



GUIDANCE PAPER FOR TEMPLATE
SERVICES AGREEMENT: NEW SUPPLY DEVELOPMENT FUNDING AND CAPACITY

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BACKGROUND

This guidance has been prepared to assist with the preparation of the New Supply Development Funding and Capacity Services Agreement at both the procurement and contract negotiations stages.

It contains example Milestones and Conditions Precedent to Drawdown for different procurement methods, which are required to be included in Part B of the Key Terms section of the New Supply Development Funding and Capacity Services Agreement. However, it should be noted that each procurement is different and so changes to, additions to, and/or removals from, the examples may be required depending on the situation.

Where the procurement involves no Upfront Development Cost Funding, and the New Supply is being funded solely through an Operating Supplement model, an example of extracts from the New Supply Development Funding and Capacity Services Agreement is given showing what changes will need to be made to remove redundant provisions.

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1. EXAMPLE MILESTONES

Please refer to Part B of the Key Terms section of the New Supply Development Funding and Capacity Services Agreement.

1.1 Provider Build

New Supply Housing Project Timeline and Key Milestone Dates	Milestone	Date
	1 Acquisition of land All land required for undertaking the New Supply Housing Project is acquired.	
	2 Commencement of construction Suitable construction contract is in place, all consents and other pre-construction requirements met, and construction has begun, or is about to begin.	
	3 Code Compliance Certificate for New Supply Properties Construction completed and Code Compliance Certificate issued.	

1.2 Turnkey

New Supply Housing Project Timeline and Key Milestone Dates	Milestone	Date
	1 Entry into unconditional purchase agreement Contract for acquisition of land required for undertaking the New Supply Housing Project is entered into.	
	2 Settlement of purchase agreement New Supply Properties are fully constructed and the Provider takes ownership of them	
	OR	
	1 Settlement of purchase agreement New Supply Properties are fully constructed and the Provider takes ownership of them	

1.3 Developer Build Partnership

New Supply Housing Project Timeline and Key Milestone Dates	Milestone	Date
	<p>1 Entry into unconditional purchase agreement/development agreement</p> <p>Contract for acquisition of land required for undertaking the New Supply Housing Project is entered into/Contract governing development of New Supply Properties is entered into</p>	
	<p>2 Code Compliance Certificate for New Supply Properties</p> <p>Construction completed and Code Compliance Certificate issued.</p>	

1.4 Provider Lease

New Supply Housing Project Timeline and Key Milestone Dates	Milestone	Date
	<p>1 Code Compliance Certificate for New Supply Properties</p> <p>Construction completed and Code Compliance Certificate issued.</p>	

2. EXAMPLE CONDITIONS PRECEDENT TO DRAWDOWN

Please refer to Part B of the Key Terms section of the New Supply Development Funding and Capacity Services Agreement.

2.1 Provider Build of New Supply Properties

Guidance Note: Provider builds of New Supply Properties may differ depending on whether the Provider already owns the land, or will need MSD funding to help acquire the land. Once the Provider has the land (or if it already owns the land), the development process will often look very similar.

Accordingly, the below table incorporates all the basic elements for Provider builds of New Supply Properties. It may be that one or more of the milestones are not relevant to the procurement, or two milestones are combined together, for any given procurement.

Where a Condition Precedent to Drawdown has already been satisfied under an earlier milestone, it may be suitable to remove it from this table (e.g., if resource consents have already been provided it may not be necessary to see them again). However, some conditions precedent may continue to remain relevant or may update as the development progresses (e.g., external finance may be subject to certain conditions during the land acquisition stage, but need to be an unconditional commitment for the construction stage).

Drawdown Stage	Conditions
<p>Drawdown for Milestone 1</p> <p>Completion of Purchase Agreement</p>	<p>The Provider is to provide:</p> <ul style="list-style-type: none"> • the Provider's nominated bank account for deposit of the Upfront Development Cost Funding; • a copy of the signed agreement for sale and purchase between the Provider (as purchaser) and [Vendor Entity] (as vendor) for the land being purchased for the New Supply Housing Project (Purchase Agreement), which provides for the: <ul style="list-style-type: none"> ○ deposit (if any) to be held until settlement or cancellation of the Purchase Agreement; and ○ settlement date under the Purchase Agreement to align with, or occur shortly after [insert relevant conditions for settlement date, for example, the issue of copies of all relevant resource consent(s) and building consent(s) for the New Supply Housing Project]; • written confirmation from the Provider that all conditions contained within the Purchase Agreement are fully satisfied in all respects, and reasonable evidence of the same; • written confirmation from the Provider of the settlement date under the Purchase Agreement, and reasonable evidence of the same;

	<ul style="list-style-type: none"> • copies of all relevant resource and building consents for the New Supply Housing Project; • if the Provider is or will receive funding from any external financier(s) to enable it to complete the New Supply Housing Project: <ul style="list-style-type: none"> ○ evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has an unconditional and binding commitment from the external financier(s) that such funding will be provided; and ○ where an external financier has required any other quantity surveyor or similar report as a condition of or in relation to its funding, a copy of that report; • a copy of an independent valuation from a registered valuer under the Valuers Act 1948 of the land being acquired under the Purchase Agreement on an “as is” and “as if complete” basis that demonstrates, to the reasonable satisfaction of MSD, that, respectively, the purchase price under the Purchase Agreement and the anticipated Development Costs are proportionate to the current and future value of the New Supply Housing Project; and • evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has sufficient financial resources to enable the completion of the New Supply Housing Project (which could include the Upfront Development Cost Funding, funding from external financiers, the Provider’s own financial resources, or a combination thereof).
<p>Drawdown for Milestone 2 Entry into and commencement of construction contract</p>	<p>The Provider is to provide</p> <ul style="list-style-type: none"> • [the Provider’s nominated bank account for deposit of the Upfront Development Cost Funding]; • [copies of all relevant resource consents and building consents for the New Supply Housing Project]; • a report from an independent quantity surveyor, who may be appointed jointly with the Provider’s external financiers, endorsed by a board member or trustee, or the Chief Executive Officer, of the Provider certifying that: <ul style="list-style-type: none"> ○ all required building consents and resource consents for the New Supply Housing Project are held and are not subject to any conditions that are likely not to be satisfied; ○ they have seen and approved the form and content of any construction contract(s) and relevant subcontract(s) in relation to the New Supply Housing Project and that any such construction contract(s) (and to the extent relevant, any such

	<p>subcontract(s)) complies with the Project Management Plan and has been confirmed;</p> <ul style="list-style-type: none"> o the construction contract(s) and any relevant subcontracts include appropriate liquidated damages regimes to incentivise the full and timely performance and delivery of the New Supply Housing Project; o the contractor(s) that will be involved with the construction under such contract(s) are reputable contractors, to the best of his or her knowledge; o the procurement process undertaken in order to select the contractor(s) was fair and transparent and designed to obtain value-for-money; o the fees under the construction contract(s) are consistent with the New Supply Housing Project costings in the Project Management Plan, and are fair and reasonable given the nature of the New Supply Housing Project; and o confirmation that construction on the New Supply Housing Project has begun, or is expected to begin within one month from the date that that Drawdown Notice is submitted; <ul style="list-style-type: none"> • a copy of any construction contract(s) in relation to the New Supply Housing Project; • [if the Provider is or will receive funding from any external financier(s) to enable it to complete the New Supply Housing Project: <ul style="list-style-type: none"> o evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has an unconditional and binding commitment from the external financier(s) that such funding will be provided; and o where an external financier has required any other quantity surveyor or similar report as a condition of or in relation to its funding, a copy of that report; and] • [written confirmation that there have been no material adverse changes to any information previously provided by the Provider to MSD (whether under an earlier Condition Precedent to Drawdown or otherwise), which MSD has not previously been made aware of and consented to.]
<p>Drawdown for Milestone 3 Completion of construction</p>	<p>The Provider is to provide:</p> <ul style="list-style-type: none"> • a copy of the Code Compliance Certificate(s) for each of the New Supply Properties; and • a final project acquittal report in the form notified by MSD to the Provider from time to time, annexing a report from

	<p>an independent quantity surveyor, who may be appointed jointly with the Provider's external financier(s), which confirms that the relevant milestones for Drawdown [4] have been met.</p>
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2.2 Turnkey

Guidance note: Turnkey purchases are likely to involve either a single drawdown to complete the purchase, or two drawdowns to contribute towards the deposit, and then complete the purchase. Accordingly, instead of providing multiple options within one table to delete or add to, the two options are provided below in full.

Select and amend as appropriate.

Two Stage Drawdown for payment of deposit, then balance of funds on settlement

Drawdown Stage	Conditions
<p>Drawdown for Milestone 1 Deposit</p>	<p>The Provider is to provide:</p> <ul style="list-style-type: none"> • the Provider's nominated bank account for deposit of the Upfront Development Cost Funding; • copy of the signed Agreement for Sale and Purchase between the Provider (as purchaser) and [Vendor Entity] (as vendor) for the New Supply Properties (Purchase Agreement), which provides for the: <ul style="list-style-type: none"> ○ the construction, development, or procurement of the New Supply Properties in compliance with the Plans and Specifications; ○ deposit (if any) to be held until settlement or cancellation of the Purchase Agreement; and ○ settlement date under the Purchase Agreement to align with, or occur shortly after, the issue of the Code Compliance Certificate for all of the New Supply Properties; • written confirmation from the Provider that all conditions contained within the Purchase Agreement are fully satisfied in all respects, and reasonable evidence of the same; • if the Provider is or will receive funding from any external financier(s) to enable it to complete Purchase Agreement: <ul style="list-style-type: none"> ○ evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has a binding commitment from the external financier(s) that such funding will be provided, and that it is not subject to any conditions that are not likely to be satisfied; ○ where an external financier has required any other quantity surveyor or similar report as a condition of or in relation to its funding, a copy of that report; and • evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has sufficient financial resources to enable the completion of the Purchase Agreement (which could include the Upfront Development Cost

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	Funding, funding from external financiers, the Provider's own financial resources, or a combination thereof).
Drawdown for Milestone 2 Balance of Purchase Price	<p>The Provider is to provide:</p> <ul style="list-style-type: none"> • written confirmation from the Provider of the settlement date under the Purchase Agreement, and reasonable evidence of the same; • if the Provider is or will receive funding from any external financier(s) to enable it to complete the Purchase Agreement, confirmation and evidence to the reasonable satisfaction of MSD that the funding will still be provided; • if the Provider is or will receive funding from any external financier(s) to enable it to complete the New Supply Housing Project: <ul style="list-style-type: none"> ○ evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has an unconditional and binding commitment from the external financier(s) that such funding will be provided; and ○ where an external financier has required any other quantity surveyor or similar report as a condition of or in relation to its funding, a copy of that report; and • evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has sufficient financial resources to enable the completion of the Purchase Agreement (which could include the Upfront Development Cost Funding, funding from external financiers, the Provider's own financial resources, or a combination thereof); • written confirmation that there have been no material adverse changes to any information previously provided by the Provider to MSD (whether under an earlier Condition Precedent to Drawdown or otherwise), which MSD has not previously been made aware of and consented to; • a copy of the Code Compliance Certificate(s) issued for the New Supply Properties; • search copies of the computer registers or records of title for each of the New Supply Properties; and • a final project acquittal report in the form notified by MSD to the Provider from time to time.

Single drawdown for payment of purchase price on settlement

<p>Drawdown for Milestone 1</p>	<p>The Provider is to provide:</p> <ul style="list-style-type: none"> • the Provider's nominated bank account for deposit of the Upfront Development Cost Funding; • copy of the signed Agreement for Sale and Purchase between the Provider (as purchaser) and [Vendor Entity] (as vendor) for the New Supply Properties (Purchase Agreement), which provides for the: <ul style="list-style-type: none"> ○ the construction, development, or procurement of the New Supply Properties in compliance with the Project Management Plan; and ○ settlement date under the Purchase Agreement to align with, or occur shortly after, the issue of the Code Compliance Certificate for all of the New Supply Properties; • written confirmation from the Provider that all conditions contained within the Purchase Agreement are fully satisfied in all respects, and reasonable evidence of the same; • written confirmation from the Provider of the settlement date under the Purchase Agreement, and reasonable evidence of the same; • if the Provider is or will receive funding from any external financier(s) to enable it to complete the New Supply Housing Project: <ul style="list-style-type: none"> ○ evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has an unconditional and binding commitment from the external financier(s) that such funding will be provided; and ○ where an external financier has required any other quantity surveyor or similar report as a condition of or in relation to its funding, a copy of that report; and • evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has sufficient financial resources to enable the completion of the Purchase Agreement (which could include the Upfront Development Cost Funding, funding from external financiers, the Provider's own financial resources, or a combination thereof); • a copy of the Code Compliance Certificate(s) issued for the New Supply Properties; • search copies of the computer registers or records of title for each of the New Supply Properties; and
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	<ul style="list-style-type: none">• a final project acquittal report in the form notified by MSD to the Provider from time to time.
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2.3 Developer Build Partnership

Guidance note: *Developer build partnerships may take a variety of forms, and the different milestones and Conditions Precedent to Drawdown on each milestone will need to be carefully considered when preparing these forms of Agreements.*

A general example of developer build partnerships is provided below to assist with developing the Agreement.

Drawdown Stage	Conditions
Drawdown for Milestone 1	<p>The Provider is to provide</p> <ul style="list-style-type: none"> • the Provider's nominated bank account for deposit of the Upfront Development Cost Funding; • a copy of the development agreement between the Provider (as purchaser) and [Developer Entity] (as developer) for the New Supply Housing Project (Development Agreement), which provides for the delivery (including the construction, development, or procurement) of the New Supply Properties in compliance with the Project Management Plan; • [a copy of the signed agreement for sale and purchase between the Provider (as purchaser) and [Vendor Entity] (as vendor) for the land being purchased for the New Supply Housing Project (Purchase Agreement), which provides for the: <ul style="list-style-type: none"> ○ deposit (if any) to be held until settlement or cancellation of the Purchase Agreement; and ○ settlement date under the Purchase Agreement to align with, or occur shortly after, [insert relevant conditions for settlement date, for example, the issue of copies of all relevant resource consent(s) and building consent(s) for the New Supply Housing Project];] • a report from an independent quantity surveyor, who may be appointed jointly with the Provider's external financiers, endorsed by a board member or trustee, or the Chief Executive Officer, of the Provider certifying that: <ul style="list-style-type: none"> ○ all required building consents and resource consents for the New Supply Housing Project are held and are not subject to any conditions that are likely not to be satisfied; ○ they have seen and approved the form and content of any construction contract(s) and relevant subcontract(s) in relation to the New Supply Housing Project and that any such construction contract(s) (and to the extent relevant, any such subcontract(s)) complies with the Project Management Plan and has been confirmed;

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Drawdown Stage	Conditions
	<ul style="list-style-type: none"> ○ the construction contract(s) and any relevant subcontracts include appropriate liquidated damages regimes to incentivise the full and timely performance and delivery of the New Supply Housing Project; ○ the contractor(s) that will be involved with the construction under such contract(s) are reputable contractors, to the best of his or her knowledge; ○ the procurement process undertaken in order to select the contractor(s) was fair and transparent and designed to obtain value-for-money; ○ the fees under the construction contract(s) are consistent with the New Supply Housing Project costings in the Project Management Plan, and are fair and reasonable given the nature of the New Supply Housing Project; and ○ confirmation that construction on the New Supply Housing Project has begun, or is expected to begin within one month from the date that that Drawdown Notice is submitted; • a copy of any construction contract(s) in relation to the New Supply Housing Project; • if the Provider is or will receive funding from any external financier(s) to enable it to complete the New Supply Housing Project: <ul style="list-style-type: none"> ○ evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has an unconditional and binding commitment from the external financier(s) that such funding will be provided; and ○ where an external financier has required any other quantity surveyor or similar report as a condition of or in relation to its funding, a copy of that report; and • evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has sufficient financial resources to enable the completion of the New Supply Housing Project (which could include the Upfront Development Cost Funding, funding from external financiers, the Provider's own financial resources, or a combination thereof).
Drawdown for Milestone 2	<p>The Provider is to provide:</p> <ul style="list-style-type: none"> • a copy of the Code Compliance Certificate(s) for each of the New Supply Properties; and

Drawdown Stage	Conditions
	<ul style="list-style-type: none"><li data-bbox="619 264 1410 434">• a final project acquittal report in the form notified by MSD to the Provider from time to time, annexing a report from an independent quantity surveyor, who may be appointed jointly with the Provider's external financier(s), that the relevant milestones for Drawdown [2] have been met.

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2.4 Provider Lease of New Supply Properties

Guidance note: *It is envisaged that most, if not all, Provider lease arrangements of all New Supply Properties will not include any Upfront Development Funding Costs, and instead an Operating Supplement will be used to cover the costs of delivering the New Supply Properties over the term of the Agreement.*

Accordingly, there are no Conditions Precedent to Drawdown.

Drawdown Stage	Conditions
N/A	N/A

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3. AMENDMENTS TO NEW SUPPLY DEVELOPMENT FUNDING AND CAPACITY SERVICES AGREEMENT FOR OPERATING SUPPLEMENT ONLY MODEL

This section shows in tracked changes the amendments required to the New Supply Development Funding and Capacity Services Agreement where only an Operating Supplement is used, and no Upfront Development Cost Funding is to be provided by MSD.

SERVICES AGREEMENT: NEW SUPPLY DEVELOPMENT FUNDING AND CAPACITY

Part B: Capacity Phase Key Terms

Properties and Services	
Services description	The Services to be provided by the Provider are set out in Schedule 1.
Services Location(s)	[Insert city/town/other location(s) of Housing].
Property Management Requirements	The Provider is to comply with the Property Management Requirements set out in Schedule 6.
Tenancy Management Requirements	The Provider is to comply with the Tenancy Management Requirements set out in Schedule 7.
Additional Services	[Insert any additional services (over and above those set out in Schedule 1) to be provided by the Provider (including any value-adds offered in original proposal)]. A failure to provide these Additional Services will be a material breach of this Agreement.
Volume and description of Properties	[Insert brief details of Properties available as at the Commencement Date (if any)] [A][, a]s set out in Schedule 4 (as that Schedule is updated by MSD, in accordance with this Agreement, from time to time on the MSD Housing Client System). Where the parties agree to add any New Supply Properties as Properties pursuant to clause 2.4 of Schedule 9, they will enter into a variation agreement substantially in the form set out in Schedule 8 to delete and replace Schedule 4.
Financial and reporting	
Services Payment	MSD will pay the Provider the Services Payment for each Payment Period in accordance with Schedule 2. The Services Payment includes the Total IRRS Payment, the Total Turnaround Payment and the Total Top-up Payment.

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<p>Services Payment report and invoice</p>	<p>The Provider must provide MSD, by every second Monday during the Term, a Services Payment report and tax invoice in respect of the prior Payment Period in a form acceptable to MSD, acting reasonably.</p> <p>The Services Payment report will specify the Services Payment for the prior Payment Period and will set out individually each item that has been taken into account in calculating the Services Payment.</p>
<p>Agreed Rent</p>	<p>The Total IRRS Payment is based, among other things, on the Agreed Rent for each Property. The Agreed Rent is set out in Schedule 4 as at the Commencement Date.</p> <p>If the Parties agree to: (i) amend the Agreed Rent during the Term of this Agreement pursuant to a Market Rent Review or otherwise, or (ii) add any new or substituted Properties pursuant to clause 5 of Schedule 1, they will enter into a variation agreement in the form attached at Schedule 8 to delete and replace Schedule 4.</p> <p>Where the parties agree to add any New Supply Properties as Properties pursuant to clause 2.4 of Schedule 9, the Agreed Rent to be included in the relevant variation agreement for the new Properties will be <i>[[insert Agreed Rent amount of each type of New Supply Property]</i>, subject to annual changes in the relevant consumer price index for rentals in the Service(s) Location.]</p> <p>or</p> <p>[determined by an independent valuation by an independent registered valuer appointed by MSD and the Provider prior to the relevant variation agreement being entered into, subject to a cap of <i>[insert cap for each type of New Supply Property]</i>].</p> <p><i>[Relevant method for determining Agreed Rent to be included and the other option deleted.]</i></p>
<p>Consumer price index adjustments to Agreed Rent</p>	<p>The Market Rent component of the Agreed Rent for each Property will be annually adjusted by the Relationship Management Group for annual changes in the relevant consumer price index in accordance with clause 4.1 of Schedule 1, except in respect of a year in which a Market Rent Review occurs.</p> <p>The Relationship Management Group will agree the relevant annual consumer price index adjustment date. Following any consumer price index-adjustment agreed and determined by the Relationship Management Group, the parties will enter into a variation agreement in the form attached at Schedule 8 to delete and replace Schedule 4.</p>
<p>Market Rent Review</p>	<p>The Market Rent component of the Agreed Rent for each Property will be subject to a Market Rent review in accordance with clause 4 of Schedule 1 as soon as practicable following the fifth anniversary of the Commencement Date (or, if a Property becomes subject to this Agreement after the Commencement Date, the fifth anniversary of the date it became subject to this Agreement), and in each case, every subsequent five year anniversary thereafter.</p> <p>The Relationship Management Group will ensure that each Market Rent Review is undertaken in accordance with the requirements of clause 4 of Schedule 1.</p>

IRR	The collection of IRR from Tenants is the sole responsibility of the Provider. MSD is not liable under this Agreement for any non-payment or late payment of IRR by any Tenant.
Compensation payable by MSD for any early termination of this Agreement for convenience	Yes / No [If yes, insert fair and reasonable compensation calculation, having regard to clause 23.1 of the Relationship Agreement and (if applicable) that the Provider is not at fault and/or has not acted negligently where MSD terminates this Agreement for convenience.]
Repayment of Upfront Development Cost Funding for termination of this Agreement during Capacity Phase	<p>Where clause 10.2(b) of Schedule 9 applies, the Provider is to within 20 Business Days of the Termination Date repay all or some of the Upfront Development Cost Funding calculated as follows:-</p> $A = B \times \left(\frac{C}{D}\right)$ <p>Where:-</p> <p>A — is amount payable by the Provider to MSD;</p> <p>B — is the total Upfront Development Cost Funding received by the Provider;</p> <p>C — is the remaining whole years between the Termination Date and the Expiry Date, plus 1; and</p> <p>D — is the duration of the Capacity Phase.</p>
Sharing of Data	
Data provided by MSD	<p>MSD is to provide a written data report to the Provider's Representative (through the Relationship Management Group) every six months during the Capacity Phase, identifying each of the following in relation to the 6 month period prior to the relevant written data report (in each case, in comparison to a sector average and/or relevant individual Housing and Housing Services providers on an anonymised basis):</p> <ul style="list-style-type: none"> the Provider's portfolio priority score, based on the percentage of Tenants in each priority and sub-priority) category in the MSD Housing Client System; the percentage of the Provider's Properties utilised on a plus or minus 1 bedroom basis; and the percentage of Tenants who were identified by the Provider (rather than MSD) and subsequently let a Property under this Agreement. <p>Following receipt of the Data referred to below from the Provider, MSD will also provide to the Provider a comparison of each item of such Data against the sector average and/or individual relevant Housing and Housing Services providers on an anonymised basis.</p>
Data provided by Provider	<p>The Provider is to provide a written data report to MSD's Representative (through the Relationship Management Group) every six months during the Capacity Phase, identifying each of the following in relation to the 6 month period prior to the written data report:</p> <ul style="list-style-type: none"> the Tenancy occupancy rate for all the Properties, measured as the average Tenancy occupancy rate versus the average

	<p>Tenancy vacancy rate for the Provider's portfolio of Properties;</p> <ul style="list-style-type: none"> • the Tenancy churn rate for all of the Properties; • the number of Tenancies which terminated for each Reason for Exit (including sub-categories of each Reason for Exit, where applicable); • the average number of days between one Tenancy ending and the next Tenancy beginning in respect of all of the Properties; • the percentage of rent arrears over 21 days in respect of all of the Properties; and • the average time to respond to urgent Property-related and Tenant-related queries across all of the Properties. <p>The Provider is to provide a written data report to MSD's Representative (through the Relationship Management Group) every 12 months during the Capacity Phase, identifying Tenant satisfaction rates for the Properties in relation to the prior 12 month period, measured as:</p> <ul style="list-style-type: none"> • Tenant satisfaction rates with the Tenant's contact point; • overall Tenant satisfaction; and • Tenant satisfaction in relation to repairs and maintenance.
<p>Data outcomes following specified periods</p>	<p>Within 20 Business Days of MSD's Representative having received the second 6 month written Data report as set out above, the Relationship Management Group is to meet to review and discuss such Data.</p> <p>If the Relationship Management Group considers that such Data provided by the Provider above is not satisfactory in the context of the Services and the principles set out in clause 3.2 of the Relationship Agreement, the parties will seek to agree changes to this Agreement to improve the Provider's performance of the Services. The parties will enter into a variation agreement in the form attached as Schedule 8 to give effect to such agreed changes.</p> <p>If MSD considers, having received the fourth 6 month written Data report as set out above, that such Data provided by the Provider is not satisfactory in the context of the Services and the principles set out in clause 3.2 of the Relationship Agreement, MSD may, following discussion with the Provider and acting reasonably, and having regard to the principles set out in clause 3.2 of the Relationship Agreement and that the Services need to meet the needs of Housing Clients, impose a performance regime on the Provider based on the Data by notice in writing to the Provider. The Provider is to comply with the requirements of such performance regime.</p>
<p>Data outcomes - ongoing</p>	<p>If, at any time during the Capacity Phase, MSD (acting reasonably) considers that the Data provided by the Provider above is not satisfactory in the context of the Services and the principles set out in clause 3.2 of the Relationship Agreement, then the Relationship Management Group will meet as frequently as reasonably required and work together co-operatively to seek to improve such Data.</p> <p>If, after a period of three months or longer following the Relationship Management Group's first such meeting, MSD (acting reasonably) considers that the Data has not been</p>

	<p>improved to a satisfactory level having regard to other relevant Housing and Housing Services providers, then MSD may undertake increased monitoring of the Provider in accordance with clause 10.2 of the Relationship Agreement.</p> <p>If, after a period of three months or longer following increased monitoring by MSD, MSD (acting reasonably) considers that the Data has not been improved to a satisfactory level, then MSD may, acting reasonably, and having regard to the principles set out in clause 3.2 of the Relationship Agreement and that the Services need to meet the needs of Housing Clients, impose a performance regime on the Provider based on the Data by notice in writing to the Provider. The Provider is to comply with the requirements of such performance regime.</p>
Insurance and Step-in Rights	
Insurances required	The Provider is to hold and maintain the insurance policies at (or greater than) the specified levels of cover required and approved by the Regulatory Authority.
MSD Step-in Rights	MSD has Step-in Rights as set out in Schedule 3.
Variations to Schedules	
Variations to Schedules	<p><i>[If any Schedule is being amended, this Key Term should be populated with the agreed amendments to the Schedules. No changes should be made directly to the Schedules themselves. Please see the example formats below (note that not all of these will necessarily be used in each situation).]</i></p> <p>[This Agreement is amended as follows:</p> <ul style="list-style-type: none"> • [Clause <i>[insert clause number]</i> of Schedule <i>[insert Schedule number]</i> is deleted.] • [Clause <i>[insert clause number]</i> of Schedule <i>[insert Schedule number]</i> is amended by deleting the reference to <i>[insert (e.g., "30 January 2019")]</i> and replacing it with a reference to <i>[insert (e.g., "30 June 2019")]</i>. • [Clause <i>[insert clause number]</i> of Schedule <i>[insert Schedule number]</i> is deleted and replaced with the following clause: <i>[insert clause number]: [insert replacement clause in italics]</i> • [A new clause <i>[insert new clause number (e.g., "3A" if the new clause is to be inserted between existing clauses 3 and 4)]</i> of Schedule <i>[insert Schedule number]</i> is added as follows: <i>[insert new clause number]: [insert new clause in italics]]</i>

Part C: Development Phase Key Terms

Key Term	Description	
Provider's External Financier(s) (if applicable)	[Insert name of Provider's External Financiers (if any)]	
Financier Direct Deed date and ref. no. (if applicable)	[Insert date and reference number of Financier Direct Deed (if any)]	
New Supply Housing Project	<p>The Provider is to deliver the New Supply Properties to be let to Eligible Tenants at the Services Location, as further described in Schedule 9 and in accordance with the below configurations:</p> <p>[Insert high level configuration requirements, including in relation to minimum property size, relevant suburbs within the Services Location, number of bedrooms and minimum fit for purpose design requirements]</p> <p>(Configurations)</p>	
Plans and Specifications	<p>[Refer to and/or attach a copy of the detailed plans and specifications for the New Supply Properties in the New Supply Housing Project if available as at the date this Agreement is signed.</p> <p>If not available, include an appropriate note, e.g.:</p> <p>Provider to provide MSD with a copy of the detailed Plans and Specifications prior to requesting Drawdown<u>the first Milestone Date</u>.</p> <p>All Plans and Specifications must be compliant with the Configurations. (see clause 3.3 of Schedule 9.)</p>	
Primary Contracts	<p>The Primary Contracts are:</p> <ul style="list-style-type: none"> • [Insert a description of primary contracts that require MSD's approval (see clause 5.1(a) of this Schedule 9), for example: • Construction contract; • Agreement for sale and purchase; • Development agreement; • Deed of/agreement to lease.] 	
New Supply Housing Project Timeline and Key Milestone Dates	Milestone	Date
	<p>[Insert relevant milestones from the separate example milestones document, depending on procurement methodology.]</p> <p>It should be noted that the Drawdowns of Upfront Development Funding Costs are tied into milestones, i.e., the milestone will provide the date for drawdown of Upfront Development Cost Funding.</p>	

Key Term	Description	
	<i>This should be taken into account when developing milestones for the New Supply Housing Project.</i>	
Development Phase Reporting	<p>Regular reporting</p> <p>During the Development Phase, the Provider must provide to MSD:</p> <ul style="list-style-type: none"> • within 10 Business Days following the end of the relevant calendar month, the Quarterly Development Report for the calendar quarters ending 30 September, 31 December, 31 March, and 30 June; • <i>[Insert any other regular reporting requirements]</i> <p>Ad Hoc reporting</p> <p>The Provider must provide to MSD:</p> <ul style="list-style-type: none"> • within 10 Business Days of a request to do so, any information MSD, acting reasonably, requires to satisfy itself that the terms of this Agreement are being complied with or any other related matter; • notice of any matter (including any variations to the New Supply Housing Project) that will, or is likely to, have a material impact on the New Supply Housing Project complying with the Project Management Plan, or the ability of the Provider to deliver the New Supply Housing Project immediately (or as soon as possible thereafter) upon becoming aware of such matter; • notice of the New Supply Properties passing their final inspection for their Code Compliance Certificate(s) within 10 Business Days of the Provider being notified; • notice of Code Compliance Certificate(s) being issued for the New Supply Properties within 5 Business Days of issue; • <i>[Insert any other ad hoc or irregular reporting requirements]</i> 	

Key Term	Description	
Operating Supplement	<p>[Insert any Operating Supplement payable in respect of relevant Properties. The Agreed Rent in Part A of these Key Terms should also refer to the Operating Supplement if it applies. If only an Operating Supplement is payable in respect of the New Supply Properties (rather than any Upfront Development Cost Funding Amount), then the following four Key Terms in square brackets should be removed, and Schedule 9 will need amending to remove the relevant Upfront Development Cost Funding Payment provisions. Please refer to separate MSD guidance on relevant provisions to remove.].]</p>	
{Upfront Development Cost Funding Amount}	<p>[insert %] of Development Costs, up to [Insert cap on total amount] (inclusive of GST, if any)</p> <p>[Note that where the Provider is not GST registered or cannot claim back GST in respect of the New Supply Housing Project, MSD's % contribution above will be calculated by reference to the GST inclusive amount of the total Development Costs.</p> <p>Where the Provider is GST registered and/or can claim back GST in respect of the New Supply Housing Project, MSD's % contribution above will be calculated by reference to the GST exclusive amount of the total Development Costs.</p> <p>Please note that whether or not the % contribution will be calculated by reference to the GST inclusive or exclusive amount of the total Development Costs, the Upfront Development Cost Funding Amount will remain inclusive of GST, if any.]</p>	
{Upfront Development Cost Funding Payments} [Insert relevant amounts which align with Milestone Dates]	Instalment Amount	Payment Date
	[\$[•]] (calculated at [•]% of the Upfront Development Cost Funding Amount)	Within seven Business Days of satisfaction of the Conditions Precedent for Drawdown for Milestone 1
	[\$[•]] (calculated at [•]% of the Upfront Development Cost Funding Amount)	Within seven Business Days of satisfaction of the Conditions Precedent for Drawdown for Milestone 2
	[\$[•]] (calculated at [•]% of the Upfront Development Cost Funding Amount)	Within seven Business Days of satisfaction of the Conditions Precedent for Drawdown for Milestone 3
{Conditions Precedent to Drawdown}	Drawdown Stage	Conditions
	Every Drawdown	<p>The Provider is to submit:</p> <ul style="list-style-type: none"> • a completed Drawdown Notice; and • a tax-compliant invoice (in a form previously approved by MSD) for the amount (if any) shown by the Drawdown Notice as owing to the Provider

Key Term	Description		
	and to be paid by MSD to the Provider.		
	[Insert further relevant Conditions Precedent to Drawdown from separate Examples Conditions Precedent to Drawdown document, depending on procurement method.]		
[Security protection for MSD]	A registered encumbrance and/or registered land covenant in gross over each of the New Supply Properties and/or Properties in the form attached to Schedule 10 and in accordance with the provisions of Schedule 10.		
Compensation payable by MSD for any earlier termination of this Agreement during Development Phase	The equivalent provision in Part B of these Key Terms will not apply during the Development Phase, and instead this Key Term will apply during the Development Phase only. <i>[Insert fair and reasonable compensation calculation, having regard to clause 23.1 of the Relationship Agreement and that the Provider is not at fault (if applicable) where MSD terminates this Agreement for convenience.]</i>		
Insurances required during Development Phase	Insurance type	Required?	Amount of cover required
	Public liability	<i>[Yes/No]</i>	<i>[Insert minimum amount of cover required]</i> , per event or series of related events
	Material loss/damage	<i>[Yes/No]</i>	Full replacement value of all buildings comprised in the New Supply Housing Project (including removal of debris and consultants, contractors, and legal fees), being at least <i>[Insert minimum amount of cover required]</i>
	Contract works (all risks) insurance	<i>[Yes/No]</i>	<i>[Insert minimum amount of cover required]</i>
	<i>[Insert any others]</i>	<i>[Yes/No]</i>	<i>[Insert minimum amount of cover required]</i>
Sunset Date	<i>[Insert date by which the Development Phase must be completed and all New Supply Properties delivered. Failure to deliver by this date entitles MSD to terminate this Agreement, so there should be a reasonable allowance between this date and the expected date for completion, to give the Provider an opportunity to still complete the project even if there are delays.]</i>		
Further Deliverables	MSD and the Provider agree to the following further deliverables: <i>[Insert any further documents, requirements to be met, or other items which are not covered elsewhere in the Key Terms or Schedules 9 and 10.]</i>		

Key Term	Description
	<p><i>For example, for Provider Lease developments:</i></p> <p><i>The Provider agrees to:</i></p> <ul style="list-style-type: none"> • <i>within 10 Business Days of the date of this Agreement, provide MSD with a draft copy of the agreement to lease/deed of lease between [Landlord Entity] as landlord and the Provider as lessee of the New Supply Properties, for MSD's approval (acting reasonably); and</i> • <i>on or before the issue of Code Compliance Certificates for the New Supply Properties, provide MSD with a copy of the signed agreement to lease/deed of lease between [Landlord Entity] as landlord and the Provider as lessee of the New Supply Properties substantially in the same form as approved by MSD.]</i>

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SCHEDULE 5: DEFINITIONS

1 Defined terms

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

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

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

Agreed Rent means, in respect of a Property, the weekly rent (based on Market Rent) as set out in Schedule 4 (as amended from time to time in accordance with this Agreement);

Agreement means this Services Agreement, including its Schedules, as it may be amended in writing from time to time;

Business Day means a day that is not a Saturday, Sunday or public holiday in New Zealand or any anniversary day in the region in which the relevant Services are being provided;

Capacity Phase has the same meaning as set out in Schedule 9;

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

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

Ineligible Tenant means a person who:

- (a) was an Eligible Tenant but has subsequently ceased to be an Eligible Tenant; or
- (b) was a tenant in a Short Term Private Rental and continues to be a tenant in the Property after that tenancy has ended;

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

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

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

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

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

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

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

New Supply Properties has the same meaning as set out in Schedule 9;

Parties means MSD and the Provider;

Payment Period means:

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

Property means a property that is listed in Schedule 4, as that list is amended from time to time in accordance with this Agreement (including so as to reflect any approved additions and substitutions and any released Properties (if applicable));

Reason for Exit means each of the following:

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

Assessment and Treatment Act 1992 or a compulsory care order under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003); and

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

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

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

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

Services Payment means the payment by MSD to the Provider in consideration for the Services provided (or to be provided) by the Provider, as set out in Schedule 2;

Short Term Private Rental means a Property that has been let in the private rental market as a result of:

- (a) MSD notifying the Provider that the Property is not required to be let to Eligible Tenants for a specified period; or
- (b) the Provider obtaining MSD's prior written consent that a Property can be let to a private market tenant for a specified period;

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

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

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

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

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

Tenant means a person who is named as a tenant in a Tenancy Agreement and is occupying the Property nominated in the Tenancy Agreement, together with any household members occupying the Property (as the context requires);

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

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

Turnaround Period means, in respect of a Property:

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

~~**Upfront Development Cost Funding** has the same meaning as set out in Schedule 9.~~

2 **Definitions from Relationship Agreement and Key Terms**

Other capitalised terms used but not defined in clause 1 above have the meanings given to them in the Relationship Agreement or the Key Terms (as applicable).

SCHEDULE 9: DEVELOPMENT PHASE OBLIGATIONS

This Schedule 9 describes the Development Phase obligations and related rights and obligations of the Parties during the Development Phase. ~~It also sets out certain Upfront Development Cost Funding repayment obligations during the Capacity Phase.~~

1 Additional definitions and interpretation

1.1 The following terms in this Schedule 9 are used with the meaning set out below:

Capacity Phase means the period commencing on the addition of one or more Properties to Schedule 4 in accordance with clause 2.4 of this Schedule 9 and ending on the Expiry Date (or earlier termination of this Agreement), during which the Provider must make the Properties available for letting to Eligible Tenants;

Certificate for Public Use has the meaning set out in the Building Act 2004;

Code Compliance Certificate has the meaning set out in the Building Act 2004;

~~**Conditions Precedent to Drawdown** means the conditions precedent to Drawdown as set out further in the Key Terms;~~

Configurations has the meaning set out in the Key Terms;

~~**Development Costs** means the Provider's costs of delivering the New Supply Properties in relation to the New Supply Housing Project;~~

Development Phase means the period leading up to, and including, the delivery of the New Supply Properties and ending in the issuance of a Code Compliance Certificate for, and availability for tenancy by Eligible Tenants under the Capacity Phase of, all the New Supply Properties (excluding any later additions or substitutions of any Properties);

~~**Drawdown** means a permitted drawdown of Upfront Development Cost Funding against the stipulated milestone, as set out in the Key Terms;~~

~~**Drawdown Notice** means a Drawdown notice in (or substantially in) the form notified by MSD to the Provider from time to time;~~

Good Industry Practice means the degree of skill, care, prudence, foresight, and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of goods and services engaged in the same type of undertaking as that of the Provider, contractors, subcontractors, consultants, or other such persons (as applicable), under the same or similar circumstances as those contemplated by this Agreement;

New Supply Housing Project means the development described in the Key Terms for the delivery of the New Supply Properties;

New Supply Properties means those properties being delivered by the Provider as part of the New Supply Housing Project, as set out further in the Project Management Plan;

Plans and Specifications means the plans and specifications identified in the Key Terms;

Primary Contract means any contract identified as a primary contract in the Key Terms;

Project Management Plan means a suitable and robust development plan agreed between MSD and the Provider;

Quarterly Development Report means the quarterly development report substantially in the form as notified by MSD to the Provider from time to time that the Provider is to provide to MSD as set out in the Key Terms; and

Sunset Date means the date identified in the Key Terms; ~~and~~

~~**Upfront Development Cost Funding** means the contributions paid by MSD towards the Development Costs during the Development Phase under the terms and conditions contained in this Agreement; and~~

~~**Upfront Development Cost Funding Amount** means the percentage of the Provider's Development Costs MSD has agreed to pay, up to a maximum dollar figure amount, as Upfront Development Cost Funding as set out in the Key Terms.~~

- 1.2 In Schedule 9, unless specifically stated otherwise, "deliver" includes all actions required to fully deliver, including where appropriate development, construction, refurbishment, procurement and acquisition.
- 2 **New Supply Properties**
- 2.1 The Provider is to deliver the New Supply Properties at the Services Location for Eligible Tenants by the end of the Development Phase and in accordance with the Project Management Plan. For this purpose, New Supply Properties can include relocation and/or refurbishment of an existing structure provided it is of a standard acceptable to MSD.
- 2.2 By the end of the Development Phase, the Provider is to ensure that each New Supply Property:
- (a) is suitable for letting to Eligible Tenants and for the intended purpose of the New Supply Housing Project;
 - (b) complies with the Project Management Plan (including in relation to compliance with the Configurations and Plans and Specifications);
 - (c) is delivered in accordance with all relevant resource and building consents, has a Code Compliance Certificate, and complies with all relevant Laws;
 - (d) without limiting the warranties and guarantees implied at law, is delivered in accordance with Good Industry Practice;
 - (e) will be available, upon completion, for letting to Eligible Tenants approved by MSD, in accordance with Schedule 1; and
 - (f) complies with all other terms and conditions of this Agreement.
- 2.3 If during the Development Phase a New Supply Property is completed and complies with clause 2.2(a) to (f) of this Schedule 9 except in respect of a Code Compliance Certificate being issued, MSD and the Provider agree that the Capacity Phase can commence in respect of that New Supply Property, provided that:

- (a) the Provider has obtained a Certificate for Public Use for that New Supply Property;
- (b) the Provider can safely and effectively carry out all of its duties during the Capacity Phase in respect of that New Supply Property;
- (c) occupation and use of the New Supply Property for the Capacity Phase will not materially interfere with the Provider's ability to deliver the New Supply Housing Project;
- (d) the New Supply Property can be safely occupied without undue interference with any occupants' use and enjoyment of the New Supply Property (including interference by noise, dust, vibrations, or smells from any source); and
- (e) the Provider obtains a Code Compliance Certificate for the New Supply Property as soon as possible.

2.4 Following completion of the Development Phase in respect of a New Supply Property, the parties will enter into a variation agreement substantially in the form set out in Schedule 8 to add that New Supply Property as a Property, and the Provider is to provide that New Supply Property as a Property in accordance with Schedule 1, and manage it, for the remainder of the Term and in accordance with this Agreement and the Contract Documents.

2.5 Notwithstanding completion of the Development Phase, any minor omissions or defects in the New Supply Properties must be rectified within 90 days of the issue of the relevant Code Compliance Certificate(s).

3 **Project Management Plan**

3.1 The Provider is to deliver the New Supply Housing Project in accordance with the Project Management Plan.

3.2 The Project Management Plan is to incorporate:

- (a) the Configurations and Plans and Specifications; and
- (b) a project timeline which includes expected timeframes and dates for obtaining all relevant documentation, delivery of key parts of the New Supply Housing Project, and a due date for completion of the New Supply Housing Project,

and shall require the delivery of the New Supply Properties in accordance with the Configurations, Plans and Specifications, and project timeline.

3.3 The Provider is to ensure that the Plans and Specifications are consistent with, and incorporate, the Configurations. In the event of any conflict between the Configurations and the Plans and Specifications or any other documents, the Configurations will prevail unless MSD has expressly provided its prior written consent to such conflict.

4 **Project timeline**

4.1 Notwithstanding clause 2.1 of this Schedule 9 and without limiting clause 7.5 of this Schedule 9:

- (a) the Provider is to use all reasonable endeavours to meet the project timeline and key milestone dates for the New Supply Housing Project delivery as set out in the Key Terms and the Project Management Plan; and
- (b) if the Provider considers that it will not, or is unlikely to, meet such project timeline and key milestone dates, it will notify MSD in writing as soon as practicable and the Provider is to minimise the delay in meeting such project timeline and key milestone dates.

5 **Building contract and other contracts**

5.1 In relation to any contract (including any construction contract(s) and subcontracts) for the delivery of any part of the New Supply Housing Project, the Provider:

- (a) may only enter into any Primary Contract in relation to any part of the New Supply Housing Project with MSD's prior consent (not to be unreasonably withheld or delayed);
- (b) is not to materially vary, or permit or allow the material variation of, any Primary Contract without MSD's prior written approval (not to be unreasonably withheld or delayed);
- (c) is to ensure the contract:
 - (i) is in writing;
 - (ii) is consistent, and requires the delivery of the New Supply Housing Project in accordance, with the terms of this Agreement; and
 - (iii) requires the contracting third party to exercise Good Industry Practice in delivering its part of the New Supply Housing Project;
- (d) is to ensure each contracting third party is:
 - (i) suitably experienced and qualified, and has sufficient capacity and capability to deliver that part of the New Supply Housing Project contracted to them; and
 - (ii) fully aware of the Provider's obligations during the Development Phase;
- (e) is not relieved from any liability or obligation to deliver the New Supply Housing Project; and
- (f) in respect of any construction contract, is to ensure that the contractor is a licenced building practitioner (as that term is defined in the Building Act 2004).

- 5.2 For the avoidance of doubt, in this clause 5 of this Schedule 9 “contract” includes any contract, agreement, or arrangement with any third party for the delivery of any part of the New Supply Housing Project, and may include a development agreement with a developer, design services agreement with a design consultant, or agreement for sale and purchase of any land or properties.

6 Risks and insurance

- 6.1 The Provider is to ensure all risks of the New Supply Housing Project are adequately and suitably covered, whether by insurance or otherwise.
- 6.2 Where any insurance policies are identified in the Key Terms, the Provider is to:
- (a) effect and maintain, or cause to be effected and maintained, the identified insurance policies:
 - (i) for at least the minimum amount specified in the Key Terms for any one occurrence and in the aggregate;
 - (ii) with a reputable and financially sound insurer;
 - (iii) on terms which a prudent and experienced person performing work of a nature similar to the work the subject of the insurance could reasonably be expected to obtain; and
 - (iv) from the date of the commencement of any construction works in relation to the New Supply Housing Project until the completion of the Development Phase;
 - (b) within 10 Business Days of a request by MSD, provide MSD with evidence that the identified insurance policies are effected and maintained;
 - (c) except for an amount of less than \$10,000.00 and where the claim is in relation to an event which does not affect the safe occupation of the New Supply Properties or delivery of the New Supply Housing Project, notify MSD of any claims under any of the identified insurance policies; and
 - (d) subject to the terms of any Financier Direct Deed, use the proceeds of any claim under any of the identified insurance policies to reinstate the New Supply Properties, or as otherwise agreed by MSD and the Provider.
- 6.3 Without limiting the obligations of the Provider in clause 6.2 of this Schedule 9, the Provider is to ensure that any contractors, subcontractors, consultants, or other third parties involved with the delivery of the New Supply Housing Project effect insurance policies on terms and covering risks that a prudent and experienced person performing work of a nature similar to the work the subject of the insurance could reasonably be expected to maintain obtain.

~~7 Upfront Development Cost Funding~~

- ~~7.1 MSD will provide the Upfront Development Cost Funding Amount to cover the agreed percentage of the Provider’s Development Costs (up to a maximum amount) as set out in the Key Terms, subject to the Provider satisfying any~~

~~Conditions Precedent to Drawdown and otherwise complying with the terms and conditions of this Agreement.~~

- ~~7.2 — The Upfront Development Cost Funding Amount will be paid by MSD in one or more separate Drawdowns against the specified milestones in the Key Terms.~~
- ~~7.3 — The Provider acknowledges MSD's rights to withhold Upfront Development Cost Funding or seek repayment (in part or in full) in accordance with this Agreement and the Relationship Agreement.~~
- ~~7.4 — Nothing in this Agreement is to be interpreted as requiring MSD to increase its contribution towards the New Supply Housing Project beyond the Upfront Development Cost Funding Amount, and the Provider acknowledges that it is to meet any additional or unforeseen costs of completing the New Supply Housing Project that may arise.~~

~~8 — Payment of Upfront Development Cost Funding~~

- ~~8.1 — MSD will pay to the Provider the amount set out in the Drawdown Notice (up to the amount of the Upfront Development Cost Funding the Provider may drawdown at the relevant milestone) within the timeframe set out in the Key Terms, provided that the Conditions Precedent to Drawdown have been satisfied in full.~~
- ~~8.2 — No money is payable by MSD until the Provider has satisfied all relevant Conditions Precedent to Drawdown. If the Provider fails to submit any documentation required under, or otherwise comply with or satisfy, any Condition Precedent to Drawdown, MSD may (at its sole discretion) withhold payment of any Upfront Development Cost Funding.~~
- ~~8.3 — If the portion able to be drawn upon at any given milestone is not fully drawn, the balance can be drawn upon at the next Drawdown (if any).~~
- ~~8.4 — Unless MSD agrees otherwise, a Drawdown Notice must be submitted within 12 months of the milestone date for the relevant Drawdown, and in any event prior to the completion of the Development Phase.~~
- ~~8.5 — Any dispute arising in relation to a payment under a Drawdown or Drawdown Notice shall be resolved in accordance with clause 13.5 of the Relationship Agreement, as if the Drawdown Notice was an invoice.~~

~~9 — Management of Upfront Development Cost Funding payments~~

~~The Provider recognises that it needs to be a prudent and transparent manager of Upfront Development Cost Funding and will therefore:~~

- ~~(a) — keep clear records of and account separately for all receipts of, and expenditure of, the Upfront Development Cost Funding; and~~
- ~~(b) — only expend the Upfront Development Cost Funding in or towards meeting its actual out of pocket expenses incurred in connection with the New Supply Housing Project.~~

~~10 — Repayment of Upfront Development Cost Funding~~

~~10.1~~—The Provider agrees that all funds paid to it by MSD under this Agreement and not expended in accordance with this Agreement (together with any interest accrued in respect of such funds) are to be repaid as follows:

~~(a)~~—within 20 Business Days of completion of the Development Phase the Provider is to issue MSD a report in the form notified by MSD to the Provider from time to time, together with such other evidence as MSD may reasonably require, which illustrates:

~~(i)~~—the Provider's total Development Costs; and

~~(ii)~~—MSD's share of the Development Costs (calculated in accordance with clause 7.1 of this Schedule 9); and

~~(b)~~—in the event that the Upfront Development Cost Funding received by the Provider exceeds MSD's share of the Development Costs as identified pursuant to clause 10.1(a)(ii) of this Schedule 9, the Provider must repay the difference, and issue a credit note (that meets the requirements of the Goods and Services Tax Act 1985), to MSD within 15 Business Days of issue of the report under clause 10.1(a) of this Schedule 9.

~~10.2~~—MSD may otherwise require the Provider to repay any portion of the Upfront Development Cost Funding:

~~(a)~~—during the Development Phase:

~~(i)~~—reflective of the degree and materiality of any breach of this Agreement by the Provider to deliver the New Supply Property in accordance with this Agreement, as determined by MSD in its sole discretion and acting reasonably (which determination may include agreement to provision of a lesser number of New Supply Properties than agreed or in a different configuration from that agreed); or

~~(ii)~~—in the event of termination of this Agreement pursuant to clause 11.4, 11.5 or 12(b) of this Schedule 9, or clause 22.3 of the Relationship Agreement; and

~~(b)~~—during the Capacity Phase, in the event of termination pursuant to clause 22.3 of the Relationship Agreement and as further set out in the Key Terms.

~~11.7~~ **Failure to meet its obligations during the Development Phase**

~~11.7.1~~ Without limiting any of its other rights or remedies under the Relationship Agreement or at law or equity, in the event that during the Development Phase:

~~(a)~~ the Provider has breached this Agreement; or

~~(b)~~ the Provider has failed to meet the obligations to deliver the New Supply Housing Project as set out in this Agreement; or

~~(c)~~ the Provider has been required to repay any Upfront Development Cost Funding in accordance with this Agreement and fails to make such repayment;

MSD may give 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 7 of this Schedule 9.

~~11.27.2~~ Within 15 Business Days of receiving MSD's notice under clause 7.1 of this Schedule 9, the Provider is to:

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

~~11.37.3~~ During the implementation of such rectification programme:

- (a) 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; ~~and~~
- (b) MSD may withhold all or part of any payment otherwise due; ~~and~~
- ~~(c) MSD may, acting reasonably, require the Provider to withhold the expenditure of any Upfront Development Cost Funding that the Provider holds.~~

~~11.47.4~~ If, after following the process in clauses 7.2 to 7.3 of this Schedule 9 above, the Provider still has not remedied the default specified in MSD's original notice, to MSD's satisfaction, then MSD may terminate this Agreement by giving 30 Business Days' notice to the Provider.

~~11.57.5~~ Notwithstanding any other provision of this Agreement, but subject to the Financier Direct Deed, if the Development Phase has not been completed and the Capacity Phase commenced for all New Supply Properties by the Sunset Date, MSD may terminate this Agreement by giving 30 Business Days' notice to the Provider.

~~128~~ **Additional Provider termination rights**

In addition to the termination rights available under the Relationship Agreement, ~~and~~

the Provider may apply to MSD to terminate this Agreement at any time. MSD will give reasonable consideration to such request and the basis on which it can be agreed to; ~~and~~

- ~~(a) the Provider may terminate MSD's involvement with the New Supply Housing Project on 15 Business Days' notice if MSD fails to pay any Upfront Development Cost Funding when due and payable, provided that the failure~~

~~has not been remedied before the expiration of that notice period, subject to immediate repayment by the Provider to MSD of all amounts (including earlier advances of Upfront Development Cost Funding) already received.~~

~~13.9~~ **Review of documents by MSD**

~~13.19.1~~ The Provider has sole responsibility for the delivery of the New Supply Housing Project in accordance with this Agreement irrespective of any receipt, review, inspection, approval, consent, or acceptance by MSD of any documents or information supplied by the Provider, including Plans and Specifications, ~~any documentation required under the Conditions Precedent to Drawdown,~~ or other documentation or information required under this Agreement.

~~13.29.2~~ MSD assumes no responsibility or liability to the Provider or to any other person for the engineering or architectural soundness, safety, compliance with Laws, compliance with this Agreement, or suitability of any of the Configurations, Plans and Specifications or other plans and specifications, of the New Supply Housing Project, which remain the sole responsibility of the Provider.

~~14.10~~ **General**

~~14.110.1~~ MSD and the Provider agree to do all things necessary to perform or fulfil the Further Deliverables as set out in the Key Terms (if any).

~~14.210.2~~ Without limiting any of the Provider's obligations under this Agreement and the Relationship Agreement, the Provider is to deliver the New Supply Housing Project:

- (a) in accordance with all Laws;
- (b) in accordance with the terms of this Agreement;
- (c) diligently, efficiently, and without undue delay.



~~SCHEDULE 10: SECURITY PROTECTION FOR MSD~~

~~For the avoidance of doubt, this Schedule 10 is subject to the terms of any applicable Financier Direct Deed.~~

~~Encumbrance and land covenant~~

~~To protect MSD's interests under this Agreement (during both the Development Phase and the Capacity Phase), MSD will, if provided for in the Key Terms, register an encumbrance in the form attached to this Schedule 10 or a land covenant in gross against the computer registers and/or records of titles to the New Supply Properties and the Properties. The encumbrance or land covenant in gross must rank first in priority to any mortgage or security to be provided in favour of another financier of the Provider.~~

~~No objection~~

~~The Provider will do everything necessary to support the registration of any encumbrance or land covenant in gross pursuant to clause 1 of this Schedule 10 and the Key Terms, including execution of all necessary documents required for registration, and will procure such written consents and binding agreements as may be necessary from any security holder, financier or other third party having or seeking a security interest or other interest or estate in the Properties as are necessary. The overall security positions of MSD and any other security holder or financier to the Provider may require the entry into by the Provider, MSD and any other security holder or financier of a tripartite or multiparty security deed regulating those parties' respective rights and security positions. MSD may at its discretion require entry into such a deed as a condition of Upfront Development Cost Funding.~~

~~Discharge~~

~~MSD will discharge any encumbrance or land covenant in gross in respect of a Property that permanently ceases to be subject to this Agreement. MSD shall not unreasonably withhold or delay any discharge of any encumbrance or land covenant in gross pursuant to clause 3 of this Schedule 10.~~



ATTACHMENT TO SCHEDULE 10: FORM OF ENCUMBRANCE

Encumbrance instrument

Section 101, Land Transfer Act 1952

Computer register(s)	All/part	Area/description of part or stratum	TEMPORAL
[CFRs]	All		
Encumbrancee		Section(s) of the Land Transfer Act	
[TEC]			
Encumbrancee		Section(s) of the Land Transfer Act	
HER MAJESTY THE QUEEN in right of New Zealand acting by and through the Chief Executive of the MINISTRY OF SOCIAL DEVELOPMENT			
Estate or interest to be encumbered		Part of the freehold land in the computer register(s)	
Encumbrance memorandum number			
Nature of security		As set out in the Annexure Schedule	
As set out in the Annexure Schedule			
Operative clause		As set out in the Annexure Schedule	
<p>The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above computer freehold register(s) with the above sum of money, annuity, or rentcharge to be raised and paid in accordance with the terms set out below and in the [above encumbrance memorandum] Annexure Schedule and so as to incorporate in this encumbrance the terms and other provisions set out below and in the [above encumbrance memorandum] [and] Annexure Schedule for the better securing to the Encumbrancee the payment(s) secured by this encumbrance, and</p>			
Terms		As set out in the Annexure Schedule	
<p>1 Length of term: [insert length of term of Services Agreement] years commencing on [insert date of commencement of Services Agreement]</p> <p>2 Payment date(s): As set out in the Annexure Schedule</p> <p>3 Rate(s) of interest: An interest rate being three (3) percentage points above the 90-day bank bill mid rate (expressed as a percentage per annum), as displayed at or about 10.45am on page BKBM (or its successor page) of the Reuters Monitor Screen (or an equivalent) on each day during which the default continues</p>			
Covenants and conditions		As set out in the Annexure Schedule	
See Annexure Schedule			
Modification of statutory provisions		As set out in the Annexure Schedule	

~~Sections 23, 185, 203-205, 289, 302-306 and Schedule 4 of the Property Law Act 2007 and sections 97, 154 and 156 of the Land Transfer Act 1952 apply to this instrument but otherwise (and without prejudice to the Encumbrancee's rights of action at common law as a rentchargee) the Encumbrancee is entitled to none of the powers and remedies given to encumbrances or mortgagees by the Land Transfer Act 1952 and the Property Law~~

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~~Continuation of "Covenants and Conditions"~~

BACKGROUND

~~A. — The Encumbrancer is the registered proprietor of the Land.~~

~~B. — The Encumbrancee has provided or is providing funding to the Encumbrancer to enable the development of the Land and/or the use of the Land for public housing and requires this Encumbrance to be registered on the Land to ensure that the Land continues to be used for public housing purposes including on any transfer of the Land by the Encumbrancer to a third party.~~

~~C. — The Encumbrancer has agreed to encumber the Land for the benefit of the Encumbrancee as set out in this Encumbrance.~~

DEFINITIONS AND INTERPRETATION

Definitions: In this Encumbrance, unless the context indicates otherwise:

~~**Business Day** means a day (other than a Saturday or a Sunday) on which registered banks are open for general banking business in Wellington and Auckland;~~

~~**Encumbrance** means this encumbrance instrument;~~

~~**Encumbrancee** means Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Social Development and includes such other New Zealand government agency or Crown entity as may assume the role of purchaser of public housing provision on behalf of the New Zealand government in place of the Ministry of Social Development;~~

~~**Encumbrancer** means the person named as the Encumbrancer in this Encumbrance and includes any subsequent assignee of or successor to the party named as Encumbrancer;~~

~~**GST** means goods and services tax or any tax imposed pursuant to the provisions of the *Goods and Services Tax Act 1985* (or any act in substitution thereof);~~

~~(f) — **Land** means [insert legal description];~~

~~**Purpose** means:~~

~~using the Land for public housing purposes in accordance with the terms of the Services Agreement;
or~~

~~where there is no Services Agreement in place between the Encumbrancer and the Encumbrancee,
using the Land in accordance with any public housing parameters notified in writing to the Encumbrancer by the Encumbrancee; or~~

~~such other purpose as may be agreed in writing between the Encumbrancer and the Encumbrancee;~~

~~**Rentcharge** means a rental charge of \$[1.00] plus GST (if applicable) per day for each unit or dwelling located on the Land (including in a multi-storey development) in respect of which the Encumbrancer is in breach of its obligations and covenants under this Encumbrance, for the duration of any breach; and~~

~~**Services Agreement** means the [*insert name*] Agreement dated [*•*] between the Encumbrancee and the Encumbrancer for the properties on the Land to be developed or refurbished and/or for the properties on the Land to be used for public housing purposes, including as renewed, amended or replaced from time to time.~~

~~**Interpretation:** In this Encumbrance, unless the context indicates otherwise:~~

~~**Defined expressions:** expressions defined in the main body of this Encumbrance have the defined meaning throughout this Encumbrance, including the background.~~

~~**Headings:** clause and other headings are for ease of reference only and will not affect the interpretation of this Encumbrance.~~

~~**Parties:** references to any party include that party's executors, administrators, successors and assigns.~~

~~**Persons:** references to a person include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity.~~

~~**Plural and singular:** references to the singular include the plural and vice versa.~~

~~**Clauses/schedules/attachments:** references to clauses, schedules and attachments are to clauses in, and the schedules and attachments to, this Encumbrance. Each such schedule and attachment forms part of this Encumbrance.~~

~~**Statutory provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it; and~~

~~**Negative obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.~~

~~**ENCUMBRANCER'S COVENANTS**~~

~~The Encumbrancer must not without the Encumbrancee's prior written consent, during the term of this Encumbrance, use the Land, do anything on the Land or permit anything to be done on the Land, for any purpose other than the Purpose. Without limiting the rights of the Encumbrancee to recover the Rentcharge pursuant to this Encumbrance, any breach of this covenant will found an action for breach of covenant and the Encumbrancer and Encumbrancee agree will also provide grounds for injunctive relief to compel performance or to prevent any use of the Land other than for the Purpose.~~

~~**RENTCHARGE**~~

~~Subject to clause 5 below, the Rentcharge is payable by the Encumbrancer to the Encumbrancee on 31 March every calendar year.~~

~~If, during the 12 months preceding the day on which the annual Rentcharge under clause 4 is payable there has not been any breach by the Encumbrancer of any of the covenants under this Encumbrance, then the annual Rentcharge will be deemed to have been paid. However if the Encumbrancer is in breach of any of its obligations or covenants under this Encumbrance, the Encumbrancee shall be entitled to make demand for payment of the Rentcharge.~~

~~Regardless of any other rights or remedies available to or exercised by the Encumbrancee under the Services Agreement or otherwise at equity or at law, the Rentcharge shall be payable, if demand has~~

~~been made in writing by the Encumbrancee, within ten (10) working days of the date of the demand, and in respect of continuing breaches a further Rentcharge shall be payable in arrears on the first working day of every month for as long as the breach remains unremedied. For the sake of clarity, a new Rentcharge will be payable for subsequent breaches.~~

~~Any failure by the Encumbrancee to make demand for payment of the Rentcharge in respect of any breach shall not operate as a waiver in respect of that or any other breach of the Encumbrancer's obligations.~~

~~The Encumbrancer shall be liable to pay interest to the Encumbrancee on demand, calculated daily, on any late payment of the Rentcharge by the Encumbrancer, at the Rate of Interest set out on the front page of this Encumbrance.~~

~~If a default is continuing on a day that is not a Business Day, the Rate of Interest to apply to that day shall be the Rate of Interest that was calculated on the immediately preceding Business Day.~~

~~DELAY OR WAIVER~~

~~No delay or failure by the Encumbrancee to enforce any of the Encumbrancer's obligations or covenants and no indulgence granted to the Encumbrancer will prejudice the Encumbrancee's rights of enforcement under this Encumbrance.~~

~~NOTICES~~

~~Any notice to be served on the Encumbrancer shall be served on the Encumbrancer at its head office or principal place of business.~~

~~Any notice to be served on the Encumbrancee shall be served on the then current chief executive (or current acting chief executive) of the Ministry of Social Development or such other New Zealand Government agency or Crown entity as may assume the role of purchaser of public housing provision on behalf of the New Zealand government in place of the Ministry of Social Development.~~

~~COSTS~~

~~The Encumbrancer will pay the Encumbrancee's reasonable and proper legal costs attributable to the attempted enforcement, enforcement or discharge of this Encumbrance.~~

~~GENERAL~~

~~This Encumbrance is intended to be registered at Land Information New Zealand ahead of, and will be binding on, all transferees, tenants, lessees, mortgagees, chargeholders and any other holder of any estate or interest in the Land and their respective successors in title and assigns.~~

~~The Encumbrancee consents to the registration of any subsequent mortgage, variation of a subsequent mortgage, discharge of a subsequent mortgage, easement, variation of easement and/or surrender of easement to be registered against the title of the Land (or any part of it).~~

~~Where this Encumbrance binds or benefits a party comprising more than one person, it shall bind or benefit those persons jointly and severally.~~

~~If at any time any provision of this Encumbrance is or becomes invalid, void, illegal or unenforceable in any respect whatsoever, then:~~

~~that part or provision shall be severed from this Encumbrance;~~

~~such invalidity and severing shall not in any way affect or impair the validity, legality and enforceability of any other part or provision of this Encumbrance; and~~

~~in any event the parties shall enter into appropriate substitute instrument(s) to give full and proper effect to the agreements and understandings in this Encumbrance.~~

~~The Encumbrancer acknowledges that this Encumbrance has been granted for valuable consideration received, in full compensation for the grant of this Encumbrance.~~

~~The Encumbrancer and the Encumbrancee acknowledge that the primary purpose of this Encumbrance is to secure the covenants of the Encumbrancer as set out in this Encumbrance. Any payments made pursuant to this Encumbrance, including any payment of the Rentcharge, will not release the Encumbrancer from or constitute the satisfaction of, the Encumbrancer's obligations under this Encumbrance.~~

~~The Encumbrancer covenants not to take any steps whatsoever to redeem or purport to redeem the Rentcharge.~~