



[Insert Provider logo]

Revised Working Draft 2 (15.08.2018)
NOT GOVERNMENT POLICY

Relationship Agreement for Provision of Housing and Housing Services

Her Majesty, the Queen in right of New Zealand acting by and
through the Ministry of Social Development

[Insert full legal name of Provider]

Reference No: [●]

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Date:

PARTIES

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

[Insert full legal name of Provider and description] (*Provider*)

(each a *party* and together, the *parties*)

BACKGROUND

This section summarises the reasons for this Agreement and “sets the scene”.

- A. Stable housing offers a place from which individuals, families, and communities grow. It is crucial to ensuring physical and psychological well-being, and central to social harmony and the achievement of positive education, health and labour market outcomes.
- B. In 2014, MSD was appointed under the Housing Restructuring and Tenancy Matters Act 1992 as the purchaser of public housing and associated services for the Crown. MSD wishes to work with the Provider, utilising a relationship-based, strategic partnering approach, to provide tenancies and associated services for its clients in need of Housing.
- C. The Provider is an owner of quality and appropriate housing, or an expert in the delivery of quality, appropriate and stable housing and/or housing services, in New Zealand and wishes to provide such housing and/or housing services to MSD, in accordance with the principles set out in clause 3.2 of this Agreement.
- D. This formal written Agreement is necessary in order to be clear about expectations, conditions and obligations. The parties see this Agreement as the founding document of what they hope will be a long term relationship, in which they will both act reasonably and in the best interests of the broader Housing outcomes. Individual transaction-based Services Agreements will be entered into by the parties from time to time. A Services Agreement will prevail over this Agreement to the extent of any conflict between the provisions of this Agreement and a Services Agreement, and will incorporate this Agreement.
- E. This Agreement contains the following specific parts:

Part A – Defined Terms and Interpretation
Part B – Parties and Term
Part C – Services, Force Majeure Events and Changes
Part D – Payment
Part E – Confidentiality and Intellectual Property
Part F – Indemnities and liability
Part G – Step-in
Part H – Termination
Part I – Expiry and disengagement
Part J – Dispute resolution
Part K – Miscellaneous terms

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PART A – DEFINED TERMS AND INTERPRETATION

In this Part we define terms used throughout this Agreement and also include some rules on how to interpret this Agreement.

1 DEFINITIONS**1.1 Defined terms**

In this Agreement the following terms are used with the meaning set out below:

Agreement means this Relationship Agreement for Provision of Housing and Housing Services;

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 New Zealand in which the relevant Services are being provided; ~~[Drafting note: given the Services Location may be specified as nationwide, we think the simplest and clearest approach is to use Wellington anniversary days rather than refer to the relevant region.]~~

Change of Ownership means:

- (a) any disposal of any direct or indirect 25 percent or more ownership interest in the Provider; or
- (b) any change in the effective management or control of the Provider;

Claim includes any claim, demand or legal proceeding, including by way of contribution or indemnity, for payment of money, for an extension of time or relief from performance of obligations, however arising;

Commencement Date means:

- (a) in relation to this Agreement, the date of this Agreement; and
- (b) in relation to any particular Services Agreement, the date on which that Services Agreement commences in accordance with its terms (including subject to any Conditions Precedent);

Conditions Precedent means the conditions precedent listed in the Services Agreement;

Confidential Information means all information made available by MSD or the Provider to the other (the *recipient*) about itself, its owners, its business, its financial situation, the Services and any Intellectual Property Materials;

Consent means any consent, authorisation, permit, licence, registration or exemption issued by a governmental entity, judicial or regulatory body or stock exchange required to enable the Provider to perform its obligations under this Agreement and any Services Agreement;

TEMPLATE

Contract Documents means this Agreement, any Financier Direct Deed, any Services Agreement and all associated documents between (at least) MSD and the Provider;

Data means the data to be shared between the parties, as set out in a Services Agreement;

Disengagement Period means the period during which Disengagement Services are to be provided as identified in a Disengagement Plan or such other period as is reasonable to enable the Housing Services to cease being provided by the Provider or be transferred (if applicable) from the Provider to MSD or its nominee or a new provider upon the end of the relevant Term;

Disengagement Plan means the disengagement plan provided by the Provider and approved by MSD as required by this Agreement;

Disengagement Services means the disengagement services (if any) to be provided by the Provider in accordance with a Disengagement Plan and otherwise in accordance with clause 25.2 of this Agreement;

Dispute means any dispute or disagreement about any aspect of any Contract Document;

Disputed Amount has the meaning given in clause 13.5(a);

Eligible Tenant means an eligible tenant as that term is defined by section 92(7) of the HRTM Act (and in respect of Housing New Zealand Corporation, means a tenant under section 72(1) of the HRTM Act) and includes a person paying a market rent who is not eligible for an IRRS but is nonetheless eligible for public housing;

Expert Determination means determination by an Independent Expert in accordance with clause 27;

Expiry Date, in relation to any particular Services Agreement, means the date on which that Services Agreement is due to expire (if applicable);

Financial Records means all financial information relating to the Services, as required under clause 9.2;

Financier Direct Deed means a deed made between, among others, MSD, the Provider and the Provider's external financiers (or an agent of them) that regulates their respective rights and powers as between them with regard to the Provider;

Force Majeure Event means any circumstance or event beyond the reasonable control of the Provider and which could not have been prevented by the exercise of all proper care and diligence, good contingency planning or observance of Good Industry Practice;

Good Industry Practice means that degree of skill, care, prudence, foresight and operating practice that would reasonably be expected of a skilled and competent supplier of services of the type provided under this Agreement;

GST means goods and services tax chargeable under the GST Act;

GST Act means the Goods and Services Tax Act 1985;

Housing means any housing provided to and funded by MSD pursuant to a Services Agreement;

Housing Client means an Eligible Tenant, a Transitional Housing Eligible Client and/or a Tenant (as the context requires);

Housing Services means any housing-related services provided to and funded by MSD pursuant to a Services Agreement;

HRTM Act means the Housing Restructuring and Tenancy Matters Act 1992;

Independent Expert has the meaning given in clause 27(a);

Insolvency Event means, in relation to a person, that the person:

- (a) is insolvent; or
- (b) is liquidated or has a liquidator, receiver, statutory manager, administrator or similar official appointed; or
- (c) enters into any compromise with creditors or scheme of arrangement with creditors (except as part of a solvent reconstruction or amalgamation first approved by MSD in writing); or
- (d) threatens to suspend payment of its debts; or
- (e) ceases to carry on business in New Zealand; or
- (f) has any security enforced against the whole or a substantial part of its assets; or
- (g) has any similar event occur in relation to it;

Intellectual Property means all patents, registered designs, trade marks, logos, trade dress, copyright, domain names, rights in computer software and databases, rights in inventions, know-how and business process and methods (including applications for the grant of any of the foregoing);

Intellectual Property Materials means any software, firmware, documented methodology or process, documentation or other material whatsoever in either or both human readable or computer readable form that wholly or partly contain Intellectual Property;

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

Laws means ~~those principles of New Zealand law established by the courts,~~ statutes, regulations, ordinances, by-laws and any other subordinate forms of rule-making (including codes of practice) of government ~~(including codes of practice)~~, any local authority, or any governmental entity as well as any Consents (and any conditions or requirements under them), those principles of New Zealand law established by the courts, and New Zealand Standards;

Liability includes any debt, obligation, expense, loss, damage, cost, charge or other liability of any kind;

Losses or *Loss* means all damages, losses, Liabilities, costs, expenses and charges;

Major Sub-contractor means any sub-contractor that the Provider intends to subcontract, or has in accordance with clause 3.10(b) sub-contracted, 30% or more of the value of the Services to;

Material Adverse Effect means a material adverse effect (including cost increase) on either party's rights or ability to perform under this Agreement or any Services Agreement;

MSD Personnel means:

- (a) any officer, employee, contractor, sub-contractor or agent of or to MSD (excluding the Provider and any of its sub-contractors);
- (b) any agency to whom MSD's powers have been delegated in accordance with the State Sector Act 1988 and any employee of or contractor to that agency;
- (c) any employees of or contractors to The Treasury, the Inland Revenue Department, the Department of Prime Minister and Cabinet and the State Services Commission;
- (d) the Auditor-General and any employee of, or contractor to, the Office of the Auditor-General (including their employees); and
- (e) any Minister of the New Zealand Government to whom the Chief Executive of MSD or The Treasury reports and any staff working in that Minister's office;

MSD Housing Client System means the online electronic communications system (and associated back-up system) which is operated by MSD to communicate with the Provider and other Housing and Housing Services providers, and any manual system in place for transitional Housing or any other service;

MSD's Representatives means the persons for the time being appointed by MSD as its representatives under this Agreement and any Services Agreements;

Notice of Dispute has the meaning given to it in clause 26.2;

Occupant means a Transitional Housing Eligible Client who has been provided a Property to reside in on a short term basis in accordance with a Services Agreement, together with any household members occupying the Property (as the context requires);

Operational Manual means the operational manual from time to time published by MSD on its website;

Payment Period means:

- (a) each 14-day period during the Term starting on the first available Saturday and ending on the second next Friday; and
- (b) any applicable shorter period to cater for the beginning and end of the Term;

Persistent Failure means, on any date, that in the preceding 12 months, the Provider has consistently failed to meet, or to remedy to MSD's satisfaction a breach of, its material obligations under this Agreement or a Services Agreement;

Personal Information means information about an identifiable individual, which includes personal information about Housing Clients;

Prescribed Rate means, as at any date, the rate that is 3% above the 90-day bank bill bid settlement rate displayed on page BKBM (or its successor page) of the Reuters Monitor Screen around 10:45 a.m. on that date;

Property means any property identified under a Services Agreement as a property to be let to a Housing Client or which has been let to a Housing Client (as the context requires);

Property Management Requirements means the property management requirements and obligations on the Provider in relation to the Properties set out in a Services Agreement;

Provider's Representatives means the persons for the time being appointed -by the Provider as its representatives under this Agreement and any Services Agreements;

Qualifying Change in Law has the meaning given in clause 12.4(a);

Records means the Service Records and the Financial Records;

Regulatory Authority means the authority appointed under section 159 of the HRTM Act, responsible for regulating community housing providers, known at the Commencement Date as the Community Housing Regulatory Authority;

Relationship Management Group means the relationship management group in respect of this Agreement and the Services Agreements, comprising of at least MSD's Representatives and the Provider's Representatives and such other members agreed by MSD's Representatives and the Provider's Representatives (provided that each party will (unless otherwise agreed by the parties) have an equal number of members of the relationship management group);

Reports means the reports the Provider is required to prepare and make available to MSD under this Agreement and a Services Agreement;

Residential Tenancies Act means the Residential Tenancies Act 1986;

Service Records means records relating to the Services as required under clause 9.1(a);

Services means, in respect of any Services Agreement, the Housing and/or Housing Services described in that Services Agreement to be provided by the Provider;

Services Agreement means any set of specific supply terms agreed from time to time between MSD and the Provider for the provision of specific Housing and/or Housing Services, that is to be read with, and incorporates the terms set out in, this Agreement;

TEMPLATE

Services Agreement Payment means, in respect of a Payment Period, the aggregate payment to be made by MSD to the Provider pursuant to and calculated in accordance with the applicable Services Agreement;

Step-in Rights means MSD's rights to step in (if any) under Part G of this Agreement and the relevant Services Agreement;

Tax means any present or future tax, levy, impost, deduction, charge, duty or withholding of any type (other than GST) that is levied or imposed by a governmental entity, plus any associated interest, penalties, charges or fees also imposed;

Tenancy Agreement means a tenancy agreement between the Provider and a Tenant that complies with the Residential Tenancies Act and the HRTM Act (as applicable), all other applicable Laws and the terms of this Agreement and the relevant Services Agreement;

Tenancy Management Requirements means the tenancy management requirements and obligations on the Provider in relation to the Tenants set out in a Services Agreement;

Tenant means, as the context requires:

- (a) an Eligible Tenant 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); and/or
- (b) an Occupant;

Term means:

- (a) in respect of this Agreement, the period from the Commencement Date to the earlier of:
 - (i) the date the parties agree to terminate this Agreement under clause 5(c);
 - (ii) the date this Agreement terminates pursuant to clause 22.2; and
 - (iii) the Termination Date; and
- (b) in respect of a Services Agreement, the period from the Commencement Date to the earlier of:
 - (i) the Expiry Date (if applicable); and
 - (ii) the date the Services Agreement is terminated pursuant to the Services Agreement or this Agreement;

Termination Date means the termination date specified in a Termination Notice;

Termination Event means a termination event as listed in clause 22.3(a) and clause 22.3(b);

Termination Notice means a notice of termination issued following the occurrence of a Termination Event in accordance with clause 22.3(a) or clause 22.3(e);

Transitional Housing Eligible Client means a person who is identified in the MSD Housing Client System as being homeless (that is, living in inappropriate conditions, for example currently residing in cars, tents, garages, caravans, or sleeping rough), or who is otherwise able to prove the seriousness of their housing situation, and ~~who is~~ either:

- (a) referred to the Provider by MSD; or
- (b) identified by, or has made themselves known to, the Provider in accordance with the requirements of a Services Agreement; and

WorkSafe means WorkSafe New Zealand or any successor regulator under the Health and Safety at Work Act 2015.

2 PRINCIPLES OF INTERPRETATION

- (a) The parties are to have regard to the principles set out in clause 3.2 when exercising their rights and performing their obligations under this Agreement and each Services Agreement, and acknowledge that such rights and obligations are to be interpreted to give effect to the principles set out in clause 3.2.
- (b) In this Agreement, unless the context otherwise requires, or any Services Agreement otherwise provides:
 - (i) references to clauses, schedules or annexures are references to clauses, schedules or annexures of or to this Agreement;
 - (ii) a gender includes other genders;
 - (iii) different grammatical forms of defined expressions have corresponding meanings;
 - (iv) the singular includes the plural and vice versa;
 - (v) a reference to a person includes any form of legal entity or body of persons, including its successors and permitted assigns;
 - (vi) any agreement not to do a thing is also an agreement not to permit or cause that thing to be done;
 - ~~(vii) any reference to a security interest includes a security interest within the meaning of section 17 of the Personal Property Securities Act 1999;~~
 - ~~(viii)~~ (vii) any reference to approval, consent, notice or waiver being required is to prior written approval, consent, notice or waiver;
 - ~~(ix)~~ (viii) any requirement to give notice or to advise or signal something means to do so in writing;
 - ~~(ix)~~ (ix) "includes" or "including" do not imply any limitation;

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~~(xii)~~(x) _____ “written” and “in writing” include email communications;

~~(xiii)~~(xi) _____ a reference to any legislation includes that legislation as modified or re-enacted and all regulations, orders in council, other instruments and/or standards rules under it;

~~(xiv)~~(xii) _____ a reference to any document includes a reference to that document as varied, supplemented, novated, replaced or substituted from time to time;

~~(xv)~~(xiii) _____ headings are for reference only and do not affect interpretation;

~~(xvi)~~(xiv) _____ a reference to days is to calendar days of the year;

~~(xvii)~~(xv) _____ a reference to currency is a reference to legal tender in New Zealand ~~currency~~;

~~(xviii)~~(xvi) _____ if something has to be done on or by a day that is not a Business Day, it can be done on the immediately succeeding Business Day; and

~~(xix)~~(xvii) _____ this Agreement is not to be interpreted against MSD simply because it drafted it.

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PART B – PARTIES AND TERM

This Part describes the relationship between the parties and how generally they will work together, how this Agreement works with different sets of Services Agreements from time to time and what the contractual term is.

3 PROVIDER AND MSD**3.1 Mutual obligations**

MSD and the Provider each agree:

- (a) that they wish to build a strong, strategic-partnering relationship with each other in accordance with the principles set out in clause 3.2 to help the New Zealand Government meet its goal of making sure that those who need Housing get the assistance that they need;
- (b) to co-operate fully with each other to achieve the purposes of this Agreement and each Services Agreement in the spirit of good faith, openness and transparency, and consistently with the principles of innovation, sustainability and proportionality;
- (c) that they will act in a manner that is consistent with the principles of the Treaty of Waitangi (which establishes the unique and special relationship between iwi, Māori and the Crown), including in accordance with the principles of partnership and utmost good faith;
- (d) to share information in a timely fashion on a 'no surprises' basis, including anything that might adversely affect MSD's reputation or the Provider's reputation, or be of public interest;
- (e) to consult as early as practicable about anything that may materially affect its performance under this Agreement or about any possible or actual breach of this Agreement; and
- (f) not to do anything that would cause the other party to be in breach of applicable Laws (but this does not affect any exercise of executive or legislative power).

3.2 Principles

~~Each of the Provider and MSD~~ and the Provider each agree to and acknowledge the following principles:

- (a) together, we can achieve more for New Zealand, than if we act alone;
- (b) the welfare and safety of our clients and the welfare of communities is at the centre of what we do;
- (c) Housing must be of the right size and configuration, and in areas of need;
- (d) quality is essential, and innovation and sustainability are highly valued; and

- (e) together, we must support the growth of a fair, efficient and effective community housing sector.

3.3 Relationship between MSD and the Regulatory Authority

- (a) This clause 3.3 applies if the Provider is registered by the Regulatory Authority under the HRTM Act.
- (b) The parties acknowledge and agree that the Regulatory Authority registers certain providers of Housing and/or Housing Services under the HRTM Act and also regulates such providers, in order to ensure that tenants are appropriately housed, and to support the growth of a fair, efficient and transparent community housing sector.
- (c) ~~‡~~The parties acknowledge and agree that:
- (i) this Agreement and each Services Agreement are based on, and rely on, the Regulatory Authority's role as described in clause 3.3(b), and the relationship between MSD and the Regulatory Authority as at the Commencement Date;:-
- (ii) as a consequence of clause 3.3(c)(i), this Agreement and each Services Agreement omit certain provisions relating to the provision of information by the Provider, which would otherwise have been included in this Agreement and each Services Agreement as obligations on the Provider as a provider of Housing and/or Housing Services; and
- ~~(i)(iii)~~ This includes, in particular, there being adequate and sufficient information sharing between MSD and as at the Commencement Date, MSD and the Regulatory Authority have agreed to certain information sharing between the Regulatory Authority and MSD in relation to Pproviders of Housing and/or Housing Services ~~(who are registered as Class 1 Social Landlords under the HRTM Act), Housing and Housing Services~~ to improve outcomes for Ttenants and to provide for compliance efficiencies for Pproviders registered as Class 1 Social Landlords under the HRTM Act.
- (d) ~~For this purpose~~In connection with clause 3.3(c), the Provider (if it is registered as a Class 1 Social Landlord under the HRTM Act) authorises MSD to liaise with the Regulatory Authority and consents to MSD receiving certain information about the Provider as agreed between the Regulatory Authority and MSD and its performance, systems and processes (and also consents to MSD relying on such information) directly from the Regulatory Authority. The Provider agrees that MSD may provide the Regulatory Authority with a copy of this consent if required by the Regulatory Authority.
- ~~(b)(e)~~(e) If and to the extent MSD and the Regulatory Authority propose to change the nature or extent of the information provided by the Regulatory Authority to MSD (as agreed by the Regulatory Authority and MSD as at the Commencement Date) during the Term, MSD will discuss this with the Provider (if it is registered under the HRTM Act).

~~(e)~~(f) If and to the extent the existing relationship between MSD and the Regulatory Authority ceases to exist or materially changes during the Term, then each party agrees that it will, upon written request from the other ~~P~~party, meet within 10 Business Days of a written request to discuss and agree changes to this Agreement and any Services Agreement that are necessary to ensure that MSD continues to receive adequate and sufficient information from the Provider in relation to Housing and Housing Services that it is providing to MSD.

3.4 Relationship Management Group

The parties intend that the Relationship Management Group referred to in clause 7 will be the primary mechanism by which all relevant matters relating to this Agreement and each Services Agreement will be progressed, managed and addressed, and that they intend to invoke the formal contractual mechanisms set out in this Agreement only where the Relationship Management Group has been unable to resolve a matter.

3.5 Relationship and authority

- (a) The Provider is an independent contractor to MSD. Nothing in this Agreement or in any Services Agreement (including, for the avoidance of doubt, the strategic partnering approach referred to in this Agreement and any Services Agreement, and clause 3.1(c)) creates any agency, employment, fiduciary, partnership, trust, or joint venture relationship between MSD and the Provider.
- (b) Neither MSD nor the Provider has authority to enter into contracts or incur debts on behalf of the other, and must not represent that it has any such authority.

3.6 Relationship between this Agreement ~~and a~~ Services Agreements and the Operational Manual

- (a) This 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. It continues in force until terminated in accordance with its terms.
- (b) The terms of this Agreement apply to all Services provided to MSD pursuant to, and are incorporated into each Services Agreement that the Provider and MSD enter into on and from the Commencement Date.
- (c) A Services Agreement must be signed by both the Provider and MSD in respect of each particular set of Services that the Provider is to provide to MSD, and each Services Agreement is a distinct contract (and a tailored agreement as defined in the HRTM Act).
- (d) From time to time MSD may also publish an Operational Manual and other manuals and guidelines. The Provider is to comply with the Operational Manual and observe any other manuals and guidelines, but if there is any conflict between the terms of the Operational Manual or other manuals and guidelines and the terms of this Agreement and/or any Services Agreement, the terms of the Agreement and/or the Services Agreement will prevail. ~~The~~

Operational Manual and other manuals and guidelines may be replaced or updated from time to time by MSD following discussion with the Provider and so long as such replacement or update does not add material extra cost or risk to the Provider (having regard to the Provider and the relevant circumstances).

3.7 Precedence of Contract Documents

- (a) If there is any conflict between the terms of this Agreement and any Services Agreement, the terms of the Services Agreement will prevail, because the parties agree it is important that flexibility be preserved to enable the needs of any particular Housing or Housing Services supply or transaction to be met.
- (b) The Contract Documents will otherwise have the order of precedence set out in the relevant Services Agreement.

3.8 Co-ordination and co-operation

The parties acknowledge that:

- (a) if the Provider is registered ~~as a Class 1 Social Landlord~~ under the HRTM Act, it has an ongoing relationship with the Regulatory Authority; and
- (b) a range of different organisations and people are involved in the provision of goods and services in relation to the Properties and Housing Clients. Each party is to coordinate and cooperate with such other organisations and people in a positive and timely manner, including by abiding by and entering into any necessary coordination or interface agreements.

3.9 Provider registration and consents

The Provider is to:

- (a) ensure that it maintains at all times such registration with the Regulatory Authority, under the HRTM Act, as is specified in any Services Agreement or is otherwise required under the HRTM Act; or
- (b) ensure it holds such MSD social sector accreditations as are specified in any Services Agreement; and
- (c) hold and comply with all Consents required in relation to the Services.

3.10 Employees, agents, contractors and sub-contractors

- (a) If the Provider is registered ~~as a Class 1 Social Landlord~~ under the HRTM Act, it may enter into a sub-contract in respect of any part of the Services.
- (b) If the Provider is not registered ~~as a Class 1 Social Landlord~~ under the HRTM Act, then it may enter into a sub-contract in respect of any part of the Services, provided that:

- (i) if and to the extent the sub-contractor is a Major Sub-contractor, the Major Sub-contractor is first approved by MSD (provided that such approval may not be unreasonably withheld or delayed); and
- (ii) if and to the extent the sub-contractor is to perform any tenancy management-related or support Services, the sub-contractor is first approved by MSD (provided that such approval may not be unreasonably withheld or delayed).
- (c) MSD will be responsible for any MSD Personnel. The Provider will be responsible for the acts and omissions of its own personnel, including its officers, employees, agents, contractors and sub-contractors.
- (d) Notwithstanding clauses 3.10(a)~~3.11(a)~~ and 3.10(b)~~3.11(b)~~, the Provider is not relieved of any of its obligations and liabilities under this Agreement and/or any Services Agreements as a result of any subcontracting of its obligations and liabilities and remains primarily responsible for all actions of any sub-contractor (including any Major Sub-contractor) in connection with the performance of the Provider's obligations under this Agreement and/or any Services Agreements.
- (e) Each of MSD and the Provider will be taken to have at least the same knowledge as the MSD Personnel (for MSD) or the Provider's personnel (including its officers, employees, agents, contractors and sub-contractors) (for the Provider), or that which ought reasonably to be held by any of them.

3.11 Warranties

- (a) Each of the parties has entered into this Agreement and each Services Agreement in reliance on the warranties and representations made by the other party in this clause 3.11.
- (b) Each party warrants and represents to the other party throughout the Term that:
 - (i) it is a properly constituted legal entity and has the power and the authority to own its assets, to carry on its business and to enter into and perform under the Contract Documents;
 - (ii) it is not immune from legal proceedings, the Contract Documents are not contrary to Laws or any court order or third party contract, and the other party will be able to enforce them against it;
 - (iii) the other party's use of information provided by it to the other party will not breach the Intellectual Property rights of any third party; and
 - (iv) it is not subject to any actual, threatened or likely Claim that could have a Material Adverse Effect on it.

4 INFORMATION SHARING

4.1 Sharing of information

Without limiting clause 6.2 and to the extent MSD and the Provider are not restricted from doing so under relevant Laws, each of MSD and the Provider is to provide the other party as soon as reasonably practicable with any information that is material to the Tenants, Properties or the Services and/or which may materially affect the Tenants, Properties or the Services.

4.2 Accuracy of Housing Client and third party information

Each of MSD and the Provider acknowledge that to the extent that it has provided the other with information collected from a Housing Client or other third party, it has no control over that information or its accuracy. Neither party makes any warranty about any information that it has collected from a Housing Client or other third party which it provides to the other, but will provide all such information in good faith.

5 TERM AND CONDITIONS PRECEDENT

- (a) This Agreement and each Services Agreement commence on the relevant Commencement Date.
- (b) The Conditions Precedent in respect of a Services Agreement (if any) must be satisfied by the Provider as soon as possible and otherwise by the date specified in the Services Agreement (with notice of this to MSD), and to MSD's satisfaction. Only MSD can waive them. If they are not met by the final date for satisfaction specified ~~insatisfaction date~~ the Services Agreement, the Services Agreement will be of no further effect, unless MSD agrees otherwise.
- (c) Subject to clause 22.1, this Agreement continues in force until the parties agree in writing to terminate it (or it is otherwise terminated in accordance with clause 22.2 or clause 22.3).
- (d) Each Services Agreement continues in force for the Term.

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PART C – SERVICES, FORCE MAJEURE EVENTS AND CHANGES

This Part describes the Services to be provided by the Provider and what it has to do to comply with MSD's requirements (including in relation to record keeping and reporting, what happens if it is prevented from performing its obligations because of force majeure, and how this Agreement can be changed).

6 SERVICES**6.1 General**

- (a) The Provider is to provide the Services:
 - (i) on the terms and conditions of this Agreement and the Services Agreement;
 - (ii) in a manner that ensures the personal privacy and dignity of Housing Clients is respected, and any disruption to them is minimised as far as practicable;
 - (iii) in a manner that respects and is appropriate to Housing Clients' religious and cultural beliefs and practices, age, gender and any disabilities;
 - (iv) in accordance with Good Industry Practice;
 - (v) in accordance with all applicable Laws;
 - (vi) in accordance with the Vulnerable Children Act 2014, where the Provider is also providing children's services;
 - (vii) in accordance with the Operational Manual; and
 - (viii) in accordance with MSD's reasonable directions, so long as they are not inconsistent with the terms of any Contract Document.
- (b) The Provider is to ensure it is listed in MSD's Family Services Directory (<http://www.familyservices.govt.nz/directory>) and that the necessary information is updated when required, unless the relevant Service being provided is exempt.

6.2 Properties and Services information to be given to MSD

The Provider is to promptly advise MSD of the following matters affecting or which may affect any Property or Services:

- (a) any material damage;
- (b) any event that could give rise to:
 - (i) a material health or safety risk; or
 - (ii) any serious accident or injury or fatality to do with the Provider or MSD Personnel;

- (c) any reports made to WorkSafe in relation to notifiable events under the Health and Safety at Work Act 2015, at the same time they are provided to WorkSafe;
- (d) any industrial action and the Provider's response to it;
- (e) any substantial dispute between the Provider or any of its related companies or sub-contractors and any governmental or semi-governmental entity or agency (including any local or statutory authority);
- (f) any Termination Event;
- (g) any material or substantive Claim threatened or initiated against the Provider; and
- (h) any event or circumstance that could materially adversely affect the Provider's ability to perform under the Contract Documents or would, within time, become a Provider default under any Contract Document.

6.3 Advice to be given to the Provider

MSD is to promptly advise the Provider of the following matters affecting or which may affect MSD's obligations under this Agreement and any Services Agreement:

- (a) any event that could give rise to:
 - (i) a material health or safety risk; or
 - (ii) any serious accident or injury or fatality to do with MSD or any sub-contractor to MSD; and
- (b) any material or substantive Claim threatened or initiated against MSD.

6.4 Health and safety

The Provider is to have a health and safety plan that adequately addresses its duties under this Agreement, any Services Agreements and the Health and Safety at Work Act 2015, and the parties are to consult, cooperate and coordinate with each other with regard to health and safety in respect of the Properties, the relevant Housing Clients and the Services.

6.5 Data sharing

Each party is to share Data in accordance with each Services Agreement, and the Data outcomes set out in each Services Agreement will apply.

7 RELATIONSHIP MANAGEMENT GROUP

- (a) MSD and the Provider agree to work together in good faith in accordance with the roles and responsibilities outlined in this Agreement and to improve the Housing outcomes of New Zealanders in need. The Relationship Management Group will oversee the practical implementation and performance of this Agreement and each Services Agreement, ~~and~~ will have overall responsibility for overseeing prompt, effective, open and transparent communication between the parties and is to resolve all matters promptly.

- (b) The Relationship Management Group is to liaise regularly to monitor performance, review the effectiveness of the Services and identify early any issues and any opportunities for improvement. The Relationship Management Group is to meet quarterly or regularly as otherwise agreed (including as set out in a Services Agreement), by whatever means suit, and at least one representative of each party must attend a meeting for it to have a quorum. MSD will provide a draft agenda and minutes, and these will then be finalised by the parties.
- (c) In addition to clause 7(b), each party may call a Relationship Management Group meeting on no less than five Business Days' written notice to the other if it considers an issue needs to be considered on an urgent basis, and each party is to ensure that at least one representative attends the meeting.
- (d) Each party is to:
 - (i) ensure that its members of the Relationship Management Group have regard to the strategic partnering ~~relationship approach~~ set out in paragraph B of the Background to this Agreement, the obligations of the parties set out in clause 3.1, the principles set out in clause 3.2 and the parties' intention set out in clause 3.4;
 - (ii) ensure that its members of the Relationship Management Group seek to ensure co-ordination of information and communication at a regional and national level and promptly inform the other members of any changes to key personnel and any key information regarding the Services; and
 - (iii) vest sufficient authority in its members of the Relationship Management Group to enable them to discharge their role effectively. The members must communicate proactively and openly, to deliver the outcomes and objectives of this Agreement and each Services Agreement.
- (e) The Services Agreement may include additional requirements in relation to the Relationship Management Group, suitable to the circumstances of any particular Services Agreement.
- (f) Decisions of the Relationship Management Group are not intended to be binding on the parties or to detract from the contractual rights or obligations of either MSD or the Provider, unless implemented as an express written direction from MSD or as a formal change under clause 12 of this Agreement.

8 INFORMATION, RECORDS AND REPORTING

8.1 Records

Without limiting its obligation to comply with Laws generally, the Provider is to maintain sufficient records, and reasonably assist MSD when requested, so that

MSD can meet its obligations under the Official Information Act 1982, the Ombudsmen Act 1975 and the Public Records Act 2005.

8.2 Regular reportinge

The Provider is to provide MSD with such reports and notifications as are required under, and within the timeframes stipulated in, any Services Agreement.

8.3 Financial information

If requested ~~by~~ MSD, the Provider (if it is not registered ~~as a Class 1 Social Landlord~~ under the HRTM Act) is to provide to MSD the following, within five Business Days of their preparation:

- (a) its monthly management accounts;
- (b) its quarterly management accounts;
- (c) its annual audited accounts, in each case prepared in accordance with NZ GAAP (being “generally accepted accounting practice” as defined in the Financial Reporting Act 2013); and
- (d) its annual report and its annual business plan, including ~~the Provider’s~~ sits budget for the current year and its annual forecast for the next two financial years.

8.4 Compliance certificate

If the Provider is not registered ~~as a Class 1 Social Landlord~~ under the HRTM Act, it is to provide to MSD, within 10 Business Days of the end of each calendar quarter, a compliance certificate signed by a director or trustee (as applicable) in a form acceptable to MSD (acting reasonably) certifying compliance with the Provider’s obligations under this clause 8 and clause 9.

9 RECORD KEEPING AND POLICIES

9.1 Service Records

- (a) The Provider is to maintain, and (without limiting the Provider’s obligations under clause 6.2) provide to MSD as soon as practicable, but in any event within ~~five-10~~ Business Days (or such later period as otherwise agreed by MSD) of a written request, all information relating to the Services, including information relating to:
 - (i) the Provider’s performance monitoring;
 - (ii) the Services carried out;
 - (iii) all insurance claims relating to the Services; and
 - (iv) notifiable events under the Health and Safety at Work Act 2015, near misses and incidents relating to security that have occurred during the Term (and in this regard, the Provider is to comply with the Public Records Act 2005).

- (b) MSD may disclose any of the above Service Records to a potential new provider in the course of retendering for the Services to the extent the Service Records relate to the operational characteristics of the Services and/or Properties, but must first redact the Provider's commercially sensitive information.

9.2 Financial Records

The Provider is to maintain, and provide to MSD as soon as practicable, but in any event within ~~five~~ 10 Business Days (or such later period as otherwise agreed by MSD) of a written request, all financial information relating to the provision of Services under this Agreement and any Services Agreements, including copies of all written consents and approvals, or waivers or releases in respect of any breaches by the Provider under its financing arrangements.

9.3 Policies

The Provider is to hold and maintain all policies that have been approved by the Regulatory Authority (and which the Regulatory Authority requires the Provider to hold and maintain)~~it is required by the Regulatory Authority to hold~~. The Provider is to provide a copy of such policies to MSD within five Business Days of any request by MSD for a copy of such policies.

9.4 Maintenance of Records

The Provider is to:

- (a) ensure that the Records are always up to date, in enough detail for MSD to reconcile all Reports and invoices;
- (b) hold Records and other required information in readily accessible and useable format;
- (c) ensure all Records are maintained ~~such~~ that an alternative provider can perform the Services if necessary; and
- (d) retain Records for the Term and for at least seven years after it ends.

9.5 Unauthorised use of Records

If either the Provider or MSD becomes aware or suspects that any unauthorised person has accessed or tried to access any Records, Confidential Information or Personal Information, or that any person used any of them other than for the purposes of this Agreement or a Services Agreement, it will:

- (a) immediately notify the other party;
- (b) take all available steps available to it to identify those unauthorised persons; and
- (c) (in consultation with the other party) make such changes to its systems and operations as will prevent, as far as is practicable, the re-occurrence of such security breach.

9.6 Access to and inspection of Records

- (a) Upon request by MSD, the Provider is to provide MSD with access to:
 - (i) all Records maintained by the Provider;
 - (ii) any other information relevant to the Provider's performance under this Agreement and each Services Agreement; and
 - (iii) the Provider's physical premises, to enable MSD to have electronic access to all Records held electronically (and the Provider is to ensure its personnel provide any required assistance to MSD in accessing such electronic records).
- (b) The Provider is to facilitate any physical inspection of Records by MSD Personnel.
- (c) MSD may take a copy of any Records during the course of any inspection.
- (d) The Provider is to provide a report on all or any of the Records to MSD as and when requested by MSD.

9.7 Assistance in responding to Parliamentary questions

The Provider is to fully and promptly co-operate with MSD if information is required from the Provider to enable MSD or a Minister to respond to a Parliamentary or Select Committee question.

9.8 Controller and Auditor-General

The Provider is to permit, and procure that each Major Sub-contractor permits, the Controller and Auditor General (or his or her appointee) to examine any Records for the purposes of the Public Audit Act 2001 and is to provide him or her with such explanations as may be needed.

10 MONITORING OF SERVICES

10.1 Provider monitoring

Notwithstanding clause 7, the Provider is to regularly monitor its performance under this Agreement and each Services Agreement.

10.2 MSD monitoring

- (a) Notwithstanding clause 7, MSD may, upon reasonable concern regarding the Provider's performance under this Agreement or any Services Agreement~~at its discretion~~, undertake:
 - (i) its own performance monitoring of the Provider, including to ensure that the Services are being provided in accordance with this Agreement and the relevant Services Agreement;
 - (ii) ~~undertake~~ increased performance monitoring of the Provider if it considers that Data provided by the Provider pursuant to a Services Agreement has not evidenced improvement to a satisfactory level,

having regard to other relevant Housing and Housing Services providers (and the Provider will be required to meet MSD's reasonable costs of any increased monitoring if requested by MSD),

and in each case the Provider is to reasonably assist MSD as required with that monitoring.

- (b) MSD will notify the Provider of the outcome of the performance monitoring exercise, and the Provider is to have due regard to MSD's comments in terms of how it provides the Services.
- (c) If MSD finds evidence of any misleading or incorrect Provider reporting or claims for payment, MSD may increase the level of:
 - (i) its own performance monitoring; and/or
 - (ii) the Provider's required monitoring of its own performance under this Agreement and the relevant Services Agreement,

and, the Provider will be required to meet MSD's reasonable costs of any increased monitoring if requested by MSD.

- (d) If the Provider becomes subject to any increased monitoring by MSD under clause 10.2(a)(ii) or clause 10.2(c), then it is to provide to MSD, within 10 Business Days of the end of each calendar quarter, a compliance certificate signed by a director or trustee (as applicable) in a form acceptable to MSD (acting reasonably) certifying ~~10.2(e)~~ compliance with the Provider's obligations under this Agreement.

11 FORCE MAJEURE EVENTS

11.1 No liability for breaches caused by Force Majeure Event

- (a) The Provider will not be liable for any default or delay in its performance if and to the extent that default or delay is caused by a Force Majeure Event. A Property will not be considered to have failed to meet any required standard under this Agreement or a Services Agreement if that failure is caused by a Force Majeure Event.
- (b) If it wishes to invoke this clause 11, the Provider is to give MSD notice that a Force Majeure Event has occurred as soon as it can, including:
 - (i) the nature of the Force Majeure Event;
 - (ii) when it occurred and how long it will likely last;
 - (iii) its expected effect on the Provider's ability to perform; and
 - (iv) which Properties and which Tenants are affected,

and the Provider is to keep MSD fully and accurately informed about the Force Majeure Event and its effect on an ongoing basis.

- (c) The Provider is to use reasonable endeavours to overcome or mitigate the effect of the Force Majeure Event as quickly as is practicable and to continue

to perform under this Agreement, on time, including by sourcing alternative Properties, if practicable (but without the Provider being required to incur material extra expense).

- (d) The Provider is to notify MSD, as soon as it can, once the Force Majeure Event has ceased.

11.2 Alternative arrangements and Step-in Rights

MSD may make its own arrangements for alternative means of providing any Service that has been suspended as a result of a Force Majeure Event, and in any such case MSD's Step-in Rights will be available. The Provider's right to relief because of a Force Majeure Event does not affect MSD's ability to exercise its Step-in Rights.

11.3 Termination right

MSD may terminate the relevant Services Agreement under clause 22.4 in relation to any extended Force Majeure Event.

11.4 Disputes

The parties are to ensure they first seek to resolve any Dispute between them about a Force Majeure Event through the Relationship Management Group. Failing resolution of any ~~disagreement~~ Dispute about a Force Majeure Event through the Relationship Management Group, either MSD or the Provider may provide a Notice of Dispute pursuant to clause 26.2.

12 CHANGE PROCEDURE

12.1 How this Agreement can be changed

This Agreement and any Services Agreement can only be changed in the manner specified in this Agreement or in the relevant Services Agreement.

12.2 Change compensation principles

MSD will only pay the Provider a compensation amount for a change of costs in respect of a change to this Agreement or any Services Agreement effected under this clause 12 and in accordance with MSD's available funding mechanisms at the relevant time. In determining the amount of compensation payable, the following change compensation principles will apply:

- (a) appropriate regard must be had to the timing of cash flows;
- (b) the Provider is to do what it reasonably can to mitigate the effect of the change, including through obtaining competitive quotations where relevant;
- (c) there can be no double-counting; and
- (d) the compensation calculation must take full account of any insurance proceeds, damages and other amounts payable to the Provider (as if it had insured, as required under the relevant Services Agreement, and actually made a claim).

12.3 Changing this Agreement and any Services Agreement generally

- (a) MSD and the Provider may, acting reasonably, each propose a change to this Agreement or any Services Agreement (other than a change resulting from a change in Law which is dealt with under clause 12.4) (including to give effect to a MSD direction which results in additional cost) by giving notice to the other containing details of the proposed change, which notice must include:
- (i) the reasons for the proposed change, including a brief explanation of the costs and benefits to the parties;
 - (ii) the feasibility of the change, and how and when it could be implemented or completed (as applicable);
 - (iii) the impact of the change on the Services, timeframes, the terms of this Agreement or the Services Agreement and MSD or the Provider's (as applicable) ability to perform under it;
 - (iv) if the result of a MSD direction, why it should be treated as a change;
 - (v) any change in costs (on an open book basis);
 - (vi) any competitive quotations received;
 - (vii) any implications for the Provider's existing Tenants, and how they will be managed and disruption minimised;
 - (viii) any implications in terms of the Provider's registration under the HRTM Act (if applicable);
 - (ix) the implications of not implementing the change; and
 - (x) any other matter likely to be relevant,
- and must also attach a draft amendment document recording the relevant change proposed to this Agreement or the Services Agreement.
- (b) The Provider must not seek reimbursement of costs for any matter to the extent already covered by this Agreement or the Services Agreement, or to the extent it results from the Provider's own act or omission.
- (c) The parties will act fairly and reasonably with regard to any proposed change to this Agreement or any Services Agreement, having regard to reasonably expected financial and operational implications for the parties, the principles set out in clause 3.2, the terms agreed on in entering into this Agreement, what has triggered the perceived need for the change and what increased economic benefit or burden results to either party. However:
- (i) MSD will be entitled ultimately to refuse a change proposed by the Provider or to impose a change on the Provider (**a MSD Mandatory Change**), so long as this clause 12.3(c) and clause 12.3(d) are complied with; and

- (ii) MSD may not refuse a Provider-initiated change where the direct consequence of MSD refusing such Provider-initiated change would result in one of the situations or circumstances in clause 12.3~~(d)(i) to 12.3(d)(x)~~ occurring,

and any Dispute about the change will first need to be resolved by the Relationship Management Group and, failing resolution through the Relationship Management Group, through clauses 26.2 and 26.3 (and if that does not resolve it, either party may refer the Dispute to Expert Determination for resolution).

- (d) The Provider may refuse an MSD-initiated change only where that ~~E~~change would:
 - (i) cause the Provider to incur any additional capital or operational expenditure, unless MSD has agreed to fund it through MSD's available funding mechanisms at the relevant time; or
 - (ii) result in the Provider having insufficient personnel and other resources available to it to effect the relevant ~~E~~change within the required timeframe; or
 - (iii) require the Services to be performed by the Provider in a way that infringes any Law; or
 - (iv) cause the Provider to be in breach of another term of this Agreement or any Contract Document; or
 - (v) cause the Provider to breach any of its constitutional documents; or
 - (vi) be inconsistent with Good Industry Practice; or
 - (vii) cause any Consent to be revoked; or
 - (viii) materially and adversely affect the health and safety of anyone living in or working on the Properties; or
 - (ix) cause the Provider to lose its registration ~~as a Class 1 Social Landlord under the HRTM Act~~ (if applicable); or
 - (x) cause any existing insurance policy or contract for insurance that is required to be procured, held and maintained by the Provider under this Agreement and any Services Agreement to become void or voidable.

12.4 Change in Laws

- (a) The Provider is to comply with this Agreement and each Services Agreement even if relevant Laws change from their actual or reasonably foreseeable state as at the date of this Agreement or the relevant Services Agreement (for example, because change has been foreshadowed or announced). However, some financial relief may be available under clause 12.4(d)(i) where the change in Laws expressly and exclusively applies to the Properties, to Housing providers providing Housing and Housing Services to MSD or to

community housing providers registered ~~as Class 1 Social Landlords~~ under the HRTM Act (if applicable) (*Qualifying Change in Law*).

- (b) The Provider and MSD may each notify the other of an actual or impending Qualifying Change in Law, explaining the likely effects of the Qualifying Change in Law on the operation of this Agreement and any Services Agreement, as soon as practicable (and ideally before it comes into force). This notice must give details of:
 - (i) the resulting necessary change to the Services and the steps that the Provider will need to take as a result of that Qualifying Change in Law being implemented;
 - (ii) any increase or decrease in the Provider's costs in complying with this Agreement or any Services Agreement as a result of the Qualifying Change in Law; and
 - (iii) any changes required to this Agreement or any Services Agreement,
- (c) The parties are to meet promptly to discuss and agree the likely effect (including financial consequences) of the Qualifying Change in Law and how the Provider can minimise or mitigate its effects.
- (d) Within 10 Business Days of that meeting (or such longer period as may be reasonably required), MSD is to either:
 - (i) accept the Provider's change proposal (or agree a variation of it), including in respect of any compensation payable for a change of costs as a result of the Qualifying Change in Law; or
 - (ii) amend this Agreement or any Services Agreement as far as necessary to avoid or mitigate the consequences of the Qualifying Change in Law; or
 - (iii) notify the Provider that it disputes the Provider's notice of change,

and any Dispute in relation to the above will first be dealt with by the Relationship Management Group. Failing resolution through the Relationship Management Group, ~~the Dispute may be dealt with under clauses 26.2 and 26.3~~ (and if that does not resolve it, either party may refer it to Expert Determination).

12.5 Documentation

- (a) The parties will document any agreed change to this Agreement pursuant to this clause 12 by execution of an applicable amendment agreement setting out the terms on which the change is to be implemented.
- (b) Pending execution of the amendment agreement referred to in clause 12.5(a) and subject to clause 12.3(d), the Provider is to, if directed by MSD,

implement a MSD Mandatory Change on the basis set out in the relevant change notice.

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PART D – PAYMENT

This Part describes how the Provider is paid, how invoicing is to be done and how MSD may register an encumbrance or land covenant in gross pursuant to a Services Agreement~~take a security interest or other protection for certain amounts repayable or due to it.~~

13 SERVICES AGREEMENT PAYMENT, ~~UNAVAILABILITY DEDUCTION AND OTHER PAYMENTS~~**13.1 Obligation to pay**

- (a) In each Payment Period, MSD is to pay the Provider each Services Agreement Payment in accordance with the relevant Services Agreement.
- (b) A negative amount may be due, in which case this amount will then be owing to MSD by the Provider.

13.2 Reporting and invoicing

- (a) Reporting for the purposes of payment calculations, and invoicing, will be as specified in the relevant Services Agreement. All invoices must be tax invoices in a form approved by MSD and be for the amount (if any) calculated to be payable by MSD, plus GST (if any).
- (b) MSD may reject as invalid a report or invoice that is incomplete, incorrect or fails to meet the requirements of the Services Agreement.

13.3 Payment

- (a) MSD will only pay the Provider once MSD has received a valid tax invoice from the Provider and the required reports for the Payment Period to which that invoice relates.
- (b) MSD will pay the amount stated in any valid invoice within 5 Business Days of receiving it, unless MSD disputes it.
- (c) MSD will make payments direct to the Provider's nominated bank account in New Zealand, for which the Provider must have provided a pre-printed deposit slip or other official bank confirmation.
- (d) The mere fact of payment by MSD does not mean MSD accepts that the Provider has performed in that Payment Period, nor does it show any waiver of MSD's rights.
- (e) If a report shows a net amount owed by the Provider to MSD, the Provider will pay that amount to MSD within 10 Business Days following MSD issuing the Provider an invoice for the amount set out in that report.
- (f) All late payments under this Agreement or any Services Agreement will bear interest at the Prescribed Rate from the due date until the date of actual payment.

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- (g) All payments under this Agreement or any Services Agreement are to be invoiced and paid in New Zealand dollars.

13.4 Unintended invoice errors

If it is found at any time that an invoice issued to a party pursuant to this Agreement and any Services Agreement contains any unintended and/or unintentional error and a party has been overcharged or undercharged, then the party who has identified such incorrect invoice will notify the other party. The next invoice submitted by the party who provided the invoice containing such errors to the other party is to take account of, and make an adjustment for, the relevant amount overcharged or undercharged in the relevant invoice. Any Dispute in relation to the errors will be referred to the Relationship Management Group. Failing resolution through the Relationship Management Group, clauses 26.2 and 26.3 will apply (and failing resolution, either party may refer the Dispute to Expert Determination).

13.5 Disputed Amounts

- (a) Each party may dispute and withhold payment of any amount invoiced by the other party under this Agreement or any Services Agreement if it considers it not to be due and payable as invoiced (a *Disputed Amount*), pending agreement or determination in relation to that Disputed Amount. Otherwise, each party must pay any amount invoiced (including any undisputed portion of an invoice) by the other party on or before the date payment is due.
- (b) Each party will notify the other through the Relationship Management Group of any Disputed Amount within five Business Days of receipt by it of the relevant invoice, giving particulars of the Disputed Amount and any supporting evidence.
- (c) The other party is to respond to the notice of a Disputed Amount through the Relationship Management Group within a further five Business Days. If the other party does not so respond, or agrees the Disputed Amount is not due and payable, the disputing party will not be required to pay the Disputed Amount.
- (d) If a party disputes the other party's notice of a Disputed Amount, the matter will first be resolved by the Relationship Management Group, and failing such resolution, will be resolved under clauses 26.2 and 26.3 as a Dispute (and if that does not resolve it, it will be subject to Expert Determination).
- (e) If it is agreed or determined that:
- (i) a party has withheld an amount that the other party was entitled to be paid; or
 - (ii) a party has claimed and has been paid an amount that it was not entitled to be paid,

the withheld amount or refund due must be paid, plus interest at the Prescribed Rate from the date on which the payment was due or the refund became owing to the date of payment in full.

- (f) Each party is to continue to comply with this Agreement even if the other party has disputed an amount invoiced.

13.6 Recovery and set-off

- (a) If the Provider does not provide the Services as required, or if this Agreement or the relevant Services Agreement is terminated and any payment has been made by MSD in advance of the relevant Services being provided, MSD may:
 - (i) require the Provider to:
 - (A) repay a portion of the amount already paid to the Provider; or
 - (B) reduce the amount to be paid in respect of subsequent Payment Periods; or
 - (ii) suspend or delay future payments due until a remedy plan is agreed and implemented.
- (b) Any amount to be so repaid, reduced, suspended or delayed will be reasonably determined by MSD following discussion with the Provider.
- (c) Any repayment due from the Provider is to be paid within 10 Business Days of the date of MSD's notice to do so.

13.7 Goods and Services Tax

- (a) In this clause 13.7, words and phrases defined in the GST Act have the meaning given in that Act, unless the context requires otherwise.
- (b) Unless expressly provided to the contrary, any consideration payable for a supply made under this Agreement or any Services Agreement is stated before the addition of any GST chargeable on that supply.
- (c) Where GST is chargeable on a supply made (or deemed by the GST Act to be made) by one party (the *Supplier*) to the other party (the *Recipient*) under this Agreement, the Supplier will issue a tax invoice to the Recipient and the Recipient will pay to the Supplier the GST chargeable on that supply, in addition to and at the same time the consideration payable for that supply, unless section 5(23) of the GST Act applies to that supply.
- (d) Each party will provide the other with any information reasonably requested by it in relation to the amount of GST chargeable on a supply made under this Agreement.
- (e) If an amount payable under or in connection with this Agreement is calculated or determined by reference to an expense, cost, loss or outgoing of a party (the *Relevant Expense*), the Relevant Expense amount for the purpose of calculating the payment is to be reduced by an amount equal to any deductible input tax credit or any deduction from output tax available to the person in respect of that Relevant Expense.

13.8 Acknowledgement in respect of Services

The Provider acknowledges that the entirety of each Services Agreement Payment is consideration for the Provider providing the Services and making the Properties ~~A~~available for use by Housing Clients in accordance with this Agreement and the relevant Services Agreement. It is not consideration for the supply of any other services by the Provider. Unless expressly provided for in any Services Agreement, no payment will be made by MSD to the Provider in respect of the Provider's supply of any other services.

13.9 Encumbrance or land covenant in gross~~Security interest or other MSD protection~~

- (a) To protect MSD's interests under this Agreement and any relevant Services Agreement which specifically provides for an encumbrance and/or land covenant in gross, the Provider agrees to MSD being entitled to register such encumbrance ~~-and/~~or land covenant in gross as ~~may be~~ specified in the Services Agreement and having, where relevant, such priority as may also be specified (subject to the terms of any applicable Financier Direct Deed). The terms of such document will be in a form standard for MSD and will be presented to the Provider with the Services Agreement.
- (b) MSD agrees to release any such encumbrance and/or land covenant in gross on the Expiry Date, or as otherwise specified in the relevant Services Agreement or Financier Direct Deed.

13.10 Rates and Taxes

The Provider is responsible for and will pay all rates and Taxes assessed on or in relation to the Properties, or under or in connection with the Services, this Agreement and each Services Agreement (or will ensure such rates and Taxes are paid).

PART E – CONFIDENTIALITY AND INTELLECTUAL PROPERTY

This Part records how MSD and the Provider will keep information confidential, and how each party will deal with its, and the other's, intellectual property.

14 CONFIDENTIALITY OF INFORMATION**14.1 Non-disclosure**

Subject to clause 14.2, MSD and the Provider will each treat all Confidential Information of the other as strictly confidential, not disclose it to any third party or use it other than for the purposes of this Agreement or a Services Agreement, unless:

- (a) the Confidential Information is already in the public domain or known to the recipient; or
- (b) the Confidential Information has been independently developed by the recipient; or
- (c) the Confidential Information is required to be disclosed by virtue of any Laws, court order or stock exchange rules; or
- (d) the disclosure is authorised by this Agreement or a Services Agreement; or
- (e) the disclosure is first approved by the other party; or
- (f) the disclosure is to the party's officers, employees, contractors, sub-contractors, agents or professional advisors on a need-to-know basis, and the proposed recipient is made aware of this clause 14 and agrees to observe it. The disclosing party will be responsible for ensuring confidentiality is observed.

14.2 Further permitted disclosure by MSD

MSD may disclose the Confidential Information of the Provider to:

- (a) Ministers, members of Cabinet and relevant Select Committees and in accordance with other parliamentary processes;
- (b) any potential new provider (except any Confidential Information that is commercially sensitive information), provided MSD makes the recipient of such information aware that such information is confidential;
- (c) the Regulatory Authority; and
- (d) any other government agency on a need-to-know basis,

provided that:

- (e) MSD will first notify the Provider in writing of the relevant proposed disclosure and allow the Provider a reasonable opportunity to comment on the proposed disclosure (including making a request for commercially

sensitive information to be redacted in relation to clauses 14.2(a), 14.2(c) or 14.2(d)) to the extent:

- (i) MSD is not prevented from doing so under relevant Laws; and
- (ii) it is reasonably practicable to do so in the relevant circumstances,

and MSD will have regard to the Provider's comments (including any requested redacted commercially sensitive information) before making such disclosure; and

- (f) if MSD is prevented under relevant Laws from notifying, or it is not reasonably practicable to notify, the Provider in advance of any disclosure under clauses 14.2(a), 14.2(c) or 14.2(d), it will notify the Provider in writing as soon as practicable after it has been made.

14.3 Application of Official Information Act 1982 and Ombudsmen Act 1975

The Provider acknowledges that MSD is subject to the Official Information Act 1982 and the Ombudsmen Act 1975 and may be obliged to disclose Confidential Information under those Acts. MSD will use its reasonable endeavours to advise the Provider of any such request received by it that relates to Confidential Information of the Provider and to the extent reasonably practicable, will allow the Provider a reasonable opportunity to comment on any Confidential Information MSD proposes to, or is required to, disclose under those Acts.

15 COLLECTION, USE, STORAGE AND DISCLOSURE OF PERSONAL INFORMATION

15.1 Provider's Obligations

The Provider is to:

- (a) comply with the Privacy Act 1993 when collecting, using and disclosing Personal Information, including Personal Information of Tenants and other Housing Clients;
- (b) only access the Personal Information of Housing Clients where it has appropriate authority to do so, and will ensure that all of its officers, employees, contractors sub-contractors and agents comply with this obligation;
- (c) only use Personal Information disclosed by MSD for the purposes of this Agreement;
- (d) securely dispose of any Housing Client's Personal Information when no longer needed, including at least by permanent and secure hard copy destruction or shredding, or permanent deleting of electronic documents;
- (e) ensure that all conflicts of interest (including those of its officers, employees, contractors, sub-contractors and agents) are appropriately managed, including by appropriate segregation and limitations on access to information;

- (f) take appropriate steps to verify the identity of any person asking for Personal Information before any disclosure is made, and only disclosing if permitted by the Privacy Act 1993;
- (g) redirect any person to MSD where that person believes that MSD holds Personal Information about him or her that is inaccurate and should be corrected; and
- (h) ensure that if a breach of the Privacy Act 1993 has or may have occurred in respect of any Personal Information of a Tenant, Housing Client or MSD Personnel, the Provider:
 - (i) responds to the breach in accordance with the current privacy breach guidelines (including voluntary guidelines) published by the Office of the Privacy Commissioner; and
 - (ii) cooperates with MSD to manage and address the breach.

15.2 Security of Personal Information

- (a) The Provider is to:
 - (i) ensure that all Personal Information held by it is protected from loss, unauthorised access, use, modification, disclosure or other misuse, including ensuring that all hard copy Housing Client records are securely stored when not in use;
 - (ii) immediately notify MSD of any actual or suspected loss, unauthorised access, use, modification, disclosure or other misuse of any Personal Information of a current or former Housing Client; and
 - (iii) cooperate with MSD where any investigation is undertaken into any actual or suspected unauthorised access, use or disclosure of Personal Information.
- (b) Personal Information about Housing Clients may only be exchanged between MSD and the Provider through, and in accordance with, any Personal Information privacy policies applying to the MSD Housing Client System, as set out in the Operational Manual, except where:
 - (i) it is necessary to disclose Personal Information over the telephone, in which case the Provider is to take all reasonable care to ensure that Personal Information is only disclosed when the Provider is satisfied that they are speaking with MSD Personnel; or
 - (ii) this Agreement expressly provides otherwise; or
 - (iii) MSD expressly agrees otherwise in writing.

16 INTELLECTUAL PROPERTY

16.1 Pre-existing Intellectual Property

Each of MSD and the Provider will own, or be the licensee of, all Intellectual Property and Intellectual Property Material that it owns or has on licence before the Commencement Date or that it develops independently of the performance of this Agreement and/or any Services Agreement. Neither party acquires any rights or interest in that pre-existing Intellectual Property or Intellectual Property Material of the other by virtue of this Agreement and/or any Services Agreement.

16.2 Developed Intellectual Property

MSD will own all Intellectual Property and Intellectual Property Material developed by it from its pre-existing Intellectual Property and/or Intellectual Property Material referred to in clause 16.1. The Provider will own all other Intellectual Property and Intellectual Property Material developed as part of, or for the purposes of, the Services, this Agreement or a Services Agreement.

16.3 MSD licence

MSD licences to the Provider (on a royalty-free basis) its Intellectual Property and Intellectual Property Material referred to in clause 16.1 and clause 16.2 that needs to be used for the purposes of this Agreement or any Services Agreement, for the Term, provided it is only used for such purposes. MSD may impose such restrictions on use of that Intellectual Property and Intellectual Property Material as it considers fit.

16.4 Provider licence

- (a) The Provider grants to MSD, and to all other governmental entities or agencies with an interest in Housing, a non-exclusive, transferable, irrevocable, royalty-free licence (including the right to grant sub-licences), for the Term, to use and develop the Provider's Intellectual Property and Intellectual Property Material developed through performance of this Agreement and/or any Services Agreement in order to obtain the full benefit of the Services.
- (b) The Provider will not limit the licence in clause 16.4(a) through any contract or arrangement entered into with another third party (subject to the licence terms of any off-the-shelf third party software).

16.5 No warranty

Neither MSD nor the Provider gives any warranty to the other as to the suitability for the other's purposes of any Intellectual Property or Intellectual Property Material licensed under this clause 16. The Provider must not in any way prejudice ownership by MSD of any of MSD's Intellectual Property or Intellectual Property Material.

16.6 Licence to sub-contractors

With MSD's prior written approval, the Provider may grant a licence of certain MSD Intellectual Property and/or Intellectual Property Material licensed to the Provider

under clause 16.3 to a sub-contractor, solely to use that MSD Intellectual Property and/or Intellectual Property Material for performance by that sub-contractor. MSD may require a direct acknowledgement from the sub-contractor of the terms of this clause 16.

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PART F – INDEMNITIES AND LIABILITY

This Part records who is responsible if this Agreement is not observed or things otherwise go wrong. The aim is to allocate risk and responsibility.

17 INDEMNITIES**17.1 General indemnities**

Subject to the limitations in clause 17.3 and except where the Provider is Housing New Zealand Corporation (or any other relevant Crown agent entity, Crown entity company or Public Finance Act Schedule 4A company that provides Services to MSD), the Provider is to indemnify MSD and all MSD Personnel from and against all Claims, Losses and Liabilities arising from:

- (a) death or personal injury;
- (b) loss of or damage to any property:
 - (i) belonging to MSD or for which MSD is responsible; or
 - (ii) belonging to any third party;
- (c) breach of statutory duty; and
- (d) third party Claims made against MSD or any MSD Personnel,
arising from or in connection with:
 - (e) the Provider's provision of the Services or performance under this Agreement or the relevant Services Agreement;
 - (f) to the extent permitted by Law, any Provider breach of Law; or
 - (g) an Intellectual Property Claim (other than as a result of MSD engaging in any modification or updating of any Provider Intellectual Property Material or any breach by MSD of a licence under clause 16.4).

17.2 Release of Indemnified Parties

MSD and MSD Personnel will have no responsibility or liability to the Provider or any of its related companies or related entities (or any of its or their officers, employees, contractors, sub-contractors or agents) in connection with any Claims, Losses or Liabilities arising from the Provider's or any of its related companies' or related entities' (or any of its or their officers, employees', contractors', sub-contractor' or agents') use or occupation of any Property, and to the extent permitted by law and subject to clause 17.3 the Provider absolutely releases each of them from any such liability.

17.3 Limits on indemnity cover

The Provider is not obliged to indemnify MSD or any MSD Personnel to the extent that the Claims, Losses and Liabilities result directly from:

- (a) the Provider acting in accordance with MSD's written directions from MSD's representatives on the Relationship Management Group implemented in accordance with this Agreement; or
- (b) an unlawful, reckless or negligent act or omission of MSD or any MSD Personnel; or
- (c) any MSD failure to perform under this Agreement or any Services Agreement; or
- (d) any valid claim of a Force Majeure Event.

17.4 Privity

Clauses 17 and 18 are (for the purposes of the Contract and Commercial Law Act 2017) intended to confer benefits in favour of, and be enforceable by, all relevant MSD Personnel.

18 MSD'S REMEDIES FOR PROVIDER ~~BREACH~~NON-PERFORMANCE

MSD's remedies in respect of any Provider ~~breach~~non-performance of this Agreement or any Services Agreement are any one or combination of the following (at MSD's election, but subject to clause 20):

- (a) the granting of an injunction, order for specific performance or other discretionary remedy by a court, including a right to damages for the direct losses it has suffered as a result of the non-performance (excluding any consequential loss);
- (b) Step-in Rights and recovery of direct Losses under clause 21 and associated provisions of the Services Agreement (if applicable);
- (c) termination rights under clause 22.3; and/or
- (d) any other right or remedy expressly provided for in the Contract Documents.

19 INSURANCE AND PROVIDER'S CLAIMS

- (a) The Provider is to ensure that all insurance policies required by any Services Agreement are procured, effected, held and maintained (as applicable) for the duration of the Term.
- (b) If the Provider is required by any Services Agreement to hold insurance, it will not bring any Claim against MSD or any MSD Personnel if the Provider is able to recover the relevant Losses under insurance. If the Provider fails to hold, maintain, or voids, any such insurance, then it will have no Claim at all. MSD acknowledges that occasions may arise where it may not be possible or financially reasonably practicable for the Provider to obtain certain types of insurance, and the Services Agreement may reflect this accordingly.

20 NO DOUBLE COUNTING

Notwithstanding any other provision of this Agreement and any Services Agreement, neither party is entitled to recover compensation or make a Claim

under this Agreement or any Services Agreement in respect of any Loss that it has incurred to the extent it has already been compensated in respect of that Loss under this Agreement, any Services Agreement or other Contract Document.

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PART G – STEP-IN

This Part describes how MSD can “step-in” to perform the Services, instead of the Provider, if it needs to.

21 STEP-IN RIGHTS

MSD will have, as a discretionary remedy without prejudice to its other rights, remedies and powers, such Step-in Rights, if any, as may be specified in a Services Agreement. MSD will only exercise its Step-in Rights where it reasonably considers it needs to take action in connection with any of the Properties or Services in serious circumstances as described in the Services Agreement. Any exercise by MSD of its Step-in Rights will have such consequences as are specified in the Services Agreement, including the recovery of direct Losses.

TEMPLATE

PART H – TERMINATION

This Part sets out when and how this Agreement and any Services Agreement can be terminated.

22 TERMINATION EVENTS

22.1 Termination of this Agreement

Notwithstanding any other provision of this Agreement or a Services Agreement, this Agreement cannot be terminated for so long as any Services Agreement remains in force (unless all Services Agreements are also terminated on the same effective date).

22.2 Termination for Convenience

Subject to clause 22.1, either party may at any time terminate this Agreement or any Services Agreement, for convenience, without needing a specific reason, unless the Services Agreement expressly negates the right to do so. To do so, the party terminating must give the other at least 70 Business Days' notice of termination (unless a different period is specified in a Services Agreement). The Services Agreement may contain further provisions specific to termination.

22.3 Termination on Provider default

Without limiting any of its other rights or remedies but subject to clause 22.1, MSD may terminate this Agreement or any Services Agreement if the Provider defaults under this Agreement or any Services Agreement, in accordance with the following:

- (a) MSD may give a Termination Notice with immediate effect at any time after any of the following events or circumstances:
 - (i) the Provider loses its registration under the HRTM Act (notwithstanding any appeal rights of the Provider to the District Court);
 - (ii) the Provider assigns this Agreement or a Services Agreement in breach of clause 28.2 or a Change of Ownership occurs without MSD's consent in breach of clause 29.1;
 - (iii) a Provider Insolvency Event; or
 - ~~(iv) a Persistent Availability Breach; or~~
 - ~~(v)~~ (iv) the Provider or any of its officers, employees, contractors, sub-contractors or agents knowingly makes any materially false, misleading or incorrect statement in any report, notice or invoice to MSD (unless made without authority).
- (b) In the following events or circumstances, MSD must first give the Provider notice (with a copy to the Regulatory Authority) specifying the default in reasonable detail and requiring it to be remedied within an agreed timeframe following the process set out in this clause 22.3:

- (i) the Provider has not complied with its insurance obligations under this Agreement or a Services Agreement;
- (ii) the Provider has breached a Contract Document;
- (iii) any Material Adverse Effect resulting from a breach of any of the warranties set out in clause 3.11;

(iv) a Persistent Failure; or

(v) it becomes unlawful for the Provider to provide the Services.

- (c) Within 15 Business Days of receiving MSD's notice under clause 22.3(b), the Provider is to:

- (i) propose a rectification programme that is reasonably acceptable to MSD, specifying:
 - (A) the timeframe within which the default will be remedied;
 - (B) a work plan for remedying the default within that timeframe; and
 - (C) any temporary measures being put in place to mitigate the effects of the default; and
- (ii) remedy the default within a timeframe reasonably acceptable to MSD.

- (d) During the implementation of such rectification programme, the Provider is to keep MSD advised of progress against the agreed timeframes. MSD may agree to a reasonable variation of the relevant plan where circumstances beyond the Provider's reasonable control affect its implementation.

- (e) If, after following the process in paragraphs 22.2(c) to (d) above, the Provider still has not remedied the default specified in MSD's original notice, to MSD's satisfaction, then MSD may give the Provider a Termination Notice on not less than 30 Business Days' notice.

22.4 Prolonged Force Majeure Event

MSD may terminate the relevant Services Agreement in the event the Provider is unable to perform all or a material part of the Services due to a Force Majeure Event of six months' or more duration. MSD must give not less than 30 days' termination notice.

23 CONSEQUENCES OF TERMINATION

23.1 Calculation of Compensation Amount

- (a) If this Agreement or any Services Agreement is terminated under:
 - (i) clause 22.2, MSD will pay such compensation for early termination as may be specified in that Services Agreement. Any such compensation must be based on principles of fairness to both parties and take into account all relevant factors, including the risk of future non-performance by the Provider and, if applicable in the relevant

circumstances, that the Provider has not breached the Services Agreement and has not acted negligently in performing its obligations under the Services Agreement; or

- (ii) clauses 22.3 or 22.4, no compensation will be paid to the Provider, unless provided otherwise in the Services Agreement.
- (b) If any compensation is payable, it will be in full and final settlement of any and all Claims the Provider may have against MSD, but without affecting pre-existing or accrued rights or entitlements of MSD or the ability of the Provider to recover any amounts properly accrued or incurred prior to such termination to the extent such amounts have not been taken into account in determining the compensation specified in a Services Agreement.

23.2 Effect of Termination

~~Up until~~If this Agreement and/or a Services Agreement (as applicable) is terminated in accordance with its terms:

- (a) the Provider will continue to provide the Services until the Termination Date;
- (b) MSD will continue to pay for the Services as provided for in the Services Agreement, until the Termination Date; and
- (c) clause 25.2 will apply.

23.3 No effect on pre-existing obligations or other Services Agreement

Subject to clause 23.1(b) termination has no effect on any accrued or pre-existing obligations, nor does any termination in relation to one Services Agreement of itself have the effect of terminating any others.

23.4 Provisions surviving termination

The following provisions survive any termination of this Agreement: clauses 8.1, 9, 14, 15, 16, 23, 24, 25, 26, 27, 30, 31, 35, 37 and 39.

TEMPLATE

PART I – EXPIRY AND DISENGAGEMENT

This Part describes how MSD and the Provider will disengage from each other at this end of this Agreement and/or any Services Agreement, to ensure a smooth transition.

24 EXPIRY DATE OF SERVICES AGREEMENT

On the Expiry Date of a Services Agreement (or within five Business Days of such Expiry Date):

- (a) subject to its set-off rights, MSD will make any payments due to the Provider pursuant to the relevant Services Agreement; and
- (b) the Provider is to pay all money it owes to MSD pursuant to the relevant Services Agreement.

25 DISENGAGEMENT**25.1 Preparation**

The Provider is to prepare and maintain a Disengagement Plan in respect of a Services Agreement if requested by MSD prior to the Expiry Date.

25.2 Disengagement Services

During the Disengagement Period, the Provider will:

- (a) supply the Disengagement Services in accordance with the Disengagement Plan (if applicable);
- (b) co-operate fully with MSD or its nominee and any new provider;
- (c) implement any transfers, assignments and novations;
- (d) implement any other transactions and operational handover activities; and
- (e) do all other things,

required by this Agreement, any other Contract Document or otherwise reasonably required by MSD, to (as applicable) enable the Services to cease being provided by the Provider to MSD or support a seamless transfer of responsibility for the Properties and/or the Services to MSD or its nominee or any new provider.

25.3 MSD as attorney

The Provider irrevocably appoints MSD as the Provider's attorney and gives it full power and authority to carry out the Provider's obligations under this clause 25.

PART J – DISPUTE RESOLUTION

This Part sets out how any disputes between MSD and the Provider will be resolved.

26 DISPUTES**26.1 Relationship Management Group**

Without limiting any other provision of this Agreement, the parties are to first seek to resolve any Disputes through the Relationship Management Group. If the Relationship Management Group fails to resolve any Dispute within a reasonable timeframe or in a manner which results in an outcome acceptable to a party (acting reasonably), the Dispute will be dealt with under the remaining provisions of this clause 26.

26.2 Notice of Dispute

If a Dispute continues to exist following the application of clause 26.1, then either party can provide a notice (a *Notice of Dispute*) to the other party, setting out in full the facts of the Dispute, the contractual context or other legal basis for it and what relief it seeks (if applicable). The fact of the Dispute does not relieve either party from its obligations under this Agreement or any Services Agreement, pending resolution of the Dispute.

26.3 Informal Dispute resolution

Once a Notice of Dispute has been given, each party is to first use its best efforts to resolve the dispute through good faith negotiations and informal dispute resolution techniques such as internal escalation within each party's organisation (including up to the chief executive level) or mediation.

26.4 Disputes between MSD and Housing New Zealand (or other Crown entities)

Clauses 26.5 to 26.9 and clause 27 do not apply to any Dispute between MSD and Housing New Zealand Corporation (or any other relevant Crown agent entity, Crown entity company or Public Finance Act Schedule 4A company that provides Services to MSD). Instead, if a Dispute between them cannot be resolved under clause 26.3, then it will be referred to their respective Ministers for resolution.

26.5 Arbitration

If:

- (a) the Dispute is not resolved under clause 26.3 within 15 Business Days from the date of the Dispute Notice being given;
- (b) this Agreement does not require that the Dispute be subject to Expert Determination; and
- (c) the parties have not otherwise agreed to refer the Dispute to Expert Determination,

then:

TEMPLATE

- (d) either party may notify the other that it wishes the Dispute to be referred to arbitration, in Wellington, by a named arbitrator and under the Arbitration Act 1996; and
- (e) if the parties then cannot agree on the arbitrator within five Business Days, the arbitrator will be chosen by the President of the New Zealand Law Society (or his or her nominee).

26.6 Qualifications of arbitrator

Any arbitrator must be suitably qualified to resolve the Dispute and independent of both parties.

26.7 Award

The arbitrator's award must include reasons and will be final and binding on the parties, although either of them may appeal to the High Court on any question of law arising out of the award.

26.8 Costs

Costs will be borne in the manner determined by the arbitrator, or, if no determination as to costs is made by the arbitrator, each party will bear its own costs and an equal share of the costs of the arbitration.

26.9 Referral to Expert Determination

If the Dispute is not resolved informally and this Agreement requires it will be subject to Expert Determination, either party may notify the other that it wishes to refer the Dispute to Expert Determination under clause 27.

26.10 No court proceedings

Except for an appeal on a point of law, neither party will bring court proceedings if there is a Dispute. However, a party may nevertheless seek urgent injunctive, declaratory or urgent interlocutory relief from the courts.

27 EXPERT DETERMINATION

- (a) If either MSD or the Provider wishes to refer a Dispute to Expert Determination under this clause 27, the parties are to first agree on an appropriate independent expert, but if they cannot within five Business Days, a party can request:
 - (i) the President of the Chartered Accountants Australia and New Zealand to appoint the independent expert if the Dispute is a financial Dispute; and
 - (ii) the President of the New Zealand Law Society to appoint the independent expert for all other Disputes.

That person will be requested to appoint an independent expert suitably qualified and experienced in relation to the subject matter of the Dispute and

who accepts the timeframes for determination set out in this Agreement (the *Independent Expert*).

- (b) Once the Independent Expert has been agreed or nominated, either party may within a further five Business Days⁷ refer the Dispute to the Independent Expert by providing notice to the other party and the Independent Expert.
- (c) The Independent Expert must make the determination (including reasons for it) based on the information made available by the parties and will notify the parties of that determination within 30 Business Days of the referral.
- (d) Either party may make a written submission to the Independent Expert. Submissions will be provided to the Independent Expert and the other party no later than 10 Business Days after the referral of the matter to the Independent Expert.
- (e) Either party may submit a written response to the other party's written submissions within 15 Business Days of the referral.
- (f) The Independent Expert may call for further submissions, documents or information from either or both parties and/or may call a private conference between the parties (and, if they wish, their legal advisors).
- (g) The Independent Expert will decide how any conference is conducted as well as any other procedures or timeframes needed to resolve the Dispute.
- (h) In reaching a determination, the Independent Expert will have regard to the parties' written and oral submissions and the relevant terms of this Agreement. The Independent Expert may also:
 - (i) rely on his or her own knowledge, skill and experience in relation to the matter in Dispute;
 - (ii) review and revise any opinion, instruction, determination or decision given or made under this Agreement;
 - (iii) make his or her own enquiries without consulting the parties; and
 - (iv) after consulting with the parties, commission his or her own advisors or consultants.
- (i) In making his or her determination, the Independent Expert is not required to observe the rules of evidence.
- (j) The Independent Expert will act as an expert and not an arbitrator and his or her determination will be final and binding on the parties, unless there is some manifest error.
- (k) The parties will implement the determination in accordance with the Independent Expert's directions.
- (l) The Independent Expert must treat all information disclosed to him or her as confidential and will not disclose it to anyone other than to resolve the Dispute. All such information remains the property of the disclosing party.

- (m) Unless the Independent Expert orders otherwise, each party will meet its own costs in connection with resolution of the Dispute and the Independent Expert's and other costs will be borne equally.
- (n) The Independent Expert will not be liable to the parties in relation to the Expert Determination, except in the case of fraud or bad faith.

TEMPLATE

PART K – MISCELLANEOUS TERMS

This Part contains a range of general miscellaneous provisions necessary for the proper operation of this Agreement and any Services Agreement.

28 ASSIGNMENT**28.1 Assignment by MSD**

MSD may only assign and/or transfer all or part of its rights and/or obligations under this Agreement and any other Contract Document without the prior written consent of the Provider to:

- (a) any part of the Crown, as that term is defined in section 2 of the Public Finance Act 1989; and
- (b) any other public body whose obligations under each Contract Document are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Provider) by the Crown,

where government policy so dictates and so long as the assignee enters into a ~~an~~ ~~acceptable~~ deed of covenant to observe this Agreement.

28.2 Assignment by Provider

- (a) The Provider may at any time request, in writing, for MSD to consent to it transferring or assigning all or part of its right, title and interest in and under any Contract Document to another Housing provider.
- (b) The Provider is to provide any information that MSD requests in relation to the proposed transfer or assignment including information regarding the proposed transferee or assignee.
- (c) MSD may, in its absolute discretion, after receiving the information regarding the proposed transfer or assignment, decide whether to agree (with or without conditions) to the proposed transfer or assignment.
- (d) If MSD agrees to the proposed transfer or assignment, then:
 - (i) the Provider is to ensure that any conditions imposed by MSD are complied with to MSD's satisfaction;
 - (ii) the Provider is to procure the transferee or assignee to enter into an agreement with MSD in the form of the relevant Contract Documents; and
 - (iii) the Provider and the transferee or assignee must obtain all approvals in relation to the proposed transfer or assignment and execute all documents relating to the transfer or assignment.
- (e) MSD agrees:
 - (i) not to unreasonably withhold consent to any transfer; and

- (ii) to promptly do all things necessary to enable the transfer to occur.

29 CHANGE OF OWNERSHIP

29.1 Restriction on Provider Change of Ownership

A Change of Ownership may only occur ~~if MSD determines (acting reasonably) that there are no grounds for withholding its consent under clause 29.3~~ with MSD's prior consent (subject to clause 29.3).

29.2 Notification

- (a) The Provider is to notify MSD of any proposed Change of Ownership, with particulars of the change.
- (b) The Provider will facilitate any probity investigations that MSD may need to undertake as a result.

29.3 MSD determination

MSD may withhold its consent to a Change of Ownership if it considers the Provider will not be as financially, technically or managerially capable as a result, or there would be some other adverse effect or increased risk to MSD in connection with this Agreement.

30 NOTICES

30.1 Notices and references

Each notice or communication under this Agreement (other than any communication that is required to be made through the MSD Housing Client System) must be made in writing by email, personal delivery or by post to the addressee at the relevant contact details as set out below (which may be updated in any Services Agreement or by notice).

30.2 Contact details

The initial contact details for MSD and the Provider are:

MSD

Addressee: [•]
Address: [•]
Email: [•]
DDI: [•]

Provider

Addressee: [•]
Address: [•]
Email: [•]
DDI: [•]

30.3 Deemed delivery

A notice, consent or other communication for the purposes of this Agreement will be considered received at the earlier of time of actual receipt and:

- (a) in the case of a letter, on the fourth Business Day after posting;
- (b) in the case of an email, on the Business Day on which it arrives in the recipient's information system (or if received in that system after 5.00 p.m., on the next Business Day); and
- (c) in the case of personal delivery, when delivered.

31 Liability

Where at any time, the Provider consists of more than one person, each person shall be jointly and severally liable in respect of the obligations under this Agreement and each Services Agreement. If the Provider is acting in a trustee capacity, subject to being personally liable for liabilities incurred as a result of its fraud, negligence or wilful breach of the terms of the trust, its liability under this Agreement and each Services Agreement is otherwise limited to the assets that it holds in that trustee capacity.

32 COUNTERPARTS

This Agreement may be signed in different copies. A party may enter into this document by executing any counterpart.

33 SEVERABILITY

If any provision of this Agreement or any other Contract Document becomes unenforceable, illegal or invalid for any reason, it will be read as modified accordingly, to the extent necessary to remove that character, or severed from this Agreement or other Contract Document.

34 WAIVER

If MSD waives any rights on a particular occasion, that waiver only operates for that occasion and does not set any precedent.

35 PUBLIC DISCLOSURE

Any public disclosure by a party relating to the Contract Documents must be approved by the other party prior to its release.

36 ENTIRE AGREEMENT

The Contract Documents constitute all agreements about their respective subject matter.

37 FURTHER ASSURANCES

A party must, at its own expense and in a timely manner, do all things and execute all documents reasonably necessary to give effect to any Contract Document.

38 AMENDMENTS

No amendment to this Agreement or any Services Agreement will be effective unless it is in writing and signed by duly authorised signatories of each party.

39 GOVERNING LAW

This Agreement and all Contract Documents are governed by New Zealand Laws and the New Zealand courts will have jurisdiction to determine any dispute.

TEMPLATE

EXECUTION

Signed as an Agreement.

EXECUTED by the parties on the date appearing at the top of page 1.

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]** by:

Signatory name:
Signatory title:

Signatory name:
Signatory title:

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