

Social and Affordable Housing Fund - Services Deed

Department of Family and Community Services (FACS)

and

*The Uniting Church in Australia Property Trust (NSW)
(ABN 77 005 284 605) for and on behalf of Uniting
(NSW.ACT) (ABN 78 722 539 923) (also known as
UnitingCare NSW.ACT) (ServiceCo)*

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ANNEXURES

Annexure A – Bid Design Deliverables

A1 – Initial Delivery Phase Plans

A2 – Initial Delivery Phase Program

Annexure B – Bid Services Deliverables

B1 – Initial Service Delivery Phase Plans

Annexure C – Base Case Financial Model

Annexure D – Commercial Close Adjustment Protocol

Services Deed

Date 24 January 2019

Parties The Secretary of the Department of Family and Community Services as Housing Agency under section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**)

The Uniting Church in Australia Property Trust (NSW) (ABN 77 005 284 605) for and on behalf of Uniting (NSW.ACT) (ABN 78 722 539 923) (also known as UnitingCare NSW.ACT) (**ServiceCo**)

Background

- A. FACS has conducted a public tender process and selected ServiceCo as a preferred tenderer for the Service Package.
- B. This Deed sets out the terms on which:
 - (a) ServiceCo agrees to deliver the Services;
 - (b) FACS agrees to pay the Monthly Service Payment to ServiceCo; and
 - (c) the risks associated with the Service Package are allocated as between FACS and ServiceCo.
- C. FACS intends for the Service Package to be delivered within the National Regulatory System.
- D. The Services are essential or critical services to be provided to the State of New South Wales.

Operative provisions

Part A - Interpretation and project parameters

1. Definitions

In this Deed, unless the context otherwise requires:

Abatement has the meaning given in the Payment Schedule.

Accommodation Services means the services described in section 2 of the Services Specification as varied or supplemented in accordance with any Variation.

Accounts and Records has the meaning given in clause 50.1(a).

Additional Funding means a grant, payment, co-payment, subsidy or other monetary contribution from any Authority received, whether directly or indirectly, by ServiceCo in connection with the Accommodation Services or (until such time that clause 19A(a) is satisfied, a Substituted New Dwelling), other than:

- (a) any such amount which is payable under a FACS Service Package Document;
- (b) any refund, repayment or reduction in Tax; or
- (c) Commonwealth Rent Assistance.

Adjustment Note has the meaning given in the GST Law.

Adverse Rights means all (if any) interests, rights, affectations, encumbrances, Easements, covenants (including any rights, Easements and other affectations or encumbrances in respect of conduits) and other restrictions on use (excluding rights of light and air):

- (a) affecting or impacting the Site as set out in the Project Information; or
- (b) of which ServiceCo has actual knowledge,

as at the date of this Deed.

Affordable Housing means the Service Package Dwellings which are made available to Affordable Housing Tenants.

Affordable Housing Tenant means a household which meets the affordable housing eligibility criteria outlined in the NSW Affordable Housing Guidelines, and has a right to occupy a Dwelling under a Residential Tenancy Agreement, and where the context requires, any such household which has been allocated a Dwelling in accordance with the Services Specification.

Agreed Margin means the Service Delivery Margin, the ServiceCo Margin and (in respect of clause 31.1(b) only) the Delivery Margin.

Agreement for Lease means an agreement for lease entered into by ServiceCo in connection with the Service Package.

Allocation Zone means each area of Social Housing described as an 'allocation zone' for the purposes of allocating Social Housing from the NSW Housing Register (or any replacement term used by FACS to denote an area for this purpose).

Amended Quick Ratio means the amended quick ratio calculated in accordance with Performance Outcome 7: Financial Viability Guidance Note and the relevant Financial Performance Report template required by the National Regulatory System for Community Housing, each as updated from time to time (and to the extent that ratio is no longer used for the National Regulatory System for Community Housing, the last current amended quick ratio is deemed to apply as the Amended Quick Ratio).

Amended Quick Ratio Threshold means an Amended Quick Ratio equal to or greater than 1.2.

Amendment has the meaning given in clause 47.1(a).

Applicant means an individual who:

- (a) applied to FACS for Social Housing;
- (b) was assessed by FACS or a Registered CHP as eligible for Social Housing; and
- (c) is on the NSW Housing Register.

Appropriate Applicant means an Applicant that is on the NSW Housing Register to whom a 'Reasonable Offer' could be made by ServiceCo in accordance with the Housing Pathways Policies. For the purposes of this definition, 'Reasonable Offer' has the meaning given to it in the document entitled 'Matching and Offering a Property to a Client Policy' as published on the FACS website and as replaced from time to time, and at the date of this Deed means an offer of Tenancy in a Dwelling that is consistent with:

- (a) the number of bedrooms the household requires;
- (b) the Allocation Zone requested by the Applicant; and
- (c) any other features of a property required after an assessment of the Applicant.

Approval means:

- (a) each Key Planning Approval; and
- (b) any other licence, permit, authorisation, consent, assessment, approval, determination, certificate, accreditation, registration, clearance, permission, exemptions, notification, application, filing, lodgement, deed, direction or declaration or the like, which must be obtained or satisfied (as the case may be) in connection with the Service Package.

Approved Services Brief has the meaning given in clause 27.5(b).

APRA means Australian Prudential Regulation Authority.

Artefacts means any places, fossils, bones, artefacts, coins, articles of value or antiquity, structures, natural features or remains or things of scientific, geological, historical, aesthetic, social, spiritual, cultural or aboriginal heritage or archaeological interest.

Asset Lease Side Deed means any document so entitled dated on or about the date of this Deed between FACS, ServiceCo and a Lessor substantially in the form set out in Schedule 26.

Asset Management Services means the services described in section 3 of the Services Specification, as varied or supplemented in accordance with any Variation.

Associate or **Associates** means, in relation to a person, any Related Body Corporate of that person, and any officer, agent, adviser, consultant, contractor or employee of that person or that Related Body Corporate and:

- (a) in the case of ServiceCo, includes:
 - (i) the ServiceCo Representative;
 - (ii) ServiceCo's officers, agents, advisers, consultants, contractors and employees, each acting in connection with the Service Package;
 - (iii) Equity Investors and any Consortium Members, and their respective officers, agents, advisers, consultants, contractors and employees, each acting in connection with the Service Package;
 - (iv) any Subcontractors (that are not covered by paragraph (a)(ii)) and their respective officers, agents, advisers, consultants, contractors and employees, each acting in connection with the Service Package; and
 - (v) any person on or at a Site at the express or implied invitation of ServiceCo or a Subcontractor in connection with the performance of the Service Package Activities,

but does not include FACS, any of FACS' Associates, any Tenants or the members of the DAB; and

- (b) in the case of FACS, includes:
 - (i) officers, agents, advisers, consultants, contractors, authorised officers and employees of FACS;
 - (ii) the FACS Representative and any other person responsible for the administration or management or implementation of the Service Package, or any aspect of the Service Package, for and on behalf of FACS; and
 - (iii) any other person to whom FACS delegates a right, power, function or duty under this Deed,

each acting in connection with the Service Package but does not include ServiceCo or any of ServiceCo's Associates, any Tenants, members of the DAB, the Registrar, Land and Housing Corporation or the Aboriginal Housing Office.

Augmentation means an increase in the number of Service Package Dwellings to be provided as part of the Service Package after the date of this Deed:

- (a) the total number of which equals ■ or more Service Package Dwellings; and
- (b) which FACS determines should be delivered as an Augmentation.

Augmentation Concept Design means the concept design developed by ServiceCo in accordance with FACS requirements.

Augmentation Documents means all documents to be entered into by one or more of FACS and ServiceCo (amongst others) for the undertaking of the relevant Augmentation.

Augmentation Objectives has the meaning given in clause 27.1(a).

Augmentation Proposal has the meaning given in clause 27.6(a).

Authority means

- (a) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; and
- (b) any other person having jurisdiction over, or ownership of, any Utilities or Utility Infrastructure.

Bank Bill means a bill of exchange (as defined in the *Bills of Exchange Act 1909* (Cth)) that has been accepted by a bank authorised under a law of the Commonwealth of Australia or any state to carry on banking business.

Bank Bill Rate, for a period, means:

- (a) the rate, expressed as a yield per cent per annum (rounded up (if necessary) to four decimal places) that is quoted as the average bid rate on the Reuters monitor system page 'BBSY' (or any page that replaces that page) at about 10:10 am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in Months which is closest to that period; or
- (b) if there is a manifest error in the calculation of that average bid rate, or if no average bid rate is published for Bank Bills of that tenor by about 10:30 am, then the Bank Bill Rate will be the rate reasonably determined by FACS, having regard to the rates otherwise bid for Bank Bills having a tenor as described above, at or around that time, to be the appropriate equivalent rate.

Base Case Financial Model means ServiceCo's audited financial model for the Service Package as at the date of this Deed, a copy of which has been initialled by both parties and is annexed as Annexure C.

Base Cost means Service Delivery Costs, ServiceCo Costs and (in respect of clause 31.1(b) only) Delivery Costs, in each case that are directly attributable to the relevant Change Compensation Event, but excluding all:

- (a) Prolongation Costs;
- (b) Financing Delay Costs; and
- (c) Agreed Margin.

Best Services Practices means the practices required for the provision of activities and services similar to the Delivery Phase Activities and the Services (as applicable), which are performed:

- (a) with the standard of skill, care and diligence which may reasonably be expected of a skilled and experienced professional suitably qualified in the provision of activities and services similar to the Delivery Phase Activities or the Services (as applicable);
- (b) in a manner that is client focused and safe to all people and the Environment;
- (c) with the intent of ensuring reliable, long term and safe and secure operation of the Relevant Infrastructure;
- (d) by trained and experienced personnel using high quality, safe and proper equipment, tools, procedures and industry standards;
- (e) with adequate levels of resources, including personnel, materials and supplies;
- (f) using suitable and high quality finishes and materials which are free from defects; and
- (g) with a commitment to continually adopting innovation to improve service quality and value for money, provided that this requirement in and of itself does not require ServiceCo to upgrade any Service Package Dwelling after the Date of Service Readiness for the Stage in which that Dwelling is comprised, unless ServiceCo is expressly required to do so.

Bid Design Deliverables means Annexure A.

Bid Services Deliverables means Annexure B.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney, New South Wales.

Business Hours means between 9:00 am and 5:00 pm on a Business Day.

CCU has the meaning given in clause 55.2(b).

Change Compensation Event means each event described in the table in clause 31.2.

Change in Control means:

- (a) where, at any time, any person or Entity alone or together with any Associate or Associates, ceases to or commences to, directly or indirectly have Control of an Entity;
- (b) a change in the manager, trustee or Responsible Entity of any Group Member that is a trust; or
- (c) a change in a member of a company limited by guarantee, where that member ceases to or commences to, directly or indirectly, have Control of that company.

For the purposes of this definition, Associate or Associates has the meaning given in the Corporations Act and includes a person deemed to be an Associate of a designated body (within the meaning of section 12 of the Corporations Act).

Change in Law means;

- (a) the coming into effect of, or a change or the repeal of, Legislation; or
- (b) any judgment or decision of a court of law which changes the way a Law is applied or interpreted,

after the date of this Deed, but does not include:

- (c) a change in the way a Law is applied or interpreted due to:
 - (i) the failure of ServiceCo or any of its Associates to comply with a Law, Policy or Approval; or
 - (ii) a ServiceCo Act or Omission;
- (d) any new Law or change in existing Law relating to Taxes including the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth), the GST Law or the *Payroll Tax Act 2007* (NSW);
- (e) any new local government Law or change in any existing local government Law;
- (f) any of the events described in paragraphs (a) to (c) of the definition of 'MAE Change in Law'; and
- (g) any new Law or change to or repeal of any existing Law which was not in force at the date of this Deed but which:
 - (i) had been published in the Government Gazette by way of bill, draft bill or draft statutory instrument or otherwise specifically referred to prior to the date of this Deed;
 - (ii) is contained in or referred to in the Services Specification, the Proposal, any Service Package Document or Project Information or any other material provided by FACS to ServiceCo or any of its Associates in connection with the Service Package prior to the date of this Deed;
 - (iii) a party performing activities similar to the Service Package Activities in accordance with Best Services Practices would have reasonably foreseen or anticipated prior to the date of this Deed;
 - (iv) is substantially the same as a Law in force prior to the date of this Deed; or
 - (v) is substantially the same as any other requirement with which ServiceCo was required to comply under any FACS Service Package Document as at the date of this Deed.

Change in Management means a change in:

- (a) any Entity which provides management functions to ServiceCo;
- (b) the senior employees of any Entity which provides management functions to ServiceCo; or
- (c) the senior management of ServiceCo,

as applicable.

Change in Mandatory Requirements means a:

- (a) Project-Specific Change in Law; or
- (b) Change in Policy,

that occurs after the date of this Deed and that will have an effect on the cost of carrying out the Service Package Activities.

Change in Policy means any one or more of the following that occurs after the date of this Deed:

- (a) the introduction of a new Policy; or
- (b) a change in a Policy,

but does not include:

- (c) any one of the events referred to in paragraphs (a) to (b) where that event:
 - (i) has been expressly notified by FACS to ServiceCo prior to the date of this Deed;
 - (ii) is contained or referred to in the Services Specification, the Proposal, any Service Package Document or Project Information or any other material provided by FACS to ServiceCo or any of its Associates in connection with the Service Package prior to the date of this Deed;
 - (iii) would have been reasonably foreseen or anticipated prior to the date of this Deed by a party providing services similar to the Service Package Activities in accordance with Best Services Practices;
 - (iv) is substantially the same as a Policy in force prior to the date of this Deed; or
 - (v) is substantially the same as any other requirement with which ServiceCo was required to comply with under FACS Service Package Documents prior to the date of this Deed;
- (d) any:
 - (i) new Approval;
 - (ii) new requirement to obtain a new Approval; or
 - (iii) amendment, repeal or change in, or any requirement to amend or change, an existing Approval;
- (e) any of the events referred to in paragraphs (a) to (b) that results from or is in response to any ServiceCo Act or Omission or failure of ServiceCo or any of its Associates to comply with a Law, Policy or Approval; or
- (f) where the Policy is a standard, code, specification, policy, requirement, guideline, protocol, procedures or plan of any Authority other than FACS.

Change Proposal has the meaning given in clause 28(b).

CHIMES means the Community Housing Information Management System maintained by FACS.

Claim means any claim, action, demand, suit, proceeding, penalty or fine (including by way of contribution or indemnity) made:

- (a) in connection with the Service Package Documents, the Relevant Infrastructure, any Site or the Service Package; or
- (b) at Law or for specific performance, restitution or payment of money (including damages).

Commercial Close means the date on which the last Condition Precedent to be satisfied, has been satisfied (or waived in accordance with clause 3.3), as set out in a notice given by FACS to ServiceCo in accordance with clause 3.2(c).

Commercial Close Adjustment Protocol means the protocol to:

- (a) update the Base Case Financial Model; and
- (b) amend this Deed,

to be applied at Commercial Close, in accordance with clause 3.5 and clause 49 and set out in Annexure D.

Commercial Close Financial Model means the Base Case Financial Model as updated and audited in accordance with the Commercial Close Adjustment Protocol.

Commercially Sensitive Information means the information referred to in the Commercially Sensitive Information Schedule.

Commercially Sensitive Information Schedule means Schedule 11.

Commonwealth means the Commonwealth of Australia.

Commonwealth Rent Assistance or **CRA** means the rent assistance payable by the Commonwealth pursuant to the *Social Security Act 1991* (Cth) and the *A New Tax System (Family Assistance) Act 1999* (Cth).

Community Housing Act means the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW).

Compensable Intervening Event means any of the following events occurring during a Service Delivery Phase:

- (a) **(FACS breach)**: a breach by FACS of any FACS Service Package Document; and
- (b) **(fraudulent act or omission)**: a fraudulent, reckless, unlawful or malicious act or omission of FACS or any of its Associates in connection with the Service Package.

Compensable Relief Event means any of the following events occurring during a Delivery Phase:

- (a) **(FACS breach)**: a breach by FACS of any FACS Service Package Document; and
- (b) **(fraudulent act or omission)**: a fraudulent, reckless, unlawful or malicious act or omission of FACS or any of its Associates in connection with the Service Package.

Compensation Date has the meaning given in the Termination Payments Schedule.

Condition Precedent means each condition precedent in the Conditions Precedent Schedule.

Condition Precedent Deadline means the date so specified in the Contract Particulars.

Conditions Precedent Schedule means Schedule 2.

Confidential Information means:

- (a) the Service Package Documents;
- (b) the Project Information;
- (c) any Commercially Sensitive Information;

- (d) information provided by:
 - (i) FACS or any of its Associates to ServiceCo or any of its Associates; or
 - (ii) ServiceCo or any of its Associates to FACS or any of its Associates,in connection with this Deed or the Service Package, whether provided prior to, on or after the date of this Deed;
- (e) ServiceCo Material; and
- (f) Personal Information,

but does not include any report prepared by or on behalf of FACS in relation to the performance or non-performance by ServiceCo or its Associates of its obligations pursuant to this Deed (provided that any information contained in any such report which is Commercially Sensitive Information is redacted in such report).

Consequential or Indirect Loss means:

- (a) any loss of opportunity, profit, anticipated profit, business, business opportunities or revenue or any failure to realise anticipated savings; or
- (b) to the extent not prohibited by Law, any penalties payable under agreements other than FACS Service Package Documents or Key Subcontracts.

Consortium means all of the parties identified as such in the Contract Particulars and **Consortium Member** means any of them.

Construction Project has the meaning given in the WHS Regulation.

Consumer Price Index or **CPI** has the meaning given in the Indexes Schedule.

Contamination has the meaning set out in the *Contaminated Land Management Act 1997* (NSW).

Contract Particulars means Schedule 1.

Control means:

- (a) 'Control' as defined in the Corporations Act;
- (b) the ability to control, directly or indirectly, the composition of the board or partnership committee;
- (c) being in a position to cast, or control the casting of, more than 25% of the maximum number of votes that may be cast at a general meeting or similar (or if the Entity is a trust, the appointment of a trustee of that trust); or
- (d) having a relevant interest (as defined in section 608 of the Corporations Act but as if a reference in that section to 'securities' were a reference to Securities as defined in this Deed) in more than 25% of the Securities,

of an Entity (whether alone or together with any Associates). For the purposes of this definition, Associate has the meaning given in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of section 12 of the Corporations Act).

Controlling Entity means, in relation to a Change in Control of a Consortium Member, the person or Entity to whom Control will pass.

Corporations Act means the *Corporations Act 2001* (Cth).

Costs means:

- (a) all actual direct capital costs, preliminaries, operation and maintenance costs or external third party advisory costs properly and reasonably incurred, or which will be properly and reasonably incurred, as a direct consequence of the relevant Change Compensation Event, and in each case to the extent that they exceed the relevant amounts (if any) assumed in the then current Financial Model; and
- (b) in respect of any "Saving", all direct costs saved or which will be saved or ought reasonably to have been saved.

Counterparty Details means:

- (a) in connection with ServiceCo:
 - (i) a certified copy of its constitution (or other constituent documents);
 - (ii) in the case of a trustee who enters into FACS Service Package Documents on behalf of a trust, a certified copy of the relevant trust deed;
 - (iii) a certified copy of any powers of attorney under which the person executed each FACS Service Package Document; and
 - (iv) a certified copy of the extract of minutes evidencing the resolutions of its board of directors, authorising the entry into, delivery and observance of obligations in accordance with each FACS Service Package Document to which it is a party; and
- (b) in connection with each other person (other than FACS) who is a party to a FACS Service Package Document, a certified copy of any powers of attorney under which the person executed each FACS Service Package Document.

DAB or Dispute Avoidance Board means the dispute avoidance board constituted under the DAB Agreement.

DAB Accession Deed Poll means an accession deed poll substantially in the form of Schedule 23.

DAB Agreement means the document entitled 'Dispute Avoidance Board Agreement' dated 3 December 2018 between FACS, the members of the DAB, ServiceCo and any acceding party.

Date of Service Readiness means, in respect of each Stage, the date specified in the certificate issued by FACS under clause 17.6(a)(i) as the date on which ServiceCo achieved Service Readiness.

Debt means the principal amounts properly drawn down by ServiceCo under the Finance Documents to finance the Service Package, including accrued interest and fees payable in respect of those principal amounts, and any net amounts payable under any hedging arrangements relevant to those principal amounts deducting all credit balances on all debt reserve and debt service accounts (however named) held by or on behalf of ServiceCo or any Financier and related to the Service Package but does not include default interest, equity shareholder loans, or amounts in the nature of Equity.

Deed has the meaning given in clause 2.2(a).

Deed of Indemnity means a deed of indemnity between FACS and the Property Trust in the form set out in Schedule 29 or such other form as FACS may approve.

Default Termination Event means the occurrence of any of the following events:

- (a) **(abandonment)**: ServiceCo wholly or substantially abandons the Service Package or any material part of the Service Package Activities or a Stage;
- (b) **(Group Member Insolvency Event)**: an Insolvency Event occurs in relation to a Group Member;
- (c) **(ServiceCo fraud)**: ServiceCo engages in fraud, collusion or dishonest conduct in performing its obligations under any Service Package Document;
- (d) **(assignment, transfer or disposal)**: ServiceCo assigns, transfers or otherwise disposes of any of its rights, title and interest in or under any Service Package Document, the whole or any part of a Site or the Relevant Infrastructure in breach of clause 47;
- (e) **(Change in Control)**: a Change in Control occurs in respect of ServiceCo other than in accordance with clause 48;
- (f) **(unremedied Major Default)**: a Major Default is capable, or is deemed to be capable, of remedy and ServiceCo fails to remedy the Major Default within the period set out in the Major Default Notice (as extended, if at all, in accordance with clause 37.4(b));
- (g) **(failure to achieve Service Readiness by Sunset Date)**: ServiceCo fails to achieve a Service Readiness Milestone by the applicable Sunset Date;
- (h) **(Major Default not capable of remedy)**: a Major Default is not capable, or is deemed to not be capable, of remedy and ServiceCo fails to diligently comply with any reasonable requirements of FACS to overcome the consequences of the Major Default within the time stated in the Major Default Notice (as extended, if at all, under clause 37.4(b));
- (i) **(liability cap)**: where the aggregate accrued liability of ServiceCo to the Indemnified Persons under the Service Package Documents is equal to or exceeds █████ of the General Liability Cap;
- (j) **(Illegality Event)**: an Illegality Event occurs;
- (k) **(Probity Event)**: ServiceCo fails to comply with clause 53.1(d), in relation to a Probity Event;
- (l) **(loss of registration)**: ServiceCo's registration as a Registered CHP is cancelled or ServiceCo otherwise ceases to be a Registered CHP;
- (m) **(Deed of Indemnity)**: the Deed of Indemnity provided by the Property Trust is or becomes void, voidable, illegal, invalid or unenforceable for any reason and is not replaced within 20 Business Days or the Property Trust breaches a material term of the Deed of Indemnity; or
- (n) **(deemed Default Termination Event)**: any other event which is deemed to be a Default Termination Event under clause 37.2(f) or clause 37.6(c).

Default Termination Payment means the payment calculated in accordance with section 4 of the Termination Payments Schedule.

Delay Costs means Financing Delay Costs and Prolongation Costs (as applicable).

Delivery Costs means the net incremental Costs of a Subcontractor engaged by ServiceCo to carry out Delivery Phase Activities or capital works during a Service Delivery Phase relating to a Change Compensation Event, provided that those Costs are directly attributable to the relevant Change Compensation Event, excluding all Agreed Margin, Prolongation Costs, Financing Delay Costs and all other Base Costs.

Delivery Margin means:

(a)

[REDACTED]

(b)

[REDACTED]

Delivery Method means the method utilised (or proposed to be utilised) by ServiceCo to deliver the Service Package Dwellings, which may include:

- (a) construction of new Dwellings;
- (b) refurbishment of existing Dwellings; or
- (c) leasing Dwellings.

Delivery Phase means:

- (a) in respect of a Service Package Dwelling, the period beginning on Commercial Close and ending on and including the Date of Service Readiness for the Stage in which the relevant Service Package Dwelling is comprised; or
- (b) for the purposes of the definitions of Development Document and Quarter, clauses 16.2 and 49.3(b) and the definition of Accommodation Cost in the Termination Payment Schedule only, the period beginning on Commercial Close and ending on and including the Date of Service Readiness for the last Stage to achieve Service Readiness.

Delivery Phase Activities means:

- (a) all things which ServiceCo is, or may be, required to carry out or do in connection with the Relevant Infrastructure during a Delivery Phase; and
- (b) all other things which ServiceCo is, or may be, required to carry out or do in accordance with the FACS Service Package Documents during a Delivery Phase,

but excludes the Services.

Delivery Phase Plans means each of the plans described in the Delivery Phase Plans and Reports Schedule.

Delivery Phase Plans and Reports Schedule means Schedule 16.

Delivery Phase Program means the Initial Delivery Phase Program, as updated in accordance with clause 16.2.

Design Requirements means requirements for the design of the Relevant Infrastructure as set out in section 2.2 of the Services Specification.

Developer means any person who enters into a Development Document with ServiceCo.

Development Consent means:

- (a) each consent or approval granted or required to be granted by the authority with jurisdiction to assess and/or determine the relevant development application in accordance with the *Environmental Planning and Assessment Act 1979* (NSW) in respect of the Service Package or a Site; and

- (b) any modification of it.

Development Document means any agreement entered into by ServiceCo or a Subcontractor which relates to the acquisition, development, construction or supply of Service Package Dwellings during the Delivery Phase (other than a document referred to in any of paragraphs (a), (b), (d), (e), (f), (g), (h), (i) and (j) of the definition of Service Package Document or a Development Consent) but does not relate to any other Service Package Activities.

Dispute has the meaning given in clause 40(a).

Dwelling means a room or suite of rooms occupied, used, constructed or adapted so as to be capable of being occupied or used as a separate, self-contained and lockable domicile that:

- (a) may be occupied by one or more households; and
- (b) must have its own cooking, bathing and toilet facilities and be accessible without passing through another Dwelling,

but does not include:

- (c) 'secondary dwellings' as defined in the *Standard Instrument - Principal Local Environmental Plan* made under the *Environmental Planning and Assessment Act 1979* (NSW);
- (d) 'detached studios' as defined in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (NSW); or
- (e) studio apartments with a minimum internal area of less than 35m².

Dwellings Schedule means Schedule 25.

Early Warning (Delivery) has the meaning given in clause 23.1(a).

Early Warning (Service Delivery) has the meaning given in clause 24.1(a).

Easements means all easements, restrictions on use, covenants, agreements, or other similar arrangements together with any leases, sub-leases, licences, rights or privileges, in each case as are granted on or prior to the date of this Deed.

Employee Checks means the checks of employees and volunteers set out in the Contract Particulars.

Entity has the meaning given in section 64A of the Corporations Act, but is also deemed to include a joint venture within the meaning of Australian Accounting Standard 131 (AASB 131).

Environment means the physical factors of the surroundings of humans and other life forms, including the land, soil, plants, habitat, waters, atmosphere, climate, sounds, odours, tastes, biodiversity and the social factor of aesthetics.

Equity means the equity capital in, or subordinated debt which is in substance equivalent to ordinary equity in, ServiceCo as set out in the Financial Model.

Equity Documents means each of the documents listed in the Equity Documents Schedule.

Equity Documents Schedule means Schedule 13.

Equity Investor means:

- (a) a person identified as such in the Ownership Schedule (until that person is replaced in accordance with clause 48);

- (b) each person who has provided or has agreed to provide:
 - (i) Equity at the times and in the amounts set out in the Financial Model (whether by way of subscription for units or shares or provision of unitholder or shareholder loans); or
 - (ii) any other equity, financial arrangement, security or option issued by or provided to a Group Member; and
- (c) any person who replaces or is added, in accordance with clause 48, to the persons referred to in paragraphs (a) or (b).

Equity IRR means the nominal internal rate of return to Equity Investors as set out in the Commercial Close Financial Model or in the Financial Model (whichever is lower).

Excluded Contract means each Development Document.

Excluded Material means any Material which is owned by a Developer as at the date of this Deed or developed and owned by a Developer after the date of this Deed and used by it to design, construct, deliver or supply Service Package Dwellings.

Executive Representatives has the meaning given in clause 40(c).

Expert Determination Agreement means an expert determination agreement to be entered into between ServiceCo, FACS and an independent expert substantially in the form set out in Schedule 19.

Expiry Date has the meaning given in clause 4.2.

FACS Augmentation Documents means those Augmentation Documents to which FACS is a party.

FACS Comment Right means FACS is of the view, acting reasonably, that:

- (a) the Submitted Document:
 - (i) is incomplete, inaccurate, of poor quality, ambiguous, unclear or otherwise is not in a condition to allow FACS, in its reasonable opinion, to adequately review it;
 - (ii) does not comply with the relevant Laws, Approvals or Policies; or
 - (iii) is not in accordance with the requirements of this Deed or any other FACS Service Package Document (including that the Submitted Document is inconsistent with or not in accordance with Services Requirements); or
- (b) implementing or proceeding on the basis of the Submitted Document would adversely affect any of FACS' rights under a FACS Service Package Document, FACS' ability to enforce any such rights, any of its statutory rights, obligation or functions, or FACS' ability to perform its obligations under a FACS Service Package Document.

FACS Nominee has the meaning given in clause 47.3(b).

FACS Representative means the person identified as such in the Contract Particulars, subject to replacement or delegation in accordance with clauses 11.2(e) and 11.2(f).

FACS Service Package Documents means those Service Package Documents to which FACS is a party.

Federal Rent Assistance Legislation means Legislation of the Commonwealth pursuant to which the Commonwealth provides rent assistance to persons who are Tenants or Household Members.

Final Expiry Date means:

- (a) in respect of each Year 1 Dwelling, the date which is the 25th anniversary of the earlier of:
 - (i) the date that is the first anniversary of Commercial Close; and
 - (ii) the Date of Service Readiness in respect of the Stage in which that Dwelling is comprised;
- (b) in respect of each Year 2 Dwelling, the date which is the 25th anniversary of the earlier of:
 - (i) the date that is the second anniversary of Commercial Close; and
 - (ii) the Date of Service Readiness in respect of the Stage in which that Dwelling is comprised; and
- (c) in respect of each Year 3 Dwelling, the date which is the 25th anniversary of the earlier of:
 - (i) the date that is the third anniversary of Commercial Close; and
 - (ii) the Date of Service Readiness in respect of the Stage in which that Dwelling is comprised,

as adjusted by any extensions deemed under clause 23.11.

Final Impact Statement means an assessment of the anticipated impact that the Augmentation option is likely to have (both during the delivery and after Service Readiness) on the Service Package.

Final Procurement Strategy means a strategy developed by ServiceCo outlining those packages of an Augmentation that will be tendered.

Final Services Requirements means, for each Augmentation, the requirements (including performance requirements, delivery, asset maintenance and other service standards) that ServiceCo considers need to be considered in developing the preferred option to meet the Augmentation Objectives for that Augmentation.

Finance Documents means:

- (a) each of the documents listed in the Finance Documents Schedule;
- (b) any document entered into in relation to a refinancing of the Debt or a financing or refinancing of ServiceCo's senior financial indebtedness to finance activities other than the Service Package Activities, including any security trust deed;
- (c) any other document which the parties agree is a Finance Document for the purposes of this Deed; and
- (d) any document which effects an amendment to, or restatement or replacement of, or waiver or consent under, any other Finance Document.

Finance Documents Schedule means Schedule 12.

Financial Model means the Commercial Close Financial Model as updated from time to time in accordance with clause 49.

Financial Performance Report means the report entitled 'Financial Performance Report' that ServiceCo is required to provide to the Registrar (or any replacement financial report(s) required by the Registrar from time to time).

Financial Performance Report Metrics Statement has the meaning given to it in clause 5.1(a)(ii).

Financial Year means each 12 Month period commencing on 1 July and ending on 30 June.

Financiers means the providers of any financing facilities, financial arrangements or accommodation to a Group Member under the Finance Documents from time to time and may, where the context permits, include any agent or trustee of such Financiers (other than Finance Documents solely between Group Members).

Financiers' Tripartite Deed means Schedule 37 or a deed substantially in the form of Schedule 37, as the context permits or requires.

Financing Delay Costs means the incremental financing costs actually incurred, or which will be actually incurred, by ServiceCo under the Finance Documents that are directly attributable to a delay to the achievement of a Service Readiness Milestone by the relevant Service Readiness Milestone Date caused by:

- (a) a Compensable Relief Event;
- (b) a Variation; or
- (c) Change in Mandatory Requirements the subject of a Variation Order,

but excluding all financing costs that are attributable to delays caused by any other Relief Event.

Fit For Purpose or **FFP** means the Relevant Infrastructure:

- (a) is fit for its intended purposes, functions and uses specified in, or which can reasonably be ascertained from clauses 1 to 55, the Services Specification and the Payment Schedule;
- (b) otherwise meets the requirements for the Service Package Dwellings set out in or which can be reasonably ascertained from:
 - (i) the Design Requirements and the Services Requirements; and
 - (ii) all other requirements of this Deed; and
- (c) is fit for the performance of the Services in accordance with the Services Requirements and so as to facilitate and not impair the achievement of the Service Package Objectives.

Force Majeure Event means, in respect of a Site, any of the following events occurring:

- (a) war, act of a public enemy (whether war is declared or not), civil war, rebellion, revolution, military usurped power, military insurrection, military commotion or other like hostilities;
- (b) nuclear or biological contamination;
- (c) ionising radiation or contamination by radioactivity;
- (d) any act of terrorism occurring at the Site, except to the extent coverage is provided for a declared terrorist incident under the *Terrorism Insurance Act 2003* (Cth);

- (e) bushfire, lightning, cyclone, hurricane, tempest, mudslide, landslide, earthquakes, droughts declared as a state of emergency and high seas inundation;
- (f) a flood which might at the date of this Deed be expected to occur no more frequently than once in 100 years;
- (g) fire or explosion caused by events referred to in paragraphs (a) to (f); or
- (h) during a Service Delivery Phase only, Utility Interruption due to an interruption that occurs upstream from the point at which that Utility provider's Utility Infrastructure connects specifically to the Site or the Relevant Infrastructure;

and which:

- (i) in relation to paragraphs (a) to (d), save to the extent the event is caused or contributed to by a ServiceCo Act or Omission;
- (j) save in relation to paragraph (h), occurs at or directly in the vicinity of the Site;
- (k) in:
 - (i) respect of a claim for relief pursuant to clause 23 only, prevents or delays ServiceCo from carrying out all or substantially all of the Service Package Activities in respect of the Site; or
 - (ii) all other circumstances in respect of a Site, prevents ServiceCo from carrying out all or substantially all of the Accommodation Services at the Site;
- (l) was not caused or contributed to by ServiceCo or its Associates, or FACS or its Associates, to the extent arising from a failure by ServiceCo or its Associates to perform the Services in accordance with this Deed;
- (m) was beyond the reasonable control of ServiceCo or its Associates; and
- (n) could not have been prevented, avoided, remedied or overcome by taking those steps which a prudent, experienced and competent contractor for facilities similar to the Relevant Infrastructure and providing services similar to the Services would have taken using Best Services Practices (including the expenditure of reasonable sums of money).

Force Majeure Termination Event for a Site means:

- (a) either party has been prevented from carrying out all or substantially all of the Service Package Activities for that Site for a continuous period exceeding 180 days as a result of a Force Majeure Event; and
- (b) at least 180 days has elapsed since ServiceCo gave notice to FACS in accordance with clause 23.3(a) or 24.3(a) (as the case may be) of the Force Majeure Event,

or any other event expressly deemed to be a Force Majeure Termination Event in this Deed.

General Liability Cap has the meaning given in clause 35A.1(a).

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

Group means ServiceCo, each Holding Entity and any wholly owned subsidiary of any of them.

Group Member means any of ServiceCo, each Holding Entity or any wholly owned subsidiary of any of them.

GST means:

- (a) the same as in the GST Act; and
- (b) any other goods and services tax, or any Tax applying to this transaction in a similar way.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Amount has the meaning given in clause 22.8(c)(ii).

GST Law has the meaning given in the GST Act.

Head Lease Side Deed means any document so entitled dated on or about the date of this Deed between FACS, ServiceCo and a Lessor substantially in the form set out in Schedule 27.

Holding Entity means each company or trust which, directly or indirectly, holds all of the issued shares or units in, or otherwise Controls:

- (a) ServiceCo, and which is not itself wholly owned by any other Entity; and
- (b) any company that holds Securities in ServiceCo.

Household Member means an individual:

- (a) listed as an additional person to be housed at the time of application to the NSW Housing Register;
- (b) approved to be housed at the beginning of a Tenancy; or
- (c) who is otherwise an approved additional occupant of the Dwelling.

Housing Pathways means the common Social Housing application and assessment system, maintained under a partnership between FACS and community housing providers.

Housing Pathways Policies means the policies identified as such in Appendix A of the Services Specification.

Illegality Event means ServiceCo or a Key Subcontractor:

- (a) ceases to hold an Approval; or
- (b) breaches applicable Legislation,

and FACS forms the view (acting reasonably) that such failure or breach is material to the performance of ServiceCo's obligations under this Deed and such failure or breach is not remedied within 30 days after the earlier of:

- (c) the date on which FACS notifies ServiceCo of the failure or breach; or
- (d) the date on which ServiceCo becomes aware of the failure or breach.

Indemnified Person has the meaning in clause 34.1.

Index means each index set out in the Indexes Schedule.

Indexed means the relevant amount as indexed in accordance with the Indexes Schedule.

Indexes Schedule means Schedule 4.

Initial Delivery Phase Plans means the version of the Delivery Phase Plans current at the date of this Deed attached as Annexure A1.

Initial Delivery Phase Program means the version of the Delivery Phase Program current at the date of this Deed attached as Annexure A2.

Initial Offer has the meaning given in clause 21.4(b).

Initial Service Delivery Phase Plans means the version of the Service Delivery Phase Plans current at the date of this Deed attached as Annexure B1.

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

- (a) an application is made (other than for a frivolous or vexatious reason) for the winding up or deregistration of a party and, where an application has been made for the dismissal or withdrawal of the application for winding up within 10 Business Days, the application is not dismissed or withdrawn within 30 Business Days;
- (b) an order is made for the winding up of a party, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by FACS before that order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval;
- (c) a party passes a resolution for its winding up or deregistration, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by FACS before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
- (d) a receiver, receiver and manager, liquidator, provisional liquidator, compulsory manager trustee for creditors or in bankruptcy or analogous person is appointed to take possession of, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of a party or otherwise enforces its Security Interest;
- (e) a party or any other person appoints an administrator to the party, or takes any step to do so;
- (f) a party:
 - (i) suspends payment of its debts (other than as the result of a failure to pay a debt or claim which is the subject of a good faith dispute);
 - (ii) ceases or threatens to cease to carry on all or a material part of its business;
 - (iii) is or states that it is unable to pay its debts; or
 - (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F of the Corporations Act;
- (g) a party enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors, without the prior consent of FACS, except for the purposes of a solvent reconstruction or amalgamation permitted by this Deed; or
- (h) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a) to (g).

Insurances means the insurances required to be procured and maintained by ServiceCo in accordance with clause 36.1(a).

Intellectual Property Rights means all present and future rights throughout the world conferred by Law in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results in the industrial,

commercial, scientific, literary or artistic fields, including confidential information, whether or not registrable, registered or patentable, including:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights.

Intervening Event means any of the following occurring during a Service Delivery Phase:

- (a) **(Compensable Intervening Event)**: a Compensable Intervening Event;
- (b) **(FACS Act or Omission)**: any act or omission of:
 - (i) FACS; or
 - (ii) any Associate of FACS,in connection with the Service Package other than any such act or omission which is authorised or permitted under a FACS Service Package Document, Policy or Law; or
- (c) **(Force Majeure Event)**: a Force Majeure Event.

Key People means the people so named in the Contract Particulars as replaced (if at all) in accordance with clauses 11.5(b) or 11.5(c).

Key Planning Approval means each of those approvals identified as such in the Contract Particulars.

Key Subcontract means:

- (a) each Subcontract in respect of the Service Package Activities identified in the Contract Particulars as a 'Key Subcontract';
- (b) each Agreement for Lease and Lease; and
- (c) any other Subcontract (other than an Excluded Contract):
 - (i) which involves a direct dealing or interaction with a Tenant or Household Member;
 - (ii) the term of which exceeds three years; or
 - (iii) in respect of which the total amount payable to the relevant Subcontractor, and its Related Bodies Corporate, under that Subcontract and other Subcontracts exceeds or is likely to exceed [REDACTED] per annum (Indexed),

unless FACS agrees that Subcontract is not a Key Subcontract prior to its execution,

as replaced in accordance with clauses 14.3 and 14.4.

Key Subcontractor means a party (other than ServiceCo) to a Key Subcontract.

Land and Housing Corporation means the Land and Housing Corporation, New South Wales, a statutory authority within the Department of Family and Community Services.

Land Tax means land tax payable in accordance with the provisions of *the Land Tax Act 1956* (NSW) and the *Land Tax Management Act 1956* (NSW).

Last Expiry Date means the date when all Service Package Dwellings have reached their Expiry Date.

Law means:

- (a) those principles of common law and equity established by decisions of courts; and
- (b) Legislation.

Lease means a lease agreement entered into by ServiceCo in connection with the Service Package, other than a Residential Tenancy Agreement.

Legislation means all legislation, statutes, rules, regulations, by-laws, ordinances and subordinated legislation of the Commonwealth, the NSW Government or an Authority.

Lessor means a person who enters into a Lease or an Agreement for Lease (or both, as the case may be) with ServiceCo.

Liability means any debt, obligation, claim, action, cost (including legal costs, deductibles or increased premiums), expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- (a) actual, prospective or contingent; or
- (b) currently ascertainable or not,

and whether under or arising out of or in any way in connection with this Deed, any other Service Package Documents or arising at Law.

MAE Change in Law means a Change in Law by reason of:

- (a) a change in Federal Rent Assistance Legislation existing at the date of this Deed;
- (b) the enactment or making of new Federal Rent Assistance Legislation after the date of this Deed; or
- (c) a change in the way Federal Rent Assistance Legislation is applied, or in the interpretation of a Federal Rent Assistance Legislation, after the date of this Deed,

which results in:

- (d) rent assistance no longer being payable by the Commonwealth to a material proportion of persons who receive such assistance at the date of this Deed;
- (e) a material decrease in the average amount of rent assistance payable by the Commonwealth to a person; or
- (f) a material proportion of persons receiving rent assistance at the date of this Deed being otherwise unable to receive rent assistance from the Commonwealth,

after taking into account any other NSW Government or Commonwealth assistance, support or transitional arrangements with respect to the Social Housing.

Major Default means any of the following events:

- (a) **(Program Milestones)**: ServiceCo fails to achieve a Program Milestone by the relevant Milestone Date;
- (b) **(Finance Documents)**: any event that would restrict or cancel ServiceCo's ability to obtain or to have available finance in accordance with the Finance Documents, except to the extent that immediately after that restriction or cancellation, the

funding available to ServiceCo is greater than that required to enable ServiceCo to fully undertake the Service Package;

- (c) **(fraud)**: an Associate of ServiceCo engages in fraud, collusion or dishonest conduct in performing their obligations under the Service Package Documents;
- (d) **(representations and warranties)**: a representation or warranty given by ServiceCo under a FACS Service Package Document is found to be materially incorrect or misleading or a financial audit report discloses fraudulent, false, misleading or negligent reporting by ServiceCo in respect of any financial statements or invoices or other books or records of ServiceCo;
- (e) **(subcontracting and Key People)**: ServiceCo breaches an obligation in clauses 14.3, 14.4 or 11.5;
- (f) **(Personal Information)**: any failure by ServiceCo to comply with its obligations under clause 52.6;
- (g) **(breach of FACS Service Package Document)**: any breach of any FACS Service Package Document by ServiceCo (other than any Service Failure, any other Major Default or a Default Termination Event) which is not cured within [REDACTED] (or such longer period as FACS (acting reasonably) determines) of ServiceCo receiving a notice of that breach from FACS;
- (h) **(Change in Management)**: as a result of a Change in Management, ServiceCo no longer has the same or better management skills available to it as it had prior to the Change in Management;
- (i) **(Change in Control)**: a Change in Control occurs in respect of any Consortium Member other than ServiceCo without the consent of FACS in accordance with clause 48.3;
- (j) **(Probity Event)**: ServiceCo fails to remedy a Probity Event in accordance with clause 53;
- (k) **(loss of registration)**: a Key Subcontractor providing Asset Management Services or Tenancy Management Services has its registration as a Registered CHP cancelled or that Key Subcontractor otherwise ceases to be a Registered CHP;
- (l) **(breach of other Service Package Document)**: ServiceCo:
 - (i) breaches any of its obligations under any Service Package Document other than a FACS Service Package Document (other than where such breach is any other Major Default, a Default Termination Event or a Service Failure);
 - (ii) the breach has or will have a material adverse effect on ServiceCo's ability to deliver the Service Package; and
 - (iii) is not diligently pursuing the remedy of the breach;
- (m) **(Major Default Service Failure)**: a Major Default Service Failure occurs;
- (n) **(Insolvency Event of Consortium Member)**: an Insolvency Event occurs in relation to a Consortium Member;
- (o) **(Insurances)**: a breach by ServiceCo of any of its obligations under clause 36.2;
- (p) **(Service Readiness Outstanding Item)**: ServiceCo fails to complete or remedy a Service Readiness Outstanding Item within the timeframe prescribed under clause 17.7(a);

- (q) **(Registrar enforcement powers)**: a Registrar exercises any power under sections 20 or 21 of the National Law in respect of ServiceCo;
- (r) **(failure to comply with National Regulatory Code)**: ServiceCo fails to comply with any condition of its registration as a Registered CHP or any other performance requirement under the National Regulatory Code and receives a notice to that effect;
- (s) **(credit support)**: ServiceCo fails to comply with clause 5.1(b)(iv)A; or
- (t) **(other)**: any other event which is deemed to be a Major Default under clause 17.7(e).

Major Default Notice has the meaning given in clause 37.2(b).

Major Default Service Failure has the meaning given in the Payment Schedule.

Margin means an amount on account of:

- (a) off-site overheads and administrative, corporate and other like costs and profit; and
- (b) on-site overheads (including cost of project management services).

Material means tangible and intangible information, documents (including any document within the meaning of the *Evidence Act 1995* (NSW)), reports, software (including source and object code), inventions, discoveries, designs, innovations, technology, processes, methods, techniques, know-how, data and other materials in any media whatsoever.

Material Adverse Effect means the net present value of the equity cashflows projected over the remaining period of the Term:

- (a) once the MAE Change in Law comes into effect; and
- (b) using the Equity IRR and the then current Financial Model as adjusted to reflect the MAE Change in Law,

is less than or equal to zero.

Milestone Dates means the dates described as such in the Program Milestones Schedule (and include the Service Readiness Milestone Dates), as updated in accordance with this Deed.

Minimum Stage Requirements means, in respect of a proposed Stage, ServiceCo:

- (a) has provided FACS with at least three Months' notice of the proposed Stage in accordance with clause 17.2(a); and
- (b) is of the reasonable opinion that all of the Service Package Dwellings referred to in that notice have achieved Service Readiness.

Mitigating Factors means:

- (a) all reasonable endeavours ServiceCo, or any of its Associates, has taken (or proposes to take in the future) to mitigate, minimise or avoid the adverse effects, costs, consequences or duration of the Relief Event, Intervening Event, Variation or Change in Mandatory Requirements (as the case may be) (including by putting in place temporary measures reasonably required by FACS);
- (b) all reasonable steps ServiceCo, or any of its Associates, has taken (or proposes to take in the future) which a prudent, competent and experienced contractor in the circumstances of ServiceCo or the relevant Associate of ServiceCo, would have taken to mitigate, minimise or avoid the effects, costs, consequences or duration of

the Relief Event, Intervening Event, Variation or Change in Mandatory Requirements (as the case may be); and

- (c) all actions ServiceCo, or any of its Associates, has taken (or proposes to take in the future) to take advantage of any positive or beneficial effects of the Relief Event, Intervening Event, Variation or Change in Mandatory Requirements (as the case may be) and maximise any reduction in costs arising from the Relief Event, Intervening Event, Variation or Change in Mandatory Requirements (as the case may be).

Model Output Schedule means the work sheets in the Commercial Close Financial Model identified as the 'Model Output Schedule'.

Model Variation Event has the meaning given in clause 49.3(a).

Month means a calendar month.

Monthly Service Payment means a monthly service payment payable to ServiceCo calculated in accordance with the Payment Schedule.

National Law means the Appendix to the Community Housing Act.

National Regulatory Code means Schedule 1 to the National Law.

National Regulatory System means the National Regulatory System for Community Housing.

Negotiated Offer has the meaning given in clause 21.4(d).

Net Additional Funding has the meaning given in clause 22.9(b).

Non-Compliant Metrics has the meaning given to it in clause 5.1(b).

Notice of Proposed Augmentation has the meaning given in clause 27.1(a).

NSW Affordable Housing Guidelines means the document entitled 'NSW Affordable Housing Ministerial Guidelines' dated June 2015 issued by FACS, as amended or replaced from time to time.

NSW Code has the meaning given in clause 55.2(a).

NSW Government means the Crown in right of the State of New South Wales and its agencies.

NSW Guidelines has the meaning given in clause 55.1.

NSW Housing Register means the single list of Applicants waiting for Social Housing that is operated and maintained by FACS in partnership with community housing providers.

Omitted Service Package Activities has the meaning given in clause 26.1(c).

Operating Month means:

- (a) for the first Operating Month, the period commencing on the Service Commencement Date in respect of the first Stage to achieve Service Readiness and ending on the final day of that Month;
- (b) each subsequent Month during the Service Delivery Phase; and
- (c) for the final Operating Month, the period from the end of the last full Operating Month (as defined in paragraph (b)) to the Last Expiry Date.

Operating Year means:

- (a) for the first Operating Year, the period commencing on the Service Commencement Date in respect of the first Stage to achieve Service Readiness and ending on the next 30 June;
- (b) subject to paragraph (c), each subsequent 12 Month period during the Service Delivery Phase commencing on 1 July and ending on 30 June; and
- (c) for the final Operating Year, the period from the end of the last full Operating Year (as defined in paragraph (b)) to the last Expiry Date.

Option Condition has the meaning given in Schedule 20 or the meaning given in an Asset Lease Side Deed, as the context permits or requires.

Option Notice Service Date has the meaning given in Schedule 20 or the meaning given in an Asset Lease Side Deed, as the context permits or requires.

Option Period has the meaning given in Schedule 20 or the meaning given in an Asset Lease Side Deed, as the context permits or requires.

Option to Lease has the meaning given in Schedule 20 or the meaning given to 'Option to Sublease' in an Asset Lease Side Deed, as the context permits or requires.

Original Reviewable Services Schedule means the tabs named 'service delivery costs', 'performance and data reporting' and 'tailored support coordination' in the Model Output Schedule, which contains the information required under clause 21.1(b).

Outcomes Based Contracting means the linking of a component of the Monthly Service Payment to the achievement of outcomes-focused requirements pursuant to clause 21.

Overdue Rate means ■ per annum above the Bank Bill Rate.

Ownership Schedule means Schedule 14.

Partial Termination has the meaning given in clause 39.1(a)(ii).

Payment Schedule means Schedule 3.

Performance and Data Reporting means the services described in section 6 of the Services Specification as varied or supplemented in accordance with any Variation.

Performance Regime means the regime for Abatement described in the Payment Schedule and Appendix C of the Services Specification.

Personal Information means any "personal information", as defined in the *Privacy Act 1988* (Cth), with respect to current or former Tenants.

Policies means all standards, codes, specifications, policies, requirements, guidelines, procedures, protocols and plans to be complied with in accordance with, and subject to, the terms of this Deed including:

- (a) the standards, codes, specifications, policies, requirements, guidelines, procedures, protocols and plans set out in, or otherwise expressly referred to in, the Services Specification;
- (b) all Approvals (including any conditions or requirements under them);
- (c) all requirements and standards of Authorities; and
- (d) any other policy, guideline, standard, procedure or requirement, which applies in connection with the Service Package:
 - (i) which is notified to ServiceCo;

- (ii) which is publicly available or otherwise available to ServiceCo; or
- (iii) with which ServiceCo is expressly required by the terms of this Deed, by Law or by direction of FACS to comply with,

unless FACS gives notice to ServiceCo that the policy, guideline, standard, procedure or requirement does not constitute a Policy for the purposes of this Deed.

Pollution has the same meaning as in the *Protection of the Environment Operations Act 1997* (NSW).

Preliminary Impact Statement means a preliminary draft of the Final Impact Statement.

Preliminary Procurement Strategy means a preliminary draft of the Final Procurement Strategy.

Preliminary Services Requirements means a preliminary draft of the Final Services Requirements.

Privacy Legislation means the *Privacy Act 1988* (Cth) as amended by the *Privacy Amendment (Private Sector) Act 2000* (Cth), and any other applicable Commonwealth or NSW Government Legislation or guidelines relating to privacy.

Private Housing means those Dwellings on a Site that are not Social Housing or Affordable Housing, including those Dwellings that are indicated as such in the Dwellings Schedule.

Probity Event includes any event or thing which occurs before or after the date of this Deed which:

- (a) has a material adverse effect on, or on the perception of, the character, integrity or honesty of a Group Member, Consortium Member or a Relevant Person;
- (b) relates to a Group Member, Consortium Member or a Relevant Person and has or may have a material adverse effect on the public interest, or public confidence, in the Service Package; or
- (c) involves a material failure of a Group Member, Consortium Member, Relevant Person or any Subcontractor (who is not a Consortium Member) to achieve or maintain:
 - (i) reasonable standards of ethical behaviour;
 - (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of the Group Member, Consortium Member, Relevant Person or Subcontractor (as applicable) to carry out and observe its obligations in connection with the Service Package; or
 - (iii) other standards of conduct that would otherwise be expected of a party involved in a FACS or NSW Government project.

Probity Investigation means any probity, criminal or security investigation to report on or check the character, integrity, experience or honesty of a person or Entity, including:

- (a) investigations into commercial structure, business and credit history, prior contract compliance or any criminal records or pending charges; and
- (b) interviews of any person or research into any relevant activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation.

Program Milestones means each of the milestones (including the Service Readiness Milestones) set out in Schedule 24.

Program Milestones Schedule means Schedule 24.

Programming Requirements means the requirements set out in Schedule 15.

Project Control Group means the group referred to in clause 12.1(a).

Project Information means all Material provided or made available by or on behalf of FACS or its Associates to ServiceCo or its Associates in connection with the Service Package (which is not incorporated into this Deed).

Project-Specific Change in Law means a Change in Law which, by express reference, applies to:

- (a) the Service Package;
- (b) ServiceCo; or
- (c) a Site,

and not to other projects, Entities or sites.

Prolongation Costs means actual additional net incremental Costs incurred, or which will be incurred, by ServiceCo or a Subcontractor that are directly attributable to a delay to the achievement of a Service Readiness Milestone by the relevant Service Readiness Milestone Date caused by:

- (a) a Compensable Relief Event;
- (b) a Variation; or
- (c) Change in Mandatory Requirements the subject of a Variation Order,

but excluding all Base Costs (other than net incremental preliminaries), Financing Delay Costs, Agreed Margin, any other Margin and Costs that are attributable to delay caused by any other Relief Event.

Property Trust means The Uniting Church in Australia Property Trust (NSW) ABN 77 005 284 605.

Proposal means the proposal submitted by ServiceCo in response to the Request for Proposal.

Quarter means each three Month period commencing on a Quarterly Date, save that:

- (a) the first Quarter of the Delivery Phase will be the period from Commercial Close until the day before the first Quarterly Date during the Delivery Phase;
- (b) the last Quarter of the Delivery Phase will be the period from the last Quarterly Date during the Delivery Phase to the Date of Service Readiness;
- (c) the first Quarter of the Service Delivery Phase will be the period from the Date of Service Readiness in respect of the first Stage to achieve Service Readiness until the day before the first Quarterly Date during the Service Delivery Phase; and
- (d) the last Quarter of the Service Delivery Phase will be the period from the last Quarterly Date during the Service Delivery Phase to the Last Expiry Date.

Quarterly Date means every 1 January, 1 April, 1 July and 1 October.

Quarterly Delivery Report means the 'Quarterly Delivery Report' prepared in accordance with the Delivery Phase Plans and Reports Schedule and in the form of Schedule 36.

Quarterly Performance Report has the meaning given in the Services Specification.

Rates means all municipal rates, water rates, sewerage rates, drainage rates and other rates payable to any Authority in connection with the Site or the Relevant Infrastructure.

RCTI has the meaning given to "recipient created tax invoice" in the GST Law.

Recipient has the meaning given in clause 22.8(c)(ii).

Recipient Supply has the meaning given in clause 22.8(e)(i).

Records means comprehensive detailed records and business systems recorded in writing in books or filed in ServiceCo's or its Associate's computer system:

- (a) in respect of the Service Package Activities; and
- (b) in the form and encompassing all information required by FACS from time to time.

Rectification Costs means an amount equal to the aggregate of the reasonable and proper costs incurred by FACS in:

- (a) curing, rectifying or remedying ServiceCo's defaults (including amounts paid by FACS to a Subcontractor under a Side Deed); and
- (b) procuring alternative performance of the Service Package (including any lease payment obligations under a lease entered into by FACS or its nominee pursuant to the Option to Lease) but only to the extent such costs exceed the cost components of the Monthly Service Payment relating to the performance of the Service Package Activities and the insurance, deducted as part of the Transition Services Payment.

Rectification Plan means the plan referred to in clause 5.1(b)(iii).

Registered CHP means an Entity registered under the Community Housing Act as a community housing provider.

Registrar means the person appointed as 'Registrar' under section 10 of the Community Housing Act or the Registrar for a jurisdiction other than New South Wales that is participating in the National Regulatory System.

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Event means any Relief Event, Intervening Event, Change Compensation Event or other event which entitles ServiceCo to:

- (a) relief or suspension from performance of its obligations under a FACS Service Package Document;
- (b) compensation from FACS; or
- (c) bring any other Claim against FACS,

in connection with the Service Package.

Relevant Event Effects means, in respect of a Relief Event, Intervening Event, Variation or Change in Mandatory Requirements:

- (a) the effects of the Relief Event, Intervening Event, Variation or Change in Mandatory Requirements (as the case may be) on:
 - (i) the carrying out of the Service Package Activities and ServiceCo's ability to carry out the Services in accordance with the Services Requirements; and

- (ii) any other relevant part of this Deed, including any amendments required;
- (b) in respect of a Compensable Relief Event, Compensable Intervening Event, Variation or Change in Mandatory Requirements only, any compensation sought by ServiceCo as a consequence of the Compensable Relief Event, Compensable Intervening Event, Variation or Change in Mandatory Requirements (as the case may be) under clause 31; and
- (c) any relief sought by ServiceCo as a consequence of the Relief Event, Intervening Event, Variation or Change in Mandatory Requirements (as the case may be) under clauses 23, 24, 26 or 28 (as the case may be).

Relevant Infrastructure, in respect of a Site, means the whole of the area inside the boundaries of the Site, the physical works, infrastructure and grounds contained within those boundaries, and all equipment owned, leased, licensed or controlled by ServiceCo, which it uses to provide the Services in accordance with this Deed, including any Supporting Infrastructure and any Variations.

Relevant Person means:

- (a) a director or secretary of a Consortium Member;
- (b) a director or secretary of a Group Member;
- (c) the Key People; or
- (d) an officer, agent, adviser, contractor, employee or consultant of a Consortium Member or Subcontractor who:
 - (i) has the ability to exercise influence or control over the decisions or actions of the Consortium Member or Subcontractor in relation to the Service Package other than solely through the exercise of voting rights at a meeting of shareholders or directors of the Consortium Member or Subcontractor;
 - (ii) works on, or at, a Site during a Service Delivery Phase; or
 - (iii) has access to Personal Information and any other Confidential Information which compromises the security of the Relevant Infrastructure.

Relevant Secured Property means the interest of any Group Member in the Service Package Documents, the Sites, the Service Package Dwellings and any other assets required to perform the Service Package Activities.

Relief Event means any of the following events occurring during a Delivery Phase:

- (a) **(Compensable Relief Event):** a Compensable Relief Event;
- (b) **(FACS Act or Omission):** any act or omission of:
 - (i) FACS; or
 - (ii) any Associate of FACS,

in connection with the Service Package, other than any act or omission which is authorised or permitted under a FACS Service Package Document, Policy or Law;

- (c) **(Force Majeure Event):** a Force Majeure Event;

- (d) **(Change in Mandatory Requirements)**: a Change in Mandatory Requirements which occurs in respect of the Relevant Infrastructure, for which FACS has issued a Variation Order in accordance with clause 28;
- (e) **(Variation)**: a Variation for which FACS has issued a Variation Order; and
- (f) **(Key Planning Approval)**: a legal challenge brought about by way of commencement of court proceedings (other than by ServiceCo or its Associates) in relation to a Key Planning Approval except to the extent the legal challenge was in connection with ServiceCo's failure to comply with a Service Package Document or due to a deficiency in the documentation prepared by ServiceCo in connection with obtaining the Key Planning Approval or any failure by ServiceCo to comply with the *Environmental Planning and Assessment Act 1979* (NSW).

Removal Date has the meaning given in clause 33.4(b).

Removed Dwelling has the meaning given in clause 33.4(b).

Reputable Insurer means an insurance company having the Required Rating.

Request for Proposal means the Request for Proposal for the Service Package issued by FACS on 31 May 2018.

Required Rating means a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc. (or such other credit rating as FACS may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc., an equivalent rating with another reputable rating agency (as FACS may approve in writing).

Residential Tenancy Agreement has the meaning given in section 13 of the *Residential Tenancies Act 2010* (NSW).

Responsible Entity has the meaning given in the Corporations Act.

Retained Social Housing Tenant means a Social Housing Tenant who has subsequently been assessed as ineligible for Social Housing rent subsidy in accordance with section 4.7 of the Services Specification and has been classified as such in accordance with that section.

Review Period has the meaning given in clause 10(c).

Reviewable Services means:

- (a) Tailored Support Coordination Services; and
- (b) Performance and Data Reporting,

and **Reviewable Service** means one of them.

Reviewable Services Date means:

- (a) the third anniversary of the Service Commencement Date with respect to the final Stage to achieve Service Readiness; and
- (b) thereafter every three years or part thereof until the last Final Expiry Date.

Reviewable Services Plan means the Service Delivery Phase Plan of that name.

Reviewable Services Schedule means the Original Reviewable Services Schedule updated under clause 21.1(c).

Reviewable Services Tender Expiry Date means one Month after the expiry of the then current Reviewable Services Term.

Reviewable Services Term means each of the following periods:

- (a) the period commencing on the Service Commencement Date of the final Stage to achieve Service Readiness and ending on the day prior to the third anniversary of that date; and
- (b) the period or part thereof which occurs every three years thereafter until the last Final Expiry Date,

unless otherwise changed by agreement between the parties.

Savings means:

- (a) the amount of any Costs of ServiceCo or a Subcontractor, together with the relevant Agreed Margin and Margin avoided or otherwise reduced in accordance with this Deed arising in connection with a Change Compensation Event; and
- (b) Net Additional Funding.

Secured Finance Document means a Finance Document in respect of which the obligations of the relevant Group Members are secured by a Security Interest over the Relevant Secured Property.

Securities means shares, units, interests in a partnership, and any other interests, which would constitute 'securities' as defined under the Corporations Act.

Security Interest means any mortgage, pledge, lien, encumbrance, assignment, charge or any security or preferential interest or arrangement of any kind and includes:

- (a) a 'security interest' as defined in section 12 of the *Personal Property Securities Act 2009* (Cth);
- (b) anything which gives a creditor priority to other creditors with respect to any asset; and
- (c) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

ServiceCo Act or Omission means:

- (a) a breach of this Deed by ServiceCo; or
- (b) any other act or omission of ServiceCo or its Associates other than an act or omission undertaken in accordance with the Service Package Documents and not undertaken fraudulently, recklessly, unlawfully, negligently or maliciously.

ServiceCo Augmentation Material means

- (a) all material disclosed or otherwise provided by or on behalf of ServiceCo to FACS which is connected with an Augmentation (or any related development) or the involvement of a person with an Augmentation; and
- (b) all material prepared or created by or on behalf of ServiceCo in connection with an Augmentation (or any related development) in the possession or control of ServiceCo,

whether or not the Augmentation proceeds.

ServiceCo Costs means the net incremental Costs incurred by ServiceCo that are directly attributable to implementing the relevant Change Compensation Event, but excluding all Agreed Margins, Prolongation Costs, Financing Delay Costs, costs of project management services provided by ServiceCo, Delivery Costs and Service Delivery Costs.

ServiceCo Margin means [REDACTED]

ServiceCo Material means:

- (a) the Delivery Phase Plans and the Quarterly Delivery Report;
- (b) the Service Delivery Phase Plans;
- (c) any ServiceCo Augmentation Material; and
- (d) all other Material which ServiceCo or any of its Associates (other than any Lessors) prepares, uses and provides to FACS or any of its Associates in connection with the Service Package whether before or after the date of this Deed.

Service Commencement Date means, in respect of each Stage, the day after the Date of Service Readiness.

ServiceCo Representative means the person identified in the Contract Particulars subject to replacement or delegation in accordance with clause 11.3.

Service Delivery Costs means the net incremental Costs a Key Subcontractor incurs in performing the Services that are directly attributable to implementing the relevant Change Compensation Event during a Service Delivery Phase (of either a one off or recurrent nature), but excluding all Agreed Margin, Prolongation Costs, Financing Delay Costs, Delivery Costs and ServiceCo Costs.

Service Delivery Margin means [REDACTED]

Service Delivery Phase means:

- (a) in respect of a Service Package Dwelling, the period beginning on the relevant Service Commencement Date and ending on the date which is the Final Expiry Date for that Service Package Dwelling; or
- (b) for the purposes of the definitions of Operating Month, Operating Year and Quarter and clauses 19.1, 21.9(c), 22.1, 38.3(c) and 50.1(b) only, the period beginning on the Service Commencement Date in respect of the first Stage to achieve Service Readiness and ending on the Final Expiry Date of the last Service Package Dwelling to achieve Service Readiness.

Service Delivery Phase Plans means each of the plans described in the Service Delivery Phase Plans Schedule.

Service Delivery Phase Plans Schedule means Schedule 17.

Service Failure has the meaning given in the Payment Schedule.

Service Package means:

- (a) the performance of the Service Package Activities including:
 - (i) financing the Service Package Activities; and
 - (ii) performing the Services; and
- (b) the performance of all other obligations,

in accordance with, or as contemplated by, any Service Package Document, or incidental to any Service Package Document.

Service Package Activities means all works, things and tasks that ServiceCo is, or may be, required to do to comply with its obligations in connection with the FACS Service Package Documents, including the Delivery Phase Activities and the Services.

Service Package Documents means:

- (a) this Deed;
- (b) any Financiers' Tripartite Deed;
- (c) each Key Subcontract;
- (d) each Side Deed;
- (e) the Equity Documents;
- (f) the Deed of Indemnity;
- (g) the DAB Accession Deed Poll;
- (h) the DAB Agreement;
- (i) any Augmentation Documents; and
- (j) any other document the parties agree is a Service Package Document.

Service Package Dwelling or **SP Dwelling** means a Dwelling located or to be located on a Site and in respect of which Services are (or will be) undertaken.

Service Package Objectives means the objectives of the Service Package included in the Contract Particulars.

Service Provision Performance Incident has the meaning given in the Payment Schedule.

Service Readiness means, in respect of a proposed Stage, when all the Service Readiness Criteria for that proposed Stage have been met to the satisfaction of FACS (acting reasonably).

Service Readiness Criteria means the criteria for service readiness described in Schedule 8.

Service Readiness Milestones means the Program Milestones described as such in the Program Milestones Schedule.

Service Readiness Milestone Dates means the dates described as such in the Program Milestones Schedule, as updated in accordance with this Deed.

Service Readiness Outstanding Item means any act, matter, state of affairs or thing that is required in accordance with this Deed to have been performed, achieved, undertaken, provided or completed by ServiceCo as at Service Readiness which has not been so performed, achieved, undertaken, provided or completed by ServiceCo, unless FACS has determined (acting reasonably), that such act, matter, state of affairs or thing (or the cumulative impact of multiple acts, matters, state of affairs or things) is likely to prevent:

- (a) ServiceCo from delivering the Services in accordance with the Services Specification;
- (b) ServiceCo being a Registered CHP; or
- (c) compliance with the National Regulatory System.

Service Readiness Schedule means Schedule 8.

Services means:

- (a) the services referred to in the Services Specification to be undertaken by ServiceCo during a Service Delivery Phase including:
 - (i) Accommodation Services;
 - (ii) Asset Management Services;
 - (iii) Performance and Data Reporting;
 - (iv) Tailored Support Coordination Services; and
 - (v) Tenancy Management Services; and
- (b) all other things ServiceCo is, or may be, required to provide or undertake during a Service Delivery Phase to comply with the Services Requirements or Service Package Documents,

in each case as modified in accordance with this Deed.

Services Brief, for an Augmentation, means an Initial Services Brief or a Final Services Brief (as the context requires).

Services Requirements means the requirements for the provision of the Services as set out in:

- (a) the Services Specification;
- (b) the Bid Services Deliverables; and
- (c) the remainder of this Deed.

Services Specification means Schedule 18, as may be amended from time to time in accordance with this Deed.

Side Deed means, where the context permits:

- (a) each Head Lease Side Deed;
- (b) each Asset Lease Side Deed; and
- (c) any Subcontract Side Deed executed in accordance with clause 14.3(c).

Site means a site identified in sections 2 to 4 of the Dwellings Schedule.

Site Conditions means any physical conditions on, above, under, or over the surface, or in the vicinity of a Site, including:

- (a) **(water and gas)**: ground gases, ground water, ground water hydrology, surface water, water quality, salinity, the existence of any wells and the effects of any de-watering;
- (b) **(physical structures)**: physical and structural conditions above, upon and below the ground including any infrastructure, partially completed structures, Artefacts or in ground works;
- (c) **(vegetation)**: pastures, grasses or other vegetation on the Site;
- (d) **(topography)**: topography, ground surface and sub-surface conditions and geology including rock or other materials;

- (e) **(climate)**: climatic and weather conditions, rain, surface water run-off and drainage, water seepage, wind, wind-blown dust and sand seasons, mud and other effects of climatic and weather conditions;
- (f) **(Contamination)**: any Contamination;
- (g) **(Pollution)**: any Pollution;
- (h) **(physical conditions)**: all other physical conditions and characteristics of, or in the vicinity of the Site, on or below the surface which may affect ServiceCo's ability to carry out its obligations in accordance with this Deed; and
- (i) **(Adverse Rights)**: all Adverse Rights over or in connection with the Site.

Site Selection Strategy means Schedule 22.

Social Housing means those Service Package Dwellings which are made available to Social Housing Tenants.

Social Housing Tenant means a household which meets the social housing eligibility criteria outlined in the 'FACS Eligibility for Social Housing Policy' and has the right to occupy a Dwelling under a Residential Tenancy Agreement and where the context requires, any such household which has been allocated a Service Package Dwelling in accordance with the Services Specification.

Solvent has the meaning given in the Corporations Act.

Specific Cohort has the meaning given in the Services Specification.

Stage means each stage formed in accordance with clause 17.9(a) as set out in section 3 of the Dwellings Schedule.

Subcontract means an agreement which:

- (a) ServiceCo enters into with a Subcontractor; or
- (b) a Subcontractor enters into with another Subcontractor,

in connection with the Service Package Activities, including each Lease.

Subcontract Side Deed means a direct deed substantially in the form set out in Schedule 21.

Subcontractor means:

- (a) any person (excluding a Tenant) who enters into a contract in connection with the Service Package Activities with ServiceCo or any Key Subcontractor; or
- (b) for the purposes of the definition of Relevant Person and Probity Event and clauses 14.2(b), 14.4(a) and 14.4(b), only, any person whose Subcontract is in connection with the Service Package Activities and is in a chain of contracts where the ultimate contract is with ServiceCo or any Key Subcontractor.

Submitted Document means any document required to be submitted for review in accordance with clause 10.

Substituted New Dwelling means a Dwelling on a site listed in section 3 of the Dwellings Schedule.

Suitable Substitution Accommodation means alternative permanent accommodation that:

- (a) has, subject to clause 20(d), the same number of bedrooms as the Service Package Dwelling it is replacing;

- (b) complies with:
 - (i) the Services Specification;
 - (ii) the Design Requirements;
 - (iii) the Site Selection Strategy;
 - (iv) this Deed; and
 - (v) paragraphs 2 and 6 of item 2 and item 3 of the Service Readiness Criteria, with respect to any accommodation used in substitution of any Service Package Dwellings during a Service Delivery Phase in accordance with clause 20;
- (c) is not currently used for the provision of Social Housing or Affordable Housing; and
- (d) has not been constructed, acquired or refurbished using, or otherwise the subject of, Additional Funding.

Sunset Date means:

- (a) in the context of an event described in paragraph (a) of the definition of Major Default, to the extent that event is a failure to achieve a Service Readiness Milestone by the relevant Service Readiness Milestone Date, the date that is 24 Months from that Service Readiness Milestone Date;
- (b) in the context of a Major Default which occurs during the Delivery Phase (other than a Major Default described in paragraph (a) of this definition), the last day of the period referred to in clause 37.3(d)(i) applicable to the Major Default; or
- (c) in the context of a Major Default which occurs during the Service Delivery Phase, the last day of the period referred to in clause 37.3(d)(iii) applicable to the Major Default,

as adjusted by any extension deemed under clause 23.11.

Supplier has the meaning given in clause 22.8(c).

Supporting Infrastructure means, in respect of a Site, the amenities and supporting infrastructure that:

- (a) ServiceCo owns or controls or will own or control and will make available to Tenants in connection with the Service Package; and
- (b) is external but is to be provided to a Site by ServiceCo or its Associates and which is used in common with other users, including roads, footpaths, transport facilities and any Utility Infrastructure external to a Site,

including as specified in the Dwellings Schedule.

Tailored Support Coordination Services means the services described in section 5 of the Services Specification, as varied or supplemented in accordance with any Variation.

Tax or Taxes means any present or future tax, levy, impost, rate, charge, fee, deduction or withholding of any nature, imposed or levied by an Authority, FACS, the NSW Government or the Commonwealth, together with any interest, penalty, charge, fee or other amount imposed or made on, or in connection with, any of the foregoing, but excluding any Rates.

Tax Invoice has the meaning given in the GST Law.

Taxable Supply has the meaning given in the GST Law, excluding section 84-5 of the GST Act.

Temporary Dwelling means a SP Dwelling on a Site:

- (a) listed in section 2 of the Dwellings Schedule; and
- (b) described as having the dwelling type 'temporary dwelling'.

Tenancy means the occupation of a Service Package Dwelling under a Residential Tenancy Agreement.

Tenancy Management Services means the services described in section 4 of the Services Specification, as varied or supplemented in accordance with any Variation.

Tenant means any:

- (a) Social Housing Tenant; and
- (b) Affordable Housing Tenant.

Term means the term of this Deed:

- (a) commencing in accordance with clause 4.1; and
- (b) ending on the Expiry Date.

Termination Bond means a bond or bank guarantee which:

- (a) is unconditional, irrevocable and payable on demand;
- (b) is issued by a financial institution that is the holder of a current licence issued by APRA and has the Required Rating;
- (c) specifies a location in Sydney (or any other place that FACS approves) where demand is to be given and payment made, without further confirmation from the issuer, on any Business Day;
- (d) is governed by and to be construed according to the Laws applying in New South Wales;
- (e) is, where required, duly stamped; and
- (f) is otherwise on terms and in a form acceptable to FACS, acting reasonably.

Termination Payment means a termination payment calculated in accordance with the Termination Payments Schedule.

Termination Payment Date means the date determined in accordance with section 3.1 of the Termination Payment Schedule.

Termination Payments Schedule means Schedule 6.

Total Equity means the line item entitled 'total equity' in the consolidated business analysis section of the relevant Financial Performance Report.

Transition Services Payment means, in respect of a Service Package Dwelling, for the whole or any part of an Operating Month or Operating Months during the period set out in clause 38.4(d), an amount equal to the Monthly Service Payment which would have been payable but for the operation of 38.3(d)(ii), less an amount equal to the aggregate of (without double counting):

- (a) all cost components of the Monthly Service Payment relating to the performance of the Service Package Activities that are not being provided; and
- (b) any Rectification Costs incurred by FACS during the Operating Month (or part thereof) to which the Transition Service Payment relates.

Updated Dwellings Schedule has the meaning given in clause 17.9.

Utility means any utility service, including water, electricity, gas, telephone, drainage, sewerage, stormwater, communications and data services (including telephone, facsimile and internet access).

Utility Infrastructure means any part of the supply, distribution or reticulation network owned, operated or controlled by a Utility provider, including poles, pipes, pipeline, cables, wires, conduits, tunnels, aqueduct, electrical installation, telecommunications plant, water channel, and railway and electronic communications systems, but not including any part of the Relevant Infrastructure.

Utility Interruption means any one or more Utilities not being available for use at a Site (at all or in the necessary quantity).

Variation means:

- (a) a change to the Services Requirements or the Services; or
- (b) in the period prior to the Service Commencement Date, a change to the Relevant Infrastructure or the Design Requirements,

but excluding:

- (c) any change referred to in paragraphs (a) or (b) which is required to ensure that the Relevant Infrastructure or the Services are otherwise in accordance with this Deed;
- (d) the updating of the Dwellings Schedule in accordance with clause 17.9;
- (e) substitution of a Service Package Dwelling identified in the Dwellings Schedule with a new Dwelling in accordance with clause 20; and
- (f) any Augmentation.

Variation Order means a notice entitled "Variation Order" issued in accordance with clause 26.3(c)(iii) or 28(c), requiring ServiceCo to proceed with the relevant Variation or comply with the Change in Mandatory Requirements (as applicable).

Variation Proposal has the meaning given in clause 26.2.

Variation Request has the meaning given in clause 26.1(a).

Voluntary Termination means the termination of this Deed pursuant to clause 38.2.

Voluntary Termination Payment means the payment calculated in accordance with section 5 of the Termination Payments Schedule.

WHS Act means the *Work Health and Safety Act 2011* (NSW).

WHS Legislation means Legislation relating to health and safety at work including:

- (a) the WHS Act; and
- (b) the WHS Regulation,

and includes industry codes of practice, safety standards, handbooks and guidelines about work, health and safety in place from time to time.

WHS Management Plan means the Delivery Phase Plan of that name.

WHS Regulation means the *Work Health and Safety Regulation 2017* (NSW).

Year 1 Dwelling means each Service Package Dwelling comprised in the first [redacted] Service Package Dwellings to achieve Service Readiness.

Year 2 Dwelling means each Service Package Dwelling comprised in the [redacted] Service Package Dwellings to achieve Service Readiness after the Year 1 Dwellings achieved Service Readiness.

Year 3 Dwelling means each Service Package Dwelling comprised in the [redacted] Service Package Dwellings to achieve Service Readiness after the Year 1 Dwellings and Year 2 Dwellings have achieved Service Readiness.

Zoning means, in respect of a Dwelling, the zoning described for that Dwelling as set out in the 'Zoning' column of the table in section 2 or 3 (as relevant) of the Dwellings Schedule.

2. General rules of interpretation

2.1 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to:
- (i) a party, clause, Schedule, Exhibit or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Deed; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;

- (h) **(Policies)**: a reference to a Policy means:
- (i) in the case of a Policy in existence as at the date of this Deed, the version of that Policy stated in this Deed, or if no version is stated, the current version as at the date of this Deed; or
 - (ii) in the case of new Policy which is introduced after the date of this Deed, the current version as at the date such Policy is introduced,
- in each case, as amended or updated from time to time but in all cases excluding any new Policy or amended Policy which FACS notifies or directs ServiceCo under clause 28(c) that ServiceCo is not required to comply with;
- (i) **(definitions)**:
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
 - (ii) unless the context otherwise requires, terms which are defined in a Schedule of this Deed have the same meaning throughout this Deed (including the Schedules and Annexures to it);
- (j) **('includes')**: 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';
- (k) **('or')**: the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) **('\$')**: a reference to '\$', AUD or dollar is to Australian currency;
- (n) **(Business Day)**: if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (o) **(day)**: except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;
- (p) **(time)**: a reference to time is a reference to time in Sydney, Australia;
- (q) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) **(function)**: a function includes a power, authority or duty;
- (s) **(obligations and liabilities)**: a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) **('may')**: except to the extent that FACS is expressly required under this Deed to act reasonably:
- (i) in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by FACS, means that FACS can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to ServiceCo) and FACS has no obligation to do so; and

- (ii) FACS may consent or grant any approval as FACS (in its absolute and unfettered discretion (and without regard to ServiceCo)) thinks fit or may be given subject to any conditions;
- (u) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (v) **(asset)**: references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (w) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and
- (x) **(Delivery Phase Program)**: a reference to the Delivery Phase Program is a reference to the most recent Delivery Phase Program that has been reviewed and not rejected in accordance with clause 10(e).

2.2 Composition of this Deed and order of precedence

- (a) **(Deed composition)**: This deed comprises:
 - (i) clauses 1 to 55;
 - (ii) Schedule 1 to Schedule 37; and
 - (iii) Annexure A to Annexure D,
 (the **Deed**).
- (b) **(Annexures)**: ServiceCo agrees that to the extent that an Annexure seeks to impose any obligations on FACS, ServiceCo will not be entitled to make any Claim against FACS in respect of that obligation (unless that same obligation is expressly imposed on FACS in a clause or Schedule).
- (c) **(Notification of ambiguity)**: If either party identifies an inconsistency, ambiguity or discrepancy within this Deed, then that party must notify the other party of the inconsistency, ambiguity or discrepancy as soon as possible and, in any case not later than five Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.
- (d) **(Resolution of ambiguity)**: Within 15 Business Days after:
 - (i) in the case of a notice from ServiceCo under clause 2.2(c), FACS' receipt of ServiceCo's notice pursuant to clause 2.2(c); or
 - (ii) in the case of a notice from FACS, the date of FACS' notice pursuant to clause 2.2(c),

FACS will direct ServiceCo as to how to resolve the inconsistency, ambiguity or discrepancy which is the subject of the notice given under clause 2.2(c) as follows:

- (iii) **(order of precedence)**: if the relevant inconsistency, ambiguity or discrepancy is within a document forming part of this Deed, and there is a process for resolving such inconsistencies, ambiguities and discrepancies contained in the relevant document, then, in accordance with that process; or
- (iv) **(higher standard)**: if the inconsistency, ambiguity or discrepancy is between documents forming part of this Deed or is within a document that forms part of this Deed but does not have a process for resolving the inconsistency, ambiguity or discrepancy, then FACS will direct ServiceCo to adopt the option FACS requires ServiceCo to proceed with, which may be the greater, more onerous to ServiceCo or higher requirement, standard, quality, level of service, staffing level, quantum or scope as determined by FACS.
- (e) **(Inconsistency between Policies)**: Without limiting the remainder of this clause 2.2, to the extent there is any inconsistency, ambiguity or discrepancy between the Policies which ServiceCo is required to comply with pursuant to this Deed, the standards, codes, specifications, policies and requirements set out in paragraphs (a), (b) and (c) of the definition of Policies will prevail over the standards, codes, specifications, policies and requirements referred to in paragraph (d) of that definition.
- (f) **(Inconsistency between FACS Service Package Documents)**: If there is an ambiguity, discrepancy or inconsistency between this Deed and any other FACS Service Package Document, then the following order of precedence will apply:
 - (i) the Financiers' Tripartite Deed;
 - (ii) this Deed; and
 - (iii) the remaining FACS Service Package Documents.

2.3 Plans, reports and procedures

A reference to any Delivery Phase Plan, the Quarterly Delivery Report, Service Delivery Phase Plan or Service Delivery Phase Report is a reference to that Delivery Phase Plan, Quarterly Delivery Report, Service Delivery Phase Plan or Service Delivery Phase Report as amended or updated from time to time under this Deed.

2.4 Version of documents with which ServiceCo must comply

Where ServiceCo is required to comply with a document, and that document or any update of that document is required to be submitted for review in accordance with clause 10, ServiceCo must comply with the version of the document that has been submitted, reviewed and amended (if applicable) in accordance with clause 10.

2.5 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

2.6 Prior approval or consent

Where ServiceCo is required by this Deed to obtain FACS' or the FACS Representative's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the action, document or thing occurring or coming into effect.

2.7 Action without delay

Unless there is a provision in this Deed, which specifies a period of time in which ServiceCo must do something, all things must be done by ServiceCo without undue delay.

2.8 Provisions limiting or excluding Liability, rights or obligations

- (a) **(Other rights not excluded):** A right or obligation of FACS or ServiceCo under this Deed will not limit or exclude any other right or obligation of FACS or ServiceCo under this Deed unless expressly stated.
- (b) **(Liability only excluded to the extent permitted by Law):** Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

2.9 Relationship of the parties

Nothing in this Deed or any other Service Package Document:

- (a) **(No additional relationship):** creates a partnership, joint venture, fiduciary, employment or agency relationship between FACS and:
 - (i) ServiceCo; or
 - (ii) any of ServiceCo's Associates; or
- (b) **(No good faith):** imposes any duty of good faith on FACS (unless otherwise expressly provided).

2.10 FACS' executive rights, duties and functions

- (a) **(FACS' own interests):** Unless otherwise expressly provided in FACS Service Package Documents, nothing in FACS Service Package Documents gives rise to any duty on the part of FACS to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations in accordance with FACS Service Package Documents.
- (b) **(FACS' rights):** Notwithstanding anything expressly provided or implied in FACS Service Package Documents to the contrary, the parties acknowledge and agree that:
 - (i) FACS and its Associates are not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other government party in the proper exercise and performance of any of its executive or statutory rights or duties; and
 - (ii) nothing expressly provided or implied in FACS Service Package Documents has the effect of constraining FACS or any of its Associates, placing any fetter on FACS' or any of its Associates' discretion to exercise or not to exercise any of its executive or statutory rights or duties.
- (c) **(No Claim):** Subject to clause 2.10(d), ServiceCo will not be entitled to make any Claim against FACS or any of its Associates for any Liability relating to any exercise or failure of FACS or any of its Associates to exercise any of its executive or statutory rights or duties.
- (d) **(Liability for breach):** Clauses 2.10(a) to 2.10(c) (inclusive) do not limit any Liability which FACS would have had to ServiceCo under any FACS Service Package Document as a result of a breach by FACS of a term of any FACS Service Package Document but for those clauses.

2.11 Reasonable endeavours and obligations to act in good faith

Any statement in a FACS Service Package Document providing that FACS (or any officer or agent of FACS) will use or exercise 'reasonable endeavours', 'act reasonably' or 'act in good faith' in relation to an outcome, means that FACS (or any officer or agent of FACS) will take steps so far as it is reasonably able to do so, having regard to its resources and other responsibilities but:

- (a) **(no guarantee)**: does not guarantee the relevant outcome will be brought about; and
- (b) **(no obligation)**: is not required to:
 - (i) exercise a right of any government party, or to influence, over-ride, interfere with or direct any other government party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (ii) exercise a power or discretion or otherwise act in a manner that FACS (or the officer or agent of FACS) regards as not in the public interest;
 - (iii) develop or implement new policy or a change in policy;
 - (iv) procure any new Legislation or a change in Legislation; or
 - (v) act in any way that FACS (or the officer or agent of FACS) regards as not in the public interest.

2.12 No FACS liability for review

- (a) **(No obligation)**: FACS does not owe any duty of care to ServiceCo (or any duty of care to ServiceCo to procure that any of the Associates of FACS) to:
 - (i) review ServiceCo Material submitted by ServiceCo (including any Submitted Documents); or
 - (ii) inspect or review the Service Package Activities or the Relevant Infrastructure,for defects, other errors or omissions or for compliance with FACS Service Package Documents or any Laws or Policies.
- (b) **(No relief)**: No:
 - (i) review of, comment upon, acceptance, approval, certification of, endorsement, rejection of or failure to comment upon any ServiceCo Material by FACS or its Associates;
 - (ii) inspection or review of the Service Package Activities or the Relevant Infrastructure by FACS; or
 - (iii) failure by (or on behalf of) FACS or its Associates, to detect any non-compliance by ServiceCo with its obligations in accordance with FACS Service Package Documents or any Laws or Policies;will:
 - (iv) relieve ServiceCo from, or alter or affect, ServiceCo's Liabilities, obligations or responsibilities whether in accordance with FACS Service Package Documents or otherwise according to Law;

- (v) evidence or constitute the grant of an extension of time, or a request or direction to accelerate, disrupt, prolong or vary any or all of the Service Package Activities;
 - (vi) prejudice FACS' rights against ServiceCo whether under FACS Service Package Documents or otherwise according to Law; or
 - (vii) constitute an approval by FACS of ServiceCo's performance of its obligations in accordance with FACS Service Package Documents.
- (c) **(No Claim):** ServiceCo will not be entitled to make any Claim against FACS, whether under this Deed or at Law, for any Liabilities incurred by ServiceCo in connection with any review, comment or failure to comment on, acceptance, approval, certification of, endorsement or rejection of, any ServiceCo Material (including any Submitted Documents).

2.13 Indexation

- (a) **(Indexed amounts):** All amounts required to be adjusted under this Deed by an Index will be Indexed in accordance with the Indexes Schedule.
- (b) **(Changes to indexes):** Any changes to Indexes will be calculated in accordance with the Indexes Schedule.

2.14 Cost of carrying out obligations

- (a) **(Costs to perform):** Each party must carry out its obligations under this Deed at its own cost, unless expressly provided otherwise.
- (b) **(Negotiation costs):** Except as otherwise expressly provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

2.15 Exclusion of Civil Liability Act 2002 (NSW)

- (a) **(Excluded operation of Civil Liability Act):** To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002 (NSW)* is excluded in relation to any and all rights, obligations and Liabilities arising under or in relation to this Deed, howsoever those rights, obligations or Liabilities are sought to be enforced.
- (b) **(Subcontracts must exclude operation of Civil Liability Act):** ServiceCo must procure that each Subcontract includes provisions that, to the extent permitted by Law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002 (NSW)* in relation to all rights, obligations or Liabilities arising under or in relation to that Subcontract howsoever such rights, obligations or Liabilities are sought to be enforced.

2.16 Final and binding

Where a determination, decision, opinion or direction is said in this Deed on any basis to be 'final and binding', neither party is entitled to challenge that decision, opinion or direction.

2.17 Governing Law

This Deed is governed by, and must be construed according to, the Laws of New South Wales, Australia.

2.18 Entire agreement

To the extent permitted by Law and in relation to their subject matter, this Deed and the other FACS Service Package Documents:

- (a) **(entire understanding)**: embody the entire understanding of the parties and constitute the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersede any prior agreement of the parties.

2.19 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Deed.

2.20 ServiceCo and its Associates

Any obligation of ServiceCo under a FACS Service Package Document is deemed to include an obligation on ServiceCo to ensure that each of its Associates assume and comply with a corresponding obligation to the extent that the obligation is applicable to that Associate of ServiceCo under any Law or a Service Package Document or Subcontract to which that Associate is a party.

2.21 Survival of certain provisions

- (a) **(Surviving clauses)**: All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
 - (i) FACS' rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) any obligation to make any Accounts and Records available to FACS;
 - (iv) any indemnity or financial security given in accordance with this Deed;
 - (v) the Performance Regime;
 - (vi) any limitation or exclusion of Liability; and
 - (vii) any right or obligation arising on termination of this Deed, including an Option to Lease.
- (b) **(Interpretation)**: No provision of this Deed which is expressed to survive the termination of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.
- (c) **(Survival of rights and obligations)**: No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document, which implements any transaction under this Deed.

2.22 Waiver

- (a) **(Writing)**: A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in, or the partial exercise or enforcement of, a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.

- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

2.23 Severance

If, at any time, a provision of this Deed or any other FACS Service Package Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed or any other relevant FACS Service Package Document; or
- (b) that provision under the Law of any other jurisdiction.

2.24 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

2.25 Moratorium legislation

A provision of any Law which comes into effect after the date of this Deed and operates to:

- (a) increase or improve any of ServiceCo's rights, powers or remedies under this Deed or otherwise; or
- (b) prejudicially affect the exercise by FACS of any right, power or remedy under this Deed or otherwise,

(each matter referred to in paragraph (a) or (b), a "**Specified Effect**") is, to the extent only that the Law has the Specified Effect, expressly waived by ServiceCo to the extent it is legally able to do so. If a waiver is ineffective the parties will consult in good faith to determine how the parties can be restored to their original positions under this Deed.

2.26 Community housing agreement

- (a) The parties agree that this Deed is a 'community housing agreement' under and for the purposes of section 16 of the Community Housing Act.
- (b) The parties agree that under and for the purposes of section 18(1)(c) of the Community Housing Act, that section 18 of the Community Housing Act does not apply to any Site.

2.27 Ipso facto

The parties intend and agree that, for the purposes of the Corporations Amendment (Stay on Enforcing Certain Rights) Regulations (No.2) 2018 (Cth) and any successor or replacement Law, this Deed is a contract for the supply of essential or critical goods or services to the State of New South Wales or the public on behalf of the State of New South Wales.

Part B - Service Package commencement

3. Conditions Precedent

3.1 Commencement

(a) This Deed will only come into force and effect (but will do so automatically on the date) when the last of the Conditions Precedent to be satisfied, has been satisfied, (or waived in accordance with clause 3.3) except for the provisions contained in:

- (i) clause 1 (Definitions);
- (ii) clause 2.1 (Interpretation);
- (iii) clause 2.9 (Relationship of the parties);
- (iv) clause 2.10 (FACS' executive rights, duties and functions);
- (v) clause 2.11 (Reasonable endeavours and obligations to act in good faith);
- (vi) clause 2.12 (No FACS Liability for review);
- (vii) clause 2.17 (Governing Law);
- (viii) this clause 3 (Conditions Precedent);
- (ix) clause 4 (Term);
- (x) clause 6.3 (All Risks);
- (xi) clauses 11.2 and 11.3 (Parties' representatives);
- (xii) clause 25 (Reduction in FACS' liability for Relevant Events);
- (xiii) clause 22.9 (Additional Funding);
- (xiv) clause 34 (Indemnities and Consequential or Indirect Loss);
- (xv) clause 40 (Dispute resolution);
- (xvi) clause 44 (Representations and warranties);
- (xvii) clause 47 (Assignment and amendments);
- (xviii) clause 48 (Change in Control);
- (xix) clause 49.1 (Updating the Base Case Financial Model at Commercial Close);
- (xx) clause 51 (Intellectual Property Rights);
- (xxi) clause 52 (Confidential Information and disclosure);
- (xxii) clause 53 (Probity Events and Probity Investigations); and
- (xxiii) clause 54 (Notices and bar to Claims),

which will commence on the date of this Deed.

3.2 Satisfaction of Conditions Precedent

- (a) **(Conditions Precedent Schedule)**: The Conditions Precedent Schedule sets out each Condition Precedent that ServiceCo must satisfy.
- (b) **(ServiceCo to satisfy)**: ServiceCo must satisfy each Condition Precedent in the Conditions Precedent Schedule (or procure its waiver in accordance with clause 3.3) by the Condition Precedent Deadline and must notify FACS as each Condition Precedent is satisfied.
- (c) **(Notice at Commercial Close)**: When the last Condition Precedent to be satisfied has been satisfied or waived, FACS must confirm by notice to ServiceCo that every Condition Precedent has been satisfied or waived, and the date upon which the last of the Conditions Precedent was satisfied or waived.

3.3 Waiver of Conditions Precedent

A Condition Precedent is only waived if FACS gives notice of the waiver of the Condition Precedent to ServiceCo.

3.4 Failure to satisfy by the Condition Precedent Deadline

If any Condition Precedent is not satisfied (or waived in accordance with clause 3.3) by the Condition Precedent Deadline, then:

- (a) **(option to terminate)**: FACS may terminate this Deed upon giving not less than five Business Days' notice to ServiceCo;
- (b) **(FACS Service Package Documents terminated)**: if FACS terminates this Deed in accordance with clause 3.4(a), each of FACS Service Package Documents will be taken to have been terminated at the time this Deed is terminated and will be of no further force or effect; and
- (c) **(no claim)**: neither party will have any Claim against the other party arising out of or in connection with the Service Package or the Service Package Documents, including due to the failure to satisfy (or procure the waiver of) a Condition Precedent, except in respect of antecedent breaches of the clauses listed in clause 3.1.

3.5 Model Output Schedule

- (a) **(Model Output Schedule)**: The parties acknowledge that the Commercial Close Financial Model will contain the Model Output Schedule.
- (b) **(Conformed copies)**: As soon as practicable after Commercial Close, the parties will prepare conformed copies of the Service Package Documents incorporating relevant data derived from the Model Output Schedule.

4. Term

4.1 Commencement date

Subject to clause 3.1, this Deed commences on the date of this Deed.

4.2 Expiry Date

This Deed will terminate, in respect of each Service Package Dwelling, on the relevant Final Expiry Date unless terminated earlier, in which case this Deed will expire on the date of such earlier termination (in each case an **Expiry Date**).

5. Credit support

5.1 Amended Quick Ratio and Total Equity

- (a) Without limiting section 4.2 of the Service Delivery Phase Plans Schedule, ServiceCo must provide to FACS:
- (i) a copy of each Financial Performance Report submitted by ServiceCo to the Registrar within one Business Day of submitting that report to the Registrar; and
 - (ii) from the earlier of the third anniversary of Commercial Close or the Date of Service Readiness of the final Stage, concurrently with the report referred to in clause 5.1(a)(i), a written statement certifying:
 - A. the Amended Quick Ratio based on the Financial Performance Report referred to in clause 5.1(a)(i);
 - B. Total Equity set out in the Financial Performance Report referred to in clause 5.1(a)(i); and
 - C. Total Equity set out in the Financial Performance Report for the year of Commercial Close,**(Financial Performance Report Metrics Statement).**
- (b) If:
- (i) ServiceCo does not or is unable to provide a Financial Performance Report Metrics Statement in accordance with clause 5.1(a)(ii) or is late in submitting any Financial Performance Report to the Registrar; or
 - (ii) a Financial Performance Report Metrics Statement demonstrates:
 - A. ServiceCo's Total Equity in the relevant year has reduced by ██████ or more compared with Total Equity in the year of Commercial Close; or
 - B. the Amended Quick Ratio has not met the Amended Quick Ratio Threshold,**(or both, as the case may be) (Non-Compliant Metrics),**
- then:
- (iii) ServiceCo must provide FACS with a rectification plan indicating how and when it will satisfy the Non-Compliant Metrics (**Rectification Plan**) and implement that plan; and
 - (iv) FACS may, in its absolute discretion, by notice to ServiceCo:
 - A. require ServiceCo to provide to FACS a Termination Bond in favour of FACS within 10 Business Days; or
 - B. retain a portion of the Monthly Service Payment in respect of each Operating Month as security,in accordance with this clause 5.
- (c) FACS will determine the amount of the Termination Bond or the amount of the Monthly Service Payment to retain (whichever applicable), having regard to:

- (i) the increase in risk to FACS;
 - (ii) the seriousness of the failure and the level of detail and proposed action to rectify as demonstrated in the Rectification Plan; and
 - (iii) where applicable, the need to ensure the amount is not set at a size which disproportionately prejudices ServiceCo's ability to satisfy its Rectification Plan.
- (d) Subject to FACS' right to have recourse to any Termination Bond, FACS must:
- (i) release the Termination Bond; or
 - (ii) cease to retain that portion of the Monthly Service Payment which it has previously retained under clause 5.1(b)(iv)B,
- on the earliest of:
- (iii) 10 Business Days after ServiceCo provides evidence:
 - A. to the satisfaction of FACS, that ServiceCo is capable of meeting the Amended Quick Ratio Threshold and ServiceCo's Total Equity is within [REDACTED] of the Total Equity in the year of Commercial Close; and
 - B. that the Amended Quick Ratio meets the Amended Quick Ratio Threshold,

in two consecutive Financial Performance Report Metrics Statements; and
 - (iv) the date which is 60 Business Days after the Last Expiry Date (**End Date**) save that if:
 - A. there are any Disputes which remain unresolved on that End Date, the date is the later of the End Date and the date which is 20 Business Days after the Dispute is finally resolved; or
 - B. this Deed has been terminated as a result of a Default Termination Event, the date is the later of the End Date and the date which is 20 Business Days after the Default Termination Payment (in respect of the relevant Default Termination Event) was paid by ServiceCo in accordance with this Deed,

(each a **Return Date**) and if the circumstances in both paragraphs A. and B. arise, the date is the later of the Return Dates.

5.2 Termination Bonds

- (a) Each Termination Bond must:
 - (i) subject to clause 5.2(d), be for the period from and including the date the Termination Bond is provided to FACS pursuant to this Deed, up to and including the End Date (as defined in clause 5.1(d)(iv) above);
 - (ii) name FACS as beneficiary; and
 - (iii) be in the form of Schedule 28 or such other form as FACS may approve, or be provided as a cash equivalent to FACS.

- (b) FACS is entitled to call upon or have recourse to the Termination Bond provided under clause 5.1(b)(ii)A:
- (i) if ServiceCo has not paid an amount that is payable under clause 38.6;
or
 - (ii) if ServiceCo has not replaced the Termination Bond in accordance with the requirements of this clause 5,

without providing notice to ServiceCo that it intends to make such a call or have recourse to the Termination Bond.

- (c) The amount of any demand by FACS under the Termination Bond pursuant to clause 5.2(b)(i) will be an amount determined by FACS as necessary to compensate FACS for any Liability incurred by FACS as a consequence of ServiceCo's failure to pay an amount that is payable under clause 38.6.
- (d) If at any time FACS has been provided with the Termination Bond pursuant to this Deed and it has an expiry date which is prior to the last day of the period identified in clause 5.2(a)(i), ServiceCo must provide a replacement Termination Bond to FACS having the same face value as the Termination Bond it is replacing not less than 30 days prior to any expiry or termination of the Termination Bond.
- (e) If at any time:
- (i) the long term credit rating of the issuer of the Termination Bond is withdrawn or falls below the Required Rating or that issuer otherwise ceases to be the holder of a current licence issued by the APRA (each a **Relevant Downgrade**); or
 - (ii) the specified location within Sydney (or such other place as approved by FACS) is no longer available for demand to be given or for payment to be made under a Termination Bond,

ServiceCo must provide FACS with a replacement Termination Bond:

- (iii) for the same face value as the Termination Bond it is replacing;
- (iv) that satisfies all of the requirements of this clause 5; and
- (v) from a financial institution that is the holder of a current licence issued by APRA, which is acceptable to FACS and which has a Required Rating at the time of issue of the replacement Termination Bond.

That replacement Termination Bond must be provided to FACS by ServiceCo within 20 Business Days after the Relevant Downgrade.

- (f) If FACS has not received a replacement Termination Bond required by clause or before the date identified in clause 5.2(d) or 5.2(e) respectively, irrespective of anything contained in and without limiting FACS' rights under any Service Package Document or that Termination Bond and without limiting the unconditional nature of that Termination Bond, FACS may call on or have recourse to that Termination Bond currently held by FACS and hold the proceeds pursuant to this clause 5.
- (g) Any proceeds held by FACS pursuant to clause 5.2(f) will be available to FACS and may be drawn upon by FACS pursuant to clause 5.2(b). FACS is entitled to the interest earned on those proceeds.
- (h) The balance of any proceeds held by FACS pursuant to clauses 5.2(f) and 5.2(g) must be returned to ServiceCo within 10 Business Days after the date upon which ServiceCo provides a replacement Termination Bond in accordance with clause 5.2(d) or 5.2(e) as the case may be.

- (i) Nothing in this clause 5 will prevent FACS from seeking other remedies from ServiceCo at any time.
- (j) In the event that, following a Partial Termination:
 - (i) any amount is called, demanded or drawn under the Termination Bond;
or
 - (ii) any amount held by FACS under clause 5.2(f) and 5.2(g) as a result of a call, demand or draw on the Termination Bond is subsequently used by FACS,

any proceeds remaining will be repaid to ServiceCo in exchange for a new Termination Bond which has a face value of the amount repaid.
- (k) ServiceCo must not institute any proceedings or take any steps to injunct or otherwise restrain:
 - (i) the issuer of a Termination Bond held by FACS from paying FACS pursuant to the Termination Bond or contact the issuer of the Termination Bond in an attempt to prevent or delay the issuer from making any payment under the Termination Bond;
 - (ii) FACS from taking any steps for the purpose of calling on, having recourse to or making a demand under the Termination Bond or receiving payment under the Termination Bond or otherwise exercising its rights under the Termination Bond; or
 - (iii) FACS from using any money received under the Termination Bond.
- (l) FACS may only use the proceeds of any Termination Bond, or have recourse to any amounts retained as security under clause 5.1(b)(iv)B, or claim any Termination Bond issued in its favour, to reimburse FACS for any Liability for which ServiceCo is liable, and in payment of any other moneys due and payable by ServiceCo to FACS (including monies owing under any indemnity).
- (m) The parties acknowledge that the Termination Bond is provided to effect an allocation of cash flow risk notwithstanding any dispute in respect of whether an entitlement to call on the Termination Bond arises.

Part C – General obligations

6. Service Package Activities

6.1 Performance of Service Package Activities

- (a) **(Performance):** ServiceCo must carry out the Service Package Activities.
- (b) **(Service Package Activities):** Without limiting clause 6.1(a), ServiceCo must:
 - (i) perform the Service Package Activities in accordance with:
 - A. the Service Package Documents;
 - B. all applicable Laws, Approvals and Policies;
 - C. the Services Requirements;
 - D. Best Services Practices; and
 - E. the Delivery Phase Plans and the Service Delivery Phase Plans (as applicable); and
 - (ii) ensure that neither ServiceCo nor any of its Associates, in either case acting in connection with the Service Package, cause FACS or any Associates of FACS to breach any Law.
- (c) **(Comply with directions):** ServiceCo must comply with:
 - (i) all directions given by FACS or the FACS Representative to comply with the terms of the FACS Service Package Documents;
 - (ii) all agreements made by the parties in accordance with this Deed;
 - (iii) all Variation Orders issued by FACS in accordance with this Deed; and
 - (iv) all directions or determinations given by FACS or the FACS Representative in accordance with FACS Service Package Documents, whether or not ServiceCo disputes that such direction is a direction or asserts that the direction is, or determination is, a Variation under this clause, except as required by Law.
- (d) **(ServiceCo not to act):** Except as otherwise required by Law, ServiceCo must not accept or act upon directions in connection with the Service Package Activities from an Associate of FACS other than the FACS Representative or a FACS delegate appointed in accordance with clause 11.2.

6.2 Disputed Directions

- (a) **(Comply with direction):** Subject to clause 26, where ServiceCo disputes that any direction given or determination made has been given or made in accordance with clause 6.1(c) or clause 6.1(d), ServiceCo must, save where the direction would cause it to breach any Legislation, comply with the direction or determination, but at the same time may refer the Dispute for determination in accordance with clause 40.
- (b) **(Determination of Dispute):** An expert, arbitrator, court or tribunal with power to determine a Dispute under this Deed will have the power to open up and review the direction purported to be given or determination purported to be made under this Deed.

6.3 All Risks

- (a) **(All risks and no claim):** Except as otherwise expressly provided in FACS Service Package Documents, as between FACS and ServiceCo:
- (i) ServiceCo accepts all risks (and the cost of such risks) in connection with the Service Package; and
 - (ii) ServiceCo is not entitled to make any Claim against FACS or any of its Associates in connection with any Site, Site Conditions, the Relevant Infrastructure, the Service Package or the Service Package Documents, including any Claim for breach of contract, misrepresentation or negligence (other than a Claim for breach of contract where FACS fails to make any payment properly due to ServiceCo under this Deed).
- (b) **(ServiceCo assumes risk):** ServiceCo assumes the risk (and the cost of such risks) in connection with:
- (i) the existence, location, condition and availability of Utility Infrastructure in connection with the Service Package Activities;
 - (ii) the Site Conditions, title to any Site or adequacy of or access to any Site and its surroundings for the Service Package; and
 - (iii) loss or damage to Relevant Infrastructure during the Term.
- (c) **(Liability exceptions):** Clause 6.3(a) does not:
- (i) limit ServiceCo's right to raise any defence in relation to a Claim made by FACS against ServiceCo;
 - (ii) exclude or limit any Liability FACS or any of its Associates may have to ServiceCo or any of its Associates under this Deed or at Law in respect of ServiceCo's Liability to a third party in respect of death, personal injury or damage to property to the extent that the Liability of ServiceCo or its Associates is a consequence of:
 - A. a breach by FACS of a FACS Service Package Document; or
 - B. a fraudulent, reckless, unlawful or malicious act or omission of FACS or a FACS Associate; or
 - (iii) subject to and without limiting clause 6.3(d), exclude or limit any Liability FACS may have to ServiceCo under FACS Service Package Documents or at Law in respect of Liability incurred by ServiceCo as a result of a breach by FACS of any FACS Service Package Document.
- (d) **(ServiceCo acknowledgement):** ServiceCo acknowledges and agrees that its sole financial entitlement and FACS' sole financial Liability:
- (i) for delay, disruption or disturbance to the progress of any part of the Delivery Phase Activities, including by reason of a Relief Event, a Change in Mandatory Requirements or a Variation, is limited to the amount payable by FACS to ServiceCo in accordance with clauses 23.6, 23.9, 26, 28 and clause 31; and
 - (ii) for prevention, hindrance or disruption to the performance of the Services arising out of or in connection with an Intervening Event, including any Compensable Intervening Event, is limited to the amount payable by FACS to ServiceCo in accordance with clause 24.6 and clause 31.

6.4 Minimum requirements not sufficient

ServiceCo acknowledges and agrees that to the extent that the Design Requirements or Services Requirements specify or prescribe a minimum requirement, compliance with those minimum requirements may not of itself be sufficient for ServiceCo to discharge its obligations pursuant to this Deed.

6.5 Applicable Laws

ServiceCo must not, and must procure that none of ServiceCo's Associates, cause FACS or any of FACS' Associates to breach any Law.

6.6 Work health and safety

(a) ServiceCo must:

(i) in carrying out the Services Package Activities:

A. ensure that it complies with the WHS Legislation and all requirements of this Deed in respect of work health and safety; and

B. require that all Subcontractors comply with the WHS Legislation and their obligations referred to in this Deed in respect of work health and safety;

(ii) notify FACS immediately of all work health and safety matters in connection with the performance of the Service Package Activities that are required to be notified under the WHS Legislation;

(iii) provide FACS with all information and documents requested by FACS in relation to any work health and safety issues arising from or in connection with the Services Package Activities;

(iv) consult, cooperate and coordinate with FACS and any other person with obligations under the WHS Legislation in relation to the same matters as ServiceCo (if any); and

(v) refrain from doing anything that may impede FACS in discharging its obligations in respect of work health and safety.

(b) For the purposes of the WHS Legislation, FACS engages ServiceCo as principal contractor for any construction project undertaken in connection with this Deed or forming part of the Service Package Activities and authorises ServiceCo to have management and control of the workplace and to discharge the duties of a principal contractor under the WHS Legislation.

(c) ServiceCo agrees to discharge and perform the responsibilities and functions of the principal contractor for any construction project undertaken in connection with this Deed or forming part of the Service Package Activities, unless:

(i) another person has the capability and resources to comply with the duties and obligations under the WHS Legislation (including the duties of a principal contractor) in respect of that construction project; and

(ii) that person is effectively engaged by ServiceCo as principal contractor for the purposes of the WHS Legislation in respect of that construction project.

7. Quality assurance

7.1 Audits and performance compliance

- (a) **(FACS may procure Associates):** FACS may undertake or procure an Associate to undertake at any time up to six Months after the last day of the Term, an audit or performance compliance review to verify ServiceCo's compliance with FACS Service Package Documents.
- (b) **(Audit scope):** An audit or performance compliance review may include examination of:
 - (i) any part of the Relevant Infrastructure;
 - (ii) the carrying out of any Service Package Activities;
 - (iii) the Accounts and Records;
 - (iv) ServiceCo Material; and
 - (v) ServiceCo's and its Associates' processes and methodologies.
- (c) **(FACS audit obligations):** Where FACS undertakes an audit or performance compliance review in accordance with clause 7.1, FACS:
 - (i) must, where reasonably able to do so, provide ServiceCo with no less than 10 Business Days' notice of any relevant audit or performance compliance review;
 - (ii) must use reasonable endeavours to minimise any disruption caused to the Service Package Activities; and
 - (iii) may provide a copy of any report prepared as a consequence of the audit or performance compliance review to ServiceCo and its Associates and may require ServiceCo and its Associates to attend a meeting to discuss the audit or performance compliance review report.
- (d) **(ServiceCo audit obligations):** ServiceCo must:
 - (i) provide all ServiceCo Material reasonably requested by FACS or any of its Associates (other than Lessors) (acting reasonably) undertaking the audit or performance compliance review; and
 - (ii) arrange for those undertaking the audit on behalf of FACS to meet with any of ServiceCo's Associates and have access to users of the Site and Relevant Infrastructure.
- (e) **(Discussion of audit):** When required by FACS, the Project Control Group must discuss any audit or performance compliance review and seek to agree:
 - (i) any action ServiceCo must undertake to ensure that it addresses any failure by ServiceCo to comply with the requirements of FACS Service Package Documents; and
 - (ii) the time in which any such action must be undertaken.
- (f) **(Implementation of actions):** To the extent that:
 - (i) the parties reach agreement in accordance with clause 7.1(e), ServiceCo must implement the actions as agreed between the parties; or

- (ii) the parties are unable to reach an agreement in accordance with clause 7.1(e), FACS may direct ServiceCo to meet the requirements referred to in clause 7.1(e)(i) and ServiceCo must implement such actions.
- (g) **(Liability for cost of audit):** ServiceCo will not be liable for any costs incurred by FACS performing audits or performance compliance reviews under this clause 7, unless an audit or performance compliance review establishes that ServiceCo is in material breach of a FACS Service Package Document, or has acted negligently or fraudulently in the performance of any of the Service Package Activities, in which case FACS' reasonable costs of performing the audit or performance compliance review are to be paid by ServiceCo as a debt due and payable by ServiceCo to FACS.
- (h) **(Auditor-General not limited):** Without limiting this clause 7.1, the parties acknowledge and agree that, notwithstanding any provision of this Deed to the contrary:
 - (i) the powers and responsibilities of the Auditor-General for the State of New South Wales under the *Public Finance and Audit Act 1983* (NSW) (or any substituted legislation) are not limited or affected by the terms of this Deed and each party submits to those powers and responsibilities;
 - (ii) FACS or ServiceCo may be the subject of an audit by the Auditor-General pursuant to the *Public Finance and Audit Act 1983* (NSW); and
 - (iii) without limiting clause 7.1(h)(i), ServiceCo undertakes to FACS that it will, at its own cost, cooperate and fully comply with the directions of the Auditor-General and FACS in relation to any audit referred to in clause 7.1(h)(ii).

7.2 Call-in

- (a) If:
 - (i) FACS is dissatisfied with ServiceCo's performance of the Service Package Activities (acting reasonably); or
 - (ii) ServiceCo is in breach of an obligation under this Deed or, in FACS' reasonable view, ServiceCo will be in breach of an obligation if its current performance continues unchanged,

FACS may issue a notice to ServiceCo outlining the nature of FACS' dissatisfaction.
- (b) If required by FACS in the notice under clause 7.2(a), ServiceCo must:
 - (i) provide information in relation to the areas of concern identified by FACS;
 - (ii) attend meetings with FACS;
 - (iii) prepare and implement remedial plans to improve performance in the areas identified by FACS in order to comply with the Service Package Documents; and
 - (iv) allow FACS access to any Site on which the Service Package Activities are being undertaken, and ServiceCo agrees to provide full and unrestricted access to any such Sites.

8. Approvals

- (a) **(General):** ServiceCo must:
- (i) obtain, maintain and comply with;
 - (ii) ensure that the Relevant Infrastructure satisfies and complies with; and
 - (iii) pay all fees and contributions in relation to,
- all Approvals (including any Key Planning Approvals and modifications to any Approvals) necessary for the Service Package, including all conditions and requirements of those Approvals.
- (b) Without limiting clause 6.3(b), ServiceCo acknowledges that:
- (i) FACS is not responsible for identifying or procuring any Sites;
 - (ii) securing access to land is required to deliver the Service Package and is at the sole risk of ServiceCo; and
 - (iii) FACS will not be liable upon any Claim (insofar as it is permitted by Law) by ServiceCo or any other party arising out of or in any way in connection with:
 - A. identifying and obtaining access to a Site;
 - B. any Site Conditions; or
 - C. any delay, additional costs or other effects on the Service Package Activities related to the ability of ServiceCo or any Subcontractors to obtain access to a Site.

9. Project Information

9.1 No representations from FACS

ServiceCo acknowledges and agrees that FACS, its Associates and the author of any report provided in the Project Information have not made and make no representations (express or implied), and give no warranties or guarantees (express or implied), and owe no duty of care (express or implied), in respect of:

- (a) **(Project Information):** the accuracy, suitability, adequacy, completeness of, or any omissions from, the Project Information; or
- (b) **(Proposal):** the feasibility or fitness for purpose of the Proposal (or any part of it).

9.2 Documents representations and warranties by ServiceCo

Without limiting clause 9.1, ServiceCo acknowledges and agrees that:

- (a) **(entry into Deed):** it enters into this Deed based on its own investigations, interpretations, deductions, information and determination;
- (b) **(Project Information):** the Project Information was provided by FACS and its Associates for the information only of ServiceCo;
- (c) **(adequacy of Services Specification etc):** it has satisfied itself that there is nothing in the Design Requirements or the Services Requirements which would prevent:

- (i) the Relevant Infrastructure from being Fit For Purpose; or
- (ii) the Services being carried out in accordance with this Deed;
- (d) **(no reliance)**: it did not rely upon any Project Information or the accuracy, adequacy, suitability or completeness of the Project Information for the purposes of entering into this Deed or delivering the Service Package; and
- (e) **(FACS entry into Deed)**: FACS has entered into this Deed relying upon the warranties, acknowledgements, representations and agreements of ServiceCo as set out in this Deed.

10. Review of documents by FACS

- (a) **(Form of Submitted Document):** ServiceCo must provide electronic versions in PDF and (where practical) native format of each Submitted Document to FACS, which must be editable by FACS.
- (b) **(Additional information):** ServiceCo must promptly provide to FACS, any additional information, data or documents requested by FACS (acting reasonably) in connection with a Submitted Document or reasonably required by FACS to review the Submitted Document and respond in accordance with this clause 10.
- (c) **(Review Period):** FACS may provide ServiceCo comments (in writing) on a Submitted Document within 20 Business Days of receipt by FACS of the Submitted Document or such additional information, data or documents as may be requested by FACS pursuant to clause 10(b) **(Review Period)** if a Submitted Document gives rise to a FACS Comment Right.
- (d) **(Deemed "no comment"):** If FACS fails to provide any comments on a Submitted Document within the Review Period, then FACS will be deemed to have no comments on the Submitted Document.
- (e) **(Amend and resubmit):** If FACS provides 'comments' on a Submitted Document in accordance with clause 10(c), ServiceCo must:
 - (i) amend the Submitted Document in accordance with the comments of FACS to the extent required to overcome or address the relevant FACS Comment Rights; and
 - (ii) resubmit the revised Submitted Document to FACS,
(resubmitted document), and the provisions of this clause 10 will reapply to the resubmitted document until such time as FACS has 'no comments' or is deemed to have 'no comments' on the resubmitted document pursuant to clause 10(d).
- (f) **(Proceed):** ServiceCo may only proceed with the Service Package Activities in accordance with a Submitted Document where FACS provides 'no comments' or is deemed to provide no comments in respect of the Submitted Document.
- (g) **(Latest version):** Where ServiceCo is required to comply with a document, and that document or any update of that document is required to be submitted for review in accordance with this clause 10, ServiceCo must comply with the version of the document that has been submitted, reviewed and amended (if applicable) in accordance with this clause 10.
- (h) **(Register):** ServiceCo must maintain a register of the date of submission and content of each Submitted Document and must regularly update that register to record:
 - (i) each Submitted Document to which it receives a response or comment from FACS, including a copy of that response or comment; and
 - (ii) each Submitted Document to which it receives no response or no comment in the Review Period or in respect of which it is deemed not to have received any response or comment in accordance with this clause 10.

11. Parties, personnel and community

11.1 Authorities

ServiceCo acknowledges and agrees that:

- (a) **(jurisdiction)**: there are Authorities with jurisdiction over aspects of the Service Package Activities and the Site;
- (b) **(Authorities)**: those Authorities may, from time to time and at any time, exercise their statutory functions and powers in a way which disrupts, interferes with or otherwise affects the Service Package Activities; and
- (c) **(co-operation)**: it will co-operate with and co-ordinate its Service Package Activities with those Authorities as is required by them.

11.2 FACS Representative

- (a) **(Natural person)**: FACS will ensure that at all times throughout the Term there is a natural person appointed by it as the FACS Representative for the Service Package.
- (b) **(Identity)**: As at the date of this Deed, the FACS Representative is the party nominated as such in the Contract Particulars.
- (c) **(Agent of FACS)**: The FACS Representative will administer this Deed on behalf of FACS and will exercise all rights, powers, authority and functions of FACS under this Deed as FACS' agent.
- (d) **(Oral directions)**: The FACS Representative may give a direction orally but will as soon as practicable confirm that direction in writing.
- (e) **(Replacement)**: FACS may at any time replace the FACS Representative, in which event FACS will appoint another person as the FACS Representative and notify ServiceCo of that appointment.
- (f) **(Delegation)**: FACS may at any time delegate the exercise of any power or authority of the FACS Representative to a person other than the then appointed FACS Representative and may terminate or vary that delegation.
- (g) **(Notification of delegation)**: FACS will promptly notify ServiceCo of the identity of each delegate, the powers and authority delegated (including any conditions applying to the delegated power).
- (h) **(Vary or terminate delegation)**: FACS may vary or terminate any delegated power or authority of the FACS Representative but must promptly notify ServiceCo of any such variation or termination.

11.3 ServiceCo Representative

- (a) **(Natural person)**: ServiceCo must ensure that at all times throughout the Term there is a natural person appointed by it as ServiceCo Representative in respect of the Service Package.
- (b) **(Identity)**: As at the date of this Deed, the ServiceCo Representative is the party nominated as such in the Contract Particulars.

- (c) **(Employee):** The ServiceCo Representative must be an officer or employee of ServiceCo or a Related Body Corporate of ServiceCo and must be employed full time on the Service Package.
- (d) **(Replacement):** The ServiceCo Representative can only be replaced in accordance with clause 11.4.
- (e) **(Contact):** The ServiceCo Representative must act as the principal point of contact between ServiceCo and FACS in respect of the administration of this Deed, and be available to FACS as and when required.
- (f) **(Directions):** A direction is given to ServiceCo if it is given to the ServiceCo Representative.
- (g) **(Authority and skills):** ServiceCo must ensure that at all times during his or her appointment, the ServiceCo Representative has:
 - (i) the authority to perform its role and duties and discharge its obligations under this Deed; and
 - (ii) a detailed knowledge of the Service Package and sufficient experience and skills to undertake the role of ServiceCo Representative.
- (h) **(Duties during the Term):** The ServiceCo Representative must perform the duties of the ServiceCo Representative under this Deed, including to:
 - (i) **(spokesperson):** act as the spokesperson for ServiceCo;
 - (ii) **(partnership):** ensure the ongoing implementation of a partnership with FACS;
 - (iii) **(liaison):** liaise and generally deal with stakeholders;
 - (iv) **(manage):** represent the views of ServiceCo and manage and co-ordinate issues with any ServiceCo Associate prior to presentation to FACS;
 - (v) **(presence):** ensure a strong presence and consistent project management role for ServiceCo in the implementation of the Service Package;
 - (vi) **(appoint temporary replacement):** appoint a person with the equivalent qualification, experience, ability and expertise to temporarily act as ServiceCo Representative before taking any annual or other leave;
 - (vii) **(co-ordinate Subcontractors):** co-ordinate and liaise with the Subcontractors and oversee the performance by the Key Subcontractors of their Key Subcontracts (other than any Lessors in relation to any Leases) during the term;
 - (viii) **(meetings with FACS):** convene and attend co-ordination meetings with FACS when requested by FACS; and
 - (ix) **(co-ordinate transition):** co-ordinate the delivery of the Service Package Activities including execution of the Delivery Phase Activities in order to facilitate achievement of each Service Readiness Milestone by the relevant Service Readiness Milestone Date.

11.4 Replacement of ServiceCo Representative

ServiceCo must, if the ServiceCo Representative dies, becomes seriously ill or resigns from the employment of ServiceCo or any of its Associates or receives a promotion, replace the

ServiceCo Representative with a person approved by FACS (such approval not to be unreasonably withheld) of at least equivalent qualification, experience, ability and expertise.

11.5 Key People

ServiceCo must:

- (a) **(requirement to employ or engage)**: ensure that the Key People are employed or engaged in the roles specified in the Contract Particulars by the dates specified in the Contract Particulars;
- (b) **(restrictions on replacement)**: subject to clause 11.5(c), not replace the Key People or delegate the functions of the Key People without FACS' prior written approval (which will not be unreasonably withheld); and
- (c) **(replacement in certain circumstances)**: if any of the Key People die, become seriously ill or resign from the employment of ServiceCo or any of its Associates or receive a promotion, replace the relevant Key People with persons approved by FACS (such approval not to be unreasonably withheld) of at least equivalent qualification, experience, ability and expertise.

12. Meetings

12.1 Project Control Group

- (a) **(Establishment)**: The parties will establish a group consisting of the following members (together the **Project Control Group**):
 - (i) the FACS Representative;
 - (ii) the ServiceCo Representative; and
 - (iii) two other representatives that FACS nominates from time to time.
- (b) **(Chairperson)**: The FACS Representative will be the chairperson of the Project Control Group.
- (c) **(Functions)**: The functions of the Project Control Group will be to:
 - (i) monitor the overall progress of the Service Package Activities and compliance with this Deed;
 - (ii) up until the final Date of Service Readiness, consider the most recent Quarterly Delivery Report and, without limiting clause 12.1(c)(i) monitor the overall progress of the Delivery Phase Activities including progress against the Program Milestones;
 - (iii) assist in the resolution of any matters referred to the Project Control Group by a party including Disputes in accordance with clause 40;
 - (iv) review all reports and plans provided by ServiceCo during the Term;
 - (v) discuss and address matters in relation to Augmentations including those arising out of clause 27 and potential Augmentations;
 - (vi) discuss stakeholder and community engagement; and
 - (vii) discuss and address such other matters as the members of the Project Control Group may agree from time to time in connection with the Service Package.

- (d) **(Meetings):** The Project Control Group must:
- (i) meet:
 - A. monthly (and not later than 15 Business Days after the end of each Month) from Commercial Close until the first anniversary of the last Services Commencement Date;
 - B. quarterly (not later than 15 Business Days after the end of each Quarter) following the first anniversary of the last Services Commencement Date; and
 - C. when otherwise called to meet on 10 Business Days' notice by FACS or ServiceCo. Without limiting this clause 12.1(d)(i)C, ServiceCo acknowledges and agrees that FACS may call a meeting if FACS is dissatisfied with ServiceCo's performance,

unless otherwise agreed by FACS and ServiceCo; and
 - (ii) conduct its meetings in the manner agreed from time to time between FACS and ServiceCo.
- (e) **(Reports):** ServiceCo must, no later than five Business Days before each meeting of the Project Control Group convened in accordance with clause 12.1(d), give each member of the Project Control Group:
- (i) up until the last Service Commencement Date, the Quarterly Delivery Report for the previous Month (which will be the report provided under clause 16.2 to the extent a monthly update was required in the previous Month) and the latest Delivery Phase Program; and
 - (ii) thereafter, the Quarterly Performance Report.
- (f) **(Subcontractors):** FACS may direct ServiceCo to procure the attendance of senior representatives of any of the Subcontractors (not forming part of the Project Control Group) or any of their respective Associates at any meeting of the Project Control Group.

12.2 General requirements for meetings

- (a) **(Meeting agendas):** FACS will determine the agenda for each meeting of the Project Control Group, and in determining each agenda:
- (i) will seek input from ServiceCo; and
 - (ii) include any items notified to it by any other member received no later than five Business Days prior to the date of the meeting.
- (b) **(Minutes):** FACS will take minutes of each Project Control Group meeting and distribute such minutes prior to the next relevant meeting.
- (c) **(Continuity of membership):** The parties acknowledge the importance of the Project Control Group having a continuity of membership in order to successfully carry out its functions.
- (d) **(Changes to membership):** The people who are required to attend the Project Control Group meetings under this Deed may, where strictly necessary, be changed by the party they are representing, from time to time on notice to the other parties, together with details of the reason for the change.
- (e) **(Liability of Project Control Group):** The Project Control Group:

- (i) is advisory only and its decisions or recommendations are not binding on the parties; and
 - (ii) does not have any legal responsibilities, Liability or right to require any of the parties to act or refrain from acting in any way.
- (f) **(No limitation):** The parties' involvement in the Project Control Group does not affect their respective rights and obligations under this Deed.
- (g) **(Further information):** FACS may require ServiceCo to provide information on matters discussed at any Project Control Group meeting and ServiceCo must provide that information in a timely manner.
- (h) **(No reliance or Claim):** Neither FACS nor ServiceCo will be entitled to:
- (i) rely on any statement, opinion, advice, representation, warranty, promise or undertaking made or given by or on behalf of any member of the Project Control Group (in its capacity as a member); or
 - (ii) make any Claim against any such group or committee or any member of the Project Control Group (in its capacity as a member),
- arising in connection with anything, which any such member does or fails to do in its capacity as a member of the Project Control Group.
- (i) **(Conduct at meetings):** The parties must to the greatest extent possible, freely and openly discuss the Service Package Activities at all meetings (including the meetings of the Project Control Group), and ServiceCo must procure that its Associates fully respond to any questions which FACS may ask ServiceCo at any meetings conducted under this Deed within five Business Days.

13. Communications and Community Relations

ServiceCo must manage and participate in all community relations programs and activities as reasonably requested by FACS from time to time and must not, and procure that its Associates do not, communicate with the media or communicate any information publicly with regard to the Service Package without the prior written consent of the FACS Representative.

14. Subcontracting and third party arrangements

14.1 Subcontracting

ServiceCo:

- (a) **(Service Package Activities):** must not subcontract the performance of the Service Package Activities or any part of them except in accordance with this clause 14;
- (b) **(Notification):** must notify FACS of all Subcontractors it intends to engage to undertake the Service Package Activities; and
- (c) **(Provide copies of subcontracts):** must promptly provide to FACS a copy of:
 - (i) each Key Subcontract; and
 - (ii) any other Subcontract requested by FACS,

entered into or proposed to be entered into involving any of the Service Package Activities (regardless of whether ServiceCo is a party to that contract) and, where requested, all plans, specifications and drawings related to those Subcontracts.

14.2 Liability

ServiceCo:

- (a) **(FACS Service Package Documents)**: is not relieved from any or all of its obligations or Liabilities under the FACS Service Package Documents as a result of subcontracting any of those obligations or Liabilities; and
- (b) **(responsible for subcontractors)**: will be responsible for the acts and omissions of any Subcontractor and their respective Associates in carrying out the Service Package Activities as if such acts or omissions were ServiceCo acts or omissions.

14.3 Key Subcontracts

- (a) **(Employment)**: ServiceCo must:
 - (i) engage the Key Subcontractors as specified in the Contract Particulars in the relevant roles specified in the Contract Particulars; and
 - (ii) not engage a Key Subcontractor that is not specified in the Contract Particulars without the prior written consent of FACS (which will not be unreasonably withheld). It will be reasonable for FACS to withhold its consent if FACS is not satisfied that the Key Subcontractor complies with clause 14.4(a)(ii).
- (b) **(Restrictions)**: ServiceCo must not, and must ensure none of its Associates:
 - (i) amend or agree to amend, grant an indulgence, waive or accept any waiver, release or adjustment of any rights to or under any Key Subcontract in a way that would:
 - A. have a material adverse effect on the ability of ServiceCo to perform and observe its obligations under any Service Package Document; or
 - B. have a material adverse effect on the rights, or increase the Liabilities or obligations, of FACS under any Project Document or the ability or capacity of FACS to exercise its rights or perform its obligations under a FACS Service Package Document; or
 - (ii) terminate, rescind, novate or assign, or agree to any termination, rescission, novation or assignment of, any Key Subcontract, without the prior consent of FACS (which will not be unreasonably withheld).
- (c) **(Side Deed)**: ServiceCo must procure from any Key Subcontractor an executed deed substantially in the form of the Side Deed applicable to that Key Subcontractor, concurrently with entry into the relevant Key Subcontract.
- (d) **(Prescribed terms)**: ServiceCo must ensure that each Key Subcontract includes a clause which provides that, if this Deed is terminated in accordance with clause 38:

- [REDACTED]
- [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

14.4 Requirements for subcontracting

- (a) **(Engagement of Subcontractors):** Without limiting clause 14.3, ServiceCo must not engage any Subcontractor, or allow any Subcontractor to be engaged, in connection with the Service Package, unless:
- (i) if FACS requires Probity Investigations to be carried out in respect of that Subcontractor, FACS' probity requirements as described in clause 53 are satisfied;
 - (ii) the proposed Subcontractor has the financial capacity, applicable registrations and certifications, experience and capability to perform the subcontracted obligations to at least the standards required by this Deed; and
 - (iii) in respect of a Key Subcontract, the Key Subcontract contains further provisions expressly recognising and permitting the exercise by FACS of its rights under and contains all relevant provisions prescribed by (if applicable) clauses 14.1, 30, 37, 47, 48, 50, 51, 52 and 53.
- (b) **(Occurrence of Probity Event):** If, following a Probity Investigation in respect of a proposed Subcontractor, FACS:
- (i) determines that a Probity Event has occurred in respect of a Subcontractor or a Relevant Person engaged by that Subcontractor; and
 - (ii) is of the opinion that it is consequently not desirable for that Relevant Person to take part in the management or performance of the Subcontract, or for the Subcontractor to be engaged in connection with the Service Package,
- FACS may (as the case may be):
- (iii) direct ServiceCo that the Subcontractor must not be engaged in connection with the Service Package; or
 - (iv) approve the Subcontract on condition that the Relevant Person:
 - A. not take part in the management or performance of the Subcontract; or
 - B. not to be allowed access to the Site,

or such other conditions as the FACS Representative considers necessary to quarantine that Relevant Person from the Service Package and on conditions that the Subcontractor provides its written undertaking to the FACS Representative to comply with such conditions.

- (c) **(Compliance with Subcontractor obligations):** ServiceCo must, and must procure that all Key Subcontractors, comply with their respective obligations under each Subcontract they enter into.

14.5 Monitoring of Key Subcontracts

ServiceCo must notify FACS of:

- (a) any material breach of a Key Subcontract; and
- (b) any dispute which is notified as such under a Key Subcontract, immediately upon becoming aware of such breach or dispute.

14.6 Industrial issues

ServiceCo:

- (a) **(solely responsible):** has sole responsibility for, and must manage, all aspects of industrial relations in connection with the Service Package; and
- (b) **(to inform FACS):** must keep FACS fully and immediately informed of industrial relations issues or action which affect or are likely to affect the carrying out of the Service Package Activities and what action or measures (including settlements) ServiceCo has taken or proposes to take to overcome the effects of such industrial relations issues or action.

15. Workforce

- (a) **(Requirements and checks):** ServiceCo must ensure that each employee of ServiceCo and each Subcontractor engaged to provide any Service Package Activities (other than employees engaged to provide Delivery Phase Activities only) passes the relevant Employee Checks:
 - (i) prior to being engaged to provide the Service Package Activities; and
 - (ii) at the frequencies specified in the Contract Particulars.
- (b) **(Availability of results):** ServiceCo must promptly, on request, make the results of:
 - (i) any Employee Checks; or
 - (ii) any Probity Investigation that ServiceCo is required to undertake in accordance with clause 53.2, available to FACS.
- (c) **(Denial of employment):** Without prejudice to clause 53.2(d), FACS may require ServiceCo to deny or procure that the Subcontractors deny employment to a prospective employee and refuse to engage any person or discontinue the employment or engagement of any person involved in the Service Package Activities if:
 - (i) the Probity Investigation reveals information indicating that that person does not comply with the requirements of this Deed;

- (ii) the employee fails an Employee Check; or
- (iii) FACS considers that that person is (in respect of a person providing Services) unsuitable or (in respect of any person involved in the Service Package Activities) unqualified to provide the Service Package Activities assigned to that person.

Part F – Delivery Phase obligations

16. Delivery Phase

16.1 Delivery Phase Plans and Quarterly Delivery Reports

- (a) **(Initial Delivery Phase Plans):** The parties acknowledge that the Initial Delivery Phase Plans are included as Annexure A1.
- (b) **(Preparation):** ServiceCo must prepare (where there are no relevant Initial Delivery Phase Plans), and otherwise update each Delivery Phase Plan:
 - (i) in accordance with the Delivery Phase Plans and Reports Schedule and the other requirements of this Deed relevant to that Delivery Phase Plan; and
 - (ii) to ensure each Delivery Phase Plan contains complete and accurate information in respect of the relevant aspects of the Service Package.
- (c) **(Submission):** ServiceCo must submit each Delivery Phase Plan to FACS for review in accordance with clause 10.
- (d) **(Authority Approval):** If a Delivery Phase Plan is required to be approved by an Authority, ServiceCo must ensure that it has obtained that Approval prior to submitting the relevant Delivery Phase Plan to FACS for review.
- (e) **(Quarterly Delivery Reports):** ServiceCo must prepare and submit the Quarterly Delivery Reports to FACS in accordance with the Delivery Phase Plans and Reports Schedule.
- (f) **(Additional information):** ServiceCo must promptly provide to FACS any additional information in connection with the Delivery Phase Plans and the Quarterly Delivery Reports reasonably requested by FACS.
- (g) **(Complete):** ServiceCo warrants that each Delivery Phase Plan and Quarterly Delivery Report is complete and correct, and not false or misleading in any material respect, at the time it is provided to FACS.

16.2 Monthly update

Without limiting section 3.1 of the Programming Requirements, to the extent that in any Month during the Delivery Phase:

- (a) ServiceCo becomes aware that there is or likely to be a change to any anticipated Date of Service Readiness by more than two Months;
- (b) ServiceCo has in that Month provided FACS with a notice under clause 16.3(b);
- (c) any event occurs that will have a material impact on the ability of ServiceCo to perform the Delivery Phase Activities or would make the Quarterly Delivery Report incorrect in a material respect; or
- (d) ServiceCo updated the Delivery Phase Program pursuant to section 3.1(d) of the Programming Requirements,

ServiceCo must provide FACS and the Project Control Group with a copy of the latest Quarterly Delivery Report:

- (e) updated (in mark-up) on an exceptions basis to reflect the impact of the relevant changes or events; and

- (f) inclusive of the latest Delivery Phase Program (updated in accordance with clause 3.1 of the Programming Requirements),

at least five Business Days prior to the next meeting of the Project Control Group.

16.3 Program Milestones and Delivery Phase Program

- (a) **(Program Milestones):** ServiceCo must achieve each Program Milestone by the relevant Milestone Date.
- (b) **(Anticipated delay):** If ServiceCo considers that it is likely to be delayed in achieving a Program Milestone, ServiceCo must immediately give FACS notice of the delay, including details of the nature, cause and the likely extent of the delay.
- (c) **(Program update):** ServiceCo must update the Delivery Phase Program in accordance with the Programming Requirements and must not adjust any Service Readiness Milestone Date or any other Milestone Date.

16.4 Development Consent

- (a) ServiceCo must:
 - (i) procure Development Consents on terms that are not inconsistent with this Deed;
 - (ii) not include any information provided by FACS to ServiceCo in an application for Development Consent without the prior consent of FACS (which FACS will not unreasonably withhold); and
 - (iii) provide to FACS:
 - A. any information that FACS reasonably requests in relation to an application, in the form required by FACS; and
 - B. a copy of each Development Consent obtained and any amendments to, or notices relating to, those consents within five Business Days of receipt.
- (b) ServiceCo is solely responsible for ensuring that each Development Consent is obtained in accordance with this Deed. No action or inaction of FACS or any FACS Associate will be taken to be an acknowledgement that:
 - (i) the Development Consent complies with the requirements of this Deed; or
 - (ii) ServiceCo, by complying with the Development Consent, is acting in accordance with this Deed.
- (c) ServiceCo must comply with all conditions of each Development Consent.

17. Service Readiness

17.1 Requirement

Without limiting clause 16.3(a), ServiceCo must achieve each Service Readiness Milestone by the relevant Service Readiness Milestone Date.

17.2 Notice of Stages

- (a) Without limiting clause 16.2, but notwithstanding anything else in this Deed, ServiceCo must give FACS notice of a proposed Stage at least three Months prior

to issuing a notice in respect of that proposed Stage under clause 17.5. The notice must:

- (i) identify the Service Package Dwellings that will comprise the proposed Stage which, subject to clause 17.2(b), must total at least 20 Service Package Dwellings;
 - (ii) attach a Dwellings Schedule in which it has removed from section 2 of that schedule the Service Package Dwellings that will be used to deliver the proposed Stage and populated section 3 with all of the information required for that Stage; and
 - (iii) confirm the date upon which it reasonably expects to achieve Service Readiness in respect of the proposed Stage.
- (b) If a proposed Stage is the final Stage, ServiceCo may propose a Stage comprised of less than 20 Service Package Dwellings.

17.3 Satisfaction of Service Readiness Criteria

ServiceCo must, in respect of a proposed Stage:

- (a) meet or exceed the Minimum Stage Requirements; and
- (b) satisfy all Service Readiness Criteria in accordance with the Service Readiness Schedule,

before ServiceCo achieves Service Readiness for a proposed Stage.

17.4 Failure to satisfy Service Readiness Criteria

If ServiceCo fails to satisfy any Service Readiness Criteria for a proposed Stage (which must be satisfied prior to Service Readiness), FACS may refuse to issue the certificate of Service Readiness for that proposed Stage in accordance with clause 17.6.

17.5 Notice of Service Readiness

When ServiceCo is of the reasonable opinion that it has met the Minimum Stage Requirements for a Stage, ServiceCo must provide:

- (a) notice to this effect in the form of Schedule 35; and
- (b) all the information required under the Service Readiness Schedule,

to FACS.

17.6 Determination of Service Readiness

- (a) **(Issue of notice or certificate):** If, in the opinion of FACS (acting reasonably):
 - (i) Service Readiness has been achieved in respect of a proposed Stage, FACS must issue a certificate of Service Readiness to ServiceCo within 10 Business Days after receipt of the notice under clause 17.5; or
 - (ii) Service Readiness has not been achieved in respect of a proposed Stage, FACS must, by not later than five Business Days after receipt of the notice issued in accordance with clause 17.5, issue to ServiceCo a notice containing details of the outstanding Service Readiness Criteria that must be satisfied by ServiceCo as a condition precedent to achieving Service Readiness.

- (b) **(Consequences of notice):** If FACS issues a notice under clause 17.6(a)(ii), clause 17.5 and this clause 17.6 will reapply in respect of those outstanding Service Readiness Criteria set out in FACS' notice.
- (c) **(Consequences of certificate):** The issue of a certificate of Service Readiness in respect of a Stage in accordance with this clause 17.6 does not constitute:
 - (i) an approval by FACS of the completion of the Relevant Infrastructure under this Deed; or
 - (ii) evidence that all or any other obligations under this Deed have been satisfied.

17.7 Service Readiness Outstanding Items

- (a) **(Outstanding Items):** FACS may issue a certificate of Service Readiness in respect of a Stage with a list of Service Readiness Outstanding Items and the time within which they must be rectified.
- (b) **(Time period):** FACS must act reasonably in determining the time within which a Service Readiness Outstanding Item in respect of a Stage will be rectified.
- (c) **(Program for completion to be submitted):** Within five Business Days after the issue of a certificate of Service Readiness in respect of a Stage, ServiceCo must submit to FACS (for review in accordance with clause 10) a program for the completion of the Service Readiness Outstanding Items, which complies with clause 17.7(b).
- (d) **(Complete within timeframe):** ServiceCo must complete or remedy each Service Readiness Outstanding Item in respect of a Stage in the relevant timeframe determined in accordance with clause 17.7(a) to the satisfaction of FACS (acting reasonably).
- (e) **(Failure to complete):** A Major Default will occur if a Service Readiness Outstanding Item in respect of a Stage is not completed or remedied within the timeframe determined in accordance with clause 17.7(a).

17.8 No prior occupancy

Notwithstanding anything else in this Deed, ServiceCo must not enter into any Residential Tenancy Agreements or otherwise permit Tenants to occupy any Service Package Dwellings prior to the Service Commencement Date for that Stage.

17.9 Stages

The parties acknowledge and agree that if Service Readiness is achieved:

- (a) the Stage proposed by ServiceCo in the relevant notice provided under clause 17.2 is formed for the purposes of this Deed; and
- (b) the Dwellings Schedule will be deemed to be deleted and replaced with the Updated Dwellings Schedule attached to that notice,

on and from the relevant Date of Service Readiness.

Part G – Service Delivery Phase obligations

18. Service Delivery Phase Plans

- (a) **(Initial Service Delivery Phase Plans):** The parties acknowledge that the Initial Service Delivery Phase Plans are included as Annexure B1.
- (b) **(Submission and update):** ServiceCo must:
 - (i) prepare and update the Service Delivery Phase Plans:
 - A. in accordance with the relevant requirements of the Service Delivery Phase Plans Schedule; and
 - B. to ensure they contain complete and accurate information in respect of the relevant aspects of the Service Package;
 - (ii) update all Service Delivery Phase Plans as necessary to reflect any changes to the nature, understanding or status of the Services; and
 - (iii) submit to FACS all Service Delivery Phase Plans, when prepared and updated, for review in accordance with clause 10.
- (c) **(Performance):** Unless otherwise agreed by FACS, ServiceCo must perform the Services in accordance with the Service Delivery Phase Plans.
- (d) **(Authority Approval):** If a Service Delivery Phase Plan is required to be approved by an Authority, ServiceCo must ensure that it has obtained that Approval prior to submitting the relevant Service Delivery Phase Plan to FACS for review.
- (e) **(Additional information):** ServiceCo must promptly provide to FACS any additional information that FACS requests in connection with the Service Delivery Phase Plans.
- (f) **(Warranty):** ServiceCo warrants that each Service Delivery Phase Plan and Service Delivery Phase Report is complete and correct, and not false or misleading in any material respect, at the time it is provided to FACS.

19. Obligation to perform the Services

19.1 Performance of the Services

In addition to the obligations set out in clause 6, during the Service Delivery Phase, ServiceCo must continuously perform the Services in accordance with the Services Requirements.

19.2 Registration

- (a) ServiceCo must ensure that at all times during a Service Delivery Phase, ServiceCo, each Key Subcontractor providing any Tenancy Management Services and each Key Subcontractor providing any Asset Management Services in respect of the relevant Service Package Dwellings:
 - (i) is a Registered CHP;
 - (ii) maintains or improves the tier of registration set out in the Contract Particulars;
 - (iii) complies with all terms and conditions attaching to or contained in the CHP registration conditions, including (without limitation) the conditions of registration set out in section 15 of the National Law; and

- (iv) on request, provides to FACS full and certified copies of proof of registration as a Registered CHP.
- (b) If ServiceCo subcontracts the performance of the facilities maintenance services, the facilities maintenance provider is not required to be a Registered CHP with respect to the facilities maintenance services.
- (c) Without limiting any provisions of this Deed, the parties acknowledge and agree that the Registrar has various enforcement powers under the National Law and that the Registrar may take such action if the Registrar reasonably believes that the provider is not complying with the community housing legislation of a participating jurisdiction.

19.3 Supporting Infrastructure

On and from completion of the Supporting Infrastructure, ServiceCo must make the Supporting Infrastructure in relation to a Site available to the Social Housing Tenants and Affordable Housing Tenants in respect of that Site.

19A Substituted New Dwellings

- (a) Without limiting ServiceCo's obligations:
 - (i) at Law; or
 - (ii) under any Residential Tenancy Agreement which ServiceCo or a Tenancy Management Services Provider has entered into with a Tenant,

prior to the 5th anniversary of Commercial Close, ServiceCo must cease using 46 of the Temporary Dwellings for the delivery of the Accommodation Services and substitute the use of those Temporary Dwellings with 46 Substituted New Dwellings:

 - (iii) in accordance with this clause 19A; and
 - (iv) so as to meet the aggregate bedroom numbers for Substituted New Dwellings set in section 1 of the Dwellings Schedule.
- (b) Prior to using Substituted New Dwellings to provide Accommodation Services, ServiceCo must demonstrate to FACS' reasonable satisfaction that the Substituted New Dwellings comply with the Service Readiness Criteria.
- (c) ServiceCo must provide FACS with, on or prior to the date that is 2 Months before the date from which ServiceCo proposes to use any Substituted New Dwelling to provide Accommodation Services:
 - (i) notice in writing of:
 - A. the relevant Substituted New Dwelling;
 - B. the date from which ServiceCo will use the Substituted New Dwelling to provide Accommodation Services; and
 - C. the Temporary Dwelling that will no longer be used to provide the Accommodation Services;
 - (ii) a proposed updated Dwellings Schedule that reflects the information contained in the notice given under clause 19.3(c)(i); and

- (iii) all of the information required under Schedule 8 to demonstrate that ServiceCo has satisfied the Service Readiness Criteria in respect of the Substituted New Dwelling.
- (d) Upon receipt of the information under clause 19.3(c), FACS will determine (acting reasonably) whether the Substituted New Dwelling satisfies the Service Readiness Criteria and notify ServiceCo of its determination.
- (e) If FACS determines that the Substituted New Dwelling has satisfied the Service Readiness Criteria under clause 20(c):
 - (i) the Dwellings Schedule will be deemed to be replaced with the proposed new Dwellings Schedule provided to FACS under clause 19.3(c)(ii); and
 - (ii) the Substituted New Dwelling will be deemed to form part of the same Stage as the Temporary Dwelling that has been replaced,
 on and from the date specified in the notice issued under clause 20(c).

20. Substitution of Service Package Dwellings

- (a) Without limiting ServiceCo's obligations:
 - (i) at Law; or
 - (ii) under any Residential Tenancy Agreement which ServiceCo or a Key Subcontractor providing Tenancy Management Services has entered into with a Tenant,

if ServiceCo wishes to provide Accommodation Services using Dwellings that are not Service Package Dwellings identified in section 2 or section 4 of the Dwellings Schedule (including any Dwellings in relation to Sites that are described as 'unidentified Sites' in the Dwellings Schedule), ServiceCo must request FACS' consent in accordance with clause 20(b).
- (b) Any notice given by ServiceCo pursuant to clause 20(a) seeking the consent of FACS to the use of new Dwellings must:
 - (i) identify:
 - A. the proposed new Dwellings and the sites on which they are (or will be) located; and
 - B. the Service Package Dwellings that will not, or will no longer, be used to provide the Accommodation Services (if applicable),

(Substitution);
 - (ii) demonstrate that the proposed new Dwellings are (or will be) Suitable Substitution Accommodation;
 - (iii) confirm that the new proposed Dwellings have the same Zoning as the Dwellings they are replacing, unless FACS otherwise agrees that the land use zoning for the proposed Dwellings may be different;
 - (iv) confirm whether the proposed new Dwellings will be owned or leased by ServiceCo, and if leased, specify the duration and terms of any such Lease;
 - (v) confirm that the proposed new Dwellings will be delivered using the same Delivery Method as the Dwellings they are replacing;

- (vi) provide FACS with:
 - A. a proposed new Dwellings Schedule in which it has removed from section 2 or section 3 of that Schedule (whichever applicable) the Service Package Dwellings and Sites which it no longer proposes to use and replaced them with the Service Package Dwellings and Sites described in clause 20(b)(i) above; and
 - B. during a Delivery Phase only, to the extent the Delivery Method has changed, an updated Program Milestones Schedule in which it has updated the Program Milestones (but not the corresponding number of Service Package Dwellings to achieve that Program Milestone or the Milestone Dates) to reflect the new Delivery Method.

- (c) *[not used]*
 - (i) *[not used]*;
 - (ii) *[not used]*.

- (d) Subject to the remainder of this clause 20, ServiceCo can substitute a Dwelling with a proposed new Dwelling which has a different bedroom configuration to the Dwelling which is the subject of the substitution, provided that on the earlier of the Date of Service Readiness for the last Stage to achieve Service Readiness and the Service Readiness Milestone Date occurring on the third anniversary of Commercial Close as extended in accordance with this Deed, the total number of Dwellings with studio, 1 bedroom, 2 bedroom, 3 bedroom, 4 bedroom and 5 bedroom configurations is that shown in section 1 of the Dwellings Schedule.

- (e) In determining its consent under clause 20(a), FACS will consider (acting reasonably) whether:
 - (i) ServiceCo has provided all of the information required under clause 20(b);
 - (ii) the information provided under clause 20(b) demonstrates to the satisfaction of FACS that the Dwellings are Suitable Substitution Accommodation; and
 - (iii) *[not used]*.

It will be unreasonable for FACS to withhold its consent if ServiceCo provides all of the information required under clause 20(b) and FACS is satisfied of the matters in clause 20(e)(ii).

- (f) If FACS consents to the new Dwellings pursuant to clause 20(a):
 - (i) the Dwellings Schedule will be deemed to be replaced with the proposed new Dwellings Schedule provided to FACS under clause 20(b)(vi)A;
 - (ii) to the extent the relevant Substitution has occurred during a Service Delivery Phase, the new Dwellings will be deemed to form part of the same Stage and be subject to the same requirements (including the same Final Expiry Date) as the Service Package Dwellings that have been replaced; and
 - (iii) if a proposed new Program Milestones Schedule has been provided to FACS under clause 20(b)(vi)B, the Program Milestone Schedule will be deemed to be replaced with that new schedule.

21. Repricing Reviewable Services

21.1 Reviewable Services Schedule

- (a) **(Original Reviewable Services Schedule):** For the purposes of the Proposal and to assist in the repricing of the Reviewable Services, ServiceCo has prepared the Original Reviewable Services Schedule and the Reviewable Services Plan.
- (b) **(Status and content of Original Reviewable Services Schedule):** The Original Reviewable Services Schedule sets out the basis on which ServiceCo has priced the Reviewable Services for the first Reviewable Services Term, including:
- (i) details of relevant margins;
 - (ii) details in respect of the allocation of responsibilities and risks between ServiceCo and any Subcontractors in respect of the performance of the Reviewable Services; and
 - (iii) the staffing profiles and shift patterns in respect of the performance of the Reviewable Services, including details of the number of full time equivalent positions involved in performing the Reviewable Services, including those involved in 'Management and Administration', consistent with the Financial Model.
- (c) **(Reviewable Services Schedule updated):** The Original Reviewable Services Schedule (in the case of the first Reviewable Services Term), and then, in the case of each subsequent Reviewable Services Term, the then current Reviewable Services Schedule and the Reviewable Services Plan:
- (i) will be updated at the commencement of the subsequent Reviewable Services Term to reflect:
 - A. the terms and prices agreed or determined under this clause 21 for that subsequent Reviewable Services Term; and
 - B. the information required under clause 21.1(b) for that subsequent Reviewable Services Term; and
 - (ii) as updated in accordance with clause 21.1(c)(i), will be used for the purposes of pricing the Reviewable Services for the following Reviewable Services Term.
- (d) **(Overarching principles for repricing Reviewable Services):** Unless otherwise agreed in writing by FACS, ServiceCo must price the provision of each Reviewable Service for the ensuing Reviewable Services Term in accordance with the following pricing principles and otherwise in accordance with this clause 21:
- (i) ServiceCo must include all efficiencies, innovations and continuing improvements so as to reduce or minimise the cost of delivering the Reviewable Services for the next Reviewable Services Term in its offer under clause 21.4;
 - (ii) there must be no new margins and no increase to any margins, from those margins identified in the Original Reviewable Services Schedule;
 - (iii) there must be no net increase to the Monthly Service Payment from the previous Reviewable Services Term as a result of any reallocation of poor performance risk as between ServiceCo and any Subcontractors following the pricing of each Reviewable Service for the next Reviewable Services Term; and

- (iv) unless otherwise agreed by FACS (acting reasonably), there must be no increase in the aggregate number of full time equivalent positions involved in performing the relevant Reviewable Services, from the Original Reviewable Services Schedule including those involved in 'Management and Administration' other than:
 - A. where necessary due to:
 - 1) any changes under clause 21.3(a); or
 - 2) any Variation implemented under this Deed; or
 - B. where ServiceCo can demonstrate to the satisfaction of FACS (acting reasonably) that such changes in the aggregate number of full time equivalent positions are required to meet the requirements of this Deed for the next Reviewable Services Term.

21.2 FACS benchmarking

ServiceCo acknowledges that FACS may, at any time, in its discretion:

- (a) **(State benchmarking)**: benchmark the pricing for the Reviewable Services against other Social Housing and Affordable Housing in New South Wales for any purpose including to inform its decision whether to proceed to make a request for ServiceCo to submit an offer in accordance with clause 21.4(a);
- (b) **(Information)**: provide ServiceCo with information obtained by FACS arising out of the benchmarking of the Reviewable Services undertaken by FACS; and
- (c) **(Meeting)**: request that ServiceCo:
 - (i) meet with FACS to discuss the outcome of any benchmarking undertaken by FACS and ServiceCo must attend such meetings; and
 - (ii) procure the attendance of a representative of any Subcontractor at such meetings.

21.3 Preparation for repricing

Not later than 12 Months before each Reviewable Services Date, FACS will consult with and notify ServiceCo of:

- (a) **(Reviewable Services)**: changes to be made to the Services or Services Requirements and any terms of this Deed for the Reviewable Services for the purposes of the next Reviewable Services Term which may include a change to the Services or the Services Requirements to support Outcomes Based Contracting principles;
- (b) **(timetable)**: a timetable for the repricing of the Reviewable Services;
- (c) **(bundling)**: any bundling of the Reviewable Services for repricing; and
- (d) **(amendments)**: any required amendments to the then current Reviewable Services Plan.

21.4 Request for offer to reprice

- (a) **(Request for offer)**: FACS may request ServiceCo to submit an offer for the provision of each Reviewable Service or a bundle of the Reviewable Services (as notified by FACS under clause 21.3) for the next Reviewable Services Term.

- (b) **(ServiceCo offer):** Whether or not FACS has made a request in accordance with clause 21.4(a), not later than 10 Months before the Reviewable Services Date, ServiceCo may (and if FACS has made a request in accordance with clause 21.4(a), ServiceCo must) submit an offer for the provision of the Reviewable Services for the next Reviewable Services Term on the terms notified by FACS under clause 21.3 (**Initial Offer**).
- (c) **(Offer detail):** ServiceCo's Initial Offer must:
- (i) contain an overarching explanation and details of any proposed changes to the price of the Reviewable Services;
 - (ii) be priced in accordance with the pricing principles set out in clause 21.1(d);
 - (iii) break down the price for each of the Reviewable Services for the next Reviewable Services Term;
 - (iv) include the staffing profiles and shift patterns in respect of the performance of the Reviewable Services for the next Reviewable Services Term, including the number of full time equivalent positions involved in 'Management and Administration' compared with the then current Reviewable Services Schedule;
 - (v) detail all of the relevant factors and inputs into the proposed price including proposals in connection with labour and materials required to perform the Services;
 - (vi) clearly identify the allocation of responsibility for the performance of obligations where such obligations may be provided pursuant to two or more Services (including Services which do not constitute Reviewable Services); and
 - (vii) provide details of any changes that may have been made to its subcontracting arrangements for the Reviewable Services during the previous Reviewable Services Term.
- (d) **(Offer submitted):** If ServiceCo submits an Initial Offer, then:
- (i) for a period of four Months after the Initial Offer is submitted (or such longer period agreed between the parties), FACS agrees to negotiate exclusively with ServiceCo for the provision of the relevant Reviewable Services during the next Reviewable Services Term; and
 - (ii) FACS will, by a date not later than one Month after the expiration of that four Month period, advise ServiceCo whether:
 - A. ServiceCo's Initial Offer or ServiceCo's final negotiated offer (**Negotiated Offer**) is acceptable to FACS for the provision of the Reviewable Services; or
 - B. FACS requires ServiceCo to conduct a competitive tender under clauses 21.6 to 21.8 (inclusive) in respect of that Reviewable Service.
- (e) **(Offer remains open):** Notwithstanding that FACS may require ServiceCo to conduct a competitive tender, ServiceCo's Initial Offer and Negotiated Offer (if any) must remain open for subsequent acceptance by FACS until the Reviewable Services Tender Expiry Date.

21.5 No offer made

If ServiceCo does not submit an offer under clause 21.4(b), then FACS may:

- (a) **(current terms)**: require ServiceCo to continue to provide those Reviewable Services on the then current terms and pricing for the next Reviewable Services Term; or
- (b) **(require competitive tender process)**: require ServiceCo to conduct a competitive tender to be conducted in accordance with clauses 21.6 to 21.8 (inclusive).

21.6 Competitive tender

- (a) **(ServiceCo to conduct tender process)**: If FACS requires ServiceCo to conduct a competitive tender pursuant to clause 21.4(d)(ii)B or 21.5(b), ServiceCo must conduct a competitive tender in accordance with this clause 21.6 and the Reviewable Services Plan.
- (b) **(No delegation)**: ServiceCo may not subcontract or otherwise delegate any aspect of a competitive tender conducted under this clause 21.6 without the prior consent of FACS.
- (c) **(Initial meeting)**: Promptly, and in any event within one Month after receipt of FACS' request under clause 21.4(d)(ii)B or 21.5(b) for a competitive tender to be conducted under this clause 21.6 and the Reviewable Services Plan, ServiceCo must commence the competitive tender process by convening an initial meeting with FACS and the probity officer (if applicable).
- (d) **(Consultation)**: At the initial meeting convened under clause 21.6(c) (and any subsequent meetings agreed between them), ServiceCo, FACS and the probity officer (if applicable) will work collaboratively, having regard to the Reviewable Services Plan, to seek to agree on:
 - (i) the appropriate timetable for conducting the tender by ServiceCo for the relevant Reviewable Services, including the proposed date for releasing the tender to the market and identifying all activities that involve FACS, including the dates for:
 - A. any submission of documents to FACS (including any revisions or resubmissions); and
 - B. any review, comment, outcomes or actions required to be performed by FACS,all of which must be consistent with this clause 21 and the Reviewable Services Plan;
 - (ii) the appropriate manner of advertising the tender for the relevant Reviewable Services and the means of identifying prospective tenderers;
 - (iii) evaluation criteria, evaluation plan and evaluation panel (which may, at FACS' discretion, include a representative of FACS), which will include those set out in clause 21.6(h); and
 - (iv) the draft tender documentation which must:
 - A. provide such information concerning the Service Package, the relevant Reviewable Services and the Service Package Documents as FACS reasonably requires to ensure the tenderers are fully informed of the opportunity tendered (including details of the evaluation criteria set out in clause 21.6(d)(iii));

- B. impose a duty of confidentiality on tenderers;
 - C. require tenders to be conforming and irrevocable until one Month after the relevant current Reviewable Services Term;
 - D. require tenderers to comply with the subcontracting requirements set out in clause 14.4 including providing consents to the conduct of any Probity Investigations which may be required by FACS;
 - E. attach a draft Subcontract:
 - 1) substantially on the same terms (other than price, term and any amendments required in accordance with clause 21.3 or to ensure that the contract is arms-length) as the current Subcontract to the extent it relates to the tendered Reviewable Services or which is otherwise acceptable to FACS; and
 - 2) which provides for the review of those Reviewable Services in accordance with the terms of this clause 21;
 - F. include a reasonable transition plan for the prompt transfer of the Reviewable Services from ServiceCo to that successful third party tenderer;
 - G. require tenderers to accept the terms of the draft Subcontract; and
 - H. enable ServiceCo to prepare a proposed updated Reviewable Services Schedule in accordance with the pricing principles set out in clause 21.1(d) (provided that this does not require the disclosure of any current pricing information, including margins, Monthly Service Payments or full time equivalents, to tenderers); and
- (v) whether ServiceCo or FACS should manage the tender process.
- (e) **(Review of request for tender):** Not later than 30 Business Days prior to the proposed date for releasing the tender to the market, ServiceCo must provide to FACS:
- (i) the final request for tender prepared by ServiceCo which is proposed to be issued to prospective tenderers;
 - (ii) the list of proposed tenderers; and
 - (iii) ServiceCo's proposed evaluation plan in respect of the request for tender,
- for each of the Reviewable Services for review in accordance with clause 10.
- (f) **(Collaboration with FACS):** Subject to clause 21.6(i)(i), ServiceCo must:
- (i) actively manage the tender process;
 - (ii) keep FACS regularly informed as to the progress of the tender;

- (iii) during the tender process, give FACS reasonable prior written notice of any interviews or meetings with the tenderers and FACS may, in its discretion, attend such interviews or meetings; and
 - (iv) during the tender process, give FACS copies of all correspondence or documents received by ServiceCo from the tenderers or provided by ServiceCo to the tenderers.
- (g) **(Offers):** Subject to clause 21.6(i), ServiceCo must seek offers by competitive tender, on the basis of the tender approved by FACS in accordance with clause 21.6(e), from at least three experienced and capable service providers with the financial capacity to provide the relevant Reviewable Services for the remainder of the Term (or if there are not three such service providers active in the market and if approved by FACS pursuant to clause 21.6(e), such lesser number) for the relevant component of the Reviewable Services which must not include (without the consent of FACS) offers from:
- (i) ServiceCo or any Associate of ServiceCo;
 - (ii) any more than one Related Body Corporate of any Associate of ServiceCo; or
 - (iii) any service provider that has not received the prior approval of FACS (which must not be unreasonably withheld).
- (h) **(Content of offers):** Subject to clause 21.6(i), ServiceCo must procure that each offer obtained under clause 21.6(g) addresses the following criteria:
- (i) details of the contract price, which reflect a competitive pricing of the Reviewable Services in the then current market;
 - (ii) current capacity and capability to carry out the Reviewable Services over the Reviewable Services Term, including current workload and resources plans, key people, subcontractors and consultants;
 - (iii) previous performance of services similar to the relevant Reviewable Services together with referees;
 - (iv) financial capacity to provide the Reviewable Services;
 - (v) demonstration that ServiceCo will be able to continue to meet the performance standards in the Services Specification relevant to the Reviewable Services; and
 - (vi) value for money delivered to FACS.
- (i) **(FACS manage the tender process):** Within 15 Business Days after receipt of the documentation in accordance with clause 21.6(e), FACS may notify ServiceCo that it wishes to manage the tender process. If FACS notifies ServiceCo that it wishes to manage the tender process:
- (i) ServiceCo must:
 - A. comply with all reasonable requests of FACS to assist with that competitive tender process; and
 - B. refrain from doing anything that may impede FACS in conducting that competitive tender process;
 - (ii) FACS must:

- A. keep ServiceCo regularly informed as to the progress of the tender;
 - B. during the tender process, give ServiceCo reasonable prior written notice of any interviews or meetings with the tenderers and ServiceCo may, in its discretion, attend such interviews or meetings; and
 - C. provide ServiceCo with a copy of all offers received by FACS; and
- (iii) FACS must use the list of proposed tenderers prepared by ServiceCo in accordance with clause 21.6(e) and 21.6(g), as approved by FACS or as amended by agreement between FACS and ServiceCo.

ServiceCo acknowledges and agrees that FACS' management of the tender process pursuant to this clause 21.6(i) is an administrative function only and does not relieve ServiceCo from, or alter or affect, ServiceCo's obligations, Liabilities or responsibilities.

21.7 Outcome of competitive tender process

ServiceCo must, within six Months after the notice from FACS under clause 21.4(d)(ii)B or 21.5(b), (or if FACS has managed the tender process in accordance with clause 21.6(i), within one Month of receipt by ServiceCo of the offers received by FACS in accordance with clause 21.6(i)(ii)C) provide to FACS:

- (a) copies of all offers ServiceCo has procured which meet the requirements set out in clauses 21.6(g) and 21.6(h);
- (b) any further details as FACS reasonably requires in relation to the tender and the offers,

so that FACS and ServiceCo can collaboratively work together, in accordance with clause 21.8 to seek to reach agreement on the appointment of one of the tenderers to provide each of the Reviewable Services for the next Reviewable Services Term.

21.8 Consultation

- (a) **(Reviewable Services):** During the period of one Month following provision of the information under clause 21.7, ServiceCo and FACS must regularly and collaboratively consult with each other concerning those offers which comply with clauses 21.6(g) and 21.6(h), to seek to reach agreement on:
 - (i) the evaluation report in connection with each offer; and
 - (ii) the appointment of one of the tenderers to provide each of the Reviewable Services for the next Reviewable Services Term having regard to:
 - A. the experience, capability and financial capacity of each tenderer;
 - B. the extent to which each offer provides value for money to FACS when compared with each of the other offers; and
 - C. the ability of ServiceCo to continue to meet the Services Specification and otherwise comply with this Deed on subcontracting the relevant Reviewable Service to any of the tenderers.

- (b) **(FACS agreement):** ServiceCo must not enter into any contract with any tenderer for the provision of the Reviewable Services without the prior agreement of FACS.
- (c) **(Probity investigations):** ServiceCo must ensure that each of the tenderers for the Reviewable Services, and any persons likely to be associated with the provision of the Reviewable Services, provide their consent to the carrying out of any Probity Investigations required by FACS.

21.9 Appointment and payment

- (a) **(Successful tenderer):** If an offer made by a tenderer is acceptable to FACS (whether or not the tender process was conducted by FACS or ServiceCo), ServiceCo must (subject only to the conduct of Probity Investigations satisfactory to FACS):

- (i) subcontract; or
- (ii) where applicable, ensure that the relevant Key Subcontractors subcontract,

the provision of the relevant Reviewable Services for the next Reviewable Services Term to the successful tenderer, pursuant to a Subcontract which complies with clause 21.6(d)(iv)E.

- (b) **(Deemed approval):** A Subcontract entered into in accordance with this clause 21.9 will be deemed to be approved by FACS for the purposes of clause 14.3.

- (c) **(Adjustments):** The parties must adjust:

- (i) the Monthly Service Payment (and the Financial Model); and
- (ii) the terms of this Deed (including any changes to be made to the Services or Services Requirements made by FACS pursuant to clause 21.3(a)),

for the balance of the Service Delivery Phase to reflect:

- (iii) ServiceCo's offer accepted by FACS; or
- (iv) the Subcontract entered into in accordance with clause 21.9(a),

(as applicable), unless clause 21.10(a) or 21.10(b) applies, in which case the parties must adjust the Monthly Service Payment (and the Financial Model) for the balance of the Service Delivery Phase to reflect the circumstances described in clause 21.10(a) or 21.10(b) (as applicable).

21.10 Failure to agree

If none of the offers made by the tenderers are acceptable to FACS (whether or not the tender process was managed by FACS or ServiceCo), FACS may:

- (a) **(acceptance):** accept ServiceCo's Initial Offer or Negotiated Offer (if any);
- (b) **(current terms):** require ServiceCo to proceed to provide the Reviewable Services under the current terms and pricing in accordance with clause 21.11; or
- (c) **(Variation):** omit the Reviewable Services from the Services by way of a Variation and carry out the Reviewable Services itself or procure a third party to carry out the Reviewable Services (in which case the Monthly Service Payment will be adjusted and this Deed amended as necessary in accordance with the clause 31 for the omission of those Reviewable Services).

21.11 Continued provision of Reviewable Services

- (a) **(Appointment of Subcontractor):** Subject to clause 21.11(b), without limiting FACS' rights under this Deed, if a Subcontractor is intended by FACS to be appointed to carry out the Reviewable Services in the next Reviewable Services Term but has not yet been appointed under clause 21.9 by the date of commencement of the next Reviewable Services Term, ServiceCo must continue to provide the relevant Reviewable Services on the terms and pricing for the immediately prior Reviewable Services Term and in accordance with the Services Specification, until such time as a Subcontractor is appointed under clause 21.9 and commences provision of those Reviewable Services.
- (b) **(Backdated price):** If the period for provision of the Reviewable Services by ServiceCo under clause 21.11(a) extends beyond the Reviewable Services Tender Expiry Date, FACS will pay the price offered by ServiceCo (if any) in ServiceCo's Initial Offer for the continued provision of the Reviewable Services backdated to the Reviewable Services Tender Expiry Date.

21.12 Probity of process

FACS may, at any time, appoint a probity officer to, or have the FACS Representative, oversee the whole or any part of the process referred to in this clause 21 and ServiceCo must:

- (a) **(provide assistance):** provide all assistance and information required by; and
- (b) **(comply with directions):** comply with all directions of,

the probity officer or the FACS Representative, in connection with that process.

Part H – Payment Provisions

22. Payments, adjustments & Taxes

22.1 FACS' payment obligations

- (a) **(Payment obligations):** In consideration of ServiceCo providing the Services, FACS will pay ServiceCo the Monthly Service Payment:
- (i) calculated in accordance with the Payment Schedule; and
 - (ii) in arrears,
- during the Service Delivery Phase from the end of the first Month of the Service Delivery Phase.
- (b) **(Other payments):** Other than the Monthly Service Payments, FACS will pay any payment that is due and payable to ServiceCo, and ServiceCo must pay any payment that is due and payable to FACS:
- (i) at the time specified in this Deed or the relevant FACS Service Package Document for the particular payment; or
 - (ii) if no time is specified for the payment of the relevant amount, the payment will be made:
 - A. by FACS, in the case of a payment to ServiceCo:
 - 1) during the Delivery Phase, 20 Business Days after a written demand is made for payment of the amount; and
 - 2) during the Service Delivery Phase, at the same time as the next Monthly Service Payment is made by FACS to ServiceCo after the relevant amount becomes due and payable and a written demand is made for payment of the amount; and
 - B. by ServiceCo in the case of a payment to FACS, within 20 Business Days after a written demand being made by FACS for payment of the relevant amount.

22.2 Monthly Service Payments

- (a) **(Updated information):** Within five Business Days after the end of each Month during the Service Delivery Phase, ServiceCo must ensure that it has updated the information in CHIMES relating to:
- (i) delivery of the Service Package Dwellings details including Program Milestones;
 - (ii) Service Package Dwelling details (including any changes to the details of Service Package Dwellings that have been substituted pursuant to clause 20) and first occupation dates; and
 - (iii) any other details in respect of the Services Package which FACS reasonably requires.
- (b) **(Timing of payment and RCTI):** After the end of each Month during the Service Delivery Phase, FACS will:

- (i) on the sixth Business Day, calculate the Monthly Service Payment for that Month; and
 - (ii) by the ninth Business Day, make the Monthly Service Payment and issue the RCTI.
- (c) **(Registered):** Each of FACS and ServiceCo acknowledges that it (or in the case of FACS, an entity on behalf of FACS) is registered for GST when it enters into this Deed and that each party will notify the other party if it (or the relevant entity) ceases to be registered.
- (d) **(Payment not evidence of proper performance):** Neither payment of Monthly Service Payments by FACS to ServiceCo nor the issuing of any RCTI is:
- (i) evidence that the Service Package Activities have been carried out by ServiceCo in accordance with FACS Service Package Documents; or
 - (ii) an admission of Liability,
- and is only to be taken as payment on account.
- (e) **(Correction of previous RCTI):** FACS may, in any RCTI, correct any error in any previous RCTI issued by FACS.
- (f) **(Adjustment Notice):** By the 23rd day of the Month, ServiceCo may notify FACS that it believes the RCTI issued in that Month is incorrect and submit to FACS a request for adjustment of the Monthly Service Payment in respect of that RCTI **(Adjustment Notice)** including the basis on which the adjustment has been requested.
- (g) **(Additional information):** FACS must consider the Adjustment Notice and may require ServiceCo to provide additional information.
- (h) **(Adjustment Notice payment):** To the extent FACS agrees that an adjustment is required to the RCTI, FACS will adjust the Monthly Service Payment for the next Month in the Service Delivery Phase accordingly.

22.3 Payment adjustments under the Performance Regime and Payment Schedule

- (a) **(Performance Regime applies):** The Monthly Service Payments will be adjusted to the extent and in the manner described in the Performance Regime and Payment Schedule to reflect the agreed principle that FACS will only pay for the quantum and quality of the Services actually provided.
- (b) **(Payments):** To the extent that ServiceCo must pay FACS for any Liabilities contemplated by the exclusions in clause 22.3(e) and those Liabilities are in excess of the Monthly Service Payments, then in addition to any other remedies of FACS or its Associates under this Deed or at Law, the future Monthly Service Payments will be reduced to the extent necessary for FACS or its Associates to be compensated for those Liabilities in full. To the extent that FACS and its Associates are unable to recover such compensation by the reduction of future Monthly Service Payments, any shortfall in such compensation will be a debt due and payable by ServiceCo to FACS.
- (c) **(ServiceCo acknowledgements):** ServiceCo acknowledges and agrees that if clause 22.3(a), or any adjustment under the Performance Regime or Payment Schedule pursuant to that clause, is held to be void or unenforceable, other than a challenge to the Performance Regime or Payment Schedule initiated by FACS or its Associates, clause 22.3(a) and the Performance Regime and the Payment Schedule will not limit ServiceCo's Liability to FACS under this Deed or otherwise at Law for any Liability suffered by FACS up to an amount equal to the amount that

would have been applied as a consequence of the Service Failure had it not been held to be void or unenforceable.

- (d) **(Sole remedy):** Subject to clauses 22.3(c) and 22.3(e), adjustment of the Monthly Service Payments by application of the Performance Regime or Payment Schedule under clause 22.3(a), will be the only monetary consequence for ServiceCo for any Service Failure to which the Performance Regime or Payment Schedule applies.
- (e) **(Exclusions to sole remedy):** Clause 22.3(d) does not limit or affect:
 - (i) any other right or remedy under this Deed, any other Service Package Document or at Law (other than, subject to this clause 22.3(e), for monetary compensation to the extent such right or remedy applies to the same events as the Service Failure to which the Performance Regime or Payment Schedule applies);
 - (ii) FACS' right to recover for any loss, damage, cost, destruction or other amounts which are indemnified by ServiceCo under clause 34 (other than clause 34.1), to the extent that FACS has not been fully compensated for that loss or damage;
 - (iii) FACS' rights under clauses 37 or 38;
 - (iv) FACS' rights under this Deed or any other FACS Service Package Document in respect of the event that caused or contributed to the Service Failure (as opposed to the Service Failure itself) to the extent that FACS has not been fully compensated for that loss or damage;
 - (v) any payment on termination of this Deed (including a Termination Payment);
 - (vi) any Liability of ServiceCo to FACS or an Associate of FACS suffered or incurred by FACS or any Associate of FACS as a result of any:
 - A. fraudulent, unlawful or criminal act or omission; or
 - B. any wilful breach of a Service Package Document,by ServiceCo or any of its Associates where FACS has not been completely compensated for that Liability by the adjustment in accordance with clause 22.3(a); or
 - (vii) any Liability that ServiceCo has to FACS for any Liability that FACS has to a third party to the extent that FACS has not been fully compensated for that Liability by the adjustment under clause 22.3(a).
- (f) **(Genuine pre-estimate):** ServiceCo acknowledges and agrees that:
 - (i) it is difficult, and in some instances impossible, to calculate with precision the diminution in value FACS may suffer in connection with each Service Failure; and
 - (ii) notwithstanding clause 22.3(f)(i), the application and escalation of the Performance Regime and Payment Regime associated with each Service Failure is proportionate and not extravagant and reflects a genuine pre-estimate of the diminution in value of the Services to FACS in connection with such Service Failures.

22.4 Refund

If:

- (a) **(payment):** FACS pays ServiceCo, or ServiceCo pays FACS, any amount under clause 22.1 or otherwise; and
- (b) **(entitlement):** it is subsequently agreed or determined under this Deed for any reason that the recipient was not entitled to that payment (or any part of that payment) under this Deed,

the recipient will immediately refund to the party which made the payment (or the part that constitutes the overpayment, as the case may be), that payment plus interest at the Overdue Rate from the day the payment was paid to (and including) the date of repayment under this clause 22.4.

22.5 Interest

- (a) **(Interest):** Subject to clause 22.6, and other than where section 3.2 of the Termination Payment Schedule applies in relation to a Termination Payment if a party fails to pay any amount due and payable by that party to the other party within the time required under this Deed, then it must pay interest on that amount:
 - (i) from the date on which payment was due and payable until the date on which payment is made;
 - (ii) calculated on daily balances at the Overdue Rate; and
 - (iii) capitalised monthly.
- (b) **(Sole entitlement):** The amount specified in this clause 22.5 will be a party's sole entitlement to interest including damages for loss of, use of, or the cost of borrowing, money.

22.6 Set-off

- (a) **(FACS' payments):** Without limiting FACS' rights at Law, FACS may deduct from any moneys due and payable to ServiceCo under FACS Service Package Documents or otherwise at Law:
 - (i) any moneys due and payable by any Group Member to FACS in respect of the Service Package Documents;
 - (ii) any Liabilities contemplated by the exclusions in clause 22.3(e); and
 - (iii) the amount of any Claim that FACS may make in good faith against any Group Member in respect of the Service Package Documents.
- (b) **(Details of set-off):** FACS must provide ServiceCo with reasonable details of the basis on which it is setting off any amount pursuant to clause 22.6(a).
- (c) **(ServiceCo's payments):** ServiceCo must make all payments to FACS free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless ServiceCo is compelled by Law to make such a deduction or withholding.

22.7 Liability for Taxes

- (a) **(ServiceCo to indemnify):** Subject to clause 22.8, ServiceCo must indemnify FACS against, and must pay FACS on demand the amount of, all Taxes (excluding Rates or Land Tax, and any penalty, fine, charge or interest in respect of any Rates or Land Tax) incurred in connection with:
 - (i) the negotiation, preparation, execution and registration of this Deed or any other Service Package Document;

- (ii) the transactions that this Deed or any other Service Package Document contemplates; and
 - (iii) any amendment to, or any consent, approval, waiver, release or discharge of, or under, this Deed or any other Service Package Document.
- (b) **(Rates and Land Tax):** ServiceCo:
- (i) bears the cost of all Rates and Land Tax, if any, in respect of; and
 - (ii) must indemnify FACS against, and must pay FACS on demand, the amount of, all Rates and Land Tax and any penalty, fine, charge or interest in respect of any Rates or Land Tax incurred in connection with, the Service Package.
- (c) **(GST):** ServiceCo must indemnify FACS against, and must pay FACS on demand, the amount of any GST liability or denied input tax credits of FACS that arise directly or indirectly from any change to ServiceCo's GST registration status or any change to the GST treatment of supplies or acquisitions made by ServiceCo (where the GST treatment arises from any action or inaction of ServiceCo), where that change differs from that set out in the Financial Model.

22.8 GST

- (a) **(Interpretation):**
- (i) Except where the context suggests otherwise, terms used in this clause 22.8 have the meanings given to those terms by the GST Act (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 22.8.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 22.8.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** Subject to clause 22.8(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:
- (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 22.8), for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**),

at the same time as any other consideration is to be first provided for that supply; and

- (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply or, in the case of a supply in relation to which an RCTI is to be issued, the Recipient must provide an RCTI to the Supplier for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 22.8(c)(ii).
- (d) **(Variation of GST):**
 - (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 22.8(c) and clause 22.8(e)), varies from the additional amount paid by the Recipient under clause 22.8(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 22.8(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 22.8(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
 - (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 22.8(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the parties agree to set off their GST liabilities in respect of the supplies and consideration referred to in clause 22.8(c)(ii). For the avoidance of doubt, clause 22.8(c) also applies to the Recipient in its capacity as the supplier of the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 22.8(c).
- (f) **(No merger):** This clause 22.8 will not merge on completion or termination of this Deed.

22.9 Additional Funding

- (a) If ServiceCo receives or becomes aware that it will receive Additional Funding it must notify FACS within 10 Business Days of the earlier of receipt or becoming aware of that receipt of Additional Funding. The notice must include:
 - (i) details of the provider of the Additional Funding;
 - (ii) the amount of any such Additional Funding; and
 - (iii) the purpose (including the Service Package Dwellings in respect of which) the Additional Funding will be used for.
- (b) A notice provided under clause 22.9(a) will be deemed to be a 'Variation Proposal' and FACS may in its absolute discretion issue a Variation Order to effect either:
 - (i) a reduction in the Monthly Service Payment (and an adjustment to the Financial Model) to account for the net effect of ServiceCo's receipt of the relevant Additional Funding on ServiceCo's revenues as set out in the Financial Model immediately prior to that reduction (**Net Additional Funding**); and

- (ii) a lump sum payment to FACS where the Additional Funding is itself a lump sum amount.
- (c) ServiceCo may approach FACS to discuss potential Additional Funding opportunities from time to time.

Part I - Change in Circumstances

23. Delivery Phase – delay

23.1 Early warning

- (a) **(Early Warning):** If ServiceCo becomes aware of a Relief Event or any other matter which will, or is likely to, give rise to a delay in achieving a Program Milestone by the relevant Milestone Date, it must promptly give FACS notice of the matter and the delay it is likely to cause (**Early Warning (Delivery)**) in the form of Schedule 33.
- (b) **(Prevent):** Subject to this clause 23, 'prevent' or 'prevented' does not mean that ServiceCo is permanently prevented from performing its obligations and includes delay in performing its obligations.

23.2 Entitlement to Claim

- (a) Subject to this clause 23 and clause 25, if ServiceCo has been or will be delayed in achieving a Program Milestone by the relevant Milestone Date, ServiceCo will be entitled to claim:
 - (i) relief from its obligation to achieve the relevant Program Milestone by the relevant Milestone Date; or
 - (ii) relief from any of its other Delivery Phase Activities,(or both) in accordance with this clause 23.
- (b) **(Variations):** In order to claim relief under clause 23.2(a) for a Relief Event which is a Variation or a Change in Mandatory Requirements, ServiceCo must submit its initial notice under clauses 26 and 28.

23.3 Conditions precedent to relief

Subject to clause 23.5, it is a condition precedent to ServiceCo's entitlement to relief from its obligations to achieve a Program Milestone by the relevant Milestone Date and its other Delivery Phase Activities that:

- (a) **(notices):** ServiceCo submits to FACS:
 - (i) a notice in the form of Schedule 34 (with reference to the Early Warning (Delivery), if relevant), which includes the Relevant Event Effects (including the estimated period of time of the delay) and any Mitigating Factors, within 20 Business Days after the date on which it first became aware of the occurrence of the relevant Relief Event; and
 - (ii) where the delay or period that ServiceCo is prevented from performing any of the Delivery Phase Activities extends beyond the period set out in the notice submitted in accordance with clause 23.3(a)(i), an updated notice, once the consequences of the Relief Event have ceased, promptly (and in any event, within 10 Business Days after the consequences of the Relief Event have ceased);
- (b) **(Program Milestones):** ServiceCo can demonstrate that:
 - (i) it has actually been or will be delayed by the relevant Relief Event in a manner which will delay the achievement of a Program Milestone by the relevant Milestone Date; and

- (ii) in respect of the Service Package Dwellings that ServiceCo intended to utilise to meet the relevant Program Milestone(s), the Relief Event has caused or will cause activities on the critical path contained and shown in the then current Delivery Phase Program to be delayed for one or more of those Service Package Dwellings. ServiceCo's intention to utilise those Service Package Dwellings to meet the relevant Program Milestone(s) must be ascertainable from the then current Delivery Phase Program;
- (c) **(relief)**: with respect to a claim for relief from its other Delivery Phase Activities, ServiceCo's performance of all or any part of the Delivery Phase Activities is actually prevented, or will actually be prevented, by the relevant Relief Event; and
- (d) **(Delivery Phase Program)**: ServiceCo is, at the time it submits the relevant notice and any updated notice, complying with its obligations in connection with the Delivery Phase Program.

23.4 Relief determined by FACS

- (a) **(FACS' determination)**: Subject to clause 23.4(b) if the conditions precedent in clause 23.3 have been satisfied, then:
 - (i) in respect of a claim for relief from achieving a Program Milestone by the relevant Milestone Date:
 - A. the obligation to achieve the affected Program Milestone by the relevant Milestone Date will be suspended; and
 - B. the failure to achieve the Program Milestone by the relevant Milestone Date will not be a breach of this Deed by ServiceCo, a ServiceCo Act or Omission or a Major Default, but only in respect of the Service Package Dwellings that were affected by the Relief Event and only until the earlier of:
 - C. the date FACS determines (acting reasonably) the Relief Event and its consequences cease to prevent performance of the relevant Delivery Phase Activities; and
 - D. the date on which FACS determines (acting reasonably) the Relief Event and its consequences would have ceased to prevent the achievement of the Program Milestones, had ServiceCo or any of its Associates not failed to do any of the things contemplated by clause 25(b)(ii);
 - (ii) in respect of a claim for relief from its other Delivery Phase Activities, FACS will grant ServiceCo such other reasonable relief from the Delivery Phase Activities determined by FACS, taking into account all relevant evidence presented by the parties.
- (b) **(Limitations)**: Notwithstanding anything in this Deed, FACS is not required to grant ServiceCo relief from any Service Package Activities from which ServiceCo has not claimed relief.
- (c) **(Notice of determination)**: FACS must provide notice of its determination under clause 23.4(a) to ServiceCo within 20 Business Days after the later of:
 - (i) the date on which ServiceCo submits the relevant notice; and
 - (ii) where any updated notice is submitted in accordance with clause 23.3(a)(i), the date on which that updated notice is submitted.

- (d) **(Interim determinations):** In the circumstances contemplated by clause 23.4(c)(ii), FACS may, in its absolute discretion, give interim determinations of ServiceCo's entitlement to relief notwithstanding that the effects of the relevant Relief Event are continuing.

23.5 Unilateral extensions

- (a) **(Unilateral extensions):** Whether or not ServiceCo has made, or is entitled to make, a claim for, or is entitled to, relief under clause 23.4(a)(i), FACS may, at its absolute discretion at any time and from time to time prior to a Milestone Date, by notice to ServiceCo, unilaterally grant relief in respect of the obligation to achieve a Milestone Date for one or more Service Package Dwelling or extend that Milestone Date in its entirety following the occurrence of a Relief Event.
- (b) **(Acknowledgements):** The parties acknowledge that:
 - (i) FACS is not required to exercise FACS' discretion under clause 23.5(a) for the benefit of ServiceCo; and
 - (ii) the exercise or failure to exercise FACS' discretion under this clause 23.5 is not capable of being the subject of a Dispute for the purposes of clause 40 or otherwise subject to review.
- (c) In circumstances where FACS exercises its power under this clause 23.5 as a consequence of a delay to a Service Readiness Milestone Date caused by a Compensable Relief Event for which ServiceCo is entitled to relief in accordance with clause 23.4(a)(i) of this Deed, FACS must pay compensation to ServiceCo in accordance with clause 23.6.

23.6 Entitlement to costs

- (a) **(Compensable Relief Event):** Subject to clause 23.6(b), to the extent that the obligation to achieve a Service Readiness Milestone by the Service Readiness Milestone Date is suspended under clause 23.4(a)(i)A for a Compensable Relief Event, FACS will pay ServiceCo the amount calculated in accordance with clause 31, provided that ServiceCo has complied with and continues to comply with the requirements under clause 23.3.
- (b) **(Relief from obligations):** If the obligation to achieve a Service Readiness Milestone by the Service Readiness Milestone Date is not suspended under clause 23.4(a)(i)A, ServiceCo will not be entitled to any compensation, including any Prolongation Costs.

23.7 Sole remedy

Subject to clauses 6.3(c) and 6.3(d)(i):

- (a) **(Relief Event):** ServiceCo's sole remedy for a prevention, delay or disruption during the Delivery Phase is as set out in this clause 23; and
- (b) **(relief and compensation):** ServiceCo will not be entitled to make any Claim, and FACS will have no Liability for, any Claim made by ServiceCo (including for damages for breach), for ServiceCo being delayed or prevented from providing Delivery Phase Activities (including delay to a Service Readiness Milestone Date) in accordance with this Deed other than for the relief and compensation in accordance with this clause 23.

23.8 Concurrent delays

ServiceCo is not entitled to relief under clause 23.4 or compensation under clause 23.6 in respect of a delay to the achievement of a Program Milestone caused by a Relief Event to the extent that an event which is not a Relief Event causes a delay to a Program Milestone which

is contemporaneous, concurrent or overlapping with the delay to a Program Milestone caused by the relevant Relief Event.

23.9 Force Majeure Event during Delivery Phase

- (a) **(ServiceCo's obligations):** If:
- (i) a Relief Event is a Force Majeure Event;
 - (ii) the Force Majeure Event prevents ServiceCo from performing the Delivery Phase Activities; and
 - (iii) ServiceCo has been granted relief from its obligation to perform the relevant Delivery Phase Activities under clause 23.4,

then, the obligations of ServiceCo under this Deed which are affected by the Force Majeure Event and which are the subject of the relief granted under clause 23.4 will be suspended, but only to the extent that, and for so long as ServiceCo has been granted relief from its obligation to perform the relevant Delivery Phase Activities under clause 23.4.

- (b) **(FACS' obligations):** The obligations of FACS under this Deed which are affected by the Force Majeure Event will be suspended, but only to the extent that, and for so long as, the Force Majeure Event prevents FACS from meeting its obligations under this Deed.
- (c) **(Party not in breach):** A party's failure to perform its obligations under this Deed which are suspended under clause 23.9(a) will not be a breach of this Deed, a Major Default or a Default Termination Event during that period of suspension.

23.10 Time not at large

None of:

- (a) **(breach):** a breach of this Deed or any other FACS Service Package Document by FACS or any of its Associates;
- (b) **(Variation):** a Variation directed, or Variation Order issued, by FACS or the FACS Representative;
- (c) **(act or omission):** any other act or omission of FACS or any of FACS' Associates;
- (d) **(failure to grant relief):** a failure by FACS to grant relief under clause 23.4 or to do so within the time required by that clause;
- (e) **(time bar):** the operation of any time bar, including clause 23.3(a); or
- (f) **(other default):** any other default, act or omission of FACS or any of FACS' Associates,

sets a Service Readiness Milestone Date, or any other time, at large.

23.11 Final Expiry Date and Sunset Date

To the extent relief is granted in respect of a Service Readiness Milestone under clause 23.4 in respect of a Service Package Dwelling affected by a Relief Event (as established in accordance with clause 23.3(b)(ii)), the Final Expiry Date and the Sunset Date will be deemed to be extended by the relevant period of suspension under clause 23.4(a)(i).

24. Service Delivery Phase – Intervening Events

24.1 Early warning

- (a) **(Early Warning):** If ServiceCo becomes aware of an Intervening Event or any other matter which has prevented, or will prevent ServiceCo from performing any Services in accordance with this Deed, it must promptly give FACS notice of the matter and the delay or effect it is likely to cause (**Early Warning (Service Delivery)**) in the form of Schedule 33.
- (b) **(Prevent):** Subject to this clause 24 'prevent' or 'prevented' does not mean that ServiceCo is permanently prevented from performing its obligations and includes delays in performing its obligations.

24.2 Entitlement to Claim

If, during a Service Delivery Phase, an Intervening Event prevents, or will prevent, ServiceCo from:

- (a) meeting any of the Services Requirements in accordance with this Deed; or
- (b) otherwise performing any of the Service Package Activities,

(or both), ServiceCo will be entitled to claim relief from performance of its obligations in accordance with this clause 24.

24.3 Conditions precedent to relief

It is a condition precedent to FACS granting any relief or ServiceCo having any entitlement in connection with an Intervening Event that:

- (a) **(Notices):** ServiceCo submits to FACS:
 - (i) a notice in the form of Schedule 34 (with reference to the Early Warning (Service Delivery), if relevant) which includes the Relevant Event Effects and any Mitigating Factors, within 20 Business Days after the date on which it first became aware of the occurrence of the Intervening Event; and
 - (ii) where the delay or period that ServiceCo is prevented from performing any of the Service Package extends beyond the period set out in the notice submitted in accordance with clause 24.3(a)(i), an updated notice, once the consequences of the Intervening Event have ceased, promptly (and in any event, within 10 Business Days after the consequences of the Intervening Event have ceased); and
- (b) **(Relief):** ServiceCo's performance of all or any part of the Service Package Activities is actually prevented, or will actually be prevented, by the relevant Intervening Event.

24.4 Services suspended and no breach

To the extent that:

- (a) an Intervening Event prevents ServiceCo from meeting any of the Services Requirements in accordance with this Deed; and
- (b) the conditions precedent in clause 24.3 have been satisfied,

then:

- (c) the relevant obligation of ServiceCo will be suspended; and
- (d) the failure to perform the affected Services will not be a breach of this Deed by ServiceCo, a ServiceCo Act or Omission, a Major Default or a Default Termination Event,

but only until the earlier of:

- (e) the date the Intervening Event and its consequences cease to prevent performance of the relevant Services; and
- (f) the date on which the Intervening Event and its consequences would have ceased to prevent performance, had ServiceCo or any of its Associates not failed to do any of the things contemplated by clause 25(b)(ii).

24.5 Continue to provide Services

- (a) If an Intervening Event prevents ServiceCo from meeting any of the Services Requirements in accordance with this Deed, then:
 - (i) **(perform obligations)**: ServiceCo must, subject to clause 24.4 and unless it is actually or practically impossible to do so with respect to the Relevant Infrastructure given the nature of the Intervening Event, continue to provide the Services and otherwise perform its obligations under this Deed; and
 - (ii) **(Replacement Services)**: to the extent it is actually or practically impossible for ServiceCo to provide any of the Services with respect to the Relevant Infrastructure and otherwise perform its obligations under this Deed, given the nature of the Intervening Event:
 - A. FACS may direct ServiceCo to deliver replacement Services by an alternative method or 'work around' from that contemplated in the then current Service Delivery Phase Plans and the Services Specification to the reasonable satisfaction of FACS (including by providing alternative accommodation whilst the Intervening Event subsists) to the extent that it is reasonably possible for ServiceCo to do so **(Replacement Services)**; and
 - B. ServiceCo must comply with any such directions.
- (b) ServiceCo must use reasonable endeavours to procure Replacement Services by way of temporary accommodation if directed by FACS under clause 24.5(a)(ii), that is suitable for the affected Tenants having regard to all of the circumstances, including availability of accommodation, time and cost.
- (c) FACS acknowledges and agrees that provided ServiceCo used reasonable endeavours under clauses 24.5(a)(ii) and 24.5(b), any accommodation provided as part of the Replacement Services does not have to strictly meet all the requirements for Accommodation Services and the Services Requirements under this Deed.

24.6 Payment

- (a) **(Payment of Monthly Service Payment)**: FACS must continue to pay the Monthly Service Payment in respect of the Service Package Dwellings affected by the Intervening Event to the extent that ServiceCo performs the Services or Replacement Services (or both, as applicable) in respect of the Service Package Dwellings in accordance with clauses 24.5(a) to 24.5(c).

- (b) **(Compensation for acts):** If ServiceCo's obligation to perform the Services is suspended in accordance with clause 24.4 because of a Compensable Intervening Event or an event described in paragraph (b) of the definition of Intervening Event (which will be deemed to be a Compensable Intervening Event for the purposes of this clause only), then FACS will to the extent clause 24.6(a) applies, in addition to the amounts referred to in clause 24.6(a) pay ServiceCo an amount calculated in accordance with clause 31.
- (c) **(Compensation for suspension):** If:
 - (i) the Intervening Event is a Force Majeure Event; and
 - (ii) FACS exercises its right of suspension under clause 38.3(d),
 (which will be deemed to be a Compensable Intervening Event from the date of suspension for the purposes of this clause), then FACS will from the date of the relevant suspension notice, to the extent clause 24.6(a) applies, in addition to the amounts referred to in clause 24.6(a), pay ServiceCo an amount calculated in accordance with clause 31.

24.7 Alternative arrangements

- (a) If ServiceCo:
 - (i) is not able to provide any of the Services as a result of an Intervening Event; and
 - (ii) does not provide Replacement Services in accordance with clauses 24.5(a)(ii) to 24.5(c) within a reasonable period of time after FACS directs it to do so under clause 24.5(a)(ii),
 then:
 - (iii) FACS may make alternative arrangements for the performance of those Services;
 - (iv) subject to clause 24.7(b) and 24.7(c), to the extent that the costs incurred by FACS in making those alternative arrangements exceed the Monthly Service Payments that would otherwise be payable to ServiceCo for the period of the Replacement Services had the Intervening Event not occurred, such amounts will be a debt due and payable from ServiceCo to FACS and ServiceCo must reimburse FACS the amounts; and
 - (v) FACS has no obligation to continue paying the Monthly Service Payment to ServiceCo under clause 24.6(a) in respect of the Services that are not being provided.
- (b) If the Intervening Event is a Compensable Intervening Event, or an event described in paragraph (b) of the definition of Intervening Event, ServiceCo will not be required to reimburse FACS under clause 24.7(a)(iv).
- (c) If:
 - (i) the Intervening Event is a Force Majeure Event;
 - (ii) FACS makes alternative arrangements under clause 24.7(a)(iii); and
 - (iii) FACS exercises its right of suspension under clause 38.3(d),

ServiceCo will not be required to reimburse FACS under clause 24.7(a)(iv) for any costs incurred after the date of the relevant suspension notice.

- (d) FACS shall not incur any Liability to ServiceCo in respect of alternative arrangements it makes under this clause 24.7.

24.8 Cessation of Intervening Event

ServiceCo must:

- (a) **(notification)**: notify FACS; and
- (b) **(performance of Services)**: recommence performing all Services suspended as a result of the Intervening Event,

immediately after it ceases to be prevented from performing those Services as a result of the relevant Intervening Event or its consequences.

24.9 Sole remedy

Subject to clauses 6.3(c) and 6.3(d)(ii):

- (a) **(Intervening Event)**: ServiceCo's sole remedy for a prevention, delay or disruption during a Service Delivery Phase is as set out in this clause 24; and
- (b) **(relief and compensation)**: ServiceCo will not be entitled to make any Claim, and FACS will have no Liability for any Claim made by ServiceCo (including for damages for breach), for ServiceCo being prevented from providing the Service in accordance with this Deed other than for the relief and compensation in accordance with this clause 24.

25. Reduction in FACS' liability for Relevant Events

FACS' Liability and ServiceCo's entitlements in connection with any Relevant Event will be reduced:

- (a) **(caused by ServiceCo)**: to the extent that the Relevant Event is:
 - (i) within the reasonable control of ServiceCo and its Associates;
 - (ii) caused or contributed to by any breach of another Service Package Document by ServiceCo or any of its Associates who is a counterparty to the Service Package Document; or
 - (iii) caused or contributed to by a ServiceCo Act or Omission, to the extent arising from a failure by ServiceCo or its Associates to perform the Services in accordance with this Deed;
- (b) **(failure to mitigate)**: to the extent ServiceCo, or any of its Associates, fails to:
 - (i) use all reasonable endeavours to mitigate, minimise or avoid the effects, costs, consequences or duration of the Relevant Event (including by putting in place temporary measures reasonably required by FACS); or
 - (ii) take all reasonable steps which a prudent, competent and experienced contractor in the circumstances of ServiceCo or the relevant Associate of ServiceCo would have taken to mitigate, minimise or avoid the effects, costs, consequences or duration of the Relevant Event; or
- (c) **(insurance proceeds)**: by any insurance proceeds:
 - (i) from any Insurances which respond to the Relevant Event or any other insurance proceeds or compensation payable to ServiceCo, or any of its Associates; or

- (ii) which would have been payable to ServiceCo or any of its Associates in accordance with any Insurances but for any failure by ServiceCo or any of its Associates to comply with this Deed, any Service Package Documents, the terms of those Insurances or to make or pursue a claim under any Insurances.
- (d) (**knowledge**): to the extent ServiceCo ought reasonably to have become aware of the occurrence of the Relevant Event prior to the date 20 Business Days before submitting its notice under clause 24.3(a).

26. Variations

26.1 Variation Request

- (a) Either party may issue a notice entitled "Variation Request" to the other party in the form of Schedule 30 which must include details of:
 - (i) (**proposed Variation**): the proposed Variation;
 - (ii) (**preferred financing**): the preferred financing for the proposed Variation in accordance with clause 31 (where the Variation will result in an increase to the cost of the Relevant Infrastructure or the Services); and
 - (iii) (**specific information**): in the case of a Variation proposed by FACS, any information FACS requires that ServiceCo include in its Variation Proposal,

(Variation Request).
- (b) (**ServiceCo to bear risks of costs**): Unless otherwise agreed in writing by FACS, ServiceCo will:
 - (i) bear all risks and costs associated with a Variation proposed by ServiceCo; and
 - (ii) not be entitled to make any Claim against FACS arising out of, or in any way in connection with, a Variation proposed by ServiceCo,

including where FACS issues a Variation Order requiring ServiceCo to implement the Variation in accordance with the Variation Proposal.
- (c) (**Omitted Service Package Activities**): Subject to clause 26.1(d), FACS may only decrease, omit, delete or remove any part of the Service Package Activities through a Variation Request where those Service Package Activities do not relate to the Service Package Dwellings or any Services impacting on the development, maintenance, upkeep or repair of those Service Package Dwellings (**Omitted Service Package Activities**).
- (d) (**No Applicants**): FACS may issue a Variation Request to omit a Service Package Dwelling (and all Service Package Activities in connection with that Service Package Dwelling) from the Service Package Activities if a Service Package Dwelling is vacant because there are no Appropriate Applicants for that Service Package Dwelling.

26.2 Variation Proposal

Within 20 Business Days after receipt or issue (as applicable) of a Variation Request, ServiceCo must submit a notice in the form of Schedule 31 entitled "Variation Proposal" to FACS (**Variation Proposal**). The Variation Proposal must:

- (a) be signed by the ServiceCo Representative;

- (b) describe any Mitigating Factors; and
- (c) provide details of the Relevant Event Effects (if any).

26.3 Variation Order

- (a) **(Further information):** After receipt of a Variation Proposal, FACS may request further information from ServiceCo required by FACS (acting reasonably) to assess the relevant Variation Proposal.
- (b) **(Provision of information):** Where FACS requests further information under clause 26.3(a), ServiceCo must promptly provide such further information to FACS.
- (c) **(Instruction):** Following:
 - (i) receipt of a Variation Proposal; or
 - (ii) if further information is requested under clause 26.3(a), receipt by FACS from ServiceCo of all such further information reasonably requested,

FACS must issue a notice to ServiceCo advising ServiceCo that FACS:

- (iii) accepts the Variation Proposal and directs ServiceCo to proceed with the Variation in accordance with the Variation Proposal by issuing a notice entitled "Variation Order";
- (iv) does not accept the Variation Proposal but directs ServiceCo to proceed with the Variation by issuing a notice entitled "Variation Order" in which case:
 - A. FACS' or ServiceCo's entitlement to compensation will be determined in accordance with clause 31.1; and
 - B. ServiceCo's entitlement to relief will be determined by FACS (acting reasonably); or
- (v) does not wish to proceed with the proposed Variation and confirms that the Variation Request is withdrawn.
- (d) **(Unilateral Variation):** Whether or not either party has issued a Variation Request under clause 26.1, FACS may at any time instruct ServiceCo to implement a Variation by issuing a notice entitled "Variation Order" in which case ServiceCo's entitlement to:
 - (i) compensation will be determined in accordance with clause 31.1; and
 - (ii) relief will be determined by FACS (acting reasonably).

26.4 Right to proceed

- (a) **(Variation Order):** ServiceCo must not proceed with any Variation, and will not have any entitlement to make any Claim in respect of a Variation, unless a Variation Order requiring ServiceCo to proceed with the Variation has been issued by FACS.
- (b) **(FACS may approve or reject):** FACS will be under no obligation to issue a Variation Order requiring ServiceCo to proceed with a Variation proposed by ServiceCo under clause 26.1(a)(i).

26.5 Omission by FACS

- (a) **(Omitted Service Package Activities):** The parties acknowledge and agree that if FACS has issued a Variation Request in respect of Omitted Service Package Activities, it may itself, or may engage an Associate of FACS, to undertake any Omitted Service Package Activities.
- (b) **(Coordination with Service Package Activities):** ServiceCo must:
 - (i) permit FACS or any of FACS' Associates to carry out any Omitted Service Package Activities;
 - (ii) co-operate with FACS and any of FACS' Associates in carrying out any Omitted Service Package Activities (as applicable); and
 - (iii) co-ordinate the Service Package Activities with the work carried out or to be carried out by FACS or any of FACS' Associates in connection with any Omitted Service Package Activities (as applicable).

26.6 Implementation

If FACS issues a Variation Order in accordance with this clause 26:

- (a) ServiceCo must implement the Variation in accordance with the terms of the Variation Order;
- (b) in respect of a Variation proposed by ServiceCo under clause 26.1, and where the Variation will give rise to a Saving, FACS and ServiceCo will share any Saving between the parties as determined in accordance with clause 31 other than a Variation Order pursuant to clause 22.9(b) in respect of which FACS will be entitled to the entire amount of the Net Additional Funding; and
- (c) where FACS or ServiceCo is entitled to compensation under clause 31.1, the amount payable will be:
 - (i) if FACS issues a notice under clause 26.3(c)(iii), as set out in the Variation Proposal; or
 - (ii) otherwise calculated in accordance with clause 31.

26.7 Directions

- (a) **(FACS direction):** If ServiceCo considers that a direction, determination or decision (**Direction**) by FACS constitutes or involves a Variation and FACS has not given that Direction expressly by way of a Variation Order, and ServiceCo intends to make a Claim that the Direction is a Variation, ServiceCo must:
 - (i) within 10 Business Days after receiving the Direction and before commencing any work the subject matter of the Direction, give written notice to FACS that it considers the Direction constitutes or involves a Variation; and
 - (ii) within 10 Business Days after giving the notice under clause 26.7(a)(i) and before commencing any work the subject matter of the Direction, give FACS a Variation Proposal in respect of the alleged Variation.
- (b) **(Confirmation):** Within 10 Business Days of FACS receiving a Variation Proposal under clause 26.7(a) FACS must:
 - (i) confirm by notice in writing that the Direction is in fact a Variation, in which case FACS will issue a notice entitled "Variation Order";

- (ii) withdraw the Direction, in which case ServiceCo must not comply with the Direction; or
 - (iii) inform ServiceCo that, in FACS' view, the Direction does not constitute or involve a Variation in which case ServiceCo must comply with the Direction but may refer the matter to dispute resolution in accordance with clause 40.
- (c) **(Conditions for ServiceCo claim):** ServiceCo is not entitled to make any Claim in respect of a Direction that gives rise to a Variation of the type described in clause 26.7(a) unless it has given the notices under clause 26.7(a).

27. Augmentations

27.1 Notice of Proposed Augmentation

- (a) FACS may at any time issue to ServiceCo a notice setting out the details of a proposed Augmentation (**Notice of Proposed Augmentation**). These details may include:
- (i) FACS' objectives for a proposed Augmentation;
 - (ii) desired timeframes for the delivery of the proposed Augmentation;
 - (iii) desired funding arrangements for the proposed Augmentation;
 - (iv) the proposed contractual structure for the delivery of the proposed Augmentation; and
 - (v) any other information considered relevant by FACS,
- (together the **Augmentation Objectives**).
- (b) If the Notice of Proposed Augmentation requests that ServiceCo provide an estimate of the third party costs that ServiceCo will incur in complying with its obligations under clause 27.2, ServiceCo must promptly provide that estimate.

27.2 Identification of options

- (a) As soon as practicable after:
- (i) receipt of a Notice of Proposed Augmentation; or
 - (ii) if the Notice of Proposed Augmentation requests that ServiceCo provide an estimate of the third party costs that ServiceCo will incur in complying with its obligations under this clause 27.2, FACS advising ServiceCo that the fee estimate is acceptable,
- ServiceCo must either:
- (iii) advise FACS that ServiceCo will not participate in the proposed Augmentation; or
 - (iv) provide FACS with one or more options to meet the Augmentation Objectives. Each option must be accompanied by:
 - A. Preliminary Services Requirements;
 - B. a Preliminary Procurement Strategy, to the extent that ServiceCo may or proposes to engage subcontractors to deliver the Augmentation; and

C. a Preliminary Impact Statement.

- (b) FACS will provide ServiceCo with written comments within 20 Business Days of receiving the information under clause 27.2(a)(iv).
- (c) FACS may suggest alternative options or modifications to the proposed options.
- (d) ServiceCo must submit to FACS amended or additional options, which address the comments provided by FACS under clauses 27.2(b) and 27.2(c).

27.3 Selection of preferred option

- (a) The FACS Representative will:
 - (i) specify the required contents of the Augmentation Concept Design; and
 - (ii) select the preferred option for the Augmentation.
- (b) If FACS decides to not proceed with the Augmentation, FACS will reimburse ServiceCo the reasonable third party costs incurred by ServiceCo in performing its obligations under clause 27.2, capped at the amount of any estimate provided by ServiceCo under clause 27.1(b).
- (c) If FACS requests that ServiceCo provide FACS with an estimate of the third party costs which ServiceCo will incur in preparing a Services Brief for the Augmentation, ServiceCo must promptly provide the estimate.

27.4 Initial Services Brief

- (a) As soon as practicable after:
 - (i) the selection of a preferred option pursuant to clause 27.3(a)(i); or
 - (ii) if FACS requests that ServiceCo provide an estimate of the third party costs that ServiceCo will incur in preparing a Services Brief, FACS advising ServiceCo that the fee estimate is acceptable,

ServiceCo must provide FACS with an initial services brief for the Augmentation, based on the preferred option, which must include:

- (iii) a draft Augmentation Concept Design;
- (iv) the draft Final Services Requirements and:
 - A. if the draft Final Services Requirements differ from the Preliminary Services Requirements, an explanation for any such difference; and
 - B. confirmation that the draft Augmentation Concept Design meets the draft Final Services Requirements;
- (v) to the extent a Preliminary Procurement Strategy was provided, a draft Final Procurement Strategy and, if the draft Final Procurement Strategy differs from the Preliminary Procurement Strategy, an explanation for any such difference; and
- (vi) the draft Final Impact Statement and, if the draft Final Impact Statement differs from the Preliminary Impact Statement, an explanation for any such difference,

(Initial Services Brief).

- (b) FACS must:
 - (i) review the Initial Services Brief; and
 - (ii) provide ServiceCo with written comments on the Initial Services Brief within 10 Business Days of receiving that document.

27.5 Final Services Brief

- (a) ServiceCo must within 20 Business Days of receiving comments from FACS, submit to FACS a final services brief which:
 - (i) addresses the comments provided by FACS under clause 27.4(b)(ii); and
 - (ii) includes:
 - A. the Augmentation Objectives;
 - B. the Augmentation Concept Design;
 - C. the Final Services Requirements;
 - D. the Final Procurement Strategy;
 - E. the Final Impact Statement; and
 - F. the overall scope, costs, program and risk associated with the implementation of the Augmentation,

(Final Services Brief).

- (b) FACS must review the Final Services Brief and if FACS is satisfied that the Final Services Brief will achieve the Augmentation Objectives, FACS may approve the Final Services Brief (**Approved Services Brief**).

- (c) If:
 - (i) ServiceCo prepares a Final Services Brief which will achieve the Augmentation Objectives in accordance with this clause 27.5; and
 - (ii) FACS does not proceed to implement the Augmentation,

then FACS will reimburse ServiceCo the reasonable third party costs incurred by ServiceCo in preparing the Initial Services Brief and Final Services Brief, capped at the amount of any estimate provided by ServiceCo under clause 27.3(c).

27.6 Augmentation Proposal

- (a) FACS may request that ServiceCo provide FACS with a written proposal to deliver the Augmentation in accordance with the Approved Services Brief (**Augmentation Proposal**). If FACS' request also requests that ServiceCo provide FACS with an estimate of the third party costs which ServiceCo will incur in preparing the Augmentation Proposal, ServiceCo must promptly provide that estimate.
- (b) As soon as practicable after:
 - (i) receiving a request under clause 27.6(a); or
 - (ii) if FACS requests that ServiceCo provide an estimate of the third party costs that ServiceCo will incur in preparing the Augmentation Proposal, FACS advising ServiceCo that the fee estimate is acceptable,

ServiceCo must submit an Augmentation Proposal which must include:

- (iii) the proposed Delivery Method;
 - (iv) the proposed procurement strategy;
 - (v) the proposed program;
 - (vi) a detailed cost estimate, including a cost breakdown and the proposed margin for ServiceCo;
 - (vii) the proposed financing arrangements;
 - (viii) the proposed changes to any Service Package Documents (excluding any Financiers' Tripartite Deed and the Equity Documents); and
 - (ix) such other information requested by FACS.
- (c) As soon as reasonably practicable after ServiceCo submits the Augmentation Proposal, ServiceCo must negotiate in good faith with FACS with a view to reaching agreement on all aspects of the Augmentation Proposal.
- (d) The Augmentation Proposal will not proceed unless the parties reach agreement on all aspects of the Augmentation Proposal.
- (e) If:
- (i) ServiceCo prepares an Augmentation Proposal in accordance with this clause 27.6; and
 - (ii) the Augmentation Proposal does not proceed,
- then FACS will reimburse the reasonable third party costs incurred by ServiceCo in preparing the Augmentation Proposal, capped at the amount of any estimate provided by ServiceCo for the relevant Augmentation Proposal.

27.7 No limitation

This clause 27 does not limit any of FACS' other rights under this Deed except that ServiceCo cannot be directed to undertake an Augmentation under clause 26.

28. Change in Mandatory Requirements

- (a) **(Change in Mandatory Requirements):** ServiceCo must provide to FACS a notice within 10 Business Days after becoming aware of any Change in Mandatory Requirements.
- (b) **(ServiceCo action):** If a Change in Mandatory Requirements occurs, ServiceCo must provide to FACS within 20 Business Days after becoming aware of that Change in Mandatory Requirements, a notice in respect of the relevant Change in Mandatory Requirements in the form of Schedule 32 which:
 - (i) is signed by the ServiceCo Representative;
 - (ii) describes any Mitigating Factors; and
 - (iii) provides details of the Relevant Event Effects (if any),**(Change Proposal).**
- (c) **(FACS action):** On receipt of a Change Proposal, FACS must issue a notice to ServiceCo advising ServiceCo that FACS:

- (i) in the case of a Change in Policy:
 - A. accepts the Change Proposal and directs ServiceCo to comply with the relevant Change in Mandatory Requirements by issuing a notice entitled "Variation Order";
 - B. does not accept the Change Proposal but directs ServiceCo to comply with the relevant Change in Mandatory Requirements by issuing a notice entitled "Variation Order" in which case ServiceCo's entitlement to:
 - 1) compensation will be determined in accordance with clause 31.1; and
 - 2) relief will be determined by FACS (acting reasonably); or
 - C. unless a failure to comply with that Change in Mandatory Requirements would result in ServiceCo being in breach of Legislation or any Approval, directs ServiceCo not to comply with the relevant Change in Mandatory Requirements; and
- (ii) in the case of a Change in Mandatory Requirements that is not a Change in Policy:
 - A. accepts the Change Proposal and directs ServiceCo to comply with the Change in Mandatory Requirements by issuing a notice entitled "Variation Order";
 - B. does not accept the Change Proposal but directs ServiceCo to comply with the relevant Change in Mandatory Requirements by issuing a notice entitled "Variation Order" in which case ServiceCo's entitlement to:
 - 1) compensation will be determined in accordance with clause 31.1; and
 - 2) relief will be determined by FACS (acting reasonably); or
 - C. rejects ServiceCo's notice under clause 28(b) on the basis that the event the subject of the notice is not a Change in Mandatory Requirements.
- (d) **(Conditions for ServiceCo claim):** ServiceCo is not entitled to make any Claim in respect of a Change in Mandatory Requirements unless it has given notices in accordance with clause 28(a) and 28(b).
- (e) **(Implementation):** If FACS issues a Variation Order in accordance with this clause 28:
 - (i) ServiceCo must comply with the relevant Change in Mandatory Requirements; and
 - (ii) where ServiceCo is entitled to compensation under clause 31.1, FACS will pay ServiceCo the amount:
 - A. if FACS issues a notice under clause 28(c)(i)A or 28(c)(ii)A, set out in the Change Proposal; or
 - B. otherwise calculated in accordance with clause 31.

29. Material Adverse Effect

29.1 Notice of Material Adverse Effect

- (a) If a MAE Change in Law occurs which ServiceCo reasonably believes has had, or has started to have, a Material Adverse Effect, ServiceCo must:
 - (i) notify FACS of the Material Adverse Effect and provide evidence to support its assertion that a Material Adverse Effect has occurred (including the calculation set out in the definition of 'Material Adverse Effect'); and
 - (ii) use all reasonable endeavours to mitigate the adverse consequences of the event it believes is a Material Adverse Effect.
- (b) FACS will determine, acting reasonably, whether it is satisfied a Material Adverse Effect has occurred and notify ServiceCo within 10 Business Days of its determination.
- (c) A notice given under clause 29.1(a) will only be valid if it is given within 60 Business Days after the MAE Change in Law had or has started to have a Material Adverse Effect.

29.2 Good faith negotiations

- [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]

29.3 Termination as a last resort

If the parties cannot agree the MAE Variations within three Months of the commencement of negotiations, ServiceCo may terminate this Deed upon 12 Months' notice to the other party, in which case:

- (a) no Termination Payment will be payable by either party; and
- (b) clause 33.3 will apply.

30. Step-in by appointment of statutory manager

The parties acknowledge and agree that, in respect of the Social Housing provided by ServiceCo under this Deed:

- (a) the Registrar is entitled to appoint a statutory manager to conduct the affairs and activities of ServiceCo as they relate to the community housing assets of ServiceCo under the Community Housing Act (section 21 of the National Law);
- (b) the statutory manager's functions will include the right to pay monies (including rent) under any Subcontract or Lease and enforce any rights under any such Subcontract or Lease; and
- (c) if a statutory manager is appointed to exercise functions of ServiceCo, the governing body of ServiceCo may not exercise any of those functions without the consent of the statutory manager.

31. Compensation

31.1 Compensation for Base Costs

- (a) Where this Deed requires compensation to be calculated in accordance with this clause 31, the entitlement to compensation in respect of a Change Compensation Event will be calculated as follows:

[REDACTED]

where:

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- (b) To the extent that any Change Compensation Event involves Delivery Phase Activities or capital works during a Service Delivery Phase, the amount of any Base Costs plus applicable Agreed Margin payable to ServiceCo will be calculated as:

[REDACTED]

where:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

(c) To the extent that Change Compensation Events involve recurrent works or services, the amount of any Base Costs plus applicable Agreed Margin payable to ServiceCo will be calculated as:

[REDACTED]

where:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

31.2 Change Compensation Events and Agreed Margin entitlement

The following table sets out the Change Compensation Events for which either party may be entitled to compensation in accordance with this Deed, and the applicable ServiceCo Margin relevant to the calculation of 'C' and 'D' under clause 31.1 is as follows:

| [REDACTED] | | | |
|------------|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

| | | | |
|--|--|--|--|
| | | | |
|--|--|--|--|

31.3 Compensation for Delay Costs

Subject to the specific requirements and restrictions otherwise set out in this Deed, ServiceCo's entitlement to Delay Costs on the occurrence of those Change Compensation Events listed in the table in clause 31.2 as entitling ServiceCo to compensation under this clause 31.3 and for which ServiceCo is granted relief from achieving a Service Readiness Milestone by the relevant Service Readiness Milestone Date will be calculated as follows:

[REDACTED]

Where:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

31.4 Savings for ServiceCo Variations

For the purposes of clause 26.6(b), the amount of any saving payable to FACS in respect of a Variation proposed by ServiceCo that will give rise to a Saving, will be:

- (a) as agreed between the parties at the time; or
- (b) if the parties are unable to agree within 20 Business Days of ServiceCo issuing the relevant Variation Proposal, the amount of Savings payable to FACS will be 50% (other than a Variation Order pursuant to clause 22.9(b), in relation to which FACS will be entitled to the entire amount of the Net Additional Funding).

31.5 Change in Mandatory Requirements

To the extent that:

- (a) a Change in Mandatory Requirements occurs for which ServiceCo is entitled to relief in accordance with this Deed; and
- (b) the Change in Mandatory Requirements affects a Reviewable Service;

(**Changed Reviewable Service**) then, the amount payable to ServiceCo pursuant to clause 31.1 in respect of the Changed Reviewable Service will be those Base Costs and Margin incurred, or to be incurred, until the commencement of the next Reviewable Services Term.

31.6 General principles for calculating compensation

The extent (if any) to which compensation will be payable by FACS in accordance with this Deed, will be determined as follows:

- (a) (**overriding considerations**): the overriding considerations will be that:
 - (i) FACS is receiving value for money; and
 - (ii) the compensation amount is fair and reasonable and is calculated in a manner that is transparent and reflects commercial arm's length arrangements;
- (b) (**incremental costs**): changes in Base Costs are to be determined on an incremental basis where:
 - (i) in the case of an increase in Base Costs, only costs that would not be incurred but for the Change Compensation Event are to be taken into account;
 - (ii) in the case of a reduction in Base Costs, only savings that would not have accrued but for the Change Compensation Event are to be taken into account; and
 - (iii) Base Costs will be calculated net of any insurance proceeds, damages or compensation which ServiceCo or the relevant Subcontractor(s) receives or is entitled to receive as a result of the Change Compensation Event;
- (c) (**mitigation**): calculation of Costs will:
 - (i) exclude any incremental Costs which would not have been incurred; and
 - (ii) include any Savings which would have been derived,

to the extent ServiceCo and its Associates fail to use all reasonable endeavours to mitigate the effects of any Change Compensation Event (including by putting in place temporary measures reasonably acceptable to the FACS Representative);
- (d) (**Open Book Basis**): ServiceCo must and must procure that its Associates:
 - (i) provide all information referred to in this clause 31 on an Open Book Basis;
 - (ii) make available the appropriate personnel to explain the basis on which a particular calculation has been made; and
 - (iii) allow FACS to review and undertake audits,

in order to enable FACS to verify compliance with this Deed and make an accurate assessment of compensation;

- (e) **(time value of money)**: appropriate regard must be given to the time value of money and timing of cash flows by discounting or inflating them to reflect when they occur (if applicable);
- (f) **(no double counting)**: no amounts will be double counted and no costs will be payable more than once;
- (g) **(costs and Margin)**: any costs which have, or will be, incurred by ServiceCo as a result of the Relevant Event will not include any Margin;
- (h) **(margin)**: except where ServiceCo is expressly entitled to be paid a Margin, FACS will not pay or otherwise compensate ServiceCo (or any Key Subcontractor) for any Margin (or loss of Margin) in respect of a Change Compensation Event; and
- (i) **(Service Package only)**: to the extent ServiceCo undertakes business or activities other than the Service Package, FACS will have no liability, and ServiceCo will have no entitlement, in respect of the impact of a Change Compensation Event on its other activities.

In this clause 31.6, 'Open Book Basis' includes ServiceCo providing a breakdown of the calculation of all relevant preliminaries, labour, equipment, materials, subcontract, finance and other costs and Margins of ServiceCo and its Associates in a clear and transparent manner and other information reasonably requested by FACS including reasonably available source documents required to verify such calculation.

31.7 Form and timing of compensation

- (a) **(Change Compensation Event)**: If a Change Compensation Event:
 - (i) results in an amount owing from ServiceCo to FACS, FACS will deduct such amount from the Monthly Service Payments payable to ServiceCo after the relevant Change Compensation Event, or if there are insufficient subsequent Monthly Service Payments payable to ServiceCo to cover the amount of the Change Compensation Event or if the Change Compensation Event occurs during a Delivery Phase, such amount will be a debt due and payable by ServiceCo to FACS;
 - (ii) results in an amount owing from FACS to ServiceCo that is not financed by ServiceCo in accordance with clause 31.7(b), FACS will pay such amount to ServiceCo:
 - A. subject to clause 31.7(a)(ii)B, by way of a lump sum payment, monthly in arrears, a series of milestone payments or an adjustment to the Monthly Service Payment (or a combination of these methods); or
 - B. is in respect of Financing Delay Costs, FACS will pay such amount to ServiceCo monthly in arrears on the date which FACS would have paid the Monthly Service Payment relating to those days of delay had achievement of the relevant Service Readiness Milestone not been delayed by the relevant Change Compensation Event; or
 - C. results in an amount owing from FACS to ServiceCo that is financed by ServiceCo in accordance with clause 31.7(b), FACS will pay such amount to ServiceCo by way of an increase in the Monthly Service Payment.
- (b) **(Reasonable endeavours to obtain financing)**: Where FACS requests ServiceCo to obtain financing for a Change Compensation Event, ServiceCo must use all reasonable endeavours to obtain such financing, including by using any Savings

resulting from other Change Compensation Events which have resulted in amounts being available under the Finance Documents.

- (c) **(Unable to obtain funds):** Where ServiceCo, having used all reasonable endeavours, is unable to obtain financing on terms which are satisfactory to FACS, FACS will pay the relevant amounts in accordance with clause 31.7(a)(ii)B.

31.8 Annual review of ongoing compensation

- (a) **(Annual review):** If compensation is payable to ServiceCo under this clause 31 and has been made by an increase in the Monthly Service Payment, the amount of the compensation will be subject to annual review at the end of each Operating Year in accordance with this clause 31.8 to reflect actual costs incurred for the relevant Change Compensation Event entitling ServiceCo to compensation under this clause 31 for that Operating Year.
- (b) **(Adjustment to Monthly Service Payment):** To the extent that the ongoing net costs or net savings arising as a consequence of any event entitling ServiceCo to compensation under this clause 31 differs from the then existing compensation made through the Monthly Service Payment, the Monthly Service Payment will be adjusted accordingly over the balance of the Term.
- (c) **(Time of review):** Within one month prior to the end of each Operating Year, ServiceCo must undertake and provide to FACS a review of the amount of ongoing net costs or net savings arising as a consequence of the event entitling ServiceCo to compensation under this clause 31 incurred, paid or accrued for which compensation has been made through the Monthly Service Payment over the Term.
- (d) **(FACS review and Disputes):** FACS must, within 20 Business Days of receipt of a review undertaken in accordance with clause 31.8(c), notify ServiceCo of any matter within that review with which FACS does not agree, and any Dispute on the extent of any adjustment of compensation may be referred by either party for resolution in accordance with clause 40.

32. Tender process during Service Delivery Phase

- (a) FACS may require ServiceCo to carry out a tender process in respect of a Variation in accordance with this clause 32 if, during a Service Delivery Phase:
 - (i) the Relevant Event involves capital costs that are likely to exceed [REDACTED]; or
 - (ii) FACS notifies ServiceCo that it does not accept or rejects a Variation Request issued by ServiceCo and that it requires ServiceCo to carry out a tender process in respect of the relevant Variation.
- (b) If a tender process is required to be carried out in accordance with clause 32:
 - (i) **(tender process):** ServiceCo must obtain a minimum of three separate quotes from experienced, independent and capable contractors reasonably acceptable to FACS to carry out any work or services in respect of the Variation (unless FACS agrees otherwise);
 - (ii) **(tender process material):** ServiceCo must permit FACS to review all materials that are issued and submitted in the tender process and provide any other information that FACS reasonably requires including such written consents as are required (including by Law) to carry out any Probity Investigations;
 - (iii) **(selection criteria):** ServiceCo must ensure, and if requested by FACS, demonstrate to the reasonable satisfaction of FACS, that the

Subcontractor it intends to select and engage is the best choice having regard to the:

- A. price quoted;
 - B. experience and capability of that Subcontractor;
 - C. the extent to which the Subcontractor provides value for money to FACS when compared with other quotes;
 - D. the terms of the proposed Subcontract; and
 - E. ability of the Subcontractor to carry out the work or the services in the manner required by this Deed;
- (iv) **(subcontracting requirements)**: the Subcontractor must meet the requirements in respect of Subcontractors set out in this Deed; and
- (v) **(FACS not satisfied)**: if, following the conduct of the tender process, FACS is not reasonably satisfied with the tenders, it may:
- A. direct ServiceCo not to accept any tender offer;
 - B. except where expressly stated otherwise in this Deed, direct ServiceCo not to proceed with the relevant Variation; or
 - C. instruct ServiceCo to proceed with the work or the services, but on another basis under this Deed.

Part J - Expiry and handover obligations

33. Expiry obligations

33.1 Transition arrangements

The parties must:

- (a) no later than five years prior to the first Final Expiry Date to arise under this Deed; and
- (b) where ServiceCo is given less than or equal to 36 Months' notice of an Expiry Date in respect of the Service Package or a Stage (as applicable), as soon as reasonably practicable after the relevant notice period commences,

commence meetings regularly to discuss:

- (c) the assistance that ServiceCo must provide under clause 33.2;
- (d) any arrangements (subject to the agreement of both parties) for delivery of the services after each Expiry Date, including:
 - (i) where and the terms on which ServiceCo would continue to provide one or more services comprising the Services; or
 - (ii) any arrangement of alternative housing for Tenants on the expiry of their Residential Tenancy Agreements or early termination of this Deed which FACS in its absolute discretion may effect,

(or any combination).

33.2 ServiceCo obligations up to and including the Expiry Date

Unless otherwise agreed between the parties in respect of the Service Package or each Stage (as applicable):

- (a) subject to clause 33.2(b), ServiceCo must:
 - (i) in respect of the obligations set out in clauses 33.2(a)(iii) and 33.2(a)(iv) in the period commencing five years prior to the first Final Expiry Date; or
 - (ii) without limiting clause 33.2(a)(i), in respect of all obligations set out in this clause 33.2(a), in the period which is not less than:
 - A. six Months before the first Final Expiry Date to arise under this Deed; or
 - B. where ServiceCo is given less than or equal to 36 Months' notice of an Expiry Date, the relevant notice period provided that, in the case of a notice issued pursuant to clause 38.2 only, ServiceCo must comply with clause 33.2(a)(iv) within 12 months of the date of that notice,

do all things reasonably required by FACS to ensure the smooth and orderly transfer of responsibility for delivering the Service Package to FACS or its nominee, including:

- (iii) meeting with FACS and such other persons notified by FACS to discuss the orderly transfer of Tenants to alternative accommodation on the expiry of their Residential Tenancy Agreements on reasonable notice by FACS;

- (iv) agreeing a plan in cooperation with FACS for the transfer of Tenants to alternative accommodation on the expiry of their Residential Tenancy Agreements or early termination of this Deed;
- (v) providing sufficient resources, including personnel, for the time required to facilitate the transfer of Tenants to alternative accommodation on expiry of their Residential Tenancy Agreements or early termination of this Deed;
- (vi) by each relevant Expiry Date, having procured the novation or, if such novation cannot be procured, the assignment to FACS or its nominee of:
 - A. such Subcontracts as FACS may nominate;
 - B. any Leases, subleases and licences requested by FACS;
 - C. any warranties provided in respect of the Service Package that are capable of assignment,
 in respect of the relevant Service Package Dwellings; and
- (vii) facilitating communications with the Tenants;
- (b) where an Expiry Date is prior to the relevant Final Expiry Date, ServiceCo must meet the requirements under clause 33.3(a) unless FACS, acting reasonably, determines such requirements cannot be met within the required time due to the limited notice period ServiceCo has received of the Expiry Date, in which case, ServiceCo must meet such requirements as soon as practicable after the Expiry Date; and
- (c) without limiting clause 33.2(a)(vii), ServiceCo acknowledges the right of FACS to enter the Site to assist Tenants to move to alternative accommodation.

33.3 Vacant possession

Where:

- (a) transition arrangements are required pursuant to clause 33.1(d); or
- (b) FACS has served a notice of Voluntary Termination under clause 38.2(a); or
- (c) ServiceCo has served a notice of termination following an unresolved Material Adverse Effect under clause 29.3; and
- (d) ServiceCo has not otherwise provided written notice to FACS promptly after the occurrence of any of the events in this clause 33.3 that ServiceCo wishes to continue to house Tenants in any Service Package Dwellings after the relevant Expiry Date,

the parties will work together in good faith to ensure that all relevant Service Package Dwellings are vacated by the relevant Expiry Date and otherwise agree to comply with their respective obligations under this clause 33.

33.4 Removal of Service Package Dwellings

- (a) Where:
 - (i) transition arrangements have been implemented pursuant to clause 33.1(d), then for the period of two years prior to the relevant Expiry Date;
 - (ii) FACS has served a notice of Voluntary Termination under clause 38.2, then for the period between receipt of that notice and the Expiry Date; or

- (iii) either party has served a notice of termination for a Force Majeure Termination Event under clause 38.3, then for the period between receipt of that notice and the Expiry Date,

ServiceCo may remove vacant Service Package Dwellings from the Service Package in accordance with this clause 33.4, unless the parties have agreed otherwise pursuant to clause 33.1(d). In the case of Voluntary Termination under clause 38.2, Service Co may commence the sale process of vacant Service Package Dwellings or put the vacant Services Package Dwellings to an alternative use once they have been removed from the Service Package.

- (b) Where a Tenant's Residential Tenancy Agreement will expire or a Tenant proposes to vacate a Service Package Dwelling (for whatever reason) within the relevant period referred to in clause 33.4(a)(i) to 33.4(a)(iii), ServiceCo may omit that Dwelling from the Service Package (**Removed Dwelling**) on and from the date the Dwelling becomes vacant (**Removal Date**) without having to submit a notice pursuant to clause 26.1.
- (c) ServiceCo may deal with Removed Dwellings after the Removal Date.
- (d) The parties acknowledge and agree that on and from the Removal Date:
 - (i) for the purposes of section 4.2 of the Payment Schedule, a Removed Dwelling will be deemed to be vacant;
 - (ii) for the purpose of section 6 of the Payment Schedule, the Removed Dwellings will be deemed to be:
 - A. occupied by a Social Housing Tenant, where the immediate previous Tenant was a Social Housing Tenant; or
 - B. occupied by an Affordable Housing Tenant, where the immediate previous Tenant was an Affordable Housing Tenant;
 - (iii) ServiceCo's inability to perform any Services in respect of that Removed Dwelling will not be a breach of this Deed by ServiceCo, a ServiceCo Act or Omission, a Service Failure, a Major Default or a Default Termination Event; and
 - (iv) the parties deem that a Removed Dwelling is not a Service Package Dwelling for the purposes of any Option to Lease.

33.5 ServiceCo transition representative

Without limiting its obligations under this clause 33 for:

- (a) (**expiry of Service Package**): not less than 24 Months before the first Final Expiry Date; or
- (b) (**notice period**): where the relevant Expiry Date is prior to the Final Expiry Date and ServiceCo is given less than or equal to 36 Months' notice of the Expiry Date, the relevant notice period,

ServiceCo must, if reasonably necessary, provide a dedicated person with appropriate expertise and experience to manage the transition out and handover of the Service Package.

Part K - Risk, Indemnity and Insurance

34. Indemnities and Consequential or Indirect Loss

34.1 Indemnity for ServiceCo breach

Subject to clauses 22.3(d) and 24.9, ServiceCo indemnifies FACS, FACS' employees and officers and the NSW Government (each an **Indemnified Person**) from and against any Claim or Liability suffered or incurred by any Indemnified Person in connection with:

- (a) **(breach of Deed)** any breach by ServiceCo of this Deed; or
- (b) **(breach FACS Service Package Document)**: any breach by ServiceCo or any of its Associates of any FACS Service Package Document.

34.2 General indemnity

ServiceCo indemnifies the Indemnified Persons from and against any Claim or Liability suffered or incurred by any Indemnified Person in connection with:

- (a) **(loss or damage)**: any loss of, or damage or destruction to, property;
- (b) **(injury, illness or death)**: any injury to, illness or death of, any person; or
- (c) **(third parties)**: to the extent not covered under clause 34.2(a) or 34.2(b), any third party actions brought against the Indemnified Persons,

to the extent caused or contributed to by ServiceCo or any of its Associates in connection with the Service Package or the Service Package Activities.

34.3 Project Information

ServiceCo:

- (a) **(indemnity)**: indemnifies FACS and any of its Associates against any Claim or Liability suffered or incurred by FACS or any of its Associates and releases and must procure that its Associates or any other person to whom the Project Information is disclosed by ServiceCo, an Associate of ServiceCo or any person on ServiceCo's or its Associate's behalf release FACS and any of FACS' Associates from any Claim arising in connection with the provision of, or the purported reliance upon, or use of, the Project Information by ServiceCo, an Associate of ServiceCo or any other person to whom the Project Information is disclosed by ServiceCo, an Associate of ServiceCo or any person on ServiceCo's or its Associate's behalf to the extent only that a Claim is made against FACS or any of its Associates by ServiceCo, an Associate of ServiceCo or any other person to whom the Project Information is disclosed by ServiceCo, an Associate of ServiceCo or any person on ServiceCo's or its Associate's behalf; and
- (b) **(release)**: releases and must procure that its Associates release FACS and any of FACS' Associates from any Claim in respect of any failure by FACS to make available to ServiceCo any information, data or material relating to the Service Package.

34.4 Privacy indemnity

ServiceCo must release, indemnify and must keep indemnified on demand FACS and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which FACS or any of its Associates suffer or incur resulting from any act done or practice engaged in by ServiceCo or any Associate of ServiceCo in connection with the Service Package, which would, had that act or practice been done or engaged in by FACS, have contravened any of the Privacy Legislation.

34.5 Failure to achieve Service Readiness

- (a) Without limiting clause 34.1, if ServiceCo fails to achieve a Service Readiness Milestone by the relevant Service Readiness Milestone Date, the costs that FACS incurs (or will incur) that are directly attributable to the delay to the achievement of the relevant Service Readiness Milestone, including:
- (i) on-site and off-site overheads and administrative, corporate and other like costs; and
 - (ii) external third party advisory costs,
- are to be paid by ServiceCo as a debt due and payable by ServiceCo to FACS.
- (b) ServiceCo's total aggregate liability to FACS in respect of a failure to achieve a Service Readiness Milestone by the relevant Service Readiness Milestone Date and a breach of clause 17.1 is limited to an amount equal to [REDACTED] per day for a maximum of [REDACTED] per Service Readiness Milestone (**Milestone Delay Cap**).
- (c) The Milestone Delay Cap does not apply to Liability:
- (i) arising out of any indemnity set out in clauses 34.2 to 34.4;
 - (ii) arising from any wilful misconduct, criminal act or fraud on the part of ServiceCo or any of its Associates;
 - (iii) for which ServiceCo or its Associates are insured under any Insurances that have been effected and maintained as required by this Deed or Liability for which ServiceCo or its Associates would have been insured under such Insurances if:
 - A. this clause 34.5(c) did not exist; and
 - B. ServiceCo and its Associates had:
 - 1) effected and maintained the relevant Insurances as required by this Deed;
 - 2) complied with the relevant Insurances;
 - 3) submitted a claim under the relevant Insurances where there was a legitimate entitlement to do so; and
 - 4) taken reasonable steps to pursue the claim;
 - (iv) to the extent that ServiceCo has recovered that liability from a third party;
 - (v) imposed on ServiceCo under clause 26.6(b) to pay or allow FACS any share of Savings;
 - (vi) arising as a result of a breach by ServiceCo of any confidentiality obligation contained in any Service Package Document to which ServiceCo is a party;
 - (vii) arising from abandonment of the whole or a substantial part of the Service Package Activities by ServiceCo or any of its Associates;
 - (viii) in respect of any statutory fine or civil penalty arising from any breach of Law by ServiceCo or any of its Associates;
 - (ix) to the extent which, by law, the parties cannot limit or exclude;

- (x) in respect of a deductible or excess under any Insurance;
- (xi) arising in respect of the application of the Performance Regime or the Payment Schedule;
- (xii) in respect of any claims by third parties (which is itself not a Consequential or Indirect Loss);
- (xiii) any interest under clause 22.5;
- (xiv) any amounts payable under and calculated in accordance with the Termination Payments Schedule; and
- (xv) any amounts payable under clause 22.4.

34.6 Release

ServiceCo releases, and must procure that each of its Associates releases, each of the Indemnified Persons from any Claim or Liability for damage, destruction, loss, death, illness or injury to the extent caused by ServiceCo or any of its Associates in connection with the Service Package or the Service Package Activities.

34.7 Limits on ServiceCo liability to indemnify and release

ServiceCo's Liability to indemnify and release the Indemnified Persons or any Associate of FACS in accordance with this Deed will be reduced to the extent that any such Claim or Liability is caused or contributed to by:

- (a) **(breach)**: any breach by FACS of any FACS Service Package Documents;
- (b) **(fraud)**: any fraudulent, reckless, unlawful or malicious act or omission of the Indemnified Persons or the Associate of FACS (as the case may be); or
- (c) **(Relevant Event)**: a Relevant Event, but only to the extent that the reduction in ServiceCo's Liability to indemnify or release is agreed by the parties or determined in accordance with this Deed (if at all),

other than to the extent that ServiceCo is entitled to recover under any of the Insurances, or would have been entitled to recover:

- (d) but for any breach by ServiceCo or any of its Associates of this Deed or the relevant insurance policy; or
- (e) if ServiceCo had submitted a Claim under the relevant Insurances where there was a legitimate entitlement to do so and taken reasonable steps to pursue the claim.

34.8 Third party claim under indemnity

- (a) **(Management of Claims)**: Subject to clause 34.8(b) and 34.8(c), if a Claim is made against an Indemnified Person, in respect of which ServiceCo is required to indemnify the relevant Indemnified Person in accordance with this Deed, FACS must:
 - (i) to the extent that FACS' insurers in connection with such a Claim agree, as soon as is reasonably practicable after it becomes aware of the Claim:
 - A. notify ServiceCo of the alleged Claim;
 - B. give ServiceCo the option to defend the Claim; and

- C. provide ServiceCo (at ServiceCo's expense) with reasonable assistance in negotiating, defending or otherwise taking action or proceedings in respect of that Claim; and
 - (ii) not settle or compromise the Claim without the prior written consent of ServiceCo (which cannot be unreasonably withheld or delayed), and ServiceCo will be deemed to be acting reasonably if ServiceCo refuses to provide its consent as a result of restrictions or obligations under any insurance policy to which that Claim relates.
- (b) **(Urgent proceedings):** If interlocutory proceedings are commenced against FACS on an urgent basis, FACS may initially defend such proceedings, but as soon as practicable after commencement of the proceedings, FACS must give ServiceCo the option to conduct the defence of such proceedings.
- (c) **(Other matters):** Clauses 34.8(a)(i)B, 34.8(a)(i)C and 34.8(a)(ii) do not apply to any Claim which:
 - (i) FACS (acting reasonably) considers should be conducted by FACS for public policy reasons; or
 - (ii) would prevent the continued development or operation of the Service Package or continued conduct of the Service Package Activities,
 and FACS, to the extent reasonably practicable, must consult in good faith with ServiceCo with respect to such Claim.
- (d) **(Management of Claims by FACS):** If FACS is managing a Claim for which ServiceCo is required to indemnify an Indemnified Person, FACS must:
 - (i) give ServiceCo prior notice before agreeing to any compromise or settlement of that Claim; and
 - (ii) use reasonable endeavours to consult in good faith with ServiceCo prior to agreeing to any such compromise or settlement.
- (e) **(Management of Claims by ServiceCo):** If ServiceCo is managing a Claim in accordance with clause 34.8(a)(i)B, ServiceCo must:
 - (i) give FACS prior notice before agreeing to any compromise or settlement of that Claim; and
 - (ii) use reasonable endeavours to consult in good faith with FACS prior to agreeing to any such compromise or settlement.

34.9 Continuing obligation

- (a) **(Indemnities):** Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) **(Enforcement):** It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity under this Deed.
- (c) **(Payment):** A party must pay on demand any amount it must pay under an indemnity in this Deed.

35. Exclusion of Consequential or Indirect Loss

35.1 Exclusion of Consequential or Indirect Loss – ServiceCo

- (a) **(No liability of ServiceCo):** Subject to clause 35.1(b) but notwithstanding any other provision of the FACS Service Package Documents, neither ServiceCo nor any of its Associates has any Liability to FACS or any of its Associates for any Consequential or Indirect Loss incurred or sustained by FACS or any of its Associates:
- (i) as a result of any act or omission of ServiceCo or any of its Associates;
or
 - (ii) due to any breach of a FACS Service Package Document by ServiceCo or any of its Associates.
- (b) **(Exceptions to no ServiceCo liability):** The exclusion of Liability of ServiceCo and its Associates under clause 35.1(a) does not apply to Liability:
- (i) for which ServiceCo or its Associates are insured under any Insurances that have been effected and maintained as required by this Deed or Liability for which ServiceCo or its Associates would have been insured under such Insurances if:
 - A. this clause 35 did not exist; and
 - B. ServiceCo and its Associates had:
 - 1) effected and maintained the relevant Insurances as required by this Deed;
 - 2) complied with the relevant Insurances;
 - 3) submitted a claim under the relevant Insurances where there was a legitimate entitlement to do so; and
 - 4) taken reasonable steps to pursue the claim;
 - (ii) for which ServiceCo recovers pursuant to an indemnity under any Service Package Documents;
 - (iii) to the extent that ServiceCo has recovered that liability from a third party;
 - (iv) arising from any criminal act or fraud on the part of ServiceCo or any of its Associates;
 - (v) arising from any wilful misconduct on the part of ServiceCo or any of its Associates;
 - (vi) arising from any loss of or damage to property or injury to, illness or death of any person;
 - (vii) in respect of a deductible or excess under any Insurance;
 - (viii) arising by virtue of the application of the Performance Regime or the Payment Schedule;
 - (ix) expressly imposed on ServiceCo or any of its Associates under any of the Service Package Documents to pay FACS any of the following amounts:
 - A. any interest under clause 22.5;

- B. any amounts payable under clause 22.4, 24.7(a)(iv) or 48.9;
 - C. any amounts expressly stated to be payable as a debt due and payable under FACS Service Package Documents;
 - D. without limiting clause 35.1(b)(vi), any amounts payable by ServiceCo to FACS or an Indemnified Person under clause 34.2(c);
 - E. any amounts payable under and calculated in accordance with the Performance Regime or the Payment Schedule (including under clause 22.2(f));
 - F. any amounts payable under and calculated in accordance with clause 31; or
 - G. any amounts payable under and calculated in accordance with the Termination Payments Schedule;
- (x) imposed on ServiceCo under clause 26.6(b) to pay or allow to FACS any share of Savings;
 - (xi) in respect of any statutory fine or civil penalty arising from any breach of Law by ServiceCo or any of its Associates; or
 - (xii) arising from abandonment of the whole or a substantial part of the Delivery Phase Activities or the Services by ServiceCo or any of its Associates.

35.2 Exclusion of Consequential or Indirect Loss – FACS

- (a) **(No liability of FACS):** Subject to clause 35.2(b) but notwithstanding any other provision of the FACS Service Package Documents, neither FACS nor any of its Associates has any Liability to ServiceCo or any of its Associates (whether in contract, tort or otherwise), in respect of Consequential or Indirect Loss incurred or sustained by ServiceCo or its Associates:
 - (i) as a result of any act or omission of FACS or any of its Associates; or
 - (ii) due to any breach of a FACS Service Package Document by FACS or any of its Associates.
- (b) **(Exceptions to the no FACS liability):** The exclusion of Liability of FACS and its Associates in clause 35.2(a) does not apply to:
 - (i) Liability arising from any criminal act or fraud on the part of FACS or its Associates;
 - (ii) Liability arising from any wilful misconduct on the part of FACS (in its capacity as a party to this Deed) or its Associates in connection with the Service Package;
 - (iii) Liability arising from any loss of or damage to property or any injury to, illness or death of, any person caused or contributed to by FACS or its Associates;
 - (iv) Liability expressly imposed on FACS under any of FACS Service Package Documents to pay to ServiceCo any of the following amounts:
 - A. any Monthly Service Payment;
 - B. any interest under clause 22.5;

- C. any amounts payable under and calculated in accordance with clause 31; or
- D. any amounts payable in accordance with the Termination Payments Schedule;
- (v) Liability imposed on FACS under clause 26.6(b) to pay or allow ServiceCo any share of Savings; or
- (vi) payment of any excess or deductible payable by FACS under clause 36.5.

35A Limitation of liability

35A.1 General liability cap

- (a) Subject to clause 35A.1(b), but otherwise despite any other clause of this Deed, ServiceCo's maximum aggregate liability to the Indemnified Persons arising out of or in connection with this Deed, howsoever caused or arising, whether in contract, tort (including negligence or otherwise), equity, statute (to the extent that it is possible to exclude such liability), by way of indemnity, contribution, unjust enrichment, warranty or guarantee or otherwise at law is limited to an amount equal to [REDACTED] (**General Liability Cap**).
- (b) The General Liability Cap does not apply to Liability:
 - (i) arising out of any indemnity set out in clauses 34.2 to 34.4;
 - (ii) arising from any wilful misconduct, criminal act or fraud on the part of ServiceCo or any of its Associates;
 - (iii) for which ServiceCo or its Associates are insured under any Insurances that have been effected and maintained as required by this Deed or Liability for which ServiceCo or its Associates would have been insured under such Insurances if:
 - A. this clause 35A did not exist; and
 - B. ServiceCo and its Associates had:
 - 1) effected and maintained the relevant Insurances as required by this Deed;
 - 2) complied with the relevant Insurances;
 - 3) submitted a claim under the relevant Insurances where there was a legitimate entitlement to do so; and
 - 4) taken reasonable steps to pursue the claim;
 - (iv) to the extent that ServiceCo has recovered that liability from a third party;
 - (v) imposed on ServiceCo under clause 26.6(b) to pay or allow to FACS any share of Savings;
 - (vi) arising as a result of a breach by ServiceCo of any confidentiality obligation contained in any Service Package Document to which ServiceCo is a party;
 - (vii) arising from abandonment of the whole or a substantial part of the Service Package Activities by ServiceCo or any of its Associates;

- (viii) in respect of any statutory fine or civil penalty arising from any breach of Law by ServiceCo or any of its Associates;
- (ix) to the extent which, by law, the parties cannot limit or exclude;
- (x) in respect of a deductible or excess under any Insurance;
- (xi) arising in respect of the application of the Performance Regime or the Payment Schedule;
- (xii) arises out of a breach of clause 51;
- (xiii) in respect of any claims by third parties (which is itself not a Consequential or Indirect Loss);
- (xiv) any interest under clause 22.5; and
- (xv) any amounts payable under clause 22.4 or 48.9.

35A.2 Adjustment to the General Liability Cap

- (a) If the aggregate accrued liability of ServiceCo to the Indemnified Persons under this Deed is equal to or exceeds █████ of the General Liability Cap, ServiceCo may propose, in writing to FACS, to increase the General Liability Cap, which FACS may approve or reject in its absolute discretion.
- (b) If FACS approves ServiceCo's proposal to increase the General Liability Cap then from the date of FACS' acceptance in writing, the General Liability Cap will be the increased figure.

36. Insurance

36.1 Insurances

ServiceCo must:

- (a) procure, or cause to be procured, and thereafter maintain, each of the insurances which would be procured and maintained by ServiceCo with respect to any Site or the Service Package if ServiceCo was using Best Services Practices (**Insurances**);
- (b) effect all Insurances with Reputable Insurers;
- (c) comply at all times with the terms of each Insurance;
- (d) punctually pay all premiums and other amounts payable in connection with the Insurances;
- (e) not do or permit, or omit to do, anything which prejudices any Insurance and promptly rectify anything which might, if not rectified, prejudice any Insurance; and
- (f) bear all amounts by way of deductibles or excesses which apply to a claim made under any Insurances.

36.2 Notification and making of claims

ServiceCo must in relation to any Insurances other than workers compensation or motor vehicle Insurances:

- (a) (**notification**): promptly notify FACS of any occurrence that may give rise to a material claim in connection with the Service Package under any Insurance, except

where an Insured's right of indemnity under the relevant Insurances would be prejudiced by giving such notice;

- (b) **(subsequent developments)**: keep FACS informed of subsequent developments concerning the occurrence under clause 36.2(a); and
- (c) **(pursue claims)**: diligently pursue any claim which it has under any Insurance which has arisen in connection with the Service Package.

36.3 Evidence of Insurances

Whenever reasonably requested by FACS, ServiceCo must give FACS evidence satisfactory to FACS that the Insurances have been procured and continue to be maintained in accordance with this Deed, to enable FACS to satisfy itself that all of the insurance requirements of the Service Package under this Deed are being complied with.

36.4 Application of insurance proceeds

All proceeds of any Insurances (except business interruption policies) must be applied:

- (a) towards replacement or repair of the Relevant Infrastructure (including Service Package Dwellings) or the relevant Site the subject of the Insurance under which a Claim has been made; or
- (b) to discharge the relevant Liability or Claim, or make good the relevant Liability the subject of the Insurance under which a Claim has been made.

36.5 Deductibles

- (a) **(Loss or damage)**: Where the event that is insured under any Insurances is loss or damage caused by a Compensable Relief Event or a Compensable Intervening Event for which ServiceCo is entitled to relief in accordance with this Deed, FACS will pay the related deductible or excess.

Part L - Default, Termination and Disputes

37. Major Default

37.1 Meaning of remedy or cure

- (a) Where the word 'remedy' or 'cure' or any other grammatical form of those words is used in this clause 37, it means to cure or redress the relevant breach or Major Default, or overcome its consequences so that:
- (i) there ceases to be any continuing detrimental effect of that breach or Major Default;
 - (ii) any prior detrimental effect is rectified; and
 - (iii) FACS and its Associates are in the position they would have been in had the relevant breach or Major Default not taken place.
- (b) The parties acknowledge and agree that if an event identified in paragraphs (a) or (s) of the definition of Major Default occurs, that Major Default will, for the purposes of this clause 37, be deemed to be capable of cure, notwithstanding that the relevant Major Default may not, as a matter of fact, be capable of cure.

37.2 Notice of Major Default

- (a) **(ServiceCo's obligations):** ServiceCo must:
- (i) promptly notify FACS upon the occurrence of a Major Default; and
 - (ii) immediately take steps to mitigate, minimise or avoid the effects, consequences or duration of the Major Default.
- (b) **(Major Default Notice):** If:
- (i) ServiceCo notifies FACS of a Major Default under clause 37.2(a); or
 - (ii) FACS considers that a Major Default has occurred,
- FACS may give ServiceCo a notice in writing **(Major Default Notice):**
- (iii) stating that a Major Default has occurred;
 - (iv) identifying and providing details of the Major Default; and
 - (v) if the Major Default:
 - A. is capable of remedy, stating a date by which ServiceCo must remedy the Major Default (which must allow for a reasonable period of time to remedy the Major Default in the circumstances);
 - B. is not capable of remedy, stating any reasonable requirements of FACS in connection with that Major Default and a date by which ServiceCo must comply with those requirements (which must allow for a reasonable period of time to comply with FACS' requirements in the circumstances); or
 - C. is not capable of remedy and FACS has formed the view (acting reasonably) that there are no reasonable requirements that can be met by ServiceCo to overcome the consequences

of, or compensate FACS for, the Major Default, a statement to that effect along with its reasons for forming that view.

- (c) **(Remedy):** The remedy of a Major Default may include (where FACS requires) replacing the relevant Key Subcontractor, if:
- (i) the relevant Key Subcontractor is responsible for the Major Default; and
 - (ii) the cure period under the relevant Key Subcontract has expired,
- and ServiceCo must comply with the requirements of this clause 37 requiring such a replacement, within three Months of notice being given by FACS and, where FACS requires such a replacement, diligently pursuing a replacement Key Subcontractor and implementing all reasonable measures to perform the Services in accordance with this Deed.
- (d) **(Unreasonable requirements):** If ServiceCo (acting in good faith) does not agree with a Major Default Notice, or any part of it, it must:
- (i) promptly notify FACS, including the reasons why; and
 - (ii) if ServiceCo does not agree with the period of time stated in the Major Default Notice, specify the period of time which it believes is reasonable.
- (e) **(FACS to act in good faith):** FACS must in good faith consider ServiceCo's notice under clause 37.2(d) and (acting reasonably):
- (i) make any changes to the Major Default Notice that it considers reasonable as a consequence of ServiceCo's notice; and
 - (ii) notify ServiceCo of those changes (if any).
- (f) **(Major Default not capable of remedy or cure):** If after considering ServiceCo's notice under clause 37.2(d), FACS maintains the view (acting reasonably) that there are no reasonable requirements that can be met by ServiceCo to overcome the consequences of, or compensate FACS for, the Major Default, FACS must notify ServiceCo of this determination and the Major Default will be deemed to be a Default Termination Event.
- (g) **(ServiceCo not satisfied):** If ServiceCo is not satisfied with:
- (i) the changes (if any) made by FACS under clause 37.2(e); or
 - (ii) FACS' determination under clause 37.2(f),
- then:
- (iii) ServiceCo may refer the matter to expert determination in accordance with clause 42; and
 - (iv) if clause 37.2(f) applies, the Major Default will not be deemed to be a Default Termination Event unless and until determined by expert determination in accordance with clause 42,

and ServiceCo must act in accordance with the Major Default Notice while the matter is being determined in accordance with clause 42.

37.3 ServiceCo to provide remedy program and comply with Major Default Notice

- (a) **(Remedy program):** If FACS gives a Major Default Notice to ServiceCo, then notwithstanding its rights under clause 37.2(d) to 37.2(g), ServiceCo must within 10 Business Days:
- (i) where the Major Default is capable of remedy, unless the relevant Major Default is a failure to pay money which must be remedied immediately, give FACS a program to remedy the Major Default in accordance with the terms of the Major Default Notice (which may include a plan to replace the Subcontractor causing the Major Default); and
 - (ii) where the Major Default is not capable of remedy, give FACS a program to prevent the Major Default from recurring and complying with any reasonable requirements of FACS set out in the Major Default Notice (which may include a plan to replace the Subcontractor causing the Major Default),
- for approval by FACS.
- (b) **(Content of remedy program):** Any program provided to FACS under clause 37.3(a) must include:
- (i) each task to be undertaken, the date by which each task is to be completed and the additional resources and personnel (if applicable) to be applied;
 - A. in respect of clause 37.3(a)(i), to remedy or cure the Major Default; or
 - B. in respect of clause 37.3(a)(ii), to prevent the Major Default from recurring; and
 - (ii) any temporary measures that will be undertaken while the Major Default is being cured in order to ameliorate the impact of the Major Default.
- (c) **(Compliance):** Notwithstanding the fact that it may have exercised its rights under clause 37.2(d) to 37.2(g), ServiceCo must comply with any program provided under clause 37.3(a) in the form approved by FACS.
- (d) **(Maximum remedy period):** Subject to any Financiers' Tripartite Deed and clause 37.4(a), the period of time (including any extension under clause 37.4(b)) which ServiceCo may be given to remedy a Major Default will be:
- (i) subject to clause 37.3(d)(ii), where the applicable Major Default occurs during the Delivery Phase, 12 Months in the aggregate from the date of the applicable Major Default Notice;
 - (ii) where the applicable Major Default is an event identified in paragraph (a) of the definition of Major Default, to the extent that event is a failure to achieve a Service Readiness Milestone by the relevant Service Readiness Milestone Date, 24 Months from the date of the applicable Major Default Notice; and
 - (iii) where the applicable Major Default occurs during the Service Delivery Phase, six Months in the aggregate from the date of the applicable Major Default Notice.

37.4 Extension of remedy program

- (a) **(Impact of Relevant Event):** If ServiceCo is prevented from carrying out its obligations in accordance with clause 37.3(c) as a direct result of a Relevant Event for which ServiceCo is entitled to relief in accordance with this Deed, then the program to remedy or comply (including the time to remedy the Major Default or comply with FACS' requirements), and the time set out in the Major Default Notice, must be extended:
- (i) to reflect the period ServiceCo is prevented from carrying out its obligations in accordance with the remedy program by that Relevant Event; or
 - (ii) in respect of loss or damage caused by that Relevant Event, for the period from the commencement of that loss or damage until the earlier of the date that the necessary repairs or rebuilding have been completed, or ought reasonably to have been completed,

provided that:

- (iii) the period of extension granted under this clause 37.4(a) must not exceed:
 - A. during a Delivery Phase, the period of relief granted in accordance with clause 23.4 or 23.5; or
 - B. during a Service Delivery Phase, the period of relief granted under clause 24.4,(as applicable) for that Relevant Event; and
 - (iv) ServiceCo demonstrates to FACS' satisfaction (acting reasonably) that ServiceCo has diligently pursued and, to the extent reasonably possible, continues to diligently pursue the program agreed or determined under clause 37.3.
- (b) **(Extension of Major Default Notice):** Subject to clause 37.4(d), if ServiceCo:
- (i) is not able to, where the Major Default is capable of remedy, remedy the Major Default or, where the Major Default is not capable of remedy, comply with the reasonable requirements of FACS in respect of the Major Default within the timeframe stated in the Major Default Notice; and
 - (ii) ServiceCo has been diligently pursuing the remedy of that Major Default or compliance with any reasonable requirements of FACS, (as the case may be),

ServiceCo may request that FACS extend the time stated in the Major Default Notice and FACS will grant an extension for such period as FACS determines is required (acting reasonably) to either enable ServiceCo to remedy the Major Default or comply with any reasonable requirements of FACS.

- (c) **(Request for further information):** FACS may request, and ServiceCo must provide, any further information reasonably required by FACS to enable FACS to determine an extension under clause 37.4(b).
- (d) **(Limitation):** ServiceCo is only entitled to one extension in accordance with clause 37.4(b) in connection with the same Major Default.

37.5 Effect of curing

If a Major Default occurs and is cured by any person, any rights in respect of that Major Default which have not been exercised prior to it being cured, may not thereafter be exercised.

37.6 Major Default regarding a Reviewable Service

- (a) Without limiting the terms of this clause 37 (including the provision of any remedy program under clause 37.3), if an event identified in paragraph (g) of the definition of Major Default occurs in connection with a Reviewable Service:
- (i) to the extent:
- A. the Reviewable Service is delivered by a Subcontractor, FACS may direct ServiceCo to terminate or procure the termination of the Subcontract with the relevant Subcontractor causing the Major Default and retender that Subcontract; and
- B. ServiceCo is delivering the Reviewable Service, FACS may direct ServiceCo to tender the performance of the Reviewable Service to a suitably qualified person and engage that person or entity as a Key Subcontractor,
- within 90 days (or such longer period agreed between the parties) after receipt of a notice from FACS directing ServiceCo to do so; and
- (ii) ServiceCo will bear the risk of the price of the retendered services being higher (if any).
- (b) If, following the conduct of a tender process directed by FACS under clause 37.6(a)(i), FACS is not reasonably satisfied with the tenders received, it may:
- (i) direct ServiceCo:
- A. not to accept; or
- B. if applicable, to procure that the relevant Key Subcontractor does not accept,
- any tender offer, and:
- (ii) omit the Reviewable Service from the Services and carry out the Reviewable Service itself or procure a third party to carry out the Reviewable Service (in which case the Monthly Service Payment will be adjusted and this Deed amended as necessary in accordance with clause 31 for the omission of that Reviewable Service).
- (c) If ServiceCo fails to comply with its obligations under clause 37.6(a) within the timeframe determined in accordance with that clause, this will be deemed to be a Default Termination Event.

38. Termination

38.1 Sole basis

- (a) **(Sole basis):** Clause 3.4 and this clause 38 set out the sole basis at Law or otherwise upon which FACS is entitled to terminate, rescind or accept a repudiation of this Deed.
- (b) **(No limitation):** Subject only to clauses 22.3(d) and 38.1(a):

- (i) nothing in clause 3.4 or this clause 38 in any way prejudices or limits any other rights or remedies of FACS, whether under this Deed or any other FACS Service Package Document or otherwise at Law, and whether against ServiceCo or otherwise, in relation to any Default Termination Event, Major Default or breach of any FACS Service Package Document; and
- (ii) the termination of this Deed on any basis, and any payment of the relevant Termination Payment, will not in any way prejudice or limit either party's Liability to the other in respect of the events giving rise to the termination.
- (c) **(No right to terminate):** Subject to clauses 29.3 and 38.3 but notwithstanding any other provision of this Deed or any rights ServiceCo has at Law or otherwise but for this clause 38.1(c), ServiceCo acknowledges that it has no right under this Deed, at Law, or otherwise, to terminate this Deed.

38.2 Voluntary Termination

- (a) **(Voluntary termination notice):** FACS may at any time and in its sole and absolute discretion, terminate this Deed by giving ServiceCo not less than 36 Months' notice during which ServiceCo must continue to provide the Services in accordance with this Deed except with respect to clauses 38.2(b) and 38.2(c).
- (b) **(No new Tenants):** On and from the date that notice is given under clause 38.2(a), ServiceCo may not enter into any new Residential Tenancy Agreements in connection with any Service Package Dwellings for the remainder of the Term without FACS' prior written consent.
- (c) **(No breach):** To the extent that the requirement in clause 38.2(b) prevents ServiceCo from meeting any of the Services Requirements under this Deed, the failure to perform the affected Services will not be a Service Provision Performance Incident.
- (d) **(Date of termination):** Termination of this Deed under clause 38.2(a) will take effect upon the date specified in the notice given under clause 38.2(a).

38.3 Termination for Force Majeure

- (a) **(Force Majeure Termination Event notice):** Subject to clause 38.3(c), if a Force Majeure Termination Event occurs (or is deemed to occur), then either party may terminate this Deed by giving notice to the other party.
- (b) **(Date of termination):** Termination of this Deed for a Force Majeure Termination Event will take effect upon the date specified in the notice given under clause 38.3(a).
- (c) **(Restrictions on termination):** ServiceCo is not entitled to terminate this Deed under clause 38.3(a) during the period ServiceCo is able to recover (or, but for any breach by ServiceCo or any of its Associates of a FACS Service Package Document or the relevant Insurances, would have been able to recover) under the advance loss of profits Insurance (applicable to the Relevant Infrastructure) or the consequential loss cover section of the industrial special risks Insurance or other business interruption Insurance (in respect of the Service Delivery Phase) for the relevant Force Majeure Termination Event.
- (d) **(Suspension of ServiceCo's right to terminate):**
 - (i) If ServiceCo gives a termination notice in accordance with clause 38.3(a) during a Service Delivery Phase, FACS may, subject to clause 38.3(d)(ii), suspend ServiceCo's right to terminate by giving a

suspension notice within 20 Business Days after receipt of ServiceCo's termination notice.

- (ii) FACS may suspend ServiceCo's right to terminate in accordance with clause 38.3(d)(i) for up to a maximum period of 12 Months.
- (iii) If FACS gives ServiceCo a suspension notice under clause 38.3(d)(i):
 - A. clause 24.5 and 24.6 will continue to apply; and
 - B. this Deed will not terminate until expiry of written notice (of at least 30 Business Days) from FACS to ServiceCo that it is ending the suspension of ServiceCo's right to terminate.
- (iv) If ServiceCo becomes able to recommence performing the relevant obligations after FACS gives ServiceCo a suspension notice:
 - A. ServiceCo must promptly recommence performance of those obligations; and
 - B. ServiceCo's termination notice under clause 38.3(a) will cease to have any effect.

38.4 Default Termination Event

- (a) **(Rights):** Subject to clause 39 and any Financiers' Tripartite Deed, if a Default Termination Event occurs, FACS may, without limiting any rights or remedies it has under this Deed or at Law (other than rights of termination), elect to terminate this Deed in full or in part by giving notice to ServiceCo that it is terminating this Deed in accordance with this clause 38.4 and (if applicable) 39.2.
- (b) **(Option to Lease and assignment rights):** ServiceCo acknowledges that if a Default Termination Event occurs on or after the Date of Service Readiness in respect of a Stage and:
 - (i) ServiceCo owns any of the relevant Sites, the Option to Lease applies; or
 - (ii) ServiceCo leases any of the relevant Sites, FACS may exercise any Option to Lease or its right to procure an assignment (as applicable) under the relevant Side Deed.
- (c) **(Date of termination):** Termination of this Deed for a Default Termination Event will take effect upon the date specified in the notice given under clause 38.4(a), provided that where one or more Options to Lease apply, FACS will specify that termination will take effect in respect of particular Service Package Dwellings either:
 - (i) upon FACS deciding it does not wish to exercise any Options to Lease during the relevant Option Periods, the date nominated by FACS in a notice to ServiceCo provided at any time during the Option Period (such date of termination being no longer than 120 days from the date of such notice);
 - (ii) where FACS wishes to exercise any Options to Lease during the Option Period, the date the relevant leases commence in accordance with their terms;
 - (iii) on expiry of the last Option Period; or
 - (iv) any combination of paragraphs (i) to (iii) above.

- (d) **(Transition):** From the date a notice under clause 38.4(a) is served until the date of termination, ServiceCo must continue to provide the Services subject to the following provisions:
- (i) ServiceCo:
 - A. must comply with any reasonable direction from FACS, including any direction to cease providing some or all of the Services; and
 - B. must not:
 - 1) place new Tenants into any Service Package Dwellings; or
 - 2) communicate with Tenants,

without the consent of FACS (which will not be unreasonably withheld);
 - (ii) to the extent that the requirement in clause 38.4(d)(i) prevents ServiceCo from meeting any of the Services Requirements under this Deed, the failure to perform the affected Services will not be a Service Provision Performance Incident; and
 - (iii) FACS:
 - A. will cease to pay the Monthly Service Payment to ServiceCo; and
 - B. must pay the Transition Services Payment to ServiceCo.

38.5 Assistance

ServiceCo will use its best endeavours to assist FACS in the exercise of FACS' rights in accordance with this clause 38.

38.6 Payment on termination

- (a) **(Payment):** Subject to clause 38.6(b), if FACS has terminated this Deed in full or in part in accordance with:
- (i) clause 38.2 for Voluntary Termination, FACS must pay the Voluntary Termination Payment to ServiceCo; and
 - (ii) clauses 38.4 and 39.1 for termination for a Default Termination Event:
 - A. to the extent the Default Termination Payment is positive, ServiceCo must pay it to FACS; and
 - B. to the extent the Default Termination Payment is negative, FACS must pay it to ServiceCo,

no later than the Termination Payment Date, as a debt due and payable, in accordance with the Termination Payment Schedule.
- (b) **(Force Majeure Termination Event or Material Adverse Effect):** In the event there is a Force Majeure Termination Event or termination following an unresolved Material Adverse Effect under clause 29.3, no Termination Payment will be payable by either party but any amounts owing by one party to the other party must be paid within 20 Business Days of the date on which this Deed is terminated by reason of that Force Majeure Termination Event or unresolved Material Adverse Effect (as applicable).

- (c) **(FACS' rights):** If FACS is not satisfied that ServiceCo has satisfied its obligations in clause 33, ServiceCo will be liable to FACS for the amount that is reasonably necessary to cover the expected costs of performing those obligations (including reasonable contingencies) in addition to any Termination Payment payable by ServiceCo in accordance with this clause 38.6 and the Termination Payments Schedule.
- (d) **(Payment obligations cease):** Upon termination under this clause 38, FACS' future obligations under the FACS Service Package Documents to pay the Monthly Service Payment will cease.

38.7 Waiver

If this Deed or, in the event of a Partial Termination, part of this Deed is terminated in accordance with this Deed, then:

- (a) **(Liability):** subject to clause 38.7(b):
 - (i) ServiceCo waives any right it might otherwise have to make any Claim or, in the event of a Partial Termination, a Claim in relation to the terminated parts of this Deed, against FACS or any of its Associates; and
 - (ii) FACS and each of its Associates will have no further Liability or, in the event of a Partial Termination, no further Liability in relation to the terminated parts of this Deed, to ServiceCo or any of its Associates,

by reason, or as a result, of the termination or the circumstances relating to the termination, or otherwise arising out of or in connection with the Service Package Documents, the Sites, the Service Package Activities or the Service Package more generally other than any Claim previously notified to FACS in accordance with this Deed which is not otherwise due and payable under this Deed;
- (b) **(exclusive entitlement):** ServiceCo's sole and exclusive entitlement to make a Claim against FACS following termination of this Deed will be in connection with its rights to a Termination Payment; and
- (c) **(wrongful termination):** if FACS terminates this Deed for a Default Termination Event and it is subsequently determined that such termination was wrongful (including if FACS has terminated this Deed for a deemed Default Termination Event under clause 37.2(f) and it is subsequently determined that FACS had no right to terminate this Deed on that basis), then, unless the parties agree otherwise, such exercise shall be deemed to have been a Voluntary Termination in accordance with clause 38.2 and ServiceCo's sole rights in such circumstances will be those set out in clause 38.6(a)(i).

38.8 Additional rights and obligations on Termination

The additional rights and obligations of the parties on a termination of this Deed are set out in clauses 33 and 39.

39. Partial Termination

39.1 Partial Termination

- (a) Where a Default Termination Event or a Force Majeure Termination Event affects some but not all of the Service Package Dwellings, FACS (or in respect of a Force Majeure Termination Event, ServiceCo) will have the sole and unfettered right to elect whether to terminate:
 - (i) subject to clause 39.1(b), this Deed in full; or

- (ii) subject to clause 39.1(c), only in relation to particular Service Package Dwellings (**Partial Termination**),

in each case pursuant to clause 38.2(a) or clause 38.4(a) (as applicable).

- (b) Where:

- (i) a Force Majeure Termination Event occurs; or
- (ii) a Default Termination Event occurs within paragraph (g) of that definition,

then provided at least [REDACTED] of the Service Package Dwellings comprised in the Service Package (rounded to the nearest whole number) are unaffected by these events, FACS (or in respect of a Force Majeure Termination Event, ServiceCo) may only effect a Partial Termination in respect of the Service Package Dwellings affected by the Relevant Event and may not terminate this Deed in full.

- (c) FACS may only effect a Partial Termination in relation to (up to and including) [REDACTED] Service Package Dwellings.
- (d) FACS cannot effect a Partial Termination in respect of one Dwelling within a Site, without terminating the whole Site.
- (e) A reference to Partial Termination in this Deed means that the requirement for any Services or any other requirements of this Deed relating to the Service Package Dwellings that are the subject of the Partial Termination are terminated, including, subject to clause 39.2, FACS' obligation to make any payment to ServiceCo in respect of the relevant Service Package Dwellings.
- (f) Following a Partial Termination, all references in this Deed and any Service Package Document to the relevant Service Package Activities will be read by reference to the remaining Service Package Dwellings for the purposes of the continued performance of this Deed by both parties in relation to those remaining Service Package Dwellings.

39.2 Consequences of Partial Termination

Where FACS effects a Partial Termination pursuant to clause 39.1(a):

- (a) FACS' notice of Partial Termination is a Variation Order and the provisions of clause 26 will be followed accordingly except that:
 - (i) FACS will, acting reasonably, determine the effect (if any) of the Partial Termination on:
 - A. this Deed;
 - B. the Service Readiness Criteria;
 - C. the requirements under this Deed for Service Readiness;
 - D. the Services Requirements; and
 - E. the Monthly Service Payments, including on the basis that the original Monthly Service Payment was calculated as an average across all Service Package Dwellings. The parties acknowledge that the Monthly Service Payment was sized on the basis that the Substituted New Dwellings would be delivered prior to the 5th anniversary of Commercial Close in accordance with clause 19A. To the extent that FACS terminates particular Dwellings pursuant to this clause 39.2 in

connection with a failure to comply with clause 19A, the adjustment to the Monthly Service Payment should take into account both amounts which FACS has paid or would have otherwise expected to pay ServiceCo in respect of the capital cost of delivering Substituted New Dwellings which will not be delivered; and

- (ii) ServiceCo must, within 10 Business Days of the date of FACS' notice of Partial Termination and any subsequent notice requesting such information, provide the FACS Representative with any information in respect of the impact of the Partial Termination reasonably requested by the FACS Representative in that notice;
- (b) ServiceCo is not entitled to any compensation and will have no Claim against FACS by virtue of or arising from the Partial Termination;
- (c) FACS is entitled to the compensation (if any) and other rights and remedies set out in the Termination Payment Schedule but only with respect to the Service Package Dwellings or the Service Package Activities that are the subject of the Partial Termination;
- (d) FACS may have recourse to and apply any security provided by ServiceCo under or in connection with this Deed in respect of any Liability it may suffer or Claim which FACS may have against ServiceCo whether for amounts due, or damages arising out of or in relation to the relevant Service Package Dwellings arising from the Partial Termination or otherwise;
- (e) the rights and obligations of the parties in relation to the Service Package Dwellings that are the subject of the Partial Termination will otherwise cease except for:
 - (i) any accrued rights and obligations under this Deed in respect of the relevant Service Package Dwellings, including those arising out of the Partial Termination; and
 - (ii) any rights and obligations which are expressed to continue after termination, including those referred to in clause 2.21; and
- (f) subject to clause 2.21, each of the Service Package Documents to which ServiceCo is a party will be deemed not to apply to the Service Package Dwellings affected by the Partial Termination and those documents will be of no further force or effect in relation to the relevant Service Package Dwellings.

39.3 Waiver and no Claim

On Partial Termination, in respect of the relevant Service Package Dwellings:

- (a) ServiceCo waives any right it might otherwise have to pursue a Claim of restitution of any kind, including a Claim of unjust enrichment or quantum meruit; and
- (b) ServiceCo will not be entitled to make a Claim against FACS or FACS' Associates for any amount other than for payment of the relevant Termination Payment.

39.4 Facilitation

ServiceCo must:

- (a) to the extent directed by the FACS Representative, comply with its obligations, and permit FACS to exercise all its rights, under clause 33 in relation to the Service Package Dwellings that are the subject of the Partial Termination; and
- (b) do all other things reasonably requested by FACS to minimise any disruption to the remaining Service Package Dwellings and to facilitate the effective transfer of the

relevant Services and licence of the ServiceCo Materials (other than Excluded Materials).

39.5 Continuity following Partial Termination

On Partial Termination, ServiceCo must continue to comply with its remaining obligations under the Service Package Documents, and must ensure that its Subcontractors continue to comply with their obligations under the Service Package Documents and all relevant Subcontracts in respect of the Service Package Activities to the extent they are not the subject of the Partial Termination.

40. Dispute Resolution procedure

- (a) **(Definition):** Unless a FACS Service Package Document provides otherwise, any dispute between FACS and ServiceCo arising in connection with the Service Package (**Dispute**) must be resolved in accordance with this clause 40.
- (b) **(Dispute Avoidance Board):** Without limiting the process set out in this clause 40 to clause 43, the parties acknowledge that the Dispute Avoidance Board will assist the parties to prevent and resolve Disputes as described in the DAB Agreement.
- (c) **(Notification):** If a Dispute arises then a party may give notice to the other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of FACS and ServiceCo (**Executive Representatives**) (**Dispute Notice**) with a copy to the Dispute Avoidance Board.
- (d) **(Contents of Notice):** A Dispute Notice must:
 - (i) state that it is a notice under this clause 40; and
 - (ii) include or be accompanied by particulars of the matters the subject of the Dispute.
- (e) **(Attempt to resolve Dispute):** If a Dispute is referred for resolution by negotiation under clause 40(a), then:
 - (i) the Executive Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days of the date on which the Dispute Notice is received (or such later date as the parties may agree); and
 - (ii) any agreement reached between the Executive Representatives will be reduced to writing, signed by or on behalf of each party and will be contractually binding on the parties.
- (f) **(Involve Dispute Avoidance Board):** The Executive Representatives may, by agreement:
 - (i) have the chairperson of the Dispute Avoidance Board facilitate the meetings under clause 40(e)(i), in which case the chairperson will act independently and facilitate negotiations;
 - (ii) meet, at any time, together with the Dispute Avoidance Board; and
 - (iii) in writing, refer the Dispute to the Dispute Avoidance Board for its opinion by providing a written notice to the chairperson of the Dispute Avoidance Board (**Notice of Referral**) stating that the Notice of Referral is a notice under this clause 40(f)(iii).

41. Dispute Avoidance Board

41.1 Engagement of Dispute Avoidance Board

- (a) The DAB has been constituted under the DAB Agreement.
- (b) Each party must, following execution by ServiceCo of the DAB Agreement Accession Deed Poll:
 - (i) at all times comply with the terms of the DAB Agreement;
 - (ii) attend meetings with the DAB as required pursuant to the DAB Agreement or this Deed; and
 - (iii) provide all reasonable assistance to the DAB in fulfilling its function(s) in respect of the Service Package including providing all information it reasonably requests.

41.2 Obtaining Dispute Avoidance Board's assistance

- (a) If the Executive Representatives request any meeting with the Dispute Avoidance Board under clause 40(f)(ii), the Dispute Avoidance Board will act independently in assisting the parties and in doing so may:
 - (i) attend any meeting as agreed by the parties;
 - (ii) facilitate the attendance at any meeting by such other persons as agreed between the Executive Representatives; and
 - (iii) facilitate negotiations between the parties.
- (b) Each of the DAB, FACS and ServiceCo may also request a conference with the Dispute Avoidance Board in accordance with the rules in section 3 in Schedule 3 of the DAB Agreement.
- (c) Any assistance provided on a Dispute by the Dispute Avoidance Board under this clause 41.2 will:
 - (i) be on a 'without prejudice' basis; and
 - (ii) continue until either party notifies the Dispute Avoidance Board in writing that its assistance is no longer required.

41.3 Obtaining Dispute Avoidance Board's opinion

- (a) If a Dispute is referred to the Dispute Avoidance Board under clause 40(f)(iii), the opinion provided on a Dispute by the DAB will be given in accordance with the rules in Schedule 3 of the DAB Agreement or such rules as may otherwise be agreed between the parties and the DAB.
- (b) If a party (**Party A**) wishes to pursue the Dispute following the Dispute Avoidance Board providing an opinion for the purposes of section 4 in Schedule 3 of the DAB Agreement, Party A may refer the Dispute to expert determination within 20 Business Days of receipt of the opinion.
- (c) If Party A fails to refer the Dispute to expert determination in accordance with clause 41.3(b):
 - (i) the other party will not be liable; and

- (ii) Party A will be absolutely barred from issuing a referral to expert determination under clause 41.3(b), arising out of, or in any way in connection with, the fact, matter or thing (as the case may be) on which the Dispute is based.

42. Expert determination

- (a) **(Dispute unresolved by Executive Representatives):** If a Dispute (in whole or in part) which has been referred to the Executive Representatives for negotiation in accordance with clause 40(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 40(e)(i) then those parts of the Dispute which remain unresolved will be referred to an expert for determination.
- (b) **(Exchange of lists of three preferred experts):** Within 10 Business Days after the date on which a Dispute is referred to an expert for determination under clause 42(a), if FACS and ServiceCo are unable to agree on an expert to determine the Dispute, FACS and ServiceCo must exchange lists of three persons (in order of preference) who, if appointed, would satisfy the requirements of clause 42(e), from whom the expert is to be chosen.
- (c) **(Appointment of person who appears on both lists):** Any person that appears on both lists under clause 42(b) will be appointed as the expert to determine a Dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 40(a) will be appointed.
- (d) **(Appointment if no person appears on both lists):** If no person appears on both lists, the party which gave the notice under clause 40(a) must procure the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 42(b) within 10 Business Days of the exchange of lists under clause 42(b).
- (e) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (f) **(No entitlement to challenge appointment):** Neither party will be entitled to challenge the appointment of an expert under this clause 42 on the basis that the expert does not satisfy the requirements of clause 42(e).
- (g) **(Not an arbitration agreement):** Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2010* (NSW).
- (h) **(Agreement):** Within 10 Business Days of the expert being agreed, deemed or nominated, FACS and ServiceCo must enter into an agreement with the expert on substantially the terms of the Expert Determination Agreement or on such reasonable terms as the expert may require.
- (i) **(Costs):** FACS and ServiceCo must:
 - (i) bear their own costs in connection with the expert determination proceedings; and
 - (ii) pay an equal portion of the costs of the expert.
- (j) **(Notification):** The determination of the expert must be in writing and will be final and binding on FACS and ServiceCo unless:

- (i) the expert determination includes payment of compensation and the amount claimed, or subsequently determined by the expert, to be payable is equal to or greater than \$1,000,000 (Indexed); and
 - (ii) within 10 Business Days of receipt of the determination, a party gives notice to the other party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 43.
- (k) **(Amendment to determination):** Upon submission by any party, the expert may amend the determination to correct:
- (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (iv) a defect in form.
- (l) **(Proportionate liability):** To the extent permitted by Law, the expert will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 42(l), have applied to any Dispute referred to expert determination in accordance with this clause 42.

43. Reference to Arbitration

- (a) **(Dispute):** If a Dispute is not finally resolved (in whole or in part) in accordance with clause 40(e) or 42 then FACS or ServiceCo may notify the other that it requires the Dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by the other party of a notice under clause 43(a), the Dispute will be referred to arbitration.
- (c) **(ACICA Rules):** Arbitration in accordance with this clause 43 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) subject to this clause 43.
- (d) **(Seat):** The seat of the arbitration will be Sydney, New South Wales.
- (e) **(Language):** The language of the arbitration will be English.
- (f) **(Governing Law):** The Law governing this arbitration agreement is the law of New South Wales, Australia.
- (g) **(Appointment of arbitrator):** The parties will endeavour to agree on the person to be appointed as arbitrator, but if no such agreement is reached within 10 Business Days of the Dispute being referred to arbitration in accordance with clause 43(b), the arbitrator will be appointed by the Australian Centre for International Commercial Arbitration upon the request of either party.
- (h) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (i) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (j) **(Oral hearing):** The oral hearing must be conducted as follows:
 - (i) any oral hearing must take place in Sydney, New South Wales and all outstanding issues must be addressed at the oral hearing;

- (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than 28 days prior to the date fixed for oral hearing each party must give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination;
 - (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set pursuant to clause 43(j)(ii);
 - (vii) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross-examination; and
 - (viii) each party is expected to put its case on significant issues in cross examination of a relevant witness called by the opposing party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the opposing party may know the nature of and basis for the challenge to the written evidence of a witness.
- (k) **(Experts):** Unless otherwise ordered each party may only rely upon one expert witness in connection with any recognised area of specialisation.
- (l) **(Proportional liability):** The parties agree that:
- (i) the powers conferred, and restrictions imposed, on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitrator appointed in accordance with this clause 43;
 - (ii) the arbitrator has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (or any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitrator; and
 - (iii) to the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 43(l), have applied to any Dispute referred to arbitration in accordance with this clause 43.

43.2 Continue to perform

Notwithstanding the existence of a Dispute, each party must continue to perform its obligations in accordance with the FACS Service Package Documents.

43.3 Interlocutory relief

This clause 43 does not prevent a party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect that party's rights.

43.4 Jurisdiction of courts

Without limiting clauses 40 to 43, each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

44. Representations and warranties

44.1 FACS' representations and warranties

FACS represents and warrants for the benefit of ServiceCo that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under FACS Service Package Documents and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(validity)**: each FACS Service Package Document constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (c) **(legality)**: the execution, delivery and performance of each FACS Service Package Document does not violate any Law to which FACS is subject.

44.2 ServiceCo's representations and warranties

ServiceCo represents and warrants for the benefit of FACS that:

- (a) **(incorporation)**: the Property Trust is duly incorporated in Australia and is existing under Australian Law;
- (b) **(power to execute)**: it has the capacity and power to execute, deliver and perform its obligations under the Service Package Documents to which it is a party and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (c) **(legality)**: the execution, delivery and performance of each Service Package Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (d) **(validity)**: each of the Service Package Documents to which it is a party constitutes a valid and legally binding obligation on it, enforceable in accordance with its terms;
- (e) **(no trust relationship)**: except as stated in this Deed, it is not the trustee or Responsible Entity of any trust nor does it hold any property subject to or impressed, by any trust;
- (f) **(no subsidiaries)**: it has no subsidiaries;
- (g) **(no tax consolidation)**: it is not part of any tax consolidation arrangement contemplated by the *Income Tax Assessment Act 1997* (Cth) or GST grouping arrangement contemplated by the GST Law, save and except for the GST Religious Group that has "The Uniting Church in Australia – National Assembly" as its principal member and except with the consent of FACS;
- (h) *[not used]*;
- (i) **(acknowledgement of Property Trust's status)**: the Property Trust is a legal entity which holds property, situated within the State of New South Wales, in trust for all the organisations of the Uniting Church in Australia including ServiceCo;
- (j) **(residency)**: it is a resident in Australia and has not transferred any of its business outside of Australia;
- (k) **(transaction permitted)**: the execution, delivery and performance by it of the Service Package Documents will not breach, or result in a contravention of:

- (i) any Law, regulation or Approval;
- (ii) its constitution or other constituent documents; or
- (iii) any Security Interest or agreement which is binding it,

and will not result in the acceleration of the date for payment of any obligation under any agreement which is binding on it;

- (l) **(information true and correct)**: all information that has been provided to FACS in connection with the Service Package Documents is true, accurate and correct in all material respects and ServiceCo is not aware of any material facts or circumstances that have not been disclosed to FACS and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed with ServiceCo;
- (m) **(no immunity)**: it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (n) **(no default)**: it is not in default of its material obligations under any Service Package Document to which it is expressed to be a party;
- (o) **(no knowledge of other proposals)**: prior to the date of this Deed, it had no knowledge of any part of the proposal by any other proponent for the Service Package and has not directly or indirectly communicated any part of its proposal for the Service Package to any other proponent;
- (p) **(no arrangement)**: prior to the date of this Deed, it has not entered into any contract or arrangement or arrived at any understanding with any other proponent in relation to the Service Package to the effect that it will pay money to or confer any benefit upon any other proponent as a result of entering into this Deed or providing its proposal for the Service Package;
- (q) **(Site)**: ServiceCo has full and proper rights to use and licence the Site and the Relevant Infrastructure for the purposes of the Service Package in accordance with this Deed; and
- (r) **(authorisation)**: the Property Trust has been validly authorised to execute this deed for and on behalf of Uniting (NSW.ACT) (ABN 78 722 539 923).

44.3 Repetition of representation and warranties

- (a) Each representation and warranty given by ServiceCo under this Deed, other than those set out in clause 44.2(q):
 - (i) **(date of Agreement)**: is made on the date of this Deed; and
 - (ii) **(repetition)**: other than those set out in clauses 44.2(o) and 44.2(p), will be deemed to be repeated each day during the period from the date of this Deed to the Expiry Date for the last Stage to terminate or expire,

with reference to the facts and circumstances then subsisting.
- (b) The representation and warranty set out in clause 44.2(q) is made in respect of a Site on the Date of Service Readiness for the Stage in which that Site is comprised, and will be deemed to be repeated each day during the period from the Date of Service Readiness to the Expiry Date for the Service Package Dwellings on that Site.

45. Benefits held on trust for its Associates

- (a) **(Benefit of indemnities):** FACS holds on trust for:
 - (i) each Indemnified Person each indemnity and release given by ServiceCo under this Deed in favour of the Indemnified Person; and
 - (ii) each of its Associates and the NSW Government and its Associates, each right in this Deed to the extent that such right is expressly stated to be for the benefit of FACS' Associates, NSW Government or NSW Government Associates.
- (b) **(ServiceCo acknowledgement):** ServiceCo acknowledges the existence of such trusts, and consents to:
 - (i) FACS exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of the relevant parties; and
 - (ii) the relevant parties exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.

46. ServiceCo's general undertakings

- (a) ServiceCo must:
 - (i) **(dispute proceedings):** immediately upon becoming aware that any litigation, arbitration, administration, adjudication or mediation proceedings, which may adversely affect the Service Package or ServiceCo's ability to perform its obligations under the Service Package Documents, have been commenced or threatened, give FACS written notice of such litigation, arbitration, administrative, adjudication or mediation proceedings; and
 - (ii) **(restrictions):** not:
 - A. cease to be resident in Australia or transfer in whole or in part its undertaking, business or trade outside Australia;
 - B. [not used]
 - C. [not used]; or
 - D. engage in any tax consolidation arrangement contemplated by the *Income Tax Assessment Act 1997* (Cth) or GST grouping arrangement contemplated by the GST Law,without FACS' prior consent.
- (b) **(FACS consent):** FACS must not unreasonably withhold its consent under clause 46(a)(ii) if the relevant transaction is on arm's length commercial terms.

47. Assignment and amendments

47.1 Assignment, amendments and other dealings by ServiceCo

- (a) **(Restrictions on ServiceCo):** Except as expressly permitted by this Deed or any Financiers' Tripartite Deed, ServiceCo must not:

- (i) enter into any financing agreements (including in respect of present or contingent indebtedness, deferred purchase or leasing arrangements or similar obligations, but excluding indebtedness incurred in the ordinary course of carrying out the Service Package) other than the Finance Documents and any amendment, novation, supplement, variation or replacement of any of those documents;
- (ii) assign, novate, mortgage, charge, create or allow to exist any Security Interest over, make or permit any material amendment to or, waive, terminate, surrender, rescind or accept repudiation of any Service Package Document or enter into any agreement or arrangement which affects the operation or interpretation of any Service Package Document; or
- (iii) lease, license, transfer, sell, dispose of, part with possession of, mortgage, charge or otherwise deal with the whole or any part of the Site or the Relevant Infrastructure if that dealing would prejudice the ability of ServiceCo to perform its obligations under the Service Package Documents,

without FACS' prior consent (each an **Amendment** for the purposes of this clause 47).

(b) **(Exceptions):** Clause 47.1(a) does not apply in respect of:

- (i) a mortgage, charge or general security interest granted by ServiceCo over or in respect of Relevant Secured Property to secure its obligations to any Financier (or the trustee or agent for any Financier) under the Finance Documents, if, and for so long only as, each Financier (or the trustee or agent for the Financiers) is a party to the Financiers' Tripartite Deed;
- (ii) a Change in Control, which is to be dealt with in accordance with clauses 48.2 to 48.9;
- (iii) a Key Subcontract or any Excluded Contract; or
- (iv) a Dwelling which has been substituted in accordance with clause 20.

(c) **(Entry into Finance Document):** ServiceCo must not enter into any Secured Finance Document until any Financier (or the trustee or agent for any Financier) under those Secured Finance Documents has executed a deed with FACS substantially in the form of the Financiers' Tripartite Deed or is or has become bound by the Financiers' Tripartite Deed.

(d) **(Notice of intended Amendment):** If ServiceCo requires the consent of FACS under clause 47.1(a) to an Amendment, it must submit to FACS a written request seeking its consent. Such a request must set out:

- (i) the proposed Amendment and the reasons for it;
- (ii) the response or anticipated response of any other party to the Service Package Documents regarding the proposed Amendment;
- (iii) the response or anticipated response of any assignee or incoming party of the Service Package Documents to the proposed Amendment; and
- (iv) copies of any documents relevant to ServiceCo's request.

(e) **(FACS to advise):** Subject to clause 47.1(g), FACS must advise ServiceCo, within:

- (i) 15 Business Days of receiving its request under clause 47.1(d) if it requires further information from ServiceCo regarding the proposed Amendment, in which case ServiceCo must provide the additional information sought by FACS within a further period of 10 Business Days after receiving FACS' request for further information; and
- (ii) 15 Business Days of receiving its request under clause 47.1(d) or the additional information requested by FACS under clause 47.1(e)(i), whether:
 - A. it consents to the proposed Amendment; or
 - B. the proposed Amendment is unacceptable to it and the reasons why the proposed Amendment is unacceptable.
- (f) **(Failure to respond):** If FACS fails to respond for any reason within the relevant period specified under clause 47.1(e)(ii) in relation to a proposed Amendment in respect of a Service Package Document, which is not a FACS Service Package Document, ServiceCo:
 - (i) may send a reminder notice; and
 - (ii) if FACS fails to respond to the reminder notice within 10 Business Days, FACS will be deemed to have not consented to the requested Amendment.
- (g) **(FACS consent):** FACS will not withhold its consent to a requested Amendment where the requested Amendment will not have a material adverse effect on:
 - (i) the ability of ServiceCo to perform, and observe its respective obligations under any Service Package Document to which it is a party; or
 - (ii) the rights or Liability of FACS under any FACS Service Package Document, or the ability or capacity of FACS to exercise its rights or perform its obligations under a FACS Service Package Document.

47.2 Amendment of FACS Service Package Document

Except as otherwise expressly provided in FACS Service Package Documents, no amendment to any FACS Service Package Document is valid or binding on a party unless made in writing and executed by FACS and all other parties to the relevant FACS Service Package Document.

47.3 Assignment by FACS

- (a) **(ServiceCo consent required):** Subject to clause 47.3(b), FACS may not sell, transfer or assign or otherwise dispose of all or any part of its interest in FACS Service Package Documents without the prior consent of ServiceCo.
- (b) **(No consent required):** FACS may sell, transfer or assign or otherwise dispose of all or any part of its interest in FACS Service Package Documents without ServiceCo's consent, if the proposed transferee is the NSW Government or an entity described in paragraph (a) of the definition of 'Authority' which is an agent of the NSW Government (**FACS Nominee**).
- (c) **(FACS sale, transfer, assignment or disposal):** If FACS elects to sell, transfer, assign or otherwise dispose of all or any part of its interest in the FACS Service Package Documents in a manner permitted under clause 47.3(a):
 - (i) ServiceCo consents to that sale, transfer, assignment or disposal;
 - (ii) ServiceCo must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to FACS

and the FACS Nominee) to give effect to that sale, transfer, assignment or disposal; and

- (iii) from the date of such sale, transfer, assignment or disposal, all references to 'FACS' in this Deed will be deemed to include reference to FACS Nominee in place of FACS.

47.4 Copies of Finance Documents

ServiceCo must deliver to FACS, a certified complete copy of each Finance Document entered into by ServiceCo and each amendment to, or waiver, variation or change of any provision of, the Finance Documents, in each case within five Business Days after its execution.

48. Change in Control

48.1 Initial status of ownership

ServiceCo represents and warrants that, as at the date of this Deed, ServiceCo will be indirectly and beneficially owned and Controlled as set out in the Ownership Schedule.

48.2

[REDACTED]

[REDACTED]

48.3 Restrictions on Changes in Control

Subject to clause 48.7 ServiceCo must not and must ensure that there is not at any time any Change in Control of ServiceCo or a Key Subcontractor without FACS' prior consent which must be requested by notice from ServiceCo to FACS.

48.4 Notice to FACS

Any notice under clause 48.3 seeking the consent of FACS to a Change in Control must include:

- (a) **(notice of Proposed Changes):** the extent and nature of the proposed Change in Control, including the identity and address of each person proposed to acquire Control; and
- (b) **(necessary information):** all other information necessary for FACS to determine:
 - (i) whether to consent to the Change in Control; or
 - (ii) the probity or other investigations (if any) FACS wants to undertake in respect of the persons to whom clause 48.4(a) refers.

48.5 FACS' right to withhold consent

Subject to clause 48.8, FACS may only refuse to consent to a proposed Change in Control if FACS is of the opinion (acting reasonably) that:

- (a) **(grounds for FACS refusal):** the proposed Change in Control:
 - (i) is against the public interest;
 - (ii) would adversely affect the ability or capability of ServiceCo or the Property Trust to carry out its obligations in accordance with any Service Package Document;

- (iii) would result in a Probity Event;
- (iv) would result in a Consortium Member being Controlled by an Entity that:
 - A. is not a reputable Entity or person to properly carry out the obligations of the relevant Key Subcontractor under the relevant Service Package Documents;
 - B. is an unsuitable Entity or person, having regard to the activities or business of that Entity or person, and their compatibility with the obligations of the relevant Key Subcontractor under the Service Package Documents;
 - C. has an interest or duty which conflicts or may conflict in a material way with the interests of FACS;
 - D. does not have a sufficient level of financial, managerial or technical expertise or capacity to deliver the Service Package; or
 - E. would have a material adverse effect on the Service Package;
- (v) without limiting clause 48.5(a)(iv), would result in a Key Subcontractor no longer:
 - A. having sufficient expertise and ability; or
 - B. being of sufficiently high financial and commercial standing, to properly carry out the obligations of the relevant Key Subcontractor under the relevant Service Package Documents;
- (vi) would increase the Liability of, or risks accepted by FACS under FACS Service Package Documents or in any other way in connection with the Service Package; or
- (vii) would result in a new Controlling Entity that is not Solvent and reputable; or
- (b) **(trust)**: in respect of a change in the manager, trustee or Responsible Entity of any Holding Entity, ServiceCo or any subsidiary of ServiceCo that is a trust, is such that the proposed manager, trustee or Responsible Entity no longer:
 - (i) has sufficient expertise or ability; or
 - (ii) is of sufficiently high financial and commercial standing, to properly carry out the obligations of the relevant manager, trustee or Responsible Entity under the relevant Service Package Documents.

48.6 Consent to a Change in Control

FACS must advise ServiceCo, within 15 Business Days (or such longer period as FACS reasonably requests given the nature of the proposed Change in Control) of receiving ServiceCo's request for consent in accordance with clause 48.3 or clause 48.8, whether:

- (a) **(consent)**: it consents to the Change in Control;
- (b) **(unacceptable)**: it does not consent to the Change in Control in which case it must provide reasons for doing so in accordance with clause 48.5; or
- (c) **(further information)**: it requires further information from ServiceCo regarding the Change in Control, in which case ServiceCo must provide the additional information

sought by FACS within a further period of 10 Business Days, after which FACS must respond in terms of clause 48.5 or this clause 48.6 within 10 Business Days after FACS receives that additional information.

48.7 [Not used]

48.8 On-market acquisitions

If:

- (a) **(Change in Control)**: a Change in Control occurs due to the transfer of shares or other interests which are listed on a recognised stock exchange; and
- (b) **(prior consent not possible)**: the consent of FACS is required under this Deed but could not have been obtained prior to the Change in Control,

that consent must be sought immediately after the Change in Control, and ServiceCo must procure that the Controlling Entity ceases to have the Control which resulted in the Change in Control within 60 Business Days after receiving any notice under clause 48.5 that FACS withholds its consent to the Change in Control.

48.9 Costs relating to a Change in Control

ServiceCo must pay FACS its costs (including legal and financial advisers' fees) reasonably incurred in relation to considering or consenting to a proposed Change in Control.

49. Financial Model

49.1 Updating the Base Case Financial Model at Commercial Close

- (a) **(Base Case Financial Model)**: The parties acknowledge that the Base Case Financial Model is set out in Annexure C.
- (b) **(Commercial Close Adjustment Protocol)**: The parties agree that the Base Case Financial Model has been prepared on an indicative basis prior to the date of this Deed, and must be updated at Commercial Close in accordance with the Commercial Close Adjustment Protocol.
- (c) **(Commercial Close Financial Model)**: The Base Case Financial Model will be:
 - (i) updated by FACS in accordance with the Commercial Close Adjustment Protocol; and
 - (ii) initialled by the parties,at Commercial Close and will then become the Commercial Close Financial Model.

49.2 Status of the Financial Model

The parties acknowledge and agree that:

- (a) **(not actual performance)**: the Financial Model:
 - (i) may not reflect the actual financial performance or the projected financial performance or budgets of the Service Package or ServiceCo; and
 - (ii) is purely a financial model to be used in order to process Model Variation Events and Termination Payments; and
- (b) **(errors or omissions)**: FACS must not be adversely affected by any ambiguities, discrepancies, inconsistencies, conflicts, errors or omissions in the Financial Model.

49.3 Varying the Financial Model

- (a) Subject to clause 49.3(b), the parties must vary the Financial Model in accordance with this clause 49 upon the occurrence of any of the following events (each a **Model Variation Event**):
- (i) **(Reviewable Services)**: following the price review of a Reviewable Service in accordance with clause 21;
 - (ii) **(Change Compensation Event)**: a Change Compensation Event which results in a permanent adjustment to the Monthly Service Payment in accordance with this Deed (a **CCE Model Variation Event**);
 - (iii) **(prior to Service Readiness)**: the date that is one Month prior to the date that ServiceCo reasonably expects to achieve Service Readiness for the final Stage if a CCE Model Variation Event has occurred and the thresholds in clause 49.3(b) have not been reached;
 - (iv) **(Partial Termination)**: following a Partial Termination in accordance with clause 39;
 - (v) **(Augmentation)**: the FACS Augmentation Documents are executed by all parties to them and all conditions precedent for those FACS Augmentation Documents to come into full force and effect have been satisfied or waived; and
 - (vi) **(agreed events)**: any other event which ServiceCo and FACS agree to be a Model Variation Event.
- (b) **(Delivery Phase)**: The Financial Model does not need to be varied for a CCE Model Variation Event that occurs in the Delivery Phase (a **Delivery Phase CCE Model Variation Event**) in accordance with clause 49.3(a)(ii) unless and until:
- (i) the aggregate value of all Delivery Phase CCE Model Variation Events (as set out in the Variation Proposal provided in connection with each relevant Delivery Phase CCE Model Variation Event) that have occurred since the Financial Model was last varied in accordance with clause 49.3(a)(ii), exceeds [REDACTED] or
 - (ii) the value of any one Delivery Phase CCE Model Variation Event (as set out in the Variation Proposal provided in connection with the relevant Delivery Phase CCE Model Variation Event) exceeds [REDACTED]

49.4 Principles for variations to the Financial Model

When a Model Variation Event occurs, the parties must vary the Financial Model, as necessary, by taking into account only the amounts:

- (a) **(agreement)**: determined in accordance with this Deed;
- (b) **(otherwise agreed)**: agreed between FACS and ServiceCo; or
- (c) **(dispute resolution)**: determined in accordance with clause 40.

49.5 Procedures for variations to the Financial Model

Any variations to the Financial Model to take account of a Model Variation Event must be made as follows:

- (a) **(ServiceCo proposal)**: ServiceCo must propose the variation by notice to FACS within 15 Business Days of the Model Variation Event occurring, giving:

- (i) a varied Financial Model incorporating all adjustments relevant to the Model Variation Event and full details of the assumptions and calculations used;
 - (ii) an instruction manual outlining how to use the varied Financial Model, which is acceptable to FACS, acting reasonably;
 - (iii) a proposed commercial close adjustment protocol (if applicable) outlining the interest rate setting procedures and model solving procedures for adjusting the varied Financial Model to incorporate updated interest rates; and
 - (iv) a revised Model Output Schedule;
- (b) **(review)**: the review of the varied Financial Model and the proposed commercial close adjustment protocol (if applicable) must be submitted to FACS for review in accordance with clause 10;
 - (c) **(amendment)**: once the variations to the Financial Model or the commercial close adjustment protocol, as applicable, are agreed or are determined in accordance with clause 40, ServiceCo must promptly amend the Financial Model accordingly and the proposed commercial close adjustment protocol (if applicable) accordingly and resubmit this to FACS;
 - (d) **(varied Financial Model)**: once agreed, the varied Financial Model (as adjusted in accordance with the proposed commercial close adjustment protocol, if applicable) will be the Financial Model for the purposes of this Deed; and
 - (e) **(updated Model Output Schedule)**: whenever the Financial Model is updated, the Model Output Schedule must be updated to reflect the updated Financial Model.

49.6 Access to information

Without limiting clause 49.5(a), ServiceCo must provide FACS and any other authorised representatives of FACS with:

- (a) **(electronic copies)**: full access to electronic copies of the varied Financial Model;
- (b) **(log of changes)**: a log of all changes that have been made to the Financial Model;
- (c) **(calculations)**: all supporting calculations; and
- (d) **(other information)**: any other information reasonably requested by FACS, including any information required explaining how to operate the Financial Model,

for a Model Variation Event, including reasonable access to any financial modeller employed, appointed or engaged by ServiceCo or a ServiceCo Associate with ability to access that information, and relevant passwords or other access information.

49.7 Auditing the Financial Model

- (a) **(Model auditors)**: FACS may at any time appoint a model auditor to audit the Financial Model and:
 - (i) ServiceCo must provide all reasonable assistance to the model auditor;
 - (ii) the results of the audit must be disclosed to both FACS and ServiceCo; and
 - (iii) to the extent any inconsistency, ambiguity, discrepancy, conflict, error or omission is revealed in the audit by FACS, ServiceCo must promptly correct the Financial Model accordingly.

- (b) **(Costs):** If an audit by FACS results in a correction to the Financial Model, ServiceCo must pay the reasonable costs of FACS in conducting the audit, but, if no correction is required, FACS must bear the costs of the audit.

49.8 Custody of Financial Model

The Financial Model must be held from Commercial Close for the Term by FACS on the basis that it must be released to ServiceCo for the purposes of:

- (a) varying the Financial Model and the Model Output Schedule on the occurrence of Model Variation Events; and
- (b) the determination of any Dispute in accordance with clauses 40 to 43.

50. Records and accounts

50.1 Records

ServiceCo must:

- (a) keep proper books of account, records and documents (including to demonstrate compliance with the Services Specification), financial and all other accounts and records it has relating to the Service Package (**Accounts and Records**) at its offices; and
- (b) ensure that its Accounts and Records are available to FACS (subject to receiving two Business Days' notice from FACS) during the Service Delivery Phase.

50.2 Financial statements

- (a) **(Audited financial statements):** As soon as practicable (and in any event not later than 120 days) after the close of each Financial Year, ServiceCo must give to FACS certified copies of the consolidated (if applicable) and unconsolidated audited financial statements for the previous Financial Year for ServiceCo.
- (b) **(Cashflow and profit and loss statements):** Not later than 30 days after the end of each Quarter, ServiceCo must give to FACS a certified copy of its unaudited cashflow and profit and loss statements, and, if requested by FACS must ensure that each Group Member does likewise.

50.3 Other information

ServiceCo must give to FACS the following information:

- (a) **(copies):** copies of all documents or information given or received by ServiceCo to or from the Australian Securities & Investments Commission or Australian Stock Exchange Limited, promptly after the information is first given or received;
- (b) **(counterparty changes):** details of any changes to the Counterparty Details within 20 Business Days after the change;
- (c) **(material changes):** details of any material change in the financial condition of ServiceCo (since the date of their last audited accounts) which would prejudice the ability of ServiceCo to perform its obligations under the Service Package Documents; and
- (d) **(other information):** such other information relating to the Service Package as FACS may reasonably require from time to time, including any information reasonably requested by FACS to enable FACS to comply with applicable Legislation (including *State Records Act 1998* (NSW) in relation to Records, the Relevant Infrastructure and users of the Services).

50.4 ServiceCo Material

ServiceCo must maintain a document management system for all ServiceCo Material and Project Information that:

- (a) **(requirements)**: is in accordance with any requirements set out in the Services Requirements;
- (b) **(safe and secure)**: is safe and secure and compatible with FACS' document management systems as advised by FACS;
- (c) **(access)**: enables FACS and its Associates (including any nominee) to quickly and easily retrieve, review and utilise ServiceCo Material; and
- (d) **(distribution)**: tracks the distribution of all ServiceCo Material.

51. Intellectual Property Rights

- (a) Any Intellectual Property Rights and title to, or in relation to, the ServiceCo Materials will vest, upon creation, in ServiceCo.
- (b) ServiceCo grants, and will ensure third parties grant, to FACS a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, copy, modify and exploit the ServiceCo Materials (other than any Excluded Material).

52. Confidential Information and disclosure

52.1 Confidential Information and disclosure by FACS

- (a) **(Disclosure)**: Subject to clause 52.1(b), FACS and any Authority may disclose any information in connection with the Service Package, including Project Information.
- (b) **(Requirements)**: FACS may only disclose the Commercially Sensitive Information:
 - (i) in accordance with Laws or for the enforcement of any criminal law;
 - (ii) in accordance with clause 52.6;
 - (iii) where disclosure is in the course of the official duties of a minister, the Treasurer, the Premier or the Attorney General;
 - (iv) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (v) to satisfy the requirements of Parliamentary accountability;
 - (vi) to any Associate of FACS or the NSW Government and officers, agents, advisers, consultants, contractors, authorised officers and employees of the NSW Government each acting in connection with the Service Package, to the extent necessary for the purpose of the Service Package provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
 - (vii) to any advisor of FACS or to the NSW Government and officers, agents, advisers, consultants, contractors, authorised officers and employees of the NSW Government to the extent necessary for FACS to properly undertake future projects, provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
 - (viii) in annual reports of FACS or the NSW Government;

- (ix) in accordance with policies of FACS or the NSW Government or any Authority;
- (x) for any tender process required to be conducted under the Termination Payments Schedule or in respect of an Augmentation or proposed Augmentation;
- (xi) where the Commercially Sensitive Information is any part of the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of this Deed; or
- (xii) to the Australian Bureau of Statistics or any other federal or state government statistics or data collection agency, provided they agree to maintain the confidentiality of any Commercially Sensitive Information under ABS policies.

52.2 Confidential Information and disclosure by ServiceCo

- (a) **(Confidentiality obligation):** Subject to clauses 52.2(b) and clause 52.4(b), ServiceCo must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of FACS make public or disclose to any person any Confidential Information.
- (b) **(Disclosure of Confidential Information):** Without limiting ServiceCo's obligation under clause 52.2(a) and subject to clause 52.2(c), ServiceCo may disclose Confidential Information:
 - (i) to its Associates to the extent necessary for the purpose of undertaking the Service Package;
 - (ii) to any prospective financier or equity investor of the Service Package, subject to FACS having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that FACS considers necessary; or
 - (iii) in accordance with clause 52.4.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, ServiceCo must ensure that the person to whom the information is disclosed enters into a confidentiality deed with ServiceCo to keep the Confidential Information, confidential in accordance with this clause 52.
- (d) **(Permitted disclosure):** ServiceCo may disclose Confidential Information and will not be required to seek FACS' consent to a disclosure, announcement or statement under clause 52.2(a) or 52.3(a) where the disclosure announcement or statement is:
 - (i) required by Law, provided that it:
 - A. notifies FACS of the requirement to make that disclosure; and
 - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
 - (iii) required to be made to a court in the course of proceedings to which ServiceCo is a party; or

- (iv) required by a relevant recognised stock exchange, subject to:
 - A. the disclosure, announcement or statement does not refer to FACS' or any of its Associates' involvement in the Service Package; and
 - B. ServiceCo having used all reasonable endeavours to obtain FACS' consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

52.3 Public announcements by ServiceCo

Subject to clause 52.2(d), ServiceCo must:

- (a) **(FACS' prior consent)**: not make any public disclosures, announcements or statements in relation to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package, without FACS' prior consent;
- (b) **(terms and conditions)**: comply with any terms and conditions FACS imposes and must use all reasonable endeavours to agree with FACS the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package before the relevant disclosure, announcement or statement is made; and
- (c) **(copies to be provided)**: as soon as practicable, give to FACS a copy of any public disclosure, announcement or statement agreed to or approved by FACS in accordance with this clause 52.3 or for which FACS' consent or approval was not required in accordance with clause 52.4.

52.4 Information public or known

Notwithstanding anything in this clause 52, either party may disclose information in connection with the Service Package (including any Confidential Information) if:

- (a) **(already available)**: the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 52; or
- (b) **(already in possession)**: the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

52.5 Disclosure by FACS under GIPA Act

- (a) Notwithstanding the other provisions of this clause 52, the parties acknowledge that:
 - (i) **(documents to be published)**: the Service Package Documents and information concerning the Service Package Documents will be published on FACS' contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
 - (ii) **(availability of Service Package Documents)**: FACS may make the Service Package Documents (other than the Key Subcontracts) or any of them available to any person in accordance with Division 5 of Part 3 of the GIPA Act.
- (b) The parties acknowledge that:

- (i) **(notification)**: FACS will notify ServiceCo of any proposed disclosure of Commercially Sensitive Information by FACS under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
- (ii) **(consultation)**: following notification by FACS in accordance with clause 52.5(b)(i), FACS will take reasonable steps to consult with ServiceCo before disclosing Commercially Sensitive Information, including under the GIPA Act;
- (iii) **(objection)**: if, following:
 - A. notification by FACS in accordance with clause 52.5(b)(i); or
 - B. consultation between FACS and ServiceCo in accordance with clause 52.5(b)(ii),

ServiceCo objects to disclosure of some or all of the Commercially Sensitive Information, ServiceCo must provide details of any such objection within five Business Days after the date ServiceCo received notification from FACS or the date on which the consultation process concluded (as relevant);
- (iv) **(disclosure)**: FACS may take into account any objection received from ServiceCo pursuant to clause 52.5(b)(iii) in determining whether the Commercially Sensitive Information identified by ServiceCo should be disclosed; and
- (v) **(FACS' obligations)**: nothing in this clause 52.5 will limit or otherwise affect the discharge of FACS' obligations under the GIPA Act.

52.6 Personal Information

ServiceCo must:

- (a) **(collection)**: not collect any Personal Information except in accordance with the Services Requirements, all Laws and Policies;
- (b) **(disclosure)**: not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Laws, and then only in accordance with the Services Requirements, all Laws and Policies; and
- (c) **(retention)**: keep, and make available to FACS on request, records detailing the recipient of any Personal Information that ServiceCo has disclosed, the date of disclosure and the Personal Information that has been disclosed.

52.7 Privacy

Without limiting any obligations in respect of privacy set out in the Services Requirements, ServiceCo agrees to, and will ensure that any Subcontract contains terms which require the Subcontractor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Subcontract (as the case may be), in the same way as FACS would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by FACS.

53. Probity Events and Probity Investigations

53.1 Probity Event

- (a) **(Notice)**: ServiceCo must give notice to FACS immediately upon becoming aware that a Probity Event has occurred or is likely to occur.

- (b) **(Contents of notice):** The notice under clause 53.1(a), must, at a minimum, describe the Probity Event, when the Probity Event occurred, or is likely to occur, and the circumstances giving rise to the Probity Event.
- (c) **(Meeting):** Promptly, and in any case no later than five Business Days after FACS:
 - (i) receives a notice under clause 53.1(a); or
 - (ii) becomes aware of a Probity Event,

FACS and ServiceCo must meet to agree a course of action to remedy or otherwise address the Probity Event and the timeframe in which that will occur.
- (d) **(Compliance):** ServiceCo must comply with any agreement made in accordance with clause 53.1(c) in the agreed timeframe.
- (e) **(Failure to agree):** If FACS and ServiceCo fail to agree to a course of action in accordance with clause 53.1(c) (including where ServiceCo fails to meet with FACS in accordance with clause 53.1(c)), ServiceCo must, at its cost, take any action required by FACS to remedy the Probity Event in accordance with any timeframe determined by FACS.

53.2 Probity Investigation

- (a) **(Requirement for Probity Investigation):** ServiceCo agrees that FACS may, or may require ServiceCo at any time to, conduct a Probity Investigation in respect of a Relevant Person, a Consortium Member, a Group Member or any person who is proposed to become a Relevant Person, a Consortium Member or a Group Member.
- (b) **(Promptly):** Where FACS requires ServiceCo to conduct a Probity Investigation in accordance with clause 53.2(a), ServiceCo must conduct the Probity Investigation promptly.
- (c) **(Consents required for Probity Investigation):** ServiceCo must procure all consents necessary to enable ServiceCo or FACS to conduct any Probity Investigation.
- (d) **(No appointment without consent):** ServiceCo must not appoint a person to the position of Relevant Person unless FACS has given approval following any Probity Investigation that it elects to conduct or any other investigation FACS reasonably requires.

53.3 FACS costs of Probity Events and Probity Investigation

- (a) **(FACS Costs):** Subject to clause 53.3(b), ServiceCo must bear all costs incurred by FACS in connection with a Probity Event or Probity Investigation that led to a Probity Event.
- (b) **(ServiceCo not liable):** ServiceCo will not be liable for FACS' costs of any further Probity Investigation required by FACS in respect of a Probity Event in relation to which an initial Probity Investigation has been undertaken.

54. Notices and bar to Claims

54.1 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing):** must be in writing;

- (b) **(addressed)**: must be addressed as specified in the Contract Particulars (as the case may be), or as otherwise notified by that party to each other party from time to time;
- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in the Contract Particulars (or the address of the addressee most recently notified under clause 54.1(b) as the case may be);
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in the Contract Particulars (or the address of the addressee most recently notified under clause 54.1(b), as the case may be):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) subject to clause 54.1(f), in the case of prepaid post, on the fourth Business Day after the date of posting to an address within Australia and on the 10th Business Day after the date of posting by airmail to an address outside Australia;
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and
- (f) **(notices sent by post)**: if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

54.2 Notices of Claims

- (a) **(Liability)**: Subject to clause 54.2(b):
 - (i) FACS and its Associates will not be liable upon any Claim that ServiceCo is entitled to make against FACS or its Associates; and
 - (ii) ServiceCo is absolutely barred from making any Claim against FACS or any of its Associates,

under any FACS Service Package Document or otherwise arising in connection with the Service Package Documents, the Relevant Infrastructure or the Service

Package unless ServiceCo gives FACS the notices required by clause 54.3 and, if applicable, clause 54.4.

- (b) **(Notice requirements):** Where any provision of this Deed contains specific notice requirements (including a requirement to submit or update a Variation Proposal):
- (i) FACS and its Associates will not be liable upon any Claim that ServiceCo is entitled to make against FACS or its Associates; and
 - (ii) ServiceCo is absolutely barred from making any Claim against FACS or any of its Associates,

arising out of, or in connection with, the event or circumstance to which the relevant provisions of this Deed, or any other Service Package Document, entitling ServiceCo to make a Claim against FACS or its Associates apply, unless ServiceCo has complied with the specific notice requirements (including any requirement to update a Variation Proposal) set out in those relevant provisions.

54.3 Prescribed notices

The required notices referred to in clause 54.2(a) are:

- (a) **(intention to submit Claim):** a written notice from ServiceCo in which ServiceCo:
- (i) states that it intends to submit a Claim; and
 - (ii) identifies the event on which the Claim will be based,
- which notice must be given to FACS within 20 Business Days of the earlier of:
- (iii) the date on which ServiceCo first became aware; and
 - (iv) the date on which ServiceCo ought reasonably to have become aware,
- of the event on which the Claim is based; and
- (b) **(Claim):** a formal written notice from ServiceCo to FACS setting out the Claim, including:
- (i) detailed particulars concerning the event on which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of FACS Service Package Documents or otherwise, and if based on a term of FACS Service Package Documents, clearly identifying the specific term;
 - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (iv) details of the amount claimed and how it has been calculated,

which notice must be given to FACS within 10 Business Days of giving the notice under clause 54.3(a).

54.4 Continuing events

If the event upon which the Claim under clause 54.3(b) is based, or the consequences of that event, are continuing, ServiceCo must continue to give the information required by clause 54.3(b) every 20 Business Days after the notice under clause 54.3(b) was submitted, until after the event or consequences of the event have ceased.

54.5 Notice to Financiers

ServiceCo acknowledges that FACS may provide to the Financiers a copy of any notice from:

- (a) ServiceCo to FACS; or
- (b) FACS to ServiceCo,

in connection with the FACS Service Package Documents or the Service Package.

54.6 Power of attorney

ServiceCo irrevocably:

- (a) **(appointment)**: appoints FACS, and FACS' nominees from time to time, jointly and severally, as its attorneys with full power and authority:
 - (i) with effect from the end of each Service Delivery Phase, to execute any assignment or novation contemplated by clauses 33.2(a)(vi); and
 - (ii) to exercise FACS' rights in accordance with clause 30; and
- (b) **(ratification of action)**: agrees to ratify and confirm whatever action is taken by the attorney appointed by ServiceCo under clause 54.6(a).

55. NSW Code and Guidelines

55.1 Reference

In addition to terms defined in this Deed, terms used in this clause 55 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**) (as published by the NSW Treasury in July 2013 and as amended or updated from time to time). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

55.2 Primary obligation

- (a) **(NSW Code)**: In carrying out the Service Package Activities, ServiceCo must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for Procurement (**NSW Code**) and the NSW Guidelines.
- (b) **(Notification of Construction Compliance Unit)**: ServiceCo must notify the Construction Compliance Unit (**CCU**) and FACS of any possible non-compliance with the NSW Code and the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) **(Subcontractors bound by NSW Code)**: Where ServiceCo engages a Subcontractor or consultant, ServiceCo must ensure that Subcontract or consultancy contract imposes on the Subcontractor or consultant equivalent obligations to those in this clause 55 (under the heading 'NSW Code and NSW Guidelines'), including that the Subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) **(Engagement of other parties)**: ServiceCo must not appoint or engage another party in relation to the Service Package where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or the NSW Guidelines.

55.3 Access and information

- (a) **(Maintenance of records):** ServiceCo must maintain adequate records of compliance with the NSW Code and the NSW Guidelines by it, its subcontractors, consultants and related entities.
- (b) **(Facilitation of authorised personnel):** ServiceCo must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
- (i) enter and have access to sites and premises (or part thereof) controlled by ServiceCo, including but not limited to the Site and the Relevant Infrastructure;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the Service Package;
 - (v) have access to personnel; and
 - (vi) interview any person,
- as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and the NSW Guidelines, by ServiceCo, its subcontractors, consultants, and related entities.
- (c) **(Production of documents):** ServiceCo, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

55.4 Sanctions

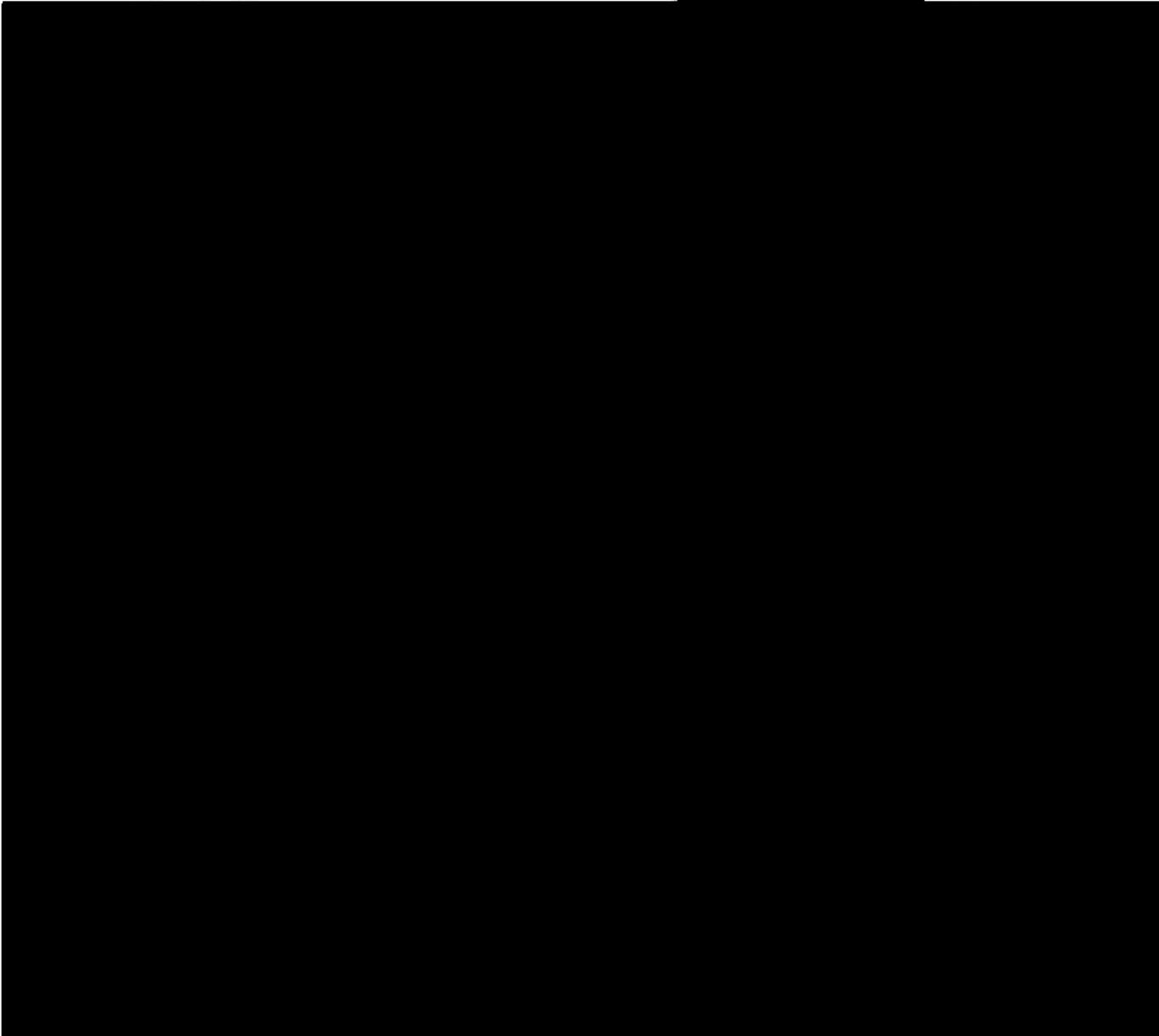
- (a) **(ServiceCo not subject to a sanction):** ServiceCo warrants that at the time of entering into this Deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and the NSW Guidelines apply.
- (b) **(Sanctions may be imposed):** ServiceCo acknowledges that, if ServiceCo does not comply with, or fails to meet any obligation imposed by, the NSW Code or the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or the NSW Guidelines.
- (c) **(Disclosure of sanctions):** Where a sanction is imposed on ServiceCo or its Associates:
- (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the NSW Government (through its agencies, ministers and the CCU) is entitled to:
 - A. record and disclose details of non-compliance with the NSW Code or the NSW Guidelines and the sanction; and
 - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by ServiceCo, or its related entities, in respect of work to which the NSW Code and the NSW Guidelines apply.

55.5 Compliance

- (a) **(Cost of compliance):** ServiceCo bears the cost of ensuring its compliance with the NSW Code and the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Code and the NSW Guidelines. ServiceCo is not entitled to make any Claim against FACS or the NSW Government for such costs.
- (b) **(Responsibility to perform):** Compliance with the NSW Code and the NSW Guidelines does not relieve ServiceCo from responsibility to perform the Service Package Activities and any other obligation under this Deed, or from Liability for any defect in the Relevant Infrastructure or from any other legal liability, whether or not arising from its compliance with the NSW Code and the NSW Guidelines.
- (c) **(Proposed Variation):** Where a Variation is proposed, and that Variation may, or may be likely to, affect compliance with the NSW Code or the NSW Guidelines, ServiceCo must immediately notify FACS of the Variation:
 - (i) the extent to which compliance with the NSW Code or the NSW Guidelines will be, or is likely to be, affected by the Variation; and
 - (ii) what steps ServiceCo proposes to take to mitigate any adverse impact of the Variation (including any amendments it proposes to the WHS Management Plan),

and FACS will direct ServiceCo as to the course it must adopt within 10 Business Days of receiving notice.

Executed as a deed



Schedule 1 – Contract Particulars

1. FACS Representative

The FACS Representative for the purpose of clause 1 (*Definitions*) of this Deed is:

FACS Representative

[REDACTED]

Address

[REDACTED]

Email

[REDACTED]

Telephone

[REDACTED]

2. ServiceCo Representative

The ServiceCo Representative for the purpose of clause 1 (*Definitions*) of this Deed is:

ServiceCo Representative

[REDACTED]

Address

[REDACTED]

Email

[REDACTED]

Telephone

[REDACTED]

3. Consortium

The Consortium for the purpose of clause 1 (*Definitions*) of this Deed is:

Name of Consortium Member

The Uniting Church in Australia Property Trust (NSW) (ABN 77 005 284 605) for and on behalf of Uniting (NSW.ACT) (ABN 78 722 539 923) (also known as UnitingCare NSW.ACT)

Role

ServiceCo

4. Key People

The Key People and their corresponding roles and dates for appointment, for the purpose of clauses 1 (*Definitions*) and 11.5 (*Key People*) of this Deed, are:

| | |
|--|--|
| Role | Director, Property and Housing |
| Name | ██████████ |
| Date by which person must be appointed | Date of this Deed |
| Address | ██ |
| Email | ████████████████████ |
| Telephone | ██████████ |

| | |
|--|--|
| Role | Head of Village Services |
| Name | ██████████ |
| Date by which person must be appointed | Date of this Deed |
| Address | ██ |
| Email | ████████████████████ |
| Telephone | ██████████ |

| | |
|------|------------------------------|
| Role | Head of Property Development |
|------|------------------------------|

Name [REDACTED]

Date by which person must be appointed Date of this Deed

Address [REDACTED]

Email [REDACTED]

Telephone [REDACTED]

Role Capital Works Manager

Name [REDACTED]

Date by which person must be appointed Date of this Deed

Address [REDACTED]

Email [REDACTED]

Telephone [REDACTED]

Role Tenancy Management Lead

Name [REDACTED]

Date by which person must be appointed Date of this Deed

Address [REDACTED]

Email [REDACTED]

Telephone [REDACTED]

Role Head of Property Portfolio Planning

Name [REDACTED]

Date by which person must be appointed Date of this Deed

Address [REDACTED]

Email [REDACTED]

Telephone [REDACTED]

Role Contract Manager -- Housing Programs

Name [REDACTED]

Date by which person must be appointed Date of this Deed

Address [REDACTED]

Email [REDACTED]

Telephone [REDACTED]

5. Dispute Avoidance Board Members

The Dispute Avoidance Board Members for the purpose of clause 1 (*Definitions*) and 41 (*Dispute Avoidance Board*) of this Deed, are:

Name [REDACTED]

Address [REDACTED]

Email [REDACTED]

Telephone [REDACTED]

Name [REDACTED]

Address [REDACTED]

Email [REDACTED]

Telephone [REDACTED]

Name [REDACTED]

Address [REDACTED]

Email [REDACTED]

Telephone [REDACTED]

6. Employee Checks

| Employee Check | Employees of ServiceCo and Subcontractors to whom it applies | Frequency of update |
|--|--|--|
| A 'national police check' conducted through the NSW Police. | Those who are reasonably likely to have access to Tenants or Household Members, whether supervised or unsupervised, and are not exempt. | At a minimum: <ul style="list-style-type: none"> prior to the Service Commencement Date in accordance with the Service Readiness Schedule; and every four years after the last check (or every three years for individuals involved in aged care work in accordance with the <i>Aged Care Act 1997</i> (Cth)). |
| A 'working with children check' conducted through the NSW Office of the Children's Guardian in accordance with the <i>Child Protection (Working with Children) Act 2012</i> (NSW). | Those who are conducting child-related work and are not exempt under Part 4, regulation 20 of the <i>Child Protection (Working with Children) Regulation 2013</i> (NSW). | At a minimum: <ul style="list-style-type: none"> prior to the Service Commencement Date in accordance with the Service Readiness Schedule; and every five years after the last check. |

7. Other Service Package details

| | |
|----------------------------|---|
| Service Package Objectives | <ul style="list-style-type: none"> Increase supply of Social and Affordable Housing: The Service Package will deliver access to an additional 300 Social and Affordable Dwellings in suitable locations that are new to the sector. Delivery and value for money: The Service Package will deliver high quality Services that represent value for money with an appropriate risk profile and within the timeframe set by the NSW Government. Unlock land contributions: The Service Package will seek to unlock concessional land contributions, where available, to drive value for money and maximise the impact of the available funding (for example, through partnerships with organisations such as local government authorities and faith based organisations that have access to suitable underutilised land). Innovation through partnerships: The Service Package is seeking to facilitate cooperation and partnerships between the private and non-governmental organisation sectors to deliver innovative Services. Quality Services that drive social outcomes: The Service Package will deliver quality Accommodation Services, Asset Management Services and Tenancy Management Services, coupled with Tailored Support Coordination Services that |
|----------------------------|---|

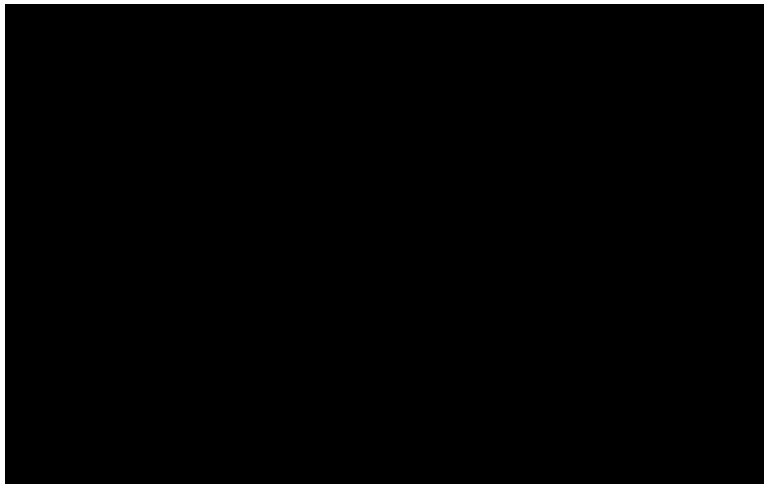
engage and empower people in Social and Affordable Housing to build more independence.

- **Increase Social and Affordable Housing options for vulnerable households:** The Service Package will seek to increase Social and Affordable Housing options for eligible Tenants, including women aged 55 years and over.
- **Evidence building and continued reform:** The Service Package will support evidence building and data collection to help drive continued reform and an investment approach to service delivery in the sector.
- **Strategic alignment:** The Service Package will align with and contribute to the NSW Government's ten year strategy for Social Housing, Future Directions for Social Housing in NSW.
- **Promote Regional Areas:** The Service Package will target 35% of Dwellings in Regional Areas.

**Conditions Precedent
Deadline**

2pm on the date that is 10 Business Days after the date of this Deed.

Key Planning Approvals



Tier or CHP Registration

- in respect of ServiceCo, Tier 2.
-

8. [Not used]

9. Details for notices

The notice details for the purpose of clause 1 (*Definitions*) of this Deed are as follows:

FACS

Attention 

Address [REDACTED]

Telephone [REDACTED]

Email [REDACTED]

ServiceCo

Attention [REDACTED]

Address [REDACTED]

Telephone [REDACTED]

Email [REDACTED]

Schedule 2 – Conditions Precedent Schedule

| Item | Condition Precedent |
|------|--|
| 1. | <p>FACS Service Package Documents</p> <p>The valid execution, delivery and provision to FACS of each of the FACS Service Package Documents, each in form and substance satisfactory to FACS and at least one original counterpart of each of those documents has been provided to FACS.</p> |
| 2. | <p>Other Service Package Documents</p> <p>The valid execution, delivery and provision to FACS of a certified copy of each other Service Package Document, each in form and substance satisfactory to FACS, together with evidence that all conditions precedent to such Service Package Documents have been satisfied or waived (other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to this Deed).</p> |
| 3. | <p>[Not used]</p> |
| 4. | <p>Legal opinions</p> <p>FACS receiving legal opinions given for the benefit of FACS, each in form and substance satisfactory to FACS, from:</p> <ul style="list-style-type: none">(a) solicitors acting for each Consortium Member and Equity Investor as to:<ul style="list-style-type: none">(i) the legal capacity and corporate power of that Consortium Member or Equity Investor to enter into and perform its obligations under the FACS Service Package Documents to which it is a party;(ii) the enforceability against the relevant Consortium Member or Equity Investor of the FACS Service Package Documents to which it is a party; and(iii) due execution by the Consortium Member or Equity Investor of the FACS Service Package Documents to which it is a party; and(b) [not used] |
| 5. | <p>Corporate structure</p> <p>FACS receiving evidence that the corporate structure and any equity and/or subordinated debt arrangements between ServiceCo and its shareholders are in accordance with the Ownership Schedule and the information provided to FACS prior to the execution of this document, including certifications regarding shareholdings.</p> |

Item Condition Precedent

6. Authorised officers

FACS receiving names and specimen signatures of the authorised officers of ServiceCo, including the ServiceCo Representative and any other person authorised to take action or give notices for or on behalf of ServiceCo under the FACS Service Package Documents.

7. [Not used]

8. Insurances

FACS receiving a certificate executed by a director of ServiceCo that confirms that ServiceCo has obtained the Insurances required to be taken out by ServiceCo in connection with the Delivery Phase Activities pursuant to clause 36.1 (*Insurance*) of this Deed.

9. Commercial Close Financial Model and Model Output Schedule

FACS receiving:

- (a) an electronic copy of the Commercial Close Financial Model and the Model Output Schedule, in form and substance satisfactory to FACS;
 - (b) a letter, in form and substance satisfactory to FACS, confirming that the Commercial Close Financial Model is identical to the Base Case Financial Model except as updated in accordance with the Commercial Close Adjustment Protocol or as otherwise set out in the letter; and
 - (c) an audit report on the Commercial Close Financial Model, in form and substance satisfactory to FACS, from an auditor acceptable to FACS.
-

10. Stamp duty

FACS receiving evidence that any stamp duty payable in connection with the entry into each of the Service Package Documents has been or will, contemporaneously with Commercial Close, be paid or that an exemption will apply.

11. [Not used]

12. Other requirements

ServiceCo delivering to FACS any other opinion, certificate or other document that FACS reasonably requests.

Schedule 3 – Payment Schedule

1. Definitions

For the purposes of this Schedule, the definitions in clause 1 (*Definitions*) of this Deed will apply as supplemented by the following definitions:

Abatement means any or all of the following:

- (a) Service Compliance Abatement;
- (b) Service Provision Abatement;
- (c) Tenant Mix Abatement; and
- (d) Service Quality Abatement.

Annual Reporting Compliance Failures means the occurrence of a 'Performance Incident' in respect of KPI 402, or 404.

Annual Service Activity Compliance Failures means the occurrence of a 'Performance Incident' in respect of KPI 301, 302, 306, 307 or 308.

Actual Variable Interest Rate means, in respect of an Operating Quarter, the Bank Bill Rate on the first day of that Quarter.

Actual Variable Notional Payment means, in respect of an Operating Quarter, the notional interest that would be payable by applying the Actual Variable Interest Rate to the Base Case Variable Amount, calculated in accordance with section 3(a).

Base Case Variable Amount means, in respect of an Operating Quarter, the amount identified as such in the Commercial Close Financial Model.

Base Case Variable Interest Rate means the reference rate set out in the Commercial Close Financial Model.

Base Case Variable Notional Payment means, in respect of an Operating Quarter, the notional interest that would be payable on the Base Case Variable Amount at the Base Case Variable Interest Rate.

Excess Subsidy Rebate means the rebate calculated in accordance with section 7(c).

Indexed Non-Reviewable Services Payment means, in respect of an Operating Month and a SP Dwelling, the amount set out for a SP Dwelling in Table 3 in Annexure A to this Schedule, as indexed in accordance with the Indexes Schedule.

Indexed Reviewable Services Payment means, in respect of an Operating Month and a SP Dwelling, the amount set out for a SP Dwelling in Table 3 in Annexure A to this Schedule, as indexed in accordance with the Indexes Schedule.

Interest Rate Adjustment means the adjustment calculated in accordance with in section 3(a).

Interim Survey has the meaning given in section 8.

Key Performance Indicator or **KPI** means the Key Performance Indicators in Appendix C of the Services Specification.

Major Default Service Failure means the occurrence of:

- (a) subject to sections 8(d) and 8(e), in [REDACTED] consecutive Operating Years any [REDACTED] Service Quality Performance Incidents in each Operating Year;
- (b) in [REDACTED] consecutive Operating Years:
 - (i) any Quarterly Reporting Compliance Failures in [REDACTED] consecutive Operating Quarters; and
 - (ii) the same Annual Reporting Compliance Failure on [REDACTED] occasions; or
 - (iii) the same Annual Service Activity Compliance Failure on [REDACTED] occasions; or
 - (iv) the same Quarterly Service Activity Compliance Failure on [REDACTED] occasions; or
- (c) a Service Reporting Performance Incident occurs in respect of KPI 403 (*Quarterly Data Report*) in respect of [REDACTED] consecutive Operating Quarters.

Market Rent has the meaning given in the Services Specification.

Maximum Turnaround Times has the meaning given in the Services Specification.

Non-Indexed Non-Reviewable Services Payment means, in respect of an Operating Month and a SP Dwelling, the amount set out for a SP Dwelling in Table 3 in Annexure A to this Schedule.

Non-Indexed Reviewable Services Payment means, in respect of an Operating Month and a SP Dwelling, the amount set out for a SP Dwelling in the Table 3 in Annexure A to this Schedule.

Non-Reviewable Services means any Services other than the Reviewable Services.

Operating Quarter means each Quarter during the Service Delivery Phase.

Quality Areas means the categories identified as such in Table 1 in section 4.3.

Quarterly Reporting Compliance Failures means the occurrence of a Performance Incident in respect of KPI 401 or 403.

Quarterly Service Activity Compliance Failures means the occurrence of a Performance Incident in respect of KPI 303, 304, 305 or 309.

Service Activity Compliance KPIs means the KPIs so described in Appendix C of the Services Specification.

Service Activity Performance Incident has the meaning given to 'Performance Incident' in Appendix C of the Services Specification in respect of Service Activity Compliance KPIs.

Service Compliance Abatement means, in respect of an Operating Month, the abatement calculated in accordance with section 5.

Service Compliance Performance Incident means:

- (a) Service Activity Performance Incident; and

(b) Service Reporting Performance Incident.

Service Failure means:

- (a) Service Compliance Performance Incident;
- (b) Service Provision Performance Incident; and
- (c) Service Quality Performance Incident.

Service Provision Abatement means an abatement calculated in accordance with section 4.2.

Service Provision Performance Incident has the meaning given in Appendix C of the Services Specification in respect of KPI 101.

Service Quality Abatement means an abatement calculated in accordance with section 4.3.

Service Quality KPIs means the KPIs so described in Appendix C of the Services Specification.

Service Quality Performance Incident has the meaning given to 'Performance Incident' in Appendix C of the Service Specification in respect of KPI 201, 202, 203 or 204.

Service Reporting Compliance KPIs means the KPIs so described in Appendix C of the Services Specification.

Service Reporting Performance Incident has the meaning given to 'Performance Incident' in Appendix C of the Services Specification in respect of Service Reporting Compliance KPIs.

Tenancy Policy Supplement has the meaning given in the Services Specification.

Tenant Mix Abatement means the abatement calculated in accordance with section 6.

Tenant Mix Performance Incident means a failure by ServiceCo to provide services in respect of the agreed proportion of Social Housing Tenants.

Tenant Satisfaction Survey has the meaning given in the Services Specification.

Tenantable has the meaning given in the Services Specification.

Untenantable has the meaning given in the Services Specification.

2. Monthly Services Payment

(a) The Monthly Service Payment in respect of an Operating Month will be calculated as follows:

$$\text{MSP} = \Sigma(\text{MSP}_{\text{dwelling}} \times (1 - \text{ServiceKPI}_{\text{dwelling}})) - \text{SurveyKPI} - \Sigma\text{COMKPI}_i + \text{IRTA} \times \Sigma(1 - \text{ServiceKPI}_{\text{dwelling}}) - \text{TMA} - \text{EXA}$$

where:

ServiceKPI_{dwelling} = the Service Provision Abatement calculated based on the previous three Operating Months' Service Provision Performance Incidents for a SP Dwelling

SurveyKPI = the Service Quality Abatement based on the results of the most recent Tenant Satisfaction Survey

COMKPI_i = the Service Compliance Abatement

MSP_{dwelling} = the monthly service payment for SP Dwelling = ICSP_{dwelling} + NCSP_{dwelling} + IRSP_{dwelling} + NRSP_{dwelling}

ICSP_{dwelling} = the Indexed Non-Reviewable Services Payment for SP Dwelling

NCSP_{dwelling} = the Non-Indexed Non-Reviewable Services Payment for SP Dwelling

IRSP_{dwelling} = the Indexed Reviewable Services Payment for SP Dwelling

NRSP_{dwelling} = the Non-Indexed Reviewable Services Payment for SP Dwelling

TMA = Tenant Mix Abatement applying during the Operating Month

EXA = Excess Subsidy Rebate applying during the Operating Month

IRTA = the Interest Rate Adjustment applying during the Operating Month

- (b) Subject to section 9, the Monthly Service Payment is calculated for all SP Dwellings within Stages that have achieved Service Readiness.
- (c) The Monthly Service Payment and Abatements that are subject to indexation will be adjusted annually in accordance with the Indexes Schedule.

3. Interest Rate Adjustment

- (a) On the first Business Day of each Operating Quarter, the Interest Rate Adjustment shall be calculated for each Operating Month which makes up that Operating Quarter as follows:

$$IRTA = (Int_{actual} - Int_{base}) \times (n_m / n_q)$$

where:

Int_{actual} = Actual Variable Notional Payment for the Operating Quarter

Int_{base} = Base Case Variable Notional Payment for the Operating Quarter

n_m = the number of days in the relevant Operating Month

n_q = the number of days in the relevant Operating Quarter

- (b) The Interest Rate Adjustment can be positive or negative.
- (c) The parties agree that the method of calculating the Actual Variable Notional Payment shall be consistent with the method for calculating the Base Case Variable Notional Payment.

4. Performance Regime

4.1 Monthly Service Payment Abatement

- (a) If at any time during the Service Delivery Phase, a Service Failure occurs, FACS may make Abatements from any Monthly Service Payment, in respect of:
 - (i) that Service Provision Performance Incident, in accordance with section 4.2;
 - (ii) that Service Quality Performance Incident, in accordance with section 4.3;
 - (iii) that Service Compliance Performance Incident, in accordance with section 5; and
 - (iv) that Tenant Mix Performance Incident, in accordance with section 6.
- (b) No reduction in Abatements shall be permitted where the same event causes more than one type of Service Failure.
- (c) Abatements will be applied at the time FACS becomes aware of a Service Failure and FACS will be entitled to apply Abatements retroactively.
- (d) ServiceCo may submit additional information which FACS may take into consideration when determining whether to apply the relevant Abatement.
- (e) FACS will not apply the Tenant Mix Abatement under section 6 prior to the Date of Service Readiness of the final Stage or the final Service Readiness Milestone Date (whichever occurs earlier).

4.2 Service Provision Abatement

- (a) In respect of each SP Dwelling used to provide the Accommodation Services for a given Operating Quarter, ServiceCo will report the following information to FACS on a quarterly basis:
 - (i) the number of vacancies that the SP Dwelling experienced;
 - (ii) the number of consecutive days the SP Dwelling was vacant for during each vacancy; and
 - (iii) for each vacancy, whether the SP Dwelling was considered to be Tenantable or Untenantable.
- (b) The Service Provision Abatement will be calculated as follows:
 - (i) If the current Operating Month immediately succeeds the submission of the Quarterly Performance Report then, the Service Provision Abatement is calculated as:

$$\text{ServiceKPI}_{\text{dwelling}} = (\text{SPF}_t + \text{SPF}_u) / \text{NOD}_q$$

where:

NOD_q = Number of days in the last Operating Quarter

SPF_t = the Service Provision Performance Incident in respect of Tenantable SP Dwellings, where,

$SPF_t = \sum(\max(DV_{upn} - DV_{th}), 0)$ where:

DV_{upn} is the number of days SP Dwelling P was vacant for in respect of vacancy n . There may be more than one period of vacancy in a quarter

DV_{th} is the Maximum Turnaround Time for Tenantable SP Dwellings

SPF_u = the Service Provision Performance Incident in respect of Untenantable SP Dwellings, where,

$SPF_u = \sum \max((DV_{upn} - DV_{uth}), 0)$ where:

DV_{upn} is the number of days SP Dwelling P was vacant for in respect of vacancy n . There may be more than one period of vacancy in a quarter

DV_{uth} is the Maximum Turnaround Time for Untenantable SP Dwellings

- (c) If the current Operating Month is not the Operating Month immediately succeeding the submission of a Quarterly Performance Report, then, the Service Provision Abatement is calculated as:





ServiceKPI_{dwelling} = the ServiceKPI_{dwelling} applied in the previous Operating Month

- (d) The maximum aggregate Abatement that can be made in respect of Service Provision Performance Incidents is the total Monthly Service Payment amount in respect of the services not provided.

4.3 Service Quality Abatement

- (a) The Service Quality Abatement is calculated, in respect of an Operating Month and the 'Service Quality KPIs' in Appendix C of the Services Specification, having regard to Table 1 below.

Table 1: Service Quality Failures

| Quality Area | Satisfaction % | \$ Abatement applied (p.a.), (Indexed) | Offset for High Performance allowed |
|--|---|--|-------------------------------------|
| Maintenance Services (in accordance with the survey metrics) |  |  | Yes |
| Condition of SP |  |  | Yes |

| | | | |
|---|----------------------|----------------------|-----|
| Dwelling (in accordance with the survey metrics) | ████ ████ | ████ ████ | |
| Tenancy Management Services (in accordance with the survey metrics) | ████ ████ ████ | ████ ████ ████ | Yes |
| Tailored Support Coordination Services | ████ ████ ████ | ████ ████ ████ | No |

where:

AMT₁ = the threshold set in the National Regulatory System for Community Housing Registration Return Guide Housing Asset Metrics in respect of the Tenant Satisfaction Survey (green traffic light)

AMT₂ = the first tolerance band set in the National Regulatory System for Community Housing Registration Return Guide Housing Asset Metrics in respect of the Tenant Satisfaction Survey (amber traffic light)

AMT₃ = the second tolerance band set in the National Regulatory System for Community Housing Registration Return Guide Housing Asset Metrics in respect of the Tenant Satisfaction Survey (red traffic light)

TMT₁ = the threshold set in the National Regulatory System for Community Housing Registration Return Guide Housing Tenancy Management Metrics in respect of the Tenant Satisfaction Survey (green traffic light)

TMT₂ = the first tolerance band set in the National Regulatory System for Community Housing Registration Return Guide Housing Tenancy Management Metrics in respect of the Tenant Satisfaction Survey (amber traffic light)

TMT₃ = the second tolerance band set in the National Regulatory System for Community Housing Registration Return Guide Housing Tenancy Management Metrics in respect of the Tenant Satisfaction Survey (red traffic light)

(b) Where a Quality Area has 'Yes' in the column titled 'Offset for High Performance allowed', ServiceCo will be permitted to allocate % points above the AMT₁ threshold in one Quality Area to Quality Areas with performance below the threshold. For example if:

- (i) the AMT₁ for Maintenance Services was 75% and ServiceCo's survey result was 80%, and
- (ii) the AMT₂ for Condition for SP Dwelling was 65 - 74% and ServiceCo's survey result was 74%

then ServiceCo would be able to allocate 1% of the Maintenance Services Satisfaction %, raising it above the Abatement threshold.

- (c) The non-submission of valid results for any Quality Area will result in a satisfaction score of zero being applied to the relevant Quality Area.
- (d) The Abatements applied for a failure in any individual Quality Area are cumulative based on the lowest Satisfaction % achieved.
- (e) The Service Quality Abatement for the succeeding 12 Operating Months will be calculated as follows:

$$\text{SurveyKPI} = (\text{MS} + \text{PC} + \text{TMS} + \text{TSC}) / 12$$

where:

MS = The annual abatement for Maintenance Services Service Quality Abatement is calculated based on ServiceCo's 'Satisfaction' results in respect of Maintenance Services in the most recent Tenant Satisfaction Survey in accordance with the thresholds identified in Table 1

PC = The annual abatement for Condition of SP Dwelling Service Quality Abatement is calculated based on ServiceCo's 'Satisfaction' results in respect of Condition of SP Dwelling in the most recent Tenant Satisfaction Survey in accordance with the thresholds identified in Table 1

TMS = The annual abatement for Tenancy Management Services Service Quality Abatement is calculated based on ServiceCo's 'Satisfaction' results in respect of Tenancy Management Services in the most recent Tenant Satisfaction Survey in accordance with the thresholds identified in Table 1

TSC = The annual abatement for Tailored Support Coordination Services Quality Abatement is calculated based on ServiceCo's 'Satisfaction' results in respect of Tailored Support Services in the most recent Tenant Satisfaction Survey in accordance with the thresholds identified in Table 1

5. Service Compliance Abatement

- (a) The Service Compliance Abatement is calculated, in respect of an Operating Month in accordance with the 'Service Activity Compliance KPIs' and 'Service Reporting Compliance KPIs' in Appendix C of the Services Specification.
- (b) The next Monthly Service Payment will be abated by the sum of all individual dollar Abatements accrued (defined as COMKPI_i in section 2).

6. Tenant Mix Abatement

- (a) FACS will assess the level of ServiceCo's performance in respect of its obligations to provide the Service Package to the Social Housing Tenant percentage set out in the Services Specification by reviewing the "Assistance Type" data provided in accordance with ServiceCo Reporting Requirements Appendix D of the Services Specification and the Quarterly Data Report.
- (b) FACS will calculate the Tenant Mix Abatement as follows:

TMA =

- (i) Zero if the current Quarter is the first quarter since the Service Commencement Date of the final Stage; or

(ii) $\Sigma(\text{MSP}_{\text{dwelling}}) \times (0.75 \times (1 - \text{Min}(\text{CSP}/\text{BSP}, 1)))$

where:

TMA = Tenant Mix Abatement

CSP is the calculated Social Housing Tenant percentage and equals NAS/TD where:

NAS = is the sum over all SP Dwellings of NDW_h

where:

NDW_h is the number of days SP Dwelling P would have the "Assistance Type" equal to "General" in the previous two quarters

$\text{TD} = \text{NOD}_h * \text{NOP}$

where:

NOD_h = Number of days in the previous two quarters

NOP = Number of SP Dwellings

BSP is the bid minimum Social Housing percentage set out in section 2.3 of the Services Specification.

7. Excess Subsidy Rebate

- (a) The maximum Social Housing income eligibility limit and weekly income allowances for Tenants and Household Members must be determined in accordance with the Tenancy Policy Supplement.
- (b) If a Tenant is classified as a Retained Social Housing Tenant in accordance with section 4.7 of the Services Specification, ServiceCo will pay the Excess Subsidy Rebate.
- (c) FACS will calculate the Excess Subsidy Rebate as follows:

$$\text{EXA} = (\text{NODm}/\text{NODqc}) \times \text{EXA}_{\text{pq}}$$

NODm = number of days in the current Operating Month

NODqc = number of days in the current Operating Quarter

EXA_{pq} = the Excess Subsidy Rebate calculated at the end of the previous Operating Quarter as follows:

$$\text{EXA}_{\text{pq}} = \Sigma \text{ERPC}_n \times \text{Max} ((\text{RSet}_p - \text{RUpper} - \text{CCRA}_p), 0) \times \text{NODqc}/7$$

where:

ERPC_n is the percentage rebate applied based on Table 2 below.

$RSet_p$ is the weekly rent charged to the Tenant for SP Dwelling P set by ServiceCo for the last week of the reporting period.

$RUpper$ is the weekly rent that would be charged to the Tenant for SP Dwelling P had Tenant P household's assessable income been equal to the household's income eligibility limit for the last week of the reporting period. $RUpper$ must be equal to 25% of Tenant P household's income eligibility limit.

$RMarket_p$ is the weekly Market Rent for SP Dwelling P.

$CCRAp$ is the change in Tenant P's weekly household CRA entitlement and equal to

$$CCRABp - CCRACp$$

where:

$CCRABp$ is Tenant P's weekly household CRA entitlement that would have applied to Tenant P at the residential tenancy agreement commencement date ($CCRABp$ can be zero) if the thresholds and rates for the payments of CRA applicable at the date of this Deed were applied adjusted for any then applicable indexation.

$CCRACp$ is Tenant P's weekly household CRA entitlement that would have applied to Tenant P on the week end immediately preceding the most recent rent and income review ($CCRACp$ can be zero) on the assumption that the thresholds and rates for the payments of CRA applicable at the date of this Deed were applied adjusted for any then applicable indexation.

Table 2: Percentage Rebate Levels

| Rebate ($ERPC_n$) | Applicable Threshold Range ($RMarket_p - RSet_p$) / $RMarket_p$ |
|------------------------|--|
| 20% | > 80% |
| 40% | > 60% and ≤ 80% |
| 60% | > 40% and ≤ 60% |
| 80% | > 20% and ≤ 40% |
| 100% | ≤ 20% |

8. Interim Survey

- (a) If a Service Quality Performance Incident occurs in respect of a Tenant Satisfaction Survey, ServiceCo may undertake another survey during the following Operating Year in accordance with this section 8 (**Interim Survey**).
- (b) ServiceCo must:
 - (i) conduct the Interim Survey in accordance with sections 4.13(a)(ii), 4.13(a)(iii) and 4.13(b) of the Services Specification (for the Quality Areas relating to 'Maintenance Services', 'Condition of SP Dwelling', 'Tenancy Management Services' and 'Tailored Support Coordination

Services', as if the Interim Survey were a Tenant Satisfaction Survey;
and

- (ii) report the results to the FACS Representative by the third quarter of that Operating Year in accordance with section 6.3 of the Services Specification.
- (c) If, in respect of a Quality Area:
 - (i) ServiceCo achieves a satisfaction % in the Interim Survey that is equal to or exceeds the relevant satisfaction threshold set out in Table 1; and
 - (ii) a Service Quality Performance Incident occurred in relation to that Quality Area in the preceding Tenant Satisfaction Survey,then the Interim Survey is deemed to be successful (**Successful Interim Survey**).
- (d) If a Successful Interim Survey is conducted in accordance with this section 8, the Service Quality Performance Incidents in the initial Operating Year will be deemed to be zero for the purpose of determining whether a Major Default Service Failure has occurred.
- (e) A failure by ServiceCo to achieve a satisfaction threshold set out in Table 1 in an Interim Survey will not constitute a second Service Quality Performance Incident for the purposes of paragraph (a) of the definition of Major Default Service Failure.

9. Removed SP Dwellings and adjustments

The parties acknowledge and agree that this Schedule is subject to:

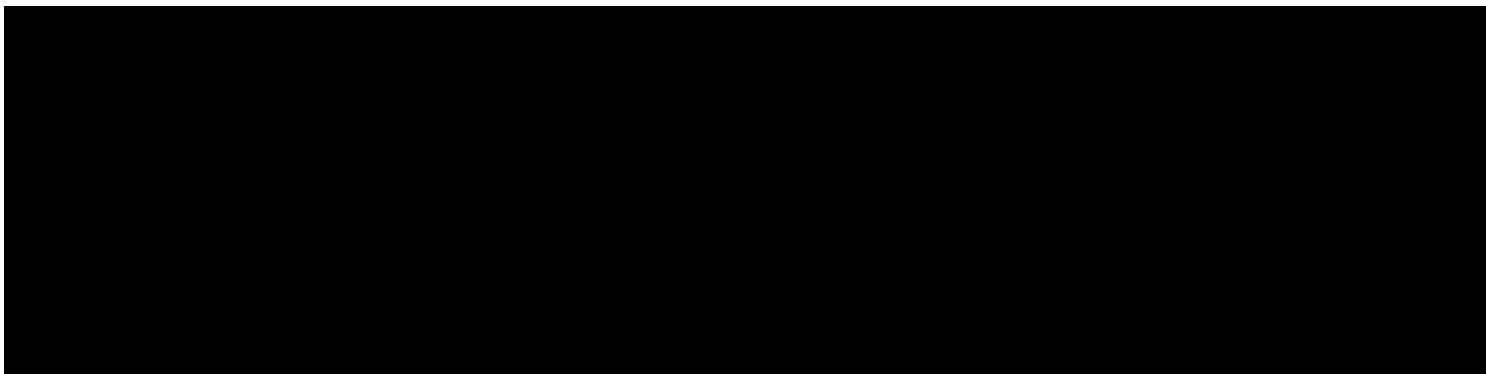
- (a) clause 33.4 (*Removal of Service Package Dwellings*) of this Deed in respect of any Removed Dwellings; and
- (b) section 4.5(f) and 4.5(g) of the Services Specification in respect of any Appropriate Applicants.

Annexure A

Table 3: Monthly Service Payment per SP Dwelling

| Monthly Service Payment per SP Dwelling component | Amount (\$, real as at 30 June 2018)(*) |
|---|---|
| Indexed Non-Reviewable Services Payment for SP Dwelling (ICSP _{dwelling}) | ██████████ |
| Non-Indexed Non-Reviewable Services Payment for SP Dwelling (NCSP _{dwelling}) | ██████████ |
| Indexed Reviewable Services Payment for SP Dwelling (IRSP _{dwelling}) | ██████████ |
| Non-Indexed Reviewable Services Payment for SP Dwelling (NRSP _{dwelling}) | ██ |

(*) The amounts in Table 3 will be updated at Commercial Close in accordance with the Services Deed, Annexure D - Commercial Close Adjustment Protocol (CCAP).



Schedule 4 – Indexes Schedule

1. Submission and review

1.1 Definitions

For the purposes of this Schedule, the definitions in clause 1 (*Definitions*) of this Deed will apply as supplemented by the following definitions:

Consumer Price Index or CPI means the All Groups Consumer Price Index Australia (ABS Cat No. 6401.0 Series ID A2325846C) published quarterly by the Australian Bureau of Statistics or, if section 1.3 applies, the index determined in accordance with that section.

CPI Multiplier at any time means:

- (a) the most recently published CPI for the Quarter ending 31 March; divided by
- (b) the published CPI for the Quarter ending 31 March 2018.

Indexation Date means 1 July of each financial year.

Wage Price Index or WPI means the Wage Price Index (NSW, All Industries, Private) (ABS Cat No. 6345.0 Series ID A2599049K) published quarterly by the Australian Bureau of Statistics or, if section 1.3 applies, the index determined in accordance with that section.

WPI Multiplier at any time means:

- (a) the most recently published WPI for the Quarter ending 31 March; divided by
- (b) the published WPI for the Quarter ending 31 March 2018.

1.2 Indexation

- (a) All amounts to be "Indexed" under this Deed are indexed annually on the Indexation Date by multiplying the relevant amount by:
 - (i) in respect of the Indexed Non-Reviewable Services, the CPI Multiplier;
 - (ii) in respect of the Indexed Reviewable Services, the WPI Multiplier; and
 - (iii) in respect of any other amounts (including Abatements), the CPI Multiplier.

1.3 Changes to indexes

The following rules apply to all terms identified in section 1.2 as being referable to an index published by the Australian Bureau of Statistics:

- (a) if there is a change in the coverage of the index from that applying at the date of this Deed and the new index is linked to another index, the defined term is to be referable to the new index;
- (b) if the index is published and there is a change in its:
 - (i) coverage and it is not linked to another index; or
 - (ii) periodicity,the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to determine:
 - (iii) whether the index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and
 - (iv) if it is not, what other index should be used as a substitute index for the purpose of the defined terms used in this Deed,and that determination is final and binding on the parties;
- (c) if there is a change in the reference base of the index from that applying at the date of this Deed and the Australian Bureau of Statistics provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purpose of the use of the defined term in this Deed, in terms of the new reference base. Where possible, the conversion factor should be applied to paragraph (a) and (b) in the definitions of 'CPI Multiplier' and 'WPI Multiplier' in section 1.1 so that going forward both paragraphs (a) and (b) of those definitions are expressed in the terms of the new reference base;
- (d) if there is a change in the reference base of the index from that applying at the date of this Deed and the Australian Bureau of Statistics does not provide a conversion factor, the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to calculate a revised index for the purposes of the defined terms used in this Deed, and that calculation is final and binding on the parties;
- (e) if the index ceases to be published and the Australian Bureau of Statistics publishes another index which is:
 - (i) a replacement of that index; and
 - (ii) linked to the index,the defined term must be re-calculated to the same reference base as the replacement index;
- (f) if the index ceases to be published and the Australian Bureau of Statistics does not publish another index which is linked to the index, the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to calculate a revised index for the purposes of the defined terms used in this Deed, and that calculation is final and binding on the parties;
- (g) if the index ceases to be published and the Australian Bureau of Statistics does not publish another index in place of the index, the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to determine an appropriate index which is a general indicator of the rate of price change for the relevant goods and services, and that determination is final and binding on the parties; and

- (h) if a Change in Law causes a material aberration in the index, the index must be adjusted to remove the impact of that material aberration in accordance with any such methodology published by a responsible Authority for adoption by business or, in the absence of such publication, within six months of the occurrence of the material aberration as agreed by the parties or, in the absence of agreement, as determined by an independent expert in accordance with clause 42 (*Expert Determination*) of this Deed.

Confidential

Schedule 5 – [not used]

Schedule 6 – Termination Payments

1. Definitions

For the purposes of this Schedule, the definitions in clause 1 (*Definitions*) of this Deed will apply as supplemented by the following definitions:

Accommodation Cost means A - B where:

A = the lesser of:

during the Delivery Phase the actual Debt drawn (including capitalised interest and fees) at the Termination Date or, during the Service Delivery Phase the actual Debt outstanding at the Termination Date

B = the sum of the proceeds of the sale of any SP Dwellings in an arm's length transaction at Fair Value plus the Estimated Accommodation Value of any SP Dwellings not sold within a 60 day period from the Termination Date;

to the extent this is negative, it will be taken as zero.

Actual Proceeds has the meaning given to it in section 3.3(b).

Additional Amount has the meaning given to it in section 3.3(b).

Adjusted New Monthly Service Payment has the meaning given in section 4.2(c)(iv).

Compensation Date means either:

- (a) if section 4.2(c) applies, the earlier of:
 - (i) the date that the New Contract is entered into; and
 - (ii) the date on which the Termination Payment payable to ServiceCo has been agreed or determined in accordance with section 4.5; or
- (b) if section 4.3 applies, the date on which the Estimated Additional Cost has been agreed or determined; or
- (c) if section 5 applies, the date on which the Accommodation Cost has been agreed or determined.

Compliant Tender means a tender which meets all of the Qualification Criteria.

Deemed New Contract means a contract in respect of any terminated Service Package Dwellings on the same terms and conditions as this Deed as at the Termination Date, but with the following amendments:

- (a) the Dwellings are to be delivered using a design and construct strategy;
- (b) any Major Default Notices must be cancelled and any related breach waived;

- (c) the location of the Dwellings will be comparable, but will not necessarily be the exact locations set out in this Deed (including through the application of the Site Selection Strategy); and
- (d) the term shall be equal to the period from the Compensation Date to and including the Final Expiry Date.

Estimated Accommodation Independent Valuation means a process where the parties procure the services of an independent expert to determine the Estimated Accommodation Value in accordance with the Valuation Principles and agree that the Estimated Accommodation Value as determined by that independent expert will be final and binding. This process needs to be completed within a 60 day period.

Estimated Accommodation Value means the amount determined via an Estimated Accommodation Independent Valuation which a third party would pay to ServiceCo as the value of the Dwellings.

Estimated Additional Cost means the amount determined in accordance with sections 4.3 and 4.4, being the additional costs that FACS would incur under a Deemed New Contract in excess of those under this Deed.

Fair Value means the amount at which an asset, equity or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale.

Government Debt Rate means the NSW Treasury Corporation (TCorp) long term 90 day reversion rate.

Key Subcontractor Breakage Costs means [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

Liquid Market means that there are at least two parties (in addition to any party controlled by the Financiers, each of whom is capable of being a suitable substitute contractor) in the prevailing market for public private partnership contracts or similar contracts for the provision of services (in each case the same as or similar to this Deed), such that the result of that tender process would provide a reasonably likely indicator of Fair Value.

New Contract means a contract on the same terms and conditions as this Deed as at the Termination Date, but with the following amendments:

- (a) the SP Dwellings are to be delivered using a design and construct strategy;
- (b) any Major Default Notices shall be cancelled and any related breach waived;

- (c) the location of the SP Dwellings will be comparable, but will not necessarily be the exact locations set out in this Deed(including through the application of the Site Selection Strategy);
- (d) the term shall be equal to the period from the Compensation Date to and including the Final Expiry Date; and
- (e) any other amendments which do not materially increase the Monthly Service Payment which FACS would be prepared to pay in consideration for New ServiceCo entering into the New Contract.

New Monthly Service Payment has the meaning give to it in section 4.2(c)(iv).

New ServiceCo means the person or entity who has entered or who will enter into a New Contract with FACS.

NPV New Monthly Service Payment means:

$$\text{NPVNMSP} = A - B$$

where:

- NPVNMSP = Net Present Value New Monthly Service Payment;
- A = the total of all payments of the Adjusted New Monthly Service Payments forecast to be made over the term of the New Contract (or, if shorter, the period from the Compensation Date to and including the Final Expiry Date) calculated and discounted as at the Termination Date by the Government Debt Rate; and
- B = the total of all payments of the Monthly Service Payments forecast to be made over the Term of the this Deed had it not terminated, calculated and discounted as at the Termination Date by the Government Debt Rate.

To the extent that the NPVNMSP is negative, it will be taken to be zero.

Parameters for Adjustment means the following items:

- (a) **Concessional Land:** land which has been contributed by ServiceCo to the Services Package at a value of [REDACTED];
- (b) **Margin on debt:** A loan with a value of [REDACTED] which has been provided to the Services Package at a margin of [REDACTED];
- (c) **Residual Value:** no more than [REDACTED] of the total capital cost of delivering the Service Package being amortised over the Term.

Provisional Proceeds has the meaning given to it in section 3.3(a).

Qualification Criteria means the criteria which FACS requires tenderers to meet as part of the Tender Process, which shall be:

- (a) criteria having substantially the same effect as the criteria applied by FACS when selecting those to be invited to submit detailed proposals and any other final offers under the procurement process used in the selection of ServiceCo to deliver the Service Package;
- (b) the operational and technical ability of the tenderers to deliver the Service Package Activities;
- (c) the independence of the tenderer from ServiceCo and FACS; and
- (d) any other relevant tender criteria selected by FACS acting reasonably.

ServiceCo Additional Amount has the meaning given to it in section 3.3(c)(i).

Tender Costs means the internal and external costs reasonably incurred or reasonably expected to be incurred by FACS in carrying out the Tender Process and/or in connection with any calculation of the Estimated Additional Cost (including the cost of the independent expert appointed pursuant to section 4.3(d)).

Tender Documentation means the documentation issued by FACS to request tenders from any parties interested in entering into a New Contract in accordance with section 4.2(c).

Tender Process means the process by which FACS requests tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and negotiates to enter into a New Contract with a New ServiceCo, in accordance with section 4.2(c).

Termination Date means in respect of a tranche of Service Package Dwellings that are terminated, a Stage that is terminated or the termination of the Service Package (as applicable), the date such termination occurs in accordance with clause 38 (*Termination*) or clause 39 (*Partial Termination*) of this Deed.

Valuation Principles means having regard to the following in determining the Estimated Accommodation Value of a Dwelling:

- (a) the size, location, condition, quality, age and orientation of the property;
- (b) comparative sales data, taking into consideration sale prices in the last 12 months or more of comparable properties similar in size, location, condition, quality, age and orientation; and
- (c) the valuation methodology standards or principles published by the Australian Property Institute or any successor organisation.

2. Interpretation

To the extent a termination occurs in respect of some but not all Service Package Dwellings, the provisions of this Schedule will be construed to apply for only those Service Package Dwellings which have been terminated.

3. Payment of Termination Payment

3.1 Timing of payment

If this Deed is terminated under clause 38 (*Termination*) of this Deed, the party obliged to pay the Termination Payment under clause 38.6 (*Payment on termination*) of this this Deed must pay the Termination Payment as a lump sum on or before the date which is 90 days after the Termination Date (or where termination is pursuant to clause 38.4 (*Default Termination Event*) or clause 38.2 (*Voluntary Termination*) of this Deed, 30 days after the Compensation Date if this is later).

3.2 Payment of interest

In respect of Termination Payments calculated under this Schedule only, interest shall accrue on any unpaid element of the Termination Payment:

- (a) in respect of a Termination Payment calculated under section 4, from the 31st day after the Compensation Date to (and excluding) the date on which the Termination Payment is paid in full. Interest shall accrue on that Termination Payment at the Overdue Rate. Interest is payable on the date on which the Termination Payment is paid; and
- (b) in respect of any Termination Payment calculated under section 5, from and including the Termination Date to (and excluding) the date on which the Termination Payment is paid in full. Interest on the Termination Payment shall accrue at the Government Debt Rate from and including the day after the Termination Date to and including the 90th day after the Termination Date and thereafter on the whole of that Termination Payment at the Overdue Rate. Interest is payable on the date on which the Termination Payment is paid.

3.3 Treatment of insurance proceeds

- (a) Notwithstanding any term of this Deed, if the calculation of the Termination Payment requires the parties to take into account insurance proceeds that have not yet been received by ServiceCo, then receipt (or non-receipt) of the insurance proceeds, or uncertainty as to the quantity or timing of receipt of the same, shall not delay the calculation or payment of the Termination Payment and instead the parties shall calculate the Termination Payment on the basis of the maximum amount of proceeds that ServiceCo is reasonably likely to recover assuming that ServiceCo has complied with its insurance obligations under clause 36 (*Insurance*) of this Deed (**Provisional Proceeds**) taking into account all information that is then available to the parties.
- (b) If, following the calculation of the Termination Payment, the insurance proceeds that ServiceCo actually recovers (**Actual Proceeds**) are less than the Provisional Proceeds, FACS shall, immediately on notification of the Actual Proceeds by ServiceCo, pay to ServiceCo an amount equal to that by which the Provisional Proceeds exceed the Actual Proceeds (**Additional Amount**). For the avoidance of doubt, FACS will not be required to pay any interest on this Additional Amount.
- (c) If, following the calculation of the Termination Payment, the Actual Proceeds are more than the Provisional Proceeds, FACS may, in its sole discretion:

- (i) direct ServiceCo to immediately on receipt of the Actual Proceeds, pay to FACS an amount equal to that by which the Actual Proceeds exceed the Provisional Proceeds (**ServiceCo Additional Amount**); or
- (ii) if FACS has not paid the Termination Payment in full at that time, reduce the outstanding Termination Payment by the ServiceCo Additional Amount,

and ServiceCo will not be required to pay any interest on any ServiceCo Additional Amount.

- (d) References to insurance proceeds in sections 3.3(b) to 3.3(c) (inclusive) are to insurance proceeds that ServiceCo is entitled to retain and which it has not applied and it is not obliged to apply in respect of its reinstatement obligations under this Deed.

3.4 General obligations

- (a) Each Party must use all reasonable endeavours to mitigate any losses or costs forming part of any Termination Payment.
- (b) Any Termination Payment payable by or to ServiceCo must be calculated in accordance with this Schedule without any double counting.

4. Termination for Default Termination Event

4.1 Default Termination Event

If FACS terminates this Deed following a Default Termination Event in accordance with clause 38.4 (*Default Termination Event*) of this Deed (regardless of whether FACS otherwise has the right to terminate for any other reason), FACS must at its sole discretion, elect to:

- (a) re-tender the provision of the Service Package Activities in accordance with section 4.2; or
- (b) require an expert determination in accordance with section 4.3.

4.2 Re-tendering process

- (a) FACS is entitled to elect to retender the provision of the Service Package Activities in accordance with section 4.1(a) if:
 - (i) FACS notifies ServiceCo on or before the date falling 20 Business Days after the Termination Date;

in which case the amount of compensation payable by FACS shall be agreed or determined in accordance with sections 4.2(c) and 4.5.

- (b) Any Dispute in relation to whether a Liquid Market exists may be referred by either party for dispute resolution in accordance with clause 40 (*Dispute resolution procedure*) of this Deed.

- (c) If FACS elects to re-tender the provision of the Service Package Activities in accordance with section 4.2(a), the following provisions shall apply:
- (i) the objective of the Tender Process shall be to identify a new service company and the lowest New Monthly Service Payment offered by a Compliant Tenderer;
 - (ii) the FACS Representative shall use its reasonable endeavours to complete the Tender Process as soon as practicable having regard to the assistance given by ServiceCo in connection with the Tender Process;
 - (iii) the FACS Representative shall notify ServiceCo of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, and shall act reasonably in setting such requirements and terms;
 - (iv) as soon as practicable after tenders have been received, the FACS Representative shall determine the Compliant Tenders and the lowest Monthly Service payment offered by a Compliant Tenderer (**New Monthly Service Payment**) and will require an independent expert to adjust the New Monthly Service Payment so as to neutralise for any differences between the New Monthly Service Payment and the current Monthly Service Payment which arise as a result of the Parameters for Adjustment (**Adjusted New Monthly Service Payment**);
 - (v) as soon as practicable after the expert has concluded the process in section 4.2(c)(iv), the FACS Representative shall notify ServiceCo of:
 - A. the Adjusted New Monthly Service Payment; and
 - B. the Tender Costs;
 - (vi) if FACS receives less than two tenders (or less than two Compliant Tenders) in response to the Tender Process, the provisions of section 4.3 shall apply;
 - (vii) FACS may elect at any time prior to the receipt of two Compliant Tenders to follow the no re-tendering procedure under section 4.1 by notifying ServiceCo that this election has been made and upon the making of such an election, the provisions of section 4.3 shall apply; and
 - (viii) in the event that the Tender Process is not completed within 12 months from the date of issue of the Tender Documentation, the provisions of section 4.3 shall apply.

4.3 Expert determination

If:

- (a) FACS elects to require expert determination pursuant to sections 4.1 or 4.2(c)(vii);
- (b) the provisions of sections 4.2(c)(vi) or 4.2(c)(viii) apply; or
- (c) the conditions set out in section 4.2(a) are not satisfied,

the following provisions apply:

- (d) the parties will procure the services of an independent expert to determine the Estimated Additional Cost based on the formula set out in section 4.4 (as applicable) and agree that the Estimated Additional Cost as determined by the independent expert will be final and binding; and
- (e) all forecast amounts of revenues and costs must be calculated by the independent expert on a nominal basis as at the Termination Date, whereby future amounts are indexed at the indexation rates in the Financial Model.

4.4 Estimated Additional Cost

The Estimated Additional Cost shall be determined by the independent expert, based on the following formula:

$$\text{EAC} = \text{A} - \text{B}$$

where:

$$\text{EAC} = \text{Estimated Additional Cost};$$

$$\text{A} = \text{the total of all costs reasonably forecast to be incurred by FACS as a direct result of termination of this Deed, calculated and discounted at the Government Debt Rate, such costs to include:}$$

- (a) the costs reasonably forecast to be incurred by FACS over the term of the Deemed New Contract (or, if shorter, the period from the Compensation Date to and including the Final Expiry Date) in connection with providing the Service Package Activities to the standard required by the Deemed New Contract, but adjusted so as to neutralise for any differences between this amount and the current Monthly Service Payment which arise as a result of the Parameters for Adjustment;
- (b) any lease payments payable under a lease entered into pursuant to an Option to Lease;
- (c) a reasonable risk assessment of any cost overruns that will arise whether or not forecast in the Financial Model; and
- (d) any rectification costs required to deliver services under the Deemed New Contract to the standard required in the Deemed New Contract and any additional operating costs required to restore operating service standards; and

$$\text{B} = \text{the total of all payments of the Monthly Service Payments forecast to be made over the term of the this Deed had that not been terminated calculated and discounted as at the Termination Date by the Government Debt Rate.}$$

To the extent that the EAC is negative, it will be taken to be zero.

4.5 Termination for Default Termination Event

- (a) If this Deed is terminated pursuant to clause 38.4 (*Default Termination Event*) of this Deed, the Termination Payment shall be calculated as follows:

Termination Payment or TP means:

$$TP = A + B + C + D + E + F - G + H + I + J$$

where:

- A = the NPV New Monthly Service Payment offered by a Compliant Tenderer if section 4.2 applies, or the Estimated Additional Cost if section 4.3 applies;
- B = the Tender Costs;
- C = the amounts that FACS is entitled to set off or deduct under this Deed including, for the avoidance of doubt, any reasonable costs incurred by FACS in connection with the relevant Default Termination Event and as a direct result of terminating this Deed;
- D = any amounts owing by ServiceCo to FACS under the Service Package Documents as at the Termination Date;
- E = any gains which have or will accrue to ServiceCo as a result of the termination of this Deed and any other Service Package Documents;
- F = the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) ServiceCo is entitled to receive, or would be entitled to receive had ServiceCo complied with the requirements of clause 36 (*Insurance*) of this Deed and the relevant insurance policy, under any insurance policy;
- G = any amounts due and payable by FACS to ServiceCo in accordance with the terms of FACS Service Package Documents as at the Termination Date, but only to the extent that such amounts should have been paid prior to the Termination Date but remained unpaid at the Termination Date;
- H = any amounts paid to ServiceCo by FACS (including as a component of the Monthly Service Payment) for maintenance, refurbishment or capital replacement where that maintenance, refurbishment or capital replacement has not been carried out by ServiceCo;
- I = FACS' reasonable costs in consulting with and relocating the current Tenants of the SP Dwellings out of those Dwellings into alternative accommodation (if applicable);
- J = FACS' reasonable costs of bringing the Dwellings to a standard appropriate for use as accommodation by Tenants (to the extent FACS has exercised an Option to Lease).
- (b) If the Termination Payment is a positive number, ServiceCo shall pay that amount to FACS.

- (c) If the Termination Payment is a negative number, FACS shall pay that amount to ServiceCo.

5. Voluntary Termination by FACS

5.1 Voluntary Termination

If this Deed is terminated pursuant to clause 38.2 (*Voluntary Termination*) of this Deed, the Termination Payment shall be calculated as follows:

Termination Payment or TP means:

- TP = A + B + C - D - E - F + G + H where:
- A = an amount equal to the reasonable ServiceCo costs incurred in assisting FACS to re house existing Tenants (if requested);
- B = an amount equal to the Accommodation Cost;
- C = an amount equal to the Key Subcontractor Breakage Costs;
- D = any amounts owing by ServiceCo to FACS under the FACS Service Package Documents as at the Termination Date;
- E = any amounts paid by FACS to ServiceCo on account for Services not performed by the Termination Date;
- F = the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) ServiceCo is entitled to retain in respect of a Claim which has been made or has arisen or accrued on or before the Termination Date, or ServiceCo would be entitled to retain had ServiceCo complied with the requirements of clause 36 (*Insurance*) of this Deed and the relevant insurance policy, under any insurance policy;
- G = any amounts due and payable by FACS to ServiceCo in accordance with the terms of FACS Service Package Documents as at the Termination Date, but only to the extent that such amounts should have been paid prior to the Termination Date but remained unpaid as at the Termination Date;
- H = an amount equal to the reasonable costs incurred or to be incurred by ServiceCo in repairing damage to Dwellings caused by Tenants which costs have not yet been recouped by or reimbursed to ServiceCo through the Monthly Service Payments.

5.2 Disposal of SP Dwellings following Voluntary Termination

In disposing of the SP Dwellings following a Voluntary Termination, ServiceCo is required to seek to achieve Fair Value (and procure that its Financiers seek Fair Value where relevant)

and where requested by FACS, demonstrate that it has sought to achieve Fair Value for the SP Dwellings it has sold but excluding any SP Dwellings that have been sold by a receiver appointed to ServiceCo by its Financiers.

To the extent FACS is of the view that ServiceCo or its Financiers (as relevant) have not achieved Fair Value for any SP Dwelling (excluding any SP Dwelling that has been sold by a receiver appointed to ServiceCo by its Financiers), FACS may engage an independent expert to determine the Estimated Accommodation Value of the Accommodation Costs and FACS will use the higher of the Estimated Accommodation Value and the Fair Value achieved by ServiceCo.

Confidential

Schedule 7 – [not used]

Schedule 8 – Service Readiness Schedule

For the purposes of this Schedule, terms not defined in clause 1 (*Definitions*) of this Deed are defined in section 1 of the Services Specification.

| Service Readiness Criteria | | | |
|----------------------------|------------------------|---|----------------------------------|
| Item | Subject matter | Criterion | Stage to which criterion applies |
| 1 | Registration | <p>Each of:</p> <ol style="list-style-type: none"> 1. ServiceCo; 2. each Key Subcontractor providing any Asset Management Services; and 3. each Key Subcontractor providing any Tenancy Management Services, <p>has become a Registered CHP, with the tier of registration being that identified in the Contract Particulars.</p> | All Stages. |
| 2 | Director's certificate | <p>ServiceCo has provided FACS with a certificate executed by a board member of ServiceCo with respect to the applicable Stage that:</p> <ol style="list-style-type: none"> 1. identifies the addresses of each Service Package Dwelling to be used for Social Housing and Affordable Housing in that Stage; 2. attaches a certificate of practical completion issued in accordance with the construction contract between ServiceCo and the relevant Subcontractor in respect of the Relevant Infrastructure comprising the Stage; 3. confirms that ServiceCo has in place all resourcing required for the provision of the Service Package in respect of that Stage (including employees required for the Services and all systems); 4. confirms that ServiceCo has in place all of the Insurances required under clause 36 (<i>Insurance</i>) of this Deed in respect of the Service Delivery Phase; 5. confirms each employee required for the Services has passed the Employee Checks applicable to that employee; 6. confirms that each Service Package Dwelling is | A certificate for each Stage. |

| Service Readiness Criteria | | | |
|----------------------------|---|--|----------------------------------|
| Item | Subject matter | Criterion | Stage to which criterion applies |
| | | <p>Fit For Purpose in accordance with section 2.6 of the Services Specification; and</p> <p>7. confirms that Service Package Dwellings are in accordance with the Single Storey Guidelines, where required by the Services Specification.</p> | |
| 3 | Certification | <p>ServiceCo has provided FACS with the following certification:</p> <ol style="list-style-type: none"> to the extent the Stage is not comprised of properties leased to ServiceCo, a copy of the occupation certificate for each Service Package Dwelling for social and affordable housing. The occupation certificate must be provided by a NSW Building Professionals Board Category A1 Unrestricted Certifier; and work as executed plans and a certificate from an independent 'LHA Design Guideline Assessor' as approved by Livable Housing Australia. This applies to New Dwellings and Substituted New Dwellings only. | Each Stage. |
| 4 | Compliance | <p>The Service Package Dwellings for the relevant Stage comply with the Design Requirements, evidenced by:</p> <ol style="list-style-type: none"> a statement of compliance from an independent architect registered with the NSW Architects Registration Board that each Service Package Dwelling in the relevant Stage that must be designed in accordance with the "Schedule 1 Design Quality Principles" of the State Environmental Planning Policy No 65 pursuant to section 2.2.1 of the Services Specification, has been designed pursuant to that schedule; and a statement of compliance from an independent architect registered with the NSW Architects Registration Board that each Service Package Dwelling in the relevant Stage that must be designed in accordance with the Apartment Design Guide pursuant to section 2.2.1 of the Services Specification, has been designed in accordance with that guide. | Each Stage. |
| 5 | Private Housing and Supporting Infrastructure | <p>ServiceCo has ensured that:</p> <ol style="list-style-type: none"> to the extent a Site on which the Stage is located has Private Housing, 100% of Private Housing located on that Site is available for occupation; and all of the Supporting Infrastructure for the Site on which the Stage is located (if any) has | Each Stage. |

Service Readiness Criteria

| Item | Subject matter | Criterion | Stage to which criterion applies |
|------|----------------|-----------|----------------------------------|
|------|----------------|-----------|----------------------------------|

achieved completion.

| | | | |
|---|--------------------|--|---|
| 6 | Template documents | <p>ServiceCo and FACS have agreed the updates required (if any) to the following documents in accordance with section 5.8 of the Services Specification:</p> <ol style="list-style-type: none"> 1. Tenant Needs Assessment Template; and 2. Tenant Support Services Plan Template. | The first Stage to achieve the Date of Service Readiness. |
|---|--------------------|--|---|

| | | | |
|---|------------------------------|---|---|
| 7 | Service Delivery Phase Plans | <p>ServiceCo has:</p> <ol style="list-style-type: none"> 1. submitted final drafts of the Service Delivery Phase Plans as required by and otherwise in accordance with the Service Delivery Phase Plans Schedule; and 2. received approval of those final versions pursuant to clause 10 (<i>Review of documents by FACS</i>) of this Deed. | The first Stage to achieve the Date of Service Readiness. |
|---|------------------------------|---|---|

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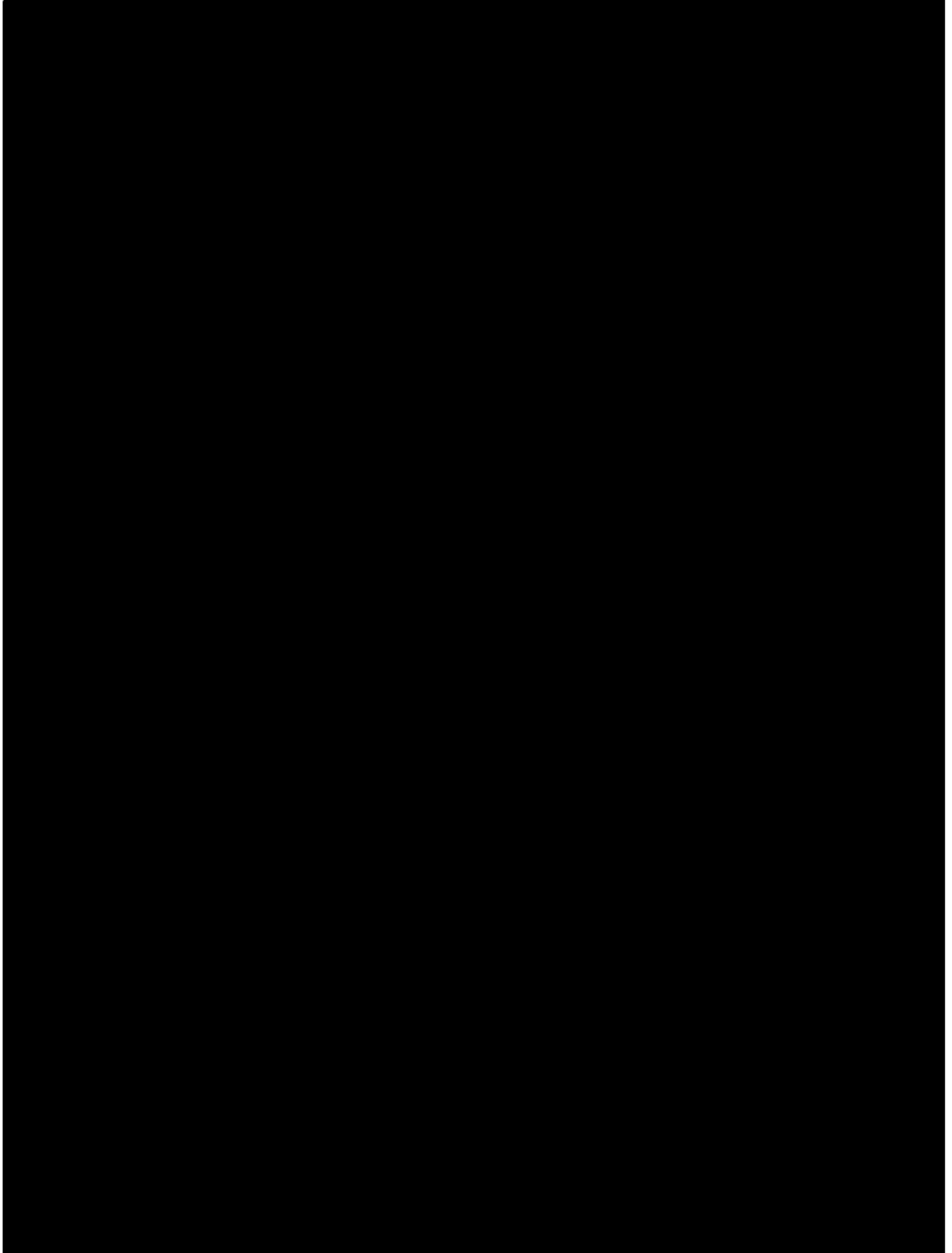
Schedule 9 – [not used]

Confidential

Schedule 10 – [not used]

Confidential

Schedule 11 – Commercially Sensitive Information





Confidential

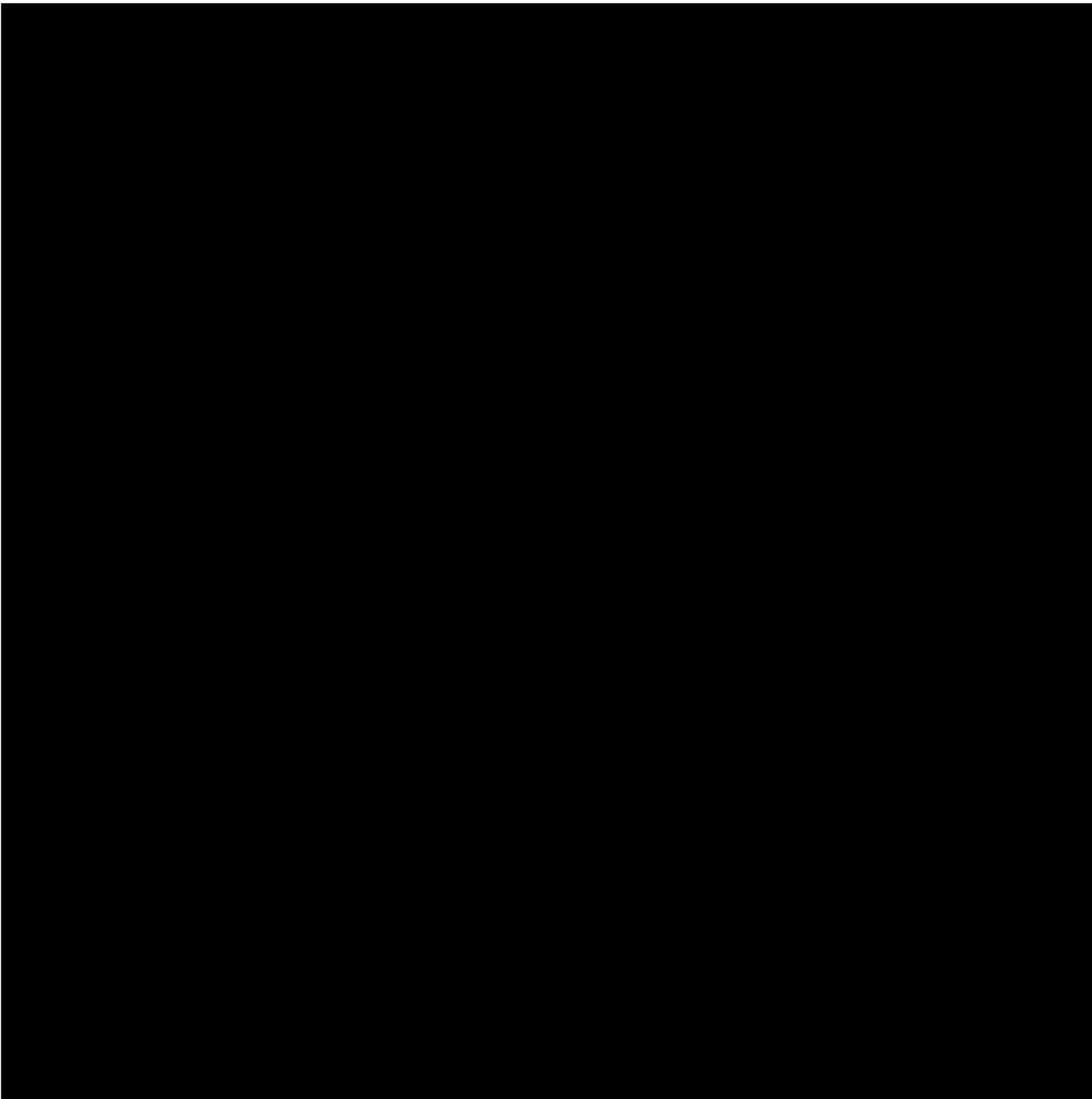
Schedule 12 – [not used]

Confidential

Schedule 13 – [not used]

Confidential

Schedule 14 – Ownership Schedule



Schedule 15 – Programming Requirements

1. The Delivery Phase Program

- (a) The Delivery Phase Program must be prepared in accordance with the detailed requirements set out in this Deed, including this Schedule, and otherwise in accordance with any other requirements reasonably requested by FACS.
- (b) For the purposes of this Schedule, terms not defined in clause 1 (*Definitions*) of this Deed are defined in the Program Milestones Schedule.
- (c) ServiceCo must prepare, implement, and update as required a Delivery Phase Program. The Delivery Phase Program must identify:
 - (i) in respect of each Site, timelines for:
 - A. [not used];
 - B. Development Consent Obtained;
 - C. Construction Commenced;
 - D. Service Readiness Milestones;
 - E. the critical path for the execution of the Delivery Phase Activities; and
 - F. the contingency allowed within the Delivery Phase Program for potential delays; and
 - (ii) ServiceCo's proposed Stages, to the extent known.

2. General requirements for the preparation of the Delivery Phase Program

2.1 Software system

- (a) ServiceCo must prepare the Delivery Phase Program by using a recognised specialist proprietary programming computer software system which has been approved in advance by FACS.
- (b) Any references to the provision of an electronic copy of a document produced by computer software means an electronic copy of that document in the format of the software in which the document was originally created or configured so as to allow the person to whom the electronic copy is provided to access and amend the information contained therein in the same manner as could the original creator(s) of that document.
- (c) Without limiting the general nature of this section 2, FACS approves the use of the proprietary computer software known as "Microsoft Project" (2010 or higher), produced by Microsoft Corporation.

3. Updating the Delivery Phase Program

3.1 Updates to the Delivery Phase Program

Without limiting clause 16.3 (*Program Milestones and Delivery Phase Program*) of this Deed, ServiceCo must update and submit to the FACS Representative for review in accordance with clause 10 (*Review of documents by FACS*) of this Deed, updates of the Delivery Phase Program to accurately reflect the progress of the Delivery Phase Activities at the following intervals:

- (a) within 20 Business Days of Commercial Close to reflect the date of Commercial Close and each Service Readiness Milestone Date;
- (b) quarterly, as a component of the Quarterly Delivery Report, to accurately reflect the actual status and any change in the progress of the Delivery Phase Activities (including any delays which have or may have occurred in respect of the progress of the Delivery Phase Activities) or any other changes to the activities, times, durations or other information contained in the Delivery Phase Program to accurately reflect the actual status and progress of the Delivery Phase Activities;
- (c) within five Business Days of:
 - (i) ServiceCo being granted relief from its obligation to achieve any Program Milestone by the relevant Milestone Date in accordance with clause 23 (*Delivery Phase – delay*) of this Deed; or
 - (ii) ServiceCo being directed to carry out a Variation in accordance with clause 26 (*Variations*) of this Deed;
- (d) within two Business Days of ServiceCo deciding to make any material changes to the information contained in the Delivery Phase Program; and
- (e) otherwise within five Business Days of any request by the FACS Representative at any time,

and such updates must comply with this Schedule and the other requirements of this Deed.

3.2 Content and format of updated Delivery Phase Program

- (a) ServiceCo must submit to FACS the updated Delivery Phase Program in the following forms:
 - (i) two paper copies (which must be submitted on an A1 size sheet reduced to A3 and appropriately time scaled across the sheet so as to be legible and to detail the sequence, duration and interaction of design, procurement and construction);
 - (ii) one electronic version in .pdf format; and
 - (iii) one electronic version in original, executable Microsoft Project file format or other software file format agreed between the parties.
- (b) The updated Delivery Phase Program must:
 - (i) clearly identify the percent complete and the remaining duration of each activity;

- (ii) clearly identify the activities that had started and which activities had finished during the reporting period and the dates on which those activities started and finished;
- (iii) be updated to the end of the previous reporting period using the software to record actual dates and the percent complete of activities;
- (iv) identify whether ServiceCo will not achieve any Service Readiness Milestone until after the relevant Service Readiness Milestone Date; and
- (v) incorporate and display the version of the Delivery Phase Program produced at the end of the previous reporting period as a baseline reflecting the actual status and progress of the Delivery Phase Activities.

Schedule 16 – Delivery Phase Plans and Reports

1. Purpose and background

- (a) The purpose of this Schedule is to set out in detail ServiceCo's obligations in respect of the Delivery Phase Plans and the Quarterly Delivery Report.
 - (b) In this Schedule, each individual plan, program, protocol, procedure, report or notification forming part of the Delivery Phase Plans and Reports is referred to as a "Plan".
-

2. General obligations

2.1 ServiceCo to provide Plans

ServiceCo must provide or update each Plan during the Delivery Phase:

- (a) so that it is in a form that is consistent with and builds upon Annexure A (Bid Design Deliverables) for those Delivery Phase Plans that relate to the delivery of a Service Package component;
- (b) so that it contains the content specified in the second column of the relevant table in this Schedule;
- (c) within the time period specified in the third column of the relevant table in this Schedule; and
- (d) using the delivery method specified by the FACS Representative from time to time by written notice to ServiceCo.

2.2 Quarterly Plans

Each Plan that is required to be provided on a quarterly basis must:

- (a) include the required information for that Quarter and on a cumulative basis in respect of the then current Financial Year; and
- (b) be accompanied by a statement of compliance with all relevant legal requirements and a listing of any related investigations, violations, citations by the Registrar or resulting resolutions which have occurred during that Quarter or subsequently up to the date of that Plan.

2.3 Annual Plans

Each Plan that is required to be provided on an annual basis must:

- (a) include the required information for that Operating Year; and
- (b) be accompanied by a statement of compliance with all relevant legal requirements and a listing of any related investigations, violations, citations by the Registrar or resulting resolutions which have occurred during that Operating Year or Financial Year (as relevant) or subsequently up to the date of that Plan.

Table 1 Quarterly Delivery Report

| Plan | Content of Plan | Time for provision |
|---------------------------|--|---|
| Quarterly Delivery Report | <p>The Quarterly Delivery Report must be in the form of Schedule 36 and include the following information:</p> <ol style="list-style-type: none"> 1. (ServiceCo report – overview): a written overview of the Delivery Phase Activities and the Service Package more generally; 2. (Program Milestones – level 1 reporting): <ol style="list-style-type: none"> 2.1 (summary of Program Milestones): summary overview of the Program Milestones at a Service Package level; 2.2 (ServiceCo Service Package risks): details of any 'significant issues' (being issues that ServiceCo has identified that will delay Program Milestones) and 'potential issues' (issues that may affect the Program Milestones being achieved); and 2.3 (progress in relation to Program Milestones): a summary of the key progress activities relating to the Program Milestones; 3. (Program Milestones – level 2 reporting): <ol style="list-style-type: none"> 3.1 (summary of Program Milestones): details of progress of the Delivery Phase Activities and compliance with the Delivery Phase Program at a 'site' level); and 3.2 (ServiceCo Service Package risks): details of any 'significant issues' (issues that will delay Program Milestones) and 'potential issues' (issues that may affect the Program Milestones being achieved); 4. (updated Delivery Phase Program): pursuant to section 3 of Schedule 15, a copy of the Delivery Phase Program updated in accordance with this Deed together with: <ol style="list-style-type: none"> 4.1 a summary of changes made to the Delivery Phase Program; 4.2 details of any changes of activities made to the Delivery Phase Program that are on the identified critical path; and 4.3 changes of activities that are not on the critical path; 5. (updated Delivery Plan): a copy of the updated Delivery Plan; 6. (Service Readiness preparation): a summary of the activities associated with Service Readiness, including the anticipated Dates for Service | Within five Business Days of the end of the relevant Quarter. |

| | | |
|--|--|--|
| | <p>Readiness (if known); and</p> <p>7. (other information): such other information reasonably requested by the FACS Representative.</p> | |
|--|--|--|

Table 2 Delivery Phase Plans

| Plan | Content of Plan | Time for provision |
|------------------------|--|--|
| WHS Management Plan | <p>The WHS Management Plan is contained in Annexure A (<i>Bid Design Deliverables</i>) of this Deed.</p> <p>The WHS Management Plan must:</p> <ol style="list-style-type: none"> 1. demonstrate how ServiceCo will comply with all WHS Legislation, including by reference to: <ol style="list-style-type: none"> (i) known hazards and risks in relation to the Relevant Infrastructure (including the Services); and (ii) ServiceCo's support measures; 2. describe how ServiceCo will ensure that all Subcontractors comply with the WHS Legislation; 3. describe the actions ServiceCo will take to address any risks or potential risks to the health and safety of people at the Relevant Infrastructure; and 4. cover each of the Delivery Phase and Service Delivery Phase. | <p>On or prior to the date of this Deed or as otherwise required by the FACS Representative during the Delivery Phase.</p> |
| Delivery Phase Program | <p>The Delivery Phase Program is contained in Annexure A (<i>Bid Design Deliverables</i>) of this Deed.</p> <p>ServiceCo must update the Delivery Phase Program in accordance with the Programming Requirements of this Deed.</p> | <p>On or prior to the date of this Deed and updated as required in accordance with the Programming Requirements.</p> |
| Delivery Plan | <p>The Delivery Plan is contained in Annexure A (<i>Bid Design Deliverables</i>) of this Deed.</p> <p>The Delivery Plan will provide the foundation for the contents of the Delivery Phase Program and must include the following information:</p> <ol style="list-style-type: none"> 1. delivery methodology: <ol style="list-style-type: none"> (i) approach to the delivery of the Delivery Phase Program; and (ii) governance processes to ensure that | <p>On or prior to the date of this Deed and updated in accordance with this Deed (including as part of the Quarterly Delivery Report).</p> |

| | | |
|----|---|--|
| | <p>the Program Milestones are monitored and achieved;</p> | |
| 2. | <p>identification of Subcontractors: identification of Subcontractor(s) integral to the delivery of the Delivery Phase Program;</p> | |
| 3. | <p>procurement and administration of Key Subcontracts and Development Documents: description of ServiceCo's approach to the procurement and administration of Key Subcontracts and Development Documents;</p> | |
| 4. | <p>program management: outline ServiceCo's approach to program and project scheduling, time management and program management;</p> | |
| 5. | <p>development and construction management:</p> <ul style="list-style-type: none"> (i) description of ServiceCo's approach to development and (where applicable) construction management; and (ii) description of ServiceCo's processes and procedures that guide development and (where applicable) construction management activities; | |
| 6. | <p>approach to Development Consents: approach to Development Consents and the strategy for obtaining such Development Consents for each Site;</p> | |
| 7. | <p>quality management: outline procedures to ensure quality assurance in the delivery of Sites and Service Package Dwellings to the Design Requirements and other applicable requirements of this Deed;</p> | |
| 8. | <p>stakeholder and communication management:</p> <ul style="list-style-type: none"> (i) identify key stakeholders and their interests during the Delivery Phase; (ii) identify the issues involved in the management of each stakeholder during the Delivery Phase as a result of unplanned events and the proposed approach to managing these issues; and (iii) identify proactive and reactive communication and media strategies, how these will be implemented, and processes and protocols that will be adopted to keep FACS informed; and | |
| 9. | <p>risk management:</p> <ul style="list-style-type: none"> (i) assess key risks associated with the implementation of the Delivery Phase and their likely impact on key Delivery Phase Activities and Program Milestones; (ii) assess key risks that underpin assumptions that have been made in relation to accessing Sites and Service Package Dwellings, including an assessment of relevant real estate | |

| | | |
|-------------------|---|---|
| | <p>markets and land and/or Dwelling availability; and</p> <p>(iii) outline appropriate risk mitigation strategies to address key risks and their potential impacts.</p> | |
| Mobilisation Plan | <p>The Mobilisation Plan is contained in Annexure A (<i>Bid Design Deliverables</i>) of this Deed.</p> <p>The Mobilisation Plan must:</p> <ol style="list-style-type: none"> 1. outline the activities that ServiceCo and its Key Subcontractors will undertake in order to mobilise in preparation for delivering the Services following the achievement of Service Readiness; 2. outline the key personnel that are (or will be) engaged in connection with the Service Package (including all of the Key People identified in the Contract Particulars) and their skills; 3. identify the capacity and capability of ServiceCo and relevant Key Subcontractors to undertake the Service Package; 4. identify the risks associated with mobilisation of personnel and how those risks will be mitigated; 5. identify the funding allocated to resourcing and ServiceCo's mobilisation activities; and 6. cover each of the Delivery Phase and the Service Delivery Phase. | <p>On or prior to the date of this Deed and updated in accordance with this Deed.</p> |

Schedule 17 – Service Delivery Phase Plans

1. Definitions

For the purposes of this Schedule, terms not defined in clause 1 (*Definitions*) of this Deed are defined in section 1 (*Definitions*) of the Services Specification.

2. Purpose and background

- (a) The purpose of this Schedule is to set out in detail ServiceCo's obligations in respect of the Service Delivery Phase Plans.
 - (b) In this Schedule, each individual plan, program, protocol, policy, procedure, strategy report or notification forming part of the Service Delivery Phase Plans is referred to as a "Plan".
-

3. General obligations

3.1 ServiceCo to provide Plans

ServiceCo must provide or update each Plan during the Service Delivery Phase:

- (a) so that it is in a form that is consistent with and builds upon Annexure B (Bid Services Deliverables) for those Service Delivery Phase Plans that relate to the delivery of a Service Package component;
- (b) so that it contains the content specified in the second column of the relevant table in this Schedule;
- (c) within the time period specified in the third column of the relevant table in this Schedule; and
- (d) using the delivery method specified by the FACS Representative from time to time, by written notice to ServiceCo.

3.2 Quarterly Plans

Each Plan that is required to be provided on a quarterly basis must:

- (a) include the required information for that Quarter and on a cumulative basis in respect of the then current Financial Year; and
- (b) be accompanied by a statement of compliance with all relevant legal requirements and a listing of any related investigations, violations, citations by the Registrar or resulting resolutions which have occurred during that Quarter, or subsequently up to the date of that Plan.

3.3 Annual Plans

Each Plan that is required to be provided on an annual basis must:

- (a) include the required information for that Operating Year; and
- (b) be accompanied by a statement of compliance with all relevant legal requirements and a listing of any related investigations, violations, citations by the Registrar or resulting resolutions which have occurred during that Operating Year or Financial Year (as relevant) or subsequently up to the date of that Plan.

4. Other reporting obligations

4.1 ServiceCo's other reporting obligations not affected

ServiceCo acknowledges that:

- (a) it is required by other parts of this Deed to provide certain plans, programs, protocols, policies, procedures, strategies, reports or notifications to FACS (including the Performance and Data Reporting Services);
- (b) it may also have obligations to FACS in respect of performance reporting, performance reviews and audits under a funding deed or other funding arrangement that it has entered into with FACS; and
- (c) failure to refer to any plan, program, protocol, policy, procedure, strategy, report, review, audit or notification within this Schedule does not affect those obligations.

4.2 Information submitted to Registrar

ServiceCo must provide to FACS a copy of all documents and information submitted by ServiceCo to a Registrar (including any Registrar not located in NSW) or the NSW Land and Housing Corporation within five Business Days of submitting that information, to the extent the documents or other information relate to the Service Package or this Deed.

5. Plans

Table 1 Service Delivery Phase Plans

| Plan | Content of Plan | Time for provision |
|--------------|---|---|
| Housing Plan | <p>At a minimum, the Housing Plan should include the following information:</p> <ol style="list-style-type: none"> 1. outline the resource allocation/personnel for the draw down of Applicants from the Housing Pathways shortlist in a manner that will enable ServiceCo to achieve the Target Turnaround Time; and 2. a timeline (which must be reasonable) of interface with potential Tenants and the local community, the proposed stakeholder engagement activities, including information to be provided to the local community and to the potential tenants (e.g. floor plan, facilities available including nearest public transport access points etc), the holding of information forums and walk throughs. | <p>In respect of each Stage, two months prior to the date on which ServiceCo reasonably expects to achieve Service Readiness in respect of that proposed Stage, and as otherwise required in accordance with this Deed or by the FACS Representative during the Service Delivery Phase.</p> |

| Plan | Content of Plan | Time for provision |
|---|---|---|
| | <p>As ServiceCo updates the Housing Plan in accordance with this Deed, this information must be set out on a Stage basis, as and when once each proposed Stage is known. At this time, ServiceCo must take into account the number of Service Package Dwellings to be tenanted in updating the information.</p> <p>The Housing Plan must also take into account all relevant requirements under this Deed, including, for example, clauses 13 (<i>Communications and Community Relations</i>) and 17.8 (<i>No Prior Occupancy</i>) of this Deed.</p> | |
| Affordable Housing Allocation Plan | <p>As a minimum, the Affordable Housing Allocation Plan should set out ServiceCo's proposed approach to allocating Affordable Housing to Tenants to meet FACS' objective of facilitating the transition of Social Housing Tenants to available Affordable Housing, where appropriate. The Affordable Housing Allocation Plan should include, at a minimum, the approach to:</p> <ol style="list-style-type: none"> 1. identifying, prioritising and allocating Social Housing Tenants who are eligible for Affordable Housing in accordance with the NSW Affordable Housing Guidelines; 2. allocation priority when Affordable Housing vacancies arise, including giving priority to those Social Housing Tenants (known to ServiceCo) who are able to transition. The Social Housing Tenants can be from within the Program or external to the program; and 3. filling Affordable Housing vacancies from elsewhere in a manner that complies with current Best Services Practice, in the event that no Social Housing Tenants are able to transition. | As required in accordance with this Deed or by the FACS Representative during the Service Delivery Phase. |
| Tailored Support Coordination Engagement Strategy | <p>As a minimum, the Tailored Support Coordination Engagement Strategy should include the following information:</p> <ol style="list-style-type: none"> 1. the activities or protocols for engaging with Tenants and Household Members who are reluctant or refuse to participate in all or part of the activities undertaken as part of the Tailored Support Coordination Services; and 2. the approach to responding to situations whereby the refusal of Tenants and Household Members to engage will significantly impact on the undertaking of the core activities of the Tailored Support Coordination Services, including timely | As required in accordance with this Deed or by the FACS Representative during the Service Delivery Phase. |

| Plan | Content of Plan | Time for provision |
|------|-----------------|--------------------|
|------|-----------------|--------------------|

reporting of any refusal to FACS.

Performance and Data Reporting Plan

As a minimum, the Performance and Data Reporting Plan should incorporate the following information:

1. an overview of the information management systems in respect of housing asset and client data that ServiceCo will use to comply with the Performance and Data Reporting requirements and whether these are compatible with the existing data systems within FACS (including CHIMES);
2. the proposed process for collecting, recording and maintaining all information required to comply with the Performance and Data Reporting requirements, including records on the Dwellings, Tenants and Household Members, Tenancies, outcomes and the general provision of the Services;
3. the process for transmitting the required data to FACS in accordance with the specified reporting requirements; and
4. how ServiceCo will address the requirements under the Privacy Legislation and Best Services Practices, where relevant.

As required in accordance with this Deed or by the FACS Representative during the Service Delivery Phase.

Site and Community Integration Management Plan

The Community Integration Management Plan should set out ServiceCo's proposed approach to managing Social Housing and Affordable Housing in an integrated community.

As a minimum this should include:

1. its approach to managing shared access to common areas and Supporting Infrastructure shared between Private, Social and Affordable Tenancies on a Site by Site basis;
2. where applicable, its proposed approach to delivering Asset Management Services and Tenancy Management Services with respect to mixed tenure developments and the management of Tenant interactions, including a description of the key risks associated with such developments and appropriate strategies to manage these risks;
3. its approach to managing tenancies in a manner that promotes community integration; and
4. in any proposed locations where there is

As required in accordance with this Deed or by the FACS Representative during the Service Delivery Phase.

| Plan | Content of Plan | Time for provision |
|--------------------------|--|---|
| | <p>an existing level of social disadvantage and/or social housing concentration, either at a Site level, or at a precinct or suburb level, its approach to managing Social Housing Tenancies so as to:</p> <ul style="list-style-type: none"> (i) not exacerbate the existing level of social disadvantage; and (ii) best facilitate achievement of the Target Outcomes. | |
| Reviewable Services Plan | <p>The Reviewable Services Plan must include:</p> <ol style="list-style-type: none"> 1. the methodology and approach ServiceCo will use with respect to Reviewable Services; 2. details on how the Reviewable Services regime will be implemented, updated and monitored; and 3. the assumptions and basis on which ServiceCo has priced the Reviewable Services for the first Reviewable Services Term, including: <ul style="list-style-type: none"> (i) details of relevant margins; (ii) details in respect of the allocation of responsibilities and risks between ServiceCo and Key Subcontractors in respect of the performance of the Reviewable Services; and (iii) the staffing profiles and shift patterns in respect of the performance of the Reviewable Services, including details of the number of full time equivalent positions involved in performing the Services, consistent with the Financial Model. | As required in accordance with this Deed or by the FACS Representative during the Service Delivery Phase. |

Confidential

Schedule 18 – Services Specification

The Services Specification sets out FACS' outcomes and requirements for the Program, including FACS' requirements for the Services comprised in the Service Package.

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1. Definitions

For the purposes of this Specification, the definitions in clause 1 (*Definitions*) of this Deed will apply as supplemented by the following definitions:

Aboriginal Housing Office Standards means the document titled 'Aboriginal Housing Office Standards for New Supply, New Acquisition and Repairs & Maintenance' issued by the Aboriginal Housing Office, as amended or replaced from time to time.

Affordable Housing Allocation Plan means the Service Delivery Phase Plan of that name.

Affordable Housing Rent means a rental amount determined in accordance with the NSW Affordable Housing Guidelines.

Annual Data Report means an annual submission prepared in compliance with the data requirements and reporting periods set out in section 6.5 and in Appendix D.

Annual Performance and Outcomes Report means the annual report prepared in compliance with the requirements of section 6.4 and Appendix F.

Apartment Design Guide means the document titled 'Apartment Design Guide' issued by the NSW Department of Planning and Environment, as amended or replaced from time to time.

Asset Performance Standards means the asset performance standards which ServiceCo must comply with as a Registered CHP (at the Tier applicable to ServiceCo) under the National Regulatory System.

Breach means that the Tenant has breached the Residential Tenancy Agreement.

Catastrophic Void means major structural and safety issues have arisen in relation to a Service Package Dwelling, which require either:

- (a) maintenance or a major maintenance update to that Dwelling; or
- (b) a rebuild of that Dwelling,

and those major issues were not brought about by an act or omission of ServiceCo or an Associate of ServiceCo.

Condition Survey means the condition survey undertaken in accordance with this Specification for each Service Package Dwelling to identify the maintenance required to meet the Asset Performance Standards.

CRA means Commonwealth Rent Assistance.

End of Tenancy means the Residential Tenancy Agreement has been terminated for any reason, including when:

- (a) the Tenant provides notice that they are vacating the Service Package Dwelling and provides vacant possession, including where ServiceCo relocates or transfers a Tenant, a Tenant mutually exchanges properties with another Tenant, or the Tenant is moving into private rental;
- (b) the Tenancy has been relinquished or an order for termination has been obtained, and a provisional lease or recognition as a Tenant will be granted;
- (c) the Tenant receives a final 'apprehended violence order' prohibiting them from access to their Service Package Dwelling;
- (d) the Tenant abandons the Service Package Dwelling;

- (e) the Tenant has passed away and ServiceCo has obtained vacant possession;
or
- (f) ServiceCo asks the Tenant to vacate the Service Package Dwelling, including where a Breach has occurred and ServiceCo has obtained an order for termination of the Tenancy and possession of the Service Package Dwelling, a three or six month fixed term or a provisional lease has ended, the Tenant is no longer eligible to live in the Service Package Dwelling following an eligibility review of a fixed term lease, the Tenant is on a continuous lease and they or their partner/spouse owns a Dwelling that they could live in or sell, or the Tenant rejects a final offer of alternative housing.

End of Tenancy Report has the meaning given in section 5.7.

Excess Subsidy Rebate has the meaning given in the Payment Schedule.

FACS Policies means those policies of FACS identified in Appendix A, as amended or replaced from time to time.

General Cohort Service Package means a Service Package which does not target any Specific Cohort.

Housing Pathways Transfer Policy means the document titled 'Transfer Policy' issued by FACS, as amended or replaced from time to time.

Key Performance Indicator or **KPI** means the indicators set out in Appendix C.

LGA means a local government area.

Livable Housing Design Guidelines means the document titled 'Livable Housing Design Guidelines' 2017 (fourth edition) issued by Livable Housing Australia, as amended or replaced from time to time.

Market Rent means the market rent for a Dwelling determined in accordance with the NSW Community Housing Rent Policy.

Maximum Turnaround Time means:

- (a) in respect of the first instance ServiceCo utilises a Service Package Dwelling in connection with the Service Package, 60 days from the Date of Service Readiness for the Stage in which that Service Package Dwelling is comprised;
and
- (b) in all other circumstances:
 - (i) 28 days for an Tenantable Dwelling; and
 - (ii) 35 days for an Untenantable Dwelling,

where the start date is the day after a Tenant vacates the relevant Dwelling.

Method of Measurement means methodologies to collect data for use in computation of the Outcomes Indicators.

National Construction Code means the document titled 'National Construction Code' 2016 issued by the Australian Building Codes Board, as amended or replaced from time to time.

National Regulatory Code Evidence Guidelines means the document titled 'National Regulatory Code Evidence Guidelines' issued by the National Regulatory System for Community Housing Directorate, as amended or replaced from time to time.

National Regulatory Code Registration's Return Guide means the document titled 'National Regulatory Code Registration's Return Guide' issued by the National Regulatory System for Community Housing Directorate.

NSW Affordable Housing Guidelines means the document titled 'NSW Affordable Housing Ministerial Guidelines' issued by FACS, as amended or replaced from time to time.

NSW Community Housing Access Policy means the document titled 'NSW Community Housing Access Policy' issued by FACS, as amended or replaced from time to time.

NSW Community Housing Eligibility Policy means the document titled 'NSW Community Housing Eligibility Policy' issued by FACS, as amended or replaced from time to time.

NSW Community Housing Rent Policy means the document titled 'NSW Community Housing Rent Policy' issued by FACS, as amended or replaced from time to time.

NSW Community Housing Water Charging Guidelines means the document titled 'NSW Community Housing Water Charging Guidelines' issued by FACS, as amended or replaced from time to time.

Outcomes Indicator means measures of how Tenants and Household Members are progressing towards, and whether they have achieved, the changes that are expected as a result of the Program for all and/or Specific Cohorts.

Performance and Data Reporting Plan means the Service Delivery Phase Plan of that name.

Performance Incident means a failure to meet any of the Key Performance Indicators.

Positive Exit means an End of Tenancy has occurred as the result of a Tenant initiated exit or provider initiated exit and the Tenant will be housed in:

- (a) private ownership or private rental in the period immediately after their tenancy has ended; or
- (b) Affordable Housing in the period immediately after their Social Housing tenancy has ended.

Program means Phase 2 of the Social and Affordable Housing Fund.

Quarterly Data Report means a quarterly submission prepared in compliance with the data requirements and reporting periods set out in section 6.5 and Appendix D.

Quarterly Performance Report has the meaning given in section 6.3.

Relevant Stakeholders means a person or an entity who has an interest in the Program.

ServiceCo Policies and Procedures has the meaning given to in section 4.2(b).

Single Storey Guidelines means the guidelines set out in Appendix I.

Social and Affordable Housing means:

- (a) Social Housing; and
- (b) Affordable Housing.

Social Housing Allocation Policies and Procedures has the meaning given in section 4.5.

Social Housing Eligibility and Allocations Policy Supplement means the document titled 'Social Housing Eligibility and Allocations Policy Supplement' issued by the NSW Government, as amended or replaced from time to time.

Specific Cohort means each of:

- (i) single older women; and
- (ii) people over the age of 55 without children living at home,

separately, or any combination of them, as the context requires.

State Environmental Planning Policy No 65 means the document titled 'State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Delivery (SEPP 65)' issued by the NSW Government, as amended or replaced from time to time.

State Environmental Planning Policy (Affordable Rental Housing) means the document titled 'State Environmental Planning Policy (Affordable Rental Housing)' issued by the NSW Government, as amended or varied from time to time.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) means the document titled 'State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004' issued by the NSW Government, as amended or varied from time to time.

Support Services means provision of social supports that are specific to addressing the needs and vulnerabilities of a Tenant or Household Member.

Tailored Support Coordination Engagement Strategy means the Service Delivery Phase Plan of that name.

Target Occupancy Date has the meaning given in section 2.5.

Target Outcomes means the outcomes specified in the SAHF Outcomes Measurement Framework described in Appendix E.

Target Turnaround Time means:

- (a) in respect of the first instance ServiceCo utilises the Service Package Dwelling in connection with the Service Package, 46 days from the Date of Service Readiness for the Stage in which that Service Package Dwelling is comprised; and
- (b) in all other circumstances:
 - (i) 14 days for a Tenantable Dwelling; or
 - (ii) 28 days for an Untenantable Dwelling,

where the start date is the day after a Tenant vacates the relevant Dwelling.

Tenancy means the occupation of a Service Package Dwelling under a Residential Tenancy Agreement.

Tenancy Policy Supplement means the document titled 'Tenancy Policy Supplement' issued by FACS, as amended or varied from time to time.

Tenancy Termination Code means the HOMES 'Tenancy Termination Reason' and 'Where Next Housed' codes set by FACS.

Tenant Cohort-Specific Service Package means a Service Package where all or part of the Service Package is delivered to the Specific Cohort(s) (as applicable).

Tenant Needs Assessment has the meaning given in section 5.2.

Tenant Needs Assessment Template means a template in the form of Appendix G, as amended (if at all) in accordance with section 5.8.

Tenant Needs Reassessment has the meaning given in section 5.3.

Tenant Satisfaction Survey has the meaning given in section 4.13.

Tenant Support Services Plan means a plan that satisfied the requirements of section 5.4.

Tenant Support Services Plan Template means a template in the form of Appendix H, as amended (if at all) in accordance with section 5.8.

Tenantable means that an unoccupied Service Package Dwelling can be ready for occupation by a Tenant within seven days of the exit of the previous Tenant, taken to be where a Service Package Dwelling:

- (a) requires no work or minor maintenance work only in that seven day period, for example, re-hanging a kitchen cupboard; or
- (b) is new (within the seven day period commencing on the day that the occupancy certificate is issued),

irrespective of whether:

- (c) it is difficult to secure Tenants for that Dwelling, because it is geographically isolated or there are a lack of suitable Tenants; or
- (d) the Dwelling is in a domicile that is occupied by more than one household.

Transition Readiness Assessment has the meaning given in section 4.7(b).

Turnaround Time means the period of time between a Tenant exiting a Service Package Dwelling and another Tenant commencing occupation of that Service Package Dwelling.

Under-Occupancy has the meaning given in the Housing Pathways Transfer Policy.

Untenantable means that an unoccupied Service Package Dwelling cannot be ready for occupation by a Tenant within seven days of the exit of the previous Tenant, taken to be where a Dwelling requires moderate maintenance work (including, but not limited to, painting the walls, re-carpeting, refitting the kitchen or bathroom) and that work has to be deferred or otherwise cannot be completed within that seven day period, irrespective of whether:

- (a) it is difficult to secure Tenants for that Dwelling, because it is geographically isolated or there is a lack of suitable Tenants; or
- (a) the Dwelling is in a domicile that is occupied by more than one household, but excluding where a Catastrophic Void has occurred.

2. Accommodation Services

2.1 Key outcomes

ServiceCo must deliver the following Accommodation Services outcomes:

- (a) Accommodation Services are delivered that are new to the social and affordable housing sector. This may include Accommodation Services delivered through:
 - (i) new Dwellings constructed for the Program;
 - (ii) existing Dwellings (or other buildings) that have been re-configured and/or redeveloped for use in connection with the Program; or
 - (iii) Dwellings acquired or leased from the private market for the Program,

to provide the net increase in Social and Affordable Housing capacity;

- (b) quality Accommodation Services have been provided that meet the diverse needs of Tenants and Household Members and the Target Outcomes;
- (c) Tenants' changing housing needs are responded to fairly and flexibly; and
- (d) Tenants and Household Members' are satisfied with the Accommodation Services.

2.2 Dwelling design

2.2.1 Design Requirements

- (a) ServiceCo must:
 - (i) in respect of each Stage, ensure that the proportion of Service Package Dwellings in that Stage that meet (or exceed) the 'silver level' of the Livable Housing Design Guidelines, is equal to or greater than the proportion of Service Package Dwellings specified to meet the 'silver level' in section 1 of the Dwellings Schedule;
 - (ii) ensure that each Service Package Dwelling complies with other relevant industry standards and relevant Laws that apply to that Service Package Dwelling including, but not limited to:
 - A. the National Construction Code;
 - B. State Environmental Planning Policy No 65;
 - C. the Apartment Design Guide; and
 - D. local government Laws and Laws in relation to planning and environment,in each case, as each such standard or equivalent standard was current at the time of construction of the Service Package Dwelling; and
 - (iii) ensure that a Service Package Dwelling complies with the Single Storey Guidelines to the extent those Guidelines apply to that Service Package Dwelling; and
 - (iv) ensure that all Service Package Dwellings that it makes available are Fit For Purpose in accordance with section 2.6.
- (b) The requirements in section 2.2.1(a)(ii)(C) apply to all Service Package Dwellings that consist of more than one level, including those that are not apartments.

2.2.2 Other requirements

- (a) ServiceCo must comply with:
 - (i) all National Regulatory System requirements in respect of 'housing assets'; and
 - (ii) to the extent that it applies to a Service Package Dwelling, the State Environmental Planning Policy (Affordable Housing Policy).

- (b) To the extent ServiceCo has identified a Specific Cohort, the Service Package Dwellings made available to a Tenant from that Specific Cohort must be suitable and comply with all relevant industry standards, including but not limited to, where Service Package Dwellings are occupied by Aboriginal people, the Aboriginal Housing Office Standards.

2.3 Social Housing tenancy mix

ServiceCo must ensure that a minimum of [REDACTED] of Tenants in Service Package Dwellings (that have achieved Service Readiness) are Social Housing Tenants.

2.4 Affordable Housing integration

ServiceCo must ensure that Affordable Housing is incorporated into the Service Package in a manner consistent with the Target Outcomes, facilitating the transitioning out of Social Housing.

2.5 Utilisation of Service Package Dwellings

- (a) Subject to clause 24.5(a)(ii)(B) (*Continue to provide Services*) of this Deed, ServiceCo must provide the Services (other than the Tailored Support Coordination Services) from the Service Package Dwellings identified in section 3 of the Dwellings Schedule.
- (b) ServiceCo must maximise the utilisation of Service Package Dwellings at all times.
- (c) Subject to section 2.5(e), ServiceCo must:
 - (i) endeavour to meet the applicable Target Turnaround Time for a Service Package Dwelling; and
 - (ii) notwithstanding section 2.5(b), ensure that the Turnaround Time for a Service Package Dwelling does not exceed the applicable Maximum Turnaround Time.
- (d) Where the Turnaround Time for a Dwelling exceeds the applicable Target Turnaround Time but does not exceed the applicable Maximum Turnaround Time, ServiceCo must provide an explanation for exceeding the applicable Target Turnaround Time to the FACS Representative in accordance with section 6.3.
- (e) Sections 2.5(a) to 2.5(d) do not apply in the event of a Catastrophic Void. If a Catastrophic Void occurs, ServiceCo must notify the FACS Representative immediately and provide to the FACS Representative a plan for rectifying the situation. The plan must include a 'Target Occupancy Date' which is the date by which the Service Package Dwelling will be occupied by a Tenant (**Target Occupancy Date**).
- (f) The FACS Representative will determine (acting reasonably) whether the Target Occupancy Date proposed by ServiceCo pursuant to section 2.5(e) is reasonable, and notify ServiceCo of its determination. If the FACS Representative does not consider that the Target Occupancy Date is reasonable, it will stipulate the Target Occupancy Date and the plan will be deemed to be amended accordingly.
- (g) Nothing in section 2.5(e) will limit or otherwise affect the obligations of ServiceCo under clause 24 (*Service Delivery Phase – Intervening Events*) of this Deed.

2.6 Fit For Purpose

ServiceCo must ensure that at all times on and from the Date of Service Readiness in respect of a Stage until the end of the Term the Relevant Infrastructure in respect of that Stage will:

- (a) be Fit For Purpose by reference to the purposes, function, uses and requirements which apply as at the Date of Service Readiness; and
- (b) comply with:
 - (i) all applicable Laws; and
 - (ii) all applicable Policies.

2.7 Number and location of Service Package Dwellings

ServiceCo must:

- (a) make available the number of Service Package Dwellings specified in section 1 of the Dwellings Schedule as Social and Affordable Housing, for use as Social and Affordable Housing, in accordance with this Specification and the Services Deed;
- (b) in respect of Service Package Dwellings it makes available under section 2.7(a), ensure that it meets the bedroom configurations in section 1 of the Dwellings Schedule on the earlier of the Date of Service Readiness for the last Stage to achieve Service Readiness and the Service Readiness Milestone Date occurring on the third anniversary of Commercial Close as extended in accordance with this Deed; and
- (c) locate Service Package Dwellings in accordance with sections 2 or 3 (as applicable) of the Dwellings Schedule, other than in respect of any alternative accommodation used in connection with Replacement Services.

3. Asset Management Services

3.1 Key outcomes

ServiceCo must deliver the following Asset Management Services outcomes:

- (a) a pro-active asset management strategy;
- (b) effective provision of responsive repairs to maintain Tenant and Household Members' safety and security and the functionality and amenity of the Service Package Dwellings;
- (c) effective management of responsive maintenance services promptly following the occupancy of the Service Package Dwellings, particularly with regard to multiple dwellings Sites;
- (d) effective scheduling of responsive and planned maintenance in response to ongoing Condition Surveys and assessment activity;
- (e) responsive management of the relationship with Tenants and Household Members, particularly in relation to sensitivity to Tenant and Household Members' needs and characteristics and respect for privacy;

- (f) Tenants and Household Members are satisfied with the Asset Management Services;
- (g) protocols, policies and procedures have been prepared, updated and implemented so as to effectively operationalise the intent of relevant FACS Policies; and
- (h) out of hours service is provided for emergency repairs.

3.2 Asset Maintenance Plan

ServiceCo must prepare, implement, document, update and at all times comply with an 'Asset Maintenance Plan' in respect of the Service Package in accordance with the Housing Assets Performance Outcomes in the National Regulatory Code Evidence Guidelines.

3.3 Condition Survey

ServiceCo must undertake a Condition Survey in accordance with the Housing Assets Performance Outcomes in the National Regulatory Code Evidence Guidelines with the additional requirements that:

- (a) the Condition Survey includes an assessment of the Service Package Dwellings in accordance with the Asset Performance Standards;
- (b) where ServiceCo manages other properties outside of the Program, the Condition Survey must clearly identify Service Package Dwellings (that is the Dwellings within the Program); and
- (c) the results of the Condition Survey must be reported to the FACS Representative in accordance with section 6.4.

4. Tenancy Management Services

4.1 Key outcomes

ServiceCo must deliver the following Tenancy Management Services outcomes:

- (a) high quality, fair, transparent, responsive and accessible Tenancy Management Services have been provided, and tailored to the diverse needs of Tenants and Household Members and the Target Outcomes;
- (b) an effective and accessible point of contact has been developed for Applicants, Tenant and Household Member;
- (c) the rights and entitlements of Tenants and Household Members (including under any Residential Tenancy Agreements) have been fully maintained, and the obligations of Tenants are enforced;
- (d) Applicants', Tenants' and Household Members' privacy and confidentiality have been maintained and preserved;
- (e) Tenants' and Household Members' changing housing needs are responded to fairly and flexibly;
- (f) Tenants and Household Members are satisfied with the Tenancy Management Services;

- (g) Tenancy Management Services are delivered in a culturally appropriate manner and are consistent with good practice principles for working with Aboriginal people; and
- (h) protocols, policies and procedures are prepared, updated and implemented so as to effectively operationalise the intent of relevant FACS Policies.

4.2 Application of housing policies

- (a) ServiceCo must provide the Tenancy Management Services in accordance with:
 - (i) all FACS Policies and new FACS Policies that FACS introduces from time to time as directed by the FACS Representative; and
 - (ii) the National Regulatory Code and other state or national standards that apply to Registered CHPs and the Service Package Activities.
- (b) ServiceCo must implement its own policies and procedures in accordance with sections 4.5, 4.7, 4.8, 4.9, 4.12 and 4.13 (**ServiceCo Policies and Procedures**).

4.3 Changes to housing policies

ServiceCo must ensure that throughout the Term it updates the ServiceCo Policies and Procedures to reflect the FACS Policies and complies with those updated ServiceCo Policies and Procedures.

4.4 Residential Tenancy Agreements

ServiceCo must enter into, or ensure that a Key Subcontractor providing Tenancy Management Services enters into, a Residential Tenancy Agreement with each Tenant in accordance with the requirements of the *Residential Tenancies Act 2010* (NSW).

4.5 Social Housing allocation

- (a) Notwithstanding any other provision in this Services Specification, ServiceCo must only allocate Social Housing to Applicants who meet the eligibility requirements established by the NSW Community Housing Eligibility Policy.
- (b) ServiceCo must only make offers of Social Housing to Applicants.
- (c) ServiceCo must develop, implement and update its own social housing allocation policies and procedures which must be consistent with:
 - (i) the requirements of the NSW Community Housing Eligibility Policy; and
 - (ii) the requirements of the NSW Community Housing Access Policy,**(Social Housing Allocation Policies and Procedures)**.
- (d) In allocating housing to Applicants, ServiceCo must comply with the Housing Pathways Policies, with the following additional requirements:
 - (i) where ServiceCo has a Tenant Cohort Specific Service Package, it:
 - A. must not use restrictions or bypass codes to make offers to Applicants other than those used for the applicable Specific Cohort(s); and

- B. if section 4.5(e)(ii) applies, must not use the restrictions or bypass codes used for the applicable Specific Cohort for which there is not a sufficient number of Applicants on the NSW Housing Register;
 - (ii) where ServiceCo has a General Cohort Service Package, it must not use restrictions or bypass codes to target a Specific Cohort;
 - (iii) where ServiceCo has a 'Local Allocation Plan' as part of its Social Housing Allocation Policies and Procedures, the Local Allocation Plan must be:
 - A. developed in accordance with section 4.5(c);
 - B. fair and non-discriminatory; and
 - C. developed and implemented in a manner that does not:
 - 1) where ServiceCo has a Tenant Cohort Specific Service Package, systematically bypass the Specific Cohort(s); and
 - 2) where ServiceCo has a General Cohort Service Package, systematically target one or more Specific Cohorts.
- (e) Where ServiceCo is delivering a Tenant Cohort-Specific Service Package it must:
 - (i) provide:
 - A. [REDACTED] Service Package Dwellings to Applicants who are single older women; and
 - B. [REDACTED] dwellings for Applicants aged over 55 without children living at home,

from the Specific Cohort; and
 - (ii) to the extent there is not a sufficient number of Applicants on the NSW Housing Register from the Specific Cohort, Social Housing must be allocated to other Applicants in accordance with sections 4.5(a), 4.5(b) and 4.5(d).
- (f) Without limiting section 4.5(e) and clause 26.1(c) (*Omitted Service Package Activities*) of this Deed, where a Service Package Dwelling is vacant and there are no Appropriate Applicants for that Service Package Dwelling, ServiceCo must:
 - (i) notify FACS in writing that the Service Package Dwelling is vacant and that there are no Appropriate Applicants for that Service Package Dwelling;
 - (ii) advise FACS of its proposed mitigation strategy in respect of the vacant Service Package Dwellings (which must include all reasonable steps to mitigate the effect of the vacancy); and

- (iii) meet with FACS within 10 Business Days to discuss and agree its mitigation strategy in respect of the vacant Service Package Dwelling,

in which case, the vacancy will not cause a Service Provision Performance Incident, provided that ServiceCo complies with the mitigation strategy agreed under paragraph (iii).

- (g) To the extent that ServiceCo complies with section 4.5(f):
 - (i) ServiceCo will be entitled to relief from any Service Failure which would otherwise be triggered by the operation of that mitigation strategy; and
 - (ii) the Monthly Service Payment is reduced to the extent that the mitigation strategy produces a net income for ServiceCo.

4.6 Affordable Housing allocation

ServiceCo must allocate Affordable Housing in accordance with:

- (a) the NSW Affordable Housing Guidelines; and
- (b) the Affordable Housing Allocation Plan.

4.7 Transition Readiness Assessment

- (a) ServiceCo must identify:
 - (i) Social Housing Tenants who may be ready to transition to paying rent amounts that are more consistent with Market Rent or Affordable Housing Rent in accordance with this section 4.7; or
 - (ii) Affordable Housing Tenants who may be ready to transition to paying Market Rent.
- (b) ServiceCo must conduct annual Tenant Transition Readiness Assessments. To meet this requirement, ServiceCo must:
 - (i) review each Tenant's rent and income in accordance with the applicable rent review requirements for Social Housing and Affordable Housing under the NSW Community Housing Rent Policy or the NSW Affordable Housing Guidelines;
 - (ii) where a Social Housing Tenant has been assessed as no longer meeting the maximum Social Housing income eligibility limit in accordance with the Tenancy Policy Supplement, ServiceCo must undertake an assessment of the Tenant's capacity to pay and sustain rent that is more consistent with Market Rent or Affordable Housing Rent for the relevant Service Package Dwelling. Any such assessment must consider all information obtained through the Transition Readiness Assessment, any recent rent and income review, the Tenant Needs Assessment and the Tenant Needs Reassessment; and
 - (iii) where a Social Housing Tenant has been assessed as both no longer being entitled to a Social Housing rent subsidy and capable of paying and sustaining rent more consistent with Market Rent or Affordable Housing Rent for the relevant Service Package Dwelling,

ServiceCo must review the Tenant's eligibility in accordance with the applicable eligibility requirements for Social Housing under the NSW Community Housing Eligibility Policy.

- (c) Where an Affordable Housing Tenant has been assessed as no longer meeting the relevant maximum eligibility income limit under the NSW Affordable Housing Guidelines, such Tenant will no longer be classified as an Affordable Housing Tenancy for the purposes of the Service Package and ServiceCo must use reasonable endeavours to transition the Tenant into alternate private accommodation and end the Tenancy at the earliest time permitted under:
- A. the *Residential Tenancies Act 2010 (NSW)* and the *Residential Tenancy Regulation 2010 (NSW)*;
 - B. the terms of the relevant Residential Tenancy Agreement; and
 - C. relevant FACS Policies.
- (d) Where a Social Housing Tenant is assessed as no longer meeting the Social Housing eligibility criteria under section 4.7(b)(iii), ServiceCo must use reasonable endeavours to transition the Tenant into alternate accommodation or rent settings that are consistent with the outcome of the assessment undertaken in section 4.7(b)(ii), including:
- (i) transitioning the Tenant to an Affordable Housing Tenancy while allowing the Tenant to remain housed in the same Service Package Dwelling he or she was originally allocated, in which case the Tenant will be classified as an Affordable Housing Tenant for the purposes of the Service Package; and
 - (ii) transitioning the Tenant and relevant Household Members to alternative affordable housing or private housing accommodation, available outside of the Service Package, and end the Tenancy at the earliest time permitted under:
 - A. the *Residential Tenancies Act 2010 (NSW)* and the *Residential Tenancy Regulation 2010 (NSW)*;
 - B. the terms of the relevant Residential Tenancy Agreement; and
 - C. relevant FACS Policies.
- (e) Notwithstanding its obligations under this section, if ServiceCo is unable to effect a Tenant transition as described in section 4.7(d)(i) or 4.7(d)(ii), each affected Tenant will be classified as a Retained Social Housing Tenant for the purposes of the Service Package:
- (i) at the time any applicable rent change comes into effect; or
 - (ii) 60 days after the completion of the Tenant Transition Readiness Assessment,
- whichever occurs earliest.

4.8 Rent

ServiceCo must:

- (a) ensure that any rent charged in respect of a Service Package Dwelling to:
 - (i) a Social Housing Tenant (including a Retained Social Housing Tenant) is in accordance with the Community Housing Rent Policy; and
 - (ii) an Affordable Housing Tenant is in accordance with the Community Housing Rent Policy and the Affordable Housing Guidelines;
- (b) repay FACS any amount calculated in accordance with the Excess Subsidy Rebate in section 7 (*Excess Subsidy Rebate*) of the Payment Schedule;
- (c) develop, implement and update a rent policy which is consistent with the requirements of the Community Housing Rent Policy, the Affordable Housing Guidelines and sections 4.7 and 4.8(b); and
- (d) conduct a rent and income review for each Tenant:
 - (i) within 12 months of that Tenant signing a Residential Tenancy Agreement;
 - (ii) within 12 months of that Tenant's preceding Transition Readiness Assessment; or
 - (iii) at the frequency required by the NSW Community Housing Rent Policy or NSW Affordable Housing Guidelines (as applicable),

whichever occurs earliest.

4.9 Tenant complaints and appeals

ServiceCo must develop, implement and update its own Tenant complaints and appeals policies and procedures which must be compliant with the requirements under the Tenant and Housing Services Performance Outcome in the National Regulatory Code Evidence Guidelines.

4.10 Tenant evictions

- (a) Any evictions by ServiceCo or a Key Subcontractor providing Tenancy Management Services (as applicable) under section 90 and section 91 of the *Residential Tenancies Act 2010* (NSW) as amended by section 154 (or any equivalent provisions that replace them) must be signed off by ServiceCo at the CEO level or by a delegated senior member of staff.
- (b) ServiceCo must, and must ensure that any Key Subcontractor providing Tenancy Management Services (where applicable) must, exercise extra care to ensure that termination is appropriate. The NSW Community Housing Access Policy, under section 4.4 "Termination of resident and tenancy agreements", provides further guidance on termination under section 85 of the *Residential Tenancies Act 2010* (NSW).

4.11 Tenancy exits

ServiceCo must facilitate Positive Exits from Social Housing and Affordable Housing where appropriate through active engagement and Tailored Support Coordination Services, including provision of tenancy references to enable access to private rental properties.

4.12 Tenant engagement

ServiceCo must develop, implement and update and at all times comply with a 'Tenant Engagement Protocol' which must be compliant with the requirements under the Tenant and Housing Services Performance Outcome in the National Regulatory Code Evidence Guidelines.

4.13 Tenant Satisfaction Survey

- (a) ServiceCo must undertake a Tenant Satisfaction Survey in accordance with the Tenant and Housing Services Performance Outcomes in the National Regulatory Code Evidence Guidelines with the following additional requirements:
 - (i) the Tenant Satisfaction Survey must be undertaken annually;
 - (ii) the Tenant Satisfaction Survey must only assess the Tenants' satisfaction with respect to service quality KPIs 201 to 204 in Appendix C;
 - (iii) the results of the Tenant Satisfaction Survey must clearly identify Tenants' responses with respect to section 4.13(a)(ii) and be quarantined from any responses relating to other properties managed by ServiceCo outside of the Program; and
 - (iv) the results of the Tenant Satisfaction Survey must be reported to the FACS Representative in accordance with section 6.4.
- (b) To be considered valid, a Tenant Satisfaction Survey's response and return rate must be equal to or exceed the thresholds set out in the 'Tenancy Management Metrics' section of the National Regulatory Code Registration's Return Guide.

5. Tailored Support Coordination Services

5.1 Key outcomes

ServiceCo must deliver the following Tailored Support Coordination Services outcomes:

- (a) facilitated access to quality supports, opportunities or Support Services has been provided to Tenants and Household Members, with the intensity of Tailored Support Coordination Services provided by ServiceCo being tailored to their diverse needs and Target Outcomes, whilst providing Tenants and Household Members a choice of support provider;
- (b) Tenants and Household Members are satisfied with the Tailored Support Coordination Services;
- (c) Tenants and Household Members have been appropriately assessed and assisted to access appropriate supports, opportunities and Support Services;

- (d) Tailored Support Coordination Services are delivered in a culturally appropriate manner and are consistent with good practice principles for working with Aboriginal people; and
- (e) effective arrangements have been established with NSW Government agencies and non-government organisations to provide supports, opportunities and Support Services to Tenants and Household Members.

5.2 Tenant Needs Assessments

- (a) ServiceCo must undertake an assessment of each Tenant and related initial Household Member within six weeks of that Tenant signing a Residential Tenancy Agreement (**Tenant Needs Assessment**).
- (b) ServiceCo must undertake a Tenant Needs Assessment of each new Household Member within six weeks of ServiceCo approving that person as an additional occupant of the relevant Service Package Dwelling.
- (c) The Tenant Needs Assessment must be undertaken in accordance with and recorded in the form of the Tenant Needs Assessment Template in Appendix G.
- (d) Where a Household Member is under the age of 12 years, ServiceCo must undertake that person's Tenant Needs Assessment in conjunction with the Tenant Needs Assessment of the person that has parental responsibility or is the carer or legal guardian (as applicable) for that Household Member, unless specific special needs, safety issues or other identified risks warrant that ServiceCo undertakes a separate Tenant Needs Assessment for the person.

5.3 Tenant Needs Reassessment

- (a) At a minimum, ServiceCo must undertake a follow up assessment (**Tenant Needs Reassessment**) for each Tenant and related Household Member within 12 months of the date of the most recent Tenant Needs Assessment or preceding Tenant Needs Reassessment, whichever occurs earlier.
- (b) ServiceCo must undertake a Tenant Needs Reassessment for any Tenant and related Household Members in the event that an unforeseen circumstance occurs that has a significant impact on that Tenant's ability to progress toward the Target Outcomes, within six weeks of being notified of such circumstance.
- (c) The Tenant Needs Reassessment must be carried out in accordance with the requirements set out in section 5.2(c).
- (d) Where a Household Member is under the age of 12 years, ServiceCo must undertake that person's Tenant Needs Reassessment in conjunction with the Tenant Needs Reassessment of the person that has parental responsibility or is the carer or legal guardian for that Household Member (as applicable), unless specific special needs, safety issues or other identified risks warrant that ServiceCo undertakes a separate Tenant Needs Reassessment for the person.

5.4 Tenant Support Services Plan

- (a) Subject to section 5.4(b), ServiceCo must develop and implement a Tenant Support Services Plan for each Tenant and related initial Household Member within 12 weeks of the Tenant signing a Residential Tenancy Agreement. The contents of the Tenant Support Services Plan should be client focused, developed in collaboration with the individual and tailored to the needs and goals of the Tenant and Household Members.

- (b) ServiceCo must develop and implement a Tenant Support Services Plan for each new Household Member within 12 weeks of ServiceCo approving that person as an additional occupant of the relevant Service Package Dwelling.
- (c) The Tenant Support Services Plan requires the agreement of the Tenant or Household Member to which it relates. Where a Tenant Support Services Plan relates to a Household Member whose ability to provide agreement is inhibited, the person having parental responsibility or that is the carer or guardian for that Household Member (as applicable) may provide agreement on their behalf for the purposes of this section 5.4(c).
- (d) The Tenant Support Services Plan must be undertaken in accordance with and recorded in the form of the Tenant Support Services Plan Template in Appendix H.
- (e) ServiceCo must ensure that each Tenant Support Services Plan is updated annually as a minimum, and in any event within six weeks after:
 - (i) a Tenant Needs Assessment (or a Tenant Needs Reassessment) is carried out;
 - (ii) new information is provided by the relevant Tenant or Household Members; or
 - (iii) any unforeseen circumstances (of the nature described in section 5.3(b)) affecting the Tenant or a Household Member occurs.
- (f) Where a Household Member is under the age of 12 years, ServiceCo must:
 - (i) develop and implement that person's Tenant Support Services Plan in conjunction with the Tenant Support Services Plan of the person having parental responsibility or that is the carer or legal guardian (as applicable) for that Household Member, unless specific special needs, safety issues or other identified risks warrant that ServiceCo develop a separate Tenant Support Services Plan for the person; and
 - (ii) seek agreement of the Tenant Support Services Plan from the person having parental responsibility or the carer or legal guardian (as applicable) for the relevant Household Member.

5.5 Facilitating access to Support Services

- (a) ServiceCo must ensure that throughout the Term it identifies, facilitates and records referrals to appropriate Support Services for Tenants and Household Members.
- (b) ServiceCo must ensure that the record keeping incorporates (at a minimum):
 - (i) details of the Support Services the Tenant or Household Members have been referred to by ServiceCo;
 - (ii) any information on the status of a referral, including whether the Tenant or Household Member has experienced any delay accessing the Support Service;
 - (iii) alternate referrals or key actions for unfulfilled referrals;

- (iv) explanations for rejections, delays or other incidents that prevent Tenants or Household Members accessing the referred Support Service; and
- (v) feedback on Support Service providers from ServiceCo, Tenants or Household Members.

5.6 Tailored Support Coordination Engagement Strategy

ServiceCo must develop, implement and comply with the Tailored Support Coordination Engagement Strategy.

5.7 End of Tenancy Reports

- (a) ServiceCo must provide an End of Tenancy Report:
 - (i) for each Tenant and related Household Member (where practicable) who transitions out of a Service Package Dwelling when a Tenancy ends, in which case the report must be completed prior to the Dwelling being allocated to a new Tenant; and
 - (ii) for each Tenant or related Household Member (where practicable) who transitions out of a Service Package Dwelling without the Tenancy ending, in which case the report must be completed within six weeks of ServiceCo first becoming aware of the transition.
- (b) Subject to section 5.7(c), the End of Tenancy Report must:
 - (i) as a minimum ascertain and record the key circumstance of the transition (which may or may not be linked to an End of Tenancy) and where the Tenant or Household Member is next housed in accordance with FACS' Tenancy Termination Codes:
 - A. a 'sub-reason' should be included as a 'where next housed' code to differentiate Affordable Housing; and
 - B. 'sub-reasons' may be developed in addition to FACS' Tenancy Termination Codes provided the core structure of those codes remains unchanged;
 - (ii) record any changes to the status of the Tenant or Household Member since the last Tenant Needs Assessment or Tenant Needs Reassessment, including:
 - A. employment;
 - B. education;
 - C. level of educational attainment; and
 - D. safety and risk.
 - (iii) record any additional relevant information regarding the key circumstances of the Tenant or Household Member in transition, including when the 'Other' Tenancy Termination Code has been used.
- (c) In circumstances where ascertaining the information in section 5.7(b) directly from a Tenant or Household Member is not possible including when:

- (i) the Tenant or Household Member is deceased or incapacitated;
- (ii) a Tenant or Household Member has abandoned the Service Package Dwelling without notice; or
- (iii) the Tenant does not comply fully with tenancy end procedures,

ServiceCo must use reasonable endeavours to complete the End of Tenancy Report using alternate information sources (including drawing on ServiceCo employees knowledge where necessary).

5.8 Updates to template documents

- (a) If either party wishes to amend the Tenant Support Services Plan Template or the Tenant Needs Assessment Template:
 - (i) that party must notify the other party of such and, subject to section 5.8(b), the parties must discuss the proposed amendments to the relevant document; and
 - (ii) if the parties agree to any amendments to a document, ServiceCo must update the document accordingly and use that updated document for the purposes of its obligations under this section 5.
- (b) The parties may meet once prior to the first Date of Service Readiness and up to once each Operating Year thereafter for the purposes of section 5.8(a).

6. Performance and Data Reporting

6.1 Key outcomes

ServiceCo must deliver the following Performance and Data Reporting outcomes:

- (a) accurate and timely reporting of performance monitoring and data collection requirements in the format specified by FACS; and
- (b) Tenants' privacy and confidentiality have been maintained and preserved.

6.2 Performance and Data Reporting Plan

ServiceCo must implement the Performance and Data Reporting Plan, which describes how it will implement the Performance and Data Reporting requirements as set out in this section 6.

6.3 Quarterly Performance Report

- (a) ServiceCo must submit a Quarterly Performance Report for every quarter of the Operating Year.
- (b) For those Key Performance Indicators specifying a quarterly reporting period as set out in Appendix C, the Quarterly Performance Report must specify the following information and the number of incidents reported to or identified by ServiceCo within each Quarter during an Operating Year, including:
 - (i) the number of repeat Performance Incidents reported over successive Quarters;
 - (ii) the number of Performance Incidents including:

- A. the unique incident number;
 - B. the nature of the Performance Incident; and
 - C. the date of the Performance Incident if applicable;
- (iii) information in relation to Turnaround Times that exceeded the Target Turnaround Times (but were within the Maximum Turnaround Times) in accordance with section 2.5(d);
 - (iv) the proportion of Tenants that are Social Housing Tenants as at the end of the relevant Quarter; and
 - (v) any other information reasonably required by the FACS Representative to assess the performance of ServiceCo.
- (c) In respect of KPI 303, 304 and 305, FACS recognises that the obligations of ServiceCo underpinning these KPIs require the cooperation of, and voluntary participation from, Tenants and Household Members. On this basis:
 - (i) if a Tenant Needs Assessment or a Tenant Needs Reassessment was conducted, or a Tenant Support Services Plan developed, outside of the timeframes stipulated in this Specification (or not developed at all) due to circumstances beyond the reasonable control of ServiceCo; and
 - (ii) ServiceCo used reasonable endeavours to implement its Tailored Support Coordination Engagement Strategy in respect of these Tenants and Household Members,

then, if ServiceCo submits additional information for FACS' that demonstrates the above, a Performance Incident exception can be reported for the purposes of section 6.3(b).

6.4 Annual Performance and Outcomes Report

- (a) ServiceCo must submit an Annual Performance and Outcomes Report for every Operating Year.
- (b) The Annual Performance and Outcomes Report must specify the following information:
 - (i) for those Key Performance Indicators specifying an annual reporting period as set out in Appendix C:
 - A. the number of Performance Incidents reported to or identified by ServiceCo within the Operating Year including:
 - 1) the unique incident number;
 - 2) the nature of the Performance Incident; and
 - 3) the date of the Performance Incident if applicable.
 - B. the number of repeat Performance Incidents reported over successive Operating Years;

- (ii) a consolidated summary and reconciliation of information provided in each Quarterly Performance Report for that Operating Year;
- (iii) results of the Tenant Satisfaction Survey carried out by ServiceCo during the Operating Year to which the report relates and proposed strategies to improve satisfaction;
- (iv) results of the Condition Survey carried out by ServiceCo during the Operating Year. To the extent that ServiceCo did not conduct a Condition Survey in respect of any Service Package Dwellings during the relevant Operating Year, ServiceCo must submit evidence that all Service Package Dwellings will be surveyed within a three Operating Year period in accordance with the Housing Assets Performance Outcomes in the National Regulatory Code Evidence Guidelines;
- (v) the information specified in the Annual Performance and Outcomes Report Requirements in Appendix F; and
- (vi) any other information reasonably required by the FACS Representative to assess the performance of ServiceCo.

6.5 ServiceCo Data Reporting Requirements

- (a) ServiceCo must collect the data that is required to meet the data requirements in Appendix D. The parties acknowledge and agree that where data collection requires the cooperation of, and voluntary participation from, Tenants and Household Members, ServiceCo must use reasonable endeavours to obtain the information, but in doing so, may not be able to collect it.
- (b) ServiceCo must submit:
 - (i) Quarterly Data for every quarter of the Operating Year; and
 - (ii) Annual Data for every Operating Year,
 in accordance with the data requirements and reporting periods as set out in Appendix D.

6.6 Reporting requirements

- (a) ServiceCo must meet all reporting requirements in accordance with the Performance and Data Reporting Plan.
- (b) ServiceCo must submit the Quarterly Data, Quarterly Performance Report, Annual Performance and Outcomes Report and Annual Data in both electronic and hard copy formats, or as otherwise specified by the FACS Representative.
- (c) ServiceCo agrees that reporting data will be shared with the 'Department of Social Services Data Exchange' reporting system to facilitate analysis and reporting.

6.7 Program evaluation

ServiceCo must participate in evaluation and research activities with FACS as required by the FACS Representative, including providing all reasonable information available to ServiceCo to support FACS' evaluation and research activities.

Appendices

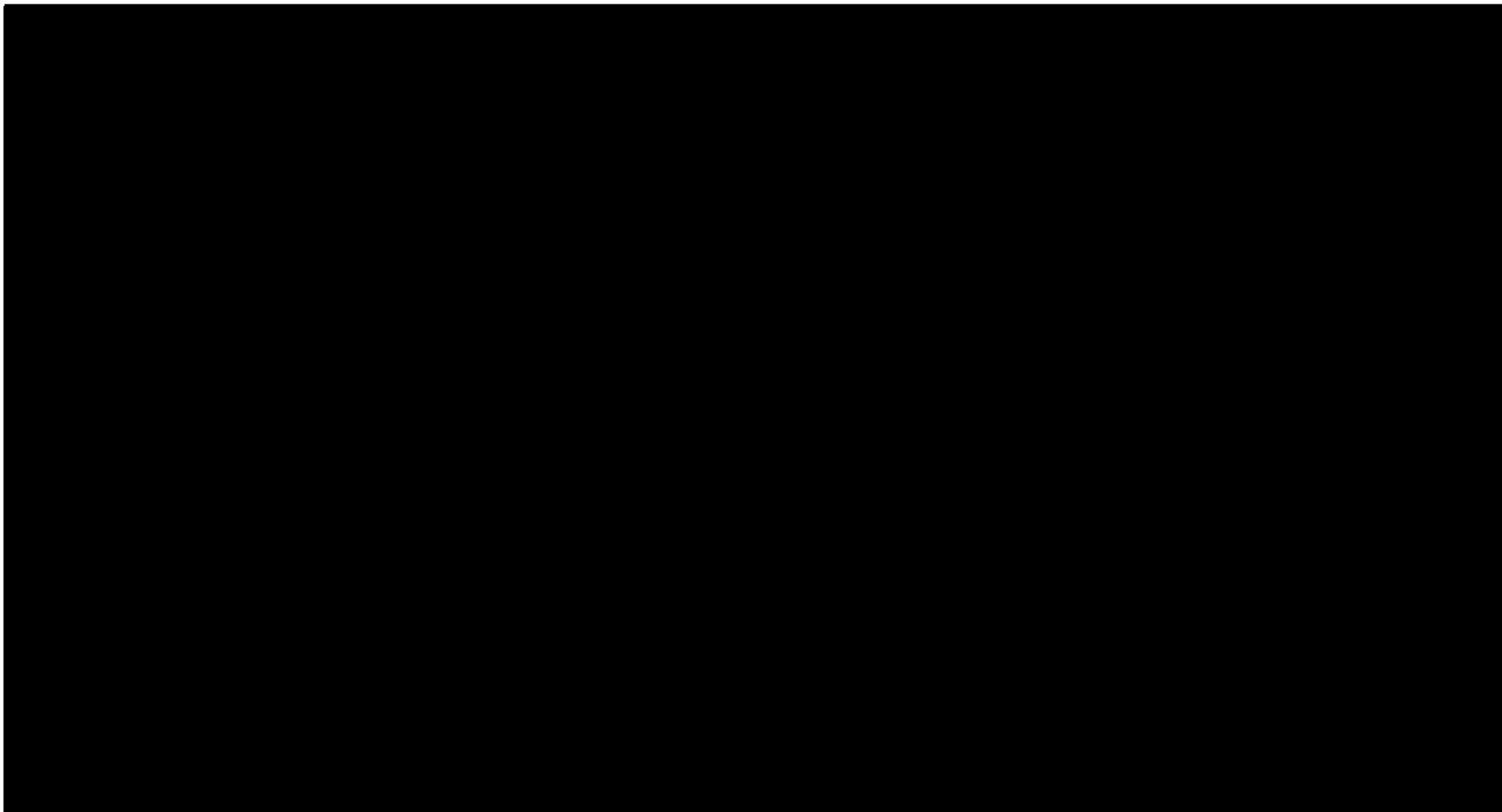
Appendix A: FACS Policies

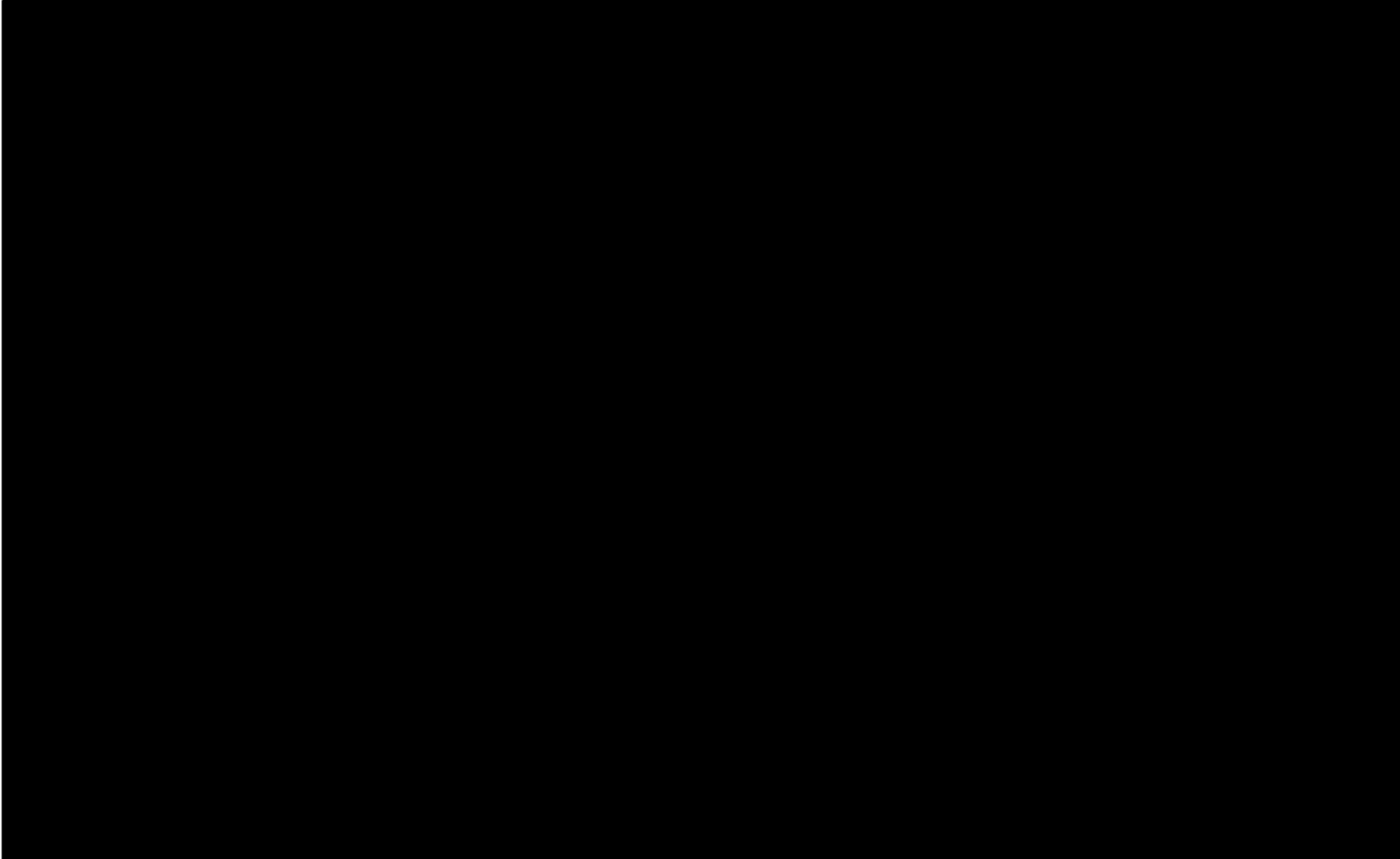
FACS Policies means the following policies as amended or replaced from time to time:

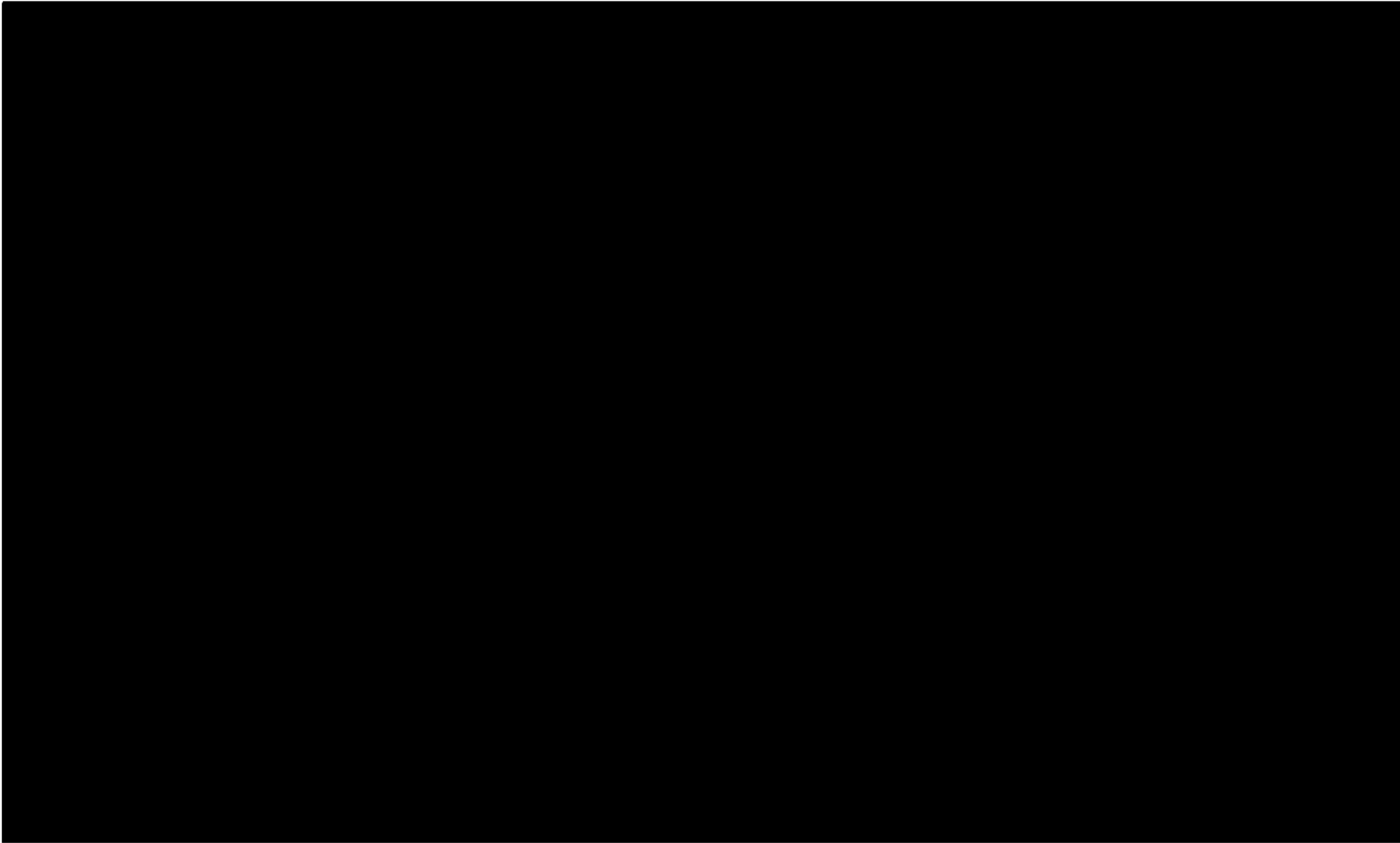
- (a) NSW Community Housing Rent Policy;
- (b) NSW Community Housing Eligibility Policy;
- (c) NSW Community Housing Access Policy;
- (d) NSW Community Housing Water Charging Guidelines;
- (e) NSW Affordable Housing Guidelines;
- (f) the following policies in relation to Housing Pathways:
 - (i) the Housing Pathways Transfer Policy;
 - (ii) the 'Children and Young People at Risk Policy';
 - (iii) the 'Community Housing Complaints, Issues and Appeals Management Framework';
 - (iv) the 'Domestic and Family Violence Policy Statement';
 - (v) the 'Eligibility for Social Housing Policy';
 - (vi) the 'Housing Assistance Options Policy';
 - (vii) the 'Matching and Offering a Property to a Client Policy';
 - (viii) the 'Social Housing Assistance Policy for Registered Persons';
 - (ix) the 'Social Housing Eligibility and Allocations Policy Supplement';
and
 - (x) the Tenancy Policy Supplement',each issued by FACS (**Housing Pathways Policies**); and
- (g) other policies and guidelines as notified by the Housing Agency (as defined under the Community Housing Act).

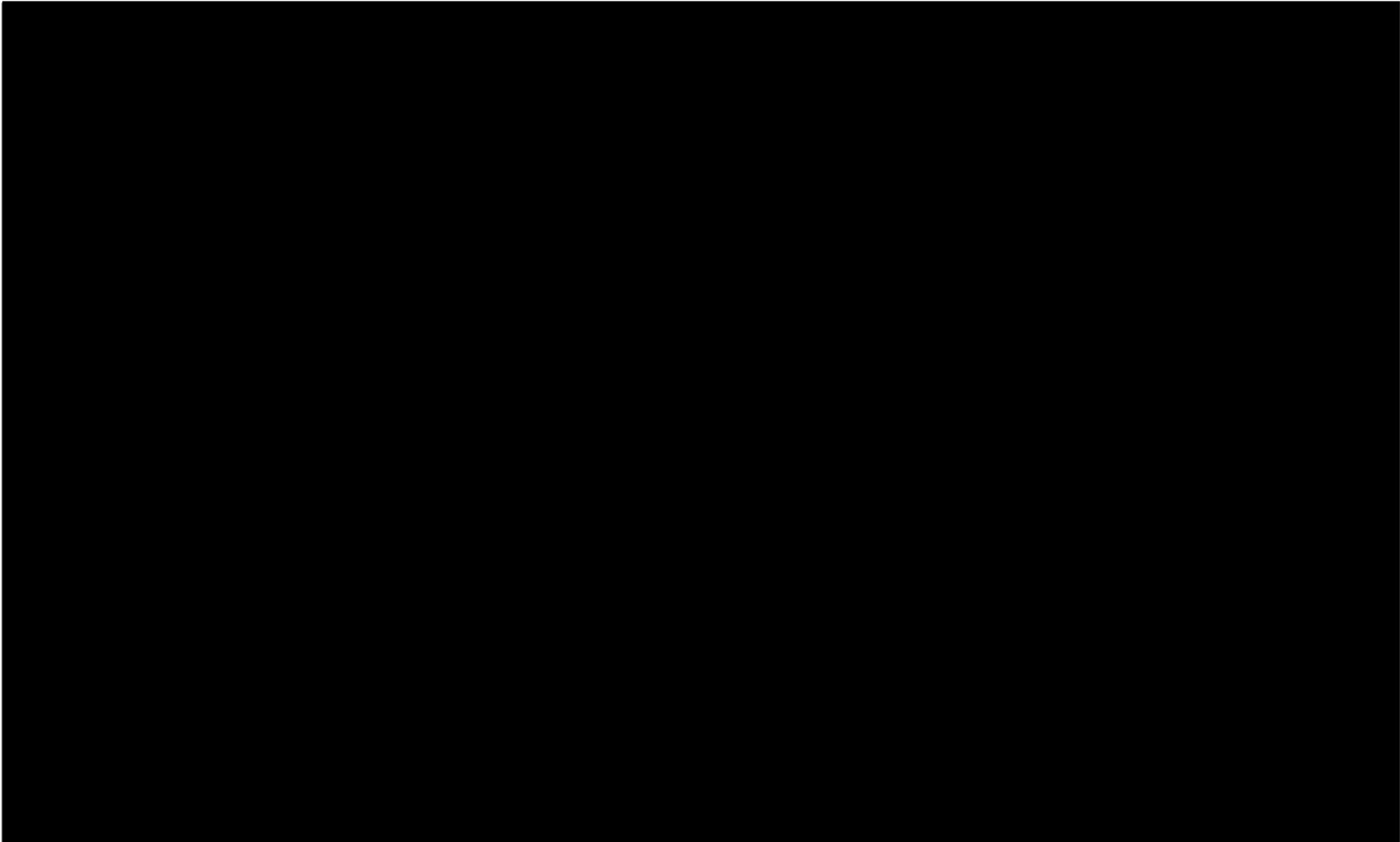
Appendix B: Not used

Appendix C: Key Performance Indicators











Appendix D: ServiceCo Reporting Requirements

| Ref | Reporting Requirement | Data Requirement | Level of reporting required | Frequency reported to FACS | Submission Method |
|-----|---|---|-------------------------------|----------------------------|-------------------------------|
| 1 | Statistical Linkage Key (SLK) | A statistical linkage key (SLK) is used to uniquely identify individual clients without disclosing personal information. This allows clients to be matched on a de-identified basis and tracked over time. | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 2 | Assistance Type | The type of assistance provided for each SP Dwelling: Affordable Housing, general housing (Social Housing) or other | Dwellings | Quarterly | Submit to FACS Representative |
| 3 | Main Language | The household's main language spoken at home. | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 4 | Disability Status | Whether the Tenant and Household Member/s has a disability or ongoing medical condition. | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 5 | NDIS Support | Whether a Tenant or a Household Member receives NDIS support | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 6 | Indigenous Status | Whether a Tenant and Household Member/s identifies themselves as of Aboriginal or Torres Strait Islander descent | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 7 | Postcode | The postcode of each Tenant and Household Member. | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 8 | Tenant Details | The date of birth and gender of each Tenant and Household Member. | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 9 | Highest educational qualification completed | The Tenant and Household Member/s' highest qualification <i>completed</i> : Primary school Secondary school (Yr 7-12) Postgraduate degree Graduate diploma/Graduate certificate Bachelor degree (with or without honours) Advanced diploma/diploma Certificate III/IV (including trade certificate) Certificate III Other non-school Not applicable | Tenants and Household Members | Quarterly | Submit to FACS Representative |

| Ref. | Reporting Requirement | Data Requirement | Level of reporting required | Frequency reported to FACS | Submission Method |
|------|------------------------------|--|-------------------------------|----------------------------|-------------------------------|
| 10 | Occupation status | Whether the Tenant and Household member/s' are: Employed full-time (35 hours per week or more)? Employed part-time (less than 35 hours per week) Unemployed (not currently employed but actively looking for work)? Unemployed but not looking for work? Retired? In full-time study? In part-time study? Unable to work (e.g. long-term illness, serious injury)? Not in the labour force (e.g. home duties and not looking for work)? Volunteering? A full-time parent/carer? | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 11 | Complaints | The number and nature of complaints received related to neighbourhood disturbances, anti-social behaviour, domestic and family disputes/violence and similar alleged offences at Sites or involving Tenants. The number and nature of complaints made against ServiceCo. | SAHF Portfolio | Quarterly | Submit to FACS Representative |
| 12 | Disability Modifications | Whether the SP Dwelling has been modified for use by Tenants with a disability and if so, the extent to which the SP Dwellings have been modified. The number of requests from Tenants or Household Members to have the SP Dwelling modified for use by Tenants with a disability and if so, the extent to which the SP Dwelling has been modified. | Dwellings | Quarterly | Submit to FACS Representative |
| 13 | Dwelling Configuration | The number of bedrooms in the SP Dwelling. | Dwellings | Quarterly | Submit to FACS Representative |
| 14 | Dwelling Details | The unique identifier, unit number, street number, suburb, postcode and LGA for each SP Dwelling. The unique identifier for any SP Dwelling not condition surveyed. The unique identifier for any SP Dwelling that was surveyed and did not meet the Asset Performance Standards. | Dwellings | Quarterly | Submit to FACS Representative |
| 15 | End of Tenancy Report | The Tenancy Termination Reason and Where Next Housed recorded (including any additional sub reasons used). | Tenancy | Quarterly | Submit to FACS Representative |
| 16 | Former Tenant | Any Tenants or Household Members that were previously Social Housing or Affordable Housing Tenants and are Applicants to or have re-entered a SP Dwelling (when possible). | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 17 | Housing Status at allocation | Whether the Tenant or Household Members were homeless (had no housing) or were residing in temporary or emergency accommodation at the time of allocation. | Household | Quarterly | Submit to FACS Representative |
| 18 | Income at Signing | Assessable income: the value of weekly income from all sources (excluding CRA) for all Tenants and Household Members for the first week of the Tenancy. The income used to establish eligibility of a household for receipt of housing assistance. Household income: the main income source of the household (wages, Centrelink payments, other or unknown) for the first week of the Tenancy. | Household | Quarterly | Submit to FACS Representative |

| Ref. | Reporting Requirement | Data Requirement | Level of reporting required | Frequency reported to FACS | Submission Method |
|------|------------------------------|--|-------------------------------|----------------------------|-------------------------------|
| 19 | Income | Household income –the main income source of the household (wages, Centrelink payments, other or unknown) (with the most up to date information for the reporting period). Assessable income –the value of weekly income from all sources (excluding CRA) for all Tenants and Household Members for the last week of the reporting period as specified and used by the agency to establish eligibility of a household for receipt of housing assistance. CRA income –the weekly amount of CRA each household and Tenant is entitled to receive in the fortnight prior to data extraction. | Household | Quarterly | Submit to FACS Representative |
| 20 | Likelihood Of Transition | The likelihood of the Tenant and Household Members successfully transitioning out of Social Housing or Affordable Housing in the short-term and/or long-term, as recorded in the Tenant Needs Assessment or Tenant Needs Reassessment (whichever is most recent). | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 21 | Market Rent | The value of the weekly Market Rent for the SP Dwelling The method for determining Market Rent | Dwellings | Quarterly | Submit to FACS Representative |
| 22 | Rent Charged | The weekly rent charged to the Tenant for the last week of the reporting period (excluding CRA and charges for utilities, meals, cleaning, laundry or other facility costs). The rent charged is the amount of money the Tenant has been asked to pay. It may differ from Market Rent and may not have been received. | Dwellings | Quarterly | Submit to FACS Representative |
| 23 | Rental Arrears | The value of any rental and non-rental arrears a Tenant accrues with ServiceCo. | Tenancy | Quarterly | Submit to FACS Representative |
| 24 | Targeted Assistance | Whether the letting of the SP Dwelling is targeted to any specific cohort of the community and specify that cohort. | Dwellings | Quarterly | Submit to FACS Representative |
| 25 | Tenancy Details | A unique Tenancy identifier, SP Dwelling identifier, household identifier, start date and end date for each Tenancy. | Tenancy | Quarterly | Submit to FACS Representative |
| 26 | Length in current residence | The length of each current residence (in years and months) matched to the Tenant and Household Member (Mandatory Outcome – Appendix E). | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 27 | Tenant Needs Assessment | The number of Tenant Needs Assessments that were conducted and where a Tenant Needs Assessment conducted outside of the required timeframe the extenuating circumstances (if any) that led to it not being conducted or being conducted outside of the required timeframe. | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 28 | Tenant Support Services Plan | The number of Tenant Support Services Plans that were conducted and where a Tenant Support Services Plan was completed outside of the required timeframes the extenuating circumstances (if any) that led to it not being conducted or being conducted outside of the required timeframe. | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 29 | Tenant Needs Reassessment | The number of Tenants Needs Reassessments that were conducted and where a Tenant Needs Reassessment was conducted outside of the required timeframe the extenuating circumstances (if any) that led to it not being conducted or being conducted outside of the required timeframe. | Tenants and Household Members | Quarterly | Submit to FACS Representative |

| Ref. | Reporting Requirement | Data Requirement | Level of reporting required | Frequently reported to FACS | Submission Method |
|------|--------------------------------|---|-------------------------------|-------------------------------|-------------------------------|
| 30 | Tenant Satisfaction Survey | Valid results for the required Tenant Satisfaction Survey. Details of the surveys sample representativeness, including any differences between the demographic characteristics of respondents and the demographic profile of all Tenants housed by ServiceCo. The date of last survey, number of surveys distributed, how many surveys were sent / Tenants phoned / invitations to interview attempted, numbers of surveys returned, the number of completed surveys received and if interviews were carried out. | SAHF Portfolio | Annual | Submit to FACS Representative |
| 31 | Tenant Status | The safety and risk status of Tenants and Household Members following the completion of the Tenant Needs Assessment, Tenant Needs Reassessment and End of Tenancy Report. | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 32 | Transfer | Whether each Tenancy is a transfer from public housing or another Community Housing Provider. Whether a Tenancy is an internal transfer (where a household has moved from one SP Dwelling to another SP Dwelling that the same ServiceCo manages during the reporting period). | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 33 | Transfer Details | The number of transfer requests, the number of requests that were successful and the primary reasons for transfer as articulated by the Tenant or Household Members. | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 34 | Personal wellbeing | The Personal Wellbeing Index for each Tenant and Household Member On a scale from 0 to 10, where 0 means no satisfaction at all and 10 means completely satisfied, how satisfied are you with...? ... your life as a whole? ... your standard of living? ... your health? ... what you are achieving in life? ...your personal relationships? ...how safe you feel? ... feeling part of your community? ... your future security? | Tenants and Household Members | Annually | Submit to FACS Representative |
| 35 | Dwelling satisfaction | Each Tenant's and Household Member's level of satisfaction with their SP Dwelling | Tenants and Household Members | Annually | Submit to FACS Representative |
| 36 | Dwelling location satisfaction | Each Tenant and Household Members level of satisfaction with their dwelling location | Tenants and Household Members | Tenants and Household Members | Submit to FACS Representative |

Appendix E: SAHF Outcomes Measurement Framework

The SAHF Outcomes Measurement Framework outlines the range of Target Outcomes for Tenant and Household Member(s) aligned to the NSW Human Services Outcomes Framework. The SAHF Outcomes Measurement Framework specifies indicators which will provide evidence to support service delivery that drives social outcomes for a range of Tenants and Household members.

ServiceCos will be required to report against all domains from the SAHF Outcomes Measurement Framework. ServiceCos will report against all of the outcomes and indicators contained within the Home outcome domain and report a minimum of one outcome and one indicator from other domains.

Progress against outcomes domains will be reported in Appendix F: Annual Performance and Outcomes Report.

SAHF Outcomes Measurement Framework

| | Outcome | Indicator | Potential method of measurement |
|------------------------------------|--|--|---|
| 1 Home – mandatory outcomes | | | |
| 1.1 | Housing stability | Number and % new housing tenancies still in place after 12 months (out of total number of tenancies) | Appendix D Housing status at allocation & Tenancy details |
| 1.2 | Access to affordable housing – housing affordability | Number and % of households whose housing costs do not exceed 30% household income (out of total number of households) | Appendix D – Market rent and assessable income include CRA |
| 1.3 | Dwelling satisfaction | Number and % tenants and household members satisfied with the dwelling they live in (out of total tenant needs assessment respondents) | Tenant Needs Assessment |
| 1.4 | Dwelling location satisfaction | Number and % tenants and household members satisfied with the location of the dwelling they live in (out of total tenant needs assessment respondents) | Tenant Needs Assessment |
| 1.5 | Housing independence | Number and % of households who exit housing positively (out of total number of existing households) | Appendix D - End of Tenancy Report - report Tenancy Termination Reason and where next housed recorded |
| 2 Social & Community | | | |
| 2.1 | Tenants and household members have strong support networks | Satisfaction with personal relationships (average and range ¹) (out of total tenant needs assessment respondents) | Tenant Needs Assessment |

| | | | |
|---------------------------------|--|---|--|
| 2.2 | Sense of belonging to community | Satisfaction with feeling part of your community (average and range) (out of total tenant needs assessment respondents) | Tenant Needs Assessment |
| 3 Health | | | |
| 3.1 | Improved health outcomes | Satisfaction with health (average and range) (out of total tenant needs assessment respondents) | Tenant Needs Assessment |
| 3.2 | Improved personal wellbeing | Average total personal wellbeing index (PWI) score and change in average total PWI score (out of total tenant needs assessment respondents) | Tenant Needs Assessment |
| 4 Safety | | | |
| 4.1 | People in Social & Affordable Housing feel safe | Satisfaction with feelings of safety (average and range) (out of total tenant needs assessment respondents) | Tenant Needs Assessment |
| 4.2 | Domestic violence victims are able to live in safety | Number and % of tenants and household members who experience violence and anti-social behaviour (including school aged children or young people who may be at risk of significant harm) (out of total tenants and household members housed) | Complaint records |
| 5 Education & Skills | | | |
| 5.1 | Improved educational outcomes | Number and % of young people aged 15-19 years that complete Yr 12 (out of total tenants and household members aged 15-19) | Tenant Needs Assessment – current level of schooling |
| | | Number and % of tenants and household members enrolled in further education or training (includes university, TAFE, vocational training or equivalents) (out of total tenants and household members aged over 17) | Tenant needs assessment |
| | | Number and % of tenants and household members completed further education or training (includes university, TAFE, vocational training or equivalents) (out of total ServiceCo tenants and household members aged over 17) | Tenant needs assessment |
| 6 Economic | | | |
| 6.1 | Improved economic outcomes | Number and % of tenants and household members who have a higher median weekly income (out of total ServiceCo tenants and household members aged over 15) | Increase in income as captured in Appendix D |

| | | | |
|----------------------|--|---|--|
| | | Number and % of tenants and household members employed ² (out of total labour force that the provider services) ³ | Tenant Needs Assessment – employment |
| 7 Empowerment | | | |
| 7.1 | Belief in self and hope for the future | Satisfaction with life as a whole (average and range) (out of total tenant needs assessment respondents) | Tenant Needs Assessment MDS empowerment - satisfied with life as a whole |
| 7.2 | Improved ability to leverage opportunities | Satisfaction with what they are achieving in life (average and range) (out of total tenant needs assessment respondents) | Tenant Needs Assessment MDS empowerment – satisfied with what they are achieving in life |

¹ N.B. Average in the table below refers to the total score of all responses from the total tenant needs assessment respondents divided by the number of tenant needs assessment respondents. Range refers to the highest and lowest scores from total tenant needs assessment respondents.

² Employed is defined as those individuals who are employed full-time (35 hours per week or more) and employed part-time (less than 35 hours per week).

³ Labour force is defined as those employed as per definition above, as well as those who are unemployed (not currently employed but actively looking for work) and those in part-time study. The labour force does not include the following categories: those in full-time study, unemployed but not looking for work, retired, unable to work (e.g. long-term illness, serious injury), not in the labour force (e.g. home duties and not looking for work) and a full-time parent/carer).

Appendix F: Annual Performance and Outcomes Report Requirements

| Ref | Reporting Requirements | Requirement |
|--|--------------------------------------|---|
| Performance | | |
| 1 | Performance Incidents Summary | <p>The number of Performance Incidents reported to or identified by ServiceCo within the Operating Year including:</p> <ul style="list-style-type: none"> (i) the unique incident number; (ii) the nature of the Performance Incident; and (iii) the date of the Performance Incident if applicable. <p>The number of repeat Performance Incidents reported over successive Operating Years.</p> |
| 2 | Quarterly Performance Report Summary | A consolidated summary and reconciliation of information provided in each Quarterly Performance Report for that Operating Year. |
| 3 | Tenant Satisfaction Survey results | The aggregated results of the Tenant Satisfaction Survey carried out by ServiceCo during the Operating Year to which the report relates and proposed strategies to improve satisfaction. |
| 4 | Condition Survey results | The aggregated results of the Condition Survey carried out by ServiceCo during the Operating Year. To the extent that ServiceCo did not conduct a Condition Survey in respect of any SP Dwellings within the Program during the relevant Operating Year, ServiceCo must submit evidence that all SP Dwellings will be surveyed within a three Operating Year period in accordance with the Housing Assets Performance Outcomes in the National Regulatory Code Evidence Guidelines. |
| 5 | Other information (where required) | Any other information reasonably required by the FACS Representative to assess the performance of ServiceCo. |
| Outcomes | | |
| Specify the outcome domain and repeat for each domain from Appendix E: | | |
| 6 | Outcomes and Indicators | For the Home domain, all outcomes and indicators must be reported against. Specify at least one outcome and one indicator from all other domains in Appendix E. |

| | | |
|---|---|--|
| 7 | Outcomes and indicator analysis: | <p>Provide aggregated results and analysis of outcomes data including:</p> <ul style="list-style-type: none"> (i) current progress against outcome (in this reporting period); (i) a basic trend analysis (over time) for each outcome indicating the direction and size (reported as a %) of change against each outcome; (ii) breakdown by cohorts or demographic group; and (iii) commentary that provides insight or explanation for the results including any factors outside of the control of ServiceCo that may have impacted the results in any way or instances where ServiceCo believes the result is attributable to the Program or Services provided by ServiceCo or its support partners (or, where there are no support partners, Support Service providers). |
|---|---|--|

| Identified issues and future performance | | |
|--|---|--|
| 8 | Future performance: | <ul style="list-style-type: none"> (i) Commentary on how their performance against outcomes could be improved in the short-term and/or long-term by the actions of ServiceCo, FACS, or other Relevant Stakeholders; and (ii) Commentary on the cost/difficulty of strategies/approaches required to improve performance. |
| 9 | Identified issues | <ul style="list-style-type: none"> (i) Description of issues it has faced: <ul style="list-style-type: none"> ○ collecting data, including involving Tenants and other Relevant Stakeholders; and ○ analysing or drawing conclusions with the data. (ii) Any concerns ServiceCo has on the validity of particular outcomes, indicators or measures. |
| 10 | Proposed solution/actions to address identified issues | For each of the identified issues (if any), appropriate solutions or actions to address the issue, including any analysis on the implications of suggested changes, solutions or actions. |

Appendix G: Tenant Needs Assessment Template (must be conducted for every Tenant and Household Member over 12)

Part 1: Preliminary assessment

Tenant or Household Member details

| | | | |
|------------------|------------|-----|--|
| Lease start date | DD/MM/YYYY | CRN | |
| Date moved in | DD/MM/YYYY | | |

| | | | |
|-------------------------------------|------------|----------|---|
| First or given name | | Gender | <input type="checkbox"/> Male |
| Surname or family name | | | <input type="checkbox"/> Female |
| Date of birth | DD/MM/YYYY | | <input type="checkbox"/> Other (please specify) _____ |
| Residential address | | | |
| Apartment/Flat/Unit number (if any) | | | |
| Street number | | | |
| Street name | | | |
| Town/Suburb | | Postcode | |
| Contact details | | | |
| Home phone | | Email | |
| Mobile | | | |

| | | | | |
|---|---|--|---|---|
| Of Aboriginal or Torres Strait Islander descent? For persons of both Aboriginal and Torres Strait Islander origin, mark both 'Yes' boxes | <input type="checkbox"/> Yes, Aboriginal | <input type="checkbox"/> Yes, Torres Strait Islander | <input type="checkbox"/> Yes, Aboriginal and Torres Strait Islander | <input type="checkbox"/> No |
| Country of birth | <input type="checkbox"/> Australia | Preferred language | <input type="checkbox"/> English | <input type="checkbox"/> Other (please specify) _____ |
| | <input type="checkbox"/> Other (please specify) _____ | | <input type="checkbox"/> Other (please specify) _____ | |
| What is the main language spoken at home? | <input type="checkbox"/> English | Interpreter required? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| | <input type="checkbox"/> Other (please specify) _____ | | | |

Other Household Members (if applicable)

| First or given name | First or given name | First or given name |
|--|--|---|
| Surname or family name | Surname or family name | Surname or family name |
| Date of birth DD/MM/YYYY | Date of birth DD/MM/YYYY | Date of birth DD/MM/YYYY |
| Relationship <input type="checkbox"/> Partner <input type="checkbox"/> Daughter or son <input type="checkbox"/> Unrelated flatmate or co-tenant <input type="checkbox"/> Other relation (please specify) _____ | Relationship <input type="checkbox"/> Partner <input type="checkbox"/> Daughter or son <input type="checkbox"/> Unrelated flatmate or co-tenant <input type="checkbox"/> Other relation (please specify) _____ | Relationship <input type="checkbox"/> Partner <input type="checkbox"/> Daughter or son <input type="checkbox"/> Unrelated flatmate or co-tenant <input type="checkbox"/> Other relation(please specify) _____ |
| Status <input type="checkbox"/> Independent (separate assessment to be undertaken) <input type="checkbox"/> Dependent | Status <input type="checkbox"/> Independent (separate assessment to be undertaken) <input type="checkbox"/> Dependent | Status <input type="checkbox"/> Independent (separate assessment to be undertaken) <input type="checkbox"/> Dependent |

Immediate prior housing status (Please tick relevant)

| | |
|--|---|
| <input type="checkbox"/> Crisis accommodation | <input type="checkbox"/> Caravan or residential park |
| <input type="checkbox"/> Transitional housing | <input type="checkbox"/> Family/friends |
| <input type="checkbox"/> Boarding house | <input type="checkbox"/> Private rental market |
| <input type="checkbox"/> Social Housing (transfer) | <input type="checkbox"/> Other (please specify) _____ |

Type of housing and lease (Please tick relevant)

| | |
|---|--|
| <input type="checkbox"/> Social Housing- 2 year | <input type="checkbox"/> Affordable Housing- 1 year |
| <input type="checkbox"/> Social Housing- 5 year | <input type="checkbox"/> Continuous Lease- select reason below |

Reason for continuous lease

| | |
|--|---|
| <input type="checkbox"/> Aged 65 years or older | <input type="checkbox"/> Receives support from a person receiving Centrelink Carer Payment or Carer Allowance |
| <input type="checkbox"/> Aboriginal or Torres Strait Islander aged 45 years or older | |
| <input type="checkbox"/> Transfer from non SAHF social housing dwelling | <input type="checkbox"/> Receives support from a specific program |

Primary Income source

| | |
|---|--|
| <input type="checkbox"/> Age Pension | <input type="checkbox"/> Employment |
| <input type="checkbox"/> Disability Support Pension | <input type="checkbox"/> NDIS |
| <input type="checkbox"/> Newstart Allowance | <input type="checkbox"/> Other (Please Specify): _____ |

| | | |
|--|------------------------------|-----------------------------|
| Experiencing domestic or family violence? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|--|------------------------------|-----------------------------|

Part 2: Tenant Needs Assessment

Housing History

| Experience of homelessness | | |
|--|---------|--------------|
| Rough sleeping | Length: | Last period: |
| Couch surfing | Length: | Last period: |
| Crisis accommodation | Length: | Last period: |
| Transitional housing | Length: | Last period: |
| Boarding house | Length: | Last period: |
| Other: _____ | Length: | Last period: |
| Experience sustaining housing | | |
| Social Housing | Length: | Last period: |
| Affordable Housing | Length: | Last period: |
| Private rental accommodation | Length: | Last period: |
| Homeownership | Length: | Last period: |
| Comments: (Note housing history issues that may indicate likely support needs) | | |
| | | |

| Employment | |
|---|--|
| Are you... | |
| - <i>Mark all relevant options</i> | |
| <input type="checkbox"/> Employed full-time (35 hours per week or more) | <div style="border: 1px dashed black; padding: 5px;"> Actively looked for work includes: - Written, telephoned or applied to an employer for work; - Had an interview with an employer for work; - Answered an advertisement for a job; - Checked or registered with an employment agency; - Taken steps to purchase or start your own business; - Advertised or tendered for work; - Contacted friends or relatives in order to obtain work </div> |
| <input type="checkbox"/> Employed part-time (less than 35 hours per week) | |
| <input type="checkbox"/> Unemployed – not currently employed but looking for work | |
| <input type="checkbox"/> Retired | |
| <input type="checkbox"/> In full-time study | |
| <input type="checkbox"/> In part-time study | |
| <input type="checkbox"/> Unable to work (e.g. long-term illness, serious injury) | |
| <input type="checkbox"/> Not in the labour force (e.g. home duties or not looking for work) | |
| <input type="checkbox"/> Volunteering | |
| <input type="checkbox"/> A full-time parent/carer | |

| |
|--|
| <p>Education</p> <p>Are you currently enrolled in a course of study for a trade certificate, diploma, degree or any other educational qualification?</p> <p>- <i>Do not include any hobby or recreational courses</i></p> <p><input type="checkbox"/> Yes, enrolled full-time</p> <p><input type="checkbox"/> Yes, enrolled part-time</p> <p><input type="checkbox"/> No</p> |
| <p>In the last 12 months, did you complete any course of study for a trade certificate, diploma, degree or any other educational qualification?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> |
| <p>Highest level of education or training qualification completed</p> <p>- <i>Mark only one option</i></p> <p>- <i>For people currently at school, mark the highest year of schooling they have completed, not the year they are currently undertaking</i></p> <p><input type="checkbox"/> Did not go to school</p> <p><input type="checkbox"/> Year 6 or below</p> <p><input type="checkbox"/> Year 7 or equivalent</p> <p><input type="checkbox"/> Year 8 or equivalent</p> <p><input type="checkbox"/> Year 9 or equivalent</p> <p><input type="checkbox"/> Year 10 or equivalent</p> <p><input type="checkbox"/> Year 11 or equivalent</p> <p><input type="checkbox"/> Year 12 or equivalent</p> <p><input type="checkbox"/> Certificate I/II</p> <p><input type="checkbox"/> Certificate III/IV (including trade certificate)</p> <p><input type="checkbox"/> Diploma / Advanced diploma</p> <p><input type="checkbox"/> Bachelor degree (with or without honours)</p> <p><input type="checkbox"/> Graduate diploma / Graduate certificate</p> <p><input type="checkbox"/> Postgraduate degree</p> <p><input type="checkbox"/> Other non-school</p> |

| | | | | | | | | | | | | | | | | |
|---|--|--|---|---|---|---|---|---|--|-----------------------------------|---|--|---|--|--|---|
| <p>Disability and ongoing medical conditions</p> <p>- <i>Mark all that apply</i></p> | | | | | | | | | | | | | | | | |
| <table border="0"> <tr> <td><input type="checkbox"/> Acquired brain injury</td> <td><input type="checkbox"/> Physical disability</td> </tr> <tr> <td><input type="checkbox"/> Intellectual/learning disability</td> <td><input type="checkbox"/> Hearing impairment</td> </tr> <tr> <td><input type="checkbox"/> Mental illness and/or disorder</td> <td><input type="checkbox"/> Physical illness</td> </tr> <tr> <td><input type="checkbox"/> Post Traumatic Stress Disorder</td> <td><input type="checkbox"/> Chronic/terminal illness</td> </tr> <tr> <td><input type="checkbox"/> Visually impaired</td> <td><input type="checkbox"/> HIV/AIDS</td> </tr> <tr> <td><input type="checkbox"/> Alcohol and other drug use</td> <td><input type="checkbox"/> Mobility impairment</td> </tr> <tr> <td><input type="checkbox"/> Kidney failure</td> <td><input type="checkbox"/> Experience of torture or trauma</td> </tr> <tr> <td><input type="checkbox"/> Wheelchair user</td> <td><input type="checkbox"/> Other (please specify)</td> </tr> </table> | <input type="checkbox"/> Acquired brain injury | <input type="checkbox"/> Physical disability | <input type="checkbox"/> Intellectual/learning disability | <input type="checkbox"/> Hearing impairment | <input type="checkbox"/> Mental illness and/or disorder | <input type="checkbox"/> Physical illness | <input type="checkbox"/> Post Traumatic Stress Disorder | <input type="checkbox"/> Chronic/terminal illness | <input type="checkbox"/> Visually impaired | <input type="checkbox"/> HIV/AIDS | <input type="checkbox"/> Alcohol and other drug use | <input type="checkbox"/> Mobility impairment | <input type="checkbox"/> Kidney failure | <input type="checkbox"/> Experience of torture or trauma | <input type="checkbox"/> Wheelchair user | <input type="checkbox"/> Other (please specify) |
| <input type="checkbox"/> Acquired brain injury | <input type="checkbox"/> Physical disability | | | | | | | | | | | | | | | |
| <input type="checkbox"/> Intellectual/learning disability | <input type="checkbox"/> Hearing impairment | | | | | | | | | | | | | | | |
| <input type="checkbox"/> Mental illness and/or disorder | <input type="checkbox"/> Physical illness | | | | | | | | | | | | | | | |
| <input type="checkbox"/> Post Traumatic Stress Disorder | <input type="checkbox"/> Chronic/terminal illness | | | | | | | | | | | | | | | |
| <input type="checkbox"/> Visually impaired | <input type="checkbox"/> HIV/AIDS | | | | | | | | | | | | | | | |
| <input type="checkbox"/> Alcohol and other drug use | <input type="checkbox"/> Mobility impairment | | | | | | | | | | | | | | | |
| <input type="checkbox"/> Kidney failure | <input type="checkbox"/> Experience of torture or trauma | | | | | | | | | | | | | | | |
| <input type="checkbox"/> Wheelchair user | <input type="checkbox"/> Other (please specify) | | | | | | | | | | | | | | | |

Personal Wellbeing

The following questions ask how satisfied you feel, on a scale from zero to 10. **Zero** means you feel no satisfaction at all and **10** means you feel completely satisfied.

| | | | | | | | | | | |
|--|---|---|---|---|---|---|---|---|---|----------------------------|
| Thinking about you own life, and personal circumstances, how satisfied are you with your life as a whole? | | | | | | | | | | |
| No satisfaction at all 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | Completely Satisfied 10 |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|----------------------------|
| How satisfied are you with your standard of living? | | | | | | | | | | |
| No satisfaction at all 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | Completely Satisfied 10 |
| How satisfied are you with your health? | | | | | | | | | | |
| No satisfaction at all 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | Completely Satisfied 10 |
| How satisfied are you with what you are achieving in life? | | | | | | | | | | |
| No satisfaction at all 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | Completely Satisfied 10 |
| How satisfied are you with your personal relationships? | | | | | | | | | | |
| No satisfaction at all 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | Completely Satisfied 10 |
| How satisfied are you with how safe you feel? | | | | | | | | | | |
| No satisfaction at all 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | Completely Satisfied 10 |
| How satisfied are you with feeling part of your community? | | | | | | | | | | |
| No satisfaction at all 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | Completely Satisfied 10 |
| How satisfied are you with your future security? | | | | | | | | | | |
| No satisfaction at all 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | Completely Satisfied 10 |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|-----------------------------|
| Choice and control | | | | | | | | | | |
| •How much control do you feel you have over your life.? | | | | | | | | | | |
| No control at all 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | Completely in control 10 |
| I am free to decide how to live my life: | | | | | | | | | | |
| <input type="checkbox"/> Completely disagree <input type="checkbox"/> Disagree <input type="checkbox"/> Neither disagree nor agree <input type="checkbox"/> Agree <input type="checkbox"/> Completely agree | | | | | | | | | | |

Current support arrangements (if applicable)

| Tenant or Household Member main support provider details | | |
|---|---|--|
| Name | Support Provider | |
| | Contact name: | Position: |
| | Telephone: | Email: |
| | Work: Mobile: | |
| Type and level of support(s) | | |
| <input type="checkbox"/> Aged services <input type="checkbox"/> Domestic and family violence services <input type="checkbox"/> Mental health services <input type="checkbox"/> CALD services <input type="checkbox"/> NDIS package <input type="checkbox"/> LGBTIQ services <input type="checkbox"/> Family services <input type="checkbox"/> Aboriginal and Torres Strait Islander services <input type="checkbox"/> Other disability services (please specify): _____ | | |
| Level of support provided | <input type="checkbox"/> Low (less than 2 hours/week) <input type="checkbox"/> High (more than 8 hours/week) | <input type="checkbox"/> Medium (2-8 hours/week) Actual hours/week: _____ |
| Comments: <i>(Identify if existing support services are meeting current need)</i> | | |
| Dependent Household Member main support provider details | | |
| Name | Support Provider | |
| | Contact name: | Position: |
| | Telephone: | Email: |
| | Work: Mobile: | |
| Type and level of support(s) | | |
| <input type="checkbox"/> Aged services <input type="checkbox"/> Domestic and family violence services <input type="checkbox"/> Mental health services <input type="checkbox"/> CALD services <input type="checkbox"/> NDIS package <input type="checkbox"/> LGBTIQ services <input type="checkbox"/> Family services <input type="checkbox"/> Aboriginal and Torres Strait Islander services <input type="checkbox"/> Other disability services (please specify): _____ | | |
| Level of support provided | <input type="checkbox"/> Low (less than 2 hours/week) <input type="checkbox"/> High (more than 8 hours/week) | <input type="checkbox"/> Medium (2-8 hours/week) Actual hours/week: _____ |
| Comments: <i>(Identify if existing support services are meeting current need)</i> | | |

| | |
|---|--|
| <p>Financial difficulty Identify if assistance is required:</p> <ul style="list-style-type: none"> • Previous Social Housing debt • Household budget management • Rent payment • Gambling | |
| <p>Safety and risk issues Identify potential safety risks:</p> <ul style="list-style-type: none"> • Domestic or family violence • Children at risk • Police involvement • Mental health/self-harm • Substance use • Hoarding/squalor | |

Development of Tenant Support Services Plan

| |
|--|
| <p>Is the Tenant satisfied overall with the extent to which we have met the goals in their previous Tenant Support Services Plan?</p> <p><input type="checkbox"/> Extremely satisfied</p> <p><input type="checkbox"/> Somewhat satisfied</p> <p><input type="checkbox"/> Neither satisfied nor dissatisfied</p> <p><input type="checkbox"/> Somewhat dissatisfied</p> <p><input type="checkbox"/> Extremely dissatisfied</p> <p><input type="checkbox"/> Not applicable (e.g. new SAHF tenant)</p> |
| <p>Is a Tenant Support Services Plan required?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> |
| <p>Does the Tenant or Household Member want to develop a Tenant Support Services Plan?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> |
| <p>Does the Tenant or Household Member want to be referred for a Pre-employment Readiness Assessment?</p> <p><input type="checkbox"/> Yes- referral to Employment and Opportunities Manager for assessment</p> <p><input type="checkbox"/> No</p> |
| <p>Does the Tenant or Household Member consent to us working with them on an application for NDIS support?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Not applicable (e.g. tenant has no identified disabilities, or tenant already has NDIS support)</p> |
| <p>Development of Tenant Support Services Plan <i>(Identify timeframe for a home visit to discuss Support Service provider options and develop plan)</i></p> |

Frequency of Tenant Needs Assessment

| |
|--|
| <p>Timeframe for Tenant Needs Reassessment:</p> <p><input type="checkbox"/> 6 months</p> <p><input type="checkbox"/> 12 months</p> |
|--|

Managing transitions out of social housing- Continuous lease

| |
|---|
| <p>Are there any issues that may impact on the capacity of the Tenant or Household Member to live Independently and sustain their housing in the next two years?</p> <p><input type="checkbox"/> Frail aged</p> <p><input type="checkbox"/> Physical disability</p> <p><input type="checkbox"/> Health issues</p> <p><input type="checkbox"/> Other (please specify): _____</p> |
| <p>Is it likely that the Tenant or Household Member will need to transition to more supported accommodation in the next two years?</p> <p><input type="checkbox"/> Group home</p> |

| |
|--|
| <input type="checkbox"/> Aged care hostel <input type="checkbox"/> Nursing home <input type="checkbox"/> Other (please specify): _____ |
| Comments: <i>(Identify if any actions are required to plan for alternative accommodation over short to medium term)</i> |

Managing transitions out of social housing and affordable housing- Fixed term lease

| | |
|---|---|
| If the Tenant household has been offered a five year Social Housing lease, what is the reason for the length of lease? | |
| <input type="checkbox"/> Disability Support/Age Service/Invalidity Service/Partner Service Pension <input type="checkbox"/> Carer Payment/Carer Allowance/Mobility Allowance <input type="checkbox"/> Other (please specify): _____ | <input type="checkbox"/> NSW Trustee and Guardian client <input type="checkbox"/> NSW Public Guardian client |
| Is the Tenant or Household Member or working age and able to work? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Is the Tenant or Household Member interested in engaging in education, training and employment opportunities? | |
| <input type="checkbox"/> Yes and is taking immediate steps <input type="checkbox"/> Yes but is focused on addressing other support needs in the short term <input type="checkbox"/> No, already employed <input type="checkbox"/> No, not interested <input type="checkbox"/> No, other (please specify): _____ | |
| Comments: <i>(identify if any actions are required to plan for transition out over short to medium term for inclusion in Tenant Services Support Plan)</i> | |

Sign off

| | | | |
|-------------------------------|--|------|--|
| Support Coordinator Name | | Date | |
| Support Coordinator Signature | | | |

Tenant Satisfaction Survey

| | Question Wording | Response Options | Source of Question | Outcomes Measurement and Reporting Framework Outcomes Indicator |
|------------------------------------|---|---|--|--|
| Demographics | | | | |
| 1. | What is your date of birth? | DD/MM/YYYY | ABS Surveys FACS Minimum Dataset | Demographic information to validate Uniting data linkage |
| 2. | What is your gender? | Male Female Other If other, please specify (free text) | ABS Gender Standard Classification FACS Minimum Dataset | Demographic information to validate Uniting data linkage |
| Satisfaction with Housing Services | | | | |
| 3. | <p>Please indicate whether the following features of your home are important or not important to your household.</p> <p>THEN</p> <p>Please indicate if these features currently meet the needs of your household or not.</p> <ul style="list-style-type: none"> • Size of home • Number of bedrooms • Modifications for special needs (e.g. disability) • Easy access and entry • Car parking • Yard space and fencing • Privacy of the home • Safety and security within the home • Safety and security outside the home within the neighbourhood (e.g. adequate street lighting) • Energy efficiency (e.g. power bills) • Water efficiency (e.g. water saving shower head, dual flush toilet) • Thermal comfort (e.g. cool in summer, warm in winter) | <p>Important Not Important</p> <p>Meets needs Does not meet needs</p> | National Social Housing Survey by AIHW. | <p>1.1.5 Individuals are satisfied with the appropriateness and location of their Dwelling</p> <p>1.1.6 Individuals are satisfied with the adequacy of Dwelling modifications and the response to any disability modification requests made to ServiceCo</p> |
| 4. | <p>Please indicate if it is important or not for your household to have access to the following facilities or services.</p> <p>THEN</p> <p>Please indicate if the location of your current home</p> | <p>Important Not Important</p> <p>Meets needs</p> | National Social Housing Survey by AIHW. | 1.1.5 Individuals are satisfied with the appropriateness and location of their Dwelling |

| Question Wording | Response Options | Source of Question | Outcomes Measurement and Reporting Framework Outcomes Indicator |
|---|--|---|---|
| <p>meets the needs of your household or not.</p> <ul style="list-style-type: none"> • Shops and banking facilities • Public transport (e.g. buses, trams, trains) • Parks and recreational facilities • Emergency services, medical services and hospitals • Child care facilities • Education and training facilities (e.g. TAFE, university) • Employment or place of work • Community and support services (e.g. aged care services, disability services, drug and alcohol support services) • Family and friends | Does not meet needs | | |
| 5. Overall, how satisfied are you that your rights as a tenant are upheld by Uniting? | Very dissatisfied Dissatisfied Neither satisfied nor dissatisfied Satisfied Very satisfied | NSW Federation of Housing Associations' Community Housing Tenant Satisfaction Survey. | NRSCH Outcome 1 The community housing provider is fair, transparent and responsive in delivering housing assistance to tenants, residents and other clients: |
| 6. How satisfied are you with the way Uniting provides you with information? | Very dissatisfied Dissatisfied Neither satisfied nor dissatisfied Satisfied Very satisfied | NSW Federation of Housing Associations' Community Housing Tenant Satisfaction Survey. | NRSCH Outcome 1a The provider makes information about its tenancy management policies and procedures available in a variety of formats |
| 7. How satisfied are you with the communication with Uniting? | Very dissatisfied Dissatisfied Neither satisfied nor dissatisfied Satisfied Very satisfied | NSW Federation of Housing Associations' Community Housing Tenant Satisfaction Survey. | NRSCH Outcome 1a The provider makes information about its tenancy management policies and procedures available in a variety of formats |
| 8. How satisfied are you with the way Uniting involves residents? | Very dissatisfied Dissatisfied Neither satisfied nor dissatisfied Satisfied Very satisfied | NSW Federation of Housing Associations' Community Housing Tenant Satisfaction Survey. | NRSCH Outcome 1d The provider involves tenants and residents in the planning and delivery of housing services in a variety of accessible ways |

| | Question Wording | Response Options | Source of Question | Outcomes Measurement and Reporting Framework Outcomes Indicator |
|-----|---|--|--|--|
| 9. | How satisfied are you that Uniting listens to residents' views and acts on them? | Very dissatisfied Dissatisfied Neither satisfied nor dissatisfied Satisfied Very satisfied | NSW Federation of Housing Associations' Community Housing Tenant Satisfaction Survey. | NRSCH The provider obtains feedback from tenants and residents on its services, and consults with them on proposals that will affect them |
| 10. | How satisfied are you that residents are able to influence Uniting's decision-making? | Very dissatisfied Dissatisfied Neither satisfied nor dissatisfied Satisfied Very satisfied | NSW Federation of Housing Associations' Community Housing Tenant Satisfaction Survey. | NRSCH The provider obtains feedback from tenants and residents on its services, and consults with them on proposals that will affect them |
| 11. | Do you understand how your rent is calculated? | Yes No | NSW Federation of Housing Associations' Community Housing Tenant Satisfaction Survey. | NRSCH Outcome 1b The provider makes information about its policies and procedures to determine and manage rents available in a variety of formats |
| 12. | Overall, how satisfied are you with the condition of your home? | Very dissatisfied Dissatisfied Neither satisfied nor dissatisfied Satisfied Very satisfied | NSW Federation of Housing Associations' Community Housing Tenant Satisfaction Survey. | NRSCH The provider maintains a satisfactory level of tenant and resident satisfaction with maintenance and housing amenity |
| 13. | Overall, how satisfied are you with the repairs and maintenance services that Uniting provides? | Very dissatisfied Dissatisfied Neither satisfied nor dissatisfied Satisfied Very satisfied | NSW Federation of Housing Associations' Community Housing Tenant Satisfaction Survey.. | NRSCH Outcome 2c The provider maintains a satisfactory level of tenant and resident satisfaction with maintenance and housing amenity |
| 14. | Overall, how satisfied or dissatisfied are you with Uniting's responses to your request for disability modifications? | Very dissatisfied Dissatisfied Neither satisfied nor dissatisfied Satisfied Very satisfied NA Did not request any disability modifications. | NSW FaCS SAHF Contract | 1.1.6 Individuals are satisfied with the adequacy of Dwelling modifications and the response to any disability modification requests made to ServiceCo |
| 15. | For you, what are the benefits of living in Uniting | Multiple tick box | National Social Housing Survey | Additional information |

| Question Wording | Response Options | Source of Question | Outcomes Measurement and Reporting Framework Outcomes Indicator |
|--|--|---|---|
| housing? | <ul style="list-style-type: none"> • Feel more settled • Feel more able to cope with life events • Feel part of the local community • Feel more able to improve job situation (i.e. obtain, maintain or advance) • Feel more able to start or continue education/training • Able to manage rent/money better • Have better access to services • No benefit • Other (please specify) | by AIHW. | |
| Satisfaction with Support Service | | | |
| 16. Over the last 12 months, how satisfied were you with the services provided to you by Uniting? | Very dissatisfied Dissatisfied Neither satisfied nor dissatisfied Satisfied Very satisfied | National Social Housing Survey by AIHW NSW Federation of Housing Associations' Community Housing Tenant Satisfaction Survey. | 1.2.1 Individuals report that the Support Services they currently access meet their needs NRSCH Outcome 1e The provider establishes and maintains arrangement that are adequate to ensure tenants and residents with support needs receive appropriate support, if relevant and where available to maintain their tenancies Outcome 1g The provider maintains a satisfactory level of tenant and resident satisfaction |
| 17. Over the last 12 months, how satisfied were you with how Uniting helped you connect to supports or local services? | Very dissatisfied Dissatisfied Neither satisfied nor dissatisfied Satisfied Very satisfied | NSW Federation of Housing Associations' Community Housing Tenant Satisfaction Survey. | 1.2.2 Individuals are satisfied with ServiceCo's performance facilitating access to Support Services NRSCH Outcome 1e The provider establishes and maintains arrangement that are adequate to ensure tenants and residents with support needs receive appropriate support, if relevant and where available to maintain their tenancies |
| 18. Over the last 12 months, how satisfied were you with the | Very dissatisfied | NSW Federation of Housing | 1.2.1 Individuals report that the Support Services they currently |

| | Question Wording | Response Options | Source of Question | Outcomes Measurement and Reporting Framework Outcomes Indicator |
|---|--|--|---|--|
| | supports and local services Uniting staff helped you connect to? | Dissatisfied Neither satisfied nor dissatisfied Satisfied Very satisfied | Associations' Community Housing Tenant Satisfaction Survey. | access meet their needs |
| Satisfaction with Support Services Planning | | | | |
| 19. | In the last twelve months have you received a Support Services Plan from Uniting? | Yes No, this was not offered No, I did not want one I don't know | Original Tenant Survey | To be used for data validation purposes |
| 20. | Overall, how satisfied or dissatisfied are you with Uniting's process in respect of identifying your support needs and working with you to develop a Support Services Plan | Dissatisfied Fairly dissatisfied Neither Fairly satisfied Very satisfied | NSW FaCS SAHF Contract (cannot be changed as linked to abatement) | KPI Appendix C Schedule 18 |
| 21. | Over, how satisfied or dissatisfied are you with Uniting in respect of following up with you on a periodic basis to review progress as agreed in your Support Services Plan? Leave blank if you have not received a Support Services Plan. | Dissatisfied Fairly dissatisfied Neither Fairly satisfied Very satisfied | NSW FaCS SAHF Contract (cannot be changed as linked to abatement) | KPI Appendix C Schedule 18 |

Tenant Support Services Plan

Names

Tenant or household member

Age

Name(s) of dependent(s)

Age

Age

Age

Current use of support service(s)

| | | | |
|-------------------|------------------|------------------------|-----------------|
| Household Member: | Support Service: | Name of Contact Person | Type of Support |
|-------------------|------------------|------------------------|-----------------|

Work mobile:

Email:

| | | | |
|-------------------|------------------|------------------------|-----------------|
| Household Member: | Support Service: | Name of Contact Person | Type of Support |
|-------------------|------------------|------------------------|-----------------|

Work mobile:

Email:

| | | | |
|-------------------|------------------|------------------------|-----------------|
| Household Member: | Support Service: | Name of Contact Person | Type of Support |
|-------------------|------------------|------------------------|-----------------|

Work mobile:

Email:

Support Services Action Plan and Schedule

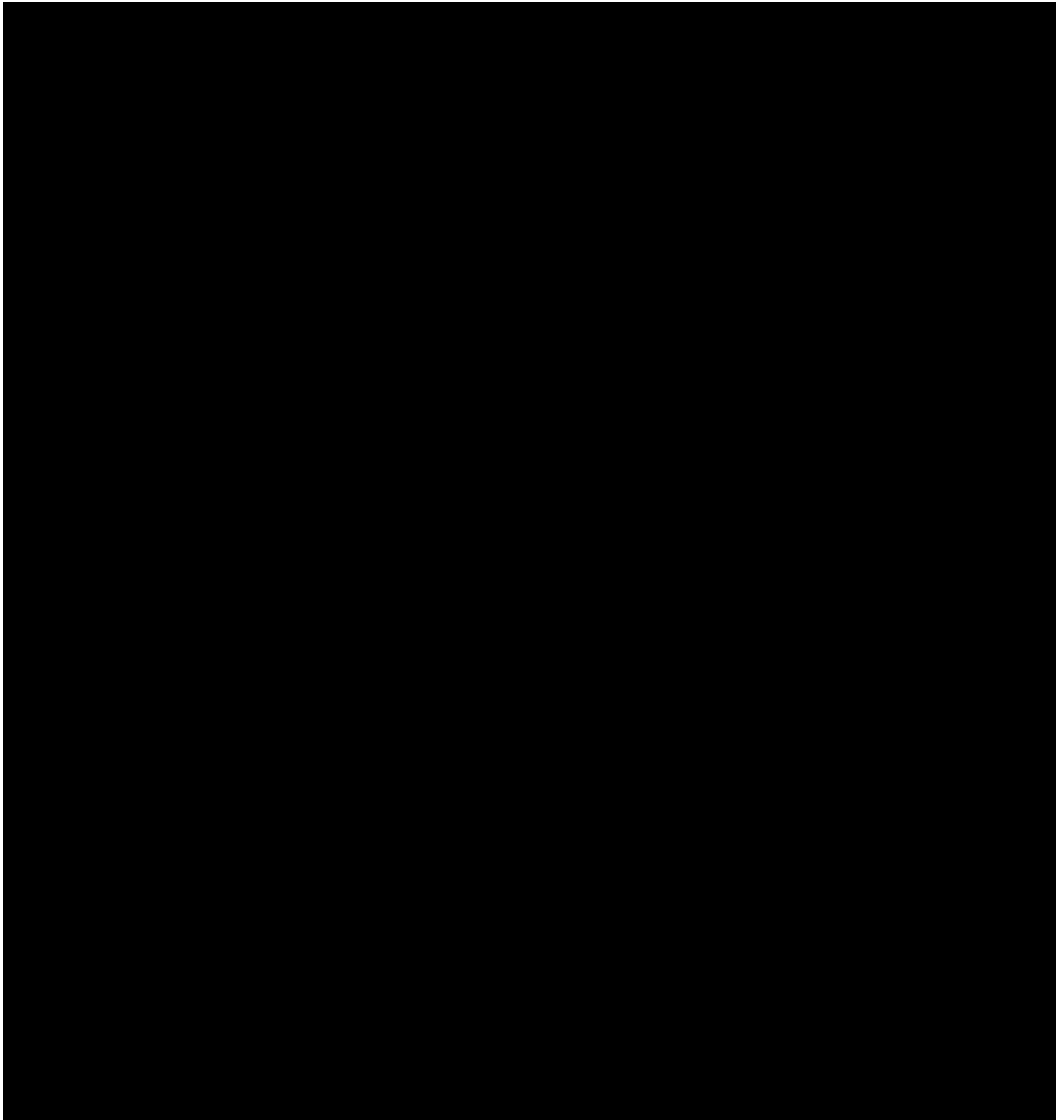
Use this template to record agreed actions, appointments or meetings

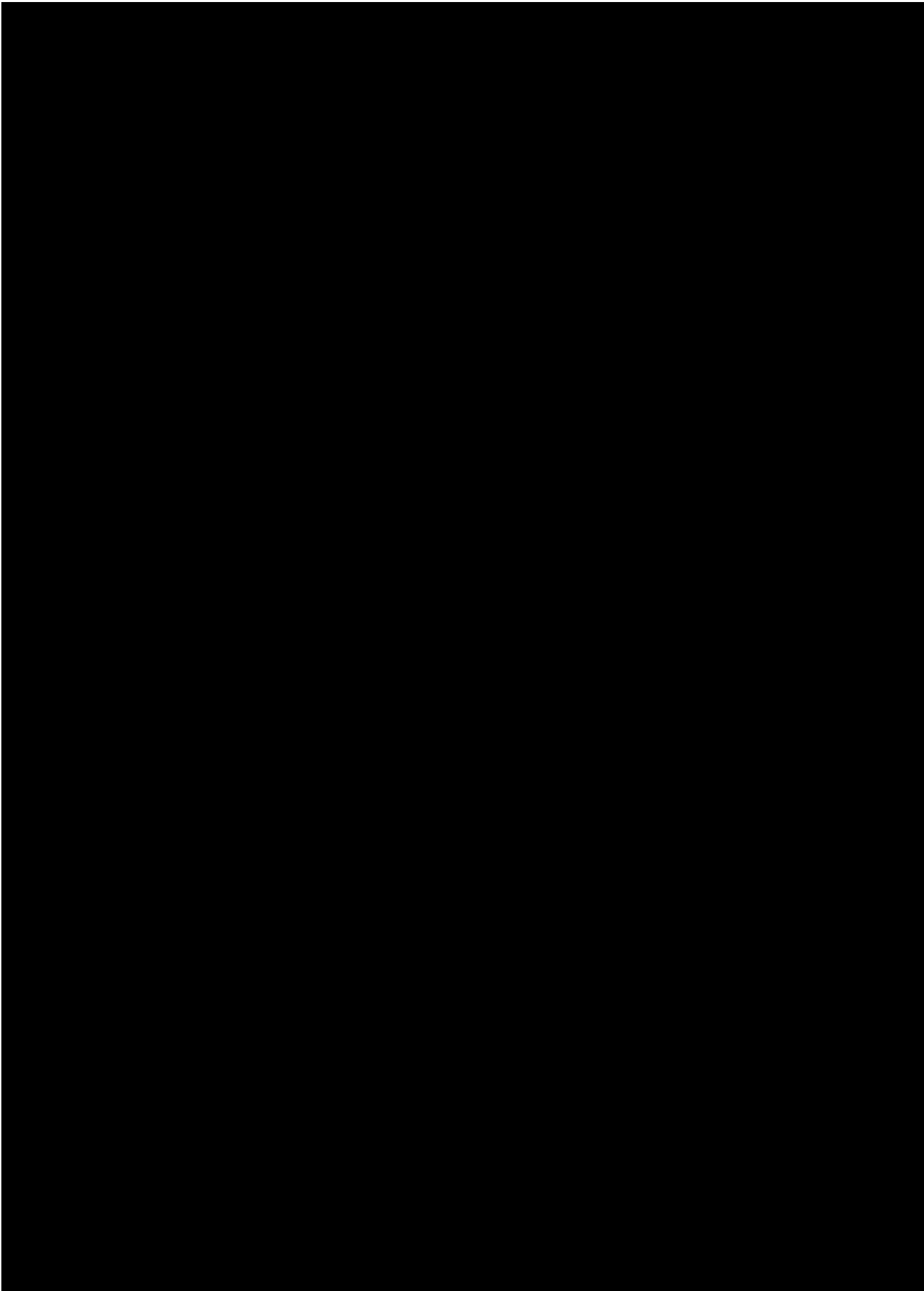
Household Member:

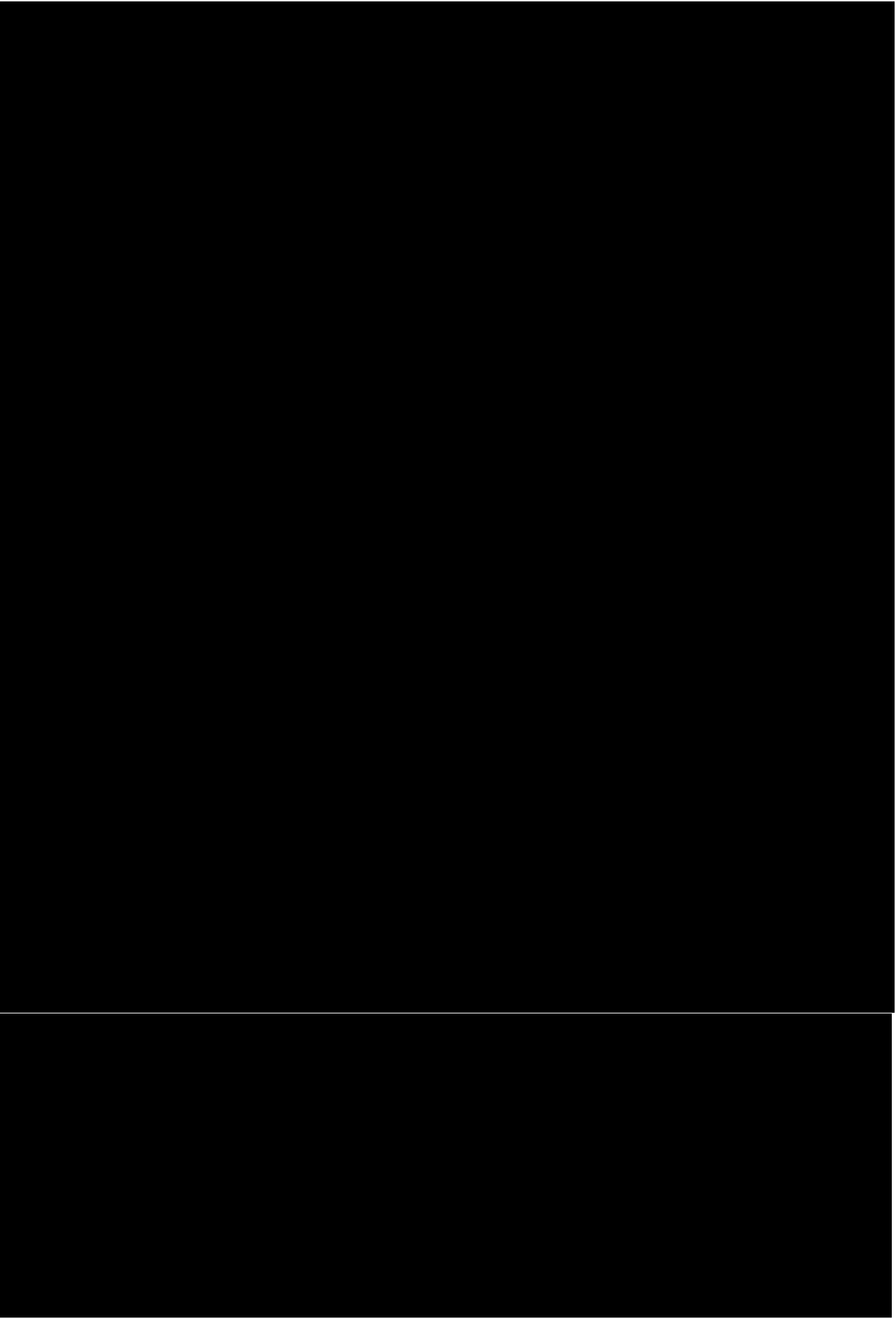
Service Provider:

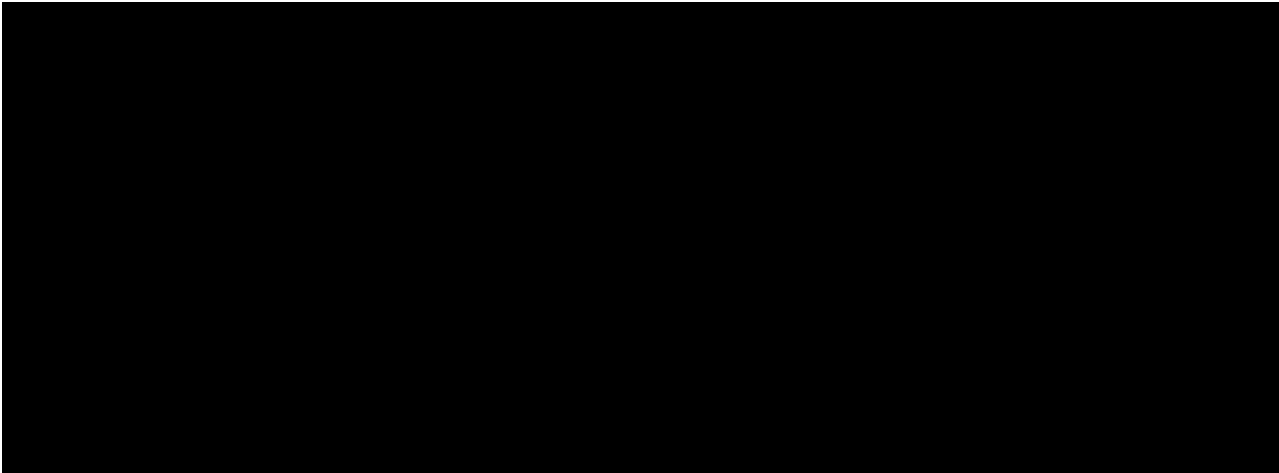
| Date | Agreed actions/appointments | Completed? | Initials |
|------|-----------------------------|------------|----------|
|------|-----------------------------|------------|----------|

| Date | Agreed actions/appointments | Completed? | Initials |
|------|-----------------------------|------------|----------|
|------|-----------------------------|------------|----------|











the 1990s, the number of people in the UK who are aged 65 and over has increased from 10.5 million to 13.5 million (19.5% of the population).

There are a number of reasons why the number of people aged 65 and over has increased. One of the main reasons is that people are living longer. The life expectancy at birth in the UK is now 77 years for men and 81 years for women. This is a significant increase from the 1950s, when life expectancy at birth was 71 years for men and 75 years for women.

Another reason why the number of people aged 65 and over has increased is that people are having children later in life. This means that there are more people in the 65-74 age group than there were in the 1950s. This is because people are having children at a later age, which means that there are more people in the 65-74 age group than there were in the 1950s.

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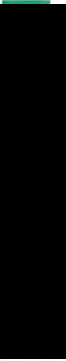
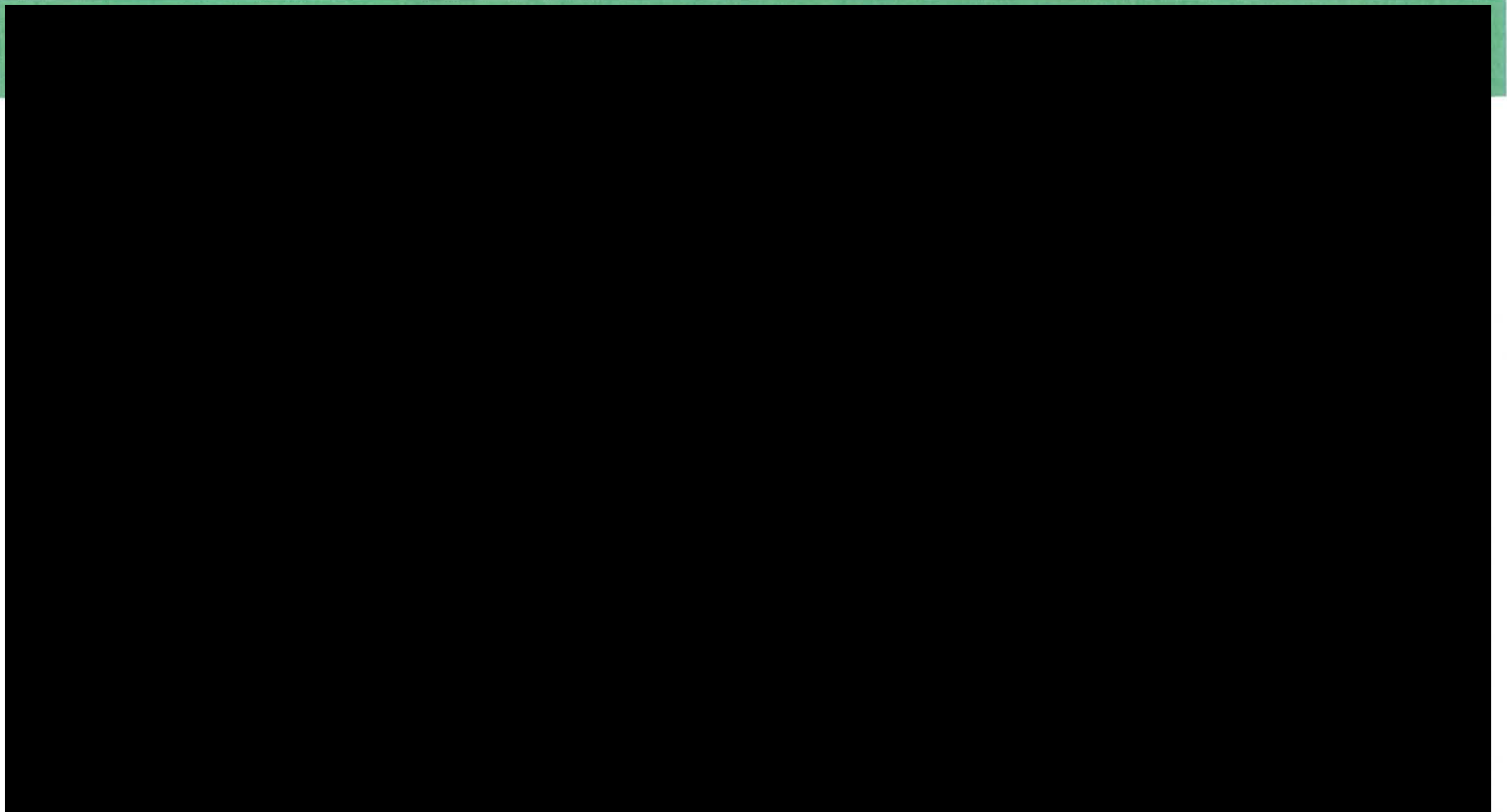
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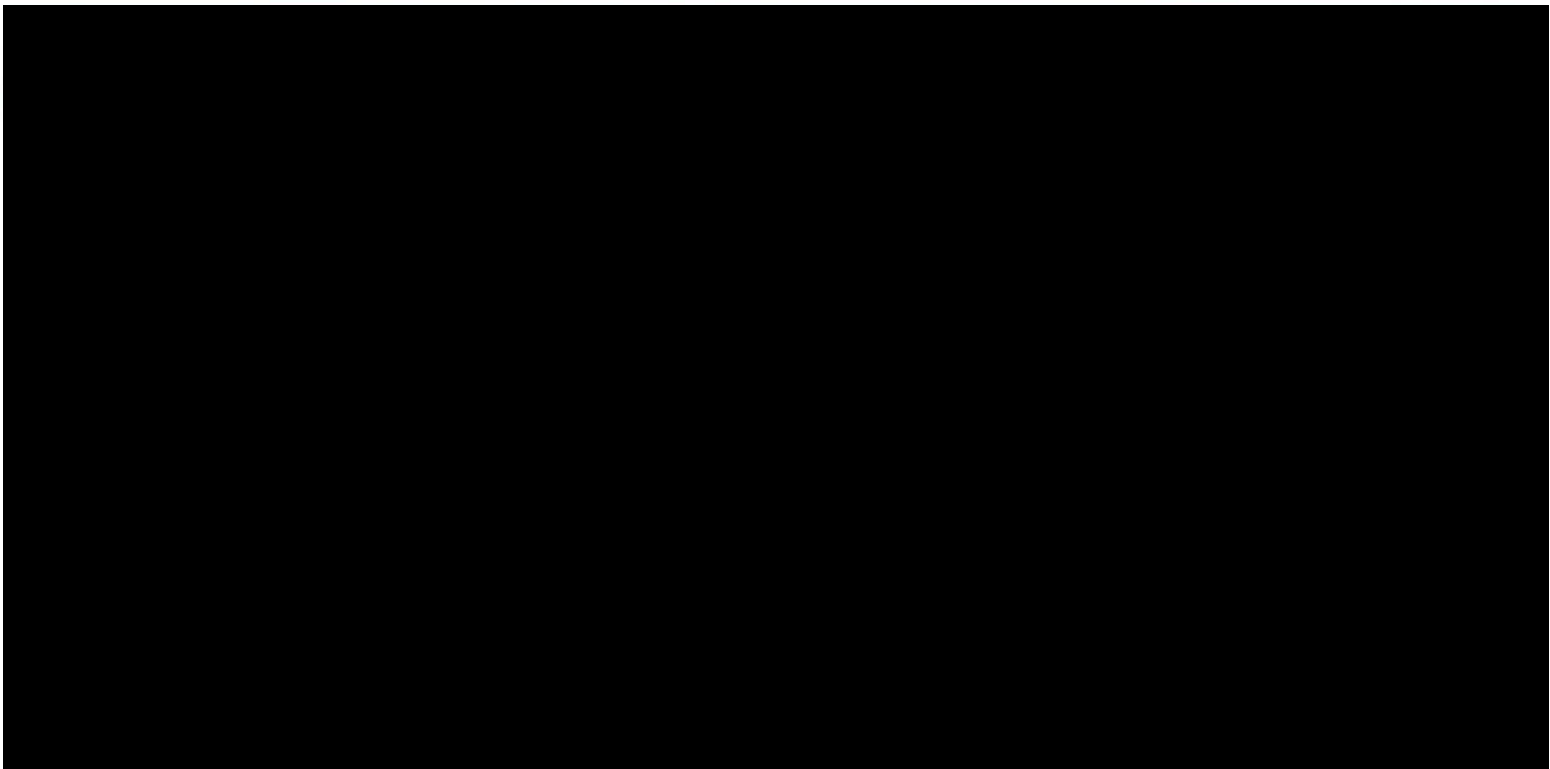
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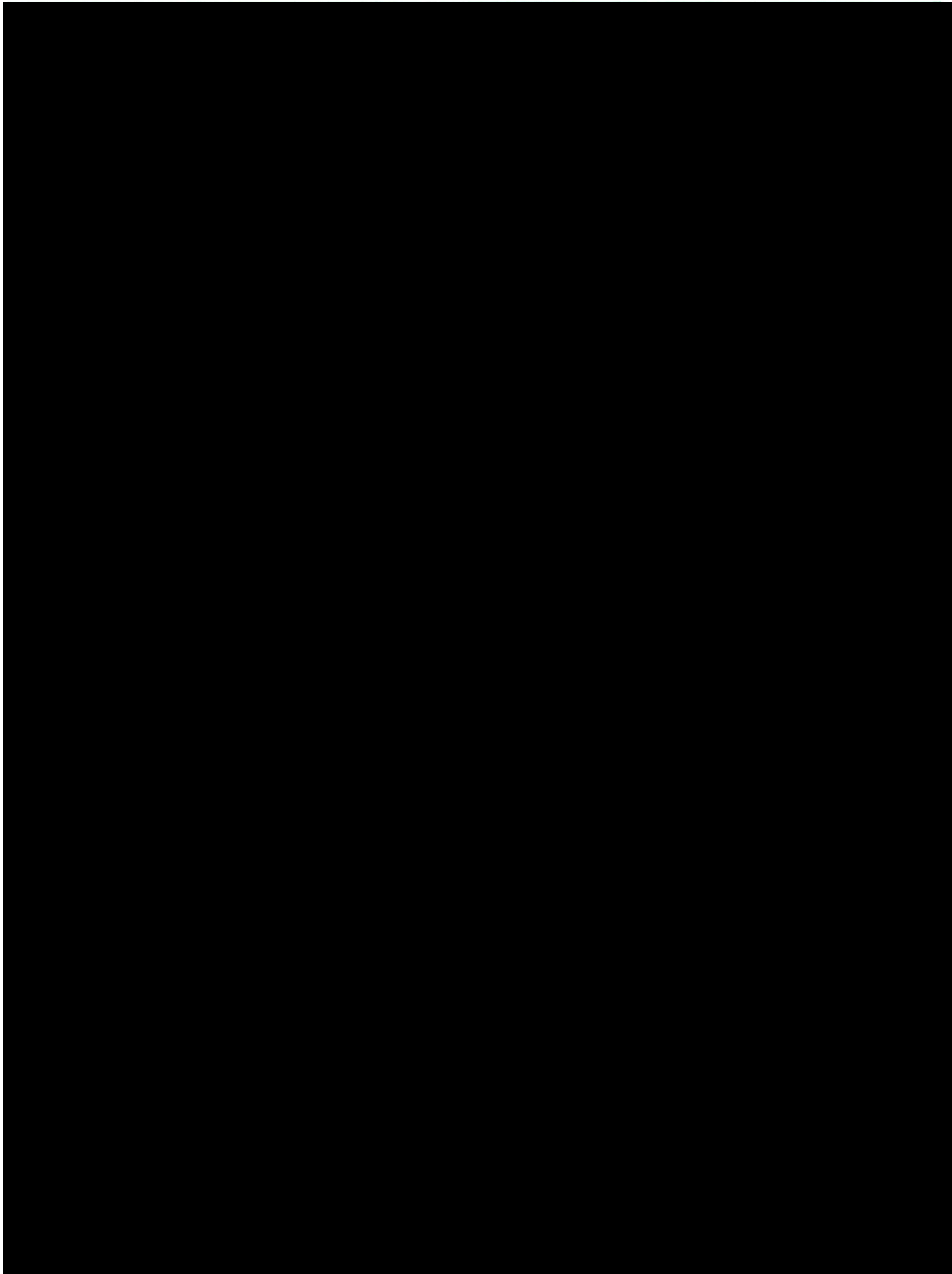
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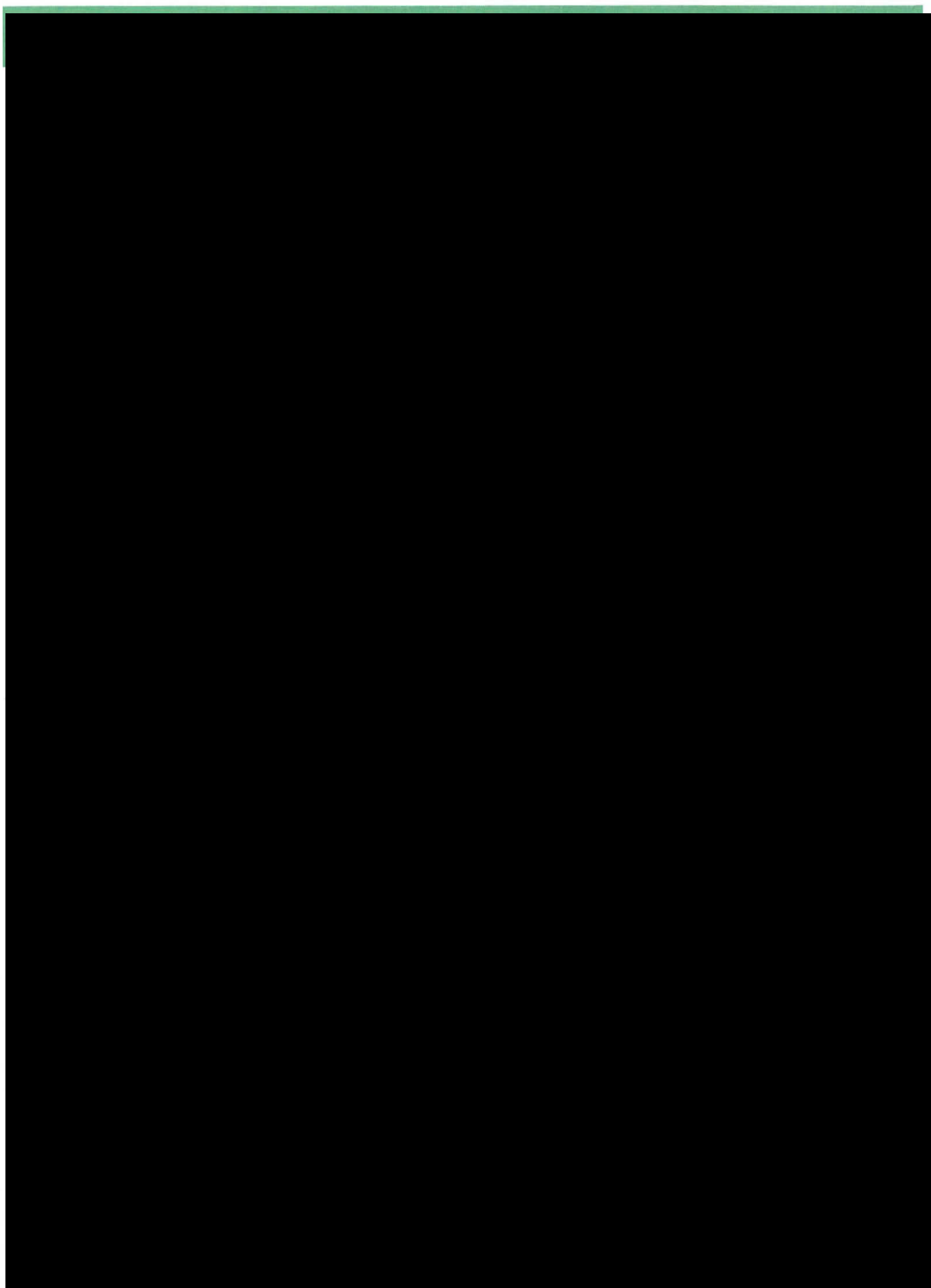
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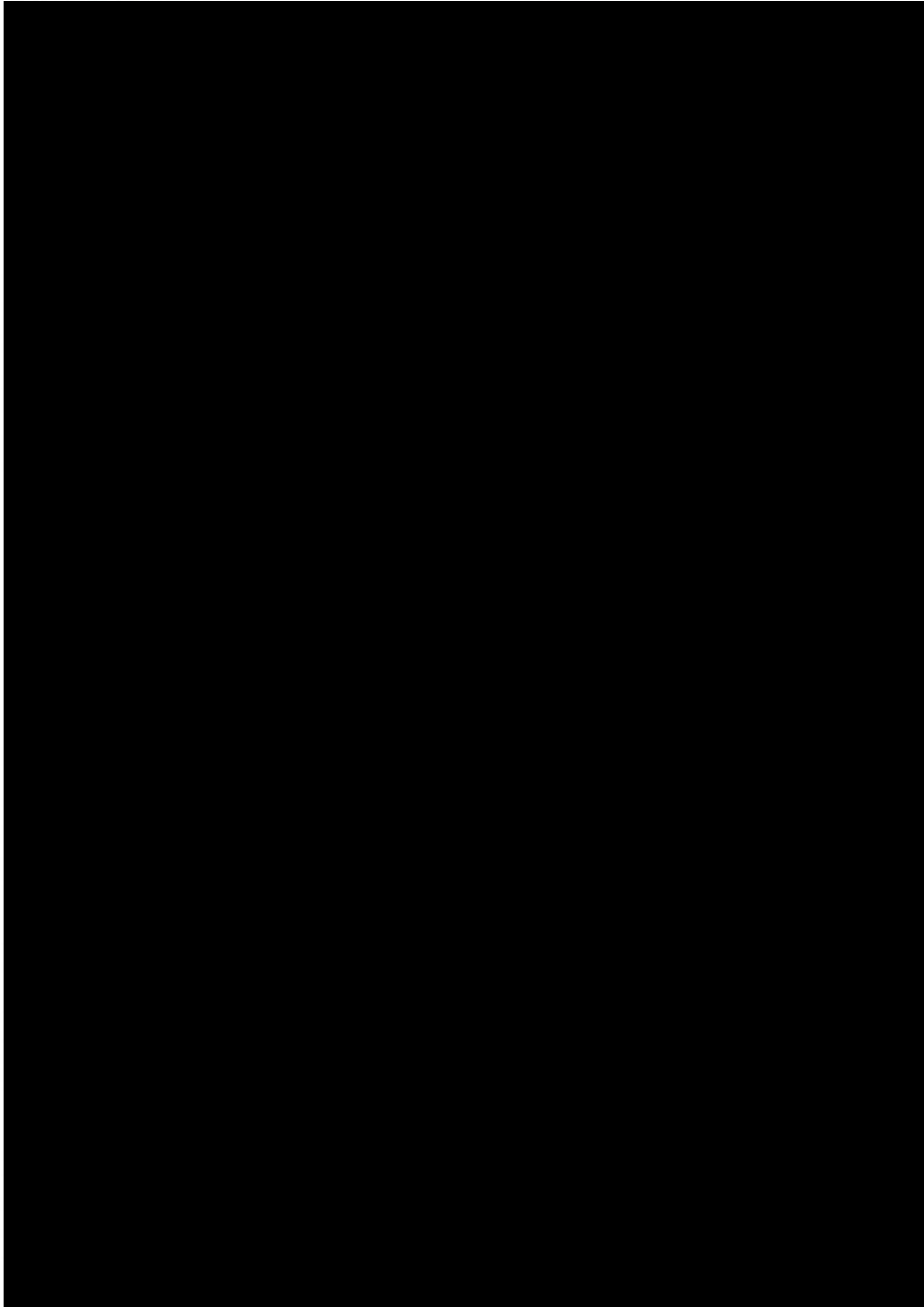


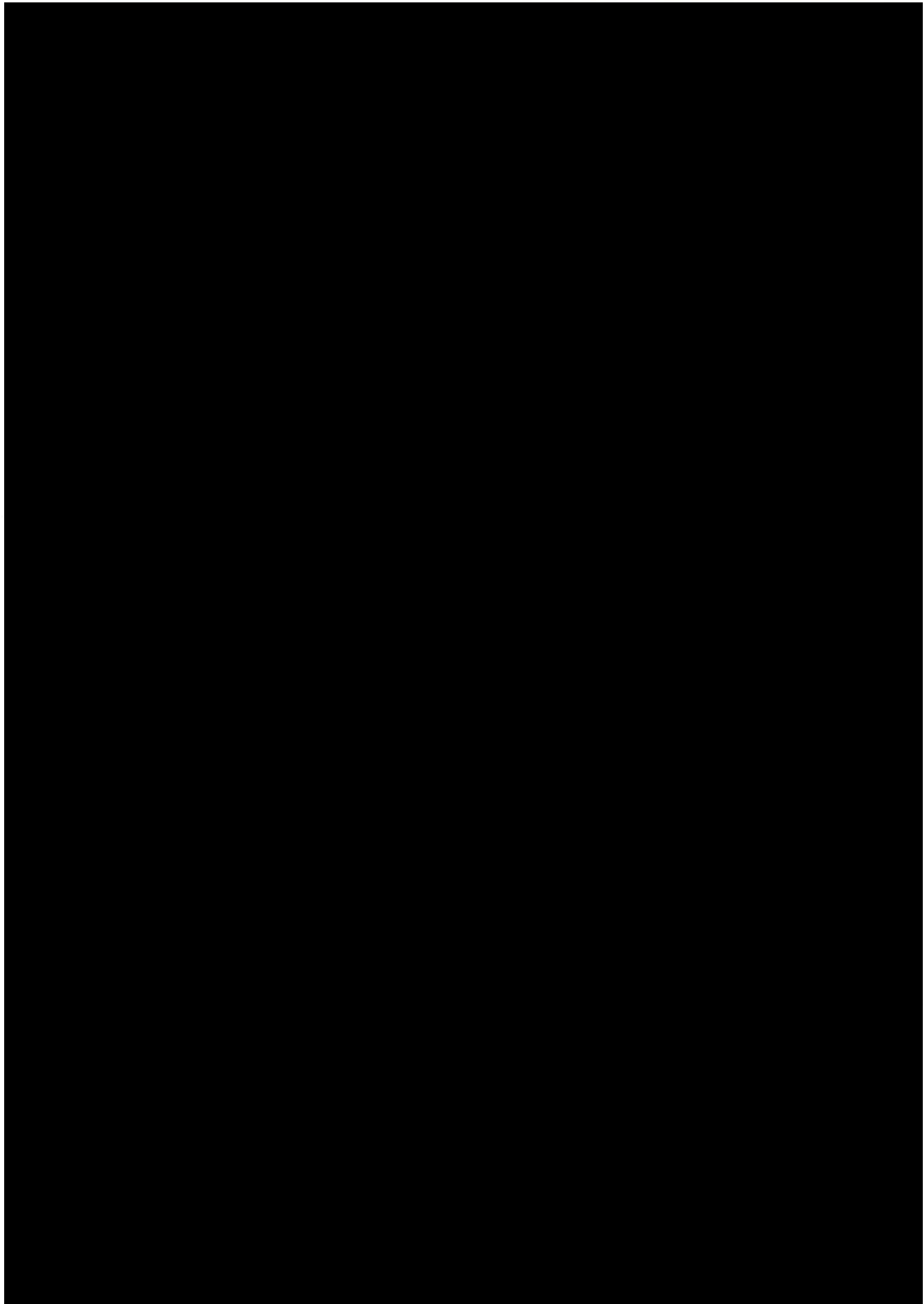


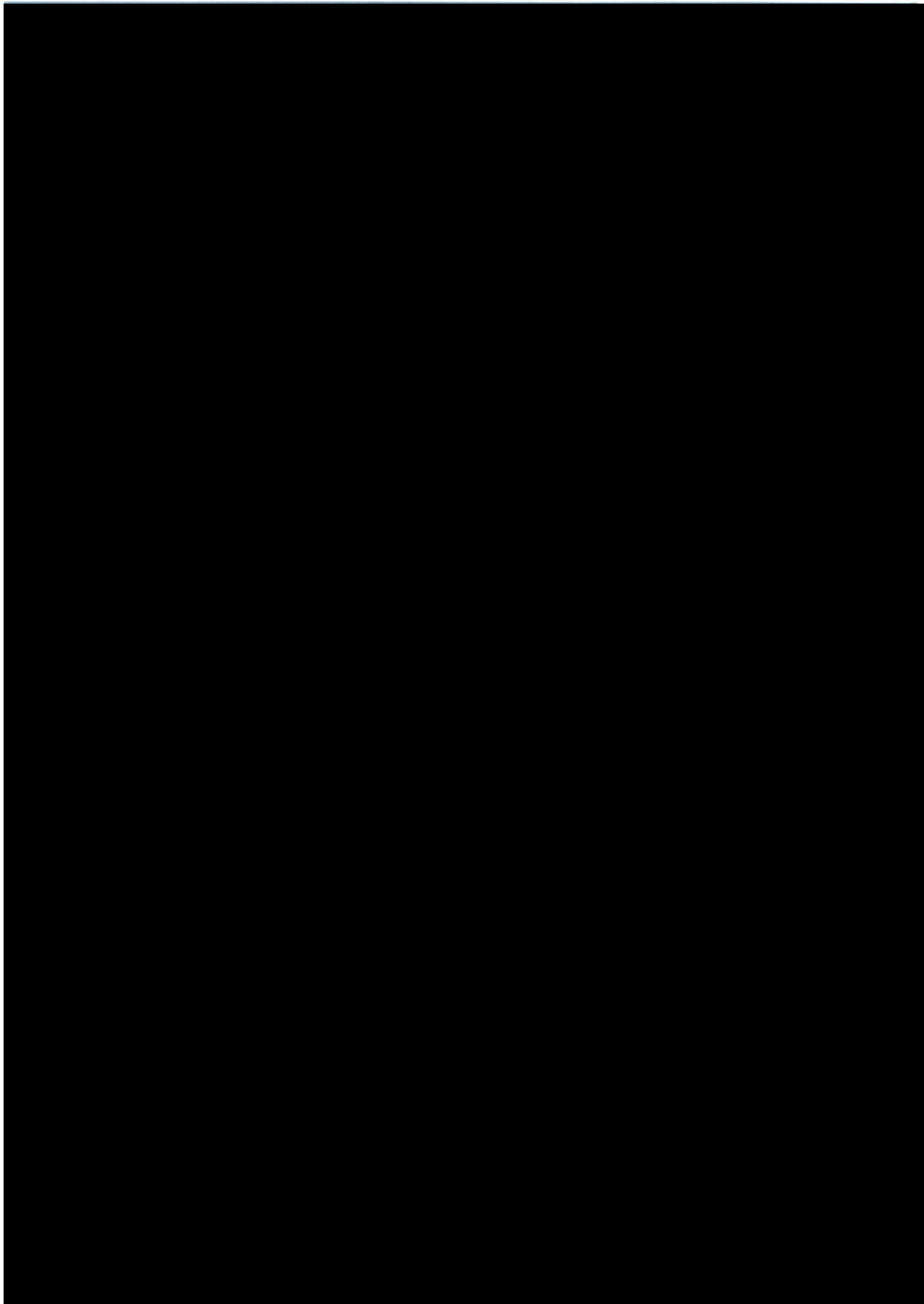


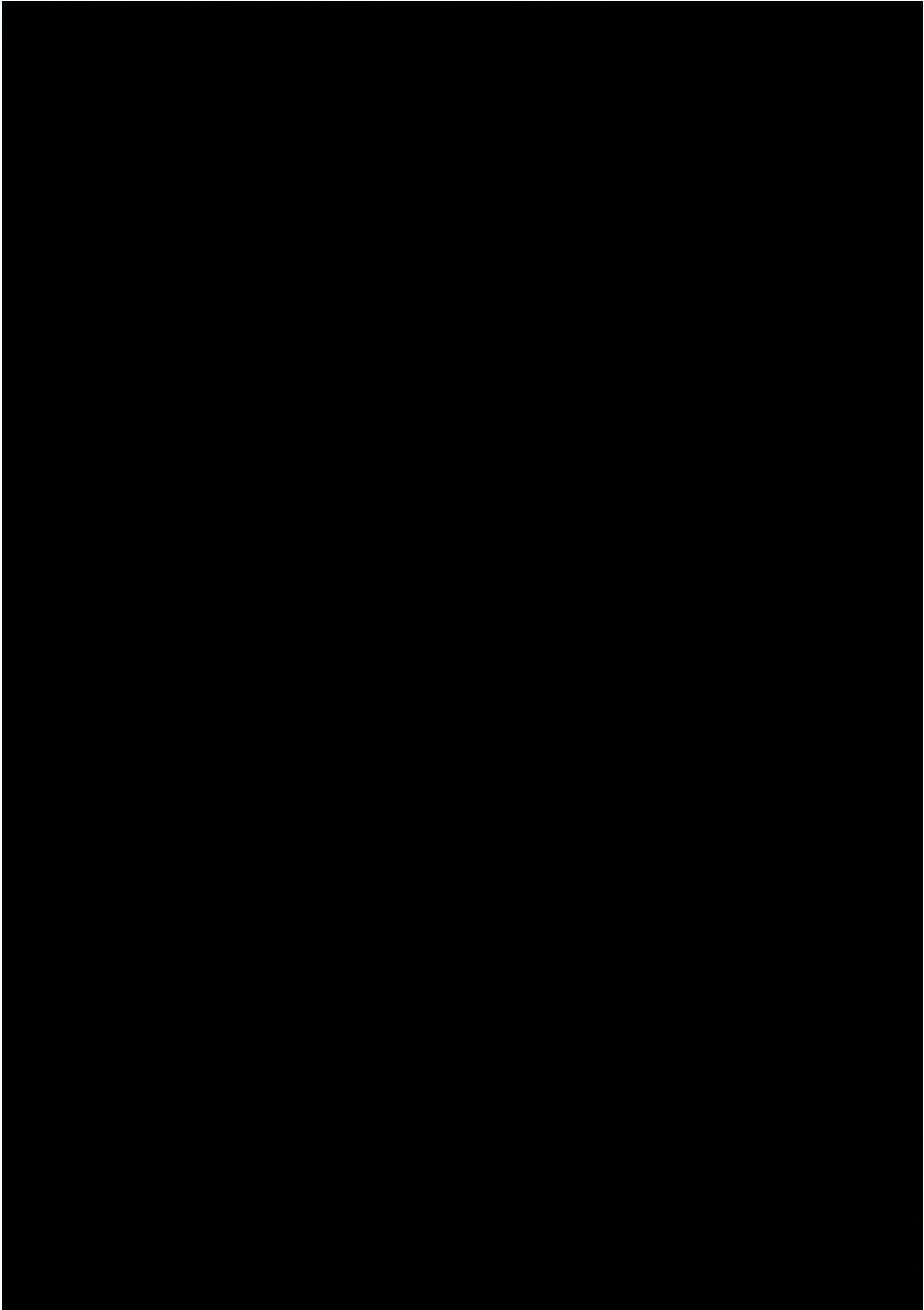


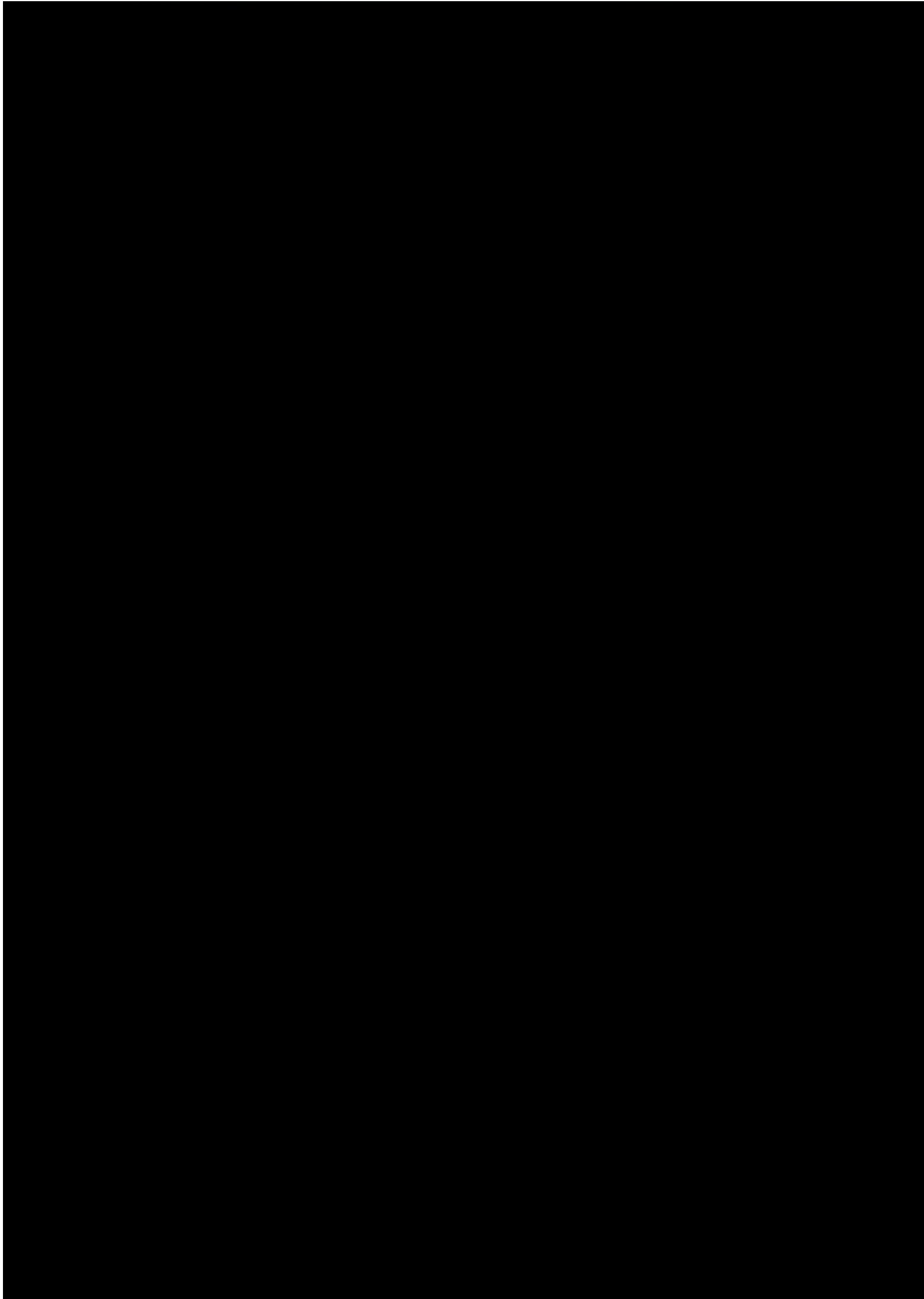


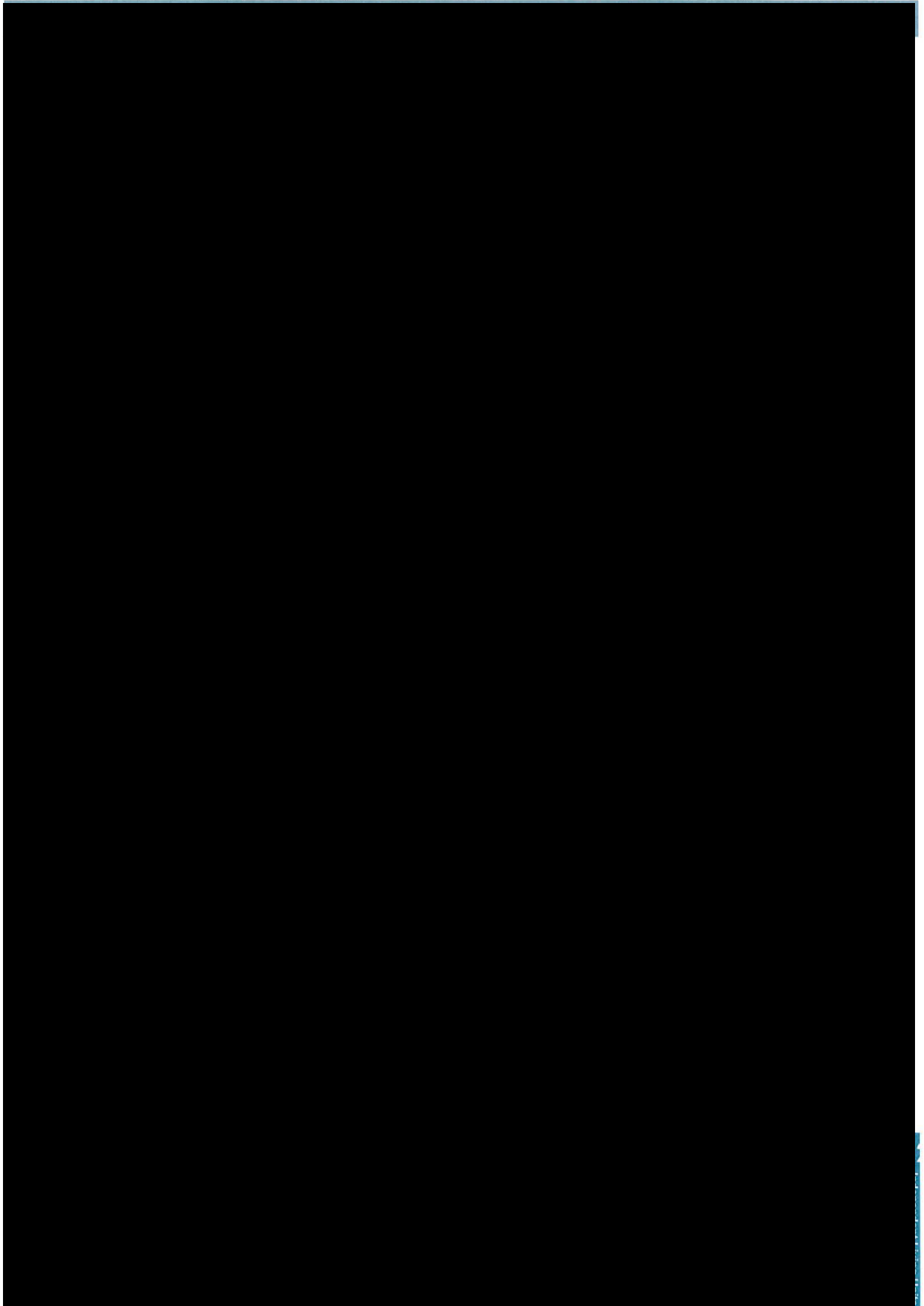




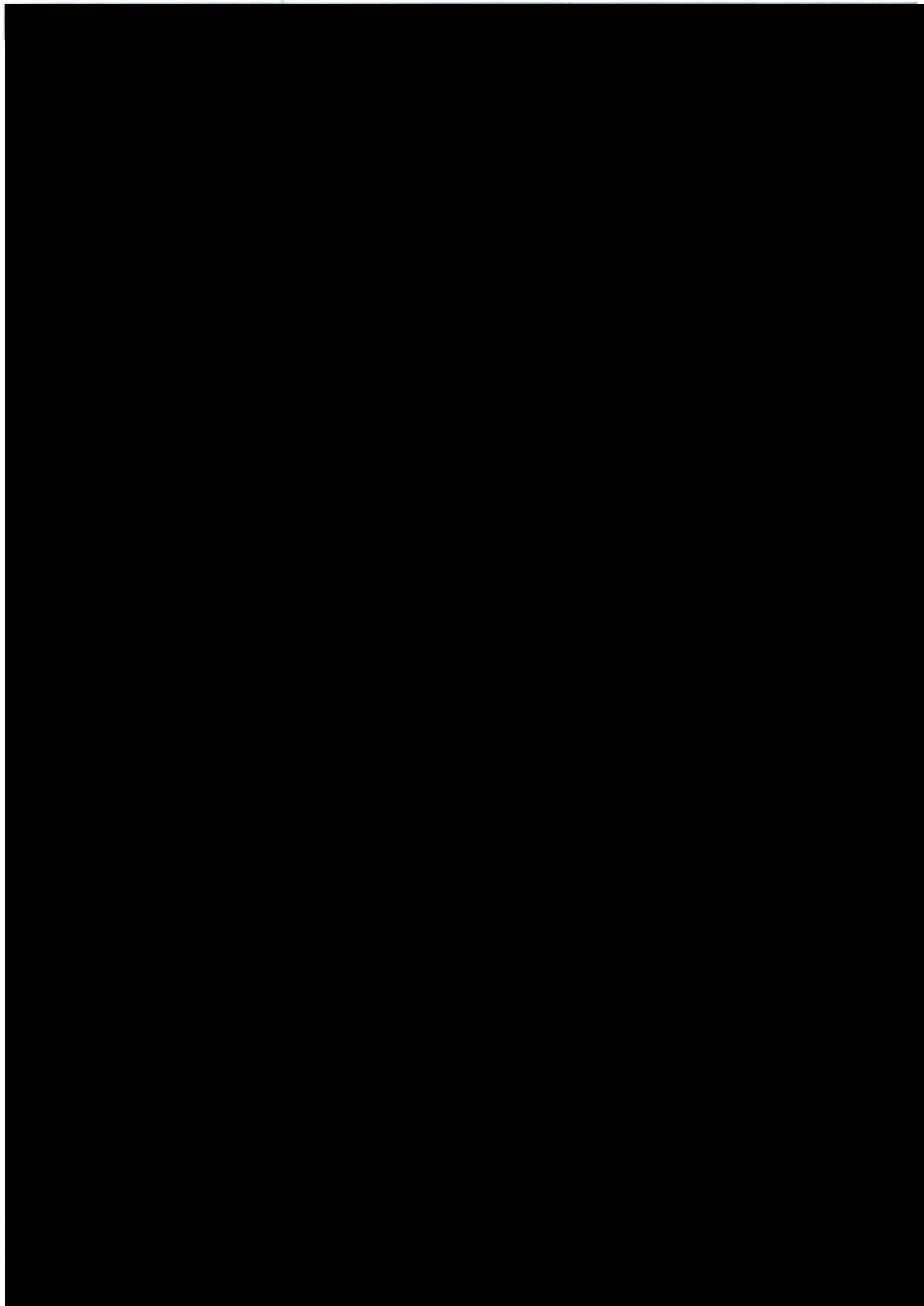


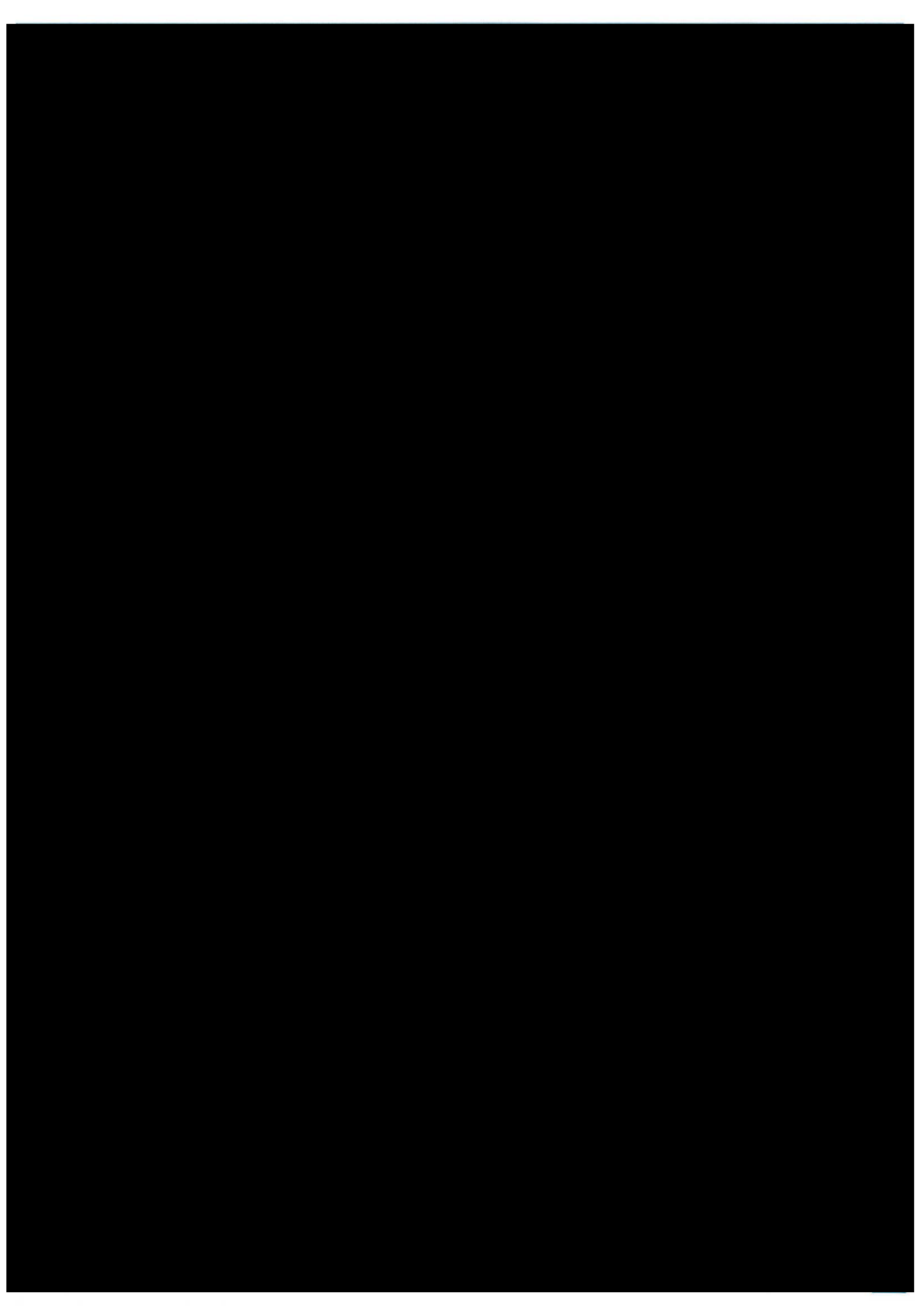




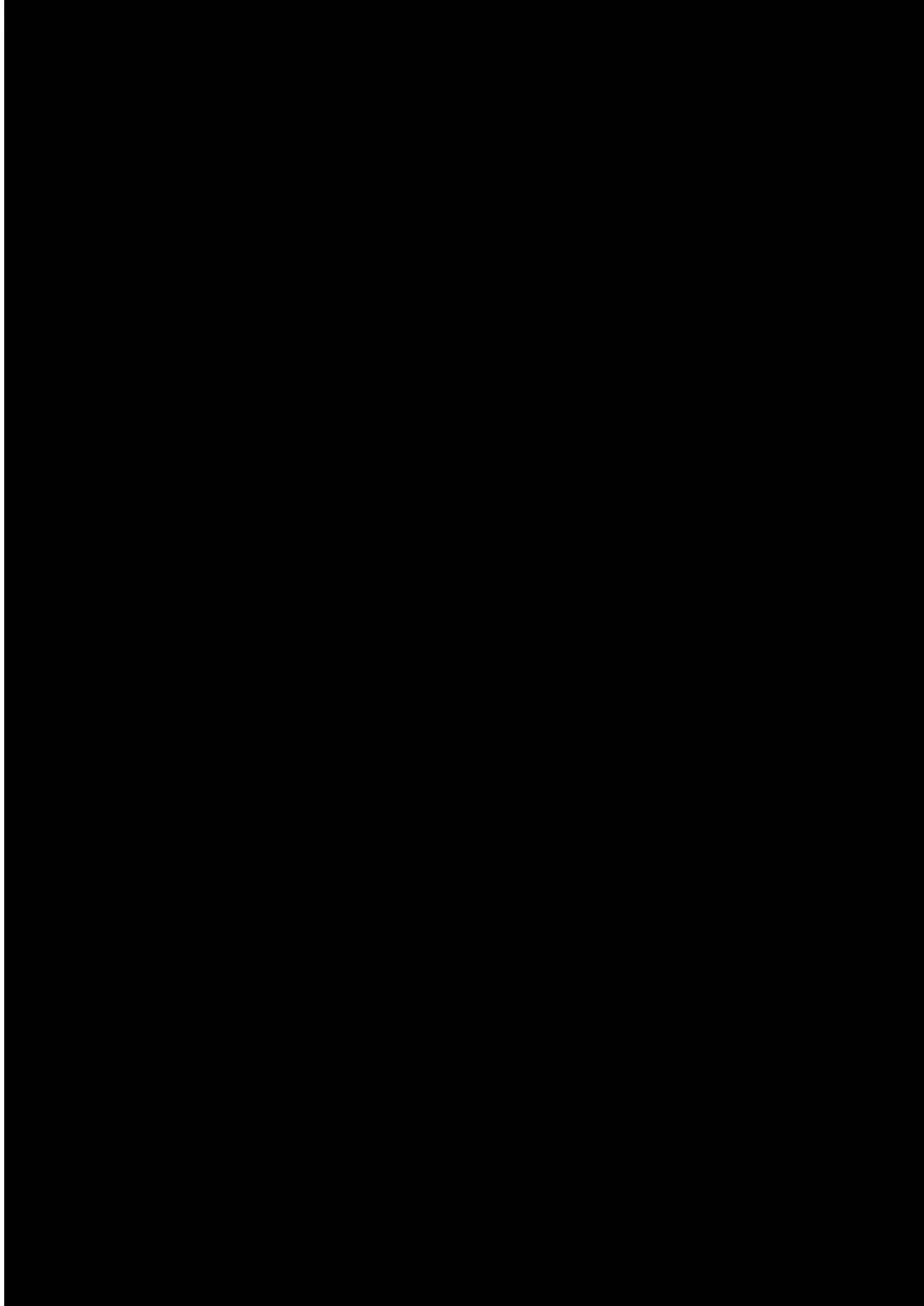


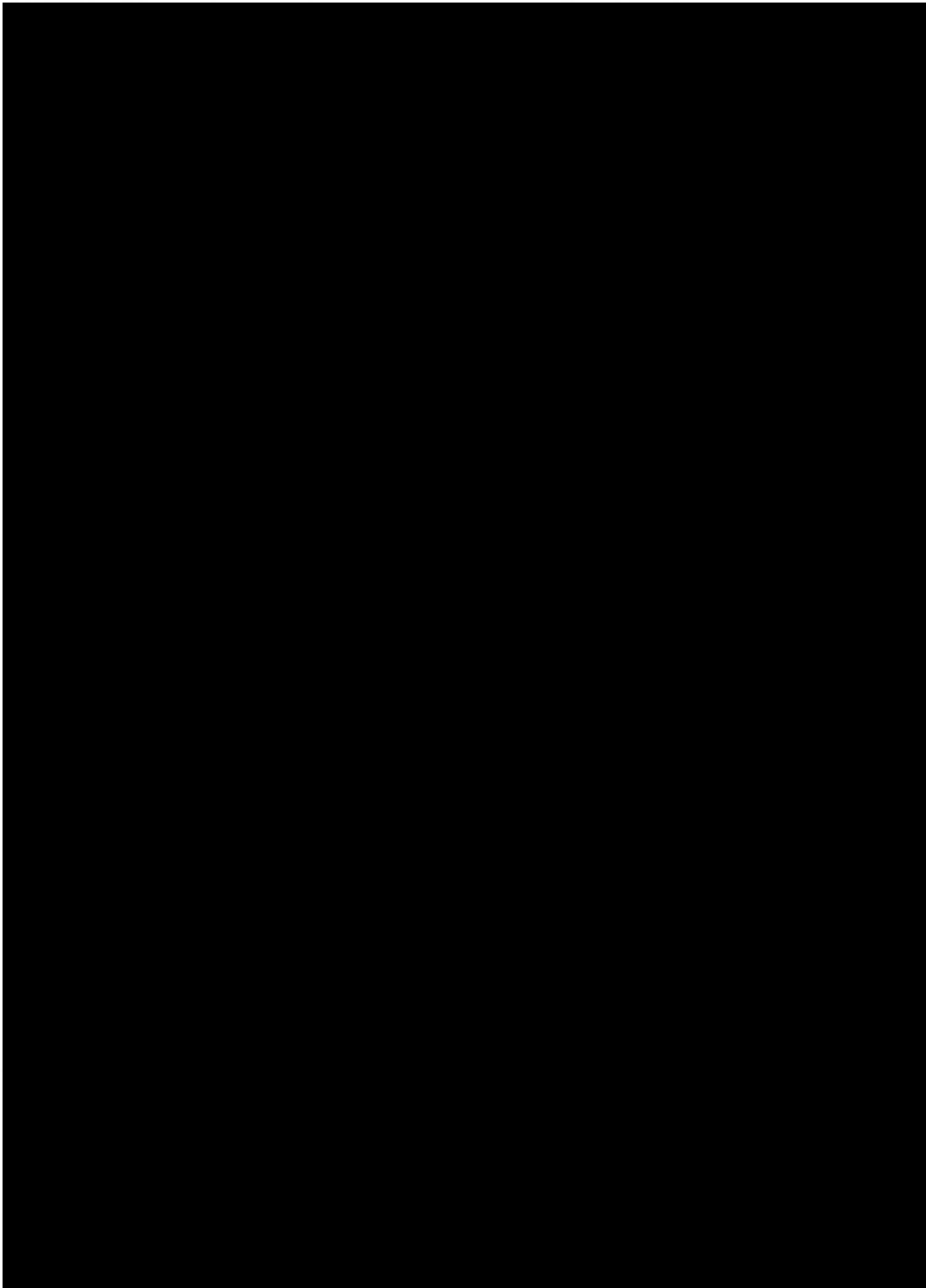
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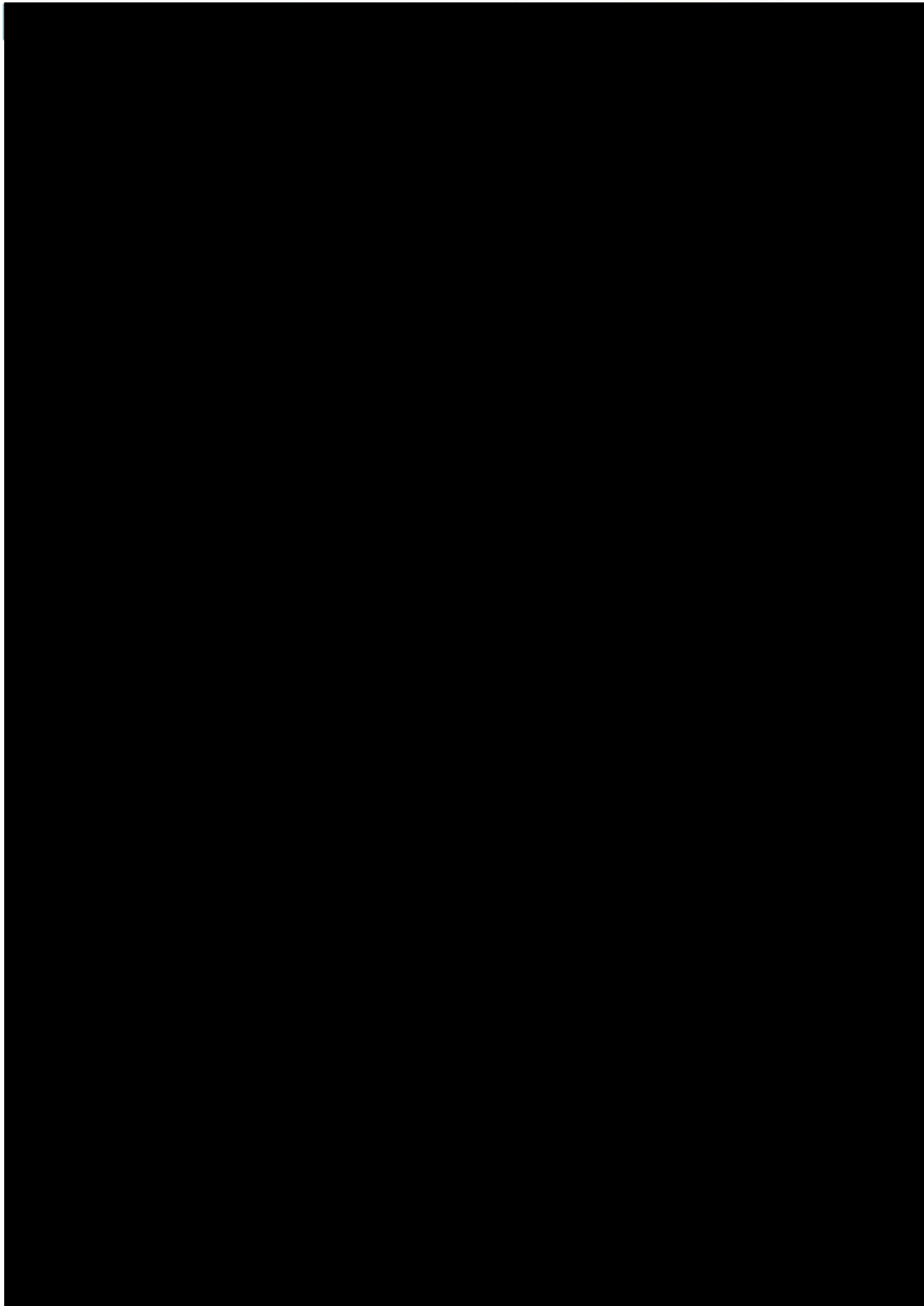












the 1990s, the number of people in the UK who are aged 65 and over has increased from 10.5 million to 13.5 million, and the number of people aged 75 and over has increased from 4.5 million to 6.5 million (Office for National Statistics 2000).

There is a growing awareness of the need to address the needs of older people, and the need to ensure that they are able to live independently in their own homes for as long as possible. This has led to a number of initiatives, including the development of community care packages, the provision of home care services, and the development of residential care facilities.

One of the key challenges facing the UK in the 21st century is how to meet the needs of an ageing population. This paper examines the current situation in the UK, and discusses the challenges that are likely to be faced in the future. It also discusses some of the initiatives that are being taken to address these challenges.

The paper is divided into three main sections. The first section discusses the current situation in the UK, and the challenges that are likely to be faced in the future. The second section discusses some of the initiatives that are being taken to address these challenges. The third section discusses the implications of these initiatives for the future.

The first section discusses the current situation in the UK, and the challenges that are likely to be faced in the future. The population of the UK is ageing, and the number of people aged 65 and over is increasing. This is leading to a number of challenges, including the need to provide care for older people, and the need to ensure that they are able to live independently in their own homes for as long as possible.

The second section discusses some of the initiatives that are being taken to address these challenges. These include the development of community care packages, the provision of home care services, and the development of residential care facilities. These initiatives are aimed at ensuring that older people are able to live independently in their own homes for as long as possible.

The third section discusses the implications of these initiatives for the future. It is expected that these initiatives will help to address the challenges facing the UK in the 21st century, and will ensure that older people are able to live independently in their own homes for as long as possible.

The paper concludes by discussing the implications of these initiatives for the future. It is expected that these initiatives will help to address the challenges facing the UK in the 21st century, and will ensure that older people are able to live independently in their own homes for as long as possible.

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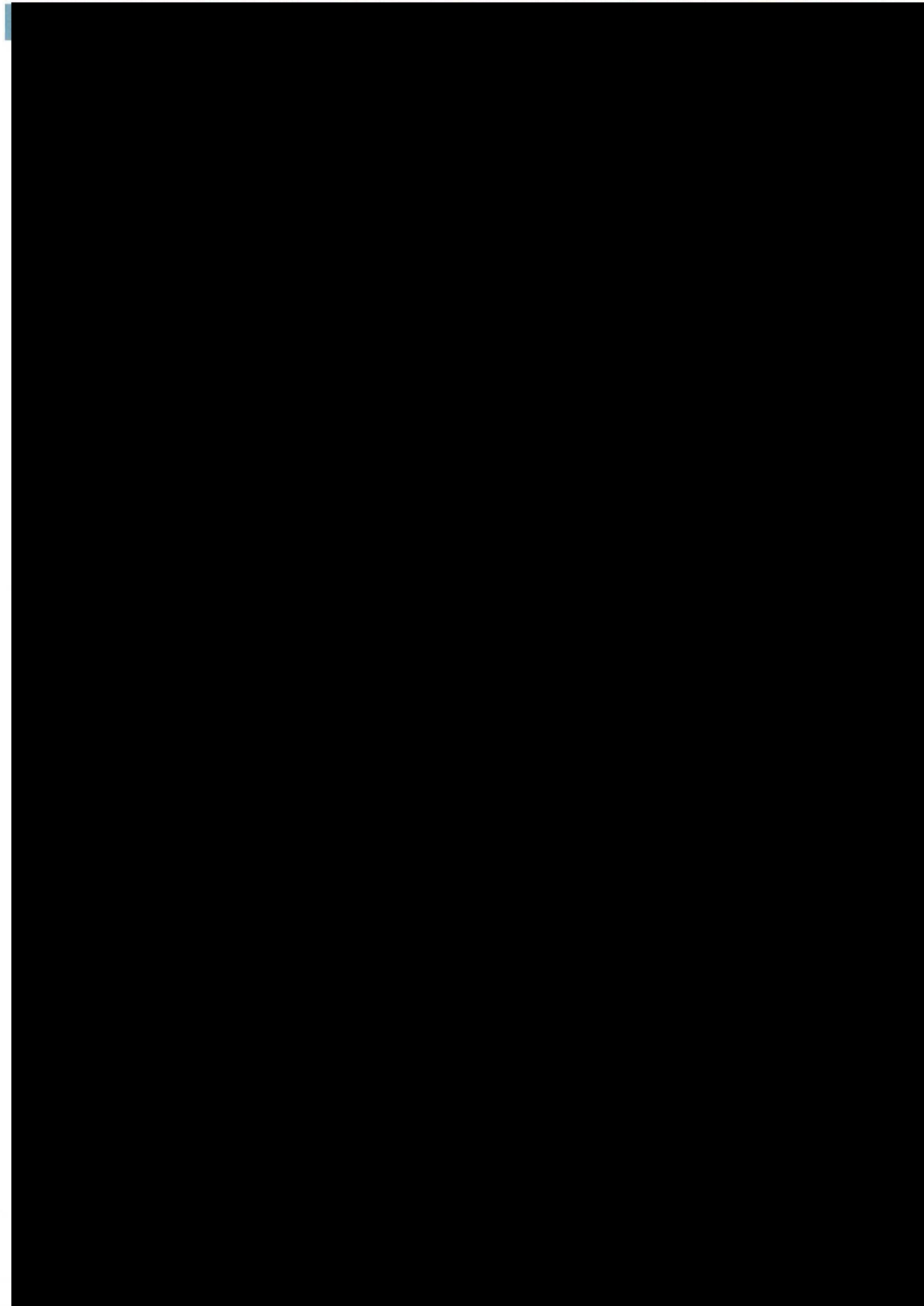
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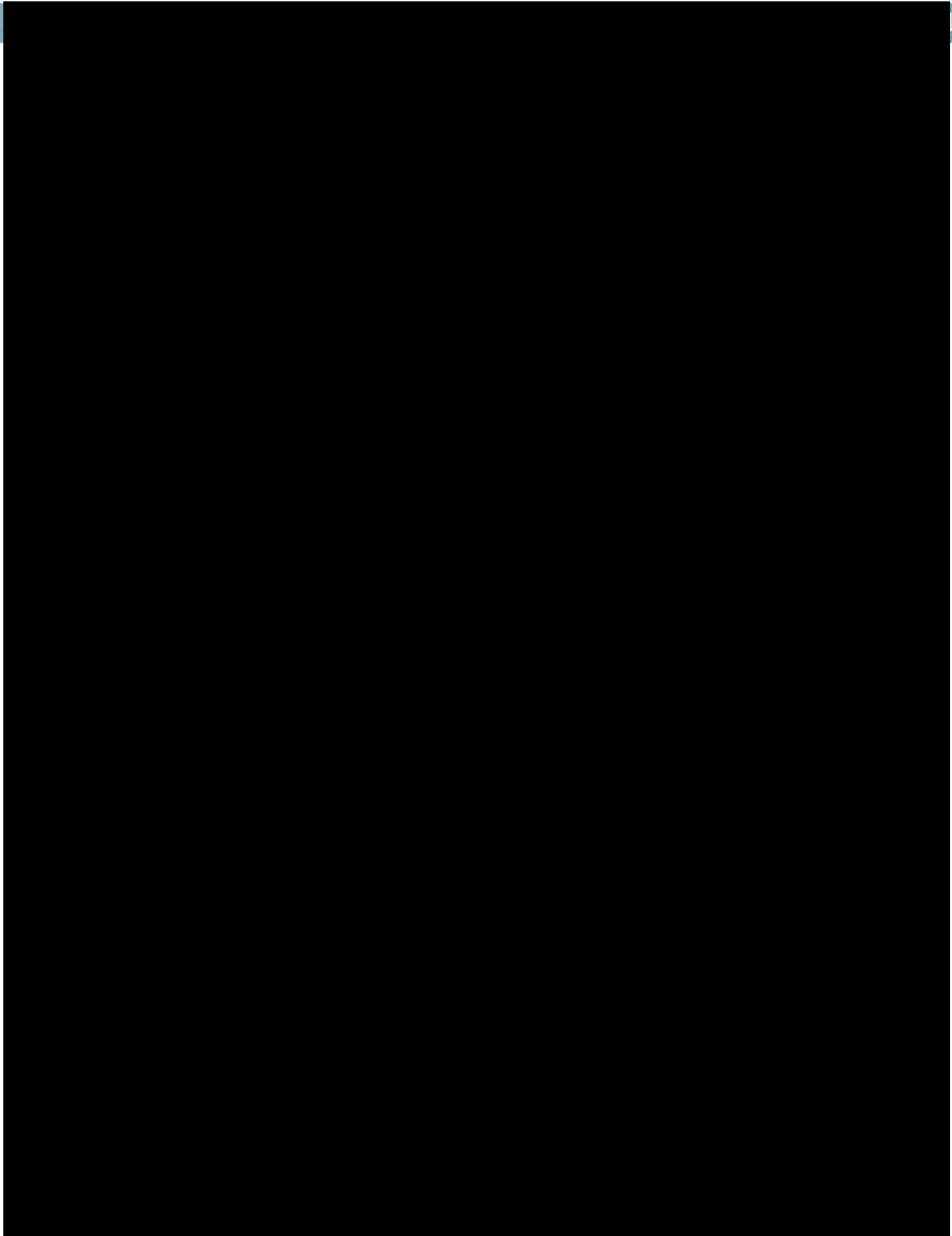
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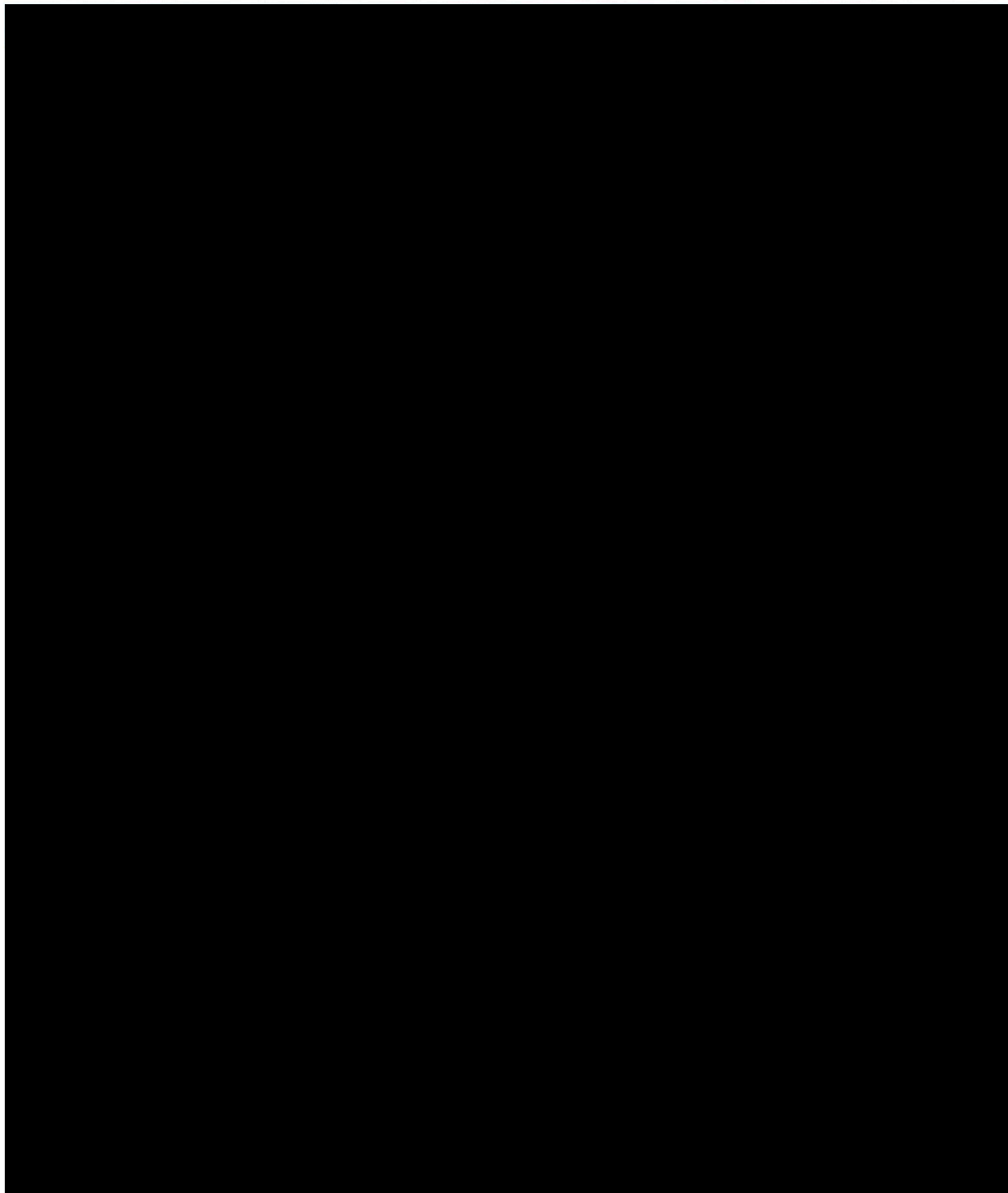
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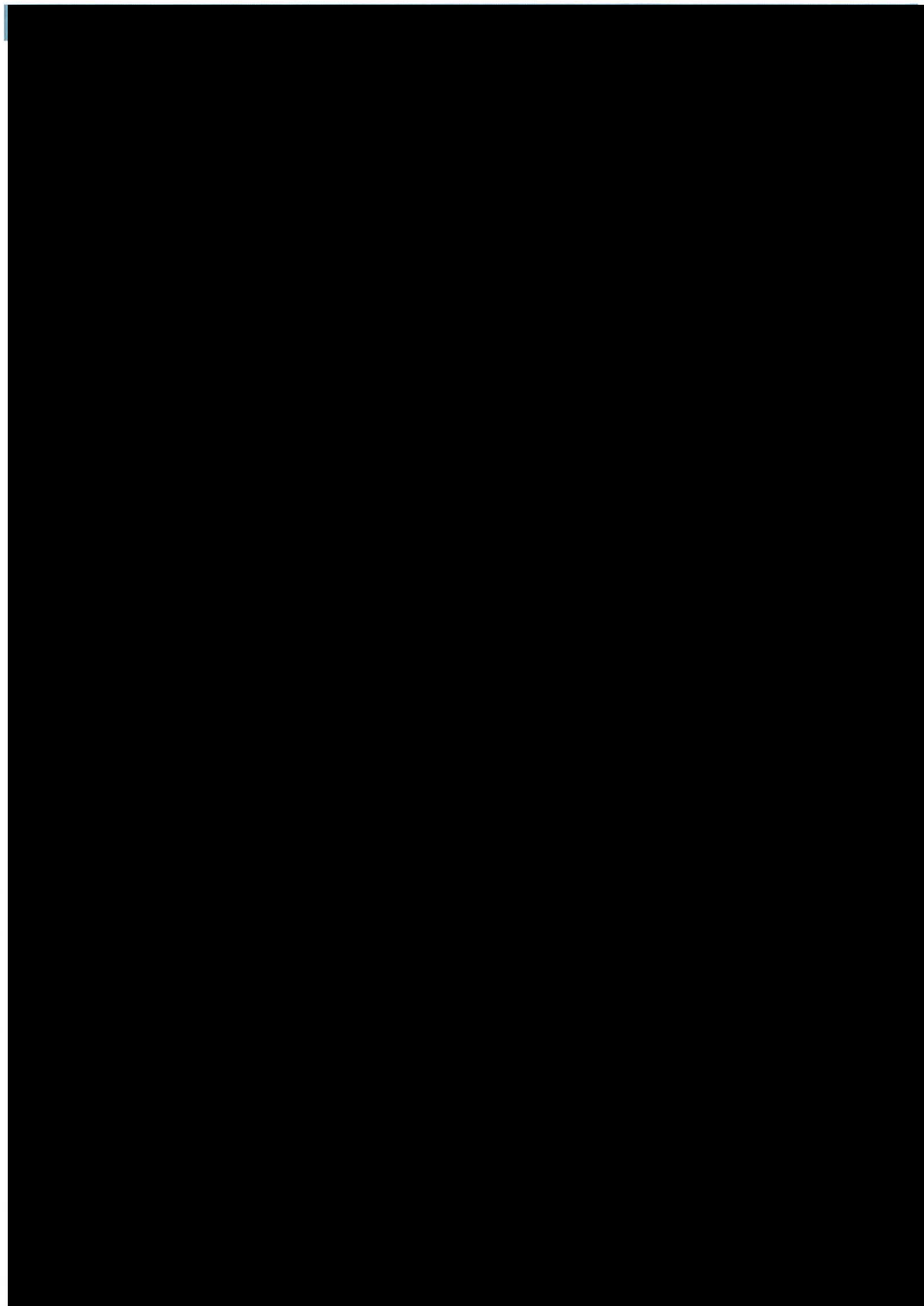
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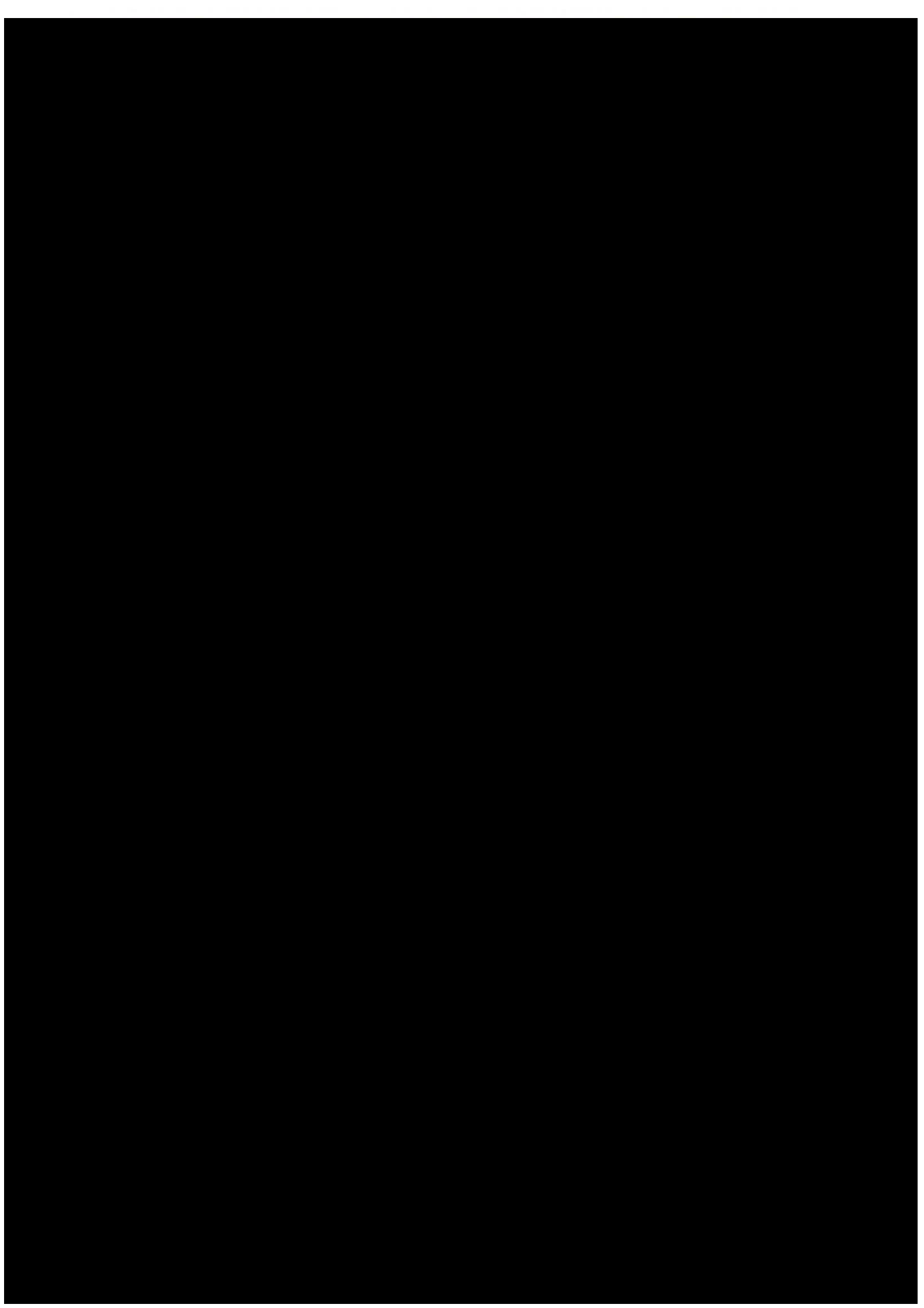
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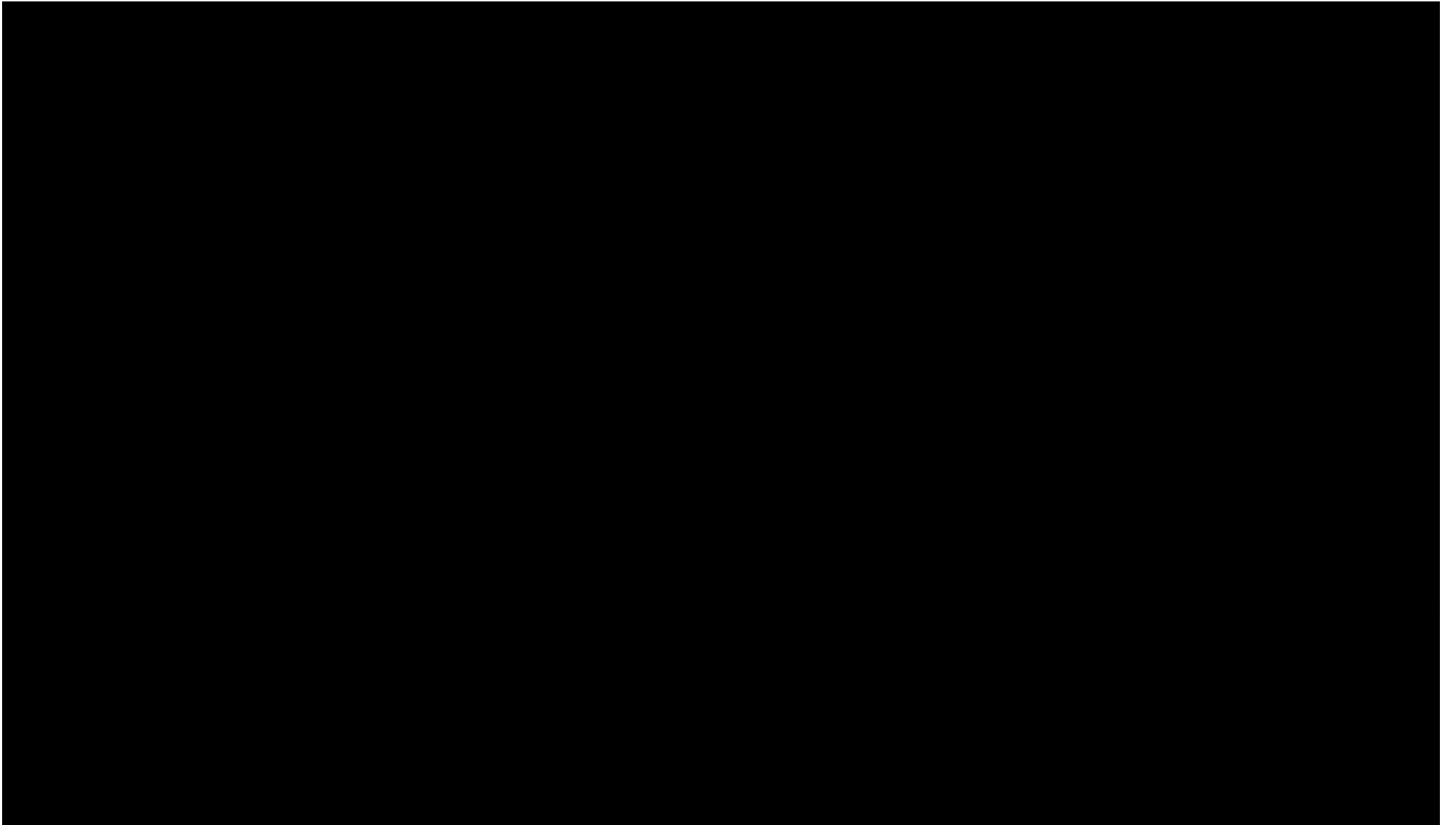












Confidential

Schedule 19 – Expert Determination Agreement

*Social and Affordable Housing Fund - Expert
Determination Agreement*

Department of Family and Community Services (FACS)

and

*The Uniting Church in Australian Property Trust (NSW)
(ABN 77 005 284 605) for and on behalf of Uniting
(NSW.ACT) (ABN 78 722 539 923) (also known as
UnitingCare NSW.ACT) (ServiceCo)*

and

[Insert] (Expert)

Expert Determination Agreement made on *[insert]*

Parties The Secretary of the Department of Family and Community Services as Housing Agency under section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**)

The Uniting Church in Australia Property Trust (NSW) (ABN 77 005 284 605) for and on behalf of Uniting (NSW.ACT) (ABN 78 722 539 923) (also known as UnitingCare NSW.ACT) of Level 4, 222 Pitt Street, Sydney NSW 2000 (**ServiceCo**)

[Insert name and address of Expert agreed between the Parties or appointed pursuant to clause 42 (Expert determination) of the Services Deed or the equivalent clause in each Relevant Agreement] (**Expert**)

Recitals

- A. The background to the Service Package is set out in the Services Deed.
- B. On *[insert]*, *[the Parties agreed / (insert party name) chose]* that the matter described in Schedule 1 be determined by an Expert appointed under clause *[insert relevant clause reference]* of the Relevant Agreement.
- C. In accordance with clause *[insert relevant clause reference]* of the Relevant Agreement, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement and the Services Deed.

Operative provisions

1. Definitions

1.1 Services Deed definitions

Unless otherwise expressly defined, expressions used in this Agreement have the meanings given to them in the Services Deed.

1.2 Definitions

Agreement means this agreement and includes all schedules, exhibits, attachments and annexures to it.

Code of Conduct means the code of conduct set out in section 2 of Schedule 2.

Matter means a dispute under, arising out of, or in connection with the Relevant Agreement and referred to expert determination under clause *[insert relevant clause reference]* of the Relevant Agreement.

Party means *[insert party names]*.

Services Deed means the document entitled "Social and Affordable Housing Fund – Services Deed" between FACS and ServiceCo dated *[insert date]*.

Relevant Agreement means *[insert the relevant Service Package Document under which the Matter arose]*.

Rules means the "Rules for Expert Determination Process" set out in Schedule 2.

Schedule of Fees and Disbursements means the fees and disbursements contained in Schedule 3.

1.3 Interpretation

In this Agreement:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Agreement and Schedule references)**: a reference to:
- (i) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Agreement; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(Party)**: a reference to a party includes that Party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **(“includes”)**: “includes” and “including” will be read as if followed by the phrase “(without limitation)”;
- (j) **(“or”)**: the meaning of “or” will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **(“\$”)**: a reference to “\$”, AUD or dollar is to Australian currency;
- (m) **(Business Day)**: if the day on or by which anything is to be done under this Agreement is not a Business Day, that thing must be done no later than the next Business Day;
- (n) **(day)**: except as otherwise provided in this Agreement or where a reference is made to 'Business Days', day means a calendar day;

- (o) **(time)**: a reference to time is a reference to time in Sydney, Australia;
- (p) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (q) **(function)**: a function includes a power, authority or duty;
- (r) **(obligations and Liabilities)**: a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (s) **("may")**: except to the extent that FACS is expressly required under this Agreement to act reasonably:
 - (i) in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by FACS, means that FACS can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to ServiceCo) and FACS has no obligation to do so; and
 - (ii) FACS may consent or grant any approval as FACS (in its absolute and unfettered discretion (and without regard to ServiceCo)) thinks fit or may be given subject to any conditions;
- (t) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
 - (i) is reconstituted, renamed or replaced, or if its powers or functions are transferred to, or assumed by, another Entity, this Agreement is deemed to refer to that other Entity; or
 - (ii) ceases to exist, this Agreement is deemed to refer to that new Entity which serves substantially the same purpose or object as the former Entity;
- (u) **(asset)**: references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (v) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

2. Appointment of Expert

- (a) **(Parties to appoint Expert)**: The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.
- (b) **(Agreement of conditions)**: The Parties agree that:
 - (i) the Expert will act as an expert and not as an arbitrator;
 - (ii) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
 - (iii) the rules of evidence do not apply to the determination; and
 - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules including the Code of Conduct.

- (c) **(Independence and bias):** If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

3. Confidentiality

- (a) Subject to clause 3(b), all proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential.
- (b) No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any person except:
- (i) with the prior written consent of both Parties;
 - (ii) as may be required by Law;
 - (iii) for the purpose of subsequent arbitration; or
 - (iv) to the extent necessary to enforce the Expert's determination.

4. Costs and fees

- (a) **(Parties joint and severally liable):** As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements.
- (b) **(Calculation of costs and fees):** The Parties agree, subject to the terms of the Relevant Agreement, as between themselves that:
- (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements; and
 - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in any determination.

5. Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all Claims or Liabilities in connection with any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

6. Co-operation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

7. Governing Law and jurisdiction

- (a) **(Governing Law):** This Agreement is governed by, and must be construed according to, the Laws of New South Wales, Australia.

- (b) **(Jurisdiction):** Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.

Schedule 1 - Matter

[Insert description of matter]

Schedule 2 - Rules for Expert Determination Process

1. Commencement

The expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules including the Code of Conduct.

2. Code of Conduct

- (a) The function of the Expert is to make a determination of the Matter in accordance with the Relevant Agreement, the Services Deed and this Agreement, including these Rules and the Code of Conduct.
 - (b) The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in these Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
 - (c) The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
 - (d) The Expert must disclose to both Parties all information and documents received.
 - (e) If a Party fails to make a written submission, the Expert may continue with the process.
 - (f) Subject to section 4 of these Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.
-

3. Written submissions

- (a) Within 5 Business Days after the date this expert determination process begins, the Party who gave notice under clause 42 (*Expert determination*) of the Services Deed or the equivalent clause of the Relevant Agreement] (**Party A**) must give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.
 - (b) Within 5 Business Days after the statement in section 3(a) served, the other Party must give Party A and the Expert a written response to Party A's submissions.
 - (c) If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in section 3(b) within the time allowed by the Expert.
 - (d) If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.
-

4. Conference

- (a) The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Sydney, Australia.
-

- (b) At least 5 Business Days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.
- (c) The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under section 4(b), the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the expert determination process.
- (d) The Parties:
 - (i) may be accompanied at a conference by legal or other advisers; and
 - (ii) subject to the terms of this Agreement and the Relevant Agreement, will be bound by any procedural directions given by the Expert in relation to the expert determination process.
- (e) The conference must be held in private.
- (f) If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

5. General

- (a) In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Relevant Agreement, this Agreement and these Rules.
- (b) Subject to section 4(c), meetings and discussions with the Expert must only take place in the presence of both Parties.
- (c) Without limiting clause 2(c) of this Agreement, the Expert must:
 - (i) inform the Parties of:
 - A. any relationship or interest with the Parties or their respective Associates;
 - B. any interest the Expert has in the matters in dispute; and
 - C. any circumstance which might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially,immediately upon becoming aware of any such circumstance; and
 - (ii) upon making any disclosure under this section 5(c), unless and until the Parties agree otherwise, terminate the proceedings.

6. The determination

- (a) As soon as possible after receipt of the submissions or after any conference and, in any event not later than 30 days after the Expert's acceptance of appointment, the Expert must:
 - (i) determine the Matter between the Parties; and
 - (ii) notify the Parties of that determination.
- (b) The determination of the Expert must:
 - (i) be in writing stating the Expert's determination and giving reasons;

- (ii) be made on the basis of the submissions (if any) of the Parties, the conference (if any) and the Expert's own expertise; and
 - (iii) meet the requirements of the Relevant Agreement.
- (c) To the extent permitted by Law, the Expert's determination will be final and binding on the Parties unless a notice of dissatisfaction is given in accordance with clause 42(j) (*Notification*) of the Services Deed.

7. Costs

Security for costs of the Expert must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

8. Modification

These Rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

9. Proportionate liability

Notwithstanding anything else, to the extent permissible by Law, the Expert will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any dispute referred to Expert determination.

Schedule 3 - Schedule of Fees and Disbursements

[Insert Expert's fees and disbursements]

SIGNED as an agreement

[Insert execution blocks]

Schedule 20 – Option to Lease

1. Definitions

For the purposes of this Schedule, the following definitions shall apply:

API means the New South Wales Division of the Australian Property Institute.

Lease means a lease comprised of:

- (a) Lease – form 07L (as updated from time to time or, if that registrable form is no longer used, the standard registrable lease form that has replaced it) completed in accordance with section 2.5(c); and
- (b) conditions substantially in the form contained in Annexure A to this Schedule as completed in accordance with section 2.5(c).

Option Condition means FACS has given notice of termination to ServiceCo under clause 38.4 (*Default Termination Event*) of this Deed.

Option Fee means [REDACTED].

Option Notice Service Date means the date on which notice is given by FACS in accordance with section 2.3.

Option Period means the period beginning on the date of satisfaction of the Option Condition and ending at 5.00pm on the date that is 10 days after the market rent is determined in accordance with section 2.2 or any other date the parties may agree.

Option to Lease means the option to lease granted by ServiceCo under section 2.1.

Valuer means a valuer who has the following qualifications:

- (a) current membership of the API or the Royal Institution of Charter Surveyors; and
- (b) at least five years' experience in valuing real property and infrastructure similar to the Sites and Relevant Infrastructure.

2. Option to Lease

2.1 Grant of Option to Lease

- (a) In consideration of the payment of the Option Fee by FACS to ServiceCo, ServiceCo grants an option to FACS to lease any Dwelling which at the date of the exercise of the option is subject to a Residential Tenancy Agreement with a Social Housing Tenant and the corresponding Relevant Infrastructure subject to:
 - (i) satisfaction of the Option Condition in respect of that Dwelling and the corresponding Relevant Infrastructure; and
 - (ii) the terms and conditions of this Deed.
- (b) ServiceCo acknowledges receipt of the Option Fee.

2.2 Determination of market rent

- (a) Within five days of the satisfaction of the Option Condition, ServiceCo and FACS must meet in good faith to discuss and agree on the identity of an independent Valuer to be jointly engaged to determine the market rent for the following 12 Month period for the Dwellings and Relevant Infrastructure the subject of the Option Condition.
- (b) If the parties fail to jointly appoint a Valuer within 30 days after FACS gives notice under clause 38.4(a) (*Rights*) of this Deed, either party may after written notice to the other refer the matter to the President of the API, to appoint a Valuer on behalf of the parties.
- (c) The parties agree that in determining the market rent for the following 12 Month period of the Dwellings and Relevant Infrastructure the subject of the Option Condition, the Valuer shall be instructed to take into account in determining the valuation comparable properties in proximity to the subject Dwellings and Relevant Infrastructure however without regard to any particular use of the Dwellings for Social Housing and Affordable Housing.
- (d) The Valuer must give written reasons for the determination and the parties agree that the rent under any Lease is determined by the valuation of the Valuer. The valuation of the Valuer is final and binds the parties, unless in the event of manifest error, in which case clause 42 (*Expert determination*) of this Deed applies.

2.3 Exercise of Option to Lease

- (a) FACS may exercise the Option to Lease during the Option Period by giving written notice to ServiceCo and identifying in its absolute discretion:
 - (i) any Dwellings (**Nominated Dwellings**) which FACS proposes to lease pursuant to the Option to Lease;
 - (ii) Relevant Infrastructure corresponding to those Dwellings (**Nominated Relevant Infrastructure**) which FACS proposes to lease pursuant to the Option to Lease;
 - (iii) the 'Commencement Date' of the Lease which may be up to 120 days from the date of the notice; and
 - (iv) the term of the Lease as nominated by FACS which may be up to, but not exceeding, five years, unless:
 - A. the end date of the Option Period is five years or less from the Final Expiry Date, then the maximum term of the lease can be no longer than the period left before the Final Expiry Date; or
 - B. ServiceCo consents to a longer term, in which case the term will be that longer term.

2.4 Appointment of nominee

- (a) At any time during the Option Period, but prior to the exercise of the Option to Lease, FACS may appoint a nominee to lease the Nominated Dwellings and Nominated Relevant Infrastructure by giving written notice of such nominee to ServiceCo which:

- (i) has been executed by both FACS and the nominee; and
- (ii) states that the nominee confirms it has taken a nomination of the Option to Lease and agrees that it is bound by the terms of this Schedule as if it were FACS,

(Nomination Notice).

- (b) On and from the date that FACS gives the Nomination Notice to ServiceCo the nominee will be bound by all of the obligations of FACS under this Schedule.

2.5 Exercise of Option to Lease

If the Option to Lease is validly exercised in respect of particular Dwellings and Relevant Infrastructure:

- (a) FACS (or FACS' nominee where one has been nominated under section 2.4) and ServiceCo are regarded as having entered into the Lease as lessee and lessor respectively;
- (b) the date of the Lease is the Option Notice Service Date;
- (c) FACS must deliver an unexecuted copy of the Lease with all necessary particulars completed to ServiceCo or ServiceCo's solicitors within three Business Days after the Option Notice Service Date, such particulars to be completed as follows:
 - (i) the "Lessor" to be ServiceCo;
 - (ii) the "Lessee" to be FACS or FACS' nominee appointed under section 2.4;
 - (iii) the "Rent" is the rent determined under section 2.2(d);
 - (iv) the "Land" to be the title references for the Nominated Dwellings and Nominated Relevant Infrastructure;
 - (v) the "Premises" is the Nominated Dwellings and all infrastructure, fixtures and equipment comprised in the Nominated Relevant Infrastructure leased to FACS as part of the premises, unless otherwise specified in the Option Notice;
 - (vi) the "Term" is such period as is nominated by FACS in the notice given under section 2.3(a);
 - (vii) the "Commencement Date" is the date that is nominated by FACS in the notice given under section 2.3(a); and
 - (viii) the "Expiry Date" is the last day of the "Term" as determined in accordance with section 2.5(c)(vi).

2.6 No exercise of Option to Lease

If the Option to Lease is not exercised:

- (a) ServiceCo retains the Option Fee; and
- (b) this Schedule will cease to apply on and from the last day of the Option Period.

2.7 Caveat

- (a) FACS may lodge a caveat on the title to any Dwelling if the caveat refers only to FACS' interest under the Option to Lease.
- (b) If FACS lodges a caveat, FACS must immediately at its cost consent to any dealing by ServiceCo with the Dwelling that is permitted by this Deed or that does not materially prejudice FACS' rights under this Deed.

Confidential

Annexure A – Form of Lease

Annexure 'A' to a Lease dated *[insert date]*

Lessor: *[insert name of Lessor and ACN]*

Lessee: *[insert name of Lessee and ACN]*

Premises: *[insert]*

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1. Definitions and interpretation

1.1 Definitions

In this Lease:

API means the Australian Property Institute (New South Wales Division).

Bank Bill Rate for a period, means:

- (a) the rate, expressed as a yield per cent per annum (rounded up (if necessary) to four decimal places) that is quoted as the average bid rate on the Reuters monitor system page 'BBSY' (or any page that replaces that page) at about 10.10am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in months which is closest to the period; or
- (b) if there is a manifest error in the calculation of that average bid rate, or if no average bid rate is published for Bank Bills of that tenor by about 10.30am, then the Bank Bill Rate will be the rate reasonably determined by the Lessor, having regard to the rates otherwise bid for Bank Bills having a tenor as described above, at or around that time, to be the appropriate equivalent rate.

Building means the building located on the land in Item 1, the Premises and the Common Areas.

Business Day means Monday to Friday, excluding New South Wales public holidays.

Commencement Date means the date in Item 4.

Common Areas means the common property of the Owners Corporation (if applicable); and areas of the Building which are provided for common use (for example, car parking areas, footpaths, access ways, entrances, stairs, escalators, lifts, toilets, and loading docks).

Community Housing means subsidised accommodation for people on very low, low or moderate income or people with additional needs that is managed by not for profit organisations within the State of New South Wales. For the purpose of this Lease, Community Housing does not include crisis housing or transitional housing.

CPI means All Groups Consumer Price Index for the City of Sydney published by the Australian Bureau of Statistics. If the CPI no longer exists, it means an index that the President of the API decides reflects changes in the cost of living in Sydney.

Deal means assign, transfer, sell, sublet, licence, part with possession of, transfer, mortgage, charge, surrender, dispose of, grant a trust over or otherwise deal with or permit any dealing with any property or legal or equitable interest and **Dealing** has a corresponding meaning.

Existing Lease Guarantee means a security given to the Lessor with respect to an Existing Tenant's obligations under an Existing Tenant Lease.

Existing Tenants means a person or entity which holds an estate, interest or occupancy right in the Premises or any part of it pursuant to an Existing Tenant Lease.

Existing Tenant Leases means all leases (registered or unregistered), licences, permits to occupy or other occupancy rights (written or oral) which exist in relation to the Premises or any part of it as at the Commencement Date but excluding any such arrangements which exist between the Lessor and the Lessee.

Financial Year means 1 July to 30 June.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Item means an item in the Reference Schedule.

Lessee means the person named as lessee on the cover page and includes its successors, executors and administrators, its assigns approved by the Lessor and, where the context permits, includes any agent, contractor, employee, invitee, licensee, sub-contractor, sub-lessee or other person claiming through the Lessee.

Lessee's Predecessor means any previous lessee under this Lease and, where this Lease is one in a series of consecutive leases granted pursuant to the exercise of options, any lessee under an earlier lease in the series.

Lessee's Property means the fixtures, fittings, furnishings, plant and equipment and other items installed in or brought onto any part of the Building at any time (whether before or after the Commencement Date) by or on behalf of the Lessee or the Lessee's Predecessors and, where the context permits, includes any part of them.

Lessor means the person named on the cover page and includes its successors, executors, administrators and assigns and, where the context permits, includes its agents, contractors and employees.

Liabilities means any action, claim, damages, demand, expense, liability and loss of any kind.

New Lease Guarantee means a security given or transferred to the Lessee with respect to an Existing Tenant's obligation under an Existing Tenant Lease.

Overdue Rate means 2% per annum above the Bank Bill Rate.

Owners Corporation means any owners corporation created under the *Strata Schemes Management Act 1996* (NSW) which applies to the Land and includes, where the context allows, the manager, secretary, agents and employees of and any person authorised by the Owners Corporation.

Premises means (and where the context permits, includes part of) the premises described in Item 2 and includes the Lessor's fixtures, fittings, furnishings, plant and equipment within the premises.

Relevant Lease Covenants has the meaning given in clause 3.3.

Relevant ROA Covenants has the meaning given in clause 3.2.

Rent means the amount in Item 6, as varied under this Lease.

Services means any services and facilities (including air conditioning thermostats, ducts and outlets, fire sprinkler heads and piping, security and fire alarm equipment, lighting, central electrical switching arrangement, emergency lighting and exit signs) provided or installed by Authorities, the Lessor or any person authorised by the Lessor in the Premises or for the benefit of the Premises in any floor of the Premises or in any ceiling cavity or walls adjoining the Premises.

Tenant means the Existing Tenants.

1.2 Interpretation

In this Lease, unless the contrary intention appears:

- (a) other parts of speech and grammatical forms of a word or phrase defined in this Lease have a corresponding meaning;

- (b) examples are descriptive only, not exhaustive;
- (c) headings and material included in boxes do not form part of this Lease and are not legally binding;
- (d) a reference to a clause, party or schedule is a reference to a clause of, and a party and schedule to, this Lease and a reference to this Lease includes any schedule;
- (e) no provision of this Lease will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Lease or that provision;
- (f) a covenant or agreement by two or more persons binds them jointly and severally;
- (g) a reference to a body, other than a party to this Lease, whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (h) a reference to liquidation includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;
- (i) a reference to the Delivery Phase Program is a reference to the most recent Delivery Phase Program that has been reviewed and not rejected in accordance with clause 10(e) of the Services Deed.

1.3 Statutory provisions

- (a) The covenants powers and provisions implied in leases by virtue of the *Conveyancing Act 1919* (NSW) (as amended) are expressly negated except in so far as they or some part or parts thereof are included in the provisions expressed in this Lease.
- (b) The exemption under clause 156 of the *Residential Tenancies Act 2010* (NSW) applies to this Lease and this Lease is exempted from the operation of the *Residential Tenancies Act 2010* (NSW).
- (c) The parties acknowledge that to the extent of inconsistency between the provisions of this Lease and the *Residential Tenancies Act 2010* (NSW), the provisions of the *Residential Tenancies Act 2010* (NSW) will be deemed to apply.

2. Services provided by Lessor

2.1 Grant of Lease

The Lessor grants to the Lessee a lease of the Premises on the terms of this Lease for the Term.

2.2 Quiet enjoyment by Lessee

The Lessee may occupy and use the Premises without being disturbed by the Lessor (or any person claiming through it), except as permitted by this Lease.

2.3 Services supplied by Lessor

- (a) If the Lessor supplies any Services to the Premises or the Building, it must use its reasonable endeavours to ensure that they work efficiently.
- (b) Despite clause 2.3(a) or any other provision in this Lease, the Lessor is not liable for any failure to provide or maintain services where the failure is caused or contributed to by the Lessee.

2.4 Services provided by authorities

The Lessor must use its reasonable endeavours to ensure that water and electricity supplies and drainage, sewerage and telephone services to the Premises are maintained by the relevant authority where the Lessor has been providing those utilities at the Commencement Date.

2.5 Lessee's access

- (a) The Lessee may enter and use the Premises at any time, subject to this Lease, the Law, any encumbrances registered on the title to the Land and the requirements of statutory authorities.
- (b) By the Commencement Date, the Lessor must provide to the Lessee the access keys to enable the Lessee to use the Premises. At the end of this Lease, the Lessee must return to the Lessor all access keys issued to it.

3. Concurrent Lease and Existing Tenancies

3.1 Concurrent Lease

- (a) This Lease is concurrent with the Existing Tenant Leases and the Lessee acknowledges that the Lessee's right of occupation of the Premises is subject to that of the Existing Tenants under the Existing Tenant Leases while the Existing Tenant Leases remain in force.
- (b) The Lessee must perform the obligations of the Lessor which arise during the Term in connection with the Existing Tenant Leases in favour of the Existing Tenants and their respective successors and assigns (and the Lessee assumes all Liabilities of the Lessor which arise during the Term in connection with the Existing Tenant Leases).
- (c) The Lessee indemnifies the Lessor and must keep indemnified and hold harmless the Lessor in relation to any Liability arising in connection with a breach of clause 3.1(b) by the Lessee, other than Liability resulting from the wilful default of the Lessor under an Existing Tenant Lease.
- (d) Subject to this Lease, the Lessee may enforce all rights, powers and remedies of the Lessor under the Existing Tenant Leases to the exclusion of the Lessor.
- (e) The Lessee is entitled to all rent and other money paid or payable to the Lessor under the Existing Tenant Leases during the Term.
- (f) The Lessee must notify the Lessor promptly in writing upon becoming aware of any actual or prospective Liability relating to the Existing Tenant Leases. If

the Lessee gives such notification, the Lessee may at its cost prosecute, defend or otherwise deal with any such Liability on behalf of the Lessor and the Lessor must provide such cooperation as is reasonable at the cost of the Lessee.

3.2 Residual Occupancy Arrangements

To the extent the Existing Tenant Leases comprise licences, permits to occupy or other occupancy rights which exist in relation to the Premises (**Residual Occupancy Arrangements**) and this Lease does not have the legal effect of putting the Lessee, during the Term, in the same position as the Lessor in terms of enforcing all covenants, rights, powers and remedies of the Lessor under the Residual Occupancy Arrangements, then:

- (a) subject to clause 3.2(b), the Lessor assigns to the Lessee with effect from the Commencement Date:
 - (i) the Lessor's interest in the Residual Occupancy Arrangements; and
 - (ii) the benefit of the covenants by the Existing Tenants under the Residual Occupancy Arrangements,

(Relevant ROA Covenants),

and the Lessee accepts the assignment and assumes all Liabilities of the Lessor and must indemnify and keep the Lessor indemnified and held harmless from any Liability which arises during the Term in respect of the Residual Occupancy Arrangements; and
- (b) if the benefit of any Relevant ROA Covenant is not assignable, then it is not assigned to the Lessee under this clause, and during the Term:
 - (i) the Lessor holds the benefit of the Relevant ROA Covenant for the benefit of the Lessee; and
 - (ii) if directed by the Lessee, the Lessor must use reasonable endeavours to enforce the Relevant ROA Covenant for and at the cost of the Lessee.

3.3 Relevant Lease Covenants

To the extent this Lease does not have the legal effect of putting the Lessee, during the Term, in the same position as the Lessor in terms of enforcing all covenants, rights, powers and remedies of the Lessor under the Existing Tenant Leases, then:

- (a) subject to clause 3.3(b), the Lessor assigns to the Lessee with effect from the Commencement Date:
 - (i) the Lessor's interest in the Existing Tenant Leases; and
 - (ii) the benefit of the covenants by the Existing Tenants under the Existing Tenant Leases,

(Relevant Lease Covenants),

and the Lessee accepts the assignment and assumes all Liabilities of the Lessor and must indemnify and keep the Lessor indemnified and held harmless from any Liability which arises during the Term in respect of the Existing Tenant Leases; and

- (b) if the benefit of any Relevant Lease Covenant is not assignable, then it is not assigned to the Lessee under this clause, and during the Term:
 - (i) the Lessor holds the benefit of the Relevant Lease Covenant for the benefit of the Lessee; and
 - (ii) if directed by the Lessee, the Lessor must use reasonable endeavours to enforce the Relevant Lease Covenant for and at the cost of the Lessee.

3.4 Insurance required by Existing Tenant Leases

The Lessor will use reasonable endeavours at the cost of the Lessee to procure that the Existing Tenants which are obliged under their Existing Tenant Leases to take out insurance policies which name or note the interests of the Lessor, or which must include the Lessor as a co-insured, amend such policies to include the Lessee as named, noted or co-insured parties (as the case may be) in addition to the Lessor.

3.5 Lessee dealing with Existing Tenant Leases

- (a) Subject to clause 3.5(b), the Lessee may:
 - (i) amend or vary any Existing Tenant Leases;
 - (ii) accept a surrender of all or any part of an Existing Tenant Lease;
 - (iii) agree to an Existing Tenant holding over under an Existing Tenant Lease; or
 - (iv) terminate an Existing Tenant Lease in accordance with its terms, without the Lessor's consent.
- (b) The Lessee must not, without the prior written consent of the Lessor, amend any Existing Tenant Lease in a manner that:
 - (i) requires the Lessor to pay or incur any cost or Liability;
 - (ii) imposes any additional or more onerous obligation or liability on the Lessor;
 - (iii) extends the term or grants an option to extend the term of the Existing Tenant Lease beyond the expiry of the Term; or
 - (iv) releases the Existing Tenant from any obligation to carry out capital works, or make good the leased premises at the end of the leased term under the Existing Tenant Lease.
- (c) If, pursuant to an agreement made with the Lessee, an Existing Tenant executes an instrument which amends, varies, surrenders or terminates an Existing Tenant Lease and the instrument is not inconsistent with clause 3.5(b), the Lessor must on request from the Lessee promptly execute that instrument as lessor.
- (d) The Lessor irrevocably appoints the Lessee as the attorney of the Lessor to sign any instrument referred to in clause 3.5(c). The attorneys may only sign an instrument on behalf of the Lessor if the Lessor fails to sign and return the instrument within 10 Business Days after receiving the instrument from the Lessee in executable form.
- (e) The Lessee must pay any duty in respect of such instrument.

- (f) Nothing in this clause 3.5 prevents the Lessee, in its own right, from providing or agreeing to provide any right or benefit to an Existing Tenant (for example, in a separate agreement between the Lessee and the Existing Tenant that is not an amendment or variation of an Existing Tenant Lease).

3.6 Lessor not to deal with Existing Tenant Leases

The Lessor must not:

- (a) amend or vary any Existing Tenant Leases;
- (b) accept a surrender of all or any part of an Existing Tenant Lease;
- (c) terminate an Existing Tenant Lease; or
- (d) purport to enforce or exercise any rights, powers or remedies of the Lessor under an Existing Tenant Lease,

except:

- (e) as permitted by this Lease; or
- (f) with the Lessee's prior written consent, which may be withheld in the Lessee's absolute discretion.

3.7 Assignment of Existing Lease Guarantees

- (a) On the Commencement Date, the Lessor assigns to the Lessee its interest in assignable Existing Lease Guarantees.
- (b) The Lessor does not warrant that the Existing Lease Guarantees are valid, enforceable or assignable to the Lessee.

3.8 Existing Lease Guarantees that are not assignable

If the Lessor holds an Existing Lease Guarantee for an Existing Tenant Lease and the Existing Lease Guarantee is not assignable, then:

- (a) from the Commencement Date:
 - (i) the Lessor holds its interest under the Existing Lease Guarantee for the benefit of the Lessee; and
 - (ii) if directed by the Lessee, the Lessor must:
 - A. return the Existing Lease Guarantee to the issuer of the Existing Lease Guarantee;
 - B. return the Existing Lease Guarantee to the Existing Tenant on whose behalf the Existing Lease Guarantee is issued; or
 - C. use its reasonable endeavours to claim under the Existing Lease Guarantees and pay the money received to the Lessee.

3.9 Registration

The Lessor must attend to registration of this Lease at the Lessee's cost in the relevant land register as soon as practicable after the Commencement Date, and the Lessee

must provide such assistance as may be reasonably required by the Lessor to register the Lease.

3.10 Partial surrender of Lease upon expiry of Existing Tenant Lease

- (a) The Lessee must partially surrender that part of the Premises which is the subject of an Existing Tenant Lease so far as it relates to the land the subject Existing Tenant Lease to take effect the day immediately after the expiry date or early termination (as applicable) of the Existing Tenant Lease.
- (b) On and from the date of any partial surrender under clause 3.10(a), the Lessor and the Lessee agree that the Rent payable under this Lease is reduced by an amount equal to the proportion that the area of the Premises which has been surrendered under clause 3.10(a) bears to the total area of the Premises the subject of the Lease as at the date of the surrender.
- (c) The Lessee must prepare all documents necessary for the parties to comply with and implement this clause 3.10.
- (d) Following receipt of the documents from the Lessee, the Lessor must promptly execute the documents.
- (e) The Lessor must attend to stamping and registration of all documents at its cost and return an executed and stamped copy of the documents to the Lessee.

4. Payments by Lessee

4.1 Method of payment

- (a) The Lessee must pay all money owed to the Lessor under this Lease:
 - (i) by payment to the Lessor by any method of which the Lessor notifies the Lessee;
 - (ii) within 14 days after demand, unless otherwise specified in this Lease; and
 - (iii) without deduction or set off.
- (b) The Lessee must pay to the Lessor the Rent:
 - (i) whether or not the Lessor demands payment;
 - (ii) in equal monthly instalments (except for the first and last instalments, which will be apportioned in respect of time if necessary); and
 - (iii) in advance on the Commencement Date and on the first of each month.

4.2 Services

In addition to the amounts paid or payable under clauses 4.1 and 4.3, the Lessee must pay on time for all services supplied to the Premises, including water, excess water, electricity, gas, telephone, trade waste or other costs incurred as a result of the Lessee's use or occupation of the Premises.

4.3 Lessee's share of building costs

- (a) The Lessee must pay to the Lessor:
- (i) all rates, assessments, fees and charges (including charges for water and sewerage usage, drainage, trade waste and fire services), costs, levies, impositions and duties of any authority, body, department, government or instrumentality assessed, charged, imposed or levied in respect of the Premises, the land or services to the Premises or the land (regardless of ownership); and
 - (ii) any property tax assessed on the Premises, including the Lessor's land tax (calculated on the basis that the Premises is the only property the Lessor owns).
- (b) The Lessee is not obliged to pay:
- (i) any commission or similar charge paid to any person in connection with letting or licensing any part of the Building;
 - (ii) the Lessor's income tax or capital gains tax;
 - (iii) any amount for which a particular lessee or licensee of any part of the Building is responsible; or
 - (iv) the cost of any structural work or cost treated by the Lessor (acting in good faith) in its accounting statements as a capital expense.

4.4 Interest on late payments

- (a) If the Lessee does not pay any money to the Lessor on the due date, the Lessor may charge interest on that money at the Overdue Rate.
- (b) The Lessor may calculate the interest on any unpaid money on a daily basis from and including the day the unpaid money was due up to and including the day it is paid.

4.5 Errors

If either the Lessee or the Lessor identifies an error in any calculation or payment, the Lessor must make any necessary adjustment in the Lessee's next monthly statement (or as soon as practicable if this Lease has ended).

4.6 Cost of lease, default, approvals etc

The Lessee must pay within 14 days after notice the Lessor's reasonable costs (including legal costs) and all charges, duties, expenses and fees of or incidental to:

- (a) any request for the approval or consent of the Lessor (and of any head lessor or mortgagee of the Lessor); and
- (b) any breach or default by the Lessee under this Lease.

4.7 GST

- (a) Any reference in this clause to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

- (b) Unless expressly included, the consideration for any supply made under or in connection with this Lease does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this clause.
- (c) Any amount referred to in this Lease (other than an amount referred to in clause 4.7(h)) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with this Lease, the consideration to be provided under this Lease for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (e) The recipient must pay the additional amount payable under clause 4.7(d) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under clause 4.7(d) or at such other time as the parties agree.
- (g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Lease the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 4.7(e) the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (h) If one of the parties to this Lease is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Lease, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 4.7(d).

5. Rent review

5.1 CPI review

- (a) As at a CPI review date in Item 7, the Rent is adjusted using the following formula:

$$\text{New Rent} = \text{Rent immediately before the CPI review date} \times \frac{a}{b}$$

where

- a is the CPI last published before the CPI review date; and
- b is the CPI last published before the later of the Commencement Date and the immediately preceding CPI review date in Item 7.

- (b) The Lessee must pay the new Rent from the CPI review date.

- (c) Until the Lessor notifies the Lessee of the new Rent, the Lessee must continue to pay the existing Rent to the Lessor.
- (d) The Lessor must calculate any necessary adjustment between the Rent the Lessee has paid and the Rent the Lessee should have paid from the CPI review date.
- (e) The Lessee must pay any adjustment when the Lessee's next monthly payment is due.

6. Lessee's general obligations

6.1 Use

The Lessee must:

- (a) use the Premises only for the permitted use in Item 8;
- (b) not put any safe or other heavy article in the Premises unless the Lessor first consents;
- (c) not put any advertisement, plate or sign outside the Premises or on the inside face of the windows unless the Lessor first consents;
- (d) not use the Premises in a way that interferes with the efficient operation of the Services to the Premises or the Building; and
- (e) not have or use dangerous substances (including hazardous materials or chemicals, flammable liquids, acetylene gas or alcohol, explosive oils or substances) in the Premises or the Building.

6.2 Maintaining premises and Lessee's property

- (a) The Lessee must keep the Premises clean and tidy and in at least as good a condition as they were in at the Commencement Date (for example, the Lessee must repair damage and replace broken fittings), except for:
 - (i) fair wear and tear;
 - (ii) damage caused by earthquake, fire, flood, storm, tempest, war damage or act of God; and
 - (iii) damage to the extent it was caused or contributed to by the Lessor.
- (b) The Lessee must replace all broken glass with glass of the same or similar quality.
- (c) Subject to clause 6.3, the Lessee does not have to repair the structure of the Building or Premises.
- (d) The Lessee must take reasonable precautions to keep the Premises free of vermin, insects, birds and animals and, as required by the Lessor, employ qualified pest exterminators.

6.3 Damage caused by Lessee

If the Lessee damages the Building or the Premises (including structural damage, but excluding damage resulting from any latent defect in the Building) the Lessee must at the Lessor's option:

- (a) promptly repair the damage to the Lessor's reasonable satisfaction; or
- (b) pay to the Lessor within 14 days after demand the Lessor's cost of repairing the damage.

6.4 Altering Premises

The Lessee must not erect or construct upon the Premises or any part thereof any building, structure or improvement, nor carry out any alteration to any building structure or improvement on the Premises or any part thereof without the prior written consent of the Lessor.

6.5 Lessee must observe law and rules

The Lessee must comply with the law and any notice from any authority that requires the Lessee to do or not do anything concerning the Premises, the Lessee's use of the Premises, the Lessee's Property or this Lease (for example, laws relating to occupational health and safety and environmental matters), excluding anything relating to the structure of the Building which does not arise as a result of the Lessee's particular use of the Premises.

6.6 How Lessee should behave

The Lessee must not make any illegal, immoral, offensive or unlawful use of the Premises or the Common Areas, nor cause any nuisance, damage or disturbance to the Lessor or any occupier of the Building or of any nearby property.

6.7 Using Common Areas

- (a) The Lessee may use the Common Areas in common with others, but only for the purposes for which they were designed.
- (b) The Lessee must comply with the Lessor's reasonable requirements, the Law and the requirements of statutory authorities in relation to the use of the Common Areas.

7. Risk and insurance

7.1 Lessee's insurance

- (a) Except where prohibited by the *Residential Tenancies Act 2010* (NSW), the Lessee must have current insurance policies covering:
 - (i) public liability arising out of the use or occupation of the Premises for the amount in Item 9 (or any reasonable higher amount notified by the Lessor) in respect of any single event; and
 - (ii) cover for all other risks which from time to time a prudent property owner and landlord would effect for a property being used as Community Housing.
- (b) The Lessee must deliver to the Lessor adequate written evidence of the existence and contents of each policy immediately after the Lessee takes it out and of its currency on each anniversary of the Commencement Date and when reasonably required by the Lessor.

7.2 Lessee not to void insurances; extra premiums

- (a) The Lessee must not cause the rate of any insurance premium relating to the Premises or the Building to be increased, or prejudice or render void or voidable that insurance.
- (b) If the Lessor approves (in its absolute discretion) any request of the Lessee which increases an insurable risk, the Lessee must pay to the Lessor any extra premiums payable by the Lessor due to the increased risk.

7.3 Lessee releases and indemnifies Lessor

- (a) The Lessee releases the Lessor (and its agents, contractors, employees and officers) from all Liabilities for any damage, loss, injury, or death occurring in the Premises or the Building, except to the extent that the damage, loss, injury or death was caused by the negligence or wilful act of the person seeking to be released.
- (b) The Lessee indemnifies the Lessor (and its agents, contractors, employees and officers) against all Liabilities arising out of or in relation to any faulty Lessee's Property or any act or omission of any kind of the Lessee.

7.4 Lessee's obligations at Lessee's risk and expense

Unless this Lease expressly provides otherwise, all of the following are at the Lessee's sole risk and expense:

- (a) anything which the Lessee is required or permitted to do under this Lease, whether or not the Lessor gives its approval or consent to that thing;
- (b) the Lessee's Property; and
- (c) the Lessee's use and occupation of the Premises.

7.5 Lessee to give notice of risk

The Lessee must give the Lessor notice of any of the following as soon as it becomes aware of them:

- (a) damage, death, injury or loss occurring in or any defect or lack of repair in the Premises; and
- (b) any circumstances likely to cause damage, risk or hazard to any person or property in or services and amenities of the Premises.

8. Lessor's general rights

8.1 Lessor may enter Premises

- (a) The Lessor will have access to the Premises in the following circumstances:
 - (i) immediately and without notice where in the opinion of the Lessor an emergency threatens life or substantial damage upon the Premises;
 - (ii) with reasonable prior notice to inspect or view the state of the Premises;
 - (iii) with reasonable prior notice to ascertain whether the Lessee is complying with the provisions of this Lease;

- (iv) in accordance with any notice issued by the Lessor with respect to any breach or default by the Lessee;
 - (v) to do anything the Lessor must or may do under this Lease; or
 - (vi) as otherwise agreed between the parties.
- (b) Wherever the Lessor exercises its right of entry to the Premises under this Lease, the Lessor must:
- (i) use reasonable endeavours to not cause any undue interruption or inconvenience to the use or occupation of the Premises by the Lessor or a Tenant including:
 - A. by giving reasonable notice to the Lessee to allow it to comply with any of its notice obligations under an Existing Tenant Lease; and
 - B. by complying with the Lessee's reasonable directions relating to access to the Premises, having regard to the Lessee's obligations under any Existing Tenant Lease.

8.2 Lessor's consent or approval

Unless expressly stated in a particular clause:

- (a) the Lessor must not unreasonably withhold or delay its consent or approval under this Lease, but may give it on reasonable conditions; and
- (b) any consent or approval of the Lessor must be in writing.

8.3 Sale of building

If the Lessor wants to sell the Premises or the Building, it may put up a 'for sale' sign on the Premises, and enter the Premises for the purposes of showing the Premises to the prospective purchasers, subject to complying with the conditions in clause 8.1(b).

8.4 No waiver

- (a) Failure to exercise, delayed exercise or partial exercise of any available remedy or right does not waive any breach by a party.
- (b) Waiver by a party of a particular breach is not a waiver of any other breach or default.
- (c) Demand or acceptance by the Lessor of money payable under this Lease after the Lessee's breach or default does not prejudice any other right or remedy of the Lessor.

9. Transfers, sublettings, etc

9.1 Dealing with Premises

- (a) The Lessee must not directly or indirectly Deal with its interest in the Premises (or any part of it) except as expressly permitted by this Lease unless the prior written consent of the Lessor is obtained (such consent not to be unreasonably withheld or delayed).

- (b) Despite clause 9.1(a) the Lessee may Deal with its interest in the Premises (or any part of it) without the consent of the Lessor where the proposed transferee is:
 - (i) the NSW Government; or
 - (ii) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality which is an agent of the NSW Government.
- (c) Where the Lessee Deals with its interest in the Premises under clause 9.1(b), the Lessee must as soon as reasonably practicable after the Dealing has occurred, provide the Lessor with written notice of such Dealing.

9.2 Costs in relation to dealings

The Lessee must pay the Lessor's reasonable expenses (including administration and legal costs) in relation to any proposed dealing under clause 9.1, even if the Lessee (or other party) does not comply with clause 9.1 or if the proposed dealing does not proceed.

10. Damage, destruction or resumption of building

10.1 Damage or destruction

- (a) If the Premises are damaged or destroyed or affected by hazardous or injurious materials or substances so as to render the Premises substantially unfit for use and occupation then the Lessee may:
 - (i) ask the Lessor to re-build the Premises; or
 - (ii) terminate this Lease by notice in writing to the Lessor.
- (b) Where the Lessee gives notice under clause 10.1(a)(i), if the Lessor does not notify the Lessee within two months after the Lessee's request that the Lessor intends to rebuild, or does not rebuild within six months after stating its intention to do so, the Lessor or the Lessee may terminate this Lease by notice to the other, in which case the Lease ends on the date of the notice.
- (c) If the Premises are damaged or destroyed or affected by hazardous or injurious materials or substances so as to render the Premises substantially unfit for use and occupation, then the Lessor must reduce the Rent and other money payable by a reasonable amount (depending on the kind and extent of the damage and destruction) from the date of the damage or destruction until the Premises are again fit for use or this Lease is ended.
- (d) Despite any other provision, the Lessee has no right to the reduction to the extent that the Lessee's act or omission caused the damage, destruction or affectation and has no right to terminate this Lease if the Lessee caused or substantially contributed to the damage, destruction or effect.

10.2 Resumption

If a competent authority resumes the Premises or the Building, and this makes the Premises unfit or unavailable for the Lessee's use during the term, then the Lessor or the Lessee may terminate this Lease by notice to the other and the Lessor is not liable to pay the Lessee any compensation.

10.3 Resolving disputes about reduction in rent on damage or destruction

- (a) If the Lessee does not agree with the reduction made by the Lessor under clause 10.1(c) or the Lessor and the Lessee do not agree on whether there should be a reduction under that clause, either party may give the other notice of the dispute within 14 days after the damage or destruction occurs.
- (b) The parties must negotiate in good faith to agree on a reduced amount within 14 days after delivery of the notice of dispute.
- (c) If the Lessee and the Lessor agree on a reduced amount, the Lessee must pay that amount from the agreed date.
- (d) If the Lessee and the Lessor do not agree then, within 30 days after the period in clause 10.3(b), either party may ask the President of the API to appoint a valuer who is a current full member of the API with at least five years' experience in valuing properties similar to the Premises to decide the reduced amount (if any) and the date from which the reduced amount must be paid.
- (e) The Lessee and the Lessor must instruct the valuer to decide the reduced amount within 30 days after being appointed.
- (f) If the Lessee does not keep to a time limit in this clause which applies to it, the right attached is lost and there is no reduction in the Rent and other money payable, except to the extent that the Lessor made a reduction under clause 10.1(c).
- (g) Until the dispute is resolved, the Lessee must pay the current Rent and other money payable, subject to any reduction under clause 10.1(c). The Lessor must calculate and refund any adjustment within 14 days after the agreement or decision by the valuer.
- (h) In deciding the dispute, the valuer acts as an expert and not as an arbitrator and must give written reasons for the decision.
- (i) The valuer's decision is final and binding on the parties (except for manifest error).
- (j) The Lessor and the Lessee must each pay one half of the valuer's costs.

11. End of Lease

11.1 Handing back Premises

When this Lease ends, the Lessee must vacate the Premises and give them back to the Lessor clean and free from rubbish and in the same condition as they were in before the Commencement Date, except for fair wear and tear and damage which the Lessee is not required to repair under clause 6.2.

11.2 Continuing occupation after end of Lease

- (a) If the Lessor agrees, the Lessee may continue to occupy the Premises after the expiry of the Term for a fixed term of four months and then for continuing periods of four months' each.
- (b) The Rent for the four monthly occupation is one third of the annual Rent current on the date.

- (c) The four monthly occupation is on the same provisions as in this Lease, so far as applicable, but the Lessor or the Lessee may end the occupation by one months' notice to the other expiring on any day.

11.3 Assignment of Residual Occupancy Arrangements and Guarantees

Upon termination or expiration of this Lease, the Lessee assigns to the Lessor with effect from the date of termination or expiration:

- (a) the Lessee's interest in the Residual Occupancy Arrangements; and
- (b) the benefits of the covenants by the Existing Tenants under the Residual Occupancy Arrangements,

and the Lessor accepts the assignment.

11.4 Reassignment of Existing Lease Guarantees

- (a) On the termination of this Lease, the Lessee assigns to the Lessor its interest in assignable Existing Lease Guarantees and New Lease Guarantees.
- (b) The Lessee does not warrant that the Existing Lease Guarantees or New Lease Guarantees are valid, enforceable or assignable to the Lessor.

11.5 Bank guarantees that are not assignable

If on the date of termination of this Lease the Lessee holds an Existing Lease Guarantee or New Lease Guarantee and the Existing Lease Guarantee or New Lease Guarantee (as applicable) is not assignable, then:

- (a) the Lessee's interest in the Existing Lease Guarantee or New Lease Guarantee (as applicable) is not assigned to the Lessor; and
- (b) from the date of termination:
 - (i) the Lessee holds the rights under the Existing Lease Guarantee or New Lease Guarantee (as applicable) for the benefit of the Lessor; and
 - (ii) if directed by the Lessor the Lessee must claim under the Existing Lease Guarantee or New Lease Guarantee (as applicable) and pay the money to the Lessor.

12. Breach of Lease

12.1 Termination for Lessee's default

The Lessor may terminate this Lease if:

- (a) the Lessee does not pay any money payable to the Lessor under this Lease within 60 days after the due date;
- (b) the Lessee does not observe any provision of this Lease and within a reasonable time after service of a notice by the Lessor (such period being not less than 60 days) specifying the non-observance:
 - (i) if the matter is capable of remedy, does not remedy it to the Lessor's reasonable satisfaction; or

- (ii) if the matter is not capable of remedy, does not pay compensation to the Lessor's reasonable satisfaction; or
- (c) an order is made or a resolution is effectively passed for the winding up, liquidation, compromise, arrangement, amalgamation, arrangement or compromise with creditors of the Lessee which is a company.

This clause does not affect any claim or other remedy of the Lessor against the Lessee for breach of this Lease and has effect despite any other term in this Lease.

13. General

13.1 Notices

- (a) A notice under this Lease must be in legible writing and in English.
- (b) If the Lessor wants to give a notice to the Lessee, the Lessor must:
 - (i) give it to the Lessee personally; or
 - (ii) leave it at, or post or fax it to, the Premises, the Lessee's registered office or the Lessee's last known business address.
- (c) If the Lessee wants to give a notice to the Lessor, the Lessee must leave it at, or send it by security post or fax it to the Lessor's registered office or any other address that the Lessor nominates.
- (d) If any notice is given on a day which is not a Business Day or after 5.00pm (addressee's time), it is taken not to be given until the next Business Day.
- (e) Any notice given by the Lessor is valid and effective if given under the common seal of the Lessor or signed by an attorney, director, company secretary, authorised officer or solicitor of the Lessor.

13.2 Governing Law

This Lease is governed by New South Wales law.

13.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day.

13.4 Variation

A variation of any provision of this Lease must be in writing and signed by the parties.

13.5 Whole Agreement

This Lease comprises the whole agreement between the parties in respect of its subject matter.

13.6 Severability

If a court decides that any part of this Lease is void, voidable, illegal or unenforceable or this Lease would be void, voidable, illegal or unenforceable unless a part is severed from this Lease, then that part is severed from this Lease and does not affect the continued operation of the rest of this Lease.

Reference Schedule

Items

| | | |
|---|------------------------------------|---|
| 1 | Land | [insert] |
| 2 | Premises: | The Land and the Lessor's improvements on the Land. |
| 3 | Term: | [insert] |
| 4 | Commencement Date: | [insert] |
| 5 | Expiry Date: | [insert] |
| 6 | Rent: | [insert] per annum (excluding GST) |
| 7 | CPI Review Date | On each anniversary of the Commencement Date. |
| 8 | Permitted Use: | Community Housing |
| 9 | Public liability insurance amount: | ██████████ |

Confidential

Schedule 21 – Subcontract Side Deed

*Social and Affordable Housing Fund -
Subcontract Side Deed*

[Insert name of Subcontractor]

[insert ABN/ACN/ARBN]

*The Uniting Church in Australia Property Trust (NSW)
(ABN 77 005 284 605) for and on behalf of Uniting
(NSW.ACT) (ABN 78 722 539 923) (also known as
UnitingCare NSW.ACT)(ServiceCo)*

Department of Family and Community Services (FACS)

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BETWEEN:

The Secretary of the Department of Family and Community Services as Housing Agency under section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**).

[Insert] ABN/ACN *[insert]* whose registered office is at *[Insert]* (**Subcontractor**).

The Uniting Church in Australia Property Trust (NSW) (ABN 77 005 284 605) for and on behalf of Uniting (NSW.ACT) (ABN 78 722 539 923) (also known as UnitingCare NSW.ACT) whose registered office is at Level 4, 222 Pitt Street, Sydney NSW 2000 (**ServiceCo**).

RECITALS:

- (A) FACS and ServiceCo have entered, or will enter, into the Services Deed for the provision of the Service Package.
- (B) ServiceCo has subcontracted its obligations to *[insert purpose of Subcontract]* to the Subcontractor pursuant to the Subcontract.
- (C) The Subcontractor has agreed to grant to FACS certain rights in relation to the Subcontract.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions and interpretation

1.1 Services Deed definitions

Definitions in the Services Deed apply in this Deed unless the context requires otherwise or the relevant term is defined in this Deed.

1.2 Definitions

In this Deed:

Approved Nominee means a person nominated by FACS and approved by the Subcontractor in accordance with clause 4.8 as:

- (a) having legal capacity, power and authority to become a party to and perform the obligations of ServiceCo under the Subcontract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of ServiceCo under the Subcontract.

Default Event means:

- (a) any default (howsoever described) by ServiceCo under the Subcontract; or

(b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Subcontractor to terminate, rescind, accept the repudiation of, or suspend any or all of the Subcontractor's obligations under the Subcontract.

Default Event Notice has the meaning given in clause 3.2(a).

Effective Date means the date specified in the Novation Notice.

FACS Cure Notice has the meaning given in clause 3.2(c).

GST Amount has the meaning given in clause 9(c)(ii).

Material Adverse Effect means a material adverse effect on:

- (a) the ability of each of ServiceCo or the Subcontractor to perform and observe their respective obligations under any Service Package Document to which it is a party; or
- (c) the rights of FACS under any FACS Service Package Document, or the ability or capacity of FACS to exercise its rights or perform its obligations under a FACS Service Package Document.

Novation Notice has the meaning given in clause 4.1.

Recipient has the meaning given in clause 9(c)(ii).

Services Deed means the document entitled "Social and Affordable Housing Fund - Services Deed" dated on or about the date of this Deed between FACS and ServiceCo.

Subcontract means the contract titled *[insert]* dated on or about the date of this Deed between ServiceCo and the Subcontractor.

Supplier has the meaning given in clause 9(c).

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to:
 - (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or

instrument as amended, novated, supplemented, varied or replaced from time to time;

- (e) (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) (**person**): a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) (**legislation**): a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) (**'includes'**): 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';
- (j) (**'or'**): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) (**'\$'**): a reference to '\$', AUD or dollar is to Australian currency;
- (m) (**Business Day**): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (n) (**day**): except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;
- (o) (**time**): a reference to time is a reference to time in Sydney, Australia;
- (p) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (q) (**function**): a function includes a power, authority or duty;
- (r) (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (s) (**'may'**): except to the extent that FACS is expressly required under this Deed to act reasonably:
 - (i) in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by FACS, means that FACS can exercise that power, right or remedy in its absolute

and unfettered discretion (and without regard to ServiceCo) and FACS has no obligation to do so; and

- (ii) FACS may consent or grant any approval as FACS (in its absolute and unfettered discretion (and without regard to ServiceCo)) thinks fit or may be given subject to any conditions;
- (t) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (u) **(asset)**: references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset; and
- (v) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Inconsistencies

To the extent of any inconsistency between the terms of this Deed and the Subcontract, this Deed will prevail over the Subcontract.

1.5 Services Deed and Financiers' Tripartite Deed

The Subcontractor acknowledges that it has received a copy of the Services Deed and the Financiers' Tripartite Deed.

1.6 Exclusion of Civil Liability Act 2002 (NSW)

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and Liabilities arising under or in relation to this Deed, howsoever those rights, obligations or Liabilities are sought to be enforced.

1.7 FACS' executive rights, duties and functions

- (a) **(Acknowledgements)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.10 (*FACS' executive rights, duties and functions*) of the Services Deed in relation to this Deed.
- (b) **(No Claim)**: Subject to clause 1.7(c), ServiceCo and the Subcontractor will not be entitled to make any Claim against FACS or any of its Associates for any Liability relating to any exercise or failure of FACS or any of its Associates to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach)**: Clauses 1.7(a) and 1.7(b) do not limit any Liability which FACS would have had to ServiceCo or the Subcontractor under any Service Package Document as a result of a breach by FACS of a term of any FACS Service Package Document but for those clauses.

2. Subcontractor's warranty and FACS' rights and liability

2.1 Subcontractor's warranty

- (a) The Subcontractor warrants to FACS that it has carried out and, provided the Subcontract has not been terminated, will continue to carry out its duties under the Subcontract in accordance with the Subcontract and that it has exercised and will continue to exercise, in carrying out the Services, the level of skill and care reasonably to be expected from an appropriately qualified and competent contractor providing those services in relation to a project of a similar size and scope to the Services. In particular and without limiting the generality of the foregoing, the Subcontractor covenants with FACS that it has carried out and will, provided the Subcontract has not been terminated, carry out and complete the Services in accordance with the Subcontract and duly observe and perform all its duties and obligations thereunder.
- (b) Without prejudice to any of FACS' other rights under this Deed (including, without limitation, under clauses 3 and 4), FACS may only exercise its rights under this clause 2.1 upon:
 - (i) the termination of the Services Deed or ServiceCo's engagement under the Services Deed; or
 - (ii) ServiceCo no longer being responsible for providing the Service Package substantially on the basis set out in the Services Deed and/or the Monthly Service Payment regime no longer applying.
- (c) Despite any other provision of this Deed or the Subcontract, the maximum aggregate liability of the Subcontractor under this clause 2.1 and the Subcontract is no greater than the maximum liability of the Subcontractor under the Subcontract.
- (d) FACS agrees that it is not permitted to recover, and the Subcontractor will not be liable to FACS for, any loss under this clause 2.1 that is not permitted to be recovered against the Subcontractor under the Subcontract.
- (e) FACS agrees that it may not exercise its rights under this clause 2.1 to the extent it has already recovered an amount for any loss arising from the same cause of action for breach of warranty under the Services Deed.

2.2 FACS' rights under Services Deed

- (a) The Subcontractor acknowledges and agrees to FACS' rights and ServiceCo's obligations under the Services Deed, including under the following clauses of the Services Deed:
 - (i) clause 7.1 (*Audits and performance compliance*);
 - (ii) clause 6.6 (*Work health and safety*);
 - (iii) clause 33 (*Expiry obligations*);
 - (iv) clause 37 (*Major Default*);
 - (v) clause 38 (*Termination*); and
 - (vi) clause 51 (*Intellectual Property Rights*).

- (b) The Subcontractor must:
 - (i) exercise its rights under the Subcontract in a way that facilitates the effective exercise by FACS of the rights referred to in clause 2.2(a); and
 - (ii) permit FACS or a FACS Associate to have access to, and take copies of, the information to which FACS is entitled to have access to in accordance with FACS' rights referred to in clause 2.2(a).
- (c) During the period in which FACS is exercising a right referred to in clause 2.2(a), FACS may, in accordance with the Services Deed and the Subcontract, require the suspension or the continuation of performance by the Subcontractor of its obligations under the Subcontract, and if it does so, the Subcontractor must (without limiting its rights under clause 3) comply with this requirement and with all reasonable directions of FACS in relation to the performance of the Subcontract by the Subcontractor during such period.
- (d) The requirement of FACS that the Subcontractor suspend or continue to perform its obligations under the Subcontract and the giving of any direction under clause 2.2(c) by FACS does not constitute an assumption by FACS of any obligations of the Subcontractor under the Subcontract.

2.3 Subcontracting and Probity Investigations

- (a) The Subcontractor acknowledges FACS' rights and ServiceCo's obligations under the following clauses of the Services Deed:
 - (i) clause 14 (*Subcontracting and third party arrangements*);
 - (ii) the clauses listed in clause 14.4 (*Requirements for Subcontracting*); and
 - (iii) clause 53 (*Probity Events and Probity Investigations*).
- (b) The Subcontractor must not subcontract any of its obligations under the Subcontract without ensuring that ServiceCo has obtained the prior consent of FACS to that subcontract, where FACS' consent is required in accordance with clause 14 (*Subcontracting and third party arrangements*) of the Services Deed.
- (c) Without limiting clauses 2.3(a) or 2.3(b), the Subcontractor acknowledges and agrees that:
 - (i) in accordance with clauses 14 (*Subcontracting and third party arrangements*) and 53 (*Probity Events and Probity Investigations*) of the Services Deed, FACS may, from time to time, or may require ServiceCo to, conduct Probity Investigations of the Subcontractor and Relevant Persons in respect of the Subcontractor (excluding the ServiceCo Representative), or other persons to whom the Subcontractor is proposing to subcontract any of its obligations under the Subcontract;
 - (ii) it will procure all relevant consents from any persons in connection with whom a Probity Investigation is to be conducted; and
 - (iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a Relevant Person in relation to the management or performance of any Service Package Activities unless FACS has

given approval (including following a Probity Investigation and any other investigations that FACS reasonably requires in accordance with the Services Deed).

2.4 No liability for information

The Subcontractor acknowledges and agrees that:

- (a) any information, data and documents provided by FACS:
 - (i) are provided for information purposes only and all of FACS' and its Associates' Intellectual Property Rights therein remain the property of FACS or its Associates (as the case may be); and
 - (ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of FACS or its Associates; and
- (b) to the extent permitted by Law, neither FACS nor any of its Associates will have any Liability to the Subcontractor or any of their Associates, nor will the Subcontractor or any of their Associates be entitled to make any Claim against FACS, or seek, pursue or obtain an indemnity against or contribution to Liability from FACS or any of its Associates arising out of or in connection with:
 - (i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in 2.4(a) by the Subcontractor or any other person to whom such information is disclosed by the Subcontractor, or any of their respective Associates or any person on any of their behalf;
 - (ii) any reference to FACS in the Subcontract; or
 - (iii) any review of, comments upon, acceptance, approval or certification of the form or substance of the Subcontract by FACS.

2.5 Subcontract not to affect FACS' rights

Each of ServiceCo and the Subcontractor acknowledges and agrees that:

- (a) where the Subcontractor is expressed in the Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Services Deed or an equivalent or similar right of ServiceCo:
 - (i) this does not of itself expand ServiceCo's rights, or FACS' Liability, under the Services Deed to include the compensation or relief to which the Subcontractor is or may become entitled under the Subcontract; and
 - (ii) ServiceCo's rights, and FACS' Liability, under the Services Deed will be determined solely in accordance with the terms of the Services Deed;
- (b) as between FACS (on the one hand) and ServiceCo and the Subcontractor (on the other hand), ServiceCo and the Subcontractor accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Subcontract and this Deed; and
- (c) notwithstanding anything to the contrary in the Subcontract, the Subcontractor has no right to deal directly with FACS or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:

- (i) expressly provided to the contrary in the Services Deed or this Deed;
or
- (ii) FACS consents in writing.

3. FACS' right to cure Default Events

3.1 FACS' cure rights

- (a) On becoming aware of any Default Event (and subject to clause 3.1(b)), FACS may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.
- (b) Clause 3.1(a) only applies if the Subcontractor has given a FACS Cure Notice in accordance with clause 3.2(c).
- (c) Upon FACS exercising any of its rights under this clause 3.1, ServiceCo's obligations under the Subcontract are suspended (other than ServiceCo's obligation to pay money) to the extent and for such period as ServiceCo is prevented from performing such obligations by FACS' exercise of its rights pursuant to clause 3.1(a).
- (d) If FACS exercises its rights pursuant to clause 3.1(a), FACS may, after giving reasonable prior notice to ServiceCo, cease to exercise those rights, and in any event, will cease to exercise those rights once the relevant Default Event has been remedied.

3.2 Restriction on right to terminate or suspend

The Subcontractor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract unless each of the following conditions has been satisfied:

- (a) the Subcontractor has given to FACS prior notice setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Subcontract, together with the statements referred to in clause 3.3 (**Default Event Notice**);
- (b) if the Subcontractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract is subject to any right of a Financier to cure or remedy the Default Event:
 - (i) the cure or remedy period available to the Financiers in respect of the Default Event under any Finance Document has expired without a cure or remedy being achieved; or
 - (ii) the Security Trustee has notified the Subcontractor in writing that it does not intend to cure or remedy the Default Event;
- (c) the Subcontractor has given notice to FACS confirming that, either:
 - (i) the requirements of clause 3.2(b) are satisfied; or
 - (ii) the Subcontractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of, any or all of its obligations under the Subcontract is not subject to any right of the Financiers to cure or remedy the Default Event,

(FACS Cure Notice), and

- (d) any one of the following has occurred:
- (i) the Default Event is capable of cure or remedy within 20 Business Days after the date on which the FACS Cure Notice is given to FACS (or such longer period as is permitted under the Subcontract or agreed to by the Subcontractor), and that Default Event has not been cured or remedied within the relevant period;
 - (ii) if the Default Event is not one described in clause 3.2(d)(i) but is nevertheless reasonably capable of cure or remedy, FACS has not commenced curing or remedying the Default Event within 20 Business Days after the date on which the FACS Cure Notice is given and has not continued to diligently pursue that cure or remedy; or
 - (iii) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, ServiceCo or FACS (or another person on behalf of either of them) have not paid or otherwise provided that compensation to the Subcontractor:
 - A. to the extent that the relevant amount of compensation has been referred to expert determination under clause 8, within 20 Business Days after that dispute is resolved; or
 - B. otherwise within 20 Business Days after the date on which FACS received the FACS Cure Notice;
 - C. if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, FACS does not commence and continue to perform ServiceCo's obligations under the Subcontract within 20 Business Days after the date on which the FACS Cure Notice is given to FACS; or
 - D. FACS notifies the Subcontractor in writing after receipt of the FACS Cure Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

3.3 Statements concerning Default Event

- (a) As part of any Default Event Notice, the Subcontractor must submit to FACS statements of:
- (i) where the Default Event is a monetary default:
 - A. the provisions of the Subcontract alleged to have been breached or not fulfilled; and
 - B. the amount which must be paid to the Subcontractor to remedy the Default Event;
 - (ii) where the Default Event is of a non-monetary nature:
 - A. the provisions of the Subcontract alleged to have been breached or not fulfilled;

- B. sufficient information to enable FACS to identify the material facts;
 - C. the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled if reasonably capable of cure or remedy; and
 - D. the time within which the specified steps can reasonably be expected to be taken; and
- (iii) any rights available to the Financiers, pursuant to any Finance Document to which the Subcontractor is a party, to cure or remedy that Default Event and the period within which that cure or remedy must occur before the Finance Documents permit the Subcontractor to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract.
- (b) If the Subcontractor gives a FACS Cure Notice to FACS in accordance with clause 3.2(c), as part of that notice the Subcontractor must update the matters referred to in clause 3.3(a).

3.4 Warranty of accuracy

- (a) The Subcontractor warrants to FACS that statements submitted by it under clause 3.3 will be, so far as reasonably practicable and subject to unintended error which the Subcontractor agrees to promptly rectify, true, complete and accurate statements of the amounts to which the Subcontractor considers itself entitled.
- (b) The Subcontractor waives and abandons all claims then known or which ought reasonably to have been known to the Subcontractor arising out of or in connection with the Subcontract prior to the date of the Default Event Notice other than the claims disclosed in the statements submitted by it under clause 3.3.

3.5 Disputes as to statements

If FACS disputes the amount of any claim or the existence of any default referred to in a Default Event Notice pursuant to clause 8:

- (a) FACS must pay the amount not in dispute;
- (b) upon resolution of the dispute in accordance with clause 8, the parties must make payments as determined; and
- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Service Package Documents.

3.6 Verification

FACS may appoint a firm of independent chartered accountants or a firm of technical advisers, in each case approved by ServiceCo and the Subcontractor (such approval not to be unreasonably withheld or delayed), to verify (at the cost of ServiceCo) statements submitted by the Subcontractor, and the Subcontractor must (subject to such firm(s) executing an appropriate confidentiality agreement in a form reasonably requested by the Subcontractor) permit such firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is

reasonably required with a view to confirming the accuracy and completeness of such statements.

3.7 No Liability

ServiceCo and the Subcontractor acknowledge that, without limiting the Liability of ServiceCo (which continues to be responsible for the performance of its obligations under the Subcontract), and without limiting FACS' obligations under clause 4, FACS will not be liable for any obligation or Liability of ServiceCo under the Subcontract by reason only of FACS performing ServiceCo's obligations in accordance with the Subcontract. ServiceCo and the Subcontractor each release FACS from any such Liability, except to the extent that such Liability occurs or arises as a direct result of any criminal conduct, fraud or wilful misconduct on the part of FACS.

3.8 ServiceCo to compensate FACS

Any reasonable loss suffered or incurred by FACS arising out of or in any way in connection with the exercise of its rights under this clause 3 will be a debt due from ServiceCo to FACS.

3.9 No limitation on other rights

The exercise (or failure to exercise) by FACS of its rights under this clause 3 will not limit FACS' rights against ServiceCo under FACS Service Package Documents or otherwise according to Law.

4. Novation of Subcontract

4.1 Option

FACS may require a novation of the Subcontract in accordance with this clause 4 upon the termination of the Services Deed by giving a notice to the Subcontractor (**Novation Notice**).

4.2 Novation of Subcontract

With effect from the Effective Date:

- (a) the parties novate the Subcontract so that FACS (or, if applicable, the Approved Nominee) and the Subcontractor are parties to a new contract on the same terms as the Subcontract as amended by this Deed; and
- (b) any reference in the Subcontract to ServiceCo shall be read as a reference to FACS (or, if applicable, the Approved Nominee).

4.3 Rights and obligations of FACS and the Subcontractor under the Subcontract

If FACS gives a Novation Notice then, subject to clause 4.6, with effect from the Effective Date:

- (a) FACS (or, if applicable, the Approved Nominee):
 - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, ServiceCo would have been entitled at and after the Effective Date;

- (ii) must perform all obligations and discharge all Liabilities under the Subcontract which, but for this Deed, ServiceCo would have been required to perform or discharge at and after the Effective Date; and
 - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, ServiceCo would have been bound at and after the Effective Date; and
- (b) the Subcontractor:
- (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, it would have been entitled at and after the Effective Date;
 - (ii) must perform all obligations and discharge all Liabilities under the Subcontract which, but for this Deed, it would have been required to perform or discharge at and after the Effective Date; and
 - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, it would have been bound at and after the Effective Date,

as if FACS (or, if applicable, the Approved Nominee) had originally been a party to the Subcontract in place of ServiceCo.

4.4 Release by Subcontractor

With effect from the Effective Date, the Subcontractor releases ServiceCo from all obligations and Liability under or in respect of the Subcontract that arises or accrues at or after the Effective Date.

4.5 Release by ServiceCo

With effect from the Effective Date, ServiceCo releases the Subcontractor from all obligations and Liability under or in respect of the Subcontract that arises or accrues at or after the Effective Date.

4.6 Obligations and Liability prior to the Effective Date

Nothing in this Deed releases ServiceCo or the Subcontractor from any obligation or Liability under the Subcontract arising or accruing before the Effective Date and FACS (or, if applicable, the Approved Nominee) does not assume any such obligation or Liabilities under this Deed.

4.7 Amendments to Subcontract

- (a) With effect from the Effective Date, the terms of the Subcontract will be deemed to be amended as required to reflect the fact that the Services Deed is at an end, and that the Subcontract must operate independently of the Services Deed, on the basis that:
- (i) the rights and obligations that FACS (or, if applicable, the Approved Nominee) will assume under the Subcontract from the Effective Date will be equivalent to those that ServiceCo would have had under the Subcontract had the Services Deed not been terminated;
 - (ii) the rights and obligations that the Subcontractor will assume under the Subcontract from the Effective Date will be equivalent to those

that the Subcontractor would have had under the Subcontract had the Services Deed not been terminated;

- (iii) any provisions of the Services Deed incorporated by reference into the Subcontract prior to the Effective Date are incorporated in the Subcontract from the Effective Date; and
 - (iv) without affecting the generality of this clause 4.7(a), clauses [*insert relevant clauses of the Subcontract*] of the Subcontract will be deleted.
- (b) If at or after the Effective Date, there is a dispute between FACS (or, if applicable, the Approved Nominee) and the Subcontractor as to how the terms of the Subcontract are deemed to have been amended pursuant to clause 4.7(a), then upon either party serving a written notice to this effect on the other, the dispute will be determined in accordance with clause 8.

4.8 Approved Nominee

- (a) FACS' nominee may be named as a party to the Subcontract in substitution for ServiceCo if FACS' nominee is an Approved Nominee.
- (b) The Subcontractor must:
 - (i) notify FACS as to whether FACS' nominee is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information reasonably required by the Subcontractor to decide whether the nominated person is an Approved Nominee;
 - (ii) not unreasonably withhold or delay its decision on whether FACS' nominee is an Approved Nominee; and
 - (iii) enter into a side deed with FACS and the Approved Nominee on substantially the same terms as this Deed.

4.9 Insurances

- (a) If the Subcontractor is required under the Subcontract to take out or maintain or take out and maintain any insurance required under clause 36 (*Insurance*) of the Services Deed to be taken out and maintained by ServiceCo (each such insurance, a **Subcontract Insurance**), then the Subcontractor undertakes to FACS to:
 - (i) take out or maintain or take out and maintain the Subcontract Insurances, as applicable; and
 - (ii) comply with clause 36 (*Insurance*) of the Services Deed with respect to the Subcontract Insurances, as if that clause and Schedule were set out in full in this Deed (*mutatis mutandis*).
- (b) The Subcontractor acknowledges and agrees that the proceeds of any Subcontract Insurance will be applied in accordance with clause 36.4 (*Application of insurance proceeds*) of the Services Deed.

4.10 Other documents under the Subcontract

If FACS gives a Novation Notice then, as from the Effective Date, ServiceCo must procure the novation or assignment to FACS (or, if applicable, the Approved Nominee) of:

- (a) *[Insert list of documents to be novated/assigned (e.g collateral warranty deeds)].*
-

5. Representations and warranties

5.1 Representations and warranties by Subcontractor

- (a) The Subcontractor represents and warrants for the benefit of FACS that:
- (i) **(power to execute)**: it has the capacity and power to execute, deliver and carry out its obligations under this Deed and each other Service Package Document to which it is a party and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
 - (ii) **(legality)**: the execution, delivery and performance of this Deed and each other Service Package Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
 - (iii) **(validity)**: this Deed and each other Service Package Document to which it is a party constitutes a valid and legally binding obligation on it, enforceable in accordance with its terms;
 - (iv) **(registration)**: it is duly registered, properly constituted and remains in existence;
 - (v) **(no trust relationship)**: except as stated in this Deed, it is not the trustee, manager or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
 - (vi) **(information true and correct)**: all information provided by it to FACS in connection with this Deed and each Service Package Document to which it is a party is true, accurate and correct in all material respects and the Subcontractor is not aware of any material facts or circumstances that have not been disclosed to FACS and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or consent to the entry into the Subcontract;
 - (vii) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon it or its ability to perform its financial and other obligations under this Deed or any other Service Package Document to which it is a party;
 - (viii) **(Insolvency Event)**: no Insolvency Event has occurred in respect of it;
 - (ix) **(accounts)**:
 - A. its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
 - B. there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and

- C. such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
- (x) **(no default):**
 - A. it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and
 - B. nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, and which would have a Material Adverse Effect;
 - (b) **(no immunity):** neither it nor any of its assets enjoys any immunity from set off, suit or execution in any jurisdiction; and
 - (c) **(own investigations):** in entering into this Deed, the Subcontract and any other Service Package Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by FACS, ServiceCo or any other person unless in respect of ServiceCo or any other person, other than FACS or an Associate of FACS, it is expressly permitted to do so in accordance with a Service Package Document to which it is a party.

5.2 Repetition of representations and warranties

The representations and warranties in this clause 5 are taken to be repeated immediately before Commercial Close, on the basis of the facts and circumstances as at that date.

5.3 Reliance on representations and warranties

The Subcontractor acknowledges that FACS executed this Deed and agreed to take part in the transactions that this Deed contemplates in reliance on the representations and warranties that are made or repeated in this clause 5.

6. Undertakings by Subcontractor

The Subcontractor undertakes to FACS as follows:

- (a) **(notification of Default Event):** it will notify FACS of any Default Event promptly after it gives notice of that Default Event in accordance with clause *[insert]* (*[Notice of ServiceCo Event of Default]*) of the Subcontract;
- (b) **(documents in relation to Default Event):** it will promptly give FACS a copy of all documents issued by the Subcontractor to ServiceCo in relation to a Default Event;
- (c) **(no amendment without consent):** it will not, without first obtaining the consent of FACS:
 - (i) make or permit any amendment or replacement of or addition to;

- (ii) subject to clause 3.2, terminate, surrender, rescind or accept repudiation of;
- (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed or clause 8.3 (*Replacement of Key Subcontractor*) of the Financiers' Tripartite Deed; or
- (iv) allow any express waiver of its material rights and obligations under,

the Subcontract, provided that FACS will not withhold its consent to an amendment which is an amendment to which it has consented in accordance with the Services Deed;
- (d) **(disposals)**: it will not, after Commercial Close, transfer, assign, mortgage, charge, encumber or otherwise deal with its rights, obligations or interests in the Subcontract without first procuring that the proposed transferee, assignee, mortgagee or chargee executes a deed in favour of FACS (in a form and substance approved by FACS) pursuant to which the transferee, assignee, mortgagee or chargee agrees to accept and be bound by this Deed as if it were the Subcontractor;
- (e) **(attend meetings and inspections)**: it will (when reasonably requested by FACS):
 - (i) attend, where reasonable and appropriate, meetings with FACS or any of FACS' Associates;
 - (ii) provide FACS or any of FACS' Associates and authorised personnel with:
 - A. in the case of the Subcontractor, full access to:
 - 1) the Site; and
 - 2) any other place where any Services are being provided,

to the extent provided in the Services Deed; and
 - B. any other information, records or documents that FACS or any of its Associates (acting reasonably) requires in relation to the provision of the Services or compliance with the Subcontract or any information required by FACS to comply with requests from the New South Wales Auditor-General; and
 - (iii) permit FACS or any of FACS' Associates to attend all tests and inspections to be carried out in connection with the Service Package in accordance with the terms of the Subcontract, to the extent provided in the Services Deed; and
- (f) **(access to records)**: at the request of FACS, it will:
 - (i) permit FACS or any of its Associates to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the Subcontractor in relation to the Service Package; and

- (ii) supply FACS or any of its Associates with a copy of any such report or document which they may require from time to time.

7. Acknowledgement by ServiceCo

ServiceCo consents to the terms of this Deed and will co-operate in the implementation of this Deed.

8. Dispute resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 8 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Services Deed are resolved. Accordingly, the provisions of clauses 40 (*Dispute Resolution procedure*) to 43 (*Reference to Arbitration*) of the Services Deed are incorporated into this Deed but as if:

- (a) the only persons party to the Services Deed, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

9. GST

- (a) **(Interpretation):**
 - (i) Except where the context suggests otherwise, terms used in this clause 9 have the same meanings given to those terms by the *New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 9.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** Subject to clause 9(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:

- (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 9) for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (iii) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 9(c)(i).
- (d) **(Variation of GST):**
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 9(c) and clause 9(e)), varies from the additional amount paid by the Recipient under clause 9(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 9(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 9(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 9(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 9(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 9(c) (or the time at which such GST Amount would have been payable in accordance with clause 9(c) but for the operation of clause 9(e)(i)).
- (f) **(No merger):** This clause 9 will not merge on completion or termination of this Deed.
- (g) **(Application of Services Deed):** If clause 22 (*Payments, adjustments & Taxes*) of the Services Deed would apply in connection with a Taxable Supply to which this clause 9 also applies, then clause 22 (*Payments, adjustments & Taxes*) of the Services Deed will apply in connection with that supply and the provisions of this clause 9 (but for this paragraph) will not apply.

10. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

FACS

Attention:
Address:
Telephone:
Email:



ServiceCo

Name:
Address:
Email:
For the attention of:



Subcontractor

Name: [insert]
Address: [insert]
Email: [insert]
For the attention of: [insert]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address, or emailed (in the form agreed by both parties) to the email address, of the addressee set out in clause 10(b);
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 10(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) subject to clause 10(f), in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and

- (f) **(notices sent by post):** if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

11. Confidential Information and disclosure

11.1 Confidential Information and disclosure by FACS

- (a) Subject to clause 11(b), FACS and any Authority may disclose any information in connection with the Service Package, including Service Package Information.
- (b) FACS may only disclose the Commercially Sensitive Information:
- (i) in accordance with Laws or for the enforcement of any criminal law;
 - (ii) where disclosure is in the course of the official duties of the responsible Minister, the Treasurer, the Premier or the Attorney General;
 - (iii) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the Public Finance and Audit Act 1983 (NSW);
 - (iv) to satisfy the requirements of Parliamentary accountability;
 - (v) to any Associate of FACS to the extent necessary for the purpose of the Service Package provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
 - (vi) in annual reports of FACS;
 - (vii) in accordance with policies of FACS or the NSW Government or any Authority;
 - (viii) for any tender process required to be conducted under the Termination Payments Schedule; or
 - (ix) where the Commercially Sensitive Information is any part of the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of the Services Deed.

11.2 Confidential Information and disclosure by Subcontractor

- (a) **(Confidentiality obligation):** Subject to clauses 11.2(b) and clause 11.4, the Subcontractor must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of FACS, make public or disclose to any person any Confidential Information.

- (b) **(Disclosure of Confidential Information):** Without limiting the Subcontractor's obligations under clause 11.2(a) and subject to clause 11.2(c), the Subcontractor may disclose Confidential Information:
 - (i) to its Associates to the extent necessary for the purpose of undertaking the Service Package; and
 - (ii) in accordance with clause 11.4.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, the Subcontractor must ensure that the person to whom the information is disclosed enters into a confidentiality deed with it to keep the Confidential Information confidential in accordance with this clause 11.
- (d) **(Permitted disclosure):** The Subcontractor may disclose Confidential Information and will not be required to seek FACS' consent to a disclosure, announcement or statement under clause 11.2(a) or 11.3(a) or to enter into a confidentiality deed under clause 11.2(c) where the disclosure announcement or statement is:
 - (i) required by Law, provided that it:
 - A. notifies FACS of the requirement to make that disclosure; and
 - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
 - (iii) required to be made to a court in the course of proceedings to which the Subcontractor is a party; or
 - (iv) required by a relevant recognised stock exchange, subject to:
 - A. the disclosure, announcement or statement not referring to FACS' or any of its Associates' involvement in the Service Package; and
 - B. the Subcontractor having used all reasonable endeavours to obtain FACS' consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

11.3 Public announcements by Subcontractor

Subject to clause 11.2(d), the Subcontractor must:

- (a) not make any public disclosures, announcements or statements in relation to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package, without FACS' prior consent;
- (b) comply with any terms and conditions FACS imposes and must use all reasonable endeavours to agree with FACS the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Service Package or FACS' or any of FACS' Associates' involvement in

the Service Package before the relevant disclosure, announcement or statement is made; and

- (c) as soon as practicable, give to FACS a copy of any public disclosure, announcement or statement agreed to or approved by FACS in accordance with this clause 11.3 or for which FACS' consent or approval was not required in accordance with clause 11.4.

11.4 Information public or known

Notwithstanding anything in this clause 11, any party may disclose information in connection with the Service Package (including any Confidential Information) if:

- (a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 11; or
- (b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

11.5 Disclosure by FACS under GIPA Act

- (a) Notwithstanding the other provisions of this clause 11, the parties acknowledge that:
 - (i) the Service Package Documents and information concerning the Service Package Documents will be published on FACS' contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
 - (ii) FACS may make the Service Package Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
 - (i) FACS will notify the Subcontractor of any proposed disclosure of Commercially Sensitive Information by FACS under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
 - (ii) following notification by FACS in accordance with clause 11.5(b)(i), FACS will take reasonable steps to consult with the Subcontractor before disclosing Commercially Sensitive Information under the GIPA Act;
 - (iii) if, following:
 - A. notification by FACS in accordance with clause 11.5(b)(i); or
 - B. consultation between FACS and the Subcontractor in accordance with clause 11.5(b)(ii),the Subcontractor objects to disclosure of some or all of the Commercially Sensitive Information, the Subcontractor must provide details of any such objection within five Business Days after the date the Subcontractor received notification from FACS or the date on which the consultation process concluded (as relevant);
 - (iv) FACS may take into account any objection received from the Subcontractor pursuant to clause 11.5(b)(iii) in determining whether

the Commercially Sensitive Information identified by the Subcontractor should be disclosed; and

- (v) nothing in this clause 11.5 will limit or otherwise affect the discharge of FACS' obligations under the GIPA Act.

11.6 Personal Information

The Subcontractor must:

- (a) not collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Standards;
- (b) not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Laws, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Standards; and
- (c) keep, and make available to FACS on request, records detailing the recipient of any Personal Information that the Subcontractor has disclosed, the date of disclosure and the Personal Information that has been disclosed.

11.7 Privacy

- (a) **(Compliance)**: Without limiting any obligations in respect of privacy set out in the Design Requirements or the Services Requirements, the Subcontractor agrees to, and will ensure that the Subcontract and any other subcontract entered into by the Subcontractor in relation to the Service Package contains terms which require the Subcontractor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Subcontract or other relevant subcontract (as the case may be), in the same way as FACS would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by FACS.
- (b) **(Release and Indemnity)**: The Subcontractor must release, indemnify and must keep indemnified on demand FACS and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which FACS or any of its Associates suffer or incur resulting from any act done or practice engaged in by the Subcontractor or any of their respective Associates in connection with the Service Package, which would, had that act or practice been done or engaged in by FACS, have contravened any of the Privacy Legislation.

12. Termination of this Deed

- (a) **(Satisfaction of obligations under the Subcontract or novation of Subcontract)**: This Deed will terminate automatically without any requirement for any notice from any party:
 - (i) upon the performance and satisfaction of all of the obligations under the Subcontract; or
 - (ii) upon the novation of the Subcontract to FACS.
- (b) **(Does not affect rights of parties)**: The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

- (c) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
- (i) FACS' rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to FACS;
 - (v) any indemnity or financial security given in accordance with this Deed;
 - (vi) any limitation or exclusion of Liability; and
 - (vii) any right or obligation arising on termination or expiry of this Deed.
- (d) **(Interpretation):** No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.
- (e) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

13. Governing law and jurisdiction

13.1 Governing law

This Deed is governed by, and must be construed according to, the Laws of New South Wales, Australia.

13.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 13.2(a).

14. Miscellaneous

14.1 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding)**: embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior written or other agreement of the parties.

14.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

14.3 Waiver

- (a) **(Writing)**: A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in, or the partial exercise or enforcement of a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

14.4 Consents and approvals

A consent or approval required under this Deed from FACS may be given or withheld, or may be given subject to any conditions, as FACS (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

14.5 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

14.6 Expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

14.7 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

14.8 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.

- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

14.9 Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

14.10 Moratorium legislation

A provision of any Law which comes into effect after the date of this Deed and operates to:

- (a) increase or improve any of ServiceCo's or the Subcontractor's rights, powers or remedies under this Deed or otherwise; or
- (b) prejudicially affect the exercise by FACS of any right, power or remedy under this Deed or otherwise,

(each matter referred to in (a) and (b), a **Specified Effect**) is, to the extent only that the Law has the Specified Effect, expressly waived by ServiceCo to the extent it is legally able to do so. If a waiver is ineffective the parties will consult in good faith to determine how the parties can be restored to their original position under this Deed.

Executed as a deed.

[Insert execution blocks]

Confidential

Schedule 22 – Site Selection Strategy

Confidential

Schedule 23 – DAB Accession Deed Poll

BY: The Uniting Church in Australia Property Trust (NSW) (ABN 77 005 284 605) for and on behalf of Uniting (NSW.ACT) (ABN 78 722 539 923) (also known as UnitingCare NSW.ACT) whose registered office is at Level 4, 222 Pitt Street, Sydney NSW 2000 (**ServiceCo**)

IN FAVOUR OF: (1) The Secretary of the Department of Family and Community Services as Housing Agency under section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**)

and

(2) **Members of the DAB** (collectively **Members**), namely:

[REDACTED]
[REDACTED]
[REDACTED]

and

(3) each person who has acceded to the DAB Agreement, (together (2) and (3) being the **Continuing Parties**).

RECITALS:

- (A) This deed poll is supplemental to the agreement titled "DAB Agreement" between FACS and the Continuing Parties dated [insert] as amended or acceded to from time to time (**DAB Agreement**).
- (B) FACS and the Continuing Parties are each party to the DAB Agreement.
- (C) FACS has entered into the Services Deed with ServiceCo.
- (D) Each of the Continuing Parties has acknowledged and agreed that ServiceCo will accede to the DAB Agreement.
- (E) By this deed poll, ServiceCo accedes to the DAB Agreement and the DAB Agreement is amended on the terms set out in this deed poll.

This deed poll provides as follows:

1. Interpretation

Capitalised terms used in this deed poll and not otherwise defined have the same meanings as those given in the DAB Agreement. The following definitions apply in this deed poll:

Effective Date means the date of execution of this deed poll.

Executed as a deed poll.

[Insert execution blocks]

Schedule 24 – Program Milestones

1. Definitions

For the purposes of this Schedule, the definitions in clause 1 (*Definitions*) of this Deed will apply as supplemented by the following definitions:

Construction Commenced means ServiceCo has:

- (a) entered into a Development Document with respect to the construction of all of the relevant SP Dwellings; and
- (b) commenced construction of the works on the relevant Site.

Development Consent Obtained means ServiceCo has:

- (a) received a notice of determination issued under section 4.18 of the *Environmental Planning and Assessment Act 1979* (NSW) with respect to the relevant Development Consent; or
- (b) effected registration of the relevant Development Consent on the 'NSW planning portal' (being the website with the URL of www.planningportal.nsw.gov.au or any other website used by the Secretary of the Department of Planning and Environment to provide public access to documents or other information in the NSW planning database).

Notification of Dwellings means ServiceCo has provided notification of specific units that comprise the Service Package Dwellings pursuant to clause 17.2 (*Notice of Stages*) of this Deed.

New Dwelling means a Dwelling on a Site listed as a 'new Dwelling' in Section 2 of the Dwelling Schedule.

Refurbished Dwelling means a Dwelling on a Site listed as a 'refurbished Dwelling' in Section 2 of the Dwelling Schedule.

2. Program Milestones – [REDACTED] refurbished Dwellings to be delivered in the first 3 years

Program Milestones

| Year 1 | Milestone Date |
|---|--|
| Notification of Dwellings with respect to [REDACTED] SP Dwellings | The date that is the first anniversary of Commercial Close |
| Construction Commenced with respect to [REDACTED] SP Dwellings | |

| Year 2 | Milestone Date |
|---|---|
| Notification of Dwellings with respect to [REDACTED] SP Dwellings | The date that is the second anniversary of Commercial Close |
| Construction Commenced with respect to [REDACTED] SP Dwellings | |

Service Readiness Milestones

| Service Readiness Milestone | Service Readiness Milestone Date |
|---|---|
| Service Readiness has been achieved with respect to [REDACTED] SP Dwellings | The date that is the first anniversary of Commercial Close |
| Service Readiness has been achieved with respect to an additional [REDACTED] SP Dwellings | The date that is the second anniversary of Commercial Close |
| Service Readiness has been achieved with respect to an additional [REDACTED] SP Dwellings | The date that is the third anniversary of Commercial Close |

3. Program Milestones – [REDACTED] new Dwellings to be delivered in the first 3 years

Program Milestones

| Year 1 | Milestone Date |
|--|--|
| Development Consent Obtained with respect to [REDACTED] SP Dwellings | The date that is the first anniversary of Commercial Close |
| Construction Commenced with respect to [REDACTED] SP Dwellings | |

| Year 2 | Milestone Date |
|--|---|
| Development Consent Obtained with respect to [REDACTED] SP Dwellings | The date that is the second anniversary of Commercial Close |
| Construction Commenced with respect to [REDACTED] SP Dwellings | |

Service Readiness Milestone

| Service Readiness Milestone | Service Readiness Milestone Date |
|---|---|
| Service Readiness has been achieved with respect to [REDACTED] SP Dwellings | The date that is the first anniversary of Commercial Close |
| Service Readiness has been achieved with respect to [REDACTED] SP Dwellings | The date that is the second anniversary of Commercial Close |
| Service Readiness has been achieved with respect to [REDACTED] SP Dwellings | The date that is the third anniversary of Commercial Close |

4. Program Milestones – [REDACTED] Temporary Dwellings to be substituted out of the program to be delivered in the first 3 years

Program Milestones

| Year 1 | Milestone Date |
|---------------|-----------------------|
|---------------|-----------------------|

Notification of Dwellings with respect to [REDACTED] SP Dwellings The date that is the first anniversary of Commercial Close

Construction Commenced with respect to [REDACTED] SP Dwellings

| Year 2 | Milestone Date |
|---------------|-----------------------|
|---------------|-----------------------|

Notification of Dwellings with respect to [REDACTED] SP Dwellings The date that is the second anniversary of Commercial Close

Construction Commenced with respect to [REDACTED] SP Dwellings

Service Readiness Milestone

| Service Readiness Milestone | Service Readiness Milestone Date |
|------------------------------------|---|
|------------------------------------|---|

Service Readiness has been achieved with respect to [REDACTED] SP Dwellings The date that is the first anniversary of Commercial Close

Service Readiness has been achieved with respect to [REDACTED] SP Dwellings The date that is the second anniversary of Commercial Close

Service Readiness has been achieved with respect to [REDACTED] SP Dwellings The date that is the third anniversary of Commercial Close

5. Program Milestones – [REDACTED] Substituted New Dwellings to be substituted in to be delivered by the end of year 5

Program Milestones

| Year 2 | Milestone Date |
|---------------|-----------------------|
|---------------|-----------------------|

Development Consent Obtained with respect to [REDACTED] SP Dwellings The date that is the third anniversary of Commercial Close

Construction Commenced with respect to [REDACTED] SP Dwellings

| Year 3 | Milestone Date |
|---------------|-----------------------|
|---------------|-----------------------|

Development Consent Obtained with respect to [REDACTED] SP Dwellings The date that is the third anniversary of Commercial Close

Construction Commenced with respect to [REDACTED] SP Dwellings

| Year 4 | Milestone Date |
|---------------|-----------------------|
|---------------|-----------------------|

Development Consent Obtained with respect to [REDACTED] SP Dwellings The date that is the fourth anniversary of Commercial Close

Construction Commenced with respect to [REDACTED] SP Dwellings

Service Readiness Milestone

| Service Readiness Milestone | Service Readiness Milestone Date |
|------------------------------------|---|
|------------------------------------|---|

Service Readiness has been achieved with respect to [REDACTED] SP Dwellings The date that is the fourth anniversary of Commercial Close

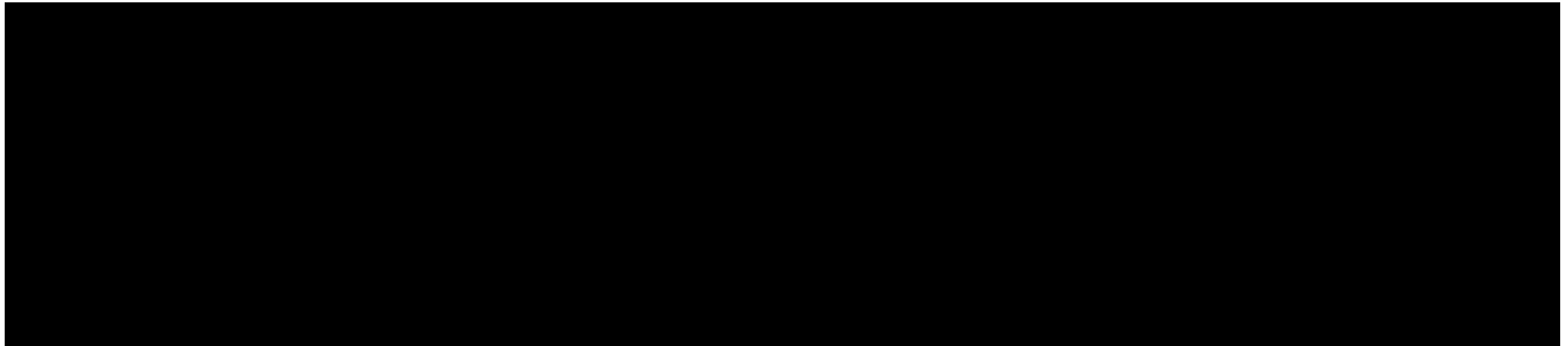
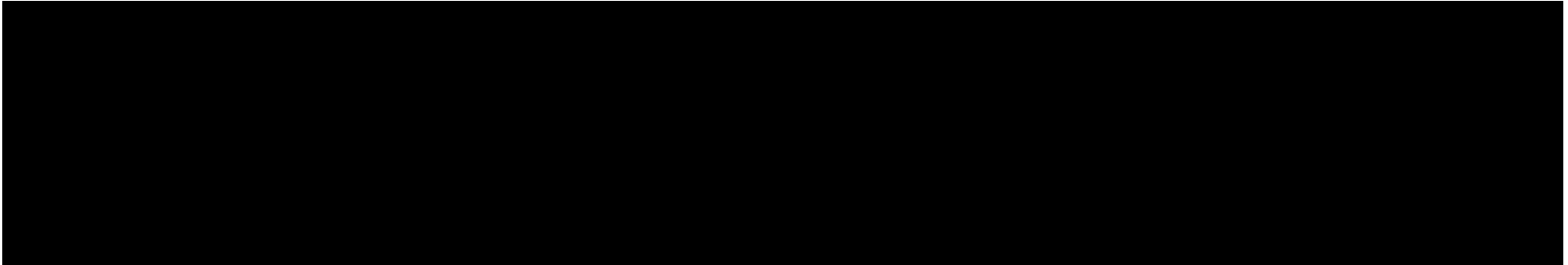
Service Readiness has been achieved with respect to [REDACTED] SP Dwellings The date that is the fifth anniversary of Commercial Close

Confidential

Schedule 25 – Dwellings Schedule

2. Identified and Unidentified Service Package Dwellings that have not achieved Service Readiness

| Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA) | Dwelling Type | Service Package Dwellings | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
|---|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--------------------|-----------------|---------------------------|--------|
| | | Studio SP Dwellings | One bedroom SP Dwellings | Two bedroom SP Dwellings | Three bedroom SP Dwellings | Four bedroom SP Dwellings | | | | |



Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

Dwelling Type

Service Package Dwellings

Studio SP Dwellings

One bedroom SP Dwellings

Two bedroom SP Dwellings

Three bedroom SP Dwellings

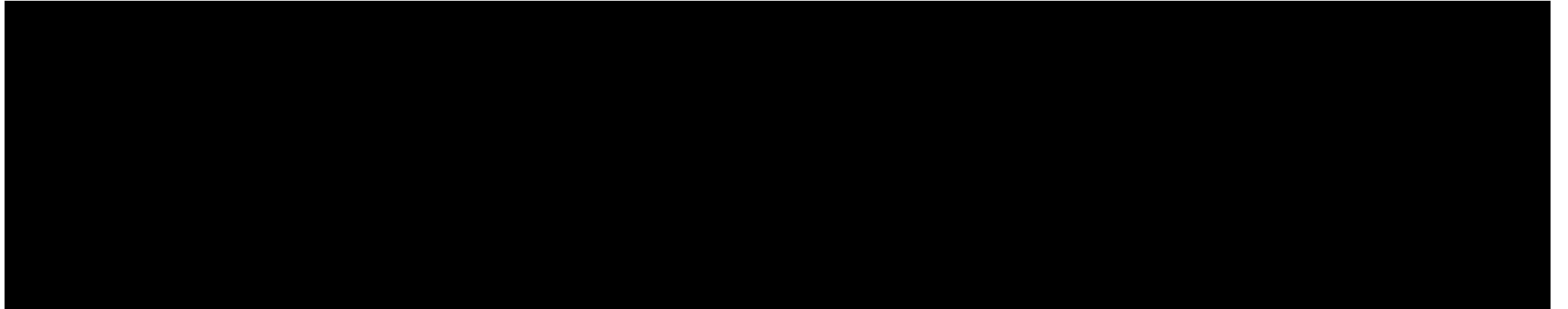
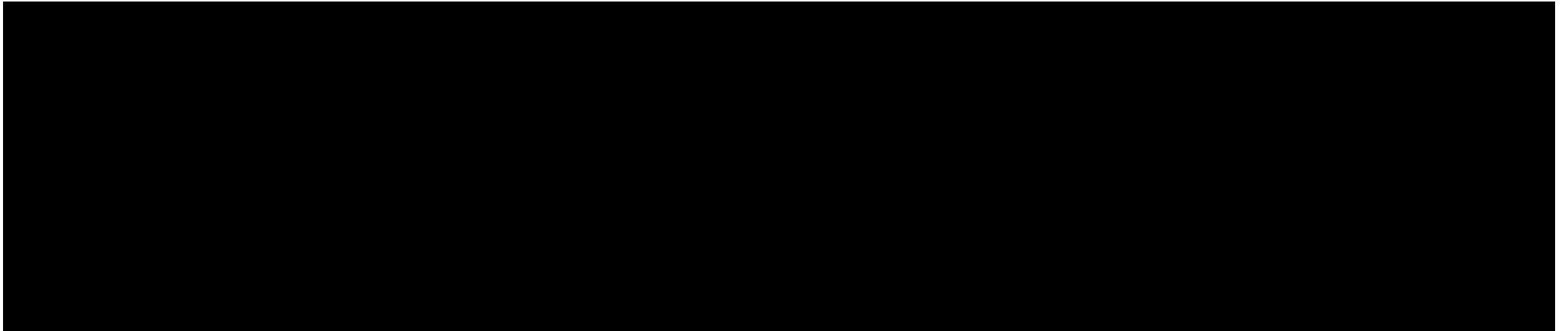
Four bedroom SP Dwellings

Total SP Dwellings

Private Housing

Supporting Infrastructure

Zoning



Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

Dwelling Type

Service Package Dwellings

Studio SP Dwellings

One bedroom SP Dwellings

Two bedroom SP Dwellings

Three bedroom SP Dwellings

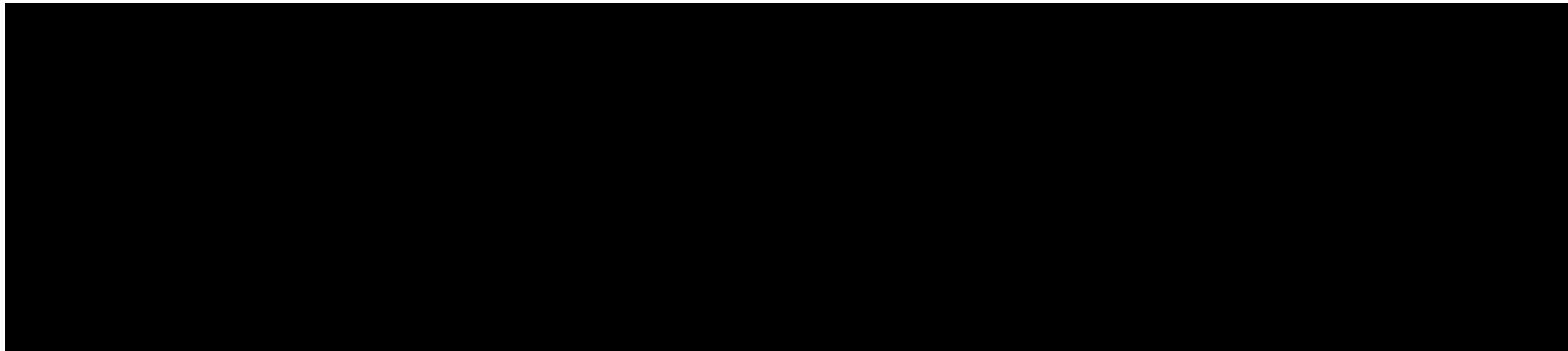
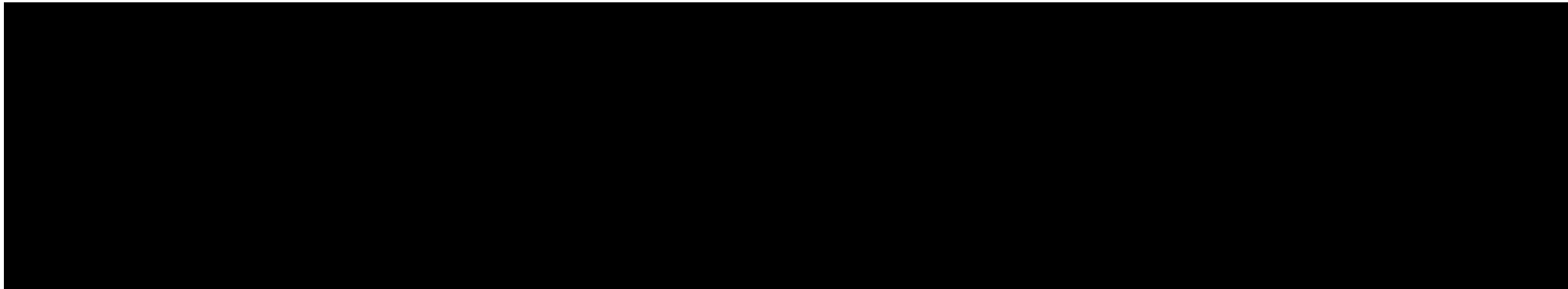
Four bedroom SP Dwellings

Total SP Dwellings

Private Housing

Supporting Infrastructure

Zoning



Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

Dwelling Type

Service Package Dwellings

Studio SP Dwellings

One bedroom SP Dwellings

Two bedroom SP Dwellings

Three bedroom SP Dwellings

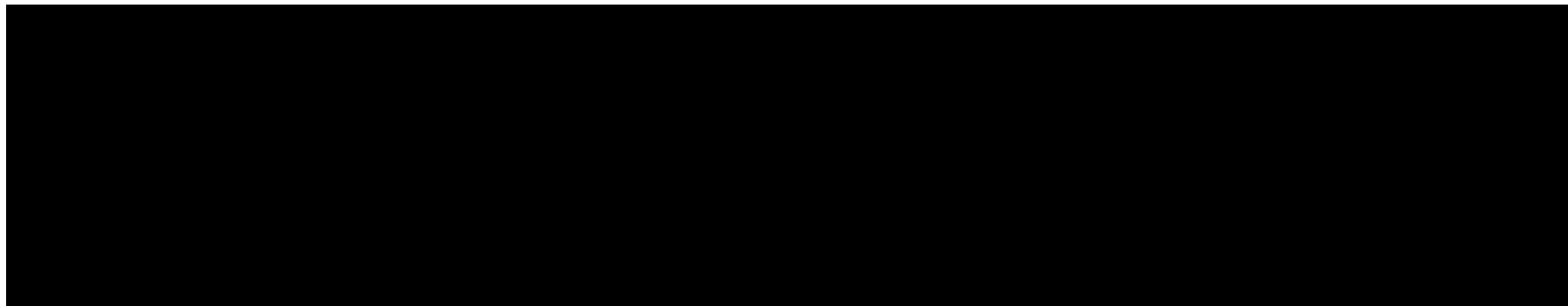
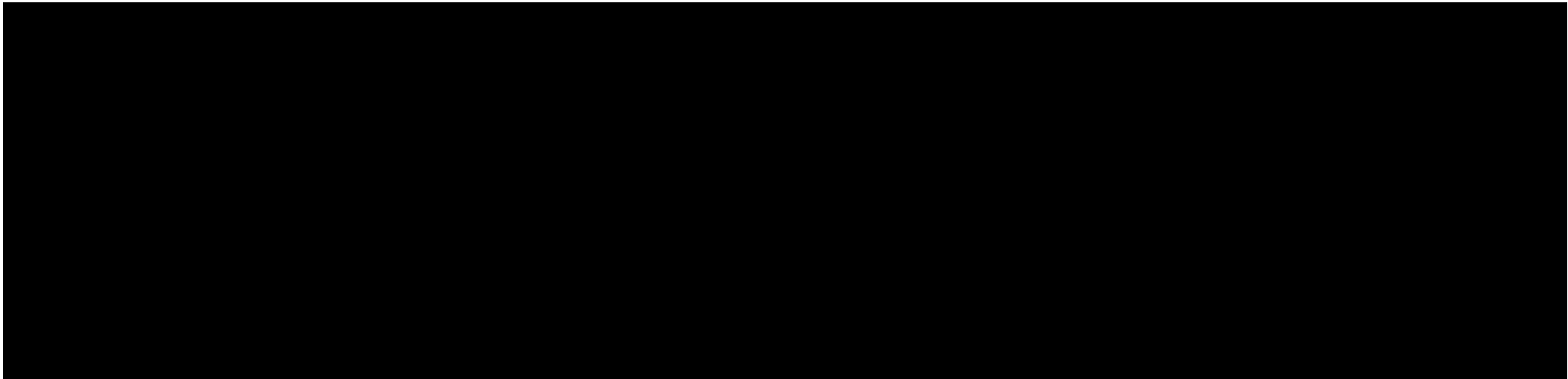
Four bedroom SP Dwellings

Total SP Dwellings

Private Housing

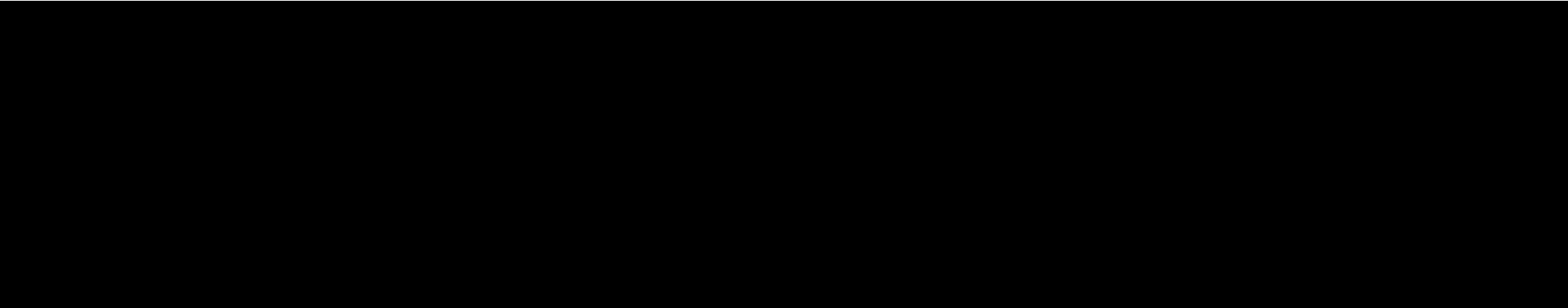
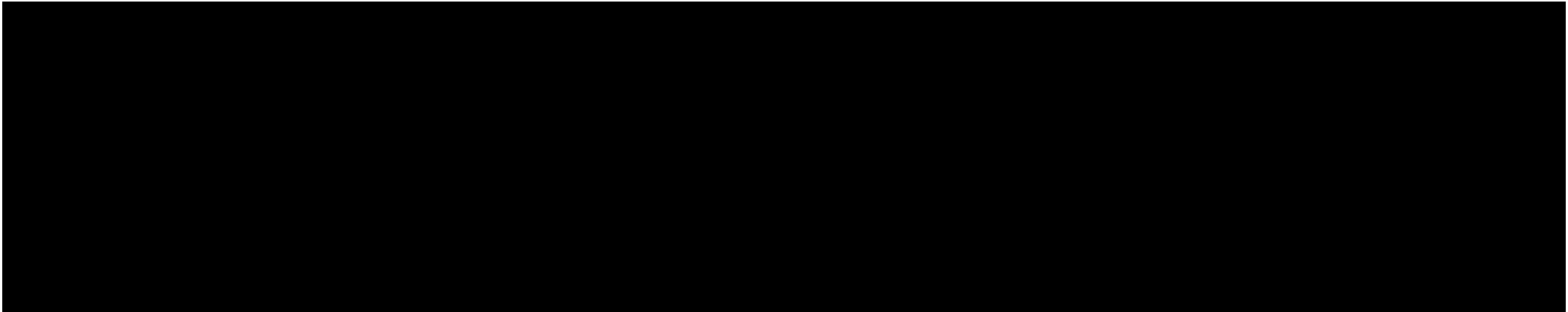
Supporting Infrastructure

Zoning



Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

| Dwelling Type | Service Package Dwellings | | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--|--------------------|-----------------|---------------------------|--------|
| | Studio SP Dwellings | One bedroom SP Dwellings | Two bedroom SP Dwellings | Three bedroom SP Dwellings | Four bedroom SP Dwellings | | | | | |



Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

Dwelling Type

Service Package Dwellings

Studio SP Dwellings

One bedroom SP Dwellings

Two bedroom SP Dwellings

Three bedroom SP Dwellings

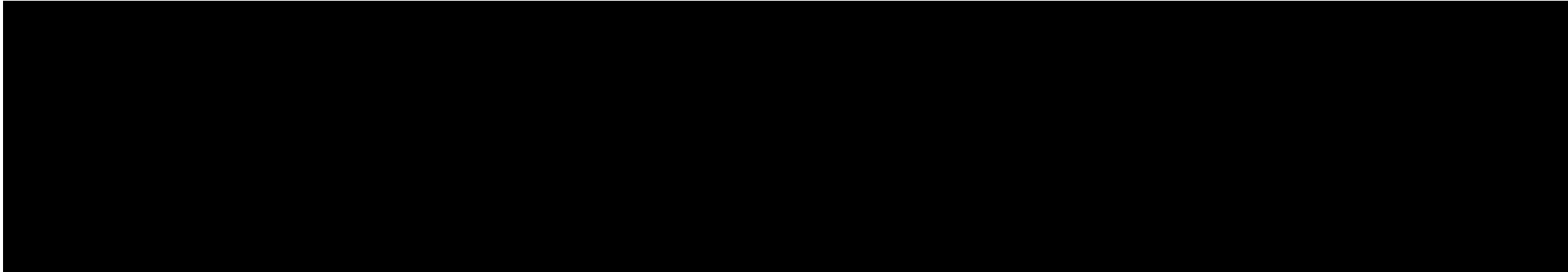
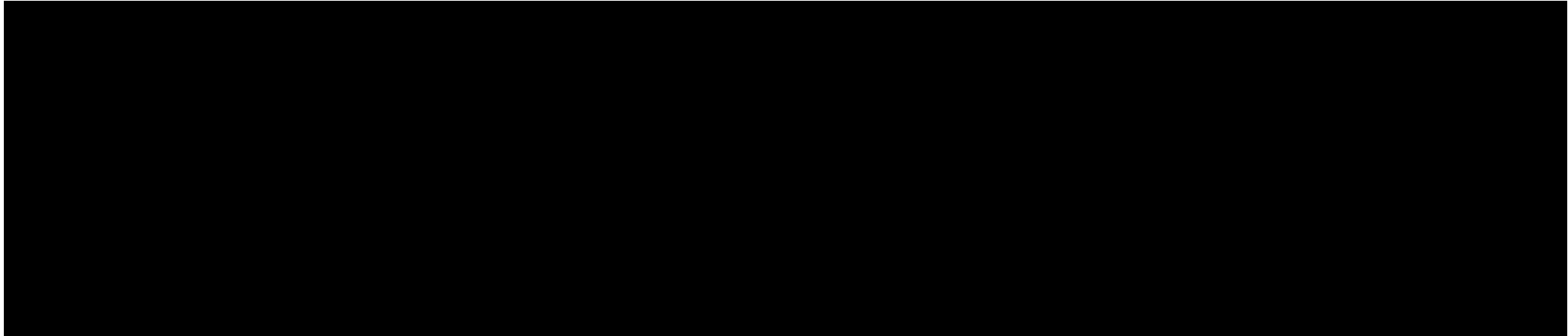
Four bedroom SP Dwellings

Total SP Dwellings

Private Housing

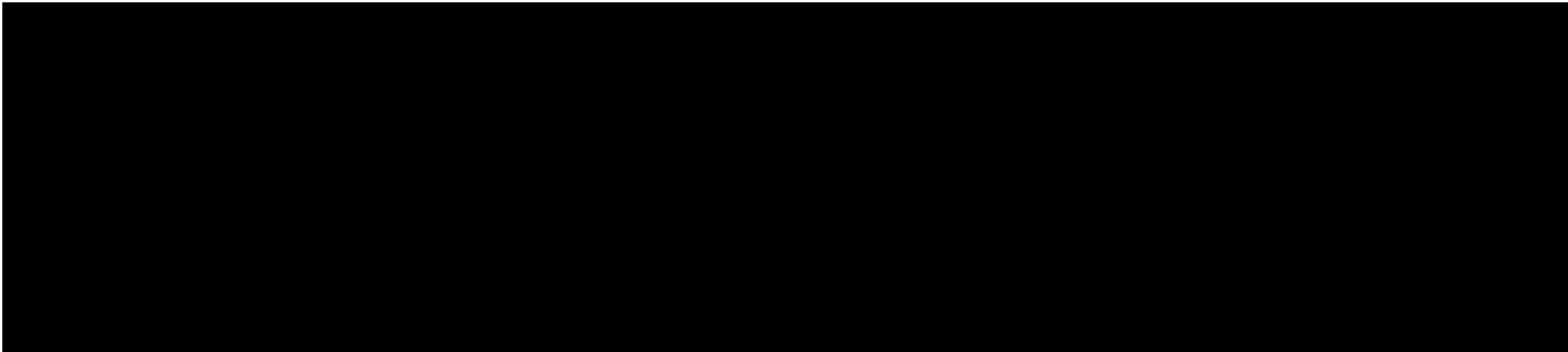
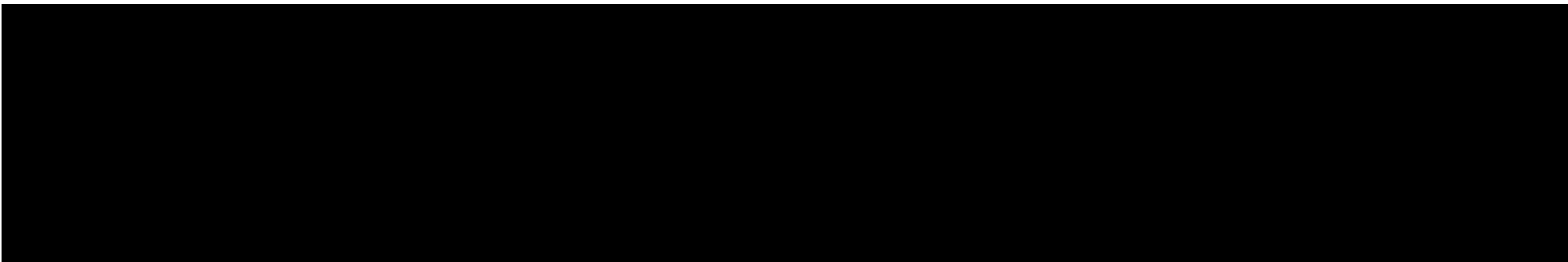
Supporting Infrastructure

Zoning



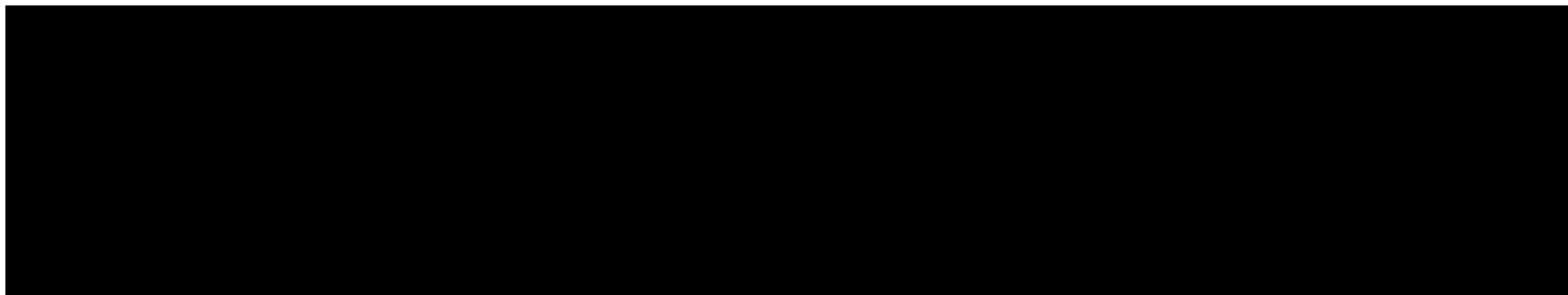
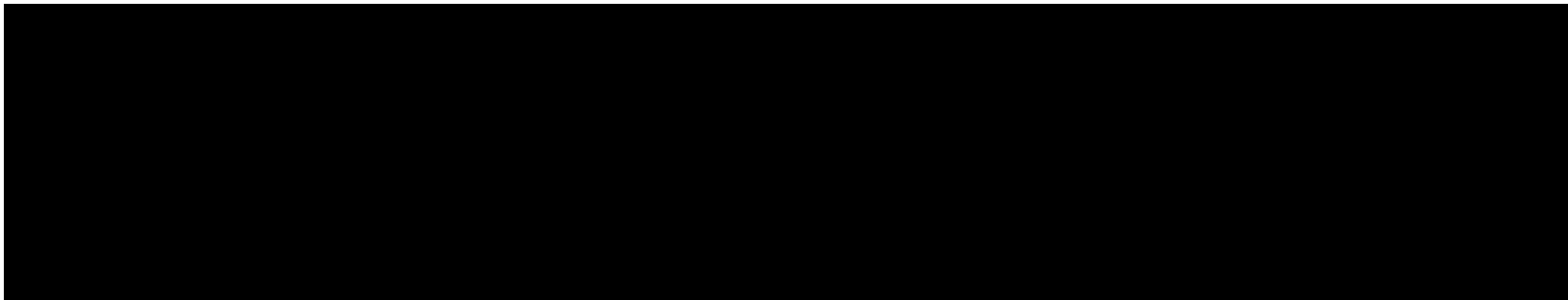
Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

| Dwelling Type | Service Package Dwellings | | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--|--------------------|-----------------|---------------------------|--------|
| | Studio SP Dwellings | One bedroom SP Dwellings | Two bedroom SP Dwellings | Three bedroom SP Dwellings | Four bedroom SP Dwellings | | | | | |



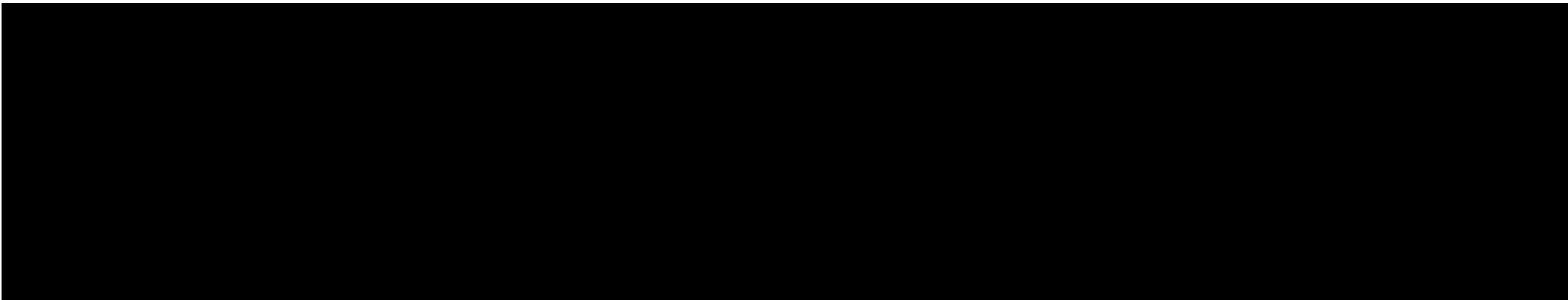
Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

| Dwelling Type | Service Package Dwellings | | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--|--------------------|-----------------|---------------------------|--------|
| | Studio SP Dwellings | One bedroom SP Dwellings | Two bedroom SP Dwellings | Three bedroom SP Dwellings | Four bedroom SP Dwellings | | | | | |



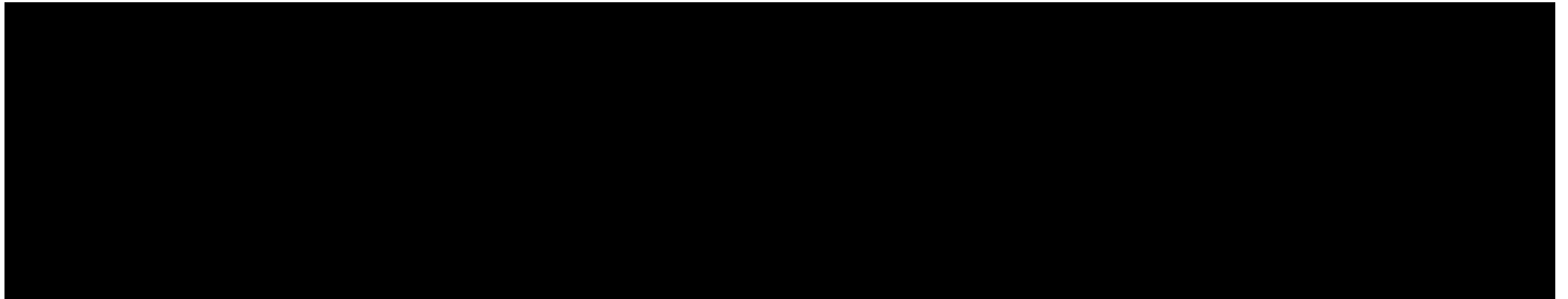
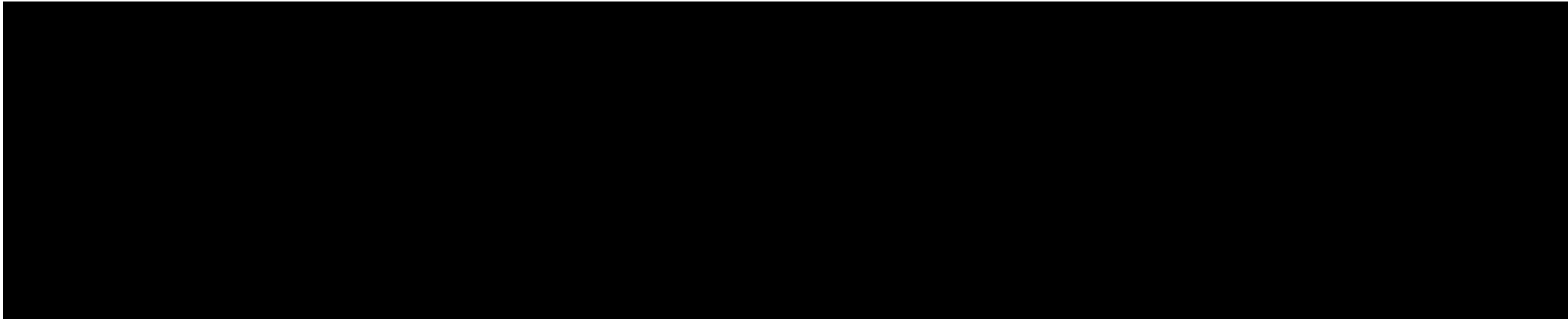
Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

| Dwelling Type | Service Package Dwellings | | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
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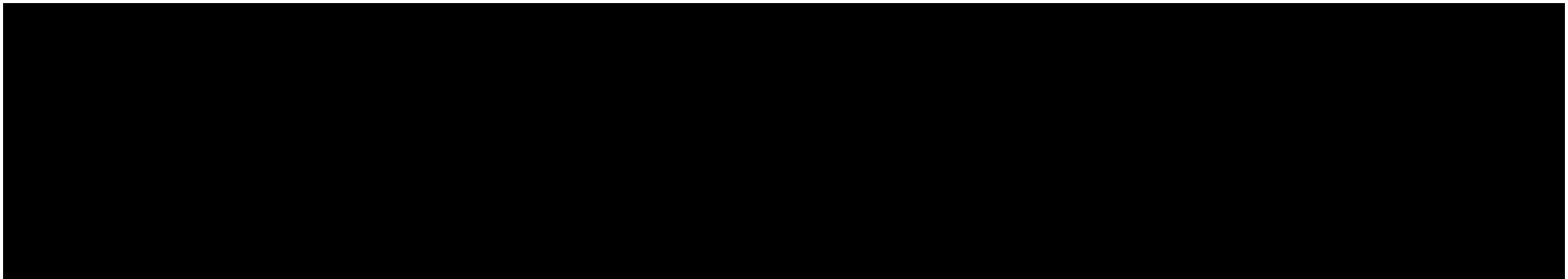
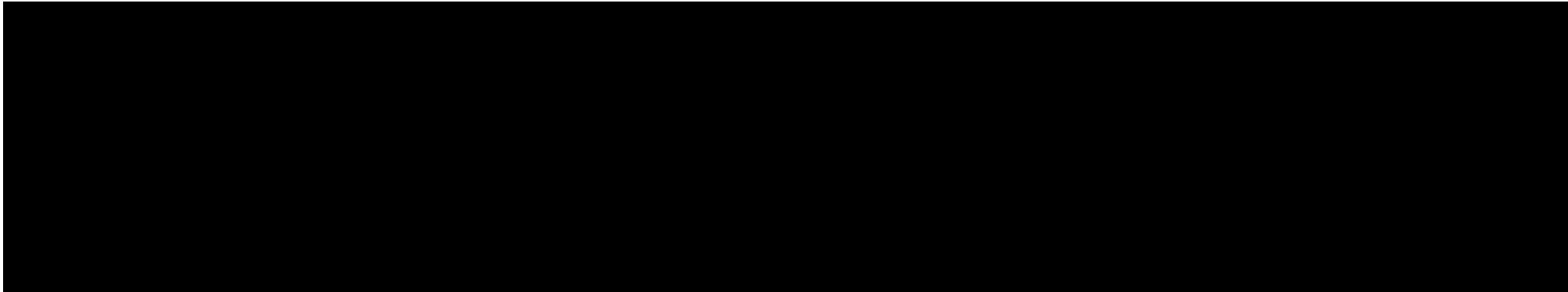
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| Dwelling Type | Service Package Dwellings | | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
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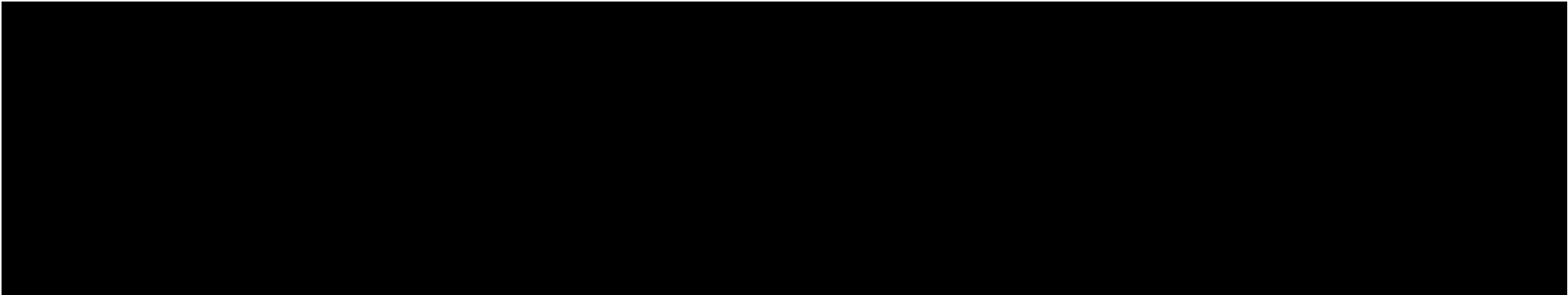
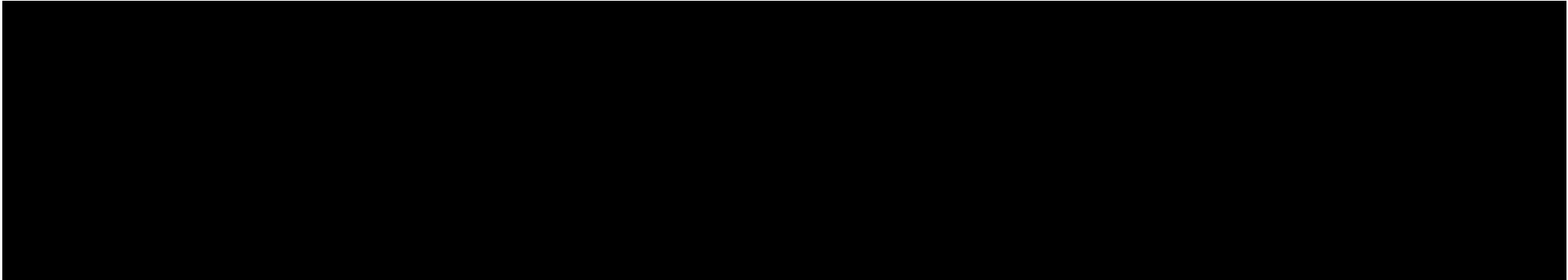
Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

| Dwelling Type | Service Package Dwellings | | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--|--------------------|-----------------|---------------------------|--------|
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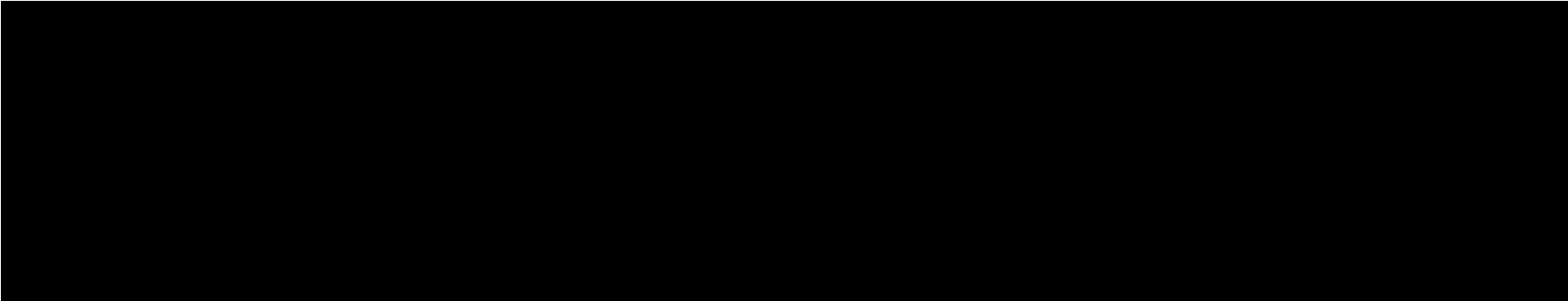
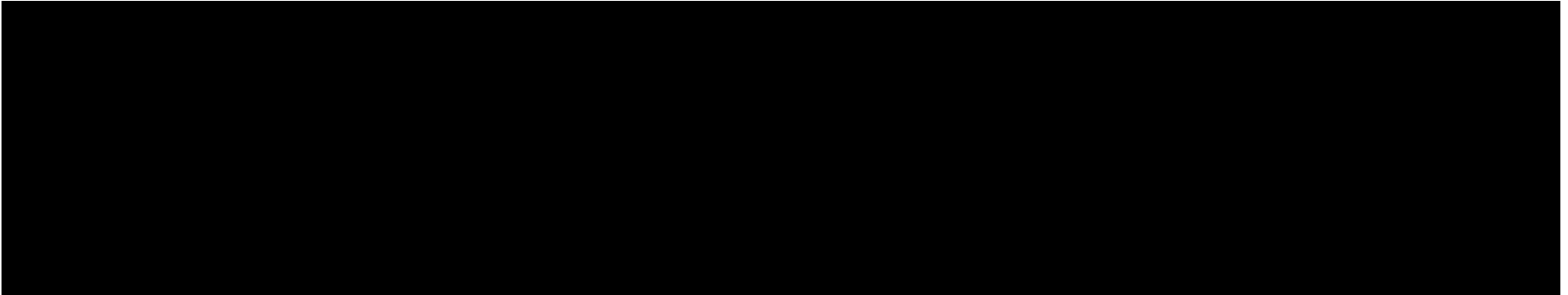
Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

| Dwelling Type | Service Package Dwellings | | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--|--------------------|-----------------|---------------------------|--------|
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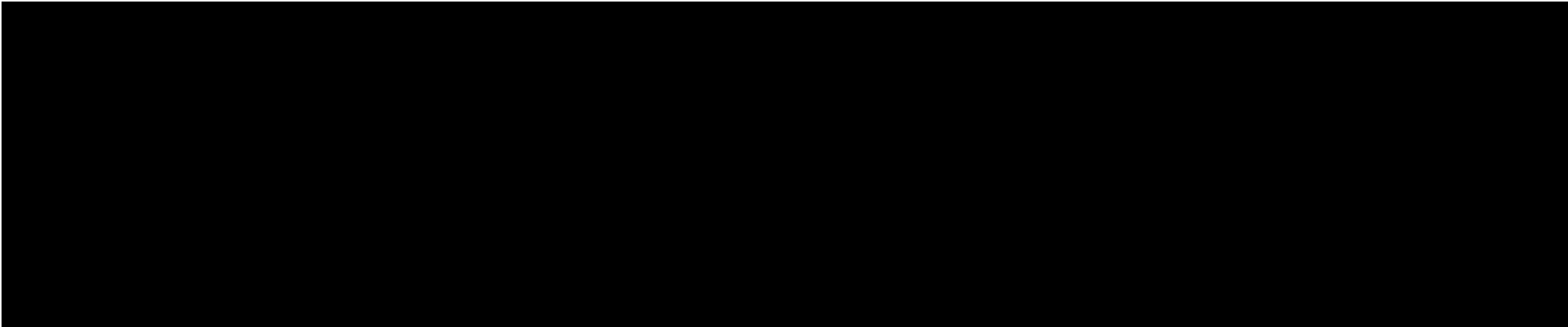
Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

| Dwelling Type | Service Package Dwellings | | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--|--------------------|-----------------|---------------------------|--------|
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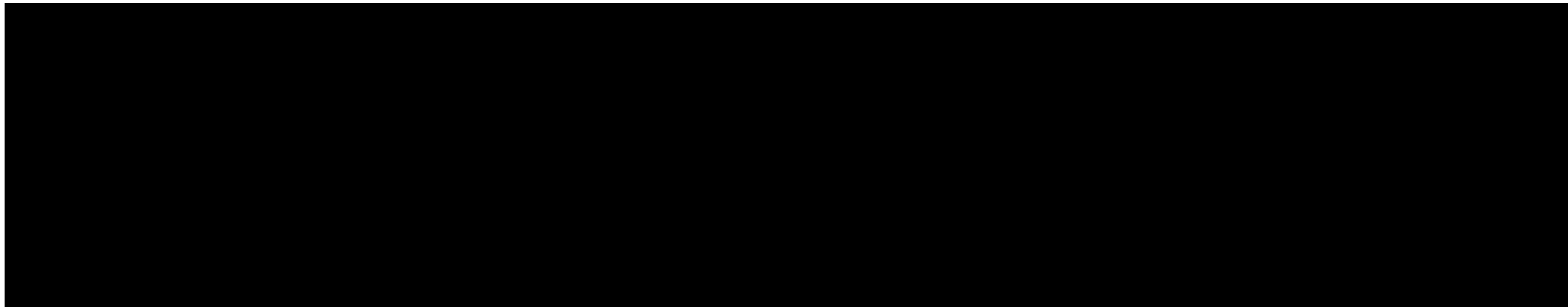
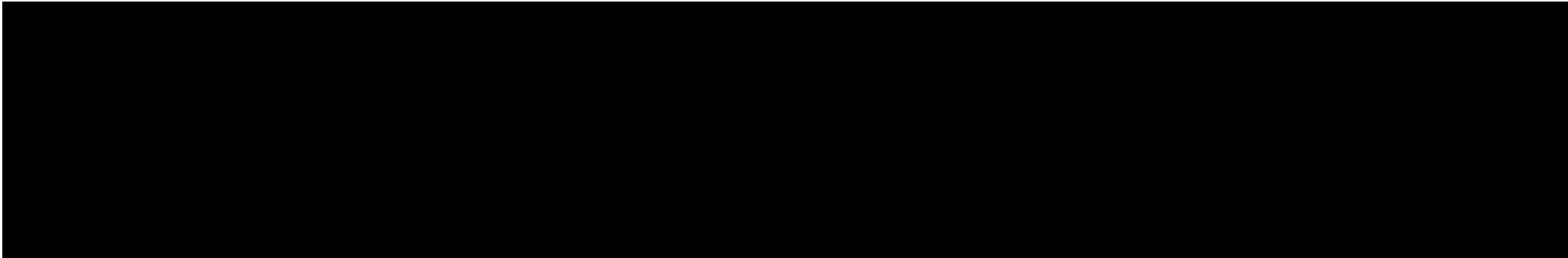
Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

| Dwelling Type | Service Package Dwellings | | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--|--------------------|-----------------|---------------------------|--------|
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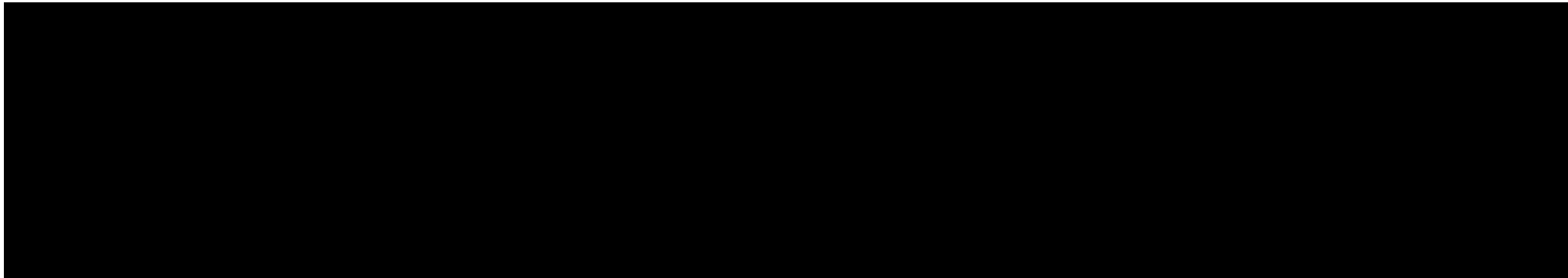
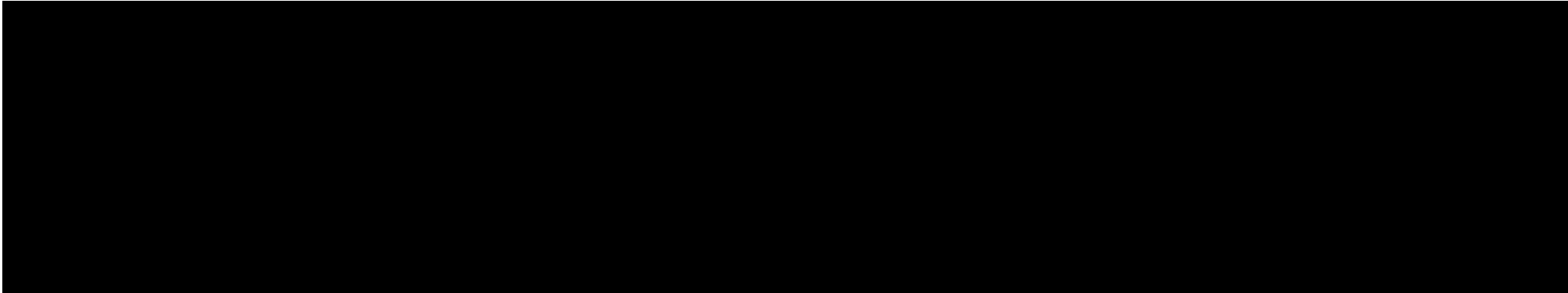
Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

| Dwelling Type | Service Package Dwellings | | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--|--------------------|-----------------|---------------------------|--------|
| | Studio SP Dwellings | One bedroom SP Dwellings | Two bedroom SP Dwellings | Three bedroom SP Dwellings | Four bedroom SP Dwellings | | | | | |



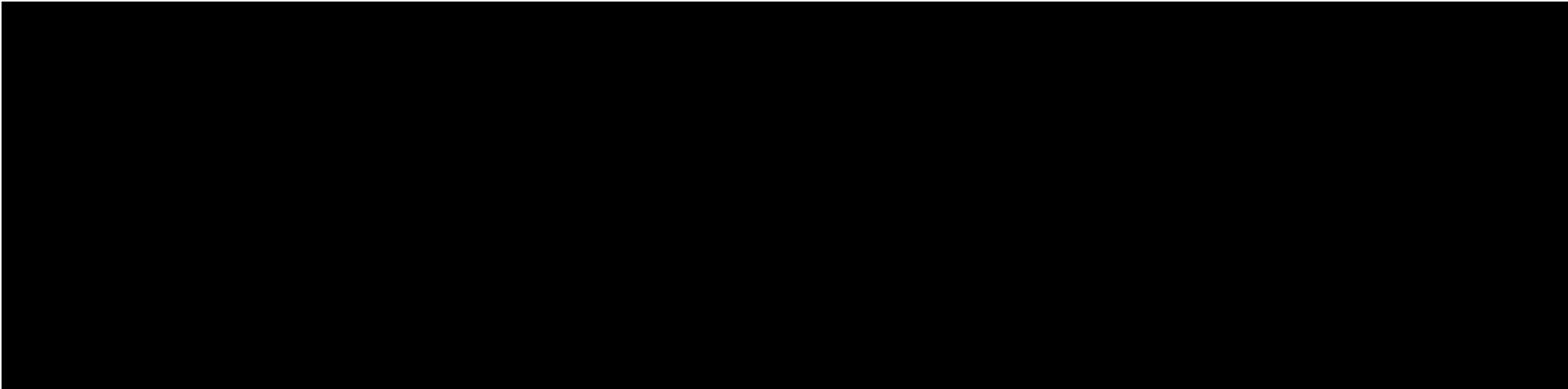
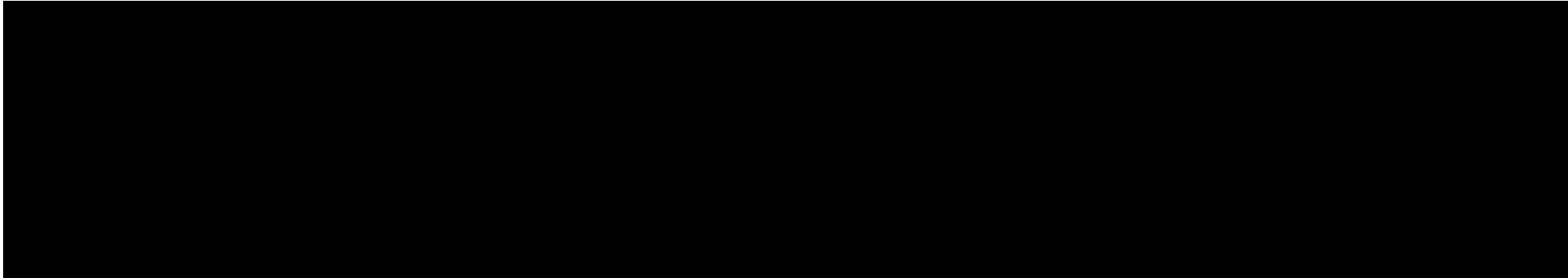
Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

| Dwelling Type | Service Package Dwellings | | | | | Total SP Dwellings | Private Housing | Supporting infrastructure | Zoning |
|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--------------------|-----------------|---------------------------|--------|
| | Studio SP Dwellings | One bedroom SP Dwellings | Two bedroom SP Dwellings | Three bedroom SP Dwellings | Four bedroom SP Dwellings | | | | |



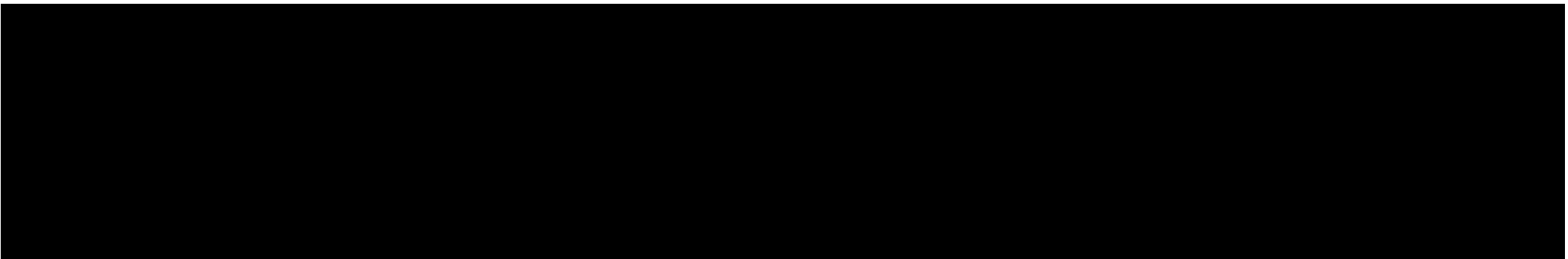
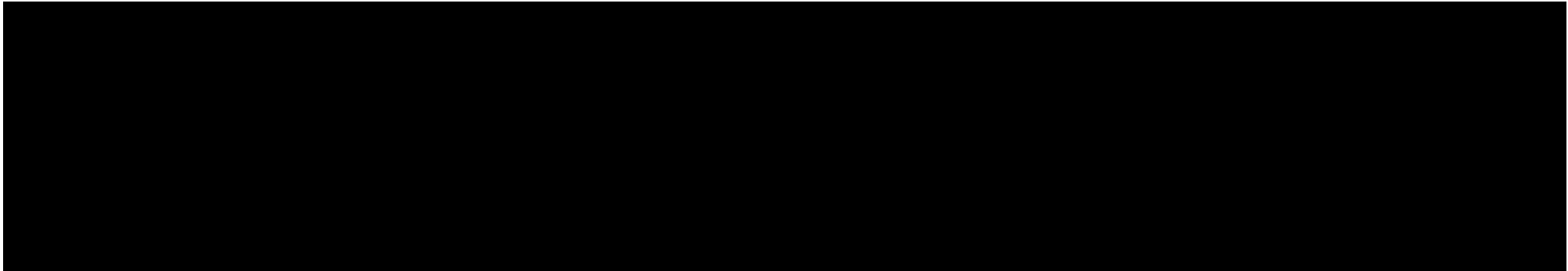
Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

| Dwelling Type | Service Package Dwellings | | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--|--------------------|-----------------|---------------------------|--------|
| | Studio SP Dwellings | One bedroom SP Dwellings | Two bedroom SP Dwellings | Three bedroom SP Dwellings | Four bedroom SP Dwellings | | | | | |



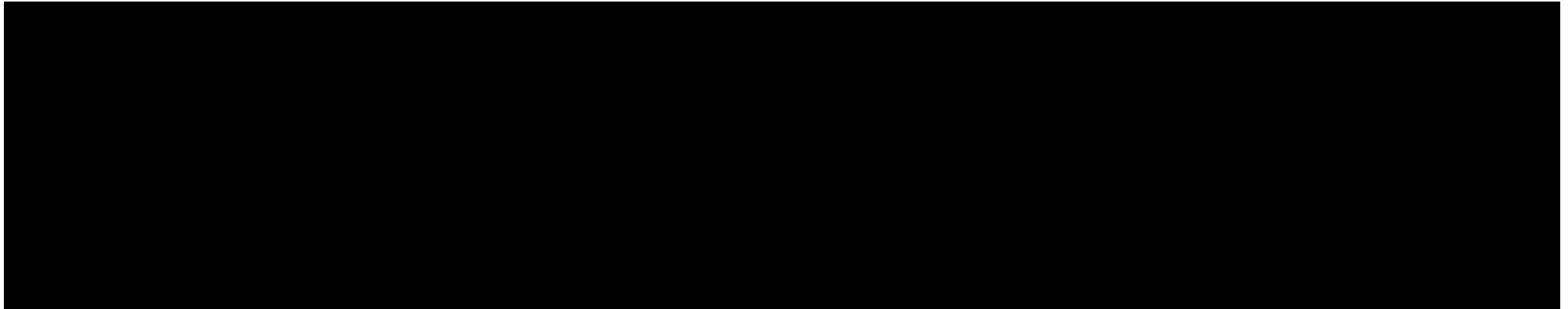
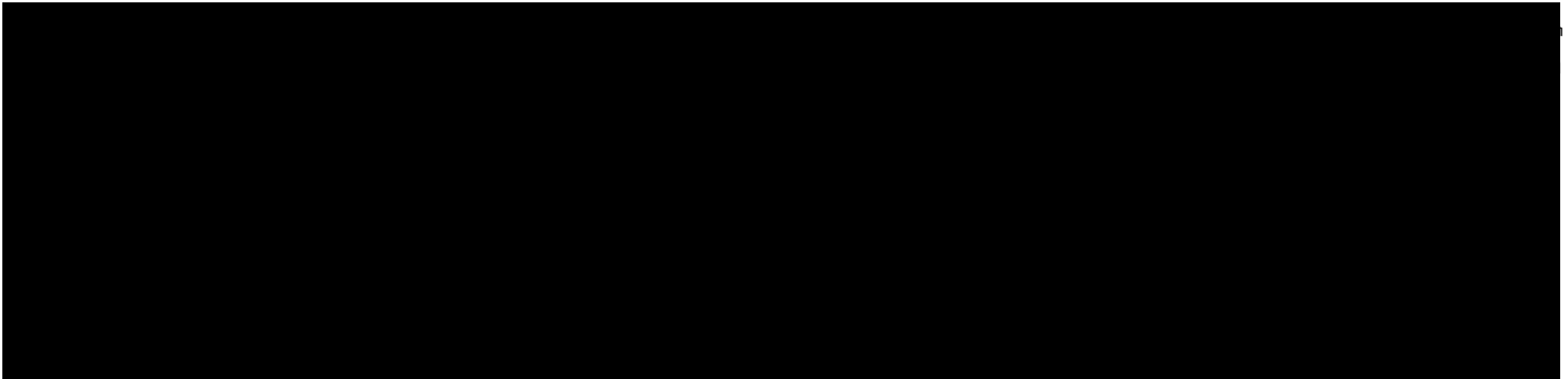
Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

| Dwelling Type | Service Package Dwellings | | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--|--------------------|-----------------|---------------------------|--------|
| | Studio SP Dwellings | One bedroom SP Dwellings | Two bedroom SP Dwellings | Three bedroom SP Dwellings | Four bedroom SP Dwellings | | | | | |



Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

| Dwelling Type | Service Package Dwellings | | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--|--------------------|-----------------|---------------------------|--------|
| | Studio SP Dwellings | One bedroom SP Dwellings | Two bedroom SP Dwellings | Three bedroom SP Dwellings | Four bedroom SP Dwellings | | | | | |



Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

Dwelling Type

Service Package Dwellings

Studio SP Dwellings

One bedroom SP Dwellings

Two bedroom SP Dwellings

Three bedroom SP Dwellings

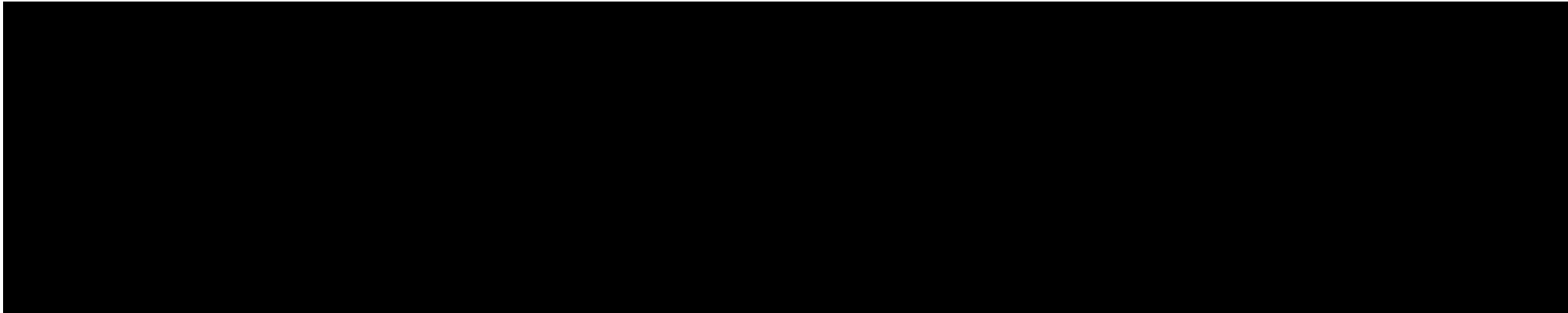
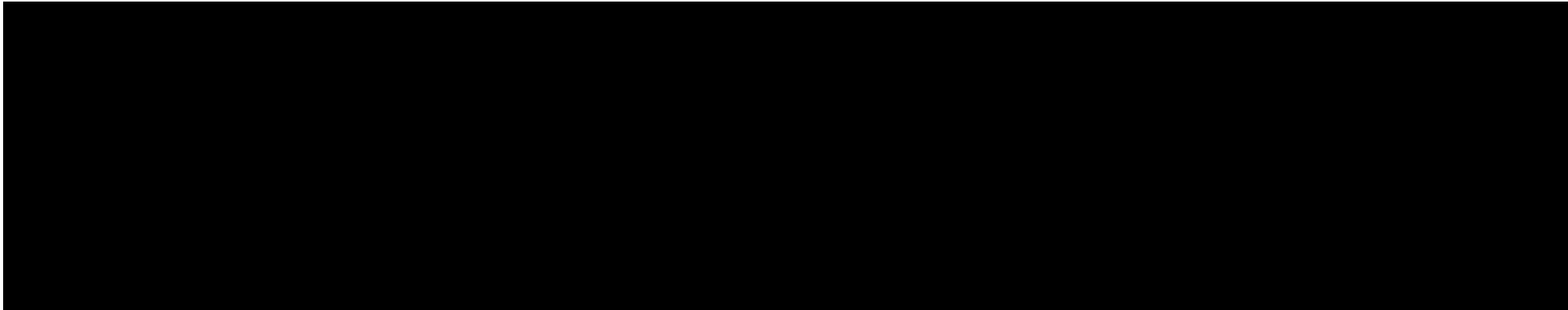
Four bedroom SP Dwellings

Total SP Dwellings

Private Housing

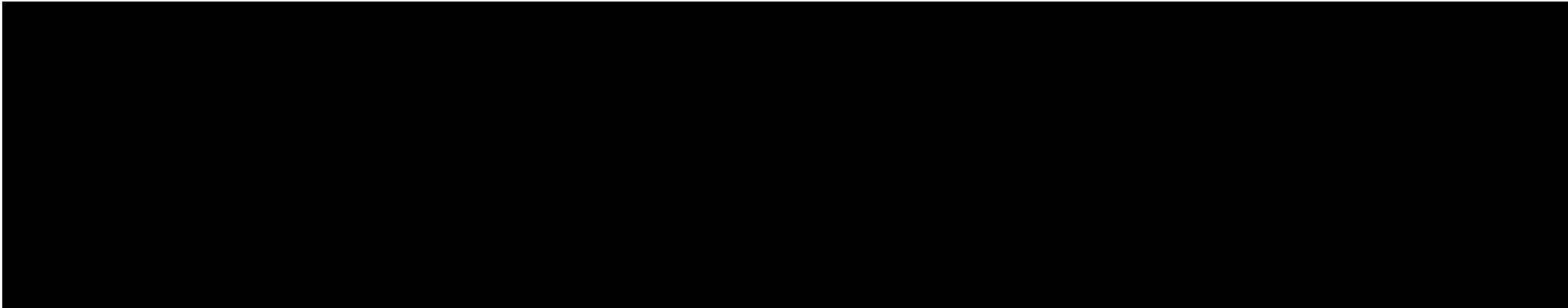
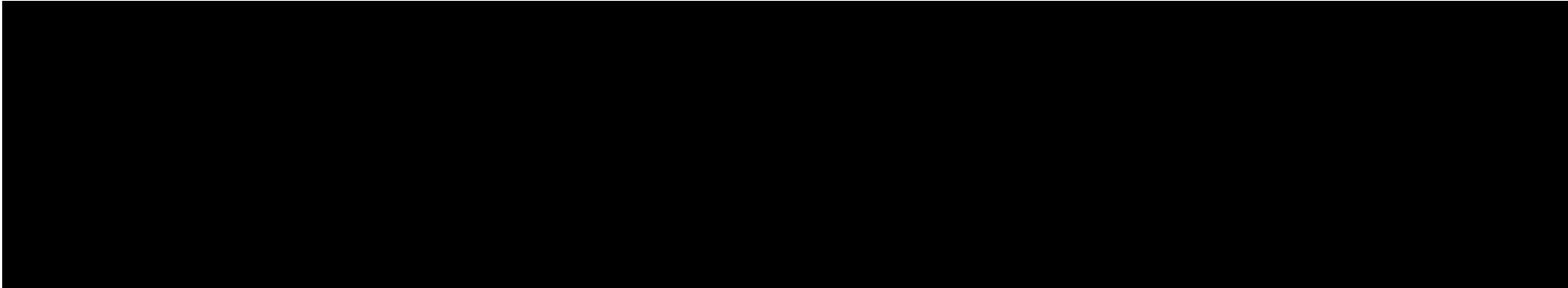
Supporting Infrastructure

Zoning



Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

| Dwelling Type | Service Package Dwellings | | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--|--------------------|-----------------|---------------------------|--------|
| | Studio SP Dwellings | One bedroom SP Dwellings | Two bedroom SP Dwellings | Three bedroom SP Dwellings | Four bedroom SP Dwellings | | | | | |



Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

Dwelling Type

Service Package Dwellings

Studio SP Dwellings

One bedroom SP Dwellings

Two bedroom SP Dwellings

Three bedroom SP Dwellings

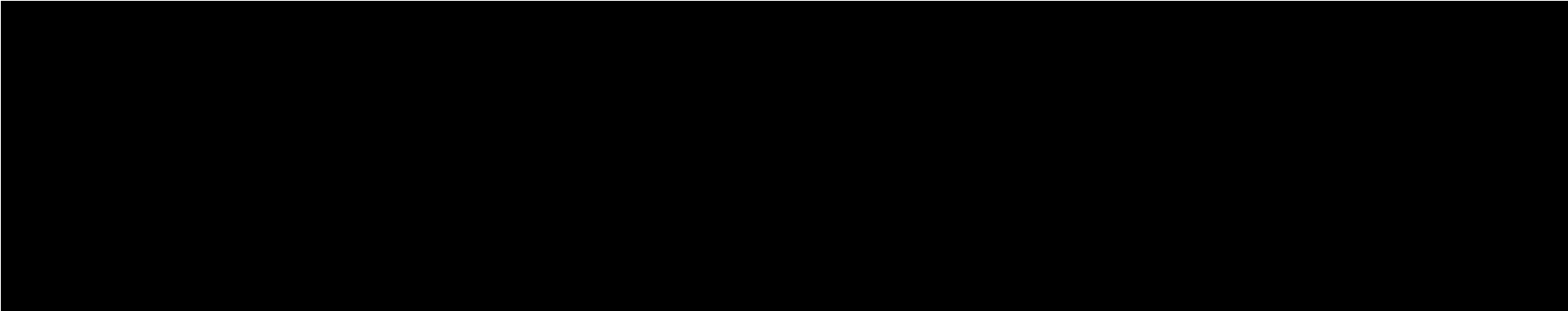
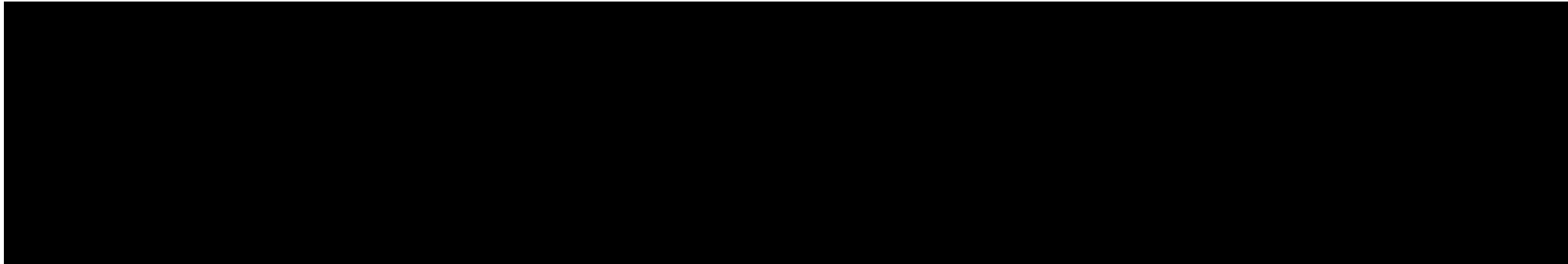
Four bedroom SP Dwellings

Total SP Dwellings

Private Housing

Supporting Infrastructure

Zoning



Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

Dwelling Type

Service Package Dwellings

Studio SP Dwellings

One bedroom SP Dwellings

Two bedroom SP Dwellings

Three bedroom SP Dwellings

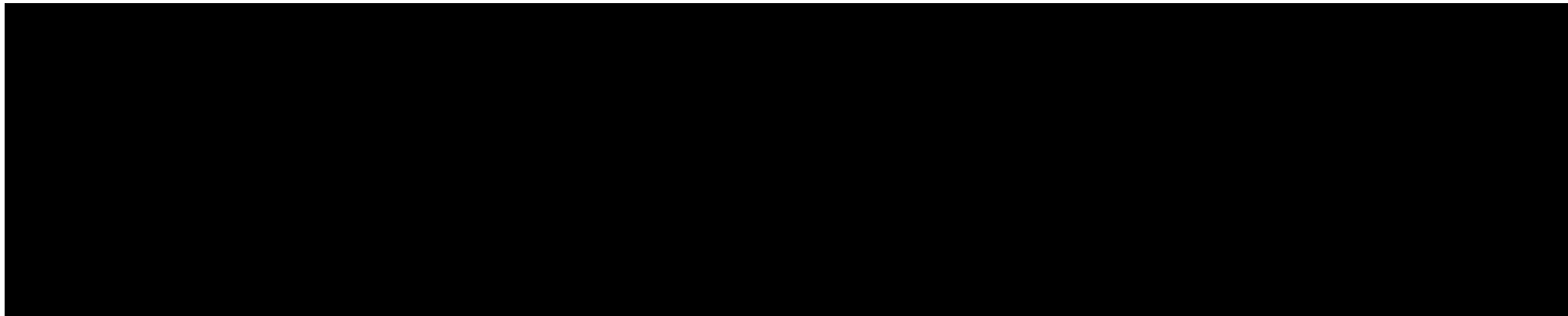
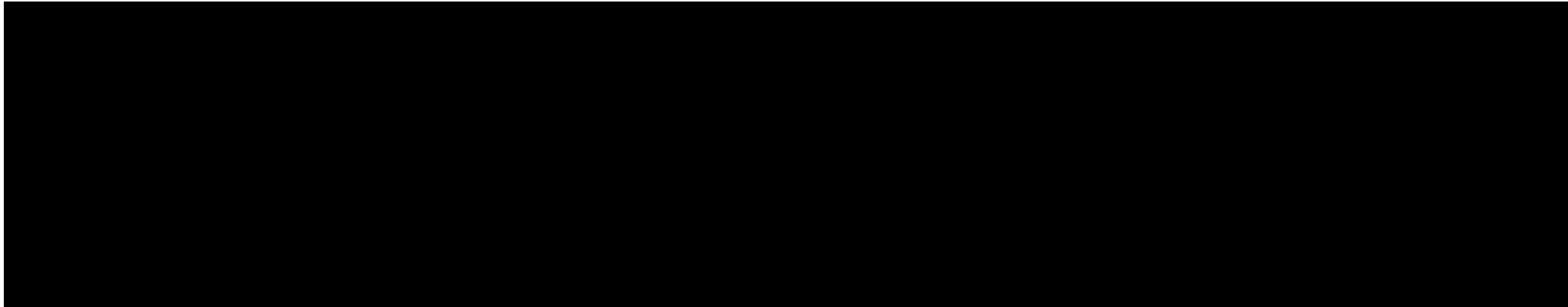
Four bedroom SP Dwellings

Total SP Dwellings

Private Housing

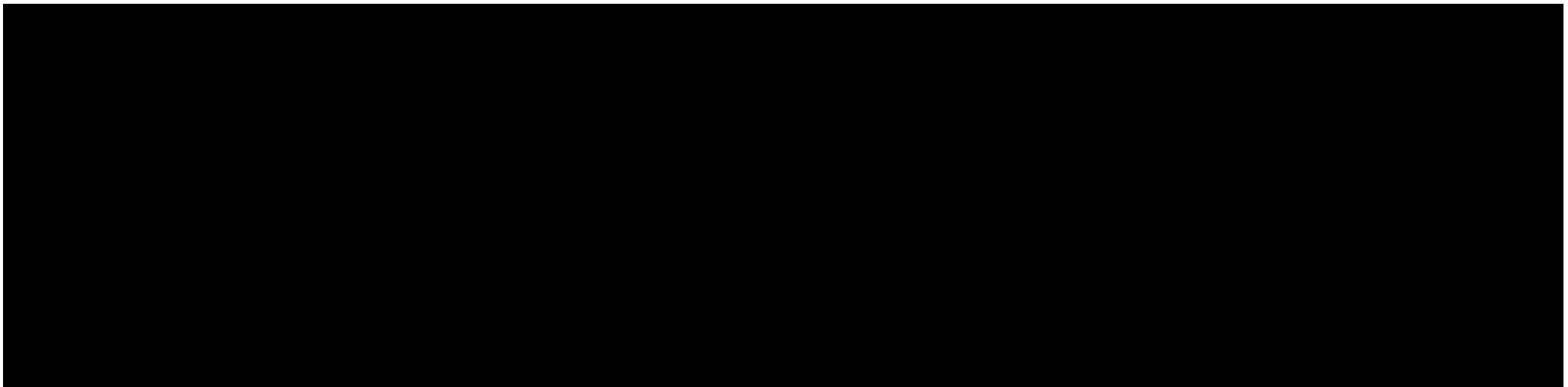
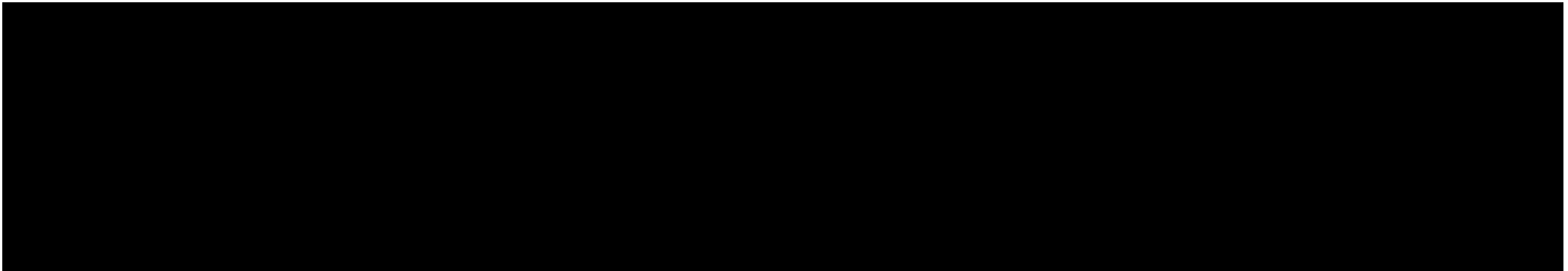
Supporting Infrastructure

Zoning



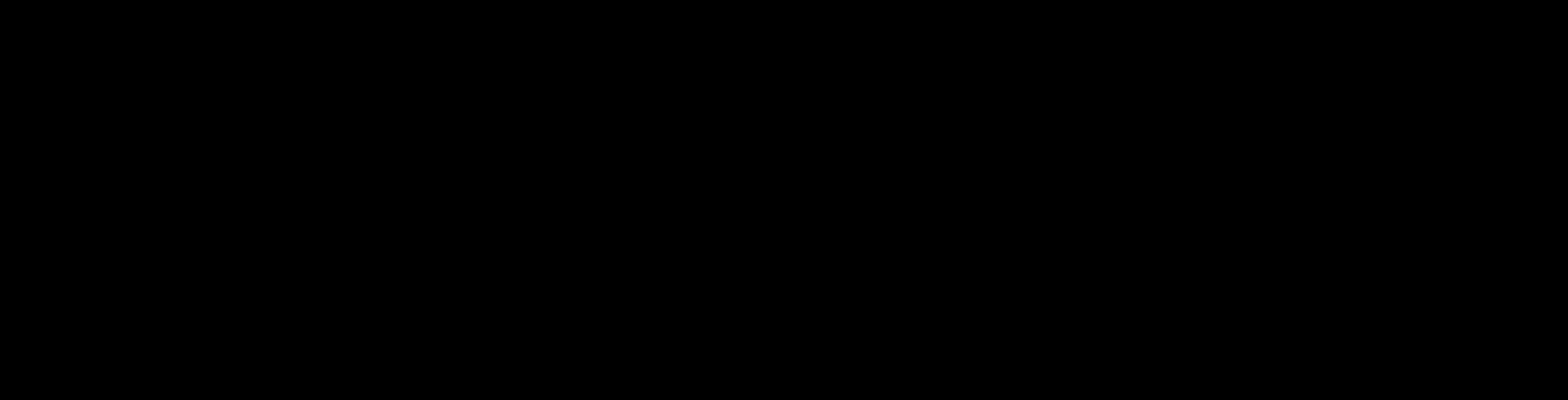
Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

| Dwelling Type | Service Package Dwellings | | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--|--------------------|-----------------|---------------------------|--------|
| | Studio SP Dwellings | One bedroom SP Dwellings | Two bedroom SP Dwellings | Three bedroom SP Dwellings | Four bedroom SP Dwellings | | | | | |



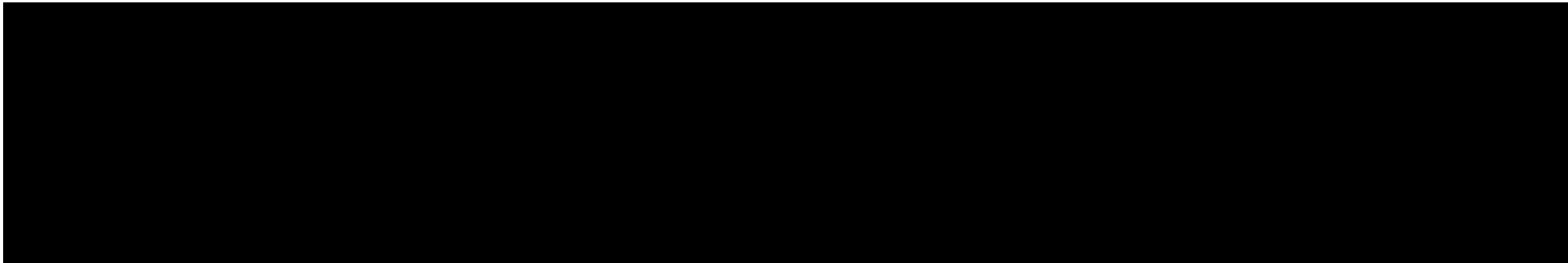
Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

| Dwelling Type | Service Package Dwellings | | | | | | Total SP Dwellings | Private Housing | Supporting Infrastructure | Zoning |
|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--|--------------------|-----------------|---------------------------|--------|
| | Studio SP Dwellings | One bedroom SP Dwellings | Two bedroom SP Dwellings | Three bedroom SP Dwellings | Four bedroom SP Dwellings | | | | | |



3. New Sites New Dwellings to be substituted in as SP Dwellings

| Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA) | Dwelling Type | Service Package Dwellings | | | | | | Private Housing | Supporting Infrastructure | Zoning |
|---|---------------|---------------------------|--------------------------|--------------------------|----------------------------|---------------------------|--------------------|-----------------|---------------------------|--------|
| | | Studio SP Dwellings | One bedroom SP Dwellings | Two bedroom SP Dwellings | Three bedroom SP Dwellings | Four bedroom SP Dwellings | Total SP Dwellings | | | |



Site (deposited plan information and addresses of SP Dwellings); or Unidentified Site (LGA)

Dwelling Type

Service Package Dwellings

Studio SP Dwellings

One bedroom SP Dwellings

Two bedroom SP Dwellings

Three bedroom SP Dwellings

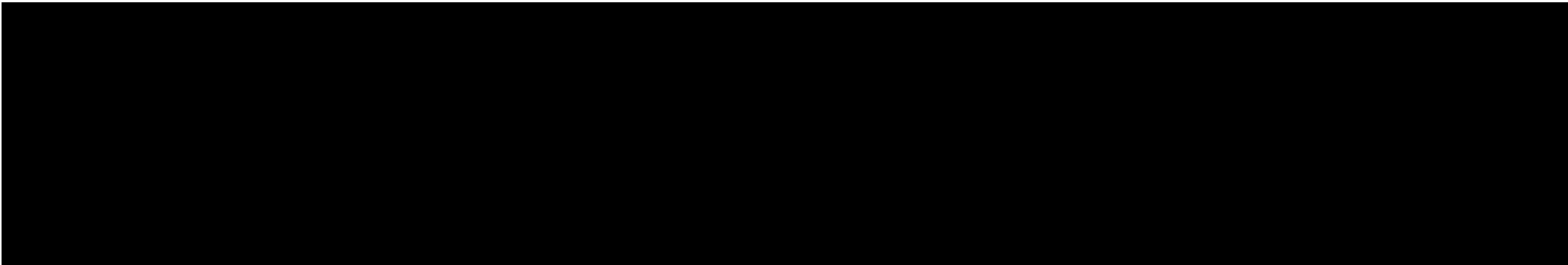
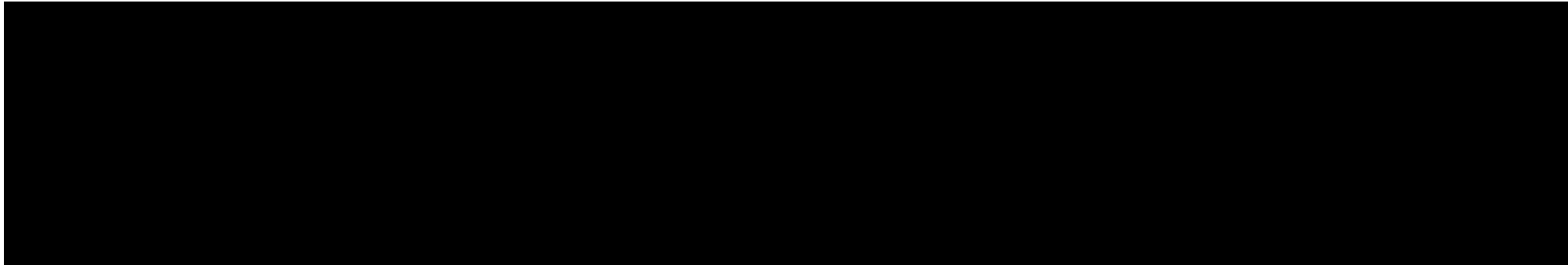
Four bedroom SP Dwellings

Total SP Dwellings

Private Housing

Supporting Infrastructure

Zoning



4. Service Package Dwellings that have achieved Service Readiness, by Stage

| Stage | Site (deposited plan information and addresses of SP Dwellings) | Service Package Dwellings | | | | | | Private Housing | Supporting Infrastructure | Zoning |
|-----------------------|---|---------------------------|--------------------------|----------------------------|---------------------------|---------------------------|--------------------|-----------------|---------------------------|----------|
| | | One bedroom SP Dwellings | Two bedroom SP Dwellings | Three bedroom SP Dwellings | Four bedroom SP Dwellings | Five bedroom SP Dwellings | Total SP Dwellings | | | |
| [insert stage number] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] |
| | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] |
| | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] |
| | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] | [insert] |

Confidential

Schedule 26 – Asset Lease Side Deed

An Asset Lease Side Deed is intended for use with a Lessor where ServiceCo views the relevant Lease as an asset. For example, the Financial Model may rely on ServiceCo retaining the value contained in these Leases on a termination.

Accordingly, the document seeks to replicate (in respect of these Leases) the same position on termination as applies in respect of Sites to which ServiceCo has freehold title. This means that FACS will:

- *be granted an 'Option to Sublease' the Site following a termination of the Services Agreement; and*
- *pay ServiceCo the market rate of rent to compensate ServiceCo for the capital investment it has made in the Site.*

Social and Affordable Housing Fund - Asset Lease Side Deed

[Insert name of Lessor]

[insert ABN/ACN/ARBN]

*The Uniting Church in Australia Property Trust (NSW)
(ABN 77 005 284 605) for and on behalf of Uniting
(NSW.ACT) (ABN 78 722 539 923) (also known as
UnitingCare NSW.ACT) (ServiceCo)*

Department of Family and Community Services (FACS)

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BETWEEN:

The Secretary of the Department of Family and Community Services as Housing Agency under section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**).

[Insert] ABN/ACN *[insert]* whose registered office is at *[insert]* (**Lessor**).

The Uniting Church in Australia Property Trust (NSW) (ABN 77 005 284 605) for and on behalf of Uniting (NSW.ACT) (ABN 78 722 539 923) (also known as UnitingCare NSW.ACT) whose registered office is at Level 4, 222 Pitt Street, Sydney NSW 2000 (**ServiceCo**).

RECITALS:

- (A) FACS and ServiceCo have entered, or will enter, into the Services Deed for the provision of the Service Package.
- (B) The Lessor is the registered proprietor of the Premises.
- (C) ServiceCo has obtained its right to occupy the Premises from the Lessor pursuant to the Lease.
- (D) The Lessor has agreed to grant to FACS certain rights in relation to the Lease.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions and interpretation

1.1 Services Deed definitions

Definitions in the Services Deed apply in this Deed unless the context requires otherwise or the relevant term is defined in this Deed.

1.2 Definitions

In this Deed:

Default Event means:

- (a) any default (howsoever described) by ServiceCo under the Lease; or
- (a) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Lessor to terminate, rescind, accept the repudiation of, or suspend any or all of the Lessor's obligations under the Lease.

Default Event Notice has the meaning given in clause 3.2(a).

FACS Cure Notice has the meaning given in clause 3.2(c).

GST Amount has the meaning given in clause 9(c)(i).

Lease means the lease over the Premises dated on or about the date of this Deed between ServiceCo and the Lessor.

Option Condition means FACS has given notice of termination to ServiceCo under clause 32.4 (*Default Termination Event*) of the Services Deed.

Option Fee means [REDACTED].

Option Sublease means a sublease comprised of:

- (a) Sublease – form 07SL (as updated from time to time or, if that registrable form is no longer used, the standard registrable lease form that has replaced it) completed in accordance with section 4.5(c); and
- (b) conditions substantially in the form contained in Annexure A to this Schedule as completed in accordance with section 4.5(c).

Option to Sublease means the option to sublease granted by ServiceCo in favour of FACS under clause 4.1.

Option Notice Service Date means the date on which the notice is given by FACS in accordance with section 4.3(a).

Option Period means the period beginning on the date of satisfaction of the Option Condition and ending at 5.00pm on the date that is 10 days after the market rent is determined in accordance with clause 4.2 or any other date the parties may agree.

Material Adverse Effect means a material adverse effect on:

- (a) the ability of each of ServiceCo or the Lessor to perform and observe their respective obligations under any Service Package Document to which it is a party; or
- (b) the rights of FACS under any FACS Service Package Document, or the ability or capacity of FACS to exercise its rights or perform its obligations under a FACS Service Package Document.

Premises means *[insert]*.

Premises Infrastructure means the Relevant Infrastructure (as that term is defined in the Services Deed) on the Premises.

Receiver means agent, attorney, trustee, manager, receiver, receiver and manager, administrator, liquidator or provisional liquidator or analogous person appointed under or in connection with FACS Security or pursuant to court order on application by FACS.

Recipient has the meaning given in clause 9(c)(i).

Services Deed means the document entitled "Social and Affordable Housing Fund - Services Deed" dated on or about the date of this Deed between FACS and ServiceCo.

Supplier has the meaning given in clause 9(c).

Valuer means a valuer who has the following qualifications:

- (a) current membership of the API or the Royal Institution of Charter Surveyors; and

- (b) at least five years' experience in valuing real property similar to the Premises Infrastructure.

1.3 Interpretation

In this Deed:

- (a) (**headings**): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) (**count and gender**): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) (**Deed and Schedule references**): a reference to:
 - (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) (**document as amended**): a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) (**person**): a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) (**legislation**): a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) (**'includes'**): 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';
- (j) (**'or'**): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) (**'\$'**): a reference to '\$', AUD or dollar is to Australian currency;

- (m) **(Business Day)**: if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (n) **(day)**: except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;
- (o) **(time)**: a reference to time is a reference to time in Sydney, Australia;
- (p) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (q) **(function)**: a function includes a power, authority or duty;
- (r) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (s) **(‘may’)**: except to the extent that FACS is expressly required under this Deed to act reasonably:
 - (i) in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by FACS, means that FACS can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to ServiceCo) and FACS has no obligation to do so; and
 - (ii) FACS may consent or grant any approval as FACS (in its absolute and unfettered discretion (and without regard to ServiceCo)) thinks fit or may be given subject to any conditions;
- (t) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (u) **(asset)**: references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (v) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Inconsistencies

To the extent of any inconsistency between the terms of this Deed and the Lease, this Deed will prevail over the Lease.

1.5 Services Deed and Financiers' Tripartite Deed

The Lessor acknowledges that it has received a copy of the Services Deed and the Financiers' Tripartite Deed.

1.6 Exclusion of Civil Liability Act 2002 (NSW)

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and Liabilities arising under or in relation to this Deed, howsoever those rights, obligations or Liabilities are sought to be enforced.

1.7 FACS' executive rights, duties and functions

- (a) **(Acknowledgements):** The parties acknowledge the substance, operation and potential effect and consequences of clause 2.10 (*FACS' executive rights, duties and functions*) of the Services Deed in relation to this Deed.
- (b) **(No Claim):** Subject to clause 1.7(c), ServiceCo and the Lessor will not be entitled to make any Claim against FACS or any of its Associates for any Liability relating to any exercise or failure of FACS or any of its Associates to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach):** Clauses 1.7(a) and 1.7(b) do not limit any Liability which FACS would have had to ServiceCo or the Lessor under any FACS Service Package Document as a result of a breach by FACS of a term of any FACS Service Package Document but for those clauses.

2. Lessor's warranty and FACS' rights and liability

2.1 Lessor's warranty

- (a) The Lessor warrants to FACS that it has carried out and, provided the Lease has not been terminated, will continue to carry out its duties under the Lease in accordance with the Lease. In particular and without limiting the generality of the foregoing, the Lessor covenants with FACS that it has carried out and will, provided the Lease has not been terminated, duly observe and perform all its duties and obligations under the Lease.
- (b) Without prejudice to any of FACS' other rights under this Deed (including, without limitation, under clauses 3 and 4), FACS may only exercise its rights under this clause 2 upon:
 - (i) the termination of the Services Deed or ServiceCo's engagement under the Services Deed; or
 - (ii) ServiceCo no longer being responsible for providing the Service Package substantially on the basis set out in the Services Deed and/or the Monthly Service Payment regime no longer applying.
- (c) FACS agrees that it may not exercise its rights under this clause 2.1 to the extent it has already recovered an amount for any loss arising from the same cause of action for breach of warranty under the Services Deed.

2.2 FACS' rights under Services Deed

- (a) The Lessor acknowledges and agrees to FACS' rights and ServiceCo's obligations under the Services Deed, including under the following clauses of the Services Deed:
 - (i) clause 7.1 (*Audits and performance compliance*);
 - (ii) clause 6.6 (*Work health and safety*);

- (iii) clause 33 (*Expiry obligations*);
 - (iv) clause 37 (*Major Default*);
 - (v) clause 38 (*Termination*); and
 - (vi) clause 51 (*Intellectual Property Rights*).
- (b) The Lessor must:
- (i) exercise its rights under the Lease in a way that facilitates the effective exercise by FACS of the rights referred to in clause 2.2(a); and
 - (ii) permit FACS or a FACS Associate to have access to, and take copies of, the information to which FACS is entitled to have access to in accordance with FACS' rights referred to in clause 2.2(a).

2.3 Subcontracting and Probity Investigations

- (a) The Lessor acknowledges FACS' rights and ServiceCo's obligations under the following clauses of the Services Deed:
- (i) clause 14 (*Subcontracting and third party arrangements*);
 - (ii) the clauses listed in clause 14.4 (*Requirements for Subcontracting*); and
 - (iii) clause 53 (*Probity Events and Probity Investigations*).
- (b) Without limiting clause 2.3(a), the Lessor acknowledges and agrees that:
- (i) in accordance with clauses 14 (*Subcontracting and third party arrangements*) and 53 (*Probity Events and Probity Investigations*) of the Services Deed, FACS may, from time to time, or may require ServiceCo to, conduct Probity Investigations of the Lessor and Relevant Persons in respect of the Lessor (excluding the ServiceCo Representative);
 - (ii) it will procure all relevant consents from any persons in connection with whom a Probity Investigation is to be conducted; and
 - (iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a Relevant Person in relation to the management or performance of any Service Package Activities unless FACS has given approval (including following a Probity Investigation and any other investigations that FACS reasonably requires in accordance with the Services Deed).

2.4 No liability for information

The Lessor acknowledges and agrees that:

- (a) any information, data and documents provided by FACS:
- (i) are provided for information purposes only and all of FACS' and its Associates' Intellectual Property Rights therein remain the property of FACS or its Associates (as the case may be); and

- (ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of FACS or its Associates; and
- (b) to the extent permitted by Law, neither FACS nor any of its Associates will have any Liability to the Lessor or any of their Associates, nor will the Lessor or any of their Associates be entitled to make any Claim against FACS, or seek, pursue or obtain an indemnity against or contribution to Liability from FACS or any of its Associates arising out of or in connection with:
 - (i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in clause 2.3(a) by the Lessor or any other person to whom such information is disclosed by the Lessor, or any of their respective Associates or any person on any of their behalf;
 - (ii) any reference to FACS in the Lease; or
 - (iii) any review of, comments upon, acceptance, approval or certification of the form or substance of the Lease by FACS.

2.5 Lease not to affect FACS' rights

Each of ServiceCo and the Lessor acknowledges and agrees that:

- (a) where the Lessor is expressed in the Lease to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Services Deed or an equivalent or similar right of ServiceCo:
 - (i) this does not of itself expand ServiceCo's rights, or FACS' Liability, under the Services Deed to include the compensation or relief to which the Lessor is or may become entitled under the Lease; and
 - (ii) ServiceCo's rights, and FACS' Liability, under the Services Deed will be determined solely in accordance with the terms of the Services Deed;
- (b) as between FACS (on the one hand) and ServiceCo and the Lessor (on the other hand), ServiceCo and the Lessor accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Lease and this Deed; and
- (c) notwithstanding anything to the contrary in the Lease, the Lessor has no right to deal directly with FACS or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
 - (i) expressly provided to the contrary in the Services Deed or this Deed; or
 - (ii) FACS consents in writing.

3. FACS' right to cure Default Events

3.1 FACS' cure rights

- (a) On becoming aware of any Default Event (and subject to clause 3.1(b)), FACS may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.

- (b) Clause 3.1(a) only applies if the Lessor has given a FACS Cure Notice in accordance with clause 3.2(c).
- (c) Upon FACS exercising any of its rights under this clause 3.1, ServiceCo's obligations under the Lease are suspended (other than ServiceCo's obligation to pay money) to the extent and for such period as ServiceCo is prevented from performing such obligations by FACS' exercise of its rights pursuant to clause 3.1(a).
- (d) If FACS exercises its rights pursuant to clause 3.1(a), FACS may, after giving reasonable prior notice to ServiceCo, cease to exercise those rights, and in any event, will cease to exercise those rights once the relevant Default Event has been remedied.

3.2 Restriction on right to terminate or suspend

The Lessor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Lease unless each of the following conditions has been satisfied:

- (a) the Lessor has given to FACS prior notice setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Lease, together with the statements referred to in clause 3.3 (**Default Event Notice**);
- (b) if the Lessor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Lease is subject to any right of a Financier to cure or remedy the Default Event:
 - (i) the cure or remedy period available to the Financiers in respect of the Default Event under any Finance Document has expired without a cure or remedy being achieved; or
 - (ii) the Security Trustee has notified the Lessor in writing that it does not intend to cure or remedy the Default Event;
- (c) the Lessor has given notice to FACS confirming that, either:
 - (i) the requirements of clause 3.2(b) are satisfied; or
 - (ii) the Lessor's right to terminate, rescind, accept the repudiation of, or suspend the performance of, any or all of its obligations under the Lease is not subject to any right of the Financiers to cure or remedy the Default Event,

(FACS Cure Notice), and
- (d) any one of the following has occurred:
 - (i) if the Default Event is capable of cure or remedy within 20 Business Days after the date on which the FACS Cure Notice is given to FACS (or such longer period as is permitted under the Lease or agreed to by the Lessor), that Default Event has not been cured or remedied within the relevant period;
 - (ii) if the Default Event is not one described in clause 3.2(d)(i) but is nevertheless reasonably capable of cure or remedy, FACS has not commenced curing or remedying the Default Event within 20 Business Days after the date on which the FACS Cure Notice is

given and has not continued to diligently pursue that cure or remedy;
or

- (iii) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, ServiceCo or FACS (or another person on behalf of either of them) has not paid or otherwise provided that compensation to the Lessor:
 - A. to the extent that the relevant amount of compensation has been referred to expert determination under clause 8, within 20 Business Days after that dispute is resolved;
 - B. otherwise within 20 Business Days after the date on which FACS received the FACS Cure Notice;
 - C. if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, FACS does not commence and continue to perform ServiceCo's obligations under the Lease within 20 Business Days after the date on which the FACS Cure Notice is given to FACS; or
 - D. FACS notifies the Lessor in writing after receipt of the FACS Cure Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

3.3 Statements concerning Default Event

- (a) As part of any Default Event Notice, the Lessor must submit to FACS statements of:
 - (i) where the Default Event is a monetary default:
 - A. the provisions of the Lease alleged to have been breached or not fulfilled; and
 - B. the amount which must be paid to the Lessor to remedy the Default Event;
 - (ii) where the Default Event is of a non-monetary nature:
 - A. the provisions of the Lease alleged to have been breached or not fulfilled;
 - B. sufficient information to enable FACS to identify the material facts;
 - C. the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled if reasonably capable of cure or remedy; and
 - D. the time within which the specified steps can reasonably be expected to be taken; and
 - (iii) any rights available to the Financiers, pursuant to any Finance Document to which the Lessor is a party, to cure or remedy that Default Event and the period within which that cure or remedy must

occur before the Finance Documents permit the Lessor to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Lease.

- (b) If the Lessor gives a FACS Cure Notice to FACS in accordance with clause 3.2(c), as part of that notice the Lessor must update the matters referred to in clause 3.3(a).

3.4 Warranty of accuracy

- (a) The Lessor warrants to FACS that statements submitted by it under clause 3.3 will be, so far as reasonably practicable and subject to unintended error which the Lessor agrees to promptly rectify, true, complete and accurate statements of the amounts to which the Lessor considers itself entitled.
- (b) The Lessor waives and abandons all claims then known or which ought reasonably to have been known to the Lessor arising out of or in connection with the Lease prior to the date of the Default Event Notice other than the claims disclosed in the statements submitted by it under clause 3.3.

3.5 Disputes as to statements

If FACS disputes the amount of any claim or the existence of any default referred to in a Default Event Notice pursuant to clause 8:

- (a) FACS must pay the amount not in dispute;
- (b) upon resolution of the dispute in accordance with clause 8, the parties must make payments as determined; and
- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Service Package Documents.

3.6 Verification

FACS may appoint a firm of independent chartered accountants or a firm of technical advisers, in each case approved by ServiceCo and the Lessor (such approval not to be unreasonably withheld or delayed), to verify (at the cost of ServiceCo) statements submitted by the Lessor, and the Lessor must (subject to such firm(s) executing an appropriate confidentiality agreement in a form reasonably requested by the Lessor) permit such firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

3.7 No Liability

ServiceCo and the Lessor acknowledge that, without limiting the Liability of ServiceCo (which continues to be responsible for the performance of its obligations under the Lease), and without limiting FACS' obligations under clause 4, FACS will not be liable for any obligation or Liability of ServiceCo under the Lease by reason only of FACS performing ServiceCo's obligations in accordance with the Lease. ServiceCo and the Lessor each release FACS from any such Liability, except to the extent that such Liability occurs or arises as a direct result of any criminal conduct, fraud, or wilful misconduct on the part of FACS.

3.8 ServiceCo to compensate FACS

Any reasonable loss suffered or incurred by FACS arising out of or in any way in connection with the exercise of its rights under this clause 3 will be a debt due from ServiceCo to FACS.

3.9 No limitation on other rights

The exercise (or failure to exercise) by FACS of its rights under this clause 3 will not limit FACS' rights against ServiceCo under the FACS Service Package Documents or otherwise according to Law.

4. Option to Sublease

4.1 Option

- (a) In consideration of the payment of the Option Fee by FACS to ServiceCo, ServiceCo grants an option to FACS to sublease the Premises and Premises Infrastructure subject to:
- (i) satisfaction of the Option Condition in respect of the Premises and Premises Infrastructure; and
 - (ii) the terms and conditions of this Deed.
- (b) ServiceCo acknowledges receipt of the Option Fee.

4.2 Determination of market rent

- (a) Within five days of the satisfaction of the Option Condition, ServiceCo and FACS must meet in good faith to discuss and agree on the identity of an independent Valuer to be jointly engaged to determine the market rent for the following 12 Month period for the Premises the subject of the Option Condition.
- (b) If the parties fail to jointly appoint a Valuer within 30 days satisfaction of the Option Condition, either party may after written notice to the other refer the matter to the President of the API, to appoint a Valuer on behalf of the parties.
- (c) The parties agree that in determining the market rent for the following 12 Month period of the Premises and the Premises Infrastructure the subject of the Option Condition, the Valuer shall be instructed to take into account in determining the valuation comparable properties in proximity to the subject Premises and Premises Infrastructure however without regard to any particular use of the Premises for Social Housing and Affordable Housing.
- (d) The Valuer must give written reasons for the determination and the parties agree that the rent under any Lease is determined by the valuation of the Valuer. The valuation of the Valuer is final and binds the parties, unless in the event of manifest error, in which case clause 42 (*Expert determination*) of the Services Deed applies.

4.3 Exercise of Option to Sublease

- (a) FACS may exercise the Option to Sublease during the Option Period by giving written notice to ServiceCo and identifying in its absolute discretion the:
- (i) 'Commencement Date' of the Option Sublease which may be up to 120 days from the date of the notice; and

- (ii) term of the Option Sublease as nominated by FACS which may be up to, but not exceeding, five years, unless:
 - A. the end date of the Option Period is five years or less from the Final Expiry Date, in which case the maximum term of the lease can be no longer than the period left before the Final Expiry Date; or
 - B. ServiceCo consents to a longer term, in which case the term will be that longer term.

4.4 Appointment of nominee

- (a) At any time during the Option Period, but prior to the exercise of the Option to Sublease, FACS may appoint a nominee to sublease the Premises by giving written notice of such nominee to ServiceCo which:
 - (i) has been executed by both FACS and the nominee; and
 - (ii) states that the nominee confirms it has taken a nomination of the Option to Sublease and agrees that it is bound by the terms of this clause 4 as if it were FACS,

(Nomination Notice).
- (b) On and from the date that FACS gives the Nomination Notice to ServiceCo, the nominee will be bound by all of the obligations of FACS under this clause 4.

4.5 Exercise of Option to Sublease

If the Option to Sublease is validly exercised in respect of the Premises:

- (a) FACS (or FACS' nominee where one has been nominated under clause 4.4) and ServiceCo are regarded as having entered into the Option Sublease as sublessee and sublessor respectively;
- (b) the date of the Option Sublease is the Option Notice Service Date; and
- (c) ServiceCo must deliver to FACS an unexecuted copy of the Option Sublease with all necessary particulars completed to FACS or FACS' solicitors within five Business Days' after the Option Notice Service Date, such particulars to be completed as follows:
 - (i) the "Head Lease" to be the Lease;
 - (ii) the "Sublessor" to be ServiceCo;
 - (iii) the "Head Lessor" to be the Lessor;
 - (iv) the "Sublessee" to be FACS or FACS' nominee appointed under clause 4.4;
 - (v) the "Rent" is the rent determined under clause 4.2;
 - (vi) the "Land" is to be the title references for the Premises and the Premises Infrastructure;
 - (vii) the "Term" is to be such period as is nominated by FACS in the notice given under clause 4.3(a);

- (viii) the "Commencement Date" is such period as is nominated by FACS in the notice given under clause 4.3(a); and
- (ix) the "Expiry Date" is the last date of the "Term" as determined in accordance with clause 4.5(c)(vii).

4.6 No exercise of Option to Sublease

If the Option to Sublease is not exercised:

- (a) ServiceCo retains the Option Fee; and
- (b) this clause 4 will cease to apply on and from the last day of the Option Period.

4.7 Caveat

- (a) FACS may lodge a caveat on the title to the Premises if the caveat only refers to FACS' interest under the Option to Sublease.
- (b) If FACS lodges a caveat, FACS must immediately at its cost consent to any dealing by the Lessor or ServiceCo with the Premises provided that it does not materially prejudice FACS' rights under this Deed.

4.8 Lessor consent

- (a) The Lessor consents to the grant of the Option to Sublease and any Option Sublease granted pursuant to the Option to Sublease.
- (b) The Lessor must upon request from either FACS (or FACS' nominee where one has been nominated under clause 4.4) or ServiceCo execute any Option Sublease granted for the purpose of the covenants contained in clause 13.8 of the Option Sublease.
- (c) The Lessor must provide all assistance reasonably necessary to enable any Option Sublease granted under this clause 4 to be registered in the relevant land register as soon as practicable after its commencement.

4.9 Restriction on Lessor's rights under Lease during term of Option Sublease

- (a) Despite clause 3 of this Deed, from the date of satisfaction of the Option Condition until:
 - (i) where FACS does not exercise its Option to Sublease in accordance with this clause 4, the last day of the Option Period; or
 - (ii) where FACS does exercise its Option to Sublease, the expiry of the term of the Option Sublease,

the Lessor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Lease under any circumstance, including where an Insolvency Event occurs in relation to ServiceCo which causes a Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of the Lessor's obligations under the Lease, provided that the Lessor continues to receive rent in accordance with the terms of the Lease. If the Lessor does not receive rent in accordance with the terms of the Lease, then clause 3 will apply.

4.10 Other documents under the Lease

If FACS gives an Option Notice then, as from the commencement date of the Option Sublease as is nominated by FACS in the notice given under clause 4.3(a), ServiceCo must procure the novation or assignment to FACS (or, if applicable, or FACS' nominee appointed under clause 4.4) of:

- (a) *[Insert list of documents to be novated/assigned].*

5. Representations and warranties

5.1 Representations and warranties by Lessor

- (a) The Lessor represents and warrants for the benefit of FACS that:
- (i) **(power to execute)**: it has the capacity and power to execute, deliver and carry out its obligations under this Deed and each other Service Package Document to which it is a party and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
 - (ii) **(legality)**: the execution, delivery and performance of this Deed and each other Service Package Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
 - (iii) **(validity)**: this Deed and each other Service Package Document to which it is a party constitutes a valid and legally binding obligation on it, enforceable in accordance with its terms;
 - (iv) **(registration)**: it is duly registered, properly constituted and remains in existence;
 - (v) **(no trust relationship)**: except as stated in this Deed, it is not the trustee, manager or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
 - (vi) **(information true and correct)**: all information provided by it to FACS in connection with this Deed and each Service Package Document to which it is a party is true, accurate and correct in all material respects and the Lessor is not aware of any material facts or circumstances that have not been disclosed to FACS and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or consent to the entry into the Lease;
 - (vii) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon it or its ability to perform its financial and other obligations under this Deed or any other Service Package Document to which it is a party;
 - (viii) **(Insolvency Event)**: no Insolvency Event has occurred in respect of it;
 - (ix) **(accounts)**:
 - A. its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of

its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;

B. there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and

C. such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;

(x) **(no default):**

A. it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and

B. nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, and which would have a Material Adverse Effect;

(b) **(no immunity):** neither it nor any of its assets enjoys any immunity from set off, suit or execution in any jurisdiction; and

(c) **(own investigations):** in entering into this Deed, the Lease and any other Service Package Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by FACS, ServiceCo or any other person unless in respect of ServiceCo or any other person, other than FACS or an Associate of FACS, it is expressly permitted to do so in accordance with a Service Package Document to which it is a party.

5.2 Repetition of representations and warranties

The representations and warranties in this clause 5 are taken to be repeated immediately before Commercial Close, on the basis of the facts and circumstances as at that date.

5.3 Reliance on representations and warranties

The Lessor acknowledges that FACS executed this Deed and agreed to take part in the transactions that this Deed contemplates in reliance on the representations and warranties that are made or repeated in this clause 5.

6. Undertakings by Lessor

The Lessor undertakes to FACS as follows:

(a) **(notification of Default Event):** in the case of the Lessor, it will notify FACS of any Default Event promptly after it gives notice of that Default Event in accordance with clause *[insert]* (*[Notice of ServiceCo Event of Default]*) of the Lease;

- (b) **(documents in relation to Default Event):** in the case of the Lessor, it will promptly give FACS a copy of all documents issued by the Lessor to ServiceCo in relation to a Default Event;
- (c) **(no amendment without consent):** it will not, without first obtaining the consent of FACS:
- (i) make or permit any amendment or replacement of or addition to;
 - (ii) subject to clause 3.2, terminate, surrender, rescind or accept repudiation of;
 - (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed or clause 8.3 (*Replacement of Key Subcontractor*) of the Financiers' Tripartite Deed; or
 - (iv) allow any express waiver of its material rights and obligations under, the Lease, provided that FACS will not withhold its consent to an amendment which is an amendment to which it has consented in accordance with the Services Deed;
- (d) **(disposals):** it will not, after Commercial Close, transfer, assign, mortgage, charge, encumber or otherwise deal with its rights, obligations or interests in the Lease without first procuring that the proposed transferee, assignee, mortgagee or chargee executes a deed in favour of FACS (in a form and substance approved by FACS) pursuant to which the transferee, assignee, mortgagee or chargee agrees to accept and be bound by this Deed as if it were the Lessor;
- (e) **(attend meetings and inspections):** it will (when reasonably requested by FACS):
- (i) attend, where reasonable and appropriate, meetings with FACS or any of FACS' Associates;
 - (ii) provide FACS or any of FACS' Associates and authorised personnel with:
 - A. in the case of the Lessor, full access to:
 - 1) the Site; and
 - 2) any other place where Services are provided,to the extent provided in the Services Deed; and
 - B. any other information, records or documents that FACS or any of its Associates (acting reasonably) requires in relation to the provision of the Services or compliance with the Lease or any information required by FACS to comply with requests from the New South Wales Auditor-General; and
 - (iii) permit FACS or any of FACS' Associates to attend all tests and inspections to be carried out in connection with the Service Package in accordance with the terms of the Lease, to the extent provided in the Services Deed; and

- (f) **(access to records)**: in the case of the Lessor, at the request of FACS, the Lessor will:
- (i) permit FACS or any of its Associates to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the Lessor in relation to the Service Package; and
 - (ii) supply FACS or any of its Associates with a copy of any such report or document which they may require from time to time.

7. Acknowledgement by ServiceCo

ServiceCo consents to the terms of this Deed and will co-operate in the implementation of this Deed.

8. Dispute resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 8 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Services Deed are resolved. Accordingly, the provisions of clauses 40 (*Dispute Resolution procedure*) to 43 (*Reference to Arbitration*) of the Services Deed are incorporated into this Deed but as if:

- (a) the only persons party to the Services Deed, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

9. GST

- (a) **(Interpretation)**:
 - (i) Except where the context suggests otherwise, terms used in this clause 9 have the same meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed (other than under this clause 9) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 9.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements)**: Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the

amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

- (c) **(Additional amount of GST payable):** If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:
- (i) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (ii) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 9(c)(i).
- (d) **(Variation of GST):**
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 9(c) and clause 9(e)), varies from the additional amount paid by the Recipient under clause 9(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 9(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 9(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 9(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 9(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 9(c) (or the time at which such GST Amount would have been payable in accordance with clause 9(c) but for the operation of clause 9(e)(i)).
- (f) **(No merger):** This clause 9 will not merge on completion or termination of this Deed.
- (g) **(Application of Services Deed):** If clause 22 (*Payments, adjustments & Taxes*) of the Services Deed would apply in connection with a Taxable Supply to which this clause 9 also applies then clause 22 (*Payments, adjustments & Taxes*) of the Services Deed will apply in connection with that supply and the provisions of this clause 9 (but for this paragraph) will not apply.

10. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

FACS

Attention:
Address:
Telephone:
Email:



ServiceCo

Name:
Address:
Email:
For the attention of:



Lessor

Name: [insert]
Address: [insert]
Email: [insert]
For the attention of: [insert]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address, or emailed (in the form agreed by both parties) to the email address, of the addressee in accordance with clause 10(b);
- (e) **(taken by received)**: are taken to be received by the addressee at the address set out in clause 10(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) subject to clause 10(f) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (iii) in the case of email, the first to occur of:

- A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
- B. the time that the communication enters an information system which is under the control of the addressee; or
- C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and

- (f) **(notices sent by post):** if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

11. Confidential Information and disclosure

11.1 Confidential Information and disclosure by FACS

- (a) Subject to clause 11.1(b), FACS and any Authority may disclose any information in connection with the Service Package, including Service Package Information.
- (b) FACS may only disclose the Commercially Sensitive Information:
 - (i) in accordance with Laws or for the enforcement of any criminal law;
 - (ii) where disclosure is in the course of the official duties of the responsible Minister, the Treasurer, the Premier or the Attorney General;
 - (iii) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (iv) to satisfy the requirements of Parliamentary accountability;
 - (v) to any Associate of FACS to the extent necessary for the purpose of the Service Package provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
 - (vi) in annual reports of FACS;
 - (vii) in accordance with policies of FACS or the NSW Government or any Authority;
 - (viii) for any tender process required to be conducted under the Termination Payments Schedule; or
 - (ix) where the Commercially Sensitive Information is any part of the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of the Services Deed.

11.2 Confidential Information and disclosure by Lessor

- (a) **(Confidentiality obligation):** Subject to clause 11.2(b) and clause 11.4(b), the Lessor must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of FACS, make public or disclose to any person any Confidential Information.
- (b) **(Disclosure of Confidential Information):** Without limiting the Lessor's obligations under clause 11.2(a) and subject to clause 11.2(c), the Lessor may disclose Confidential Information:
 - (i) to its Associates to the extent necessary for the purpose of undertaking the Service Package; and
 - (ii) in accordance with clause 11.4.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, the Lessor must ensure that the person to whom the information is disclosed enters into a confidentiality deed with it to keep the Confidential Information confidential in accordance with this clause 11.
- (d) **(Permitted disclosure):** The Lessor may disclose Confidential Information and will not be required to seek FACS' consent to a disclosure, announcement or statement under clause 11.2(a) or 11.3(a) or to enter into a confidentiality deed under clause 11.2(c) where the disclosure announcement or statement is:
 - (i) required by Law, provided that it:
 - A. notifies FACS of the requirement to make that disclosure; and
 - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
 - (iii) required to be made to a court in the course of proceedings to which the Lessor is a party; or
 - (iv) required by a relevant recognised stock exchange, subject to:
 - A. the disclosure, announcement or statement not referring to FACS' or any of its Associates' involvement in the Service Package; and
 - B. the Lessor having used all reasonable endeavours to obtain FACS' consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

11.3 Public announcements by Lessor

Subject to clause 11.2(d), the Lessor must:

- (a) not make any public disclosures, announcements or statements in relation to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package, without FACS' prior consent;
- (b) comply with any terms and conditions FACS imposes and must use all reasonable endeavours to agree with FACS the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package before the relevant disclosure, announcement or statement is made; and
- (c) as soon as practicable, give to FACS a copy of any public disclosure, announcement or statement agreed to or approved by FACS in accordance with this clause 11.3 or for which FACS' consent or approval was not required in accordance with clause 11.4.

11.4 Information public or known

Notwithstanding anything in this clause 11, any party may disclose information in connection with the Service Package (including any Confidential Information) if:

- (a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 11; or
- (b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

11.5 Disclosure by FACS under GIPA Act

- (a) Notwithstanding the other provisions of this clause 11, the parties acknowledge that:
 - (i) the Service Package Documents and information concerning the Service Package Documents will be published on FACS' contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
 - (ii) FACS may make the Service Package Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
 - (i) FACS will notify the Lessor of any proposed disclosure of Commercially Sensitive Information by FACS under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
 - (ii) following notification by FACS in accordance with clause 11.5(b)(i), FACS will take reasonable steps to consult with the Lessor before disclosing Commercially Sensitive Information under the GIPA Act;
 - (iii) if, following:
 - A. notification by FACS in accordance with clause 11.5(b)(i); or
 - B. consultation between FACS and the Lessor in accordance with clause 11.5(b)(ii),

the Lessor objects to disclosure of some or all of the Commercially Sensitive Information, the Lessor must provide details of any such objection within five Business Days after the date the Lessor received notification from FACS or the date on which the consultation process concluded (as relevant);

- (iv) FACS may take into account any objection received from the Lessor pursuant to clause 11.5(b)(iii) in determining whether the Commercially Sensitive Information identified by the Lessor should be disclosed; and
- (v) nothing in this clause 11.5 will limit or otherwise affect the discharge of FACS' obligations under the GIPA Act.

11.6 Personal Information

The Lessor must:

- (a) not collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Policies;
- (b) not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Law, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Policies; and
- (c) keep, and make available to FACS on request, records detailing the recipient of any Personal Information that the Lessor has disclosed, the date of disclosure and the Personal Information that has been disclosed.

11.7 Privacy

- (a) **(Compliance):** Without limiting any obligations in respect of privacy set out in the Design Requirements or the Services Requirements, the Lessor agrees to, and will ensure that the Lease and any other Lease entered into by the Lessor in relation to the Service Package contains terms which require the Lessor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Lease or other relevant Lease (as the case may be), in the same way as FACS would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by FACS.
- (b) **(Release and Indemnity):** The Lessor must release, indemnify and must keep indemnified on demand FACS and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which FACS or any of its Associates suffer or incur resulting from any act done or practice engaged in by the Lessor or any of their respective Associates in connection with the Service Package, which would, had that act or practice been done or engaged in by FACS, have contravened any of the Privacy Legislation.

12. Termination of this Deed

- (a) **(Satisfaction of obligations under the Lease or commencement of Option Sublease):** This Deed will terminate automatically without any requirement for any notice from any party:
 - (i) upon the performance and satisfaction of all of the obligations under the Lease; or

- (ii) upon the commencement of the Option Sublease.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.
- (c) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
 - (i) FACS' rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to FACS;
 - (v) any indemnity or financial security given in accordance with this Deed;
 - (vi) any limitation or exclusion of liability; and
 - (vii) any right or obligation arising on termination or expiry of this Deed.
- (d) **(Interpretation):** No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.
- (e) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

13. Governing law and jurisdiction

13.1 Governing law

This Deed is governed by and must be construed according to the laws of New South Wales, Australia.

13.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 13.2(a).

14. Miscellaneous

14.1 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding)**: embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior written or other agreement of the parties.

14.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

14.3 Waiver

- (a) **(Writing)**: A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in, or the partial exercise or enforcement of, a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement of, that or any other right provided by Law or under this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

14.4 Consents and approvals

A consent or approval required under this Deed from FACS may be given or withheld, or may be given subject to any conditions, as FACS (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

14.5 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

14.6 Expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

14.7 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

14.8 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

14.9 Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

14.10 Moratorium legislation

A provision of any Law which comes into effect after the date of this Deed and operates to:

- (a) increase or improve any of ServiceCo's or the Lessor's rights, powers or remedies under this Deed or otherwise; or
- (b) prejudicially affect the exercise by FACS of any right, power or remedy under this Deed or otherwise,

(each matter referred to in (a) and (b), a **Specified Effect**) is, to the extent only that the Law has the Specified Effect, expressly waived by ServiceCo to the extent it is legally able to do so. If a waiver is ineffective the parties will consult in good faith to determine how the parties can be restored to their original position under this Deed.

Executed as a deed.

[Insert execution blocks]

Confidential

Annexure A – Form of Lease

Annexure 'A' to a Sublease dated [insert date]

Sublessor: [insert name of Sublessor and ACN]

Sublessee: [insert name of Sublessee and ACN]

Head Lessor: [insert name of Head Lessor and ACN]

Premises: [insert]

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1. Definitions and interpretation

1.1 Definitions

In this Sublease:

API means the Australian Property Institute (New South Wales Division).

Bank Bill Rate for a period, means:

- (a) the rate, expressed as a yield per cent per annum (rounded up (if necessary) to four decimal places) that is quoted as the average bid rate on the Reuters monitor system page 'BBSY' (or any page that replaces that page) at about 10.10am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in months which is closest to the period; or
- (b) if there is a manifest error in the calculation of that average bid rate, or if no average bid rate is published for Bank Bills of that tenor by about 10.30am, then the Bank Bill Rate will be the rate reasonably determined by the Sublessor, having regard to the rates otherwise bid for Bank Bills having a tenor as described above, at or around that time, to be the appropriate equivalent rate.

Building means the building located on the land in Item 1, the Premises and the Common Areas.

Business Day means Monday to Friday, excluding New South Wales public holidays.

Commencement Date means the date in Item 4.

Common Areas means the common property of the Owners Corporation (if applicable) and areas of the Building which are provided for common use (for example, car parking areas, footpaths, access ways, entrances, stairs, escalators, lifts, toilets, and loading docks).

Community Housing means subsidised accommodation for people on very low, low or moderate income or people with additional needs that is managed by not for profit organisations within the State of New South Wales. For the purpose of this Sublease, Community Housing does not include crisis housing or transitional housing.

CPI means All Groups Consumer Price Index for the City of Sydney published by the Australian Bureau of Statistics. If the CPI no longer exists, it means an index that the President of the API decides reflects changes in the cost of living in Sydney.

Deal means assign, transfer, sell, sublet, licence, part with possession of, transfer, mortgage, charge, surrender, dispose of, grant a trust over or otherwise deal with or permit any dealing with any property or legal or equitable interest and **Dealing** has a corresponding meaning.

Existing Sublease Guarantee means a security given to the Sublessor with respect to an Existing Subtenant's obligations under an Existing Subtenant Sublease.

Existing Subtenant means a person or entity which holds an estate, interest or occupancy right in the Premises or any part of it pursuant to an Existing Subtenant Sublease.

Existing Subtenant Subleases means all subleases (registered or unregistered), licences, permits to occupy or other occupancy rights (written or oral) which exist in relation to the Premises or any part of it as at the Commencement Date but excluding any such arrangements which exist between the Sublessor and the Sublessee.

Financial Year means 1 July to 30 June.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Head Lease [*insert*].

Head Lessor means the party listed in Item 10.

Item means an item in the Reference Schedule.

Liabilities means any action, claim, damages, demand, expense, liability and loss of any kind.

New Sublease Guarantee means a security given or transferred to the Sublessee with respect to an Existing Subtenant's obligation under an Existing Subtenant Sublease or with respect to a New Sub-subtenant's obligation under a Sub-sublease.

New Sub-subtenant means a person other than the Sublessee who Sub-subleases any part of the Premises from the Sublessee or another Tenant.

Overdue Rate means 2% per annum above the Bank Bill Rate.

Owners Corporation means any owners corporation created under the *Strata Schemes Management Act 1996* (NSW) which applies to the Land and includes, where the context allows, the manager, secretary, agents and employees of and any person authorised by the Owners Corporation.

Premises means (and where the context permits, includes part of) the premises described in Item 2 and includes the Sublessor's fixtures, fittings, furnishings, plant and equipment within the premises.

Relevant Sublease Covenants has the meaning given in clause 3.3.

Relevant ROA Covenants has the meaning given in clause 3.2.

Rent means the amount in Item 6, as varied under this Sublease.

Services means any services and facilities (including air conditioning thermostats, ducts and outlets, fire sprinkler heads and piping, security and fire alarm equipment, lighting, central electrical switching arrangement, emergency lighting and exit signs) provided or installed by Authorities, the Sublessor or any person authorised by the Sublessor in the Premises or for the benefit of the Premises in any floor of the Premises or in any ceiling cavity or walls adjoining the Premises.

Sublessee means the person named as sublessee on the cover page and includes its successors, executors and administrators, its assigns approved by the Sublessor and, where the context permits, includes any agent, contractor, employee, invitee, licensee, sub-contractor, sub-lessee or other person claiming through the Sublessee.

Sublessee's Predecessor means any previous sublessee under this Sublease and, where this Sublease is one in a series of consecutive subleases granted pursuant to the exercise of options, any sublessee under an earlier sublease in the series.

Sublessee's Property means the fixtures, fittings, furnishings, plant and equipment and other items installed in or brought onto any part of the Building at any time (whether before or after the Commencement Date) by or on behalf of the Sublessee or the Sublessee's Predecessors and, where the context permits, includes any part of them.

Sublessor means the person named on the cover page and includes its successors, executors, administrators and assigns and, where the context permits, includes its agents, contractors and employees.

Sub-sublease means:

- (a) a sub-sublease or other parting with possession of all or part of the Premises by the Sublessee;
- (b) a concurrent sub-sublease of all or part of the Premises; or
- (c) the granting of any licence in relation to the Premises, including but not limited to, rights of occupation granted to the Sublessee.

Tenant means the Existing Subtenants and New Sub-subtenants.

1.2 Interpretation

In this Sublease, unless the contrary intention appears:

- (a) other parts of speech and grammatical forms of a word or phrase defined in this Sublease have a corresponding meaning;
- (b) examples are descriptive only, not exhaustive;
- (c) headings and material included in boxes do not form part of this Sublease and are not legally binding;
- (d) a reference to a clause, party, or schedule is a reference to a clause of, and a party and schedule to, this Sublease and a reference to this Sublease includes any schedule;
- (e) no provision of this Sublease will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Sublease or that provision;
- (f) a covenant or agreement by two or more persons binds them jointly and severally;
- (g) a reference to a body, other than a party to this Sublease, whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (h) a reference to liquidation includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.

1.3 Statutory provisions

- (a) The covenants powers and provisions implied in leases by virtue of the *Conveyancing Act 1919 (NSW)* (as amended) are expressly negated except in so far as they or some part or parts thereof are included in the provisions expressed in this Sublease.

- (b) The exemption under clause 156 of the *Residential Tenancies Act 2010* (NSW) applies to this Sublease and this Sublease is exempted from the operation of the *Residential Tenancies Act 2010* (NSW).
- (c) The parties acknowledge that to the extent of inconsistency between the provisions of this Sublease and the *Residential Tenancies Act 2010* (NSW), the provisions of the *Residential Tenancies Act 2010* (NSW) will be deemed to apply.

2. Services provided by Sublessor

2.1 Grant of Sublease

The Sublessor grants to the Sublessee a sublease of the Premises on the terms of this Sublease for the Term.

2.2 Quiet enjoyment by Sublessee

The Sublessee may occupy and use the Premises without being disturbed by the Sublessor (or any person claiming through it), except as permitted by this Sublease.

2.3 Services supplied by Sublessor

- (a) If the Sublessor supplies any Services to the Premises or the Building, it must use its reasonable endeavours to ensure that they work efficiently.
- (b) Despite clause 2.3(a) or any other provision in this Sublease, the Sublessor is not liable for any failure to provide or maintain services where the failure is caused or contributed to by the Sublessee.

2.4 Services provided by authorities

The Sublessor must use its reasonable endeavours to ensure that water and electricity supplies and drainage, sewerage and telephone services to the Premises are maintained by the relevant authority where the Sublessor has been providing those utilities at the Commencement Date.

2.5 Sublessee's access

- (a) The Sublessee may enter and use the Premises at any time, subject to this Sublease, the law, any encumbrances registered on the title to the Land and the requirements of statutory authorities.
- (b) By the Commencement Date, the Sublessor must provide to the Sublessee the access keys to enable the Sublessee to use the Premises. At the end of this Sublease, the Sublessee must return to the Sublessor all access keys issued to it.

3. Concurrent Sublease and Existing Tenancies

3.1 Concurrent Sublease

- (a) This Sublease is concurrent with the Existing Subtenant Subleases and the Sublessee acknowledges that the Sublessee's right of occupation of the Premises is subject to that of the Existing Subtenants under the Existing Subtenant Subleases while the Existing Subtenant Subleases remain in force.

- (b) The Sublessee must perform the obligations of the Sublessor which arise during the Term in connection with the Existing Subtenant Subleases in favour of the Existing Subtenants and their respective successors and assigns (and the Sublessee assumes all Liabilities of the Sublessor which arise during the Term in connection with the Existing Subtenant Subleases).
- (c) The Sublessee indemnifies the Sublessor and must keep indemnified and hold harmless the Sublessor in relation to any Liability arising in connection with a breach of clause 3.1(b) by the Sublessee, other than Liability resulting from the wilful default of the Sublessor under an Existing Subtenant Sublease.
- (d) Subject to this Sublease, the Sublessee may enforce all rights, powers and remedies of the Sublessor under the Existing Subtenant Subleases to the exclusion of the Sublessor.
- (e) The Sublessee is entitled to all rent and other money paid or payable to the Sublessor under the Existing Subtenant Subleases during the Term.
- (f) The Sublessee must notify the Sublessor promptly in writing upon becoming aware of any actual or prospective Liability relating to the Existing Subtenant Subleases. If the Sublessee gives such notification, the Sublessee may at its cost prosecute, defend or otherwise deal with any such Liability on behalf of the Sublessor and the Sublessor must provide such cooperation as is reasonable at the cost of the Sublessee.

3.2 Residual Occupancy Arrangements

To the extent the Existing Subtenant Subleases comprise licences, permits to occupy or other occupancy rights which exist in relation to the Premises (**Residual Occupancy Arrangements**) and this Sublease does not have the legal effect of putting the Sublessee, during the Term, in the same position as the Sublessor in terms of enforcing all covenants, rights, powers and remedies of the Sublessor under the Residual Occupancy Arrangements, then:

- (a) subject to clause 3.2(b), the Sublessor assigns to the Sublessee with effect from the Commencement Date:
 - (i) the Sublessor's interest in the Residual Occupancy Arrangements; and
 - (ii) the benefit of the covenants by the Existing Subtenants under the Residual Occupancy Arrangements,

(Relevant ROA Covenants),

and the Sublessee accepts the assignment and assumes all Liabilities of the Sublessor and must indemnify and keep the Sublessor indemnified and held harmless from any Liability which arise during the Term in respect of the Residual Occupancy Arrangements; and
- (b) if the benefit of any Relevant ROA Covenant is not assignable, then it is not assigned to the Sublessee under this clause, and during the Term:
 - (i) the Sublessor holds the benefit of the Relevant ROA Covenant for the benefit of the Sublessee; and
 - (ii) if directed by the Sublessee, the Sublessor must use reasonable endeavours to enforce the Relevant ROA Covenant for and at the cost of the Sublessee.

3.3 Relevant Sublease Covenants

To the extent this Sublease does not have the legal effect of putting the Sublessee, during the Term, in the same position as the Sublessor in terms of enforcing all covenants, rights, powers and remedies of the Sublessor under the Existing Subtenant Subleases, then:

- (a) subject to clause 3.3(b), the Sublessor assigns to the Sublessee with effect from the Commencement Date:
 - (i) the Sublessor's interest in the Existing Subtenant Subleases; and
 - (ii) the benefit of the covenants by the Existing Subtenants under the Existing Subtenant Subleases,

(Relevant Sublease Covenants),

and the Sublessee accepts the assignment and assumes all Liabilities of the Sublessor and must indemnify and keep the Sublessor indemnified and held harmless from any Liability which arise during the Term in respect of the Existing Subtenant Subleases; and

- (b) if the benefit of any Relevant Sublease Covenant is not assignable, then it is not assigned to the Sublessee under this clause, and during the Term:
 - (i) the Sublessor holds the benefit of the Relevant Sublease Covenant for the benefit of the Sublessee; and
 - (ii) if directed by the Sublessee, the Sublessor must use reasonable endeavours to enforce the Relevant Sublease Covenant for and at the cost of the Sublessee.

3.4 Insurance required by Existing Subtenant Subleases

The Sublessor will use reasonable endeavours at the cost of the Sublessee to procure that the Existing Subtenants which are obliged under their Existing Subtenant Subleases to take out insurance policies which name or note the interests of the Sublessor, or which must include the Sublessor as a co-insured, amend such policies to include the Sublessee as named, noted or co-insured parties (as the case may be) in addition to the Sublessor.

3.5 Sublessee dealing with Existing Subtenant Subleases

- (a) Subject to clause 3.5(b), the Sublessee may:
 - (i) amend or vary any Existing Subtenant Subleases;
 - (ii) accept a surrender of all or any part of an Existing Subtenant Sublease;
 - (iii) agree to an Existing Subtenant holding over under an Existing Subtenant Sublease; or
 - (iv) terminate an Existing Subtenant Sublease in accordance with its terms,without the Sublessor's consent.
- (b) The Sublessee must not, without the prior written consent of the Sublessor, amend any Existing Subtenant Sublease in a manner that:

- (i) requires the Sublessor to pay or incur any cost or Liability;
 - (ii) imposes any additional or more onerous obligation or liability on the Sublessor;
 - (iii) extends the term or grants an option to extend the term of the Existing Subtenant Sublease beyond the expiry of the Term; or
 - (iv) releases the Existing Subtenant from any obligation to carry out capital works, or make good the subleased premises at the end of the subleased term under the Existing Subtenant Sublease.
- (c) If, pursuant to an agreement made with the Sublessee, an Existing Subtenant executes an instrument which amends, varies, surrenders or terminates an Existing Subtenant Sublease and the instrument is not inconsistent with clause 3.5(b), the Sublessor must on request from the Sublessee promptly execute that instrument as sublessor.
- (d) The Sublessor irrevocably appoints the Sublessee as the attorney of the Sublessor to sign any instrument referred to in clause 3.5(c). The attorneys may only sign an instrument on behalf of the Sublessor if the Sublessor fails to sign and return the instrument within 10 Business Days after receiving the instrument from the Sublessee in executable form.
- (e) The Sublessee must pay any duty in respect of such instrument.
- (f) Nothing in this clause 3.5 prevents the Sublessee, in its own right, from providing or agreeing to provide any right or benefit to an Existing Subtenant (for example, in a separate agreement between the Sublessee and the Existing Subtenant that is not an amendment or variation of an Existing Subtenant Sublease).

3.6 Sublessor not to deal with Existing Subtenant Subleases

The Sublessor must not:

- (a) amend or vary any Existing Subtenant Subleases;
- (b) accept a surrender of all or any part of an Existing Subtenant Sublease;
- (c) terminate an Existing Subtenant Sublease; or
- (d) purport to enforce or exercise any rights, powers or remedies of the Sublessor under an Existing Subtenant Sublease,

except:

- (e) as permitted by this Sublease; or
- (f) with the Sublessee's prior written consent, which may be withheld in the Sublessee's absolute discretion.

3.7 Assignment of Existing Sublease Guarantees

- (a) On the Commencement Date, the Sublessor assigns to the Sublessee its interest in assignable Existing Sublease Guarantees.
- (b) The Sublessor does not warrant that the Existing Sublease Guarantees are valid, enforceable or assignable to the Sublessee.

3.8 Existing Sublease Guarantees that are not assignable

If the Sublessor holds an Existing Sublease Guarantee for an Existing Subtenant Sublease and the Existing Sublease Guarantee is not assignable, then from the Commencement Date:

- (a) the Sublessor holds its interest under the Existing Sublease Guarantee for the benefit of the Sublessee; and
- (b) if directed by the Sublessee, the Sublessor must:
 - (i) return the Existing Sublease Guarantee to the issuer of the Existing Sublease Guarantee;
 - (ii) return the Existing Sublease Guarantee to the Existing Subtenant on whose behalf the Existing Sublease Guarantee is issued; or
 - (iii) use its reasonable endeavours to claim under the Existing Sublease Guarantees and pay the money received to the Sublessee.

3.9 Registration

The Sublessor must attend to registration of this Sublease at the Sublessee's cost in the relevant land register as soon as practicable after the Commencement Date, and the Sublessee must provide such assistance as may be reasonably required by the Sublessor to register the Sublease.

4. Payments by Sublessee

4.1 Method of payment

- (a) The Sublessee must pay all money owed to the Sublessor under this Sublease:
 - (i) by payment to the Sublessor by any method of which the Sublessor notifies the Sublessee;
 - (ii) within 14 days after demand, unless otherwise specified in this Sublease; and
 - (iii) without deduction or set off.
- (b) The Sublessee must pay to the Sublessor the Rent:
 - (i) whether or not the Sublessor demands payment;
 - (ii) in equal monthly instalments (except for the first and last instalments, which will be apportioned in respect of time if necessary); and
 - (iii) in advance on the Commencement Date and on the 1st of each month.

4.2 Payment of rent under Head Lease

Despite clause 4.1, where the Sublessee is obliged to pay any amount to the Sublessor under the terms of this Sublease (including Rent), the Sublessor irrevocably directs the Sublessee to pay such amounts as follows:

- (a) firstly, directly to the Head Lessor in satisfaction of all money owed (including rent) by the Sublessor to the Head Lessor under the terms of the Head Lease; and
- (b) secondly, as to the balance, to the Sublessor.

4.3 Services

In addition to the amounts paid or payable under clauses 4.1 and 4.4, the Sublessee must pay on time for all services supplied to the Premises, including water, excess water, electricity, gas, telephone, trade waste or other costs incurred as a result of the Sublessee's use or occupation of the Premises.

4.4 Sublessee's share of building costs

- (a) The Sublessee must pay to the Sublessor:
 - (i) all rates, assessments, fees and charges (including charges for water and sewerage usage, drainage, trade waste and fire services), costs, levies, impositions and duties of any authority, body, department, government or instrumentality assessed, charged, imposed or levied in respect of the Premises, the land or services to the Premises or the land (regardless of ownership); and
 - (ii) any property tax assessed on the Premises, including the Sublessor's land tax (calculated on the basis that the Premises is the only property the Sublessor owns).
- (b) The Sublessee is not obliged to pay:
 - (i) any commission or similar charge paid to any person in connection with letting or licensing any part of the Building;
 - (ii) the Sublessor's income tax or capital gains tax;
 - (iii) any amount for which a particular sublessee or licensee of any part of the Building is responsible; or
 - (iv) the cost of any structural work or cost treated by the Sublessor (acting in good faith) in its accounting statements as a capital expense.

4.5 Interest on late payments

- (a) If the Sublessee does not pay any money to the Sublessor on the due date, the Sublessor may charge interest on that money at the Overdue Rate.
- (b) The Sublessor may calculate the interest on any unpaid money on a daily basis from and including the day the unpaid money was due up to and including the day it is paid.

4.6 Errors

If either the Sublessee or the Sublessor identifies an error in any calculation or payment, the Sublessor must make any necessary adjustment in the Sublessee's next monthly statement (or as soon as practicable if this Sublease has ended).

4.7 Cost of sublease, default, approvals etc

The Sublessee must pay within 14 days after notice the Sublessor's reasonable costs (including legal costs) and all charges, duties, expenses and fees of or incidental to:

- (a) any request for the approval or consent of the Sublessor (and of any head lessor or mortgagee of the Sublessor); and
- (b) any breach or default by the Sublessee under this Sublease.

4.8 GST

- (a) Any reference in this clause to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply made under or in connection with this Sublease does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this clause.
- (c) Any amount referred to in this Sublease (other than an amount referred to in clause 4.8(h)) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with this Sublease, the consideration to be provided under this Sublease for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (e) The recipient must pay the additional amount payable under clause 4.8(d) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under clause 4.8(d) or at such other time as the parties agree.
- (g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Sublease the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 4.8(e) the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (h) If one of the parties to this Sublease is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Sublease, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 4.8(d).

5. Rent review

5.1 CPI review

- (a) As at a CPI review date in Item 7, the Rent is adjusted using the following formula:

[REDACTED]

- (b) The Sublessee must pay the new Rent from the CPI review date.
- (c) Until the Sublessor notifies the Sublessee of the new Rent, the Sublessee must continue to pay the existing Rent to the Sublessor.
- (d) The Sublessor must calculate any necessary adjustment between the Rent the Sublessee has paid and the Rent the Sublessee should have paid from the CPI review date.
- (e) The Sublessee must pay any adjustment when the Sublessee's next monthly payment is due.

6. Sublessee's general obligations

6.1 Use

The Sublessee must:

- (a) use the Premises only for the permitted use in Item 8;
- (b) not put any safe or other heavy article in the Premises unless the Sublessor first consents;
- (c) not put any advertisement, plate or sign outside the Premises or on the inside face of the windows unless the Sublessor first consents;
- (d) not use the Premises in a way that interferes with the efficient operation of the Services to the Premises or the Building; and
- (e) not have or use dangerous substances (including hazardous materials or chemicals, flammable liquids, acetylene gas or alcohol, explosive oils or substances) in the Premises or the Building.

6.2 Maintaining premises and Sublessee's property

- (a) The Sublessee must keep the Premises clean and tidy and in at least as good a condition as they were in at the Commencement Date (for example, the Sublessee must repair damage and replace broken fittings) except for:
- (i) fair wear and tear;
- (ii) damage caused by earthquake, fire, flood, storm, tempest, war damage or act of God; and

- (iii) damage to the extent it was caused or contributed to by the Sublessor.
- (b) The Sublessee must replace all broken glass with glass of the same or similar quality.
- (c) Subject to clause 6.3, the Sublessee does not have to repair the structure of the Building or Premises.
- (d) The Sublessee must take reasonable precautions to keep the Premises free of vermin, insects, birds and animals and, as required by the Sublessor, employ qualified pest exterminators.

6.3 Damage caused by Sublessee

If the Sublessee damages the Building or the Premises (including structural damage, but excluding damage resulting from any latent defect in the Building) the Sublessee must at the Sublessor's option:

- (a) promptly repair the damage to the Sublessor's reasonable satisfaction; or
- (b) pay to the Sublessor within 14 days after demand the Sublessor's cost of repairing the damage.

6.4 Altering Premises

The Sublessee must not erect or construct upon the Premises or any part thereof any building, structure or improvement, nor carry out any alteration to any building structure or improvement on the Premises or any part thereof without the prior written consent of the Sublessor.

6.5 Sublessee must observe law and rules

The Sublessee must comply with the law and any notice from any authority that requires the Sublessee to do or not do anything concerning the Premises, the Sublessee's use of the Premises, the Sublessee's Property or this Sublease (for example, laws relating to occupational health and safety and environmental matters), excluding anything relating to the structure of the Building which does not arise as a result of the Sublessee's particular use of the Premises.

6.6 How Sublessee should behave

The Sublessee must not make any illegal, immoral, offensive or unlawful use of the Premises or the Common Areas, nor cause any nuisance, damage or disturbance to the Sublessor or any occupier of the Building or of any nearby property.

6.7 Using Common Areas

- (a) The Sublessee may use the Common Areas in common with others, but only for the purposes for which they were designed.
- (b) The Sublessee must comply with the Sublessor's reasonable requirements, the law and the requirements of statutory authorities in relation to the use of the Common Areas.

7. Risk and insurance

7.1 Sublessee's insurance

- (a) Except where prohibited by the Residential *Tenancies Act 2010* (NSW), the Sublessee must have current insurance policies covering:
 - (i) public liability arising out of the use or occupation of the Premises for the amount in Item 9 (or any reasonable higher amount notified by the Sublessor) in respect of any single event; and
 - (ii) cover for all other risks which from time to time a prudent property owner and landlord would effect for a property being used as Community Housing.
- (b) The Sublessee must deliver to the Sublessor adequate written evidence of the existence and contents of each policy immediately after the Sublessee takes it out and of its currency on each anniversary of the Commencement Date and when reasonably required by the Sublessor.

7.2 Sublessee not to void insurances; extra premiums

- (a) The Sublessee must not cause the rate of any insurance premium relating to the Premises or the Building to be increased, or prejudice or render void or voidable that insurance.
- (b) If the Sublessor approves (in its absolute discretion) any request of the Sublessee which increases an insurable risk, the Sublessee must pay to the Sublessor any extra premiums payable by the Sublessor due to the increased risk.

7.3 Sublessee releases and indemnifies Sublessor

- (a) The Sublessee releases the Sublessor (and its agents, contractors, employees and officers) from all Liabilities for any damage, loss, injury, or death occurring in the Premises or the Building, except to the extent that the damage, loss, injury or death was caused by the negligence or wilful act of the person seeking to be released.
- (b) The Sublessee indemnifies the Sublessor (and its agents, contractors, employees and officers) against all Liabilities arising out of or in relation to any faulty Sublessee's Property or any act or omission of any kind of the Sublessee.

7.4 Sublessee's obligations at Sublessee's risk and expense

Unless this Sublease expressly provides otherwise, all of the following are at the Sublessee's sole risk and expense:

- (a) anything which the Sublessee is required or permitted to do under this Sublease, whether or not the Sublessor gives its approval or consent to that thing;
- (b) the Sublessee's Property; and
- (c) the Sublessee's use and occupation of the Premises.

7.5 Sublessee to give notice of risk

The Sublessee must give the Sublessor notice of any of the following as soon as it becomes aware of them:

- (a) damage, death, injury or loss occurring in or any defect or lack of repair in the Premises; and
- (b) any circumstances likely to cause damage, risk or hazard to any person or property in or services and amenities of the Premises.

8. Sublessor's general rights

8.1 Sublessor may enter Premises

- (a) The Sublessor will have access to the Premises in the following circumstances:
 - (i) immediately and without notice where in the opinion of the Sublessor an emergency threatens life or substantial damage upon the Premises;
 - (ii) with reasonable prior notice to inspect or view the state of the Premises;
 - (iii) with reasonable prior notice to ascertain whether the Sublessee is complying with the provisions of this Sublease;
 - (iv) in accordance with any notice issued by the Sublessor with respect to any breach or default by the Sublessee;
 - (v) to do anything the Sublessor must or may do under this Sublease; or
 - (vi) as otherwise agreed between the parties.
- (b) Wherever the Sublessor exercises its right of entry to the Premises under this Sublease, the Sublessor must use reasonable endeavours to not cause any undue interruption or inconvenience to the use or occupation of the Premises by the Sublessor or a Tenant including:
 - (i) by giving reasonable notice to the Sublessee to allow it to comply with any of its notice obligations under an Existing Subtenant Sublease or a Sub-sublease; and
 - (ii) by complying with the Sublessee's reasonable directions relating to access to the Premises, having regard to the Sublessee's obligations under any Existing Subtenant Sublease or Sub-sublease.

8.2 Sublessor's consent or approval

Unless expressly stated in a particular clause:

- (a) the Sublessor must not unreasonably withhold or delay its consent or approval under this Sublease, but may give it on reasonable conditions; and
- (b) any consent or approval of the Sublessor must be in writing.

8.3 Sale of building

If the Sublessor wants to sell the Premises or the Building, it may put up a 'for sale' sign on the Premises, and enter the Premises for the purposes of showing the Premises to the prospective purchasers, subject to complying with the conditions in clause 8.1(b).

8.4 No waiver

- (a) Failure to exercise, delayed exercise or partial exercise of any available remedy or right does not waive any breach by a party.
- (b) Waiver by a party of a particular breach is not a waiver of any other breach or default.
- (c) Demand or acceptance by the Sublessor of money payable under this Sublease after the Sublessee's breach or default does not prejudice any other right or remedy of the Sublessor.

9. Transfers, sublettings, etc

9.1 Dealing with Premises

- (a) The Sublessee must not directly or indirectly Deal with the Premises (or any part of it) except as expressly permitted by this Sublease unless the prior written consent of the Sublessor is obtained (such consent not to be unreasonably withheld or delayed).
- (b) Despite clause 9.1(a):
 - (i) the Sublessee may Deal with the Premises (or any part of it) without the consent of the Sublessor where the proposed transferee is:
 - A. the NSW Government; or
 - B. any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality which is an agent of the NSW Government; and
 - (ii) the Sublessee may grant rights of possession in respect of the Premises without the consent of the Sublessor to any Tenant under a Sub-sublease, provided that the grant of such rights will not relieve the Sublessee of any of its obligations or liabilities under this Sublease.
- (c) Where the Sublessee Deals with its interest in the Premises under clause 9.1(b)(i), the Sublessee must as soon as reasonably practicable after the Dealing has occurred, provide the Sublessor with written notice of such Dealing.

9.2 Costs in relation to dealings

The Sublessee must pay the Sublessor's reasonable expenses (including administration and legal costs) in relation to any proposed dealing under clause 9.1, even if the Sublessee (or other party) does not comply with clause 9.1 or if the proposed dealing does not proceed.

10. Damage, destruction or resumption of building

10.1 Damage or destruction

- (a) If the Premises are damaged or destroyed or affected by hazardous or injurious materials or substances so as to render the Premises substantially unfit for use and occupation then the Sublessee may:
 - (i) ask the Sublessor to re-build the Premises; or
 - (ii) terminate this Sublease by notice in writing to the Sublessor.
- (b) Where the Sublessee gives notice under clause 10.1(a)(i), if the Sublessor does not notify the Sublessee within two months after the Sublessee's request that the Sublessor intends to rebuild, or does not rebuild within six months after stating its intention to do so, the Sublessor or the Sublessee may terminate this Sublease by notice to the other, in which case the Sublease ends on the date of the notice.
- (c) If the Premises are damaged or destroyed or affected by hazardous or injurious materials or substances so as to render the Premises substantially unfit for use and occupation then the Sublessor must reduce the Rent and other money payable by a reasonable amount (depending on the kind and extent of the damage and destruction) from the date of the damage or destruction until the Premises are again fit for use or this Sublease is ended.
- (d) Despite any other provision, the Sublessee has no right to the reduction to the extent that the Sublessee's act or omission caused the damage, destruction or affectation and has no right to terminate this Sublease if the Sublessee caused or substantially contributed to the damage, destruction or effect.

10.2 Resumption

If a competent authority resumes the Premises or the Building, and this makes the Premises unfit or unavailable for the Sublessee's use during the term, then the Sublessor or the Sublessee may terminate this Sublease by notice to the other and the Sublessor is not liable to pay the Sublessee any compensation.

10.3 Resolving disputes about reduction in rent on damage or destruction

- (a) If the Sublessee does not agree with the reduction made by the Sublessor under clause 10.1(c) or the Sublessor and the Sublessee do not agree on whether there should be a reduction under that clause, either party may give the other notice of the dispute within 14 days after the damage or destruction occurs.
- (b) The parties must negotiate in good faith to agree on a reduced amount within 14 days after delivery of the notice of dispute.
- (c) If the Sublessee and the Sublessor agree on a reduced amount, the Sublessee must pay that amount from the agreed date.
- (d) If the Sublessee and the Sublessor do not agree then, within 30 days after the period in clause 10.3(b), either party may ask the President of the API to appoint a valuer who is a current full member of the API with at least five years' experience in valuing properties similar to the Premises to decide the reduced amount (if any) and the date from which the reduced amount must be paid.

- (e) The Sublessee and the Sublessor must instruct the valuer to decide the reduced amount within 30 days after being appointed.
- (f) If the Sublessee does not keep to a time limit in this clause which applies to it, the right attached is lost and there is no reduction in the Rent and other money payable, except to the extent that the Sublessor made a reduction under clause 10.1(c).
- (g) Until the dispute is resolved, the Sublessee must pay the current Rent and other money payable, subject to any reduction under clause 10.1(c). The Sublessor must calculate and refund any adjustment within 14 days after the agreement or decision by the valuer.
- (h) In deciding the dispute, the valuer acts as an expert and not as an arbitrator and must give written reasons for the decision.
- (i) The valuer's decision is final and binding on the parties (except for manifest error).
- (j) The Sublessor and the Sublessee must each pay one half of the valuer's costs.

11. End of Sublease

11.1 Handing back Premises

When this Sublease ends, the Sublessee must vacate the Premises and give them back to the Sublessor clean and free from rubbish and in the same condition as they were in before the Commencement Date, except for fair wear and tear and damage which the Sublessee is not required to repair under clause 6.2.

11.2 Continuing occupation after end of Sublease

- (a) If the Sublessor agrees, the Sublessee may continue to occupy the Premises after the expiry of the Term for a fixed term of four months and then for continuing periods of four months' each.
- (b) The Rent for the four monthly occupation is one third of the annual Rent current on the date.
- (c) The four monthly occupation is on the same provisions as in this Sublease, so far as applicable, but the Sublessor or the Sublessee may end the occupation by one month's notice to the other expiring on any day.

11.3 Assignment of Residual Occupancy Arrangements and Guarantees

Upon termination or expiration of this Sublease, the Sublessee assigns to the Sublessor with effect from the date of termination or expiration:

- (a) the Sublessee's interest in the Residual Occupancy Arrangements; and
- (b) the benefits of the covenants by the Existing Subtenants under the Residual Occupancy Arrangements,

and the Sublessor accepts the assignment.

11.4 Reassignment of Existing Sublease Guarantees

- (a) On the termination of this Sublease, the Sublessee assigns to the Sublessor its interest in assignable Existing Sublease Guarantees and New Sublease Guarantees.
- (b) The Sublessee does not warrant that the Existing Sublease Guarantees or New Sublease Guarantees are valid, enforceable or assignable to the Sublessor.

11.5 Bank guarantees that are not assignable

If on the date of termination of this Sublease the Sublessee holds an Existing Sublease Guarantee or New Sublease Guarantee and the Existing Sublease Guarantee or New Sublease Guarantee (as applicable) is not assignable, then:

- (a) the Sublessee's interest in the Existing Sublease Guarantee or New Sublease Guarantee (as applicable) is not assigned to the Sublessor; and
- (b) from the date of termination:
 - (i) the Sublessee holds the rights under the Existing Sublease Guarantee or New Sublease Guarantee (as applicable) for the benefit of the Sublessor; and
 - (ii) if directed by the Sublessor the Sublessee must claim under the Existing Sublease Guarantee or New Sublease Guarantee (as applicable) and pay the money to the Sublessor.

12. Breach of Sublease

12.1 Termination for Sublessee's default

The Sublessor may terminate this Sublease if:

- (a) the Sublessee does not pay any money payable to the Sublessor under this Sublease within 60 days after the due date;
- (b) the Sublessee does not observe any provision of this Sublease and within a reasonable time after service of a notice by the Sublessor (such period being not less than 60 days) specifying the non-observance:
 - (i) if the matter is capable of remedy, does not remedy it to the Sublessor's reasonable satisfaction; or
 - (ii) if the matter is not capable of remedy, does not pay compensation to the Sublessor's reasonable satisfaction; or
- (c) an order is made or a resolution is effectively passed for the winding up, liquidation, compromise, arrangement, amalgamation, arrangement or comprise with creditors of the Sublessee which is a company.

This clause does not affect any claim or other remedy of the Sublessor against the Sublessee for breach of this Sublease and has effect despite any other term in this Sublease.

13. General

13.1 Notices

- (a) A notice under this Sublease must be in legible writing and in English.
- (b) If the Sublessor wants to give a notice to the Sublessee, the Sublessor must:
 - (i) give it to the Sublessee personally; or
 - (ii) leave it at, or post or fax it to, the Premises, the Sublessee's registered office or the Sublessee's last known business address.
- (c) If the Sublessee wants to give a notice to the Sublessor, the Sublessee must leave it at, or send it by security post or fax it to the Sublessor's registered office or any other address that the Sublessor nominates.
- (d) If any notice is given on a day which is not a Business Day or after 5.00pm (addressee's time), it is taken not to be given until the next Business Day.
- (e) Any notice given by the Sublessor is valid and effective if given under the common seal of the Sublessor or signed by an attorney, director, company secretary, authorised officer or solicitor of the Sublessor.

13.2 Governing Law

This Sublease is governed by New South Wales law.

13.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day.

13.4 Variation

A variation of any provision of this Sublease must be in writing and signed by the parties.

13.5 Whole Agreement

This Sublease comprises the whole agreement between the parties in respect of its subject matter.

13.6 Severability

If a court decides that any part of this Sublease is void, voidable, illegal or unenforceable or this Sublease would be void, voidable, illegal or unenforceable unless a part is severed from this Sublease, then that part is severed from this Sublease and does not affect the continued operation of the rest of this Sublease.

13.7 Head Lease

- (a) The Sublessor must:
 - (i) obey the Head Lease in the Sublessor's capacity as lessee under the Head Lease, except to the extent that the Sublessee assumes the Sublessor's obligations under this Sublease;

- (ii) promptly inform the Sublessee of any notice to Sublessor receives from the Head Lessor and of anything else that may affect the performance of the Sublessee's obligations under this Sublease;
 - (iii) not transfer the Sublessor's interest or rights under the Head Lease;
 - (iv) not surrender the Head Lease to the Head Lessor without the Sublessee's consent (which may be withheld in the Sublessee's absolute discretion); and
 - (v) must not do anything that may end the Head Lease before its expiry date.
- (b) If the Sublessor breaches the Head Lease in a way that may prejudice the Sublessee's interests, the Sublessee may:
- (i) do anything reasonably required to remedy the breach; and
 - (ii) recover the cost of doing so from the Sublessor as money due under this Sublease.
- (c) The Sublessor must ensure the Sublessee has the benefit of the Head Lessor's obligations under the Head Lease as if those obligations were imposed on the Sublessor by this Sublease, with only those changes necessary for them to apply to this Sublease.

13.8 Head Lessor's consent

- (a) The Head Lessor consents to this Sublease.
- (b) The Head Lessor acknowledges and agrees that provided it continues to receive rent in accordance with the terms of the Head Lease, the Head Lessor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Head Lease under any circumstance.

Reference Schedule

Items

1 Land: [insert]

2 Premises: The Land and the Sublessor's improvements on the Land.

3 Term: [insert]

4 Commencement Date: [insert]

5 Expiry Date: [insert]

6 Rent: [insert] per annum (excluding GST).

7 CPI Review Date: On each anniversary of the Commencement Date.

8 Permitted Use: Community Housing.

9 Public liability insurance amount:

██████████

10 Head Lessor: [insert]

Confidential

Schedule 27 – Head Lease Side Deed

The form of Head Lease Side Deed is intended for use with a Lessor where ServiceCo does not view the relevant Lease as an asset. See the note to Schedule 26 (Asset Lease Side Deed) for further information on what the Asset Lease Side Deed entails.

Under the Head Lease Side Deed, FACS will have a right to require the novation of the original Lease, with no change to the terms of that Lease (including the rate of rent).

*Social and Affordable Housing Fund - Head
Lease Side Deed*

[Insert name of Lessor]

[insert ABN/ACN/ARBN]

*The Uniting Church in Australia Property Trust (NSW)
(ABN 77 005 284 605) for and on behalf of Uniting
(NSW.ACT) (ABN 78 722 539 923) (also known as
UnitingCare NSW.ACT) (ServiceCo)*

Department of Family and Community Services (FACS)

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BETWEEN:

The Secretary of the Department of Family and Community Services as Housing Agency under section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**).

[Insert] ABN/ACN *[insert]* whose registered office is at *[insert]* (**Lessor**).

The Uniting Church in Australia Property Trust (NSW) (ABN 77 005 284 605) for and on behalf of Uniting (NSW.ACT) (ABN 78 722 539 923) (also known as UnitingCare NSW.ACT) whose registered office is at Level 4, 222 Pitt Street, Sydney NSW 2000(**ServiceCo**).

RECITALS:

- (A) FACS and ServiceCo have entered, or will enter, into the Services Deed for the provision of the Service Package.
- (B) The Lessor is the registered proprietor of the Premises.
- (C) ServiceCo has obtained its right to occupy the Premises from the Lessor pursuant to the Lease.
- (D) The Lessor has agreed to grant to FACS certain rights in relation to the Lease.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions and interpretation

1.1 Services Deed definitions

Definitions in the Services Deed apply in this Deed unless the context requires otherwise or the relevant term is defined in this Deed.

1.2 Definitions

In this Deed:

Approved Nominee means a person nominated by FACS and approved by the Lessor in accordance with clause 4.9 as:

- (a) having legal capacity, power and authority to become a party to and perform the obligations of ServiceCo under the Lease; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of ServiceCo under the Lease.

Assignment Notice has the meaning given in clause 4.1.

Default Event means:

- (a) any default (howsoever described) by ServiceCo under the Lease; or
- (c) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Lessor to terminate, rescind, accept the repudiation of, or suspend any or all of the Lessor's obligations under the Lease.

Default Event Notice has the meaning given in clause 3.2(a).

Effective Date means the date specified in the Assignment Notice.

FACS Cure Notice has the meaning given in clause 3.2(c).

GST Amount has the meaning given in clause 9(c)(i).

Lease means the lease over the Premises dated on or about the date of this Deed between ServiceCo and the Lessor.

Material Adverse Effect means a material adverse effect on:

- (a) the ability of each of ServiceCo or the Lessor to perform and observe their respective obligations under any Service Package Document to which it is a party; or
- (d) the rights of FACS under any FACS Service Package Document, or the ability or capacity of FACS to exercise its rights or perform its obligations under a FACS Service Package Document.

Premises means *[insert]*.

Receiver means agent, attorney, trustee, manager, receiver, receiver and manager, administrator, liquidator or provisional liquidator or analogous person appointed under or in connection with FACS Security or pursuant to court order on application by FACS.

Recipient has the meaning given in clause 9(c)(ii).

Services Deed means the document entitled "Social and Affordable Housing Fund - Services Deed" dated on or about the date of this Deed between FACS and ServiceCo.

Supplier has the meaning given in clause 9(c).

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to:

- (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **(‘includes’)**: ‘includes’ and ‘including’ will be read as if followed by the phrase ‘(without limitation)’;
- (j) **(‘or’)**: the meaning of ‘or’ will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **(‘\$’)**: a reference to ‘\$’, AUD or dollar is to Australian currency;
- (m) **(Business Day)**: if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (n) **(day)**: except as otherwise provided in this Deed or where a reference is made to ‘Business Days’, day means a calendar day;
- (o) **(time)**: a reference to time is a reference to time in Sydney, Australia;
- (p) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (q) **(function)**: a function includes a power, authority or duty;

- (r) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (s) **(‘may’)**: except to the extent that FACS is expressly required under this Deed to act reasonably:
 - (i) in exercising a power, right or remedy, the term ‘may’, when used in the context of a power, right or remedy exercisable by FACS, means that FACS can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to ServiceCo) and FACS has no obligation to do so; and
 - (ii) FACS may consent or grant any approval as FACS (in its absolute and unfettered discretion (and without regard to ServiceCo)) thinks fit or may be given subject to any conditions;
- (t) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (u) **(asset)**: references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset; and
- (v) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Inconsistencies

To the extent of any inconsistency between the terms of this Deed and the Lease, this Deed will prevail over the applicable Lease.

1.5 Services Deed and Financiers’ Tripartite Deed

The Lessor acknowledges that it has received a copy of the Services Deed and the Financiers’ Tripartite Deed.

1.6 Exclusion of Civil Liability Act 2002 (NSW)

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and Liabilities arising under or in relation to this Deed, howsoever those rights, obligations or Liabilities are sought to be enforced.

1.7 FACS’ executive rights, duties and functions

- (a) **(Acknowledgements)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.10 (*FACS’ executive rights, duties and functions*) of the Services Deed in relation to this Deed.

- (b) **(No Claim):** Subject to clause 1.7(c), ServiceCo and the Lessor will not be entitled to make any Claim against FACS or any of its Associates for any Liability relating to any exercise or failure of FACS or any of its Associates to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach):** Clauses 1.7(a) and 1.7(b) do not limit any Liability which FACS would have had to ServiceCo or the Lessor under any FACS Service Package Document as a result of a breach by FACS of a term of any FACS Service Package Document but for those clauses.

2. Lessor's warranty and FACS' rights and liability

2.1 Lessor's warranty

- (a) The Lessor warrants to FACS that it has carried out and, provided the Lease has not been terminated, will continue to carry out its duties under the Lease in accordance with the Lease. In particular and without limiting the generality of the foregoing, the Lessor covenants with FACS that it will, provided the Lease has not been terminated, duly observe and perform all its duties and obligations under the Lease.
- (b) Without prejudice to any of FACS' other rights under this Deed (including, without limitation, under clauses 3 and 4, FACS may only exercise its rights under this clause 2 upon:
 - (i) the termination of the Services Deed or ServiceCo's engagement under the Services Deed; or
 - (ii) ServiceCo no longer being responsible for providing the Service Package substantially on the basis set out in the Services Deed and/or the Monthly Service Payment regime no longer applying.
- (c) FACS agrees that it may not exercise its rights under this clause 2.1 to the extent it has already recovered an amount for any loss arising from the same cause of action for breach of warranty under the Services Deed.

2.2 FACS' rights under Services Deed

- (a) The Lessor acknowledges and agrees to FACS' rights and ServiceCo's obligations under the Services Deed, including under the following clauses of the Services Deed:
 - (i) clause 7.1 (*Audits and performance compliance*);
 - (ii) clause 6.6 (*Work health and safety*);
 - (iii) clause 33 (*Expiry obligations*);
 - (iv) clause 37 (*Major Default*);
 - (v) clause 38 (*Termination*); and
 - (vi) clause 51 (*Intellectual Property Rights*).
- (b) The Lessor must:

- (i) exercise its rights under the Lease in a way that facilitates the effective exercise by FACS of the rights referred to in clause 2.2(a); and
- (ii) permit FACS or a FACS Associate to have access to, and take copies of, the information to which FACS is entitled to have access to in accordance with FACS' rights referred to in clause 2.2(a).

2.3 Subcontracting and Probity Investigations

- (a) The Lessor acknowledges FACS' rights and ServiceCo's obligations under the following clauses of the Services Deed:
 - (i) clause 14 (*Subcontracting and third party arrangements*);
 - (ii) the clauses listed in clause 14.4 (*Requirements for Subcontracting*); and
 - (iii) clause 53 (*Probity Events and Probity Investigations*).
- (b) Without limiting clause 2.3(a), the Lessor acknowledges and agrees that:
 - (i) in accordance with clauses 14 (*Subcontracting and third party arrangements*) and 53 (*Probity Events and Probity Investigations*) of the Services Deed, FACS may, from time to time, or may require ServiceCo to, conduct Probity Investigations of the Lessor and Relevant Persons in respect of the Lessor (excluding the ServiceCo Representative);
 - (ii) it will procure all relevant consents from any persons in connection with whom a Probity Investigation is to be conducted; and
 - (iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a Relevant Person in relation to the management or performance of any Service Package Activities unless FACS has given approval (including following a Probity Investigation and any other investigations that FACS reasonably requires in accordance with the Services Deed).

2.4 No liability for information

The Lessor acknowledges and agrees that:

- (a) any information, data and documents provided by FACS:
 - (i) are provided for information purposes only and all of FACS' and its Associates' Intellectual Property Rights therein remain the property of FACS or its Associates (as the case may be); and
 - (ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of FACS or its Associates; and
- (b) to the extent permitted by Law, neither FACS nor any of its Associates will have any Liability to the Lessor or any of their Associates, nor will the Lessor or any of their Associates be entitled to make any Claim against FACS, or seek, pursue or obtain an indemnity against or contribution to Liability from FACS or any of its Associates arising out of or in connection with:

- (i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in clause 2.4(a) by the Lessor or any other person to whom such information is disclosed by the Lessor, or any of their respective Associates or any person on any of their behalf;
- (ii) any reference to FACS in the Lease; or
- (iii) any review of, comments upon, acceptance, approval or certification of the form or substance of the Lease by FACS.

2.5 Lease not to affect FACS' rights

Each of ServiceCo and the Lessor acknowledges and agrees that:

- (a) where the Lessor is expressed in the Lease to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Services Deed or an equivalent or similar right of ServiceCo:
 - (i) this does not of itself expand ServiceCo's rights, or FACS' Liability, under the Services Deed to include the compensation or relief to which the Lessor is or may become entitled under the Lease; and
 - (ii) ServiceCo's rights, and FACS' Liability, under the Services Deed will be determined solely in accordance with the terms of the Services Deed;
- (b) as between FACS (on the one hand) and ServiceCo and the Lessor (on the other hand), ServiceCo and the Lessor accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Lease and this Deed; and
- (c) notwithstanding anything to the contrary in the Lease, the Lessor has no right to deal directly with FACS or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
 - (i) expressly provided to the contrary in the Services Deed or this Deed; or
 - (ii) FACS consents in writing.

3. FACS' right to cure Default Events

3.1 FACS' cure rights

- (a) On becoming aware of any Default Event (and subject to clause 3.1(b)), FACS may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.
- (b) Clause 3.1(a) only applies if the Lessor has given a FACS Cure Notice in accordance with clause 3.2(c).
- (c) Upon FACS exercising any of its rights under this clause 3.1, ServiceCo's obligations under the Lease are suspended (other than ServiceCo's obligation to pay money) to the extent and for such period as ServiceCo is prevented from performing such obligations by FACS' exercise of its rights pursuant to clause 3.1(a).

- (d) If FACS exercises its rights pursuant to clause 3.1(a), FACS may, after giving reasonable prior notice to ServiceCo, cease to exercise those rights, and in any event, will cease to exercise those rights once the relevant Default Event has been remedied.

3.2 Restriction on right to terminate or suspend

The Lessor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Lease unless each of the following conditions has been satisfied:

- (a) the Lessor has given to FACS prior notice setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Lease, together with the statements referred to in clause 3.3 (**Default Event Notice**);
- (b) if the Lessor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Lease is subject to any right of a Financier to cure or remedy the Default Event:
 - (i) the cure or remedy period available to the Financiers in respect of the Default Event under any Finance Document has expired without a cure or remedy being achieved; or
 - (ii) the Security Trustee has notified the Lessor in writing that it does not intend to cure or remedy the Default Event;
- (c) the Lessor has given notice to FACS confirming that, either:
 - (i) the requirements of clause 3.2(b) are satisfied; or
 - (ii) the Lessor's right to terminate, rescind, accept the repudiation of, or suspend the performance of, any or all of its obligations under the Lease is not subject to any right of the Financiers to cure or remedy the Default Event,

(**FACS Cure Notice**), and
- (d) any one of the following has occurred:
 - (i) the Default Event is capable of cure or remedy within 20 Business Days after the date on which the FACS Cure Notice is given to FACS (or such longer period as is permitted under the Lease or agreed to by the Lessor), that Default Event has not been cured or remedied within the relevant period;
 - (ii) if the Default Event is not one described in clause 3.2(d)(i) but is nevertheless reasonably capable of cure or remedy, FACS has not commenced curing or remedying the Default Event within 20 Business Days after the date on which the FACS Cure Notice is given and has not continued to diligently pursue that cure or remedy; or
 - (iii) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, ServiceCo or FACS (or another person on behalf of either of them) have not paid or otherwise provided that compensation to the Lessor:

- A. to the extent that the relevant amount of compensation has been referred to expert determination under clause 8, within 20 Business Days after that dispute is resolved;
- B. otherwise within 20 Business Days after the date on which FACS received the FACS Cure Notice;
- C. if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, FACS does not commence and continue to perform ServiceCo's obligations under the Lease within 20 Business Days after the date on which the FACS Cure Notice is given to FACS; or
- D. FACS notifies the Lessor in writing after receipt of the FACS Cure Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

3.3 Statements concerning Default Event

- (a) As part of any Default Event Notice, the Lessor must submit to FACS statements of:
 - (i) where the Default Event is a monetary default:
 - A. the provisions of the Lease alleged to have been breached or not fulfilled; and
 - B. the amount which must be paid to the Lessor to remedy the Default Event;
 - (ii) where the Default Event is of a non-monetary nature:
 - A. the provisions of the Lease alleged to have been breached or not fulfilled;
 - B. sufficient information to enable FACS to identify the material facts;
 - C. the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled if reasonably capable of cure or remedy; and
 - D. the time within which the specified steps can reasonably be expected to be taken; and
 - (iii) any rights available to the Financiers, pursuant to any Finance Document to which the Lessor is a party, to cure or remedy that Default Event and the period within which that cure or remedy must occur before the Finance Documents permit the Lessor to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Lease.
- (b) If the Lessor gives a FACS Cure Notice to FACS in accordance with clause 3.2(c), as part of that notice the Lessor must update the matters referred to in clause 3.3(a).

3.4 Warranty of accuracy

- (a) The Lessor warrants to FACS that statements submitted by it under clause 3.3 will be, so far as reasonably practicable and subject to unintended error which the Lessor agrees to promptly rectify, true, complete and accurate statements of the amounts to which the Lessor considers itself entitled.
- (b) The Lessor waives and abandons all claims then known or which ought reasonably to have been known to the Lessor arising out of or in connection with the Lease prior to the date of the Default Event Notice other than the claims disclosed in the statements submitted by it under clause 3.3.

3.5 Disputes as to statements

If FACS disputes the amount of any claim or the existence of any default referred to in a Default Event Notice pursuant to clause 8:

- (a) FACS must pay the amount not in dispute;
- (b) upon resolution of the dispute in accordance with clause 8, the parties must make payments as determined; and
- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Service Package Documents.

3.6 Verification

FACS may appoint a firm of independent chartered accountants or a firm of technical advisers, in each case approved by ServiceCo and the Lessor (such approval not to be unreasonably withheld or delayed), to verify (at the cost of ServiceCo) statements submitted by the Lessor, and the Lessor must (subject to such firm(s) executing an appropriate confidentiality agreement in a form reasonably requested by the Lessor) permit such firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

3.7 No Liability

ServiceCo and the Lessor acknowledge that, without limiting the Liability of ServiceCo (which continues to be responsible for the performance of its obligations under the Lease), and without limiting FACS' obligations under clause 4, FACS will not be liable for any obligation or Liability of ServiceCo under the Lease by reason only of FACS performing ServiceCo's obligations in accordance with the Lease. ServiceCo and the Lessor each release FACS from any such Liability, except to the extent that such Liability occurs or arises as a direct result of any criminal conduct, fraud or wilful misconduct on the part of FACS.

3.8 ServiceCo to compensate FACS

Any reasonable loss suffered or incurred by FACS arising out of or in any way in connection with the exercise of its rights under this clause 3 will be a debt due from ServiceCo to FACS.

3.9 No limitation on other rights

The exercise (or failure to exercise) by FACS of its rights under this clause 3 will not limit FACS' rights against ServiceCo under the FACS Service Package Documents or otherwise according to Law.

4. Assignment of Lease

4.1 Option

FACS may require an assignment of the Lease in accordance with this clause 4 upon the termination of the Services Deed by giving a notice to the Lessor (**Assignment Notice**).

4.2 Assignment of Lease

With effect from the Effective Date:

- (a) ServiceCo as beneficial owner assigns its interest in the Lease and the Premises to FACS (or, if applicable, the Approved Nominee);
- (b) ServiceCo assigns its interest in all the Lessor's covenants under the Lease, whether or not they concern or run with the Premises, to FACS (or, if applicable, the Approved Nominee); and
- (c) FACS (or, if applicable, the Approved Nominee) accepts ServiceCo's interest in the Lease.

4.3 Procedural obligations

If the Lease is a registered Lease:

- (a) as soon as possible after the Effective Date, and in any event within 21 days of the Effective Date:
 - (i) FACS (or, if applicable, the Approved Nominee) must prepare; and
 - (ii) ServiceCo and FACS (or, if applicable, the Approved Nominee) must execute,

an instrument of transfer in registrable form to effect the transfer of ServiceCo's registered leasehold interest to FACS (or, if applicable, the Approved Nominee);
- (b) as soon as possible after the Effective Date, FACS (or, if applicable, the Approved Nominee) must procure the stamping of the instrument of transfer referred to in clause 4.3(a); and
- (c) as soon as possible after FACS (or, if applicable, the Approved Nominee) has provided the Lessor with a copy of the duly stamped instrument of transfer referred to in clause 4.3(a), the Lessor must procure registration with the 'Land and Property Information' of same.

4.4 Rights and obligations of FACS and the Lessor under the Lease

If FACS gives an Assignment Notice then, subject to clause 4.7, with effect from the Effective Date:

- (a) FACS (or, if applicable, the Approved Nominee):

- (i) is entitled to all rights and benefits under the Lease to which, but for this Deed, ServiceCo would have been entitled at and after the Effective Date;
 - (ii) must perform all obligations and discharge all liabilities under the Lease which, but for this Deed, ServiceCo would have been required to perform or discharge at and after the Effective Date; and
 - (iii) is bound by and must comply with all other provisions of the Lease by which, but for this Deed, ServiceCo would have been bound at and after the Effective Date; and
- (b) the Lessor:
- (i) is entitled to all rights and benefits under the Lease to which, but for this Deed, it would have been entitled at and after the Effective Date;
 - (ii) must perform all obligations and discharge all liabilities under the Lease which, but for this Deed, it would have been required to perform or discharge at and after the Effective Date; and
 - (iii) is bound by and must comply with all other provisions of the Lease by which, but for this Deed, it would have been bound at and after the Effective Date,

as if FACS (or, if applicable, the Approved Nominee) had originally been a party to the Lease in place of ServiceCo.

4.5 Release by Lessor

With effect from the Effective Date, the Lessor releases ServiceCo from all obligations and liability under or in respect of the Lease that arises or accrues at or after the Effective Date.

4.6 Release by ServiceCo

With effect from the Effective Date, ServiceCo releases the Lessor from all obligations and liability under or in respect of the Lease that arises or accrues at or after the Effective Date.

4.7 Obligations and liability prior to the Effective Date

Nothing in this Deed releases ServiceCo or the Lessor from any obligation or liability under the Lease arising or accruing before the Effective Date and FACS (or, if applicable, the Approved Nominee) does not assume any such obligation or liabilities under this Deed.

4.8 Amendments to Lease

- (a) With effect from the Effective Date, the terms of the Lease will be deemed to be amended as required to reflect the fact that the Services Deed is at an end, and that the Lease must operate independently of the Services Deed, on the basis that:
 - (i) the rights and obligations that FACS (or, if applicable, the Approved Nominee) will assume under the Lease from the Effective Date will be equivalent to those that ServiceCo would have had under the Lease had the Services Deed not been terminated;
 - (ii) the rights and obligations that the Lessor will assume under the Lease from the Effective Date will be equivalent to those that the

Lessor would have had under the Lease had the Services Deed not been terminated;

- (iii) any provisions of the Services Deed incorporated by reference into the Lease prior to the Effective Date are incorporated in the Lease from the Effective Date; and
 - (iv) without affecting the generality of this clause 4.8(a), clauses **[insert relevant clauses of the Lease]** of the Lease will be deleted.
- (b) If at or after the Effective Date, there is a dispute between FACS (or, if applicable, the Approved Nominee) and the Lessor as to how the terms of the Lease are deemed to have been amended pursuant to clause 4.8(a), then upon either party serving a written notice to this effect on the other, the dispute will be determined in accordance with clause 8.

4.9 Approved Nominee

- (a) FACS' nominee may be named as a party to the Lease in substitution for ServiceCo if FACS' nominee is an Approved Nominee.
- (b) The Lessor must:
 - (i) notify FACS as to whether FACS' nominee is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information reasonably required by the Lessor to decide whether the nominated person is an Approved Nominee;
 - (ii) not unreasonably withhold or delay its decision on whether FACS' nominee is an Approved Nominee; and
 - (iii) enter into a side deed with FACS and the Approved Nominee on substantially the same terms as this Deed.

4.10 Insurances

- (a) If the Lessor is required under the Lease to take out or maintain or take out and maintain any insurance required under clause 36 (*Insurance*) of the Services Deed to be taken out and maintained by ServiceCo (each such insurance, a **Lease Insurance**), then the Lessor undertakes to FACS to:
 - (i) take out or maintain or take out and maintain the Lease Insurances, as applicable; and
 - (ii) comply with clause 36 (*Insurance*) of the Services Deed with respect to the Lease Insurances, as if that clause were set out in full in this Deed (*mutatis mutandis*).

4.11 Other documents under the Lease

If FACS gives an Assignment Notice then, as from the Effective Date, ServiceCo must procure the assignment to FACS (or, if applicable, the Approved Nominee) of:

- (a) **[Insert list of documents to be assigned]**.

5. Representations and warranties

5.1 Representations and warranties by Lessor

- (a) The Lessor represents and warrants for the benefit of FACS that:
- (i) **(power to execute)**: it has the capacity and power to execute, deliver and carry out its obligations under this Deed and each other Service Package Document to which it is a party and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
 - (ii) **(legality)**: the execution, delivery and performance of this Deed and each other Service Package Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
 - (iii) **(validity)**: this Deed and each other Service Package Document to which it is a party constitutes a valid and legally binding obligation on it, enforceable in accordance with its terms;
 - (iv) **(registration)**: it is duly registered, properly constituted and remains in existence;
 - (v) **(no trust relationship)**: except as stated in this Deed, it is not the trustee, manager or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
 - (vi) **(information true and correct)**: all information provided by it to FACS in connection with this Deed and each Service Package Document to which it is a party is true, accurate and correct in all material respects and the Lessor is not aware of any material facts or circumstances that have not been disclosed to FACS and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or consent to the entry into the Lease;
 - (vii) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon it or its ability to perform its financial and other obligations under this Deed or any other Service Package Document to which it is a party;
 - (viii) **(Insolvency Event)**: no Insolvency Event has occurred in respect of it;
 - (ix) **(accounts)**:
 - A. its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
 - B. there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and
 - C. such accounts have been prepared in accordance with the Corporations Act and accounting principles and

practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;

- (x) **(no default):**
 - A. it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and
 - B. nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, and which would have a Material Adverse Effect;
- (b) **(no immunity):** neither it nor any of its assets enjoys any immunity from set off, suit or execution in any jurisdiction; and
- (c) **(own investigations):** in entering into this Deed, the Lease and any other Service Package Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by FACS, ServiceCo or any other person unless in respect of ServiceCo or any other person, other than FACS or an Associate of FACS, it is expressly permitted to do so in accordance with a Service Package Document to which it is a party.

5.2 Repetition of representations and warranties

The representations and warranties in this clause 5 are taken to be repeated immediately before Commercial Close, on the basis of the facts and circumstances as at that date.

5.3 Reliance on representations and warranties

The Lessor acknowledges that FACS executed this Deed and agreed to take part in the transactions that this Deed contemplates in reliance on the representations and warranties that are made or repeated in this clause 5.

6. Undertakings by Lessor

The Lessor undertakes to FACS as follows:

- (a) **(notification of Default Event):** in the case of the Lessor, it will notify FACS of any Default Event promptly after it gives notice of that Default Event in accordance with clause *[insert]* (*[Notice of ServiceCo Event of Default]*) of the Lease;
- (b) **(documents in relation to Default Event):** in the case of the Lessor, it will promptly give FACS a copy of all documents issued by the Lessor to ServiceCo in relation to a Default Event;
- (c) **(no amendment without consent):** it will not, without first obtaining the consent of FACS:
 - (i) make or permit any amendment or replacement of or addition to;

- (ii) subject to clause 3.2, terminate, surrender, rescind or accept repudiation of;
 - (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed or clause 8.3 (*Replacement of Key Subcontractor*) of the Financiers' Tripartite Deed; or
 - (iv) allow any express waiver of its material rights and obligations under, a Lease, provided that FACS will not withhold its consent to an amendment which is an amendment to which it has consented in accordance with the Services Deed;
- (d) **(disposals)**: it will not, after Commercial Close, transfer, assign, mortgage, charge, encumber or otherwise deal with its rights, obligations or interests in the Lease without first procuring that the proposed transferee, assignee, mortgagee or chargee executes a deed in favour of FACS (in a form and substance approved by FACS) pursuant to which the transferee, assignee, mortgagee or chargee agrees to accept and be bound by this Deed as if it were the Lessor;
- (e) **(attend meetings and inspections)**: it will (when reasonably requested by FACS):
- (i) attend, where reasonable and appropriate, meetings with FACS or any of FACS' Associates;
 - (ii) provide FACS or any of FACS' Associates and authorised personnel with:
 - A. in the case of the Lessor, full access to:
 - 1) the Site; and
 - 2) any other place where any Services are being provided,
 to the extent provided in the Services Deed; and
 - B. any other information, records or documents that FACS or any of its Associates (acting reasonably) requires in relation to the provision of the Services or compliance with the Lease or any information required by FACS to comply with requests from the New South Wales Auditor-General; and
 - (iii) permit FACS or any of FACS' Associates to attend all tests and inspections to be carried out in connection with the Service Package in accordance with the terms of the Lease, to the extent provided in the Services Deed; and
- (f) **(access to records)**: in the case of the Lessor, at the request of FACS, the Lessor will:
- (i) permit FACS or any of its Associates to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the Lessor in relation to the Service Package; and

- (ii) supply FACS or any of its Associates with a copy of any such report or document which they may require from time to time.

7. Acknowledgement by ServiceCo

ServiceCo consents to the terms of this Deed and will co-operate in the implementation of this Deed.

8. Dispute resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 8 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Services Deed are resolved. Accordingly, the provisions of clauses 40 (*Dispute Resolution procedure*) to 43 (*Reference to Arbitration*) of the Services Deed are incorporated into this Deed but as if:

- (a) the only persons party to the Services Deed, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

9. GST

- (a) **(Interpretation):**
 - (i) Except where the context suggests otherwise, terms used in this clause 9 have the same meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 9.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** Subject to clause 9(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:

- (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 9) for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (iii) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 9(c)(i).
- (d) **(Variation of GST):**
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 9(c) and clause 9(e)) varies from the additional amount paid by the Recipient under clause 9(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 9(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 9(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 9(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 9(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 9(c) (or the time at which such GST Amount would have been payable in accordance with clause 9(c) but for the operation of clause 9(e)(i)).
- (f) **(No merger):** This clause 9 will not merge on completion or termination of this Deed.
- (g) **(Application of Services Deed):** If clause 22 (*Payments, adjustments & Taxes*) of the Services Deed would apply in connection with a Taxable Supply to which this clause 9 also applies, then clause 22 (*Payments, adjustments & Taxes*) of the Services Deed will apply in connection with that supply and the provisions of this clause 9 (but for this paragraph) will not apply.

10. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

FACS

Attention:
Address:
Telephone:
Email:



FACS Note to Proponent: As the Proponent did not bid back this Schedule or Schedule 1 as part of its Proposal, FACS requires the Proponent to provide the below information.

ServiceCo

Name:
Address:
Email:
For the attention of:



Lessor

Name: [insert]
Address: [insert]
Email: [insert]
For the attention of: [insert]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address, or emailed (in the form agreed by both parties) to the email address, of the addressee in accordance with clause 10(b);
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 10(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) subject to clause 10(f), in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or

- C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and

- (f) **(notices sent by post)**: if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

11. Confidential Information and disclosure

11.1 Confidential Information and disclosure by FACS

- (a) Subject to clause 11.1(b), FACS and any Authority may disclose any information in connection with the Service Package, including Service Package Information.
- (b) FACS may only disclose the Commercially Sensitive Information:
- (i) in accordance with Laws or for the enforcement of any criminal law;
 - (ii) where disclosure is in the course of the official duties of the responsible Minister, the Treasurer, the Premier or the Attorney General;
 - (iii) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (iv) to satisfy the requirements of Parliamentary accountability;
 - (v) to any Associate of FACS to the extent necessary for the purpose of the Service Package provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
 - (vi) in annual reports of FACS;
 - (vii) in accordance with policies of FACS or the NSW Government or any Authority;
 - (viii) for any tender process required to be conducted under the Termination Payments Schedule; or
 - (ix) where the Commercially Sensitive Information is any part of the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of the Services Deed.

11.2 Confidential Information and disclosure by Lessor

- (a) **(Confidentiality obligation)**: Subject to clauses 11.2(b) and clause 11.4(b), the Lessor must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written

consent of FACS, make public or disclose to any person any Confidential Information.

- (b) **(Disclosure of Confidential Information):** Without limiting the Lessor's obligations under clause 11.2(a) and subject to clause 11.2(c), the Lessor may disclose Confidential Information:
 - (i) to its Associates to the extent necessary for the purpose of undertaking the Service Package; and
 - (ii) in accordance with clause 11.4.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, the Lessor must ensure that the person to whom the information is disclosed enters into a confidentiality deed with it to keep the Confidential Information confidential in accordance with this clause 11.
- (d) **(Permitted disclosure):** The Lessor may disclose Confidential Information and will not be required to seek FACS' consent to a disclosure, announcement or statement under clause 11.2(a) or 11.3(a) or to enter into a confidentiality deed under clause 11.2(c) where the disclosure announcement or statement is:
 - (i) required by Law, provided that it:
 - A. notifies FACS of the requirement to make that disclosure; and
 - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
 - (iii) required to be made to a court in the course of proceedings to which the Lessor is a party; or
 - (iv) required by a relevant recognised stock exchange, subject to:
 - A. the disclosure, announcement or statement not referring to FACS' or any of its Associates' involvement in the Service Package; and
 - B. the Lessor having used all reasonable endeavours to obtain FACS' consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

11.3 Public announcements by Lessor

Subject to clause 11.2(d), the Lessor must:

- (a) not make any public disclosures, announcements or statements in relation to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package, without FACS' prior consent;
- (b) comply with any terms and conditions FACS imposes and must use all reasonable endeavours to agree with FACS the wording and timing of all public

disclosures, announcements or statements by it or any of its Associates relating to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package before the relevant disclosure, announcement or statement is made; and

- (c) as soon as practicable, give to FACS a copy of any public disclosure, announcement or statement agreed to or approved by FACS in accordance with this clause 11.3 or for which FACS' consent or approval was not required in accordance with clause 11.4.

11.4 Information public or known

Notwithstanding anything in this clause 11, any party may disclose information in connection with the Service Package (including any Confidential Information) if:

- (a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 11; or
- (b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

11.5 Disclosure by FACS under GIPA Act

- (a) Notwithstanding the other provisions of this clause 11, the parties acknowledge that:
 - (i) the Service Package Documents and information concerning the Service Package Documents will be published on FACS' contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
 - (ii) FACS may make the Service Package Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
 - (i) FACS will notify the Lessor of any proposed disclosure of Commercially Sensitive Information by FACS under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
 - (ii) following notification by FACS in accordance with clause 11.5(b)(i), FACS will take reasonable steps to consult with the Lessor before disclosing Commercially Sensitive Information under the GIPA Act;
 - (iii) if, following:
 - A. notification by FACS in accordance with clause 11.5(b)(i); or
 - B. consultation between FACS and the Lessor in accordance with clause 11.5(b)(ii),

the Lessor objects to disclosure of some or all of the Commercially Sensitive Information, the Lessor must provide details of any such objection within five Business Days after the date the Lessor received notification from FACS or the date on which the consultation process concluded (as relevant);

- (iv) FACS may take into account any objection received from the Lessor pursuant to clause 11.5(b)(iii) in determining whether the Commercially Sensitive Information identified by the Lessor should be disclosed; and
- (v) nothing in this clause 11.5 will limit or otherwise affect the discharge of FACS' obligations under the GIPA Act.

11.6 Personal Information

The Lessor must:

- (a) not collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Policies;
- (b) not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Law, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Policies; and
- (c) keep, and make available to FACS on request, records detailing the recipient of any Personal Information that the Lessor has disclosed, the date of disclosure and the Personal Information that has been disclosed.

11.7 Privacy

- (a) **(Compliance):** Without limiting any obligations in respect of privacy set out in the Design Requirements or the Services Requirements, the Lessor agrees to, and will ensure that the Lease and any other Lease entered into by the Lessor in relation to the Service Package contains terms which require the Lessor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Lease or other relevant Lease (as the case may be), in the same way as FACS would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by FACS.
- (b) **(Release and Indemnity):** The Lessor must release, indemnify and must keep indemnified on demand FACS and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which FACS or any of its Associates suffer or incur resulting from any act done or practice engaged in by the Lessor or any of their respective Associates in connection with the Service Package, which would, had that act or practice been done or engaged in by FACS, have contravened any of the Privacy Legislation.

12. Termination of this Deed

- (a) **(Satisfaction of obligations under the Lease or assignment of Lease):** This Deed will terminate automatically without any requirement for any notice from any party:
 - (i) upon the performance and satisfaction of all of the obligations under the Lease; or
 - (ii) upon the assignment of the Lease to FACS.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

- (c) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
- (i) FACS' rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to FACS;
 - (v) any indemnity or financial security given in accordance with this Deed;
 - (vi) any limitation or exclusion of Liability; and
 - (vii) any right or obligation arising on termination or expiry of this Deed.
- (d) **(Interpretation):** No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.
- (e) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

13. Governing law and jurisdiction

13.1 Governing law

This Deed is governed by, and must be construed according to, the laws of New South Wales, Australia.

13.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought at any time in connection with this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 13.2(a).

14. Miscellaneous

14.1 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding)**: embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior written or other agreement of the parties.

14.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

14.3 Waiver

- (a) **(Writing)**: A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in, or the partial exercise or enforcement of, a right, provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement of, that or any other right provided by Law or under this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

14.4 Consents and approvals

A consent or approval required under this Deed from FACS may be given or withheld, or may be given subject to any conditions, as FACS (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

14.5 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed signed by or on behalf of each party.

14.6 Expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

14.7 Severance

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

14.8 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.

- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

14.9 Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

14.10 Moratorium legislation

A provision of any Law which comes into effect after the date of this Deed and operates to:

- (a) increase or improve any of ServiceCo's or the Lessor's rights, powers or remedies under this Deed or otherwise; or
- (b) prejudicially affect the exercise by FACS of any right, power or remedy under this Deed or otherwise,

(each matter referred to in (a) and (b), a **Specified Effect**) is, to the extent only that the Law has the Specified Effect, expressly waived by ServiceCo to the extent it is legally able to do so. If a waiver is ineffective the parties will consult in good faith to determine how the parties can be restored to their original position under this Deed.

Executed as a deed.

[Insert execution blocks]

Confidential

Schedule 28 – Termination Bond

THIS DEED POLL (BOND) is made on

20

BETWEEN:

| | |
|-----------------|--|
| Name | The Secretary of the Department of Family and Community Services as Housing Agency under section 16 of the <i>Community Housing Providers (Adoption of National Law) Act 2012</i> |
| Short form name | FACS |
| Notice details | [REDACTED] |
| Address: | [REDACTED] |
| Email: | [REDACTED] |
| Telephone: | [REDACTED] |

Given by:

| | |
|-----------------|---------------|
| Name | [Insert] |
| ABN | [Insert] |
| Short form name | Issuer |
| Notice details | [Insert] |
| Address: | [Insert] |
| Email: | [Insert] |
| Telephone: | [Insert] |

BACKGROUND:

- (a) By a deed dated [Insert] entitled 'Social and Affordable Housing Fund - Services Deed' (**Services Deed**) between The Uniting Church in Australia Property Trust (NSW) (ABN 77 005 284 605) for and on behalf of Uniting (NSW.ACT) (ABN 78 722 539 923) (also known as UnitingCare NSW.ACT) (**ServiceCo**) and FACS, ServiceCo agreed to, amongst other things, carry out the service package activities, including by providing accommodation services.
- (b) Under the provisions of the Services Deed, ServiceCo is required to procure the provision of this Bond to FACS.

AGREED TERMS:

This deed poll provides as follows:

1. The Issuer unconditionally and irrevocably undertakes and covenants to pay to FACS on written demand without reference to ServiceCo and notwithstanding any notice given by ServiceCo to the Issuer not to do so, any sum or sums which may from time to time be demanded in writing by FACS to a maximum aggregate sum of **[\$insert]**.
2. The Issuer's liability under this Bond will be a continuing liability and will continue until the earlier of the date:
 - (a) on which payment is made under this Bond of the maximum aggregate sum;
 - or

- (b) on which FACS notifies the Issuer in writing that this Bond is no longer required.
3. The liability of the Issuer under this Bond will not be discharged or impaired by reason of any change or changes (with or without the knowledge or consent of the Issuer) in any of the stipulations or provisions of the Services Deed or acts or things to be executed, performed or done under the Services Deed or by reason of any breach or breaches of the Services Deed by ServiceCo or FACS.
 4. The Issuer may at any time without being required to do so pay to FACS the maximum aggregate sum less any amount or amounts it may previously have paid under this Bond or such lesser sum as may be required and specified by FACS and thereupon the liability of the Issuer hereunder in respect of that amount paid shall immediately cease.
 5. FACS may not assign, grant a Security Interest (as that term is defined in the Services Deed) over, or otherwise dispose of all or any benefit, right or interest under this Bond without the prior consent (not to be unreasonably withheld) of the Issuer, provided that the prior consent of the Issuer will not be required if FACS assigns, grants a Security Interest over, or otherwise disposes of all or any benefit, right or interest under this Bond consequent upon the assignment, grant of a Security Interest over, or disposal otherwise of all or any benefit, right or interest in the Services Deed pursuant to clause 47 (*Assignment and amendments*) of the Services Deed.
 6. This Bond will be governed by and construed in accordance with the laws for the time being of New South Wales.
 7. Further to paragraph 1, written demand is payable at *[insert address]*. In the event that the Issuer ceases to be located at the said location, a written demand will be payable at any branch of the Issuer in Sydney, NSW.

Executed as a deed poll.

[Signature of Issuer]

Confidential

Schedule 29 – Deed of Indemnity

*Deed of Indemnity – Social and Affordable
Housing Fund*

Department of Family and Community Services (FACS)

and

*The Uniting Church in Australia Property Trust (NSW)
(Property Trust)*

ABN 77 005 284 605

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BETWEEN:

Name **The Secretary of the Department of Family and Community Services** as Housing Agency pursuant to section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW)

Short form name **FACS**

Notice details [REDACTED]

Address: [REDACTED]

Email: [REDACTED]

Telephone: [REDACTED]

Name **The Uniting Church in Australia Property Trust (NSW)**

ABN 77 005 284 605

Short form name **Property Trust**

Notice details [REDACTED]

Address: [REDACTED]

Email: [REDACTED]

Telephone: [REDACTED]

BACKGROUND:

- (A) FACS has agreed to enter into the Services Deed with ServiceCo on the condition that the Property Trust provides this document.

AGREED TERMS:

1. Definitions and interpretation

1.1 Defined terms

In this document:

Indemnified Event means any one or more of the following events:

- (a) any failure by ServiceCo to pay any money owed to FACS under or in relation to the Services Deed duly and punctually;
- (b) any failure by ServiceCo to observe or perform any of ServiceCo's Obligations;
- (c) any Service Package Document being wholly or partly void, voidable or unenforceable against ServiceCo or the Property Trust for any reason and whether or not FACS knew or ought to have known of that reason, with the result in any such case that sums which would (but for the voidness, voidability or unenforceability) have been recoverable by FACS under any Service Package Document are not recoverable by FACS under that Service Package Document;

- (d) ServiceCo being, for any reason and whether or not FACS knew or ought to have known of that reason, incapable of being sued;
- (e) ServiceCo lacking the capacity and power to execute, deliver or perform any of its obligations under any Service Package Document; or
- (f) a disclaimer of any Service Package Document (including the Services Deed) or property made by a liquidator of ServiceCo pursuant to Part 5.6 Division 7A of the Corporations Act or any other applicable laws.

Material Adverse Effect means, with respect to a person, a material adverse effect on:

- (a) their business, assets or financial condition; or
- (b) their ability to perform their obligations under any Service Package Document.

Relevant Person means ServiceCo, the Property Trust and any person who has executed a Security in favour of FACS.

Security means a mortgage, charge, pledge, lien, hypothecation, guarantee (including the guarantee under this document), indemnity (including the indemnity under this document), letter of credit, letter of comfort, performance bond, or other assurance against loss which secures an amount owed by ServiceCo or the Property Trust to FACS under or in relation to any Service Package Documents, whether existing at the date of this document or at any time in the future.

ServiceCo means The Uniting Church in Australia Property Trust (NSW) for and on behalf of Uniting (NSW.ACT) (also known as UnitingCare NSW.ACT).

ServiceCo's Obligations means the due and punctual performance by ServiceCo of all of its liabilities, obligations and agreements (present or future, actual or contingent) to FACS arising at any time, pursuant to or in connection with the Services Deed and each other Service Package Document including as may be modified or agreed upon in connection with the implementation of any remedy program or other cure in respect of any Major Default or other breach or default, in each case in accordance with the requirements of the Services Deed or otherwise by agreement by FACS at its sole and absolute discretion.

Services Deed means the document entitled 'Social and Affordable Housing Fund - Services Deed' dated on or about the date of this Deed between FACS and ServiceCo.

Unpaid Amount means an amount which is not paid on the date on which it is due and payable under this document.

1.2 The Services Deed

Subject to clauses 1.1 and 1.3, defined words and expressions used in this document have the meanings given to them in the Services Deed.

1.3 Interpretation

In this document:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (a) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

- (b) **(document and Schedule references)**: a reference to:
- (i) a party, clause, Schedule, Exhibit or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this document; and
 - (ii) a section is a reference to a section of a Schedule;
- (c) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (d) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (e) **(person)**: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (f) **(legislation)**: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (g) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (h) **(‘includes’)**: ‘includes’ and ‘including’ will be read as if followed by the phrase ‘(without limitation)’;
- (i) **(‘or’)**: the meaning of ‘or’ will be that of the inclusive, being one, some or all of a number of possibilities;
- (j) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms, including the electronic form in which it was generated;
- (k) **(‘\$’)**: a reference to ‘\$’, AUD, or dollar is to Australian currency;
- (l) **(Business Day)**: if the day on or by which anything is to be done under this document is not a Business Day, that thing must be done no later than the next Business Day;
- (m) **(day)**: except as otherwise provided in this document or where a reference is made to ‘Business Days’, day means a calendar day;
- (n) **(time)**: a reference to time is a reference to time in Sydney, Australia;
- (o) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (p) **(function)**: a function includes a power, authority or duty;

- (q) **(obligations and liabilities)**: a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (r) **('may')**: except to the extent that FACS is expressly required under this document to act reasonably:
 - (i) in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by FACS, means that FACS can exercise that power, right or remedy at its absolute and unfettered discretion (and without regard to ServiceCo), and FACS has no obligation to do so; and
 - (ii) FACS may consent or grant any approval as FACS (at its absolute and unfettered discretion (and without regard to ServiceCo)) thinks fit or may be given subject to any conditions;
- (s) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this document which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this document is deemed to refer to that other entity; or
 - (ii) ceases to exist, this document is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (t) **(asset)**: references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived from, the property or asset; and
- (u) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

2. Indemnity

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- [Redacted]

- [Redacted]

- [Redacted]

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- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

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- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [REDACTED]
- [REDACTED]

3. Nature and preservation of liability

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] s rights under this document, any Service Package Document or any Security;
- [REDACTED]
- [REDACTED]

- (a) **(Incorporation)** it is duly incorporated and existing under Australian law and has the capacity and power to execute, deliver and perform its obligations under this document;
- (b) **(Constitution)** the execution, delivery and performance of this document does not violate its constitution or any other document, agreement, law or rules by which it is bound;
- (c) **(Corporate power)** it has taken all action required to enter into this document and to authorise the execution and delivery of this document and the performance of its obligations under this document;
- (d) **(Filings)** it has filed all notices and effected all registrations with the Australian Securities and Investments Commission (ASIC) or similar office in its jurisdiction of incorporation and in any other jurisdiction as required by law, and those filings and registrations are current, complete and accurate;
- (e) not used ;
- (f) not used;
- (g) **(Status)** it is not in liquidation, provisional liquidation or receivership, or under administration, and no matter relating to it or any of its subsidiaries is the subject of a direction under, or having effect as if it were a direction under, section 14 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Law**), or the subject of an investigation under, or taken to be under, ASIC Law;
- (h) **(Ownership of property)** it has full legal capacity and power to own its property and assets and carry on its business as it is now being conducted;
- (i) **(Ranking of obligations)** this document constitutes a valid and legally binding obligation, enforceable in accordance with its terms, to rank at all times at least equally with all of its other present and future unsecured payment obligations (including, without limitation, contingent obligations), other than those which are mandatorily preferred by law, and that the Property Trust has taken all action required to ensure that its obligations under this document so rank and will continue to so rank;
- (j) **(No litigation)** no litigation, arbitration or administrative proceedings are taking place, pending or, to the knowledge of any of its officers, threatened against it, any of its subsidiaries, or any of its or their property, which, if adversely determined, would be likely to have either separately or in aggregate a Material Adverse Effect on it or any of its subsidiaries;
- (k) **(Financial statements)** its financial statements, current as at the date of this document have been prepared in accordance with the laws of Australia and (except where inconsistent with those laws) generally accepted accounting principles consistently applied, and give a true and fair view of the financial condition of it and its subsidiaries as at the date to which they are made up, and of the results of operations for the financial year then ended, and there has been no change since that date having a Material Adverse Effect on it, or on it and its subsidiaries on a consolidated basis;
- (l) **(Other information)** the written information and reports (if any) which it has given to FACS in connection with the negotiation and preparation of this document:
 - (i) was, when given, true and accurate in all material respects and not misleading, whether by omission or otherwise; and

- (ii) contain forecasts and opinions, all of which were made or formed after due and careful consideration on the part of its relevant officers based on the best information available to it, and were fair and reasonable when made or formed; and
- (m) **(No filings or Taxes)** it is not necessary or desirable to ensure the legality, validity, enforceability or admissibility in evidence of this document that this document or any other instrument be filed or registered with any Authority or that any Taxes be paid.

4.2 Reliance on representations and warranties

The Property Trust acknowledges that FACS entered into the Services Deed in reliance on the representations and warranties in this clause 4.

4.3 No representations to Property Trust

The Property Trust confirms that it has not executed this document as a result of, or in reliance upon, any promise, representation, statement or information of any kind or nature, whatever given or offered to it by or on behalf of FACS whether in answer to any inquiry by or on behalf of the Property Trust or not.

5. Payments

5.1 On demand

All money payable by the Property Trust under this document must be paid, on demand by FACS, in immediately available funds to the account and in the manner notified from time to time by FACS to the Property Trust.

5.2 Appropriation of payments

FACS may appropriate any money received by it under or in respect of this document, any Service Package Document, or any Security, in the manner, order and at any time as FACS, at its absolute discretion, determines.

5.3 Interest

The Property Trust must, on demand by FACS, from time to time pay interest on all Unpaid Amounts. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment at the Overdue Rate and, if not paid when due, will itself bear interest in accordance with this clause 5.3. Interest is calculated on the basis of the actual number of days on which interest has accrued and on a 365 day year.

5.4 Merger

If the liability of the Property Trust to pay to FACS any money under this document becomes merged in any judgment or order, then as an independent obligation the Property Trust must pay interest on the amount of that money at the rate which is the higher of that payable under clause 5.3 and that fixed by or payable under the judgment or order.

5.5 Withholding for Taxes

All payments by the Property Trust under this document will be without deduction or withholding for any present or future Taxes unless the Property Trust is compelled by law to make any deduction or withholding. If this is the case, the Property Trust must pay to FACS any additional amounts as are necessary to enable FACS to receive, after all those

deductions and withholdings, a net amount equal to the full amount which would otherwise have been payable had no such deduction or withholding been required to be made.

6. Expenses, stamp duty and GST

6.1 Expenses

The Property Trust must, on demand, indemnify FACS and keep FACS indemnified, against all reasonable expenses (including legal fees, costs and disbursements on a solicitor/own client basis) incurred by FACS in connection with the successful enforcement, attempted enforcement or preservation of any rights under this document.

6.2 Stamp duties

The Property Trust must:

- (a) **(Payment of all duties):** pay all stamp duties, registration and similar Taxes, including fines and penalties, financial institutions duty (if any) and debits tax (if any) in connection with the execution, delivery, performance, enforcement or attempted enforcement of this document, or any payment or other transaction under, or contemplated in this document; and
- (b) **(Indemnity):** indemnify FACS and keep FACS indemnified against any loss or liability incurred or suffered by it as a result of the delay or failure by the Property Trust to pay Taxes.

6.3 GST

- (a) **(Interpretation):**
 - (i) Except where the context suggests otherwise, terms used in this clause 6.3 have the meanings given to those terms by the GST Law (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 6.3.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this document (other than under this clause 6.3) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 6.3.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements)** Any payment or reimbursement required to be made under this document that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable)** Subject to the remainder of this clause 6.3, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this document (except where it is expressly stated to be inclusive of GST):

- (i) any party (**Recipient**) that is required to provide consideration for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (ii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 6.3(c)(i).
- (d) **(Variation of GST):**
- (i) If the GST Amount recovered by the Supplier from the Recipient under clause 6.3(c) for a supply varies from the amount of GST paid or payable by the Supplier on that supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this document within seven days after the Supplier becomes aware of the adjustment event.
- (e) **(Exclusion of GST from calculations)** If a payment is calculated by reference to, or as a specified percentage of, another amount or revenue stream, that payment shall be calculated by reference to, or as a specified percentage of, that other amount or revenue stream net of GST.
- (f) **(No merger)** This clause will not merge on completion or termination of this document.

7. Assignment

The Property Trust acknowledges and agrees that FACS may at any time assign or otherwise transfer all or any part of its rights under this document in accordance with clause 47.3 (*Assignment by FACS*) of the Services Deed and may disclose to any such proposed assignee or transferee any information in the possession of FACS relating to the Property Trust.

8. Governing law and jurisdiction

8.1 Governing law

This document is governed by, and must be construed according to, the Laws of New South Wales, Australia.

8.2 Jurisdiction

- (a) **(Acceptance of jurisdiction):** The Property Trust irrevocably submits to the non-exclusive jurisdiction of the courts and appellate courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this document.
- (b) **(No objection to inconvenient forum):** The Property Trust irrevocably waives any objection it may now or in the future have to the venue of any action or proceeding, and any claim it may now or in the future have that any action or

proceeding has been brought in an inconvenient forum, if that venue falls within clause 8.2(a).

9. Notices

9.1 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this document:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Property Trust

Name: The Uniting Church in Australia Property Trust (NSW)
Address: [REDACTED]
Email: [REDACTED]
For the attention of: [REDACTED]

FACS

Name: FACS
Address: [REDACTED]
Email: [REDACTED]
For the attention of: [REDACTED]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address, or emailed (in the form agreed by both parties) to the email address, of the addressee set out in clause 1.1(b);
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 1.1(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) subject to clause 1.1(f), in the case of prepaid post, on the fourth Business Day after the date of posting to an address within Australia and on the tenth Business Day after the date of posting by airmail to an address outside Australia;
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;

- B. the time that the communication enters an information system which is under the control of the addressee; or
- C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and

- (f) **(notices sent by post)**: if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

10. Miscellaneous

10.1 Certificate of FACS

A certificate in writing of FACS certifying the amount payable by ServiceCo or the Property Trust to FACS or stating any other act, matter or thing relating to this document, any Service Package Document or any Security will be prima facie evidence of the contents of the certificate.

10.2 Continuing obligation

This document will be a continuing obligation, notwithstanding any termination by the Property Trust, settlement of account, intervening payment, a disclaimer of any Service Package Document or property made by a liquidator of ServiceCo pursuant to Part 5.6 Division 7A of the Corporations Act or other applicable laws, express or implied revocation or any other matter or thing, and continues to entitle FACS to the due and punctual payment of any amount which becomes due or owing, or is incurred after termination, settlement of account, payment, revocation or other matter or thing until a final discharge has been given to the Property Trust.

10.3 Further assurance

The Property Trust will immediately on demand by FACS, and at the entire cost and expense of the Property Trust, perform all duties and execute all agreements, assurances and other documents as FACS reasonably requires, to perfect or give effect to the rights and powers of FACS, created, or intended to be created, by this document.

10.4 Form of demand

A demand on the Property Trust for performance under this document may be in the form and contain any information as FACS determines. Where the demand relates to the payment of an amount in respect of the indemnity under clause 2.1 it shall specify the amount demanded and the basis of the calculation.

10.5 Severance

If, at any time, any provision of this document is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this document; or

- (b) that provision under the Law of any other jurisdiction.

10.6 Remedies cumulative

The rights and remedies conferred by this document on FACS are cumulative and in addition to all other rights or remedies available to FACS by law or by virtue of any Service Package Document or any Security.

10.7 Waiver

- (a) **(Writing):** A waiver given by a party under this document is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in, or the partial exercise or enforcement of, a right provided by Law or under this document by a party, does not preclude or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this document.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this document operates as a waiver of another breach of that term or of a breach of any other term of this document.

10.8 Consents and approvals

Where under this document the consent or approval of FACS is required to any act or thing then, unless expressly provided otherwise in this document, that consent or approval may be given or withheld at the absolute and unfettered discretion of FACS.

10.9 Moratorium legislation

A provision of any Law which comes into effect after the date of this document and operates to:

- (a) increase or improve any of the Property Trust's rights, powers or remedies under this document or otherwise; or
- (b) prejudicially affect the exercise by FACS of any right, power or remedy under this document or otherwise,

(each matter referred to in paragraph (a) or (b), a "**Specified Effect**") is, to the extent only that the Law has the Specified Effect, expressly waived by the Property Trust to the extent it is legally able to do so. If a waiver is ineffective the parties will consult in good faith to determine how the parties can be restored to their original positions under this document.

10.10 Debit accounts and set-off

FACS may, without prior notice to the Property Trust, set-off any amount which is owing on any account whatsoever by FACS to the Property Trust under the Service Package Documents, against any liability of the Property Trust to FACS under this document. The rights of FACS under this clause 10.10 are without prejudice and in addition to any other right or remedy to which it is at any time entitled.

10.11 Counterparts

This document may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same document.

10.12 Execution by less than all parties

This document binds each of the persons executing it notwithstanding:

- (a) that one or more of the persons named in this document as a Property Trust may not execute or may not become or may cease to be bound by this document; or
- (b) that FACS may not execute or may only subsequently execute this document.

10.13 Resolution of disputes binding

The settlement or the final resolution of any dispute arising under or in connection with the Services Deed, including any dispute as to ServiceCo's liability under or in connection with the Services Deed, in accordance with the procedures provided for in the Services Deed or otherwise as agreed between the parties in the Services Deed, will be final and binding on the Property Trust and the Property Trust will not reopen, revisit or otherwise dispute that settlement or resolution and the subject matter of that settlement or resolution.

10.14 No right to be heard

To the fullest extent permitted by law, the Property Trust waives and expressly disclaims any right to be heard at or appear in any proceedings (whether judicial, arbitral, administrative or of any other nature including but not limited to any alternative dispute resolution) conducted for the purpose of settling or resolving, or attempting to settle or resolve, any dispute referred to in clause 10.13 or otherwise to be involved in the settlement or resolution of any such dispute.

10.15 Exclusion of Civil Liability Act 2002 (NSW)

- (a) To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002 (NSW)* is excluded in relation to any and all rights, obligations and Liabilities arising under or in relation to this document, howsoever those rights, obligations or Liabilities are sought to be enforced.
- (b) Without limiting the generality of clause 10.15(a), it is further agreed that the rights, obligations and liabilities of FACS and the Property Trust (including those relating to proportionate liability) are as specified in this document and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in respect of the Services Deed, tort or otherwise.

Executed as a deed.

[Insert execution blocks]

Confidential

Schedule 30 – Variation Request

VARIATION REQUEST

Prepared in accordance with clause 26.1
(*Variation Request*) of the Services Deed

VR [*insert no*]

| | |
|-------------------|--|
| SERVICECO: | The Uniting Church in Australia Property Trust (NSW) (ABN 77 005 284 605) for and on behalf of Uniting (NSW.ACT) (ABN 78 722 539 923) (also known as UnitingCare NSW.ACT) (ServiceCo) |
| DATE: | [<i>insert</i>] |
| STAGE(S): | [<i>insert Stage number(s) if applicable</i>] |

Dear [*insert*]

- (a) We refer to the 'Services Deed' between the Department of Family and Community Services (**FACS**) and ServiceCo dated [*insert*] (**Services Deed**).
- (b) Capitalised terms used in this Variation Request have the meaning given to them in the Services Deed unless otherwise defined.
- (c) [[**FACS / ServiceCo**] wishes to propose a Variation]. This Variation Request relates to:
 - (i) [*insert*];
 - (ii) [*insert*].
- (d) For the purposes of clause 26.1 (*Variation Request*) of the Services Deed:

| |
|--|
| (i) details of the proposed Variation : |
| [<i>insert</i>] |
| (ii) details of the preferred financing for the proposed Variation in accordance with clause 31 (<i>Compensation</i>) of the Services Deed (where the Variation will result in an increase to the cost of the Relevant Infrastructure or the Services): |
| [<i>insert</i>] |
| [Drafting Note: in the case of a Variation proposed by FACS only] |
| [(iii) specific information that FACS requires that ServiceCo include in its Variation Proposal:] |
| [<i>insert</i>] |

Yours faithfully

[**FACS / ServiceCo name**]

[insert name of FACS Representative / ServiceCo Representative]

[FACS Representative/ServiceCo Representative]

[List any Attachments]

Confidential

Schedule 31 – Variation Proposal

VARIATION PROPOSAL

Prepared in accordance with clause 26.2 (Variation Proposal) of the Services Deed VP *[insert no]*

| | |
|-------------------------------|--|
| SERVICECO: | The Uniting Church in Australia Property Trust (NSW) (ABN 77 005 284 605) for and on behalf of Uniting (NSW.ACT) (ABN 78 722 539 923) (also known as UnitingCare NSW.ACT) (ServiceCo) |
| DATE: | <i>[insert]</i> |
| In relation to: | |
| VARIATION REQUEST NO.: | <i>[insert]</i> |
| DESCRIPTION: | <i>[insert]</i> |
| STAGE(S): | <i>[insert Stage number(s) if applicable]</i> |

Dear *[insert]*

- (a) We refer to:
- (i) the 'Services Deed' between the Department of Family and Community Services (**FACS**) and ServiceCo dated *[insert]* (**Services Deed**); and
 - (ii) Variation Request No. *[insert]* dated *[insert]* and issued by [**FACS/ ServiceCo**] (**Variation Request**).
- (b) Capitalised terms used in this Variation Proposal have the meaning given to them in the Services Deed unless otherwise defined.
- (c) For the purposes of clause 26.2 (*Variation Proposal*) of the Services Deed, details of the effect of the Variation Request are as follows:

| (i) Mitigating Factors: | | |
|--------------------------------|---|-----------------|
| (A) | all reasonable endeavours ServiceCo, or any of its Associates, has taken (or proposes to take in the future) to mitigate, minimise or avoid the adverse effects, costs, consequences or duration of the Variation (including by putting in place temporary measures reasonably required by FACS); | <i>[insert]</i> |
| (B) | all reasonable steps ServiceCo, or any of its Associates, has taken (or proposes to take in the future) | <i>[insert]</i> |

| | | |
|---|--|----------|
| | which a prudent, competent and experienced contractor in the circumstances of ServiceCo or the relevant Associate of ServiceCo, would have taken to mitigate, minimise or avoid the effects, costs, consequences or duration of the Variation; | |
| (C) | all actions ServiceCo, or any of its Associates, has taken (or proposes to take in the future) to take advantage of any positive or beneficial effects of the Variation and maximise any reduction in costs arising from the Variation. | [insert] |
| (ii) the Relevant Event Effects (if any), being the effects of the Variation on: | | |
| (A) | the carrying out of the Service Package Activities and ServiceCo's ability to carry out the Services in accordance with the Services Requirements; | [insert] |
| (B) | any other relevant part of the Services Deed, including any amendments required; | [insert] |
| (C) | any compensation sought by ServiceCo as a consequence of the Variation under clause 31 (<i>Compensation</i>) of the Services Deed; | [insert] |
| (D) | any relief sought by ServiceCo as a consequence of the Variation under the applicable clause of the Services Deed. | [insert] |
| (iii) any other relevant information : | | |
| [insert] | | |

Yours faithfully

[insert ServiceCo name]

[insert name of ServiceCo Representative]

ServiceCo Representative

[List any Attachments]

Confidential

Schedule 32 – Change Proposal

CHANGE PROPOSAL

Prepared in accordance with clause 28
(Change in Mandatory Requirements) of
the Services Deed

CP [*insert no*]

| | |
|-------------------|--|
| SERVICECO: | The Uniting Church in Australia Property Trust (NSW) (ABN 77 005 284 605) for and on behalf of Uniting (NSW.ACT) (ABN 78 722 539 923) (also known as UnitingCare NSW.ACT) (ServiceCo) |
| DATE: | [<i>insert</i>] |
| STAGE(S): | [<i>insert Stage number(s) if applicable</i>] |

Dear [*insert*]

- (a) We refer to the 'Services Deed' between the Department of Family and Community Services (**FACS**) and ServiceCo dated [*insert*] (**Services Deed**).
- (b) ServiceCo wishes to notify FACS that it become aware of a Change in Mandatory Requirements on [*insert date*].
- (c) The Change in Mandatory Requirements is:
 - (i) [*insert*];
 - (ii) [*insert*].
- (d) For the purposes of clause 28 (*Change in Mandatory Requirements*) of the Services Deed, details of the effect of the Change in Mandatory Requirements are as follows:

| (i) Mitigating Factors: | | |
|-------------------------|--|-------------------|
| (A) | all reasonable endeavours ServiceCo, or any of its Associates, has taken (or proposes to take in the future) to mitigate, minimise or avoid the adverse effects, costs, consequences or duration of the Change in Mandatory Requirements (including by putting in place temporary measures reasonably required by FACS); | [<i>insert</i>] |
| (B) | all reasonable steps ServiceCo, or any of its Associates, has taken (or proposes to take in the future) which a prudent, competent and experienced contractor in the circumstances of ServiceCo or the relevant | [<i>insert</i>] |

| | | |
|--|---|----------|
| | Associate of ServiceCo, would have taken to mitigate, minimise or avoid the effects, costs, consequences or duration of the Change in Mandatory Requirements; | |
| (C) | all actions ServiceCo, or any of its Associates, has taken (or proposes to take in the future) to take advantage of any positive or beneficial effects of the Change in Mandatory Requirements and maximise any reduction in costs arising from the Change in Mandatory Requirements. | [insert] |
| (ii) the Relevant Event Effects (if any), being the effects of the Change in Mandatory Requirements on: | | |
| (A) | the carrying out of the Service Package Activities and ServiceCo's ability to carry out the Services in accordance with the Services Requirements; | [insert] |
| (B) | any other relevant part of the Services Deed, including any amendments required; | [insert] |
| (C) | any compensation sought by ServiceCo as a consequence of the Change in Mandatory Requirements under clause 31 (<i>Compensation</i>) of the Services Deed; | [insert] |
| (D) | any relief sought by ServiceCo as a consequence of the Change in Mandatory Requirements under the applicable clause of the Services Deed. | [insert] |
| (iii) any other relevant information : | | |
| [insert] | | |

Yours faithfully

[insert ServiceCo name]

Signed by:

[insert name of ServiceCo Representative]

ServiceCo Representative

[List any Attachments]

Confidential

Schedule 33 – Early Warning Notice

EARLY WARNING NOTICE

Prepared in accordance with EWN [*insert no*]
[*clause 23 (Delivery Phase – delay)*
/ *clause 24 (Service Delivery Phase –*
Intervening Events)] of the Services Deed

SERVICECO: The Uniting Church in Australia Property Trust (NSW) (ABN 77 005 284 605) for and on behalf of Uniting (NSW.ACT) (ABN 78 722 539 923) (also known as UnitingCare NSW.ACT) (**ServiceCo**)

DATE OF NOTICE: [*insert*]

In relation to:

DESCRIPTION: [*insert*]

STAGE(S): [*insert Stage number(s) if applicable*]

Dear [*insert*]

- (a) We refer to the 'Services Deed' between the Department of Family and Community Services (**FACS**) and ServiceCo dated [*insert*] (**Services Deed**).
- (b) Capitalised terms used in this notice have the meaning given to them in the Services Deed unless otherwise defined.
- (c) ServiceCo wishes to notify FACS that it has become aware of matter(s) within the meaning of paragraph [*insert*] of the definition of Relief Event which [*will / is likely to*] give rise to a delay in achieving a Program Milestone by the relevant Milestone Date. These matters are:
 - (i) [*insert*];
 - (ii) [*insert*].

OR

ServiceCo wishes to notify FACS that it has become aware of matter(s) within the meaning of paragraph [*insert*] of the definition of Intervening Event which [*has prevented / will prevent*] ServiceCo from performing any of the Services in accordance with the Services Deed. These matters are:

- (i) [*insert*];
- (ii) [*insert*].
- (d) ServiceCo considers the delay and/or effect the matters referred to in paragraph (c) is likely to cause is [*insert description of expected period of delay and/or other effects*].

Yours faithfully

[*insert ServiceCo name*]

[insert name of ServiceCo Representative]

ServiceCo Representative

[List any Attachments]

Confidential

Schedule 34 – Delay Notice

DELAY NOTICE

Prepared in accordance with DN *[insert no]*

**[clause 23 (Delivery Phase – delay)
/ clause 24 (Service Delivery Phase –
Intervening Events)]** of the Services Deed

| | |
|-------------------|--|
| SERVICECO: | The Uniting Church in Australia Property Trust (NSW) (ABN 77 005 284 605) for and on behalf of Uniting (NSW.ACT) (ABN 78 722 539 923) (also known as UnitingCare NSW.ACT) (ServiceCo) |
|-------------------|--|

| | |
|------------------------|-----------------|
| DATE OF NOTICE: | <i>[insert]</i> |
|------------------------|-----------------|

In relation to:

| | |
|----------------------------------|---|
| EARLY WARNING NOTICE NO.: | <i>[insert or if there is no relevant Early Warning Notice, insert 'N/A']</i> |
|----------------------------------|---|

| | |
|---------------------|-----------------|
| DESCRIPTION: | <i>[insert]</i> |
|---------------------|-----------------|

| | |
|------------------|---|
| STAGE(S): | <i>[insert Stage number(s) if applicable]</i> |
|------------------|---|

Dear *[insert]*

- (a) We refer to:
 - (i) the 'Services Deed' between the Department of Family and Community Services (**FACS**) and ServiceCo dated *[insert]* (**Services Deed**); and
 - (ii) Early Warning Notice No. *[insert]* dated *[insert]* (**Early Warning**).
- (b) Capitalised terms used in this notice have the meaning given to them in the Services Deed unless otherwise defined.
- (c) ServiceCo wishes to notify FACS of the following matter(s) which constitute a **[Relief Event / Intervening Event]** within the meaning of paragraph *[insert]* of the definition of **[Relief Event / Intervening Event]**:
 - (i) *[insert (please specify, in particular, any information different to that outlined in any Early Warning)]*;
 - (ii) *[insert]*.
- (d) For the purposes of clause **[23 / 24]** of the Services Deed, details of the **[Relief Event / Intervening Event]** are as follows:

| | | |
|--------------------------------|---|-----------------|
| (i) Mitigating Factors: | | |
| (A) | all reasonable endeavours ServiceCo, or any of its Associates, has taken (or proposes to take in the future) to mitigate, minimise or avoid the adverse effects, costs, | <i>[insert]</i> |

| | | |
|--|---|--|
| | consequences or duration of the [Relief Event / Intervening Event] (including by putting in place temporary measures reasonably required by FACS); | |
| (B) | all reasonable steps ServiceCo, or any of its Associates, has taken (or proposes to take in the future) which a prudent, competent and experienced contractor in the circumstances of ServiceCo or the relevant Associate of ServiceCo, would have taken to mitigate, minimise or avoid the effects, costs, consequences or duration of the [Relief Event / Intervening Event] ; | <i>[insert]</i> |
| (C) | all actions ServiceCo, or any of its Associates, has taken (or proposes to take in the future) to take advantage of any positive or beneficial effects of the [Relief Event / Intervening Event] and maximise any reduction in costs arising from the [Relief / Intervening Event] . | <i>[insert]</i> |
| (ii) the Relevant Event Effects (if any), being the effect of the [Relief Event / Intervening Event] on: | | |
| (A) | the carrying out of the Service Package Activities and ServiceCo's ability to carry out the Services in accordance with the Services Requirements; | <i>[Insert. In the case of a Relief Event, this should clearly identify the Service Package Dwellings that ServiceCo intended to utilise to meet the relevant Program Milestone(s).]</i> |
| (B) | any other relevant part of the Services Deed, including any amendments required; | <i>[insert]</i> |
| (C) | any compensation sought by ServiceCo as a consequence of the [Relief Event / Intervening Event] under clause 31 (<i>Compensation</i>) of the Services Deed; | <i>[insert]</i> |
| (D) | any relief sought by ServiceCo as a consequence | |

| | | |
|--|--|--|
| | of the [Relief Event / Intervening Event] under the applicable clause of the Services Deed. | |
| (iii) any other relevant information: | | |
| [insert] | | |

Yours faithfully

[insert ServiceCo name]

Signed by:

[insert name of ServiceCo Representative]

ServiceCo Representative

[List any Attachments]

Confidential

Schedule 35 – Notice of Service Readiness

NOTICE OF SERVICE READINESS

Prepared in accordance with clause 17.5 SR *[insert no]*
(Notice of Service Readiness) of the
 Services Deed

| | |
|-------------------|--|
| SERVICECO: | The Uniting Church in Australia Property Trust (NSW) (ABN 77 005 284 605) for and on behalf of Uniting (NSW.ACT) (ABN 78 722 539 923) (also known as UnitingCare NSW.ACT) (ServiceCo) |
| DATE: | <i>[insert]</i> |
| STAGE: | <i>[insert Stage number]</i> |

Dear *[insert]*

- (a) We refer to:
 - (i) the 'Services Deed' between the Department of Family and Community Services (**FACS**) and ServiceCo dated *[insert]* (**Services Deed**); and
 - (ii) ServiceCo's notice dated *[insert]* providing FACS with notice of a proposed Stage in accordance with clause 17.2 (*Notice of Stages*) of the Services Deed.
- (b) ServiceCo wishes to notify FACS that it is of the reasonable opinion that it has met the Minimum Stage Requirements.
- (c) In accordance with clause 17.5 (*Notice of Service Readiness*) of the Services Deed and the Service Readiness Schedule, we attach the following documents as evidence of Service Readiness:

| Service Readiness Criteria | | | |
|-----------------------------------|----------------|-----------|--------------------|
| Item | Subject matter | Criterion | Document reference |

| | | | |
|---|--------------|--|-----------------|
| 1 | Registration | Each of: <ol style="list-style-type: none"> 1. ServiceCo; 2. each Key Subcontractor providing any Asset Management Services; and 3. each Key Subcontractor providing any Tenancy Management Services, has become a Registered CHP, with the tier of registration being that identified in the Contract Particulars. | <i>[insert]</i> |
|---|--------------|--|-----------------|

Service Readiness Criteria

| Item | Subject matter | Criterion | Document reference |
|------|----------------|-----------|--------------------|
|------|----------------|-----------|--------------------|

| | | | |
|---|------------------------|---|----------|
| 2 | Director's certificate | ServiceCo has provided FACS with a certificate executed by a board member of ServiceCo with respect to the applicable Stage that: | [insert] |
|---|------------------------|---|----------|

1. identifies the addresses of each Service Package Dwelling to be used for Social Housing and Affordable Housing in that Stage;
2. attaches a certificate of practical completion issued in accordance with the construction contract between ServiceCo and the relevant Subcontractor in respect of the Relevant Infrastructure comprising the Stage;
3. confirms that ServiceCo has in place all resourcing required for the provision of the Service Package in respect of that Stage (including employees required for the Services and all systems);
4. confirms that ServiceCo has in place all of the Insurances required under clause 36 (*Insurance*) of this Deed in respect of the Service Delivery Phase;
5. confirms each employee required for the Services has passed the Employee Checks applicable to that employee;
6. confirms that each Service Package Dwelling is Fit For Purpose in accordance with section 2.6 of the Services Specification; and
7. confirms that Service Package Dwellings are in accordance with the Single Storey Guidelines, where required by the Services Specification.

| | | | |
|---|---------------|---|----------|
| 3 | Certification | ServiceCo has provided FACS with the following certification: | [insert] |
|---|---------------|---|----------|

1. to the extent the Stage is not comprised of properties leased to ServiceCo, a copy of the occupation certificate for each Service Package Dwelling for social and affordable housing. The occupation certificate must be provided by a NSW Building Professionals Board Category A1 Unrestricted Certifier; and
2. work as executed plans and a certificate from an independent 'LHA Design Guideline Assessor' as approved by Livable Housing Australia. This applies to New Dwellings and Substituted New Dwellings only.

Service Readiness Criteria

| Item | Subject matter | Criterion | Document reference |
|-------------|-----------------------|------------------|---------------------------|
|-------------|-----------------------|------------------|---------------------------|

| | | | |
|---|------------|--|----------|
| 4 | Compliance | <p>The Service Package Dwellings for the relevant Stage comply with the Design Requirements, evidenced by:</p> <ol style="list-style-type: none"> 1. a statement of compliance from an independent architect registered with the NSW Architects Registration Board that each Service Package Dwelling in the relevant Stage that must be designed in accordance with the "Schedule 1 Design Quality Principles" of the State Environmental Planning Policy No 65 pursuant to section 2.2.1 of the Services Specification, has been designed pursuant to that schedule; and 2. a statement of compliance from an independent architect registered with the NSW Architects Registration Board that each Service Package Dwelling in the relevant Stage that must be designed in accordance with the Apartment Design Guide pursuant to section 2.2.1 of the Services Specification, has been designed in accordance with that guide. | [insert] |
|---|------------|--|----------|

| | | | |
|---|---|--|----------|
| 5 | Private Housing and Supporting Infrastructure | <p>ServiceCo has ensured that:</p> <ol style="list-style-type: none"> 1. to the extent a Site on which the Stage is located has Private Housing, 100% of Private Housing is available for occupation; and 2. all of the Supporting Infrastructure for the Site on which the Stage is located (if any) has achieved completion. | [insert] |
|---|---|--|----------|

(d) [On the basis that this is the first Stage to achieve Service Readiness, we also attach:]

[Drafting Note: This paragraph (d) (including the following table, comprising items 6 and 7) should only be included in respect of notice for the first Stage to achieve Service Readiness.]

| | | | |
|---|--------------------|--|----------|
| 6 | Template documents | <p>ServiceCo and FACS have agreed the updates required (if any) to the following documents in accordance with section 5.8 of the Services Specification:</p> <ol style="list-style-type: none"> 1. Tenant Needs Assessment Template; and 2. Tenant Support Services Plan Template. | [insert] |
|---|--------------------|--|----------|

| | | | |
|---|------------------|----------------|----------|
| 7 | Service Delivery | ServiceCo has: | [insert] |
|---|------------------|----------------|----------|

- Phase Plans
1. submitted final drafts of the Service Delivery Phase Plans as required by and otherwise in accordance with the Service Delivery Phase Plans Schedule; and
 2. received approval of those final versions pursuant to clause 10 (*Review of documents by FACS*) of this Deed.
-

Yours faithfully

[insert ServiceCo name]

Signed by:

[insert name of ServiceCo Representative]

ServiceCo Representative

Confidential

Schedule 36 – Quarterly Delivery Report

Quarterly Delivery Report

Period covered: This report covers the period between:

XX/XX/20XX to XX/XX/20XX

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1 ServiceCo Report - Overview

Guidance Note: *ServiceCo is to provide a summary/overview of the Delivery Phase Activities and the Service Package more generally.*

2 Program Milestones – Level 1 Reporting

Guidance Note: The Program Milestone reporting is for ServiceCo to provide an update on progress against the Program Milestones. ServiceCo should use this section to identify any issues with achieving Program Milestones and provide risk and mitigation strategies. Individual project/Site issues should be captured in the level 2 reporting. This does not limit or otherwise affect ServiceCo’s obligation to notify FACS under clause 16.3(b).

2.1 Summary of Program Milestones

Guidance Note: ServiceCo to complete the following summary table.

| Program Milestone | Number of SP Dwellings to date to have achieved Program Milestone | Milestone Date at end of year 1 | | Milestone Date at end of year 2 | | Milestone Date at end of year 3 | | Risk | Comments |
|------------------------------|---|---|--|---|--|---|--|------|----------|
| | | Number of SP Dwellings required to achieve Program Milestone* | Forecast number of SP Dwellings to achieve Program Milestone | Number of SP Dwellings required to achieve Program Milestone* | Forecast number of SP Dwellings to achieve Program Milestone | Number of SP Dwellings required to achieve Program Milestone* | Forecast (number of SP Dwellings) to achieve Program Milestone | | |
| Site Secured | | | | | | | | | |
| Development Consent Obtained | | | | | | | | | |
| Construction Commenced | | | | | | | | | |
| Service Readiness | | | | | | | | | |

| | | | | | | | | | |
|-----------|--|--|--|--|--|--|--|--|--|
| Milestone | | | | | | | | | |
|-----------|--|--|--|--|--|--|--|--|--|

*This is the number of SP Dwellings required to reach that Program Milestone as set out in the Program Milestones Schedule.

| | | |
|-------|--|---|
| Red | | Significant issues – ServiceCo has identified that the Program Milestones will be delayed |
| Amber | | Potential Issues – ServiceCo has identified there are issues that may affect the Program Milestones being achieved. |
| Green | | No Issues - On track |

2.2 ServiceCo Service Package risks

Guidance Note: ServiceCo is to address any amber and red risks (as described) in the above table, including:

- whether the risk is a 'significant issue' (being an issue that ServiceCo has identified that will delay Program Milestones) or a 'potential issues' (being an issue that may affect the Program Milestones being achieved); and
- how these risks will be mitigated/managed.

| Milestone | Number of dwellings at risk | Issue | Significant or potential issue | Risk | Mitigation strategy |
|-----------|-----------------------------|-------|--------------------------------|------|---------------------|
| | | | | | |
| | | | | | |
| | | | | | |

2.3 Progress in relation to Program Milestones

Guidance Note: ServiceCo is to outline a summary of key progress activities relating to the Program Milestones.

| Milestone | Key Progress |
|-----------|--------------|
| | |

| | |
|--|--|
| | |
| | |
| | |

3 Program Milestones – Level 2 Reporting

3.1 Summary of Program Milestones

Guidance Note: ServiceCo is to complete the Level 2 project reporting for each project/Site in the table per below. Note the milestones in this table are not Program Milestones, but represent an overview of the activities associated in the relevant Program Milestones on a per project/Site basis. This is intended as a working document where ServiceCo provides up to date forecasts as against Milestone Dates.

| Address | Number of SP Dwellings | Delivery methodology | Proposed Stage number as per Delivery Phase Program (if applicable) | Stage status (if applicable) | Program Milestones | | | | Risk | Project status | Comments |
|---------|------------------------|----------------------|---|------------------------------|--------------------|------------------------------|------------------------|-----------------------------|------|----------------|----------|
| | | | | | Site Secured | Development Consent Obtained | Construction Commenced | Service Readiness Milestone | | | |
| | | | | | T | T | T | T | | | |
| | | | | | F | F | F | F | | | |
| | | | | | A | A | A | A | | | |
| | | | | | T | T | T | T | | | |
| | | | | | F | F | F | F | | | |




| | | | | | | | | | | | |
|--|--|--|--|--|---|---|---|---|--|--|--|
| | | | | | A | A | A | A | | | |
| | | | | | T | T | T | T | | | |
| | | | | | F | F | F | F | | | |
| | | | | | A | A | A | A | | | |

Note:

T = Target date (at contract close)

F = Forecast date (current at the time of the report)

A = Actual date achieved

| | | |
|-------|---|---|
| Red |  | Significant issues – ServiceCo has identified that Program Milestone will be delayed |
| Amber |  | Potential Issues – ServiceCo has identified possible issues in achieving Program Milestones |
| Green |  | No issues - On track |

3.2 ServiceCo Service Package risks

Guidance Note: ServiceCo is to address any amber and red risks identified in the above table, including:

- whether the risk is a 'significant issue' (being an issue that ServiceCo has identified that will delay Program Milestones) or a 'potential issues' (being an issue that may affect the Program Milestones being achieved); and
- how these risks will be mitigated/managed.

| Address | Number of SP Dwellings | Issue | Significant or potential issue | Risk | Mitigation strategy |
|---------|------------------------|-------|--------------------------------|------|---------------------|
| | | | | | |
| | | | | | |

| |
|--|
| |
| |
| |
| |
| |
| |
| |
| |
| |
| |

4 Updated Delivery Phase Program

Guidance Note: ServiceCo is to provide an updated Delivery Phase Program (as an attachment) along with the following information:

4.1 Summary of Changes

Guidance Note: ServiceCo is to provide a summary of changes made to the Delivery Phase Program.

| Component amended | Description of change |
|-------------------|-----------------------|
| | |
| | |
| | |

4.2 Critical Path Activity Changes

Guidance Note: ServiceCo is to provide details of any changes of activities made to the Delivery Phase Program that are on the identified critical path.

| Activity | Description of change | Reason for change | Change in duration (if applicable) | Change in time (if applicable) | New completion date (if applicable) | Delay to Service Readiness Milestone Date (if applicable) |
|----------|-----------------------|-------------------|------------------------------------|--------------------------------|-------------------------------------|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |

4.3 Changes not on the critical path

Guidance Note: ServiceCo is to provide a summary of changes of Delivery Phase Activities that are not on the critical path.

| Activity | Description of change | New completion date |
|----------|-----------------------|---------------------|
| | | |
| | | |
| | | |

5 Updated Delivery Plan

Guidance Note: ServiceCo must provide an updated Delivery Plan (as an attachment to this report) and provide a summary of the updates below.

| Section amended | Description of Change |
|-----------------|-----------------------|
| | |
| | |
| | |

6 Service Readiness preparation

Guidance Note: ServiceCo is to provide a summary of the key Delivery Phase Activities associated with forming a Stage and preparing for Service Readiness including the anticipated Dates for Service Readiness (if known).

| Address | Project status | Stage status | Activities for Service Readiness | Anticipated date for Service Readiness (if known) |
|---------|----------------|--------------|----------------------------------|---|
| | | | | |
| | | | | |
| | | | | |

7 Other Information

Guidance Note: *ServiceCo to provide any other information including any information requested by FACS.*

Confidential

Schedule 37 – Financiers’ Tripartite Deed

Confidential

*Social and Affordable Housing Fund –
Financiers’ Tripartite Deed*

Department of Family and Community Services (FACS)

and

*The Uniting Church in Australia Property Trust (NSW)
(ABN 77 005 284 605) for and on behalf of Uniting
(NSW.ACT) (ABN 78 722 539 923) (also known as
UnitingCare NSW.ACT) (ServiceCo)*

and

[Insert] (Security Trustee)

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Social and Affordable Housing Fund – Financiers’ Tripartite Deed

Date

Parties

The Secretary of the Department of Family and Community Services as Housing Agency under section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**)

The Uniting Church in Australia Property Trust (NSW) (ABN 77 005 284 605) for and on behalf of Uniting (NSW.ACT) (ABN 78 722 539 923) (also known as UnitingCare NSW.ACT) (**ServiceCo**)

[Insert] (**Security Trustee**)

Background

- A. FACS and ServiceCo have entered, or will enter, into the Services Deed for the provision of the Service Package.
- B. ServiceCo, the Security Trustee and others have entered, or will enter, into the Finance Documents to finance the Service Package.
- C. The parties are entering into this Deed to record the agreement between them in relation to the interaction of their respective rights and obligations under the Service Package Documents and the Financiers' Securities.

Operative provisions

1. Definitions

1.1 Definitions

In this Deed:

Appointed Representative means a Representative appointed in accordance with clause 5.5.

Australian Prudential Regulation Authority means the statutory body with responsibility for regulation of the Australian financial services industry established pursuant to the *Australian Prudential Regulation Authority Act 1998* (Cth), or any replacement body.

FACS Intention to Terminate Notice has the meaning given to that term in clause 4.2.

FACS Tripartite Rights has the meaning given to it in clause 7.1(a).

Finance Default Notice has the meaning given to it in clause 4.3.

Finance Event of Default means an "Event of Default" as defined in the Finance Documents.

FACS Note:

Definition to be confirmed on review of Finance Documents.

Finance Party has the meaning given to it in the Security Trust Deed.

FACS Note:

Definition to be confirmed on review of Finance Documents.

Financiers' Subcontract Tripartite has the meaning given to it in the Finance Documents.

FACS Note:

Definition to be confirmed on review of Finance Documents.

Financiers' Security means the security interests granted in favour of the Security Trustee under the Finance Documents, in accordance with clause 47.1(b) (*Assignment, amendments and other dealings by ServiceCo*) of the Services Deed.

FACS Note:

Definition to be confirmed on review of Finance Documents.

Financiers' Tripartite Rights has the meaning given to that term in clause 7.1(a).

Fit and Proper Person means a person or entity who:

- (a) is solvent and reputable;
- (b) does not have an interest which conflicts in a material way with the interests of FACS or is involved in a business or activity which is incompatible or inappropriate in relation to the Service Package;
- (c) (in the case of a Suitable Substitute notified pursuant to clause 8.1(a)(i)) has or has available to it a sufficient level of financial, managerial and technical capacity to carry out the Service Package Activities under the Service Package Documents; and
- (d) is a Registered CHP with Tier 1 or 2 accreditation,

provided that:

- (e) a novation or transfer of ServiceCo's rights and liabilities under the Service Package Documents to that person; or
- (f) a transfer of the legal or beneficial ownership of the equity or ownership interests in ServiceCo to that person,

would not:

- (g) be against the public interest;
- (h) lead to the occurrence of a Probity Event;
- (i) have a FPP Material Adverse Effect; or
- (j) increase the level of risk or liabilities of FACS or any Associate of FACS.

FPP Material Adverse Effect means a material adverse effect on:

- (a) the ability of ServiceCo to comply with its obligations under any Service Package Document;
- (b) FACS' rights under any Service Package Document; or
- (c) the ability of ServiceCo to pay to the Financiers the amounts due under, and substantially in accordance with, the Finance Documents.

Nominated Dwellings has the meaning given to that term in Schedule 20 of the Services Deed.

Nominated Relevant Infrastructure has the meaning given that term in Schedule 20 of the Services Deed.

Novation Date means the date any novation or change in ownership referred to in clause 8.1(a) becomes effective as permitted under clause 8.1(d).

Permitted Financier List means the list of financial institutions set out in the letter provided by ServiceCo to and approved by FACS on or prior to date of this Deed, as updated from time to time by agreement of ServiceCo, the Security Trustee and FACS.

Permitted Investment Fund List means the list of investment funds set out in the letter provided by ServiceCo to and approved by FACS on or prior to the date of this Deed, as updated from time to time by agreement of ServiceCo, the Security Trustee and FACS.

Personal Property Securities Act (PPSA) means the *Personal Property Securities Act 2009* (Cth).

Personal Property Securities Register means the register established under chapter 5 of the PPSA.

President has the meaning given to that term in clause 5.6(b).

Related Entity has the meaning given to that term in the Corporations Act.

Relevant Property means:

- (a) where clause 8.4(a) applies, the property referred to in that clause; or
- (b) where clause 8.4(b) applies, each:
 - (i) Nominated Dwelling and any Nominated Relevant Infrastructure corresponding to that Nominated Dwelling subject to the exercise of the Option to Lease by FACS; and
 - (ii) Site lease to be novated to FACS or its nominee in accordance with a Lease Side Deed.

Remedy means, with respect to a breach, default or event (an "Event"):

- (a) if the Event is capable of being cured, to cure the Event in accordance with the applicable contract; and
- (b) if the Event is not capable of being cured, to take steps reasonably acceptable to FACS to overcome the effects of the Event and to prevent the recurrence of the Event; or
- (c) otherwise making arrangements satisfactory to FACS (acting in its sole discretion),

and may include the replacement of a defaulting contractor, the assignment or novation of ServiceCo's interests in the Service Package Documents or the payment of reasonable compensation.

Representative means each of:

- (a) the Security Trustee; and
- (b) an attorney, agent, manager, receiver, receiver and manager, administrator or analogous person appointed by the Security Trustee under any Financiers' Security.

Revival Date means, if a FACS Intention to Terminate Notice has been issued by FACS and:

- (a) if no Step-In Notice is issued by the Security Trustee in accordance with clause 5.2, the proposed date of issue of the Termination Notice (as specified in the FACS Intention to Terminate Notice); or
- (b) if a Step-In Notice has been issued by the Security Trustee in accordance with clause 5.2 and:
 - (i) it is withdrawn in accordance with this Deed, the date of the withdrawal; or
 - (ii) a Step-In Period has commenced, the expiry of that Step-In Period.

Secured Money has the meaning given to it in the Security Trust Deed.

FACS Note:

Definition to be confirmed on review of Finance Documents.

Security Trust means the security trust established under the Security Trust Deed named [insert name of security trust].

FACS Note:

Definition to be confirmed on review of Finance Documents.

Service Package Breach means a breach by ServiceCo of any of its obligations under the Service Package Documents and includes the occurrence of any Major Default or Default Termination Event.

Services Deed means the deed entitled Social and Affordable Housing Fund - Services Deed dated on or about the date of this Deed between FACS and ServiceCo.

Statutory Step-In Event means the appointment of a statutory manager to conduct the affairs and activities of ServiceCo, as described in clause 30 (*Step-In by appointment of statutory manager*) of the Services Deed.

Step-In Date means the date specified in the Step-In Notice issued by the Security Trustee to FACS under clause 5.2 on which a step in is to be effected in accordance with clause 5.5 or such later date as may be agreed between FACS and the Security Trustee.

Step-In Notice has the meaning given to that term in clause 5.2.

Step-In Period means the period on and from the Step-In Date up to and including the earliest of:

- (a) the date specified in a notice issued in accordance with clause 5.8(a) or 5.9;
- (b) the Novation Date;
- (c) the Expiry Date; and
- (d) the date contained in the Step-In Report as agreed under clause 5.4 and, if applicable, extended under clause 5.10.

Step-In Report means the report produced and agreed between FACS and the Security Trustee in accordance with clause 5.4, as updated in accordance with this Deed.

Suitable Substitute means a Suitable Substitute Owner or a Suitable Substitute ServiceCo (as applicable).

Suitable Substitute Owner means a proposed owner of ServiceCo notified to FACS under clause 8.1(a)(ii) as approved by FACS under clause 8.1(b).

Suitable Substitute ServiceCo means a proposed contractor notified to FACS under clause 8.1(a)(i) as approved by FACS under clause 8.1(b).

Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by an Authority, together with any related interest, penalty, fine or other charge.

Termination Notice means a notice given by FACS to ServiceCo under clause 38.4 (*Default Termination Event*) of the Services Deed.

1.2 Definitions in Services Deed

Subject to clause 1.1, terms used in this Deed that are defined in the Services Deed have the same meanings in this Deed.

2. General rules of interpretation

2.1 Services Deed provisions incorporated by reference

The parties agree to be bound by clause 2 (*General rules of interpretation*) of the Services Deed (other than clauses 2.2 (*Composition of this Deed and order of precedence*) and 2.26 (*Community housing agreement*)) in the form that clause takes as at the date of this Deed, as if set out in its entirety in this clause 2, except that for the purposes of this Deed references in those clauses to ServiceCo shall be read as references to ServiceCo and the Security Trustee.

2.2 Remedies cumulative

The rights and remedies provided in this Deed are cumulative and are not exclusive of any rights or remedies provided by law or any other agreement, except to the extent expressly provided in this Deed.

2.3 Multiple parties

If a party to this Deed is made up of more than one person, or a term is used in this Deed to refer to more than one party (but excluding any reference to the Finance Parties):

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and

- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

2.4 Service Package Documents

The Security Trustee acknowledges that it has received a copy of:

- (a) the Services Deed; and
- (b) the Side Deeds.

2.5 Order of precedence

If there is an ambiguity, discrepancy or inconsistency between this Deed and the Services Deed, then the provisions of this Deed will take precedence over those of the Services Deed.

2.6 Approvals and consents

- (a) For the avoidance of doubt, all approvals, consents, decisions or exercises of discretion required to be given or made by FACS:
 - (i) relating to, or arising under or in connection with this Deed (including in respect of a Step-In Report under clause 5.4); or
 - (ii) sought in relation to or in connection with, or referable to, or determinative of, the occurrence of any Service Package Breach,and regardless of whether the requirement of the approval, consent, decision or exercise of discretion is express or implied, FACS has the right to give or make its approval, consent or decision or exercise its discretion conditionally or unconditionally or to withhold its approval, consent, decision or exercise of discretion but in giving or withholding its approval, consent, decision or exercise of discretion, or in imposing any conditions, FACS must act reasonably.
- (b) Without limitation, FACS will not be acting unreasonably merely because, in giving or withholding any approval or consent, or in imposing any conditions, FACS:
 - (i) acts in accordance with relevant government policies;
 - (ii) adopts a "whole of government" approach; or
 - (iii) acts to protect its reputation.

2.7 Security Trustee limitation of liability

- (a) Subject to this clause 2.7, the Security Trustee enters into and performs this Deed and the transactions it contemplates only as the trustee of the Security Trust, except where expressly stated otherwise. This applies also in respect of any past and future conduct (including omissions) relating to this Deed or those transactions.
- (b) Subject to this clause 2.7, under and in connection with this Deed and those transactions and conduct:
 - (i) the Security Trustee's liability (including for negligence) to parties other than the Financiers is limited to the extent it can be satisfied out of the assets of the Security Trust. The Security Trustee need not pay any such liability out of other assets;

(ii) another party may only do the following with respect to the Security Trustee (but any resulting liability remains subject to the limitations in this clause):

- A. prove and participate in, and otherwise benefit from, any form of insolvency administration of the Security Trustee but only with respect to Security Trust assets;
- B. exercise rights and remedies with respect to Security Trust assets, including set-off;
- C. enforce its security (if any) and exercise contractual rights; and
- D. bring any proceedings against the Security Trustee seeking relief or orders that are not inconsistent with the limitations in this clause,

and may not:

- E. bring other proceedings against the Security Trustee;
- F. take any steps to have the Security Trustee placed in any form of insolvency administration or to have a receiver or receiver and manager appointed; or
- G. seek by any means (including set-off) to have a liability of the Security Trustee to that party satisfied out of any assets of the Security Trustee other than Security Trust assets.

(c) Clauses 2.7(a) and 2.7(b) apply despite any other provision in this Deed but do not apply with respect to any liability of the Security Trustee to another party (including for negligence) to the extent that:

- (i) the Security Trustee has under the Security Trust Deed no right or power to have Security Trust assets applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in either case because the Security Trustee's behaviour was beyond power or improper in relation to the Security Trust; or
- (ii) the Security Trustee is not indemnified due its fraud, wilful misconduct or gross negligence.

(d) The limitation in clause 2.7(b)(i) is to be disregarded for the purposes (but only for the purposes) of the rights and remedies described in clause 2.7(b)(ii), and interpreting this Deed and any security for it, including determining the following:

- (i) whether amounts are to be regarded as payable (and for this purpose damages or other amounts will be regarded as a payable if they would have been owed had a suit or action barred under clause 2.7(b)(ii) been brought);
- (ii) the calculation of amounts owing; or
- (iii) whether a breach or default has occurred,

but any resulting liability will be subject to the limitations in this clause.

- (e) The Security Trustee confirms that it is indemnified for its actions under this Deed out of the assets of the Security Trust, subject to the exceptions in clause 2.7(c).

2.8 Security Trustee liability must be limited and must be indemnified

The Security Trustee is not obliged to do or not do anything in connection with this Deed unless:

- (a) the Security Trustee's liability is limited in a manner which is consistent with clause 2.7;
- (b) the Security Trustee is indemnified by the Financiers (or otherwise put in funds) in accordance with the Security Trust Deed to its reasonable satisfaction against any liability or loss arising from, and any costs, charges and expenses (including those incurred in connection with advisers) properly incurred in connection with, doing or not doing that thing; and
- (c) it has been given instructions by the required majority of Financiers in accordance with the Finance Documents.

FACS Note:

To be updated/confirmed by the Security Trustee when appointed.

2.9 Replacement of Security Trustee

If the Security Trustee is replaced as trustee under the Security Trust Deed, then the Security Trustee:

- (a) may assign, novate or otherwise transfer its rights and obligations under this Deed to the replacement trustee without the consent of FACS if it:
 - (i) is a Related Entity of the Security Trustee; or
 - (ii) has all of the required qualifications, consents, authorisations and approvals necessary to carry on the business of a security trustee and is carrying on a business similar to that of the Security Trustee; and
- (b) will be released from its obligations under this Deed when the replacement trustee provides, in form and substance reasonably acceptable to the other parties to this Deed:
 - (i) copies of a deed poll under which the replacement trustee undertakes to be bound by this Deed as the Security Trustee with effect from the date of that deed poll; and
 - (ii) evidence that it has undertaken to be bound by each other Service Package Document and each Finance Document to which the Security Trustee is a party.

2.10 Role of Representative

Where in this Deed there is a reference to:

- (a) the Security Trustee doing, or refraining from doing, any act, matter or thing, it is taken to include a reference to the Security Trustee procuring any Representative appointed by the Security Trustee in accordance with the Security Trust Deed, any Financiers' Security and this Deed which has been notified to and approved by

FACS in accordance with this Deed doing, or refraining from doing, that act, matter or thing;

- (b) FACS doing, or refraining from doing, any act, matter or thing, it is taken to include a reference to the FACS Representative which has been notified to ServiceCo in accordance with the Services Deed doing, or refraining from doing, that act, matter or thing; or
- (c) ServiceCo doing, or refraining from doing, any act, matter or thing, it is taken to include a reference to ServiceCo procuring any ServiceCo Representative appointed by ServiceCo in accordance with the Services Deed which has been notified to and approved by FACS in accordance with the Services Deed doing, or refraining from doing, that act, matter or thing.

2.11 Acknowledgments of ServiceCo

ServiceCo acknowledges, consents and agrees to the arrangements set out herein, and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Deed.

3. Acknowledgments and consents

3.1 Acknowledgments of FACS

FACS:

- (a) acknowledges and consents to the creation and existence of the Financiers' Securities;
- (b) acknowledges and agrees that the Security Trustee is not subject to any duty or obligation under the Service Package Documents as a result of the Financiers' Securities, except as specifically set out under this Deed;
- (c) acknowledges and agrees that the creation and existence of the Financiers' Securities is not, of itself, a Service Package Breach; and
- (d) acknowledges and agrees that, without limiting the liability of ServiceCo (which continues to be responsible for the performance of its obligations under the Service Package Documents), neither the Security Trustee nor any other Representative will be liable, or taken to have assumed liability, for any obligations of ServiceCo under the Service Package Documents by reason only of the creation or enforcement of any rights under the Financiers' Securities, the appointment of the Representative or the exercise by the Representative of any of ServiceCo's rights or powers under the Service Package Documents, other than to the extent confirmed in writing by the Security Trustee or Representative.

3.2 No extension of rights

- (a) Unless expressly authorised or set out under this Deed, nothing in this Deed or the Finance Documents:
 - (i) authorises the Security Trustee to do anything which ServiceCo may not do under the Services Deed;
 - (ii) operates to grant the Security Trustee rights greater than the rights of ServiceCo under the Services Deed; or

- (iii) authorises a Financier, the Security Trustee or any Representative to do any act or thing without FACS' consent where, under the Services Deed, ServiceCo requires FACS' consent to such act or thing.
- (b) To the extent that there is an inconsistency with a right of the Security Trustee or FACS to exercise any power or do anything under the Finance Documents or the Service Package Documents (respectively) and this Deed, the Security Trustee and FACS agree not to exercise that power or do anything under the Finance Documents or the Service Package Documents (respectively) in a manner which is inconsistent with this Deed.

4. Notices and Events of Default

4.1 FACS notice obligations

FACS will provide to the Security Trustee a copy of any:

- (a) Major Default Notice; or
- (b) notice (if any) of the occurrence of a Default Termination Event,

in each case on or about the date that such notice is provided to ServiceCo.

4.2 FACS restricted from issuing a Termination Notice

FACS shall not issue a Termination Notice without giving to the Security Trustee a prior written notice (**FACS Intention to Terminate Notice**) setting out:

- (a) the proposed date of issue by FACS to ServiceCo of the Termination Notice (which must not be less than 20 Business Days from the date of the FACS Intention to Terminate Notice);
- (b) the proposed date on which the Services Deed will terminate; and
- (c) details of the Default Termination Event giving rise to the Termination Notice.

4.3 Security Trustee notice obligations

- (a) The Security Trustee must, within:
 - (i) 2 Business Days of becoming aware of a Finance Event of Default, give notice (**Finance Default Notice**) to FACS setting out reasonable details of the Finance Event of Default; and
 - (ii) a further 8 Business Days of the date of the Finance Default Notice, notify FACS whether the Security Trustee intends or has been instructed to exercise its rights under the Finance Documents and, if so, the proposed date for, and proposed method of, such exercise.
- (b) If at any time after a Finance Default Notice has been given, the intentions of or instructions given to the Security Trustee change or, as referred to in clause 4.3(a)(ii) above it intends or is instructed to exercise its rights under the Finance Documents to take action to enforce any Financiers' Security, the Security Trustee must promptly give a further notice to FACS setting out the action it has been instructed or otherwise proposes to take.
- (c) Subject to the Security Trustee providing the notices under clauses 4.3(a) and (b) and otherwise complying with its obligations under this Deed, nothing in this Deed

restricts the rights of the Security Trustee to enforce the Finance Documents in accordance with their terms and the terms of this Deed.

5. Financiers' cure rights

5.1 FACS acknowledgments regarding the Financiers' cure rights

FACS acknowledges and agrees that:

- (a) the Security Trustee will have rights under the Finance Documents and this Deed to take steps to Remedy, or procure the Remedy, of a Service Package Breach, in conjunction with ServiceCo's rights to Remedy Service Package Breaches under the Services Deed;
- (b) all acts, matters or things done or effected by the Security Trustee which would satisfy (had they been done or effected by ServiceCo) any of the obligations of ServiceCo (including any Remedy of any Service Package Breach or performance of ServiceCo's obligations under a Service Package Document effected by the Security Trustee or an Appointed Representative under the remainder of this clause 5) shall be effective, as between FACS and ServiceCo, to satisfy and discharge the relevant obligations of ServiceCo or to Remedy the relevant Service Package Breach to the same extent as if it had been done or effected by ServiceCo;
- (c) ServiceCo or the Appointed Representative will be taken to have Remedied a Service Package Breach which cannot be remedied, if ServiceCo or Appointed Representative has implemented a program acceptable to FACS to prevent the recurrence of the Service Package Breach (including in accordance with a Step-In Report), or has taken such other steps or made such other arrangements as are satisfactory to FACS to overcome or mitigate the effects of the Service Package Breach;
- (d) without derogating from any other rights the Security Trustee may have under this Deed or the Financiers' Securities, FACS agrees that:
 - (i) if the Security Trustee appoints a Representative under the Financiers' Securities; or
 - (ii) if any enforcement action is taken in accordance with the remainder of this clause 5,that appointment or enforcement action will not, for the duration of the Representative's appointment in accordance with this Deed or the duration of the enforcement action, of itself constitute a Service Package Breach; and
- (e) during a Step-In Period, the Services Deed shall remain in full force and effect and FACS' and ServiceCo's rights and obligations under the Services Deed and other Service Package Documents will, subject to this Deed and except as otherwise agreed in the Step-In Report, continue.

5.2 Security Trustee may give notice of intention to step-in

At any time during the period:

- (a) in the case of a Default Termination Event, commencing upon receipt by the Security Trustee of a FACS Intention to Terminate Notice and ending one Business Day prior to the proposed date termination of the Services Deed will take effect as specified in the FACS Intention to Terminate Notice; or
- (b) in the case of a Finance Event of Default, commencing upon receipt by FACS of:

- (i) a Finance Default Notice under clause 4.3(a)(i); or
- (ii) subsequent notice provided under clause 4.3(b) which includes a statement that the Security Trustee intends or has been instructed to exercise its rights under the Finance Documents,

and ending one Business Day prior to the proposed date of exercise of rights under the Finance Documents,

the Security Trustee may (but is not obliged to) give notice to FACS (**Step-In Notice**) stating that a Representative intends to step in within 20 Business Days from the date of the Step-In Notice and specifying the date on which a step in is to be effected in accordance with clause 5.5 with such date being no earlier than the date the information set out in clause 5.4(a) has been provided to FACS.

5.3 FACS Termination Rights restricted

- (a) Unless permitted under clause 5.3(b) or clause 5.8, FACS must not issue a Termination Notice:
 - (i) in respect of a Default Termination Event (other than Default Termination Events arising solely as a result of a Finance Event of Default), during the period referred to in clause 5.2(a);
 - (ii) in respect of a Default Termination Event arising solely as a result of a Finance Event of Default, during the period referred to in clause 5.2(b) unless FACS has issued or issues during such period a FACS Intention to Terminate Notice and the period referred to in clause 5.2(a) has expired without the Security Trustee having given a Step-In Notice;
 - (iii) once a Step-In Notice is given by the Security Trustee under clause 5.2 above, at any time prior to the Step-In Date proposed in the Step-In Notice, unless the Step-In Notice is withdrawn;
 - (iv) during the Step-In Period; or
 - (v) in respect of any Service Package Breach which has been Remedied by ServiceCo or the Appointed Representative including:
 - A. in accordance with a remedy program provided under clause 37.3 (*ServiceCo to provide remedy program and comply with Major Default Notice*) of the Services Deed;
 - B. in accordance with a Step-In Report; or
 - C. as otherwise agreed with FACS.
- (b) Subject to the operation of clause 6 and without limiting FACS' rights to terminate the Services Deed during the Step-In Period under clause 5.8, if a FACS Intention to Terminate Notice has been issued and any Default Termination Event specified in that FACS Intention to Terminate Notice is continuing, FACS will be entitled on and after the Revival Date to:
 - (i) exercise any rights available to it in relation to that Default Termination Event, including issuing a Termination Notice; and
 - (ii) pursue any claims and exercise any remedies, in addition to termination, which FACS may have under the Service Package Documents or otherwise against ServiceCo.

5.4 Step-In Report

- (a) Within 10 Business Days of receipt by FACS of a Step-In Notice, the Security Trustee must provide FACS with:
 - (i) a draft proposal for a Step-In Report; and
 - (ii) details of any Representative the Security Trustee proposes to exercise the rights set out in clause 5.5, including any reasonable particulars requested by FACS.
- (b) Within 5 Business Days of receipt by FACS of the information set out in clause 5.4(a), FACS and the Security Trustee must meet to agree the Step-In Report in accordance with this clause.
- (c) FACS and the Security Trustee will jointly develop a report in relation to the Step-In Period, which will include the following details:
 - (i) any obligations which are or will become outstanding by ServiceCo to FACS under the Service Package Documents during the Step-In Period;
 - (ii) a detailed program to Remedy or overcome the effects of any Service Package Breaches and/or prevent the recurrence of Service Package Breaches where the relevant Service Package Breaches are not remediable;
 - (iii) details of the proposal for the performance of obligations which are or will become outstanding by ServiceCo to FACS under the Service Package Documents during the Step-In Period including the extent to which the Security Trustee or an Appointed Representative will continue to perform the Service Package Activities during the Step-In Period;
 - (iv) a program to Remedy any Finance Events of Default;
 - (v) the duration of the Step-In Period, which must be for a period of no less than the period reasonably required by the Security Trustee or an Appointed Representative to Remedy the relevant Service Package Breach and no longer than 180 days after the Step-In Date (or any longer period agreed by FACS (acting reasonably) including in circumstances where clause 5.4(c)(vi) applies), and the actions to be taken by each party during the Step-In Period;
 - (vi) where the Remedy involves the replacement of a Key Subcontractor that holds any necessary accreditation, a detailed program for the replacement contractor to obtain the required accreditation to undertake the applicable Service Package Activities;
 - (vii) details of the proposed insurance arrangements during the Step-In Period; and
 - (viii) the Service Package Documents under which the Appointed Representative will be assuming ServiceCo's rights and obligations.
- (d) FACS and the Security Trustee will use all reasonable efforts for a period of 20 Business Days after the date of the first meeting pursuant to clause 5.4(b) to jointly produce and settle a report in relation to the Step-In Period. If, at the end of that period, FACS and the Security Trustee have not reached agreement on a Step-In Report, either party may refer the matter for dispute resolution on an expedited basis in accordance with clause 5.11.

- (e) FACS may designate an auditor and/or technical adviser to verify any information provided in relation to the Step-In Report. Each party to this Deed must provide access to and make copies of all records, documents, data and accounting and other information relating to the Service Package in its possession which the auditor or technical adviser reasonably requires in order to make such verification or itself determine such information.
- (f) All costs incurred by any party in relation to the production or verification of the Step-In Report will be paid or reimbursed on demand by ServiceCo unless, in relation to the verification of the Step-In Report requested by FACS under clause 5.4(e) above, the auditor and/or technical adviser did not make any adverse findings against the content of the report provided by ServiceCo, in which case FACS will bear the cost of such verification.
- (g) The Security Trustee must give written notice to FACS of any further details, plans and reports regarding the status of the Service Package and the implementation of the Step-In Report (and any consequential changes to the Step-In Report) at least once in each month during the Step-In Period. Upon request by FACS (which may be made no more than once in each month), the Step-In Report will be updated by the Security Trustee and submitted to FACS for approval (not to be unreasonably withheld or delayed) to take into consideration matters raised by the Security Trustee not contemplated in the original Step-In Report.
- (h) Each of ServiceCo and FACS must notify the other and the Security Trustee as soon as it becomes aware of a Service Package Breach which is subsisting at any time during the Step-In Period, but is not identified in the Step-In Report, and (in addition to the Security Trustee's obligation to update under clause 5.4(g)) the Step-In Report must be updated by the Security Trustee in accordance with this clause 5.4 to take account of such event or circumstance.

5.5 Appointed Representative may step-in

- (a) Provided the Security Trustee has complied, and continues to comply, with its obligations under clauses 4 and 5, and without limiting the other actions which the Security Trustee is permitted to take under this Deed, following the occurrence of a Service Package Breach or a Finance Event of Default, a Representative may be appointed by the Security Trustee to step in to possession and control of ServiceCo's rights and obligations under and interest in the Service Package Documents on the Step-In Date (**Appointed Representative**).
- (b) The Security Trustee acknowledges and agrees that it will not appoint a Representative to exercise the rights set out in this clause 5.5 unless the proposed Representative:
 - (i) is a suitable and appropriate person to carry on the Service Package during the Step-In Period; and
 - (ii) will continue to be able to carry out or procure the performance of the obligations of ServiceCo under the Services Deed during the Step-In Period unless otherwise agreed by FACS (acting reasonably).
- (c) ServiceCo acknowledges that any action taken under this clause 5 will not affect any rights the Appointed Representative, FACS, the Security Trustee and the Financiers may have against ServiceCo.
- (d) The Security Trustee must require that the Appointed Representative:
 - (i) observes ServiceCo's rights and obligations under the Service Package Documents (as if the Appointed Representative was ServiceCo); and

- (ii) minimises any disruption to the Service Package Activities under the Services Deed, as a result of it exercising its rights or carrying out its obligations under this Deed (except to the extent expressly contemplated in the Step-In Report).
- (e) The Security Trustee acknowledges and agrees that, except as expressly contemplated by the Step-In Report, neither it nor any Appointed Representative shall in any way knowingly interfere with the performance by each Key Subcontractor of its obligations under its Key Subcontract, including by limiting or otherwise restricting its access to the Site, except to the extent set out in the Step-in Report.
- (f) ServiceCo (and to the extent confirmed in writing by the Security Trustee in accordance with the Step-In Report or otherwise, the Security Trustee) is liable to FACS for the acts and omissions of any Appointed Representative and contractor or person engaged by the Appointed Representative in connection with this Deed and ServiceCo:
 - (i) consents to the Appointed Representative exercising its rights under this clause 5; and
 - (ii) agrees that any act or omission of the Appointed Representative or any contractor or person engaged by the Appointed Representative in exercising the rights and powers of ServiceCo under the Service Package Documents is deemed to be an act or omission of ServiceCo under the Service Package Documents.
- (g) If the Appointed Representative takes any steps to remedy a Service Package Breach, the Security Trustee must require that the Appointed Representative must not, in doing so, do anything or omit to do anything which, if it were done or not done by ServiceCo (as applicable), would be a breach of the terms of any Service Package Document, unless otherwise agreed in the Step-In Report.

5.6 FACS may request replacement of Appointed Representative

- (a) If:
 - (i) at any time after receiving the information set out in clause 5.4(a), FACS notifies the Security Trustee that it is not satisfied that a Representative meets the criteria contained in clause 5.5(b) (which notice must specify the reasons why FACS has reached that view); or
 - (ii) at any time during the Step-In Period, FACS notifies the Security Trustee that it reasonably considers that the Representative no longer meets the criteria in clause 5.5(b) (which notice must specify the reasons why FACS has reached that view),

the Security Trustee must nominate a substitute Representative, acceptable to FACS, to replace the Appointed Representative within 10 Business Days.

- (b) If the proposed Representative nominated by the Security Trustee to replace the Appointed Representative pursuant to clause 5.6(a) is not acceptable to FACS, either party may refer the selection of an appropriate Representative to the President for the time being of the Chartered Accountants Australia and New Zealand (the **President**) who must only select an appropriate Representative who, in the opinion of the President meets the criteria contained in clause 5.5(b), and the parties agree that the decision of the President on the identity of the Representative will be final and binding on both parties, provided the decision of the President is based on the criteria set out in clause 5.5(b). The Step-In Period will be extended by the period of time required to find and appoint a substitute Representative

acceptable to FACS or appointed by the President for the time being of the Chartered Accountants Australia and New Zealand.

- (c) Subject to FACS' prior written approval (which approval must not be unreasonably withheld or delayed and must be given if details of any such engagement are agreed in the Step-In Report), the Representative may engage additional skilled consultants or contractors to assist it in carrying out the obligations of ServiceCo under the Service Package Documents.

5.7 Deemed cure

FACS acknowledges and agrees that if the Security Trustee appoints an Appointed Representative under the Financiers' Securities and that Appointed Representative continues to comply with and act in accordance with the Step-In Report and this Deed then that appointment will be taken, for the duration of the Appointed Representative's appointment in accordance with this Deed, to Remedy the Default Termination Event constituted by:

- (a) an Insolvency Event in relation to ServiceCo which occurred prior to the appointment or which subsists or occurs during the appointment; or
- (b) a Change in Control (which is not a Permitted Change in Control) occurring in respect of ServiceCo other than in accordance with clause 48 (*Change in Control*) of the Services Deed.

5.8 Termination during Step-In Period

- (a) Without limiting FACS' rights under clause 5.3(b) or under clause 38.2 (*Voluntary Termination*) or clause 38.3 (*Termination for Force Majeure*) of the Services Deed, FACS will be entitled to terminate the Services Deed during the Step-In Period by written notice to ServiceCo, the Security Trustee and the Appointed Representative only where one or more of the following has occurred:
 - (i) the Security Trustee or its Appointed Representative notify FACS in writing that they do not intend to Remedy the breach which gave rise to the FACS Intention to Terminate Notice or the Step-In Period has been terminated by the Appointed Representative under clause 5.9;
 - (ii) prior to FACS and the Security Trustee agreeing a Step-In Report in accordance with clause 5.4:
 - A. the Security Trustee or its Appointed Representative engage in conduct that, in the reasonable opinion of FACS, indicates that they do not intend to Remedy any Service Package Breach (in respect of which the Security Trustee has received notice under clauses 4.1 or 4.2) that:
 - 1) arose prior to the Step-In Date;
 - 2) is continuing (and capable of Remedy); and
 - 3) would have entitled FACS to terminate the Services Deed at that time,other than to the extent that the parties are unable to agree what action is required to Remedy a Service Package Breach and the matter has been referred to dispute resolution in accordance with clause 5.11, and until the dispute is resolved FACS will not be entitled to issue a notice or terminate the Services Deed under this clause 5.8(a)(ii) on the basis that the Security Trustee or its Appointed Representative has

engaged in conduct that indicates that they do not intend to Remedy any such Service Package Breach; or

- B. unless otherwise agreed by FACS, ServiceCo, the Security Trustee or an Appointed Representative is not continuing to perform the Service Package Activities to the extent it is able to do so;
- (iii) once FACS and the Security Trustee have agreed a Step-In Report in accordance with clause 5.4:
- A. the Appointed Representative does not use all reasonable endeavours to Remedy any Service Package Breach in accordance with the Step-In Report; or
 - B. the Security Trustee or an Appointed Representative is not continuing to perform the Service Package Activities to the extent agreed in the Step-In Report; or
- (iv) in relation to a Step-In Period that commenced as a result of a Finance Event of Default, a Default Termination Event occurs during the Step-In Period (other than a Default Termination Event which is already the subject of the Finance Event of Default and is identified in the Step-In Report and which is being remedied or its effects overcome in accordance with the Step-In Report) in which case following the occurrence of that Default Termination Event FACS may issue a FACS Intention to Terminate Notice and follow the procedure contained in this clause 5.
- (b) If an event described in clause 5.8(a) has occurred, FACS may not terminate the Services Deed under clause 5.8(a)(ii) or 5.8(a)(iii) unless FACS would (but for this Deed) be entitled to terminate the Services Deed, and:
- (i) FACS has given prior notice to the Security Trustee of its intention to terminate the Services Deed; and
 - (ii) the Security Trustee or Appointed Representative does not:
 - A. commence or resume using all reasonable endeavours to Remedy a Service Package Breach referred to in clause 5.8(a)(ii)A or 5.8(a)(iii)A within 10 Business Days of receipt of such notice and continues to use all reasonable endeavours to Remedy the relevant Service Package Breach; or
 - B. commence or resume and continue to perform the Service Package Activities to the extent it is able to do so, in the case of clause 5.8(a)(ii)B, or to the extent agreed in the Step-In Report in the case of clause 5.8(a)(iii)B.

5.9 Step out

- (a) The Security Trustee or its Appointed Representative may, at any time during the Step-In Period, with at least 10 Business Days prior written notice to FACS, terminate the Step-In Period with effect from the date specified in that notice.
- (b) The giving of a notice under clause 5.9(a) by the Appointed Representative will not limit any of the rights (if any) of FACS against the Appointed Representative arising during the Step-In Period.

5.10 Extension of Step-In Period

- (a) The Security Trustee may, by written notice to FACS, request that the Step-In Period be extended. If the Security Trustee makes a request, it must provide to FACS an updated Step-In Report containing full details of all steps which the Security Trustee or Appointed Representative is taking, or proposes to take and the status of such steps, during the Step-In Period and any extension of it.
- (b) Following receipt of a notice under clause 5.10(a) above, where the Security Trustee or its Appointed Representative is diligently pursuing the Remedy of any Service Package Breach and the performance of the requirements of the Step-In Report during the Step-In Period (including continuing to perform the Service Package Activities in accordance with the Step-In Report), FACS may extend the Step-In Period for a period that is reasonably required (taking into account the nature of the Service Package Breach and the Remedy necessary) up to 120 days in aggregate by written notice to the Security Trustee and the Appointed Representative.
- (c) FACS must, upon written request by the Security Trustee, grant an extension to any Step-In Period if the Security Trustee or its Appointed Representative is diligently pursuing the Remedy of any Service Package Breach and the performance of the requirements of the Step-In Report during the Step-In Period (including continuing to perform the Service Package Activities in accordance with the agreed Step-In Report) and if:
 - (i) the Security Trustee has been unable to procure or cause the assignment, transfer or other disposal proposed in any notice given to FACS under clause 8.1(a) because FACS has withheld consent in breach of its obligations under clauses 8.1(b) or 8.1(c); or
 - (ii) a Force Majeure Event, Change Compensation Event, Relief Event or Statutory Step-In Event occurs during the Step-In Period which in the reasonable opinion of FACS adversely affects the ability of the Security Trustee or its Appointed Representative to procure a Remedy of the relevant Service Package Breach in accordance with the Step-In Report,provided that the Step-In Period will only be extended for a period determined by FACS which is reasonably necessary to overcome the delays caused by those events and does not extend further than the relief period granted under the Services Deed.
- (d) The Security Trustee acknowledges that any extension resulting from a Force Majeure Event does not in any way limit the rights of FACS in connection with the occurrence of the Force Majeure Event under the Service Package Documents.
- (e) If an application for extension has been made in accordance with clause 5.10(a) or clause 5.10(c) and has not been determined by FACS before the Step-In Period expires, then the Step-In Period will be extended until FACS has determined the application for extension.
- (f) Notwithstanding any other clause in this Deed, FACS may, in its absolute discretion, extend the Step-In Period by written notice to the Security Trustee and the Appointed Representative.

5.11 Dispute Resolution

The Security Trustee and FACS agree that if there is a dispute in relation to the production or contents of the Step-In Report under clause 5.4 (other than in respect of the appointment of the Appointed Representative), either party may refer that dispute for resolution in accordance

with clauses 40 (*Dispute Resolution procedure*) to 43 (*Reference to Arbitration*) of the Services Deed as if those clauses were set out in full in this Deed and:

- (a) each reference to ServiceCo was a reference to the Security Trustee; and
- (b) the reference to the Chief Executive Officers of ServiceCo in the Services Deed is a reference to senior representatives of the Security Trustee.

6. Statutory step-in rights

- (a) Each of the Security Trustee and ServiceCo recognise and acknowledge:
 - (i) the rights available to the Registrar to appoint a statutory manager to conduct the affairs and activities of ServiceCo as they relate to the community housing assets of ServiceCo under the Community Housing Act (clause 21 of the National Law);
 - (ii) the rights available to the statutory manager to pay monies (including rent) under any Subcontract or Lease and enforce any rights under any such Subcontract or Lease; and
 - (iii) that while a statutory manager is appointed to exercise functions of a Registered CHP, the governing body of the Registered CHP may not exercise any of those functions without the consent of the statutory manager.
- (b) Without limitation, the Security Trustee agrees that:
 - (i) those rights may be exercised even if an Appointed Representative has been appointed or the Security Trustee has otherwise taken enforcement action under a Financiers' Security; and
 - (ii) the Security Trustee must ensure that such Appointed Representative does such things as FACS or the Registrar may reasonably require in order to enable or facilitate the effective exercise of such rights.

7. Priority of Tripartite Agreements

7.1 Tripartite Priority

- (a) The Security Trustee acknowledges the rights of FACS under each Side Deed (**FACS Tripartite Rights**) and FACS acknowledges the rights of the Security Trustee under each Financiers' Subcontract Tripartite (**Financiers' Tripartite Rights**).
- (b) FACS and the Security Trustee agree that:
 - (i) the Financiers' Tripartite Rights will take precedence over FACS Tripartite Rights for the duration of the period referred to in clause 5.2(a) or 5.2(b);
 - (ii) if the Security Trustee exercises its rights to step in in accordance with clause 5, the Financiers' Tripartite Rights will take precedence over FACS Tripartite Rights from the date of the Step-In Notice for the duration of the Step-In Period, provided that FACS' prior written consent will be required to any substitution of, or the termination, assignment or novation of, a Key Subcontract or Significant Subcontract; and

- (iii) if the Security Trustee does not exercise its rights to step in in accordance with clause 5 or if its Step-In Period ends, FACS Tripartite Rights will take precedence over the Financiers' Tripartite Rights.
- (c) The Security Trustee will use its best endeavours to ensure that rights under the Finance Documents are exercised in a way which facilitates the effective exercise by FACS of FACS Tripartite Rights.

7.2 Marshalling

Neither the Security Trustee nor FACS are obliged to marshal in favour of the other. If any of the Financiers' Securities become enforceable in accordance with their terms, the Security Trustee in its absolute discretion may determine the extent (if any) to which it will have recourse to any of the Financiers' Securities.

8. Financier sale and other rights

8.1 Suitable Substitute

- (a) At any time during the Step-In Period, the Security Trustee may notify FACS that it wishes to:
 - (i) procure the novation of ServiceCo's rights and liabilities under the Services Deed and other relevant Service Package Documents and/or transfer legal or beneficial ownership in the other Relevant Secured Property; or
 - (ii) cause a direct or indirect transfer in the legal or beneficial ownership of the equity or ownership interests in ServiceCo,to a Suitable Substitute.
- (b) Subject to clause 8.1(c), FACS must notify the Security Trustee as to whether the proposed Suitable Substitute is acceptable on or before the date falling 30 days after the date of receipt of all information reasonably required by FACS to decide whether the proposed Suitable Substitute is acceptable. If FACS notifies the Security Trustee that the subject person is unacceptable:
 - (i) the Security Trustee may, within the then current Step-In Period, propose an alternative Suitable Substitute, in which case, the provisions of clauses 8.1(b) and 8.1(c) will apply to that alternative person; and
 - (ii) the parties will agree in good faith any amendments to the Step-In Report and FACS may grant an extension to the Step-In Period for a period that is reasonably required to take into consideration the resulting delay to novation of ServiceCo's rights and liabilities under the Services Deed and other relevant Service Package Documents, provided that FACS is not required to agree to more than one extension to the Step-In Period.
- (c) A proposed Suitable Substitute will be acceptable to FACS if it is satisfied (acting reasonably) that that person:
 - (i) is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person); and
 - (ii) in the case of a Suitable Substitute ServiceCo, will assume all of the obligations of ServiceCo under the Service Package Documents.

- (d) At any time after the approval of a proposed Suitable Substitute by FACS in accordance with clauses 8.1(b) and 8.1(c), the Security Trustee may, on 10 Business Days' prior written notice to FACS, procure or cause the assignment, transfer or other disposal proposed in the notice given to FACS under clause 8.1(a). Without limiting the foregoing, in the case of a Suitable Substitute ServiceCo, the assignment, transfer or disposal will neither be permitted nor effective unless and until the Suitable Substitute ServiceCo has assumed all of the obligations of ServiceCo under the Service Package Documents, and acquired such other Relevant Secured Property as is required for it to perform the Service Package Activities, in form and substance acceptable to FACS (acting reasonably).
- (e) FACS acknowledges and agrees that the approval of a proposed Suitable Substitute by FACS in accordance with clauses 8.1(b) and 8.1(c) will constitute the consent of FACS for the purposes of clauses 47.1 (*Assignment, amendments and other dealings by ServiceCo*) and 48.3 (*Restrictions on Change in Control*) of the Services Deed (as applicable).

8.2 Effect of Novation or change in ownership

On and from the Novation Date:

- (a) without limiting FACS' rights under clause 38.2 (*Voluntary Termination*) or clause 38.3 (*Termination for Force Majeure*) of the Services Deed, any then subsisting ground for termination of the Services Deed by FACS shall be deemed to have no effect provided the Suitable Substitute Remedies any Default Termination Event continuing at that time within the time periods specified in the Step-In Report (or such other period as FACS may agree in writing in connection with the novation);
- (b) in the case of a novation of ServiceCo's rights and liabilities under the Services Deed:
 - (i) the Suitable Substitute ServiceCo will become a party to the Services Deed in place of ServiceCo and the Suitable Substitute ServiceCo will be treated as if it had originally been named as a party to the Services Deed in place of ServiceCo;
 - (ii) the Suitable Substitute ServiceCo will assume and enjoy the rights and powers and perform and discharge the obligations and liabilities of ServiceCo under the Services Deed, whether such obligations and liabilities have arisen before, or will arise after, the Novation Date, and ServiceCo will be released from all such obligations and liabilities;
 - (iii) FACS will owe the obligations and liabilities on the part of FACS under the Services Deed to the Suitable Substitute ServiceCo in place of (and will be released by) ServiceCo, including any undischarged liability in respect of any loss or damage suffered or incurred by ServiceCo or adjustment, rebate or other amounts due from FACS to ServiceCo in respect of any period prior to the Novation Date; and
 - (iv) the Security Trustee (or new financiers if applicable) must enter into a tripartite deed with FACS and the Suitable Substitute ServiceCo on substantially the same terms as this Deed.

8.3 Replacement Key Subcontractor

- (a) During the Step-In Period, the Security Trustee must ensure that no person is engaged by it to replace or become a Key Subcontractor other than in accordance with a Step-In Report without first:
 - (i) obtaining the prior consent of FACS; and

- (ii) disclosing to FACS such details of the relevant person and of the proposed terms and conditions of that person's engagement as a Key Subcontractor as may be reasonably necessary in order to enable FACS to determine whether it will so consent.
- (b) If FACS' consent is sought under clause 8.3(a), FACS will not unreasonably withhold or delay giving that consent if:
- (i) it has received all of the details referred to in clause 8.3(a)(ii);
 - (ii) the same appointment were made by ServiceCo, the appointment and the new Key Subcontractor would comply with the Services Deed; and
 - (iii) the proposed terms and conditions of that person's engagement include:
 - A. a requirement to perform such of the obligations of the current Key Subcontractor under the relevant subcontract which remain unsatisfied; or
 - B. a requirement to perform all or part of the Services Requirements so as to ensure that ServiceCo remains in compliance with the Services Deed.

8.4 Release of and consents under Financiers' security

- (a) Subject to clause 8.4(c), to the extent that ServiceCo is required to handover, surrender, transfer, pay or otherwise dispose of property (including rights to insurance proceeds) to FACS or its nominee under the Services Deed and the Relevant Property is in whole or part the subject of any Security Interest in favour of the Security Trustee or any other Finance Party (including any Security Interest under the Financiers' Securities), the Security Trustee will promptly ensure that the Security Interest is released in respect of the Relevant Property and will do all things (including registering documents and procuring registration of financing change statements on the Personal Property Securities Register) as FACS may reasonably require as may be necessary or desirable to give effect to that release.
- (b) To the extent that:
- (i) FACS exercises an Option to Lease; or
 - (ii) ServiceCo is required to novate the lease of a Site to FACS or its nominee in accordance with a Lease Side Deed,
- and the Relevant Property is in whole or part the subject of any Security Interest in favour of the Security Trustee or any other Finance Party (including any Security Interest under the Financiers' Securities), the Security Trustee will promptly ensure that all necessary consents under the Finance Documents in respect of the Lease or novation (as the case may be) are given and will do all things (including producing the relevant certificate of title or lease to enable FACS or its nominee to register the Lease or the novation and procuring registration of financing change statements on the Personal Property Securities Register) as FACS may reasonably require as may be necessary or desirable to give effect to the exercise of the Option to Lease or the novation (as the case may be).
- (c) Nothing in clause 8.4(a) requires the Security Trustee to release a Security Interest over the right of ServiceCo to be paid an amount under clause 38.6 (*Payment on termination*) of the Services Deed or amounts paid under that clause.

9. Undertakings

9.1 Copies of Finance Documents

ServiceCo agrees to promptly give to FACS a copy of each Finance Document once executed and certified by an authorised officer of ServiceCo to be a true copy.

9.2 Financing agreements

ServiceCo and the Security Trustee undertake and agree that they may not enter into any financing agreements (including in respect of present or contingent indebtedness, deferred purchase or leasing arrangements or similar obligations, but excluding indebtedness incurred in the ordinary course of business) other than:

- (a) the Finance Documents;
- (b) to effect a novation, assignment or substitution of a Financier or any of the rights or obligations of a Financier permitted under clause 9.4;
- (c) to effect a novation or assignment permitted under clause 15.2; or
- (d) with the prior written consent of FACS (in its absolute discretion).

FACS Note:

Parties to note that 'Finance Documents' is broadly defined in the Services Deed and includes:

- **any document entered into in relation to a refinancing of the Debt or a financing or refinancing of ServiceCo's senior financial indebtedness to finance activities other than the Service Package Activities, including any security trust deed; and**
- **documents which effect an amendment, restatement or replacement of other Finance Documents.**

Amendments of Finance Documents and refinancings do not require FACS' consent under this Deed or the Services Deed.

9.3 Money secured under Financiers' Securities

- (a) ServiceCo and the Security Trustee each warrant to FACS that the only obligations of ServiceCo to the Security Trustee which form part of the Secured Money are the obligations of ServiceCo under the Finance Documents.
- (b) The warranty in clause 9.3(a) will be deemed to be repeated on each anniversary of the date of this Deed.

9.4 Disposal of Relevant Secured Property and assignment by Financiers

- (a) Subject to the terms of this Deed and the Finance Documents, the Security Trustee, acknowledges and agrees that neither it nor any Representative may assign, transfer or otherwise dispose of any of the Relevant Secured Property prior to the date of termination or expiry of the Services Deed (or partial termination with respect to a Stage in relation to that Relevant Secured Property that is related to that Stage), other than in accordance with the terms of the Services Deed.
- (b) The Security Trustee acknowledges and agrees that it must not (and it must not permit any Financier to) assign, transfer or otherwise dispose of all or any part of its (or that Financier's) rights, benefits or obligations under any of the Finance Documents unless:

- (i) it is permitted under clause 2.9; or
 - (ii) the assignee, novatee or transferee:
 - A. is an existing Financier or any of its Related Bodies Corporate so long as that Related Body Corporate's primary business does not involve investing in distressed assets;
 - B. is a financier that, unless FACS consents otherwise, has a credit rating of at least:
 - 1) prior to the Service Commencement Date for all Stages, A- (issued by Standard and Poor's Australia) or A3 (issued by Moody's Investor Service); or
 - 2) on or after the Service Commencement Date for all Stages, BBB+ (issued by Standard and Poor's Australia) or Baa1 (issued by Moody's Investor Service),

or is, in FACS' opinion, suitably guaranteed by an entity which has such an applicable credit rating and:

 - 3) is on the Permitted Financier List; or
 - 4) is regulated by the Australian Prudential Regulation Authority;
 - C. is an investment fund that:
 - 1) is on the Permitted Investment Fund List; and
 - 2) holds or manages total net assets of at least [REDACTED] million and has sufficient available assets to fund the commitments of the Financier under the Finance Documents which are being transferred to it;
 - D. is a securitisation or funding vehicle of the transferring Financier where the transferring Financier remains lender of record; or
 - E. is a financial institution which has been consented to by FACS (acting reasonably), with such consent being deemed to be given if FACS does not respond within 10 Business Days of the request for consent.
- (c) FACS, in determining whether or not to provide consent under clause 9.4(b)(ii)B, will:
- (i) take into account the financial position of the financier (including the ability of that financier to fund the commitments of the Financier which are being transferred to it) and the prudential and regulatory regime applicable to that financier's business; and
 - (ii) have been deemed to have given its consent if it does not respond within 10 Business Days of the request for consent.

9.5 Services Deed notices

FACS acknowledges and agrees that ServiceCo will be required to give the Security Trustee and the Financiers a copy of certain documents issued to it or issued by it under the Services Deed. FACS consents to ServiceCo giving the Security Trustee and the Financiers copies of those documents.

9.6 Finance Document Notices

The Security Trustee must give FACS a copy of any document issued by the Security Trustee under:

- (a) *[insert notice provisions from Finance Documents]*,

within 2 Business Days of the issue of the relevant document. ServiceCo consents to the Security Trustee giving FACS copies of those documents.

FACS Note:

Relevant key notice provisions from Finance Document to be listed.

10. Insurance proceeds

Notwithstanding the Financiers' Security, to the extent the insurance proceeds paid or payable in connection with the Service Package are received by the Security Trustee or any other Finance Party, the Security Trustee acknowledges and agrees with FACS that:

- (a) the insurance proceeds paid or payable in connection with the Service Package must be applied in accordance with clause 36.4 (*Application of insurance proceeds*) of the Services Deed; and
- (b) the Security Trustee will use reasonable endeavours to assist ServiceCo to comply with the relevant provisions of the Services Deed referred to in clause 10(a) above.

11. Representations and warranties

- (a) FACS represents and warrants that:
- (i) **(power)** it has the power to execute, deliver and carry out its obligations under this Deed and all necessary action has been taken to authorise that execution, delivery and performance;
- (ii) **(validity)** this Deed constitutes a valid and legally binding obligation on it in accordance with its terms;
- (iii) **(legality)** the execution, delivery and performance of this Deed does not violate any Law to which FACS is subject;
- (iv) **(Services Deed)** for the benefit of the Security Trustee only, to FACS' knowledge as at the date of this Deed, FACS has no right, without ServiceCo's consent, which is now exercisable or with the giving of notice or lapse of time will or may become exercisable to:
- A. terminate, rescind, repudiate or vary the Services Deed; or
- B. refuse to perform or observe any of FACS' obligations under the Services Deed; and

- (v) **(Service Package Documents)** for the benefit of the Security Trustee only, the FACS Service Package Documents set out all of the terms, conditions and warranties of the agreements, arrangements and understandings between ServiceCo of the one part and FACS of the other part in respect of the subject matter of the Service Package.
- (b) ServiceCo represents and warrants that:
- (i) **(incorporation)** the Property Trust is duly incorporated in Australia and is existing under Australian Law;
 - (ii) **(power)** it has the capacity and power to execute, deliver and perform its obligations under this Deed and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
 - (iii) **(legality)** the execution, delivery and performance of this Deed does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
 - (iv) **(validity)** this Deed constitutes a valid and legally binding obligation on it, enforceable in accordance with its terms; and
 - (v) **(Finance Documents)** the Finance Documents to which it is a party set out all the terms, conditions and warranties of the agreements, arrangements and understandings between it and the other parties to the Finance Documents in respect of the subject matter of those Finance Documents.
- (c) The Security Trustee (both in its own right and as trustee of the Security Trust) represents and warrants that:
- (i) **(power)** it has the power under the Security Trust Deed to execute, deliver and carry out its obligations under this Deed and all necessary action has been taken to authorise that execution, delivery and performance;
 - (ii) **(validity)** this Deed constitutes a valid and legally binding obligation on it in accordance with its terms;
 - (iii) **(legality)** the execution, delivery and performance of this Deed does not violate any Law to which it is subject; and
 - (iv) **(trust authority)** all action that is necessary under the Security Trust Deed or at law to:
 - A. authorise it entering into this Deed and carrying out the transactions that this Deed contemplates;
 - B. ensure that this Deed is legal, valid and binding on it as trustee of the Security Trust and admissible in evidence against it in that capacity; and
 - C. enable it to properly carry on the business of the Security Trust,has been taken.

12. Continuing obligation

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) It is not necessary for a party to incur expenses or to make any payment before enforcing a right of indemnity under this Deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this Deed.

13. Indemnity

ServiceCo indemnifies each of FACS and the Security Trustee against, and must pay them on demand the amount of, all losses, liabilities, expenses and Taxes incurred in connection with the administration and any actual or attempted preservation or enforcement, of any rights under this Deed subject to, in respect of:

- (a) FACS, clause 34.7 (*Limits on ServiceCo liability to indemnify and release*) and 35.1 (*Exclusion of Consequential or Indirect Loss – ServiceCo*) of the Services Deed; and
- (b) the Security Trustee, clause *[insert]* of the Security Trust Deed.

14. Taxes

14.1 Taxes

ServiceCo:

- (a) must pay all taxes in respect of this Deed, the performance of this Deed and each transaction effected by or made under this Deed;
- (b) indemnifies each other party against liability arising from failure to comply with clause 14.1(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of any taxes paid under this clause 14.1.

14.2 GST

- (a) **(Interpretation)**
 - (i) Except where the context suggests otherwise, terms used in this clause 14.2 have the meanings given to those terms by the GST Act (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14.2.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 14.2.

- (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements)** Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable)** Subject to paragraph (e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:
 - (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 14.2), for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with paragraph 14.2(c)(ii).
- (d) **(Variation of GST)**
 - (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with paragraphs 14.2(c) and 14.2(e)), varies from the additional amount paid by the Recipient under paragraph 14.2(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph 14.2(d) is deemed to be a payment, credit or refund of the GST Amount payable under paragraph 14.2(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration)**
 - (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which paragraph 14.2(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with paragraph 14.2(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with paragraph 14.2(c) (or the time at which such GST Amount would have been payable in accordance with paragraph 14.2(c) but for the operation of paragraph 14.2(e)(i)).
- (f) **(No merger)** This clause 14.2 will not merge on completion or termination of this Deed.

15. Amendment and assignment

15.1 Amendment of this Deed

Except as otherwise expressly provided in this Deed, no amendment to this Deed is valid or binding on a party unless made in writing and executed by FACS and all other parties to this Deed.

15.2 Assignment

- (a) Subject to any express provisions of this Deed, the Security Trustee and ServiceCo may only dispose of, declare a trust over or otherwise create an interest in its rights under this Deed with the consent of FACS.
- (b) FACS may dispose of, declare a trust over or otherwise create an interest in its rights under this Deed without the consent of any other party provided it complies with the terms of clause 47.3 (*Assignment by FACS*) of the Services Deed and the person to or for whom FACS transfers, disposes, declares a trust over or otherwise creates an interest in its rights under this Deed is the same person as the transferee of FACS' rights under and in accordance with the Services Deed.
- (c) Subject to any express provision of this Deed, the parties may not, without the prior written consent of the others, assign, grant a Security Interest over, or otherwise dispose of all or any benefit, right or interest under this Deed, provided always that an assignment by FACS of its interest to a FACS Nominee will not require ServiceCo's or the Security Trustee's prior written consent.
- (d) The provisions of clauses 15.2(a) and 15.2(c) do not apply to the granting of Security Interests in accordance with the Finance Documents or Service Package Documents.

16. Disclosure, confidentiality and publicity

16.1 Confidential Information and disclosure by FACS

- (a) Subject to clause 16.1(b), FACS or any Authority may disclose any information in connection with the Service Package, including Information Documents.
- (b) FACS may only disclose the Commercially Sensitive Information:
 - (i) in accordance with:
 - A. Laws or for the enforcement of any criminal law;
 - B. clause 16.5 of this Deed;
 - (ii) where disclosure is in the course of the official duties of the responsible Minister, the Treasurer, the Premier or the Attorney General;
 - (iii) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (iv) to satisfy the requirements of Parliamentary accountability;
 - (v) to any Associate of FACS to the extent necessary for the purpose of the Service Package provided they agree to maintaining the confidentiality of any Confidential Information;
 - (vi) in annual reports of FACS or the NSW Government;

- (vii) in accordance with policies of FACS or the NSW Government or any Authority;
- (viii) for any tender process required to be conducted under the Termination Payments Schedule; or
- (ix) where the Commercially Sensitive Information is any part of the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of the Services Deed.

16.2 Confidential Information and disclosure by the Security Trustee

- (a) Subject to clauses 16.2(b) and 16.3, the Security Trustee must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of FACS make public or disclose to any person any Confidential Information.
- (b) Without limiting the Security Trustee's obligation under clause 16.2(a) and subject to clause 16.2(c), the Security Trustee may disclose Confidential Information:
 - (i) to its Associates and to any Representative or its Associates, in each case to the extent necessary for the purpose of undertaking the Service Package or exercising its rights and obligations under the Finance Documents;
 - (ii) to a Finance Party and any officer, agent, adviser, consultant, contractor or employee of that Finance Party to the extent necessary for the purpose of undertaking the Service Package or exercising its rights and obligations under the Finance Documents;
 - (iii) to any prospective financier or equity investor of the Service Package, subject to FACS having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that FACS considers necessary; or
 - (iv) in accordance with clause 16.4.
- (c) Before disclosing any Confidential Information, the Security Trustee (as applicable) must ensure that the person to whom the information is disclosed enters into a confidentiality deed to keep the Confidential Information confidential in accordance with this clause 16.
- (d) The Security Trustee may disclose Confidential Information and will not be required to seek FACS' consent to a disclosure, announcement or statement under clause 16.2(a) or 16.3(a) where the disclosure announcement or statement is:
 - (i) required by Law, provided that it:
 - A. notifies FACS of the requirement to make that disclosure; and
 - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to obtain legal advice or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;

- (iii) required to be made to a court in the course of proceedings to which the Security Trustee is a party; or
- (iv) required by a relevant stock exchange, subject to:
 - A. the disclosure, announcement, or statement does not refer to FACS' or any of its Associates' involvement in the Service Package; and
 - B. the Security Trustee having used all reasonable endeavours to obtain FACS' consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

16.3 Public announcements by Security Trustee

Subject to clause 16.2(d), the Security Trustee must:

- (a) not make any public disclosures, announcements or statements in relation to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package, without FACS' prior consent;
- (b) comply with any terms and conditions FACS imposes and must use all reasonable endeavours to agree with FACS the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package before the relevant disclosure, announcement or statement is made; and
- (c) as soon as practicable, give to FACS a copy of any public disclosure, announcement or statement agreed to or approved by FACS in accordance with this clause 16.3 or for which FACS' consent or approval was not required in accordance with clause 16.4.

16.4 Information public or known

Notwithstanding anything in this clause 16 any party may disclose information in connection with this Deed (including any Confidential Information) if:

- (a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 16; or
- (b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

16.5 Disclosure by FACS under GIPA Act

- (a) Notwithstanding the other provisions of this clause 16.5, the parties acknowledge that:
 - (i) the Service Package Documents and information concerning the Service Package Documents will be published on FACS' contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
 - (ii) FACS may make the Service Package Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:

- (i) FACS will notify the Security Trustee of any proposed disclosure of Commercially Sensitive Information in relation to the Finance Parties by FACS under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
- (ii) following notification by FACS in accordance with clause 16.5(b)(i), FACS will take reasonable steps to consult with the Security Trustee before disclosing such Commercially Sensitive Information, including under the GIPA Act;
- (iii) if, following:
 - A. notification by FACS in accordance with clause 16.5(b)(i); or
 - B. consultation between FACS and the Security Trustee in accordance with clause 16.5(b)(ii),the Security Trustee objects to disclosure of some or all of the relevant Commercially Sensitive Information, the Security Trustee must provide details of any such objection within five Business Days after the date the Security Trustee received notification from FACS or the date on which the consultation process concluded (as relevant);
- (iv) FACS may take into account any objection received from the Security Trustee pursuant to clause 16.5(b)(iii) in determining whether the Commercially Sensitive Information identified by the Security Trustee should be disclosed; and
- (v) nothing in this clause 16.5 will limit or otherwise affect the discharge of FACS' obligations under the GIPA Act.

17. Notices

FACS

Attention:
Address:
Telephone:
Email:

[REDACTED]

ServiceCo

Attention:
Address:
Telephone:
Email:

[REDACTED]

Security Trustee

Attention: [insert]
Address: [insert]
Telephone: [insert]
Email: [insert]

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) must be in writing;
- (b) must be addressed as specified above, or as otherwise notified by that party to each other party from time to time;
- (c) must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out above; and
- (e) are taken to be received by the addressee at the address set out above:
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

18. Governing law

- (a) This deed is governed by the Law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

Executed as a deed.

[Insert execution blocks]

Confidential

Annexure A – Bid Design Deliverables



Annexure A – Bid Design Deliverables



Confidential

Annexure B – Bid Services Deliverables



Annexure C – Base Case Financial Model

Confidential

Annexure D – Commercial Close Adjustment Protocol
