

Dated

2021

**Parties**

**KĀINGA ORA - HOMES AND COMMUNITIES**

KĀINGA ORA

[            ]

Purchaser

[            ]

Covenantor

Superlots [            ]

**Roskill South**

**Agreement for Sale and  
Development**

## Contents

	Page
<b>AGREEMENT FOR SALE AND DEVELOPMENT .....</b>	<b>5</b>
<b>SCHEDULE 1: SPECIFIC TERMS .....</b>	<b>8</b>
1 <b>LAND: .....</b>	<b>8</b>
2 <b>DWELLING DELIVERIES: .....</b>	<b>8</b>
3 <b>PURCHASE PRICE:.....</b>	<b>9</b>
4 <b>PAYMENT DATES:.....</b>	<b>10</b>
5 <b>OVERSEAS INVESTMENT ACT 2005:.....</b>	<b>10</b>
6 <b>INITIAL DPM MEMBERS:.....</b>	<b>10</b>
7 <b>MILESTONES .....</b>	<b>10</b>
8 <b>MAXIMUM MARKETING .....</b>	<b>11</b>
9 <b>PURCHASERS GST NUMBER .....</b>	<b>12</b>
<b>SCHEDULE 2: PURCHASER'S DEVELOPMENT PLAN.....</b>	<b>13</b>
<b>SCHEDULE 3: DEFINITIONS &amp; INTERPRETATION .....</b>	<b>14</b>
1 <b>DEFINITIONS (CONTINUED FROM CLAUSE 1 OF THE GENERAL TERMS).....</b>	<b>14</b>
<b>SCHEDULE 4: KĀINGA ORA GENERAL TERMS.....</b>	<b>20</b>
1 <b>PARTNERING.....</b>	<b>20</b>
2 <b>OBJECTIVES AND GOALS.....</b>	<b>20</b>
3 <b>CONTRIBUTIONS OF THE PARTIES .....</b>	<b>22</b>
4 <b>RELIANCE ON SKILLS OF PURCHASER.....</b>	<b>22</b>
5 <b>MANAGEMENT OF THE RELATIONSHIP .....</b>	<b>23</b>
6 <b>DEVELOPMENT PARTNER MEETING .....</b>	<b>23</b>
7 <b>DISPUTE RESOLUTION .....</b>	<b>25</b>
8 <b>SUPERLOT INTERFACE MEETING .....</b>	<b>25</b>
9 <b>DEPOSIT.....</b>	<b>26</b>
10 <b>PAYMENT OF PURCHASE PRICE.....</b>	<b>27</b>

11	DEVELOPMENT BY KĀINGA ORA OF TITLE .....	27
12	KĀINGA ORA WORKS.....	31
13	REMEDIAION WORKS .....	33
14	RIGHT OF KĀINGA ORA TO CARRY OUT WORKS.....	34
15	NON OBJECTION .....	35
16	SCHEME OF DEVELOPMENT .....	35
17	DESIGN REVIEW PROCESS.....	35
18	CONSTRUCTION OF DWELLINGS .....	37
19	IMPLEMENTATION TIMETABLE .....	38
20	KIWIBUILD HOMES.....	41
21	MARKET HOMES .....	42
22	DWELLING INNOVATION .....	42
23	ROSKILL SOUTH CONTRIBUTION – CONSTRUCTION PLUS.....	42
24	OPEN HOMES AND INFORMATION .....	42
25	MARKETING.....	43
26	LICENCE TO OCCUPY.....	44
27	HEALTH AND SAFETY.....	45
28	TIDY SITE AND FENCING .....	46
29	GOOD NEIGHBOURHOOD.....	46
30	INSURANCE.....	47
31	REMEDIES OF DEFAULT .....	48
32	NO SECURITY INTEREST .....	49
33	NO CAVEAT.....	50
34	COVENANTOR.....	50
35	GST.....	51
36	GENERAL.....	51
	<b>SCHEDULE 5: GENERAL TERMS WITH DELETIONS .....</b>	<b>57</b>
	<b>SCHEDULE 6: DPM RULES AND PROCESS.....</b>	<b>58</b>

**SCHEDULE 7: DEVELOPMENT ENCUMBRANCE .....60**

**SCHEDULE 8: LICENCE TO OCCUPY.....61**

**SCHEDULE 9: KĀINGA ORA ROSKILL SOUTH DEVELOPMENT MASTER PLAN.....68**

**SCHEDULE 10: MONTHLY REPORT FORMAT .....69**

**SCHEDULE 11: CONSTRUCTION PLUS POLICY .....70**

**SCHEDULE 12: TITLES FOR SUPERLOT/SUBDIVISION PLANS .....71**

**SCHEDULE 13: STANDARD OPERATING PROCEDUES (SOPS) .....72**

Draft

Superlot [                    ]

## Roskill South

### AGREEMENT FOR SALE AND DEVELOPMENT

**Dated:**

**Parties:**

1        **Kāinga Ora-Homes and Communities (Kāinga Ora).**

2        [                    ] as the Purchaser (**Purchaser**).

3        [                    ] as the Covenantor (**Covenantor**).

#### Background

- A        Kāinga Ora is the appointed agent for the development of land owned by Housing New Zealand Limited and Housing New Zealand Build Limited at Roskill South Kāinga Ora has been established to coordinate integrated urban development that provides a mix of public, affordable and market housing. It will play an essential role in tackling the Government’s key priorities of ending homelessness and making houses more affordable. It will continue to be a significant provider of public housing.
- B        Roskill South is a well-established and culturally diverse community with a strong sense of place. Kāinga Ora is tasked with ensuring the Roskill South Development will build on that strength of community and will set benchmarks for quality, increased density and pace of delivery of housing. As the master planner, Kāinga Ora will ensure the Roskill South Development will focus on regeneration, innovation and affordability.
- C        Kāinga Ora has selected the Purchaser to purchase, develop and deliver dense, innovative and affordable housing on the basis of Kāinga Ora’s approval of the Purchaser’s submitted proposals and plans for its development of the Superlot.
- D        The Design Guidelines for the Roskill South Development cover issues such as the Design Review Process, urban design, landscape and architectural design. In addition, Kāinga Ora has implemented a Master Plan for the Roskill South Development including such matters as infrastructure, green space, methodology, allocation of responsibilities, landscaping and affordable housing. The Purchaser has agreed to undertake and implement development of the Superlot in accordance with the Design Guidelines, the Purchaser’s Development Plan and the Master Plan (together referred to as the “Scheme of Development”), with the terms of this Agreement and in accordance with all relevant consents, statutes, regulations and industry best practice.

- E Kāinga Ora will support the Purchaser with its compliance with the terms of this Agreement and the Scheme of Development, collaborate with it to ensure the Purchaser's Development is completed in accordance with the Scheme of Development, the Vision and the Objectives.
- F The Covenantor has agreed to be jointly and severally liable with the Purchaser for the due payment of all moneys due under this Agreement and the performance and observance of all the Purchaser's warranties and obligations under this Agreement.
- G Kāinga Ora, the Purchaser and the Covenantor have agreed to enter into this Agreement recording in full the agreement reached between them for the sale and development of the Superlot.

**The Parties Agree as follows:**

1. Each party shall carry out the obligations imposed on that party by this Agreement.
2. The Purchaser shall pay Kāinga Ora the Purchase Price together with all such other sums as shall become payable under the Agreement (plus GST, if any) at the times and in the manner provided in this Agreement.
3. Each party agrees to the terms and conditions set out in the Agreement.
4. The Agreement comprises the following documents:
  - (a) This Agreement;
  - (b) Schedule 1: Specific Terms;
  - (c) Schedule 2: Purchaser's Development Plans;
  - (d) Schedule 3: Definitions and Interpretation;
  - (e) Schedule 4: Kāinga Ora General Terms;
  - (f) Schedule 5: General Terms with Deletions;
  - (g) Schedule 6: DPM Rules, Process and Report Format;
  - (h) Schedule 7: Development Encumbrance;
  - (i) Schedule 8: Licence to Occupy;
  - (j) Schedule 9: Kāinga Ora Roskill South Development Master Plan;
  - (k) Schedule 10: Monthly Report Format;
  - (l) Schedule 11: Construction Plus policy.
  - (m) Schedule 12:- Titles for Superlot/Subdivision Plans
  - (n) Schedule 13:- Standard Operating Procedures (SOPS) and

This Agreement shall constitute the entire agreement between the parties. This Agreement supersedes the Registration of Interest, response thereto, all prior negotiations, representations, and warranties, except insofar as the same are expressly incorporated herein.

Kāinga Ora hereby sells and the Purchaser hereby purchases the Superlot on the terms set out in this Agreement and the Covenantor hereby guarantees the due and punctual observance and performance by the Purchaser of this Agreement.

Executed on the date recorded above by:

Kāinga Ora-Homes and Communities:

\_\_\_\_\_  
Authorised Signatory                      Print Name

\_\_\_\_\_  
Authorised Signatory                      Print Name

**MGL Limited**  
As Purchaser:

\_\_\_\_\_  
Director                                      Print Name

\_\_\_\_\_  
Director                                      Print Name

**Neilston Group Limited**  
As Covenantor:

\_\_\_\_\_  
Director                                      Print Name

\_\_\_\_\_  
Director                                      Print Name

## SCHEDULE 1: SPECIFIC TERMS

<b>1</b>	<b>LAND:</b>	
1.1	Description of Superlot	[            ]
1.2	Address	[            ]
1.3	Legal Description	As outlined in red on the attached indicative plan.  Currently contained in the following records of title
1.4	Indicative Area	[            ] m2 (estimated)
<b>2</b>	<b>DWELLING DELIVERIES:</b>	
2.1	Total number of Dwellings to be constructed on the Superlot	The Purchaser commits to constructing a minimum of [            ] Dwellings and that comply with the Roskill South Design Guideline, the Typology Criteria set by Kāinga Ora and have the DRP, AHPDP and Kāinga Ora approval via the Design Review Process set out in the Kāinga Ora general Terms.
2.2	Homestar	The Purchaser shall procure all Dwellings include such design and build requirements as are necessary to achieve a Homestar 6 rating. The Purchaser shall at its cost be responsible for registration of the Dwellings with the Homestar 6 programme and for obtaining the Homestar 6 certification prior to settlement with End Purchasers.
2.3	KiwiBuild Homes	The Purchaser agrees to collaborate with Kāinga Ora and any relevant authority and commits to the delivery of [            ] Dwellings as KiwiBuild Homes as a minimum  The Purchaser may put forward proposals for Kāinga Ora consideration/consent to deliver greater than the above number of the Dwellings as Kiwibuild Homes.  KiwiBuild Homes means Dwellings that are subject to the KiwiBuild Criteria and forming part of the KiwiBuild Programme together with any additional criteria contemplated in the Kāinga Ora General Terms and in any event comprise at least the following:



	<ul style="list-style-type: none"> <li>• A minimum of 1 bedroom (including studio and one + study) at or below \$500,000</li> <li>• A minimum of 2 bedrooms at or below \$600,000</li> <li>• A minimum of 3 bedroom at or below \$650,000</li> </ul> <p>Entering into an Option Agreement with the Crown for the KiwiBuild “underwrite” is entirely at the Purchaser’s discretion and subject to Crown agreement.</p> <p>Whether or not the Purchaser enters in an Option Agreement, the Purchaser commits to ensuring that KiwiBuild Homes are marketed and sold in consultation with Kāinga Ora and, if so required by Kāinga Ora (or required by an Option Agreement) sold in compliance with all terms, conditions and criteria to be met by End Purchasers purchasing KiwiBuild Homes, including (but not limited to) the requirement for KiwiBuild Homes to be first released to and available for purchase by Local Purchasers and the requirement to include Kāinga Ora’s approved KiwiBuild End Purchaser contract terms within all End Purchaser Agreements for KiwiBuild Homes.</p> <p>For the avoidance of doubt, Kāinga Ora offers no guarantee as to the availability of qualifying End Purchasers for KiwiBuild Homes. However, if despite the Purchaser’s best endeavours, the KiwiBuild Homes are not sold to qualifying End Purchasers pursuant to the required criteria and terms within a reasonable period of time, the parties agree to meet to consider together the sales process and outcomes on an open book basis and discuss in good faith potential strategies for achieving the desired sale of the Dwellings. Noting this process will be governed by the KiwiBuild agreement if applicable.</p>
2.4 Market Price	Market Price shall be the sale price for a Dwelling estimated as being likely to be achieved in a competitive and open market between a willing buyer and a willing seller in an arm’s length transaction at the proposed time of sale
2.5 Typology Criteria	The Purchaser must obtain Kāinga Ora approval of the typologies/layout in the Purchaser’s Development Plan to be implemented on the Superlot. Such approval shall not be unreasonably withheld or delayed provided that all Dwellings are Town Houses that comply with the Roskill South Design Guidelines.
3 <b>PURCHASE PRICE:</b>	[                    ] plus GST (if any) being [                    ] per m2 (plus GST if any)

3.1	Deposit 1	10% of the Purchase Price payable upon signing of the Development Agreement by the Parties;
3.2	Settlement Sum	90% of the Purchase Price
4	<b>PAYMENT DATES:</b>	
4.1	Deposit 1	10% of the Purchase Price payable upon signing of the Development Agreement by the Parties;
4.2	Settlement Date	The balance of the Purchase Price is payable 12 months following the date upon which Kāinga Ora confirms to the Purchaser in writing that the works agreed to be undertaken by Kāinga Ora prior to possession as set out herein are practically complete and offering a Licence to Occupy on Kāinga Ora's standard terms, or 10 working days following issuance of title, whichever is the later.
5	<b>OVERSEAS INVESTMENT ACT 2005:</b>	The Purchaser and the Covenantor warrant to Kāinga Ora that the Purchaser is neither an "OIA Person" nor an "associate" of an "overseas person" as those terms are defined in the Overseas Investment Act 2005 and OIA Approval for the Purchaser to acquire the Superlots is not required.
6	<b>INITIAL MEMBERS:</b>	<b>DPM</b> Kāinga Ora Representatives: [            ] Purchaser Representatives: [            ]
7	<b>MILESTONES</b>	
7.1	Milestone 1	The Purchaser shall commence construction (with all necessary approvals and consents for the implementation of the Purchaser's Development) of all Dwellings within 8 months from the date of the Development Agreement.
7.2	Milestone 2	The Purchaser shall then complete construction of all Dwellings within 12 months of the achievement of Milestone 1.

<p>8</p> <p><b>MAXIMUM MARKETING</b></p>	<p>The Purchaser agrees to work collaboratively with Kāinga Ora to set an agreed Purchaser-led marketing plan for the Purchaser's Development and Dwellings as is considered reasonable and appropriate by the parties for the Superlot and having regard to the marketing budget to be agreed and defined in the base line feasibility.</p> <p>Kāinga Ora will continue to lead project marketing co-ordination and contribute to marketing expenses for the Roskill South Development.</p> <p>The Purchaser acknowledges and agrees that in addition to its own marketing and sales campaign for the Dwellings it shall contribute financially to any coordinated and combined marketing programme that Kāinga Ora organises for the Roskill South Development up to a maximum of \$15,000.00 plus GST per annum.</p>
<p>9</p> <p><b>Revenue Share</b></p>	
<p>9.1</p> <p>Revenue Calculation:</p> <p>Share</p>	<p>The Purchaser shall pay to the Vendor a Revenue Share being 50% of the sum over the Agreed Market Pricing as recorded in 9.2 below achieved on an End Purchaser contract (including all variations and additions that might be negotiated) which shall be paid by the Purchaser to Kāinga Ora, plus GST (if any) on settlement of the relevant End Purchaser lot.</p> <p>By way of example only:</p> <p>Agreed Market Pricing: \$750,000</p> <p>End Purchaser Purchase Price: \$850,000</p> <p>Revenue Share payable to Kāinga Ora: \$50,000</p>

9.2 Deliveries and Pricing	<p>The Purchaser shall deliver the below typologies on the Superlot and shall use best endeavours to market and sell these to End Purchasers for no less than the agreed market pricing:</p> <p><b>Agreed Market Pricing (inc GST) is to be on a fair and reasonable basis and is to be agreed at the time of the Parties entering into the Development Agreement.</b></p> <p>Pricing For Example</p> <p>Terrace 3 bed \$650,000.00</p> <p>Duplex 3 bed \$850,000.00</p> <p>Standalone 3 Bed \$890,000.00</p> <p>Standalone 5 bed \$1,200,000.00</p>
9.3 Revenue Payment Dates Share	<p>Payable on each End Purchaser settlement date. If all End Purchaser sales have not been settled on the date three years from the Settlement Date, the Revenue Share shall become payable in full in advance calculated using market valuation for the remaining unsettled Dwellings.</p>
10 PURCHASERS NUMBER GST [ ]	

## SCHEDULE 2: PURCHASER'S DEVELOPMENT PLAN

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*This is the first iteration of the Purchaser's Development plans for the Superlot and shows numbers of Dwellings, typologies, layout and other amenity features planned for the Superlot. This plan remains subject to the Design Review Process.*

Draft

## SCHEDULE 3: DEFINITIONS & INTERPRETATION

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### 1 Definitions (continued from Clause 1 of the General Terms)

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1.1 The definitions in clause 1 of the General Terms apply (save as where the meaning or intent of the word use requires otherwise).

1.2 This Schedule 3 applies to and forms part of both the Specific Terms and the Kāinga Ora General Terms.

1.3 In this Agreement:

**Agreement** means this agreement.

**AHPDP** means the Auckland Council formed and administered independent Auckland Housing Programme Dedicated Panel made up of specialists selected by Auckland Council in its sole and unfettered discretion being urban design specialists, landscape specialists, architectural specialists, property experts, Mana Whenua specialists as Auckland Council deems are required depending on the nature and location of the project.

**Applicable Codes of Practice** means those approved Codes of Practice published by Worksafe New Zealand from time to time.

**Audit** means an inspection or audit at the instigation of Kāinga Ora of the financial accounts of the Purchaser sufficient to allow Kāinga Ora to be satisfied (acting reasonably) as to the correctness of the Profit calculation and the Profit Share due to Kāinga Ora.

**Code Compliance Certificate** has the same meaning as set out in the Building Act 2004.

**Confidential Information** means:

- (a) the existence of this Agreement, its subject matter and the terms and conditions contained in it; and
- (b) any information which is not public knowledge and which is obtained from the other party pursuant to or in the course of the negotiation or implementation of this Agreement.

**Consent** means all resource consents and approvals issued or to be issued by the Relevant Authority including but not limited to land use consents, approvals, or Infrastructure Funding Arrangement or Memorandum of Understanding with the Relevant Authority relating to the Kāinga Ora Works.

**Construction Plus** means the Kāinga Ora Construction Plus Policy detailed in clause 23 of the Specific Terms and as set out in Schedule 11 (as may be amended, varied or replaced by Kāinga Ora from time to time).

**Default Interest** means interest calculated at 6% above the BNZ 90 day bank bill rate from the date on which such monies are due until the date of payment in full, calculated daily.

**Deposit** means the Deposit described in clause 3 of the Specific Terms.

**Deposit Date** means the Deposit Date for the Deposit described in clause 4 of the Specific Terms.

**Design Guidelines** means the Design Guidelines for the Roskill South Development provided by Kāinga Ora as may be amended, varied or replaced by Kāinga Ora from time to time.

**Design Review Process** means the design review processes set out in clause 17 and at <https://Kāinga Ora .co.nz/Kāinga Ora -design-guidelines> as may be amended, varied or replaced by Kāinga Ora from time to time.

**DPM** means the Development Partner Meetings to be established by the parties in accordance with clause 6 of the Kāinga Ora General Terms, the first members of which are identified in clause 7 of the Specific Terms.

**Dwellings** means the houses/units to be constructed by the Purchaser on the Superlot as detailed in the Specific Terms including KiwiBuild Homes and all associated land, fencing, landscaping, rear access lanes, paths, driveways, services, retaining walls, common areas, all garbage collection and recycling facilities, together with all as may be required by pursuant to the Design Review Process and any consent issued by the Relevant Authority.

**End Purchaser** means a bona fide arm's length third party purchaser of a Dwelling.

**End Purchaser Agreement** means an agreement to be entered into between the End Purchaser and the Purchaser for the sale and purchase of a Dwelling such agreement to be substantially in the then current REINZ and ADLS form of agreement (currently the 10th edition, 2019), including comprehensive guarantees and warranties for new Dwellings and containing all further terms required or anticipated by this Agreement.

**Final Design Assessment Report** means a final design assessment report created by Kāinga Ora, pursuant to the Design Review Process, upon considering all the recommendations of the TAG and AHPDP and the Purchaser's responses to all TAG and AHPDP comments, queries and concerns.

**General Terms** means the amended General Terms of Sale set out in the ADLS 10th Edition 2019 of the Auckland District Law Society Agreement for Sale and Purchase of Real Estate form forming Schedule 5 to this Agreement and as further varied by the Schedules of this Agreement.

**Head titles** means the prior Record of Titles for the Superlots prior to the Subdivision as described in clause 1 of the Specific Terms.

**Homestar 6** means the comprehensive and independent national rating tool provided by the New Zealand Green Building Council to measure the health, warmth and efficiency of a home and each Dwelling achieving not less than a rating of 6 on that relevant rating scale.

**Implementation Timetable** means the timetable for the implementation of the Purchaser's Development and the construction and completion of Dwellings in accordance with clause 20 of the Kāinga Ora General Terms.

**Innovative Construction and Design Strategy** means innovative construction products, methodologies and concepts including but not limited to the use of offshore volumetric

modular building components(subject always to the terms of this Agreement) and such other information and processes as may be submitted by the Purchaser and approved by Kāinga Ora from time to time.

**Issue of Title** means the date upon which Kāinga Ora advises the Purchaser in writing that a search copy of the Titles for the Superlots is available for searching in Landonline.

**Kāinga Ora General Terms** means the terms set out in Schedule 4.

**Kāinga Ora Works** means the Kāinga Ora Pre-Possession Works and the Kāinga Ora Post-Possession Works to be undertaken by Kāinga Ora described in clause 12 of the Kāinga Ora General Terms.

**Kāinga Ora Works Practical Completion** means the date upon which Kāinga Ora confirms to the Purchaser in writing that the Kāinga Ora Pre-Possession Works to be completed prior to offering the Purchaser Possession as specified in clause 12.1 are practically complete in that the Kāinga Ora Pre-Possession Works specified in clause 12.1 are able to be used for their intended purpose without material inconvenience, have generally been undertaken in accordance with works specifications and are complete except for minor defects and minor omissions in the sole opinion of Kāinga Ora.

**KiwiBuild Criteria** means the qualifying criteria for KiwiBuild Homes established by the New Zealand Government pursuant to its KiwiBuild Programme as advised by the New Zealand Government from time to time.

**KiwiBuild Homes** means those Dwellings subject to the KiwiBuild Criteria and forming part of the KiwiBuild Programme and contemplated in clause 2 of the Specific Terms to be delivered by the Purchaser in accordance with clauses 19 to 24 of the Kāinga Ora General Terms.

**KiwiBuild Option Agreement** means an Agreement that may be entered into by the Purchaser and the New Zealand Government in regards to the KiwiBuild Programme.

**KiwiBuild Programme** means the New Zealand Government's programme to identify and leverage opportunities to procure KiwiBuild Homes, being affordable quality dwellings for qualifying home buyers.

**Licence to Occupy** means a licence on the terms contemplated in clause 26 of the Kāinga Ora General Terms and set out in Schedule 8.

**Marketing Design Guide and Media Protocol Plans** means Kāinga Ora policies as amended from time to time for the sale and marketing of Kāinga Ora's Roskill South Development, the Superlot and Dwellings thereon.

**Master Plan** means Kāinga Ora's Roskill South Development master plan and ancillary plans, information and policies as developed by Kāinga Ora (and amended or replaced from time to time by Kāinga Ora) a high level overview plan of which is attached hereto at Schedule 9.

**Milestones** means the Purchaser's Milestones described in clause 19 of the Kāinga Ora General Terms.

**Objectives** means the objectives described in clause 2 of the Kāinga Ora General Terms.



**Open Book Accounting** means an arrangement in which the Purchaser grants Kāinga Ora access at reasonable times on reasonable notice to multiple layers of accounting information in a constant and consistent manner and in particular shares costs information in a complete, transparent, accurate, current and readily accessible manner.

**Partnering Concept** means the partnering concept described in clause 1 of the Kāinga Ora General Terms.

**Plan of Subdivision** means Kāinga Ora's plan to be deposited with Land Information New Zealand via Landonline subdividing some of the Head Titles to create new Titles for some of the Superlots, an indicative version of which is attached as Schedule 2.

**Possession** means the earlier of entering into occupation, the commencement date of a right to occupy, or settlement.

**Project Launch** means the introduction of the Purchaser's Development to the Public.

**Purchase Price** means the Purchase Price for the Superlot set out in clause 3 of the Specific Terms.

**Purchaser's Development** means the design of the subdivision and housing plan within the Superlot in accordance with the Scheme of Development and the Purchaser's Development Plan and the construction of all of the Dwellings and associated infrastructure, amenity and open space together with any Additional Deliveries all in accordance with the terms of this Agreement and in compliance with all relevant consents, statutes, regulations and industry best practice.

**Purchaser's Development Plan** means the first iteration of the detailed plan for the Purchaser's Development of the Superlot attached at Schedule 2 which remains subject to the TAG, AHPDP and Kāinga Ora approvals pursuant to the Design Review Process.

**Purchaser's Personnel** means all employees, agents and subcontractors of the Purchaser and the employees of such subcontractors and agents.

**Registered Bank** has the meaning set out in the Reserve Bank of New Zealand Act 1989.

**Relevant Authority** means any entity, including any government, local territorial authority, statutory or non-statutory authority or body having jurisdiction over the Roskill South-036D Development or any part thereof or any works undertaken thereon.

**Remediation** means the remediation works described in the Site Specific Remediation and Management Plan and as further detailed in clause 14 of the Kāinga Ora General Terms.

**Roskill South Development** means Kāinga Ora's redevelopment of the land owned by Housing New Zealand Limited within Roskill South to create a regeneration of the Roskill South community, maintaining its sense of place, building on its established and culturally diverse community, delivering new benchmarks for development quality, density and pace of delivery with a focus on innovation and affordability all as detailed in the Master Plan and Scheme of Development.

**Scheme of Development** means the then current Master Plan, the Auckland Unitary Plan, the Design Guidelines and all documentation supporting or referenced within those

documents including (but not limited to) Kāinga Ora's policies on affordable housing and innovation and Kāinga Ora's Standard Operating Procedures.

**Settlement Date** means the date specified in the Specific Terms

**Settlement Sum** means the settlement sum/s for the Superlot described in clause 3 of the Specific Terms.

**SIM** means Superlot Interface Meeting as described in clause 8.

**Site Specific Remediation and Management Plan** means the Site Specific Remediation and Management Plan for the Superlot dated [xxxxxxxxxxxxx]

**Soil Remediation Target** means either the relevant soil guideline value set out in the Resource Management (National Environmental Standard for assessing and managing contaminants in soil to protect human health) Regulations 2011 or the permitted activity standards in E30.6.1.4 of the Auckland Unitary Plan, whichever is the lower.

**Specific Terms** means the terms set out in Schedule 1.

**Standard Operating Procedures** means the then current Kāinga Ora Standard Operating Procedures as provided by Kāinga Ora to the Purchaser from time to time and all ancillary documents and information relating thereto.

**Superlot** means Superlot RS036D comprised of the Titles.

**TAG** means the Kāinga Ora formed and administered Technical Advisory Group made up of the Kāinga Ora master planner/urban designer, HNZA urban design representative, independent design expert (Chair), independent landscape design expert and such additional experts as Kāinga Ora so chooses and deems in its sole and unfettered discretion are required from time to time which shall provide written recommendations and approvals against the requirements of the approved Design Guidelines.

**Title** means the record of Title/s issued or to be issued by Land Information New Zealand for the Superlot as described in paragraph 1.2 of the Specific Terms and Title means any one of them or as may be identified herein.

**Vision** means the vision for the Roskill South Development to build on and contribute to the vibrant diverse community within Roskill South whilst maintaining the existing sense of place and to set new benchmarks for quality, affordable, dense urban development with a focus on innovation and affordability.

#### 1.4 Interpretation

In this Agreement:

- 1.4.1 headings are for convenience only and shall not affect interpretation;
- 1.4.2 where a word or a phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings;
- 1.4.3 if a party comprises more than one person, each person's liability is joint and several;

- 1.4.4 a party includes its successors;
- 1.4.5 references to the schedules are to the schedules of this Agreement;
- 1.4.6 in the event of a conflict between the Specific Terms and the Kāinga Ora General Terms, the Specific Terms shall prevail. If there is any conflict between the Kāinga Ora General Terms and the General Terms, the Kāinga Ora General Terms shall prevail;
- 1.4.7 references to a statute include references to regulations, orders or notices made under or pursuant to such statute. References to any statute, regulation, order or other statutory instrument or by-law shall be deemed to be references to the statute, regulation, order, instrument or by-law as from time to time amended replaced or substituted; and
- 1.4.8 "including" and similar words do not imply any limitation.
- 1.5 **Conflicts**
- 1.5.1 If there is a conflict between the terms of this Agreement and the General Terms, then the terms of this Agreement shall apply.
- 1.6 **Term and General Scope**
- 1.6.1 The term of this Agreement shall be deemed to commence on the date of this Agreement and shall continue until the Purchaser's Development has been completed to the satisfaction of Kāinga Ora (acting reasonably in all respects and having regard to the advice of the DPM) unless terminated earlier in accordance with its terms.
- 1.6.2 Nothing contained or implied in this Agreement shall be construed as creating, and neither party shall state, imply or do anything to suggest, that this Agreement creates an employer/employee, partnership or principal/agent relationship between the parties or any of their proprietors, officers, employees or subcontractors.
- 1.6.3 This Agreement shall define the rights, benefits, duties, liabilities and obligations of Kāinga Ora and the Purchaser with respect to those matters specifically set out herein.

## SCHEDULE 4: Kāinga Ora GENERAL TERMS

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### 1 Partnering

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- 1.1 **Partnering Concept** means the over-arching principle which shall govern and guide the contractual and working relationships between the parties and which recognises the following objectives and principles:
- 1.1.1 the establishment of a relationship based on mutual trust;
  - 1.1.2 the recognition that Kāinga Ora must ensure that the performance of this Agreement complies with all statutes and Government policies in place from time to time;
  - 1.1.3 the shared intention to achieve (by constructively and harmoniously working together) cohesion within Roskill South and the Roskill South Development which complies with the Scheme of Development;
  - 1.1.4 openness, promptness, consistency, fairness and prompt notification in all dealings and communications between the parties and their agents;
  - 1.1.5 non-adversarial dealings between the parties and constructive mutual steps both to avoid differences and to identify solutions;
  - 1.1.6 promotion of a problem solving approach between the parties; and
  - 1.1.7 notification of issues or concerns at the earliest practical opportunity.
- 1.2 This Agreement establishes a partnering relationship between the parties which shall be governed by the Partnering Concept to ensure the Purchaser delivers the Purchaser's Development in accordance with the Scheme of Development and in harmony and cohesion within Roskill South and the Roskill South Development.

### 2 Objectives and Goals

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- 2.1 **Objectives** means the joint objectives of the Parties for the Purchaser's Development being to:
- 2.1.1 implement Kāinga Ora's Master Plan objectives in compliance with the Scheme of Development by procuring the construction of the agreed Dwellings and implementing the Innovative Construction and Design Strategy;
  - 2.1.2 develop the Superlot as a cohesive part of the Roskill South Development;
  - 2.1.3 protect the integrity of the Vision throughout the development process;
  - 2.1.4 use the land within the Roskill South Development efficiently and responsibly;
  - 2.1.5 preserve the unique natural features of Roskill South;

- 2.1.6 build on the existing built diverse community by incorporating good urban design principles with built forms to a high standard of design and quality incorporating innovative housing and construction features, optimising utilised space based on leading urban design principles, including adopting future technologies as they arise, to the end and intent that a community is further established in Roskill South which sets benchmarks within the industry as to the design and quality and pace of delivery of all of the components of the Purchaser's Development;
- 2.1.7 to test the Innovative Construction and Design Strategy so as to result in Dwellings that are:
- 2.1.8 more affordable to construct;
- 2.1.9 more affordable to buy;
- 2.1.10 more affordable to own;
- 2.1.11 received positively by the market;
- 2.1.12 healthy to live in;
- 2.1.13 a positive addition to their neighbourhood;
- 2.1.14 modern, attractive and relevant in their urban context;
- 2.1.15 energy and water efficient;
- 2.1.16 quicker to build; and
- 2.1.17 able to be deployed at a scale to help alleviate Auckland's housing pressures; and
- 2.1.18 to educate the market and industry on the outcomes of implementing the Innovative Construction and Design Strategy.
- 2.1.19 to ensure the Purchaser's Development is integrated within the Roskill South Development cohesively and creates an accessible, inclusive and desirable community with a focus on affordability and innovation;
- 2.1.20 to ensure that the simultaneous undertaking of works for the Purchaser's Development and other parts of the Roskill South Development are streamlined and each undertaken with care, clear communication and in line with the Objectives so as to reduce any negative impact on other development sites and Roskill South's existing inhabitants (including the residents, businesses, facilities and the general public of Roskill South) through careful planned construction, the timing of works and the delivery of products to the public;
- 2.2 The parties each record their commitment to the achievement of the Objectives reflecting the following basic principles:
  - 2.2.1 support by the parties for activities that build on the Objectives and Vision;
  - 2.2.2 full participation by the parties in terms of this Agreement and the Partnering Concept;
  - 2.2.3 transparency and co-operation in good faith and commitment to all aspects of planning, design, development and implementation;

- 2.2.4 recognition of the need for a skilled workforce; and
- 2.2.5 promotion of innovation and alternative ways of addressing all planning, design, development and implementation issues, where necessary to achieve continued improvement.

### 3 Contributions of the Parties

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3.1 The parties shall be responsible as follows:

3.1.1 Kāinga Ora shall have responsibility for:

- (a) leading the strategic master planning, design and marketing for the Roskill South Development;
- (b) using reasonable endeavours to streamline the simultaneous implementation of other aspects of the Roskill South Development and the Purchaser's Development;
- (c) completing Kāinga Ora's Works as soon as practicable and to a proper and workmanlike standard;
- (d) reasonably assisting the Purchaser in compliance with the Scheme of Development; and
- (e) working with the Purchaser pursuant to the Partnering Concept.

3.1.2 The Purchaser shall have responsibility for:

- (a) the delivery and funding of the Purchaser's Development in accordance with this Agreement and the Scheme of Development; and
- (b) completing all planning, design review, consents, compliance, construction, supervision, detailed project and contract management, reporting, sales and marketing as required for the Purchaser's Development and all in accordance with the Scheme of Development and the terms of this Agreement.

3.2 Kāinga Ora acknowledges that it will provide to the Purchaser indicative details relating to the timing, creation, intentions and expectations in respect of any public amenity Kāinga Ora is delivering for the Roskill South Development.

3.3 The Purchaser shall undertake the Purchaser's Development in accordance with the Implementation Timetable mindful always of the marketing strategy and indicative staging agreed to by the DPM and of meeting market demands and delivering Dwellings to the market at pace.

### 4 Reliance on Skills of Purchaser

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4.1 The Purchaser warrants that it has and will continue to have during the term of this Agreement the skill, expertise, capacity, funding and resources to carry out the Purchaser's

Development in accordance with the required approvals and consents as contemplated by this Agreement to develop the Superlot using the Innovative Construction and Design Strategy. The Purchaser is not aware of any reason why the Purchaser's Development may not be able to be completed on the Superlot in the manner and timeframe contemplated by this Agreement and will comply with the terms of this Agreement.

- 4.2 The Purchaser acknowledges that Kāinga Ora has entered into this Agreement in reliance on the skill, expertise, capacity, funding and resources of the Purchaser and in reliance on the Purchaser's Development Plans including its commitments to implement the Innovative Construction and Design Strategy and deliver the Dwellings.

## 5 Management of the Relationship

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- 5.1 The parties agree to establish, maintain and continuously develop effective management practices for management of their relationship and the performance of this Agreement, having regard always to the Master Plan.
- 5.2 The Purchaser shall employ appropriate quality control measures to monitor and develop its own performance and will perform its obligations under this Agreement to industry best practice.

## 6 Development Partner Meeting

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- 6.1 The parties will schedule and attend regular DPM's comprising four members the initial members of which are recorded in clause 7 of the Specific Terms. The role of the DPM will include the following activities:
- 6.1.1 to foster the Partnering Concept and ensure the Objectives are being met;
- 6.1.2 consider the day to day operation of the Purchaser's Development within the overall context of the Roskill South Development;
- 6.1.3 to consider, develop and report on key performance indicators for progress of the Purchaser's Development;
- 6.1.4 to provide an open and transparent forum for the sharing of information, ideas and plans to ensure the streamlining of approval processes and timely implementation of the Purchaser's Development;
- 6.1.5 to prepare and approve a schedule and plan incorporating all of the matters contemplated herein;
- 6.1.6 to monitor the undertaking of the Purchaser's Development as against all of the Purchaser's obligations, pursuant to this Agreement;
- 6.1.7 to monitor and review the Purchaser's compliance with the Standard Operating Procedures; and to monitor and review the adoption and implementation of Kāinga Ora's Marketing Design Guide and Media Protocol Plans by the Purchaser and its integration with Kāinga

Ora's marketing of the Roskill South Development (as required by clause 25 of the Kāinga Ora General Terms).

- 6.2 Each party shall be entitled to appoint two members to the DPM and to remove any member appointed by it and appoint another member in his or her place.
- 6.3 The procedure with respect to meetings of the DPM shall be governed by the rules set out in Schedule 6.
- 6.4 The chairperson shall be appointed by Kāinga Ora and shall be one of Kāinga Ora's two members of the DPM.
- 6.5 The DPM shall meet no less frequently than six-weekly or as otherwise required by Kāinga Ora.
- 6.6 All decisions of the DPM must be unanimous and in writing and shall be binding on the parties (subject always to any other required authorisations or authorities recorded as required at the time of the resolution recording such decision).
- 6.7 If the DPM is unable to attain unanimity on a decision which has or may have a material effect on a party then the matter shall be referred for resolution in accordance with clause 7.1 of the Kāinga Ora General Terms (excluding clause 7.1.1).
- 6.8 The DPM can include such other parties as Kāinga Ora and the Purchaser agree to be involved in the DPM meetings and either party may invite any of their key consultants to attend such meetings provided that such invitees do not have any voting rights at any such meetings.
- 6.9 Three working days before each scheduled DPM meeting, the Purchaser shall provide to all members of the DPM a report in the format prescribed by Kāinga Ora from time to time. The current reporting format is set out in Schedule 6. The Purchaser shall ensure each report shall contain up to date and correct information and addresses issues and questions raised by the DPM in prior meetings.
- 6.10 The DPM is authorised and instructed by this Agreement to set processes for and advance the intentions of the parties under this Agreement to the extent possible, and to discuss and set out ways in which delivery of the Purchaser's Development can be implemented and improved in terms of timeliness, quality and compliance provided however the DPM does not have the authority to amend the scope of this Agreement or to incur financial obligations upon the parties outside the terms of this Agreement. No act of a party to this Agreement shall be binding on the other unless the act is done or taken through or approved by the DPM (or otherwise formally approved) in the manner provided for in this Agreement. Where a decision of the DPM is made, each party warrants that its representatives have authority to make such decision.
- 6.11 The Purchaser covenants that it shall (acting in good faith at all times) have regard to and give full and proper consideration to, issues, concerns, requests and alterations raised or requested by the other members of the DPM.



## 7 Dispute Resolution

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- 7.1 The parties shall use their best endeavours to resolve by mutual agreement any dispute or conflict that may arise as to the meaning of any provision in this Agreement. If a conflict arises:
- 7.1.1 the dispute shall first be referred to the DPM for resolution; and
  - 7.1.2 if the DPM is unable to resolve the dispute within ten (10) working days, the DPM will refer the matter to the chief executive officers of the parties who shall discuss the dispute in an attempt to resolve the issues between the parties. If the Purchaser has no chief executive officer position, a director or principal of the Purchaser shall discuss the dispute instead; and
  - 7.1.3 if the chief executive officers are unable to resolve the dispute within ten (10) working days clause 7.2 below shall apply.
- 7.2 If at the conclusion of the procedures set out in clause 7.1 above the dispute is not resolved to the satisfaction of either party, then a party may by written notice to the other, require the matter to be determined by arbitration in accordance with the Arbitration Act 1996.
- 7.3 The parties agree that in the case of arbitration they shall jointly appoint an arbitrator reasonably acceptable to the parties. If the parties cannot reach agreement on an arbitrator within five working days of notice given pursuant to clause 7.2 above, the parties shall request the president of the Auckland District Law Society to make an appropriate appointment for them. In each case the arbitrator's decision shall be final and binding on the parties.
- 7.4 Whilst a dispute is being resolved or arbitrated (as the case may be), the parties shall continue to perform their respective obligations under this Agreement to the extent reasonably possible having regard to the nature of the relevant dispute.
- 7.5 A party who seeks urgent interlocutory relief may, by written notice to each other party to the dispute, elect not to comply with the provisions of clauses 7.1 to 7.4, but only to the extent of the relief sought and for the period required to dispose of the application for such interlocutory relief. Except to that extent, on the disposal of the application the provisions of clauses 7.1 to 7.4 inclusive shall once again take effect.

## 8 Superlot Interface Meeting

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- 8.1 Kāinga Ora may schedule Superlot Interface Meeting/s ("**SIM**"). Kāinga Ora shall direct the content, membership and regularity of meetings for the SIM and may require the Purchaser to participate from time to time (at its own cost).
- 8.2 The Purchaser shall attend all meetings and covenants that it shall participate in good faith and give full and proper consideration to, issues, concerns, requests and alterations raised or requested by the other members of the SIM and Kāinga Ora.

- 8.3 The role of the SIM will predominantly be to align, integrate and coordinate the development of Superlots within the overall context of the Roskill South Development including but not limited to:
- 8.3.1 coordinating and harmonising the look and feel of the Roskill South Development;
  - 8.3.2 coordinating and harmonising the location and bulk of development and infrastructure within the Roskill South Development;
  - 8.3.3 shared and coordinated amenity;
  - 8.3.4 where there are interrelated PCBU duties (as defined by the Health and Safety at Work Act 2015), consulting on health and safety coordination;
  - 8.3.5 traffic management;
  - 8.3.6 scheduling and coordinating development works so as to not materially interfere or disrupt the community, resident neighbours and neighbouring development works; and
  - 8.3.7 to provide an open and transparent forum for the sharing of information, ideas and plans to ensure the streamlining of works.

## 9 Deposit

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Clause 2.0 of the General Terms (set out in Schedule 5) is hereby deleted and replaced with the following:

### **Payment**

- 9.1 The Purchaser shall pay to Kāinga Ora the Deposit on the Deposit Date.

### **Non-payment of Deposit**

- 9.2 Kāinga Ora may cancel this Agreement for non-payment of the Deposit or any part thereof where Kāinga Ora has first given to the Purchaser three working days' notice in writing of its intention to cancel and the Purchaser has failed to pay the Deposit in full within that time.
- 9.3 The Purchaser acknowledges that the Deposit is part of the Purchase Price but is non-refundable to the Purchaser except in the event of a non-remedied material default by Kāinga Ora (as set out in clause 31.5(b))

## 10 Payment of Purchase Price

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### Purchase Price

- 10.1 The Purchase Price for the Superlot shall be paid as follows:
- (a) the Deposit shall be payable on the Deposit Date (in accordance with clause 9 of the Kāinga Ora General Terms and clause 4 of the Specific Terms); and
  - (b) Settlement Sum shall be payable on the date provided for in clause 4 of the Specific Terms.
- 10.2 The parties are contracting on the basis that this transaction is for a compulsory zero rated supply and that no GST will be payable.
- 10.3 Should the Purchaser fail to pay any amounts due pursuant to this Agreement for any reason whatsoever, then the Purchaser shall pay to Kāinga Ora Default Interest on such amount from the due date to the date of payment.

### Land Transfer

- 10.4 Notwithstanding the Settlement Date specified above and provided the Title to the relevant Superlot is available and transferable, at any time the Purchaser may, by 15 Working days written notice to Kāinga Ora, elect to move a Settlement Date to an earlier date.

## 11 Development by Kāinga Ora of Title

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### Acknowledgement as to Title

- 11.1 Kāinga Ora is not obliged to continue with any part of the Roskill South Development unless it obtains consents from the Relevant Authority for the Roskill South Development on terms and conditions satisfactory to it in all respects and further, unless it decides that it is financially viable for it to do so.

### Purchase Price Adjustment

- 11.2 There shall be no variation to the Purchase Price except if on the subdivision the actual land area of the Superlot exceeds either or is less than the area shown on the indicative plan of subdivision attached as Schedule 2 by more than 5% then the Purchase Price shall be adjusted by an equivalent percentage change. For clarity, on the 5% threshold is met, the entire percentage change is utilised in calculation of the Purchase Price adjustment and the Settlement Sum shall be increased or decreased (as the case may be) to take account of the Purchase Price adjustment.
- 11.3 Kāinga Ora shall at, Kāinga Ora's expense in all things and in a timely;
- 11.3.1 Submit the Plan of Subdivision for those Superlots to be subdivided to the Relevant Authority for Consent;
  - 11.3.2 Implement the Consent;

- 11.3.3 deposit the Plan of Subdivision and the documentation required for the issue of the Superlot Title in the relevant registry of Land Information New Zealand (“LINZ”); and
- 11.3.4 obtain the Title for the Superlot generally as indicatively indicated on the Plan of Subdivision as soon as reasonably practicable.

#### **Payment of Development Contribution and Infrastructure Growth Charges**

- 11.4 Kāinga Ora may have undertaken removal of dwellings or other commercial units on the Superlot and may have accordingly received development contribution levy credits and infrastructure growth charge credits as a result and pursuant to the policies of the Relevant Authorities then applying. Pursuant to agreements between Kāinga Ora and Council and Kāinga Ora and Watercare, all such credits (with the exception of one development contribution credit per Superlot) are being applied to social housing developments being undertaken by Housing New Zealand Corporation and its subsidiaries.
- 11.5 Accordingly, whether the Superlot Title is several parcels, several titles or one block, the Purchaser acknowledges and agrees that it shall receive:
- (a) one development contribution credit per Superlot; and
  - (b) NIL infrastructure growth charge credits.
- 11.6 Kāinga Ora shall not pay any development contribution levies or infrastructure growth charges imposed by any Relevant Authority for any subsequent subdivision of the Superlot. These shall be the responsibility of the Purchaser.
- 11.7 Kāinga Ora shall register an encumbrance against the Title to the Superlot recording the allocation of one development contribution credit per Superlot and NIL infrastructure growth charge credits in the form attached at Schedule 7.

#### **Transfer**

- 11.8 Notwithstanding any other terms of this Agreement, the Purchaser shall not be entitled to a transfer of a Superlot (or part thereof) or to call for settlement in accordance with the provisions of this Agreement until:
- 11.8.1 all conditions precedent (if any) have been satisfied;
  - 11.8.2 title for the relevant Superlot has issued (if applicable); and
  - 11.8.3 Kāinga Ora Works Practical Completion.

#### **Easements, encumbrances, rights and obligations**

- 11.9
- 11.9.1 Kāinga Ora reserves the right to grant or receive the benefit of such easements, land covenants, building line restrictions, consent notices, or other encumbrances, rights or obligations (“**Encumbrances**”) which may be required in order to satisfy any conditions of the Consent, or the requirements of any statute, regulation or Relevant Authority, or which are, acting reasonably in all respects, necessary or desirable in the opinion of Kāinga Ora for the

Roskill South Development and/or the Scheme of Development or otherwise to ensure the compliance by the Purchaser and its successors in title with the terms of this Agreement. Subject to the proviso below, the Purchaser shall take title to Superlot subject to, or with the benefit of, any such Encumbrances, and shall execute and where necessary have its bankers or financiers execute all proxies, authorities or documents (with the inclusion of all terms considered reasonably desirable by the solicitors for Kāinga Ora) and do such acts and things as may be required implement any such Encumbrances on the Title and the titles to the Dwellings.

- 11.9.2 Without limiting the generality of clause 11.9.1 above, Kāinga Ora may register an Encumbrance against the Superlot substantially in the form attached as Schedule 8 to ensure that the Purchaser implements the Purchaser's Development in accordance with this Agreement and otherwise complies with the terms of this Agreement in all respects. Kāinga Ora will provide a release of this Encumbrance to the Purchaser as part of its obligations under clause 4 of the Encumbrance. The Purchaser shall ensure that release requests of the Encumbrance in Schedule 8 are made and the release registered with LINZ for all End Purchaser Dwellings in a proper and timely manner.
- 11.9.3 Kāinga Ora reserves the right to create and make any changes to the terms of any such Encumbrances prior to their registration on the Titles to the Superlot and if any Encumbrances are created or changes or variations are made to the Encumbrances by Kāinga Ora then the Purchaser will accept the same without any right or claim of compensation against Kāinga Ora subject to the proviso below.
- 11.9.4 Provided however that save in respect of any Encumbrance required by the terms of the Consent, the Scheme of Development or otherwise contemplated by this Agreement, Kāinga Ora must not, without the Purchaser's prior written consent, grant or reserve any such Encumbrance which shall materially detrimentally alter:
- (a) the value of the Superlot;
  - (b) the Purchaser's ability to undertake the Purchaser's Development on the terms contemplated herein; or
  - (c) that conflicts with the KiwiBuild Option Agreement.

The parties shall consult in good faith to try to resolve any objection raised by the Purchaser to any such encumbrance, failing which they will utilise the disputes resolution procedure in clause 7 of the Kāinga Ora General Terms.

- 11.10 The boundaries and area on the Plan of Subdivision are approximate only and subject to final adjustment on final survey and approval of the Plan of Subdivision by Kāinga Ora and the Relevant Authority. The Purchase Price will be adjusted accordingly to increases and decreases in the Superlot as provided for in clause 11.2 above, but the Purchaser shall not otherwise be entitled to make any objection or requisition or claims of compensation by reason of any alteration or variation to the Plan of Subdivision as may become necessary by direction of any Relevant Authority or by the practical exigencies of the Roskill South Development and Subdivision. However should the Purchaser request any change to the plan of Subdivision and Kāinga Ora agrees to such change, then the Purchaser shall pay to Kāinga Ora on demand all costs incurred by Kāinga Ora in undertaking any such change to its Plan of Subdivision and the Consent.

### Shared Access Lots

- 11.11 The Purchaser acknowledges and agrees with Kāinga Ora's requirement to ensure uniform and harmonious ownership and use structures/entities for commonly utilised areas throughout the Roskill South Development. For any Shared Access Way Lots with more than 10 End Purchasers utilising it, the Purchaser shall create an incorporated society to own the Shared Access Way Lot. Such incorporated society structure and associated documentation shall be subject to approval by Kāinga Ora and in any event utilising Kāinga Ora's standard documents (as created from time to time) for such incorporated societies owning Shared Access Way Lots within the Roskill South Development.
- 11.12 The Purchaser shall ensure that jointly owned Shared Access Way Lots with 10 or less End Purchasers utilising it shall have a registered land covenant on the relevant End Purchaser titles subject to pre-approval by Kāinga Ora and in any event utilising Kāinga Ora's standard documents (as created from time to time).
- 11.13 For any other land that will be used or enjoyed by 10 or more End Purchasers, or in any case where Kāinga Ora considers the improvements on any jointly used land requires on-going maintenance and/or management, the Purchaser shall comply with Kāinga Ora's requirements for the ownership and use of shared and/or commonly used land in the Roskill South Development, which may (despite clause 11.11 above) include the creation and use of the incorporated society structure approved by Kāinga Ora and utilising Kāinga Ora's standard documents as set out in clause 11.11 above.
- 11.14 The Purchaser shall be obliged to undertake the management of and fund the Shared Access Way Lot for at least 12 months from the date of its first settlement to an End Purchaser that has an interest in such Shared Access Way Lot. Such proposed management and manager thereof shall be subject to prior approval of Kāinga Ora.

## 12 Kāinga Ora Works

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12.1 Kāinga Ora shall complete the following works prior to offering the Purchaser Possession (unless otherwise agreed) as soon as reasonably practical:

12.1.1 The site remediation works described in the Site Specific Remediation and Management Plan; ;

12.1.2 The demolition and removal of all above ground structures within a Superlot including foundations, driveways and footpaths with the exception of any protected trees and their root zones..

(together “**Kāinga Ora Pre-Possession Works**”)

12.2 The parties acknowledge and agree that Kāinga Ora shall complete the following works following Possession (unless otherwise agreed). Kāinga Ora shall undertake these works at a time to be agreed with the Purchaser having regard to the programme of works for the Purchaser’s Development.

12.2.1 stormwater, wastewater, water, power, telecommunications and fibre services connections at a location considered convenient and reasonable to facilitate connection to the Superlot boundary

Any permitted alterations to the Purchaser’s Development that necessitate changes to the services and/or locations of service by Kāinga Ora shall be entirely at the cost of the Purchaser in all things.

(together “**Kāinga Ora Post-Possession Works**”)

12.3 Kāinga Ora shall undertake Kāinga Ora’s Works in accordance with industry best practice and in such manner and utilising such methodology as Kāinga Ora so chooses. However, the parties may agree at DPM for the Purchaser to undertake aspects of the Kāinga Ora’s Works (with cost and terms to be agreed, both parties acting reasonably) in order to assist with coordination, efficiency and HSW.

12.4 Kāinga Ora will consult with the Purchaser as to the timing and coordination of Kāinga Ora’s Works.

12.5 The parties agree that Kāinga Ora is only required to undertake the Kāinga Ora Works and Kāinga Ora is not required to undertake any further works to the Superlot such as, for example only, any further ground finishing, infill, levelling or compacting works or construction of retaining walls.

12.6 Kāinga Ora gives no warranty as to the suitability of the Superlot for the Purchaser’s Development (either pre or post completion of the Kāinga Ora Works).

12.7 The parties agree that Kāinga Ora may, in addition to the Kāinga Ora Works provided for in this Development Agreement, agree with the Purchaser to carry out Further Works for the Purchaser (“Further Works”).

12.8 Such Further Works to be agreed between Kāinga Ora and the Purchaser in writing.

- 12.9 All such Further Works to be undertaken by Kāinga Ora for the Purchaser shall be based on and in reliance on with the Purchasers designs/planning/engineering by its consultants and as per relevant DRP approvals obtained.
- 12.10 The Purchaser acknowledges in Kāinga Ora undertaking Further Works on behalf of the Purchaser this may have programme / Superlot handover implications that will be agreed with the Purchaser..
- 12.11 All such Further Works for Purchaser shall be undertaken at the Purchasers cost in all things. Such costs will be calculated as an actual cost recovery plus GST.
- 12.12 Payment for these Further Works should be made within 3 months of the works being completed by Kāinga Ora.

### 13 Revenue Share

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- 13.1 In this clause 13:

**Revenue** for each respective Market Dwelling means the purchase price (including GST) paid by an End Purchaser for that Market Dwelling to the Purchaser (including all variations and additions that might be negotiated and any other Dwelling associated payments).

**Market Valuation** for each respective Market Dwelling means the market value of the Market Dwelling (including GST) as at the date which is 3 years after the Settlement Date as determined by a registered valuer appointed and paid for by Kāinga Ora.

**Agreed Market Pricing** means the required pricing for Market Dwelling typologies to be agreed between the parties.

- 13.2 The parties acknowledge that the Purchase Price for the Superlots has been agreed in reliance on the potential for Revenue Share and in reliance on the Agreed Market Pricing.
- 13.3 In addition to the Purchase Price, the parties agree to share equally the Revenue over the Agreed Market Pricing achieved from the sale of Market Dwellings to End Purchasers (or other third parties). Kāinga Ora's share for each respective End Purchaser (or other third party) sale will be referred to in this clause 13 as **Revenue Share**.
- 13.4 The Purchaser will pay to Kāinga Ora the Revenue Share for each Market Dwelling without set-off or deduction on the date of settlement of each sale of a Market Dwelling by the Purchaser to an End Purchaser (or other third party).
- 13.5 For each Market Dwelling that has not been sold to an End Purchaser (or other third party) on the date 3 years from the Settlement Date the Purchaser will pay to Kāinga Ora without set-off or deduction a half share of the amount by which the Market Valuation exceeds the Agreed Market Pricing for the Market Dwelling
- 13.6 The Purchaser will make payment pursuant to clause 13.5 on the day which is 20 working days after Kāinga Ora provides written notice to the Purchaser of the Market Valuation for the respective Market Dwelling.



## 14 Remediation Works

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- 14.1 The Purchaser acknowledges that soil within the Superlot may be impacted by contamination (because of prior uses) as may be identified in the Site Specific Remediation and Management Plan.
- 14.2 Kāinga Ora shall undertake Remediation as set out in the Site Specific Remediation and Management Plan being either:
- (a) Removal and disposal of soil and material as necessary to achieve the Soil Remediation Target; or
  - (b) Encapsulation of soils impacted by contamination and/or contaminated materials and reinstatement and compaction of material (with concentrations below the Soil Remediation Target) above that encapsulation as indicated in the Site Specific Remediation and Management Plan, provided however that Kāinga Ora in its sole discretion can revise this plan as long as the changes are acceptable to the Auckland Council and do not significantly impact the Purchaser's Development,
- in such manner and utilising such methodology as Kāinga Ora chooses in its sole discretion.
- 14.3 Kāinga Ora is not obligated to remove or encapsulate soil that has concentrations below the Soil Remediation Target.
- 14.4 Other than as may be required by the Remediation works or Kāinga Ora Works, Kāinga Ora shall not be obligated to remove any fencing, old foundations, pipes, cables, or other appurtenances of any nature.
- 14.5 Where Remediation requires removal of soil (rather than encapsulation), Kāinga Ora shall not be required to infill or back fill any holes (whether or not caused by Kāinga Ora Works) nor level or compact any soil post removal of the soil impacted by contamination.
- 14.6 Following completion of the Remediation works Kāinga Ora shall, upon request, provide the Purchaser with the Site Validation Report issued by Kāinga Ora's consultant recording completion of Remediation.
- 14.7 Kāinga Ora will consult with the Purchaser as to the timing of the Kāinga Ora Post-Possession Works, shall use reasonable endeavours to co-ordinate with and not materially disrupt or delay the Purchaser's Development and shall complete Remediation of the Superlot prior to the Settlement Date.
- 14.8 The Purchaser is responsible for remediation of any contamination caused by the Purchaser's Development or failure to mitigate/resolve as required by clause 13.10 below.
- 14.9 The Purchaser shall also undertake and be responsible for (at the Purchaser's cost) the remediation of any minor contamination findings not of a material/substantial nature not previously discovered during Remediation, but excluding any deteriorated asbestos for which the Kāinga Ora will be solely responsible for remediating.

## Purchaser's Duty to Mitigate Harm

- 14.10 Kāinga Ora has or will undertake testing of the Superlot and is only aware of the contamination of the Superlot described in the Site Specific Remediation and Management Plan. Following Kāinga Ora Works Practical Completion, should the Purchaser (or its contractors, employees, visitors or any other person under its control or invitation) encounter any matter, substance or thing that has or may cause material or substantial harm or contamination of the Superlot and its surroundings or any part thereof or any land, wetland or water area or ecosystem located thereon or nearby, the Purchaser shall take all steps required to mitigate and resolve any harm or contamination or potential therefore and shall notify Kāinga Ora.

Where such works are Remediation works required by the Site Specific Remediation and Management Plan, Kāinga Ora will be responsible for the costs of Remediation of such contamination, the Purchaser shall provide Kāinga Ora with access (as set out in clause 15 below) and the Purchaser acknowledges and agrees it has no right to damages, compensation, cost, delay or any other remedy as a result of the either the finding or the resulting additional Kāinga Ora Remediation works.

## 15 Right of Kāinga Ora to carry out works

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- 15.1 Kāinga Ora and Kāinga Ora's surveyors, agents, consultants, engineers, contractors, sub-contractors, employees or any of them shall have the right to enter the Superlot at all times prior to or after settlement (as the case may be) but excluding land sold and settled with any End Purchaser, with such plant, machinery, vehicles and equipment and to do such work as shall in the opinion of Kāinga Ora, Kāinga Ora's engineers or Kāinga Ora's contractors be necessary or desirable and, without limiting the generality of the foregoing, including the right to:
- 15.1.1 Undertake the Kāinga Ora Works pursuant to clause 12 of the Kāinga Ora General Terms;
  - 15.1.2 cut and, if required, remove any materials and vegetation including trees (provided however Kāinga Ora has no obligation to remove any trees that are not within the Superlot boundary, without in any case being liable in damages or to make any compensation to the Purchaser or any person claiming through or under the Purchaser;
  - 15.1.3 carry out any other act, matter, work or thing that may in the sole discretion of Kāinga Ora be necessary or desirable to complete the Roskill South Development, all of which shall be carried out in accordance with the requirements of the Relevant Authority, (where applicable).

Provided however that Kāinga Ora shall first consult with the Purchaser (the parties acting in good faith) with a view to agreeing as far as reasonable and practical to minimising inconvenience to the Purchaser's Development by coordinating the timing of the works programme. In any event Kāinga Ora shall, where required by the Purchaser, in a timely manner reinstate in as like state as reasonably possible the surface of the land within the Superlot after the undertaking of any works contemplated herein and shall make good any damage caused to the Purchaser's Development. Kāinga Ora shall not otherwise be liable for any damage or loss in value caused to the Superlot or property arising therefrom.

## 16 Non Objection

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- 16.1 The Purchaser will support Kāinga Ora's undertaking of the Roskill South Development and allow Kāinga Ora and its business partners to undertake the Roskill South Development without interference, objection, opposition or restraint from the Purchaser.
- 16.2 The Purchaser will not make or support any objection to or submission opposing any application for resource consent, district plan provision or change or other authorisation for or facilitating the Roskill South Development under the Resource Management Act 1991 nor will the Purchaser take issue against or cause any delay to any such application, district plan provision or change.
- 16.3 The Purchaser will bring no proceedings for damages, nuisance or interference arising from the Roskill South Development and neither will the Purchaser support, finance or contribute to the cost of any such proceedings.
- 16.4 The Purchaser will not encourage or assist any other party to undertake any of the actions which the Purchaser has agreed not to undertake under this clause 16 and will not procure any other party to do so.
- 16.5 In the event that Kāinga Ora consents to the Purchaser selling all or part of its interest in the Superlot (including to an End Purchaser Agreement) (and in addition to any other terms imposed by Kāinga Ora as a condition of its consent or otherwise required or implied by this Agreement) the Purchaser will not sell, transfer, dispose or otherwise part with its interest in the Superlot or part thereof without first obtaining from any purchaser, transferee or donee (including an End Purchaser) a Deed of Covenant on identical terms and conditions as set out in this clause and shall provide a copy of that Deed to Kāinga Ora prior to any settlement by the Purchaser with any such third party. Such Deed of Covenant shall be prepared by the Purchaser's solicitor at the cost of the Purchaser and shall be subject to the approval of Kāinga Ora and its solicitors (acting reasonably in all respects) (also at the cost of the Purchaser).

## 17 Scheme of Development

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- 17.1 The Scheme of Development governs the development of the Superlot. The Purchaser's Development and plans thereto must be interpreted and implemented in a manner entirely consistent and compliant with the Scheme of Development.
- 17.2 The Purchaser's Development Plan, which forms part of the Scheme of Development, is the master document against which the Purchaser's Development will be implemented and shall substantially and in all material respects mirror and comply with the Master Plan and the Design Guidelines.
- 17.3 The Purchaser shall not deviate from the Purchaser's Development Plan without Kāinga Ora's consent.

## 18 Design Review Process

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- 18.1 The Purchaser shall comply with the Design Review Process and shall adhere to the timeframes set out therein.
- 18.2 The Purchaser shall at its cost do all things necessary to obtain the TAG, AHPDP (where required) and Kāinga Ora approval, as required, of early concept designs and developed designs of the Purchaser's Development Plan before lodgement of any resource consent application for the Purchaser's Development Plan or any implementation thereof.
- 18.3 The Purchaser must submit to the Design Review Process with all due speed and diligence and pursuant to the Design Review Process, provide high quality, professional and detailed design plans for the Dwellings, facilities and infrastructure that are to be constructed on the Superlot that comply with the Design Guidelines, the Scheme of Development and the terms of this Agreement.
- 18.4 All reviews by the TAG, AHPDP and Kāinga Ora pursuant to the Design Review Process shall assess the iterations and details of the Purchaser's Development Plan including, but not limited to Superlot master planning, configuration of lots, lot planning and configuration within lots, architecture and lot landscaping against outcomes prescribed in the Design Guidelines, the Scheme of Development and the terms of this Agreement.
- 18.5 The Purchaser will ensure that:
- 18.5.1 all landscaping for the Purchaser's Development (including, but not limited to all streetscapes, parks, Dwellings and common areas) is to a high standard consistent with the Design Guidelines;
- 18.5.2 the Purchaser's Development encompasses a variety of Dwelling designs, formats and typologies that demonstrate innovation and significant variation in architectural variety as to the construction and delivery of such Dwellings in terms of design, catering for a diverse range of occupants, exterior construction materials, street presentation, landscaping, fencing and boundary treatments, provision of carparking, letterboxes and other exterior finishes; and
- 18.6 The Purchaser shall work collaboratively with the TAG, AHPDP and Kāinga Ora, all acting reasonably and in good faith, to embrace, install, utilise and or promote services, systems and materials endorsed by TAG, AHPDP and/or Kāinga Ora for the betterment of the Purchaser's Development as a cohesive part of the Roskill South Development and for the betterment of each Dwelling's performance and aesthetics and the promotion and sale of the Dwellings.
- 18.7 If detail or iterations of the Purchaser's Development Plan presented to the TAG, AHPDP or Kāinga Ora do not comply with Design Guidelines, the Scheme of Development or the terms of this Agreement or do not contain the required information or if the Design Review Process is not adhered to in any way, Kāinga Ora may in its sole and unfettered discretion require the Purchaser to complete additional reviews with the TAG, AHPDP and/or Kāinga Ora as Kāinga Ora so requires at the Purchaser's cost.
- 18.8 If the Purchaser fails to meet information requirements of the TAG, AHPDP or Kāinga Ora, either in quality of information or by the timing of the submission, that will result in cancellation of the scheduled review.

- 18.9 The Purchaser shall respond to and address in a considered and detailed manner all the TAG, AHPDP and Kāinga Ora points, issues, queries and concerns within the timeframes specified in the Design Review Process.
- 18.10 The Purchaser shall attend all pre-application meetings with the Relevant Authority as required or recommended by Kāinga Ora.
- 18.11 Upon Receipt of the Final Design Assessment Report, the Purchaser is obliged to adopt its requirements into its Purchaser's Development. The Purchaser must not alter, in any way, such plans or deviate from the intent of such Final Design Assessment Report.
- 18.12 Should any alterations be requested by the Purchaser or any Relevant Authority subsequent to the issue of the Final Design Assessment Report, the Purchaser shall obtain any necessary further approvals of such alteration/s pursuant to the Design Review Process.
- 18.13 Once Kāinga Ora provides the Purchaser with the Final Design Assessment Report, the Purchaser must, with all due speed and diligence, proceed to procure all subdivision and land use consents and building consents and any other consents required from the Relevant Authority for the subdivision and construction of the Purchaser's Development (at its own cost) in accordance with the Final Design Assessment Report and all necessary Consents.
- Notwithstanding the foregoing, the Purchaser may make minor adjustments to the interior layout or exterior of the Dwellings where such changes are so minor so as not to require any changes to consents issued for the Purchaser's Development by a Relevant Authority and are not otherwise in contravention of TAG recommendations provided any changes/adjustments are first approved by an Kāinga Ora DPM representative.
- 18.14 Pursuant to clause 11.9 of the Kāinga Ora General Terms, Kāinga Ora may register an Encumbrance on the Title (and any subdivisions thereof) recording the provisions of this clause 18.

## 19 Construction of Dwellings

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- 19.1 The Purchaser's Development including all Dwellings, Additional Deliveries, fences, landscaping, driveways and paths, rear access lanes retaining walls and common areas must be constructed by the Purchaser so as to comply with all aspects of:
- 19.1.1 the terms of this Agreement;
- 19.1.2 the Innovation and Construction Strategy;
- 19.1.3 Kāinga Ora's approvals;
- 19.1.4 the Design Review Process approved design;
- 19.1.5 the Design Guidelines;
- 19.1.6 the Scheme of Development;
- 19.1.7 all Standard Operating Procedures;

- 19.1.8 any Encumbrances registered or to be registered on the Title;
- 19.1.9 all applicable consents, legislation, regulations, by-laws, order or other direction issued by a Relevant Authority;
- 19.1.10 necessary due care and skill to deliver high quality subdivision and Dwellings;
- 19.1.11 professionalism and in accordance with current industry standards and practice; and within the timeframes specified in clause 20 below.
- 19.2 No increase in the number or size of the Dwellings, or change to their typologies is permitted without the consent of Kāinga Ora in its sole and unfettered discretion and without adherence to the Design Review Process. The consideration of any such consent request made will be at the sole cost of the Purchaser and will include (but is not limited to) a review of existing and planned infrastructure and services within Roskill South and a review of the Scheme of Development for Roskill South. If any such request is agreed by Kāinga Ora, the conditions imposed will include (but are not limited to) the Purchaser meeting the cost of any infrastructure or services upgrades required to accommodate the increase.
- 19.3 The Purchaser shall not permit settlement or possession to take place pursuant to any End Purchaser Agreement prior to a Code Compliance Certificate issuing for the relevant Dwelling and completion in full of the Kāinga Ora Works.
- 19.4 The Purchaser acknowledges that the Superlot is part of a brownfields development site and thus shall ensure that its engineering design contemplates efficient and appropriate solutions for the construction of the various contemplated Dwellings in the Purchaser's Development (and all associated works) that best utilise such engineering and construction methodologies that most appropriately accommodate the conditions generally and reasonably expected on such a brownfields site and that take into account the Purchaser's due diligence investigations for the site.

### **Maintaining Pedestrian Access**

- 19.5 The Purchaser shall ensure regular and accessible pedestrian access over roads, footpaths and to reserves and shall ensure key transport links are provided and maintained at all times throughout the Purchaser's Development and shall request Kāinga Ora's prior written approval for all closures or temporary restrictions.

## **20 Implementation Timetable**

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### **Completion of Purchaser's Development**

- 20.1 The Purchaser acknowledges that Kāinga Ora is relying on the Purchaser to procure the sale of developed land to End Purchasers as soon as practical through the development by the Purchaser of the Superlot. Accordingly the Purchaser warrants and undertakes that it will not "land bank" the Superlot, but will with all due speed and diligence proceed to undertake and complete the Purchaser's Development and shall do so continuously and expeditiously so as to complete the Purchaser's Development in accordance with the Implementation Timetable and prior to the End Construction Date.

- 20.2 The Purchaser shall use its best endeavours to procure all necessary consents, commence construction as soon as practical, and in any event have completed the Purchaser's Development by the End Construction Date (subject to any extensions agreed pursuant to clause 20.6), at its own cost and expense in all things (save as where costs and development obligations are otherwise allocated in this Agreement).

### **Milestones**

- 20.3 Milestone 1 – The Purchaser shall commence construction (with all necessary approvals and consents for the implementation of the Purchaser's Development) of all Dwellings within 8 months from the date of the Development Agreement.
- 20.4 Milestone 2 – The Purchaser shall then complete construction of all Dwellings within 12 months of the achievement of Milestone 1.
- 20.5 The Purchaser will use its best endeavours to reach the agreed Milestones.
- 20.6 If despite the Purchaser's best endeavours but for reasons outside of the control of Purchaser (including, but not limited to delays incurred in obtaining the required approvals/consents for the Purchaser's Development from the Relevant Authority or as a result of Kāinga Ora Works not being completed within programmed timeframes), the Purchaser does not achieve the Milestones, the parties will consult and consider the circumstances and shall mutually agree via the DPM further reasonable extensions that still require delivery at speed of the Dwellings and best endeavours to comply with the Implementation Timetable but accommodate the delay/problem encountered.
- 20.7 Subject to clause 19.6, should the Purchaser not meet the targets set by the Milestones, that shall constitute default on an essential term of this Agreement and Kāinga Ora may exercise its Remedies of Default pursuant to clause 30 of the Kāinga Ora General Terms.

## Reporting

- 20.8 The Purchaser shall provide to Kāinga Ora reports on its sales, development and construction timetable (reflecting the Implementation Timetable) on the 3<sup>rd</sup> working day of each month in the format prescribed by Kāinga Ora from time to time. The current reporting format is set out at Schedule 10.
- 20.9 Notwithstanding Schedule 10, the Purchaser shall ensure each monthly report shall contain up to date and correct data comprising historic data and data from the immediately prior calendar month and including details of:
- 20.9.1 construction status;
  - 20.9.2 consent status;
  - 20.9.3 Kiwibuild status;
  - 20.9.4 design status;
  - 20.9.5 Dwelling addresses;
  - 20.9.6 Dwelling typologies;
  - 20.9.7 Dwelling and section sizes;
  - 20.9.8 End Purchaser Agreement dates;
  - 20.9.9 sale prices;
  - 20.9.10 settlement dates;
  - 20.9.11 anonymised demographic data of End Purchaser
  - 20.9.12 compliance with the Implementation Timetable.
- 20.10 Following receipt of each monthly report, or if the Purchaser fails to provide all the requisite information in a monthly report, Kāinga Ora may request and the Purchaser will cooperate with an audit of the Purchaser
- 20.11 The Purchaser will permit the auditors and others nominated by Vendor to undertake such audits and to have access to its premises and books and record at any time during normal business or trading hours.
- 20.12 In the event the Purchaser fails to report up to date, correct or comprehensive information on an open book basis the Purchaser will pay for the costs of audit incurred by the Vendor.
- 20.13 The Purchaser further agrees to consult with Kāinga Ora with a view to agreeing indicative further milestones for completion of the Purchaser's Development.
- 20.14 The Purchaser and Kāinga Ora shall discuss and agree and adjust where necessary a joint programme of works reflecting the timing of the Kāinga Ora Works and the Milestones.



## 21 KiwiBuild Homes

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- 21.1 The parties acknowledge that the Purchaser has or is about to enter into a KiwiBuild Option Agreement pursuant to the KiwiBuild Programme whereby the Purchaser's Development will become a KiwiBuild Qualifying Development and form part of the KiwiBuild Programme on the basis that the Dwellings identified as KiwiBuild herein will be KiwiBuild Homes.
- 21.2 Kāinga Ora confirms that any Dwellings constructed and sold as part of the Purchaser's Development as KiwiBuild Homes pursuant to the KiwiBuild Option Agreement will not be a breach of any of the provisions of this Agreement whereby compliance with this Agreement would cause the Purchaser to be in breach of the KiwiBuild Option Agreement.
- 21.3 Provided, however, whilst the KiwiBuild Option Agreement referenced herein remains in effect the Purchaser shall also do the following:
- (a) Collaborate with Kāinga Ora and any Relevant Authority and shall deliver the required number of Dwellings set out in clause 2 of the Specific Terms within the Purchaser's Development as KiwiBuild Homes (subject to approval pursuant to the Design Review Process in accordance with clause 18 of the Kāinga Ora General Terms).
  - (b) Seek and obtain from Kāinga Ora's Urban Development Delivery team their prior written approval to any proposed material change to the Purchaser's Development as a result of any requirement of the KiwiBuild Option Agreement; and
  - (c) Report to Kāinga Ora's Kāinga Ora's Urban Development Delivery team on the progress of the sale of KiwiBuild Homes, in particular by providing the date of the relevant Agreements (as and when obtained); a legal description of the KiwiBuild Home concerned; the purchase price and settlement date and advise Kāinga Ora of any variations thereto prior to settlement, provided however that the Purchaser shall not disclose and Kāinga Ora may not require the Purchaser to disclose the name of any purchaser of a KiwiBuild Home.
  - (d) Procure written confirmation from the Purchaser's solicitor following the settlement of a Dwelling forming part of the KiwiBuild Programme that such Dwelling has been sold by the Purchaser as a KiwiBuild Home and as required by the KiwiBuild Option Agreement.
- 21.4 In addition, Kāinga Ora may request that certain (additional to KiwiBuild Homes) Dwellings be first marketed for purchase by a Local Purchaser excluding any KiwiBuild Homes sold by the Purchaser pursuant to the KiwiBuild Option Agreement.
- 21.5 For the purposes of clause 20.4 "Local Purchaser" means any person who meets the terms of the KiwiBuild Programme and who lives or works locally (in the usual course of their daily lives) to the relevant Dwelling at the time of such purchase and is subject to providing verification of such living or working locally as Kāinga Ora may reasonably require.
- 21.6 The Purchaser shall ensure that all KiwiBuild Homes meet the requirements of the KiwiBuild Programme and is otherwise in compliance with Kāinga Ora's terms herein (acknowledging that the KiwiBuild Programme prevails)

- 21.7 Provided however the Purchaser shall not advertise these KiwiBuild Dwellings for sale prior to the modular components for the KiwiBuild Dwellings arriving in New Zealand. Any change to this requirement can be discussed and agreed between the DPM members.

## 22 Market Homes

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- 22.1 In addition to its KiwiBuild Homes commitments, the Purchaser commits to price and deliver all of the Market Homes within the Superlot so as likely to meet the Market Price.
- 22.2 In the pricing and delivery of its Market Homes the Purchaser shall ensure that the Market Homes are implemented and constructed within and pursuant to the Approved Design.

## 23 Dwelling Innovation

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- 23.1 The Purchaser shall work collaboratively with Kāinga Ora to implement the Innovative Construction and Design Strategy and having due regard to the Objectives and the Partnering Concept.
- 23.2 The Purchaser shall also work collaboratively with Kāinga Ora to jointly assess and identify appropriate other innovative housing products and/or innovative development strategies including but not limited to:
- 23.2.1 the construction and sale of houses of greater affordability;
  - 23.2.2 faster construction;
  - 23.2.3 innovative construction methodologies and designs;
  - 23.2.4 greater economical build costs; and
  - 23.2.5 improved land use efficiencies.

## 24 Roskill South Contribution – Construction Plus

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- 24.1 The Purchaser acknowledges and agrees that a key goal of Kāinga Ora is to ensure the delivery of the Construction Plus policy. Kāinga Ora will work with the Purchaser and its other business partners in Roskill South to ensure a co-ordinated approach to the implementing of the Construction Plus policy.
- 24.2 The Purchaser will fund, perform and/or otherwise implement the Construction Plus policy as detailed in Schedule 11.

## 25 Open Homes and Information

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- 25.1 Unless an alternative sale strategy is otherwise approved by Kāinga Ora and specifically dispenses with the requirement for showhome/s, the Purchaser will construct such display

showhome/s or suites located within the Superlot in consultation with Kāinga Ora having regard to the Superlot acquired and the configuration within the Roskill South Development as a whole. Such showhome/s and/or showhome suite/s shall be operated in accordance with this clause 24.

- 25.2 The Purchaser shall construct, operate and maintain any such showhome/s and/or showhome suite/s to a high quality standard in all respects for the betterment of the Roskill South Development and shall appropriately staff it with informed, experienced sales persons. The parties acknowledge and agree that high quality includes, but is not limited to, any showhome/s and/or showhome suite/s:
- 25.2.1 being professionally designed and decorated and with appropriate landscaping; and
  - 25.2.2 including adequate carparking for its purpose and use within the Superlot; and
  - 25.2.3 including a dedicated toilet (with disabled access); and
  - 25.2.4 having appropriate pedestrian access (including disabled access); and
  - 25.2.5 having adequate signage that is suitable and of high quality and in particular highlighting the location and availability of carparking on the Superlot.
- 25.3 The showhome/s and/or showhome suite/s shall be a Dwelling that is subject to the terms of this Agreement in all respects (including, but not limited to the requirement for the showhome/s and/or showhome suite/s to be approved via the Design Review Process pursuant to clause 18 of the Kāinga Ora General Terms).
- 25.4 The Purchaser shall agree with the DPM the terms of and days and hours of operation of any showhome/s and/or showhome suite/s but it shall in any event be for the entire duration of the Purchaser's sale of Dwellings and be an appropriate reception point to manage the Purchaser's sales of Dwellings .

## 26 Marketing

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- 26.1 The Purchaser shall incorporate Kāinga Ora's Marketing Design Guide and Media Protocol Plan into its sales programme for the Purchaser's Development and the individual Dwellings therein.
- 26.2 The Purchaser shall consult with Kāinga Ora and follow Kāinga Ora's reasonable directions from time to time to ensure that the Purchaser's marketing is aligned to Kāinga Ora's marketing for the Roskill South Development.
- 26.3 The parties shall consult with regularity to ensure optimum incorporation and alignment pursuant to clauses 25.1 and 25.2 above and to consider other effective measures to help ensure maximum value and optimum timing for the parties is realised through the sales and marketing process.
- 26.4 A key aspect of the Purchaser's Development is to test market acceptance of the Dwellings constructed via the Innovative Construction and Design Strategy and to educate the industry. A representative number of Dwellings constructed via the Innovative Construction and Design Strategy must therefore be open to the public for viewing for a minimum of one (1)

month and information about the Purchaser's Development, including high level costs, shall be made available to the public.

- 26.5 The Purchaser acknowledges and agrees that in addition to its own marketing and sales campaign it shall contribute financially to any coordinated and combined marketing programme that Kāinga Ora organises that includes other builders and developers at the Roskill South Development. Such financial contribution shall be in a timeframe and for an amount that is suitable and appropriate, and shall not exceed a pro rata amount having regard to:
- 26.5.1 the numbers of Dwellings that the Purchaser has for sale as a portion of the total Dwellings being marketed at the Roskill South Development; and
- 26.5.2 the total number of other builders and contributions to be made by them to the marketing programme; provided that, unless otherwise agreed, from the date of this Agreement until the End Construction Date the Purchaser shall not be required to contribute more than the Maximum Marketing Contribution of \$15,000 as recorded in clause 8 of the Specific Terms with the parties acting at all times reasonably and in good faith.
- 26.6 The Purchaser will not object (and waives any right to do so) to methods employed by Kāinga Ora in an endeavour to sell other lots forming part of the Roskill South Development including, without limitation, as to the use of signs, the placement of signs on the common property and the maintenance of display units and/or a sales office, provided that Kāinga Ora does not cause unreasonable interference to the Purchaser's Development in completing its proposed works.

## 27 Licence to Occupy

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- 27.1 Following Kāinga Ora Works Practical Completion Kāinga Ora and (in consideration to the sum of \$10.00 if demanded) shall not unreasonably withhold or delay its grant of, a non-exclusive Licence to Occupy for the Superlot as is reasonably required by the Purchaser to implement the Purchaser's Development.
- 27.2 The Licence to Occupy will be for a term commencing on the date granted and will expire on the Settlement Date, unless terminated earlier.
- 27.3 The Licence to Occupy will be granted in respect of the whole, but not part of the Superlot.
- 27.4 The Purchaser will not have any right or interest in the Superlot other than the right to access the Superlot as necessary to carry out physical work in accordance with the Licence and this Agreement.
- 27.5 The Purchaser's right to occupy as contemplated in this clause is at its own risk and is subject to the terms set out in the terms of the Licence to Occupy **attached** as Schedule 8.

## 28 Health and Safety

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- 28.1 The Purchaser shall comply with all of the Purchaser's obligations under the Health and Safety at Work Act 2015, as amended or updated from time to time (HSWA).
- 28.2 So far as is reasonably practicable, the Purchaser will consult, co-operate and co-ordinate activities with all other persons who have a health and safety duty in relation to a matter or area.
- 28.3 The Purchaser shall ensure that all of its contractors, employees and any other person engaged by the Purchaser in the performance of this Agreement or the Purchaser's Development, shall at all times conduct themselves in a safe and responsible manner in accordance with the requirements of the HSWA.
- 28.4 Responsibility for health, safety and security for the Purchaser's Development rests with the Purchaser immediately upon the Purchaser having Possession of the Purchaser's Development (or part thereof) and for the avoidance of any doubt, once the Purchaser has Possession as the Purchaser will have control and direction of all health, safety and security matters in the undertaking of the Purchaser's Development and Kāinga Ora shall have no liability in respect of the Purchaser's health, safety and security responsibilities.
- 28.5 Without limiting the generality of the foregoing, upon Possession, the Purchaser must:
- (a) in the performance of this Agreement, comply with all laws, Applicable Codes of Practice and industry best practice and at all times exercise all necessary precautions in undertaking the Purchaser's Development of the Superlot for the safety of all persons and the public, and for the protection of the environment; and
  - (b) employ a suitably qualified and experienced person or engage a suitably qualified and experienced consultant for the duration of this Agreement to ensure the Purchaser's implementation of, compliance with and performance of all the Purchaser's obligations contemplated in this clause 27.

### Reporting and Data Sharing

- 28.6 To enable Kāinga Ora to collate and share health and safety related information, trends and statistics for the betterment of health and safety generally, upon Possession the Purchaser shall commence providing monthly reports to Kāinga Ora detailing the Purchaser's implementation of and compliance with this clause 27 and any activity, incidents or accidents that have occurred in the prior month from the date of the last report, such monthly report to be in a form acceptable to Kāinga Ora. The Purchaser acknowledges and agrees this data shall be collated, reviewed, analysed and may then be (anonymously) shared by Kāinga Ora to builder partners and the industry generally for the betterment of health and safety.

### Licence to Occupy

- 28.7 For the duration of any Licence to Occupy granted by Kāinga Ora the Purchaser, in addition to the above obligations, the Purchaser must, if so requested, provide Kāinga Ora with such evidence or information as it reasonably requires to verify satisfactory performance of the Purchaser obligations under this clause 27.

## Mitigating Harm

- 28.8 Should the Purchaser or any of its contractors, employees, visitors or any other person under its control or invitation encounter any matter, substance or thing that has or may cause a health and safety risk, harm or breach of the codes, guidelines, protocol or procedures at the Roskill South Development or any part thereof, the Purchaser shall immediately take all steps to mitigate any harm or risk. Where such matter, substance or thing does or may impact upon any area, use or thing outside of the Purchaser's Development, the Purchaser shall notify Kāinga Ora as soon as reasonably practicable.

## 29 Tidy Site and Fencing

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- 29.1 The Purchaser shall take effective measures to reasonably control construction material and debris arising in connection with activity within or related to the development of the Superlot and all associated works and shall maintain in a clean, tidy and good workmanlike way and shall in any event comply with all conditions, terms and requirements of Relevant Authorities, their district plan and rules, all consents and conditions arising out of the Resource Management Act and the directions of Kāinga Ora.
- 29.2 The Purchaser shall use its best endeavours to ensure that dust, dirt and other construction material debris originating from the Superlot shall not be conveyed by any means whatsoever or cause an annoyance or become a nuisance to the general public or property owners and occupiers within or adjacent to the Superlot.
- 29.3 The Purchaser shall fence the Superlot in an appropriate manner and with a height of no less than 1.8 metres and shall board up the fences with relevant marketing material to be approved by Kāinga Ora.
- 29.4 The Purchaser shall ensure that all infrastructure for services, berms, planting, paths and curbs surrounding or within the Superlot are protected from damage during implementation of the Purchaser's Development Plan and shall be responsible for remedying any damage caused promptly and at its sole cost. The Purchaser shall ensure that no debris, rubbish, materials or substances are situated or deposited on the planted areas at any time.

## 30 Good Neighbourhood

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- 30.1 The Purchaser shall ensure that they comply with the following good neighbourhood provisions while undertaking the Purchaser's Development;
- 30.1.1 Complete an induction with Kāinga Ora prior to undertaking work on the Land to understand the community, existing relationships and standard disruption mitigations;
- 30.1.2 Operating within social responsibility and maintaining community standards;
- 30.1.3 Working hours which align with Kāinga Ora's commitments to the neighbours;
- 30.1.4 Address issues raised within a timely manner and share ongoing issues snapshot with Kāinga Ora to support broader neighbourhood engagement programme;

- 30.1.5 Good traffic management and communication practices, including TMP's where necessary.
- 30.1.6 Maintaining footpath condition adjacent to sites (unless closed via a TMP)
- 30.1.7 Stick to designated parking areas.
- 30.1.8 Maintaining berms of the site.
- 30.1.9 Operate on a policy of what comes to site, leaves site (e.g take rubbish home).
- 30.1.10 Report to Council of any rubbish that is dumped at the Superlot frontage.
- 30.1.11 Report to Auckland Transport of any damage to the road carriageway observed during works (where the carriageway is live).
- 30.1.12 Ensure banners onsite are secured, maintained and any vandalism/graffiti is reported to Kāinga Ora.
- 30.1.13 Maintain appropriate erosion and sediment controls.
- 30.1.14 Ensure Suitable site security maintained.
- 30.1.15 Commit to repair damage caused by the build-partners works.
- 30.1.16 Ensure no music is to be played on sites.
- 30.1.17 Ensure no deliveries are to arrive on site prior to the consented working hours.

## 31 Insurance

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- 31.1 The Purchaser must effect and keep in effect from the date of Possession of any part of the Superlot being purchased herein and thereafter for the period for which this Agreement remains current between the parties the following types of insurance:
  - 31.1.1 Public Liability Insurance in an amount no less than \$10,000,000.00 for any one event;
  - 31.1.2 all other insurances as required by law;
  - 31.1.3 where the Purchaser commences any work on a Superlot prior to its Settlement Date, contractors all risk cover; and
  - 31.1.4 full replacement and reinstatement insurance for all infrastructure, structures, fixtures and fittings and chattels in or on the Superlot with (if so requested by Kāinga Ora) the interest of Kāinga Ora noted thereon, with a reputable solvent insurer.
- 31.2 The Purchaser indemnifies Kāinga Ora from and against any and all claims and costs (of whatever nature) arising from damage to third party property, Kāinga Ora's property or personal injury caused by the Purchaser (or its contractors, agents and invitees) in implementing the Purchaser's Development including (but not limited to) the construction of Dwellings by the Purchaser and/or the subdivision of the Superlot.

- 31.3 The Purchaser shall provide a Certificate of Currency annually to Kāinga Ora for all insurances detailed in this clause 30 and shall not lapse or cancel the policy and shall ensure the premium is paid in full on time and shall supply evidence thereof on request.

## 32 Remedies of Default

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- 32.1 If the Purchaser fails to commence or complete the Purchaser's Development in accordance with this Agreement or defaults in performance, including failing to have completed the Purchaser's Development by the End Construction Date, or any other term of this Agreement Kāinga Ora shall, where that default or breach is capable of remedy, give the Purchaser written notice of the breach or default requiring it be remedied within 20 working days. Should that breach or default not be so remedied within the time frame specified in the notice, or not be capable of remedy (as the case may be) Kāinga Ora may:
- 32.1.1 exercise any rights that Kāinga Ora may possess including (without limitation) the right to sue for damages arising as a consequence of the Purchaser's breach of this Agreement; and/or
- 32.1.2 sue for specific performance; and/or
- 32.1.3 where such default occurs before the Settlement Date and before the date the Purchaser has taken title to the Superlot, cancel this Agreement in respect of the unsettled Superlot; and/or
- 32.1.4 direct the Purchaser who shall use best endeavours to collaborate and co-operate with Kāinga Ora to assist in devising a suitable strategy for the Purchaser to market and sell Superlot to a third party to facilitate the exit of the Purchaser from the development in a manner that minimises detrimental commercial outcomes to the balance of the development, in the reasonable opinion of Kāinga Ora; and/or
- 32.1.5 require all consents, licences and intellectual property in, for or relating to the Purchaser's Development that are within the purchaser's ownership or control to be assigned or transferred to Kāinga Ora to enable Kāinga Ora to procure completion of the Purchaser's Development (but which shall otherwise be treated by Kāinga Ora as Confidential Information). The Purchaser confirms that this clause constitutes in itself evidence of its consent to all such assignments and transfers and may be produced to all third parties as indisputable proof of Kāinga Ora's right to require and effect the assignment or transfer and the Purchaser's consent thereto; and/or
- 32.1.6 Where such default occurs before the Settlement Date serve on the Purchaser written notice requiring the Purchaser to immediately cease construction on all the Superlots and:
- (a) To transfer all the Superlots back to Kāinga Ora; or
- (b) Require the Purchaser to transfer all the Superlots to another builder partner for the consideration as determined between Kāinga Ora and the builder partner.
- 32.1.7 The Purchaser shall complete the transfer of the Superlots within 20 working days of Kāinga Ora's notice pursuant to clause 31.1.6 above. The transfer shall include the transfer of the title to the Superlot (and any titles derived from the title to the Superlot), any partially completed or completed Dwelling(s), any infrastructure, any works done on the Superlot by the Purchaser together with all Consents, licences, warranties, guarantees, and intellectual property in, for, or relating to the development of the Superlot to be assigned or transferred



to Kāinga Ora, or to the other builder partner, as the case may be to enable Kāinga Ora to procure completion of the Purchaser's Development (but which intellectual property shall otherwise be treated by Kāinga Ora as Confidential Information). The Purchaser confirms that this clause constitutes in itself evidence of its consent to all such assignment and transfers, and may be produced by all third parties as indisputable proof of Kāinga Ora's or other builder partner's right to require and effect the assignment or transfer of the Purchaser's Consent, licences, warranties, guarantees and intellectual property referred to herein.

- 32.1.8 Further the Purchaser shall indemnify and keep indemnified Kāinga Ora against any claim, loss, damage, cost, liability, proceeding or expense suffered or incurred by Kāinga Ora arising directly or indirectly from the breach of any Purchaser obligation or any term of this Agreement by the Purchaser.
- 32.2 Kāinga Ora shall be entitled to register a caveat against the titles to the Superlot to preserve Kāinga Ora's interest under this Agreement and in particular clause 31.1.6 and 31.1.7 and the Purchaser hereby authorises Kāinga Ora to register the caveat to protect its interest. The parties agree clause 31.1.6 and 31.1.7 create a caveatable interest in all the Superlots.
- 32.3 In consideration of Kāinga Ora entering into this Development Agreement and in circumstances where the Purchaser defaults in its obligations as set out in clause 31.1 above, the Purchaser irrevocably nominates, constitutes and appoints Kāinga Ora or any officer of Kāinga Ora to be the true and lawful attorney of the Purchaser for the purposes of executing all documents and performing all acts, matters, and things as may be necessary under clause 31.1.6 above subject to Kāinga Ora first giving the Purchaser 5 working days' notice of its intention to use this power of attorney.
- 32.4 Where default occurs before the Settlement Date and before the date the Purchaser has taken title to the Superlot, the Purchaser acknowledges that no compensation will be paid by Kāinga Ora to the Purchaser for any costs incurred by the Purchaser or for any works commenced or improvements on the Superlot in the event the Agreement is terminated due to the Purchaser's default.
- 32.5 If Kāinga Ora does not comply with the terms of a Settlement Notice served by the Purchaser then the Purchaser may without prejudice to any other rights or remedies available to the Purchaser at law or in equity;
- (a) sue Kāinga Ora for specific performance; or
  - (b) give notice to Kāinga Ora in writing cancelling this Agreement and demanding from Kāinga Ora a pro-rata amount of the Deposit (based on the Settlement Sum for the Superlot being terminated from the Agreement as a proportion of all the Settlement Sum).
- 32.6 Nothing in this clause 31 shall prevent either party from seeking injunctive relief.

### 33 No Security Interest

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- 33.1 The Purchaser will not create or allow any Security Interest (as defined in the Personal Property Securities Act 1999) over or affecting the Superlot or any infrastructure or

improvements thereon until it takes Title to the Superlot except those arising as a matter of law.

- 33.2 All infrastructure, structures, fittings and fixtures on or in Superlot regardless of whether paid for by Kāinga Ora or the Purchaser, including proceeds therefrom (from sale or insurance), other than assets belonging to third party contractors, will be and will remain the sole property of Kāinga Ora until the settlement in full of the relevant Superlot is completed. Kāinga Ora.
- 33.3 Notwithstanding clause 32.2 above, all infrastructure, structures, fittings, fixtures and chattels on or in the Superlot shall remain at the risk of the Purchaser from Possession.

## 34 No Caveat

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- 34.1 The Purchaser and anyone claiming through the Purchaser, shall not lodge a caveat against Kāinga Ora's Title to any of the Superlot. If the Purchaser does register a caveat or permits anyone claiming an interest through, or on behalf of, or at the instruction of the Purchaser to register such a caveat, the Purchaser shall be liable for all costs incurred by Kāinga Ora in connection therewith including the costs of removal and the costs and expenses incurred directly or indirectly by any consequential delay suffered by Kāinga Ora, and the Purchaser shall withdraw any such caveat forthwith upon being requested to do so by Kāinga Ora.

## 35 Covenantor

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- 35.1 In consideration of Kāinga Ora entering into this Agreement with the Purchaser at the request of the Covenantor, the Covenantor unconditionally irrevocably and jointly and severally guarantees to Kāinga Ora the due and punctual observance and performance by the Purchaser of all of the obligations of this Agreement.
- 35.2 The Covenantor shall indemnify and keep indemnified Kāinga Ora against any claim, loss, damage, cost, liability, proceeding or expense suffered or incurred by Kāinga Ora arising directly or indirectly from the breach of any Purchaser obligation or any term of this Agreement by the Purchaser provided the Covenantor shall have no greater liability under this clause than the Liability of the Purchaser under this Agreement.
- 35.3 Notwithstanding that as between the Purchaser and the Covenantor, the Covenantor may be a surety only nevertheless as between the Covenantor and Kāinga Ora, the Covenantor shall be deemed to be a principal obligor jointly and severally with the Purchaser.
- 35.4 The liability of the Covenantor under this Agreement shall not be affected by the granting of time or any other indulgence to the Purchaser or by the compounding, compromise, release, abandonment, waiver, variation or renewal of any of the rights of Kāinga Ora against the Purchaser or by any neglect or omission to enforce such rights or by any other thing which under the law relating to sureties would or might but for this provision release the Covenantor in whole or in part from its obligations under this Agreement.
- 35.5 The covenants and agreements made or given by the Covenantor shall not be conditional or contingent in any way or dependent upon the validity or enforceability of the covenants and

agreements of any other person and shall be and remain binding notwithstanding that any other person shall not have executed or duly executed this Agreement.

- 35.6 To the fullest extent permitted by law, the Covenantor hereby waives such of the rights of the Covenantor as surety or indemnifier (legal, equitable, statutory or otherwise) which may at any time be inconsistent with any of the provisions of this Agreement (including this clause 34).
- 35.7 The Covenantor shall, in advance or as appropriate contemporaneously, keep Kāinga Ora informed in respect of any matter that may have an impact on the financial performance or financial security of the Covenantor.

## 36 GST

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- 36.1 Kāinga Ora is registered under the GST Act. Its GST number is 91-495-627.
- 36.2 The Purchaser warrants that it:
- (a) is registered under the GST Act (or will be so registered at the Settlement Date) and its GST number is as stated in clause 10 of the Specific Terms;
  - (b) intends to use the goods supplied under this Agreement for making taxable supplies;
  - (c) does not intend to use the property as a principal place of residence by the Purchaser or a person associated with the Purchaser under section 2A(1)(c) of the GST Act; and
  - (d) does not intend to direct Kāinga Ora to transfer Title to the Superlot to another party.
- 36.3 GST will therefore be chargeable on the supply under this Agreement at zero percent pursuant to section 11(1)(mb) of the GST Act.

## 37 General

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- 37.1 The General Terms with deletions set out in Schedule 5 apply to the sale and purchase of the Superlot as varied by the Specific Terms and the Kāinga Ora General Terms. In the event of conflict first the Specific Terms, followed by the Kāinga Ora General Terms shall prevail over the General Terms.

### Lowest price clause

- 37.2 For purposes of the financial arrangement rules in the Income Tax Act 2007, the parties agree that the Purchase Price is the lowest price denominated in New Zealand dollars they would have agreed for the Superlot and taking into account the Purchaser's assumption of all of the obligations herein on the date this Agreement was entered into and the Purchase Price does not contain any capitalised interest.

### **Assignment by Kāinga Ora**

- 37.3 Kāinga Ora may assign, transfer, (whether by nomination or otherwise), or dispose of or alienate the benefit of this Agreement, without the need to obtain the Purchaser's consent, provided that Kāinga Ora procures the transferee to enter into a deed of covenant with the Purchaser pursuant to which the transferee agrees to comply with all of Kāinga Ora's obligations under this Agreement.

### **Personal Rights**

- 37.4 This Agreement and all rights granted by this Agreement are personal to the Purchaser and may not be assigned except in accordance with clause 36.5 and 36.6 below.
- 37.5 The covenants in this Agreement are intended to be binding on successors in title to the Superlot for so long as the Purchaser's Development remains incomplete. In the event that prior to the completion of the Purchaser's Development the Purchaser wishes to sell or dispose of its interest in all or part of the Superlot any such proposed new purchaser or disposee shall be subject to the prior written consent of Kāinga Ora, in its sole and unfettered discretion (and which may be conditional upon a suitable covenant, amongst other matters). Provided such sale is first consented to by Kāinga Ora, it shall be a term of such sale or disposal that the new purchaser or disposee enters into a Deed of Covenant in a form approved by Kāinga Ora (acting reasonably) to be bound by the provisions of this Agreement and the Purchaser hereby undertakes to deliver to Kāinga Ora such Deed of Covenant properly signed by the new purchaser and new covenantor on settlement of such sale or disposal. All costs incurred by Kāinga Ora under this clause (both in considering the request and approving and signing any resulting Deed of Covenant) shall be met by the Purchaser.
- 37.6 Any change in the effective control, management or ownership of the Purchaser, the Covenantor or their shareholding entities shall be deemed to be an assignment or transfer/disposal for the purposes of clauses 36.4 and 36.5 above.

### **Force Majeure**

- 37.7
- 37.7.1 If any events of force majeure prevent the performance by either party of any of its obligations under this Agreement, then performance of that obligation shall be suspended until the cause of force majeure ceases to prevent performance of that obligation. The party claiming force majeure shall notify the other in writing as soon as reasonably possible after the occurrence of the cause of force majeure.
- 37.7.2 No force majeure will relieve a party of any obligations under this Agreement including the obligation to pay money that had arising or been incurred before the occurrence of the force majeure.
- 37.7.3 If force majeure affects a party from carrying out its obligations under this Agreement then that party must use all possible diligence and use all reasonable endeavours to rectify the force majeure as quickly as possible and minimise any damage it causes.
- 37.7.4 Notwithstanding the provisions of this clause 36.7, if for any reason it shall appear that the subsistence of the cause of force majeure is so great or will (or is likely to) last so long as to operate to frustrate this Agreement then either party may apply to the other for termination

of this Agreement. If the other party agrees to such termination then the terms of the termination shall be agreed between the parties and if the parties shall fail to agree on such terms the matter shall be referred for resolution in accordance with this Agreement.

37.7.5 For the purposes of this Agreement in the event of force majeure shall be limited to the following occurrences:

- (a) acts of terrorism, war (either declared or not declared), revolution or active public enemies;
- (b) flood, storm, tempest, earthquake, fire, explosion or other act of God;
- (c) act or restraint of any local authority or government department or agency; or
- (d) strike or lock-out,

and being an occurrence act or event beyond a parties reasonable control and having a material negative impact on the Superlot or the relevant parties ability to perform its obligations herein.

Notwithstanding the above a force majeure event does not include any event directly or indirectly and/or as a result of Covid19 (as that term is defined by the World Health Organisation).

#### **Costs**

37.8 Each party shall pay all of their own legal costs in respect of this Agreement.

37.9 Notwithstanding clause 36.8 above:

37.9.1 the Purchaser shall pay all expenses (including legal costs on a solicitor-client basis) for which Kāinga Ora is liable in consequence of any breach by the Purchaser of the terms of this Agreement; and

37.9.2 Kāinga Ora shall pay all expenses (including legal costs on a solicitor-client basis) for which the Purchaser is liable in consequence of any breach by Kāinga Ora of the terms of this Agreement.

#### **Kāinga Ora**

37.10 Kāinga Ora is Housing New Zealand Limited's agent and Housing New Zealand Build Limited's agent for the implementation of the Roskill South Development and is responsible for the performance of Housing New Zealand Limited's obligations and Housing New Zealand Build Limited's obligations under this Agreement. All rights and obligations in this Agreement to be performed or enjoyed by Housing New Zealand Limited and/or Housing New Zealand Build Limited or Kāinga Ora shall be performed, enjoyed or enforced by or on Kāinga Ora as Housing New Zealand Limited's agent and/or Housing New Zealand Build Limited's agent.

37.11 Kāinga Ora covenants in favour of the Purchaser that Kāinga Ora has the authority to perform Housing New Zealand Limited's obligations and Housing New Zealand Build Limited's obligations under this Agreement and the Purchaser may rely on any act or approval having been done or given by Kāinga Ora as having been given by Housing New Zealand Limited and/or Housing New Zealand Build Limited as registered proprietor and vendor.

## Confidentiality

- 37.12 The Purchaser agrees that it will not without the prior written consent of Kāinga Ora use Confidential Information or disclose Confidential Information to any person other than those of its officers, employees, elected officials, consultants, directors and advisers essential to the implementation of the provisions contained in it or as required by law or any convention of the Government of New Zealand including but not limited to The Official Information Act 1982, The Local Government Official Information and Meetings Act 1987 and The Stock Exchange Listing Rules.
- 37.13 The Purchaser shall use its best endeavours to ensure those of its officers, employees, elected officials, consultants, directors and advisers to whom confidential information is disclosed in terms of clause 36.12 above are aware of and comply with the confidentiality obligations imposed by that clause.
- 37.14 If the Purchaser is required by law to disclose any Confidential Information it will immediately, and prior to such disclosure, advise Kāinga Ora. The Purchaser acknowledges that Kāinga Ora is subject to the provisions of the Official Information Act 1982.
- 37.15 The obligations under this clause shall survive termination or cancellation of this Agreement.
- 37.16 Except as required by law, ASX or NZX disclosure rules (where applicable) or any convention of the Government of New Zealand, the Purchaser shall not make any announcement or disclosure relating to the existence of this Agreement or its subject matter or terms except in such form and manner, and at such time, as the parties agree.
- 37.17 Notwithstanding the above, Kāinga Ora and the Purchaser agree that they shall jointly release key learnings that may be of benefit to the construction and build market in general regarding effective outcomes that result from the Innovative Construction and Design Strategy.

## Severance

- 37.18 If any part of this Agreement is or becomes legally ineffective, invalid or unenforceable, the effectively, validity or enforceability of the remainder is not affected.

## Counterparts

- 37.19 This Agreement may be executed in two or more counterparts, each of which is deemed an original and all of which constitute one and the same Agreement. This Agreement will be effective upon the exchange of physical originals or by scanning and emailing executed counterparts.

## Waiver

- 37.20 A failure or neglect by either party to enforce at any time any provision of this Agreement shall not be construed or deemed to be a waiver of the rights of either party and shall not in any way affect the validity of the whole or any part of this Agreement.

## Entire Agreement

- 37.21 This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings,

negotiations and discussions, whether oral or written, of the parties including (but not limited to) the Information Memorandum and any Term Sheet, and there are no warranties representations or other agreements among the parties in connection with the subject matter hereof except as set forth specifically herein.

- 37.22 No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the parties.
- 37.23 No waiver of any of the provisions of this Agreement shall or shall be deemed to constitute a waiver of any other provision hereof (whether or not similar) nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.
- 37.24 Where this Agreement permits Kāinga Ora to make changes to terms, policies and processes from time to time, Kāinga Ora shall use reasonable endeavours to ensure any such changes are not enforced retrospectively where such changes would impose greater obligation or cost than the terms, policies and processes applicable as at the date of this Agreement.

#### **Fair Trading Act 1986**

37.25 In accordance with s.5D of the Fair Trading Act 1986, the parties confirm:

37.25.1 all parties are in trade;

37.25.2 the land transacted under this Agreement is being supplied and acquired in trade;

37.25.3 the Purchaser has placed no reliance on any representations or agreements with Kāinga Ora or its agents made prior to this Agreement and will not place any reliance on any such representations at any subsequent time;

37.25.4 The parties have agreed the following sections of the Fair Trading Act 1986 do not apply to this Agreement and the Purchaser shall have no rights against Kāinga Ora for any contravention of those sections:

- (a) s.9 – misleading and deceptive conduct generally
- (b) s.12A – unsubstantiated representations
- (c) s.13 – false or misleading representations
- (d) s.14(1) – false representations and other misleading conduct in relation to land

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

#### **No Partnership**

37.26 No relationship of partnership or agency between or amongst the parties will be created or implied by the entering into of this Agreement.

**No Liability**

37.27 Notwithstanding Kāinga Ora's rights to review, approve, consent, monitor or otherwise control or comment on the Purchaser's Development pursuant to this Agreement, Kāinga Ora shall not be liable to the Purchaser or any other third party for any adverse effects resulting from the making or implementation of its comments, conditions, direction or strategy in relation to the Purchaser's Development and the success thereof.

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**SCHEDULE 5: GENERAL TERMS WITH DELETIONS**

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## SCHEDULE 6: DPM RULES AND PROCESS

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- (a) **Notices:** Notice of meetings shall be given to all members by the chairperson or the member calling the meeting not less than 10 working days prior to the date of the meeting specifying the time, place and proposed business of the meeting. Such notice shall be given to the address specified by each DPM member for that purpose (or if no address is specified, to the party of which that member is an appointee). The meeting may deal with any business not specified in the notice of meeting provided that each party is represented at the meeting by one or more appointees and no member present objects to the consideration of that business.
- (b) **Quorum:** No business shall be transacted at any meeting of the DPM unless a quorum is present in person at the time when the meeting proceeds to business. Unless the parties agree otherwise, the quorum for meetings of the DPM shall be all 4 members.
- (c) **Adjournment:** If within half an hour of the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned for 5 working days at the same time and place and, if at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the member or members (or his, her or their alternatives) present shall constitute a quorum.
- (d) **Voting:** Voting at any meeting of the DPM shall be one vote per member. Decisions must be unanimous.
- (e) **Minutes:** Full and accurate minutes of the proceedings of each meeting shall be kept. The Chairperson may appoint one of the members as secretary or the DPM may engage the services of a secretary to attend meetings of the DPM to record proceedings.
- (f) **Written Resolutions:** A resolution in writing signed by all members of the DPM (or their respective alternates) shall be as valid and effectual as a resolution passed at a meeting of the DPM. Any such resolution may consist of several documents in like form each signed by one or more of the members of the DPM. A facsimile message purporting to be sent by a voting member shall be deemed to be a document signed by such member for the purpose of this clause.
- (g) **Meeting by Telephone/Videoconference:** The contemporaneous linking together by telephone or other means of communication of a number of the members of the DPM not less than a quorum, whether or not any one or more of the members is out of New Zealand, shall be deemed to constitute a meeting of the DPM so long as the following conditions are met:
- (i) all the members shall be entitled to notice of a meeting by telephone or other means of communication and to be linked by telephone or such other means for the purposes of such meeting. Notice of any such meeting may be given by telephone or other means of communication;

- (ii) each of the members taking part in the meeting must be able to hear each of the other members taking part at the commencement of the meeting,

and a minute of the proceedings at any such meeting shall be sufficient evidence of such proceedings and of the observance of all necessary formalities, if certified as a correct minute by the Chairperson or by another member.

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**SCHEDULE 7: DEVELOPMENT ENCUMBRANCE**

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**SCHEDULE 8: LICENCE TO OCCUPY**

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Draft

Dated

2020

**Parties**

**Kāinga Ora- Homes and Communities**

Kāinga Ora

**[Purchaser]**

Licensee

**Licence to Occupy  
Superlot [No.], Roskill South**

**Dated** 2020

**Parties**

- 1 Kāinga Ora- Homes and Communities (“**Kāinga Ora**”)
- 2 [Purchaser] (“**Licensee**”)

**Background**

- A Under an Agreement for Sale and Development entered into on the [date of agreement] between Kāinga Ora and the Licensee (“**Agreement**”) Kāinga Ora agreed to sell and the Licensee agreed to purchase and develop the land situated at Superlot [no.], Roskill South (“**Property**”).
- B Kāinga Ora has agreed to grant the Licensee a licence to occupy the Property to enable it to commence the development works contemplated in the Agreement and the Licensee has agreed to take on a licence over the Property on the terms contained herein.

**The Parties Agree:**

**1. Grant of Licence**

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- 1.1. Kāinga Ora hereby grants to the Licensee (and to the extent necessary, their employees, financiers, consultants, agents and contractors) a non-exclusive Licence to occupy the Property on the terms set out in this Licence for the purposes of:
  - a) undertaking all building works and earthworks required by the terms of the Agreement in accordance with the terms of the Agreement (“**Works**”) for the preparation, delivery and completion of the Licensee’s development of the Property; and
  - b) marketing the Licensee’s development of the Property to End Purchasers pursuant to the terms of the Agreement including (but not limited to) completion and operation of a showhome/s.
- 1.2. This Licence commences on the date of this document and expires on settlement of the Licensee’s purchase of the Property unless terminated earlier pursuant to clause 6 below.
- 1.3. This licence to occupy is granted by Kāinga Ora to the Licensee in consideration of the Licensee carrying out the works contemplated in the Agreement.
- 1.4. The Licensee acknowledges and agrees that from the date of this Licence or from the date it entered into occupation of the Property whichever is the earlier, it has control and direction of the Property and is responsible for all health, safety and security matters in the undertaking of the Purchaser’s Development and Kāinga Ora shall have no liability in respect of the Licensee’s health, safety and security responsibilities.

**2. Licence Contractual Only**

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- 2.1. This Licence is contractual only. It does not give the Licensee any title interest in the Property.

### 3. Covenants by the Licensee

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3.1. The Licensee shall (and shall ensure that their employees, financiers, consultants, agents and contractors and any other person engaged by the Licensee) at all times during the currency of this Licence:

- (a) comply with all of the Licensee's obligations under the Health and Safety at Work Act 2015, as amended or updated from time to time (HSWA);
- (b) consult, co-operate and co-ordinate activities with all other persons who have a health and safety duty in relation to a matter or area;
- (c) ensure that all of its contractors, employees and any other person engaged by the Licensee in the performance of this Agreement or the Purchaser's Development, at all times conduct themselves in a safe and responsible manner in accordance with the requirements of the HSWA;
- (d) Without limiting the generality of the foregoing, the Licensee must:
  - (i) in the performance of the Agreement, comply with all laws, Applicable Codes of Practice and industry best practice and at all times exercise all necessary precautions in undertaking the Purchaser's Development of the Superlot for the safety of all persons and the public, and for the protection of the environment; and
  - (ii) employ a suitably qualified and experienced person or engage a suitably qualified and experienced consultant for the duration of the Agreement to ensure the Licensee's implementation of, compliance with and performance of all the Licensee's obligations contemplated in this clause 3.
- (e) if so requested, provide Kāinga Ora with such evidence or information as it reasonably requires to verify satisfactory performance of the Licensee obligations under this clause 3.
- f) ensure that it complies with Kāinga Ora's reasonable requests in relation to the temporary fencing off of the Property (to not less than 1.8m high) to secure the Property against unauthorised entry;
- g) comply in full with clause 27 of the Agreement;
- h) mitigate dangers whether actual or perceived;
- i) make good any loss or damage to the Development which arises from the Licensee's activities;
- j) reduce or eliminate nuisances or any other aggravating factors arising from activities on the Property to the minimum possible;
- k) noise control; comply with statutory and territorial authority requirements relating to the control of noise levels on the Property; and



- l) nuisance; take all necessary precautions to prevent nuisance from water, smoke, dust, rubbish and other causes.

3.2 The Licensee must, as soon as reasonably practicable, give Kāinga Ora written notice if:

- (a) Any serious injury or property damage occurs;
- (b) a Government Agency issues a notice, order or fine;
- (c) a Government Agency commences an investigation or prosecution; or
- (d) the Licensee or an employee agent or contractor of the Licensee is required by any legislation to give a notice or a report.

*For the purposes of this clause 3.4 "Government Agency" means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.*

3.3 The Licensee must, as soon as practicable after giving such notice, provide Kāinga Ora with a written report setting out reasonable details of the relevant happenings preceding such notice.

#### **4. Kāinga Ora's Covenants**

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4.1. Kāinga Ora will provide all necessary access as contemplated herein to the Licensee.

#### **5. Variation of Licence**

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5.1. The Licensee acknowledges that Kāinga Ora shall have the power by not giving less than five working days prior notice in writing, to vary the terms of this Licence as it shall see fit in respect of the Property and/or Development, provided however that any variation notified pursuant to the provisions of this clause shall not unreasonably limit or impede in any way the Licensee's ability to progress the completion of the Licensee's development as contemplated in the Agreement provided that due regard is had to the requirements set out in clause 3 herein.

#### **6. Termination**

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6.1. This Licence shall be subject to immediate termination by Kāinga Ora if:

- a) at any time any provision of this Licence is breached by the Licensee and not remedied by the Licensee within five working days of the Licensee being notified by Kāinga Ora so to do; or
- b) the Agreement is terminated; or
- c) the Agreement is assigned, transferred or otherwise disposed of (this Licence being personal to the Licensee).

## **7. No Interest in Land**

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- 7.1. The Licensee has a personal right of entry on to the Property and through the Development on the terms specified in this Licence but no title interest in the Property.

## **8. Indemnity**

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- 8.1. The Licensee shall indemnify Kāinga Ora against all costs, losses, damages and expenses which Kāinga Ora may suffer or incur in consequence of works undertaken or any breach or non-observance by the Licensee of any of the covenants terms and conditions of this Licence. On any default or failure by the Licensee to observe and perform any of the covenants terms and conditions of this Licence the Licensee will forthwith on demand by Kāinga Ora make good to Kāinga Ora all costs, losses, damages and expenses sustained or incurred by Kāinga Ora by reason of or in consequence of any such default or failure by the Licensee without the necessity of any prior demand having been made on the Licensee and without prejudice to Kāinga Ora's right to terminate under clause 6 of this Licence or the terms of the Agreement.

## **9. Interpretation**

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- 9.1. In this Licence, unless the context otherwise requires, all words defined or capitalised shall have the same meaning as defined in the Agreement.

## **10. Costs**

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- 10.1. Each party will pay its own costs of and incidental to the preparation and execution of this Licence.
- 10.2. Kāinga Ora's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of Kāinga Ora's rights, remedies and powers under this Licence shall be paid for by the Licensee.

## **11. Counterparts**

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- 11.1. This deed may be executed in two or more counterparts (including by facsimile or email) all of which will together be deemed to constitute one and the same deed. A party may enter into this deed by signing a counterpart copy and sending it to the other party. The parties consent and agree to be bound by their electronic signatures.



## SCHEDULE 9: KĀINGA ORA ROSKILL SOUTH DEVELOPMENT MASTER PLAN

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*Revision:*

*Date:*

*The Master Plan shows Kāinga Ora's indicative Roskill South Development plans to be considered alongside overall master plan framework. It remains subject to review and revision by Kāinga Ora from time to time.*

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## SCHEDULE 10: MONTHLY REPORT FORMAT

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## SCHEDULE 11: CONSTRUCTION PLUS POLICY

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- 1.1 The Purchaser shall (subject to review and revision by Kāinga Ora from time to time) use and continue to use its ability wherever it can, in good faith to:
- 1.1.1 maximise the opportunity for the creation of employment opportunities to local people residing in the Roskill South area within its business and/or the Purchaser's Development;
  - 1.1.2 maximise the creation of training opportunities by utilising existing work experience schemes and formal apprenticeships within its business to the end intent to develop a local work force that is highly skilled, properly qualified and well-motivated to meet the skill needs of the local economy in respect of the construction industry.
  - 1.1.3 Commit to ensuring, funding, creating and or undertaking of such initiatives as may contribute to the growth and sustainment of the community wherever it can, for example, but not limited to:
    - (a) support extraordinary learning, for example small construction projects / demonstrations in local schools;
    - (b) reduce, recycle and reuse materials wherever possible;
    - (c) promote construction careers, for example through mentoring, regular sites visits from local schools, installation of hoardings to communicate various construction skills;
    - (d) work with the community for example, creating and maintaining community gardens, sponsoring local sports teams to the end and intent that such community initiatives both grow and encourage them to become self-sustaining, funding local community organisations;
    - (e) be a good neighbour by minimising disruption, demonstrating a safe site and practices, keeping an eye on the area / a "neighbourhood watch" role and helping out and fitting in where required.

**SCHEDULE 12: TITLES FOR SUPERLOT/SUBDIVISION PLANS**

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## SCHEDULE 13: STANDARD OPERATING PROCEDUES (SOPS)

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