

Capacity Contract for the Tauranga transfer transaction

On 15 December 2016, the Ministry of Social Development (**MSD**) entered into a Capacity Contract for the provision of social housing services in Tauranga. This Capacity Contract is an agreement for the delivery of a number of social housing places for an initial term of 25 years commencing on Financial Close (which is expected to occur on 31 March 2017). Initially, social housing will be provided using properties that will be transferred to the Provider by Housing New Zealand under a Sale and Purchase Agreement.

This is the first contract for large-scale provision of social housing by a Community Housing Provider. In order to provide transparency to the public and to the community housing provider market, the contract is published online.

This Capacity Contract was developed using bespoke provisions specifically for the Tauranga transfer transaction. However, the Tauranga Capacity Contract will form the basis of any future similar large-scale transfer transactions and a number of provisions are expected to have continuing relevance for any future social housing transfer transaction Capacity Contracts. These provisions are outlined in Tables 1 and 2, and have been broken down by part (in the case of the Base Agreement) and by Schedule.

Tables 1 and 2 in this covering note include information that sets out MSD's and the Treasury's best assessment, as at December 2016, of the likely status of the provisions that may be taken forward to future transfer transactions. The Treasury and MSD reserve the right to alter their view on which provisions to take forward (and which should be changed) in any future transfer transactions.

Other parts of the contract are more specific to the unique context of the Tauranga transfer, including provisions to allocate certain risks to the party best able to manage them. These provisions have been developed to manage a range of variables relating to the scale of the transfer, the number of providers in the Tauranga region, the demand for social housing in the area, the nature of the particular housing market and the portfolio of properties that is being transferred

Some redactions have been made to the Capacity Contract and the Sale and Purchase Agreement to protect the privacy of tenants and to protect commercially sensitive information of the parties to the Capacity Contract.

Assessment of provisions in the Tauranga Capacity Contract expected to be relevant (without significant amendment) in future transfer transaction contracts

Table 1: Base Agreement	
Part 1: Definitions and Interpretation	Largely relevant to any transaction although some definitions are transfer transaction-specific.
Part 2: Project Documents	Largely relevant to any transfer transaction.
Part 3: Participants and nature of parties' obligations	Largely relevant to any transfer transaction. The actual participants on the Provider side will vary between transfer transactions.
Part 4: Commencement and duration	Initial term and conditions precedent are likely to be relevant to any transfer transaction but the other provisions in this Part are bespoke and would vary between transfer transactions.
Part 5: Properties	<i>This Part is highly bespoke to this transaction.</i>
Part 6: Services	Largely relevant to any transaction. Some aspects of the Remediation Plan requirements and Asset Condition Surveys may vary between transfer transactions. Sub-contracting requirements would change if any major sub-contractors are to be used by the Provider to deliver the Services.
Part 7: Force Majeure Events	Largely relevant to any transfer transaction.
Part 8: Changes	Largely relevant to any transfer transaction. Some aspects of the MSD-imposed change process and the criteria for a Provider being able to refuse a Change Proposal are transfer transaction-specific.
Part 9: Payment and refinancing	Largely relevant to any transaction. Some transfer transaction-specific changes will be required.
Part 10: Warranties and undertakings	Largely relevant to any transfer transaction. Some warranties and undertakings are Provider-specific (and therefore transfer transaction-specific).
Part 11: Confidentiality and Intellectual Property	Largely relevant to any transfer transaction.
Part 12: Indemnities and liabilities	Largely relevant to any transfer transaction although some provisions may vary between transfer transactions. Limitation of Provider liability is entirely bespoke and not taken forward to future transfer transactions unless special circumstances apply.
Part 13: MSD Step-in	Largely relevant to any transfer transaction.

Table 1: Base Agreement	
Part 14: Insurance and reinstatement	Largely relevant to any transfer transaction.
Part 15: Termination	Termination events largely applicable to any transfer transaction but some other aspects of this Part are more bespoke. Arrangements and interactions with the Financier Direct Deed and the consequences upon termination may vary between transfer transactions and as such are reasonably bespoke.
Part 16: Disengagement	Largely relevant to any transfer transaction.
Part 17: Dispute resolution	Largely relevant to any transfer transaction.
Part 18: Miscellaneous terms	Largely relevant to any transfer transaction.

Table 2: Schedules	
Schedule 1: Conditions Precedent	<i>This Schedule will vary between transactions.</i>
Schedule 2: Provider Warranted Data	<i>This Schedule will vary between transactions.</i>
Schedule 3: Agreed Pool of Properties	<i>This Schedule will vary between transactions.</i>
Schedule 4: Project and Ancillary Documents	<i>This Schedule will vary between transactions.</i> <i>The version of the Financier Direct Deed included in this Capacity Contract is the version that was circulated to Respondents during the Request for Proposal process for SHRP Tauranga. The Financier Direct Deed will vary between transactions.</i>
Schedule 5: Transition Services Requirements	Largely relevant to any transfer transaction. The Transition Plan is bespoke and will vary between transfer transactions.
Schedule 6: Property Management Requirements	Largely relevant to any transfer transaction (particularly the “Property Management Requirements”). The “Delivery Proposals” will vary between transfer transactions. The Remediation Plan Annexure is also highly bespoke to this transfer transaction.
Schedule 7: Tenancy Management Requirements	Largely relevant to any transfer transaction (particularly the “Tenancy Management Requirements”). The “Delivery Proposals” will vary between transfer transactions. The “Tenancing Vacant Properties process” in Annexure 2 may vary slightly between transfer transactions depending on the vacancy risk transfer applicable to the transfer transaction.

Table 2: Schedules	
Schedule 8: Reviewable Documents	Largely relevant to any transfer transaction. Some mandatory content may vary and is bespoke to this transfer transaction. Timeframes for delivering draft and final Operative Documents may vary between transfer transactions.
Schedule 9: Governance and reporting	Largely relevant to any transfer transaction. Some reporting requirements and the reporting templates are likely to vary between transfer transactions.
Schedule 10: Financing	<i>This Schedule will vary between transactions.</i>
Schedule 11: Payment Mechanism	<i>This Schedule may vary between transactions.</i>
Schedule 12: Change Compensation Principles	Largely relevant to any transfer transaction.
Schedule 13: Helpdesk and Availability Requirements	Large parts will be relevant to any transfer transaction although the Helpdesk arrangements (including the “Delivery Proposals”) are transfer transaction-specific. The presentation of this Schedule may change for future transfer transactions.
Schedule 14: Calculation of Compensation on Termination	<i>This Schedule may vary between transactions. Aspects of this Schedule are bespoke to the Provider.</i>
Schedule 15: Sale Process	Largely relevant to any transfer transaction where a Put Option is a feature.
Schedule 16: CRI Mortgage	Largely relevant to any transfer transaction where a Crown Retained Investment is a feature. Some aspects may vary between transactions.
Schedule 17: Requirement for Performance Regime	<i>This Schedule may vary between transactions.</i>

Capacity Contract

Her Majesty, the Queen in Right of New Zealand acting by and through the Chief Executive of the Ministry of Social Development (MSD)

and

Accessible Properties New Zealand Limited and AP Properties Tauranga 2016 LP (together the Provider)

Date

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Execution 180

This **Capacity Contract** is made on

2016

between (1) **Her Majesty, the Queen in Right of New Zealand acting by and through the Chief Executive of the Ministry of Social Development (MSD)**

and (2) **Accessible Properties New Zealand Limited and AP Properties Tauranga 2016 LP (together the Provider)**

Introduction

- A. MSD invited community housing providers to submit proposals to MSD:
- (i) to purchase community housing stock in Tauranga; and
 - (ii) to make that community housing stock available exclusively to social housing tenants referred by MSD.
- B. The Provider is the successful respondent, and entered into the Sale and Purchase Agreement dated on or about the date of this Agreement under which it will purchase the community housing stock in Tauranga.
- C. The Provider will obtain finance and provide the Services on the terms and conditions of this Agreement.
- D. MSD will make payments to the CHP within the Provider in consideration for the Provider making the relevant Properties Available in accordance with, and otherwise complying with, the terms and conditions set out in this Agreement.

It is agreed

Part 1 – Definitions and interpretation

1. Definitions

In this Agreement, unless the context otherwise requires, the following terms have the following meanings:

Abandonment means that a Tenant can be reasonably considered to have abandoned a Property with no intention to comply with the Tenancy Agreement relating to that Property, despite having given no notice of termination of the Tenancy Agreement;

Actual Termination Date means:

- (a) if a Termination Notice is issued and the Security Trustee serves a Step-in Notice (as defined in the Financier Direct Deed) prior to the Termination Date specified in that Termination Notice, the date of termination of this Agreement under clause 61.5(c)(ii); or
- (b) in all other cases, the Termination Date;

Additional Debt Refinancing means any Refinancing which would increase the aggregate principal amount of Senior Debt (including capitalised interest but disregarding the value of any Swaps or equivalent hedging products), at any time over the term of the relevant facility or loan,

above the maximum amount available under the Senior Financing Agreements in place as at Financial Close;

Additional Payments means any payment that MSD is required to make to the Provider under this Agreement, other than the Availability Payment and any portion of a Tenant's Bond Amount or Rent in Advance Amount;

Adjusted CRI means, in respect of any applicable Property at any relevant time:

$$AC = C \times (1-z)$$

where:

C = the CRI Amount for that Property; and

z = the number set out in the relevant quadrant of the table below, based on the date of the relevant Property and the aggregate number of Properties previously released under this Agreement, expressed as a decimal:

Commercial Sensitivity

Affiliate means a person that is a "related company" of any relevant person;

Agent means, as at the Execution Date, Westpac New Zealand Limited in its capacity as agent for the Senior Lenders under the Financing Agreements, and includes any successor to, or replacement of, the Agent;

Agreed Pool of Properties means all of the properties listed in Schedule 3 (Agreed Pool of Properties) from time to time, including:

- (a) the Original Properties;
- (b) the Returned Properties;
- (c) the New Properties;
- (d) the Permanent Substitute Properties;
- (e) the Temporary Substitute Properties; and
- (f) the New Supply Properties that have been added to paragraph 5 (New Supply Properties) of Schedule 3 (Agreed Pool of Properties) in accordance with clause 14 (New Supply Commitment),

but for the avoidance of doubt, excluding any property that has ceased to be:

- (g) an Original Property (until returned as an Original Returned Property, if applicable);
- (h) a New Property;

- (i) a Permanent Substitute Property or Temporary Substitute Property,

in accordance with this Agreement;

Agreed Pool of Properties Change Form means the form in the form attached to Schedule 3 (Agreed Pool of Properties) as Annexure 1 (Agreed Pool of Properties Change Form);

Agreed Rent means the amount of weekly rent for a Property as set out in Schedule 3 (Agreed Pool of Properties), Indexed on a twelve monthly basis, with Indexation first occurring on the date that is twelve months after the Agreed Rent Base Date, provided that the Agreed Rent for a Property shall never be less than the Agreed Rent for a Property that applies as at Financial Close;

Agreed Rent Base Date means 30 June 2016;

Agreed Rent Indexation Date means 31 March 2016;

Agreement is described in clause 3.1 (Scope of Agreement);

Agreement Start Date means the date on which all the Tier 1 Conditions Precedent are satisfied or waived, as set out in a notice given by MSD under clause 9.5 (Conditions Precedent);

Ancillary Documents:

- (a) means the agreements to which the Provider is party for the performance of its obligations under this Agreement but to which MSD is not a party, being those agreements identified as such in Part 1 (Overview of Project Documents and Ancillary Documents) of Schedule 4 (Project and Ancillary Documents);
- (b) includes any document or agreement entered into for the purpose of supplementing, amending, replacing or novating any of those listed documents that MSD has agreed (in writing) to be an Ancillary Document; and
- (c) does not include the Financing Agreements;

Annual Maintenance Plan means the plan of that name prepared and submitted annually by the Provider as an Operative Document in accordance with the requirements of Schedule 8 (Reviewable Documents), that has been Finalised under the Review Procedures;

Approved Valuation means a valuation which satisfies each of the following conditions:

- (a) it applies to all of the Properties at the relevant time;
- (b) it is prepared by a registered valuer approved by the Agent;
- (c) it is addressed to MSD for reliance purposes;
- (d) it is prepared for mortgage security purposes;
- (e) it is dated no later than four months prior to the date on which it is provided to MSD; and
- (f) it is prepared in accordance with valuation instructions acceptable to MSD, acting reasonably;

Arms Length Terms includes (without limiting the ordinary meaning of that term) relationships, dealings and transactions that:

- (a) do not include elements that parties in their respective positions would usually omit; or
 - (b) do not omit elements that parties in their respective positions would usually include,
- if the parties are:
- (c) connected or related only by the transaction or dealing in question;
 - (d) acting independently; and
 - (e) each acting in their own respective best interests;

Asset Condition Standards means:

- (a) with respect to each individual Property, an average condition rating of 3 or better for the components of that Property (assessed in accordance with the International Infrastructure Management Manual (IIMM) 2015 Edition (as used by the New Zealand Asset Management Support group (NAMS)) at all times during the Contract Term; and
- (b) with respect to the full portfolio of the Agreed Pool of Properties, an average condition rating of 2 or better (assessed in accordance with the International Infrastructure Management Manual (IIMM) 2015 Edition (as used by the New Zealand Asset Management Support group (NAMS)) at all times during the Contract Term;

Asset Condition Survey means each survey undertaken in accordance with clause 28 (Asset Condition Survey) in order to ascertain whether the Provider has complied with its obligations in relation to the remediation, maintenance and refurbishment of the Properties;

Asset Management Plan means the asset replacement, maintenance and refurbishment plan for the Properties and each update or revision of that plan:

- (a) prepared and submitted as an Operative Document in accordance with Schedule 8 (Reviewable Documents), being a plan based on the draft asset management plan set out in the Provider's Proposal;
- (b) that contains the information and documentation required by Schedule 8 (Reviewable Documents); and
- (c) that has been Finalised under the Review Procedures;

Asset Owner means AP Properties Tauranga 2016 LP;

Asset Owner General Partner means AP Properties Tauranga Limited;

Asset Owner Partnership Agreement means the limited partnership agreement relating to the Asset Owner dated on or about the date of this Agreement, made between Asset Owner General Partner and HoldCo LP;

Available means that a Property meets the Availability Requirements;

Available Tenanted Properties means Properties that meet the Availability Requirements and are Tenanted;

Available Vacant Properties means Properties that meet the Availability Requirements in clauses 11.1(b)(ii) and 11.1(b)(iii) and are Vacant;

Availability Breach means any breach of the Availability Requirements (other than a breach of the Availability Requirement in clause 11.1(b)(i) where the Property is otherwise an Available Vacant Property);

Availability Payment means, in respect of a Payment Period, the payment to be made by MSD to the Provider, calculated in accordance with paragraph 1 (Availability Payment) of Schedule 11 (Payment Mechanism);

Availability Requirements is defined in clause 11.1(b);

Availability Report means the report described in paragraph 11 (Availability Report) of Schedule 9 (Governance and reporting);

Background IP is defined in clause 45.1(a);

Base Agreement means this document comprising clauses 1 (Definitions) to 84 (Governing law and jurisdiction) (inclusive);

Base Costs means the actual costs properly and reasonably incurred by the Provider and by any Sub-contractor (as applicable) as a result of a Change, excluding any Margin;

Base Senior Debt Termination Amount is defined in Schedule 14 (Calculation of Compensation on Termination);

Bond Amount means the bond as defined in the Residential Tenancies Act, except that for the purpose of this Agreement and for the avoidance of doubt, the bond:

- (a) is to be calculated with reference to the Rent Amount and not the Agreed Rent; and
- (b) for Existing Tenancies, must not, despite any statutory authority to the contrary, be increased during the term of the Tenancy Agreement unless the Tenant expressly agrees to such increase;

Business Day means a day other than a Saturday or Sunday or a public holiday in New Zealand;

Business Hours means 9.00am to 5.00pm on a Business Day;

Capital Expenditure means any expenditure treated as capital expenditure in accordance with GAAP from time to time;

Cash Flow Available for Debt Service means Revenue less:

- (a) Operating and Lifecycle Costs; and
- (b) Taxes (if any) (measured on the then-applicable tax treatment of the Provider);

Cessation Date is defined in paragraph 3(b) (Tenancy review and ineligibility of Tenant as Social Housing Client) of Annexure 3 (Tenant and Tenancy changes and notifications) to Schedule 7 (Tenancy Management Requirements);

Change means:

- (a) any change made or proposed to be made in connection with this Agreement or the Services excluding any change that relates to the reconfiguration of, or refurbishment to or improvement to or any other physical alteration to, any of the Properties; or
- (b) (where the context permits) any Change in Law;

Change Compensation Principles means the principles set out in Schedule 12 (Change Compensation Principles);

Change in Costs means, in respect of any Relevant Event, the direct effect of that event (whether of a one-off or recurring nature, and whether positive or negative) on the actual or anticipated Losses of the Provider or on the Provider's operating revenue (without double counting), in each case calculated in accordance with the Change Compensation Principles;

Change in Law means the coming into effect after the Execution Date of:

- (a) any Law (including a Law that repeals or amends an existing Law), other than any Law that was:
 - (i) published on or before the Execution Date in a bill or draft bill, as part of a government consultation paper or in a draft statutory instrument; and
 - (ii) was, as at the Execution Date, publicly available and included substantially the same content as the Law eventuating after the Execution Date; or
- (b) any applicable judgment of a relevant court of law that changes or creates a binding precedent,

but does not include a change in Law that was not in force at the Execution Date but that:

- (c) was contained or referred to in the Tendering Information or any Project Documents with substantially the same content as the change eventuating after the Execution Date;
- (d) a party experienced and competent in the provision of the Services would have reasonably foreseen or anticipated prior to the Execution Date; or
- (e) is a change in the way a Law applies or is interpreted as a result of a court decision other than as described in paragraph (b);

Change Notice is defined in clause 33.1(a);

Change of Ownership means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Provider and/or a Provider Entity;
- (b) any change in Control in respect of the Provider and/or a Provider Entity;
- (c) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the Shareholder Debt advanced or made available to the Provider and/or a Provider Entity; and/or
- (d) any other arrangements that have, or may have, or that result in, the same effect as those described in any of paragraphs (a), (b) and (c);

Change Proposal is described in clause 33.1(b);

Child Sex Offender means a child sex offender as that term is defined in section 182B of the Corrections Act 2004;

CHP means Accessible Properties New Zealand Limited;

Claim includes any claim, proceeding, action, demand or suit (including by way of contribution or indemnity) at Law or in equity including for payment of money (including damages) or for an extension of time or relief from the performance of obligations, including by statute (to the extent permitted by Law), in tort for negligence or otherwise, including negligent misrepresentation or for strict liability or for restitution;

Class 1 Social Landlord means a community housing provider registered under, and in accordance with, the HRTM Act and the Housing Restructuring and Tenancy Matters (Community Housing Provider) Regulations 2014 as a *class 1: social landlord*;

Comparable Geographic Spread means, in respect of, as applicable:

- (a) Renewed Properties where clause 9.2(b)(ii) applies, that the Properties selected by the Provider as Renewed Properties provide a geographical spread that is not materially disproportionate in light of the number of Renewed Properties compared with all Properties in the Agreed Pool of Properties (in terms of geography and Letting Areas) to the geographical spread of all of the Agreed Pool of Properties at the time the Provider selects the Renewed Properties to be subject to the Renewal Notice, or as otherwise agreed by MSD, acting reasonably, in light of MSD's then-current purchasing intentions; or
- (b) New Supply Properties, that the New Supply Properties are positioned to provide a geographical spread that is not materially disproportionate when compared with all Properties in the Agreed Pool of Properties (in terms of geography and Letting Areas) to the geographical spread of all of the Agreed Pool of Properties at the time the Provider Completes a New Supply Property, or as otherwise agreed by MSD, acting reasonably, in light of MSD's then-current purchasing intentions;

Communications Plan means the plan of that name prepared and updated by the Provider in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents) and that has been Finalised under the Review Procedures;

Compensation Date is defined in Schedule 14 (Calculation of Compensation on Termination);

Compensation Sum is defined in Schedule 14 (Calculation of Compensation on Termination);

Complaints and Incidents Policy means the policy of that name prepared by the Provider as part of the Policy and Procedures Manual in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents) and that has been Finalised under the Review Procedures;

Completed means that a property has reached practical completion, all necessary code compliance certificates for that property have been obtained and that property is owned by the Asset Owner, and **Completes** and **Completion** have corresponding meanings;

Compliance Certificate means a certificate as described in paragraph 13 (Compliance Certificate) of Schedule 9 (Governance and reporting);

Conditions Precedent means the Tier 1 Conditions Precedent and the Tier 2 Conditions Precedent;

Conditions Precedent Deadline means the Tier 1 Conditions Precedent Deadline or the Tier 2 Conditions Precedent Deadline (as applicable);

Confidential Information means:

- (a) all information and trade secrets already communicated or subsequently communicated under or in connection with this Agreement or with respect to the Services or otherwise with respect to the subject matter of this Agreement including (without limitation) any information obtained:
 - (i) in the course of negotiations leading to the conclusion of this Agreement; or
 - (ii) in the performance of this Agreement;

- (b) any information about the business or property of a person including (without limitation) any information:
 - (i) relating to the financial position of that person;
 - (ii) concerning that person's suppliers and customers or its agents or brokers;
 - (iii) relating to that person's internal management, structure, personnel or strategies; or
 - (iv) comprising the terms of this Agreement (other than to the extent those terms have previously been disclosed by or with the consent of MSD under clause 43 (Confidential Information)); and
- (c) all information in respect of any materials in which any person has Intellectual Property rights in accordance with the terms of this Agreement,

and for the avoidance of doubt, does not include the Performance Metrics or any information included in a Performance Report, including the Provider's performance against the Performance Metrics;

Confirmed Change means a Change confirmed by MSD under Part 8 (Changes) being either:

- (a) any amendment or variation agreement entered into between MSD and the Provider setting out the terms and conditions of a Confirmed Change; or
- (b) a Mandatory Change Notice;

Consent means:

- (a) any consent, authorisation, permit, registration, filing, agreement, notarisation, certificate, licence, approval, or exemption from, by or with, a Governmental Entity, judicial body or stock exchange that is required to enable the Provider to observe, comply with or perform any of its obligations under this Agreement (and includes consents required to comply with Laws or as a result of the rights or discretions of any third party); and
- (b) in relation to any act, matter or thing that will be prohibited or restricted in whole or in part if a Governmental Entity, judicial body or stock exchange intervenes or acts in any way within a specified period after lodgement, filing, registration or notification of such act, matter or thing, the expiry of such period without such intervention or action;

Contamination means the presence on, in, over or under land (including both surface and ground water) of a substance at a concentration above the concentration at which the substance is normally or naturally present on, in, over or under that land (including both surface and ground water) or land or waters in the same locality, being a presence that presents a risk of harm to human health or any other feature of the Environment;

Contract Quarter means each of the following periods throughout the Contract Term (or part period at the beginning and end of the Contract Term, as applicable):

- (a) 1 January to 31 March;
- (b) 1 April to 30 June;
- (c) 1 July to 30 September; and
- (d) 1 October to 31 December;

Contract Term means the period from and including Financial Close until and including the Expiry Date, or if this Agreement ends earlier, until and including the Termination Settlement Date;

Contract Year means:

- (a) the twelve month period commencing on Financial Close; and
- (b) each subsequent 12 calendar month period during the Contract Term;

Control means, in relation to a body corporate (of any kind):

- (a) where that body corporate is a company, control or influence of, or having the capacity to control or influence, the composition of the board as defined in section 7 of the Companies Act 1993;
- (b) where that body corporate is a limited partnership, having control or influence of, or having the capacity to control or influence, the general partner(s) of that limited partnership;
- (c) being in a position to cast, or control the casting of, more than 20 per cent of:
 - (i) the maximum number of votes that may be cast at a general meeting of shareholders or partners; or
 - (ii) the voting rights (however described) attributable to the shareholding or Partnership Interests; or
- (d) having a relevant interest (as defined in sections 235 to 238 of the Financial Markets Conduct Act 2013) in more than 20 per cent of the voting products,

of that body corporate (whether alone or together with any Affiliate);

Controller means, in relation to a Change of Ownership (as the context may require), the person or body corporate that is then exercising Control or the person or body corporate to whom Control is intended to pass;

Convictions means any previous convictions or pending prosecutions, but excludes:

- (a) minor road traffic offences; and
- (b) any matter to which the Criminal Records (Clean Slate) Act 2004 applies;

CPI: National Rent Index means the CPI: National rent index (Series ref: CPIQ 9041) as published by Statistics New Zealand or any successor or replacement index to CPI: National rent index as nominated by Statistics New Zealand for the time being;

CRI Adjustment means, in respect of any Property, the difference between the CRI Amount and the Adjusted CRI for that Property;

CRI Amount means, in respect of any Property, the dollar amount specified for such Property in Schedule 3 (Agreed Pool of Properties);

CRI Creditor means the CRI Creditor under the Financier Direct Deed;

CRI Index means the Corelogic NZ Quarterly House Price Index for the Tauranga territorial authority region;

CRI Mortgage means the mortgage registered over a Property that secures the Crown Retained Investment;

CRI Mortgage Terms means the form of instrument setting out the base terms and conditions as set out in Schedule 16 (CRI Mortgage Instrument);

CRI Pool is defined in clause 15.4(d)(ii)(A);

CRI to Value Ratio means, at any time, the ratio of the aggregate Crown Retained Investment in all Properties to Approved Valuation at that time;

Crown Retained Investment or **CRI** means MSD's future right to receive payment of an amount that is secured by a CRI Mortgage registered against each Original Property, each Substitute Property and each New Supply Property, being (on any date):

- (a) in respect of any Original Property (excluding any Original Returned Property), the CRI Amount for that Original Property (Indexed by the CRI Index to the Relevant Date);
- (b) in respect of any Substitute Property, the CRI Amount for the Original Property for which that Substitute Property was substituted (Indexed by the CRI Index to the Relevant Date), unless otherwise agreed to the contrary between the parties;
- (c) in respect of any New Supply Property, the CRI Amount for the New Supply Property (Indexed by the CRI Index to the Relevant Date); and
- (d) in respect of any Original Returned Property, the CRI Amount for the Original Returned Property (Indexed by the CRI Index to the Relevant Date);

Debt Balance at Expiry means the amount of debt which is the lower of:

- (a) the Asset Owner's estimated debt balance at expiry (as forecast at the time the Economic Viability Test calculation is undertaken);
- (b) [REDACTED] plus any debt raised by the Asset Owner for reconfiguration or redevelopment of the Agreed Pool of Properties approved by MSD under clause 15.4 (Reconfiguration requiring MSD's consent); and
- (c) the amount of debt at expiry that would give a Loan to Value Ratio of [REDACTED] using the most recent Approved Valuation,

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provided that debt included in the above definition will only include debt that is secured against the Agreed Pool of Properties, and where used in paragraphs (a) and (b) of this definition, will be reduced pro-rata if the portfolio of Renewed Properties is less than all Properties in the Agreed Pool of Properties;

Debt Collection Policy means the policy of that name prepared by the Provider as part of the Policy and Procedures Manual in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents) and that has been Finalised under the Review Procedures;

Defect means any defect in any Property that:

- (a) has an adverse effect on any person's health, safety or security;
- (b) has an adverse effect on the functionality of the asset in question; or
- (c) has a material impact on tenant amenity,

and includes every non-compliance with any Property Management Requirement, in each case whether arising prior to or after Financial Close;

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Defect Priority Framework means the framework set out as annexed to Schedule 13 (Helpdesk and Availability Requirements), which sets out various sub-classifications relating to “OTH” Defects;

Deferred CRI is defined in clause 9.8(b);

Deferred Permanent Rectification Period has the meaning given to it in paragraph 2.4(a)(i) (Temporary Rectification) of Schedule 13 (Helpdesk and Availability Requirements);

De-Indexed is defined in clause 3.6 (De-escalation);

Delivery Proposal means the Provider’s proposed delivery solution, as set out in Schedule 6 (Property Management Requirements) in relation to the Property Requirements, in Part 3 (Tenancy services) of Schedule 7 (Tenancy Management Requirements) in relation to those Tenancy Management Requirements in Part 3 of Schedule 7 and in paragraph 1 (Helpdesk) of Schedule 13 (Helpdesk and Availability Requirements), which form part of the Property Management Requirements, the Tenancy Management Requirements and the Helpdesk requirements respectively;

Department of Corrections means the Government department of that name that has an inter-agency agreement with MSD to share information about Child Sex Offenders;

Developed IP is defined in clause 45.1(b);

Director’s Certificate means a certificate in the form set out in Annexure 1 (Director’s Certificate) to Schedule 1 (Conditions Precedent);

Disengagement Period means:

- (a) in the case of this Agreement reaching the Expiry Date, the period from the Expiry Date until all Disengagement Services have been completed, and all required documentation has been delivered to MSD, to the reasonable satisfaction of MSD; or
- (b) in the case of termination of this Agreement, the period from the Actual Termination Date until all Disengagement Services have been completed, and all required documentation has been delivered to MSD, to the reasonable satisfaction of MSD;

Disengagement Plan means the disengagement plan established by the Provider in accordance with Part 16 (Disengagement) and Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents), that has been Finalised under the Review Procedures;

Disengagement Services means the services to be provided by the Provider in accordance with Part 16 (Disengagement) of this Agreement, and includes delivery of all assets, records, information, data and other tangible or intangible deliverables specified in the Disengagement Plan (or otherwise required in accordance with clause 68.2 (Disengagement Services));

Dispute has the meaning given to it in clause 70.1 (Notice of Dispute);

Dispute Resolution Procedures means the procedures for hearing and resolving Disputes as set out in Part 17 (Dispute resolution);

Disputed Amount has the meaning given to it in clause 39.5 (Disputed Amounts);

Distributed CRI Amount means the Lifted CRI applicable to the relevant Original Property that was utilised for the purpose of any reconfiguration or redevelopment to deliver (in whole or in part) on the New Supply Commitment distributed on a pro rata basis according to each respective council capital rates valuation applicable to each Original Returned Property and each New Supply Property that is returned to the Agreed Pool of Properties in conjunction with that Original Returned Property;

Dollars means New Zealand dollars or any other currency that is for the time being the lawful currency of New Zealand;

Economic Viability Test is defined in clause 9.7(b);

Emergency Procedures and Business Continuity Manual means the manual of that name prepared by the Provider as part of the Policy and Procedures Manual in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents) and that has been Finalised under the Review Procedures;

Encumbrance means the first ranking in priority encumbrance registered on the titles to the Properties (in the case of the Original Properties, on or before the Execution Date) which secures an obligation that a Property is used in accordance with the terms of a 'Capacity Contract', which primarily means that the Property should only be used for social housing purposes;

Environment includes all aspects of the surroundings of human beings including:

- (a) the physical characteristics of those surroundings such as land, water and the atmosphere;
- (b) the biological characteristics of those surroundings such as animals, plants and other forms of life; and
- (c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures;

Execution Date means the date this Agreement is signed by all parties;

Exercise Notice is defined in clause 16.2(a);

Existing Tenants means those tenants that have been transferred to the CHP from HNZ as at Settlement in accordance with the Sale and Purchase Agreement;

Expert Determination means determination by an Independent Expert in accordance with clause 71 (Expert Determination);

Expiry Date means:

- (a) the date 25 years from Financial Close (**Initial Expiry Date**); or
- (b) where this Agreement has been renewed in accordance with clause 9.2 (Renewal), means the date set out in a Renewal Notice as being the new Expiry Date;

Expiry Payment Date means the earlier of:

- (a) the date that falls on the five year anniversary of the Expiry Date; and
- (b) in relation to a Non-Renewal Property that the Asset Owner sells to determine the Net Proceeds of Sale, the settlement date (or such deferred payment date) for the sale of that Non-Renewal Property following which the Asset Owner is put in sufficient funds to pay, to MSD, the MSD Expiry Proportion, provided that such payment is made no later than the five year anniversary of the Expiry Date,

or such other date as may be agreed between the parties as being the Expiry Payment Date;

Fast Track Priority Social Housing Clients means those Social Housing Clients that MSD considers to be most in need of social housing and who should be given highest priority by the Provider and placed at the top of the housing register maintained by MSD. These Social

Housing Clients may be identified with an 'F' or other similar distinguishing tag next to the Social Housing Client's listing and any other ordinary Priority Rating assigned to that Social Housing Client as outlined in the Shortlist;

Final Portfolio Properties is defined in paragraph 1.1 (Definitions) of Schedule 14 (Calculation of Compensation on Termination);

Finalised has the meaning give to it in Part 2 (Review Procedures) of Schedule 8 (Reviewable Documents);

Financial Close means the date on which the last of the Tier 2 Conditions Precedents is satisfied or waived;

Financial Close Adjustment Protocol means the financial close adjustment protocol as defined in the Sale and Purchase Agreement;

Financial Records is defined in clause 25.2 (Financial Records);

Financier Direct Deed means the deed so named and made between, amongst others, MSD, the Provider and the Agent in the form of Annexure 1 (Financier Direct Deed) to Schedule 4 (Project and Ancillary Documents);

Financing Agreements means all or any of the agreements or instruments entered into or to be entered into by the Provider (or a Provider Entity) relating to the debt financing of the transaction and the Provider's delivery of its obligations under this Agreement (including any agreements or instruments to be entered into by the Provider (or a Provider Entity) relating to the re-scheduling of their indebtedness or any Refinancing);

Financing Default means any event of default (however described) in respect of the Provider under the Senior Financing Agreements;

First New Supply Period is defined in clause 14.2(a)(i);

Force Majeure Event means any:

- (a) cyclone, tornado, earthquake, natural disaster, landslide, tsunami, flood, volcanic eruption or mudslide;
- (b) civil riot, civil rebellion, revolution, terrorism, military usurped power, act of sabotage or act of public enemy and war (declared or undeclared) or other like hostilities;
- (c) epidemics or pandemics to the extent that the Provider or its Sub-contractors, cannot, in compliance with Law, access a Property or deliver the Services;
- (d) "terrorist act" as defined in section 5 of the Terrorism Suppression Act 2002;
- (e) ionising radiation, Contamination by radioactivity, nuclear, chemical or biological Contamination not caused or contributed to by the Provider or any Provider Related Person or any Tenant; and/or
- (f) explosion or fire caused by an event referred to in paragraph (a) or paragraph (b), not caused or contributed to by the Provider or any Provider Personnel, where the Provider can demonstrate that all reasonable preventative measures were taken to minimise the cause and effect of the explosion or fire on the performance of its obligations under this Agreement;

GAAP has the meaning given to the term "generally accepted accounting practice" in section 5 of the Financial Reporting Act 2013;

General Partner means each of the Asset Owner General Partner and HoldCo General Partner and **General Partners** means both of them;

Good Industry Practice means that degree of skill, care, prudence and foresight and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of services engaged in the same type of undertaking as that of the Provider and/or any Sub-contractor under the same or similar circumstances as those contemplated by this Agreement;

Governmental Entity means any government, or any governmental or semi-governmental entity, person or authority, body politic (but excluding any political party), government department, local government authority or statutory authority and includes (unless the context otherwise requires) MSD;

Gross Proceeds of Sale means:

- (a) where a Property is not sold by the Provider, the amount that is equal to the open market value of the Property determined in accordance with Part 1 (Agreeing the valuation and sales process) of Schedule 15 (Sales Process); or
- (b) where a Property is sold by the Provider, all cash proceeds arising under or in connection with the sale of the Property less GST (if any);

GST means tax chargeable under the GST Act;

GST Act means the Goods and Services Tax Act 1985;

Health and Safety Plan means the plan of that name prepared by the Provider as part of the Policy and Procedures Manual in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents) and that has been Finalised under the Review Procedures;

Helpdesk means the helpdesk to be provided by the Provider in accordance with Schedule 13 (Helpdesk and Availability Requirements);

Helpdesk User means any Social Housing Client, any Tenant, any member of the public, any representative of MSD or any representative of the Provider who has contacted the Helpdesk for any purpose, including the notification of a Job;

High Performance Breach means any breach of the High Performance Requirements;

High Performance Requirements means the requirements specified in paragraph 1 (High Performance Requirements) of Schedule 17 (Requirements for Performance Regime);

High Suitability List means the list of Properties that the parties have agreed are the Properties that are most suitable as social housing properties and which the Provider wishes to incur significant capital expenditure in respect of, in accordance with clause 13.2 (High Suitability List);

HNZ means Housing New Zealand Corporation or Housing New Zealand Limited (as the context requires);

HoldCo General Partner means AP Holdings Tauranga Limited;

HoldCo LP means AP Holdings Tauranga 2016 LP;

HoldCo Limited Partner means Accessible Properties New Zealand Limited;

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

HSE Legislation means all statutes, regulations and other subordinate legislation in force, or that comes into force, in New Zealand while this Agreement remains current in respect of health and safety in employment (including the Health and Safety at Work Act 2015 and all regulations made under that Act);

Immediate Termination Event is defined in clause 63.2(a);

Indemnified Party means each of MSD and MSD Personnel;

Independent Expert means a person appointed for the time being under clause 71 (Expert Determination), who has suitable expertise and experience required to determine a Dispute having regard to the nature of the Dispute;

Independent Quality Assurance Report means a report (expressed as being able to be relied upon by MSD) from an appropriately qualified and experienced reviewer, in light of the size and scale of the transaction, that confirms:

- (a) that the approach to the development of the capacity building plan and operational readiness testing process is appropriate in terms of the capability required by the Provider to perform its obligations under this Agreement;
- (b) that the Transition Plan and transition processes contain the appropriate activities and level of detail in light of the size and scale of the capability building that needs to be undertaken by the Provider to put the Provider in a position to comply with its obligations under the Agreement and to avoid any risk of the Provider failing to comply with such obligations;
- (c) that the Transition Plan and transition processes have been completed as required by the Agreement (including any changes agreed between the parties);
- (d) that there are no material caveats to highlight in relation to any of the reviewer's findings;
- (e) that the reviewer has had full access to all required materials and Provider Personnel necessary to undertake its review activities; and
- (f) that the Provider has resolved any material issues that had been raised by the reviewer during the course of its review process;

Indexation Component means:

- (a) in respect of MSD's Indexation Component, the difference between:
 - (i) the CRI as at the Put Release Date for the Property; and
 - (ii) the CRI, in respect of that Property, on Financial Close; and
- (b) in respect of the Provider's Indexation Component, the difference between:
 - (i) the Indexed Provider Price, on the Put Release Date for the Property; and
 - (ii) the Initial Provider Price in respect of that Property;

Indexed is defined in clause 3.5 (Indexation and replacement of indices);

Indexed Provider Price means, in respect of any Property and any date, the Initial Provider Price, Indexed to that date by application of the CRI Index;

Ineligible Tenant means that:

- (a) a person was a Social Housing Client but MSD has notified the Provider in accordance with paragraph 3(a) (Tenancy review and ineligibility of Tenant as Social Housing Client) of Annexure 3 (Tenant and Tenancy changes and notification) to Schedule 7 (Tenancy Management Requirements) that the person is no longer eligible to be a Social Housing Client, and the person's status as an Ineligible Tenant will be effective from the Cessation Date; or
- (b) a person was a tenant in a Property under a Short-Term Private Rental, and continues to be a tenant in that Property following the expiry of the Short-Term Rental Period;

Initial Expiry Date is defined in paragraph (a) of the definition of Expiry Date in this clause 1;

Initial New Supply Properties is defined in clause 14.2(a)(i);

Initial Provider Price means, in respect of any Property, the amount set out in Schedule 3 (Agreed Pool of Properties) in respect of that Property, as updated at Financial Close in accordance with the Financial Close Adjustment Protocol in respect of the Original Properties (other than Original Returned Properties) and on the basis summarised in clause 12.5 (Updating Schedule 3 (Agreed Pool of Properties));

Initial Shortlist is defined in paragraph 2.1(a) (Initial Shortlist) of Annexure 2 (Tenanting Vacant Properties process) to Schedule 7 (Tenancy Management Requirements);

Insolvency Event means, in relation to a person, any of the following events:

- (a) the presentation of an application for liquidation of that person that is not discharged within 30 days of its filing or that is not demonstrated to MSD prior to the expiry of that 30 day period as being an application that is frivolous, vexatious or relates to a liability that has been paid in full by the Provider;
- (b) entering into, or issuing any formal proposal or resolution to enter into, any compromise or scheme of arrangement with all or some of that person's creditors, except as part of a solvent reconstruction or amalgamation previously approved by MSD in writing;
- (c) the appointment of a liquidator, receiver, statutory manager, administrator or similar official to that person;
- (d) the suspension or threatened suspension by that person of the payment of that person's debts generally;
- (e) the cessation by that person of its business in New Zealand;
- (f) the enforcement of any security against the whole or a substantial part of that person's assets; or
- (g) other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

Insurance Policy means any policy or contract for insurance that is required to be procured and maintained under clause 59.2 (Specified insurances);

Intellectual Property means patents, registered designs, petty patents, utility models, trade marks (including logos and trade dress), domain names, copyright, circuit layouts, rights in computer software and databases, rights in inventions, know how and business process and methods, (in each case) whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection that are capable of intellectual property protection under Law;

Intellectual Property Claim means any third party actions, Claims and/or demands made against an Indemnified Party that possession or utilisation by an Indemnified Party of the Provider Background IP or the Developed IP infringes the Intellectual Property rights of any third party;

Intellectual Property Materials means any software, firmware, documented methodology or process, documentation or other material whatsoever (including any reports, specification, plans, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions) in either or both human readable or computer readable form that wholly or partly embody or contain Intellectual Property;

Interest Coverage Ratio means the ratio of Cash Flow Available for Debt Service to Interest Expense;

Interest Expense means:

$$\text{Interest Expense} = \text{IR} \times \text{DB}$$

where:

IR = the Interest Rate; and

DB = the Debt Balance at Expiry;

Interest Rate means the aggregate of:

- (a) the then current swap rate for a term of 15 years or the term of the proposed Renewal Period (whichever period is lower);
- (b) the swap margin then charged in relation to hedging the Senior Debt; and
- (c) the credit margin then charged on the Senior Debt,

provided that in respect of (b) and (c) of this definition, where the Provider can demonstrate to MSD's reasonable satisfaction (which shall include the Provider providing evidence to MSD that a competitive process for procuring financing has been undertaken), that it cannot obtain a swap margin or credit margin (as applicable) following the then current Expiry Date on an interest-only basis that is the same or better than what is then charged on its outstanding Senior Debt, the swap margin or credit margin (as applicable) for the purpose of the Economic Viability Test assessment shall be one that reflects obtainable terms;

IRR or Income Related Rent means the lesser of:

- (a) a Social Housing Client's weekly income-related rent (as defined in section 2 of the HRTM Act) that is calculated by MSD, where an income-related rent applies for that Social Housing Client;
- (b) the Market Rent for the Property; and
- (c) any other "grandparented" rent amount that MSD has expressly agreed to in writing for an individual Social Housing Client;

IRRS or Income Related Rent Subsidy means:

- (a) where the Property is Tenanted, the Agreed Rent for the Property less the applicable IRR for the Tenant that has a Tenancy in respect of the Property; or
- (b) where the Property is Vacant, means the Agreed Rent,

and for the purpose of this definition, IRR shall be the IRR before the application of any special circumstances reduction that may be applied by the Provider in accordance with section 92(5) of the HRTM Act;

Job means:

- (a) any event, occurrence or circumstance that requires action on the part of the Provider to ensure all Property Management Requirements and associated Availability Requirements are restored and/or met;
- (b) any event, occurrence or circumstance that requires action on the part of the Provider in accordance with the Tenancy Management Requirements as a result of a call lodged with the Helpdesk by a Tenant; and
- (c) any complaint lodged with the Helpdesk by any person in relation to a Property, a Tenant, any other resident of a Property, any visitor to a Property or the actions of the Provider or any Provider Personnel;

Job Classification means, in respect of a Job, the Job Classification applicable to that Job as specified in the column entitled "Job Classification" in:

- (a) the table contained in paragraph 3.1 (Property management classifications) of Schedule 13 (Helpdesk and Availability Requirements) with respect to Property Management Requirements; or
- (b) the table contained in paragraph 3.2 (Tenancy management classifications) of Schedule 13 (Helpdesk and Availability Requirements) with respect to applicable Tenancy Management Requirements;

Join-in Request means that an existing Tenant makes a request of the Provider that another person or household member be added as a named tenant in the Tenancy Agreement;

Joint Tenancy means that there are two or more individuals named as joint tenants in a Tenancy 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 of government, any local authority, or any Governmental Entity as well as any Consents (and any conditions or requirements under them);

Legal Proceedings is defined in clause 42.2(f);

Letting Area means a geographical area identified by postcode assigned to that area by New Zealand Post Limited;

Liability includes any debt, obligation, cost (including legal costs, deductibles or increased premia), expense, loss, damage, compensation, charge or liability of any kind, actual, prospective or contingent and whether or not currently ascertainable and whether arising under or for breach of contract, in tort (including negligence), restitution, under statute (including, to the extent permitted by Law, statutory fines, penalties and criminal liability) or otherwise at Law or in equity;

Lifted CRI is defined in clause 14.3(a)(ii)(A);

Lifted CRI List means the list of properties that are not currently in the Agreed Pool of Properties (but once were Original Properties) in respect of which a Lifted CRI has been added to the New Supply Pool, as set out in paragraph 6 (Lifted CRI List) of Schedule 3 (Agreed Pool of Properties);

Limited Partnership Certificate means a certificate in the form set out in Annexure 2 (Limited Partnership Certificate) to Schedule 1 (Conditions Precedent);

Loan to Value Ratio means, at any time, the ratio of Senior Debt to Approved Valuation at that time (with Senior Debt, for the purposes of this definition, to be the maximum Senior Debt available at any time during the term of the relevant Senior Financing Agreements);

Logged Job Time, in relation to any Job, means the moment that the Job:

- (a) first comes to the attention of the Helpdesk or any Provider Personnel (including by way of text message or voicemail, in which case, the relevant time is the time the text message or voicemail was received); or
- (b) should have come to the attention of the Helpdesk or any Provider Personnel, if the Provider were complying with its obligations under this Agreement,

whichever is the earlier;

Logged Temporary Rectification Time, in relation to any Job, means the moment that the Job has satisfied both of the following criteria:

- (a) it is Temporarily Rectified; and
- (b) it has been reported by the Provider to the Helpdesk as having been Temporarily Rectified and the relevant Tenant has been notified accordingly (or reasonable attempts have been made to notify the Tenant accordingly);

Logged Permanent Rectification Time, in relation to any Job, means the moment that the Job has satisfied both of the following criteria:

- (a) it is Permanently Rectified; and
- (b) it has been reported by the Provider to the Helpdesk as having been Permanently Rectified and the relevant Tenant has been notified accordingly (or reasonable attempts have been made to notify the Tenant accordingly);

Logged Response Time, in relation to any Job, means the time of actual Response to that Job (which will, except in the case of any dispute, be the Response time as logged with the Helpdesk);

Logged Rectification Time means Logged Permanent Rectification Time or Logged Temporary Rectification Time, as applicable;

Losses means all damages, losses, Liabilities, costs, expenses (including legal expenses on a solicitor/client basis and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands and **Loss** shall be construed accordingly;

Mandatory Change Notice has the meaning given to it in clause 35.4(a);

Margin means the fixed percentages that the Provider or any Sub-contractor may charge in relation to a Change in accordance with the Change Compensation Principles to cover all overheads and administrative and corporate and other like costs and profit (including the cost of the Provider's project management services);

Margin Allowances are specified as annexed to Schedule 12 (Change Compensation Principles);

Market Rent has the meaning given to that term in paragraph (b) of the definition of market rent in the HRTM Act;

Material Adverse Effect means a material adverse effect on:

- (a) the ability of the Provider to perform and observe its obligations under any Project Document;
- (b) the rights of MSD under any Project Document; or
- (c) the ability, cost or capacity of MSD to exercise its rights or perform its obligations under any Project Document;

Maximum Occupancy Level is defined in paragraph 15.1(a) (Enforcing maximum occupancy requirements) of Schedule 7 (Tenancy Management Requirements);

Moneys Owning means all moneys that the Provider, alone or together with any other person, at any time becomes actually liable to pay to, or for the account of, MSD (alone or together with any other person) on any account whatsoever under or in relation to any Project Document (including by way of principal or interest, fees, costs, charges, expenses, indemnity or damages);

Monthly Job-logging Report means the report described in paragraph 15 (Monthly Job-logging Report) of Schedule 9 (Governance and reporting);

Moral Rights means the rights conferred on authors of copyright works under Part 4 of the Copyright Act 1994;

MSD Background IP means Background IP that is owned by MSD or any MSD Personnel or by a licensor of MSD or any MSD Personnel;

MSD Developed IP is defined in clause 45.1(c);

MSD Expiry Proportion means the proportion of the Gross Proceeds of Sale to which MSD is entitled to be paid in respect of a Property as calculated in accordance with clause 9.8;

MSD Information means any information disclosed or made available to the Provider, its Shareholders or advisers by or on behalf of MSD about or relating to the Services, including any of the Tendering Information and any report provided by MSD to the Provider with respect to any of the Properties;

MSD Operational Change means an administrative or operational Change that MSD (acting reasonably) determines will (with the payment of additional money) not have an adverse impact on the performance of the Services;

MSD Personnel means:

- (a) any employee of MSD, contractor to (excluding the Provider and any of its sub-contractors), or agent of, MSD;
- (b) any agency to whom MSD's powers have been delegated in accordance with the State Sector Act 1988 and any employee of such agency;
- (c) any employees of the Treasury, Inland Revenue, the Department of Prime Minister and Cabinet and the State Services Commission;
- (d) the Auditor General, the Deputy Auditor General and any employee of, or contractor to, the Office of the Auditor General or the Audit Office; and

- (e) any Minister of the New Zealand Government to whom the Chief Executive of MSD or the Treasury report and any staff working in that Minister's office;

MSD Social Housing Client System means the electronic system operated by MSD as a communications system between community housing providers (including the Provider) and MSD, which is used for purposes including the following:

- (a) to communicate securely about Social Housing Clients who could be a potential Tenant for a Vacant or soon to be Vacant Property;
- (b) to manage the process of placing Social Housing Clients in Properties;
- (c) to submit availability reporting and invoices; and
- (d) to communicate about changes to Tenancies or about Tenants,

such system being as notified by MSD to the Provider from time to time. As at the Execution Date, the primary MSD Social Housing Client System is called Business Online Services, which is accessible online, with a back-up system also operated by MSD in the event that Business Online Services is ever unavailable;

MSD's Representative means the person for the time being appointed by MSD as its representative under clause 21.2(a) and Part 2 (Parties' representatives) of Schedule 9 (Governance and reporting);

Net Proceeds of Sale means:

- (a) where a Property is not sold by the Provider, the amount that is equal to the open market value of the Property determined in accordance with Part 1 (Agreeing the valuation and sales process) of Schedule 15 (Sales Process) after deducting the reasonable costs incurred by the Provider in providing a property condition assessment and an open market valuation in accordance with paragraph 1(a)(i) and (ii) (Valuation and sales report) of Schedule 15 (Sales Process); or
- (b) where a Property is sold by the Provider, all cash proceeds arising under or in connection with the sale of the Property less GST (if any) after deducting the reasonable costs incurred by the Provider in providing a property condition assessment and an open market valuation in accordance with paragraph 1(b)(i) and (ii) (Valuation and sales report) of Schedule 15 (Sales Process), reasonable real estate agent's commission and marketing costs and reasonable solicitor's fees incurred in any such sale;

New Contract is defined in Schedule 14 (Calculation of Compensation on Termination);

New IRR Effective Date is defined in paragraph 4(a)(ii) (Changes to IRR) of Annexure 3 (Tenant and Tenancy changes and notifications) to Schedule 7 (Tenancy Management Requirements);

New Properties means those properties listed in paragraph 2 (New Properties i.e. no CRI Mortgage) of Schedule 3 (Agreed Pool of Properties) and **New Property** means any one of those properties;

New Provider means the person who has entered or who will enter into the New Contract with MSD;

New Supply Agreed Rent means the then-current market rent for the Property (as demonstrated by the Provider to MSD's reasonable satisfaction) provided that the market rent shall not exceed the maximum Agreed Rent amount applicable to the Typology of the relevant Property as set out in MSD's then-current purchasing intentions document for the Tauranga region (or similar MSD document outlining the maximum rents to be paid by MSD for social housing in the Tauranga region), such amount being De-Indexed to the Agreed Rent Base Date

to determine the Agreed Rent as at Financial Close. As at the Agreed Rent Base Date, the following amounts are the applicable maximum Agreed Rent amounts by Typology according to MSD's purchasing intentions:

Number of bedrooms	Agreed Rent per week (applicable as at Financial Close)
One	\$275
Two	\$350
Three	\$425
Four	\$500
Five +	\$575

New Supply Commitment is defined in clause 14.2(a)(i);

Commercial
Sensitivity

New Supply Contribution Amount means \$ [REDACTED] for each of the first 149 New Supply Properties and \$ [REDACTED] for the final New Supply Property for each New Supply Property Completed prior to expiry of the applicable New Supply Delivery Period;

New Supply Delivery Period is defined in clause 14.2 (New Supply Delivery Period);

New Supply Pool means:

$$\text{New Supply Pool} = \text{NS} + \text{L} - \text{D}$$

where:

NS = \$ [REDACTED] Commercial Sensitivity

L = the aggregate Lifted CRI in respect of all Properties then listed in the Lifted CRI List; and

D = the aggregate of any New Supply Contribution Amount deducted from the New Supply Pool in accordance with clause 14.1(b)(ii);

New Supply Properties means 150 new properties over and above the aggregate of the number of Original Properties as at Financial Close and any deferred settlement Original Properties transferred to the Asset Owner following Financial Close in accordance with the Sale and Purchase Agreement) that have been Completed, provided that such additional properties do not exceed the following Typology caps and do offer a Comparable Geographic Spread (and any one of which is a **New Supply Property**):

Number of bedrooms	Typology cap	
	First New Supply Period	First New Supply Period + Second New Supply Period (total across both periods)
One	4 properties	38 properties
Two	22 properties	48 properties
Three	Zero properties (i.e. no properties of this Typology will be accepted as New Supply Properties)	Zero properties (i.e. no properties of this Typology will be accepted as New Supply Properties)
Four	36 properties	50 properties
Five	10 properties	14 properties
Six	2 properties	2 properties
Seven	1 property	1 property

For the avoidance of doubt, any additional property that is Completed but would cause the above Typology bands to be exceeded or does not offer a Comparable Geographic Spread, shall not be a New Supply Property;

New Supply Property Capital Value means the new council-acquired capital value rating valuation for each New Supply Property once Completed, plus the difference (if positive) between the reasonably determined build costs attributable to that New Supply Property and the “improvements” value of the new council-acquired capital value rating;

New Supply Provider Price means the difference between:

- (a) the New Supply Property Capital Value for each New Supply Property (but De-Indexed back to Financial Close); and
- (b) the Distributed CRI Amount as applied to that New Supply Property;

New Zealand Building Code means Schedule 1 to the Building Regulations 1992 (or any replacement of it);

Non-Renewal Properties means:

- (a) where clause 9.2(b)(ii)(A) applies, any Property that has a CRI Mortgage registered against it and is not a Renewed Property; and
- (b) where clause 9.2(b)(iii) applies, all Properties in the Agreed Pool of Properties that have a CRI Mortgage registered against them;

Notice of Dispute is defined in clause 70.1 (Notice of Dispute);

Notifiable Event is defined in section 16 of the Health and Safety at Work Act 2015;

Notifying Party is defined in paragraph 2.4(a)(i) (Delay) of Schedule 5 (Transition Services Requirements);

Offeree is defined in paragraph 2.3(b)(ii)(A) (Making offers to Suitable Social Housing Clients on Initial Shortlist) of Annexure 2 (Tenancing Vacant Properties process) to Schedule 7 (Tenancy Management Requirements) and, for the avoidance of doubt, includes any Suitable Social Housing Client listed on a Refreshed Shortlist to whom the Provider makes an offer of rental of a Property;

Ongoing Utilisation Notice is defined in clause 9.2(b)(ii)(A);

Ongoing Utilisation Period is defined in clause 9.2(b)(ii)(A);

Open Book Basis includes (without limiting the natural meaning of that term):

- (a) the provision of all information reasonably required in order to be able to assess direct and actual costs, Losses and Margins (where payable) whether that information is held by the Provider or a Provider Related Person;
- (b) the provision of a full breakdown of all relevant preliminaries, labour, equipment, materials, sub-contract costs and Margins in a clear and transparent manner; and
- (c) the conduct by or on behalf of MSD of such audits and inspections of the Financial Records of the Provider or a Provider Related Person in order to enable MSD to verify the Provider's compliance with any “open-book” requirements specified in this Agreement;

Operating and Lifecycle Costs means the Provider's projected operating costs and asset management lifecycle costs over the relevant measurement period, to be calculated on the basis outlined in clause 9.7(d)(iii);

Operational Readiness Test means the test described in Annexure 2 (Operational Readiness Test) to Schedule 5 (Transition Services Requirements);

Operative Documents means the documentation listed in Schedule 8 (Reviewable Documents), and any other documentation agreed by MSD and the Provider to comprise Operative Documents;

Original Properties means those properties listed in paragraph 1 (Original Properties) of Schedule 3 (Agreed Pool of Properties) from time to time, and as updated in accordance with the Financial Close Adjustment Protocol to include all properties purchased under the Sale and Purchase Agreement and **Original Property** means any one of those properties;

Original Returned Property means an Original Property that was removed from the Agreed Pool of Properties for the purpose of enabling reconfiguration or redevelopment in order to deliver on the Provider's New Supply Commitment in accordance with the terms of this Agreement and has been Completed and returned (whether the same Typology or not) to the Agreed Pool of Properties in conjunction with Completing at least one New Supply Property, which is added as an Original Property in paragraph 1 (Original Properties) of Schedule 3 (Agreed Pool of Properties) at the time of return to the Agreed Pool of Properties in accordance with this Agreement;

Outstanding Work means any work required, as identified in an Asset Condition Survey, to return the Property or Properties to the then-applicable Required Standard;

Parole Services means the New Zealand Parole Board or similar authority from whom approval may be required to be sought by the Department of Corrections to enter into a Tenancy Agreement with a Social Housing Client that is a Child Sex Offender;

Partner has the meaning given to that term in section 2 of the HRTM Act;

Partnership Interest means those interests set out in section 38(1) of the Limited Partnerships Act 2008;

Payment Period means:

- (a) the period commencing on Financial Close and ending on the next Friday;
- (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 Contract Term;

Performance Breach means any breach of the Performance Requirements;

Performance Data means all reports and all source information, documentation and data required for, created, produced or prepared in accordance with the performance monitoring programme;

Performance Metrics means the performance metrics outlined in paragraph 12.4 (Performance Metrics) of Schedule 9 (Governance and reporting);

Performance Report means the report described in paragraph 12 (Performance Report) of Schedule 9 (Governance and reporting);

Performance Requirements means the requirements specified in paragraph 2 (Performance Requirements) to Schedule 17 (Requirements for Performance Regime);

Permanent Rectification means rectification measures taken by the Provider to remedy any breach of the Property Management Requirements or to meet any Tenancy Management Requirement such that, following rectification, the relevant Property Management Requirement or Tenancy Management Requirement is met, and **Permanently Rectified** shall have an equivalent meaning;

Permanent Substitute Properties means those properties listed in paragraph 3 (Permanent Substitute Properties/Returned Properties) of Schedule 3 (Agreed Pool of Properties) and **Permanent Substitute Property** means any one of those properties;

Permitted Rental means the renting of a property that was, but is no longer, in the Agreed Pool of Properties but is still subject to an Encumbrance and in relation to which MSD has given consent to use as a Permitted Rental in accordance with clauses 10.3(a) and 10.3(b);

Permitted Rental Consideration Period is defined in clause 16.6(c);

Permitted Rental Period is defined in clause 10.3(b)(ii);

Permitted Security Interest means:

- (a) a Security Interest arising solely by operation of Law and in the ordinary course of business of the Provider (including for securing payment of Tax) provided the Asset Owner is not in payment default to the holder of that Security Interest;
- (b) any Security Interest that is created or provided for by a lease for a term of more than one year (as defined in the Personal Property Securities Act 1999) in respect of which the Asset Owner is the lessee and that does not secure payment or performance of an obligation;
- (c) any Security Interest created by a Senior Financing Agreement that solely secures Senior Debt (including Swaps) to be used for the purposes of the Provider's performance of its obligations under this Agreement; or
- (d) any Security Interest created by the Encumbrance or the CRI Mortgage;

Persistent Availability Breach means, on any date, that more than 10 per cent of all Properties have not met one or more Availability Requirements for the 12 months immediately preceding that date;

Persistent Failure means, on any date, that in the 12 months immediately preceding that date:

- (a) 30 or more breaches (not being Availability Breaches, High Performance Breaches or Performance Breaches) occurred, were notified to the Provider under clause 63.3 (Notice of Breach), and were not remedied to MSD's satisfaction in accordance with clause 63.3(b); or
- (b) 40 or more breaches (not being Availability Breaches, High Performance Breaches or Performance Breaches) have occurred, have been notified to the Provider under clause 63.3 (Notice of Breach), and have been remedied to MSD's satisfaction in accordance with clause 63.3(b),

but for the purpose of this definition, a breach can only be counted towards one occurrence of a Persistent Failure under (a) or (b) above (as applicable);

Persistent High Performance Breach means, on any date, that in the 12 months immediately preceding that date:

- (a) three or more High Performance Breaches occurred, were notified to the Provider under clause 63.3 (Notice of Breach), and were not remedied to MSD's satisfaction in accordance with clause 63.3(b);
- (b) five or more High Performance Breaches have occurred, have been notified to the Provider under clause 63.3 (Notice of Breach), and have been remedied to MSD's satisfaction in accordance with clause 63.3(b),

but for the purpose of this definition, a High Performance Breach can only be counted towards one occurrence of a Persistent High Performance Breach under (a) or (b) above (as applicable);

Persistent Performance Breach means, on any date, that in the 12 months immediately preceding that date:

- (a) 10 or more Performance Breaches occurred, were notified to the Provider under clause 63.3 (Notice of Breach), and were not remedied to MSD's satisfaction in accordance with clause 63.3(b);
- (b) 20 or more Performance Breaches occurred, were notified to the Provider under clause 63.3 (Notice of Breach), and were remedied to MSD's satisfaction in accordance with clause 63.3(b),

but for the purpose of this definition, a Performance Breach can only be counted towards one occurrence of a Persistent Performance Breach under (a) or (b) above (as applicable);

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

Phase One Transition Services means all of the services described in Schedule 5 (Transition Services Requirements) as being Phase One Transition Services;

Phase Two Transition Services means all of the services described in Schedule 5 (Transition Services Requirements) as being Phase Two Transition Services;

Physical Damage Policy is defined in clause 59.2(a);

Planned Financial Close Date means 31 March 2017;

Police Vetting Report means a report on an individual issued by the Licensing and Vetting Service of the New Zealand Police or any successor to its role;

Policy and Procedures Manual means a manual containing the policy and procedures applicable to the operation and management of the Services to be prepared and updated by the Provider in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents), and that:

- (a) must include:
 - (i) a programme that sets out the manner in which the Provider will monitor its own performance in its delivery of the Property Management Services and Tenancy Management Services; and
 - (ii) all the other documents and information required to be prepared and included in the Policy and Procedures Manual in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents) and the Property Management Requirements and Tenancy Management Requirements; and
- (b) has been Finalised under the Review Procedures;

Prescribed Rate means, as at any date, three per cent above the 90 day bank bill bid settlement rate displayed on page BKBM (or its successor page) of the Reuters Monitor Screen at 10.45 am on that date;

Prevention Plan is defined in clause 63.4(c);

Principles means:

- (a) supporting the growth of a fair, efficient and effective community housing sector;
- (b) ensuring that Tenants are appropriately housed;
- (c) providing social housing of the right size and configuration, in areas it is needed;
- (d) being proactive in the Provider's concern for the broader welfare of Tenants;
- (e) cooperating with other service providers in the Provider's community to support the Tenants; and
- (f) creating opportunities to support Tenants to independence, where appropriate;

Priority Rating means a Social Housing Client's MSD-assigned priority rating based on the Social Housing Client's level of need for social housing;

Probity Event means:

- (a) offering, giving or agreeing to give to any employee or agent of, or contractor to, MSD or any other Governmental Entity any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with MSD or another Governmental Entity; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with MSD or another Governmental Entity;
- (b) entering into this Agreement or any other contract with MSD or another Governmental Entity in connection with which commission has been paid or has been agreed to be paid by the Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to MSD;
- (c) committing any offence under any Laws creating offences in respect of fraudulent acts, in respect of fraudulent acts in relation to this Agreement or any other contract with MSD or another Governmental Entity;
- (d) defrauding or attempting to defraud or conspiring to defraud MSD or another Governmental Entity; or
- (e) an event, matter or thing for which the Provider or Provider Personnel is responsible (other than an event, matter or thing for which there is another express remedy under this Agreement) that:
 - (i) constitutes a conflict of interest that is or is likely to have a material adverse effect on the ability of the Provider to perform its obligations under this Agreement or on the rights of MSD under any Project Document; or
 - (i) is or is likely to have a material adverse effect on:

- (A) the reputation or credibility of MSD or another Governmental Entity; or
- (B) the public interest (having regard to the policy objectives of MSD) and public confidence in social housing;

Probity Investigation means such probity and criminal investigations as more particularly described in clause 29.3 (Probity Investigations) to report on the character, honesty and integrity of any person as are required by Law or by MSD from time to time, to ensure that a person is fit and proper for his or her proposed or continued involvement in the performance of any of the Provider's obligations under this Agreement;

Professional Advisor means any accounting, legal, insurance, engineering or technical services professional advisor;

Project Documents means those agreements listed as "Project Documents" in Part 1 (Overview of Project Documents and Ancillary Documents) of Schedule 4 (Project and Ancillary Documents) and includes any document or agreement entered into for the purpose of supplementing, amending, replacing or novating any of those listed documents that the parties have agreed (in writing) to be a Project Document;

Prolonged Force Majeure Event means that the greater of the following periods has passed since a Force Majeure Event occurred and the impact of the Force Majeure Event is continuing:

- (a) the number of years equal to the period for which the Provider's business interruption insurance policy (in place at the commencement of the Force Majeure Event) provides cover in respect of the Force Majeure Event; and
- (b) one year;

Property means any property in the Agreed Pool of Properties from time to time and where the context requires, property includes any individual dwelling that is capable of being separately tenanted, and **Properties** means all properties in the Agreed Pool of Properties at the relevant time and where the context requires, properties includes all individual dwellings that are capable of being separately tenanted;

Property Condition Report means a written report that;

- (a) specifies the condition of each room of the Property, and outlines any damage or defects to the structure or contents of each room. For example:
 - (i) cracks, chips, holes, peeling paint;
 - (ii) water stains and mould;
 - (iii) worn, stained or broken floor coverings;
 - (iv) scratches in woodwork, especially polished floorboards;
 - (v) dust, grease, grime, dirt, oil, cobwebs;
 - (vi) dripping taps;
 - (vii) torn or deteriorated fly wire;
 - (viii) broken light fittings or blown light globes;
 - (ix) weeds, dry patches in the lawn, dying plants, overgrowth;
 - (x) problems with hot water, stove, reticulation;

- (xi) problems with locks, doors or windows; or
- (xii) signs of mice or cockroaches;
- (b) lists the furniture and chattels in the Property;
- (c) states the Rent Amount and Bond Amount due for the Property;
- (d) includes the water meter reading, if applicable; and
- (e) is signed by the Offeree and the Provider;

Property Management Requirements means the requirements and obligations on the Provider with respect to the Properties set out or referenced in Schedule 6 (Property Management Requirements), or elsewhere in this Agreement;

Property Management Services means all of those things necessary to maintain the Properties in accordance with the Property Management Requirements;

Property Requirements means each statement of MSD's specific requirements with respect to the Properties, as set out in Schedule 6 (Property Management Requirements);

Protected Disclosures Act means the Protected Disclosures Act 2000;

Protected Pool means the Properties listed in the then-current:

- (a) Reconfiguration List; or
- (b) High Suitability List;

Provider Background IP means Background IP that is owned by the Provider, or Provider Personnel or by a licensor of the Provider or Provider Personnel;

Provider Default means an Immediate Termination Event or a Remediable Provider Default;

Provider Entities means each of the General Partners and HoldCo LP, and Provider Entities means all of them;

Provider Personnel means any:

- (a) Provider Related Person; or
- (b) director, officer, employee or agent of, or contractor to, the Provider or a Provider Related Person;

Provider Related Person means any:

- (a) Affiliate of the Provider; or
- (b) Sub-contractor;

Provider's Proposal means the proposal of the Provider dated 7 June 2016 submitted in response to the request for proposal with respect to the transaction issued on 23 March 2016;

Provider's Representative means the person for the time being appointed by the Provider as its representative under clause 21.2(b) and Part 2 (Parties' representatives) of Schedule 9 (Governance and reporting);

Public Records Act means the Public Records Act 2005, and includes any standards issued by the Chief Archivist (as defined in the Public Records Act) under section 27 of the Public Records Act, as amended under section 27(1)(b) of the Public Records Act, but only to the extent that:

- (a) the Chief Archivist has stated that compliance with those standards is mandatory; and
- (b) such standards have not been revoked;

Put IRRS Amount means, in respect of a Property that has a Crown Retained Investment and is subject to an Exercise Notice, a dollar amount that is equal to the IRRS that would have been payable for the Property over the period:

- (a) from and including the date that commences on the day immediately after 26 Business Days from the date the Exercise Notice was received; and
- (b) up to and including the earlier of the settlement date (where the Property is sold in accordance with the Sales Process) and 90 days from the date the Exercise Notice is received,

for this purpose assuming that the Property was still in the Agreed Pool of Properties, but in all cases any Net Proceeds of Sale will only be applied towards this amount where the Exercise Notice took effect 26 Business Days after the Exercise Notice was received, in accordance with clause 16.5(b)(i). For the avoidance of doubt, the Property must continue to meet the Availability Requirements in clauses 11.1(b)(i) and 11.1(b)(iii) for IRRS to be calculated as being payable during this period;

Put Option is defined in clause 16.3;

Put Option Period means the period commencing on the second anniversary of Financial Close and ending on the Expiry Date;

Put Release Date is:

- (a) in relation to a Property that the Provider does not wish to sell to determine the Net Proceeds of Sale, the date that is 90 days following the Provider's receipt of an Exercise Notice; or
- (b) in relation to a Property that the Provider sells to determine the Net Proceeds of Sale, the settlement date for the sale of that Property,

or such other date agreed between the parties as being the Put Release Date;

Put Remediation Amount means, in respect of a Property that has a Crown Retained Investment and is subject to an Exercise Notice, a dollar amount that is equal to the amount that would need to be spent on remediation work to bring the Property up to the Asset Condition Standard that applies with respect to each individual Property, such amount to be determined by an independent expert in accordance with Part 1 (Agreeing the valuation and sales process) of Schedule 15 (Sales Process);

Put Transfer Notice is defined in clause 16.2(c);

Qualifying Change in Law means any Change in Law that expressly and exclusively applies to:

- (a) the Properties or a Property;
- (b) the quantification of, or eligibility for, IRRS;

- (c) the Provider, but only where the change also applies to other social housing providers providing social housing and related services under a capacity contract on similar terms to those set out in this Agreement; or
- (d) registered community housing providers (as defined in section 2 of the HRTM Act);

Quality Assurance System means the system for quality assurance to be developed by the Provider under clause 26.1 (Quality Assurance System);

Quality Assurance Plan means the plan of that name prepared by the Provider as part of the Policy and Procedures Manual in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents) and that has been Finalised under the Review Procedures;

Reconciliation Report means the report described in paragraph 14 (Reconciliation Report) of Schedule 9 (Governance and reporting);

Reconfiguration List means the list of Properties maintained by MSD that MSD has agreed, in accordance with clause 13.1(c)(i), may be included on the Reconfiguration List and which continue to be eligible for inclusion on the Reconfiguration List in accordance with the conditions imposed and the period for inclusion stipulated by MSD under that clause;

Reconfiguration Proposal means a proposal prepared by the Provider to reconfigure Properties so that they are more suitable for the needs of current and future Social Housing Clients and Tenants and includes the proposal to be prepared in relation to the New Supply Commitment under clause 14.1(a)(iii);

Records means the Service Records and the Financial Records;

Rectification Programme is defined in clause 63.4(b)(i);

Referral is defined in paragraph 2.2(c)(i) (Making Referral Request for Suitable Social Housing Client) of Annexure 2 (Tenancing Vacant Properties process) to Schedule 7 (Tenancy Management Requirements);

Referral Request is defined in paragraph 2.2(b) (Making Referral Request for Suitable Social Housing Client) of Annexure 2 (Tenancing Vacant Properties process) to Schedule 7 (Tenancy Management Requirements);

Refinancing means:

- (a) any amendment, variation, novation, supplement or replacement of any Senior Financing Agreement;
- (b) any entry into a new Senior Financing Agreement; or
- (c) the exercise of any right, or the grant of any waiver or consent under any Senior Financing Agreement,

pursuant to which the Provider assumes or incurs any new or increased Senior Debt or other borrowed money indebtedness;

Refreshed Shortlist is defined in paragraph 3.1(b) (Refreshed Shortlist) of Annexure 2 (Tenancing Vacant Properties process) to Schedule 7 (Tenancy Management Requirements);

Refreshed Shortlist Request is defined in paragraph 3.1(a)(iii) (Refreshed Shortlist) of Annexure 2 (Tenancing Vacant Properties process) to Schedule 7 (Tenancy Management Requirements);

Regulatory Authority means the authority appointed under section 159 of the HRTM Act to perform the functions and exercise the powers of the regulatory authority under Part 10 of that Act, which, as at the Execution Date, is the Ministry of Business Innovation and Employment acting through its business unit, the Community Housing Regulatory Authority;

Relationship Management Group means the relationship management group referred to in clause 21.1 (Governance), the composition, functions and processes of which are described in Schedule 9 (Governance and reporting);

Re-Let Period means the 11 Business Day period commencing on the date that the Property becomes Vacant;

Relevant Date means the date on which the CRI Mortgage for the relevant Property is required to be released;

Relevant Event means any:

- (a) Confirmed Change;
- (b) Qualifying Change in Law; and/or
- (c) exercise by MSD of its Step-in Rights under clause 56.2 (Step-in – no Provider breach) that affects the carrying out of any Services;

Relevant Index means CPI: National Rent Index, except where and to the extent that any reference to indexation in this Agreement expressly refers to an alternative index, in which case it means that alternative index;

Relevant Payment Date is defined in clause 39.4(e);

Relevant Properties is defined in clause 60.1(a);

Remaining New Supply Properties is defined in clause 14.2(a)(ii);

Remediable Provider Default is defined in clause 63.2(b);

Remediation Costs is defined in clause 1 of the Sale and Purchase Agreement;

Remediation Plan means the plan referred to in clause 19.4 (Remediation of initial Defects) and included in the Annexure (Remediation Plan) to Schedule 6 (Property Management Requirements) as may be amended in accordance with clause 19.5 (Addition of Defects to Remediation Plan);

Remediation Works means all work required to be undertaken in accordance with the Remediation Plan;

Renewal Notice is defined in clause 9.2(a);

Renewal Period is defined in clause 9.2(a);

Renewed Properties means:

- (a) in the case of a Renewal Notice issued pursuant to clause 9.2(a), all Properties in the Agreed Pool of Properties; and
- (b) in the case of a Renewal Notice issued pursuant to clause 9.2(b)(ii), means all Properties subject to the Renewal Notice but as selected by the Provider provided that such selection ensures that the Renewed Property Requirements are met,

and **Renewed Property** means any individual Property that is one of the Renewed Properties;

Renewed Property Requirements means that the:

- (a) number of Renewed Properties by Typology aligns with required number of Properties by Typology as set out in the Renewal Notice;
- (b) Properties selected as Renewed Properties meet the Asset Condition Standards at the time of selection; and
- (c) Properties selected by the Provider ensure that a Comparable Geographic Spread is maintained in respect of the Renewed Properties;

Rent Amount means the IRR or any amount that is less than the IRR where section 92(5) of the HRTM Act applies;

Rent in Advance Amount means any Rent Amount that is payable in advance of the start of the Tenancy (such amount being in compliance with the requirements of the Residential Tenancies Act);

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

Reputable Insurer means a financially sound and reputable insurer with a long term credit rating (or equivalent) of no less than:

- (a) A- from Standard & Poor's, a division of the McGraw-Hill Companies, or the successor to its ratings business; and/or
- (b) A- from A.M. Best Company, Inc, or the successor to its ratings business,

or any other financially sound and reputable insurer approved in writing by MSD (such approval not to be unreasonably withheld);

Required Insurance means an insurance that is required by the terms of this Agreement;

Required Rectification Period means, in respect of a Job, the longer of the following time periods:

- (a) the required maximum period for completing Permanent Rectification of that Job stipulated in the table in paragraph 3.1 (Property management classifications) of Schedule 13 (Helpdesk and Availability Requirements) (as applicable), calculated from the Logged Job Time for that Job; or
- (b) where a Deferred Permanent Rectification Period applies, the time of expiry of that Deferred Permanent Rectification Period, calculated from the Logged Job Time for that Job;

Required Response Period is the required maximum period for Responding to a Job stipulated in the table in paragraph 3.1 (Property management classifications) or in the table in paragraph 3.2 (Tenancy management classifications), as applicable, of Schedule 13 (Helpdesk and Availability Requirements), calculated from the Logged Job Time for that Job;

Required Standard means, in relation to an Asset Condition Survey, the required standard for the Properties, at the relevant time, as specified in the Asset Management Plan or, where applicable, the Asset Condition Standards or otherwise as discernible from the terms of this Agreement (including Schedule 6 (Property Management Requirements));

Residential Tenancies Act means the Residential Tenancies Act 1986;

Residual Value means the residual value for the Property as set out in Schedule 3 (Agreed Pool of Properties);

Response means an appropriate representative of the Provider contacting the relevant Helpdesk User to discuss the Job raised by that Helpdesk User and advising the Helpdesk User of the process for rectification of the Job raised, with the appropriate representative of the Provider being:

- (a) in the case of a Job that relates to the Property Management Requirements, the Provider's Sub-contractor responsible for rectifying the issue; and
- (b) in the case of any other Job, the Provider's Tenancy Manager for the Property or Tenant to whom the Job relates,

and **Respond**, **Responded** and **Responding** shall have equivalent meanings;

Restricted Tenant means any person:

- (a) who is not a Social Housing Client;
- (b) who is a Social Housing Client but the Provider's Class 1 Social Landlord registration has been, and continues to be, Suspended;
- (c) who is a Social Housing Client, but who has previously been accommodated by the Provider in a Property or any other property when the person was not a Social Housing Client in the period 91 days prior to when the Tenancy for the new Property would commence, unless MSD (in its absolute discretion) has given its prior written approval to that Social Housing Client becoming a Tenant in a Property or in the case of a genuine emergency; or
- (d) who has not been selected by the Provider in accordance with Annexure 2 (Tenancing Vacant Properties process) to Schedule 7 (Tenancy Management Requirements),

and for the purpose of this definition, any person referred to MSD on a Shortlist shall be deemed to be a Social Housing Client;

Retained Risk Notice means a Vendor Retained Risk Notice as defined in clause 10.3(a) of the Sale and Purchase Agreement;

Returned Properties are all Properties that have become a Returned Property as that term is defined in clause 15.2(a)(i)(B) that, once a Returned Property, are to be listed in paragraph 3 (Permanent Substitute Properties/Returned Properties) of Schedule 3 (Agreed Pool of Properties) and **Returned Property** means any one of those properties;

Revenue means the Provider's projected revenue over the relevant measurement period calculated on the basis set out in clause 9.7(d)(ii);

Review Procedures means the procedures by which Reviewable Documents are reviewed by MSD as described in Part 2 (Review Procedures) of Schedule 8 (Reviewable Documents) and includes, where Reviewable Documents previously Finalised are amended or updated, the procedures for reviewing, amending and updating such documents;

Reviewable Document means any Operative Document, together with such other documentation that the parties agree in writing should be a Reviewable Document (and including all documents described in Schedule 8 (Reviewable Documents));

Revised IRR is defined in paragraph 4(a)(i) (Changes to IRR) of Annexure 3 (Tenant and Tenancy changes and notifications) to Schedule 7 (Tenancy Management Requirements);

Sale and Purchase Agreement means the Agreement for Sale and Purchase of Real Estate to be entered into by Asset Owner and Housing New Zealand Limited on or about the Execution Date;

Sales Process means the process outlined in Schedule 15 (Sales Process);

Same Typology means in respect of a Property to be reconfigured, reinstated or substituted that the number of bedrooms and number of bathrooms is the same both before and after implementation of the reconfiguration, reinstatement or substitution (as applicable);

Schedules means the schedules to the Base Agreement, and includes all appendices, annexures and exhibits (as applicable) to such schedules;

Second New Supply Period is defined in clause 14.2(a)(ii);

Security Interest includes a **security interest** within the meaning ascribed to that term under section 17 of the Personal Property Securities Act 1999;

Security Trustee means the security trustee appointed by the Senior Lenders being, as at the Execution Date, Westpac New Zealand Limited;

Senior Debt means the financial accommodation provided by the Senior Lenders to the Asset Owner from time to time under the Senior Financing Agreements, which financial accommodation does not include any financing attributable to Properties for so long as an Encumbrance does not apply to them during the course of a reconfiguration;

Senior Financing Agreements means those Financing Agreements specified as such in Schedule 10 (Financing) and any amendments to or replacements of any Senior Financing Agreements that relate to Refinancings undertaken in accordance with clause 40 (Refinancing);

Senior Lender means a person providing financial accommodation to the Provider under the Senior Financing Agreements from time to time and includes, as applicable, any hedge counterparty;

Service Records is defined in clause 25.1 (Service Records);

Services means each and all of the services described in this Agreement in relation to the provision of social housing and related services in respect of the Properties, including all services described in, or otherwise required to be performed in order to meet the requirements of, Schedule 5 (Transition Services Requirements), Schedule 6 (Property Management Requirements), Schedule 7 (Tenancy Management Requirements), Schedule 9 (Governance and reporting) and Schedule 13 (Helpdesk and Availability Requirements);

Settlement means that Financial Close (as defined in the Sale and Purchase Agreement) has occurred;

Shareholder means any person from time to time holding share capital in HoldCo General Partner;

Shareholder Breach means:

- (a) any sale, transfer or disposal of any direct legal, beneficial or equitable interest in any or all of the shares in a General Partner; or
- (b) any sale, transfer or disposal of any direct legal, beneficial or equitable interest in any or all of the Partnership Interests in the Asset Owner or HoldCo LP,

in breach of clause 73 (Change of Ownership);

Shareholder Debt means any loan, convertible note, debt security or other instrument treated as debt in accordance with GAAP advanced, made or to be made available by:

- (a) a Shareholder (or by a person under the Control of the Shareholder's holding company (within the meaning of section 5 of the Companies Act 1993)) to the HoldCo General Partner; or
- (b) a Limited Partner (or by a person under the Control of a Limited Partner's holding company (within the meaning of section 5 of the Companies Act 1993) or if the Limited Partner is a limited partnership itself, by a person under the Control of such Limited Partner's limited partners) to the Asset Owner or HoldCo LP;

Shortlist means an Initial Shortlist or a Refreshed Shortlist;

Short-Term Private Rental is defined in clause 10.2(a);

Social Housing Client means an **eligible tenant** as defined in section 92(7) of the HRTMA Act and where used in the Base Agreement, means, where the context requires, a Social Housing Client who is a Tenant;

Sole Tenancy means that there is one individual named as the tenant in a Tenancy Agreement;

Start Date means the date on which a New Property or a Substitute Property is added to the Agreed Pool of Properties as a New Property or a Substitute Property (as applicable), or a new Agreed Rent is to apply to a Property at any time after Financial Close (for a reason other than as a result of an existing Agreed Rent being Indexed);

Statement of Satisfactory Tenancy means a positive letter of referral from the Provider;

Step-in Agent means an agent or other duly appointed advisor or contractor acting on MSD's behalf (including any other Governmental Entity or **social housing provider** as defined in the HRTM Act) appointed by MSD for the purpose of exercising some or all of its Step-in Rights;

Step-in Rights means those rights of MSD to step-in under Part 12 (MSD Step-in);

Step-out Date means the date specified as such in a notice given by MSD under clause 57.1 (Cessation);

Sub-contractor means:

- (a) any person engaged by the Provider from time to time as may be permitted by this Agreement to procure the provision of the Services (or any of them); and
- (b) includes (unless otherwise specified in this Agreement) any other person that is engaged (at any tier) to act as a sub-contractor for the purposes of this Agreement;

Sub-contractor Breakage Costs means Losses that have been or will be reasonably and properly incurred by the Provider to a Sub-contractor as a direct result of the termination of this Agreement, but only to the extent that:

- (a) the Losses are incurred in connection with the Provider's performance of its obligations under this Agreement, including in respect of the Services, including:
 - (i) any materials or goods ordered or sub-contracts placed that cannot be cancelled without such Losses being incurred;
 - (ii) any expenditure incurred in anticipation of the provision of Services in the future;

- (iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Provider's performance of its obligations under this Agreement; and
 - (iv) redundancy payment liability incurred by a Sub-contractor; and
- (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms;

Substitute Property means a Temporary Substitute Property or a Permanent Substitute Property;

Suitable Social Housing Clients means a Social Housing Client referred to the Provider through a Shortlist, or added to a Shortlist in accordance with paragraph 2.1(b) (Initial Shortlist) or paragraph 3.1(e) (Refreshed Shortlist) of Annexure 2 (Tenancing Vacant Properties process) to Schedule 7 (Tenancy Management Requirements);

Suitable Substitute Provider means a person approved by MSD (such approval not to be unreasonably withheld or delayed) as:

- (a) not being an Unsuitable Third Party;
- (b) having the legal capacity, power and agency to become a party to and perform the obligations of the Provider under this Agreement; and
- (c) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) that are sufficient to enable it to perform the obligations of the Provider under this Agreement;

Suspected Housing Fraud means the possible occurrence of:

- (a) a Social Housing Client not having declared that they have a partner;
- (b) a Social Housing Client not having declared any income they have received or may be receiving on an ongoing basis;
- (c) a Social Housing Client having supplied information to MSD when applying to become a Social Housing Client or at any other time, that differs to the information provided by the Social Housing Client to the Provider, on the Tenancy Agreement or otherwise, or is in any way misleading or false;
- (d) a Social Housing Client failing to inform MSD of circumstances that may affect their income related rent, their ongoing eligibility for social housing or their need for the particular social housing they are currently housed in;
- (e) the Social Housing Client having sublet a Property; or
- (f) any situation analogous to those in paragraphs (a) to (e) above;

Suspended means that the Provider's registration as a Class 1 Social Landlord has been suspended by the Regulatory Authority in accordance with section 169 of the HRTM Act;

Swap means an interest rate swap or other equivalent or comparable transaction entered into by the Provider and any hedge counterparty;

Tax means any present or future tax, levy, impost, deduction, charge, duty or withholding of any nature (other than GST) that is levied or imposed by a Governmental Entity, together with

interest, penalties, charges, fees, or other amounts (if any) imposed or made on or in respect of the above and Taxation will be construed accordingly;

Temporary Rectification means a course of action that will temporarily ameliorate the consequences of a Property Management Requirements-related Job, and ensure that an affected Property can continue to be used without risk to health, safety or security, whilst the Job is being permanently Rectified, and **Temporarily Rectified** shall have an equivalent meaning;

Temporary Rectification Period has the meaning given to it in paragraph 2.4 (Temporary Rectification) of Schedule 13 (Helpdesk and Availability Requirements);

Temporary Substitute Properties means those properties listed in paragraph 4 (Temporary Substitute Properties) of Schedule 3 (Agreed Pool of Properties) and **Temporary Substitute Property** means any one of those properties;

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 that complies with the Residential Tenancies Act, all other applicable Laws and the terms of this Agreement that is entered into by the CHP and a Suitable Social Housing Client (or is transferred to the CHP under or pursuant to the Sale and Purchase Agreement);

Tenancy Inspections means an inspection of the Property in accordance with paragraph 11.1 (Tenancy Inspections) of Schedule 7 (Tenancy Management Requirements);

Tenancy Inspections Policy means the policy of that name prepared by the Provider as part of the Policy and Procedures Manual in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents) and that has been Finalised under the Review Procedures;

Tenancy Management Requirements means those requirements of MSD as varied in accordance with Part 8 (Changes) or otherwise under the terms of this Agreement that set out MSD's minimum requirements for the provision of Tenancy Management Services, the initial Tenancy Management Requirements being set out in Schedule 7 (Tenancy Management Requirements) or elsewhere in this Agreement;

Tenancy Management Services means all of the services described in Schedule 7 (Tenancy Management Requirements);

Tenancy Manager means a person who is the Provider's Personnel who has frontline contact with Tenants and undertakes some or all of the Tenancy Management Services;

Tenancy Signing Notice is defined in paragraph 5.2(a) (Notifying MSD of filled Vacancy) of Annexure 2 (Tenanting Vacant Properties process) to Schedule 7 (Tenancy Management Requirements);

Tenancy Start Date means that the date that the Tenancy will commence in accordance with the Tenancy Agreement;

Tenancy Tribunal means the **Tribunal** as defined in section 2(1) of the Residential Tenancies Act;

Tenant means a tenant as named in a Tenancy Agreement while a Tenancy is in place;

Tenant Anti-social Behaviour and Damage Policy means the policy of that name prepared by the Provider as part of the Policy and Procedures Manual in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents) and that has been Finalised under the Review Procedures;

Tenant Disputes Policy means the policy of that name prepared by the Provider as part of the Policy and Procedures Manual in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents) and that has been Finalised under the Review Procedures;

Tenant Engagement Policy means the policy of that name prepared by the Provider as part of the Policy and Procedures Manual in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents) and that has been Finalised under the Review Procedures;

Tenant Overcrowding and Property Underutilisation Policy means the policy of that name prepared by the Provider as part of the Policy and Procedures Manual in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents) and that has been Finalised under the Review Procedures;

Tenant Placement Policy means the policy of that name prepared by the Provider as part of the Policy and Procedures Manual in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents) and that has been Finalised under the Review Procedures;

Tenant Transfer Policy means the policy of that name prepared by the Provider as part of the Policy and Procedures Manual in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents) and that has been Finalised under the Review Procedures;

Tenanted means that the Property is subject to a Tenancy Agreement;

Tendering Information means the invitation for expressions of interest and the request for proposals documentation issued by MSD in respect of the transaction and the Project Documents, and includes all other written information, including responses to questions, provided by MSD to the Provider or to all respondents in connection with the same;

Termination Adjustment Amount is defined in paragraph 1.1 (Definitions) of Schedule 14 (Compensation on Termination);

Termination Date means the date specified as such in a Termination Notice, in accordance with clause 61.5 (Termination Date);

Termination Event is defined in clause 61.4 (Termination);

Termination Notice means a notice of termination issued in accordance with this Agreement following the occurrence of a Termination Event;

Termination Settlement Date means the date upon which the Final Portfolio Properties are transferred to MSD, to be the same date as the Compensation Date;

Third Party Claim is defined in clause 47.1 (Notice);

Threshold Unavailability Charge is defined in paragraph 4 (Threshold Unavailability Charge) of Schedule 11 (Payment Mechanism);

Tier 1 Conditions Precedent means conditions specified in paragraph 1 (Contractual close Conditions Precedent) of Schedule 1 (Conditions Precedent);

Tier 1 Conditions Precedent Deadline means 2.00pm on the date 10 Business Days after the Execution Date;

Tier 2 Conditions Precedent means conditions specified in paragraph 2 (Financial Close Conditions Precedent) of Schedule 1 (Conditions Precedent);

Tier 2 Conditions Precedent Deadline means 2.00pm on the date 90 Business Days after the Planned Financial Close Date (adjusted as agreed in accordance with paragraph 2.4(d)(ii) of Schedule 5 (Transition Services Requirements));

Top-up Amount means the difference between the Agreed Rent and the weekly rent payable by the private rental market tenant from time to time (where the weekly rent is less than the Agreed Rent). For the avoidance of doubt, where the Provider has reduced the rent payable by the private rental market tenant on a temporary basis, including because the Provider needs to complete remediation work on the Property, the Top-up Amount will not be increased during that temporary period to cover the difference between the agreed rent as set out in the tenancy agreement and the reduced rent that the private market tenant is being charged as rent;

Transition Committee is defined in paragraph 2.5 (Transition Committee) of Schedule 5 (Transition Services Requirements);

Transition Completion Certificate means a certificate in the form attached as Annexure 3 (Transition Completion Certificate) to Schedule 5 (Transition Services Requirements);

Transition Delay is defined in paragraph 2.4(a)(i) (Delay) of Schedule 5 (Transition Services Requirements);

Transition Obligations is defined in paragraph 2.4(a)(i) (Delay) of Schedule 5 (Transition Services Requirements);

Transition Period means the period commencing on the Agreement Start Date and ending on completion of the Phase Two Transition Services;

Transition Period Phase One means the period commencing on the Agreement Start Date and ending on completion of the Phase One Transition Services;

Transition Plan means the plan setting out the Transition Services that is attached as Annexure 1 (Transition Plan) to Schedule 5 (Transition Services Requirements);

Transition Report means the report described in paragraph 10 (Transition Report) of Schedule 9 (Governance and reporting);

Transition Services means the Phase One Transition Services and the Phase Two Transition Services;

Transition Services Requirements means those requirements of MSD as varied in accordance with Part 8 (Changes) or otherwise under the terms of this Agreement that set out MSD's minimum requirements for the provision of Transition Services, the initial Transition Services Requirements being set out in Schedule 5 (Transition Services Requirements);

Typology refers to the number of bedrooms in a Property;

Unavailable means that a Property does not meet one or more of the Availability Requirements;

Unavailable for Maintenance Reasons means that a Property does not meet the Availability Requirement specified in clause 11.1(b)(i);

Unavailable for Other Reasons means that a Property does not meet one or more of the Availability Requirements specified in clauses 11.1(b)(ii) and 11.1(b)(iii);

Unavailable Tenanted Properties means Properties that are Unavailable and are Tenanted or are deemed to be Unavailable Tenanted Properties under the terms of this Agreement. For the purpose of this definition, Properties that are Tenanted but are Unavailable for Maintenance Reasons will be deemed to be Unavailable Tenanted Properties;

Unavailable Untenanted Properties means Properties that are Unavailable for Other Reasons and are not Tenanted or are deemed to be Unavailable Untenanted Properties under the terms of this Agreement;

Unavailability Threshold means, on any date, that more than 10 per cent of all Properties (excluding a Property being used at that date as a Short-Term Private Rental and any property that is Unavailable for Maintenance Reasons as a result of methamphetamine contamination) are, or are deemed to be, Unavailable for Maintenance Reasons. This definition is subject to the operation of clause 39.3(a)(i)(B)(I);

Unsuitable Third Party means any person:

- (a) whose activities are, in the reasonable opinion of MSD, incompatible with any operations or activities carried out by MSD for the purposes contemplated by this Agreement or any other of MSD's legal duties or other functions; and/or
- (b) who is, in the reasonable opinion of MSD, inappropriate because of specific information received by MSD from the Serious Fraud Office, the Police or other applicable law enforcement agency about the unsuitability of that person to act in relation to the provision of Services;

Use is defined in clause 45.1(d);

Vacancy means that the Property is Vacant;

Vacancy Notice is defined in paragraph 1.1 (Issuing Vacancy Notice) of Annexure 2 (Tenancing Vacant Properties process) to Schedule 7 (Tenancy Management Requirements);

Vacant means there is no Tenancy Agreement in place in respect of the Property and the Property has not been deliberately taken out of circulation to perform maintenance on the Property without a Tenant being in the Property, such that the Property is Unavailable for Maintenance Reasons. For the purpose of this definition, a Tenancy Agreement is only "in place" from the Tenancy Start Date until the earlier of the tenancy expiry date or tenancy termination date;

Variable EVT Inputs means:

- (a) the proposed Renewal Period;
- (b) the Properties subject to the proposed Renewal Period; and
- (c) the terms of the Agreement that would apply during the proposed Renewal Period,

each as outlined in MSD's Renewal Notice;

Vendor means the Vendor under the Sale and Purchase Agreement;

Vendor Retained Risk Claim means a Retained Risk Claim as defined in clause 10.3(a) of the Sale and Purchase Agreement;

Vulnerable Children Act means the Vulnerable Children Act 2014; and

Warning Notice means a notice issued or to be issued by MSD under clause 63.4 (Warning Notice).

2. Interpretation of Agreement

2.1 General interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to a clause, a paragraph, a part, a schedule, an exhibit, an annexure or an appendix is a reference to a clause, paragraph or part of, or a schedule, exhibit, annexure or appendix to this Agreement;
- (b) a gender includes each other gender;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a person includes:
 - (i) a partnership (including a limited partnership) and also a body of persons, whether corporate or unincorporated; and
 - (ii) reference to its respective successors in title and permitted assigns;
- (e) a reference to documentation includes:
 - (i) a reference to that document as varied, supplemented, novated or substituted from time to time; and
 - (ii) a reference to that documentation in any form, whether paper based or in electronic form encoded on or as part of any form of media;
- (f) a reference to materials means a reference to materials of any kind whether in the form of documentation, software, hardware, componentry or otherwise;
- (g) any agreement not to do a thing also constitutes an agreement not to suffer or permit or cause that thing to be done;
- (h) any reference to a consent requires the prior written consent of the party required to give that consent;
- (i) whenever the words “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation”;
- (j) the words “written” and “in writing” include email communications and any other means of reproducing words, figures or symbols in a tangible and visible form;
- (k) a reference to any legislation includes a modification of that legislation or legislation enacted in substitution for that legislation and a regulation, order-in-council and other instrument from time to time issued or made under that legislation;
- (l) headings and the table of contents are included for the purpose of ease of reference only and are not to have any effect on construction and interpretation;
- (m) the “Introduction” forms part of this Agreement;
- (n) a reference to days, other than Business Days, is a reference to any calendar day of the year;
- (o) a reference to currency is a reference to New Zealand currency;

- (p) where a word or phrase is defined in this Agreement, its other grammatical forms have a corresponding meaning;
- (q) if an obligation falls to be performed or a right is to be exercised on or by a day that is not a Business Day then, unless otherwise specified, that obligation is due to be performed or that right may be exercised on the Business Day next following that day;
- (r) none of the terms nor any of the parts of this Agreement are to be construed against a party, by reason of the fact that a term or a part was first proposed or was drafted by that party;
- (s) a reference to a “related company” is to a related company as defined in section 2(3) of the Companies Act 1993, as if each reference to “company” within the definition was to any body corporate, however and wherever incorporated; and
- (t) a party who has an obligation is to perform that obligation at its own cost, unless a term of this Agreement expressly provides otherwise.

2.2 Provider

Reference to the Provider is (depending on the context required) either a reference to the Asset Owner and the CHP both jointly and severally, or just the relevant party comprising the Provider.

2.3 Principles

- (a) The Provider must be cognisant of the Principles when delivering the Services. The obligations of the Provider under or in relation to this Agreement are to be interpreted to give effect to these Principles.
- (b) Clause 2.3(a) is not intended to be interpreted as expanding or extending any express provision of this Agreement.

Part 2 – Project Documents

3. Agreement

3.1 Scope of Agreement

This Agreement comprises the following documents, each of which is deemed to form, and to be read and construed as part of, this Agreement:

- (a) the Base Agreement;
- (b) the Schedules; and
- (c) subject to clause 3.2, each Operative Document.

3.2 Status of Operative Documents

- (a) The Provider is bound to comply with, and must perform all of its obligations under, the Operative Documents.
- (b) Each Operative Document must be submitted for review under the Review Procedures, unless otherwise specified in this Agreement. MSD may review an Operative Document under the Review Procedures, but incurs no liability and assumes no responsibility for failing or declining to do so.
- (c) The Provider acknowledges and agrees that any obligations imposed or purported to be imposed on MSD in the Operative Documents are not legally binding on MSD unless a corresponding obligation is expressly agreed to in writing by MSD, which agreement expressly refers to the terms of this clause 3.2 and is evidenced by the signature of MSD's Representative.

3.3 Precedence of documents

- (a) Where there is any ambiguity, inconsistency or conflict of obligations between the documents that comprise this Agreement, the following order of precedence will apply:
 - (i) the Base Agreement;
 - (ii) the Schedules; and
 - (iii) the Operative Documents.
- (b) Where there is any ambiguity, inconsistency or conflict of obligations within each of the documents or categories of documents identified in clause 3.3(a), then the obligation to which the Provider is subject is that determined by MSD to be the most beneficial to MSD, even where the cost of performing that obligation is higher.
- (c) Where there is any ambiguity, inconsistency or conflict of obligations between this Agreement and any of the other Project Documents, the following order of precedence will apply:
 - (i) the Financier Direct Deed;
 - (ii) this Agreement; and
 - (iii) the remaining Project Documents.

- (d) Except as otherwise expressed in this Agreement, any specific terms and conditions will prevail over any general terms and conditions.

3.4 Approvals, consents and similar actions

Neither the giving of any approval or consent, the review of any document or failure to do so, any course of action (or any failure or ongoing failure to act), or MSD's knowledge of any course of action (or failure to act) or the provisions of any agreement or document shall (unless otherwise expressly stated in this Agreement):

- (a) relieve the Provider of any of its obligations under the Project Documents;
- (b) relieve the Provider of any duty it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing that is the subject of the approval, consent, review or knowledge; or
- (c) exclude or limit MSD's rights and remedies under this Agreement.

3.5 Indexation and replacement of indices

- (a) In this Agreement, except where otherwise provided, references to amounts expressed to be "Indexed" are references to such amounts at the price reference date multiplied by:

$$\frac{I_1}{I_2}$$

where I1 is the value of the Relevant Index most recently published prior to the relevant calculation date (or in the case of the CRI Index, most recently available from Core Logic including any provisional value for the CRI Index), and I2 is the value of the Relevant Index on Financial Close, or in the case of Agreed Rent, on the Agreed Rent Indexation Date.

- (b) If there is a material change in the nature or basis of any Relevant Index, or if any Relevant Index is discontinued, the parties shall agree on an alternative index that as closely replicates the Relevant Index as is possible, and such consequential changes shall be made to the calculations provided for in this Agreement as are necessary to ensure that all figures, payments or calculations to be adjusted with reference to a Relevant Index under this Agreement shall be adjusted in a manner as similar as possible to the manner in which such figures, payments or calculations would have been undertaken as if such change had not occurred. Any Dispute regarding changes to the calculations may be referred by either party to the Dispute Resolution Procedures.

3.6 De-escalation

- (a) In this Agreement, except where otherwise provided, references to amounts expressed to be "De-Indexed" are references to such amounts at the price reference date multiplied by:

$$\frac{I_2}{I_1}$$

where I1 and I2 are defined in clause 3.5.

- (b) Where any Property (other than an Original Property) is added to the Agreed Pool of Properties after Financial Close or there is otherwise to be a change to the Agreed Rent that applies to a Property after Financial Close (for a reason other than as a result of an existing Agreed Rent being Indexed), the Agreed Rent for that Property shall, prior to

being Indexed to set the Agreed Rent for the Property as at the Start Date, be De-Indexed to the Agreed Rent Base Date.

3.7 This Agreement a tailored agreement

- (a) This Agreement is a tailored agreement as defined in section 2 of the HRTM Act to the extent it relates to the provision of social housing and any related services and payment by MSD in respect of such social housing and any related services.
- (b) For the avoidance of doubt, this Agreement:
 - (i) only relates to social housing provided from the Properties in the Tauranga region and the associated social housing services in relation to those Properties as described in this Agreement; and
 - (ii) relates to existing premises being the Original Properties, and also makes provision for this Agreement to apply to other premises, being New Properties, New Supply Properties and Substitute Properties, all of which are described in Schedule 3 (Agreed Pool of Properties).

4. Other project documentation

4.1 Ancillary Documents and Financing Agreements

- (a) The Provider has provided to MSD copies of the Ancillary Documents executed on or before the Execution Date.
- (b) Without prejudice to the provisions of clause 4.1(c) and clause 4.1(e), if for any reason and at any time:
 - (i) an amendment is made to, or a waiver is given under any Ancillary Document;
 - (ii) the Provider enters into a new Ancillary Document (or any agreement that affects the interpretation or application of any Ancillary Document); or
 - (iii) an existing Ancillary Document is terminated,

the Provider shall deliver to MSD a conformed copy of each such amendment, waiver, agreement or evidence of termination within five Business Days after the date of its execution or creation (as applicable), certified as a true copy by an officer of the Provider.
- (c) The Provider shall perform its obligations under, and observe all of the provisions of the Ancillary Documents so as to avoid any termination of the Ancillary Documents for the Provider's default and shall not:
 - (i) terminate or agree to the termination of all or part of any Ancillary Document;
 - (ii) make or agree to any material variation of any Ancillary Document;
 - (iii) in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or cause or procure that others in any material respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under any Ancillary Document; or
 - (iv) enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Ancillary Document,

unless:

- (v) it is satisfied on reasonable grounds that the proposed action, waiver or allowance would not have a Material Adverse Effect; and
 - (vi) the case of the termination or agreement to the termination of all or part of any Ancillary Document, the Provider has complied with, and is not in breach of, clause 23 (Sub-contractors), clause 72 (Assignment) and clause 73 (Change of Ownership).
- (d) Subject to clause 40 (Refinancing) the Provider shall be free to enter into, terminate, waive or amend its rights and generally deal with its Financing Agreements on such terms and conditions as it sees fit.
- (e) No entry into or termination of, amendment, waiver or exercise of a right under any Ancillary Document:
- (i) is permitted if the effect of the same would be reasonably expected to have a Material Adverse Effect; or
 - (ii) shall have the effect of increasing MSD's liabilities on early termination of this Agreement unless the Provider has obtained the prior written consent of MSD to such increased liability.

Part 3 – Participants and nature of parties' obligations

5. Participants

5.1 MSD

MSD is a party to this Agreement and is the Governmental Entity that has been appointed as the social housing agency to, amongst other functions, refer or allocate prospective tenants to social housing providers and to enter into agreements with social housing providers in respect of the provision by those social housing providers of social housing and related services for the price to be paid by MSD for those services and on any other terms and conditions as agreed between the two parties.

5.2 Asset Owner

The Asset Owner is a party to this Agreement and is the legal owner of the Properties used to provide the Services. The Asset Owner is jointly and severally liable with the CHP for all obligations expressed as obligations of the Provider under this Agreement.

5.3 CHP

The CHP is party to this Agreement, a Class 1 Social Landlord under the HRTM Act and Housing Restructuring and Tenancy Matters (Community Housing Provider) Regulations 2014 and is jointly and severally liable with the Asset Owner for all obligations expressed as obligations of the Provider under this Agreement.

5.4 Provider

The Provider is the person responsible for providing the Services. The Provider is made up of the Asset Owner and the CHP who are both jointly and severally liable for the performance of the obligations of the Provider under this Agreement.

5.5 MSD's Representative

MSD's Representative is the person from time to time appointed by MSD to act as its representative, as between MSD and the Provider, on the terms and conditions set out in this Agreement.

5.6 Provider's Representative

The Provider's Representative is the person from time to time appointed by the Provider to act as its representative, as between the Provider and MSD, on the terms and conditions set out in this Agreement.

5.7 Independent Expert

Each Independent Expert is or will be appointed jointly by MSD and the Provider to resolve Disputes in accordance with clause 71 (Expert Determination).

5.8 Senior Lenders

The Senior Lenders are to provide Senior Debt financing to the Provider in connection with its provision of the Services.

5.9 Asset Owner General Partner

Asset Owner General Partner is the company which, as at the Execution Date, is the general partner of the Asset Owner.

5.10 HoldCo LP

HoldCo LP is the limited partnership which, as at the Execution Date, is the limited partner of the Asset Owner.

5.11 HoldCo General Partner

HoldCo General Partner is the company which, as at the Execution Date, is the general partner of HoldCo LP and holds all the shares in the Asset Owner General Partner.

5.12 HoldCo Limited Partner

HoldCo Limited Partner is the company that, as at the Execution Date, is the limited partner of HoldCo LP, who, as at the Execution Date, is also the CHP.

5.13 Shareholders

The Shareholders are the persons who hold shares in HoldCo General Partner from time to time.

5.14 General

This clause 5 is intended to provide a general description of the persons involved (directly or indirectly) in the performance of this Agreement and is not intended to be an aid to interpretation or to otherwise have contractual effect.

6. Provider and MSD

6.1 No agency

The relationship of the Provider to MSD is that of an independent contractor to its customer. Nothing in any Project Document will constitute either party as the partner, agent, fiduciary, trustee, employee or officer of, or as a joint venturer with, the other party.

6.2 No authority

The Provider acknowledges that it does not have the authority to enter into contracts or incur debts on behalf of MSD. Neither party will make any contrary representation to any other person.

6.3 Mutual obligations

Each party agrees:

- (a) promptly to advise the other party on becoming aware of any material breach by it of its obligations under this Agreement;
- (b) subject to clause 7 (Nature of MSD's obligations), to take reasonable care not to do anything, or omit to do anything, that would cause the other party to be in breach of applicable Laws;

- (c) to consult with the other party as soon as practicable as to any event that may materially affect the performance of its obligations under this Agreement; and
- (d) that in fulfilling its obligations under this Agreement it will co-operate, at its own expense, (but without being compelled to incur material expenditure) with the other party to achieve the purposes and intent of this Agreement,

and neither party shall be under any obligation to perform any of the other party's obligations under this Agreement.

6.4 Allocation of risk

Whenever the Provider is obliged or required to do or undertake anything under a Project Document, then that obligation or requirement is at the risk, cost and expense of the Provider, unless that Project Document expressly provides otherwise.

6.5 Employees, agents, contractors and sub-contractors

- (a) Except where otherwise expressly provided:
 - (i) any act or omission or the misconduct of any employee, contractor, sub-contractor or agent of the Provider, in the course of the performance of or the express or implied scope of the Provider's obligations under this Agreement, is deemed to be the act, omission or misconduct of the Provider; and
 - (ii) any act or omission or the misconduct of any employee, contractor, sub-contractor or agent of MSD, in the course of the performance of or the express or implied scope of MSD's obligations under this Agreement, is deemed to be the act, omission or misconduct of MSD.
- (b) Without limitation to its actual knowledge, the Provider shall, for the purposes of this Agreement, be deemed to have such knowledge of any fact or circumstance in respect of any matter relating to this Agreement as:
 - (i) is held by any Provider Personnel; or
 - (ii) ought reasonably to be held by any Provider Personnel as a result of that person's involvement in the provision of any aspect of the Services.

6.6 MSD's acts and omissions

- (a) Where MSD exercises any right it has under clauses 6.6(a)(i), 19.4(d), 19.9(c), 26.3 (Audits), 28.6 (Failure to undertake Outstanding Works), its Step-in Rights other than as a result of a breach of the Provider's obligations under this Agreement, or pursuant to any express statutory authority to enter a Property for the purpose of undertaking an audit in, or to undertake work on, a Property, and MSD or any MSD Personnel causes damage to the Property (or verifiable damage to the property of any third party, including the property belonging to any Tenant) because of an act or omission of MSD or any MSD Personnel while undertaking such audit in or work on, the Property:
 - (i) MSD will be responsible for remedying such damage (at MSD's expense) within the Permanent Rectification Period applicable to such work or, where not so remedied, MSD shall be liable to the Provider for the cost of such remediation work;
 - (ii) MSD shall not issue any notice of breach in respect of any breach that arises as a direct result of MSD or any MSD Personnel's act or omission in respect of the Property;

- (iii) to the extent that such damage causes the Property not to meet the Availability Requirements, the Property will be deemed to be Available until such time as MSD has remedied the damage necessary to ensure that MSD's or the MSD Personnel's act or omission is not the cause of the Property failing to meet the Availability Requirements; and
 - (iv) to the extent that MSD or MSD Personnel causes verifiable damage to the property of any third party, including the property belonging to a Tenant, MSD shall be responsible for remedying the damage (at MSD's expense) or replacing the damaged property.
- (b) Notwithstanding clause 6.6(a), where MSD or any MSD Personnel is acting in accordance with the instruction or advice of the Provider, or where the Provider has not complied with its obligations under clause 26.2 (Access to premises and Properties) in respect of allowing access to a Property, and such instruction, advice or failure to comply with such obligations is the direct cause of MSD's or the MSD Personnel's act or omission causing damage, clause 6.6(a) shall not apply and the Provider shall be solely liable for any resulting damage.

7. Nature of MSD's obligations

7.1 Statutory functions

Nothing in or contemplated by any Project Document will be construed or interpreted as restricting or otherwise affecting the unfettered discretion of MSD or any other Governmental Entity to exercise any of its executive or statutory powers or functions under any Law, or to require MSD or any other Governmental Entity:

- (a) to interfere with or influence the exercise of any statutory power or discretion by any person, including MSD or a Governmental Entity;
- (b) to exercise a power or discretion in a manner that promotes the expected outcomes of the Project Documents if MSD regards that exercise as not in the public interest;
- (c) to develop or implement new policy in a manner that is only consistent with the expected outcomes of the Project Documents;
- (d) to procure legislation in the future in a manner that is only consistent with the expected outcomes of the Project Documents; or
- (e) to act in any other way that MSD regards as not in the public interest.

7.2 Claims by Provider

- (a) Anything that MSD or any other Governmental Entity does or fails to do pursuant to its executive or statutory functions and powers will be deemed not to be or cause an act or omission by MSD under a Project Document and will not entitle the Provider to make any Claim against MSD under a Project Document.
- (b) Notwithstanding clauses 7.1 and 7.2(a), MSD is not relieved from any Claim that the Provider may have against MSD for its exercise of (or failure to exercise) its executive or statutory functions or powers under any Law in a manner contrary to an express obligation of MSD under a Project Document and the existence of such obligations, and the existence and amount of such Claim will be assessed in accordance with the terms of the relevant Project Document.

7.3 No obligation to influence

The parties expressly acknowledge and agree that MSD is not obliged, in performing any of the duties and obligations of MSD under the Project Documents, to exercise a power, function or duty that is granted to or within the responsibility of any other Governmental Entity, or to influence, over-ride or direct any other Governmental Entity in the proper exercise and performance of its legal duties and functions.

7.4 Good faith

Nothing in any Project Document is to be construed as imposing any general duty of good faith on MSD to the Provider or Provider Personnel in relation to or arising out of MSD's purchase of the Services, other than to comply with the obligations (if any) expressly stated to be assumed by MSD under the Project Documents on a good faith basis.

8. Provider's due diligence

8.1 MSD Information

MSD makes no warranties nor gives any representations to the Provider as to the accuracy, completeness or fitness for any purpose of any MSD Information. The Provider shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against MSD or any MSD Personnel on grounds that any information, whether obtained from MSD or otherwise (including information made available by MSD), is incorrect or insufficient, with the exception of any MSD Personnel who have expressly provided that the Provider may rely upon certain MSD Information, but in any event, only to the extent expressly provided in the MSD Personnel's relevant statement of reliance. The Provider shall make its own enquiries as to the accuracy and adequacy of that information.

8.2 Provider to satisfy itself

(a) The Provider shall be deemed to have satisfied itself:

- (i) as to the subject matter of this Agreement (including MSD Information) and the nature and extent of the risks assumed by it under this Agreement and is solely responsible for the consequences of any misunderstanding or misinterpretation of the requirements of this Agreement;
- (ii) as to the quantity, quality, nature and extent of all resources (including human resources), materials (including Intellectual Property Materials) and facilities necessary to enable it to meet, to comply with and perform its obligations under this Agreement; and
- (iii) that it has sufficient financial resources to enable the Provider to undertake the Services, perform its other obligations and to manage the risks assumed by it under this Agreement.

(b) The Provider acknowledges and agrees that it:

- (i) has gathered all information necessary to fully inform itself as to:
 - (A) the nature of the work and materials necessary for the provision of the Services;
 - (B) all regulatory requirements of the relevant Governmental Entities in relation to the provision of the Services generally; and
 - (C) the performance of its obligations generally under this Agreement;

- (ii) has otherwise made its own independent assessment of, and has relied on its own enquiries, investigations, experience, skills and judgement in its entry into, and performance of this Agreement; and
- (iii) has not relied on any representations made, or information provided to it, by MSD that has not been independently verified by the Provider, except to the extent that the Provider has relied upon MSD Information for which any MSD Personnel have provided an express statement of reliance.

Part 4 – Commencement and duration

9. Contract term

9.1 Commencement and duration

- (a) This Agreement and the rights and obligations of the parties to this Agreement take effect as set out in clause 9.3.
- (b) Except as stated in clause 9.5, this Agreement terminates on the earlier of:
 - (i) the Expiry Date; and
 - (ii) the Termination Settlement Date.

9.2 Renewal

- (a) MSD may, subject to the Economic Viability Test being satisfied in accordance with clause 9.7, renew this Agreement for a further period from the Initial Expiry Date or subsequent Expiry Date (as applicable) (**Renewal Period**) by giving written notice (a **Renewal Notice**) to the Provider by no later than 27 months before the Initial Expiry Date or then-current Expiry Date (as applicable). Any such Renewal Period will be:
 - (i) for a term selected by MSD, being a term of between 15 and 25 years (as set out in the Renewal Notice); and
 - (ii) on the same terms as the terms of this Agreement as at the Initial Expiry Date (or then-current Expiry Date in the case of a subsequent renewal).
- (b) Where:
 - (i) MSD gives notice under clause 9.2(a), the Agreement will continue for the Renewal Period on the same terms as the terms of the Agreement as at the Initial Expiry Date (or then-current Expiry Date in the case of a subsequent renewal) and, for the avoidance of doubt, any Crown Retained Investment then in place in respect of a Property will remain in place subject to those terms, as will any CRI Mortgage and Encumbrance registered against the titles of any Properties;
 - (ii) MSD does not give notice under clause 9.2(a), but MSD wishes to continue to utilise some or all of the Properties for social housing purposes but on different terms to those then currently in place:
 - (A) MSD may, no later than 27 months before the Initial Expiry Date or then-current Expiry Date (as applicable) make an offer to the Provider by giving written notice (an **Ongoing Utilisation Notice**) to the Provider to utilise some or all of the Properties for a further term of between 15 and 25 years from the Initial Expiry Date or subsequent Expiry Date (as applicable) (**Ongoing Utilisation Period**) on terms that are no less favourable to the Provider than those terms currently offered by MSD (or MSD's successor) to other providers of social housing, by setting out the number of Properties by Typology that MSD wishes to renew the Agreement in respect of (with the actual Properties that the Ongoing Utilisation Notice will apply to being selected by the Provider, provided such selection complies with the Renewed Property Requirements and with the Provider managing the transfer of Tenants to maximise the number of Renewed Properties that are tenanted immediately following the then-current Expiry Date);

- (B) upon receipt of an offer from MSD, the process outlined in clause 9.7 will be followed to establish whether the Economic Viability Test has been met in respect of MSD's offer;
 - (C) where the Economic Viability Test is met (which is to be established in accordance with clause 9.7), the parties shall enter into a new agreement that reflects MSD's offer, to take effect on and from the Expiry Date;
 - (D) where there is any disagreement between the parties as to the terms of the agreement to be entered into, including where the Provider considers that the terms offered by MSD (or MSD's successor) are less favourable than those terms then currently offered by MSD (or MSD's successor) to other providers of social housing, this will be treated as a Dispute that is subject to Expert Determination;
 - (E) in respect of any Properties that MSD's offer does not extend to, the parties (acting reasonably) shall, prior to the Expiry Date, use reasonable endeavours to agree a timeframe in which the MSD Expiry Proportion must be paid to MSD following the Expiry Date, and if no agreement can be reached between the parties, the date by which the MSD Expiry Proportion must be paid by the Provider to MSD shall be deemed to be the Expiry Payment Date (failing which the CRI Creditor may exercise its power of sale under the CRI Mortgage);
 - (F) MSD acknowledges and confirms that the receipt by MSD of the amount due to it under (E) is in full and final satisfaction of MSD's right to receive the future payment of the Crown Retained Investment in respect of those Properties as granted under clause 17 (Grant of Crown Retained Investment and CRI Mortgage);
 - (G) MSD will arrange for any CRI Mortgage and Encumbrance registered against the title to the Property to be discharged contemporaneously with MSD's receipt of the MSD Expiry Proportion; and
 - (H) in respect of any Properties covered under (G), where the MSD Expiry Proportion will be paid after the Expiry Date, MSD shall allow the Provider to use the Properties for a purpose that does not relate to social housing provided that any such use does not de-value the Properties or bring MSD into disrepute or, alternatively, where the Property is reasonably expected to be Tenanted immediately prior to the Expiry Date and MSD continues to wish to provide an income-related rent subsidy to a social housing provider in respect of that Tenant after the Expiry Date, MSD will discuss with the Provider, in good faith, providing an alternative contract (on MSD's then-current and standard terms) in relation to such Tenants;
- (iii) MSD does not give notice under clause 9.2(a) or clause 9.2(b)(ii)(A), MSD will, unless the parties have agreed an alternative arrangement that was not contemplated by this clause 9.2, be deemed to have given notice to the Provider 24 months before the Expiry Date that it does not require the Properties for social housing purposes on and from the Expiry Date, and in such a situation:
- (A) the parties (acting reasonably) shall, prior to the Expiry Date, use reasonable endeavours to agree a timeframe in which the MSD Expiry Proportion must be paid to MSD following the Expiry Date, and if no agreement can be reached between the parties, the date by which the MSD Expiry Proportion must be paid by the Provider to MSD shall be deemed to be the Expiry Payment Date (failing which the CRI Creditor may exercise its power of sale under the CRI Mortgage);
 - (B) MSD acknowledges and confirms that the receipt by MSD of the amount due to it under (A) is in full and final satisfaction of MSD's right to receive the

future payment of the Crown Retained Investment as granted under clause 17 (Grant of Crown Retained Investment and CRI Mortgage);

- (C) MSD will arrange for any CRI Mortgage and Encumbrance registered against the title to the Property to be discharged contemporaneously with MSD's receipt of the MSD Expiry Proportion; and
 - (D) where the MSD Expiry Proportion will be paid after the Expiry Date, MSD shall allow the Provider to use the Properties for a purpose that does not relate to social housing provided that any such use does not de-value the Properties or bring MSD into disrepute or, alternatively, where the Property is reasonably expected to be Tenanted immediately prior to the Expiry Date and MSD continues to wish to provide an income-related rent subsidy to a social housing provider in respect of that Tenant after the Expiry Date, MSD will discuss with the Provider, in good faith, providing an alternative contract (on MSD's then-current and standard terms) in relation to such Tenants; and
- (iv) MSD does not give notice under clause 9.2(a) or clause 9.2(b)(ii)(A), but MSD wishes to continue to utilise some or all of the Properties for social housing purposes but on different terms to those then currently in place and offers terms that are less favourable to the Provider than those terms currently offered by MSD (or MSD's successor) to other providers of social housing (and the Provider does not agree to those terms), or the parties otherwise wish to negotiate an agreement that is outside the parameters of any of the scenarios under clauses 9.2(b)(i) or 9.2(b)(ii), the parties will negotiate in good faith to reach an agreement prior to 24 months before the Expiry Date and if such agreement is not reached by this date, the process in clauses 9.2(b)(iii)(A) to (D) shall apply.
- (c) The parties must enter into any variation agreement necessary to give effect to the renewal of this Agreement where the parties have agreed that the renewal is to be undertaken on terms different from those then in force.

9.3 Date from which obligations in force

- (a) Clause 9.4 and the following provisions of this Agreement take effect from the Execution Date:
 - (i) clauses 1 and 2 (Definitions and Interpretation of Agreement);
 - (ii) clause 3 (Agreement);
 - (iii) clause 6.1 (No agency);
 - (iv) clause 6.2 (No authority);
 - (v) clause 7 (Nature of MSD's obligations);
 - (vi) clause 8 (Provider's due diligence);
 - (vii) clause 9 (Contract term);
 - (viii) clause 21 (Governance and representatives);
 - (ix) clause 29.3 (Probity Investigations);
 - (x) clause 41 (Provider warranties);
 - (xi) clause 42.1 (General undertakings);

- (xii) clause 43 (Confidential Information);
 - (xiii) clause 44 (Personal Information);
 - (xiv) clause 45 (Intellectual Property);
 - (xv) clause 50 (Limitation of Provider's liability);
 - (xvi) Part 12 (Indemnities and liability);
 - (xvii) Part 17 (Dispute resolution);
 - (xviii) Part 18 (Miscellaneous terms);
 - (xix) Schedule 1 (Conditions Precedent); and
 - (xx) Schedule 10 (Financing).
- (b) The following provisions of this Agreement take effect from the Agreement Start Date:
- (i) clause 4 (Other project documentation);
 - (ii) the remainder of Part 3 (Participants and nature of parties' obligations) not already in effect in accordance with clause 9.3(a);
 - (iii) clauses 19.1(a)(i) and 19.1(a)(v) to 19.1(a)(x) and 19.2(b) (provisions relating to Transition Services);
 - (iv) clause 22.1 (Regular reporting during Transition Period) and 22.2 (Regular reporting from Financial Close);
 - (v) clause 23 (Sub-contractors);
 - (vi) clause 24 (Compliance obligations);
 - (vii) clause 25 (Record keeping);
 - (viii) clause 26.1 (Quality Assurance System);
 - (ix) clause 26.3 (Audits);
 - (x) the remainder of clause 29 (Provider Personnel and employees) not already in effect in accordance with clause 9.3(a);
 - (xi) Part 8 (Changes);
 - (xii) the remainder of clause 42 (Provider undertakings) not already in effect in accordance with clause 9.3(a);
 - (xiii) Part 14 (Insurance and reinstatement);
 - (xiv) Schedule 2 (Provider Warranted Data);
 - (xv) Schedule 4 (Project and Ancillary Documents);
 - (xvi) Schedule 5 (Transition Services Requirements);

- (xvii) Schedule 8 (Reviewable Documents);
 - (xviii) Schedule 9 (Governance and reporting); and
 - (xix) Schedule 12 (Change Compensation Principles).
- (c) Each provision of this Agreement not specified in clause 9.3(a) or 9.4(b) takes effect on and from Financial Close.

9.4 Continuing obligations

Except as otherwise expressly provided in this Agreement or as already taken into account in the calculation of any payment on termination under this Agreement:

- (a) expiry or termination of this Agreement shall be without prejudice to any accrued rights or obligations under this Agreement as at the date of termination; and
- (b) expiry or termination of this Agreement shall not affect the continuing rights and obligations of the Provider and MSD under:
 - (i) this clause 9.4;
 - (ii) clause 25.4 (Retention of Records);
 - (iii) clause 43 (Confidential Information);
 - (iv) clause 44 (Personal Information);
 - (v) clause 45 (Intellectual Property);
 - (vi) clause 50 (Limitation of Provider liability);
 - (vii) Part 15 (Termination);
 - (viii) Part 16 (Disengagement);
 - (ix) Part 17 (Dispute resolution); and
 - (x) clause 84 (Governing law and jurisdiction),or under any other provision of this Agreement that:
 - (xi) relates to or is in connection with:
 - (A) MSD's rights to set-off and recover money;
 - (B) confidentiality;
 - (C) Intellectual Property;
 - (D) any indemnity, or other financial security given under this Agreement; or
 - (E) any right arising on termination;
 - (xii) is expressed to survive termination;

- (xiii) is required to give effect to such termination or the consequences of such termination; or
- (xiv) by implication from its nature is intended to survive termination.

9.5 Conditions Precedent

- (a) The Provider must procure that:
 - (i) the Tier 1 Conditions Precedent are satisfied by the Tier 1 Conditions Precedent Deadline; and
 - (ii) the Tier 2 Conditions Precedent are satisfied by the Tier 2 Conditions Precedent Deadline.
- (b) The Provider must notify MSD promptly when each Condition Precedent has, in the Provider's reasonable opinion, been satisfied.
- (c) MSD will notify the Provider promptly of the date on which MSD is satisfied that:
 - (i) all Tier 1 Conditions Precedent have either been satisfied, or have been unconditionally waived by MSD; and
 - (ii) all Tier 2 Conditions Precedent have either been satisfied, or have been unconditionally waived by MSD.
- (d) If the Conditions Precedent are not met to MSD's satisfaction or waived by MSD (subject to any terms or conditions imposed by MSD) by the relevant Conditions Precedent Deadline, then MSD may, at its option, terminate this Agreement. In such event no payment will be due by, nor will either party have any claim against the other under or in respect of this Agreement, save that clause 9.4 shall continue to apply and be binding on each of the parties.
- (e) Each of the Conditions Precedent is for the sole benefit of MSD and must be met to MSD's satisfaction. Conditions Precedent may only be waived in writing by MSD (in its absolute discretion). MSD agrees not to waive any Condition Precedent other than where it has received a written request to do so from the Provider.

9.6 Operational Readiness Test and Financial Close

- (a) The parties agree that:
 - (i) it is their intention that the Operational Readiness Test should be satisfied by no later than 10 Business Days prior to the Planned Financial Close Date; and
 - (ii) Financial Close is intended to occur on the Planned Financial Close Date (unless agreed otherwise including in accordance with Schedule 5 (Transition Services Requirements)) but shall not occur any earlier than the Planned Financial Close Date.
- (b) No later than 10 Business Days prior to the Provider being satisfied that it will meet the Operational Readiness Test, the Provider must give MSD notice that it believes that it will soon meet the Operational Readiness Test and shall confirm the date upon which it expects this to occur and accordingly, the date upon which it expects to issue the Transition Completion Certificate in accordance with clause 9.6(c).
- (c) When the Provider is satisfied that the Operational Readiness Test has been met, it will issue a Transition Completion Certificate to MSD.

- (d) MSD will have five Business Days from receipt of a Transition Completion Certificate to notify the Provider that it does not believe that the Operational Readiness Test has been met. Where:
 - (i) MSD does not issue a notice within the five Business Day period, the Provider will be deemed to have met the Operational Readiness Test; or
 - (ii) such a notice has been given to the Provider, the Provider will be deemed not to have met the Tier 2 Conditions Precedent and the Operational Readiness Test and this will be treated as a Dispute to be resolved in accordance with Part 17 (Dispute resolution), and shall be referred for resolution in accordance with the Dispute Resolution Procedures. If the Dispute cannot be resolved informally between the parties in accordance with those Dispute Resolution Procedures, it shall be subject to Expert Determination.
- (e) The Provider shall not be entitled to any relief or extension of time as a result of MSD giving notice in accordance with clause 9.6(d), unless the parties agree or the Independent Expert determines that there were no reasonable grounds for MSD to issue the notice.

9.7 Economic Viability Test

- (a) Where, under clause 9.2(a) or clause 9.2(b)(ii), the Economic Viability Test is required to be assessed, the following process will apply:
 - (i) the Provider will, within three months of receipt of MSD's Renewal Notice or Ongoing Utilisation Notice, provide MSD with a notice outlining whether it considers the Economic Viability Test to have been met, including providing all evidence and calculations (on an Open Book Basis) in support of this conclusion and, where an Ongoing Utilisation Notice is provided pursuant to clause 9.2(b)(ii), identifying the addresses of the Properties that the Provider has selected as Renewed Properties (**EVT Calculation Notice**);
 - (ii) where the EVT Calculation Notice concludes that the Economic Viability Test has been met, the Agreement will be deemed to have been renewed in respect of the Renewed Properties on the terms set out in the Renewal Notice or Ongoing Utilisation Notice, with such Renewal Period or Ongoing Utilisation Period to commence with effect from the end of the then current Expiry Date;
 - (iii) where the EVT Calculation Notice concludes that the Economic Viability Test has not been met, within three months of receipt of the Providers EVT Calculation, MSD will either:
 - (A) withdraw its Renewal Notice or Ongoing Utilisation Notice (with or without undertaking market testing and verification activities to establish whether the Provider's calculations are accurate);
 - (B) notify the Provider that it does not agree with the Provider's calculations and provide reasons and evidence for this position; or
 - (C) notify the Provider that it wishes to negotiate on the terms of the renewal of the Agreement so that the Economic Viability Test can be satisfied;
 - (iv) where the Provider receives a notice from MSD under clause 9.7(a)(iii)(A), the current Contract Term will be deemed to be amended so that there is 24 months between MSD's notice and the Expiry Date;
 - (v) where the Provider receives a notice from MSD under clause 9.7(a)(iii)(B), the parties will meet to discuss the disagreement in good faith, and if the parties cannot agree within 10 Business Days that the Economic Viability Test has been met and:

- (A) MSD wishes to continue with a renewal, MSD will refer the matter to Expert Determination within two Business Days of failing to reach such agreement within the 10 Business Day period, and the Expiry Date (where the Economic Viability Test is determined not to have been met) or the then current Expiry Date and the commencement of the Renewal Period or Ongoing Utilisation Period (where the Economic Viability Test is determined to have been met) (as applicable), will be deemed to be amended so that there is 24 months between the Independent Expert's determination and the then current Expiry Date; or
 - (B) MSD does not wish to continue with a renewal or fails to refer the matter to Expert Determination within the required two Business Day period, MSD will either formally notify the Provider that it withdraws its Renewal Notice or Ongoing Utilisation Notice, or will, in the case of failure to refer the matter to Expert Determination, be deemed to have withdrawn its Renewal Notice or Ongoing Utilisation Notice, and the current Contract Term will be deemed to be amended so that there is 24 months between MSD's notice or deemed notice of withdrawal of its Renewal Notice or Ongoing Utilisation Notice and the Expiry Date;
- (vi) where the Provider receives a notice from MSD under clause 9.7(a)(iii)(C), the parties will have a maximum of three months from the date of MSD's notice to reach agreement, and execute an agreement to renew the Agreement and extend the Contract Term, and where:
- (A) the parties execute an agreement to renew the Agreement and extend the Contract Term within the three month period, the then current Expiry Date and the commencement of the Renewal Period or Ongoing Utilisation Period, will be deemed to be amended so that there is 24 months between and the date of execution of the renewal agreement and the then current Expiry Date; or
 - (B) the parties fail to execute an agreement to renew the Agreement and extend the Contract Term within the three month period, MSD will be deemed to have withdrawn its Renewal Notice or Ongoing Utilisation Notice and the current Contract Term will be deemed to be amended so that there is 24 months between MSD's notice or deemed notice of withdrawal of its Renewal Notice or Ongoing Utilisation Notice and the Expiry Date.
- (b) For the purpose of this Agreement, the Economic Viability Test will be met if, in respect of the Variable EVT Inputs, an Interest Coverage Ratio of at least 1.30:1 (or, if such an Interest Coverage Ratio is not obtainable, such other higher Interest Coverage Ratio as MSD accepts as being obtainable in accordance with clause 9.7(c)) will be met in each Contract Year during the proposed Renewal Period (**Economic Viability Test**).
- (c) For the purpose of clause 9.7(b), where the Provider can demonstrate to MSD's reasonable satisfaction (which shall include the Provider providing evidence to MSD that a competitive process for procuring financing has been undertaken), that it cannot obtain senior debt financing with a minimum Interest Coverage Ratio of 1.30:1, on an interest only basis, the minimum Interest Coverage Ratio required to meet the Economic Viability Test may be increased to reflect obtainable debt financing terms.
- (d) For the purpose of ascertaining whether the Economic Viability Test has been met, the following inputs shall be used for the purpose of the calculation (which inputs shall be made available to MSD on an Open Book Basis):
- (i) the Variable EVT Inputs;
 - (ii) the Revenue, which shall be calculated:

- (A) based on the forecast Agreed Rent that will apply to the Renewed Properties in the final year of the then current Contract Term (to be forecast at the time the Economic Viability Test calculations are undertaken);
 - (B) based on a revenue indexation assumption that is based on the average annual Indexation of Agreed Rent observed over the then-current Contract Term; and
 - (C) assuming an allowance for vacancy of 2% of Agreed Rent and an allowance for bad debts of 1% of Agreed Rent (after application of the vacancy allowance); and
- (iii) the Operating and Lifecycle Costs, which shall be calculated:
- (A) based on the level of Service and Asset Condition Standards that will be required under the Agreement, once renewed in accordance with the Renewal Notice;
 - (B) based on and applying market evidence, including for example, actual rates and insurance costs;
 - (C) based on the Provider's historical performance under the Agreement during the then-current Contract Term;
 - (D) in a manner that is consistent with the costs and/or performance of other Class 1 Social Landlords; and
 - (E) utilising the results of the most recent Asset Condition Survey undertaken of each of the Renewal Properties, provided that the Provider must exclude from any costs used in ascertain the Operating Costs and Lifecycle Costs, any costs that relate to items included in the then-current Asset Management Plan that, in accordance with that Asset Management Plan, are expected to be completed before the then-current Expiry Date and any costs that relate to work that should already have been undertaken by the Provider in respect of the Renewed Properties in order to meet the requirements of this Agreement, including to meet the Asset Condition Standards,

provided that there shall be no double counting in any of the inputs measured and used in the above calculations.

- (e) MSD may, at its sole and absolute discretion, be entitled to:
- (i) benchmark any financing assumptions that the Provider has made in calculating any components used in determining whether the Economic Viability Test has been met;
 - (ii) require the Provider to make available to MSD, evidence that the Provider has run a competitive process to procure its debt financing terms, and MSD may test or challenge the robustness of any such competitive process;
 - (iii) market test, verify, benchmark, and/or have independently reviewed, any of the inputs used by the Provider in calculating whether the Economic Viability Test has been met, to ensure that MSD is reasonably satisfied that the inputs used by the Provider are competitive and appropriate; and
 - (iv) undertake an Asset Condition Survey in respect of any of the Renewed Properties in accordance with clause 28.1(d).

9.8 Application of Gross Proceeds of Sale on Expiry

Where, upon expiry of the Agreement or where MSD has only renewed the Agreement in respect of some of the Properties and the Provider is required by clause 9.2(b)(ii)(E) or clause 9.2(b)(iii)(A) to pay the MSD Expiry Proportion to MSD:

- (a) prior to the step in clause 9.8(b) occurring:
 - (i) where any Crown Retained Investment is sitting in the CRI Pool, any such Crown Retained Investment will be distributed on a pro rata basis (according to the Initial Provider Price for each Property subject to a CRI Mortgage) across all Properties in the Agreed Pool of Properties that are then subject to a CRI Mortgage; and
 - (ii) the Debt Balance on Expiry including any accrued but unpaid interest, fees and costs, will be notionally distributed on a pro rata basis (according to the Initial Provider Price for each Property subject to a CRI Mortgage) across all Properties in the Agreed Pool of Properties so that the amount on an individual Property basis for the purpose of clause 9.8(b)(i) is identified;
- (b) by no later than 4pm (or such other time as agreed between MSD and the Provider) on the Expiry Payment Date, the Provider must pay (or retain or notionally retain, as the case may be) the Gross Proceeds of Sale for each relevant Non-Renewal Property (calculated by utilising the Sales Process, with any necessary modification to reflect the relevant elements that need to be ascertained for the purpose of this clause) in the following order (with such amounts as are payable to MSD inclusive of GST, if any):
 - (i) first, to the account of the Provider (for payment to the Senior Lenders), the Debt Balance at Expiry including any accrued but unpaid interest, fees and costs, applied to the Non-Renewal Property in accordance with clause 9.8(a)(ii);
 - (ii) secondly, to the account of MSD, the outstanding Crown Retained Investment less:
 - (A) ■ percent of the Gross Proceeds of Sale; and
 - (B) the costs reasonably incurred by the Provider in providing a property condition assessment and an open market valuation in accordance with paragraph 1(b)(i) and (ii) of Schedule 15 (Sales Process), on the real estate agent's commission and marketing costs and on solicitor's fees incurred in any such sale,

of the Non-Renewed Property (the amount in (A) and (B) above together being the **Deferred CRI**);
 - (iii) thirdly, to the account of the Provider, the Residual Value for the Non-Renewal Property less an amount equal to the amount that is applied to the account of the Provider under clause 9.8(b)(i) for such Non-Renewal Property;
 - (iv) fourthly, on a pari passu basis, between:
 - (A) (to the account of MSD) an amount up to an amount that equals the Deferred CRI; and
 - (B) (to the account of the Provider) an amount up to an amount that equals the Deferred CRI; and
 - (v) fifthly, to the account of the Provider, any surplus in respect of that Non-Renewal Property; and

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- (c) notwithstanding anything in clause 39.7 (Goods and Services Tax (GST)), the amount of any consideration payable by the Provider to MSD pursuant to clause 9.8(b) shall be inclusive of GST if (and only if) the Provider is not entitled to claim a credit for input tax in connection with the supply to which the consideration relates.

Part 5 – Properties

10. Agreed Pool of Properties

10.1 Availability and exclusive use

Subject to clauses 10.2 and 10.3, the Provider must make Available, maintain and use the Properties exclusively for renting by the CHP to Social Housing Clients referred to the Provider by MSD in accordance with this Agreement. In particular, the CHP:

- (a) may only enter into a Tenancy Agreement with a person in respect of any Property where that person is a Social Housing Client that has been referred to the Provider by MSD and/or has otherwise been selected by the Provider in accordance with Annexure 2 (Tenanting Vacant Properties process) to Schedule 7 (Tenancy Management Requirements);
- (b) must not enter into a tenancy agreement in respect of a Property with a person who is, at the time of entering into the tenancy agreement, a Restricted Tenant; and
- (c) must not continue to be a party to a Tenancy Agreement after the Cessation Date in respect of a Property with any person who has become an Ineligible Tenant.

10.2 Short-Term Private Rental

- (a) Where MSD has been unable to make any Suitable Social Housing Clients available to the Provider on a Shortlist (including a manual Shortlist) or MSD does not wish to exercise its Put Option for any other reason, MSD can require that the Provider use all reasonable endeavours to rent the Property in the private rental market for a short-term period of the Provider's election, but not exceeding 12 months (a **Short-Term Private Rental**).
- (b) Where MSD wishes to exercise its right under clause 10.2(a), MSD's Representative will give notice to the Provider setting out that it wishes to exercise its right under clause 10.2(a) to require the Provider to enter into a Short-Term Private Rental (a **Short-Term Private Rental Notice**).
- (c) Where the Provider receives a Short Term Private Rental Notice from MSD, the Provider:
 - (i) will use all reasonable endeavours to tenant the Property with a private rental tenant (who will be a Restricted Tenant or Ineligible Tenant) as soon as reasonably possible after receipt of the notice, taking into account its obligations under clause 10.2(d)(iv); and
 - (ii) notify MSD's Representative in writing when it has tenanted the Property and the term of the tenancy (which shall not exceed 12 months) (the **Short-Term Rental Period**).
- (d) Where MSD requires that a Short-Term Private Rental occur:
 - (i) the Property will remain subject to, and will be permitted under, the Encumbrance;
 - (ii) MSD will not be entitled to call on the Provider to repay the Crown Retained Investment unless MSD exercises its termination rights under Part 15 (Termination);
 - (iii) MSD will not be entitled to exercise its Put Option in respect of the Property such that the Exercise Notice takes effect in accordance with clause 16.5(b) during the Short-Term Rental Period;

- (iv) during the Short-Term Rental Period, MSD will not pay IRRS to the Provider in respect of that Property, but MSD will make payment of a Top-up Amount to the Provider in respect of that Property in accordance with Schedule 11 (Payment Mechanism), provided that the Provider has demonstrated to MSD's reasonable satisfaction that:
 - (A) the Provider has used all reasonable endeavours to ensure that the Property is tenanted throughout the Short-Term Rental Period (and, for the avoidance of doubt, the Provider will receive a Top Up Amount equivalent to the Agreed Rent where, despite the Provider using all reasonable endeavours as per this clause, the Property is not tenanted at any stage during the Short-Term Rental Period);
 - (B) the Provider has used all reasonable endeavours to achieve the best rent reasonably achievable in the private rental market for that Property at that time; and
 - (C) the terms of the tenancy agreement will enable the Provider to continue to achieve that best rent reasonably achievable in the private rental market during the term of the tenancy, and the Provider exercises such rights under the tenancy agreement in this regard, except that for the avoidance of doubt, this provision does not require the Provider to undertake regular rent reviews during the term of the tenancy agreement for the purpose of finding opportunities to increase the rent,

and where there is any dispute between the parties as to the appropriate Top-up Amount payable by MSD, this dispute will be referred for resolution in accordance with clause 70 (Disputes);

- (v) the Property must cease to be subject to a tenancy agreement with a Restricted Tenant or an Ineligible Tenant, and must be available for exclusive use in accordance with clause 10.1, immediately following the end of the Short-Term Rental Period. If the Property is still subject to a tenancy agreement with a Restricted Tenant or an Ineligible Tenant and accordingly is not available for exclusive use in accordance with clause 10.1 immediately following the end of the Short-Term Rental Period, the Property will be deemed to be an Unavailable Untenanted Property until such time as the Property is available for exclusive use in accordance with clause 10.1; and
- (vi) IRRS will commence being payable at the end of the Short-Term Rental Period, provided the Provider has submitted a Vacancy Notice that specifies that the Property will be Vacant as at the end of the Short-Term Rental Period, and IRRS will continue to be payable for a period of up to 11 Business Days from the date the Vacancy commences, provided the Property is an Available Vacant Property during that up to 11 Business Day period.

10.3 Permitted Rental

- (a) The Provider may, with MSD's prior consent:
 - (i) enter into a tenancy agreement in respect of a property that is subject to an Encumbrance and that had previously been in the Agreed Pool of Properties but has ceased to be in the Agreed Pool of Properties as a result of the Put Option having been exercised in respect of that property, with a Restricted Tenant; or
 - (ii) continue to be a party to a tenancy agreement in respect of a property that is subject to an Encumbrance and that had previously been in the Agreed Pool of Properties but has ceased to be in the Agreed Pool of Properties as a result of the Put Option having been exercised in respect of that property, with any person that becomes an Ineligible Tenant.

- (b) For MSD's consent under clause 10.3(a) to be an effective consent, such consent must:
 - (i) be given in writing by MSD's Representative; and
 - (ii) specify the period of time for which the property may be tenanted by a person who is a Restricted Tenant or Ineligible Tenant, or may otherwise be used as a Permitted Rental, which must be reasonable in the circumstances (the **Permitted Rental Period**). Where a deemed Permitted Rental occurs as a result of a Substitution, the Permitted Rental Period will be until the Expiry Date for a Permanent Substitute Property or for the period that MSD has agreed that a Temporary Substitute Property may be substituted for a Property for a Temporary Substitute Property.
- (c) For the purpose of clause 10.3(b)(ii), the Permitted Rental Period will commence no earlier than the date upon which the Exercise Notice issued in relation to the Property has taken effect in accordance with clause 16.5(b).
- (d) Permitted Rental will be possible (but still subject to MSD's absolute discretion) where an Exercise Notice has been provided in respect of a Property and one of the following circumstances applies:
 - (i) an existing Tenant who will become an Ineligible Tenant when the Exercise Notice takes effect, wishes to remain living in the Property (once it is no longer in the Agreed Pool of Properties) until the Provider is able to sell the property (in circumstances where the Provider will be selling the property in order to determine the Net Proceeds of Sale); or
 - (ii) in any other exceptional circumstances, at MSD's absolute discretion.
- (e) Subject to clause 12.2(c)(i), a Permitted Rental will be deemed to have occurred in respect of a Property on a permanent or temporary basis (as applicable) where MSD has agreed that the Property will be substituted in accordance with clause 12.2 (Permanent Substitute Properties) or 12.3 (Temporary Substitute Properties) for a Substitute Property.
- (f) Where a Permitted Rental occurs:
 - (i) the property will remain subject to the Encumbrance;
 - (ii) during the Permitted Rental Period MSD will not be able to call on the Provider to repay any or all of the Crown Retained Investment in respect of that property unless MSD exercises its rights under Part 15 (Termination); and
 - (iii) during the Permitted Rental Period MSD will not pay IRRS or any Additional Payment to the Provider in respect of that property (as it will not be, or in the case of a Substitute Property will be deemed for payment purposes not to be, in the Agreed Pool of Properties).

11. Property Availability

11.1 Availability

- (a) MSD will only be required to pay IRRS in respect of a Property that is Available.
- (b) A Property will only be Available if it meets the following availability requirements and it is not otherwise deemed, in accordance with clause 11.1(c) or any other express provision in this Agreement, to be an Unavailable Untenanted Property or an Unavailable Tenanted Property:

- (i) subject to clause, 11.1(d), the Property is maintained in accordance with the Property Management Requirements in Part 2 (Overall requirements) (with “all requirements set out in this Schedule 6” being read for the purpose of this provision as a reference to “all requirements elsewhere in Part 2 and Part 3 of Schedule 6”) and Part 3 (Property CORs) of Schedule 6 (Property Management Requirements) and, where the Property does not comply with any such Property Management Requirements at any time, such non-compliance is Permanently Rectified within the Required Rectification Period;
- (ii) the Provider is in compliance with the Availability Requirements that are listed in the tables in paragraph 4 (Tenancy Management Availability Requirements) of Schedule 13 (Helpdesk and Availability Requirements) in respect of the Property, or the Property is currently deemed to meet this Availability Requirement in accordance with paragraph 2.1(c)(iv)(A) (Initial Shortlist) or paragraph 3.1(e) (Refreshed Shortlist) of Annexure 2 (Tenancing Vacant Properties process) to Schedule 7 (Tenancy Management Requirements); and
- (iii) the Provider is in compliance with clause 10.1 (Availability and exclusive use) in respect of the Property,

(Availability Requirements).

- (c) For the purpose of clause 11.1(b), any Property that is being used as a Short-Term Private Rental, is deemed for payment purposes to be an Unavailable Tenanted Property during the Short-Term Rental Period but, for the avoidance of doubt, will not be considered to be Unavailable for Maintenance Reasons or Unavailable for Other Reasons during the Short-Term Rental Period.
- (d) For the purpose of clause 11.1(b)(i), where a Property is Vacant during the Re-Let Period, the Property will still be considered to be Available even if does not meet the requirement set out in clause 11.1(b)(i).

11.2 Unavailability Threshold

On any day the Unavailability Threshold has been exceeded a Threshold Unavailability Charge will be payable by the Provider, calculated in accordance with paragraph 4 (Threshold Unavailability Charge) of Schedule 11 (Payment Mechanism).

12. Changes to Agreed Pool of Properties

12.1 New Properties

- (a) The parties may agree, at any time during the Contract Term, to add a property or properties (not being a Substitute Property) to the Agreed Pool of Properties. The addition of that property or properties will be treated as a Change to be dealt with under Part 8 (Changes) of this Agreement.
- (b) Where, in accordance with clause 12.1(a), a party wishes to propose the addition of a property or properties to the Agreed Pool of Properties:
 - (i) if the Change is being initiated by MSD, MSD’s Change Notice must:
 - (A) describe the type of property or properties MSD is looking to have included in the Agreed Pool of Properties; and
 - (B) identify whether MSD would be willing to make any sort of financial contribution towards the purchase or lease of any property or properties,

and the Provider's Change Proposal must include a completed Agreed Pool of Properties Change Form; or

- (ii) if the Change is being initiated by the Provider, the Provider's Change Proposal must outline the reason(s) why the Provider wishes to add a new property to the Agreed Pool of Properties and must include a completed Agreed Pool of Properties Change Form.
- (c) Where, through applying the Change provisions in Part 8 (Changes) of this Agreement, the parties agree to add a property or properties to the Agreed Pool of Properties:
 - (i) each property or properties shall be listed under paragraph 2 (New Properties) of Schedule 3 (Agreed Pool of Properties) as a New Property;
 - (ii) each New Property will be a Property on and from the Start Date specified for that New Property, as set out in paragraph 2 (New Properties) of Schedule 3 (Agreed Pool of Properties), or the date the Change becomes a Confirmed Change (whichever is later); and
 - (iii) the Agreed Rent will be as agreed through the Change Process to apply in respect of the New Property.

12.2 Permanent Substitute Properties

- (a) The Provider may, with MSD's approval (such approval not to be unreasonably withheld), permanently substitute a Property for a different comparable property. Whether the proposed Permanent Substitute Property is a comparable property will be at an assessment made solely by MSD (acting reasonably).
- (b) MSD's approval under clause 12.2(a) may be given subject to any terms and conditions that MSD thinks fit (acting reasonably), including the date that the substitution will take effect (**Start Date**) and whether or not MSD agrees to the Agreed Rent that the Provider proposes will apply to the Permanent Substitute Property from the Start Date.
- (c) Where MSD agrees to a Property being permanently replaced as a Permanent Substitute Property then either:
 - (i) the Provider may (prior to the substitution occurring) elect to transfer the Crown Retained Investment (and CRI Mortgage) and the Encumbrance then currently in place in respect of the Property being permanently replaced, to the Permanent Substitute Property, provided that this may only occur where the Crown Retained Investment to apply in respect of the Permanent Substitute Property (to be secured by a CRI Mortgage) will:
 - (A) be the higher of the then current Crown Retained Investment and the CRI Amount applicable to the Property; and
 - (B) ensure that the Crown Retained Investment as a percentage of the property value on the Permanent Substitute Property is the same or a lower percentage than the Crown Retained Investment as a percentage of the property value that applied in respect of the Property being substituted immediately prior to the substitution taking place (with property value meaning the then current council capital rates valuation for the Property),

and, for the purpose of this clause:

- (C) the parties must enter into a variation to record the terms and conditions of the substitution and such terms and conditions shall, unless otherwise agreed between the parties, require the removal of the Encumbrance and any CRI Mortgage from the title to any Property that is to be removed from

the Agreed Pool of Properties, provided that an Encumbrance and CRI Mortgage securing an equivalent level of Crown Retained Investment (and Crown Retained Investment to property value coverage for MSD) is contemporaneously registered against the Permanent Substitute Property; and

- (D) the CRI Amount, the Initial Provider Price and the Residual Value for the Permanent Substitute Property shall be deemed to be the same as the CRI Amount, the Initial Provider Price and the Residual Value applying to the property being permanently replaced by the Permanent Substitute Property; or
- (ii) where the situation in clause 12.2(c)(i) does not apply:
 - (A) in accordance with clause 10.3(e), the Property being substituted will be deemed to be treated as a permanent Permitted Rental; and
 - (B) for the avoidance of doubt, there will be no Crown Retained Investment in respect of the Permanent Substitute Property and no Encumbrance or CRI Mortgage will be required to be registered against the title to the Permanent Substitute Property.
- (d) Where MSD agrees to a Property being permanently replaced as a Permanent Substitute Property:
 - (i) the Permanent Substitute Property will be deemed to be added to the Agreed Pool of Properties and for this purpose:
 - (A) each property or properties shall be listed under paragraph 3 (Permanent Substitute Properties) of Schedule 3 (Agreed Pool of Properties) as a Permanent Substitute Property; and
 - (B) each Permanent Substitute Property will be a Property on and from the Start Date specified for that Permanent Substitute Property, as set out in paragraph 3 (Permanent Substitute Properties) of Schedule 3 (Agreed Pool of Properties); and
 - (ii) where clause 12.2(c)(i) applies, the Property being substituted will be removed from the Agreed Pool of Properties contemporaneously with the Encumbrance and any CRI Mortgage being removed from the title.

12.3 Temporary Substitute Properties

- (a) The Provider may, with MSD's approval (such approval not to be unreasonably withheld) temporarily substitute a Property for a different comparable property. Whether the proposed Temporary Substitute Property is a comparable property will be an assessment made solely by MSD (acting reasonably).
- (b) MSD's approval under clause 12.3(a) may be given subject to any terms and conditions that MSD thinks fit, including the date that the substitution will take effect (**Start Date**), the period of time for which the substitution may continue and whether or not MSD agrees to the Agreed Rent that the Provider proposes will apply to the Temporary Substitute Property from the Start Date (acting reasonably).
- (c) Where MSD agrees to a Property being temporarily replaced as a Temporary Substitute Property:
 - (i) in accordance with clause 10.3(e), the Property being substituted will be deemed to be treated as a Permitted Rental for a temporary period, such period being the Permitted Rental Period;

- (ii) for the avoidance of doubt, there will be no Crown Retained Investment in respect of the Temporary Substitute Property and no Encumbrance or CRI Mortgage will be required to be registered against the title to the Temporary Substitute Property; and
- (iii) the Temporary Substitute Property will be deemed to be temporarily added to the Agreed Pool of Properties and for this purpose:
 - (A) each property or properties shall be listed under paragraph 4 (Temporary Substitute Properties) of Schedule 3 (Agreed Pool of Properties) as a Temporary Substitute Property; and
 - (B) each Temporary Substitute Property will be a Property on and from the Start Date specified for that Temporary Substitute Property, as set out in paragraph 4 (Temporary Substitute Properties) of Schedule 3 (Agreed Pool of Properties) but will be deemed to be removed from being listed in paragraph 4 of Schedule 3 at the end of the applicable Permitted Rental Period for that Temporary Substitute Property.

12.4 Temporary Substitute Properties that become Unavailable for Other Reasons

If a Temporary Substitute Property ever becomes Unavailable for Other Reasons, MSD may, with effect from the date determined by MSD in its absolute discretion, such date being no earlier than the date upon which the Temporary Substitute Property first becomes Unavailable for Other Reasons:

- (a) notify the Provider that the Temporary Substitute Property shall cease to be a Temporary Substitute Property and it will be deemed to have been removed from the Agreed Pool of Properties; and
- (b) from the date notified by MSD, the property that was originally substituted will:
 - (i) cease to be a Permitted Rental;
 - (ii) be deemed to be a Property in the Agreed Pool of Properties and all information that was previously listed in Schedule 3 (Agreed Pool of Properties) in relation to that property immediately prior to the date that the property previously ceased to be in the Agreed Pool of Properties, will be deemed to apply once again to that property; and
 - (iii) itself become Unavailable for Other Reasons and, accordingly, an Unavailable Untenanted Property, from that date (and the Permitted Rental Period will be deemed to have come to an end) until such time as the Property satisfies the Availability Requirements.

12.5 Updating Schedule 3 (Agreed Pool of Properties)

- (a) The parties acknowledge that Schedule 3 (Agreed Pool of Properties) is a living Schedule that is intended to be updated from time to time in accordance with this Agreement. The purpose of this clause is to outline, in one clause, the provisions in this Agreement that either:
 - (i) deem Schedule 3 (Agreed Pool of Properties) to have been updated where certain circumstances apply; or
 - (ii) provide for MSD to update Schedule 3 (Agreed Pool of Properties) where certain circumstances apply.

For the avoidance of doubt, this clause 12.5 is included to assist the parties in understanding how Schedule 3 (Agreed Pool of Properties) is updated and shall not take precedence where it conflicts with any other provision in this Agreement.

- (b) Accordingly, and further to clause 12.5(a):
 - (i) paragraph 1 (Original Properties) of Schedule 3 (Agreed Pool of Properties) shall:
 - (A) be updated by MSD to remove Original Properties in accordance with clause 14.3(b)(i)(A) and 14.3(b)(ii)(A) as part of facilitating the delivery of the New Supply Commitment;
 - (B) be deemed to have been updated in accordance with clause 15.2(b)(v) to remove any Original Property as part of the Provider undertaking a reconfiguration that does not require MSD's consent;
 - (C) be updated by MSD to add Original Returned Properties in accordance with clause 14.4(c)(ii) as part of facilitating the delivery of the New Supply Commitment;
 - (D) be updated by MSD to remove or add any property as an Original Property (as applicable) in accordance with any variation entered into in accordance with clause 15.4(d);
 - (E) be updated by MSD in accordance with a variation entered into between the parties to remove any property as an Original Property where a Permanent Substitute Property is to replace the Original Property, in circumstances where clause 12.2(c)(i) applies; and
 - (F) be deemed to have been updated to remove a Property that is subject to an Exercise Notice in accordance with clause 16.5 (Effect of exercise of the Put Option) where a Property is subject to the Put Option;
 - (ii) paragraph 2 (New Properties) of Schedule 3 (Agreed Pool of Properties) shall:
 - (A) be updated by MSD to add any new property that is to become a Property in the Agreed Pool of Properties in accordance with clause 12.1 (New Properties);
 - (B) be deemed to have been updated to remove a Property that is subject to an Exercise Notice in accordance with clause 16.5 (Effect of exercise of the Put Option) where a Property is subject to the Put Option; and
 - (C) be deemed to have been removed as at the Expiry Date where the New Property is not a Renewed Property;
 - (iii) paragraph 3 (Permanent Substitute Properties/Returned Properties) of Schedule 3 (Agreed Pool of Properties) shall:
 - (A) be updated by MSD to add a property as a Permanent Substitute Property in accordance with clause 14.3(b)(ii)(B) as part of facilitating the delivery of the New Supply Commitment;
 - (B) be deemed to have been updated in accordance with clause 15.2(b)(xi) to add a property as a Returned Property as part of the Provider undertaking a reconfiguration that does not require MSD's consent;
 - (C) be updated by MSD in accordance with a variation entered into between the parties to remove or add a property as a Permanent Substitute Property or

Returned Property (as applicable) in circumstances where clause 15.4(d) applies;

- (D) be updated by MSD in accordance with a variation entered into between the parties to add a property as a Permanent Substitute Property in accordance with clause 12.2(d) where the property is to be added in place of an Original Property; and
 - (E) be deemed to have been updated to remove a Property that is subject to an Exercise Notice in accordance with clause 16.5 (Effect of exercise of the Put Option) where a Property is subject to the Put Option;
- (iv) paragraph 4 (Temporary Substitute Properties) of Schedule 3 (Agreed Pool of Properties) shall:
- (A) be updated by MSD to add a property as a Temporary Substitute Property in accordance with clause 14.3(b)(i)(B) as part of facilitating the delivery of the New Supply Commitment;
 - (B) be deemed to have been updated in accordance with clause 15.2(b)(v) to add a property as a Temporary Substitute Property as part of the Provider undertaking a reconfiguration that does not require MSD's consent;
 - (C) be deemed to have been updated in accordance with clause 15.2(b)(xi) to remove a property from being a Temporary Substitute Property as part of the Provider undertaking a reconfiguration that does not require MSD's consent;
 - (D) be updated by MSD to add a property as a Temporary Substitute Property in accordance with clause 12.3(c)(iii)(A) when that property is temporarily being used in place of an Original Property;
 - (E) be updated by MSD to remove a property as a Temporary Substitute Property in accordance with clause 12.3(c)(iii)(B) or 12.4(a) where that property is deemed to have ceased to be a Temporary Substitute Property in place of an Original Property; and
 - (F) be updated by MSD to remove or add a property as a Temporary Substitute Property (as applicable) in accordance with any variation entered into in accordance with clause 15.4(d);
- (v) paragraph 5 (New Supply Properties) of Schedule 3 (Agreed Pool of Properties) shall:
- (A) be updated by MSD to add a property as a New Supply Property when that New Supply Property has been Completed, in accordance with clause 14.4(b)(i) or 14.4(c)(i) (as applicable) as part of the delivery of the New Supply Commitment; and
 - (B) be deemed to have been updated to remove a Property that is subject to an Exercise Notice in accordance with clause 16.5 (Effect of exercise of the Put Option) where a Property is subject to the Put Option; and
- (vi) paragraph 6 (Lifted CRI List) of Schedule 3 (Agreed Pool of Properties) shall be updated by MSD to:
- (A) add any Original Property that is to be added to the Lifted CRI List in accordance with clause 14.3(a)(ii)(A); and
 - (B) remove any Original Property that is to be removed from the Lifted CRI List in accordance with clause 14.3(b)(i).

- (c) MSD shall, upon reasonable request by the Provider, provide a copy of the then current form of Schedule 3 (Agreed Pool of Properties) within 10 Business Days of such request being made by the Provider. Where the Provider does not agree that the current form of Schedule 3 (Agreed Pool of Properties) correctly reflects the requirements summarised in this clause 12.5, the Provider may refer the matter to Expert Determination.

13. Protected Pool

13.1 Reconfiguration List

- (a) Where the Provider has prepared a Reconfiguration Proposal, the Provider may submit that Reconfiguration Proposal to MSD for its consideration and the parties may then agree to meet and discuss the Reconfiguration Proposal, which may include a wider discussion of which of the Properties in the Agreed Pool of Properties could be suitable for reconfiguration taking into account:
 - (i) where each Property is in its asset management lifecycle;
 - (ii) the suitability of each Property as compared with the Social Housing Clients then listed (or are forecast to be listed over the next Contract Year) on MSD's social housing register as seeking housing in the region in which the Properties are located; and
 - (iii) current and forecast Property Vacancies.
- (b) Following the discussion taking place between the parties in accordance with clause 13.1(a) or, no earlier than 20 Business Days of the Reconfiguration Proposal being submitted if such a discussion has not occurred between the parties by that date, the Provider may resubmit its Reconfiguration Proposal to MSD and include, as part of that Reconfiguration Proposal, a list of Properties that the Provider wishes to have included on the Reconfiguration List, such Properties being those Properties that the Provider wishes to reconfigure, commence reconfiguring or continue reconfiguring in the then current Contract Year and/or next Contract Year, in accordance with its Reconfiguration Proposal.
- (c) No later than 20 Business Days following receipt of the Provider's resubmitted Reconfiguration Proposal, MSD shall confirm in writing:
 - (i) that it agrees that the Properties proposed in the Reconfiguration Proposal for inclusion in the Reconfiguration List may be included on the Reconfiguration List, for such period and upon such conditions as MSD in its absolute discretion determines; or
 - (ii) that it does not agree that the Properties proposed in the Reconfiguration Proposal for inclusion in the Reconfiguration List may be included on the Reconfiguration List,

and if MSD has not responded within this timeframe, MSD shall be deemed to have not agreed to include the Properties on the Reconfiguration List.

13.2 High Suitability List

- (a) No later than five months prior to each five year anniversary of Financial Close, the parties will meet and discuss which of the Properties in the Agreed Pool of Properties should be listed as being properties that are likely to be in most demand by current or future Social Housing Clients during the next five Contract Years and which the Provider has recently incurred, or wishes to incur, significant capital expenditure on over this period, for this purpose taking into account:

- (i) the Provider's planned or recent maintenance and capital expenditure on the Properties in that period;
 - (ii) the suitability of each Property as compared with the Social Housing Clients then listed (or are forecast to be listed over the next Contract Year) on MSD's social housing register as seeking housing in the region in which the Properties are located; and
 - (iii) current and forecast Property Vacancies.
- (b) Following the discussion taking place between the parties in accordance with clause 13.2(a), the Provider will prepare a draft high suitability list, which will list the Properties that are likely to be most in demand by current or future Social Housing Clients in the next five Contract Years, and will submit this to MSD within three months of the next anniversary of Financial Close. Any such list shall not list more than 15% of the number of Properties in the then-current Agreed Pool of Properties.
- (c) No later than 20 Business Days following receipt of the Provider's draft high suitability list, MSD shall, acting reasonably, confirm in writing:
- (i) that it agrees with the list of Properties on the draft high suitability list, and such list will then become the High Suitability List effective from the start of the next Contract Year and for five Contract Years thereafter;
 - (ii) that it wishes to further negotiate or discuss the list of Properties on the draft high suitability list, in which case the parties will meet within five Business Days of MSD's confirmation being provided to agree, in writing, on a list that will become the next High Suitability List; or
 - (iii) that it does not agree with the list of Properties on the draft high suitability list, in which case there will be no High Suitability List that is effective from the start of the next Contract Year and for five Contract Years thereafter.

14. New Supply Commitment

14.1 New supply acknowledgements and commitments

- (a) The Provider acknowledges and agrees that:
- (i) it has committed to making New Supply Properties available to MSD for inclusion in the Agreed Pool of Properties within the New Supply Delivery Period (**New Supply Commitment**);
 - (ii) the New Supply Pool represents a notional amount of Crown Retained Investment (calculated at the CRI Amount) that will (on a pro rata basis and in accordance with clause 14.5 (Application of the New Supply Pool)) be added to the CRI Amount of each Property with a CRI Mortgage if the New Supply Commitment is not achieved; and
 - (iii) it will, by no later than 12 months following Financial Close, deliver a Reconfiguration Proposal to MSD in relation to the New Supply Commitment which outlines, in detail:
 - (A) the Original Properties that are to be reconfigured in order to contribute to the achievement of the New Supply Commitment;

- (B) the number, Typology and location of New Supply Properties that are proposed to be delivered by way of a reconfiguration/redevelopment of Original Properties;
- (C) the number, Typology and location of New Supply Properties that are proposed to be delivered other than by way of a reconfiguration/redevelopment of Original Properties;
- (D) the expected timeframe (subject to any specified assumptions and/or qualifications) in which each of the New Supply Properties in (B) and (C) will be Completed, provided that such timeframe must be within the New Supply Delivery Period; and
- (E) the Provider's plan for moving Tenants to facilitate the reconfiguration/redevelopment described in this Reconfiguration Proposal,

which the Provider must ensure is approved by MSD prior to the Reconfiguration Proposal being implemented by the Provider, if the Provider wishes to be able to rely upon clause 14.2(c). For the avoidance of doubt, where MSD's prior approval has not been sought to the Reconfiguration Proposal to be delivered under this clause 14.1(a)(iii), MSD will not be required to extend the First New Supply Period or Second New Supply Period (as applicable) under clause 14.2(c).

- (b) Where the Provider has Completed a New Supply Property and any Original Returned Property that relates to that New Supply Property (where an Original Property was used to facilitate the redevelopment and not substituted with a Permanent Substitute Property), within the First New Supply Period:
 - (i) that New Supply Property and any such Original Returned Property will be added to the Agreed Pool of Properties in accordance with clause 14.4 (Changes to the Agreed Pool of Properties); and
 - (ii) MSD will deduct the New Supply Contribution Amount for that New Supply Property from the New Supply Pool.
- (c) Where the Provider has Completed a New Supply Property and any Original Returned Property that relates to that New Supply Property (where an Original Property was used to facilitate the redevelopment and not substituted with a Permanent Substitute Property), within the Second New Supply Period:
 - (i) that New Supply Property and any such Original Returned Property will only be required to be added to the Agreed Pool of Properties by MSD in accordance with clause 14.4 (Changes to the Agreed Pool of Properties); and
 - (ii) MSD will only be required to deduct the New Supply Contribution Amount for that New Supply Property from the New Supply Pool,

if the Provider had previously sought and received MSD's approval to deliver any New Supply Property within the Second New Supply Period, such approval not to be withheld by MSD where:

- (iii) there is demonstrated demand in the Tauranga market for social housing places to be purchased by MSD over and above what is already being provided (or contracted by MSD to be provided by the projected Completion date for the New Supply Property); and
- (iv) the Provider can demonstrate to MSD's reasonable satisfaction that it complied with its diligent pursuit obligation under clause 14.2(b)).

14.2 New Supply Delivery Period

- (a) For the purpose of this clause 14, the New Supply Delivery Period shall, subject to clauses 14.2(b) and 14.2(c), mean:
 - (i) in respect of at least the first 75 New Supply Properties (**Initial New Supply Properties**), the [REDACTED] year anniversary of Financial Close (**First New Supply Period**); and
 - (ii) in the case of the remaining New Supply Properties (**Remaining New Supply Properties**), the [REDACTED] year anniversary of Financial Close (**Second New Supply Period**).
- (b) Notwithstanding clause 14.2(a), the Provider agrees to use its best endeavours to diligently pursue Completion of the Remaining New Supply Properties within the First New Supply Period and must be able to demonstrate to MSD that it is doing so, otherwise MSD may, at its discretion (acting reasonably), reduce the Second New Supply Period. Where the Provider has Completed any of the Remaining New Supply Properties within the First New Supply Period, MSD will treat these as having been Completed within the New Supply Delivery Period.
- (c) Where the Provider can demonstrate to MSD's reasonable satisfaction that despite its best endeavours to diligently pursue or due to circumstances outside of the Provider's reasonable control (such as an unforeseen consenting issue, consenting timeframes that took longer than could reasonably have been anticipated, or extreme weather events that delayed construction activity), it has been unable to Complete the Remaining New Supply Properties before the end of the First New Supply Period or Second New Supply Period (as applicable), MSD will extend the First New Supply Period or Second New Supply Period (as applicable) to take into account such circumstances, provided that the Provider is taking all reasonable steps to mitigate the delays caused by such circumstances outside of its reasonable control.

14.3 Facilitating reconfiguration to assist delivery of New Supply Properties

- (a) Subject to clause 14.3(d), where the Provider wishes to utilise and/or reconfigure an Original Property for the purpose of delivering the New Supply Commitment:
 - (i) the Provider will give notice to MSD of:
 - (A) the Original Property that is to be utilised in the reconfiguration or redevelopment;
 - (B) the Substitute Property that is to take the place of the Original Property, being either:
 - (I) a Temporary Substitute Property that is to be used in place of the Original Property while the reconfiguration or redevelopment is taking place, such Temporary Substitute Property being (unless otherwise agreed by MSD, acting reasonably) of the Same Typology, and, where required by the Tenant of an Original Property that is being temporarily substituted (where the Tenant is being moved to the Temporary Substitute Property), or where the Original Property is Vacant, in the same Letting Area as the Original Property it is to temporarily replace; or
 - (II) where MSD gives its approval under clause 12.2 (Permanent Substitute Properties) a Permanent Substitute Property, provided that where MSD's approval is given the Provider must make the election set out in clause 12.2(c)(i) and otherwise comply with all requirements of that clause; and

- (C) the date from which the reconfiguration or redevelopment is planned to commence and the date that the Provider requires the Original Property to be unencumbered (provided that the Provider must give reasonable notice of this date to MSD);
- (ii) upon receipt of the Provider's notice under clause 14.3(a)(i), MSD will, immediately prior to the date that the Provider requires the Original Property to be unencumbered (provided that the Provider has complied with the reasonable notice requirement in clause 14.3(a)(i)(C)):
 - (A) where clause 14.3(a)(i)(B)(I) applies, arrange for the Encumbrance and the CRI Mortgage to be discharged from the title to the Original Property, at the same time as adding an amount equal to the Crown Retained Investment for that Original Property, De-Indexed by the CRI Index back to Financial Close (**Lifted CRI**) to the New Supply Pool and adding the Original Property to the Lifted CRI List; or
 - (B) where clause 14.3(a)(i)(B)(II) applies, arrange for the Encumbrance and the CRI Mortgage to be discharged from the title to the Original Property, provided that a CRI Mortgage and Encumbrance has been registered against the title to the Permanent Substitute Property (with the Provider using all reasonable endeavours to facilitate this),

provided that MSD shall not be required under this clause 14.3(a)(ii) to remove any Encumbrance from the title to an Original Property where the number of Encumbrances removed and not replaced under this clause 14 at any given time exceeds the total number of New Supply Pool Properties still to be Completed at that time.
- (b) Subject to clause 14.3(d), where all steps in clause 14.3(a) have been completed:
 - (i) where clause 14.3(a)(i)(B)(I) applies, MSD shall update Schedule 3 (Agreed Pool of Properties) to:
 - (A) delete the Original Property from the table of Original Properties, but to move the entry for that Property into the Lifted CRI List; and
 - (B) add the new Temporary Substitute Property to the table of Temporary Substitute Properties in paragraph 4 (Temporary Substitute Properties) in Schedule 3 (Agreed Pool of Properties); or
 - (ii) where clause 14.3(a)(i)(B)(II) applies, MSD shall update Schedule 3 (Agreed Pool of Properties) to:
 - (A) delete the Original Property from the table of Original Properties; and
 - (B) add the new Permanent Substitute Property to the table of Permanent Substitute Properties in paragraph 3 (Temporary Substitute Properties/Returned Properties) in Schedule 3 (Agreed Pool of Properties).
- (c) The Provider must ensure that before an Original Property is removed from the Agreed Pool of Properties in accordance with the remainder of this clause 14.3, that it has arranged for any Tenant residing in that Property to be moved to a suitable alternative Property in accordance with the requirements outlined in Schedule 7 (Tenancy Management Requirements) for Provider-initiated transfers.
- (d) This clause 14.3 shall not apply in respect of any delivery of a New Supply Property that would be Completed during the Second New Supply Period unless MSD's prior approval to the delivery of the New Supply Property in the Second New Supply Period has been provided in accordance with clause 14.1(c).

14.4 Changes to the Agreed Pool of Properties

- (a) This clause 14.4 is subject to clause 14.1(c).
- (b) Where a New Supply Property is Completed within the New Supply Delivery Period, but an Original Property was not utilised in order to make that New Supply Property available (or the Original Property was substituted by a Permanent Substitute Property):
 - (i) MSD must promptly update Schedule 3 (Agreed Pool of Properties) to add the New Supply Property to the table of New Supply Properties. For the purpose of updating the table of New Supply Properties, the following details should be used for that New Supply Property:
 - (A) the Initial Provider Price shall be the New Supply Provider Price;
 - (B) the Market Value shall be listed as N/A (i.e. not applicable);
 - (C) the CRI Amount shall be zero;
 - (D) the Residual Value shall be New Supply Provider Price for that Property inflated at ■■■ percent per annum until the Expiry Date; and
 - (E) the Agreed Rent shall be the applicable New Supply Agreed Rent for the particular Typology of the New Supply Property which will be Indexed to determine the Agreed Rent that applies from the date that the New Supply Property is added to the Agreed Pool of Properties;
 - (ii) the Asset Owner must arrange for a CRI Mortgage and an Encumbrance to be registered against the title to the Completed New Supply Property; and
 - (iii) provided all other steps in this clause 14.4(a) have occurred, MSD must deduct, from the New Supply Pool, the relevant New Supply Contribution Amount for that New Supply Property.
- (c) Where a New Supply Property and the Original Returned Property are Completed within the New Supply Delivery Period, in circumstances where an Original Property was utilised in order to make that New Supply Property available (and that Original Property was not substituted by a Permanent Substitute Property):
 - (i) MSD must promptly update Schedule 3 (Agreed Pool of Properties) to add the New Supply Property to the table of New Supply Properties. For the purpose of updating the table of New Supply Properties, the following details should be used for that New Supply Property:
 - (A) the Initial Provider Price shall be the New Supply Provider Price;
 - (B) the Market Value shall be listed as N/A (i.e. not applicable);
 - (C) the CRI Amount shall be the Distributed CRI Amount applicable to that New Supply Property;
 - (D) the Residual Value shall be the New Supply Provider Price for that Property inflated at ■■■ percent per annum until the Expiry Date; and
 - (E) the Agreed Rent shall be the applicable New Supply Agreed Rent for the particular Typology of the New Supply Property, which will be Indexed to determine the Agreed Rent that applies from the date that the New Supply Property is added to the Agreed Pool of Properties;

- (ii) MSD must promptly update Schedule 3 (Agreed Pool of Properties) to add the Original Returned Property to the table of Original Properties. For the purpose of updating the table of Original Properties, the following details should be used for that Original Returned Property:
 - (A) the Initial Provider Price shall be the New Supply Provider Price;
 - (B) the Market Value shall be listed as N/A (i.e. not applicable);
 - (C) the CRI Amount shall be the Distributed CRI Amount applicable to that Original Returned Property;
 - (D) the Residual Value shall be New Supply Provider Price for that Property inflated at [REDACTED] percent per annum until the Expiry Date; and
 - (E) the Agreed Rent shall be the applicable New Supply Agreed Rent for the particular Typology of the Original Returned Property, which will be Indexed to determine the Agreed Rent that applies from the date that the Original Returned Property is added to the Agreed Pool of Properties;
- (iii) where a Temporary Substitute Property was utilised while the reconfiguration or redevelopment was occurring in accordance with clause 14.3(a)(i)(B)(I):
 - (A) MSD must update Schedule 3 (Agreed Pool of Properties) to delete the relevant Temporary Substitute Property from the Temporary Substitute Property table; and
 - (B) the Asset Owner must arrange for an Encumbrance to be registered against the title to the Completed Original Returned Property and each such Completed New Supply Property;
- (iv) the Asset Owner must arrange for a CRI Mortgage to be registered against the title to the Completed Original Returned Property and each such Completed New Supply Property; and
- (v) upon registration of the Encumbrance and CRI Mortgage as required under this clause 14.4(c), MSD must deduct, from the New Supply Pool:
 - (A) the relevant New Supply Contribution Amount for that New Supply Property; and
 - (B) any Lifted CRI that related to the Original Property that has been returned as an Original Returned Property and distributed as Distributed CRI Amounts across the Original Returned Property and each such Completed New Supply Property.

14.5 Application of the New Supply Pool

Where any notional amount remains in the New Supply Pool as at the end of the First New Supply Period or the Second New Supply Period (as applicable), that amount shall be distributed across and added to, on a pro rata basis (according to the Initial Provider Price of each Property), the CRI Amount applying to each of the Properties in the Agreed Pool of Properties that are subject to a CRI Mortgage as at that date by MSD. For the avoidance of doubt, the New Supply Pool to be distributed may include an amount that is attributable to Lifted CRI.

14.6 Delivery of an Encumbered Property as a Permanent Substitute Property

Where any Lifted CRI has been distributed in accordance with clause 14.5 as a result of the Provider not delivering an Original Returned Property to replace an Original Property, the Provider must promptly either:

- (a) arrange for a New Property of the Same Typology and in the same Letting Area as the Original Property (unless otherwise agreed by MSD, acting reasonably, that the New Property may be of a different Typology and/or in a different Letting Area) to have an Encumbrance placed against its title and to seek to have the property included as a New Property in the Agreed Pool of Properties; or
- (b) procure (with MSD's agreement), a Temporary Substitute Property to temporarily replace the Original Property, pending the Completion of any reconfiguration or redevelopment that is currently then under construction.

15. Reconfiguration

15.1 Application of clause

This clause 15 does not apply to any reconfiguration undertaken by the Provider in order to deliver on its New Supply Commitment, such reconfiguration to be undertaken in accordance with clause 14 (New Supply Commitment).

15.2 Reconfiguration without MSD's consent

- (a) The Provider may undertake reconfiguration of a Property without requiring MSD's prior written consent where the Provider complies with the following requirements:
 - (i) the Provider ensures that if it is removing an Original Property from the Agreed Pool of Properties to undertake reconfiguration involving that Original Property, that:
 - (A) it adds a Temporary Substitute Property that is of the Same Typology as the Original Property being removed from the Agreed Pool of Properties for the purpose of reconfiguration, to the Agreed Pool of Properties (with such Temporary Substitute Property to remain in the Agreed Pool of Properties for the period of time that commences on the date that the Original Property is removed from the Agreed Pool of Properties, until the time that a new Property is returned to the Agreed Pool of Properties as required under (B) below);
 - (B) once reconfiguration involving the Original Property is complete, it returns a Property (a **Returned Property**) to the Agreed Pool of Properties that is of the Same Typology as the Original Property, such Returned Property to be added to the Agreed Pool of Properties in place of the Temporary Substitute Property that had been added to the Agreed Pool of Properties under (A) above;
 - (C) any Temporary Substitute Property and any Returned Property is in the same Letting Area as the Original Property that it is replacing;
 - (D) it ensures that an Original Property is not removed from the Agreed Pool of Properties and any Temporary Substitute Property and any Returned Property is not added to the Agreed Pool of Properties in place of the Original Property or Temporary Substitute Property (as applicable), until an Encumbrance is registered against the title to the Temporary Substitute Property or Returned Property (as applicable); and

- (E) it ensures that an Original Property against which a CRI Mortgage is registered is not removed from the Agreed Pool of Properties and any Temporary Substitute Property and any Returned Property is not added to the Agreed Pool of Properties in place of the Original Property or Temporary Substitute Property (as applicable), until a CRI Mortgage is registered against the title to the Temporary Substitute Property or Returned Property (as applicable) to secure the Crown Retained Investment specified under clause 15.2(b); and
 - (ii) the Provider undertakes any Tenant transfer that is necessary to undertake, in accordance with paragraphs 21.1(b) and 21.2 (Delivery Proposals) of Schedule 7 (Tenancy Management Requirements) and in compliance with all relevant Laws.
- (b) Where the Provider wishes to undertake a reconfiguration that will comply with clause 15.2(a):
 - (i) the Provider must give reasonable prior written notice to MSD of the Original Property it will remove from the Agreed Pool of Properties (including the date on which the Original Property will be removed from the Agreed Pool of Properties) and a completed Agreed Pool of Properties Change Form identifying the Temporary Substitute Property that will be deemed to be added to the Agreed Pool of Properties;
 - (ii) the parties will take all necessary steps and execute all necessary documents to arrange for the CRI Mortgage and Encumbrance to be released from the title to the Original Property, contemporaneously with the registration of a CRI Mortgage and Encumbrance on the title to a Temporary Substitute Property that complies with the requirements in clause 15.2(a);
 - (iii) the Crown Retained Investment that will apply to the Temporary Substitute Property and that the CRI Mortgage will secure shall be the higher of the then current Crown Retained Investment and the CRI Amount applicable to the Original Property, provided that the Crown Retained Investment as a percentage of the property value on the Temporary Substitute Property must be the same or a lower percentage than the Crown Retained Investment as a percentage of the property value that applied in respect of the Original Property being substituted immediately prior to the substitution taking place (with property value meaning the then current council capital rates valuation for the Property);
 - (iv) the CRI Amount, the Initial Provider Price and the Residual Value for the Temporary Substitute Property shall be deemed to be the same as the CRI Amount, the Initial Provider Price and the Residual Value applying to the Original Property;
 - (v) upon the occurrence of the removal and registration of CRI Mortgages and Encumbrances under clause 15.2(b)(ii), the Original Property will be deemed to have been removed from the Agreed Pool of Properties and the Temporary Substitute Property will be deemed to have been added to the Agreed Pool of Properties as a Temporary Substitute Property;
 - (vi) the Provider must ensure that if the Temporary Substitute Property will be Vacant at the time it is added to the Agreed Pool of Properties, that it has issued a Vacancy Notice in respect of that Property at least 15 Business Days prior to that Temporary Substitute Property being added to the Agreed Pool of Properties;
 - (vii) where an Original Property is to be removed from the Agreed Pool of Properties but will become Vacant at any time after the notice under 15.2(b)(i) is issued (provided the Original Property will be removed from the Agreed Pool of Properties within two months of the date of issue of the notice), the Provider shall not issue a Vacancy Notice in respect of that Property in accordance with Annexure 2 (Tenancing Vacant Properties Process) of Schedule 7 (Tenancy Management

Requirements) and the Property shall be deemed to be an Unavailable Tenanted Property for reporting and payment purposes from the time it becomes Vacant until the date that the Property is removed from the Agreed Pool of Properties;

- (viii) where a Tenant who was a Tenant in the Original Property that is being removed from the Agreed Pool of Properties will become a Tenant in the Temporary Substitute Property, the contemporaneous release and registration of the CRI Mortgages and Encumbrances, shall be arranged to occur on the same date as the date that the Tenant will move into the Temporary Substitute Property;
 - (ix) the Provider may undertake any Tenant transfer that is necessary to undertake, in accordance with paragraphs 21.1(b) and 21.2 (Delivery Proposals) of Schedule 7 (Tenancy Management Requirements) to facilitate the reconfiguration but without the need for MSD's prior consent to such Tenant transfer;
 - (x) the Agreed Rent for the Temporary Substitute Property shall be the same as the Agreed Rent that applied to the Original Property that the Temporary Substitute Property is replacing; and
 - (xi) clauses 15.2(b)(i) to 15.2(b)(x) shall apply where the Returned Property is to be added back into the Agreed Pool of Properties in place of the Temporary Substitute Property and for this purpose, references in those clauses to Original Property and Temporary Substitute Property shall be read as Temporary Substitute Property and Returned Property respectively.
- (c) Where, at any time during the course of a reconfiguration of a Property, the Provider has failed or is failing to comply with any of the requirements in clause 15.2(a)(i), the Original Property will be deemed to be listed in the Agreed Pool of Properties and shall be categorised as Unavailable for Other Reasons and, accordingly, an Unavailable Untenanted Property for reporting and payment purposes.

15.3 Reconfiguration discussions

Where:

- (a) MSD has been unable to make names of any Suitable Social Housing Clients available to the Provider on a Shortlist and MSD wishes to explore, with the Provider, the option of reconfiguring the Property so that it is more suitable for Social Housing Clients; or
- (b) either party considers that there is potential to reconfigure a Property or Properties, being either a Property or Properties on the Reconfiguration List or any other Property or Properties,

the parties will, within 10 Business Days of a request being made by either party, meet in good faith and on an informal basis, to discuss reconfiguration options that may be possible.

15.4 Reconfiguration requiring MSD's consent

- (a) Where the Provider wishes to reconfigure a Property but such proposed reconfiguration will not comply with one or more of the requirements set out in clause 15.2(a), the Provider shall submit a detailed Reconfiguration Proposal to MSD, which should include, as part of the Reconfiguration Proposal, a draft variation outlining the changes that would be necessary to this Agreement to give effect to the Provider's Reconfiguration Proposal and details of the amount of additional debt that the Asset Owner would be proposing to raise to undertake the reconfiguration or redevelopment of any property that will be within the Agreed Pool of Properties once the reconfiguration or redevelopment is completed.
- (b) MSD may, acting reasonably:

- (i) reject a Reconfiguration Proposal, giving reasons;
 - (ii) seek further information in relation to the Reconfiguration Proposal from the Provider;
 - (iii) notify the Provider that it wishes to negotiate the Reconfiguration Proposal; or
 - (iv) accept the Reconfiguration Proposal without amendment.
- (c) A Reconfiguration Proposal shall not be deemed to have been accepted until the Reconfiguration Proposal (as may be amended following negotiation between the parties) has been confirmed in writing through a written variation to this Agreement and any other necessary Project Documents executed by both parties, which written variation shall also include MSD's consent and approval to all conditions of the accepted Reconfiguration Proposal that may otherwise need to be given under this Agreement.
- (d) Where any Reconfiguration Proposal is accepted, the terms of any such variation entered into under clause 15.4(c) shall, unless otherwise agreed between the parties:
- (i) require the removal of the Encumbrance and any CRI Mortgage from the title to any Property that is to be removed from the Agreed Pool of Properties in order to facilitate the reconfiguration, provided that an Encumbrance and one or more CRI Mortgages securing an equivalent level of Crown Retained Investment (and Crown Retained Investment to property value coverage for MSD) is registered against any property or properties to be returned as a Property within the Agreed Pool of Properties once the reconfiguration has been completed;
 - (ii) require that where any CRI Mortgage is discharged from the title of a Property in accordance with clause 15.4(d)(i):
 - (A) the Crown Retained Investment applicable to that Property shall be "parked" in a notional Crown Retained Investment Pool that shall operate on the same basis as Lifted CRI (**CRI Pool**); and
 - (B) if a property is not returned to the Agreed Pool of Properties to replace the property that is removed (and a CRI Mortgage securing an equivalent level of Crown Retained Investment is not registered against such property) before the Expiry Date, upon the Expiry Date the CRI Amount of every Property in the Agreed Pool of Properties that is subject to a CRI Mortgage as at the Expiry Date, shall be increased on a pro rata basis by MSD (pro rata according to the applicable Initial Provider Price of each such Property) to ensure that the full amount of Crown Retained Investment parked in the CRI Pool is distributed across those Properties;
 - (iii) require that the basis for calculating the Initial Provider Price, the CRI Amount and the Residual Value in clauses 14.4(a) and 14.4(c) (as applicable) shall also apply to any reconfigured properties that become part of the Agreed Pool of Properties pursuant to a variation entered into between the parties in accordance with this clause 15.4; and.
 - (iv) state the amount of additional debt relating to the reconfiguration or redevelopment that MSD has agreed can be debt counted for the purpose of paragraph (b) of the definition of Debt Balance at Expiry.
- (e) Where MSD wishes to explore reconfiguration options, it may request that the Provider prepare a Reconfiguration Proposal to address the purchasing needs of MSD. The Provider may agree to submit a Reconfiguration Proposal or may choose not to in its absolute discretion. The terms upon which the Provider is to prepare a Reconfiguration Proposal will be agreed between the parties at or around the time the request is made by MSD.

16. Put Option

16.1 Grant

The Provider unconditionally and irrevocably grants to MSD the Put Option in accordance with, and subject to, the terms of this clause 16.

16.2 Exercise

- (a) At any time during the Put Option Period MSD may exercise the Put Option in respect of a single Property or multiple Properties by giving notice in writing in substantially the form set out in Annexure 2 (Form of Exercise Notice) to Schedule 3 (Agreed Pool of Properties) to the Provider (**Exercise Notice**), provided that the Put Option may not be exercised by MSD in breach of clause 16.4 and may only be exercised once every calendar month during the period in which the Put Option may be exercised.
- (b) For the avoidance of doubt, the Put Option may be exercised multiple times during the Put Option Period.
- (c) The Provider may, within 10 Business Days of receipt of an Exercise Notice, give written notice to MSD that it wishes an alternative Property of the Same Typology and in the Same Letting Area (or, with MSD's approval (acting reasonably), a different Letting Area) as the Property to which the Exercise Notice relates (but excluding any New Supply Property), to be the Property that is subject to the Exercise Notice in place of the Property identified in the Exercise Notice (**Put Transfer Notice**).
- (d) Upon MSD's receipt of the Put Transfer Notice:
 - (i) if the Property proposed in the Put Transfer Notice is not subject to a Tenancy:
 - (A) the Exercise Notice will be deemed to have been updated to refer to such Property in place of the Property originally described in the Exercise Notice, but in all other respects the Exercise Notice shall remain unchanged (including, for the avoidance of doubt, the date of receipt of the Exercise Notice); and
 - (B) for the avoidance of doubt, clause 16.5(b)(i) shall apply; or
 - (ii) if the Property proposed in the Put Transfer Notice is subject to a Tenancy:
 - (A) the Provider must have sought and obtained the Tenant's consent to transfer into the Property the subject of the Exercise Notice (or another Vacant Property), and have delivered written evidence of such consent to MSD within 30 Business Days of receipt of the Exercise Notice;
 - (B) where the Tenant's consent is not obtained as required by clause 16.2(d)(ii)(A), the original Exercise Notice will continue to apply unchanged;
 - (C) where the Tenant's consent is obtained as required by clause 16.2(d)(ii)(A), the Exercise Notice will be deemed to have been updated to refer to the Property identified in the Put Transfer Notice, in place of the Property originally described in the Exercise Notice, but in all other respects the Exercise Notice shall remain unchanged (including, for the avoidance of doubt, the date of receipt of the Exercise Notice);
 - (D) where consent required by clause 16.2(d)(ii)(C) is obtained and the Exercise Notice is deemed to have been updated but, by operation of clause 16.5(b)(i), the Property originally subject to the Exercise Notice has already

been deemed to have been removed from the Agreed Pool of Properties, that Property will be deemed to have been added back into the Agreed Pool of Properties and the Property listed in the Put Transfer Notice will be deemed to have been removed from the Agreed Pool of Properties, effective from the date that clause 16.2(d)(ii)(A) is satisfied;

- (E) for the avoidance of doubt, and notwithstanding any other provision of this Agreement, where clause 16.2(d)(ii)(C) applies, the timeframe that would have originally applied to the Property the subject of the original Exercise Notice under clause 16.5(b) will continue to apply and the Provider will be responsible for ensuring that the business-initiated transfer of the Tenant into the an alternative Property (in accordance with paragraph 21.1(b) of Schedule 7 (Tenancy Management Requirements) is completed prior to the Property ceasing to be in the Agreed Pool of Properties, otherwise the Provider will forego its ability to receive IRRS in respect of the property that the Tenant needing to transfer is residing in from the date that the Property ceases to be in the Agreed Pool of Properties; and
- (F) the Sales Process shall be paused during the period from the date upon which MSD gives notice that it accepts the Put Transfer Notice until the earlier of the date upon which clause 16.2(d)(ii)(A) is satisfied and the date 30 Business Days after the date of receipt of the Exercise Notice.

16.3 Put Option

The Put Option:

- (a) requires, subject to clause 16.6, the Provider to pay to MSD the Net Proceeds of Sale (or any portion of the Net Proceeds of Sale) payable to MSD under clause 16.7 (if any) for the Property or Properties (as the case may be) by 4pm on the Put Release Date;
- (b) releases the Property or Properties (as the case may be) from this Agreement as at the date the Exercise Notice takes effect in relation to a Property or Properties, thereby removing the Property or Properties from the Agreed Pool of Properties; and
- (c) subject to clause 16.6, if an Encumbrance is registered against the title to the Property or Properties (as applicable), triggers the requirement for MSD to remove the Encumbrance from the title to the Property or Properties as soon as reasonably practicable after the date and time that repayment required by 16.3(a) occurs.

16.4 Restrictions on exercise of Put Option

MSD is not entitled to exercise the Put Option in relation to any Property:

- (a) in the Protected Pool from time to time;
- (b) that is not Vacant unless that Property will soon become Vacant because a Tenant will become an Ineligible Tenant at the time the Exercise Notice takes effect;
- (c) that is subject to a Vacancy Notice unless MSD has not been able to make any names of Suitable Social Housing Clients available to the Provider in response to a Vacancy Notice; or
- (d) where such exercise would cause the aggregate number of Properties that have been the subject of a Put Option over the Contract Term to reach or exceed █ % of the number of Original Properties.

Commercial Sensitivity

16.5 Effect of exercise of the Put Option

- (a) Where an Exercise Notice given pursuant to clause 16.2(a), on and from the date that the Exercise Notice is received:
 - (i) the process outlined in Parts 1 (Agreeing the valuation and sales process) and 2 (Selling the Property) of Schedule 15 (Sales Process) (as applicable depending on whether the Property is to be sold in order for the Provider to pay the Net Proceeds of Sale (or any portion of the Net Proceeds of Sale) payable to MSD under clause 16.7(if any)) should commence; and
 - (ii) the Provider may give notice to MSD pursuant to clause 16.6(a).
- (b) An Exercise Notice given pursuant to clause 16.2(a) will take effect by deeming a Property to have been removed from the Agreed Pool of Properties (except that any relevant information for that Property in the relevant Part of Schedule 3 (Agreed Pool of Properties) will continue to be used for the purpose of applying the provisions in this Agreement relating to the Put Option and the Property will continue to be deemed to be a Property for the purpose of clause 26.2 (Access to premises and Properties)), and will remove the requirement for MSD to pay IRRS in respect of the Property:
 - (i) 26 Business Days after the date that the Exercise Notice is given where the Property is not subject to a Tenancy; and
 - (ii) 90 days after the date that the Exercise Notice is given where the Property is subject to a Tenancy, or any other shorter or longer minimum notice period that must be given to a Tenant to terminate a tenancy by notice in accordance with the Residential Tenancies Act.

16.6 Put Property to be used as a Permitted Rental

- (a) Where MSD has given an Exercise Notice to the Provider in relation to a Property and the Provider wishes to use that Property as a Permitted Rental, the Provider must give MSD written notice of this along with information that would be reasonably necessary for MSD to have so as to enable MSD to consider the Provider's request. This notice must be given by the Provider within five Business Days of receiving an Exercise Notice.
- (b) Upon receipt of a notice from the Provider in accordance with clause 16.6(a), MSD will consider whether to give approval to the Permitted Rental under clause 10.3(a) and will notify the Provider, in writing, of its decision.
- (c) During the period from MSD's receipt of a notice from the Provider in accordance with clause 16.6(a) and MSD giving its decision under clause 16.6(b) (**Permitted Rental Consideration Period**), the Sales Process shall pause and, where MSD does not agree to the Permitted Rental, the Put Release Date (if already agreed) and the 90 day period specified in paragraph (b) of the definition of Put IRRS Amount shall be extended out by the number of Business Days (or days, in the case of the Put IRRS Amount) that is equal to the number of Business Days (or days in the case of the Put IRRS Amount) that the Permitted Rental Consideration Period lasted.
- (d) Where MSD agrees to allow a Permitted Rental in relation to a Property that is the subject of an Exercise Notice:
 - (i) the Sales Process will continue to be paused following the Permitted Rental Consideration Period but shall recommence no later than 90 days prior to the expiry of the Permitted Rental Period;
 - (ii) the Put Release Date (if already agreed) will be extended by an amount of time that is equal to the Permitted Rental Period; and

- (iii) for the avoidance of doubt, the Encumbrance and the CRI Mortgage will not be discharged from the title to the Property during the Permitted Rental Period and the Net Proceeds of Sale (or any such portion of the Net Proceeds of Sale) payable to MSD under clause 16.7 (if any) will not be payable by the Provider to MSD.

16.7 Payment of Net Proceeds of Sale

By no later than 4pm (or such other time as agreed between MSD and the Provider) on the Put Release Date, the Provider must pay (or retain or notionally retain, as the case may be) the Net Proceeds of Sale of the relevant Property in the following order (such amounts as are payable to MSD inclusive of GST, if any):

- (a) first, to the account of the Provider, the Put IRRS Amount in respect of the relevant Property;
- (b) secondly, to the account of MSD, the Put Remediation Amount;
- (c) thirdly, to the account of the Provider, the Initial Provider Price in respect of the relevant Property;
- (d) fourthly, to the account of the Provider, the CRI Adjustment in respect of the relevant Property;
- (e) fifthly, to the account of MSD, the balance of the CRI Amount in respect of the Property (excluding any amount attributable to the CRI Adjustment in respect of the relevant Property);
- (f) sixthly, on a pari passu basis, between:
 - (i) (to the account of MSD) the Indexation Component of MSD; and
 - (ii) (to the account of the Provider) the Indexation Component of the Provider; and
- (g) seventhly, to the account of the Provider, any surplus,

notwithstanding anything in clause 39.7 (Goods and Services Tax (GST)), the amount of any consideration payable by the Provider to MSD pursuant to this clause 16.7 shall be inclusive of GST if (and only if) the Provider is not entitled to claim a credit for input tax in connection with the supply to which the consideration relates.

16.8 Discharge of Crown Retained Investment

MSD acknowledges and confirms that the receipt by MSD of the amount due to it under clause 16.7 is in full and final satisfaction of MSD's right to receive the future payment of the Crown Retained Investment as granted under clause 17 (Grant of Crown Retained Investment and CRI Mortgage).

16.9 Releases of Encumbrance and CRI Mortgage

Provided the Provider has complied with its obligation in clause 16.7:

- (a) MSD will arrange for:
 - (i) any Encumbrance to be removed from the title to the Property or Properties (as applicable); and
 - (ii) any CRI Mortgage registered against the title to the Property or Properties (as applicable) to be discharged,

contemporaneously with the Provider's payment of the Net Proceeds of Sale (or any such portion of the Net Proceeds of Sale) payable to MSD under clause 16.7 (if any); and

- (b) the parties will execute all documentation required to enable MSD to perform its obligations in clause 16.9(a).

17. Grant of Crown Retained Investment and CRI Mortgage

- (a) As consideration for MSD entering into this Agreement, the Asset Owner grants, to MSD, at the time of acquisition of the Original Properties, the Crown Retained Investment which is secured by a CRI Mortgage registered against each Original Property.
- (b) MSD's right to receive future payment of the CRI in respect of each Original Property, shall be secured by the registration, at Settlement, of the CRI Mortgage over the title to each such Original Property, such registration to be effected in accordance with the Sale and Purchase Agreement.
- (c) For the purpose of clause 17(a), each CRI Mortgage must be entered into on the CRI Mortgage Terms.

18. Provider buy-out of Crown Retained Investment

The Provider may, at any time during the Contract Term, repay the Crown Retained Investment held by MSD in respect of a Property by:

- (a) issuing a notice (**Buy-out Notice**) to MSD, such notice specifying:
 - (i) the Property or Properties to which the Buy-out Notice relates; and
 - (ii) the date on which the Provider intends to repay the Crown Retained Investment in the Property or Properties; and
- (b) transferring a sum equal to the then applicable Crown Retained Investment in respect of that Property or Properties to the bank account nominated by MSD for that purpose (details of such nomination to be provided by MSD to the Provider in writing within 10 Business Days of receipt of the Provider's Buy-out Notice).

Part 6 – Services

19. Services

19.1 Core Services

(a) The Provider must provide:

- (i) the Transition Services in accordance with the Transition Services Requirements;
- (ii) the Tenancy Management Services in accordance with the Tenancy Management Requirements;
- (iii) the Property Management Services in accordance with the Property Management Requirements; and
- (iv) all other Services,

and all such Services must be provided:

- (v) in accordance with and on the terms and conditions of this Agreement (including all Finalised Operative Documents);
 - (vi) so as to ensure the personal privacy of and dignity of Social Housing Clients is respected;
 - (vii) in a manner that respects and is appropriate to the Social Housing Clients' religious and cultural beliefs and practices, age, gender and disabilities;
 - (viii) in a manner that minimises, as far as reasonably practicable, disruption to the Social Housing Clients;
 - (ix) with due care, skill and diligence and by the use of techniques, methodologies, processes and materials that accord with Good Industry Practice, to the extent that such Good Industry Practice requires more stringent or additional standards than those otherwise imposed on the Provider under this Agreement; and
 - (x) in accordance with all applicable Laws, including the Residential Tenancies Act, the HRTM Act, the Housing Improvement Regulations 1947, the Privacy Act 1993 and the Human Rights Act 1993.
- (b) The Provider will not be in breach of this Agreement for failing to comply with any of the Property Management Requirements, including to implement the then-current Annual Maintenance Plan, to undertake Remediation Works, to rectify Defects or to undertake Asset Condition Surveys, where the Provider can demonstrate to MSD's reasonable satisfaction that the reason for such non-compliance is that the Provider has not been able to access a Property and the Provider has acted and is continuing to act in a timely manner and has taken and is taking all steps available to it at the relevant time under the relevant Tenancy Agreement and at Law, or as required by its Operative Documents, to gain access to such Property for the purpose of complying with its Property Management Requirements in respect of that Property.

19.2 Other Services

The Provider must also:

- (a) provide the Disengagement Services (if so required by MSD) in accordance with the terms of Part 16 (Disengagement); and
- (b) perform all obligations that by the terms of this Agreement the Provider is bound to perform.

19.3 Co-ordination and co-operation

- (a) The use and occupation of any Property by any Social Housing Client shall not limit or affect the Provider's obligations to provide the Services in accordance with this Agreement, or entitle the Provider to make any claim against MSD.
- (b) Where MSD, where permitted to under this Agreement, engages a third party to provide services in relation to the Properties identical to the Services, then:
 - (i) the Provider (at its own cost) must co-operate with that third party supplier to enable that third party supplier to provide the relevant services or Services (including in relation to the provision of reasonable access, assistance and information);
 - (ii) the Provider will enter into and comply with such co-ordination and interface agreements with third party suppliers as MSD or the Provider may reasonably require; and
 - (iii) MSD will be responsible for procuring that the third party suppliers enter into these agreements.
- (c) Where MSD provides, or engages a third party to provide, services to the Tenants that MSD has not contracted with the Provider to provide under this Agreement, the Provider will co-operate in good faith with MSD and any such third party in relation to the provision of such services.

19.4 Remediation of initial Defects

- (a) The Provider must carry out the Remediation Works in accordance with the Remediation Plan, including the timeframes specified in it.
- (b) Within two Business Days of the conclusion of the initial period under the Remediation Plan, the Provider shall provide a certificate from a director of the CHP or the Asset Owner General Partner to MSD stating that all Remediation Works have (or have not) been completed in accordance with the Remediation Plan as at the conclusion of that period. Details of the Remediation Works undertaken shall be included as an appendix to the certificate. Where the certificate confirms that there are outstanding Remediation Works as at the conclusion of the initial period, identification of the remaining Remediation Works and the plan for their completion shall also be appended to the certificate, and a further director's certificate (with completed appendix) shall be provided to MSD once all Remediation Works are complete.
- (c) In the event that the Provider has not completed all Remediation Works in respect of a Property in accordance with the Remediation Plan;
 - (i) from the date of non-compliance until all Remediation Works in respect of that Property have been completed and a certification that complies with clause 19.4(b) (but which relates to that Property) has been provided to MSD, that Property to which the non-compliance relates shall be deemed to be Unavailable for Maintenance Reasons; and

- (ii) MSD shall be entitled to provide written notice to the Provider notifying it of that non-compliance and requiring the Provider to remedy the non-compliance within a reasonable period of time.
- (d) If a notice is given under clause 19.4(c)(ii), the Provider must rectify the non-compliance within the time specified in MSD's notice. If the Provider fails to do so within the period specified, or fails to rectify the non-compliance to the standard required by this Agreement, then MSD shall be entitled (but not obliged) to undertake, or procure the undertaking of, such outstanding work and to recover all costs incurred by MSD (including administration costs) in doing so from the Provider, as Moneys Owning.

19.5 Addition of Defects to Remediation Plan

- (a) Where the Provider has submitted a Vendor Retained Risk Claim in accordance with the Sale and Purchase Agreement and:
 - (i) the Vendor has responded by agreeing to pay the Remediation Costs for the matter set out in a Retained Risk Notice, the Defect the subject of that Retained Risk Notice shall become a Remediation Work that is deemed to have been added to the Remediation Plan, with such Remediation Work categorised in the Remediation Plan according to the Defects Priority Framework used to prepare the Remediation Plan;
 - (ii) the Vendor has advised that it will undertake the actions necessary to remedy the relevant matter set out in a Retained Risk Notice at its cost, the Defect will not be a Defect for the purpose of clause 19.9 that is required to be remedied by the Provider in accordance with Schedule 13 (Helpdesk and Availability Requirements), provided the Provider ensures that it can demonstrate to MSD's reasonable satisfaction that it has actively enforced its rights under the Sale and Purchase Agreement to have the Defect remedied by the Vendor in accordance with the requirements of the Sale and Purchase Agreement; or
 - (iii) the Vendor has responded by requesting further information regarding the claim or the remedy or reinstatement proposed or the Vendor has responded by disputing the claim, if the claim is determined or agreed:
 - (A) in the Provider's favour, as agreed between the parties or through the disputes process (as applicable), the Defect the subject of that Retained Risk Notice shall become a Remediation Work that is deemed to have been added to the Remediation Plan, with such Remediation Work categorised in the Remediation Plan according to the Defects Priority Framework used to prepare the Remediation Plan; or
 - (B) against the Provider, the calculation of the Required Response Period and the Required Rectification Period will start from the date of the determination and the Defect must be rectified by the Provider in accordance with Schedule 13 (Helpdesk and Availability Requirements),

and until such time as the parties agree (or the Vendor has responded by requesting further information regarding the claim or the remedy or reinstatement proposed) or the dispute is settled, the Defect shall be treated as if it is a Remediation Work that is included in the Remediation Plan.
- (b) For the avoidance of doubt, nothing in this clause 19.5 limits the Provider's obligation to Respond and Rectify Jobs that can be categorised as Emergency (EMG) or Urgent (URG) Jobs in accordance with paragraph 3.1 (Property management classification) of Schedule 13 (Helpdesk and Availability Requirements), in accordance with the Required Response Period and Required Rectification Period for such Jobs.

19.6 Asset condition

From Financial Close, the Provider must undertake all required asset management and lifecycle management with respect to every Property to ensure that the Asset Condition Standards are met at all times.

19.7 Planned maintenance

From Financial Close, the Provider must carry out planned maintenance (including both scheduled lifecycle maintenance and routine cyclical maintenance) by implementing those parts of the Asset Management Plan, the then-current Annual Maintenance Plan and the Policy and Procedures Manual concerned with planned maintenance and otherwise in accordance with the terms of this Agreement.

19.8 Unscheduled repairs and rectification works

The Provider must undertake all required unplanned repairs, rectification works or Defect correction in accordance with the Asset Management Plan, the Policy and Procedures Manual, Schedule 6 (Property Management Requirements) and Schedule 13 (Helpdesk and Availability Requirements).

19.9 Defects

- (a) The Provider must rectify all Defects, whether or not notified to the Provider by MSD under this clause 19.9.
- (b) Except in the case of Remediation Works (in relation to which remediation shall be in accordance with clause 19.4) and subject to clause 19.5:
 - (i) subject always to clause 19.9(b)(ii), if MSD identifies, or is notified of, a Defect, then MSD may give written notice to the Provider specifying the Defect, requiring the Provider to remedy the Defect and specifying a reasonable time within which this will occur; and
 - (ii) where the Provider has not already had the opportunity to rectify a Defect in a Property through application of Schedule 13 (Helpdesk and Availability Requirements), that Defect shall be logged as a Job immediately on receipt of MSD's notice, and the Required Response Period and Required Rectification Period for that Defect shall be calculated in accordance with Schedule 13.
- (c) If a notice is given under clause 19.9(b)(i), the Provider must rectify the Defect within the time specified in MSD's notice (or within the Required Rectification Period, if clause 19.9(b)(ii) applies). If the Provider fails to do so within the period specified, or fails to rectify the non-compliance to the standard required by this Agreement, then MSD shall be entitled (but not obliged) to undertake, or procure the undertaking of, rectification of such Defect and to recover all costs incurred by MSD (including administration costs) in doing so from the Provider, as Moneys Owning.
- (d) Neither MSD's rights, nor the Provider's liability, whether under this Agreement or otherwise at Law in respect of Defects, will be affected or limited by:
 - (i) the rights conferred on MSD by this clause 19.9 or any other provision of this Agreement; or
 - (ii) the failure by MSD to exercise any such right.
- (e) Except in the case of Remediation Works (in relation to which remediation shall be in accordance with clause 19.4), the Provider must rectify all Defects notified to it by a Social Housing Client, and all Defects that come to its attention through performing the

Services or through any other channel, in accordance with the processes and timeframes set out in Schedule 13 (Helpdesk and Availability Requirements), as the case may require.

- (f) Where any Defect exists at Financial Close, but that Defect does not form part of the Remediation Works under the Remediation Plan, the Provider shall be required to remedy such Defect:
 - (i) in accordance with Schedule 13 (Helpdesk and Availability Requirements), if and when such Defect is reported to the Helpdesk by a Tenant; and
 - (ii) otherwise, in accordance with the methodology and schedule set out in its Asset Management Plan.

20. Operative Documents

20.1 Status of Operative Documents

If there is any inconsistency between any aspect of the Operative Documents (on the one hand) and any of the Transition Services Requirements, the Property Management Requirements or the Tenancy Management Requirements (on the other hand), the Transition Services Requirements, the Property Management Requirements and/or the Tenancy Management Requirements shall prevail.

20.2 Maintenance of Operative Documents

The Provider must prepare, maintain and update all Operative Documents in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents). All Operative Documents, and all updates to Operative Documents, must be submitted to the Review Procedures. No updates or amendments to any Operative Document shall apply until that update or amended Operative Document has been Finalised in accordance with the Review Procedures.

21. Governance and representatives

21.1 Governance

- (a) On or prior to the Execution Date, the parties are to establish a Relationship Management Group. The Relationship Management Group will be a forum that will (among other things) be responsible for overseeing the implementation and performance of this Agreement.
- (b) The parties will procure that the Relationship Management Group performs the functions assigned to the Relationship Management Group in accordance with the terms of Schedule 9 (Governance and reporting).

21.2 Representatives

- (a) MSD shall, from time to time, notify the Provider in writing of the person it appoints as MSD's Representative.
- (b) The Provider shall, from time to time, notify MSD in writing of the person it appoints as the Provider's Representative.
- (c) MSD will ensure that it always has a person representing it as MSD's Representative as long as any obligations under this Agreement remain to be performed by the Provider.

- (d) The Provider will ensure that it always has a person representing it as the Provider's Representative as long as any obligations under this Agreement remain to be performed by the Provider. The Provider's Representative must be available as and when required within Business Hours.
- (e) MSD's Representative and the Provider's Representative will each be delegated, by MSD and the Provider respectively, the functions, powers and responsibilities assigned to them by the terms of Part 2 (Parties' representatives) of Schedule 9 (Governance and reporting) (as applicable).
- (f) The Provider will ensure that the Provider's Representative:
 - (i) has sufficient experience and skills to undertake the role;
 - (ii) is provided with all necessary information and documentation within its possession or control to enable the Provider's Representative to fully and effectively perform his or her functions and responsibilities;
 - (iii) implements such internal procedures as are necessary to ensure that all material events relating to this Agreement are brought to the attention of the Provider's Representative; and
 - (iv) is at all reasonable times fully contactable by MSD's Representative, or his or her delegate.

22. Reporting

22.1 Regular reporting during Transition Period

On and from the Agreement Start Date until the end of the Transition Period, the Provider must submit:

- (a) a Transition Report to MSD, the frequency of submission and particulars of which are as specified in Schedule 9 (Governance and reporting); and
- (b) such additional reports and information relating to the Transition Services as MSD may reasonably request.

22.2 Regular reporting from Financial Close

On and from Financial Close, the Provider must submit:

- (a) a Reconciliation Report to MSD, the particulars of which are as specified in Schedule 9 (Governance and reporting);
- (b) an Availability Report to MSD in accordance with clause 39.3 (Report and invoice) through the MSD Social Housing Client System, the frequency of submission and particulars of which are as specified in Schedule 9 (Governance and reporting);
- (c) in respect of its performance under this Agreement, a Performance Report to MSD, the frequency of submission and particulars of which are as specified in Schedule 9 (Governance and reporting);
- (d) in respect of its performance under this Agreement, Compliance Certificates to MSD, the frequency of submission and particulars of which are specified in Schedule 9 (Governance and reporting);

- (e) to MSD, at the same time as such report is provided to the Regulatory Authority, a copy of every part of that report provided to the Regulatory Authority by the CHP pursuant to section 175 of the HRTM Act that relates to the CHP's provision of Services under this Agreement;
- (f) to MSD, upon request by MSD, a copy of every written notice given to the CHP by the Regulatory Authority pursuant to section 177(3) of the HRTM Act relating to the Regulatory Authority's decision in respect of any non-trivial complaint made about the CHP;
- (g) to MSD at the same time the same are provided to the Governmental Entity responsible for regulation of health and safety in New Zealand, a copy of all reports made with respect to Notifiable Events;
- (h) to MSD, a "no surprises" notification of:
 - (i) any matter that may adversely affect the reputation of MSD; or
 - (ii) any matter of high public interest,that relates to this Agreement in any way, as soon as the Provider becomes aware of any such matter;
- (i) to MSD, such other reports as may be required under Schedule 9 (Governance and reporting); and
- (j) to MSD, such additional reports and information relating to the Services as MSD may reasonably request.

22.3 Financial information

The Provider shall:

- (a) at the request of MSD, provide to MSD any information provided by it to the Senior Lenders during the term of this Agreement and any other information relating to this Agreement that MSD may reasonably require;
- (b) provide to MSD copies of:
 - (i) on request by MSD, the Asset Owner's monthly management accounts within five Business Days of their preparation;
 - (ii) the Asset Owner's quarterly management accounts within five Business Days of their preparation;
 - (iii) its annual audited accounts within five Business Days of their publication (in each case prepared in accordance with GAAP); and
 - (iv) its annual report and annual business plan (within five Business Days of their preparation) showing in the case of the annual business plan the Provider's budget for its current and each of the two following financial years; and
- (c) promptly on the occurrence of a Financing Default notify MSD of such Financing Default.

22.4 No relief from obligations by reporting

The provision of reports by the Provider to MSD and any other information provided by the Provider to MSD about the Services does not relieve or affect the Provider's obligations under this Agreement.

23. Sub-contractors

23.1 General provisions

- (a) The Provider must not sub-contract the whole or any part of the Services to any person except in accordance with this clause 23.
- (b) The Provider must not sub-contract all or a substantial part of the Tenancy Management Services without the Provider, the Sub-contractor and MSD entering into a direct deed to protect MSD's rights and interests under this Agreement.
- (c) The Provider is solely responsible for the selection of each Sub-contractor and must ensure, in each case, that each such Sub-contractor is creditworthy, qualified and has the relevant experience and expertise to perform the work it is required to carry out for the Provider.
- (d) The Provider must:
 - (i) comply with its obligations under all sub-contracts to which it is party;
 - (ii) monitor the performance by each Sub-contractor under:
 - (A) each sub-contract to which the Provider is party; and
 - (B) any related direct deed to which the Provider is party;
 - (iii) ensure compliance by each Sub-contractor with those terms of this Agreement that apply to Sub-contractors or sub-contracts; and
 - (iv) ensure that any sub-contract it enters into with a Sub-contractor contains agreements relating to the collection, use, storage, disclosure and security of Personal Information that are on the same terms as the requirements set out in clause 44 (Personal Information).
- (e) The Provider:
 - (i) is not relieved of any of its obligations and liabilities under this Agreement as a result of any subcontracting of its obligations and liabilities; and
 - (ii) remains responsible for all work carried out and materials used for the purposes of the Provider complying with its obligations under this Agreement, in the delivery of the Services.
- (f) The Provider must advise MSD of any early termination of a sub-contract promptly on its termination, or on becoming aware of its termination.
- (g) The Provider may replace any Sub-contractor on giving prior written notice to MSD.

24. Compliance obligations

24.1 Applicable Laws

- (a) The Provider must:
 - (i) ensure that the CHP is at all times registered as a Class 1 Social Landlord;
 - (ii) ensure that the Services (including the procurement and supply of any items or materials procured for the provision of the Services) are provided by it and its Provider Personnel in compliance with all Laws including, without limitation, the Residential Tenancies Act, the Housing Improvement Regulations 1947 and the Vulnerable Children Act 2014, as well maintaining sufficient records, and providing reasonable assistance to MSD where requested, to enable MSD to meet the requirements of the Official Information Act 1982, the Ombudsmen Act 1975 and the Public Records Act; and
 - (iii) not, by any act or omission:
 - (A) delay provision of any information that would cause MSD or any MSD Personnel to be in breach of the Official Information Act 1982; or
 - (B) cause MSD or any MSD Personnel to be in breach of any other Law.
- (b) Clause 24.1(a) is not to be read as limiting any other provision in this Agreement relating to compliance with any specific Laws.

24.2 Environmental obligations

The Provider must at all times perform its obligations under this Agreement in an environmentally responsible manner and comply with all Laws relating to the Environment.

24.3 Consents

The Provider must obtain, maintain and comply with all Consents required in relation to the Services.

24.4 Health and safety obligations

- (a) The Provider:
 - (i) must strictly comply, and ensure that all Provider Personnel strictly comply, with all HSE Legislation and do all things necessary and in a manner that ensures that the Provider satisfies its duties and obligations under all HSE Legislation;
 - (ii) must put in place a Health and Safety Plan that adequately addresses its duties and obligations under this Agreement and under all HSE Legislation;
 - (iii) must ensure that all Provider Personnel take reasonable care that his or her acts or omissions in carrying out the Services do not adversely affect the health and safety of other persons; and
 - (iv) without limiting the effect of any other indemnity in this Agreement, to the extent permitted by Law, indemnifies MSD and all MSD Personnel against any Losses suffered or Liabilities incurred by MSD or any MSD Personnel that may arise as a result of any breach by the Provider or any Provider Personnel of HSE Legislation or this clause 24.4.

- (b) Where MSD and the Provider have a duty in relation to the same matter imposed by or under HSE Legislation, MSD and the Provider will consult, co-operate and co-ordinate activities to discharge their respective duties.

24.5 Notification

The Provider must immediately notify MSD of any breach or likely breach or non-compliance or likely non-compliance with this clause 24.

25. Record keeping

25.1 Service Records

- (a) The Provider must at all times, and in accordance with Good Industry Practice and any applicable Laws, maintain all information (in both hard and soft copy form) relating to the Services (**Service Records**) including information relating to the following:
 - (i) the Provider's performance monitoring;
 - (ii) all Services carried out following Financial Close;
 - (iii) all insurance claims; and
 - (iv) Notifiable Events, near misses and incidents relating to security that have occurred during the Contract Term.
- (b) MSD is entitled to disclose any of the Service Records to a potential New Provider for any of the purposes relating to retendering for the Services but for this purpose may redact from those Service Records, before such disclosure, the Provider's commercially sensitive financial information.

25.2 Financial Records

The Provider must at all times, and in accordance with Good Industry Practice, GAAP (as applicable) and any applicable Laws, maintain all financial information (in both hard and soft copy) relating to the provision of Services under this Agreement (**Financial Records**) including information relating to the following:

- (a) administrative overheads;
- (b) payments made to or received from Sub-contractors;
- (c) capital and operating expenditure;
- (d) such other items as MSD may reasonably require from time to time to conduct costs audits for verification of expenditure for the purpose of this Agreement;
- (e) copies of all written consents and approvals, or waivers or releases in respect of any breaches by the Provider under the Financing Agreements; and
- (f) all reports, invoices and supporting documentation referred to in clause 39.3 (Report and invoice).

25.3 Maintenance of Records

- (a) The Provider shall ensure that the Records are kept up to date at all times.

- (b) The Provider will:
 - (i) keep MSD fully informed as to the procedures in place for ensuring that all the Records are kept up to date at all times, and at MSD's request provide MSD with evidence that those records are fully up to date;
 - (ii) hold all Records held in electronic form in a format that is, or in formats that are, compatible with MSD's computer systems for the time being, so as to enable MSD to exercise its rights of access under clause 25.5(a)(i);
 - (iii) ensure that it and all of the Provider Personnel maintain the Records to a standard and containing sufficient detail to allow an experienced provider of services the same or similar to those of the Services, to perform the Services or similar services if the Provider ceases to do so in whole or in part; and
 - (iv) not hold or store any of the Records outside New Zealand without the prior written consent of MSD.
- (c) The Records must provide sufficient detail to enable MSD to reconcile the Records with:
 - (i) the contents of the Reports that the Provider is required to provide to MSD under this Agreement; and
 - (ii) the invoices that the Provider renders to MSD under clause 39.3 (Report and invoice).

25.4 Retention of Records

- (a) The Provider shall retain all Records it is obliged to maintain under this Agreement for the whole of the Contract Term and for a period of seven years after the Expiry Date or Termination Settlement Date (as applicable).
- (b) The Provider must not use any of the Records other than for the purposes contemplated by this Agreement.
- (c) The Provider must ensure that it has and continues to have access to all Records at all times, that all Records are available in human readable form (as well as computer readable form, if relevant) and that the integrity of the Records is not at any time compromised.
- (d) The retention period specified in clause 25.4(a) applies to the primary source Records and to all Records held in electronic form.
- (e) The Provider will, in addition to its obligations under clause 25.4(a), clause 25.4(b) and clause 25.4(c), observe and comply with the requirements of the Public Records Act as if the Records were public records (as defined in that Act).
- (f) If either party becomes aware or suspects that any unauthorised person has obtained or attempted to obtain access to the Records or any Confidential Information or Personal Information, or has attempted to use the Records or any Confidential Information or Personal Information for purposes not authorised or permitted by the terms of this Agreement, that party:
 - (i) will immediately notify the other party;
 - (ii) will take such steps as are available to it to identify those unauthorised persons; and

- (iii) (after consultation with the other party) will make such changes to its operations at its own cost, with a view to prevent, as far as is practicable, the occurrence of the same or similar breaches of security in the future.

25.5 Access to and inspection of Records

- (a) MSD will have access to:
 - (i) all Records that are maintained by the Provider;
 - (ii) any other information relevant to the Provider's performance and compliance with the terms of this Agreement (but excluding any information or documentation that is subject to legal privilege); and
 - (iii) the Provider's office systems, but only to the extent necessary to enable MSD to have electronic access to all Records held in electronic form (and not in respect of any information that does not relate to this Agreement).
- (b) The Provider must provide such facilities as MSD may reasonably require for its representatives to visit any place where the Records are held, in order to inspect the Records.
- (c) MSD may take copies of any Records during the course of any inspection.
- (d) The Provider will provide a report on all or any of the Records to MSD as and when requested by MSD.

25.6 Assistance in responding to Parliamentary questions

The Provider must provide reasonable co-operation and timely assistance to MSD, including through the provision of Records and other information or responses related to this Agreement, where MSD requires information from the Provider in order for MSD or a Minister to respond to a Parliamentary question or a question from a Select Committee of the House of Representatives.

26. Service assurance

26.1 Quality Assurance System

- (a) Prior to Financial Close, the Provider must develop a Quality Assurance System to cover the provision of the Services.
- (b) The Quality Assurance System must be developed and implemented in accordance with the Quality Assurance Plan, which forms part of the Policy and Procedures Manual.
- (c) The Provider:
 - (i) must implement and comply with the Quality Assurance System in providing the Services;
 - (ii) must allow MSD access to the Quality Assurance System so as to enable surveillance and auditing of compliance with the Quality Assurance System; and
 - (iii) will not be relieved from performing any of its obligations under this Agreement or from any of its liabilities whether under this Agreement or at Law as a result of the implementation of, and compliance with, the quality assurance requirements of this Agreement.

- (d) The Provider must regularly update and maintain the Quality Assurance System throughout the Contract Term to the reasonable satisfaction of MSD.
- (e) The Quality Assurance System and each update of the same must be submitted for review under the Review Procedures.

26.2 Access to premises and Properties

- (a) The Provider shall, on reasonable notice, take all reasonable steps (including exercising all rights available to it under the Tenancy Agreement or pursuant to any Laws, including the Residential Tenancies Act) to provide MSD and/or the independent property expert involved in the Sales Process (and any person authorised by any of those persons) prompt access to any of the Provider's premises used for providing the Services or any Property for the purposes set out in clause 26.2(b) and clause 26.3. Such access shall be provided in a manner that ensures the health and safety of those that will be entering the Provider's premises or a Property is managed to the greatest extent possible, including by alerting MSD to any risks that may be present at the Property that the Provider ought to be reasonably aware of, prior to the premises or a Property being accessed.
- (b) MSD may, subject to being able to access the Provider's premises or any Property under clause 26.2(a), enter the Provider's premises or any of the Properties:
 - (i) to appraise the Properties and/or the Services;
 - (ii) to review, inspect and monitor work being done or services being provided as part of any aspect of the Services;
 - (iii) to undertake rectification of any outstanding Defects in accordance with clause 19.4(d) or clause 19.9 (Defects);
 - (iv) to access the Records in accordance with clause 25.5 (Access to and inspection of Records);
 - (v) to check the Provider's compliance with its obligations under this Agreement;
 - (vi) to remedy any damage caused by MSD or any MSD Personnel as required by clause 6.6(a)(i) (such MSD Personnel to be approved in advance by the Provider, such approval not to be unreasonably withheld);
 - (vii) to undertake audits of any aspect of the Services; and
 - (viii) in connection with any matter that MSD deems relevant to the performance of the Services,

and when accessing any of the Properties, MSD shall, and shall ensure that any MSD Personnel, comply with any reasonable access requirements notified to it by the Provider.

- (c) The Provider shall provide MSD and any person authorised by MSD (or procure that MSD and any person authorised by MSD) is provided with such information, explanations and documentation reasonably necessary or desirable to enable MSD to fully exercise its rights under clause 26.2(b).
- (d) MSD will bear the reasonable costs and expenses of any inspection or test conducted at its direction under this clause 26 unless the inspection or test reveals any Defect (excluding a Defect which is still to be remedied as part of the Remediation Works, and which is not, at the relevant time, already required to have been completed in accordance with the Remediation Plan) or breach of the Tenancy Management Requirements, in which case the Provider must bear the costs and expenses of the inspection and testing.

26.3 Audits

- (a) MSD may initiate an audit of all or any of the items listed in clause 26.3(d) to verify the Provider's compliance with and performance of its obligations under this Agreement and the likely capacity of the Provider to continue to comply with the Provider's obligations under this Agreement.
- (b) If MSD initiates an audit MSD must:
 - (i) give the Provider reasonable notice of when the audit is to be conducted;
 - (ii) advise the Provider of the indicative scope of the audit that is to be undertaken;
 - (iii) give the Provider an estimate of the audit's duration;
 - (iv) advise the Provider of the individuals to whom MSD wishes to have access;
 - (v) advise the Provider of the identity of the person or persons who are to conduct the audit; and
 - (vi) not initiate more than two audits in each Contract Year, unless a Termination Event has occurred and is continuing.
- (c) The Provider must:
 - (i) provide such information, explanations and documentation requested by the persons undertaking the audit for MSD that are relevant to the conduct of the audit;
 - (ii) arrange for those undertaking the audit on behalf of MSD to meet with the Provider's internal quality assessors and external auditors if so required; and
 - (iii) make the Records available to those undertaking the audit on behalf of MSD.
- (d) An audit may include examination of the following to the extent they relate to the provision of the Services or the performance of its obligations under this Agreement:
 - (i) all aspects of the provision of the Services including the implementation of any Change;
 - (ii) security and administration practices and facilities;
 - (iii) quality assurance practices;
 - (iv) the Provider's compliance with the Transition Services Requirements, Tenancy Management Requirements, the Property Management Requirements and/or the requirements relating to the Helpdesk and Schedule 11 (Payment Mechanism);
 - (v) statutory, regulatory and contractual compliance generally;
 - (vi) project management practices and documentation;
 - (vii) internal review and testing processes;
 - (viii) Sub-contractor arrangements;
 - (ix) document management practices and version control;
 - (x) record management practices;

- (xi) the resources and technical infrastructures being utilised by the Provider in its supply of the Services;
 - (xii) business continuity, backup procedures and disaster recovery planning;
 - (xiii) health and safety records and compliance with the Provider's health and safety duties and obligations under this Agreement and under all HSE Legislation;
 - (xiv) application and operating systems and the use of tools and other third party materials; and
 - (xv) the Provider's operational processes and methodologies and all documentation associated with those processes and methodologies.
- (e) Upon the conclusion of any audit, the person that has undertaken the audit shall prepare a report and make that report available to MSD and the Provider. MSD and the Provider must review that report together as soon as practicable after it is issued. If that report reveals failure on the part of the Provider to be in compliance with any of its obligations under this Agreement, the Provider shall at its own cost promptly take such steps necessary to remedy or mitigate the effect of those failures.
- (f) If an audit establishes that the Provider is in material breach of this Agreement, or has acted negligently or fraudulently in the performance of any of the Services, MSD's reasonable costs of performing the audit are to be borne by the Provider. In all other cases the Provider will not be liable for any costs incurred by MSD in performing the audit.
- (g) MSD shall ensure that any person appointed by it to conduct an audit under this clause 26.3 will agree to be bound by a confidentiality agreement on terms that are substantially similar to those set out in clause 43 (Confidential Information), prior to the commencement of that audit.

26.4 Controller and Auditor-General

The Provider shall permit the Controller and Auditor-General or any person appointed by the Controller and Auditor-General to examine all or any part of the Records for the purposes of the Public Audit Act 2001. The Provider must provide oral and written explanations to the Controller and Auditor-General or any person appointed by the Controller and Auditor-General in accordance with any request from any such person.

27. Monitoring of Services

27.1 Provider monitoring

The Provider shall monitor its performance in the delivery of the Services in accordance with the applicable provisions of the Policy and Procedures Manual.

27.2 MSD monitoring

- (a) MSD may elect at any time to undertake its own performance monitoring of the Services for any purpose, including to ensure that the Services are being provided in accordance with this Agreement.
- (b) The Provider will use its best endeavours to assist MSD in any performance monitoring exercise under clause 27.2(a). MSD may notify the Provider of the outcome of the performance monitoring exercise, and the Provider shall have due regard to MSD's comments in relation to the ongoing provision of the Services.

- (c) Without prejudice to MSD's other rights and remedies under this Agreement, where the Provider has been found:
 - (i) to be misleading in the submission of Availability Reports or Performance Reports or claims for payment under clause 39.3 (Report and invoice); or
 - (ii) to have submitted at least two erroneous Availability Reports or Performance Reports within a three month period,

MSD may, by notice to the Provider, increase the level of:

- (iii) its monitoring of the Provider; and/or
- (iv) the Provider's monitoring of its own performance of its obligations under this Agreement,

in respect of the Services that are the subject of such misleading or erroneous reporting until such time as the Provider demonstrates to the reasonable satisfaction of MSD that it is capable of performing and will perform all of its obligations under this Agreement.

- (d) If MSD issues a notice under clause 27.2(c), the Provider shall bear its own costs and indemnify and keep MSD indemnified at all times from and against all reasonable costs and expenses incurred by or on behalf of MSD in relation to such increased level of monitoring arising due to circumstances under clause 27.2(c).

28. Asset Condition Survey

28.1 Asset Condition Surveys

- (a) Each Asset Condition Survey undertaken by (or on behalf of) either party must assess whether the relevant Property has been and is being remediated and maintained by the Provider in accordance with:
 - (i) the Asset Condition Standards;
 - (ii) the Asset Management Plan;
 - (iii) the Remediation Plan;
 - (iv) the Property Management Requirements; and
 - (v) the Provider's other obligations under this Agreement.
- (b) The Provider must carry out an Asset Condition Survey in relation to each Property, and produce a report on that Asset Condition Survey, at least once every five years, with an Asset Condition Survey being carried out in relation to 20 percent of all Properties during each Contract Year. The Provider must submit a copy of every Asset Condition Survey report to MSD.
- (c) MSD shall be entitled to carry out Asset Condition Surveys, or to procure the carrying out of Asset Condition Surveys by an independent expert, no more than once every five Contract Years with respect to any particular Property, unless a Remediable Provider Default or an Immediate Termination Event is subsisting, in which case there shall be no limitation on MSD's right to undertake Asset Condition Surveys.
- (d) In addition, MSD shall be entitled to carry out an Asset Condition Survey, or to procure the carrying out of an Asset Condition Survey by an independent expert, on each or any

individual Renewed Property during the period between the date that is 27 months prior to the Expiry Date and the date that is six months prior to the Expiry Date.

28.2 Notification

MSD shall notify the Provider in writing a minimum of 20 Business Days in advance of the date it wishes to carry out or procure the carrying out of each its Asset Condition Surveys.

28.3 Parties' obligations

Where MSD carries out or procures the carrying out of an Asset Condition Survey, MSD shall use its reasonable endeavours to minimise any disruption to Social Housing Clients and to the provision of the Services by the Provider. The Provider shall (free of charge) afford MSD and any independent expert carrying out an Asset Condition Survey any reasonable assistance required by that person during the carrying out of that Asset Condition Survey, including obtaining Social Housing Client consent and exercising its rights under the Residential Tenancies Act.

28.4 Results of Asset Condition Survey

If any Asset Condition Survey shows that the Provider has not complied with or is not complying with any of its obligations under this Agreement for the maintenance of the Properties to the Required Standard, then MSD shall be entitled:

- (a) to notify the Provider of the rectification and/or maintenance work required to bring any Property up to the Required Standard;
- (b) to specify a reasonable period within which the Provider must carry out such rectification and/or maintenance work; and
- (c) to recover the cost of the applicable Asset Condition Survey from the Provider, as Moneys Owning.

28.5 Provider must perform Outstanding Work

The Provider shall carry out such Outstanding Work notified under clause 28.4 in order to reach the Required Standard within the period specified, and any costs it incurs in carrying out the Outstanding Work shall be at its own expense.

28.6 Failure to undertake Outstanding Work

If the Provider fails to complete such Outstanding Work in order to reach the Required Standard within the period specified, MSD shall be entitled to undertake, or to procure the undertaking of, such Outstanding Work and to recover all costs incurred by it (including administration costs) in doing so from the Provider, as Moneys Owning.

29. Provider Personnel and employees

29.1 Provider Personnel

- (a) The Provider must ensure that all Provider Personnel:
 - (i) are suitably qualified and are of good character;
 - (ii) have the requisite skills, expertise, qualifications and experience; and

- (iii) carry out their respective duties with due care, skill and diligence and otherwise in accordance with the service delivery standards set out in this Agreement.
- (b) The Provider acknowledges and agrees that MSD may conduct a Probity Investigation and other investigations in relation to any Provider Personnel at any time during the Contract Term in accordance with clause 29.3. The Provider must obtain all necessary consents for this purpose.

29.2 Police check

- (a) The Provider shall procure (unless and to the extent otherwise agreed by MSD) that, in respect of all potential staff or persons engaged by the Provider or any Sub-contractor accessing Properties or having contact with Tenants when performing any of the Services (each a **Named Employee**), before a Named Employee begins to perform any of the Services:
 - (i) each Named Employee is questioned as to whether he or she has any Convictions;
 - (ii) a Police Vetting Report is obtained in respect of each Named Employee;
 - (iii) each Named Employee shall provide their express written consent to the Provider to the disclosure of any Convictions (including any that arise after the Named Employee has commenced performing any Service) and to the disclosure of any Police Vetting Report to MSD; and
 - (iv) to the extent permitted by Law, a copy of the information referred to in clause 29.2(a)(iii) is retained by the Provider and provided to MSD upon request.
- (b) The Provider shall procure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a Police Vetting Report, is employed or engaged to perform any of the Services without MSD's prior written consent (such consent not to be unreasonably withheld or delayed).
- (c) MSD may require a further Police Vetting Report to be obtained in respect of a Named Employee from time to time throughout the Contract Term. The Provider shall procure that MSD is kept advised at all times of any member of staff who, subsequent to their commencement of employment as a member of staff, receives a Conviction or whose previous Convictions become known to the Provider (or any employee of a Sub-contractor involved in the provision of the Services).
- (d) This clause 29.2 shall not apply to those individuals who are required by the Provider or any Sub-contractor to provide emergency reactive services. In the case of such individuals, the Provider shall, or shall procure that any Sub-contractor shall, ensure that such individuals are accompanied at all times while at any tenanted Property by a member of the Provider or Sub-contractor's staff who has been properly employed or engaged in accordance with clauses 29.1(a)(i) to 29.1(a)(iii).

29.3 Probity Investigations

- (a) At any time MSD may conduct, or may require the Provider to conduct, a Probity Investigation in respect of any key personnel. MSD will advise the Provider in writing of those persons on whom MSD requires a Probity Investigation.
- (b) Key personnel comprise any officer or employee of the Provider or a Provider Related Person that:
 - (i) has the ability to exercise influence or control in matters relating to the provision of the Services;

- (ii) has access to any Property following Financial Close; or
 - (iii) has access to information that is Confidential Information of MSD or any other User or Personal Information provided by MSD.
- (c) MSD may require the Provider to conduct probity and security investigations in addition to a Probity Investigation on key personnel or persons proposed to be key personnel.
- (d) The Provider will advise MSD at least 15 Business Days prior to the proposed appointment of any key personnel.
- (e) The Provider will procure the written consent to a Probity Investigation of all key personnel on whom MSD advises the Provider it requires a Probity Investigation and any other probity and security investigations, and all consents and other information required by the Law and by MSD must be given to MSD.
- (f) MSD's determination as to whether a person is a fit and proper person to be involved in the provision of Services will be advised to the Provider by MSD:
 - (i) (where MSD does not require a Probity Investigation) 10 Business Days after being informed of the proposed appointment under clause 29.3(d); or
 - (ii) (in any other case) within 10 Business Days after being provided with the information referred to in clause 29.3(e).
- (g) The Provider will not appoint, and will ensure no other person appoints, any person to a position that enables them to perform any key personnel function if MSD has not given approval (following any Probity Investigation and other investigations that MSD requires) to that person becoming key personnel.

29.4 Resources and training

The Provider shall procure that:

- (a) there shall be at all times a sufficient number of staff (including all relevant grades of supervisory staff):
 - (i) engaged in the provision of the Services with the requisite level of skill and experience in order to enable the Provider to comply with and perform its obligations under this Agreement; and
 - (ii) to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for the Services; and
- (b) all staff receive such training and supervision, at the Provider's cost:
 - (i) as is necessary to ensure the proper performance of the Services under this Agreement;
 - (ii) to the standard appropriate for their particular positions; and
 - (iii) subject to Part 8 (Changes) (as applicable), to updated or modified standards as identified and notified to the Provider from time to time.

29.5 Personnel policies and procedures

The Provider shall establish and maintain personnel policies and procedures covering all relevant matters (including a code of conduct, discipline, employment relationship problems,

equal opportunities, and health and safety (including in relation to drugs and alcohol)). The Provider shall ensure that the terms and implementation of such policies and procedures comply with Laws, and Good Industry Practice, and that they are published in written form and that copies of them (and any revisions and amendments to them) are immediately issued to MSD.

29.6 Responsibility for staff costs

As between the Provider and MSD:

- (a) the Provider shall be entirely responsible for all aspects, including costs, of the contracts of employment of its and its Sub-contractors' employees; and
- (b) except where otherwise specifically provided, the Provider shall be liable for any costs and payment of redundancy awards to its employees, agents or representatives, including any costs and payment of redundancy awards to Provider Personnel.

29.7 Protected Disclosures Act

The Provider must:

- (a) comply with the requirements of section 11 of the Protected Disclosures Act, as though the Provider were a public sector organisation within the meaning of that Act;
- (b) provide copies of the internal procedures required under clause 29.7(a) to MSD both before Financial Close and whenever they are changed; and
- (c) provide reporting to MSD in its Performance Reports in relation to disclosures received by the Provider in accordance with its internal procedures.

Part 7 – Force Majeure Events

30. Application

Clause 31 (Force Majeure Events) applies on and from Financial Close until the Expiry Date or the Termination Settlement Date (as applicable).

31. Force Majeure Events

31.1 No liability for breaches caused by Force Majeure Event

If and to the extent that the Provider is unable to perform any of its obligations under this Agreement because of any Force Majeure Event:

- (a) the requirement to do so will be suspended;
- (b) the Provider will have no liability to MSD in respect of any non-performance by the Provider of such obligations;
- (c) a Property is an Unavailable Untenanted Property as a result of the Force Majeure Event, the Property will be deemed to be an Unavailable Tenanted Property instead;
- (d) a Property is Unavailable for Maintenance Reasons as a result of the Force Majeure Event, the Property will not be treated as Unavailable for Maintenance Reasons for the purpose of the definition of Unavailability Threshold; and

- (e) a Property does not meet the Availability Requirements as a result of the Force Majeure Event, the Property will not be treated as having not met the Availability Requirements for the purpose of the definition of Persistent Availability Breach,

but only from the time of the Force Majeure Event until the time at which MSD determines (acting reasonably) that the Force Majeure Event or the consequences of the Force Majeure Event cease to prevent compliance with those obligations,

but:

- (f) as soon as reasonably practicable after becoming aware of the Force Majeure Event, the Provider must notify MSD accordingly, describing the Force Majeure Event, including:
 - (i) that a Force Majeure Event has occurred;
 - (ii) the date of commencement of the Force Majeure Event; and
 - (iii) that the Force Majeure Event is (or would, if unremedied by the Provider, be) the direct cause of any failure or likely failure by the Provider to comply with its obligations under this Agreement, the obligations of the Provider under this Agreement that are affected by the Force Majeure Event, and the period of time for which the same is likely to subsist,

and where reasonably practicable, the Provider will continue to provide MSD regular written reports with respect to such Force Majeure Event, for so long as the Force Majeure Event continues to prevent the Provider from carrying out its obligations under this Agreement;

- (g) the Provider must notify MSD if at any time the Provider becomes aware of any additional information relating to the Force Majeure Event or its consequences that is new or that renders information previously provided inaccurate or misleading;
- (h) the Provider will not be released from any liability which accrued before the Force Majeure Event;
- (i) the Provider must use reasonable endeavours to overcome, or to mitigate the effect of the Force Majeure Event and to continue to perform the Provider's obligations under this Agreement on time;
- (j) the Provider must, as soon as reasonably practicable after becoming aware of the cessation of the Force Majeure Event, notify MSD accordingly; and
- (k) the Agreement will otherwise remain in effect in all respects.

31.2 Alternative arrangements

MSD may make its own arrangements for alternate means of providing any of the Services that have been suspended as a result of a Force Majeure Event, and in any such case Part 13 (MSD Step-in) shall apply.

31.3 Where relief is not available

- (a) Nothing in clause 31.1 entitles the Provider to any relief from its obligations under this Agreement which are not affected by the relevant Force Majeure Event.
- (b) No relief is available to the Provider if and to the extent that:

- (i) the relevant Force Majeure Event or its consequences could have been prevented by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking the obligations under this Agreement;
- (ii) the relevant Force Majeure Event or its consequences were otherwise caused or contributed to directly or indirectly by the negligence of the Provider or any Provider Personnel or the failure by the Provider or any Provider Personnel to comply with their respective obligations; or
- (iii) the relevant Force Majeure Event or its consequences were otherwise within the control of the Provider (including within the scope of any reasonable contingency planning or otherwise in accordance with Good Industry Practice).

31.4 Step-in

The rights of the Provider to suspension of obligations by reason of a Force Majeure Event do not affect the rights of MSD under clause 53 (Step-in Rights).

31.5 No Claim

The Provider will not be entitled to make any Claim against MSD arising out of or in connection with a Force Majeure Event other than under and in accordance with this Part 7.

31.6 Relief from termination

If:

- (a) an Immediate Termination Event, Remediable Provider Default or any failure to rectify a Remediable Provider Default or to implement a Prevention Plan occurs; and
- (b) MSD is satisfied (acting reasonably) that the Immediate Termination Event, Remediable Provider Default or failure to rectify a Remediable Provider Default or to implement a Prevention Plan is caused by a Force Majeure Event,

then, subject to the Provider's compliance with the relevant provisions of this Part 7, MSD shall not be entitled to terminate this Agreement under clause 63.5 (Termination Notice) in respect of that Immediate Termination Event or Remediable Provider Default for as long as the Force Majeure Event continues to prevent the rectification of the Remediable Provider Default or the implementation of the Prevention Plan.

31.7 Disputes

If the parties cannot agree:

- (a) the extent of any relief attributable to a Force Majeure Event; or
- (b) that a Force Majeure Event has occurred,

the parties will resolve the matter by referring the matter to Expert Determination.

Part 8 – Changes

32. Generally

32.1 Change process must be followed

Subject to clause 35.3 (Ratification) and paragraph 6 (Changes to requirements in Schedule 7) of Schedule 7 (Tenancy Management Requirements), no payment will be made in respect of any variation to this Agreement that relates to a Change, unless the processes and procedures set out in this Part 8 have been complied with and a Confirmed Change has been achieved. For the avoidance of doubt, no payment will be made in respect of any variation to this Agreement that relates to any variation other than a Change, unless the processes and procedures set out in clause 15 (Reconfiguration) have been complied with.

32.2 Obligations unaffected without express consent

Unless and to the extent otherwise expressly agreed by MSD, in relation to each Change, the Provider must continue to comply with its obligations under this Agreement until a Change has become a Confirmed Change in accordance with this Part 8, or paragraph 6 (Changes to requirements in Schedule 7) of Schedule 7 (Tenancy Management Requirements), as applicable.

32.3 Directions

- (a) The Provider must comply with any reasonable direction issued by MSD's Representative, which is consistent with the terms of this Agreement.
- (b) Any claim by the Provider against MSD for costs expenses and/or other relief in connection with a direction given to the Provider by MSD's Representative will only be dealt with under this Part 8 as a Change if MSD determines that the direction constitutes a Change and MSD does not withdraw or modify the direction within 10 Business Days of the date of receipt of the Provider's notice under clause 32.3(c).
- (c) The Provider must, if it wishes to make a claim for costs, expenses and/or other relief in connection with a direction given to it by MSD, within 10 Business Days of receiving that direction and before complying with that direction, give written notice to MSD:
 - (i) stating that it considers the direction constitutes or involves a Change;
 - (ii) setting out the legal basis for the claim, whether based on a term of this Agreement or otherwise, and if based on a term of this Agreement, clearly identifying the specific term;
 - (iii) setting out the facts relied on in support of the claim in sufficient detail to permit verification; and
 - (iv) detailing the estimated Change in Costs to be claimed and the proposed methodology by which that Change in Costs will be calculated, on an Open Book Basis,

and, if the Provider has given notice to MSD that it wishes to make such a claim in respect of a direction, the Provider will not be required to comply with such direction until it is determined that the direction does not constitute a Change or the Change becoming a Confirmed Change in accordance with this Part 8.

- (d) If the Provider fails to comply with clause 32.3(c), then MSD will have no liability to the Provider nor will the Provider have any cause of action against MSD or any MSD Personnel in respect of the direction.

- (e) Notwithstanding clause 32.3(c), if MSD advises the Provider that a direction must be acted on by the Provider urgently, and the Provider notifies MSD prior to acting on that direction that it wishes to make a claim for costs and expenses on the basis that such direction is a Change, the Provider will act on the direction immediately but will then provide the information set out in clause 32.3(c) as soon as reasonably practicable thereafter.
- (f) If the Provider disputes any determination on the part of MSD under clause 32.3(a) that a direction is not a Change, the parties shall resolve the matter in accordance with the Dispute Resolution Procedures and if the Dispute cannot be resolved informally between the parties in accordance with those Dispute Resolution Procedures, it shall be subject to Expert Determination.

32.4 Change Compensation Principles

Any payment by MSD to the Provider in respect of a Change (as provided for in this Part 8) is governed by the terms of Schedule 12 (Change Compensation Principles). No amount is payable by MSD to the Provider in respect of a Change, except as expressly provided in this Part 8 and then only to the extent provided for in the Change Compensation Principles.

33. Initiation of Change Procedure

33.1 Submission of Change Notice

- (a) Each of MSD and the Provider shall be entitled to propose a Change to this Agreement by issuing to the other party a written notice containing details of the proposed Change (**Change Notice**).
- (b) Where the Provider is the issuer of the Change Notice, the Change Notice must include:
 - (i) a full analysis and breakdown of the proposed Change, including:
 - (A) the reasons for the proposed Change, including a brief explanation of the costs and benefits to MSD;
 - (B) the feasibility of the Change, and how and when it could be implemented or completed (as applicable);
 - (C) the impact of the Change on the Services, timeframes, the terms of this Agreement, and the ability of the Provider to perform its obligations under this Agreement;
 - (D) any Change in Costs (on an Open Book Basis) (whether an increase or a decrease);
 - (E) any competitive quotations required by MSD where the proposed Change has an estimated Change in Costs more than \$100,000 (Indexed);
 - (F) any implications for the Provider's existing Tenants, and the Provider's proposal for minimising any disruption to, or implications of, the Change on those Tenants;
 - (G) any implications for the Provider in terms of the Provider's registration as a Class 1 Social Landlord, including any approval that would be required from the Regulatory Authority to implement the Change;
 - (H) the implications of not implementing the Change;

- (I) any other matter that is likely to be relevant to MSD in its consideration of the Change; and
 - (J) any other approval and Consent implications of the proposed Change; and
 - (ii) a draft amendment agreement setting out the amendments required to this Agreement that would be needed to give effect to the Change if it becomes a Confirmed Change (**Draft Amendment Agreement**),
- and that written notice shall then constitute a **Change Proposal**.
- (c) A Change Proposal issued by the Provider must:
- (i) not seek to impose any unreasonable or arbitrary conditions;
 - (ii) not, unless it is a Change Proposal prepared in response to a Change Notice issued by MSD, seek the reimbursement of costs incurred as a result of, or due to any Change that relate to a Change in Law unless the Change in Law is a Qualifying Change in Law, and in that case, provided the Provider has complied with clause 38 (Change in Law); and
 - (iii) not seek the reimbursement of costs incurred as a result of, or due to that Change, to the extent that the subject matter of that Change involves:
 - (A) anything that is, immediately prior to the issue of the Change Notice, already required for the Provider to comply with this Agreement; and
 - (B) a proposed Change to the extent that such Change is sought as a result of an act or omission of the Provider or is as a result of any default or misconduct of the Provider.
- (d) Where MSD is the issuer of the Change Notice, the Change Notice must contain such information as is reasonably necessary to enable the Provider to respond with a Change Proposal.
- (e) Within 20 Business Days of receipt of a Change Notice, unless the Provider has issued MSD a notice in accordance with clause 33.3(b), the Provider shall prepare and issue to MSD a Change Proposal containing the information referenced in clause 33.1(b).
- (f) MSD may, in its absolute discretion, require the Provider to obtain competitive quotations for the work or for elements of the work involved in implementing the Change (in which case, the competitive quotations will form part of the Change Proposal or an amended Change Proposal).

33.2 Funding a Change

If MSD is the sender of the Change Notice, and the Change is identified as involving a Change in Costs increase, MSD must specify in the Change Notice how the capital expenditure and/or operating expenditure involved in implementing the Change would be financed.

33.3 Provider's right to refuse

- (a) The Provider shall be entitled to refuse an MSD-initiated Change Notice only where that Change (if implemented):
 - (i) would require the Services to be performed by the Provider in a way that infringes any Law;
 - (ii) would be inconsistent with Good Industry Practice;

- (iii) would cause any Consent to be revoked;
- (iv) would materially and adversely affect the health and safety of any person residing in or working on the Properties;
- (v) would cause any existing Insurance Policy to become void or voidable; or
- (vi) would cause the CHP to lose its tax exempt status or act ultra vires,

or where the Change Notice relates to the addition of Properties to the Agreed Pool of Properties as contemplated by clause 12.1 (New Properties).

- (b) The Provider must provide MSD with written notice of its refusal of an MSD-initiated Change Notice within 10 Business Days of its receipt of the relevant Change Notice issued in accordance with clause 33.1(a). The Provider's notice must set out the reason or reasons for such refusal and provide all supporting documentation (including copies of all relevant legal or professional assessments) that the Provider contends support its refusal of the MSD-initiated Change Notice. If MSD disputes the Provider's grounds for refusal, then MSD may refer the Dispute to Expert Determination for resolution.

33.4 MSD's right to refuse or withdraw

MSD shall be entitled to refuse any Provider-initiated Change Proposal other than:

- (a) a Change Proposal that relates to a Change in Law which is not a Change Proposal to which clause 38 (Change in Law) applies; and
- (b) a Change Proposal that relates to a direction issued by MSD in accordance with clause 32.3 (Directions) that in fact constituted a Change (provided that the Provider has complied with the requirements of that clause 32.3 itself and then only to the extent that the Provider has already implemented the direction that constitutes a Change),

and shall be entitled to withdraw any MSD-initiated Change Notice at any time prior to a proposed Change becoming a Confirmed Change in accordance with clause 35.2 (Documentation).

34. Review of Change Proposal

34.1 Review and audit

- (a) Following receipt of a Change Proposal, MSD may, in good faith and taking account of all the relevant issues, conduct:
 - (i) (at MSD's election) a full cost audit or other review of the Change Proposal on an Open Book Basis; and
 - (ii) (at MSD's election) a full technical audit or other review of the Change Proposal,and the Provider will be solely responsible for the costs of those audits or reviews unless the Change is a MSD-initiated Change.
- (b) The Provider must give MSD access to all information and documentation that MSD may request for the purpose of conducting the audits and reviews under clause 34.1(a).

34.2 Change in Costs

- (a) MSD will not be obliged to accept the reasonableness or accuracy of any quote, estimate, valuation, allowance or cost submitted by the Provider in any Change Proposal.
- (b) MSD may require and rely on independent valuations or assessments from qualified experts appointed by MSD at MSD's own expense for this purpose.
- (c) Without limiting the foregoing, the parties acknowledge and agree that any valuation or assessment by an expert appointed under clause 34.2(b) is solely for MSD's benefit and, notwithstanding verification by that expert, MSD in its absolute discretion may elect or refuse to accept the Change in Costs proposed by the Provider or any other quote, estimate, valuation, allowance or cost submitted by the Provider in connection with its Change Proposal.

35. MSD approval or rejection of Change Proposal

35.1 Notification

- (a) Within 10 Business Days (or such other period as may be agreed by the parties, acting reasonably) of receiving a Change Proposal from the Provider (including an updated Change Proposal under clause 35.1(a)(ii)) MSD will notify the Provider whether it:
 - (i) accepts the Change Proposal, in which case the parties must sign and date the Draft Amendment Agreement (whereupon it will become a Confirmed Change in accordance with clause 35.2);
 - (ii) requests changes to the Change Proposal (including the addition of further relevant information), in which case the Provider will promptly (and in any event within 10 Business Days or such other period as may be agreed between the parties, acting reasonably) provide to MSD an updated Change Proposal that incorporates MSD's reasonably requested changes, provided that, within five Business Days of a request from MSD to change the Change Proposal, the Provider may notify MSD that it wishes to negotiate the Change Proposal, in which case the process in clause 35.1(a)(iii) will apply;
 - (iii) wishes to negotiate the Change Proposal, in which case the parties must, as soon as practicable (and in any event within five Business Days) after MSD notifies the Provider of its desire to negotiate the Change Proposal, meet and use their best endeavours to agree the terms of the Change;
 - (iv) withdraws the MSD Change Notice to which the Change Proposal relates, in which case the Change Proposal will be of no effect; or
 - (v) rejects the Change Proposal, in which case that Change Proposal will be deemed to be withdrawn.
- (b) If MSD and the Provider are unable to agree on the final terms of a Change Proposal within 15 Business Days of being requested to do so pursuant to clause 35.1(a)(iii) (or within any other time period that the parties may, acting reasonably, agree within that 15 Business Day period), clause 35.4 will apply unless the Change Proposal relates to a Change in Law to which clause 38 (Change in Law) does not apply, in which case the matter will be treated as a Dispute to be resolved by referring the Dispute to Expert Determination.
- (c) Notwithstanding the foregoing, MSD may not reject any Change Proposal proposed by the Provider to the extent the Change Proposal relates to a Change that is required in order for the Provider to implement and comply with any Change in Law.

35.2 Documentation

The parties will document agreement to the Change Proposal by execution of an applicable amendment agreement setting out the terms on which the Change is to be implemented, including specifying how the Confirmed Change will be paid for (and under which of the Project Documents). In order for a Change to become a Confirmed Change, MSD must sign and return a copy of the applicable amendment agreement, as soon as practicable after the parties have agreed and documented its terms.

35.3 Ratification

Where it is impossible for the Provider to seek MSD's consent to a Change under this Agreement before the Change is partially or fully implemented or where, in breach of this Agreement, the procedure in this Part 8 has not been followed prior to the partial or full implementation of a Change, then:

- (a) the Provider must, as soon as reasonably practicable (and in any event within five Business Days) of the breach, seek MSD's ratification of any such Change by submitting a Change Proposal in accordance with this Part 8; and
- (b) in such circumstances MSD may, at its discretion, reject the proposed ratification, in which case the Provider must reverse any such Change at its own cost, provided that MSD cannot reject a proposed ratification submitted in accordance with clause 35.3(a), where the relevant Change was reasonable and performed by the Provider in direct response to a bona fide emergency.

35.4 MSD-imposed implementation

- (a) Where MSD receives a Change Proposal from the Provider in respect of an MSD Operational Change, MSD may (unless the notice would have the effect of requiring the Provider to be in breach of any Law or to act inconsistently with Good Industry Practice, would cause any existing Consent to be revoked, would cause any existing Insurance Policy to become void or voidable, would cause the CHP to lose its tax exempt status or act ultra vires, or requires the Provider to undertake structural reconfiguration of a Property), give notice to the Provider requiring the Change Proposal (as may be amended by MSD provided that it still remains within the definition of MSD Operational Change) to be implemented on the terms, conditions and specifications, and with the alterations to payments payable under this Agreement (or any component of a payment, such as the Agreed Rent for a Property), specified in that notice (a **Mandatory Change Notice**).
- (b) Where MSD provides the Provider with a Mandatory Change Notice:
 - (i) the Provider may provide notice to MSD that it disagrees with the specified alterations to the payments to be made under this Agreement, but may not otherwise dispute or contest the terms, conditions and specifications on which the Change is to be implemented. Any notice to be given by the Provider under this clause 35.4(b)(i) must be given within three Business Days of receipt of the Mandatory Change Notice, otherwise the Provider is deemed to have accepted the terms; and
 - (ii) where the parties are unable to agree on the specified alterations to payments to be made under this Agreement within 10 Business Days of the date of the Mandatory Change Notice, the Dispute will be referred to Expert Determination for resolution.
- (c) Pending resolution of the alteration of the payments to be made under this Agreement as a result of the Change, the Provider must, if so directed by MSD, implement the Change on the basis set out in the Mandatory Change Notice.

35.5 Conflict

Notwithstanding the presence of any “entire agreement” clause in an amendment agreement, in the event of a conflict between a Confirmed Change and the Change Compensation Principles, the Confirmed Change (and the associated amendment agreement) will be deemed to be subject to the Change Compensation Principles, except and to the extent that the Confirmed Change contains terms expressly derogating from the Change Compensation Principles and specifying what those derogations are.

35.6 Financing of Capital Expenditure

- (a) MSD acknowledges that where the Change is a MSD-initiated Change Notice that would involve a Change in Costs increase, MSD will:
 - (i) agree to pay for any Capital Expenditure; or
 - (ii) withdraw the Change.
- (b) If MSD has agreed to pay the Capital Expenditure required to implement the Change, the parties will also document as part of the amendment agreement:
 - (i) the amount and timing of the costs to be incurred by the Provider in implementing the Change; and
 - (ii) the process by which the amount and timing of such costs will be verified during the implementation of the Change and the amount, timing and terms of payments to be made by MSD as a result.

35.7 Provider's Costs

- (a) MSD will not incur any liability in respect of any costs and expenses incurred by the Provider, any Provider Personnel or any other person in connection with the preparation, processing and approval of any Change Proposal, except to the extent provided in clause 35.7(b).
- (b) If MSD is the sender of the Change Notice and the Change Notice is subsequently withdrawn by MSD under clause 35.1, MSD must pay reasonable additional third party costs incurred by the Provider in preparing the Change Proposal, provided that:
 - (i) the Provider has used its best endeavours to submit a reasonably priced Change Proposal in accordance with Good Industry Practice;
 - (ii) the additional third party costs incurred by the Provider must only incorporate the direct costs invoiced by a third party to the Provider or a Provider Related Person in connection with preparing that Change Proposal and must not include any margin payable to the Provider or a Provider Related Person; and
 - (iii) the Provider has provided MSD with such evidence as MSD may reasonably require in order to verify the additional third party costs and that such costs can be substantiated in accordance with clause 25 (Record keeping).

36. Implementation of Changes

- (a) Subject to any Consents that must be obtained or modified being so obtained or modified, the Provider must implement each Confirmed Change in accordance with its terms.

- (b) The Provider must ensure that the Services are performed in accordance with this Agreement during and following the implementation of a Confirmed Change except only to the extent otherwise expressly specified in that Confirmed Change.

37. Variations to Agreement

No amendment to this Agreement evidencing any Confirmed Change (or any other variation to this Agreement) will be effective unless it is in writing and signed by or on behalf of both parties or by MSD in the case of a Mandatory Change Notice.

38. Change in Law

38.1 Occurrence

Notwithstanding a Change in Law, the Provider must comply (to the extent that it is lawful) with all obligations imposed on it under this Agreement. For the avoidance of doubt, the Provider must comply with all Changes in Law while performing its obligations under this Agreement. Financial relief from the consequences of a Change in Law shall only be provided by MSD where the Change in Law constitutes a Qualifying Change in Law.

38.2 Qualifying Change in Law

- (a) The remainder of this clause 38 applies only to Qualifying Changes in Law.
- (b) This Agreement does not provide any financial recourse to MSD for any Change in Law that does not comprise a Qualifying Change in Law.

38.3 Notification of Qualifying Change in Law

The Provider must notify MSD promptly on becoming aware of any actual or impending (and probable) Qualifying Change in Law. If the Provider fails to notify MSD, MSD may notify the Provider of that Qualifying Change in Law. The Provider must then, as soon as practicable and, where reasonably possible, before the Law is to come into effect, send to MSD a written notice (**Provider's Notice**) expressing its opinion on the likely effects of the Qualifying Change in Law, giving details of:

- (a) any necessary change to the Services and the steps that the Provider will need to take as a result of that change being implemented;
- (b) any changes required to the terms of this Agreement;
- (c) any relief required from compliance with its obligations under this Agreement; and
- (d) any increase or decrease in its costs and/or any increase or decrease in its operating revenue that will be required to comply with this Agreement as a result of a Qualifying Change in Law,

accompanied by a Change Proposal.

38.4 Parties to discuss

As soon as practicable (and in any event within 10 Business Days) after receipt by MSD of a Provider's Notice under clause 38.3, the parties shall meet to discuss and agree the issues referred to in clause 38.3 and any ways in which the Provider can mitigate the effects of the Qualifying Change in Law, including:

- (a) providing evidence that the Provider has used its best endeavours (including (where practicable) the use of competitive quotations) to oblige its Sub-contractors to minimise any increase in costs and maximise any reduction in costs;
- (b) demonstrating how any costs to be incurred or avoided are being measured in a cost effective manner;
- (c) demonstrating that any expenditure that will be avoided, which was anticipated to be incurred as a consequence of the Qualifying Change in Law, has been taken into account in determining the amounts proposed under clause 38.3(d); and
- (d) demonstrating how the Provider has used its reasonable endeavours to minimise any reduction in operating revenue.

38.5 MSD options on receipt of Provider's Notice

- (a) Within 15 Business Days of the meeting referred to in clause 38.4, MSD must either:
 - (i) accept the Change Proposal accompanying the Provider's Notice, subject to any agreements reached under clause 38.4, in which case the parties must take such actions as are specified in the Change Proposal;
 - (ii) vary any requirements of this Agreement necessary to avoid or mitigate the consequences of the Qualifying Change in Law, in which case MSD's election to vary this Agreement will be deemed to be a Change initiated by MSD and the Change Proposal will be negotiated in accordance with clause 35.1(a)(iii); or
 - (iii) issue a notice that it disputes the details contained in the Provider's Notice. Any such Dispute will be resolved by referring the Dispute to Expert Determination.
- (b) If MSD issues a notice under clause 38.5(a)(iii), no later than five Business Days following the Provider's Notice being determined by an Independent Expert, MSD may elect either option available to it under clause 38.5(a)(i) or clause 38.5(a)(ii).

38.6 Consequences of Qualifying Change in Law

If a Qualifying Change in Law occurs, then:

- (a) the Provider must identify all of the financial consequences (both positive and negative) of that Qualifying Change in Law, including all of the costs, Losses, benefits and savings (including any changes whether positive or negative to the Provider's operating revenue) such that the outcome identifies the total net consequences of that Qualifying Change in Law (with costs to the Provider reflected as a positive number, and savings to the Provider reflected as a negative number), with any Dispute to be resolved by referral to Expert Determination;
- (b) the financing implications and the compensation payable to the Provider for the financial consequences of that Qualifying Change in Law will be addressed, and any applicable changes to this Agreement implemented, as a Change in accordance with this clause 38.6 and with this Part 8;
- (c) subject to clause 38.6(d), the Provider will be entitled to any Change in Costs (if positive) directly resulting from the Qualifying Change in Law; and
- (d) MSD will be entitled to compensation from the Provider for an amount equivalent to 100 per cent of the net consequences (if that net amount is a negative number) arising from that Qualifying Change in Law.

Part 9 – Payment and refinancing

39. Availability Payment, Additional Payment and other payments

39.1 Obligation to pay and sole remedy

- (a) MSD must pay the CHP the Availability Payment in respect of each Payment Period, calculated in accordance with Schedule 11 (Payment Mechanism).
- (b) Where an Availability Payment in respect of a Payment Period, calculated in accordance with Schedule 11 (Payment Mechanism) is calculated to be a negative amount, this amount shall constitute Moneys Owing to MSD by the Provider (except that the negative amount will be treated as a positive amount for the purpose of ascertaining Moneys Owing to MSD).
- (c) MSD must pay the CHP any Additional Payment in respect of each Payment Period, as agreed between the parties in writing. MSD agrees that it will reimburse the Provider for consumption-based water usage charges that are exclusively attributable to the occupation of the Properties by Existing Tenants that are, in accordance with this Agreement, paid by the Provider and not able to be recovered by the Provider from the Existing Tenants as a result of the restrictions in this Agreement.
- (d) MSD will pay the CHP any portion of the Rent in Advance and the Bond Amount (if any) that MSD, in its absolute discretion, has agreed to make on behalf of a Tenant.
- (e) Subject to clause 39.1(f), the sole remedies of MSD in respect of a failure to provide the Services in accordance with this Agreement are:
 - (i) where an Unavailability Payment or Threshold Unavailability Charge is payable for any such failure, the operation of Schedule 11 (Payment Mechanism);
 - (ii) the granting of injunctive relief, a decree of specific performance or other discretionary remedies available from any Court of competent jurisdiction (whether or not an Unavailability Payment or Threshold Unavailability Charge is applicable for any such failure); and
 - (iii) the remedies set out in clause 63 (Termination on Provider Default).
- (f) In addition to its remedies under clause 39.1(e), MSD may exercise:
 - (i) any other express right or remedy of MSD under this Agreement; and
 - (ii) its right to claim, on or after termination of this Agreement, the amount of its costs, losses, damages and expenses suffered or incurred as a result of rectifying or mitigating the effects of:
 - (A) any breach of this Agreement by the Provider; or
 - (B) any negligent act or omission on the part of the Provider,
 - (C) after taking account of:
 - (I) sums already recovered by MSD under this Agreement; and
 - (II) any compensation payable under Part 15 (Termination).

- (g) Notwithstanding any other provision in this Agreement, and for the avoidance of doubt, MSD shall not be required to make any Availability Payment, Additional Payment or any payment for Rent in Advance or a Bond Amount to the CHP where the CHP is not registered as a Class 1 Social Landlord and accordingly, where the Provider is in breach of clause 24.1(a)(i).
- (h) MSD will not exercise, and waives all rights to exercise, any claims for any moneys recoverable under rentcharges or otherwise set out in the Encumbrances in respect of any Property.

39.2 **Acknowledgements in respect of Unavailable Untenanted Properties and exceeding the Unavailability Threshold**

The Provider acknowledges and agrees that:

- (a) MSD will suffer loss and damage as a result of the Provider's failure to ensure that:
 - (i) the Properties are not Unavailable Untenanted Properties; and
 - (ii) the Unavailability Threshold has not been exceeded;
- (b) the Unavailability Payment represents a genuine pre-estimate of MSD's potential losses as a result of Properties being Unavailable Untenanted Properties, to the extent it can be estimated as at the date of this Agreement;
- (c) the Threshold Unavailability Charge represents a genuine pre-estimate of MSD's potential losses as a result of Unavailability Threshold being exceeded, to the extent it can be estimated as at the date of this Agreement; and
- (d) prior to entering into this Agreement, the Provider was given an opportunity to review and understand the intent and operation of the Unavailable Untenanted Properties regime and the Unavailability Threshold regime.

39.3 **Report and invoice**

- (a) No later than the 10th Business Day following each Payment Period, the CHP shall submit to MSD, through the MSD Social Housing Client System:
 - (i) an Availability Report certified by the Provider:
 - (A) specifying the Availability Payment due for the immediately preceding Payment Period;
 - (B) categorising each Property into one or more of the availability categories (Available Tenanted Properties, Available Vacant Properties, Unavailable Tenanted Properties and Unavailable Untenanted Properties) over the Payment Period and specifying the dates over which a Property was in a given category. For the purpose of this categorisation, if a Property was:
 - (I) either an Unavailable Tenanted Property or an Unavailable Untenanted Property at any time during a day, the Property shall be categorised as an Unavailable Tenanted Property or an Unavailable Untenanted Property (as applicable) for that entire day; and
 - (II) was both an Unavailable Tenanted Property and an Unavailable Untenanted Property on a given day, the Property shall only be categorised as an Unavailable Untenanted Property on that day and shall be deemed not to be Unavailable for Maintenance Reasons on that day;

- (C) setting out individually each item that has been taken into account in calculating the Availability Payment in accordance with Schedule 11 (Payment Mechanism), including the relevant Unavailability Payment, Threshold Unavailability Charge and the Top-up Payment for the Payment Period; and
 - (D) setting out any other matters required to be included in that Availability Report in accordance with Schedule 9 (Governance and reporting);
- (ii) a separate report, in a form to be agreed by MSD:
 - (A) setting out any Additional Payments due to the Provider and/or any Moneys Owning to MSD;
 - (B) setting out a comprehensive explanation of the basis on which such Additional Payments are being claimed, and when the costs associated with such Additional Payments were incurred (including supporting documentation, where applicable); and
 - (C) in respect of any Additional Payment relating to water charges, outlining the consumption-based water usage charges that are exclusively attributable to the occupation of Properties by Existing Tenants that have been paid by the Provider in the Payment Period, including a detailed table outlining the Existing Tenants for which such water charges have been paid by the Provider and the Property and water charges applicable for each such Existing Tenant, along with supporting documentation evidencing the water charges paid by the Provider during the Payment Period; and
- (iii) an invoice (or separate invoices, so that Additional Payments are covered in a separate invoice) (the form of which must have been previously approved by MSD (such approval not to be unreasonably withheld or delayed)) (each a **valid invoice**) for the amount (if any) shown by the report as owing by MSD to the Provider and for all GST payable by MSD in respect of that amount.
- (b) If the Provider submits a report or an invoice that is incomplete, incorrect or in breach of clause 39.3(a), MSD may reject the invoice and that invoice will not be considered as valid.

39.4 Payment

- (a) With the exception of amounts that MSD has agreed to pay to the CHP on behalf of a Tenant as payment or part payment of the Rent in Advance and Bond Amount that would otherwise be payable by a Tenant, no moneys are payable to the CHP by MSD unless MSD has received a valid invoice from the Provider and the report for the Payment Period to which that invoice relates.
- (b) Any amounts that MSD has agreed to pay to the CHP on behalf of a Tenant as payment or part payment of the Rent in Advance and Bond Amount that would otherwise be payable by a Tenant, shall be notified as soon as reasonably practicable and paid directly by MSD to the CHP without the need for an invoice. Payment of such amounts shall be made by MSD within five Business Days of receipt of a financial assistance application for some or all of the Rent in Advance and/or the Bond Amount (provided MSD has agreed to provide financial assistance to the Tenant).
- (c) Availability Payments and Additional Payments will only be paid to the CHP. MSD will not pay any Availability Payment or Additional Payment to any other entity that makes up the Provider other than the CHP.
- (d) Payment of Availability Payments and Additional Payments by MSD to the CHP constitutes full consideration for the Provider's performance of its obligations under this

Agreement and distribution of any portion of an Availability Payment or Additional Payment between the entities making up the Provider is a matter for those entities to determine. No entity making up the Provider other than the CHP shall have the right to claim, from MSD, payment of any Availability Payment or Additional Payment under this Agreement.

- (e) MSD shall pay the amount stated in any valid invoice submitted under clause 39.3 within ten Business Days of receipt of the valid invoice by MSD (the **Relevant Payment Date**). This clause 39.4(e) is subject to clause 39.5.
- (f) Payments to be made by MSD under this clause 39.4 will be made by direct payment into the CHP's nominated bank account in New Zealand. The CHP will supply MSD with verification of the nominated bank account details (either a pre-printed deposit slip or other bank-headed stationery) to enable such payments to be made.
- (g) Payment of the Availability Payment, any Additional Payment or any other moneys by MSD to the CHP does not constitute acceptance by MSD that the Provider has performed its obligations, nor does it constitute (nor is it to be construed as) a waiver of any of MSD's rights and remedies, whether under this Agreement or at Law.
- (h) If a report shows a net amount owed by the Provider to MSD, then the Provider shall pay that amount to MSD within ten Business Days following the date that such report was received by MSD.
- (i) Except where otherwise specifically provided in this Agreement, where any payment due from the Provider to MSD or from MSD to the CHP under any provision of this Agreement is not paid on or before its due date, it shall bear interest at the Prescribed Rate from the due date (whether before or after any judgment) until the date of actual payment.
- (j) All moneys payable to or by MSD under this Agreement are to be invoiced and paid only in Dollars.

39.5 Disputed Amounts

- (a) MSD may withhold the payment of any amount invoiced by the CHP that MSD considers on reasonable grounds:
 - (i) is not an amount to which the CHP is entitled under the terms of this Agreement; or
 - (ii) is not an amount to which the CHP is entitled on the Relevant Payment Date,(each a **Disputed Amount**), pending agreement or determination with respect to that Disputed Amount.
- (b) MSD must pay any amount invoiced by the CHP that is not disputed by MSD on or before the Relevant Payment Date.
- (c) MSD shall notify the CHP in writing within four Business Days of receipt by MSD of the relevant invoice of any Disputed Amount, together with a report setting out:
 - (i) particulars as to the quantum of that Disputed Amount;
 - (ii) the reasons for such dispute; and
 - (iii) such supporting evidence as MSD may wish to provide in respect of the dispute.
- (d) Within five Business Days following receipt by the CHP of a notice served by MSD under clause 39.5(c), the CHP shall respond by notifying MSD as to whether or not it agrees with the statements made in that notice. If the CHP indicates that it does agree, or if the

CHP fails to respond within five Business Days, MSD will not be required to pay to the CHP any amounts withheld under clause 39.5(a).

- (e) If the CHP responds under clause 39.5(d) indicating that it does not agree with all or any of the statements made in a notice served by MSD under clause 39.5(c), the matter or matters in question shall be referred for resolution in accordance with the Dispute Resolution Procedures and if the Dispute cannot be resolved informally between the parties in accordance with those Dispute Resolution Procedures, it shall be subject to Expert Determination.
- (f) Subject to clause 39.5(g), if it is agreed or determined that:
 - (i) MSD has withheld an amount that the CHP was entitled to be paid; or
 - (ii) the CHP has claimed under clause 39.2 an amount that it was not entitled to be paid,

MSD shall pay such amount to the CHP or the Provider shall repay such amount to MSD (as applicable) together with interest on that amount at the Prescribed Rate from the date on which payment was or should have been made until all relevant monies have been paid in full (whether before or after judgment).

- (g) Clause 39.5(f) only applies to withheld or overpaid amounts at any given time that are in aggregate with any other withheld or overpaid amounts greater than \$10,000 (excluding interest). Amounts withheld or overpaid that are less than \$10,000 (excluding interest) will not have interest charged.
- (h) The Provider is not excused from the performance of any of its obligations under this Agreement because MSD has exercised its rights under this clause 39.5.

39.6 Rights of set-off

- (a) MSD may at any time deduct from any amount payable to the CHP or the Provider:
 - (i) any Moneys Owing to MSD; and
 - (ii) any Claim to Moneys Owing that MSD may have against the Provider,under any Project Document.
- (b) The Provider must not at any time deduct from money otherwise due to MSD (including any Moneys Owing to MSD) under any Project Document:
 - (i) any debt or other money due from MSD to the CHP or the Provider; or
 - (ii) any Claim to money that the Provider may have against MSD.
- (c) MSD will provide the Provider with reasonable details of the basis on which it is setting off any amount under this clause 39.6.
- (d) Notwithstanding clause 39.6(a), MSD acknowledges that it will not be entitled to deduct any Moneys Owing from any payment to or for the account of the CHP or the Provider if:
 - (i) this Agreement has been terminated under clause 62 (Termination for convenience); and
 - (ii) such deduction would reduce the amount payable to or for the account of the Provider in connection with the termination of this Agreement to an amount less than the Base Senior Debt Termination Amount.

39.7 Goods and Services Tax (GST)

- (a) In this clause 39.7, 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 under or pursuant to any other Project Document is stated before the addition of any GST chargeable on that supply.
- (c) The parties agree that 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 shall provide the other party 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 (**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.

39.8 Rates and Taxes

The Provider is responsible for and will pay all rates and Taxes assessed on or in relation to the Properties, under this Agreement, or any transaction evidenced or contemplated by this Agreement or in respect of, or because of, the Provider's performance of its obligations under this Agreement.

39.9 Acknowledgement in respect of Services

The Provider acknowledges that the entirety of each Availability Payment and Additional Payment is consideration for the Provider making Available, maintaining and using the Properties exclusively for renting to Social Housing Clients referred to the Provider by MSD in accordance with this Agreement and no part thereof is attributable to, or consideration for, the supply of any other Services by the Provider under this Agreement or other Project Document. Other than as expressly provided in this Agreement or other Project Document, no payment will be made by MSD to the Provider in respect of the Provider's supply of any such other Services except (in respect of the Transition Services) to the extent that this is expressly provided for in Schedule 5 (Transition Services Requirements) and then, only in respect of a delay caused by MSD.

40. Refinancing

40.1 Refinancing

The Asset Owner may undertake or permit any Refinancing subject to and in accordance with this clause 40.

40.2 Refinancing – Additional Debt Refinancing

- (a) The Asset Owner must not undertake any Additional Debt Refinancing except in accordance with this clause 40.2.

- (b) Where the Asset Owner intends to undertake any Additional Debt Refinancing it must first provide MSD with:
 - (i) an Approved Valuation; and
 - (ii) details of the Loan to Value Ratio for the proposed Additional Debt Refinancing (along with reasonable evidence as to its calculation).
- (c) Within 20 Business Days after receipt of the information provided under clause 40.2(b), MSD must either:
 - (i) provide its written consent to the Additional Debt Refinancing, which it must do, subject to the remaining provisions of this clause 40, where the aggregate of the Loan to Value Ratio and the CRI to Value Ratio is 1 or less; or
 - (ii) withhold its consent to the Additional Debt Refinancing, which it may do, at its absolute discretion, where the aggregate of the Loan to Value Ratio and the CRI to Value Ratio is greater than 1:1 (or where, due to the Asset Owner not having provided sufficient information to MSD, MSD is not reasonably satisfied that the aggregate of the Loan to Value Ratio and the CRI to Value Ratio is equal to or less than 1:1),

provided that if MSD does not respond to the Asset Owner within the 20 Business Day period referred to above, it will be deemed to have consented to the proposed Additional Debt Refinancing.
- (d) For the avoidance of doubt, where the information required to be provided by or on behalf of the Asset Owner to MSD under clause 40.2(b) has not been provided, the 20 Business Day period for the purpose of clause 40.2(c) shall not commence and as such, deemed consent will not have been given under that clause.

40.3 Refinancing – Financier Direct Deed

The Asset Owner must not enter into any Refinancing unless the Financier Direct Deed (or a deed on substantially the same terms as the Financier Direct Deed entered into by MSD and the other relevant parties) applies to the Refinancing.

40.4 Refinancing – restrictions on funders

The Asset Owner must not undertake any Refinancing that is, in whole or in part, arranged or funded by an Unsuitable Third Party. MSD will advise the Provider in writing if it considers that any party to a proposed Refinancing is an Unsuitable Third Party.

40.5 Refinancing – hedging

The Asset Owner must only enter into Swaps or equivalent hedging products for the purposes of bona fide interest rate risk management and not for speculative purposes.

40.6 Refinancing – permitted purpose

The Asset Owner must not undertake any Refinancing other than where the indebtedness assumed under that Refinancing will be used solely for the provision of Services under this Agreement.

40.7 Refinancing – application

This clause 40 does not apply to any debt financing transaction undertaken by the CHP that:

- (a) does not relate to the subject matter of this Agreement;
- (b) does not relate to the provision of financial accommodation for the purposes of this Agreement; and
- (c) does not include the provision of security over any assets solely used for the purposes of this Agreement.

Part 10 – Warranties and undertakings

41. Provider warranties

MSD has entered into this Agreement in reliance on, and the Provider makes the warranties and representations to MSD set out under, clause 41.1 and clause 41.2.

41.1 General warranties

The Provider warrants and represents to MSD that:

- (a) the:
 - (i) Asset Owner is a limited partnership duly formed and validly existing under, and is registered in accordance with, the Limited Partnerships Act 2008 and all details of the Asset Owner required to be provided under that Act for the register of limited partnerships maintained under that Act have been provided; and
 - (ii) CHP is properly constituted and incorporated under the Companies Act 1993;
- (b) it has the corporate power and the authority to own its assets and to carry on its business as it is now being conducted;
- (c) neither it nor any of its assets enjoys any immunity from set-off, suit or execution;
- (d) it has the corporate power to enter into and to exercise its rights and perform its obligations under the Project Documents;
- (e) all actions necessary on the part of the Provider to authorise the execution of and the performance of its obligations under the Project Documents have been taken or, in the case of any Project Document executed after the Execution Date, will be taken before such execution;
- (f) the obligations expressed to be assumed by the Provider under the Project Documents to which it is party, are, or in the case of any Project Document executed after the Execution Date, will be on their execution, legal, valid, binding and enforceable;
- (g) each Project Document is, or in the case of any Project Document executed after the Execution Date, will be on its execution, in proper form for enforcement in New Zealand;
- (h) the execution and delivery of the Project Documents to which it is party, and the performance of the Provider's obligations under the Project Documents to which it is party, does not contravene any provision of:
 - (i) any existing Laws either in force, or enacted but not yet in force, that are binding on the Provider;
 - (ii) the CHP's constitution;
 - (iii) the Asset Owner Partnership Agreement;
 - (iv) any order or decree of any court or arbitrator that is binding on the Provider; or
 - (v) any obligation that is binding on the Provider or on any of its assets or revenues;
- (i) Asset Owner General Partner has the authority and power under the Asset Owner Partnership Agreement and the Limited Partnerships Act 2008 to execute the Project

Documents in its capacity as general partner of the Asset Owner and thereby to bind the Asset Owner as a limited partnership; and

- (j) all assets of the Asset Owner, including all Properties in which MSD holds a Crown Retained Investment are:
 - (i) owned by the Asset Owner; and
 - (ii) under the management and control of the Asset Owner General Partner.

41.2 Information warranties

The Provider further warrants and represents to MSD that:

- (a) the statements and representations made in the Provider's Proposal are true and correct;
- (b) the particulars regarding the Provider and Provider Entities as set out in Schedule 2 (Provider Warranted Data) are true and correct and:
 - (i) no other person has any legal or beneficial interest in the Provider or the Provider Entities; and
 - (ii) there is no agreement, arrangement or understanding in existence:
 - (A) under which further shares or other interests (including Partnership Interests) in the Provider or the Provider Entities may be issued to any person or under which any person is entitled to call for the issue of any shares or other interests (including Partnership Interests) other than as a result of any additional issuance of shares or other interests by the Asset Owner to the CHP or by the CHP to IHC New Zealand Incorporated; or
 - (B) that has resulted in or may result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of such shares or other interests (including Partnership Interests) other than as a result of any enforcement by the Senior Lenders of their rights under the Financing Agreements;
- (c) all information provided by the Provider to MSD under or in relation to this Agreement is, or will be when disclosed, complete and accurate in all material respects and that the use of that information by either party (for the purpose for which it was disclosed) will not breach the Intellectual Property rights of any third party;
- (d) the Asset Owner has not, other than in connection with the provision of Services under this Agreement, traded at any time since its incorporation as a limited partnership under the Limited Partnerships Act 2008, nor has the Asset Owner incurred any liabilities or entered into any document or agreement in respect of the provision of Services under this Agreement, other than the Project Documents, or as contemplated under any Project Document;
- (e) no Probity Event has occurred or is continuing in relation to the Provider or a Provider Related Person;
- (f) no Claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the Provider's knowledge (after having made due enquiry), pending or threatened against it or any of its assets that will or may have a Material Adverse Effect; and
- (g) the copies of the Project Documents that the Provider has delivered or, when executed, will deliver to MSD are or, as applicable, will be, true and complete copies of such

documents and there are not any other agreements or documents in existence replacing or relating to any of the Project Documents that would materially affect the interpretation or application of any of the Project Documents.

41.3 Deemed repetition

Each of the warranties set out in clause 41.1 and clause 41.2 are deemed to be repeated each day during the Contract Term by reference to the facts existing on that day, except that:

- (a) the warranties in clause 41.2(a) and 41.2(b) are made only as at the Execution Date and the date of Financial Close; and
- (b) the warranty in clause 41.2(c) is made only as at the time that the relevant information is provided.

41.4 No limitation

MSD and the Provider acknowledge and agree that none of the representations and warranties made by the Provider under clause 41.1 or clause 41.2 or elsewhere in this Agreement will be interpreted as being limited or affected by any endorsement or failure to endorse, or failure to review or comment on, any of the Reviewable Documents under the Review Procedures, or by any report or failure to report, or comment made by an Independent Expert.

42. Provider undertakings

42.1 General undertakings

The Provider undertakes to MSD that, for so long as this Agreement remains in full force:

- (a) the CHP shall not cease to be resident in New Zealand or transfer in whole or in part its undertaking, business or trade outside of New Zealand;
- (b) it shall not undertake the performance of its obligations under this Agreement otherwise than through the Asset Owner, the CHP or a Sub-contractor;
- (c) the Asset Owner shall not, without the written consent of MSD (such consent not to be unreasonably withheld or delayed), incorporate any company or purchase or acquire or subscribe for any shares or other interests (including Partnership Interests) in any company or other entity save where such entity is solely involved in providing the Services;
- (d) the Asset Owner shall not, without the written consent of MSD (such consent not to be unreasonably withheld or delayed), make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business and as contemplated by the Project Documents;
- (e) it shall take reasonable care not to do anything, or omit to do anything, that would cause MSD to be in breach of any applicable Laws;
- (f) it shall consult with MSD as soon as practicable as to any event that has or may materially and adversely affect the performance of its obligations under this Agreement;
- (g) the Asset Owner shall not create, permit or suffer to exist any Security Interest over all or any of its assets, without the prior written consent of MSD, except for Permitted Security Interests;

- (h) the Asset Owner shall not, without the prior written consent of MSD, (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend, create or permit a Security Interest to subsist over, or to otherwise dispose of:
 - (i) any of its rights under any Project Document or Financing Agreement to which it is party;
 - (ii) all or any part of, or any interest in the Properties other than as expressly provided for in any Project Document or Financing Agreement (and then only if MSD has first given its express approval to the same); or
 - (iii) the whole or any part of its business or assets that would affect the ability of the Provider to perform its obligations under this Agreement,
 nor agree, offer, attempt or purport to do any of those things, except:
 - (iv) as expressly provided for in the Project Documents; or
 - (v) by way of a Permitted Security Interest; and
- (i) the Asset Owner shall not (unless otherwise expressly permitted by this Agreement) contract with, assume or permit to subsist any Liability in favour of, or buy, sell or dispose of assets to or from a Provider Related Person otherwise than on Arms Length Terms.

42.2 Event information

The Provider shall:

- (a) promptly advise MSD of any material damage to or destruction of any of the Properties;
- (b) promptly advise MSD of any event in relation to the Properties or the provision of the Services that may give rise to:
 - (i) a material health or safety risk (including any failure to comply with any Law relating to health and safety); or
 - (ii) a serious accident, injury or damage to persons (including death) in connection with any act or omission on the part of the Provider or any Sub-contractor;
- (c) promptly advise MSD of any industrial action that may affect the provision of the Services, and the actions the Provider has taken or proposes to take to minimise or overcome the effects of the industrial action;
- (d) promptly advise MSD of any substantial dispute between the Provider or any Provider Related Person and any Governmental Entity;
- (e) promptly advise MSD on becoming aware of the occurrence of any Termination Event or any other material breach by it of its warranties or obligations under this Agreement, another Project Document or a Financing Agreement;
- (f) within five Business Days after becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before any court, arbitrator or Governmental Entity (**Legal Proceedings**) has been threatened or commenced against the Provider or a Provider Entity, give MSD notice of such Legal Proceedings;
- (g) promptly advise MSD of any circumstances that would, with the giving of notice and/or lapse of time, constitute a Provider Default; and
- (h) promptly advise MSD of any circumstances that:

- (i) give rise to a drawstop or change the drawdown milestones as specified in the Senior Financing Agreements; or
- (ii) would, with the giving of notice and/or lapse of time, give rise to an event of default, cancellation, prepayment event or similar event (whatever called) under any Financing Agreement to which the Provider or any Provider Related Person is party.

Part 11 – Confidentiality and Intellectual Property

43. Confidential Information

43.1 Non-disclosure

Subject to clause 43.2 and clause 43.3, each party shall treat as confidential and not disclose to any third party nor use for its own benefit (other than for the purposes of this Agreement) any Confidential Information that is the Confidential Information of the other party.

43.2 General exceptions

Clause 43.1 does not preclude a party disclosing Confidential Information:

- (a) if that information was known, or becomes known, to the public through no act or default of the recipient;
- (b) that the recipient is required by Law to disclose so long as the recipient provides written notice of the required disclosure promptly on receipt of notice of the required disclosure (if it is permitted to do so by Law);
- (c) that was lawfully known to the recipient prior to the date it was received;
- (d) that becomes available to the recipient from a source other than the person that disclosed that information, provided that the recipient has no reason to believe such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited by Law from disclosing such information;
- (e) that has been or is independently developed by the recipient;
- (f) to any rating agency in connection with the credit rating of that party;
- (g) as required by the rules of any recognised stock exchange;
- (h) to the extent that such disclosure is authorised by this Agreement; or
- (i) if such disclosure is approved for release with the prior written consent of the party that disclosed that information.

43.3 Limited disclosure

- (a) The Provider may, subject to clause 43.3(b), disclose the Confidential Information of MSD to:
 - (i) any of its directors, officers, employees, Sub-contractors or Professional Advisors who need to know the same for the purposes of this Agreement;
 - (ii) a Senior Lender or a Senior Lender's Professional Advisors or to any person and its Professional Advisors where it is proposed that a person should or may provide finance (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Provider and/or a Provider Entity in accordance with the provisions of this Agreement, but only to the extent reasonably necessary to enable a decision to be taken in relation to the finance proposal; and
 - (iii) any prospective purchaser of shares or Partnership Interests (as applicable) in the Provider or a Provider Entity in accordance with the provisions of this Agreement,

but only to the extent reasonably necessary to enable a decision to be taken in relation to the proposed share purchase,

and the Provider will ensure that the proposed recipient of any information disclosed under this clause 43.3(a) is made aware of and will comply with the terms of this clause 43.

- (b) The Provider will not disclose the Confidential Information of MSD under clause 43.3(a) unless, where MSD provides notice to the Provider that the same is required, that person has given a written confidentiality undertaking to the Provider and for the benefit of MSD substantially similar to those set out in this clause 43 (the form of the undertaking to be first approved by MSD).
- (c) MSD may, subject to clause 43.3(d), disclose the Confidential Information of the Provider to:
 - (i) any potential New Provider (except any Confidential Information that is the Provider's commercially sensitive financial information);
 - (ii) any MSD Personnel;
 - (iii) the Regulatory Authority; and
 - (iv) those who otherwise need to know the same in connection with the operation, administration and management of the Services and this Agreement,

provided, and to the extent that, such disclosure under sub-paragraphs (i) and (iv) above is necessary for the then-current and/or ongoing operation, administration and management of the Services and this Agreement.

- (d) MSD will not disclose the Confidential Information of the Provider under clauses 43.3(c)(i) or 43.3(c)(iv) unless, where the Provider provides notice to MSD that the same is required, that person has given a written confidentiality undertaking to MSD and for the benefit of the Provider substantially similar to those set out in this clause 43.
- (e) For the purpose of clause 43.3(c), the Provider acknowledges that the sharing of Confidential Information with the Regulatory Authority about the Provider and about the Provider's compliance with, or performance under, this Agreement, is deemed to be necessary for the then-current and/or ongoing operation, administration and management of the Services and this Agreement even though the Regulatory Authority may also use such Confidential Information for the purpose of performing its functions under the HRTM Act and any regulations made pursuant to that Act.
- (f) MSD will ensure that any person to which it discloses Confidential Information of the Provider is made aware of and will comply with the terms of this clause 43.
- (g) The Provider acknowledges that MSD is subject to the Official Information Act 1982 and that MSD is obliged to disclose Confidential Information under that Act if so requested and if there is no good reason under the terms of that Act to withhold that information. MSD shall use its reasonable endeavours to advise the Provider of any request received by it under the Official Information Act 1982 that relates to Confidential Information of the Provider.
- (h) MSD may, in its own right or through another Governmental Entity, provide public access to or distribution of this Agreement.

44. Personal Information

44.1 Collection, use, storage and disclosure of Personal Information

The Provider will when providing the Services and performing its other obligations under this Agreement:

- (a) comply with the Privacy Act 1993 (including for the avoidance of doubt, all privacy principles set out in the Privacy Act 1993) when collecting, storing, using and disclosing Personal Information, including Personal Information of Tenants and other Social Housing Clients;
- (b) only access the Personal Information of Social Housing Clients where it has appropriate authority to do so, and will ensure that each of the Provider Personnel complies with this obligation;
- (c) only use Personal Information disclosed by MSD for the purpose of delivering the Services in accordance with this Agreement and otherwise in accordance with the Privacy Act 1993;
- (d) ensure that any disclosure of Personal Information is done in accordance with the Privacy Act 1993;
- (e) ensure that it corrects any Personal Information of a Social Housing Client that it holds immediately upon becoming aware that such information is incorrect;
- (f) securely dispose of any Social Housing Client's Personal Information that it holds when the Provider no longer needs this information, including to the extent reasonably practicable by:
 - (i) destroying hard copy information in a secure destruction or shredding bin, or by a professional document destruction organisation; and
 - (ii) permanently deleting electronic documents;
- (g) ensure that conflicts of interest are appropriately managed, including ensuring that Provider Personnel with a close personal connection to any individual about whom Personal Information relates immediately cease being involved in relation to that individual's file and their access to such Personal Information will thereafter be restricted;
- (h) take appropriate steps to verify the identity of any person that makes a request to receive Personal Information or before making any disclosure of Personal Information to any person and only disclose Personal Information to a person that the Provider is permitted to disclose such Personal Information to in accordance with the Privacy Act 1993;
- (i) redirect any individual to MSD where the individual believes that MSD holds Personal Information about that individual that is inaccurate and the individual wishes to have the information corrected;
- (j) not use MSD's unique client numbers for the purpose of identifying a Social Housing Client in the Provider's own internal records or any other purposes; and
- (k) ensure that if a breach or a suspected breach of the Privacy Act 1993 occurs in respect of any Personal Information of a Tenant, a Social Housing Client or any MSD Personnel, that the Provider:
 - (i) works in co-operation with MSD to appropriately manage and address the breach or suspected breach; and

- (ii) responds to the breach in accordance with any then-current privacy breach guidelines (including voluntary guidelines) published by the Office of the Privacy Commissioner.

44.2 Security of Personal Information

- (a) The Provider will, when providing the Services and performing its other obligations under this Agreement:
 - (i) ensure that all Personal Information received from MSD and from other sources, including Social Housing Clients, is protected at all times from loss, unauthorised access, use, modification, disclosure or other misuse, including ensuring that all hard copy Social Housing Client records are kept in a secure storage receptacle 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 Social 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) The parties agree that Personal Information about Social 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 Social Housing Client System, except where it:
 - (i) is strictly necessary to disclose Personal Information over the telephone in which case the Provider must take all reasonable care to ensure that Personal Information is only disclosed when the Provider is reasonably satisfied that they are speaking with MSD Personnel;
 - (ii) this Agreement expressly provides otherwise; or
 - (iii) MSD expressly agrees otherwise, such express agreement having been given in writing by MSD's Representative.
- (c) Where the Provider is storing Personal Information about current or former Social Housing Clients, the Provider must ensure that all access to the Provider's network and to such Personal Information is password protected (including by requiring regular updates to passwords).
- (d) Where any Provider Personnel has account access to the MSD Social Housing Client System, each of those Provider Personnel must set up their own individual user profile and password (details of which are not shared with anyone else) and such passwords must conform to the following minimum complexity rules (or any other complexity rules that MSD may otherwise approve, acting reasonably, from time to time):
 - (i) a minimum password length of 16 characters with no complexity requirement; or
 - (ii) a minimum password length of 10 characters, consisting of at least three of the following character sets:
 - (A) lowercase letters (a-z);
 - (B) uppercase characters (A-Z);
 - (C) digits (0-9); and

- (D) punctuation and special characters.
- (e) Where any individual has received an MSD Social Housing Client System user account login and that individual ceases to be Provider Personnel, the Provider must immediately de-provision that individual's user account or notify MSD that the user account needs to be de-provisioned.

45. Intellectual Property

45.1 Preliminary

In this Agreement, the term:

- (a) **Background IP** means Intellectual Property Material of MSD, any MSD Personnel or its respective licensors, or the Provider, any Provider Personnel, or their respective licensors, that is:
 - (i) already in existence prior to the Execution Date; or
 - (ii) brought into existence other than by virtue of the performance of this Agreement,and that is utilised as part of the Services or for the purposes of the Services or this Agreement;
- (b) **Developed IP** means Intellectual Property Material:
 - (i) that is developed as part of the Services, or for the purposes of the Services or this Agreement; and/or
 - (ii) includes additions to or adaptations, customisations or enhancements of or deletions or derivatives from Provider Background IP, but excludes additions to or adaptations, customisations or enhancements of or deletions or derivatives from MSD Background IP;
- (c) **MSD Developed IP** means Intellectual Property Material that is additions to or adaptations, customisations or enhancements of or deletions or derivatives from MSD Background IP; and
- (d) **Use** means, in relation to any Intellectual Property Material, the accessing, possessing, using, storing, copying, translating, adapting, customising, enhancing, or sub-licensing of that material, and includes the incorporation of that Intellectual Property Material with other materials and the creation of new versions of or derivatives from those Intellectual Property Materials.

45.2 Background IP

- (a) The Provider acknowledges and agrees that MSD or its respective licensors is and remains the owner of all MSD Background IP. Neither the Provider, nor any Provider Personnel has (by virtue of this Agreement or otherwise) any Claim on, entitlement to, or rights in relation to any MSD Background IP except to the extent provided in this clause 45.
- (b) MSD acknowledges and agrees that the Provider or any Provider Personnel or their respective licensors is and remains the owner of all Provider Background IP. MSD does not have (by virtue of this Agreement or otherwise) any Claim on, entitlement to, or rights in relation to any Provider Background IP except to the extent provided in this clause 45.

45.3 MSD Developed IP and Developed IP

- (a) Subject to clause 45.4, all Intellectual Property rights in the MSD Developed IP vest in MSD at the time of its creation and at each and every stage of its development.
- (b) Subject to clause 45.5, all Intellectual Property rights in the Developed IP (other than the MSD Developed IP) vest in the Provider at the time of its creation and at each and every stage of its development.
- (c) The Provider shall ensure, where necessary, that it secures the right to undertake such vesting and shall do all such things and sign all such documents required to ensure that all MSD Developed IP is transferred and assigned to MSD to ensure compliance with clause 45.3(a). The Provider shall mark any copyright work comprising MSD Developed IP with the legend "© Crown copyright [insert the year of generation of the work]".

45.4 Licensing of MSD Background IP and MSD Developed IP

- (a) MSD:
 - (i) shall make available to the Provider all MSD Background IP and MSD Developed IP that MSD reasonably considers is necessary for the performance of the Provider's obligations under this Agreement;
 - (ii) hereby grants to the Provider, to the extent MSD is legally able to do so, a non-exclusive, royalty-free, non-transferable and irrevocable licence to Use such MSD Background IP during the Contract Term solely for the purpose of the performance of the Provider's obligations under this Agreement; and
 - (iii) may, at its discretion and by giving written notice to the Provider, impose restrictions on the Provider's Use of all or part of MSD Background IP and/or MSD Developed IP, provided that such restrictions must not cause the Provider to be unable to perform its obligations under this Agreement.

This clause 45.4(a) is subject to clause 45.4(c) and clause 45.4(d).

- (b) MSD gives no warranty as to the suitability for the Provider's purpose of any MSD Background IP and/or MSD Developed IP licensed under this clause 45.4. The Provider must not, by any act or omission, in any way prejudice ownership by MSD of any MSD Background IP.
- (c) Any licence granted to the Provider under clause 45.4(a) includes the right on the part of the Provider to grant a sub-licence to a Sub-contractor, so long as:
 - (i) the Provider gives MSD reasonable prior notice of its intention to grant such sub-licence; and
 - (ii) if so required by MSD, that Sub-contractor first enters into a direct undertaking with MSD on terms reasonably satisfactory to MSD.
- (d) No sub-licence may be granted by the Provider, except in accordance with this clause 45.4.

45.5 Licensing of Provider Background IP and Developed IP

- (a) The Provider hereby grants to MSD, and to all other Governmental Entities with an interest in social housing and/or the Project Documents, a non-exclusive, transferable, irrevocable, perpetual, royalty-free licence to Use Provider Background IP and Developed IP (with the right to grant sub-licences in the same) in order to obtain the full benefit of the

Services but for no other reason or purpose. MSD shall notify the Provider in advance of any transfer or sub-licensing of this licence.

- (b) The Provider shall ensure that none of the Provider Background IP and Developed IP is assigned, transferred, sold or made subject to an exclusive licence to Use for the benefit of any third party during or after the Contract Term, unless it preserves for MSD and any sub-licensee of MSD the rights granted under this clause 45.5.
- (c) Notwithstanding the terms of this clause 45.5, to the extent that any item of Provider Background IP is:
 - (i) commercially available off-the-shelf third party software, the obligations of the Provider will be to licence that item of Provider Background IP to MSD, and to all other Governmental Entities with an interest in social housing and/or the Project Documents if the Provider is legally able to do so, and on the terms of the licence granted to the Provider by the third party licensor (and the Provider will use all reasonable endeavours to procure the consent of that licensor to grant the licence to MSD and to all other Governmental Entities with an interest in social housing and/or the Project Documents); or
 - (ii) bespoke proprietary software that is listed in the Disengagement Plan, MSD's and all other Governmental Entities with an interest in social housing and/or the Project Documents' licences in respect of such software shall not be perpetual and shall be irrevocable on the earlier of the Termination Date and the Expiry Date, and in such circumstances MSD and all other Governmental Entities with an interest in social housing and/or the Project Documents, shall have access to copies of all outputs delivered or to be delivered by such software in respect of the services.
- (d) The Provider gives no warranty as to the suitability for MSD's purpose of any Provider Background IP and/or Developed IP licensed under this clause 45.5. MSD must not, by any act or omission, in any way prejudice ownership by the Provider of any Provider Background IP and/or Developed IP.

45.6 Moral Rights

The Provider, in respect of all Developed IP:

- (a) to the extent permitted by any Laws, will not, and will take all reasonable steps to ensure that all Provider Personnel will not, sue, enforce any Claim, bring any action or exercise any cure in respect of any breach or alleged breach of any person's Moral Rights in respect of any Developed IP against MSD, any MSD Personnel or any third party to whom MSD licenses (whether express or implied), or grants any other rights to use, possess, modify, vary or amend any Developed IP;
- (b) will procure that all individuals who are, or may be, authors of any Developed IP, sign, date and return to the Provider a Moral Rights consent (in a form acceptable to MSD), prior to those individuals commencing work on the creation of any Developed IP;
- (c) will, within 10 Business Days of a request from MSD, provide to MSD any Moral Rights consent that is obtained under clause 45.6(b); and
- (d) will maintain an up-to-date record of the names and contact details of each person who is an author of any Developed IP and the Developed IP of which such person is an author, and provide a copy of any updated records to MSD on request.

Part 12 – Indemnities and liability

46. Indemnities

46.1 General indemnities

The Provider shall (subject to clause 46.4) be responsible for, and indemnify and keep indemnified, each Indemnified Party (on demand) 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; or
- (d) third party actions, Claims and/or demands made against an Indemnified Party, arising out of, or as a consequence of:
 - (e) the performance or non-performance by the Provider of the Services (other than Transition Services performed up until the date of Financial Close);
 - (f) the performance or non-performance by the Provider of its other obligations under this Agreement (other than Transition Services performed up until the date of Financial Close);
 - (g) an Intellectual Property Claim; or
 - (h) the presence on any Property of the Provider or any Provider Personnel or any other person for whom the Provider or any Provider Personnel is responsible.

46.2 Release of Indemnified Parties

- (a) The Provider releases, to the maximum extent permitted by Law, each Indemnified Party from all Claims, Losses and Liabilities resulting from any accident, damage, death or injury arising from the use or occupation by the Provider or any Provider Personnel of the Properties.
- (b) The release under clause 46.2(a) is absolute, except to the extent that the accident, damage, death or injury is a direct consequence of a fraudulent, negligent or wilful act or omission of an Indemnified Party.

46.3 Provider's other indemnities

In addition, the Provider is responsible for, and releases and indemnifies each Indemnified Party (on demand) from and against all Claims, Losses and Liabilities under:

- (a) clause 24.4(a)(iv);
- (b) clause 27.2(d); and

- (c) any other term of this Agreement, whereby the Provider has agreed to indemnify or release any Indemnified Party.

46.4 Limits on indemnity cover

The Provider is not obliged to indemnify an Indemnified Party to the extent that the Claims against or Losses and Liabilities of the Indemnified Party occur directly as a result of:

- (a) the Provider acting on directions given in writing by MSD in accordance with this Agreement or the Financier Direct Deed, provided that the Provider has:
 - (i) first notified MSD in writing of the consequences of so acting; and
 - (ii) implemented the direction in a manner that is not negligent and is in accordance with Good Industry Practice;
- (b) an unlawful, wilful, reckless or negligent act or omission of any Indemnified Party;
- (c) failure on the part of MSD to perform its obligations under this Agreement or the Financier Direct Deed;
- (d) any Force Majeure Event, but only to the extent the Provider is entitled to relief from that Force Majeure Event and/or its consequences in accordance with the provisions of this Agreement; or
- (e) any other circumstance in respect of which the Provider is expressly stated under this Agreement not to be liable, in breach and/or responsible,

except to the extent that such act or omission under clause 46.4(b) or such failure to perform under clause 46.4(c), was caused or contributed to by an act or omission of the Provider.

46.5 Specific provisions relating to Intellectual Property Claims

- (a) The indemnity set out in clause 46.1 will not apply to an Intellectual Property Claim to the extent that the Intellectual Property Claim:
 - (i) arises solely from a modification, updating or development, carried out by or for an Indemnified Party, to any Provider Background IP or Developed IP, where such modification, updating or development is not authorised or approved by the Provider in writing; or
 - (ii) is in respect of Provider Background IP or Developed IP and has been made as a direct result of MSD or a Governmental Entity (or any of their respective sub-licensees) acting in breach of clause 45.5 (Licensing of Provider Background IP and Developed IP).
- (b) Where an Intellectual Property Claim disrupts the Services or otherwise prevents an Indemnified Party from obtaining the full benefit of this Agreement, the Provider will (unless otherwise requested by the Indemnified Party) at its own expense immediately:
 - (i) obtain for the Indemnified Party the legal right to continued use of the infringing items; or
 - (ii) replace, modify or resupply the infringing items so that there is no further infringement, without adversely affecting their performance or functionality.

46.6 Privity

This Part 12 of this Agreement is (for the purposes of the Contracts (Privity) Act 1982) intended to confer benefits in favour of, and be enforceable by, all Indemnified Parties.

47. Conduct of third party indemnity claims

47.1 Notice

- (a) Where an Indemnified Party wishes to make a Claim under this Agreement against the Provider in relation to a claim made against it by a third party (a **Third Party Claim**), MSD shall give notice of that Third Party Claim to the Provider as soon as reasonably practicable setting out full particulars of the same.
- (b) MSD will not, and will procure that any applicable Indemnified Party will not, settle or compromise any Third Party Claim made against the relevant person without the prior written consent of the Provider, provided that the Provider complies with its obligations under this clause 47.

47.2 Provider's undertakings

The Provider undertakes that:

- (a) it shall not (and shall procure that any Sub-contractor shall not), without the prior written consent of MSD, settle or compromise any Claim to which MSD is, or is likely to become, a party;
- (b) it shall ensure that its Sub-contractors give undertakings identical to those given by the Provider to MSD under this clause 47; and
- (c) where the Provider and/or the Provider's insurers elect to instruct a solicitor to investigate or defend any third party claim against the Provider and, in the Provider's reasonable opinion, MSD is likely to become materially involved in that claim, the Provider will use best endeavours to procure that the insurers agree to waive client privilege to any information or documents supplied to the solicitor to the extent necessary to enable such information or documents to be provided to MSD on request.

47.3 Assumption of control of Third Party Claims

The Provider shall be entitled to assume the conduct of the defence of any Third Party Claim no fewer than five Business Days after a request to that effect being made by the Provider to MSD on the following conditions:

- (a) the Provider shall be solely responsible for all the costs and expenses of that defence (including any negotiations associated with, and any settlement of, that Third Party Claim);
- (b) the Provider shall keep MSD regularly and fully informed as to all matters pertaining to that Third Party Claim and shall consult with and take into account each relevant Indemnified Party's views on the conduct of the defence (including in relation to any negotiations associated with, and any settlement of, that Third Party Claim);
- (c) where Legal Proceedings have been issued against an Indemnified Party, the Provider shall, if so requested by MSD, use its best endeavours to obtain leave of the court for itself to be substituted as defendant in place of that Indemnified Party and/or for that person to withdraw from the Legal Proceedings;

- (d) while an Indemnified Party remains a party to any Legal Proceedings issued in connection with a Third Party Claim, the Provider shall use its best endeavours to diligently defend, arbitrate and otherwise conduct the litigation or settle the claim;
- (e) the Provider shall not enter into any settlement or compromise in relation to any Third Party Claim without first obtaining the prior written consent of MSD (which must not be unreasonably withheld or delayed); and
- (f) MSD, at the Provider's expense, will offer reasonable assistance to the Provider in its defence of the Third Party Claim.

47.4 Cabinet directions for the conduct of Crown legal business

- (a) The Provider acknowledges and agrees that:
 - (i) the Indemnified Parties are or may be subject to the "Cabinet Directions for the Conduct of Crown Legal Business 2012" (and any successor to those Cabinet directions);
 - (ii) each Indemnified Party that is subject to those Cabinet directions is entitled to receive representation or advice from the Crown Law Office or as the Solicitor-General directs, in relation to actual or imminent litigation to which that Indemnified Party is a party; and
 - (iii) such Indemnified Party may obtain such representation or advice notwithstanding the Provider's assumption of the conduct of the defence of any Third Party Claim in accordance with clause 47.3 where that Indemnified Party considers this necessary or appropriate to ensure that their or the Crown's (as defined in section 2 of the Public Finance Act 1989) wider interests in relation to such litigation are protected and advanced.
- (b) If an Indemnified Party obtains representation or advice as set out in this clause 47.4 this will not derogate from that Indemnified Party's or the Provider's rights and obligations under clause 47.3 or under any other provision in this Part 12 (Indemnities and liability), provided that the Provider's obligation under clause 47.3(a) shall not extend to any costs and expenses incurred by the Indemnified Party in obtaining and implementing that separate representation or advice.

48. Provider's Claims

48.1 Recovery

Despite any other term of this Agreement (other than clause 48.2), the Provider shall not, if it is obliged to maintain insurance under Part 14 (Insurance and reinstatement) of this Agreement, bring any Claim or action against any Indemnified Party in respect of any Losses in circumstances where the Provider is able to recover such Losses under such insurance (or where it would have been able to recover such Losses had it been complying with its obligations under this Agreement).

48.2 Maximum level of insurance

Clause 48.1 does not prevent the Provider from claiming against any Indemnified Party for any Losses:

- (a) not covered because of the level of deductible under such insurance; or
- (b) to the extent such Losses exceed the maximum level of such insurance,

in each case to the extent the relevant Insurance Policies comply with this Agreement.

49. No double counting

Notwithstanding any other provisions of this Agreement, neither party shall be entitled to recover compensation or make a Claim under this Agreement in respect of any Loss that it has incurred to the extent that it has already been compensated in respect of that Loss under this Agreement or otherwise.

50. Limitation of Provider liability

Commercial
Sensitivity

- (a) The Provider's maximum aggregate liability under this Agreement shall be limited to [REDACTED] (Indexed) (**Liability Cap**).
- (b) The Liability Cap will be exclusive of the following (to the extent applicable):
 - (i) any deductions from, or reductions in, payments of IRRS by MSD, including the application and/or payment of any Threshold Unavailability Charge and Unavailability Payments in Schedule 11 (Payment Mechanism);
 - (ii) any diminution in the value of the Properties (or any Loss arising from the transfer of the Properties upon termination for a Provider Default to MSD or its nominee in accordance with this Agreement);
 - (iii) the amount of any insurance proceeds recovered under an Insurance Policy (excluding proceeds recovered under any third party liability policies);
 - (iv) Liability for wilful default, fraudulent or criminal actions (including relevant Probity Events);
 - (v) Liability arising out of abandonment by the Provider; and
 - (vi) Liability that cannot be excluded at Law.
- (c) For the avoidance of doubt, the Liability Cap does not apply in respect of the payment by the Provider to MSD of any MSD Expiry Proportion, any MSD share of the Net Proceeds of Sale, or any other payments required to be made by the Provider to MSD in relation to the Crown Retained Investment (including as a prerequisite to the CRI Mortgage being discharged from a title to a Property) that the Provider is required to pay to MSD under and in accordance with the terms of this Agreement or the CRI Mortgage.

Part 13 – MSD Step-in

51. Interpretation

In this Part 13, references to MSD taking action are deemed to include references to MSD procuring the taking of action by a Step-in Agent appointed by MSD.

52. When Step-in applies

If MSD reasonably considers that it needs to take action in connection with any of the Properties or the Services:

- (a) because:
 - (i) of serious injury or death to persons;
 - (ii) MSD assesses that there is a serious risk to the health and safety of persons;
 - (iii) of material damage or destruction to property (including all or part of the Properties);
 - (iv) MSD assesses that there is a serious risk to property (including all or part of the Properties); or
 - (v) the Regulatory Authority has issued a notice of revocation of the CHP's Class 1 Social Landlord registration; or
- (b) to enable it to discharge any statutory duty,

then MSD will be entitled to take all or any of the actions described in clause 53 (Step-in Rights).

53. Step-in Rights

53.1 Extent of Step-in Rights

To the extent reasonably required to remedy the reasons for step-in as notified to the Provider under clause 54.1 (Particulars of notice), MSD may:

- (a) temporarily assume total or partial management and control of all or some of the Properties and/or the provision of the Services;
- (b) take such steps (including suspension of the Services in whole or in part) as in the reasonable opinion of MSD are necessary or desirable:
 - (i) to mitigate, remedy or minimise the effects of the threat or event that caused the risk; or
 - (ii) to continue the provision of the Services as required under this Agreement;
- (c) do all things and perform all such acts that the Provider is obliged or authorised to do under or in connection with this Agreement, or any other Project Document to which the Provider is party; and

- (d) do all things and perform all such acts that MSD is authorised or empowered to do with respect to the Provider under:
 - (i) this Agreement or any Project Document; or
 - (ii) any Law.

53.2 Exercise of Step-in Rights

MSD shall, in exercising its Step-In Rights:

- (a) endeavour to remedy the reasons for step-in as notified under clause 54.1 (Particulars of notice) and do so in a manner consistent with its obligations under clause 7 (Nature of MSD's obligations); and
- (b) appoint a Step-in Agent to provide any of the relevant Services.

54. Notice

54.1 Particulars of notice

MSD must first notify the Provider, before exercising its Step-in Rights, of:

- (a) the date that it will first exercise its Step-in Rights;
- (b) where it is appointing a Step-in Agent, the identity of that Step-in Agent and any restrictions on that Step-in Agent's authority;
- (c) the Services that are the subject of step-in; and
- (d) the reasons why MSD is exercising its Step-in Rights,

and may update the information set out in any such notice at any time during the period of exercise of its Step-in Rights.

54.2 Emergency

If there is an emergency, MSD need not comply with clause 54.1 before exercising its Step-in Rights, but it will do so as soon as reasonably practicable following the decision to exercise its Step-in Rights.

54.3 Power of attorney

The Provider irrevocably:

- (a) appoints MSD and MSD's nominees from time to time, jointly and severally, as the Provider's attorney with full power and authority to exercise all or any of MSD's Step-in Rights;
- (b) agrees that MSD may delegate, to its Step-in Agent, the power and authority given to MSD by the Provider pursuant to clause 54.3(a) such that the Step-in Agent shall have full power and authority to exercise all or any of MSD's Step-in Rights;
- (c) agrees to ratify and confirm whatever action is taken by MSD and its nominees and its Step-in Agent, provided such action is not unlawful or negligent; and

- (d) on request from MSD to execute a separate power of attorney in terms of this clause 54, agrees to execute such separate power of attorney.

55. Provider's rights and obligations on step-in

55.1 Suspension

The Provider's rights and obligations under this Agreement (other than in respect of clause 55.2) are suspended for the period that MSD is exercising its Step-in Rights but only to the extent necessary to permit MSD to exercise those rights.

55.2 Provider must co-operate

Where MSD has exercised, or while MSD is exercising, its Step-in Rights, MSD shall keep the Provider reasonably informed of the actions it proposes to take and, to the extent known, the likely duration of the exercise of its Step-in Rights and the Provider must:

- (a) do such things as MSD may require to assist MSD in the exercise of its Step-in Rights (including facilitating ongoing access to any support or other services provided by employees, Sub-contractors or third parties);
- (b) not do anything by either act or omission that impedes or frustrates MSD in the exercise of its Step-in Rights; and
- (c) ensure that none of the Provider Personnel, by either act or omission, impede or frustrate MSD in the exercise of its Step-in Rights.

56. Relief and payments on step-in

56.1 Step-in – Provider breach

Where and to the extent that MSD exercises its Step-in Rights as a result of a breach of the Provider's obligations under this Agreement, MSD may recover from the Provider, as Moneys Owed, the direct Losses MSD incurs as a result of exercising its Step-in Rights (including costs and expenses incurred by MSD in delivering any of the Services).

56.2 Step-in – no Provider breach

Where and to the extent that MSD exercises its Step-in Rights other than as a result of a breach of the Provider's obligations under this Agreement, and without limiting the application of clause 6.6:

- (a) MSD will bear its own direct Losses incurred as a result of exercising its Step-in Rights; and
- (b) MSD will be liable to the Provider for any direct Losses resulting from:
 - (i) damage to any property; or
 - (ii) any third party claim made against the Provider,

in each case to the extent attributable to the actions of the Step-in Agent during the period of Step-in.

56.3 Entitlement to IRRS

MSD's exercise of its Step-in Rights will not prejudice the CHP's right to receive the IRRS in accordance with this Agreement except to the extent that it is not entitled to receive the IRRS (or any portion thereof) as a result of the event giving rise to the exercise of the Step-in Rights or as a result of any Law that prevents such payment being made by MSD or otherwise, in accordance with Schedule 11 (Payment Mechanism).

57. Step-out

57.1 Cessation

MSD:

- (a) may at any time after it has exercised its Step-in Rights; and
- (b) shall, promptly after it has remedied the reasons for exercising its Step-in Rights to its satisfaction,

notify the Provider of the Step-out Date, provided that the Step-out Date must be not less than five Business Days and not more than 30 Business Days (unless otherwise agreed by the Provider, acting reasonably) after the date of MSD's notice given under this clause 57.1.

57.2 Consequences

On the Step-out Date:

- (a) the Provider must immediately recommence performance of its obligations that were suspended under clause 55.1 (Suspension); and
- (b) MSD will give reasonable assistance to the Provider to ensure that this process of transition is undertaken as smoothly as possible.

58. Provider's acknowledgements

58.1 MSD not liable

The Provider acknowledges and agrees that MSD is not obliged:

- (a) to exercise all or any of its rights under this Part 13 at any time;
- (b) to remedy any Provider Default or other breach by the Provider of this Agreement; or
- (c) to mitigate, remedy or minimise the effects of the event or risk that triggered MSD's exercise of its Step-in Rights.

58.2 Release

The Provider releases MSD from all Liability (whether present or future, or quantified or not) that MSD may otherwise incur under this Agreement or at Law, arising directly or indirectly as a result of MSD's exercise of its Step-in Rights, unless and to the extent that it is proven that MSD has acted unlawfully, wilfully, recklessly, or negligently.

58.3 No Claim

The Provider agrees that it will not make any Claim (except to the extent permitted under this clause 58.3) against MSD in connection with MSD's exercise of its Step-in Rights, unless and to the extent that it is proven that MSD has acted unlawfully, wilfully, recklessly, or negligently.

58.4 Other rights not affected

MSD may exercise its rights under this Part 13 without in any way affecting the other rights and remedies then available to MSD under this Agreement or at Law, in equity, under statute or otherwise.

Part 14 – Insurance and reinstatement

59. Insurance

59.1 Obligations of Provider

The Provider must not take any action or fail to take any action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, that would entitle any insurer to refuse to pay any claim under any Insurance Policy.

59.2 Specified insurances

With effect from Financial Close, the Provider must take out and maintain the following insurances:

- (a) a physical damage policy in respect of the Properties in respect of loss or damage by fire, earthquake, accident, malicious damage, weather damage, theft, burglary and such other risks as it is prudent in accordance with best commercial practice to insure against for an amount at least equal to their full replacement value (the **Physical Damage Policy**);
- (b) a public liability policy on account of injury or damage suffered by the public and against such other risks as it is prudent in accordance with best commercial practice to insure against; and
- (c) any other insurances required by Law or that a reasonable and prudent social housing landlord would be expected to maintain.

59.3 General provisions relating to insurances

The Insurance Policies must:

- (a) be provided by Reputable Insurers;
- (b) include terms and requirements reflecting good commercial practice at the time of placement of the relevant policies;
- (c) in respect of any Physical Damage Policy, note the interest of the Crown as mortgagee under the CRI Mortgage; and
- (d) in respect of any Physical Damage Policy, provide for payment of any proceeds received by the Provider to be applied in accordance with clause 60 (Reinstatement).

59.4 Evidence of policies and renewal certificates

The Provider shall provide to MSD:

- (a) immediately on becoming aware of the same:
 - (i) written notice of any cancellation or proposed cancellation of an Insurance Policy by an insurer; and
 - (ii) information on any circumstances that may reasonably be expected to materially affect coverage under and in accordance with any of the Insurance Policies; and

- (b) on request:
 - (i) copies of all Insurance Policies and any other information reasonably requested by MSD from time to time relating to the Insurance Policies (including following renewal or replacement);
 - (ii) evidence that MSD's interest in respect of the CRI Mortgage is noted on the relevant policies;
 - (iii) evidence that the premia payable under all Insurance Policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this clause 59.4.
- (c) Renewal certificates in relation to the Insurance Policies shall be obtained as and when necessary and certified copies shall be forwarded to MSD as soon as reasonably practicable but in any event within 10 Business Days of the renewal date of the Insurance Policies.

59.5 Payment of deductibles and premia

The insurance premia for the Insurance Policies, and the deductibles or excesses applicable to such policies, shall at all times be the responsibility of the Provider. The Provider must punctually pay all deductibles, excesses, premia and other amounts payable in respect of the Insurance Policies.

59.6 Failure to maintain insurances

- (a) If the Provider is in breach of clause 59.2, MSD may pay any premia required to keep such insurances in force or procure and maintain such insurances and may in either case recover such amounts from the Provider as Moneys Owing.
- (b) Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Provider of its liabilities and obligations under this Agreement.

59.7 Notification and preservation of claims and known circumstances

- (a) The Provider shall give MSD notification within five Business Days of any insurance claim being made that relates in any way to this Agreement:
 - (i) in excess of \$50,000 on any of the Insurance Policies;
 - (ii) relating to any matter that may adversely affect the reputation of MSD; and
 - (iii) relating to any matter of high public interest,or of any circumstances of which the Provider is aware that may reasonably be expected to give rise to any such claim.
- (b) Such notice must be accompanied by full details of the incident or event giving rise to the claim. The Provider must promptly take steps to ensure that its rights, and the rights of any other persons to whom the benefit of the Insurance Policy extends, are fully preserved.

59.8 Other obligations of Provider in relation to insurances

Without limiting MSD's rights or the Provider's obligations under this clause 59, the Provider must also:

- (a) not do or permit or omit to do anything that prejudices any Insurance Policy;
- (b) rectify anything that may, if not rectified, prejudice any Insurance Policy;
- (c) promptly reinstate an Insurance Policy if it lapses, with a Reputable Insurer and on terms compliant with the insurance requirements of this Agreement;
- (d) notify the insurers of any relevant Insurance Policy of any Change relating to the Properties that increases the value of the Properties to the extent required by such policy;
- (e) fully and promptly disclose all material information to all relevant insurers (and to any persons acting on their behalf) relating to the Insurance Policies in all respects; and
- (f) comply at all times with the terms of each Insurance Policy.

60. Reinstatement

60.1 Generally

- (a) Upon becoming aware of any material damage to, or destruction of all or any part of the Properties (the **Relevant Properties**), MSD will (as soon as reasonably practicable) notify the Provider as to whether it:
 - (i) requires the Provider to rebuild or repair the Relevant Properties on the basis of the Same Typology as those for the original Relevant Properties (but in accordance with all then current Laws); or
 - (ii) wishes to negotiate with the Provider for the Relevant Properties to be rebuilt or repaired other than on the basis of the Same Typology as those for the original Relevant Properties,

and at the same time, MSD will notify the Provider of any changes to MSD's requirements regarding provision of the Services in respect of the Relevant Properties.

- (b) Without limiting the Provider's rights under Part 5 (Properties), if MSD notifies the Provider that:
 - (i) the Relevant Properties are to be rebuilt or repaired on the basis of the Same Typology as those for the original Relevant Properties (but in compliance with all then current Laws), clauses 60.2 and 60.3 will apply; or
 - (ii) it wishes to negotiate with the Provider for the Relevant Properties to be rebuilt or repaired other than on the basis of the Same Typology as those for the original Relevant Properties, including any requirement (whether imposed by MSD or the local council) that the Relevant Properties be rebuilt or repaired to a higher seismic standard than the original Relevant Properties, the parties will treat this as a reconfiguration to be dealt with in accordance with clause 15.4(e) except that the Provider must submit a Reconfiguration Proposal as requested by MSD and MSD must act reasonably in considering the Reconfiguration Proposal submitted by the Provider.

60.2 Insurance proceeds

Subject to clause 60.1(a), all insurance proceeds received under any Physical Damage Policy shall be applied to repair, reinstate and replace each part or parts of the Properties in respect of which the proceeds were received.

60.3 Reinstatement processes

Where MSD determines under clause 60.1(a)(i) that the Relevant Properties are to be rebuilt or repaired on the basis of the Same Typology as the original Relevant Properties, the Provider does not exercise any of its rights under Part 5 (Properties) in respect of the Relevant Properties and the cost of rebuild or repair according to such specifications exceeds the cost of rebuild or repair according to the original specifications, then the Provider will be solely responsible for the payment of any shortfall.

60.4 Extent of reinstatement relief

In the event of any event or occurrence giving rise to actual physical loss, destruction of, or damage to any of the Properties from any cause and to which the Provider is entitled to recourse under the Physical Damage Policy (excluding for the avoidance of doubt any event or occurrence to the extent recourse to such policy is not available due to the operation of any deductible on that policy):

- (a) MSD has no obligation to pay IRRS to the CHP in respect of such Relevant Properties until the Properties are rebuilt or repaired so that they meet the Availability Requirements; but
- (b) in all other respects, the Provider shall not be in breach of this Agreement in respect of the Relevant Properties provided that the Provider is complying with its obligations under this Part 14.

Part 15 – Termination

61. Termination Events

61.1 Subject to Financier Direct Deed

This Part 15 is subject to the terms of the Financier Direct Deed.

61.2 Remedies cumulative

The rights and remedies exercisable under this Part 15 are in addition, and without prejudice, to any other rights and remedies of MSD under this Agreement on or following the occurrence of a Termination Event.

61.3 Termination under Agreement only

This Agreement may only be terminated in accordance with its express terms.

61.4 Termination

This Agreement may be terminated:

- (a) for convenience in accordance with clause 62 (Termination for convenience); or
 - (b) as a result of a Provider Default in accordance with clause 63 (Termination on Provider Default),
- (each a **Termination Event**).

61.5 Termination Date

- (a) Subject to this clause 61.5, the Termination Date will be a fixed date as specified in a Termination Notice served on the Provider under this Agreement.
- (b) The Termination Date specified in a Termination Notice must be:
 - (i) in the case of termination under clause 62 (Termination for convenience), no less than 60 Business Days; or
 - (ii) in the case of termination under clause 63 (Termination on Provider Default), no less than 30 Business Days,after the date on which it is served.
- (c) If the Security Trustee issues a Step-in Notice (as defined in the Financier Direct Deed) before the Termination Date referred to in a Termination Notice, that Termination Date shall be deemed to be suspended and will not take effect until such time as:
 - (i) MSD is entitled to terminate this Agreement in accordance with the Financier Direct Deed; and

- (ii) MSD gives the Provider and the Security Trustee no less than five Business Days' notice that this Agreement will be finally terminated, with no further remedy rights for any party, and specifying the final Termination Date.

62. Termination for convenience

62.1 MSD may terminate at any time

MSD may terminate this Agreement at any time on or before the Expiry Date under this clause 62.

62.2 Termination Notice

If MSD wishes to terminate this Agreement under this clause 62, it must give a Termination Notice to the Provider stating that MSD is terminating this Agreement under this clause 62.

63. Termination on Provider Default

63.1 General provision

- (a) MSD shall be entitled to terminate this Agreement in accordance with this clause 63 if a Provider Default has occurred.
- (b) Where the Provider Default is constituted by a Probity Event, then the terms of clause 63.6 will apply instead of clauses 63.4 and 63.5.

63.2 Provider Default

For the purposes of this Agreement:

- (a) **Immediate Termination Event** means any one or more of the following:
 - (i) the Regulatory Authority providing notice that the CHP will cease to be a Class 1 Social Landlord on expiry of a specified notice period provided that one of the following has also occurred (whichever occurs earlier):
 - (A) the CHP has not appealed against the Regulatory Authority's decision relating to its loss of registration within the period of time stipulated in section 184 of the HRTM Act being, as at the Execution Date, 28 days of the Regulatory Authority's registration revocation decision being made;
 - (B) the CHP has appealed against the Regulatory Authority's decision relating to its loss of registration within the period of time stipulated in section 184 of the HRTM Act but the appeal body has determined not to reverse the Regulatory Authority's decision thereby refusing to either restore the CHP's registration or determine that the CHP should remain registered;
 - (C) three months has passed since the Regulatory Authority provided notice that the CHP will cease to be a Class 1 Social Landlord on expiry of a specified notice period; or
 - (D) the CHP is no longer registered as a Class 1 Social Landlord or other class of registered community housing provider (as defined in the HRTM Act) that is entitled to receive payment of IRRS under this Agreement

(unless MSD, in its absolute discretion, has decided that in the particular circumstances, this should not be a trigger for an Immediate Termination Event occurring),

and such notice has not been withdrawn, cancelled or otherwise deemed to be of no effect;

- (ii) a Shareholder Breach;
 - (iii) failure by the Provider to comply with clause 72.3 (Assignment by Provider);
 - (iv) a Probity Event (as that term is defined by reference to paragraphs (a) to (d) of that definition) occurs to which clause 63.6(b) applies;
 - (v) an Insolvency Event occurs in relation to the Provider or a Provider Entity;
 - (vi) any statement or representation made in any report, notice or invoice provided or rendered to MSD by or through the Provider is or proves to be false, misleading or incorrect in any material respect in circumstances where:
 - (A) the Provider wilfully or deliberately made that statement or representation having actual knowledge that such report, notice or invoice was false, misleading or incorrect in any material respect; and
 - (B) the individual providing such report, notice or invoice was not acting independently of the Provider (such phrase to have the meaning set out in clause 63.6); and
- (b) **Remediable Provider Default** means any one or more of the following:
- (i) failure by the Provider to comply with:
 - (A) clause 59.2 (Specified insurances); or
 - (B) clause 23 (Sub-contractors);
 - (ii) a breach by the Provider of any of its obligations under this Agreement (other than those obligations specifically referred to in clause 63.2(a) or comprising an Availability Breach, High Performance Breach or a Performance Breach) or of any of the terms of any Project Document (other than this Agreement), that has a Material Adverse Effect;
 - (iii) any Material Adverse Effect resulting from any of the representations and warranties made (or deemed repeated) by the Provider under this Agreement being found to be untrue or incorrect when made (or deemed repeated);
 - (iv) a Persistent Availability Breach;
 - (v) a Persistent High Performance Breach;
 - (vi) a Persistent Performance Breach;
 - (vii) a Persistent Failure;
 - (viii) a failure by the Provider to comply with the child sex offender requirements in Annexure 2 (Tenancing Vacant Properties process) to Schedule 7 (Tenancy Management Requirements);

- (ix) wilfully or deliberately failing to comply with:
 - (A) paragraph 17 (Suspected housing fraud) of Schedule 7 (Tenancy Management Requirements); or
 - (B) paragraph 18 (Child abuse and family violence) of Schedule 7 (Tenancy Management Requirements);
- (x) a major breach by the Provider of any of its obligations in clause 44 (Personal Information) that does cause, or could reasonably be expected to cause, significant reputational damage to MSD or the Provider;
- (xi) it becomes unlawful for the Provider to provide the Services;
- (xii) the occurrence of either:
 - (A) the acceleration by a Senior Lender of repayment of all or a material part of the Senior Debt following a Financing Default; or
 - (B) an event that would prevent the Provider from obtaining or continuing to have available funding under the Financing Agreements to the extent necessary for the provision of the Services, excluding any draw-stops under the Senior Financing Agreements that have existed for up to 90 days;
- (xiii) all or any material part of any Project Document is or becomes void, voidable, illegal, invalid or unenforceable (other than by reason of a party waiving any of its rights);
- (xiv) a Probity Event (of whatever nature) occurs, being a Probity Event that is not an Immediate Termination Event;
- (xv) an Unsuitable Third Party Controls or becomes entitled to Control a Shareholder;
- (xvi) failure by the Provider to comply with clause 73 (Change of Ownership), except where that failure to comply constitutes a Shareholder Breach;
- (xvii) on at least 3 occasions in 6 months, statements or representations made in any report or invoice provided or rendered to MSD by or through the Provider are or prove to be false, misleading or incorrect in any material respect in circumstances where the Provider or a Provider Related Person (if that company is the source of the report or invoice) ought reasonably to have known that the report or invoice was false, misleading or incorrect in any material respect; or
- (xviii) any statement or representation made in any report, notice or invoice provided or rendered to MSD by or through the Provider (except in circumstances that constitute an Immediate Termination Event) is or proves to be false, misleading or incorrect in any material respect in circumstances where the Provider or a Provider Related Person (if that company is the source of the report or invoice) wilfully or deliberately made that statement or representation having actual knowledge that such report, notice or invoice was false, misleading or incorrect in any material respect.

63.3 Notice of Breach

- (a) MSD may, at any time within 10 Business Days after it becomes aware of the occurrence of a High Performance Breach, a Performance Breach or any other breach of this Agreement (other than an Availability Breach), serve a notice of that breach on the Provider. MSD may not serve a notice of breach under this clause 63.3, in respect of any breach, if it has not done so within 10 Business Days of becoming aware of the same.
- (b) Each notice of a breach must specify the type and nature of the High Performance Breach, Performance Breach or other breach and require the Provider to:
 - (i) provide a plan to remedy the High Performance Breach, Performance Breach or other breach, or to prevent reoccurrence of the underlying circumstances that gave rise to the High Performance Breach, Performance Breach or other breach, to MSD's reasonable satisfaction within 10 Business Days of receiving the notice (**Breach Remedy Plan**); and
 - (ii) implement that Breach Remedy Plan in accordance with its terms.

63.4 Warning Notice

- (a) MSD may, at any time within 20 Business Days after it becomes aware of the occurrence of a Remediable Provider Default, serve a Warning Notice on the Provider, a copy of which will be provided by MSD to the Regulatory Authority. MSD may not serve a Warning Notice, in respect of any Remediable Provider Default, if it has not done so within 20 Business Days of becoming aware of the same.
- (b) Each Warning Notice must specify the type and nature of the Remediable Provider Default, giving reasonable details, and stating whether or not the Remediable Provider Default can be remedied. If the Warning Notice states that the Remediable Provider Default can be remedied, then the Provider must either:
 - (i) put forward a rectification programme (**Rectification Programme**) that is acceptable to MSD (acting reasonably) within 15 Business Days after the date the Provider receives the Warning Notice, specifying:
 - (A) the timeframe within which the Remediable Provider Default will be remedied;
 - (B) a work plan for the remedying of the Remediable Provider Default within that timeframe; and
 - (C) any temporary measures being put in place to mitigate the effects of the Remediable Provider Default,
 and rectify the Remediable Provider Default in accordance with the Rectification Programme; or
 - (ii) remedy the Remediable Provider Default within 20 Business Days (or such longer period as may be specified by MSD) after the date the Provider receives the Warning Notice,

provided that, in the case of a Remediable Provider Default under any of clauses 63.2(b)(xvii), or 63.2(b)(xviii), MSD will be entitled to require that the Remediable Provider Default is remedied in accordance with clause 63.4(b)(ii) where MSD considers, acting reasonably, that it is practicable to do so and has, in the

relevant Warning Notice, set out the basis on which it considers it is practicable to do so.

- (c) If the Warning Notice states that the Remediable Provider Default cannot be remedied, the Provider must submit a plan (**Prevention Plan**) that is acceptable to MSD (acting reasonably) within 15 Business Days after the date the Provider receives the Warning Notice, with the Prevention Plan setting out:
 - (i) any temporary measures being put in place to mitigate the effects of the Remediable Provider Default;
 - (ii) how the Provider intends to appropriately address the underlying circumstances that gave rise to the Remediable Provider Default and prevent their recurrence; and
 - (iii) the timeframe within which the Provider will appropriately address the consequences of the Remediable Provider Default,

and the Provider must implement the Prevention Plan in accordance with its terms.

- (d) The Provider:
 - (i) must, during the implementation of the Rectification Programme or Prevention Plan (as applicable), keep MSD advised of progress against the timeframes set out therein;
 - (ii) may, where circumstances adversely affect the implementation of the Rectification Programme or Prevention Plan (as applicable) in accordance with its then-current terms, request a variation to such Rectification Programme or Prevention Plan for MSD to approve (acting reasonably), provided that the Provider:
 - (A) notifies MSD of those circumstances, and submits the proposed variation no later than five Business Days prior to the due date for completion of the implementation of the Rectification Programme or Prevention Plan (as applicable);
 - (B) has complied, and continues to comply, with the Rectification Programme or Prevention Plan (except to the extent adversely affected by the circumstances notified) and has been diligently pursuing such rectification or prevention consistently with Good Industry Practice; and
 - (C) while pursuing such rectification or prevention, did not cause or contribute to such circumstances by its negligence or failure to comply with its obligations under this Agreement.
- (e) Where a Warning Notice is issued:
 - (i) to which clause 63.4(b)(i) applies, and the Provider rectifies the Remediable Provider Default in accordance with the Rectification Programme;
 - (ii) to which clause 63.4(b)(ii) applies, and the Provider remedies the Remediable Provider Default within 20 Business Days after the date the Provider receives the Warning Notice; or
 - (iii) to which clause 63.4(c) applies, and the Provider implements the Prevention Plan in accordance with its terms,

in each case to the satisfaction of MSD (acting reasonably) then in each case the Warning Notice in relation to the relevant Remediable Provider Default will be deemed to be revoked and this Agreement will continue.

- (f) The Provider may refer any Dispute under this clause 63.4 for resolution by Expert Determination, and must continue to diligently pursue the Rectification Programme or Prevention Plan (as applicable) pending determination of that Dispute.

63.5 Termination Notice

- (a) MSD may, at any time after the occurrence of an Immediate Termination Event, serve a Termination Notice on the Provider.
- (b) If in the case of a Remediable Provider Default:
 - (i) the timeframe for implementing the Rectification Programme or Prevention Plan (as applicable) has expired and the applicable Warning Notice has not been revoked under clause 63.4(e); or
 - (ii) the Provider has failed to comply with clause 63.4(b) or 63.4(c) (as applicable),then MSD may serve a Termination Notice on the Provider.

63.6 Probity Event

- (a) In this clause 63.6:
 - (i) a “Sub-contractor” means a sub-contractor of the Provider, a sub-contractor of a sub-contractor, and any other sub-contractor of whatever tier involved in the matters that are the subject of this Agreement;
 - (ii) the expression “not acting independently of” (when used in relation to the Provider or a Sub-contractor) means and shall be construed as acting with the knowledge (actual or imputed) of any one or more of the directors of the Provider or the Sub-contractor (as applicable); and
 - (iii) the phrase “involved in the matters that are the subject of this Agreement” includes any involvement of whatever nature whether by way of the provision of any service, the exercise of any powers of managerial control, the exercise of any powers of direction or influence, or any other kind of involvement including by way of any financial interest.
- (b) If a Probity Event has occurred for which an officer or an employee of the Provider or a Provider Entity is responsible, in circumstances where that employee was not acting independently of the Provider or a Provider Entity, then MSD may serve a Termination Notice on the Provider and clause 63.5 will apply.
- (c) If a Probity Event has occurred for which an employee of the Provider is responsible in circumstances where that employee was acting independently of the Provider, then MSD may give written notice to the Provider advising it that MSD may serve a Warning Notice on it, unless within 10 Business Days of receipt of such written notice the Provider terminates the employee's employment.
- (d) If a Probity Event has occurred for which an officer or employee of a direct Sub-contractor to the Provider is responsible, in circumstances where that employee was not acting independently of that Sub-contractor, then MSD may give written notice to the Provider advising that MSD may serve a Warning Notice on it, unless within 10

Business Days of receipt of such written notice the Provider terminates that Sub-contractor's sub-contract with the Provider.

- (e) If a Probity Event has occurred for which an employee of a direct Sub-contractor to the Provider is responsible, in circumstances where that employee was acting independently of that Sub-Contractor, then MSD may give written notice to the Provider advising it that MSD may serve a Warning Notice on it, unless within 10 Business Days of receipt of such written notice the Sub-contractor terminates that employee's employment.
- (f) If a Probity Event has occurred for which a person not specified in clause 63.6(b) to clause 63.6(e) (inclusive) is responsible, then MSD may give written notice to the Provider advising it that MSD may serve a Warning Notice on it, unless within 10 Business Days of receipt of such written notice the Provider procures:
 - (i) in the case of an employee, the termination of that person's employment;
 - (ii) in the case of a contractor (whether or not contracted by the Provider or a Sub-contractor), the termination of that contractor's contract to the extent relating to the matters that are the subject of this Agreement; and
 - (iii) in the case of any other person who has an ability to influence the Provider in relation to the matters that are the subject of this Agreement or who exercises Control over the Provider, a Provider Related Person or any Sub-contractor, the removal of that person from any involvement in the matters that are the subject of this Agreement or from the exercise of any Control over the Provider, a Provider Related Person or any Sub-contractor (as applicable).
- (g) A Termination Notice or a Warning Notice served on the Provider under this 63.6 must specify:
 - (i) the nature of the Probity Event that has occurred; and
 - (ii) the identity of the person whom MSD considers has been responsible for the occurrence of the Probity Event.
- (h) For the avoidance of doubt, where the Provider is required to procure the termination of the employment of an employee of a Sub-contractor in accordance with this clause 63.6, the termination of that Sub-contractor's sub-contract will also be deemed to remedy any such Probity Event.

63.7 Prolonged Force Majeure Event

- (a) Where, as a result of a Prolonged Force Majeure Event, the Provider can satisfy MSD (acting reasonably) that the Economic Viability Test can no longer be met (taking into account the proceeds of any business interruption policy) on the basis of the reduced number of Properties that are Available (assuming that Properties that are not Available as a result of a Prolonged Force Majeure Event (the **FM Unavailable Properties**) are not in the Agreed Pool of Properties and making necessary changes to clause 9.7(d) such that references to Renewed Properties are read as referring to those properties that remain Available despite the Prolonged Force Majeure Event), the parties will seek to agree arrangements to mitigate the impact of the Prolonged Force Majeure Event and where the parties are unable to agree on such arrangements within 20 Business Days of the Prolonged Force Majeure Event occurring, either party may serve a termination notice on the other party, which shall have the effect of bringing forward the Expiry Date to a date that is 20 Business Days from the date of the termination notice in respect of the FM Unavailable Properties.

- (b) MSD may reject the Provider's termination notice served pursuant to clause 63.7(a), by agreeing to make an Additional Payment to cover the Provider's reasonable fixed and unavoidable direct costs related to this Agreement and its debt service costs in respect of the Senior Financing Agreement, while the effects of the Prolonged Force Majeure Event continue to subsist.
- (c) Upon termination:
 - (i) the termination notice shall have the effect of bringing forward the Expiry Date to a date that is 20 Business Days from the date of the termination notice and, accordingly:
 - (A) the parties (acting reasonably) shall, prior to the revised Expiry Date, use reasonable endeavours to agree a timeframe in which the MSD Expiry Proportion must be paid to MSD following the revised Expiry Date, and if no agreement can be reached between the parties, the date by which the MSD Expiry Proportion must be paid by the Provider to MSD shall be deemed to be the Expiry Payment Date (failing which the CRI Creditor under the Financier Direct Deed may exercise its power of sale under the CRI Mortgage);
 - (B) MSD acknowledges and confirms that the receipt by MSD of the amount referred to under (A) is in full and final satisfaction of MSD's right to receive the future payment of the Crown Retained Investment as granted under clause 17 (Grant of Crown Retained Investment and CRI Mortgage);
 - (C) MSD shall arrange for any CRI Mortgage and Encumbrance registered against titles to each FM Unavailable Property to be discharged contemporaneously with MSD's receipt of the MSD Expiry Proportion; and
 - (D) where the MSD Expiry Proportion will be paid after the Expiry Date, MSD shall allow the Provider to use the FM Unavailable Properties for a purpose that does not relate to social housing provided that any such use does not de-value the FM Unavailable Properties or bring MSD into disrepute;
 - (ii) the Properties shall remain with the Provider;
 - (iii) the Provider shall retain any insurance proceeds; and
 - (iv) neither party will owe the other any termination compensation payment to the other, other than any MSD Expiry Proportion that is to be paid to MSD in accordance with this clause 63.7(c) in respect of the FM Unavailable Properties and in such circumstances and to the extent recovered from the aggregate of any insurance proceeds and the Gross Proceeds of Sale in respect of such FM Unavailable Properties, the Provider will:
 - (A) first (after calculating the Debt Balance attributable to the FM Unavailable Properties in accordance with clause 9.8(a)(ii)), retain (for payment to the Senior Lenders) the balance of its Senior Debt applicable to the FM Unavailable Properties, including any accrued but unpaid interest, fees and costs;
 - (B) secondly, pay to MSD the outstanding Crown Retained Investment applicable to the FM Unavailable Properties less the Deferred CRI;

- (C) thirdly, retain the Residual Value for the FM Unavailable Properties (discounted back at the Transaction IRR from the Expiry Date) less an amount equal to any amounts retained under limb (A) above;
 - (D) fourthly, on a pari passu basis, pay MSD and retain for itself, an amount up to an amount equal to the Deferred CRI; and
 - (E) fifthly, retain the balance of any such amounts.
- (d) Where a Prolonged Force Majeure Event occurs, but clause 63.7(a) does not apply, the parties agree to vary this Agreement to bring forward the Expiry Date in respect of any Properties that continue to be affected and Unavailable as a result of the Force Majeure Event, such that these Properties can be removed from the Agreed Pool of Properties, and in such a case the expiry provisions in clause 63.7(c) shall apply.

64. Consequences of Termination

64.1 Compensation provisions

If this Agreement is terminated under:

- (a) clause 62 (Termination for convenience), the terms of paragraph 3.1 (Compensation Sum - termination for convenience) of Schedule 14 (Calculation of Compensation on Termination) shall apply; or
- (b) clause 63 (Termination on Provider Default), the terms of paragraph 3.2 (Compensation Sum - termination for Provider Default) of Schedule 14 (Calculation of Compensation on Termination) shall apply,

in the calculation of the compensation (if any) payable by or to MSD as a result.

64.2 Compensation Sum

- (a) MSD will determine the Compensation Sum to be paid by it or to it, on termination of this Agreement, in accordance with this clause 64.2 and Schedule 14 (Calculation of Compensation on Termination).
- (b) The Compensation Sum and any other moneys that are paid as a result of termination of this Agreement under this Part 15 (including without limitation any Termination Adjustment Amount), are paid in full and final settlement of each party's rights and claims against the other under this Agreement or any Project Document whether under contract, tort, restitution or otherwise, except in respect of:
 - (i) any antecedent liability of the Provider to MSD that MSD has been unable to set off or deduct under the terms of this Agreement;
 - (ii) any antecedent liability of either party to the other that arose prior to the Termination Settlement Date (but not from the termination itself) to the extent such liability has not been taken into account in determining the Compensation Sum; and
 - (iii) any liabilities arising in respect of any breach by either party of their obligations under clause 9.4 (Continuing obligations) that arise or continue after the Termination Settlement Date to the extent such liabilities have not been taken into account in determining the Compensation Sum.

- (c) If the Compensation Sum is zero or a negative number, MSD shall have no obligation to make any payment to the Provider and, with effect from the time that MSD gives notice of the determination of the Compensation Sum to the Provider, MSD shall be released from all liability to the Provider for breaches and/or termination of the Project Documents whether under contract, tort, restitution or otherwise except to the extent specified under clause 64.2(b).
- (d) If the Compensation Sum is a negative number, then an amount equal to the Compensation Sum shall be due and payable by the Provider to MSD in accordance with clause 64.4(b)(ii).
- (e) In the event of any Dispute as to the calculation of the Compensation Sum, the parties shall resolve that Dispute in accordance with the Dispute Resolution Procedures and if the Dispute cannot be resolved informally between the parties in accordance with those Dispute Resolution Procedures, it shall be subject to Expert Determination.

64.3 Effect of Termination Notice

Following the serving of a Termination Notice:

- (a) the Provider will continue to provide the Services until the Termination Settlement Date; and
- (b) MSD will continue to pay the Availability Payment, subject to the terms of this Agreement, until the Termination Settlement Date.

64.4 Termination Date

- (a) On and from the Termination Settlement Date:
 - (i) the Provider will, from the time that the Final Portfolio Properties are transferred to MSD or its nominee, cease to be required to make any properties exclusively available for MSD's social housing purposes and will cease to provide the Services;
 - (ii) MSD will cease to pay the Availability Payment for any period after the Termination Settlement Date; and
 - (iii) clause 9.4 (Continuing obligations) will apply.
- (b) On the Compensation Date:
 - (i) the Provider must transfer all its rights, title and interest to the Final Portfolio Properties, subject to all existing Tenancies, to MSD or its nominee on receipt of that element of the Compensation Sum that is not disputed (if any);
 - (ii) the Provider must transfer any Compensation Sum (where the Compensation Sum is a negative number) that is payable by the Provider and not disputed, to MSD;
 - (iii) contemporaneously with the transfer under clause 64.4(b)(i), the Provider assigns and MSD (or MSD's nominee) accepts an assignment of all of the Provider's rights in the Final Portfolio Properties and the existing Tenancies relating to the Final Portfolio Properties;
 - (iv) contemporaneously with the transfer under clause 64.4(b)(i), the Provider will deliver to MSD, the following deliverables:

- (A) original documentation relating to each Final Portfolio Property and Tenancy (or copies where the Provider does not hold an original);
- (B) all keys, electronic door openers or security codes for the Final Portfolio Properties held by the Provider;
- (C) originals (or copies where the Provider does not hold originals) of any warranties and guarantees held in respect of works carried out by the Provider at any of the Final Portfolio Properties only to the extent that such warranties and guarantees can be transferred to MSD or MSD's nominee; and
- (D) all discharges, withdrawals, transfers and other instruments in registerable form as may be required to transfer title to the Final Portfolio Properties to the Purchaser free of any security interest other than the Encumbrance, the CRI Mortgage and any encumbrance in favour of a local authority within the meaning of the Local Government Act 2002; and
- (v) the Provider and MSD will sign, execute or do all deeds, schedules, acts, documents and things as may be reasonably be required by the other party to give effect to the terms and intentions of this clause 64.4(b).

65. Provider Option on Termination

Notwithstanding clause 64.4(b)(i), if this Agreement is terminated under clause 62 (Termination for convenience), then the Provider may elect to retain ownership of up to 5% of the Final Portfolio Properties (where it is able to demonstrate to MSD's reasonable satisfaction that such Properties have been developed, adapted or improved so as to be suitable for use by tenants with intellectual disabilities) and the Compensation Sum calculated in accordance with Schedule 14 (Calculation of Compensation on Termination) shall be reduced accordingly to take account of such Properties not being transferred under clause 64.4(b)(i) to MSD or its nominee.

66. Payment of Compensation

66.1 Payment of Compensation Sum

- (a) MSD must (if the Compensation Sum is a positive number) pay to the Provider the element of the Compensation Sum that is not disputed on the Compensation Date, and the remainder on or before the date falling 20 Business Days after it has been determined by Expert Determination. Subject to clause 64.2(b), where MSD terminates this Agreement under clause 62 (Termination for convenience), MSD must pay the Base Senior Debt Termination Amount within 10 Business Days after the Actual Termination Date.
- (b) MSD shall pay interest to the Provider at the Prescribed Rate on any amount of the Compensation Sum that MSD:
 - (i) has failed to pay on or prior to the Compensation Date (where there is no Dispute as to any element of the Compensation Sum); or
 - (ii) has been held liable to pay under Expert Determination and which has been withheld from the Compensation Date until the date specified in clause 66.1.
- (c) MSD will not be obliged to pay the Compensation Sum unless and until:

- (i) the Provider has provided customary undertakings to MSD that bind it to legally transfer all its rights, title and interest to the Properties to MSD or its nominee on receipt of the Compensation Sum; and
 - (ii) the Security Trustee has released all Security Interests over the Properties or has provided an undertaking satisfactory to MSD that it will do so on payment of the Compensation Sum.
- (d) MSD may require that, following the date of the Termination Notice, interest payable on the Senior Debt is paid directly by MSD (on behalf of the Provider) to the Senior Lenders and the Availability Payment or Compensation Sum (as applicable) otherwise payable to the Provider will be reduced by such amounts.
- (e) MSD's obligation to pay the Compensation Sum under this clause 66.1 is, notwithstanding clause 39.6 (Rights of set-off), irrespective of whether or the extent to which the Provider has complied or is complying with its obligations under Part 16 (Disengagement).

66.2 Adjustment of Compensation Sum

- (a) Where:
- (i) an amount payable by MSD under clause 66.1 is attributable to interest payable by the Provider to the Senior Lenders under the Senior Financing Agreements; and
 - (ii) the Provider is required, in accordance with the Senior Financing Agreements, to gross-up the amount of such interest payable to the Senior Lenders for any Tax payable to a Governmental Entity in New Zealand,

then MSD shall pay to the Provider such additional amount as will put the Provider in the same after Tax position as it would have been in had no such gross-up payment been required, taking account of any relief, allowances, deduction, setting off or credit in respect of Tax (whether available by choice or not) that may be available to the Provider to reduce the gross-up payment.

- (b) If part or all of the Compensation Sum payable by MSD to the Provider is characterised by Inland Revenue as taxable income rather than as a capital receipt, and is accordingly subject to Tax payable to a Governmental Entity in New Zealand, then MSD shall, following receipt of evidence of this assessment and such supporting evidence as it may reasonably require from the Provider, pay to the Provider such additional amount as will put the Provider in the same after Tax position as it would have been in had the payment not been subject to Tax, taking account of any relief, allowances, deduction, setting off or credit in respect of Tax (whether available by choice or not) that may be available to the Provider to reduce the Tax payment.

66.3 Senior Debt

- (a) MSD shall be entitled to rely on a certificate from the Agent as conclusive evidence of the amount of Senior Debt outstanding at any relevant time.
- (b) The payment of the Compensation Sum in full shall discharge MSD's obligation to pay any element of compensation due to the Provider that wholly or partly comprises Senior Debt.

Part 16 – Disengagement

67. Expiry Date

On and from the Expiry Date:

- (a) clause 9.4 (Continuing obligations) will apply;
- (b) subject to its rights of set-off under this Agreement, MSD will make any payments then due and payable to the Provider; and
- (c) the Provider must pay all Moneys Owing to MSD.

68. Disengagement

68.1 Preparation

The Provider must prepare and maintain the Disengagement Plan in accordance with Part 1 (Operative Documents) of Schedule 8 (Reviewable Documents).

68.2 Disengagement Services

During the Disengagement Period, the Provider:

- (a) shall supply the Disengagement Services in accordance with the Disengagement Plan;
- (b) shall co-operate fully with MSD or its nominee and any New Provider;
- (c) shall undertake such other conveyances and assignments and novations;
- (d) shall undertake such other transactions and operational handover activities;
- (e) shall give such assurances; and
- (f) shall do all other acts and things,

as required by the terms of this Agreement or otherwise reasonably required by MSD to support a seamless transfer of responsibility for the Properties and/or the Services to MSD or its nominee or any New Provider.

69. Other requirements

69.1 Attorney

The Provider irrevocably appoints MSD (acting through any person expressly nominated by MSD for this purpose) as the Provider's lawful attorney with full power and agency to carry out the Provider's obligations under clause 68.

69.2 Step-in Rights not affected

Nothing in this Part 16 limits or affects MSD's rights and remedies under Part 13 (MSD Step-in).

Part 17 – Dispute resolution

70. Disputes

70.1 Notice of Dispute

If there is a dispute arising in relation to any aspect of this Agreement or the subject matter of this Agreement (**Dispute**) then the party wishing to invoke the provisions of this Part 17 will serve a notice (a **Notice of Dispute**) on the other party, together with its submissions in relation to the Dispute.

70.2 Agreement to substitute dispute resolution procedures

Where a Dispute arises the parties may elect not to invoke the provisions of this Part 17 and may utilise an alternate dispute resolution process but only if both parties agree.

70.3 Submissions

The submissions referred to in clause 70.1 will include (among other things) a description of the nature of the Dispute, the contractual or other legal basis on which the Dispute is based and (where relevant) the amount claimed.

70.4 Informal Dispute resolution

Where a Notice of Dispute has been served under clause 70.1, each party must:

- (a) 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 at the Chief Executive officer level for each party) or mediation; and
- (b) not commence any arbitration proceeding relating to the dispute unless it has complied with this clause 70.4 and clauses 70.6 and 70.7.

70.5 Obligations continue

Despite the existence of a Dispute or the referral of a Dispute for resolution under this Part 17:

- (a) the Provider must continue to provide the Services and perform its other obligations under this Agreement; and
- (b) MSD will continue to perform its obligations under this Agreement and may exercise its rights under this Agreement without regard to the existence of a Dispute, while that Dispute has not been resolved under this Part 17.

70.6 Arbitration

If:

- (a) the Dispute is not resolved under clause 70.4 within 15 Business Days from the date of service of the Dispute Notice under clause 70.1;
- (b) this Agreement does not require that the Dispute will be subject to Expert Determination; and

- (c) the parties have not otherwise agreed to refer the Dispute to Expert Determination, then:
- (d) either party may give notice to the other party:
 - (i) setting out the subject matter and details of the Dispute and requiring that the Dispute be referred to arbitration by a sole arbitrator; and
 - (ii) stating the name of the person whom the party giving the notice nominates as an arbitrator;
- (e) if the parties fail to agree on the identity of the arbitrator within five Business Days of the date of receipt of the notice referring the Dispute to arbitration, the arbitrator will be chosen by the president or vice president of the New Zealand Law Society (or his or her nominee);
- (f) any arbitrator will:
 - (i) be suitably qualified (in the opinion of the appointing person) for this purpose in matters relevant to the Dispute; and
 - (ii) be independent from either party (for example, will not be an ex-employee of either party and will not have entered into significant contracts or arrangements with either party);
- (g) the arbitration will be held in Wellington, New Zealand;
- (h) the arbitrator will decide the Dispute in accordance with New Zealand law and conduct the arbitration in accordance with the Arbitration Act 1996 (the **Arbitration Act**) and the rules contained in the First and Second Schedules to the Arbitration Act, subject to the following exceptions:
 - (i) to the extent that the notice provisions in this Agreement are inconsistent with article 3 of the First Schedule, the notice provisions of this Agreement apply;
 - (ii) for the purposes of article 15(3) of the First Schedule, any order or ruling of an arbitrator made prior to the replacement of that arbitrator under article 13 of the First Schedule will be invalid;
 - (iii) the parties agree that either party may request the arbitral tribunal under article 33(1)(b) of the First Schedule to give an interpretation of a specific point or part of an award;
 - (iv) articles 1(4) and 1(5) of the Second Schedule will not apply to override the provisions in this clause 70.6 for the appointment of the arbitrator;
 - (v) the arbitration will not involve an inquisitorial process such as the arbitrator interviewing witnesses of his or her own choosing (so that article 3(1)(a) of the Second Schedule will not apply); and
 - (vi) the High Court may determine any question of law that arises from the arbitration if it is satisfied that the determination of the question of law concerned may either:
 - (A) produce a substantial savings in cost to the parties; or

- (B) having regard to all the circumstances, substantially affect the rights of one or more parties,

(so that articles 4(2)(a) and 4(2)(b) of the Second Schedule will apply in the alternative, not cumulatively);

- (i) the arbitrator's award will be an award with reasons (which will form part of the award) and will be final and binding on the parties, provided that either party may appeal to the High Court on any question of law arising out of the award;
- (j) the parties' own costs and the costs of the award in relation to the arbitration will be borne in the manner determined by the arbitrator and, in the absence of such determination, each party will bear its own costs and an equal share of the costs of the arbitration; and
- (k) subject to clauses 70.6(h)(vi) and 70.8, neither party will bring any court proceedings relating to the Dispute or any part of it.

70.7 Referral to Expert Determination

If the Dispute is not resolved under clause 70.4 and this Agreement requires that the Dispute will be subject to Expert Determination, either party may, by written notice to the other party, refer the Dispute to Expert Determination under clause 71 (Expert Determination). The parties may otherwise agree in writing to refer the Dispute to Expert Determination under clause 71.

70.8 Urgent relief

Nothing in this Agreement shall preclude a party from seeking urgent injunctive or declaratory relief or from otherwise seeking urgent interlocutory relief from the courts. If interlocutory relief is sought by a party, then that party shall, subject to the extent of the relief obtained from the courts and following the period required to dispose of the application, submit the Dispute for resolution under this Part 17.

70.9 Timeframes

Any of the timeframes specified in this clause 70 may be varied by written agreement between the parties.

71. Expert Determination

71.1 Expert Determination process

- (a) If a Dispute has been referred to Expert Determination under this clause 71, the expert will be appointed by agreement between the parties or, if the parties are unable to reach agreement on an expert within five Business Days of the written notice under clause 70.7 (Referral to Expert Determination) being issued, then such person will be appointed by the president of the Chartered Accountants Australia and New Zealand (or his or her nominee) where the parties agree that the Dispute is a financial Dispute or the president of the New Zealand Law Society (or his or her nominee) for all other Disputes, who will be requested to appoint an independent expert who (in his or her opinion) is suitably qualified and experienced in relation to the subject matter of the Dispute and accepts the timeframes for determination set out in this Agreement (the **Independent Expert**).

- (b) Once the Independent Expert has been agreed or nominated, then either party may within five Business Days of such agreement or nomination, refer the Dispute to the Independent Expert by providing written notice to the other party and the Independent Expert.
- (c) The Independent Expert appointed or nominated will be required under their terms of engagement to make the determination based on the information made available to them by the parties and will notify the parties in writing of that determination as soon as possible and in any event within 20 Business Days of the referral of the Dispute to them (or such later date as the parties agree). The Independent Expert's determination will include a determination as to any amount in Dispute. The Independent Expert will provide reasons for their determination.
- (d) Either party will be entitled to make written submissions to the Independent Expert detailing (among other things) that party's understanding of the factual background to the Dispute, each party's position as to how the Dispute should be resolved and its arguments in support of its position, and may include other such information, data, documentation or evidence the party considers relevant to the determination of the Dispute. Such 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 under clause 71.1(b).
- (e) Either party will be entitled to submit a written response to the other party's written submissions, but such a response will be provided to the Independent Expert and the other party no later than 15 Business Days after the referral of the Dispute to the Independent Expert under clause 71.1(b).
- (f) If the Independent Expert decides that further information is required for the purposes of their determination, the Independent Expert may call for further submissions, documents or information from either or both parties and/or may call a conference between the parties.
- (g) The Independent Expert may conduct a conference at their discretion but will give the parties reasonable notice of the conference and of the matters to be addressed at it. At the conference, the parties may be legally represented and both parties shall be entitled to be heard. The conference will be held in private.
- (h) In reaching a determination, the Independent Expert will take account of the parties' written and oral submissions (if a conference is convened) and the relevant terms of this Agreement. The Independent Expert may also:
 - (i) rely on their own knowledge, skill and experience in relation to the matter in Dispute;
 - (ii) open up, review and revise any opinion, instruction, determination or decision of whatever nature given or made under this Agreement;
 - (iii) make their own enquiries without reference to the parties; and
 - (iv) (following consultation with the parties) commission their own advisers or consultants to assist the Independent Expert in making their determination.
- (i) In making their 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 their determination will be final and binding on the parties, unless:

- (i) there is manifest error (by way of clerical error, miscalculation or defect of form);
or
 - (ii) unless and to the extent otherwise expressly provided under this Agreement.
- (k) The parties will comply with the Independent Expert's directions as to how their determination is to be implemented.
- (l) The Independent Expert may establish procedures and a timeframe for resolution of the Dispute to the extent that those matters are not already set out in this clause 71.
- (m) All information, data or documentation disclosed or delivered by a party to the Independent Expert(s) in consequence of or in connection with their appointment as Independent Expert(s) shall be treated as confidential. The Independent Expert(s) shall not, except as permitted by clause 43 (Confidential Information) disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Independent Expert's work.
- (n) The cost of the Independent Expert in making their determination will be borne equally by each of the parties to the Dispute. Each party is responsible for its own costs in connection with resolution of a Dispute unless the Independent Expert orders otherwise.
- (o) If the Independent Expert fails to provide a determination within the timeframes stipulated in this Agreement (or as otherwise agreed in writing between the parties), either party may terminate the process then underway and resubmit the Dispute to Expert Determination, with this clause 71 to then reapply to that Dispute as if it had not previously been submitted to Expert Determination.
- (p) The Independent Expert will not be liable to the parties in relation to the Expert Determination, except in the case of fraud or where the Independent Expert is proven to have acted in bad faith.

Part 18 – Miscellaneous terms

72. Assignment

72.1 Agreement binding

This Agreement is binding on the parties and their respective successors and permitted assigns.

72.2 Assignment by MSD

MSD may only assign and/or transfer the whole or any part of its rights and/or obligations under this Agreement 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 Project Document are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Provider) by the Crown or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under that guarantee and the obligations of MSD under the Project Documents,

and MSD must ensure that no assignment and/or transfer of MSD's rights and/or obligations under this Agreement occurs unless the assignee and/or transferee becomes subject to, and agrees to be bound by, the same rights and obligations as MSD's rights and obligations under the Project Documents.

72.3 Assignment by Provider

- (a) The Provider may not assign and/or transfer the whole or any part of its rights and obligations under this Agreement without the prior written consent of MSD and any purported assignment and/or transfer on the part of the Provider without such prior written consent is deemed to be void.
- (b) A merger or amalgamation of the Provider with another person or a merger or amalgamation of a substantial part of the Provider's business with another person's business shall be deemed to be an assignment or transfer for the purposes of this clause.
- (c) Clause 72.3(a) does not apply to:
 - (i) the granting of any security for any liabilities or obligations of the Asset Owner or any of its Affiliates under the Senior Financing Agreements or to the enforcement of the same; and
 - (ii) any general security granted by the CHP on an arm's length basis over all or substantially all of its assets.

73. Change of Ownership

73.1 Restriction on Change of Ownership

- (a) A Change of Ownership may only occur if MSD determines (acting reasonably) that there are no grounds for withholding its consent under clause 73.3.

- (b) Notwithstanding clause 73.1(a):
 - (i) the CHP must at all times remain a wholly owned subsidiary (as defined in sections 5 and 6 of the Companies Act 1993) of IHC New Zealand Incorporated;
 - (ii) HoldCo LP must at all times remain the sole limited partner of the Asset Owner;
 - (iii) HoldCo General Partner must at all times remain the sole general partner of HoldCo LP;
 - (iv) Asset Owner General Partner must at all times remain the sole general partner of the Asset Owner; and
 - (v) Asset Owner General Partner must at all times remain a wholly owned subsidiary (as defined in sections 5 and 6 of the Companies Act 1993) of HoldCo General Partner.
- (c) Clauses 73.1(a) and 73.1(b) are each subject to clause 73.4.

73.2 Notification

- (a) If a Change of Ownership is proposed, the Provider shall notify MSD of that proposed Change of Ownership as soon as it becomes aware of the same.
- (b) The Provider must promptly provide such particulars relating to the proposed Change of Ownership as MSD may reasonably require, including:
 - (i) the identity of each proposed Controller and its Affiliates;
 - (ii) the legal and beneficial owners of the proposed Controller and the proposed Controller's ultimate holding company;
 - (iii) the extent and nature of the proposed Change of Ownership; and
 - (iv) any other information necessary for MSD to determine whether or not to consent to the Change of Ownership.
- (c) The Provider will:
 - (i) promptly provide such further information as MSD reasonably requires; and
 - (ii) obtain such written consents as may be required by MSD to undertake Probity Investigations in relation to each proposed Controller and its Affiliates.

73.3 MSD determination

MSD may withhold its consent to a Change of Ownership under clause 73.1(a) if:

- (a) it has not been given all of the information required under clause 73.2(b) or under clause 73.2(c); or
- (b) MSD determines that:
 - (i) the proposed Controller:
 - (A) is not solvent or reputable;

- (B) is an Unsuitable Third Party; or
- (C) does not have a sufficient level of financial, managerial and technical capacity to comply with the Provider's obligations under this Agreement, including to provide the Services, relative to the financial, managerial and technical capacity of the existing Controller; or
- (ii) the proposed Change of Ownership:
 - (A) is against the public interest;
 - (B) could lead to the occurrence of a Probity Event; or
 - (C) would result in an increase in the level of risk or liabilities of MSD.

73.4 Exceptions

- (a) Clause 73.1(a) does not apply in respect of a Change of Ownership of HoldCo LP, HoldCo General Partner or of any Shareholder Debt:
 - (i) as part of an intra-group transfer, restructure or reorganisation of the group of companies of which a Shareholder is a member as at the Execution Date and there is no resulting change in ultimate beneficial shareholding;
 - (ii) where the transferee is an existing Shareholder;
 - (iii) where the transferee is a corporate or unincorporated fund managed by, or under common management or Control with, the transferor; or
 - (iv) as a consequence of any change in legal or beneficial ownership of any equity interest (including shares, units and/or other interests) in any direct or indirect equity holder of any Shareholder that:
 - (A) does not result in a change of Control of such person; or
 - (B) results in a change of Control of such person, and the new Controller is reputable.
- (b) Subject to MSD's rights under clause 73.3, clauses 73.1(a) and 73.1(b) do not apply in respect of a Change of Ownership of the Provider or a Provider Entity or of any Shareholder Debt that is being transferred as a consequence of the exercise by the Senior Lenders of their rights in respect of the Partnership Interests or shares (as applicable) of the Provider or a Provider Entity or of any Shareholder Debt granted in any document conferring security over the Partnership Interests or shares (as applicable) of the Provider or a Provider Entity or of any Shareholder Debt.

74. Notices

74.1 Notices and references

Each notice or other communication under this Agreement (other than any communication that is required to be made through the MSD Social Housing Client System) must be made in writing by facsimile, email, personal delivery or by post to the addressee at the facsimile number, email address or address, and marked for the attention of the addressee, from time to time designated for the purpose by the addressee to the other party. The initial addressee, address, facsimile number and email address of MSD and the Provider are set out in clause 74.2.

74.2 Addresses

The addressee, address, facsimile number and email address of MSD and the Provider are:

MSD

Addressee: Scott Gallacher

Address: The Aurora Centre, 56 The Terrace, Wellington 6011, PO Box 1556, Wellington 6140

Facsimile: 04 918 0099

Email address: Scott.Gallacher006@msd.govt.nz

Provider

Addressee: General Manager, Tauranga

Address: c/- Accessible Properties I Centre, Level 8, 50 Manners St, Wellington, PO Box 1974, Wellington 6140

Facsimile: N/A

Email address: Tauranga@accessibleproperties.co.nz,

or any replacement details notified to the other party by notice from time to time.

74.3 Deemed delivery

A communication will be deemed to be received:

- (a) in the case of a correctly addressed, fully prepaid letter, on the fourth Business Day after posting;
- (b) in the case of a facsimile, on the Business Day on which it is dispatched or, if dispatched after 5.00 pm (in the place of receipt) on the next Business Day;
- (c) 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 5.00pm, on the next Business Day), provided that if there is any dispute as to whether an email has been received, the email shall only be deemed to have been received at the time that the party giving notice produces a printed copy of the email that evidences that the email was sent to the correct email address of the party given notice; and
- (d) in the case of personal delivery, when delivered.

75. Counterparts

This Agreement may be signed in any number of counterparts all of which, when taken together, constitute one and the same instrument. A party may enter into this Agreement by executing any counterpart.

76. Severability

If any provision of this Agreement is or becomes unenforceable, illegal or invalid for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity. If such modification is not possible, then such provision shall be severed from this Agreement without affecting the enforceability, legality or validity of any other provision of this Agreement.

77. Waiver

Any delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Agreement shall not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this Agreement shall not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.

78. Contracts (Privity) Act

Except to the extent any term of this Agreement expressly states otherwise, a person who is not a party to this Agreement shall have no right under the Contracts (Privity) Act 1982 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

79. Legal fees

If any legal action or other proceeding is brought for the enforcement of an obligation under this Agreement, the prevailing party shall be entitled to legal fees and other costs incurred in that action or proceeding on a solicitor/client basis (subject to review under the Lawyers and Conveyancers Act 2006) in addition to any other relief to which it may be entitled.

80. Public disclosure

All public disclosure by the Provider relating to this Agreement including promotional or marketing material (but not including any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements) shall be co-ordinated with and must first be approved in writing by MSD prior to its release.

81. Further assurances

A party must, at its own expense and within a reasonable time of being requested by another party to do so, do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.

82. Entire agreement

This Agreement and the other Project Documents constitute the entire agreement between the parties and supersedes and extinguishes all prior agreements and understandings between the parties about their respective subject matter.

83. **Amendments in writing**

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

84. **Governing law and jurisdiction**

This Agreement is governed by, and is to be construed in accordance with, the Laws of New Zealand. Each party irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Agreement.

Execution

Signed as an agreement

**SIGNED by Her Majesty, the Queen in
Right of New Zealand acting by and
through the Chief Executive of the
Ministry of Social Development)
in the presence of:)**

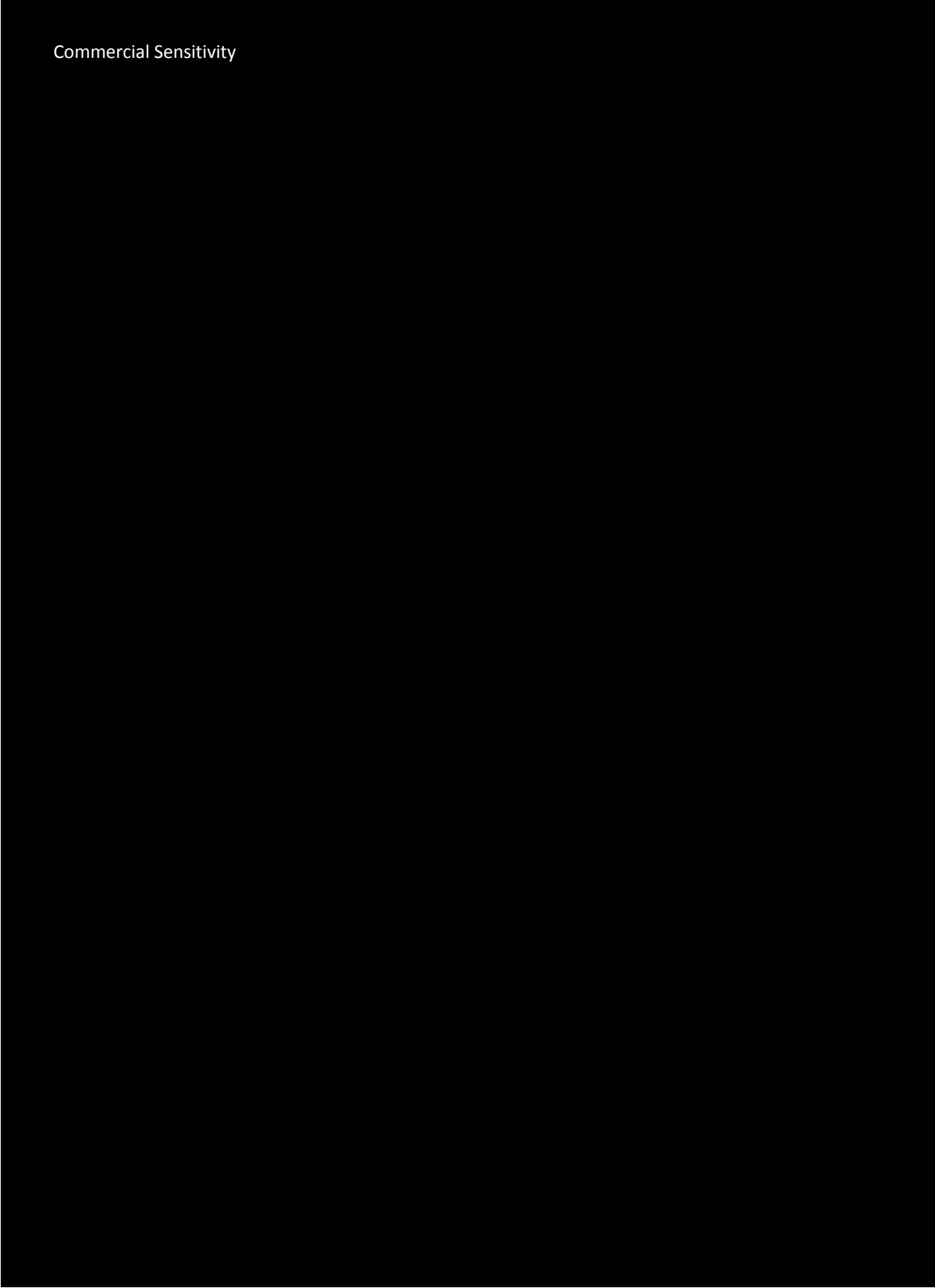
Witness Signature

Print Name

Witness Occupation

Place of residence

Commercial Sensitivity

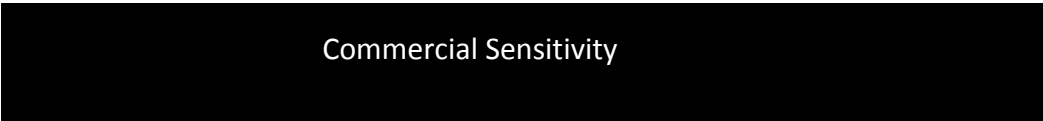


Schedule 1: Conditions Precedent

(Clause 9.5 (Conditions Precedent))

1. Contractual close Conditions Precedent

This Agreement is conditional on the Provider delivering to MSD all of the following in a form and substance reasonably satisfactory to MSD:

- (a) **Director's Certificate:** a duly completed Director's Certificate in respect of the CHP in substantially the form set out in Annexure 1 (Director's Certificate) to this Schedule 1;
- (b)  **Commercial Sensitivity**
- (c) **Legal opinions:** a legal opinion from solicitors acting for the Provider in relation to the CHP and the Asset Owner entering into and performing their obligations under each of the Project Documents to which it is a party;
- (d) **Project Documents:** original counterparts of all Project Documents and certified copies of all Ancillary Documents, all duly executed by all parties other than (if applicable) MSD;
- (e) **Financing Agreements:** certified copies of the Financing Agreements and equity subscription documents duly executed by all parties to them; and
- (f) **Binding ruling:** a copy of a binding taxation ruling from Inland Revenue in relation to the GST treatment of the payments under this Agreement.

2. Financial Close Conditions Precedent

Financial Close is conditional on the following:

- (a) **Transition Completion Certificate:** a duly executed Transition Completion Certificate has been issued by the Provider and accepted or deemed to have been accepted by MSD in accordance with clause 9.6 (Operational Readiness Test and Financial Close) of the Base Agreement;
- (b) **Financing Agreements and limited partnership agreements:** evidence that all conditions precedent to financing under the Financing Agreements and the limited partnership agreements have been satisfied (or waived in accordance with their terms) except for the giving of the notice by MSD described in clause 9.5(c) (Conditions Precedent) of the Base Agreement;
- (c) **Copies of Insurance Policies:** copies of all Insurance Policies for the Required Insurances being delivered to MSD;
- (d) **Broker's Letter of Undertaking:** a letter of undertaking from the Provider's insurance broker as to the currency of each policy under, and the compliance of each policy with, the requirements of clause 59 (Insurance) of the Base Agreement being delivered to MSD; and
- (e) **Settlement:** Settlement having occurred under the Sale and Purchase Agreement. For the avoidance of doubt, settlement will occur under the Sale and Purchase Agreement contemporaneously with Financial Close.

Annexure 1: Director's Certificate

TO: Ministry of Social Development (**MSD**)

I am a [director/board member] of Accessible Properties New Zealand Limited (the **CHP**) and am authorised to execute this certificate in the name of the CHP.

I refer to the capacity contract relating to the provision of social housing places in Tauranga between MSD and the Provider dated [] 2016 (**Capacity Contract**).

Terms defined in the Capacity Contract have the same meaning when used in this certificate.

THE CHP CERTIFIES as follows:

1. Attached to this certificate are true, complete and up to date certified or original copies of the following:
 - (a) [a power of attorney granted by the CHP for the purpose of permitting the execution on behalf of the Provider Organisation of the relevant Project Documents (marked "B"), which power of attorney has not been revoked by the CHP and remains in full force and effect;] and
 - (b) [*insert others*].
2. The CHP has passed resolutions authorising the CHP to enter into, and perform and observe its obligations under, the Capacity Contract, the Project Documents and the Ancillary Documents:
 - (a) these resolutions have been duly passed [at a properly convened meeting of the duly appointed directors/board members of the CHP] OR [in accordance with the constitution of the CHP by way of written resolution of the duly appointed directors/board members] [and have been approved and ratified by special resolution duly passed by the shareholders of the CHP]; [*to be deleted as applicable*]
 - (b) [a duly qualified quorum of directors was present and voting at the meeting of the CHP and the requisite majority of the directors of the CHP voted in favour of approving the resolutions;] [*delete if written resolution*]
 - (c) [all provisions contained in the Companies Act 1993 and the constitution of the CHP relating to the declaration of interests and the powers of interested directors to vote were observed; [and]]
 - (d) the resolutions have not been amended or rescinded and are in full force and effect[.]; and]
 - (e) the power of attorney of the CHP referred to in those resolutions has not been revoked.]
3. The following signatures are the true signatures of the authorised representatives of the CHP and the persons who have been authorised to sign the relevant Project Documents and to give, on behalf of the CHP, notices and communications under, or in connection with, the relevant Project Documents.

Authorised Representatives

Name	Position	Signature

Signatories

Name	Position	Signature

Signed

.....

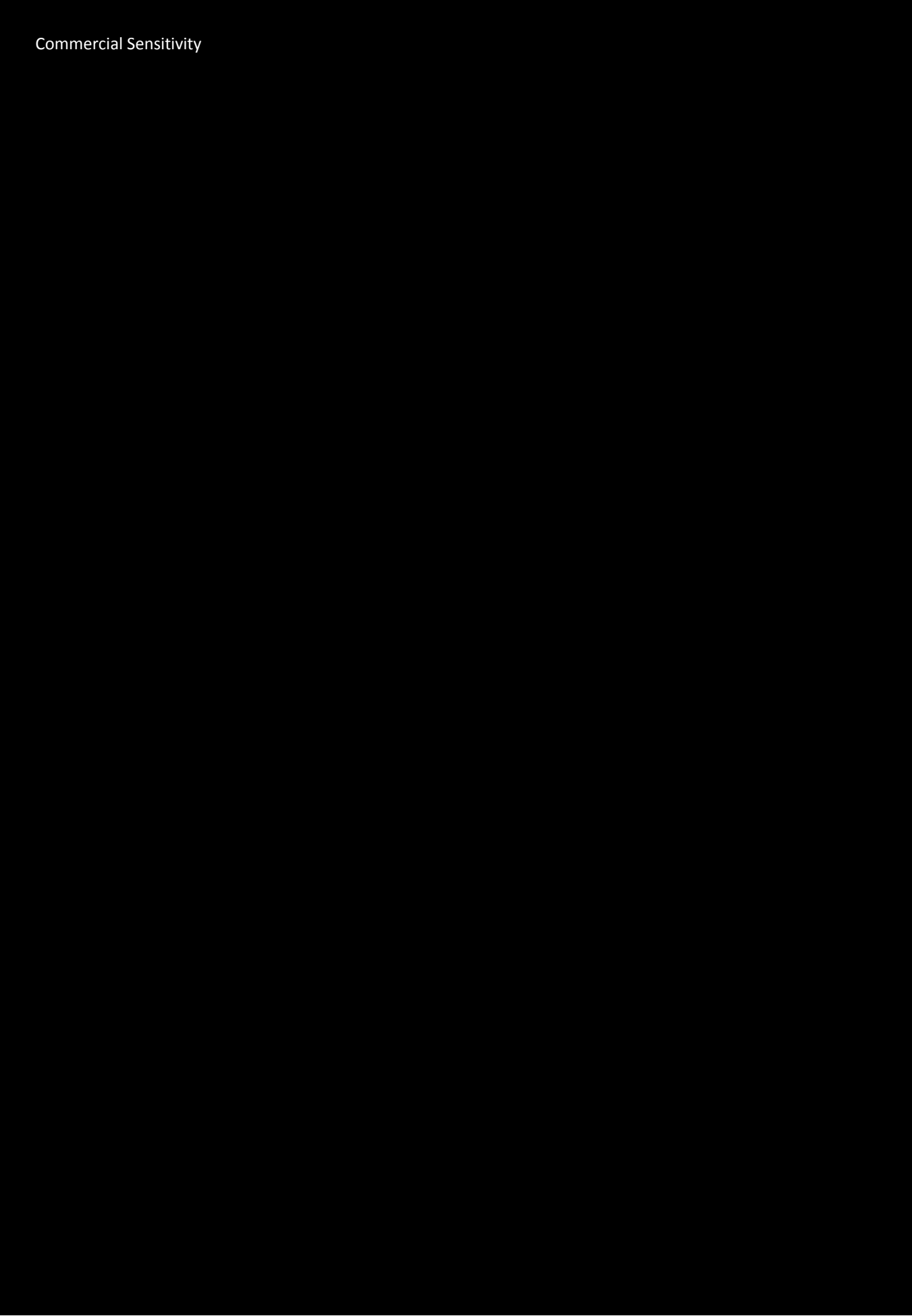
Date:

.....

(Print Full Name of Director/Board Member)

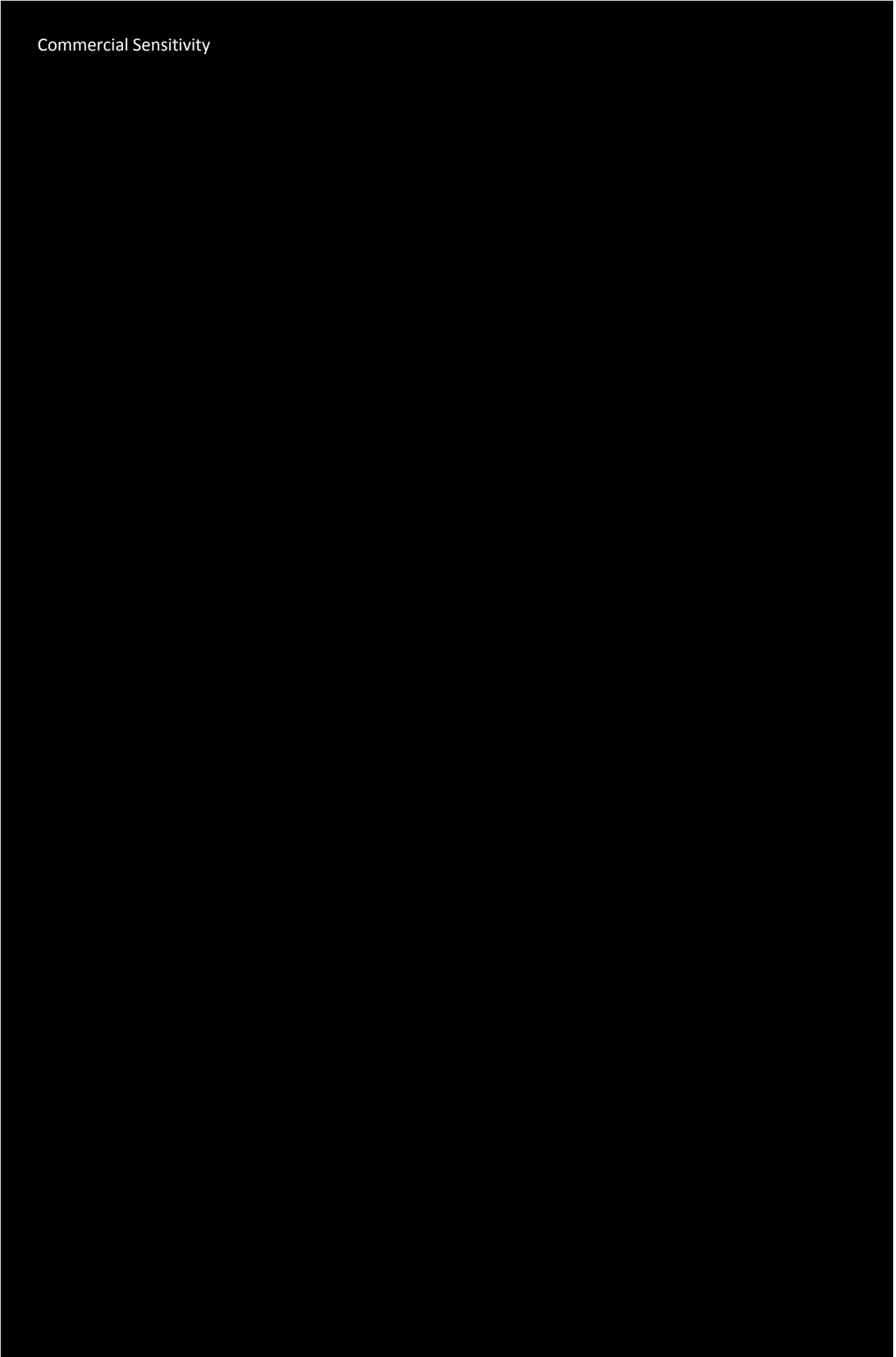
Annexure 2: Limited Partnership Certificate

Commercial Sensitivity



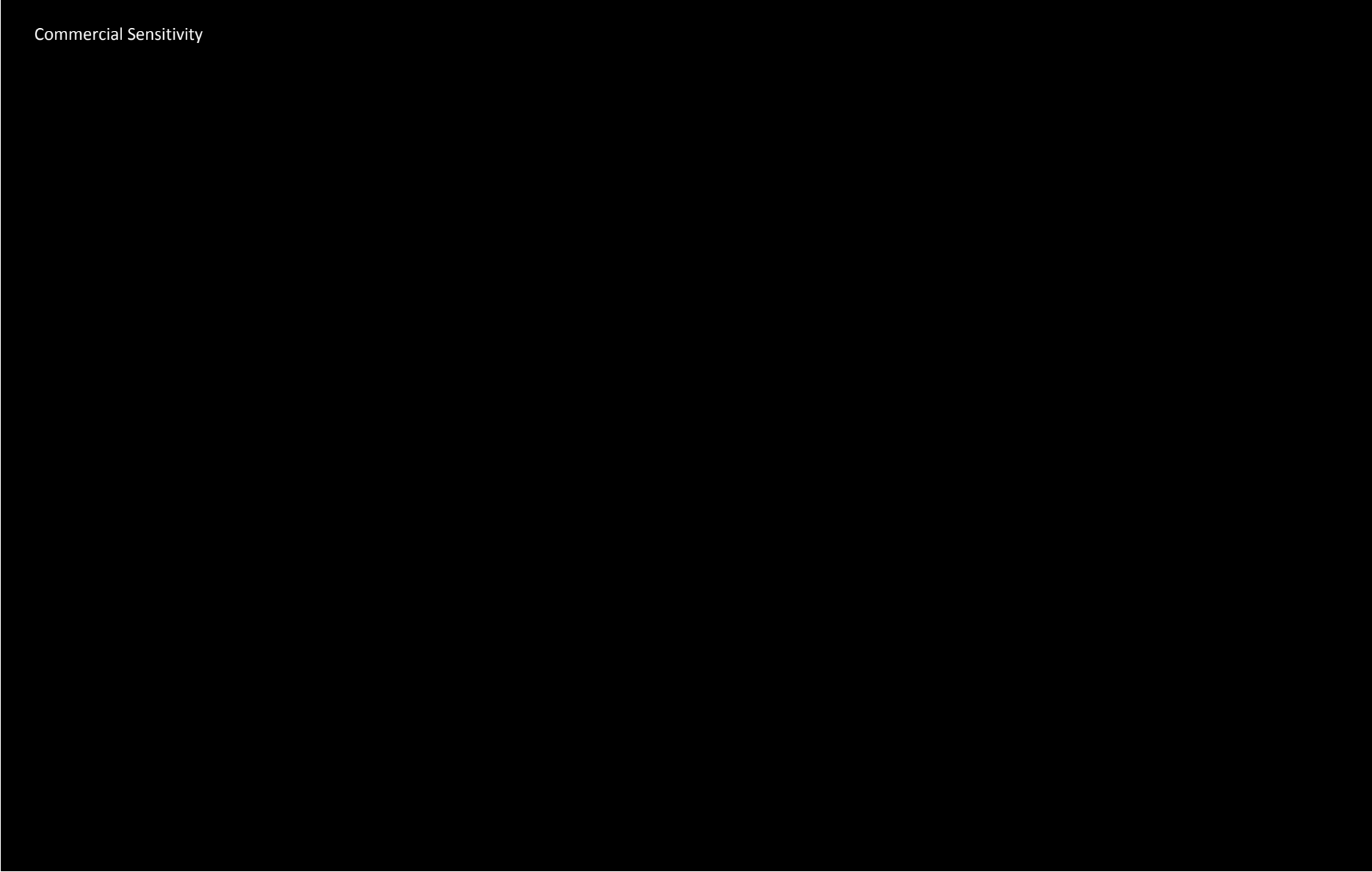
Schedule 2: Provider Warranted Data

Commercial Sensitivity



Schedule 3: Agreed Pool of Properties

Commercial Sensitivity



Schedule 4: Project and Ancillary Documents

Part 1 - Overview of Project Documents and Ancillary Documents

1. Project Documents

The Project Documents are as follows:

- (a) this Agreement between MSD and the Provider;
- (b) the Sale and Purchase Agreement between Housing New Zealand Limited and the Asset Owner; and
- (c) the Financier Direct Deed between MSD, the Provider and Security Trustee.

2. Ancillary Documents

The Ancillary Documents are as follows:

- (a) the lease of the Properties between Asset Owner as lessor and the CHP as lessee;
- (b) the Asset Owner Partnership Agreement between the Asset Owner General Partner and HoldCo LP; and
- (c) the limited partnership agreement between the HoldCo General Partner and the HoldCo Limited Partner.

Part 2 – Forms of certain Project Documents

Annexure 1: Financier Direct Deed

[Note: This version of the Financier Direct Deed is the version circulated to Respondents during the Request for Proposal process for SHRP Tauranga. It does not reflect the final agreed terms of the Financier Direct Deed for that transaction.]

Financier Direct Deed

relating to

the Social Housing Reform Programme

Her Majesty The Queen in Right of New Zealand acting by and through the Chief Executive of the Ministry of Social Development

MSD

and

[•]

Security Trustee

and

[•]

Senior Lender(s)

and

[Her Majesty The Queen in Right of New Zealand acting by and through the Chief Executive of the Ministry of Social Development]

CRI Creditor

and

[CHP] and [Asset Owner]

Provider

Date

[Drafting Note: This deed assumes the use of a security trustee and facility agent. It will be amended as needed to reflect applicable bid and financing structures.]

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This **Financier Direct Deed** is made on

2017

between (1) Her Majesty The Queen in Right of New Zealand acting by and through the Chief Executive of the Ministry of Social Development (**MSD**)

and (2) [●] (**Security Trustee**)

and (3) [●] (**Senior Lender(s)**)

and (4) [●] (**CRI Creditor**)

and (5) [CHP] and [Asset Owner] (**Provider**)

Introduction

- A. The background to the Programme is set out in the Capacity Contract.
- B. The Provider has granted Security Interests to the Security Trustee in relation to the Programme.
- C. The parties agree that the Security Trustee will have the option of exercising certain rights in relation to the Provider, on the terms set out in this Deed.
- D. The Senior Lenders have, at the request of the Provider, agreed to make financial accommodation available to the Provider on the condition that (amongst other things) the Provider and the CRI Creditor agree to the priority and subordination of the Security Interests as set out in this Deed.

It is agreed:

Part 1 – Definitions and Interpretation

1. Definitions

Definitions in the Capacity Contract apply in this Deed unless the relevant term is defined in this Deed. The following terms are defined in this Deed:

Affiliate means any person that is a “related company” of the Security Trustee or any Senior Lender (as the case may be), as that term is defined in section 2(3) of the Companies Act 1993;

Appointed Representative means a Representative that has been notified to MSD pursuant to a Step-in Notice;

Capacity Contract means the agreement relating to the Programme dated on or about the date of this Deed between MSD and the Provider;

Costs of Realisation means the reasonable costs incurred by a Secured Party, or any Receiver or similar agent appointed by it, in relation to protecting or enforcing the security conferred by the Secured Party’s Security Documents, or in the exercise by a Secured Party or any Receiver or similar agent appointed by it of all or any of the powers and authorities conferred on that Secured Party by its Security Documents;

CRI Indebtedness means all indebtedness of the Provider to the CRI Creditor in respect of Crown Retained Investment or sustained in any way by the CRI Creditor in connection with any such indebtedness or the enforcement or attempted enforcement of any such indebtedness;

CRI Security Interest means each security interest created by the CRI Mortgage;

Date of Enforcement means, unless the Secured Parties agree in writing to the contrary, the first day on which a Secured Party becomes entitled to exercise any right of Enforcement available to it under its Security Documents;

Deed means this financier direct deed;

Enforcement means the exercise by a Secured Party of any right available to it by way of enforcement or realisation of a security interest under any one or more of its Security Documents, including:

- (a) making demand, taking steps to recover (whether directly or by set-off, counterclaim or otherwise) or accept money or other property, or exercising or enforcing its rights in respect of, its Indebtedness;
- (b) without limiting (a) above, taking any steps to enforce any Security Document (including the service of a notice under section 92 of the Property Law Act 1952 or section 119 of the Property Law Act 2007 (as the case may be) or the appointment of a receiver of rents); and
- (c) claiming, proving or accepting payment in composition by, or in a liquidation or administration of, the Provider;

Event of Default has the meaning given to that term in the Senior Financing Agreements;

Facility Agreement means the Senior Facility Agreement or any agreement evidencing the Crown Retained Investment indebtedness, as the context requires;

FDD Termination Date means the date on which this Deed terminates or expires in accordance with clause 20 (Term);

Indebtedness means the Senior Indebtedness and the CRI Indebtedness, as the context requires;

Nominated Amount means:

- (a) in the case of the Security Trustee \$[●]; and
- (b) in the case of the CRI Creditor \$[●];

Priority Amount means, on any day and in relation to a Secured Party, the aggregate of:

- (a) an amount equal to its Secured Indebtedness (excluding accrued interest) at that time, but limited to its Nominated Amount;
- (b) (in the case of the Senior Lenders) an amount equal to the interest (including capitalised interest, and including after as well as before judgment) owing to that Secured Party at the Date of Enforcement but limited to an amount equal to the interest that would accrue in a period of six months at the Reference Rate on the amount referred to in paragraph (a);
- (c) (in the case of the Senior Lenders) an amount equal to the interest (including capitalised interest, and including after as well as before judgment) accrued to that Secured Party from the Date of Enforcement to that day but limited to an amount equal to the interest

that would accrue in a period of six months at the Reference Rate on the amount referred to in paragraph (a);

- (d) the Secured Party's Costs of Realisation; and
- (e) all preferential payments (if any) required by law to be paid prior to that Secured Party's Secured Indebtedness;

Programme means the Government's programme of social housing reform known as the Social Housing Reform Programme;

Receiver includes a receiver and manager;

Reference Rate means, in relation to a Secured Party, the rate of interest payable to that Secured Party immediately prior to the Date of Enforcement pursuant to its Facility Agreement;

Representative means:

- (a) the Security Trustee, any Senior Lender and/or any of their Affiliates;
- (b) a receiver, a receiver and manager or an administrator of the Provider appointed under the Security Documents, being:
 - (i) partners, directors or the equivalent of PwC, KPMG, Deloitte, EY, Grant Thornton, KordaMentha, McGrathNicol, BDO or any of their respective successor firms; and/or
 - (ii) any other insolvency practitioners agreed by MSD and the Security Trustee (acting reasonably) in writing to be pre-approved for the purposes of clause 7.3 (Appointed Representatives), provided that no party may withhold its agreement if the insolvency practitioner is of national or international repute and is not an Unsuitable Third Party;
- (c) a person directly or indirectly owned or controlled by the Security Trustee and/or any Senior Lender(s) and/or any of their Affiliates; or
- (d) any other person approved by MSD under clause 7.3 (Appointed Representatives);

Required Period means, in respect of any Termination Notice, the period starting on the date on which that Termination Notice is provided to the Security Trustee under clause 5.2 (Termination Notice) and ending 30 Business Days later;

Secured Indebtedness means, in relation to a Secured Party, all indebtedness of the Provider to that Secured Party that is secured by its Security Documents;

Secured Party means the CRI Creditor or the Security Trustee;

Secured Property means the property subject to the Security Interests;

Security Document means the Senior Security Documents or the CRI Mortgage;

Security Interest means the Senior Security Interest or the CRI Security Interest, as the context requires;

Security Trust and Intercreditor Deed has the meaning given to that term in the Senior Financing Agreements;

Senior Facility Agreement means the facility agreement(s) described as such in the Senior Financing Agreements;

Senior Indebtedness means all indebtedness of the Provider to the Security Trustee or incurred by the Security Trustee on behalf of the Provider or sustained in any way by the Security Trustee in connection with any such indebtedness or the enforcement or attempted enforcement of any such indebtedness;

Senior Security Documents has the meaning given to that term in the Senior Financing Agreements;

Senior Security Interest means each security interest created by the Senior Security Documents;

Step-in Date means the date on which the Security Trustee serves a valid Step-in Notice on MSD pursuant to clause 7.1 (Step-in Notice);

Step-in Notice means a notice served on MSD by the Security Trustee, advising MSD:

- (a) of the appointment and identity of the Appointed Representative; and
- (b) that the Appointed Representative is to exercise the rights specified in clause 7.4 (Assumption of rights);

Step-in Period means the period from the Step-in Date up to and including the earlier of:

- (a) the Step-out Date;
- (b) the date of any novation under clause 10 (Novation);
- (c) the date of any termination of the Capacity Contract in accordance with clause 6.1 (Grounds for termination); and
- (d) the date of expiry of the Capacity Contract;

Step-out Date means the date specified in a Step-out Notice, being:

- (a) no less than seven days after the date that notice is served on MSD if:
 - (i) on that date no Provider Default is subsisting; or
 - (ii) that notice is issued in circumstances where MSD has been requested to, but has not, given its consent to a novation under clause 10 (Novation); or
- (b) in all other cases, the date falling 30 days after the date the Step-out Notice is served on MSD;

Step-out Notice means a notice served on MSD by the Appointed Representative pursuant to clause 8 (Step-out);

Suitable Substitute Provider and **Suitable Substitute Sub-contractor** means a person approved by MSD (such approval not to be unreasonably withheld or delayed) as:

- (a) not being an Unsuitable Third Party;
- (b) in the case of a Suitable Substitute Provider, it (or a member of its bidding group) is registered as a Class 1 Social Landlord;
- (c) having the legal capacity, power and authority to become a party to and perform the obligations of the Provider under the Capacity Contract, [or of the Sub-contractor under the applicable Major Sub-contract (as the case may be)]; and

- (d) employing persons or engaging sub-contractors having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Provider under the Capacity Contract or of the Sub-contractor under the applicable Major Sub-contract (as the case may be); and

Termination Notice has the meaning given to that term in the Capacity Contract.

2. Interpretation

2.1 Construction of certain references

Unless the context otherwise requires:

- (a) an **agreement** includes a contract, deed, licence, undertaking and other document or legally enforceable arrangement (in each case, whether or not in writing, present and future) and includes that document as amended, assigned, novated or substituted from time to time;
- (b) **consent** includes an approval, authorisation, exemption, filing, licence, order, permit, recording and registration;
- (c) **costs** incurred by a person include all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and taxes incurred by that person;
- (d) a **guarantee** includes an indemnity, letter of credit, legally binding letter of comfort, suretyship and other agreement the economic effect of which is to provide security, or otherwise assume responsibility, for the indebtedness or obligations of another person;
- (e) whenever the words **includes** or **including** are used in this Deed, they are deemed to be followed by the words “without limitation”, and the word **including** when introducing an example does not limit the meaning of the words to which the example relates;
- (f) **indebtedness** includes any obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment of money;
- (g) the “Introduction” forms part of this Deed;
- (h) the **liquidation** of a person includes the dissolution, administration, winding-up and bankruptcy of that person and any analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, carries on business or has property;
- (i) **loss** includes loss of profit and loss of margin;
- (j) **property** includes the whole and any part of the relevant person’s business, assets, undertaking, revenues and rights (in each case, present and future), and reference to any property includes any legal or equitable interest in it;
- (k) a **security interest** includes:
 - (i) a mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement, order and other arrangement of any kind, the economic effect of which is to secure a creditor; and
 - (ii) a “security interest” as defined in section 17(1)(a) of the PPSA in respect of which the relevant person is the debtor,

but does not include:

- (iii) a lien arising solely by operation of law; or
- (iv) a security interest taken in collateral by a seller to the extent that it secures the obligation to pay all or part of the purchase price of that collateral, where that collateral is purchased in the ordinary course of business of the buyer and the purchase price is paid within 60 days of supply; or
- (v) a netting or set-off arrangement entered into in the ordinary course of a person's banking arrangements for the purpose of netting debit and credit balances;
- (l) **tax(es)** includes any tax, levy, impost, stamp or other duty and any other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);
- (m) **writing** includes a facsimile transmission, an email communication and any means of reproducing words in a tangible and permanently visible form;
- (n) a reference to any legislation includes a modification of that legislation or legislation enacted in substitution for that legislation and a regulation, order-in-council and other instrument from time to time issued or made under that legislation;
- (o) a reference to a party, clause, schedule or annexure is a reference to a party, clause, schedule of or annexure to this Deed;
- (p) a gender includes each other gender;
- (q) the singular includes the plural and vice versa;
- (r) a reference to a person includes:
 - (i) a partnership and also a body of persons, whether corporate or unincorporated;
 - (ii) an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state, an agency of a state and any other entity (in each case, whether or not having separate legal personality); and
 - (iii) reference to its respective successors in title and permitted assigns;
- (s) a reference to documentation includes:
 - (i) a reference to that document as varied, supplemented, novated or substituted from time to time; and
 - (ii) a reference to that documentation in any form, whether paper based or in electronic form encoded on or as part of any form of media;
- (t) any agreement that a party not do a thing also constitutes an agreement that, to the extent it is within the control of that party, it will not suffer or permit or cause that thing to be done;
- (u) any reference to a consent or approval requires the prior written consent or approval of the party required to give that consent;
- (v) headings and the table of contents are included for the purpose of ease of reference only and are not to have any effect on construction and interpretation;

- (w) a reference to days, other than Business Days, is a reference to any calendar day of the year;
- (x) a reference to currency is a reference to New Zealand currency;
- (y) if an obligation falls to be performed or a right is to be exercised on or by a day that is not a Business Day then, unless otherwise specified, that obligation is due to be performed or that right may be exercised on the Business Day next following that day;
- (z) none of the terms nor any of the parts of this Deed are to be construed against a party, by reason of the fact that that term or that part was first proposed or was drafted by that party;
- (aa) a party who has an obligation is to perform that obligation at its own cost, unless a term of this Deed expressly provides otherwise;
- (bb) an agreement, representation or undertaking given by the Provider or the CRI Creditor in favour of two or more persons is for the benefit of them jointly and each of them severally;
- (cc) a party to this Deed or another agreement includes its successors and its permitted assignees, novatees and transferees; and
- (dd) if the Security Trustee considers that an amount of Senior Indebtedness paid by the Provider is capable of being avoided or otherwise set aside on the liquidation of the Provider or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

Part 2 – Direct agreement

3. Deed

3.1 Priority of documents

To the extent of any inconsistency between this Deed and any other Project Document, this Deed will prevail.

3.2 Commencement

The rights and obligations of the parties under this Deed commence on Financial Close.

[Drafting Note: Interaction with other direct deeds and parent company guarantees to be addressed as required.]

4. Consent to security

4.1 Security Interest

MSD acknowledges notice of, and consents to:

- (a) the Security Interests granted by the Provider in favour of the Security Trustee and the CRI Creditor under the Security Documents; and
- (b) the priority and subordination of those Security Interests in accordance with Part 3 of this Deed.

4.2 Other security interest

MSD confirms that, as at the date of this Deed, it has not received notice of any other Security Interest granted over the Provider's rights under the Capacity Contract.

4.3 No obligations

Except as specifically provided for in this Deed, MSD has no obligations (whether express, implied, collateral or otherwise) to the Security Trustee or a Senior Lender in connection with the Capacity Contract or to the CRI Creditor in connection with this Deed.

4.4 No actions adverse to Tenants' rights

The Senior Lenders and the Security Trustee:

- (a) acknowledge the existence and content of the Encumbrance;
- (b) acknowledge that the Properties are to be used solely for the purposes specified in the Capacity Contract and will, from time to time, be subject to the Tenancy Agreements; and
- (c) undertake that they will not, and will not seek to, take any action (whether Enforcement or otherwise) that may adversely impact on any Tenants' legal or contractual rights.

5. Exercise of MSD's termination rights

5.1 Termination of Capacity Contract

- (a) MSD may give a notice terminating the Capacity Contract at any time, on the grounds of a Provider Default, if:
 - (i) it complies with clause 5.2, clause 5.3 and clause 5.4; and
 - (ii) it is entitled to do so under clause 6.1 (Grounds for termination).
- (b) MSD may give a notice terminating the Capacity Contract on grounds other than Provider Default in accordance with the Capacity Contract. This Deed will not apply to termination of the Capacity Contract where this clause 5.1(b) applies.

5.2 Termination Notice

MSD may only terminate the Capacity Contract on the grounds of a Provider Default if MSD has provided to the Security Trustee:

- (a) in the case of a Remediable Provider Default:
 - (i) a copy of the Warning Notice that was served on the Provider in accordance with clause 61.4 (Warning Notice) of the Capacity Contract; and
 - (ii) a copy of the Termination Notice that was served on the Provider in accordance with clause 61.5(b) (Termination Notice) of the Capacity Contract; or
- (b) in the case of an Immediate Termination Event, a copy of the Termination Notice that was served on the Provider under clause 61.5(a) (Termination Notice) of the Capacity Contract,

together with, in either case, written details of any other existing liabilities or unperformed obligations under any Project Document of which MSD is aware at the time of the Termination Notice.

5.3 Timing of Termination Notices

MSD may only exercise its termination rights under clause 5.2 if it has provided a copy of the Termination Notice to the Security Trustee no less than 30 Business Days prior to the Termination Date specified in that Termination Notice.

5.4 Restrictions on termination

MSD shall not terminate the Capacity Contract during any Step-in Period on grounds that the Security Trustee has taken any action referred to in clause 7 (Step-in) or enforced any Security Document(s).

6. Grounds for termination

6.1 Grounds for termination

MSD may terminate the Capacity Contract at any time if it is entitled to do so under the terms of the Capacity Contract and this Deed:

- (a) if no Step-in Notice is given by the Security Trustee during the Required Period;

- (b) after service of a Step-out Notice, so long as the grounds constituting a Provider Default:
 - (i) continue to subsist; and
 - (ii) are not subject to measures satisfactory to MSD (acting reasonably) to prevent the recurrence of the Provider Default;
- (c) if amounts, of which MSD was not aware (having made reasonable enquiry) at the time of the Termination Notice, subsequently become payable and are not discharged on or before the later of:
 - (i) the end of the Required Period;
 - (ii) the date 20 Business Days after such amounts have been notified to the Security Trustee; and
 - (iii) the end of any longer period set out in a payment plan which the Security Trustee may request MSD to consent to having regard to the quantum of the amount payable (such consent not to be unreasonably withheld);
- (d) on grounds arising or occurring during a Step-in Period in accordance with the terms of the Capacity Contract provided that where a Remediable Provider Default arises or occurs during a Step-in Period, the Appointed Representative (jointly and severally with the Provider) shall be entitled to the right to seek to remedy or prevent recurrence of that Remediable Provider Default in accordance with clause 61.4 (Warning Notice) of the Capacity Contract (as may be extended in accordance with clause 6.2 of this Deed), and for the duration of any Step-in Period the following modifications to the Capacity Contract shall be deemed to apply:
 - (i) MSD shall not be entitled to terminate the Capacity Contract on the grounds of any Immediate Termination Event set out in clauses 61.2(a)(i), 61.2(a)(ii) or 61.2(a)(vi) or 61.2(a)(vii) of the Capacity Contract;
 - (ii) MSD shall not be entitled to terminate the Capacity Contract on the grounds of any Remediable Provider Default set out in clause 61.2(b)(xii) of the Capacity Contract;
 - (iii) for the purposes of determining whether a Remediable Provider Default arises or occurs under clauses 61.2(b)(v) to 61.2(b)(vii) of the Capacity Contract after the Step-in Date, Persistent High Performance Breaches, Persistent Performance Breaches and Persistent Failures that arose or occurred prior to the Step-in Date shall not be taken into account during the Step-in Period but, subject to clause 10.3 (Effect of Transfer), shall be taken into account at the Step-out Date;
 - (iv) for the purposes of determining whether a Remediable Provider Default arises or occurs under clause 61.2(b)(iii), clause 61.2(b)(xviii) or clause 61.2(b)(xix) of the Capacity Contract during the Step-in Period or whether an Immediate Termination Event arises or occurs under clause 61.2(a)(vii) of the Capacity Contract, no statement or representation made (or deemed to have been made or repeated) prior to the Step-in Date shall be taken into account during the Step-in Period;
 - (v) MSD shall not be entitled to terminate the Capacity Contract on the grounds of an Immediate Termination Event set out in clause 61.2(a)(iii) of the Capacity Contract (but only insofar as the Shareholder Breach is in respect of a sale, transfer or disposal of any beneficial or equitable interest in any or all of the shares in HoldCo) or a Remediable Provider Default set out in clause 61.2(b)(xvi)(A) or clause 61.2(b)(xvii) of the Capacity Contract unless the Security Trustee or an Appointed Representative procures or effects a transfer in breach of clause 10 (Novation); and

- (vi) for the purposes of all applicable Immediate Termination Events and Remediable Provider Defaults (and for the purposes of clause 61.6(b) of the Capacity Contract as it relates to the Immediate Termination Events and Remediable Provider Defaults), the references to 'not acting independently of the Provider or the HoldCo' shall be read as 'not acting independently of the Appointed Representative',

provided that clauses 6.1(d)(ii) to 6.1(d)(vi) shall cease to apply from (but excluding) the Step-out Date;

- (e) on grounds arising or occurring prior to the Step-in Date in respect of that Step-in Period (whether or not continuing at the Step-in Date), if the grounds arose following Financial Close, and neither the Appointed Representative nor the Provider is using all reasonable endeavours (including implementation of any rectification or prevention programme) to remedy any Provider Default, or put in place measures satisfactory to MSD (acting reasonably) to prevent the recurrence of the Provider Default, or where that Provider Default cannot be remedied, to address the circumstances which led to, or the event giving rise to or resulting from the Provider Default that:
 - (i) arose prior to the Step-in Date;
 - (ii) is continuing; and
 - (iii) would have entitled MSD to terminate the Capacity Contract.
- (f) without limiting clause 6.1(e), if the Termination Notice was issued under clause 61.2(a)(i) (Provider Default) of the Capacity Contract and the Senior Lenders have not appointed, as an Appointed Representative, a person registered as a Class 1 Social Landlord within the period of notice of deregistration of the Provider given by the Regulatory Authority.

6.2 Extension to cure periods

- (a) Where:
 - (i) a Remediable Provider Default (as modified under clause 6.1(d)) arises or occurs during a Step-in Period;
 - (ii) the Appointed Representative has sought to remedy or prevent recurrence of that Remediable Provider Default in accordance with clause 61.4 (Warning Notice) of the Capacity Contract; and
 - (iii) the Appointed Representative demonstrates to MSD (acting reasonably) that:
 - (A) it has been diligently pursuing rectification or prevention (as applicable) consistent with Good Industry Practice, but has not been able to achieve such rectification or prevention within the timeframe permitted under the Capacity Contract; and
 - (B) it is capable of remedying or implementing the Prevention Plan in respect of the Remediable Provider default (as the case may be) within a specified extended timeframe being no longer than the greater of 20 Business Days and any other period agreed by MSD (acting reasonably) (the **Extended Cure Period**),

then the period available under clause 61.4 (Warning Notice) of the Capacity Contract for the rectification or prevention of recurrence of the Remediable Provider Default will be extended by the Extended Cure Period.

- (b) A maximum of one Extended Cure Period will apply to each Remediable Provider Default.

6.3 Diligent pursuit

For the purposes of this Deed, in assessing what can be achieved by diligent pursuit and in assessing whether there has been a failure to diligently pursue or assessing compliance with clause 6.1(e), regard must be had to any time reasonably necessary to enforce any Major sub-contract, or to engage a substitute Major Sub-contractor in accordance with the terms of this Deed.

7. Step-in

7.1 Step-in Notice

Subject to clause 7.2 and clause 7.3 and without prejudice to the Security Trustee's rights under the Senior Financing Agreements, the Security Trustee may give MSD a Step-in Notice at any time:

- (a) during which an Event of Default is subsisting (whether or not a Termination Notice has been served); or
- (b) during a Required Period.

7.2 Details of Step-in Notice

The Security Trustee shall give MSD not less than three Business Days' prior written notice (or where a voluntary administrator has been appointed to the Provider, not less than one Business Day's prior written notice) of:

- (a) its intention to issue a Step-in Notice;
- (b) the identity of the proposed Appointed Representative; and
- (c) reasonable detail of any Event of Default leading to the intention to issue a Step-in Notice,

provided that where the proposed Appointed Representative is a Representative within paragraph (d) of the definition of Representative, the Security Trustee must give MSD not less than 10 Business Days' prior written notice in accordance with this clause.

7.3 Appointed Representatives

- (a) If the Security Trustee has issued a Step-in Notice in accordance with clauses 7.1 and 7.2, the appointment of a Representative within paragraphs (a) to (c) of the definition of Representative will be effective for all purposes under this Deed, and MSD will not be entitled to challenge or dispute the effectiveness of any such appointment.
- (b) Subject to clause 7.3(c) the Security Trustee shall not appoint a Representative within paragraph (d) of the definition of Representative unless it has obtained the prior written approval of MSD, which approval may only be withheld if MSD considers that the proposed Representative is an Unsuitable Third Party.
- (c) If, where clause 7.3(b) applies:
 - (i) MSD notifies the Security Trustee within five Business Days after its receipt of a notice under clause 7.2 that the proposed Appointed Representative is an Unsuitable Third Party, the notice under clause 7.2 proposing that Appointed Representative will be deemed to be withdrawn; and

- (ii) If MSD does not notify the Security Trustee within five Business Days after its receipt of a notice under clause 7.2 that the proposed Appointed Representative is an Unsuitable Third Party, the proposed Appointed Representative will be deemed not to be an Unsuitable Third Party for the purpose of clause 7.3(a).

7.4 Assumption of rights

- (a) On and from the issue of the Step-in Notice:
 - (i) the Appointed Representative shall assume, jointly and severally with the Provider, the rights (but not the obligations) of the Provider under all Project Documents until the end of the Step-in Period; and
 - (ii) the Provider shall remain solely responsible for the performance of its obligations under the Project Documents until the end of the Step-in Period.
- (b) For the avoidance of doubt, the Step-in Notice must relate to all rights of the Provider under all Project Documents and cannot apply only to some of those rights.
- (c) MSD acknowledges that, without limiting the liability of the Provider, no Representative is or will be, *solely by reason of*:
 - (i) the creation of the Security Interests under the Senior Financing Agreements;
 - (ii) the entry into this Deed or any other Senior Financing Agreement; or
 - (iii) the taking of enforcement action or the exercise of any powers under the Security Documents or this Deed,

liable for any obligation or liability of the Provider under the Project Documents (or for any greater such obligation or liability) than it would have been liable for but for the relevant thing described in any of clauses 7.4(c)(i) to 7.4(c)(iii), but nothing in this clause 7.4(c) affects the liability of the Security Trustee under this Deed.

7.5 Dealings with Appointed Representative

During the Step-in Period, MSD shall deal with the Appointed Representative and not the Provider (provided nothing in this clause shall preclude MSD from continuing to communicate with Provider Personnel to the extent it considers necessary in connection with the Services).

7.6 Operation of Capacity Contract during Step-in Period

During the Step-in Period, MSD will be entitled to exercise its rights under the Capacity Contract in accordance with its terms (except to the extent modified by this Deed) and, without limitation, will continue to be entitled to withhold Availability Payments and accrue breaches and failures in accordance with the Capacity Contract.

8. Step-out

8.1 Step-out Notice

The Appointed Representative may at any time during the Step-in Period, serve a Step-out Notice on MSD, specifying the Step-out Date.

8.2 Step-out Date

On the Step-out Date:

- (a) the rights of the Appointed Representative against MSD will be cancelled;
- (b) MSD will no longer deal with the Appointed Representative, and will instead deal with the Provider in connection with the Project Documents; and
- (c) without prejudice to MSD's rights against the Provider, the Appointed Representative will be released from any obligations and liabilities to MSD in connection with that Step-in Period from that date on.

8.3 Continuing obligations

The Provider shall continue to be bound by the terms of the Project Documents, notwithstanding the issue of a Step-in Notice, the occurrence of a Step-in Period, the passing of a Step-out Date, any action by the Security Trustee or the Appointed Representative or any Senior Lender and/or any provision of this Deed.

9. [Replacement of Major Sub-contractors]

9.1 Application

This clause 9 will apply if, during a Step-in Period, the Security Trustee or an Appointed Representative intends to replace a Major Sub-contractor, and any replacement of a Major Sub-contractor under this clause shall be deemed to be approved by MSD for the purposes of clause 22 (Sub-contractors) of the Capacity Contract. Any replacement of a Major Sub-contractor in accordance with this clause 9 shall not constitute an Immediate Termination Event under clause 61.2(a)(iii) (Provider Default) of the Capacity Contract, or a Remediable Provider Default under clause 61.2(b)(xvi)(B) of the Capacity Contract.

9.2 Replacement of Major Sub-contractor

If, during a Step-in Period, the Security Trustee or an Appointed Representative intends to replace a Major Sub-contractor:

- (a) clause 22 (Sub-contractors) of the Capacity Contract will apply; and
- (b) for the purposes of clause 22.1 (General provisions) of the Capacity Contract, the only grounds on which MSD may withhold its consent to the appointment of the proposed replacement Major Sub-contractor is if that person is not a Suitable Substitute Provider.]

[Drafting Note: To include or delete depending on structure.]

10. Novation

10.1 Transfer to Suitable Substitute Provider

Subject to clause 10.2, at any time:

- (a) during which an Event of Default is subsisting; or
- (b) during a Step-in Period,

the Security Trustee may, on 20 Business Days' prior written notice to MSD and the Appointed Representative, procure the transfer of the Provider's rights and obligations under the applicable Project Documents to a Suitable Substitute Provider. For the avoidance of doubt, the transfer must relate to all rights and obligations of the Provider under those documents and cannot apply only to some of those rights and obligations.

10.2 Suitable Substitute Provider

- (a) At the time the Security Trustee notifies MSD of a proposed transfer pursuant to clause 10.1, the Security Trustee must provide MSD with details of the identity of the proposed transferee, a copy of the proposed contract pursuant to which such transfer will occur and any further information about the proposed transferee that MSD may reasonably require to determine whether the proposed transferee is a Suitable Substitute Provider.
- (b) MSD shall notify the Security Trustee whether any person to whom the Security Trustee proposes to transfer the Provider's rights and liabilities under the Project Documents is a Suitable Substitute Provider, on or before the date falling 20 Business Days after the date of receipt of all information reasonably required by MSD to decide whether the proposed transferee is a Suitable Substitute Provider.
- (c) MSD shall not withhold its consent to a proposed transferee under clause 10.2(b) unless:
 - (i) the proposed transferee is not, in MSD's reasonable opinion, a Suitable Substitute Provider; and/or
 - (ii) there are unremedied Remediable Provider Defaults that would not be cured or otherwise resolved by the transfer to the Suitable Substitute Provider and no Rectification Programme or Prevention Plan required under the Capacity Contract or this Deed has been proposed to MSD's reasonable satisfaction in respect of such Remediable Provider Defaults.
- (d) Any consent by MSD does not constitute a waiver of any unremedied Provider Default.
- (e) MSD will act reasonably in considering any variation to, or replacement of, any Rectification Programme or Prevention Plan that is proposed by a transferee, or proposed transferee, of the Provider's rights and obligations under this clause 10.2, provided that any such variation to, or replacement of, any Rectification Programme or Prevention Plan (as applicable) complies with the requirements for the same set out in clauses 61.4(b) or (c) (as applicable) of the Capacity Contract

10.3 Effect of transfer

- (a) On any transfer to a Suitable Substitute Provider becoming effective:
 - (i) the Provider and the Appointed Representative shall be released from any obligations arising on and from that date under or in connection with this Deed and the Project Documents, and the Suitable Substitute Provider shall become liable for obligations arising on and after that date;
 - (ii) without prejudice to the Suitable Substitute Provider's obligation to comply with any Rectification Programme or Prevention Plan (as may be amended by way of clause 10.2(e) subsisting at the time of transfer, any then-subsisting ground for termination of the Capacity Contract by MSD shall be deemed to have no effect and any subsisting Warning Notice or Termination Notice shall be automatically revoked; and
 - (iii) MSD shall enter into a financier direct deed with the Suitable Substitute Provider and the lenders (or agent or trustee acting on their behalf) to that Suitable Substitute Provider, on substantially the same terms as this Deed.
- (b) MSD acknowledges and agrees that a novation in accordance with this clause 10 shall not constitute a breach of clause 69.3 (Assignment by Provider) of the Capacity Contract or an Immediate Termination Event under clause 61.2(a)(iii) (Provider Default) of the Capacity Contract or result in a Remediable Provider Default under clause 61.2(b)(xvi)(A) of the Capacity Contract.

10.4 Transfer of ownership of Provider

- (a) If:
 - (i) clause 10.1 applies; and
 - (ii) the Security Trustee wishes to procure the transfer of ownership or Control of the Provider rather than procuring the transfer of the Provider's rights and liabilities under the Project Documents,
 then:
 - (iii) subject to clauses 10.4(a)(iv) and 10.4(a)(v), this clause 10 shall apply (mutatis mutandis);
 - (iv) without prejudice to MSD's rights under clause 10.2, it will be reasonable for MSD to withhold its consent to any Change of Ownership on the same grounds on which it could withhold its consent under, or in circumstances that would otherwise breach, the Capacity Contract; and
 - (v) if consent is given to the Change of Ownership, the Provider shall be deemed to be a Suitable Substitute Provider for the purposes of this Deed.
- (b) MSD acknowledges and agrees that a transfer in accordance with this clause 10.4 shall not constitute a Shareholder Breach or constitute a Remediable Provider Default under clause 61.2(b)(xvi)(A) or clause 61.2(b)(xvii) of the Capacity Contract.

11. Amendment of Project Documents

11.1 No Alteration without consent

MSD undertakes for the benefit of the Senior Lenders that:

- (a) until the Senior Debt is repaid in full; or
- (b) until termination of the Capacity Contract,

(whichever is the first to occur) it will not make any modification, variation or amendment (each an **Alteration**) to the terms of any Project Document that:

- (c) reduces the Provider's entitlement to be paid IRRS in accordance with the Capacity Contract;
- (d) increases the Crown Retained Investment or alters the circumstances in which the same becomes payable;
- (e) materially increases the Provider's financial liabilities or obligations under the Capacity Contract; or
- (f) materially alters the termination rights of any party under the Capacity Contract,

without the consent of the Security Trustee as set out in clause 11.2. For the purposes of this clause 11, **Project Documents** includes the Capacity Contract and all schedules to the Capacity Contract, but excludes any Operative Documents.

11.2 Consent regime

- (a) The Security Trustee undertakes for the benefit of MSD that it will not unreasonably withhold or delay its consent to any proposed Alteration to any Project Document.
- (b) MSD:
 - (i) shall be entitled to rely for all purposes on any copy of the Security Trustee's written consent to any Alteration, where provided by the Provider to MSD; and
 - (ii) shall have no obligation to verify the substance or form of any such consent with the Security Trustee or to otherwise make any request directly to the Security Trustee for its consent to an Alteration.
- (c) Where the Security Trustee does not respond to a written request for its consent to an Alteration within 15 Business Days after receipt of the same, it will be deemed to have given its consent and clause 11.2(d) will apply.
- (d) For the purposes of clause 11.2(c), MSD shall be entitled to rely for all purposes on:
 - (i) a copy of the written request for an Alteration as provided by the Provider to the Security Trustee; and
 - (ii) written confirmation from the Provider, provided at any time after the end of the 15 Business Day period referred to in clause 11.2(c), that the Security Trustee did not respond to the request for Alteration within this period,

and will be entitled to proceed with any Alteration on the basis of the Security Trustee's deemed consent.
- (e) The Provider must not request MSD to make any Alteration to any Project Document unless it has first obtained any consents required from Senior Lenders or the Security Trustee (and MSD will be entitled to assume without enquiry that the Provider has done so).

12. Tender process

MSD shall, in undertaking the Tender Process and establishing the Highest Compliant Tender Price under Part 3 (Valuation methodology) of Schedule 14 (Calculation of Compensation on Termination) of the Capacity Contract, owe a duty of reasonable care to the Security Trustee to obtain the best price reasonably obtainable at the time the Tender Process is undertaken.

Part 3 – Priority and Subordination

13. Priority

13.1 Priority

The Senior Security Interest has priority over the CRI Security Interest up to (and limited to) the Priority Amount of the Security Trustee.

13.2 Sharing of proceeds

Notwithstanding:

- (a) the respective dates of execution or perfection or receipt of notice of the Security Documents; or
- (b) any amounts that may, from time to time, be paid to the credit of an account of the Provider with a Secured Party; or
- (c) any rule of law (including, but not limited to, the rule in *Hopkinson v Rolt* and the rule in *Clayton's Case*); or
- (d) any other matter,

as between the Secured Parties, the proceeds of realisation of the Security Documents are to be shared in the manner and according to the priorities set out in this Deed.

13.3 Interaction with Capacity Contract

This Part 3 will not apply:

- (a) to any Compensation Sum, which must be paid by MSD to or to the account of the Provider, where applicable, in accordance with clause 63 (Payment of Compensation Sum) of the Capacity Contract; or
- (b) to any transaction permitted or anticipated under Part 5 (Properties) of the Capacity Contract, or the proceeds of any such transaction.

14. Subordination

14.1 Subordination

Notwithstanding any agreement constituting or evidencing any of the CRI Indebtedness, each of the Provider and the CRI Creditor agree for the benefit of the Security Trustee that the CRI Indebtedness is subordinated and subject in point of priority and (except as expressly provided by this Deed), right of repayment to the prior payment in full of the Senior Indebtedness.

14.2 No payment of CRI Indebtedness

The Provider and the CRI Creditor each agree for the benefit of the Security Trustee that, notwithstanding anything to the contrary contained in any agreement evidencing any of the CRI Indebtedness, it will not, prior to the FDD Termination Date and except as expressly provided in this Deed:

- (a) directly or indirectly make or receive any payment or distribution to, or to the order of, the CRI Creditor in respect of any of the CRI Indebtedness; or
- (b) sell, purchase or acquire any of the CRI Indebtedness in cash or in kind; or
- (c) create or permit to exist a security interest, or give a guarantee, over or affecting the CRI Indebtedness, other than the CRI Mortgage; or
- (d) discharge any of the CRI Indebtedness by set off; or
- (e) take or omit to take any action whereby the subordination created or expressed to be created by this Deed may be impaired.

14.3 Permitted payments of CRI Indebtedness

The Provider must pay, and the CRI Creditor will be entitled to receive, amounts representing CRI Indebtedness to which the CRI Creditor is entitled under the Capacity Contract.

14.4 Enforcement of CRI Indebtedness

- (a) The CRI Creditor agrees for the benefit of the Security Trustee that notwithstanding anything to the contrary contained in any agreement constituting or evidencing any CRI Indebtedness, it will not (except as expressly provided in this Deed) exercise any right of Enforcement available to it.
- (b) The restriction on Enforcement set out in clause 14.4(a) does not apply to any exercise by MSD of:
 - (i) its rights under Part 5 (Properties) of the Capacity Contract;
 - (ii) its termination rights under the Capacity Contract (subject to Part 2 (Direct agreement) of this Deed); or
 - (iii) its rights under Schedule 14 (Calculation of Compensation on Termination) of the Capacity Contract.

14.5 Subordinated payments to be held on trust

- (a) Except as expressly provided in this Deed if, prior to the FDD Termination Date, the CRI Creditor receives any payment or accepts any property in respect of any CRI Indebtedness, whether on the liquidation of the Provider or otherwise, the CRI Creditor shall hold each such payment and any such property on trust as bare trustee for the Security Trustee.
- (b) The CRI Creditor will pay the relevant amount (plus interest (if any)), and turn over the relevant property, to the Security Trustee in or towards discharge of the Senior Indebtedness.

14.6 Failure of trust

If and to the extent that, prior to the FDD Termination Date, the trust constituted by clause 14.4 is not properly constituted or otherwise is not effective, the CRI Creditor agrees forthwith on demand to pay to the Security Trustee any of the CRI Indebtedness received, or property accepted by, the CRI Creditor.

14.7 Enforcement by Security Trustee

- (a) If the Security Trustee enforces a security created by or pursuant to the Senior Security Documents, provided the Security Trustee applies the proceeds of enforcement in accordance with the terms of this Deed, then:
 - (i) the CRI Creditor will not be entitled to take or have possession of any property subject to any such security or maintain a receiver in possession in respect of such property (except with the prior written consent of the Security Trustee); and
 - (ii) the Security Trustee will control the entire conduct of any sale of property covered by any security interest created by or pursuant to a Senior Security Document.
- (b) If, following an Enforcement by the Security Trustee, the Security Trustee sells any property over which the CRI Creditor (or any trustee or agent on its behalf) has security for the CRI Indebtedness, or if the Debtor sells such property at the request of the Security Trustee following an Enforcement by the Security Trustee, the CRI Creditor will on such sale release its security over that property upon receipt from the Debtor of any amount due to it under this Deed.

14.8 No enforcement

A Secured Party may refrain from enforcing the security created by or pursuant to the Security Documents granted in its favour as long as that Secured Party sees fit.

14.9 FDD Termination Date

Nothing in this clause 14 shall apply after the FDD Termination Date.

15. Variation of Senior Indebtedness

Each of the Provider and the CRI Creditor acknowledges undertakes that, prior to the FDD Termination Date, the provisions of this Deed shall not be affected by any amendment to, or substitution of, any agreement constituting or evidencing or security for any Senior Indebtedness.

16. Distribution

16.1 Pre enforcement

This clause does not apply to:

- (a) proceeds of any sale of any Property that do not comprise the proceeds of Enforcement; or
- (b) to any amount payable under the Capacity Contract.

16.2 Post Enforcement

All amounts received or recovered by a Secured Party under its Security Documents will be applied as follows:

- (a) first, to meet all costs and expenses that, as a matter of law, rank in priority to the categories below;
- (b) secondly, to meet all costs and expenses of Enforcement;

- (c) thirdly, in or towards payment to the Security Trustee of its Secured Indebtedness but limited to its Priority Amount;
- (d) fourthly, in or towards payment to the CRI Creditor of its Secured Indebtedness but limited to its Priority Amount; and
- (e) fifthly, to the extent of any Secured Indebtedness owing to a Secured Party in excess of its Priority Amount, then to each Secured Party in turn (in the order of its priority) until all its Secured Indebtedness is paid in full.

16.3 Exceptions to order of payment

The order of payment set out in clause 16.2 shall not require payment of amounts to a Secured Party when the relevant property is sold subject to its Security Interest.

17. Secured Parties

17.1 Enforcement

Each Secured Party promptly will notify the other Secured Party of any event giving rise to a Date of Enforcement of which the officers of that Secured Party having responsibility for its Secured Indebtedness have actual knowledge.

17.2 Insurance proceeds

A Secured Party receiving the proceeds of the Provider's insurance in respect of the Secured Property prior to the Date of Enforcement will notify the other Secured Party and, unless both Secured Parties agree otherwise, will apply those proceeds for the purpose of repairing, rebuilding, restoring or replacing the Secured Property concerned in accordance with the Capacity Contract, or for the purpose of paying any third party liability that is the basis of that payment. Proceeds of insurance received after the Date of Enforcement are to be applied as set out in clause 16 (Distribution).

17.3 Co-operation

Each Secured Party covenants (for the benefit only of the other Secured Party) that it will act in good faith towards, and co-operate with, the other Secured Party to give effect to this Deed.

17.4 Security interests

No Secured Party will accept from the Provider any security interest (other than under its Security Documents) over any part of the Secured Property, without the prior written consent of the other Secured Party.

18. Discharge

If, at any time, the CRI Creditor exercises in good faith its power of sale in respect of any Secured Property, the Security Trustee will provide the CRI Creditor with a registrable discharge of the Senior Security Interest over that Secured Property if the Security Trustee receives an amount of at least the lesser of:

- (a) its Secured Indebtedness as at the date of payment;
- (b) its Priority Amount; and
- (c) the Compensation Sum.

Part 4 – Miscellaneous Terms

19. Assignment

19.1 Benefit and burden of this Deed

This Deed is binding on and enures for the benefit of the parties and their respective successors and permitted assignees, novatees or transferees.

19.2 Assignment and related matters

- (a) No party to this Deed may assign or transfer any part of its rights or obligations under this Deed, unless permitted to do so pursuant to clause 19.2(b), clause 19.2(c) or clause 19.2(d), clause 19.2(e) or clause 19.2(f).
- (b) The Security Trustee may assign or transfer its rights and obligations under this Deed to a successor Security Trustee in accordance with the Senior Financing Agreements without the consent of MSD.
- (c) Any Senior Lender may assign or transfer its rights under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements.
- (d) MSD must assign, novate or otherwise transfer its rights and/or obligations under this Deed to any person that MSD assigns, novates or otherwise transfers its rights and/or obligations under the Capacity Contract in accordance with clause 69.2 (Assignment by MSD) of the Capacity Contract and must procure that the transferee enters into a deed in favour of the Security Trustee, in a form acceptable to the Security Trustee (acting reasonably) binding itself to the terms of this Deed.
- (e) The Provider may not assign, novate or transfer any of its rights or obligations under this Deed without the consent of MSD, the Security Trustee and the CRI Creditor. If MSD, the Security Trustee and the CRI Creditor consent to such assignment, novation or transfer, each assignee, novatee or transferee will have the same obligations to, and rights against, the Security Trustee and the CRI Creditor under this Deed as if named in this Deed as the Provider.
- (f) The CRI Creditor may assign, novate or transfer any of its rights or obligations under this Deed to any other Crown entity or agency, without the consent of the Provider or the Security Trustee, provided the assignee has acceded to or otherwise agreed to be bound to the terms of this Deed.
- (g) If clause 19.2(b) applies, then MSD shall enter into a direct agreement with the new Security Trustee on substantially the same terms as this Deed.
- (h) If the Security Trustee resigns or is replaced pursuant to the terms of the Senior Financing Agreements, then such resignation or replacement shall not be effective until a new agent has acceded to and has agreed to become bound to the terms of this Deed, unless MSD and the Security Trustee have entered into a new direct agreement as contemplated by clause 19.2(g).
- (i) Notwithstanding the terms of this clause 19.2, the Provider shall be permitted to assign its rights under this Deed by way of security as part of the Security Interests referred to in clause 4.1 (Security Interest).

19.3 Acknowledgment

Subject always to clause 19.2, no Secured Party will assign, novate, transfer or otherwise dispose of its rights under its Security Documents, or in relation to any Secured Indebtedness,

to any person without first obtaining from that person an acknowledgement (in form and substance satisfactory to the other Secured Party) that it is bound by this Deed.

19.4 Disclosure of information

The Security Trustee may disclose, on a confidential basis, to a potential assignee, novatee, transferee or other person with whom contractual relations in connection with this Deed are contemplated, any information about the Provider or the CRI Creditor whether or not that information was obtained in confidence and whether or not that information is publicly available.

20. Term

This Deed shall remain in effect until the earlier of:

- (a) the date on which all amounts that may be or become owing by the Provider to the Senior Lenders under the Senior Financing Agreements have been irrevocably paid in full, the Senior Lenders are not required to provide further accommodation to, or to the account of, the Provider, and the Security Interests created under the Security Documents have been released by the Security Trustee, except where such repayment or release occurs in connection with a Refinancing permitted under the terms of the Capacity Contract in circumstances where the benefit of this Deed continues to be held by the Security Trustee (or a replacement Security Trustee) under the security trust constituted under the existing Security Trust and Intercreditor Deed for the benefit of the new Senior Lenders and other finance parties providing the new Senior Debt;
- (b) the date of termination or expiry of the Capacity Contract; or
- (c) the date of transfer of the Provider's rights and liabilities under the Project Documents to a Suitable Substitute Provider pursuant to clause 10.1 (Transfer to Suitable Substitute Provider), so long as the requirements of clause 10.3(a) have then been observed and performed.

21. Dispute resolution

21.1 Interaction between termination and dispute resolution

- (a) The parties acknowledge that MSD is entitled to give a Termination Notice under the Capacity Contract regardless of whether a Dispute has been referred to dispute resolution in accordance with Part 17 (Dispute resolution) of the Capacity Contract.
- (b) Where, following the issue of a Termination Notice:
 - (i) MSD seeks to exercise its rights to terminate the Capacity Contract; and
 - (ii) the Security Trustee refers any such action to dispute resolution in accordance with clause 21.2,

the parties agree that the Capacity Contract shall not be terminated unless and until the dispute resolution procedures have been finally resolved and the outcome of the dispute resolution procedure is that MSD is permitted to terminate the Capacity Contract in accordance with its terms and this Deed.

21.2 Dispute resolution under this Deed

- (a) If there is a dispute arising in relation to any aspect of this Deed or the subject matter of this Deed, then any party may refer the dispute to be determined in accordance with Part 17 (Dispute resolution) of the Capacity Contract applied *mutatis mutandis*.

- (b) Despite the existence of a Dispute or the referral of the Dispute for resolution under this clause 21.2:
 - (i) the Provider must continue performing the Services and performing its other obligations under the Capacity Contract; and
 - (ii) MSD will continue to perform its obligations under this Deed and the Capacity Contract and may exercise its rights under this Deed and the Capacity Contract without regard to the existence of the Dispute, while that Dispute has not been resolved pursuant to this clause 21.2.

22. Notices

22.1 Method of giving notices

A notice, consent, approval or other communication (each a **Notice**) under this Deed must:

- (a) be in writing addressed to the address of the recipient from time to time designated for the purpose by the addressee to the other parties. The initial address of each party is set out under its name on the execution pages of this Deed; and
- (b) be signed by an authorised representative of the sender.

22.2 Notice effective

- (a) No Notice or other communication is to be effective until it is received.
- (b) A communication will be deemed to be received:
 - (i) in the case of a letter, on the fifth Business Day after posting (with all postage paid);
 - (ii) in the case of an email, on the Business Day on which it arrives in the recipient's information system (provided that if it is received in that system after 5.00pm on a Business Day, then it will be deemed to be received on the next Business Day), provided that if there is any dispute as to whether an email has been received, the email shall only be deemed to have been received at that time where the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice; and
 - (iii) in the case of personal delivery, when delivered.

23. Miscellaneous

23.1 Perfecting transfer or release

MSD shall, at the Provider's expense, take whatever action the Security Trustee, the Appointed Representative or a Suitable Substitute Provider taking a transfer in accordance with clause 10.1 (Transfer to a Suitable Substitute Provider) may reasonably require to perfect any transfer or release under clause 9 (Replacement of Major Sub-contractors) or clause 10 (Novation), including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Security Trustee, Appointed Representative or Suitable Substitute Provider reasonably requires.

23.2 Security Trustee to notify MSD

The Security Trustee shall promptly notify MSD of:

- (a) any decisions to accelerate the maturity of any amounts owing by the Provider to a Senior Lender under the Senior Financing Agreements and/or any decisions to demand repayment; and
- (b) the date on which all Senior Indebtedness is repaid in full.

23.3 Provider acknowledgment

The Provider joins in this Deed to acknowledge and consent to the arrangements set out and agrees not knowingly to do or omit to do anything that may prevent any party from enforcing its rights under this Deed and shall do all such acts, matters and things as may be required of it to give effect to the provisions of this Deed, including clause 10 (Novation).

24. Security Trustee

- (a) The Security Trustee enters into this Deed only in its capacity as trustee of the trust constituted under the Security Trust and Intercreditor Deed (the **Security Trust**) and in no other capacity.
- (b) Each party other than the Security Trustee acknowledges that under the terms of the Security Trust and Intercreditor Deed the Security Trustee:
 - (i) holds the benefit of this Deed for the benefit of the Beneficiaries (as defined in the Security Trust and Intercreditor Deed); and
 - (ii) is bound to act on the instructions of those Beneficiaries given in accordance with the Security Trust and Intercreditor Deed, and is not bound to act without instructions or where the Security Trust and Intercreditor Deed otherwise provides that the Security Trustee is not bound to act.
- (c) The Security Trustee's obligations, duties and responsibilities under this Deed are limited to those expressly set out in the Security Trust and Intercreditor Deed and this Deed.
- (d) A liability of the Security Trustee arising under or in connection with this Deed is strictly limited, and can only be enforced against the Security Trustee, to the extent to which it can be satisfied out of the property or assets which become subject to the Security Trust (**Trust Property**) out of which the Security Trustee is actually indemnified for the liability. This limitation will not apply to any obligation or liability of the Security Trustee to the extent it is caused by the Security Trustee's fraud, gross negligence or wilful misconduct.
- (e) If any party (other than the Security Trustee) does not recover the full amount of any money owing to it arising from non-performance by the Security Trustee of any of its obligations, or non-payment by the Security Trustee of any of its liabilities, under or in respect of this Deed by enforcing the rights referred to in clause 24(d), that party may not (except in the case of fraud, gross negligence or wilful misconduct by the Security Trustee) seek to recover the shortfall by:
 - (i) bringing the procedure against the Security Trustee in its personal capacity; or
 - (ii) seeking the appointment of a liquidator, administrator, receiver, manager or similar person to the Security Trustee or prove in any liquidation, winding up, dissolution, receivership, administration, statutory management, removal from the register of companies, or the entering into of a compromise, deed of arrangement,

assignment for the benefit of creditors or other arrangement or compromise with creditors, or bankruptcy of, or affecting, the Security Trustee.

- (f) The Security Trustee is not obliged to do or refrain from doing anything under this Deed (including incurring any liability) unless the Security Trustee's liability is limited in the same manner as set out in this clause.
- (g) To the maximum extent permitted by law, this clause 24 applies despite any other provision of this Deed or any principle of equity or law to the contrary.
- (h) For the purposes of this Deed, it is agreed that the Security Trustee cannot be regarded as having engaged in gross negligence to the extent to which such gross negligence has been caused or contributed to by a failure by another party to this Deed to fulfil its obligations under this Deed or any other act or omission of that party or any other person (other than any receiver, agent or attorney appointed by the Security Trustee).
- (i) If the Security Trustee incurs any liability to any person as a consequence of having relied on a document which was inaccurate, forged or does not bind the person on whose behalf it was purportedly given, the Security Trustee is entitled to be indemnified or exonerated for the amount of such liability from the Trust Property.
- (j) The Security Trustee confirms that it is authorised to enter into this Deed and exercise all of its powers under this Deed on behalf of the Beneficiaries.

25. General

25.1 Counterparts

This Deed may be signed in any number of counterparts all of which, when taken together, constitute one and the same instrument. A party may enter into this Deed by executing any counterpart.

25.2 Severability

If any provision of this Deed is or becomes unenforceable, illegal or invalid for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity. If such modification is not possible, then such provision shall be severed from this Deed without affecting the enforceability, legality or validity of any other provision of this Deed.

25.3 Waiver

Time is of the essence in respect of all dates and times for compliance by the Provider and the CRI Creditor with their respective obligations under this Deed. Any delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Deed shall not operate as a waiver of such right, power or remedy. A waiver of any breach of any provisions of this Deed shall not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.

25.4 Remedies cumulative

The rights of the Security Trustee under this Deed are cumulative and not exclusive of any rights provided by law.

25.5 **Rights reserved**

Nothing in this Deed affects the rights of each Secured Party against the Provider as set out in the Security Documents. As against the Provider, each Secured Party remains entitled to exercise all its rights under its Security Documents unless specifically prohibited by this Deed. The provisions of each Security Document are confirmed, subject only to this Deed.

25.6 **Partial invalidity**

The illegality, invalidity or unenforceability of a provision of this Deed under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.

25.7 **Certificates conclusive**

A certificate by the Security Trustee of any amount payable under this Deed is conclusive evidence for all purposes, including for any proceedings.

25.8 **Custody of documents**

So long as the Senior Security Documents are in force, the Security Trustee will be entitled to hold any title deeds, share certificates or other title documents, certificates or papers in respect of any property subject to the security created by or pursuant to the relevant Senior Security Documents in priority to the entitlement of the CRI Creditor. The Security Trustee has no responsibility to the CRI Creditor to require or maintain custody of such documents.

25.9 **Legal fees**

If any legal action or other proceeding is brought for the enforcement of an obligation under this Deed, the prevailing party shall be entitled to legal fees and other costs incurred in that action or proceeding on a solicitor / client basis (subject to review under the Lawyers and Conveyancers Act 2006) in addition to any other relief to which it may be entitled.

25.10 **Public disclosure**

All public disclosure to which clause 42.2(b) of the Capacity Contract does not apply by the Provider or the Security Trustee relating to this Deed, including promotional or marketing material (but not including any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements), shall be co-ordinated with and must first be approved in writing by MSD prior to its release.

25.11 **Entire agreement**

This Deed and the other Project Documents (to which two or more parties are a party) constitute the entire agreement between the parties and together supersede and extinguish all prior agreements and understandings between the parties about their respective subject matters.

25.12 **Amendments in writing**

No amendment to this Deed will be effective unless it is in writing and signed by duly authorised signatories of all the parties.

25.13 **Governing Law and jurisdiction**

This Deed is governed by, and is to be construed in accordance with, the Laws of New Zealand. Each party irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Deed.

25.14 Contractual Remedies Act 1979

The remedies of damages and cancellation as against the Security Trustee or any other Senior Lender under or in connection with the assignment by way of security of the Provider's rights under the Capacity Contract and each other Project Document made pursuant to the Financing Agreements are hereby expressly excluded for the purpose of section 11 of the Contractual Remedies Act 1979 and the parties agree that this clause shall be deemed to take effect as an amendment to the Capacity Contract and each other Project Document (as applicable).

Execution

[Execution blocks to be inserted]

Schedule 5: Transition Services Requirements

1. Purpose

The purpose of this Schedule 5 is:

- (a) to describe the objectives for the Transition Services;
- (b) to specify the requirements for the Transition Services; and
- (c) to specify any responsibilities that MSD will assume in relation to the Transition Services.

2. Transition

2.1 Objectives

The general objectives of the Transition Services are to ensure that the Services (and everything required to support the Services) are established by the Provider and in a manner that:

- (a) causes minimal disruption to MSD and to Existing Tenants; and
- (b) enables the Provider to provide the Services in accordance with the terms of this Agreement.

2.2 Description of the Transition Services

(a) Transition Services

The Provider must provide the following Transition Services during the Transition Period to meet the objectives specified in paragraph 2.1, to otherwise comply with its obligations under this Schedule 5 and by undertaking and completing the activities that the Provider is required to undertake pursuant to the Transition Plan:

- (i) those Transition Services set out in Part A of the Transition Plan during the Transition Period Phase One (the **Phase One Transition Services**); and
- (ii) those Transition Services set out in Part B of the Transition Plan during the Transition Period (the **Phase Two Transition Services**).

(b) Excluded services

Any activities of MSD relating to the transition that are expressly specified as activities of MSD in the Transition Plan are excluded services and are not activities that the Provider is required to undertake as part of the Transition Services.

(c) HNZ transition activities

Any activities of HNZ relating to the transition that are specified expressly as activities to be undertaken by HNZ in the Transition Plan are Transition Services that the Provider is responsible for ensuring the completion of.

2.3 Transition Completion Certificate

The Phase One Transition Services will not be deemed to be complete until the Provider has, acting reasonably, issued a Transition Completion Certificate, certifying that the Phase One Transition Services have been satisfactorily completed, such certificate to be issued once:

- (a) the milestones in Part A of the Transition Plan have been completed as evidenced by achievement of the success criteria set out for each of those milestones;
- (b) the Provider has obtained an Independent Quality Assurance Report providing assurance that the Operational Readiness Test has been met (a copy of such Independent Quality Assurance Report to be included with the Transition Completion Certificate); and
- (c) the Provider is satisfied that the Operational Readiness Test has been met,

and the Transition Completion Certificate has been accepted or deemed to have been accepted by MSD in accordance with clause 9.6 (Operational Readiness Test and Financial Close) of the Base Agreement.

2.4 Delay

(a) Notification

- (i) If any party (the **Notifying Party**) is delayed or considers that it is likely to be delayed in performing its obligations (**Transition Obligations**) during the Transition Period, whether as a result of:

- (A) any actual or anticipated act or omission on its part; or
- (B) any alleged, actual or anticipated act or omission on the part of another party,

(each a **Transition Delay**), then:

- (C) the Notifying Party must notify the other party as soon as reasonably practicable after it becomes aware of a Transition Delay and by that notification give such details set out in paragraph 2.4(a)(ii) of which it is then aware; and
 - (D) the Notifying Party must use all reasonable endeavours to avoid or limit the effects of the Transition Delay.
- (ii) The following notification details should be provided:
 - (A) the Transition Delay that has occurred and when the Transition Delay occurred or when the Notifying Party first became aware of the Transition Delay (as the case may be);
 - (B) the effect the Transition Delay has had, or the effect the Transition Delay is having or is likely to have, on the Notifying Party's ability to perform its Transition Obligations;
 - (C) the impact, or potential impact, that Transition Delay has, or may have, on the programme for the Transition Services (as set out in the Transition Plan);

- (D) the period of time during which the Notifying Party expects the performance of its obligations to be delayed because of the Transition Delay;
- (E) whether the Notifying Party considers the effect of the Transition Delay to be critical; and
- (F) its opinion as to the cause or causes of the Transition Delay.

(b) Mitigation Strategy

- (i) The parties must meet as soon as reasonably practicable after a party has received a notice of the kind referred to in paragraph 2.4(a)(i). The purpose of that meeting (and any subsequent meetings concerning the Transition Delay) is:
 - (A) first, to decide on a mitigation strategy to avoid or mitigate the Transition Delay; and
 - (B) secondly, to negotiate, in good faith, an extension of time in accordance with paragraph 2.4(d) or other appropriate remedy in accordance with paragraph 2.4(e) where MSD is the Notifying Party.
- (ii) Until the parties have agreed on the action(s) to be taken under paragraph 2.4(b)(i) or, as applicable, the matter has been determined by the Independent Expert through Expert Determination in accordance with paragraph 2.4(d)(iv), the Notifying Party must update the notice given under paragraph 2.4(a) at weekly intervals, unless otherwise agreed.

(c) Resources

Without prejudice to the generality of paragraph 2.4(b)(i) (and subject to paragraph 2.4(f)):

- (i) where the Transition Delay has been as a result of the Provider's act or omission, appropriate resources or other appropriate means will be provided by the Provider to avoid or mitigate the delay at no cost to MSD; and
- (ii) where the Transition Delay has been as a result of MSD's act or omission, MSD will provide additional appropriate resources to avoid or mitigate the Transition Delay.

(d) Extensions

In deciding how, and on what basis, an extension of time may be agreed as a result of a Transition Delay:

- (i) such extension of time will only be considered by the parties once a mitigation strategy has been agreed in accordance with paragraph 2.4(b)(i)(A) or both parties agree that the circumstances are such that no means are practically available to mitigate the Transition Delay;
- (ii) the parties will agree to a reasonable extension of time, by amendment of the dates in the Transition Plan and, if necessary and reasonable, the Planned Financial Close Date, where the Transition Delay is as a result of an act or omission of MSD or HNZ;
- (iii) MSD may, in its absolute discretion, agree a reasonable extension of time, by amendment of the dates in the Transition Plan, where the Transition Delay is as

a result of the Provider's act or omission, subject to the Provider reimbursing MSD (on demand) for any reasonable costs incurred by MSD that will result from such an extension (such anticipated costs to be notified and agreed to by the Provider prior to MSD agreeing to the extension); and

- (iv) if an extension of time is not agreed under this paragraph 2.4(d), the matter will referred to Expert Determination for resolution.

(e) **Other appropriate remedy**

- (i) Where the Transition Delay has occurred as a result of MSD's act or omission and, as a consequence of the Transition Delay, dates in the Transition Plan have been amended such that one or more dates extend beyond a date that is within five Business Days of, or after, the Planned Financial Close Date, MSD will be liable to reimburse the Provider for any reasonable expenditure, direct Losses and costs relating to the following categories as they relate to the act or omission of MSD:

- (A) financing arrangements;
- (B) implementing workarounds;
- (C) Provider Personnel (including overtime and allowances); or
- (D) reconstructing or reloading any data,

provided that:

- (E) the Provider can produce receipts or other evidence satisfactory to MSD (acting reasonably) to substantiate such expenditure, direct Losses and costs; and
- (F) in no case will MSD be liable for any indirect loss or damage, including any loss of profits or loss of opportunity to the extent that such loss is indirect, arising out of or in connection with a Transition Delay that has occurred as a result of MSD's act or omission.

(f) **Joint responsibility**

Where it is agreed that a Transition Delay has been partly caused by:

- (i) the Provider's act or omission; and
- (ii) an act or omission of MSD,

then,

- (iii) any mitigation strategy proposed or agreed will reflect on a reasonable basis an allocation of additional resources from each party, with the associated costs being divided between the parties on a basis which correlates to the relative contribution of each of the parties to the relevant Transition Delay; and
- (iv) unless otherwise agreed by MSD, any extension of time proposed or agreed will be limited to the extent that the Transition Delay has been caused by an act or omission of MSD.

(g) **General**

This paragraph 2.4, and any action taken under, or as a consequence of the operation of, this paragraph 2.4, will in no way affect or prejudice MSD's rights and remedies under the other provisions of this Agreement, or in general law, in respect of any Transition Delay.

2.5 **Transition Committee**

- (a) The parties will establish a transition committee (the **Transition Committee**) which must be attended by:
 - (i) the Provider's Representative and up to three additional Provider Personnel;
 - (ii) MSD's Representative and up to three additional MSD Personnel; and
 - (iii) any other attendees agreed between the parties,
 and may be attended by an HNZ representative.
- (b) The Transition Committee will meet on a regular basis, being not less than once per week during the Transition Period or more frequently if required by either party, for the purpose of discussing:
 - (i) the progress of each party against the Transition Plan;
 - (ii) the Transition Services to be performed by the parties in the immediate future and how the parties will work in together, where required;
 - (iii) any issues that have arisen or that a party foresees may arise in relation to the provision of the Transition Services in accordance with the Transition Plan and what steps are being taken by the relevant party to manage these issues; and
 - (iv) any other matters relating to the Transition Services nominated by either party for discussion.
- (c) Meetings of the Transition Committee will take place at MSD's Wellington head office or at a location otherwise agreed between the parties, on dates and times to be agreed between the parties and arranged by MSD.

2.6 **Relief from responsibility**

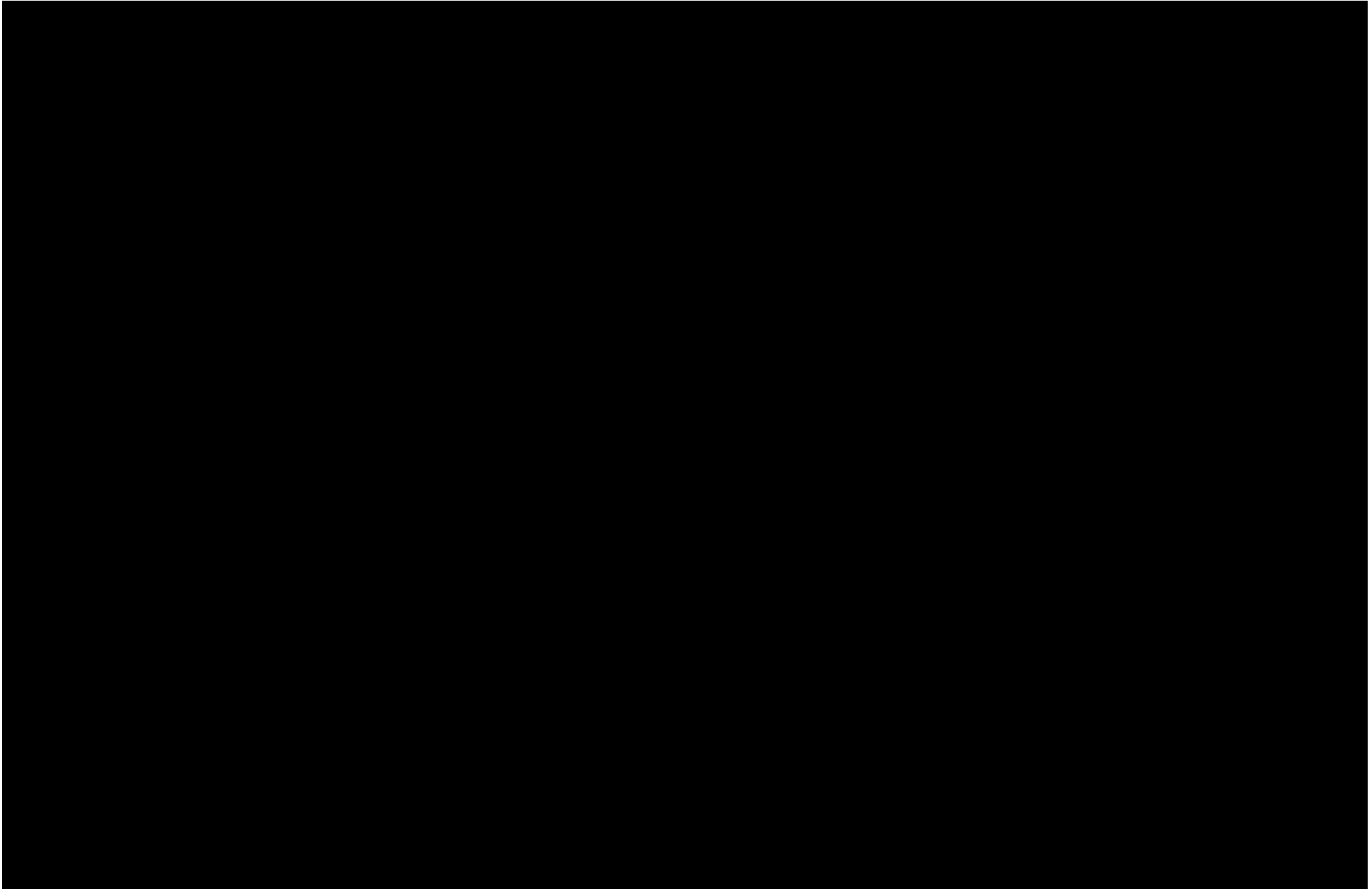
The Provider's responsibility for any failure to perform the Transition Services will reduce proportionately to the extent that such failure has been caused by any act or omission of MSD or HNZ, except to the extent that such act or omission has been caused or contributed by:

- (a) any act or omission of the Provider or the Provider Personnel (including the Provider's failure to perform its obligations under this Agreement); or
- (b) any act or omission of MSD or HNZ that has received the Provider's prior written approval,

and provided the Provider had:

- (c) promptly provided to MSD, in writing, full details of any failure of MSD's or HNZ's (not contributed to by the Provider or the Provider's Personnel or approved by the Provider) as described above and its impact on the Provider's obligations; and
- (d) taken all reasonable steps to eliminate or avoid the occurrence of any failure of MSD's or HNZ's (not contributed to by the Provider or the Provider's Personnel or approved by the Provider) described above and to mitigate its effect.

Annexure 1: Transition Plan



Schedule 6: Property Management Requirements

Part 1 – General provisions

1. Interpretation

- (a) The Provider must comply with all provisions set out in this Schedule 6.
- (b) Where a provision in this Schedule 6 is split into a paragraph headed “Property Requirements” and a paragraph headed “Delivery Proposal”, the Provider must comply with all Property Requirements and all Delivery Proposals.
- (c) In the case of any inconsistency, the requirement to comply with the Property Requirements prevails over compliance with the Delivery Proposals.
- (d) For the avoidance of doubt, compliance with the Delivery Proposals but not with the Property Requirements constitutes a breach by the Provider of these Property Management Requirements.

Part 2 – Overall requirements

2. Property standard

2.1 Property Requirements

The Provider must maintain all Properties in accordance with:

- (a) all requirements set out in this Schedule 6, except only with respect to the Remediation Works, completion of which shall be in accordance with the Remediation Plan;
- (b) all relevant legislative requirements (including those ascertained from the Residential Tenancies Act and the Housing Improvement Regulations 1947);
- (c) the standards and requirements applicable to a Class 1 Social Landlord;
- (d) the requirements of the New Zealand Building Code;
- (e) all applicable New Zealand Fire Service requirements;
- (f) all relevant approved codes of practice;
- (g) all applicable AS/NZS standards; and
- (h) all applicable Operative Documents.

2.2 Delivery Proposal

Commercial Sensitivity

3. Performance of Property Management Services

In performing the Property Management Services, the Provider shall:

General

- (a) support the achievement of better tenancy outcomes through providing suitable, well-managed properties, and healthy safe homes;
- (b) meet its legal and contractual obligations and actively exceed them where appropriate benefit arises for its Tenants and stakeholders;
- (c) create Tauranga-specific organisational structures, policies, procedures and processes for the maintenance, refurbishment and reconfiguration of the portfolio that specifically target homes standards and alterations that meet the needs and the best quality of life for the Tenants;
- (d) administer policies and procedures that ensure investment in Properties and areas that will enable Tenants' access to communities, employment and services;
- (e) maintain a strong focus on property condition, suitability and ability to support Tenant outcomes;
- (f) Commercial Sensitivity
- (g) Commercial Sensitivity

Methamphetamine and smoke alarms

- (h) manage the risk of methamphetamine and other contaminations by:
 - (i) being aware and acting on the warning signs, tenant, location and community indicators;
 - (ii) attributing contamination to tenants at the "end of lease" inspection;
 - (iii) identifying and co-opting addiction and other support services to assist; and
 - (iv) reminding the Tenant of the possible consequences, for example tenancy agreement breaches;
- (i) complete required smoke alarm installation and remediation in the first six months after Financial Close;

People and Sub-contractors

- (j) ensure that all property managers:
 - (i) undergo Site Safe training, attain Site Safe Passports and hold a first aid certification;
 - (ii) have the appropriate technical ability;
 - (iii) have people interface capability;

- (iv) have knowledge in building standards, regulatory requirements and legislation;
- (v) have a quality focus;
- (vi) have empathy with people's circumstances;
- (vii) have the skills to work confidently with Tenants;
- (viii) have the ability to assertively apply standards;
- (ix) have a community focus; and
- (x) have the drive to deliver all service requirements;
- (k) hold all Sub-contractors to high standards set by the Provider and that comply with the terms of this Agreement, and closely monitor the workmanship of all Sub-contractors;
- (l) undertake due diligence on all potential Sub-contractors, including:
 - (i) accreditation;
 - (ii) quality;
 - (iii) staffing;
 - (iv) processes;
 - (v) safety; and
 - (vi) organisational competence;
- (m) require that all Sub-contractors can demonstrate communication skills, a collaborative working style and a drive to meet expectations;
- (n) procure all Sub-contractors undertaking capital works in excess of \$500,000 or providing other works or services with an estimated value in excess of \$250,000 per annum through competitive tender processes that each have service requirements, outputs, performance measures and standards clearly articulated in the contract, and with the winning Sub-contractor selected through application of formal evaluation criteria that include quality, responsiveness and value for money;
- (o) ensure the maintenance Sub-contractor is responsible to the Provider for regular reporting on progress and completion of work, obtaining any regulatory consent and ensuring thorough health and safety management practices; and
- (p) make every effort to resolve Sub-contractor issues and performance inhibitors upfront.

Part 3 – Property CORs

4. Interior hardware

4.1 Property Requirements

- (a) The Provider must ensure that all hardware in each Property is functional at all times. This requirement shall include all:

- (i) windows, cupboards and doors;
 - (ii) window, cupboard and door catches and latches; and
 - (iii) towel rails.
- (b) The Provider must ensure that, at all times, there is a functioning, appropriate privacy lock on all toilet and bathroom doors, with each such lock also being capable of being unlocked from the outside of the room.

4.2 Delivery Proposals

Commercial Sensitivity

5. Window safety from falling

5.1 Property Requirement

The Provider must ensure that all windows above ground level are fitted with appropriate security stays (for timber windows) or appropriate restrictor stays (for aluminium windows) that are functional at all times.

5.2 Delivery Proposals

Commercial Sensitivity

6. Stove security

6.1 Property Requirements

- (a) The Provider must ensure that all stand-alone stoves at all times have an appropriate, fully functioning anti-tip device and drop bolt fitted and operating as intended.
- (b) The Provider must ensure that built-in ovens are adequately restrained.

6.2 Delivery Proposals

Commercial Sensitivity

7. Hot water cylinder seismic restraint

7.1 Property Requirement

The Provider must ensure that appropriate hot water cylinder seismic straps are present and securely fitted at all times.

7.2 Delivery Proposals

Commercial Sensitivity

8. Gas fittings

8.1 Property Requirements

- (a) The Provider must ensure all gas fittings and appliances (if any) are complete, undamaged, safe and fully functional at all times.
- (b) All gas fittings and appliances must be inspected and certified by a person authorised to perform such activities in accordance with the Plumbers, Gasfitters and Drainlayers Act 2006.
- (c) The Provider must provide to MSD a gas inspection report on each Property that has any gas fittings, at least every 36 months, which report must:
 - (i) clearly state that all gas fittings and appliances in that Property are complete, undamaged, safe and fully functional; and
 - (ii) include a copy of the certificate(s) of inspection from a person authorised in accordance with the Plumbers, Gasfitters and Drainlayers Act 2006 covering all gas fittings at that Property.

8.2 Delivery Proposals

Commercial Sensitivity

9. Curtains

9.1 Property Requirement

The Provider must ensure that curtains and curtain tracks are fitted, appropriate, complete, fit for purpose, functional and operational on the full extent of all windows in all living rooms, dining rooms and bedrooms. Curtains and tracks may be excluded from kitchens, bathrooms, toilets, stairs and hallways.

9.2 Delivery Proposals

Commercial Sensitivity

10. Childproof storage

10.1 Property Requirement

The Provider must ensure that adequate childproof storage space is provided in each kitchen, bathroom and laundry, including:

- (a) in kitchens, childproof catches must be present and functional on all under-sink cupboards;
- (b) in bathrooms, a vanity is not considered childproof unless childproof catches are fitted, and a shaving cabinet must have childproof catches; and
- (c) in laundries, a shelf is acceptable if it is higher than 1.2m above floor level, otherwise a childproof catch is required on a laundry cabinet.

10.2 Delivery Proposals

Commercial Sensitivity

11. Doors and windows

11.1 Property Requirement

The Provider must ensure that all exterior doors and windows, including flashings, locks, hinges and hardware, are all present, fully functioning and sealing well. Each Property must be weathertight.

11.2 Delivery Proposals

Commercial Sensitivity

12. Entry lighting

12.1 Property Requirements

- (a) The Provider must ensure that each front entry and each rear entry has appropriate exterior lighting fittings present and fully functional at all times.
- (b) While replacing blown bulbs in the light fittings shall generally be a Tenant obligation, the Provider must ensure all exterior lighting is fully functional and operational at the commencement of every new Tenancy.

12.2 Delivery Proposals

Commercial Sensitivity

Part 4 – Asset management requirements

13. Whole of life

13.1 Property Requirements

- (a) The Provider must ensure it provides and implements a robust and reliable whole of life solution that supports the operation and maintenance of the Properties.

- (b) The Provider must:
 - (i) adopt a proactive process of continuous improvement and innovation to provide either cost, performance or added value advantages to both parties and demonstrate continuous improvement and cost effectiveness in the performance of the Property Management Services; and
 - (ii) at no additional cost to MSD, provide timely advice to MSD once every Contract Year and at MSD's request (acting reasonably) on any innovations that may allow MSD to improve its capabilities, efficiency and economy in obtaining, integrating, utilising and managing the Property Management Services and similar services provided at other social housing properties.
- (c) The Provider must focus its whole of life activities in accordance with the Asset Management Plan in order to achieve:
 - (i) a cost effective balance between:
 - (A) preventative maintenance;
 - (B) planned asset refurbishment; and
 - (C) asset replacement;
 - (ii) minimised interruption to the tenancy of Tenants through:
 - (A) preventative maintenance;
 - (B) planned asset refurbishment; and
 - (C) reduced reactive maintenance tasks; and
 - (iii) optimised asset performance and availability through:
 - (A) planned preventative maintenance;
 - (B) condition-based maintenance and replacement;
 - (C) procurement of materials and assets;
 - (D) planned acquisitions, disposals and reconfigurations that respond to changing housing needs; and
 - (E) planned asset overhauls where appropriate.

13.2 Delivery Proposals

Commercial Sensitivity

14. Asset management planning

14.1 Property Requirements

The Provider must provide asset management services for the Properties that:

- (a) ensure that at all times the Properties' physical assets meet or exceed the Asset Condition Standards;
- (b) deliver a planned approach for asset renewal and replacement throughout the Contract Term, based on quantitative condition assessment;
- (c) allow for flexibility and changes over time in the provision of the Property Management Services, the assets and the Properties;
- (d) ensure continuous improvement in asset management performance;
- (e) utilise an approach based on the suite of ISO55000 standards on asset management and New Zealand Asset Management Support (**NAMS**) documents (including the NAMS Property Manual and the International Infrastructure Management Manual 2015 Edition) (or equivalent approach) in relation to asset condition and Asset Condition Surveys and audits; and
- (f) collect asset condition and maintenance history information to facilitate the management of accurate life-cycle plans and maintenance works.

14.2 Delivery Proposals

Commercial Sensitivity

Part 5 – Information

15. Records and data management

15.1 Property Requirements

The Provider must:

- (a) manage and store in a secure central repository all manuals, compliance certificates, warranty information and performance records, in a manner that conforms with the requirements of the Public Records Act and that is compatible with MSD's systems;
- (b) administer plans of the Properties to help capture physical changes occurring to the Properties, including new builds, refurbishments, additions, re-designs, reconfigurations, asset commissions and decommissions;
- (c) maintain a common standard of layering, symbols and measurement, including gross and net internal areas;
- (d) ensure suitable document management practices are in place, including maintaining any information relevant to asset management;
- (e) maintain all asset and property data relating to the Properties;
- (f) maintain performance and operating logbooks for all assets;
- (g) ensure that Performance Data is not amended, deleted or destroyed unless prior written authorisation is provided by MSD's Representative and, where such authorisation is provided, the Provider must prepare, record and retain:
 - (i) details of the unamended item of Performance Data;

- (ii) the exact nature and impact of the amendment, deletion or destruction;
 - (iii) details of the item of Performance Data amended, deleted or destroyed;
 - (iv) the reason given for the amendment, deletion or destruction;
 - (v) the date and time of the amendment, deletion or destruction;
 - (vi) details of the person who amended, deleted or destroyed the relevant item of Performance Data; and
 - (vii) details of the authorisation of the amendment, deletion or destruction of the relevant item of Performance Data;
- (h) prepare and supply all information reasonably required by MSD or any person, firm, Governmental Entity or other body to whom MSD is obliged to present information at any time in relation to the performance of any of the Property Management Services; and
 - (i) maintain a principal system (or systems) that contain all data and records relating to the Properties, including all asset information, systems and processes, performance results, asset performance data, historical information, warranties, manuals, details of monitoring compliance with any Consents, all Helpdesk records and all job logs. The Provider shall provide to MSD, within two Business Days of request by MSD, a true, accurate and complete copy of any data, records or other information MSD requests from time to time.

15.2 Delivery Proposals

Commercial Sensitivity

Part 6 – Helpdesk and inspections

16. Helpdesk

- (a) The Provider must provide a comprehensive manned Helpdesk in accordance with the requirements of paragraph 1 (Helpdesk) of Schedule 13 (Helpdesk and Availability Requirements).
- (b) The Provider must Respond to, and Permanently Rectify, all Defects in accordance with the requirements set out in Schedule 13 (Helpdesk and Availability Requirements).

17. Inspections

17.1 Property Requirements

- (a) The Provider must ensure that it undertakes a property inspection on each Property not less than once every six months. Each such property inspection must ascertain all visible and notified Defects (including damage). Property inspections may be, but are not required to be, undertaken at the same time as the tenancy elements of a Tenancy Inspection are undertaken in accordance with Schedule 7 (Tenancy Management Requirements).
- (b) Immediately on completion of each tenancy element and each property inspection element of a Tenancy Inspection, the Provider must log with the Helpdesk any Defects or

other Jobs relating to that Property or a Tenant that require rectification by, or attention from, the Provider.

17.2 Delivery Proposals

Commercial Sensitivity

Annexure: Remediation Plan

1. Initial Remediation Plan

The Remediation Plan as appended to this Annexure is the Remediation Plan with effect from the Execution Date. This Remediation Plan includes all Defects that are expected to exist in the Properties as at Financial Close from the following parts of the Tenant impact and cost matrix categories in the Defect Priority Framework:

- (a) Legislative / Property COR requirements; and
- (b) Category 1: major cost, low impact.

2. Ability to request an update to the Remediation Plan

- (a) The Provider may, within nine months of Financial Close, submit a written request to MSD to update the Remediation Plan that was appended to this Annexure as at the Execution Date (**Original Remediation Plan**), with an updated Remediation Plan. Such request must be accompanied by:
 - (i) a description of the Defects in the Original Remediation Plan that the Provider would like to substitute with different Defects that it has identified from undertaking inspections as existing in the Properties;
 - (ii) visual evidence of the Defects in the Properties that the Provider wishes to substitute;
 - (iii) an estimate of the cost of repairing the proposed substitute Defects; and
 - (iv) an estimate of the cost of repairing the Defects that the Provider no longer wishes to repair and therefore wishes to substitute,
 (the **Remediation Plan Request**).
- (b) The Provider must not submit a Remediation Plan request to MSD:
 - (i) if the estimated cost of repairing the proposed substitute Defects is less than the estimated cost of repairing the original Defects in the Original Remediation Plan that the provider wishes to substitute out;
 - (ii) if the proposed substitute Defects are defects that are covered by a Vendor Retained Risk Claim; and/or
 - (iii) if the Provider is proposing a longer timeframe in which to complete the Remediation Works (including in respect of the proposed substitute Defects) that the timeframe for completing Remediation Works as outlined in the Original Remediation Plan.
- (c) The Provider may only submit one Remediation Plan Request to MSD.

3. MSD consideration of Remediation Plan Request

- (a) Within one month of receipt of a Remediation Plan Request, MSD shall, acting reasonably, confirm to the Provider whether it accepts the proposed substitutions of Defects, and if MSD does so approve the substitution of Defects in the Remediation Plan,

the parties shall enter into a variation to record such agreement, including by appending a replacement Remediation Plan which will replace the Original Remediation Plan.

- (b) Any variation under paragraph 3(b) of this Annexure will only be effective if it complies with clause 37 (Variations to Agreement) of the Base Agreement.
- (c) Where MSD does not give its approval within one month under paragraph 3(a) of this Annexure, MSD shall be deemed to have declined to accept the changes and the Original Remediation Plan shall continue to apply as the Remediation Plan for the purpose of this Agreement.
- (d) MSD may not reject a request to substitute a Defect with another Defect where the original Defect had previously been rectified by HNZ.

Schedule 7: Tenancy Management Requirements

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Schedule 7: Tenancy Management Requirements

Part 1 – General provisions

1. Interpretation

1.1 Compliance with Tenancy Management Requirements and Delivery Proposals

- (a) The Provider must comply with every paragraph of this Schedule 7.
- (b) With respect to Part 3 (Tenancy services), the Provider must comply with all “Tenancy Management Requirements” and all “Delivery Proposals” set out in Part 3 (Tenancy services).
- (c) In all other parts of this Agreement, reference to Tenancy Management Requirements is to the entirety of this Schedule 7. The distinction within this Schedule 7 between Tenancy Management Requirements and Delivery Proposals is solely to set priority in the case of conflict between the Provider’s obligations.
- (d) In the case of any inconsistency, the requirement to comply with the Tenancy Management Requirements prevails over compliance with the Delivery Proposals.
- (e) For the avoidance of doubt, compliance with the Delivery Proposals but not with the Tenancy Management Requirements constitutes a breach by the Provider of the Tenancy Management Requirements.

1.2 Additional compliance obligations

In relation to all Tenancy Management Requirements set out in this Schedule 7, the Provider must comply with the requirements of the following when satisfying the Tenancy Management Requirements:

- (a) the Residential Tenancies Act, the HRTM Act, the Privacy Act 1993, the Human Rights Act 1993 and all other Laws;
- (b) the Tenancy Agreement between the Provider and the relevant Tenant; and
- (c) the Policy and Procedures Manual.

1.3 MSD Social Housing Client System

Where this Schedule 7 refers to receipt of a notice or request and that notice or request is made through the MSD Social Housing Client System, receipt will be taken to mean the date and time on which the MSD Social Housing Client System logs the notice or request as having been received into the MSD Social Housing Client System.

1.4 Tenant Placement Policy

Where this Schedule 7 refers to the Provider selecting, placing or offering a Property to a Social Housing Client or Tenant in accordance or consistently with the Tenant Placement Policy, the Provider will, where MSD has directed the Provider to select Social Housing Clients or Tenants (as applicable) in the order of the Priority Rating assigned to the Social Housing Client or Tenant by MSD, act in accordance with MSD’s direction and, if the Provider wishes to depart from MSD’s direction, it must have MSD’s prior written consent to do so. Such MSD direction may require the Provider to select and make offers of Properties to Social Housing Clients and

Tenants in accordance with the Priority Ratings assigned by MSD (unless otherwise expressly agreed by MSD), instead of in accordance with the relevant part of the Tenant Placement Policy that deals with placing and offering a Property to a Social Housing Client or Tenant.

1.5 Performance of Tenancy Management Services

In performing the Tenancy Management Services, the Provider will:

- (a) take appropriate measures to ensure that Tenancy Managers working alone do not enter into situations that endanger their safety and that they have a means of seeking help;
- (b) ensure that Tenancy Managers entering into Properties where there is a known risk of aggressive or violent behaviour, have additional support (for example, the support of an additional colleague or the New Zealand Police);
- (c) ensure that each Tenancy Manager holds a recently issued first aid certificate;
- (d) have in place and implement specific Tauranga organisational structures, policy, procedures and processes that are specifically targeted to achieve legal compliance and positive Tenant and community outcomes;
- (e) draw upon and implement best practice guidance that is available in the social housing market from time to time during the Contract Term where this does not conflict with other requirements in this Agreement, including, as applicable:
 - (i) Community Housing Aotearoa's Best Practice Guide for Community Housing in New Zealand;
 - (ii) practices necessary to meet the Regulatory Authority's standards that must be met to maintain registration as a Class 1 Social Landlord;
 - (iii) encouraging and supporting the Provider's staff to complete the certified housing professional certificate with the Australasian Housing Institute; and
 - (iv) OGC guidelines for business practices and project activities;
- (f)

Commercial Sensitivity
- (g) allocate Tenants amongst Tenancy Managers such that those Tenancy Managers dealing with Tenants who create a higher workload for the Tenancy Manager, have the number of Tenants they look after adjusted accordingly;
- (h) encourage Tenancy Managers to be proactive and take the initiative to make decisions that improve Tenant outcomes;
- (i) ensure that its Tenancy Managers are well trained, well supported and have a portfolio size that ensures that they are able to perform their Tenancy duties proactively;
- (j)

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[Redacted]

(k)

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- (l) run an ongoing training programme to ensure that Tenancy Managers are continually up-to-date with new compliance requirements, continuous improvement initiatives and best practice; and

(m)

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[Redacted]

Part 2 – Tenanting Vacant Properties process and notifications

2. Tenanting Vacant Properties

The Provider will follow the process set out in Annexure 2 (Tenanting Vacant Properties process) to this Schedule 7 where a Property is soon to become Vacant.

3. Tenant placement principle

- (a) The Provider acknowledges and agrees that the overriding principle that applies to the Provider's selection and placement of a Social Housing Client in a Property is that:
 - (i) Properties must be allocated fairly and transparently and on the basis of need, balanced with achieving a sustainable match, taking into account specific characteristics of the Social Housing Client or Tenant (as applicable) and the neighbourhood; and
 - (ii) when referral preferences are specified by a Social Housing Client or Tenant (as applicable), there must be clear benefits for the Social Housing Client or Tenant and other groups of Tenants or Social Housing Clients must not be unreasonably disadvantaged.
- (b) The Provider must implement and must be seen to be implementing this overriding principle through all steps taken by the Provider in the Tenanting Vacant Properties process as outlined in Annexure 3 (Tenanting Vacant Properties process) to this Schedule 7 and when undertaking Tenant transfers in accordance with paragraph 21 (Tenant transfers) even where the MSD Social Housing Client System may include capability that allows the Provider to do otherwise, including:
 - (i) through the information it provides to MSD in order to receive a Shortlist of Suitable Social Housing Clients (for example, by not being selective about tenant characteristics the Provider is looking for, unless there is a good reason to do so based on the needs of the prospective Tenant);
 - (ii) by limiting the number of Shortlists it utilises (and requests, including through refreshing shortlists) when selecting and making offers to Suitable Social Housing Clients;
 - (iii) by limiting the circumstances in which the Provider decides that a Social Housing Client is unsuitable for a Property (which should usually be based on the needs of the Social Housing Client and only in extreme circumstances, on the behaviour or risk factors of a Social Housing Client); and
 - (iv) in circumstances where the Provider is permitted under this Schedule 7 to add a Tenant to a Shortlist, by appropriately adding Tenants who wish to transfer to a new Property or who the Provider wishes to transfer to a new Property for reasons relating to a Tenant change in circumstances, as an identified suitable client to a Shortlist, and when considering that Tenant against other Social Housing Clients on the Shortlist,

and the Provider must also give effect to this principle through the Provider's Tenant Placement Policy.
- (c) In order to demonstrate compliance with this overriding Tenant placement principle, the Provider must:
 - (i) maintain a written record that outlines:

- (A) why specific preferences identified on a Shortlist were taken into account by the Provider;
 - (B) why the selected Social Housing Client or Tenant (as applicable) was considered to be the best match for the Property; and
 - (C) why a Social Housing Client or Tenant (as applicable) that had a higher Priority Rating than the Social Housing Client or Tenant selected by the Provider, was not selected instead; and
- (ii) make such written records available to MSD upon request, and when MSD is undertaking an audit of the Provider in accordance with clause 26.3 (Audits) of the Base Agreement.

4. No reliance on risk ratings or other information

Without limiting sections 103(4) and 106(4) of the HRTM Act, the Provider acknowledges that information provided by MSD in any Initial Shortlist or Refreshed Shortlist, including information about risk ratings assigned to Social Housing Clients, is not definitive. To the extent permitted by law, the Provider releases MSD from all liability and Losses suffered by the Provider, and must ensure that no claim is brought against MSD by any Sub-contractor or Provider Personnel, in respect of any liability or Losses arising out of or in connection with:

- (a) any information provided by MSD to the Provider, including any risk rating assigned to a Social Housing Client; or
- (b) any inaccuracy in the information provided by MSD, including MSD's assignment of the appropriate risk rating for a Social Housing Client.

5. Tenant and tenancy changes and notification requirements

The Provider will comply with the notification requirements set out in Annexure 3 (Tenant and Tenancy changes and notifications) to this Schedule 7 in relation to Tenants and Tenancies.

6. Changes to requirements in Schedule 7

6.1 Use of Tenancy Requirements Change Process

- (a) Where MSD wishes to make a Change to any provision in this Schedule 7, including the amendment of any existing provision or the addition of a new tenancy management requirement, MSD may submit that Change through the process outlined in paragraph 6.2 (the **Tenancy Requirements Change Process (MSD)**) instead of through the Change process in Part 8 (Changes) of the Base Agreement.
- (b) Where the Provider wishes to make a Change to any provision in this Schedule 7, the Provider may, in the first instance, submit that Change through the process outlined in paragraph 6.3 (the **Tenancy Requirements Change Process (Provider)**) instead of through the Change process in Part 8 (Changes) of the Base Agreement.

6.2 Tenancy Requirements Change Process (MSD)

- (a) Where MSD wishes to make a Change to any provision in this Schedule 7, including the amendment of any existing provision or the addition of a new tenancy management requirement, MSD may give written notice to the Provider of the Change (a **MSD Schedule 7 Change Notice**) specifying:

- (i) the details of the Change;
 - (ii) the date upon which the Change will take effect;
 - (iii) at MSD's absolute discretion, details of any Additional Payment that MSD proposes to make to the Provider in recognition of any additional cost and expense that the Provider would reasonably incur in implementing the Change; and
 - (iv) if MSD is proposing to make an Additional Payment to the Provider in respect of the Change, details of how the Additional Payment will be made and whether the Additional Payment is a one-off payment or a reoccurring payment.
- (b) Subject to paragraphs 6.2(c) and 6.2(d), the Provider must implement the Change in accordance with the MSD Schedule 7 Change Notice provided by MSD and this Schedule 7 will be deemed to have been amended in accordance with the terms of the MSD Schedule 7 Change Notice unless that Change (if implemented):
- (i) would require the Services to be performed by the Provider in a way that infringes any Law;
 - (ii) would be inconsistent with Good Industry Practice;
 - (iii) would materially and adversely affect the health and safety of any person residing in or working on the Properties; or
 - (iv) would cause any existing Insurance Policy to become void or voidable.
- (c) The Provider must provide MSD with written notice of its refusal of a MSD Schedule 7 Change Notice on one or more of the grounds specified in paragraph 6.2(b) within five Business Days of its receipt of the relevant MSD Schedule 7 Change Notice issued in accordance with paragraph 6.2(a). The Provider's notice must set out the reason or reasons for such refusal and provide all supporting documentation (including copies of all relevant legal or professional assessments) that the Provider contends support its refusal of the MSD Schedule 7 Change Notice. If MSD disputes the Provider's ground(s) for refusal, then MSD may refer the Dispute to Expert Determination for resolution.
- (d) Where MSD provides the Provider with a MSD Schedule 7 Change Notice and the effect of the MSD Schedule 7 Change Notice is:
- (i) that implementing the Change would result in an additional cost to the Provider to implement the Change which cannot be reasonably absorbed by the Provider from within its existing Provider Personnel resources and the Provider considers that any Additional Payment is not sufficient to compensate the Provider for the additional costs it will incur; or
 - (ii) the Change would materially affect the Provider's performance of its other obligations under this Agreement or materially affect its rights under this Agreement,

then the Provider may provide notice to MSD that it disagrees that the Tenancy Requirements Change Process (MSD) should be used to effect the Change, and may require the Change to be subject to the Change procedures in Part 8 (Changes) of the Base Agreement. Any notice to be given by the Provider under this paragraph 6.2(d) must be given within five Business Days of receipt of the Schedule 7 Change Notice and accompanied by a Change Proposal, otherwise the Provider will be deemed to have accepted the terms of the MSD Schedule 7 Change Notice.

- (e) Notwithstanding anything to the contrary in clause 35.7 (Provider's Costs) of the Base Agreement, MSD will not incur any liability in respect of any costs and expenses incurred by the Provider, any Provider Personnel or any other person in connection with the

preparation, processing and approval of any Change Proposal submitted in accordance with paragraph 6.2(d), including where MSD rejects the Change Proposal and the Change is deemed to be withdrawn.

6.3 Tenancy Requirements Change Process (Provider)

- (a) Where the Provider wishes to make a Change to any provision in this Schedule 7, the Provider may give written notice to MSD of the Change (a **Provider Schedule 7 Change Notice**) specifying:
 - (i) the details of the Change; and
 - (ii) the proposed date upon which the Change will take effect.
- (b) Following receipt of a Provider Schedule 7 Change Notice, MSD will notify the Provider whether it (at its absolute discretion):
 - (i) accepts the Provider Schedule 7 Change Notice, in which case it will countersign the Provider Schedule 7 Change Notice and return this to the Provider to evidence MSD's acceptance and such counter-signed Provider Schedule 7 Change Notice will be deemed to have amended this Schedule 7 in accordance with its terms;
 - (ii) wishes to negotiate the Provider Schedule 7 Change Notice, in which case the parties must, as soon as practicable (and in any event within five Business Days) after MSD notifies the Provider of its desire to negotiate the Provider Schedule 7 Change Notice, meet and use their best endeavours to agree the terms of the Change; or
 - (iii) rejects the Provider Schedule 7 Change Notice, in which case the Provider may then elect to submit a full Provider-initiated Change Proposal under Part 8 (Changes) of the Base Agreement in respect of that Change,

and where MSD has not responded to the Provider Schedule 7 Change Notice within five Business Days of the Provider giving the Provider Schedule 7 Change Notice to MSD, MSD will be deemed to have rejected the Provider Schedule 7 Change Notice under paragraph 6.3(b)(iii).

Part 3 – Tenancy services

7. Collecting and depositing Bond Amount

7.1 Tenancy Management Requirements

- (a) The Provider shall collect the Bond Amount (or the relevant part of the Bond Amount, as applicable):
 - (i) from the Tenant, except where MSD has confirmed to the Provider that it will be providing any or all financial assistance to the Tenant in respect of the payment of the Bond Amount; and/or
 - (ii) from MSD, where MSD has confirmed that it will be providing all or some financial assistance to the Tenant in respect of the payment of the Bond Amount.
- (b) For the purpose of paragraph 7.1(a)(ii), the Provider will comply with any reasonable request from MSD in regards to the method of payment of such amount, which may include the Provider providing its bank account details to MSD so that such payments can be made by MSD by way of automatic transfer once approved in MSD's payment systems.
- (c) Following receipt of any part of the Bond Amount the Provider must comply with all requirements under the Residential Tenancies Act in relation to that money, including:
 - (i) providing a receipt to the Tenant; and
 - (ii) within the timeframe specified in the Residential Tenancies Act, lodging the received bond money with the relevant agency or person that the Residential Tenancies Act requires residential tenancy bonds to be lodged with (being MBIE as at the Execution Date).
- (d) The Provider must retain proper business records of the bond monies received, receipted and lodged.

7.2 Delivery Proposal

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8. Rent collection and notifications

8.1 Tenancy Management Requirements

- (a) The Provider will:
 - (i) subject to paragraph 8.1(a)(ii), be responsible for collecting the full Rent Amount payable by the Tenant under the Tenancy Agreement;
 - (ii) be responsible for collecting any Rent Amount (or portion of any Rent Amount) payable by MSD directly to the Provider as satisfaction or part satisfaction of the Rent Amount owing by the relevant Tenant, where MSD has agreed to redirect some or all of a Tenant's MSD benefit payments to the Provider for this purpose;

- (iii) take necessary debt recovery steps in accordance with the Debt Collection Policy where any Rent Amounts (or any other amount that is owing by the Tenant to the Provider) are owing to the Provider in accordance with the terms of the Tenant's Tenancy Agreement, provided that any debt recovery steps taken by the Provider:
 - (A) must not include requesting an additional advance Rent Amount from the Tenant;
 - (B) must not include seeking any damages from the Tenant in respect to any such unpaid Rent Amounts;
 - (C) must not include seizing the Tenant's personal property;
 - (D) must, in the first instance, be undertaken directly by the Provider following up with the Tenant or by seeking and enforcing a mediated order through the Tenancy Tribunal and in all circumstances in accordance with the Debt Collection Policy; and
 - (E) must not include the Provider giving the Tenant a notice that it is terminating the Tenancy unless:
 - (I) the Provider has given notice to MSD, no less than five Business Days in advance of issuing such a notice to the Tenant, that it intends to issue that notice, such notice to MSD to be given in writing to the MSD office in the locality where the Property is located;
 - (II) the Provider has arranged an appointment for the Tenant to meet with that local MSD office to discuss whether financial assistance may be available to the Tenant; and
 - (III) the Provider has notified the Tenant that it intends to shortly issue a notice terminating the Tenancy and has explained to the Tenant that the Provider will (or has, as applicable) contact the MSD office in the locality where the Property is located to arrange an appointment for the Tenant to discuss with MSD whether financial assistance may be available to the Tenant in respect of any overdue Rent Amounts and that the Tenant should attend the appointment, such notice to be given to the Tenant no later than five Business Days in advance of issuing such a notice to the Tenant terminating the Tenancy;
- (iv) notify the Tenant if there is to be any change to his or her Rent Amount, in accordance with the requirements of the Residential Tenancies Act, the HRTM Act and this Agreement. The Provider must not give a Tenant notice that his or her Rent Amount will increase if this would mean that the Rent Amount will exceed the applicable IRR for that Tenant;
- (v) notify MSD through the MSD Social Housing Client System of the amount of Rent Amount arrears owing by the Tenant within one Business Day of receiving a request from MSD for the Provider to notify MSD of such arrears;
- (vi) provide reasonable assistance to MSD in relation to any queries received from MSD in respect of any Rent Amounts that may be in arrears by a Tenant, or any matter relating to a potential refund to be made to a Tenant by MSD; and
- (vii) notify MSD through the MSD Social Housing Client System of any change to a Tenant's Rent Amount within seven Business Days prior to the effective date of that change where the Rent Amount will increase or as soon as reasonably practicable where the Rent Amount will decrease.

- (b) The Provider must not request any payment from a Tenant in respect of any matter relating to the Tenancy other than:
- (i) the Rent Amount (which must not exceed the IRR);
 - (ii) the one-off Bond Amount and the Rent in Advance Amount;
 - (iii) the actual costs of utilities made available at the Property that are paid for by the Provider excluding, for Existing Tenants, water usage charges that are exclusively attributable to a Tenant's occupation of the Property on the basis of consumption, for which payment from the Existing Tenant must not be sought until otherwise expressly permitted by MSD; and
 - (iv) any amounts that the Provider is lawfully permitted to recover from the Tenant in respect of damage caused by the Tenant to the Property (including any chattels in the Property owned by the Provider).

8.2 Delivery Proposal

Commercial Sensitivity

9. Tenancy Agreement

9.1 Tenancy Management Requirements

The Provider must ensure that a written Tenancy Agreement that:

- (a) meets the requirements of the Residential Tenancies Act;
- (b) provides for a periodic Tenancy (unless MSD has given it prior written approval to the Tenancy being a fixed term Tenancy); and
- (c) complies with the requirements of this Agreement,

is in place between the Provider and the Tenant at all times during the Tenancy.

9.2 Delivery Proposal

Commercial Sensitivity

10. Helpdesk

10.1 Tenancy Management Requirements

- (a) The Provider must maintain a 24/7 manned Helpdesk, with a freephone number for Helpdesk Users to use to access it.
- (b) The Helpdesk must be provided in accordance with paragraph 1 (Helpdesk) of Schedule 13 (Helpdesk and Availability Requirements).

10.2 Delivery Proposal

Commercial Sensitivity

11. Tenancy Inspections

11.1 Tenancy Management Requirements

The Provider must, in accordance with the Tenancy Inspections Policy, take all reasonable steps necessary to complete a minimum of two Tenancy Inspections for each Property every Contract Year. Each Tenancy Inspection must:

- (a) in relation to the Property:
 - (i) check that the Property is in a state of repair that complies with the requirements in Schedule 6 (Property Management Requirements);
 - (ii) ascertain and record all visible and notified Defects (including damage);
 - (iii) check that the Property is in a state of repair that complies with all applicable Laws;
 - (iv) check that all health and safety risks at the Property are being appropriately managed; and
 - (v) check that all smoke alarms in the Property are in good working order; and
- (b) in relation to the Tenancy, undertake the Tenancy-related checks as specified in the Tenancy Inspections Policy,

and, for the avoidance of doubt, the Property element and the Tenancy element of the Tenancy Inspection may be conducted at separate times except that a Tenancy Inspection will not have been completed until both of those elements of the Tenancy Inspection have been completed.

11.2 Delivery Proposal

Commercial Sensitivity

12. Tenant meetings and engagement

12.1 Tenancy Management Requirements

- (a) The Provider must comply with the Tenant Engagement Policy in relation to:
 - (i) handling any request from a Tenant where the Tenant wishes to meet with the Provider, to discuss any issues that have arisen in relation to the Tenancy that the Tenant wishes to discuss with the Provider; and
 - (ii) arranging and facilitating other regular engagement with Tenants that the Provider is required to have with Tenants as required by the Tenant Engagement Policy.

- (b) The Provider must comply with the Complaints and Incidents Policy in relation to handling any complaint received from a Tenant about the Provider or any Provider Personnel.

12.2 Delivery Proposal

Commercial Sensitivity

13. Community links

13.1 Tenancy Management Requirements

Commercial Sensitivity

13.2 Delivery Proposal

Commercial Sensitivity

14. Complaints and incidents

14.1 Tenancy Management Requirements

The Provider must comply with the Tenant Anti-social Behaviour and Damage Policy in relation to responding to and, as applicable, addressing any complaints made, or incidents notified, to the Provider or MSD by a member of the public or a neighbour of a Tenant about the behaviour (including anti-social behaviour) of any:

- (a) Tenant;
- (b) resident of a Property; or
- (c) visitor to a Property.

14.2 Delivery Proposal

Commercial Sensitivity

15. Enforcing maximum occupancy requirements

15.1 Tenancy Management Requirements

- (a) The Provider must take all reasonable steps and otherwise comply with the overcrowding sections of the Tenant Overcrowding and Property Underutilisation Policy to ensure that the maximum occupancy level for a Property is not exceeded. The **Maximum Occupancy Level** for a Property is:
 - (i) subject to paragraph 15.1(a)(ii), the lesser of:
 - (A) two persons for every one bedroom in the Property, plus one person (e.g. if a Property has three bedrooms the Maximum Occupancy Level under this paragraph would be seven persons); and
 - (B) any lower maximum number of occupants specified in the Tenancy Agreement for the Property; and

- (ii) also calculated by applying the following restrictions:
 - (A) children aged 10 years or older should not share a bedroom with a person of the opposite sex;
 - (B) children aged less than 18 years of the same sex may share a bedroom;
 - (C) single adults should have a separate bedroom; and
 - (D) couples (including parents) should share a bedroom but should have a separate bedroom to other persons.
- (b) Where the Provider discovers that the Maximum Occupancy Level for a Property has been and is continuing to be exceeded, the Provider must take appropriate action, including as required by the overcrowding sections of the Tenant Overcrowding and Property Underutilisation Policy, to ensure that the number of persons residing in the Property is brought back in line with the Maximum Occupancy Level for the Property as soon as possible.

15.2 Delivery Proposal

Commercial Sensitivity

16. Subletting

16.1 Tenancy Management Requirements

The Provider must:

- (a) not approve a Tenant subletting a Property to any person; and
- (b) take all reasonable steps to ensure that a Tenant does not sublet a Property to any person.

16.2 Delivery Proposal

Commercial Sensitivity

17. Suspected housing fraud

17.1 Tenancy Management Requirements

The Provider must:

- (a) give written notice to MSD immediately upon the Provider becoming aware of any Suspected Housing Fraud through the contact for reporting suspected housing fraud as provided by MSD from time to time, initially as outlined in paragraph 32 (MSD contacts) and by using the template form for reporting Suspected Housing Fraud as provided by MSD from time to time;
- (b) provide all reasonable assistance and cooperation to MSD in order to assist MSD in any investigation being conducted by MSD into Suspected Housing Fraud;

- (c) acknowledge, in the Provider's Service Records, receipt of any fraud report that MSD makes available to the Provider following its investigations into Suspected Housing Fraud; and
- (d) keep a written record of any actions to be taken by (or confirmation that no action will be taken), and any action that is taken, by the Provider, in response to any fraud report provided by MSD so that MSD can view such record as part of the Provider's Service Records.

17.2 Delivery Proposal

Commercial Sensitivity

18. Child abuse and family violence

18.1 Tenancy Management Requirements

- (a) The Provider must, as a provider of children's services in accordance with the Vulnerable Children Act (in the opinion of the chief executive of MSD):
 - (i) as soon as is practicable, being no later than the date of Financial Close, adopt a child protection policy that complies with the requirements set out in section 19 of the Vulnerable Children Act;
 - (ii) keep that child protection policy under review during the Contract Term in accordance with, and at the frequency required by, section 16(a)(iii) of the Vulnerable Children Act;
 - (iii) make a copy of its child protection policy available to MSD, and provide any updated versions of such policy to MSD during the Contract Term as soon as the policy is updated in final form; and
 - (iv) implement its child protection policy.
- (b) The Provider must inform the appropriate authority (as at the Execution Date, being Child Youth and Family (a service division of MSD) or the New Zealand Police, as applicable) immediately upon the Provider becoming aware of the occurrence or possible occurrence of family violence (no matter how serious) either:
 - (i) at a Property, or that has or may have been inflicted by or on, a Tenant or any other person residing at, or visiting, a Property; or
 - (ii) otherwise notified to the Provider by any person.
- (c) The Provider must provide all reasonable assistance and cooperation to the relevant authority investigating any potential or actual child abuse or family violence that may have occurred, in order to assist that agency with its investigations.

18.2 Delivery Proposal

Commercial Sensitivity

19. Tenant absences

19.1 Tenancy Management Requirements

The Provider must:

- (a) take reasonable steps to ensure that it has received written notice from the Tenant where the Tenant is planning to be absent from the Property it is Tenanted for more than eight weeks; and
- (b) give notice to MSD through the MSD Social Housing Client System, on any such notice received from a Tenant, within one Business Day of receipt of the Tenant notice.

19.2 Delivery Proposal

Commercial Sensitivity

20. Tenant disputes

20.1 Tenancy Management Requirements

Except in the case of Abandonment or a significant irredeemable breach of the Tenancy Agreement or the Residential Tenancies Act (being a significant health and safety breach) by the Tenant, the Provider must act in accordance with the Tenant Disputes Policy to resolve any dispute that arises with the Tenant including taking all necessary steps outlined in the Tenant Disputes Policy before making an application to the Tenancy Tribunal or terminating the Tenancy Agreement.

20.2 Delivery Proposal

Commercial Sensitivity

21. Tenant transfers

21.1 Tenancy Management Requirements

(a) Tenant-initiated transfer

Where a Tenant makes a request of the Provider to transfer to a different Property for any reason, including because of a change in the Tenant's circumstances:

- (i) the Provider must:
 - (A) take all reasonable steps to manage the Tenant's expectations about the prospect of relocation, as the Tenant may not be able to transfer where the Tenant is already suitably housed;
 - (B) before initiating the transfer process, explore all other reasonably viable solutions that could address the Tenant's underlying reason for the Tenant's request to transfer;

- (C) document, in a written form, the Tenant's request to transfer, including the date the request was made and the reason for the request; and
 - (D) ensure that it explains the requirements and rules for the tenant transfer process to the Tenant in a way that reasonably enables the Tenant to understand such requirements;
 - (ii) once the steps outlined in paragraph 21.1(a)(i) have been completed:
 - (A) notify the Tenant of how the Tenant can contact MSD to request a reassessment, so that a needs assessment can be undertaken by MSD in relation to the Tenant;
 - (B) notify the Tenant that where a request is made of MSD by the Tenant, that MSD will conduct a needs assessment to determine whether the Tenant should be placed back on MSD's social housing register for a new Property, and that if the Tenant is placed back on MSD's social housing register there is no guarantee that the Tenant will be first in line to receive the next suitable Property that becomes Vacant, as the Tenant's needs will be considered in light of the needs of other Social Housing Clients that MSD refers to the Provider for such a Vacant Property; and
 - (C) document in written form that the Provider has notified the Tenant how it may contact MSD directly; and
 - (iii) otherwise comply with the parts of the Tenant Transfer Policy that are relevant to Tenant-initiated transfers.
- (b) **Provider-initiated transfer – work to Property and other reasons not connected with a Tenant's change in circumstances**

Where the Provider wishes to transfer a Tenant to another Property and the reason for the proposed transfer is that the Provider wishes to undertake maintenance, redevelopment, refurbishment or reconfiguration of the Property or for any other reason not connected to a Tenant's change in circumstances:

- (i) the proposed transfer must be necessary and desirable;
- (ii) the Provider must identify a suitable alternative Property that is appropriate to the Tenant's housing needs to offer to the Tenant (on a permanent or short-term basis, as applicable). The alternative Property should be as similar to the Property that the Tenant is currently living in as is possible (including the number of bedrooms, the Tenant-specific modifications required, and (within reason) the location of the Property), unless otherwise agreed with MSD (acting reasonably);
- (iii) the Provider must have MSD's prior written consent to undertake the transfer, including MSD's consent to the Property that the Tenant will transfer to;
- (iv) where the work:
 - (A) can be undertaken in the short term (within 120 days), an alternative Property may be made available to the Tenant on a short, fixed-term basis to allow the work to be undertaken before a transfer can occur; and
 - (B) cannot be undertaken in the short term (within 120 days), an alternative Property may be made available to the Tenant on a permanent basis;
- (v) where a transfer is to occur, the Provider is required:

- (A) to act consistently with the Tenant Placement Policy when selecting a new Property for the Tenant to move in to, including ensuring that the needs of any other Social Housing Client on a Shortlist for the proposed Property are taken into account before assigning the Property to the Tenant;
 - (B) to make the Tenant aware of the pending works (if applicable) at the time the Property is offered to the Tenant (if known at that time), or as soon as possible once pending works are decided;
 - (C) to outline the options available to the Tenant in the circumstances (such as the Tenant returning to the same Property after the works (if applicable) have been completed or transferring permanently to a new Property);
 - (D) to make an offer of a new Property to the Tenant (on a permanent or short-term basis, as applicable), in writing. This notice must clearly specify whether the new Property is a temporary or permanent solution;
 - (E) to arrange (at the Provider's cost) for the Tenant to view the new Property before the Tenant makes a decision on whether to accept the Provider's offer;
 - (F) if the Tenant accepts the Provider's offer or if the Tenant does not accept the Provider's offer but the Provider otherwise exercises any rights it has in accordance with the HRTM Act and the Residential Tenancies Act to require the Tenant to move to an alternative Property, to arrange for (and pay for all reasonable costs associated with) the Tenant to be relocated to the new Property. Such costs include reasonable moving costs and costs associated with disconnecting and arranging a new connection of telephone, power and gas;
 - (G) where the Tenant is to return to the original Property once work on that original Property has been completed, when it is time for the Tenant to move back to the original Property, to arrange for (and pay for all reasonable costs associated with) the Tenant relocating back to the original Property. Such costs include reasonable moving costs and costs associated with disconnecting and arranging a new connection of telephone, power and gas; and
 - (H) notify MSD of the transfer having occurred through the MSD Social Housing Client System; and
- (vi) the Provider must otherwise comply with the parts of the Tenant Transfer Policy that are relevant to Provider-initiated transfers,

and for the avoidance of doubt, this paragraph 21.1(b) shall continue to apply even if the Provider discovers, once it has commenced the process of deciding to initiate a Provider-initiated transfer under this paragraph, that the Tenant has also had a change in circumstances.

(c) Provider-initiated transfer – change in Tenant circumstances

Where the Provider wishes to transfer a Tenant to another Property for reasons relating to a change in circumstances of the Tenant:

- (i) the Provider must give notice to MSD of this change in accordance with paragraph 2 (Change in Tenant's circumstances affecting housing need) of Annexure 3 (Tenant and Tenancy changes and notifications) to this Schedule 7 so that MSD can reassess the Tenant's needs;

- (ii) following MSD's reassessment of the Tenant's housing needs, if the Provider wishes to transfer the Tenant to a different Property, the Provider:
 - (A) shall facilitate the transfer by placing the Tenant on future Shortlists for Vacant Properties that are appropriate to the Tenant's housing needs as a Provider-identified suitable Social Housing Client;
 - (B) shall assess that Tenant's suitability to be selected for placement in a Vacant Property against the needs of other Social Housing Clients on the Shortlist for that Property in accordance with the Tenant Placement Policy; and
 - (C) otherwise apply the process in Annexure 2 (Tenancing Vacant Properties process) to this Schedule 7, where that Tenant is to be offered a different Property;
 - (iii) the Provider must have MSD's prior written consent to undertake the transfer, including MSD's consent to the Property that the Tenant will transfer to; and
 - (iv) the Provider must otherwise comply with the parts of the Tenant Transfer Policy that are relevant to Provider-initiated transfers.
- (d) **Transfer to another community housing provider**

The Provider must not transfer a Tenant to a property owned or managed by someone other than the Provider without MSD's prior written consent, such consent being given or not given at MSD's absolute discretion. MSD's consent may be given subject to any conditions MSD thinks fit.

21.2 Delivery Proposal

Commercial Sensitivity

22. Managing join-ins

22.1 Tenancy Management Requirements

- (a) The Provider must, when it receives a Join-in Request from a Tenant:
 - (i) consider the Join-in Request;
 - (ii) consider whether the Join-in Request, if granted, would pose any safety risk to MSD, the Provider or the local community;
 - (iii) consider whether the Join-in Request, if granted, would give rise to any overcrowding issues. For the purpose of this paragraph 22.1(a)(iii), if the Maximum Occupancy Level for the Property would be exceeded if the Join-in Request was granted, this is deemed to be an overcrowding issue and the Join-in Request must be declined;
 - (iv) decide, after considering the matters outlined in paragraphs 22.1(a)(i), 22.1(a)(ii) and 22.1(a)(iii), whether it agrees to the Join-in Request and notify the Tenant of the outcome and next steps; and
 - (v) if the Provider agrees to the Join-in Request, refer the Join-in Request to MSD through the MSD Social Housing Client System for assessment and a decision as to whether to approve the Join-in Request.

- (b) Where the Provider has referred a Join-in Request to MSD in accordance with paragraph 22.1(a)(v) and MSD:
 - (i) approves the Join-in Request, the Provider will:
 - (A) amend the Tenancy Agreement to add the name of the new Tenant; and
 - (B) within one Business Day of the Tenancy Agreement being amended to add the name of a new Tenant, notify MSD, through the MSD Social Housing Client System; or
 - (ii) does not approve the Join-in Request, the Provider will notify the Tenant of this decision and must not amend the Tenant's existing Tenancy Agreement to add the name of any new tenant.
- (c) Where the Provider does not agree to the Join-in Request or MSD does not approve the Join-in Request, the Provider may consider utilising the Tenant transfer process in accordance with paragraph 21 (Tenant transfers).
- (d) The Provider must make any MSD policy on join-ins that MSD provides to the Provider from time to time, freely and easily available to all Tenants.

22.2 Delivery Proposal

Commercial Sensitivity

23. Tenancy releases

23.1 Tenancy Management Requirements

Where a Tenant wishes to be released from a Joint Tenancy:

- (a) a release shall only occur if the Provider consents. However, the Provider must not withhold its consent unless there are genuine reasons that warrant refusing consent;
- (b) the Provider shall not, unless exceptional circumstances apply (such as Suspected Housing Fraud), refuse to give consent on the basis that the Tenant that is requesting to be released from the Joint Tenancy intends to remain living in the Property as an additional occupant;
- (c) the Provider must, if a person is released from being a Tenant under a Joint Tenancy and they will continue to remain living in the Property, advise that person that they will no longer enjoy the rights that come with being a Tenant (for example, that they will only be able to remain living in the Property for so long as the remaining Tenant(s) consents and will have no right to remain living in the Property if the remaining Tenant(s) die); and
- (d) the Provider must, where it has agreed to release a person from a Joint Tenancy, notify MSD of the release through the MSD Social Housing Client System, within three Business Days of such release taking effect.

23.2 Delivery Proposal

Commercial Sensitivity

24. Death of Tenant

24.1 Tenancy Management Requirements

- (a) Where a Joint Tenancy is in place and one Tenant passes away, the Provider must:
 - (i) where the Provider is advised of the death by a remaining Tenant, or has received notification of the death from MSD, the Provider must allow one week to pass from the date of receiving such notice (whichever notice is provided earlier) before contacting the remaining Tenant(s), except in cases of emergency;
 - (ii) unless MSD has been the one to notify the Provider of the death, provide notice to MSD of the death within one Business Day of becoming aware of the death; and
 - (iii) where the Property may no longer be suitable for the remaining Tenant(s) as a result of the death of one of the Tenants:
 - (A) notify MSD of this fact in accordance with paragraph 1 (Change in Tenant's circumstances affecting IRR) and/or paragraph 2 (Change in Tenant's circumstances affecting housing need) of Annexure 3 (Tenant and Tenancy changes and notifications) to this Schedule 7 (as applicable); and/or
 - (B) consider utilising the Tenant transfer process in accordance with paragraph 21 (Tenant transfers).
- (b) Where a Sole Tenancy is in place and the Tenant passes away, the Provider:
 - (i) must, if the Tenant's personal representative or next of kin has not already notified the Provider of the death of the Tenant, within 10 Business Days of the death of the Tenant, contact the next of kin or personal representative of the deceased Tenant for the purpose of attempting to agree a date (within 21 days of when such contact is made) by when the Property will be vacated;
 - (ii) must, if agreement cannot be reached with the next of kin or personal representative of the Tenant when contact is first made or attempted to be made under paragraph 24.1(b)(i):
 - (A) immediately give written notice to the next of kin or personal representative of the Tenant that the Property must be vacated, prior to the Tenancy Agreement terminating (such date to be determined under the Residential Tenancies Act); or
 - (B) if notice under paragraph 24.1(b)(ii)(A) cannot be given for any reason, the Provider must immediately apply to the Tenancy Tribunal for an order to terminate the Tenancy; and
 - (iii) is responsible for continuing to collect the Rent Amounts from the deceased's estate until the Tenancy Agreement terminates.

24.2 Delivery Proposal

Commercial Sensitivity

25. Terminating Tenancy

25.1 Tenancy Management Requirements

The Provider must, when a Tenancy is terminating:

- (a) for any reason other than because the Provider has received a notice from MSD in accordance with paragraph 3(a) (Tenancy review and ineligibility of Tenant as Social Housing Client) of Annexure 3 (Tenant and Tenancy changes and notifications) to this Schedule 7, discuss with the Tenant the possibility that MSD may consider the Tenant to no longer be eligible to be a Social Housing Client and may not be re-listed by MSD on its social housing register;
- (b) if appropriate, provide the Tenant with a Statement of Satisfactory Tenancy;
- (c) undertake an inspection of the Property and complete a Property Condition Report; and
- (d) give notice to MSD in accordance with paragraph 8 (Notifying MSD of terminating Tenancy) of Annexure 3 (Tenant and Tenancy changes and notifications) to this Schedule 7.

25.2 Delivery Proposal

Commercial Sensitivity

26. Abandoned Tenancies

26.1 Tenancy Management Requirements

Where there has been an Abandonment of a Property, the Provider must ensure that the Property is Vacant from the earlier of the date upon which a possession order (as defined in the Residential Tenancies Act) is granted, or would reasonably have been granted by the Tenancy Tribunal had the Provider applied to the Tenancy Tribunal for an order pursuant to section 61(1) of the Residential Tenancies Act as soon as the Provider had become aware, or ought reasonably to have become aware, of the Abandonment.

26.2 Delivery Proposal

Commercial Sensitivity

27. Family Services Directory

27.1 Tenancy Management Requirements

The Provider will ensure that it is listed in MSD's Family Services Directory (<http://www.familyservices.govt.nz/directory>) and that the "Necessary Information" is updated whenever such information changes.

27.2 Delivery Proposal

Commercial Sensitivity

28. Tenancy reviews

28.1 Tenancy Management Requirements

- (a) The Provider will provide reasonable assistance to MSD in relation to any tenancy review being conducted by MSD to confirm whether a Tenant has had a change in circumstances that warrants a change to the Tenant's eligibility for social housing. Such reasonable assistance includes:
 - (i) providing relevant information about a Tenant or a Tenancy to MSD; and
 - (ii) responding to MSD's reasonable queries about a Tenant or a Tenancy.
- (b) The Provider shall keep a record, as part of its Service Records, of:
 - (i) any tenancy review outcome or report about a Tenant that is notified or made available to the Provider by MSD; and
 - (ii) any action that the Provider takes in respect of a Tenancy as a result of the information provided by MSD following its completion of a tenancy review.

28.2 Delivery Proposal

Commercial Sensitivity

Part 4 – Systems

29. General responsibilities

The Provider:

- (a) is responsible for ensuring that the Provider's information technology systems and relevant Provider Personnel can access any MSD Social Housing Client System that is able to be accessed over the internet, including by ensuring that the Provider or relevant Provider Personnel have established any access account needed to access the MSD Social Housing Client System (for example, a RealMe account);
- (b) must ensure the integrity and security of the Provider's information technology system and network communications (including all software, services and hardware);
- (c) must exercise all due care in the access to and use of the MSD Social Housing Client System;
- (d) must access and use the MSD Social Housing Client System only for lawful purposes and in accordance with all access and security restrictions that apply to the MSD Social Housing Client System, and all applicable Laws;
- (e) must ensure that Provider Personnel that use the MSD Social Housing Client System are sufficiently trained and only have access to the MSD Social Housing Client System to the extent required to perform their duties;
- (f) must comply with any instructions with respect to accessing and using the MSD Social Housing Client System notified to the Provider from time to time, including with respect to MSD's user policies, privacy and security procedures;
- (g) must immediately notify MSD of any problems or issues that arise in relation to the MSD Social Housing Client System; and
- (h) comply with clause 44.2(e) of the Base Agreement in relation to de-provisioning an individual's MSD Social Housing Client System user account login when that individual ceases to be Provider Personnel.

30. Maintenance and support

- (a) The Provider acknowledges that MSD and/or its suppliers may, from time to time, make MSD's primary MSD Social Housing Client System unavailable for certain periods of time in order to conduct repairs to, or maintain, replace, upgrade, or inspect the MSD Social Housing Client System. The Provider acknowledges and agrees that some or all of MSD's primary MSD Social Housing Client System will be unavailable during any period of maintenance and that the Provider may be asked to utilise MSD's secondary back-up MSD Social Housing Client System during this period of unavailability.
- (b) The Provider agrees that paragraph 30(a) does not prejudice or derogate from the Provider's rights or obligations under this Agreement (including to any extension that the Provider may be entitled to where MSD has failed to comply with its obligations under this Agreement).

31. Training

The Provider will be responsible for providing or arranging for the provision by MSD of all required training to Provider Personnel in respect of the MSD Social Housing Client System to the extent required for the performance of the Tenancy Management Services.

Part 5 – Operational issues and contacts

32. MSD contacts

Where the Provider encounters any operational issue or has an operational query in relation to the Tenancy Management Requirements, such as an issue with the MSD Social Housing Client System, the Provider should contact the appropriate MSD contact as notified to the Provider from time to time. As at the Agreement Start Date, the contacts for operational issues relating to the Tenancy Management Requirements are:

- (a) for operational queries or assistance relating to the MSD Social Housing Client System:

Contact	Contact details
Centralised Housing Unit	Email: Privacy

- (b) for assistance in relation to any Social Housing Client-focussed MSD processes:

Contact	Contact details
Privacy	Privacy

- (c) to report Suspected Housing Fraud:

Contact	Contact details
MSD (either online or through the allocated phone number).	Online through the applicable page on the MSD website (contact details to report Suspected Housing Fraud are listed on the general contacts page on MSD's website).

- (d) for any other issue or query, the Provider should contact MSD's Representative.

Annexure 1: Not used

Annexure 2: Tenanting Vacant Properties process

1. Notifying MSD of impending Vacancy

1.1 Issuing Vacancy Notice

No later than 15 Business Days before any Property is due to become Vacant (or the day that a possession order (as defined in the Residential Tenancies Act) is granted by the Tenancy Tribunal as a result of an Abandonment of a Property), the Provider will notify MSD, in writing through the MSD Social Housing Client System, of the impending or actual Vacancy (a **Vacancy Notice**). The Vacancy Notice must specify the Property to which the Vacancy Notice relates, the date that the Property is due to become Vacant and must contain the other information required by paragraph 1.2 of this Annexure 2.

1.2 Contents of Vacancy Notice

A Vacancy Notice provided in accordance with paragraph 1.1 of this Annexure 2 must set out as much detail as possible about the Property that will become Vacant in order to assist MSD in identifying a shortlist of Suitable Social Housing Clients. The Vacancy Notice must be accurate and must include, but is not limited to, the following information:

- (a) the reference for the Property, including (until no longer required by MSD) the required prefix supplied by MSD;
- (b) the date that the Property will be Vacant;
- (c) population of the 'market rent' field with the Agreed Rent in the MSD Social Housing Client System for the Property;
- (d) physical details of the Property (such as number of bedrooms, parking, insulation, heating, double glazing, etc.);
- (e) access and layout (such as whether the Property has multiple floors);
- (f) special features of the Property (such as wheelchair access, disability modifications for bathrooms, kitchens etc.);
- (g) address and location of the Property (such as proximity to busy roads, public walkways, social services, shops, schools, public transport, unfenced waterways (rivers etc.)); and
- (h) only, in limited circumstances and in accordance with the overriding principle in paragraph 3 (Tenant placement principle) of this Schedule 7, preferred tenant characteristics.

2. Using Initial Shortlist to select Suitable Social Housing Clients

2.1 Initial Shortlist

- (a) Within one Business Day following receipt of a Vacancy Notice, MSD will provide the Provider with a shortlist of up to 15 Suitable Social Housing Clients through the MSD Social Housing Client System (**Initial Shortlist**). The Initial Shortlist will identify:
 - (i) names and date of birth of all applicable persons (applicants);

- (ii) names and date of birth of all household members included in each Social Housing Client's application;
- (iii) number of bedrooms required;
- (iv) the Priority Rating for each Social Housing Client including indicating whether a Social Housing Client is a Fast Track Priority Social Housing Client; and
- (v) preferred letting locality areas (i.e. areas where the Social Housing Client needs to live),

and may also identify:

- (vi) a property modification indicator for the Property;
 - (vii) health and disability conditions of the Social Housing Client;
 - (viii) special requirements (e.g., modified housing); and
 - (ix) risk indicators about an individual or household (e.g., aggressive behaviour, etc.).
- (b) When a Vacancy Notice has been provided or after receipt of the Initial Shortlist from MSD, the Provider:
- (i) may, through the MSD Social Housing Client System and before using the Initial Shortlist, but only where permitted by the terms of this Schedule 7 (including the Tenant Placement Policy), add additional names of its own identified suitable Social Housing Clients (being only those Social Housing Clients that are already Tenants of the Provider and who have been referred to MSD for reassessment of their social housing needs) to the Initial Shortlist, and the information set out in paragraph 2.1(a) of this Annexure 2 will be provided by MSD within one Business Day for those additional Social Housing Clients; and
 - (ii) must, at any time where MSD identifies that there is a Social Housing Client in urgent need, add the name of that other Social Housing Client that MSD requests be added as an additional MSD-referred suitable Social Housing Client, to the Vacancy listing or Initial Shortlist, and the information set out in paragraph 2.1(a) of this Annexure 2 will be provided by MSD within one Business Day for those additional Social Housing Clients.
- (c) Where any Initial Shortlist:
- (i) does not identify any Suitable Social Housing Clients to include on an Initial Shortlist; or
 - (ii) is not made available to the Provider in accordance with paragraph 2.1(a) of this Annexure 2, and provided:
 - (A) the Provider has checked the information provided in its original Vacancy Notice and has refreshed this information to limit the number of details provided about the Property to only those mandatory fields required in the MSD Social Housing Client System, and the refreshed Initial Shortlist continues not to identify any Suitable Social Housing Clients;
 - (B) the Provider has followed up with MSD's Representative within two Business Days of the Vacancy Notice being issued to MSD; and
 - (C) an Initial Shortlist has still not been provided by MSD within three Business Days following receipt of a Vacancy Notice,

the Provider will notify MSD in writing through the MSD Social Housing Client System and MSD will contact the Provider to seek any necessary details about the Property vacancy (which the Provider must promptly make available to MSD) and:

- (iii) MSD will provide a manual Shortlist for the Provider's use and the Provider must use this manual Shortlist to fill the Vacant Property; or
- (iv) if MSD is unable to make a manual Shortlist available to the Provider within one Business Day of the Provider giving such notice to MSD, the Provider must then issue a new Vacancy Notice for the Property within the following 10 Business Days, and if the Provider:
 - (A) has complied with this obligation, the Property will be deemed to meet the second limb of the definition of Availability Requirements during this 10 Business Day period and for another 26 Business Days thereafter; or
 - (B) has not complied with this obligation, the Property will be deemed to not meet the definition of Availability Requirements from the date that this 10 Business Day period ends.

2.2 Making Referral Request for Suitable Social Housing Client

- (a) The Provider will use the Initial Shortlist to give suitable priority to those Social Housing Clients that MSD has indicated as being Fast Track Priority Social Housing Clients or who have been assigned a high Priority Rating by MSD and shall otherwise apply the Tenant Placement Policy, for the purpose of selecting one (or in limited circumstances, more than one) Suitable Social Housing Client that it wishes to contact for the purpose of arranging an interview.
- (b) Once the Provider has complied with paragraph 2.2(a) of this Annexure 2 it will notify MSD (through the MSD Social Housing Client System) of which Suitable Social Housing Client(s) the Provider considers to be most suitable and requires further information about in order to make contact with the Suitable Social Housing Client for the purpose of arranging an interview or other meeting (**Referral Request**).
- (c) Within one Business Day of receipt of a Referral Request (or three Business Days where the Provider has made a Referral Request in respect of a Child Sex Offender), MSD will, through the MSD Social Housing Client System, either:
 - (i) make a referral to the Provider enabling the Provider to make contact with that Suitable Social Housing Client (a **Referral**), in which case the following information will be provided by MSD to the Provider:
 - (A) contact information (phone number) for the Suitable Social Housing Client; and
 - (B) the Social Housing Client's provisional IRR; or
 - (ii) decline making a Referral where the Suitable Social Housing Client is no longer a Suitable Social Housing Client.
- (d) Where MSD declines to make a Referral in accordance with paragraph 2.2(c)(ii) of this Annexure 2, the Provider must immediately select another Suitable Social Housing Client from the Initial Shortlist and make a new Referral Request to MSD.
- (e) The Provider must apply the Tenant Placement Policy and must make an offer to a Suitable Social Housing Client within two Business Days of receiving a Referral in respect of that Suitable Social Housing Client. If an offer has not been made within this timeframe, the Provider must notify MSD through the MSD Social Housing Client System and (unless MSD agrees otherwise) make a new Referral Request.

2.3 Making offers to Suitable Social Housing Clients on Initial Shortlist

- (a) Before making an offer of a Property to a Suitable Social Housing Client the Provider must have:
 - (i) matched a Suitable Social Housing Client listed on the Initial Shortlist to the soon to be Vacant Property and received a Referral for that Suitable Social Housing Client;
 - (ii) where the Suitable Social Housing Client is a Child Sex Offender, been given express approval by MSD to house that Social Housing Client in the Property and such approval:
 - (A) will not be given by MSD unless the Department of Corrections, (with the approval of the New Zealand Police, New Zealand Parole Board or similar authority (as applicable)) has given approval; and
 - (B) will be given (or not given as the case may be) by MSD within three Business Days of the Provider making a Referral Request to MSD through the MSD Social Housing Client System. If approval has not been given by MSD within this timeframe, the Provider may assume that approval will not be given by MSD; and
 - (iii) arranged for the Suitable Social Housing Client to have viewed the Property.
- (b) The Provider must, at the time of offering a Property to a Suitable Social Housing Client:
 - (i) give the Suitable Social Housing Client notice that they have 48 hours (or such other longer period as may be approved by MSD in its absolute discretion) to accept or reject the Property from the time that the offer was made, otherwise the Provider will assume that the offer has been declined by the Suitable Social Housing Client; and
 - (ii) notify MSD (through the MSD Social Housing Client System):
 - (A) of which Suitable Social Housing Client from the Initial Shortlist has been offered the Property (the **Offeree**); and
 - (B) of whether the Offeree requires financial assistance from MSD to pay the Bond Amount and the Rent in Advance Amount.
- (c) If the Offeree does not accept the Property (or subsequently withdraws its acceptance of an offer or does not agree to enter into a Tenancy Agreement) within 48 hours of receiving the offer of the Property from the Provider, the Provider must:
 - (i) within one Business Day of the Provider's offer being declined, notify MSD (through the MSD Social Housing Client System) of the offer being declined by an Offeree, including the reason for the Offeree declining; and
 - (ii) unless the Initial Shortlist can no longer be used in accordance with paragraph 2.3(e) of this Annexure 2, offer the Property to another Suitable Social Housing Client on the Initial Shortlist within five Business Days of receiving the notification of rejection from the Offeree.
- (d) If that second offer is also not accepted, the Provider must continue to make offers of the Property to Suitable Social Housing Clients on the Initial Shortlist by completing the steps outlined in paragraphs 2.2, 2.3(a), 2.3(b) and (if applicable) 2.3(c) of this Annexure 2, until an offer is accepted by a Suitable Social Housing Client or an Initial Shortlist is no longer able to be used in accordance with 2.3(e) of this Annexure 2 (whichever is sooner).

- (e) The Initial Shortlist may be used by the Provider for a period of 15 Business Days from the Provider's receipt of the Initial Shortlist. Thereafter, the Provider must not arrange interviews with, or offer a Property to, the Suitable Social Housing Clients on the Initial Shortlist, and paragraph 3 (Using Refreshed Shortlist to select Suitable Social Housing Clients) of this Annexure 2 shall then apply.
- (f) Where the Provider has exhausted making offers to all Suitable Social Housing Clients on the Initial Shortlist but all offers have been declined (and the Provider has notified MSD of the declined offers), withdrawn in accordance with this Agreement, or a Social Housing Client is determined to be genuinely unsuitable by the Provider (as permitted in the Tenant Placement Policy) and has been identified as such in the MSD Social Housing Client System, the Provider shall refresh the Initial Shortlist and continue making offers to the new Suitable Social Housing Clients on the updated Initial Shortlist.

3. Using Refreshed Shortlist to select Suitable Social Housing Clients

3.1 Refreshed Shortlist

- (a) Where no Suitable Social Housing Client listed on the Initial Shortlist has accepted an offer of a Property made by the Provider within 15 Business Days of the Provider's receipt of the Initial Shortlist from MSD, the Provider must, through the MSD Social Housing Client System:
 - (i) review the original information submitted by the Provider about the Property in the Vacancy Notice and update this as required;
 - (ii) identify any Social Housing Client that has rejected a Provider's offer of the Property; and
 - (iii) request a Refreshed Shortlist of Suitable Social Housing Clients from MSD (a **Refreshed Shortlist Request**).

For the avoidance of doubt, the only circumstances in which the Provider may identify a Social Housing Client as being unsuitable through the MSD Social Housing Client System is when the Social Housing Client has previously rejected an offer of the Property made by the Provider, where the Provider has withdrawn an offer of the Property for any reason set out in paragraph 4.1(b) of this Annexure 2, or as permitted in the Tenant Placement Policy.

- (b) Within one Business Day following receipt of a Refreshed Shortlist Request, MSD will provide the Provider with a refreshed shortlist of up to 15 Suitable Social Housing Clients (a **Refreshed Shortlist**). The Refreshed Shortlist will contain the information specified in paragraph 2.1(a) of this Annexure 2 and may contain some or all of the same Suitable Social Housing Clients as were contained on the Initial Shortlist.
- (c) Each Refreshed Shortlist will remain current for 15 Business Days. Thereafter, the Provider must not arrange interviews with, or offer a Property to, the Suitable Social Housing Clients on that Refreshed Shortlist.
- (d) The Provider may request as many Refreshed Shortlists from MSD as required provided that the Provider may only request a Refreshed Shortlist once a previous Refreshed Shortlist is no longer current or the Provider has exhausted the list of names on the Refreshed Shortlist as a result of genuine unsuitability (as permitted in the Tenant Placement Policy) or declined offers or offers withdrawn in accordance with this Agreement. Each Refreshed Shortlist will be provided by MSD within the timeframe specified in paragraph 3.1(b) of this Annexure 2 and will contain the information specified in paragraph 2.1(a) of this Annexure 2.

- (e) The provisions in paragraph 2.1(c) of this Annexure 2 apply in respect of any Refreshed Shortlist, with necessary modifications (such as references to Initial Shortlist being read as Refreshed Shortlist)

3.2 Using Refreshed Shortlists to make offers

- (a) The Provider must use each Refreshed Shortlist to continue to make offers of the Property to Suitable Social Housing Clients on the Refreshed Shortlist by completing the steps outlined in paragraphs 2.2, 2.3(a), 2.3(b) and (if applicable) 2.3(c) of this Annexure 2, until the earlier of the following occurs:
 - (i) an offer is accepted by a Suitable Social Housing Client;
 - (ii) the Refreshed Shortlist is no longer able to be used in accordance with paragraph 3.1(c) of this Annexure 2; or
 - (iii) the Vacancy is withdrawn by the Provider.
- (b) Where the Provider has exhausted making offers to all Suitable Social Housing Clients on a Refreshed Shortlist but all offers have been declined (and the Provider has notified MSD of the declined offers), withdrawn in accordance with this Agreement, or a Social Housing Client is determined to be genuinely unsuitable by the Provider (as permitted in the Tenant Placement Policy) and has been identified as such in the MSD Social Housing Client System and the Provider is still within the 15 Business Day period of receiving a Refreshed Shortlist, the Provider shall refresh the Refreshed Shortlist and continue making offers to the new Suitable Social Housing Clients on the updated Refreshed Shortlist.
- (c) Each Suitable Social Housing Client offered a Property in accordance with this paragraph 3.2 is also an Offeree for the purpose of this Annexure 2.

4. Withdrawing Property offer

4.1 Circumstances where withdrawal of Property offer can occur

The Provider may withdraw (or must withdraw where the Property will not be in a habitable state to be Tenanted when the Property was otherwise due to become Vacant) a Property Vacancy before an offer of a Property is made to a Suitable Social Housing Client, or may withdraw (or must withdraw where the Property will not be in a habitable state to be Tenanted when the Property was otherwise due to become Vacant) a Property Vacancy and/or offer of a Property made to an Offeree before the offer is accepted and a Tenancy Agreement entered into, in any of the following circumstances:

- (a) the offered Property is inadequate for any of the following reasons:
 - (i) the Property has been vandalised;
 - (ii) a health and safety issue is discovered on inspection of the Property;
 - (iii) the Property description was incorrect; or
 - (iv) there is a serious mismatch with the neighbourhood that creates a significant health and safety risk;
- (b) the Offeree is physically unable to accept the offer at this time due to a temporary change of circumstances such as:
 - (i) hospitalisation;

- (ii) custody issues that are in the process of resolution where the timeframe for resolution is unknown; or
- (iii) where there are temporary mobility problems and the Property has stairs or steep slopes,

provided that MSD's written approval is required before a withdrawal may occur as a result of one of the circumstances (or a circumstance similar to those) outlined in this paragraph 4.1(b), such approval may be given in MSD's absolute discretion; or

- (c) the offered Property is no longer available because:
 - (i) the Property has been materially damaged (for example, fire damaged);
 - (ii) it is discovered that there is a cleansing order issued against the Property pursuant to section 41 of the Health Act 1956; or
 - (iii) the Property has already been offered to another Suitable Social Housing Client,

but in no other circumstances.

4.2 Process for withdrawing Property Vacancy and/or offer

- (a) Where the Provider wishes to (or is required to) withdraw an offer of a Property made to an Offeree in accordance with paragraph 4.1 of this Annexure 2, the Provider must give written notice to:
 - (i) the Offeree; and
 - (ii) MSD, through the MSD Social Housing Client System,
 setting out the reasons why the offer of a Property is being withdrawn.
- (b) Where the Provider wishes to (or is required to) withdraw a Property Vacancy in accordance with paragraph 4.1 of this Annexure 2, the Provider must:
 - (i) first, give notice to MSD through the MSD Social Housing Client System that an offer to an Offeree has been withdrawn (only relevant in circumstances where an offer of the Property has been made to an Offeree); and
 - (ii) notify MSD, through the MSD Social Housing Client System of the withdrawal of the Property as being Vacant,

setting out the reasons why the offer of a Property and the Property Vacancy is being withdrawn.

4.3 Consequence where offer withdrawn

Where a Property Vacancy or an offer of a Property is withdrawn:

- (a) for any of the reasons specified in paragraphs 4.1(a)(i), 4.1(a)(ii), 4.1(c)(i) or 4.1(c)(ii) of this Annexure 2, the Property will be deemed to be Unavailable; or
- (b) where paragraph 4.3(a) of this Annexure 2 does not apply, for any of the reasons covered under:
 - (i) paragraphs 4.1(a)(iii), 4.1(a)(iv) or 4.1(b) of this Annexure 2, the Provider must treat this as an offer of a Property declined by a Social Housing Client and must

continue to make offers of the Property to other Suitable Social Housing Clients until an offer is accepted; or

- (ii) paragraph 4.1(c)(iii) of this Annexure 2, the Provider must continue the offer process with that other Suitable Social Housing Client in accordance with Part 2 (Tenancing Vacant Properties process and notifications).

5. Accepting Social Housing Client as Tenant

5.1 Introductory meeting

- (a) Once an Offeree has accepted the Provider's offer of a Property, the Provider must, prior to the Tenancy Start Date, arrange for an introductory meeting to be held with the Offeree where the Provider will:
 - (i) arrange for the Offeree:
 - (A) to inspect the Property to enable the Offeree to view the condition and layout of the Property;
 - (B) to have a walk-through of the Property with a Tenancy Manager with the Tenancy Manager explaining the features of the Property and expectations for upkeep; and
 - (C) to complete, with the Provider, a Property Condition Report for the Property,

either (at the Offeree's election) in person or through the provision by the Provider to the Offeree of current photographs of the Property, prior to the Offeree entering into the Tenancy Agreement;
 - (ii) inform the Offeree of its:
 - (A) responsibilities as a tenant, including its responsibility to make rental payments, to upkeep the Property and the conditions of the Tenancy Agreement (such as the maximum number of occupants that may reside in the Property);
 - (B) rights as a tenant of the particular Property, including the Provider's responsibility to maintain the Property;
 - (C) responsibilities as a good neighbour; and
 - (D) obligation to pay any metered water charges, including payment methods,

in a manner that reasonably enables the Offeree to understand such information;
 - (iii) provide the Offeree with an induction pack that includes a written "Tenants Guide" (in both English and Māori at a minimum) containing key information a Tenant needs to know in relation to their Tenancy, including how to make a complaint and to whom, as well as information about social and community groups (and their service and contact information) as well as information about local schools, day-care facilities, doctors, clinics, churches and emergency services;
 - (iv) notify the Offeree how it may in the future be able to receive a Statement of Satisfactory Tenancy from the Provider, including the circumstances that would or would not lead to the Offeree (once a Tenant) receiving a Statement of Satisfactory Tenancy from the Provider;

- (v) if required, assist the Offeree to complete forms and processes necessary to set up automatic payments or benefit redirections necessary to facilitate the payment of the Rent Amount;
- (vi) if required, assist the Offeree to apply to MSD for financial assistance to pay the Bond Amount and the Rent in Advance Amount, and update any necessary details in the MSD Social Housing Client System to notify MSD of the application;
- (vii) arrange for that Suitable Social Housing Client to enter into a Tenancy Agreement (that complies with the Residential Tenancies Act, the terms of this Agreement and all other applicable Laws) with the Provider;
- (viii) where, under the Minors Contracts Act 1969 and the Residential Tenancies Act, the Offeree does not have full capacity in respect of a Tenancy Agreement, the Provider must assist the Offeree:
 - (A) to make an application to the Tenancy Tribunal to ratify the Tenancy Agreement; and
 - (B) if required, to seek assistance from MSD for the Tenancy Tribunal application fee; and
- (ix) make the keys to the Property available to the Offeree (or, where the Property is still Tenanted as at the date of this introductory meeting, arrange an alternative meeting time where the keys will be made available to the Offeree).
- (b) For the purpose of paragraph 5.1(a) of this Annexure 2, the Provider must not enter into a Tenancy Agreement with any person that was not on the original list of household members for that Social Housing Client, as set out on the Initial Shortlist or Refreshed Shortlist (as the case may be).

5.2 Notifying MSD of filled Vacancy

- (a) Within one Business Day of a Social Housing Client signing the Tenancy Agreement for a Property, the Provider must give MSD written notice through the MSD Social Housing Client System of, in respect of the Property:
 - (i) the reference for the Tenancy;
 - (ii) the fact of the Tenancy Agreement having been signed by both parties by indicating that the offer has been accepted by the Offeree;
 - (iii) the confirmed Tenancy Start Date;
 - (iv) the confirmed Rent Amount;
 - (v) the confirmed date that the Rent Amount will commence being payable (being the effective date);
 - (vi) the day and frequency upon which the Rent Amount will be payable;
 - (vii) any rent redirection start date and payment reference, as applicable;
 - (viii) the confirmed Bond Amount;
 - (ix) the confirmed Rent in Advance Amount; and
 - (x) any persons who will be living in the Property as household members,

and must update any other details about the Tenancy that are otherwise incorrectly listed in the MSD Social Housing Client System for that Tenancy (the **Tenancy Signing Notice**).

- (b) The Provider must ensure that the Property is Available for a suitable Tenant to take possession on the Tenancy Start Date as specified in the Tenancy Agreement. If the Property is not Available by the Tenancy Start Date:
 - (i) the Property will be treated as being an Unavailable Tenanted Property and accordingly IRRS will not be paid by MSD to the Provider in respect of the Property unless the Provider has, with MSD's approval, placed the Tenant in a Temporary Substitute Property; and
 - (ii) the Provider must, at the Provider's expense, provide suitable alternative accommodation satisfactory to the Tenant and MSD until the Property becomes Available.

6. IRRS payments during Tenanting Vacant Properties process

- (a) For the avoidance of doubt, IRRS will be payable from the date that a Property first becomes Vacant (provided the Vacancy has been listed in accordance with paragraph 1.1 of this Annexure 2) and will continue to be payable for a period of up to 11 Business Days from the date the Vacancy commences, provided the Property meets the Availability Requirements during that up to 11 Business Day period (or 26 Business Day period of the Property becoming Vacant in the case of a Property for which a possession order has been granted by the Tenancy Tribunal as a result of an Abandonment of the Property).
- (b) For the avoidance of doubt, where a Vacancy Notice is issued in respect of a Property and the Property Vacancy is withdrawn by the Provider, IRRS will not be payable in respect of the Property:
 - (i) from the date that the Property Vacancy is withdrawn; or
 - (ii) where a subsequent Vacancy Notice is issued in respect of that Property, from the date that the Property becomes Vacant again after the issue of any subsequent Vacancy Notice where the Property has not been Tenanted between the issue of that Vacancy Notice and the previous Vacancy Notice issued in respect of the Property.

Annexure 3: Tenant and Tenancy changes and notifications

1. Change in Tenant's circumstances affecting IRR

Where the Provider becomes aware of any change in a Tenant's circumstances that may affect a Tenant's rate of IRR, the Provider must notify MSD of this change in circumstances through the MSD Social Housing Client System within five Business Days of becoming aware of the change. To assist the Provider, MSD may provide guidance to the Provider from time to time as to the sorts of circumstances that may constitute a change in a Tenant's circumstances but the absence of such guidance or a circumstance not being listed in any such guidance does not derogate from the Provider's obligation under this paragraph.

2. Change in Tenant's circumstances affecting housing need

Where the Provider becomes aware of any change in a Tenant's circumstances that may affect a Tenant's housing need, the Provider must notify MSD of this change in circumstances through the MSD Social Housing Client System within five Business Days of becoming so aware.

3. Tenancy review and ineligibility of Tenant as Social Housing Client

- (a) MSD will notify the Provider and work with the Provider to assist any Tenant that is likely to no longer be eligible to be a Social Housing Client to transition to housing independence. Where a Tenancy review is undertaken by MSD and MSD determines that a Tenant is no longer eligible to be a Social Housing Client, MSD will, within five Business Days of determining this ineligibility, notify the Provider, through the MSD Social Housing Client System, of the Tenant's ineligibility as a Social Housing Client.
- (b) Upon receipt of a notice from MSD in accordance with paragraph 3(a) of this Annexure 3, the Provider must calculate the cessation date for the Tenant which will be the date that the Property will be deemed to be an Unavailable Untenanted Property if the Tenant has not vacated the Property by that date (**Cessation Date**). The Cessation Date shall be a date that is no later than a date that allows for:
 - (i) the minimum amount of notice to be given to the Tenant of the tenancy termination, as required by the Residential Tenancies Act; and
 - (ii) an additional 10 Business Days,
 counted from the date that notice is given by MSD in accordance with paragraph 3(a) of this Annexure 3.
- (c) Within five Business Days of receipt of a notice from MSD under paragraph 3(a) of this Annexure 3, the Provider will:
 - (i) inform the relevant Tenant that he or she is no longer eligible to be a Social Housing Client; and
 - (ii) give notice, in accordance with the Residential Tenancies Act, that the Tenancy Agreement is to be terminated.

4. Changes to IRR

- (a) MSD may, from time to time, recalculate the IRR for each Tenant and shall notify the Provider through the MSD Social Housing Client System where there is any change in the IRR calculated for a Tenant, including:
 - (i) the revised IRR for that Tenant, which will replace the then-current IRR for that Tenant (**Revised IRR**); and
 - (ii) the date from which the Revised IRR will be effective (**New IRR Effective Date**).
- (b) The New IRR Effective Date shall be a date that is no earlier than a date that allows for the minimum amount of notice to be given to the Tenant of a change in the Rent Amount payable by the Tenant, as required by the Residential Tenancies Act and the HRTM Act, counted from the date that notice is given by MSD in accordance with paragraph 4(a) of this Annexure 3.
- (c) Within one Business Day of receipt of a notice from MSD under paragraph 4(a) of this Annexure 3, the Provider must give notice to the Tenant of the change in accordance with paragraph 8 (Rent collections and notifications) of this Schedule 7.

5. Notifying MSD of change to Tenancy Start Date or cancelled Tenancy

If:

- (a) there is a change to the Tenancy Start Date as compared with the Tenancy Start Date notified to MSD in the Tenancy Signing Notice; or
- (b) the Tenancy Agreement is cancelled after giving a Tenancy Signing Notice to MSD but prior to the Tenant moving in to the Property,

the Provider must notify MSD of this change through the MSD Social Housing Client System within one Business Day of the occurrence of the change or cancellation.

6. Notifying MSD of changes to Property

As soon as the Provider becomes aware that there has been a change made to:

- (a) the warm and dry features of a Property (including the ceiling insulation, curtains, efficient heating sources, floor insulation and double glazing);
- (b) the safety features of a Property (such as smoke alarms, sprinklers and security alarms); or
- (c) the number of bedrooms in a Property,

it must notify MSD of this change by updating the relevant details for the Property through the MSD Social Housing Client System.

7. Notifying MSD of maintenance and planned improvements

- (a) Where a Property will cease to be subject to a Tenancy Agreement and the Provider will be undertaking maintenance on the Property rather than notifying MSD of the Vacancy in accordance with paragraph 1 (Notifying MSD of impending Vacancy) of Annexure 2

(Tenanting Vacant Properties process) to this Schedule 7, the Provider must, within 20 Business Days of becoming aware that a Tenancy Agreement will be ending, notify MSD's Representative of:

- (i) the fact that the Provider will not be listing the Property as being Vacant within 15 Business Days of the Tenancy Agreement coming to an end because it will be performing maintenance on the Property; and
 - (ii) the timeframe during which the Property will not be subject to a Tenancy Agreement as a result of the Provider undertaking maintenance on the Property, which the Provider must continue to update through the MSD Social Housing System as soon as the Provider becomes aware that this timeframe has changed.
- (b) Where the Provider undertakes any improvement or refurbishment to a Property:
- (i) the Agreed Rent for the Property will not be adjusted where the improvements have resulted in an increase in the Market Rent (calculated between the date immediately prior to the improvement occurring and the date immediately after the improvement occurring); and
 - (ii) the Property will be deemed to be an Unavailable Untenanted Property where the improvements have resulted in a decrease in the number of bedrooms in the Property,

unless MSD expressly agrees otherwise in writing.

8. Notifying MSD of terminating Tenancy

- (a) The Provider must, no later than seven Business Days prior to a Tenancy terminating, notify MSD, through the MSD Social Housing Client System of:
 - (i) the Tenancy that is coming to an end; and
 - (ii) the date that the Tenancy will end.
- (b) If, after giving notice in accordance with paragraph 8(a) or this paragraph 8(b) of this Annexure 3, the Provider becomes aware that there has been a change to any information previously provided in relation to the termination of a Tenancy, the Provider must within one Business Day of becoming aware of the change, notify MSD of the change through the MSD Social Housing Client System.

9. Notifying MSD of Tenant risks

- (a) The Provider must notify MSD, through the MSD Social Housing Client System, of the fact that there is a Tenant or Tenancy risk factor in relation to a Tenant or Tenancy that MSD may wish to make contact with the Provider about to find out further details, within one Business Day of becoming aware of that risk. The Provider must give such notice where it becomes aware of any of any risk factors that could reasonably pose a health and safety risk to any person:
 - (i) entering the Property the subject of the Tenancy;
 - (ii) dealing with the Tenant; or
 - (iii) otherwise in reasonably close proximity of the Property the subject of the Tenancy or housing the Tenant.

- (b) The Provider must give MSD further details of the risk factors at MSD's request.

Annexure 4: Transitional arrangements

The parties agree that notwithstanding any other provision in this Agreement, the following provisions in this Annexure 4 will apply during that part of the Transition Period expressly described in the relevant provision in this Annexure 4:

1. Black-out Periods

(a) Tenancy reviews

During the period commencing on Financial Close and ending one month from Financial Close, MSD will not:

- (i) issue any notices to the Provider pursuant to paragraph 3(a) of Annexure 3 (Tenant and Tenancy changes and notifications) to Schedule 7 (Tenancy Management Requirements);
- (ii) issue any notices to a Tenant that would notify the Tenant that they have become an Ineligible Tenant; or
- (iii) select any Tenant to put through its tenancy review process.

(b) IRR reviews

During the period commencing three Business Days prior to Financial Close and ending on Financial Close, MSD will delay the processing of any IRR reviews that result in a change to IRR from a change in circumstances or annual review where such application was submitted to MSD prior to Financial Close.

2. Future-dated rent charges

During the period from Financial Close up to and including 13 Business Days following Financial Close, MSD will manually update the MSD Social Housing Client System to capture any changes in the Rent Amount issued to Tenants by HNZ prior to Financial Close but which will take effect following Financial Close, provided that the Provider has ensured that HNZ has notified MSD of such changes.

3. Join-ins

Where a Join-in Request had been submitted prior to Financial Close but approved (and notified to the Provider) by MSD after Financial Close, the Provider will have five Business Days (rather than one Business Day provided for under paragraph 22.1(b)(i)(B)) of this Schedule within which to update the Tenant's record in the MSD Social Housing Client System to notify of this change.

4. Vacancies

- (a) The following transitional payment arrangements will apply in respect of Properties that are transferred to the Provider on Financial Close if the scenario in column 1 in the following table applies and the Provider must submit a Vacancy Notice for these Properties to MSD on the first Business Day following Financial Close:

Column 1 - Scenario	Column 2 – Availability status
A Property is Vacant on Financial Close	Available Vacant Property from Financial

(i.e. with no Tenancy Agreement in place at all, even one with a future Tenancy Start date post-Financial Close) but the Property is in a state that can be Tenanted immediately (or only requires minor work that can be completed prior to being Tenanted).	Close to 26 Business Days post Financial Close (unless Tenanted prior to the end of this 26 Business Day Period), and thereafter an Unavailable Untenanted Property until the first new Tenancy Agreement post-Financial Close commences.
A Property is Vacant on Financial Close (with no Tenancy Agreement in place at all, even one with a future Tenancy Start date post-Financial Close) but Property not in a state that can be Tenanted immediately and requires work that will take longer than the 26 Business Days to complete.	Available Vacant Property from Financial Close to 26 Business Days post Financial Close (unless Tenanted prior to the end of this 26 Business Day Period), and thereafter an Unavailable Tenanted Property until the first new Tenancy Agreement post-Financial Close commences.
A Property is subject to a Tenancy Agreement at Financial Close but the Tenancy will end within 15 Business Days of Financial Close.	<p>(a) Normal Availability status applies until the Tenancy Agreement ends;</p> <p>(b) Available Vacant Property from the date that is 15 Business Days prior to the Property becoming Vacant (less the number of Business Days between Financial Close and the Tenancy Agreement ending, as the Provider must list the Vacancy on the first Business Day following Financial Close) plus 11 Business Days from the Tenancy Agreement ending (unless Tenanted prior to the end of this maximum 26 Business Day Period); and</p> <p>(c) thereafter an Unavailable Untenanted Property until the first new Tenancy Agreement post-Financial Close commences.</p>
A Property is Vacant on Financial Close but a Tenancy Agreement has been entered into but the Tenancy Agreement will not commence until sometime after Financial Close.	Available Vacant Property until the date that is 26 Business Days from Financial Close or the date that the Tenancy Agreement commences (whichever is less), and thereafter an Unavailable Tenanted Property until the first new Tenancy Agreement post-Financial Close commences.
A Property is Vacant on Financial Close but a Social Housing Client has been offered the Property by HNZ, but accepts the place after Financial Close.	Available Vacant Property until the date that is 26 Business Days from Financial Close or the date that the Tenancy Agreement commences (whichever is less), and thereafter an Unavailable Tenanted Property until the first new Tenancy Agreement post-Financial Close commences.
Property determined to be “abandoned” prior to Financial Close, but HNZ has been unable to secure a possession order prior	Available Vacant Property until the date that is 26 Business Days from Financial Close or the date that the Tenancy Agreement commences (whichever is

to Financial Close.	less), and thereafter an Unavailable Tenanted Property until the first new Tenancy Agreement post-Financial Close commences.
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- (b) Properties to which this paragraph 4 applies shall be deemed to have the Availability status for payment purposes as set out in column 2 above (provided they are not Unavailable Untenanted Properties during any such period, in which case the Property shall be treated as an Unavailable Untenanted Property notwithstanding the status set out in Column 2 above). Thereafter (after the first new Tenancy post-Financial Close commences), the Property shall have the relevant Availability status that would ordinarily apply to that Property.

Schedule 8: Reviewable Documents

Part 1: Operative Documents

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
Asset Management Plan	<p>The Asset Management Plan is the asset replacement, maintenance and refurbishment plan for the Properties and must include, as a minimum:</p> <ul style="list-style-type: none"> the strategies and objectives that underpin the asset management and facilities maintenance approach; the asset management framework, including purpose, management responsibilities, process details, systems and change management; how the Provider will optimise the asset value and the value of the Crown Retained Investment over the Contract Term; detailed information on the assets that support service delivery including key issues and strategies, condition, performance, criticality and capacity; a whole of life asset management approach to assets, including: <ul style="list-style-type: none"> details of current and forecast future asset condition at a component level; an analysis of asset life cycles at a component level including identifying the forecast timing for undertaking asset life cycle maintenance at a component, per Property level (by month(s) and the year), including details of any changes from the previous plan (extended or reduced life) and the reasons for those changes; and details of estimated asset life cycle costs at a per Property and component level, including details of any 	Five months prior to the Planned Financial Close Date (based on the draft provided as part of the Provider's Proposal) (sub-plans to be submitted in accordance with their specified timeframes).	One month prior to the Planned Financial Close Date (after proceeding through Review Procedures).	<p>Must be updated by the Provider:</p> <ul style="list-style-type: none"> annually (and have been Finalised at least 30 Business Days before the end of each Contract Year); to take account of any proposed material change to the document; and as and when reasonably required by MSD, <p>with each update to be submitted for review under the Review Procedures.</p>

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<p>changes from the previous plan (extended or reduced life) and the reasons for those changes;</p> <ul style="list-style-type: none"> the process and associated software by which asset management planning will be undertaken, the framework that the Provider intends to use, and how the Provider will ensure consistency, efficiency, compliance and effectiveness over the life of the Properties; details of the methodology, policies, procedures, processes, work practices, liaison procedures and other operational matters for the replacement, maintenance and refurbishment of the Properties and delivery of the Services, including procedures relating to issue and risk management and procedures for co-ordination with relevant Sub-contractors; the process by which the Provider will provide and maintain suitable and current asset information to effect lifecycle planning, maintenance operations, and Property performance measurement; the specific strategy applied for planned maintenance (i.e., scheduled lifecycle maintenance and routine cyclical maintenance) versus reactive maintenance, including the balance between planned and reactive maintenance that the Provider expects to achieve, and how this balance will actually be achieved; a description of how the Provider will respond to reactive maintenance and repair requirements; details of how trade services will be resourced or procured, including detailing how the Provider will ensure works undertaken are delivered to the required quality and Jobs are only logged as complete when they have been completed to the required quality; risk management approach; 			

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<ul style="list-style-type: none"> the then-current Annual Maintenance Plan (as further described below); a forward-looking 10 year planned maintenance plan; a description of how the asset condition and functional effectiveness will be maintained throughout the life of the Properties; the quality management plan, including how any non-compliances with the Asset Management Plan performance criteria will be managed and in what timeframe; a description of the Provider's asset condition assessment regime and Asset Condition Survey regime; and how the Provider will ensure data accuracy, data validation and data integrity of live and historical information is maintained, and the assurance of data quality including audit processes around consistency of grading data. 			
Annual Maintenance Plan (part of the Asset Management Plan)	<p>The Annual Maintenance Plan for each Contract Year must include, as a minimum:</p> <ul style="list-style-type: none"> the planned maintenance (including both scheduled lifecycle maintenance and routine cyclical maintenance) to be carried out and the proposed dates on which such planned maintenance will be carried out, together with particulars of its nature, scope and location; any anticipated effects of the planned maintenance on the availability of any Property, delivery of any of the Services and tenant amenity; details of current and forecast future asset condition on a per asset per Property basis; and an analysis of asset life cycles on a per asset per Property basis, including details of any changes from the previous plan (extended or reduced life) and the reasons for those 	<p>Five months after Financial Close for Contract Year one. Each new Annual Maintenance Plan to be submitted at least two months prior to the start of each Contract Year (for the applicable upcoming Contract Year).</p>	<p>Seven months after Financial Close (after proceeding through Review Procedures) (noting that the first five months of the first Annual Maintenance Plan will not be of contractual effect). For subsequent years, the Annual Maintenance Plan</p>	<p>Must be updated by the Provider:</p> <ul style="list-style-type: none"> to take account of any proposed material change to the document; each time that the Asset Management Plan is updated; and as and when reasonably required by MSD, <p>with each update or new year's Plan to be submitted for review under the</p>

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	changes, and must be consistent with the Asset Management Plan and comply with the Asset Condition Standards.		for the next year must be Finalised at least one month prior to the first day of that Contract Year. Finalised document to be incorporated into the Asset Management Plan.	Review Procedures.
Policy and Procedures Manual	<p>The Policy and Procedures Manual must include, as a minimum:</p> <ul style="list-style-type: none"> descriptions of the procedures used for minimising disruption to Tenants during servicing, repair and maintenance work; how the Provider will manage schedules and staff rosters to support the achievement of all Required Response Periods and Required Rectification Periods; procedures for information management (including procedures and policies with respect to privacy, security of information, etc.); procedures for how the Tenants will be able to contact the Provider and how Jobs resulting from such contact will be logged as required by Schedule 13 (Helpdesk and Availability Requirements) and in order to comply with the requirements and timeframes outlined in that Schedule. This must detail how the Tenants will be informed of the means of contacting the Provider including clear instructions on how the Tenant may make contact with its Tenancy Manager without incurring a charge for making 	Four months prior to the Planned Financial Close Date (sub-plans to be submitted in accordance with their specified timeframes).	Seven weeks prior to the Planned Financial Close Date (after proceeding through Review Procedures).	<p>Must be updated by the Provider:</p> <ul style="list-style-type: none"> to take account of any proposed material change to the document; and as and when reasonably required by MSD, <p>with each update to be submitted for review under the Review Procedures.</p>

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<p>such contact;</p> <ul style="list-style-type: none"> • protocols for relevant Provider Personnel whilst working on or in the Properties (covering entry, onsite behaviour, etc.); • the following sub-plans: <ul style="list-style-type: none"> ○ Emergency Procedures and Business Continuity Manual (as further described below); ○ Risk Management Plan (as further described below); ○ Quality Assurance Plan (as further described below); ○ Health and Safety Plan (as further described below); ○ Communications Plan (as further described below); ○ Helpdesk manual (as further described below); ○ Tenant Placement Policy (as further described below); ○ Tenancy Inspections Policy (as further described below); ○ Tenant Engagement Policy (as further described below); ○ Complaints and Incidents Policy (as further described below); ○ Debt Collection Policy (as further described below); ○ Tenant Disputes Policy (as further described below); ○ Tenant Transfer Policy (as further described below); ○ Tenant Anti-social Behaviour and Damage Policy (as further described below); ○ Tenant Overcrowding and Property Underutilisation Policy (as further described below); ○ IRR/Rent Amount Collection Policy; ○ Child Protection Policy; ○ Family Violence Policy; 			

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<ul style="list-style-type: none"> ○ Elder Protection Policy; ○ Pet Policy; ○ Community Policy; ○ Additional Charges/Auxiliary Charges Policy (with reference to paragraph 8.1(b) of Schedule 7 (Tenancy Management Requirements); and ○ ICT Security Policy; and • information relating to the monitoring of the Services by the Provider. 			
<p>Emergency Procedures and Business Continuity Manual</p> <p>(part of the Policy and Procedures Manual)</p>	<p>The Emergency Procedures and Business Continuity Manual must describe how the Provider will deal with any emergency event, or identified threat or risk to any Property.</p> <p>The Emergency Procedures and Business Continuity Manual must also include:</p> <ul style="list-style-type: none"> • details of how any threat or risk will be mitigated and managed; • emergency/major event procedures for all relevant Sub-contractors; • details of how service levels will be restored in full within agreed timescales and also within strategic methodology to enable continuous operations; and • details of how its own business continuity will be managed, as well as the business continuity of its Sub-contractors involved in the performance of the Services. 	Four months prior to the Planned Financial Close Date.	<p>Seven weeks prior to the Planned Financial Close Date (after proceeding through Review Procedures).</p> <p>Finalised document to be incorporated into the Policy and Procedures Manual.</p>	Must be updated by the Provider to take account of any proposed material change to the document, with each update to be submitted for review under the Review Procedures.
<p>Risk Management Plan</p> <p>(part of the Policy and Procedures Manual)</p>	<p>The Risk Management Plan must detail the Provider's approach to the management of risk, and will include, as a minimum:</p> <ul style="list-style-type: none"> • response actions for all identified risks, including any risks notified to the Provider by MSD; • a risk register, which will contain details of all identified 	Four months prior to the Planned Financial Close Date.	Seven weeks prior to the Planned Financial Close Date (after proceeding through Review	<p>Must be updated by the Provider:</p> <ul style="list-style-type: none"> • annually; and • to take account of any proposed material change to the

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<p>risks and the impact of such risks, proposed mitigation strategies, and details of the residual risk following implementation of mitigation strategies;</p> <ul style="list-style-type: none"> procedures for updating and reviewing the risk register; and detail of the scope and frequency of risk reviews. 		Procedures). Finalised document to be incorporated into the Policy and Procedures Manual.	document, with each update to be submitted for review under the Review Procedures.
Quality Assurance Plan (part of the Policy and Procedures Manual)	<p>The Quality Assurance Plan must include, as a minimum:</p> <ul style="list-style-type: none"> details of the methodology, procedures and processes for quality assurance during the Contract Term; details regarding how statutory compliance is ensured; details of the reporting systems, proposed format and content of reports, together with its documentation and proposed auditing and other controls; details of the independent audit regime or means of verification of facilities maintenance practices, data, and systems; and details of all other best practice aspects for quality assurance. 	Four months prior to the Planned Financial Close Date.	<p>Seven weeks prior to the Planned Financial Close Date (after proceeding through Review Procedures).</p> <p>Finalised document to be incorporated into the Policy and Procedures Manual.</p>	<p>Must be updated by the Provider:</p> <ul style="list-style-type: none"> annually; and to take account of any proposed material change to the document, <p>with each update to be submitted for review under the Review Procedures.</p>
Health and Safety Plan (part of the Policy and Procedures Manual)	<p>The Health and Safety Plan must include, as a minimum:</p> <ul style="list-style-type: none"> details of the methodology, procedures and processes for operational occupational health and safety during the operational stages; details of health, safety and security policies and procedures around accessing Properties; details of the reporting systems, proposed format and content of reports, together with its documentation and proposed auditing and other controls; details of the Provider's fire safety policy and procedures; and 	Four months prior to the Planned Financial Close Date.	<p>Seven weeks prior to the Planned Financial Close Date (after proceeding through Review Procedures).</p> <p>Finalised document to be incorporated into the Policy and Procedures</p>	<p>Must be updated by the Provider:</p> <ul style="list-style-type: none"> annually; and to take account of any proposed material change to the document, <p>with each update to be submitted for review under the Review Procedures.</p>

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<ul style="list-style-type: none"> details of all other best practice aspects for occupational health and safety. 		Manual.	
<p>Communications Plan</p> <p>(part of the Policy and Procedures Manual)</p>	<p>The Communications Plan must set out how the Provider will communicate with MSD and third parties and must include, as a minimum:</p> <ul style="list-style-type: none"> points of contact of key personnel within the Provider, MSD and any Sub-contractor; the protocols for issuing external communications/publicity in relation to MSD, the Services and/or any Property, including all privacy and security controls; and the route through which issues will be escalated and reasons for the escalation. 	Four months prior to the Planned Financial Close Date.	<p>Seven weeks prior to the Planned Financial Close Date (after proceeding through Review Procedures).</p> <p>Finalised document to be incorporated into the Policy and Procedures Manual.</p>	<p>Must be updated by the Provider:</p> <ul style="list-style-type: none"> annually; and to take account of any proposed material change to the document, <p>with each update to be submitted for review under the Review Procedures.</p>
<p>Helpdesk manual</p> <p>(part of the Policy and Procedures Manual)</p>	<p>The Helpdesk manual must include, as a minimum:</p> <ul style="list-style-type: none"> details of the methodology, procedures and processes for the Helpdesk, including how the Provider will: <ul style="list-style-type: none"> provide a 24/7 manned fully resourced and operational Helpdesk service to provide a notification interface; provide logging and storing of accurate records of all the enquiries and calls to the Helpdesk using Helpdesk phone monitoring systems and logging and storing of accurate records of all enquiries made to, and issues lodged through, Tenancy Managers and/or property managers; have procedures and systems to store accurate Helpdesk records of enquires and calls and procedures and systems to store records of enquiries made, and issues lodged, through and by Tenancy Managers and/or property managers; 	Four months prior to the Planned Financial Close Date.	<p>Seven weeks prior to the Planned Financial Close Date (after proceeding through Review Procedures).</p> <p>Finalised document to be incorporated into the Policy and Procedures Manual.</p>	<p>Must be updated by the Provider:</p> <ul style="list-style-type: none"> annually; and to take account of any proposed material change to the document, <p>with each update to be submitted for review under the Review Procedures.</p>

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<ul style="list-style-type: none"> ○ record, monitor and manage relevant data and prepare activity reports so as to ensure that it meets its reporting obligations under this Agreement, including its obligation to prepare reports; ○ implement the policies and procedure for dealing with calls and ensure that all Helpdesk personnel are trained and inducted to these procedures; ○ develop and implement systems including project specific workflows and processes within a software system to ensure all data (whether lodged with the Helpdesk or through Tenancy Managers or property managers) is captured and cannot be amended without recording the necessary information as outlined within the Property Management Requirements; ○ develop and maintain reports within the Helpdesk system to enable reporting in accordance with the Property Management Requirements; ○ acknowledge all requests in an appropriate and timely manner utilising a personal service for calls received; ○ confirm and acknowledge written forms of communication; ○ acknowledge communications to the Helpdesk within the requisite time periods using the appropriate means of response; and ○ log and respond to specific service requests, including providing appropriate flow charts and decision making charts; ● details of the methodology, procedures and processes relating to how the Helpdesk, Tenancy Managers, property managers and Provider Personnel in the Provider's office will all immediately log all enquiries and Jobs notified to each of them into a single software package, and how that 			

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<p>single software package operates; and</p> <ul style="list-style-type: none"> • details of the reporting systems, proposed format and content of reports, together with its documentation and proposed auditing and other controls. 			
<p>Tenant Placement Policy</p> <p>(part of the Policy and Procedures Manual)</p>	<p>The Tenant Placement Policy must set out how the Provider will select and place Social Housing Clients in Properties that will become Vacant and must include, as a minimum:</p> <ul style="list-style-type: none"> • key outcomes sought and principles used to develop the processes and by which results can be judged as successful; • key information to support effective and efficient operations; • a robust process to select tenants from MSD's register (in line with the Tenancy Placement Principle) taking into consideration their needs, priority and risk rating; • procedures to manage and coordinate property viewings, property offers, acceptance and declines; • how prospective tenant circumstances and impact of Provider action will be considered by the Provider when selecting and placing tenants; • details on how to complete a Property Condition Report; • how the Provider will manage the tenancy documentation including the Tenancy Agreement, advanced rent and bond lodgement; • information that will be provided to existing Tenants and new Tenants i.e. induction and expectation setting; • how Tenant-initiated transfers and "identified suitable client" processes will operate; • any KPIs, if offered, and how they will be monitored and any remedial action if they are breached; 	<p>Four months prior to the Planned Financial Close Date.</p>	<p>Seven weeks prior to the Planned Financial Close Date.</p>	<p>Must be updated by the Provider to take account of any proposed material change to the document, with each update to be submitted for review under the Review Procedures.</p>

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<ul style="list-style-type: none"> • how placement decisions will be recorded and reported to enable MSD to audit; and • how the process will operate if the Provider does not have flexibility not to choose what it considers to be the highest priority Suitable Social Housing Client, <p>and must reflect and be consistent with the Tenant placement principle outlined in paragraph 3 (Tenant placement principle) of Schedule 7 (Tenancy Management Requirements).</p>			
<p>Tenancy Inspections Policy (part of the Policy and Procedures Manual)</p>	<p>The Tenancy Inspections Policy must include, as a minimum:</p> <ul style="list-style-type: none"> • key outcomes sought and principles used to develop the processes and by which results can be judged as successful. In particular, the principles that will guide the content of the Tenancy Inspections Policy are: <ul style="list-style-type: none"> ○ the Property is a healthy and safe environment; ○ the inspection is conducted with sensitivity, and respects the Tenant's rights; ○ the condition of the Property is maintained to the standards required by the Agreement; ○ issues are resolved as required by the Agreement; and ○ procedures are pragmatic and applicable, and the outcomes that are to be sought and will guide the content of the Tenancy Inspections Policy are: <ul style="list-style-type: none"> ○ inspections adhere to industry standards; ○ issues are remedied in a timely manner; and ○ Properties are safe and healthy; • key information to support effective and efficient operations; • how inspections will be scheduled; • the process to be undertaken if access is not granted in 	<p>Four months prior to the Planned Financial Close Date.</p>	<p>Seven weeks prior to the Planned Financial Close Date.</p>	<p>Must be updated by the Provider to take account of any proposed material change to the document, with each update to be submitted for review under the Review Procedures.</p>

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<p>line with landlord rights in the Residential Tenancies Act;</p> <ul style="list-style-type: none"> • industry standardised operating procedures that clearly outline how inspections will be conducted e.g. visual inspection of the state and condition of the property; • how identified issues will be captured, managed and resolved; • details of how Tenants will be advised of the results of the inspection; • how and when notes should be recorded to capture the outcome of the inspection; • a clear process to follow when a risk to the health, safety and welfare of the occupant(s) and/or visitors has been identified, including what actions will be taken; • any cohort-specific processes; • a detailed description of the property condition inspection elements of the inspection; • a detailed description of the Tenant/ household inspection elements of the inspection; • a process for how and when any assessment of Tenant/ household need will occur including social service requirements and how that will be followed up and reported; • how any issues identified at the previous inspection will be reviewed and checked for resolution; • how the requirements for reporting suspected housing fraud or household abuse will link in to the inspection process; • any KPIs, if offered, how they will be monitored and any remedial action if they are breached; and • how records will be kept of compliance and results of 			

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	completed processes and available for MSD to audit compliance.			
Tenant Engagement Policy (part of the Policy and Procedures Manual)	<p>The Tenant Engagement Policy must include, as a minimum:</p> <ul style="list-style-type: none"> key outcomes sought and principles used to develop the processes and by which results can be judged as successful. In particular, the principles that will guide the content of the Tenant Engagement Policy are: <ul style="list-style-type: none"> open and straightforward communication; two-way listening, informing and mutual understanding; suitable for a Tenant with limitations (e.g. hearing, sight, literacy, access); encourage involvement with their community; and procedures are pragmatic and applicable, and the outcomes that are to be sought and will guide the content of the Tenant Engagement Policy are: <ul style="list-style-type: none"> Tenants are comfortable asking for help and advice; information is timely and relevant to the Tenant; and Tenants want to engage in their neighbourhood and community; key information to support effective and efficient operations; a communication and contact strategy and how that will interface with any MSD engagement; any cohort specific processes; any engagement strategies for different phases or situations during the Agreement, including transition from Housing New Zealand, Tenant transfers, reconfiguration, Tenant dispute and tenant exit; a clear description on how Sub-contractors will be 	Four months prior to the Planned Financial Close Date.	Seven weeks prior to the Planned Financial Close Date.	Must be updated by the Provider to take account of any proposed material change to the document, with each update to be submitted for review under the Review Procedures.

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<p>expected to engage with Tenants;</p> <ul style="list-style-type: none"> • a clear process on how identified risk(s) to the Provider and Sub-contractors will be managed and mitigated; • a clear process for how issues and complaints will be managed and escalated to MSD where the reputation of the service could be compromised; and • any KPIs, if offered, and how they will be monitored, any remedial action if they are breached and how records will be kept of compliance and available for MSD to audit compliance. 			
Complaints and Incidents Policy (part of the Policy and Procedures Manual)	<p>The Complaints and Incidents Policy must include, as a minimum:</p> <ul style="list-style-type: none"> • key outcomes sought and principles used to develop the processes and by which results can be judged as successful. In particular, the principles that will guide the content of the Complaints and Incidents Policy are: <ul style="list-style-type: none"> ○ Tenants have a right to be heard; ○ Tenants will not be penalised for raising a complaint; ○ the Provider will act promptly and professionally; and ○ procedures are pragmatic and applicable, and the outcomes that are to be sought and will guide the content of the Complaints and Incidents Policy are: <ul style="list-style-type: none"> ○ Tenant acknowledges complaint is satisfactorily addressed; ○ satisfactory resolutions are achieved quickly, with minimal escalation; and ○ communication between the Tenant and the Provider remains open; • standard operating procedures that ensure that all 	Four months prior to the Planned Financial Close Date.	Seven weeks prior to the Planned Financial Close Date.	Must be updated by the Provider to take account of any proposed material change to the document, with each update to be submitted for review under the Review Procedures.

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<p>incidents and complaints are:</p> <ul style="list-style-type: none"> ○ responded to promptly; ○ escalated appropriately; ○ managed and resolved; and ○ mitigated so future occurrences are minimised; <ul style="list-style-type: none"> • a process for capturing all complaints and incidents e.g. a complaints register; • a reporting system; • a clear description of how the policy will apply to Sub-contractors; • any rights of escalation or appeal the Tenant will have, including independent review or complaint escalation; • how the process will be communicated to the Tenant and on-going communication will be managed; • any KPIs, if offered, how they will be monitored and any remedial action if they are breached; and • how records will be kept of compliance and results of completed processes and available for MSD to audit compliance. 			
<p>Debt Collection Policy</p> <p>(part of the Policy and Procedures Manual)</p>	<p>The Debt Collection Policy must include, as a minimum:</p> <ul style="list-style-type: none"> • key outcomes sought and principles used to develop the processes and by which results can be judged as successful. In particular, the principles that will guide the content of the Debt Collection Policy are: <ul style="list-style-type: none"> ○ identify extenuating circumstances before debt occurs; ○ first try to resolve directly with the Tenant; ○ give the Tenant the opportunity to clear the debt; ○ use the Tenancy Tribunal as a last resort; and ○ procedure actions are pragmatic and applicable, 	Four months prior to the Planned Financial Close Date.	Seven weeks prior to the Planned Financial Close Date.	Must be updated by the Provider to take account of any proposed material change to the document, with each update to be submitted for review under the Review Procedures.

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<p>and the outcomes that are to be sought and will guide the content of the Debt Collection Policy are:</p> <ul style="list-style-type: none"> ○ assistance is found for Tenants with extenuating circumstances; ○ debt repayment prior to going to the Tenancy Tribunal; and ○ debt repayment plans are maintained; <ul style="list-style-type: none"> • key information to support effective and efficient operations; • a clear process for how issues and Tenant debt collection will be managed; • how the process will be communicated to the Tenant and how on-going communication will be managed; • how Tenant circumstances and impact of Provider action will be considered by the Provider when undertaking debt collection; • any communication that will occur with MSD in respect of prior notification of the intention to issue a notice of termination to a Tenant for debt-related reasons; • key trigger points and timings for action by the Provider, including communication with the Tenant, use of MSD benefit re-direction (if appropriate) or other social service intervention; • an escalation process of actions, reviews and decision points before resolution is progressed through the Tenancy Tribunal or by issuing a notice of termination; • any classification of dispute routes or the circumstances in which a Tenancy Tribunal referral or notice for termination would be used immediately; • any rights of appeal or alternative action the Tenant will 			

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<p>have;</p> <ul style="list-style-type: none"> any KPIs, if offered, how they will be monitored and any remedial action if they are breached; and how records will be kept of compliance and results of completed processes and available for MSD to audit compliance. 			
<p>Tenant Disputes Policy</p> <p>(part of the Policy and Procedures Manual)</p>	<p>The Tenant Disputes Policy must include, as a minimum:</p> <ul style="list-style-type: none"> key outcomes sought and principles used to develop the processes and by which results can be judged as successful; key information to support effective and efficient operations; a clear process for how issues and Tenant disputes will be managed; how the process will be communicated to the Tenant and on-going communication will be managed; how Tenant circumstances and the impact of Provider action will be considered by the Provider when managing Tenant disputes; an escalation process of actions, reviews and decision points before resolution is progressed through the Tenancy Tribunal or by issuing a notice of termination; any classification of dispute routes or the circumstances in which a Tenancy Tribunal referral will occur or a notice of termination would be used as an immediate response; any rights of appeal or alternative action the Tenant will have; any KPIs, if offered, and how they will be monitored, any remedial action if they are breached; how records will be kept of compliance and results of 	Four months prior to the Planned Financial Close Date.	Seven weeks prior to the Planned Financial Close Date.	Must be updated by the Provider to take account of any proposed material change to the document, with each update to be submitted for review under the Review Procedures.

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<p>completed processes and available for MSD to audit compliance; and</p> <ul style="list-style-type: none"> must include, as part of the process to be followed when a breach occurs, that: <ul style="list-style-type: none"> the Tenancy Manager will meet with the Tenant to agree a remedy (such agreement to be recorded in writing); for the following two weeks (14 days) the Tenancy Manager will verify whether the Tenant is adhering to the agreed remedy; and if the breach continues, mediation will be used to reach and agree a new remedy. 			
<p>Tenant Transfer Policy</p> <p>(part of the Policy and Procedures Manual)</p>	<p>The Tenant Transfer Policy must include, as a minimum:</p> <ul style="list-style-type: none"> key outcomes sought and principles used to develop the processes and by which results can be judged as successful. In particular, the principles that will guide the content of the Tenant Transfer Policy are: <ul style="list-style-type: none"> fair consideration is given to the current Property; suitable Property for Tenant need; informed Tenants; and procedures are pragmatic and applicable, and the outcomes that are to be sought and will guide the content of the Tenant Transfer Policy are: <ul style="list-style-type: none"> transfers are made if there is circumstance and need; Tenant feedback into the placement process; and Tenant understands options, rights and responsibilities; key information to support effective and efficient operations; a robust process for both Tenant-initiated transfers (in line 	Four months prior to the Planned Financial Close Date.	Seven weeks prior to the Planned Financial Close Date.	Must be updated by the Provider to take account of any proposed material change to the document, with each update to be submitted for review under the Review Procedures.

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<p>with the Tenancy Placement Principle) and Provider-initiated transfers that are compliant with the requirements of this Agreement;</p> <ul style="list-style-type: none"> • how the process will be communicated to the Tenant and how on-going communication will be managed; • how Tenants will be engaged where there is to be a Provider-initiated transfer, including the process that will be followed by the Provider to try and secure Tenant-consented transfers before other escalated actions; • any rights of appeal or alternative action the Tenant will have; • how MSD will be engaged if MSD consent is required; • how Tenant circumstances and the impact of Provider action will be considered when undertaking Tenant transfers; • any KPIs, if offered, and how they will be monitored and any remedial action if they are breached; and • how transfer decisions will be recorded and reported to enable MSD to audit. 			
<p>Tenant Anti-social Behaviour and Damage Policy (part of the Policy and Procedures Manual)</p>	<p>The Tenant Anti-social Behaviour and Damage Policy must include, as a minimum:</p> <ul style="list-style-type: none"> • key outcomes sought and principles used to develop the processes and by which results can be judged as successful. In particular, the principles that will guide the content of the Tenant Anti-social Behaviour and Damage Policy are: <ul style="list-style-type: none"> ○ respond swiftly; ○ manage to resolution; ○ work to find pathways to address underlying cause; and 	<p>Four months prior to the Planned Financial Close Date.</p>	<p>Seven weeks prior to the Planned Financial Close Date.</p>	<p>Must be updated by the Provider to take account of any proposed material change to the document, with each update to be submitted for review under the Review Procedures.</p>

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<ul style="list-style-type: none"> ○ be pragmatic and applicable, and the outcomes that are to be sought and will guide the content of the Tenant Anti-social Behaviour and Damage Policy are: <ul style="list-style-type: none"> ○ satisfactory resolution for all parties; ○ escalation is appropriate and timely; and ○ Tenants get support to address the underlying cause; • key information to support effective and efficient operations; • a robust process for dealing with both Tenant anti-social behaviour and Tenant damage; • how the process will be communicated to the Tenant and how on-going communication will be managed; • how communication with complainants or official bodies will be managed; • how Tenant circumstances and impact of Provider action will be considered when addressing Tenant anti-social behaviour and Tenant damage; • an escalation process of pro-active and reactive actions, reviews and decision points before the Tenant Disputes Policy is used; • any pro-active actions the Provider will take to avoid Tenant anti-social behaviour or Tenant damage occurring; • how the Tenant will be engaged, at what points, and what feedback, if any, will be provided to the Tenant; • how payment for Tenant damage will be undertaken and will interact with Debt Collection Policy; • any KPIs, if offered, how they will be monitored and any remedial action if they are breached; and 			

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
	<ul style="list-style-type: none"> how monitoring and Tenant or Provider actions will be recorded and reported to enable MSD to audit. 			
Tenant Overcrowding and Property Underutilisation Policy (part of the Policy and Procedures Manual)	<p>The Tenant Overcrowding and Property Underutilisation Policy must include, as a minimum:</p> <ul style="list-style-type: none"> key outcomes sought and principles used to develop the processes and by which results can be judged as successful; key information to support effective and efficient operations; a robust process for dealing with both Tenant overcrowding and Property underutilisation; how the process will be communicated to the Tenant and how on-going communication will be managed; how Tenant circumstances and impact of Provider action will be considered when undertaking Tenant overcrowding and Property underutilisation actions; an escalation process of pro-active and reactive actions, reviews and decision points before any Tenant transfer is used; any pro-active actions the Provider will take to avoid overcrowding or Property underutilisation; how overcrowding or underutilisation will be monitored and the results reported to MSD; how the Tenant will be engaged, at what points, and what feedback, if any, will be provided to the Tenant; any KPIs, if offered, how they will be monitored and any remedial action if they are breached; and how monitoring and Tenant or Provider actions will be recorded and reported to enable MSD to audit. 	Four months prior to the Planned Financial Close Date.	Seven weeks prior to the Planned Financial Close Date.	Must be updated by the Provider to take account of any proposed material change to the document, with each update to be submitted for review under the Review Procedures.

Operative Document	Mandatory content	Time for delivery of first draft	Latest date by which the document must be Finalised	Updates
Disengagement Plan	<p>The Disengagement Plan must, as a minimum:</p> <ul style="list-style-type: none"> • specify the tasks, the resources and the personnel to be used to effect disengagement and ensure the seamless migration of responsibility for the provision of the Disengagement Services during the Disengagement Period; • specify the assets, fitout, Records, information, data and other tangible or intangible deliverables (including all applicable Intellectual Property Materials) to be delivered by the Provider to MSD on or prior to the last day of the Disengagement Period; and • include a detailed description of the following: <ul style="list-style-type: none"> ○ the items that make up the handover package, being all deliverables the Provider is to deliver to MSD on or prior to the last day of the Disengagement Period, which must be sufficient to ensure the Services can continue to be performed by MSD or a third party if the Provider ceases to provide (permanently or temporarily) some or all of the Services; ○ the tasks to be performed to effect disengagement; ○ a timetable (based on the likely scenarios) incorporating staged handovers of different parts of the Services; ○ key dependencies and risks; and ○ risk mitigation planning, including provision of applicable Services during the Disengagement Period. 	<ul style="list-style-type: none"> • Not less than 18 months prior to the Expiry Date; and • within 10 Business Days of MSD requesting the Provider to prepare the plan if a Termination Notice has been given. 	<ul style="list-style-type: none"> • Not less than 12 months prior to the Expiry Date (after proceeding through Review Procedures); and • within 30 days of MSD requesting the Provider to prepare the plan if a Termination Notice has been given. 	

Part 2: Review Procedures

1. Generally

1.1 Application

The provisions of this Part 2 shall apply whenever any item, document or course of action is required to be reviewed or processed in accordance with the Review Procedures.

1.2 Reviewing person

The Review Procedures are to be conducted by one or more reviewing persons (as directed by MSD). A reviewing person may be MSD's Representative and/or a qualified person appointed by MSD to conduct or assist in the conduct of the relevant Review Procedures.

1.3 Provider acknowledgments

The Provider acknowledges and agrees that where, pursuant to this Agreement, any Reviewable Document is reviewed (or is available to be reviewed) by a reviewing person under the Review Procedures or where MSD's Representative or other person acting on behalf of MSD participates (or has the opportunity to participate) in any workshop, presentation or other forum in respect to the development of a Reviewable Document:

- (a) the Review Procedures and MSD's participation in such reviews, workshops, or presentations or any other forum (or MSD's opportunity to so review or participate) are solely for the benefit of MSD;
- (b) neither MSD, MSD's Representative, a reviewing person nor any other person on behalf of MSD, assumes or owes any duty of care to the Provider:
 - (i) to participate in workshops, presentations or any other forum, or in so participating in such workshops, presentations or other forum;
 - (ii) to review any Reviewable Document; or
 - (iii) to ascertain errors, omissions or compliance with this Agreement; and
- (c) neither MSD's participation in any workshops, presentations or other forum nor any review of, comments upon or failure to review or comment upon any Reviewable Document by the reviewing person or anyone else on behalf of MSD will:
 - (i) relieve the Provider from, or alter or affect, the Provider's obligations or liabilities under this Agreement;
 - (ii) constitute any representation by MSD or anyone acting on its behalf as to the compliance of the Reviewable Document with the requirements of this Agreement;
 - (iii) evidence or constitute the granting of an extension of time, or affect the time for performance by the Provider of its obligations under this Agreement;
 - (iv) imply that the Services have been or will be provided in accordance with this Agreement or that the Properties are or will be fit for purpose; or
 - (v) prejudice MSD's rights against the Provider under this Agreement or otherwise according to Law.

2. Submitted Items

2.1 Provider's submissions

- (a) Each submission under the Review Procedures shall be made to MSD.
- (b) Each submission under the Review Procedures shall comprise:
 - (i) a complete copy of the Reviewable Document to be reviewed;
 - (ii) particulars of the relevant provisions of this Agreement under which such document is submitted; and
 - (iii) such other information necessary to enable the reviewing person to undertake the review for the purposes of this Schedule 8,

collectively referred to in this Schedule 8 as a **Submitted Item**.

2.2 MSD's response

- (a) The reviewing person will provide to the Provider an endorsement in relation to the relevant Submitted Item of "no comment" or "comments", as the reviewing person deems appropriate. Such response shall be provided by the reviewing person to the Provider as soon as the reviewing person is reasonably able to do so.
- (b) The Provider shall submit any further or other information, data and documents that the reviewing person reasonably requires and requests from the Provider.
- (c) If the reviewing person has reasonably requested further or other information, data or documents in accordance with paragraph 2.2(b), then where the Provider does not submit any such information, data and documents on a timely basis, and in any event within 10 Business Days following the request from the reviewing person, the reviewing person shall be entitled:
 - (i) to comment on the Submitted Item on the basis of the information, data and documents that have been provided; or
 - (ii) to notify the Provider that insufficient information, data and/or documents have been provided to enable MSD to review that Submitted Item in accordance with this Schedule 8 (in which case MSD will not be required to commence its review of the Submitted Item until sufficient information, data and/or documents have been provided).

2.3 Grounds upon which MSD may comment on Submitted Items

- (a) The reviewing person may raise comments in relation to any Submitted Item on:
 - (i) any grounds where the Submitted Item is being submitted for the first time or at any other time prior to the Reviewable Document becoming Finalised for the first time under this Agreement; or
 - (ii) the following grounds where a previously Finalised Reviewable Document is, subsequent to being Finalised, submitted again as a Submitted Item:
 - (A) the Submitted Item is incomplete (which may be because it does not include the required mandatory content for that Reviewable Document,

as required under Part 1 of this Schedule 8), of poor quality or otherwise not in a condition to allow MSD to adequately review it;

- (B) the Submitted Item is inconsistent with previously submitted and implemented documentation (including the terms of this Agreement) or creates ambiguity;
 - (C) the Submitted Item (on the balance of probabilities) is not in accordance with Good Industry Practice;
 - (D) the Submitted Item is inconsistent with any requirements or performance standards that the CHP must comply with in order to maintain its registration as a Class 1 Social Landlord;
 - (E) the Submitted Item (on the balance of probabilities) is not in accordance with, or is not likely to enable the Provider to be in compliance with, the Property Management Requirements or the Tenancy Management Requirements;
 - (F) the Submitted Item (if the Asset Management Plan or its sub-plan, the Annual Maintenance Plan) is proposing to move maintenance work or asset life cycle replacements into a subsequent year without reasonable justification for doing so or, in MSD's opinion, for the purpose of pushing such maintenance or asset lifecycle replacement into a period beyond the then current Expiry Date for the purpose of deferring costs so that the costs would be able to be taken into account as part of the Economic Viability Test calculations;
 - (G) the Submitted Item does not otherwise comply with the terms of this Agreement or is likely to result in a breach of the terms of this Agreement;
 - (H) the Submitted Item (on the balance of probabilities) would breach any Law and/or is likely to result in a threat to health and safety;
 - (I) the Provider's or MSD's ability to perform their respective obligations under this Agreement would (on the balance of probabilities) be adequately affected; and/or
 - (J) the proposed course of action would be likely to result in MSD incurring material additional expense.
- (b) For the avoidance of doubt and without in any way limiting what the reviewing person may deem appropriate to provide "comments" on in accordance with paragraph 2.2(a) and 2.3(a)(i), the reviewing person may provide comments directed at ensuring that the Submitted Item complies in all respects with the Provider's obligations under this Agreement, the touch points with MSD's operating model align, any innovation offered by the Provider is feasible including by taking into account any resource implications such innovation would have on MSD's operating model, and that there is alignment between the Submitted Item and MSD's own policies.

3. Effect of review

3.1 Finalised Submitted Item

- (a) Subject to paragraph 3.2, any Submitted Item that is endorsed "no comment" by MSD under these Review Procedures:

- (i) will, subject to paragraph 3.1(b), be deemed to have been finalised for the purposes of this Agreement (**Finalised**); and
- (ii) shall then, and only then, be complied with or implemented (as the case may be) by the Provider at its own risk and expense,

it being acknowledged by the Provider that notwithstanding any term of this Schedule 8 and the other terms of this Agreement (express or implied), no Review Procedure relieves the Provider of any of its obligations under this Agreement (including the Provider's obligation to ensure that the Submitted Item complies with the relevant terms of this Agreement) nor does any Review Procedure constitute an acknowledgement by MSD that the Provider has complied with any such obligations.

- (b) For the avoidance of doubt, once a Reviewable Document is deemed Finalised for the purposes of this Agreement in accordance with this paragraph 3.1, the contents of that Reviewable Document may only be amended by re-submitting an updated version of that Reviewable Document, with amendments clearly marked, to the Review Procedures, and completing such procedures in accordance with this Schedule 8.

3.2 Interim reviews

Any Submitted Item that is submitted for interim review shall not be considered to be "Finalised" for any purpose, even where that Submitted Item has been endorsed "no comment" by MSD under these Review Procedures or endorsed "no comment" prior to Financial Close.

3.3 Amended Submitted Item

If MSD provides an endorsement of "comments" in relation to any Submitted Item:

- (a) within five Business Days of receiving the endorsement of "comments" on any Submitted Item, the Provider shall amend such Submitted Item in accordance with the comments and re-submit (on one or more occasions) the amended Submitted Item pursuant to this paragraph 3.3 and the provisions of paragraph 2.2 (MSD's response) and this paragraph 3 shall apply (changed according to context) to such re-submission;
- (b) paragraph 3.3(a) shall apply to each submission, until such time as the Submitted Item is returned to the Provider with the endorsement "no comment";
- (c) the Provider must ensure that all amendments made to the Submitted Item since it was last reviewed by MSD are clearly marked as amendments. Any failure by the Provider to clearly mark all amendments to a Submitted Item in its re-submission shall result in:
 - (i) any such amendment not being considered by MSD; and
 - (ii) the Submitted Item being deemed to continue to be endorsed "comments" until such time as the amendment is brought to the attention of MSD through re-submission of that item under the Review Procedures,

and should the Provider comply with or implement the Submitted Item notwithstanding this failure, such compliance or implementation remains at the Provider's risk and expense; and

- (d) comply with such Submitted Item after amendment and Finalisation in accordance with the comments.

3.4 **Meeting to discuss endorsement of “comments”**

In the event that any Submitted Item has been endorsed “comments” on more than one occasion, where the comments so lend themselves, the parties shall, if a request to do so is made by either party, meet as soon as reasonably practicable after such request is made to discuss such Submitted Item, the basis for the comments and any suggestions that may enable that Submitted Item to be endorsed “no comment” when re-submitted.

3.5 **No limitation**

No comment or any failure to give or make a comment under this Part 2 shall operate to exclude or limit the Provider’s obligations or liabilities under this Agreement (or MSD’s rights under this Agreement) or shall constitute a MSD-initiated Change.

Schedule 9: Governance and reporting

Part 1 – Relationship Management Group

1. Composition

1.1 Relationship Management Group

Unless otherwise agreed by the parties, the Relationship Management Group shall comprise six members, being:

- (a) the Provider's Representative and two other representatives appointed by the Provider; and
- (b) MSD's Representative and two other representatives appointed by MSD.

1.2 Notification of membership

Subject to paragraphs 7.4 (Notification of appointment) and 8.4 (Notification of appointment), on or prior to the Agreement Start Date, each party must give the other party written notice of the representatives (and any alternates to those representatives) it appoints to the Relationship Management Group. Subject to paragraphs 7.4 (Notification of appointment) and 8.4 (Notification of appointment), each party may replace a representative or alternate appointed by it by written notice to the other party.

1.3 Authority of members

Each party must ensure the members of the Relationship Management Group appointed by it:

- (a) are authorised to represent the respective party in respect of any of the purposes, duties or functions of the Relationship Management Group; and
- (b) attend all meetings as required, subject to the terms of paragraphs 4.2 (Method of attendance) and 4.3 (Quorum).

2. Sub-groups

The Relationship Management Group may form a sub-group for any purpose. The sub-group will be governed by the same terms as the Relationship Management Group unless the sub-group is expressly formed on restricted terms (in which case such restricted terms shall apply to that sub-group).

3. Purposes

3.1 Relationship Management Group

The Relationship Management Group shall be responsible for overseeing the implementation and performance of the Project Documents from the Execution Date until the Expiry Date or the Actual Termination Date (whichever occurs first), such responsibility to include:

- (a) monitoring the delivery of the Transition Services, the Tenancy Management Services and the Property Management Services, with reference to all applicable Project Documents and Operative Documents;

- (b) reviewing reports prepared by the Provider or any other person in relation to the Tenancy Management Services and the Property Management Services;
- (c) discussing any issues arising from any manuals, plans, programmes, reports or documents provided by or on behalf of the Provider;
- (d) discussing issues of public concern;
- (e) discussing quality assurance;
- (f) reporting on and discussing health and safety issues;
- (g) raising for discussion any potential Changes, where practicable, prior to the issue of any Change Notice in accordance with Part 8 (Changes) of the Base Agreement;
- (h) monitoring and overseeing the implementation and negotiation of any proposed Change; and
- (i) acting as a forum to discuss any other issues arising in relation to the Services.

4. Meetings

4.1 Frequency

- (a) The Relationship Management Group shall meet:
 - (i) monthly or as otherwise agreed by the Relationship Management Group; and
 - (ii) at such other times as the parties may reasonably require.
- (b) The Provider shall:
 - (i) within one month after the Execution Date, propose for approval by MSD (acting reasonably) a schedule of Relationship Management Group meetings for the period up until Financial Close (which shall be updated as necessary to reflect the likely date of Financial Close); and
 - (ii) within one month before the Financial Close and thereafter within one month before each anniversary of Financial Close, propose for approval by MSD (acting reasonably), a schedule of Relationship Management Group meetings for the following 12 month period.
- (c) Each party shall use its reasonable endeavours to adhere to the schedules of meetings approved by MSD under paragraph 4.1(b).

4.2 Method of attendance

Subject to paragraph 4.3, a meeting of the Relationship Management Group may be held:

- (a) by assembly at the place, date, and time appointed for the meeting under paragraph 4.1; and
- (b) where requested by a member not less than five Business Days in advance, by means of audio, or audio and visual, communication by which all members participating can simultaneously hear and speak to each other throughout the meeting.

4.3 Quorum

- (a) For a meeting of the Relationship Management Group to proceed there must be in attendance (whether in person or not) at all times during the meeting at least four members, including at least two representatives of MSD and at least two representatives of the Provider (a **Quorum**).
- (b) If a Quorum is not present within 15 minutes after the time appointed for the meeting, the meeting is adjourned for two Business Days at the same time and place or to such other date, time and place as the members present at the meeting may appoint.
- (c) A member may be represented by an alternate (either in person, by telephone, video conference or similar telecommunication device).

4.4 Chair

The chair of a Relationship Management Group shall be MSD's Representative (or his or her alternate).

4.5 Attendees

During the period when Transition Services are being provided either party may have other sub-contractors, advisors and consultants present at any Relationship Management Group meeting from time to time as required, subject to giving the other party not less than two Business Days' prior notice of such attendance.

4.6 Procedures and protocols

Subject to this paragraph 4, meetings of the Relationship Management Group will be conducted according to such other procedures and protocols as the members of the Relationship Management Group agree from time to time.

5. Agenda and minutes

5.1 Agenda

- (a) At least five Business Days prior to the scheduled date of each meeting, the Provider shall prepare and provide to the members of the Relationship Management Group a draft agenda for the meeting, along with supporting reports and information.
- (b) MSD shall advise the Provider within two Business Days whether it wishes to make additions to the agenda and whether it requires the Provider to provide additional information prior to the meeting.
- (c) The final agenda shall be circulated by the Provider at least one Business Day prior to the meeting, together with any additional material requested by MSD.
- (d) The agenda may be amended at the meeting by agreement of at least three members of the Relationship Management Group present at the meeting.

5.2 Minutes

Within five Business Days of the conclusion of each meeting of the Relationship Management Group, the Provider shall prepare and circulate detailed minutes of the meeting to each member of the Relationship Management Group. The minutes must include:

- (a) a list of attendees;

- (b) details of the matters discussed at the meeting; and
- (c) the actions arising from the meeting as agreed by the Relationship Management Group at that meeting.

5.3 Provision of additional information

MSD may (acting reasonably) require, from time to time, the Provider to provide additional information on matters discussed at any Relationship Management Group meeting and the Provider must provide such information in a timely manner.

6. Conduct and decisions

6.1 Relationship principles

Each party acknowledges and agrees that the parties will behave and work together, in relation to all aspects of this Agreement and the delivery of the Services, in a manner that is consistent with the following principles:

- (a) **Teamwork:** MSD and the Provider will operate as a team, tasked with delivering MSD's outcomes and objectives. Communication will be open and honest. Each party will respond quickly and proactively to issues raised by the other, and both opportunities and solutions to problems will be shared.
- (b) **Transparency:** transparency is a fundamental requirement in relation to all operational information and matters relating to the provision of the Services.

6.2 Completion of agreed actions

Without prejudice to the right of MSD to issue directions and Change Notices in accordance with the Base Agreement, each party must seek to complete any actions assigned to it, which are agreed at the Relationship Management Group meeting, within a timely manner.

6.3 Effect of decisions

The parties recognise that decisions of the Relationship Management Group shall not be binding nor confer rights or obligations on either MSD or the Provider under, or otherwise affect, any of the Project Documents, unless any such decision of the Relationship Management Group is given as an express direction under clause 32.3 (Directions) of the Base Agreement by MSD's Representative in writing within five Business Days of the meeting, or a Confirmed Change results after the matter is progressed in accordance with Part 8 (Changes) of the Base Agreement.

6.4 Effect of exercise of rights by MSD

MSD exercising, or omitting to exercise, any of its rights and obligations with respect to the Relationship Management Group will not:

- (a) lessen or otherwise affect the Provider's obligations and MSD's rights, whether under the Project Documents or at Law;
- (b) entitle the Provider to make any Claim against MSD; or
- (c) be construed as a Change,

except that in the event of any direction given, or Change initiated, by MSD following any meeting of the Relationship Management Group, the relevant provisions of the Project Documents shall, notwithstanding the foregoing, apply.

Part 2 – Parties’ representatives

7. MSD’s Representative

7.1 General

MSD’s Representative will:

- (a) exercise the rights, powers and authority and perform the roles delegated to MSD’s Representative by MSD as may be notified to the Provider from time to time;
- (b) exercise such other power or authority of MSD under any Project Document, delegated in writing by MSD to MSD’s Representative and notified to the Provider (including any conditions applying to the delegated power);
- (c) bind MSD under the Project Documents, only to the extent of compliance with the conditions of any lawfully delegated power to do so; and
- (d) exercise all powers, duties, discretions and authorities on behalf of MSD (and not as an independent certifier, assessor or valuer).

7.2 Notices

Any notice that is required to be given to MSD under any Project Document can, unless otherwise specified, be given to MSD’s Representative. Any notice given to, or any information within the possession of, MSD’s Representative is deemed to have been given to, or to be within the possession of, MSD.

7.3 Reliance on instruction

- (a) Except where notified in writing by MSD before such act, instruction, notice or direction, the Provider and the Provider’s Representative shall be entitled to treat any act, instruction, notice or direction of MSD’s Representative as being expressly authorised by MSD, and the Provider and the Provider’s Representative shall not be required to determine whether authority has in fact been given.
- (b) The Provider shall be entitled to rely on written instructions given by:
 - (i) MSD’s Representative or authorised delegate acting within his or her delegation;
 - (ii) the Chief Executive of MSD; or
 - (iii) a person to whom the Chief Executive of MSD has delegated appropriate authority, evidence of which has been provided to the Provider.
- (c) The Provider shall not be entitled to rely on or claim, and MSD shall not be responsible for, any relief, additional time, or Losses should the Provider act or fail to act on any notice, communication or other purported instruction given by a person alleging to act for or on behalf of MSD unless such instruction is given in accordance with paragraph 7.3(b).

- (d) The Provider shall not be required to act on any notice, communication or other purported instruction given by a person alleging to act for or on behalf of MSD unless such instruction is given in accordance with paragraph 7.3(b).

7.4 Notification of appointment

- (a) MSD must provide written notice to the Provider of the name and contact details of, and the extent of the delegation exercisable by, MSD's Representative on or before the Agreement Start Date.
- (b) MSD may appoint a replacement or additional MSD's Representative at any time by written notice to the Provider, which notice shall contain the information required by paragraph 7.4(a).

7.5 Delegation of function

For the avoidance of doubt, MSD's Representative may, from time to time and on written notice to the Provider's Representative, delegate all or part of his or her functions and powers to a suitably qualified and experienced alternate and may at any time revoke such delegation or limit or qualify its extent (in each case) on written notice to the Provider's Representative.

8. Provider's Representative

8.1 Generally

The Provider's Representative will:

- (a) exercise the rights, powers and authority and perform the roles delegated to the Provider's Representative by the Provider as may be notified to MSD from time to time;
- (b) exercise such other power or authority of the Provider under any Project Document, delegated in writing by the Provider to the Provider's Representative and notified to MSD (including any conditions applying to the delegated power);
- (c) bind the Provider under the Project Documents, only to the extent of compliance with the conditions of any lawfully delegated power to do so; and
- (d) exercise all powers, duties, discretions and authorities on behalf of the Provider (and not as an independent certifier, assessor or valuer).

8.2 Notices

Any notice that is required to be given to the Provider under any Project Document can, unless otherwise specified, be given to the Provider's Representative. Any notice given to, or any information within the possession of, the Provider's Representative is deemed to have been given to, or to be within the possession of, the Provider.

8.3 Reliance on instruction

- (a) Except where notified in writing by the Provider before such act, instruction, notice or direction, MSD and MSD's Representative shall be entitled to treat any act, instruction, notice or direction of the Provider's Representative as being expressly authorised by the Provider, and MSD and MSD's Representative shall not be required to determine whether authority has in fact been given.
- (b) MSD shall not be entitled to rely on or claim, and the Provider shall not be responsible for, any relief, additional time or Losses should MSD act or fail to act on any notice,

communication or other instruction given by a person alleging to act for and on behalf of the Provider unless that person is the Provider's Representative or authorised delegate acting within his or her delegation.

- (c) MSD shall not be required to act on or acknowledge any notice, communication or other purported instruction given by a person alleging to act for or on behalf of the Provider unless such instruction is given by the Provider's Representative or authorised delegate acting within his or her delegation.

8.4 Notification of appointment

- (a) The Provider must provide written notice to MSD of the name and contact details of, and the extent of the delegation exercisable by, the Provider's Representative on or before the Agreement Start Date.
- (b) Subject to clause 21.2 (Representatives) of the Base Agreement, the Provider may appoint a replacement Provider's Representative at any time by written notice to MSD, which notice shall contain the information required by paragraph 8.4(a).

8.5 Delegation

For the avoidance of doubt, but subject to clause 21.2 (Representatives) of the Base Agreement, the Provider's Representative may, from time to time and on written notice to MSD's Representative, delegate his or her functions and powers to a suitably qualified and experienced alternate appointed when the Provider's Representative is incapacitated, ill or on holiday and may at any time revoke such delegation or limit or qualify its extent (in each case) on written notice to MSD's Representative.

Part 3 – Reporting

9. Reporting obligations

9.1 Provider to provide reports

The Provider must provide MSD with the reports specified in this Schedule 9, within the time periods specified in this Schedule 9.

9.2 Delivery of reports

The prescribed modes of delivery of reports required under this Schedule 9 may be varied from time to time by written notification from MSD to the Provider.

9.3 Truth and accuracy of reports

Each report provided by the Provider under this Schedule 9 must be complete and correct, and not false and misleading in any material particular.

10. Transition Report

10.1 Obligation to provide

On and from the Agreement Start Date until Financial Close the Provider must, on a weekly basis, provide to MSD a Transition Report.

10.2 Form of report

Each Transition Report must be completed substantially in the form set out in Annexure 1 (Form of Transition Report) to this Schedule 9.

10.3 Delivery requirements

Each Transition Report must be delivered by secure transmittal, in a soft copy format readable by MSD, to MSD's Representative.

11. Availability Report

11.1 Obligation to provide

On and from Financial Close the CHP must, no later than the 10th Business Day following the end of each Payment Period, provide to MSD an Availability Report.

11.2 Form of report

- (a) Each Availability Report must be completed substantially in the form set out in Annexure 2 (Form of Availability Report) to this Schedule 9 and must relate to the availability of all Properties over the immediately preceding Payment Period, broken down under the following categories:
 - (i) Available Tenanted Properties;
 - (ii) Available Vacant Properties;
 - (iii) Unavailable Tenanted Properties, also identifying which of these Properties are currently:
 - (A) a Short-Term Private Rental; and
 - (B) a deemed Permitted Rental (as a result of a Substitute Property having been substituted in its place); and
 - (iv) Unavailable Untenanted Properties.
- (b) The Start Date and End Date in Annexure 2 must include a Start Date and End Date falling within the fortnightly period to which the Availability Report relates. For the avoidance of doubt, a single Property may be listed under multiple categories in one Availability Report where the Property fits into different categories at different times in the fortnight. Where this occurs, the 'Total Agreed Rent claimed over Payment Period' entry must be calculated on a pro rata basis dependent on the number of days that the Property falls within a given category.

11.3 Delivery requirements

Each Availability Report must be submitted electronically through the MSD Social Housing Client System.

12. Performance Report

12.1 Obligation to provide

On and from Financial Close the Provider must, within 10 Business Days after the end of each Contract Quarter, provide to MSD a Performance Report.

12.2 Form of report

Each Performance Report must be completed substantially in the form set out in Annexure 3 (Form of Performance Report) to this Schedule 9 and must include at a minimum:

- (a) a summary of all High Performance Breaches, Performance Breaches and other breaches (including the relevant status of each):
 - (i) during the Contract Quarter to which the Performance Report relates; and
 - (ii) across the Contract Year in which that Contract Quarter falls;

Commercial Sensitivity

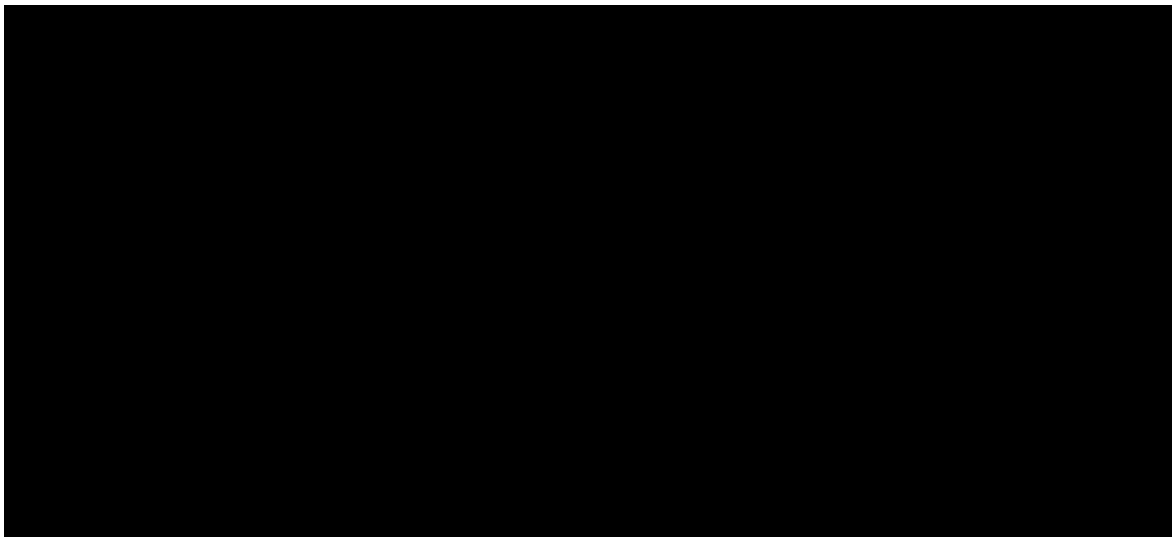
- (c) details of all Notifiable Events (i.e. “near miss” health and safety incidences) that have occurred during the applicable reporting period; and
- (d) details of any disclosures made to the Provider in accordance with its internal procedures which the Provider is required to report on in accordance with clause 29.7(c) of the Base Agreement.

12.3 Delivery requirements

Each report provided in accordance with this paragraph 12 must be delivered by secure transmittal, in a soft copy format readable by MSD, to MSD's Representative, and is to be uploaded through a secure location as notified by MSD.

12.4 Performance Metrics

Commercial Sensitivity



13. Compliance Certificate

13.1 Obligation to provide

- (a) From Financial Close, the Provider must, within 10 Business Days after the end of each Contract Quarter, provide to MSD a Compliance Certificate signed by a director of each of the Asset Owner and the CHP, each of whom must be authorised to sign on behalf of the Asset Owner or CHP (as applicable).
- (b) The Compliance Certificate provides confirmation to MSD in respect of the matters addressed in that Compliance Certificate in the Contract Quarter immediately prior to the date on which the Compliance Certificate is provided to MSD.

13.2 Form of certificate

Each Compliance Certificate must be completed substantially in the form set out in Annexure 4 (Form of Compliance Certificate) to this Schedule 9.

13.3 Delivery requirements

Each Compliance Certificate must be delivered by secure transmittal, in a soft copy format readable by MSD, to MSD's Representative, and is to be uploaded through a secure location as notified by MSD.

14. Reconciliation Report

14.1 Obligation to provide

The Provider must, within five Business Days from Financial Close, provide to MSD a Reconciliation Report.

14.2 Form of report

The Reconciliation Report must be completed substantially in the form set out in Annexure 5 (Form of Reconciliation Report) to this Schedule 9 and must:

- (a) use the data that was loaded into the Provider's ICT system in respect of the Properties and Tenancies as at one day following Financial Close (i.e. 1 April 2017 assuming Financial Close occurs on 31 March 2017), excluding any changes made to those records

by the Provider between the date of data migration to the Provider from HNZ and the date that the data is extracted from the Provider's ICT system for the purpose of compiling the Reconciliation Report; and

- (b) be in the form of a .csv file.

14.3 **Delivery requirements**

Each report provided in accordance with this paragraph 14 must be delivered by secure transmittal, in a soft copy format readable by MSD, to MSD's Representative, and is to be uploaded through a secure location as notified by MSD.

15. **Monthly Job-logging Report**

15.1 **Obligation to provide**

From Financial Close, the Provider must, within 10 Business Days after the end of each calendar month, provide to MSD a Monthly Job-logging Report.

15.2 **Form of Monthly Job-logging Report**

Each Monthly Job-logging Report must be completed substantially in the form set out in Annexure 6 (Form of Monthly Job-logging Report) to this Schedule 9 (or other form of report agreed between the parties that may be automatically generated through the Provider's property and tenancy management software package) and must, at a minimum, summarise:

- (a) the number of Jobs logged in the Provider's property and tenancy management software package during the immediately preceding calendar month;
- (b) the Provider's response time in respect of each Job; and
- (c) whether, in each case, the Provider's response time complied with the Required Response Period and (if applicable) the Required Rectification Period for the relevant Job Classification listed in paragraph 3 (Job Classifications) of Schedule 13 (Helpdesk and Availability Requirements).

15.3 **Delivery requirements**

Each report provided in accordance with this paragraph 15 must be delivered by secure transmittal, in a soft copy format readable by MSD, to MSD's Representative, and is to be uploaded through a secure location as notified by MSD.

16. **Other reports**

16.1 **Obligation to provide**

In addition to the reporting requirements above, MSD may, by giving written notice to the Provider, request (and the Provider must then provide within any reasonable timeframe required by MSD) any report, whether on a one off or regular basis, that MSD, acting reasonably, (and in its sole discretion) deems necessary to enable MSD to ascertain the Provider's compliance with any provision of this Agreement or the quality of the Services provided. The form of such reports will be provided either on the date of the notice requiring it or at a later time identified by MSD in the relevant notice.

16.2 Examples of reports that may be requested

Without limiting paragraph 16.1, MSD may from time to time from Financial Close request reports from the Provider, on a one-off or regular basis, relating to any or all of the following:

(a) Property movements

Details and relevant circumstances of any Properties that have (over any relevant reporting period determined by MSD):

- (i) been placed on the High Suitability List in accordance with clause 13.2 (High Suitability List) of the Base Agreement at any time during period to which the Property movement report relates;
- (ii) been placed on the Reconfiguration List in accordance with clause 13.1 (Reconfiguration List) of the Base Agreement any time during the period to which the property movement report relates;
- (iii) become subject to a Short-Term Private Rental;
- (iv) become a Permitted Rental; or
- (v) been subject to a substitution (whether temporary or permanent);

(b) Property and tenancy inspections

Details and relevant circumstances of:

- (i) all property inspections conducted in accordance with paragraph 17 (Inspections) of Schedule 6 (Property Management Requirements); and/or
- (ii) all tenancy inspections conducted in accordance with paragraph 11 (Tenancy Inspections) of Schedule 7 (Tenancy Management Requirements),

over any relevant reporting period determined by MSD;

(c) Property management

- (i) details (including any relevant classifications (as determined and provided by MSD)) and relevant circumstances of all Defects or Jobs occurring or identified during any relevant reporting period determined by MSD (including, without limitation, those in relation to the Property CORs as listed in Part 3 (Property CORs) of Schedule 6 (Property Management Requirements)); and
- (ii) details and relevant circumstances of the Provider's response times and rectification times in relation to each Defect or Job (including, where applicable, whether such times complied with any relevant requirements); and

(d) Tenancy management

Details and relevant circumstances of:

- (i) all Tenants that have been, or will be, subject to a Provider-initiated transfer in accordance with paragraphs 21.1(b) or (c) (Tenant transfers) of Schedule 7 (Tenancy Management Requirements);

- (ii) all Tenants that have been, or will be, transferred to another community housing provider in accordance with paragraph 21.1(d) (Tenant transfers) of Schedule 7 (Tenancy Management Requirements);
- (iii) all Jobs (both within and outside of business hours) requested and/or conducted during any relevant reporting period determined by MSD in relation to Tenants or Tenancies; and
- (iv) details and relevant circumstances of the Provider's response times and rectification times in relation to each relevant Job (including, where applicable, whether such times complied with any relevant requirements).

16.3 **Delivery requirements**

Each report provided in accordance with this paragraph 16 must be delivered by secure transmittal, in a soft copy format readable by MSD, to MSD's Representative, and is to be uploaded through a secure location as notified by MSD.

17. **Market Rent report**

17.1 **Obligation to provide**

- (a) The Provider must provide to MSD:
 - (i) on an annual basis, on each 12 month anniversary of the Agreed Rent Base Date, a report that outlines the current Market Rent for each Property, as assessed by the Provider; and
 - (ii) on any other date where the Provider reviews and adjusts (or the Tenancy Tribunal determines) a Market Rent for a Property, a report that outlines the current Market Rent for that Property, as assessed by the Provider.
- (b) Each report provided to MSD under this paragraph 17 must set out the Market Rent for each Property as well as the effective date for when each such Market Rent shall commence applying.

17.2 **Delivery requirements**

Each report provided in accordance with this paragraph 17 must be delivered by secure transmittal, in a soft copy format readable by MSD, to MSD's Representative, and is to be uploaded through a secure location as notified by MSD.

Annexure 1: Form of Transition Report

1. Update against Transition Plan

2. Risk Register

3. Work stream narrative updates

3.1 Communications stream

[insert weekly update from work stream]

3.2 **Information stream**

[insert weekly update from work stream]

3.3 **Operational readiness stream**

[insert weekly update from work stream]

3.4 **Tenancy stream**

[insert weekly update from work stream]

3.5 **Property stream**

[insert weekly update from work stream]

Annexure 2: Form of Availability Report

[Drafting Note: See separate excel worksheet.]

Annexure 3: Form of Performance Report

PERFORMANCE REPORT

Contract Quarter: [mm][yyyy] to [mm][yyyy]

The following Performance Report is laid out as follows:

- Section 1 (Report summary) gives an overview of the key information in the Performance Report and gives a snapshot of the important information contained in the report.
- Section 2 (Warning Notices over Contract Quarter) lists and summarises the Warning Notices that have been issued by MSD over the Contract Quarter.
- Section 3 (Probity Events over Contract Quarter) lists and summarises the Probity Events that have occurred over the Contract Quarter, including those for which Warning Notices have been issued by MSD).
- Section 4 (Performance against High Performance Requirements) and section 5 (Performance against Performance Requirements) are each divided into three subsections:
 - o In the first subsection, the Provider identifies whether it has breached any of the requirements (and how many times) during the Contract Quarter.
 - o In the second subsection, the Provider identifies how many times it has breached each High Performance Requirement/Performance Requirement in the Contract Year to date.
 - o In the third subsection, the Provider lists all High Performance Breaches/Performance Breaches in the Contract Year to date (taking information from the first two subsections), describes the relevant breach and summarises what action has been taken (or is being taken) in respect of each breach.
- Section 6 (Details of all other breaches of Provider obligations during Contract Year to date) lists, describes and summarises the actions taken in relation to any other breaches of the Provider's obligations (i.e. those which are not High Performance Breaches or Performance Breaches).
- Section 7 (Performance against Performance Metrics) describes the Provider's performance against the Performance Metrics listed in paragraph 12.4 of Schedule 9 (Governance and reporting) of the Capacity Contract.
- Section 8 (Health and safety incidents and "near misses" and Notifiable Events over Contract Quarter) lists the health and safety incidents and "near misses" in the Contract Quarter, summarises the incidents and summarises the actions taken in relation to them.
- Section 9 (Disclosures over Contract Quarter) lists and summarises any disclosures made in relation to clause 29.7(c) (Protected Disclosures Act) of the Base Agreement of the Capacity Contract.
- Section 10 (Percentage of Tenancy Inspections completed) sets out the percentage of Tenancy Inspections completed over the relevant period.

1. Report summary

Report Details		
Contract Quarter:	[●] to [●] in Contract Year [●]	
Warning Notices and Probity Notices		
Number of Warning Notices issued over Contract Quarter:	[●]	See subsection: 2
Number of Probity Events over Contract Quarter:	[●]	See subsection: 3
Breaches		
Number of High Performance Breaches over Contract Quarter:	[●]	See subsection: 4.1
Total number of High Performance Breaches in Contract Year to date:	[●]	See subsection: 4.2
Number of Performance Breaches over Contract Quarter:	[●]	See subsection: 5.1
Total number of Performance Breaches in Contract Year to date:	[●]	See subsection: 5.2
Total number of other breaches of Provider obligations in Contract Quarter and Contract Year to date:	[●]	See subsection: 6
Targets not met		
Number of Targets not met in relation to Performance Metrics over Contract Quarter:	[●]	See subsection: 7
Health and safety		
Number of health and safety incidents and “near misses” over Contract Quarter:	[●]	See subsection: 8
Disclosures		
Number of disclosures made over Contract Quarter:	[●]	See subsection: 9
Tenancy Inspections		
Percentage of Properties that have had one Tenancy Inspection during the Contract Year to date:	[●]%	See subsection: 10
Percentage of Properties that have had two or more Tenancy Inspections during the Contract Year to date:	[●]%	See subsection: 10

2. Warning Notices issued over Contract Quarter

Date of Warning Notice	Relevant clause of Capacity Contract breached and outline of circumstances resulting in breach	Rectified within 20 Business Days?	(if not remedied or capable of being remedied) Rectification Plan or Prevention Plan submitted within applicable time period?	Summary of Plan	Summary of Provider's progress in complying with plan and any associated deadlines or timeframes	Variation requested? <i>Provide details of variations requested and circumstances.</i> ¹
TOTAL NUMBER OF WARNING NOTICES ISSUED OVER CONTRACT QUARTER:						[•]

¹ Note listing a variation request in this table will not constitute notifying MSD under clause 63.4(d)(ii) of the Base Agreement.

3. Probity Events over Contract Quarter

Date of Probity Event	Outline of circumstances giving rise to Probity Event	Person responsible	Action taken	Warning Notice issued? (If yes, record in Warning Notices table above)
TOTAL NUMBER OF PROBITY EVENTS OVER CONTRACT QUARTER				

4. Performance against High Performance Requirements

4.1 Performance over Contract Quarter – High Performance Requirements

No. (HPR-##)	Description of High Performance Requirement	Description of what triggers a High Performance Breach	New High Performance Breach triggered during Contract Quarter? (Y/N)
01	The Provider has complied with clause 26.2(a) (Access to premises and Properties) of the Base Agreement, in respect of access to the Provider's premises and to Properties.	One High Performance Breach is triggered if the Provider fails to comply once or more during a Contract Quarter .	[Yes][No] <i>Details of all High Performance Breaches must be recorded in the table at subsection 4.3 below.</i>
02	The Provider has at all times complied with paragraph 11 (Tenancy Inspections) of Schedule 7 (Tenancy Management Requirements), relating to the requirement to conduct Tenancy Inspections in accordance with the Tenancy Inspections Policy.	One High Performance Breach is triggered if the Provider fails to comply once or more during a Contract Year .	[Yes][No] <i>A High Performance Breach in respect of this High Performance Requirement will only be new if a High Performance Breach has not occurred previously in the relevant Contract Year.</i> <i>Details of all High Performance Breaches must be recorded in the table at subsection 4.3 below.</i> <i>Each Contract Quarter, the Provider must also report on the % of the total number of Properties that have been subject to Tenancy Inspections and/or Property Inspections during the Contract Year to date. See subsection 10.</i>
03	A Substitute Property has become Unavailable for Other Reasons and if MSD exercised its discretion, would cease to be a Substitute Property in accordance with clause 12.4(a) (Temporary Substitute Properties that become Unavailable for Other Reasons) of the Base Agreement.	One High Performance Breach is triggered each time the event described occurs at any time .	[Yes][No] (If yes) number of High Performance Breaches during this Contract Quarter: [●] <i>Details of all High Performance Breaches must be recorded in the table at subsection 4.3 below.</i>

4.2 Performance over Contract Year to date – High Performance Requirements

[Drafting Note: The Provider does not need to complete this subsection 4.2 if the Contract Quarter covered in subsection 4.1 is the first Contract Quarter in a Contract Year.]

No. (HPR-##)	Description of High Performance Requirement	Description of what triggers a High Performance Breach	Number of High Performance Breaches in Contract Year to Date
HPR-01	The Provider has complied with clause 26.2(a) (Access to premises and Properties) of the Base Agreement, in respect of access to the Provider's premises and to Properties.	A High Performance Breach is triggered if the Provider fails to comply once or more during a Contract Quarter .	[•] Only a maximum of 4 is possible in any Contract Year.
HPR-02	The Provider has at all times complied with paragraph 11 (Tenancy Inspections) of Schedule 7 (Tenancy Management Requirements), relating to the requirement to conduct Tenancy Inspections in accordance with the Tenancy Inspections Policy.	A High Performance Breach is triggered if the Provider fails to comply once or more during a Contract Year .	[•] Only a maximum of 1 is possible in any Contract Year.
HPR-03	A Substitute Property has become Unavailable for Other Reasons and if MSD exercised its discretion, would cease to be a Substitute Property in accordance with clause 12.4(a) (Temporary Substitute Properties that become Unavailable for Other Reasons) of the Base Agreement.	A High Performance Breach is triggered if the Provider fails to comply at any time .	[•] No maximum applies.

4.3 Details of all High Performance Breaches during Contract Year to date

Identifying number of High Performance Requirement breached	Description of circumstances giving rise to Performance Breach <i>(include dates if applicable)</i>	Notice of breach served under cl 63.3(a)? (Y/N)	Details of Breach Remedy Plan (if notice of breach served)	Details of Provider's compliance with Breach Remedy Plan (if notice of breach served) – <i>note whether the breach is "not remedied", "undergoing remediation" or "remedied" and provide details.</i>
High Performance Breaches occurring in previous Contract Quarters in this Contract Year to date				
High Performance Breaches occurring in this Contract Quarter				
TOTAL HIGH PERFORMANCE BREACHES FOR YEAR TO DATE:				[•]

5. Performance against Performance Requirements

5.1 Performance over Contract Quarter – Performance Requirements

No. (PR-##)	Description of Performance Requirement	Description of what triggers a Performance Breach	New High Performance Breach triggered during Contract Quarter?
PR-01	The Provider has at all times complied with the Tenant Placement Policy as required under Part 2 (Tenanting Vacant Properties process and notifications) of Schedule 7 (Tenancy Management Requirements).	One Performance Breach is triggered if the Provider fails to comply once or more during a Contract Quarter .	[Yes][No] <i>Details of all Performance Breaches must be recorded in the table at subsection 5.3 below.</i>
PR-02	The Provider has not materially failed to comply with paragraph 5.1(a)(ii) (Introductory meeting) of Annexure 2 (Tenanting Vacant Properties process) to Schedule 7 (Tenancy Management Requirements), relating to provision of information to an Offeree prior to entry into a Tenancy Agreement.	One Performance Breach is triggered if the Provider fails to comply once or more during a Contract Year .	[Yes][No] <i>A Performance Breach in respect of this Performance Requirement will only be new if a Performance Breach has not occurred previously in the relevant Contract Year.</i> <i>Details of all Performance Breaches must be recorded in the table at subsection 5.3 below.</i>
PR-03	The Provider has at all times complied with the Debt Collection Policy.	One Performance Breach is triggered if the Provider fails to comply once or more during a Contract Quarter .	[Yes][No] <i>Details of all Performance Breaches must be recorded in the table at subsection 5.3 below.</i>
PR-04	The 24/7 Helpdesk that the Provider is required to have in place in accordance with paragraph 10.1(a) (Helpdesk) of Schedule 7 (Tenancy Management Requirements) has been operational 95% of the time over each calendar month of the Contract Quarter.	One Performance Breach is triggered each time the Helpdesk is not operational for 95% of a calendar month within the Contract Quarter .	[Yes][No] (If yes) number of Performance Breaches during this Contract Quarter: [●] <i>A maximum of three Performance Breaches would be possible.</i> <i>Details of all Performance Breaches must be recorded in the table at subsection 5.3 below.</i>
PR-05	The Provider has at all times complied with paragraph 9 (Tenancy Agreement) of Schedule 7 (Tenancy Management Requirements) relating to the requirement to have a Tenancy Agreement in place with each Tenant.	One Performance Breach is triggered if the Provider fails to comply once or more during a Contract Quarter .	[Yes][No] <i>Details of all Performance Breaches must be recorded in the table at subsection 5.3 below.</i>

No. (PR-##)	Description of Performance Requirement	Description of what triggers a Performance Breach	New High Performance Breach triggered during Contract Quarter?
PR-06	The Provider has at all times complied with paragraph 12 (Tenant meetings and engagement) of Schedule 7 (Tenancy Management Requirements), relating to the requirement to respond to a Tenant's request to discuss issues in accordance with the Tenant Engagement Policy.	One Performance Breach is triggered if the Provider fails to comply once or more during a Contract Year .	<p>[Yes][No]</p> <p><i>A Performance Breach in respect of this Performance Requirement will only be new if a Performance Breach has not occurred previously in the relevant Contract Year.</i></p> <p><i>Details of all Performance Breaches must be recorded in the table at subsection 5.3 below.</i></p>
PR-07	The Provider has at all times complied with paragraph 14 (Complaints and incidents) of Schedule 7 (Tenancy Management Requirements) relating to the requirement to respond to and address complaints and incidents (including anti-social behaviour) in accordance with the Tenant Anti-social Behaviour and Damage Policy.	One Performance Breach is triggered if the Provider fails to comply once or more during a Contract Quarter .	<p>[Yes][No]</p> <p><i>Details of all Performance Breaches must be recorded in the table at subsection 5.3 below.</i></p>
PR-08	The Provider has at all times complied with paragraph 20 (Tenant disputes) of Schedule 7 (Tenancy Management Requirements), relating to the handling of Tenant disputes in accordance with the Tenant Disputes Policy.	One Performance Breach is triggered if the Provider fails to comply once or more during a Contract Quarter .	<p>[Yes][No]</p> <p><i>Details of all Performance Breaches must be recorded in the table at subsection 5.3 below.</i></p>
PR-09	The Provider has not materially failed to comply with any of the requirements in paragraph 21 (Tenant transfers) of Schedule 7 (Tenancy Management Requirements) including the Tenant Transfers Policy relating to Tenant Transfers such that the Provider's failure has materially and detrimentally impacted MSD or a Tenant.	One Performance Breach is triggered each time the Provider fails to comply.	<p>[Yes][No]</p> <p>(If yes) number of Performance Breaches during this Contract Quarter: [●]</p> <p><i>Details of all Performance Breaches must be recorded in the table at subsection 5.3 below.</i></p>

5.2 Performance over Contract Year to date – Performance Requirements

No. (PR-##)	Description of Performance Requirement	Description of what triggers a Performance Breach	Number of Performance Breaches in Contract Year to Date
PR-01	The Provider has at all times complied with the Tenant Placement Policy as required under Part 2 (Tenancing Vacant Properties process and notifications) of Schedule 7 (Tenancy Management Requirements).	One Performance Breach is triggered if the Provider fails to comply once or more during a Contract Quarter .	[•] <i>Only a maximum of 4 is possible in any Contract Year.</i>
PR-02	The Provider has not materially failed to comply with paragraph 5.1(a)(ii) (Introductory meeting) of Annexure 2 (Tenancing Vacant Properties process) to Schedule 7 (Tenancy Management Requirements), relating to provision of information to an Offeree prior to entry into a Tenancy Agreement.	One Performance Breach is triggered if the Provider fails to comply once or more during a Contract Year .	[•] <i>Only a maximum of 1 is possible in any Contract Year.</i>
PR-03	The Provider has at all times complied with the Debt Collection Policy.	One Performance Breach is triggered if the Provider fails to comply once or more during a Contract Quarter .	[•] <i>Only a maximum of 4 is possible in any Contract Year.</i>
PR-04	The 24/7 Helpdesk that the Provider is required to have in place in accordance with paragraph 10.1(a) (Helpdesk) of Schedule 7 (Tenancy Management Requirements) has been operational 95% of the time over each calendar month of the Contract Quarter.	One Performance Breach is triggered each time the Helpdesk is not operational for 95% of a calendar month of the Contract Quarter .	[•] <i>Only a maximum of 4 is possible in any Contract Year.</i>
PR-05	The Provider has at all times complied with paragraph 9 (Tenancy Agreement) of Schedule 7 (Tenancy Management Requirements) relating to the requirement to have a Tenancy Agreement in place with each Tenant.	One Performance Breach is triggered if the Provider fails to comply once or more during a Contract Quarter .	[•] <i>Only a maximum of 4 is possible in any Contract Year.</i>
PR-06	The Provider has at all times complied with paragraph 12 (Tenant meetings and engagement) of Schedule 7 (Tenancy Management Requirements), relating to the requirement to respond to a Tenant's request to discuss issues in accordance with the Tenant Engagement Policy.	One Performance Breach is triggered if the Provider fails to comply once or more during a Contract Year .	[•] <i>Only a maximum of 1 is possible in any Contract Year.</i>
PR-07	The Provider has at all times complied with paragraph 14 (Complaints and incidents) of Schedule 7 (Tenancy Management Requirements) relating to the requirement to respond to and address complaints and incidents (including anti-social behaviour) in accordance with the Tenant Anti-social Behaviour and Damage Policy.	One Performance Breach is triggered if the Provider fails to comply once or more during a Contract Quarter .	[•] <i>Only a maximum of 4 is possible in any Contract Year.</i>

No. (PR-##)	Description of Performance Requirement	Description of what triggers a Performance Breach	Number of Performance Breaches in Contract Year to Date
PR-08	The Provider has at all times complied with paragraph 20 (Tenant disputes) of Schedule 7 (Tenancy Management Requirements), relating to the handling of Tenant disputes in accordance with the Tenant Disputes Policy.	One Performance Breach is triggered if the Provider fails to comply once or more during a Contract Quarter .	[•] <i>Only a maximum of 4 is possible in any Contract Year.</i>
PR-09	The Provider has not materially failed to comply with any of the requirements in paragraph 21 (Tenant transfers) of Schedule 7 (Tenancy Management Requirements) including the Tenant Transfers Policy relating to Tenant Transfers such that the Provider's failure has materially and detrimentally impacted MSD or a Tenant.	One Performance Breach is triggered each time the Provider fails to comply.	[•] No maximum applies.

5.3 Details of all Performance Breaches during Contract Year to date

Identifying number of Performance Requirement breached	Description of circumstances giving rise to Performance Breach <i>(include dates if applicable)</i>	Notice of breach served under cl 63.3(a)? (Y/N)	Details of Breach Remedy Plan (if notice of breach served)	Details of Provider's compliance with Breach Remedy Plan (if notice of breach served)
Performance Breaches during previous Contract Quarters in this Contract Year to date				
Performance Breaches occurring during this Contract Quarter				
TOTAL PERFORMANCE BREACHES FOR YEAR TO DATE:				[●]

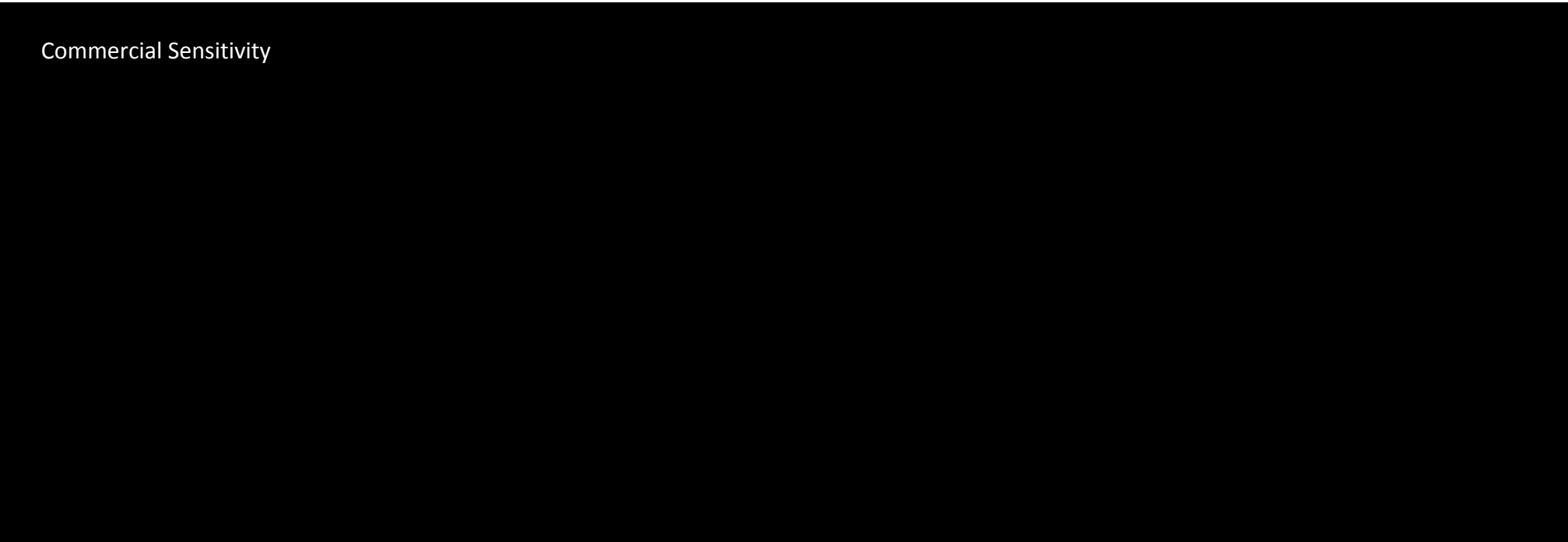
6. Details of all other breaches of Provider obligations during Contract Year to date

Date of breach	Relevant clause of Capacity Contract	Outline of circumstances giving rise to breach	Action taken	Warning Notice issued? (If yes, record in Warning Notices table above)
Breaches during previous Contract Quarters in this Contract Year to date				
Breaches during this Contract Quarter				

7. Performance against Performance Metrics

7.1 Performance over Contract Quarter – Performance Metrics

Commercial Sensitivity



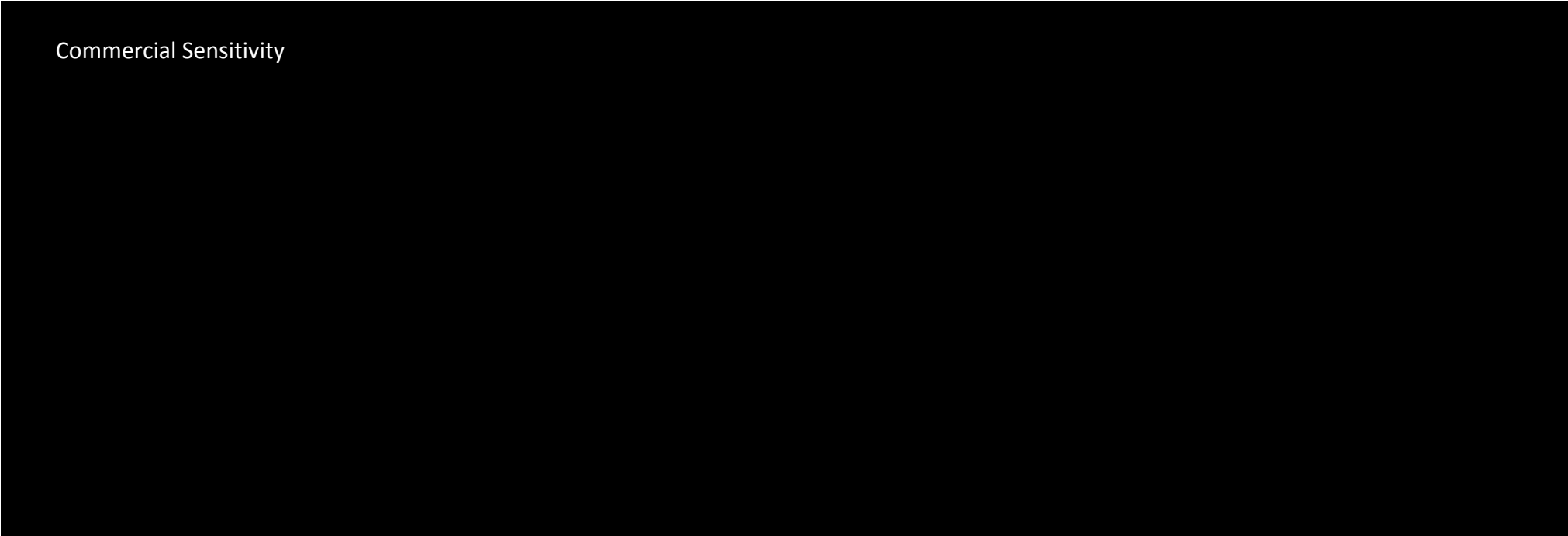
7.2 Narrative Response from Provider – Contract Quarter

[Where the Provider has not met any Target for a Performance Metric over the Contract Quarter, the Provider must provide a narrative response (for each such Performance Metric) that outlines:

- the reason(s) why the Provider believes it did not meet the Performance Metric during the Contract Quarter; and*
- what it proposes to do differently to ensure that it will meet the Performance Metric over the next Contract Quarter.]*

7.3 Performance over Contract Year to date – Performance Metrics

Commercial Sensitivity



7.4 Narrative Response from Provider – Contract year to date:

[Where the Provider has not met any Target for a Performance Metric over the Contract Quarter, the Provider must provide a narrative response (for each such Performance Metric) that outlines:

- the reason(s) why the Provider believes it did not meet the Performance Metric during the Contract Quarter; and*
- what it proposes to do differently to ensure that it will meet the Performance Metric over the next Contract Quarter.]*

8. Health and safety incidents and “near misses” and Notifiable Events over Contract Quarter

Description of incident / “near miss”	Date logged	Time logged	Property affected	Action assigned

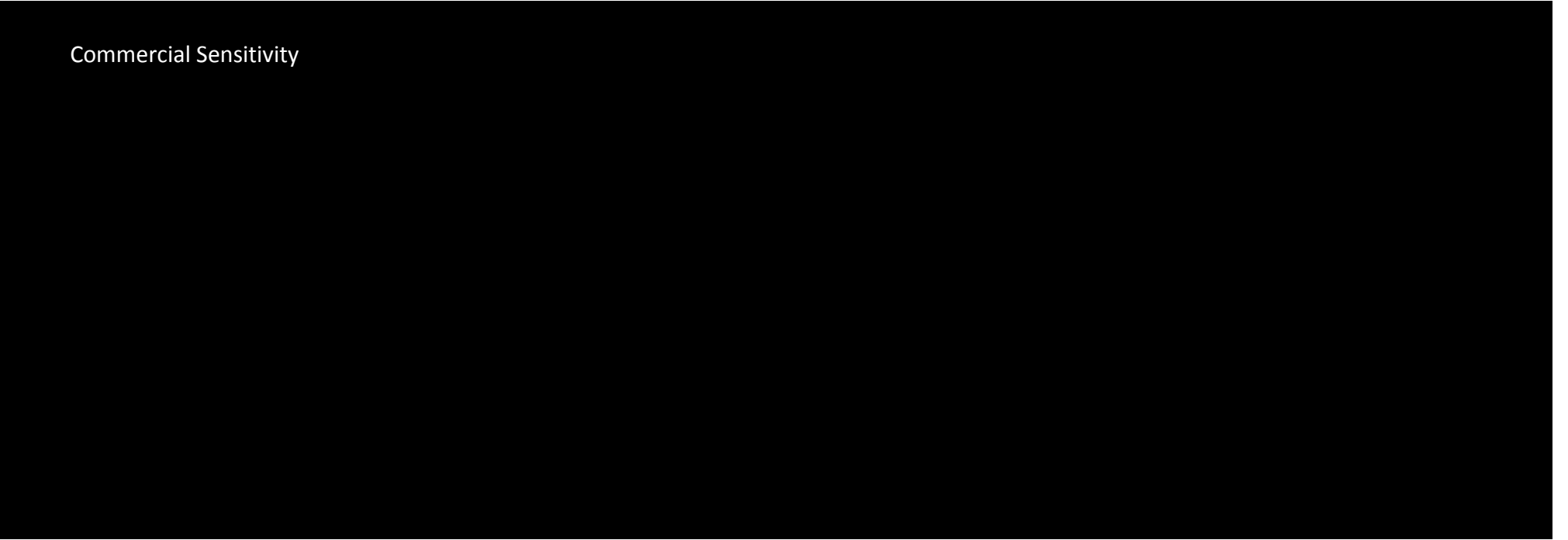
9. Disclosures during Contract Quarter

[The Provider should include details of any disclosures made to it in accordance with its internal procedures. See clause 29.7(c) (Protected Disclosure Act) of the Base Agreement for this reporting obligation. If there have been no disclosures during the reporting period, the Provider should simply record 'None received.' under this heading.]

Date of Disclosure	Details of disclosure	Action Taken

10. Percentage of Tenancy Inspections completed

Commercial Sensitivity



Annexure 4: Form of Compliance Certificate

(Paragraph 13 (Compliance Certificate) of Schedule 9 (Governance and reporting))

TO: Her Majesty, The Queen in Right of New Zealand acting by and through the Chief Executive of the Ministry of Social Development (**MSD**)

I refer to the Agreement relating to the agreement relating to [insert city] between MSD and [insert names of CHP and Asset Owner] (together, the **Provider**) dated [] (**Capacity Contract**).

I am a [director] of [insert name of CHP or Asset Owner] (the **Relevant Entity**). I am authorised to execute this certificate for the Relevant Entity in relation to the performance of the Provider under the Capacity Contract.

This certificate is given to you pursuant to paragraph 13 (Compliance Certificate) of Schedule 9 (Governance and reporting). Terms defined in the Capacity Contract have the same meaning when used in this certificate.

I CERTIFY on behalf of the Provider as follows:

1. I have read and understood the Provider's obligations under clauses 22 (Reporting), 23 (Sub-contractors), 24 (Compliance obligations), 25 (Record keeping), 29 (Provider Personnel and employees), 41 (Provider warranties), 42 (Provider undertakings) and 59 (Insurance) of the Capacity Contract.
2. At all times during the Contract Quarter to which this certificate relates, the Provider has complied with and continues to comply with clause 22 of the Capacity Contract. All reports provided by the Provider to MSD have been true, complete and accurate.
3. At all times during the Contract Quarter to which this certificate relates, the Provider has complied with and continues to comply with clause 23 of the Capacity Contract.
4. At all times during the Contract Quarter to which this certificate relates, the Provider has complied with and continues to comply with clause 24 of the Capacity Contract.
5. At all times during the Contract Quarter to which this certificate relates, the Provider has complied with and continues to comply with all of its obligations under HSE Legislation.
6. At all times during the Contract Quarter to which this certificate relates, the Provider has complied with and continues to comply with clause 25 of the Capacity Contract.
7. At all times during the Contract Quarter to which this certificate relates, the Provider has complied with and continues to comply with clause 29 of the Capacity Contract.
8. At all times during the Contract Quarter to which this certificate relates, the Provider has complied with and continues to comply with clause 59 of the Capacity Contract.
9. The representations and warranties given by the Provider under the Capacity Contract (including, in particular, clause 41 of the Capacity Contract) [remain true and correct] / [remain true and correct, except to the following extent [insert exceptions]].
10. The undertakings made by the Provider under clause 42 of the Capacity Contract [have been complied with in all material respects] / [have been complied with in all material respects, except to the following extent [insert exceptions]].

This certificate is given by me as director of the [CHP/Asset Owner] for and on behalf of the Provider.

Signed

.....

.....

Date:

Annexure 5: Form of Reconciliation Report

[The following table must be completed for each Tenancy in place as at the reference date (such date as identified in paragraph 14.2(a) of this Schedule 9).]

Tenancy Reference	IRR Payment Reference	Signatory count for the Tenancy	Rent Amount for the Tenancy	Agreed Rent for the Tenancy

Annexure 6: Form of Monthly Job-logging Report

This Monthly Job-logging Report is an additional requirement to the reporting and record keeping obligations in relation to the Helpdesk in the Base Agreement and Schedule 13 (Helpdesk and Availability Requirements).

1. Report summary

Report Details		
Calendar month and Contract Year	[mm] in Contract Year [●]	
Property management Jobs		
Number of Emergency Jobs over calendar month (and number for which the Provider did not comply with required response/rectification times):	[●], of which: (a) [●] did not comply with the Required Response Period; and (b) [●] did not comply with the Required Rectification Period.	See subsection: 2.1
Number of Urgent Jobs over calendar month (and number for which the Provider did not comply with required response/rectification times):	[●], of which: (a) [●] did not comply with the Required Response Period; and (b) [●] did not comply with the Required Rectification Period.	See subsection: 2.2
Number of Property CORs Defects over calendar month (and number for which the Provider did not comply with required response/rectification times):	[●], of which: (a) [●] did not comply with the Required Response Period; and (b) [●] did not comply with the Required Rectification Period.	See subsection: 2.3
Number of Other Jobs over calendar month (and number for which the Provider did not comply with required response/rectification times):	[●], of which: (a) [●] did not comply with the Required Response Period; and (b) [●] did not comply with the Required Rectification Period.	See subsection: 2.4

Tenancy management Jobs		
Number of Urgent Jobs over calendar month (and number for which the Provider did not comply with Required Response Periods):	[●], of which [●] did not comply with the Required Response Period.	See subsection: 3.1
Number of Non-urgent Jobs over calendar month (and number for which the Provider did not comply with Required Response Periods):	[●], of which [●] did not comply with the Required Response Period.	See subsection: 3.2

2. Jobs relating to Property Management Requirements

[Note: see paragraph 3 (Job Classifications) of Schedule 13 (Helpdesk and Availability Requirements) for guidance on Job Classifications]

2.1 Emergency Jobs (Property Management Requirements)

No.	Property reference	Brief description of nature of the Job	Logged Job Time (include date)	Required Response Period	Logged Response Time	Complied with Required Response Period? [Y/N]	Required Rectification Period (include a note if a Temporary/Deferred Permanent Rectification Period applies and specify details)	Logged Rectification Time – Temporary Rectification	Logged Rectification Time – Permanent Rectification	Complied with Required Rectification Period (and/or Temporary / Deferred Rectification Period)? [Y/N]
				4 hours			24 hours			
				4 hours			24 hours			
				4 hours			24 hours			
				4 hours			24 hours			

				4 hours			24 hours			
				4 hours			24 hours			
				4 hours			24 hours			
Total number of Emergency Jobs (Property Management Requirements):										[•]
Total number of Emergency Jobs (Property Management Requirements) for which the Provider did not respond within the Required Response Period:										[•]
Total number of Emergency Jobs (Property Management Requirements) for which the Provider did not comply with the Required Rectification Period:										[•]

2.2 Urgent Jobs (Property Management Requirements)

No.	Property reference	Brief description of nature of the Job	Logged Job Time (<i>include date</i>)	Required Response Period	Logged Response Time	Complied with Required Response Period? [Y/N]	Required Rectification Period (<i>include a note if a Temporary/ Deferred Permanent Rectification Period applies and specify details</i>)	Logged Rectification Time – Temporary Rectification	Logged Rectification Time – Permanent Rectification	Complied with Required Rectification Period (and/or Temporary / Deferred Rectification Period)? [Y/N]
				1 calendar day			7 calendar days			
				1 calendar day			7 calendar days			
				1 calendar day			7 calendar days			
				1 calendar day			7 calendar days			
				1 calendar day			7 calendar days			
				1 calendar day			7 calendar days			
				1 calendar day			7 calendar days			
				1 calendar day			7 calendar days			
				1 calendar day			7 calendar days			
				1 calendar day			7 calendar days			
				1 calendar day			7 calendar days			
Total number of Urgent Jobs (Property Management Requirements):										[•]
Total number of Urgent Jobs (Property Management Requirements) for which the Provider did not respond within the Required Response Period:										[•]
Total number of Urgent Jobs (Property Management Requirements) for which the Provider did not comply with the Required Rectification Period:										[•]

2.3 Jobs relating to Property CORs Defects (Property Management Requirements)

No.	Property reference	Brief description of nature of the Job	Logged Job Time <i>(include date)</i>	Required Response Period	Logged Response Time	Complied with Required Response Period? [Y/N]	Required Rectification Period	Logged Rectification Time – Permanent Rectification	Complied with Required Rectification Period? [Y/N]
				Two Business Days			The earlier of (a) the commencement of the next Tenancy Inspection and (b) six months.		
				Two Business Days			The earlier of (a) the commencement of the next Tenancy Inspection and (b) six months.		
				Two Business Days			The earlier of (a) the commencement of the next Tenancy Inspection and (b) six months.		
				Two Business Days			The earlier of (a) the commencement of the next Tenancy Inspection and (b) six months.		
Total number of Property CORs Jobs:									[●]
Total number of Property CORs Jobs for which the Provider did not respond within the Required Response Period:									[●]
Total number of Property CORs Jobs for which the Provider did not comply with the Required Rectification Period:									[●]

2.4 Other Jobs (Property Management Requirements)

No.	Property reference	Brief description of nature of the Job	Sub-classification (see paragraph 3.1 of Schedule 13 (Helpdesk and Availability Requirements) for guidance)	Logged Job Time (include date)	Required Response Period	Logged Response Time	Complied with Required Response Period? [Y/N]	Required Rectification Period (Depends on sub-classification. See paragraph 3.1 of Schedule 13 (Helpdesk and Availability Requirements) for guidance)	Logged Rectification Time – Permanent Rectification	Complied with Required Rectification Period? [Y/N]
					Two Business Days					
					Two Business Days					
					Two Business Days					
					Two Business Days					
					Two Business Days					
					Two Business Days					
					Two Business Days					
Total number of Other Jobs (Property Management Requirements):										[●]
Total number of Other Jobs (Property Management Requirements) for which the Provider did not respond within the Required Response Period:										[●]
Total number of Other Jobs (Property Management Requirements) for which the Provider did not comply with the relevant Required Rectification Period:										[●]

3. Jobs relating to Tenancy Management Requirements

3.1 Urgent Jobs (Tenancy Management Requirements)

No.	Property reference	Brief description of nature of the Job	Logged Job Time <i>(include date)</i>	Within or outside Business Hours?	Required time within which the Provider must notify a Tenancy Manager <i>(1 hour if within Business Hours, 4 hours if outside)</i>	Time Tenancy Manager notified	Complied with required time? [Y/N]	Required Response Period <i>(3 hours if within Business Hours, 6 hours if outside)</i>	Logged Response Time	Complied with Required Response Period? [Y/N]
					[1][4] hour[s]			[3][6] hours		
					[1][4] hour[s]			[3][6] hours		
					[1][4] hour[s]			[3][6] hours		
					[1][4] hour[s]			[3][6] hours		
					[1][4] hour[s]			[3][6] hours		
					[1][4] hour[s]			[3][6] hours		
					[1][4] hour[s]			[3][6] hours		
					[1][4] hour[s]			[3][6] hours		
Total number of Urgent Jobs (Tenancy Management Requirements):										[●]
Total number of Urgent Jobs (Tenancy Management Requirements) for which the Provider did not notify a Tenancy Manager within the relevant required timeframe:										[●]
Total number of Urgent Jobs (Tenancy Management Requirements) for which the Provider did not respond within the relevant Required Response Period:										[●]

3.2 Non-urgent Jobs (Tenancy Management Requirements)

No.	Property reference	Brief description of nature of the Job	Logged Job Time <i>(include date)</i>	Within or outside Business Hours?	Required time within which the Provider must notify a Tenancy Manager <i>(1 hour if within Business Hours, 4 hours if outside)</i>	Time Tenancy Manager notified	Complied with required time? [Y/N]	Required Response Period	Logged Response Time	Complied with Required Response Period? [Y/N]
					[1][4] hour[s]			Two Business Days		
					[1][4] hour[s]			Two Business Days		
					[1][4] hour[s]			Two Business Days		
					[1][4] hour[s]			Two Business Days		
					[1][4] hour[s]			Two Business Days		
					[1][4] hour[s]			Two Business Days		
Total number of Non-urgent Jobs (Tenancy Management Requirements):										[●]
Total number of Non-urgent Jobs (Tenancy Management Requirements) for which the Provider did not notify a Tenancy Manager within the relevant required timeframe:										[●]
Total number of Non-urgent Jobs (Tenancy Management Requirements) for which the Provider did not respond within the Required Response Period:										[●]

Availability Report - Payment Period dd/mm/yyyy-dd/mm/yyyy

AVAILABILITY REPORT Payment Period (fortnight) dd/mm/yyyy - dd/mm/yyyy						
Part One - Availability Payment Due (calculated in accordance with Schedule 11 (Payment Mechanism) of Capacity Contract)						
IRRS Payment for Payment Period (IRRSP)	Unavailability Payment for Payment Period (UP)	Threshold Unavailability Charge for Payment Period (TUC)	Top-up Payment for Payment Period (TUP)	Availability Payment due (IRRSP - UP - TUC + TUP)		
\$xxx	\$xxx	\$xxx	\$xxx	\$xxx		
Part Two - Summary of Available Properties						
Notes for completing this Part: - "Start Date" and "End Date" refers to the times during the Payment Period when the Property fell into the relevant category; it does not refer to the start/end of the Tenancy. - A property may have more than one "Start Date" and "End Date" within a Payment Period where, for example, a Property was Available at the start of the Payment Period, was briefly Unavailable in the middle of the Payment Period and then become Available again. Every period should be recorded in the relevant category. - Refer to the Base Agreement for the definitions of "Available Tenanted Property" and "Available Vacant Properties" to assist with putting each Property into the correct category.						
Category 1: Available Tenanted Properties						
Property reference (note: must be a unique and enduring identifier for the relevant property)	Start date	End date	(Weekly) Agreed Rent	Total Agreed Rent claimed over Payment Period	IRR (as defined in the Capacity Contract - i.e. this may be equal to Market Rent)	Comments (include details of any changes to IRR, etc. that occurred during the Payment Period, and any other information relevant to the calculation of the Agreed Rent claimed)
Subtotal IRRSP claimed - Available Tenanted Properties					\$xxx	
Category 2: Available Vacant Properties						
Property reference (note: must be a unique and enduring identifier for the relevant property)	Start date	End date	(Weekly) Agreed Rent	Total Agreed Rent claimed over Payment Period	Comments (include details of any changes that occurred during the Payment Period, and any other information relevant to the calculation of the Agreed Rent claimed)	
Sub-total IRRSP claimed - Available Vacant Properties:					\$xxxx	
Total IRRSP claimed for Payment Period:					\$xxxx	
Part Three - Summary of Unavailable Properties						
Notes for completing this Part:						

Availability Report - Payment Period dd/mm/yyyy-dd/mm/yyyy

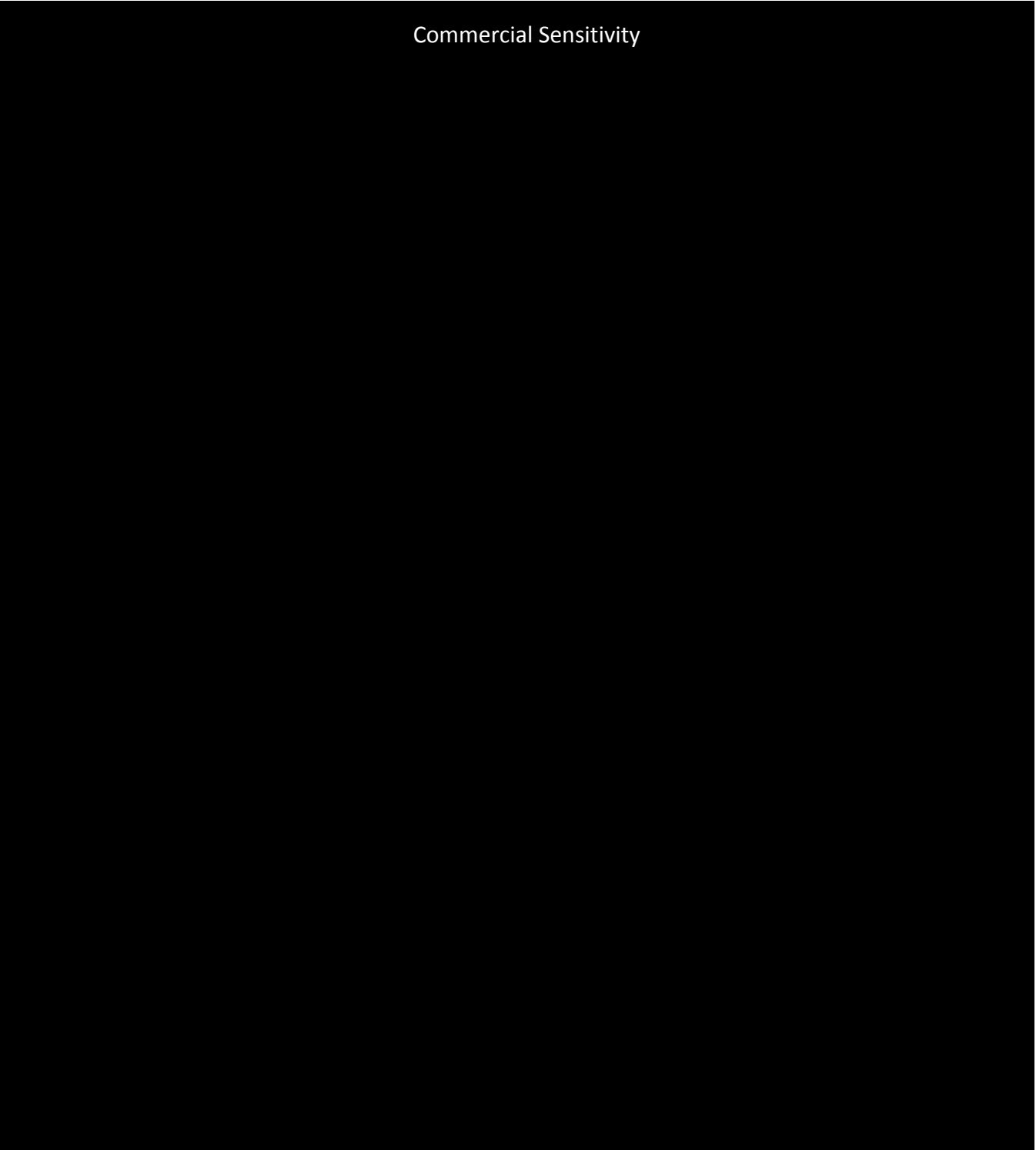
- "Start Date" and "End Date" refers to the times during the Payment Period when the Property fell into the relevant category; it does not refer to the start/end of the Tenancy. - A property may have more than one "Start Date" and "End Date" within a Payment Period where, for example, a Property was Available at the start of the Payment Period, was briefly Unavailable in the middle of the Payment Period and then become Available again. Every period should be recorded in the relevant category. - Refer to the Base Agreement for the definitions of "Unavailable Tenanted Property", "Short-Term Private Rental", "Permitted Rental", "Unavailable for Maintenance Reasons" and "Unavailable Untenanted Property" to assist with putting each Property into the correct category - Where a Property has been included in Category 4 because it is Unavailable for Maintenance Reasons as a result of methamphetamine contamination, include this in the comment section.								
Category 3: Unavailable Tenanted Properties (that are Short-Term Private Rentals)								
Property reference (note: must be a unique and enduring identifier for the relevant property)	Start date	End date	(Weekly) Agreed Rent	IRR (as defined in the Capacity Contract - i.e. this may be equal to Market Rent)	Top-Up Amount claimed over Payment Period (i.e. difference between private rental amount and Agreed Rent)	Comments (include any relevant information, including the term of any Short-Term Private Rental and whether a Short-Term Private Rental ended earlier than previously agreed with MSD)		
Total Top Up Amount claimed for Payment Period:					\$xxxx			
Category 4: Unavailable Tenanted Properties (including those that are deemed Permitted Rentals or that are Unavailable for Maintenance Reasons (even if not Tenanted))								
Property reference (note: must be a unique and enduring identifier for the relevant property)	Start date	End date	Comments (if the Property was Unavailable for Maintenance Reasons, include a note as to the reason eg. due to CORS defect, methamphetamine contamination, health and safety or other maintenance(describe), and any other relevant information)					
Category 5: Unavailable Untenanted Properties								
Property reference	Start date	End date	Comments (include any relevant information)					
Subtotal Unavailability Payment payable for Unavailable Untenanted Properties:					\$xxx			
Total Unavailability Payment payable for Payment Period:					\$xxx			
Part Four - Calculation of Threshold Unavailability Charge								

Availability Report - Payment Period dd/mm/yyyy-dd/mm/yyyy

Notes for completing this Part:						
- In this Part, the total number of Properties that fall into category 4 (subject to the exception below) or category 5 for each day of the fortnight must be recorded - together these make up the "total Unavailable Properties" for that day. - The total number of Properties on each day of the fortnight must also be recorded. - If a Property falls into category 4 on a given day because on that day it is Unavailable for Maintenance Reasons due to methamphetamine contamination, this incidence of Unavailability should not be included in the total number of Unavailable Properties for that day. - If a Property falls into category 4 or 5 for only part of a day, it should still be included in the total number of Unavailable Properties for that day as if it had been in that category for the whole day. - See Schedule 11 (Payment Mechanism) of the Capacity Contract for the calculation of the Threshold Unavailability Charge.						
	Date	No. of Category 4 Properties on this day	No. of Category 5 Properties on this day	Total Unavailable Properties for this day	Total number of Properties on this day	
Day 1 of Payment Period	dd/mm/yyyy	xx	xx	xx	xx	
Day 2 of Payment Period						
Day 3 of Payment Period						
Day 4 of Payment Period						
Day 5 of Payment Period						
Day 6 of Payment Period						
Day 7 of Payment Period						
Day 8 of Payment Period						
Day 9 of Payment Period						
Day 10 of Payment Period						
Day 11 of Payment Period						
Day 12 of Payment Period						
Day 13 of Payment Period						
Day 14 of Payment Period						
					Total Threshold Unavailability Charge payable:	

Schedule 10: Financing

Commercial Sensitivity



Schedule 11: Payment Mechanism

1. Availability Payment

The **Availability Payment** for any Payment Period (n) will be calculated in accordance with the following formula:

$$AP(n) = IRRSP - UP - TUC + TUP$$

where:

AP = the Availability Payment for Payment Period (n);

IRRSP = the IRRS Payment for Payment Period (n) calculated in accordance with paragraph 2 (Calculation of IRRS Payment);

UP = the Unavailability Payment for Payment Period (n) calculated in accordance with paragraph 3 (Calculation of Unavailability Payment);

TUC = the applicable Threshold Unavailability Charge for Payment Period (n) calculated in accordance with paragraph 4 (Threshold Unavailability Charge); and

TUP = the applicable Top-up Payment for Payment Period (n) calculated in accordance with paragraph 5 (Top-Up Payment).

2. Calculation of IRRS Payment

The **IRRS Payment** for any Payment Period (n) will be calculated in accordance with the following formula:

$$IRRSP(n) = \sum (\sum IRRS)$$

where

IRRSP = the IRRS Payment for Payment Period (n);

\sum = the sum of $\sum IRRS$ applied to each relevant Property that was an Available Tenanted Property or an Available Vacant Property at any time over Payment Period (n);

$\sum IRRS$ = the total IRRS for a single Property over Payment Period (n) where the Property was an Available Tenanted Property or Available Vacant Property at any time over Payment Period (n), calculated by adding the applicable Daily IRRS for each day falling in Payment Period (n); and

Daily IRRS = the Daily IRRS for a Property on a single day (d) in Payment Period (n) where the Property was an Available Tenanted Property or an Available Vacant Property at any time over Payment Period (n) calculated as follows:

$$\text{Daily IRRS} = AR - IRR$$

where:

Daily IRRS	= the IRRS for the Property on day (d);
AR	= the Agreed Rent for the Property on day (d); and
IRR	= the IRR for the Property on day (d) or where the Property is Vacant on day (d), zero (subject to the for the avoidance of doubt proviso at the end of the definition of IRRS which shall also apply to the definition of IRR when used here in this formula),

with AR and IRR each being calculated on a daily pro rata basis for each day falling within Payment Period (n).

3. Calculation of Unavailability Payment

The **Unavailability Payment** for any Payment Period (n) will be calculated in accordance with the following formula:

$$\text{UP}(n) = \sum \text{PUC}$$

where

UP = the Unavailability Payment for Payment Period (n)

\sum = the sum of PUC applied to each relevant Property that was an Unavailable Untenanted Property on any day falling in Payment Period (n); and

PUC = the PUC for a single Property for Payment Period (n) where the Property was an Unavailable Untenanted Property on any day falling in Payment Period (n), calculated as follows:

$$\text{PUC} = \text{D} \times \text{Amount}$$

where:

PUC = the Property Unavailability Charge for the Property over Payment Period (n);

D = the number of days in Payment Period (n) that the Property was an Unavailable Untenanted Property; and

Amount = means \$100 (Indexed on the same basis and at the same frequency as Agreed Rent).

4. Threshold Unavailability Charge

The **Threshold Unavailability Charge** for any Payment Period (n) will be calculated in accordance with the following formula:

$$\text{TUC}(n) = \text{NP} \times \text{UBC}$$

where:

TUC = the Threshold Unavailability Charge for the Payment Period (n):

NP = the number of Properties that the Unavailability Threshold has been exceeded over each day in the Payment Period (n); and

UBC = means \$100 (Indexed on the same basis and at the same frequency as Agreed Rent).

5. Top-Up Payment

The **Top-up Payment** for any Payment Period (n) will be calculated in accordance with the following formula:

$$\text{TUP}(n) = \sum (\sum \text{TUA})$$

where

TUP = the Top-Up Payment for the Payment Period (n), except that where the Top-Up Payment is calculated as being a negative number, it shall be deemed to be zero;

\sum = the sum of $\sum \text{TUA}$ applied to each relevant Property that was a Short-Term Private Rental at any time over that Payment Period (n);

$\sum \text{TUA}$ = the total Top Up Amount for a single Property over the Payment Period (n) where the Property was a Short-Term Private Rental at any time over that Payment Period (n), calculated by adding the applicable Daily TUA for each day falling in the Payment Period (n); and

Daily TUA = the Daily TUA for a Property on a single day in the Payment Period (n) where the Property was a Short-Term Private Rental at any time over that Payment Period (n), calculated as follows:

$$\text{Daily TUA} = \text{AR} - \text{MR}$$

where:

Daily TUA = the Top-up Amount (but calculated on a daily pro rata basis) for the Property on the day falling within the Payment Period (n);

AR = the Agreed Rent (but calculated on a daily pro rata basis) for the Property on the day falling within the Payment Period (n); and

MR = the rent amount contracted to be received from the property from the private renter (but calculated on a daily pro rata basis) for the Property on the day falling within the Payment Period (n).

Schedule 12: Change Compensation Principles

1. General principles

1.1 Open book

Any Change or Change in Costs, in respect of which MSD has agreed or is obliged to pay the Provider compensation, will only be approved and will only be payable by MSD if the calculation of charges proposed by the Provider is disclosed to MSD on an Open Book Basis.

1.2 Other considerations

In determining any Change in Costs or the amount of compensation payable in respect of a Change:

- (a) appropriate regard must be given to the timing of cash flows and all cash flows should be discounted or inflated to reflect when they occur (if appropriate);
- (b) the Provider:
 - (i) must take, and require all Provider Personnel to take, all proper and reasonable steps to mitigate the effect and consequences of the Change or event giving rise to the Change in Costs; and
 - (ii) will not be entitled to compensation under these Change Compensation Principles for any costs or Losses to the extent it, or any Provider Personnel, has failed to comply with paragraph 1.2(b)(i) of these Change Compensation Principles;
- (c) the compensation will be assessed in a manner that avoids double counting, particularly in relation to profits, margins, delay and prolongation costs; and
- (d) the compensation calculation will take full account of any insurance proceeds, damages, other compensation or amount paid or confirmed as due and payable to the Provider or any Provider Personnel or that would have been payable to the Provider or any Provider Personnel had the Provider or the Provider Personnel complied with the Provider's insurance obligations under the Base Agreement and made a proper claim under the relevant Insurance Policies as a result of the occurrence of the relevant event.

1.3 Omissions

Where MSD omits a Service by way of a Change, and such Service is not required to be provided by the CHP to its Tenants by Law or in accordance with Good Industry Practice, deductions will be made from the amounts then payable by MSD under this Agreement for any actual savings to the Provider (including any profit on the amount of such savings).

2. Change compensation

2.1 Generally

The entire compensation payable by MSD for the implementation of a Change is to comprise only the Base Costs and (subject to paragraph 2.2) a Margin and not any separate fee, profit, element or uplift.

2.2 Provider Margin

The Provider will not charge any Margin in connection with the management or implementation of any Change except as provided in this paragraph 2.2. The Provider may charge a Margin up to (but not exceeding) the applicable Margin Allowance in connection with the implementation of any Change, but only in the following circumstances where the Provider can demonstrate to MSD that:

- (a) due to the complexity of the Change it is necessary for the Provider to deploy significant additional or specialised resources into the processing or management of the Change; and/or
- (b) due to the high value nature of the Change, the Provider is being required to assume extraordinary risks in connection with the performance of the Sub-contractors in implementing the Change.

2.3 Base and lifecycle costs

- (a) The labour cost and professional fee (including project management) cost components of the Base Costs for a Change (and any associated lifecycle or maintenance changes) are to be calculated on the basis of then-current market rates on a fair and reasonable basis, fully disclosed to MSD on an Open Book Basis and incorporating applicable comparator information.
- (b) Any lifecycle replacement and maintenance associated with additional works (or changes to the Properties) shall be consistent with the lifecycle and maintenance profile of the Properties envisaged in the Asset Management Plan, provided that the Provider shall reflect improvements in technology that can optimise whole of life costs for MSD.

2.4 Costs or savings

- (a) The costs or savings applicable to any Change to be paid for or received by MSD are to be calculated as follows:

$$P = A - B - C$$

where:

P = the amount payable to or by the Provider;

A = the amount payable to the Provider or any Sub-contractor for implementing the Change, calculated in accordance with these Change Compensation Principles;

B = the amount avoided or saved by the Provider; and

C = the change in the Provider's operating revenue as a result of the Change (where a reduction shall be expressed as a negative number and an increase shall be expressed as a positive number).

- (b) The calculation of A and B in the foregoing formula must take into account the Base Costs payable and any Margin payable in accordance with these Change Compensation Principles to the extent required to, in the case of a Change, leave the Provider in a 'no better and no worse' position on implementation of the Change.
- (c) In determining Base Costs, the Provider will only be entitled to compensation for those costs, without double counting properly and reasonably incurred and directly attributable to the implementation of the Change in question, excluding any Margin.
- (d) For the purposes of calculating any Margin Allowance, all Base Costs will exclude any financing, delay or prolongation costs that may otherwise be payable in accordance with these Change Compensation Principles.
- (e) In calculating B in the foregoing formula, the calculation of Base Costs must include all costs avoided by the Provider or any Sub-contractor. In the context of a Change that is an omission to any Services, this saving must include the same Margin Allowances that would apply as if there had been an increase in the Services.
- (f) The Provider must use its best endeavours to ensure that its Sub-contractors minimise any increase in costs and maximise any reductions in costs.

2.5 Form and payment of compensation

Subject to the terms of the Base Agreement, the amounts calculated in accordance with these Change Compensation Principles will be paid and invoiced in a manner determined by MSD by one or more lump sum payments, by increasing or decreasing the Agreed Rent, or by a combination of these.

Annexure: Margin Allowances

Component	Margin Allowance		
Margin	\$0 to \$100,000 (inclusive) (Base Cost either by way of one off Capital Expenditure or annual operating expenditure)	>\$100,000 to \$500,000 (exclusive) (Base Cost either by way of one off Capital Expenditure or annual operating expenditure)	>\$500,000 (Base Cost either by way of one off Capital Expenditure or annual operating expenditure)
	0%	10%	10%

Schedule 13: Helpdesk and Availability Requirements

1. Helpdesk

1.1 Helpdesk Requirements

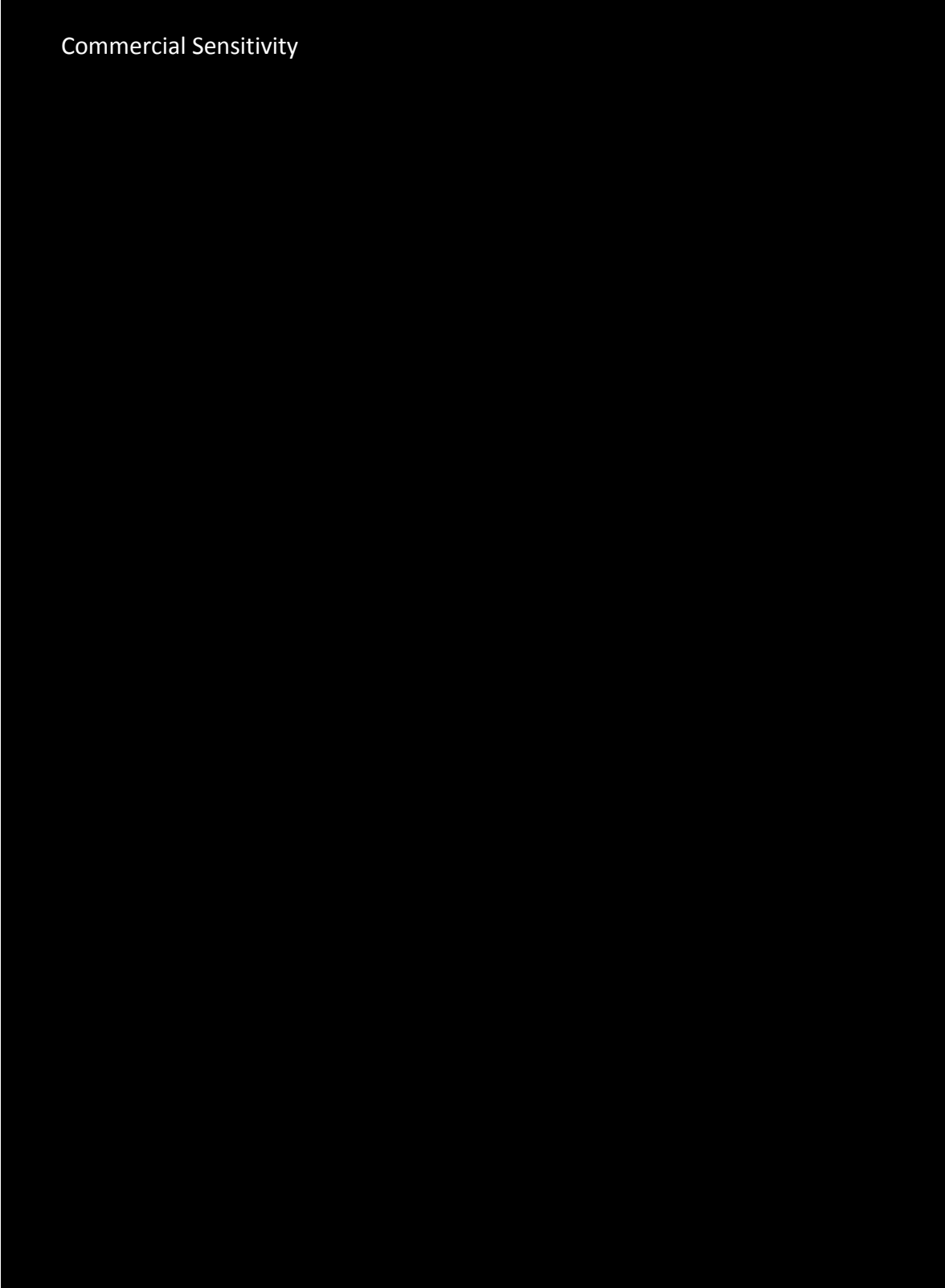
- (a) The Provider must provide a comprehensive 24/7 manned Helpdesk, which must:
 - (i) form, in conjunction with the relevant Tenancy Manager, the day to day notification interface between the Social Housing Clients and the Provider in relation to the following matters:
 - (A) the notification of Jobs relating to the Property Management Services or any Property;
 - (B) the notification of Jobs from any Tenant relating to the Tenancy Management Services;
 - (C) the recording of issues arising and actions taken by the Provider in relation to any Social Housing Clients or Tenants;
 - (D) notification of emergencies; and
 - (E) updates of progress regarding every Job notified to the Helpdesk;
 - (ii) form the day to day notification interface between members of the public and the Provider for the notification of Jobs arising from members of the public in relation to any Tenant or Property;
 - (iii) be fully responsible for managing and co-ordinating the responses and must be a point of contact for Social Housing Clients and Tenants and the single point of contact for members of the public wishing to make complaints or lodge issues with respect to Tenants or Properties; and
 - (iv) form the day to day notification interface between MSD and the Provider with respect to any Jobs notified by MSD that relate to any Property Management Requirements.
- (b) The Helpdesk must be accessible via:
 - (i) 24/7 manned freephone 0800 number;
 - (ii) 24/7 manned online reporting portal; and
 - (iii) any other access method that is generally made available in accordance with Good Industry Practice as an option for people to access helpdesks.
- (c) The Provider must notify every Tenant of the ways to contact the Helpdesk as soon as he or she becomes a Tenant, and must notify every Tenant of any change to the Helpdesk contact method (including a change in freephone number or a change in website address) from time to time prior to such change taking effect.
- (d) Where Schedule 7 (Tenancy Management Requirements) requires the Provider to utilise the MSD Social Housing Client System in the Provider's performance of specific Tenancy Management Services, the Provider must utilise that System and follow all associated processes. Provided appropriate, permanent, unamendable records are kept in relation to those processes, such items need not also be logged through the Helpdesk.

- (e) The Provider must ensure that:
 - (i) the Helpdesk answers all calls made to the Helpdesk within a reasonable period of the Helpdesk User placing the call;
 - (ii) the Helpdesk contacts every Helpdesk User within a reasonable period of a request being lodged online;
 - (iii) the Helpdesk (in relation to contact made directly with the Helpdesk), each Tenancy Manager (in relation to items noticed by, or brought to the attention of, that Tenancy Manager), each property manager (in relation to items noticed by, or brought to the attention of, that property manager), and each other member of the Provider Personnel (in relation to items noticed by, or brought to the attention of, that Provider Personnel):
 - (A) immediately logs all Jobs reported, noticed or brought to their attention (including by way of text message or voicemail), in the Provider's property and tenancy management software package, with all Jobs to be logged in one single software package no matter how they are raised;
 - (B) logs and processes all queries that relate to the provision of Property Management Services and/or Tenancy Management Services, whether or not they constitute Jobs. All enquiries received that are not related to the Provider's obligations under this Agreement must be directed by the Helpdesk or other recipient to the appropriate recipient promptly, courteously and appropriately;
 - (C) records in the Provider's property and tenancy management software package all relevant details of every Job through its lifecycle, including the following information for all Jobs:
 - (I) name, location and contact details of the person logging the Job;
 - (II) the nature of the Job;
 - (III) the Logged Job Time;
 - (IV) the service or response required;
 - (V) the Job Classification;
 - (VI) a unique request reference;
 - (VII) the response and rectification actions taken;
 - (VIII) the Logged Response Time;
 - (IX) the Logged Rectification Time; and
 - (X) the name(s) of the person(s) acting on behalf of the Provider who undertook the Response, the Temporary Rectification (if any) and the Permanent Rectification;
 - (D) records in the Provider's property and tenancy management software package all relevant details of every Job through its lifecycle, including the following information for Jobs related to Property Management Services, also:
 - (I) the location of the Property and the room/area affected by the Job;

- (II) the assets affected by the Job; and
 - (III) the date and time when a request was passed to the relevant Sub-contractor;
- (E) records in the Provider's property and tenancy management software package all relevant details of every Job through its lifecycle, including the following information for Jobs related to Tenancy Management Services, also:
 - (I) the date and time when the Job was notified by the Helpdesk to the relevant Tenancy Manager;
 - (II) the details of the Property affected by the Job (if applicable); and
 - (III) the details of the Tenant affected by the Job (if known); and
- (F) provides an appropriate and timely acknowledgment to the relevant Helpdesk User, Social Housing Client, Tenant or member of the public (as applicable) of each communication, having regard to the nature and importance of the request for assistance;
- (iv) the Helpdesk co-ordinates the appropriate response to all Jobs, within the Required Response Period and the Required Rectification Period; and
- (v) the Helpdesk keeps the relevant Helpdesk User, Social Housing Client, Tenant or member of the public (as applicable) informed should problems occur with responding to, or rectifying, any Job.
- (f) The Provider must ensure that, once information has been logged with the Helpdesk and/or in the Provider's property and tenancy management software package, entries cannot be amended, deleted or destroyed unless prior written authorisation is provided by MSD's Representative and, where such authorisation is provided, the Provider must prepare, record and retain:
 - (i) details of the unamended entry;
 - (ii) the exact nature and impact of the amendment, deletion or destruction;
 - (iii) details of the entry amended, deleted or destroyed;
 - (iv) the reason given for the amendment, deletion or destruction;
 - (v) the date and time of the amendment, deletion or destruction;
 - (vi) details of the person who amended, deleted or destroyed the relevant entry; and
 - (vii) details of the authorisation of the amendment, deletion or destruction of the relevant entry by MSD's Representatives.
- (g) The Provider must ensure that an appropriate back-up system is in place to ensure that Helpdesk and the Provider's property and tenancy management software package data and records cannot be lost or destroyed as a result of software or systems failure or any other occurrence. The data and records must be backed-up on to the back-up system not less than daily.
- (h) The Provider must provide to MSD, promptly on MSD's request from time to time, copies of all Helpdesk records, property and tenancy management software package records and all job logs for the period requested by MSD at that time.

1.2 Delivery Proposals

Commercial Sensitivity



2. Job Response and Rectification

2.1 Generally

- (a) The Provider must Respond to each Job within the Required Response Period and must Rectify the Job prior to the end of the Required Rectification Period (if a Required

Rectification Period is stated for that Job), in accordance with the requirements set out in this paragraph 2 and in paragraph 3.

- (b) The Provider must ensure that all corrective actions it is responsible for arising from statutory inspections, regulatory inspections, property inspections or Tenancy Inspections are remedied promptly in accordance with the required time.

2.2 Response

- (a) In responding to a Job, the Provider must, within the Required Response Period stipulated for the relevant Job set out in:

- (i) the table in paragraph 3.1 (Property management classifications) for any Property Management Requirement-related Job; or
- (ii) the table in paragraph 3.2 (Tenancy management classifications) for any Tenancy Management Requirement-related Job,

notify the Tenant of the Provider's plans for determining the cause of, and subsequently rectifying, the Job and its estimated period of rectification.

- (b) A Property:

- (i) will not be deemed be an Unavailable Tenanted Property in relation to a Job if the Provider Responds to that Job within the relevant Required Response Period and Rectifies that Job in accordance with the relevant Required Rectification Period for that Job set out in the table in paragraph 3.1; and
- (ii) will be deemed to be an Unavailable Tenanted Property if the Provider fails to Respond to a Job within the relevant Required Response Period and/or fails to Rectify a Job within the relevant Required Rectification Period for that Job set out in the table in paragraph 3.1 until (as applicable) such time as the Job has been Responded to or the Job has been Rectified.

- (c) For Tenancy Management Requirement-related Jobs:

- (i) the Provider must ensure that a Tenancy Manager has been notified of a Job within:
 - (A) one hour of the Logged Job Time for that Job where the Logged Job Time for that Job is within Business Hours; and
 - (B) four hours of the Logged Job Time for that Job where the Logged Job Time for that Job is outside Business Hours; and
- (ii) the notification to be made to the Tenant within the Required Response Time must be made by a Tenancy Manager.

2.3 Permanent Rectification

- (a) The Provider must Permanently Rectify each Job prior to the end of the Required Rectification Period for that Job.
- (b) The Provider's obligations under this paragraph 2.3 with respect to Property Management Requirement-related Jobs are subject to paragraph 2.4.

2.4 Temporary Rectification

- (a) If the Provider is unable to rectify a Property Management Requirement-related Job with an “Emergency” or “Urgent” Job Classification within the Required Rectification Period, it may follow a Temporary Rectification course of action that will temporarily ameliorate the consequences of the Job whilst the Job is being Permanently Rectified. In such case, the Provider must specify:
- (i) the time by which Permanent Rectification will occur (being the **Deferred Permanent Rectification Period**), which must be reasonable in the circumstances (taking into account the nature of the Job and the Tenant’s circumstances); and
 - (ii) the time by which the Temporary Rectification will be implemented (being the **Temporary Rectification Period**), which must be as soon as reasonably practicable in the circumstances and in no event later than the Permanent Rectification Period would have been were there no Temporary Rectification,

each of which must be notified to the Tenant and logged with the Helpdesk in relation to that Job prior to the Temporary Rectification being commenced. Where the Deferred Permanent Rectification Period logged by the Provider is not considered by MSD to be reasonable in the circumstances, the Deferred Permanent Rectification Period may be required to be amended at MSD’s written direction.

- (b) Temporary Rectification may only be sought in respect of Property Management Requirement-related Jobs with an “Emergency” or “Urgent” Job Classification, and does not apply to Jobs with a “Property CORs defects” or “Other” Job Classification, or Jobs that are not related to the Property Management Requirements.
- (c) If the Provider undertakes a Temporary Rectification that is permitted in accordance with this paragraph 2.4, the Provider must:
- (i) diligently pursue the Temporary Rectification, within the Temporary Rectification Period;
 - (ii) ensure that the Job is Temporarily Rectified before the expiry of the Temporary Rectification Period; and
 - (iii) ensure that the Job is Permanently Rectified before the expiry of the Deferred Permanent Rectification Period.
- (d) No Temporary Rectification will:
- (i) relieve the Provider of any of its obligations or liabilities under this Agreement; or
 - (ii) entitle the Provider to make any Claim against MSD,

except that, where any such Temporary Rectification is undertaken and completed to the required standards within the Temporary Rectification Period, the Property shall not be deemed be an Unavailable Tenanted Property in respect of the Job until the Deferred Permanent Rectification Period has expired and the Job has not been Permanently Rectified.

3. Job Classifications

3.1 Property management classifications

The Job Classifications to be applied by the Provider with respect to Property Management Requirement-related Jobs are as follows:

Job Classification	Description	Required Response Period	Required Permanent Rectification period
Emergency (EMG)	<p>Required to be responded to urgently in order:</p> <ul style="list-style-type: none"> to protect from imminent danger or any other adverse effect on health, safety or security; otherwise to comply with any HSE Legislation; to urgently reinstate an essential function or component of a Property that has failed, if it affects (or may affect) the health, safety or security of the Tenant; or to meet the requirements of any applicable legislation or of any regulatory body with respect to security, provision of essential services or safety. <p>By way of illustration only (and without limitation), includes work necessary to ensure:</p> <ul style="list-style-type: none"> there is a means of cooking; there is a hot water supply (potable); there is a cold water supply (potable); there is a gas supply (if the Property uses gas services); correction of all faults associated with sanitary appliances (toilets, showers, baths and hand basins); correction of all faults associated with waste and sewer drains (e.g., blocked sink or drain); there is a power supply (restore power when lost to whole Property, restore lighting to communal areas); the building exterior is secure (e.g., fixing broken exterior doors, locks, windows or door glazing, or window catches or stays); there is electrical safety (e.g., detached or broken fittings, preventing shocks); there is fire safety and a clear means of egress; and there are at least two functioning smoke detectors in the Property. 	Four hours	24 hours.
Urgent (URG)	<p>Required to be responded to urgently to protect the Property or restore Tenant amenity, but not required to protect from imminent danger or any other adverse effect on the health, safety or security of any person or to comply with any HSE Legislation.</p> <p>By way of illustration only (and without limitation), includes work necessary to ensure:</p> <ul style="list-style-type: none"> cooking appliances that are not fully functional are repaired; correction of rainwater leaks into the building envelope (e.g., repairs to flashings around roof penetrations, repairs to windows or doors that are leaking); correction of minor water supply pipe leaks; repair or replacement of smoke detectors that are not functioning (where at least two remain functional); repair of potential trip hazards (e.g., pathways, floors linings, etc.); and 	One calendar Day	Seven calendar days.

Job Classification	Description	Required Response Period	Required Permanent Rectification period
	<ul style="list-style-type: none"> loss of functionality of clothes lines. 		
Property CORs defects (CORs)	Maintenance or repair that does not fall within the above categories, and relates to the Property CORs requirements set out in Part 3 (Property CORs) of Schedule 6 (Property Management Requirements).	Two Business Days	The earlier of: <ul style="list-style-type: none"> the commencement of the next tenancy inspection; and six months.
Other (OTH)	<p>Reactive maintenance that does not fall within the above categories, usually raised by Tenant notification or following a Tenancy Inspection, including the property inspection element of a Tenancy Inspection.</p> <p>Generally carried out to protect the Tenant or the Property, or required to meet the Provider's obligations under this Agreement, or required to meet the requirements of the Residential Tenancies Act, other applicable law or the requirements of a regulatory body (if not captured by a classification above).</p> <p>OTH is split into the following sub-classifications:</p> <ul style="list-style-type: none"> Category 1; Category 2; Category 3; Category 4; Negligible Defects 1; and Negligible Defects 2, <p>each as defined in accordance with the Defect Priority Framework contained in the Annexure (Defect Priority Framework) to this Schedule 13.</p> <p>The Required Response Period for each such sub-classification is two Business Days. The Required Permanent Rectification period for each such sub-classification is as follows:</p>	Two Business Days	See specific classifications below.
	Sub classification: OTH Category 1		The earlier of: <ul style="list-style-type: none"> the commencement of the next tenancy inspection; and six months.
	Sub classification: OTH Category 2		The earlier of: <ul style="list-style-type: none"> the commencement of the next tenancy inspection; and six months.
	Sub classification: OTH Category 3		One year.
	Sub classification: OTH Category 4		Two years.

Job Classification	Description	Required Response Period	Required Permanent Rectification period
	Sub classification: OTH Negligible Defects 1		Five years.
	Sub classification: OTH Negligible Defects 2		10 years.

For the avoidance of doubt, the Provider is not responsible for ensuring that utilities supply or infrastructure is available to the Properties except to the extent that utilities supply is not available at a Property because of an impediment on the Property that prevents utility supply from being able to be made available to the Property (such as broken or blocked water or gas pipes on the Property), which is, for the avoidance of doubt, the Provider's responsibility.

3.2 Tenancy management classifications

The Job Classifications to be applied by the Provider with respect to Tenancy Management Requirement-related Jobs are as follows:

Job Classification	Description	Required Response Period
Urgent	<p>Required to be responded to urgently in order:</p> <ul style="list-style-type: none"> to protect a Tenant or resident of the Property from imminent danger or any other adverse effect on health, safety or security; otherwise to comply with any HSE Legislation; or to meet the requirements of any applicable legislation or of any regulatory body with respect to security, provision of essential tenancy-related services or safety. 	<ul style="list-style-type: none"> Three hours where the Logged Job Time for the Job is within Business Hours; or Six hours where the Logged Job Time for the Job is outside Business Hours.
Non-urgent	<p>A Job that does not fall within the Urgent category, including:</p> <ul style="list-style-type: none"> a request from a Tenant for a meeting; and complaints made or incidents notified by third parties (or MSD) to the Provider where the complaint does not relate to an Urgent issue. 	Two Business Days

3.3 MSD may upgrade or downgrade

If, prior to Permanent Rectification of a Job, MSD disagrees with the Provider's categorisation of any Job on reasonable grounds (which must be made with reference to the applicable Job Classification), it may notify the Provider of the correct categorisation and that categorisation (along with the Response and Rectification Periods applicable to that re-categorised Job) will prevail.

4. Tenancy Management Availability Requirements

- (a) The following table sets out certain timing requirements on the Provider with respect to the Tenancy Management Requirements which if not met, will, notwithstanding any other provision in this Agreement, mean that the Property will be deemed not to meet the Availability Requirements and will be categorised as an Unavailable Untenanted Property

until such time as the applicable unavailability rectification identified in the table below has occurred.

Availability Requirement	Trigger for Property becoming an Unavailable Untenanted Property	Unavailability rectification
A new Tenant has been selected for a Vacant Property (in accordance with Annexure 2 (Tenancing Vacant Properties process) to Schedule 7 (Tenancy Management Requirements)), a Tenancy Agreement has been signed by both parties, the Tenancy Start Date has been reached and the Tenant has, in fact, commenced its Tenancy of the Property, within 11 Business Days of the Property becoming Vacant (or within 26 Business Days of the Property becoming Vacant in the case of a Property for which a possession order has been granted by the Tenancy Tribunal as a result of an Abandonment of the Property).	Subject to paragraph 4(c), the first day after the date that is 11 Business Days following the Property first becoming Vacant (or the first day after the date that is 26 Business Days following the Property becoming Vacant in the case of a Property for which a possession order has been granted by the Tenancy Tribunal as a result of an Abandonment of the Property).	Date that a Tenant (selected in accordance with Annexure 2 (Tenancing Vacant Properties process) to Schedule 7 (Tenancy Management Requirements)) commences a Tenancy in the Property.
Compliance with paragraph 16 (Subletting) of Schedule 7 (Tenancy Management Requirements) in relation to the requirement for there to be no subletting.	First day that the Provider has become aware, or should reasonably have become aware, that the Property has been sublet.	Date that the subletting arrangement ends.
Provider ensuring Property is Available and in a fit state to be Tenanted as at Tenancy Start Date, in accordance with paragraph 5.2(b) of Annexure 2 (Tenancing Vacant Properties process) to Schedule 7 (Tenancy Management Requirements).	<p>Tenancy Start Date, unless:</p> <p>(i) the Provider makes suitable replacement alternative accommodation available to the Tenant as at that date, accepted by the Tenant and MSD as being of equivalent or better value; and</p> <p>(ii) the Provider covers the Tenant's additional moving costs,</p> <p>in which case the trigger will delay until the date that MSD has agreed as being the last date that the Tenant must be able to move in to the Property.</p>	Date that the Tenant moves in to the Property (and the Property is in a fit state for the Tenant to do so).
Provider has ensured that the Tenancy Agreement with an Ineligible Tenant has ended and the Ineligible Tenant has vacated the Property by the Cessation	The Cessation Date.	Later of the dates upon which the Ineligible Tenant has vacated the Property and the date that Tenancy Agreement with the Ineligible Tenant has

Availability Requirement	Trigger for Property becoming an Unavailable Untenanted Property	Unavailability rectification
Date.		ended.
Provider has ensured that a valid Tenancy Agreement is in place at all times during a Tenancy, in accordance with paragraph 9 (Tenancy Agreement) of Schedule 7 (Tenancy Management Requirements).	A Social Housing Client is residing in a Property without a Tenancy Agreement being in place.	Date that the Tenancy Agreement is in place with the Social Housing Client.
Provider has complied with its obligations in paragraph 24.1(b) (Death of Tenant) of Schedule 7 (Tenancy Management Requirements) to ensure that the Tenancy Agreement that was in place with a now deceased sole Tenant ends as early as possible.	First date after the date that the Tenancy Agreement should have terminated, had the Provider complied with its obligations in paragraph 24.1(b) (Death of a Tenant) of Schedule 7 (Tenancy Management Requirements).	Tenancy Agreement with the now deceased sole Tenant ends.

- (b) The following table sets out certain time requirements on the Provider with respect to the Tenancy Management Requirements that, if not met, will, notwithstanding any other provision in this Agreement, mean that the Property will be deemed not to meet the Availability Requirements, and will be categorised as an Unavailable Tenanted Property, until such time as the applicable unavailability rectification identified in the table below has occurred.

Availability Requirement	Trigger for Property becoming an Unavailable Tenanted Property	Unavailability rectification
A Tenant has been transferred to a new Property in a manner that is consistent with the requirements in paragraph 21 of Schedule 7 (Tenancy Management Requirements) including the Tenant Placement Policy and the Tenant Transfer Policy.	The date that the Tenancy Agreement commences in respect of the new Property that the Tenant has been transferred into.	The date that the Tenancy Agreement ends in respect of the new Property that the Tenant has been transferred into.
The Provider has applied for a possession order pursuant to section 61(1) of the Residential Tenancies Act as soon as the Provider became aware or ought reasonably to have become aware that there had been an Abandonment of the Property.	The date that a possession order would reasonably have been granted by the Tenancy Tribunal had the Provider applied for a possession order pursuant to section 61(1) of the Residential Tenancies Act as soon as the Provider became aware or ought reasonably to have become aware that there had been an Abandonment of the Property.	The date that a possession order is granted by the Tenancy Tribunal in relation to the Property.

- (c) Where, in relation to a Property, MSD has not complied with any of its obligations in Annexure 2 (Tenancing Vacant Properties process) to Schedule 7 (Tenancy Management

Requirements) within the timeframe specified for MSD to complete a requirements, the 11 Business Day period (or 26 Business Day period where a possession order has been granted by the Tenancy Tribunal in relation to an Abandonment) specified in the table in paragraph 4(a) shall be extended by one Business Day for every Business Day that MSD is late in complying with its obligations in respect of that Property Vacancy.

Annexure: Defect Priority Framework

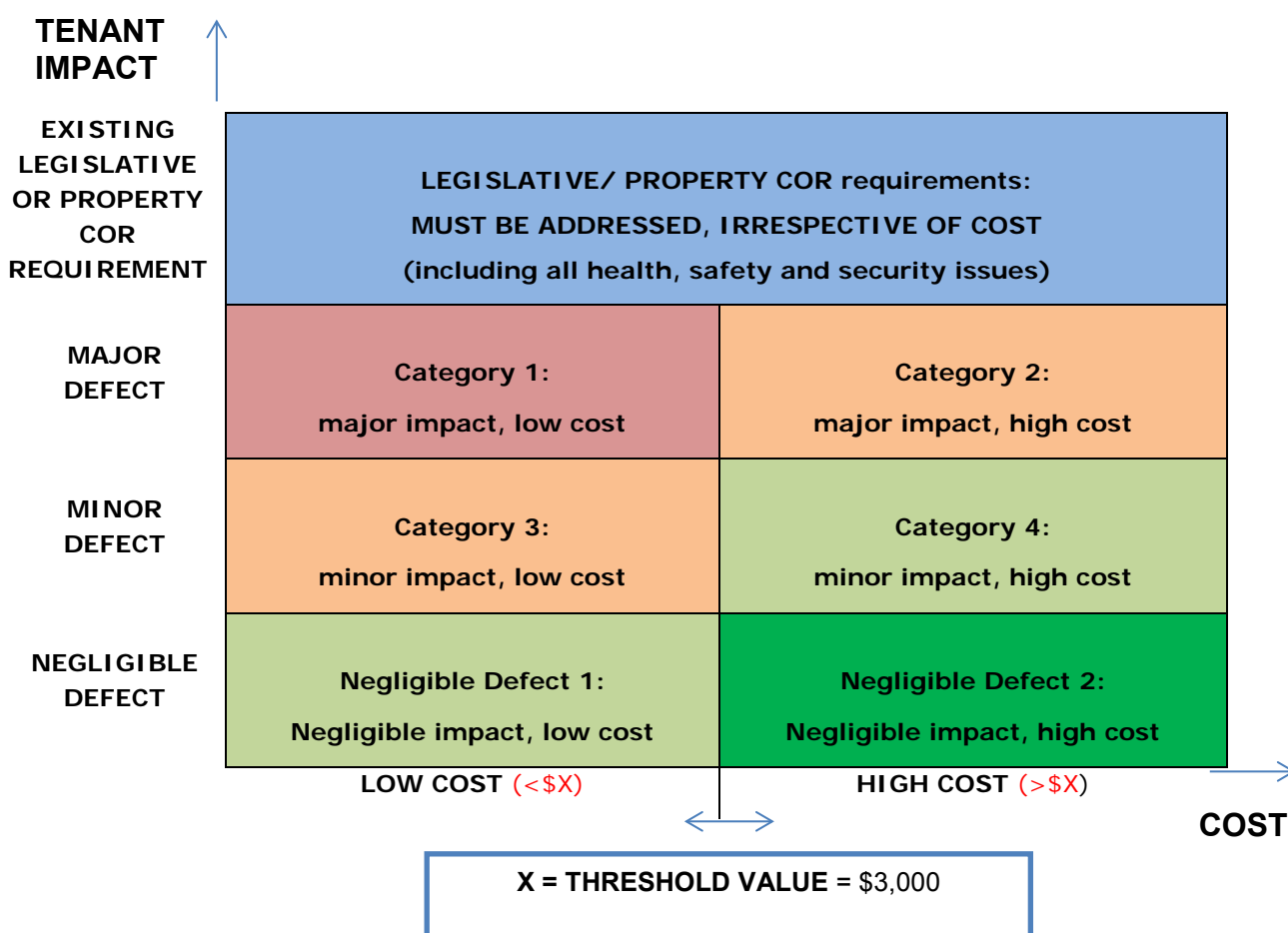
1. Defect Priority Framework

1.1 General

- (a) The Defect Priority Framework consists of the following parts:
- (i) the tenant impact and cost matrix set out in paragraph 1.2 of this Annexure;
 - (ii) the general criteria set out in paragraph 1.3 of this Annexure; and
 - (iii) the component group priority set out in paragraph 1.4 of this Annexure.
- (b) The Defect Priority Framework shall be ascertained by interpreting the tenant impact and cost matrix by reference to the general criteria and the component group priority.
- (c) The Defect Priority Framework shall also be used in the sub-classification of Job classified in accordance with Schedule 13 as OTHER Jobs.

1.2 Tenant impact and cost matrix

The tenant impact and cost matrix is as follows:



1.3 General criteria

The general criteria to be applied in the interpretation of the tenant impact and cost matrix are as follows:

Tenant impact description	Criteria
Major Defect	<p>Provided the Defect is not a legislative or regulatory requirement, or a Property CORs Defect (as described in the table in paragraph 3.1):</p> <ul style="list-style-type: none"> Includes all graffiti, trip hazards, defects that could be considered a hazard to occupant health, safety or security, any readily visible hole or cracks in an internal wall or ceiling lining, door, window or external wall, any defect in a sanitary or plumbing component that causes a leak, all defects that prevent a component from performing its intended function or any non-functioning or missing component. Includes all Defects that are major in nature in that they affect a relatively substantial part of a component. Includes Defects that, if left, the component is highly likely to fail before the next scheduled maintenance event or could cause further deterioration, damage or failure of an adjoining or related component. Includes all moisture related Defects (e.g., mould, mildew, rot or damp). Includes all Defects that could be considered to have a reasonably material impact on Tenant amenity (either visual or functional, including in the context of the dwelling remaining warm / safe / dry).
Minor Defect	<p>Items that are not a legislative or regulatory requirement, Property CORs Defects or Major Defects and that fall within the following descriptors:</p> <ul style="list-style-type: none"> Defects that consist only of small hairline cracks, or small chips in sanitary and plumbing components where the Defect does not cause, and is unlikely to cause, a leak if left un-remediated. Defects that are only minor in nature in that they affect only a relatively small component or a minor part of a larger component. Defects that, if left, could cause the component to fail before the next scheduled maintenance event or could cause the deterioration or damage of another component. Defects that could be considered to have some impact on tenant amenity (either visual or functional).
Negligible Defect	<p>Defects that are 'less than minor' in nature in that they affect only a small part of a component AND:</p> <ul style="list-style-type: none"> have only negligible or no impact on tenant amenity; are unlikely to become a hazard if left until captured in the next

Tenant impact description	Criteria
	<p data-bbox="528 280 946 309">maintenance cycle of the item; and</p> <ul data-bbox="475 353 1362 421" style="list-style-type: none"> <li data-bbox="475 353 1362 421">• are unlikely to give rise to weathertightness or moisture issues if left to the next maintenance cycle. <p data-bbox="467 459 1385 519">Defects that relate to a garden shed or carport and do not represent a hazard to occupant safety or security.</p>
<p data-bbox="300 555 1362 678">Where a Defect does not fall neatly within the categories, the Provider shall utilise the highest potentially applicable classification for that Defect. For example, if the Provider is unclear whether the Defect meets the Minor Defect criterion or the Negligible Defect criterion, the Provider shall class that Defect as a Minor Defect.</p>	

1.4 Component group priority

The Provider is to utilise the following component group priority when considering and assessing potential impact on Tenants:

- (a) firstly, interior finishes and services;
- (b) then, external fabric; and
- (c) then, external works, sundries and structural.

Schedule 14: Calculation of Compensation on Termination

Part 1 - Definitions, interpretation and general provisions

1. Definitions

1.1 Definitions

In addition to the definitions set out in clause 1 (Definitions) of the Base Agreement:

Adjusted Estimated Value (Convenience) means a sum equivalent to A in the formula below:

$$A = (B+C) - (D+E)$$

Where:

A = the Adjusted Estimated Value (Convenience);

B = the greater of X and Y, where:

X = the DCF Value; and

Y = the Convenience Property Value;

C = MSD Due Amount;

D = the aggregate of the items specified in paragraphs (c), (d) and (e) of the definition of Compensation Adjustment; and

E = the Base Senior Debt Termination Amount;

Adjusted Estimated Value (Default) means a sum equivalent to F in the formula below:

$$F = G+I+ J - K$$

Where:

F = the Adjusted Estimated Value (Default);

G = the DCF Value;

I = MSD Due Amount;

J = the Termination Adjustment Amount (if applicable); and

K = the aggregate Compensation Adjustment;

Adjusted Highest Compliant Tender Price means the Highest Compliant Tender Price, plus the MSD Due Amount, minus the Compensation Adjustment;

Base Senior Debt Termination Amount means:

- (a) all amounts outstanding at the date on which the Base Senior Debt Termination Amount is actually paid, including interest and Default Interest accrued as at that date, from the Provider to the Senior Lenders in respect of Permitted Borrowing; and
- (b) all amounts including costs of early termination of Swaps and other breakage costs, payable by the Provider to the Senior Lenders as a result of prepayment of amounts outstanding in respect of Permitted Borrowing as a result of termination of the Agreement, subject to the Provider and the Senior Lenders mitigating all such costs to the extent reasonably possible, but *excluding* any amounts payable in respect of Swaps to the extent that the same are not entered into in respect of Permitted Borrowing,

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

- (c) all credit balances on any bank accounts in respect of which the Senior Lenders have the benefit of a security interest (but excluding any account to the extent that the credit balance of the account is not available for the repayment of Senior Debt) held by or on behalf of the Provider on the date of actual payment of the Base Senior Debt Termination Amount;
- (d) all amounts, including costs of early termination of Swaps and other breakage costs, payable by the Senior Lenders to the Provider as a result of prepayment of amounts outstanding in respect of Permitted Borrowing as a result of termination of the Agreement; and
- (e) all other amounts received by the Senior Lenders on or after the Termination Date and before the date of actual payment of the Base Senior Debt Termination Amount as a result of enforcing any other rights they may have under the Senior Financing Agreements;

Compensation Adjustment means, as at the Compensation Date, an amount equal to the aggregate of:

- (a) the Tender Costs;
- (b) additional costs reasonably and properly incurred by MSD as a direct result of termination of the Agreement or any other Project Documents;
- (c) any Rectification Costs;
- (d) amounts that MSD is entitled to set off or deduct against amounts owing by the Provider under the Agreement; and
- (e) insurance proceeds payable to the Provider but not paid at the Compensation Date other than insurance proceeds representing insurance indemnification of the Provider against its liabilities to third parties;

Compensation Date means either:

- (a) if Part 4 (Retender process) applies:

- (i) the date specified by MSD under the Tender Process on which the New Contract is to take effect (which date must be no later than nine months after the Actual Termination Date);
 - (ii) if MSD makes an election under paragraph 6.10 (MSD may elect to discontinue), a date specified by MSD which must be no later than 60 Business Days after the date of such determination;
 - (iii) if MSD elects to retender the performance of the Agreement under paragraph 5.1 (Election), and the Highest Compliant Tender Price has not been established within nine months after the Actual Termination Date (as contemplated under paragraph 6.9 (Completion of retendering procedure)), a date specified by MSD, which must be no later than 60 Business Days after the date nine months after the Actual Termination Date; or
 - (iv) if it is determined in accordance with Part 17 (Dispute resolution) of the Base Agreement that there is no Liquid Market, a date specified by MSD, which must be no later than 60 Business Days after the date of such determination; or
- (b) in any other case, subject to clause 66 (Payment of Compensation) of the Base Agreement, a date notified by MSD to the Provider, which must be no later than 10 Business Days after the Actual Termination Date;

Compensation Sum means:

- (a) where the Agreement is terminated under clause 62 (Termination for convenience) of the Base Agreement, the amount calculated under paragraph 3.1 (Compensation sum – termination for convenience); or
- (b) where the Agreement is terminated under clause 63 (Termination on Provider Default) of the Base Agreement, the Default Termination Amount;

Compliant Tender means any tender submitted by a Compliant Tenderer that meets the Qualification Criteria;

Compliant Tenderer means a tenderer who is a Suitable Substitute Provider;

Convenience Property Value means the aggregate market value of the Final Portfolio Properties, determined in accordance with paragraph 4.3 (Valuation methodology – Convenience Property Value);

Default Termination Amount means either:

- (a) the Adjusted Estimated Value (Default); or
- (b) the Adjusted Highest Compliant Tender Price,

as applicable;

DCF Value means the aggregate of the discounted cash flow value and the Discounted Residual Value determined in accordance with paragraph 4.2 (Valuation methodology – DCF Value);

Default Interest means any increased margin that is payable to the Senior Lenders or which accrues as a result of any payment due to the Senior Lenders not being made on the date on which it is due;

Discounted Residual Value means:

- (a) in respect of the Final Portfolio Properties that were Original Properties, the aggregate Residual Value, as specified in Schedule 3 (Agreed Pool of Properties), of such Final Portfolio Properties; and
- (b) in respect of the Final Portfolio Properties that were not Original Properties, the aggregate Residual Value, as agreed between the parties or otherwise determined at the time the relevant Property became subject to a CRI Mortgage, of each of such Final Portfolio Properties,

discounted from the Scheduled Expiry Date to the Termination Settlement Date at the applicable Termination Discount Rate;

EOI Invitation means an invitation for expressions of interest, issued by MSD, for parties to enter into a New Contract;

Final Portfolio Properties means:

- (a) each Original Property owned by the Provider as at the Termination Settlement Date; and
- (b) (where different) each Property that is subject to a CRI Mortgage as at the Termination Settlement Date;

Highest Compliant Tender Price means the price offered by the Compliant Tenderer (if any) with the highest tender price;

Liquid Market means:

- (a) there are at least two parties, each of whom in MSD's reasonable opinion is capable of meeting the Qualification Criteria and being a Suitable Substitute Provider who indicate, in response to the EOI Invitation, that they intend to participate in the Tender Process; and
- (b) MSD receives at least two Compliant Tenders through the Tender Process,

provided always that any vehicle controlled and established by the Senior Lenders specifically for the purposes of the Agreement and to which the Agreement may be novated, and any Governmental Entity (including MSD) shall be disregarded in assessing whether the tests set out in paragraphs (a) and (b) above are met, without limiting any such vehicle's or Governmental Entity's ability to participate in the Tender Process;

MSD Due Amount means any amount due and payable by MSD to the Provider in accordance with the terms of the Project Documents as at the Termination Date and which is not discharged prior to the Compensation Date;

New Contract means an agreement on the same terms and conditions as this Agreement and the other Project Documents existing as at the Termination Settlement Date, but with the following amendments:

- (a) the term of such agreement shall be equal to the term from the Termination Settlement Date until the Scheduled Expiry Date, with Services to commence under the New Contract on the Termination Settlement Date; and
- (b) any other amendments which do not adversely affect the Provider (including any adverse effect on the compensation payable to the Provider under this Schedule 14),

provided that any Availability Breaches, High Performance Breaches, Performance Breaches and the corresponding breaches or failures and/or Warning Notices shall be deemed to be cancelled for all purposes on entry into the New Contract, and no liability for any breach by the Provider prior to the date of the New Contract shall be imposed on the new party;

Permitted Borrowing means, without double counting, any:

- (a) advances to the Provider under the Senior Financing Agreements;
- (b) interest under the Senior Financing Agreements; and
- (c) other amounts accrued or payable under the Senior Financing Agreements,

in each case excluding any amounts advanced, or payable in respect of amounts advanced, in breach of clause 40 (Refinancing) of the Base Agreement;

Qualification Criteria means the criteria each tenderer will be required by MSD to meet as part of the Tender Process, which shall be:

- (a) each tenderer must provide a commitment to enter into the New Contract with effect from the Termination Settlement Date;
- (b) each tenderer must provide evidence sufficient to satisfy MSD (acting reasonably) that it has the financial ability to pay the capital sum tendered for the New Contract;
- (c) it is, or will be on completion of the Tender Process, a Class 1 Social Landlord eligible to provide the Services and receive the IRRS in respect of the Final Portfolio Properties;
- (d) each tenderer must bid on the basis of a single capital payment to be made by the tenderer to MSD on the date of the New Contract, representing an amount bid by the tenderer in consideration of it acquiring the Final Portfolio Properties, assuming all rights and accepting all obligations set out in the New Contract and including within that sum an amount equivalent to the applicable Rectification Costs (if any);
- (e) the tenderer (other than where the tenderer is the submitter of the MSD Proposal), and each equity or debt provider in respect of the tender, is not a Governmental Entity in New Zealand and is not owned or controlled by such a Governmental Entity, unless the relevant Governmental Entity is a State enterprise or a subsidiary thereof (as defined in the State-Owned Enterprises Act 1986) or a Crown entity (as defined in the Crown Entities Act 2004) and, in the case of a Crown entity:
 - (i) it is acting in accordance with its statutory powers and functions; and
 - (ii) it is not subject to any direction under sections 103 to 107 of the Crown Entities Act 2004 that may affect the independence of the Crown entity in relation to the tender;
- (f) each tenderer must have (directly or via its sub-contractors) the experience, technical expertise (including asset management capability) and financial capability to provide the Services;
- (g) the technical solution proposed by each tenderer is in sufficient detail and is capable of delivery, each to MSD's satisfaction (acting reasonably);
- (h) MSD has not, at any time prior to the tender, made a determination that the tenderer or any of its equity providers is an Unsuitable Third Party or is not, where that equity provider is a person that Controls the tenderer, reputable for the purposes of clause 73 (Change of Ownership) of the Base Agreement; and

- (i) any other criteria and processes that MSD may determine at its reasonable discretion, provided that any other criteria and processes do not limit or reduce in any way the other Qualification Criteria specified in this definition;

Rectification Costs means an amount equal to the reasonable and proper costs that would need to be incurred by MSD (or, in the case of a retender under paragraph 6 (Retendering procedure), that would need to be incurred by the successful tenderer for the New Contract) in respect of any expenditure required to ensure that each component of each Final Portfolio Property has a condition rating of 3 or better (assessed in accordance with the International Infrastructure Management Manual (IIMM) 2015 Edition (as used by the New Zealand Asset Management Support Group));

Request for Tenders means a request for tenders, issued by MSD, for parties to enter into a New Contract;

Scheduled Expiry Date means, at any time, the then-current Expiry Date under the Agreement at that time (disregarding any rights of renewal or extension or the application of clause 63.7 (Prolonged Force Majeure Event) of the Base Agreement);

Tender Costs means:

- (a) the reasonable and proper costs of MSD incurred in carrying out the Tender Process; and/or
- (b) the reasonable and proper third party costs of MSD incurred in connection with any calculation of the DCF Value;

Tender Process means the process by which MSD requests expressions of interest and tenders for entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a new contractor, in accordance with paragraph 6 (Retendering procedure);

Tender Process Monitor means a third party appointed by the Provider under paragraph 6.6 (Tender Process Monitor);

Termination Adjustment Amount means an amount calculated and payable in accordance with paragraph 3.3 (Termination Adjustment Amount);

Termination Discount Rate means:

- (a) where the Agreement has been terminated under clause 62 (Termination for convenience) of the Base Agreement, an appropriate post-tax nominal discount rate determined by the Independent Expert, having regard to prevailing market weighted average costs of capital applicable to contracts with a similar risk profile to the transaction; or
- (b) where the Agreement has been terminated under clause 63 (Termination on Provider Default) of the Base Agreement, the Transaction IRR;

Commercial
Sensitivity

Transaction IRR means [REDACTED]%, provided that this percentage shall be recalculated and updated as at Financial Close, only if the 15 year swap rate at Financial Close (as referred to in the Financial Close Adjustment Protocol) is greater than [REDACTED] % or less than [REDACTED] %; and

Valuation Principles means the valuation principles set out in the Annexure to this Schedule 14.

1.2 Interpretation

Any reference in this Schedule to a Part or a paragraph is, unless the context otherwise requires, to a Part or a paragraph of this Schedule.

2. General principles

2.1 No double counting

- (a) Notwithstanding any other provisions in the Base Agreement or this Schedule 14, neither party shall be entitled to recover compensation or make a claim under the Base Agreement or this Schedule 14 in respect of any Losses that it has incurred or costs that it will incur to the extent that it has already been compensated in respect of those Losses or those costs pursuant to the Base Agreement, this Schedule 14 or otherwise.
- (b) In determining the Compensation Adjustment, MSD will determine the amounts comprised in that definition on a consistent basis and ensuring that no amounts are double counted.

2.2 Compensation Adjustment

To the extent that any amount, cost, gain, proceed or balance that falls within any of the limbs of the definition of Compensation Adjustment (**Relevant Amount**) has been taken into account when determining the Highest Compliant Tender Price or the DCF Value (as the case may be), those amounts will not be added or deducted when determining the Adjusted Estimated Value (Convenience), Adjusted Estimated Value (Default) or the Adjusted Highest Compliant Tender Price (as the case may be). MSD will ensure that the valuation procedure in paragraph 4 (Establishment of estimated values) or the retendering procedure in paragraph 6 (Retendering procedure) is conducted in such a way that it can be determined whether any Relevant Amount is included in the Highest Compliant Tender Price or the DCF Value (as the case may be).

Part 2 – Compensation on termination

3. Calculation of Compensation Sum

3.1 Compensation Sum – termination for convenience

If MSD terminates the Agreement pursuant to clause 62 (Termination for convenience) of the Base Agreement, the Compensation Sum is an amount equal to the net aggregate of the following:

- (a) the Base Senior Debt Termination Amount;
- (b) the Adjusted Estimated Value (Convenience), provided that such amount shall not in any circumstances be less than zero;
- (c) redundancy payments for employees of the Provider that have been or will be reasonably incurred by the Provider as a direct result of termination of the Agreement, that the Provider is legally liable to pay under the terms of the relevant employment contracts or at law and that would not have been otherwise incurred if the Agreement was not terminated for convenience;
- (d) costs (other than any costs incurred as Sub-contractor Breakage Costs, which are separately addressed under paragraph 3.1(e)) reasonably and properly incurred by the Provider as a direct result of the termination of the Agreement, but only to the extent that:
 - (i) the costs are incurred in connection with the Provider's performance of its obligations under this Agreement, including in respect of the Services, including:
 - (A) any materials or goods ordered in the ordinary course of business that cannot be cancelled without such costs being incurred;
 - (B) any expenditure incurred in the ordinary course of business in anticipation of the provision of Services in the future; and
 - (C) the cost of demobilisation including the cost of equipment used in connection with the Provider's performance of its obligations under this Agreement; and
 - (ii) the costs are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonably commercial terms;
- (e) amounts reasonably and properly incurred by the Provider and payable as Sub-contractor Breakage Costs, as a direct result of termination of the Agreement, such amounts only to be paid to the extent that:
 - (i) the Provider is liable to pay such amounts to the Sub-contractor under the express terms of the relevant sub-contract;
 - (ii) as at the Termination Date there is no event of default (however described) subsisting under the relevant sub-contract that would entitle the Provider to terminate such sub-contract; and
 - (iii) they represent an amount no greater than one year's verifiable net profit attributable to the provision of the relevant Services under the relevant sub-contract.

3.2 Compensation Sum – termination for Provider Default

If MSD terminates the Agreement pursuant to clause 63 (Termination on Provider Default) of the Base Agreement, the Compensation Sum is an amount equal to the Default Termination Amount.

3.3 Termination Adjustment Amount

- (a) If MSD terminates the Agreement pursuant to clause 63 (Termination on Provider Default) of the Base Agreement and elects to undertake a retender process under Part 5 (Retender process), the Termination Adjustment Amount will be calculated in accordance with this paragraph 3.3.
- (b) The Termination Adjustment Amount for any period will be equal to the Availability Payment that would otherwise have been payable in respect of that period, reduced (if applicable) by an amount agreed between the parties (or, if the parties cannot agree, determined in accordance with the Dispute Resolution Procedures) to reflect a reasonable allowance for Services that are not provided by the Provider during that period.
- (c) The Termination Adjustment Amount represents an amount that MSD is paying to require the Provider to continue to hold the Properties in order to give MSD time to test the market to ensure that MSD (or its nominee) is paying an appropriate amount for the Final Portfolio Properties.
- (d) The parties acknowledge that the Termination Adjustment Amount will comprise a partial pre-payment of the Compensation Sum, will be taken into account in calculating the Adjusted Estimated Value (Default) and will only apply:
 - (i) if the CHP is not legally able to receive Availability Payments calculated in accordance with Schedule 11 (Payment Mechanism); and
 - (ii) in respect of any period during the period from the Actual Termination Date to the Termination Settlement Date (inclusive) when paragraph 3.3(d)(i) applies,

so as to ensure the no double counting principle in paragraph 2.1 (No double counting) is given effect to.

Part 3 – Valuation methodology

4. Establishment of estimated values

4.1 Required procedure

If MSD:

- (a) is required to determine the Adjusted Estimated Value (Convenience); or
- (b) is required, or elects, to determine the Adjusted Estimated Value (Default) (whether or not it has initially commenced a retender),

then the following procedure shall apply:

- (c) the parties will appoint an Independent Expert in accordance with clause 71 (Expert Determination) of the Base Agreement to determine the DCF Value;
- (d) the terms of this paragraph 4 and the terms of clause 71 (Expert Determination) of the Base Agreement will apply as if the Independent Expert were determining a Dispute; and
- (e) each party will appoint a registered valuer to determine the Convenience Property Value (if applicable) in accordance with paragraph 4.3 (Valuation methodology – Convenience Property Value).

4.2 Valuation methodology – DCF Value

Where an Independent Expert is required to determine the DCF Value under this Part 3, the Independent Expert:

- (a) will be required to determine (and, if necessary, update so that the information is current at the Termination Settlement Date) the DCF Value based on:
 - (i) a discounted cash flow valuation methodology, in respect of the post-tax nominal cash flows for the Agreement, for the period from the Termination Settlement Date to the Scheduled Expiry Date; and
 - (ii) the Residual Values in respect of the Final Portfolio Properties;
- (b) will be required to establish (where applicable) and apply the Termination Discount Rate in determining the DCF Value;
- (c) will be required to determine:
 - (i) the projected revenue of the Provider for the transaction;
 - (ii) the projected operating costs and lifecycle capital expenditure of the Provider for the Contract Term; and
 - (iii) the Residual Values of the Final Portfolio Properties,

in accordance with the Valuation Principles;

- (d) will be entitled to consider any relevant comparable data available from or submissions made by MSD or the Provider; and
- (e) will be entitled to consider any other evidence, matters or market information that the Independent Expert considers to be relevant (acting reasonably) on a basis consistent with the requirements of this paragraph 4.2 and the Valuation Principles.

4.3 Valuation methodology – Convenience Property Value

Where MSD is required to determine the Convenience Property Value:

- (a) each party will appoint a registered valuer to value the Final Portfolio Properties;
- (b) each valuer will be provided with identical valuation instructions and information regarding the Final Portfolio Properties;
- (c) each valuer will be required to determine the aggregate value of the Final Portfolio Properties on an open market, willing buyer willing seller basis:
 - (i) disregarding any assets of the Provider other than the Final Portfolio Properties and any fittings or fixtures associated with the Final Portfolio Properties and owned by the Provider;
 - (ii) disregarding the Crown Retained Investment and the CRI Mortgage;
 - (iii) assuming the Agreed Rent (Indexed in accordance with the Base Agreement) remains payable for each Final Portfolio Property until the Scheduled Expiry Date; and
 - (iv) taking into account such information regarding asset condition as is provided to the valuers;
- (d) each valuer will be required to provide its valuation report within the same time period, being a period (no greater than 60 days, and to be 60 days unless otherwise agreed) to be determined by the parties;
- (e) each valuation report will be provided to both parties when completed;
- (f) the Convenience Property Value will be determined by MSD as the amount representing A below:

$$A = B - C$$

Where:

A = the Convenience Property Value;

B = the mid point between the two valuations of the Final Portfolio Properties as provided to MSD under this paragraph 4.3; and

C = the Crown Retained Investment as at the Termination Settlement Date; and

- (g) the Convenience Property Value will not be subject to the Dispute Resolution Procedures except in the case of manifest error.

Part 5 – Retender process

5. Retendering

5.1 Election

In determining the Compensation Sum for termination for Provider Default under clause 63 (Termination on Provider Default) of the Base Agreement, MSD, subject to paragraph 5.2, is entitled to either:

- (a) require an expert determination in accordance with paragraph 4 (Establishment of estimated values); or
- (b) retender the performance of the Agreement in accordance with paragraph 6 (Retendering procedure).

5.2 Limitations on election

Subject to paragraph 6.10 (MSD may elect to discontinue), MSD shall only be entitled to elect to retender the performance of the Agreement in accordance with paragraph 6 (Retendering procedure) if:

- (a) MSD notifies the Provider on or before the date falling 20 Business Days after the Actual Termination Date that it intends to retender; and
- (b) MSD (acting reasonably) determines that there is likely to be a Liquid Market, provided that MSD shall not be entitled to retender if:
 - (i) the Provider or the Senior Lenders have demonstrated to the reasonable satisfaction of MSD that they have used reasonable endeavours (by way of a bona fide tender request issued to market participants and incorporating a bidder pre-qualification stage and a bidder short-listing stage) to procure the transfer of the rights and obligations of the Provider under clause 9.1 of the Financier Direct Deed or a transfer of the ownership or Control of the Asset Owner under clause 9.4 of the Financier Direct Deed, but have failed to do so (provided that failure to transfer was not as a result of the Provider or the Senior Lenders deciding not to transfer to a Suitable Substitute Entity (as that term is defined in the Financier Direct Deed) solely on the grounds of price, unless the Senior Lenders (acting reasonably) provide notice to MSD that the only prices tendered as part of their process were either (A) unrealistically and unreasonably low in the context of the rights to be transferred or (B) insufficient to meet the Senior Lenders' or their appointees' statutory duties to third parties in respect of the proposed transfer);
 - (ii) the Provider or the Senior Lenders have notified MSD of a Dispute under paragraph 5.3, and that Dispute has not yet been resolved in accordance with Part 17 (Dispute resolution) of the Base Agreement; or
 - (iii) it is determined in accordance with Part 17 (Dispute resolution) of the Base Agreement that there is not likely to be a Liquid Market.

5.3 Disputes

The Provider may, no later than 10 Business Days after MSD notifies the Provider in writing that it intends to retender, notify MSD in writing that it will dispute this decision on the grounds that MSD has not acted in accordance with paragraph 5.2, and Part 17 (Dispute resolution) of the Base Agreement will apply.

6. Retendering procedure

If MSD elects to retender the performance of the Agreement under paragraph 5 (Retendering), then the following provisions shall apply.

6.1 Objectives

- (a) The objectives of the Tender Process are:
 - (i) to enable MSD to enter into a New Contract with a Compliant Tenderer; and
 - (ii) to establish the Highest Compliant Tender Price.
- (b) MSD shall (subject to any legal requirements preventing it from doing so) use reasonable endeavours to complete the Tender Process as soon as practicable.
- (c) MSD shall, in undertaking the Tender Process and establishing the Highest Compliant Tender Price, owe a duty of reasonable care to the Provider to obtain the best price reasonably obtainable at the time the Tender Process is undertaken.

6.2 Tender Process

- (a) MSD shall appoint a duly qualified agent to run the Tender Process on its behalf.
- (b) The Tender Process Monitor will be entitled to monitor MSD's compliance with the Tender Process and, in particular, paragraph 6.3.

6.3 MSD participation in Tender Process

- (a) If MSD elects to run a Tender Process, it must also submit a proposal under the Tender Process (or procure another Governmental Agency, or another person or persons on its behalf, to submit a proposal) (the **MSD Proposal**).
- (b) MSD shall establish, and must comply with, information barriers between any MSD Personnel involved in submitting a MSD Proposal under the Tender Process, and any MSD Personnel involved in the operation or evaluation of the Tender Process.
- (c) MSD must:
 - (i) calculate its proposed purchase price by way of establishing the DCF Value (assuming termination for Provider Default); and
 - (ii) submit as part of the MSD Proposal a bid price equivalent to that established under paragraph 6.3(c)(i), amended only to the extent commercially reasonable to do so having regard to the specific requirements of the Tender Process.
- (d) MSD may (but is not obliged to) express the MSD Proposal as being conditional on there not being two or more Compliant Tenders (excluding the MSD Proposal). If:
 - (i) the MSD Proposal is expressed as being conditional on there not being two or more Compliant Tenders (excluding the MSD Proposal); and
 - (ii) the agent appointed by MSD to run the Tender Process determines that there are two or more Compliant Tenders (excluding the MSD Proposal),

then the MSD Proposal will not be capable of acceptance and will be disregarded in establishing the Highest Compliant Tender Price.

6.4 **Qualification Criteria**

MSD shall notify the Provider of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, and shall act reasonably in setting such requirements and terms.

6.5 **Information to be available**

The Provider authorises the release of any information by MSD under the Tender Process, which would otherwise be prevented under clause 43 (Confidential Information) of the Base Agreement, that is reasonably required as part of the Tender Process.

6.6 **Tender Process Monitor**

The Provider may, at its own cost, appoint a person (the **Tender Process Monitor**) to monitor the Tender Process for the purpose of reporting to the Provider and the Senior Lenders on MSD's compliance with the Tender Process and the Qualification Criteria, and making representations to MSD. The Tender Process Monitor will not disclose any Confidential Information to the Provider or any other person (and shall provide an undertaking to MSD to such effect as a condition of its appointment) but shall be entitled to advise the Provider and the Senior Lenders as to whether it considers that MSD has acted in accordance with the Tender Process and the Qualification Criteria, and correctly determined the Highest Compliant Tender Price.

6.7 **Role of Tender Process Monitor**

The Tender Process Monitor shall enter into a confidentiality agreement with MSD in a form acceptable to MSD and shall (subject to execution of such confidentiality agreement) be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and shall be required to make written representations to MSD, the Provider and the Senior Lenders regarding compliance with the Tender Process and the Qualification Criteria. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds. MSD shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by the Provider in the event that the Provider refers a Dispute relating to the Adjusted Highest Compliant Tender Price to Expert Determination.

6.8 **Adjusted Highest Compliant Tender Price**

- (a) As soon as practicable after tenders have been received, MSD shall determine the Compliant Tenders, determine the Highest Compliant Tender Price and calculate and pay the Provider the Adjusted Highest Compliant Tender Price.
- (b) If, following the conclusion of the tender response period, MSD has received at least two Compliant Tenders, but decides not to enter into a New Contract with a Compliant Tenderer, it shall notify the Provider of this decision and pay to the Provider an amount equal to the Adjusted Highest Compliant Tender Price.

6.9 **Completion of retendering procedure**

If MSD elects to retender the performance of the Agreement under paragraph 5.1 (Election), and the Highest Compliant Tender Price has not been established within nine months after the Actual Termination Date, then the Compensation Sum will be ascertained in accordance with paragraph 4 (Establishment of estimated values).

6.10 **MSD may elect to discontinue**

MSD may elect at any time prior to the receipt of a Compliant Tender to follow the establishment of estimated values procedure under paragraph 4 (Establishment of estimated values) by notifying the Provider that this election has been made.

6.11 **No Liquid Market**

(a) If MSD does not receive:

- (i) by the closing date specified in the EOI Invitation issued as part of the Tender Process, responses that meet the test set out in paragraph (a) of the definition of Liquid Market; or
- (ii) by the closing date specified in the Request for Tenders issued as part of the Tender Process, responses that meet the test set out in paragraph (b) of the definition of Liquid Market,

the establishment of estimated values procedure under paragraph 4 (Establishment of estimated values) will automatically apply.

- (b) If it is determined in accordance with Part 17 (Dispute resolution) of the Base Agreement that MSD has not acted in accordance with paragraph 6.3 (MSD participation in Tender Process), the establishment of estimated values procedure under paragraph 4 (Establishment of estimated values) will automatically apply.

6.12 **Basis of Tender**

MSD shall conduct the Tender Process on the basis that:

- (a) where and to the extent any Final Portfolio Properties have been damaged or destroyed prior to or during the commencement of the Tender Process by an event covered by the Required Insurance, the tender must be conducted on the basis that the remediation of such damage or destruction will be contracted to the new contractor with the agreed costs of remedying the same to be met by MSD; and
- (b) the Final Portfolio Properties will be transferred to the new contractor (as a nominee of MSD) subject to the CRI Mortgage and the Encumbrance.

Annexure: Valuation Principles

1. The Independent Expert must assume that the Project Documents in force immediately prior to the Termination Date continue until the Scheduled Expiry Date.
2. The Independent Expert must assume that, as at the Termination Settlement Date, no breach of this Agreement, Remediable Provider Default or Immediate Termination Event subsists and there are no Claims outstanding.
3. All assumptions made in determining costs and revenues must be adopted and applied consistently, and must not result in double counting.
4. In determining revenue, the Independent Expert must:
 - (a) assume that the Agreed Rent will be paid for each of the Properties, as at the Termination Settlement Date, without deduction or charge, until the Scheduled Expiry Date; and
 - (b) index the Agreed Rent at the mean of the previous five years' movements in the Relevant Index but otherwise in accordance with the Base Agreement.
5. In determining costs, the Independent Expert must ascertain the projected costs of the Provider in delivering the Services in accordance with the Agreement until the Scheduled Expiry Date.
6. In determining the impact of taxation in deriving the post-tax free cashflow, the Independent Expert must take into account the then-applicable tax position of the Provider and the then-applicable tax legislation.
7. In determining any component of revenue or cost, the Independent Expert must, among other things:
 - (a) consider the historical performance of the Provider, on the assumption that the Agreement and scope and nature of services remain in the form existing as at the Termination Settlement Date; and
 - (b) determine that component of revenue or cost on a basis consistent with that incorporated into a price for the Agreement if the Agreement were to be sold in a market of knowledgeable, willing but not anxious buyers and sellers acting at arm's length.
8. The Independent Expert will have a duty to obtain specialist advice, including independent technical advice in relation to the provision of the Services (including costs and performance standards), specialist commercial and legal advice to the extent reasonably required.
9. In determining the DCF Value, the Independent Expert must assume a residual value equal to the Discounted Residual Value.

Schedule 15: Sales Process

Part 1 – Agreeing the valuation and sales process

1. Valuation and sales report

Within 20 Business Days of the Provider's receipt of an Exercise Notice, the Provider must provide, to MSD, a report that includes:

- (a) **No sales process:** where the Provider does not wish to sell the Property in order to determine the Net Proceeds of Sale:
 - (i) a comprehensive property condition assessment prepared by a reputable property condition assessor:
 - (A) that outlines whether the Property meets the Asset Condition Standard that applies with respect to each individual Property; and
 - (B) that provides, if applicable, an estimate of the cost of remediation work that would need to be undertaken to bring the Property up to the Asset Condition Standard that applies with respect to each individual Property;
 - (ii) a current open market valuation of the Property (including all chattels in the Property owned by the Provider) assuming no Encumbrance is registered against the title to the Property, prepared by a reputable and independent residential property valuer;
 - (iii) comment on any issues, risks or other matters relating to the Property and the value of the Property that MSD should be aware of; and
 - (iv) details of the date on which the Provider will make payment of any Net Proceeds of Sale (or portion of Net Proceeds of Sale) to MSD, being a date no later than 90 days after the date of the Provider's receipt of the Exercise Notice; or
- (b) **Sales process:** where the Provider does wish to sell the Property in order to determine the Net Proceeds of Sale, the following information:
 - (i) a comprehensive property condition assessment prepared by a reputable property condition assessor:
 - (A) that outlines whether the Property meets the Asset Condition Standard that applies with respect to each individual Property; and
 - (B) that provides an estimate of the cost of remediation work that would need to be undertaken to bring the Property up to the Asset Condition Standard that applies with respect to each individual Property;
 - (ii) a current open market valuation of the Property (including all chattels in the Property owned by the Provider) assuming no Encumbrance is registered against the title to the Property, prepared by a reputable and independent residential property valuer;
 - (iii) comment on any issues, risks or other matters relating to the Property and the value of the Property that MSD should be aware of;

- (iv) the proposed terms of sale for the Property, which should be the latest version of the ADLS Agreement for Sale and Purchase of Real Estate unless there is a justifiable reason to use alternative terms and conditions of sale;
- (v) a copy of the sales and marketing proposals from no less than two real estate agents which shall include:
 - (A) agent price expectations;
 - (B) a draft listing authority;
 - (C) the agent's marketing strategy; and
 - (D) the proposed marketing budget,

together with a recommendation from the Provider as to which of the two agent proposals should be accepted, such recommendation being based on which proposal provides best value for money, taking into account the value of the Property and the relevant market; and
- (vi) a recommended sale price range (where the Property is to be sold by tender or negotiation) or a recommended reserve (where the Property is to be sold at an auction).

2. MSD review of report

Within three Business Days of receipt of the Provider's in accordance with paragraph 1 (Valuation and sales report), MSD will notify the Provider in writing whether it approves the content of the report (including the sales process, as applicable). Where:

- (a) MSD (acting reasonably) approves the report (including the sales process as set out in that report, as applicable), the Provider shall proceed on the basis of that sales process;
- (b) MSD does not provide a response within the three Business Day period, MSD will be deemed to have accepted the report (including the sales process as set out in that report, as applicable) and the Provider shall proceed on the basis of that sales process; or
- (c) MSD (acting reasonably) gives notice that it does not approve the report (including the sales process as set out in that report, as applicable), this will be treated as a dispute to be resolved in accordance with Part 17 (Dispute resolution) of the Base Agreement, which shall be referred for resolution in accordance with the Dispute Resolution Procedures. If the Dispute cannot be resolved informally between the parties in accordance with those Dispute Resolution Procedures, it shall be subject to Expert Determination in accordance with clause 71 (Expert Determination) of the Base Agreement, and the date for payment under paragraph 1(a) shall be extended by the duration of that Expert Determination process.

Part 2 – Selling the Property

3. Regular reporting

Where the Provider does wish to sell the Property in order to determine the Net Proceeds of Sale and the report prepared in accordance with paragraph 1(b) has been accepted (with or without modifications, as agreed between the parties or determined by an Independent

Expert in accordance with clause 71 (Expert Determination) of the Base Agreement), the Provider shall:

- (a) ensure that sales process as outlined in such report is followed;
- (b) seek MSD's prior approval where it wishes to sell the Property for less than the reserve price (in the case of an auction) or for an amount that is below the bottom of the sales range, in each case as outlined in the approved report; and
- (c) give notice to MSD's Representative, as soon as a sale and purchase agreement has been entered into and is unconditional, such notice setting out:
 - (i) the purchase price achieved for the Property;
 - (ii) the settlement date; and
 - (iii) the final agent and marketing costs (which should not exceed the agent and marketing costs outlined in the approved report unless MSD's prior written approval had been received).

Schedule 16: CRI Mortgage Instrument

FORM OF REGISTRABLE MEMORANDUM

Section 155A, Land Transfer Act 1952

Class of instrument in which provisions intended to be included:

MORTGAGE – ALL OBLIGATIONS

Person executing Memorandum:

HER MAJESTY THE QUEEN in Right of New Zealand acting by and through the Chief Executive of the Ministry of Social Development
--

The following provisions are intended for inclusion in instruments of the above class:

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SCHEDULE

1. SUMS SECURED BY THIS MORTGAGE

- 1.1 This mortgage secures the Crown Retained Investment.

2. COVENANT TO PAY AND COMPLY WITH OBLIGATIONS

- 2.1 The Mortgagor will punctually pay the Crown Retained Investment to the Mortgagee at the time and on the terms and conditions set out in the Capacity Contract but subject always to the terms of any Financier Direct Deed.
- 2.2 The Mortgagor shall, where the Land is to be transferred pursuant to the Capacity Contract, comply with its obligations under clause 64.4 (Termination Date) of the Capacity Contract on the Termination Settlement Date to transfer all its rights, title and interest to the Land to the Mortgagee on the terms set out in the Capacity Contract.

3. MAXIMUM AMOUNT OF PRIORITY OVER SUBSEQUENT MORTGAGES

- 3.1 For the purposes of Section 92 of the Property Law Act the maximum amount of priority which shall be afforded to this Mortgage over any subsequent mortgage, charge, lien or encumbrance shall be the sum described as "Priority Amount" in the Mortgage Instrument together with all interest expenses and costs of realisation of this Mortgage. However, this paragraph shall not be construed as either a waiver of priority in respect of any of the Crown Retained Investment that may exceed that amount or as a representation of the total amount capable of being secured by this Mortgage.

4. MORTGAGE A CONTINUING SECURITY

- 4.1 This Mortgage shall remain in full force and shall be a running and continuing security for the payment of the Crown Retained Investment and the observance and performance of all the terms and conditions contained or implied in this Mortgage until the final release of this Mortgage shall have been executed by the Mortgagee.

5. NEGATIVE PLEDGE AND SALE OR LETTING

- 5.1 The Mortgagor will not further mortgage, charge or in any way encumber the Land or any part thereof without the prior written consent of the Mortgagee. This clause 5.1 does not apply to the grant of any security under any Senior Financing Agreements.
- 5.2 The Mortgagor will not sell, dispose of, let, lease or subdivide the Land or any part of it. This clause 5.2 shall be suspended and of no effect until such time as the Mortgagor has failed to comply with any obligation to make payment of any MSD Expiry Proportion, any Ministry of Social Development share of the Net Proceeds of Sale, or any other payments due and owing to the Ministry of Social Development by the Mortgagor in relation to the Crown Retained Investment in accordance with the Capacity Contract.
- 5.3 The Mortgagor hereby authorises any prior mortgagee to furnish to the Mortgagee from time to time any information relating to the state of accounts under any prior mortgage. This clause 5.3 is suspended and of no effect while the Land is subject to the Capacity Contract.

6. NOT USED

7. NO RIGHT TO MARSHAL

- 7.1 The Mortgagor shall not be entitled to marshal in respect of this Mortgage or any collateral security.

8. NON MERGER OF SECURITIES

- 8.1 Nothing contained in this Mortgage shall be held to merge, discharge or prejudice any other security or securities now held or which may hereafter be held or taken by the Mortgagee for payment of any part of the Crown Retained Investment. Neither this Mortgage or any such other security shall affect any claim or demand which the Mortgagee may now or hereafter have or be entitled to make against any other person or persons as surety or sureties or on any bill of exchange or promissory note for any part of the Crown Retained Investment or operate as a payment of such moneys until the same shall have been actually paid in cash.

9. TIME FOR PAYMENT

- 9.1 Any moneys payable under this Mortgage shall be paid to the Mortgagee on the day on which banks in New Zealand are open for business and in sufficient time to allow the Mortgagee to lodge the moneys received in a bank account so that the bank will credit such moneys to the account of the Mortgagee on that date. Unless otherwise agreed by the Mortgagee, compliance with the requirements of this clause shall require the Mortgagor to hand such moneys to the Mortgagee no later than 3.30 p.m. on the date for payment, or where the date for payment is not a day on which banks are open for business, on the immediately preceding date on which banks are open for business. Where the Mortgagor fails to make payment by the requisite time it shall be deemed to have made payment on the next following day on which banks are open for business.

10. PAYMENT OF OUTGOINGS

- 10.1 The Mortgagor will pay and discharge all rates, taxes, charges and any other assessments or outgoings charged, assessed or imposed upon or payable by the Mortgagor in respect of the Land or any part of the Land as and when the same become due and payable until the Mortgagee shall have executed the release of this Mortgage.
- 10.2 The Mortgagee shall not be entitled to recover any moneys paid by the Mortgagee in respect of any rates, taxes, charges and any other assessments or outgoings charged, assessed or imposed upon or payable by the Mortgagor in respect of the Land or any part of the Land in circumstances where the Mortgagor has failed to comply with clause 10.1, if such amounts have already been recovered by the Ministry of Social Development from the Mortgagor pursuant to the Capacity Contract.

11. PAYMENT OF COSTS AND EXPENSES

- 11.1 The Mortgagor will pay the costs and expenses of the Mortgagee (including Mortgagee's legal costs (on a solicitor/client basis) and the costs of all agents and other professional advisors of the Mortgagee) relating to the enforcement or attempted enforcement by the Mortgagee of its rights, remedies and powers under this Mortgage and including the giving or attempted giving of any notice under the Property Law Act.

12. INSURANCE

- 12.1 The Mortgagor shall take out a comprehensive policy of insurance in accordance with the covenant implied by the Property Law Act against loss or damage by any other event or events normally covered by a policy of insurance to full replacement value or at the Mortgagee's option, to full indemnity value, in an insurance office from time to time approved by the Mortgagee. Clause 2 of Part 1 Schedule 2 to the Property Law Act is varied by the deletion of the words "by fire" so that it applies to damage or destruction caused in any way.
- 12.2 Clause 12.1 is suspended and of no effect while the Land is a Property as defined in the Capacity Contract.

13. LEASE OR LICENCE

- 13.1 Where the Land consists of or includes a lease or licence, the Mortgagor will pay the rental and will perform and observe all the covenants expressed or implied on the part of the lessee or licensee and will during the continuance of this Mortgage, at the cost of the Mortgagor, do all that shall be necessary for obtaining or attempting to obtain an extension or renewal of such lease or licence or a new lease or licence.
- 13.2 Where the Land consists of or includes a lease or licence, the Mortgagor will, immediately after service of any notice relating to the lease or licence given by the lessor/licensor or under the Property Law Act to the Mortgagor, serve a copy of that notice on the Mortgagee.

14. UNIT TITLES

- 14.1 Where the Land consists of or includes a stratum estate under the Unit Titles Act 2010 (or any Act passed in substitution or variation of the Act) (in this clause called "the Act") the Mortgagor will during the continuance of this Mortgage:
- (a) duly and punctually pay to the body corporate in respect of the Land upon which the principal unit and any accessory units comprising the Land are erected, all moneys payable by the Mortgagor under the Act and the rules of the body corporate; and
 - (b) comply with all other obligations of the Mortgagor under the Act, Unit Titles Regulations 2011 and any other regulations pursuant to the Act and the rules of the body corporate; and
 - (c) take all reasonable steps necessary to enforce the obligations of the body corporate and the other owners under the Act and the rules of the body corporate; and
 - (d) require the body corporate to insure and keep insured all buildings and other improvements on its Land to their full replacement value in accordance with Section 135 of the Act; and
 - (e) immediately after its receipt, give the Mortgagee written notification of having received notice of any meeting or resolution to be passed without general meeting of the body corporate at which it is proposed to move any resolution requiring a unanimous vote for its passing, any resolution altering the rules of the body corporate or any special resolution or a notice under Section 86 of the Act requiring the Mortgagor to sign any document; and
 - (f) give to the Mortgagee such information relating to the affairs of the body corporate as the Mortgagee shall reasonably require from time to time.

Production of this Mortgage by the Mortgagee to the secretary of the body corporate shall be sufficient authority for the Secretary to give the Mortgagee any information which the Mortgagor would be entitled to be given.

15. CROSS LEASE

- 15.1 Where the Land consists of or includes a flat or unit held under cross lease title, being a title which comprises an undivided share as tenant in common in the fee simple estate in the Land on which the flat or unit is erected together with a lease of that flat or unit:
- (a) the Mortgagor will ensure that all covenants, conditions and agreements contained or implied in each of the leases registered against the fee simple estate are observed and performed by the respective lessees and the lessors; and
 - (b) the Mortgagor will forthwith supply to the Mortgagee a copy of any notice given by or to the Mortgagor pursuant to any of the leases and a copy of any submission to arbitration and will comply with the Mortgagee's written instructions as to the conduct of any such arbitration.

16. COMPLIANCE WITH STATUTES

- 16.1 The Mortgagor will promptly comply with and observe all statutes at any time in force and all regulations and by-laws thereunder and all requirements and orders of any other authority which may in any way affect the Land or non-observance of which may prejudicially affect this security, and the Mortgagor will not do or suffer anything to be done whereby any charge or liability may be imposed upon the Land or any part thereof in priority to or *pari passu* with or in derogation of this Mortgage.
- 16.2 In any case where a resource consent or existing use rights exist, then within the meaning of the Resource Management Act 1991 or any amendment to that Act the Mortgagor will continue to use the Land and any improvements on it so as to preserve all such rights. In any case where pursuant to the Resource Management Act 1991 a resource consent affecting the Land has been or is hereafter granted upon or subject to any term or condition the Mortgagor will continually use and continue to use the Land and improvements on it in strict compliance with any such term or condition.
- 16.3 The Mortgagor will not carry on any offensive trades as defined by the Fourth Schedule, Land Transfer Act 1952. If any trade or business is carried on from the Land comprised in the Mortgage, the Mortgagor will not, without the prior consent of the Mortgagee, use the Land to carry on any other trade or business and will not cease to use the Land to carry on that trade or business without the prior consent of the Mortgagee and will carry on that trade or business in accordance with all laws and authorisations current and pertaining to such business.

17. STATUTORY MODIFICATIONS

- 17.1 The covenants, powers and provisions implied in mortgages by virtue of the Property Law Act and the Land Transfer Act or any statutory modification or re-enactment of them, shall for the purposes of this Mortgage and to the extent permitted by law, be negated.

18. SERVICE OF NOTICE

- 18.1 Any demand or notice required or authorised by the Property Law Act or by this Mortgage to be served on the Mortgagor may be served in such manner as is prescribed by Sections 353-355 of the Property Law Act or by order of the Court. In the case of a Company any demand or notice may be served by leaving it at the registered office of the Company or by posting it by registered letter addressed to the Mortgagor at its registered office or addressed to it at its place of business last known to the mortgagee or by delivering it to any person who is named on the public register as a Director or Secretary of the Company.
- 18.2 Any service effected in the manner provided by this clause shall be valid and sufficient even though the Mortgagor, whether to the Mortgagee's knowledge or otherwise, may at the date of such service be of unsound mind, deceased, bankrupt or in liquidation or absent from New Zealand or shall not have received the demand or notice and notwithstanding any other event or matter.
- 18.3 The provisions of this clause shall also apply (with all necessary modifications) to service on any guarantor of the Mortgagor's obligations under this Mortgage.
- 18.4 The Mortgagee may, at its option, where it is so permitted by law, as an alternative to the preceding provisions, serve any notice by placing an advertisement in a newspaper or newspapers circulating in the area where the Land is located, and such notice shall be deemed to have been served on the Mortgagor on the date of advertisement of the notice.
- 18.5 The above modes of service are subject to any mandatory statutory provisions and are in addition to any other lawful methods of service.

19. MORTGAGEE EMPOWERED TO REMEDY DEFAULT

- 19.1 If the Mortgagor shall make default in the prompt performance or observance of any covenant contained or implied in this Mortgage, it shall be lawful for but not obligatory upon the Mortgagee without prejudice to any other right or remedy of the Mortgagee to do all things and pay all moneys necessary in the opinion of the Mortgagee to make good or to attempt to make good or remedy such default to the satisfaction of the Mortgagee.
- 19.2 All moneys expended in this way by the Mortgagee shall be deemed to be part of the Crown Retained Investment and shall be payable in the manner and at the time the Crown Retained Investment is payable.

20. MORTGAGEE NOT ACCOUNTABLE FOR LOSS

- 20.1 The Mortgagee shall not be under any obligation to exercise any power, right or authority implied or vested in the Mortgagee by this Mortgage or under any statute and the Mortgagee shall not be answerable or liable for any loss occasioned by its omission or delay in doing so or occasioned by any partial or attempted exercise or execution of any such power, right or authority.

21. NON WAIVER

- 21.1 Delay by the Mortgagee in exercising all or any of its rights, remedies and powers contained or implied in this Mortgage upon the breach of any covenant or condition contained or implied in the Mortgage shall not operate as a waiver of any such breach or prevent the Mortgagee from at any time exercising all or any of its rights, remedies and powers.

22. INVALIDITY

22.1 If at any time any provision of this Mortgage becomes illegal, invalid or unenforceable in any respect under the laws of New Zealand, that illegality, invalidity or unenforceability shall not affect or impair the ability of the Mortgagee to enforce the provisions or the remaining provisions of this Mortgage.

23. CONSUMER GUARANTEES ACT

23.1 No provision of this Mortgage will, or is intended to, have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993. All provisions of this Mortgage shall be deemed amended to give effect to that intention except as permitted by the Consumer Guarantees Act 1993. Where the moneys secured by this Mortgage are for a business purpose, the Consumer Guarantees Act 1993 shall have no application.

24. MORTGAGEE NOT OBLIGED TO PRODUCE DOCUMENTS

24.1 The Mortgagee shall, subject to Section 211(b) of the Land Transfer Act, not be bound to produce any document of title or this Mortgage to the Land Registry Office or elsewhere while the Mortgagor is in default of any provision of this Mortgage, and until the proper and reasonable costs of such production have first been paid to the Mortgagee.

25. DEFAULT PROVISIONS

25.1 If any of the events set out in clause 25.2 occur the Mortgagee may, without giving the Mortgagor any notice or waiting any time except as required by Sections 119-126 of the Property Law Act, exercise any one or more of the powers set out in this Mortgage, the Property Law Act, the Land Transfer Act and any other Acts now or in the future in force.

25.2 The powers set out in clause 25.1 above may be exercised (subject to the required notice) if:

- (a) the Mortgagor fails to pay the Crown Retained Investment on the terms and in the manner set out in the Capacity Contract; or
- (b) any of the covenants or agreements binding upon the Mortgagor in this mortgage or in any written agreement are broken, including, for clarity, clause 2.2 relating to transfer of the Final Portfolio Properties on the Compensation Date.

25.3 The Mortgagee will not be liable for any damage or loss caused by the exercise of the powers set out in clause 25.1 hereof.

26. APPOINTMENT OF ATTORNEY

26.1 By signing this Mortgage the Mortgagor irrevocably appoints the Mortgagee, the secretary and the directors for the time being of the Mortgagee and any one or more of them, the Mortgagor's attorney(s) on the Mortgagor's behalf and at the Mortgagor's cost to do all or any of the following:

- (a) to do anything which the Mortgagor has failed to do in fulfilment of the terms of this Mortgage;
- (b) for this purpose, to sign the Mortgagor's name or affix the Mortgagor's seal to any document; and/or

- (c) in respect of any lease or licence:
 - (i) to execute all documents and do all such things that the Mortgagee shall think necessary for the purpose of keeping the lease valid and in full force and effect and perfecting this security; and/or
 - (ii) to sign and execute such mortgage of any new or further term or interest in the said Land or any part thereof or (at the option of the Mortgagee) a request under Section 117(1) of the Land Transfer Act.

26.2 Except in relation to the perfection of this Mortgage, clause 26.1 shall be suspended and of no effect until such time as the Mortgagor has failed to comply with any obligation to make payment of any MSD Expiry Proportion, any Ministry of Social Development share of the Net Proceeds of Sale, or any other payments due and owing to the Ministry of Social Development by the Mortgagor in relation to the Crown Retained Investment in accordance with the Capacity Contract.

27. RELEASE OF SECURITY

27.1 Subject to the terms and conditions of the Financier Direct Deed and the Capacity Contract, the Mortgagor shall not be entitled to a discharge of this Mortgage so long as the Mortgagor has any actual or contingent liability to the Mortgagee for the Crown Retained Investment.

27.2 Upon the Crown Retained Investment being fully paid, subject to the terms and conditions of the Financier Direct Deed and the Capacity Contract, the Mortgagee will deliver up all securities and security documents held on account of the Crown Retained Investment and a discharge of this Mortgage on a separate form of discharge, or where registration is to be completed electronically, shall give its authority to discharge.

28. TRANSFER BY MORTGAGEE

28.1 Subject to clause 72.2 (Assignment by MSD) of the Capacity Contract, the Mortgagee may, without notice at any time, assign, transfer or transmit, this Mortgage and any security interests created thereto to an assignee, transferee or successor of the Mortgagee's interest in the Crown Retained Investment.

29. MISCELLANEOUS

29.1 References to any legislation or to any provision of any legislation shall be deemed references to that legislation or provision as amended, re-enacted or substituted from time to time and unless otherwise stated, refers to New Zealand legislation.

29.2 References to any document include references to that document as modified, novated, supplemented, varied or replaced from time to time by the Mortgagee.

29.3 Nothing contained in this Mortgage shall oblige the Mortgagee to provide any financial accommodation or services to any person.

29.4 A reference to a **person**:

- (a) includes a corporation; and
- (b) extends to and includes the executors, administrators, transferees, successors and permitted assigns of that person.

30. CONFLICT

30.1 In the event of any inconsistency or conflict between any provision of this Mortgage and any provision of any agreement listed below, then the following order of precedence shall apply to the extent of the inconsistency or conflict:

- (a) first, the Financier Direct Deed;
- (b) secondly, the Capacity Contract; and
- (c) thirdly, this Mortgage.

30.2 For the avoidance of doubt and for the purposes of this clause 30:

- (a) where a provision of this Mortgage relates to the same subject matter as the corresponding provision of the Capacity Contract or the Financier Direct Deed and that provision is more onerous on the party giving this Mortgage or a Relevant Party (as defined in the Capacity Contract) than it is in the Capacity Contract or the Financier Direct Deed, the provision of the Capacity Contract or the Financier Direct Deed will prevail in accordance with the order of precedence described in clause 30.1 above; and
- (b) any act expressly permitted under the Capacity Contract or the Financier Direct Deed will be deemed to be expressly permitted under this Mortgage.

30.3 Inconsistency or conflict shall not arise merely because a provision in this Mortgage provides for additional obligations on any party in relation to different subject matter which are not created under the Capacity Contract or the Financier Direct Deed.

31. DEFINITIONS

"Authority and Instruction" means a document entitled "Client Authority and Instruction" given by the Mortgagor to a Conveyancer (in the form approved by the Mortgagee) that authorises and instructs the Conveyancer to register this Mortgage as an Electronic Instrument and includes all documents and pages that are attached to the Authority and Instruction.

"Capacity Contract" means an agreement between the Mortgagee and a Community Housing Provider and (if applicable) the legal owner of properties managed by a Community Housing Provider for the purchase of a designated number of social housing places.

"Community Housing Provider" means a "community housing provider" as defined in Section 2 of the Housing Restructuring and Tenancy Matters Act 1992.

"Crown Retained Investment" has the meaning given by clause 1 (Definitions) of the Capacity Contract but limited to the extent of the Crown Retained Investment applicable to the Land.

"Conveyancer" has the meaning given to it by the Lawyers and Conveyancers Act 2006.

"Electronic Instrument" has the meaning given to it by the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

"Financier Direct Deed" means the deed of that name attached as Annexure 1 (Financier Direct Deed) to Schedule 4 (Project and Ancillary Documents) of the Capacity Contract,

entered into by MSD, the Security Trustee, the CRI Creditor and the Provider (each as defined in that deed).

"Final Portfolio Properties" has the meaning given by clause 1 (Definitions) of the Capacity Contract.

"Land" means the Land(s) described together with all improvements made to such Land(s) being the property charged under this Mortgage.

"Land Transfer Act" means the Land Transfer Act 1952.

"Material" means any event which in the opinion of the Mortgagee is prejudicial to the security of the Mortgagee under this Mortgage.

"Mortgage" means this Memorandum together with the Mortgage Instrument, and if the Mortgage is to be registered electronically, includes an Authority and Instruction, and includes any provisions set out in this Memorandum which are amended, added or varied specifically by the terms of any annexure or schedule attached to the Mortgage Instrument.

"Mortgagee" means HER MAJESTY THE QUEEN in Right of New Zealand acting by and through the Chief Executive of the Ministry of Social Development.

"Mortgage Instrument" means the document signed by the Mortgagor and entitled "Mortgage Instrument (All Obligations)" and includes each schedule annexed or attached to it and if the Mortgage is to be registered electronically, includes a Mortgage in the form of an Electronic Instrument certified under Section 164A of the Land Transfer Act pursuant to an Authority and Instruction given by the Mortgagor.

"Mortgagor" except where the context otherwise requires includes all persons jointly and severally who execute this Mortgage and any person who accepts, subject to this Mortgage, a transfer, assignment, or transmission of the land the subject of this Mortgage and a reference to the Mortgagor shall also include their respective successors, executors, administrators, transferees, personal representatives and permitted assigns.

"MSD Expiry Proportion" has the meaning given by clause 1 (Definitions) of the Capacity Contract.

"Net Proceeds of Sale" has the meaning given by clause 1 (Definitions) of the Capacity Contract.

"Property Law Act" means the Property Law Act 2007.

"Senior Financing Agreements" has the meaning given by clause 1 (Definitions) of the Capacity Contract.

"Termination Settlement Date" has the meaning given by clause 1 (Definitions) of the Capacity Contract.

A reference to the singular shall include the plural and vice versa.

Words importing one gender shall include the other genders as the case may require.

Dated this	day of
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Execution

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

Memorandum []

Land Transfer Act 1952

MORTGAGE

All obligations

Registered pursuant to Section 155A

Land Transfer Act 1952

Registrar-General of Land

Land Registry

(Abstract Number/date)

"Particulars Entered in Register
Southland, Otago, Canterbury,
Westland, Marlborough, Nelson,
Wellington, Hawkes Bay, Gisborne,
Taranaki, South Auckland and North
Auckland Land Registries.

For Registrar-General of Land"

Schedule 17: Requirements for Performance Regime

1. High Performance Requirements

The following are High Performance Requirements for the purpose of the definition of High Performance Requirements in clause 1 (Definitions) of the Base Agreement:

Requirement	Period over which the requirement is measured for the purpose of determining whether the High Performance Requirement has been met
The Provider has complied with clause 26.2(a) (Access to premises and Properties) of the Base Agreement, in respect of access to the Provider's premises and to Properties.	Contract Quarter
The Provider has at all times complied with paragraph 11 (Tenancy Inspections) of Schedule 7 (Tenancy Management Requirements), relating to the requirement to conduct Tenancy Inspections in accordance with the Tenancy Inspections Policy.	Contract Year
A Substitute Property has become Unavailable for Other Reasons and if MSD exercised its discretion, would cease to be a Substitute Property in accordance with clause 12.4(a) (Temporary Substitute Properties that become Unavailable for Other Reasons) of the Base Agreement.	No specific measurement period.

2. Performance Requirements

The following are Performance Requirements for the purpose of the definition of Performance Requirements in clause 1 (Definitions) of the Base Agreement:

Requirement	Period over which the requirement is measured for the purpose of determining whether the Performance Requirement has been met
The Provider has at all times complied with the Tenant Placement Policy as required under Part 2 (Tenancing Vacant Properties process and notifications) of Schedule 7 (Tenancy Management Requirements).	Contract Quarter

Requirement	Period over which the requirement is measured for the purpose of determining whether the Performance Requirement has been met
The Provider has not materially failed to comply with paragraph 5.1(a)(ii) (Introductory meeting) of Annexure 2 (Tenancing Vacant Properties process) to Schedule 7 (Tenancy Management Requirements), relating to provision of information to an Offeree prior to entry into a Tenancy Agreement.	Contract Year
The Provider has at all times complied with the Debt Collection Policy.	Contract Quarter
The 24/7 Helpdesk that the Provider is required to have in place in accordance with paragraph 10.1(a) (Tenancy Management Requirements) of Schedule 7 (Tenancy Management Requirements) has been operational 95% of the time.	Calendar month
The Provider has at all times complied with paragraph 9 (Tenancy Agreement) of Schedule 7 (Tenancy Management Requirements), relating to the requirement to have a Tenancy Agreement in place with each Tenant.	Calendar Quarter
The Provider has at all times complied with paragraph 12 (Tenant meetings and engagement) of Schedule 7 (Tenancy Management Requirements), relating to the requirement to respond to a Tenant's request to discuss issues in accordance with the Tenant Engagement Policy.	Contract Year
The Provider has at all times complied with paragraph 14 (Complaints and incidents) of Schedule 7 (Tenancy Management Requirements), relating to the requirement to respond to and address complaints and incidents (including anti-social behaviour) in accordance with the Tenant Anti-social Behaviour and Damage Policy.	Contract Quarter
The Provider has at all times complied with paragraph 20 (Tenant disputes) of Schedule 7 (Tenancy Management Requirements), relating to the handling of Tenant disputes in accordance with the Tenant Disputes Policy.	Contract Quarter

Requirement	Period over which the requirement is measured for the purpose of determining whether the Performance Requirement has been met
The Provider has not materially failed to comply with any of the requirements in paragraph 21 (Tenant transfers) of Schedule 7 (Tenancy Management Requirements), including the Tenant Transfers Policy relating to Tenant transfers such that the Provider's failure has materially and detrimentally impacted MSD or a Tenant.	No specific measurement period.