**).
- 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~~ is to 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 3.4~~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.

Ineligible Tenants

~~3.6~~ Where a Tenant is determined by MSD to be an Ineligible Tenant~~ineligible to receive an IRRS~~, MSD ~~must~~ is to:

~~(a)~~ (a) -within five Business Days of determining this ineligibility inform the Provider via the MSD Housing Client System of ~~that the~~ Ineligible Tenant; and

~~(a)~~ (b) inform the Ineligible Tenant by notice in writing of such ineligibility.

~~3.6~~ 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 to the Provider in accordance with clause 3.6 of this Schedule 1, and is to notify MSD of such IRRS Cessation Date within five Business Days or receiving notice from MSD under clause 3.6 of this Schedule 1.

~~3-73.8~~ 3-83.8 Within five Business Days of receipt of a notice from MSD under clause 3.6 ~~3-7~~ of Schedule 1, MSD the Provider 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 from the IRRS Cessation Date; and
- (c) (unless MSD provides its approval under clause 3.9 of this Schedule 1), the Tenancy will be terminated with effect from the IRRS Cessation Date.

~~3-83.9~~ 3-83.9 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.

~~3-93.10~~ 3-93.10 Any payment of IRRS made in respect of an Ineligible Tenant (following an IRRS Cessation Date or where the Provider has failed to notify MSD of a change in circumstances in accordance with clause ~~4-1~~ 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.

4 **Agreed Rent and Market Rent**

- 4.1 The initial Agreed Rent for each Property is set out in Schedule 4. The Market Rent component of the Agreed Rent is subject to annual indexation as identified in the Key Terms and 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.
- 4.2 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. For this purpose, the Provider will propose a revised Market Rent for each Property which will be agreed or determined pursuant to clause 4.4 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 5 of this Schedule 1, the Provider will

propose a Market Rent for each Property, which will be agreed to or determined pursuant to clause 4.4 of this Schedule 1.

- 4.4 MSD will consider any Market Rent proposed by the Provider pursuant to clauses 4.2 or 4.3 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:
- (a) 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 87 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 (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.
- 4.5 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.

5 Property additions and substitutions

- 5.1 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 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.
- 5.2 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.
- 5.3 If MSD approves any additional or substitute property proposed by the Provider in accordance with either clause 5.1 or 5.2 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 87 to vary Schedule 4 of this Agreement to reflect 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 87 to vary Schedule 4 of this Agreement to reflect the updated list of Properties to remove that temporary substitute Property.

- 5.4 MSD may from time to time notify the Provider that one or more Properties is not required to be let to Eligible Tenants 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.
- 5.5 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.

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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:

$$\text{Services Payment} = \text{Total IRRS Payment} + \text{Total Turnaround Payment} + \text{Total Top-up Payment}$$

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 Turnaround Payment = the Total Turnaround 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

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 Tenant who has been let a Property in accordance with this Agreement in the relevant Payment Period.
- 2.2 **Daily IRRS:** The Daily IRRS 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, 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 equals or exceeds the amount of the Agreed Rent for that Property, the Daily IRRS will be zero. All IRRS amounts are GST-exclusive.

3 Total Turnaround Payment

- 3.1 **Total Turnaround Payment:** The Total Turnaround 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 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

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- (b) completed the tenancy matching process set out in the Operational Manual and the MSD Housing Client System within the required timeframes.

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).

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

5.1 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.

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SCHEDULE 3: STEP-IN RIGHTS

The parties acknowledge that ~~they expect it is anticipated that any issues that arise during the Term are dealt with by~~ the Relationship Management Group ~~to deal with issues that arise during the Term~~ 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 ~~S~~step-in ~~A~~pplies

- (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 ~~because of~~ any of the following:

~~(i)~~ (i) serious injury or death to persons; ~~or~~

~~(ii)~~ (ii) serious risk to the health and safety of persons; ~~or~~

~~(iii)~~ (iii) serious risk of material damage or destruction or serious risk to property; ~~or~~

~~(iv)~~ (iv) the Provider's registration under the HRTM Act has been revoked; or

~~(v)~~ (v)

~~(ii)~~ (v) to enable MSD to meet any ~~of its~~ statutory duties it may have under health and safety Laws or the Vulnerable Children Act 2014,

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

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(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 4 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 5: ~~INTERPRETATION~~ DEFINITIONS

1 Defined terms

In this Agreement, the following ~~words/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, the weekly rent (based on Market Rent) ~~as set out in Schedule 4 (as amended from time to time in accordance with this Agreement);~~

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 ~~Wellington~~ the region in which the relevant Services are being provided;

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 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 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~~ alter the Market Rent;

Market Rent means the weekly market rent for each Property as set out in Schedule 4 (as amended from time to time in accordance with this Agreement);

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;

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 4, as that list is 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));

Reason for Exit means each of the following:

- (a) a Provider-initiated transfer of the Tenant to another property;
- (b) a Tenant-initiated transfer to another property;
- (c) the death of a Tenant;
- (d) a Provider-initiated termination of the Tenancy due to one of the following:
 - (i) a breach by the Tenant of the Tenancy Agreement (with the breach to be specified, along with measures taken by the Provider and the Tenant to overcome and rectify the breach); or
 - (ii) the Tenant is no longer an Eligible Tenant (with the reason to be specified); or
 - (iii) a 90 day notice being given by the Provider under section 51 of the Residential Tenancies Act (with any background to this to be provided); or
 - (iv) any other reason not set out in paragraphs (i) to (iii) above, with the reason to be specified (for example, the Tenant is subject to a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment Act 1992 or a compulsory care order under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003); and

(e) a Tenant-initiated termination of the Tenancy due to one of the following:

- (i) the Tenant has moved out of the area; or
- (ii) the Tenant has moved to a private sector rental; or
- (iii) the Tenant has moved into home ownership; or
- (iv) the Property is no longer suited to the Tenant (with the reason to be specified); or
- (v) the Tenant is in prison; or
- (vi) the Tenant has Abandoned the Property; or
- (vii) the Provider is unable to identify a specific reason;

~~(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;

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 for a specified period; or
- (b) the Provider obtaining MSD's prior written consent that a 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 ~~S~~step-in ~~R~~ights 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 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), complies with the Residential Tenancies Act and the HRTM Act (as applicable), all other applicable Laws and the terms of this Agreement;

Tenant means a person who is named as 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 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~~^{5th} Business Day later and the day a new Tenancy Agreement commences.

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).

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SCHEDULE 6: PROPERTY MANAGEMENT REQUIREMENTS

Requirement	Detail
1. General requirements	
a.	General maintenance The Provider is to maintain all Properties in accordance with all relevant Laws and the standards and requirements applicable to a Class 1: Social Landlord.
b.	Planned maintenance, unscheduled repairs and defect rectification Planned maintenance, unscheduled repairs and defect rectification must be carried out in accordance with the relevant asset management plan for the Properties submitted to and approved by the Regulatory Authority (the Asset Management Plan) and the Provider's internal policies and procedures in relation to the Services as submitted to and approved by the Regulatory Authority.
c.	Records The Provider is to maintain a system (or systems) that contains all relevant information, data and records relating to the Properties.
2. Specific requirements	
a.	Interior Hardware All interior hardware (including all windows, cupboards, doors and latches) is to be functional. Appropriate privacy lock(s) will be present on all toilet and bathrooms doors.
b.	Window safety mechanisms All windows above ground level must <u>comply with clause F4 of the New Zealand Building Code</u> be fitted with appropriate security or restrictor stays.
c.	Stove security Stand-alone stoves must have an anti-tip device and drop bolt fitted and operating. Built-in ovens must be adequately restrained.
d.	Hot water cylinder Seismic straps must be securely fitted to each hot water cylinder.
e.	Gas fittings Any gas fittings and appliances must be safe to operate and must be inspected and certified on a regular basis and in accordance with the Gas (Safety and Measurement) Regulations by a person authorised under the Plumbers, Gasfitters and Drainlayers Act 2006.
f.	Curtains and blinds Appropriate curtains or blinds must be fitted and fully functional on (at least) all windows in living rooms, dining rooms and bedrooms.
g.	Childproof storage Where children are residing in a Property with a Tenant, there must be storage space with childproof latches in each kitchen, bathroom and laundry. <u>If a child resides in a Property with a Tenant and there is storage space in the kitchen, bathroom or laundry, there must be childproof latches on such storage space.</u>
h.	Doors and windows All exterior doors, windows and associated hardware must be functioning and sealing well.

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Requirement		Detail							
i.	Entry lighting	All entrance doors must have appropriate light fixtures and fittings.							
3. 24/7 Contact Point and Inspections									
a.	24/7 Contact Point	<p>The Provider is to maintain, and ensure the Tenant is aware of, a 24/7 telephone contact point (24/7 Contact Point) which allows the Tenant to contact the Provider free of charge to notify the Provider of any issue (including any emergency in relation to the Property and any Property-related jobs).</p> <p>All calls to the 24/7 Contact Point must be answered, or the Tenant must be able to leave a recorded message. (and the Provider is to respond to the Tenant within the required response period set out in section 4 below).</p>							
b.	Inspections	The Provider is to inspect each Property and each Tenancy at least once every 12 months (an Inspection). For an Inspection to be considered as conducted, both the Property elements and Tenancy elements need to be completed, however the Property elements and Tenancy elements of the Inspection may be conducted together or at separate times.							
c.	Property elements	<p>The Inspections must, in relation to the Property:</p> <ul style="list-style-type: none"> • check the state of repair of the Property; • ascertain and record visible and notified defects; • check the Property complies with all applicable Laws; • check health and safety risks are appropriately managed; and • check smoke alarms. 							
d.	Tenancy elements	The Inspection must undertake the Tenancy-related checks as required under paragraphs 3(e) and 3(f) of the Tenancy Management Requirements.							
e.	Job logging	Immediately following each Inspection, the Provider is to log, or ensure the Tenant logs, any defects and other jobs in relation to the Property with the 24/7 Contact Point.							
4. Property jobs and defects									
a.	General	Property jobs and defects must be responded to and permanently rectified as set out below (but subject to paragraph 4(d) below).							
	Property job classification	Description	<table border="1"> <thead> <tr> <th>Required response period</th> <th>Required permanent rectification period</th> </tr> </thead> <tbody> <tr> <td>Emergency (EMG)</td> <td>Required to be responded to urgently in order: <ul style="list-style-type: none"> • —to protect from imminent danger or </td> <td>Four hours</td> <td>24 hours</td> </tr> </tbody> </table>	Required response period	Required permanent rectification period	Emergency (EMG)	Required to be responded to urgently in order: <ul style="list-style-type: none"> • —to protect from imminent danger or 	Four hours	24 hours
Required response period	Required permanent rectification period								
Emergency (EMG)	Required to be responded to urgently in order: <ul style="list-style-type: none"> • —to protect from imminent danger or 	Four hours	24 hours						

Requirement	Detail
	<p>any other adverse effect on health, safety or security⁷, <u>or</u></p> <ul style="list-style-type: none"> • otherwise to comply with any health and safety Laws; • to urgently reinstate an essential function or component of a Property that has failed, if it affects (or may affect) the health, safety or security of the Tenant; or • to meet the requirements of any applicable Laws or of any regulatory body with respect to security, provision of essential services or safety. <p>By way of illustration only (and without limitation), includes work necessary to ensure:</p> <ul style="list-style-type: none"> • there is a means of cooking; • there is a potable hot water supply and cold water supply; • there is a gas supply (if the Property uses gas services); • correction of all faults associated with sanitary appliances (toilets, showers, baths and hand basins) where those sanitary appliances would otherwise be unable to be used by the Tenant; • correction of all faults associated with waste and sewer drains (e.g., blocked sink or drain) where those waste and sewer drains would otherwise be unable to be used by the Tenant; • there is a power supply (<u>e.g.</u>, restore power when lost to whole Property and restore lighting to communal areas); • the building exterior is secure (e.g., fixing broken exterior doors, locks, windows or door glazing, or window catches or stays); • there is electrical safety (e.g., detached or broken fittings, preventing shocks); • there is fire safety and a clear means of egress; • there is at least one working smoke alarm in each sleeping space of the Property (or otherwise within three metres of the entrance to each sleeping space); and

Requirement	Detail		
	<ul style="list-style-type: none"> there is at least one smoke alarm installed on the each storey or level in the habitable space of each Property. 		
Urgent (URG)	<p>Required to be responded to urgently to protect the Property or restore Tenant amenity, but not required to protect from imminent danger or any other adverse effect on the health, safety or security of any person or to comply with any health and safety Laws.</p> <p>By way of illustration only (and without limitation), includes work necessary to ensure:</p> <ul style="list-style-type: none"> cooking appliances that are not fully functional are repaired; correction of rainwater leaks into the building envelope (e.g., repairs to flashings around roof penetrations, repairs to windows or doors that are leaking); correction of minor water supply pipe leaks; repair or replacement of smoke detectors that are not functioning (provided that there must be at least one working smoke alarm in each sleeping space of the Property (or otherwise within three metres of the entrance to each sleeping space) and at least one smoke alarm installed on the each storey or level in the habitable space of each Property); repair of potential internal trip hazards (e.g., floors linings, etc.); and functionality of clothes lines. 	One calendar day	Five calendar days
Specific Requirements	Maintenance or repair that does not fall within the above categories, and relates to the specific requirements set out in section 2 of these Property Management Requirements.	Two Business Days	The earlier of the next Inspection and six months .
Other (OTH)	Reactive maintenance that does not fall within the above categories (and which does not fall into the " Deferred (DFR) " job classification category <u>immediately</u> below), usually raised by Tenant notification or following an Inspection.	Two Business Days	The earlier of the next Inspection and six months .

Requirement	Detail		
	<p>Generally carried out to protect the Tenant or the Property, or required to meet the Provider's obligations under this Agreement, or required to meet the requirements of the Residential Tenancies Act or other applicable Laws.</p> <p>By way of illustration only (and without limitation), includes work necessary to ensure:</p> <ul style="list-style-type: none"> • interior linings, floor coverings etc. are free of material damage; • exterior cladding, doors and windows are free from rot; • fences are in good repair; • graffiti is removed; • mould is removed and any associated mould preventative action is undertaken; and • borer or other infestation is treated. 		
<p>Deferred<u>Planned maintenance in Asset Management Plan or annual maintenance plan</u></p>	<p>Reactive maintenance that would ordinarily fit within the "Other (OTH)" job classification category <u>immediately</u> above, but where the job is already scheduled in the Provider's then-current Asset Management Plan or annual maintenance plan to take place as part of planned maintenance, provided the maintenance is shown in one or both of those documents as being planned to take place within the two year period commencing on the date that the relevant job is logged with the 24/7 Contact Point.</p>	<p>Two Business Days</p>	<p>Two years</p>
<p>b. Tenant notification</p>	<p>The Provider is to notify the Tenant of its plans to determine the cause of each of the above jobs, rectify it and indicate how long that rectification is to take.</p>		
<p>c. Utilities</p>	<p>Notwithstanding paragraph 4(a) above, the Provider is not responsible for ensuring that utilities supply or infrastructure is available to the Properties except to the extent that it<u>any unavailability</u> is not due to an impediment on the Property that is preventing utility supply (such as broken or blocked water or gas pipes on the Property).</p>		
<p>d. Temporary Rectification</p>	<p>If the Provider is unable to permanently rectify an "Emergency" or "Urgent" job within the required rectification period set out in paragraph 4(a) above, it may act to temporarily ameliorate the consequences of the job whilst the job is being permanently rectified. In such case, the Provider must<u>is to</u> specify in its Service Records:</p>		

Requirement	Detail
	<ul style="list-style-type: none"> the time by which permanent rectification will occur, which must be reasonable in the circumstances (taking into account the nature of the job and the Tenant's circumstances); and the time by which the temporary amelioration of consequences will occur, which must be as soon as reasonably practicable in the circumstances and in no event later than when the permanent required rectification period set out in paragraph 4(a) should have been, <p>each of which must is to be notified to the Tenant and logged with the 24/7 Contact Point prior to the temporary work being commenced.</p>
5. Asset Condition Standards and Asset Condition Surveys	
Aset Condition Standards	<p>The Asset Conditions Standards are, with respect to each individual Property, an average condition rating of 3 or better for the components of that Property (assessed in accordance with NAMS) at all times. [Drafting note: NAMS reference still under consideration by MSD.]</p>
Provider Asset Condition Surveys	<p>The Provider is to carry out surveys to ascertain whether it has complied with its obligations in relation to the remediation, maintenance and refurbishment of the Properties as set out in the Asset Management Plan (an Asset Condition Survey):</p> <p>The Provider must produce a report based on an Asset Condition Survey in relation to each Property which will assess whether the Property is being maintained as required, and provide these reports to MSD on request.</p>
MSD Asset Condition Surveys	<p>The Provider shall allow MSD to carry out (or procure) Asset Condition Surveys, provided that MSD notifies the Provider at least 20 Business Days in advance and uses its reasonable endeavours to minimise disruption to Tenants and the Services.</p> <p>If an MSD Asset Condition Survey shows that the Provider has not, or is not complying with its obligations MSD shall be entitled to notify the Provider, specify a reasonable period within which the Provider is to carry out the required work (at the Providers cost) and recover the costs of the applicable Asset Condition Survey from the Provider.</p> <p>If the Provider fails to complete such work, MSD will be entitled to undertake such work and recover all costs of such from the Provider.</p>

SCHEDULE 7: TENANCY MANAGEMENT REQUIREMENTS

Requirement	Detail
6.5. General	
a.	Compliance obligations The Provider must is to comply with all Laws, each Tenancy Agreement and the policies and procedures applicable to the operation and management of the Services as approved by the Regulatory Authority (the Policies).
b.	MSD Housing Client System Any notice or request made through the MSD Housing Client System will be taken to be received when the notice or request is logged as received.
c.	Tenant placement The Provider will, when selecting each Housing Client in respect of a Property, act in accordance with this Agreement, the Operational Manual and any direction from MSD (including in accordance with the order of MSD's assigned priority rating). If the Provider wishes to depart from MSD's direction, it must have MSD's consent to do so.
7.6. Tenanting vacant Properties process and notifications	
a.	Tenanting Vacant Properties The Provider is to follow the process set out in the Operational Manual and the MSD Housing Client System when a Property is ready to be let to a Housing Client.
b.	Tenant placement principle The Provider acknowledges that Properties must be allocated fairly, transparently and on the basis of need, balanced with achieving a sustainable match (taking into account specific characteristics of the Housing Client and the neighbourhood) (the Tenant Placement Principle). The Provider is to ensure its Policies give effect to the Tenant Placement Principle, and must be able to demonstrate compliance with the Tenant Placement Principle (including through written records demonstrating why a Housing Client was selected by the Provider).
c.	No reliance on risk ratings or other information The Provider acknowledges that information about risk ratings assigned to Housing Clients is not definitive. To the extent permitted by law, the Provider releases MSD from all liability and Losses suffered by the Provider, and is to ensure that no claim is brought against MSD by any sub-contractor or Provider personnel in relation to such information.
d.	Tenant and Tenant-related changes and Notification requirements The Provider is to comply with the notification requirements set out in the Operational Manual and the MSD Housing Client System regarding Tenant and Tenant-related changes.

Requirement	Detail
8.7. Tenancy management services	
a.	<p>Bond Amount</p> <p>The Provider is to collect the bond (as defined in the Residential Tenancies Act) (the Bond Amount) (or the relevant part of the Bond Amount) from the Tenant, except where MSD has confirmed that it will be providing financial assistance to the Tenant in respect of the Bond Amount- (in which case the Provider will collect the Bond Amount, or part of the Bond Amount, from MSD). The Provider is to comply with its obligations under the Residential Tenancies Act regarding the Bond Amount (including receipt and lodging requirements).</p>
b.	<p>Rent collection and notifications</p> <p>The Provider is responsible for:</p> <ul style="list-style-type: none"> • collecting the IRR or any amount that is less than the IRR where section 92(5) of the HRTM Act applies (the Rent Amount) (and any Rent Amount that is payable in advance of the start of the Tenancy (the Rent in Advance Amount)) payable by the Tenant (or MSD if MSD has confirmed that it will be providing financial assistance or if MSD is redirecting some of the Tenant's MSD benefit payments); • notifying the Tenant if there is to be any change to his or her Rent Amount; • notifying MSD of Rent Amount arrears owing by the Tenant as soon as reasonably practicable following receipt of a request from MSD for that information; • assisting MSD in relation to any queries relating to Rent Amounts that may be in arrears by a Tenant or any matter relating to a potential refund to be made to a Tenant; • notifying MSD through the MSD Housing Client System of any change to a Tenant's Rent Amount no less than five Business Days prior to the effective date of that change; and • taking necessary debt recovery steps in accordance with its Policies and the Operational Manual, with termination of the Tenancy Agreement being a last resort. <p>The Provider may not request any other payment from a Tenant other than as expressly permitted under this Agreement.</p>
c.	<p>Tenancy Agreement</p> <p>The Provider is to ensure that a written Tenancy Agreement is in place between the Provider and the Tenant which provides for a periodic term (unless MSD has approved otherwise) and otherwise complies with the requirements of this Agreement.</p>
d.	<p>24/7 Contact Point</p> <p>The Provider is to maintain the 24/7 Contact Point as further described in the Property Management Requirements.</p>
e.	<p>Inspections</p> <p>The Provider is to inspect each Property and each Tenancy at least once every 12 months (an Inspection). For an Inspection to be considered as conducted, both the Property elements and Tenancy elements need to be completed, however the Property elements and Tenancy elements of the Inspection may be conducted together or at separate times.</p>

Requirement		Detail
f.	Tenancy elements	The Inspections must, in relation to a Tenancy, undertake the Tenant-related checks as specified in the Policies.
g.	Tenant meetings and engagement	The Provider is to comply with its Policies in relation to meeting with Tenants and handling Tenant complaints or incidents. The Policies must provide for the handling of any request from a Tenant where the Tenant wishes to meet with the Provider to discuss any issues that have arisen in relation to the Tenancy Agreement.
h.	Complaints and incidents	The Provider is to comply with its Policies in relation to responding to and addressing any complaints or incidents notified to the Provider or MSD (including about the behaviour of any Tenant or visitor to a Property).
i.	Enforcing maximum occupancy requirements	The Provider is to comply with its Policies and the Operational Manual to ensure that the maximum occupancy level for a Property is not exceeded. If it is exceeded, the Provider is to take appropriate action to ensure that the number of persons residing in the Property is brought back to the maximum occupancy level for the Property as soon as possible.
j.	Subletting	The Provider is to take all reasonable steps to ensure a Tenant does not sublet a Property and, if subletting does occur, take all reasonable steps to rectify any subletting that may occur.
k.	Suspected Housing fraud	<p>The Provider is to give written notice to MSD as soon as possible upon the Provider becoming aware of any suspected Housing fraud (as explained in the Operational Manual).</p> <p>The Provider is to provide all reasonable assistance to MSD in relation to any investigation into suspected Housing fraud and keep records in relation to any fraud reports, or actions taken in relation to fraud reports.</p>
l.	Child abuse and family violence	<p>The Provider is to, where it is providing children's services, comply with the Vulnerable Children Act 2014. This includes:</p> <ul style="list-style-type: none"> • adopting and implementing a child protection policy that complies with section 19 of the Vulnerable Children Act 2014; • keeping its child protection policy under review (including updating as applicable) throughout the Term in accordance with section 16(a)(iii) of the Vulnerable Children Act 2014; • make a copy of its child protection policy (including as updated) available to MSD; • informing the appropriate authorities immediately upon the Provider becoming aware of the occurrence or possible occurrence of family violence (no matter how serious) either: <ul style="list-style-type: none"> ○ at a Property, or that has or may have been inflicted by or on, a Tenant or any other person residing at, or visiting, a Property; or ○ otherwise notified to the Provider by any person; and • providing all reasonable assistance and cooperation to the

Requirement	Detail
	relevant authority investigating any potential or actual child abuse or family violence that may have occurred.
m. Tenant absences	<p>The Provider is to take reasonable steps to ensure that it will receive written notice from the Tenant where the Tenant is planning to be absent from the Property for more than eight weeks.</p> <p>The Provider <u>must-is to</u> give a copy of such notice to MSD through the MSD Housing Client System as soon as possible following the Provider receiving such notice.</p>
n. Tenant disputes	The Provider is to act in accordance with its Policies to resolve any Tenant D dispute that arises with the Tenant.
o. Tenant-initiated transfers	<p>Where a Tenant requests to transfer to a different Property for any reason the Provider is to:</p> <ul style="list-style-type: none"> • take all reasonable steps to manage the Tenant's expectations about the prospect of relocation; • explore all other reasonably viable solutions that could address the Tenant's underlying reason for the Tenant's request to transfer; • document, in a written form, the Tenant's request to transfer; and • ensure that it explains the requirements and rules for the tenant transfer process to the Tenant in a way that reasonably enables the Tenant to understand such requirements, <p>and, following undertaking the above steps:</p> <ul style="list-style-type: none"> • notify the Tenant of how the Tenant can contact MSD to request a needs assessment (and the associated process in relation to such assessment); • appropriately record the steps the Provider has taken; and • otherwise comply with the relevant parts of its Policies.
p. Provider-initiated transfer (other than due to a change in Tenant circumstances)	<p>Where the Provider wishes to transfer a Tenant to another Property and the reason for the proposed transfer is not connected to a Tenant's change in circumstances (e.g., for maintenance, redevelopment or improvement works in relation to the Property), the Provider <u>must-is to</u> notify MSD in advice-advance of undertaking the transfer, and:</p> <ul style="list-style-type: none"> • the transfer must be necessary and desirable; • the Provider <u>must-is to</u> identify a suitable alternative Property that is appropriate to the Tenant's housing needs (in respect of location and, if appropriate, configuration). <u>An alternative Property will only be suitable if, in the case of maintenance, redevelopment or improvement works, -that:</u> <ul style="list-style-type: none"> ○ the alternative Property is available to the Tenant on a short, fixed-term basis or on a permanent basis; and ○ <u>which cannot be undertaken within 120 days (or such longer period as agreed by MSD), the alternative Property is available to the Tenant on a permanent basis.</u>

Requirement	Detail
	<p>Where a transfer is to occur, the Provider is required to:</p> <ul style="list-style-type: none"> • facilitate the transfer, including by acting in accordance with its Policies and these Tenancy Management Requirements; • assess that Tenant's suitability to be selected for placement against the needs of other Housing Clients (including by applying the process in the Operational Manual and the MSD Housing Client System); • outline the options available to the Tenant in the circumstances (including by making the Tenant aware of any circumstances relation-relating to the alternative Property (e.g., works that are pending)); • make an offer of a new Property to the Tenant, in writing (specifying whether on a permanent or short-term basis, as applicable); • arrange (at the Provider's cost) for the Tenant to view the new Property prior to the Tenant's decision being required; • arrange and pay for all reasonable costs associated with the Tenant being relocated to the new Property; • if applicable, arrange and pay for all reasonable costs associated with the Tenant being relocating-relocated back to the original Property; and • notify MSD of the transfer having occurred through the MSD Housing Client System.
q.	<p>Provider-initiated transfer (due to a change in Tenant circumstances)</p> <p>If a change in Tenant circumstances occurs, the Provider is to notify MSD in accordance with the requirements of this Agreement so that MSD can reassess the Tenant's needs, and, following reassessment if the Provider wishes to transfer the Tenant to a different Property, the Provider is to:</p> <ul style="list-style-type: none"> • facilitate the transfer; and • assess that Tenant's suitability against the needs of other Housing Clients (including by following the process in the Operational Manual and the MSD Housing Client System).
r.	<p>Managing join-ins</p> <p>When an existing Tenant makes a request to the Provider that another person or household member be added as a named tenant in the Tenancy Agreement (a Join-in Request), the Provider must is to assess such request, including whether such join-in would:</p> <ul style="list-style-type: none"> • pose any safety risk to MSD, the Provider or the local community; or • give rise to any overcrowding issues. <p>If the Provider agrees-is willing to agree to the Join-in Request, the Provider is to refer the Join-in Request to MSD through the MSD Housing Client System for assessment.</p> <p>If MSD:</p> <ul style="list-style-type: none"> • <u>approves the Join-in Request, the Provider may (by agreement with the existing Tenant):</u> <ul style="list-style-type: none"> o <u>vary the existing Tenancy Agreement to include the new tenant as a Tenant; or</u>

Requirement	Detail
	<ul style="list-style-type: none"> o terminate the existing Tenancy Agreement and arrange for a new Tenancy Agreement to be entered into with the existing Tenant and the new tenant; or • does not approve the Join-in Request, the Provider will notify the Tenant of this decision. <p>If either the Provider or MSD do not approve the Join-in Request, the Provider may consider utilising the Tenant transfer process.</p> <p>The Provider must <u>is to</u> make any MSD policy on join-ins freely and easily available to all Tenants (provided that MSD provides such policy to the Provider).</p>
s.	<p>Tenancy releases</p> <p>A Tenant may only be released from a Tenancy where there are two or more individuals named as joint tenants in a Tenancy Agreement (a Joint Tenancy) if such Tenant receives the consent of the Provider. The Provider must not withhold its consent unless there are genuine reasons that warrant refusing consent (e.g., suspected Housing fraud (e.g., the Tenant that is requesting to be released from the Joint Tenancy intends to remain living in the Property as an additional occupant)).</p> <p>If a person is released from being a Tenant under a Joint Tenancy, the Provider must <u>is to</u>:</p> <ul style="list-style-type: none"> • advise that person that they will no longer enjoy the rights that come with being a Tenant; and • notify MSD of the release through the MSD Housing Client System within three Business Days.
t.	<p>Death of Tenant in a Joint Tenancy</p> <p>Where a Joint Tenancy is in place and one Tenant passes away, the Provider is to follow the process set out in the Operational Manual, including allowing one week to pass from the date of notification to the Provider of the death before contacting the remaining Tenant(s), except in cases of emergency or as otherwise agreed by MSD where the Provider requests that a longer period apply having regard to the particular circumstances.</p>
u.	<p>Death of Tenant - Sole Tenant</p> <p>Where a sole tenancy is in place and the Tenant passes away, the Provider is to:</p> <ul style="list-style-type: none"> • if there are no other occupants residing in the pProperty, issue a 21 day notice to vacate the pProperty to the appropriate person e.g., next of kin, executor of estate or solicitor; or • if there are occupants still residing in the pProperty, follow the process outlined in the Operational Manual.
v.	<p>Boarders</p> <p>The Provider is to notify MSD before agreeing to any Tenant request for a boarder to occupy a Property with the Tenant.</p> <p><u>If MSD becomes aware of any Tenant request made to MSD for a boarder to occupy a Property with a Tenant, it will notify the Provider.</u></p>
w.	<p>Home detention and bail</p> <p>The Provider is to notify MSD before agreeing to any Tenant request for use of a Property as an address for home detention or bail.</p>

Requirement		Detail
		<u>If MSD becomes aware of any Tenant request made to MSD to use a Property as an address for home detention or bail, it will notify the Provider.</u>
x.	Terminating Tenancy Agreement	The Provider is to, when a Tenancy Agreement is terminating: <ul style="list-style-type: none"> if appropriate, inform the Tenant(s) of the possibility that MSD may no longer consider it or them eligible to be a Housing Client; if appropriate, provide the Tenant with a positive letter of referral; undertake an inspection of the Property; and give reasonable notice to MSD specifying the details for the terminating tenancy.
y.	Family Services Directory	The Provider will <u>is to</u> ensure that it is listed in MSD's Family Services Directory and that its 'Necessary Information' is updated as required.
z.	Tenancy reviews	The Provider will reasonably assist MSD if MSD is seeking to confirm whether a Tenant has had a change in circumstances that warrants a change to the Tenant's eligibility for Housing.
9.8. Systems		
a.	General responsibilities	The Provider is to: <ul style="list-style-type: none"> ensure that its information technology systems and its personnel can access the MSD Housing Client System; use all reasonable endeavours to ensure the integrity and security of its information technology system and network communications; exercise all due care in the access to and use of the MSD Housing Client System; access and use the MSD Housing Client System only for lawful purposes; ensure that Provider personnel that use the MSD Housing Client System are sufficiently trained and only have access to the MSD Housing Client System to the extent required to perform their duties; comply with any instructions with respect to accessing and using the MSD Housing Client System notified to the Provider from time to time; immediately notify MSD of any problems or issues that arise in relation to the MSD Housing Client System; and de-provision an individual's MSD Housing Client System user account login when that individual ceases to be Provider personnel.
b.	Maintenance and support	The Provider acknowledges that the primary part of the MSD Housing Client System may be unavailable from time to time in order to conduct system related maintenance, upgrades or other works and that the Provider may be required to utilise MSD's secondary back-up system during periods of unavailability.

Requirement		Detail
c.	Training	MSD will make training available to the Provider in relation to the MSD Housing Client System. The Provider will ensure its relevant personnel attend any training provided by MSD, and is responsible for providing all other required training to Provider personnel in respect of the MSD Housing Client System.
d.	MSD Housing Client System issues	If the Provider encounters any issue or has a query in relation to the MSD Housing Client System, the Provider should contact the appropriate MSD contact as notified to the Provider from time to time.

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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-capacity~~~~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.]
- (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")]*].

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- (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

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