

**SALE AND DEVELOPMENT AGREEMENT –
[Super Lot[s] [X]] – [*Wider Kāinga Ora
Development Name*]**

HOUSING NEW ZEALAND BUILD LIMITED

[DEVELOPER]

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SCHEDULES – NGĀ WĀHANGA

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DRAFT

AGREEMENT DATED

20[2X]

PARTIES

1. **HOUSING NEW ZEALAND BUILD LIMITED (NZ Company Number 6837775) (HNZ Build)**
2. **[DEVELOPER] (NZ Company Number [12345]) (Developer)**

BACKGROUND

- A. Kāinga Ora is a Crown entity for the purposes of the Crown Entities Act 2004, established by section 8 of the Kāinga Ora – Homes and Communities Act 2019 (**Kāinga Ora Act**) with the objective to contribute to sustainable, inclusive, and thriving communities that:
 - a. provide people with good quality, affordable housing choices that meet diverse needs;
 - b. support good access to jobs, amenities, and services; and
 - c. otherwise sustain or enhance the overall economic, social, environmental, and cultural well-being of current and future generations.
- B. Kāinga Ora undertakes the functions set out in section 13 of the Kāinga Ora Act, which include providing housing and undertaking urban development. In relation to urban development, Kāinga Ora also acts in accordance with the objectives, functions, and duties set out in the Urban Development Act 2020.
- C. Kāinga Ora acts in a manner consistent with the operating principles set out in section 14 of the Kāinga Ora Act. These principles fall under five headings: public housing solutions that contribute positively to well-being, housing supply meets needs, well-functioning urban environments, stewardship and sustainability, and collaboration and effective partnerships.
- D. HNZ Build is a wholly owned subsidiary of Kāinga Ora and, as a result, is also a Crown entity for the purposes of the Crown Entities Act 2004 and is required:
 - a. to the extent they relate to HNZ Build, to act consistently with the objectives and operating principles set out in section 13 of the Kāinga Ora Act and the Kāinga Ora statement of intent current at any given time;
 - b. to act consistently with the Government Policy Statement issued (as amended) under the Kāinga Ora Act; and
 - c. to perform its functions in a manner consistent with the spirit of service to the public and in collaboration with other public entities.
- E. In accordance with its functions and the operating principles and to meet its objective, Kāinga Ora has undertaken engagement with Māori and other persons and communities regarding [XYZ]. Kāinga Ora has undertaken that engagement in accordance with the principles in He Toa Takitini – our Partnership and Engagement Framework.
- F. The majority of the land at [XYZ] is owned by HNZ Build. To assist Kāinga Ora in leading the renewal of this urban environment HNZ Build is willing to sell the Super Lot[s].

- G. Kāinga Ora and HNZ Build have selected the Developer to purchase and develop the Super Lot[s] on the basis of the Developer’s proposal to carry out the Project as part of the wider Kāinga Ora Development. The Developer is willing to purchase the Super Lot[s] and develop [it][them] as the Project in accordance with this Agreement.
- H. HNZ Build and the Developer have agreed to enter into this Agreement recording in full the agreement reached between them for the sale and development of the Super Lot[s] as the Project.

This Agreement records the parties’ agreement as set out in the Specific Terms and General Terms.

SIGNATURES

SIGNED on behalf of **HOUSING NEW ZEALAND BUILD LIMITED** by:

Signature of authorised signatory

Name of authorised signatory

SIGNED on behalf of **[INSERT NAME]** as Developer by:

Signature of director/authorised signatory

Signature of director/authorised signatory

Name of director/authorised signatory

Name of director/authorised signatory

SPECIFIC TERMS – NGĀ TAUTUHI TŪPONO

Land																									
[Land:]	<p>[insert if Super Lot Subdivision still required].</p> <p>Address: [insert address of the land to be subdivided into super lots]</p> <p>Legal Description: [insert the legal description of the land that is to be subdivided into super lots i.e. Lot, DP, and title]</p>																								
Super Lot[s]:	<p>Legal Description: [UDD reference] [area]m² more or less described [as Lot [lot no.] DP [DP reference]] [OR] [in the table below] [being part of the Land] and being part of the Development [as marked on the Master Plan].</p> <table border="1"> <thead> <tr> <th>UDD Ref</th> <th>Area</th> <th>Lot</th> <th>DP</th> <th>Title</th> <th>Address</th> </tr> </thead> <tbody> <tr> <td></td> <td>m² more or less</td> <td></td> <td></td> <td>to issue</td> <td></td> </tr> <tr> <td></td> <td>m² more or less</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td>m² more or less</td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	UDD Ref	Area	Lot	DP	Title	Address		m ² more or less			to issue			m ² more or less						m ² more or less				
UDD Ref	Area	Lot	DP	Title	Address																				
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	m ² more or less																								
	m ² more or less																								
Payments																									
Purchase Price: <i>[(Refer clause 13)]</i>	<p>[insert] plus GST (if any) (calculated at \$[] per square metre plus GST (if any))</p> <p>Date[s] for payment of balance of purchase price: [In accordance with ADLS general terms 3.8][Option 1 (Standard)][] day of [] with part payments made on the earlier sale of any Homes (calculated based on the number of Homes sales settled as a proportion of the total number of Homes), to be paid to HNZ Build in line with clause 13.2] [Option 2 (Bespoke)] [<i>insert bespoke regime for staggered payment</i>];</p>																								
Deposit: <i>(Refer clause 12.8)</i>	<p>An amount equal to [10% of the Purchase Price]</p> <p>Date[s] for payment: [insert]</p>																								
Marketing Contribution: <i>(Refer clause 26.3)</i>	\$30,000 plus GST per annum [per Super Lot].																								
Traffic and Community Engagement Management Contribution: <i>(Refer clause 16.4)</i>	<p>[\$50,000 plus GST]</p> <p>[\$50,000 plus GST per annum].</p>																								

Milestones		
Milestones and Milestone Dates: <i>(Refer clause 17)</i>	Milestones	Milestone Dates
	Milestone 1: The floor slab of the first Home on [the Super Lot / a Super Lot / Super Lot 1 etc] has been laid.	60 days after the Occupation Date for a Super Lot
	Milestone 2: Practical Completion of all of the Homes on [the Super Lot] [each of the Super Lots]OR[[Super Lot 1] [Super Lot 2] [Super Lot 3]].	[insert] [] months after the date of this Agreement
	[insert and other (if any)]	[insert]
Conditions [Please re-order the conditions below in ascending order of date for satisfaction.]		
Conditions: <i>(Refer clause 2)</i> <i>[Drafting Note: consider whether it will be necessary to include a condition that requires the development of protocols to ensure compliance with the Standard Operating Procedures]</i>	Condition	Date for Satisfaction
	Kāinga Ora Approval Condition	[[20] Working Days after the date of this Agreement].
	Developer Board Approval Condition	[20 Working Days after the date of this Agreement.]
	Developer Suitability Condition	[20 Working Days after the date of this Agreement]
	Due Diligence Condition	[20 Working Days after the date of this Agreement]
	Resource Consent Condition [for Super Lot []]	[insert] Look Forward Date: [[insert]][N/A]]
	Land Use Consent Condition [for Super Lot []]	[insert] Look Forward Date [[insert]][N/A]]
	Construction Start Condition	The relevant Milestone Date Look Forward Date: [[insert]][N/A]]
	KiwiBuild Agreement Condition	[60 Working Days after the date of the Agreement]

	Finance Condition	[20] Working Days after the date of the Agreement.
	OIO Condition	[insert]
	[insert]	[insert]
<p>Settlement Date[s]:</p>	<p><i>[Option 1 – To be used when the purchase price is paid in full on the settlement date and no early access has been given so no licence is required]</i></p> <p>[In respect of each Super Lot, the][The] date 10 Working Days after the later of:</p> <ul style="list-style-type: none"> • the date that HNZ Build advises the Developer that a record of title for the [relevant] Super Lot has issued from LINZ; • all Conditions have been satisfied or (if applicable) waived; and • the HNZ Build Works [and relating to the relevant Super Lot] have reached practical completion (as certified by HNZ Build’s project manager).] <p><i>[Option 2 – To be used when the purchase price is paid in full on the settlement date and early access is given]</i></p> <p>[In respect of each Super Lot the][The] later of:</p> <ul style="list-style-type: none"> • 10 Working Days after the later of: <ul style="list-style-type: none"> ○ the date that HNZ Build advises the Developer that a record of title for the [relevant] Super Lot has issued from LINZ; ○ all Conditions have been satisfied or (if applicable) waived; and ○ the HNZ Build Works [and relating to the relevant Super Lot] have reached practical completion (as certified by HNZ Build’s project manager); and • [X] months after the Occupation Date [of the relevant Super Lot].] <p><i>[Option 3 –To be used when the purchase price is not being paid on the settlement date but the Developer gets possession from settlement date.</i></p> <p><i>If you use this option, you will need to select which of these clauses also go into the agreement:</i></p> <ul style="list-style-type: none"> • <i>Clause 13 which sets out when the purchase price is to be paid by reference to a specific long-stop date and a requirement to part pay the purchase price as sales to the End Purchaser are completed</i> • <i>Clause 11 which requires a performance bond to be put in place to secure payment of the balance of the purchase price]</i> <p>[In respect of each Super Lot,]10 Working Days after the later of:</p>	

	<ul style="list-style-type: none"> the date that HNZ Build advises the Developer that a record of title for the [relevant] Super Lot has issued from LINZ; the Design Documents and the Project Plan have been approved by the Design Review Panel; all Conditions have been satisfied or (if applicable) waived; and the HNZ Build Works [and relating to the relevant Super Lot] have reached practical completion (as certified by HNZ Build’s project manager).
Licence Commencement Date	<p>10 Working Days after the later of:</p> <ul style="list-style-type: none"> satisfaction of the following Conditions [identify the conditions] the date the HNZ Build Works [and, if in stages, for the relevant stage relating to the relevant Super Lot] have reached practical completion (as certified by HNZ Build’s project manager) the parties have executed and delivered a licence in the form set out in this Agreement.
[Licence Commencement Date]	<p>10 Working Days after the later of:</p> <ul style="list-style-type: none"> satisfaction of the following Conditions [identify the conditions] the parties have executed and delivered a licence in the form set out in this Agreement
Homes to be built by Developer	
Total number of Homes on [the/each] Super Lot	<p>[[Super Lot 1:] insert] [[Super Lot 2:] insert] (Note: this includes the [Affordable Homes], [KiwiBuild Homes] and [Market Homes])</p>
[Typologies]	
[Insert Typology subheadings]	[Super Lot] description.]
[Affordable Homes] <i>(Refer clause 19))</i>	
Applicable Affordable Home deliverables	<p>[Build-to-Rent] [Shared Equity] <i>[Rather than having a separate box, each of these "affordable deliverables" is to be an option that may be chosen. More than one might be chosen. If an option is chosen the document should generate a table</i></p>

	<i>like the one created for KiwiBuild but instead headed "Build to Rent" etc. It should also populate a schedule to the agreement for each of the options chosen and a definition. The provisions to go in the schedule won't be in this document but imported from a library.]</i>		
[KiwiBuild <i>(Refer clause 20)]</i>			
[KiwiBuild Homes:]	[Type]	[Quantity]	
	[One (including studio and one + study)]	[insert]	
	[Two]	[insert]	
	[Three (or more)]	[insert]	
Revenue Share [This section of the table is to be removed if Market Price and Revenue Share do not apply] <i>(Refer clause 12.11)]</i>			
Revenue Share:	[insert]%		
Agreed Prices	Type of [Market] Home	Market Price	
	[One (including studio and one + study)]	[insert]	
	[Two]	[insert]	
	[Three]	[insert]	
	[Four or more]	[insert]	
Other Details			
HNZ Build Address for Notices:	[Floor 5, 7 Waterloo Quay, Pipitea, Wellington, 6011] [insert HNZ Build email]		
HNZ Build's GST No.:	125-981-623		
Developer's Address for Notices:	[insert Developer's address] [insert Developer's email]		
Developer's GST No.:	[insert Developer's GST No.]		

<p>Insurances:</p>	<ul style="list-style-type: none"> • [Public Liability: [\$insert] for any one claim and [\$insert] in aggregate] • [Contract Works: Full replacement value] • [Professional Indemnity: [\$insert] for any one claim and [\$insert] in aggregate]] • [Motor Vehicle: [\$insert]] • [Plant and machinery insurance: [\$insert]]
<p>Developer's DPM Representatives: <i>(Refer clause 1.1)</i></p>	<p>[insert the names occupations and contact details of up to 2 representatives]</p>
<p>HNZ Build DPM Representatives: <i>(Refer clause 1.1)</i></p>	<p>[insert the names occupations and contact details of up to 2 representatives]</p>
<p>Developer's Senior Manager: <i>(Refer clause 36.5)</i></p>	<p>[insert name, role/title and contact details]</p>
<p>HNZ Build Senior Manager: <i>(Refer clause 36.5)</i></p>	<p>[[insert name, role/title and contact details]</p>

GENERAL TERMS – NGĀ TŪPONO

1. DEFINITIONS AND INTERPRETATION – NGĀ TAUTUHI ME NGĀ WHAKAMĀRAMATANGA

1.1 Definitions: In this Agreement, unless the context indicates otherwise:

[Access Licence (Preliminary)] means the form of licence set out in [Schedule 8[A]];]

[Access Licence (Works)] means the form of licence set out in [Schedule 8[B]];]

[Affordable Homes] means the buildings to be constructed by the Developer on the Super Lot[s] in accordance with clause 19);

Agreement means this agreement, including all schedules and attachments;

[Alliance] means the alliance of organisations known as [LEAD Alliance [[Te Aranga] formed by Kāinga Ora for the purpose of preparing land for development and delivering new and upgraded infrastructure and amenity on behalf of Kāinga Ora and HNZ Build;]

Amended ADLS Terms means the general terms of sale as amended and attached as [Schedule 1] and shall include any ADLS addendum to such general terms that is attached in [Schedule 1];

Authority means [insert Territorial Authority] and any other local body, government or other authority having jurisdiction over, or authority for, the Project or the Development;

Building Works means the design and construction of all Homes and surrounding improvements including all below ground (foundation) and above ground works, the Public Area Works all as set out in the Design Documents;

[Call Option] means the option granted under clause 33.1;]

[Call Option Notice] has the meaning given to that term in clause 33.3;]

Change Notice has the meaning given to that term by clause 7.2

Conditions means the conditions set out in the Specific Terms or implied by statute and 'Condition' means any one of them;

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is marked by either party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence';
- (c) is provided by either party or a third party 'in confidence';
- (d) either party knows or ought to know is confidential; or
- (e) is of a sensitive nature or commercially sensitive to either party;

Consents means the Resource Consents and all building consents and other permits, licences, approvals and any other similar items legally required by the Developer to undertake the Project;

Construction Plus Policy means the Kāinga Ora policy set out in [Schedule 12];

Date for Satisfaction means, in relation to each Condition, the date for satisfaction set out in the Specific Terms for that Condition;

Default Interest Rate means 6% above the Bank of New Zealand 90-day bank bill rate;

Delay Event means a delay to the progress of the Works caused by:

- (a) a delay in the granting of any Consent;
- (b) the Expert determination or dispute resolution procedures of a dispute relating to the Project;
- (c) (except where solely affecting the Developer) any industrial action, worker dispute, strike, lockout which affects the provision of labour, materials or any builder, contractor or supplier of material in any way involved in carrying out or providing materials, services or work;
- (d) terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration, act of civil or military authority;
- (e) an epidemic or pandemic;
- (f) any delay caused by HNZ Build in the performance of its obligations or the exercise of its rights under this Agreement;
- (g) a material change in government housing policy (having a material adverse effect on the Super Lot[s]);
- (h) any pause in the Works resulting from the operation of clause 14.3 (Further Remediation);
- (i) any event, series of events or circumstances arising from the physical impacts of climate change that prevents a party from performing its obligations under this Agreement and includes, but is not limited to:
 - (i) disruption of logistics and transport systems relied on for the supply of key resources;
 - (ii) unsafe working conditions due to extreme weather;
 - (iii) unavailability of insurance; or
- (j) any other event or circumstance which is beyond the reasonable control of the Developer and which could not have been foreseen by an experienced developer,

in each case which could not have been prevented by the exercise of reasonable care, skill and diligence by the Developer but does not include any lack of funds or change in economic conditions (unless caused by a Delay Event listed above);

Deposit means the Deposit described in the Specific Terms;

Design Documents means all drawings, plans, specifications and materials and colour schedules for the various:

- (a) typologies/categories of Homes to be constructed as part of the Project by the Developer; and
- (b) any Public Areas forming part of the Project,

which will be high quality, professional and detailed design plans and specifications that comply with the Design Guidelines;

Design Guidelines means the minimum design guidelines (which include Homestar 6, carbon zero or healthy homes requirements), which will apply to the Development, and includes any updates made from time to time in accordance with clause 5.6;

Design Review Panel means the panel formed by Kāinga Ora in relation to the Development to provide written recommendations and approvals on draft land use and subdivision consent applications building consent applications and Design Documents against the requirements of the approved Design Guidelines;

Design Review Process means the Design Review Process established by Kāinga Ora for the promotion of good design and compliance with the Design Guidelines in developments such as the Project, the current process being that set out in [Part 3 of the document titled 'Design Principles and Review Process – 2021-06-03 V1] **Please confirm that this is the most up-to-date and relevant document for the location.**;

Developer's Representative means the individual identified in the Specific Terms as the Developer's Representative

- (a) if more than one individual is identified in the Specific Terms, anyone of them;
- (b) any replacement individuals notified in writing to HNZ Build; or
- (c) in relation to a particular matter, any individual or individuals identified by the Developer as the party to act as the Developer's Representative;

Development means the Kāinga Ora designed and directed development of the land in accordance with the Master Plan which development is known as [e.g. Hobsonville], including the Super Lot[s], to create an integrated urban community;

[Development Covenants means a:

- (a) [covenant in gross in favour of [Kāinga Ora][other governing entity]]; [and]
- (b) [land covenant between Lots][,][;and]
- (c) [encumbrance],

substantially in the form[s] attached to this Agreement as [Schedule 10];];

Development Framework means:

- (a) the Design Guidelines;
- (b) the Design Documents (once approved under clause 5);
- (c) the Master Plan (subject to clause 5.7);
- (d) the Project Plan;
- (e) [Auckland Unitary Plan (Operative in part)][District Plan]; and
- (f) the Programme,

and, once issued, the Final Assessment Report;

Development Partner Meeting or **DPM** means the meetings to be held between representatives of the Developer and HNZ Build as required by clause 4;

Encumbrance means:

- (a) any interest, equity or other right of any other person (including any right to acquire, option, right of first refusal or right of pre-emption), mortgage, charge, pledge, lien, restriction, assignment, hypothec, security interest, title retention, sale and buy-back, sale and lease-back or any other interest in property that legally or in substance secures any obligation of any person, or other arrangement of any nature having similar economic effect (and includes any "security interest" within the meaning of the Personal Property Securities Act 1999); or
- (b) any agreement or arrangement to create any of the above;

End Purchaser means a genuine arm's length third party purchaser for value of a Lot and Home (or multiple Lots and Homes) (which may include Kāinga Ora or its nominee);

End Purchaser Agreement means an agreement to sell and purchase a Lot and Home (or multiple Lots and Homes) entered into between the Developer (or a party acting on behalf of the Developer) and an End Purchaser;

[Excluded Costs means, except as otherwise agreed by HNZ Build:

- (a) any cost of a kind that would typically be regarded as not within the scope of development or project management services;
- (b) a cost or expense transferred or charged by a person which is related to the Developer (or an employee of, or contractor or adviser to, such a person) which cost or expense exceeds the amount which would have been included in the actual costs had the work concerned been undertaken directly for, or by, the Developer;
- (c) bad debts, losses (whether actual or estimated), collection costs, and related legal costs;
- (d) any fines and penalties incurred by or imposed on the Developer in relation to the Project;
- (e) entertainment costs;

- (f) losses from other contracts;
- (g) compensation payable by the Developer for any personal grievance claims or in respect of claims under or relating to Health and Safety Legislation or the RMA;
- (h) bonding costs associated with the Project (with the exception of costs associated with bonds required and actually provided as a requirement of any Consent), and banking, interest, finance charges and associated costs of any borrowing;
- (i) any costs associated with any dispute under this Agreement including any amount paid by way of interest, compensation, damages or settlement, and legal costs;]

Expert means an expert to be appointed under clause 34.2 to determine a dispute who:

- (a) has been qualified in the general subject matter of the dispute or difference for not less than 10 years;
- (b) has had 5 years' relevant experience in the past 10 years in relation to the type of matter in dispute; and
- (c) who is a specialist in relation to the relevant subject matter;

Final Assessment Report means a final assessment report issued by the Design Review Panel in relation to the Project Plan and Design Documents (both as reviewed by it), as contemplated by clause 5;

GST Act means the Goods and Services Tax Act 1985;

Health and Safety Legislation means the Health and Safety at Work Act 2015 and any regulations made under that Act, and codes of practice and standards approved under that Act and any replacement legislation;

HNZ Build DPM Representative means the individual identified in the Specific Terms as the HNZ Build DPM Representative, or:

- (a) if more than one individual is identified in the Specific Terms, any one of them;
- (b) any replacement individuals notified in writing to the Developer; or
- (c) in relation to a particular matter, any individual or individuals identified by HNZ Build as the party to act as the HNZ Build DPM Representative;

HNZ Build Works means: the demolition and infrastructure works to be undertaken by HNZ Build as described in clause 8 and the Remediation Works;

Homes means:

- (a) the [OPTION 1[Affordable Homes,] Market Homes, [KiwiBuild Homes]] [OPTION 2 WHERE THERE ARE ONLY MARKET HOMES the buildings to be constructed by the Developer on the Super Lot[s] in accordance with the Design Documents]; and
- (b) all associated fencing, landscaping, access lanes, paths, driveways, services, infrastructure, facilities, retaining walls, common areas, rubbish collection and

recycling facilities forming part of the Project whether as proposed by the Developer (and approved under clause 5) or as required by the Design Review Panel as part of the approval process described in clause 5 or by any Authority;

[Innovative Construction and Design Strategy means innovative construction products, methodologies and concepts including but not limited to the use of offshore volumetric modular building components (subject to the terms of this Agreement) and such other information and processes as may be agreed from time to time;]

Insolvency Event means any of the following events:

- (a) the presentation of an application for liquidation of the Developer that is not discharged within 30 days of its filing or that is not demonstrated to HNZ Build prior to the expiry of that 30-day period as being an application that is frivolous or vexatious;
- (b) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of the Developer’s creditors;
- (c) the appointment of a liquidator, receiver, statutory manager, administrator or similar official to the Developer;
- (d) the suspension or threatened suspension by the Developer of the payment of the Developer’s debts;
- (e) the cessation by the Developer of the whole, or any relevant part, of the Developer’s business in New Zealand;
- (f) the enforcement of any security against the whole, a substantial or any relevant part of the Developer’s assets; or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction,

Intellectual Property means all intellectual property rights and interests (including the goodwill and any other common law rights and interests) owned, licensed or held by a party or used by it domain names, patents, designs, copyrights, know how, trade names, symbols, logos and licenses or similar use rights in respect of such rights and interests and any other intellectual property rights enforceable in New Zealand and elsewhere;

Kāinga Ora means Kāinga Ora – Homes and Communities established under section 8 of the Kāinga Ora Act;

[KiwiBuild Homes means the buildings to be constructed by the Developer on the Super Lot[s] as part of the Project in accordance with clause 20 that are to be provided as part of the KiwiBuild Programme;]

[KiwiBuild Programme means the Crown’s programme, administered by the KiwiBuild unit of Kāinga Ora, to identify and leverage opportunities to procure KiwiBuild Homes, being affordable quality homes for first home buyers, by acquiring vacant and underutilised Crown land or purchasing private land and contracting with developers to deliver KiwiBuild Homes, and generally known as ‘KiwiBuild’;]

[KiwiBuild Terms means the terms that apply to the construction and sale of KiwiBuild Homes as set out in [Schedule 12] which terms apply where the Developer has not entered into a Relationship and Option Agreement;]

[Land has the meaning given to that term in the Specific Terms;]

Land Use Consents means all Authority consents and approvals (including variations of any existing consent) to enable the Homes to be built on the Lots, as intended under the Project Plan;

Law or **Laws** means all statutes, regulations and bylaws of government, local and other public authorities;

Look Forward Date means, where relevant to a Condition, the date specific as the 'Look Forward Date', for that Condition, in the Specific Terms (if any);

Lot or **Lots** means, as the case may be, each and every lot and/or unit created by the Developer out of the Super Lot[s] as identified in the Project Plan;

[Market Homes means the buildings to be constructed by the Developer on the Super Lot[s] in accordance with this Agreement [that are not [Affordable Homes] [or] [KiwiBuild Homes]]];

[Market Price means, in relation to each [Market]Home, the price set out in the Specific Terms that relates to a Revenue Share;]

Marketing Contribution means the Marketing Contribution set out in the Specific Terms;

Marketing Design Guide and **Media Protocol Plan** means Kāinga Ora policies as amended from time to time for the sale and marketing of the Development;

Master Encumbrance means the encumbrance in gross to be registered against the record(s) of title to the Super Lot[s] in favour of HNZ Build or Kāinga Ora or otherwise as elected by HNZ Build, as encumbrancee, substantially on the terms and conditions set out in [Schedule 6];

Master Plan means the master plan for the Development as developed by HNZ Build and attached as [Schedule 4] (as amended or replaced from time to time);

Material Breach means:

- (a) in relation to the Developer a breach of this Agreement that is material, including the following examples of breach, which do not limit the range of possible breaches that may be deemed to be material, and which will be considered to be material at all times during the period that this Agreement remains in force:
 - (i) failure to pay the balance of the Purchase Price due in respect of [the Super Lot / one or more Super Lots] on the due date for payment (without prejudice to clause 32.1(a));
 - (ii) failure to comply, in all material respects, with the approved Design Documents in carrying out construction of the Works;
 - (iii) a wilful or grossly negligent act or omission (whether in breach of clause 27, another provision of this Agreement or otherwise) that affects materially the reputation of Kāinga Ora, HNZ Build or the Development;

- (iv) a breach of clause 18.1 (Compliance with Laws) or 18.2 (Health and Safety) other than breaches of a minor and technical nature;
 - (v) [Termination of the Relationship and Option Agreement entered into by the Developer (other than by agreement between the parties to it)];
 - (vi) a breach by the Developer under clause 37 (such as assignment or attempted assignment without consent);
 - (vii) failure to achieve Milestone [2] by the relevant Milestone Date; and
 - (viii) a repeated and consistent failure to comply with the requirements in clause 4.1 to attend the DPMs;
- (b) in relation to either party:
- (i) a failure by that party to complete Settlement as described in clause 32.1(a) (which is a Material Breach for all purposes other than clauses 32.1(b) to (e));
 - (ii) a persistent, flagrant or wilful failure to carry out its obligations under this Agreement;

Milestones means the milestones set out in the Specific Terms;

Milestone Dates means each date associated with a particular Milestone as set out in the Specific Terms, as may be modified or extended in accordance with this Agreement;

No Objection Covenant means the covenant (in gross in favour of HNZ Build or Kāinga Ora or otherwise as elected by HNZ Build) to be registered against the record(s) of title to the Super Lot[s] and the Lots on substantially the terms and conditions set out in [Schedule 7];

Occupation Date means[, separately in relation to each Super Lot,] the date that the Developer is legally entitled to occupy [the/that] Super Lot (exclusively or otherwise), irrespective of whether the Developer takes physical occupation of [the][that] Super Lot, and whether this occurs on the [relevant]Settlement Date or under the terms of a licence, or otherwise;

[Payment Bond means a bond in favour of HNZ Build provided by a New Zealand registered trading bank in a form acceptable to HNZ Build;]

Practical Completion means, in relation to each Home, the later of the date on which:

- (a) a Code Compliance Certificate has been issued by the relevant Authority in respect of the Home;
- (b) practical completion of the Home has been achieved in accordance with the terms of the relevant construction contract for that Home;
- (c) any fencing, landscaping, access lanes, paths, driveways, services, infrastructure, facilities, retaining walls, common areas, rubbish collection and recycling facilities or other outdoor works specified in the Design Documents for the Lot have been completed;

provided that there may still be works of a minor nature to be completed, to the extent permitted by HNZ Build (acting reasonably), that do not prevent the Home being used as a residence;

[Pre-Settlement Requirements] means:

- (a) [insert]
- (b) [insert] etc]

Programme means the specific and detailed development and construction timetable (being a GANTT chart or (if agreed between the parties from time to time)) equivalent chart detailing the [steps to be taken to satisfy the Conditions and the] [implementation of the Works and achievement of Milestones] [attached at [Error! Reference source not found.]] [prepared] and then maintained by the Developer in accordance with clause 17;

Project means:

- (a) the development of the Super Lot[s] by the Developer to deliver the Lots and the Homes, in accordance with the Development Framework;
- (b) the Subdivision Works; and
- (c) the Building Works;

Project Completion means the later of the date on which:

- (a) a record of title is issued for each Lot;
- (b) Practical Completion is achieved in respect of the last Home forming part of the Project;
- (c) all of the Works have been completed in accordance with this Agreement,

Project Objectives means the objectives set out in clause 3.1;

Project Plan means the detailed plan for the Project attached as [Schedule 3] or submitted for approval in accordance with clause 5;

Proposed Variation has the meaning given to that term by clause 7.1;

Public Area means those areas of the Super Lot[s] that are designated in the Project Plan or Master Plan to be accessed and enjoyed by the public at large (whether or not they are to be vested in a local authority or government body);

Public Area Works means any works set out in the Design Documents to be carried out within any Public Area;

[Relationship and Option Agreement] means an agreement between the Developer and Kāinga Ora (as agent of the Crown) in relation to the underwrite and delivery of KiwiBuild Homes;]

Releases has the meaning given to that term by clause 22.3;

Remediation and Management Plan means the site specific remediation and management plan for the Super Lot[s] attached as [Schedule 11] prepared in accordance with the Residential Criteria;

Remediation Works means the remediation works described in the Remediation and Management Plan;

Residential Criteria means:

- (a) the criteria for standard residential lots set out in the 2012 User's Guide for implementing the Resource Management (National Environmental Standard for assessing and managing contaminants in soil to protect human health) Regulations 2011 or any replacement national environment standard managing contaminants in soil; and
- (b) any applicable regional plan provisions defining permitted contaminant levels in soil;

Resource Consents means all of the Land Use Consents and the Subdivision Consents to be obtained by the Developer under the Resource Management Act 1991 for the Project;

Settlement means in relation to [the][each] Super Lot the moment in time when each party has performed their settlement obligations under clause 12;

Settlement Date means[, in relation to a Super Lot,] the settlement date allocated to [the/that] Super Lot in the Specific Terms (subject to clause 12.3 and 12.4);

[Showhome means a Home to be constructed for an initial use (in accordance with clause 26.6) as an example of a type of Home that is, or will be, for sale as part of the Project and subsequently as a Home to be sold to an End Purchaser in accordance with this Agreement;]

Site Validation Report means a signed certification issued by HNZ Build's consultant recording that the Remediation Works relevant to [the/a] Super Lot have been completed in accordance with the Remediation and Management Plan;

Specific Terms means the table headed 'Specific Terms' that precedes these General Terms;

Standard Operating Procedures means the operating policies and procedures attached as [Schedule 13];

Step-in Notice means a notice issued by HNZ Build to the Developer under clause 31.3

Step-in Period means, in relation to any exercise by HNZ Build of Step-in Rights under clause 31, the period commencing on the date HNZ Build exercises its Step-in Rights following service of the Step-in Notice and ending on the service of the Step-out Notice;

Step-in Rights means the rights of HNZ Build set out in clause 31;

Step-out Notice means the notice issued by HNZ Build notifying the Developer that HNZ Build is ceasing its Step-in Rights as noted in the relevant Step-in Notice;

Subdivision Consents means all Authority consents and approvals required to enable new records of title to be issued for the Lots;

Subdivision Works means all construction, engineering and other works, including the design, construction and installation of all utilities, facilities and other infrastructure required to comply with the requirements of the Subdivision Consents:

Super Lot[s] means all of the land comprising [the] [each] Super Lot specified in the Specific Terms [, being part of the Land, to be contained in the separate record(s) of title to be issued];

[Super Lot Consents means the land use consents (if any) and subdivision consents relating to the subdivision of the Land and creation of the Super Lot[s];]

Termination Event in relation to the Developer, means the occurrence of any of the events set out in clause 32.1;

Typologies [has the meaning given to it in the Specific Terms][means the typologies for the Homes approved as part of the approval of the Design Documents under clause 5];

Vision means the vision for the Development to build on and contribute to the vibrant diverse community within [*variable – name of the local area*] while maintaining a sense of place and to set new benchmarks for quality, affordable, dense and diverse urban development with a focus on innovation, affordability and a low climate impact;

Working Day means any day of the week other than:

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Matariki Holiday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day and any other statutory holiday observed in the location of the Super Lot[s] (and each includes any day on which the relevant statutory holiday is observed due to it falling on a Saturday or Sunday); and
- (b) a day in the period commencing on the 15th day of December in any year and ending on the 15th day of January in the following year, both days inclusive; and is deemed to commence at 9:00am and to terminate at 5:00pm.

Works means the Subdivision Works and Building Works, and all other works required to design, construct and complete the Project.

1.2 Interpretation: In this Agreement, unless the context indicates otherwise:

- (a) expressions defined
 - (i) in the main body of this Agreement; or
 - (ii) as items listed in the Specific Terms,have the defined meaning throughout this Agreement, including the background;
- (b) clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;
- (c) references to any **party** include that party's executors, administrators, successors and permitted assigns;
- (d) references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons,

governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;

- (e) references to the singular include the plural and vice versa;
- (f) references to clauses and schedules are to clauses in, and the schedules to, this Agreement;
- (g) references to any statute or statutory provision are to statutes or statutory provisions in force in New Zealand and include any statute or statutory provision which amends or replaces the statute or statutory provision, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under the statute or statutory provision;
- (h) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
- (i) the term **includes** or **including** (or any similar expression) is deemed to be followed by the words **without limitation**.

2. CONDITIONS – NGĀ HEIPŪTANGA

2.1 **Conditions:** The following Conditions apply: **[Please re-order the conditions below in ascending order of date for satisfaction. You will also need to finesse the list formatting e.g. use ";" and "." for the second to last listed condition and "." for the last listed condition.]**

- (a) [Kāinga Ora Approval Condition:
 - (i) this Agreement is conditional on HNZ Build obtaining the necessary internal approvals by Kāinga Ora to HNZ Build's entry into this Agreement by the relevant Date for Satisfaction;
 - (ii) HNZ Build will not be required to provide any reason for any failure to satisfy the Kāinga Ora Approval Condition; and
 - (iii) the Kāinga Ora Approval Condition is inserted for the sole benefit of HNZ Build;]
- (b) [Developer Board Approval Condition:
 - (i) this Agreement is conditional on the Developer obtaining, by the relevant Date for Satisfaction, the approval of its board of directors (or its parent's board of directors if stated in the Specific Terms) to the Developer's entry into this Agreement;
 - (ii) the Developer will not be required to provide any reason for any failure to satisfy the Developer Board Approval Condition; and
 - (iii) the Developer Board Approval Condition is inserted for the sole benefit of the Developer;]
- (c) [Due Diligence Condition:
 - (i) this Agreement is conditional on the Developer being entirely satisfied, by the relevant Date for Satisfaction, with its due diligence

investigations in relation to the land comprising, or to comprise, the Super Lot[s], and its suitability for the Project; and

(ii) the Due Diligence Condition is inserted for the sole benefit the Developer;]

(d) [Developer Suitability Condition:

(i) this Agreement is conditional on HNZ Build being entirely satisfied, by the relevant Date for Satisfaction, with its due diligence investigations in relation to the Developer; and

(ii) the Developer Suitability Condition is inserted for the sole benefit of HNZ Build]

(e) [Resource Consent Condition:

(i) this Agreement is conditional on the Developer obtaining, by the relevant Date for Satisfaction, the Resource Consents (on terms satisfactory to the Developer and HNZ Build acting reasonably and subject to clauses 2.1(e)(ii) and (iii));

(ii) the Developer’s approval of the terms of a Resource Consent may only be withheld in circumstances where those terms do not enable the number and mix of Homes set out in the Specific Terms to be developed or will, or are substantially likely to, have a material negative impact on:

(A) the Developer’s ability to undertake the Project in compliance with the terms of this Agreement and Developer’s feasibility; or

(B) the Developer’s funder’s approval (in the funder’s sole discretion);

(iii) HNZ Build’s approval of the terms of a Resource Consent may only be withheld in circumstances where those terms:

(A) would not enable the number and mix of Homes set out in the Specific Terms to be developed; or

(B) would result in an adverse legal or financial impact on HNZ Build or Kāinga Ora;

(iv) the Resource Consent Condition is inserted for the benefit of both HNZ Build and the Developer;] and

(v) a Resource Consent Condition operates as a separate Condition in respect of each Super Lot. If the Resource Consent Condition is not satisfied in relation to a Super Lot, then that Super Lot is severed from the Agreement and the Agreement will continue so that the provisions related to all other Super Lots remain in full force and effect;]

(f) [Land Use Consent Condition:

- (i)** this Agreement is conditional on the Developer obtaining, by the relevant Date for Satisfaction, the Land Use Consents (on terms satisfactory to the Developer and HNZ Build acting reasonably and subject to clauses 2.1(f)(i) and (iii));
- (ii)** the Developer’s approval of the terms of a Land Use Consent may only be withheld in circumstances where those terms do not materially deliver the yields contemplated by the Developer in its feasibility for the Project and will or are substantially likely to have a material negative impact on:

 - (A)** the Developer’s ability to undertake the Project in compliance with the terms of this Agreement and Developer’s feasibility; or
 - (B)** the Developer’s funder’s approval (in the funder’s sole discretion);
- (iii)** HNZ Build’s approval of the terms of a Land Use Consent may only be withheld in circumstances where those terms:

 - (A)** would not enable the number and mix of Homes set out in the Specific Terms to be developed; or
 - (B)** would result in an adverse legal or financial impact on HNZ Build or Kāinga Ora;
- (iv)** Land Use Consent Condition is inserted for the benefit of both HNZ Build and the Developer;[and
- (v)** a Land Use Consent Condition operates as a separate Condition in respect of each Super Lot which is to be developed as unit titles. If the Land Use Consent Condition is not satisfied in relation to a relevant Super Lot, then that Super Lot is severed from the Agreement and the Agreement will continue so that the provisions related to all other relevant unit title Super Lots remain in full force and effect.]
- (g)** [Construction Start Condition:

 - (i)** this Agreement is conditional on the Developer achieving Milestone [1], by the relevant Milestone Date; and
 - (ii)** the Construction Start Condition is inserted for the sole benefit of HNZ Build;]
- (h)** [KiwiBuild Agreement Condition:

 - (i)** this Agreement is conditional on the Developer entering into a Relationship and Option Agreement that relates to the Project and that agreement either (1) being or becoming unconditional or (2) being or becoming conditional only on this Agreement becoming unconditional, by the relevant Date for Satisfaction, on terms acceptable to both the Developer and HNZ Build; and
 - (ii)** the KiwiBuild Agreement Condition is inserted for the benefit of both HNZ Build and the Developer;]

- (i) [Finance Condition:
 - (i) clauses 9.1 and 9.2 of the Amended ADLS Terms will apply; and
 - (ii) the Finance Condition is inserted for the sole benefit the Developer; and]
- (j) [OIO Condition:
 - (i) clauses 9.6 and 9.8 of the Amended ADLS Terms will apply; and
 - (ii) the OIO Condition is inserted for the benefit of both HNZ Build and the Developer; and]
- (k) [More fulsome details of any other Condition included in the Specific Terms to be included here.]

2.2 Application of Amended ADLS Terms: Clause 9 of the Amended ADLS Terms applies to the operation of all of the Conditions. Where there is any conflict between the Amended ADLS Terms and this Agreement, this Agreement will prevail.

2.3 Benefit of Conditions: Any Conditions that are for the benefit of one party may only be waived by that party. Any conditions that are for the benefit of both HNZ Build and the Developer are not capable of waiver.

2.4 Assessments required for Conditions: Where a Condition relates to an assessment by one party of matters relating to knowledge or information held or controlled by another, the party holding or controlling that knowledge or information must (at no cost to the other party) provide that knowledge and information to the party requiring it to enable it to carry out the relevant assessment:

- (a) in a format reasonably required by the party requesting the information or knowledge; and
- (b) within 5 Working Days of a request being made,

and if the information is not provided within that timeframe, the relevant Date for Satisfaction will be extended by a period of time equal to the delay.

2.5 [Look Forward Cancellation: This Agreement is also conditional on HNZ Build being satisfied (acting reasonably and having regard to the matters set out in clause 2.6) that the Developer has, by the relevant Look Forward Date specified for a condition in the Specific Terms, made reasonable progress toward the satisfaction of such Condition. If HNZ Build, on (or within [20] Working Days after) the relevant Look Forward Date, gives notice to the Developer that it considers that the Developer has not made reasonable progress toward the satisfaction of the relevant Condition to the extent that it:

- (a) will not be possible to satisfy it; or
- (b) is highly unlikely that it will be satisfied,

by the relevant Date for Satisfaction and requiring the Developer to provide reasonable written evidence to HNZ Build to the contrary (**Look Forward Notice**) and the Developer fails to provide that reasonable written evidence to HNZ Build, within 10 Working Days of receipt of a Look Forward Notice HNZ Build may cancel this Agreement by notice in writing

to the Developer (but not once the relevant Condition has been satisfied) and neither party will have any claim against the other except in relation to any breach occurring prior to that cancellation.

2.6 Reasonable Progress Considerations: HNZ Build must, in considering whether or not to issue a Look Forward Notice or to exercise a right of cancellation under clause 2.5:

- (a) take into account the Project as a whole (and may take into account any other projects being carried out by the Developer within the Development) and the package of Conditions; and
- (b) recognise that, in some circumstances, it would not be commercially prudent for the Developer to take certain steps toward the satisfaction of a Condition until another Condition has been satisfied, a particular Milestone is achieved or certain works have been undertaken.]

3. PROJECT OBJECTIVES – NGĀ WHĀINGA KAUPAPA

3.1 Project Objectives: The parties record that they are committed to achieving the following objectives in relation to the Project:

- (a) [delivery of the Affordable Homes as required by clause 19;]
- (b) [delivery of the KiwiBuild Homes as required by clause 20;]
- (c) compliance with the functions and operating principles set out in 12, 13 and 14 of the Kāinga Ora–Homes and Communities Act 2019;
- (d) implementation of the Kāinga Ora Master Plan objectives in compliance with the Development Framework by procuring the construction of the Homes [and implementing the Innovative Construction and Design Strategy];
- (e) develop the Super Lot[s] as a cohesive part of the Development;
- (f) protect the integrity of the Vision throughout the development processes;
- (g) use the land within the Development efficiently and responsibly and in a manner that promotes increasingly efficient buildings and construction process that have a low climate impact;
- (h) preserve the unique natural features of [reference to location];
- (i) build on the existing built diverse community by incorporating good urban design principles with built forms to a high standard of design and quality incorporating innovative housing and construction features, optimising utilised space based on leading urban design principles, including adopting future technologies as they arise, to the end and intent that a community is further established in [reference to location] which sets benchmarks within the industry as to the design and quality and pace of delivery of all of the components of the Project;
- (j) [to test the Innovative Construction and Design Strategy so as to result in Homes that are:
 - (i) more affordable to construct;

- (ii) more affordable to buy;
 - (iii) more affordable to own;
 - (iv) received positively by the market;
 - (v) healthy to live in;
 - (vi) a positive addition to their neighbourhood;
 - (vii) modern, attractive and relevant in their urban context;
 - (viii) energy and water efficient;
 - (ix) quicker to build; and
 - (x) [able to be deployed at scale to help alleviate [relevant City's] housing pressures];
- (k) [to educate the market and industry on the outcomes of implementing the Innovative Construction and Design Strategy;]
- (l) to ensure that the simultaneous undertaking of works for the Project and other parts of the Development are streamlined and each undertaken with care, clear communication and in line with the Project Objectives so as to reduce any negative impact on other development sites and [reference to location]'s existing inhabitants (including the residents businesses, facilities and the general public of [reference to location]) through careful planned construction, the timing of works and the delivery of products to the public;

3.2 Commitment to Project Objectives: The parties both record their commitment to the achievement of the Project Objectives reflecting the following basic principles:

- (a) support by the parties for activities that build on the Project Objectives and Vision;
- (b) full participation by the parties in terms of this Agreement and the Partnering Concept;
- (c) transparency and co-operation in good faith and commitment to all aspects of planning, design, development and implementation;
- (d) recognition of the need for a skilled workforce; and
- (e) promotion of innovation and alternative ways of addressing all planning, design, development and implementation issues, where necessary to achieve continued improvement.

3.3 Partnering Concept: The Partnering Concept is an over-arching principle which will govern and guide the contractual and working relationships between the parties and which recognises and comprises the following objectives and principles:

- (a) the establishment of a long-term enduring relationship based on mutual trust, respect and reciprocity;
- (b) the need for a shared understanding and consideration of each other's position;

- (c) the importance to each party of them being kept informed, and being able to have their say on matters that are important to them;
 - (d) the shared intention to achieve (by constructive and harmonious working together) each party's objectives;
 - (e) openness, promptness, consistency and fairness in all dealings and communications between the parties and their agents and representatives, including in relation to the resolution of any differences or disputes which may arise;
 - (f) communication that includes feedback so each party can understand how their viewpoint has been considered and how it has influenced the decision of the other;
 - (g) non-adversarial dealings between the parties and constructive mutual steps both to avoid differences and to identify solutions;
 - (h) promotion of a problem solving approach between the parties; and
 - (i) notification of issues of concern at the earliest practical opportunity;
- (Partnering Concept).

3.4 Relationship: The parties record their commitment to the Partnering Concept and acknowledge that:

- (a) the parties must, both in their day-to-day interaction and in performing their obligations under this Agreement, conduct themselves in a manner which is consistent with the Partnering Concept;
- (b) each party will ensure that its representative, subcontractors, and consultants are made aware of the parties' respective rights and obligations under this clause and will use their reasonable endeavours to ensure that such representatives, sub-contractors, and consultants have regard to and abide by, in performing their obligations in respect of the Project, the objectives and principles recognised by and comprising the Partnering Concept; and
- (c) each party will:
 - (i) respect the other party's strategic and operating environments;
 - (ii) consider the effects that their operations or activities, beyond just the carrying out of the Works or the Development, may have on the other party and work together to try and minimise or mitigate any adverse effects where reasonably possible; and
 - (iii) promote good urban and environmental design having regard to the Master Plan;
- (d) HNZ Build must comply with over-arching statutory obligations and Government policies in place from time to time which obligations and policies may impact on how partnering is given effect to.

3.5 Reliance on Developer’s Expertise: The Developer acknowledges that HNZ Build has entered into this Agreement in reliance on the skill, expertise, capacity, funding and resources of the Developer and warrants that:

- (a) it has and will continue to have during the term of this Agreement the skill, expertise, capacity, funding and resources to carry out the Project in accordance with this Agreement; and
- (b) it is not aware of any reason why the Project may not be able to be completed on the Super Lot[s] in the manner and timeframe contemplated by this Agreement.

3.6 No Partnership or Joint Venture: Despite the Partnering Concept neither this Agreement nor the relationship created by it, is intended to create, and will not be construed as creating, any partnership or joint venture as between the parties.

3.7 No UDA Development Agreement: This Agreement is not a development agreement for the purposes of section 235 of the Urban Development Act 2020.

4. DEVELOPMENT PARTNER MEETINGS – WHAKATAKANGANGĀ HUI O NGĀ HOA WHAKAWHANAKE

4.1 Development Partner Meeting Representatives: The parties will appoint two representatives each to attend Development Partner Meetings for the Project. The parties’ initial Development Partner Meeting representatives are those set out in the Specific Terms (if any). A party may substitute a representative, by written notice to the other party, provided that the replacement person is competent, informed and authorised to make decisions (subject to clause 4.3). The parties must use all reasonable endeavours to ensure that at least one of its representatives (or a qualifying substitute) attends each DPM.

4.2 Functions of Development Partner Meetings: The general functions of the Development Partner Meetings will be to:

- (a) foster the Partnering Concept and ensure the Project Objectives are being met (or are on track to be met);
- (b) provide a forum for communication between HNZ Build and the Developer in respect of both the Project and progress with the Development;
- (c) monitor any progress, or lack of progress, made toward the satisfaction of any Conditions;
- (d) provide an open and transparent forum for the sharing of information, ideas and plans to ensure the streamlining of approval processes and timely implementation of the Project in a high quality manner;
- (e) monitor and observe the progress of the Project in accordance with this Agreement;
- (f) receive, consider and provide feedback on any reports required to be produced by the Developer;
- (g) review, discuss and consider any Proposed Variation;

- (h) act as an initial forum to discuss issues and identify acceptable solutions before initiating formal dispute resolution procedures;
- (i) provide a forum for presentation of, and feedback on, the proposed Design Documents prepared by the Developer prior to its submission to the Design Review Panel for approval under clause 5.3;
- (j) review, discuss and consider (to the extent relevant):
 - (i) Consent applications;
 - (ii) survey plans for the Project;
 - (iii) any Consent granted; and
 - (iv) the progress made towards the issue of records of title to the Super Lot[s] and the Lots;
 - (v) the Developer’s marketing and sales strategy;
- (k) monitor and review the Developer’s compliance with its health and safety obligations, the Health and Safety at Work Act 2015 and under clause 18.1 of this Agreement; and
- (l) monitor and review the Developer’s compliance with the criteria used for selection of the Developer as a development partner for the Development (as set out in the information memorandum or request for proposals that the Developer submitted a tender in respect of, or other selection process documents used);
- (m) proactively consider, discuss and decide on methods of improving the way that the Project is being, or is to be, delivered and actions to be taken by either party to assist in giving effect to those decisions including interactions with third parties.

4.3 Decisions and Authority: All decisions of the parties at DPMs must be unanimous and will be binding on the parties to this Agreement. Where the parties fail to reach unanimity the matter may be dealt with as a dispute under clause 35. The representatives at DPMs are only authorised to make decisions that relate to the day to day operation and undertaking of the Project and decisions made are not intended to avoid the need to obtain any other authority or approval required by this Agreement. The parties at DPMs are not authorised to make any decision that:

- (a) amounts to a variation of this Agreement; or
- (b) has the effect of limiting or restricting a decision that HNZ Build is entitled to make under this Agreement except to the extent that a delegation by HNZ Build allows its DPM representatives (or one of them) to do so.

4.4 Meetings: DPMs will be held at the times agreed by the parties (attendance may be via video or audio link), but in any event at intervals of not less than once every 6 weeks. The parties agree:

- (a) 3 Working Days before each DPM the Developer is to provide the HNZ Build DPM representatives with a report (in a format reasonably required by HNZ Build)

addressing the items set out in [Schedule 9] to the extent relevant to the current stage of the Project;

- (b) a quorum for any Development Partner Meeting will be one representative of HNZ Build and one representative of the Developer;
- (c) a representative of HNZ Build will be the chairperson of all meetings and the parties will ensure that:
 - (i) due notice of the meeting location, time and date is given to other members of the DPM;
 - (ii) meetings are held with appropriate formality;
 - (iii) minutes of each meeting are kept and distributed to all DPM representatives within 5 Working Days for review and comment; and
 - (iv) copies of the official record of the minutes are stored electronically in a location accessible by all parties;
- (d) either party may convene a special DPM by giving 5 Working Days' prior written notice to the other party's representatives.

4.5 Costs: Each party will bear its own costs incurred in relation to the activities of the DPM.

4.6 [Precinct Interface Committee: HNZ Build may establish a Precinct Interface Committee (PIC). HNZ Build will direct the content, membership and regularity of meetings for the PIC and may require the Developer to participate from time to time (at its own cost). The Developer will participate in good faith and give full and proper consideration to, issues, concerns, requests and alterations raised or requested by the other members of the PIC and HNZ Build. The role of the PIC will predominantly be to align, integrate and coordinate the Project and other parts of the Development including but not limited to:

- (a) coordinating and harmonising the:
 - (i) look and feel of;
 - (ii) location and bulk of development and infrastructure within, the various parts of the Development;
- (b) shared and coordinated amenity;
- (c) ensuring a mix of retail and commercial activities;
- (d) health and safety policy coordination;
- (e) traffic management;
- (f) scheduling works within the Development so as to avoid material interference or disruption neighbouring or nearby works; and
- (g) to provide an open and transparent forum for the sharing of information, ideas and plans to ensure the streamlining of various works within the Development,

provided that participation in PIC meetings is not intended to allow the Developer to have any influence over other parts of the Development.]

5. DESIGN APPROVAL – WHAKAAETANGA O NGĀ WHAKAAHUA

5.1 Preparation of Design Documents and the Project Plan: Except where all Design Documents and the Project Plan have been approved before this Agreement is signed, the Developer will prepare both concept and detailed Design Documents and the Project Plan, at its own cost, and submit them to the Design Review Panel for review and approval, in accordance with the Design Review Process. The Design Documents for the Project must:

- (a) be prepared in accordance with the Development Framework (including complying with the Design Guidelines);
- (b) be consistent with the Project Objectives;
- (c) be consistent with the Programme and so that the applicable Milestone Dates can be achieved; and
- (d) meet any relevant Consent requirements.

5.2 [Design and Typologies: The Developer acknowledges that the Design Documents and the Project Plan must encompass a variety of Home designs, formats and typologies that demonstrate innovation and significant variation in architectural variety as to the construction and delivery of Homes in terms of design, exterior construction materials, street presentation, fencing, landscaping, access lanes, paths, driveways, services, infrastructure, facilities, retaining walls, common areas, rubbish collection and recycling facilities and boundary treatments, provision of carparking, letterboxes and other exterior finishes.]

5.3 Design Review Process: The Developer must follow and comply with the Design Review Process in force at all relevant times and (without limitation):

- (a) work collaboratively with HNZ Build, the Design Review Panel and Kāinga Ora to progress the Design Documents and the Project Plan through the Design Review Process;
- (b) respond to and address in a considered and detailed manner all the points, issues, queries and concerns raised by HNZ Build, the Design Review Panel or Kāinga Ora within the timeframes specified in the Design Review Process;
- (c) attend all pre-application meetings with the relevant Authority as required or recommended by HNZ Build or the Design Review Panel.

5.4 Alignment with Consents: The Developer acknowledges that the Design Review Process will incorporate certain review steps that are required and form part of the process for obtaining the Resource Consents and where this Agreement is subject to a Resource Consent Condition the steps taken to satisfy that condition will for part of the Design Review Process. Where the review or approval of the Design Review Panel is required, the Developer will continue to diligently pursue that review or approval by taking into account the advice and recommendations of the Design Review Panel with a view to obtaining a Final Assessment Report, finalising the Design Documents and the Project Plan, and obtaining the Resource Consents in a timely manner having regard to the Milestones.

5.5 Final Assessment Report: Once the Final Assessment Report has been issued by the Design Review Panel the Developer will adopt the Final Assessment Report and incorporate it in the Design Documents and the Project Plan. The Developer may only vary or deviate from the Final Assessment Report in accordance with clause 7.

5.6 Design Guidelines: The Developer acknowledges that the Design Guidelines may need to be varied from time to time to ensure that they are consistent with the intent and style of those used for other comparable, high quality, sustainable residential projects in New Zealand provided that the Developer will not be required to change the Design Documents or Project Plan after Final Assessment Report has been issued as a result of variations made to the Design Guidelines if such a change would result in material additional costs or delays being incurred by the Developer unless HNZ Build:

- (a) agrees to reimburse the Developer for any material and reasonable additional costs incurred in making such a change; and
- (b) grants an extension of time to any relevant Milestone Dates that is reasonably required as a result of the change.

5.7 Master Plan: The Developer acknowledges that Kāinga Ora has the overall strategic and master planning role for the Development and that, as a result, it reserves the right to make changes to the Master Plan. Where changes to the Master Plan affect the Project materially:

- (a) HNZ Build and the Developer will work together in good faith in order to minimise the net effect of the changes on the Project; and
- (b) where, despite compliance with clause 5.7(a) the changes;
 - (i) occur after the Final Assessment Report has been issued, the Developer will not be required to change the Design Documents or Project Plan if such a change would result in material additional costs or delays being incurred by the Developer unless HNZ Build or Kāinga Ora agrees to reimburse the Developer for any material and reasonable additional costs incurred in making such a change];
 - (ii) are either cost neutral or result in a cost benefit to the Developer the Project must be carried out in a manner that is consistent with the amended Master Plan;
- (c) the Developer will not be required to change the Design Documents to the extent that such a change would prevent the Developer from achieving a Milestone by the relevant Milestone Date unless HNZ Build grants an extension of time to any relevant Milestone Dates that is reasonably required as a result of the change.

5.8 Implementation of Master Plan: The Developer acknowledges that, while Kāinga Ora intends to implement the Master Plan and HNZ Build intends to assist it in doing so, neither Kāinga Ora nor HNZ Build have any obligation to the Developer to do so (other than HNZ Build's obligation to deliver the Super Lot[s] as required by this Agreement) and the Developer will not have any claim against Kāinga Ora or HNZ Build in relation to the Master Plan not being implemented or not being implemented in the manner anticipated by the Developer.

6. DESIGN REQUIREMENTS – NGĀ HERENGA WHAKAAHUA

6.1 Design Consultants: The Developer must:

- (a) ensure that all consultants, designers and contractors engaged in the Project are sufficiently qualified and have proven recent experience; and
- (b) as and when requested, notify HNZ Build of the identity and contact details of such consultants, designers and contractors following their appointment.

6.2 Design Warranties: The Developer warrant that all design work relating to the Design Documents and the Works will:

- (a) be completed in accordance with good industry standards, principles and practices using a high level of skill and care;
- (b) be completed in accordance with the terms of this Agreement; and
- (c) comply with all Laws and all Consents.

6.3 MBIE Building for Climate Change Programme: The parties acknowledge that "good industry standards, principles and practices" will take into consideration the expected requirements of the Ministry of Business, Innovation and Employment Building for [Climate Change Programme](#).

6.4 Responsibility for Design: Despite the supply of the Design Documents to HNZ Build, or its acceptance or approval of it, the design of the Works will remain the responsibility of the Developer and neither HNZ Build nor any of its advisers and representatives will have any responsibility in respect of the integrity, quality or suitability of that design and such acceptance, approval or evaluation will not relieve the Developer of its obligations contained in this Agreement.

7. VARIATIONS TO PROJECT PLAN OR DESIGN DOCUMENTS – NGĀ TOHUTOHU KI TE MAHI KAPONO, KI NGĀ TUHINGA WHAKAAHUA RĀNEI

7.1 Variations to Project Plan: The Developer may make minor variations to the Design Documents or the configuration or layout of the Project Plan (each a **Proposed Variation**) provided that if any Proposed Variation:

- (a) would increase the time required to achieve a Milestone, or any combination of Milestones; or
- (b) is likely to delay completion of the Project beyond the relevant dates provided for in the Programme; or
- (c) [is likely to reduce the number of, or change the typology mix of, [[Market Homes] [or] [Affordable Homes] [or] [KiwiBuild Homes] forming part of the Project]; or
- (d) would result in non-compliance with the Design Guidelines; or
- (e) would otherwise fundamentally affect the design outcomes of the Project or Development,

(or any combination of those) it must first obtain the prior written approval of the Design Review Panel.

7.2 Approval required: Where the approval of the Design Review Panel is required under clause 7.1 the Developer must, before taking steps to implement the Proposed Variation, give written notice (**Change Notice**) to the Design Review Panel with details of:

- (a) the Proposed Variation;
- (b) the reason for the Proposed Variation; and
- (c) the time within, and the manner in which, the Developer proposes to implement the Proposed Variation,

and HNZ Build must cooperate with the Developer to obtaining a response from the Design Review Panel confirming:

- (d) if the Proposed Variation may be considered for approval by HNZ Build at the DPM;
- (e) if paragraph (d) does not apply whether or not the Design Review Panel:
 - (i) approves the Proposed Variation including specifying the terms and conditions of such approval (if any); or
 - (ii) withholds its approval of the Proposed Variation; or
 - (iii) requires further information (in which case this clause 7.2 will apply again following receipt of that further information).

7.3 Parameters of Approval: Where a Proposed Variation would:

- (a) [reduce or increase the number of [Market Homes] [or] [[KiwiBuild Homes] forming part of the Project]; or
- (b) may, affect the health and safety of any person; or
- (c) would result in non-compliance with the Design Guidelines,

the Design Review Panel may withhold its approval in its absolute discretion.

8. INFRASTRUCTURE AND DELIVERY – NGĀ TOHUWHIRI KI TE PUAKI

8.1 Demolition Works: HNZ Build will as soon as reasonably practical following the date of this Agreement [and before the Occupation Date]:

- (a) demolish all existing buildings, foundations and other above ground structures on the Super Lot[s] provided that any new structures forming part of the Development and contemplated as being part of the Project will not be removed or demolished;
- (b) [remove all trees other than any which:
 - (i) are protected by any Law; or

- (ii) form part of the Project, the Development, or which HNZ Build has advised the Developer prior to entry into this Agreement, are to be retained for the purposes of supporting urban ngahere or has otherwise agreed with the Developer may remain as part of the Project];

8.2 Infrastructure Works: HNZ Build will as soon as reasonably practical following the date of this Agreement [and before the Occupation Date]:

- (a) [unless it is already formed, form and seal the road to [the/each] Super Lot, to the standards required by an Authority; and
- (b) provide to [the/each] Super Lot complete stormwater, wastewater, water, power, telecommunications and fibre services connections at a location considered by HNZ Build and based on the Master Plan to be convenient and reasonable to facilitate connection at the boundary to [the/each] Super Lot;]
- (c) provided that:
 - i) any changes to the services and/or locations of a service to be carried out by HNZ Build resulting from a Proposed Variation approved under clause 7 will be entirely at the cost of the Developer in all things];
 - ii) if a transformer is required it may be located within a Super Lot; and
 - iii) any on-site mitigation (including the installation of retention tanks) will be the responsibility of the Developer who will meet all related costs and compliance requirements.

8.3 [HNZ Build will provide to [the/each] Super Lot boundary:

- i) a single 20mm water connection and a single water meter;
- ii) a single power pillar with 60 amp fuse or a transformer;
- iii) single or multiple storm water connection(s) at the low point of the Super Lot of size and number deemed appropriate by HNZ Build for the storm water management plan for the Development;
- iv) A single wastewater connection of size deemed appropriate by HNZ Build based on the yields (*for the Super Lot?*) described in the Master Plan.

8.4 HNZ Build will provide telecommunications and fibre capacity to the berm of each Super Lot.

8.5 HNZ Build is not required to provide any vehicle crossing for the land and/or any Super Lot.

9. [CREATION OF THE SUPER LOT[S] – MAHI HANGA O NGĀ ROTA NUI

9.1 [Development Contributions and Infrastructure Growth Charges: HNZ Build[, the Alliance] or Kāinga Ora may have undertaken removal of homes or commercial units on the Super Lot[s] and may have received development contribution levy credits and infrastructure growth charge credits as a result in accordance with the policies of the relevant Authorities that applied at the time. Under agreements between Kāinga Ora and Auckland Council and

Watercare, and Vector all such credits (with the exception of one development contribution credit [per Super Lot] may be applied to social housing developments being undertaken by Kāinga Ora and its subsidiaries.

9.2 Developer Entitlement: The parties acknowledge and agree that irrespective of whether the Super Lot[s] [is/are] in several parcels, several titles or one block, the Developer will receive:

- (a) one development contribution credit [per/for the] Super Lot; and
- (b) no infrastructure growth charge credits; and
- (c) [xx] retained water meter[s] on site [per/for the] Super Lot.

9.3 [Payment of Infrastructure Growth Charge Credit: The Developer will, on the same day the balance of the Purchase Price is payable, pay to HNZ Build an amount equal to the infrastructure growth charge credit that would otherwise have been allocated by Watercare to HNZ Build had the [xx] water meters been disconnected and removed plus GST (if any). This obligation will be recorded in the Master Encumbrance if required by HNZ Build.]

9.4 Developer responsible for development contribution levies: The Developer is responsible for all development contribution levies or infrastructure growth charges imposed by any Authority for any subsequent subdivision or development of the Super Lot[s].

9.5 [Super Lot Subdivision: To the extent it has not already done so from the [date of this Agreement][date that all Conditions have been satisfied or waived] HNZ Build will at its cost and with all reasonable speed:

- (a) take all steps necessary to satisfy the conditions of any Super Lot Consents required for the issue of a certificate under section 224(c) of the RMA;
- (b) prepare a survey plan in accordance with the Super Lot Consents;
- (c) arrange for the Authority and LINZ to approve the survey plan for the Super Lot[s] (**Approved Survey Plan**);
- (d) apply for certificates under section 223 and section 224 of the RMA;
- (e) lodge the Approved Survey Plan in LINZ;
- (f) deposit the Approved Survey Plan in LINZ; and
- (g) have LINZ issue a separate record of title for [the Super Lot][each Super Lot].

9.6 [Super Lot Subdivision Works: The parties acknowledge that despite clause 9.5 it may be reasonable for HNZ Build to delay certain aspects of the Subdivision Works until after certain conditions of the Super Lot Consent have been met. The parties will co-ordinate the works anticipated in clause 9.5 with the Programme unless otherwise agreed.]

10. [PRE-SETTLEMENT ACCESS BY DEVELOPER – TOMONGA WHAI MUI I TE WHAKATAUNGA MŌ TE KAUHANGA

10.1 Option 1 [Licence to Access for Preliminary Works: The Developer may from time to time request, in which case HNZ Build will grant, non-exclusive access to the whole of [one or

more] of the Super Lot[s] to carry out preliminary or investigative work related to the Project for an agreed period commencing on the Licence Commencement Date. The terms of the Access Licence (Preliminary) apply to the Developer's access for preliminary or investigative work irrespective of whether a separate licence is executed. Before the Developer is given access to the Super Lot[s] the parties must if required by either party in writing enter into a licence substantially in the form of the Access Licence (Preliminary).]

10.2 Option 2 [Licence to Occupy for Works: The Developer may from time to time request, in which case HNZ Build will grant, non-exclusive access to the whole of [one or more of] the Super Lot[s] to undertake the Works. The term of the licence will be from the Licence Commencement Date to the Settlement Date. The terms of the Access Licence (Works) will apply to the Developer's access to undertake works irrespective of whether a separate licence is executed.] The parties will, if required by either party in writing, promptly enter into a licence substantially in the form of the Access Licence (Works).

10.3 Access by HNZ Build: Regardless of the application of [clause 10.1 [or] clause 10.2] or the transfer of the Super Lot[s] to the Developer, HNZ Build (including its surveyors, agents, consultants, engineers, contractors, sub-contractors and employees) will at all times after [the/an] Occupation Date (including after the [relevant] Settlement Date, if different) be entitled to access the [relevant] Super Lot (excluding any part of it that has been transferred to an End Purchaser) to carry out any work reasonably necessary for the Development (**Development Work**) provided that:

- (a) it must first consult with the Developer, including if time permits raising the proposed Development Work access at a Development Partner Meeting, in order to integrate the timing of the Development Work with the Works;
- (b) any interference with the Works is kept to a minimum;
- (c) HNZ Build must ensure that anyone entering the Super Lot[s] for the Development Work must comply with the Developer's reasonable health and safety requirements;
- (d) the Development Work must not materially affect the Developer's ability to undertake the Project as contemplated by this Agreement;
- (e) HNZ Build must ensure that any damage caused to the Super Lot[s] or the Developer's improvements or machinery is promptly reinstated or remedied,

and both parties must act reasonably and in good faith in relation to the giving and coordination of that access.

10.4 [Further Works: HNZ Build will complete the following works following the Occupation Date, at a time to be agreed with the Developer having regard to the Programme:

- (a) form and seal the road to each Super Lot, to the standards required by an Authority; and
- (b) stormwater, wastewater, water, power, telecommunications and fibre services connections at a location considered convenient and reasonable to facilitate connection at the boundary to each Super Lot;

provided that any changes to the services and/or locations of a service to be carried out by HNZ Build resulting from a Proposed Variation approved under clause 7 will be entirely at the cost of the Developer in all things.]

11. [PAYMENT BOND – UTU PONO]

- 11.1 Settlement Requirement:** As a settlement requirement, the Developer must, on the Settlement Date for [the/each] Super Lot, provide to HNZ Build a Payment Bond for an amount equal to the balance of the Purchase Price payable in respect of [the/that] Super Lot. The Payment Bond must provide for payment (upon demand by HNZ Build) of the balance of the Purchase Price on the date(s) set out in the Specific Terms or earlier in the event that clause 32.2(b)(i) (HNZ Building calling for early payment due to a Termination Event) applies.
- 11.2 Release:** The Payment Bond will be released [(or partially released in respect of a Super Lot)] on the date the Developer has paid all sums due in respect of the [relevant] Super Lot to HNZ Build under this Agreement.

12. SUPER LOT SALE AND PURCHASE – HOKO ME TE UTU O NGĀ ROTA NUI

- 12.1 Sale:** HNZ Build agrees to sell to the Developer, and the Developer agrees to buy from HNZ Build, the Super Lot[s] for the Purchase Price and on the terms and conditions set out in this Agreement.

- 12.2 [Purchase Price Adjustment:** If, following the deposit of the survey plan for [the/a] Super Lot, the final surveyed area of [the/that] Super Lot is greater than 5% smaller or larger than the area identified in the Specific Terms (or the Master Plan or otherwise in this Agreement), the Purchase Price for [the/that] Super Lot will be adjusted so that it reflects the intended per metre rate payable for [the/that] Super Lot.]

- 12.3 [Right to call for early Settlement:** At any time prior to the Settlement Date for [the/a] Super Lot, provided:

- (a) all Conditions have been satisfied or waived;
- (b) the record of title to [the/that] Super Lot has been issued; [and]
- (c) all instruments referred to in clause 12.5 have been registered or will be registered on settlement; [and]
- (d) [the Resource Consents have been granted and all relevant appeal periods have lapsed];

the Developer may give notice in writing to HNZ Build (**Early Settlement Notice**) calling for the Settlement Date in respect of the [relevant] Super Lot to be brought forward to a date specified in the Early Settlement Notice (to be no earlier than 15 Working Days after the date that the Early Settlement Notice is given). On the service of a valid Early Settlement Notice the Settlement Date for [the/that] Super Lot is deemed to have been amended to the date set out in the Early Settlement Notice (subject to clause 12.4).]

- 12.4 Settlement 'Brown Out':** Where [the/a] Settlement Date falls during either the last:

- (a) 5 Working Days of May; or
- (b) 10 Working Days of June;

(Brown Out Periods)

in any year, [the/that] Settlement Date will be deferred to the first Working Day after the expiry of the relevant Brown Out Period.

12.5 Interests on Title: The Developer acknowledges that, in addition to any registered encumbrances, interests or notations existing as at the date of this Agreement, the Super Lot[s] will be subject to:

- (a) the Master Encumbrance;
- (b) the No Objection Covenant;
- (c) any encumbrances, interests or notations required to satisfy the conditions of any Super Lot Consent; and
- (d) any encumbrances, interests or notations that in the reasonable opinion of HNZ Build are necessary or desirable for implementation of the Master Plan or completion of the Development,

which will be registered against the record(s) of title to the Super Lot[s] on or before to the Settlement Date. HNZ Build acknowledges that any changes to the Master Encumbrance made between the date of this Agreement and the Settlement Date for [the/a] Super Lot, and any interest registered under clause 12.5(d), must not materially adversely affect:

- (e) the value of [the Super Lot] / [a Super Lot that it is registered against]; or
- (f) the ability of the Developer to undertake the Project.

12.6 ADLS Terms: The Amended ADLS Terms are deemed to be included in this Agreement to the extent necessary to apply to the sale of [the Super Lot][each Super Lot (separately)] to the Developer. Where the Amended ADLS Terms apply, references to:

- (a) 'vendor' are references to HNZ Build; and
- (b) 'purchaser' are references to the Developer,

12.7 Inconsistency with Amended ADLS Terms: In the event of any inconsistency between the Specific Terms, these General Terms and the Amended ADLS Terms, the General Terms will prevail over the Amended ADLS Terms and the Specific Terms will prevail over both the General Terms and the Amended ADLS Terms however, for avoidance of doubt:

- (a) this clause and the termination provisions set out in clause 32 of these General Terms do not affect the operation of the following provisions of the Amended ADLS Terms:
 - (i) clauses [3.12, 3.13 or 3.15] (relating to late or deferred settlement);
 - (ii) clauses [11.1, 11.2 11.6, 11.7 and 11.8], (relating to settlement notices); and
- (b) despite clause 12.7(a), if either clause:
 - (i) [11.4] (relating to failure by a purchaser to comply with a settlement notice); or
 - (ii) [11.5] (relating to failure by a vendor to comply with a settlement notice),

of the Amended ADLS Terms applies, then a Termination Event will have occurred and clauses 32.2 to 32.6 will prevail to the extent that there is any inconsistency with the Amended ADLS Terms.

- 12.8 Deposit:** The Developer must pay the Deposit to the trust account of the solicitor acting for HNZ Build on the sale of the Super Lot[s](if any). If no solicitor is acting, the Developer must pay the Deposit to the account nominated by HNZ Build and payment shall be due once the Agreement is unconditional. The Developer must pay the deposit in cleared funds by direct credit to the account, and by the date specified in the Specific Terms.
- 12.9 [Pre-Settlement Requirements:** The Developer must comply with all the Pre-Settlement Requirements [relevant to a Super Lot] on or before the Settlement Date [for that Super Lot] and until those Pre-Settlement Requirements have been satisfied, will not be deemed to be ready willing and able to settle [that Super Lot].].
- 12.10 Payment Requirements:** In relation to all payments required under this Agreement by the Developer:
- (a) those amounts will be paid:
 - (i) in cleared funds and free of any restriction or condition; and
 - (ii) without any deduction or set off; and
 - (b) if a payment is not paid on its due date, as required by this Agreement, interest at the Default Interest Rate will be payable on that unpaid amount (or unpaid part of it) from its due date until the date it is paid.
- 12.11 [Revenue Share Payments:** In addition to the Purchase Price, the Developer will pay the instalments of the Revenue Share to HNZ Build, on each Revenue Share Date. The Developer must notify HNZ Build of any sale or variation that will result in a Revenue Share at the next Development Partner Meeting following that sale or variation being agreed to (or earlier in writing). In this clause 12.11:
- (a) **Additional Amount** means the amount (excluding GST) payable by an End Purchaser to the Developer for the purchase of a [Market] Home under an End Purchaser Agreement that is above the Market Price.
 - (b) **Revenue Share** means the proportionate share of the **Additional Amount** as set out in the Specific Terms;
 - (c) **Revenue Share Date** means the later of:
 - (i) the 20th of the month following the settlement of the sale of a [Market] Home (which results in a Revenue Share); and
 - (ii) receipt from HNZ Build of a GST tax invoice for the instalment of the Revenue Share.
- 12.12 Revenue Share End Date:** If on the date 3 years after the Settlement Date for [the/a] Super Lot (**End Date**), any [Market] Homes constructed on [the/that] Super Lot remain unsold (or sold but the sale has not settled), a final Revenue Share payment will be paid by the Developer:
- (a) to HNZ Build for each of those unsold (or sold but not settled) [Market] Homes;

- (b) on the 20th of the month following the End Date;

and where the [Market] Home has not been sold **Additional Amount** will mean the fair market value at the End Date (either agreed or determined by a registered valuer acting as an Expert in accordance with, and appointed under, clause 34) of each [Market] Home less the applicable Market Price.]

13. PAYMENT OF THE PURCHASE PRICE – MONI UTU O TE UTU HOKO

13.1 Date for Payment of the Balance of the Purchase Price: Subject to clause 13.2 the Developer will pay the balance of the Purchase Price on the date specified in the Specific Terms.

13.2 Payment of the Purchase Price on Progressive Basis: The Developer must, [Option 1] within 10 Working Days of the settlement of each sale of a Home to an End Purchaser, pay to HNZ Build the proportion of the balance of the Purchase Price outstanding that equates to the number of Homes sales settled as a proportion of the total number of Homes [OR] [Option 2] [on the staggered payment dates set out or described in the Specific Terms].

14. CONTAMINATION AND ENVIRONMENTAL MATTERS – NGĀ KAUPAPA WHAKAHĒ ME NGĀ TAKE TAI AO

14.1 Previous Use: The Developer acknowledges that the Super Lot[s] may, as a result of prior uses of the Super Lot[s], previously have been contaminated with substances which may include (but may not be limited to) asbestos, lead paint and hydrocarbons.

14.2 Remediation Works: HNZ Build[, through the Alliance or otherwise,] has (or will prior to the Occupation Date) undertaken Remediation Works. A Site Validation Report has been issued and will be provided to the Developer on request (on a non-reliance basis). Where Remediation Works involve the removal of soil (rather than encapsulation), HNZ Build will not be required to infill or back fill any holes (whether caused by the Remediation Works or not) nor level or compact any soil after removal of the soil.

14.3 Further Remediation: Despite clause 14.2 if the Developer, in the course of carrying out the Project, discovers contaminated soil or water within the Super Lot[s] which existed on the Super Lot[s] prior to the Occupation Date and does not meet the requirements of the Remediation and Management Plan it must:

- (a) give HNZ Build notice of the of the discovery (**Remediation Notice**) promptly;
- (b) take all reasonable steps necessary to mitigate the risk of further or cross contamination including all necessary steps to ensure that it complies with all Health and Safety Legislation in relation to the contaminated soil or water;
- (c) pause all Works within the relevant part, or parts, of the Super Lot[s] (**Affected Area**) and remove all personnel, equipment and machinery from the Affected Area;
- (d) provide HNZ Build [and the Alliance] with all access to the Affected Area (and any reasonable site set up and lay down areas) that HNZ Build considers reasonably necessary to enable further Remediation Works to ensure that the Affected Area meets the Residential Criteria (and where the Remediation and Management Plan applies to the relevant part of the Super Lot[s], meets the requirements set out in it); and

- (e) not enter the Affected Area without the approval of HNZ Build [and/or the Alliance] (such approval not to be unreasonably withheld or delayed) until the further Remediation Works contemplated by clause (d) have been completed.

14.4 Remediation Notice: If a Remediation Notice is given by the Developer and provided that the Developer has complied with the requirements of clause 14.3, HNZ Build will[, or will procure that the Alliance will,] apply for any necessary consents or approvals from the relevant Authority then carry out and complete the further Remediation Works contemplated by clause 14.3(d) without undue delay.

14.5 HNZ Build Liability: Despite anything else set out in this clause 14, the Developer acknowledges that it has had a reasonable opportunity to assess the status of the Land, the Remediation and Management Plan and related material provided to it by HNZ Build and that if HNZ Build complies with the obligations in clause 18.2, HNZ Build:

- (a) will have no liability to the Developer in relation to any claims, demands, damages, expenses of any nature (including legal fees and expenses), loss or liability relating to or resulting from:
 - (i) the discovery of contaminated soil or water under clause 14.3; or
 - (ii) the further Remediation Works contemplated by clause 14.3(d);
- (b) is not responsible to carry out any Remediation Works in relation to any contamination of soil or water that did not exist at the Occupation Date, except to the extent that it exists as a result of a failure of HNZ Build to ensure that the Super Lot[s] meet[s] the requirements of the Remediation and Management Plan.

15. DEVELOPER CONSENTS – NGA WHAKAAETANGA O TE KAIHANGA

15.1 Developer to Obtain Consents: To the extent not already obtained prior to the date of this Agreement or required to satisfy any Condition (and without limiting the Design Review Process and the Developer's obligations to comply with it), the Developer will apply for and use all reasonable endeavours to obtain all necessary Consents and enter into any necessary agreements required to undertake the Project in accordance with this Agreement.

15.2 Consent Applications: The Developer acknowledges and agrees that it:

- (a) will prepare applications for the Consents for the Project;
- (b) will not apply for any Consent for an activity that is inconsistent with the Development Framework; and
- (c) will not promote a private plan change or apply for consent for a non-complying activity that is inconsistent with the Development Framework,

and must obtain the prior written approval of HNZ Build (not to be unreasonably withheld or delayed) to all applications for Consents (or variations of any application, or of existing Consents) prior to submitting them to the relevant Authority.

15.3 HNZ Build Assistance: HNZ Build will provide reasonable assistance and support to the Developer in obtaining any Consents, provided that HNZ Build will not be obliged to incur

any third party costs (not including internal costs or overheads) and nor will HNZ Build assume any responsibility for any outcome obtained or not obtained.

16. CONSTRUCTION – MAHI HANGA

16.1 Proceed with Due Diligence: The Developer will, promptly following the Occupation Date:

- (a) use all reasonable endeavours to procure that the Works are carried out and completed with all due diligence and in accordance with the Development Framework to achieve Project Completion on or before the relevant Milestone Date; and
- (b) achieve each Milestone by its Milestone Date.

16.2 Construction Obligations: The Developer will commence the Works as soon as practicable following the Occupation Date and will undertake the Works:

- (a) in a proper and skilful manner utilising good trade quality methods and materials and in accordance with good industry standards, principles and practices;
- (b) in accordance with the Design Documents, Project Plan and Consents;
- (c) in accordance with all statutory and regulatory requirements;
- (d) at the Developer's cost and risk in all things; and
- (e) in accordance with, and to meet all the requirements of, this Agreement.

16.3 Construction Traffic: The Developer must ensure that access to and exit from the various parts of the Super Lot[s] by construction traffic is limited to the routes and times required by the Resource Consents for the Project and any related traffic management plan (which must take into account and be consistent with any traffic management plan applicable to the Development).

16.4 Traffic and Community Engagement Management Contribution: The Developer must pay the Traffic and Community Engagement Management Contribution to HNZ Build on the first date the balance of the Purchase Price (or any part of it) is payable. [The per annum contribution will be calculated for the period from the date 10 Working Days after the works described in clause (a) have been completed (as certified by HNZ Build's project manager), to the date that Milestone 1 is achieved and will be paid in respect of each 12 month period or part of a 12 month period during that period]. The Traffic and Community Engagement Management Contribution must be held, and used, by HNZ Build to fund traffic management related to the Project and surrounding parts of the Development.

16.5 Infrastructure: The Developer will be responsible for procuring the delivery of all services and infrastructure within the Super Lot[s] required to connect the Homes to the services and infrastructure connections provided to the boundaries of the Super Lot[s] and to ensure that any existing infrastructure is protected and preserved (other than in accordance with any Consent and with the approval of any third party whose approval is required) and the Developer must immediately repair any damage caused to existing infrastructure.

16.6 Tidy Site and Fencing: The Developer must from the date this Agreement is unconditional, meet the costs of any contribution to the expenses of erecting or maintaining any fence on the property or the property boundary that would otherwise be the responsibility of HNZ

Build (as registered owner) in accordance with the Fencing Act 1978, where such costs arise on or subsequent to the unconditional date. The Developer will ensure that, before commencement of construction of the Project and until all exterior works have been completed (or a later date if required by any Authority) the Super Lot[s] [is][are]:

- (a) fenced with a standard temporary construction fence with a minimum height of 1.8m (ensuring that any advertising or marketing material on such fences has been first approved by HNZ Build or Kāinga Ora);
- (b) kept in a reasonably tidy state consistent with a high standard of residential construction practice in New Zealand.

16.7 Dust and Noise: The Developer must use all reasonable endeavours to manage, mitigate, and monitor dust and noise emissions during construction of the Project so they do not cause an annoyance or become a nuisance to the general public or property owners and occupiers within or adjacent to [the/a] Super Lot. At a minimum, the Developer must:

- (a) install windbreak fabrics along the temporary construction fences to reduce dust pollution outside the Super Lot[s]. The windbreak fabrics must be installed within 10 working days the Occupation Date and prior to commencement of the Works on site;
- (b) install temporary noise barriers where a construction noise limit is predicted to be exceeded. The noise barriers must be installed prior to commencement of the aspect of the Works on site predicted to exceed a construction noise limit and be maintained until the risk of that exceedance is no longer a risk; and
- (c) in recognition of the importance of well-functioning urban environments, including community harmony, the Developer must take particular care to comply with any dust and noise mitigation controls set out in the relevant Land Use Consent conditions.

16.8 Other Good Neighbour Measures: The Developer must ensure that it complies with the following good neighbourhood provisions while undertaking the Project:

- (a) complete an induction with HNZ Build prior to commencing the Works on [the/a] Super Lot to understand the community, existing relationships and standard disruption mitigations in order to operate within social responsibility and community standards;
- (b) address issues raised by stakeholders in a timely manner and share ongoing issues with HNZ Build at DPMs to support HNZ Build's broader neighbourhood engagement programme;
- (c) maintain the footpath condition adjacent to [the/each] Super Lot (unless closed via a traffic management plan);
- (d) only use designated parking areas;
- (e) maintain existing berms around [the/a] Super Lot;
- (f) in relation to waste management, operate on a policy of 'what comes to site, leaves site' (i.e. take rubbish away);
- (g) having made enquiry as to the options available, take the most robust steps it considers appropriate to minimise waste resulting from the Project and to

minimise the carbon emissions of both the Project and the ongoing operation of the Home;

- (h) report to the relevant Authority the dumping of any rubbish at [the/a] Super Lot frontage;
- (i) report, to the relevant Authority responsible for local roads, any damage to the road carriageway observed during Works (where the carriageway is live);
- (j) ensure banners onsite are secured, maintained and any vandalism/graffiti is reported to HNZ Build;
- (k) ensure suitable site security is maintained;
- (l) repair damage to public or third party property caused by the Works or any other act or omission of the Developer or its contractors or subcontractors on [the/a] Super Lot;
- (m) ensure that any music played on [the/a] Super Lot during the carrying out of the Works is not played sufficiently loudly to breach the noise control requirements of the relevant Authority; and
- (n) ensure no deliveries are to arrive on site prior to the consented working hours.

16.9 Construction Plus Policy: In carrying out the Project the Developer must ensure that it:

- (a) liaises and consults meaningfully with HNZ Build to understand the Construction Plus Policy with a view to agreeing on suitable actions or a programme of works to be adopted by the Developer in order to meet the expectations set out in the Construction Plus Policy; and
- (b) has regard to the Construction Plus Policy and undertakes any such activities agreed under clause 16.9(a).

17. PROGRAMME – HŌTAKA

17.1 Developer to Maintain: [The Developer will, promptly following the date of this Agreement prepare a Programme for the Project (in a manner that reflects the need to achieve the Milestones by the Milestone Dates) and submit it to HNZ Build for approval (approval not to be unreasonably withheld or delayed).] The Developer will maintain the Programme and will, following any approved change or amendment made under clause 7, or an extension of time agreed under clause 17.4 provide a copy of any updated Programme at the next Development Partner Meeting.

17.2 Monitoring: The Developer will:

- (a) report on the actual progress of Works at Development Partner Meetings (to monitor the actual progress of Works as against the requirements of the Programme); and
- (b) provide updates at Development Partner Meetings to ensure the representatives are fully informed of progress and any issues in respect of the achievement of the Milestones by the Milestone Dates.

- 17.3 Delays to Milestone Dates:** If the Developer becomes aware, at any time, that there will or is likely to be a delay to the extent that any Milestone Date may be missed, the Developer must:
- (a) in the first instance use all reasonable endeavours needed to accelerate the Works in order to achieve the relevant Milestone by the Milestone Date;
 - (b) as soon as reasonably practicable and in any event within 5 Working Days after becoming aware (or of the day on which it ought to have become aware) that the Milestone Date cannot be achieved despite any reasonable steps taken to accelerate progress, submit to HNZ Build a written notice setting out:
 - (i) the reason for the delay;
 - (ii) an evaluation of the likely effect of the delay on the Programme and the achievement of any Milestone by its Milestone Date; and
 - (iii) any strategies to avoid or mitigate the delay; and
 - (c) take all steps reasonably available to it to mitigate the delay and the consequences of any delay or likely delay.

17.4 Extension of Time: Where clause 17.3 applies due to a Delay Event HNZ Build will act reasonably in considering whether to grant an extension to the relevant Milestone Date and/or the corresponding Condition Date (if applicable). As part of its consideration it will assess the net effect of the delay resulting from the Delay Event (taking into account any failure by the Developer to comply with clause 17.3(c)) and, if an extension is granted, the Developer will update the Programme and provide a copy to HNZ Build and the DPM.

18. COMPLIANCE WITH LAWS AND HEALTH AND SAFETY – TE WHAKAŪ KI NGĀ TURE, HAUORA, ME TE HAUMARU

18.1 Compliance with Laws: In completing the Project and otherwise complying with its obligations under this Agreement, the Developer will at all times (and at its cost) comply strictly, and take all practicable steps to ensure compliance by its workers, contractors and subcontractors, with the requirements of all relevant Laws, including (without limitation) the Building Act 2004, the Resource Management Act 1991, the Health and Safety at Work Act 2015, the Immigration Act 2009 and the Employment Relations Act 2000 (all as amended or updated from time to time).

18.2 Specific Health and Safety Obligations: Without limiting clause 18.1,;

- (a) so far as is reasonably practicable, the Developer will consult, co-operate and co-ordinate activities with all other persons who have a health and safety duty in relation to a matter or area;
- (b) the Developer must use its reasonable endeavours to ensure that all of its contractors, employees and any other person(s) engaged by the Developer in the performance of this Agreement or the Project, have the necessary and appropriate policies and plans in place so as to comply with all of their obligations under the Health and Safety Legislation; and
- (c) responsibility for health, safety and security for the Project rests with the Developer immediately on the Occupation Date [that applies to each Super Lot], on the basis that the Developer will have control and direction of all health,

safety and security matters in the undertaking of the Project and HNZ Build will have no liability in respect of the Developer's health, safety and security responsibilities.

18.3 Standard Operating Procedures: Without limiting the generality of clauses 18.1 and 18.2, the Developer must comply with the Standard Operating Procedures set out in [Schedule 13].

18.4 Overlaps: To the extent that the Developer and HNZ Build have a duty in relation to the same matter imposed by or under the Health and Safety Legislation, the parties agree to consult, cooperate and coordinate activities so far as is reasonably practicable and to provide each other with all information that the other party may reasonably require. Without limitation, the developer must advise HNZ Build of any risks that its becomes aware of that might have an impact outside the Super Lot[s].

18.5 H&S Reporting: To enable HNZ Build to collate and share health and safety related information, trends and statistics for the improvement of health and safety generally, the Developer will provide information in its monthly reports at DPMs to HNZ Build detailing the Developer's implementation of and compliance with this clause 18 and any activity, incidents or accidents that have occurred since the date of the last report. The Developer acknowledges and agrees this data may be collated, reviewed, analysed and may then be shared (anonymously) by HNZ Build to builder partners and the industry generally for the improvement of health and safety.

18.6 Fair Trading Act 1986: In accordance with section 5D of the Fair Trading Act 1986, the parties confirm:

- (a) all parties are in trade;
- (b) the land transacted under this Agreement is being supplied and acquired in trade;
- (c) the Developer has placed no reliance on any representations or agreements with HNZ Build, Kāinga Ora or their agents made prior to this Agreement and will not place any reliance on any such representations at any subsequent time.

18.7 Disapplication: The parties have agreed the following sections of the Fair Trading Act 1986 do not apply to this Agreement and the Developer will have no rights against HNZ Build, Kāinga Ora or their agents for any contravention of these sections:

- (a) section 9 – misleading and deceptive conduct generally;
- (b) section 12A – unsubstantiated representations;
- (c) section 13 – false or misleading representations;
- (d) section 13(1) – false representations and other misleading conduct in relation to land,

and the parties confirm they have carefully considered their rights and obligations under the Fair Trading Act 1986, have discussed and negotiated this clause and have taken substantive independent legal advice. The parties confirm they consider it fair and reasonable that these sections should not apply to the representations and transactions of the parties relating to this Agreement.

19. [AFFORDABLE HOMES – NGĀ KĀINGA WHAKARURU]

19.1 The Developer will comply with its obligations in relation to Affordable Homes as set out in the Specific Terms and [[Schedule 15] / each of the following::

- (a) [Build-to-Rent, the provisions of [Schedule 14] apply;] and
- (b) [Shared Equity, the provisions of [Schedule 15] apply;]

and the Developer will deliver all Affordable Homes in accordance with those provisions (as applicable).]

20. [KIWIBUILD HOMES – NGĀ KĀINGA KIWIBUILD]

20.1 [Relationship and Option Agreement: In relation to the Project:

- (a) the Developer will ensure that all KiwiBuild Homes meet the requirements of the KiwiBuild Programme; and
- (b) HNZ Build confirms that any Homes constructed and sold as part of the Project as KiwiBuild Homes under the Relationship and Option Agreement will not be a breach of any of the provisions of this Agreement in circumstances where compliance with the Relationship and Option Agreement would otherwise cause the Developer to be in breach of this Agreement; and
- (c) before entering into, or agreeing to any variation to, a Relationship and Option Agreement that would include a requirement which would result in a material change to the Project the Developer will seek and obtain the prior written approval of HNZ Build under clause 7.

20.2 [KiwiBuild Terms: The Developer must, as part of its completion of the Project, achieve Practical Completion of at least the number and type of KiwiBuild Homes set out in the Specific Terms in accordance with the KiwiBuild Terms.]

21. DEVELOPMENT OF [MARKET] HOMES – WHAKAWHANAKE O NGĀ KĀINGA [MĀKETE]

The Developer must:

21.1 ensure that any of the [Market] Homes to which the Revenue Share provisions in clause 12.11 relate are built and delivered in a manner that is likely to achieve the applicable Market Price; and

21.2 only sell [Market] Homes to End Purchasers, unless otherwise approved in writing by HNZ Build and Kāinga Ora (which may be withheld at their absolute discretion).

22. FURTHER SUBDIVISION PROCESS AND SALES – NGĀ MAHI AKE I TE WHAKAINATI ME NGĀ MAHI HOKO

22.1 Creation of Lots: The Developer will, at the appropriate time to ensure that the Developer will be able to comply with all the Milestone Dates at its cost and subject to all relevant Consents having been obtained:

- (a) take all steps necessary to satisfy the conditions of any Subdivision Consents required for the issue of a certificate under section 224(c) of the Resource Management Agreement 1991;

- (b) commence and, in accordance with this Agreement, continue and complete the Subdivision Works;
- (c) prepare a survey or unit plan (as applicable) in accordance with the Development Framework and the relevant Subdivision Consents;
- (d) obtain the approval of the relevant Authority and LINZ to the survey plan(s) prepared under clause 22.1(c);
- (e) apply for certificates under sections 223 and 224(c) (and (224(f), if relevant) of the Resource Management Act 1991 and, if relevant, any certificates required under the Unit Titles Act 2010;
- (f) lodge the approved survey or unit plan(s) with LINZ in a timely manner having regard to any relevant Milestone Dates; and the requirement for the prior lodgement of the Super Lot plan with LINZ
- (g) following settlement deposit the approved survey or unit plan(s) with LINZ; and
- (h) following settlement, have LINZ issue separate records of title for each of the Lots to be created, with each record of title to be subject to:
 - (i) any interests which either the Authority or LINZ require to satisfy any condition of the Consents or to deposit the approved survey plan(s); [and]
 - (ii) all necessary easements for services and access[.]
 - (iii) the No Objection Covenant.

22.2 [Street Names: The Developer acknowledges and agrees that any names for the streets or private ways within the Project that are submitted to the relevant Authority for approval by the Developer must first be approved by HNZ Build (not to be unreasonably withheld or delayed). The Developer must not submit a request for approval of names for streets within the Project without such approval.]

22.3 Discharge of Master Encumbrance: The Developer must advise HNZ Build promptly each time a code compliance certificate issues in respect of a Home (providing a copy of the Code Compliance Certificate(s)) following which HNZ Build must instruct its solicitor to sign and certify the relevant partial (or full, if relevant) discharge of encumbrance instrument of the Master Encumbrance and release it into the control of the Developer's solicitor.

22.4 Timing of the issue of records of title: To minimise disruption to the others' registration the Developer and HNZ Build must keep each other informed and coordinate the timing of registration.

22.5 No Undeveloped Lots: Unless it has first obtained the written approval of HNZ Build (which HNZ Build may withhold at its absolute discretion), the Developer must not settle the transfer of any Lot that does not have a Home on it which has reached Practical Completion. This provision is not intended to prohibit the entry into an agreement to sell a Lot and Home (or Lots and Homes) to an End Purchaser.

22.6 [End Purchaser Agreements: The Developer must ensure that all End Purchaser Agreements it enters into include the following provision (or a provision having the same effect):

“The purchaser acknowledges and agrees that Housing New Zealand Build Limited (or any other Crown Entity for the purposes of the Crown Entities Act 2004 that acquires Housing New Zealand Build Limited’s rights in relation to the Property) may exercise a right to have the Property or the land out of which the Property is to be subdivided (and improvements) transferred to it or a nominee entity (**Replacement Vendor**) prior to Settlement (subject to an obligation to assume the vendor’s responsibilities under this agreement) (**Interim Transfer**). The purchaser acknowledges and agrees that, with effect from and by, the occurrence of an Interim Transfer:

- (a) *it will remain bound by its obligations under this agreement for the benefit of the Replacement Vendor;*
- (b) *the Replacement Vendor will:*
 - (i) *be bound by the vendor’s obligations; and*
 - (ii) *enjoy, and be entitled to enforce, the benefit of all of the vendor’s rights,**under this agreement;*
- (c) *any deposit held under this agreement may be (at the Replacement Vendor’s election) either:*
 - (i) *transferred to the trust account of the solicitor acting for the Replacement Vendor to be held on the same basis as it is held in the vendor’s solicitor trust account; or*
 - (ii) *remain held in the vendor’s solicitor trust account,**and, if required by the Replacement Vendor, the purchaser will sign a consent, acknowledgement, deed or other document to record the above separately.”*

23. DEVELOPER TO SUPPORT DEVELOPMENT – KAIHANGA KI TE TAUTOKO I TE WHAKAWHANAKE

23.1 Support: The Developer will support HNZ Build in its undertaking of the Development, but will not be required to file a submission in support, and allow HNZ Build and its business partners or other Developers to undertake the Development without undue interference, objection, opposition or restraint from the Developer.

23.2 Not to Object: The Developer will not make or support any objection to or submission opposing any application for resource consent, district or regional plan provision or change or other authorisation for or facilitating the Development under any legislation nor will the Developer take issue against or cause any delay to any such application, district or regional plan provision or change.

23.3 No Proceedings: The Developer will not bring any proceedings for damages, nuisance or interference arising from the Development and neither will the Developer support, finance or contribute to the cost of any such proceedings.

23.4 No Encouragement: The Developer will not encourage or assist any other party to undertake any of the actions which the Developer has agreed not to undertake under 23.2 and 23.3 and will not procure any other party to do so.

24. HNZ BUILD TO SUPPORT PROJECT – TE MAHI TAUTOKO A HNZ BUILD

24.1 Provided and to the extent that the Developer is developing the Super Lot[s] in accordance with this Agreement:

- (a) Support:** HNZ Build will support the Project, but will not be required to file a submission in support, and allow the Developer to undertake the Project without undue interference, objection, opposition or restraint from HNZ Build;
- (b) Not to Object:** HNZ Build will not make or support any objection to or submission opposing any application for a Resource Consent, building consent or other authorisation for or facilitating the Project; and
- (c) No Encouragement:** HNZ Build will not encourage or assist any other party to undertake any of the actions which HNZ Build has agreed not to undertake under this clause 24 and will not procure any other party to do so.

25. REPORTING, AUDIT AND RECORDS – MAHI PŪRONGO, TĀTARI KAUTE, ME NGĀ REKOATA

25.1 Audit: If the Developer has:

- (a)** failed to provide sufficient or accurate detail of the requisite information in a monthly report required by clause 4.4(a); or
- (b)** failed to provide a monthly report required by clause 4.4(a),

and that failure is not rectified within 3 months of the due date, HNZ Build may request and the Developer will cooperate with an audit of the Developer for the purpose of obtaining that missing detailed information. The cost of such an audit will be borne by the Developer unless the audit reveals that it was unnecessary or inappropriate in the circumstances.

25.5 Financial Records: The Developer must at all times maintain all financial information (in at least soft copy form) relating to the Project and, ensure that HNZ Build is permitted access to that information on an 'open book' basis, where HNZ Build has a legitimate need to verify costs relating to the Project [(for example, for the exercise of the Call Option)]. The Developer must also ensure that its financial records show that all retention funds held in accordance with the Construction Contracts Act 2002 are separately retained and are not comingled with other amounts.

26. MARKETING – MAKETE

26.1 Marketing Protocol: The Developer must:

- (a)** incorporate the Marketing Design Guide and Media Protocol Plan into its sales programme for the Project and the individual Homes; and
- (b)** comply with HNZ Build's reasonable directions from time to time to ensure that the Developer's marketing is aligned to Kāinga Ora or HNZ Build's marketing for the Development,

and the parties must consult with regularity to ensure optimum incorporation and alignment under (a) and (b) above and to consider other effective measures to help ensure maximum value and optimum timing for the parties is realised through the sales and marketing process.

26.2 [Innovative Construction and Design Strategy: A key aspect of the Project is to test market acceptance of the Homes constructed via the Innovative Construction and Design Strategy and to educate the industry. As a result, a representative number of Homes constructed via the Innovative Construction and Design Strategy must be open to the public for viewing for a minimum of 1 month and information about the Project, including high level costs, must be made available to the public.]

26.3 Marketing Contribution: The Developer acknowledges and agrees that in addition to its own marketing and sales campaign it must contribute financially to any coordinated and combined marketing programme that Kāinga Ora or HNZ Build organises that includes other builders and developers involved in the Development (**Marketing Programme**). The Developer's financial contribution will be payable on the later of design approval (in line with clause 5) and the receipt by the Developer of a GST tax invoice for the Marketing Contribution (in line with the Specific Terms). The parties acknowledge and agree that the Marketing Contribution is a fair proportion of the total marketing costs for the Marketing Programme, having regard to:

- (a) the numbers of Homes that the Developer has for sale as a portion of the total Homes being marketed within the Development; and
- (b) the total number of other builders and developers (and contributions to be made by them) to the Marketing Programme provided that, unless otherwise agreed, from the date of this Agreement until Project Completion the Developer will not be required to contribute more than the Marketing Contribution,

and the parties have and will act reasonably and in good faith at all times in relation to the assessment the Developer's contribution to the Marketing Programme.

26.4 No Objection: The Developer will not object (and waives any right to do so) to methods employed by Kāinga Ora or HNZ Build in an endeavour to sell other lots forming part of the Development including, without limitation, as to the use of signs, the placement of signs on land outside of the Super Lot[s] and the maintenance of display units and/or a sales office, provided that Kāinga Ora or HNZ Build do not cause unreasonable interference to the Project in doing so.

26.5 [Marketing Suite: The Developer must ensure that, for the period that the Homes are being marketed, a marketing and sales suite or office (**Marketing Suite**) is established in a location within or adjacent to the Development, of a size and design approved by HNZ Build (approval not to be unreasonably withheld or delayed) for the purpose of marketing the Homes for pre-sale. Where relevant HNZ Build will licence the relevant area for the Marketing Suite to the Developer for a nominal sum (terms and conditions to be agreed, both parties acting reasonably). Where the Developer is undertaking more than one project in the Development or is buying more than one Super Lot, a single Marketing Suite may service them all (or more than one). The Marketing Suite must:

- (a) be appropriately staffed with informed and experienced sales persons during opening hours approved by HNZ Build (approval not to be unreasonably withheld or delayed);

- (b) be located in a secure temporary and movable building or structure which is insured against all relevant risks;
- (c) be professionally presented and decorated;
- (d) include a dedicated toilet (with disabled access);
- (e) have appropriate pedestrian access (including disabled access); and
- (f) have adequate signage that is suitable and of high quality,

and HNZ Build must provide all reasonable access for the Developer to establish and operate the Marketing Suite in the approved location (but the Developer will be responsible for all services to the Marketing Suite). If this Agreement is cancelled or terminated for any reason, the Developer must remove the Marketing Suite and reinstate the land or building it is on or in to the state that it was in prior to the Developer bringing the Marketing Suite to it.]

26.6 [Showhomes, Open Homes and Information: Unless an alternative sales strategy is approved by HNZ Build which specifically dispenses with the requirement for a Showhomes, the Developer will construct a Showhome (or Showhomes) within the Development and:

- (a) the Developer must obtain the prior written approval of HNZ Build to the number, location(s) type(s) and opening hours of each Showhomes, such approval must not be unreasonably withheld or delays and in considering HNZ Build must have regard to:
 - (i) the Typologies; and
 - (ii) the location of the Super Lot[s] within the Development as a whole;
- (b) each Showhome to be constructed for the Project will:
 - (i) be the first Home to be constructed;
 - (ii) be a Home that is subject to the terms of this Agreement in all respects (if constructed within [the/a] Super Lot);
 - (iii) be operated and maintained to a high standard in all respects;
 - (iv) be professionally designed and decorated and with appropriate landscaping;
 - (v) include a dedicated toilet (with disabled access);
 - (vi) have appropriate pedestrian access (including disabled access);
 - (vii) have adequate signage that is suitable and of high quality;
 - (viii) remain operated as a Showhome for the entire remaining duration of the Developer’s marketing of Homes [on the Super Lot / a Super Lot that it relates to].]

27. CONSULTATION AND MEDIA PROTOCOL – WHAKAHAERENGA O NGĀ AKOAKO ME TE HUNGA PĀPĀHO

27.1 No Surprises, Consultation and Media Protocol: Each party acknowledges that it is important to consult with and keep each other informed about any:

- (a) act, omission, matter or thing that might, or might reasonably be perceived to, affect in any material way the completion of the Project [(and, in particular but without limitation, any KiwiBuild Homes)] so that neither party is 'surprised' by that act, omission, matter or thing; and
- (b) other act, omission, matter or thing relating to the Project as reasonably required;

provided however that HNZ Build will be under no obligation to communicate government policy changes and neither party will be required to communicate any information which may breach any duty or obligation of confidentiality that it is bound by.

27.2 Briefing: The Developer:

- (a) will ensure that the HNZ Build DPM Representative is fully briefed (including providing a copy of any communications) at least 24 hours' (except where legally required to be issued sooner) before releasing any public communications relating to the Project [(and, in particular but without limitation, relating to any KiwiBuild Homes)] (including any media statement or advisory or any notice to a stock exchange or regulatory authority (which notice must be delivered at least one hour prior to that notice being issued (but 24 hours if legally permitted)));
- (b) will provide all reasonable advice and assistance to HNZ Build to enable HNZ Build to understand any aspect of the Project relevant to this clause including any particular documentation produced by or for the Developer; and
- (c) before releasing any communications, in good faith, consider and take account of any comments received by the Developer from HNZ Build in respect of those communications, including any comments on the need for and proposed extent of the disclosure.

27.3 Public Statements: Without limiting any other clauses in the Agreement, neither party will make any public statements relating to, associated with or impacting on its relationship with the other party without the prior written approval of the other party, which approval will not be unreasonably withheld (except to the extent required by any Law). The Developer acknowledges that statements made by Members of Parliament or their staff or representatives are beyond the reasonable control of HNZ Build and any statements made by them without the Developer's approval will not be a breach of this clause.

27.4 Controversy: Neither party will do anything in relation to the Project that is likely to, or could reasonably be expected to:

- (a) result in the other party being subjected to reputational harm; or
- (b) harm the reputation of the Project or the Development; and
should:
- (c) a controversy arise in connection with either party's activities or its decisions; or

- (d) a controversy arise in connection with the Project generally; or
- (e) the Developer or any of its officers, members, employees or agents act in a way which, in the reasonable opinion of HNZ Build, is likely to result in:
 - (i) HNZ Build being subjected to reputational harm;
 - (ii) harm to the reputation of the Development; or
 - (iii) the Project being brought into disrespect or disrepute,

then, if required by HNZ Build (without prejudice to any of its other rights or remedies), the Developer must:

- (f) promptly meet (in person or otherwise) with the HNZ Build DPM Representative to commence discussions with a view to resolving such situation; and
- (g) take reasonable interim steps specifically identified by HNZ Build to limit the harm or damage caused by the relevant matter.

28. REPRESENTATIONS AND WARRANTIES – NGA MĀNGAI ME NGĀ WĀRENA

28.1 Representations and Warranties of the Developer: The Developer represents and warrants to HNZ Build, as at the date of this Agreement, as follows:

- (a) it is able to pay its debts as they fall due, has not suspended payment to creditors, has not ceased or threatened to cease to carry on business, and has not convened a meeting of creditors, proposed a scheme of arrangement with creditors, or made any assignment or composition with creditors;
- (b) no receiver or administrator has been appointed to the whole or any part of their undertaking or assets and no grounds exist such an appointment;
- (c) on execution and delivery of this Agreement by it, this Agreement will constitute legal, valid and binding obligations, enforceable against it in accordance with its terms;
- (d) there is no action, suit or proceeding before any court or relevant Authority now pending or, to the knowledge of it, threatened against it which might adversely affect the ability of it to perform its obligations under this Agreement;
- (e) all information that has been provided by it to HNZ Build under or in relation to this Agreement is, or will be when disclosed, complete and accurate in all material respects; and
- (f) it has and will continue to have during the term of this Agreement the skill, expertise, capacity, funding and resources to carry out the Project.

28.2 Developer's Acknowledgement:

- (a) The Developer acknowledges and agrees that, except as expressly set out in this Agreement, HNZ Build has not made any representation, given any advice or given any warranty or undertaking of any kind in respect of:

- (i) any transaction or arrangement contemplated under this Agreement;
or
 - (ii) any other matter relevant to the Developer's decision to enter into this Agreement.
- (b) Without limiting clause 28.2(a), the Developer acknowledges and agrees that:
 - (i) HNZ Build has not given any representation and does not give or warranty as to the suitability of the use of [the/a] Super Lot;
 - (ii) the information disclosed to it by HNZ Build in relation to the Development did not purport to contain all of the information that the Developer required for the purposes of preparing and lodging a proposal or making the decision to enter into this Agreement or to have been prepared having regard to the Developer's business objectives, financial situation or particular needs;
 - (iii) neither HNZ Build, nor any other person acting on behalf of or associated with HNZ Build, has made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the information disclosed to it by HNZ Build in relation to the Development;
 - (iv) it has not relied in any way on the skill or judgment of HNZ Build or any person acting on behalf of or associated with any of them and they have relied absolutely on their own opinion and professional advice based upon their own independent analysis, assessment, investigation and appraisal in deciding to enter into this Agreement;
 - (v) it has carried out all relevant due diligence investigations and have examined and acquainted themselves concerning:
 - (A) all aspects of the Super Lot[s] and the Project;
 - (B) all information which is relevant to the risks, contingencies and other circumstances related to the Super Lot[s] and the Project which could affect their decision to enter into this Agreement; and
 - (C) all amounts payable between the parties to this Agreement.

[28.3 HNZ Build's Interest:

HNZ Build represents and warrants to the Developer, as at the date of this Agreement, that notwithstanding it is not currently the registered owner of the Land, it has sufficient influence in the Super Lot(s) to enable it to enter into and comply with the Agreement.]

28.3 Reliance on Representations:

- (a) The Developer acknowledges and agrees that HNZ Build has entered into this Agreement in reliance on the representations and warranties contained in clause 28.1.
- (b) The Developer acknowledges and agrees that all of their representations, warranties, acknowledgements and agreements under clause 28.1 survive the

execution and delivery of this Agreement and the completion of the transactions contemplated by it.

- (c) HNZ Build acknowledges and agrees that the Developer has entered into this Agreement in reliance on the representations and warranties contained in clause 28.3.
- (d) HNZ Build acknowledges and agrees that all of their representations, warranties, acknowledgements and agreements under clause 28.3 survive the execution and delivery of this Agreement and the completion of the transactions contemplated by it.]

29. INSURANCE – INIHUA

29.1 Policies: The Developer must:

- (a) for as long as it is subject to any outstanding obligations in respect of carrying out the Project under this Agreement effect and maintain and promptly pay all premiums for a policies of professional indemnity insurance and public liability insurance for the amounts set out in the Specific Terms;
- (b) procure that all contractors and subcontractors for the Project effect, maintain (in the name of the relevant contractor or subcontractor) and promptly pay all premiums for public liability insurance for an amount of not less than set out in the Specific Terms, covering claims in respect of loss of or damage to property or injury to or death of persons arising from or in connection with the carrying out of any works by or on behalf of the Developer during the term of this Agreement;
- (c) maintain or, where it is not the main contractor, ensure that the main contractor for the Works effects and maintains (and promptly pays all premiums for) policies, of:
 - (i) contract works insurance for the value of the Works underway at any given time;
 - (ii) plant and machinery insurance for an amount that is an amount of not less than set out in the Specific Terms; and
 - (iii) motor vehicle liability insurance for an amount that is an amount of not less than set out in the Specific Terms,

29.2 HNZ Build Approval: Any policy of insurance required under clause 29.1 must be with an insurer, and on terms, approved by HNZ Build.

29.3 HNZ Build Interest: The Developer will procure that the interest of HNZ Build as [a neighbouring land owner] [owner of the Super Lot[s]] [and grantee of the Call Option] on its public liability policy of insurance required to be maintained under clause 29.1.

29.4 Timing and Evidence of Insurance: The Developer must procure that all contractors, subcontractors and consultants for the Project (whichever is applicable):

- (a) effect the relevant insurance referred to in clause 29.1 before accessing the Super Lot[s]; and

- (b) provide to HNZ Build upon request evidence of the insurance (including copies of policies) referred to in clause 29.1 being in place.

30. LIABILITY AND INDEMNITIES – NGĀ TAUMAHATANGA ME NGĀ UTU

30.1 Developer Indemnity: The Developer indemnifies HNZ Build from and against any claims, demands, damages, costs, expenses of any nature (including legal fees and expenses), loss or liability brought against or suffered by it (to the extent permitted by Law) arising directly or indirectly out of any breach by the Developer of this Agreement.

30.2 Exclusion of Developer Liability: The liability of the Developer under clause 30.1 excludes any claims, demands, damages, expenses of any nature (including legal fees and expenses), loss or liability resulting from the gross negligence, wilful fraud, intentional wrongful act or intentional wrongful omission on the part of HNZ Build, its officers, employees or authorised agents (or any of them).

30.3 Exclusion of HNZ Build Liability: Despite any other provision of this Agreement the liability of HNZ Build under this Agreement excludes:

- (a) any claims, demands, damages, expenses of any nature (including legal fees and expenses), loss or liability resulting from:
 - (i) the default, gross negligence, wilful fraud, intentional wrongful act or wrongful omission on the part of the Developer, its officers, employees, contractors, or authorised agents (or any of them); or
 - (ii) the impacts of long-term and material changes in global or regional weather patterns including from sea level rise or storm surges; or
- (b) any indirect or consequential losses of any kind, loss of opportunity, loss of profits or punitive damages; or
- (c) any adverse effects to the Developer or any other third party resulting from the making or implementation of any comments, conditions, direction or strategy from Kāinga Ora, the Design Review Panel or HNZ Build (in line with their right to review, approve, consent, monitor or otherwise control or comment on the Project under this Agreement) in relation to the Project and its success (or lack of success).

31. [STEP-IN RIGHTS – MANA TĀWHAI]

31.1 General: If HNZ Build reasonably believes that it needs to take action in connection with the Project because:

- (a) of serious injury or death to persons;
- (b) HNZ Build assesses that there is a serious risk to the health and safety of persons; or
- (c) HNZ Build assesses that there is a serious risk to property (including all or part of the Project);

then HNZ Build will be entitled to take all or any of the actions described in clause 31.2.

- 31.2 Exercise of Step-in Rights:** In exercising its Step-in Rights, HNZ Build may:
- (a) exclude the Developer from any parts of the Super Lot[s] occupied by the Developer that is reasonably necessary for the purposes of exercising its rights under this clause;
 - (b) temporarily assume total or partial management and control of all or part of the Works on the relevant area;
 - (c) take such steps (including suspension of the Works on the relevant area in whole or in part) as in the reasonable opinion of HNZ Build are necessary or desirable:
 - (i) to mitigate the threat or event that caused the risk;
 - (ii) to minimise the effects of the threat or event that caused the risk; or
 - (iii) to continue the implementation of the Works as required by this Agreement;
 - (d) do all things and perform such acts that the Developer is obliged or authorised to do under or in connection with this Agreement; and
 - (e) do all things and perform such acts that HNZ Build is authorised or empowered to do with respect to the Developer under:
 - (i) this Agreement; or
 - (ii) any Law.
- 31.3 Notice:** HNZ Build must first notify the Developer before exercising its rights under this clause 31 of:
- (a) the date that it will be exercising its Step-in Rights;
 - (b) the Works that are the subject of the Step-in Rights; and
 - (c) the reason why HNZ Build is exercising its Step-in Rights.
- 31.4 Suspension:** The Developer's rights and obligations under this Agreement (other than in respect of clauses 31.5 and 31.6) are suspended for the period that HNZ Build is exercising its Step-in Rights but only to the extent necessary to permit HNZ Build to exercise those rights.
- 31.5 Developer must Cooperate:** Where HNZ Build has exercised, or while HNZ Build is exercising its Step-in Rights, under this Agreement, the Developer must:
- (a) do such things as HNZ Build may require to assist HNZ Build in the exercise of those 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 HNZ Build in the exercise of its Step-in Rights; and
 - (c) ensure that none of the Developer's personnel, by either act or omission impede or frustrate HNZ Build in the exercise of its Step-in Rights.

- 31.6 Payments:** Where HNZ Build exercises its Step-in Rights as a result of a breach of the obligations of the Developer under this Agreement, any costs incurred by HNZ Build in exercising its Step-in Rights will be recoverable from the Developer as a debt due and owing, and the Developer indemnifies HNZ Build against any and all such costs.
- 31.7 Step-out:** HNZ Build may at any time after it has exercised its Step-in Rights and must immediately when there is no longer any reason for it to exercise the Step-in Rights, notify the Developer that it will cease to exercise those rights and the date on which that will occur, provided such Step-out Notice is given at least 10 Working Days (except where HNZ Build exercised its Step-in Rights for a short duration in order to deal with an emergency) prior to the date on which HNZ Build will cease to exercise those rights.
- 31.8 Consequences:** Upon the date that HNZ Build ceases to exercise its Step-in Rights under clause 31.7:
- (a) the Developer must immediately recommence performance of its obligations to the extent that they were suspended under clause 31.4; and
 - (b) HNZ Build will give reasonable assistance to the Developer to ensure that this process of transition is effected as smoothly as possible.
- 31.9 HNZ Build Not Required to Act:** The Developer acknowledges and agrees that HNZ Build is not obliged:
- (a) to exercise all or any of its rights under this clause 31 at any time;
 - (b) to remedy any default or other breach by the Developer of this Agreement;
 - (c) to effect removal of the effect of, or the event or risk that triggered exercise of the Step-in Rights; or
 - (d) to overcome or mitigate any risk or risk consequences in respect of which the Step-in Rights are exercised.
- 31.10 Release:** The Developer releases HNZ Build from all liability (whether present or future, or quantified or not) that HNZ Build may otherwise incur in relation to the Developer under this Agreement or at Law, arising directly or indirectly as a result of the exercise of the Step-in Rights by HNZ Build, unless and to the extent that HNZ Build has acted unlawfully, wilfully, recklessly, or negligently.
- 31.11 No Claim:** The Developer agrees that they will not make any claim against HNZ Build in connection with the exercise of the Step-in Rights by HNZ Build, unless and to the extent that it is proven that HNZ Build has acted unlawfully, wilfully, recklessly, or negligently.
- 31.12 No Effect on Other Rights and Obligations:** HNZ Build may exercise its rights under this clause 31 without prejudice to any other rights and remedies then available to HNZ Build under this Agreement or at Law, in equity, under statute or otherwise.
- 31.13 Power of Attorney:** In consideration of the sum of \$1.00 paid by HNZ Build to the Developer (receipt of which is acknowledged by the Developer), the Developer:
- (a) grants to HNZ Build an irrevocable power of attorney to act as the Developer in all respects in relation to exercising any of the Step-In Rights and to sign in the name of the Developer any documents or authorities required to give effect to HNZ Build's exercise of the Step-In Rights; and

- (b) will ratify, and agrees to ratify to each person dealing with HNZ Build, anything done by HNZ Build in accordance with this clause and will indemnify HNZ Build on demand against loss, cost, expense, charge, damage, claim or liability which HNZ Build suffers or incurs as a direct or indirect consequence of any action taken in accordance with this clause.]

32. TERMINATION – MANA WHAKAMUTU

32.1 Termination Events: A Termination Event occurs if:

- (a) either party has failed to complete Settlement on the Settlement Date [for a Super Lot] and has subsequently failed to complete Settlement by the expiry of a settlement notice to the extent that the other party is entitled under the Amended ADLS Terms to terminate the agreement to sell [the/any] Super Lot (see clause 12.6);
- (b) a party has committed a Material Breach of this Agreement and where that breach is reasonably capable of being remedied, has failed to comply with an earlier written notice given by the other party:
 - (i) specifying that breach; and
 - (ii) in the case of a notice from HNZ Build, requiring that Developer:
 - (A) to remedy that breach within 20 Working Days after receipt of the notice; or
 - (B) where such breach is reasonably capable of being remedied but not within 20 Working Days after the notice, to provide HNZ Build, within 20 Working Days after the notice, with a detailed plan for the prompt remedy of the breach; or
 - (iii) in the case of a notice from the Developer, requiring HNZ Build to remedy that breach within 20 Working Days after receipt of the notice (or such longer period as is reasonable in the circumstances); or
- (c) the Developer fails to comply with a plan provided under clause 32.1(b)(ii)(B) which was accepted by HNZ Build the parties acknowledging that a failure will itself be a new Material Breach (to which clause 32.1(b)(ii)(B) will not apply);
- (d) a plan provided by the Developer under clause 32.1(b)(ii)(B) is rejected as not acceptable to HNZ Build (acting reasonably) within 20 Working Days of receipt;
- (e) the Developer has committed a Material Breach of this Agreement, where that breach is not reasonably capable of being remedied by the Developer; or
- (f) an Insolvency Event occurs in relation to the Developer.

32.2 Termination for Breach: If a Termination Event occurs then, without limiting any other right of termination or remedy of the parties under this Agreement or any Law (including any court action injunctive or other equitable relief):

- (a) where the Termination Event relates to breaches by HNZ Build, the Developer may terminate this Agreement at any time and with immediate effect by written notice to HNZ Build;

- (b)** where the Termination Event relates to breaches by the Developer, HNZ Build may:
- (i)** [where any part of the Purchase Price has not yet been paid, whether it has previously become payable or not, give notice under the Payment Bond requiring the balance of the Purchase Price to be paid to HNZ Build];
 - (ii)** [if the Super Lot has / in relation to any Super Lot] not yet transferred to the Developer, terminate this Agreement at any time and with immediate effect by written notice to the Developer;
 - (iii)** [if the Super Lot / in relation to any Super Lot that] has been transferred to the Developer:
 - (A)** terminate this Agreement at any time and with immediate effect by written notice to the Developer; or
 - (B)** direct the Developer to assist in devising and giving effect to a suitable strategy for the Developer to market and sell [the/that] Super Lot to a third party to facilitate the exit of the Developer from the Project in a manner that minimises detrimental commercial outcomes to the balance of the Development, in the reasonable opinion of HNZ Build and the Developer must use all reasonable endeavours to collaborate and co-operate with HNZ Build in doing so (including taking all necessary steps and signing all necessary documents, to give effect to any resulting sale); [or
 - (C)** exercise its call option rights under this agreement and then terminate this Agreement at any time and with immediate effect by written notice to the Developer;]
 - (iv)** exercise any rights that HNZ Build may hold including (without limitation) the right to sue for damages arising as a consequence of the Developer's breach of this Agreement;

32.3 Provision of Rights: Where 32.2(b)(i) or (iii) above apply, the Developer:

- (a)** will be deemed to have granted to HNZ Build (or a third party nominated by HNZ Build to take over the Project, or part of it), to the extent required to enable it to complete the Project (or any part of the Project that HNZ Build wishes to compete), a non-exclusive, royalty-free, perpetual, transferable and irrevocable licence to use and copy any Intellectual Property owned, held, developed, modified or enhanced by the Developer in relation to the Project; and
- (b)** must use all reasonable endeavours to novate or assign any third party contracts it is a party to in relation to the Project, where HNZ Build requires it, to HNZ Build or a third party nominated by HNZ Build. The Developer confirms that this clause in itself constitutes evidence of its agreement and consent to all such novations and assignments and may be produced to all third parties as indisputable proof of HNZ Build's right to require and effect the novation or assignment and the Developer's consent.

32.4 Consequences of Termination: If this Agreement is terminated validly by either party (for any reason):

- (a) termination will be without prejudice to either party's rights and remedies in respect of any breach of this Agreement by the other party (including where the losses suffered as a result of such breach occurs after the termination of this Agreement), where the breach occurred before the termination of this Agreement; and
- (b) the provisions of clauses 1 (Definitions and Interpretation), 30 (Liability and Indemnities), [33 (Call Option, subject to clause 33.4(c))] and 36 (Confidentiality), together with those other provisions of this Agreement which are incidental to, and required in order to give effect to those clauses, will remain in full force and effect.

32.5 No Limitation: For the avoidance of doubt, the parties acknowledge that despite anything else in this clause 32, all legal and equitable remedies (including an action for damages or injunctive relief) will be available upon the occurrence of a Material Breach whether this Agreement is terminated or not.

32.6 [Improvements: If any improvements have been made by the Developer to [the/a] Super Lot and this Agreement is terminated prior to Settlement:

- (a) by the Developer for a default by HNZ Build, then:
 - (i) the Developer will have the right to remove (at the Developer's cost) any of the Developer's improvements to the Lots within 40 Working Days of the date of cancellation; and
 - (ii) if the Developer does not remove the Developer's improvements within the timeframe specified in clause 32.6(a)(i), then:
 - (A) the improvements will vest in HNZ Build; and
 - (B) the Developer will have no obligation to remove such improvements;
 - (C) HNZ Build will have no right to recover any costs of removal from the Developer,provided that to the extent that that any improvements have not been constructed in compliance with any Consent or Law HNZ Build may elect to remove and/or demolish them and recover the reasonable costs of removal and/or demolition from the Developer; or
- (b) by HNZ Build for a default by the Developer, then HNZ Build may elect to keep the improvements (in which case the improvements will vest in HNZ Build without compensation) or [(except to the extent that such improvements are subject to a Call Option Notice)] HNZ Build:
 - (i) may give written notice to the Developer requiring the Developer to remove, at the Developer's cost, any of the Developer's improvements to the Lots and return the Lots to the condition they were in prior to the improvements being made within 40 Working Days of the date of cancellation (or any longer period specified by HNZ Build); and

- (ii) if the Developer does not remove the Developer’s improvements within the timeframe specified in clause 32.6(b)(i), may elect to keep the improvements (in which case the improvements will vest in HNZ Build without compensation) or remove the improvements in the manner the Developer was required and recover the costs of removal from the Developer.]

33. [CALL OPTION – KIRIMANA WHAKAWHITI TŪMAU

33.1 Call Option: The Developer grants to HNZ Build a call option (exercisable under to clause 33.3) to buy back:

- (a) [the Super Lot if / any Super Lot] transferred to the Developer under this Agreement; and
- (b) any part of [the/a] Super Lot where that part is contained in a separate record (or records) of title and is still held in the name of the Developer (or any legal person related to or controlled by the Developer, unless that person purchased at fair value and HNZ Build has been paid all amounts payable by the Developer to HNZ Build for that part),

and any improvements constructed by the Developer on that land (**Option Land**).

33.2 Application of Call Option: The parties acknowledge that:

- (a) the Call Option may be exercised by HNZ Build separately in relation to [separate Super Lots or] parts of [the/a] Super Lot (where 33.1(b) applies) subject to clause 33.3;
- (b) where a Call Option Notice is given, ‘Option Land’ in the following subclauses will be read to mean the part of the Option Land that the Call Option has been exercised in relation to; and
- (c) at HNZ Build’s election the transferee of the Option Land (**Option Transferee**) may be either HNZ Build or a third party nominated by HNZ Build as transferee.

33.3 Exercise of Call Option: If a Termination Event occurs, HNZ Build may exercise the Call Option at any time within [40] Working Days of the date of the Termination Event by serving notice to that effect on the Developer and specifying a date for the transfer of the Option Land (and which part of the Option Land is relevant, if the Option is only exercised in relation to part) (**Call Option Notice**). To the extent that the Option Land is subject to End Purchaser Agreements, the Option Transferee will take that part of the Option Land subject to, and must assume responsibility for the Developer’s obligations under, those End Purchaser Agreements.

33.4 Effect: If HNZ Build exercises the Call Option under clause 33.3:

- (a) the purchase price will be calculated in accordance with clause 33.5;
- (b) HNZ Build must pay, or procure the payment of, the purchase price to the Developer upon the transfer of the Option Land;
- (c) if applicable, any deposits paid under End Purchaser Agreements must be either (at HNZ Build’s election, but in either case preserving the existing rights of each End Purchaser under each End Purchaser Agreement):

- (i) transferred to the trust account of the solicitor acting for the Option Transferee; or
 - (ii) remain held in the solicitor trust account in which they were held as at the date of the Call Option Notice;
- (d) the Developer:
- (i) will be deemed to have granted to the Option Transferee, to the extent required to enable it to complete the Project (or any part of the Project that it wishes to compete), a non-exclusive, royalty-free, perpetual, transferable and irrevocable licence to use and copy any Intellectual Property owned, held, developed, modified or enhanced by the Developer in relation to the Project; and
 - (ii) must use all reasonable endeavours to novate or assign any third party contracts it is a party to in relation to the Project, where HNZ Build requires it, to the Option Transferee. The Developer confirms that this clause in itself constitutes evidence of its agreement and consent to all such novations and assignments and may be produced to all third parties as indisputable proof of HNZ Build's right to require and effect the novation or assignment and the Developer's consent; and
- (e) both parties must do all things and sign all documents necessary to transfer to, and vest in, the Option Transferee all of its right, title and interest in the Option Land and once that has occurred this Agreement will be terminated (subject to clause 32.2 provided that reference to this clause 33 will no longer apply).

33.5 Purchase Price on Exercise of Call Option: The price payable for the Option Land under the Call Option (**Option Land Purchase Price**) will be expressed as 'plus GST' (if any) and will be the sum of:

- (a) the purchase price actually paid by the Developer for the Option Land that the Option has been exercised in respect of; plus
- (b) the actual development costs (but excluding any Excluded Costs) incurred by the Developer on an open book cost recovery basis in relation to Option Land (including a fair and reasonable proportion of infrastructure costs incurred by the Developer for infrastructure that services the Option Land and other land),

less the sum of:

- (c) the reasonable costs incurred by HNZ Build in relation to the termination of this Agreement and the exercise of the Call Option (including any reasonable costs incurred by HNZ Build on a solicitor/client basis);
- (d) any costs incurred by HNZ Build in procuring that Option Land is transferred to the Option Transferee free from any Encumbrance (other than an Encumbrance permitted by this Agreement or necessary for the development of the Option Land);
- (e) insurance funds received or receivable by Developer in relation to any damage or destruction that occurs on the Option Land to the extent such funds have not been applied in reinstatement of the relevant damage to the Option Land; and

- (f) an amount equal to the costs required to complete any works to remedy, replace, demolish and/or rebuild any Works undertaken by the Developer in breach of its obligations under this Agreement,

provided that if the sum of (a) and (b) above exceeds the fair market value of the Option Land at the date of the Call Option Notice (**Market Value**) the sum of (a) and (b) above will be replaced by an amount equal to the Market Value and the deductions described in (c) to (f) (inclusive) above will be deducted from that lesser amount to calculate the Option Land Purchase Price.

33.6 Actual Development Costs: Where HNZ Build disagrees with the Developer’s assessment of the actual development costs to be included for the purposes of clause 33.5(b) or where the Developer fails to submit an assessment of such costs within [40] Working Days after the date of the Call Option Notice, either party may refer the assessment to an Expert for determination under clause 34 and the relevant Expert appointed must be an external chartered accountant from a level one accounting firm approved in accordance with All-of-Government Consultancy Services – Business and Finance (Tranche 1).

33.7 Disputed deductions: If there is a dispute in relation to the amounts deductible under 33.5(c) to (f) (inclusive), HNZ Build will pay the full amount required to settle the purchase of the Option Land without the disputed deductions but will pay the disputed deductions to the lawyer’s for HNZ Build (to be held in trust) and clause 10 of the Amended ADLS Terms will apply to the assessment of the amount payable by HNZ Build under this clause.

33.8 Fair Market Value: For the purposes of clause 33.5, the fair market value of the Option Land, as at the time of the exercise of the Call Option, will be (unless otherwise agreed between the parties) determined by a registered valuer acting as an Expert in accordance with, and appointed under, clause 34 (if appointed).

33.9 Power of Attorney: In consideration of the sum of \$1.00 paid by HNZ Build to the Developer (receipt of which is acknowledged by the Developer), the Developer:

(a) grants to HNZ Build an irrevocable power of attorney to act for the Developer in all respects in relation to registering a transfer of the Option Land and to sign in the name of the Developer any documents or authorities required to give effect to and (if so required) to register the transfer of the Option Land to the Option Transferee as contemplated by this clause; and

(b) will ratify, and agrees to ratify to each person dealing with HNZ Build, anything done by HNZ Build in accordance with this clause and will indemnify HNZ Build on demand against any loss, cost, expense, charge, damage, claim or liability which HNZ Build suffers or incurs as a direct or indirect consequence of any action taken in accordance with this clause.]

34. EXPERT DETERMINATION – TOHUNGA PŪTOHE

34.1 Dispute as to Decision: This clause 34 will apply where this Agreement provides for a dispute between the parties to be referred to an Expert for determination and such a referral is made (**Initiation**).

34.2 Appointment of Expert: The Expert will be appointed by agreement between the parties. If within 10 Working Days of an Initiation the parties have been unable to agree on the Expert, the parties will attempt to agree on a nominating authority to appoint the Expert which will be the senior officer for the time being of an appropriate association, institute, society or board. If the parties cannot agree on the nominating authority within

15 Working Days of an Initiation, then any party to the dispute or difference may request the President of the New Zealand Law Society to appoint the Expert (that appointment will be binding on the parties for the determination of the dispute).

34.3 Provision of Information: Within 5 Working Days of the appointment of the Expert, the parties to the dispute or difference must each provide the Expert with a written submission and with any relevant supporting material in respect of the dispute. As soon as the Expert has received all of the submissions, the parties must exchange submissions and will have 5 further Working Days within which to make a further written submission. The Expert must then begin the determination promptly.

34.4 Expert to Act as Expert: The Expert will act as an expert and not as an arbitrator for the purposes of resolving the dispute promptly so as to avoid any delays by either party in performing their obligations under this Agreement, and the parties will use reasonable endeavours to ensure that the Expert gives their decision as speedily as possible which will be final and binding on the parties. In determining the dispute, the Expert:

- (a) will consider the written submissions of the parties but will not be bound by them;
- (b) will take into account the context of and circumstances surrounding the matters in dispute and this Agreement (including the Project Objectives) in its entirety;
- (c) will act impartially and fairly between the parties;
- (d) may rely on their own knowledge, skill and experience in relation to the matter in dispute; and
- (e) may make their own enquiries without reference to the parties.

34.5 Replacement Expert: Upon any Expert becoming unwilling or unable to continue in that capacity, the parties will in good faith agree upon a suitable replacement expert, or failing agreement to be nominated by the authority that nominated the first Expert.

34.1 Costs: The costs of appointing the Expert and the Expert's costs and disbursements in connection with their duties will be shared between the parties to the dispute in such proportion as the Expert determines or, in the absence of such determination, then equally between them.

35. RESOLUTION OF OTHER DISPUTES – WHAKATAUNGA O TAKE KĒ

35.1 Determination of Disputes: Other than any dispute to which clause 34 applies, all disputes between the parties arising under or in relation to this Agreement must be determined in accordance with this clause 35.

35.2 Preference for resolution by agreement: Despite the provisions of this clause the parties agree to use all reasonable endeavours:

- (a) to resolve disputes by agreement; and
- (b) at each stage of the course of the dispute resolution process, to make decisions based on achieving an agreed outcome rather than holding out for the best outcome for themselves.

- 35.3 Referral Notice:** Any party may formally raise a dispute by notice in writing to the other party to the dispute (**Referral Notice**).
- 35.4 DPM Referral:** Any party may, within 10 Working Days after the issue of the Referral Notice, require an extraordinary DPM to be held for the dispute to be considered and discussed in an effort to find a resolution.
- 35.5 Referral to Senior Management:** Any party may, if within 10 Working Days after a meeting being called under clause 35.4 the DPM representatives have not resolved the dispute, require the dispute to be referred to the Developer’s Senior Manager and the HNZ Build Senior Manager (**Senior Managers**) for resolution and the following will apply:
- (a) reference to the Senior Managers must be made as follows:
 - (i) the party referring the matter must set out in writing to each of the Senior Managers, with a copy to the other party, the dispute with supporting information and detail; and
 - (ii) the other party may itself submit such information and detail as it considers relevant;
 - (b) the Senior Managers must use all reasonable endeavours to issue a joint determination on any dispute put to them within 10 Working Days of the date the dispute was referred to them, but in any event must issue a joint determination in writing within 15 Working Days;
 - (c) if the Senior Managers are unable to reach a resolution or fail to issue a joint determination within the time required, the dispute concerned will be unresolved and either party may then refer the dispute to arbitration;
 - (d) if one or both of the Senior Managers:
 - (i) does not have the authority to resolve the dispute and bind the applicable party; and/or
 - (ii) is a current DPM representative or is involved in the Project on a day-to-day basis,an alternative appropriate senior representative of the relevant party must be made available for the purposes of this clause 35.5.
- 35.6 Arbitration:** Where a dispute is unable to be resolved under clause 35.4 or 35.5, the parties may refer the dispute to arbitration to be determined as follows:
- (a) a notice requiring arbitration must be in writing; and
 - (b) the dispute must be referred to a sole arbitrator agreed by the parties or, if the parties cannot agree within 10 Working Days of referral, then the arbitrator will be appointed by the President of the New Zealand Law Society and the dispute will be finally resolved by arbitration by such sole arbitrator under the Arbitration Act 1996.
- 35.7 Urgency:** The parties acknowledge that if a dispute arises between them it is likely to be a matter requiring urgent resolution. Each party undertakes to the other to act expeditiously and reasonably to have the dispute prepared for and determined by arbitration as soon as reasonably practicable in all of the circumstances.

35.8 Alternative Dispute Resolution: Nothing in this Agreement will prevent the parties agreeing on an alternative form of dispute resolution to resolve a dispute including referring the matter to an Expert.

36. CONFIDENTIALITY AND DISCLOSURE – MAHI MUNA ME TE WHAKAATU

36.1 Protection of Confidential Information: Each party confirms that it has adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use by third parties, and that it will not use or disclose the other party's Confidential Information to any person or organisation.

36.2 Exceptions to Confidentiality: Clause 36.1 will not prevent or restrict the use by Kāinga Ora or HNZ Build of its template documents used in the preparation of this Agreement (or any variations to it) and will not apply in the following circumstances:

- (a) if the use or disclosure is required by law (including, without limitation, under the Official Information Act 1982), Ministers on a 'need to know' basis or parliamentary convention or any requirement to disclose to any select committee or parliamentary inquiry or required by a legally binding consent or approval obtained for the purposes of the Project;
- (b) to the extent that use or disclosure is necessary for the purposes of performing its obligations under this Agreement;
- (c) if the other party gives prior written approval to the use or disclosure;
- (d) in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the parties;
- (e) disclosures to professional advisers and affiliates, financiers and contractors;
- (f) disclosures in defence of legal proceedings brought against any person;
- (g) disclosures by HNZ Build to Kāinga Ora;
- (h) any disclosure required by any applicable stock exchange listing rules;
- (i) disclosure in relation to compliance with this Agreement or the operation, variation, supplementation or interpretation of this Agreement (or similar) to solicitors, barristers or other professional advisers under a duty of confidentiality;
- (j) disclosure to a bank or other financial institution relevant to a party, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements;
- (k) disclosure to LINZ as contemplated by clause 39.17; and
- (l) disclosure to an Expert or arbitrator under clauses 34 or 35.

36.3 Official Information Act: In relation to clause 36.2(a) above, each party acknowledges that HNZ Build is or may be subject to the Official Information Act 1982 (**OIA**) and that HNZ Build is obliged to disclose the terms and the existence of this Agreement or other Confidential Information if so requested and if there is no good reason under the OIA to withhold that Confidential Information. HNZ Build will use reasonable endeavours to

notify the Developer of any request received by HNZ Build under the OIA that relates to the terms and the existence of this Agreement or other Confidential Information and the response to be given to that request.

36.4 Obligation to inform staff: Each party will ensure that its personnel:

- (a) are aware of the confidentiality obligations in this Agreement, and
- (b) do not use or disclose any of the other party's Confidential Information except as allowed by this Agreement.

36.5 Public Disclosure: If a party is required by any Law, or the rules of any stock exchange, to disclose any confidential information, it will immediately, and prior to such disclosure, advise the other party and the parties will use all reasonable endeavours to not have any information that is commercially sensitive to the other party included in such release or disclosure. The parties agree that they will jointly release key learnings from the Project that may be of benefit to the construction and build market in general.

37. ASSIGNMENT – MAHI KOPOU

37.1 No Assignment: The Developer agrees and acknowledges that the Super Lot[s] [is/are] being sold to the Developer to enable the Developer to undertake the Project. The Developer must not (unless HNZ Build expressly agrees in writing otherwise or as permitted under this clause):

- (a) assign and/or transfer all or any of its interest in this Agreement at any time; or
- (b) on-sell, transfer or otherwise dispose of any titles to the Super Lot[s] to any person other than as expressly contemplated by this Agreement.

37.2 Change of Control: Any change in the shareholding of the Developer altering the effective control of the Developer will be deemed to be an assignment for the purposes of clause 37.1.

37.3 Exemption to Developer Assignment Restrictions: Despite clauses 37.1 and 37.2, HNZ Build agrees that the Developer may with the prior written consent of HNZ Build, assign the whole of its rights under this Agreement (but not part) to an entity that is [wholly] owned by the Developer (referred to in this clause as a **Related Entity**), such consent not to be unreasonably withheld provided that:

- (a) there is no unresolved Material Breach;
- (b) the Related Entity has the financial, technical and personnel resources and experience to perform the Developer's obligations under this Agreement;
- (c) the Related Entity enters into a direct covenant with HNZ Build agreeing to be bound by the terms of this Agreement (the form of the covenant to be prepared by solicitors acting for HNZ Build);
- (d) all relevant contracts relating to the development of the Project which remain on foot are, on or before the date of the assignment, novated to the assignee (including, but not limited to, all sale and purchase agreements, consultancy appointments and construction contracts); and

- (e) to the extent required to enable the assignee to complete the Project (or any part of the Project), a non-exclusive, royalty-free, perpetual and irrevocable licence to use and copy any Intellectual Property owned, held, developed, modified or enhanced by the Developer in relation to the Project,

provided that HNZ Build reserves the right (acting reasonably) to require a guarantee of the assignee's performance of its obligations under this Agreement. Any approved assignment to a Related Entity is not a release, and will not alter the obligations, of the Developer under this Agreement.

37.4 Funding Arrangements: The Developer may not grant a security interest in this Agreement or assign by way of security its interest in this Agreement without the prior written consent of HNZ Build (such consent not to be unreasonably withheld or delayed). The Developer acknowledges that it will be a condition of HNZ Build granting its consent that a direct deed is agreed and entered into between HNZ Build, the Developer and the relevant funder which:

- (a) protects the rights of HNZ Build under this Agreement where enforcement action is being taken by the secured party[, and includes a right of first refusal in favour of HNZ Build or its nominee that is exercisable if the secured party gives notice of its intention to exercise a power of sale;]
- (b) acknowledges and binds the secured party to the Step-in Rights;
- (c) prevents further borrowing by the Developer in respect of the Project without HNZ Build's prior approval (not to be unreasonably withheld) and ring-fences the Project from other security provided to the secured party by the Developer[including any security provided in respect of the Payment Bond];
- (d) [acknowledges and binds the secured party to the Call Option;] and
- (e) is otherwise acceptable to HNZ Build (acting reasonably).

37.5 Assignment by HNZ Build: HNZ Build may assign and/or transfer the whole or any part of its rights and/or obligations under this Agreement at any time without the prior written consent of the Developer provided that assignee also contemporaneously becomes the registered proprietor of the Super Lot[s].

38. TAX PROVISIONS – TĀKE TĀREWA

38.1 GST: The following applies to the GST treatment of the supply of [the/any] Super Lot:

- (a) any consideration payable for supply of [the/any] Super Lot under this Agreement is exclusive of any GST charged in respect of that supply;
- (b) HNZ Build warrants that at [the/each] Settlement Date it will be a registered person for GST purposes;
- (c) the Developer warrants that:
 - (i) it is a registered person, its address and its GST registration number are as set out in the Specific Terms; and
 - (ii) it will continue to be a registered person for GST purposes;

- (d) the parties agree that the supply of [the/any] Super Lot sold to the Developer by HNZ Build under this Agreement (**Super Lot Supply**) will be zero-rated for GST purposes under section 11(1)(mb) of the GST Act;
- (e) the Developer confirms that, for the purposes of section 78F(2) of the GST Act as at [the/each] Settlement Date:
 - (i) the Developer is acquiring [the/each] Super Lot with the intention of using it for making taxable supplies; and
 - (ii) it does not intend to use [the/any] Super Lot as a principal place of residence for the Developer or any person associated with the Developer under section 2A(1)(c) of the GST Act;
- (f) if, for any reason, the Super Lot Supply is not zero-rated for GST purposes under section 11(1)(mb) of the GST Act and HNZ Build has the obligation to account for any GST charged in respect of the Super Lot Supply:
 - (i) the Developer must pay to HNZ Build, in addition to the consideration otherwise payable for the supply, an amount equal to the GST charged in respect of the Super Lot Supply (**GST Amount**), within 2 Working Days of HNZ Build issuing to the Developer a tax invoice or debit note in respect of the supply;
 - (ii) the Developer must pay to HNZ Build, in addition to the GST Amount, and upon demand by HNZ Build, an amount equal to any Default GST (as defined by the Amended ADLS Terms); and
 - (iii) it will not be a defence to a claim against the Developer for payment to HNZ Build of any amount payable under clause (f)(ii) that HNZ Build has failed to mitigate the damages suffered by HNZ Build by paying an amount of GST when it fell due under the GST Act.

38.2 Taxable Supplies: Subject to clause 38.1 any specific terms to the contrary under this Agreement:

in relation to any taxable supply made under or in connection with this Agreement unless the consideration otherwise payable for the supply is expressly stated to be inclusive of GST, the recipient must pay to the supplier, in addition to and at the same time as the consideration otherwise payable for the supply, an amount equal to any GST charged on the supply, provided that the supplier has issued to the recipient a Tax Invoice in respect of the supply (and provided further that if, in respect of the relevant taxable supply, the statutory criteria for zero-rating under section 11(1)(mb) or any other provision of the GST Act are satisfied, the supply will be zero-rated); and

unless expressly provided otherwise, where any 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**) for the purpose of calculating the amount payable the amount of the Relevant Expense is to be reduced by an amount equal to any deduction for input tax or any other deduction from output tax available to that party as a result of incurring the Relevant Expense, provided that if the amount payable is the consideration, or part of the consideration, for any taxable supply, clause 38.1(a) will apply, as appropriate.

38.3 Lowest Price: For the purposes of the financial arrangements rules in the Income Tax Act 2007, the parties agree that:

- (a) the aggregate consideration payable for [the/a] Super Lot as adjusted or calculated in accordance with any provision of this Agreement, plus GST (if any) is the lowest price (within the meaning of section EW 32(3) of the Income Tax Act 2007) that they would have agreed for the sale and purchase of [the/that] Super Lot (**Lowest Price**), on the date that this Agreement was entered into, if payment would have been required in full at the time the first right in the contracted property (being [the/that] Super Lot) was transferred;
- (b) the Lowest Price is the value of [the/that] Super Lot; and
- (c) they will compute their taxable income for the relevant period on the basis that the Purchase Price includes no capitalised interest and they will file their tax returns on that basis.

38.4 Purchase Price Allocation: HNZ Build warrants the purchase price allocation [is/is not] relevant to it as vendor for income tax and/or GST purposes. The Developer warrants the purchase price allocation [is/is not] relevant to it as purchaser for income tax and/or GST purposes.

38.5 Interpretation: Unless the context requires otherwise, words and phrases used in this clause 38 have the same meaning as those words and phrases have in the GST Act.

39. GENERAL PROVISIONS – NGĀ MEA WHĀNUI

39.1 Method of Giving Notices: Clause 1.4 of the Amended ADLS Terms will apply to all notices to be given under this Agreement. Any party providing a notice under this Agreement will use reasonable endeavours to give notice electronically, provided that, if that party is unable to effect or confirm delivery of the notice electronically, or delivery of the notice electronically is not permitted by law, it will [to the extent practicable][use reasonable endeavours to (to the extent practicable)]:

- (a) use FSC-certified or recycled paper and non-solvent-based ink when printing a notice; and
- (b) if the notice is being delivered by hand, courier or post, use a delivery method that minimises the greenhouse gas emissions associated with that delivery [(for example, by using a courier service that utilises electric vehicles or is certified as carbon neutral)].

39.2 Entire Agreement: This Agreement records the entire understanding and agreement of the parties relating to the matters dealt with in this Agreement. This Agreement supersedes all previous understandings or agreements (whether written, oral or both) relating to such matters.

39.3 Changes to policies: Where this Agreement permits HNZ Build to make changes to policies, processes, guidelines (or the like) from time to time, the altered requirements of those documents may not be enforced retrospectively if they would impose greater obligations on the Developer (unless HNZ Build keeps the Developer whole in relation to the effect of those greater obligations).

39.4 In Writing: Any:

- (a) amendment to this Agreement will only be effective if it is in writing and signed by each party; provided that
 - (b) consent or approval to be given under this Agreement is not required to be signed and may be given by notice in writing under clause 39.1.
- 39.5 Remedies:** The rights, powers and remedies provided in this Agreement are cumulative and are in addition to any right, powers or remedies provided by law.
- 39.6 Further Assurances:** Each party will do all things and execute all documents reasonably required to implement and carry out its obligations under, and contemplated by, this Agreement. Each party agrees to take reasonable steps it considers necessary to minimise the greenhouse gas emissions of its activities wherever practical when performing its obligations under this Agreement.
- 39.7 Non-Merger:** The warranties, undertakings, obligations and indemnities given under this Agreement will not merge or be treated as discharged but will remain enforceable to the fullest extent, despite any rule of law to the contrary.
- 39.8 Costs:** Unless otherwise stated in this Agreement (including any deed of variation), each party will bear its own costs and expenses in connection with the negotiation, preparation and implementation of this Agreement or any deed of variation. If the terms of a deed of variation greatly benefit one party over the other, that party shall meet the costs and expenses in connection with the negotiation and preparation of the deed of variation.
- 39.9 Copies:** Any legible copy (with clear plans in colour where applicable) of this Agreement that is fully executed and received via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this Agreement) may be relied on by any party and presented in evidence in any legal proceedings as though it were an original copy of this Agreement. This Agreement may be entered into on the basis of an exchange of signed PDF or other document reproduction format. The parties will each use reasonable endeavours to sign this Agreement and any variation or associated document in a manner that avoids unnecessary printing, physical delivery or in-person signing where travel (other than on foot or by other non-emitting means) may be required.
- 39.10 Partial Invalidity:** A provision of this agreement that is illegal, invalid or unenforceable is ineffective to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of the remainder of the agreement.
- 39.11 Survival of Representations and Warranties:** All representations and warranties in this Agreement survive the execution and delivery of this Agreement and the completion of transactions contemplated by it. Any indemnity or any obligation of confidence under this Agreement is independent of, and survives termination of, this Agreement. Any other term by its nature intended to survive termination of this Agreement or that arises on termination of this Agreement survives termination of this Agreement.
- 39.12 Successors:** The provisions of this Agreement will continue for the benefit of, and be binding on the parties and their respective successors and permitted substitutes and assigns and (where applicable) legal personal representatives.
- 39.13 Waiver:** Any waiver by a party of any of its rights or remedies under this Agreement will be effective only if it is recorded in writing and signed by that party. If the waiver relates to a breach of any provision of this Agreement, this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by a party will in any way

affect, limit or waive that party's right to subsequently require strict compliance with this Agreement.

- 39.14 Precedence:** Where there is an ambiguity, inconsistency or conflict of obligations within this Agreement and any Schedule or other documents forming part of this Agreement, then the provisions in this Agreement will prevail.
- 39.15 Governing Law and Jurisdiction:** This Agreement is governed by the laws of New Zealand and with respect to any legal action or proceedings that may be brought with respect to this Agreement or any transaction contemplated by this Agreement, the Developer irrevocably and unconditionally submit to and accepts, for itself and in respect of its assets, the non-exclusive jurisdiction of any of the courts of New Zealand.
- 39.16 Joint and Several Liability:** If a party comprises more than one person, each person's liability is joint and several.
- 39.17 No Caveat:** The Developer covenants not to lodge any caveat against the records of title to [the/any] Super Lot. If the Developer does lodge a caveat, the Developer irrevocably appoints HNZ Build to be the Developer's true and lawful attorney to do all things and sign all instruments, consents and documents in the name of the Developer, and on the Developer's behalf that HNZ Build deems necessary or expedient to have that caveat removed. The Developer acknowledges and agrees that the production of this Agreement to LINZ will be sufficient evidence of the appointment of HNZ Build as the attorney of the Developer for that purpose. The costs of removal of any caveat will be payable by the Developer to HNZ Build immediately on demand.

SCHEDULE 1

Amended ADLS Terms
(see attached)

[When you prepare the development agreement you can use the pdf of the amended ADLS agreement for sale and purchase terms, but you must purchase an ADLS agreement each time a development agreement is prepared. You will need to partially complete the webforms document to do this. Completing the vendor and purchaser's names and the property address should be sufficient.]

*[If you need to order webforms please remember to enter the PO number at the time ADLS PO No. **5249707**]*

[Please add the ADLS tax price allocation in addition to the ADLS amended terms.]

DRAFT

SCHEDULE 2

Super Lot[s] Plans
(see attached)

DRAFT

SCHEDULE 3

Project Plan
(see attached)

DRAFT

SCHEDULE 4

Master Plan
(see attached)

DRAFT

SCHEDULE 5

[Programme
(see attached)]

[Please ensure this programme is prepared in advance and covers satisfaction of conditions and approval of Design Docs]

DRAFT

SCHEDULE 6

Master Encumbrance
(see attached)

[This encumbrance has been designed to be registered after the development agreement is signed but before the land is transferred to the developer. Consider registering it after conditions (other than title and perhaps other long term conditions) have been satisfied.]

The circumstances when a partial discharge will be made available reflect the terms of the development agreement. If any change is made to these provisions in the development agreement, you will need to update the encumbrance.

Several terms in the encumbrance follow the definitions provided in the development agreement. If the development agreement is altered, check that all capitalised terms in the encumbrance are still defined in the development agreement. If not, provide an appropriate definition in the encumbrance itself.

<mailto:>

No Objection Covenant
(see attached)

DRAFT

Covenant Instrument to note land covenant

(Section 116(1)(a) & (b) Land Transfer Act 2017)

Covenantor

Housing New Zealand Build Limited

Covenantee

Housing New Zealand Build Limited

Grant of Covenant

<p>The Covenantor, being the registered owner of the burdened land(s) set out in Schedule A, grants to the Covenantee in gross the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).</p>

Schedule A

Purpose of covenant	Shown reference (plan reference)	Burdened Land (Record of Title)	In gross
No objections	[plan reference]	[title reference]	Housing New Zealand Build Limited (in gross)

Annexure Schedule A - Covenant rights and powers (including terms, covenants and conditions)

Page 1 of 2 Pages

Covenant

BACKGROUND

- A The Covenantee is designing and directing a development of land in accordance with a master plan to create an integrated urban community which development is known as [] and incorporates the Burdened Land (“Kāinga Ora Development”).
- B The Covenantor intends to sell the Burdened Land for development by a third party as part of the Kāinga Ora Development.
- C The Covenantor has agreed to covenant to the Covenantee in the manner set out in this instrument.

COVENANTS

No Objection

- 1 The Covenantor will allow the Covenantee to undertake the Kāinga Ora Development (whether personally or otherwise) without undue interference, objection, opposition or restraint.
- 2 The Covenantor will not:
 - 2.1 make nor support any objection to or submission opposing any application for resource consent, or for district or regional plan changes or any other authorisation facilitating the Kāinga Ora Development;
 - 2.2 take issue against or cause any delay to any such application, district or regional plan change or other authorisation;
 - 2.3 bring any submission, application, appeal or proceedings that is designed or intended to limit, prohibit or restrict the carrying on by the Covenantee of any lawful activity forming part of the Kāinga Ora Development;
 - 2.4 support, finance or contribute to the cost of any such submission, application, appeal or proceedings;
 - 2.5 encourage or assist any party to undertake any of the actions which the Covenantor has agreed not to undertake and will not procure any other party to do so; and
 - 2.6 object (and waives any right to do so) to methods employed by the Covenantee in an endeavor to sell other lots forming part of the Kāinga Ora Development provided such methods do not cause unreasonable interference with the Covenantor’s development and sale of the Burdened Land.

General

- 3 The obligations in clause 2 apply notwithstanding that the Kāinga Ora Development (or any part of it) may be undertaken, not by the Covenantor personally, but by third parties in accordance with the design and direction of the Covenantor.
- 4 Where the Covenantor commits a breach of any provision of this covenant, the Covenantor may serve a written notice on the Covenantor specifying the breach and requiring the breach to be remedied within a specified period, such period to be not less than fourteen days from the date of the Covenantor's notice. If the Covenantor fails to remedy the breach at the end of the specified period, the Covenantor shall be entitled to take such action as is necessary and expedient to enforce compliance with this covenant.
- 5 The Covenantor is entitled to recover as a debt due from a defaulting Covenantor all costs (including solicitors costs) incurred by the Covenantor in securing or attempting to secure compliance with this covenant by the defaulting Covenantor and the Covenantor will indemnify the Covenantor from all proceedings, costs, claims, and demands in respect of any breach by the Covenantor.
- 6 This covenant binds the Covenantor's successors in title so that the contemporaneously with the acquisition of any interest in the Burdened Land all such successors in title must comply with the covenants given by the Covenantor contained in this instrument.
- 7 The Covenantor may assign the benefit of this covenant to any other person having overall responsibility for the design and implementation of the Kāinga Ora Development.

SCHEDULE 8

Licence Form[s]

[Schedule 8[A]]

Access Licence (Preliminary)

(see attached)]

[Schedule 8[B]]

Access Licence (Works)

(see attached)]

DRAFT

SCHEDULE 9

Matters to be addressed in monthly reports provided by the Developer
(see attached)

Each monthly report must contain up to date and correct data comprising historic data and data from the immediately prior calendar month and including details of:

- construction status;
- health and safety matters;
- [Consent status;]
- [Kiwibuild status (if relevant) provided that where there is a Relationship and Option Agreement in place in relation to the Project, the Developer’s reporting obligations in relation to its KiwiBuild obligations under this Agreement (to the extent covered by that agreement) will be satisfied by the Developer’s compliance with the Relationship and Option Agreement;]
- [the status of [list Affordable Homes relevant to the Agreement]];]
- [Design Document status;]
- [Addresses allocated to Homes;]
- [Typologies;]
- [Home and section sizes;]
- [End Purchaser Agreement dates;]
- [sale prices;]
- [settlement dates;]
- [anonymised demographic data of End Purchaser;]
- [the development of new skills and technology to enable compliance with the Ministry of Business, Innovation and Employment’s Building for Climate Change programme;]
- compliance with the Programme.

SCHEDULE 10

Development Covenants

(see attached)]

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SCHEDULE 11[

Remediation and Management Plan

(see attached)]

DRAFT

SCHEDULE 12[

Construction Plus

(see attached)

[Insert most recent policy. As at March 2022, the policy dated 15.02.22 in the document name is the most up to date. You must check that the policy has not been updated. Please contact Nigel Chandra to see if it has. If the 15.02.22 policy is still current, you can use the PDF version of it that is generated at the same time as the DA from LawHawk.]

]

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SCHEDULE 13[

Standard Operating Procedures/Protocols

[Drafting Note: This schedule is to be used to set out the standard operating procedures issued by Kāinga Ora (which change over time and cover a range of issues including Health and Safety). The Developer will be required to comply with them in carrying out the Project. Refer to the Conditions Section in the Specific terms for notes on requiring protocols to be developed. The types of standard operating procedures envisaged relate to, by way of example:

- *Environmental Management Plans;*
- *Health and Safety;*
- *Midden Protocols;*
- *Wildlife Protocols;*
- *Accidental Discoveries;*
- *Approved Protocol for Work in Vicinity of Services; and*
- *Discovery of Kōiwi and taonga]*

SCHEDULE 14[

Affordable Housing -Build to Rent

(see attached)]

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SCHEDULE 15[

Affordable Housing - Shared Equity

(see attached)]

DRAFT

SCHEDULE 16[

KiwiBuild Terms

[to be added]

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