

*[Insert name of Lessor]*

**(LESSOR)**

**HOUSING NEW ZEALAND LIMITED**

**(LESSEE)**

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**LEASE INSTRUMENT**  
*[insert address of premises]*

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Released under the Official Information Act 1982

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DEED dated the

day of

20[ ]

[ ] at [ ] ("Lessor") being the owner of the Premises (as described in the Particulars) HEREBY LEASES the Premises to HOUSING NEW ZEALAND LIMITED at Wellington ("Lessee") which accepts the grant of this Lease of the Premises for the Term from the Commencement Date at the Annual Rent and otherwise on the terms and conditions which form Schedules 1, 2 and 3 to this Lease.

EXECUTION

SIGNED [for and on behalf of] [by] [ ] [LIMITED] as Lessor in the presence of ) Director/Authorised Signatory Director/Authorised Signatory

Witness signature

Full Name

Address

Occupation

Note: If two directors sign, no witness is necessary. If a director and authorised signatory sign, both signatures are to be witnessed. If the director and authorised signatory are not signing together, a separate witness will be necessary for each signature.

SIGNED for and on behalf of HOUSING NEW ZEALAND LIMITED as Lessee by its duly authorised attorney in the presence of ) Attorney

Signature

Full Name

Address

Occupation

Note: An Attorney must sign for Housing New Zealand. Only certain office holders have power of attorney. This does not include Tenancy Managers or Property Managers. Refer to F-201. The Attorney must sign and date a certificate of non-revocation of power of attorney and attach the certificate to this Lease.

**SCHEDULE 1**

**PARTICULARS**

1.	<b>Premises:</b>	The land legally described as [ ] and comprised in computer register [ ] ( Registry) with the dwelling and other improvements situated on that land including all the Lessor's fittings, fixtures and chattels contained in the Premises.	
2.	<b>Address:</b>	[ ].	
3.	<b>Term:</b>	[ ] years from the Commencement Date.	
4.	<b>Further Terms:</b>	[ ] – clause 41 of Schedule 2.	
5.	<b>Commencement Date:</b>	[ ].	
6.	<b>Expiry Date:</b>	[ ] – subject to extension in accordance with clause 42 of Schedule 2.	
7.	<b>Renewal Dates:</b>	[ ].	
8.	<b>Final Expiry Date:</b>	[ ] – subject to extension in accordance with clause 42 of Schedule 2.	
9.	<b>Permitted Use:</b>	Residential occupation including social housing – clause 7 of Schedule 2.	
10.	<b>Annual Rent: GROSS</b>	\$[ ] as adjusted from time to time in accordance with clause 3 of Schedule 2.	
11.	<b>Monthly Rent: GROSS</b>	\$[ ] being one twelfth of the Annual Rent as adjusted from time to time in accordance with clause 3 of Schedule 2.	
12.	<b>Rent Review Dates:</b>	<b>Fixed Rent Adjustment Dates:</b>	Each anniversary of the Commencement Date during the Term and any Further Term which is not a Market Rent Review Date.
		<b>Market Rent Review Dates:</b>	(i) Each [ ] anniversary of the Commencement Date during the initial Term; (ii) Each Renewal Date; and (iii) Each [ ] anniversary of the commencement date of and during any Further Term.
13.	<b>Valuer:</b>	[ ] – see clauses 1.1 and 3.2 of Schedule 2.	
14.	<b>Schedule 3 Required:</b>	[Yes/No] – particulars relating to Minimum Standard.	

Lessor's Address for Service: [ ], New Zealand

Lessee's Address for Service: 80 Boulcott Street, Wellington 6011, New Zealand

**For Lessee use only:**

Lease reference number:	
Other:	

## SCHEDULE 2

### TERMS AND CONDITIONS

#### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Lease unless the context otherwise requires:

Whenever expressions appear in this Lease and also appear in Schedule 1 (Particulars), then those expressions shall mean and include the details supplied after them in Schedule 1;

**“Act”** means the Residential Tenancies Act 1986;

**“Authority”** means and includes each and every governmental, regional, territorial, municipal, statutory or other authority, agency or body having jurisdiction or authority over or in respect of the property or any part or any activity carried on from or within the property and includes:

- (a) every network utility operator (as that term is defined in the Resource Management Act 1991) having jurisdiction or authority over or in respect of the operation, provision or distribution of services, facilities or amenities to or from, and essential for the occupation of, the Premises (such as water, waste water, electrical, telecommunications, gas or drainage services); and
- (b) every consent authority and requiring authority having authority or jurisdiction under, or pursuant to, or for the purposes of, the Resource Management Act 1991;

**“building consent”**, **“code compliance certificate”** and **“building work”** shall each have the meaning ascribed to them under the Building Act 2004;

**“Business Day”** means a day other than:

- (a) a Saturday or Sunday; and
- (b) the Sovereign’s Birthday, Anzac Day, Labour Day and Waitangi Day; and
- (c) the day observed in the appropriate area as the anniversary of the province of which the area forms part; and
- (d) a day in the period commencing with Good Friday and expiring with the Tuesday after Easter; and
- (e) a day in the period commencing with the 24<sup>th</sup> day of December and expiring with the 3<sup>rd</sup> day of January;

**“consent authority”**, **“requiring authority”**, **“regional plan”**, **“district plan”**, **“regional rules”**, **“district rules”**, **“abatement notice”**, **“enforcement order”** and **“resource consent”**, where used in reference to a resource consent shall each have the meaning ascribed to them by the Resource Management Act 1991;

**“contaminant”** and **“hazardous substance”** each have the meaning ascribed to them by the Resource Management Act 1991, and **“unsafe concentrations”** where used in reference to

contaminants or hazardous substances shall be as specified or determined in accordance with any prevailing national standards, Ministry of Health guidelines, occupational safety codes of compliance or other applicable legislative or regulatory requirements from time to time for dwellings to be suitable for domestic residence;

“**Cost**” for the purposes of clauses 11 and 12 means amounts inclusive of GST paid or payable by the Lessee to third parties in connection with the carrying out of any repairs, maintenance or other work for which the Lessor is responsible under this Lease;

“**GST**” means goods and services tax as defined by the Goods and Services Tax Act 1985;

“**Fixed Rent Adjustment Date**” means each Fixed Rent Adjustment Date specified in Item 12 of the Particulars;

“**Force Majeure Event**” means an Act of God (including earthquakes, volcanic activity, landslides, lightning, floods, storms or other extraordinary weather event or natural disaster), acts of the Queen’s enemies, wars, insurrections, riots, strikes by employees, contractors, and subcontractors other than those employed by the Lessor or the Lessee, epidemics, civil disturbance or the order of any court or other Authority;

“**Essential Services**” means all plumbing, electrical fittings and electrical wiring, gas facilities (including pipes, conduits, valves and other equipment), and other services, facilities or amenities provided by the Lessor for heating or cooling the Premises or otherwise essential for the occupation of the Premises for the Permitted Use;

“**exterior and structure of the Premises**” extends to include the roof, chimney(s), flue(s), gutters, floors, internal structural walls, external walls, external doors and door frames, external windows and window frames (including glass contained in such external doors and windows) and remaining fabric, structure and shell of any building(s) which comprise or are contained in the Premises (or where the Premises form part of a building, then such building) not forming part of the interior of the Premises;

“**GST**” means goods and services tax as defined by the Goods and Services Tax Act 1985;

“**HNZ**” means Housing New Zealand Limited and extends to include its successors and assigns;

“**HNZC**” means Housing New Zealand Corporation and extends to include its successors and assigns;

“**HNZC Code of Conduct**” means the code of conduct issued by HNZC setting out the rules and guidelines which it and its officers, agents and contractors must observe in carrying out rights of inspection, maintenance and repair of properties leased out by HNZ for residential purposes and includes all updates and amendments from time to time (a full set of which is available for viewing at the Manukau and Wellington offices of HNZC during normal office hours);

“**HNZC’s Maintenance Standard**” means the maintenance standards and guidelines applied by HNZC to houses which it itself owns as updated and amended by HNZC from time to time

(a full set of which is available for viewing at the Manukau and Wellington offices of HNZN during normal office hours);

**"interior of the Premises"** extends to:

- (a) the internal surfaces of external walls and of internal structural walls;
- (b) the internal surfaces of the ceiling; and
- (c) the internal surfaces of external doors and door frames and of external windows and window frames, and the internal surfaces of the glass contained in such external doors and windows,

of any building(s) which comprise or are contained in the Premises (or where the Premises form part of a building, then such internal surfaces within the space which comprises the Premises), and extends to include all internal non-structural partitions and divisions, windows and window frames, and internal doors and door frames (including the glass contained in such doors and windows);

**"Lease"** means the lease granted by this instrument;

**"Lessee"** includes where appropriate the executors, administrators, successors and assigns of the Lessee and, where the context requires, extends to and includes the Lessee's representatives, agents and contractors;

**"Lessor"** includes where appropriate the executors, administrators, successors and permitted assigns of the Lessor;

**"Market Rent Review Date"** means each Market Rent Review Date specified in Item 12 of the Particulars;

**"Minimum Standard"** means those minimum standards of amenity, performance standards and other requirements for a house:

- (a) as set out in Schedule 3 (if indicated in the Particulars);
- (b) that must be met by a community housing provider to maintain registration as a *class 1: social landlord* (or if that class is replaced or substituted, its nearest equivalent) under the Housing Restructuring and Tenancy Matters Act 1992 (and the regulations to that Act, including the Housing Restructuring and Tenancy Matters Community Housing Provide Regulations 2014) and any amendments, Act and regulations in substitution; and
- (c) otherwise as required by law from time to time for dwellings to be suitable for domestic residence and includes, by way of example and not limitation, compliance insofar as they relate to residential dwellings within the Housing Restructuring and Tenancy Matters Act 1992, the Local Government Act 1974, the Local Government Act 2002, the Health Act 1956, the Building Act 2004, the Resource Management Act 1991, the Health and Safety at Work Act 2015 and the Act (and the regulations to those Acts, if any, and other applicable regulations such as the Housing Improvement

Regulations 1947) and all amendments and Acts (and the regulations to those Acts, if any) in substitution and otherwise as may be required to meet the requirements of all relevant Authorities;

**“Month”** means a calendar month commencing on the first day of that month and ending on the last day of that month;

**“Outgoings”** means all costs and expenses incurred in respect of or associated with the Premises (and the common areas of the property, if applicable) including but not limited to:

- (a) body corporate levies, water and/or waste water rates or other charges, rates, duties, taxes or levies payable to the relevant Authority; and
- (b) insurance premiums and related valuation fees,

but does not include charges for electricity, telecommunications or gas supplied to and used or consumed in the Premises by the Lessee or any sub-lessee;

**“Particulars”** means the particulars which are described in Schedule 1 of this Lease;

**“Premises”** means the Premises as described in the Particulars;

**“property”** and **“building”** mean the land and building(s) of the Lessor which comprise or contain the Premises. Where the Premises are part of a unit title development the word “property” means the land and building(s) comprised in that development;

**“Rent Review Date”** includes each Fixed Rent Adjustment Date and Market Rent Review Date;

**“Renewal Date”** means each Renewal Date specified in Item 7 of the Particulars;

**“Renewed Lease”** is a lease granted pursuant to clause 41;

**“structure”** in relation to any building(s) on a property extends to include the structure, structural elements and fabric, foundations and any support structure impacting on the structural integrity of the building;

**“Term”** means the term specified in the Particulars and includes any Further Term (and where applicable shall also extend to include any extended period pursuant to clause 42); and

**“Valuer”** means that valuer identified in Item 13 of the Particulars or such other registered valuer as the parties may agree from time to time.

1.2 In this Lease unless the context otherwise requires:

- (a) Headings and subheadings are inserted for ease of reference only and do not form part of this Lease or affect the interpretation of this Lease.
- (b) Words importing a singular number shall include the plural and vice versa.
- (c) Where two or more persons are bound by a provision in this Lease, then that provision shall bind those persons jointly and each of them severally.



- (d) References to persons shall be deemed to include references to individuals, companies, corporations or partnerships in each case whether or not having separate legal personalities.
- (e) References to parties, clauses and schedules shall be references to parties, clauses and schedules of this Lease, and a reference in a schedule to a clause is a reference to a clause in that schedule.
- (f) Any obligation not to do something shall be deemed to include an obligation not to suffer, commit or cause that thing to be done. Any obligation to do something shall be deemed to include an obligation to cause that thing to be done.
- (g) References to any Act means an Act of the New Zealand Parliament at present in force and includes references to regulations, orders, notices or codes of practice made under or pursuant to any such Act and references to an Act or regulation shall include all amendments to that Act or regulation (whether by subsequent statute or otherwise) and references to an Act or regulation passed in substitution for that Act or regulation.
- (h) If something is to be done by a day that is not a Business Day the obligation to perform or do that thing by that day shall be postponed to the next following Business Day.
- (i) References to currency are to \$NZ inclusive of GST (if any) unless expressly specified to the contrary.
- (j) This Lease is to be construed in accordance with New Zealand law.

## **2. RENT**

- 2.1 The Lessee shall pay during the Term the Annual Rent (as adjusted from time to time under this Lease) by equal monthly instalments of the Monthly Rent on the first Business Day of each Month during the Term (and proportionately for any part of a Month). Payments of the Monthly Rent shall be paid in arrears with the first payment (being a proportionate payment if applicable) to be paid on the first Business Day of the Month first occurring after the Commencement Date.
- 2.2 The Lessee shall be entitled to pay any Outgoings not paid by the Lessor pursuant to clause 4 and deduct that cost from the Monthly Rent.

## **3. RENT REVIEWS**

- 3.1 The Annual Rent applicable under this Lease shall be adjusted as from each Fixed Rent Adjustment Date to be the Annual Rent payable during the period of twelve (12) months immediately preceding the relevant Fixed Rent Adjustment Date increased by two (2) per cent (2%).
- 3.2 The Annual Rent applicable under this Lease may be reviewed as from each Market Rent Review Date as follows:

- (a) Either party may, but in each case not earlier than three (3) months prior to and not later than three (3) months following the relevant Market Rent Review Date (time being of the essence), give written notice to the other party that it requires the Annual Rent to be reviewed in accordance with this clause 3.2.
- (b) Upon provision or receipt of a written notice by either party under clause 3.2(a), the parties shall endeavour to agree upon the current market rent of the Premises to apply as the new Annual Rent, but if agreement is not reached within ten (10) Business Days following that notice (or such longer period as the parties may agree), then the current market rent (and accordingly the new Annual Rent) shall be determined by the Valuer, acting as an expert and not as an arbitrator.
- (c) Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the Valuer may prescribe and the Valuer shall have regard to any such representations but shall not be bound by them.
- (d) When the current market rent has been determined the person or persons determining the same shall give written notice of it to the parties. The parties shall share the costs of the determination equally.
- (e) Notwithstanding any other provision of this clause 3.2, the new Annual Rent shall not be less than the Annual Rent payable by the Lessee as from the Commencement Date of the initial Term of this Lease.
- (f) The provisions relating to resolution of disputes in accordance with clause 29 shall apply to any determination of the current market rent in accordance with this clause 3.2.
- (g) For the purposes of this clause 3.2, the current market rent shall be determined in accordance with its ordinary meaning, however:
- (i) having regard to the following factors:
    - (1) the rental values of comparable premises in the locality or in similar localities;
    - (2) the Premises are available for leasing with vacant possession by a willing but not anxious Lessor to a willing but not anxious Lessee for a term equal to the whole Term and any additional right of renewal;
    - (3) the permitted use of the Premises and services by the Lessee;
    - (4) the Act is not intended to apply to this Lease;
    - (5) the terms and conditions contained in this Lease (including the provisions for rent review) other than the amount of rent reserved in this Lease;
    - (6) the general fitness, condition and quality of the Premises; and

- (ii) disregarding the following factors:
  - (1) any improvements or fixtures erected or installed at the Lessee's expense;
  - (2) any goodwill attributable to the Premises through the Lessee's business activity;
  - (3) the deleterious condition of the Premises if such condition results from any breach of this Lease by the Lessee.

#### 4. OUTGOINGS

- 4.1 The Lessor shall pay all Outgoings in respect of the Premises (including but not limited to all general, water and waste water rates) directly to the relevant Authority or other party entitled to receive payment.
- 4.2 The Lessor is responsible for the maintenance and upkeep of, and all costs and charges associated with, the supply, consumption and/or usage of any water provided to the Premises and/or waste water disposed of from the Premises by way of non-reticulated services, facilities or systems (if applicable to the Premises).
- 4.3 Where separate water and/or waste water rates are levied by an Authority in respect of the consumption or usage of water provided to the Premises and/or waste water disposed of from the Premises, the following shall apply at the end of each rating year:
  - (a) The Lessee shall, on receipt of proof that payment has been made by the Lessor of any invoice relating to water and waste water rates and/or water and waste water usage in respect of the Premises from the relevant Authority together with a copy of the relevant invoice, pay to the Lessor that part (or those parts) of the charges levied by the relevant Authority which relate(s) to the actual consumption or usage of water provided to the Premises and/or waste water disposed of from the Premises (whether such consumption or usage charges are determined on the basis of actual metered consumption or usage, or as a fixed rate) (subject always to clauses 4.3(b) and (c)).
  - (b) The Lessee shall not be responsible under clause 4.3(a) to pay any charges (whether fixed, uniform or otherwise) or part(s) of them:
    - (i) which are incurred whether or not the Premises are occupied; and/or
    - (ii) for common facilities; and/or
    - (iii) if the Lessor fails to provide to the Lessee receipt of proof of payment and a copy of the relevant invoice within three (3) months (time being of the essence) after the end of the relevant rating year.
  - (c) Charges for which the Lessee is responsible under clause 4.3(a) shall be apportioned between the Lessor and the Lessee in respect of periods current at the commencement and termination of the Term.

4.4 If the Lessor does not pay the Outgoings as required the Lessee may, if it considers it reasonably necessary for the maintenance and/or operation of any Essential Services, provided any sub-lessee has not paid any such Outgoings, pay any or all of the Outgoings (including GST (if any)) and shall be entitled to deduct those amounts (where paid by the Lessee, or by the sub-lessee where that sub-lessee is entitled to recover payment from the Lessee) from the Monthly Rent.

## **5. GST**

The parties acknowledge that the Annual Rent is inclusive of GST (if any) and the Lessor shall be solely responsible to account to the Commissioner of Inland Revenue for any GST (and any additional GST penalty, interest or other sum levied against the Lessor by reason of non or late payment of GST) payable by the Lessor in respect of any payments made by the Lessee under this Lease (including the payment of Annual Rent) as and when such GST falls due.

## **6. INTEREST ON UNPAID MONEYS**

If the Monthly Rent or other moneys payable by one party to the other on any account whatsoever pursuant to this Lease shall be in arrears and unpaid for ten (10) Business Days after the due date for payment, whether or not any formal or legal demand for payment has been made, such moneys shall bear interest at the rate equivalent to that being charged by the Lessee's main bank for unsecured lending during the time the moneys were outstanding plus two (2) per cent (2%) per annum from such due date until the date of payment in full of such moneys and such interest shall be payable on demand and be recoverable in like manner as Monthly Rent or other moneys in arrears. The recovery of or the right to recover interest shall be without prejudice to all other rights, powers and remedies in this Lease.

## **7. USE**

7.1 The Premises are to be used by the Lessee for the Permitted Use only.

7.2 It is acknowledged by the Lessee and the Lessor that the Act is not intended to apply to this Lease. The Lessee and the Lessor also hereby expressly provide and acknowledge that the Lessee will not occupy the Premises but will (either itself or through HNZC or any other agent of the Lessee, as the case may be) sublet the Premises to a third party for residential purposes including social housing and the Lessor hereby consents to that subletting. This Lease is granted and taken genuinely for that purpose and not for the purpose of evading all or any of the provisions of the Act.

7.3 Despite clause 7.2, the Lessor and the Lessee expressly acknowledge that the Act and its processes may apply to the exercise by the Lessee (or HNZC or any other agent of the Lessee, as the case may be) of its rights and remedies as against any sub-lessee of the Premises from time to time.

## 8. QUIET ENJOYMENT

The Lessee shall quietly hold and enjoy the Premises throughout the Term without any interruption by the Lessor or any person claiming under the Lessor.

## 9. COMPLIANCE WITH ACTS AND REGULATIONS

9.1 The Lessor warrants to the best of its knowledge and belief that, at the Commencement Date of the initial Term of this Lease:

- (a) the Premises are suitable for the Permitted Use and comply fully with the Minimum Standard; and
- (b) the use of the Premises by the Lessee for the Permitted Use will comply with all applicable acts, ordinances, regulations, by-laws, regional and district rules for the time being in force and the requirements of any Authority having jurisdiction; and
- (c) all Essential Services are fit for the Permitted Use, safe, and in good, operational order and will last for the duration of the Term; and
- (d) the Premises are not, and have never been, a leaky building (as defined in the Weathertight Homes Resolution Services Act 2006, being a dwellinghouse into which water has penetrated as a result of any aspect of the design, construction, or alteration of the dwellinghouse, or materials used in its construction or alteration); and
- (e) the Premises are free from unsafe concentrations of contaminants and hazardous substances on, in or under the Premises as at the Commencement Date of the initial Term or arising as a result of previous uses of the Premises and/or other parts of the Lessor's property; and
- (f) the Premises comply fully with all requirements in respect of smoke alarms and insulation that are imposed on a landlord of residential premises under the Act and any relevant regulations made under the Act.

9.2 The Lessor indemnifies the Lessee against all costs, claims, damage, expense, loss or liability which the Lessee suffers or incurs at any time as a direct or indirect result of any breach by the Lessor of any of its warranties under clause 9.1.

9.3 Except where the same is expressed to be the responsibility of the Lessee under this Lease, the Lessor shall comply with:

- (a) the provisions of all acts, ordinances, regulations, by-laws, regional plan and district plan, and regional rules and district rules for the time being in force; and
- (b) the requirements of all Authorities (including compliance with regional rules and district rules and, if applicable the obtaining of any resource consent or other authorisation, approval, permit or consent); and
- (c) all notices (including abatement notices) and all requisitions issued, made or given by any Authority; and

- (d) the conditions of any resource consent, building consent, licence or permit; and
- (e) the provisions of any enforcement order;

in any way relating to or affecting the exterior and structure of the Premises and all Essential Services, and shall forthwith after receipt of any requisition or notice supply a copy of same to the Lessee.

## 10. LESSOR'S MAINTENANCE AND OTHER OBLIGATIONS

10.1 The Lessor shall, at its expense during the Term:

- (a) put, keep and maintain:
  - (i) the exterior and structure of the Premises; and
  - (ii) all Essential Services;
  - (iii) all other services, facilities or amenities provided as an integral part of the building or the property for the general use and enjoyment of the building by its occupants (for example, lifts and escalators);
  - (iv) all common areas of the property (if any),  
  
in a weatherproof and watertight condition (as applicable) and in good order and repair;
- (b) repair any inherent defect in the Premises (including any inherent defect in the Essential Services or in the Lessor's, fixtures, fittings and chattels), whether caused or arising during or before the commencement of the Term;
- (c) be responsible for:
  - (i) exterior landscaping work of a major, non-recurring maintenance nature, such as tree removals and replacement of fencing and retaining walls; and
  - (ii) maintenance of spas and/or swimming pools and associated equipment (if any), including recurrent and structural maintenance;
- (d) use best endeavours to ensure that the exterior and structure of the Premises and all Essential Services at all times comply with:
  - (i) the Minimum Standard (as applicable); and
  - (ii) all relevant legislation and regulations; and
- (e) carry out all or any works to the Premises (whether to the interior of the Premises or to the exterior and structure of the Premises) reasonably required by the Lessee and notified to the Lessor to remedy any breach by the Lessor of any of its warranties under clause 9.1.

- 10.2 The Lessor shall not be liable for any glass replacement or repair and maintenance of the interior of the Premises which the Lessee is responsible to undertake in accordance with clause 17 except where and to the extent that the need for replacement, repair or maintenance of the same is caused by or arises from the Lessor's failure to comply with its other repair and maintenance responsibilities.
- 10.3 The Lessor covenants that where works were undertaken to the Premises (whether to the interior of the Premises or to the exterior and structure of the Premises) prior to or about the Commencement Date or during the Term where a building consent was required for those works, the works were undertaken in accordance with a building consent, and a code compliance certificate has issued.
- 10.4 The Lessor shall:
- (a) ensure that before accessing the Premises the Lessor provides the Lessee with sufficient notice in accordance with clause 15 to enable the Lessee to fully comply with its obligations under the Act; and
  - (b) comply with the HNZC Code of Conduct and the Act in respect of any visits which the Lessor or its agent or contractor makes to the Premises to carry out any work for which the Lessor is responsible under this Lease.
- 10.5 Without limiting any other rights which the Lessee might have under this Lease or at law, where any maintenance or repair work is to be carried out by or on behalf of the Lessor:
- (a) which adversely affects the quiet enjoyment of the Lessee or any sub-lessee, the Monthly Rent shall abate according to the nature and extent of the disturbance or interruption; and
  - (b) for which vacant possession of the Premises is reasonably required for the work to be carried out, then no Monthly Rent shall be payable while the Lessee or any sub-lessee is required to yield up possession of the Premises to enable the work.

## **11. LESSEE'S ELECTION TO CARRY OUT WORK ON LESSOR'S BEHALF**

- 11.1 The Lessee may in its sole discretion elect to carry out all or any work (including repair and replacement) in respect of the Premises for which the Lessor is responsible under this Lease, as agent for and on behalf of the Lessor, including (but not limited to) where the Lessee considers that such work must reasonably be done:
- (a) to enable the Lessee or other occupant of the Premises to have, or continue to have, the full use and benefit of the Premises for the Permitted Use;
  - (b) to ensure the least practicable interference with the ability of the Lessee or any occupant of the Premises to have, or continue to have, the full use and benefit of the Premises for the Permitted Use; and/or
  - (c) to protect the health, safety, privacy and security of any occupant of the Premises; and/or

- (d) having regard to the Lessee's role to provide quality social housing.
- 11.2 The Lessee shall consult with the Lessor in respect of any expenditure on work to be carried out on the Lessor's behalf in accordance with this clause 11.
- 11.3 The Lessee shall be entitled to deduct from the Monthly Rent an amount equal to the Cost of any work for which the Lessor is responsible under this Lease which the Lessee elects to carry out on the Lessor's behalf in accordance with this clause 11. Where the Lessee makes a deduction from the Monthly Rent for the Cost of any such work, the Lessee must provide reasonable evidence of this Cost to the Lessor.
- 11.4 For the avoidance of doubt, nothing in this clause 11 in any way requires the Lessee to carry out any work in respect of the Premises for which the Lessor is responsible under this Lease, nor shall anything the Lessee does under this clause 11 relieve the Lessor from or diminish its obligations and responsibilities under clause 10.

## **12. LESSEE'S OBLIGATIONS IN CARRYING OUT WORK ON LESSOR'S BEHALF**

- 12.1 If the Lessee carries out any work for and on behalf of the Lessor in accordance with clause 11.1, the Lessee shall:
- (a) where any such work includes or comprises any alterations or additions which are structural in nature, obtain the consent of the Lessor (such consent not to be unreasonably or arbitrarily withheld or delayed);
  - (b) arrange for all such work to be carried out by contractors contracted by the Lessee, in a workmanlike manner and in accordance with all applicable statutory or regulatory requirements (including where necessary obtaining any necessary building consents and code compliance certificates); and
  - (c) notify the Lessor of all such work undertaken and the Cost of such work.
- 12.2 Where the Lessee carries out any work on the Lessor's behalf in respect of which the Lessor may wish to claim the cost under any warranty, the Lessee shall assist and co-operate and provide documentation reasonably required for the Lessor's claim.

## **13. LESSEE TO CARRY OUT PERIODIC INSPECTIONS AND REPORT TO LESSOR**

- 13.1 The Lessee shall (either itself or through its representatives or contractors contracted by the Lessee) carry out annual inspections of the Premises and then report to the Lessor in writing on the outcome of those inspections. The Lessee's inspection reports to the Lessor shall, where applicable, identify and make recommendations on any work in respect of the Premises for which the Lessor is responsible under this Lease which the Lessee considers may need to be undertaken.
- 13.2 The parties shall use their reasonable endeavours to agree upon an annual programme for any work for which the Lessor is responsible under this Lease (both parties acting reasonably), having regard to any recommendations made by the Lessee in its inspection reports to the Lessor. That programme:



- (a) is to identify what actions may be needed, when that action should be undertaken and the expected cost of that action; and
- (b) may, without limiting the Lessee's rights under clause 11 in any way, also identify whether any action is to be undertaken by the Lessor or by the Lessee on the Lessor's behalf in accordance with clause 11.

13.3 The Lessor acknowledges and accepts that:

- (a) the information and services provided by the Lessee in carrying out inspections of the Premises, reporting to the Lessor and making any associated recommendations:
  - (i) may be based only on an opinion of the physical condition of the property from a limited visual inspection of those parts of the property which are readily visible and accessible on the day and at the time of the inspection (and without limiting the foregoing, will not reveal the existence of any water ingress or latent, concealed, non-visible or obscured defects or problems);
  - (ii) are made available without any representation of any kind, express or implied; by the Lessee;
- (b) the Lessee does not assume and expressly disclaims any responsibility or liability for any incompleteness, inaccuracy, error or omission in or arising from the provision of such information and services; and
- (c) the Premises may not be in the standard required by this Lease on the Commencement Date and the Lessor agrees that the provisions of this Lease apply to all work required to the Premises to meet that standard.

13.4 The Lessor shall generally use its reasonable endeavours to assist and provide the Lessee with all reasonable information required by the Lessee in relation to the Premises and the property in a timely and effective manner.

#### **14. NOTIFICATION OF DEFECTS**

14.1 The Lessee will inform the Lessor as soon as reasonably practicable after such matters become known to the Lessee of:

- (a) any features of the Premises which do not comply with any legislation, regulations or by-laws applicable to the Premises and/or their use; and
- (b) any improvements or repairs required to be made to the Premises to ensure that the exterior and structure of the Premises and all Essential Services:
  - (i) are put into and remain in a good standard of repair and suitable for the Permitted Use; and
  - (ii) comply with all relevant acts, ordinances, bylaws, regional and district plans and rules for the time being in force or the requirements of any Authority having jurisdiction over the Premises.

## 15. LESSOR'S RIGHT OF ACCESS

15.1 The Lessor shall not at any time enter the Premises except:

- (a) for the purpose of carrying out necessary repairs to or necessary maintenance of, the Premises required to be carried out by the Lessor (except to the extent that the Lessee is to perform such repairs or maintenance for and on behalf of the Lessor under clause 11), after giving to the Lessee not less than twenty four (24) hours' prior notice of the intended entry and the reason for that intended entry; or
- (b) with the prior written consent of the Lessee on each occasion provided that such consent shall not, having regard to the Lessee's obligations to any sub-lessee under the Act and the HNZ Code of Conduct, be unreasonably withheld if no entry for that purpose has been made by the Landlord within the last twelve (12) months.

15.2 For the avoidance of doubt, the Lessor and its agents may not:

- (a) except with the prior written consent of the Lessee under clause 15.1 on each occasion, at any time enter the Premises for the purposes of showing the Premises to prospective lessees, prospective purchasers, valuers or the Lessor's agents, and then not more frequently than reasonably specified by the Lessee; or
- (b) in any circumstances enter the Premises for the purposes of showing the Premises by way of an open home; or
- (c) communicate directly with any sub-lessee whatsoever during the Term without first notifying the Lessee (except in the case of an emergency) and advising the reason for that communication; or
- (d) in contravention of the Act cause or permit any interference with the reasonable peace, comfort or privacy of any sub-lessee in the use of the Premises by that sub-lessee (and without limiting the generality of this sub-clause, the Lessor and its agents may not record, distribute or publish any images (including electronically) of any sub-lessee(s) or their personal belongings under any circumstances except with the prior written consent of the Lessee on each occasion).

15.3 In any of the circumstances in which the Lessor is permitted to enter the Premises described in this clause 15 (except in an emergency):

- (a) such rights of entry shall be restricted to times between 8 o'clock in the morning and 7 o'clock in the evening; and
- (b) the Lessee shall be entitled to require that an authorised representative of the Lessee accompanies the Lessor at all times while on the Premises.

15.4 Having regard to the Lessee's obligations to any sub-lessee under the Act, if the Act at any time provides for:

- (a) any longer minimum periods for a landlord to give prior written notice before entering premises than the minimum notice period set out in clause 15.1; and/or

- (b) any maximum frequency of entry by a landlord onto premises; and/or
- (c) any greater hourly restrictions during which a landlord is permitted to enter premises (except in an emergency) than the hourly restrictions on entry set out in clause 15.3,

then the applicable restrictions set out in clauses 15.1, 15.2 and 15.3 relating to minimum notice periods, maximum frequency of entry and hourly restrictions on entry by the Lessor shall be deemed to be adjusted (as applicable) to reflect such greater restrictions as are then imposed upon a landlord under the Act.

15.5 For the purposes of this clause 15, a reference to the Lessor is deemed to include the Lessor's agents, employees, contractors and other invitees.

## **16. ADDITIONS AND ALTERATIONS**

16.1 In addition to the rights provided for in clause 11, the Lessee may make or allow to be made alterations or additions to any part of the Premises:

- (a) without having to obtain the written consent if such alterations or additions are non-structural in nature; and
- (b) in any other case upon first producing to the Lessor on every occasion plans and specifications and obtaining the written consent of the Lessor (not to be unreasonably or arbitrarily withheld).

16.2 The Lessee will promptly discharge and procure the withdrawal of any liens or charges of which notice may be given to the Lessee or the Lessor in respect of any work carried out by the Lessee.

16.3 The Lessee, when undertaking any building work to the Premises, shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates.

16.4 The Lessee shall reinstate the Premises at the expiry of the Term:

- (a) in respect of any alterations or additions undertaken under clause 16.1(a); and
- (b) in respect of any alterations or additions undertaken under clause 16.1(b) if the Lessor so requires in writing at the time of giving its consent to those additions or alterations.

## **17. LESSEE'S MAINTENANCE AND OTHER OBLIGATIONS**

17.1 Subject to clause 10 and the following provisions of this clause 17, the Lessee shall be responsible during the Term, at its expense, to:

- (a) repair and maintain:
  - (i) the interior of the Premises; and
  - (ii) all Lessor's fixtures, fittings and chattels (excluding Essential Services) which are located within the interior of the Premises; and

- (b) keep any exterior grounds, yards and surfaced areas comprised in or forming part of the Premises in a tidy condition, and maintain any garden or lawn areas in a tidy and cared for condition.

17.2 The Lessee shall, at its expense and to the reasonable satisfaction of the Lessor, at the expiration or earlier determination of the Term (or, where this Lease is renewed, at the expiration or earlier determination of the last renewed term):

- (a) quietly yield up the interior of the Premises and the Lessor's fixtures, fittings and chattels contained in the Premises:
  - (i) in the same order, repair and condition as they were in at the Commencement Date of the initial Term of this Lease (in respect of the interior of the Premises, subject to fair wear and tear and normal ageing); and
  - (ii) free from unsafe concentrations of contaminants and hazardous substances on, in or under the Premises arising as a result of the use of the Premises by the Lessee or any sub-lessee;
- (b) replace all broken glass in windows and doors forming part of the Premises;
- (c) replace any Lessor's fixtures, fittings and chattels located within the interior of the Premises and which cannot be yielded up in the same order, repair and condition as they were in at the Commencement Date of the initial Term of this Lease with items of a similar standard to the original items;
- (d) paint and redecorate those parts of the interior of the Premises which have previously been painted and decorated (unless and to the extent that the same have been painted and redecorated within the preceding twelve (12) months and do not reasonably require further painting and redecorating) to a specification reasonably determined by the Lessee, but in any event, such specification shall not be required to exceed the standard to which the Premises were decorated at the Commencement Date of the initial Term of this Lease;
- (e) replace all floor coverings and curtains in the Premises (unless and to the extent that the same have been replaced within the preceding twelve (12) months and do not reasonably require further replacement) to a specification reasonably determined by the Lessee, but in any event, such specification shall not be required to exceed the standard of the floor coverings and curtains in the Premises at the Commencement Date of the initial Term of this Lease; and
- (f) make good any damage to the Premises (including damage to any drains, fences, paths, lawns, gardens, or grounds, or to any clotheslines or other facilities provided in the grounds, or to any conduits serving the Premises, or to any windows, doors, Lessor's fixtures, fittings and chattels, or other facilities leased with the Premises) caused by the wilful or negligent act or omission of the Lessee or any sub-lessee, except to the extent that the Lessor is able to recover the cost of making good such damage under insurance effected by the Lessor.

17.3 The Lessee shall not be responsible under clause 17.2 or otherwise under this Lease for:

- (a) any repair and maintenance which the Lessor is responsible to undertake;
- (b) any repair of any inherent defect in the Premises (including any inherent defect in the Essential Services or in the Lessor's, fixtures, fittings and chattels); and
- (c) making good any loss or damage by fire, flood, explosion, lightning, storm, earthquake, volcanic activity, earth subsidence, other extraordinary weather event or natural disaster, inevitable accident or the occurrence of any other peril against the risk of which the Lessor is or has covenanted with the Lessee to be insured, save where and to the extent that:
  - (i) the damage was intentionally done or caused by the Lessee or the Lessee's employees, contractors, sub-lessee or sub-lessee's invitees; or
  - (ii) the damage was the result of an act or omission by the Lessee or the Lessee's employees, contractors, sub-lessee or sub-lessee's invitees that:
    - (1) occurred on or about the Premises or the property; and
    - (2) constitutes an imprisonable offence; or
  - (iii) any insurance moneys that would otherwise have been payable to the Lessor for the damage are irrecoverable because of an act or omission of the Lessee or the Lessee's employees, contractors, sub-lessee or sub-lessee's invitees.

17.4 The Lessor acknowledges and accepts that:

- (a) the Premises will be used for social housing during the Term; and
- (b) subject to the Lessee complying with any applicable statutory or regulatory requirements regarding the same and also with its obligations in clause 17.2 at the expiration or earlier determination of the Term (or, where this Lease is renewed, at the expiration or earlier determination of the last renewed term), but otherwise despite any other provision of this Lease:
  - (i) the Lessee may, in its sole discretion, elect to defer the performance of or compliance with any maintenance, repair, reinstatement or replacement obligations it may have under this Lease in respect of the Premises and/or the Lessor's fixtures, fittings and chattels contained in the Premises until the expiration or earlier determination of the Term (or, where this Lease is renewed, at the expiration or earlier determination of the last renewed term) and in doing so it shall not be or be deemed to be in breach of those obligations; and
  - (ii) the Lessee is not obliged to ensure, nor does it make any warranty or representation (expressed or implied) whatsoever, that the Premises and the Lessor's fixtures, fittings and chattels contained in the Premises will at all

times during the currency of this Lease be kept and maintained in clean order, repair and condition.

## 18. INSURANCE

18.1 The Lessor shall insure the Premises for their full reinstatement value against loss, damage or destruction by fire, flood, explosion, lightning, storm, earthquake, volcanic activity, earth subsidence, other extraordinary weather event or natural disaster, or inevitable accident.

18.2 For the avoidance of doubt, sections 268 to 270 of the Property Law Act 2007 apply to this Lease. In view of that, where the Premises or any part(s) of the property are damaged or destroyed by:

- (a) fire, flood, explosion, lightning, storm, earthquake, volcanic activity, earth subsidence, other extraordinary weather event or natural disaster or inevitable accident; or
- (b) the occurrence of any other peril against the risk of which the Lessor is insured or has covenanted with the Lessee to be insured,

then:

- (c) the Lessor must not require the Lessee:
  - (i) to meet the cost of making good the destruction or damage; or
  - (ii) to indemnify the Lessor against the cost of making good the destruction or damage; or
  - (iii) to pay damages in respect of the destruction or damage; and
- (d) the Lessor must indemnify the Lessee against the cost of carrying out any works to make good the destruction or damage if the Lessee is obliged by the terms of this Lease to carry out those works.

18.3 Clause 18.2 applies:

- (a) even if an event that gives rise to the destruction or damage is caused or contributed to by the negligence of the Lessee or a person for whose acts or omissions the Lessee is responsible including the Lessee's employees, contractors, sub-lessee or sub-lessee's invitees; and
- (b) except as provided in clause 18.4.

18.4 Clause 18.2(c) does not excuse the Lessee from any liability to which the Lessee would otherwise be subject, and the Lessor does not have to indemnify the Lessee under clause 18.2(d), if, and to the extent that:

- (a) the destruction or damage was intentionally done or caused by the Lessee or the Lessee's employees, contractors, sub-lessee or sub-lessee's invitees; or

- (b) the destruction or damage was the result of an act or omission by the Lessee or the Lessee's employees, contractors, sub-lessee or sub-lessee's invitees that:
  - (i) occurred on or about the Premises or the property; and
  - (ii) constitutes an imprisonable offence; or
- (c) any insurance moneys that would otherwise have been payable to the Lessor for the destruction or damage are irrecoverable because of an act or omission of the Lessee or the Lessee's employees, contractors, sub-lessee or sub-lessee's invitees.

18.5 The Lessee may manage any remedial work resulting from any insurance claims on the Lessor's behalf (acting reasonably) and will be entitled to recover the costs of such management from the Lessor's insurance company or, failing that, the Lessor except where the damage is caused by the deliberate or wilful act or omission of the Lessee.

18.6 The Lessor shall:

- (a) on or before the Commencement Date, provide in writing to the Lessee full copies of the policy of insurance effected and maintained by or on behalf of the Lessor in respect of the Premises (and, if the Premises form part of a unit title development under the Unit Titles Act 2010 so clause 22.1 applies, by or on behalf of the relevant Body Corporate) and a certificate of currency for that policy (together, "**policy documents**");
- (b) provide in writing to the Lessee any policy documents and other information about insurance of the Premises that the Lessee reasonably requests from time to time;
- (c) if anything changes so that any policy documents or other information provided by the Lessor in accordance with this clause 18.6 are no longer accurate, current or correct, provide the accurate, current or correct policy documents or information in writing to the Lessee; and
- (d) provide all policy documents and other information in accordance with clauses 18.6(b) and 18.6(c) promptly and in any case within such timeframe as the Lessee reasonably requires to enable the Lessee to meet any insurance disclosure obligations to any sub-lessee of the Premises under the Act or otherwise.

18.7 The Lessee:

- (a) is entitled to rely on the policy documents and other information provided by the Lessor about insurance of the Premises in accordance with clause 18.6 as conclusive evidence of the accuracy, currency and correctness of those policy documents and the matters described in that information; and
- (b) may disclose the policy documents and other information about insurance of the Premises (including any policy documents and other information provided by the Lessor in accordance with clause 18.6) to any sub-lessee of the Premises pursuant to any insurance disclosure obligation that the Lessee may have to do so under the Act or otherwise.

18.8 The provision of the policy documents and any other information by the Lessor to the Lessee does not in any way whatsoever excuse the Lessor from or modify any obligations and liabilities which the Lessor has in respect of the insurance of the Premises in accordance with this Lease.

18.9 The Lessee may recover from the Lessor any loss suffered by the Lessee due to the Lessor's default of its obligations under clause 18.6 (including by setting off any amounts payable by the Lessee to the Lessor or otherwise).

## 19. DAMAGE TO OR DESTRUCTION OF PREMISES

19.1 If the Premises are destroyed or damaged:

(a) so as to render them uninhabitable; or

(b) in the reasonable opinion of either party, so as to require demolition or reconstruction, either party may give the other not less than fourteen (14) days' written notice (or, in the Lessor's case, such longer period as may be provided for in clause 19.10) terminating this Lease. If this Lease is terminated pursuant to the provisions of this clause 19.1 such termination shall be without prejudice to the rights of either party arising prior to such termination.

19.2 Where the Premises are or will be inaccessible or incapable of being used for their intended purpose due to an event or circumstances not caused by the Lessee or those for who the Lessee is responsible (an "Event"), then:

(a) the Monthly Rent and Outgoings shall cease to be payable by the Lessee as from the date of the Event until the Premises are once again fully accessible and/or capable of being used for their intended purpose (as applicable); and

(b) the Lessee may give the Lessor not less than fourteen (14) days' written notice terminating this Lease.

If this Lease is terminated pursuant to the provisions of this clause 19.2 such termination shall be without prejudice to the rights of either party arising prior to such termination. This clause 19.2 overrides any contrary provision in this Lease.

19.3 If the Premises are partly damaged or destroyed but not so as to render them uninhabitable, or are rendered uninhabitable, inaccessible or incapable of being used for their intended purpose but a notice to terminate the Lease is not given by either party under clauses 19.1 or 19.2 (as applicable), the Lessor shall proceed to repair, reinstate or reconstruct the Premises as soon as reasonably practicable.

19.4 During the effecting of such repairs or reinstatement and until their completion the Monthly Rent shall abate according to the nature and extent of the damage or destruction (and subject always to clause 19.2).



- 19.5 Any repair, reinstatement or reconstruction shall be carried out by the Lessor in consultation with the Lessee using materials, a form of construction and according to a plan acceptable to the Lessee and so that:
- (a) the Premises after completion of such repair or reinstatement are of the same size, quality and standard as they were in prior to such damage or destruction; and
  - (b) the Lessee's obligations under this Lease are not materially increased; and
  - (c) the Premises are no less suitable for the Lessee's use and enjoyment of the Premises immediately preceding the date on which such damage or destruction occurred.
- 19.6 If vacant possession of the Premises is reasonably required to enable the Lessor to carry out any repairs or reinstatement then the Lessor shall give the Lessee written notice specifying the date on which possession is required that date being such as to enable the Lessee to give such notice to its sub-lessees as may be required by the Act prior to entry by a landlord. No Monthly Rent shall be payable while the Lessee or any sub-lessee is required to yield up possession of the Premises to enable any repairs or reinstatement to be carried out. For the avoidance of doubt, any requirement for the Lessee to yield up possession of the Premises to enable the Lessor to carry out any repairs or reinstatement under this clause 19.6 does not, alone or of itself, mean that the Premises are rendered uninhabitable.
- 19.7 Where the Premises are not so damaged so as to be uninhabitable and a sub-lessee of the Lessee is still in occupation of the Premises the Lessor must give the Lessee sufficient notice in accordance with clause 15 to enable the Lessee to comply with the requirements of the Act as to entry by a landlord prior to exercising any rights of access to carry out repairs and shall otherwise access the Premises and carry out the work in a manner which complies with this Lease and the obligations of a landlord under the Act.
- 19.8 Without limiting clauses 19.1 and 19.2, if:
- (a) the Premises are not repaired, reinstated or reconstructed to the same standard that the Premises were in immediately preceding the date on which such damage or destruction occurred within a reasonable period after the date of the damage occurring; or
  - (b) any sub-lessee of the Lessee obtains any order from the tenancy tribunal pursuant to section 59(4)(b) of the Act that it is unreasonable to require the sub-lessee to continue the sub-tenancy even at a reduced rental,
- then the Lessee may terminate this Lease upon notice being given to the Lessor.
- 19.9 Clause 11 shall not apply to any required repair, reinstatement or reconstruction under this clause 19 unless the Lessee at any time notifies the Lessor that (having regard to its role to provide quality social housing) the Lessee requires such repair, reinstatement or reconstruction to be carried out by the Lessee for and on behalf of the Lessor in accordance with clause 11 and otherwise with the provisions of this clause 19. If the Lessee proceeds to repair, reinstate or reconstruct the Premises for and on behalf of the Lessor in accordance with this clause 19.9 (not being emergency, temporary or impermanent repairs primarily to

protect and/or preserve the health, safety and security of the occupants of the Premises or any personal property), then neither party shall then have any continuing right to terminate this Lease under clause 19.1 or 19.2 (as applicable) arising from the occurrence of the relevant damage or destruction.

- 19.10 Having regard to the Lessee's obligations to any sub-lessee under the Act, if the Act at any time provides for any longer minimum period for a landlord to give notice terminating a tenancy where premises are destroyed or damaged as to be uninhabitable then the minimum notice period for a Lessor's notice set out in clause 19.1 shall be deemed to be adjusted (as applicable) to reflect such greater restrictions as are then imposed upon a landlord under the Act.

## **20. FORCE MAJEURE**

- 20.1 If either party shall fail to comply with or observe any maintenance, repair or reinstatement obligation for which that party is responsible under this Lease and such failure is caused by any Force Majeure Event provided such party exercises reasonable diligence to put itself again in a position to carry out its obligations that failure shall not give rise to any cause of action or liability due to any such failure.
- 20.2 If a party becomes aware of a serious prospect of a Force Majeure Event it shall notify the other party as soon as reasonably practicable of the particulars of which it is aware.
- 20.3 No Force Majeure Event shall relieve either party from their obligations to make payments of amounts due prior to the occurrence of the Force Majeure Event.

## **21. ASSIGNMENT, TRANSFER OR VESTING**

- 21.1 The Lessee shall not assign this Lease without first obtaining the written consent of the Lessor which consent shall not be unreasonably or arbitrarily withheld if:
- (a) the Lessee proves to the reasonable satisfaction of the Lessor that the proposed assignee is (or in the case of the company the shareholders of the proposed assignee are) respectable, responsible and has the financial resources to meet the Lessee's commitments under this Lease;
  - (b) all rent and other moneys payable under this Lease have been paid and there are no material subsisting breaches of any of the Lessee's covenants contained in this Lease;
  - (c) a deed of covenant in customary form approved or prepared by the Lessor is duly executed by the assignee and delivered to the Lessor; and
  - (d) the Lessee pays the Lessor's proper costs and disbursements in respect of the approval and the preparation of any covenant.
- 21.2 Despite clause 21.1, the Lessee shall not be obliged to obtain or seek the consent of the Lessor to any change in the shareholding of the Lessee or to any assignment of this Lease:

- (a) to HNZC or to a related company (as that term is defined in the Companies Act 1993) of the Lessee or of HNZC or a company amalgamating with HNZ or HNZC; or
- (b) to the Crown (whether acting through a Minister of the Crown or otherwise) or a Crown entity (as defined in section 2(1) of the Public Finance Act 1989) or a state enterprise or any company which is wholly-owned by a Crown entity or a state enterprise:
  - (i) empowered or set up in connection with any national or regional reorganisation, restructuring or reconstruction of HNZ and/or of HNZC; and/or
  - (ii) in which all property, liabilities, contracts, engagements, rights and/or authorities of HNZ and/or of HNZC are or will be statutorily vested; or
- (c) which is a social housing transaction under the Housing Corporation Act 1974.

## 22. UNIT TITLE AND CROSS LEASE COVENANTS

22.1 Where the Premises form part of a unit title development under the Unit Titles Act 2010 the following provisions shall apply:

- (a) The expression "**Body Corporate**" means the Body Corporate incorporated under the Unit Titles Act 2010 in respect of the property.
- (b) The Lessor shall supply the Lessee with a copy of the rules of the Body Corporate from time to time applying in respect of the Premises.
- (c) The Lessee shall not do anything or omit to do anything which would place the Lessor in breach of any of the rules of the Body Corporate.
- (d) The Lessee shall not be required to pay any charges or fees levied by the Body Corporate.
- (e) The Lessor's obligation to insure the building shall be satisfied by the Body Corporate maintaining the same insurance covers in accordance with the Unit Titles Act 2010.
- (f) The Lessee's obligation to indemnify the Lessor in this Lease is extended to include the Body Corporate but only to the extent that the Body Corporate is not fully indemnified under any policy of insurance.
- (g) The Lessor shall observe and perform all of the Lessor's obligations as a member of the Body Corporate and shall use the Lessor's best endeavours to:
  - (i) ensure that the Body Corporate complies with its rules and the provisions of the Unit Titles Act 2010; and
  - (ii) without limiting clause 22.1(g)(i), procure that the Body Corporate performs the Lessor's repair and maintenance obligations under this Lease (as and to the extent that the Body Corporate rather than the Lessor is primarily responsible for the same) including:

- (1) managing, maintaining and keeping in a good state of repair the common property comprised in the unit title development and any assets owned by the Body Corporate or designed for use in connection with the common property; and
- (2) maintaining, repairing, or renewing all building elements and all infrastructure that relate to or serve more than 1 unit (as those terms are defined in the Unit Titles Act 2010).
- (h) Where in this Lease the consent of the Lessor is required in respect of any other matter then the like consent of the Body Corporate shall also be required if the consent of the Body Corporate to any such matter would be necessary under the rules of that Body Corporate or the Unit Titles Act 2010.
- (i) Subject to any restriction imposed in the rules of the Body Corporate applying at the time in respect of the Premises, the Lessor shall:
- (i) advise the Lessee in writing of:
- (1) any annual general meeting or extraordinary general meeting of the Body Corporate (each a “**Body Corporate meeting**”) by at least five (5) days prior notice and, subject to the Lessor’s advance receipt of the same from the Body Corporate, the proposed agenda for that Body Corporate meeting; and
- (2) any resolution(s) proposed to be passed at any Body Corporate meeting or otherwise in accordance with the rules of the Body Corporate, subject to and in any event as soon as reasonably practicable following the Lessor’s receipt of the same from the Body Corporate;
- (ii) permit the Lessee (or the Lessee’s nominated representative), if the Lessee so elects in its discretion, to attend any Body Corporate meeting together with the Lessor; and
- (iii) consult with the Lessee beforehand and exercise any vote that the Lessor is entitled to cast as a member of the Body Corporate and/or of a Body Corporate committee (whether at any Body Corporate meeting or otherwise in accordance with the rules of the Body Corporate) in a manner consistent with and otherwise having reasonable regard to the Lessee’s interests and views as lessee under this Lease and sub-lessor of the Premises.
- (j) (i) In conjunction with the lease of the Premises, the Lessor grants to the Lessee the right to use the common areas together with the Lessor and any other persons authorised by the Lessor, subject to such restrictions as are specified in this Lease.
- (ii) In this clause 22.1(j), “**common areas**” means those parts of the property the use of which is necessary for the enjoyment of the Premises and which is

shared with the Lessor, other lessees and/or occupiers (such as but not limited to rights of way, car parks and other shared facilities (as that term is defined in the Unit titles Act 2010)).

22.2 Where the Premises form part of a cross lease development the following provisions shall apply:

- (a) The expression "**Common Lessors**" means all of the Lessors under a lease for a flat or unit in a cross lease development.
- (b) The expression "**Cross leases**" means the registered cross leases which form part of the title to the Premises and the Lessor's right and interest in fee simple and leasehold interest in the Premises.
- (c) This Lessee shall not do anything or omit to do anything which would place the Lessor in breach of the Cross leases.
- (d) The Lessor shall observe and perform all of the Lessor's obligations under the Cross leases as a Common Lessor and shall use the Lessor's best endeavours to ensure that the Common Lessors comply with the Cross leases.
- (e) Where in this Lease the consent of the Lessor is required in respect of any other matter then the like consent of the Common Lessors shall also be required if the consent of the Common Lessors to any such matter would be necessary under the Cross leases.

### 23. NO SUBDIVISION

The Lessor shall not subdivide the property (or any part of it) further in order to create any additional lot or lots whether by fee simple titles, unit titles, cross leases or otherwise during the Term (or any Further Term) except, if applicable, to enable the registration of this Lease.

### 24. CANCELLATION

24.1 If:

- (a) the Monthly Rent or any part shall be in arrears and unpaid ten (10) Business Days after the due dates for payment; or
- (b) any of the covenants or agreements of this Lease on the part of the Lessee have not been observed and performed; or
- (c) the Lessee is in liquidation or receivership or shall make or enter into composition, assignment or other arrangement with or for the benefit of its creditors,

(subject, in either case, to the non payment or breach not being the subject of a bona fide dispute between the Lessor and the Lessee) then the Lessor may give the Lessee notice of the default in accordance with the provisions of section 245 (in respect of the covenant to pay the Monthly Rent) or section 246 (in respect of any other breach of covenant by the Lessee) of the Property Law Act 2007. If, after fifteen (15) Business Days of the Lessee's receipt of that

notice (or, in the case of any default under clause 24.1(b), such longer period that is reasonable in the circumstances), the default is not remedied, then (in addition to the Lessor's right to apply to the Court for an order for possession) it will be lawful for the Lessor thereupon or at any time thereafter to re-enter upon the Premises or any part of the Premises whereupon the Term shall be cancelled but without prejudice to the rights of either party against the other.

24.2 If:

- (a) any amounts payable by the Lessor shall be in arrears and unpaid after the due date for payment; or
- (b) the Lessor breaches any of the covenants or agreements of this Lease to be observed and performed on the part of the Lessor; or
- (c) the Lessor is bankrupt, in liquidation or receivership or shall make or enter into composition, assignment or other arrangement with or for the benefit of its creditors; or
- (d) the Premises constitute a leaky building (as defined in clause 9.1(d)); or
- (e) the Premises are no longer inhabitable or adequate for the Permitted Use; or
- (f) any contaminant or hazardous substance is found to exist in unsafe concentrations on, in or under the Premises as at the Commencement Date or arising as a result of previous uses of the Premises and/or other parts of the Lessor's property,

(subject, in any case, to the non payment or breach not being the subject of a bona fide dispute between the Lessor and the Lessee) then the Lessee may give the Lessor notice of the default.

24.3 If, after fifteen (15) Business Days of the Lessor's receipt of a notice given by the Lessee under clause 24.2, the default is not remedied, then it will be lawful for the Lessee thereupon or at any time thereafter to:

- (a) recover from the Lessor any loss suffered by the Lessee due to the Lessor's default (including by setting off any amounts payable by the Lessee to the Lessor or otherwise);
- (b) convert this Lease by further written notice to (at the Lessee's election) either a monthly tenancy or a three (3) monthly tenancy, terminable by one (1) month's notice (in the case of a monthly tenancy) or three (3) months' notice (in the case of a three (3) monthly tenancy), at the Annual Rent then payable and otherwise on the same terms and conditions as this Lease (so far as applicable to a monthly or three (3) monthly tenancy, as the case may be);
- (c) cancel this Lease by further written notice, either with immediate effect or (at the Lessee's election) with effect from the date which is three (3) months following the Lessor's receipt of that further notice whereupon the Term shall be cancelled but without prejudice to the rights of either party against the other;

(d) exercise any of its other legal rights.

## **25. ESSENTIALITY OF PAYMENTS**

25.1 Failure to pay the Monthly Rent on the due date shall be a breach going to the essence of the Lessee's obligations under this Lease.

25.2 The acceptance by the Lessor of arrears or of any late payment of Monthly Rent shall not constitute a waiver of the essentiality of the Lessee's continuing obligations to pay the Monthly Rent.

## **26. LOSS ON RE-ENTRY**

On re-entry the Lessor shall be entitled on reasonable prior notice to the Lessee to remove from the Premises any of the sub-lessee's possessions and, subject to section 62 of the Act, place them outside the Premises or such other place as the Lessor decides and the Lessor shall not be responsible for any damage caused to such possessions or for any loss suffered by the Lessee or the sub-lessee.

## **27. REMOVAL OF FIXTURES AND FITTINGS**

The Lessee will be entitled to remove at any time and if required by the Lessor by notice not less than five (5) Business Days following cancellation or expiration of the Term of this Lease will remove at the expiration or sooner determination of the Term or at such other time as the Lessee gives up possession of the Premises all fixtures and fittings which belong to the Lessee or which the Lessee has installed in the Premises.

## **28. DEALINGS WITH SUB-LESSEE FOLLOWING TERMINATION OR CANCELLATION**

If this Lease is terminated or cancelled and the Lessor leases the Premises directly to the sub-lessee the Lessee will arrange for the transfer of the sub-lessee's bond to the Lessor.

## **29. DISPUTES**

29.1 No party to this Lease shall commence any court or arbitration proceedings relating to any dispute arising out of this Lease (including any dispute as to the validity, breach or cancellation of this Lease or as to any claim in tort, in equity or pursuant to any statute) unless that party has complied with the following paragraphs of this clause 29.

29.2 Any party who claims that a dispute has arisen under or in relation to this Lease must give written notice to every other party specifying the nature of the dispute.

29.3 On receipt of such notice by the other party the parties to this Lease:

- (a) must co-operate and use their best endeavours to resolve the dispute expeditiously.
- (b) must, if they do not within seven (7) days of receipt of the notice (or such further period as they may agree in writing) resolve the dispute, refer the matter in dispute to

mediation by an independent mediator accredited by LEADR New Zealand Incorporated (the “mediation”).

- 29.4 The mediation shall in all respects be conducted in terms of the LEADR New Zealand Incorporated Standard Mediation Agreement.
- 29.5 The mediation shall be conducted by a mediator and at a fee agreed by the parties. Failing agreement between the parties the mediator shall be selected and the mediator’s fee shall be determined by the Chair for the time being of LEADR New Zealand Incorporated. The costs of the mediator’s fees shall be shared equally by the Lessor and the Lessee with each party paying their own costs. Such mediation process shall not (unless otherwise agreed between the parties) extend beyond a period of ten (10) Business Days following the appointment of the mediator.
- 29.6 A party who seeks urgent interlocutory relief may, by written notice to the other party to the dispute, elect not to comply with the provisions of clauses 29.1 to 29.5 but only to the extent of the relief sought and for the period required to dispose of the application for such interlocutory relief. Except to that extent on the disposal of the application the provisions of clauses 29.1 to 29.5 shall once again take effect.
- 29.7 Where any dispute arising between the parties under this Lease cannot be resolved pursuant to clauses 29.1 to 29.5 within the periods referred to in clauses 29.1 to 29.5 the parties may take such steps as they consider appropriate to resolve the dispute.
- 29.8 Pending resolution of any dispute the parties will continue to perform their obligations in this Lease which are not directly at issue in the dispute.
- 29.9 Nothing in this clause 29 shall prevent a party suing the other for arrears of Annual Rent or other monies payable under this Lease.

### **30. NOTICES**

Any notice to be given under this Lease shall, unless otherwise required by sections 353 to 361 of the Property Law Act 2007, be deemed sufficiently served if delivered, sent by registered post or sent by facsimile to the addressee at the addressee’s address specified in the Particulars (which must be a New Zealand address) or such other New Zealand address as is notified to the other party from time to time. Any notice delivered shall be deemed to be served on the date of delivery, any notice posted by registered post shall be deemed to have been served on the second day following the posting and any notice sent by facsimile shall in absence of evidence to contrary be deemed to be served contemporaneously with the generation of the sending party’s facsimile machine of an error free transmission receipt. Any notice sent by fax shall be followed by a copy of that notice sent or delivered by any other of the methods for service. Any notice or other document or writing served or given by either party hereunder shall be valid and effectual if served or given under the hand of any authorised representative of that party.



**31. WAIVER**

No waiver or failure to act by the Lessor in respect of any breach by the Lessee of any covenant or agreement shall operate as a waiver of another breach.

**32. CONFIDENTIALITY**

The parties shall maintain as confidential at all times and shall not at any time directly or indirectly disclose or permit to be disclosed to any person the existence or terms of this Lease except to the extent:

- (a) reasonably required by this Lease or, without limiting the effect of this clause 32, as may be reasonably required for the implementation of this Lease; or
- (b) that those terms are or become in the public domain (upon registration of this Lease or otherwise); or
- (c) required by law (including the Official Information Act 1982).

**33. NO PARTNERSHIP**

Nothing in this Lease shall be deemed or construed by the parties or by any third party as creating the relationship of partnership, principal and agent or joint venture between the parties.

**34. MORTGAGEE CONSENT AND CONCURRENT INTERESTS**

34.1 Subject to the Lessor's prior compliance with this clause 34, the Lessor shall be entitled with the prior written consent of the Lessee (which shall not be unreasonably or arbitrarily withheld or delayed) to sell, transfer, mortgage, charge, assign and otherwise deal with its interest in the property and or its interest in this Lease including the right to receive the Annual Rent and other moneys payable under this Lease.

34.2 The Lessor warrants that it has, at its cost, obtained and delivered (or will deliver) to the Lessee a written acknowledgement from any mortgagee, chargeholder or any other person acquiring a security interest or other encumbrance over the Lessor's property and/or the Lessor's interest in this Lease that such mortgagee, chargeholder or other person:

- (a) is fully aware of the existence and operation of this Lease and unconditionally consents to the grant of this Lease; and
- (b) confirms to the Lessee that if it exercises any rights under its mortgage, charge, security interest or encumbrance (as applicable), it shall exercise all rights subject the Lessee's interest under this Lease and shall ensure that there is no interference with the Lease and the ability of the Lessee or other occupant of the Premises to continue to use and/or occupy the Premises.

34.3 Where this Lease is not registered under the Land Transfer Act 1952, then the Lessor must not sell, mortgage, charge, transfer, assign or otherwise deal with its interest in the property

and/or its interest in this Lease without first delivering to the Lessee at the Lessor's cost (as applicable):

- (a) any written acknowledgement required by clause 34.2; and
- (b) a deed of covenant in a form reasonably acceptable to the Lessee executed by the purchaser, transferee, assignee or other disposee of the Lessor's interest in the property and/or its interest in this Lease ("**covenantor**"), pursuant to which the covenantor covenants for the Lessee's benefit to abide by the covenants, terms and conditions of this Lease (without limitation including the provisions of this clause 34) which are to be observed and performed by the Lessor under this Lease.

34.4 If the Lessor breaches clauses 34.1, 34.2 or 34.3, then without prejudice to the Lessee's rights and remedies under this Lease and at law (including but not limited to its right to seek injunctive relief), the Monthly Rent and Outgoings shall cease to be payable by the Lessee as from the date of the breach until the breach is remedied.

### **35. EXCLUSION OF IMPLIED TERMS IN PROPERTY LAW ACT 2007**

To the extent permitted by law or as may be contradicted by this Lease, the covenants, powers and provisions (if any) implied in leases by virtue of Schedule 3 of the Property Law Act 2007 are expressly negated.

### **36. REGISTRATION**

36.1 The Lessee is entitled to call for and arrange registration of this Lease under the Land Transfer Act 1952 at any time during the Term (or any Further Term) if it so requires. Pending registration, the Lessee shall be entitled to lodge a caveat against the certificate(s) of title or computer register(s) in respect of the Premises to protect its interest under this Lease.

36.2 To enable the Lessee to register this Lease:

- (a) the Lessor agrees to enter into, sign and deliver any documents and do all things as may reasonably be required by the Lessee to enable the registration of this Lease. Without limiting the foregoing, the Lessor shall be responsible at its own cost to:
  - (i) sign and deliver to the Lessee any necessary consents and/or plans required to enable the registration of this Lease;
  - (ii) procure:
    - (1) the consent of any mortgagee, chargeholder or other third party who may have an interest in the Premises or the property; and
    - (2) such other consents which may be required to enable the registration of this Lease; and
- (b) the Lessor authorises the Lessee, at the Lessee's election and without limiting the Lessor's responsibilities under clause 36.2(a)(ii), to do all things reasonably necessary on behalf of the Lessor to procure the consent of any mortgagee, chargeholder or

other third party required to enable the registration of this Lease. All proper costs expended by the Lessee in procuring such consent(s) shall be the Lessor's responsibility and shall at the Lessee's option:

- (i) be payable by the Lessor to the Lessee upon written demand;
- (ii) be set off by the Lessee against the Monthly Rent, the Outgoings and any other money payable by the Lessee under this Lease; or
- (iii) any combination of the above.

36.3 If the Lessor fails to comply with its responsibilities under clause 36.2(a) within four (4) weeks of written demand by the Lessee (time being of the essence), the Lessee shall be entitled by further written notice to the Lessor, which may be given in its absolute discretion and without prejudice to its rights and remedies under this Lease and at law (including but not limited to its right to seek injunctive relief), to withhold payment of the Monthly Rent, the Outgoings and any other money payable by the Lessee under this Lease, without penalty, from the date of such further notice until such time as the Lessor complies in full with its responsibilities under clause 36.2(a).

36.4 Should the Lessee call for registration or the parties otherwise agree to register this Lease, the Lessor shall be responsible for all costs relating to the registration of this Lease under the Land Transfer Act 1952.

### **37. LIMITATION OF LIABILITY**

37.1 If any person enters into this Lease as trustee of a trust ("**Trust**"), then that person warrants that:

- (a) it has power to enter into this Lease under the terms of the Trust;
- (b) it has properly signed this Lease in accordance with the terms of the Trust; and
- (c) all of the persons who are trustees of the Trust have approved entry into this Lease.

37.2 If any person enters into this Lease as trustee of a Trust, acting in an independent capacity and having no right to or interest in any of the assets of the trust except in that person's capacity as trustee of the Trust, then:

- (a) subject to clause 37.2(b), the liability of that trustee ("**Trustee**") arising under this Lease shall not be personal and unlimited but shall be limited to an amount equal to the value of the assets of the Trust that are available to meet that Trustee's liability; and
- (b) if loss is incurred by the other party to this Lease due to an intentional default or the dishonesty (but not negligence) in breach of trust by that Trustee, that Trustee will be personally liable to the other party to this Lease to the extent the assets of the Trust do not satisfy the loss.

37.3 For the purpose of clarification (but without limitation):

- (a) a trustee of a Trust is not acting independently and has an interest in the assets of the Trust if that person is a beneficiary, discretionary beneficiary, settlor or appointor in relation to the Trust unless otherwise agreed to in writing by the other party to this Lease; and
- (b) where the Trustee is a company, the limitation of liability under this clause 37 shall cease to apply to the Trustee in the event of any change to the actual or beneficial ownership of the Trustee, or any change to the directors of the Trustee, without the prior written consent of the other party to this Lease.

### **38. LESSEE'S REPRESENTATIVE**

38.1 The Lessor acknowledges that:

- (a) the Lessee may nominate one or more representatives as, and who shall be, the Lessee's agent(s) in all matters concerning this Lease and/or any subletting arrangements relating to the Premises; and
- (b) the covenants given by the Lessor and the obligations and responsibilities assumed by it in this Lease may be enforced against it at the suit of the Lessee's nominated representative(s) in accordance with Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017.

### **39. COSTS**

Each party shall bear its own costs in relation to the grant of this Lease and any variation or renewal or any deed recording a rent adjustment. The Lessee shall pay any stamp duty payable in connection with the grant of this Lease (if any).

### **40. LEASE SUPERSEDES ANY PREVIOUS LEASE**

This Lease supersedes, and (except where this Lease is in renewal of a lease granted on the same terms and conditions as this Lease) extinguishes, all lease documents relating to any previous lease of the Premises by HNZ or HNZC entered into with the Lessor (or any predecessor in title to the Lessor as owner of the Premises) prior to the date of this Lease.

### **41. FURTHER TERMS**

41.1 If the Particulars provide that Further Terms may be granted and the Lessee has given to the Lessor written notice to renew this Lease at least three (3) months before the Expiry Date the Lessor will renew this Lease for the next Further Term described in the Particulars from the relevant Renewal Date.

41.2 The Renewed Lease shall be on the same terms and conditions as this Lease except that:

- (a) the Expiry Date shall be updated accordingly to reflect the due expiry date of the Renewed Lease;

- (b) the Further Terms shall be reduced by one, or deleted entirely if no Further Terms remain, to the intent that no right to renew this Lease shall extend beyond the Final Expiry Date;
- (c) if the relevant Renewal Date is a Fixed Rent Adjustment Date, the Annual Rent payable from that Renewal Date shall be adjusted in accordance with clause 3.1;
- (d) if the relevant Renewal Date is a Market Rent Review Date:
  - (i) the Annual Rent payable from that Renewal Date shall be the current market rent which if not agreed on shall be determined in accordance with clause 3.2 but the Annual Rent shall be subject to the provisions of clause 3.2(e); and
  - (ii) pending determination of the Annual Rent in accordance with clause 41.2(d)(i), the Lessee shall pay an interim rent from that Renewal Date equivalent to the Annual Rent applicable immediately preceding the Renewal Date.

## **42. EXTENSION OF TERM**

42.1 The Lessee may (other than pursuant to the grant of a further lease, by taking a Renewed Lease for any Further Term specified in the Particulars, or by holding over pursuant to clause 43):

- (a) on one (1) occasion during the initial Term of the Lease; and/or
- (b) on one (1) occasion during each Further Term,

(but not during any period of holding over pursuant to clause 43) give to the Lessor written notice to extend the Lease, or the Renewed Lease as the case may be, for the further period and on the terms and conditions set out in clause 42.2.

42.2 Upon the Lessee giving to the Lessor a notice pursuant to clause 42.1:

- (a) the Term of the Lease, or the Further Term as the case may be, shall automatically be extended by a further period of:
  - (i) three (3) months; or
  - (ii) such longer period as may at that time be required under the Act to enable the Lessee to give notice to terminate any sub-tenancy and comply with its corresponding obligations to any sub-lessee under the Act,

commencing on the date immediately following the date on which the Term (or Further Term) was due to expire before the Lessee's notice was given to the Lessor;

- (b) the Expiry Date and the Final Expiry Date shall each be deferred by a corresponding period; and
- (c) the rent payable during such extended period shall be the rent payable immediately prior to that period.

**43. HOLDING OVER**

If the Lessee continues in occupation of the Premises beyond the Expiry Date (other than pursuant to the grant of a further lease or by taking a Renewed Lease) or the Final Expiry Date the Lessee will occupy the Premises under a periodic tenancy at the rent and in the manner payable immediately prior to the Expiry Date or the Final Expiry Date (as the case may be). The tenancy created may only be determinable:

- (a) by the Lessee serving on the Lessor not less than one (1) month's notice in writing at any time; or
- (b) by the Lessor serving on the Lessee not less than four (4) months' notice in writing at any time.

Released under the Official Information Act 1982

**SCHEDULE 3**

**PARTICULARS RELATING TO MINIMUM STANDARD**

Released under the Official Information Act 1982